High Court of Ireland Decisions

Judgment

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Neutral Citation:	[2016] IEHC 222
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THE HIGH COURT

JUDICIAL REVIEW

[2011 No. 729 J.R.]

BETWEEN

S. F. A. (AN INFANT SUING BY HIS MOTHER AND NEXT FRIEND A. A.) & A. A.
APPLICANTS

AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, THE REFUGEE APPLICATIONS COMMISSIONER, IRELAND AND THE ATTRONEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Colm Mac Eochaidh delivered on the 25th day of April , 2016.

Introduction:
1. The court delivered judgment in *S.F.A. (an infant suing by his mother and next friend A.A.) & A.A. v. Minister for Justice and Equality* [2015] IEHC 364, dated the 16th June, 2015, and declined the application made for judicial review. The background facts and the legal principles may be found in the text of the judgment itself.

2. The applicants now seek a certificate to appeal pursuant to s. 5 of the Illegal Immigrants (Trafficking) Act, 2000. The applicants say a preliminary reference to the Court of Justice of the European Union (C.J.E.U.), pursuant to Art. 267 of the Treaty on the Functioning of the European Union (T.F.E.U.), is required if the court is minded to refuse a certificate of appeal. It is accepted that a court about to refuse such a certificate is a court within the meaning of Art. 267(3) and must in certain circumstances refer questions to the C.J.E.U.. A question of E.U. law could only be referred to Luxembourg in that context if an answer to the question was required to determine whether to grant a certificate of appeal.

Certificate of appeal:

3. The applicants submit that the court should grant a certificate to appeal on the following points of law:-

> 1. Whether an error as to jurisdiction (assuming no reliance on error on the face of the record) must be identified before certiorari is available in respect of a challenge to the validity of a decision of the Refugee Applications Commissioner.
>
> 2. Whether the minimum standards mandated by European law were breached as a result of the manner in which the application was dealt with by the second respondent.
>
> 3. Whether the infant applicant has a right to be heard in respect of his mother's claim, when the decision in his mother's case is utilised against his interests.
>
> 4. Whether the mis-description of the second applicant's evidence should have entitled the applicants to certiorari.
>
> 5. Whether the obligation to examine up to date and relevant country of origin information relating, inter alia, to "laws and regulations of the country of origin and the manner in which they are applied" is a mandatory requirement under European law (art. 4(3)(a) Qualification Directive) and has application in the applicants' claims.
>
> 6. Whether the findings in relation to internal relocation were in error. Whether the obligation to identify a place of relocation was complied with to the extent required by the minimum standards.
>
> 7. Whether the "B.N.N." restrictions on access to judicial review in respect of decisions of O.R.A.C. infringe E.U. law.

Relevant Law:
4. Section 5(3) of the Illegal Immigrants (Trafficking) Act, 2000, is in the following terms:-

> "(a)The determination of the High Court of an application for leave to

apply for judicial review as aforesaid or of an application for such judicial review shall be final and no appeal shall lie from the decision of the High Court to the Supreme Court in either case except with the leave of the High Court which leave shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(b) This subsection shall not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution."

5. Article 267 T.F.E.U. is set out as follows:-

"The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

(a) the interpretation of the Treaties;

(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay."

6. In *Glancré Teoranta v. An Bord Pleanála* [2006] IEHC 250 MacMenamin J. set out the following principles as applicable in relation to the meaning of a test of exceptional public importance:-

"1. The requirement goes substantially further than that a point of law

emerges in or from the case. It must be one of exceptional importance being a clear and significant additional requirement.

2. The jurisdiction to certify such a case must be exercised sparingly.

3. The law in question stands in a state of uncertainty. It is for the common good that such law be clarified so as to enable the courts to administer that law not only in the instant, but in future such cases.

4. Where leave is refused in an application for judicial review i.e. in circumstances where substantial grounds have not been established a question may arise as to whether, logically, the same material can constitute a point of law of exceptional public importance such as to justify certification for an appeal to the Supreme Court (Kenny).

5. The point of law must arise out of the decision of the High Court and

not from discussion or consideration of a point of law during the hearing.

