



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-411/10 N.S. v Secretary of State for the Home Department and C-493/10 M.E. and Others v Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform

An asylum seeker may not be transferred to a Member State where he risks being subjected to inhuman treatment

EU law does not permit a conclusive presumption that Member States observe the fundamental rights conferred on asylum seekers

The common policy on asylum is a constituent part of the EU's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the European Union. The 'Dublin II' Regulation¹ sets out the criteria for determining the Member State responsible for examining an asylum application lodged in the EU, a single Member State being, in principle, responsible. Where a third country national has applied for asylum in a Member State which the Regulation does not indicate as the State responsible, the Regulation provides for a procedure for transferring the asylum seeker to the Member State responsible.

In Case C-411/10, Mr N.S., an Afghan national, came to the United Kingdom after travelling through, among other countries, Greece, where he was arrested in 2008. He was released by the Greek authorities four days later and ordered to leave Greece within 30 days. Mr N.S. did not make an asylum application. According to him, when he tried to leave Greece he was arrested by the police and expelled to Turkey, where he was detained in appalling conditions for two months. He states that he escaped from his place of detention in Turkey and travelled to the United Kingdom, where he arrived in January 2009 and lodged an asylum application. In July, Mr N.S. was informed that he would be transferred to Greece in August, under the 'Dublin II' Regulation. In legal proceedings then brought challenging that decision he alleged that there was a risk that his fundamental rights would be infringed were he to be sent back to Greece. The national court points out that asylum procedures in Greece have serious shortcomings, the proportion of asylum applications which are granted is extremely low, judicial remedies are inadequate and very difficult to access and the conditions for reception of asylum seekers also inadequate.

Case C-493/10 concerns five persons, all unconnected with each other, originating from Afghanistan, Iran and Algeria. Each of them travelled via Greece where they were arrested for illegal entry without applying for asylum. They then travelled to Ireland, where they claimed asylum. They resist their return to Greece and claim that the procedures and conditions for asylum seekers there are inadequate.

In that context, both the Court of Appeal of England and Wales (United Kingdom) and the High Court (Ireland) ask the Court of Justice whether – in the light of the overloading of the Greek asylum system and its effects on the treatment of asylum seekers and on the examination of their claims – the authorities of a Member State which should transfer the applicants to Greece (the Member State responsible for the examination of the asylum application under the Regulation) must first check whether that State actually observes fundamental rights. They also ask whether, if that State does not observe fundamental rights, those authorities are bound to assume responsibility for examining the application themselves.

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).

In the course of the proceedings before the Court in these cases, thirteen Member States, the Swiss Confederation, the United Nations High Commissioner for Refugees, Amnesty International and the AIRE Centre have intervened. The parties which have submitted observations agree that in 2010 Greece was the point of entry in the European Union of almost 90% of illegal immigrants, resulting in a disproportionate burden being borne by that State compared to other Member States and the inability of the Greek authorities to cope with the situation in practice.

In today's judgment the Court notes, first, that the Common European Asylum System was conceived in a context making it possible to assume that all the participating States observe fundamental rights and that the Member States can have confidence in each other in that regard. It is precisely because of that principle of mutual confidence that the European Union legislature adopted the 'Dublin II' Regulation, the main objective of which is to speed up the handling of asylum claims in the interests both of asylum seekers and the participating Member States.

Proceeding on the basis of that principle, the Court examines whether the national authorities which should carry out the transfer to the Member State responsible for the asylum application, indicated by the Regulation, must first examine whether the fundamental rights of persons in that State are observed.

The Court states that the slightest infringement of the norms governing the right to asylum cannot be sufficient to prevent the transfer of an asylum seeker to the Member State primarily responsible, since that would deprive States' obligations in the Common European Asylum System of their substance and endanger the objective of quickly designating the Member State responsible.

However, the Court holds that **EU law precludes a conclusive presumption that the Member State indicated by the Regulation as responsible observes the fundamental rights of the EU.**

The Member States, including the national courts, may not transfer an asylum seeker to the Member State indicated as responsible where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union. The Court considers that the Member States have a number of sufficient instruments at their disposal enabling them to assess compliance with fundamental rights and, therefore, the real risks to which an asylum seeker would be exposed were he to be transferred to the Member State responsible².

The Court adds that, subject to the right itself to examine the application, **the Member State which should transfer the applicant to the Member State responsible under the Regulation and which finds it is impossible to do so, must examine the other criteria set out in the Regulation, in order to establish whether one of the following criteria enables another Member State to be identified as responsible for the examination of the asylum application.**

In that regard, **it 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. If necessary, it must itself examine the application.**

Finally, the Court states that its answers do not require to be qualified in any respect so as to take account of Protocol (No 30) on the application of the Charter of Fundamental Rights of the European Union to Poland and the United Kingdom.

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

² Including the reports of international non-governmental organisations or the United Nations Refugee Agency.

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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