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(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY UPENYU HOVE FOR JUDICIAL REVIEW

AND

IN THE MATTER OF AN APPLICATION BY TINASHE JINGA FOR JUDICIAL REVIEW

_____

WEATHERUP J

The applications.

[1] The applicants are Zimbabwean citizens applying for asylum in the United Kingdom. Each arrived in the Republic of Ireland and then travelled to Belfast and applied for asylum. The Secretary of State for the Home Department directed that each applicant should be returned to the Republic of Ireland in accordance with the legislative provisions giving effect to the Dublin Convention. The applicants apply for Judicial Review of the decisions of the Secretary of State. Mr McTaggart BL appeared for the applicants. Mr Maguire BL appeared for the respondent in the case of the first applicant and Ms Connolly BL appeared for the respondent in the case of the second applicant.

The Dublin Convention.

[2] The Dublin Convention came into operation in September 1997. It represents an agreement by the Member States of the European Union by which it might be determined which Member State is responsible for consideration of asylum claims made in the EU by non-EU nationals. In general the Dublin Convention established criteria by which it might be

determined which Member State is responsible for dealing with the asylum claim. Among the criteria for identifying the responsible Member State is the State where the applicant first entered the EU. The Dublin Convention also includes provision that permits Member States to accept responsibility for asylum claims in cases where according to the criteria another Member State may be the responsible State. The Dublin Convention was replaced by the Dublin II Regulation which came into effect on 1 September 2003. The criteria and mechanisms for determining the Member State responsible for examining the asylum application lodged in one of the Member States by a third country national are now contained in Council Regulation (EC) 343/2003.

The legislation.

[3] The Immigration and Asylum Act 1999 section 11 provides for the removal from the United Kingdom of asylum claimants.

> A claimant for asylum may be removed from the United Kingdom to a Member State where a certificate has been issued by the Secretary of State under Section 11(2).
> Such a certificate will be issued where (a) the Member State has accepted responsibility under the Dublin Convention for dealing with the applicants' claim for asylum and (b) the Secretary of State is of the opinion that the claimant is not a national or citizen of the Member State to which he is to be sent.
> Under section 11(1) a Member State is not to be regarded as a place (a) where a person's life or liberty is threatened or (b) from which a person will be sent to another country otherwise and in accordance with the Refugee Convention.

[4] In the Immigration Rules (HC 395) paragraph 345 deals with "Third country cases."

> Where the Secretary of State is satisfied that the conditions of Section 11 of the 1999 Act are fulfilled he will normally refuse the asylum application and issue a section 11 certificate without substantive consideration of the applicant's claim.
> Paragraph 345(2) provides that the Secretary of State shall not remove an asylum applicant without substantive consideration of his claim unless (i) the asylum applicant has not arrived in the United Kingdom directly from the country in which he claims to fear persecution and has had the opportunity to seek the protection of a third country or (ii) there is no other clear evidence of his admissibility to a third country.
> If the Secretary of State is satisfied on the above criteria he is under no obligation to consult the authorities of the third country before the removal of the asylum applicant to that country.

The applicants

[5] The first applicant left Zimbabwe for South Africa and travelled from there to the Republic of Ireland at the beginning of 2002. He remained in Dublin under a student visa until 19 September 2002 when he travelled into the United Kingdom by bus from Dublin to Belfast. The first applicant's wife travelled directly from Zimbabwe to Dublin in September 2002 and then joined the first applicant in Belfast. Mrs Hove gave birth to a daughter on 16 October 2002 in the Royal Victoria Hospital, Belfast.

[6] On 6 February 2003 the first applicant and his wife applied for asylum in the United Kingdom. The first applicant and his wife were then dealt with by the immigration authorities in similar fashion but it is the first applicant who has applied for Judicial Review and whose details are set out below. On 7 February 2003 the first applicant was required to attend Belfast Immigration Office for the purposes of a screening interview. The introduction to the screening form was read to the first applicant and included:

> "It is possible that the United Kingdom may not be the state responsible for considering your asylum application. If this is the case, you will be informed of any applications and decisions to transfer your case to another country."

