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HANDBOOK ON
IMMIGRATION
AND ASYLUM
IN IRELAND
2007

**EMMA QUINN
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CORONA JOYCE
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LIST OF ABBREVIATIONS AND IRISH TERMS

CADIC	Coalition Against the Deportation of Irish Children
Dáil	Parliament, Lower House
EEA	European Economic Area
EMN	European Migration Network
Gardaí/Garda Síochána	Police
GNIB	Garda National Immigration Bureau
HRC	Habitual Residency Condition
IBC/05	Irish Born Child Scheme 2005
INIS	Irish Naturalisation and Immigration Service
NERA	National Employment Rights Authority
NCP	National Contact Point
NGO	Non-Governmental Organisation
NPAR	National Action Plan Against Racism
ORAC	Office of the Refugee Applications Commissioner
Oireachtas	Parliament, both houses
RAT	Refugee Appeals Tribunal
Seanad Éireann	Parliament, Higher House
Tánaiste	Deputy Prime Minister
Taoiseach	Prime Minister
UNHCR	United Nations High Commissioner for Refugees

PREFACE

In the last decade or so rapid economic growth has transformed Ireland from its long-established status as a sender of emigrants to becoming a receiver of a substantial number of immigrants, to the extent that immigrants now outnumber emigrants by a large margin. The dramatic shift towards increased immigration has resulted in a great deal of activity in policy formation and in the emergence of much new information in diverse fields, including statistics, policy and law. This Handbook aims to draw together such information up to the end of 2007 to provide a comprehensive overview of immigration and asylum in Ireland, and is intended as a reference tool for people working in the area of immigration and asylum in Ireland, including State and non-State service providers, legal and other practitioners, policy makers and researchers.

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This document is for information purposes only and does not purport to be a legal interpretation of Irish or EU law.

1. INTRODUCTION

This Handbook is intended as a reference tool for people working in the area of immigration and asylum in Ireland, including State and non-State service providers, legal and other practitioners, policy makers and researchers. In the last decade economic growth has transformed Ireland from its traditional status as a sender of emigrants to one of a net receiver of immigrants. The dramatic shift towards increased immigration has resulted in the emergence of much new information in diverse fields, including statistics, policy and law. The Handbook aims to draw together such information up to the end of 2007 (with 2008 updates where appropriate), to provide a comprehensive overview of immigration and asylum in Ireland, and to equip the user with a useful reference tool to navigate the field.¹

The Handbook is structured as follows: Chapter 2 provides an overview of available statistics on flows and stocks of immigrants and investigates the nature of recent flows as well as the demographic, ethnic, religious and employment-related characteristics of non-Irish nationals in Ireland. Chapter 3 contains a discussion of the large number of new domestic policies, which have emerged as policymakers have responded to the unprecedented scale and pace of migration into Ireland. Chapter 4 provides information on the domestic legislation introduced in response to the new inflows. Immigration has also been influenced by Ireland's relationship with the EU, both because the Union represents a free-travel zone of open borders and because of the supremacy of EU law. This latter channel of influence is also discussed in Chapter 4. An appendix to Chapter 4 contains a comprehensive schedule of relevant

¹ A substantial amount of the information contained in the Handbook was collated by the Irish National Contact Point of the European Migration Network (EMN) which is located at the ESRI. The EMN is a Network established to provide policy makers in the European Commission and EU Member States, as well as the general public, with objective, reliable and comparable information on migration and asylum in the European Union. It is intended that such information will facilitate an overall view of the migration and asylum situation across the EU Community and its Member States. Research reports, annual policy analysis reports and statistical reports are prepared by the EMN using existing national data. The Irish documents are available to download at www.esri.ie.

INTRODUCTION

EU legal instruments. A second appendix to Chapter 4 lists international instruments impacting Irish immigration and asylum law.

With the introduction of much new domestic and European legislation, many issues have subsequently required judicial interpretation and clarification. As a result, the amount of Irish asylum and immigration case law currently available is far greater than that which existed only a decade ago. Chapter 5 contains summaries of important decisions of the High Court and Supreme Court; summaries of significant case law from the European Court of Justice; and summaries of decisions of the Refugee Appeals Tribunal in relation to refugee status determination. The case law summaries are structured thematically for ease of reference.

Within the immigration and asylum sector, new State and non-governmental organisations have been established in recent years, and researchers have begun to investigate the social and economic implications of immigration. We provide information on these actors and their work in Chapters 6 and 7. A list of selected recent and current research publications is provided in Chapter 8. A Glossary of relevant terms is supplied at Appendix A and Appendices B – E contain schematic outlines of elements of the asylum and deportation processes. An Index of Case Law is provided at the back of the Handbook.

2. STATISTICS

This section contains a description of the range and nature of the statistics on migration and migrants that are available in Ireland. It presents some summary data for recent years and provides background to some of the other issues covered later in this report (e.g. policy developments, legislation etc.)

2.1 SOME CONCEPTUAL ISSUES

There have been a variety of international initiatives designed to promote the availability of high quality migration statistics and standardised data collection procedures. The UN has developed concepts and definitions related to defining migration and measuring migratory flows generally. In a definitional sense, the UN aim is to account for all categories of persons crossing international borders, regardless of nationality, place of birth or place of residence.² The criterion of “duration of stay” in the country of immigration or emigration, in association with the concept of residence, is used as a basic provision in forming a distinction between “migrants” and “non-migrants”. The latter term covers such categories as tourists, short-term business travellers, frontier workers, pilgrims, nomads etc.

The UN recommendations distinguish two basic categories of migrant, long-term and short-term. These are defined as follows:

- A long-term migrant is a person who moves to a country other than that of his or her usual residence for a period of at least one year, so that the country of destination effectively becomes his or her new country of residence.
- A short-term migrant is a person who moves to a country other than that of his or her usual residence for a period of at least three months but less than a year except in cases where the movement to

² Country of residence is defined as the country where a person lives, that is to say where the person has a place to live where he or she normally spends the daily period of rest.

that country is for reasons of recreation, holiday, visits to friends and relatives, business, medical treatment, or religious pilgrimage.

While these definitions have not been widely adopted, especially in regard to national administrative-based data, they provide a useful benchmark and focus for further efforts towards harmonisation. These concepts form the basic definition of migration in the new EU Regulation for Migration and Asylum Statistics (EC 862/2007 of 11 July 2007). The Regulation provides a framework for the collection of improved, comparable statistics but it will need to be completed through the adoption of implementing measures in the form of Commission Regulations.

Frequently, available immigration data relate to specific categories of migrants such as asylum seekers or workers, or to related groups such as non-Irish nationals. (It is clear from published material that some countries regard the term “immigrant” as applicable only to non-nationals, and others to the even more restricted group of non-EU nationals.) However, the reasoning behind having a more comprehensive basic definition derives from the fact that all the components of migration flows have an economic or social impact.

2.2 IRISH MIGRATION STATISTICS

Irish official data are often limited by the fact that there are no exit controls at Irish borders. Therefore in the years between censuses we can only estimate the number of migrants in the country at any time. In addition the common travel area with Britain and the freedom of movement of EU nationals means that information on these flows is more limited. Official data may be supplemented with survey-based quantitative research but a reliable sample is difficult to achieve as non-Irish nationals are difficult to survey due to, for example, frequent address changes. Statistics on external migration flows in Ireland can be categorised under four main headings:

- (1) Aggregate inflows and outflows compiled annually by the Central Statistics Office (CSO).
- (2) Data on employment permits issued for non-EEA citizens derived from the administrative records of the Department of Enterprise, Trade and Employment (DETE).

- (3) Data on asylum seekers as compiled by the Department of Justice, Equality and Law Reform (DJELR) and its satellite agencies.
- (4) Limited published information on registrations of non-EEA citizens (GNIB).

Statistics on the stock of migrants in Ireland can be derived from the Census which is conducted every five years by the CSO.

2.2.1 Flow data

2.2.1.1 Global Migration Estimates

The aggregate or global CSO flow data, which covers all movements relating to both Irish citizens and non-Irish nationals, provide annual estimates of migratory inflows and outflows classified by aspects such as age, sex, nationality, country of origin/destination, etc. This source also provides population stock estimates classified by nationality in intercensal years.

However, there are constraints on the level of detail that can be shown under these headings as the relevant estimates are derived from sample surveys (mainly the Quarterly National Household Survey (QNHS)). The immigration data are obtained by means of “recall questions”, which seek information on both the current location of residence for each respondent and where he or she was living one year earlier.³

Table 2.1 shows annual migration flows, both gross and net, between 1987 and 2007.⁴ This period was characterised by considerable volatility in regard to migration flows. There were substantial population losses due to emigration in the late 1980s: the annual outflow peaked at over 70,000 in 1989. However the position stabilised in the early 1990s when the migration inflows and outflows were more or less in balance. Inward migration has grown steadily since the mid-1990s, to well over 100,000 per annum in the last two years, and peaking at almost 110,000 in the

³ Nationality figures from the QHNS are considered ‘tentative’ due to concerns, which are based on international experience, around the extent to which the survey captures minority communities in a proportionate and representative manner (CSO, *Quarterly National Household Survey*, Quarter 1, 2005).

⁴ The CSO released its *Population and Migration Estimates April 2007* in December 2007. The CSO paper includes revised migration estimates for 2003 to 2006. The data have been revised upward by an annual average of about 12,000 in respect of both immigration and emigration, resulting in small changes to net migration.

STATISTICS

twelve months to April 2007. Migratory outflows have also increased in recent years, as returning immigrants have added their numbers to the emigrating Irish nationals. In the twelve months to April 2007, the inflow of 110,000 was offset by an estimated outflow of 42,000, resulting in net-migration of over 67,000. The majority of people moving from Ireland (52 per cent) migrated to countries outside the EU.

Table 2.1 Gross and Net Migration Flows, 1987-2007⁵

Year (ending April)	Outward	Inward (<i>'000s</i>)	Net
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	42.2	109.5	67.3

Sources: 1987-2002: Population and Migration Estimates (various releases); 2003-2007: CSO, 2007, Population and Migration Estimates April 2007

Table 2.2 shows the estimated nationality breakdown of immigration flows between 1996 and 2007. The inward flows now involve increasing numbers of non-Irish nationals. Table 2.2 shows that the most dramatic

⁵ These figures are derived from the CSO series of Annual Labour Force Surveys over the period from 1987 to 1996 and the QNHS series from 1997 onwards. The immigration estimates relate to those persons resident in the country at the time of the survey and who were living abroad at a point in time twelve months earlier. Virtually all of the survey-based immigration flow data contained in this report are derived on this basis.

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recent trend has been the large influx of nationals from the new EU Member States (NMS) since 2004. Their numbers increased from 34,000 in the 12 months to April 2005 to 53,000 in April 2007. In 2007 nationals of the 12 NMS accounted for 48 per cent of all immigrants in Ireland.

Table 2.2. Estimated Immigration by Nationality, 1996-2007

	Irish	UK	EU 13**	EU 16-27*** 000's	USA	Rest of World	Total
1996	17.7	8.3	5.0	-	4.0	4.2	39.2
1997	20.8	8.4	5.5	-	4.2	5.5	44.5
1998	24.3	8.6	6.1	-	2.3	4.7	46.0
1999	26.7	8.2	6.9	-	2.5	4.5	48.9
2000	24.8	8.4	8.2	-	2.5	8.6	52.6
2001	26.3	9.0	6.5	-	3.7	13.6	59.0
2002	27.0	7.4	8.1	-	2.7	21.7	66.9
2003	17.6	9.1	8.8	-	2.1	22.4	60.0
2004	16.7	7.4	13.3	-	2.3	18.8	58.5
2005	18.5	8.9	9.3	34.1	2.1	11.6	84.6
2006	18.9	9.9	12.7	49.9	1.7	14.7	107.8
2007 ¹	20.0	5.9	10.4	52.7	2.8	17.8	109.5
				%			
1996	45.2	21.2	12.8	-	10.2	10.7	100.0
1997	46.7	18.9	12.4	-	9.4	12.4	100.0
1998	52.8	18.7	13.3	-	5.0	10.2	100.0
1999	54.6	16.8	14.1	-	5.1	9.2	100.0
2000	47.1	16.0	15.6	-	4.8	16.3	100.0
2001	44.6	15.3	11.0	-	6.3	23.1	100.0
2002	40.4	11.1	12.1	-	4.0	32.4	100.0
2003	29.3	15.2	14.7	-	3.5	37.3	100.0
2004	28.5	12.6	22.7	-	3.9	32.1	100.0
2005	21.9	10.5	11.0	40.3	2.5	13.7	100.0
2006	17.5	9.2	11.8	46.3	1.6	13.6	100.0
2007*	18.3	5.4	9.5	48.1	2.6	16.3	100.0

* Preliminary.

** EU15 (i.e. the 15 EU Member States prior to 2004 Accession) excluding Ireland and the UK

*** Note that prior to April 2005 EU16-27 nationals were counted in the "Rest of World" category. From 2004 this category includes only the 10 new Member States that joined the EU in May 2004. The 2007 data include immigrants from Bulgaria and Romania, which joined the EU in January 2007.

Source: 1996-2001: CSO Population and Migration Estimates April 2003; 2002-2007: CSO Population and Migration Estimates April 2007

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The absolute number of Irish nationals returning peaked at 27,000 in 2002. At this point, returning Irish nationals represented 40 per cent of all immigrants. In 2007, the number of Irish immigrants was 20,000, representing just 18 per cent of the total. The estimates for the year to April 2007 indicate that about 5 per cent of the total inflow were UK nationals, about 2 per cent were citizens of the U.S., while over 16 per cent were from other countries.

Other sources for measuring immigration flows, for example administrative sources, are limited in Ireland due largely to the existence of a free travel area between Ireland and the United Kingdom and the fact that only minimal restrictions apply to the movement of EEA citizens when moving between countries within the European Union. This means, in effect, that such movements are not recorded. Administrative sources can provide information on the movement of non-EEA citizens only.

In terms of age distribution, those aged 25-44 years currently constitute almost 60 per cent of the total inflow, a proportion that has increased in recent years (see Table 2.3). About 30 per cent of the gross inflow relates to young people aged 15 to 24 years. Around 12 per cent of inward migrants in 2007 were children aged less than 15 years. This proportion has shown a tendency to increase in recent years, suggesting an increasing proportion of immigrants coming with families. Immigrants in the age group 45 years and over currently make up less than 8 per cent of the inflow.

The Irish Department of Social and Family Affairs issues Personal Public Service Numbers (PPSN), which are necessary for employment. A new analysis conducted by the CSO that compares PPSN allocations and employer end-of-year (P35) returns to the Revenue Commissioners for non-Irish nationals reveal the extent to which those allocated PPS numbers took up and retained insurable employment over time.⁶ The analysis shows that just under half of those allocated a PPSN between 2002 and 2005 had employment activity in 2006. For those allocated a PPSN in the earlier period (i.e. the year 2002) about one in three had some level of insurable employment in 2006. This reflects a pattern of declining employment participation over time. For example, almost 60 per cent of those allocated PPS numbers in 2002 were recorded as having been in employment in 2002. This proportion fell to 53 per cent in 2003, to 41 per cent in 2004 and to 35 per cent in 2005. Among nationals of the new Members States, mainly entering from 2004

⁶ Central Statistics Office, 2007, *Foreign Nationals: PPSN Allocations and Employment, 2002-2006*.

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onwards, the rate of employment activity started off very high (80 per cent) and fell off more slowly than in respect of other nationalities. These data on the inflow of immigrants and employment around the period of EU enlargement highlight the need for caution in using data on registrations for the purposes of job search to make inferences about the size and duration of migration flows.

Table 2.3. Estimated Immigration Flows Classified by Age, 1991-2007

	<i>0-14</i>	<i>15-24</i>	<i>25-44</i>	<i>45-64</i>	<i>65+</i>	<i>Total</i>
	(000)					
Persons						
1991	5.2	9.3	14.6	2.5	1.7	33.3
1992	6.2	12.5	16.5	4.1	1.4	40.7
1993	5.6	10.3	14.5	3.6	0.8	34.7
1994	4.4	9.7	12.1	3.1	0.9	30.1
1995	5.3	8.0	14.6	2.6	0.7	31.2
1996	6.6	10.9	16.9	3.6	1.2	39.2
1997	6.4	13.8	18.2	4.7	1.5	44.5
1998	7.5	12.4	19.9	4.3	1.8	46.0
1999	7.0	15.3	21.5	4.1	0.9	48.9
2000	7.1	16.8	23.4	4.0	1.2	52.6
2001	7.9	16.4	29.5	4.3	0.8	59.0
2002	7.0	19.8	35.2	4.2	0.8	66.9
2003	7.3	17.5	28.8	5.1	1.3	60.0
2004	6.1	18.7	28.8	4.2	0.7	58.5
2005	8.0	24.2	44.8	6.1	1.2	84.6
2006	11.5	31.6	57.2	6.1	1.4	107.8
2007	11.7	30.3	59.8	6.9	0.9	109.5
Males						
1991	2.7	4.5	8.0	1.4	0.9	17.6
1996	3.1	4.2	8.7	2.2	0.6	18.8
2001	4.1	6.6	16.3	2.5	0.5	30.1
2006	5.5	16.4	34.0	3.7	0.7	60.3
2007	5.6	13.4	33.6	4.3	0.6	57.4
Females						
1991	2.6	4.8	6.5	1.1	0.8	15.8
1996	3.6	6.7	8.1	1.3	0.6	20.4
2001	3.8	9.8	13.2	1.8	0.3	29.0
2006	6.0	15.2	23.2	2.4	0.7	47.5
2007	6.1	16.9	26.2	2.7	0.3	52.4

Source: CSO Population and Migration Estimates, various years

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Table 2.4. PPSN Numbers Allocated 2002-2005 and those Recorded as Employed in 2006

	PPSNs Allocated 2002-2005	Employment in 2006	% Employed in 2006
United Kingdom	64,647	19,677	30.4
Eu15 (excl IE and UK)	77,704	23,790	30.6
EU16 to EU25	183,472	121,815	66.4
USA	10,334	1,868	18.1
Rest of World	111,085	51,566	46.4
Total foreign nationals	447,242	218,716	48.9

Source: CSO, 2007, Foreign Nationals: PPSN Allocations and Employment, 2002-2006

2.2.1.2 Employment Permit Data

The Department of Enterprise, Trade and Employment make available a substantial amount of information on non-EU labour migration. Prior to January 2007 non-EU workers coming to Ireland held either a work permit or a work visa/authorisation. A work permit was the main means by which non-EEA nationals took up employment in Ireland and traditionally covered a wide range of occupations ranging from low to high skilled. Working visa/authorisations were issued to suitably qualified persons in areas of skill shortages.

As discussed in Chapter 3, a new Employment Permits Scheme was introduced in 2007 that significantly altered the system of labour migration to Ireland. The scheme includes a new green card scheme and a revised work permit scheme. Green cards cover occupations offering a salary of €60,000 or more per annum, and some occupations with annual salaries in the €30,000 to €59,999 range in which skills shortages have been identified. Just under 3,000 green cards were issued in 2007. Under the new Scheme, work permits are issued for a restricted list of occupations as determined by labour shortages. About 7,000 such work permits were issued in 2007, along with almost 13,500 renewals of permits issued under the previous system.

Irish Government labour migration policy is to meet most of Ireland's labour needs from within the enlarged EU. Even before the accession of ten new EU Member States in May 2004 the Department of Enterprise, Trade and Employment favoured work permit applications made on behalf of nationals of these ten countries. The impact of the 2004 Accession on work permit allocations is clearly seen in Table 2.5. The number of work permits issued began to fall after 2003; between 2003 and 2007 the number issued fell by 50 per cent

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Table 2.5. Employment Permits* Issued and Renewed, 1998-2007

Year	Permits Issued	Permits Renewed	Total	Percentage Renewed
1998	3,830	1,886	5,716	42.0
1999	4,597	1,660	6,262	28.9
2000	15,735	2,271	18,006	36.3
2001	29,951	6,485	36,446	36.0
2002	23,759	16,562	40,321	45.5
2003	22,512	25,039	47,551	62.1
2004	10,821	23,246	34,067	48.9
2005	8,166	18,970	27,134	55.7
2006	8,524	16,600	24,854	61.2
2007	10,147	13,457	23,604	54.1

Source: Department of Enterprise, Trade and Employment.

Note: The percentage renewed is calculated on the basis of the total permits issued for the previous year.

* Includes work permits, spousal work permits, group permits, green cards and intra company transfer permits. These data do not include a large number of students permitted to work in Ireland while engaged in education.

Table 2.6. Work Permits Issued and Renewed by Nationality, 1998-2007

Country, Region	1998	2000	2002	2003	2004	2005	2006	2007
	Number							
USA, Canada	1,645	1,851	1,096	1,265	1,196	1,363	1,373	1,557
Australia	312	768	1,116	1,149	908	927	879	808
India	446	644	845	1,030	1,253	1,724	2,166	4,069
Japan	248	176	197	209	235	221	214	208
Pakistan	224	468	840	830	846	822	769	813
Philippines	63	991	3,255	4,042	4,301	4,172	3,850	3,885
South Africa	178	637	2,273	2,468	2,031	1,834	1,719	1,461
EU 10 States	240	5673	13725	16606	5290	260	171	82
Other Eastern Europe	292	2,351	8,562	9,974	7,978	6,800	5,552	3,232
Other Countries	2,068	4,447	8,412	9,978	10,029	9,011	8,161	7,489
Total	5,716	18,006	40,321	47,551	34,067	27,134	24,854	23,604

Source: Department of Enterprise, Trade and Employment.

Nationals of Bulgaria and Romania continue to require a work permit to access the Irish labour market and are counted in the "Other Eastern Europe" category.

"Other Eastern Europe" includes Albania, Belarus, Bosnia, Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Macedonia, Moldova, Romania, Russian Federation, Ukraine, Yugoslavia (Federal).

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The Department of Enterprise, Trade and Employment also supply a nationality breakdown of work permit allocations. A large proportion of work permit allocations in 2007 were to nationals of non-EU Eastern European States and the Philippines.

2.2.1.3 *Statistics on Asylum Applicants*

Data on asylum seekers are compiled principally by the Office of the Refugee Applications Commissioner (ORAC) and by the Refugee Appeals Tribunal (RAT). The data potentially available on asylum seekers cover some personal characteristics (age, sex, nationality, etc.) as well as information on the various stages of the application process (i.e. initial or first instance applications and appeals). Data on decisions taken at each stage (i.e. recognition of refugee status, refusals, withdrawals, etc.) are also available. Table 2.7 shows the number of applications for asylum that were lodged in Ireland over the period from 1994 to 2007. The total number of applications over the entire period was more than 76,000. The number increased from negligible proportions in the early 1990s to over 11,600 in 2002. However, between 2002 and 2005 the number of applicants fell sharply by over 7,000 or about 60 per cent. There were a total of 3,985 applications for asylum in 2007, the lowest since 1997. It is of interest to note that this number of applicants for asylum represents less than 4 per cent of the estimate of total gross inward migration in 2007.

Table 2.7. Asylum Applications 1994-2007

Year	Applications
1994	362
1995	424
1996	1,179
1997	3,883
1998	4,626
1999	7,724
2000	10,938
2001	10,325
2002	11,634
2003	7,900
2004	4,766
2005	4,323
2006	4,314
2007	3,985
Total 1994-2007	76,383

Source. Office of the Refugee Applications Commissioner

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Table 2.8 shows that Nigeria remains the stated country of nationality of the largest number of applicants for asylum. In 2004 nearly 40 per cent of all applicants stated that they were of Nigerian nationality; in 2007 about a quarter of asylum applicants (1,028) stated Nigerian nationality. Applications from those listing Romanian nationality ranked second in 2001 and 2004, but have declined following its accession to the EU in 2007. Applications from stated nationals of Iraq, China, Pakistan and Georgia have entered the top five ranking countries in 2007. The remaining applicants in 2007 came from a diverse range of countries and in most cases the number applying from each country was less than 100.

Table 2.8. Applications for Asylum by Nationality 2001, 2004, 2007

2001		2004		2007	
Country	No.	Country	No.	Country	No.
Nigeria	3,461	Nigeria	1,778	Nigeria	1,028
Romania	1,348	Romania	286	Iraq	285
Moldova	549	Somalia	200	China	259
Ukraine	376	China	152	Pakistan	185
Russia	307	Sudan	143	Georgia	174
Other	4,284	Other	2,207	Other	2,054
Total	10,325	Total	4,766	Total	3,985

Source: Office of the Refugee Applications Commissioner

Calculation of refugee recognition rates that take adequate account of first instance and appeal stages are inherently problematic because they involve the comparison of annual numbers of applications and decisions, and the latter can relate to applications over a number of years. Ideally the measure should view the first instance and appeal stages as one integrated process and avoid double counting of individual applicants. Table 2.9 provides estimated refugee recognition rates for the period 2004 to 2007 based on published statistics from the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal. These rates are calculated on the basis of the total number of recommendations/decisions that refugee status should be granted at first instance and appeal in any given year as a percentage of the total number of recommendations/decisions made at first instance or appeal in that year.⁷ The problem of double counting cases persists.

⁷ Cases finalised refer to those that are processed to the stage where the Minister for Justice, Equality and Law Reform is in a position to grant, or not to grant, a declaration of refugee status. Applications processed under Regulation (EC) No 343/2003 of 18 February 2003 (“The Dublin Regulation”) are excluded from these calculations. Applications that are withdrawn, deemed withdrawn or are abandoned are included in

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Table 2.9. Refugee Recognition Rates 2004-2007*

	2004	2005	2006	2007
Total ORAC Recommendations	6878	5243	4244	3787
Total RAT Completed appeals	6305	4029	1950	1878
Positive ORAC Recommendations	430	455	397	374
“Positive” RAT Decisions**	717	514	251	203
Total Decisions/Recommendations	13183	9272	6194	5665
Total Positive Decisions/Recommendations	1147	969	648	577
Recognition Rate ORAC	6.3%	8.7%	9.4%	9.9%
Recognition Rate RAT	11.4%	12.8%	12.9%	10.8%
Overall Recognition Rate	8.7%	10.5%	10.5%	10.2%

Source: Office of the Refugee Applications Commissioner statistics available at www.orac.ie; Refugee Appeals Tribunal 2008, 2007, 2006, 2005.

* These data include withdrawn/deemed withdrawn/abandoned cases as “negative” recommendations/decisions because comprehensive data excluding such cases are not published.

** Recommendations issued by the Refugee Appeals Tribunal to the Minister for Justice, Equality and Law Reform to overturn the decision of the Refugee Applications Commissioner are counted as “positive decisions”.

Certain key decisions or actions taken in the asylum and deportation process may only be appealed to the High Court by way of judicial review.⁸ Statistics on applications for judicial review of the decisions of the Office of the Refugee Appeals Commissioner, the Refugee Appeals Tribunal and the Minister for Justice, Equality and Law Reform in asylum related matters are published by the Courts Service. There were 1,024 new asylum related judicial review applications made in the High Court in 2007, a 12% increase on the figure for 2006. There were 263 orders made granting leave to seek judicial review in asylum related cases in 2007. This is an 89% increase compared with 2006 when 139 such orders were granted (Courts Service, 2008).

the calculations and are counted as negative recommendations/decisions; inadequate data are published to construct a rate excluding such cases.

⁸ Section 5 of the Illegal Immigrants (Trafficking) Act 2000 specifically provides that certain decisions made in the asylum and immigration processes cannot be questioned other than by way of judicial review. Section 5 of the 2000 Act also provides special rules for judicial review of such decisions. These rules are more stringent than the normal rules for judicial review. See section 4.1.1.7 of this text.

The official figures do not provide a breakdown of judicial review applications by agency, however in figures published by *The Irish Times*, the Office of the Refugee Applications Commissioner (ORAC) was the subject of 440 judicial review applications in 2007 and the Irish Naturalisation and Immigration Service (INIS) and/or the Department of Justice, Equality and Law Reform were the subject of 378 applications for judicial review during the same time. *The Irish Times* estimate that the balance (206 applications) relates to decisions made by the Refugee Appeals Tribunal (RAT). It also states that the RAT paid out €4.29 million in respect of 190 cases in 2007, a cost considerably higher than that incurred by the ORAC or INIS in the same period.⁹

2.2.2 Stock data

2.2.2.1 Census 2006

Data from Census 2006 provide a great deal of information on the stock of non-Irish nationals resident in Ireland. Given Ireland's particular migration history and the fact that Ireland is a relatively recent immigration country, it is reasonable to assume that most non-Irish nationals resident here are immigrants. (Census 2006 also contains information on residence one year previously.) Table 2.10 compares the number and percentage of persons usually resident in Ireland in 2002 and 2006 classified by nationality. The percentage of persons with non-Irish nationality increased significantly from 6 per cent to 10 per cent, while the percentage of those enumerated with Irish nationality fell from 93 per cent to 89 per cent.

The most significant increase was seen in the EU category, which accounted for 2.5 per cent of persons enumerated in 2002 and 7 per cent in 2006. This increase in the proportion of EU nationals was mainly driven by migrants from the 10 EU States that acceded in 2004: 120,500 or almost 3 per cent of the population enumerated on Census night held nationality of one of the EU10 States.

⁹The Irish Times, March 2008. '1,000 Asylum Review Cases Last Year'. Available at <http://www.irishtimes.com/>.

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Table 2.10. Persons Usually Resident and Present in the State on Census Night 2002 and 2006, Classified by Nationality

	2002		2006	
	000s	%	000s	%
<i>Irish</i>	3,584,975	92.9	3,706,683	88.8
UK	103,476	2.7	112,548	2.7
Other EU 15	29,960	0.8	42,693	1.0
New EU 10	-	-	120,534	2.9
<i>Total EU*</i>	133,436	3.5	275,775	6.6
Other European	23,105	0.6	24,425	0.6
USA	11,384	0.3	12,475	0.3
Africa	20,981	0.5	35,326	0.8
Asia	21,779	0.6	46,952	1.1
Other nationalities	11,236	0.3	22,422	0.5
Multi/No nationality	3,187	0.1	3,676	0.1
Not stated	48,412	1.3	44,279	1.1
<i>Total Non Irish**</i>	224,261	5.8	419,733	10.1
Total	3,858,495	100.0	4,172,013	100.0

*2006 data include EU10 countries. **Excludes “no nationality” and “not stated”.

Table 2.11 shows the age breakdown of non-Irish nationals in Ireland. The majority of non-Irish nationals usually resident in Ireland fall into the 25-44 age group (52 per cent). Non-Irish nationals also have a slightly higher proportion in the 15-24 age group than Irish nationals (18 per cent and 15 per cent respectively).

Table 2.11. Persons Usually Resident and Present in the State on Census Night 2006, Classified by Nationality and Age Group

	Irish		Non Irish	
	000s	%	000s	%
0-14 yrs	797,281	21.5	52,500	12.5
15-24 yrs	536,777	14.5	75,687	18.0
25-44 yrs	1,089,238	29.4	219,281	52.2
45-64 yrs	845,160	22.8	57,181	13.6
65 yrs +	438,227	11.8	15,084	3.6
Total	3,706,683	100.0	419,733	100.0

Table excludes “no nationality” and “not stated”

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Ireland is still quite an ethnically homogenous country. As Table 2.12 shows, 95 per cent of those who answered the nationality question indicated their ethnicity was White, while Black, Asian and Other ethnicities accounted for just 1 per cent each. Those respondents of Irish nationality are even more predominantly White (98 per cent), while non-Irish respondents were 71 per cent White.

Table 2.12. Persons Usually Resident and Present in the State on Census Night 2006, Classified by Ethnic or Cultural Background

	Irish		Non-Irish		Total*	
	000s	%	000s	%	000s	%
White	3,635,127	98.1	298,711	71.2	3,956,609	94.8
<i>Irish/Irish Traveller</i>	<i>3,616,012</i>	<i>97.6</i>	<i>30,689</i>	<i>7.3</i>	<i>3,667,568</i>	<i>87.9</i>
<i>Any other White background</i>	<i>19,115</i>	<i>0.5</i>	<i>268,022</i>	<i>63.9</i>	<i>289,041</i>	<i>6.9</i>
Black	12,986	0.4	30,611	7.3	44,318	1.1
<i>African</i>	<i>11,440</i>	<i>0.3</i>	<i>28,433</i>	<i>6.8</i>	<i>40,525</i>	<i>1.0</i>
<i>Any other Black background</i>	<i>1,546</i>	<i>0.0</i>	<i>2,178</i>	<i>0.5</i>	<i>3,793</i>	<i>0.1</i>
Asian	9,268	0.3	42,553	10.1	52,345	1.3
<i>Chinese</i>	<i>3,078</i>	<i>0.1</i>	<i>13,165</i>	<i>3.1</i>	<i>16,533</i>	<i>0.4</i>
<i>Any other Asian background</i>	<i>6,190</i>	<i>0.2</i>	<i>29,388</i>	<i>7.0</i>	<i>35,812</i>	<i>0.9</i>
Other, including mixed background	12,934	0.3	33,085	7.9	46,438	1.1
Not stated	36,368	1.0	14,773	3.5	72,303	1.7
Total	3,706,683	100.0	419,733	100.0	4,172,013	100.0

* Includes “no nationality” and “not stated”.

Irish nationals are also quite homogenous religiously: the vast majority enumerated identified themselves as Catholic. Non-Irish nationals are much more religiously diverse: just over half are Catholic, 11 per cent are Church of Ireland, Protestant, Presbyterian, or Methodist, and 5 per cent are Muslim. A much higher percentage of non-Irish nationals claim to have no religion than Irish nationals (16 per cent and 3 per cent respectively).

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Table 2.13. Persons Usually Resident and Present in the State on Census Night 2006, Classified by Religion and Nationality

	Irish	Non Irish %	Total*
Roman Catholic	92.0	50.8	87.4
Church of Ireland (incl. Protestant)	2.3	7.4	2.9
Muslim (Islamic)	0.3	5.1	0.8
Other Christian religion	0.4	2.7	0.7
Presbyterian	0.4	1.8	0.5
Orthodox	0.1	4.0	0.5
Methodist	0.1	1.3	0.3
Other stated religions	0.6	7.4	1.3
No religion	2.8	16.3	4.2
Not stated	0.9	2.9	1.6
Total	100.0	100.0	100.0

* Includes “no nationality” and “not stated”.

2.2.2.2 Quarterly National Household Survey

Table 2.14 shows population and employment numbers for the adult population, those aged 15 years or over, by nationality. These are derived from the Quarterly National Household Survey for Quarter 3, 2004 (the earliest these data are available for) and Quarter 3, 2007. Over the period, the total adult population grew from 3.2 million to almost 3.5 million, a rise of just over 8 per cent.

Growth in the Irish national adult population amounted to 3.7 per cent, compared to over 80 per cent growth among the non-Irish national adult population. The number of non-Irish national adults increased from 18,500 in 2004 to 341,600 in 2007, increasing their share from less than 6 per cent to almost 10 per cent of the total population. Particularly striking is the growth in the number of adult nationals from the new EU Member States, from less than 25,000 in 2004 immediately after the EU enlargement, to almost 150,000 in 2007, a growth of over 500 per cent. By 2007 nationals of the new Member States represented over 40 per cent of all non-Irish nationals in the adult population.

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Table 2.14. Population and Employment, Population aged 15 years or over, 2004 and 2007

	Population over 15 yrs			Employment			
	2004, Q3	2007, Q3	% Change	2004, Q3	2007, Q3	% Change	% Employment Rate, 2007
Irish nationals	3,030.9	3,141.7	3.7	1779.1	1893.0	6.4	60.3
Non-Irish nationals	187.5	341.6	82.2	114.5	248.0	116.6	72.6
UK	60.0	68.1	13.5	34.8	37.7	8.3	55.4
EU15 excl. Irl. & UK	26.3	28.5	8.4	19.4	21.9	12.9	76.8
New EU MS*	24.6	149.6	508.1	19.5	126.1	546.7	84.3
Other	76.6	95.4	24.5	40.7	62.2	52.8	65.2
Total	3,218.4	3,483.3	8.2	1893.6	2140.9	13.1	61.5
Non-Irish Nationals %	5.8	9.8		6.0	11.6		

Source: CSO, QNHS, Q3, 2004 and Q3, 2007. www.cso.ie.

* In 2004 the New EU Member States consisted of the 10 states that acceded to the EU in May 2004. The 2007 data also include Romania and Bulgaria which joined the EU in January 2007

The impact of immigration is particularly evident in the employment data. Total employment increased by 13 per cent over the period, but the number of non-Irish national adults employed more than doubled from just under 114,000 to almost 250,000. In 2007 the share of non-Irish nationals in total employment increased from 6 per cent in 2004 to 11.6 per cent. Non-Irish nationals thus accounted for well over half of the total employment growth between 2004 and 2007. Again nationals of the new Member States are particularly prominent: their numbers in employment grew from less than 20,000 in 2004 to 126,000 in 2007, a growth of almost 550 per cent. By 2007 they accounted for almost half of all non-Irish national adults employed in the Irish labour market. In general, employment rates are higher among non-Irish than among Irish nationals. This reflects the fact that immigrants tend to be concentrated in the younger, prime working-age groups, and the fact that many have migrated for the purpose of economic activity. Thus, 60 per cent of Irish national adults were employed in 2007, compared to an average employment rate of 72.6 per cent among non-Irish nationals, and 84 per cent among nationals of the new Member States.

2.3 SUMMARY OF TRENDS

The data discussed above show a marked increase in the size of employment-related migration flows to Ireland up to 2007, following the economic upturn at the end of the 1990s. The composition of these flows changed over the years; at first dominated by returning Irish migrants, the proportion of Irish migrants began to decrease around 2000-2002. Between 2002 and 2004 migrants from non-EU countries dominated the immigration flows. This led to a series of policy and legislative developments (discussed in Chapters 3 and 4) as Ireland began to develop a system for managing economic migration. The most significant developments were the enactment of the Employment Permits Act in 2003 and the Immigration Act 2003. The marked increase in the number of employment permits issued up to 2003 was followed by a decline following the accession of 10 new EU Member States in 2004, after which Ireland was able to source the majority of its labour from within the EU.

Asylum-related flows also grew steadily between 1996 and 2002. The substantial amount of protection-related policy, legislation and case law that emerged at this time (discussed in Chapters 3, 4 and 5) demonstrates the challenges Ireland faced in establishing a protection system while grappling with unprecedentedly high numbers of asylum applications. For example the Refugee Act 1996 was amended substantially by the Immigration Act 1999, the Illegal Immigrants (Trafficking) Act 2000 and the Immigration Act 2003.

