

REFERRING COURT: COURT OF APPEAL (ENGLAND & WALES) (CIVIL DIVISION) – UNITED KINGDOM

THE QUEEN ON THE APPLICATION OF NS

Appellant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

- and -

**AMNESTY INTERNATIONAL LIMITED AND
THE AIRE CENTRE (ADVICE ON INDIVIDUAL RIGHTS IN EUROPE)**

First Interveners

- and -

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Second Intervener

- and -

EQUALITY AND HUMAN RIGHTS COMMISSION

Third Intervener

**WRITTEN OBSERVATIONS ON BEHALF OF AMNESTY INTERNATIONAL LIMITED
AND THE AIRE CENTRE (ADVICE ON INDIVIDUAL RIGHTS IN EUROPE)**

Amnesty International Limited and The AIRE Centre (Advice on Individual Rights in Europe) are represented by Mr Shahram Taghavi, barrister (of Bates Wells & Braithwaite) and Mr Simon Cox, barrister.

Service may be effected by email or fax at:

Email: s.taghavi@bwbllp.com

Fax: +44 20 7551 7800

Bates Wells & Braithwaite
2-6 Cannon Street
London
EC4M 6YH
United Kingdom

CONTENTS

Introduction	p.3
Summary	p.4
Question 1	p.5
Question 2	p.9
Question 3	p.21
Question 4	p.21
Question 5	p.24
Question 6	p.27
Question 7	p.29

INTRODUCTION

The First Interveners in the National Proceedings

1. Since 1993, the AIRE Centre has provided information and advice on European Union ('EU') law and international human rights law, particularly on the European Convention on Human Rights ('ECHR'). It provides advice and representation to those who wish to assert their European law rights before national and international tribunals. The Centre also trains judges, public officials, lawyers and non-governmental organisations across Europe. The Centre's staff have written widely on the interrelationship between the EU asylum *acquis* and relevant international standards.
2. Amnesty International is a worldwide movement of people working to promote respect for and protection of internationally-recognized human rights principles. It monitors law and practices in countries throughout the world in the light of international human rights, refugee and humanitarian law and standards. The movement has over 2.8 million members and supporters in more than 150 countries and territories and is independent of any government, political ideology, economic interest or religion. It bases its work on international human rights instruments adopted by the United Nations and regional bodies. It has consultative status before the United Nations Economic and Social Council and the United Nations Educational, Scientific and Cultural Organization, has participatory status at the Council of Europe, has working relations with the Inter-Parliamentary Union and the African Union, and is registered as a civil society organization with the Organization of American States.
3. The AIRE Centre and Amnesty International were admitted as joint First Interveners in the present case both by the High Court of England & Wales and by the Court of Appeal of England & Wales ('the Referring Court'). The AIRE Centre and Amnesty International were also admitted as joint interveners before the Irish High Court in the case *M.E. and Others v Refugee Applications Commissioner and Minister of Justice for Equality and Law Reform*. This case has also been referred to this Court for a preliminary ruling and has been registered as case C-493/10. By order of this Court, Case C-493/10 and the present proceedings have been joined for the purposes of the written procedure.

4. The AIRE Centre and Amnesty International were also joint third party interveners before the European Court of Human Rights ('ECtHR') in *M.S.S. v Belgium & Greece*, (application no. 30696/09), Grand Chamber, judgment 21 January 2011.
5. In these observations the AIRE Centre and Amnesty International are referred to as 'the First Intervenors'.

The Facts

6. The facts of the case giving rise to the reference are set out in the order of the Referring Court of 12 July 2010.

SUMMARY

7. The First Intervenors' replies to the questions posed by the Referring Court may be summarised as follows.

Question 1

8. A decision whether to examine an asylum application under art 3(2) of Council Regulation 343/2003 ('the Regulation') falls within the scope of EU law and, therefore, must comply with the general principles of EU law, including respect for the fundamental rights set out in art 6 TEU and the Charter of Fundamental Rights of the EU ('Charter').

Question 2

9. The duty of a Member State to respect the fundamental rights of the asylum-seeker on its territory gives rise to a prohibition on removing that asylum-seeker to a territory if there are substantial grounds for believing that removal would give rise to a real risk of a violation of that person's fundamental rights. It follows that a Member State acting under Regulation 343/2003 when deciding whether to apply art 3(1) and transfer an asylum seeker or to examine the asylum claim under art 3(2) cannot disregard the factual situation in the Member State to which the asylum-seeker would be sent.

Question 3

10. The obligation to observe EU fundamental rights precludes the operation by a Member State of a conclusive presumption that the Member State indicated to be responsible by the criteria in Chapter III of Regulation 343/2003 for an asylum claim will, in respect of the asylum-seeker in question, (i) respect the fundamental rights guaranteed by EU law and (ii) meet the minimum standards imposed by Directive 2003/9/EC ('Reception Directive'), Directive 2004/83/EC ('Qualification Directive') and Directive 2005/85/EC ('Procedures Directive') (together referred to as 'the Directives').

Question 4

11. A Member State is obliged to examine, under art 3(2) of Regulation 343/2003, an application for asylum of an asylum-seeker present on its territory, if there are substantial grounds for believing that removal would give rise to a real risk of a violation of his or her fundamental rights, including those fundamental rights guaranteed by the minimum standards set out in the Directives.

Question 5

12. In the case of an asylum-seeker to whom Regulation 343/2003 applies, the scope of the protection afforded by the general principles of EU law, in particular the fundamental rights in arts 1, 18, 19(2) and 47 of the Charter, is wider than that conferred by art 3 ECHR as thus far enunciated in the ECHR case-law.

Question 6

13. General principles of EU law, including the fundamental right to an effective remedy for a violation of EU law rights under art 47 of the Charter, preclude a rule of national law which requires a court or tribunal responsible for determining the lawfulness of the transfer of an asylum-seeker under Regulation 343/2003 to treat the Member State intended as the recipient of the transfer as a State from which a person will not be sent to another State in contravention of his rights under the ECHR or the 1951 Geneva Convention or its 1967 Protocol.

Question 7

14. The replies to Questions 2-6 are not affected by Protocol (No. 30) on the application of the Charter to Poland and to the United Kingdom.

