

The Impact of the ECtHR Judgment in *M.S.S. v. Belgium and Greece* on Asylum Transfers: A Comparative Analysis of Reforms

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Abstract

*This paper examines how the jurisprudence of the European Court of Human Rights influences the legislative systems of the member states. The central element is the observation that the comparative analysis serves as a "domino" effect triggered by the historic judgment in *M.S.S v Belgium and Greece*, which indirectly modified the Dublin II system and caused changes in perceptions and domestic legislation. The comparative study examines how judicial decisions have restructured protection systems in major transit states, such as Greece, and how host states have halted transfer to high-risk states, including Belgium and United Kingdom. The paper identifies a shift from the automatic, blind presumption of trust between states under Dublin II to trust based on evidence and guarantees. This harmonizes the protection procedure and redefines the boundary between state sovereignty and the protection of rights in matters of migration and asylum.*

Keywords: ECtHR Jurisprudence, migration, asylum, comparison, *M.S.S v Belgium and Greece*.

JEL Classification: K37, K38

DOI: <https://doi.org/10.62768/ADJURIS/2026/7/05>

Please cite this article as:

Iacob, Andra Bianca. "The Impact of the ECtHR Judgment in *M.S.S. v. Belgium and Greece* on Asylum Transfers: A Comparative Analysis of Reforms." In *Comparative and International Law in an Era of Global Transformation: Sovereignty, Justice, Cooperation, and Emerging Technologies*, edited by Liliana Tymchenko and Paulina Guli Hoti, 80–93. ADJURIS – International Academic Publisher, 2026.

<https://doi.org/10.62768/ADJURIS/2026/7/05>

1. Introduction

The transfer of people from one state to another is different because of a common way set to an automatic practice: the identification of a person who needs to be transferred, the identification of a quality state for the well-being of the person and to make a favorable decision for the transfer.

The European system was built on the presumption of mutual trust. This

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thing was demonstrated by the Dublin II Regulation. When the Dublin II Regulation came into force, transfers between European states became automatic. In that time, the concept of mutual trust. In this case, the state authorities did not observe the real effect of a transfer and the way in which a transferred person is accepted by the responsible state.

In European practice, the reception and housing conditions were poles apart. The states that were confronted with a massive immigration, Italy, Greece, and Spain, made hard efforts to accord human rights in accordance with the European system of protection to everyone. As a result, the European Court of Human Rights (ECtHR) Jurisprudence was enriched in several areas, including asylum and migration. The judges of the ECtHR needed to develop a new interpretation of the European Convention on Human Rights (ECHR). In this case, the interpretation needed to be consistent with the circumstances of the cause.

The absolute character of Article 3 ECHR was created from the beginning of the ECHR, but the real interpretation in extension was influenced by the case of *Soering v UK*. The jurisprudence of *M.S.S v Belgium and Greece* was recognized in the domestic law of the countries. The domestic laws of Belgium, Greece, and the United Kingdom were changed.

2. Conceptual Framework and the *M.S.S.* Judgment

2.1. The Knock-on Effect and Research Methodology

The term "knock-on effect" is also known as a domino effect². It means the procession of some effects or situations because of a principal cause. This terminology is used in accordance with ECtHR Jurisprudence and is based on a reinterpretation of the positive, mandatory obligations of the states. These states recognize that their authorities must provide greater support for reception, accommodation conditions and vulnerability. Competent asylum authorities, when they seek to observe a litigation conflict, must closely monitor the individual's behavior, provisional measures, and the assessment of a real risk in an effective manner.

In a methodological way, this paper utilizes the comparative method, historical method, and the concept of Law in action for all the pages of the article. In this way, we can examine how jurisprudence was introduced in certain European legislative systems.