[7] At the screening interview the first applicant was advised by immigration officials to the same effect as the words quoted from the screening form. After interview the applicant was served with "Notification of Temporary Admission to a Person who is Liable to be Detained" requiring him to report to an immigration officer at a later date. He was also served with a Statement of Evidence Form which was to be the basis of his application for asylum to the United Kingdom. The first applicant completed the Statement of Evidence Form which included an outline of his background and circumstances and the completed form was returned to the authorities on 20 February 2003.

[8] The first applicant's case was referred to the "Third Country Unit" of the Immigration and Nationality Directorate of the Home Office. On 15 April 2003 the Third Country Unit decided to refer the case to the Republic of Ireland as the country of the first applicant's entry into the European Union. By letter dated 25 June 2005 the Office of the Refugee Applications Commissioner in Dublin notified the Third Country Unit that the request for transfer was in accordance with the Dublin Convention. On 11 July 2003 the Unit, on behalf of the Secretary of State, certified that the conditions mentioned in Section 11(2) of the Immigration and Asylum Act 1999 were satisfied namely that (a) the authorities in Ireland had accepted the standing

arrangements that Ireland was the responsible state in relation to the claim for asylum and (b) that the first applicant was not a national or citizen of Ireland. By notice of decision dated 16 July 2003 under the Nationality, Immigration and Asylum Act 2002 the first applicant was informed that a decision had been taken to remove him from the United Kingdom and that directions would be given for his removal from the United Kingdom to Ireland. The first applicant was required to report to an immigration officer at Belfast International Airport on 25 July 2003.

[9] By notice dated 23 July 2003 the first applicant by his solicitor lodged a Notice of Appeal against the decision of 16 July 2003. The Notice of Appeal set out six grounds of appeal that included three grounds under the European Convention on Human Rights. Particulars of the six grounds were set out in the Notice of Appeal. By later dated 24 July 2003 the Third Country Unit on behalf of the Secretary of State confirmed that the first applicant was properly returnable to Ireland under the provisions of Section 11 of the 1999 Act and the terms of the Dublin Convention and that there were not sufficiently compassionate or compelling reasons that would warrant departure from the usual practice. The letter rejected each of the first applicant's claims under the European Convention and certified on behalf of the Secretary of State that the allegation that the return to Ireland would breach human rights under the European Convention was clearly unfounded. The first applicant was given notice of a right of appeal which under the provisions of the Nationality, Immigration and Asylum Act 2002 could only be exercised from abroad. The removal of the first applicant from the United Kingdom on 25 July 2003 was confirmed. The first applicant applied for Judicial Review of the decision that he be removed from the United Kingdom.

[10] The second applicant is also a Zimbabwean citizen. He left Zimbabwe and arrived in Dublin on 21 September 2002 and was granted a visa until 20 October 2003. The day after his arrival he travelled to Belfast. On 16 October 2002 he returned to Dublin and obtained an extension of his visa until 16 December 2002 and he returned to Belfast. He then remained in Belfast and applied for asylum in the United Kingdom on 18 August 2003. His interview with an immigration officer took place on 30 August 2003. While the layout of the screening form had changed it contained the same wording as that referred to above. In addition the second applicant was advised by an immigration officer to the same effect as the wording of the screening form. The second applicant was granted temporary admission to the United Kingdom and the following day his application was referred to the Third Country Unit. On 28 October 2003 the Third Country Unit on behalf of the Secretary of State applied to the Office of the Refugee Applications Commissioner in Dublin inviting acceptance of responsibility for the applicant's asylum claim. On 4 December 2003 the Office of the Refugee Applications Commissioner accepted the transfer of the second applicant's asylum application. On 29 January 2004 the Secretary of State's

certificate was issued and an order was made for the removal of the second applicant from the United Kingdom. For administrative reasons the applicant did not receive notice of removal to the Republic of Ireland until 15 March 2004. On that date the second applicant was arrested as he was believed not to have observed the reporting conditions of his temporary entry to the United Kingdom and because of his imminent removal it was believed he would abscond. He was detained until 18 March 2004. The second applicant applied for Judicial Review of the decision that he be removed from the United Kingdom and of the decisions that he be arrested and detained in March 2004.