SUBMISSIONS

Question 1

Does a decision made by a Member State under Article 3(2) of Council Regulation 343/2003 (“the Regulation”) whether to examine a claim for asylum which is not its responsibility under the criteria set out in Chapter III of the Regulation fall within the scope of EU law for the purposes of Article 6 of the Treaty of European Union and/or Article 51 of the Charter of Fundamental Rights of the European Union (“the Charter”)?

15. The First Interveners address Question 1 in two parts:
- (a) is a decision whether to act under art 3(2) of Regulation 343/2003 a decision within the scope of EU law?
 - (b) is such a decision one which therefore must be taken in accordance with art 6 TEU and art 51 of the Charter?

within the scope of EU law

16. Regulation 343/2003 was adopted by the Council on the basis of art 63(1)(a) TEC. This formed part of Title IV (Visas, Asylum, Immigration, and other policies related to Free Movement of Persons). On entry into force of the Lisbon Treaty, art 63 was numbered art 78 TFEU and appears under Title V (Area of Freedom, Security and Justice) and Chapter 2 (Policies on Border Checks, Asylum and Immigration).
17. Regulation 343/2003 forms part of the Common European Asylum System (‘CEAS’) established by the European Community and now forming part of EU law, see Regulation 343/2003 recitals 1 and 2. It was adopted because its objectives could not be sufficiently achieved by the Member States acting alone and can be better achieved at Community level: recital 16.
18. A regulation has general application and is binding in its entirety and directly applicable in all Member States: TEC art 249, 2nd para (now TFEU art 288, 2nd para).
19. It follows from the foregoing that Regulation 343/2003 forms part of the body of EU law.

20. Chapter II of Regulation 343/2003 sets out the general principles of the Regulation , as shown by its title. This Chapter includes art 3(1), which refers to the hierarchy of criteria set out in Chapter III.
21. Article 3(1) imposes upon the Member State indicated by those criteria a duty to determine the application in question. It stipulates, but only as a general rule, that the application shall be examined by that state.
22. Article 3(2) permits any Member State to determine the application of an asylum-seeker who has made an asylum claim in that Member State, even though that Member State does not have the art 3(1) duty. Where a Member State acts under art 3(2), 'that Member State shall become the Member state responsible within the meaning of the Regulation': art 3(2).
23. Article 3(2) is part of Regulation 343/2003 and, as part of that Regulation, part of the body of EU law.

Article 6 TEU and art 51 Charter apply

24. It is settled case-law that Member States, acting within the sphere of EU law or carrying out administrative functions in a national legal context that arise in connection with or in furtherance of EU legislation, are required to exercise such functions in a manner that complies with general principles of EU law. See, for example: Case 5/88 *Wachauf* [1989] ECR 2609 para 19; Case C-260/89 *ERT* [1991] ECR I-2925, paras 42 to 45; Case C-540/03 *Parliament v Council* [2006] ECR I-5769 concerning Member States implementation of the Family Reunification Directive, para 105; Case C-101/01 *Lindqvist* [2003] ECR I-12971.
25. The general principles of EU law include the protection of fundamental rights, including as enshrined in the Charter and ECHR. The field of application of the Charter includes Member States 'when they are implementing Union law': Charter, art 51(1). On the entry into force of the Lisbon Treaty on 1 December 2009, the Charter became binding on Member States. Under art 6(1) TEU, the Charter has the same legal force as the Treaties. Article 6(2) TEU states that 'the Union shall respect fundamental rights, as guaranteed by the [ECHR] and as they result from the constitutional traditions common to the Member States, as general principles of Community law'.

26. The Court has also held that:

- (a) Respect for human rights is a condition of the lawfulness of Community acts and that measures incompatible with respect for human rights are not acceptable in the Community (Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation v. Council and Commission* [2008] ECR I-6351, para 284)
- (b) A provision of EU law requiring - or expressly or impliedly authorising - Member States to adopt or retain national legislation inconsistent with fundamental rights would itself violate EU law. (Case C-540/03 *Parliament v Council* [2006] ECR I-5769, para 23)
- (c) Member States must not only interpret their national law in a manner consistent with EU law but also make sure they do not rely on an interpretation of wording of secondary legislation that would be in conflict with the fundamental rights protected by the EU legal order or with the other general principles of EU law (Case C-101/01 *Lindqvist* [2003] ECR I-12971, para 87; Case C-305/05 *Ordre des barreaux francophones et germanophone and Others* [2007] ECR I-5305, para 28, and Case C-403/09 PPU *Detiček* [2010] ECR I-0000, para 34).

27. When making Regulation 343/2003, the Council expressly recognised that its objective was to secure respect for fundamental rights: Regulation 343/2003, recital 15.

28. The First Intervenors therefore propose that the Court reply to Question 1 as follows:

“A decision whether to examine and take responsibility for an asylum application under art 3(2) of Regulation 343/2003 falls within the scope of EU law and must comply with the general principles of EU law, including respect for the fundamental rights set out in art 6 TEU and the Charter of Fundamental Rights of the EU.”

Question 2

Is the duty of a Member State to observe EU fundamental rights (including the rights set out in Articles 1, 4, 18, 19(2) and 47 of the Charter) discharged where that State sends the asylum seeker to the Member State which Article 3(1) designates as the responsible State in accordance with the criteria set out in Chapter III of the Regulation (“the Responsible State”), regardless of the situation in the Responsible State?

29. The essential issue raised by this question is whether a Member State considering the removal of an asylum-seeker to a second Member State (‘the receiving State’) under Regulation 343/2003 is permitted by EU law to disregard the factual situation relevant to those fundamental rights in the receiving State.
30. The First Interveners will examine, first, the fundamental rights at issue and, second, the duties of Member States acting under the Regulation to respect those rights.