Census 2006 provided much needed detail on the increased stock of non-Irish nationals living in Ireland. It is evident from census figures that Ireland now has a much more diverse population in terms of nationality, but relative homogeneity in terms of ethnicity and religion.

3. POLICY

Until relatively recently Ireland was a country of emigration. However, the exceptional economic growth of the past decade has brought with it large and sustained inflows of migrants. This shift resulted in an urgent need for updated immigration policy. Until quite recently the basic legislation governing the entry and residence of non-Irish nationals in Ireland was the Aliens Act 1935 and the Aliens Order 1946, as amended. In addition the Regulations implementing the European Union Rights of Residence Directives came into effect after Ireland joined the European Economic Community in 1973.

Non-EEA nationals coming to Ireland can be broadly categorised as either employment-based or non-employment-based immigrants.¹⁰ Employment-based immigration channels include new employment permits; intra-company transfers; trainee permits; and business permits. Non-employment based immigration includes students; working holidaymakers; applicants for asylum; and dependants. Rights and entitlements differ significantly according to immigration category, with various types of immigration stamps issued according to entry permission criteria.¹¹

In recent years a variety of legislative measures have been introduced to deal with immigration and asylum issues in Ireland including: the Refugee Act 1996; the Immigration Acts 1999, 2003 and 2004; the Illegal Immigrants (Trafficking) Act 2000; and the Employment Permits Acts 2003 and 2006. Nevertheless it has been argued that the updating of Irish immigration and asylum policy to the present time has been piecemeal, reacting to specific problems as they arise. In April 2007 an Immigration, Residence and Protection Bill was published, and attempted to codify many of the disparate instruments and administrative practices in order to present coherent managed immigration and asylum policies. The Bill fell with the General Election and change of government in June 2007. A new Immigration, Residence

¹⁰ Hughes et al (2007). 'The Impact of Immigration' in *Best of Times*. Dublin: IPA.

¹¹ See entry for 'Certificate of Registration' in Glossary for further information regarding current categories of immigration stamps.

and Protection Bill was published in January 2008 and incorporates the substance of the 2007 Bill.¹²

Further details of the content of the range of legislation relevant to immigration and asylum policy in Ireland are contained in Chapter 4. Chapter 5 contains summaries of the outcomes of important judicial decisions related to immigration and asylum. The following commentary summarises the main policy measures that have been introduced in recent years. A more detailed analysis of recent immigration and asylum policy can be found in Joyce (forthcoming), Quinn (2006; 2007) and Quinn and Hughes (2005).

3.1 REVISED EMPLOYMENT PERMITS SCHEME

In January 2007 a new Employment Permits Scheme was introduced that significantly altered the system of labour migration to Ireland. The Scheme is designed to reflect the general policy of meeting most domestic labour needs from within the enlarged EU, restricting non-EU labour immigration to workers with very specialised and/or scarce skills and with all other vacancies to be filled by EU nationals. On foot of the Employment Permits Act 2006 the old dual system of work permits and work visa/authorisations has been replaced by a new system with three main elements:

1. A type of “Green Card” for any position with an annual salary of €60,000 or more in any sector, or for a restricted list of occupations, where skill shortages have been identified, with an annual salary range from €30,000 to €59,999.
2. A work permit scheme for a very restricted list of occupations with an annual salary up to €30,000, where the shortage is one of labour rather than skills. Work permits applications will not be considered for a list of specified occupations, mainly low skilled, elementary and traditional manual craft occupations listed as ineligible for work permits.
3. An Intra-Company Transfer scheme for temporary trans-national management transfers.

¹² The scope of the Bill is very broad and covers visas, entry to the State, residence permits and registration requirements, protection, removal and other more general matters. In many instances the Bill simply restates existing legislation, but it also proposes a number of important new developments. This Handbook provides summary information on the Bill in Chapter 4.

The application for a Green Card does not entail a requirement for a labour market test. The card is issued first for two years, and will normally lead to granting of long-term residence. Holders are entitled to be accompanied by spouses and families. Work permits can be granted for two years initially and may subsequently be extended for three years. Either employers or employees may apply for employment permits and, in an important new development, the Green Card or work permit is granted to the employee rather than the employer, with the intention of reducing the potential for employee exploitation.

In 2004 a new measure was announced aimed at attracting highly skilled workers, particularly nurses, to Ireland. Under the new measure, spouses of certain categories of migrant workers could apply to work in Ireland under the Spousal Work Permit Scheme. Although spouses still required a work permit to take up employment in Ireland under the Scheme, the procedure was greatly simplified. During 2006 the Spousal Work Permit Scheme was extended to the spouses of all employment permit holders. In January 2007 a new category of Spousal/Dependant Work Permits was announced and superseded previous schemes. Coming into effect on 1 February 2007, the Spousal and Dependent Scheme was designed to ease access to employment for spouses and dependent unmarried children under the age of 18 who had been admitted into Ireland as family members of employment permit holders. The new arrangements did not remove the need for a work permit, but rather allowed spouses and dependants of employment permit holders to apply for work permits for any occupation and without the requirement of a labour market test. They, or their employer, were still required to apply for a permit in the usual way. The Department of Enterprise, Trade and Employment records show that 1,787 spousal and or dependant work permits were issued in 2007; 1,718 spousal work permits were issued in 2006; 1,168 were issued in 2005 and 739 were issued in 2004.

3.2 ACCESSION, DISPLACEMENT AND EMPLOYMENT RIGHTS

In May 2004 ten new Member States joined the European Union. Only Ireland, the UK and Sweden allowed “EU10” nationals full access to the national labour markets. The move has led to some debate about whether the policy has proved beneficial to Ireland, particularly whether or not there has been displacement of Irish workers. During 2005 there were a number of high profile cases, notably those involving the companies GAMA and Irish Ferries, which suggested that Irish workers

were being displaced by cheaper labour from abroad. (See Quinn, 2006 for more information).

This issue of displacement together with related concerns about employment rights threatened to stall the social partnership agreement in March 2006.¹³ Unions and other Social Partners argued that protection of employment standards and the minimum wage is key to avoiding a “race to the bottom” resulting in migrant workers being exploited and Irish workers displaced. The dispute was resolved when a new National Employment Rights Authority (NERA) was agreed upon, as well as a commitment to expand the labour inspectorate from 31 to 90 inspectors by the end of 2007. It is planned that NERA will be established on a statutory basis in 2008. The Authority is tasked with maintaining employment rights and labour standards throughout the labour market, with a particular concern for the rights of migrant workers. Measures were also introduced in the partnership agreement *Towards 2016* to address the fear of collective redundancies of Irish workers in order to make room for cheaper labour. (Department of the Taoiseach, 2006)

Romanian and Bulgarian nationals continue to require employment permits to access the Irish labour market despite accession to the EU in January 2007. The Minister for Enterprise, Trade and Employment has said this position would be kept under on-going review and would be assessed comprehensively before the end of 2008.

3.3 HABITUAL RESIDENCY CONDITION

A Habitual Residence Condition (HRC) was introduced ahead of the accession of ten new Member States to the EU in May 2004. The basic requirement for a person to be deemed “habitually resident” is to have been resident in Ireland or the UK for a continuous period of at least two years before making an application for social welfare. The test applies to all persons but was introduced to protect the Irish welfare system after the 2004 Accession.

The implementation of the HRC has raised concerns that some EU migrants (and returning Irish emigrants) are being exposed to poverty. Some amendments were made to the Habitual Residence Condition during 2006 including the following:

¹³ Social Partnership Agreements address mainly incomes, fiscal, social, economic, and competitiveness policies. They are negotiated between the Government and the social partners including trade unions, employers, farming organisations, and the community and voluntary sector.

- All EEA workers who have a record of employment in the State are now able to access supplementary welfare allowance. Non-EEA nationals must still satisfy the HRC.
- All workers, both EEA and non-EEA, will be able to access Child Benefit. The payment is not subject to the HRC for EEA workers, and they will be able to draw the payment even if their children are not resident in the State. Non-EEA nationals have to be resident in the State with their children in order to get payments and must satisfy the HRC unless they have resided and worked in another EEA country. Asylum seekers will continue to have no entitlement to Child Benefit.

3.4 NON-EEA STUDENTS

In the period between April 2000 and December 2004 all non-EEA students in Ireland could work 20 hours per week during term and work full time during vacation. In December 2004 the Minister for Justice, Equality and Law Reform introduced new restrictions on the access of non-EEA students to the Irish labour market. Since April 2005 only students who are pursuing courses which are of at least one year's duration and which lead to a "recognised qualification" may enter the Irish labour market.¹⁴ The changes were introduced to address the problem of people coming to Ireland as students to circumvent labour migration controls and procedures.

In the Social Partnership Agreement *Towards 2016* it was agreed that non-EU students should be subject to a work permit application before they access the Irish labour market (Department of the Taoiseach, 2006) although the relevant policy has not been put in place yet.

In April 2007 the Third Level Graduate Scheme was implemented providing that non-EEA students who have graduated on or after 1 January 2007 with a degree from an Irish third-level educational institution may be permitted to remain in Ireland for six months. The Scheme allows them to find employment and apply for a work permit or Green Card permit. During this six-month period they may work full time.

¹⁴ A "recognised qualification" will arise from a course recognised by an Irish University, the Dublin Institute of Technology, HETAC, or FETAC.

3.5 CITIZENSHIP

There were very significant policy developments in relation to non-Irish nationals and Irish citizenship in recent years. In previous years non-Irish parents of Irish-born children could apply for residency in Ireland based on the Irish citizenship of their child. This led to concerns that people were travelling to Ireland and having children in order to gain that status. After a referendum in 2004 and a subsequent Constitutional amendment, changes in citizenship provisions were enacted in the Irish Nationality and Citizenship Act 2004, which commenced in January 2005. The 2004 Act provides that any person born in Ireland after 1 January 2005 to non-Irish parents will not be automatically entitled to be an Irish citizen unless one of the parents was lawfully resident in Ireland for at least three out of the four years preceding the child's birth. Certain types of temporary residence do not count towards reckonable residence: for example, periods spent as an asylum-seeker or student. The Act has the effect that it is no longer possible for all persons born in Ireland to obtain automatic Irish citizenship.

In January 2005 the Department of Justice, Equality and Law Reform moved to clarify the position of the non-Irish national parents of Irish-born children who had applied for residency on the basis of their Irish child but had had their claims suspended in 2003. Such persons were invited to apply under the Irish Born Child 2005 Scheme (IBC/05). This was a special Scheme under which non-Irish national parents of Irish children could apply for permission to remain in the State. Almost 18,000 applications were submitted under the Scheme. Of these, 16,693¹⁵ were approved and 1,119 were refused. Applicants who were rejected were mainly found not to have proved a minimum period of continuous residence or not to have proved their identity (Department of Justice, Equality and Law Reform, May 2006). Issues have since emerged around family reunification for people successful under IBC/05 (see below).¹⁶ There were a number of legal challenges against these refusals decisions,

¹⁵ This figure includes citizens of Romania and Bulgaria. However as of 1 January 2007 Bulgaria and Romania formally became part of the European Union. Citizens of these two countries who were granted permission to remain in the State under the IBC/05 Scheme do not now have to apply to have their permission renewed.

¹⁶ Some individuals are still applying for residency in Ireland on the basis of their parentage of Irish children in circumstances where they could have applied under IBC/05 but did not for some reason, or in circumstances where their child was born after 1 January 2005 and qualified for Irish citizenship but where for some reason one of the parents does not have a residence permit.

for example *Bode & Ors. v the Minister for Justice, Equality and Law Reform and Ors.*¹⁷

During 2007 arrangements were put in place for the processing of applications for renewal of permission to remain from non-Irish nationals who are the parents of an Irish born child, born in the State before 1 January 2005, and who were granted permission to remain in the State under the IBC/05 Scheme. Details of these arrangements were placed in national newspapers in January 2007 with subsequent reminders in July and November of that year. In order to qualify for a renewal an applicant must have been successful under the first IBC/05 Scheme; must have been living in Ireland with his or her child since being granted permission to remain; and must have made every effort to become economically viable. Processing of applications for renewal of this permission to remain in the State commenced in January 2007 with some 14,000 renewal applications received by January 2008. Of this number, some 13,800 have been granted permission to remain.¹⁸

3.6 FAMILY REUNIFICATION

There is no legislation in Ireland at present which sets out entitlements to family reunification for non-EEA migrants or Irish citizens with non-EU relatives. Several NGOs including the Immigrant Council of Ireland (ICI) and the Migrant Rights Centre Ireland (MRCI) campaign regularly on this issue calling for increased transparency in the system. Research conducted by the Immigrant Council of Ireland (Cosgrave, 2006) concluded that applicants found the system bureaucratic and the criteria for success inconsistent, and that applications may take months or years to be processed. Several recommendations arose from this analysis including the following: entitlements to family reunification for legally resident non-EU migrants and Irish citizens should be set down in primary legislation; the definition of family members who qualify for reunification should be broadened to include partners; and Ministerial discretion in the decision-making process should be minimised to enhance transparency and accountability.

¹⁷ [2006] IEHC 341 (Unreported, Supreme Court, 14/11/2006). See section 5.8.1 of this text. Note also the 2008 case law update on *Dimbo v The Minister for Justice, Equality and Law Reform* [2008] IESC 25 (Unreported, Supreme Court, 01/05/2008), and *Oguekwe v The Minister for Justice, Equality and Law Reform* [2008] IESC 26 (Unreported, Supreme Court, 01/05/2008) at section 5.7.6 of this text.

¹⁸ This information was received from the Irish Naturalisation and Immigration Service (INIS), Department of Justice, Equality and Law Reform. Comprehensive details of the renewal scheme (including renewal notices) are available on www.inis.gov.ie

There is a particularly contentious issue in relation to family reunification applications made by the parents of Irish born children who applied for permission to reside in Ireland under the IBC/05 Scheme (see above). As part of the application under IBC/05 individuals signed a declaration to the effect that they are aware that if granted permission to remain, their status does not confer “any entitlement or legitimate expectation” of family reunification. The Coalition Against Deportation of Irish Citizen Children (CADIC) argues that under the current system the Minister has a duty to examine each case individually and that a blanket ban on family reunification is not compatible with the State’s obligations under the Irish Constitution or the European Convention of Human Rights. A number of legal challenges have been brought. (CADIC, 2006)

3.7 INTEGRATION POLICY DEVELOPMENT

Until recently Irish integration policy was relevant to recognised refugees only. However, in recent years integration policy has been developed for all legally resident non-Irish nationals. In July 2006 the Minister for Justice, Equality and Law Reform announced the allocation of €5 million for integration-related activities and projects. The fund is administered by the Reception and Integration Agency (RIA), and it is targeted to include assistance in employment, language, sport, and community activities. After the General Election of June 2007 a new Minister of State with special responsibility for Integration Policy was appointed. The junior ministry is based across three departments: the Department of Community, Rural and Gaeltacht Affairs; the Department of Education and Science; and the Department of Justice, Equality and Law Reform. A total of €9 million was allocated to the new Office of the Minister for Integration in the 2008 Budget.

3.8 ANTI-RACISM/DISCRIMINATION

The National Action Plan Against Racism (NPAR) was launched by the Government in January 2005. The publication of this Plan followed a consultative process which involved the government, the social partners, representatives of minority ethnic groups, members of the Traveller community, and other stakeholders. The NPAR is underpinned by the following principles: protection, inclusion, provision, recognition, and participation. Under each of these broad objectives there is a range of

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anticipated outcomes (See Department of Justice, Equality and Law Reform, 2005a).

The development of Ireland's anti-racism policy was also enhanced in 2004 by the enactment of the Equality Act 2004 which transposed the EU Race Directive and the Framework Directive in July 2004. Ireland's First Report to the United Nations under the Convention for the Elimination of All Forms of Racial Discrimination (CERD) was submitted in March 2004. The Report sets out the legislative, judicial, administrative, and other measures that have been taken to combat discrimination in Ireland. The Report was examined by the CERD Committee in March 2005.

In its third report on Ireland the European Commission against Racism and Intolerance (ECRI) welcomed the National Action Plan and the removal of the requirement for competency in the Irish language for entry to An Garda Síochána (the police). The report's authors make a number of recommendations including improved legislation against racial acts and an increase in non-denominational or multi-faith schools. (European Commission against Racism and Intolerance, 2007)

3.9 IRISH NATURALISATION AND IMMIGRATION SERVICE

A new executive office known as the Irish Naturalisation and Immigration Service (INIS) was established within the Department of Justice, Equality and Law Reform in 2005. This unit was established in order to provide a "one stop shop" in relation to asylum, immigration, citizenship, and visas. The INIS is responsible for administering the administrative functions of the Minister for Justice, Equality and Law Reform in relation to asylum, immigration (including provision of entry and transit visas to Ireland, as applicable), and citizenship matters.¹⁹

¹⁹ <http://www.inis.gov.ie>

3.10 ASYLUM PROCEDURES

The number of people applying for asylum in Ireland has dropped significantly from over 11,600 in 2002 to 3,985 in 2007 – a fall of over 65 per cent (see Table 2.7).²⁰ UNHCR data indicated that this pattern of decline could be found across all industrialized countries and the EU as a whole between 2001 and 2006 (UNHCR, 2008). However, between 2006 and 2007 the number of asylum applications lodged in the EU27 increased by 11 per cent. There were a number of policy changes in Ireland since 2003 that may have contributed to the downward trend.

Under amendments to the Refugee Act 1996, contained in the Immigration Act 2003, the Minister for Justice, Equality and Law Reform was empowered to issue Prioritisation Directives to the Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT) for certain categories of applicants. A Prioritisation Directive requires ORAC and RAT to deal with the specified category of cases as soon as possible.

The Minister directed that priority should be accorded to applications made by persons from “safe countries of origin”. Applicants for asylum from such designated countries must rebut the presumption that they are not in need of refugee protection. Designated safe countries of origin are currently Croatia, South Africa and the twelve new Member States.²¹ In

²⁰ In addition, since 1998 under the Refugee Resettlement Programme Ireland has agreed to admit, on a yearly basis, a number of 'special case' refugees (and their close relatives) who do not come under the scope of Ireland's obligations under the Geneva Convention of 1951. 'Programme Refugees', in contrast to asylum applicants, are admitted for the purpose of permanent resettlement rather than for temporary protection. Some 735 persons were approved for resettlement in Ireland under the Programme between 1998 and 2007, and 636 admitted to the State. During 2007, 114 individuals were admitted to Ireland under the Programme, with a yearly number of 200 approved.

²¹ INIS states that by virtue of the application by Ireland of the EU Treaty Protocol on Asylum for Nationals of Member States of the European Union, asylum applications are not accepted in Ireland from nationals of other Member States of the EU, and that application of this Protocol provides that any application for asylum made by a national of a Member State may be taken into consideration or declared admissible for processing by another Member State in very exceptional circumstances (INIS, January 2007; <http://www.inis.gov.ie/en/INIS/Pages/PB07000136>). The said Protocol states that EU Member States are to be regarded as safe countries of origin, and that asylum applications made by Member State nationals may be taken into consideration or declared admissible only in certain cases. It should also be noted that Directive 2004/83/EC of 29 April 2004 (see section 4.2.4.5 of this text) restricts refugee status to third country nationals and stateless persons (Article 2(a)) while Irish domestic legislation (NB, S.I. 518 of 2006 - see section 4.1.4.11 of this text) restricts eligibility for

December 2003 the Minister also stated that priority should be accorded to applications and appeals made by Nigerian nationals. This means that applicants may be housed in dedicated accommodation centres for prioritised cases, and they have statutory obligations placed on them to reside and report daily to immigration officers. (Department of Justice, Equality and Law Reform, 2005b)

In addition a more streamlined accelerated procedure was introduced at appeal stage aimed at those applicants found not to be refugees at first instance and whose cases display certain features considered to be indicative of abuse of the asylum process, including a delay in making an application for asylum without reasonable cause and manifestly unfounded claims.

The Refugee Act 1996, as amended by the Immigration Act 2003, places explicit emphasis on the credibility of asylum applicants in the determination of their claim and on their active participation. Asylum applicants must notify the relevant bodies of address changes, respond promptly to correspondence about asylum applications, turn up for scheduled interviews, etc., or run the risk of having their applications deemed withdrawn and consequently rejected – a status without any right to appeal. The Act now lists a range of factors the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal must consider to assess credibility. Asylum seeker support groups and other commentators argue that there is potential for *refoulement* in too much emphasis on credibility and stress the importance of maintaining the principle of benefit of the doubt. (Mullally, 2003; Irish Refugee Council, 2003)²²

The European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006) came into force on 10 October 2006. These Regulations were intended to give effect to the ‘Qualification Directive’ (Council Directive 2004/83/EC), which seeks to ensure that Member States apply common criteria for the identification of persons in need of international protection. Section 2(1) of these Regulations provides the criteria for eligibility for subsidiary protection. Before 10 October 2006 Ireland had not made specific provision for subsidiary or complementary protection. Applicants who had failed in their asylum claim and who yet sought international protection could only apply for leave to remain. The granting to an applicant of leave to remain is at the discretion of the

subsidiary protection to people who are not nationals of a Member State, but does not so restrict eligibility for refugee status.

²²The principle of *non-refoulement* is one fundamental to refugee protection, whereby a person will not be returned to a place where their life or liberty may be threatened. See the entry for *Non-Refoulement* in the Glossary for further information.

Minister for Justice, Equality and Law Reform.²³ An applicant for subsidiary protection is now required to show, *inter alia*, substantial grounds for believing that he or she, if returned to his or her country of origin, would face a real risk of suffering serious harm. However there is no requirement that the applicant shows a connection to a civil or political ground, as required for a declaration of Geneva Convention refugee status. See section 4.1.4.11 for more information.²⁴

Council Directive 2005/85/EC of 1 December 2005 relating to the minimum standards concerning the procedure for granting and withdrawal of refugee status in the Member States required transposition by December 1 2007. The purpose of the Directive is to establish minimum standards for procedures within the Member States for the granting and withdrawing of refugee status. It also seeks to reduce the “secondary movement” of applicants within the EU in search of different legal procedures. The Immigration, Residence and Protection Bill 2008 contains provisions that propose to give effect to the Directive.

3.11 PUBLICATION OF ASYLUM APPEAL DECISIONS

In July 2006 the Supreme Court ruled that the Refugee Appeals Tribunal (RAT) must make previous decisions available to applicants for asylum who are bringing an appeal.²⁵ The RAT had previously declined to supply asylum applicants with copies of decisions made by the Tribunal. In March 2006 the Minister for Justice, Equality and Law Reform announced that the Refugee Appeals Tribunal would publish a “selection of legally important decisions”, and that some decisions will be published on an ongoing basis in the future. (Department of Justice, Equality and Law Reform, March 2006)

²³ A total of 1,420 people have been granted humanitarian leave to remain between 1999 and mid 2007. Almost half were granted the status between 2006 and mid 2007.

²⁴ In mid-2008, in response to a Parliamentary Question in the Dáil it was made known that four persons had been granted Subsidiary Protection in the State to date. See Dail Debate Vol.654 No.1 of 13 May 2008, Question 491.

²⁵ *P. A. A. & Ors v The Refugee Appeals Tribunal & Ors*, [2007] 4 IR 94; [2006] IESC 53. See section 5.4.10 of this text.

4. LEGISLATION

This Chapter summarises the legislation relevant to Irish immigration and asylum matters. Section 4.1 outlines the relevant Irish domestic legislation. Section 4.2 contains summaries of important EU legislation dealing with immigration and international protection. A comprehensive schedule of EU legal instruments is provided at Appendix A4.1. Appendix A4.2 provides a schedule of international legal instruments relevant to Irish immigration and asylum law.²⁶

4.1 IRISH IMMIGRATION AND ASYLUM LEGISLATION

This section contains summaries of Irish primary legislation and important secondary legislation relevant to immigration and international protection. The majority of applicable domestic legislation has been introduced relatively recently and in line with increased immigration to the State.

Domestic immigration law is based on various legislative acts, including the Immigration Acts 1999 and 2004. Domestic asylum and protection law is currently based on the Refugee Act 1996, as amended and the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006). The Immigration, Residence and Protection Bill 2008 proposes a new single legislative framework for the management of both immigration and protection issues. Although this Handbook focuses on legislation published up to 2007, important new legislation published by the time of going to press is also included. This section also includes summaries of the provisions of the Immigration, Residence and Protection Bill 2008.²⁷ Legislation is presented in chronological order for ease of reference.

²⁶ International instruments assist, *inter alia*, in identifying persecution in refugee and protection claims; in identifying possible refoulement; and in ascertaining rights in situations of removal and deportation.

²⁷ The provisions of the Immigration, Residence and Protection Bill discussed are as they appeared in the Bill as published on 29 January 2008. The final form of the Bill may differ considerably.

4.1.1 Immigration

4.1.1.1 *Aliens Act 1935 and S.I. Aliens Orders 1946, 1975*

Until recently the 1935 Aliens Act, and the Orders made under that Act, formed the basic legislation governing entry to the State and residence in the State of non-Irish nationals. The Act grants wide powers to the Minister for Justice, Equality and Law Reform to regulate non-Irish nationals in Ireland in terms of their entry to, departure from, movement around, and residence in the State. A great number of orders were produced under the Aliens Act 1935. The most significant of these are the 1946 and 1975 Orders, which provide that leave to land may be refused to non-Irish nationals in certain circumstances. The Orders also provide that non-Irish nationals may be arrested and detained by an Immigration Officer or a member of the Gardaí. The 1946 Order sets out certain restrictions on the landing of non-Irish nationals, as well as procedures for their inspection, supervision, detention and deportation.

The constitutionality of parts of the 1935 Act, and orders made thereunder, were challenged in two court cases (*Leontjava and Chang v Minister for Justice, Equality and Law Reform*,²⁸ *Laurentiu v Minister for Justice, Equality and Law Reform*.²⁹) These rulings resulted in legislation being passed which, to a large extent, replaced the 1935 Act and its orders.

4.1.1.2 *Irish Nationality and Citizenship Acts 1956 - 2004*

The statute law governing Irish citizenship is the Irish Nationality and Citizenship Act 1956, as amended. The 1956 Act has been amended by the Irish Nationality and Citizenship Acts 1986, 1994, 2001 and 2004.

The right to Irish citizenship granted to all persons born on the island of Ireland (Northern Ireland and the Republic) was inserted into the Constitution by way of the Belfast Agreement in 1998. Until recently the acquisition of citizenship was, therefore, placed beyond the remit of the legislature. The Irish Nationality and Citizenship Act 2004 now sets out the conditions under which Irish citizenship may be granted to a child born in Ireland to non-Irish national parents. One of the parents must have been legally resident in the island of Ireland for three years during

²⁸ *Leontjava and Chang v Minister for Justice, Equality and Law Reform* [2005] 1 ILRM (Supreme Court, 24/06/2004). See section 5.1.2 of this text.

²⁹ *Laurentiu v Minister for Justice, Equality and Law Reform* [2000] 1 ILRM 1 (Supreme Court, 20/05/1999). See section 5.1.1 of this text.

the four years immediately preceding the child's birth. Periods spent in the State pursuing education or awaiting determination of an asylum application do not qualify in this regard.

The Irish Nationality and Citizenship Act 2001 contains significant provisions that affect people who wish to obtain Irish citizenship through marriage to an Irish citizen. If the marriage took place on or before 30 November 2002, it is possible for the non-Irish national spouse to become a citizen by making a post-nuptial declaration of citizenship (with additional conditions). If the marriage took place after that date the non-Irish national spouse may be able to naturalise at the Minister's "absolute discretion" if s/he, inter alia, has resided for one year in Ireland and during the four years prior to application had a total residence in Ireland amounting to two years. Non-Irish nationals may acquire citizenship by naturalisation if they have, inter alia, one year of continuous residence along with periods amounting to four years total residence within the eight years prior to their application. The Minister may also, in his absolute discretion, grant an application for a certificate of naturalisation in certain categories of cases, including with regard to refugees, where the applicant does not comply with the conditions for naturalisation, such as the four-year residence requirement.

4.1.1.3 S.I. No. 393/1977: European Communities (Aliens) Regulations 1977

These Regulations previously applied to EU nationals but since the introduction of S.I. No. 656 of 2006, The European Communities (Free Movement of Persons) Regulations 2006 (See section 4.1.1.22 of this text) they apply to EEA nationals who are not Union citizens. The Regulations set out the rights of persons, who are or will be employed, to land and reside in Ireland. The residence permit system that will apply to them and their dependents is detailed. This permit is valid for a period of five years and is usually renewable automatically. The rights of certain EEA nationals to remain in Ireland after employment has ceased are also set out in the regulations.

4.1.1.4 S.I. No. 57/1997: European Communities (Right of Residence of Non Economically Active Persons) Regulations 1997

These Regulations also previously applied to EU nationals but since the introduction of S.I. No. 656 of 2006, The European Communities (Free Movement of Persons) Regulations 2006 (See section 4.1.1.22 of this text) they apply to EEA nationals who are not Union citizens. The Regulations set out the rights of non-economically active people to land

in Ireland and to obtain a residence permit. Such people include students, retired persons or other economically non-active persons, and their accompanying dependants. A residence permit is only issued in cases where the Minister for Justice, Equality and Law Reform is assured that the applicant has sufficient resources to support herself or himself, their spouse, if relevant, and any accompanying dependants.

4.1.1.5 Immigration Act 1999

In the case of *Laurentiu v Minister for Justice, Equality and Law Reform*³⁰ the Aliens Act 1935 was found to be unconstitutional in the manner in which it gave the Minister for Justice, Equality and Law Reform the power to deport. In effect the Minister was found to be without statutory powers in relation to deportation of non-Irish nationals from the State. The Immigration Act 1999 was designed to remedy this gap. The Act sets out the principles, procedures and criteria which govern the detention and removal of non-Irish nationals from the State, and makes provision for the issuing of deportation and exclusion orders. The Act allows the Minister for Justice, Equality and Law Reform to require any non-Irish national to leave the State and remain thereafter out of the State.³¹

The Act also lays out the matters to which the Minister is required to have regard in determining whether to make a deportation order.³² The Act gives the Minister power to amend or revoke a deportation order,³³ and provides for the arrest and detention (for a period or period not exceeding eight weeks in aggregate) of a person against whom a deportation order is in force³⁴. This Act also amended the Refugee Act 1996 substantially, *inter alia*, establishing the Refugee Appeals Tribunal in place of the Appeals Authority.

4.1.1.6 Criminal Justice (United Nations Convention Against Torture) Act 2000

The Criminal Justice (United Nations Convention Against Torture) Act 2000 was intended to give effect to the Convention Against Torture and

³⁰ [2000] 1 ILRM 1 (Supreme Court, 20/05/1999). See section 5.1.1 of this text.

³¹ Section 3(1).

³² Section 3(6): these matters are (a) the person's age, (b) duration of residence in the State, (c) family and domestic circumstances, (d) the nature of their connection with the State, (e) their employment record, (f) their employment prospects, (g) their character and conduct, (h) humanitarian considerations, (i) any representations made, (j) the common good, and (k) considerations of national security and public policy.

³³ Section 3(11).

³⁴ Section 5.

Other Cruel, Inhuman or Degrading Treatment or Punishment. The Act defines torture as an act or omission³⁵ by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person (a) for such purposes as (i) obtaining from that person, or from another person, information or a confession, (ii) punishing that person for an act which the person concerned or a third person has committed or is suspected of having committed, or (iii) intimidating or coercing that person or a third person, or (b) for any reason that is based on any form of discrimination, but does not include any such act that arises solely from, or is inherent in or incidental to, lawful sanctions. The Act creates a statutory offence of torture with extra-territorial jurisdiction.³⁶ Section 4 of the Act contains a non-*refoulement* safeguard, and states that a person shall not be expelled or returned from the State to another state where the Minister is of the opinion that there are substantial grounds for believing that the person would be in danger of being subjected to torture. In determining whether there are such grounds, the Minister is obliged to take into account all relevant considerations including, where applicable, the existence in the state concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

4.1.1.7 Illegal Immigrants (Trafficking) Act 2000

This Act makes it an offence to organise or knowingly facilitate the entry into the State of an illegal immigrant or a person who intends to seek asylum.³⁷ The Act also amended various acts, including the Refugee Act 1996 and the Immigration Act 1999.

Section 5 of the Act provides that certain prescribed decisions made in the immigration and asylum processes, including the Minister's decision refusing a recommendation of refugee status, the Minister's proposal to deport, and the Minister's decision to deport, cannot be questioned other than by way of judicial review. The Act also stipulates certain requirements for such applications for judicial review, including that the application for leave (i.e. permission) for judicial review be made within fourteen days of the date of the notification of the impugned decision (such time being extendable by the High Court only where the Court is satisfied that there is good and sufficient reason to so extend), that the application for leave be made on notice to the Minister for Justice, Equality and Law Reform, and that the Court shall not grant leave unless

³⁵ Section 186 of the Criminal Justice Act 2006 adds here "done or made, or at the instigation of, or with the consent or acquiescence of a public official."

³⁶ Section 2.

³⁷ Section 2.

it is satisfied that there are substantial grounds for contending that the impugned decision should be quashed.

The Supreme Court has held that the interpretation of the phrase “substantial grounds” means “reasonable, arguable and weighty, and not trivial or tenuous.”³⁸ The Act provides that a determination of the High Court on a matter to which the Section applies can be appealed to the Supreme Court only where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.³⁹ These provisions are more stringent than the normal rules for judicial review, as laid out in Order 84 of the Rules of the Superior Courts.

Considerable controversy followed the introduction of Section 5, and Section 10, which provided extra measures to facilitate the deportation of non-Irish nationals from the State, as well as expanding the grounds on which they may be detained pending such deportation. The Bill was passed through the Oireachtas but the President referred these sections to the Supreme Court.⁴⁰ The Supreme Court found that neither section was repugnant to the Constitution.⁴¹

4.1.1.8 Immigration Act 2003

The Immigration Act 2003 introduced carrier liability whereby a carrier can be held responsible and fined for bringing an undocumented immigrant to the State. The Act requires carriers to carry out basic checks to ensure that passengers from outside the Common Travel Area (UK, Northern Ireland, the Channel Islands and the Isle of Man) are in possession of valid documentation necessary for entry into the State. Provision is also made for the return of persons refused leave to land, usually by the carrier responsible, to the point of embarkation.

³⁸ *Article 26 and The Illegal Immigrants (Trafficking) Bill 1999* [2000] 2 IR 360 (Supreme Court, 28/08/2000). See section 5.1.2 of this text.

³⁹ Section 5(3)(a).

⁴⁰ The President of Ireland performs the last step in the legislative process by signing bills into law. If she or he has concerns about the constitutionality of a bill the President may refer it to the Supreme Court before signing. Before making such a referral the President must first consult the Council of State, i.e. a group comprising former prime ministers, deputy prime ministers, presidents and others. The constitutionality of any bill signed following this type of referral may not be subsequently challenged in the courts.

⁴¹ *Article 26 and The Illegal Immigrants (Trafficking) Bill 1999* [2000] 2 IR 360 (Supreme Court, 28/08/2000). See section 5.1.2 of this text.

4.1.1.9 S.I. No. 445 of 2003, Immigration Act 2003 (Approved Ports) Regulations 2003

The Regulations list approved ports for non-Irish nationals arriving in the State from places outside the State other than Great Britain or Northern Ireland, and those for non-Irish nationals arriving in the State from within the Common Travel Area.

4.1.1.10 S.I. No. 446 of 2003, Immigration Act 2003 (Removal Direction) Regulations 2003

These Regulations prescribe the form to be used by an immigration officer or a member of the Garda Síochána to give a direction in writing to a carrier to remove a person from the State.

4.1.1.11 S.I. No. 447 of 2003, Immigration Act 2003 (Carrier Liability) Regulations 2003

These Regulations set out the forms of notice to be given to carriers alleged to be in breach of Section 2 of the Immigration Act 2003.

4.1.1.12 Employment Permits Act 2003

This Act was introduced to facilitate free access to the Irish labour market to nationals of the new EU Accession States after 1 May 2004. There are, therefore, no longer any requirements for citizens of those Member States to have work permits or visas. The Act also allows the Minister for Enterprise, Trade and Employment to re-impose a requirement for employment permits in respect of nationals of the Accession States post-2004, if the labour market is experiencing or is likely to experience a “disturbance”. The Act also incorporates a provision whereby, for the first time, the requirements for employment permits in respect of non-Irish nationals working in Ireland are set out in primary legislation, together with penalties for non-compliance by both employers and employees.

4.1.1.13 European Convention on Human Rights Act 2003

The European Convention for the Protection of Human Rights and Fundamental Freedoms is a binding International Treaty of the Council of Europe. The Irish Act came into effect on 31 December 2003. It has the effect of requiring the courts to interpret domestic legislation in a manner consistent with the Convention. Rights under the Convention are now enforceable in Irish courts, and Irish Courts are obliged to

interpret domestic legislation in a manner consistent with the Convention⁴². The Act obliges “every organ of the State” to “perform its functions in a manner compatible with the State’s obligations under the Convention provisions.”⁴³

The Act requires that “judicial notice” be taken of the Convention provisions and any decisions of the Convention institutions.⁴⁴ A court must “take due account” of the principles established by these decisions when dealing with Convention-related proceedings. Accordingly, judgments of the European Court of Human Rights are persuasive authorities in Irish courts when dealing with Convention rights.

The Act empowers the superior courts to make a “declaration of incompatibility” where a “statutory provision or rule of law is incompatible with the State’s obligations under the Convention provisions.”⁴⁵ The Taoiseach would have to bring the order containing any such declaration before both houses of the Oireachtas within twenty-one days of the making of the Order.⁴⁶ A party to any such proceedings can make an application to the Attorney General for compensation arising from the incompatibility⁴⁷ (and the Government can make an *ex gratia* payment to that party.⁴⁸ A statutory provision or rule of law that is declared incompatible with the Convention is still law.⁴⁹

Certain rights and freedoms protected by the Convention are of special relevance to asylum and immigration law and the identification of persecution, serious harm, or possible *refoulement* issues. These include the right to life (Article 2); the prohibition against torture (Article 3); the right to liberty and security (Article 5); the right to a fair trial (Article 6); the prohibition on retroactive criminal punishment (Article 7); the right to respect for family and private life (Article 8); the prohibition against discrimination (Article 14); the prohibition against restrictions on political activity of aliens (Article 16); and the right to an effective remedy (13), which is a subsidiary right to all the substantive rights and freedoms in the Convention. The protocols to the Convention also contain certain relevant provisions, including re the protection of freedom of movement (Article 2 of Protocol 4), safeguards relating to

⁴² Section 2.