The grounds for Judicial Review.

[11] The grounds for Judicial Review in each case are that each applicant had a legitimate expectation that he would receive notice of the Secretary of State's application to the Republic of Ireland under the Dublin Convention for transfer of the applicants' asylum claims to the Republic of Ireland so that each applicant might have the opportunity to make representation to the effect that the United Kingdom should accept responsibility for the asylum claim. This legitimate expectation was said to arise from the screening form presented to each applicant at the first interview with immigration officers and repeated by the immigration officers in the course of those interviews. Further this legitimate expectation is said to have been frustrated in each case as neither applicant was informed of the application to the Republic of Ireland until receipt of the Notice of Removal from the United Kingdom after the decision had been taken by the Republic of Ireland and by the United Kingdom.

[12] On the other hand the respondent contends that the screening form and the immigration officers stated no more than that the applicants would be "informed" of any applications to transfer the cases to another country and the applicants were so informed when the process was completed; that the statements that the applicants would be informed of applications to a third country could not create any legitimate expectation that the applicants would have a right to make representations; that in any event the applicants had the opportunity to make a full statement of evidence further to their asylum claims and had the opportunity to make representations on appeal from the decisions of the Secretary of State.

[13] The first applicant had included in his grounds for Judicial Review the further ground that European Community rights arose from the birth of a daughter in Belfast by which the daughter was an Irish national and a citizen of the European Union. The application for Judicial Review was adjourned pending the decision of the European Court of Justice in Chen and Others [2004] EUECJ C-200/02. This reference for a preliminary ruling concerned the interpretation of Council Directive 73/148/EEC of 21 May 1973 on the

abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services, of Council Directive 90/364/EEC of 28 June 1990 on the right of residence and of Article 18 EC. The reference was made in the course of proceedings brought by a child of Irish nationality, and her mother, a Chinese national, against the Secretary of State for the Home Department concerning the latter's rejection of applications for long-term permits to reside in the United Kingdom. At the resumed hearing of the Judicial Review no entitlement on the part of the first applicant was advanced in reliance on the decision in Chen.

In addition the first applicant had included in his grounds for Judicial Review the rejection of his appeal made on human rights grounds. However this matter was not advanced as a separate ground either in the first applicant's skeleton argument or at the hearing. The respondent contends that the appeal on human rights grounds was considered by the respondent and rejected as clearly unfounded and there is no basis for setting aside that conclusion.

[14] Further, the second applicant had included in his grounds for Judicial Review a challenge to the decision to arrest the second applicant on 15 March 2004 and the decision to detain him until 18 March 2004. However at the hearing of the application for Judicial Review the second applicant did not proceed with the challenge to those decisions.

Legitimate expectation.

[15] A legitimate expectation may arise from a promise or practice by a public authority. It is necessary to examine the nature of the promise or practice and the context in which it operated in order to determine what if any legitimate expectation arises. The Court of Appeal in England and Wales has stated that there are at least three possible outcomes. (a) The court may decide that the public authority is only required to bear in mind its previous policy or other representation. (b) The court may decide that the promise or practice induces a legitimate expectation of, for example, being consulted before a particular decision is taken. The court will require the opportunity for consultation to be given unless there is an overriding reason to resile from it, in which case the court will judge the adequacy of the reason advanced for the change of policy, taking into account what fairness requires. (c) The court may decide that a lawful promise or practice has induced a legitimate expectation of a *benefit which is substantive*, not simply procedural, and the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. R v North and East Devon Health Authority, ex parte Coughlan [2001] QB 213.