Fundamental rights

31. As submitted above in the First Interveners’ observations on Question 1, each Member State is required by EU law to respect the fundamental rights of the asylum-seeker when deciding whether to remove that asylum-seeker from its territory under Regulation 343/2003.
32. By art 6(1) TEU, the EU recognises the rights, freedoms and principles set out in the Charter, ‘which shall have the same legal value as the Treaties’.
33. Article 6(2) TEU provides that ‘the Union shall respect fundamental rights, as guaranteed by the European Convention on Human Rights’.
34. The ECHR is of “special significance” in the EU legal order: C-540/03 *Parliament v Council* [2006] ECR I-5769, para 35. The fundamental rights guaranteed by art 3 ECHR form part of the general principles of Union law, observance of which is ensured by the Court: Case C-465/07 *Elgafaji* [2009] ECR I-921, para 28. The Court also confirmed that the case-law of the ECtHR is taken into consideration in interpreting the scope of that right in the EU legal order: *Elgafaji*, para 28.

35. Under art 52(3) of the Charter, the meaning and scope of Charter rights which correspond to rights guaranteed by the ECHR are to be the same as those laid down by the ECHR. However, that provision does not preclude the grant of wider protection by EU law.
36. Fundamental rights are also derived from constitutional traditions common to the Member States as general principles of EU law and from the guidelines supplied by international instruments for the protection of human rights on which the Member States have collaborated or to which they are signatories (see, inter alia, Case C-260/89 *ERT* [1991] ECR I-2925, para 41; Opinion 2/94 [1996] ECR I-1759, para 33; Case C-274/99 P *Connolly v Commission* [2001] ECR I-1611, para 37; Case C-94/00 *Roquette Frères* [2002] ECR I-9011, para 25; Case C-112/00 *Schmidberger* [2003] ECR I-5659, para 71; and Case C-36/02 *Omega* [2004] ECR I-9609, para 33).
37. Article 78 TFEU provides that the EU shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national entitled to international protection and ensuring compliance with the principle of *non-refoulement*.
38. This policy must meet the requirements of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees. The First Interveners submit that interpretation of legislation adopted on the basis of art 78 TFEU must also be considered in the light of obligations deriving from the 1951 Geneva Convention (see Case C-31/09 *Bolbol v Bevandrlasi es Allampolgarsagi Hivatal* [2010] ECR 0000, para 38) and the “broad logic” of the Common European Asylum System (‘CEAS’) as a whole (see Case C-27/04 *Commission v Council* [2004] ECR I-6649, paras 67 and 81).
39. As noted, the CEAS is concerned not only with refugee recognition under the 1951 Geneva Convention and its 1967 Protocol, but also with the minimum standards for the qualification and status of other third country nationals or stateless persons as persons who are otherwise eligible for international protection.

The Charter

40. Question 2 refers in particular to arts 1, 4, 18, 19(2) and 47 of the Charter. Each article is examined in turn in relation to its application to the situation of an asylum-seeker to whom Regulation 343/2003 applies.

Article 1 of the Charter – Human dignity

“Human dignity is inviolable. It must be respected and protected.”

41. The First Interveners submit that respect for, and protection of, human dignity is the central and overarching object of fundamental rights: see explanation on art 1, para 1 of the Explanations Relating to the Charter of Fundamental Rights (2007/C303/02) (‘Explanations’); see also Case C-377/98 *Netherlands v European Parliament and Council* [2001] ECR I-7079, para 70: “It is for the Court of Justice, in its review of the compatibility of acts of the institutions with the general principles of Community law, to ensure that the fundamental right to human dignity and integrity is observed.” This principle applies *mutatis mutandis* to the acts of the Member States (cf. Charter, art 51).
42. Articles 2 to 5 of the Charter expressly articulate protection for particular aspects of human dignity. The particular function of art 1 of the Charter is therefore two-fold.
43. First, it requires that each provision of the Charter – not just arts 2 to 5 – is interpreted and applied in a way which guarantees the inviolable nature of human dignity, see Explanations, Article 1, second para.
44. Second, art 1 not only enables, but also requires, EU law to ensure that there are no lacunae in respect for and protection of the inviolability of human dignity. It ensures that aspects of human dignity not falling within the specific provisions of other Articles of the Charter are nevertheless protected by the EU legal order.
45. In the many cases in which the respect for or the protection of the dignity of an individual is at issue, other specific provisions in the Charter define with greater detail which particular facet of human dignity is indeed at issue. The requirements of art 1 will nevertheless always inform the interpretation and application of those other rights at issue. However, the independent application of art 1 cannot – and should not – be ruled out since it may prove necessary to address those situations not specifically falling within the scope of other provisions of the Charter.

Article 4:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

46. The right guaranteed in art 4, Charter, is expressed in the same language as art 3 ECHR.

47. A decade ago the ECtHR considered the application of ECHR art 3 to decisions taken under the predecessor to Regulation 343/2003, the Dublin Convention.¹ In *T.I. v UK* (no. 43844/98, 7 March 2000) ECHR 2000-III, the ECtHR said, at p15 (underline emphasis added):

“In the present case, the applicant is threatened with removal to Germany, where a deportation order was previously issued to remove him to Sri Lanka. It is accepted by all parties that the applicant is not, as such, threatened with any treatment contrary to art 3 in Germany. His removal to Germany is however one link in a possible chain of events which might result in his return to Sri Lanka where it is alleged that he would face the real risk of such treatment.

The Court finds that the indirect removal in this case to an intermediary country, which is also a Contracting State, does not affect the responsibility of the United Kingdom to ensure that the applicant is not, as a result of its decision to expel, exposed to treatment contrary to art 3 of the Convention.

Nor can the United Kingdom rely automatically in that context on the arrangements made in the Dublin Convention concerning the attribution of responsibility between European countries for deciding asylum claims. Where States establish international organisations, or *mutatis mutandis* international agreements, to pursue co-operation in certain fields of activities, there may be implications for the protection of fundamental rights. It would be incompatible

¹The predecessor of Regulation 343/2003 was the Dublin Convention (1990). The Preamble to the Dublin Convention affirms as its purpose, ‘*in keeping with the [Member States] common humanitarian tradition, to guarantee adequate protection to refugees in accordance with the terms of the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967 relating to the Status of Refugees*’ (para 2), and to ‘*take measures to avoid any situations arising, with the result that applicants for asylum are left in doubt for too long as regards the likely outcome of their applications and concerned to provide all applicants for asylum with a guarantee that their applications will be examined by one of the Member States and to ensure that applicants for asylum are not referred successively from one Member State to another without any of these States acknowledging itself to be competent to examine the application for asylum*’ (para 4)

with the purpose and object of the Convention if Contracting States were thereby absolved from their responsibility under the Convention in relation to the field of activity covered by such attribution (see e.g. *Waite and Kennedy v. Germany* judgment of 18 February 1999, *Reports* 1999, para 67). The Court notes the comments of the UNHCR that, while the Dublin Convention may pursue laudable objectives, its effectiveness may be undermined in practice by the differing approaches adopted by Contracting States to the scope of protection offered.”