⁴³ Section 3.

⁴⁴ Section 4.

⁴⁵ Section 5.

⁴⁶ Section 5(3).

⁴⁷ Section 5(3)(b).

⁴⁸ Section 5(3)(c).

⁴⁹ Section 5(2).

the expulsion of aliens (Article 1 of Protocol 7), and the prohibition of the death penalty (Articles 1 and 2 of Protocol 6, and Article 1 of Protocol 13).

In response to criticisms that the Act is an inadequate incorporation of the Convention into Irish law the Minister stated that the "...Convention was never intended to have the effect as a shadow constitution for any Member State of the Council of Europe" (See Department of Justice, Equality and Law Reform, 2003).

4.1.1.14 Immigration Act 2004

Until the introduction of the Immigration Act 2004, the Aliens Act 1935 formed the basic legislation governing the entry and residence of non-Irish nationals in the State. A complicated series of judgments led to the introduction of this Act.⁵⁰ In response to the *Leontjava and Chang v Minister for Justice, Equality and Law Reform* High Court judgment the Government quickly introduced the Immigration Act 2004. Considerable controversy attended the speed with which this Bill was passed through the legislative process into law. The State stressed that the judgment had left Ireland without a legislative basis for the operation of immigration controls and that such a situation warranted urgent action.

The Act includes a wide range of provisions that would previously have been contained in the Orders made under the 1935 Act. It makes provision for the appointment of immigration officers and criteria for permission to land. The Act empowers the Minister to make orders regarding visas and approved ports for landing, and imposes limits on the duration of a non-Irish national's stay. Certain obligations are imposed on carriers. Persons landing in the State are required to be in possession of a passport or identity document, and non-Irish nationals are required to register with the Gardai.⁵¹ The subsequent Supreme Court judgment in *Leontjava and Chang v Minister for Justice* arguably rendered much of the Act no longer necessary.

⁵⁰*Laurentiu v Minister for Justice, Equality and Law Reform* [2000] 1 ILRM (Supreme Court, 20/05/1999) and *Leontjava and Chang v Minister for Justice, Equality and Law Reform* [2005] 1 ILRM (Supreme Court, 24/06/2004). See section 5.1.1 of this text.

⁵¹ Certain Sections of the 2004 Act have been criticised as dated replications of the older orders. In particular the Act makes provision for the refusal of permission for leave to land to non-Irish nationals suffering from certain diseases or "profound mental disturbance". In addition, for the first time it is made an offence for an Irish national not to comply with immigration provisions. Section 9 obliges all persons to inform the authorities if a non-Irish national, who is in the State illegally, is living as part of their household.

4.1.1.15 Social Welfare (Miscellaneous Provisions) Act 2004

The Social Welfare Acts were amended in February 2004 to include restrictions on access to certain social welfare payments. A Habitual Residence Condition (HRC) test was included ahead of the accession of ten new EU Member States in May 2004. The test applies to all people but was introduced to protect the Irish welfare system post-accession. This was deemed to be a priority partly because Ireland has a common travel area with Britain. The basic requirement for a person to be deemed “habitually resident” is to have been resident in Ireland or the UK for a continuous period of two years before making an application for social welfare. The implementation of the HRC is discussed in Chapter 3.

4.1.1.16 Twenty-Seventh Amendment of the Constitution Act 2004

The Twenty-Seventh Amendment of the Constitution Act was passed by way of referendum in June 2004. The Amendment addresses the manner in which Irish citizenship is granted and had the effect of restoring the power of the legislature with regard to the acquisition of citizenship. Turnout for the referendum was high at 60%, with the Amendment subsequently passed by a majority of 79%.

4.1.1.17 S.I. No. 55 of 2005 - Immigration Act 1999 (Deportation) Regulations 2005

These Regulations authorise Immigration Officers and members of the Garda Síochána to deport a person from Ireland under the Immigration Act 1999. The form of the deportation order and the prescribed places of detention for the purposes of deportation are set out in the First and Second Schedule of the Regulations respectively.

4.1.1.18 S.I. No. 56 of 2005 - Immigration Act 2003 (Removal Places of Detention) Regulations 2005

This Order sets out the prescribed places of detention for the purposes of removal from the State.

4.1.1.19 Criminal Justice Act 2006

Section 186 of the Criminal Justice Act 2006 amended the definition of “torture” in the Criminal Justice (United Nations Convention Against Torture) Act 2000 by the insertion after “omission” of “done or made,

or at the instigation of, or with the consent or acquiescence of a public official”.

4.1.1.20 Employment Permits Act 2006

The Employment Permits Act 2006 sets out an enabling structure for the reformed labour migration policy discussed in Chapter 3. The Act provides for the application, granting, renewal, refusal, and revocation of employment permits. It provides that employment permits are granted to the employee and that the permit will state certain rights and entitlements of the worker concerned. The Act prohibits recruitment-related deductions from remuneration and the retention by the employer of the employee’s personal documents.

4.1.1.21 European Communities (Amendment) Act 2006

This Act amends the European Communities Act 1972, to provide that certain provisions of the Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union are part of Irish domestic law.

4.1.1.22 S.I. No. 656 of 2006 European Communities (Free Movement of Persons) Regulations 2006⁵²

These Regulations give domestic legal effect to Directive 2004/38/EC (“The Citizenship Directive”) on the right of citizens of the European Union and their family members to move and reside freely within the territory of the Member States.

Under the Regulations, a citizen of the EU does not need to register his/her presence in the State with the immigration authorities. His or her residence, however, remains subject to conditions in that he or she must be working, a student, or have enough resources to ensure that he or she does not become a burden on the social services. Family members of an EU citizen in one of those categories receive ancillary rights of entry and residence. Non-EU family members must hold a residence card. The admission of partners of European Union citizens who are in a durable relationship is facilitated and a new status of permanent residence for European Union citizens and their family members after five years residence in the State is created.

⁵² This instrument replaces the European Communities (Free Movement of Persons) Regulations 2006 (S.I. No. 226 of 2006).

The Regulations require that a non-EU family member must have been lawfully resident in another EU Member State prior to applying for a residence permit in Ireland.⁵³ Many applications for residence permits in Ireland were refused on this basis. This requirement was the subject of a preliminary reference to the European Court of Justice. The Court found the Regulations to be incompatible with the Directive.⁵⁴

4.1.1.23 S.I. No. 683 of 2006 Employment Permits Act 2006 (Prescribed Fees and Miscellaneous Procedures) Regulations 2006

These Regulations provide the detail on how foreign nationals, as defined in the Employment Permits Acts of 2003 and 2006 (See section 4.1.1.12 and 4.1.1.20 of this text), may be employed in the State. They outline the procedures to be followed in making an application for an employment permit, and the review procedures to be followed in cases where application for a permit is refused or a permit is revoked. The Regulations also set out the fees that must accompany such an application.

4.1.1.24 Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007

As discussed in Chapter 3, there has been concern in recent years about potential displacement of Irish labour. Following on from the Social Partnership Agreement *Towards 2016*, this Act was introduced in order to ensure that redundancies are genuine and to outlaw situations where workers are replaced in the same job by new workers performing the

⁵³ Regulation 3(2).

⁵⁴ In light of the decision of the European Court of Justice in Case C-127/08, *Metock & Ors v Minister for Justice, Equality and Law Reform* (Unreported, 25/07/2008), the Minister for Justice, Equality and Law Reform introduced the European Communities (Free Movement of Persons) (Amendment) Regulations 2008 (S.I. No. 310 of 2008) amending the 2006 Regulations. The 2008 Regulations remove from the 2006 Regulations the requirement that a non-EU family member must have been lawfully resident in another EU Member State prior to applying for a residence permit in Ireland. The 2008 Regulations amend Regulation 3(1) and (2) of the 2006 Regulations to read: “(1) These Regulations shall apply to— (a) Union citizens, (b) qualifying family members of Union citizens, who are not themselves Union citizens, and— (i) who seek to enter the State in the company of those Union citizens in respect of whom they are family members, or (ii) who seek to join those Union citizens, in respect of whom they are family members, who are lawfully in the State, and (c) permitted family members of Union citizens— (i) who seek to enter the State in the company of those Union citizens in respect of whom they are family members, or (ii) who seek to join those Union citizens, in respect of whom they are family members, who are lawfully present in the State.”

same tasks at lower wages (Department of the Taoiseach, 2006.) The Act establishes a redundancy panel for examination of certain proposed collective redundancies and sets out the related powers of the Minister for Enterprise, Trade and Employment.

UPDATE ON PROPOSED LEGISLATION

4.1.1.25 *Immigration, Residence and Protection Bill 2008*⁵⁵

The Immigration, Residence and Protection Bill 2008 proposes reformed systems for dealing with a broad range of matters relating to immigration, residence and removal from the State. If enacted, the Act would repeal *inter alia*, the Immigration Acts, 1999, 2003 and 2004, the Refugee Act 1996, and Section 5 of the Illegal Immigrants (Trafficking) Act 2000. For the first time in domestic legislation the phrase “foreign nationals” refers only to those who are from outside the European Union.⁵⁶ The new Bill proposes the first statutory basis for visa applications. Important proposed provisions dealing with immigration law are outlined below.

Visas

The Bill proposes a statutory basis for issuing and revoking visa applications.⁵⁷ Definitions of visas and transit visas are proposed,⁵⁸ and the Minister for Justice, Equality and Law Reform would be given the power to prescribe the form in which visa applications are to be made.⁵⁹ The Minister would be under no obligation to issue a visa.⁶⁰ Where the Minister refuses to grant a visa, the Minister would be required to inform the applicant whether a review is available and, if a review is available, how it may be sought.⁶¹ The

⁵⁵ The sections of the Bill referenced here are as per the Bill published on 29 January 2008.

⁵⁶ Section 2 of the Bill defines “foreign national” as meaning a person who is neither (a) an Irish citizen, nor (b) a person who has established a right to enter and be present in the State under the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006), the European Communities 5 (Aliens) Regulations 1977 (S.I. No. 393 of 1977) or the European Communities (Right of Residence for Non-Economically Active Persons) Regulations 1997 (S.I. No. 57 of 1997).

⁵⁷ Part 3 (i.e. Sections 8-18).

⁵⁸ Sections 8 and 9.

⁵⁹ Section 12.

⁶⁰ Section 14.

⁶¹ Section 15.

Minister would be able to revoke a visa if he or she considers its revocation justified.⁶² The holder of a revoked visa would be given ten working days to apply to the Minister for the reasons of revocation. The Bill also proposes a visa review application procedure.⁶³

Entry into the State

The Bill sets out proposals regarding entry into the State.⁶⁴ The existing legislative provisions are largely restated, including regulations dealing with approved ports for entry, the requirement to present on arrival, the power to inspect on arrival, permission and refusal of permission to enter the State, and carrier liability.

Residence Permits and Registration Requirements

A new system comprising different residence permits allocated according to the category into which a foreign national falls is proposed.⁶⁵ The Bill proposes factors to be considered by the Minister when determining an application for residency,⁶⁶ and contains provisions for long-term residency (for an initial period of five years).⁶⁷ Foreign nationals granted long-term residency would be entitled to the same rights of travel as Irish citizens, to work in the State to the same extent as Irish citizens, and to the same medical care and services and social welfare benefits as Irish citizens.

Detention and Removal of Foreign Nationals

Most provisions regarding removal from the State are restated from previous legislation. A significant departure is that the Bill allows for a foreign national to be summarily deported without notice.⁶⁸ Foreign nationals could be detained pending removal.⁶⁹ Foreign nationals under 18 years of age could be detained if they do not comply with a condition imposed by an immigration officer or

⁶² Section 16.

⁶³ Sections 17 and 18.

⁶⁴ Part IV (i.e. Sections 19-20)

⁶⁵ Part V (i.e. Sections 30-51). Note that pursuant to Section 2, “foreign nationals” refers only to those who are from outside the European Union.

⁶⁶ Section 31.

⁶⁷ Section 36.

⁶⁸ Section 4(5).

⁶⁹ Section 55: under Section 55(6)(d), such detention may not exceed eight weeks in aggregate. Section 55(6)(d), however, provides, *inter alia*, that if the foreign national has taken or is party to proceedings in respect of his or her removal, the period between their institution and their final determination shall be left out of account in calculating the period for the purposes of Section 5(5).

member of the Garda Síochána.⁷⁰ The new provisions would allow an immigration officer, for the purposes of performing any of his or her functions under the legislation, to detain and examine any person arriving at or leaving the State whom the officer reasonably suspects to be a foreign national.⁷¹

It is proposed that a removed person could be made liable for the costs of their detention and removal, and their accommodation and maintenance while being detained and removed.⁷² The Bill proposes that applications for judicial review of a removal (or transfer) order would not suspend or prevent removal from the State,⁷³ but would permit the High Court to suspend removal if it is satisfied that it is necessary for the foreign national to give instructions to his or her legal representative in relation to the application, where it is satisfied that the giving of such instructions would otherwise be impossible.⁷⁴

Marriages Involving Foreign Nationals

The Bill proposes that the marriage of a foreign national and an Irish citizen would not, of itself, confer a right on the foreign national to enter or be present in the State.⁷⁵ A marriage contracted in the State, where one or both of the parties is a foreign national, would be invalid unless the Minister for Justice, Equality and Law Reform is given three months notification, in a prescribed form, of the intention to marry, and the foreign national holds an entry permission issued for the purpose of the intended marriage, or a residence permission.⁷⁶ This Section would make it an offence to solemnise or permit the solemnisation of such a marriage, to be a party to such a marriage, or to facilitate such a marriage.⁷⁷

Judicial Review

Section 118 of the Bill proposes that the validity of any act, decision or determination under the proposed act, as well as any decision

⁷⁰ Section 56(3).

⁷¹ Section 115.

⁷² Section 60.

⁷³ Section 118(9).

⁷⁴ Section 118(10).

⁷⁵ Section 123.

⁷⁶ Section 123(2).

⁷⁷ The maximum penalty on summary conviction under the Act is a fine of €5,000 or 12 months in prison, or both. The maximum penalty on indictment is €500,000 or 5 years in prison, or both. Where a person has already been convicted of an offence under section 4, he or she is liable to a maximum fine of €500 for each day on which he or she remains in breach of that section.

under S.I. No. 57 of 1997,⁷⁸ S.I. No. 656 of 2006,⁷⁹ and S.I. No. 393 of 1977,⁸⁰ shall not be questioned otherwise than by way of judicial review. The provisions in relation to judicial review, as in the provisions pursuant to Section 5 of the Illegal Immigrants (Trafficking) Act 2000, would require that applications for review be made within fourteen days of the date of the impugned decision, and by motion on notice to the relevant respondents. Substantial grounds would be required for leave, and an appeal would lie from a determination of the High Court only where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court. The High Court's decision would not be final in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.⁸¹

The Bill proposes that a Court could declare an application for judicial review to be frivolous or vexatious, and direct by whom the costs would be borne,⁸² and that a Court could direct that the costs be borne by an applicant's legal representative.⁸³ An application for leave to apply for judicial review would not of itself suspend or prevent an applicant's transfer from the State.⁸⁴

4.1.2 Racism and Discrimination

4.1.2.1 *Prohibition of Incitement to Hatred Act 1989*

This Act made it an offence to engage in actions or broadcasts likely to stir up hatred. Hatred is defined as "hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation". The Act covers words articulated in public places or at public events. The Act also makes it an offence to be in possession of, or to distribute, potentially offensive material. The Act

⁷⁸ European Communities (Right of Residence for Non-Economically Active Persons) Regulations 1997.

⁷⁹ European Communities (Free Movement of Persons) (No. 2) Regulations 2006.

⁸⁰ *Ibid.*

⁸¹ Section 118(6).

⁸² Section 118(7).

⁸³ Section 118(8).

⁸⁴ Section 118(9).

has proved difficult to implement: to date there has been one conviction, which was later overturned on appeal. As a result, the Act is under review by the Department of Justice, Equality and Law Reform. Research has been commissioned by the National Action Plan Against Racism (NPAR) and National Consultative Committee on Racism and Interculturalism (NCCRI) to investigate whether current Irish criminal law is sufficient to deal with racially motivated crime

4.1.2.2 Employment Equality Act 1998

The Employment Equality Act deals with access to employment and training. The Act protects against discrimination on the following nine grounds: gender, marital status, family status, age, disability, religion, race, sexual orientation, and membership of the Traveller community. The Act covers private and public sector employees as well as applicants for employment and training. The publication of discriminatory advertisements is also prohibited under this legislation.

4.1.2.3 Equal Status Acts 2000 - 2004

The Equal Status Acts make it an offence to discriminate in relation to the provision of goods and services, accommodation or property. The nine grounds of discrimination covered in the Act are the same as those covered by the Employment Equality Act 1998 (See section 4.1.2.2 of this text). Private and public sector goods and services are covered. Incidents which fall under the Equality Acts or the Employment Equality Act 1998 are dealt with by the Equality Authority and the Equality Tribunal.

4.1.2.4 Equality Act 2004

The Equality Act 2004 was enacted in July 2004 and has the effect of implementing three EU Directives: the Race Directive (2000/43/EC), the Framework Employment Directive (2000/78/EC) and the Revised Gender Equal Treatment Directive (2002/73/EC). It also provides for a number of procedural amendments to the Employment Equality Act 1998 and the Equal Status Act 2000. The Equality Act extended equality legislation to domestic workers, self-employed people and persons over 65 years of age.

4.1.3 Human Trafficking

4.1.3.1 *Child Trafficking and Pornography Act 1998*

The purpose of the Act is to strengthen the legislative measures aimed to protect children under 17 years old from sexual exploitation through child trafficking and child pornography. The Act makes it an offence, punishable by up to life imprisonment, to organise or knowingly facilitate child trafficking, i.e. the entry into, transit through or exit from the State of a child for the purpose of his or her sexual exploitation. The detention of a child for such purposes is also made an offence punishable by up to ten years imprisonment. The Act does not extend to child trafficking for the purposes of labour exploitation. To date more prosecutions have been brought under the Act in relation to pornography than in relation to trafficking (See Conroy, 2003).

4.1.3.2 *Illegal Immigrants (Trafficking) Act 2000*

This Act was originally introduced to address the problem of increased activities of international criminal gangs smuggling illegal immigrants into the State. The Act creates an offence of smuggling in illegal immigrants with significant penalties on conviction and extends the powers of the Garda Síochána to enter and search premises and to detain people in relation to such activities. See the fuller discussion on this Act at section 4.1.2.7.

UPDATE ON 2008 LEGISLATION

4.1.3.3 *Criminal Law (Human Trafficking) Act 2008*

This Act creates offences criminalising trafficking in persons for the purposes of sexual or labour exploitation, or for the removal of their organs, and criminalises the selling or purchasing of human beings. The Act criminalises the trafficking of children into, through or out of the State,⁸⁵ and amends the Child Trafficking and Pornography Act 1998 to bring the offence of trafficking into line with other new trafficking offences.⁸⁶ The Act also criminalises trafficking in adults.⁸⁷ The maximum penalty is life imprisonment.

⁸⁵ Section 3.

⁸⁶ Section 4.

⁸⁷ Section 5.

Extra-territorial jurisdictions are established.⁸⁸ Anonymity is guaranteed for those who testify in court against alleged traffickers.⁸⁹ Courts are given power to exclude people from the Court for the purpose of ensuring a lack of publicity.⁹⁰ The scope of the Criminal Evidence Act 1992 is extended to offences created by the new Act, allowing for victims of trafficking to give evidence via television link.⁹¹ The Act does not, however, contain detailed provisions to support and protect victims of trafficking, and has been criticised in this regard. (Amnesty, 11 October 2007⁹²) The regulatory impact analysis states that the then Bill was solely concerned with the criminal law response to trafficking, and that the protection of victims of trafficking will be dealt with administratively

The Act seeks to implement two EU Framework Decisions: the Framework Decision on Combating Trafficking in Human Beings (for the purpose of labour and sexual exploitation)⁹³ and the Framework Decision on Combating the Sexual Exploitation of Children and Child Pornography.⁹⁴

UPDATE ON PROPOSED LEGISLATION

4.1.3.4 *Immigration Residence and Protection Bill 2008*

Section 124 of the Immigration, Residence and Protection Act 2008 proposes new provisions for protection for the victims of trafficking. A foreign national whom a member of the Garda Síochána, with reasonable grounds, believes to be a victim of trafficking, or who has provided a statement in writing to the Minister to the effect that he or she is a victim of trafficking, would be permitted to be present in the State for a forty-five day “recovery

⁸⁸ Section 7.

⁸⁹ Section 11.

⁹⁰ Section 10.

⁹¹ Section 12.

⁹² Amnesty International (Irish Section) (2007), Press Release 11th October 2007: Amnesty welcomes Trafficking Bill but criticises absence of supports for victims. Dublin: Amnesty International.

⁹³ Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings, OJ L 203 of 1 August 2002. See section 4.2.3.1 of this text.

⁹⁴ Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography, OJ L 13 of 20 January 2004, at p. 44. See section 4.2.3.2 of this text.

and reflection period”. Section 124(3) states that this period is to enable the suspected victim to recover from and escape the influence of the alleged perpetrators of the trafficking. This recovery and reflection period could be terminated, *inter alia*, where the Minister is satisfied that the foreign national has actively, voluntarily and on his or her own initiative renewed his or her relevant connections with the alleged perpetrators.

The granting of permission would not entitle the suspected victim to any right to remain in the State upon the expiry of the recovery and reflection period. The Section would provide that a suspected victim’s permission to remain could be extended where the Minister is satisfied both that the suspected victim has severed all his or her relevant connections with the alleged perpetrators of the trafficking, and where it is necessary for the purposes of allowing the alleged victim to continue to assist the Gardai in any arising investigation.

4.1.4 Asylum and Protection

4.1.4.1 *Refugee Act 1996*

The Refugee Act 1996 as amended by the Immigration Act 1999, the Illegal Immigrants (Trafficking) Act 2000 and the Immigration Act 2003 sets out core aspects of the current law governing the processing of applications for refugee status in Ireland. The principal purpose of the Act is to give statutory effect to the State’s obligations under the 1951 Geneva Convention Relating to the Status of Refugees, and the 1967 New York Protocol. The Refugee Act established the independent statutory Office of the Refugee Applications Commissioner (ORAC) and the Appeals Authority. The Act was later amended to establish the Refugee Appeals Tribunal (RAT) in place of the Appeals Authority.⁹⁵ The Act generally sets out the process for asylum applications. The Dublin Convention, which provided the legal basis for determining which EU Member State is responsible for examining an asylum application, was also incorporated into Irish law through this Act.⁹⁶

⁹⁵ The Immigration Act 1999.

⁹⁶ The functions of the Dublin Convention are now generally carried out by Council Regulation (EC) No. 343/2003.

Summary of Main Provisions in the Refugee Act 1996, as amended

The Act implements the definition of a refugee and the exclusion clauses from the 1951 Geneva Convention.⁹⁷ The Act embellishes the refugee definition by providing that “membership of a particular social group” includes membership of a trade union and membership of a group of people whose defining characteristic is their belonging to the female or male sex or having a particular sexual orientation.⁹⁸ Section 5 of the Act provides for the prohibition of *refoulement*. Section 8 provides for applications for asylum, and Section 9 provides that applicants for asylum shall be given leave to enter and remain in the State.

The Act allows for asylum applicants to be detained on certain grounds, including where an immigration officer or member of the Garda Síochána, with reasonable cause, suspects that an applicant poses a threat to national security or public order; has committed a serious non-political crime outside the State; has not made reasonable efforts to establish his identity; or without reasonable cause has destroyed his identity documents or is in possession of forged identity documents.⁹⁹

Section 6 establishes the independent Office of the Refugee Applications Commissioner, whose function to investigate an application for asylum is provided for in Section 11 and the first schedule. Section 15 establishes the independent Refugee Appeals Tribunal, to which the second schedule applies, and whose functions as an appellate body in asylum applications are set out in Section 16.

Section 18 makes provisions for family reunification, enabling the family members of a refugee to enter and reside in the State. If the Minister is satisfied that the person who is the subject of the application is a member of the family of the refugee, the Minister is obliged to grant permission to the person to enter and reside in the State. Family members for the purposes of this Section are a refugee’s spouse, his or her parents if the refugee is under 18 years of age, and any unmarried children under 18 years of age. The Minister has discretion to grant permission to certain dependent members of the family of a refugee.¹⁰⁰

Section 22 facilitates the application of the Dublin Convention and, latterly, Council Regulation (EC) No. 343/2003, enabling the transfer of applicants for asylum in the State to a Member State in which they previously applied for asylum, and the transfer into the State of

⁹⁷ Section 2.

⁹⁸ Section 1.

⁹⁹ Section 9(8). See also section 5.5 of this text.

¹⁰⁰ Section 18(4)(a).

applicants who applied for asylum in other Member States subsequent to applying in Ireland.

The Act also provides for the rights that accrue to declared refugees,¹⁰¹ programme refugees,¹⁰² and for the revocation of refugee status.¹⁰³ The Minister for Justice, Equality and Law Reform is obliged to declare asylum applicants to be refugees where either the Office of the Refugee Applications Commissioner or the Refugee Appeals Tribunal recommends that they be so declared.¹⁰⁴ Applicants who are refused may not make a further application for asylum without the consent of the Minister for Justice, Equality and Law Reform.¹⁰⁵

4.1.4.2 *Immigration Act 1999*

The Immigration Act 1999, *inter alia*, made various amendments to the Refugee Act 1996, including replacing the Appeals Board with the Refugee Appeals Tribunal, and setting out the powers of authorised officers and immigration officers.

4.1.4.3 *Illegal Immigrants (Trafficking) Act 2000*

Section 5 of the Illegal Immigrants (Trafficking) Act 2000 provides that certain prescribed decisions made in the asylum process, including decisions of the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal recommending that an asylum applicant not be declared a refugee cannot be questioned other than by way of judicial review. The Act also stipulates certain requirements for such an application for judicial review. See the fuller discussion of this Act at section 4.1.2.7 above.

4.1.4.4 *S.I. No. 343/2000: Dublin Convention (Implementation) Order 2000*

This Order gave effect to the State's obligations as a party to the Dublin Convention.¹⁰⁶ Procedures were put in place for the Office of the Refugee Applications Commissioner to determine whether an asylum application should be dealt with in the State or in another convention country. The Order set out the official means of notifying an intention to

¹⁰¹ Section 3.

¹⁰² Section 24.

¹⁰³ Section 21.

¹⁰⁴ Section 17. Section 17(2) contains an *ordre public* provision.

¹⁰⁵ Section 17(7).

¹⁰⁶ See sections 4.2.4.4 and 5.4.3 of this text.

transfer an applicant, the appeals procedure, and the type of information the Office of the Refugee Applications Commissioner could request or exchange with other Member States.

4.1.4.5 *European Convention on Human Rights Act 2003*

See the summary on this Act in section 4.1.1.13.

4.1.4.6 *Immigration Act 2003*

The Immigration Act 2003 made a substantial number of amendments to the Refugee Act 1996. All asylum applicants, including children, may now be fingerprinted. The permissible period for detention of asylum applicants between Court appearances was increased from 10 to 21 days.¹⁰⁷ An increased duty to cooperate was placed on the applicant, and where this obligation is not met, the application may be deemed withdrawn and the application rejected. The Act also mandates that the Office of the Refugee Applications Commissioner or the Refugee Appeals Tribunal shall have regard to certain matters in assessing an applicant's credibility.¹⁰⁸ The Act makes provision for the Minister for Justice, Equality and Law Reform to designate safe countries of origin. Asylum seekers from these countries will be presumed not to be refugees unless they can prove otherwise.¹⁰⁹

The amendments also included provisions allowing the Minister for Justice, Equality and Law Reform to issue prioritisation Directives to the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal for certain categories of applicants, including apparently unfounded claims, apparently well-founded claims, and cases of family reunification. Such a Ministerial direction requires the Commissioner, the Tribunal, or both, to accord priority to the specified category.

In addition, a more streamlined accelerated procedure introduced at appeal stage was aimed at those applicants found not to be refugees at

¹⁰⁷ The power of detention under the Immigration Act 1999 is exercisable only for the purpose of ensuring deportation where there is a "final or concluded intention to deport" (*B.F.O. v The Governor of Dóchas Centre*, [2003] 8 ICLMD 118, (High Court 08/05/2003). See section 5.7.10 of this text.

¹⁰⁸ See Section 11B of the Refugee Act 1996, as amended.

¹⁰⁹ In deciding whether to make such a designation, the Minister considers whether the country is party to certain international human rights instruments, whether it has a democratic political system and an independent judiciary, and whether it is governed by the rule of law. The list of countries will be kept under review but currently includes the twelve recent Accession States, Croatia and South Africa.

first instance, and whose cases display certain features considered to be indicative of abuse of the asylum process. Where the decision includes a finding listed in the new Section 13(6) of the Refugee Act 1996, the applicant is no longer entitled to an oral appeal and has ten working days, instead of fifteen, to appeal a negative status determination. The Minister has the power to decrease this period for appeal further to four working days for certain categories of applicants. The 2003 Amendments also state that the Chairperson of the Refugee Appeals Tribunal may publish decisions where he or she sees fit.¹¹⁰ The Amendments provide for revised arrangement for dealing with asylum applications that could be the responsibility of another EU Member State or Norway or Iceland, and make provision for giving effect to the Council Regulation (EC) No. 343/2003 (“The Dublin Regulation”).¹¹¹

4.1.4.7 S.I. No. 422 of 2003: Refugee Act 1996 (Safe Countries of Origin) Order 2003

This Order designates the twelve recent EU accession States as safe for the purpose of prioritising applications for refugee status made by nationals of those countries under the Refugee Act 1996 as amended.¹¹²

¹¹⁰ The Chairperson’s failure to publish any decisions, and refusal to allow access to previous decisions gave rise to *P. A. A. & Ors v The Refugee Appeals Tribunal & Ors*, [2007] 4 IR 94; [2006] IESC 53. See section 5.4.10 of this text.

¹¹¹ On 1 September 2003 Council Regulation (EC) 343/2003 (the Dublin Regulation/Dublin II) succeeded the Dublin Convention as the instrument that provides the legal basis for determining which EU Member State is responsible for examining an asylum application. All Member States, as well as Norway and Iceland, are subject to the new Regulation, with the exception of Denmark (the Dublin Convention remains in force between Denmark and the other Member States). After an asylum application is made, Ireland has three months under the Dublin Regulation (as opposed to six months under the Dublin Convention) to ask another country to take responsibility for the application. Under the Dublin Regulation, Member States are required to respond to these requests within either two months or one month depending on the circumstances of the case (three months were allowed under the Convention).

¹¹² INIS states that by virtue of the application by Ireland of the EU Treaty Protocol on Asylum for Nationals of Member States of the European Union, asylum applications are not accepted in Ireland from nationals of other Member States of the EU, and that application of this Protocol provides that any application for asylum made by a national of a Member State may be taken into consideration or declared admissible for processing by another Member State in very exceptional circumstances (INIS, January 2007; <http://www.inis.gov.ie/en/INIS/Pages/PB07000136>). The said Protocol states that EU Member States are to be regarded as safe countries of origin, and that asylum applications made by Member State nationals may be taken into consideration or declared admissible only in certain cases. It should also be noted that Directive 2004/83/EC of 29 April 2004 (see section 4.2.4.5 of this text) restricts refugee status to third country nationals and stateless persons (Article 2(a)) while Irish domestic

4.1.4.8 S.I. No. 423 of 2003: Refugee Act 1996 (Section 22) Order 2003

This Order seeks to put in place the arrangements necessary in the State to give effect to Council Regulation (EC) 343/2003 (“The Dublin Regulation”). That Council Regulation sets out the rules and procedures for determining which Member State of the European Union is responsible for dealing with an asylum application made in one of them. The Order provides that where an application is made for asylum in the State, the Office of the Refugee Applications Commissioner shall determine whether, in accordance with the Council Regulation, the application should be examined in the State. The Order also sets out procedures for appealing the Commissioner’s decision to the Refugee Appeals Tribunal, though the appeal is restricted to whether or not the Member State responsible for examination of the application has been properly established in accordance with the criteria set out in Chapter III of the Council Regulation.¹¹³

4.1.4.9 Social Welfare (Miscellaneous Provisions) Act 2003

Under the Social Welfare (Miscellaneous Provisions) Act 2003, asylum seekers are no longer entitled to receive a rent supplement. This measure is designed to direct asylum seekers into the State’s direct provision accommodation system.

4.1.4.10 S.I. No. 714 of 2004: Refugee Act 1996 (Safe Countries of Origin) Order 2004

This Order designates Croatia and South Africa as safe for the purpose of prioritising applications for refugee status made by nationals of those countries under the Refugee Act 1996, as amended.

4.1.4.11 S.I. No. 518 of 2006: The European Communities (Eligibility for Protection) Regulations 2006

The European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006) are intended to give effect to the European Qualification Directive, which came into force in October 2006 and which provides, *inter alia*, for a system of subsidiary protection. The

legislation (NB, S.I. 518 of 2006 - see section 4.1.4.11 of this text) restricts eligibility for subsidiary protection to people who are not nationals of a Member State, but does not so restrict eligibility for refugee status.

¹¹³ See section 5.4.3 of this text.

LEGISLATION

Directive seeks to ensure that Member States apply common criteria for the identification of persons in need of international protection, and to ensure a minimum standard for qualification across the Member States.

Regulation 2(1) of the S.I. provides the criteria for eligibility for subsidiary protection. An applicant for subsidiary protection is required to show, *inter alia*, substantial grounds for believing that he or she, if returned to his or her country of origin, would face a real risk of suffering serious harm. Regulation 2(1) defines serious harm as consisting of (a) the death penalty or execution, (b) torture or inhuman or degrading treatment or punishment, or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of armed conflict. There is no requirement that an applicant show a nexus to a civil or political right or ground, as required for a declaration of refugee status pursuant to Section 2 of the Refugee Act 1996. The Regulations are not retrospective, but the Minister has discretion to allow applications for subsidiary protection from applicants who had been issued with a deportation order prior to 10 October 2006 where such applicants can identify new facts or circumstances that have arisen.¹¹⁴

The Regulations contain important provisions regarding, *inter alia*, protection needs arising *sur-place*, internal protection, what constitutes persecution, and the criteria relevant to the consideration of facts and circumstances in an application for protection. These provisions are not only relevant to subsidiary protection claims as the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal are also required to apply the Regulations to decisions within the asylum process.¹¹⁵

UPDATE ON PROPOSED LEGISLATION

4.1.4.12 Immigration, Residence and Protection Bill 2008

The Immigration, Residence and Protection Bill 2008 proposes to repeal the European Communities (Eligibility for Protection) Regulations 2006. Under the Bill's proposed scheme all functions currently being carried out by the Office of the Refugee Applications Commissioner with regard to protection, including

¹¹⁴ See *H & D v Minister for Justice, Equality and Law Reform*, [2007] IEHC 277 Unreported, High Court, 27/07/2007. See section 5.6 of this text.

¹¹⁵ Regulation 3.

subsidiary protection, would be carried out by the Minister for Justice, Equality and Law Reform.

The Bill proposes a reformed system for processing applications for protection, and proposes to repeal, *inter alia*, the Refugee Act 1996, the Immigration Acts 1999, 2003, and 2004, and Section 5 of the Illegal Immigrants (Trafficking) Act 2000. Proposed changes include a shift to a single protection determination procedure meaning that all protection claims, including claims for both asylum and subsidiary protection, would be examined under a single procedure. Applicants would be required to set out all of the grounds on which they wish to remain in the State (including non-protection-related reasons for permission to remain) at the outset of their claim, and all of these matters would be examined together.¹¹⁶ The Minister for Justice, Equality and Law Reform might then find that the person is (a) allowed to remain in the State on refugee grounds, (b) allowed to remain in the State on subsidiary protection grounds, (c) allowed to reside in the State on other discretionary grounds, or (d) not allowed to remain in the State.

The Bill proposes the establishment of a Protection Review Tribunal. This body would effectively replace the Refugee Appeals Tribunal. Under the new Act, the Minister for Justice, Equality and Law Reform would carry out those functions currently dealt with by the Office of the Refugee Applications Commissioner. The Bill seeks to transpose Council Directive 2005/85 EC (“The Procedures Directive”) into Irish law, and to integrate the provisions of the Asylum Qualification Directive Regulations 2006 (S.I. No. 518 of 2006), into primary legislation.

Definitions Regarding Protection

The Bill deals with both refugee status and subsidiary protection,¹¹⁷ and provides definitions of “actors of persecution”, “actors of serious harm”, “person eligible for subsidiary protection”, “refugee” and “serious harm”.¹¹⁸ If enacted, the legislation would provide that protection against persecution or serious harm would be regarded as being generally provided where reasonable steps are taken by “a

¹¹⁶ At present a person who wishes to claim protection in the State may lodge (a) an asylum application, which is examined under the Refugee Act 1996, as amended, (b) an application for subsidiary protection pursuant to the Regulations contained in S.I. No. 518 of 2006, and (c) an application for leave to remain in the State pursuant to the provisions of the Immigration Act 1999, as amended.

¹¹⁷ Part 7, Section 61-104.

¹¹⁸ Section 61.

state or parties or organisations, including international organisations, controlling a state or a substantial part of a the territory of a state to prevent the persecution or suffering of serious harm...” Section 65 provides factors that would have to be considered with regard to the reasons for persecution. This Section provides elaboration on each of the five grounds of refugee status. Section 65(e) would provide that a particular social group could include a group based on a common characteristic of sexual orientation, depending on the circumstances in the country of origin. Section 65(f) would provide that gender related aspects could be taken into account in assessing whether an applicant is a member of a social group based on sexual orientation.¹¹⁹

Exclusion and Cessation

Sections 66 and 67 deal with, respectively, exclusion from protection and cessation of protection. Section 66(5) is similar to Regulation 13 of S.I. No. 518 of 2006 (the European Communities (Eligibility for Protection) Regulations 2006) and contrasts with Section 2 of the Refugee Act 1996 in that it provides that a person who has instigated or otherwise participated in the commission of a prescribed act or crime would be excluded from being given protection.