[16] The respondent rejects any legitimate expectations arising from the Dublin Convention as confirmed by the Court of Appeal in England and Wales in R (on the application of Lika) v Secretary of State for the Home Department [2002] EWCA CIV 1855. An ethnic Albanian from Kosova arrived in England from France and claimed asylum. The German authorities later accepted responsibility for the asylum claim under the Dublin Convention. The Secretary of State then issued the statutory certificate and the applicant commenced judicial review proceedings on the ground that Germany was not the responsible state under the Dublin Convention. The judgement of Latham LJ recites that the provisions of the Dublin Convention are not incorporated into domestic law; that the Dublin Convention is concerned with the allocation of responsibility for considering claims in caring for refugees and is not concerned directly with the provision of rights or entitlements to individual asylum seekers; the question in the case was whether or not in some way or other, although not directly affecting the rights of the appellant, the Dublin Convention restrained the behaviour of the Secretary of State towards him; the appellant contended that he had a legitimate expectation that he would be dealt with in accordance with the Dublin Convention, that is that the conditions for Germany's acceptance of responsibility had been met and that the Secretary of State had complied with the obligations as to the provision of information between States. Latham LJ rejected the argument at paragraph 26 by stating that it was difficult to say that the Dublin Convention itself could give rise to a legitimate expectation upon which an individual asylum seeker could rely; however even if that hurdle could be overcome the policy of the Secretary of State was clearly set out in paragraph 345 of the Immigration Rules which would overcome any expectation generated by the Convention.

> "The only legitimate expectation therefore which the appellant could have is that he would be dealt with in accordance with Section 2 of the Asylum and Immigration Act 1996 and para. 345 of the Immigration Rules. Among other matters the paragraph makes it clear that viz a viz the asylum seeker he has no obligation of consultation. The appellant was treated in accordance with these provisions and accordingly this argument fails."

[17] However the applicants do not rely on legitimate expectation arising from the Dublin Convention but from the statements made in the literature issued on behalf of the Secretary of State. The applicants' legitimate expectations were that they would be dealt with in accordance with the legislation and the rules and the policy of the Secretary of State. The statements and practices arising under the policy establish that the applicants would be informed of any applications and decisions to transfer an asylum application to another country. Such statements and the associated practice

involved notification to the applicants for asylum where the cases had been referred to a third country. There were clear and unequivocal statements that applicants for asylum would be informed of any third country applications.

[18] The respondent contends that the statements indicated that the applicants would be informed of third country applications, by which the applicants would be given notice after the applications had been made, rather than receiving notice in advance of the applications, and thus, says the respondent, there could be no expectation of being accorded an opportunity to make representations in relation to decisions to make third country applications. In dealing with an asylum application that involves the Dublin Convention there are for present purposes three separate stages to the process involved in the proposed transfer. First there is the decision to refer the asylum application to the third country, secondly there is the issue of the statutory certificate and the order for the removal of the applicant to the third country and thirdly there is the decision on any appeal from an order for removal. The first stage operates in the international plane. The effect of the respondent's statement is, as the respondent contends, that notice will be given of the application after the event so there could be no expectation of an opportunity to make representations at the first stage of the process prior to the application to the third country. Any representations would therefore relate to the second stage of the process, namely the decision to remove the applicant to the third country. At this second stage of the process the respondent is considering any compelling or compassionate grounds for not following the normal course at that stage, namely removal to the third country.

[19] The statements indicated that the applicants would be "informed" of any such applications. Did the statements extend merely to keeping the applicants informed of the state of the cases, as the respondent contends, or did they amount to obligations to afford the applicants the opportunity to make representations on the basis that the cases should not be transferred to the third country? Nicola Claire Mortlock is an Executive Officer in the Immigration Service Border Control Operations of the Immigration and Nationality Directorate of the Home Office and a case worker in the third country unit. It is apparent from the statement of Ms Mortlock that on being informed of the third country application an applicant might make representations that would be considered by the respondent on the basis that he should not be returned to a third country. It is there recognised that in practice an applicant who receives the requisite notification may elect to make representations and in that event his representations will be taken into account.