2.2. Facts and Findings in *M.S.S. v. Belgium and Greece*

On 21 January 2011, the Judges of the ECtHR condemned the violations

² Merriam-Webster.com Dictionary, s.v. "knock-on effect," accessed January 21, 2026, <https://www.merriam-webster.com/dictionary/knock-on%20effect>.

of Articles 3 and 13 of the ECHR by Belgium and Greece. In the first, an Afghan citizen's entry into Greece via a legal border crossing. Because of poor conditions, he considered going to Belgium. The Belgian authorities decided in accordance with the Dublin II Regulation³ to make an automatic transfer to Greece. The competent Belgian authorities did not conduct an effective, individual assessment of the actual risk. This risk stems from the reception conditions and the asylum procedure. However, these authorities relied on the presumption in the Dublin II Regulation⁴. The ECtHR judges held that mutual trust does not justify a transfer under the Dublin II Regulation when there are clear and substantial grounds for believing that the applicant faces a real risk of being treated contrary to Article 3 of the ECHR in the destination State⁵. They mentioned that the Belgian authorities are aware of the situation in Greece and, in accordance with the Dublin II Regulation, decided to affect the transfer⁶. Both states needed to make some improvements in their domestic law.

3. The Greek Asylum System

3.1. Migration Context and the Legal Framework

Greece, in southeastern Europe, is a country with a rich history and a diverse culture. In the context of the geopolitical landscape, thousands of new arrivals cross the border each year, seeking to start a new life. Every day, there are some new arrivals by sea or at the territory's borders. In general, the new arrivals are from the Asian zone (Afghanistan, Syria, Pakistan)⁷ and Africa (Somalia, Nigeria, Egypt, Morocco, Libya)⁸.

The principal routes are in the Aegean Sea: the coast of Turkey and the Greek islands (Lesbos, Samos) and the route of the Evros river. In the year 2019,

³ Council Regulation (EC) No. 343/2003 of February 18, 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, *Official Journal of the European Union* L 50 (February 25, 2003): 1–10, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003R0343>.

⁴ *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §§ 339–60 (ECtHR, January 21, 2011), <https://www.bailii.org/eu/cases/ECHR/2011/108.html>.

⁵ Marco Gerbaudo, “Paving the Way to the New Pact on Migration and Asylum: Some Reflections on Ministero dell’Interno (Joined Cases C-228/21, C-254/21, C-297/21, C-315/21, C-328/21),” *Maastricht Journal of European and Comparative Law* 31, no. 5 (2024): 647–661, <https://doi.org/10.1177/1023263X241311677>.

⁶ *M.S.S. v. Belgium and Greece*, §§ 359–60, 365–68.

⁷ UNHCR, “Operational Data Portal: Europe Sea Arrivals, Greece,” accessed September 12, 2026, <https://data.unhcr.org/en/situations/europe-sea-arrivals/location/24489>.

⁸ Ioannis E. Kotoulas, “Greece and Mass Migration from North Africa,” China-CEE Institute, September 10, 2025, <https://china-cee.eu/2025/09/10/greece-monthly-briefing-greece-and-mass-migration-from-north-africa/>.

on the island routes the new arrivals contributed to superpopulation. In this context were 42.000 of new arrivals in a capacity of 6.178 places⁹. This situation created a difficult situation for human rights in accordance with European authorities.

Before 2011, the Greek protection system was grounded in a normative act governing migration and asylum. In the first, the main law of migration was 3386/2005¹⁰. This law defined a migrant from a distinct state as a person who has no Greek citizenship and no European Union (EU) citizenship. As a result, most legal migrants were protected by this law. At the beginning of the XXI century, most migrants were from Albania and after this, the crisis of migration was bigger¹¹. Consequently, Law 3386/2005 was insufficient.

The diminution of protective character was established by Law 3386/2005 and became evident after the migration pressures. In 2009, Greek Police recorded approximately 63,500 apprehensions of Albanian nationals¹². According to Eurostat data cited by RIEAS, Greece's population grew by 35,000 people in 2009, 27,000 of whom were immigrants¹³. In 2010, the international migrant stock was 1,269,749, a 6.64% increase from 2005¹⁴.

At the same time, the medical system was confronted with a new national pandemic, malaria. This illness was stopped by medical authorities in 1974 and reborn in 2009-2014. The primary objective was to increase the arrival of new migrants from low-income countries¹⁵. All these elements led to the enactment of a new law with the primary aim of protecting migrants and refugees.