Status in the State

The Bill would provide that applicants for protection would be permitted to remain in the State for the sole purpose of having their protection application investigated.¹²⁰

Detention of Applicants for International Protection

Immigration officers would be required, if it is practicable, to issue an applicant for protection with an entry permit or, if that is not

¹¹⁹ C.f. Section 1 of the Refugee Act 1996, which provides, *inter alia*, that membership of a particular social group includes membership of a group of persons whose defining characteristic is their belonging to the female or male sex or having a particular sexual orientation.

¹²⁰ Section 70(1) and (2). C.f., Section 9(2) of the Refugee Act 1996 which provides that an applicant for refugee status shall be entitled to remain in the State until either his or her transfer pursuant to Council Regulation (EC) No. 343/2003, the date the application is withdrawn, or the date the Minister notifies refusal of a declaration of refugee status.

practicable, arrest and detain the person until an entry permit can be issued, or require him or her to remain in a specified place.¹²¹

Section 71 provides for further reasons whereby an applicant for protection can be arrested and detained. This Section is similar to Section 9(8) of the Refugee Act 1996, as amended. An immigration officer or a member of the Garda Síochána may also detain an applicant if the officer or Garda suspects that a protection applicant, immediately before the making of an application, was being, or was to be, removed from the State and has made the application for the purpose of delaying his/her removal from the State or, makes a further protection application.¹²²

While Section 71(7) would provide that the powers to arrest and detain would not apply to people under 18 years of age, Section 71(8) allows for arrest if an immigration officer or a member of the Garda Síochána has reasonable grounds for believing that the person is not under 18. Section 71(14) would provide for the removal of a person detained under the Section who indicates a desire to leave the State. See also section 4.1.1.25 of this section regarding other detention provisions in the Bill.

Protection Procedures

The Bill sets out proposals for new procedures for protection applications.¹²³ Applications for protection would be made to the Minister for Justice, Equality and Law Reform, rather than to an independent body as is currently the case.¹²⁴ The Minister (and, on appeal, the Tribunal) would be obliged to assess the credibility of a protection applicant, and have regard to certain matters in this regard.¹²⁵ This section is similar to Section 11B of the Refugee Act 1996, as amended. The Minister's determination of an application for protection would determine whether an applicant is entitled to asylum, subsidiary protection and/or permission to remain in the State.¹²⁶ Where the Minister's determination cannot be made within six months of the application, the Minister would be required, upon request, to provide an estimate of the time it will take for the determination to be made.¹²⁷

¹²¹ Section 70.

¹²² Section 71(g) and (h).

¹²³ Chapter 3 of Part 7, Sections 73-90.

¹²⁴ Section 73.

¹²⁵ Section 76.

¹²⁶ Section 79.

¹²⁷ Section 79(4).

Protection Review Tribunal

Under the new Bill, the Minister's determination could be appealed to the Protection Review Tribunal (PRT). Appointment of the Tribunal Chairperson or a member in a full-time capacity would be by the Public Appointments Service¹²⁸, but the Chairperson of the current Refugee Appeals Tribunal would be deemed to be the Chairperson of the PRT and would hold office for the unexpired period of his/her office.¹²⁹ A member appointed to be a member in a part-time capacity would be appointed by the Minister.¹³⁰ There are no regulations contained in the Bill specifying how many part-time members will be appointed. The chairperson of the Tribunal would be required to have not less than five years' experience as a practising lawyer, and the members of the Tribunal not less than five years' relevant experience.¹³¹ This contrasts with the requirement in the Refugee Act 1996, whereby both the chairperson and the members of the Tribunal are required to have not less than five years' experience as a practising lawyer.

The chairperson of the Tribunal would have the power to assign and reassign the business of the Tribunal from one member to another, and to request a Tribunal member to review his or her draft decision where it appears to the chairperson that the decision might contain an error of law or fact.¹³² The chairperson would have the power to refer, on notice to an applicant, any final decision of the Tribunal to the High Court for that Court's direction.¹³³ The chairperson would be responsible for the conduct of the Tribunal's functions in relation to any proceedings relating to the transaction of the business of the Tribunal.¹³⁴

Access to Decisions

Applicants for protection would, at the time of making an appeal, be able to apply for legally-relevant decisions of the Tribunal. Under the new section, legal representatives would no longer be able to access and search a database of decisions. Instead, a legal representative would need to apply to the Chairperson for previous

¹²⁸ Section 92(5).

¹²⁹ Section 137(5).

¹³⁰ Section 92(4).

¹³¹ Section 91.

¹³² Section 93.

¹³³ Section 93(9).

¹³⁴ Section 93(18).

decisions. The Chairperson would grant access only where the Chairperson considers that the request is reasonable and there exists a decision which is legally relevant to an applicants appeal.¹³⁵

Where there is more than one legally-relevant decision, and the chairperson is of the opinion that a representative sample of the decisions would serve the requirements of fairness, the making available of such a sample would comply with this Section's requirements.¹³⁶ The chairperson could also refuse an application for legally relevant decisions where the chairperson is satisfied that the request is frivolous or vexatious. An applicant's legal representative would be required to bring to the Tribunal's attention any decisions of which the representative is aware that may tend not to support the appeal.¹³⁷ There is also an obligation on the legal representative to use the decision given only in support of the applicant's appeal.¹³⁸ It is an offence not to comply with this section.¹³⁹ A person guilty of an offence is liable, on summary conviction, to pay a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months, or both or, on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term exceeding 5 years or both.¹⁴⁰

Information Regarding Applicants for Protection

Information holders, on request of another information holder, would be required to furnish such relevant information (i.e. about or relating to the entry into, presence in and removal from the State of foreign nationals) as is in the information holder's possession, control or procurement.¹⁴¹ The Minister would be required not to disclose information about an applicant to alleged actors of persecution or serious harm.¹⁴² A foreign national would be required to furnish, on demand, any biometric information as may reasonably be required.¹⁴³ Such biometric information will be destroyed if the foreign national becomes an Irish citizen.

¹³⁵ Section 95(2)(b) and (c).

¹³⁶ Section 95(3).

¹³⁷ Section 95(7).

¹³⁸ Section 95(8)(b)(i).

¹³⁹ Section 95(9).

¹⁴⁰ Section 119(1).

¹⁴¹ Section 106.

¹⁴² Section 107.

¹⁴³ Section 108: Section 2 defines biometric information as meaning: "information about the distinctive physical characteristics of a person including: (a) measurements or other assessments of those characteristics, and (b) information about those

Minors

An immigration officer would be required to notify the Health Service Executive (HSE) where a foreign national protection applicant is under 18 years of age.¹⁴⁴ An interviewer on behalf of the Minister and the Protection Review Tribunal would be required to inform the HSE if it considers that an accompanying adult (other than a parent) is not acting in the best interests of a minor.¹⁴⁵ A protection application for a foreign national child under the care of the HSE would not be made by the HSE unless it is satisfied that it is in the best interests of the foreign national concerned that such an application be made.¹⁴⁶

The Minister would be able to dispense with a protection interview of a minor where the Minister is of the opinion that the minor is of such an age and degree of maturity that an interview would not usefully advance the investigation,¹⁴⁷ but it is stated that this would not adversely affect the Minister's determination of the application.¹⁴⁸

The legislation, if enacted, would provide that a protection application would be deemed to be made on behalf of all the dependents of a foreign national under 18 years of age, whether they are present in the State at the time of the application or are born or arrive in the State subsequently.¹⁴⁹

4.2 EU IMMIGRATION AND ASYLUM LEGISLATION

This section contains summaries of EU legal instruments relevant to immigration and asylum and asylum law. A comprehensive schedule of relevant EU legislation can be found at Appendix A4.1.¹⁵⁰

characteristics held in automated form, and references to the provision by a person of biometric information mean its provision in a way that enables the identity of the person to be investigated or ascertained”.

¹⁴⁴ Section 73(6).

¹⁴⁵ Sections 74(8) and 85(8).

¹⁴⁶ Section 73(10).

¹⁴⁷ Section 74(10).

¹⁴⁸ Section 74(11)(c).

¹⁴⁹ Section 73(13).

¹⁵⁰ It is well to note the differences between the forms of EU legal measures discussed here. Regulations set out general rules that apply uniformly throughout the EC. They are binding and directly applicable. They take effect without the need for further enactment and may be relied upon by individuals before national courts. Directives are

LEGISLATION

All EU legislation must have a legal basis on a particular EC Treaty article. Title IV of the Treaty relates to visas, asylum, immigration and other policies related to free movement of persons, and the EU law referred to in this Section mainly consists of legal measures adopted pursuant to Title IV. Under the terms of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community by the Treaty of Amsterdam, Ireland does not take part in the adoption by the Council of proposed measures pursuant to Title IV of the EC Treaty unless Ireland opts into the measure by notifying the Council that it wishes to take part in the adoption and application of any such proposed measure. Accordingly, whether Ireland has opted into any such measure is noted in the text.

With regard to the immigration agenda of the Amsterdam Treaty, legislation in place includes Directive 2003/86/EC (“The Family Reunification Directive”), Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, and Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents. Although not a Title IV measure, Directive 2004/38/EC (“The Citizenship Directive”) is also discussed. These measures are the focus of section 4.2.1. Section 4.2.2 contains summaries of EU measures dealing with racism, while measures dealing with human trafficking are summarised in section 4.2.3.

With regard to the asylum agenda of the Amsterdam Treaty, five main pieces of legislation have so far flowed from its adoption: Directive 2001/55/EC (“The Temporary Protection Directive”); Directive 2003/9/EC (“The Reception Directive”); Regulation (EC) No. 343/2003 (“The Dublin Regulation”); Directive 2004/83/EC (“The Qualification Directive”); and Directive 2005/85/EC (“The Procedures Directive”). These measures are the focus of section 4.2.4.

binding as to the result to be achieved. They allow individual states discretion as to the means of implementation, whether by legislation or administrative action. Decisions are individual acts addressed to specific individuals or states. They do not require implementation. They are binding in their entirety on those to whom they are addressed. Framework Decisions align the laws of the Member States. They are binding on the Member States as to the result to be achieved but leave the choice of form and methods to national authorities. There is no formal hierarchy between these forms of provision.

4.2.1 Immigration

4.2.1.1 Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals¹⁵¹

This Directive seeks to make possible the recognition of an expulsion decision issued by a competent authority in one Member State against a third country national present within the territory of another Member State.¹⁵² The Directive does not apply to family members of citizens of the Union who have exercised their right of free movement.¹⁵³ Member States were required to bring into force the laws and administrative provisions necessary to comply with this Directive by 2 December 2002. The Department of Justice, Equality and Law Reform states that the transposition date does not apply to Ireland, as this is a Schengen-related measure.¹⁵⁴

4.2.1.2 Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals¹⁵⁵

Regulation 1030/2002 entered into force on the date it was published in the official journal, 15 June 2002. The Regulation was initially directly applicable in all Member States, except Ireland,¹⁵⁶ but Ireland subsequently requested that it take part.

The Regulation sets out the general characteristics of the uniform format for residence permits. The Regulation provides that the uniform format can be used as a sticker or a stand-alone document.¹⁵⁷ Certain additional technical specifications (designed to prevent counterfeiting and forgery) are stated to be secret and are not published.¹⁵⁸ The Regulation requires the Member States to issue the uniform format for residence permits no

¹⁵¹ OJ L 149, 2 June 2001, p. 34.

¹⁵² Article 1.

¹⁵³ Article 2.

¹⁵⁴ 'EU Directives', available at http://www.justice.ie/en/JELR/print/EU_Directives

¹⁵⁵ OJ L 157 of 15 June 2002, p. 1. Note that this Regulation has now been amended by Council Regulation (EC) No 380/2008 amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals, OJ L 115 of 29 April 2008, p. 1

¹⁵⁶ Recital 15.

¹⁵⁷ Article 1.

¹⁵⁸ Recital 7; Article 3.

later than one year after adopting certain security measures.¹⁵⁹ Member States may add to the permit information of importance regarding the nature of the permit, the holder's legal status, and information regarding permission to work.¹⁶⁰ "Residence permit" is taken to mean any authorisation allowing a third-country national to stay legally in a Member State, with the exception of visas, permits pending residence or asylum determinations, or authorisations for periods not exceeding six months.¹⁶¹

4.2.1.3 Directive 2003/86/EC of 22 September 2003 on the right to family reunification ("The Family Reunification Directive")¹⁶²

Directive 2003/86/EC entered into force on 3 October 2003 and applies to all EU Member States, except Ireland,¹⁶³ the United Kingdom, and Denmark. Member States' legislation had to comply with this Directive not later than 3 October 2005. The Directive lays down the conditions for the exercise of the right to family reunification by third-country nationals residing lawfully in the territory of the Member States.

The Directive determines the conditions under which family members can enter into and reside in a Member State in order to preserve the family unit. Member States are obliged to authorise entry and residence for an applicant's spouse and unmarried children.¹⁶⁴ Member States are given discretion to authorize entry and residence for other family members.¹⁶⁵ Under Article 7(1) Member States may require an applicant to provide evidence that s/he has (a) accommodation which meets the general health and safety standards of the Member State, (b) sickness insurance, and (c) stable and regular resources.¹⁶⁶

The Directive provides that family members are entitled to access to education, employment, and vocational guidance. Member States are,

¹⁵⁹ Article 9; Article 2.

¹⁶⁰ Article 1.

¹⁶¹ Article 2.

¹⁶² OJ L 251 of 3 October 2003, p. 12.

¹⁶³ Recital 17.

¹⁶⁴ Article 4(1).

¹⁶⁵ Article 4(2): dependent "first-degree relatives in the ascending line" who do not enjoy "proper family support in the country of origin", and adult unmarried children "where they are objectively unable to provide for their own needs on account of their state of health." Where the applicant is a refugee, Member States may authorise family reunification of other dependent family members pursuant to Article 10(2). Under Article 10(3), where the applicant is a refugee and an unaccompanied minor, Member States are obliged to authorise entry and residence of first-degree relatives in the direct ascending line, and have discretion to authorise the entry and residence of a guardian.

¹⁶⁶ Article 7(1).

however, permitted to take up to twelve months to “examine the situation of their labour market” before allowing family members to work.¹⁶⁷ The applicant and the family members have the right to challenge a rejection of an application for family reunification.¹⁶⁸

The Directive sets out specific provisions for the family reunification of refugees. Member States are permitted to confine applications from refugees whose family relationships predate their entry.¹⁶⁹ The Directive provides that refugees are exempted from meeting the requirements in Article 7(1). The Directive also provides that Member States may require evidence that a refugee fulfils the requirements in Article 7(1) where family reunification is possible in a third country with which the refugee or his or her family members have special links, or where the reunification application is not made within three months of the granting of refugee status.¹⁷⁰ Determinations on applications for reunification must issue within nine months of the date the application was lodged. The time limit may be extended in “exceptional circumstances linked to the complexity of the examination”.¹⁷¹

The Directive excludes from the right to family reunification people (a) whose asylum applications have not yet given rise to a final decision, (b) who have been granted temporary protection, and (c) who have been granted subsidiary protection.¹⁷² The Directive allows Member States to refuse family members on the grounds of public policy, public security or public health.¹⁷³

4.2.1.4 Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents¹⁷⁴

Directive 2003/109/EC entered into force on 12 February 2004. Member States were required to take the necessary measures to implement this Directive by 23 January 2006. Ireland,¹⁷⁵ the United Kingdom, and Denmark are not bound by the Directive. This Directive obliges Member States to grant long-term resident status to non-EU nationals who have resided legally and continuously within the territory

¹⁶⁷ Article 14.

¹⁶⁸ Article 18.

¹⁶⁹ Article 9(2).

¹⁷⁰ Article 12.

¹⁷¹ Article 5(4).

¹⁷² Article 3(2).

¹⁷³ Article 6.

¹⁷⁴ OJ L 16 of 23 January 2004, p. 44.

¹⁷⁵ Recital 25.

of a Member State for five years.¹⁷⁶ The Directive also deals with the right of residence in other Member States.

In order to obtain long-term residence, applicants must provide evidence that they have stable and regular resources sufficient to maintain themselves and their family, and that they have sickness insurance.¹⁷⁷ Member States may refuse to grant long-term resident status on grounds of public policy or public security.¹⁷⁸ Member States are barred from founding any refusal on economic considerations.¹⁷⁹ The competent authority must take a decision on whether to grant long-term resident status no more than six months after the application is lodged.¹⁸⁰ The Directive provides for the right to challenge any decision to refuse or withdraw residency.¹⁸¹

Member States are obliged to issue long-term residents with a residence permit as set out in Regulation (EC) No 1030/2002 (see section 4.2.1.2 of this text), valid for five years and renewable automatically.¹⁸² The Directive provides that long-term resident status may be withdrawn on certain prescribed grounds, including where it is detected that the long-term resident status was acquired by fraud, or where the applicant was absent from the EU for a period of twelve months or more.¹⁸³

The Directive provides that long-term residents shall enjoy equal treatment with nationals as regards (a) access to employment and self-employed activity, (b) education and vocational training, (c) recognition of professional diplomas, (d) social security, (e) tax benefits, (f) access to goods and services, (g) freedom of association and affiliation, and (h) free access to the entire territory of the Member State. Member States are permitted to restrict equal treatment with regard to certain rights.¹⁸⁴

Long-term residents can only be expelled where they constitute “an actual and sufficiently serious threat to public policy or public security.” Before deciding to expel a long-term resident, Member States must consider certain matters including duration of residence, the person’s

¹⁷⁶ Article 4: “immediately prior to the submission of the relevant application”.

¹⁷⁷ Article 5(1). Member States may also require “integration conditions, in accordance with national law” (Article 5(2)).

¹⁷⁸ Article 6(1).

¹⁷⁹ Article 6(2).

¹⁸⁰ Article 7(2): The time allowed may be extended “in exceptional circumstances linked to the complexity of the examination”.

¹⁸¹ Article 10.

¹⁸² Article 8.

¹⁸³ Article 9.

¹⁸⁴ Article 11(2)-(4).

age, and the consequences of expulsion for the applicant and his family.¹⁸⁵

A long-term resident may exercise the right of residence in a Member State other than the one that granted him or her long-term residency, subject to compliance with certain prescribed conditions.¹⁸⁶ Family members of the long-term resident may join the resident in the second State, if they were family members in the first State.¹⁸⁷ The second Member State can refuse the applications from long-term residents on grounds of public policy, public security,¹⁸⁸ or public health.¹⁸⁹ Long-term residents in a second Member State will enjoy the same benefits they enjoyed in the first Member State.¹⁹⁰

The provisions of the Directive do not prevent Member States from issuing permanent residence permits on terms that are more favourable than those set out in the Directive.¹⁹¹ The Directive does not apply to non-EU nationals pursuing studies or vocational training, non-EU nationals in the State on temporary grounds, asylum seekers or people granted temporary or subsidiary protection.¹⁹²

4.2.1.5 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ("The Citizenship Directive")¹⁹³

Directive 2004/38/EC came into force on 30 April 2004. Member States are required to have transposed the Directive into national legislation by 30 April 2006. In order to comply with the Directive,

¹⁸⁵ Article 12.

¹⁸⁶ Article 15(2) provides criteria similar to those in Article 5 re the first state of residence. Member States may also, *inter alia*, require the applicant attend language courses, and provide documentary evidence of economic activity or evidence of enrolment in an accredited establishment in order to pursue studies or training. (Article 15(3) and (4))

¹⁸⁷ Article 16: If they were not family members in the first State, Directive 2003/86/EC applies.

¹⁸⁸ Article 17: Such refusal cannot be based on economic considerations.

¹⁸⁹ Article 18(3): Diseases contracted after issue of the first residence permit shall not justify a refusal

¹⁹⁰ Article 21.

¹⁹¹ Article 13.

¹⁹² Article 3(2).

¹⁹³ OJ L 158, 30 April 2004, p. 77. While principally dealing with Union citizens' rights to free movement within the territories of the Member States, and not a Title IV measure Directive 2004/38/EC affects the legal status of non-EU nationals who are family members of Union citizens, as well as setting out rights of migrant EU citizens, and so is included in this section.

Ireland brought into force the European Communities (Free Movement of Persons) Regulations 2006 (S.I. No. 226 of 2006), which was in turn replaced by the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006).¹⁹⁴

This Directive lays down the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members, the right of permanent residence in the territory of the Member States for Union citizens and their family members, and the limits that can be placed on these rights.¹⁹⁵ The Directive seeks to codify, simplify and strengthen the previous Community instruments dealing with free movement and residence.¹⁹⁶ It does not prevent Member States from providing for national provisions more favourable for the people concerned.¹⁹⁷

The Directive applies to all EU citizens who move to or reside in a Member State other than that of which they are a national, and to their family members who “accompany or join” them.¹⁹⁸ EU citizens and their family members have the right to leave the territory of a Member State to travel to another Member State.¹⁹⁹ Member States are required to grant EU citizens the right to enter another Member State with a visa

¹⁹⁴ In light of the decision of the European Court of Justice in Case C-127/08, *Metock & Ors v Minister for Justice, Equality and Law Reform* (Unreported, 25/07/2008), the Minister for Justice, Equality and Law Reform introduced the European Communities (Free Movement of Persons) (Amendment) Regulations 2008 (S.I. No. 310 of 2008) amending the 2006 Regulations. The 2008 Regulations remove from the 2006 Regulations the requirement that a non-EU family member must have been lawfully resident in another EU Member State prior to applying for a residence permit in Ireland. The 2008 Regulations amend Regulation 3(1) and (2) of the 2006 Regulations to read: “(1) These Regulations shall apply to— (a) Union citizens, (b) qualifying family members of Union citizens, who are not themselves Union citizens, and— (i) who seek to enter the State in the company of those Union citizens in respect of whom they are family members, or (ii) who seek to join those Union citizens, in respect of whom they are family members, who are lawfully in the State, and (c) permitted family members of Union citizens— (i) who seek to enter the State in the company of those Union citizens in respect of whom they are family members, or (ii) who seek to join those Union citizens, in respect of whom they are family members, who are lawfully present in the State.”

¹⁹⁵Article 1.

¹⁹⁶Recital 3. C.f. Regulation (EEC) No 1612/68, Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC, and 93/96/EEC.

¹⁹⁷Article 37.

¹⁹⁸Article 3(1).

¹⁹⁹Article 4.

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or identity card or passport, and are required to grant non-EU national family members with a valid passport leave to enter their territory.²⁰⁰

Union citizens have a right of residence on the territory of a Member State for a period up to three months without any conditions. Family members of EU citizens who do not have the nationality of a Member State enjoy the same rights as the citizen spouse whom they accompany or join.²⁰¹ Union citizens have a right of residence for more than three months if they (a) are workers or self employed in the Member State, (b) have sufficient resources not to become a burden on the State, (c) are enrolled at a private or public established and have sickness insurance, and (d) are family members accompanying or joining the Union citizen.²⁰² Union citizens acquire the right of permanent residence in the host Member State after a five-year period of uninterrupted legal residence. Family members of the Union citizen who are not nationals of a Member State and who have lived with a Union citizen for five years also have a right to permanent residence.²⁰³

The Directive entitles family members, irrespective of their nationality, to be entitled to take up employment or self-employment.²⁰⁴ Union citizens and their family members enjoy equal treatment with the nationals of the Member State.²⁰⁵

Member States may restrict the freedom of movement of Union citizens and their family members on grounds of public policy, public security or public health. These grounds cannot be invoked to serve economic ends.²⁰⁶ Measures affecting freedom of movement and residence must comply with the proportionality principle and be based exclusively on the personal conduct of the individual concerned.²⁰⁷ Conduct giving rise to restrictions must represent a sufficiently serious and present threat that affects the fundamental interests of the State.²⁰⁸

²⁰⁰Article 5.

²⁰¹Article 6.

²⁰²Article 7(1).

²⁰³Article 16.

²⁰⁴Article 23.

²⁰⁵Article 24.

²⁰⁶Article 27.

²⁰⁷Article 27(2).

²⁰⁸*Ibid*

4.2.1.6 Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service²⁰⁹

Directive 2004/114/EC came into force on 30 April 2004 and was required to be transposed into the domestic law of the Member States by 30 April 2006. The Directive applies to all Member States, except Ireland,²¹⁰ the United Kingdom, and Denmark.

The Directive determines the conditions and rules for admission of third-country nationals to the territory of the Member States for more than three months for the purposes of studies, pupil exchange, vocational training, or voluntary service.²¹¹ The Member States are required to apply the Directive's provisions to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of studies. Member States have discretion to apply the Directive to the remaining categories of pupil exchange, unremunerated training, and voluntary service. The Directive does not apply to asylum seekers; those whose expulsion has been suspended; family members of union citizens who have exercised their right to free movement; those with long-term resident status; and employed or self-employed third-country nationals.²¹² Member States may apply more favourable standards than those set out by the Directive.²¹³

An applicant under the Directive is required to meet certain conditions: (a) present a valid travel document, (b) present parental authorisation, if he or she is a minor, (c) have sickness insurance, (d) not be regarded as a threat to public policy, security or health, and (e) provide proof, if requested, that any processing fee is paid.²¹⁴ Students are required to fulfil certain further conditions: (a) have been accepted by an establishment of education for a course of study, (b) provide evidence requested by a Member State to show sufficient resources to cover subsistence and travel costs, (c) provide evidence, if requested, of sufficient knowledge of the language of the course, and (d) provide evidence if required that the course fees are paid.²¹⁵ The Directive contains provisions to allow students already admitted by a Member

²⁰⁹ OJ L 375, 23 December 2004, p. 12.

²¹⁰ Recital 25.

²¹¹ Article 1.

²¹² Article 3.

²¹³ Article 4.

²¹⁴ Article 6.

²¹⁵ Article 7.

State to be granted a right to mobility in the other Member States.²¹⁶ The Directive also contains conditions for school pupils, trainees, and volunteers.²¹⁷

Students' residence permits are to be valid for at least one year, and are to be renewable. They can be withdrawn where the holder does not respect conditions, or where the holder does not make acceptable progress in his or studies.²¹⁸ School pupils' permits can last for no more than one year.²¹⁹ Trainees' permits can be for one year, extendable once only "for as much time as is needed to acquire a vocational qualification".²²⁰ Volunteers' permits can be for one year, extendable in exceptional cases to correspond to the period of the relevant programme.²²¹ Where an application is rejected or withdrawn, the applicant has a right to mount a legal challenge.²²²

Students are entitled to be employed and may be self-employed up to ten hours per week "outside their study time" and subject to the rules of the Member State.²²³ The Member State may take into account the situation of the labour market, and may restrict access to economic activities for the first year of residence.²²⁴

4.2.2 Racism and Discrimination²²⁵

4.2.2.1 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ("The Race Directive")²²⁶

The stated purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with

²¹⁶ Article 8.

²¹⁷ Articles 9, 10 and 11.

²¹⁸ Article 12.

²¹⁹ Article 13.

²²⁰ Article 14.

²²¹ Article 15.

²²² Article 18.

²²³ Or the equivalent in days or months per year (Article 17(2)).

²²⁴ Article 17.

²²⁵ Note also Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

²²⁶ OJ L 180 of 19 July 2000, p. 22.

a view to putting into effect in the Member States the principle of equal treatment.²²⁷ The Directive entered into force on 19 July 2000. It has been implemented in Irish law in the Equality Act 2004.

The Directive implements the principle of equal treatment between people irrespective of racial or ethnic origin. It requires that there shall be no direct or indirect discrimination based on racial or ethnic origin.²²⁸ The Directive applies to all persons, including public bodies, in relation to employment and training, education, social services, housing, organisations of workers and employers and access to goods and services.²²⁹ Where persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish facts from which it may be presumed that there has been direct or indirect discrimination, the burden of proof is on the respondent to prove that there has been no breach of the principle of equal treatment.²³⁰ The Directive does not cover difference of treatment based on nationality, and is without prejudice to provisions and conditions relating to the entry into, residence of, and treatment of third-country nationals and stateless persons on the territory of Member States.²³¹

4.2.2.2 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation²³²

This Directive entered into force on the 2 December 2000. Member States were required to transpose the Directive into domestic law by 2 December 2003.²³³ It has been given effect in Irish law in the Equality Act 2004.

The Directive aims to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.²³⁴ The Directive implements the principle of equal treatment

²²⁷ Article 1.

²²⁸ Article 2.

²²⁹ Article 3(1).

²³⁰ Article 8(1).

²³¹ Article 3(2).

²³² OJ L 303 of 2 December 2000, p. 16.

²³³ While the deadline for transposition for the Directive generally was 2 December 2003, the Directive's provisions on age and disability discrimination did not require transposition until 2 December 2006.

²³⁴ Article 1.

in the area of employment, with regard to disability, religion or belief, age or sexual orientation.

The Directive applies to all persons, including public bodies, in relation to access to employment, employment and working conditions, training, and organisations of workers.²³⁵ Where persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish facts from which it may be presumed that there has been direct or indirect discrimination, the burden is on the respondent to prove that there has been no breach of the principle of equal treatment.²³⁶ The Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into, residence of, or treatment of (arising from their legal status) third-country nationals and stateless persons in the territory of Member States.²³⁷

Differences in treatment regarding recruitment into the Police Service of Northern Ireland do not constitute discrimination where those differences in treatment are expressly authorised by national legislation.²³⁸ The Directive's provisions on religion or belief do not apply to the recruitment of teachers in schools in Northern Ireland where this is expressly authorized by national legislation.²³⁹

4.2.3 Human Trafficking

4.2.3.1 Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings²⁴⁰

The Framework Decision entered into force on 1 August 2002. Deadline for implementation in the Member States was 1 August 2004. The Framework Decision has been given effect in Ireland in the Criminal Law (Human Trafficking) Act 2008, which came into effect on 7 June 2008.

²³⁵ Article 3(1).

²³⁶ Article 10.

²³⁷ Article 3(2).

²³⁸ The Directive states that this is in order to tackle the under-representation of one of the major religious communities in the police service of Northern Ireland.

²³⁹ Article 15: The Directive states that this is in order to maintain a balance of opportunity in employment for teachers in Northern Ireland while furthering the reconciliation of historical divisions between the major religious communities in Northern Ireland.

²⁴⁰ OJ L 203 of 1 August 2002

The Framework Decision requires Member States to take measures to ensure that “the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person” will be punishable where (a) use is made of coercion, force, threat or abduction, (b) use is made of fraud or deceit, (c) there is abuse of authority of position of vulnerability, or (d) payments or benefits are given or received to achieve consent for the purpose of exploitation of a person’s labour including forced labour or services, or for the purpose of exploitation of prostitution or sexual exploitation, including in pornography.²⁴¹ This is the ‘means’ clause. A victim’s consent is irrelevant.²⁴² The means clause is irrelevant if the victim is a child.²⁴³ Member States are also required to ensure that instigation of, aiding, abetting, or attempting to commit an offence is punishable.²⁴⁴

Member States are to ensure that the criminal offences established are punishable by effective, proportionate and dissuasive criminal penalties that may entail extradition.²⁴⁵ Member States are required to ensure that legal persons can be held liable.²⁴⁶ Member States are required to establish jurisdiction where the offence is committed in whole or in part within its territory, or the offender is one of its nationals, or the offence is committed for the benefit of a legal person established within the Member State.²⁴⁷ Investigations into or prosecution of offences are not dependent on a victim’s report or accusation.²⁴⁸

²⁴¹ Article 1(1).

²⁴² Article 1(2).

²⁴³ Article 1(3).

²⁴⁴ Article 2.

²⁴⁵ Article 3(1). The maximum penalty must be not less than eight years (a) where there was gross negligence endangering the life of the victim, (b) where the victim was particularly vulnerable, (c) where there was use of serious violence or serious harm caused, and (d) where the offence was committed within the framework of a criminal organisation (Article 3(2)).

²⁴⁶ Article 4: Sanctions on legal persons are set out in Article 5 and may include (a) exclusion from entitlement to public benefits, (b) disqualification from commercial practice, (c) judicial supervision, (d) winding-up, and (e) closure of establishments used for committing the offence.

²⁴⁷ Article 6.

²⁴⁸ Article 7.

4.2.3.2 Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography²⁴⁹

The Framework Decision entered into force on the date of its publication in the official journal, 20 January 2004. Deadline for implementation in the Member States was 20 January 2006. The Framework Decision has not been implemented in Ireland.²⁵⁰

The Framework Decision requires Member States to take measures to ensure that the following intentional conduct is punishable: (a) coercing a child into prostitution or into participating in pornographic performances, or profiting or exploiting a child for such purpose, (b) recruiting a child into prostitution or into participating in pornography, (c) engaging in sexual activities with a child where there is coercion, remuneration, or abuse of trust.²⁵¹ Member States are obliged to take measures to ensure that the production, distribution, supply, acquisition and possession of child pornography are punishable.²⁵² Member States are also required to ensure that instigation of, aiding, abetting, or attempting to commit an offence is punishable.²⁵³

Member States are to ensure that the criminal offences established are punishable by effective, proportionate and dissuasive criminal penalties that may entail extradition.²⁵⁴ Member States are required to ensure that legal persons can be held liable.²⁵⁵ Member States are required to establish jurisdiction where the offence is committed in whole or in part within its territory, or the offender is one of its nationals, or the offence is committed for the benefit of a legal person established within the

²⁴⁹ OJ L 13 of 20 January 2004, p. 44.

²⁵⁰ See the Immigration, Residence and Protection Bill 2008, and section 4.1.3 of this text.

²⁵¹ Article 2.

²⁵² Article 3, where “intentional” and “committed without right”.

²⁵³ Article 4.

²⁵⁴ Article 5. The maximum penalty varies from between one and three years and five and ten years where (a) the offence involved a child below the age of consent, (b) the offender deliberately or recklessly endangered the child’s life, (c) the offence involved serious violence or caused serious harm, or (d) the offence was committed within the framework of a criminal organisation (Article 5(2)).

²⁵⁵ Article 6. Sample sanctions on legal persons are set out in Article 7 and may include (a) exclusion from entitlement to public benefits, (b) disqualification from commercial practice, (c) judicial supervision, (d) winding-up, and (e) closure of establishments used for committing the offence.

Member State.²⁵⁶ Investigations into or prosecution of offences are not dependent on a victim's report or accusation.²⁵⁷

4.2.3.3 Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities²⁵⁸

Directive 2004/81/EC came into force on the date of its publication in the official journal, 6 August 2004. Member States were required to adopt the provisions necessary to implement the Directive by 6 August 2006. The Directive applies to all Member States except the United Kingdom, Ireland,²⁵⁹ and Denmark.

The purpose of the Directive is to define the conditions for granting residence permits of limited duration, linked to the relevant national proceedings, to third country nationals who cooperate in the fight against trafficking in human beings or against action to facilitate illegal immigration.²⁶⁰ Member States are required to apply the Directive to victims of trafficking even if they have entered the territory of the Member States illegally.²⁶¹ Member States are obliged to apply the Directive to adults, and have discretion to apply it to minors.²⁶² Member States are not precluded from adopting more favourable standards.²⁶³

Member States are obliged to grant non-EU nationals to whom the Directive applies a reflection period “allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.”²⁶⁴ The reflection period does not create any entitlement to residence.²⁶⁵ During the reflection period, the non-EU nationals shall have access to certain treatment, and may not be expelled.²⁶⁶ The non-EU nationals are entitled to a standard of living ensuring subsistence and access to emergency medical needs and special

²⁵⁶ Article 8.

²⁵⁷ Article 9.

²⁵⁸ OJ L 261 of 6 August 2004, p. 19

²⁵⁹ Recital 21.

²⁶⁰ Article 1.

²⁶¹ Article 3(1).

²⁶² Article 3(3).

²⁶³ Article 4.

²⁶⁴ Article 6(1).

²⁶⁵ Article 6(3).

²⁶⁶ Article 6(2).

needs, and translation and interpreting services. Member States may provide the non-EU nationals with free legal aid.²⁶⁷ A Member State may terminate the reflection period at any time if it is established that the non-EU national “has actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the offences”, or for reasons of public policy or national security.²⁶⁸

The residence permit is valid for at least six months, renewable if conditions continue to be satisfied.²⁶⁹ The residence permit grants the holder access to the labour market, vocational training and education.²⁷⁰ The Member State may withdraw the residence permit at any time if its conditions are no longer satisfied.²⁷¹

4.2.4 Asylum and Protection

4.2.4.1 Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention²⁷²

Regulation (EC) No 2725/2000, as a Regulation, is directly applicable in all Member States, with the exception of Denmark. The Regulation establishes a system, called Eurodac, for the collation and comparison of fingerprints of asylum applicants and illegal aliens.²⁷³ It establishes a centralised database of fingerprint data.²⁷⁴ The stated aim of the Eurodac system is to assist in determining which Member State is to be

²⁶⁷ Article 7.

²⁶⁸ Article 6(4).

²⁶⁹ Article 8(3): The conditions are stated as being set out in Article 8(2). Article 8(2) refers to criteria set out in Article 8(1) which the Member State is obliged to consider, and which include whether the non-EU national has shown a clear intention to cooperate, and whether he or she has severed all relations with those suspected of the offences at issue.

²⁷⁰ Article 11: Such access is limited to the duration of the permit.

²⁷¹ Article 14: And in particular if (a) the holder has voluntarily renewed contact with the perpetrators, (b) if the authorities believe the cooperation is fraudulent, (c) for reasons of public policy or national security, (d) where the victim ceases to cooperate, and (e) where the authorities decide to discontinue the proceedings.

²⁷² OJ L 316 of 15 December 2000 p.1. See also Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of “Eurodac” for the comparison of fingerprints for the effective application of the Dublin Convention. OJ L 62 of 5 March 2002, p. 1.

²⁷³ Abbreviation of “European Dactyloscopy”.

²⁷⁴ Article 3.

responsible pursuant to the Dublin Convention (and now Regulation (EC) No 343/2003) for examining an asylum application.²⁷⁵

In Ireland, the Data Protection (Amendment) Act 2003 amended Section 1 of the Data Protection Act 1988 to provide that the lawfulness of the processing of personal data under Eurodac shall be monitored by the Data Information Commissioner.

4.2.4.2 Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (“The Temporary Protection Directive”)²⁷⁶

Directive 2001/55/EC entered into force on 7 August 2001. Ireland originally opted not to participate in the adoption of the Directive pursuant to the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community by the Treaty of Amsterdam. Ireland subsequently requested that it take part in the Directive, and by decision dated 2003/690/EC of 2 October 2003, the Directive was deemed to apply to Ireland. The Immigration, Residence, and Protection Bill 2008 includes proposed provisions to comply with the Directive. Denmark has opted out. Member States were required to ensure domestic legislation complied with the Directive from 31 December 2002.