[20] The expectations that may be classed as legitimate are a matter for the objective assessment of the Court. Having considered the statements and the practice of the respondent there is a clear implication that there will be an

opportunity for representations on notice being given of the third country application, which representations will be taken into account by the respondent in deciding whether there are compelling or compassionate grounds not to follow the normal course and order the removal of the applicant to the third country.

The discretion to refuse relief.

[21] The respondent contends that if the applicants were denied an opportunity to make representations on the decisions to remove the applicants before those decisions were first made, both applicants have nevertheless had the opportunity to make representations for the purposes of appeals against the decisions and for the purposes of the Judicial review and there are no grounds that have not been or will not be considered. In exceptional cases the Court may refuse a remedy if it is established that an irregularity makes no difference to the outcome of the process. It is necessary to determine if the opportunity to make representations for the purposes of appeals against the decisions for removal has afforded to the applicants all that they would have achieved had they made representations prior to the decisions for removal to the Republic of Ireland.

[22] Wade and Forsythe's Administrative Law (7th ed.) at page 533 caution against the conclusion that an applicant's representations "would make no difference" as that might compromise the principle that the procedures and the merits should be kept strictly apart. Nevertheless it is recognised that there may be exceptional cases where it is acceptable to consider whether the absence of the irregularity would alter the outcome. Bingham LJ adopted such an approach in R v Chief Constable of Thames Valley Police ex parte Cotton [1990] IRLR 64 where he set out six reasons why such a holding should be a rare event. The six reasons were set out again in Bingham LJ's article "Should Public Law Remedies be Discretionary?" {1991] PL 64 at 72 –

(1) Unless the subject of the decision has had an opportunity to put his case, it may not be easy to know what case he could or would have put if he had had the chance.
(2) As memorably pointed out by Megarry J in John v Ross [1970] Ch 345. 402, experience shows that that which is confidently expected is by no means always that which happens.
(3) It is generally desirable that decision makers should be reasonably receptive to argument, and it would therefore be unfortunate if the complainant's position became weaker as the decision maker's mind became more closed.
(4) In considering whether the complainant's representations would have made any difference to the outcome, the court may unconsciously stray from its proper province of reviewing the

propriety of the decision making process into the forbidden territory of evaluating the substantial merits of the decision.

(5) This is a field in which appearances are generally thought to matter.

(6) Where a decision maker is under a duty to act fairly the subject of the decision may properly be said to have a right to be heard, and rights are not be lightly denied.

[23] Appeals against immigration decisions are provided for under the Nationality, Immigration and Asylum Act 2002 (section 82(1)). Grounds of appeal include the decision being unlawful under section 6 of the Human Rights Act 1998 as being contrary to the European Convention on Human Rights. Additional grounds of appeal include the appellant being a member of the family of an EEA national and the decision breaching rights under the Community Treaties in respect of entry to or residence in the United Kingdom, that the decision is otherwise not in accordance with the law and that the person making the decision should have exercised differently a discretion conferred by immigration rules (section 84(1)). A person may not appeal while he is in the United Kingdom if a certificate has been issued under section 11 of the 1999 Act except where he has made a human rights claim and the Secretary of State has not certified that in his opinion the human rights claim is clearly unfounded (section 93).

[24] The first applicant appealed against the decision for removal. He set out six grounds of appeal, the first three being under the European Convention and the other three being under the additional grounds referred to above.

The first ground was that the decision was incompatible with Article 3 of the European Convention, being the right not to be subjected to inhuman and degrading treatment, and in that regard he relied on the medical condition of his wife and daughter.

The second ground was that the decision was incompatible with the Article 6 right to a fair trial. The particulars were that there had been no substantive consideration of his asylum application; that he had not been advised of the request under the Dublin Convention and had been denied the right to make representations; that he had not been provided with a copy of the request under the Dublin Convention so as to determine compliance with the Convention; that United Kingdom asylum applications are dealt with more promptly and that there was an obligation to afford best protection to the applicants rights.

