

Annual Policy Report on Migration and Asylum 2013: Ireland

Corona Joyce
Egle Gusciute

June 2015

EMN

European Migration Network



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The Irish National Contact Point of the European Migration Network, EMN Ireland, is located at the Economic and Social Research Institute (ESRI).

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The opinions presented in this report are those of the authors and do not represent the position of the Irish Department of Justice and Equality, the European Commission Directorate-General Home Affairs, or the Economic and Social Research Institute.

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Abbreviations and Irish Terms

AHTU	Anti Human Trafficking Unit
AVATS	Automated Visa Application and Tracking System
CJEU	Court of Justice of the European Union
CTA	Common Travel Area
DAA	Dublin Airport Authority
Dáil	Parliament, lower house
DRC	Democratic Republic of Congo
EASO	European Asylum Support Office
ECHR	<i>European Convention on Human Rights</i>
ECJ	European Court of Justice
ECRE	European Council on Refugees and Exiles
ECRI	European Commission Against Racism and Intolerance
ECtHR	European Court of Human Rights
EDAL	European Database of Asylum Law
ERF	European Return Fund
EU	European Union
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU
Gardaí/ Garda Síochána	Police
GNIB	Garda National Immigration Bureau
HEA	Higher Education Authority
HSE	Health Services Executive
HTICU	Human Trafficking Investigation and Co-ordination Unit
I/NGO	Intergovernmental/Non-Governmental Organisation
IIP	Immigrant Investor Programme
INIS	Irish Naturalisation and Immigration Service
IRC	Irish Refugee Council
MRCI	Migrant Rights Centre Ireland
NASC	The Irish Immigrant Support Centre

NERA	National Employment Rights Authority
Oireachtas	Parliament, both houses
OPMI	Office for the Promotion of Migrant Integration
ORAC	Office of the Refugee Applications Commissioner
PISA	Programme International Student Assessment
PPSN	Personal Public Service Number
QQI	Quality and Qualifications Ireland
RAT	Refugee Appeals Tribunal
RIA	The Reception and Integration Agency
SIS	Schengen Information System
STEP	Start-up Entrepreneur Programme
Tánaiste	Deputy Prime Minister
Taoiseach	Prime Minister
TFEU	Treaty on the Functioning of the European Union
UKBA	United Kingdom Border Agency
UNHCR	United Nations High Commissioner for Refugees
VAC	Visa Application Centres
VFM	Value for Money
VIS	Visa Information System

Executive Summary

The purpose of this report is to provide an overview of trends, policy developments and significant debates in the area of asylum and migration during 2013 in Ireland.

An estimated 166,000 new applications (including for visas, residence, protection and citizenship) were received by the Irish Naturalisation and Immigration Service (INIS) during 2013. A total of almost 176,600 decisions were issued, and over 97,100 new or renewed registrations were issued by the Garda National Immigration Bureau (GNIB). At the end of 2013, approximately 120,000 non-EEA nationals had permission to remain in the State, the majority for employment or study purposes and primarily from India, Brazil and China.¹

Central Statistics Office (CSO) figures for 2013 show that total net outward migration has remained broadly consistent with the previous 12-month period (33,100 compared with 34,400 respectively). The *Population and Migration Estimates 2013* data show migration between April 2008 and April 2013. Immigration to Ireland decreased by nearly 51 per cent (or from 113,500 in 2008 to 55,900 in 2013). Immigration from the EU Accession States has had the most significant decline (nearly 80 per cent). Emigration from Ireland has risen by almost 81 per cent (or from 49,200 to 89,000) in the same period. Emigration of Irish nationals has had the most significant increase of almost 289 per cent.²

PRESIDENCY OF THE EU

Ireland held the Presidency of the EU for the first six months of 2013. Developments that occurred during the Irish Presidency related to asylum and migration in the area of Justice and Home Affairs (JHA) are detailed in Appendix 3.

¹ Irish Naturalisation and Immigration Service (January 2014). 'Immigration in Ireland – 2013 in Review'. *Press Release*. Available at www.inis.gov.ie.

² Central Statistics Office (2013). *Population and Migration Estimates, April 2013*. Available at www.cso.ie.

LEGISLATION

Four pieces of secondary legislation by virtue of statutory instruments and relevant to the migration and international protection area were introduced in 2013:

- *European Union (Accession of the Republic of Croatia) (Access to the Labour Market) Act 2013 (S.I. No. 21 of 2013)*
- *Immigration Act 2004 (Atypical Working Scheme)(Application for Permission) (Fee) Regulations 2013 (S.I. No. 324 of 2013)*
- *European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013)*
- *Immigration Act 2004 (Visas)(Amendment) Order 2013 (S.I. No. 428 of 2013).*

Under the *European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013)*, responsibility for the processing of applications for subsidiary protection, both new cases and those on hand, transferred from the Minister for Justice and Equality to the Office of the Refugee Applications Commissioner. Amongst other things, it provides for an appeal to the Refugee Appeals Tribunal regarding negative decisions made by the Refugee Applications Commissioner.

The Criminal Law (Human Trafficking) (Amendment) Act 2013 was enacted in 2013 and gives effect to certain provisions of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. It criminalises trafficking for the purposes of forced begging and trafficking for criminal activities.

The Immigration, Residence and Protection Bill 2010 had not been republished by the end of 2013 as anticipated.

INTERNATIONAL STUDENTS

Approximately one-third of all permissions to remain in the State as of the end of 2013 were for study or training purposes, with 39,600 such permissions registered. Of the overall number, the majority of registrations related to degree programmes (39 per cent), followed by language courses (27 per cent), non-degree level further education courses (21 per cent) and other forms such as secondary education (13 per cent).

During 2013, changes in third-level fee arrangements for migrant students residing in Ireland were introduced. Non-EEA nationals who acquire EEA citizenship during their college course will no longer be required to pay full tuition fees.³

In April 2013 the Minister for Education and Skills launched new Government of Ireland international scholarships to strengthen links with 'emerging markets' such as China, India, Brazil and also with the United States.⁴

Ireland continued to participate in the 'Researcher Directive' in 2013. During 2013, there were 318 new agreements and 192 extensions under the 'Researcher Directive', *Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research*.⁵

LABOUR MARKET

There were 3,863 employment permits issued to non-EEA nationals during 2013, with 3,034 new permits and 829 renewals.⁶

A number of changes were made to the employment permits regime in 2013 to facilitate access for highly skilled workers. These included the opening of Green Card occupations to all sectors; efforts to simplify the application process; a reduction in advertising requirements for employers prior to offering employment to third-country nationals; permitting of Intra-Corporate Transfer Employment Permit and Contract Service Provider Employment Permit holders to apply for other employment permits; and the removal of various restrictions to applicants from within Ireland if they have a valid legal status and Garda National Immigration Bureau number and are applying for an eligible occupation.

In addition, the Highly Skilled Occupations List⁷ was broadened and updated in line with known shortages of key skills in the labour market. The primary change

³ Department of Education and Skills (July 2013). 'Minister Quinn announces changes to third-level fees to benefit migrant students'. *Press Release*. Available at www.education.ie/en.

⁴ Department of Education and Skills (22 April 2013). '22 April, 2013 - Minister Quinn launches new Government of Ireland International Scholarships to strengthen links with emerging markets'. *Press Release*. Available at www.education.ie/en.

⁵ Irish Naturalisation and Immigration Service (March 2014).

⁶ Department of Jobs, Enterprise and Innovation. Available at www.djei.ie.

relates to eligible job titles now applying across all sectors rather than being confined to a particular area. The Ineligible Categories of Employment for Employment Permits list of occupations was also updated to cater for particular shortages in relation to certain occupations requiring a non-European Economic Area language.⁸

In May 2013 Ireland announced that it would not be exercising an option under the Accession Treaty to restrict access to Ireland's labour market for nationals of Croatia. This decision follows an assessment made following analysis of a possible impact on the Irish labour market. It was concluded that it was 'highly unlikely that significant numbers of Croatians wish to migrate to Ireland'.⁹

During 2013 the Departments of Justice and Equality, and Jobs, Enterprise and Innovation announced a series of initiatives related to changes for highly-qualified workers; a Highly Skilled Job Interview Authorisation and an Atypical Working Scheme.

Highly Skilled Job Interview Authorisation

A Highly Skilled Job Interview Authorisation, announced in April 2013 and effective from 15 July, was introduced on a pilot basis to provide 'permission to enter the State on a temporary basis' to non-EEA nationals who have been invited by an employer based in the State to attend an interview for employment in a 'recognised highly skilled shortage occupation' as listed on the Department of Jobs, Enterprise and Innovation website.¹⁰

Atypical Working Scheme

An Atypical Working Scheme was also announced on a pilot basis in April 2013, effective from 2 September 2013. It provides an immigration permission for certain categories of workers such as those employed in the State on a short-

⁷ The Highly Skilled Occupations list refers to occupations in respect of which Green Card employment permit applications may be made where remuneration is between €30,000 and €59,999. All occupations (unless not in the public interest or listed on the Ineligible Categories of Employment for Employment Permits (see www.djei.ie/labour/workpermits/ineligiblecategoriesforemploymentpermits.htm) are eligible in all sectors with remuneration of €60,000 or higher. See Highly Skilled Occupations List at www.djei.ie/labour/workpermits/highlyskilledoccupationslist.htm.

⁸ See Department of Jobs, Enterprise and Innovation (April 2013). 'Employment Permits – What's New 10th April 2013'. Available at www.djei.ie/labour/workpermits.

⁹ Department of Jobs, Enterprise and Innovation (24 May 2013). 'Statement by the Department of Jobs, Enterprise and Innovation re Labour market issues relating to 2011 EU Accession Treaty'. Available at www.djei.ie/index.htm.

¹⁰ See Irish Naturalisation and Immigration Service (2013). 'New Initiatives between the Department of Justice and Equality (INIS) and the Department of Jobs, Enterprise and Innovation'. Available at www.inis.gov.ie.

term, contract basis (between 14 and 90 calendar days inclusive), non-EEA nationals employed on a trial basis (not exceeding 90 days inclusive from date of entry), and other categories of employment which may not be covered by the Employment Permits Acts.¹¹

FAMILY REUNIFICATION

In December 2013, the Minister for Justice, Equality and Defence published new policy guidelines regarding family reunification applications in the immigration system in Ireland. Described as a ‘comprehensive statement’ of Irish immigration policy in the area, the policy guidelines had the stated aim of providing ‘greater transparency in the immigration decision making process’ as well as to provide information on the ‘reasoning’ behind such policies.¹² The policy guidelines did not introduce new rights or procedures but outlined ‘greater detail on how the Minister’s discretion is intended to be applied’ for both applicants and decision-makers, particularly in the ‘essentially automatic’ nature of family reunification in the case of a spouse/minor children of a refugee or holder of subsidiary protection status and for family members under EU Treaty Rights.

MIGRANT INTEGRATION

In 2013, the Office for the Promotion of Migrant Integration (OPMI), an Office of the Department of Justice and Equality, established a new Non-Governmental Organisation (NGO) forum on an informal basis. It is intended that the Forum will meet regularly (twice to three times a year) to discuss integration issues and developments with key NGOs working in the immigrant integration area. The Forum met twice during 2013.

CITIZENSHIP

Over 30,000 applications for citizenship were decided during 2013, with 18 citizenship ceremonies held. A reduction in processing times was also noted in an year-end review, with over 70 per cent of standard applications decided within a six-month timeframe.¹³

¹¹ *ibid.*

¹² Department of Justice and Equality (31 December 2013). ‘Shatter Statement: Shatter publishes immigration policy guidelines on Family Reunification’. *Press Release*. Available at www.inis.gov.ie.

¹³ Irish Naturalisation and Immigration Service (January 2014). ‘Immigration in Ireland – 2013 in Review’. *Press Release*. Available at www.inis.gov.ie.

VISA POLICY

Provisional 2013 figures indicate some 95,000 entry visa applications were received during 2013, with an overall approval rate of 91 per cent. Over half of all applications were received from nationals of India (16 per cent), Russia (15 per cent), China (11 per cent), Nigeria (6 per cent) and Turkey (5 per cent).¹⁴

In November 2013, Thailand was added to the list of applicable countries under the Visa Waiver Scheme, bringing the number of countries covered by the Scheme to eighteen.¹⁵

Changes to Immigrant Investor Programme

In July 2013, changes to the Immigrant Investor Programme were announced, effective from mid-July. The investment threshold for the option of a Government Bond reduced from €2 million to €1 million (from a five-year bond at 1 per cent per annum to a 0 per cent interest rate). In addition, the financial requirement for an enterprise investment was halved from €1 million in an Irish enterprise for three years to a €500,000 requirement for the same time. A new category of investment was created in a managed fund to invest in Irish businesses and projects; an investment of €500,000 is required. Some decreases in terms of mixed investment involving property and group endowments is also provided for. A related change regarding the 'reckonability' of tuition fees paid to Irish tertiary educational establishments for the children of investors was also announced.¹⁶ At the time of announcement of the changes, it was noted that a total of nine applications have been approved under the Programme, with a project investment of over €10 million and predicted employment estimated at over 123 jobs.¹⁷

BORDER MONITORING

During 2013, automated border e-gates were tested at Dublin Airport for the first time. Approximately 115,000 passengers used the gates during the six-month trial. This use of automated border gates was cited as taking place in tandem with the 'civilianisation' of certain ports of entry functions at Dublin Airport.

¹⁴ *ibid.*

¹⁵ Irish Naturalisation and Immigration Service (14 November 2014). 'Minister for Justice, Equality and Defence, Alan Shatter, T.D., announces addition of Thailand to Visa Waiver Programme. Tourist and other short-stay visitor numbers likely to rise'. *Press Release*. Available at www.inis.gov.ie.

¹⁶ See Irish Naturalisation and Immigration Service (5 July 2013). 'Shatter announces changes to Immigrant Investor Programme'. *Press Release*. Available at www.inis.gov.ie.

¹⁷ *ibid.*

EUROPEAN AGENCY FOR THE MANAGEMENT OF OPERATIONAL COOPERATION AT THE EXTERNAL BORDERS OF THE MEMBER STATES OF THE EUROPEAN UNION (FRONTEx)

During 2013 Ireland continued to participate in activities of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). Limited cooperation between Frontex and Ireland is provided for via an annual application approved by the Frontex Management Board.¹⁸

Ireland participated in a total of five joint European return operations organised by Frontex during the year.

During 2013, Ireland continued to participate in meetings of the Frontex Risk Analysis Network and to provide relevant statistical data on a regular basis. It also participated in border guard training in the area of biometrics, common curriculum, false documents and return.

INTERNATIONAL PROTECTION

There was a continued decrease in applications for asylum in Ireland, with 946 applications received as of December. Of the applications received (938 new applications and eight re-applications) by the Office of the Refugee Applications Commissioner (ORAC) during 2013, the largest single number related to nationals of Nigeria (129 applications, representing 13.6 per cent of all applications), followed by nationals of Pakistan (91 applications, representing 9.6 per cent of all applications), Democratic Republic of Congo (72 applications, representing 7.6 per cent of all applications), Zimbabwe (70 applications, representing 7.4 per cent of all applications) and Malawi (55 applications, representing 5.8 per cent of all applications). Of the 1,122 cases processed to completion by ORAC during the year, there were 128 positive recommendations, 582 negative recommendations following interview, 252 other negative/withdrawn recommendations and 160 determinations made under the Dublin Convention/Regulation. One case was

¹⁸ Ireland's participation in Frontex is governed by its participation in Schengen activities. In June 2000 Ireland applied to take part in some aspects of Schengen, namely police and judicial cooperation in criminal matters, the fight against drugs and the Schengen Information System (SIS). The Council adopted a decision approving Ireland's request on 28 February, 2002. It is necessary for Ireland to put new legislative and other measures in place to give effect to the relevant elements of the Schengen *acquis*. It has been noted by the Department of Justice and Equality that Ireland is actively following up on these activities.

considered ‘unprocessable’.¹⁹ Some 248 applications were outstanding as of year-end.

ORAC received applications for asylum from 20 Unaccompanied Minors in 2013. This represented 2.1 per cent of all applications for asylum. ORAC referred 34 persons to the Team for Separated Children in the course of the year. 17 of these were reunited with their families, nine were deemed to be adult, six are being processed as unaccompanied minors.²⁰

Reception of Applicants for International Protection

At the end of December 2013, some 4,360 persons were in accommodation centres under contract to the Reception and Integration Agency (RIA), a decrease of just under 10 per cent on the 2012 figure.²¹

The issue of direct provision for applicants of international protection continued to attract much media and parliamentary discussion during 2013, mainly centred on inspections of centres and suitability of accommodation for children.

TRAFFICKING

In 2013, 44 alleged victims of human trafficking were either reported to or detected by An Garda Síochána. Of this number 64 per cent (28) victims were adults and 36 per cent (16) were minors. The majority of the alleged victims of human trafficking were female, constituting 75 per cent (33).²²

DEPORTATION, DUBLIN REGULATION TRANSFERS AND VOLUNTARY RETURN

In 2013, almost 2,250 persons were removed from Ireland. A total of 1,890 persons were refused leave to land in Ireland at ports of entry. A further 209 persons were removed from Ireland by way of deportation orders made under Section 3 of the *Immigration Act 1999*. The main country of nationality of deportation orders effected in 2013 related to Nigeria, China, Mauritius, Albania and Pakistan.²³

¹⁹ Office of the Refugee Applications Commissioner (2014). ‘*Monthly Statistical Report December 2013*’. Available at www.orac.ie.

²⁰ Office of the Refugee Applications Commissioner (March 2014).

²¹ Reception and Integration Agency (2014). ‘*RIA Monthly Report December 2013*’. Available at www.ria.gov.ie.

²² Note figures provided are provisional. Correspondence with AHTU, October 2014.

²³ Irish Naturalisation and Immigration Service (March 2014).

A total of 84 transfer orders were effected following positive determinations by the Office of the Refugee Applications Commissioner (ORAC) under the Dublin Regulation. Some 66 EU nationals were transferred on foot of an EU Removal Order.²⁴

A total of 425 persons were assisted to return home voluntarily during 2013, with 340 persons in receipt of voluntary return and reintegration assistance from the International Organization for Migration (IOM) office in Dublin and 85 availing of administrative assistance from the Irish Naturalisation and Immigration Service (INIS).²⁵

‘LEAVE TO REMAIN IN IRELAND’

During 2013 a total of 922 persons were granted leave to remain in Ireland under Section 3 of the *Immigration Act 1999 (as amended)*.²⁶

READMISSION AGREEMENTS

During 2013 Ireland completed the necessary parliamentary procedures to opt-in to 11 EU readmission agreements (Sri Lanka, Russia, Pakistan, Macao, Albania, Bosnia, Macedonia, Montenegro, Moldova, Serbia and Georgia) in accordance with Article 4 of the Protocol to the TFEU. The Council and Commission were notified accordingly and Commission procedures must be completed before the opt-in becomes fully binding on Ireland. This process is expected to be completed shortly after which all the third countries concerned will be informed that Ireland is now bound by these agreements and the necessary arrangements, implementing protocols etc. will be implemented to bring the agreements into force.²⁷

²⁴ *Ibid.*

²⁵ Irish Naturalisation and Immigration Service (January 2014). ‘Immigration in Ireland – 2013 in Review’. *Press Release*. Available at www.inis.gov.ie. Also Irish Naturalisation and Immigration Service (March 2014).

²⁶ Irish Naturalisation and Immigration Service (March 2014).

²⁷ Irish Naturalisation and Immigration Service (December 2013).

Chapter 1

Introduction

This report is the tenth in a series of Annual Policy Reports, a series which is intended to provide an overview of trends, policy development and significant debates in the area of migration and asylum during consecutive periods beginning in January 2003. Previous comparable Annual Policy Reports are also available for a number of other EU countries participating in the European Migration Network.

In accordance with Article 9(1) of Council Decision 2008/381/EC establishing the EMN, each EMN NCP is required to provide a report each year describing the migration and asylum situation in the Member State, which shall include policy developments and statistical data. The purpose of the EMN report is to continue to provide an insight into the most significant political and legislative (including EU) developments, as well as public debates, in the area of migration and asylum. The *EMN Annual Report on Migration and Asylum Policy 2013: Ireland* will cover the period 1 January 2013 to 31 December 2013.

Each Member State is tasked with documenting the state of implementation of EU legislation and the impact of European policy developments at national level. Nation-specific significant developments (political, legal, administrative, etc.) in the area of migration and international protection are to be described by each Member State. Finally, Member States are asked to comment on relevant debates. For the year 2013, this report will also be a tool to evaluate the implementation of the 'Action Plan Implementing the Stockholm Programme'²⁸ and by the European Asylum Support Office (EASO) to inform its annual report on the situation of asylum in the EU. 'EMN Informs' will also be produced to provide an EU-wide overview on specific topics.

²⁸ COM(2010)1471 final of 20.4.2010.

1.1 STRUCTURE OF ASYLUM AND MIGRATION POLICY

1.1.1 *General Structure of the Political System*

Ireland is a parliamentary democracy. The two houses of the Oireachtas (Parliament) are Dáil Éireann (the House of Representatives) and Seanad Éireann (the Senate). The Constitution was enacted in 1937 and it defines the powers and functions of the President, the Government and the Oireachtas. The Government is led by the Taoiseach (the Prime Minister, Enda Kenny T.D., as of year-end 2012) and Tánaiste (Deputy Prime Minister, Eamon Gilmore, as of year-end 2012). Each of the Dáil's 166 members is a Teachta Dála (T.D.), who is directly elected by the people. General elections take place at least once every five years. A general election took place in February 2011. At the end of 2013, the government was the 29th Government of Ireland which was formed on 9 March 2011. It comprised a coalition of Fine Gael and the Labour Party.

There were 16 government departments as of the end of 2013, with each headed by a Minister, or Prime Minister in the case of the Department of the Taoiseach.²⁹

All Irish citizens who have reached the age of 18 years and who are not disqualified by law have the right to vote at each election and referendum. British citizens can vote at Dáil elections, European elections and local elections. Other European Union (EU) citizens may vote at European and local elections. Non-EU citizens may vote at local elections only.³⁰ Details regarding entitlements, how to register and how to vote are on the website of the Office for the Promotion of Migrant Integration (OPMI) as well as other more local initiatives such as that by Dublin City Council.

1.1.2 *Institutional Context*

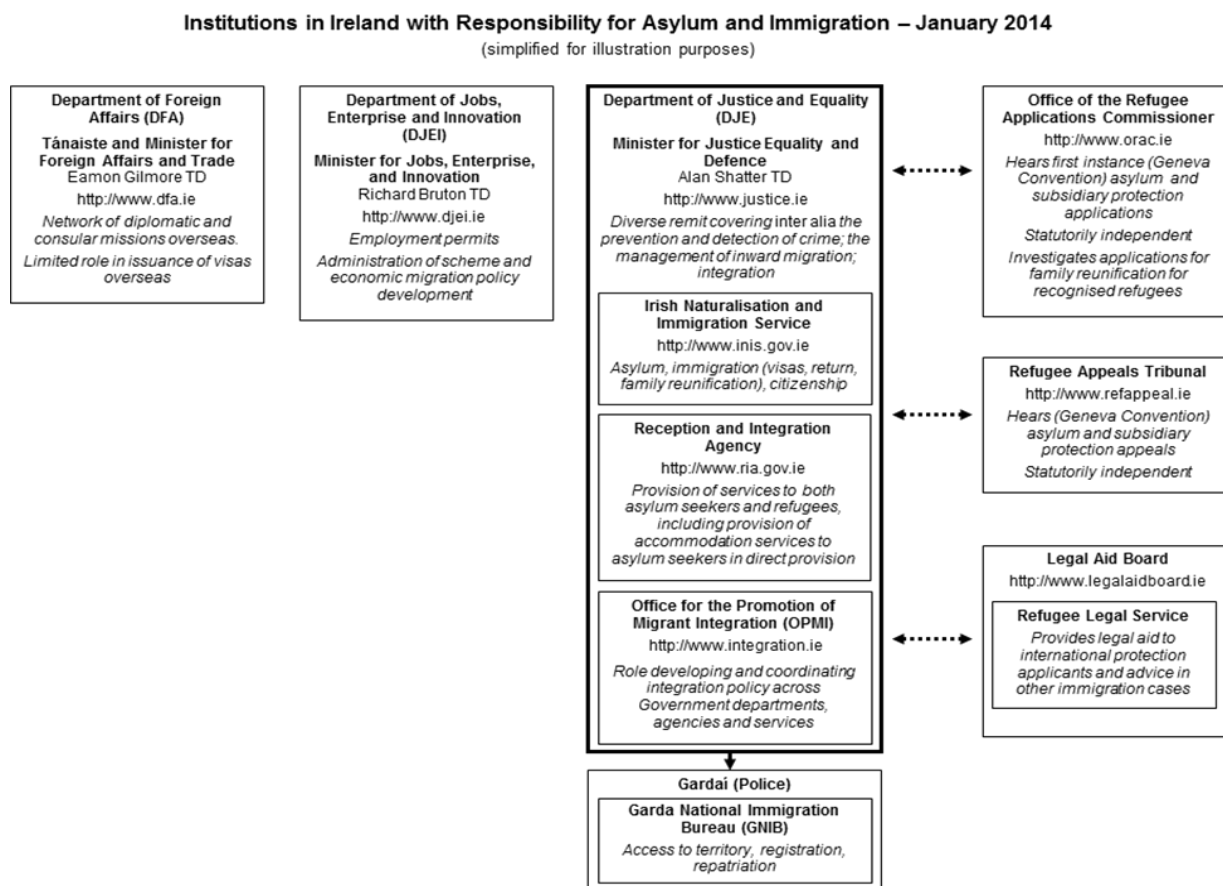
Three departments are involved in migration management in Ireland: Department of Justice and Equality, Department of Jobs, Enterprise and Innovation and the Department of Foreign Affairs.

²⁹ Department of Agriculture, Food and the Marine; Department of Arts, Heritage and the Gaeltacht; Department of Children and Youth Affairs; Department of Communications, Energy and Natural Resources; Department of Defence; Department of Education and Skills; Department of Environment, Community and Local Government; Department of Finance; Department of Foreign Affairs and Trade; Department of Health; Department of Jobs, Enterprise and Innovation; Department of Justice and Equality; Department of Public Expenditure and Reform; Department of Social Protection; Department of the Taoiseach; and Department of Transport, Tourism and Sport.

³⁰ www.integration.ie.

In addition, the Department of Health and Children is responsible for administration of the care for unaccompanied third-country minors in the State.

FIGURE 1.1 Institutions in Ireland with Responsibility for Asylum and Immigration (January 2014)



Source: www.emn.ie.

1.1.2.1 Department of Justice and Equality

The Department of Justice and Equality³¹ is responsible for immigration management and the minister of that Department has ultimate decision making powers in relation to immigration and asylum. The Garda National Immigration Bureau (GNIB) is responsible for all immigration-related matters concerning Garda (police) operations in the State and is under the auspices of An Garda Síochána and, in turn, the Department of Justice and Equality. The GNIB enforces deportations and border control, and carries out investigations related to illegal immigration and trafficking in human beings. An Garda Síochána has personnel

³¹ www.justice.ie.

specifically dealing with immigration in every Garda district, at all approved ports and airports and at a border control unit attached to Dundalk Garda Station.

In addition to the Anti-Human Trafficking Unit³² within the Department of Justice and Equality, there are three other dedicated units dealing with this issue, namely the Human Trafficking Investigation and Co-ordination Unit in the Garda National Immigration Bureau (GNIB), the Anti-Human Trafficking Team in the Health Service Executive (HSE) and a specialised Human Trafficking legal team in the Legal Aid Board (LAB). Dedicated personnel are assigned to deal with prosecution of cases in the Director of Public Prosecutions (DPP) Office. Also involved is the New Communities and Asylum Seekers Unit within the Department of Social Protection which is tasked with providing assistance to suspected victims not in the asylum system, to make the transition from direct provision accommodation to mainstream services for the duration of their temporary residency.

The Irish Naturalisation and Immigration Service (INIS)³³ is responsible for administering the statutory and administrative functions of the Minister for Justice, Equality and Defence in relation to asylum, visa, immigration and citizenship processing; asylum, immigration and citizenship policy; and repatriation. The INIS also brings the Reception and Integration Agency (RIA)³⁴ under its aegis. The RIA is responsible for co-ordinating the provision of services to asylum seekers and those awaiting decisions on their applications for subsidiary protection/‘humanitarian leave to remain’. It also co-ordinates the provision of services such as health and education to asylum seekers in RIA accommodation. Since 2004 it has also been responsible for supporting the repatriation, on an ongoing basis and on behalf of the Department of Social Protection,³⁵ of nationals of the 12 new EU Member States who fail the Habitual Residency Condition attached to social assistance payments and require assistance in returning to their country of origin. It also provides accommodation to suspected victims of trafficking pending a determination of their case and during the 60-day recovery and reflection period.

With regard to applications for asylum and decision-making regarding the granting of refugee status under the *Geneva Convention 1951*, a two-tier structure exists for asylum application processing. This consists of the Refugee Applications Commissioner (commonly referred to as the Office of the Refugee

³² www.justice.ie/en/JELR/Pages/WP09000005.

³³ www.inis.gov.ie.

³⁴ www.ria.gov.ie.

³⁵ www.welfare.ie.

Applications Commissioner [ORAC]) and the Refugee Appeals Tribunal (RAT). These bodies have responsibility for processing first-instance asylum claims and for hearing appeals, respectively. On 14 November 2013, responsibility for processing all existing and future subsidiary protection applications transferred from the Irish Naturalisation and Immigration Service (INIS) to the Office of the Refugee Applications Commissioner (ORAC) under *Statutory Instrument No 426 of 2013, the European Union (Subsidiary Protection) Regulations 2013* (see Section 4.1.2). Both bodies make recommendations on asylum claims and hearings to the Minister of the Department of Justice and Equality who makes the final decision on whether refugee status is granted or refused.³⁶ Both ORAC and RAT have their own independent statutory existence. The Department also ensures they have input into the co-ordination of asylum policy.

The Refugee Applications Commissioner is also responsible for investigating applications by refugees to allow family members to enter and reside in the State and for providing a report to the Minister on such applications. According to the website of the Irish Naturalisation and Immigration Service, visa applications should not be made by or on behalf of family members until after an application for family reunification has been granted, and passport or travel documents have been obtained. Visa applications should be submitted to the Irish Embassy or Consulate in, or accredited to, the family member's country of residence.³⁷

The Refugee Documentation Centre (RDC)³⁸ is an independent library and research service within the Legal Aid Board.³⁹ The Refugee Legal Service (RLS)⁴⁰ was established in 1999 to provide a comprehensive legal aid service for asylum seekers and falls within the remit of the statutory, independent body of the Legal Aid Board. Limited immigration advice is included under the remit of the Legal Aid Board.⁴¹ Additionally, the Legal Aid Board provides legal services on certain matters to persons identified by the Human Trafficking Investigation and Co-ordination Unit of An Garda Síochána as 'potential victims' of human trafficking under the *Criminal Law (Human Trafficking) Act 2008*.

³⁶ But is bound by Regulation 20(1) of 2013 Regulations.

³⁷ See www.inis.gov.ie/en/INIS/pages/family_reunification_recognised_refugees. The documents needed for the visa application are:

- Fully completed and signed application form
- Original Passport or Travel Document
- Photograph which meets specified INIS requirements
- Fee
- Letter that issued from INIS to the refugee in Ireland granting family reunification.

³⁸ www.legalaidboard.ie/lab/publishing.nsf/Content/RDC.

³⁹ www.legalaidboard.ie.

⁴⁰ www.legalaidboard.ie/lab/publishing.nsf/Content/Refugee_Legal_Service.

⁴¹ The Legal Aid Board website states that 'Legal aid and advice is also provided in appropriate cases on immigration and deportation matters'. Available at www.legalaidboard.ie.

The Office for the Promotion of Migrant Integration (OPMI) also comes under the auspices of the Department of Justice and Equality.⁴² With a focus on the promotion of the integration of legal immigrants into Irish society, OPMI has a cross-Departmental mandate to develop, lead and co-ordinate integration policy across government departments, agencies and services. The OPMI also co-ordinates the resettlement of refugees admitted by Ireland under the United Nations Resettlement Programme and the administration of EU and national funding for the promotion of migrant integration.

1.1.2.2 Department of Jobs, Enterprise and Innovation

The Department of Enterprise, Jobs and Innovation⁴³ administers the employment permit schemes under the general auspices of the Labour Affairs Development Division:

- The Economic Migration Policy Unit⁴⁴ contributes to the Department's work in formulating and implementing labour market policies by leading the development and review of policy on economic migration and access to employment in Ireland.
- The Employment Permits Section⁴⁵ implements a labour market driven employment permits system in order to fill those labour skills gaps which cannot be filled through EEA supply. The Employment Permits Section processes applications for employment permits, issues guidelines, information and procedures, and produces online statistics on applications and permits issued.
- The Office of Science, Technology and Innovation deals with the administration of applications from research organisations seeking to employ third-country national researchers pursuant to *Council Directive 2005/71/EC on a specific procedure for admitting Third-Country Nationals for the purposes of scientific research*.

⁴² www.integration.ie.

⁴³ www.djei.ie.

⁴⁴ www.djei.ie/labour/migration/index.htm.

⁴⁵ www.djei.ie/labour/workpermits.

1.1.2.3 The Department of Foreign Affairs

The Department of Foreign Affairs⁴⁶ has responsibility for the issuance of visas via Irish Embassy consular services in cases where the Department of Justice and Equality does not have a dedicated Visa Office present within the country.⁴⁷ The Department of Foreign Affairs has operative function only and is not responsible for visa policy or decisions, which are the remit of the Department of Justice and Equality.

1.1.3 General Structure of the Legal System

As outlined in previous reports in this series, and notably by Quinn (2009), the modern Irish legal system is based on Common Law as modified by subsequent legislation and by the *Constitution of Ireland* (1937). The Oireachtas, consisting of the President and the two Houses of the Oireachtas, Dáil Éireann and Seanad Éireann, is the only institution in Ireland with power to make laws for the State. Bills can either be initiated by Private Members' Bills or by Government and while a Bill may be commenced in either House, it must be passed by both to become law.

The First Stage of the legislative process is the initiation of a Bill (a proposal for legislation) by presentation in either the Dáil or the Seanad. There then follows a series of Stages during which the Bill is examined, debated and amended in both houses. At the Final, or Fifth Stage, a debate takes place on a motion of whether the Bill would now constitute good law. If passed in the motion, the Bill is then passed to the other House, the Seanad, with Second to Fifth Stages repeated there. The Seanad has 90 days (or a longer time period if agreed by both Houses) to consider the Bill and either pass the Bill without amendment, return the Bill to the Dáil with amendments or reject the Bill completely. Once a Bill has been passed by both Houses, the Taoiseach presents a copy of the Bill to the President for signature. When the Bill comes to the President for signature, he or she considers whether the new Bill may conflict with the Constitution and may, after consultation with the Council of State, refer the question of whether or not the Bill is constitutional to the Supreme Court. Once the President has signed the Bill it becomes an 'Act' and has legal force.⁴⁸

'Statutory Instruments', a secondary form of legislation, are typically not enacted by the Oireachtas, and allow persons or bodies to whom legislative power has

⁴⁶ www.dfa.ie.

⁴⁷ See Quinn (2009) for further discussion.

⁴⁸ Quinn (2009) provides a discussion on the structure of the Irish legal system, specifically the place of immigration and asylum within it.

been delegated by statute to legislate in relation to matters arising from the operation of the relevant primary legislation. Statutory instruments are often used to implement EU Directives.

In accordance with the Constitution, justice is administered in public, in courts established by law, with judges appointed by the President on the advice of the Government, and independence is guaranteed in the exercise of their functions. The Irish court system is hierarchical in nature and there are four types of courts in Ireland which hear different types and levels of cases. In ascending hierarchical order the four types of courts are the District Court, the Circuit Court, the High Court and the Supreme Court. Of interest, Quinn (2009) notes how the Irish asylum process sits outside the Court system. Immigration matters are dealt with on an administrative basis by the Minister for Justice and Law Reform. The relevance of the Courts in relation to asylum and immigration cases is generally limited to judicial review.

As discussed in previous reports in this series, prior to the mid-1990s Irish asylum and immigration legislation was covered under the *Aliens Act 1935* (and Orders made under that Act),⁴⁹ together with the *EU Rights of Residence Directives* which came into effect after Ireland joined the European Union in 1973. Following a sharp rise in immigration flows from the mid-1990s, several pieces of legislation were introduced to deal with immigration and asylum issues in Ireland.

Regarding domestic legislation dealing with refugees and asylum seekers, the most notable piece of legislation is the *Refugee Act 1996*, as amended. In addition, *S.I. No. 518 of 2006* seeks to ensure compliance with *EU Directive 2004/83/EC*.⁵⁰ *S.I. No. 310 of 2008* amended the 2006 Regulations following the *Metock* judgment of the European Court of Justice (ECJ). Ireland is also a signatory to the 'Dublin Convention', and is subject to the 'Dublin Regulation'⁵¹ which succeeded that Convention and which determines the EU Member State responsible for processing asylum applications made in the EU. Domestic immigration law in Ireland is based on various legislation including the *Aliens Act of 1935* and Orders made under it; the *Illegal Immigrants (Trafficking) Act 2000*;

⁴⁹ *Aliens Order 1946 (S.I. No. 395 of 1946); Aliens (Amendment) Order 1975 (S.I. No. 128 of 1975).*

⁵⁰ *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of Third-Country Nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.* Quinn (2009) discusses both current and past development of legislation in great detail.

⁵¹ *Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a Third-Country National.*

and the *Immigration Acts 1999, 2003 and 2004*.⁵² The *Immigration, Residence and Protection Bill 2010* constituted a single piece of proposed legislation for the management of both immigration and protection issues, and was restored following a change of government on 23 March 2011; however it was subsequently withdrawn in 2012 and that same year the Minister for Justice and Equality announced his intention to republish the *Immigration, Residence and Protection Bill 2010* in 2013. The *European Communities (Free Movement of Persons) (Amendment) Regulations 2008 (S.I. No. 310 of 2008)* was published in July 2008 and amends the 2006 Regulation stipulating that third-country (non-EU) nationals married to EU citizens must have resided in another Member State before moving to Ireland.

1.1.3.1 Ireland's 'Opt-in Provision' Regarding EU Asylum and Migration Measures

Regarding the situation of Ireland concerning an 'opt-in' provision regarding EU measures in asylum and migration, under the terms of the *Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union*, Ireland does not take part in the adoption by the Council of proposed measures pursuant to Title V of the TFEU unless it 'opts-in' to the measure.

Ireland has given an undertaking to opt into measures that do not compromise the Common Travel Area with the UK, which also has an opt-in/opt-out facility.⁵³

Under Declaration number 56 to the TFEU, Ireland has declared its 'firm intention to exercise its right under Article 3 of the *Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice* to take part in the adoption of measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union to the maximum extent it deems possible.'⁵⁴

⁵² See Quinn (2009) for further discussion on this issue, particularly legislative development.

