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Country of Applicant:

Iran

Date of Decision:

02-12-2008

Citation:

K.R.S. v the United Kingdom, Application no. 32733/08

Court Name:

European Court of Human Rights (Fourth Section)

Keywords:

[Dublin Transfer](#) [1]

[Effective remedy \(right to\)](#) [2]

[Non-refoulement](#) [3]

[Request to take back](#) [4]

[Responsibility for examining application](#) [5]

[Safe third country](#) [6]

Relevant Legislative Provisions:

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [7] > [Article 3](#) [8]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [9] > [Art 7](#) [10]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [9] > [Art 9](#) [11]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [9] > [Art 10](#) [12]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [9] > [Art 12](#) [13]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [9] > [Art 15](#) [14]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [9] > Art 21

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#)

[9] > [Art 39](#) [15]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [7] > [Article 13](#) [16]

European Union Law > [EN - Reception Conditions Directive, Directive 2003/9/EC of 27 January 2003](#) [17]

European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [18] > [Article 3](#) [19] > [2.](#) [20]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [7] > [Article 34](#) [21]

Headnote:

The applicant challenged his transfer to Greece from the UK under the Dublin II Regulation, on the basis that the situation for asylum seekers in Greece would lead to a violation of Article 3 ECHR. The Court declared the application manifestly ill-founded and therefore inadmissible, as it was presumed that Greece would comply with its obligations and would not *refoule* him to his country of origin Iraq.

Facts:

The applicant, an Iranian national, claimed asylum in the UK in November 2006, having travelled through Greece first. The UK authorities made a request for Greece to accept responsibility for considering his claim, pursuant to the Dublin II Regulation, which was accepted. The UK authorities therefore declared the applicant's asylum claim inadmissible and set directions for his removal to Greece.

The applicant was refused permission to bring a judicial review challenge against his removal. However removal was suspended as the applicant lodged an application with the ECtHR for a rule 39 interim measure, which was granted on the basis of a UNHCR position paper, recommending that governments refrain from returning asylum seekers to Greece under the Dublin Regulation until further notice.

He alleged before the Court that his expulsion from the UK to Greece would breach Article 3 ECHR. The Court also considered Article 13.

Decision & Reasoning:

The Court considered its previous case law on Article 3 and 13, and the obligation of States to rigorously assess whether a person has shown substantial grounds that s/he faces a real risk of being subjected to treatment contrary to Article 3 upon expulsion, which cannot be on the basis of an automatic application of procedural requirements. To comply with Article 13, there must be independent and rigorous scrutiny of such a claim, with automatic suspensive effect.

The Court noted the concerns expressed in the UNHCR position paper, in particular that Dublin returnees would not have access to an effective remedy in Greece. This concern was shared by Amnesty International and other NGOs.

However, the evidence before the Court showed that Greece did not remove people to Iran, which meant the applicant did not face a risk of *refoulement*. The Court found that there was a presumption that Greece would abide by its international obligations, contained in the Dublin Regulation, as well as the EU asylum *acquis* on minimum reception conditions and asylum

procedures.

The Court also found nothing to suggest that Dublin returnees in Greece who were at risk of onward *refoulement* would be unable to apply in Greece to the ECtHR for Rule 39 measures to prevent this, referring to a letter obtained by the UK government by the Greek 'Dublin Unit'. It reiterated that as a Contracting State Greece has undertaken to secure ECHR rights, including Article 3 and Article 34. In the absence of evidence to the contrary it should be presumed to comply with these obligations. As such, if the applicant faced removal by Greece to Iran, he should lodge a Rule 39 application against Greece, once there. Similarly, any potential concerns in relation to detention conditions in Greece should be pursued first before the Greek domestic authorities, and then the ECtHR.

Outcome:

The Court unanimously found that the UK would not breach its obligations under Article 3 ECHR by removing the applicant to Greece. It therefore declared the application inadmissible and manifestly ill founded, and lifted the interim measure.

Subsequent Proceedings :

This case was overturned by the Court in its ruling in *M.S.S. v. Belgium and Greece*.

Observations/Comments:

In 2008, following the publication of the UNHCR report in April, the ECtHR received a large number of Rule 39 requests from asylum applicants in the UK seeking to prevent their removal to Greece.

