

Joined Cases C-411/10 and C-493/10 N. S. v Secretary of State for the Home Department, and M. E. and Others v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform [2011] ECR-00000

Facts: Five appellants were arrested in Greece for illegal entry into EU territory. They then travelled to Ireland, where they sought asylum. They resisted return to Greece on the basis that this would violate their rights under EU law, even though their return to Greece was compliant with the Common European Asylum System created under Art. 3(2) of the Dublin Regulation. While some Member States contended that decisions made under Common Asylum System were not reviewable under EU law, several human rights associations, and in particular, N.S., contended that they were. The UK also questioned whether its opt-out under the agreed Protocol No. 30 (acknowledging that the Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms) would have an impact on the applicability of the Charter of Fundamental Rights on the facts.

Held: The Charter states that the provisions thereof are addressed to the Member States only when they are implementing European Union law. Therefore, it applies to decisions taken under the Dublin Regulation. Despite Art. 51(1) of Charter stating that its provisions only apply to Member States when they are implementing EU law, the exercise of discretion under the Dublin Reg Art. 3(2) was an instance of implementation within the meaning of Art. 51(1). While the presumption underlying the relevant legislation, that asylum seekers will be treated in a way which complies with fundamental rights, must be regarded as rebuttable, Member States may not transfer an asylum seeker to the allegedly responsible Member State where there are substantial grounds for believing that the asylum seeker will be face a real risk of being subjected to inhuman or degrading treatment within Art. 4 of the Charter of Fundamental Rights.

Finally, the Court reasoned that Protocol No. 30 had no impact on the applicability of the Charter of Fundamental Rights. Analysing its provisions, the Court noted that Art. 1 to the Protocol states that the Charter "does not extend" the ability of the Court to invalidate laws inconsistent with fundamental rights – a power which had existed even prior to the Charter's entry into legal force.