Irish Court of Appeal

Judgment

Title:	BS & RS -v- The Refugee Appeals Tribunal & ors
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Peart J.	Link	Birmingham J.	Hogan J.
Hogan J.	Link		

THE COURT OF APPEAL
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Record No. 2016/436

Peart J.
Birmingham J.
Hogan J.

BETWEEN/

BS AND RS

APPLICANTS / APPELLANTS

- AND-

REFUGEE APPEALS TRIBUNAL

AND MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT OF MR. JUSTICE MICHAEL PEART DELIVERED ON THE 14TH DAY OF JUNE 2017

1. This is an appeal from an order of the High Court (Humphreys J.) made on the 29th July 2016 refusing reliefs which the appellants (to whom for convenience I shall refer to jointly as "S") had sought by way of judicial review. The principal relief sought was an order of *certiorari* to quash the decision of the Refugee Appeals Tribunal ("the Tribunal") dated the 14th July 2015 which upheld the decision of the Office of the Refugee Applications Commissioner ("ORAC) dated the 19th May 2015 made pursuant to Article 12 of Regulation (EU) No. 604/2013 ("the Dublin III Regulation" or "the Regulation") that the United Kingdom is the member state responsible for determining their application for asylum. That decision carries with it the consequence that S will be transferred to the United Kingdom for the purpose of assessing their applications for a declaration of refugee status. I will refer to the decision of ORAC as the "transfer order".

2. According to their asylum applications S are Albanian nationals who previously lived in Kosova. They arrived in the State on the 12th December 2014, and two days later made an application for asylum by completing the prescribed Form ASY 1. However, and this is not in dispute, they failed to provide a truthful account of the circumstances of their arrival in the State. Had they done so, it would have been unnecessary for ORAC to make a request for information from the United Kingdom authorities pursuant to Article 34 of the Dublin III Regulation as it would have been obvious that the United Kingdom was the member state responsible for determining their applications under the Dublin III Regulation, and that they should be transferred there for that purpose pursuant to the Regulation, since they each had a valid visa issued by the United Kingdom.

3. Following the lodgment of their asylum applications, each later completed the required form entitled 'Application for Refugee Status Questionnaire' on the 26th December 2014.

4. On the 15th January 2015, prior to any interview with S, ORAC made an information request to the United Kingdom authorities in respect of S under the provisions of Article 34 of the Dublin III Regulation. The request forms were sent electronically via the secure network 'DublinNetIreland' which is used for such communications. When making those requests for information, using the prescribed Annex V request form, ORAC supplied the fingerprints of each applicant which had been taken on arrival in the State. In the box on the request form headed "Indicative evidence enclosed" the word "Fingerprints" was inserted. In addition, the request form provided details of their names, dates of birth, and place of birth, and stated under "Details", that each had claimed asylum in Ireland on the 16th December 2014. I should perhaps add that the Annex V request form is headed "Request for Information pursuant to Article 34 of the Regulation (EU) No 604/2013".

5. The information received back from the United Kingdom authorities, in response to these requests, by letter dated the 12th February 2015 satisfied ORAC that under Article 12. 2 of the Regulation the United Kingdom was the member state responsible for examining and determining these applications for refugee status. The information furnished had confirmed that the fingerprints provided matched fingerprints held on the UK records in respect of two persons whose dates of birth matched those of S but under

different names. The information was that the persons whose fingerprints matched had each been issued with a multi-visit visa to the UK which were valid from 23rd October 2014 until 23rd April 2015, and had been issued in Warsaw. This information contradicted the answers to a number of questions given by S in their completed questionnaires. At interview on the 30th April 2015 each denied, *inter alia*, ever having obtained such a visa, and continued to maintain that they were the persons named on their asylum application forms.

6. Chapter III of the Regulation (containing Articles 8-15) provides what is described therein as a hierarchy of criteria for determining which member state is responsible for determining a claim for asylum. Article 12.2 provides that *"where the applicant is in possession of a valid visa, the member state which issued the visa shall be responsible for examining the application for international protection ….."*. None of these criteria were applicable other than Article 12.2. ORAC therefore decided that S should be transferred to the United Kingdom on the basis of Article 12.2, and made a so-called 'take charge' request to the U.K. authorities under Article 21 of the Regulation in each case on the 16th March 2015 - a date which predated the interviews just referred to. The U.K. authorities responded on the 13th April 2015 (again before those interviews) by indicating that they would accept the transfers. S were each duly notified by letter dated the 19th May 2015 of the transfer decision, and of the reason. They were also informed of their right of appeal to the Tribunal within 15 working days, and were provided with a *pro forma* notice of appeal for completion should they wish to do so. They availed of their right of appeal. However, each appeal was unsuccessful.

7. There is no need to set forth the grounds of appeal relied upon before the Tribunal. It suffices to say that they included the grounds in respect of which leave was granted to seek judicial review in the High Court, and urged on his appeal.

8. Following the failure of their appeal to the Tribunal, they sought, and were granted, leave by the High Court under O. 84 Rules of the Superior Courts to seek, *inter alia*, an order to quash the Tribunal's decision to uphold the ORAC decision to transfer. An injunction restraining their transfer was granted, and this remains in place pending the final determination of these proceedings.

9. Much of the argument on this appeal focusses on the correct interpretation and application of Article 34 of the Dublin III Regulation, and in particular Articles 34.4 and 34.9 on which I have placed emphasis below. There is some utility now in setting out the provisions of that Article now. It provides:

"CHAPTER VII

ADMINISTRATIVE COOPERATION

Article 34

Information sharing

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the applicant as is appropriate, relevant and non-excessive for:

(a) determining the Member State responsible;

(b) examining the application for international protection;

(c) implementing any obligation arising under this Regulation.

2. The information referred to in paragraph 1 may only cover:

(a) personal details of the applicant, and, where appropriate, his or her family members, relatives or any other family relations (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth);

(b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);

(c) other information necessary for establishing the identity of the applicant, including fingerprints processed in accordance with Regulation (EU) No. 603/2013;

(d) places of residence and routes travelled;

(e) residence documents or visas issued by a Member State;

(f) the place where the application was lodged;

(g) the date on which any previous application for international protection was lodged, the date on which the present application was lodged, the stage reached in the proceedings and the decision taken, if any.

3. Furthermore, provided it is necessary for the examination of the application for international protection, the Member State responsible may request another Member State to let it know on what grounds the applicant bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. The other Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm its essential interests or the protection of the liberties and fundamental rights of the person concerned or of others. In any event, communication of the information requested shall be subject to the written approval of the applicant for international protection, obtained by the requesting Member State. In that case, the applicant must know for what specific information he or she is giving his or her approval.

4. Any request for information shall only be sent in the context of an individual application for international protection. *It shall set out the grounds* on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state *on what evidence*, including relevant information from reliable sources on the ways and means by which applicants enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements *it is based*. It is understood that such relevant information from reliable sources is not in itself sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to an individual applicant.[my emphasis]

5. The requested Member State shall be obliged to reply within five weeks. Any delays in

the reply shall be duly justified. Non-compliance with the five week time limit shall not relieve the requested Member State of the obligation to reply. If the research carried out by the requested Member State which did not respect the maximum time limit withholds information which shows that it is responsible, that Member State may not invoke the expiry of the time limits provided for in Articles 21, 23 and 24 as a reason for refusing to comply with a request to take charge or take back. In that case, the time limits provided for in Articles 21, 23 and 24 for submitting a request to take charge or take back shall be extended by a period of time which shall be equivalent to the delay in the reply by the requested Member State.

6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities whose designation by each Member State has been communicated to the Commission in accordance with Article 35(1).

7. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may, depending on its type and the powers of the recipient authority, only be communicated to the authorities and courts and tribunals entrusted with:

(a) determining the Member State responsible;

(b) examining the application for international protection;

(c) implementing any obligation arising under this Regulation.

8. The Member State which forwards the information shall ensure that it is accurate and up-to-date. If it transpires that it has forwarded information which is inaccurate or which should not have been forwarded, the recipient Member States shall be informed thereof immediately. They shall be obliged to correct such information or to have it erased.

9. The applicant shall have the right to be informed, on request, of any data that is processed concerning him or her.

If the applicant finds that the data have been processed in breach of this Regulation or of Directive 95/46/EC, in particular because they are incomplete or inaccurate, he or she shall be entitled to have them corrected or erased.

The authority correcting or erasing the data shall inform, as appropriate, the Member State transmitting or receiving the information.

The applicant shall have the right to bring an action or a complaint before the competent authorities or courts or tribunals of the Member State which refused the right of access to or the right of correction or erasure of data relating to him or her.

10. In each Member State concerned, a record shall be kept, in the individual file for the person concerned and/or in a register, of the transmission and receipt of information exchanged.

11. The data exchanged shall be kept for a period not exceeding that which is necessary for the purposes for which they are exchanged.

12. Where the data are not processed automatically or are not contained, or intended to be entered, in a file, each Member State shall take appropriate measures to ensure compliance with this Article through

effective checks."