The third ground was that the decision was incompatible with the applicant's Article 8 right to respect for private and family life. The particulars were that the applicant had settled and formed relationships and had support in Northern Ireland and again relying on the medical condition

of his wife and daughter and that the removal of the applicant was not necessary and was disproportionate.

The fourth ground concerned the status of the applicant's daughter as an Irish citizen with a right to reside in the United Kingdom.

The fifth ground was that the decision was not in accordance with the law in that by requiring a substantive application the applicant had a legitimate expectation that his case would be considered in the United Kingdom and that the decision failed to take account of all relevant considerations and was unreasonable.

The sixth ground relied on the above considerations to establish that the discretion should have been exercised differently.

[25] By letter dated 24 July 2003 the Home Office responded to the effect that the applicant was properly returnable to Ireland under the provisions of Section 11 of the Immigration and Asylum Act 1999 and the terms of the Dublin Convention and there were no sufficiently compassionate or compelling reasons that would warrant departing from usual practice. A response was set out to the applicant's claims under Article 3 and Article 8 and Article 6 of the European Convention and the Secretary of State certified that such claims were clearly unfounded. The applicant was informed of his right to appeal against the decision under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 but that under Section 93(2) of the Act the right to appeal could only be exercised from abroad.

[26] The applicant's fourth ground of appeal concerned the status of the applicant's daughter and raised related Community rights. This application for Judicial Review was adjourned for a period pending the decision in Chen on the issue of community rights and the applicant does not advance any such claim in these proceedings.

The applicant's fifth ground of appeal raised the issue of legitimate expectation that by completing a substantive application for asylum in the United Kingdom the applicant was entitled to have that application considered in the United Kingdom. However as the forms relied on by applicant make clear his application may fall to be considered by a third country there can be no legitimate expectation that his asylum application would be considered in the United Kingdom.

The remaining aspects of the applicant's fifth ground and the sixth ground of appeal may be considered on the composite basis that all of the applicant's factors should have led to the applicant's case being considered in the United Kingdom rather than the Republic of Ireland.

[27] The first applicant further set out in argument the grounds on which he would have relied had the opportunity been given to make representations on the transfer of the asylum application to the Republic of Ireland.

The first ground was that the United Kingdom retains the discretion to deal with the asylum application even if the case falls within the terms of the Dublin Convention. This is provided by Article 3(4) of the Dublin Convention and Article 3(2) of Council Regulation (EC) 343/2003. This residual discretion is recognised in the Home Office letter of 24 July 2003 where it is contemplated that there may be compassionate or compelling reasons that would warrant departure from what is described as the usual practice, namely returning the applicant to a third country. Further the Home Office letter of 11 July 2003 refers to the Immigration Rules that provided that an asylum application will "normally" be refused without substantive consideration and transfer will be made to a safe third country and it was stated that there were no grounds for departing from that practice in the applicant's case. So consideration was given to the existence of any grounds for not transferring the applicant in the present case.

The applicant's second ground alleges failure to take account of the rights of the applicant's daughter. It is contended that with the applicant's removal his daughter would be "constructively removed" and the respondent would thereby fail to apply it own criteria that provides that removal to a third country involves applicants who are not nationals or citizens of the country of destination. However the status of the applicant's daughter is well to the fore in the grounds of appeal already advanced. In her statement Ms Mortlock refers to the birth of the applicant's daughter and to the decision of the Supreme Court of Ireland in Fajujonu [1995] IR 151 and of the further decision of the Supreme Court in O and L [January 2003].

The third ground refers to a Home Office policy where the claimant would not normally be removed on third country grounds if he had a minor child in the United Kingdom. Authorities to the effect that the removal of a minor had been held to be cruel were not relied on.