This Directive establishes minimum standards for granting temporary protection, and seeks to promote a balance of efforts between Member States in receiving and bearing the consequences of displaced people. It defines temporary protection as “a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection.”²⁷⁷

²⁷⁵ Article 1.

²⁷⁶ OJ L 212 of 7 August 2001, p. 12

²⁷⁷ Article 2(a).

The Directive provides that that a mass influx may be caused both by spontaneous arrivals in the EU and by evacuation programmes,²⁷⁸ and provides that the existence of a mass influx of displaced persons shall be established by a Council Decision.²⁷⁹ People under temporary protection must be able to lodge an application for asylum at any time.²⁸⁰

People who are given temporary protection are accorded certain rights, including the right to a residence permit,²⁸¹ the right to work,²⁸² the right to suitable accommodation,²⁸³ the right to welfare and medical care,²⁸⁴ the right to education for minors,²⁸⁵ and the right to family reunification.²⁸⁶

4.2.4.3 Directive 2003/9/EC of 27 January 2003 on minimum standards for the reception of asylum seekers (“The Reception Directive”)²⁸⁷

This Directive entered into force on 6 February 2003 and applies to all EU Member States except Ireland and Denmark. Ireland is not participating in the adoption of the Directive pursuant to the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community by the Treaty of Amsterdam. Member States were required to ensure domestic legislation complied with the Directive from 6 February 2005.

The Directive sets out minimum standards of reception conditions for applicants for asylum in Member States in order to ensure that they will have a dignified standard of living, and to afford them comparable living conditions in all Member States. The Directive also seeks to limit secondary movements of asylum seekers who would otherwise be influenced by the variety of reception conditions in the Member States. Reception conditions are defined in the Directive as the full set of

²⁷⁸ Article 2(d).

²⁷⁹ Article 5.

²⁸⁰ Article 17.

²⁸¹ Article 8.

²⁸² Article 12: Article 12 also provides that “For reasons of labour market policies, Member States may give priority to EU citizens and citizens of States bound by the Agreement on the European Economic Area and also to legally resident third-country nationals who receive unemployment benefit.

²⁸³ Article 13(1).

²⁸⁴ Article 13(2): Note that Article 2 states that “the assistance necessary for medical care shall include at least emergency care and essential treatment of illness.”

²⁸⁵ Article 14.

²⁸⁶ Article 15.

²⁸⁷ OJ L 31 of 6 February 2003

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measures that Member States grant to asylum seekers in accordance with the Directive. Member States can apply more favourable standards than those provided by the Directive.²⁸⁸

The Directive provides asylum seekers with certain rights, including the right to information about benefits and the obligations with which they must comply relating to the reception conditions,²⁸⁹ the right to documentation certifying their status as an asylum seeker,²⁹⁰ the right to freedom of movement within the territory of the host Member State or “within an area assigned to them by the Member State”,²⁹¹ the right to maintain family unity,²⁹² the right of minors to education,²⁹³ the (conditional) right to access to the labour market,²⁹⁴ the right to conditions sufficient to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence,²⁹⁵ and the right to emergency health care and essential treatment of illness.²⁹⁶

The Directive stipulates the conditions when reception conditions may be reduced or withdrawn, including in cases where an applicant abandons his residence without informing the authorities, for reason of non-compliance in the asylum determination process, where an asylum application has not been lodged as soon as reasonably practicable after arrival, and in situations of violent behaviour.²⁹⁷ It further provides for the possibility of special provisions for persons with special needs, such

²⁸⁸ Article 4.

²⁸⁹ Article 5.

²⁹⁰ Article 6: Article 6(2) allows Member States to exclude applications of this article when an asylum seeker is in detention and during examination of an application made at the border, or in the context of a procedure deciding on an applicant’s legal right to enter the territory of a Member State.

²⁹¹ Article 7: Article 7(1) also states that the assigned area shall not affect the unalienable sphere of private life.

²⁹² Article 8. The requirement that a Member State maintain family unity is qualified by “as far as possible ... if applicants are provided with housing by the Member State concerned.”

²⁹³ Article 10. Article 10(1) requires Member States to grant minors access to the education under “similar conditions” as nationals, but also that “Such education may be provided in accommodation centres”.

²⁹⁴ Article 11. Under Article 11(2) if a decision at first instance has not been taken within a year through no fault of an applicant, the Member State is obliged to decide the conditions for granting access to the labour market. Article 11(4) allows Member States to give priority to EU citizens and other residents for reasons of labour market policy. Article 12 allows (but does not require) Member States to allow asylum seekers access vocational training.

²⁹⁵ Article 13.

²⁹⁶ Article 15.

²⁹⁷ Article 16.

as unaccompanied minors, and victims of torture and violence.²⁹⁸ The Directive provides a right of appeal in case of a negative decision relating to the granting of benefits.²⁹⁹

4.2.4.4 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 (“The Dublin Regulation”)³⁰⁰

Regulation (EC) No 343/2003, as a Regulation, is directly applicable. It has been given domestic effect through the Refugee Act 1996 (Section 22) Order 2003 (SI 423 of 2003) and Section 22 of the Refugee Act 1996, as amended. Previously, the criteria and mechanisms for determining the Member State responsible for examining an asylum application were determined pursuant to the Dublin Convention named for the location of its signing.³⁰¹ The Regulation is applicable in all Member States, as well as Norway, Iceland and Switzerland.

This Regulation creates a system designed to determine, and lays down criteria and mechanisms for determining, the Member State responsible for determining an applicant’s refugee status. It allows for the transfer of an asylum applicant in a Member State to another participating State deemed responsible for processing the applicant’s asylum claim by virtue of its being the first country in the common area in which the applicant arrived as a refugee.

The Regulation requires Member States to examine the application of any alien, for which they are responsible in accordance with a set of criteria in strict hierarchy³⁰² on the basis of the situation at the time when an asylum seeker first lodged his application with a Member State.³⁰³ The criteria for designating the responsible Member State may be summarised as follows:

- (a) The Member State where an unaccompanied minor applicant has a family member legally present.³⁰⁴
- (b) The Member State where an applicant has a family member resident as a refugee.³⁰⁵

²⁹⁸ Articles 17-20.

²⁹⁹ Article 21.

³⁰⁰ OJ L 50 of 25 February 2003, p.1

³⁰¹ OJ C 254, 19/08/1997 pp. 1-12.

³⁰² Article 5(1).

³⁰³ Article 5(2).

³⁰⁴ Article 6.

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- (c) The Member State where an applicant has a family member awaiting a first-instance asylum decision.³⁰⁶
- (d) The Member State that issued an applicant with a residence document.³⁰⁷
- (e) The Member State entered irregularly by an applicant.³⁰⁸
- (f) The Member State that allowed an applicant to enter without a visa.³⁰⁹
- (g) The Member State where an applicant applied for asylum in an international transit area.³¹⁰
- (h) The Member State where the first asylum application was lodged.³¹¹
- (i) The Member State responsible for the largest number of an applicant's family members, where the above criteria would result in the family being separated.³¹²

The Regulation contains a “sovereignty clause” which gives Member States discretion to examine an asylum application even if it is not responsible for the examination.³¹³ The Regulation also contains a “humanitarian clause” which gives Member States discretion to examine an asylum application at the request of another Member State, and bring together family members and other dependant relatives.³¹⁴

The Member State responsible for examining an application is obliged to “take charge” of an asylum seeker who has lodged an application in a different Member State, and complete the examination of the asylum application, and is obliged to “take back” an applicant whose application is under examination and who is in another Member State without permission, an applicant who has withdrawn the first application and made an application in another Member State, and an applicant whose

³⁰⁵ Article 7.

³⁰⁶ Article 8.

³⁰⁷ Article 9. Article 9 contains detailed provisions dealing with situations where a visa was issued on the written authorisation of another Member State, and where visas were issued by more than one Member State.

³⁰⁸ Article 10.

³⁰⁹ Article 11.

³¹⁰ Article 12.

³¹¹ Article 13.

³¹² Article 14.

³¹³ Article 3(2).

³¹⁴ Article 15. In cases of pregnancy, serious illness, severe handicap or old age, Member States “shall normally” bring together the asylum seeker with another relative present in the territory of a Member State, “provided that family ties existed in the country of origin” (Article 15(2)).

application it has rejected.³¹⁵ These obligations cease where the applicant has left the Member States for three months or more.³¹⁶

Where a Member State believes another Member State is responsible for examining an application, and wants that State to take responsibility, it must request that State to take charge of the applicant within three months of the (later) application.³¹⁷ The requested Member State is obliged to make a decision on a request to take charge of an applicant within two months of a “take charge” request,³¹⁸ and within one month of a “take back” request.³¹⁹

Transfer of an applicant to the Member State responsible is required to take place within six months of acceptance of the take-charge request,³²⁰ such time being extendable to one year where the applicant is imprisoned, or eighteen months where the applicant absconds.³²¹

The Regulation also attributes responsibility for examining an asylum application to the Member State that played the most important part in the applicant’s entry or residence in the Union. The Regulation requires the Member State responsible for an asylum applicant to take charge of the applicant throughout the asylum process, and to take back an applicant who is illegally in another Member State.

4.2.4.5 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 (“The Qualification Directive”)³²²

This Directive applies to all EU Member States except Denmark. The Directive was published in the Official Journal of the EU on 30 September 2004 and came into force twenty days later. Member States were required to bring into force domestic legislation necessary to comply with the Directive by 10 October 2006. Ireland ‘opted-in’ to the

³¹⁵ Article 16(1), (a) to (e).

³¹⁶ Article 16(3): unless the applicant is in possession of a valid residence document from the responsible Member State

³¹⁷ Article 17.

³¹⁸ Article 18. One month only is allowed in urgent cases under Article 18(6). Unheeded requests are construed as acceptances (Article 18(7)).

³¹⁹ Article 20(1)(b): Two weeks only are allowed where the request is based on Eurodac information.

³²⁰ Article 19(3) regarding “taking charge”; 20(1)(d) regarding “taking back”. Time runs from the decision on an appeal where there is a suspensive effect.

³²¹ Article 19(4) regarding “taking charge; Article 20(2) regarding “taking back”.

³²² OJ L 304 of 30 September 2004, p. 12

Directive pursuant to Article 3 of the Protocol on the position of the United Kingdom and Ireland by way of notification dated 13 February 2002. In Ireland, the Directive is currently given domestic effect by the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006). The Immigration, Residence and Protection Bill 2008 proposes a new statutory scheme to comply with the Directive's provisions.

The purpose of this Directive is to establish minimum standards for the qualification of third country nationals and stateless persons as refugees or beneficiaries of subsidiary protection within the Member States, and also the minimum levels of rights and benefits attached to the protection granted. The Directive also sets out the benefits to be enjoyed by family members of the beneficiaries of refugee status or subsidiary protection status. Member States can apply more favourable standards than those set out in the Directive.³²³ The Directive obliges Member States to grant asylum to refugees,³²⁴ and Member States are expressly obliged to grant subsidiary protection to those eligible.³²⁵

The Directive defines "refugee" in terms similar to Refugee Convention, with the limitation that it can only apply to persons who are third country nationals and stateless persons.³²⁶ Article 10 provides guidance for each of the recognised Refugee Convention "Grounds" of race, religion, nationality, political opinion, and membership of a particular social group.³²⁷ With regard to the latter ground, Article 10(d) states that a group shall be considered to form a particular social group where in particular members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental that a person should not be forced to renounce it, and that group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society.³²⁸ The same section also states that, "depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation."

³²³ Article 3.

³²⁴ Article 13, Article 21 outlines the conditions for protection from *refoulement*.

³²⁵ Article 18.

³²⁶ For example, nationals of EU Member States are excluded. Article 2(c)

³²⁷ Article 10(2) provides that it is immaterial whether an applicant actually possesses the characteristic attracting persecution, provided that such characteristic is attributed to the applicant by the actor of persecution.

³²⁸ Recital 27 of the Directive states: "Family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status."

The Directive sets out guidance regarding actors of persecution and protection,³²⁹ recognises persecution from non-state actors,³³⁰ and recognises non-state authorities as possible actors or protection.³³¹ The Directive also provides that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of persecution or no real risk of serious harm and the applicant can reasonably be expected to stay in that part of the country.³³² The principle of internal protection may apply notwithstanding technical obstacles to returning to the country of origin.³³³ The Directive also contains guidance for identifying acts of persecution, and acknowledges that persecution can take the form of acts of a gender-specific or child-specific nature.³³⁴

A person eligible for subsidiary protection is defined as a third-country national or stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, would face a real risk of serious harm.³³⁵ Serious harm is stated to consist of (a) death penalty or execution; (b) torture or inhuman or degrading treatment or punishment, or (c) serious and individuated threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.³³⁶

An application for protection is to be carried out on an individual basis, and includes taking into account, *inter alia*, all relevant facts regarding the country of origin at the time of the decision, the relevant statements and documentation presented by the applicant including information regarding past persecution and harm, and the individual and personal circumstances of the applicant.³³⁷ Article 5 provides guidance concerning applications submitted *sur place*. It acknowledges that a well-founded fear of persecution can be based either on events that have taken place since an applicant leaves his or her country of origin, or on an applicant's activities since s/he left the country of origin.

The Directive outlines the conditions under which a person may be excluded from refugee status, and when refugee status may cease or be

³²⁹ Articles 6 and 7.

³³⁰ Article 6(c).

³³¹ Article 7(1)(b).

³³² Article 8.

³³³ Article 8(3).

³³⁴ Article 9.

³³⁵ Article 2(e).

³³⁶ Article 15.

³³⁷ Article 4(3).

revoked.³³⁸ The Directive contains analogous provisions in respect of beneficiaries of subsidiary protection.³³⁹

The Directive details the conditions under which persons with refugee status and subsidiary protection have rights to residence permits,³⁴⁰ travel documents,³⁴¹ freedom of movement,³⁴² access to employment,³⁴³ access to education,³⁴⁴ social welfare,³⁴⁵ health care,³⁴⁶ accommodation,³⁴⁷ and integration facilities.³⁴⁸

Member States are obliged to provide for family unity and to ensure “an adequate standard of living” for family members.³⁴⁹ Family members are defined in the Directive as the beneficiary’s spouse or unmarried partner in a stable relationship, and their unmarried and dependent minor children, in so far as the family existed in the country of origin and, and in so far as they are present in the Member State where the application for international protection is made.³⁵⁰

³³⁸ Articles 11, 12 and 14. While Articles 11 and 12 are substantively similar to the comparable provisions in the Refugee Convention, Article 14(4) allows Member States to revoke or refuse asylum for reasons of national security.

³³⁹ Articles 16, 17 and 19.

³⁴⁰ Article 24: Residence permits for refugees must be valid for three years and renewable. Residence permits for those with subsidiary protection must be valid for one year and renewable.

³⁴¹ Article 25: Travel documents for refugees are stated as for the purpose of travel outside the Member State’s territory. Travel documents for those with subsidiary protection are stated as to “enable them to travel, at least when serious humanitarian reasons arise that require their presence in another State.”

³⁴² Article 32: “...under the same conditions and restrictions as those provided for other third country nationals legally resident...”

³⁴³ Article 26. With regard to those with subsidiary protection, Article 26(3) states “The situation of the labour market in the Member States may be taken into account, including for possible prioritisation of access to employment for a limited period of time to be determined in accordance with national law.”

³⁴⁴ Article 27.

³⁴⁵ Article 28.

³⁴⁶ Article 29. Article 29(2) states that Member States may limit health care granted to beneficiaries of subsidiary protection to core benefits. Recital 34 provides guidance as to the meaning of core benefits: “assistance in case of illness, pregnancy and parental assistance”.

³⁴⁷ Article 31: “The Member States shall ensure that beneficiaries [of protection] have access to accommodation under equivalent conditions as other third country nationals legally resident in their territories.”

³⁴⁸ Article 33. Facilitation of integration for refugees is mandatory under Article 33(1). Article 33(2) provides that “where it is considered appropriate by Member States”, beneficiaries of subsidiary protection shall be granted access to such programmes.

³⁴⁹ Article 23.

³⁵⁰ Article 2(h).

As will be noted, the Directive distinguishes between the rights and benefits accruing to those with refugee status and those who receive subsidiary protection by allowing Member States to withhold, or grant lesser, rights to beneficiaries of subsidiary protection.

4.2.4.6 Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (“The Procedures Directive”)³⁵¹

The Directive applies to all Member States except Denmark. The Member States were required to have domestic legislation in place complying with the Directive by 1 December 2007.³⁵² The legislation applies to applications for asylum lodged after 1 December 2007. The Immigration, Residence and Protection Bill 2008 proposes new legislative provisions to give effect to the Directive.

The purpose of the Directive is to establish minimum standards for procedures within EU Member States for granting and withdrawing refugee status.³⁵³ The Directive is divided into six chapters dealing with, respectively, general provisions,³⁵⁴ basic principles and guarantees,³⁵⁵ procedures at first instance,³⁵⁶ procedures for withdrawal of refugee status,³⁵⁷ appeals procedures,³⁵⁸ and general provisions.³⁵⁹

The Directive provides asylum seekers with certain rights and guarantees, including the right to access the procedure,³⁶⁰ the right to remain in the Member State pending examination of an asylum application,³⁶¹ and the right to an effective remedy.³⁶²

Article 8 sets out the requirements for the examination of applications. Member States are required to ensure that applications for asylum are neither rejected nor excluded on the sole ground that they were not

³⁵¹ OJ L 326, 13 December 2005, p. 13.

³⁵² The date for legislation to comply with Article 15 (regarding the right to legal assistance and representation) is 1 December 2008.

³⁵³ Article 5 allows Member States to introduce more favourable standards.

³⁵⁴ Articles 1-5.

³⁵⁵ Articles 6-22.

³⁵⁶ Articles 23-36.

³⁵⁷ Articles 37 and 38.

³⁵⁸ Article 39.

³⁵⁹ Articles 40-46.

³⁶⁰ Article 6. Article 6(1) allows Member States to require that applications for asylum be made in person or at a designated place.

³⁶¹ Article 7. The right to remain lasts only until the first-instance decision is made (Article 7(1)). This Article also provides that the right to remain shall not constitute an entitlement to a residence permit.

³⁶² Article 39.

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made as soon as possible.³⁶³ Member States are required to ensure that decisions are taken after an appropriate examination.³⁶⁴ The first-instance examination procedure is laid out in Article 23.³⁶⁵

Articles 15 and 16 set out provisions on legal assistance and representation. Member States are required to allow applicants to consult a legal advisor at their own cost.³⁶⁶ Free legal assistance must be granted on request in the event of a negative decision at first instance.³⁶⁷

Article 17 sets out guarantees for unaccompanied minors. Member States are required to take measures to ensure that a representative assists any minor.³⁶⁸ Member States may refrain, however, from appointing a representative, *inter alia*, where the minor will in all likelihood reach 18 years of age before a first instance decision is taken.³⁶⁹ Interviews are to be conducted and decisions prepared by people with the necessary knowledge of the special needs of minors.³⁷⁰ Member States are permitted to use medical examinations to determine the age of an unaccompanied minor.³⁷¹

Member States are not permitted to hold a person in detention for the sole reason of being an asylum applicant.³⁷² Where an applicant for asylum is detained, Member States are required to ensure that there is a possibility of speedy judicial review.³⁷³

Articles 19 and 20 deal with withdrawal of refugee status. Member States are obliged to ensure that a decision is taken either to discontinue or

³⁶³ Article 8(1).

³⁶⁴ Article 8(2) provides that Member States shall ensure, *inter alia*, that precise and up-to-date country of origin information is obtained (Article 8(2)(b)).

³⁶⁵ Article 23(3) allows Member States to prioritise or accelerate any application. Article 23(4) allows Member States to prioritise or accelerate certain categories of application, and provides fifteen applicable categories, including where an applicant has only raised irrelevant issues (23(4)(a), where an applicant “clearly does not qualify” (23(4)(b), where the applicant’s is considered unfounded because the applicant comes from a safe country of origin or a safe third country (23(4)(c)), and where an applicant failed without reasonable cause to make the application earlier (23(4)(i)).

³⁶⁶ Article 15(1).

³⁶⁷ Article 15(2): Such legal assistance need not cover onward appeals or reviews, including a re-hearing following review (Article 15(3)(a)). Member States may provide that free legal assistance be given only to those who lack sufficient resources, or only of the appeal is likely to succeed (15(3)(b), (d)).

³⁶⁸ Article 17(1).

³⁶⁹ Article 17(2).

³⁷⁰ Article 17(4).

³⁷¹ Article 17(5).

³⁷² Article 18(1).

³⁷³ Article 18(2).

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reject the application where an applicant explicitly withdraws a claim.³⁷⁴ Where there is reasonable cause to consider that an applicant has implicitly withdrawn or abandoned a claim, Member States are obliged to ensure that a decision is taken either to discontinue or reject a claim “on the basis that the applicant has not established an entitlement to refugee status in accordance with Directive 2004/83/EC.”³⁷⁵

Article 26 deals with the ‘first country of asylum’ concept. A country can be considered to be a first country of asylum where an applicant has been recognised as a refugee or enjoys protection in that country. Article 27 deals with the safe third country concept, and provides that Member States may apply the safe third country concept where “the competent authorities” are satisfied that a person who is seeking asylum will be treated in accordance with certain principles,³⁷⁶ and that the application of the concept shall be subject to nationally legislated rules.³⁷⁷

Articles 29, 30 and 31 deal with the concept of the safe country of origin. Articles 29 and 30 provide for the designation of a third country as a safe country of origin. Article 29 provides for the adoption of a “minimum common list of third countries regarded as safe countries of origin”, by way of the European Council acting by a qualified majority after a proposal from the European Commission.³⁷⁸ Member States can retain or introduce domestic legislation designating third countries other than those on the minimum common list as safe countries of origin.³⁷⁹ A designated safe country of origin may be considered safe for a particular applicant where the applicant is either a national of the country or was formally habitually resident there and has not submitted any “serious grounds” for considering the country not to be safe in the particular circumstances of the case in accordance with Directive 2004/83/EC.³⁸⁰

Under Article 36 Member States are permitted to provide that no examination of an asylum application shall take place where it is established that the asylum applicant is seeking to enter or has entered the Member State from a safe third country.³⁸¹ Article 36(3) provides for the adoption of a “common list of safe third countries”, by way of the

³⁷⁴ Article 19(1).

³⁷⁵ Article 20(1).

³⁷⁶ These principles are set out at 27(2), (a) to (d).

³⁷⁷ The categories of domestically legislation rules applicable are set out at 27(2)(a) to (c).

³⁷⁸ Article 29(1) & (2) have been annulled by the ECJ in *Case C-133/06 Parliament v Council*, Unreported, 06/05/2008.

³⁷⁹ Article 30.

³⁸⁰ Article 31.

³⁸¹ Article 36(2) provides the criteria for considering whether a third country is safe.

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European Council acting by a qualified majority after a proposal from the European Commission.³⁸²

Articles 37 and 38 deal with procedures for a withdrawal of refugee status. An examination to withdraw may commence when “new elements or findings arise indicating that there are reasons to reconsider the validity” of the applicant’s refugee status.³⁸³ Article 38 sets out the procedural rules for withdrawal. A refugee has a right to submit reasons why refugee status should not be withdrawn.³⁸⁴ Certain guarantees including the refugee’s right to legal advice, and the UNHCR’s right “to have access to applicants for asylum” are suspended until a decision has been taken.³⁸⁵ Member States may decide that refugee status will lapse where there are changed circumstances or when the refugee renounces refugee status.³⁸⁶

The Directive also sets out provisions for appeals procedures and the right to an effective remedy. Member States are required to ensure that applicants have the right to an effective remedy before a court or tribunal against certain decisions in the process.³⁸⁷

³⁸² Article 36(3) has been annulled by the ECJ in *Case C-133/06 Parliament v Council*, Unreported, 06/05/2008. See section 5.4.1 of this text.

³⁸³ Article 37(1).

³⁸⁴ Article 38(1).

³⁸⁵ Article 38(3).

³⁸⁶ Article 38(4).

³⁸⁷ Article 39(3)(b) requires Member States to provide rules dealing with measures where the remedy does not allow applicants to remain in the Member State pending its outcome.

A4.1 APPENDIX: SCHEDULE OF EU LEGAL INSTRUMENTS

A4.1.1 Immigration

A. Legal Instruments (adopted after entry into force of the Amsterdam Treaty (1st May 1999))

Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals, OJ L 149, 2 June 2001, p. 34.	Opt In – Yes. Measure has not yet been transposed into Irish law. ⁴¹³
Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, OJ L 187, 10 July 2001, p.45.	Opt In – No.
Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals, OJ L 157, 15 June 2002, p. 1.	Ireland opted out initially, but later requested it take part. ⁴¹⁴

⁴¹³ The Minister for Justice, Equality and Law Reform has stated that the original deadline for implementation only applied to Schengen Member States, and that a draft Directive on common standards on procedures in Member States for returning illegally staying third country nationals will repeal much of this Directive (Parliamentary Question No. 239, 25 June 2008).

⁴¹⁴ Commission Opinion on the request by Ireland to take part in Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third country nationals COM/2007/0506 final. Note that the Regulation has been amended by Council Regulation(EC) No 380/2008 of 18 April 2008

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Council Framework Decision 2002/496 of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, OJ L 328, 5 December 2002, p.1.	Opt In – Yes ⁴¹⁵ Measure not transposed into Irish law.
Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence, OJ L 328, 5 December 2002, p. 17.	Opt In – Yes. ⁴¹⁶
Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3 October 2003, p. 12.	Opt In – No.
Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air, OJ L 321, 6 December 2003, p. 26.	Opt In – No.
Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23 January 2004, p. 44.	Opt In – No.
Directive 2004/38/EC of the European Parliament and Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), OJ L 158, 30 April 2004, p. 77.	Opt In – Not Relevant – Not a Title IV Measure. Transposed through S.I. No. 656 of 2006, The European Communities

⁴¹⁵ Recital 8: “Ireland is taking part in this framework Decision in accordance with Article 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, and Article 6(2) of Council Decision 2002/192/EC of 28 February 2002 concerning Ireland’s request to take part in some of the provisions of the Schengen *acquis*”.

⁴¹⁶ The Minister for Justice, Equality and Law Reform has stated that the original deadline for implementation only applied to Schengen Member States, and that the legislative changes required to transpose the Directive are expected to be published later in 2008 (Parliamentary Question No. 239, 25 June 2008).

⁴¹⁷ The European Court Of Justice has held that the Irish statutory instrument was not compatible with the Directive. See section 5.8.3 of this text, and in particular *Case C-*

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(Free Movement
of Persons)
Regulations
2006.⁴¹⁷

Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network, OJ L 64, 2 March 2004, p. 1.

Ireland opted into this decision by default as a consequence of opting into Council Decision 2002/192/EC.

Council Decision 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals, OJ L 60, 27 February 2004, p.55.

Opt In – No.

Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ L 261, 6 August 2004, p. 19.

Opt In – No.

Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders, OJ L 261, 6 August 2004, p. 28.

Opt In – Yes.

Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data, OJ L 261, 6 August 2004, p. 24.

Ireland opted into this decision by default as a consequence of

127/08 Metock and Ors v Minister for Justice, Equality and Law Reform, Unreported, European Court of Justice, 25/07/2008.

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opting into
Council
Decision
2002/192/EC.⁴¹⁸

Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, OJ L 375, 23 December 2004, p. 12.

Opt In – No.

Council Decision 2004/927/EC of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty, OJ L 396, 31 December 2004, p. 45.

Opt In – Yes.

Council Decision 2005/267/EC of 16 March 2005 establishing a secure web-based Information and Coordination Network for Member States' Migration Management Services, OJ L 83, 1 April 2005, p. 48.

Opt In – No.

Commission Decision 2005/687/EC of 29 September 2005 on the format for the report on the activities of immigration liaison officers networks and on the situation in the host country in matters relating to illegal immigration (notified under document number C (2005) 1508), OJ L 264, 8 October 2005, p. 8.

Opt In – No.⁴¹⁹

Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L 289, 3 November 2005, p. 15.

Opt In – Yes.
Dealt with by
administrative
“Scheme for

⁴¹⁸ The Minister for Justice, Equality and Law Reform has stated that the original deadline for implementation only applied to Schengen Member States, and that the Immigration, Residence and Protection Bill will, in the main, provide the legislative vehicle for implementing the Directive's provisions.

⁴¹⁹ Recital 8: “The participation of the United Kingdom and Ireland in this Decision in accordance with Article 8(2) of Decision 2000/365/EC and Article 6(2) of Decision 2002/192/EC relates to the responsibilities of the Community for taking measures developing the provisions of the Schengen *acquis* against the organisation of illegal immigration in which the United Kingdom and Ireland participate.”

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	Accreditation of Research Organisations” under powers provided by existing legislation.
Commission Decision of 15 December 2005 laying down detailed rules for the implementation of Council Decision 2005/267/EC establishing a secure web-based Information and Co-ordination Network for Member States’ migration management services (C (2005) 5159, not yet published).	Opt In – No.
Council Decision 2006/688/EC of 5 October 2006 on the establishment of a mutual information mechanism concerning Member States’ measures in the areas of asylum and immigration, OJ L 283, 14 October 2006, p. 40.	Opt In – Yes.
Regulation (EC) No. 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation, OJ L 378, 27 December 2006.	Opt in not relevant – Not a Title IV measure.
Council Decision No. 2007/435/EC of 25 June 2007 establishing the European Fund for the Integration of third country nationals for the period 2007 to 2013 as part of the General Programme “Solidarity and Management of Migration Flows”, OJ L 168, 28 June 2007, p.18.	Opt In – Yes.
Decision No 572/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme “Solidarity and Management of Migration Flows”, OJ L 144, 6 June 2007, p.45.	Opt In – Yes.
Regulation (EC) No. 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers, OJ L 199, 31 July 2007, p.23.	Opt In Not Relevant – Not a Title IV Measure.

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Council Regulation (EC) No 380/2008 of 18 April 2008 amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals, OJ L 115, 29 April 2008, p. 1. Opt In – Yes.

B. International Agreements

Council Decision of 17 December 2003 concerning the conclusion of the Agreement between the European Community and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation, OJ L 17, 24 January 2004, p. 23. Opt In – Yes.

Agreement between the European Community and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation, OJ L 17, 24 January 2004, p.25. Opt In – No.

Information on the entry into force of the Agreement between the European Community and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation, OJ L 64, 2 March 2004, p.38. Opt In – Not Applicable.

Council Decision 2004/424/EC of 21 April 2004 concerning the conclusion of the Agreement between the European Community and the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation, OJ L 143, 30 April 2004, p. 97; entered into force on June 1, 2004. Opt In – No.

Agreement between the European Community and the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation, OJ L 143, 30 April 2004, p.99. Opt In – Not Applicable.

Information concerning the entry into force of the Agreement between the European Community and the Opt In – Not Applicable.

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Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation, OJ L 258, 5 August 2004, p.17.

Information relating to the entry into force of the Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation, OJ L 96, 5 April 2006, p.9. Opt In – Not Applicable.

Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation, OJ L 124, 17 May 2005, p.22. Opt In – Not Applicable.

Council Decision 2005/372/EC of 3 March 2005 concerning the conclusion of the Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation, OJ L 124, 17 May 2005, p.41. Opt in – No.

Council Decision 2005/809/EC of 7 November 2005 concerning the conclusion of the Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation, OJ 304, 23 November 2005, p.14. Opt in – No.

Council Decision of 22 May 2006 (no 9287/06) concerning the signing of the Agreement between the EC and Russia on readmission (not yet published). Opt in – No.

Council Decision of 24 July 2006 on the conclusion, on behalf of the European Community, of the Protocol to prevent, suppress and punish trafficking in human beings, especially women and children, supplementing the United Nations Convention against Transnational Organised Crime concerning the provisions of the Protocol, in so far as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty establishing the European Community, OJ L 262, 22 September 2006, p.51. Ireland is partially bound.⁴²⁰

⁴²⁰ Recital 5: "This Decision is without prejudice to the position of the United Kingdom and Ireland under the Protocol integrating the Schengen acquis into the

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Council Decision of 24 July 2006 on the conclusion, on behalf of the European Community, of the Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention against Transnational Organised Crime concerning the provisions of the Protocol, in so far as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty establishing the European Community, OJ L 262, 22 September 2006, p.34.	Ireland is partially bound. ⁴²¹
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Ukraine (final text of agreement initialled at EU-Ukraine summit on 27 October 2006).	Opt in – No.
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Council Decision of 19 April 2007 (2007/341/EC) concerning the signing of the Agreement between the EC and Russia on readmission, OJ L 129, 17 May 2007, p.40.	Opt in – No.
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framework of the European Union and under the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, hence the UK and Ireland are not bound by this Decision to the extent that it concerns the exercise of an external power by the Community in fields where its internal legislation does not bind the UK and/or Ireland.”

⁴²¹ Recital 5: “This Decision is without prejudice to the position of the United Kingdom and Ireland under the Protocol integrating the Schengen acquis into the framework of the European Union and under the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, hence the UK and Ireland are not bound by this Decision to the extent that it concerns the exercise of an external power by the Community in fields where its internal legislation does not bind the UK and/or Ireland.”

A4.1.2 ASYLUM

A. Legal Instruments adopted after entry into force of the Amsterdam Treaty (1st May 1999))

Council Decision 2000/596/EC of 28 September 2000 establishing a European Refugee Fund, OJ L 252, 6 October 2000, p.12	Opt In – Yes.
Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention, OJ L 316, 15 December 2000, p.1.	Opt In – Yes.
Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212, 7 August 2001, p. 12.	Opt In – Yes. Ireland opted out initially, but later requested it take part. Council Decision 2003/690/EC of 2nd October 2003 deemed that the Directive applied to Ireland. The Immigration, Residence, and Protection Bill 2008 proposes compliant provisions.
Council Decision 2002/223/EC of 19 December 2001 on the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the United	Opt in not relevant – Not a Title IV

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Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) concerning additional funding in 2001 under the current EC-UNRWA Convention for the years 1999 to 2001, OJ L 075, 16 March 2002, p.46.	measure.
Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of “Eurodac” for the comparison of fingerprints for the effective application of the Dublin Convention, OJ L 62, 5 March 2002, p. 1.	Opt In – Yes.
Council Decision 2002/463/EC of 13 June 2002 adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO programme), OJ L 161, 19 June 2002, p. 11.	Opt In – No.
Council Decision 2002/817/EC of 23 September 2002 on the conclusion of the Convention between the European Community and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) concerning aid to refugees in the countries in the Near East (2002 to 2005), OJ L 281, 19 October 2002, p.10.	Opt in not relevant – Not a Title IV measure.
Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ L 31, 6 February 2003, p. 18.	Opt In – No
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, OJ L 50, 25 February 2003, p.1.	Opt In – Yes. Transposed through Refugee Act 1996 as amended; S.I. No. 423/2003: Refugee Act 1996 (Section 22) Order 2003; and S.I. No. 500/2004: Refugee Act 1996 (Section 22) (Amendment)

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Order 2004.

Commission Regulation (EC) No. 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 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, OJ L 222, 5 September 2003, p. 1.	Opt In – Yes. Transposed through Refugee Act 1996, as amended; S.I. No. 423/2003: Refugee Act 1996 (Section 22) Order 2003; and S.I. No. 500/2004: Refugee Act 1996 (Section 22) (Amendment) Order 2004.
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Commission Decision 2003/690/EC of 2 October 2003 on the request by Ireland to accept Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (notified under document number C(2003) 3428), OJ L 251, 3.10.2003, p. 23–23.	This Decision deemed operative Ireland's opt-in to Directive 2001/55/EC.
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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, OJ L 304, 30 September 2004, p. 12.	Opt In – Yes. Transposed through Refugee Act 1996 and S.I. No. 518 of 2006 - European Communities (Eligibility for Protection) Regulations, 2006.
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Regulation (EC) No. 491/2004 of the European Parliament and of the Council of 10 March 2004 establishing a programme for financial and technical assistance to third countries in the areas of migration and asylum (AENEAS), OJ L 80, 18 March 2004, p. 1.	Opt In – No.
Council Decision 2004/867/EC of 13 December 2004 amending Decision 2002/463/EC adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO programme), OJ L 371, 18 December 2004, p. 48.	Opt In – No.
Council Decision 2004/904/EC of 2 December 2004 establishing the European Refugee Fund for the period 2005 to 2010, OJ L 381, 28 December 2004 p. 52.	Opt In – Yes.
Council Decision 2004/927/EC of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty, OJ L 396, 31 December 2004 p. 45.	Opt In – Yes.
Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326, 13 December 2005, p. 13.	Opt In – Yes. The Minister for Justice, Equality and Law Reform has stated that Irish law is substantially in compliance with the terms of the Directive. The Immigration, Residence and Protection Bill 2008 includes provisions to restate the relevant law. ⁴²²

⁴²² Parliamentary Question No. 239, 25 June 2008.

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<p>Council Decision 2006/188/EC of 21 February 2006 on the conclusion of the Agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of Council Regulation (EC) No 343/2003 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 Council Regulation (EC) No 2725/2000 concerning the establishment of Eurodac for the comparison of fingerprints for the effective application of the Dublin Convention, OJ L 066, 8 March 2006, p. 37.</p>	<p>Opt In – Not Relevant.</p>
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<p>Commission Decision 2006/399/EC of 20 January 2006 laying down detailed rules for the implementation of Council Decision 2004/904/EC as regards the eligibility of expenditure within the framework of actions co-financed by the European Refugee Fund implemented in the Member States, OJ L 162, 14 June 2006, p.1.</p>	<p>Ireland opted into this decision by default as a consequence of opting into Decision 2004/904/EC.</p>
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<p>Commission Decision 2006/400/EC of 20 January 2006 laying down detailed rules for the implementation of Council Decision 2004/904/EC as regards procedures for making financial corrections in the context of actions co-financed by the European Refugee Fund, OJ L 162, 14 June 2006, p.11.</p>	<p>Ireland opted into this decision by default as a consequence of opting into Decision 2004/904/EC.</p>
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<p>Commission Decision 2006/401/EC of 20 January 2006 laying down detailed rules for the implementation of Council Decision 2004/904/EC as regards Member States management and control systems, and rules for the administrative and financial management of projects co-financed by the European Refugee Fund, OJ L 162, 14 June 2006, p.20.</p>	<p>Ireland opted into this decision by default as a consequence of opting into Decision 2004/904/EC.</p>
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<p>Council Decision EC 2006/688/EC of 5 October 2006 on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration, OJ L 283, 14 October 2006, p.40.</p>	<p>Opt In – Yes.</p>

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Regulation (EC) No. 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation, OJ L 378 of 27 December 2006, p.41.	Opt in not relevant - Not a Title IV measure.
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Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates, OJ L 381, 28 December 2006, p.1.	Opt in not relevant – Not a Title IV measure.
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Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II), OJ L 381, 28 December 2006, p.4.	Opt in not relevant – Not a Title IV measure.
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Decision No. 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General Programme “Solidarity and Management of Migration Flows” and repealing Council Decision 2004/904/EC, OJ L 144, 6 June 2007, p.1.	Opt In – Yes.
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Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General Programme ‘Solidarity and Management of Migration Flows’, OJ L 144, 6 June 2007, p 22.	Opt In – No.
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Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme ‘Solidarity and Management of Migration Flows’, OJ L 144, 6 June 2007, p 45.	Opt In – Yes.
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Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing	Opt in not relevant – Not a Title IV
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Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers, OJ L 199, 31 July 2007, p.23. measure.