10. I should also refer again to "Chapter III - Criteria for Determining The Member State Responsible". The Articles within Chapter III set forth the various criteria by which is determined the member state responsible for determining the application for international protection. As stated already, Article 12.2 is the criterion by which the transfer decisions in this case were made. It provides as follows:

> "12.2: Where the applicant is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for international protection, unless the visa was issued on behalf of another Member State under a representation arrangement as provided for in Article 8 of Regulation (EC) No 810/2009 of the European Parliament and of the Council, of 13 July 2009, establishing a Community Code on Visas (1). In such a case, the represented Member State shall be responsible for examining the application for international protection."

11. Once ORAC received the information from the United Kingdom authorities on foot of its request, it determined in respect of S that they each came within Article 12.2 being the holders of a UK visa which was valid until the 23rd April 2015 (*i.e.* a date after they made their applications in this State for refugee status - see Article 7.2 of the Regulation).

12. It is not in dispute that the appellants gave incorrect information to ORAC in their applications for refugee status. Nevertheless, they argue that since there was a failure by ORAC to properly complete the form of request for information provided for in Annex V of the Regulation by failing to provide details of the grounds upon which the request was being made and the evidence on which it was based, the requests for information made under Article 34.4 were unlawful, with the result that the information received was not lawfully obtained. It is argued on a 'fruits of the poisoned tree' principle more familiar in a criminal law context, that the information unlawfully obtained may not be relied upon for a decision that the United Kingdom is the member state responsible for determining their applications for international protection, and that the transfer orders are therefore unlawful and should be quashed.

13. The respondents have submitted that if the appellants are correct in this regard, it necessarily follows that their applications for refugee status would be determined by a state other than the state responsible for making that determination under the Regulation - something, it is submitted, that would fly in the face of the expressed objective in, for example, Recital 40 of the Regulation, namely "[for] the establishment of criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one Member State by a third-country national or stateless person".

14. The grounds on which leave to seek a judicial review of the Tribunal's decision to affirm the decision of ORAC was granted by the High Court can be summarised as follows:

> (a) The decision to transfer, and the proposed transfer, are unlawful because both rely upon information obtained on foot of a request that did not comply with Article 34 of the Regulation because (a) the request form did not set out "the grounds on which it is based" or "on what evidence, including relevant information from reliable sources on the ways and means by which applicants entered the territories of the Member States, or on what specific and verifiable part of the applicants' statements it is based" [quoted from Art. 34].
>
> (b) By reason of the said unlawfulness the reply received to that unlawful

request for information constitutes a breach of the Data Protection Directive 95/46/EC, and was therefore sent in breach of Article 38 of the Regulation which requires that *Member States shall take all appropriate measures to ensure the security of transmitted personal data and in particular to avoid unlawful or unauthorised access or disclosure, alteration or loss of personal data processed"*, and in addition breached the appellants' rights under the Data Protection Act, 1988.

(c) The Tribunal erred in law in finding that *"there is nothing in the Dublin Regulation specifying the precise circumstances in which an Article 34 request can or cannot be made"*; and that this is inconsistent with the requirements of the Regulation, in particular that the relevant circumstances must be interpreted to be circumstances where such evidence exists, given that the evidence upon which it is based must be provided in the request.

(d) The Tribunal's decision is unsafe because no investigation was carried out to see if there was any other relevant information which may have indicated that a different Member State was in fact the responsible member state for determining their application for international protection.

(e) In order to ensure the consistency urged by Recital 29 of the Regulation in relation to the obtaining of relevant information, an inquiry in relation to a fingerprint match should have been made under the Eurodac Regulation (EU) No. 603/2013.

(f) The provision of personal data on foot of an unlawful request for information breached the appellants' right to protection of their privacy under Article 8 of the Charter of Fundamental Rights, as well as under Article 8 ECHR.

15. In his written judgment ([2016] IEHC 469) the trial judge expressed his conclusions under five separate headings as follows:

1. Are the transfer decisions invalid because the information request failed to state the grounds on which it was based contrary to Article 34 of the Dublin III Regulation?

2. The allegation that the transfer decision is invalid because the fingerprint data provided did not comply with Article 34(2)(c) of the Regulation?

3. Is the transfer decision invalid because the take charge request was not made "as quickly as possible" contrary to Article 21(1) of the Regulation?

4. Was the decision invalid due to an incorrect finding that a fingerprint match constitutes "proof" of a prior claim in the U.K.?

5. Should the application be dismissed in the discretion of the Court?

16. Having found against the appellants on the merits in respect of issues 1 - 4 above, the trial judge went on to state that in any event he would dismiss the claims on discretionary grounds because*, inter alia, "there can be no doubt but that the purpose of the 2013 Regulation is not to provide protection to applicants who seek to defeat or*

defraud the asylum and immigration systems of member states", and that he "would certainly refuse relief on a discretionary basis due to their abuse of the asylum and immigration systems". Those conclusions were based upon the failure of the appellants to be truthful when completing their applications for asylum following their arrival in the State.

17. The appellants' notice of appeal states their grounds of appeal as follows:

> 1. The trial judge erred in holding that the Appellants do not have a right to challenge any non-compliance by the State with the requirements of Article 34 Regulation (EU) No 604/2013.
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> 2. The trial judge erred in holding that no breach of Article 34 of Regulation (EU) No 604/2013 or any associated data protection law took place.
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> 3. The trial judge erred in holding that the 'take charge requests' in this case complied with the requirement to be made 'as quickly as possible' pursuant to Article 21 of Regulation (EU) No 604/2013, and/or that the Appellants do not have a right to challenge any non-compliance with this requirement.
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> 4. The trial judge erred in holding that the evidence before the Tribunal was sufficient to ground the conclusion that the proofs required to establish that the Appellants had a valid visa for the UK within the meaning of Article 12 (2) of Regulation (EU) No 604/2013.
>
> 5. The trial judge erred in holding that the application for judicial review warranted being dismissed on the basis of a lack of candour or "abuse of the asylum and immigration systems".

18. As I have indicated already, the complaint made in the High Court was that the Annex V request form was not completed as required in that it failed to state the grounds upon which the request for information was being made, and failed also to indicate the evidence upon which the request was based. Article 34(4) of the Regulation (already set forth in para. 8 above), specifies that these details shall be provided in the request, and in those circumstances the information gained on foot of that request was unlawfully obtained and hence could not be used for the purpose of the decision to transfer S to the United Kingdom.

19. The respondents accept that the request form was not completed in strict compliance with Article 34, in particular since it failed to identify that the information was being sought for the purpose of establishing the member state responsible for determining the applicants' asylum application, but argue (a) that in substance the request was a valid request on foot of which the UK authority was entitled to act should it choose to do so, and (b) that in any event any frailty in the manner in which the request form was completed does not give rise to a right of challenge by the individual who is the subject of the request.

20. In their statement of opposition the respondents denied that the information request was unlawful, and that the information gained was unlawfully obtained. It pleaded that ORAC issued the information request using the Annex V form provided for in the Regulation, and the request specified that S were applicants for asylum here, and that the request concerned details of travel, immigration and/or residence in the United Kingdom. At paras. 5 and 6 of the statement of opposition it is pleaded:

> "5. It is denied in particular that there was no factual basis for the

> Information Request as alleged or at all. It is the experience of the [ORAC] that a very high proportion of asylum applicants arrive in Ireland having travelled through the United Kingdom and, accordingly, in a large number of cases the UK is the Member State responsible for assessing the relevant asylum applications. In the case of enquiries made to the United Kingdom during the period of October to December 2014, 73% of applicants from 27 different countries had a positive history in the United Kingdom.
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> 6. In the premises, it is pleaded that the Notice Party had a clear factual basis for making the Information Request, which was made in accordance with the procedure laid down in European Union law."

21. Those pleadings are supported by averments contained in a replying affidavit of Philip Barnes sworn on behalf of the respondents on the 12th November 2015.

Ground 1: The Trial Judge erred in holding that the Appellant does not have a right to challenge any non-compliance by the State with the requirements of Article 34 Regulation (EU) No 604/2013

22. The trial judge concluded that a breach of Article 34 does not give rise to a right on the part of an asylum seeker to challenge a transfer decision made on foot of information received where there may have been a breach of the provisions of Article 34, and that the provisions of Article 34 comprise, as stated in the heading of Chapter VII, provisions relation to administrative cooperation in relation to information sharing between member states.

23. The appellants seek support from Article 27 (1) of the Regulation for their contention that individual rights capable of enforcement by individuals exist within Article 34. Article 27 (1) provides:

> "The applicant or another person as referred to in Article 18(1)(c) or (d) shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal."

24. They submit that this right to an effective remedy includes a right to challenge the transfer order on the basis that the information relied upon for the purposes of deciding to make such an order has been unlawfully obtained on foot of a request which did not comply with the provisions of Article 34.

25. However, in rejecting that submission the trial judge stated at paras. 20 - 23 of his judgment:

> *"20. I will take the opinions of the Advocate General in Case C-155/15 Karim v. Migrationsverket (17th March 2016) and Case C-63/15 Ghezelbash v. Staatssecretaris van Veiligheit en Justitie (Netherlands) (17th March 2016) as a starting point. Those opinions state that the remedy must be such as to "verify whether the criteria in Chapter III have been correctly applied in [the applicant's] case" (para.91). Chapter III of the Regulation covers arts. 7 to 15. The Court of Justice has recently upheld this approach in both cases in judgments, both delivered on 7th June 2016 (see paras. 22 and 23 of Karim and paras. 30 to 61 of Ghezelbash).*
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> *21. The fact that the Advocate General has specifically identified arts. 7 to 15 as being subject to review strongly suggests that other articles of the Regulation are not properly matters for review at the suit of an individual aggrieved applicant. For example, it is clear that a decision of another*

state to accept a transfer is not a transfer decision and is not subject to review under reg. 27 (1) (see Karim, opinion of the Advocate General at para. 42).

