



**An Binse um Achomhairc i dtaobh Cosaint Idirnáisiúnta**  
**The International Protection Appeals Tribunal**

**Information Note on Preliminary Reference in Case C 616/19**

**M.S., M.W., G.S. v Minister for Justice and Equality**

**(Request for a preliminary ruling from the High Court, Ireland)**

Advocate General Saugmandsgaard ØE delivered his opinion regarding the above matter on 3<sup>rd</sup> September 2020. This request for a preliminary ruling submitted by the High Court concerns the interpretation of the rules on admissibility laid down in Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status. The questions submitted to the Court of Justice of the European Union (CJEU) were raised in the context of three judicial review applications challenging decisions of the International Protection Appeals Tribunal, involving three third-country nationals, who have been granted subsidiary protection in Italy, applying to Ireland for the grant of refugee status.

An issue of interpretation of the provisions contained in EU law regarding the inadmissibility of certain applications for international protection had arisen in a very specific context, namely Ireland's notification of its intention to take part in the adoption and application of Regulation (EU) No 604/2013, the Dublin III Regulation, with the result that it is subject to that regulation, but Ireland not taking part in the adoption of the associated Procedures Directive, Directive 2013/32/EU, which means that it is neither bound by that directive nor subject to its application. Ireland therefore has remained subject to the original Asylum Procedures Directive 2005/85, which was associated with Regulation (EC) No 343/2003, the Dublin II Regulation.

The CJEU has therefore to determine a question of interpretation of a provision of Directive 2005/85 falling outside the framework of the Dublin II Regulation, as envisaged by the EU legislature. AG Saugmandsgaard ØE, in his opinion proposes that the CJEU find that those rules do not preclude Ireland from regarding as inadmissible applications, such as those lodged by the third-country nationals in the main proceedings, for the grant of refugee status in the case where those persons have been granted subsidiary protection by another Member State.

Having also expressed the view that “a third-country national's attempt to secure refugee status in one Member State after being granted subsidiary protection status in another Member State has, (...), been expressly provided for by the legislature within the framework both of the Dublin II Regulation and of the Dublin III Regulation” and that it “cannot therefore be deemed to constitute an abuse of rights in general and abstract terms”, he concludes as follows:

“97. In the light of the foregoing considerations, I propose that the Court answer as follows the questions referred for a preliminary ruling by the High Court (Ireland):

Article 25(2) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, examined in the context of the application of 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, must be interpreted as not precluding Ireland from providing, in its national legislation, for a ground of inadmissibility allowing it to reject an application for international protection lodged by a third-country national in the case where that third-country national has already been granted subsidiary protection status in a first Member State.”

ENDS.