The section of detention and transfer from 3386/2005 needed to be standardized in accordance with ECtHR Jurisprudence. Greece was found guilty of failing to provide a ECHR in the conditions of detention. At the same time, to have a favorable admission of asylum, a new arrival needed to go to the police

⁹ Miriam Orcutt et al., "EU Migration Policies Drive Health Crisis on Greek Islands," *The Lancet* 395, no. 10225 (2020): 668–670, [https://doi.org/10.1016/S0140-6736\(19\)33175-7](https://doi.org/10.1016/S0140-6736(19)33175-7).

¹⁰ Greece, *Law No. 3386/2005 on the Entry, Residence and Social Integration of Third-Country Nationals on Greek Territory*, Government Gazette A 212/23.08.2005, <https://www.refworld.org/legal/legislation/natlegbod/2005/en/98138>.

¹¹ Simeon Karafolas and Alexandros Alexandrakis, "The Annual Demand for Seasonal Immigrant Labor in Greece During the Crisis Period," in *EU Crisis and the Role of the Periphery*, ed. Anastasios Karasavvoglu, Serdar Ongan, and Persefoni Polychronidou (Cham: Springer, 2015), 76–79, https://doi.org/10.1007/978-3-319-10133-0_5.

¹² Thanos Maroukis, *The Number of Irregular Migrants in Greece at the End of 2010 and 2011*, ELIAMEP Briefing Notes 21/2012 (June 2012), 2, https://www.eliamep.gr/wp-content/uploads/2012/06/Briefing-Notes_21_June-2012_Thanos-Maroukis1.pdf.

¹³ Research Institute for European and American Studies (RIEAS), "Immigration to Greece," August 2010, 9, <https://www.rieas.gr/images/rieas145.pdf>.

¹⁴ Macrotrends, "Greece Immigration Statistics," accessed September 12, 2026, <https://www.macrotrends.net/global-metrics/countries/GRC/greece/immigration-statistics>.

¹⁵ Panagioti Kotsila and Giorgos Kallis, "Biopolitics of Public Health and Immigration in Times of Crisis: The Malaria Epidemic in Greece (2009–2014)," *Geoforum* 106 (2019): 223–233, <https://doi.org/10.1016/j.geoforum.2019.08.019>.

station. At the police office, the new arrival completed the required documentation. The police office is, in this context, an administrative authority within the crisis of migration and asylum procedures. Once all documents are complete, the primary observation procedure for a positive decision begins. The asylum seeker's entry in this manner is part of an international monitoring program; the fingerprinting was conducted in accordance with the EURODAC system. Human rights and their obligations are governed by law. The new arrivals had the opportunity to request integrity, legal assistance, medical assistance, and other rights, such as non-refoulement¹⁶.

3.2. Asylum and Reception Reforms

Law 3907/2011, published on 26 January 2011, established the Asylum Service and the First Reception Service and formed a central element of the reform of Greece's migration and asylum system. Its implementation developed in the immediate post-M.S.S. period.

The main objective of the Asylum Greek System is the examination of documents for approval or refusal of protection. It was the first independent structure of asylum procedure in Greece¹⁷. The First reception system in Greece has a person with authority to ensure respect for the law and European human rights standards for vulnerable people. However, the system is complex because it can assist individuals in vulnerable situations. In accordance with this system, all people can continue their education. The children can easily be integrated into Greek culture and society through the national program. Their parents can be assisted by the authorities in developing skills for a new job¹⁸. All these measures respect European practices and Directive 2013/33/EU.

We consider that a significant non-bureaucratic importance is the empathy of the staff and their flexibility in the primary areas: linguistic, medical and psychological. The latter being particularly important to create a stable link between the competent authority and the newcomers. Nevertheless, recent scholarship indicates that reception conditions in the Greek island centres continue to raise significant concerns regarding restrictions on freedom of movement, surveillance, and the effective protection of asylum seekers' fundamental rights¹⁹.

¹⁶ Joanna Lenart, "'Fortress Europe': Compliance of the Dublin II Regulation with the European Convention for the Protection of Human Rights and Fundamental Freedoms," *Utrecht Journal of International and European Law* 28, no. 75 (2012): 4–19, <https://doi.org/10.5334/ujiel.v28i75.30>.