22. In its decision in Ghezelbash, the court said at para. 51 that "[i]t follows from the foregoing that the EU legislature did not confine itself, in Regulation No. 604/2013, to introducing organisational rules simply governing relations between Member States for the purpose of determining the Member State responsible, but decided to involve asylum seekers in that process by obliging Member States to inform them of the criteria for determining responsibility and to provide them with an opportunity to submit information relevant to the correct interpretation of those criteria, and by conferring on asylum seekers the right to an effective remedy in respect of any transfer decision that may be taken at the conclusion of that process. What the court is speaking of here is the correct application of "the criteria for determining responsibility". It is not acknowledging a right of action on the part of an asylum seeker in relation to all aspects of the Dublin Regulation".

26. At para. 25 of his judgment the trial judge went on to state:

"25. It seems to me to be of some importance that art. 34, which is said to have been breached, is located not in chapter III of the Regulation but in chapter VII, which is headed 'Administration Cooperation'. It is part of a series of provisions which is directed towards member states rather than applicants. A breach of art. 34 by failing to state the grounds of a request is not an infringement of the rights of an applicant. If anything it is an inconvenience to the requested member state, who is being asked to provide information without having been given a more full and complete statement of the reasons why it is sought. But that does not give rise to any cause of action on the part of an applicant."

27. The trial judge went on to conclude that in so far as there is a right under Article 27(1) to an effective remedy, that remedy is provided by the right of appeal from ORAC to the RAT, and about which these applicants were notified when being notified of the decision to transfer them to the UK. While as a matter of domestic law the decision of the RAT is subject a judicial review, he considered that the effective remedy contemplated by the Regulation is that which is available by way of appeal to the RAT and which these appellants availed of, albeit unsuccessfully.

28. The appellants argue also that it is not open to the RAT to argue in the High Court and on appeal to this Court, that breaches by ORAC of the requirements of Article 34 of the Regulation are not justiciable at the suit of the individual applicant, since the RAT actually dealt with the applicants' complaints under Article 34 in its Decision, and should not now be permitted to argue that in fact it ought not to have adjudicated upon those matters at all. In that regard they refer to the relevant part of the Tribunal's decision at paras. 5.6 and 5.7 thereof as follows:

"5.6: There is nothing in the Dublin Regulation that limits the circumstances in which an Article 34 request for information may be made. It is correct to state that the Appellants had not stated that they have applied for a visa for the UK. However, they had stated that they travelled through the UK, which may have been the basis for the request. However, even if there was no mention by the Appellants of the UK, there is nothing in the Dublin Regulation that prevents a request for information to be sent in those circumstances.

5.7: It is clear that the purpose of the Article 34 request setting out the

> *information on which it is based, is to enable both states involved to correctly identify the state responsible for processing the application. In this case, the UK were able to identify the appellants with the visa applications made previously due to a fingerprint match. Therefore it cannot be suggested that the UK were deprived of information in the request that may have led them to reject responsibility under the Dublin Regulation."*

29. In support of their submission that the respondents ought not to be allowed to now rely upon non-justiciability given that the Tribunal actually dealt with the issue in its decision, the appellants seek to rely upon the judgment of Hutchison LJ in *R v. Westminster City Council, ex parte Ermakov* [1995] EWCA Civ 42. However, I agree with the respondents' submission that *Ermakov* does not support that argument since its conclusion was that the trial judge had erred by having regard to reasons for the Council's decision as advanced in an affidavit filed in the judicial review proceedings which were fundamentally different from the reasons given to Mr Ermakov by the Council when it notified him of the making of the decision that he and his wife had become intentionally homeless. That is entirely different. In the present case paragraph 8 of the respondents' statement of opposition specifically raised the issue of whether Article 34 created individual rights which the appellants could seek to enforce. An issue paper was prepared for the High Court. Most of the issues appearing in that issue paper were agreed issues. A number of others were not agreed, but appeared nonetheless, albeit being noted as not agreed. However, one of the agreed issues was whether Article 34(4) confers rights on applicants for asylum to challenge a request for information where the request does not set out the grounds upon which it is based. In fact it is the very first issue set forth in that issue paper. It cannot now be said that the respondents may not argue this issue because the Tribunal dealt with the matter on its merits without raising any issue as to its justiciability.

30. The appellants argue that the right to an effective remedy extends beyond the literal provisions of Article 27 (1) that an applicant shall have the right to *"an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision …"*, and includes a right to challenge the lawfulness of the information relied upon for making the decision, being in this case on the basis that it was requested other than in compliance with Article 34.4. I have set forth the relevant passages from the trial judge's judgment on that question. The appellants contend that he erred in his conclusions, and that in so doing he has misinterpreted the judgment of the CJEU in *Ghezelbash* [supra]. They submit that the judgment does not indicate clearly, as the respondents have submitted, that the right to an effective remedy referred to in Article 27 refers only to decisions within Chapter III of the Regulation, namely the application of the criteria for determining the member state responsible for determining the asylum application. They have referred this Court to the Opinion of Advocate General Sharpston in *Ghezelbash* in which she discusses the ambit of the effective remedy mandated by Article 27 (1) of the Regulation. She stated at para. 59 of her Opinion that Article 27(1) of the Regulation does not specify what components of the competent authority's decision-making process leading up to the transfer decision may be the subject of the appeal or review for which the article provides. She then referred to three options which the parties had canvassed before the court in that regard. The first option was based on an argument that the Dublin III Regulation had changed nothing in this regard, and that the narrow restrictive ground for appeal/review found in Abdullahi (Case C-394/12, EU:C:2013:813) to exist under its predecessor, the Dublin II Regulation, remained the single ground, and is articulated now in Article 3(2) of the new Regulation. The Advocate General quickly rejected that first option on the basis of text of Article 27(1) which reflects, as she stated, *"the double guarantee contained in Recital 19 of the Dublin III Regulation"*. That recital states:

"(19) In order to guarantee effective protection of the rights of the persons concerned, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established, in accordance, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union. In order to ensure that international law is a respected*, an effective remedy against such decisions should cover both the examination of the application of this Regulation* and of the legal and factual situation in the Member State to which the applicant is transferred." (emphasis added)

31. The Advocate General then proceeded to consider the second and third options which she described as follows:

> "61. The second option (put forward by France and the Commission) is to accept that, in addition to that ground, Article 27 (1) creates a right of appeal or review in instances in which the Dublin III Regulation expressly confers rights on individual applicants which reflect substantive fundamental rights protected by the Charter. where (but only where) an applicant claims that the competent authorities' decision infringed one of these 'protected rights', he is also entitled to an appeal or review under Article 27 (1) of the transfer decision.
>
> 62. The third option (proposed by Mr Ghezelbash) is to read Article 27 (1) as conferring a wider right of appeal or review, ensuring judicial oversight of the competent authorities' application of the relevant law (*including the Chapter III criteria*) to the facts presented to them." [emphasis added]

32. The Advocate General then stated that *"in the absence of wording indicating which of those options is correct, it is necessary to look at the aims and the context of the Regulation"*. Having rejected the first option, she proceeded to state that she was not convinced by the arguments made in favour of the second option, namely that the Regulation is an inter-State measure, and that the system would become unworkable if the manner in which the Chapter III criteria are applied by member states were to be subjected to judicial scrutiny under article 27 (1), and that such a process would give rise to 'forum shopping', which should be discouraged, as well as to delay in the processing of applications. She considered such an approach to be over-simplistic, and that while certain inter-State aspects undoubtedly remained in the Regulation, *"the legislator has introduced and reinforced certain substantive individual rights and procedural safeguards"*, examples of which were the right to family reunification in Articles 9 to 11, the right to information under Article 4, the right to a personal interview under Article 5. She rejected the argument based on the possibility of delaying the process, or any floodgates argument put forward. In rejecting the second option, she stated:

> "73. Against that background, it seems to me that the 'floodgates' argument advanced by the intervening Member States may overstate the consequences of interpreting Article 27 (1) as conferring a right of appeal or review which includes judicial scrutiny of the application of the Chapter III criteria.
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> 74. Thirdly, I do not consider that making an application to court to seek judicial scrutiny of an administrative decision can properly be equated with forum shopping. As I see it, the appeal or review under Article 27 protects the individual against disregard or incorrect characterisation of the relevant facts and against misinterpretation and misapplication of the relevant law. In a European Union founded on the rule of law, that is surely a legitimate objective".

33. It is the third option that she eventually concluded should be endorsed. She considered the starting point for her consideration of this third option to be that a transfer order was potentially capable of adversely affecting an asylum seeker, and that otherwise there would be little purpose in providing for a right of appeal or review. She put the issue thus at para. 81 of her Opinion:

> "81. … where there is material to support an arguable case that a transfer decision is based on a misapplication of the Chapter III criteria, does the principle of effective protection and/or rights of the defence lead to the conclusion that an applicant should be able to challenge that transfer decision under Article 27(1) of the Dublin III Regulation?"