6. The requirements regarding 'exceptional public importance' and 'desirable in the public interest' are cumulative requirements which although they may overlap, to some extent require separate consideration by the court (Raiu).

7. The appropriate test is not simply whether the point of law transcends the individual facts of the case since such an interpretation would not take into account the use of the word 'exceptional.'

8. Normal statutory rules of construction apply which mean inter alia that 'exceptional' must be given its normal meaning.

9. 'Uncertainty' cannot be 'imputed' to the law by an applicant simply by raising a question as to the point of law. Rather the authorities appear to indicate that the uncertainty must arise over and above this, for example in the daily operation of the law in question.

10. Some affirmative public benefit from an appeal must be identified. This would suggest a requirement that a point to be certified be such that it is likely to resolve other cases." (emphasis in original)

Article 267 T.F.E.U. reference:

7. The applicants submit that a preliminary reference under Art. 267 T.F.E.U should be made in the following terms:-

"1. Must limitations on the right of access to the High Court to challenge the legality of decisions of the Refugee Applications Commissioner refusing asylum have a legislative basis in order to comply with Article 52 (1) of the Charter of Fundamental Rights of the European Union?

If the answer to question 1 is "No" then must there be such a statutory basis where, already, some restrictions on such access have been imposed by statute?

2. Does European law preclude there being in place a national law whereby, except in 'rare and exceptional circumstances' an applicant for international protection may never have an opportunity to challenge the legality (as opposed to the merits) of a negative first instance decision on an asylum application?

3. To what extent, if any, is a decision maker entitled to refrain from examining 'laws and regulations of the country of origin and the manner in which they are applied' as mandated by Article 4(3) of the Qualification Directive?

4. Does the right to be heard in European law entitle an applicant such as the infant applicant herein to sight of a decision made by the examining authority upon which it intends to place weight prior to a decision being taken in circumstances where the particular decision relied on is one previously made in respect of (though not communicated to) the mother?

5. What consequences should flow from a failure to examine all relevant facts as they relate to the country of origin at the time of taking the

decision on the application; including 'laws and regulations of the country of origin and the manner in which they are applied' in accordance with Article 4. 3 (a) of the Qualification Directive in circumstances where consideration was given to state protection and internal relocation?

6. Is the onus of proof on the decision maker when considering applying the internal relocation alternative?

7. Where an internal relocation finding is made, notwithstanding a rejection of credibility, is that internal relocation assessment to be tested for compliance with the provisions of Article 8 of the Qualification Directive?"

8. As indicated above, the applicant has attempted to identify seven issues which constitute points of law of exceptional public importance in respect of which it is desirable in the public interest that an appeal should be taken to the Court of Appeal arising from my decision in the underlying proceedings.

9. The first question sought asks:-

> "Whether an error as to jurisdiction must be identified before certiorari is available in respect of a challenge to the validity of a decision of the Refugee Applications Commissioner"

10. At para. 4 of my decision in the substantive proceedings I ruled as follows:-

> "Having regard to the decision of this court in P.D. and the line of authority on which it is based, an applicant seeking to review a decision of the R.A.C. must identify an error as to jurisdiction (assuming no reliance on error on the face of the record) though this alone will not suffice to attract certiorari."

11. Inherent in the question sought to be posed to the Court of Appeal is the suggestion that certiorari should be given in respect of some decisions, even though there is no error as to jurisdiction (or error on the face of the record). The applicants have not specified what non-jurisdictional error should attract certiorari and, in particular, they have not specified what non-jurisdictional errors in this case should attract the remedy. In that sense, the proposed question is of theoretical interest only.

12. At this stage of the development of public law in Ireland, it is beyond debate that certiorari is only available to persons who establish an error in relation to jurisdiction or an error on the face of the record. (See the discussion in *'Administrative Law in Ireland'*, Hogan and Morgan, 5th Edition, at 16.20 et seq. where the authors say: "Certiorari lies to quash a decision of a public body which has been arrived at in excess of jurisdiction.") No authority from Ireland or from any common law country, or any other basis was cited by the applicants in favour of the proposition that this statement of law is, or might be, in error. The decision given by this court in the underlying proceedings involves a wide ranging discussion of what constitutes error as to jurisdiction. It is clear from the text of the judgment that there is no attempt by the court to foreclose or predict the type of error which might constitute an error as to jurisdiction.