¹⁷ Hellenic Republic, Ministry of Citizen Protection, "The New Asylum Service and Appeals Authority: Frequently Asked Questions," May 30, 2012, <https://www.minocp.gov.gr/2012/05/30/sychnes-erotiseis-i-neaypiresia-asylou-kai-i-archi-prosfygon/>.

¹⁸ Hellenic Republic, Ministry of Migration and Asylum, "Educational Activities of the Reception and Identification Service," accessed September 12, 2026, <https://migration.gov.gr/en/ekpaideytikes-enimerotikes-draseis/>.

¹⁹ C.H. (Lieneke) Slingenberg, "Coerced into Subsistence: Deprivation of Liberty in the EU Reception and Identification Centres in Greece," *Social & Legal Studies* 34, no. 3 (2025): 381–401,

4. The Belgian Asylum System

4.1. The Legislative Framework and Procedural Safeguards

Belgium is one of 6 countries that founded the EU. Between 1970 and 2000, this country respected EU Law and the Dublin II Regulation. The asylum procedure in Belgium is governed by a federal law, which means that a new arrival must undergo additional procedures to be recognized as an asylum seeker. At the end of the XX century, a new supplementary law of protection was created. *Loi du étrangers*²⁰, need to be seen as an *étranger* Constitution. Under it, European and non-European strangers have the right to well-being and legal accommodation.

The access condition in Belgium is subject to the following requirement: all people must have an ID card. For EU people, the accommodation is automatic because of one of these reasons: education studies, a job, or reunification. They need to submit some documents to the Commune, also known as City Hall. Non-EU citizens require a visa. This visa could not be obtained from the Belgian border, as a rule and it needed to be obtained before entering the state²¹. Under the EU Visa Code, a short-stay visa covers intended stays not exceeding 90 days in any 180-day period, and applications may generally be lodged no more than six months before the intended visit²². Sometimes a person may need to have a unique premise of work²³, needs to demonstrate the reunification with his family²⁴. For short stays, the Visa Code sets the common EU conditions and procedures applicable to visa applications²⁵.

Due to a great number of migrants and refugees, the Belgian authorities needed to make a new reform. In 2004, there were some minors without families

<https://doi.org/10.1177/09646639251322979>

²⁰ Belgium, *Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers*, consolidated text, accessed September 12, 2026, https://emnbelgium.be/sites/default/files/publications/loi_derniere_version.pdf.

²¹ Elisabeth Derriks, Karima Sbai, and Maïté Van Regemorter, *Droit des étrangers: Chronique de jurisprudence 2007–2010* (Brussels: Larcier, 2012), 75.

²² European Union, “Visa Code,” EUR-Lex, accessed September 12, 2026, <https://eur-lex.europa.eu/EN/legal-content/summary/visa-code.html>; Regulation (EC) No. 810/2009, as amended.

²³ European Parliament and Council of the European Union, Directive 2011/98/EU of December 13, 2011 on a Single Application Procedure for a Single Permit, *Official Journal of the European Union* L 343 (December 23, 2011): 1–9, <https://eur-lex.europa.eu/eli/dir/2011/98/oj/eng>.

²⁴ Council of the European Union, Council Directive 2003/86/EC of September 22, 2003 on the Right to Family Reunification, *Official Journal of the European Union* L 251 (October 3, 2003): 12–18, <https://eur-lex.europa.eu/eli/dir/2003/86/oj/eng>.

²⁵ European Parliament and Council of the European Union, Regulation (EC) No. 810/2009 of July 13, 2009 Establishing a Community Code on Visas (Visa Code), as amended, *Official Journal of the European Union* L 243 (September 15, 2009): 1–58, <https://eur-lex.europa.eu/eli/reg/2009/810/oj/eng>.

from 59 countries. These minors were divided into two. First category was the minors who asked for asylum: Congo, Guinea, Afghanistan. The second category was created by the minors who did not ask for asylum: Yugoslavia, Romania, Moldova²⁶.