48. This approach was very recently applied to Regulation 343/2003 by the Grand Chamber of the ECtHR: *M.S.S.* para 342. The ECtHR held that art 3 ECHR imposes upon the expelling state an obligation to consider whether in practice the receiving state would comply with its own ECHR obligations (emphasis added):
- (a) before acting under Regulation 343/2003 by transferring an asylum-seeker from Belgium to Greece, the Belgian authorities were obliged to consider the factual situation in Greece, insofar as it was relevant to the fundamental rights of the asylum-seeker in question: paras 345-352;
 - (b) “the existence [in Greece] of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention (see, *mutatis mutandis*, *Saadi v. Italy* [GC], no. 37201/06, para 147, ECHR 2008)”: para 353;
 - (c) diplomatic assurances given by Greece were not a sufficient guarantee because they “merely referred to the applicable legislation, with no relevant information about the situation in practice”: para 354 ;
 - (d) “it was in fact up to the Belgian authorities, faced with the situation described above, not merely to assume that the applicant would be treated in conformity with the Convention standards but, on the contrary, to first verify how the Greek authorities applied their legislation on asylum in practice”: para 359.

49. The Court should also note the holding by the ECtHR in *M.S.S.* that the obligation imposed by art 13 of the Reception Directive to secure adequate material reception conditions constitutes an aspect of a Member State's positive obligations under art 3 ECHR: paras 250, 253, 263, 264.
50. It follows that a Member State considering the transfer of an asylum-seeker under Regulation 343/2003 is required by general principles of EU law, in particular the obligation to respect the fundamental rights guaranteed by ECHR art 3, and its corollary, Charter art 4, to consider whether there are substantial grounds for believing that the factual situation in the receiving Member State is such that transfer there would expose the asylum-seeker to a real risk of a violation or violations of fundamental rights.
51. The correctness of this approach is not affected by arguments about the language of Regulation 343/2003. The Court has held that a provision of EU secondary legislation would not respect fundamental rights if it requires or permits action under that legislation not respecting those rights (Case C-540/03 *Parliament v Council* [2006] ECR I-5769, para 23).
52. The First Interveners submit that the same approach should, in principle, be taken to the other rights guaranteed by the ECHR and the Charter.

Article 18 of the Charter – Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 19(2) of the Charter - Protection in the event of removal, expulsion or extradition

No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

53. The First Interveners note that the reference in art 19(2) to a 'State' includes a Member State of the EU. Indeed, in *M.S.S.* the ECtHR found that removal to Greece of an asylum-seeker would result in knowingly exposing him to degrading treatment: §367.

54. Article 19(2) prohibits not only removal to a State where there are substantial grounds for believing that the individual would be exposed to a real risk of ill treatment on the territory of that State, but also removal to a State where there is a real risk of *refoulement* to another such State. See, by analogy, the judgments of the ECtHR in *T.I.*, and *Muslim*, (application no. 53566/99), (2006) 42 E.H.R.R. 16, paras 72-76; *M.S.S.* para 286.
55. Similarly, Charter art 18 prohibits not only removal to a State in which there is a real risk of persecution within the meaning of the Geneva Convention and its Protocol, but also removal under the Regulation to a State (including a Member State) where onward removal to another such State is a real risk. In those circumstances, art 18 prohibits removal of recognised refugees, asylum-seekers whose eligibility or otherwise for international protection has not yet been fully and fairly determined, and others otherwise in need of international protection (c.f. Qualification Directive). Article 19(2) affords equivalent protection to a wider category of people, including nationals of the Member State considering removal, and those excluded from recognition as refugees by, for example, the operation of the exclusion clauses of the Geneva Convention and who might therefore not benefit from the protection of Charter art 18.
56. Article 18 recognises the right of individuals to seek asylum and, where they are eligible for international protection, to enjoy it either in the form of asylum or through subsidiary forms of protection as appropriate. This right encompasses the set of positive rights codified in international law by the Geneva Convention to which the minimum standards laid down by the Directives seek to give effect in the EU.
57. The First Interveners also submit that Charter arts 18 and 19(2) prohibit a Member State from acts or omissions under EU law short of removal but which give rise to a serious risk that an asylum-seeker on its territory will effectively be faced with no choice but to leave that Member State to go to a State where he or she faces a real risk of persecution or serious harm, including treatment prohibited by art 19(2). In the context of the Geneva Convention, this is referred to as ‘constructive *refoulement*’.
58. By adopting the Qualification Directive and the Procedures Directive, the Council laid down minimum standards for Member States for their systems of determination of asylum applications.

59. Furthermore, since the rights conferred by arts 18 and 19(2) must be guaranteed in a manner consistent with human dignity (as required by art 1 of the Charter), the Reception Directive has laid down minimum standards for the reception of asylum-seekers awaiting a final decision on their asylum applications. Those minimum standards also seek to ensure that the material circumstances of asylum-seekers do not give rise to constructive *refoulement*.
60. Where a Member State effects the transfer of an asylum applicant under Regulation 343/2003 it will not have examined the asylum application in accordance with the Qualification Directive and the Procedures Directive.
61. It follows from all the above that a Member State is precluded by arts 18 and 19(2) from deciding under Regulation 343/2003 to effect the transfer of an asylum-seeker to the receiving State where the failures of that Member State to comply with the minimum standards laid down by the asylum *acquis* are such that there are substantial grounds for believing that there is a real risk that, upon transfer, the asylum-seeker concerned would not receive in practice the benefit of those minimum standards in the receiving State.