13. In my view, there can be no scope for debate on an application for a certificate of appeal that the law is unclear or in a state of uncertainty as to whether error as to jurisdiction (or an error of law in modern terms) is required to attract certiorari. I am satisfied that the state of the law on this topic is clear, and the desire of the applicants to alter it is not sufficient reason to grant a certificate of appeal.

14. The second question sought to be certified was:-

> "Whether the minimum standards mandated by European law were breached as a result of the manner in which the application was dealt with by the second respondent."

Self evidently this question merely seeks to re-argue the case urged on the court on the application rejected by me in my judgment of the 16th June, 2015. I found that the minimum standards alluded to in the question had not been breached. An applicant for a certificate of appeal, pursuant to. 5 of the Act, must do much more than simply re-argue a lost point.

15. The third question sought to be certified for appeal is:-

> "Whether the infant applicant has a right to be heard in respect of his mother's claim, when the decision in his mother's case is utilised against his interests."

16. It is correct to say that in the underlying proceedings I held that:-

> "The child has a right to be heard in respect of his own claim and this has been fully vindicated. He does not have a right to be heard in respect of his mother's claim."

17. The applicant now seeks to argue again that the child has a right to be heard about the negative result of his mother's asylum claim, and that this is a point of law of exceptional public importance, and that it is in the public interest that this point be decided. In effect, it was argued that the child should have been shown a copy of the mother's decision before he presented his own claim. The point is not dissimilar to the argument made and rejected in the reference to the C.J.E.U. in *M.M. v. Minister for Justice* (C-277/11). The applicants in that case had argued that they should know in advance the basis of a negative decision so that they could deal with the issues, and this was rejected by the C.J.E.U.. The question posed to the C.J.E.U. was:-

> "In a case where an applicant seeks subsidiary protection status following a refusal to grant refugee status and it is proposed that such an application should be refused, does the requirement to cooperate with an applicant imposed on a Member State in Article 4(1) of … Directive 2004/83 … require the administrative authorities of the Member State in question to supply such applicant with the results of such an assessment before a decision is finally made so as to enable him or her to address those aspects of the proposed decision which suggest a negative result?"

The answer given was:-

> "Accordingly, the conclusion on this point must be that the requirement that the Member State concerned cooperate with an applicant for asylum, as stated in the second sentence of Article 4(1) of Directive 2004/83, cannot be interpreted as meaning that, where a foreign national requests subsidiary protection status after he has been refused refugee status and the competent national authority is minded to reject that second application as well, the authority is on that basis obliged - before adopting its decision - to inform the applicant that it proposes to reject his application and notify him of the arguments on which it intends to base its rejection, so as to enable him to make known his views in that regard." (see para. 74 of the judgment of the E.C.J.).

18. That decision, it must be recalled, related to a decision making procedure from which there was no administrative appeal, unlike the matter under review in this case. It is difficult to see how an applicant who does not have a right to view a proposed negative outcome of his own claim would be entitled to see the result of another person's claim.

19. In *A. N. v. The Minister for Justice, Equality and Law Reform* [2008] 2 IR 48 the Supreme Court indicated that a dependant minor applicant requires to "invoke reasons on their own account" in order to make a successful claim distinct from that of their

parent. As a matter of fact, and this was not contested by the applicant, the infant's claim was indistinguishable from the mother's claim. Thus, on the facts of this case, even if it were correct to say that an infant has a right to be heard in respect of its mother's asylum claim, in a case such as this, the infant could add nothing to the claim because its case is indistinguishable from that of its parent.

20. In effect, what the applicants seeks to submit to the Court of Appeal is that the infant should have been entitled to argue that the mother's claim was wrongly decided. The applicants do not need a decision of the Court of Appeal to facilitate this objective. The law permits this to happen, but it happens in the course of an appeal to the R.A.T.. As indicated in the underlying proceedings, the mother is fully entitled to argue on appeal to the Refugee Appeals Tribunal that her case has been wrongly decided. Separately, the child, in appealing his decision, is entitled to argue that insofar as the decision in his own case is based upon the decision on the mother's case, that the decision in the mother's case was wrong.