The Rule 39 indication in this case informed the UK government that the measure would be maintained pending confirmation that the applicant would be able to apply in Greece for Rule 39 measures in the event of onward expulsion from Greece to Iran. This led an agent of the UK government to write to the Court providing information obtained from the Greek Dublin Unit that Dublin returnees would be able to lodge asylum claims upon transfer and would not be immediately removed.

On the basis of this ruling, other challenges to Dublin transfers to Greece were found inadmissible, until the case of *M.S.S. v. Belgium and Greece*.

The ECtHR Dublin Fact Sheet provides a useful overview of relevant Dublin cases before the Court:

http://www.echr.coe.int/Documents/FS_Dublin_ENG.pdf [22]

Case Law Cited:

CJEU - Case C-72/06, *Commission of the European Communities v Hellenic Republic*

UK - *H (Iran); Zego (Eritrea); Kadir (Iraq) v. Secretary of State for the Home Department* [2008] EWCA 985

[ECtHR - *Jabari v. Turkey*, Application no. 40035/98, 11 July 2000](#) [23]

[ECtHR - *Gebremedhin \(Gaberamadhien\) v France*, Application No. 25389/05](#) [24]

ECtHR - Waite and Kennedy v. Germany [GC], Application No. 26083/94

[ECtHR - NA v UK, Application No. 25904/07](#) [25]

ECtHR - Conka v Belgium (Application no. 51564/99)

ECtHR - T.I. v United Kingdom (Application no. 43844/98)

UK - Nasser v Secretary of State for the Home Department [2008] 3 WLR 1386, [2008] 2 WLR 523

[ECtHR - Chahal v the United Kingdom \(Application no. 22414/93\)](#) [26]

[ECtHR - Saadi v Italy, Application no. 37201/06](#) [27]

Attachment(s):



[K.R.S. v. THE UNITED KINGDOM.pdf](#)[28]

Other sources cited:

UNHCR Position on the return of asylum seekers to Greece under the 'Dublin Regulation', 15 April 2008

Recommendation R (97) 22, Recommendation R (98) 13, and Recommendation R (2003) 5 of the Committee of Ministers

Resolution 1471 (2005) of the Parliamentary Assembly of the Council of Europe (Accelerated asylum procedures in Council of Europe member states)

Committee for the Prevention of Torture, report on its visit to Greece from 20 to 27 February 2007

Norwegian Organisation for Asylum Seekers, the Norwegian Helsinki Committee and Greek Helsinki Monitor report 'A gamble with the right to asylum in Europe-Greek asylum policy and the Dublin 2 Regulation?', 9 April 2008

Amnesty International press release, 'No place for an asylum-seeker in Greece?', 28 February 2008

Authentic Language:

English

State Party:

United Kingdom

National / Other Legislative Provisions:

United Kingdom- Immigration Act 1971 (The 1971 Act)

United Kingdom - Immigration Rules - Para 345

United Kingdom - Asylum and Immigration (Treatment of Claimants
etc) Act 2004

Schedule 3

Part 2

Links:

[1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A1213

[2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A30

[3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A48

[4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2488

[5] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A1200

[6] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A73

[7] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[8] https://www.asylumlawdatabase.eu/node/195#toc_12

[9] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>

[10] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%207>

[11] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%209>

[12] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%2010>

[13] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%2012>

[14] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%2015>

[15] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%2039>

[16] https://www.asylumlawdatabase.eu/node/195#toc_60

[17] <https://www.asylumlawdatabase.eu/node/353>

[18] <https://www.asylumlawdatabase.eu/node/19>

[19] https://www.asylumlawdatabase.eu/node/19#toc_65

[20] https://www.asylumlawdatabase.eu/node/19#toc_67

[21] https://www.asylumlawdatabase.eu/node/195#toc_132

[22] http://www.echr.coe.int/Documents/FS_Dublin_ENG.pdf

[23] <https://www.asylumlawdatabase.eu/en/content/ecthr-jabari-v-turkey-application-no-4003598-11-july-2000>

[24] <https://www.asylumlawdatabase.eu/en/content/ecthr-gebremedhin-gaberamadhien-v-france-application-no-2538905>

[25] <https://www.asylumlawdatabase.eu/en/content/ecthr-na-v-uk-application-no-2590407>

[26] <https://www.asylumlawdatabase.eu/en/content/ecthr-chahal-v-united-kingdom-application-no-2241493>

[27] <https://www.asylumlawdatabase.eu/en/content/ecthr-saadi-v-italy-application-no-3720106>

[28]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/K.R.S.%20v.%20THE%20UNITED%20KING>