Article 47 - Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this art.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

62. Article 47 of the Charter restates the rights to judicial protection and to a remedy which, according to settled case law, are fundamental rights forming general principles of EU law: Case C-432/05 *Unibet* [2007] ECR I-2271, paras 37 and 38 and case-law cited, and Case C-409/06 *Winner Wetten*, not yet reported, 8 September 2010, para 58). Access to justice is one of the constitutive elements of a Union based

on the rule of law and is guaranteed in the legal order based on the Treaty: Case 294/83 *Les Verts v Parliament* [1986] ECR 1339, para 23.

63. Save where specific EU rules apply, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law. It is settled law that the Member State must, in law and in fact, ensure the availability of a remedy which is effective, see Case C-268/06 *Impact* [2008] ECR I-2483, paras 44 and 45; Case C-12/08 *Mono Car Styling* [2009] ECR I-6653, para 48.
64. To meet this requirement of effectiveness, national procedure must not make it in practice impossible or excessively difficult to exercise rights conferred by EU law, see *Impact*, para 46 and the case-law cited. This requirement applies both to the designation of the courts and tribunals having jurisdiction to hear and determine actions based on EU law and to national procedural rules (see *Impact*, paras 47 and 48, Case C-63/08 *Pontin* [2009] ECR I-0000, para 44, Joined Cases C-317/08 to C-320/08 *Alassini*, not yet reported, 18 March 2010 [2010] ECR 0000).
65. The Council has laid down minimum standards for effective remedies in respect of certain classes of decision in the field of asylum, see Reception Directive, art 21 and Procedures Directive, art 39.
66. Article 47, first paragraph, confirms that the right to effective judicial protection and an effective remedy applies to ‘Everyone whose rights and freedoms guaranteed by the law of the Union are violated’.
67. Therefore, it follows from art 47 that the right to an effective remedy is not confined to those rights in respect of which such minimum standards are laid down by EU secondary legislation. The right to an effective remedy applies to any violation of EU fundamental rights guaranteed by the Charter. The rights under art 47 are not confined to particular classes of dispute (as art 6 ECHR has been held by the ECtHR to be, see para 97 below).
68. The relevant individual rights and protections under EU law in respect of the violations of which an effective remedy is required by EU law to be available therefore include:

- (a) the right to human dignity: art 1, Charter;
- (b) the prohibition on torture and inhuman or degrading treatment or punishment: art 4, Charter;
- (c) the right to asylum: art 18, Charter;
- (d) the prohibition on expulsion when there is a serious risk of death, torture or inhuman or degrading treatment or punishment: art 19(2), Charter;

and, in particular, the following rights and protections guaranteed as minimum standards

- (e) the right of access to an asylum determination procedure which meets the minimum standards of the asylum *acquis*, see, in particular, Procedures Directive, arts 6, 8, 10, 12-14, 23, 35;
- (f) the right to a decision on a claim for asylum or humanitarian protection taken in compliance with a procedure meeting such minimum standards, see, in particular, Procedures Directive, arts 9 and 10;
- (g) the right to free legal assistance in respect of the asylum procedure in the circumstances laid down in Procedures Directive, arts 15 and 16;
- (h) the right to an effective remedy in respect of a decision of any kind to refuse asylum, see Procedures Directive, art 39;
- (i) the prohibition on restrictions on freedom of movement in breach of minimum standards during the asylum determination procedure: Reception Directive, art 7 and Procedures Directive, art 18;
- (j) the right to be informed about entitlement to reception conditions in a way which complies with minimum standards: Reception Directive, art 5;
- (k) the right to receive documentation proving the status as asylum-seeker within the time and in the form laid down by minimum standards: Reception Directive, art 6;
- (l) the right to receive adequate material reception conditions during the asylum determination procedure: Reception Directive, art 13;

- (m) the right to receive adequate health care during the asylum determination procedure: Reception Directive, art 15.

69. Furthermore, the duties of Member States include the duty not to transfer individuals to the territory of a State where there are substantial grounds for believing that once transferred they would face a real risk of a violation of those rights. The rights in question include: the rights enshrined in Charter arts 2 (right to life), 3 (right to integrity of the person), 5 (prohibition of slavery, forced labour), 6 (right to liberty and security), 7 (Respect for private and family life); and situations where such individuals would otherwise face a real risk of persecution or serious harm.

The Directives

70. As explained above in relation to the detailed provisions of arts 1, 4, 18, 19(2) and 47 of the Charter, the minimum standards laid down by the Directives seek to give detailed, concrete effect, in the field of asylum, to the fundamental rights set out in the Charter. Common to each of the Directives and Regulation 343/2003 are the following:

- (a) the objective of the CEAS is for the EU to be an area of freedom, security and justice open to those, who, forced by circumstances, legitimately seek protection (recital 1 of each Directive and of Regulation 343/2003)
- (b) the CEAS is based on full and inclusive implementation of the Geneva Convention relating to the Status of Refugees and its 1967 Protocol (recital 2 of each Directive)
- (c) the CEAS respects the fundamental rights and observes the principles recognised in particular by the Charter (Procedures Directive, recital 8; Qualification Directive, recital 10; Reception Directive recital 5)
- (d) that Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination, and
- (e) that minimum standards for asylum seekers should be provided to ensure a dignified standard of living.