34. She concluded that the effective remedy principle extended to an entitlement to challenge a transfer order where the ground of challenge was that it was based on a misapplication of the criteria specified in Chapter III of the Regulation, and that therefore Article 27 must be interpreted in a way that permitted such a challenge to made by an individual asylum seeker.

35. It is important to keep in mind the facts of *Ghezelbash*. Mr Ghezelbash was an Iranian national who entered the Netherlands and made an asylum application in 4th March 2014. However, the Dutch authorities made a search on the EU Visa Information System and found that French authorities had through its Iranian representative granted him a visa covering the period 17th December 2013 - 11th January 2014. On the 7th March 2014 the Dutch authorities made a take charge request to the French authorities on the basis that France was the member state responsible for determining his application for asylum. The French authorities accepted that request on 5th May 2014. However, some 10 days later Mr Ghezelbash made some further submissions to the Dutch authorities and was interviewed more closely. Shortly after that he requested the Dutch authorities to examine his application again under the extended asylum application procedure in order to allow them to submit original documents proving that he returned to Iran and remained there from the 19th December 2013 to the 20th February 2014, that is, after visiting France, which means, according to the applicant, that France was not the member state responsible for examining in his asylum application. By its decision dated the 21st May 2014 the State Secretary rejected Mr Ghezelbash's application for a residence permit on grounds of asylum. The effect of that decision was suspended by an interim measure granted by a District Court at The Hague. That Court considered that the State Secretary's decision ought to be annulled on the basis that it ought to have been examined under the extended asylum procedure which had been requested in order to take full account of the documents produced by Mr Ghezelbash. It also considered that it was required to determine whether Mr Ghezelbash "was entitled to challenge the French Republic's responsibility to examine his asylum application after that Member State has accepted that responsibility". For that purpose the court considered that it should seek a preliminary ruling from the CJEU as to the scope of the effective remedy under Article 27 of the Dublin III Regulation. The following questions were referred:

> 1. What is the scope of article 27 of [the Dublin III Regulation], whether or not read in conjunction with recital 19 of that Regulation?
>
> Does an asylum seeker -- in a situation such as that in the present case, in which the foreign national was confronted with the request for assumption of responsibility to deal with the asylum application only after that request had been agreed to, and that foreign national submits evidence, subsequent to the agreement to that request, which could lead to the conclusion that it is the requesting Member State, and not the requested Member State, which is responsible for examining the application for asylum, and the requesting Member State subsequently does not examine those documents or forward them to the requested Member State -- have the right, pursuant to that article, to an (effective) legal remedy against the application of the criteria for determining the

> Member State responsible laid down in Chapter III of [the Dublin III Regulation]?
>
> 2. On the assumption that, under [the Dublin III Regulation], or under the operation of [the Dublin II Regulation], the foreign national is in principle not entitled to invoke the incorrect application of the criteria for determining the Member State responsible when the requested Member State has agreed to a request to take charge, is the defendant correct in its contention that an exception to that assumption may be contemplated only in the case of family situations as referred to in Article 7 of [the Dublin III Regulation], or is it conceivable that there may also be other special facts and circumstances on the basis of which the foreign national may be entitled to invoke the incorrect application of the criteria for determining the Member State responsible?
>
> 3. If the answer to Question 2 is that, in addition to family situations, there are other circumstances which could lead to the foreign national being entitled to invoke the incorrect application of the criteria for determining the Member State responsible, can the facts and circumstances described in [paragraph 27 above] constitute such special facts and circumstances?"

36. By its judgment, the CJEU considered that it was not necessary to answer the second and third questions above in the light of its answer to the first question. In relation to the first question the court concluded:

> "Article 27 of the [Dublin III Regulation] …… establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, read in the light of recital 19 of the Regulation, must be interpreted as meaning that, in a situation such as that in the main proceedings, an asylum seeker is entitled to plead, in an appeal against a decision to transfer him, the incorrect application of one of the criteria for determining responsibility lay down in Chapter III of the Regulation, in particular the criterion relating to the grant of a Visa set out in Article 12 of the Regulation."

37. I have gone into the detail of *Ghezelbash*, not only because so much reliance is placed upon it by the appellants, but also to show clearly the factual background against which the particular issues in that case were being considered, and therefore the context for the conclusion by the CJEU on the first question referred to it. It is abundantly clear in my view that what was at issue was whether the effective remedy mandated by Article 27 extended to an asylum applicant's individual right to challenge a transfer order made under Article12 *on the basis of an incorrect application of the criteria for determining the member state* responsible provided for in Chapter III of the Regulation (i.e. Articles 7 - 15 of the Regulation). Indeed, I do not understand the appellants to gainsay that. Neither can they gainsay that these appellants are not seeking to challenge the transfer orders in this case on the basis that the criteria for determining the member state responsibility were incorrectly applied. Clearly they would be entitled to do so on the effective remedy basis stated in *Ghezelbash*. Rather, they are challenging the transfer decisions on the basis, inter alia, that the form requesting information from the UK authorities under Article 34 for the purposes of determining the member state responsible was not completed in strict compliance with the terms of that article, and as a result the information provided could not be relied upon for the decision ultimately made. Nowhere do they contend that the UK is not the member state responsibility, and that this State is the member responsible under the Regulation.

38. However, the appellants do seek to derive support for a further extension of that

effective remedy beyond the confines of Chapter III, and into Article 34 within Chapter VII - Administrative Cooperation, from certain statements by the CJEU with the Ghezelbash judgment. In doing so they point to what the Advocate General stated in her Opinion at para. 62 in relation to the third option for interpretation of Article 27, namely that it conferred "a wider right of appeal or review, ensuring judicial oversight of the competent authorities' application of the relevant law (*including the Chapter III criteria*) to the facts presented to them". The appellants emphasise the words "*including the Chapter III criteria"* in order to urge this Court that the trial judge was incorrect when he stated that the right of appeal/review was confined to Chapter III (i.e. Articles 7-15 of the Regulation).

39. In its judgment the CJEU stated that as regards rights enjoyed by asylum seekers, the Dublin III Regulation differed from its predecessor (Dublin II) "in essential respects", and therefore that the scope of the appeal provided for in Article 27(1) of the Dublin III Regulation had to be determined in the light of the new Regulation, its general scheme, its objectives and its context "in particular its evolution in connection with the system of which it forms part". At para. 39 of its judgment the court referred to recital 19 of the Regulation to the effect that the effective remedy in respect of transfer decisions should cover "(1) the examination of the application of the Regulation, and (2) the examination of the legal and factual situation in the member state to which the asylum seeker is to be transferred. It is only (1) which is relevant for present purposes. In relation to that first examination the court stated that it "is designed to ensure, more generally, [a] review of the proper application of the Regulation". The court went on to state that *"the reference in recital 19 … to the examination of the application of the Regulation in an appeal against a transfer decision … must be understood as being intended to ensure in particular that the criteria for determining the member state responsible laid down in Chapter III of the Regulation are correctly applied …."*. [emphasis added]

40. The CJEU went on to note that "as the EU legislature had introduced or enhanced various rights and mechanisms guaranteeing the involvement of asylum seekers in the process for determining the member state responsible [the Dublin III Regulation] differs to a significant degree from [the Dublin II Regulation]. The Court went on to make reference to the asylum seeker's right to be informed of the criteria for determining the member state responsible, as well as the relative importance of those criteria. It referred to the right to a timely interview and to be provided with a written summary of the interview, and where an applicant has already provided relevant information for the decision, the right to present any further information that may be relevant "for the correct determination of the member state responsible before a decision is taken to transfer the applicant".

41. The Court went on to state at para. 51 of its judgment:

> "51. It follows from the foregoing that the EU legislature did not confine itself in [the Dublin III Regulation], to introducing organisational rules simply governing relations between Member States for the purpose of determining the Member State responsible, but decided to involve asylum seekers in that process by obliging Member States to inform them of the criteria for determining responsibility and to provide them with an opportunity to submit information relevant to the correct interpretation of those criteria, and by conferring on asylum seekers the right to an effective remedy in respect of any transfer decision that may be taken at the conclusion of that process."

42. It is important to keep in mind the facts of *Ghezelbash* when examining what is stated either by the Advocate General or by the CJEU itself as to the ambit of the effective remedy in Article 27(1), as it is in the context of those facts that the case must be considered. Mr Ghezelbash wished to challenge the transfer order because he was of

the view that, on the facts as shown, he should be considered to be making his first application for asylum in the Netherlands in the light of the information that he wished to present, and that if the criteria were correctly applied in his case, his application would be processed in the Netherlands, and not in France.

43. There can be no doubt, particularly in the light of the Ghezelbash judgment that the Dublin III Regulation introduced and enhanced the rights of individual asylum seekers in relation to the making of transfer decisions under the Regulation by involving them to a greater extent in the process which has the capacity to adversely affect them. The involvement of the individual asylum seeker in that process under the Dublin II Regulation was considerably more limited, as can be seen from the judgment of the CJEU in Abdullahi (Case C-394/12) as explained by Advocate General Sharpston in her Opinion in *Ghezelbash*, where the asylum seeker could challenge the transfer decision (where the requested member state agrees to take charge of the applicant) only on the basis of an argument that there are systemic deficiencies in the asylum procedure and in the conditions for the reception of applicants for asylum in the requested state such that there existed a real risk that the applicant would be subjected to inhuman or degrading treatment.