21. As was pointed out in the underlying judgment, the mother accepted that her son's claim for asylum was the same as her own, and she presented her son's claim on his behalf. She did not attempt to make new points about her asylum claim when presenting her son's dependant claim. The applicants have never attempted to say to this court what they might have said to the O.R.A.C. in relation to the result of the mother's claim, had they been given the chance. In the absence of any legal or factual basis being advanced as to why the son should be heard about the result of his mother's claim, in the course of his own claim, I cannot find that a point of law, much less a point of law of exceptional public importance, has been advanced in support of this question, and certainly no element of the public interest would be served by running such an appeal.

22. The fourth question sought to be appealed is:-

> "Whether the mis-description of the second applicant's evidence should have entitled the applicants to certiorari."

23. The applicants, by posing this question, seek to re-run a point upon which they were unsuccessful in the underlying proceedings. No argument has been addressed to the court which would convince me that my decision that the mis-description of the applicant's evidence was not an error as to jurisdiction constitutes a point of law of exceptional public importance. In any event, I also ruled that even if it were an error as to jurisdiction, it was not of sufficient weight to attract certiorari, and that, in any event, the error in the evaluation of the evidence was amenable to appeal to the R.A.T..

24. No basis has been advanced as to why any of this decision making on my part should attract a certificate of appeal within the parameters described in s. 5 of the Act. There is no scope for a debate about the legal consequences flowing from an adjudicator misapprehending the evidence where the resource of an administrative appeal, capable of deciding any issue of fact or law, has been provided by the State.

25. The fifth question posed by the applicant is:-

> "Whether the obligation to examine up-to-date and relevant county of origin information … is a mandatory requirement under European law and has application in the applicants' claims."

26. In order for a certificate of appeal to be granted, the question of law sought to be litigated must be one which is involved in my decision. At no stage did I suggest that the requirement to examine up to date and relevant country of origin information was not mandatory. My decision in the underlying proceedings declined relief because the

applicant could not demonstrate what country of origin information, relevant to the applicants' claim, had not been examined nor was there any submission as to what law or regulation of the country ought to have been examined which might somehow have been connected to her claim for asylum.

27. The findings made by this court were related to the facts of the case. The obligation referred to in the proposed question is indeed mandatory and the assistance of the Court of Appeal is not necessary to establish that. In those circumstances, I cannot see that the criteria for the grant of a certificate in s. 5 are met on this particular point.

28. The sixth question posed asked:-

> "Whether the findings in relation to internal relocation were in error. Whether the obligation to identify a place of relocation was complied with to the extent required by the minimum standards."

29. In effect, the applicant again seeks to re-litigate matters decided against them in the underlying decision. This court made findings of fact that relocation was sufficiently identified, and that no legal error had occurred in the manner in which the rules in respect of internal relocation were decided. It is impossible to see how the criteria for the grant of a certificate of appeal are met by this particular proposed question.

30. The last question posed is whether:-

> "Whether the 'B.N.N.' restrictions on access to judicial review in respect of decisions of O.R.A.C. infringe EU law."

31. This court ruled in the underlying decision that any restrictions on access to judicial review of first instance decisions were more than made up for by generous access to the R.A.T., and thus the so called "B.N.N." restrictions on access to judicial review were not an infringement of the E.U. right of access to an effective remedy. On this application the applicants say this is mistaken because:-

> "The Tribunal has no jurisdiction to deal with errors of law that arise in a decision under appeal to it" (para. 7 of the applicant's written submissions of July 2015)."

In addition, they complain that no matter what points they raise on appeal to the R.A.T., the only remedy they can achieve in respect of an error at first instance is that they be declared to be entitled to refugee status.

32. If the error had the effect of denying them the status to which they are entitled as a matter of law, then the remedy which the R.A.T. provides is an effective remedy. If the error did not have the effect of denying them the status, the fact that the R.A.T. cannot undo that error does not mean that there is an absence of adequate remedy. The R.A.T. can of course agree with a submission by an applicant that an error has been an error at first instance but, nonetheless, find that the applicant is not a refugee. No injustice is thereby caused and such a result does not offend the rule that an adequate remedy be provided for errors which cause an applicant to be deprived of refugee status. Legally irrelevant errors or harmless errors do not require remedies.