71. As the recitals and substantive provisions of that legislation show, the asylum *acquis* seek to specify the minimum content of those aspects of fundamental rights set out in the Charter and engaged when asylum claims are decided within the EU.
72. The submission that a Member State considering transferring an asylum-seeker under Regulation 343/2003 is required to make a decision that respects fundamental rights is supported by case-law of this Court in other fields.
73. In cross-border intra-EU transfers in the field of family law and criminal justice the Court of Justice has consistently held that the EU instruments concerning removal from the territory of one Member State to another must be interpreted in a way which respects the fundamental rights protected in the EU legal order. Article 4(6) of the European Arrest Warrant ('EAW' Framework Decision 2202/584/JHA) empowers a Member State not to execute an EAW. The Court held that the discretion permitting optional non-execution of an EAW had to be exercised in conformity with general principles of EU law (C-123/08 *Wolzenburg* [2009] ECR I-0000, para 53).
74. In the context of family law, this Court has held that the EU framework governing the return of abducted children set out in the Brussels II Regulation (Regulation 2201/2003 in accordance with the 1980 Hague Convention on civil aspects of international child abduction) must be interpreted and applied with due regard to Charter art 7 and ECHR art 8 (see, Case C-400/10 PPU *McB*, not yet reported, 5 October 2010).
75. The First Interveners further rely upon the Court's rulings in other contexts that systematic rules giving rise to irrebuttable presumptions are disproportionate and incompatible with EU law because they do not consider the actual circumstances in specific cases. See, for example: Case C-376/08 *Serratoni* [2009] ECR I-0000, paras 39 and 40 (exclusion from public works contracts); Case C-414/02 *Spedition* [2005] ECR I-8633, paras 42-45 (customs debtors); Case C-73/06 *Planzer Luxemburg Sarl* [2007] ECR I-5655, paras 43 and 47 to 50 (VAT); Case C-274/04 *ED & F Man Sugar* [2006] ECR I-3269, paras 14-19 (administrative sanctions in export refunds); Case C-260/95 *DFDS* [1997] ECR I-1005, para 23 "taking account of the economic reality constitutes a fundamental criterion for applying the common system of VAT".
76. Such principles elaborated in an economic context must apply *a fortiori* in the context of safeguarding the fundamental rights of asylum applicants.

77. The First Interveners therefore propose that Question 2 be answered as follows:

“The duty of a Member State to comply with EU law when making a decision whether to transfer an asylum-seeker to the Member State indicated as responsible by the criteria set out in chapter III of Regulation 343/2003 precludes such a transfer if there are substantial grounds for believing that the transfer would give rise to a real risk of a violation of the asylum-seeker’s fundamental rights. It follows that, when making a decision whether to transfer, the Member State cannot disregard the factual situation in the Member State to which the asylum-seeker would be transferred.”

Question 3

In particular, does the obligation to observe EU fundamental rights preclude the operation of a conclusive presumption that the Responsible State will observe (i) the claimant’s fundamental rights under EU law; and / or (ii) the minimum standards imposed by Directives 2003/9/EC (“the Reception Directive”); 2004/83/EC (“the Qualification Directive”) and/or 2005/85/EC (“the Procedures Directive”) (together referred to as “the Directives”)?

78. For the reasons given in relation to Question 2, the First Interveners submit that EU law precludes such a presumption. They submit that the duty imposed upon each Member State to respect, protect and enforce the fundamental rights of persons within its territory precludes a Member State from disregarding the factual situation in the second Member State to which an asylum-seeker may be transferred by the first Member State under Regulation 343/2003.

79. Furthermore, and also for the reasons given in relation to Question 2, the duties imposed upon Member States by the Directives to secure minimum standards constitute implementation by secondary legislation of concrete and detailed minimum guarantees intended to secure for asylum-seekers fundamental rights, including those set out by the Charter.

Question 4

Alternatively, is a Member State under any obligation, and if so, in what circumstances, to exercise the power under Article 3(2) of the Regulation to examine and take responsibility for a claim, where transfer to the Responsible State would expose the claimant to a risk of violation of his fundamental rights, in particular the rights set out in Articles 1, 4, 18, 19(2), and/or 47 of the Charter, and/or to a risk that the minimum standards set out in the Directives will not be applied to him?

80. The First Interveners note that the dispute before the Referring Court concerns whether the Member State must act under art 3(2) of Regulation 343/2003 in a case where there are substantial grounds for believing that the transfer of the asylum-seeker would give rise to a real risk of a violation of fundamental rights. This raises three issues:
- (a) is a Member State permitted to transfer an asylum-seeker in reliance upon art 3(1) where a decision to do so would violate the EU law duty to respect fundamental rights?
 - (b) if not, in what circumstances would a transfer violate that duty to respect fundamental rights ?
 - (c) in what circumstances is a Member State required to act under art 3(2)?

Transfer under art 3(1) prohibited where fundamental rights would be breached

81. For the reasons given above in relation to questions 1, 2 and 3, Member States are precluded by EU law from taking action under Regulation 343/2003 which would violate the fundamental rights of the asylum-seeker concerned.
82. There is no doubt that the Member State can act under art 3(2) in such a case. The only condition for the exercise of art 3(2) arises from the phrase 'an application for asylum has been lodged with it', sc. that Member State. Regulation 343/2003 authorises a Member State to act under art 3(2) to examine such an application, regardless of the criteria set out in Chapter III of Regulation 343/2003. This was recognised by the ECtHR in *M.S.S.*, see paras 339, 340 and 358.

83. It follows that the Member State cannot rely upon art 3(1) to expel an asylum seeker where a decision to do so would violate the EU law duty to respect, protect and enforce fundamental rights.

When transfer is precluded

84. The First Interveners have already set out, in their response to Question 2, their submissions on the fundamental rights in issue and the role of the minimum standards set out in the Directives.

85. The First Interveners submit that a Member State is precluded from transferring an asylum-seeker where there are substantial grounds for believing that the transfer would give rise to a real risk of a violation of the fundamental rights protected by the EU legal order.

Member State must act under Article 3(2) in such a case

86. The First Interveners contend that, once a Member State has determined that it is precluded from acting under art 3(1) Regulation 343/2003 by the requirement to respect, protect and enforce fundamental rights, that Member State is not permitted merely to take no action. In such a case, respect for EU law obliges the Member State to decide under art 3(2) to examine the application for asylum and thus ensure respect for, *inter alia*, the rights to seek asylum, to be protected from *refoulement* and to an effective remedy.

87. Also, the First Interveners contend that this obligation to act under art 3(2), rather than to take no action, arises from the scheme established by Regulation 343/2003. A key object of the Regulation is the 'rapid processing of asylum applications': recital 4. The existence and importance of that objective is shown by the specific, short, time limits for action imposed upon Member States by provisions of Regulation 343/2003, such as art 17(1), art 18(1), art 20(1)(c).

88. Furthermore, such an interpretation of Regulation 343/2003 is required by the fundamental right to asylum set out in Charter Article 18, and is fully consistent with the presumptive eligibility of asylum-seekers for international protection and their inherent vulnerability, including, in particular to *refoulement*, see *M.S.S.* para 251.