44. Consequently, under the Dublin III Regulation an applicant for asylum now is entitled to have an input under the process of determining, by reference to the criteria in Chapter III of the Regulation, the member state responsible for examining his application, and that Chapter sets forth the mechanisms and procedures by which that entitlement is afforded. It is of the utmost importance that the criteria for determining the member state responsible are correctly applied, and that there be an effective remedy afforded to an applicant who contends that they have not been correctly applied. After all, the objective of the Regulation is to ensure that the application for asylum is not examined and adjudicated upon by the incorrect member state according to the Regulation.

45. Where an applicant has an entitlement to an effective remedy, what is envisaged is a remedy to provide him with, or otherwise protect and vindicate some right or entitlement of which he has been wrongfully deprived or denied. It does not extend to a right to rummage around in the undergrowth of paper which has been generated during the asylum process, including the determination of the correct member state responsible under the Regulation, to see if some 'T' has not been crossed or some 'I' has not been dotted, and then cry foul when some infelicity is discovered which has no bearing upon any individual right or entitlement of the applicant which the effective remedy is there to protect. There is nothing within Ghezelbash, either the Advocate General's Opinion or the Court's judgment to even suggest by way of some 'obiter' comment that Article 27 (1) might extend that far.

46. The fact that the Advocate General stated at para. 62 of her Opinion, as set forth at para. 38 above at para. 62 that Article 27(1) conferred "a wider right of appeal or review, ensuring judicial oversight of the competent authorities' application of the relevant law (*including the Chapter III criteria*) to the facts presented to them", cannot in my view mean that she was leaving open the possibility that where a request for information form completed for the purpose of seeking information from some other member state to assist in a determination, by reference to the Chapter III criteria, as to which member state is responsible for examining the application, the applicant for asylum could challenge the determination on the basis that the request for information form was not properly completed. The objective of the Regulation is to establish the criteria for determining the member state responsibility and to put in place mechanisms by which that can be achieved. Chapter III sets out the criteria by which that determination is made. Clearly the asylum applicant now is entitled to have an input into that decision. He may provide relevant information, and is entitled to be interviewed in person as already stated. These are entitlements, and where they are not afforded to

him, or the criteria are arguably not correctly applied, he is entitled to challenge any transfer decision that has been made in breach of his/her rights and entitlements.

47. But Article 34 confers no right or entitlement upon the individual asylum applicant. It facilitates the gathering of information by one member state from another member state in order to assist the former in determining for the purposes of the Regulation which state is the member state responsible to examine the application. A prescribed form for the purpose is provided in Annex V for completion by the requesting member state. Any such prescribed form is intended to cover a wide variety of cases. I am sure that in some cases the state requesting information may already have certain evidence upon which to base its request for information. In others however, information or evidence may be scant and imprecise. It may not be possible to provide any meaningful evidence in the prescribed form, yet the same form must be used under Article 34.

48. Can it be the case that the individual applicant who has perhaps withheld, or not provided evidence or relevant information upon arrival in a member state, or indeed as in this case, knowingly provided false information, be heard to complain that the prescribed form seeking correct information lacks the sort of evidence, or reasons for the request, referred to in Article 34.4 of the Regulation, in order by some 'trick of the loop' to have a transfer order quashed which has otherwise been made following the correct application of the criteria in Chapter III, and thereby achieve a result which runs counter to the very intention of the Regulation, namely to have his/her application determined by the incorrect member state?

49. Really one only has to pose the question in such terms to see that this cannot have been intended by the EU legislature when it provided for an effective remedy in Article 27. No right of the applicant is affected by any infelicity in the completion of, or lack of information or evidence in, the Annex V form. If the requested state considers that the form has been completed in a way that prevents it from knowing the purpose of the request, or if it needs further information for whatever reason, of course it may request the requesting state to provide further information in order to fill the gap. Alternatively, the requested state might consider that the request was not in compliance with the terms of Article 34.4 and communicate that view to the requesting state which might or might not be in a position to correct the situation, perhaps by making a new request. But what I am at pains to point out is simply that these are matters which concern the two member states concerned, and not the applicant about whom the information is being sought.

50. There is nothing in the Regulation which even suggests that a right of effective challenge to a transfer decision under Article 27 because of a failure to correctly apply the criteria in Chapter III, carries with it a concomitant right of challenge to that decision because the member state to which the initial asylum application was made may have filled up the Annex V request form either incorrectly, incompletely or otherwise not strictly in compliance with the provisions of Article 34 or the prescribed form itself. I would uphold the conclusion of the trial judge at para. 25 of his judgment that any such frailty is not an infringement of the rights of the applicant, and that it does not give rise to any cause of action on the part of the appellants.

51. In so far as the appellants argued that the Annex V forms in this case failed to indicate the reasons for the information request, I would make clear that for the same reasons just given, any lack of reasons for the request does not give rise to an individual cause of action or challenge. However, I would go on to say that in the present case the reason for the request is sufficiently clear for the purposes of the Regulation from the forms actually completed. The requirement to state the grounds for the request is to enable the requested state to know that it is entitled under Article 34.1 to provide the information requested. The requested state must know that the

information is being sought for any of three stated purposes: (a) determining the member state responsible; (b) examining the application for international protection; (c) implementing any obligation arising under the Regulation. The ORAC completed the form by stating that "the applicant has claimed asylum in Ireland …". I have already referred to the statement of opposition and to the affidavit of Philip Barnes sown on behalf of the respondents which is uncontradicted. This Court may presume, given the number of asylum seekers who transit through the UK on their way to this State, that there is significant communication between the relevant authorities in each, and that regular requests for information are made under Article 34 of the Regulation in order to determine which is the member state responsible. In the present cases, the Annex V form clearly states, first of all, that it is a request for information pursuant to Article 34. That in itself indicates, at least on a prima facie basis, that the information is being sought for one of the three purposes permitted by Article 1 of the Regulation. But if that were not enough, the form states that the applicants claimed asylum on the 16th December 2014. So, the UK authorities know that this is a request for information for the purposes of determining if the UK or some other member state may be the member state responsible for examining the application for asylum. They also know, because the form so states, that the information sought is in relation to a residence permit, travel document, visa etc. They are also provided with fingerprints taken from the applicants. Commonsense alone would dictate that the recipient of the request for information knows perfectly well and without any doubt the reason for the information request, and if by any remote chance there was still some lingering doubt, the recipient would only have to ask in order to get any further reassurance that it was a lawful request under the Regulation, and that accordingly the information requested can be provided for one of the permitted purposes.

Data Protection issues

52. The issues under this heading arise from the furnishing by the ORAC to the UK authorities of the appellants' fingerprints with the Annex V information request form. Section 9A (1) of the Refugee Act, 1996, as substituted by s. 7 of the Immigration Act, 2003 provides:

> "(1) An authorised officer, a member of the Garda Siochana or an immigration officer may, for the purposes of this Act, take or cause to be taken the fingerprints of an applicant."

53. Section 9A(8) of the Act of 1996, as substituted, provides:

> "Information obtained pursuant to subsection (1) may be communicated to convention countries or a safe third country (within the meaning of section 22) as if it was information to which subsection (9) or, as may be appropriate, subsection (10) of that section applies".

54. The appellants do not dispute that their fingerprints were taken lawfully pursuant to this provision. Neither is there any dispute that the United Kingdom is a convention country as defined.

55. Mr Barnes of ORAC in his affidavit already referred to has stated at para. 4 thereof that the applicants were provided with an 'Information Leaflet for Applicants for Refugees Status in Ireland', and 'Amendments to Information Leaflet for Applicants 2012 (Consolidation Only)', a leaflet entitled 'Important Additional Information for Certain Applicants' and another containing information on the EU Dublin III Regulation. He exhibits those documents, and states that as appears therefrom the applicants were fully informed of the application of the Dublin III Regulation, and in particular that it may apply to them if another Member State had issued them with a Visa/permit prior to the asylum application in Ireland. He also states that they were informed of their duty to provide all relevant information to the asylum authorities and to cooperate fully in that regard.

56. It can be seen from the document containing information about the Dublin III Regulation that the applicants were informed as follows under a heading "I have asked for asylum in the EU - which country will handle my claim?:

> "The fact that you asked for asylum here does not guarantee that we will examine your request here. The country that will examine your request is determined through a process established by a European Union law known as the 'Dublin Regulation'. According to this law, only one country is responsible for examining your request."

57. Additionally, under the heading "how is the country responsible for my application decided? The information booklet states the following:

> "The law sets out areas reasons why a country may be responsible for examining your request. These reasons are considered in the order of importance by the law, starting from whether you have a family member present and that Dublin country; whether you now or in the past have had a Visa or a residence permit issued by a Dublin country; or whether you have travelled to, or through, another Dublin country, either legally or irregularly."

58. In his affidavit grounding his application for judicial review, S stated:

> "13. I do not believe I was ever given an opportunity to decline the sharing of my personal informational personal data with the UK or any other Member State of the EU, and am advised that there is no lawful basis for the manner in which my personal data was shared - in particular by the [ORAC] in my case."