⁵³ As noted in Quinn, E. and Kingston, G. (2012). *Practical Measures for Reducing Irregular Migration: Ireland*. Available at www.emn.ie and www.esri.ie.

⁵⁴ Declaration by Ireland on Article 3 of the *Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice* (TFEU). Ireland also 'affirms its commitment to the Union as an area of freedom, security and justice respecting fundamental rights and the different legal systems and traditions of the Member States within which citizens are provided with a high level of safety'.

Chapter 2

Overview of Asylum and Migration Policy Developments

2.1 OVERALL DEVELOPMENTS IN ASYLUM AND MIGRATION

2.1.1 Review of Programme for Government

A second review of the 2011 *Programme for Government Common Statement* took place by Government in 2013. The *Programme for Government: Annual Report 2013* commented on progress within a number of key areas by the Government. The further extension of the Irish Short-Stay Visa Waiver Programme was noted, particularly during the 2012 London Olympics when over 30 countries sent teams or athletes to Ireland for pre-training. The continued roll-out by INIS of a multi-entry visa regime for business travellers was noted, with visas for up to a three-year duration granted. Free of charge visa applications for persons attending approved events under ‘The Gathering’ were noted,⁵⁵ to be processed on a priority basis. The continued ‘civilianisation’ of certain immigration officer services at Dublin Airport was outlined under cost-saving measures and to free up Gardaí (police) from administrative duties. It was noted that efforts had begun to extend the pilot to ‘ultimately release a significant number of Gardaí to frontline policing duties’. The enactment of the *Criminal Justice (Female Genital Mutilation) Act 2012* was also highlighted, as were draft heads of a new Irish Human Rights and Equality Commission Bill which would amalgamate the Irish Human Rights Commission (IHRC) and the Equality Authority and oblige public bodies to set out their consideration of relevant human rights and equality issues in strategic plans and annual reports. The Report outlined preparations for the establishment of the new Child and Family Support Agency, to include responsibility for the Social Work Team for Separated Children Seeking Asylum.⁵⁶ The rationalisation of four accreditation bodies⁵⁷ was noted via the establishment of the Quality and Qualifications Ireland (QQI) in November 2012.⁵⁸

⁵⁵ The Gathering ran during 2013 and aimed to engage the people of Ireland to invite diaspora and friends to attend over 5,000 special events across Ireland during the year. It was set up as a wholly-owned subsidiary of Fáilte Ireland with the operational project rolled out by the two State tourism agencies, Fáilte Ireland and Tourism Ireland.

⁵⁶ TUSLA Child and Family Agency.

⁵⁷ Amalgamation of Further Education and Training Awards, Higher Education and Training Award Council and National Qualifications Authority of Ireland and incorporating functions of the Irish Universities Quality Board.

⁵⁸ See www.taoiseach.gov.ie.

2.1.2 *Presidency of the EU*

Ireland held the Presidency of the EU for the first six months of 2013. A number of developments occurred related to asylum and migration in the area of Justice and Home Affairs (JHA), and these are detailed in Appendix 3.

2.1.3 *Criminal Law (Human Trafficking) (Amendment) Act 2013*

The Criminal Law (Human Trafficking) (Amendment) Act 2013 gives effect to certain provisions of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. It criminalises trafficking for the purposes of forced begging and trafficking for criminal activities.

It amends and extends the *Criminal Law (Human Trafficking) Act 2008* and the *Child Trafficking and Pornography Act 2008* by, inter alia, making it an aggravating factor for the purpose of sentencing if certain offences under these Acts are carried out by public officials in the course of their duties. It also amends the *Criminal Evidence Act* to enable children better to give evidence in criminal prosecutions. It raised the age limit for out-of-court video recordings of a complainant's evidence from 14 to 18, and also provided for evidence to be delivered by video recording where the witness is under 18. In addition, it also adopts the definition of forced labour as contained in the International Labour Organisation (ILO) *Convention Concerning Forced or Compulsory Labour, 1930*.

2.1.4 *Statutory Instruments*

Some four pieces of secondary legislation by virtue of statutory instruments and relevant to the migration and international protection area were made in 2013:

- *European Union (Accession of the Republic of Croatia) (Access to the Labour Market) Act 2013 (S.I. No. 21 of 2013)*
- *Immigration Act 2004 (Atypical Working Scheme)(Application for Permission) (Fee) Regulations 2013 (S.I. No. 324 of 2013)*
- *European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013)*
- *Immigration Act 2004 (Visas)(Amendment) Order 2013 (S.I. No. 428 of 2013).*

Of note, the European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013) followed the Judgment of the High Court in the case of *M.M. v. the Minister for Justice, Equality and Law Reform*. Under the Regulations, responsibility for the processing of applications for subsidiary protection, both new cases and those on hand, transferred from the Minister for Justice and

Equality to the Office of the Refugee Applications Commissioner. It provides for an appeal to the Refugee Appeals Tribunal regarding negative decisions made by the Refugee Applications Commissioner. Such an appeal must be received within 15 days of the decision. The appellant may indicate if they wish the Tribunal to hold an oral hearing for the purpose of the appeal.⁵⁹ Pending consideration of the complex issues associated with the judgment and the making of the new Regulations, the processing of some 3,800 subsidiary protection claims was put on hold in the intervening period.⁶⁰

2.1.5 *Republishing of the Immigration, Residence and Protection Bill*

The *Immigration, Residence and Protection Bill 2010* had not been republished by the end of 2013 as anticipated.⁶¹ The *Immigration, Residence and Protection Bill 2010* was published in June 2010. The 2010 Bill lapsed with the dissolution of the 30th Dáil (parliament) on 1 February 2011. It was subsequently restored to the Order Paper by the Minister for Justice and Equality and by year-end was awaiting Committee Stage. The Minister for Justice and Equality had initially signalled an intention to republish a new redrafted text of the Bill by late 2012 (subject to time constraints arising from the implementation of EU/IMF/ECB commitments), but by mid-2012, stated that he believed that the frame of a new Bill would not be enacted before 2013. As of year-end, the new Bill had remained unpublished and in early 2013 it was announced that work remained ongoing and that the Minister hoped to be in a 'position to bring a revised Bill to the Government for approval and publication later this year'.⁶²

During the year, the Minister indicated that he intended to address certain issues in a republished Bill including marriages of convenience, family reunification provisions and the protection of non-Irish nationals who were suffering domestic violence and whose immigration status may be adversely affected if they were to leave their abusive partner. Commentary throughout the year by officials on the drafting of the Bill and incorporation of amendments also reiterated the inclusion of a single protection procedure for applications for international protection.⁶³ A commitment to the introduction of an immigration appeals procedure was also included in the 2011 *Programme for Government Common Statement*.

⁵⁹ Irish Naturalisation and Immigration Service (December 2013).

⁶⁰ Office of the Refugee Applications Commissioner (December 2013).

⁶¹ Irish Naturalisation and Immigration Service (13 November 2013). 'Minister Shatter announces that processing of applications for Subsidiary Protection cases to recommence immediately'. *Press Release*. Available at www.inis.gov.ie.

⁶² Parliamentary Question No. 46 (6 March 2013).

⁶³ In November 2013, processing of subsidiary protection claims was transferred at first instance to the Office of the Refugee Applications Commissioner (ORAC) and to contain a personal interview and to include provisions for an oral

2.1.6 Direct Provision System

The issue of direct provision for applicants of international protection continued to attract much media and parliamentary discussion during 2013, mainly centred on inspections of centres and suitability of accommodation for children.

The Reception and Integration Agency (RIA) manages an inspection mechanism which operates two to three times per year. Generally two such inspections (in the form of unannounced visits) are carried out by RIA, with one inspection carried out by an external contractor, QTS. These are described as non-technical inspections. On 7 and 8 October 2013, *The Irish Times* detailed unpublished inspection reports (obtained under the *Freedom of Information Act*) for direct provision accommodation which showed ‘evidence of overcrowding, poor fire safety practices and lapses in hygiene levels across several centres’, with at least three centres run by private companies warned that their contracts would be terminated within a 30-day period unless poor standards were addressed.⁶⁴ Highlighted also were ‘chronic unhygienic food preparation, overcrowded rooms, rotting floorboards, serious cleanliness issues, blocked emergency exits, fire doors wedged open, faulty showers and fire alarms’ with a case of a family of six living in one room. In addition, several reports of breaches of child protection standards were made, of children left alone or under the care of older siblings.⁶⁵ In response, the Irish Refugee Council reiterated calls to move asylum seekers into private rental accommodation after six months, at savings they estimate of almost €9 million.⁶⁶ The Minister for Justice and Equality, in response to parliamentary questions on the reports the following day, announced that all reports would be published as from 1 October 2013. He acknowledged that the direct provision system ‘is not ideal’ but ‘facilitates the State in providing a roof over the head’ of those seeking protection ‘in a manner that facilitates resources being used economically’.⁶⁷ Since 1 October 2013 a new website⁶⁸ run by the Reception and Integration Agency (RIA) has subsequently published all direct provision inspection reports; 22 reports were published by year end.

appeal. This follows the judgment of the Irish High Court in case *M.M. v. Minister for Justice, Equality and Law Reform* in January 2013.

⁶⁴ *The Irish Times* (8 October 2013). ‘Inspections reveal poor standards in asylum centres’. Available at www.irishtimes.com.

⁶⁵ *The Irish Times* (8 October 2013). ‘A degrading and cruel system’. Available at www.irishtimes.com.

⁶⁶ Sue Conlan as quoted in *The Irish Times* (9 October 2013). ‘Government urged to end direct provision system for asylum seekers’. Available at www.irishtimes.com.

⁶⁷ Dáil Topical Issues Debate (9 October 2013). Unrevised. *Deputies Michael McCarthy, Patrick Nulty and Áine Collins Motion. ‘Asylum Seeker Accommodation’*. Response by Alan Shatter, T.D., the Minister for Justice, Equality and Defence.

⁶⁸ See www.ria-inspections.gov.ie.

A news report of mid-October 2013 detailed some 120 alerts of child protection or welfare concerns during 2012 from within a direct provision setting. Most cases of concern related to unsupervised children (47 cases), children with disruptive or sexualised behaviour (18 cases) and parents hospitalised or experiencing mental health problems (17 cases). The article cited then Minister for Children Frances Fitzgerald reporting to the Dáil that she had engaged with the HSE to ensure ‘children currently residing in direct provision are afforded the same levels of welfare and protection that their counterparts in the wider community are afforded’.⁶⁹

2.1.7 ECRI Monitoring Report on Ireland

The European Commission against Racism and Intolerance (ECRI) fourth monitoring report on Ireland was published in February 2013, containing a series of recommendations. Ireland was encouraged to monitor the application of the *Immigration Acts 2003 and 2004*, in particular as regards allegations of racial profiling, and to consider adopting legislation prohibiting any form of racial profiling.

Adoption of an *Immigration, Residence and Protection Bill* as soon as possible is urged, in particular the introduction of a single procedure. The introduction of a long-term residence status (with reference to access to university education on the same footing as nationals) is encouraged as were procedures to facilitate the registration of non-Irish nationals under the age of 16.

An ‘in-depth systematic review’ of the policy of direct provision is recommended, as is further training of all officials involved in the asylum process in order to ensure that ‘the criteria for recognition are effectively applied in practice’. A review of the current cash allowance for asylum seekers is urged, as is access to the labour market after a set time. In terms of integration measures, ECRI recommends that authorities provide greater resources to enable language skills and overall integration measures for persons with protection status. ECRI recommends the publication of clear guidelines regarding application of the social welfare Habitual Residence Test (HRC). The introduction of ‘clear criteria’ for the consideration of naturalisation applications is also encouraged.

Ratification of Protocol No. 12 to the European Convention on Human Rights (ECHR), the European Convention on the Legal Status of Migrant Workers, the

⁶⁹ *The Irish Times* (15 October 2013). ‘Social services alerted over child welfare in asylum centres’. Available at www.irishtimes.com.

European Charter for Regional or Minority Languages, the UNESCO Convention against Discrimination in Education and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (amongst others) has been encouraged.⁷⁰

2.1.8 Overall 2013 Statistics

Overall during 2013, an estimated 166,000 new applications were received by the Irish Naturalisation and Immigration Service (INIS), including applications for visas, residence, protection and citizenship. A total of almost 176,600 decisions were issued and over 97,100 new or renewed registrations were issued by the Garda National Immigration Bureau (GNIB).⁷¹

2.1.9 Population and Migration Estimates 2013

Central Statistics Office (CSO) figures for 2013 show that total net outward migration has remained broadly consistent with the previous 12-month period⁷² (33,100 compared with 34,400 respectively). However total net outward migration of Irish nationals has increased significantly rising from 25,900 in 2012 to 35,200 in 2013⁷³ (or 36 per cent). In the same period, net migration for non-Irish nationals has changed from net outward (-8,400) to net inward (2,100). Total emigration from Ireland has increased by 2.2 per cent in the year to April 2013 (rising from 87,100 to 89,000). Of the 89,000 emigrants, Irish nationals were the largest group accounting for 57.2 per cent (50,900). Total immigration has also increased in the same period by 6 per cent (rising from 52,700 to 55,900).

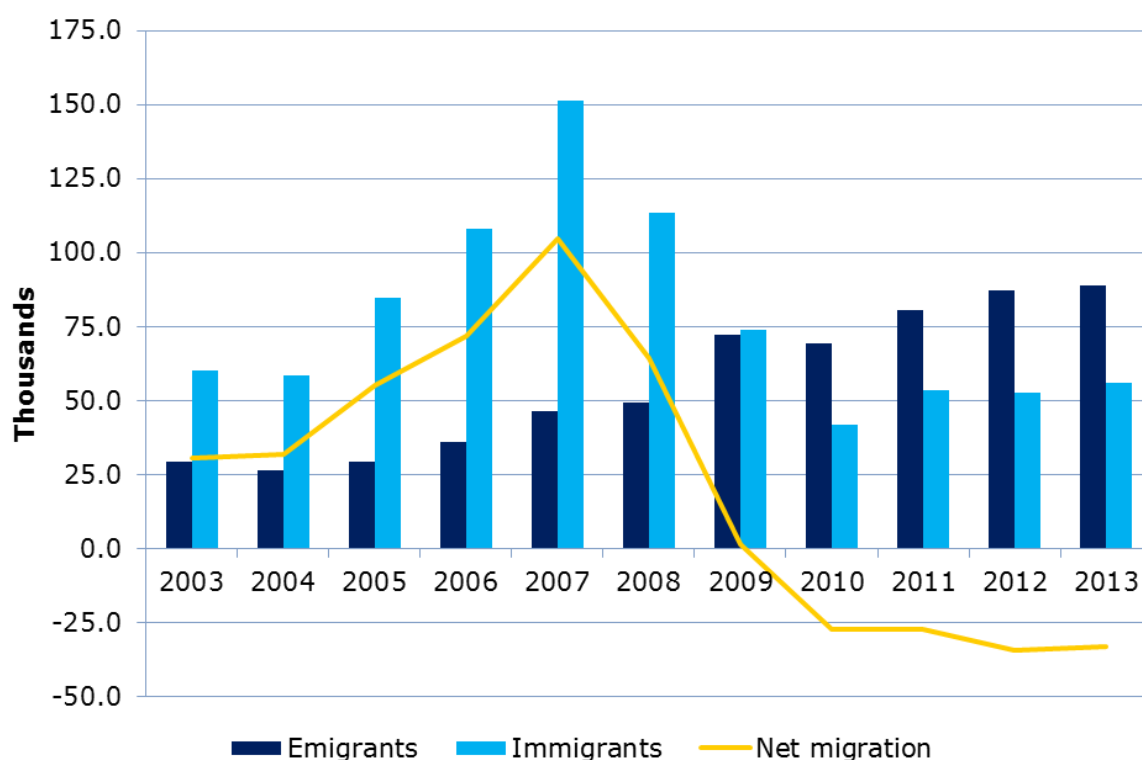
The report also shows migration between April 2008 and April 2013. Main findings from the report show that immigration to Ireland has decreased by nearly 51 per cent (or from 113,500 in 2008 to 55,900 in 2013). Immigration from the EU accession states has had the most significant decline of nearly 80 per cent. The number of UK and EU15⁷⁴ nationals has also decreased by nearly 28 per cent and 23 per cent, respectively. Numbers of third-country nationals immigrating to Ireland have fallen by just over 8 per cent. The number of Irish nationals coming to Ireland has decreased by 34 per cent.

⁷⁰ European Commission Against Racism and Intolerance (2013). *ECRI Report on Ireland (fourth monitoring cycle)*. Available at www.coe.int.

⁷¹ Irish Naturalisation and Immigration Service (January 2014). 'Immigration in Ireland – 2013 in Review'. *Press Release*. Available at www.inis.gov.ie.

⁷² 12 months to mid-April of the corresponding year.

⁷³ Year ending in April for the corresponding year.

FIGURE 2.1 Immigration, Emigration and Net Migration in Ireland, 2003-2013

Source: Population and Migration Estimates, Various. www.emn.ie.

Emigration from Ireland has risen by almost 81 per cent (or from 49,200 to 89,000) in the period from April 2008 to April 2013. Emigration of Irish nationals has had the most significant increase of almost 289 per cent (or from 13,100 to 50,900), followed by EU15 nationals, an increase of 65 per cent. The emigration of UK nationals has risen by nearly 5.4 per cent while emigration of third-country nationals has risen by 14.4 per cent. Emigration of EU accession state nationals has fallen by 18.6 per cent.⁷⁵

⁷⁴ EU countries before enlargement on 1 May 2004 excluding Ireland and the UK.

⁷⁵ Central Statistics Office (2013). *Population and Migration Estimates, April 2013*. Available at www.cso.ie.

Chapter 3

Legal Migration and Mobility

Overall, 166,000 new applications were received by Ireland in 2013, including visa, residence, citizenship and protection applications.⁷⁶

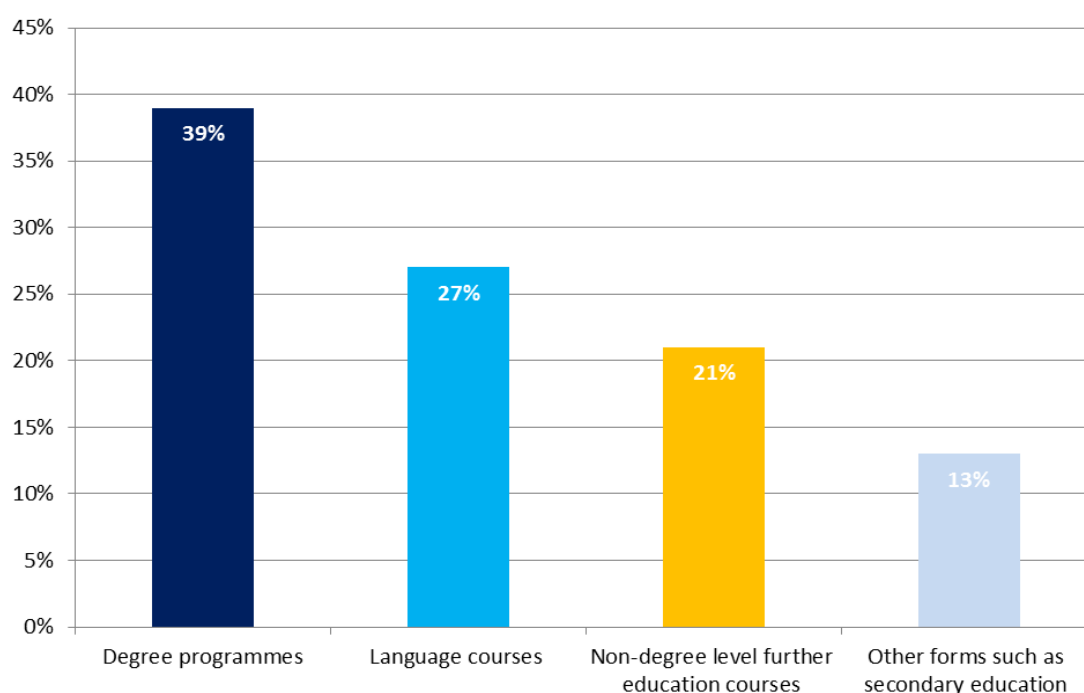
3.1 PROMOTING LEGAL MIGRATION

3.1.1 *Students and Researchers*

3.1.1.1 Statistics

Approximately one-third of all permissions to remain in the State at the end of 2013 were for study or training purposes, with 39,600 such permissions registered. Of the overall number, the majority of registrations related to degree programmes (39 per cent), followed by language courses (27 per cent), non-degree level further education courses (21 per cent) and other forms such as secondary education (13 per cent).

⁷⁶ Irish Naturalisation and Immigration Service (January 2014). 'Immigration in Ireland – 2013 in Review'. *Press Release*. Available at www.inis.gov.ie.

FIGURE 2.2 Registration for Study or Training Purpose in Ireland, 2013

Source: www.emn.ie.

Ireland continued to participate in the ‘Researcher Directive’ during 2013. During the year, there were 318 new agreements and 192 extensions under the Researcher Directive, *Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research*.⁷⁷

3.1.1.2 Government of Ireland Scholarships

In April 2013, the Minister for Education and Skills launched new Government of Ireland international scholarships to strengthen links with ‘emerging markets’ such as China, India, Brazil and the United States.⁷⁸ It was noted at this time that international students contribute ‘over a billion Euro each year to the Irish economy, and that this is a priority area in the Government’s Action Plan for Jobs 2013’.

⁷⁷ Irish Naturalisation and Immigration Service (March 2014). The scholarships were first launched in 2012 as part of the Government’s international education strategy and include a full tuition fee waiver and award of €7,500 to a student for one year of a Bachelor’s, Master’s or PhD degree. See www.educationinireland.com.

⁷⁸ Department of Education and Skills (22 April 2013). ‘Minister Quinn launches new Government of Ireland International Scholarships to strengthen links with emerging markets’. *Press Release*. Available at www.education.ie/en.

In November 2013, the Minister for Jobs, Enterprise and Innovation stated that Ireland has plans in place to more than double the number of Indian students coming to Ireland to pursue third-level education programmes by the end of 2014, with the majority at advanced post-graduate level.⁷⁹

3.1.1.3 Administrative, Legislative and Operational Developments

During 2013 the *Third Level Graduate Work Scheme* for access to the labour market for students after graduation continued to apply. The Scheme allows legally-resident non-EEA third-level graduates to remain in Ireland for the purpose of seeking employment, to apply for a Green Card or work permit, and to work up to 40 hours per week. In 2011, the Scheme was extended to 12 months for those at Level 8 or above of the National Framework of Qualifications and to six months for those with Level 7 qualifications based on the Framework.⁸⁰ The stated purpose of this Scheme is to allow legally resident non-EEA third-level graduates to remain in Ireland for the purpose of seeking employment and applying for a Green Card or work permit.⁸¹

In May 2013, an extension of the www.euraxess.ie portal dedicated to business was launched as a 'one-stop shop' for research and business opportunities.⁸² In particular, it will allow businesses to search for funding support, advertise vacancies, search an online database of researcher CVs and to access the fast track research visa system.

Changes in third-level fee arrangements for migrant students residing in Ireland were introduced in 2013. Non-EEA nationals who acquire EEA citizenship during their college course will no longer be required to pay full tuition fees. The Minister of Education and Skills also requested the Higher Education Authority (HEA) to establish and report on the practices currently operated by individual higher education institutions in charging different rates of fees stating that the 'non-EU rate of fee should be charged only to international students (with permission to remain on a student visa and conditions) and not to non-EEA nationals and their dependents who are legally resident in the EU.' The Minister

⁷⁹ Department of Jobs, Enterprise and Innovation (19 November 2013). 'Ireland set to double the number of 3rd level Indian students studying in Ireland by 2014 – Minister Bruton'. *Press Release*. Available at www.enterpriseireland.com/en.

⁸⁰ Irish Naturalisation and Immigration Service (January 2011). *New Immigration Regime for Full Time Non-EEA Students - Guidelines for Degree Programme Students*. Available at www.inis.gov.ie.

⁸¹ Department of Jobs, Enterprise and Innovation (February 2012). *Employment Permits Arrangements – Third Level Graduate Scheme*. Available at www.djei.ie.

⁸² Department of Jobs, Enterprise and Innovation (14 May 2013). 'One-stop shop for research jobs and funding opportunities for business launched'. *Press Release*. Available at www.djei.ie/index.htm.

made further calls for the ‘introduction of a consistent policy on this basis across all higher education institutions’.⁸³

3.1.1.4 Research

EURAXESS Ireland carried out an evaluation of the Hosting Agreement system for scientific researchers in Ireland during the year and found that the existence of a fast-track visa system significantly influenced the decision to relocate to Ireland for at least 53 per cent of researchers. In addition 23 per cent would not have relocated to Ireland if the Hosting Agreement did not exist. Other factors such as immediate family reunification and access to the labour market were also among the most important factors for researchers in considering relocation.⁸⁴

3.1.2 Other Legal Migration

3.1.2.1 Certificates of Registration

A total of 97,000 new or renewed registrations of permission to remain in the State were issued during 2013.⁸⁵ A fee of €300 is charged in respect of each immigration certificate of registration issued.⁸⁶

Eurostat year-end figures for 2013 shows 107,000 non-EEA nationals with permission to remain in Ireland, mostly for study or ‘other’ purposes.

⁸³ Department of Education and Skills (25 July 2013). ‘Minister Quinn announces changes to third-level fees to benefit migrant students’. *Press Release*. Available at www.education.ie/en.

⁸⁴ EURAXESS Ireland (2013). *Attracting Researchers to Ireland: The Impact of the Scientific Visa. Launched at the Irish Presidency Conference on Research Careers and Mobility*, May 2013: Dublin Castle, Dublin. See also Quinn, E. and Gusciute, E. (2013).

⁸⁵ Required for all persons intending to stay longer than 90 days in Ireland. Irish Naturalisation and Immigration Service (January 2014). ‘Immigration in Ireland – 2013 in Review’. *Press Release*. Available at www.inis.gov.ie.

⁸⁶ With effect from 19 November 2012 and regardless of duration. Exemptions include:

- Convention Refugees;
- Persons who have been reunified with such refugees under Section 18 of the *Refugee Act 1996*;
- Persons who are under 18 years of age at the time of registration;
- Spouses, widows and widowers of Irish citizens;
- Civil partners or surviving civil partners within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* of Irish citizens;
- Spouses and Dependants of EU nationals who receive a residence permit under Directive 38/04;
- Programme Refugees, as defined by Section 24 of the *Refugee Act 1996*.

See Irish Naturalisation and Immigration Service (2014). ‘*Immigration Certificates of Registration issued to non-EEA nationals*’. Available at www.inis.gov.ie.

The Irish Naturalisation and Immigration Service (INIS) has attributed a sharp drop in permissions⁸⁷ (particularly since 2010 when the comparable figures was over 133,000) to concerted efforts to ‘reduce the backlog’ of citizenship cases.⁸⁸

TABLE 3.1 All Valid Permits Issued by Reason on 31 December 2013

	2013
Family reasons	22,597
Education reasons	38,680
Remunerated activities reasons	18,555
Refugee status	969
Subsidiary protection	90
Other reasons	26,544
Total	107,435

Source: Eurostat.

3.1.2.2 Research

Barrett et al. (2013) compared the rates of receipt of welfare for migrants and natives using micro-data from the *EU Survey on Income and Living Conditions for 2008* in order to examine if the outcome is consistent with the operation of a policy which was designed to limit immigrant access to welfare.

The study found that in the years preceding the recession, migrants were less likely to be in receipt of welfare assistance in comparison to natives. The study notes that while the rate of Irish nationals receiving social security payments during recession continued to increase, the number of non-nationals receiving social welfare has decreased. By late 2009 the rate of Irish nationals receiving social welfare payments was higher than that of non-Irish nationals, the latter declining in mid-2010 while the former continued to rise.

Barrett et al. (2013) offer a possible explanation for this. While the trend could be consistent with a slower pace of job losses among non-Irish nationals from mid-2010 onwards it could also indicate that once migrants exhausted the period of time for contributory payment they would have had to apply for means-tested

⁸⁷ See Appendix 2.

⁸⁸ Irish Naturalisation and Immigration Service (January 2014). ‘Immigration in Ireland – 2013 in Review’. *Press Release*. Available at www.inis.gov.ie.

assistance; hence their exit from live register could be due to refusal of application rather than more favourable labour market conditions.⁸⁹

3.2 ECONOMIC MIGRATION

In a year-end review of 2013 developments in the area, the Minister for Justice and Equality reiterated his priority to ‘harness the previously untapped potential of the immigration system to aid economic activity’ in Ireland. Examples highlighted by the Minister included provisions in place to encourage ‘inward investment and enterprise’ in Ireland, and increased tourist and business visas.⁹⁰

3.2.1 European Union (*Accession of the Republic of Croatia*) (*Access to the Labour Market*) Act 2013 (S.I. No. 21 of 2013)

In May 2013 Ireland announced that it would not be exercising an option under the Treaty to restrict access to Ireland’s labour market for nationals of Croatia. This decision follows an assessment made following an analysis of a possible impact on the Irish labour market in light of granting access and it concluded that that it was ‘highly unlikely that significant numbers of Croatians wish to migrate to Ireland’. It was noted that previous experience related to an opening of the Irish labour market to Bulgarian nationals found that ‘only a modest increase arose in respect of PPS registrations⁹¹ which could not be described as having a distortionary impact on the Irish labour market’.⁹²

The 2013 Act provides that for the period of two years commencing on 1 July 2013, a national of the Republic of Croatia has the same entitlement to be in employment in the State as a national of another Member State to whom *Articles 1 to 6 of Regulation (EU) No. 492/2011 of the 5 April 2011 on freedom of movement for workers within the Union* apply, and that thereafter Articles 1 to 6 of the Regulation shall apply in respect of a national of the Republic of Croatia. The Act excludes the spouse of a worker and their descendants under the age of 21 or their dependants from access to the Irish labour market for the period of two years commencing on 1 July 2013.

⁸⁹ Barrett et al. (2013). Immigrants and Welfare Receipt in Ireland. *International Journal of Manpower*, Vol. 34, Issue 2, pp.142-154.

⁹⁰ Irish Naturalisation and Immigration Service (January 2014). ‘Immigration in Ireland – 2013 in Review’. *Press Release*. Available at www.inis.gov.ie.

⁹¹ PPS number is a unique reference number issued to a person when transacting with Government Departments and other public bodies.

⁹² Department of Jobs, Enterprise and Innovation (24 May 2013). ‘Statement by the Department of Jobs, Enterprise and Innovation re Labour market issues relating to 2011 EU Accession Treaty’. Available at www.djei.ie/index.htm.

3.2.2 Changes to Employment Permit System to Attract Skilled Workers

A number of changes were made to the employment permits regime in 2013 to facilitate access for highly qualified workers. These included the opening of Green Card occupations to all sectors; simplification of the application process; a reduction in advertising requirements prior to offering employment to third-country nationals; permitting of Intra-Corporate Transfer Employment Permit and Contract Service Provider Employment Permit holders to apply for other employment permits; and the removal of various restrictions to applicants from within Ireland if they have a valid legal status and Garda National Immigration Bureau number and are applying for an eligible occupation.

Further changes to ease the admission of highly skilled workers whose skills are in short supply are envisaged with the passage of an *Employment Permits (Amendment) Bill* in 2014.⁹³ A *Regulatory Impact Assessment* on a draft Bill was published in January 2013.

The Impact Assessment outlined the immediate objectives of the Bill as to:

- address current skills shortages in key sectors such as ICT;
- create more innovative processes as well reduce the administrative burden associated with applying for an employment permit;
- to cater for the accession of Croatia to the EU; and
- to address identified deficiencies in legislation which had the potential for employers to benefit from the unenforceability of employment contracts where an employee does not hold an employment permit and is required to do so.

The Impact Assessment noted that the consolidation and streamlining of the 2003 and 2006 Employment Permit Acts was necessary in order to reflect policy and economic developments since 2007 and that there needed to be greater flexibility and targeted instruments in place to support the economy's evolving skills needs which 'often require rapid response'. Overall, there is a need for a more 'robust employment permits regime with greater clarity'.

The Department of Jobs, Enterprise and Innovation has noted that changes to the employment permits regime occasioned by the enactment of the *Employment Permits (Amendment) Bill* will not remove minimum salary thresholds for the

⁹³ Department of Jobs, Enterprise and Innovation (December 2013). Subsequently passed in 2014.

issue of an employment permit. It stated that these thresholds are intended to reflect and ensure that the positions in question are skilled positions, which may not, in the instances where an employment permit is issued, have been filled by an Irish or EEA national; but were a sufficient quality of employment to attract such an employee from within the EEA. The thresholds are not set on the basis of salary rates in other jurisdictions.⁹⁴ The Bill will also address certain issues which have arisen in relation to lapsed or non-existent employment permits, and will provide a mechanism for redress in cases where an employer abuses the employment permits regime at the expense of a migrant worker.⁹⁵ In a parliamentary question in July 2013, the Minister for Jobs, Enterprise and Innovation noted that forthcoming legislation would be amended to

introduce new safeguards in the legislation to ensure the situation which arose in the Younis⁹⁶ case will not reoccur. The new safeguards will not undermine legal principles and are intended to ensure an employer cannot benefit from the fact that a contract of employment is illegal and, therefore, not legally binding.

He added that a further key feature of the new Bill would be the establishment (on a statutory footing) of an employment permit for third-country nationals who have ‘fallen out’ out of the employment permits system and that it will

continue to be the case that an employer can be prosecuted for breaches of employment law, including the Employment Permits Acts, and it is the National Employment Rights Authority's policy to pursue such breaches.⁹⁷

In April 2013 the Department of Jobs, Enterprise and Innovation announced an additional series of changes to applications following ‘a review of the Employment Permits system and the current skills needs in the labour market’ and to

ensure a balanced and renewed policy rationale for Employment Permits to facilitate access to skilled workers where there are skills shortages in the Irish and EEA labour market.⁹⁸

⁹⁴ Department of Jobs, Enterprise and Innovation (December 2013).

⁹⁵ Department of Jobs, Enterprise and Innovation (December 2013).

⁹⁶ *Hussein v. Labour Court [2012] (High Court, Hogan J., 31 August 2012).*

⁹⁷ Minister for Jobs, Enterprise and Innovation in Parliamentary Question No.7 ‘Illegal Immigrants’ (13 July 2013). Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2013071000024>.

⁹⁸ See Department of Jobs, Enterprise and Innovation (April 2013). ‘Employment Permits – What’s New 10th April 2013’. Available at www.djei.ie/labour/workpermits/whatsnew10042013.htm.

The Highly Skilled Occupations List⁹⁹ was broadened and updated in line with known shortages of key skills in the labour market. The primary change relates to a move from eligibility in respect of a particular job title now applying across all sectors (rather than confined to a particular sector) 'in recognition that a particular skill in short supply will be experienced across all sectors which require that skill'.¹⁰⁰ The Ineligible Categories of Employment for Employment Permits list of occupations was also updated to cater for particular shortages in relation to certain occupations involving the necessity of being able to communicate in a non-European Economic Area language.¹⁰¹ Regarding applications, the labour market needs test was reduced from eight weeks to two weeks. The requirement for advertisement in a national newspaper was reduced to three days and a previous requirement to advertise in a local newspaper was amended to also allow for listing on an employment website for three days.¹⁰²

Other announced changes concerned amendments of employment permit forms, internal procedures and appeals as well as updating of the relevant website; a greater focus on the random checking of permits by NERA; and a change of demonstrated income requirements from salary to overall remuneration. It was also announced that current holders of Intra-Corporate Transfer Provider Employment Permits and Contract Service Provider Employment Permits can now apply for other types of Employment Permit subject to the normal criteria and that in the case of IT graduates of foreign colleges and for technical or sales support roles with non-EEA language requirements, the remuneration threshold is reduced from the current €30,000 per annum to €27,000 per annum in respect of employment permits applications under the Work Permits category.¹⁰³

In addition, as from April 2013 non-EEA nationals already lawfully resident in the State and holding a valid Certificate of Registration (GNIB card) with Stamps 1, 1A, 2, 2A and 3 immigration permissions, may apply to the Department of Jobs,

⁹⁹ The Highly Skilled Occupations list refers to occupations in respect of which Green Card employment permit applications may be made where remuneration is between €30,000 and €59,999. All occupations (unless not in the public interest or listed on the Ineligible Categories of Employment for Employment Permits) (see www.djei.ie/labour/workpermits/ineligiblecategoriesforemploymentpermits.htm) are eligible in all sectors with remuneration of €60,000 or higher. See Highly Skilled Occupations List at www.djei.ie/labour/workpermits/highlyskilledoccupationslist.htm.

¹⁰⁰ See Department of Jobs, Enterprise and Innovation (April 2013). *Employment Permits – What's New 10th April 2013*. Available at www.djei.ie/labour/workpermits/whatsnew10042013.htm.

¹⁰¹ See www.djei.ie/labour/workpermits/ineligiblecategoriesforemploymentpermits.htm.

¹⁰² See Department of Jobs, Enterprise and Innovation (April 2013). *Employment Permits – What's New 10th April 2013*. Available at www.djei.ie/labour/workpermits/whatsnew10042013.htm.

¹⁰³ *ibid.*

Enterprise and Innovation for an Employment Permit if offered employment in a recognised highly skilled shortage occupation (as per www.djei.ie/index.htm).¹⁰⁴

3.2.2.1 ICT Sector

During parliamentary debates in 2013, the introduction of special visas or technology visas was called for in order to increase Ireland's competitiveness and attractiveness for jobs.¹⁰⁵ The Minister for Jobs, Enterprise and Innovation was cited in a newspaper article¹⁰⁶ as stating that the Government hopes to attract more non-EEA nationals to fill ICT sector shortages by introducing changes¹⁰⁷ in work permits. Upon announcing the series of changes in April 2013, the Department of Jobs, Enterprise and Innovation noted that the changes were engineered

*to ensure that Ireland has an attractive Employment Permits regime for employers and prospective employees to facilitate access to skilled foreign nationals in areas where there are demonstrable skills shortages especially in the ICT sector. The employment permits regime complements other Government initiatives especially in the education sector aimed at increasing the domestic supply of skilled labour and will therefore be adjusted accordingly over time as and when sufficient domestic supply becomes available.*¹⁰⁸

The Irish national report for the EMN study on *Attracting Highly Qualified and Qualified Third-Country Nationals: Ireland (Focussed Study)*¹⁰⁹ noted that during 2012 the Expert Group on Future Skills and Needs (EGFSN) identified recruitment difficulties within both ICT sector and from other sectors which require a high level of IT skills.¹¹⁰ An *ICT Action Plan* was compiled in 2012 by the Government, ICT Ireland, the Irish Software Association, the American Chamber of Commerce

¹⁰⁴ See Irish Naturalisation and Immigration Service (2013). 'New Initiatives between the Department of Justice and Equality (INIS) and the Department of Jobs, Enterprise and Innovation'. Available at [www.inis.gov.ie/en/INIS/Pages/NEW%20INITIATIVES%20BETWEEN%20THE%20DEPARTMENT%20OF%20JUSTICE%20AND%20EQUALITY%20\(INIS\)%20AND%20THE%20DEPARTMENT%20OF%20JOBS,%20ENTERPRISE%20AND%20INNOVATION](http://www.inis.gov.ie/en/INIS/Pages/NEW%20INITIATIVES%20BETWEEN%20THE%20DEPARTMENT%20OF%20JUSTICE%20AND%20EQUALITY%20(INIS)%20AND%20THE%20DEPARTMENT%20OF%20JOBS,%20ENTERPRISE%20AND%20INNOVATION).