33. As stated by the C.J.E.U. in *Diouf v Ministre du Travail* (C - 69/10):-

> "… the decisions against which an applicant for asylum must have a remedy under Article 39(1) of Directive 2005/85 are those which entail rejection of the application for asylum for substantive reasons…."

If an error of law caused the first instance decision maker to reject an asylum claim, that matter can be appealed to the R.A.T. which has the power to reverse the unlawful decision by recommending that the appellant be declared a refugee.

34. The applicants failed to establish any basis for the contention that the R.A.T is not permitted to deal with errors of law. The opposite is the case. Errors of law may form the basis of an appeal to the R.A.T.. This has been confirmed by the Supreme Court in *M.A.R.A. v Minister for Justice and Equality* [2014] IESC 71. Although this authority was referred to in the underlying decision, it has not been suggested on this application that M.A.R.A. has been wrongly decided.

35. A certificate of appeal is sought based on a significant misconception as to the jurisdiction enjoyed by the R.A.T.. No purpose would be served by permitting the applicants to pursue this question to the Court of Appeal.

Article 267 T.F.E.U. reference:

36. A national court may only refer a question to the Court of Justice of the European Union in respect of a matter pending before that court. The only question pending in these proceedings at this stage is whether the decision given by this court in the underlying proceedings involves a point of law of exceptional public importance, and whether it is desirable in the public interest that an appeal should be taken to the Court of Appeal.

37. It is of course possible at this stage of the proceedings that a question of interpretation of European law would arise on which the court might need assistance or must seek assistance (in view of Art. 267(3)) before deciding the s. 5 issue as to whether to grant a certificate of appeal or not. (See H.I.D. v M.J.E. [2013] IEHC 146). I am not persuaded that any question of European law arises in my decision or in respect of an application for certificate of appeal.

38. The first question in respect of which a reference to the C.J.E.U. is sought is as follows:-

> "Must limitations on the right of access to the High Court to challenge the legality of decisions of the Refugee Applications Commissioner refusing asylum have a legislative basis in order to comply with Article 52(1) of the Charter of Fundamental Rights of the European Union?"

39. The only circumstance in which this court would be required or entitled to refer that question to the C.J.E.U. at this stage would be if my decision in the underlying proceedings related to or was based upon such a question. The question is not discussed in the underlying proceedings. No such question is sought to be the basis of a certificate to the Court of Appeal and it is difficult to see how a certificate of appeal could be granted on an issue not arising from the underlying decision of the court. There is no trace of the question in the pleadings or in the various sets of written submissions connected with the underlying proceedings. I cannot see any circumstances in which an answer to that question would assist this court with deciding whether or not to grant a certificate of appeal.

40. The second question suggested for reference to the C.J.E.U. is as follows:-

> "Does European law preclude there being in place a national law whereby, except in 'rare and exceptional circumstances' an applicant for international protection may never have an opportunity to challenge the legality (as opposed to the merits) of a negative first instance decision on an asylum application?"

41. This question is based on a false assumption. A disappointed asylum seeker has a comprehensive opportunity to challenge the legality and the merits of a negative first instance decision on her asylum application by bringing an appeal to the Refugee Appeals Tribunal. Any alleged error of law and/or any alleged error of fact in the decision of the O.R.A.C. may be raised by way of appeal to the R.A.T.. No answer to this

second question would assist the court in determining whether or not to grant a certificate of appeal.

42. The third question proposed to be sent to the C.J.E.U. is:-

> "To what extent, if any, is a decision maker entitled to refrain from examining 'laws and regulations of the country of origin and the manner in which they are applied' as mandated by Article 4(3) of the Qualification Directive?

43. This court does not require an answer to this question, not least because the answer thereto is within the realms of "acte clair." A decision maker must refer to the laws and regulations of the country of origin provided that those laws and regulations are relevant to the asylum claim presented by an applicant. Article 4(3)(a) of the Qualification Directive refers to a requirement that the assessment for international protection be carried out on an individual basis that takes into account "all relevant facts" as they relate to the country of origin, including laws and regulations of the country of origin. It is a preposterous idea that on every application for asylum all of the laws and regulations of the country of origin of the asylum seeker must be examined, regardless of the claim of asylum presented by the applicant. This appears to be the settled view of the applicants' lawyers in this case. It is abundantly clear that it is only relevant facts in relation to the country of origin and relevant laws in relation to the country of origin that must be examined on any asylum application. No assistance could be obtained from the Court of Justice of the European Union in respect of this matter. This question does not require resolution in order for me to decide whether to grant a certificate of appeal in this case.