59. The statement of grounds filed for the purposes of their judicial review proceedings pleaded that since the requests for information were sent in breach of article 34.4 of the Dublin III Regulation (for the reasons I already set out above) the reply to those requests were in breach of Directive 95/46/EC - the Data Protection Directive. It is also pleaded that both the request and the reply thereto were sent in breach of Article 38 of the Dublin III Regulation "in that they breached the obligation on member states to take all appropriate measures to ensure the security of transmitted personal data and in particular *to avoid unlawful or unauthorised access or disclosure*. It is further pleaded therein that the requests for information sent pursuant to Article 34 and the information received on foot thereof are in breach of the appellants' rights, and/or ORAC's obligations, under the Data Protection Act 1988 as amended, and Directive 95/46/EC with respect to the processing of personal data.

60. The trial judge in his judgment at para.32 describes the appellants' submissions in relation to Data Protection breach as follows:

> "[Counsel] argues that *the identity information provided by the UK did not comply with the Regulation* because Article 34(2)(c) provides for the furnishing of information necessary for establishing the identity of the applicant including fingerprints processed 'in accordance with Regulation (EU) No. 603/2013', which relates to the recast 'Eurodac' Regulation, which provides for a system for the collection of fingerprint data … for the comparison of fingerprints for the effective application of [the Dublin III Regulation] establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person …… In the present case, [it is argued] the fingerprint information was not processed pursuant to this Regulation".

61. It will be noted at this point that the issue raised was not in relation to the furnishing by ORAC to the UK of the fingerprints taken from the appellants on their arrival in this State, but rather that the information provided by the UK on foot of the information request was provided in breach of Article 34, because there is no evidence

that the information provided was gathered from a Eurodac inquiry. The basis for that issue is therefore the provisions of Article 34(1) and (2) of the Dublin III Regulation which I have already set forth at para. 9 above. Paraphrased for the purposes of simplicity, and by reference to the context of the present case, these provisions mean that the UK shall communicate with this State (being the requesting state) such personal data as is appropriate, relevant and non-excessive for determining the member state responsible, and that information may only cover personal details such as name, nationality, date and place of birth of birth; identity and travel papers, and "any other information necessary for establishing the identity of the applicant, including fingerprints processed in accordance with the Eurodac Regulation No. 603/2013.

62. It was not the UK who provided the appellants' fingerprints to this State. It was the reverse. Those fingerprints were lawfully taken under s. 9A of the Refugee Act, 1996 as already stated. The UK in response to the information request simply stated that those prints matched fingerprints that they held on their records, albeit in respect of different named persons. The fact that the fingerprints were not provided by the UK must mean inevitably that they were not provided in breach of any provision of Article 34, notwithstanding that there was no proof that the fingerprints which the UK have on their records were processed in accordance with the Eurodac Regulation. They were simply not provided by the UK to ORAC at all.

63. In relation to the provision of the fingerprints to the UK as part of the information request, there is no question but that this comprises a legitimate interest for the purposes of s. 2A of the Data Protection Act, 1988. As one sees from Article 4 of the Dublin III Regulation itself, the authorities here are obliged upon an application for asylum being made to inform the applicant of a number of matters including at (e) "the fact that the competent authorities of Member States can exchange data on him or her for the sole purpose of implementing their obligations arising under this Regulation". By providing to the UK authorities the fingerprints lawfully taken from the appellants, ORAC was doing so in pursuit of the legitimate interest of obtaining information relevant to the task of determining the member state responsible for examining the appellants' applications. That is a legitimate interest which fulfils the conditionality specified in s. 2A of the 1988 Act for the processing of personal data.

64. In their written submissions the appellants state that the issue is that s. 2A of the 1988 Act can only render lawful the processing of data if the function has been carried out in accordance with law, and they submit in the present case that there was insufficient compliance with the requirements. For the reasons stated, I disagree with that submission.

65. In the event that the personal data (i.e. the fingerprints) are claimed by the appellants to be erroneous in some way that, frankly, I find hard to imagine, they have of course the remedy built into the Regulation whereby they can request that it be erased or amended.

66. The trial judge concluded that there was no breach based on the data protection grounds urged. He also concluded that in any event even if there had been, it did not invalidate the transfer decision, and further that for the reasons that I have already dealt with fully, any such breach did not give rise to a right in favour of the appellants to have the transfer decision quashed, since the complaint related to a matter within Article 34, which was part of the administrative cooperation provisions of the Regulations.

67. I am satisfied that the trial judge was correct to hold that there was no breach of data protection law either under Article 34 or under the 1988 Act.

Take-back request not made "as quickly as possible" as required by Article 21

68. Before the Tribunal it was argued by the appellants that the transfer decision was made in error because, *inter alia*, the take charge request made to the UK was not made "as quickly as possible and in any event within three months of the date on which the application [for asylum] was lodged as required by Article 21 of the Regulation

69. In the present case, the applications for asylum were lodged on the 16th December 2014, and the take back request was made on the 16th March 2015 - the last day within the three month outer limit for doing as provided by Article 21(1). The appellants submit, however, that the take back request was not made "as quickly as possible", even though it was not outside the three month limit. They point to a specific period of unexplained delay of just over one month from the date on which information was received back on the 15th February 2015 from the UK authorities on foot of the Article 34 request, and ORAC issuing a take back request to the UK on the 16th March 2015. They refer to the fact that there was no positive statement by ORAC that the take charge request was issued as quickly as was possible, and that therefore the Tribunal had no evidential basis for its conclusion that it was "not excessively long", albeit that is the wrong test.

70. It is worth noting the provisions of Article 34.5 of the Regulation which provides that where an information request is made the requested member state must issue a reply within five weeks, and where that period is not complied with then, *inter alia*, the period of the delay shall added to the period specified in, *inter alia*, Article 21 of the Regulation. The UK authorities issued a response within the 5 week period, so the 3 month period for making the take-back request was not required to be extended.

71. Article 21.1 also provides, in its third sub-paragraph:

> "Where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection shall lie with the Member State in which the application was lodged.

72. In the present case the outer period of three months was not exceeded. So, unless it can be properly concluded that the take back request was not made "as quickly as possible", it cannot be argued that responsibility for examining the applications for asylum lay with this State even though under the Chapter III criteria the UK was otherwise the member state responsible if there had been no delay.

73. The trial judge noted that Article 21 was a provision within Chapter VI which he described as "a procedural part of the Regulation". Indeed in that regard, it can be noted that Chapter VI is headed: "Procedures for Taking Charge and Taking Back". He noted that the Tribunal member had concluded that the delay in making the take back request was "not excessively long" and therefore did not reach his conclusions on the basis of whether it was "as quickly as possible". He concluded that this "minor verbal slip" did not invalidate the decision. He considered that the Regulation must be given a purposive interpretation, and accordingly that "it would undermine the purpose of the Regulation if the transfer decisions were capable of being held to be invalid as a result of a modest delay in implementation of this type". He went on to state that "the three month limit is designed to protect the member state on a purposive interpretation, and not the applicant. At paras. 44-45 of his judgment concluded on this point as follows:

> "44. To my mind, the consequence of the fact that the bulk of the Regulation is addressed to the member states rather than to the protection of applicants as such is that a receiving member state can voluntarily agree to take back an asylum applicant even after the expiry of the periods referred to in the Regulations. This is not a breach of any entitlement on the part of an applicant to have an asylum application

> determined promptly, even if such a right existed, because it is the determination of a purely procedural matter, namely which authority will adjudicate on the asylum claim. If following the expiry of a three-month period from the making of an asylum claim, there was neither a take charge request nor any visible action domestically on the claim, it may be that a legal duty to take one step or the other would arise. But legal duties imposing significant administrative burdens on public bodies cannot reasonably be expected to be put in motion without affording a reasonable time for doing so, in the absence of present circumstances which required immediate action.
>
> 45. Therefore, even if either request in the present cases was not made "as quickly as possible", that does not invalidate the transfer if the receiving State is still prepared to take the applicants back. The same position would arise even if the request was made outside the three-month period, provided that the requested state was still willing to act on it. In exercising a sovereign right to transfer charge of an applicant, where this is not strictly required by EU law, it is doubtful whether such a decision is reviewable in EU law terms or not, but assuming (which I would not accept) that it is, no uncertainty or conflict in interpretation has been shown such as to render the lawfulness of such a transfer an appropriate matter for reference to the Court of Justice."

74. The appellants accept that the three month outer limit for the take back request was not exceeded. The focus is on the phrase "as quickly as possible" as it is used in Article 21.1. I would not agree with the trial judge that a breach of these time limits in an appropriate case cannot give rise to an individual right of complaint. My earlier remarks concerning Chapter III do not apply to Article 21 since that article appears in Chapter VI. It is in my view certainly arguable, given what is stated in Recital 19 of the Regulation, and the fact that an asylum seeker may well on particular facts be adversely affected and prejudiced by an unreasonable delay in the making of a take back request to a member state responsible, that such an applicant would have an entitlement to complain and to seek a remedy requiring the requesting state to take responsibility for examining the application given that delay and prejudice. I refer again to the comments of Advocate General Sharpston in *Ghezelbash* to which I have referred above in relation to what she called "Option 3" for interpreting the possible scope of the effective remedy in Article 27 by way of appeal/review.