¹⁰⁵ Dáil Debate Unrevised (21 February 2013). Dáil Debate Vol. 774 No. 1 (6 November 2012); Dáil Debate Vol. 773 No. 12 (9 October 2012); Dáil Debate Vol. 771 No. 1 (3 July 2012).

¹⁰⁶ *The Irish Times* (10 April 2013). 'Plan to fill 2,000 technology vacancies'. Available at www.irishtimes.com.

¹⁰⁷ Increasing eligible occupations, reducing the time it takes to process applications and the number of documents required.

¹⁰⁸ See Department of Jobs, Enterprise and Innovation (April 2013). *Employment Permits – What's New 10th April 2013*. Available at www.djei.ie/labour/workpermits/whatsnew10042013.htm.

¹⁰⁹ See www.emn.ie.

¹¹⁰ Expert Group on Future Skills and Needs (January 2012). *Addressing High-Level ICT Skills Recruitment Needs: Research Findings*. Forfás: Dublin. Available at www.egfsn.ie.

Ireland, the Higher Education Authority and the EGFSN. The Plan aimed to investigate and address current skills shortages in the ICT sector. While the focus of the report was on ensuring that Ireland has a highly-skilled domestic supply of workers in this sector, migration of highly skilled workers was considered vital for meeting the demand for high-level IT skills and for native-level foreign language fluency.¹¹¹ The Government has assessed key actions to be undertaken in order to support businesses and job creation through the *Action Plan for Jobs 2012* and *Action Plan for Jobs 2013*. In this context, the Government has noted that currently approximately 55 per cent of total ICT skills demand is met from outside Ireland, of which a significant proportion is from outside the EEA. Therefore even with the successful implementation of actions proposed in the short-term, which will assist in increasing the domestic supply of ICT skills, companies will need to rely on inward migration for sourcing ICT personnel, especially those with over eight years of experience, and on personnel with multilingual skills. In order to help attract key talent, the following initiatives were proposed: the introduction of a unified employment application e-form; delivering an interim review of employment permit schemes across the categories with a particular emphasis on ICT specifically; and developing a communications campaign in order to present clear options as to the available entry channels to the State, for example the difference between an employment permit and visa.

The Government has stated that it intends that such measures will result in at least 700 additional permits issued in the ICT sector by the end of March 2014, or a 50 per cent increase on the previous year. Entrepreneurship has been recognised as a vital source of job creation, with hopes for Ireland to become the 'go to' place for businesses through encouraging international companies to invest in Ireland.¹¹²

3.2.2.2 Review Processes

A bi-annual review of the lists of occupations eligible and ineligible for issue of an employment permit has been instituted by the Department of Jobs, Enterprise and Innovation. Firstly, these reviews draw on data on employment, vacancies, job announcements and immigration and other qualitative information held in the National Skills Database, including that collated in the *National Skills Bulletin* which is published annually to identify imbalances in the Irish labour market at occupational level. In the second instance, undertaken in the spring, the lists are

¹¹¹ Department of Education and Skills (2012). *ICT Action Plan: Meeting the high level skills needs of enterprise in Ireland*. Available at www.education.ie/en.

¹¹² Department of Jobs, Enterprise and Innovation (2013). *Action Plan for Jobs 2013*. Available at www.djei.ie/index.htm

reviewed in the light of data from the *Vacancy Overview Annual Report*, which provides an overview of the demand for labour as measured by trends identified in advertised job vacancies.

3.2.3 *Highly-Skilled Job Interview Authorisation*

During 2013 the Departments of Justice and Equality, and Jobs, Enterprise and Innovation announced a series of initiatives related to changes for highly-qualified workers. This represents a shared policy between both Departments.¹¹³

A Highly Skilled Job Interview Authorisation, announced in April 2013 and effective from 15 July, was introduced on a pilot basis to provide ‘permission to enter the State on a temporary basis’ to non-EEA nationals who have been invited by an employer based in the State to attend an interview for employment in a ‘recognised highly skilled shortage occupation’.¹¹⁴ Visa-required nationals must be in possession of a valid entry visa. A number of pieces of documentation are required for inspection at a port of entry including a passport (with at least six months validity remaining), visa if required, original letter of invitation for interview from a prospective employer,¹¹⁵ evidence of sufficient funds for the duration of the stay in Ireland and medical insurance.

Upon a successful authorisation, persons may remain in Ireland while applying to, and awaiting the outcome of, an employment permit from the Department of Jobs, Enterprise and Innovation.¹¹⁶ Dependents are not permitted to accompany the interviewee, with family reunification measures to be addressed should the interview and permit application be successful.¹¹⁷

3.2.4 *Atypical Working Scheme*

An Atypical Working Scheme was also announced on a pilot basis in April 2013, effective from 2 September 2013. It provides for certain categories of workers such as those employed in the State on a short-term, contract basis (between 14

¹¹³ Irish Naturalisation and Immigration Service (December 2013).

¹¹⁴ See Highly Skilled Eligible Occupations List www.djei.ie/labour/workpermits/highlyskilledeligibleoccupationslist.htm.

¹¹⁵ This letter should provide a detailed job description and contact details (name, phone number) of the prospective employer for verification purposes.

¹¹⁶ See Irish Naturalisation and Immigration Service (2013). ‘*New Initiatives between the Department of Justice and Equality (INIS) and the Department of Jobs, Enterprise and Innovation*’. Available at [www.inis.gov.ie/en/INIS/Pages/NEW%20INITIATIVES%20BETWEEN%20THE%20DEPARTMENT%20OF%20JUSTICE%20AND%20EQUALITY%20\(INIS\)%20AND%20THE%20DEPARTMENT%20OF%20JOBS,%20ENTERPRISE%20AND%20INNOVATION](http://www.inis.gov.ie/en/INIS/Pages/NEW%20INITIATIVES%20BETWEEN%20THE%20DEPARTMENT%20OF%20JUSTICE%20AND%20EQUALITY%20(INIS)%20AND%20THE%20DEPARTMENT%20OF%20JOBS,%20ENTERPRISE%20AND%20INNOVATION).

¹¹⁷ See Irish Naturalisation and Immigration Service (2013). ‘*Highly Skilled Job Interview Authorisation*’. Available at www.inis.gov.ie/en/INIS/Pages/HIGHLY%20SKILLED%20JOB%20INTERVIEW%20AUTHORISATION.

and 90 calendar days inclusive), non-EEA nationals employed on a trial basis (not exceeding 90 days inclusive from date of entry), and other categories of employment which may not be covered by the Employment Permits Acts.¹¹⁸

The Scheme applies in cases:

- where a skill shortage has been identified;
- to provide a specialised or high skill to an industry, business or academic institution;
- to facilitate trial employment in respect of an occupation on the Highly Skilled Occupations List¹¹⁹
- to facilitate paid internships in respect of non-EEA full-time students studying outside the State (excluding medical internships).

Applications are considered by INIS and, where applicable, in consultation with the Employment Permits Section of the Department of Jobs, Enterprise and Innovation for an assessment of a possible impact on the Irish labour market. Applications are not permitted from persons already resident in Ireland; entering Ireland for employment purposes for up to 14 calendar days (inclusive/consecutive); entering Ireland for business purposes of up to 90 calendar days (inclusive/consecutive);¹²⁰ persons who may avail of a permission under the *Van Der Elst* judgment; or persons who gain employment through the Highly Skilled Job Interview Authorisation.¹²¹

The Scheme was enacted via the *Act 2004 (Atypical Working Scheme)(Application for Permission) (Fee) Regulations 2013 (S.I. No. 324 of 2013)*. The Regulations prescribe a fee of €250 for making an application for permission under the Scheme.

¹¹⁸ See Irish Naturalisation and Immigration Service (2013). 'New Initiatives between the Department of Justice and Equality (INIS) and the Department of Jobs, Enterprise and Innovation'. Available at [www.inis.gov.ie/en/INIS/Pages/NEW%20INITIATIVES%20BETWEEN%20THE%20DEPARTMENT%20OF%20JUSTICE%20AND%20EQUALITY%20\(INIS\)%20AND%20THE%20DEPARTMENT%20OF%20JOBS,%20ENTERPRISE%20AND%20INNOVATION](http://www.inis.gov.ie/en/INIS/Pages/NEW%20INITIATIVES%20BETWEEN%20THE%20DEPARTMENT%20OF%20JUSTICE%20AND%20EQUALITY%20(INIS)%20AND%20THE%20DEPARTMENT%20OF%20JOBS,%20ENTERPRISE%20AND%20INNOVATION).

¹¹⁹ As defined at www.djei.ie/labour/workpermits/highlyskilledoccupationslist.htm.

¹²⁰ E.g. attending meetings/seminars/conferences, sales trips etc.

¹²¹ See Irish Naturalisation and Immigration Service (2013). 'Atypical Working Scheme Guidelines'. Available at www.inis.gov.ie/en/INIS/Pages/Atypical%20Working%20Scheme%20Guidelines.

3.2.5 Changes to Immigrant Investor Programme

In July 2013, changes to the Immigrant Investor Programme were announced, effective as from mid-July.

In January 2012 two new immigration initiatives aimed at attracting non-EEA migrant entrepreneurs and investors were announced and became operational in mid-April 2012: an Immigrant Investor Programme (IIP) and a Start-Up Entrepreneur Programme (STEP). Both Programmes were to provide permission to reside in Ireland in return for an investment for the purpose of ‘saving or creating jobs’. Applicants must be of good character and be able to support themselves while in Ireland.¹²² Family reunification of a spouse/partner and children is provided for as long as they can be supported by the entrepreneur, investor or other private means, and no social benefits will be provided.¹²³

The IIP provides for approved participants and ‘immediate’ family members to enter Ireland on multi-entry visas and to remain for an initial period of five years (generally) with permission renewable after two years. After this initial five-year period, the investor will be free to apply for residence in five-year tranches. No minimum residence requirements are in effect excluding one visit to Ireland each year.¹²⁴ The financial commitment initially generally ranged from a once-off endowment of €500,000 for endowment-related investments, to €2 million in the new Immigrant Investor low-interest bearing Government Bond:

- A once-off endowment of a minimum of €500,000 to a project with a ‘clear public benefit’ such as in the arts, education or sport;¹²⁵
- A minimum €2 million investment, to be held for five years, in a designated Irish Government Immigrant Investor Bond;
- A minimum €1 million venture capital funding, for a minimum of three years, into an Irish business;¹²⁶

¹²² Irish Naturalisation and Immigration Service (24 January 2012). ‘Shatter announces two new initiatives: Immigrant Investor Programme and Start-up Entrepreneur Scheme’. *Press Release*. Available at www.inis.gov.ie.

¹²³ Irish Naturalisation and Immigration Service (9 February 2012) ‘Speech by Minister for Justice and Equality Mr Alan Shatter T.D. on Entrepreneur and Investor Schemes Seanad Éireann 9 February 2012’. *Press Release*. Available at www.justice.ie.

¹²⁴ Irish Naturalisation and Immigration Service (2012) *Investor and Entrepreneur Schemes*. Available at www.inis.gov.ie/en/INIS/Pages/New%20Programmes%20for%20Investors%20and%20Entrepreneurs.

¹²⁵ A minimum of €2 million investment in a special low-interest five-year immigrant investor bond. There will be one interest payment of 5.1% at the end of the five-year investment period and this is equal to an annual equivalent interest rate of 1% (AER). Irish Naturalisation and Immigration Service (2012) *Investor and Entrepreneur Schemes* (2012). Available at www.inis.gov.ie/en/INIS/Pages/New%20Programmes%20for%20Investors%20and%20Entrepreneurs.

¹²⁶ A minimum €1 million aggregate investment into new or existing Irish businesses for a minimum of three years. Funding by the investor through the intermediary of a venture capital fund will be considered provided that it can be demonstrated that the net effect is at least equivalent to that of a direct investment. Irish Naturalisation and

- A minimum €1 million mixed investment in 50 per cent property and 50 per cent in Government securities.¹²⁷

The level of investment in business entities where jobs are being created or saved was generally estimated at around €1 million.¹²⁸

The STEP provides for residency for business development purposes for approved migrants with:

- An innovative business idea for a 'High Potential Start-Up';¹²⁹
- Funding of €75,000; and
- Not be a 'drain on public funds'.¹³⁰

Changes to the Programme during 2013 saw the investment threshold for the option of a Government Bond reduced from €2 million to €1 million (from a five-year bond at 1 per cent per annum to a 0 per cent interest rate). In addition, the financial requirement for an enterprise investment was halved from €1 million in an Irish enterprise for three years to a €500,000 requirement for the same time. A new category of investment was created in a managed fund to invest in Irish businesses and projects; an investment of €500,000 is required. Some decreases in terms of mixed investment involving property and group endowments is also provided for.¹³¹ A related change regarding the 'reckonability' of tuition fees

Immigration Service (2012) *Investor and Entrepreneur Schemes*. Available at www.inis.gov.ie/en/INIS/Pages/New%20Programmes%20for%20Investors%20and%20Entrepreneurs. It was also stated that an investment into an Irish publicly quoted company 'could be considered' but the investment level would have to be 'much higher'. See 'Speech by Minister for Justice and Equality Mr Alan Shatter T.D. on Entrepreneur and Investor Schemes Seanad Éireann 9 February 2012'. *Press Release*.

¹²⁷ 'Special consideration' could be given to those purchasing property which has been enforced by NAMA, in which case a single €1 million investment in property might be sufficient. See Irish Naturalisation and Immigration Service (9 February 2012) 'Speech by Minister for Justice and Equality Mr Alan Shatter T.D. on Entrepreneur and Investor Schemes Seanad Éireann 9 February 2012'. *Press Release*.

¹²⁸ Irish Naturalisation and Immigration Service (24 January 2012). 'Shatter announces two new initiatives: Immigrant Investor Programme and Start-up Entrepreneur Scheme'. *Press Release*. Available at www.inis.gov.ie. See also further details regarding an 'Evaluation Committee'.

¹²⁹ Defined as introducing a new or innovative product or service to international markets; capable of creating ten jobs in Ireland and realising €1 million in sales within three to four years of starting up; led by an experienced management team; headquartered and controlled in Ireland; and less than six years old. See Irish Naturalisation and Immigration Service (2012) *Investor and Entrepreneur Schemes*. Available at www.inis.gov.ie/en/INIS/Pages/New%20Programmes%20for%20Investors%20and%20Entrepreneurs.

¹³⁰ See Irish Naturalisation and Immigration Service (9 February 2012) 'Speech by Minister for Justice and Equality Mr Alan Shatter T.D. on Entrepreneur and Investor Schemes Seanad Éireann 9 February 2012'. *Press Release*. Available at www.justice.ie.

¹³¹ In terms of mixed investments, Investment in a residential property of minimum value of €450,000 and a straight investment of €500,000 into the immigrant investor bond, giving a minimum investment of €950,000. The level of investment into the bond would no longer be linked to the value of the property purchased. In terms of endowments, a

paid to Irish tertiary educational establishments for the children of investors was also announced. Applications under the Scheme are assessed by an Evaluation Committee chaired by the Department of Justice and Equality, with membership drawn from the Departments of Finance, Jobs Enterprise and Innovation, Foreign Affairs and Trade, the IDA and Enterprise Ireland.

At the time of announcement of the changes, it was noted that a total of nine applications have been approved under the Programme, with a project investment of over €10 million and predicted employment estimated at over 123 jobs;¹³² as of January 2014 it was announced that since the launch of both programmes in 2012, 31 projects had been approved to date representing a total investment of almost €23 million, with ‘the potential to create almost 300 jobs’.¹³³

3.2.6 Qualifications Recognition

The *Qualifications and Quality Assurance (Education and Training) Act 2012* was signed during 2012. It provides for the establishment of a Qualifications and Quality Assurance Authority of Ireland which amalgamates four bodies that have both awarding and quality assurance responsibilities: the Further Education and Training Awards Council (FETAC), the Higher Education and Training Awards Council (HETAC), the National Qualifications Authority of Ireland (NQAI) and the Irish Universities Quality Board (IUQB). The new Authority is to assume all the functions of the four legacy bodies while also having responsibility for new or newly-statutory responsibilities in particular areas. The new Quality and Qualifications Ireland (QQI) integrated agency was established in November 2012, with functions outlined under Part 2(9)(1) of the 2012 Act. QQI is responsible for the external quality assurance of further and higher education and training (including English language provision) and validates programmes and makes awards for certain providers in these sectors. QQI is also responsible for the maintenance, development and review of the National Framework of Qualifications (NFQ). Since its establishment, QQI has undertaken the development of its qualifications and quality assurance services. Earlier in 2013,

€500,000 philanthropic donation by an individual (€400,000 where five or more individuals pool their endowment for one appropriate project). See Irish Naturalisation and Immigration Service (5 July 2013). ‘Shatter announces changes to Immigrant Investor Programme’. *Press Release*. Available at www.inis.gov.ie.

¹³² Irish Naturalisation and Immigration Service (5 July 2013). ‘Shatter announces changes to Immigrant Investor Programme’. *Press Release*. Available at www.inis.gov.ie.

¹³³ Irish Naturalisation and Immigration Service (January 2014). ‘Immigration in Ireland – 2013 in Review’. *Press Release*. Available at www.inis.gov.ie.

QQI rolled out a Comprehensive Policy Development Programme; policy is currently being developed.¹³⁴

3.2.7 *Employer Sanctions*

Ireland does not participate in the ‘Employer Sanctions Directive’.¹³⁵ The National Employment Rights Authority (NERA)¹³⁶ carries out inspections to ensure workplaces are properly regulated and to promote maximum compliance with minimum employment standards and employment permit requirements. In 2013 (to mid-December), NERA found over 600 employers in breach of employment permit legislation. Some 48 employers were prosecuted under the Employment Permits Acts during 2013.¹³⁷

NERA provides information in 13 languages and it has produced a multilingual card which inspectors can give to employees in the course of inspections, giving details of how they can contact NERA and talk confidentially regarding any issues or concerns that they may have. NERA also has a number of Inspectors with foreign language skills and access to translation services where required. NERA inspectors also contribute Ireland’s response to the issues of forced labour and human trafficking. NERA inspectors have also been trained by the Garda National Immigration Bureau (GNIB) in order to assist in the identification of forced labour and human trafficking situations. NERA participates in the Labour Exploitation Working Group co-ordinated by the Anti-Human Trafficking Unit of the Department of Justice and Equality.¹³⁸ In conjunction with inspectors of the Revenue Commissioners and the Department of Social Protection, NERA carries out joint inspections (as part of the Joint Inspection Unit structure) in cases and sectors of common risk and to ensure efficient and effective compliance with legislation. At a policy level, NERA are participants in the Hidden Economy Monitoring Group along with ICTU, Revenue Commissioners, Department of Social Protection and other relevant bodies in an effort to deal with the issues arising such as bogus self-employment, cross border issues, illegal working/work permits, social welfare fraud, excise and tax evasion etc.¹³⁹

¹³⁴ See www.qqi.ie.

¹³⁵ Directive 2009/52/EC.

¹³⁶ www.workplacerelations.ie/en/Workplace_Relations_Bodies/National_Employment_Rights_Authority.

¹³⁷ NERA (March 2014).

¹³⁸ The Gardaí, Department of Social Protection, the Health Service Executive, the International Organization for Migration, the Migrant Rights Centre Ireland, unions, employers and other social partners are also members of the Working Group.

¹³⁹ National Employment Rights Authority (December 2013).

3.2.8 Research

Quinn and Gusciute (2013) looked at policies and practical measures introduced to attract highly qualified and qualified third-country nationals to Ireland. Despite the recession in Ireland, the demand for certain specific, niche skills exceeds supply available within the EEA. As a result Ireland has aimed to attract key talent from non-EEA countries to fill skills shortages in specific sectors such as IT, engineering, finance and healthcare. The study shows that the Irish national policies have been effective in weighting the balance of third-country labour migration towards skilled and highly-skilled workers. Labour force data show that in 2012, the proportion of third-country nationals in employment in Ireland, who were employed in high-skilled occupations, was 46 per cent, third highest among 20 EU countries for which data are available. The proportion of employed non-EU nationals with high educational attainment was also particularly high in Ireland (69 per cent). However a large evidence base shows that employers in Ireland continue to experience shortages of certain workers in ICT, healthcare and financial services sectors. In recent years migrants with specific skills mixes, such as foreign languages and business skills, have also been targeted. Research indicates that the absence of clearly defined family reunification and long-term residence schemes are possible barriers to attracting third-country nationals to Ireland.¹⁴⁰

Quinn (2013) examined key issues and challenges that are apparent in relation to the intra-EU mobility of third-country nationals to and from Ireland. There has been little policy attention in Ireland in relation to intra-EU mobility of third-country national workers and the Irish immigration system does not actively facilitate such mobility, nor are there measures introduced specifically to restrict such mobility. Most relevant data sources in Ireland are not designed to record the intra-EU mobility of third-country nationals: detailed figures on visa applications by current location of applicant are not readily available. The employment permits administrative system has the potential to capture information on the place of residence of the applicant, but this field is not consistently filled. Furthermore due to measurement issues associated with sub-populations in sample surveys, data on migration flows by origin/destination, broken down by nationality, are not published by the Central Statistics Office. Sufficient data exist to indicate that intra-EU mobility to and from Ireland is low.

¹⁴⁰ Quinn, E. and Gusciute, E. (2013). *Attracting Highly Qualified and Qualified Third-Country Nationals: Ireland*. Available at <http://emn.ie> and www.esri.ie.

3.3 FAMILY REUNIFICATION

3.3.1 Statistics

During 2013 IOM Ireland provided assistance to 42 persons to travel to Ireland under family reunification visas. This assistance comprised of IOM's transit visa waiver assistance to allow family members to transit through airports where they would otherwise need a visa; airport assistance at airport of departure/transit/arrival; and occasional travel documentation assistance e.g. liaison with the International Committee of the Red Cross/Crescent for the issuance of travel documents.¹⁴¹

3.3.2 New Immigration Policy Guidelines on Family Reunification

During the year the Department of Justice and Equality published new policy guidelines regarding applications for family reunification in the immigration system in Ireland. Described as a 'comprehensive statement' of Irish immigration policy in the area, the policy guidelines have the stated aim of providing 'greater transparency in the immigration decision making process' as well as to provide information on the 'reasoning' behind such policies.¹⁴² The overall need for a 'balance of interests' is noted throughout the policy guidelines, primarily on the basis of public order, public health and financial costs to the State. This last consideration is noted in particular relevance for elderly relatives. The 'contribution' of family reunification to the integration of foreign nationals in Ireland is noted as being 'as a matter of policy'.¹⁴³

The Guidelines do not introduce new rights or procedures but outline 'greater detail on how the Minister's discretion is intended to be applied' for both applicants and decision-makers, particularly in the 'essentially automatic' nature of family reunification in the case of a spouse/minor children of a refugee or holder of subsidiary protection status and for family members under EU Treaty Rights. A consolidated approach to the processing of all family reunification cases within INIS is proposed, with a centralised unit for referral of applications (and investigations) proposed in a Family Settlement Unit, as well as a standardised application form and fee. It is the intention that all applications will be largely received from overseas, with an acknowledgement that currently 'there is no preclearance facility for applications from persons who do not need a visa to travel to Ireland' and that there is a 'strong case' for introducing a formal visa

¹⁴¹ IOM Ireland (March 2014).

¹⁴² Department of Justice and Equality (31 December 2013). 'Shatter Statement: Shatter publishes immigration policy guidelines on Family Reunification'. *Press Release*. Available at www.inis.gov.ie.

¹⁴³ Irish Naturalisation and Immigration Service (December 2013). 'Policy Document on Non-EEA Family Reunification'. Available at www.inis.gov.ie.

requirement for longer stays or an alternative pre-clearance process.¹⁴⁴ Associated difficulties in the current lack of preclearance procedures include a lack of certainty for the applicant, a resulting short provision time of 90 days for a decision to be made regarding a family reunification applicant, the potential for 'inconsistencies of approach' in various INIS units considering applications and an overall potential for misuse of short stay visa applications as a means of gaining access to Irish territory.¹⁴⁵ Consideration will be given to establishing a form of immigration status whereby visitors for family reasons may obtain an extension of their original stay (e.g. to 180 days) without conferring any (expectation of) residency rights. 'Some account' of the circumstances regarding family separation must be taken in conjunction with the relationship between the sponsor and family (or other) member. Of consideration in case processing, the longer the 'elective separation' of the family unit, the 'weaker must be the claim to reconstitution' of the family in Ireland.

A sponsor of an application for family reunification may be an Irish citizen living or intending to live in Ireland; an employment permit holder, including a 'Green Card' permit holder; a lawfully-resident foreign national holder of a 'Stamp 4'; a lawfully-resident foreign national holder of a 'Stamp 5'; a researcher under a 'Hosting Agreement'; a PhD student studying in Ireland; or a Minister of Religion holder of a 'Stamp 3'. The policy guidelines define family member categorisations as 'immediate family', 'parents' and 'other family'. Overall 'dependency' is defined as when a family member is supported financially on an ongoing basis by the sponsor and there is evidence of social dependency between the two. It is further clarified, in the context of an adult, as being pre-existing and sustained prior to the making of an application for family reunification and in place while the dependent was living in their home country.

The Guidelines note that the onus of proof regarding the 'genuineness' of the family relationship rests 'squarely with the applicant and the sponsor' regardless of whether the person is an Irish national or non-EEA national.

The Guidelines define three categories of eligibility of persons seeking to be joined by nuclear family members or de facto partners:

- Category A: eligible to sponsor applications for immediate family reunification with the primary migrant including accompaniment on arrival. Applicable for Green Card holders, investors, entrepreneurs, business

¹⁴⁴ Irish Naturalisation and Immigration Service (December 2013). 'Policy Document on Non-EEA Family Reunification'. Available at www.inis.gov.ie.

permission holders, researchers under the 'Hosting Agreements', INIS approved scholarship programme students, Intra-Corporate trainees (added), PhD students (subject to conditions including no recourse to social welfare payments) and full-time non-locum doctors in employment (new).

- Category B: eligible to sponsor applications after 12 months. Applicable for non-Green Card employment permit holders, all 'Stamp 4' holders not covered by more favourable provisions and Ministers of Religion (with provisions for including in Category A if maintained by the church). A gross income in each of the previous two years must be in excess of that applied by the Department of Social Protection when assessing eligibility for Family Income Supplement (FIS) and with an expectation that this level will be continued.
- Category C: not eligible to sponsor. Applicable for all other non-EEA nationals.

Different financial requirements will be in place regarding elderly dependent relatives and where permission will be granted on a temporary but annually renewable basis.

The situation regarding the case of Irish-citizen children is set out with a stated intention, as general policy, to 'grant immigration permission where the parent can demonstrate that an active and continuous involvement' in the child's life providing 'real emotional and/or financial support'.

Further study is outlined on new integration requirements (e.g. language competency, knowledge of Irish society). A review of current fees is also to be undertaken.

The Guidelines note the proposed introduction of a statutory appeals mechanism in a revised *Immigration, Residence and Protection Bill*, to include appeals related to family reunification applications. In the interim, all refusals are to contain a reason¹⁴⁵ and the applicant/sponsor may appeal such a decision to INIS and

¹⁴⁵ Short stay visas for the purposes of family visits would continue to be administered via the visa system.

¹⁴⁶ Outlined as including, inter alia, one or more of reasons related to public policy, financial criteria, previous immigration history of the applicant or sponsor where considered to be relevant, receipt of inadequate or inconsistent information or false documents, failure to establish closeness and durability of relationship, and cases where INIS believe that the marriage, partnership or adoption was entered into for the sole or predominant purpose of facilitating entry and residence in Ireland. See Irish Naturalisation and Immigration Service (December 2013). 'Policy Document on Non-EEA Family Reunification'. Available at www.inis.gov.ie.

considered within the ‘parameters of the [this] policy’. All applications are to be ideally dealt with in a six-month (under Category A or for Irish citizens) or 12-month (all other cases) timeframe.

The new policies are generally applicable from early 2014, however it is noted that the required administrative changes and recommendations would take time to implement fully.¹⁴⁷

3.3.2 Case Law

There were a number of cases before the Irish courts in 2013 concerning family reunification: concerning issues such as the nature of reasons needed to be given by the Minister for Justice when refusing such applications; the need for the Minister to use an objective yardstick when deciding whether financial contributions from a refugee enabled the conclusion to be drawn that the sponsor was financially dependent on him; and the types of marriage which might enable an application for family reunification to be made in respect of a spouse.

3.3.2.1 A. v. Minister for Justice [2013] IEHC 356

Minister for Justice obliged to give clear reasons for refusing application for family reunification on the ground of lack of dependency

The applicant in these proceedings was an Iraqi national who had been granted refugee status in the State. He made a family reunification application in respect of his parents and two sisters, pursuant to Section 18 of the *Refugee Act 1996*, which gives the Minister for Justice discretion to grant permission to a dependent member of the family of a refugee to enter and reside in the State.¹⁴⁸ The applicant contended that his parents suffered from medical conditions and that his eldest sister gave up her job as a lecturer to look after them, and that his father was not entitled to a pension. He stated that he transferred funds to the family and provided evidence of this.

The Minister accepted, on the basis of the documentation submitted, that the applicant had established that the subjects of the application were his parents and sisters and that they came within the required ‘degree of relationship’

¹⁴⁷ Irish Naturalisation and Immigration Service (December 2013). ‘Policy Document on Non-EEA Family Reunification’. Available at www.inis.gov.ie.

provided in Section 18(4)(b) of the Act. However, he held that the documents submitted failed sufficiently to establish that they were suffering from a mental or physical disability to such an extent that it was not reasonable for them to maintain themselves fully.

The applicant contended that various medical conditions suffered by the applicant's parents appeared to have been accepted by the Minister and that the conclusion on which the decision was based did not flow from the evidence. The court agreed that the reasons were not adequate.

As regards the alleged financial dependence on the applicant, the Minister had taken the view that the applicant's sister could continue working as a lecturer. Although he accepted that the applicant might be in a position to provide financial assistance to his family by sending money transfers from Ireland, he held that the family were not dependent on him.

The applicant contended that the Minister did not attach any or any proper weight to the regular money transfers made by him, or to the family ties and duties which rested on him as the eldest son in Iraqi culture.

The court agreed with the *dicta* of Cooke J. in *Hassan Sheekh Ali v. Minister* [2011] IEHC 115 that the issue of dependency was one of fact as to whether the subjects of the application were, in their circumstances in the country of origin 'dependent' in the sense of reliant for subsistence on the means and support of the refugee. It held that, in making such an assessment of dependency, the Minister was obliged to give a decision which should be rational and adequately reasoned.

The court held that the Minister had reached his decision regarding dependency on an irrational basis. It held that it was clear that there was evidence before him regarding the regular transfer of funds to the family by the applicant and yet there had been no mention made of them in the reasoning underpinning his decision. It held that there was also evidence before the Minister in relation to the current employment status of the applicant's sister and that his finding in respect of her potential ability to work was unreasonable because it was based on speculation that she could potentially remain working in the university where

¹⁴⁸ 'Dependent member of the family' means any grandparent, parent, brother, sister, child, grandchild, ward or guardian of the refugee who is dependent on the refugee or is suffering from a mental or physical disability to such extent that it is not reasonable for him or her to maintain himself or herself fully.

she lectured. He had not taken proper account of clarifications of the family's position provided at the investigative stage of the application. The court also held that the Minister had erred in fact in stating the family's monthly income and that this had a material effect on the outcome of his decision.

3.3.2.2 AAM v. Minister for Justice [2013] IEHC 68

No objective yardstick used by Minister for Justice when refusing to accept that payments made by applicant to alleged dependants were sufficient to conclude that they were actually dependent on him, resulting in unlawful decision

The applicant, a national of Somalia, had been granted refugee status in the State and he applied for family reunification with his mother and four siblings under Section 18 of the *Refugee Act 1996*, who lived in a camp in Somalia. He sent them approximately €157 per month. Whilst the court accepted the claimed family relationship, his application was refused on the basis that his family members were not financially dependent on him. It was considered that the applicant might be in a position to continue to provide financial assistance to his family in Somalia given that the cost of living there would be lower than that in Ireland.

He was granted leave to challenge the refusal on the basis, first, that the Minister had erred in finding that transfers of €2,830 from him to the family members in Somalia over the period September 2009 to May 2011 were not enough to establish financial dependency. The court noted that €157 a month was almost three times the gross minimum wage in neighbouring Kenya and a very substantial amount given the circumstances of the subjects of the application in a camp in Somalia; and, secondly, that the Minister had applied the wrong test with respect to dependency. The court, in granting leave, noted that the test posited in the *Refugee Act* was not forward looking and did not relate to the possible future position in Ireland. Accordingly, the finding that the subjects of the application would, in effect, be better off in Somalia, where the cost of living was lower, was not a relevant consideration in deciding whether they were dependent upon the applicant.

The court held that an inability to maintain family members in Ireland was not relevant to the assessment of dependency. It also held that no objective yardstick had been identified by the decision-maker that the payments in question constituted an insufficient sum to amount to dependency on the applicant, and it quashed the decision on that basis. It expressed the view that resources could be saved if the Minister for Justice were to draw up guidelines on what was required to establish dependency and, where such dependency was established, under what conditions family members would be permitted to join the refugee.

3.3.2.3 Hassan v. Minister for Justice [2013] IESC 8

Minister not entitled to rely on religious nature of marriage as basis for refusing application for family reunification and had failed to take account of explanation for inability to produce marriage certificate

The applicant was a national of Somalia and was granted refugee status. He then applied to the Minister for Justice pursuant to Section 18 of the *Refugee Act 1996* for family reunification with his spouse. He indicated in his application that his marriage was religious in nature but he was unable to provide any documentary evidence of it on account, he said, of the ongoing conflict in Somalia. His application was refused by the Minister on the basis of insufficient documentary evidence. The applicant's solicitors sought a review of the decision and submitted what was claimed to be an original marriage certificate, which had been obtained from the Somali embassy in Ethiopia. The application was then refused because the marriage was religious in nature.

The applicant took proceedings to challenge that decision and the High Court quashed it. He held that the explanation for the failure to register the marriage in Somalia, namely the lack of any civil registration system owing to the conflict there, was confirmed by country of origin information. In quashing the decision, it held, first, that the statement that the marriage was not recognised in Irish law because it was religious was not correct. Even if the formal requirements of the *lex loci celebrationis* had not been complied with, the marriage was still potentially capable of being recognised in the State as a valid common law marriage. Secondly, it held that the decision was based upon an incorrect interpretation of the test of a marital relationship applicable under Section 18(3)(b) of the *Refugee Act 1996*. Where a refugee was in a position to prove by alternative means that, since the date of the claimed marriage ceremony, a real marital relationship based on cohabitation and exclusivity in the relationship had subsisted between the two parties in question over a substantial period, the Minister might be entitled to consider that the requirement of Section 18(3) was satisfied.

The Minister appealed unsuccessfully to the Supreme Court. The Supreme Court held, first, that the Minister was not entitled to rely on the fact of the marriage as being religious as a ground for refusal and, secondly, that he had not taken sufficient account of the explanation given for the inability to produce a marriage certificate from Somalia in the circumstances of that country at the relevant time.

It observed that Irish law would recognise a marriage contracted in a foreign country which complied with the requirements of the laws of that country, the *lex loci celebrationis*, unless it conflicted with fundamental requirements relating to validity based on the domicile of the parties or public policy in Irish law, in particular capacity to marry. It noted that the courts had previously refused recognition to a common-law marriage because it was potentially polygamous.

It acknowledged that the question of whether an applicant was married, as alleged in a family reunification application, was a matter for the Minister to decide, but that he had to apply the law properly in doing so. It held that it was not open to the Minister to decline to decide that question by suggesting that the applicant seek a declaration pursuant to Section 29 of the *Family Law Act 1995*.

It held that, in the case before it, the Minister had been confronted with an application based on a clear assertion of a marriage ceremony with legal effect in Somalia, combined with the total loss of any possibility of producing documentary proof. It stated that the Minister was required to make an assessment based on all the evidence and with the assistance of the report prepared on foot of the investigation of the application. He was required to consider the assertion made by the applicant that a marriage had taken place and to assess its credibility, based on all the circumstances. He was not bound to accept a bald assertion but should consider it in combination with all other circumstances. One of those circumstances would be the reason offered for inability to produce a certificate. It held that he should take into account such evidence as might be provided that the parties have cohabited as a married couple. None of those considerations was decisive. It observed that he was not bound to accept the certificate which purported to emanate from the embassy in Ethiopia, but that there was nothing to prevent the applicant submitting explanation as to how the embassy came to issue it.

3.3.2.4 *Hamza v. Minister for Justice [2013] IESC 9*

Minister not entitled to rely on fact that marriage had taken place by proxy as basis for refusing application for family reunification.

The applicant was a national of Sudan who had been granted refugee status. He applied to the Minister for Justice pursuant to Section 18 of the *Refugee Act 1996* for family reunification with his spouse. In the course of his application he submitted a certificate which indicated that the marriage had taken place by proxy. The application was refused by the Minister on that account, it being held that the spouse did not qualify as a member of his family by reason of that.

The High Court quashed the decision on two bases, namely that the marriage was a proxy marriage and as such was not valid in Irish law; and that an incorrect test for recognition of a subsisting marital relationship between the refugee and the 'spouse' had been applied for the purpose of Section 18(3)(a) of the *Refugee Act 1996*. It held that, under Irish law, a proxy marriage, lawfully concluded according to the law of the locality in which it took place, would be recognised as valid provided the parties had the capacity to contract it at the time, and unless some factor of public policy applied to prevent or to relieve the State from recognising it. It held that that was particularly so where both of the parties concerned were domiciled in the jurisdiction in which the marriage was solemnised so that no issue arose as to the absent party represented by the proxy having been domiciled in Ireland at the time.

The Minister unsuccessfully appealed the decision of the High Court to the Supreme Court. The Supreme Court held that proxy marriages which were valid according to the law of the locality in which they took place would be recognised as valid in Irish law, provided the parties had the capacity to contract them at the time and unless some factor of public policy applied to prevent or to relieve the State from recognising them.