89. The First Interveners therefore consider that the answer to question 4 should be:

“When there are substantial grounds for believing that upon transfer the asylum-seeker to whom Regulation 343/2003 applies would face a real risk of a violation of fundamental rights, including any of the rights set out in arts 1, 4, 18, 19(2) and 47 of the Charter of Fundamental Rights of the EU, which include the asylum-seeker’s rights to be afforded the minimum standards imposed by the Directives, then a Member State considering whether to enforce the transfer is obliged by EU law to examine and take responsibility of the asylum application under art 3(2) of Regulation 343/2003.”

Question 5

Is the scope of the protection conferred upon a person to whom the Regulation applies by the general principles of EU law, and, in particular, the rights set out in arts 1, 18, and 47 of the Charter wider than the protection conferred by art 3 of the European Convention on Human Rights and Fundamental Freedoms (“the Convention”)?

90. The First Interveners have set out, in their comments on Question 2, their submissions on the scope of the protection conferred by the general principles of EU law. Question 5 invites comparison between the scope of the protection afforded to a person to whom Regulation 343/2003 applies by general principles of EU law, including the rights set out in the Charter, and the protection conferred by ECHR art 3.
91. The First Interveners note that the scope of the protection afforded by ECHR art 3 is not a matter of settled law. When ruling on specific complaints alleging violations of the Convention, the ECtHR expressed the extent of that scope by reference to the facts of the particular application before it. The recent judgment in *M.S.S* demonstrates that the ECtHR continues to develop the content of the protection afforded by ECHR art 3 in response to new scenarios are presented to it.
92. The jurisdiction of the ECtHR - and thus of the Grand Chamber in *M.S.S.* - is confined to the consideration of the applicable ECHR provisions. The jurisdiction of this Court under TFEU art 267 is to provide a preliminary ruling on the scope of the rights guaranteed under EU law. The First Interveners recall the Court’s conclusions in *Elgafaji*, that while ‘Article 3 of the ECHR forms part of the general principles of Community law, observance of which is ensured by the Court, and while the case-

law of the ECtHR is taken into consideration in interpreting the scope of that right in the Community legal order, when provisions of EU law differ from those found in the ECHR, the interpretation of EU law provisions *'must... be carried out independently, although with due regard for fundamental rights, as they are guaranteed under the ECHR'*: para 28. This approach finds expression in art 52(3) of the Charter.

Article 1 of the Charter – Human dignity

93. Since ECHR art 3 is reproduced by art 4 Charter, it follows that the independent application of art 1 confers rights additional to those arising under ECHR art 3.

Article 18 of the Charter – Right to asylum

Article 19(2) of the Charter - Protection in the event of removal, expulsion or extradition

94. Article 3 ECHR has not been interpreted to provide a right to asylum as such: *Ahmed v Austria* (application no. 25964/94) (1997) 24 E.H.R.R. 278; *M.S.S.* para 287. It does, however, encompass, among other things, the prohibition on direct and indirect expulsion where there are substantial grounds for believing that this would give rise to a real risk of the treatment to which art 19(2), Charter, refers. It also prohibits, among other things, a failure to provide an asylum-seeker with material assistance required by law to be given to asylum-seekers where that failure has caused living conditions which give rise to a situation of humiliating treatment: *M.S.S.* §§263-264.
95. Article 3 ECHR has not been interpreted as prescribing general procedural rights, when taken alone: *Goldstein v Sweden*, (application no. 46636/99), 12 December 2000. However, art 13 ECHR taken with art 3 ECHR has been interpreted by the ECtHR as requiring states to have, in law and in practice, procedures which ensure effective remedies for individuals who have an arguable claim that their expulsion would be contrary to Article 3 (see, e.g. *Jabari v Turkey* (application no. 40035/98), 11 July 2000, paras 43 - 50; *Conka v Belgium* (application no. 51564/99), (2002) 34 E.H.R.R. 54 paras 64 - 85; *Gebremedhin v France* (application no. 25389/05), (2010) 50 E.H.R.R. 29 , paras 53 - 67; *Abdolkhani & Karimnia v Turkey* (application no. 30471), 22 September 2009, paras 107 - 117; *M.S.S.* paras 294-320 and paras 385-397. Article 13 ECHR taken with art 3 ECHR has been interpreted as requiring specific procedural safeguards in cases where applicants to the Court complained of the absence of such safeguards. The ECtHR has not, however, prescribed a comprehensive set of procedural safeguards such as are found in the EU asylum

acquis. The ECHR “guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order” (*M.S.S.* para 288). While the remedy must be effective in practice, States still enjoy some margin of appreciation as to the remedies they provide (*M.S.S.* paras 289 and 387). The requirements of the asylum *acquis* are more exigent and more specific.

96. Neither the protective scope of art 3 ECHR nor the protective scope of art 13 ECHR taken together with art 3 ECHR as yet comprise the kind of comprehensive package of procedural safeguards afforded by the provisions of the Charter to which the Directives give express effect.

Article 47 - Right to an effective remedy and to a fair trial

97. The ECtHR has interpreted art 6 ECHR as not, *in specie*, applying to asylum and immigration matters: *Maaouia v France*, application no 39652/98, Grand Chamber, (2001) 33 E.H.R.R. 42 paras 33-41.
98. The ECtHR has held that art 13 ECHR, when taken together with one or more of the other ECHR articles, guarantees the right to an effective remedy before a national authority where there is an arguable claim that an ECHR right has been or would be violated: *M.S.S.* para 385. The ECtHR has found that for a remedy to be effective in expulsion cases, it must be practically accessible to the individuals who seek to use it and it must have automatic suspensive effect (*effet suspensif de plein droit*) *Gebremedhin*, para 66. In *M.S.S.* the shortage of lawyers providing legal aid was one of the factors leading to the ECtHR’s finding that Greece had violated art 13 ECHR taken with art 3 ECHR (para 319) along with the delays in the asylum procedure (para 320) and a lack of information about that procedure (para 311).
99. The scope of the protection of ECHR provisions has not as yet been interpreted by the ECtHR to afford the same comprehensive right to effective protection as that recognised in EU law by art 47, Charter.
100. The First Interveners therefore propose that the Court reply to Question 5 as follows:

“In the case of an asylum applicant to whom Regulation 343/2003 applies, the scope of the protection afforded by general principles of EU law, including respect for the fundamental rights set out in art 6 TEU and the Charter of

Fundamental Rights of the EU, is wider than that thus far enunciated in the jurisprudence of the European Court of Human Rights under Article 3 of the European Convention on Human Rights.”