44. The fourth question sought to be referred is:-

> "Does the right to be heard in European law entitle an applicant have sight of a decision made by the examining authority upon which it intends to place weight prior to a decision being taken in circumstances where the particular decision relied on is one previously made in respect of (though not communicated to) the mother?

45. As indicated by me above, this court ruled that the child did not have a right to be heard in respect of his mother's case during the first instance hearing of his case on the unpublished result of his mother's case. Both mother and child have extensive rights of appeal to the R.A.T. in case they are dissatisfied with either of their decisions in their own cases. The child's case was at all times presented as being the same as, and indistinguishable from, the mother's case. I cannot imagine any circumstance in which the Court of Justice could give any assistance to this court on these questions, and no basis has been laid by the applicants to support the proposition it advances that a child whose case is indistinguishable from that of its parent has a right to be shown the unpublished result of the parent's separate case, during the course of his own first instance application for asylum. I am fortified in this view by the decision of the C.J.E.U.in M.M., as described at para. 18 above.

46. The fifth question sought to be referred asks:-

> "What consequences should flow from a failure to examine all relevant facts as they relate to the country of origin at the time of taking the decision on the application; including 'laws and regulations of the country of origin and the manner in which they are applied' in accordance with Article 4.3(a) of the Qualification Directive in circumstances where consideration was given to state protection and internal relocation?"

47. It seems to me that this is not an appropriate question to refer to the Court of Justice. It is a matter for the national court to determine the consequences which follow a breach of the rule or proposition laid out in question five. The C.J.E.U. is certainly

competent to advise national courts on what the content of European law is and what it means. It never advises a national court on what consequences should flow from a breach of Union law nor would it direct a national court as to what to do once a breach of Union law is established. In any event, the question posed falls well within the doctrine of acte clair and, therefore, could not be referred.

48. The answer to the question posed is that a decision based on the error identified in the question should be quashed, unless there was a good reason not to by reference to the principles of public law. In addition, it should be noted that the proposed question is based on a premise which the applicants failed to establish. The applicants failed to establish that there had been a failure by the O.R.A.C. to examine all relevant facts relating to the country of origin, including laws and regulations of that country. No assistance is needed from the C.J.E.U. in relation to the question posed. This is not an appropriate question to refer, and in any event, an answer to the question could not offer any assistance to this court as to the actual issue pending before it, and that is whether or not to grant a certificate of appeal in this case.

49. The sixth question sought to be referred is:-

> "Is the onus of proof on the decision maker when considering applying the internal relocation alternative?"

50. No conceivable answer to this question would be of any assistance to this court in the matter pending before it because this court found as a matter of fact that the decision maker had lawfully identified a place of internal relocation and that no breach of the rules had occurred in the manner in which this decision was taken. This issue is irrelevant on this application.

The final question sought to be referred to the C.J.E.U. is as follows:-

> "Where an internal relocation finding is made, notwithstanding a rejection of credibility, is that internal relocation assessment to be tested for compliance with the provisions of Article 8 of the Qualification Directive?"

51. This question does not arise in any way in the decision taken by this court in the underlying proceedings nor was it ever part of the case urged upon the court by the applicant at that stage. No related question of appeal has been urged upon the court in relation to the application for certificate of appeal. In those circumstances, whatever answer might be given to this question, it could not be of any assistance in determining a matter pending before this court, which is whether or not to grant a certificate of appeal in respect of identified points of law. The question posed is of theoretical interest only and not related to the facts or the legal arguments of these proceedings.

52. In all those circumstances, I shall not refer any question to the Court of Justice of the European Union. I refuse to grant a certificate of appeal to the Court of Appeal pursuant to s. 5 of the Illegal Immigrants (Trafficking) Act 2000.