3.3.2.5 *AJ v. Minister for Justice [2013] IEHC 296*

Applicant unsuccessfully alleging no or inadequate reasons for decision to grant him leave to remain in the State and that decision actually based on belief that to return him to his country of origin would breach the prohibition on refoulement

In this case the applicant, an Afghan national, sought to quash a positive decision granting him leave to remain in circumstances where he had not challenged a decision by the Minister for Justice to refuse visa applications made in respect of his family, who were then living in Iran. The Minister had a general policy not to permit any person, whether related to the subject of the grant or not, to join or visit him in the State. The applicant contended that there was no reasoned basis for the positive decision or, alternatively, that it was based on recognition by the Minister that returning him to Afghanistan would breach the prohibition on *refoulement*.

The High Court held that the case was not concerned with any lack of clarity in the decision granting leave to remain, but constituted an attempt to circumvent the failure to challenge the refusal to grant the visa applications, whereby the decision could be transformed into one based on *refoulement* considerations,

which would assist the applicant in making an application for family reunification. The court said that it was clear from the evidence and the decision granting him leave to remain that it was his humanitarian representations as to his mental health that had been decisive in his being granted leave to remain, and that the grant of leave was not based on a belief that returning him to Afghanistan would breach the prohibition on *refoulement*. It therefore refrained from considering whether the blanket refusal of family reunification to those granted leave to remain was compatible with the Constitution or the *European Convention on Human Rights* (ECHR). It also declined to rule on the question of whether a person granted leave to remain was entitled to a full statement of the reasons for that decision, or indeed whether all positive decisions which relied on discretionary powers had to be accompanied by reasons.

3.3.3 Case Law - European Law Issues

3.3.3.1 *Ogieriakhi v. Minister for Justice [2013] IEHC 133*

Reference to CJEU pertaining to interpretation of Article 16 of Citizens' Directive

The plaintiff was originally a Nigerian national who arrived in Ireland in 1998 and sought asylum. One year later he married a French national and then withdrew his asylum application. He was given a residence permit by the Minister for Justice in 1999. His relationship ended in the course of 2001 and he began a new relationship with an Irish national. He divorced in 2009 and he married his Irish national partner that year. He was granted Irish citizenship by naturalisation in 2012. In his proceedings, he sued the State in a Francovich-style action for damages, claiming that it had failed properly to transpose the provisions of Directive 2004/38/EC ('the Citizens' Directive') into domestic law.

The background to his claim was that he had been dismissed from his position with the Irish postal service in 2007 on the sole ground that, as a non-EEA national, he had no right to work without a work permit. He claimed that he had already acquired a right of permanent residence in Ireland by virtue of Article 16 of the Citizens' Directive and that he accordingly had an entitlement to work in the same manner as an Irish citizen or an EU or EEA national exercising free movement rights.

The High Court decided to refer the following questions to the CJEU for a preliminary ruling:-

- Can it be said that the third-country national spouse of an EU national has 'legally resided with the Union citizen in the host Member State for a continuous period of five years' for the purposes of Article 16(2) of the

Citizens' Directive, in circumstances where the couple had married in May 1999, where a right of residency was granted to the non-national spouse in October 1999, and where, by early 2002 at the latest, they had agreed to live apart and where they both had begun to reside with entirely different partners by late 2002?

- If the answer to the first question was in the affirmative, and bearing in mind that the third-country national claiming a right to permanent residence pursuant to Article 16(2) based on five years' continuous residence prior to April 2006 also had to show that his residence was in compliance with, inter alia, the requirements of Article 7(1) of the Citizens' Directive, did the fact that during that five-year period he had left the family home and begun to reside with another individual in a new family home which was not supplied by his former EU national spouse, mean that the requirements of Article 7(1) of the Citizens' Directive were not satisfied?
- If the answer to the first question was in the affirmative and the answer to the second question was in the negative, then for the purposes of assessing whether a Member State had wrongfully transposed or otherwise failed properly to apply the requirements of Article 16(2) of the Citizens' Directive, was the fact that the national court hearing an action for damages for breach of Union law had found it necessary to make a reference on the substantive question of the plaintiff's entitlement to permanent residence itself a factor to which it can have regard in determining whether or not the breach of Union law was an obvious one?

3.3.3.2 *Lahyani v. Minister for Justice [2013] IEHC 176*

Interpretation by High Court of Article 16 of Citizens' Directive

The applicant in this case, a third-country national, had a right to reside in Ireland derived from his marriage to his EU citizen spouse who was exercising her free movement rights in Ireland. His marriage to his spouse had ended and she had left the State. He sought to quash the Minister for Justice's termination of his right of residence. His asserted right to continue residing in Ireland was based on his marriage having lasted at least three years and from the couple's residence together in Ireland for a minimum of one year before divorce proceedings were initiated. He claimed to enjoy the right of residence on a personal and individual basis under Article 13(2)(a) of the Citizens' Directive. He claimed that his intention to initiate divorce proceedings sufficed to permit him to remain in Ireland after his spouse's departure and potentially to live permanently in Ireland. The Minister for Justice contended that he had no continuing right of residence.

The court adopted an expansive interpretation of Article 13 of the Citizens' Directive, pursuant to which a right of residence would be retained if a spouse whose marriage had ended had initiated divorce proceedings within a reasonable time. The court held that that did not avail the applicant, because at the date of the revocation of his right of residence he was not divorced, had taken no steps to obtain a divorce, had no divorce petition pending which was being prosecuted expeditiously or otherwise and further, he had disengaged from contact with the Minister for Justice during a 12-month period after he was first asked if he had commenced divorce proceedings. A 17- to 18-month period had elapsed after his wife had left without anything being done by him to initiate a divorce.

In the court's view, Articles 12 and 13 of the Citizens' Directive could not be interpreted to permit a third-country national spouse to remain in the host Member State for an indefinite period, and at any time after the departure from it of his estranged spouse, commence divorce proceedings.

3.3.4 Research

The Irish country report under the European Commission Family Reunification Project, *Family Reunification – a barrier or facilitator of integration? Country Report Ireland*, outlined the current legislative and administrative policies governing applications for family reunification in Ireland, including applications for family members living overseas and in-country residence applications where family members may have met and formed family life in Ireland.

On the basis of in-depth interviews with a range of stakeholders, as well as existing published research, the Immigrant Council of Ireland (ICI) report documents the experiences and views of individuals, including both migrants and Irish citizens, who have applied for family reunification. Case law in relation to family reunification continues to evolve and 'issues arising in the context of the longer term settlement of migrants in Ireland are only beginning to come to the fore.' Authors highlight that due to the 'decision of the Irish government not to opt-in to Directives 2003/86/EC¹⁴⁹ and 2003/109/EC¹⁵⁰ and the retention of the extensive discretion of the Minister for Justice and Equality, the situation of third-country nationals and Irish nationals with regard to family reunification remains unclear, leading to confusion and frustration on the part of applicants and their family members'.

¹⁴⁹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

¹⁵⁰ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

The report notes that while Irish constitutional and human rights law ‘recognises the paramount importance of the family unit and its right to be protected’, Irish legislation ‘does not provide an explicit right to family reunification or to reside in Ireland on the basis of existing family relationships in all circumstances’.¹⁵¹ While family reunification is identified as an important issue there has been ‘no comprehensive reform to date and many of the developments have merely reacted to specific issues which entailed perceived abuse’.

In relation to integration, the ICI remarks that Irish legislation does not currently contain any express reference to integration either in immigration or citizenship law and there is no apparent formal connection between family reunification and integration at policy level. The report notes that positive changes such as spousal work permits, inclusion of de facto couples and amendments to regulations have occurred in response to external pressures arising from NGOs or by way of legal challenges rather ‘than at the initiative of the Department of Justice and Equality itself’. The report further argues that Government policy in relation to family reunification ‘does not differ in any significant way from general immigration policy and is largely influenced by financial considerations and the desire to control immigration’. The discretionary basis used to grant access to family reunification, long-term residence status and citizenship are also highlighted.¹⁵²

3.4 INTEGRATION

The Intercultural Education Strategy (2010-2015), the Cultural Diversity and the Arts Strategy (published in 2010) and the Intercultural Health Strategy (2007-2016) continued to be implemented throughout 2013. Legislation is currently being prepared to merge the Equality Authority and Human Rights Commission and to establish a new Irish Human Rights and Equality Commission.

3.4.1 Funding

A number of funding initiatives under the European Refugee Fund (ERF) and the European Integration Fund for Third-Country Nationals (EIF) continued during 2013. In September 2013, a call for proposals under the European Refugee Fund and the European Integration Fund was advertised and 22 projects were selected

¹⁵¹ The only persons who have a statutory right to family reunification are EU/EEA nationals, scientific researchers working in Ireland under *Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research* and persons granted refugee status or subsidiary protection.

to receive funding: six from the European Refugee Fund and 16 from the European Fund for the Integration of Third-Country Nationals.

The Office for the Promotion of Migrant Integration (OPMI) within the Department of Justice and Equality, has responsibility for the social, employment and integration of migrants element of the Human Capital Investment Operational Programme (HCIOP) 2007-2013.

The OPMI continued to fund the Employment of People from Immigrant Communities (EPIC) Programme during 2013. The EPIC programme aims to assist European Economic Area nationals and immigrants who can work in Ireland without a work permit to find employment and/or further training and education in Ireland. The training programme includes workplace language and social skills training, CV preparation, one-on-one coaching, interview skills, living and working in Ireland, and IT.

3.4.2 NGO Forum

In 2013, the Office for the Promotion of Migrant Integration (OPMI) established a new Non-Governmental Organisation (NGO) forum on an informal basis.

The Forum met twice during 2013, on 10 April and 26 July. It is intended that the Forum will meet regularly (twice to three times a year) to discuss integration issues and developments with key NGOs working in the immigrant integration area. Current members include AkiDwa, Crosscare, Doras Luimní, the Immigrant Council of Ireland, the Integration Centre, NASC and the New Communities Partnership.

3.4.3 Local Authority Activity

The OPMI has noted that a wide range of local (municipal) authorities have implemented, or are implementing, programmes which are designed to enhance integration practices at a local level, where an important common factor has been the involvement of local groups in the development of the plans. The involvement of local representatives in this manner helps ensure that

¹⁵² Becker et al. (2013). *Family Reunification – a barrier or facilitator of integration? Country Report Ireland*. Available at www.immigrantcouncil.ie.

programmes promoting action are tailored to the particular circumstances of geographic regions.¹⁵³

Two publications were launched during 2013 as a result of the project ‘Promoting Civic Participation of Third-Country Nationals through Local Authority Platforms 2010-2013’ which was co-financed by the EIF through the OPMI. The project was led by New Communities Partnership, in association with Dublin City Council, Dún Laoghaire Rathdown County Council, Fingal County Council and South Dublin County Council. Each of the local councils has developed an integration strategy and established an integration forum which work closely with the Social Inclusion/Community or equivalent officer, identifying key issues and getting representation on local bodies where they can help develop policy.¹⁵⁴

Information on inclusion for voting on the register of electors was distributed during the year.¹⁵⁵ Multilingual prompt cards in 17 different languages were made available to county and city councils for house-to-house enquiries, with Information Leaflet on the Register of Electors updated and made available in all of the 17 languages also.¹⁵⁶

3.4.4 Research

A 2013 report commissioned by the Doras Luimní, *Treated Differently? Evidence of racism and discrimination from a local perspective*, explored the occurrence of various forms of racism in Limerick. The study aimed to understand where racism occurs, who experiences it, and who the perpetrators are. Additionally the study sought to establish if racist incidents are reported and what barriers exist in reporting such incidents. One of the key findings of this study was that as many as 80 per cent of those who experienced racism or discrimination did not report it. The report shows that racism and discrimination are happening in Limerick but victims and witnesses are reluctant to turn to the authorities for assistance. While this particular study documented local manifestations of racism and discrimination, the issues are of global, national and regional significance.¹⁵⁷

¹⁵³ Office for the Promotion of Migrant Integration (December 2013).

¹⁵⁴ As detailed on www.integration.ie, ‘Promoting Civic Participation of Third-Country Nationals through Local Authority Platforms 2010 – 2013’. See www.integratingdublin.ie.

¹⁵⁵ See www.integration.ie.

¹⁵⁶ *Ibid.*

¹⁵⁷ Kennedy, P. (2013). *Treated Differently? Evidence of racism and discrimination from a local perspective*. Available at www.dorasluimni.org.

Kingston et al. (2013) examined objective measures of labour market outcomes to assess whether there are disparities between immigrant and native Irish participants in the labour market. The report focuses in particular on access to employment, the risk of unemployment, the quality of occupations attained and earnings from work. Kingston et al. also looked at discrimination in the labour market by focusing on people's subjective interpretations of their involvement in the labour market and drawing on a dedicated series of questions about experiences of discrimination when looking for work and when in the workplace. The research shows that Black African, Ethnic Minority EU and EU New Member State (NMS) groups fare worse than other national-ethnic groups in terms of both objective labour market outcomes (e.g. employment and unemployment) and in their experience of discrimination. Black Africans recorded the highest unemployment rate (36 per cent), and were four times more likely to be unemployed than White Irish individuals. Black Africans, Asians, Ethnic Minority EU, and White individuals from the UK and the 12 EU NMS were also less likely than White Irish nationals to work in professional and managerial occupations. In 2010, approximately 5 per cent of White Irish nationals reported having experienced discrimination while looking for work. All national-ethnic groups, apart from White UK and White EU13 individuals, reported substantially higher rates of discrimination in the workplace than White Irish. The study found that migrants who arrived in Ireland during the Recession (i.e. during or after 2008) were found to be more likely to report experiencing discrimination when looking for work than those who had arrived during the boom.¹⁵⁸

The Nasc (2013) report, *In From the Margins – Roma in Ireland: Addressing the Structural Discrimination of the Roma Community in Ireland*, examines experiences of discrimination faced by the Roma community living in Ireland. The findings of the report are based on over two years of legal case work with members of the Roma community in Cork, as well as focus groups, interviews and questionnaires. The report identifies barriers to integration that Roma experience and assesses whether equality legislation in Ireland adequately addresses the discrimination of vulnerable minorities. Difficulties faced by Roma migrants in accessing social security and healthcare are also examined.¹⁵⁹

¹⁵⁸ Kingston et al. (2013). *Ethnicity and Nationality in the Irish Labour Market: Evidence from the QNHS Equality Module 2010*. Available at www.esri.ie.

¹⁵⁹ Nasc (2013). *In from the margins: Roma in Ireland: Addressing the structural discrimination of the Roma community in Ireland*. Available at www.nascireland.org.

3.4.4.1 The Annual Integration Monitor 2013

The ESRI and Integration Centre *Annual Monitoring Report on Integration 2013* used the most recently available data to look at a range of indicators in order to measure different aspects of immigrant inclusion in Irish society. Of particular note in this Monitoring Report was the rapid increase in the acquisition of Irish citizenship among immigrants. During 2012, almost 20,200 adults from outside the European Economic Association (EEA) acquired Irish citizenship. This trend has been evident for a number of years: between 2010 and 2011 the number of non-EEA adults who acquired citizenship through naturalisation almost doubled (from 4,969 to 9,529); the figure more than doubled again between 2011 and 2012 (from 9,529 to 20,194).

The Monitoring Report also looked at integration in the employment domain. At the start of 2013 the unemployment rate was around 18 per cent among non-Irish nationals, compared to just over 13 percent for Irish nationals. The youth unemployment rate (those aged 15-24 years) is very high in Ireland, and in early 2013 it was higher for non-Irish nationals (33 per cent) than for Irish nationals (25 per cent) in this age group. The unemployment rate for workers aged over 25 is also higher among non-Irish nationals than Irish nationals.

In relation to education, data from the *Programme for International Student Assessment* (PISA) in 2012 show that, in English reading, 15-year-old immigrants from non-English speaking backgrounds had lower achievement scores, on average, than their Irish peers, although the gap between the groups had narrowed since 2009. There was no significant difference in PISA mathematics tests between immigrant students and Irish students.

Income poverty rates, measured as the percentage of a group falling below 60 per cent of median equalised income, were similar for Irish and non-Irish nationals in 2011. However basic deprivation (enforced lack of two or more items relating to food, clothing, heating and family/social life) was higher for non-Irish nationals, and was particularly high for Africans (44 per cent compared to 24 per cent for Irish nationals).

A special theme was included in the 2013 Monitor: Migrant Children at Age 3. It was found that in spite of their generally higher level of education, immigrant mothers of three-year-olds are, on average, less likely to be employed than Irish mothers. Immigrant children are also less likely to be in non-parental childcare for eight hours or more per week. The exception to this pattern is mothers from Western Europe. Their employment rates are the same as those of Irish mothers

(55 per cent) and the proportion of their children in non-parental childcare is very similar. Experience of financial strain, which increased with the economic crisis, tends to be higher among immigrant families, particularly those of African origin, but also those of EU Eastern European and Asian origin.¹⁶⁰

3.4.5 Citizenship and Naturalisation

3.4.5.1 Citizenship Statistics

Over 30,000 applications for citizenship were decided during 2013, with 18 citizenship ceremonies held. A reduction in processing times was also noted in an year-end review, with over 70 per cent of standard applications now decided within a six-month timeframe.¹⁶¹

3.4.5.2 Case Law

There were very few cases on citizenship in 2013. However, the case discussed below is referenced in relation to the guidance that it provides in reference to the obligations on the Minister for Justice to give reasons for delay in processing applications for citizenship.

3.4.5.2.1 *Mansouri v. Minister for Justice [2013] IEHC 527*

The applicant was an Algerian who had been granted refugee status in the State in 2007. He applied for a certificate of naturalisation in February 2008. A decision had yet to be made in January 2012, when he instituted proceedings and obtained leave to compel the Minister for Justice to make a decision on it. In the intervening period, a considerable amount of correspondence had passed between his solicitors and the Minister for Justice in relation to the question of when a decision might be made on the application. The Minister did not give a specific reason for the time taken to make a decision on the application, but had indicated at various points that this was due to the need to carry out various checks with a view to determining whether or not the applicant met the statutory conditions for naturalisation.

¹⁶⁰ McGinnity, F., Quinn, E., Kingston, G., and O'Connell, P. (2014). *Annual Monitoring Report on Integration 2013*. Available at www.esri.ie.

¹⁶¹ Irish Naturalisation and Immigration Service (January 2014). 'Immigration in Ireland – 2013 in Review'. *Press Release*. Available at www.inis.gov.ie.

A decision was made in May 2012 to grant the applicant naturalisation, which rendered the proceedings moot save as to costs. Resisting the applicant's application for costs, the Minister put affidavit evidence before the court explaining that the application had taken a lengthy period to determine because it was one of those in which particular potential security issues had to be addressed in the context of assessing whether or not the applicant was of 'good character', which was one of the prerequisites to obtaining a certificate of naturalisation, unless the Minister decided to waive it. It was explained that the nature of inquiries which had to be carried out were such that the Minister could not set a deadline for their completion. Moreover, it was explained that some checks had to be made with external agencies and the time taken for them to reply was outside the Minister's control. Nonetheless, he had made efforts to expedite matters as far as possible.

The court held that affidavit evidence on behalf of the Minister was of considerable assistance in providing a much more complete understanding of the chronology of events that gave rise to the elapse of time in dealing with the application. It provided a useful insight into how the applicant's case was investigated and confirmed that the Minister was dependent upon parties outside his control to provide relevant information to his investigation. The chronology indicated continuing efforts of a general nature by him to obtain information and that, once received, the information was assessed and the decision made within a relatively short time.

Nonetheless it stated that it was regrettable that the bare chronology outlined on behalf of the Minister which outlined what had happened to the application had not been provided to the applicant, and that this could have been done without any difficulty.

In deciding on the award of costs, it considered that the case was not one where the Minister had made a unilateral decision rendering the proceedings moot, which would ordinarily lead to costs being awarded against him. Rather, it occupied an intermediate position on the spectrum. This was on account of the fact that, although the mootness of the proceedings was not entirely due to an external event, there was an external element to it, namely the need to await information from external agencies, which the Minister regarded as a prerequisite to the making of his decision. The court noted that, on receipt of the relevant information from the external agency, the relevant officials were able to provide a written recommendation for the Minister. The court held that the applicant had acted reasonably in issuing the proceedings given the unexplained delay which had obtained at the time he did so in January, 2012. He had also

acted with forbearance given the elapse of time of some 44 to 45 months before he did so. He could not be considered to have acted precipitately. Taking all of the above factors into account, the court awarded him half of his costs.

3.5 VISA POLICY AND SCHENGEN GOVERNANCE

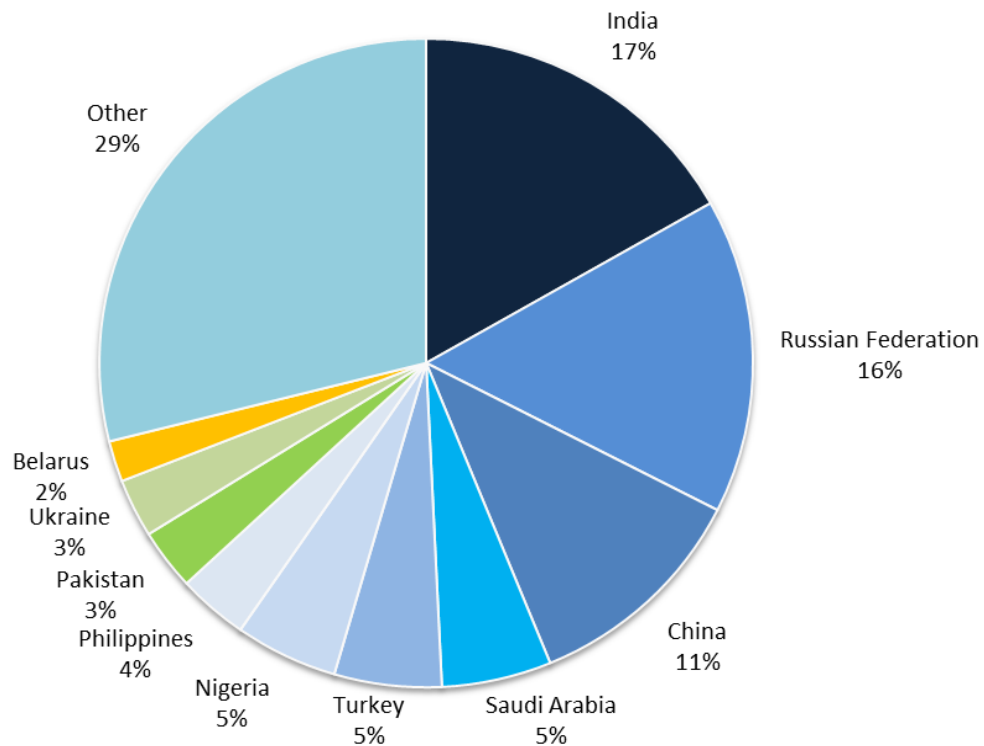
3.5.1 *Visa Statistics*

In a year-end review of 2013 developments in the area, the Minister for Justice and Equality highlighted the role of business and tourist visas in ‘Ireland’s recovery’ and remarked that visa applications to visit Ireland ‘for tourism and business reasons are now higher than they have ever been in the history of the State and many thousands more are visiting Ireland under the terms of the Irish Visa Waiver Programme’.

Just over 95,000 entry visa applications were received during 2013, with an overall approval rate of 91 per cent. Over half of all applications were received from nationals of India (16 per cent), Russia (15 per cent), China (11 per cent), Nigeria (6 per cent) and Turkey (5 per cent).¹⁶²

The majority of entry visa applications were granted to nationals of India (17 per cent), Russia (16 per cent), China (11 per cent), Saudi Arabia (5 per cent) and Turkey (5 per cent).

¹⁶² Irish Naturalisation and Immigration Service (November 2014).

FIGURE 3.1 Entry Visa Applications Granted by Nationality, 2013

Source: Irish Naturalisation and Immigration Service.

3.5.2 Extension of Visa Waiver Scheme

Thailand was added to the list of applicable countries under the Visa Waiver Scheme in November 2013, bringing the number of countries covered by the Scheme to 18.¹⁶³

The Programme was initially introduced in 2011, and was extended, during 2012, until the end of October 2016. The Programme now concerns holders of UK short-stay visas from 18 selected countries; China, India, Russia, Turkey, Ukraine, Belarus, Bosnia and Herzegovina, Montenegro, Serbia, Bahrain, Kuwait, Oman, Saudi Arabia, the United Arab Emirates, Kazakhstan, Uzbekistan, Qatar and Thailand.

The Programme provides for visa-free travel to Ireland for persons in possession of a valid UK visa and who are either nationals of one of the countries covered by the scheme, have entered the UK on a UK 'C' General visa or been granted leave to remain in the UK for up to 180 days. In essence, eligible persons will not be

¹⁶³ Irish Naturalisation and Immigration Service (14 November 2014). 'Minister for Justice, Equality and Defence, Alan Shatter, T.D., announces addition of Thailand to Visa Waiver Programme. Tourist and other short-stay visitor numbers likely to rise'. *Press Release*. Available at www.inis.gov.ie.

required to have both an Irish and UK visa when entering Ireland after lawful entry to the UK. A valid entry stamp from the UK Border Agency is required on the national's passport.

Tourists, business persons (including 'C' long-term, multi-entry business visas), sportspersons and academics are included in the categories of persons covered under the Programme, while holders of transit visas, long-term student visas and family reunification visas are excluded. Qualifying persons are permitted to remain in Ireland for a maximum of 90 days or the duration remaining on their UK leave to remain if shorter. Nationals of primarily 'emerging' markets were catered for under the initial Programme including Eastern Europe (Belarus, Montenegro, Russian Federation, Serbia, Turkey and Ukraine), Middle East (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the U.A.E.) and Asia (India, Kazakhstan, China and Uzbekistan).¹⁶⁴ During 2012, Bosnia and Herzegovina was added to the existing list of 16 countries already covered, with fees waived for long-term residents from the countries covered by the Programme who live in the Schengen area.¹⁶⁵ The *Immigration Act 2004 (Visas)(Amendment) Order 2013 (S.I. No. 428 of 2013)* added Thailand to the list of non-visa required states as in the *Immigration Act 2004 (Visas) Order 2012 (S.I. No. 417 of 2012)* during the year.

In July 2013, the Minister for Justice and Equality noted the growth in trips to Ireland from countries covered under the Short-Stay Visa Waiver Programme which was initially launched in 2011 and extended until the end of October 2016 during 2012. Provisional figures indicate that the number of visits in 2012, by persons from the seventeen countries covered by the Programme, was 38 per cent higher than in 2010, the last full year before the introduction of the Programme.¹⁶⁶ In October 2013 it was noted that since China had been added to the waiver programme, an additional 6,000 Chinese nationals had travelled to Ireland under new tour operator programme alone.¹⁶⁷

¹⁶⁴ Irish Naturalisation and Immigration Service (March 2012). *'The Irish Short-Stay Visa Waiver Programme Information Note'*. Available at www.inis.gov.ie.

¹⁶⁵ To be reviewed after six months. Irish Naturalisation and Immigration Service (12 March 2012). 'Minister Shatter announces extension of Irish Short-Stay Visa Waiver Programme'. *Press Release*. Available at www.inis.gov.ie.

¹⁶⁶ Irish Naturalisation and Immigration Service (4 July 2013). 'Minister Shatter welcomes success of Visa Waiver Programme'. *Press Release*. Available at www.inis.gov.ie. See also Irish Naturalisation and Immigration Service (14 November 2013). 'Minister for Justice, Equality and Defence, Alan Shatter, T.D., announces addition of Thailand to Visa Waiver Programme'. *Press Release*. Available at www.inis.gov.ie.

¹⁶⁷ Irish Naturalisation and Immigration Service (16 October 2013). 'Minister Shatter reveals details of proposed new visa arrangements with UK to commence in 2014 to attract tens of thousands of additional non-EU visitors to Ireland'. *Press Release*. Available at www.inis.gov.ie.

3.5.3 Common Travel Area

In a year-end review of 2012 developments, the Minister for Justice, Equality and Defence stated that he would be ‘prioritising cooperation with the UK on initiatives such as a Common Travel Area visa... and systems for improved collection and sharing of visa data’ in 2013.¹⁶⁸

Several data exchanges took place with the UK Home Office during the year including cross-checking of Irish visa biometric and biographic data with that of the UK’s immigration fingerprint data.¹⁶⁹ Cross-referencing of fingerprints from failed asylum seekers with UK immigration records also took place during the year. The cross-matching of asylum and visa applications has taken place in accordance with the applicable statutory provisions and ‘Ireland-UK Memoranda of Understanding’. During 2013, ORAC used the Automated Visa Application and Tracking System (AVATS) of INIS to detect applications for asylum where the applicant had withheld information about an Irish visa. In a year-end review of 2013 activities the Minister remarked that ‘enhanced’ data sharing with UK authorities had been established during 2013 in order to cross-check Irish visa applicants with an adverse UK immigration and/or criminal history, and that over 75,000 checks had taken place against UK records during the year. Initiatives to improve the collection and sharing of visa data between Ireland and the UK are to be prioritised in 2014.¹⁷⁰

Further activities took place during 2013 regarding the development of reciprocal Common Travel Area (CTA) visa arrangements which are expected to be operational in mid-2014. A mutual recognition by each State of short-stay visas issued by the other State is to enable ‘tourists, business and other eligible visitors’ to travel within the CTA on a single visa. Reviewing 2013 developments, the Minister for Justice and Equality remarked that it had the potential to attract ‘tens of thousands of additional tourism and business visitors to Ireland’.¹⁷¹

¹⁶⁸ Irish Naturalisation and Immigration Service (January 2014). ‘Immigration in Ireland – 2013 in Review’. *Press Release*. Available at www.inis.gov.ie.

¹⁶⁹ The cross-checking of Irish visa applicant data with the UK immigration fingerprint database has been in operation since June 2012.

¹⁷⁰ Irish Naturalisation and Immigration Service (January 2014). ‘Immigration in Ireland – 2013 in Review’. *Press Release*. Available at www.inis.gov.ie.

¹⁷¹ Irish Naturalisation and Immigration Service (January 2014). ‘Immigration in Ireland – 2013 in Review’. *Press Release*. Available at www.inis.gov.ie. See also Irish Naturalisation and Immigration Service (16 October 2013). ‘Minister Shatter reveals details of proposed new visa arrangements with UK to commence in 2014 to attract tens of thousands of additional non-EU visitors to Ireland’. *Press Release*. Available at www.inis.gov.ie.

3.5.3.1 Schengen

In June 2000 Ireland applied to take part in some aspects of Schengen, namely police and judicial cooperation in criminal matters, the fight against drugs and the Schengen Information System (SIS). The Council adopted a decision approving Ireland's request on 28 February, 2002. It is necessary for Ireland to put new legislative and other measures in place to give effect to the relevant elements of the Schengen *acquis*. It has been noted by the Department of Justice and Equality that Ireland is actively following up on these activities.¹⁷²

Ireland does not participate in the Visa Code or the Visa Information System (VIS).

3.5.3.2 Biometric Data Collection

In 2013 Ireland continued to operate biometric data collection ('e-Visa') as part of the visa application process in Nigeria and indicated its intention to expand this collection system to certain other countries, notably India. Within the e-Visa system, all visa applicants aged six years and over and who are residing in Nigeria (irrespective of nationality) must present in person to one of the Ireland Visa Application Centres (VAC) in Abuja or Lagos. Nigerian nationals seeking permission to enter at the border in Ireland may have their fingerprints checked against records at Dublin Airport.

3.5.4 Border Monitoring

3.5.4.1 Automated Border Control Technology

Automated border e-gates were tested at Dublin Airport for the first time during the year. Trialled at Pier A/D, approximately 115,000 passengers used the gates during the six-month trial. As of year-end, the Department of Justice and Equality was in discussions with the Dublin Airport Authority (DAA) regarding an extension of the use of e-gates throughout the airport. During the trial, certain passport holders (Irish, EU, EEA and Swiss passengers over 18 years of age) will not be required to present to an Immigration Officer and will instead have a 'self-service' channel with which to clear immigration control. The trial was run in cooperation with the Dublin Airport Authority (DAA) and supported by automated border gate technology provided at no cost to the State by two separate border management solutions companies, SITA and Accenture. E-gates offer certain categories of

¹⁷² Department of Justice and Equality (December 2013).

arriving passengers a 'self-service' channel to clear immigration control rather than the conventional process of presenting at a manned immigration booth.¹⁷³

The use of automated border gates was cited as taking place in tandem with the 'civilianisation' of certain port of entry functions at Dublin Airport.¹⁷⁴

The Minister for Justice and Equality signed Regulations transposing into Irish law Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data via the European Communities (Communication of Passenger Data) Regulations 2011 which came into effect in October 2011. The Regulation requires all air carriers on inbound flights from outside the EU to provide passenger data to Irish immigration authorities in order to improve border control and combat irregular immigration.¹⁷⁵ The Border Management Unit is currently working on Advance Passenger Information and is testing a prototype system Irish Borders Information System (IBIS) to inform any decision to build a standing system to receive and process passenger data from airlines. Work is continuing on the implementation of the regulations with other Departments and the relevant airlines to effectively implement the Directive.¹⁷⁶ A review of the procurement of IT services relating to border activities took place during 2013.¹⁷⁷

3.5.5 Frontex

During 2013 Ireland continued to participate in activities of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). The legal base of the Frontex Regulation falls within those provisions of the Schengen *acquis* in which Ireland does not participate and, as such, Ireland is excluded from participating as a full member. Limited cooperation between Frontex and Ireland is provided for via an annual application approved by the Frontex Management Board. During 2013, Ireland continued to participate in meetings of the Frontex Risk Analysis Network and to provide relevant statistical data on a regular basis. It also participated in border guard training in the area of biometrics, common curriculum, false documents and return.

¹⁷³ Irish Naturalisation and Immigration Service (December 2013). See also Irish Naturalisation and Immigration Service (10 May 2013). 'Immigration Service trials 'self-service' automated border control technology at Dublin Airport'. *Press Release*. Available at www.inis.gov.ie.

¹⁷⁴ During 2012, a pilot project took place in which staff members of the Department of Justice and Equality were assigned to work alongside Gardaí in immigration control duties at Dublin Airport.

¹⁷⁵ Irish Naturalisation and Immigration Service (27 October 2011). 'Minister Shatter signs new law requiring airlines to provide Advance Passenger Information'. *Press Release*. Available at www.inis.gov.ie.

¹⁷⁶ Irish Naturalisation and Immigration Service (December 2013).

¹⁷⁷ Irish Naturalisation and Immigration Service (December 2013).

During 2013, Ireland participated in a total of five joint European return operations organised by Frontex:

- On 24 January 2013, 11 persons were deported from Ireland to Lagos, Nigeria under Section 3 of the Immigration Act 1999. The deportation was part of a joint operation organised through the EU Frontex Network;
- On 13 February 2013, seven persons were deported from Ireland to Tbilisi, Georgia on under Section 3 of the Immigration Act 1999. The deportation was part of a joint operation organised through the EU Frontex Network;
- On 16 May 2013, 15 persons were deported from Ireland to Tirana, Albania under Section 3 of the Immigration Act 1999. The deportation was part of a European Frontex operation led by Ireland;
- On 5 June 2013, six persons were deported from Ireland to Lagos, Nigeria on under Section 3 of the Immigration Act 1999. The deportation was part of an operation led by Austria organised through the EU Frontex network;
- On 16 June 2013, ten persons were removed from Ireland to be returned to Kinshasa, DR Congo. The return was part of an operation led by Belgium via Brussels to Kinshasa and organised through the Frontex network.¹⁷⁸

¹⁷⁸ www.inis.gov.ie.

Chapter 4

International Protection Including Asylum

4.1 INTERNATIONAL PROTECTION PROCEDURES

4.1.1 *International Protection Statistics*

There was a (small) continued decrease in applications for asylum in Ireland, with 946 applications received during the year. Of the applications received (938 new applications and eight re-applications) by the Office of the Refugee Applications Commissioner (ORAC) during 2013, the largest single number related to nationals of Nigeria (129 applications, representing 13.6 per cent of all applications), followed by nationals of Pakistan (91 applications, representing 9.6 per cent of all applications), Democratic Republic of Congo (72 applications, representing 7.6 per cent of all applications), Zimbabwe (70 applications, representing 7.4 per cent of all applications) and Malawi (55 applications, representing 5.8 per cent of all applications).¹⁷⁹ Of the 1,122 cases processed to completion by ORAC during the year, there were 128 positive recommendations, 582 negative recommendations following interview, 252 other negative/withdrawn recommendations and 160 determinations made under the Dublin Convention/ Regulation. One case was considered 'unprocessable'.¹⁸⁰ A total of 248 applications were outstanding as of year-end.

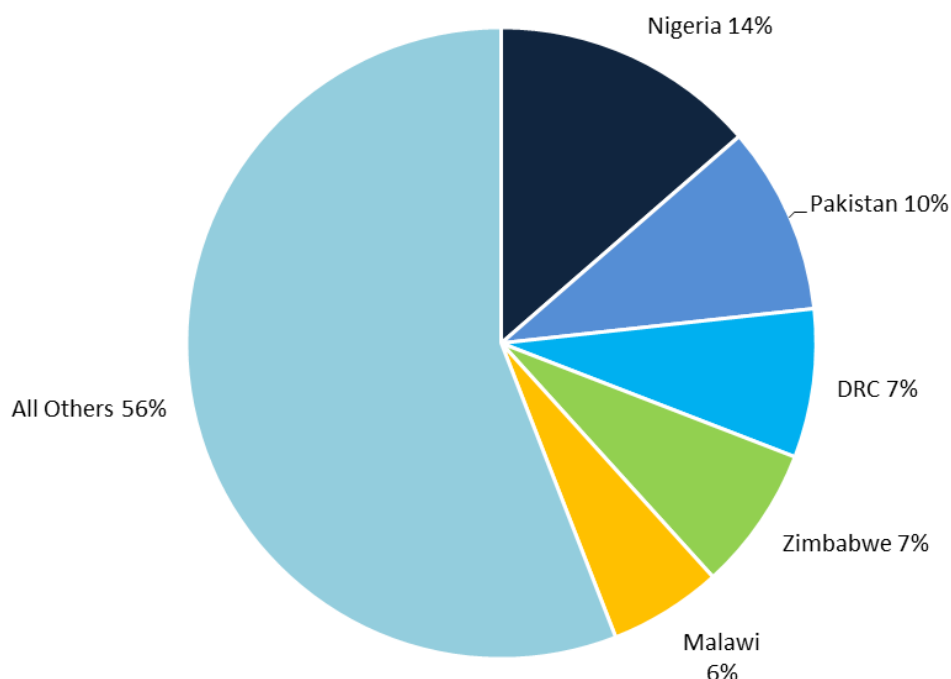
ORAC received applications for asylum from 20 Unaccompanied Minors in 2013. This represented 2.1 per cent of all applications for asylum.¹⁸¹ ORAC referred 34 persons to the Social Work Team for Separated Children in the course of the year.¹⁸²

The cross-matching of asylum and visa applications has taken place in accordance with statutory provisions and during 2013 ORAC used the Automated Visa Application and Tracking System (AVATS) of INIS to detect applications for asylum where the applicant had withheld information about an Irish visa.