The year 2006 is a new fresh start for Conseil du Contentieux des Étrangers, this is an administrative and independent authority²⁷. From this, two distinct criteria emerge. First, there is the possibility of an appeal in the annulment of the transfer decision. This appeal, although made by the person to be expelled, does not have a suspension effect. To produce the suspension, a separate request is made, which can take place even if the case is judged. The secondary measure was suspension in extreme urgency, which was limited to a maximum of 72 hours.

Practically, the fundamental difference between the two lies in the depth of the analysis. The right to appeal is a normal way to attack a court decision without suspending the effect of transmission to another state. While suspension in extreme urgency is an exceptional measure taken for more serious cases that produce a temporary stop.

4.2. Transfer Procedures and Legislative Reforms

It goes without saying that the measure of automatic transfer without prior verification and without guaranteeing European rights is in contradiction with the provisions of the ECHR and its case law. Thus, with the 2011 judgment in *M.S.S. v. Belgium and Greece*, the Belgian system produced legislative reforms with both direct and indirect effects. As for the direct effect, it was evident in the reconstruction of the transfer procedure and its guarantees. In practice, the Belgian system could no longer rely on the automatic transfer effect and the right to appeal without suspension of transfer, as provided by the 2006 reform, which remained ineffective.

The first measure taken by Belgium at the ECHR following this event was to halt transfers to Greece and to increase interaction between the authorities and the asylum and possible transfer files²⁸. The 1980 law is a fundamental core of the status of newcomers. Thus, this law was reformed in 2012 and 2014 to guarantee more rights and freedoms in accordance with the provisions of the ECHR.

In 2008, the Return Directive was adopted; in this context, the member states had to transpose it by the end of December 2010. Belgium implemented it

²⁶ Ilse Derluyn and Eric Broekaert, "Unaccompanied Refugee Children and Adolescents: The Glaring Contrast between a Legal and a Psychological Perspective," *International Journal of Law and Psychiatry* 31, no. 4 (2008): 319–330, <https://doi.org/10.1016/j.ijlp.2008.06.006>.

²⁷ Federal Public Service Interior (Belgium), "Conseil du Contentieux des Étrangers," accessed September 12, 2026, <https://www.ibz.be/fr/notre-culture-dentreprise/organismes-independants/conseil-du-contentieux-des-etrangers>.

²⁸ Philipp Lutz, Florian Trauner, and Philipp Stutz, "Towards More Fairness among States: How Dublin Transfers Redistribute Asylum Responsibility," *European Union Politics* 27, no. 3 (2026): 533–556, <https://doi.org/10.1177/14651165261446534>.

by national measures, with subsequent reforms adopted in 2012²⁹. At the same time, the principle of non-refoulement was put into practice in an exceptional manner. Like transfers, return measures as provided for in the Dublin Regulation require additional safeguards to help ensure a removal in which human rights are guaranteed throughout the transfer period and thereafter. At all times, the authorities must ensure respect for human rights in accordance with the European protection mechanism during the transfer and after it³⁰.

In 2014, a new reform was introduced to the *Loi du 1980 sur les étrangers*. A new model of codification and development practice for asylum procedures is being written. The competent authorities must review all documents on a case-by-case basis. This helps to eliminate any possibility of transfer that would contravene the provisions of the ECHR, particularly in Article 3. Any person seeking asylum may request a stay of the transfer process pending finalization of their status.

The number of non-Belgians living in Belgium exceeded 1.2 million at the end of 2013³¹. In 2023, Belgium recorded a positive international migration balance of 66,349³². As of 1 January 2025, 36% of Belgium's population had a foreign background³³.

4.3. The Application of M.S.S. in Belgian Case Law

It is needed to observe that *M.S.S v Belgium and Greece* was mentioned by the national instance³⁴. In case 56.201, the person's name is anonymized due to their vulnerability. This person of European-Chechen nationality was fingerprinted in accordance with EURODAC requirements in Poland. He was transferred to Belgium, where the Secretary of State for Migration and Asylum Policy issued a negative decision on his request to remain in the territory. Thus, the individual named X requested, in an urgent procedure, the suspension of the transfer decision's execution. In the decision given in this case, the judges mentioned

²⁹ Belgium, *Loi du 19 janvier 2012 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers*, Moniteur belge, February 17, 2012, <https://lisloi.be/laws/2012000081>.