75. Individual rights were certainly extended, or even introduced for the first time under the Dublin III Regulation, beyond the ground of appeal available under the previous Regulation (basically a refoulement-type ground - see *Abdullahi* (Case C-394/12)). Its predecessor (Dublin II Regulation) contained no equivalent of Article 27. Decisions such as *Abdullahi* which adopted a narrow interpretation of the scope of appeal or review of a transfer decision have limited relevance to the interpretation of the scope of the effective remedy contemplated by Article 27 of the Dublin III Regulation. While *Ghezelbash* is perhaps the clearest indication thus far that the Article 27 effective remedy may avail an individual applicant who complains about an excessive and unreasonable delay in the issuing of a take charge request, there does not appear as yet to have been any decision from the CJEU on this precise point . It appears that such a decision is awaited on a preliminary reference application lodged by the Verwaltungsgericht Minden, Germany (Federal Administrative Court) in a case of *Mengesteab* Case C-670/16 - a reference being currently dealt with under the Court's accelerated procedure. However, it should be immediately pointed out that this reference is sought on very different facts, including that over a year passed since the German authority made a take back request to Italy in respect of an Eritrean national on the basis that his fingerprints were taken in Italy prior to his arrival in Germany, and despite the passage of one year there had been no response at all from the Italian

authority.

76. Such facts are very different to the present case where the take back request issued within the three month period, and where the only complaint made is that since a period of about one month elapsed following receipt of information from the UK, and which is unexplained, it may be that the request was not made "as quickly as possible". Added to that one cannot but note that any delay in the decision to transfer under the Regulation was at a minimum added to by the fact that the appellants gave false information to the ORAC here. It is also the case that unlike in Mengesteab the UK authorities in the present case have agreed to the take back request, and have accepted responsibility for examining their application for asylum.

77. Without expressing any concluded view on whether the Article 27 effective remedy by way of appeal or review includes the right of an individual asylum seeker to challenge a transfer decision on the basis that the take back request was not made "as quickly as possible" as specified in Article 21.1, and making simply a working assumption that it may, I am satisfied that on the facts of the present case the appellants could not succeed in their argument. I do not consider it necessary to either make a preliminary reference to the CJEU on this question in this case, or to await the decision in Mengesteab. The appellants could not succeed on the facts of the present case even if there is found to be a general right to challenge the decision on this ground as part of the Article 27 effective remedy. In my view the words "as quickly as possible" amount to an exhortation to member states that these matters should be dealt with expeditiously, reflecting the ambition stated in recital (5) of the Regulation that the method of determining the member state responsible *"should in particular make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not compromise the objective of the rapid processing of applications for international protection"*.

78. The specified time limit is the outer period of three months. What precedes it gives expression to the desire for rapidity, and in my view nothing more than that. It is directory in nature - not mandatory. Nevertheless, I do not rule out the possibility that in some other case - though I cannot at the moment imagine what exceptional facts could give rise to it - a decision might be challenged on the basis that the decision was made within the three month outer limit but yet be quashed because it was found not to have been made "as quickly as possible". Albeit arising in a totally different context, and not even by reference to the wording of an EU Regulation, a not dissimilar phraseology was considered in *Dekra Eireann Teoranta v. The Minister for the Environment and Local Government* [2003] 2 IR 270. That case was in the context of the time limited for bringing a challenge to a public procurement decision. Under O. 84A of the Rules of the Superior Courts such proceedings must be brought "at the earliest opportunity … and in any event within three months from the date when grounds for the application first arose …". As stated by Denham J. (as she then was) in her judgment at p. 287:

> "In this specialist area of judicial review there is a clear policy underlying the law. The policy includes the requirement that an application for review of a decision to award a public contract shall be made at the earliest opportunity. There is a degree of urgency required in such applications. The applicant should move rapidly. The requirement of a speedy application is partially based on the prejudice of the parties and the State in delayed proceedings……".

79. In his judgment in *Dekra*, Fennelly J. noted that the only time limit as such specified in the rule was one of three months. He rejected an argument made by the respondents on the basis that the two phrases "at the earliest opportunity" and "in any event within three months" had to be read separately. In this regard he stated at p. 300:

> "[The respondent's argument] involves reading the first part of r.4 of

> O.84A entirely separately from the second. The obligation to apply "at the earliest opportunity" is, it is claimed, distinct from the obligation to apply "in any case [sic] within three months from the date when grounds for the application first arose". The only period mentioned, and therefore the only one that can be extended, is the three months.
>
> In my view this is an unduly restrictive reading of the provision. Taken to its logical extreme, this would mean that, even where an application is made within the period of three months, it is out of time, if it is not made at the earliest opportunity". That would be a startling proposition ……".

80. As I have said already, I am fully cognisant of the fact that the context of *Dekra* is completely different to a consideration of similar phraseology within Article 21 of the Regulation. Nevertheless, by a parity of reasoning I am driven to conclude in the present case, and on its own facts, that even though there was a short delay in the making of the take charge request following the receipt of the information from the UK authority - and in a case where false information was given by the appellants in their applications for asylum which necessitated the request for information in the first place - it would be a "startling proposition", to adopt the words of Fennelly J., if that was to invalidate the transfer request which was accepted rapidly by the UK, with the result that the incorrect member state would be required to assume an unintended responsibility for examining these applications for asylum.

81. In view of my conclusions above, it is unnecessary to determine the ground of appeal against the trial judge's conclusion that in any event he would dismiss the application for judicial review on discretionary grounds.

82. For these reasons I would dismiss the appeal.

JUDGMENT of Mr. Justice Gerard Hogan delivered on the 14th day of June 2017

1. At the heart of this appeal lies the question of the extent to which applicants for international protection are entitled to invoke certain data protection provisions provided for in EU law for the purpose of challenging the validity of certain requests for information sent from one Member State to another. While some may think it surprising that an EU regulation governing the inter-state allocation of jurisdiction in respect of asylum requests should concern itself with such matters, that is not my affair. Our task is simply to apply EU law as we find it: if the result is thought to be inconvenient or unsatisfactory, then this is a matter which the European Union legislator can address in due course.

2. The issues which arises in this appeal have been already set out in the judgment of Peart J. I would also gratefully adopt his summary of the facts.

The Dublin III Regulation

3. The Dublin system has now been in force for some 20 years since the original Dublin Convention was signed in 1990 and which subsequently came into force in 1997. The establishment of the Dublin system reflected the need for a co-ordinated response on the part of the Member States to the huge and ever increasing logistical demands which the operation of the asylum system placed upon them. In particular, the Dublin system sought to provide clear rules regarding the allocation of potentially overlapping asylum claims in different countries so that in broad terms the Member State where either fingerprints are stored or an asylum claim was first made has principal responsibility for

determining the claim for international protection.

4. The Dublin III Regulation (Regulation No. 604/2013) is the latest legislative endeavour in this regard. Supplementing and refining the earlier Convention and, in more recent times, Regulations, Dublin III establishes the criteria and mechanisms whereby the appropriate Member State responsible for processing individual asylum claims can be determined. While it is, in many respects, an inter-State measure, it also contains a variety of procedural and substantive safeguards designed to protect the rights of those seeking international protection. In this latter respect, it is clear from the recent case-law that Dublin III goes further in providing such safeguards for individual applicants for international protection as compared with, for example, Regulation No. 343/2003 ("the Dublin II Regulation") which preceded it: see, *e.g.*, the comments of Advocate General Sharpston in Case C-63/15 *Ghezelbash v. Staatssecretaris van Veiligheir en Justitie* EU:C: 2016: 409 at para. 53.

5. The system as it has evolved is admittedly a complex one. The issues which I believe arise on this appeal are in their own way ample testament of this. The real question which arises in this appeal is whether the information sharing provisions of Article 34 create enforceable legal rights which these applicants can potentially enforce. Before proceeding further a few words of contextual detail are nonetheless in order.

6. The Dublin Regulations are, of course, part of the backbone of the Common European Asylum System ("the CEAS"). Both the Schengen system and two major legislative instruments are form essential parts of that CEAS architecture.

7. The first of these instruments, Regulation No. 603/2013 ("the Eurodac Regulation") provides for the establishment of a central fingerprint database (in fact, such a system has been in operation since 2003). All asylum seekers are required to have their fingerprints taken and the Eurodac registry will then establish whether the applicant has already applied for asylum in another EU member state, or, indeed, illegally transited through that state. Although Ireland is not part of the Eurodac Regulation, Article 9 of Dublin III nonetheless provides for the collection and comparison of all fingerprint data of applicants for international protection.

8. The second is the Visa Information System provided for Regulation (EC) 767/2008 ("the VIS Regulation"). Article 21 of the VIS Regulation provides for the exchange of information between the authorities of the Member States (such as photographs or details regarding the duration of stay) in relation to asylum applicants which goes beyond the exchange of fingerprints provided for in Eurodac. The VIS Regulation is, however, part of the development of the Schengen acquis to which neither Ireland or the United Kingdom have elected to take part (see recitals 29 and 30), so it does not apply to them.

Article 34(4) of the Dublin III Regulation

9. One of the important aspects of the Dublin system is the provision which is made in Article 34 for information sharing as between Member States. Article 34 is itself located in Chapter VII of the Regulation which is headed "Administrative Cooperation". At the heart of the present appeal is the contention advanced by the applicants that the arrangements governing information exchange as between Member States gives rise - at least in the present case - to a justiciable controversy and individual rights which they can enforce. Their case, after all, is that the information requests submitted by Ireland to the United Kingdom in respect of the applicants did not comply with the requirements of Article 34(4), with the result - it is said - that personal information concerning them was transmitted to the Irish immigration authorities.