¹⁷⁹ Office of the Refugee Applications Commissioner (2014). *Annual Report 2013*. Available at www.orac.ie.

¹⁸⁰ Office of the Refugee Applications Commissioner (2014). *'Monthly Statistical Report December 2013'*. Available at www.orac.ie.

¹⁸¹ Office of the Refugee Applications Commissioner (2014). *Annual Report 2013*. Available at www.orac.ie.

FIGURE 4.1 Number of Applications, by Nationality, for Asylum in Ireland, 2013

Source: www.orac.ie.

Some 660 appeals were received by the Refugee Appeals Tribunal during 2013, with 584 decisions issued and 20 withdrawn. Of the appeals received, some 513 related to those under the substantive 15-day process, 117 under the accelerated appeals process and 30 related to the Dublin Regulation. A total of 604 appeals were completed during 2013.¹⁸³

4.1.2 European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013)

Subsequent to the judgment of the High Court in *M.M. v. Minister for Justice* (Unreported, High Court, 23 January, 2013), and in order to address some of the issues in it with a view to avoiding a build-up of undetermined applications for subsidiary protection, the *EU (Subsidiary Protection) Regulations 2013* were drafted and came into force on the 14 November 2013. Pending consideration of

¹⁸² Office of the Refugee Applications Commissioner (March 2014).

¹⁸³ Refugee Appeals Tribunal (2014). *Annual Report 2013*. Available at www.refappeal.ie.

the Judgment, some 3,800 subsidiary protection claims were put on hold during the intervening period.¹⁸⁴

The 2013 Regulations govern the investigation and determination of applications for subsidiary protection in Ireland, which are now dealt with in a procedurally similar manner to the determination of refugee applications. Previously, applicants for subsidiary protection had no permission to be in the State. However, Regulation 4 of the Regulations of 2013 changes this and provides that an applicant is entitled to remain in the State until the application or appeal is withdrawn or deemed withdrawn, or the Minister grants or refuses a declaration of subsidiary protection.

Under the new Regulations, applicants for subsidiary protection will have their applications investigated by the Refugee Applications Commissioner (Regulation 5). Applicants will be interviewed by the Commissioner who, pursuant to Regulation 6, will then prepare a report and make a recommendation as to whether or not subsidiary protection should be granted to them. Under Regulation 7, an appeal lies against negative recommendations to the Refugee Appeals Tribunal, and must be made within 15 working days of the sending to the applicant of the notification of the Commissioner's recommendation. Provision for an oral hearing is made. Unlike the *Refugee Act 1996*, there is no provision for paper appeals, unless an applicant decides not to have an oral hearing and in which case the Tribunal may proceed on the papers unless it considers an oral hearing is necessary in the interests of justice.

Insofar as the burden of proof is concerned, the position is similar to the refugee determination process. At first instance, the Commissioner must, in cooperation with the applicant, assess the relevant elements of the application. However, on appeal, it is for the applicant to show that they are a person eligible for subsidiary protection. The Tribunal must, however, assess the relevant elements of the application in cooperation with them.

Regulation 11 provides that the Commissioner and the Tribunal must assess the credibility of the applicant. The following regulations then set out general principles as to how applications are to be assessed and determined.

¹⁸⁴ Irish Naturalisation and Immigration Service (13 November 2013). 'Minister Shatter announces that processing of applications for Subsidiary Protection cases to recommence immediately'. *Press Release*. Available at www.inis.gov.ie.

The Regulations make provision for exclusion from eligibility for subsidiary protection status (Regulation 17) and cessation of eligibility for subsidiary protection status (Regulation 18).

Regulation 20 provides that, in the event of a positive recommendation from the Refugee Applications Commissioner or, as the case may be, the Refugee Appeals Tribunal, the Minister for Justice and Equality must give the applicant a declaration of subsidiary protection. He has no discretion to grant status if a negative recommendation has been made by the Commissioner or affirmed by the Tribunal.

Regulation 21 provides for revocation of declarations of subsidiary protection by the Minister if he is satisfied that:-

- a) the person should have been or is excluded from being eligible for subsidiary protection, under Regulation 17,
- b) the person has, in accordance with Regulation 18, ceased to be eligible for subsidiary protection, or
- c) misrepresentation or omission of facts, whether or not including the use of false documents, by the person was decisive in the decision to give him a declaration.

Regulation 21 provides for the procedure by which revocation occurs, which enables the person concerned to make representations on foot of a proposal to revoke. The person may appeal to the High Court against any revocation, and the High Court may either confirm the revocation or direct the Minister to withdraw it.

Regulation 22 sets out the rights of a person who has been given a declaration of subsidiary protection. They are entitled to seek and enter employment, to carry on any business, trade or profession, and to have access to education and training in the State in the like manner and to the like extent in all respects as an Irish citizen. They also are entitled to receive the same medical care and services and the same social welfare benefits as those to which Irish citizens are entitled. In general, they are also entitled to reside in the State, and to exercise the same rights of travel in, to, or from the State as those to which Irish citizens are entitled.

Regulations 25 and 26 entitle a person who has been given a declaration of subsidiary protection to apply for family reunification.

Additional funding has been provided to the Refugee Legal Service to support the provision of legal advice to subsidiary protection applicants in advance of interview, with private practitioners engaged. ORAC has noted that it has been working closely with UNHCR on the roll out of the new process and on training for persons involved in the interviewing of applicants and the making of decisions.¹⁸⁵

4.1.3 Resettlement

Ireland joined the UNHCR-led resettlement scheme in 1998, with 1,104 vulnerable persons resettled as 'programme refugees' between 2000 and 2013. Some 76 persons were resettled during 2013.¹⁸⁶

During the year four medical cases (19 persons)¹⁸⁷ were admitted, two persons arrived to join other family members resettled in 2012 and 24 DRC refugees arrived from refugee camps in Tanzania. One further DRC family of six approved for resettlement in 2013 was unable to travel from Tanzania due to the expected arrival of a child in early January. During 2013, in addition to the annual resettlement quota, 31 Afghan refugees also arrived from Syria under an EU-funded Preparatory Action for Emergency Resettlement. Due to unforeseen delays in arranging transfer of both the Afghan and DRC refugees to Ireland, two new babies were born to the families awaiting transfer, with a further baby due in January 2014.

Ireland relocated three Somali families (10 persons) from Malta to Ireland for permanent resettlement during 2013. This was noted by OPMI as a gesture of solidarity with the Maltese authorities who were experiencing exceptional pressures on their asylum system. OPMI has remarked that the three families were resettled in the same town as the three other Somali families also admitted from Malta in 2012, and were linked to service providers, with children attending school and adults are participating in language and pre-employment courses.¹⁸⁸

¹⁸⁵ Office of the Refugee Applications Commissioner (December 2013).

¹⁸⁶ See www.integration.ie. Excluding persons relocated and detailed below.

¹⁸⁷ Including one medical case from Syria.

¹⁸⁸ Office for the Promotion of Migrant Integration (December 2013).

In 2013, IOM Ireland assisted 86 refugees from seven different countries of refuge to travel to Ireland for the purposes of resettlement.¹⁸⁹

4.2 RECEPTION OF APPLICANTS FOR INTERNATIONAL PROTECTION

At the end of December 2013, a total of 4,360 persons were in accommodation centres under contract to the Reception and Integration Agency (RIA), a decrease of just under 10 per cent on 2012 figures. The occupancy rate of all centres stood at 86.4 per cent in December. The number of contracted centres fell from 35 to 34 over the course of the year, with one reception centre (Dublin-based), two self-catering centres and 31 accommodation centres. Seven centres are state-owned and three were 'system built' for the purpose of housing asylum-seekers.¹⁹⁰

The budgetary provision for RIA in 2013 was €57.5 million, reduced to €51.9 million for 2014.¹⁹¹ An *Irish Times* report in October 2013 estimated that the State had spent 'at least €775 million on the direct-provision system which was established in 2000', with the average daily rate varying from €15.50 in State-owned centres to €29.49 in privately-owned centres.¹⁹²

The system of direct provision accommodation continued to prompt much criticism during 2013, particularly regarding the length of time spent in centres by some applicants.¹⁹³ Much public discussion took place in relation to a need for reform in the reception system for asylum seekers.¹⁹⁴

¹⁸⁹ IOM Ireland (March 2014). IOM Ireland provided assistance with health-related services, such as detailed health assessment including medical history, physical examination, clinical investigations and pre-departure treatment or immunizations. Refugees requiring special medical attention during the journey were accompanied by a medical escort.

¹⁹⁰ Reception and Integration Agency (2014). *RIA Monthly Report December 2013*. Available at www.ria.gov.ie.

¹⁹¹ Parliamentary Question No. 498 (26 November 2013).

¹⁹² Noting that the private contractor rate includes energy, maintenance, transport and VAT costs. See *The Irish Times* (7 October 2013). 'State paid private firms €60m to house asylum seekers last year'. Available at www.irishtimes.com.

¹⁹³ E.g. *The Irish Times* (18 October 2013). 'Long delays make asylum process 'worse than prison''. Available at www.irishtimes.com; *The Irish Times* (8 October 2013). 'Inspections reveal poor standards in asylum centres'. Available at www.irishtimes.com; *The Irish Times* (24 April 2014). 'Government urged to expedite asylum applications'. Available at www.irishtimes.com; European Commission Against Racism and Intolerance (2013). *ECRI Report on Ireland: Fourth Monitoring Cycle*. Available at www.coe.int; The Irish Refugee Council (2013). *Direct Provision: Framing an alternative reception system for people seeking international protection*. Available at www.irishrefugeecouncil.ie. Earlier years include Arnold, S. K. (2012). *State Sanctioned Child Poverty and Exclusion: The case of children in state accommodation for asylum seekers*. Irish Refugee Council. Available at www.irishrefugeecouncil.ie; FLAC (2009). *One Size Doesn't Fit All*. Available at www.flac.ie; NASC (2008). *Hidden Cork: The Perspectives of Asylum Seekers on Direct Provision and the Asylum Legal System*. Available at www.nascireland.org.

¹⁹⁴ E.g. *The Irish Times* (4 August 2013). 'Time to legislate for direct provision system for asylum seekers'. Available at www.irishtimes.com; *The Irish Times* (23 July 2013). 'New child agency chairwoman raises concerns over conditions for asylum seekers'. Available at www.irishtimes.com; *The Irish Times* (1 April 2013). 'Ireland out of step with Europe in

Much parliamentary discussion took place on the issue during the year with over 50 queries on the topic answered by the Minister for Justice and Equality during the year.¹⁹⁵ In November 2013 the Minister for Justice and Equality acknowledged that ‘the length of time that residents spend in direct provision is an issue to be addressed’ and that a republished *Immigration, Residence and Protection Bill* will provide for a single application procedure so that applicants ‘can be provided with a final decision on all aspects of their protection application in a more straight forward and timely fashion’.¹⁹⁶

In a parliamentary response from 2013, the Minister for Justice and Equality stated that

it is worth noting that a substantial number of those residing for long periods within the direct provision system, are adults living with their children who have challenged in the courts by way of the judicial review process decisions made refusing applications for asylum and/or permission to remain in the State and whose cases await hearing or determination. There are currently approximately 1,000 such cases pending before the courts.

It was acknowledged that the Reception and Integration Agency (RIA) must ‘adapt existing premises for the purposes of accommodating asylum-seekers’ but that it ‘is not realistic to expect ‘bespoke’ accommodation for asylum-seekers in accordance with what one may wish to ideally have in a centre.’ It was also noted that a 2010 *Value for Money (VFM) Report* found that there are no cheaper alternatives to the present form of system.¹⁹⁷

The Irish Refugee Council 2013¹⁹⁸ report, *Direct Provision: Framing an alternative reception system for people seeking international protection*, sets out a number of proposals for reform. The paper noted that considering the conditions available to residents (sharing of rooms by parents and children and, in cases, with strangers, absence of play space for children and incidences of ‘real

treatment of asylum seekers – Nasc’. Available at www.irishtimes.com and *The Irish Times* (23 March 2013). ‘Inhumane asylum-seeker system needs radical reform’. Available at www.irishtimes.com.

¹⁹⁵ Seanad Debate (12 December 2013). *Direct Provision System*.

¹⁹⁶ Parliamentary Question No. 498 (26 November 2013).

¹⁹⁷ The Reception and Integration Agency (2010). *Value for Money and Policy Review: Asylum Seeker Accommodation Programme*. Available at www.ria.gov.ie.

¹⁹⁸ The Irish Refugee Council (2013). *Direct Provision: Framing an alternative reception system for people seeking international protection*. Available at www.irishrefugeecouncil.ie.

isolation' from communities), there is 'little surprise then that this has been called the next big scandal that will cost Ireland dearly, both financially and in terms of its international reputation.' The paper remarked on the 2010 *Value for Money* (VFM) report and noted that no reference had been made to the length of time spent in the system, possibility of removing facilities from private business or management of accommodation centres with

proper facilities and with appropriately qualified personnel to reduce the harm and provide a level and type of support that enables people...to play a part in their community and stand a better chance of becoming self-sufficient and less dependent on the State.

A series of reforms are proposed including a maximum of six months spent in direct provision following which access can be provided to the rent allowance social welfare scheme and a cash allowance for an adequate standard of living. Access to the labour market after six months is recommended. Other proposals include access to specialised 'one-stop-shop' reception centres for all newly-arrived protection applicants including access to necessary services (including legal and trauma supports); provision of self-catering facilities to allow for family unity and responsibility; financial support for children to take part in community activities; the ability to move out of communal accommodation at the 'earliest opportunity' to reduce a possibility of stigma for children; establishment of a system for early identification of persons with particular vulnerabilities or special needs; and greater monitoring and inspection of reception facilities including legislation placing direct provision under the remit of the Health Information and Quality Authority (HIQA) monitoring. In addition, a number of transition recommendations are outlined including a pilot centre to be run on a not-for-profit basis and to include self-catering facilities, family units and a resource centre for services.

Difficulties experienced in providing appropriate services and activities to long-term residents within the direct provision system are also raised within the Jesuit Refugee Service (JRS) paper from April 2013, *Lives on Hold: Living Long-Term in Direct Provision Accommodation*. Based on the experiences of JRS staff and volunteers in visiting 11 direct provision centres nationally each week, the paper identifies the length of time spent in the direct provision system as the 'single greatest challenge in attempting to deliver appropriate services'. An absence of a single procedure and court delays in seeking leave to seek a judicial review are cited as reasons for this duration of residence within reception centres. It is noted that there is an apparent absence of the 'necessary political will and sense of

urgency regarding the finalising of new legislation' in the area in order to introducing a single procedure.¹⁹⁹

An article by the Ombudsman, Emily O'Reilly, in Summer 2013²⁰⁰ on the topic of the treatment of asylum seekers noted that there seemed to be an 'almost universal acceptance that these arrangements are damaging to the health, welfare and life-chances of those who must endure them'. She added that asylum applicants have 'almost no personal income, no control over their food and general living conditions and are, in effect, excluded from participation in normal society.' A call was made for placement of the system of direct provision on a statutory footing in order to lend it 'a legitimacy it currently lacks'. Decisions 'taken in the administration of the law relating to immigration or naturalisation' are outside the remit of the Ombudsman; in effect with public administration in the area 'effectively free of any external oversight' other than by way of judicial review. The creation of the system is noted as having taken place in reaction to a 'perceived' emergency situation created by an increase in asylum applications. The Ombudsman states that what 'is acceptable as an emergency short-term solution often becomes unacceptable where it becomes long-term'. The Ombudsman outlined how payments to asylum-seekers had not been increased since 2000 and would stand at €26.60 and €13.40 per adult and child respectively had they increased in line with the Consumer Price Index. The length of time of applicants within the direct provision system was highlighted in the article, with recent figures at time of writing showing over 66 per cent in direct provision for more than three years; it was noted that, upon introduction of the system in 2000, the then Minister for Justice stated that persons would not stay more than six months within reception facilities. The absence of a right to work for asylum-seekers is noted, in tandem with their being 'excluded from the social welfare system and consideration for social housing'. Specific concerns were raised on the placement of children of asylum-seekers in direct provision for long periods of time, also whether parents are 'being hindered... from exercising their proper parental responsibility' whilst in direct provision. The compatibility of direct provision arrangements with Article 41.1.2 of the Irish Constitution (where the State 'guarantees to protect the Family in its constitution and authority as the necessary basis of social order and as indispensable to the welfare of the Nation and the State') and with Article 8(1) of the *European Convention on Human Rights* ('everyone has the right to respect for his private and family life') is also raised.

¹⁹⁹ Quinn, E. (April 2013). 'Lives on Hold: Living Long-Term in Direct Provision Accommodation'. *Working Notes*. Issue 71. Available at www.jrs.ie.

²⁰⁰ O'Reilly, E. (2013). 'Asylum Seekers in Our Republic: Why have we gone wrong?' *Studies*. Summer 2013. Vol. 102, no.406. Available at www.studiesirishreview.ie.

4.3 MEASURES TO IMPLEMENT ASPECTS OF THE COMMON EUROPEAN ASYLUM SYSTEM

4.3.1 *European Asylum Support Office*

Ireland continued to participate in the European Asylum Support Office (EASO) during 2013.

An ORAC trainer was requested in May 2013 to deliver the ‘Train the Trainer’ EASO/EAC module on ‘Interviewing Children’ to colleagues from other EU Member States. Ireland provided a country of origin information (COI) expert from the Refugee Documentation Centre to provide training support to the Italian authorities in November 2013 under an EASO Operational Programme for Italy. In addition, Ireland has incorporated EASO training materials into the Refugee Status Determination (RSD) training modules within the ORAC office. Ireland also participated in the annual EASO Didactic seminar in October 2013 and continues to regularly attend EASO meetings as required in particular in relation to Training and Quality.²⁰¹

EASO deployed the first expert from Ireland in the context of *Operating Plan EASO - Greece Phase II* to Athens in July 2013. The expert covered first instance issues including how to undertake a first instance interview; interview preparation; preparing a first instance report and decision after interview; and undertaking country of origin research.

During 2013 ORAC participated in the work of the EASO on the development of an EU Quality Process for the determination of applications for international protection.²⁰² It is indicated that this exercise will include a review of quality-related initiatives and projects in EU Member States since 2004, particular quality mechanisms in place, as well as a mapping of the ways in which asylum systems function in everyday practice.

4.3.2 *European Database of Asylum Law*

The Irish Refugee Council (IRC) continued to act as lead partner with regard to implementation of the European Database of Asylum Law (EDAL), an online database of case law from EU Member States relevant to the interpretation of European asylum law.²⁰³ The EDAL has been developed by the IRC in conjunction

²⁰¹ Office of the Refugee Applications Commissioner (December 2013).

²⁰² Irish Naturalisation and Immigration Service (December 2013).

²⁰³ www.asylumlawdatabase.eu.

with the European Council on Refugees and Exiles (ECRE), and is financed by the European Refugee Fund (ERF). The database contains a variety of supplementary resources such as copies of relevant legislation, country overviews and other resources relevant to the case summaries hosted. The first phase of funding ran for 18 months up until March 2012. The second phase began in September 2012 (until February 2014) and saw the database expanded to cover an additional six EU countries (Austria, Greece, Italy, Poland, Slovakia and Slovenia), to broaden its focus to cover all aspects of the Common European Asylum System, and to include both European Court of Justice and European Court of Human Rights decisions in the database. In addition, the Hungarian Helsinki Committee has joined ECRE and the IRC as an implementing partner and in particular they will manage the administration of the six most easterly EU countries. Two international conferences will also take place under this second phase.²⁰⁴

4.4 CASE LAW

A number of important judgments were delivered during 2013 in relation to asylum and subsidiary protection law in Ireland, including the extent to which asylum applications may be accepted from persons who are recognised as refugees by other countries; the impact on judicial reviews of negative asylum decisions of information which undermines the credibility the actual asylum claim; the test which should be used when assessing whether or not allegedly homosexual applicants have a well-founded fear in their country of origin; and the circumstances in which the Minister for Justice is entitled to adopt earlier findings made by him in respect of a person's asylum application when he is examining his application for subsidiary protection.

4.4.1 *A. v. Refugee Appeals Tribunal (Unreported, Supreme Court, 16 January, 2013)*

Applicant not entitled to refugee status simply on account of high statistical incidence in her tribal group of infliction of FGM

The applicant's mother made an asylum application on her behalf in which she alleged that the applicant was at risk of female genital mutilation ('FGM') in Nigeria from a family member. The Refugee Appeals Tribunal found that the claim lacked credibility and, in effect, cast doubt on the existence of the family member. It also found that state protection and internal relocation were

²⁰⁴ The Irish Refugee Council (2013). *Annual Report 2012*. Available at www.irishrefugeecouncil.ie.

available to the applicant. The applicant's mother issued proceedings to challenge the Tribunal's decision.

The High Court upheld the credibility findings made by the Tribunal, but nonetheless quashed the decision on the basis that it had failed to assess the risk to the applicant of being subjected to FGM in Nigeria having regard to country of origin information which showed a high rate of it amongst her tribe and the potential lack of police protection. The High Court granted the Tribunal a certificate of leave to appeal on the grounds that its decision raised a point of law of exceptional public importance and that it was desirable in the public interest that an appeal be taken.

The Supreme Court overturned the decision of the High Court and allowed the appeal of the Tribunal. Decisive in its view was the fact that the Tribunal had not considered credible the applicant's claim to fear the infliction of FGM from a particular 'actor of persecution'. In those circumstances, the Supreme Court made it clear that the high statistical incidence of FGM in Nigeria could not, of itself, place any obligation on an asylum decision-maker to confer refugee status on an applicant such as the minor.

4.4.2 DE v. Refugee Appeals Tribunal [2013] IEHC 304

Protection decision-makers not entitled to dismiss credibility of claims by reason of lack of documentation without having regard to Regulation 5(3) of EC (Eligibility for Protection) Regulations 2006

The applicants were a married couple and their child from Ukraine. They claimed to fear persecution as a result of the first named applicant's pursuit of corruption allegations against senior military figures in Ukraine. He claimed that he had made complaints orally and in writing and that he had been assaulted by unknown individuals on account of this. He said that the trigger for his flight from Ukraine was the posting by military authorities of his photograph on a military wanted list in relation to embezzlement and the illegal sale of arms in Kosovo, where he had previously served with the Ukrainian army.

His claim was found to lack credibility by the Refugee Appeals Tribunal owing to lack of documentation to support the claim to have made complaints about corruption in Ukraine. The applicant challenged this before the High Court.

The High Court held that there had been a failure by the Tribunal to have regard to Regulation 5(3) of EC (Eligibility for Protection) Regulations 2006. This provides:-

'Where aspects of the protection applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met-

- (a) the applicant has made a genuine effort to substantiate his or her application;*
- (b) all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given;*
- (c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;*
- (d) the applicant has applied for protection at the earliest possible time, (except where an applicant demonstrates good reason for not having done so); and*
- (e) the general credibility of the applicant has been established.'*

The High Court was critical of an approach which discounted credibility based on the absence of documents without having regard to Regulation 5(3) of the Regulations of 2006 and whether or not those conditions had been fulfilled.

It also agreed that the Tribunal had erred in discounting the credibility of a summons for the arrest of the applicant on the basis that it had been served at his father's house, given that the evidence he had given in his asylum application was that that was his last registered address in Ukraine. The court also set aside a negative credibility finding made by the Tribunal which was based on the applicant's wearing of his army uniform at hearing, noting that, contrary to what the Tribunal considered, the fact that his apartment had been sealed did not prevent him from obtaining the uniform, which could have been provided to him by his father.

4.4.3 Makuala and Gomez v. Refugee Applications Commissioner [2013] IEHC 248

Applications for asylum made by persons recognised as refugees in third countries based on alleged persecution in those countries are not admissible in Ireland in the absence of evidence that those countries afford them no protection

The first named applicant in this case was a recognised refugee in the Czech Republic since 1998. He subsequently arrived in Ireland and applied for a declaration of refugee status. He stated that he had refugee status in the Czech Republic in 1998 but had subsequently been mistreated by that state or by non-state actors acting with its tacit approval. The second named applicant was in a similar position.

Their applications were not accepted for processing by the Refugee Applications Commissioner pursuant to Section 17(4) of the *Refugee Act 1996*. That subsection provides that the Minister for Justice ‘shall not give a declaration to a refugee who has been recognised as a refugee under the *Geneva Convention* by a state other than the State and who has been granted asylum in that state and whose reason for leaving or not returning to that state and for seeking a declaration in the State does not relate to a fear of persecution in that state.’ In the light of this, the Commissioner informed the applicants that no purpose would be served by investigating their claims, and that, accordingly, their applications were not being admitted for processing.

The applicants unsuccessfully issued proceedings in the High Court to set aside the refusal to admit their asylum applications for processing.

The High Court held that, based on previous case law where similar issues had arisen, a number of matters had to be considered in making a decision under Section 17(4) of the Act of 1996, namely:-

- an applicant who had been granted asylum in another country was not entitled to a declaration of asylum simply on the basis of a bare assertion of ‘fear of persecution’;
- if there were no facts to support a claim of fear of persecution at all, Section 17(4) precluded the granting of refugee status;
- if the applicant had established a reasonable possibility of a risk of persecution if returned to the asylum granting country, it was incumbent on the Refugee Applications Commissioner to investigate the credibility of the claim;
- the applicant had to demonstrate a reasonable possibility that ‘generally’ the state in question was either not disposed to granting reasonable protection to a person in ‘fear of persecution’ or was not in a position to do so; and
- the applicant also had to be able to demonstrate as part of his claim that he had made an attempt to invoke the protection of the host state in an effort to procure protection, especially if the state conferring refugee

status was a member of the European Union bound by the Charter of Fundamental Rights, a signatory to the European Convention on Human Rights and Fundamental Freedoms, and subject to the jurisdiction of the European Court of Justice and the European Court of Human Rights.

The High Court held that it was satisfied that the evidence of the applicants of their experiences in the Czech Republic in dealing with officials of the Czech State did not support any allegation of discrimination against them on the basis of race. On the contrary, they arrived from their respective countries of origin and claimed international protection which was granted to them by the Czech authorities following due process, and full compliance with Czech State's international obligations. Following the granting of refugee status to the applicants they were given accommodation, of which they availed, and financial support during the course of their stay. They were provided with training opportunities and language courses in order to enhance their prospects of employment. Both were assisted by a non-government agency involved in the integration of refugees. When proceedings were brought against them in relation to their eviction, they had the right to be legally represented and were so represented for a time until they chose to discharge their legal adviser. Proceedings taken against them were adjourned from time to time to enable them to attend court and deal with them. They availed of the opportunity to present grievances to state officials from time to time. They were given travel documentation pursuant to the *Geneva Convention* which they used on one occasion to travel to Geneva to obtain help from the UNHCR, which intervened on their behalf, following which they returned to the Czech Republic. On their own accounts, it held that they exercised the right to free association in that they founded an association to assist refugees and asylum-seekers, and freely exercised the right to protest publicly about their grievances against the Czech authorities. They remained in the Czech Republic for many years and did not seek international protection in the form of asylum on any of their trips to Germany, Switzerland or France.

It noted that the applicants alleged that they had been assaulted by 'skinheads' and threatened by Czech officials that they should leave the country, and that they ascribed their difficulties with accommodation to racial discrimination. However, the court held that that was an assertion which was never taken beyond the level of subjective belief. There is no evidence before the Commissioner or the court that the applicants made any attempt to take legal action against any of the state authorities or officials seeking redress in respect of racial discrimination or any other wrongs allegedly committed against them. The

main emphasis in the description of events furnished by the applicants was on accommodation problems.

The court also took judicial notice of the fact that the Czech Republic was a member of the European Union and subject to the laws and treaties of the Union, the *Charter of Fundamental Rights* and the jurisdiction of the European Court of Justice. It was also a member of the Council of Europe, a signatory to the *European Convention on Human Rights and Fundamental Freedoms*, and subject to the jurisdiction of the European Court of Human Rights. The court held that there was no evidence that a reasonable degree of protection was unavailable to the applicants to secure their legal rights (including a right not to be discriminated against) under the laws of the Czech Republic, the European Union, or the *European Convention on Human Rights and Fundamental Freedoms*.

It held that there had been no real attempt by the applicants to avail of state protection in the Czech Republic against the perceived wrongs they have suffered, or to provide a reasonable explanation for failing to do so. It was satisfied that much of the evidence advanced by the applicants actually supported the proposition that the Czech authorities had endeavoured to honour their obligations to them as refugees.

4.4.4 KB v. Minister for Justice [2013] IEHC 169

Protection decision-makers obliged to consider whether compelling reasons arising out of past persecution or serious harm entitling applicant to protection.

The applicant was a national of Togo who claimed to have suffered persecution from state agents there on account of his involvement with an opposition political party. It had been accepted by the Refugee Appeals Tribunal that he had suffered past persecution in his country of origin, but it took the view that he would not be at future risk. It said that, taking into account the size of Togo, the lapse of time that the applicant had been away from it, the large population in Togo, the improvements since he left, and the presence of international observers and the return by the UNHCR of some 40,000 former refugees, it was reasonable to suppose that the applicant would not be at risk of persecution if he were to return there.

The court held that the Tribunal had overlooked the ‘compelling reasons’ limb of Regulation 5(2) of the *EC (Eligibility for Protection) Regulations 2006*, and reiterated that the task confronting the Tribunal was a three-fold one, requiring it to consider if the applicant had suffered persecution in the past. If he had, then it

had to consider whether there were good reasons for believing that such persecution would not be repeated should he be returned to his country of origin. If there were, it nonetheless had to consider whether there were compelling reasons arising out of previous persecution alone as might nevertheless warrant a determination that the applicant was eligible for protection.

The court concluded that the third task had not been undertaken by the Tribunal and that the decision was consequently unlawful.

4.4.5 EPA v. Refugee Appeals Tribunal [2013] IEHC 85

Adoption by High Court in granting leave of approach taken by House of Lords in United Kingdom to assessment of claims by alleged homosexuals.

The applicant, a national of Ghana, claimed to be homosexual and to fear persecution there. He was married with children in Ghana.

His claim was disbelieved by the Tribunal. The Tribunal referred to the fact that it believed the applicant was a happily married man.

The court opined that that was not language which indicates an acceptance that the applicant was gay. It stated that the Tribunal did not appear to accept that the applicant was homosexual. It held that a clear and reasoned finding on that central issue was required of the Tribunal and that a failure by it to decide that in express terms established a substantial ground that the decision was unlawful, and it granted leave to pursue that point.

The court held that in disbelieving his claim, the Tribunal had relied on country of origin information. Significantly, the court adopted the approach for assessment of such cases set out by the House of Lords in *HJ (Iran) v. Secretary of State for the Home Department [2010] UKSC 31*, which set out a number of criteria which decision-makers should follow when examining the claims of alleged homosexuals. The House of Lords had said that when an applicant applies for asylum on the ground of a well-founded fear of persecution because he was homosexual, the tribunal had to ask itself first if it is satisfied that he was homosexual, or that he would be treated as such by potential persecutors in his country of nationality.

- (i) If so, the tribunal had then to ask itself whether it was satisfied on the available evidence that homosexuals who lived openly would be liable to persecution in the applicant's country of nationality.
- (ii) If so, the Tribunal had to go on to consider what the individual applicant would do if he were returned to that country.
- (iii) If the applicant would in fact live openly and thereby be exposed to a real risk of persecution, then he had a well-founded fear of persecution, even if he could avoid the risk by living 'discreetly.'
- (iv) If, on the other hand, the tribunal concluded that the applicant would in fact live discreetly and so avoid persecution, it had to go on to ask itself why he would do so.
- (v) If the tribunal concluded that the applicant would chose to live discreetly simply because that was how he himself would wish to live, or because of social pressures, e.g. not wanting to distress his parents or embarrass his friends, then his application should be rejected. Social pressures of that kind did not amount to persecution and the Convention did not offer protection against them. Such a person had no well-founded fear of persecution because, for reasons that have nothing to do with any fear of persecution, he himself chose to adopt a way of life which meant that he was not in fact liable to be persecuted because he was homosexual.
- (vi) If, on the other hand, the tribunal concluded that a material reason for the applicant living discreetly on his return would be a fear of the persecution which would follow if he were to live openly as a homosexual, then, other things being equal, his application should be accepted. Such a person had a well founded fear of persecution. To reject his application on the ground that he could avoid the persecution by living discreetly would be to defeat the very right which the Convention existed to protect; his right to live freely and openly as a homosexual without fear of persecution. By admitting him to asylum and allowing him to live freely and openly as such without fear of persecution, the receiving state would give effect to that right by affording the applicant a surrogate for the protection from persecution which his country of nationality should have afforded him.

The High Court granted leave to the applicant to claim that the Tribunal failed to determine the asylum application in accordance with law, the law being as set out in *HJ (Iran) v. Secretary of State for the Home Department* [2010] UKSC 31.

A similar approach was taken by the court in granting leave in the case of *SQ v. Refugee Appeals Tribunal* [2013] IEHC 94, a Syrian national who claimed to fear persecution in Syria on the basis of his homosexuality.

4.4.6 *AW v. Refugee Applications Commissioner [2013] IEHC 71*

Paper appeal adequate to enable applicant to deal with findings on credibility of his claim which were not based on his demeanour

The Applicant was a national of Pakistan who claimed to fear persecution at the hands of the Taliban who were trying to extort money from him. The Refugee Applications Commissioner made a number of adverse credibility findings on his application. He also held that, even if the complaint were credible, the alleged threatened actions by the Taliban were motivated by financial gain and were criminal in nature as opposed to persecutory and that, accordingly, the applicant was not targeted on a Convention ground. He made a finding pursuant to Section 13(6)(a) of the *Refugee Act 1996* that the applicant had shown either no basis or a minimal basis for the contention that he was a refugee.

Section 13(5)(a) of the Act of 1996 provides that where a Section 13(6)(a) finding is made, the applicant may appeal to the Tribunal but that any such appeal will be determined without an oral hearing.

The applicant sought to rely on the decision of Cooke J. in *Nkosi v. the Refugee Applications Commissioner* (Unreported, High Court, 30 March 2012) in support of the contention that he was entitled to an oral appeal. The applicant contended that his 'personal credibility' had been rejected and that he ought to be able to redress this at an oral appeal.

The High Court refused to grant him leave. It held that there was no right to an oral hearing before the Tribunal but that where demeanour or personal credibility findings underpinned the Commissioner's decision, then the applicant might need to be able to give oral evidence again on appeal. It gave as an example a case where the Commissioner might refuse a claim because he disbelieved an applicant and did so exclusively on grounds of evasiveness, or memory failure or the manner in which evidence was uttered, and it concluded that, in such a situation, fairness would require that he should be permitted to give evidence orally again.

However, it stated that it was unable to see what possible advantage would accrue to the applicant by having an oral hearing. It noted that although significant credibility issues had been identified by the Commissioner, they were

not based on demeanour, and were therefore capable of being adequately addressed in a paper appeal.

4.4.7 AG v. Refugee Appeals Tribunal [2013] IEHC 247

Information coming to light after leave hearing but before judgment which casts doubt on credibility of applicant's claim for asylum resulting in dismissal of applicant's proceedings

The applicant in this case claimed to have been a national of Bhutan whose parents had been killed by the authorities there and he said that he had then been forced to leave the country for Nepal in 1991, when he was aged eight. He stated that he had been living clandestinely in Nepal from 1991 until 10 May, 2006. He said that he arrived in Ireland via India in November 2006. He stated that he had never previously sought asylum in Ireland or in any other country, nor had he ever held a passport because he could not obtain it without Bhutanese citizenship. He stated that he did not hold a visa to enter any country nor had he ever made an application for an Irish visa or a student visa or work permit. He claimed to have entered Ireland with a Nepalese passport. He said that he feared persecution from Maoists in Nepal, who had sought him to join their organisation in 2003.

The Refugee Applications Commissioner accepted the applicant's claim to have been forced out of Bhutan, but he made a negative recommendation on his claim of persecution, which he assessed by reference to Nepal. He noted that he had not been harmed by the Maoists there nor been subject to any harm from the Nepalese authorities. The applicant appealed to the Refugee Appeals Tribunal, in which he asserted that the Commissioner had erred in not assessing his claim by reference to Bhutan.

The Tribunal adopted a similar approach. It held that the applicant was stateless and that his country of habitual residence was Nepal. It held that he had not suffered 'persecution' there and affirmed the Commissioner's recommendation.

The applicant challenged the decision in the course of judicial review proceedings and the matter proceeded to leave hearing, at which point judgment was reserved.

At that stage, information came to light which indicated that the applicant had applied for asylum in the United Kingdom in December 2002 using different

identity details in which he claimed to be Nepalese. The information indicated that the application had been refused in January 2003, and that an appeal against that decision had been dismissed. The applicant had subsequently been treated by the British authorities as an absconder.

In the light of this information, the Tribunal brought an application to the High Court to dismiss the applicant's proceedings on the ground of abuse of process. In response, the applicant swore an affidavit acknowledging that he had been in the United Kingdom where he said he had paid a man who told him to relate a story about being persecuted by Maoists in Nepal. He sought to maintain that he was nonetheless a person who had been expelled from Bhutan when he was a child and that he was a refugee on that account. He maintained that he was accordingly entitled to pursue his application for judicial review in respect of the Tribunal's decision.

The court held that it was clear that the applicant, having failed in his application for asylum in the United Kingdom, and having pursued all legal avenues available to him there, remained illegally there and then travelled illegally to Ireland. It observed that the lies he told in respect of his story did not stem completely from the lies he decided to tell the British immigration authorities, but arose from a deliberate intention to conceal from their Irish counterparts the fact that he had had the benefit of the full asylum application procedure in the United Kingdom, and on account of which he had to invent a new story to cover the period from 2002 to 2006, every element of which was a lie.

It held that an important feature of the case was that the Commissioner and the Tribunal had largely approached their assessment of the claim on the basis of the account given by the applicant of his experiences in Nepal over a period of fifteen years, for four of which he was not in Nepal. The court was satisfied that the untruths told by the applicant materially affected the consideration of his story by the Commissioner and the Tribunal, and clearly affected the acceptance of aspects of his story in the decision made by the Tribunal.