Among other things, such an applicant has the rights set out in articles 1, 4, 18, 19(2) and 47 of the Charter of Fundamental Rights of the EU which include, among others, at a minimum, that the applicant be afforded the minimum standards imposed by the Reception Directive, Qualification Directive and Procedures Directive.”

Question 6:

Is it compatible with the rights set out in article 47 of the Charter for a provision of national law to require a Court, for the purpose of determining whether a person may lawfully be removed to another Member State pursuant to the Regulation, to treat that Member State as a State from which the person will not be sent to another State in contravention of his rights pursuant to the Convention or his rights pursuant to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees?

101. In the United Kingdom, ‘any person, tribunal or court’ responsible for determining whether an asylum applicant may be transferred under Regulation 343/2003 from the United Kingdom to a Member State is bound by national law to presume conclusively that the Member State would not send that applicant to another State in contravention of his rights under the ECHR or Geneva Convention: Asylum and Immigration (Treatment of Claimant, etc.) Act 2004, Schedule 3, Part 2, paras 3(1) and (2)(b), see order for reference paras 22 - 23.
102. This does not preclude a court from determining that this provision of national law is incompatible with the ECHR, but such a determination only gives rise to the possibility of a non-binding declaration: order for reference, para 24.
103. The First Interveners submit that the imposition of this conclusive presumption on courts and tribunals is precluded by, inter alia, the right to an effective remedy guaranteed by art 47 of the Charter.

104. As explained above in relation to Questions 2-4, a decision to transfer an asylum applicant to another Member State under Regulation 343/2003 may amount to a violation of that applicant's fundamental rights, in particular, the rights to life, asylum and human dignity and the prohibition on torture, inhuman or degrading treatment or punishment and expulsion to face death, torture or inhuman or degrading treatment or punishment.
105. Those are rights and freedoms guaranteed by EU law. A decision to transfer an asylum applicant under Regulation 343/2003 is therefore one to which art 47 of the Charter applies and thus in respect of which the Member State must make available to the applicant an effective remedy.
106. Furthermore, the First Intervenors submit that, as a matter of EU law, an asylum applicant has a right to have decisions as to his transfer under Regulation 343/2003 taken in accordance with the requirements and limitations of that Regulation, including those which arise from the requirement to respect fundamental rights. Therefore, in a case where the transfer of the applicant under art 3(1) of the Regulation is precluded by the requirement to respect fundamental rights, a decision to make that transfer is a violation of the rights guaranteed by Regulation 343/2003.
107. A presumption of law which is irrefutable and automatic, regardless of the evidence actually available, is incompatible with the requirements of effective judicial protection. Such a presumption disables the court or tribunal having jurisdiction from being able to determine whether there has been a violation of the fundamental rights in question. See, by analogy, Case C-173/03 *Traghetti del Mediterraneo* [2006] ECR I-5177.
108. It follows that, in cases falling within the scope of EU law, the domestic law in question is precluded by the general principle of EU law that Member States must ensure the availability of effective judicial protection in respect of violations of the rights guaranteed by EU law.
109. The correctness of this conclusion is not affected by the terms of the asylum *acquis*. When making the Procedures Directive, the Council recorded that this Directive 'does not deal with procedures governed by Council Regulation (EC) No 343/2003': recital 29. See also art 25(1) of that Directive.
110. The First Intervenors therefore propose that the answer to Question 6 should be:

“It is incompatible with the general principles of EU law and, in particular, the fundamental right to an effective remedy set out in Article 47 of the Charter of Fundamental Rights of the EU, for a provision of national law to require a court or tribunal, for the purpose of determining whether a person may lawfully be removed to another Member State under Regulation 343/2003, to treat that Member State as a State from which the person will not be sent to another State in contravention of his rights pursuant to the European Convention on Human Rights or his rights pursuant to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees.”

Question 7

Insofar as the preceding questions arise in respect of the obligations of the United Kingdom, are the answers to Questions 2-6 qualified in any respect so as to take account of the Protocol (No. 30) on the application of the Charter to Poland and to the United Kingdom?

111. Article 1(1) of Protocol (No 30) states:

“The Charter does not extend the ability of the Court of Justice, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or actions of Poland or of the United Kingdom are inconsistent with fundamental rights, freedoms and principles that it reaffirms.”

112. As set out above in relation to Questions 1-6, under EU law as it stood before the adoption of Protocol (30), the Court of Justice and national courts applying EU law had jurisdiction to find that laws, regulations or administrative provisions, practices or actions of the United Kingdom are inconsistent with the fundamental rights guaranteed by the EU legal order. Furthermore, under EU law as it stood, national courts applying EU law had jurisdiction to disapply such national laws and other measures on the grounds of inconsistency with those fundamental rights.

113. The function of the Charter was to ‘strengthen the protection of fundamental rights . . . by making those rights more visible in a Charter’: Preamble to Charter, 4th para. That protection was also strengthened by art 6 TEU.

114. The Court has applied the Charter to the laws of the United Kingdom since the coming into force of Protocol (30): Case C-162/09 *Secretary of State for Work and Pensions v Lassal*, judgment of 7 October 2010, paras 3 and 29.

115. It follows that the answers to Questions 2-6 are not affected by Protocol (30).

116. The First Interveners therefore propose that the answer to Question 7 should be:

“In so far as the preceding questions arise in respect of the obligations of the United Kingdom, the answers to Questions 2-6 are not affected by Protocol (No 30) on the application of the Charter to Poland and to the United Kingdom.”

Simon Cox, barrister, Bar of England and Wales

Shahram Taghavi, barrister, Bar of England and Wales

Jonathan Tomkin, barrister, Bar of Ireland

Amnesty International Limited

The AIRE Centre (Advice on Individual Rights in Europe)