The fourth ground questions the basis of the "many reasons including case specific reasons and administrative reasons" why Dublin Convention cases might be considered in the United Kingdom. Reference is made to a number of other applicants from Zimbabwe who were said to have been properly returnable under the Dublin Convention but have had their substantive asylum claims dealt with in the United Kingdom. The respondent deals with one example where the respondent had been suspicious but had been unable to establish that the applicant had entered the United Kingdom from a safe third county.

The applicant's fifth ground relies on the "constructive removal" of the applicant's daughter and the related community rights to travel in the community and reside in a Member State. Ms Mortlock states that the applicant has failed to demonstrate either that the child is exercising free movement rights to receive services or that she has sufficient resources to live without recourse to public funds. The applicant does not advance dependent community rights.

[28] The second applicant also set out in argument the grounds on which he would have relied had the opportunity been given to make representations on the transfer of the asylum case to the Republic of Ireland. The arguments correspond to those relied on by the first applicant as applied to the second applicant's circumstances.

[29] I have not been satisfied that any representations made by the applicants in relation to the decisions to remove the applicants from the United Kingdom would necessarily have led to the same result. The decisions to remove include an assessment of any compelling or compassionate grounds for not applying the normal approach that the applicants be removed, while appeals against the decisions concern the specified statutory grounds. The first applicant refers to a number of Zimbabwean citizens having their asylum applications determined in the United Kingdom where they could have been removed to the Republic of Ireland. The respondent refers to the "many reasons, including case specific and administrative reasons" why all such cases are not ordered to be removed. While other individual cases cannot be discussed by the respondent it is clear that there are unspecified case specific and administrative reasons for dealing with asylum applications from Zimbabwean citizens in the United Kingdom when they have first arrived in the EC in the Republic of Ireland. The first applicant's human rights grounds of appeal have been rejected and the other grounds remain to be considered once the first applicant has been removed. Counsel for the respondent in each case contend that the matters advanced on behalf of the applicants in argument have in effect been considered by the respondent or will be considered upon the removal and cannot alter the decisions for removal. The aftermath of the decision in the first applicant's case was engaged to a large extent in the issue of the entitlements of the first applicant and his wife as a result of the birth of their daughter in the United Kingdom. The aftermath of the decision in the second applicant's case was engaged to a large extent in the issue of the arrest and detention of the second applicant. The focus of the aftermath in each case may tend to cloud the original decisions. Overall I take account of the factors identified by Lord Bingham and reject the respondent's arguments for a refusal of relief to the applicants.

[30] The application for Judicial Review of the first applicant had challenged the rejection of the human rights claim. No arguments were advanced on this separate ground of challenges. However, apart from the issue of representations dealt with above I am satisfied that the grounds relied on are unfounded for the reasons relied on in the respondent's letter of reply.

Conclusion.

[31] The appropriate remedy is that the respondent should consider the decisions to remove the applicants in the light of the representations that the applicants might make to the effect that their asylum applications ought to be dealt with in the United Kingdom. This should apply to the first applicant's wife even though she did not apply for Judicial Review as her case has been processed with the first applicant's case. A quashing of the decisions made in respect of the applicants may, by reason of the effect of time limits, impact on the capacity of the respondent to renew the decisions to remove the applicants, if that would be the outcome of reconsideration, thereby removing any option from the respondent other than to deal with the asylum applications in the United Kingdom. To preserve the respondent's options it is not proposed to quash the decisions.

[32] On the question of relief for the applicants section 21 of the Judicature (Northern Ireland) Act 1978 provides that -

> " ……where on an application for judicial review—
>
> (a) the relief sought is an order of certiorari; and
>
> (b) the High Court is satisfied that there are grounds for quashing the decision in issue,
>
> the court may, instead of quashing the decision, remit the matter to the lower deciding authority concerned, with a direction to reconsider it and reach a decision in accordance with the ruling of the court or may reverse or vary the decision of the lower deciding authority."

[33] The applications will be remitted to the respondent under section 21 of the 1978 Act with a direction to consider the representations to be made by the applicants and to reconsider whether to proceed with the order for removal of the applicants or to deal with the applications in the United Kingdom.