The court held that when an applicant was seeking leave to apply for judicial review, it was incumbent on him to act in good faith and disclose all material facts to the court, an obligation which extended up to the time of the full judicial review hearing. If the court was misled or an applicant failed to disclose material facts relevant to his claim, the court could exercise its discretion to dismiss the claim. The exercise of that discretion depended on the facts of a particular case and the legal issues which arose. The court held that there had been a complete

lack of candour and good faith by the applicant in the course of the proceedings, and that, without the intervention of the Tribunal and the new evidence adduced by it, he would happily have allowed the High Court to proceed to determine his application on the basis of incomplete and false information about his previous application for asylum in the United Kingdom, and other facts, which were clearly and belatedly admitted by him to be untrue.

The court held that the Tribunal was prejudiced by his lack of candour and untruthfulness because it had not been informed that the applicant had made a previous asylum application which had been rejected in the United Kingdom. The court noted that that would have had an adverse consequence for the application. In addition, it noted that the facts advanced by the applicant in respect of which the determination was made by the Tribunal, consisted of matters which were clearly untrue in relation to his personal history, particularly between the years 2002 and 2006. It held that the fact that those matters were known to be untrue could also have affected the determination of his credibility in respect of other facts determined by the Tribunal, including facts concerning his alleged country of origin. The court held that it would be entirely unfair to expect the Tribunal to answer a challenge as to the lawfulness of its decision on the grounds advanced by the applicant, and it dismissed his proceedings.

4.4.8 RF v. Refugee Appeals Tribunal [2013] IEHC 350

Specific demeanour findings upheld by High Court

The applicant claimed asylum on the basis that she was a Ghanaian national. Her application was assessed by the Refugee Applications Commissioner who found that there was no Convention nexus. The applicant appealed to the Tribunal and radically changed her story. She claimed that she was a Nigerian who had been trafficked to Italy and forced to work as a prostitute. The applicant claimed that she worked for one year in Italy as such, but escaped to Ireland. She claimed to fear her trafficker, to whom she still allegedly owed €20,000.

The Tribunal rejected her claim on the basis of lack of credibility and the applicant challenged its decision in the High Court.

The High Court upheld the Tribunal's decision. In particular, it upheld a finding on credibility which had been made by reference to the applicant's demeanour. It noted that the Tribunal had referred to the applicant as 'staring into the air and appearing to guess...' and '...the applicant would repeat the question being

asked, in an effort to give herself time to think about the answer...' and 'in some cases the applicant would look to the ceiling as if trying to guess an answer....' The Tribunal Member noted that

...the applicant's evidence was vague, she did not convince me she was telling the truth, she mixed up details, she could not answer questions, she delayed in answering questions, this Applicant simply did not convince me that she now telling the truth.

The court upheld the adverse credibility finding based on demeanour on the ground that it was very clear and specified how the applicant was considered to lack credibility by reference to that factor.

By contrast, in *FEA v. Refugee Appeals Tribunal* [2013] IEHC 106, the Tribunal had stated in its decision that the applicant 'in his demeanour lacks credibility' without further elaboration. This was criticised as lacking in specificity, but the decision was upheld by reference to separate credibility findings.

4.4.9 M.A. v. Refugee Appeal Tribunal [2013] IEHC 36

Irish High Court applies decisions of Court of Justice of European Union in holding that Article 1D of the Refugee Convention applicable only to persons receiving protection from UN agencies other than the UNHCR

The applicant applied for asylum in Ireland on the basis of a fear of persecution in Iran. He said that he had been born in Iran in 1977 but that, because he was of Kurdish ethnicity, he did not hold Iranian citizenship. In 1980, at the start of the Iran-Iraq war, he and his family were among thousands of ethnic Kurds forced to flee Iran. For some months they lived in the border region of Iraq. He was eventually transferred to a refugee camp in Iraq, which was run by the UNHCR. He furnished documentary evidence of his residence there. In May 2002, he moved to Turkey. He said that he could not return to Iran because of his pro-Kurdish activities. He provided documentary evidence of his recognition as a refugee by the UNHCR in Turkey in December 2003. He said that he was given a hard time by police in Turkey and that he had been relocated from one city to another by the UNHCR. He left Turkey and travelled to Ireland. He claimed to fear persecution, torture, prison or being forced to work as an agent for the Iranian regime if returned to Iran.

The applicant was held by the Refugee Appeals Tribunal not to come within the definition of a refugee on the basis that, pursuant to Article 1D, he had already

been afforded protection and assistance by the UNHCR. The applicant challenged that before the High Court.

The High Court held that the Tribunal had erred in its assessment of the applicant's claim, because Article 1D of the Refugee Convention applied exclusively to special categories of refugees for whom separate arrangements had been made to receive protection or assistance from organs or agencies of the UN 'other than' the UNHCR. Such special arrangements were currently in place, it noted, in relation to stateless persons of Palestinian origin who were under the protection of the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). It observed that that fact had been confirmed by the Grand Chamber of the Court of Justice of the European Union in *C-31/09 Nawras Bolbol* where the applicability of Article 12(1) (a) of the 'Qualification Directive' was considered. The court noted that the CJEU had also held in *C-364/11 Abed El Karem El Kott* that at that time, UNRWA constituted the *only* UN organ or agency other than the UNHCR which was referred to in Article 12(1)(a) of the 'Qualification Directive' or Article 1D of the Refugee Convention.

Accordingly, the court therefore held that Article 1D had no applicability other than to Palestinian refugees and did not apply to persons like the applicant who was under the protection of the UNHCR and no other UN agency.

4.4.10 A. (*An Infant*) v. Minister for Justice [2013] IESC 18

Dismissal by High Court of leave proceedings on foot of motion to dismiss not to be construed as a refusal of the leave application requiring a certificate of leave to appeal to Supreme Court

The applicant had applied for asylum and sought to challenge the decision of the Refugee Applications Commissioner in judicial review proceedings, instead of appealing it to the Refugee Appeals Tribunal.

The Commissioner applied to the High Court to strike out the proceedings on the ground that the application for leave was either frivolous and vexatious, doomed to fail, or constituted an abuse of process. The High Court agreed and struck out the proceedings.

The applicant appealed to the Supreme Court, and the State parties to it sought to strike out the appeal on the basis that the applicant had not obtained a certificate of leave to appeal from the High Court, contrary to Section 5(3)(a) of

the *Illegal Immigrants (Trafficking) Act 2000*. Accordingly, the net point for the determination of the Supreme Court was whether the order of the High Court dismissing the proceedings, was a determination of the High Court of an ‘application for leave to apply for judicial review’ in respect of which the applicant required a certificate of leave to appeal pursuant to that provision.

The Supreme Court held that the application for leave to apply for judicial review was not heard by the High Court. Rather, what the High Court had heard was a motion brought by the State parties seeking an order that the applicant’s proceedings be dismissed on the grounds that they were frivolous, vexatious and/or doomed to failure. The High Court’s ruling on that motion was not a ‘determination’ within the meaning of Section 5(3)(a) of the Act of 2000. It took the view that the issues involved in a motion to dismiss could be substantially different from those involved in an application for leave to apply for judicial review. Under constitutional jurisprudence, express language was required in a statutory provision to oust the constitutional right of appeal from the High Court to the Supreme Court. The Supreme Court held that Section 5(3)(a) of the Act of 2000 did not clearly provide for such an ouster.

Accordingly, it held that the applicant was entitled to appeal the decision of the High Court on the motion without needing to obtain a certificate to do so.

4.5 CASE LAW – SUBSIDIARY PROTECTION

4.5.1 *M.M. v. Minister for Justice (Unreported, High Court, 23 January, 2013)*

There were very few cases in subsidiary protection in the courts in 2013, on account of the decision of the High Court in *M.M. v. Minister for Justice* (Unreported, High Court, 23 January, 2013), applying a ruling of the CJEU which was delivered on foot of a reference made by it in 2011 pursuant to Article 269 TFEU.

The applicant in that case was a Rwandan of Tutsi ethnicity who had sought asylum in Ireland. He contended that if he were returned to his home state, he might be prosecuted before a military court for openly criticising the manner in which investigations into the 1994 genocide were being carried out. His application had failed for want of credibility before both the Refugee Applications Commissioner and, on appeal, to the Refugee Appeals Tribunal, and he was subsequently refused a declaration of refugee status by the Minister for Justice.

He then applied for subsidiary protection and his decision was refused by the Minister, who relied when so doing on the findings in the Tribunal's decision.

The applicant challenged that decision before the High Court. A net issue arose before the court, concerning the proper construction of Article 4(1) of the 'Qualification Directive', which provides:-

Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. In cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application.

The applicant contended that the effect of the latter sentence was that the authorities of the Member States were under a duty to communicate with an applicant for international protection during the course of the assessment of an application for subsidiary protection. Specifically, he contended that in the event of a proposed decision which is adverse to an applicant, the duty of cooperation meant that the authorities were obliged to supply a draft decision in advance to such applicant for his comments.

The High Court decided to make a reference for a preliminary ruling under Article 267 TFEU to the Court of Justice of the European Union. The question posed by it in the reference was whether the requirement to cooperate with an applicant imposed on a Member State in Article 4(1) of the 'Qualification Directive' required the decision-maker examining an application for subsidiary protection to give him the results of such an assessment before a decision was finally made so as to enable him to comment on those aspects of it which suggested a negative result.

In its ruling, which was delivered on the 22 November 2012, the CJEU answered the question in the negative, but went on to express some general views on the nature of an applicant's right to be heard in the context of an application for subsidiary protection.

It emphasised the importance of the right to be heard in the context of EU law and made clear that it vested in an applicant for subsidiary protection. As regards the substance of that right, it said at paragraphs 87 and 88:

87. The right to be heard guarantees every person the opportunity to make known his views effectively during an administrative

procedure and before the adoption of any decision liable to affect his interests adversely...

88. That right also requires the authorities to pay due attention to the observations thus submitted by the person concerned, examining carefully and impartially all the relevant aspects of the individual case and giving a detailed statement of reasons for their decision...

It emphasised that it was important to hear such a person, and it went on to say at paragraphs 91 and 92:

91. Rather, when a Member State has chosen to establish two separate procedures, [as in Ireland] one following upon the other, for examining asylum applications and applications for subsidiary protection, it is important that the applicant's right to be heard, in view of its fundamental nature, be fully guaranteed in each of those two procedures.

92. Furthermore, that interpretation is all the more justified in a situation such as that of the case in the main proceedings since, according to the information provided by the referring court itself, the competent national authority, when stating the grounds for its decision to reject the application for subsidiary protection, referred to a large extent to the reasons it had already relied on in support of its rejection of the asylum application, although, under Directive 2004/83, the conditions which must be fulfilled for the grant of refugee status and for the awarding of subsidiary protection status are different, as is the nature of the rights attaching to each of them.'

It then concluded its decision and, without being in any way prescriptive as to what should follow from its decision, left it to the High Court to determine whether the procedure followed in the examination of the applicant's application for subsidiary protection was compatible with the requirements of EU law and, should it find that the right to be heard was infringed, to draw all the necessary inferences therefrom.

The High Court, in applying the ruling, held that it meant that, because the Minister for Justice had relied completely on the adverse credibility findings made by the Tribunal, he had failed to afford the applicant an effective hearing at the subsidiary protection stage.

In its view, for the hearing to be effective, the Minister was not entitled to have regard to earlier findings by the asylum authorities (or, indeed, the Minister himself when refusing an applicant a declaration of refugee status) without putting them to the applicant at the subsidiary protection stage for comment. It held that an applicant for subsidiary protection would have to be invited to comment on any adverse credibility findings made by the asylum authorities previously and given a fresh opportunity to revisit all matters bearing on the claim for subsidiary protection and have a fresh assessment made of his credibility.

The decision of the High Court is under appeal to the Supreme Court, which in mid-March, 2014 indicated to the parties to the appeal that it had decided to make a further preliminary reference to the CJEU seeking clarification of a number of matters arising out of its earlier ruling. The questions have yet to be finalised.

4.5.2 *D.N. v. Minister for Justice [2013] IEHC 447*

The decision of the High Court in *MM* was followed subsequently in *D.N. v. Minister for Justice [2013] IEHC 447*.

The applicant was a national of the Democratic Republic of Congo (DRC). She said that her husband was a high-level member of the Movement for the Liberation of Congo. She said that serious unrest had broken out in Kinshasa in 2007 and that her husband had been arrested shortly afterwards. She said that she had not had any contact with him since that his arrest and did not know his whereabouts. She claimed that, following his arrest, the DRC authorities harassed her and she decided to leave and seek asylum abroad.

Her claim failed before the Refugee Applications Commissioner and the Refugee Appeals Tribunal on the basis of lack of credibility, and she then applied for subsidiary protection on grounds indistinguishable from those advanced by her in her unsuccessful asylum claim. In refusing her application for subsidiary protection, the Minister relied on the earlier, unchallenged decision of the Tribunal refusing her asylum appeal (which had also been adopted by the Minister in refusing her a declaration of refugee status).

The court held that the Minister had erred in refusing the applicants' application for subsidiary protection by reference to the adverse credibility findings in the

Tribunal's decision. In its view, the case was on all fours with the decision of Hogan J. in *MM*. In the court's view, the decision in *MM* was a clear enunciation of the requirements imposed on the Minister in assessing an application for subsidiary protection and it considered itself bound by it and only able to depart from it, if it was of the view that its decision resulted from error.

That decision is also under appeal to the Supreme Court.

4.5.3 F.A. v. Minister for Justice [2013] IEHC 502

The applicant was a national of Bangladesh who claimed asylum. His credibility was not impugned by the Refugee Appeals Tribunal but he was nonetheless not found to be a refugee. He then applied unsuccessfully for subsidiary protection and challenged the refusal of his application.

In refusing the application, the Minister for Justice took the view that Regulation 5(1)(a) of the *EC (Eligibility for Protection) Regulations 2006* was not applicable, on the basis that the applicant was not credible. That provision obliged him to take into account all relevant facts as they related to the country of origin at the time of taking a decision on the application for protection, including laws and regulations of the country of origin and the manner in which they were applied.

The High Court held that the Minister was mistaken in considering that the applicant was not credible, and that he therefore ought to have had regard to Regulation 5(1)(a) of the Regulations of 2006 when deciding whether or not he was eligible for subsidiary protection. However, it accepted that there was no obligation to have regard to it if an applicant was not credible in his claim.

4.6 CASE LAW – PROCEDURAL MATTERS

4.6.1 O. (An Infant) v. Minister for Justice [2013] IESC 41

Refusal of wasted costs order by High Court upheld on appeal

This was an appeal by the Minister for Justice to the Supreme Court against the decision of the High Court not to award a wasted costs order against the solicitors for the applicant. In his notice of appeal, the Minister alleged that the solicitors had unduly prolonged the High Court proceedings without proper justification, and that this constituted misconduct and resulted in costs being improperly or unreasonably incurred by him. The Supreme Court dismissed the appeal, noting,

inter alia, that the solicitors were acting on advice of counsel in proceeding with the action, and it upheld the High Court's decision that they were not guilty of misconduct.

4.6.2 *A.L.M. v. Minister for Justice [2013] IEHC 203*

Applicant not estopped from continuing proceedings simply because her mother's earlier proceedings dismissed on grounds of conduct and candour

The applicant in these proceedings, born of parents who alleged, respectively, that they were nationals of Rwanda and Sierra Leone, sought to quash a decision to refuse her subsidiary protection, which was based in part on doubts as to the claimed nationality of her parents. The Minister for Justice sought the court to dismiss the proceedings on the basis that they constituted an abuse of process or were frivolous and vexatious. He pointed to the fact that the High Court had previously dismissed the applicant's mother's challenge to the refusal of her subsidiary protection application in the light of information obtained from the British authorities which showed that she had attempted to enter the United Kingdom using a Nigerian passport. He contended that the applicant's proceedings were based on substantially the same facts and grounds as those which underpinned her mother's earlier claim.

The court declined to dismiss the proceedings, considering that there was a wider range of issues arising in the applicant's application which went beyond the issues of conduct and candour which had undermined her mother's claim. It noted that some of the issues in the applicant's proceedings were enmeshed with issues concerning representations made by her father, whose separate proceedings seeking to challenge refusals of his claims remained to be determined.

4.6.3 *Lofinmakin (A Minor) v. Minister for Justice [2013] IESC 49*

Supreme Court refused to hear appeal where it had become moot owing to grant of residence to applicant.

The applicants comprised non-national parents and their two Irish citizen children. A deportation order was made in respect of the father and its validity was upheld by the High Court, which then granted a certificate of leave to appeal its decision to the Supreme Court. By the time the Supreme Court appeal became moot because the Minister for Justice subsequently decided to grant leave to remain to the father, following the judgment of the CJEU in *C-34/09 Zambrano*.

The Supreme Court held that the appeal was moot, and that it was not an exceptional case as would persuade it to hear it nonetheless.

4.6.4 *PM (Botswana) v. Minister for Justice [2013] IEHC 271*

Applicant entitled to amend proceedings post-judgment to rely on decision of CJEU

The applicant was challenging a refusal of her subsidiary protection application and sought to amend her proceedings to rely on the decision of the CJEU in *MM v. Minister for Justice, Equality and Law Reform* on 22 November 2012, notwithstanding that the court had already delivered judgment refusing leave to seek judicial review. The court granted her leave to rely upon the decision in *MM* considering that the delivery of the judgment constituted an exceptional circumstance which, in its view, the decision of the Supreme Court in *McInerney Homes [2011] IESC 31* entitled it to do.

4.7 RESEARCH

Sheehan, in the *Support for Asylum Seekers in Ireland 2013 Survey Results*, looked at the Irish asylum support sector focussing on collaboration between non-profit and non-statutory organisations. The data for this report were collected via an online, exploratory survey, to which 50 eligible organisations replied. The aim of the survey was to gain an overview of the field of asylum support. Descriptive statistics and social network analysis reveal a young and changing field that is well-connected but heavily Dublin-centred. Asylum participation is high in voluntary capacities. Respondents indicated that the most pressing challenges of the recession are decreased funding and increased workload.²⁰⁵

In the 2013 *Establishing Identity for International Protection: Ireland* report, Joyce provides an overview of challenges and practices facing national authorities, as well as I/NGOs and practitioners, in establishing the identity of applicants for protection, as well as returning rejected applicants. Difficulties in establishing identity within both processes are acknowledged by Irish policymakers, with a lack of 'core' identity documentation considered the main challenge by authorities for both. Falsified documentation is also an issue. Authorities have stated that the majority of applicants for international protection do not submit any identity documents as part of their international protection claim; others have been found to be forged, tampered with or belonging to another person.

²⁰⁵ Sheehan, K. (2013). *Support for Asylum Seekers in Ireland 2013 Survey Results*. Available at <http://sasi.ie>.

Comprehensive and reliable statistics on the issue are not available in the national context. A significant number of rejected applicants for international protection cannot be returned to their country of origin as the measures employed to establish nationality and identity are unsuccessful. In order to prevent *refoulement*, establishment of an individual's nationality (if not identity) is required and generally taken by the relevant embassy. In cases where the *Zambrano* ECJ judgment may apply, a return decision can only be deferred following verifiable DNA evidence.²⁰⁶

²⁰⁶ Joyce, C. (2013). *Establishing Identity for International Protection: Ireland*. Available at <http://emn.ie> and www.esri.ie.

Chapter 5

Unaccompanied Minors and Other Vulnerable Groups

5.1 UNACCOMPANIED MINORS

On a national level, activities outlined under commitments in the 2009 Joint Protocol on Missing Children²⁰⁷ and the *Implementation Plan from the Report of the Commission to Inquire into Child Abuse, 2009*²⁰⁸ continued during 2013.

ORAC received applications for asylum from 20 Unaccompanied Minors in 2013. This represented 2.1 per cent of all applications for asylum. ORAC referred 34 persons to the Team for Separated Children in the course of the year. 17 of these were reunited with their families, nine were deemed to be adult, six are being processed as unaccompanied minors.²⁰⁹

Activity regarding the establishment of a National Office for Unaccompanied Minors within the Office of the National Director for Children and Family Services continued during 2013 and became operational in January 2014.²¹⁰ The role of the Office is to develop national strategy and practice in relation to social work services for unaccompanied minors. It is envisioned that the Office will also collect national data on minors.

No significant change to policies, practices or clinical service delivery took place during the year. In January 2011, the Health Service Executive (HSE) confirmed that all unaccompanied minors were now cared for in either foster placements or

²⁰⁷ Health Service Executive (2009). *An Garda Síochána and Health Service Executive Joint Protocol on Missing Children*. Available at www.hse.ie/eng. The Protocol sets out the roles and responsibilities of both agencies in relation to children missing from State care, including unaccompanied minors. The Protocol outlines arrangements for addressing issues relating to children in State care who go missing, and sets out the actions to be taken by both organisations when a missing child in care report is made to An Garda Síochána.

²⁰⁸ Office of the Minister for Children and Youth Affairs (2009). *Implementation Plan from the Report of the Commission to Inquire into Child Abuse, 2009*. Available at www.dcy.gov.ie/viewdoc.asp?DocID=120. The Plan contains a review of the number of, and care provisions for, unaccompanied minors. A commitment is made to allocate a social worker to unaccompanied minors in care, and for them to be placed in 'accommodation suitable for their needs and inspected like any other children's hostels'.

²⁰⁹ Office of the Refugee Applications Commissioner (March 2014).

residential units following the closure of hostel accommodation on 31 December 2010. The HSE also stated that it aims to provide a dedicated social worker for each unaccompanied minor.²¹¹ An 'equity of care' principle for unaccompanied minors is in place.²¹² The Dublin-based Team for Separated Children Seeking Asylum now acts primarily as an intake and assessment service for all unaccompanied minors, with three shorter-term residential units where unaccompanied minors remain for a period of three to six months after referral and one medium-to-longer term residential unit for cases of special need. A national policy regarding transfers of unaccompanied minors is in place and since early 2011 'quality matching' with foster families on a national basis has taken place. The Social Work Team for Separated Children Seeking Asylum identifies, secures and funds the foster placement for the duration of the young person's time in care and undertakes additional monitoring of placements to ensure the placement is still viable. In addition, this Team continues to provide technical support, and to facilitate information sharing, with other social work teams throughout Ireland. In the case of 'aged-out' minors over the age of 18, all are now allocated a leaving and after-care worker.

Ireland continued to attend the Expert Group on Unaccompanied Minors in the Migration Process, in particular the Expert Group meetings on 'Family Tracing' of which four took place during 2013. In addition, Ireland has been invited to speak at the 2013 European Forum on the Rights of the Child to take place in December 2013 to speak about the Irish model for care and protection of unaccompanied minors.²¹³

5.1.1 Research

A 2013 report funded by Barnardos and the HSE, *Foster Care and Supported Lodgings for Separated Asylum Seeking Young People in Ireland: The views of young people, carers and stakeholders*, is based on research conducted in relation to the placement of unaccompanied minors in foster care and supported lodgings. It draws on the views of the young people concerned and key stakeholders working in this field, including carers. This research suggests that

²¹⁰ Announced in 2012. See www.hse.ie/eng/services/list/4/ChildrenandFamilyServices/childrenfirst/Gordon%20Jeyes%20letter.pdf.

²¹¹ *The Irish Times* (10 January 2011). 'Number of missing children falls as new policies adopted'. Available at www.irishtimes.com.

²¹² The termed 'equity of care' policy contained within the *Implementation Plan from the Report of the Commission to Inquire into Child Abuse, 2009* sought to end the use of separate hostels for unaccompanied minors and to accommodate them 'on a par with other children in the care system by December 2010'.

²¹³ Health Service Executive (December 2013).

the change in policy and practice²¹⁴ in the model of care provided for unaccompanied minors has been a largely positive one and that new arrangements have meant that the needs of unaccompanied minors can now be met in a more appropriate and safe way. The report notes that this shift in policy and practice represents an opportunity to provide unaccompanied minors with care that will counteract their vulnerability, compliment their resilience, and ultimately equip them for a successful transition to adulthood.²¹⁵

5.2 OTHER VULNERABLE GROUPS

5.2.1 Update to National Intercultural Health Strategy 2007-2012

A 2013 update to the national Health Service Executive *National Intercultural Health Strategy 2007-2012* took place. The Strategy was launched in 2007 and designed to ‘ensure that the ‘HSE provides a quality health service equally to all, responds appropriately to the specific health and social care needs of new and well established minority communities and is an employer of choice for many’. Subsequent implementation has taken place based on three main themes of ‘Access to services’; ‘Data, Information and Research’; and ‘Staff Learning, Training and Support’.²¹⁶ The 2013 update noted that while no new strategy is planned, the HSE’s Intercultural Health Governance group now has the remit to review recommendations remaining to be implemented and assess how they can be put into practice. The Group meets approximately once every six weeks. The 2013 update reported on efforts to produce resources to support staff in the delivery of responsive, quality services to minority service users such as an Emergency Multilingual Aid, Intercultural Guide etc. which have been made available on the HSE website in many languages. It noted that the HSE is currently working on the development of an ‘app’ to assist interpreters and any other stakeholders who work in health settings with persons from diverse language or cultural backgrounds.²¹⁷ In September 2013 it was noted that the HSE was developing an app to assist interpreters and other stakeholders who work in health settings with persons from diverse cultural and language backgrounds. In addition, a resource had been developed by the NGO AkiDwa and the Royal

²¹⁴ The model of care provided for unaccompanied minors has changed from one of ‘reactionary’ emergency hostel-based care to one based on the principle of ‘equity of care’. See Ní Raghallaigh (2013) for more information.

²¹⁵ Ní Raghallaigh, M. (2013). *Foster Care and Supported Lodgings for Separated Asylum Seeking Young People in Ireland: The views of young people, carers and stakeholders*. Barnardos and the Health Service Executive: Dublin.

²¹⁶ Intercultural Health Strategy’ page on the website of the Office for the Promotion of Migrant Integration. Available at www.integration.ie/website/omi/omiwebv6.nsf/page/managingdiversity-strategies-nationalinterculturalhealth-en.

²¹⁷ See [www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-9B7MZ6182373-en/\\$File/Health%20Service%20Executive%20Intercultural%20Health%20Governance%20Group.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-9B7MZ6182373-en/$File/Health%20Service%20Executive%20Intercultural%20Health%20Governance%20Group.pdf).

College of Surgeons for health professionals on the topic of FGM in light of legislative changes.²¹⁸

5.2.2 *Guide for Children in the Asylum Process*

A 2013 document produced by the Irish Refugee Council outlined the asylum process for children and young people. Produced in conjunction with young people who had applied for asylum in Ireland, the booklet contains accessible information on what to expect in the different stages of the asylum process (e.g. The “Short Interview” at ORAC; ‘Where will I live?’; ‘The “Long Interview” at ORAC’; ‘Who else you can turn to?’) as well as care options for separated children seeking asylum and referrals to other organisations.²¹⁹

²¹⁸ OPMI (3 September 2013). ‘Updated HSE Intercultural Health Governance Group’.

²¹⁹ The Irish Refugee Council (2013). *Seeking Asylum in Ireland: A guide for Children and Young People*. Available at www.irishrefugeecouncil.ie.

Chapter 6

Actions Addressing Trafficking In Human Beings

6.1 STATISTICS REGARDING TRAFFICKING

In 2013, 44 alleged victims of human trafficking were either reported to or detected by An Garda Síochána. Of this number 64 per cent (28) victims were adults and 36 per cent (16) were minors. The majority of the alleged victims of human trafficking were female, constituting 75 per cent (33). 25 per cent of victims were male (11).²²⁰

In a parliamentary question in November 2013, the Minister for Justice and Equality outlined partial data (January to end of September) for regions of origin of victims of trafficking for the same year.²²¹ The majority of victims came from West Africa (32 per cent), followed by other EU countries (19 per cent), East Asia (16 per cent) and Southern Africa (10 per cent). Some 31 investigations were detailed (mostly related to offences under the *Criminal Law (Human Trafficking) Act 2008* and related offences under other Acts such as the *Child Trafficking and Pornography Act 1998*), with three convictions during the first three quarters of the year.

Some two ‘recovery and reflection’ residence permissions and two ‘temporary residence permissions’ were granted during 2013 under the *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking*.²²²

6.2 CRIMINAL LAW (HUMAN TRAFFICKING) (AMENDMENT) ACT 2013

The Criminal Law (Human Trafficking) (Amendment) Act 2013 gives effect to certain provisions of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. It amends and extends the

²²⁰ Note figures provided are provisional. Correspondence with Anti-Human Trafficking Unit, Department of Justice and Equality. (October 2014).

²²¹ Parliamentary Question No.753 (5 November 2013).

²²² Anti-Human Trafficking Unit, Department of Justice and Equality (March 2014).

Criminal Law (Human Trafficking) Act 2008 and the Child Trafficking and Pornography Act 2008 by inter alia making it an aggravating factor for the purpose of sentencing, if certain offences under the aforementioned Acts are carried out by public officials in the course of their duties. It also amends the Criminal Evidence Act to enable children better to give evidence in criminal prosecutions. It raised the age limit for out-of-court video recordings of a complainant's evidence from 14 to 18, and also provided for evidence to be delivered by video recording where the witness is under 18.

6.3 PROTOCOL IN RELATION TO UNACCOMPANIED MINORS

A Protocol has been agreed between the Health Service Executive (HSE) and the Human Trafficking Investigation and Co-ordination Unit (HTICU) of the Garda National Immigration Bureau (GNIB) for unaccompanied minors who arrive at initial ports of entry. It covers areas such as cooperative interviewing, joint training and awareness raising and the sharing of information. It is hoped that the experience gained from operating this Protocol will lead to it being rolled out on a nationwide basis.²²³

6.4 REVIEW OF NATIONAL ACTION PLAN

A mid-term *Review of the National Action Plan to Prevent and Combat Trafficking in Human Beings 2009-2012* was published in April 2013.²²⁴ A number of issues were noted as presenting during the consultation process with stakeholders, including criticisms of the current system of identification of victims, suitability of RIA direct provision accommodation, lack of adequate legal support, child-specific measures, lack of convictions, need for specific forced labour legislation and access to compensation for victims. It was also noted that just over half of all persons alleged to be victims of trafficking between 2009-2011 were asylum-seekers (106 persons). Calls for the establishment of an independent National Rapporteur on human trafficking were also made.

The NGO Ruhama called for trafficking measures to be policed within an organised crime policing structure. The lack of applicability of the *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking*²²⁵

²²³ Anti-Human Trafficking Unit, Department of Justice and Equality (December 2013).

²²⁴ Department of Justice and Equality (2013). *Review of the National Action Plan on to Prevent and Combat Trafficking in Human Beings 2009-2012*. Available at www.blueblindfold.ie.

²²⁵ Administrative Arrangements for victims of trafficking set out the protections from removal, such as a 60-day period of recovery and reflection and renewable six-month temporary residence permission in addition to other protections,

to all victims was highlighted, as was the appropriateness of RIA accommodation. The Immigrant Council of Ireland (ICI) remarked that few victims are identified and protected, with less perpetrators prosecuted and convicted. The ICI also commented on the applicability of the Administrative Arrangements only in cases whereby a person is undocumented. 'Migration background screening' also appears to be 'at the core' of the process for identifying victims and service provision. Differential rights for asylum-seeking victims versus other victims is raised, particularly in light of access to accommodation, education, training, work and the acquisition of longer-term status. Greater protection and access to legal advice for victims when engaging with the criminal justice system is also called for, as are effective avenues for compensation.

The Migrant Rights Centre Ireland (MRCI) raised the issue of victims being seen 'first and foremost as undocumented migrants' who may have legitimate exploitation claims but are not seen as victims of crime. The role of the Garda National Immigration Bureau (GNIB) as competent authority for identifying victims is flagged as a concern. Related issues arising from the identification process include a lack of a clear time frame, reasons for decisions or appeal procedure. It also raises 'unclear and inconsistent' applications of the recovery and reflection period procedures. A call for specific attention to the treatment of victims of forced labour was also made. A group of NGOs active in the area reiterated earlier comments and cited evidence of RIA hostels being used by men looking to buy sexual services. Additionally, the exclusion of long-term solutions for child victims from the Administrative Arrangements is raised, with the organisations expressing concerns that the Administrative Arrangements contain less favourable measures than in the *Immigration, Residence and Protection Bill* published in 2010.

In September 2013 it was noted that Ireland was developing a follow-up to the *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012* in 'consultation with State, NGO and international stakeholders'.²²⁶ It remained unpublished at year end.

available to suspected victims of human trafficking who have no legal permission to be present in the State. They were established in June 2008 to coincide with the commencement of the *Criminal Law (Human Trafficking) Act 2008* and were updated and republished in July 2010 and March 2011. See www.justice.ie.

²²⁶ Department of Justice and Equality (26 September 2013). 'Minister Shatter welcomes publication by the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) of the Report concerning the implementation of the Council of Europe *Convention on Action against Trafficking in Human Beings in Ireland*'. *Press Release*. Available at www.justice.ie.

6.5 COUNCIL OF EUROPE GRETA FIRST REPORT ON IRELAND

The first report on Ireland by the Council of Europe GRETA was published in September 2013. It invited the Irish authorities to conduct an independent evaluation of the implementation of the first National Action Plan 2009-2012,²²⁷ and to consider the establishment of an independent National Rapporteur or other mechanism to monitor anti-trafficking activities.

Overall, GRETA noted that there is ‘no clear statutory basis on which victims of trafficking can invoke protection’.

The Report notes that it is vital for the State to ‘ensure that an effective system for proactive identification of victims of trafficking is put in place, irrespective of their nationality and immigration status’ with the ‘onus of identification’ lying on authorities. The GRETA report urged Irish authorities to ‘promote multi-agency involvement in victim identification by formalising the role and input of specialised NGOs and involving other relevant actors’.²²⁸ It acknowledged that the

power to make identification of victims of trafficking lies exclusively with a limited number of officers in the Human Trafficking Investigation and Co-ordination Unit (HTICU) of the Garda National Immigration Bureau.

GRETA noted that concern had been expressed to them that ‘a number of victims of trafficking are not identified as such due to gaps in the identification procedure’. GRETA noted that concern had been expressed that certain persons (law enforcement officers, labour inspectors) were ‘not sufficiently proactive in detecting human trafficking cases’ and recommended that future training programmes should be designed to address such needs.

The issue of applicability of the *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking* to persons within the asylum system was raised, with GRETA concluding that ‘in practice the application of the Administrative Immigration Arrangements is limited to non-European Economic Area (EEA) citizens who are not asylum-seekers’.²²⁹

²²⁷ See Section 6.4 above for further discussion on this.

²²⁸ Council of Europe GRETA (2013). *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland*. Available at www.coe.int.

²²⁹ Reference to the position of EEA victims of trafficking is made in Paragraph 4 of the Administrative Arrangements.

The need for a ‘specific identification mechanism’ for children was also noted. The stressed the need to set up a ‘specific identification mechanism which takes into account the special circumstances and needs of child victims of trafficking’ and would involve ‘child specialists’ as well as ensuring that the ‘best interests of the child are the primary consideration’. The GRETA report did welcome activities with regard to unaccompanied minors which have ‘limited to an important extent their disappearance’.²³⁰

The GRETA report urges the authorities to grant a renewable residence permit to all victims, ‘particularly when they are unable to cooperate with the authorities’.²³¹

6.6 NETWORKING AND PUBLIC AWARENESS

6.6.1 National

An Interdepartmental High Level Group was established by the Minister for Justice and Equality in late 2007 to recommend to him the most appropriate and effective responses to trafficking in human beings.²³² The High Level Group comprises senior representatives from the key Government Departments and Agencies.²³³ Members from the Group engage with NGOs and International Organisations in the manner of a Roundtable Forum twice or three times per year. In addition, the Group approved the establishment of five interdisciplinary Working Groups chaired by the Anti-Human Trafficking Unit and comprising representatives from the relevant Government Agencies, NGOs and International Organisations to progress matters at a practical ‘on the ground’ level and, in turn, report to the High Level Group. Each of the Working Groups meet as the need arises.²³⁴

The Anti-Human Trafficking Unit, in partnership with the NGO Ruhama, was successful during the year in obtaining EU funding under a PROGRESS Grant

²³⁰ As outlined in paragraph 132 of the GRETA report on Ireland.

²³¹ Council of Europe GRETA (2013). *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland*. Available at www.coe.int.

²³² The Group continues to meet.

²³³ The Departments at the time of establishment were: Dept. of Enterprise, Trade and Employment; Dept. of Health and Children; Health Service Executive; Office of the Minister for Children and Youth Affairs; Irish Naturalisation and Immigration Service; Victims of Crime Office; Garda National Immigration Bureau.

²³⁴ The Working Groups deal with: development of a national referral mechanism; awareness raising and training; child trafficking; labour exploitation issues; and sexual exploitation issues. In total, over 70 different Governmental, Non-Governmental and international organisations are involved with the AHTU in anti-trafficking initiatives. The method of consultation put in place is based on that recommended by the Organisation for Security and Cooperation in Europe in the context of developing National Referral Mechanisms on human trafficking.

Scheme related to Violence Against Women in the context of Human Trafficking. The purpose of the project, which will take place over the next two years, is aimed at activities that promote zero tolerance of human trafficking as a form of violence against women and will specifically address:

- a) Raising awareness of the issue (including rights of victims and supports available) among victims and potential victims;
- b) Promoting a message of zero tolerance of human trafficking as a form of violence against women and girls, among men and boys; and
- c) Developing innovative training and support to frontline actors including the development of a 'mobile app'.²³⁵

A number of cross-border activities in the identification and prevention of human trafficking continued to take place during 2013. A Cross-Border forum was hosted in October 2013 by the Department of Justice of Northern Ireland and the Department of Justice and Equality of the Republic of Ireland for the purpose of examining ways in which victims may be identified.

6.6.2 International

During Ireland's Presidency of the European Council, Ireland's representative on the Management Board of Frontex invited Frontex to hold a meeting which it was organising for the purpose of creating a manual for those involved in implementing immigration controls, to equip such persons in tackling the trafficking and smuggling of children, in Dublin. This meeting subsequently took place at the Department of Justice and Equality in April 2013.

The AHTU has noted that measures are in place through the Irish Government's Overseas Development Programme to provide funding for counter-trafficking activities in countries of origin. The overarching aim of the Irish Aid programme is poverty reduction, reducing vulnerability and increasing opportunity. Irish Aid has programmes in Zambia, Sierra Leone and Liberia. Education efforts, including working to combat gender-based violence in schools which leads to high levels of school drop-out rates amongst girls rendering them more vulnerable to human trafficking, is the primary focus for Irish Aid's programme in Zambia. Irish Aid jointly heads the donor group on education and supports Zambia's national development plan by funding the School Grants Mechanism. The fund aims to improve access to education and increase enrolment by building new schools and expanding existing ones; improve the quality of education through increased

²³⁵ Anti-Human Trafficking Unit, Department of Justice and Equality (December 2013).

teacher training and deployment, development of new curricula and educational materials; improve school management, teacher management, teacher motivation and pupil retention and progression; and to provide educational support for girls, orphans and vulnerable children, and children with special needs.²³⁶

Ireland, through the Department of Foreign Affairs/Irish Aid Stability Fund, is providing €100,000 in funding towards an OSCE project for the enhancement of anti-trafficking measures in the Ukraine.