Commission Decision 2002/307/EC of 18 December 2001 laying down detailed rules for the implementation of Council Decision 2000/596/EC as regards management and control systems and procedures for making financial corrections in the context of actions co-financed by the European Refugee Fund (notified under document number C(2001) 4372), OJ L 106 of 23 April 2002, p. 11. Opt In – Yes.

B. International Agreements

Council Decision 2001/258 of 15 March 2001 concerning the conclusion of an Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or Iceland or Norway, OJ L 93, 3 April 2001, p. 38. Opt In – Yes.

Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway, OJ L 93, 3 April 2001, p. 40. Opt In – Not Applicable.

Protocol to the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway, concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway, OJ L 57, 28 February 2006, p. 16. Opt In – Not Applicable.

Council Decision of 21 February 2006 on the conclusion of a Protocol to the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway, concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway, OJ L 57, 28 February 2006, p. 16. Opt In – Yes.

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L 57, 28 February 2006, p. 15.

Council Decision of 21 February 2006 on the conclusion of an Agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of Council Regulation (EC) No 343/2003 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 Council Regulation (EC) No 2725/2000 concerning the establishment of “Eurodac” for the comparison of fingerprints for the effective application of the Dublin Convention, OJ L 66, 8 March 2006, p. 37.

Opt In – Yes.

Information concerning the entry into force of the Agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of Council Regulation (EC) No 343/2003 and Council Regulation (EC) No 2725/2000 concerning the establishment of Eurodac, OJ L 96, 5 April 2006, p. 9.

Opt In – Not Applicable.

A4.2 APPENDIX: SCHEDULE OF INTERNATIONAL INSTRUMENTS IMPACTING IRISH IMMIGRATION AND ASYLUM LAW

A4.2.1 UN Conventions

Convention to Suppress the Slave Trade and Slavery (League of Nations, 1926)

Summary of Provisions	<p>Article 1(1): “Slavery” defined as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”</p> <p>Article 1(2): “The slave trade” defined as including “all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.”</p> <p>Article 2: Requirement that States undertake to take the necessary steps to prevent and suppress the slave trade, and bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms.</p>
Signed/ Ratified	Ratified: 18/06/1930

Charter of the United Nations (1945)

Summary of Provisions	<p>Chapter I: Statement of the purposes of the United Nations, including the provisions of the maintenance of international peace and security.</p> <p>Chapter II: Definition of the criteria for membership in the United Nations.</p> <p>Chapters III-XV: Description of the organs and institutions of the UN and their powers.</p> <p>Chapters XVI & XVII: Description of the arrangements for integrating the UN with established international law.</p> <p>Chapters VI & VII: The Security Council’s power to investigate</p>
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and mediate disputes, and powers to authorise economic, diplomatic, and military sanctions, as well as the use of military force, to resolve disputes.

Chapters IX & X: The UN's powers for economic and social cooperation, and description of the Economic and Social Council.

Chapter XIV: Establishes the powers of the International Court of Justice.

**Signed/
Ratified**

Ratified: 14/12/1955

Convention on the Prevention and Punishment of the Crime of Genocide (1948, in force 1951)

**Summary of
Provisions**

Article 1: "Genocide" defined as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article 1: Confirmation that genocide, whether committed in time of peace or in time of war, is a crime under international law which the contracting parties undertake to prevent and to punish.

Article 5: Undertaking by States to enact domestic legislation to provide effective penalties for persons guilty of genocide.

**Signed/
Ratified**

Signed: 17/08/1949

Ratified: 09/03/1950

**Reservations/
Declarations**

Objection: (22 December 1989)

"The Government of Ireland is unable to accept the second reservation made by the United States of America on the occasion of its ratification of the [said] Convention on the grounds that as a generally accepted rule of international law a party to an international agreement may not, by invoking the terms of its internal law, purport to override the provisions of the Agreement."

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Universal Declaration of Human Rights (UDHR) (1948)

Summary of Provisions	Article 3: Right to life. Article 4: Right to freedom from slavery. Article 5: Right to freedom from torture. Article 6: Right to recognition as a person before the law. Article 9: Prohibition of arbitrary arrest and detention. Article 10: Right to fair procedures. Article 11(1): Presumption of Innocence. Article 11(2): Right not to have criminal sanctions imposed retrospectively. Article 12: Right to privacy. Article 13: Right to free movement. Article 17: Right to private property. Article 18: Right to freedom of thought and religion. Article 18-20: Right to freedom of expression, assembly and association. Article 21: Right to take part in public affairs; to equal access to public services; and to vote in genuine elections. Article 22: Right to social security. Article 23: Right to work; just conditions of employment; and food, clothing and housing. Right to unemployment protection. Article 23(4): Right to join a trade union. Article 25: Right to medical care. Article 26: Right to education. Article 27: Right to cultural expression.
Signed/ Ratified	Ratified: 10/12/1948

Geneva Conventions on Humanitarian Law (Last revised and ratified 1949)

Summary of Provisions	Note on the Conventions and the Protocols: First Geneva Convention “for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field”. Second Geneva Convention “for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea”. Third Geneva Convention “relative to the Treatment of Prisoners of War”. Fourth Geneva Convention “relative to the Protection of Civilian Persons in Time of War”. (All four conventions were last revised and ratified on 12/08/1949.) Protocol I (1977): Protocol Additional to the Geneva Conventions
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of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts.

Protocol II (1977): Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts.

Protocol III (2005): Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem.

**Signed/
Ratified** Signed: 19/12/1949
Ratified: 27/09/1962
Protocols I & II Ratified: 19/05/1999

Convention Relating to the Status of Refugees (Geneva, 1951)

Summary of Provisions Article 1A: Refugee definition: A refugee is someone who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”
Article 1C: Cessation of refugee status.
Article 1D, E & F: Exclusion from refugee status.
Article 33: Prohibition of refoulement.
Chapter 2: Judicial status of refugees.
Chapter 3: Employment rights of refugees.
Chapter 4: Welfare rights of refugees.

**Signed/
Ratified** Signed: 01/08/1951
Ratified: 01/10/1954
Acceded: 29/11/1956

Implemented Given effect in the Refugee Act 1996 (c.f., the Immigration, Residency and Protection Bill 2008).

Protocol on the Convention Relating to the Status of Refugees (New York, 1967)

Summary of Provisions Article 1: Removal of temporal limitation in Article 1 of the 1951 Refugee Convention, rendering the refugee definition in Article 1A of the 1951 Convention applicable after 01/01/1951.

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**Signed/
Ratified** Ratified: 06/11/1968

Implemented Given effect in the Refugee Act 1996.

Convention on the Nationality of Married Women (1957, in force 1958)

Summary of Provisions Article 1: Requirement that States agree that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife.
Article 2: Requirement that States agree that neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national.
Article 3: Requirement that States agree that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures.

**Signed/
Ratified** Signed: 24/09/1957
Ratified: 25/11/1957

Convention on the Reduction of Statelessness (1961)

Summary of Provisions Articles 1-4: Provide principles for the granting of nationality at birth to avoid statelessness.
Article 5: Requirement that if a law entails loss of nationality, such loss shall be conditional upon the person acquiring another nationality.
Article 6: Requirement that if a law entails loss of nationality by a spouse or child by virtue of the loss of nationality by the other spouse or a parent, such loss shall be conditional on the person's possession or acquisition of another nationality.
Article 7: Requires that laws for the renunciation of a nationality shall be conditional upon a person's acquisition or possession of another nationality.
Article 8: Principle that contracting States shall not deprive people of their nationality so as to render them stateless.
Article 9: Prohibition of deprivation of nationality on racial, ethnic, religious or political grounds.
Article 10: Requirement that statelessness does not occur as a result of transfer of territory between States.
Article 11: Allows individuals to apply to the UNHCR to claim the benefit of the Convention.

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Signed/ Ratified	Signed: 30/08/1961 Not Ratified
Reservations/ Declarations	Reservation: “In accordance with paragraph 3 of Article 8 of the Convention Ireland retains the right to deprive a naturalised Irish citizen of his citizenship pursuant to Section 19 (1) (b) of the Irish Nationality and Citizenship Act, 1956, on grounds specified in the aforesaid paragraph.”

**International Convention on the Elimination of All Forms of Racial
Discrimination (ICERD) (1965, in force 1969)**

Summary of Provisions	Article 1: Racial discrimination defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” Article 2: Obligation on States to pursue by all appropriate means and without delay a policy of eliminating racial discrimination, and to undertake to prohibit racial discrimination.
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Signed/ Ratified	Signed: 21/03/1968 Ratified: 29/12/2000
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Reservations/ Declarations	Reservation/Interpretative declaration: “Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the measures specifically described in sub-paragraphs (a), (b) and (c) shall be undertaken with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of the Convention. Ireland therefore considers that through such measures, the right to freedom of opinion and expression and the right to peaceful assembly and association may not be jeopardised. These rights are laid down in Articles 19 and 20 of the Universal Declaration of Human Rights; they were reaffirmed by the General Assembly of the United Nations when it adopted Articles 19 and 21 of the International Covenant on Civil and Political Rights and are referred to in Article 5 (d)(viii) and (ix) of the present Convention.”
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**International Covenant on Economic, Social and Cultural Rights (ICESC)
(1966, in force 1976)**

Summary of Provisions Article 6: Right to work.
Article 7: Right to just conditions of employment.
Article 8: Right to join a trade union.
Article 9: Right to social security.
Article 10: Family rights.
Article 11(1): Right to food, clothing and housing.
Article 12: Right to medical care.
Articles 13 & 14: Right to education.
Article 15: Right to cultural expression.

**Signed/
Ratified** Signed: 01/10/1973
Ratified: 08/12/1989

**International Covenant on Civil and Political Rights (ICCPR) (1966, in force
1976)**

Summary of Provisions Article 6: Right to life.
Article 7: Right to freedom from torture.
Article 8: Right to freedom from slavery.
Article 9: Right to liberty.
Article 10: Rights of prisoners.
Article 12: Right to free movement.
Article 14: Right to fair procedures before the law.
Article 15: Right not to have criminal sanctions imposed retrospectively.
Article 16: Right to recognition as a person.
Article 17: Right to privacy.
Article 18: Right to freedom of thought and religion.
Articles 19-22: Rights to freedom of expression, association and assembly.
Article 22: Right to membership of a trade union.
Article 25(a): Right to take part in public affairs.
Article 25(c): Right to equal access of public services.
Article 25(b): Right to vote in genuine elections.
Article 23: Family rights.

**Signed/
Ratified** Signed: 01/10/1973
Ratified: 08/12/1989

**Reservations/
Declarations** Article 10, paragraph 2: Ireland accepts the principles referred to in paragraph 2 of Article 10 and implements them as far as practically possible. It reserves the right to regard full implementation of

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these principles as objectives to be achieved progressively.

Article 14: Ireland reserves the right to have minor offences against military law dealt with summarily in accordance with current procedures, which may not, in all respects, conform to the requirements of Article 14 of the Covenant.

Article 19, paragraph 2: Ireland reserves the right to confer a monopoly on or require the licensing of broadcasting enterprises.

Article 20, paragraph 1: Ireland accepts the principle in paragraph 1 of Article 20 and implements it as far as it is practicable. Having regard to the difficulties in formulating a specific offence capable of adjudication at a national level in such a form as to reflect the general principles of law recognised by the community of nations as well as the right to freedom of expression, Ireland reserves the right to postpone consideration of the possibility of introducing some legislative addition to, or variation of, existing law until such time as it may consider that such is necessary for the attainment of the objective of paragraph 1 of Article 20.

Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)

Summary of Provisions Enables individuals who claim that their ICCPR rights and freedoms have been violated to call the State in question to account for its actions.

Signed/Ratified Ratified: 08/12/1989

Reservations/Declarations Ireland does not accept the competence of the Human Rights Committee to consider a communication from an individual if the matter has already been considered under another procedure of international investigation or settlement.

Article 2, paragraph 2: "In the context of Government policy to foster, promote and encourage the use of the Irish language by all appropriate means, Ireland reserves the right to require, or give favourable consideration to, a knowledge of the Irish language for certain occupations."

Article 13, paragraph 2(a): "Ireland recognises the inalienable right and

duty of parents to provide for the education of children, and, while recognising the State's obligations to provide for free primary education and requiring that children receive a certain minimum education, nevertheless reserves the right to allow parents to provide for the education of their children in their homes provided that these minimum standards are observed."

Optional Protocol 2 to the International Covenant on Civil and Political Rights (ICCPR)

Summary of Provisions Article 1: Prohibition of the death penalty.
Signed/Ratified Ratified: 18/06/1993

International Convention on the Elimination of Discrimination Against Women (CEDAW) (1979, in force 1981)

Summary of Provisions Article 1: “Discrimination against women” defined as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Article 2: Obligation on States to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, and a requirement that States undertake to enshrine male and female equality in domestic legislation, adopt new provisions prohibiting discrimination against discrimination against women, and repeal all national penal laws which constitute discrimination against women.

Signed/Ratified Ratified: 23/12/1985

Reservations/Declarations Comments:
On 19 December 1986, the Government of Ireland notified the Secretary-General of its withdrawal of the following reservations made upon accession:

Article 9(1): Pending the proposed amendment to the law relating to citizenship, which is at an advanced stage, Ireland reserves the right to retain provisions in its existing law concerning the acquisition of citizenship on marriage.

Article 15: With regard to paragraph 4 of this Article, Ireland observes the equal rights of women relating to the movement of persons and the freedom to choose their residence; pending the proposed amendment of the law of domicile, which is at an advanced stage, it reserves the right to retain its existing law.

Article 11 (1) and 13(a)

... and pending the coming into force of the Social Welfare

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(Amendment) (No. 2) Act, 1985, to apply special conditions to the entitlement of married women to certain social security schemes.

Reservations:

Articles 16, 1 (d) and (f): Ireland is of the view that the attainment in Ireland of the objectives of the Convention does not necessitate the extension to men of rights identical to those accorded by law to women in respect of the guardianship, adoption and custody of children born out of wedlock and reserves the right to implement the Convention subject to that understanding.

Articles 11 (1) and 13 (a): Ireland reserves the right to regard the Anti-Discrimination (Pay) Act, 1974 and the Employment Equality Act 1997 and other measures taken in implementation of the European Economic Community standards concerning employment opportunities and pay as sufficient implementation of Articles 11, 1 (b), (c) and (d).

Ireland reserves the right for the time being to maintain provisions of Irish legislation in the area of social security which are more favourable to women than men.

Optional Protocol to the Convention on the Elimination of Discrimination Against Women providing for an individual complaints procedure (CEDAW)

Summary of Provisions Article 2: Enables individuals or groups to submit individual complaints to the Committee on the Elimination of Discrimination against Women.

**Signed/
Ratified** Ratified: 07/09/2000

International Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) (1984, in force 1987)

Summary of Provisions Article 1: "Torture" defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

Article 2: Obligation on States to take effective measures to

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prevent acts of torture in any territory under its jurisdiction. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

Article 3: Prohibition on refoulement or extradition of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

Article 16: Requirement that States undertake to prevent other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Signed/ Ratified	Signed: 28/09/1992 Ratified: 11/04/2002
Reservations/ Declarations	Declaration: “Ireland declares, in accordance with Article 21 of the Convention, that it recognises the competence of the Committee against Torture to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. “Ireland declares, in accordance with Article 22 of the Convention, that it recognises the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention.”
Implemented	Given effect in the Criminal Justice (United Nations Convention Against Torture) Act 2000, as amended by the Criminal Justice Act 2006.

Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Summary of Provisions Establishes “a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment”.

**Signed/
Ratified** Signed: 02/10/2007
Not Ratified

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European Convention for the Prevention of Torture (1987, in force 2002)

Summary of Provisions	Article 1: Establishes the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.
Signed/ Ratified	Signed: 14/03/1988 Ratified: 14/03/1988

International Convention on the Rights of the Child (CRC) (1989, in force 1990)

Summary of Provisions	Article 3(1): Requirement that States act in the best interest of the child. Article 6: Right to life of the child. Article 8: Right to name and identity. Article 7: Right to be raised by his or her parents. Article 9: Right to have a relationship with both parents. Article 13: Right to freedom of expression. Article 14: Right to freedom of thought and religion. Article 15: Right to freedom of association and assembly. Article 16: Right to privacy. Article 19: Right to be protected from abuse or exploitation. Article 27: Prohibition of torture, death penalty, and arbitrary detention.
Signed/ Ratified	Signed: 30/09/1990 Ratified: 28/09/1992
Reservations/ Declarations	Declarations: Upon signature: "Ireland reserves the right to make, when ratifying the Convention, such declarations as it may consider necessary." Comments: With regard to the reservations made by Bangladesh, Djibouti, Indonesia, Jordan, Kuwait and Tunisia upon ratification by Myanmar and Thailand upon accession, by Pakistan upon signature and confirmed upon ratification, and by Turkey upon signature: "The Government of Ireland consider that such reservations, which seek to limit the responsibilities of the reserving State under the Convention, by invoking general principles of national law, may create doubts as to the commitment of those States to the object and purpose of the Convention." "This objection shall not constitute an obstacle to the entry into force of the Convention between Ireland and the aforementioned States."

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With regard to the reservation made by Iran (Islamic Republic of) upon ratification:

“The reservation poses difficulties for the States Parties to the Convention in identifying the provisions of the Convention which the Islamic Government of Iran does not intend to apply and consequently makes it difficult for States Parties to the Convention to determine the extent of their treaty relations with the reserving State.

The Government of Ireland hereby formally makes objection to the reservation by the Islamic Republic of Iran.”

With regard to the reservation made by Malaysia and Saudi Arabia upon accession:

“Ireland considers that this reservation is incompatible with the object and purpose of the Convention and is therefore prohibited by Article 51 (2) of the Convention. The Government of Ireland also considers that it contributes to undermining the basis of international treaty law. The Government of Ireland therefore objects to the said reservation.”

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Summary of Provisions Article 1: Requires States to ensure that children under 18 years are not recruited compulsorily into armed forces.

**Signed/
Ratified** Signed: 17/09/2000
Ratified: 18/11/2002

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Summary of Provisions Article 1: Prohibition of the sale of children, child prostitution and child pornography.
Article 3: Obligation on States to make certain activities relating to the sale and exploitation of children criminal offences.

**Signed/
Ratified** Signed: 07/09/2000
Not Ratified

Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC) (1990, in force 2003)

Summary of Article 9: Right to life.

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Provisions	Article 10: Prohibition of cruel, inhuman or degrading treatment. Article 11: Prohibition of slavery. Article 12: Freedom of thought, conscience and religion. Article 13: Freedom of expression. Article 14: Right to privacy. Article 15: Property rights. Articles 16-20: Due process. Article 20: Prohibition of arbitrary expulsion of migrant workers. Articles 25, 27-28, 43, 45, 54: Equality with nationals. Article 32: Right to transfer earnings, savings, and belongings. Article 33: Right of migrants to be informed of their rights in a language they understand. Article 39: Freedom of movement. Article 54, 18: Protection against employment contract violations. Articles 8-35: Fundamental rights of undocumented workers.
Signed/ Ratified	Not Signed Not Ratified

Rome Statute of the International Criminal Court (1998, in force 2002)

Summary of Provisions	Article 1: Establishes the International Criminal Court. Article 6: Definition of “genocide”. Article 7: Definition of “crime against humanity”. Article 8: Definition of “war crime”.
Signed/ Ratified	Signed: 07/10/1998 Ratified: 11/04/2002

Convention on the Protection of All Persons from Enforced Disappearance (2006)

Summary of Provisions	Article 1: Prohibition of invocation of a state of war, threat of war, internal political instability, or any other public emergency, as a justification for enforced disappearance. Article 2: “Enforced disappearance” defined as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.” Article 4: Requirement that enforced disappearance constitute an offence under national criminal law.
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Article 6: Widespread or systematic use of enforced disappearance is further defined as a crime against humanity.

**Signed/
Ratified** Signed: 29/03/2007
Not Ratified

Convention on the Rights of All Persons with Disabilities (2006, in force 2008)

Summary of Provisions Article 4: Requirement to develop and carry out policies, laws and administrative measures for securing the rights recognised in the Convention and abolish laws, regulations, customs and practices that constitute discrimination.
Article 5: Right of equality before the law.
Article 6: Obligation to ensure the equal rights and advancement of women and girls with disabilities.
Articles 8 & 23: Obligation to protect children with disabilities.
Article 9: Requirement that States identify and eliminate obstacles and barriers and ensure that persons with disabilities can access their environment, transportation, public facilities and services, and information and communications technologies.
Article 10: Obligation to guarantee that persons with disabilities enjoy their inherent right to life on an equal basis with others.
Article 14: Right to liberty
Article 15: Right to bodily integrity
Article 19: Right to live independently
Article 22: Right to privacy
Article 23: Requirement that discrimination relating to marriage, family and personal relations shall be eliminated.
Article 24: Right to equality of access to education.
Article 25: Right to the highest attainable standard of health care without discrimination on the basis of disability.
Article 27: Equal right to work.
Article 29: Requirement that States ensure equality in participation in public life.
Articles 30: Requirement to ensure accessibility to cultural material and sport.

**Signed/
Ratified** Signed: 30/03/2007
Not Ratified

A4.2.2 Council of Europe

European Convention on Human Rights (1950)

Summary of Provisions	Article 2: Right to life. Article 3: Right to freedom from torture. Article 4: Right to freedom from slavery. Article 6: Right to fair procedures. Article 7: Right not to have criminal sanctions imposed retrospectively. Article 9: Right to freedom of thought and religion. Article 5: Right to liberty. Article 8: Right to respect for private and family life. Article 10: Right to freedom of expression. Article 11: Right to freedom of assembly and association; right to join a trade union. Article 12: Right to marry. Article 13: Right to an effective remedy. Article 14: Prohibition of discrimination.
Signed/ Ratified	Signed: 04/11/1950 Ratified: 25/02/1953
Implemented	Given effect by the European Convention on Human Rights Act 2003.

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11

Summary of Provisions	Article 2: Right to education. Article 3: Right to free elections.
Signed/ Ratified	Signed: 04/11/1950 Ratified: 25/02/1953
Reservations/ Declarations	Declaration: “At the time of signing the (First) Protocol the Irish Delegate puts on record that, in the view of the Irish Government, Article 2 of the Protocol is not sufficiently explicit in ensuring to parents the right to provide education for their children in their homes or in schools of the parents’ own choice, whether or not such schools are private schools or are schools recognised or established by the State.”

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Implemented Given effect by the European Convention on Human Rights Act 2003.

Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Summary of Provisions Article 2: Freedom of movement.
Article 3: Prohibition of expulsion of nationals.
Article 4: Prohibition of collective expulsion of aliens.

**Signed/
Ratified** Signed: 16/09/1963
Ratified: 29/10/1968

**Reservations/
Declarations** Declaration: "The reference to extradition contained in paragraph 21 of the Report of the Committee of Experts on this Protocol and concerning paragraph 1 of Article 3 of the Protocol includes also laws providing for the execution in the territory of one Contracting party of warrants of arrest issued by the authorities of another Contracting Party."

Implemented Given effect by the European Convention on Human Rights Act 2003.

Protocol No. 6 to the European Convention on Human Rights concerning the abolition of the death penalty

Summary of Provisions Article 1: Prohibition of the death penalty.
Article 2: Provision for laws concerning the death penalty in respect of acts committed in time of war or of imminent threat of war.

**Signed/
Ratified** Signed: 24/06/1994
Ratified: 24/06/1994

Implemented Given effect by the European Convention on Human Rights Act 2003.

Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11

Summary of Article 1: Procedural safeguards relating to expulsion of aliens

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Provisions	1. An alien lawfully resident in the territory of a State shall not be expelled there from except in pursuance of a decision reached in accordance with law and shall be allowed: (a) to submit reasons against his expulsion, (b) to have his case reviewed, and (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority. 2. An alien may be expelled before the exercise of his rights under paragraph 1.a, b and c of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.
Signed/ Ratified	Signed: 11/12/1984 Ratified: 03/08/2001
Implemented	Given effect by the European Convention on Human Rights Act 2003.

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Summary of Provisions	Article 1: General prohibition of discrimination “1 The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. “2 No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.”
Signed/ Ratified	Signed: 04/11/2002 Not Ratified

Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances

Summary of Provisions	Article 1: Abolition of the death penalty in all circumstances.
Signed/ Ratified	Signed: 03/05/2002 Ratified: 03/05/2002

European Social Charter and Revised Social Charter (1961, revised 1996)

Summary of Provisions

Article 1: Inviolability of human dignity.
Article 2: Right to life and prohibition of the death penalty.
Article 3: Right to the bodily integrity.
Article 4: Prohibition of torture and inhuman or degrading treatment.
Article 5: Prohibition of slavery.
Article 6: Right to liberty and security.
Article 7: Right to respect for private and family life.
Article 8: Right to protection of personal data.
Article 9: Right to marry and right to found a family.
Article 10: Freedom of thought, conscience and religion.
Article 11: Right to freedom of expression and information.
Article 12: Right to freedom of assembly and of association.
Article 14: Right to education.
Article 15: Right to work.
Article 17: Right to private property.
Article 18: Right to asylum.
Article 19: Prohibition of refoulement.
Article 20: Right to equality before the law.
Article 21: Prohibition of discrimination on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.
Article 23: Principle of equality between men and women.
Article 24: The rights of the child.
Article 25: The rights of the elderly.
Articles 27-31: Workers' rights.
Article 32: Prohibition of child labour.
Article 33: Protection of the family.
Article 34: Right to social security.
Article 35: Right to health care.
Articles 39 & 40: Right to vote and to stand as a candidate at elections.
Article 45: Right to Freedom of movement and of residence.
Article 47: Right to an effective remedy and fair procedures.
Article 48: Presumption of innocence.

**Signed/
Ratified**

Ratified: 07/10/1964
Revised Social Charter Ratified: 04/11/2000

European Convention for the Prevention of Torture (1987)

Summary of Provisions	Article 1: Establishes the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.
Signed/ Ratified	Signed: 14/03/1988 Ratified: 14/03/1988

Framework Convention for the Protection of National Minorities (1995)

Summary of Provisions	Article 4: Equality before the law. Article 7: Right of persons belonging to a national minority to freedom of assembly, association, expression, thought, conscience and religion. Article 8: Requirement of recognition that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations. Article 9: Obligation to ensure persons belonging to a national minority are not discriminated against in access to the media.
Signed/ Ratified	Ratified: 07/05/1999

A4.2.3 European Union

Treaty of Amsterdam amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts (1997, in force 1999)

Summary of Provisions	The Treaty of Amsterdam amends the Treaty of the European Union, the Treaties establishing the European Communities and other related acts.
Signed/ Ratified	Signed: 02/10/1997 Entered into force: 01/05/1999 Ratified by the Eighteenth Amendment of the Constitution of Ireland. Effected by the Eighteenth Amendment of the Constitution Act, 1998, approved by referendum on 22/05/1998 and signed into law on the 03/06/1998.

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Charter of Fundamental Rights (2000, adapted version 2007)

Summary of Provisions The European Union Charter of Fundamental Rights sets out in a single text the range of civil, political, economic and social rights of European citizens and all persons resident in the EU.
Chapter 1: Dignity.
Chapter 2: Freedoms.
Chapter 3: Equality.
Chapter 4: Solidarity.
Chapter 5: Citizens' rights.
Chapter 6: Justice.

**Signed/
Ratified** Solemnly proclaimed by the European Parliament, the Council of the European Union, and the European Commission on 07/12/2000.

5. CASE LAW

The amount of Irish asylum and immigration case law that is currently available is in marked contrast to the amount in existence only a decade ago. The economic growth in the State over the past decade has resulted in a dramatic shift towards increased immigration. Responding to this development, and in light of increased numbers of applications for international protection, the legislature has passed a significant amount of new legal measures dealing with immigration and asylum matters.⁴²³ At European level, the 1999 Treaty of Amsterdam gave the European Commission increased legislative authority in the immigration and asylum fields, and set the Council the task of passing important legislation in these areas over the ensuing years.⁴²⁴ With all of the resulting new legislation, many new issues have required judicial interpretation and clarification.

This section consists of summaries of relevant decisions of the High Court and Supreme Court; summaries of important case law from the European Court of Justice, particularly on the matter of residency of non-EU national family members of EU citizens; and summaries of decisions of the Refugee Appeals Tribunal in relation to refugee status determination. The decisions of the European Court of Justice and Superior Courts are binding on lower courts and decision-making bodies. Decisions of the Refugee Appeals Tribunal are not binding, but may be of persuasive value in ensuring consistency in refugee status decision-making.⁴²⁵ The body of case law on asylum and immigration law is large, and the choice of cases summarised is necessarily selective.

⁴²³ For example the Refugee Act 1996; the Immigration Acts 1999, 2003, and 2004; and the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006). See section 4.1 of this text.

⁴²⁴ For example Directive 2003/9/EC (“The Reception Directive”); Regulation (EC) No. 343/2003 (“The Dublin Regulation”); Directive 2004/83/EC (“The Qualification Directive”); and Directive 2005/85/EC (“The Procedures Directive”). See section 4.2 of this text.

⁴²⁵ The Refugee Appeals Tribunal previously refused to allow appellants access its previous decisions, but appellants now have access to a database of the Tribunal’s previous decisions for the purpose of preparing an appeal. These decisions are not publicly available. The Tribunal also has the power to publish its decisions. The Tribunal has published twenty-two decisions to date.

Many immigration and asylum-related matters are only challengeable by way of a High Court application for judicial review.⁴²⁶ The majority of the case law referred to in this section arises in this context. Applicants for judicial review must obtain leave of the High Court to seek judicial review, which in itself requires a hearing. The case law consists of decisions dealing both with leave, and substantive applications. In the summaries below it is noted if a decision deals with leave only. It is also noted if a decision is *ex tempore* (i.e. given at the time of, or soon after, a hearing). Judgments dealing with refugees are referred to in redacted form to avoid identification of the parties, in line with best Court practice

The authors have chosen cases that have proven to be significant in legal practice, and that clarify points of law. The Chapter is divided into thematic sections for ease of reference. The focus of this section is case law up to 2007, though cases from 2008 of particular importance have also been included.

5.1 CHALLENGES TO LEGISLATION AND BILLS

5.1.1 The Aliens Act 1935 and the Aliens Order 1946

Minister for Justice v Wang Zhu Jie

[1993] 1 IR 426

Supreme Court, 07/05/1991

High Court, Costello J, 05/10/1990

Description

Plain clothes Gardai [police] entered premises without a warrant, identified themselves and made immigration related enquiries. They arrested Mr. Wang who worked on the premises. The Defendant argued that the arrest was illegal because the Gardai were trespassing when they

⁴²⁶ Section 5 of the Illegal Immigrants (Trafficking) Act 2000 specifically provides that certain decisions made in the asylum and immigration processes cannot be questioned other than by way of judicial review. Section 5 of the 2000 Act also provides special rules for judicial review of such decisions. These rules are more stringent than the normal rules for judicial review. See section 4.1.1.7 of this text.

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entered. The defence also challenged the legality of the Aliens Order 1946, claiming it was *ultra vires* the Aliens Act 1935.

The High Court found that the Gardai were legally on the premises because permission to enter the premises was given. The Court also held that arrests were permissible under the 1935 Act. Despite the High Court's refusal of leave to appeal to the Supreme Court, the applicant sought to appeal, but the Supreme Court found it had no authority to hear the proposed appeal.

Principles

The Aliens Order 1946 is not *ultra vires* the Aliens Act 1935. Arrests are permissible under the 1935 Act.

Tang & Ors v Minister for Justice & Ors

[1996] 2 ILRM 46; [1996] ICLY. 80
Supreme Court, 19/12/1995
Unreported, High Court, Flood J, 11/10/1994

Description

The applicants were Hong Kong nationals with British Hong Kong passports. They arrived in the State lawfully but contravened requirements regarding length of stay and employment. They subsequently came to the attention of the Gardai, and the Department of Justice then refused them permission to remain in the State. The Tangs sought to have this decision quashed by judicial review, arguing that the decision effectively amounted to a deportation order.

The High Court declared Article 13(1) of the Aliens Order 1946 to be *ultra vires* the powers conferred on the Minister by the 1935 Act because the parent Act did not expressly authorise the Minister to make a deportation order. The Supreme Court reversed this decision on appeal, finding Article 13 of the Aliens Order, 1946 to be within the powers conferred on the Minister by the 1935 Act.

Principles

The provision of Article 13 of the Aliens Order 1946 is within the powers conferred on the Minister by the Aliens Act 1935.

Laurentiu v Minister for Justice, Equality and Law Reform & Ors

[2000] 1 ILRM 1

Supreme Court, 20/05/1999

Unreported, High Court, Geoghegan J, 22/01/1999

Description

The State appealed against a decision of the High Court that found that Section 5(1)(e) of the Aliens Act 1935 was unconstitutional. The High Court had found that this Section unconstitutionally delegated the power of deportation to the Minister when it was essentially a legislative measure.

The Supreme Court upheld the finding that Section 5 of the Aliens Act 1935 was unconstitutional and confirmed that the Minister could not have a legislative power in relation to deportation unless some provision was made in the parent Act. The Court also held that Article 13(1) of the Aliens Order 1946 was beyond the powers of the 1935 Act, and also contrary to the Constitution because it purported to confer a power to make deportation orders on the Minister.

Principles

Section 5(1)(e) of the Aliens Act 1935 was unconstitutional in the manner in which it gave the Minister for Justice the power to deport.⁴²⁷

5.1.2 The Illegal Immigrants Trafficking Bill 1999

Article 26 and the Illegal Immigrants (Trafficking) Bill 1999

[2000] 2 IR 360

Supreme Court, 28/08/2000

Description

The President of Ireland referred the Illegal Immigrants (Trafficking) Bill 1999 to the Supreme Court to consider whether the Bill was unconstitutional. The Court held that none of the Sections in question were unconstitutional. The Court held that the time limit for judicial review under Section 5 was 14 days, not 14 working days, and that the

⁴²⁷ The Immigration Act 1999 now provides the Minister for Justice, Equality and Law Reform with a power to deport.

possibility of an extension of time provided for under Section 5(2)(a) was “wide and ample enough to avoid injustice where an applicant has been unable through no fault of his or hers, or for other good and sufficient reason, to bring the application within the fourteen day period.” The Supreme Court also upheld the legality of Section 10 of the Bill, which provided for detention, on the basis that the safeguards that existed in the Bill were adequate to meet the requirements of the Constitution. The validity of the provisions of Section 10(c) of the Bill was upheld. The Supreme Court held that the interpretation of the phrase “substantial grounds” to mean reasonable, arguable and weighty, and not trivial or tenuous, was appropriate.

Principles

The Illegal Immigrants (Trafficking) Bill 1999 (enacted 2000) was not unconstitutional.

Leontjava and Chang v Director of Public Prosecutions

[2005] 1 ILRM

Supreme Court, 24/06/2004

Unreported, High Court, Finlay Geoghegan J, 22/01/2004

Description

Until 1999 the Aliens Act (1935) had been the primary legislation governing the operation of the State’s immigration controls. Orders made under Section 5 of that Act (principally the Aliens Order 1946 as amended by an extensive series of later orders) set out a detailed scheme for controlling the entry of non-nationals into the State, including provisions granting permission to be in the State, requiring non-nationals to register periodically with the Garda Síochána (police), requiring the production of passports or identification, and enabling deportation.

In the instant case, the first-named applicant had been arrested on the basis that she had broken a condition of her leave to land in the State. The second-named applicant was arrested on the basis, *inter alia*, that he had failed to produce sufficient identification when called upon to do so by the Gardai. Both applicants were charged with breaches of the Aliens Order 1946 and the Immigration Act 1999. The applicants issued judicial review proceedings to prohibit their trials, contending that the relevant provisions were invalid and unconstitutional. Specifically, they contended that the Aliens Order 1946 was *ultra vires* the Aliens Act 1935, and that

Section 2 of the Immigration Act 1999 was unconstitutional in that it attempted to delegate legislative functions to the Executive.

The High Court granted orders of prohibition, and declared that Article 5(6) of the Aliens Order 1946 (as inserted by Article 3 of the Aliens (Amendment) Order 1975) was *ultra vires* Section 5(1) of the Aliens Act 1935, and that Section 2 of the Immigration Act 1999 was repugnant to the Constitution. The Court essentially found that the Order was created by Ministerial sanction, circumventing the Constitutional process of creating primary legislation, and that Section 2 of the 1999 Act unconstitutionally purported to grant the 1946 Order statutory effect. As a result of the High Court's judgment, orders made pursuant to the Aliens Act were generally susceptible to constitutional challenge. The DPP appealed the High Court's judgment to the Supreme Court.

The Supreme Court reversed much of the High Court's judgment, and particularly with regard to Section 5(1) of the Aliens Act 1935, and Section 2 of the Immigration Act 1999, and held that the Oireachtas was entitled to make legislation "by reference" to material not contained in the body of an act itself, and that the applicants had not discharged the onus on them of proving that Section 2 of the Immigration Act 1999 was unconstitutional.