³⁰ European Parliament and Council of the European Union, Directive 2008/115/EC of December 16, 2008 on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals, arts. 1, 5, 8, and 12, *Official Journal of the European Union* L 348 (December 24, 2008): 98–107, <https://eur-lex.europa.eu/eli/dir/2008/115/oj/eng>.

³¹ The Brussels Times, “Population of Non-Belgians in Belgium in 2013 – 1.2 Million,” September 22, 2015, <https://www.brusselstimes.com/belgium-news/34878/population-of-non-belgians-in-belgium-in-2013-1-2-million/>.

³² Statbel, “International Migration Balance of 66,349 Persons in 2023,” June 4, 2024, <https://statbel.fgov.be/en/news/international-migration-balance-66349-persons-2023>.

³³ Statbel, “36% of the Belgian Population Has Foreign Background,” June 12, 2025, <https://statbel.fgov.be/en/news/36-belgian-population-has-foreign-background>.

³⁴ Conseil du Contentieux des Étrangers, *Arrêt no. 56.201*, February 17, 2011, <https://www.rvv-ccc.be/sites/default/files/arr/A56201.AN.pdf>.

the obligation to observe the independent and effective cause in accordance with the decision in *M.S.S v Belgium and Greece*³⁵.

It is important to note that to the detriment of the ECHR decision on *M.S.S v Belgium and Greece*, this person of Chechen origin would have been automatically transferred to Poland in accordance with the European provisions: the Dublin II Regulation and automatic mutual trust. It is important to note that the rights of vulnerable people are more extensive and better protected by the relevant authorities. We believe it is important to examine how ECHR decisions are effectively applied in national legislative jurisprudence to assess their impact and the mechanisms by which they are integrated.

We thus observe that in Greece, the main problem was around the reception conditions and material conditions, being a Greek system with deficient problems due to the large number of migrants and refugees. However, in Belgium, the immediate consequence was the suspension of transfers, the reconfiguration of procedural guarantees, and the challenge of the transfer.

5. The Asylum System in the United Kingdom

5.1. The Legislative Framework and Institutional Developments

The United Kingdom (UK) is a European country that has tried many times to be a part of the EU community. The acceptance was in 1973. At the time of the events, the UK was a party to the Dublin II Regulation and was therefore bound to comply with it as an EU Member State. This Regulation therefore raised the same risk assessment issue under the ECHR in the UK.

The British Nationality Act 1981 came into force on 1 January 1983 and restructured British nationality law. Under the pre-1983 rules, British mothers generally could not transmit nationality on the same terms as British fathers to children born abroad; subsequent registration provisions provide a route for certain persons affected by that historical discrimination to register as British citizens³⁶. The year 2002 started with a new law: the Nationality, Immigration and Asylum Act 2002³⁷. With its help, asylum, immigration, and appeal rights were established.

In 2008, The UK Border Agency (UKBA) was established by the British government and the Home Office. This agency has multiple roles: immigrants can be sent to detention or arrest in certain cases, search, detention, transfer of criminals after serving their detention. At the same time, a biometric recognition

³⁵ Conseil du Contentieux des Étrangers, *Arrêt no. 56.201*, February 17, 2011.

³⁶ UK Visas and Immigration, "Form UKM: Guidance," updated August 10, 2026, <https://www.gov.uk/government/publications/form-ukm-guidance>.

³⁷ United Kingdom, *Nationality, Immigration and Asylum Act 2002*, c. 41, <https://www.legislation.gov.uk/ukpga/2002/41/contents>.

by fingerprinting and the granting of ID cards were attempted³⁸. These were first used by people new to the British system who were in educational studies or who considered themselves in a civil partnership with a British person or were married to a British citizen³⁹.

However, the agency has not been without problems, which is why it was divided in 2013 into visa services (UK visas and Immigration) and enforcement and transfer (Immigration Enforcement).⁴⁰ Both UK visas and Immigration and Immigration Enforcement were created in 2013 1 month apart: March and April.