10. The first question, therefore, is whether the provisions of Article 34 give rise to

enforceable legal rights at the hands of prospective transferees such as these applicants. The related question of whether the Dublin III Regulation conferred any individual rights was considered in two recent decisions of the Court of Justice in Case C-63/15 *Ghezelbash v. Staatssecretaris van Veiligheir en Justitie* EU:C: 2016: 409 and Case C-155/15 Karim v. Migrationsverket EU:C: 2016: 410.

11. In *Ghezelbash* the applicant was an Iranian national who had his asylum claim in the Netherlands rejected by reason of a "take back" request which had been accepted by France pursuant to Article 12(4) of Dublin III. The applicant then submitted new information to the effect that he had returned to Iran from France for over three months and that, therefore, his asylum application should be determined by the Dutch authorities, as this was the place where he had first made an asylum request.

12. The Court of Justice held that Article 4 of Dublin III conferred a right on the applicant to be informed of the applicable criteria governing the determination of the relevant responsible Member State. The Court added that the effective remedy provisions of Article 27 should be interpreted as giving those seeking international protection the entitlement to request that a national court suspend the implementation of the transfer decision pending the outcome of any appeal.

13. Critically, however, the Court laid considerable emphasis on the terms of Recital 19 of the Dublin III Regulation which provides:

> "In order to guarantee effective protection of the rights of the persons concerned, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established, in accordance, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union. In order to ensure that international law is respected, an effective remedy against such decisions should cover both the examination of the application of this Regulation and of the legal and factual situation in the Member State to which the applicant is transferred."

14. The Court ultimately held that, in view of this recital and other provisions of Dublin III itself, it was clear that "the EU legislature has introduced or enhanced various rights and mechanisms guaranteeing the involvement of asylum seekers in the process for determining the Member State responsible", in particular in compared to the previous regime which operated under Dublin II. The Court further added (at para. 57):

> "However, the Court has previously held, in the context of Regulation No 343/2003, that the EU legislature did not intend that the judicial protection enjoyed by asylum seekers should be sacrificed to the requirement of expedition in processing asylum applications (see, to that effect, judgment of 29 January 2009 in *Petrosian*, C 19/08, EU:C:2009:41, paragraph 48). That finding applies, *a fortiori*, with regard to Regulation No 604/2013, as the EU legislature significantly enhanced, by that regulation, the procedural safeguards granted to asylum seekers under the Dublin system."

15. The Court thus concluded that the effective remedy provisions of Article 27(1) of Dublin III should be interpreted as meaning that an asylum seeker was entitled to plead in an appeal against a transfer order that the relevant criteria specified in Chapter III of Dublin III were incorrectly applied. The decision in *Karim* was in similar terms.

16. In his judgment in the High Court, Humphreys J. took these decisions as his starting point. He noted that in her opinion in these cases (delivered on 17th March 2016), Advocate General Sharpston had concluded that the transfer criteria in Article 7 to Article 15 in Chapter III of Dublin III were subject to review. He concluded that this "strongly suggests that other Articles of the Regulation are not properly matters for

review at the suit of an individual aggrieved litigant", giving as an example here the decision of a Member State to accept a transfer, as this was not a transfer decision and was not therefore subject to review under Article 27(1), a point which - as he noted - Advocate General Sharpston had expressly made in her opinion in *Karim* (at par. 42).

17. For my part, I cannot help thinking that this may represent something of an over-interpretation of the decisions in both *Ghezelbash* and *Karim*. While it is true that the Advocate General observed (at para. 72) in *Ghezelbash* that the "possibilities for challenging the application of the Chapter III criteria are not unlimited", she also stated (at para. 70):

> "…it seems to me over-simplistic to describe the Dublin III Regulation purely as an inter-State instrument. While certain inter-State aspects indubitably remain, the legislator has introduced and reinforced certain substantive individual rights and procedural safeguards."

18. Turning next to Article 34, it is clearly aimed at intra-State information sharing, something which *in itself* would suggest that no such rights were intended to be created. At the same time, Article 34(2) provides that the information referred to at Article 34(1) may only cover certain types of personal information, such as names, travel documents, identity papers, places of residence and so forth. The wording of Article 34(2)("…may only cover..") suggests that applicants for international protection are entitled to object in the event that the request or the answers supplied were to go further than this.

19. Article 34(3) permits the requested State to refuse to grant the information sought where, *inter alia*, the communication of such information "is likely to harm its essential interests or the protection of the liberties and fundamental rights of the person concerned or of others." The wording of this provision would in itself suggest that it contains procedural and substantive safeguards upon which individuals likely to be affected by the operation of this inter-State information exchange system can, in principle at least, rely.

20. Article 34(4) is, of course, the critical provision so far as the present appeal is concerned. It provides:

> "Any request for information shall only be sent in the context of an individual application for international protection. It shall set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state on what evidence, including relevant information from reliable sources on the ways and means by which applicants enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements it is based. It is understood that such relevant information from reliable sources is not in itself sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to an individual applicant."

21. At the hearing of the appeal, counsel for the Minister acknowledged that the requests which were transmitted in the instant cases did not, in terms, comply with the specific letter of Article 34(4) in that in particular it did not set out the grounds upon the request for based. One might nonetheless observe that, as Humphreys J. put it, the reasons for the request was at the same implicit therein, as given our geographical contiguity with the United Kingdom, it was not unreasonable to suppose that Albanian asylum seekers might well have at least transited through that Member State before claiming international protection in this State.

22. Articl3 34(7) provides that the information shall be used only by the appropriate

authorities for the purposes of determining international protection requests. Article 34(8) requires Member States to maintain up to date information. It is finally necessary to draw attention to the terms of Article 34(9):

> "The applicant shall have the right to be informed, on request, of any data that is processed concerning him or her.
>
> If the applicant finds that the data has been processed in breach of this Regulation or of Directive 95/46/EC, in particular because they are incomplete or inaccurate, he or she shall be entitled to have them corrected or erased.
>
> The authority correcting or erasing the data shall inform, as appropriate, the Member State transmitting or receiving the information.
>
> The applicant shall have the right to bring an action or a complaint before the competent authorities or courts or tribunals of the Member State which refused the right of access to or the right of correction or erasure of data relating to him or her."

The complaints of the applicants

23. The complaints of the applicants in the present appeals is that Ireland did not comply with the requirements of Article 34 in that it did not specify the reasons for the request in the manner contemplated by Article 34(4). They further state that the United Kingdom then supplied personal information concerning them to the Irish authorities in a manner which was not authorised by Article 34, in part at least because it went further than the information envisaged by Article 34(2), but also because of the invalidity of the original Article 34(4) request. They then submit that since the information so transmitted constitutes personal data which was transmitted in breach of the Dublin III Regulation, they are entitled by virtue of Article 34(9) to have such information erased and, accordingly, excluded from consideration by the Irish authorities.

24. This all leads to the ultimate submission that the decisions of the Refugee Appeals Tribunal - which acted in both instances on foot of information supplied by the UK authorities -to the effect that the applicants in these proceedings should be taken back by the UK under the terms of Dublin III should be quashed.

25. At first blush, the present applications might be thought by some to constitute examples of "frivolous or vexatious" applications for judicial review blocking the smooth operation of the Dublin System in respect of which Advocate General Sharpston was properly concerned in her opinion (at para. 71) in *Ghezelbash*. Yet I cannot I ignore the fact that a good deal of Article 34 appears to be designed to protect the data protection rights of applicants for international asylum. Specifically, Article 34(9) appears to give such applicants the right to apply to national courts to have data processed by Member States in breach of the provisions of Dublin III "corrected or erased." If, therefore, a Member State did in fact breach the requirements of Dublin III - by, for example, receiving such information following an invalid or otherwise defective request, one might ask whether the right of erasure conferred by Article 39 operated as a form of exclusionary rule which prevented national authorities from acting on foot of such information?

Conclusions

26. In these circumstances, I consider that the question of whether Article 34(4) of the Dublin III Regulation creates enforceable legal rights which individuals can assert must, at least, remain an open one. For my part, I cannot see, with respect, how this Court

can reach a conclusion adverse to the applicants' claims in the absence of an Article 267 reference and a final determination of these issues by the Court of Justice.

27. The second question is whether, even if Article 34(4) does create enforceable and justiciable rights, it can have any practical implications so far as the present case is concerned. For even if the original request did not comply with the requirements of Article 34(4), it is not clear whether Article 34(9) may be invoked to erase and thereby exclude from consideration otherwise accurate information which has been obtained from the UK authorities for all the reasons I have just mentioned.

28. Where, however, I respectfully part company with my colleagues is that I do not feel that this Court can properly resolve the issues of EU law and, specifically, the questions of interpretation of Article 34(4) and Article 34(9) of the Dublin III Regulation which arise in this appeal without the benefit of a reference of these questions to the Court of Justice of the European Union pursuant to Article 267 TFEU. It follows, therefore that, for my part, I would have favoured adjourning the present appeal pending the outcome of an Article 267 TFEU reference which addressed these (and, if necessary, other related) questions prior to ruling on the applicants' claims.