Judgment of the Court (Grand Chamber) of 21 December 2011 (references for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division) and from the High Court of Ireland — United Kingdom, Ireland) — N. S. (C-411/10) v Secretary of State for the Home Department and M. E. (C-493/10), A. S. M., M. T., K. P., E. H. v Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform

(Joined Cases C-411/10 and C-493/10) [1]

(European Union law — Principles — Fundamental rights — Implementation of European Union law — Prohibition of inhuman or degrading treatment — Common European Asylum System — Regulation (EC) No 343/2003 — Concept of 'safe countries' — Transfer of an asylum seeker to the Member State responsible — Obligation — Rebuttable presumption of compliance, by that Member State, with fundamental rights)

(2012/C 49/13)

Language of the cases: English

Referring courts

Court of Appeal (England & Wales) (Civil Division), High Court of Ireland

Parties to the main proceedings

Appellants: N. S. (C-411/10), M. E., A. S. M., M. T., K. P., E. H. (C-493/10)

Respondents: Secretary of State for the Home Department (C-411/10), Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform (C-493/10)

Intervening parties: Amnesty International Ltd and the AIRE Centre (Advice on Individual Rights in Europe) (UK) (C-411/10), United Nations High Commissioner for Refugees (UNHCR) (UK) (C-411/10), Equality and Human Rights Commission (EHRC) (C-411/10), Amnesty International Ltd and the AIRE Centre (Advice on Individual Rights in Europe) (IRL) (C-493/10), United Nations High Commissioner for Refugees (UNHCR) (IRL) (C-493/10)

Re:

(C-411/10)

Reference for a preliminary ruling — Court of Appeal (England and Wales) (United Kingdom) — Interpretation of Article 3(1) and (2), and the provisions of Chapter III, of 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) — Interpretation of the minimum standards for the reception of asylum seekers, as set out in the provisions of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ 2003 L 31, p. 18), Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12), and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13) — Procedure for determining the Member State responsible for dealing with an asylum application submitted by an Afghan national — Risk that fundamental rights may be breached if responsibility is take up again by the Member State which was previously responsible — Nature and scope of the protection conferred on an asylum seeker by the provisions of the Charter of Fundamental Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms

(C-493/10)

Reference for a preliminary ruling — High Court of Ireland — Interpretation of Articles 3(2) and 18 of 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) — Procedure for determining the Member State responsible for examining asylum applications lodged by nationals of several third countries (Afghanistan, Iran and Algeria) — Obligation of a Member State to take responsibility for examining an asylum application on the basis of Article 3(2) of Regulation (EC) No 343/2003 where there may be an infringement of the applicant's fundamental rights and/or non-compliance with the minimum standards laid down by Directives 2003/9/EC, 2004/83/EC and 2005/85/EC by the Member State responsible for the application in accordance with the criteria established by that regulation.

Operative part of the judgment

1. *The decision adopted by a Member State on the basis of Article 3(2) of 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, whether to examine an asylum application which is not its responsibility according to the criteria laid down in Chapter III of that Regulation, implements European Union law for the purposes of Article 6 TEU and/or Article 51 of the Charter of Fundamental Rights of the European Union.*

2. *European Union law precludes the application of a conclusive presumption that the Member State which Article 3(1) of Regulation No 343/2003 indicates as responsible observes the fundamental rights of the European Union.*

   Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that the Member States, including the national courts, may not transfer an asylum seeker to the 'Member State responsible' within the meaning of Regulation

No 343/2003 where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State 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 that provision.

Subject to the right itself to examine the application referred to in Article 3(2) of Regulation No 343/2003, the finding that it is impossible to transfer an applicant to another Member State, where that State is identified as the Member State responsible in accordance with the criteria set out in Chapter III of that regulation, entails that the Member State which should carry out that transfer must continue to examine the criteria set out in that chapter 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.

The Member State in which the asylum seeker is present 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, the first mentioned Member State must itself examine the application in accordance with the procedure laid down in Article 3(2) of Regulation No 343/2003.

3. *Articles 1, 18 and 47 of the Charter of Fundamental Rights of the European Union do not lead to a different answer.*

4. *In so far as the preceding questions arise in respect of the obligations of the United Kingdom of Great Britain and Northern Ireland, the answers to the second to sixth questions referred in Case C-411/10 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.*

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(1) OJ C 274, 09.10.2010
OJ C 13, 15.01.2011.

Judgment of the Court (Grand Chamber) of 21 December 2011 (reference for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Tomasz Ziolkowski (C-424/10), Barbara Szeja, Maria-Magdalena Szeja, Marlon Szeja (C-425/10) v Land Berlin

(Joined Cases C-424/10 and C-425/10) (1)

(Freedom of movement for persons — Directive 2004/38/EC — Right of permanent residence — Article 16 — Legal residence — Residence based on national law — Period of residence completed before the accession to the European Union of the State of origin of the citizen concerned)

(2012/C 49/14)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicants: Tomasz Ziolkowski (C-424/10), Barbara Szeja, Maria-Magdalena Szeja, Marlon Szeja (C-425/10)

Defendant: Land Berlin

Intervener: Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

Re:

Reference for a preliminary ruling — Bundesverwaltungsgericht — Interpretation of Article 16(1), first sentence, of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ 2004 L 158, p. 77) — Union citizen having resided lawfully, in compliance with the law of the host Member State, for more than five years in that State, but never having satisfied, during his period of residence, the conditions laid down in Article 7 of Directive 2004/38/EC — Concept of 'lawful residence' — Period of residence which amounts to five years only if periods completed before the date of accession of the Member State of origin of the person concerned to the European Union are taken into account — Determination of the period of residence necessary in order to acquire a right of permanent residence

Operative part of the judgment

1. *Article 16(1) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, must be interpreted as meaning that a Union citizen who has been resident for more than five years in the territory of the host Member State on the sole basis of the national law of that Member State cannot be regarded as having acquired the right of permanent residence under that provision if, during that period of residence, he did not satisfy the conditions laid down in Article 7(1) of the directive.*

2. *Periods of residence completed by a national of a non-Member State in the territory of a Member State before the accession of the non-Member State to the European Union must, in the absence of specific provisions in the Act of Accession, be taken into account for the purpose of the acquisition of the right of permanent residence under Article 16(1) of Directive 2004/38, provided those periods were completed in compliance with the conditions laid down in Article 7(1) of the directive.*

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(1) OJ C 301, 6.11.2010.