UK Visas and Immigration is responsible for: asylum, visa, and citizenship applications. The authorities authorized in this field have as their main responsibilities: processing visa applications, administering asylum applications and the international procedure, assessing applications, and the file of each person. All of these must comply with the provisions of the legislation on asylum and migration and respect the rights conferred.

While Immigration Enforcement is responsible for identifying and removing people who are residing illegally, managing detention operations, deportations, combating illegal migration, and ensuring the national security of the state.

5.2. Suspension of Transfers and Individual Risk Assessment

The impact of *M.S.S v Belgium and Greece* was so significant that it produced effects in other countries. The British authorities have a direct effect: suspension of transfer to Greece in accordance with *M.S.S v Belgium and Greece*. These measures of suspension were maintained for an extended period until the Greek authorities revised their conditions and introduced new human rights protections.

These suspension measures were maintained for an extended period until the Greek system issued new clarifications and a higher level of protection for European rights.

The case, *R (EM (Eritrea)) v Secretary of State for the Home Department*, was heard by the Supreme Court of the United Kingdom, where national judges discussed the application of Article 3 of the European Convention on Human Rights in a case involving four asylum seekers (three Eritrean nationals and one Iranian national)⁴¹.

These applicants came to the United Kingdom from Italy. They were

³⁸ "UKBA Switches Biometrics Spend to Immigration and Asylum," *Biometric Technology Today* 2010, no. 9 (October 2010): 12, [https://doi.org/10.1016/S0969-4765\(10\)70191-0](https://doi.org/10.1016/S0969-4765(10)70191-0).

³⁹ "UKBA to Issue ID Cards to Foreign Nationals," *Card Technology Today* 20, no. 9 (September 2008): 4, [https://doi.org/10.1016/S0965-2590\(08\)70181-6](https://doi.org/10.1016/S0965-2590(08)70181-6).

⁴⁰ BBC News, "UK Border Agency to Be Scrapped, Theresa May Announces," March 26, 2013, <https://www.bbc.com/news/uk-politics-21941395>.

⁴¹ United Kingdom Supreme Court, *R (EM (Eritrea)) v. Secretary of State for the Home Department*, [2014] UKSC 12, February 19, 2014, <https://www.supremecourt.uk/cases/uksc-2012-0272>.

therefore transferred to Italy under the Dublin II Regulation. Before the Supreme Court, the applicants sought a suspension of the transfer decisions on the grounds that this would protect the interests guaranteed by Article 3 of the ECHR, citing the impact on their physical and mental health. It was argued that, once in Italy, they would be exposed to a real risk of treatment contrary to Article 3, including the risk of abusive detention or, indirectly, of readmission to their country of origin, poor conditions of detention and reception. It is important to note that all of these can lead to degrading or inhuman treatment.

The Supreme Court, drawing on *Soering* and *M.S.S.*, held that an applicant resisting a Dublin II transfer need not establish a “systemic deficiency” in the receiving State. The decisive question is whether substantial grounds show a real risk of treatment contrary to Article 3, and the cases were remitted for assessment on that basis⁴².

6. Conclusion

The jurisprudence of the European Court of Human Rights has had a real impact on the domestic law of the Member States, the case of *M.S.S v Belgium and Greece* demonstrates this.

The evidence show that European legislative systems integrate the most impactful decisions issued by Strasbourg into national practice, interpret them in their own way, and apply them in domestic law. It is important to observe how the protection of people's rights and freedoms is intensified in the European system, with a major impact on vulnerable people: migrants and refugees. The protection of these categories of people is essential both theoretically and practically because the real state in which they find themselves is a vulnerable one.

This indicates that it is necessary for the competent authorities of the states to thoroughly and effectively verify each asylum application or international procedure. At the same time, vulnerable people observed on maritime territory or on land by the responsible authorities must be helped to gain their migrant and refugee rights. If there were a group of several people, some of whom exhibited signs of vulnerability and others did not, those who exhibited signs of vulnerability should be transferred to reception points within the European state to be granted the necessary legal status. And the people with signs of non-vulnerability should be given real guarantees throughout the transfer and afterwards.

⁴² *R (EM (Eritrea)) v. Secretary of State for the Home Department*, [2014] UKSC 12, ¶ 58.

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