

United Kingdom, Court of Appeal, R (AR) v Secretary of State for the Home Department, Judgement of 28 June 2013

Deciding bodies and decisions

Court of Appeal of The United Kingdom, Judgement of 28 June 2013 in (AR) v Secretary of State for the Home Department, [2013] EWCA Civ 778, Appellate

Area of law

EU asylum law

Summary Facts Of The Case

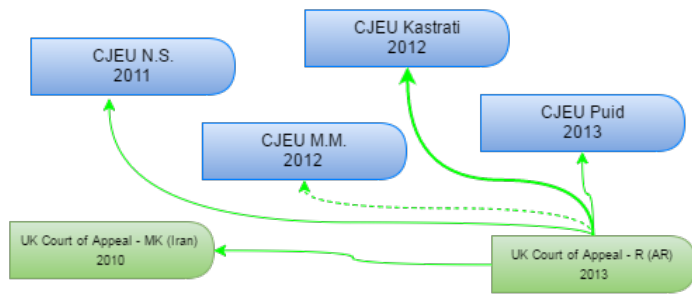
The applicant (AR), an Iranian national, arrived in Belgium in 2003 and made an application for asylum. That application was rejected in 2005. He arrived in the United Kingdom in 2011 and applied again for asylum. The UK invoked the Dublin II Regulation and requested that Belgium takes back AR. Belgium replied asking the UK to confirm that AR had not left the territory of the Member States in accordance with Article 16(3) of the Dublin II regulation (and thereby falling outside the scope of Dublin II regulation). AR claimed that he had in fact left Belgium and returned to Iran before the decision rejecting his asylum application had been made in 2005. That claim was deemed not to be credible and a letter to that effect was sent to the Belgian authorities. Belgium then accepted responsibility for the processing of his asylum claim.

Relation to the scope of the Charter

The case falls within the scope of EU Charter for the purpose of Article 51(1) therein, as the case involves a national act implementing the provisions of EU secondary law, namely the Regulation 343/2003/EC (Dublin II Regulation).

The Charter is principally invoked with reference to its Article 41 on the right to be heard before a decision is made adversely affecting an individual. While there is no suggestion that the Charter itself does not apply, the court held that the Dublin II Regulation does not create procedural rights for individuals. There is no consideration given to the connecting EU law factor.

Diagram



Vertical (UK Court of Appeal - CJEU)

Explicit references are made to national decisions[1] and decisions of the CJEU[2], including opinions of Advocates General (see reasoning above). Particular Reference is made to *Kastrati* and to the Opinion of AG Jääskin in *Puid* to reinforce the Court of Appeal's finding that the Dublin II Regulation does not create any individual rights capable of founding a challenge by an individual to a transfer. The case *Kastrati*, and the distinction operated between the two phases of an asylum application (determining the responsible Member State and secondly assessing the claim) is used to distinguish *MM*. from the present case, relied upon the defendant to argue that Article 41 CFR implies a right to be consulted prior to the issuing of a letter to Belgian authorities in the context of a Dublin II transfer.

[1] Court of Appeal, *R (MK (Iran)) v Secretary of State for the Home Department* [2010] EWCA Civ 115 (<http://www.refworld.org/docid/4b87e4562.html>)

[2] Case C-4/11 *Germany v Puid*, EU:C:2013:740 (Opinion of AG Jääskin); Case C-277/11 *MM v Minister for Justice, Equality and Law Reform*, EU:C:2012:744; Case C-620/10 *Migrationsverket Kastrati*, EU:C:2012:265; Joined Cases C-411/10 and C-493/10 *NS & ME*, EU:C:2011:865.

Sources - EU and national law

- Article 41 - Right to good administration

Sources - CJEU Case Law

- Case C-4/11 *Germany v Puid*, EU:C:2013:740 (Opinion of AG Jääskin)
 - Case C-277/11 *MM v Minister for Justice, Equality and Law Reform*, EU:C:2012:744
 - Case C-620/10 *Migrationsverket Kastrati*, EU:C:2012:265
 - Joined Cases C-411/10 and C-493/10 *NS & ME*, EU:C:2011:865
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Sources - Internal or external national courts case law

- Court of Appeal, *R (MK (Iran)) v Secretary of State for the Home Department* [2010] EWCA Civ 115 (<http://www.refworld.org/docid/4b87e4562.html>)
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