The framework for a new partnership programme between Irish Aid and the ILO, based around the ILO's Decent Work Agenda, was approved in 2011 and consists, in principle, of two phases: Phase I (2012-2013) and Phase II (2014-2015). Irish Aid funding will be earmarked corresponding to the priority themes funded in the previous three phases of the programme, namely, women's entrepreneurship, promoting employment and entrepreneurship opportunities for persons with disabilities and action against forced labour and child labour. The total funding for the new programme is €12 million; with €6 million provided for each phase. It is envisaged that in each phase €1.8 million and €0.6 million will be allocated to the priority themes of forced labour and child labour respectively.

6.6.3 Training

An Garda Síochána has identified trafficking in human beings as one of the priorities with increased priority given to prevention and detection of human trafficking in their *Annual Policing Plan*. Anti-human trafficking training was provided twice during 2013.

Awareness raising and briefing material focusing specifically on the issue of child trafficking were supplied to the National Educational Psychological Services (NEPS).²³⁷ Awareness raising material was sent to Department of Social Protection to be distributed to personnel with responsibility for providing information about jobseeking supports and the running of similarly related programmes.

²³⁶ Anti-Human Trafficking Unit, Department of Justice and Equality (December 2013).

²³⁷ NEPS psychologists specialise in working with the school community.

Chapter 7

Migration and Development Policy

7.1 'ONE WORLD ONE FUTURE' DEVELOPMENT POLICY

Irish Aid notes that Ireland's new development policy 'One World One Future' (launched in May 2013) commits Irish Aid to continue to work with African and other Diaspora organisations in Ireland to enable them to use their experience and skills to benefit their countries of origin and to promote increased awareness and public engagement through initiatives such as Africa Day.²³⁸

7.2 INTER-DEPARTMENTAL COMMITTEE ON DEVELOPMENT

Since 2007, the Irish Inter-Departmental Committee on Development (IDCD) has met twice a year. The Committee is an inter-departmental forum with the stated aim of ensuring greater coherence on development policy across all Government departments. All 15 Government departments attend, and migration has been recognised as a policy area which can have a 'profound impact' on development.²³⁹

7.3 MIGRANT DIASPORA

A number of initiatives have been undertaken to promote the role of the migrant diaspora in Ireland as a stakeholder and a possible resource for Irish Aid.

The Minister of State for Trade and Development hosted a special meeting with diaspora groups living in Ireland as part of the review of the White Paper on Irish Aid. Irish Aid has noted that further engagement with representatives of diasporas is planned for the first half of 2014.

²³⁸ Irish Aid, Department of Foreign Affairs and Trade (December 2013).

²³⁹ See www.irishaid.gov.ie for further information.

Chapter 8

Irregular Migration

8.1 DATA SHARING WITH THE UNITED KINGDOM

As discussed in Section 3.6.3, cooperation between Ireland and the UK continued during 2013 regarding maintenance of the Common Travel Area (CTA), particularly with regard to the exchange of information. On 20 December 2011, Ireland and the UK signed a joint agreement reinforcing the CTA between both countries and providing a ‘platform for greater cooperation on immigration matters’.²⁴⁰ The statement aims to work towards ‘joint standards for entry and ultimately enhanced electronic border systems’ with which to identify persons with no legal right to enter the CTA before they arrive at the border. It aims to facilitate legitimate travel within the CTA while preventing abuse of the common area and development of ways to challenge the ‘*credibility of visa and asylum applications where appropriate*’. It is also envisioned that the joint agreement will facilitate the return of unlawfully entering persons to their country of origin. It is intended that persons without a right to enter the CTA will be identified before they arrive at the border. The Agreement places a focus on visa information exchange between both countries, particularly with regard to ‘high risk’ countries and to include fingerprint biometrics and other biographical details.²⁴¹

8.2 ‘MARRIAGES OF CONVENIENCE’

The issue of suspected marriages of convenience continued to attract debate during 2013. In December 2013, the Minister for Justice and Equality raised the issue of marriages of convenience following a Justice and Home Affairs Meeting.²⁴² He noted that the issue needs a ‘robust approach’ and that it should be ensured that free movement

²⁴⁰ Irish Naturalisation and Immigration Service (20 December 2011). ‘Ireland-UK Accord to Further Secure the Common Travel Area’. *Press Release*. Available at www.inis.gov.ie.

²⁴¹ *Ibid.*

²⁴² Department of Justice and Equality (6 December 2013). ‘Minister Shatter calls for fact based discussion in relation to the free movement of persons; a core value of the European Union’. *Press Release*. Available at www.justice.ie.

is not misused and abused to the benefit of non-EU nationals in the context of young people being seduced by criminal gangs into fictional marriages for short term financial gain.

In relation to a handbook on marriages of convenience, he asks that it is 'seen in conjunction with the other measures set out in the EU action on Migratory Pressures' and states that a 'broader engagement' is required on the issue.

In February 2013, the Minister for Justice responded to a query on the topic noting a series of inter-departmental measures were planned to 'reduce the incentive to engage in such marriages'. A number of provisions to make it 'more difficult for persons engaging in a marriage of convenience to benefit from it in immigration terms' are to be included in a republished *Immigration, Residence and Protection Bill*, with the Minister for Social Protection to look at possible changes to the *Civil Registration Act 2004* in order to make such marriages more difficult to contract.²⁴³

In a written parliamentary answer in July 2013, the Minister for Social Protection noted that the Department had met a range of stakeholders with a view to introducing measures against marriages of convenience, and that at present, guidelines for registrars for marriage notifications included requirements such as verification of identity and marital status 'which can assist in the prevention of marriages of convenience'.²⁴⁴ In July news articles stated that a memo on the *Civil Registration (Amendment) Bill 2013* brought to Cabinet by Minister for Social Protection Joan Burton was approved, which provides for drafting of a law to amend relevant 2004 legislation. Automatic joint registration of parental names on a birth certificate is provided for. In addition, the Bill aims to make marriages of convenience more difficult to undertake by providing registrars with a right to investigate such a suspected marriage, to refuse to issue a marriage registration form, and to notify immigration authorities.²⁴⁵ The 2012 Annual Report of the Registrar General remarks that a legislative solution to the issue is needed to enable steps to prevent such marriages from taking place. It noted that while no statistics are available on the incidence of marriages of convenience,

anecdotal evidence suggests that the increase in the number of civil marriages from 2008 is partly accounted for by marriages of

²⁴³ Parliamentary Question No.558 'Marriages of Convenience' (19 February 2013).

²⁴⁴ Parliamentary Question No. 109 (9 July 2013).

²⁴⁵ *The Irish Times* (23 July 2013). 'Inclusion of fathers' names on birth certs to become compulsory'. Available at www.inis.gov.ie.

convenience, following the Judgment by the European Court of Justice in the Metock case.

The Annual Report surmises that while

it would be wrong to characterise all marriages between EU and non-EU nationals as marriages of convenience, the low rate of conversion of notices of intention to marry to actual marriage would suggest that marriages of convenience are a significant problem

a problem ‘borne out’ by the experience of registrars, amongst others.²⁴⁶

In November 2013, the Minister for Social Protection further elaborated on the Bill, and remarked that two of the principal policy issues to be dealt with via the Bill were marriages of convenience and establishment of a birth registration process to make it an obligation to include the father’s particulars on a birth certificate. Regarding marriages of convenience, the Minister noted that the Bill would aim to make ‘such marriages far more difficult to contract in the future’.²⁴⁷

8.3 MONITORING OF MISUSE OF THE STUDENT ROUTE

In a parliamentary question in June 2013, the Minister for Justice and Equality noted that

*tackling abuses of the [education] system was part of a whole of Government strategy that refocused efforts on growing the international education industry.*²⁴⁸

The Quality and Qualifications Ireland (QQI) undertakes a quality assurance of providers of further and higher education.²⁴⁹ A review of overall third-country national student migration took place and was outlined in the *Investing in Global Relationships: Ireland’s Intercultural Education Strategy (2010-2015)*, which was formally launched in September 2010. This was closely followed by a new immigration regime for international students which took effect from 1 January 2011. The 2011 regime introduced a time limit of (overall) seven years of

²⁴⁶ General Register Office (2013). *Annual Report of an tArd-Chláraitheoir to the Minister for Social Protection under Section 11 of the Civil Registration Act 2004 for the year 2012*. Available at www.welfare.ie.

²⁴⁷ Parliamentary Question No.34 (28 November 2013).

²⁴⁸ Parliamentary Question No.751 (11 June 2013).

²⁴⁹ See www.qqi.ie.

residence of a non-EEA student in Ireland which was 'necessary to curb the misuse of the student immigration channel by economic migrants'.²⁵⁰

²⁵⁰ Parliamentary Question No.751 (11 June 2013).

Chapter 9

Return

9.1 DEPORTATION ORDERS, TRANSFERS AND REMOVAL FROM THE STATE

In 2013, overall almost 2,250 persons were removed from Ireland.

A total of 1,890 persons were refused leave to land in Ireland at ports of entry.

A total of 84 transfer orders to another EU Member State were effected following positive determinations by the Office of the Refugee Applications Commissioner (ORAC) under the Dublin Regulation.

66 EU nationals were transferred on foot of an EU Removal Order.²⁵¹

A total of 209 persons were removed from Ireland by way of deportation orders made under Section 3 of the *Immigration Act 1999*. The main country of nationality of deportation orders effected in 2013 related to Nigeria, China, Mauritius, Albania and Pakistan.²⁵²

During 2013 Ireland participated in five Frontex operations (see Section 3.6.3).

In addition, a number of joint return operations took place in cooperation with other EU Member States:

²⁵¹ Irish Naturalisation and Immigration Service (March 2014).

²⁵² *ibid.*

TABLE 9.1 Joint Return (non-Frontex) Operations During 2013

Joint Return (non-Frontex) Operations During 2013 ²⁵³		
Date	Details	Other EU Member State
25 February 2013	7 persons were deported from Ireland to Lagos, Nigeria under Section 3 of the Immigration Act 1999	As part of a joint operation with the United Kingdom Border Agency
21 March 2013	7 persons were deported from Ireland to Lagos, Nigeria under Section 3 of the Immigration Act 1999	As part of a joint operation with the United Kingdom Border Agency
24 April 2013	10 persons were deported from Ireland to Islamabad, Pakistan and to Lagos, Nigeria under Section 3 of the Immigration Act 1999	As part of two joint operations led by the Spanish and Dutch Immigration Authorities, respectively.
14 August 2013	9 persons were removed from Ireland to Lagos, Nigeria and Accra, Ghana under Section 3 of the Immigration Act 1999	As part of a joint operation led by the UK Immigration authorities.

Source: www.inis.gov.ie.

Ireland does not participate in Directive 2008/115/EC ('the Return Directive'). The Return Directive requires a third-country national to be afforded an effective remedy to appeal against or seek review of decisions related to return before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence. The authority or body must have the power to review decisions related to return including the possibility of temporarily suspending their enforcement. The third-country national must have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance. Member States must ensure that the necessary legal assistance and/or representation is granted on request free of charge in accordance with relevant national legislation or rules regarding legal aid.

Ireland partly complies with these requirements. Whilst there is no appeal provided for against a removal on foot of a refusal of leave to land or a deportation order, a non-national subject to decisions like that is entitled to seek a judicial review of their legality before the High Court and, as the case may be, may appeal to the Supreme Court in the event of a negative decision if granted a certificate to do so. Whilst such a person is likely to be able to obtain legal representation for such a challenge without much difficulty, such representation is not provided on foot of legal aid.²⁵⁴

²⁵³ www.inis.gov.ie.

²⁵⁴ EMN Legal Consultant.

9.2 VOLUNTARY RETURN

A total of 425 persons were assisted to return home voluntarily during 2013, with 340 persons in receipt of voluntary return and reintegration assistance from the International Organization for Migration (IOM) office in Dublin and 85 availing of administrative assistance from the Irish Naturalisation and Immigration Service (INIS).²⁵⁵ The main country of nationality of persons applying to IOM for assistance was Brazil (118 persons), China (49 persons), Mauritius (48 persons), Moldova (47 person) and South Africa (15 persons). Applications were mainly received under the IVARRP programme (313) and VARRP (82).

9.2.1 International Organization for Migration

IOM Ireland provided assistance to some 68 persons under the VARRP programme,²⁵⁶ with 272 vulnerable irregular migrants meeting specific vulnerability criteria availing of assistance under the IVARRP programme²⁵⁷ to return home and avail of reintegration assistance. The main country of nationality of persons receiving assistance from IOM Dublin were Brazil (106 persons), China (46 persons), Mauritius (42 persons), Moldova (40 persons), Georgia and Malawi (10 persons respectively).²⁵⁸

During 2013, the IOM mission in Ireland continued co-ordination of the Irish participation in the Voluntary Return European Network (VREN), a joint IOM-EC initiative. In November 2013 the final VREN project conference was held in Brussels, and was attended by a representative of the Irish Department of Justice.

9.3 READMISSION AGREEMENTS

During 2013 Ireland completed the necessary parliamentary procedures to opt-in to 11 EU readmission agreements (Sri Lanka, Russia, Pakistan, Macao, Albania, Bosnia, Macedonia, Montenegro, Moldova, Serbia and Georgia) in accordance with Article 4 of the Protocol to the TFEU. The Council and Commission were notified accordingly and Commission procedures must be completed before the opt-in becomes fully binding on Ireland. This process is expect to be completed shortly, after which all the third countries concerned will be informed Ireland is

²⁵⁵ Irish Naturalisation and Immigration Service (January 2014). 'Immigration in Ireland – 2013 in Review'. *Press Release*. Available at www.inis.gov.ie. Also Irish Naturalisation and Immigration Service (March 2014).

²⁵⁶ The Voluntary Assisted Return and Reintegration Programme (VARRP) is eligible for non-EEA nationals pending or failed asylum seekers, who are at any stage of the process prior to a deportation.

²⁵⁷ The IVARRP is open to vulnerable irregular migrants presenting with a range of specific vulnerabilities.

²⁵⁸ IOM Ireland (March 2014).

now bound by these agreements, and the necessary arrangements, implementing protocols etc. will be implemented to bring the agreements into force.²⁵⁹

9.4 CASE LAW

A number of significant cases were delivered in 2013 in the area of deportation orders and applications for their revocation, covering such issues as the legality of the assessment of *refoulement* by a person other than the Minister for Justice; the entitlement of the State to deport a sex offender in the interests of preventing crime and disorder; and the circumstances in which the Minister for Justice is obliged to revoke or amend deportation orders on the basis of applications under Section 3(11) of the *Immigration Act 1999*, and the extent to which the courts can interfere with his decisions.

9.4.1 *F.E. v. Minister for Justice [2013] IEHC 93*

Deportation of sex offender parent of citizen children upheld by High Court on basis that his removal was desirable in interests of preventing disorder and crime

The applicants were a Nigerian married couple and their children, some of whom were Irish citizens. The husband had been granted permission to remain in the State in 2005 on the basis of his parentage of Irish citizen children. The permission lasted two years and he applied for renewal of it in October 2007. In February 2007 he was convicted of the sexual assault of a woman in 2004, and was sentenced to 18 months' imprisonment and placed on the sex offenders' register. His application for renewal of his permission to reside in the State was refused and a deportation order was made against him on the basis that his deportation was desirable in the interests of preventing disorder and crime, notwithstanding that his wife and citizen children intended to remain in the State.

The applicant and his family then challenged the legality of that decision in judicial review proceedings, and leave was granted on the basis that the decision was disproportionate in that it infringed the applicants' constitutional and Convention rights.

At the post-leave stage the court upheld the validity of the decision, having conducted an extensive analysis of Irish and ECHR jurisprudence on the legality of

²⁵⁹ Irish Naturalisation and Immigration Service (December 2013).

deportations on family and private life rights. In its decision, it noted that it was a condition of the grant of residence and of any renewal that he not commit criminal offences and that he had undertaken not to do so when he first applied for residence. It observed that he had by that time already committed the offence for which he was convicted, and that his presence in the State was very precarious before his application for renewal was made. It also considered his links with the State. It noted that before he arrived in it, he had spent most of his life in Nigeria. He came to the State at the age of 25, having been employed for a period of six years as a farmer/businessman in Nigeria. The deportation order had been made against him in August 2009, some six years after his arrival. He had spent 13 months of his six years in the State in prison. It therefore concluded that he was not to be regarded as a long-term migrant at the time the deportation order was made, and that his situation was in no way comparable to decisions of the European Court of Human Rights involving persons convicted of offences and subject to deportation orders who had been long-term residents in their respective states since childhood or for very considerable parts of their lives.

It also noted that careful consideration had been given in the analysis which underpinned the deportation order to the potential effect on the removal or exclusion of the father applicant on the other applicants. The analysis established that there were no 'insurmountable obstacles' to the family establishing family life in Nigeria. The children were of an 'adaptable age' should they leave the State to live in Nigeria. Two of them were in the early stages of primary school and primary and secondary education were available to children in Nigeria, which also had a functioning healthcare system and private healthcare facilities. The disruption to family life would also not have the same impact as if the father had been living with his family for the full duration of his time in the State. All the rights of the children, including the citizen children, had been taken into account, as had the rights of the State. There was no less restrictive process available to the Minister which would achieve the legitimate aim of the State to prevent disorder and crime other than deportation.

The court was satisfied that all relevant factors had been considered appropriately in the context of the applicants' constitutional and Convention rights, and it upheld the order. It was also satisfied that the analysis conducted by the Minister complied with the guidelines set out by the Supreme Court in *Oguekwe v. Minister for Justice* when deciding whether or not to deport the non-national parent of an Irish citizen child.

On the 14 February 2014, the High Court refused the applicants a certificate of leave to appeal against its decision: see *FE v. Minister for Justice* [2014] IEHC 62.

9.4.2 *SSL v. Minister for Justice [2013] IEHC 421*

Subsidiary protection decision quashed where country of origin information indicated potential for indiscriminate violence from undisciplined state agents

The applicant was from the Democratic Republic of Congo. He applied for subsidiary protection on three limbs, namely that he was at real risk of (i) suffering the death penalty or execution or (ii) torture or inhuman or degrading treatment or punishment if returned there, and (iii) that there was a serious and individual threat to his life as a civilian by reason of indiscriminate violence in a situation of international or internal armed conflict. The subsidiary protection application was grounded upon the same assertions which underpinned his earlier asylum application, which had failed before the Refugee Applications Commissioner and the Refugee Appeals Tribunal for want of credibility.

His application was refused. Insofar as the first limb was concerned, it was found that although the DRC retained the death penalty and there were reports that the government or its agents committed politically motivated killings, there were serious credibility issues in respect of the claim which had been recited in the Refugee Appeals Tribunal's decision. In particular, it was noted that the Tribunal had concluded that the difficulties described by the applicant were not capable of being believed and that he had no fear of returning to the DRC as claimed. A similar approach was taken to the second limb of his claim. Finally, the fear based on the third limb was discounted on the basis it was not accepted that the situation in the DRC amounted to a situation of international or internal armed conflict. The decision also found that he would be able to avail of state protection in his country of origin.

He obtained leave to challenge the refusal of his application on the basis that the representations made, and the country information consulted, were read selectively against his interests and that the conclusions reached were irrational.

At the post-leave stage, the High Court focused on the finding that state protection was available to him. It noted that it was based on the country of origin information that there was no international or internal armed conflict in and around the area of Kinshasa, and that the applicant could return to that city where, the decision had asserted, the rule of law prevailed.

The High Court disagreed, holding that that finding was irrational in the light of country of origin information which outlined excesses committed by the authorities, including against civilians in Kinshasa. It concluded that there was little or no basis for the conclusion reached in the determination that there was nothing to suggest that the applicant could not return to Kinshasa and that that conclusion was based on an isolated quotation from a country of origin report.

Having reached that conclusion, it concluded that it followed that any person obliged to live in an area defined by a near total collapse of civic society and the rule of law could be at risk of serious violence of an indiscriminate nature from undisciplined state forces or agents or other elements, criminal or otherwise, in circumstances where it was most unlikely that the state would take any reasonable steps to protect him.

The decision is under appeal to the Supreme Court at time of writing.

9.4.3 PBN v. Minister for Justice [2013] IEHC 435

Applicant entitled to injunction enjoining deportation where she had raised arguable basis that this would result in real risk of serious harm

In this case the applicant, a national of the Democratic Republic of Congo, was the subject of a deportation order and she sought unsuccessfully to re-enter the asylum process by making an application pursuant to Section 17(7) of the *Refugee Act 1996*.

Her application was refused and she issued judicial review proceedings seeking leave to challenge the refusal, contending that the Minister for Justice had erred in refusing consent. She also sought an interlocutory injunction to enjoin her deportation pending the hearing of those proceedings.

In her injunction application, she relied on a report from the United Kingdom about treatment of returnees to the DRC, as constituting a new element that ought to be taken into account by the Minister, as it appeared to suggest that it was unsafe for failed asylum-seekers to be returned to the DRC. The court, however, disagreed, saying it was essentially similar to the information put before the Minister during her subsidiary protection and leave to remain applications, the decisions on which the applicant had never challenged. It also cast doubts on its objectivity.

On appeal, however, the Supreme Court (see [2014] IESC 9) held that the applicant had made out an arguable case for the granting of an injunction and that the balance of convenience favoured enjoining her deportation pending the hearing of the leave application on the ground that there was a credible basis for suggesting that there was a real risk of significant harm to her if she were returned. It said that the evidential conflicts raised on the documents considered by the administrative bodies and exhibited in the course of the application, including the report which was subject to criticism from Clark J. and which concerned the fundamental right to be protected from serious risk of harm, were such that it was not the function of the court to attempt to resolve them on an interlocutory application.

9.4.4 Khan v. Minister for Justice [2013] IEHC 186

Marriage of short duration not sufficient basis for seeking to enjoin deportation

The applicant sought an injunction to enjoin his deportation to Pakistan, although he did not assert any invalidity in the deportation order, which had been made in 2012. He became involved in a relationship with his wife-to-be in 2010, and he married her in 2013. Three months later, he applied unsuccessfully to revoke the order, claiming that the Minister for Justice had overlooked, when making it, the fact that he was in a relationship.

The High Court refused to grant an injunction by reference to the principles set out in the decision of the Supreme Court in *Okunade v. Minister for Justice* [2012] IESC 49, where it had indicated that the default position, insofar as deportation orders were concerned, was that an applicant would not be entitled to a stay or an injunction pending the outcome of proceedings, whether they sought to challenge the order or not. One of the applicants in that case was a four-year-old child which had lived all its life in Ireland, and the Supreme Court therefore allowed for an exception to the default position where not granting a stay or injunction would disrupt family life which had been established in Ireland for a significant period.

The High Court in *Khan* noted that the applicant's marriage was not of long duration and that, unlike *Okunade*, there was no question of any children being deported with him. It therefore applied the default position and refused an injunction.

9.4.5 *Dos Santos v. Minister for Justice [2013] IEHC 237*

Leave granted to argue that children's 'best interests' needed to be taken into account in deciding whether or not to make deportation orders against them

The applicants in this case were a Brazilian husband and wife and their five children. They obtained leave to challenge deportation orders made against them on the basis that the 'best interests' of the children had not received express consideration by the Minister for Justice or been treated as a primary consideration by her in the analysis which underpinned the making of the orders. They alleged that this breached Ireland's obligations under the UN *Convention on the Rights of the Child*, Article 3 of which provides that:-

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

In granting leave, the court held that the applicants had shown substantial grounds for the claim that the Minister had erred in that regard. It also granted them an injunction enjoining their deportation, having regard to the decision of the Supreme Court in *Okunade*, and the number of children in the case and their various ages.

The post-leave case has been heard by the High Court and judgment is awaited at the time of writing.

9.4.6 *A.A.A. v. Minister for Justice [2013] IEHC 422*

Minister for Justice not obliged personally to consider whether deportation consistent with principle of non-refoulement

The applicants claimed that the deportation orders made against them were invalid because the Minister for Justice had not personally considered whether the State's *non-refoulement* obligations would be breached by their deportation. The High Court rejected the challenge on the basis that, in accordance with the *Carltona* principle, the officials who considered the matter were acting in the name of the Minister and that there was no reason for holding that he had to consider the matter of *refoulement* personally.

On the 14 March, 2014, the High Court delivered a judgment refusing the applicants' subsequent application for a certificate of leave to appeal its decision to the Supreme Court.

9.4.7 *Smith v. Minister for Justice [2013] IESC 4*

Supreme Court sets out law on how applications for revocation of deportation orders should be considered by Minister for Justice

The applicants were a Nigerian married couple and their children. The father was the subject of a deportation order and had applied twice, unsuccessfully, for revocation of it. He had also been found guilty of serious criminal offences in the United Kingdom for which he received a significant sentence followed by deportation and had also been guilty of significant breaches of the Irish immigration system.

The High Court refused to grant him leave to challenge the refusal of his second application for revocation on the basis that it was essentially grounded on the same argument as that which had underpinned his earlier, unchallenged, refused revocation application. Alternatively, the High Court held that even if it were incorrect in its approach in that regard, it would refuse to exercise its discretion to grant leave, by reference to the father's history of repeatedly abusing immigration laws, which it considered amounted to compelling reasons why it should exercise its discretion to refuse to entertain the application.

The applicants appealed to the Supreme Court, which upheld the High Court's decision. The Supreme Court confirmed that it was only where a revocation application can point to some significant feature, not present when the original deportation order was made, that there was any obligation on the Minister to give detailed reconsideration to the question of deportation. Additionally, it held that where, as in the case before it, neither the original deportation order nor the first nor earlier application for revocation had been challenged in the courts by judicial review (or where any such challenge failed), it had to be assumed that the analysis of the Minister, on the basis of the information before him, was correct. The court also held that it was reasonable to assume that any person seeking revocation of a deportation order would address any points which could be made in favour of the revocation sought, and that there was an obligation on persons seeking revocation to put before the Minister all relevant materials and circumstances on which reliance was sought to be placed. It held that the mere fact that what was said to be a new consideration was not before the Minister when an earlier decision was made did not of itself render it the sort of

consideration which required the Minister to actively reconsider the order. If what was asserted to be a significant and material new consideration was actually available to the applicant at the time of the previous application, but had not been advanced or brought to the Minister's attention, then, in the absence of special circumstances, it was difficult to see how the existence of such a consideration could properly be advanced as a new consideration requiring an active reassessment by the Minister of the substantive merits of the case. In order for a 'new' circumstance to require such a reassessment, it either had to have arisen after the earlier decision of the Minister, or there had to have been a compelling explanation as to why, notwithstanding its existence at the relevant time, it had not been advanced at that time.

Turning to the argument raised by the applicants, the Supreme Court noted that they contended that as a result of the CJEU's decision in *Zambrano*, the legal framework had altered within which consideration had to be given to the rights of family members, other than the person who is the subject to a deportation order. Whilst the Supreme Court accepted that it was arguable that the Minister might be required to reassess the position of either the proposed deportee or other persons who had family rights connected with him in the event of there being material and applicable change in the legal framework for carrying out such an assessment, it noted that the *Zambrano* decision had preceded the first unsuccessful application for revocation and should have been addressed in it. The Supreme Court therefore upheld the decision of the High Court to refuse to grant leave to challenge the refusal of the second application for revocation.

The Supreme Court also held that the High Court was correct in holding that, even if arguable grounds had existed for granting leave, it would have refused to do so on the basis of the applicant father's wrongful conduct.

9.4.8 Omar v. Governor of Cloverhill Prison [2013] IEHC 579

The applicant in this case, along with his wife and seven-year-old son, were nationals of Tanzania and the subject of deportation orders. Officers of the Garda National Immigration Bureau (GNIB) travelled to his dwelling in Limerick and the applicant and his wife invited them in, at which point they explained that a flight had been arranged to deport them to Tanzania and asked them to travel with them to Dublin Airport for the purpose of enforcing the orders.

Following a telephone conversation with his solicitor, the applicant and his family travelled to Dublin Airport. After arriving there, the applicant indicated that he would not board an aeroplane to his country of origin, and he was arrested

pursuant to Section 5(1)(a) of the *Immigration Act 1999*, on the basis that he intended to avoid removal from the State, and was detained.

He issued proceedings under Article 40 of the Constitution seeking his release on the basis that he was unlawfully detained.

Ordering his release, the High Court held that the officers had entered the applicant's dwelling without a search warrant for the purposes of effecting a de facto arrest in order to give effect to the deportation orders outstanding against him and his family, even though no power to do so existed in legislation. It held that no true consent to that had ever been given by the applicant and his family, and that their actions were voluntary only in the sense that they offered no physical resistance to what the officers required them to do.

On a separate point, it held that, because the applicant had not left Ireland by the date specified in the letter notifying him of the deportation order, he was liable to arrest and detention on that account. However, that was not the basis upon which he had been arrested and detained in the case and did not cure the illegality in his detention which had been identified by the High Court.

9.4.9 *Ni v. Garda Commissioner [2013] IEHC 134*

The applicant, a Chinese national, arrived in Ireland from Paris. He was refused leave to land pursuant to Section 4(3)(k) of the *Immigration Act 2004* and was detained pending removal pursuant to Section 5(2)(a) of the *Immigration Act 2003*.

The applicant issued proceedings under Article 40 of the Constitution seeking his release from detention on the basis that it was unlawful.

His case centred on the fact that, after he had been arrested, he had been detained in a terminal of Dublin Airport whilst arrangements were made to remove him. He had objected so vociferously to his removal that the captain of the aeroplane on which he was due to travel had refused to take him on board. He was then taken to a Garda station, a statutorily prescribed place of detention under the *Immigration Act 2003 (Removal Places of Detention) Regulations 2005*. He contended that the terminal in which he had been detained was not a prescribed place under the Regulations of 2005.

The High Court agreed and held that his detention was unlawful because the terminal where he was initially detained for a period of around five hours was not a statutorily prescribed place of detention, and that this had undermined the legality of the subsequent detention in a prescribed place. His release from detention was accordingly directed.

9.4.10 *Kristo v. Governor of Cloverhill Prison [2013] IEHC 218*

The applicant claimed to be an Albanian national. At the time of the hearing, he had been unlawfully in Ireland for at least six months. In early 2013, he took a flight to The Netherlands on a false passport, and was apprehended there and returned to Ireland, where he was refused leave to land at Dublin Airport pursuant to the *Immigration Act 2004*, and detained pending removal pursuant to Section 5(2) of the *Immigration Act 2003*. Insofar as his arrest and detention was concerned, he had spent approximately two hours at the airport after his arrest, and only then been detained in a prescribed place of detention under the *Immigration Act 2003 (Removal Places of Detention) Regulations 2005*.

The applicant issued proceedings under Article 40 of the Constitution seeking his release on the basis that he was unlawfully detained, impugning his detention on the basis of various grounds.

The High Court rejected his challenge to the legality of his detention. First, it rejected his complaint that the provision pursuant to which he had been arrested and detained had no applicability to him. It also rejected his complaint that he had been arrested and detained in Dublin Airport, a place which was not a ‘prescribed’ place under legislation, and had only been brought to a prescribed place some two hours later. The court noted that the purpose of his presence in Dublin Airport following his arrest was related exclusively to assisting him with making arrangements to obtain his passport, consistent with provisions of the *Immigration Act 2003* which placed an onus on him to cooperate with the relevant authorities engaged in making arrangements for his removal from the State.

Importantly, the court held that a detention did not become unlawful simply because a person had been arrested in a place like an airport, brought to the offices of the Garda National Immigration Bureau (GNIB) briefly, and then been placed in a GNIB escort vehicle to be brought to a prescribed place for detention under warrant. It confirmed that such ‘incidental’ detention in a place not prescribed was permissible, whether at the airport or in a vehicle used to convey the person to prescribed place.

The court dismissed the applicant's argument that his detention was unlawful because a number of different GNIB officers, as opposed to the officer who arrested him, appeared to have controlled his custody from the moment of his arrest to the moment of his delivery to the prescribed place.

It also rejected the argument that his detention was unlawful because the legislation prescribed that he be notified in writing of the refusal of leave to land in the English language only. The court held that the statutory requirement was to inform a non-national in writing of the grounds for the refusal of leave to land, and that there was no express statutory duty requiring the immigration officer or the GNIB to ensure that the non-national understood the ground for the refusal to enter the State.

It also held that even if there had been a breach of the legislation, including a failure to give the non-national a written notice, no such breach could taint the legality of his detention. Lastly, the court held that the fact that there was no immediate chance of the applicant being deported could not invalidate his detention, provided bona fide efforts were being made to remove him.

9.4.11 *Ganyiu v. Governor of Cloverhill Prison [2013] IEHC 511*

The applicant, a Nigerian national, was returned to Ireland from the United Kingdom under the Dublin II Regulation. A deportation order was outstanding against him and he was refused leave to land pursuant to the *Immigration Act 2004* and arrested and detained under the *Immigration Act 2003*. He was taken from the arrival terminal at the airport to another terminal, and was then conveyed to Cloverhill Prison, a prescribed place of detention under the *Immigration Act 2003 (Removal Places of Detention) Regulations 2005*.

The applicant contended that there was no legal basis for his detention covering the period from the point at which he was taken off the aeroplane until he was formally refused leave to land. He also contended that his detention at the second terminal pending removal to Cloverhill Prison was illegal.

The High Court held, first of all, that the applicant's position upon arrival in Ireland could not be realistically compared with that of other travellers, as he was a person who was subject to a deportation order and who had been transferred to Ireland under the provisions of the Dublin II Regulation. It was accordingly appropriate to make special arrangements for him as he was transferred from the

aircraft, following its arrival in the first terminal, to the second terminal. Secondly, his transfer from one terminal to the other and the actions of the Garda National Immigration Bureau in placing him under restraint were part and parcel of the statutory ‘examination’ of him pursuant to Section 4(5)(a) of the *Immigration Act 2004*, for the purpose of determining whether or not he should be given leave to land in the State. The court also held that there was no intention to use Dublin Airport as a place of detention in itself. Inasmuch as he was detained at the airport, it was by reason of incidental and extraneous factor, namely unforeseen delays in the arrival of the escort unit. It therefore upheld the legality of his detention.

9.5 CASE LAW – INTERPLAY BETWEEN *EUROPEAN CONVENTION ON HUMAN RIGHTS* (‘ECHR’) AND EU LAW

9.5.1 *Sharifi v. Austria (Application No. 60104/08) (5 December 2013)*

No breach of Article 3 ECHR caused by transfer of applicant from Austria to Greece pursuant to Dublin II Regulation where Austrian authorities unaware that deficiencies in Greek detention and reception centres for asylum-seekers and in Greek asylum procedure generally reached threshold of ill-treatment under that article

The applicant was an Afghan national who claimed asylum in Austria in July, 2008 and claimed to fear persecution in Afghanistan. He had travelled to Austria via Greece.

On 22 August 2008 the Federal Asylum Office rejected his application, on the ground that Greece was responsible for examining it in line with a provision of Austrian asylum law in conjunction with Article 10(1) and Article 18(7) of the Dublin II Regulation. It ordered his transfer back to Greece and found that he would not face any real risk of ill-treatment within the meaning of Article 3 ECHR upon his return there. That decision was upheld on appeal and the applicant was returned to Greece on the 20 October, 2008.

The main issue in the application before the ECtHR was whether the Austrian authorities knew or should have known that his expulsion to Greece on 20 October 2008 violated Article 3 ECHR, in that the deficiencies in the detention and reception conditions for asylum-seekers and the shortcomings of the Greek asylum procedure reached the threshold of ill-treatment required by that

provision (as per the Court's assessment of the situation in Greece in relation to Article 3, see *M.S.S. v. Belgium and Greece*).²⁶⁰

The Court concluded that, at the relevant time, there was ample information available to the Austrian authorities concerning the deterioration in the Greek asylum system, but that it was partly conflicting in its recommendations and results. It acknowledged that that was reflected in the ECtHR's decision in the case of *K.R.S. v. the United Kingdom* in December 2008, in which it confirmed the presumption that Greece would abide by its obligations under the relevant EU Directives to adhere to minimum standards in asylum procedure and provide minimum standards for the reception of asylum-seekers.

At the time of the applicant's proceedings in Austria and of his transfer to Greece, none of the Member States of the European Union had decided to impose a blanket suspension on the transfer of all asylum-seekers to Greece. One European country, Norway, had done so in February 2008 but it had reverted to examining such requests on a case-by-case basis in September 2008. Furthermore, at the relevant time the UNHCR had not addressed a letter to the Austrian authorities unequivocally asking them to refrain from transferring asylum-seekers to Greece, as it had done with Belgium in April 2009.

Moreover, the applicant had had access to two levels of asylum proceedings, which examined his claims in respect of Greece in substance and provided sufficient reasoning as to why the Austrian authorities had arrived at the result that his transfer to Greece in Autumn 2008 had been acceptable.

The ECtHR concluded that the Austrian authorities would have been aware in Autumn 2008 of serious deficiencies in the Greek asylum procedure and the living and detention conditions for asylum-seekers there, it was not established that the Austrian authorities ought to have known that those deficiencies reached the Article 3 ECHR threshold. Accordingly, the applicant's transfer to Greece in Autumn 2008 under the Dublin Regulation did not violate Article 3 ECHR.

9.5.2 *Mohammed v. Austria (Application No. 2283/12) (6 June, 2013)*

An applicant who makes an arguable claim that transferring him to an EU Member State under the Dublin II Regulation will breach Article 3 ECHR entitled to access an effective remedy capable of protecting him against transfer

²⁶⁰ Application No. 30696/09.

The applicant as a Sudanese national who claimed asylum in Austria in October 2010 having arrived there via Greece and Hungary.

In January 2011 the Federal Asylum Office declared that Hungary was responsible for the application pursuant to *Council Regulation (EC) No 343/2003* (the Dublin II Regulation). It accordingly rejected the asylum application and ordered the applicant's transfer to Hungary. The applicant did not appeal against that decision. Subsequently, he went into hiding and thwarted an attempt to detain and forcibly transfer him, which had been planned to take place in May 2011. In December 2011 he was detained in Vienna and the Vienna Federal Police Authority ordered his detention with a view to enforcing his transfer to Hungary. He lodged another asylum application, which was not suspensive of the transfer order, and a number of objections to the legality of his transfer to Hungary, contending that a real risk of a violation of the ECHR could not be excluded in case of the transfer of asylum-seekers to Hungary under the Dublin II Regulation, and obtained an interim measure under Rule 39 of the ECtHR's Rules of Court, which requested the Austrian Government to stay his transfer to Hungary until further notice.

The ECtHR found a violation of Article 3 in conjunction with Article 13 ECHR.

The ECtHR rejected the contention of Austria that the applicant had failed to exhaust domestic remedies in respect of the refusal of his first asylum application. It pointed out that the only remedies which needed to be exhausted under Article 35(1) ECHR were those that related to the breach alleged and which were available and effective.