Principles

The Oireachtas is entitled to make legislation "by reference" to material not contained in the body of an act. Section 2 of the Immigration Act 1999 is not unconstitutional.⁴²⁸

⁴²⁸ The Supreme Court decision post-dated the enactment of the Immigration Act 2004, which, rather than refer to the 1946 Order, specifically incorporated its provisions

5.2 REFUGEE STATUS DETERMINATION

5.2.1 Standard of Proof

F.A. v Minister for Justice, Equality and Law Reform and Appeals Authority

[2002] 5 ICLMD 108; [2001] IEHC 217
High Court, Ó Caoimh J, 21/12/2001

Description

The applicant was refused asylum at first instance, and appealed to the Appeals Authority. At the appeal he gave evidence of his claimed experience of arrest, imprisonment and subjection to torture, cruel, inhumane and degrading treatment in Sierra Leone, and argued that such treatment occurred by reason of political activity and membership of a social group. The Appeals Authority found, *inter alia*, that the applicant lacked credibility and also that he had not satisfied the standard of proof of a “reasonable likelihood of persecution”. The Applicant argued, *inter alia*, that the correct standard of proof was not “a reasonable likelihood” but a lesser standard. The Court was satisfied that the test applied by the Appeals Authority, that there must be a “reasonable likelihood” of persecution, accorded with the test applied by the House of Lords in *R v Secretary of State for the Home Department, ex parte Sivakumaran* [1988] Imm AR 147 where Lord Keith of Kinkel spoke of the need for an applicant to demonstrate “a reasonable degree of likelihood that he would be persecuted for a conventional reason if returned to his own country”.

Principles

The correct standard of proof in applications for asylum is whether there is a reasonable likelihood of persecution for a Convention reason if an applicant for asylum is returned to his or her country of origin.⁴²⁹

⁴²⁹ C.f. *R.K.S. v Refugee Appeals Tribunal & Ors* [2004] IEHC 436, Unreported, High Court, 09/07/2004. See section 5.3.5 of this text.

5.2.2 Forward-Looking Test

M v Refugee Appeals Tribunal

[2003] 1 ICLMD 82
High Court, 04/10/2002

Description

The applicant applied for leave to judicially review the decision by a member of the Refugee Appeals Tribunal upholding a declaration that his claim for refugee status was manifestly unfounded.

The court held that the applicant had to demonstrate a “current well-founded fear of persecution for a Convention reason” to be declared as a refugee. The court referred to *Adan v Secretary of State for the Home Office* [1998] 2 W.L.R. 702, wherein it was found that an “historic fear” was not sufficient for recognition as a refugee. The Court refused leave for judicial review.

Principles

A current, well-founded fear of persecution for a Convention reason is required for a declaration of refugee status. A historic fear is not sufficient.

G.A.O. v Refugee Appeals Tribunal (Tribunal Member James Nicholson)

[2005] IEHC 270
Unreported, High Court, Gilligan J, 29/07/2005 (Leave)

Description

The first-named applicant, the mother of the remaining applicants, one of whom suffered from sickle cell disease, claimed that the fact that her daughter was affected with sickle cell disease had caused them to be stigmatised in Nigeria. A medical report from an Irish consultant concluded that the ill child would likely die if returned to Nigeria. The Commissioner refused their applications for asylum and applied Section 13(6)(a) of the Refugee Act 1996, i.e. she found that their claims had no or a minimal basis for their contentions that they were refugees. The Tribunal upheld the Commissioner’s decision, and the applicants sought to review that decision.

The court granted leave for judicial review, finding that, having been put on notice of the child's affliction, the Tribunal had failed to carry out any further investigation into the treatment that the child would receive in Nigeria, and that this constituted a failure to consider this aspect of the case.

Principles

The Refugee Appeals Tribunal is obliged to carry out an investigation into the medical treatment an applicant with a particular medical condition would receive in her country of origin in order to determine whether there are grounds for a well-founded fear of persecution.

5.2.3 Persecution

Adam and Iordache v Minister for Justice, Equality and Law Reform

[2001] 2 ILRM 452

Supreme Court, 05/04/2001

High Court, O'Donovan J, 16/11/2000

Description

Two groups of Romanian nationals were separately granted leave to apply for judicial review of their deportation orders. They contended that their deportations would infringe their rights under the European Convention on Human Rights. In both cases the High Court held that the Convention was not part of Irish domestic law and that the Minister for Justice, Equality and Law Reform was not obliged to take account of it.

The Supreme Court upheld the decisions of the High Court and rejected the suggestion that, when considering the applications for asylum, the respondents were obliged to take into account the Convention, and found that general evidence of human rights abuses in a country is not in itself enough to prevent individuals being repatriated to that country, and that in order to be granted asylum an individual must show evidence that he or she is personally at risk of persecution.

Principles

When considering applications for asylum, the Minister was not obliged to take into account the European Convention on Human Rights as it was not part of Irish domestic law. General evidence of human rights abuses in a country is not in itself enough to prevent individuals being repatriated to that country.⁴³⁰

O.L.R. v Refugee Appeals Tribunal

Unreported, High Court, Gilligan J, 31/07/2003 (Leave)

Description

The Romanian applicant sought to quash the Tribunal's decision on the grounds, *inter alia*, that the Refugee Appeals Tribunal's reliance on country of origin information was unreasonable and irrational in circumstances where the Tribunal preferred one report over another, and applied an incorrect test re well-founded fear of persecution.

In granting leave to apply for judicial review, the Court held that an objective fear of persecution required an analysis of the general human rights record of, and conditions in, an applicant's country of origin, and that regard could be had to the experiences of other members of the same group. The Court also stated that an applicant who demonstrates that he suffered past persecution is entitled to a legal presumption of a well-founded fear of future persecution, which may be rebutted by showing a change in the conditions in the country of origin in the context of an individualised analysis, and that where an adjudicator is presented with conflicting country of origin reports, he should not choose between them but accept that the applicant has an arguable case. With regard to identifying whether there was evidence of persecution, the Court stated that persecution consists in serious and sustained or systematic violation of fundamental human rights, civil, political, social or economic, together with an absence or failure of state protection,

⁴³⁰ The European Convention on Human Rights was subsequently given effect in Irish law by the European Convention on Human Rights Act 2003. The Act requires that "judicial notice" be taken of the Convention provisions and any decisions of the Convention institutions. A court shall "take due account" of the principles established by these decisions when dealing with Convention-related proceedings. Accordingly, judgments of the European Court of Human Rights are persuasive authorities in Irish courts when dealing with Convention rights. See also *Lelimo v The Minister for Justice, Equality and Law Reform* [2004] 2 IR 178; High Court, Laffoy J, 30/04/2004 re non-retrospective effect of the ECHR.

including where such a situation results from the cumulative effect of various measures of discrimination. The Court cited with approval the formula of Lord Hoffman in *R. v Immigration Appeal Tribunal, ex parte Shah*, and *Islam v Secretary of State for the Home Department* [1999] 2 AC 629: “Persecution = Serious Harm + The Failure of State Protection”. The Court found that in the instant case there were substantial grounds to argue that the Tribunal had confused the objective and subjective aspects of the test of well-founded fear of persecution, and erred in only having regard to the applicant’s own personal experiences.

Principles

An applicant who has suffered past persecution is entitled to a legal presumption of a well-founded fear of future persecution. The presumption may be rebutted by showing a change in the conditions in the country of origin in the context of an individualised analysis. Where an adjudicator is presented with conflicting country of origin reports, he should accept that the applicant has an arguable case. Persecution consists in serious and sustained or systematic violation of fundamental human rights, civil, political, social or economic, together with an absence or failure of state protection, including where such a situation results from the cumulative effect of various measures of discrimination.

5.2.4 Change of Circumstances in Country of Origin

Decision Ref. No. 4, Angolan Applicant

Refugee Appeals Tribunal, Paul McGarry BL, Undated

Description

The applicant, a member of the Bakongo tribe, claimed a well-founded fear of persecution in Angola because of his membership of UNITA, and because he would be regarded as a criminal or killed if returned to Angola. The Commissioner refused the application, finding that there had been an improvement in the conditions in the applicant’s country of origin. The applicant appealed to the Refugee Appeals Tribunal.

The Tribunal found that there had been a change in circumstances in Angola since the applicant fled, and that the issue was whether the change of circumstances displaced the reality of the Applicant’s fear. The Tribunal found that there should be evidence that any change of

circumstances must be of substantial political significance (*Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 applied), that it was for the Commissioner to point to material establishing the change in circumstances, which the Commissioner had done, and that the change in circumstances had to be analysed in the context of the individual case (*Vallaj v Special Adjudicator* [2001] EWCA Civ 782 applied). The Tribunal concluded that there was compelling evidence to support a finding that the change of circumstances in Angola amounted to a change that was politically significant, tangible and realistic, and, therefore, that there was not a reasonable likelihood that the applicant would be persecuted if returned.

Principles

Where there has been a change in circumstances in an applicant's country of origin, the question is whether the change of circumstances is such as to displace the reality of the applicant's fear. There should be evidence that any change of circumstances is of substantial significance. It is for the decision-maker to point to material establishing such change in circumstances. The change in circumstances has to be analysed in the context of the individual case.⁴³¹

5.2.5 Convention Grounds/Nexus

G v Minister for Justice, Equality and Law Reform

[2004] IEHC 343

Unreported, High Court, Finlay Geoghegan J, 04/11/2004 (Leave)

Description

The applicant sought to quash the decision of the Refugee Appeals Tribunal refusing him refugee status on the ground, *inter alia*, that the Tribunal erred in considering the relative balance between any economic motives he had in seeking to come to the State and his alleged fear of persecution, and finding that he was more of an economic migrant.

The Court granted the applicant leave to seek judicial review, and held that there were substantial grounds for his asserting that if a person was

⁴³¹ See also *O.L.R. v Refugee Appeals Tribunal*, Unreported, High Court, 31/07/2003. See section 5.2.3 of this text.

a refugee, the fact that he might also be an economic migrant did not deprive him of his status as a refugee.

Principles

The fact that a refugee might also be an economic migrant does not deprive him or her of his or her status as a refugee.

N.M. v Minister for Justice, Equality and Law Reform

[2006] IEHC 241

Unreported, High Court, MacMenamin J, 26/05/2006; Dunne J, 01/12/2006 (*ex tempore*)

Description

The applicant had become HIV positive after being raped in South Africa, her country of origin. At her appeal before the Refugee Appeals Tribunal, the applicant's legal representative submitted that being HIV positive in South Africa was tantamount to a death sentence, but did not make further submissions on the matter in terms of the principles of refugee law. The Tribunal dismissed the applicant's appeal, and the applicant challenged this decision on the ground that the Tribunal did not deal with the possibility that she had a well-founded fear of persecution in South Africa because she was HIV positive.

The Court, in granting leave, held that it was arguable that HIV positive women in South Africa constitute a particular social group in need of protection for the purposes of the Refugee Act, and that it was arguable that an onus devolved on the Tribunal to investigate and consider the matter once the matter was before it, despite a lack of submissions in terms of refugee law. The High Court subsequently granted judicial review.

Principles

It is arguable that HIV positive women in South Africa constitute a particular social group. It is arguable that an onus devolves on the Tribunal to investigate and consider a matter once the matter is before it, notwithstanding that the matter has not been framed in terms of refugee law.

R.Y.T. v Minister for Justice, Equality and Law Reform

[2007] IEHC 56

Unreported, High Court, Herbert J, 23/01/2007 (Leave)

Description

The applicant challenged the decision of the Refugee Appeals Tribunal by way of judicial review on the bases, *inter alia*, that the Tribunal had considered the country of origin information selectively, that the decision was wrongly based on an acceptance that the applicant should practice his religion exclusively in private, and that this was a denial of his fundamental right to freedom of religious expression.

The Court granted leave to seek judicial review as it appeared to the Court that the Tribunal had failed to consider material evidence regarding the applicant having come to the attention of the Iranian authorities, that the Tribunal's finding that the applicant could not be categorised as proselytising had been made without consideration of the country of origin information, and that the Tribunal had substituted its own view of the applicant's religious activities for what should have been a consideration of the probable view of those activities likely to be taken by the Iranian authorities in light of the evidence.

Principles

In considering evidence re persecution on the ground of religion, the decision maker must not substitute its own view of an applicant's religious activities for a consideration of the probable view of those activities likely to be taken by the authorities in the applicant's country of origin in light of the evidence.

Decision Ref. No. 11, Iraqi Applicant

Refugee Appeals Tribunal, Elizabeth O'Brien BL, Undated

Description

The Applicant claimed a well-founded fear of persecution in Iraq. He claimed that members of a certain tribe believed he had been involved in the murder of one of its members. The Commissioner refused the application, and the applicant appealed to the Refugee Appeals Tribunal.

The Tribunal affirmed the Commissioner's recommendation, finding that there was no Convention nexus, and that while there was ample country information evidence to support the claim that one might be a

target of a blood feud, and that killings occur in such a context, the reason for the persecution in the instant case was an act that the appellant was believed to have done, as opposed to his membership of a tribe as such, and that he feared persecution because the opposing tribe wished to avenge the murder of one of their members. The Tribunal further stated that the ground of particular social group must be interpreted in light of the basic principles and purpose of the Refugee Convention, and that members of such a group must possess common immutable characteristics, but that cohesiveness is not a requirement for the existence of the group. The Tribunal stated that the group must exist independently of the persecution suffered, but that discrimination may define the group, that societal recognition may help identify the existence of a particular social group, and that it is not necessary to show that all members of the particular social group are persecuted. The Tribunal also stated that in order for a family to constitute a particular social group it must be a family which has been persecuted or likely to be persecuted because it is that family as opposed to being one which suffers persecution as a result of activities engaged in by one of its members.

Principles

The ground of particular social group must be interpreted in light of the basic principles and purpose of the Refugee Convention. Members of such a group must possess common immutable characteristics. Cohesiveness is not a requirement for the existence of the group. The group must exist independently of the persecution suffered, but discrimination may define the group. Societal recognition may help identify the existence of a particular social group. It is not necessary to show that all members of the particular social group are persecuted. In order for a family to constitute a particular social group it must be a family which has been persecuted or likely to be persecuted because it is that family as opposed to being one which suffers persecution as a result of activities engaged in by one of its members.⁴³²

⁴³² C.f. *Fornah v Secretary of State for the Home Department* [2007] 1 AC 412 (House of Lords).

5.2.6 State Protection and Internal Relocation

B.P. v The Minister for Justice, Equality and Law Reform

[2003] 4 IR 200

High Court, Gilligan J, 21/10/2003

Description

The applicant, a national of Georgia, sought asylum for reasons of a claimed fear of persecution because of his political opinion, and in particular because of a fear of reprisals for research he carried out for a television programme that investigated government corruption. The applicant said that he did not relocate in Georgia because he felt he would continue to experience problems in an alternative location. The Refugee Appeals Tribunal refused the applicant's appeal, finding, *inter alia*, that his reason for not finding an alternative place to live was implausible. The applicant sought to quash this decision by way of review arguing, *inter alia*, that the Tribunal erred in law in the manner in which it dealt with internal relocation.

The High Court granted leave to seek judicial review, finding that it was arguable that as internal relocation was an alternative to refugee status, rather than a component of the test, the Tribunal's approach was not permissible. The Court also held that it was arguable that there was no detailed consideration by the Tribunal regarding whether the risk of persecution extended to any place of proposed internal relocation.

Principles

Internal relocation is an alternative to refugee status rather than a component of the test of refugee status. Where a decision maker applies the principle of internal relocation, it is arguable that there should be a detailed consideration of whether the risk of persecution extends to a place of proposed internal relocation.

V.I. v Minister for Justice, Equality and Law Reform

2005 IEHC 150

Unreported, High Court, Clarke J, 10/05/2005 (Leave)

Description

The applicant claimed asylum on the basis that she would be forced into a marriage, and cited country of origin information that showed that

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forced marriage occurred in her country of origin. She stated that the authorities had no way of effectively dealing with the matter. The Refugee Appeals Tribunal refused the applicant's appeal, finding that there was country of origin information that stated that in one instance a captor of a child bride had been tried and convicted. The applicant challenged the Tribunal's decision by way of judicial review, claiming that it had wrongly considered the evidence before it concerning State protection.

The Court granted leave, finding that the country of origin information relied on by the Tribunal clearly referred to the exception rather than the rule, and that it was arguable that a reference to an isolated example of State protection was insufficient to justify a finding of adequate State action. The Court held that the test is whether the country of origin concerned provides reasonable protection in practical terms, and that while the existence of a law against activity amounting to persecution is a factor to be considered, the true question is whether the law coupled with its enforcement affords reasonable protection in practical terms.

Principles

A reference to an isolated example of State protection is insufficient to justify a finding of adequate State action. The test is whether the country of origin concerned provides reasonable protection in practical terms.

V.N.I. & Ors v Refugee Appeals Tribunal (Tribunal Member Olive Brennan) & Anor

[2005] IEHC 220

Unreported, High Court, Clarke J, 24/06/2005 (Leave)

Description

The applicants challenged the Tribunal's decision on the grounds that it failed to give proper consideration to their asylum claims, that the Tribunal's finding regarding State protection was wrong in law, that the Tribunal had failed to consider the applicant's fear of forced marriage, and that the Tribunal erred in improperly considering internal relocation.

The Court granted leave, finding that the true test regarding State protection is whether the country concerned provides protection in practical terms and whether the law coupled with enforcement affords reasonable protection. The Court also held that it is arguable that a decision on internal flight must comply with the UNHCR guidelines on the matter, and that a decision maker must consider whether it would be

reasonable in the circumstances for a claimant to relocate in the manner suggested.

Principles

It is arguable that a decision on internal flight must comply with the UNHCR guidelines on the matter. A decision maker must consider whether it would be reasonable in the circumstances for a claimant to relocate in the manner suggested.

J.O. v Minister for Justice, Equality and Law Reform & Ors

[2006] IEHC 46

Unreported, High Court, Peart J, 17/02/2006 (Leave)

Description

The Nigerian applicant claimed a fear of female genital mutilation (FGM). The Tribunal found that she could have internally relocated within Nigeria. The applicant challenged this decision on the basis that she had not been given an opportunity to address the Tribunal on the matter of internal relocation, and that the Tribunal had not considered internal relocation with regard to her particular circumstances.

In refusing leave, the Court held that the question of internal relocation is inextricably linked to the question of refugee status, and that the applicant should have anticipated that the matter would arise.

Principles

The question of internal relocation is inextricably linked to the question of refugee status.

D.K. v Refugee Appeals Tribunal & Anor

[2006] 3 IR 369, 373

High Court, Herbert J, 05/05/2006

Description

The Applicant claimed asylum on the ground that as a homosexual man he had a well-founded fear of persecution in Georgia. The Tribunal found that he may have been at genuine risk of serious harm, but did not accept that he had shown a failure of State protection. The applicant challenged this decision on the ground that the Tribunal erred in law and

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breached fair procedures in failing to examine his subjective fear for not seeking State protection.

The Court quashed the Tribunal's decision, finding that the Tribunal had not addressed the question of whether State protection might reasonably have been forthcoming, and had erred in law in concluding that the failure of the applicant to seek protection from the State authorities was in itself sufficient to defeat his claim. The Court further held that the Tribunal had erred in failing to consider whether the applicant's evidence and the country of origin information were sufficient to rebut the presumption of State protection.

Principles

Where an applicant for asylum has not sought State protection, the decision maker must consider whether the applicant's evidence and the country of origin information are sufficient to rebut the presumption of State protection.

L.D. v Elizabeth O'Brien (Sitting as the Refugee Appeals Tribunal) & Anor

[2006] IEHC 218

Unreported, High Court, McGovern J, 07/06/2006

Description

The applicant was in the State for one month before applying for asylum. The Commissioner rejected his claim and applied Section 13(6)(c) of the Refugee Act 1996, i.e. she found that the applicant failed without reasonable cause to make an application as soon as reasonably practicable after arrival in the State. As a consequence, the applicant did not have an oral hearing. On appeal, the Tribunal found that the applicant could have relocated internally. The applicant sought to quash the Tribunal's decision on the basis that it had acted *ultra vires* in dealing with the matter without an oral hearing, and in applying the doctrine of internal relocation without first considering whether the applicant had a well-founded fear of persecution.

In refusing the relief sought, the Court held that the Tribunal's jurisdiction was confined by Section 16(2) Refugee Act 1996, and that the Tribunal's holistic approach to internal relocation was appropriate.

Principles

A holistic application of the principle of internal relocation is appropriate in refugee status determination.

Decision Ref. No. 6, Applicant from Congo Brazzaville

Refugee Appeals Tribunal, Noel Whelan BL, Undated

Description

The applicant, a member of the Lari tribe from Congo Brazzaville, claimed that he was arrested and imprisoned for two months for publishing anti government material that aroused political unrest, that he was mistreated and assaulted while in detention, and that he was seen as a rebel by the government. He furnished the Tribunal with a psychological report, a SPIRASI report, and the summons. The Commissioner refused the applicant's claim, and the applicant appealed this decision to the Tribunal

The Tribunal set aside the Commissioner's recommendation, finding that the appellant's account was credible and consistent with the available country information, and that the furnished medical reports were consistent with the appellant's claim that he was subjected to traumatic events. The Tribunal stated that the issue of State protection did not arise as the appellant's feared persecution stemmed from the State authorities.

Principles

The issue of State protection does not arise when the appellant's feared persecution stems from State authorities.

5.3 REFUGEE STATUS DETERMINATION AND CREDIBILITY

5.3.1 Credibility and Fair Procedures Generally

L.B. v Minister for Justice, Equality and Law Reform & Anor

[2003] IEHC 18

Unreported, High Court, Finlay Geoghegan J, 07/05/2003 (Leave)

Description

The applicant claimed a well-founded fear of persecution in Kosovo because his father had collaborated with the Serb authorities. There were discrepancies between the applicant's evidence at his appeal hearing, and what he had said during the earlier stages of his application, and the Tribunal refused the appeal. The applicant contended that he had provided the Tribunal with an explanation for not disclosing certain facts at an earlier stage in his application, and that the Tribunal had failed to consider this explanation.

The Court granted leave, finding that the process by which the credibility of an applicant is assessed is a matter within the remit of the Court insofar as it goes to an applicant's entitlement to fair procedures, and that the Tribunal was under an obligation as a matter of fair procedures to consider and assess an explanation given at the oral hearing regarding why an applicant did not disclose certain facts at an earlier stage.

Principles

The process by which the credibility of an applicant is assessed is a matter within the remit of the Court insofar as it goes to an applicant's entitlement to fair procedures. The Tribunal is under an obligation as a matter of fair procedures in the assessment of an applicant's claim for refugee status to consider and assess any explanation for failure to disclose facts at an earlier stage.

B.E.E. v Refugee Appeals Tribunal and Anor

[2004] IRLHC 338

Unreported, High Court, Peart J, 21/10/2004 (Leave)

Description

The Nigerian applicant, who was over the age of majority, but nonetheless young and lacking education, had made an application for refugee status that was rejected for want of credibility. The applicant applied for leave to seek judicial review, arguing that there had been an over reliance on the part of the Tribunal on the fact that her mother had previously made an application for asylum in Ireland which had been turned down. The applicant contended that the Tribunal had failed to assess her own credibility separately, and that there was evidence that she had been raped in her native country.

The court granted leave to bring judicial review proceedings, finding that it was likely that the Tribunal Member had failed to give proper weight to the sexual assault that the applicant had suffered and the possible effect of this on the applicant's ability to tell her story and recall events. In addition, the Court found that the Tribunal Member had made errors of fact, and failed to take account of the applicant's youth, lack of education and illiteracy.

Principles

In assessing credibility a decision-maker must take account of an applicant's particular circumstances.

Z v Minister for Justice, Equality and Law Reform & Anor

Unreported, High Court, Clarke J, 26/11/2004 (Leave); Butler J, 12/05/2005

Description

The applicants, a married couple from the Russian Federation, claimed anti-Semitic past persecution. The Refugee Appeals Tribunal found against both applicants because they lacked credibility and because they had failed to disclose all matters at the outset of their application. The applicants argued that the Tribunal was not entitled to dismiss the entirety of their claim on the basis of an adverse credibility finding regarding one aspect of their evidence, particularly where that aspect did not relate to the substance of the applicants' claim.

The High Court granted leave, finding, *inter alia*, that a finding of lack of credibility has to be based on a rational analysis that explains why, in the view of the deciding officer, the truth has not been told. The High Court subsequently quashed the Tribunal's decision, stating that the Tribunal had rejected the applicant's explanation for not having raised matters at the earlier stage without giving any reason for that rejection.

Principles

The Tribunal is obliged to consider an applicant's explanation for not having raised matters at the outset, and is obliged to give reasons for a rejection of any such explanation.

5.3.2 Credibility and Errors of Fact

V.C. v Minister for Justice, Equality and Law Reform & Anor

[2003] IEHC 41

Unreported, High Court, Finlay Geoghegan J, 04/07/2003 (Leave - *ex tempore*)

Description

The Refugee Appeals Tribunal refused the applicant's appeal, finding that there were material inconsistencies in his evidence both in his questionnaire and in his interview for asylum. The applicant acknowledged that he had been untruthful at his first instance interview, but contended that the information he provided in his questionnaire was correct, and that the Tribunal had erred in fact with regard to the matters it considered in its adverse credibility finding. The respondents accepted that there were two errors of fact in the matters set out by the Tribunal in its decision, specifically the Tribunal's findings that the applicant had misrepresented the location of his wife, and that the applicant had stated that his business and car were destroyed.

The Court granted leave for judicial review, finding that if a decision-maker is assessing the credibility of an applicant and makes its decision based on an incorrect, undisputed fact then, unless it can be established that the incorrect fact is clearly so insignificant that it would not be material to the decision-maker, there is a potential breach of the obligation to observe fair procedures, and it may be asserted that the decision is unreasonable for being based on erroneous fact.

Principles

If a decision-maker is assessing the credibility of an applicant and makes its decision based on an incorrect, undisputed fact, unless it can be established that the incorrect fact is clearly so insignificant that it would not be material to the decision-maker, the decision may be in breach of fair procedures, or unreasonable.

A.C.B. v Minister for Justice, Equality and Law Reform & Anor

[2005] IEHC 157

Unreported, High Court, O'Leary J, 25/04/2005 (Leave)

Description

The applicant challenged the decision of the Refugee Appeals Tribunal on the grounds, *inter alia*, that the Tribunal relied in part on country of origin information that was not available to the applicant, that the Tribunal was unreasonable in relying on approximate dating, and that the Tribunal was unreasonable in not accepting the applicant's explanation why he had misdated a letter, in circumstances where the explanation was clearly consistent with the facts.

The Court granted leave, finding that while the matters favourable to the applicant would not constitute substantial grounds for leave individually, as each of the Tribunal's errors was part of the one process of credibility assessment, the effect of the accumulation of the errors was such as to convert the matter into substantial grounds.

Principles

While individual matters favourable to an applicant may not singly constitute substantial grounds for leave, where the Tribunal's errors are part of the one process of assessing credibility, the effect of the accumulation of the errors may be such as to convert the matter into substantial grounds sufficient for leave to seek judicial review.

O.K. & Anor v Refugee Applications Commissioner & Anor

[2007] IEHC 11

Unreported, High Court, Herbert J, 07/02/2007

Description

The Commissioner recommended that the applicants, Democratic Republic of Congo nationals, be refused asylum. The applicants had claimed that they were members of the Lendu ethnic group, that they had fled from Bunia to Fataki in April 2003 due to their difficulties, and that they escaped when armed members of the Hema raided the house. The Commissioner found the applicants' evidence of moving to Fataki and their subsequent escape to be lacking in credibility, stating that it was questionable that the applicants would move to Fataki as it was the main town of the district the locus of the conflict, and as it was run by the very group, the Hema, whom the applicants claimed to fear. The applicants contended, *inter alia*, that the Commissioner based an adverse credibility finding on errors of fact, and on conjecture.

In refusing the relief sought, the Court held that while the Commissioner had misdirected herself in concluding that Fataki was the main town in the district when the country of origin information clearly stated that Bunia was the main town, and while there was therefore no rational basis for the Commissioner to question the claimed relocation to Fataki on this ground, the Commissioner's misdirection did not invalidate her conclusion because the finding was also based on an entirely separate and severable consideration that was not demonstrated to be incorrect, i.e. that considering that the Fataki area appeared to be under Hema control, there were serious doubts about the applicants' claims to have moved there given that they belonged to the Lendu tribe.

Principles

Where there is an error of fact in an asylum decision going to the credibility of the applicant, the Court can consider whether that error is severable from other reasons for the decision.

G.T. v The Minister for Justice, Equality and Law Reform

[2007] IEHC 287

Unreported, High Court, Peart J, 27/07/2007 (Leave)

Description

The applicant sought leave to quash the decision of the Refugee Appeals Tribunal on the grounds that in arriving at an adverse credibility conclusion there were errors of fact apparent on the face of the decision which were of such significance as to undermine the decision in its entirety. The basis of the application for asylum was a claimed fear of being persecuted by her brother-in-law. The applicant claimed that the Tribunal's decision was based on various inconsistencies and errors, arising, *inter alia*, from misunderstandings of the evidence. The Tribunal found that the applicant was not personally believable for a number of reasons.

The Court refused the relief sought, finding that the Tribunal Member had not relied upon incorrect or irrelevant facts, but that, for a variety of reasons, not confined to the matters by which the decision was impugned, the applicant was not personally believable. The Court said it was not desirable that a decision be parsed and analysed word for word in order to discern some possible infelicity, but that if a decision maker makes a significant and material error in how the evidence has been recorded, or other serious error of fact, then the process by which credibility has been assessed falls short of that required to meet a proper standard of constitutional justice. The Court stated that the error must be clear and it must go to the heart of the decision making process, and fundamentally undermine it. The Court further stated that a Court should not lightly interfere with an assessment of credibility, since it is quintessentially a matter for the decision maker who has the benefit of seeing and hearing at first hand an applicant giving evidence.

Principles

The Court should not lightly interfere with an assessment of credibility, since it is quintessentially a matter for the decision maker who has the benefit of seeing and hearing at first hand an applicant giving evidence. If a decision maker makes a significant and material error in how the evidence has been recorded, or other serious error of fact, then the process by which credibility has been assessed falls short. An error must be clear and it must go to the heart of the decision making process.

5.3.3 Credibility and Objective Evidence

S.C. v Minister for Justice, Equality and Law Reform & Ors

Unreported, High Court, Kelly J, 26/07/2000 (Leave)

Description

The applicant applied for refugee status on the basis that he had a well-founded fear of persecution in his country of origin, Guinea, because of his political opinion. He was refused both at first instance and on appeal. He challenged the decisions against him, arguing that the description he provided of prison life in Guinea for members of the political opposition was consistent with the objective country of origin information, and that his claim of past persecution in this context was corroborated by scarring on his body.

Referring to *The Refugee in International Law* by Guy Goodwin-Gill, the Court stated that “[s]imply considered there are just two issues. First, could the applicant’s story have happened, or could his or her apprehension come to pass ... given what we know from available country of origin information? Secondly, is the applicant personally believable? If the story is consistent with what is known about the country of origin, then the basis for the right inferences has been laid.” The Court held that the assessment of credibility was a relevant matter for the decision-maker, but that in the instant case there was material before the decision-maker to justify the decision that the applicant lacked credibility.

Principles

There are essentially two issues in asylum claims: Firstly, could the applicant’s story have happened in light of the available country of origin information? Secondly, is the applicant personally believable? If a story is consistent with what is known about the country of origin, then the basis for the right inferences has been laid. The assessment of credibility is a relevant matter for decision-makers.

N.K. v Refugee Appeals Tribunal (Paul McGarry) & Ors

[2005] 4 IR 321, [2004] IEHC 240

High Court, Finlay Geoghegan J, 02/04/2004 (Leave)

Description

The applicant, a national of Uzbekistan, claimed a well-founded fear of persecution on account of her ethnicity and religion. Both the Commissioner and Tribunal refused her claim, raising doubts about her credibility. The applicant challenged the Tribunal's decision, arguing that an adverse credibility finding should be based on reasons bearing a legitimate nexus to the adverse finding, and that credibility should be assessed in the context of the available country of origin information.

The High Court held there were substantial grounds for claiming that where credibility arises as an issue, the Tribunal is obliged to make an express finding on the matter. The Court also concluded that there were substantial grounds for asserting as law the principle in *R v Immigration Appeals Tribunal, ex parte Ahmed*⁴³³, i.e. that applying the principle in *Horvath v Secretary of State for the Home Department*,⁴³⁴ an adjudicator is obliged to at least make some finding about the general position in the country of origin, and to assess the credibility of an applicant's concern in that context.

Principles

If an applicant's credibility is at issue, an adjudicator is obliged to make an express finding on credibility. An adjudicator is obliged to at least make some finding about the general position in the country of origin, and to assess an applicant's credibility in that context.

A.M.T. v Refugee Appeals Tribunal & Anor

[2004] 2 IR 607

High Court, Finlay Geoghegan J, 14/05/2004

Description

The applicant, a national of the Ivory Coast and a Muslim, claimed a well-founded fear because of his religion. The applicant recounted how he had been employed as a government driver but, following a change in government to one that discriminated against Muslims, suffered

⁴³³ [1999] INLR 473.

⁴³⁴ [1999] INLR 7.

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persecution. The Tribunal found that the country of origin information indicated that there was serious discrimination against Muslims in the Ivory Coast, but concluded that the applicant's particular story was not credible.

The Court quashed the Tribunal's decision, finding that the Tribunal was obliged as a matter of fair procedures to assess the applicant's story in the context of what is known about the conditions in the Ivory Coast, and that its failure to do so rendered its decision invalid

Principles

A decision maker is obliged to assess an asylum applicant's story in the context of what is known about the conditions in his or her country of origin.

O.O. v Refugee Appeals Tribunal & Anor

[2005] IEHC 42

Unreported, High Court, Peart J, 28/02/2005 (Leave)

Description

The Refugee Applications Commissioner found that the applicant was not credible and that his claim did not come within the definition of persecution. In refusing the application for leave to seek judicial review, the Court held that a lack of credibility fundamentally infects the subjective element of an applicant's well-founded fear, and that the objective element becomes irrelevant without a credible subjective element.

Principles

A lack of credibility may fundamentally infect the subjective element of an applicant's well-founded fear.

M.I. v Minister for Justice, Equality and Law Reform & Anor

[2005] IEHC 416

Unreported, High Court, Clarke J, 27/05/2005 (Leave); Peart J, 09/12/2005

Description

The applicants contended that the Tribunal failed to consider certain important matters and the country of origin information, and that the Tribunal erred in dealing with the matter of credibility in isolation from the country of origin information. The respondent contended that the Tribunal was not obliged to consider the country of origin information where an adverse credibility finding negates the need to consider such information.

The Court refused the relief sought, finding that while the principle in *Horvath v Secretary of State for the Home Department*⁴³⁵ a correct statement of principle, there are exceptional cases where a decision maker can reach a conclusion on the personal credibility of an applicant such that there could be no possible benefit derived from seeing whether the applicant's story fits into a factual context in her country of origin.⁴³⁶ The Court stated that it must not fall into the trap of substituting its own view on credibility for that of the Tribunal as the latter is in the best position to assess credibility based on the observation and demeanour of an applicant, and that a Court will be reluctant to interfere in a credibility finding other than for the reason that the process by which the assessment of credibility has been made is legally flawed.

Principles

The *Horvath* principle is a correct statement of law, but there are exceptional cases where a decision maker can reach a conclusion on the personal credibility of an applicant such that there could be no possible benefit derived from seeing whether an applicant's story fits into a factual context in her country of origin.

⁴³⁵ [2001] 1 AC 49.

⁴³⁶ I.e. that credibility findings can only be made in the context of a complete understanding of the entire picture.

D.V.T.S. v Minister for Justice, Equality and Law Reform & Anor

[2007] IEHC 305

Unreported, High Court, Edwards J, 04/07/2007

Description

The Cameroonian applicant applied for asylum, was refused by the Refugee Applications Commissioner, and appealed to the Refugee Appeals Tribunal. The applicant claimed, *inter alia*, to have been an SCNC sympathiser, and latterly an SDF member, and alleged that he was arrested during political demonstrations, detained, and tortured. The applicant furnished the Tribunal with medico-legal reports which stated, *inter alia*, that some of the applicant's scars were "consistent" with the torture claimed, and that certain other of the applicant's scars were "highly consistent" with the torture claimed. The Tribunal rejected the applicant's appeal, stating that it had the benefit of the provisions of the Istanbul Protocol, and noting that the Protocol defined "consistent with" as "the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes." The Istanbul Protocol in fact defines "highly consistent with" as "the lesions could have been caused by the trauma described, and there few other possible causes." The Tribunal did not refer to this. The applicant also furnished the Tribunal with a considerable amount of country information from recent years that tended to show that the Cameroonian authorities tortured political dissenters. The Tribunal specifically referred to the UK Fact Finding Mission Report 2004, which stated that while torture had been used in Cameroon, its perpetrators have been punished by law. The applicant sought to quash the Tribunal's decision by way of judicial review, arguing that the Tribunal failed to correctly consider the medical evidence and misapplied the Istanbul Protocol, and breached fair procedures in failing to consider all the relevant country of origin documents and using the country information selectively.

The Court granted the relief sought. The Court held that in assessing the applicant's credibility, the Tribunal placed reliance upon a significant error of fact in that the Tribunal erroneously noted that the injuries in question were merely "consistent with" the alleged torture. The Court also held that the Tribunal failed to have regard to the whole picture in the applicant's country of origin and did not meaningfully attempt to assess the claim of torture in the context of the country information in that the Tribunal did not engage with the overwhelming evidence that torture of political dissenters in Cameroon was endemic and systematic. Finally, the Court held that the Tribunal was selective in its use of country of origin reports in selecting the information preferred on the

basis that it was the most up-to-date information available, while failing to take into account a significant body of other information that was neither so old nor so out of date as to justify the Tribunal's failure to take it into account.

Principles

Decision-makers should assess asylum claims in the context of the whole picture provided by the country information, and should not be selective in their use of country of origin information.

Decision Ref. No. 22, Zimbabwean Applicant

Refugee Appeals Tribunal, James Nicholson BL, Undated

Description

The applicant claimed a well-founded fear of persecution in Zimbabwe, having been abducted and sexually abused by ZANU-PF militia. The applicant applied for asylum approximately six months after arriving in Ireland, and gave an account in her questionnaire and at her interview with the Commissioner that she subsequently acknowledged at her oral hearing to be false. She claimed that her previous story was one a trafficker advised her to use. The Refugee Applications Commissioner refused her application, and she appealed to the Refugee Appeals Tribunal.