At the relevant time, when the applicant would have been able to lodge an appeal against the first-instance asylum decision and the transfer order, he was not aware of the problems that asylum-seekers faced in Hungary which were later raised in various reports.

Insofar as the second asylum application was concerned, the ECtHR rejected the Austrian government's contention that the applicant had failed to exhaust domestic remedies because those proceedings were still pending at first instance, on account of his arguable complaints under Article 3 ECHR relating to his forced transfer to Hungary and the lack of de facto protection against such transfer in the second set of asylum proceedings.

In assessing whether or not the second asylum application constituted an effective remedy for the applicant in respect of his complaint that he would be subjected to treatment contrary to Article 3 ECHR upon being forcibly transferred to Hungary, the ECtHR began by acknowledging the need of European Union Member States to ease the strain of the number of asylum applications received by them and, in particular, to find a way to deal with repetitive and clearly abusive or manifestly ill-founded applications for asylum. On the other hand, it pointed out that it had previously found in no uncertain terms that where an applicant made an arguable claim under Article 3 ECHR, he should have access to a remedy with automatic suspensive effect, i.e. a stay on a potential deportation.

In the present case, it noted that the applicant had access to asylum proceedings allowing an examination of the merits within the scope of the Dublin II Regulation in the course of the first set of proceedings which ended in January 2011. However, almost a year then passed until the transfer order was scheduled to be enforced and the applicant lodged a second application. Bearing in mind the reported information on the situation of asylum-seekers in Hungary, and the Austrian Asylum Court's own practice at the relevant time, it held that the second application could not *prima facie* be considered abusively repetitive or entirely manifestly ill-founded. On the contrary, it observed that the applicant had, at that time, an arguable claim, as regards his complaints directed against Hungary as the receiving State.

Accordingly, it held that, in the specific circumstances of the case, especially having regard to the period of time which had elapsed between the transfer order and its proposed enforcement, and the change of circumstances manifesting itself during that time, the law as had been applied to the applicant did not afford protection from forced transfer and thus deprived him of a meaningful substantive examination of both the changed situation and his arguable claim under Article 3 ECHR concerning the situation of asylum-seekers in Hungary, thus denying him access to an effective remedy against the enforcement of the order for his forced transfer.

The ECtHR then turned to consider whether or not the examination of the issue of *refoulement* by the immigration police in the event of the applicant's forced transfer might counterbalance the lack of *de facto* protection against forced transfer in the proceedings concerning the second asylum application. It decided that it would not, because the applicant's case was at the enforcement stage, and this meant that he did not have the right to have the immigration police issue a

formal decision on the issue of *refoulement*. Any examination of that matter as provided for in Austrian legislation was at the sole discretion of the authority and was not subject to any further review. It therefore did not constitute an effective remedy within the meaning of Article 13 ECHR in connection with the applicant's complaints under Article 3 ECHR linked to his forced transfer to Hungary. The ECtHR therefore concluded that, in the specific circumstances of the case, the applicant was deprived of de facto protection against forced transfer in the course of the proceedings concerning his second asylum application while having, at the relevant time, an arguable claim under Article 3 ECHR in respect of his forced transfer to Hungary, meaning that there was a violation of Article 13 in conjunction with Article 3 ECHR.

The ECtHR then turned to consider the question of whether transferring the applicant to Hungary would breach Article 3 ECHR. In the light of the information before it, including a note issued by the UNHCR in which it appreciatively acknowledged planned changes to Hungarian law, making particular reference to the fact that transferees that immediately applied for asylum upon their arrival in Hungary would no longer be subject to detention, the ECtHR concluded that the applicant would no longer be at a real and individual risk of being subjected to treatment in violation of Article 3 ECHR upon a transfer to Hungary under the Dublin II Regulation.

The ECtHR then considered the question of whether the applicant would have sufficient access to asylum proceedings in Hungary as would allow an examination of the merits of his claim in Hungary, and the consequent risk of *refoulement* to Sudan.

The ECtHR noted that nothing was known about why the applicant had left Sudan and that he had not substantiated any individual risk of being subjected to treatment contrary to Article 3 ECHR if returned to Sudan. Whilst it did not exclude the possibility of a situation of general violence in a country of origin triggering the application of Article 3 ECHR, such an approach would only be adopted in the most extreme cases and the applicant had not been shown that to be the case in his situation.

9.5.3 Amie v. Bulgaria (Application No. 58149/09)

ECtHR reiterates conditions in which detention for the purpose of expulsion will be justified for the purpose of Article 5 ECHR

The applicants were members of a stateless family who were granted asylum in Bulgaria in 2001 and lived there. In 2006, Mr Amie, the father and first applicant, was detained following the making of an order for his expulsion which was based on the ground that he was involved in terrorist activities and represented a serious threat for national security. He was released after three months and then placed in detention again from 2008 to 2010 pending enforcement of his expulsion. The applicant unsuccessfully took a number of proceedings challenging the legality of his detention. He was released after the Sofia Administrative Court reviewed his detention of its own motion on foot of newly enacted legislation which empowered it to do so.

The ECtHR found violations of Articles 5(1) and 5(4) ECHR.

It began by noting that Article 5 ECHR enshrined a fundamental human right, namely the protection of the individual against arbitrary interference by the state with his right to liberty. Subparagraphs (a) to (f) of Article 5(1) contained, it noted, an exhaustive list of permissible grounds on which persons could be deprived of their liberty and no deprivation of liberty would be lawful unless it fell within one of those grounds. It noted that one of the exceptions, contained in subparagraph (f), permitted the state to control the liberty of aliens in the immigration context. Whilst Article 5(1) (f) did not demand that detention be considered necessary to prevent the individual from committing an offence or fleeing, it was nonetheless the case that it would be justified only for as long as deportation proceedings were in progress. If such proceedings were not prosecuted with due diligence, the detention would cease to be permissible. It held that the length of the detention should not exceed what was reasonably required for the purpose being pursued, and noted that the CJEU had expressed a similar view in *C-357/09 Kadzoev* in relation to the application of Directive 2008/115/EC (the 'Return Directive').

The ECtHR concluded that the applicant's detention was not justified by Article 5(1)(f) ECHR. It noted that he had been detained pending the enforcement of the expulsion order for his expulsion for a total period of almost 21 months, yet the only steps taken by the authorities during that time were to write four times to the Lebanese Embassy in Sofia, asking it to issue a travel document for him. Whilst they could not compel the issuing of such a document, there was no indication that they had pursued the matter vigorously or tried to enter into negotiations with the Lebanese authorities with a view to expediting its delivery.

The ECtHR also found a breach of Article 5(4) ECHR because the amount of time taken by the Bulgarian courts finally to determine his challenge to the legality of the detention order could not be regarded as complying with the requirement of that provision that the decision be taken ‘speedily’.

The ECtHR also held that there had been a violation of Article 8 ECHR. It held that the applicants had a family life in Bulgaria and that the expulsion of Mr Amie would constitute an interference with it. It concluded that his expulsion would not be ‘in accordance with law’ as required by Article 8(2) ECHR. One of the requirements flowing from that notion was that domestic law had to afford a degree of legal protection against arbitrary interference by the authorities, and that deportation measures affecting fundamental human rights had to be subject to some form of adversarial proceedings involving effective scrutiny of the reasons for them and review of the relevant evidence, and giving the person concerned a possibility to challenge the authorities’ assertion that national security was at stake. It held that the judicial proceedings at the Supreme Administrative Court, which upheld the expulsion, did not provide sufficient guarantees against arbitrariness and, when reviewing the expulsion order, did not carry out a genuine inquiry into the allegations of national security on which that order was based. It therefore could not be said to be ‘in accordance with law’ and breached Article 8 ECHR.

9.6 NORTHERN IRISH CASE LAW PERTAINING TO RETURN TO STATE UNDER DUBLIN II REGULATION

9.6.1 *In re ALJ and Others [2013] NIQB 88*

The applicants were a mother and her three children, all of whom were Sudanese nationals. They arrived in the State and applied for asylum in which she laid emphasis on her African Darfuri roots. Their application was unsuccessful and the Minister for Justice then proposed to make deportation orders in respect of them, at which point they applied for subsidiary protection. They then left the State and travelled to Northern Ireland and applied for asylum from the British authorities, who then decided to transfer them to the State pursuant to the Dublin II Regulation.

In proceedings before the High Court of Northern Ireland, they challenged the decision to transfer them to the State under the Dublin II Regulation.

They contended that the United Kingdom Border Agency's (UKBA) *Operational Guidance Note: Sudan* of August, 2011 provided that anyone who was a non-Arab Darfuri should not be returned to Sudan and could not reasonably be expected to relocate elsewhere there on the basis that Sudan was not a safe country for those of that ethnic origin. They contended that if they were removed from the United Kingdom to the State, there was a real risk that the Irish authorities did not have a similar view and had already determined that they should be returned to Sudan.

They claimed that there had been a failure to exercise discretion to determine their asylum claims in the United Kingdom under Article 3(2) of Dublin II Regulation on the basis that they would wrongly be *refouled* to Sudan from the State and also on the basis of the conditions to which they would be subjected if they were returned to the State.

With regard to the latter, they adduced evidence complaining about the suitability of the accommodation that they had previously been allocated in the State, namely a caravan in an asylum reception centre, which was allocated by the State, and accommodation in a hotel. Her children all availed of education in the State.

Since arriving in Northern Ireland, the applicants lived alone in a private rented house and were not obliged to live in hostel accommodation with other asylum-seekers. They were not provided with full board but with benefits of some £173 per week together with rent, heating and electric bill allowances, free transport to school, and allowances for school uniforms together with free prescriptions and access to the National Health Service. The children were all attending schools in Northern Ireland.

The court proceeded on the basis that the only question which it should examine was whether it had been established that there was a systemic deficiency, known to the United Kingdom, in the State's asylum or reception procedures amounting to substantial grounds for believing that the applicants would face a real risk of being subjected to inhuman or degrading treatment on return to the State.

The applicants contended that there were systemic deficiencies in the State's asylum and reception procedures, namely what they said were (a) the absence of any proper policy or country of origin information in relation to Sudan and in particular non-Arab Darfuris; (b) the exceptionally low recognition rates in Irish

asylum claims, which they contended constituted a culture of disbelief and a lack of adequate protection for refugees in the Irish immigration system; and (c) the poor living conditions for asylum-seekers combined with the endemic delays in the processing of immigration claims in the State and any related judicial review proceedings which potentially led to those conditions having to be endured for years.

The court rejected these contentions. It held that, given the evidence that guidance notes issued by the authorities in other countries were admissible in evidence in the State, the absence of any distinct policy in the State was not a systemic deficiency. Nor was it prepared to hold that the low recognition rates in Irish asylum claims were evidence of a systemic deficiency. It expressed confidence that the Irish High Court would grant the applicants relief by way of judicial review if it concluded that the asylum authorities there had failed to consider whether the applicants were non-Arab Darfuris and whether there was a well-founded fear of persecution on that account if they were returned to Sudan. It was also of the view that if the Minister for Justice came to the same conclusion, he would permit the applicants to make a fresh application for refugee status. It accordingly held that there were adequate mechanisms in place for redress within the State and that it could not be said that there was systemic failure or that if the applicants were non-Arab Darfuris, there was a real risk of *refoulement* to Sudan. Lastly, it held that it had not been established that there was a systemic deficiency in the State's asylum or reception procedures amounting to substantial grounds for believing that the applicants would face a real risk of being subjected to inhuman or degrading treatment.

The court also rejected the challenge to the lack of any policy on the part of the British authorities with regard to the exercise of discretion under Article 3(2) of the Dublin II Regulation. It noted that each case was assessed on its merits. It considered that the area in question was one where it was proper for a public authority to leave discretion open without the necessity for a policy, given the context of mutual confidence between Member States of the European Union, and having regard to the requirement not to fetter discretion, thereby ensuring that there was a degree of flexibility for wholly exceptional cases.

The court then turned to consider Section 55 of the *Borders, Immigration and Citizenship Act 2009*, Section 55(1) of which provided that 'the Secretary of State must make arrangements for ensuring that' any function of the Secretary of State in relation to immigration, asylum or nationality was 'discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom.' The court held that both the removal decision and the decision not to

exercise discretion under Article 3(2) of Dublin II Regulation constituted a 'function' referred to and that the Secretary of State was therefore under an obligation to ensure that those functions were discharged having regard to the need to safeguard and promote the welfare of the children, which meant that if those decisions had been taken without having regard to the need to safeguard and promote their welfare, then they were not taken 'in accordance with the law' for purposes of Article 8(2) ECHR.

It held that a balancing exercise had to be carried out in assessing where the best interests of the children lay with the desirability of returning them to the State under the Dublin II Regulation.

The applicants made the following assertions under Section 55 of the Act of 2009:-

- a) that the British authorities did not approach the assessment of welfare in the proper way and failed to come to any conclusion as to where the welfare of the children actually lay before assessing any of the countervailing factors;
- b) that the sub-section placed a duty on the British authorities to consider not just the welfare of any dependent children in respect of a so-called 'safe country' such as the State, but also to consider their welfare in the likely ultimate destination of those children;
- c) that the British authorities did not treat the eldest child's best interests, especially regarding his mental health, as a primary consideration when considering his removal under the Dublin II Regulation.

The court then turned to consider the position of the British authorities, as communicated to the applicants, that they would have the same opportunities for development, and receive the same level of support, in the State. It rejected this, saying at paragraph 102 that it either failed to address the question of what was in the best interests of the children or it was an assertion that the best interests of the children were equally met in the State and in Northern Ireland. It said:-

If it is the former then the decision maker has failed to address an essential question. If it is the latter then it cannot stand up to any analysis. No specific plan individual to this family has been formulated in Ireland for their reception on removal. [T]he children's primary carer... has no prospect of working in Ireland but has the prospect of working in Northern Ireland. The well-being

both emotionally and financially of the primary carer and the importance of that to the well-being of the children in her care would point significantly to the best interests of the children being to remain in Northern Ireland.

It also noted a number of additional features. First, the children had no prospect of working in the State, unlike in Northern Ireland. Secondly, in Northern Ireland the family had a separate house of their own, whereas in the State they would live in hostel accommodation. Thirdly, in Northern Ireland between the ages of 16 and 18 the children were entitled to receive a state education, unlike in the State. Fourthly, it opined that a comparison of the description of the accommodation that was provided in the State and in Northern Ireland showed a marked difference in quality and therefore in the quality of life of those who lived in it. Fifthly, it considered that there was ample evidence of physical and mental health issues developing in Ireland amongst those asylum-seekers who were in direct provision accommodation and that there was considerable evidence that the provisions in the State did not meet the minimum standards in the Reception Directive, in which the State, it noted, did not take part.

In the light of all this, the court concluded that the best interests of the children lay in being permitted to remain in Northern Ireland, and quashed the removal decision made by the British authorities.

Chapter 10

Implementation of EU Legislation

10.1 TRANSPOSITION OF EU LEGISLATION 2013

THE EUROPEAN UNION (ACCESSION OF THE REPUBLIC OF CROATIA)(ACCESS TO THE LABOUR MARKET) ACT 2013

The Act provides for the employment in the State of Croatian nationals pursuant to the Treaty concerning the accession of Croatia to the European Union, done at Brussels on 9 December 2011. It amended the *Employment Permits Act 2003* to take account of this, providing that Croatian nationals in employment in the State did not need employment permits, and provided for a number of related matters.

THE EUROPEAN UNION (RECOGNITION OF PROFESSIONAL QUALIFICATIONS RELATING TO THE PROFESSION OF PHARMACIST) REGULATIONS 2013 (S.I. No. 377 OF 2013)

These Regulations were made in order to give further effect to *Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as amended by Council Directive 2013/25/EU of 13 May 2013 by reason of the accession of the Republic of Croatia*, insofar as those Directives concern the profession of pharmacist and to amend the *Pharmacy Act 2007* accordingly.

THE EUROPEAN UNION (SUBSIDIARY PROTECTION) REGULATIONS 2013 (S.I. No. 426 OF 2013)

These Regulations were made in order to further effect to *Council Directive 2004/83/EC on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*. They came into operation on 14 November 2013.

THE EUROPEAN COMMUNITIES (LAWYERS' ESTABLISHMENT) REGULATIONS 2003 (QUALIFYING CERTIFICATE 2014) REGULATIONS 2013 (S.I. No. 496 of 2013)

These Regulations were made in order to give effect to the *Lawyers' Establishment Directive* (Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained) as provided for in the *European Communities (Lawyers' Establishment) Regulations 2003* (S.I. No. 732 of 2003, S.I. No. 752 of 2004 and S.I. No. 96 of 2008). They came into operation on 1 January 2014.

10.1.1 Case Law

10.1.1.1 C-175/11 *HID and BA v. Refugee Applications Commissioner and Others*

On the 31 January 2013 the Court of Justice of the European Union (the CJEU) gave judgment in *C-175/11 HID and BA v. Refugee Applications Commissioner* on two questions referred to it by the Irish High Court for preliminary ruling pursuant Article 267 TFEU.

The background to the reference was that the applicants had issued judicial review proceedings and obtained leave to challenge by reference to Council Directive 2005/85 (the 'Procedures Directive') the legality of the direction given by the Minister for Justice under Section 12(1) of the *Refugee Act 1996* to both the Refugee Applications Commissioner and the Refugee Appeals Tribunal that priority be given to the examination and determination of a category of applications for asylum by reference to a single country of origin, namely, Nigeria, and to the compatibility of the appeal to the Tribunal against a negative recommendation of the Commissioner with the right to an effective remedy prescribed by that Directive: see *HID and BA v. Refugee Applications Commissioner* [2010] IEHC 172.

Following a post-leave hearing before the High Court, the applicants were refused relief, see: *HID and BA v. Refugee Applications Commissioner* [2011] IEHC 33.

They then applied for a certificate of leave to appeal to the Supreme Court pursuant to Section 5(3)(a) of the *Illegal Immigrants (Trafficking) Act 2000*. In that context, the High Court decided to refer two questions to the CJEU before determining the application for a certificate.

The first question concerned the legality of administrative measures adopted for the examination and determination of applications for asylum pursuant to an accelerated procedure, pertaining to classes of application defined on the basis of nationality or country of origin.

The CJEU held that the Procedures Directive was to be interpreted as not precluding a Member State from examining by way of prioritised or accelerated procedure, in compliance with the basic principles and guarantees set out in Chapter II of that Directive, certain categories of asylum applications defined on the basis of the criterion of the nationality or country of origin of the applicant.

The legality of the Irish administrative measures in question was thereby upheld. It was therefore lawful to prioritise or accelerate classes of applications by reference to the nationality of the applicants.

The second question concerned the compatibility of the Refugee Appeals Tribunal with the requirement that an ‘effective remedy’ be provided in national law by way of appeals against the first instance determinations of asylum applications by the Refugee Applications Commissioner, as provided by Article 39 of the Procedures Directive.

Having regard to the administrative and judicial system of Ireland as a whole, whereby appellants before the Tribunal were able to challenge its decisions before the High and Supreme Courts, the CJEU concluded that the appeal before the Tribunal was to be regarded as respecting the right to an effective remedy.

10.1.1.2 Application of Ruling by High Court: *HID. v. Refugee Applications Commissioner* [2013] IEHC 146

When the matter came back for application to the High Court, the issues raised under the first question were no longer relevant. However, the court noted that notwithstanding the apparent ‘direct and complete’ response on the part of the Court of Justice to the second question, the applicants maintained that there remained outstanding points of law which constituted the basis for the grant of a certificate of leave to appeal.

They argued that, contrary to the approach which had been adopted by the High Court in its post-leave judgment and to the position of the State, the CJEU had

ruled that it was the availability of an appeal by way of judicial review to the High Court coupled with the possibility of further appeal to the Supreme Court that rendered the remedy an effective one. They submitted that that had the necessary consequence that the adjudication by the Tribunal could no longer be regarded as the 'final decision' within the meaning of Article 2(d) of the Directive. Accordingly, if judicial review formed part of the remedy required to be available for the purposes of Chapter V and Article 39 of the Directive, the 'final decision' could not be taken as having been made on an asylum application until such time as the judicial review remedy had been exhausted.

The High Court held that argument to be unfounded and based upon a mistaken reading of the judgment of the CJEU. In its view, the intention and effect of the ruling of the CJEU was that it was the nature and extent of the jurisdiction available in the judicial system as a whole, including the availability of remedies by way of administrative law review, that rendered the remedy 'effective,' because members of the Tribunal were protected against external interference (including improper influence on the part of the Minister for Justice or the State) by the availability of judicial review of any removal decision. Equally, the availability of judicial review of individual asylum decisions of the Tribunal rejecting appeals operated as an assurance that such decisions could, if necessary, be protected from external interference. The High Court held that that did not have the effect of altering the statutory position that the recommendation of the Commissioner constituted the first instance decision of the 'determining authority' within the meaning of the Procedures Directive and that the 'final decision' within the meaning thereof remained that of the Tribunal. It pointed to the fact that where judicial review of a Tribunal decision was successful, the decision was set aside and a new decision taken by the Tribunal before the asylum application could be taken to be determined and the Minister's declaration under Section 17(1) of the *Refugee Act 1996* made. The administrative law review did not substitute any new decision on the part of the High Court. Equally, when the review application was unsuccessful, the Tribunal decision remained the 'final decision' and it was that decision and not the judicial review judgment of the High Court on its validity that constituted the 'final decision' and the basis for the Minister's refusal of the declaration of refugee status under Section 17(1).

It held that the answers furnished to by the CJEU upon the two questions referred to it fully resolved the points of law originally raised as the basis of the application for leave to appeal. In its view there was no outstanding point of law which could be characterised as meeting the statutory criterion of Section 5(3)(a) of the Act of 2000, and it refused the application for leave to appeal.

10.1.1.2 C-604/12 H.N. v. Minister for Justice

The applicant was a Pakistani national who had no permission to be in the State. He purported to make an application for subsidiary protection which was declined on the basis that such an application could only be made by a person who did not 'qualify as a refugee' within the meaning of Directive 2004/83/EC (the 'Qualification Directive'), which phrase also had to be interpreted in the light of the Procedures Directive, where 'qualification as a refugee' occurred following an investigation of an asylum claim by a competent authority. Accordingly, the Minister concluded that it was incumbent on the applicant to apply for asylum and have that application determined negatively before he became entitled to apply for subsidiary protection.

The applicant obtained leave to challenge this rule in the High Court on the basis that he did not have a fear of persecution and that it was otiose to make an application for asylum. However, he was unsuccessful at the post-leave stage: see *HN v. Minister for Justice [2010] IEHC 489*. He then appealed to the Supreme Court.

In late 2012, having concluded that the interpretation of the relevant legislation could not be described as *acte clair*, the Supreme Court made a reference to the CJEU for a preliminary ruling concerning whether the Irish procedural rule that made the consideration of an application for subsidiary protection subject to the prior refusal of an application for refugee status was compatible with the requirements of Directive 2004/83/EC (the 'Qualification Directive') and, in particular, the principle of good administration in Article 41 of the *Charter of Fundamental Rights of the European Union*: see *C-604/12 H.N. v. Minister for Justice*. The matter came on for hearing before the CJEU in October, 2013.

Advocate General Bot delivered an opinion on the 7 November 2013 wherein he held that the procedural rule in question was compatible with the 'Qualification Directive' and the principle of good administration, and was consistent with the overarching objective of the Common European Asylum System to guarantee the primacy of the *Geneva Convention on the Status of Refugees*.

The ruling of the CJEU is awaited at time of writing.

Appendix 1

Methodology and Definitions

A1 METHODOLOGY

A1.1 *Definition of a Significant Development*

For the purpose of the *Annual Policy Report on Migration and Asylum 2013: Ireland*, specific criteria regarding the inclusion of significant developments and/or debates have been adopted to ensure standard reporting across all national country reports. On an EMN central level, the definition of a ‘significant development/debate’ within a particular year was an event that had been discussed in parliament and had been widely reported in the media. The longer the time of reporting in the media, the more significant the development. Development will also be considered significant if such developments/debates then led to any proposals for amended or new legislation.

A significant development is defined in the current Irish report as an event involving one or more of the following:

- (i) All legislative developments;
- (ii) Major institutional developments;
- (iii) Major debates in parliament and between social partners;
- (iv) Government statements;
- (v) Media and civil society debates;
- (vi) If the debate is also engaged with in parliament; or
- (vii) Items of scale that are discussed outside a particular sector and as such are considered newsworthy while not being within the Dáil remit;
- (viii) Academic research.

A1.2 *Sources and Types of Information Used*

The sources and types of information used include:

- Published and adopted national legislation;
- Government press releases, statements and reports;
- Published government schemes;

- Media reporting (both web-based and print-media);
- Other publications (European Commission publications; I/NGO Annual Reports; publications and information leaflets);
- Case Law reporting.

A1.3 Statistical Data

Statistics, where available, were taken from published first-source material such as Government/Other Annual Reports and published statistics from the Central Statistics Office.

Where noted, and where not possible to access original statistical sources, data were taken from media articles based on access to unpublished documents.

A1.4 Consulted Partners

In order to provide a comprehensive and reflective overview of national legislative and other debates, a representative sample of core partners were contacted with regard to input on a draft *Annual Policy Report on Migration and Asylum 2013: Ireland*:

- Department of Jobs, Enterprise and Innovation
- Department of Justice and Equality
- Health Service Executive (HSE) / TUSLA
- Immigrant Council of Ireland (ICI)
- International Organization for Migration (IOM)
- Irish Refugee Council (IRC)
- Jesuit Refugee Service, Ireland
- Migrant Rights Centre Ireland (MRCI)
- National Employment Rights Agency
- UNHCR Ireland.

A TERMS AND DEFINITIONS

All definitions for technical terms or concepts used in the study are as per the EMN Glossary 2.0.

Appendix 2

National Statistics

The tables below contain further relevant statistical data for 2013.

TABLE A2.1 Entry Visa Applications Granted by Nationality, 2013

Entry Visa Applications Granted by Nationality 2013	
Nationality	No.
India	14,570
Russian Federation	13,586
China	9,809
Saudi Arabia	4,711
Turkey	4,611
Nigeria	4,413
Philippines	3,018
Pakistan	2,639
Ukraine	2,524
Belarus	1,768
Other	25,034
Total	86,683

Source: Irish Naturalisation and Immigration Service.

TABLE A2.2 Gross and Net Migration Flows, 1987 – 2013

Year (ending April)	Outward	Inward	Net
	1,000s		
1987	40.2	17.2	-23.0
1988	61.1	19.2	-41.9
1989	70.6	26.7	-43.9
1990	56.3	33.3	-22.9
1991	35.3	33.3	-2.0
1992	33.4	40.7	7.4
1993	35.1	34.7	-0.4
1994	34.8	30.1	-4.7
1995	33.1	31.2	-1.9
1996	31.2	39.2	8.0
1997	25.3	44.5	19.2
1998	28.6	46.0	17.4
1999	31.5	48.9	17.3
2000	26.6	52.6	26.0
2001	26.2	59.0	32.8
2002	25.6	66.9	41.3
2003	29.3	60.0	30.7
2004	26.5	58.5	32.0
2005	29.4	84.6	55.1
2006	36.0	107.8	71.8
2007	46.3	151.1	104.8
2008	49.2	113.5	64.3
2009	72.0	73.7	1.6
2010	69.2	41.8	-27.5
2011	80.6	53.3	-27.4
2012	87.1	52.7	-34.4
2013	89.0	55.9	-33.1

Source: Central Statistics Office, *Population and Migration Estimates*, various years. Available at www.cso.ie.

Note: 2012 and 2013 data are preliminary. Table from O'Connell, P.J. and C. Joyce (forthcoming). 'International Migration in Ireland, 2014'. *Working Paper*. Will be available at www.esri.ie.

TABLE A2.3 Employment Permits Issued and Renewed, 1999-2013

Year	Permits Issued	Permits Renewed	Total Permits Issued (including Group Permits)
1998	3,830	1,886	5,716
1999	4,597	1,653	6,250
2000	15,735	2,271	18,006
2001	29,951	6,485	36,436
2002	23,759	16,562	40,321
2003	22,512	25,039	47,551
2004	10,821	23,246	34,067
2005	8,166	18,970	27,136
2006	8,254	16,600	24,854
2007	10,147	13,457	23,604
2008	8,481	5,086	13,567
2009	4,024	3,938	7,962
2010	3,394	3,877	7,271
2011	3,184	2,016	5,200
2012	2,919	1,088	4,007
2013	3,034	829	3,863

Source: Department of Jobs, Enterprise and Innovation. Available at www.djei.ie.

TABLE A2.4 Applications for Asylum 1992 – 2013

Year	Number of Applications	Year	Number of Applications
1992	39	2003	7,900
1993	91	2004	4,766
1994	362	2005	4,323
1995	424	2006	4,314
1996	1,179	2007	3,985
1997	3,883	2008	3,866
1998	4,626	2009	2,689
1999	7,724	2010	1,939
2000	10,938	2011	1,290
2001	10,325	2012	956
2002	11,634	2013	946

Source: Office of the Refugee Applications Commissioner. Available at www.orac.ie.

Note: Total figures refer to new and reapplications.

TABLE A2.5 Applications for Asylum by Main Country of Nationality 2008- 2013

Ranking	2008		2009		2010		2011		2012		2013	
1 st	Nigeria	1,009	Nigeria	570	Nigeria	387	Nigeria	182	Nigeria	162	Nigeria	129
2 nd	Pakistan	237	Pakistan	257	China	228	Pakistan	175	Pakistan	105	Pakistan	91
3 rd	Iraq	203	China	194	Pakistan	200	China	142	DRC	58	DRC	72
4 th	Georgia	181	DRC	102	DRC	71	DRC	70	Zimbabwe	49	Zimbabwe	70
5 th	China	180	Zimbabwe	91	Afghanistan	69	Afghanistan	67	Albania	46	Malawi	55
6 th	DRC	173	Georgia	88	Ghana	57	Zimbabwe	66	South Africa	33		
7 th	Moldova	141	Moldova	86	Cameroon	56						
8 th	Somalia	141	Somalia	84	Moldova	56						
9 th	Sudan	126	Ghana	82	Georgia	53						
10 th	Zimbabwe	114	Iraq	76	South Africa	53						
All Others		1,361		1,059		709		588		503		529
Total		3,866		2,689		1,939		1,290		956		946

Source: Office of the Refugee Applications Commissioner. Available at www.orac.ie.

Note: Total figures refer to new and reapplications.

TABLE A2.6 Asylum Appeals Received by Type, 2012 and 2013

Procedure	2012	2013	% Change
Substantive/ Substantive 15 Day	451	513	13
Accelerated	190	117	-38
Dublin Regulation	45	30	-42
Total	686	660	-5

Source: Table cited in Refugee Appeals Tribunal (2014). Annual Report 2013. Available at www.refappeal.ie.

TABLE A2.7 Applications for Leave to Remain 1999-2013, Granted Under Section 3, *Immigration Act 1999*

Year	Number of Applications
1999	22
2000	11
2001	53
2002	98
2003	59
2004	209
2005	154
2006	217
2007	859
2008	1,278
2009	659
2010	188
2011	1,968*
2012	563**
2013	922
Total	7,260

Source: Irish Naturalisation and Immigration Service.

Notes: *This figure includes cases granted following their consideration under Section 3 of the Immigration Act 1999 (as amended) and the cases of those persons who claimed a link to the *Zambrano* judgment to advance their case to remain in the State.

** 2012 figure provided as 564 in Department of Justice and Equality (2013). *Annual Report 2012*. Available at www.justice.ie.

TABLE A2.8 Applications for Subsidiary Protection 2006 – 2013

Year	Applications Received	Applications Granted
2006*	185	0
2007	1,341	2
2008	1,498	7
2009	1,758	21
2010	1,466	2
2011	889	13
2012	511	28
2013	534	31

Source: Irish Naturalisation and Immigration Service.

Note: *Subsidiary Protection Regulations came into force on 10 October 2006.

TABLE A2.9 Enforced Deportation Orders by Nationality, 2011 – 2013

2011		2012		2013	
Country	No.	Country	No.	Country	No.
Nigeria	124	Nigeria	85	Nigeria	54
Moldova	21	Pakistan	37	China	23
South Africa	21	Georgia	27	Mauritius	16
Georgia	18	Somalia	22	Albania	15
Pakistan	18	South Africa	19	Pakistan	12
Others	78	Others	112	Others	89
Total	280		302		209

Source: Irish Naturalisation and Immigration Service.

TABLE A2.10 Victims of Human Trafficking by Gender 2013

Gender	Total	%
Female	33	75
Male	11	25
Total	44	100

Source: Anti-Human Trafficking Unit.

Note: Figures are provisional.

TABLE A2.11 Victims of Human Trafficking by Age 2013

Gender	Total	%
Adult	28	64
Minor	16	36
Total	44	100

Source: Anti-Human Trafficking Unit.

Note: Figures are provisional.

TABLE A2.12 Third-Country Nationals Resettled in Ireland in 2013

Country from which TCNs were resettled	Male	Female	Total
Syria	18	17	35
Tanzania	14	10	24
Kenya	6	4	10
Egypt	4	3	7

Source: Office for the Promotion of Migrant Integration, Department of Justice and Equality.

Appendix 3

Presidency of the EU

Ireland held the Presidency of the EU for the first six months of 2013. A number of developments occurred related to asylum and migration in the area of Justice and Home Affairs (JHA), including:

- First Reading Agreement with the European Parliament on the Common European Asylum System (Asylum Procedures Directive and Eurodac Regulation).
- First Reading Agreement with the European Parliament on the Schengen governance legislative proposals (Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis and an amendment to the Schengen Borders Code as regards the rules for the temporary reintroduction of border controls at internal borders in exceptional circumstances).
- First Reading Agreement with the European Parliament on the Regulation providing for technical amendments to the Schengen Borders - the rules governing the movement of persons across borders (Schengen Borders Code) and the Convention implementing the Schengen Agreement.
- Political Agreement with the European Parliament on a Directive on the right of access to a lawyer in criminal proceedings.
- Political Agreement with the European Parliament on the proposal for a Regulation establishing the European Border Surveillance System (EUROSUR).
- Commencement of the Schengen Information System II (SIS II).
- Signature of readmission agreements with Cape Verde and Armenia.
- Signature of visa facilitation agreements with Cape Verde and Armenia.
- Establishment of a multi-annual framework for the EU Agency for Fundamental Rights for 2013-2017.
- Completion of negotiations on the proposed accession of the EU to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

- Council Conclusions on fundamental rights and rule of law and on the Commission's 2012 Report on the Application of the Charter of Fundamental Rights of the EU.
- Council Conclusions on an EU Framework for the Provision of Information on the Rights of Victims of Trafficking in Human Beings.
- Council Conclusions on setting the EU's priorities for the fight against serious and organised crime between 2014 and 2017.
- Council Conclusions calling for an update of the EU Strategy to combat radicalisation and recruitment to terrorism.
- Council Conclusions following the Commission Communication on the European Information Exchange Model.
- Council Conclusions relating to follow up to Schengen evaluations of Iceland, Norway, Finland, Sweden and Italy conducted between 2011 and 2012.
- Council Conclusions on Schengen evaluation of SIS/SIRENE Bureaux in Denmark, Iceland and Norway.
- Agreement on the operation and strategic cooperation between Liechtenstein and Europol.
- Agreement on new technical arrangements to allow the continued functioning of the Visa VISION system, resulting from the migration from SIS 1+ to SIS II.
- Adoption of Decisions on the conclusion of agreements between the EU and the Republic of Moldova and Ukraine amending arrangements on the facilitation of the issuance of visas.
- Signature of a Joint Declaration establishing a Mobility Partnership between the Kingdom of Morocco and the European Union and its Member States.
- Adoption of Report on the implementation of Article 102A of the Convention Implementing the Schengen Agreement during the years 2010 and 2011.
- Progress Report on key aspects of the Data Protection Package.

A3.1 AGREEMENT ON A COMMON EUROPEAN ASYLUM SYSTEM

The Presidency secured agreement on the final two elements of the CEAS, the 'Asylum Procedures Directive' which provides for minimum standards on procedures for granting and withdrawing refugee status; and the 'Eurodac Regulation' which concerns the system for comparing fingerprints of asylum-seekers and some categories of illegal immigrants.

A3.2 AGREEMENT ON THE CREATION OF A EUROPEAN BORDER SURVEILLANCE SYSTEM (EUROSUR)

Under the Irish Presidency, provisional agreement with the European Parliament was found on the Regulation establishing a European Border Surveillance System (EUROSUR). EUROSUR will allow for the sharing of operational information, and cooperation, between Member States' border authorities.

A3.3 REGULATIONS ON ESTABLISHING FUNDS IN THE JUSTICE AND HOME AFFAIRS AREA

By the end of the Presidency, progress for agreement had been reached on the following funds:

- Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund.
- Proposal for a Regulation establishing as part of the Internal Security Fund, the instrument for financial support for external borders and visas.
- Proposal for a Regulation laying down general provisions on the Asylum and Migration Fund and Internal Security Fund.

A3.4 VISAS AND READMISSION AGREEMENTS

The Presidency made significant progress in negotiations on proposed amendments to the 2001 Visa Regulation.

Visa facilitation agreements with Moldova and Ukraine were adopted under the Presidency. Visa facilitation and readmission agreements with Cape Verde and Armenia were signed during the Presidency. In addition, the Presidency made progress on the EU-Russia visa facilitation agreement.

A3.5 SCHENGEN

A number of agreements in the area of Schengen Governance were agreed under the Irish Presidency.

Agreement was reached on the Schengen Governance Package which provides for consistency and proportionality on the temporary re-introduction of border controls in exceptional circumstances. It also provides for a more 'robust and

rigorous system’ to oversee the implementation of the Schengen *acquis*. The agreement also enabled renewed progress on several other files in the Home Affairs area on which negotiations had been suspended since June 2012.

Agreement and adoption of the Schengen Borders Code Regulation also took place.

The Presidency oversaw the successful commencement of the Schengen Information System (SIS II) on 9 April, which facilitates the exchange of information between police and border authorities in the Member States.

A3.6 PROVISION OF INFORMATION ON THE RIGHTS OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS

The Presidency secured agreement at the June JHA Council on conclusions on an EU Framework for the Provision of Information on the Rights of Victims of Trafficking in Human Beings.

A3.7 EUROPEAN NEIGHBOURHOOD POLICY

In collaboration with the EEAS, the Presidency saw negotiations of the Association Agreements for Armenia, Georgia and Moldova finalised as part of the Eastern Partnership process.

A3.8 COUNCIL CONCLUSIONS ON SYRIA

The United Nations High Commissioner for Refugees participated in an important debate on Syria at the informal meeting of Justice and Home Affairs Ministers in Dublin in January 2013. Discussions also took place in Council which ‘addressed actions that can be taken to alleviate the plight of refugees and displaced persons in the region’.

A3.9 ACCESSION OF EU TO THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (ECHR)

The Presidency concluded an agreement on the text of the Accession Agreement of the EU to accede to the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR).

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