The Tribunal set aside the Commissioner's recommendation, finding that the appellant's past mistreatment, considered in the context of the current situation in Zimbabwe, was plausible, reasonable and consistent with the country of origin information, and that this rendered her fear of persecution well-founded. The Tribunal also found that the appellant's explanation for previously giving false evidence was plausible.

Principles

Where an applicant provides evidence of past mistreatment that is plausible, reasonable and consistent with the country of origin information his or her fear of persecution is well founded. Failure to provide truthful information in an application for asylum does not negate an asylum claim where an applicant's explanation for providing untruthful information is plausible. Delay in applying for asylum at the earliest opportunity does not negate a claim for asylum.

5.3.4 Credibility and Medical Evidence

K. v The Minister for Justice, Equality and Law Reform and Ors

Unreported, High Court, Gilligan J, 19/04/2007 (*ex tempore*)

Description

The applicant furnished medical reports as evidence in his appeal on foot of his application for refugee status. The reports stated, *inter alia*, that the physical evidence was consistent with his claim of torture. The Refugee Appeals Tribunal refused the applicant's appeal on credibility grounds. The Tribunal's decision then considered one of the medical reports, and stated that if the applicant had presented a credible claim it may have been that he would have come within Section 2 of the Refugee Act 1996.

The Court granted an order of Certiorari, finding that the medical evidence represented important evidence that was before the Tribunal, that the Tribunal Member was required in the circumstances to consider the evidence in total and was obliged as part of a rational analysis to explain, having considered the medical evidence along with the other evidence, why in the view of the Tribunal the applicant was not telling the truth. The Court found that it was clear the credibility issue was determined before any reference was made to the medical evidence, and that reference was made to only one of the reports when there were several. The Court found that the matter of the medical evidence was only addressed after the Tribunal had come to its conclusion that the applicant was not credible. The Court stated that the medical evidence should have been considered, weighed in the balance and a rational explanation given as to why it was being rejected in circumstances where the tribunal was making a finding that the applicant was not credible.

Principle

Medical evidence should be considered, weighed in the balance and a rational explanation given if it is being rejected if the decision maker is finding that against an applicant on credibility.

5.3.5 Credibility and Core Findings

R.K.S. v Refugee Appeals Tribunal & Ors

[2004] IEHC 436

Unreported, High Court, Peart J, 09/07/2004 (Leave)

Description

The Refugee Appeals Tribunal refused the applicant's appeal on credibility grounds, finding that the applicant, who claimed a well-founded fear of persecution on account of her membership of the UFC in Togo, could not be believed in relation to a claim of rape, and with regard to her description of her escape from persecution in Togo. The applicant sought to challenge the Tribunal's decision by way of judicial review.

In granting leave to seek judicial review, the Court acknowledged that the assessment of credibility is one of the most difficult tasks facing the Commissioner and Tribunal, but that reliance on what one firmly believes to be a correct instinct or gut feeling that the truth is not being told is an insufficient tool for use by such administrative bodies, and that conclusions must be based on correct findings of fact. The Court held that in the instant case even if the applicant's account seemed somewhat far-fetched the Tribunal could not thereby lightly or automatically completely discount her other evidence, including her membership of the UFC, and that even if she was not believed on certain matters, those factors alone did not remove the possibility of persecution in the future on account of her political opinion and membership of the UFC. The Court noted that it appeared to be accepted that a standard of proof less than the civil balance of probabilities was appropriate in determining the chances of future persecution.

Principles

Instinct or gut feeling that the truth is not being told is an insufficient tool for use by an administrative body such as the Refugee Appeals Tribunal. Conclusions must be based on correct findings of fact. Adverse credibility factors may not remove the possibility of future persecution where there remains relevant material evidence of such

future persecution. The standard of proof for determining the chances of future persecution is less than the civil balance of probabilities.⁴³⁷

V.M. v Michelle O’Gorman Sitting as the Refugee Appeals Tribunal & Ors

[2005] IEHC 363

Unreported, High Court, Clarke J, 11/11/2005 (Leave)

Description

The Refugee Applications Commissioner found against the applicant and applied Section 13(6)(a) of the Refugee Act 1996, i.e. she found that there was no or a minimal basis for the application, with the result that the applicant did not have an oral hearing. On appeal, the Tribunal found that the applicant was not a refugee, but did not appear to find against his credibility. The applicant contended that he was a former member of the Mungiki, and had provided significant country of origin information that tended to suggest that former members of the Mungiki were persecuted. He challenged the Tribunal’s decision for failing to consider relevant matters.

The Court granted leave, finding that in the absence of a clear finding of lack of credibility, a Court exercising a review role must exercise its role on the basis that the applicant’s evidence is correct, and that where there is ambiguity as to the extent of a finding of lack of credibility, an applicant is entitled to the benefit of such ambiguity. The Court further held that it was arguable that the decision maker was required to address the substance of the applicant’s case.

Principles

In the absence of a clear finding of lack of credibility, a Court exercising a review role must assume that an applicant’s evidence is correct. Where there is ambiguity as to the extent of a finding of lack of credibility, then an applicant is entitled to the benefit of such ambiguity. A decision-maker is obliged to address the substance of an applicant’s case.

⁴³⁷ C.f. *F.A. v Minister for Justice, Equality and Law Reform and Appeals Authority*, Unreported, High Court, 21/12/2001 ([2002] 5 ICLMD 108; [2001] IEHC 217). See section 5.2.1 of this text.

D.M.S. v Minister for Justice, Equality and Law Reform & Ors

[2005] IEHC 395

Unreported, High Court, Peart J, 24/11/2005 (Leave)

Description

The applicant claimed a well-founded fear of persecution from the DRC authorities because they believed he was Tutsi. The Tribunal found against the applicant on three separate credibility grounds - regarding his evidence that he was assisted in escaping, that he saved enough money to pay an agent to assist him in leaving the country, and that there was no country of origin information corroborating one aspect of his claim - but did not make any adverse credibility finding on the applicant's claimed core fears.

The Court granted leave, stating that it is not sufficient to make a bald statement that an applicant lacks credibility, and that the Tribunal Member had not made an examination on the core matter.

Principles

It is not sufficient to make a bald statement that an applicant lacks credibility. A Tribunal Member must examine core matters.

D.A.G. v Refugee Appeals Tribunal & Ors

Unreported, High Court, Feeney J., 01/06/2006 (Leave)

Description

The Tribunal dismissed the applicant's appeal on the bases that he had not proved that he had lived in Afgooye, Somalia, or that he was of the Bandhabow ethnic group, as he claimed. The Commissioner had found the applicant to be lacking in credibility because of his failure to mention a specific water shortage documented in the country of origin information, and because it considered that he had under-estimated the population in the region he claimed as his locality in his country of origin. The Tribunal affirmed this finding.

The Court, in granting leave for judicial review, held that it was arguable that the Tribunal's decision had been made without regard to all the information before it, and that the credibility findings against the applicant had been made in isolation from the extensive knowledge that the applicant otherwise demonstrated, such that the perceived inconsistency had to be assessed as immaterial. The Court also found

that the finding that the applicant had failed to refer to the drought was factually incorrect.

Principles

It is arguable that for the purposes of credibility determinations in asylum applications, inconsistencies must be seen as immaterial where extensive knowledge is otherwise demonstrated.

H.Y. v The Refugee Appeals Tribunal and Anor

[2007] IEHC 274

Unreported, High Court, Peart J, 31/07/2007 (Leave)

Description

The applicant claimed that he had a well-founded fear of persecution as a member of Fatah wanted by the Israeli authorities and at risk of expulsion by the Palestinian authorities to Israel. The Refugee Appeals Tribunal held against the applicant on credibility grounds, finding that it was not plausible that he would suddenly be the focus of attention having remained trouble free in previous years, that it was not plausible that the Palestinian authorities would expel him, and that it was implausible he could have made his way to Ireland with false identity documentation.

The Court granted leave, finding that the lack of plausibility in the matters held against the applicant could go to an assessment of overall credibility, but that there had to be some identifiable reason for doubting the central issue which was simply supported by the more peripheral doubts. The Court held that it was substantially arguable that the credibility of the central issue had been unduly influenced by the Tribunal's doubts relating to peripheral issues. The Court further held that there were substantial grounds to argue that an insufficient rational basis existed for concluding that the applicant's story was not credible, that the process by which the Tribunal reached its conclusion was lacking in sufficient examination of country of origin information, and rested on conjecture and gut feeling.

Principles

Where a decision-maker doubts a claim, there must be some identifiable reason to doubt the central issue of the claim which is simply supported by more peripheral doubts.

5.4 PROCEDURAL MATTERS IN REFUGEE STATUS DETERMINATION

5.4.1 Safe Countries of Origin

D.C.B. v Refugee Applications Commissioner & Ors

Unreported, High Court, O’Leary J, 16/02/2005 (*ex tempore*)

Description

The applicant, a Romanian national, claimed that the Minister had failed to properly follow the terms laid down in Section 12(4) of the Immigration Act 1999 in designating Romania a safe country.

The Court found that relevant considerations included (i) that there be a consultation with the Minister for Foreign Affairs, (ii) that it should be clarified whether the country is party to or complies with, the specified obligations, and (iii) that it should be clarified whether the country has a domestic political system, independent judiciary and is governed by the rule of law. The Court stated this despite noting that there was a lacuna in the Copenhagen criteria that appeared not to require an independent judiciary. The Court stated that the Minister was entitled to act on the assumption that the rule of law includes an independent judiciary. The Court found that the Minister appeared to have based his decision to designate Romania a safe country on the extent to which Romania had conformed to the criteria laid out in the Refugee Act 1996 by considering its adherence to various conventions to which the country was a member, and considered whether Romania had ratified all Conventions to which they would have been expected to subscribe, such that the decision to so designate Romania as a safe country was not irrational.

Principles

In considering whether a country is a safe country of origin, relevant considerations for the Minister include (i) that there be a consultation with the Minister for Foreign Affairs, (ii) whether the country is party to, or complies with, the specified obligations, and (iii) whether the country has a domestic political system, independent judiciary, and is governed by the rule of law.

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Case C-133/06 Parliament v Council

Unreported, European Court of Justice, 06/05/2008

Description

Directive 2005/85/EC states that the European Council, acting by a qualified majority, after consultation of the European Parliament, is to adopt a “minimum common list of third countries” (Article 29(1) and (2)) which are to be regarded by Member States as safe countries of origin, and a “common list of European safe third countries” (Article 36(3)). The European Parliament brought an action for annulment in respect of the provisions of the Directive that provide for the Parliament merely to be consulted. It took the view that the Council had effectively reserved to itself a right to legislation, and that the provisions at issue should have provided for the common lists to be adopted by the co-decision procedure, under which the Parliament acts as co-legislator.

The Court observed that the procedure for the adoption of the common lists introduced by the Directive differed from that which is laid down in the Treaty; that the rules regarding how Community institutions arrive at their decisions are laid down in the Treaty and are not at the disposal of the Member States or of the institutions themselves; and that to allow an institution to establish secondary legal bases was tantamount to according that institution a legislative power in excess of that provided by the Treaty. The Court held that the Council exceeded the powers conferred on it by the Treaty by including secondary legal bases in the Directive, and annulled the contested provisions.

Principles

By making the future adoption of common lists of safe countries subject to mere consultation of the Parliament instead of the co-decision procedure, the Council exceeded the powers conferred on it by the Treaty in relation to asylum. Articles 29(1) and (2) and Article 36(3) of Council Directive 2005/85/EC are annulled.

5.4.2 First Safe Countries

*Anisimova v Minister for Justice*⁴³⁸

[1998] 1 IR 186

Supreme Court, 28/11/1997

Unreported, High Court, Morris J, 18/02/1997

Description

The applicant, a Russian national, left Moldova and travelled to the UK on a six-month visa. After landing in the UK she travelled immediately to Ireland, where she claimed asylum. The Department of Justice argued that she should be deported to the UK unless she left Ireland voluntarily.

The High Court found that the State is entitled to return a person who intends to apply for asylum in Ireland to the first safe country they resided in after fleeing their home provided that the “safe country” is willing and able to hear the person’s asylum application. The Supreme Court upheld this finding on appeal.

Principles

Ireland is entitled to return a person who intends to apply for asylum in Ireland to the first safe country they resided in after fleeing their home, provided that the “safe country” is willing and able to hear the person’s asylum application.

⁴³⁸ The *Anisimova* case predates the enactment of the Refugee Act 1996, and the operation in this jurisdiction of the Dublin Convention and, latterly, Council Regulation (EC) No. 343/2003.

Gioshvili v The Minister for Justice, Equality and Law Reform⁴³⁹

Unreported, High Court, Finlay Geoghegan J, 31/01/2003 (Leave – *ex tempore*)

Description

The Applicant left Georgia in 1989, lived in Russia until 1999, and subsequently sought asylum in Ireland. The Refugee Applications Commissioner, in determining his claim, stated that Russia might have amounted to a safe third country. The applicant appealed to the Refugee Appeals Tribunal. The Tribunal concluded that the applicant's fear of persecution in Russia was not well grounded. The applicant challenged this decision by way of judicial review.

The High Court held that there were substantial grounds for the contention that refugees are not obliged to seek asylum in the first available safe country to which they flee, and that the Tribunal was not entitled to take into account the circumstances of the applicant's departure from Russia into account as matters relating to his departure from a State other than that of which he was a national can only be considered where the applicant has no nationality.

Principles

It is arguable that refugees are not obliged to seek asylum in the first available safe country to which they flee. It is arguable that the circumstances of an applicant's departure from a State other than that of which he is a national are not relevant where an applicant has a country of origin or habitual residence.

⁴³⁹ The *Gioshvili* case predates the enactment of the Immigration Act 2003, Section 7(f) of which inserted, *inter alia*, Section 11B(b) of the Refugee Act 1996, as amended, and which states that the Commissioner or Tribunal, in assessing an asylum applicant's credibility, shall have regard to whether the applicant has provided a reasonable explanation to substantiate his or her claim that Ireland is the first safe country in which he or she has arrived since departing from his or her country of origin or habitual residence.

5.4.3 Transfer Orders

D.I.S. v Minister for Justice, Equality and Law Reform & Ors

[2002] 8 ICLMD 84
High Court, Smyth J, 07/05/2002

Description

The applicant had a visa for entry into Germany and came to Ireland and applied for asylum. The Refugee Applications Commissioner decided that the provisions of the Dublin Convention applied. The applicant raised a number of issues. The applicant claimed that the Refugee Applications Commissioner should have conducted an interview prior to deciding that the Convention applied, rather than making its decision on the basis of the questionnaire. The decision also concerned the issue of family unity when making decisions under the Convention as the applicant's husband was having his case assessed in Ireland.

The Court held that there was no obligation on the Commissioner to hold an interview because there was no inhibition on the applicant presenting whatever evidence she considered relevant to the Commissioner. The Court also held that there was no necessary inhibition in the applicant being returned to Germany to have her application considered there while her husband's application was determined in Ireland, as the Commissioner has discretion regarding whether to transfer. The Court further held that the decision of the Commissioner was extinguished in its effect as it was followed by the decision of the Tribunal, and that Article 3 of the Dublin Convention, when interpreted in light of Article 31 of the Vienna Convention on the Law of Treaties, confers a right, but not a duty, on Member States to examine claims for asylum.

Principles

The decision of the Commissioner to transfer an applicant pursuant to Council Regulation (EC) No 343/2003 is extinguished in its effect when followed by a decision of the Tribunal. The Commissioner has discretion to decide whether an application should be transferred to a convention country for examination. Article 3 of the Dublin Convention confers a right, but not a duty, on Member States to examine claims for asylum.

D.Y. v Minister for Justice, Equality and Law Reform & Ors

[2004] 1 ILRM 151

Supreme Court, 01/12/2003

High Court, Finlay Geoghegan J, 18/12/2002

Description

The applicant applied for asylum in Ireland, having previously been refused asylum in Germany. The Refugee Applications Commissioner determined he should be returned to Germany pursuant to Section 22 of the Refugee Act 1996, the Dublin Convention (Implementation) Order 2000, and Article 10(1)(e) of the Dublin Convention. Article 10(1)(e) of the Dublin Convention provides, *inter alia*, that Member States are obliged to take back an applicant who has withdrawn an application and then lodged an application in another Member State, and a non-national whose application it has rejected and who is illegally in another Member State. The applicant appealed the decision to the Refugee Appeals Tribunal, who dismissed the appeal. The applicant applied for relief by way of judicial review against both decisions.

The High Court granted the relief sought on the grounds that the decisions of the Commissioner and Tribunal were predicated on a request made to Germany that was *ultra vires* their powers. The Court found that the request had been made pursuant to a provision of the Dublin Convention that had not been implemented in Ireland, i.e. Article 10(1)(e). The High Court certified that its decision involved points of law of exceptional public importance and that it was desirable in the public interest that an appeal should be taken to the Supreme Court. The points deemed to be of exceptional public importance were (i) whether or not Article 10(1)(e) of the Dublin Convention had been incorporated into the law of the State and (ii) whether the Commissioner and Tribunal had jurisdiction, respectively, to make or uphold a decision that Germany be requested to take back applicants.

The Supreme Court affirmed the High Court's decision, and held that Article 10(1)(e) of the Dublin Convention was not part of Irish law, and that the provisions relied upon in the decisions of the Commissioner and Tribunal did not permit the transfer of the asylum applications to other Member States.

Principles

The Refugee Applications Commissioner had no jurisdiction pursuant to the Dublin Convention (Implementation) Order 2000 to transfer an asylum applicant to another Convention country.

Y v Minister for Justice, Equality and Law Reform

Unreported, High Court, O'Neill J, 14/10/2005 (*ex tempore*)

Description

The applicant applied for asylum having previously applied in Italy. The Refugee Applications Commissioner determined that Italy was the Member State responsible for examining his claim under Article 20(1)(c) of Council Regulation 343/2002. The applicant married a German national and withdrew his application for asylum. The applicant was subsequently detained on foot of the transfer order, and the applicant sought an investigation pursuant to Article 40(4) of the Constitution into the legality of his detention. The Minister contended that the enforcement of the transfer order was not separable from the transfer order itself, and that once the order had been valid, its enforcement could not be invalid. The applicant contended that once he had withdrawn his asylum application, the transfer order ceased to have effect, and that therefore his detention was unlawful.

The Court was satisfied that the application in Ireland was withdrawn by virtue of the provisions of Section 22(8) of the Refugee Act 1996, that the applicant's letters of withdrawal had the effect of causing the withdrawal of all outstanding applications for asylum in any Member State, and that Italy therefore had no "take back" responsibility. The Court held that the order and its enforcement were entirely separable, and that the detention could not therefore retain validity.

Principles

The withdrawal of all outstanding applications for asylum in the Member States removes any "take back" responsibility under Council Regulation (EC) No. 343/2002. A transfer order is separable from its enforcement.

E.M. v The Minister for Justice, Equality and Law Reform

[2005] IEHC 403

Unreported, High Court, Finlay Geoghegan J, 15/11/2005

Description

The applicant applied for asylum having previously applied in the UK. The Minister made a transfer order against the applicant pursuant to Article 7 of the Refugee Act 1996 (Section 22) Order 2003 to allow the applicant be transferred to the UK. The applicant averred that she would

be a suicide risk if the transfer went ahead. She sought to compel the Minister, by way of judicial review, to consider the new medical evidence that indicated a real risk of suicide. The Minister contended that he had no discretion not to implement the transfer order, to revoke it, or to consider the applicant's application for asylum.

The Court granted declarations that the Minister had a discretion not to implement a transfer order made under Article 7(1) of the Refugee Act 1996 (Section 22) Order 2003, and that the Minister was obliged, as a matter of fair procedures, to determine the applicant's request not to implement the transfer order, and granted an injunction restraining the transfer. The Court stated that the scheme of Council Regulation (EC) No. 343/2003 was to impose on the responsible Member State an obligation to readmit the applicant to its territory, and a right, but not an obligation, on the requesting Member State to transfer the applicant. The Court also stated that the Minister was obliged to uphold the applicant's right to life as guaranteed by Article 40.3.2 of the Constitution, and that this necessitated an implicit power not to implement a transfer order where the protection of the life of the applicant required.

Principles

The Minister for Justice, Equality and Law Reform has discretion not to implement a transfer order made under article 7(1) of the Refugee Act 1996 (Section 22) Order 2003. The Minister is obliged as a matter of fair procedures to determine an applicant's request not to implement a transfer order. The Minister is obliged to uphold an applicant's right to life as guaranteed by Article 40.3.2 of the Constitution, and as a consequence has an implicit power not to implement a transfer order where the protection of the life of an applicant is at issue.

N.A.S. v James Nicholson (Acting as the Refugee Appeals Tribunal) & Anor

[2006] IEHC 29

Unreported, High Court, Herbert J, 07/02/2006

Description

The applicant applied for asylum in Ireland after previously applying for asylum in the Netherlands. Ireland applied to the Netherlands to take the applicant back under Article 16(1)(c) of Council Regulation (EC) No. 343/2003 (the Dublin Regulation). The Netherlands agreed to take the applicant back under Article 16(1)(e) of the Regulation, and the Refugee

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Applications Commissioner decided that the applicant ought to be transferred to the Netherlands. The applicant appealed this decision to the Refugee Appeals Tribunal, which found that the Netherlands was the Member State responsible under Article 16(1)(e) in conjunction with Article 20(1) of the Regulation. The applicant's challenge was based, *inter alia*, on the contention that the Tribunal's decision was *ultra vires* S.I. No. 423 of 2003, Article 8(8) of which provides that in considering an appeal against a decision of the Commissioner to transfer an applicant, the Tribunal "shall have regard only to whether or not the Member State responsible for examination of the application has been properly established in accordance with the criteria set out in Chapter III of the Council Regulation".

The Court held that the Tribunal's decision was *ultra vires* because the Tribunal was restricted to considering Chapter III of the Regulation, which did not contain Articles 16 or 20.

Principles

The Refugee Appeals Tribunal is restricted to consideration of Chapter III of the Dublin Regulation when dealing with appeals regarding transfer.

5.4.4 Age Assessment

A.M. v Refugee Applications Commissioner

[2005] IEHC 317

Unreported, High Court, Finlay Geoghegan J, 06/10/2005

Description

An asylum applicant claimed he was a minor at the time of his asylum application. The Refugee Applications Commissioner interviewed him to assess his age and assessed him to be not under 18 years of age. The applicant was thereafter processed by the Commissioner as an adult, and was in due course issued with a negative asylum determination. The applicant challenged both the age assessment and the refugee status determination.

The Court quashed the decision assessing the applicant's age, finding that minimum procedural requirements for such a procedure include (i)

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that an applicant be told the purpose of the interview in simple terms; (ii) that an applicant is entitled to be told in simple terms the reason or grounds why the interviewer considers the claim to be false and given an opportunity to deal with such matters; (iii) that the applicant is entitled to be told of any reservations held by the interviewer with regard to identity documents and is given an opportunity to deal with the matter; (iv) that if the decision is adverse to the applicant that he is clearly and promptly informed of the decision and its reasons; and (v) that the possibility and procedure of reassessment is communicated orally and in writing. The Court found that these requirements were not met in the instant case.

Principles

Minimum procedural requirements for age assessment of minors in the asylum process include (i) that an applicant be told the purpose of the interview in simple terms, (ii) that an applicant is entitled to be told in simple terms the reason or grounds why the interviewer considers the claim to be false, and to be given an opportunity to deal with such matters; (iii) that the applicant is entitled to be told of any reservations held by the interviewer with regard to identity documents and is given an opportunity to deal with the matter; (iv) that if the decision is adverse to the applicant that he is clearly and promptly informed of the decision and its reasons; and (v) that the possibility and procedure of reassessment is communicated orally and in writing.

A.S.O. (A Minor) v Refugee Applications Commissioner & Ors

[2006] IEHC 28

Unreported, High Court, Clarke J, 01/02/2006 (Leave)

Description

The Refugee Applications Commissioner initially assessed the applicant to be a minor. The Health Service Executive assigned a project worker to the applicant, and subsequently requested that the Commissioner carry out another age assessment. The Commissioner carried out a second test and determined that the applicant was over 18. The applicant challenged the second age assessment on the ground that it was in breach of fair procedures, and also challenged the subsequent refugee status determinations on the ground that they were materially affected by the allegedly unsound age assessment test.

In granting leave, the Court held that it was arguable that the correct procedures, as outlined in *A.M. v Refugee Applications Commissioner*⁴⁴⁰ were not applied in the second age assessment, and that it was arguable that the Commissioner and Tribunal's considerations were materially affected by the second age assessment, particularly with regard to credibility.

Principles

Fair procedures must be applied in age assessments of applicants for asylum. It is arguable that a refugee status determination affected by adverse credibility findings in an age assessment test would be unsound for having regard to irrelevant matters.

5.4.5 Suspension of Applications

Z.B. v Refugee Applications Commissioner & Ors

[2006] 1 IR 503; [2005] IEHC 452
High Court, Finlay Geoghegan J, 16/12/2005

Description

The applicant applied for asylum on the basis of a well-founded fear of persecution in Iraq. After his interview with the Refugee Applications Commissioner, the applicant contacted the Commissioner office and was told that a decision had been made and would be sent to him within ten days. When that time passed and he did not receive the decision, the applicant wrote to the Commissioner imploring her to send the decision to him. The Commissioner wrote to the applicant stating that her office had decided to suspend the determination of a number of applications relating to Iraqi applicants. The applicant's solicitor requested a copy of his file from the Commissioner office. The Commissioner then sent the applicant's solicitor a copy of what was later referred to as a draft of the Commissioner's decision. The draft decision was to the effect that the applicant be declared a refugee. The applicant applied for judicial review, contending that the Commissioner was not entitled to suspend consideration of his application.

The Court found that the Commissioner's decision to suspend consideration of applications of Iraqi nationals, including the applicant,

⁴⁴⁰ Unreported, High Court, Finlay Geoghegan J, 6/10/2005.

appeared to have been prompted by the commencement of military operations in Iraq in 2003. The Court held that the Commissioner's decision to suspend consideration of the applicant's claim was *ultra vires* and invalid, as there was nothing in the Refugee Act 1996, as amended, indicating that the Commissioner had the power to suspend such applications, and that the clear scheme of the 1996 act was that applicants were entitled to have their claims investigated and determined in a timely manner.

Principles

The Refugee Applications Commissioner does not have jurisdiction to suspend consideration of categories of asylum applications. Asylum applicants are entitled to have their applications investigated and determined in a timely manner.

5.4.6 Accelerated Procedures

Z v Minister for Justice, Equality and Law Reform

[2002] 2 IR 135

Supreme Court, 01/03/2002

Unreported, High Court, Finnegan J. 29/03/2001 (Leave); 17/07/2001

Description

The applicant's case was deemed to be manifestly unfounded. His application for judicial review was unsuccessful in the High Court, and he appealed this decision to the Supreme Court. The applicant claimed that the accelerated procedure for asylum applications that were considered manifestly unfounded was unfair because there was no provision for an oral hearing.

The High Court granted the applicant leave to seek judicial review on the ground that the lack of an oral hearing on appeal rendered the appeal decision unsound for breach of natural and constitutional justice. Ultimately, however, the Court refused to grant the relief sought, finding that the lack of an oral hearing did not breach the requirements of natural and constitutional justice, and that the applicant had been afforded an ample opportunity to present his case. The Court referred to the refugee definition, and stated that the phrase "well-founded fear of being persecuted" means that the fear must be well founded, and that

this implied that an applicant's frame of mind must be supported by an objective situation, and that, therefore, the phrase contained both a subjective and an objective element. The court stated that the objective element requires an evaluation of conditions in an applicant's country. The Supreme Court upheld the High Court decision.

Principles

Application of an accelerated procedure without an oral hearing does not infringe the right of an asylum applicant to natural and constitutional justice. The phrase "well-founded fear of being persecuted" means that the fear must be well founded, and that this implied that an applicant's frame of mind must be supported by an objective situation, and that, therefore, the phrase contained both a subjective and an objective element.

B.R.S. v The Refugee Applications Commissioner and Ors

2006 IEHC 247

Unreported, High Court, Clarke J, 27/06/2006 (Leave)

Description

The Applicant claimed a well-founded fear of persecution, including the death penalty, in Iran as an apostate. The Commissioner found that the country information did not corroborate the claim that the Applicant would be subjected to the death penalty, and made a finding under Section 13(6)(a) Refugee Act 1996 that the Applicant's case had no or minimal basis, as a consequence of which the Applicant would not have an oral hearing on appeal.

The High Court granted leave to seek judicial review, finding that there were substantial grounds for the contention that it was not open to the Commissioner to make the Section 13(6)(a) finding on the basis of the available evidence, that it was arguable that the Commissioner had failed to consider persecution short of the death penalty, that the substance of the requirement in Section 13(6)(a) is that in order to make a finding under that Section the Commissioner is required to be satisfied that the Applicant's claim, at its height, has been shown to have a basis no more than minimal, and that the Commissioner had not provided any reason why this threshold was met. The Court also stated that Section 13(6)(a) is not a separate decision, but part of a single determination, and that whichever of the three positions available the deciding officer determines upon (that the Applicant is a refugee, that the Applicant is not a refugee,

that the Applicant has not more than a minimal basis to contend he is a refugee), the same issues, materials and criteria are being applied to the question which needs to be addressed.

Principles

The substance of the requirement in Section 13(6)(a) of the Refugee Act 1996 is that in order to make a finding under that Section the Commissioner is required to be satisfied that the Applicant's claim, at its height, has been shown to have a basis no more than minimal.

5.4.7 Change of Address of Asylum Seeker

G.M. v Minister for Justice, Equality and Law Reform

[2002] 10 ICLMD 51
High Court, Smyth J, 30/07/2002

Description

The applicant, a Moldovan national, applied for judicial review of the deportation order made against her. She had failed to attend an interview with the Refugee Applications Commissioner after three requests were sent to the address she had supplied. Shortly after arrival in Ireland she and her companion, who she later married, had been transferred to a different address by the Reception and Integration Agency (RIA). Her husband-to-be had notified the authorities of his change of address and his asylum application was progressed. The applicant did not inform the authorities of the change of address. She argued that there was no necessity on her part to notify the Department of a change of address, in circumstances where the Department had provided the applicant with a new address and had directed her to live there.

The Court refused the application for judicial review and held that there was a clear obligation on the applicant pursuant to Section 6 of the Immigration Act 1999 to notify the Minister of a change of address. The Court noted that in the absence of a detention policy the notification of a change of address was the method by which applicants could participate in the asylum process while having some freedom of movement. The Court found also that the RIA was a separate and distinct entity from the Refugee Applications Commissioner or the Minister.

Principles

There is an obligation on an asylum applicant to notify the Minister of a change of address, even in circumstances where the change of address is brought about by the RIA.

5.4.8 Recording of the Asylum Application Interview

H v Minister for Justice, Equality and Law Reform

[2006] IEHC 355

Unreported, High Court, Feeney J, 14/11/2006

Description

The applicant requested the Refugee Applications Commissioner to allow him to electronically record his interview for refugee status. The Commissioner refused the request, and the applicant sought to challenge the refusal on the ground of fair procedures.

In refusing the relief sought, the Court held that the procedures followed by the Commissioner go beyond what is required by statute, that the procedure in this jurisdiction did not require a verbatim account, and that great care must be taken to ensure that a court does not involve itself in imposing a policy on an administrative body.

Principles

Asylum applicants do not have a right to electronically record their interviews for refugee status. The procedure in place goes beyond what is required by statute, and does not require a verbatim account of the interview.

5.4.9 Cross-Examination of the Interviewer

V.N. v Refugee Appeals Tribunal & Anor

[2002] 8 ICLMD 91
High Court, Smyth J, 08/07/2002 (Leave)

Description

The applicant applied for leave to challenge by way of judicial review the decision of the Refugee Appeals Tribunal to refuse him refugee status. He argued that the Refugee Appeals Tribunal did not properly consider his case and reached conclusions unsupported by evidence. He wanted the original interviewer to be compelled to attend the appeal hearing as a witness.

The Court held that the Tribunal could not be compelled to call the interviewer, and that there was no lack of fair procedures. The Court found that there was no injustice to an applicant, who, prior to the appeal hearing, has all the appropriate documentation that his application has generated, in not having an opportunity to cross-examine. The Court held that the appeal hearing was an independent *de novo* investigative process, and it was for the member of the Tribunal to make his own assessment, no matter what view the original interviewer may have formed.

Principles

A Tribunal cannot be compelled to call an applicant's original interviewer to give evidence. Applicants for asylum do not have a right to cross-examine their interviewers.

I.O. v Refugee Appeals Tribunal (Michelle O’Gorman) & Ors

[2003] 1 ICLMD 83; [2002] IEHC 159
High Court, Smyth J, 04/10/2002 (Leave)

Description

The applicant, a Nigerian national, claimed that the Refugee Applications Commissioner misunderstood his evidence. The applicant sought leave to apply for judicial review on the ground that the Refugee Applications Commissioner should have explained a decision not to call the officer responsible for the reports.

The Court granted leave to apply for judicial review, holding that a reasoned judgment on why the Refugee Applications Commissioner's officer was not called should have been given. The Court also stated that there might be cases where it is preferable to allow an interviewer to be cross-examined, and that it is within the Tribunal's discretion to refuse such a request, but that it cannot do so without offering a reasoned judgment.

Principles

There may be exceptional circumstances where it is preferable to allow an interviewer to be cross-examined. It is within the Tribunal's discretion to refuse such a request but it cannot so refuse without offering a reasoned judgment on the matter.

5.4.10 Access to and Relevance of Previous Decisions⁴⁴¹

V.R. & Ors v Refugee Appeals Tribunal & Ors

[2002] 7 ICLMD 79, [2002] IEHC 158
High Court, Smyth J, 25/04/2002

Description

The applicants appealed to the Refugee Appeals Tribunal after their applications for asylum were refused at first instance. The applicants argued that their right to fair procedures was infringed by the refusal of the Tribunal to grant them access to previous decisions. An injunction was sought restraining the Refugee Appeals Tribunal from proceeding with the hearing of the applicants' appeals until previous decisions of the Refugee Appeals Tribunal were furnished to the applicants. Such access had been refused on the basis, *inter alia*, of the constraints imposed by Section 16(4) ("An oral hearing under this Section shall be held in private") and Section 19 (regarding the protection of the identity of applicants) of the Refugee Act 1996. The applicants submitted that

⁴⁴¹ The law is now as per *P. A. A. & Ors v The Refugee Appeals Tribunal & Ors*, [2007] 4 IR 94; [2006] IESC 53. The judgments in *V.R. & Ors v Refugee Appeals Tribunal & Ors*, High Court, Smyth J, 25/04/2002 and *T.N.F. v Refugee Appeals Tribunal & Anor*, Unreported, High Court, O'Leary J, 21/12/2005 are included here to show the evolution of this aspect of fair procedures in Irish refugee law.

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Article 40.1 of the Constitution, guaranteeing equality before the law, necessitated the publication of decisions.

The Court held that the refusal to make available judgments of the Refugee Appeals Tribunal in cases other than the applicants' was not unlawful and in particular was not in breach of the applicants' right of access to the courts, and was not in breach of the principles of natural justice.

Principles

It is not unlawful for the Refugee Appeals Tribunal to refuse to make available its previous decisions.

T.N.F. v Refugee Appeals Tribunal & Anor

[2005] IEHC 423

Unreported, High Court, O'Leary J, 21/12/2005 (Leave)

Description

The applicant sought leave to challenge the Refugee Appeals Tribunal on the ground that the Tribunal was in breach of fair procedures in failing to consider its own previous decision to recommend refugee status in the applicant's daughter's case. The applicant's own appeal was dismissed.

The Court refused leave finding that the Tribunal had correctly stated the law when it held that it could not be influenced by the decision in the applicant's daughter's case.

Principles

The Tribunal cannot be influenced by previous decisions.

P. A. A. & Ors v The Refugee Appeals Tribunal & Ors

[2007] 4 IR 94; [2006] IESC 53

Supreme Court, 26/07/2006

Unreported, High Court, MacMenamin J, 07/07/2005

Description

The applicants requested previous decisions from the Refugee Appeals Tribunal prior to their hearings in order to better prepare their cases. The Tribunal refused to furnish the applicants with any of its previous decisions on the basis, *inter alia*, that there was no requirement for the Tribunal to furnish previous decisions under Section 19(4A) of the Refugee Act 1996. That statutory provision states, *inter alia*, that “The chairperson of the Tribunal may, at his or her discretion, decide not to publish (other than to the persons referred to in Section 16(17)) a decision of the Tribunal which in his or her opinion is not of legal importance.” The applicants claimed they had a constitutional right to access previous decisions.

The High Court had held with the applicants, finding both that the statutory provision, despite its negative wording, impliedly imposed a correlative positive obligation, and that the applicants had a right to access previous decisions by virtue of natural justice. The respondents appealed the matter to the Supreme Court.

The Supreme Court held that the Tribunal’s system was unfair and in breach of the Constitutional requirement of fair procedures, and that appellants ought to be afforded reasonable access to relevant previous decisions. The Court based its judgment on the constitutional entitlement to natural justice and fair procedures, and not on the statute. The Court stated that it is of the nature of refugee cases that the problem for an appellant in his or her country of origin is of a kind generic to that country or the conditions in that country, and that where there are such problems fair procedures require some reasonable mechanisms for achieving consistency in both the interpretation and the application of the law in similar cases. The Court held that if relevant previous decisions are not available to an appellant, he or she then will have no way of knowing whether there is such consistency. The Court stated that the Tribunal is not bound by previous decisions but that consistency of decisions based on the same objective facts may, in appropriate circumstances, be a significant element in ensuring that a decision is objectively fair rather than arbitrary.

Principles

The Refugee Appeals Tribunal is under a duty as a matter of constitutional fair procedures to allow appellants reasonable access to relevant previous decisions of the Tribunal.

5.4.11 Late Lodgement of Appeal

F.F.D. v Refugee Appeals Tribunal & Ors

[2003] 3 ICLMD 56

High Court, Butler J, 22/01/2003

Description

The applicant applied for judicial review in relation to the decisions of the Minister for Justice, Equality and Law Reform to refuse her refugee status and to deport her. The Refugee Commissioner had recommended that her application be refused. The applicant had been informed that she could appeal within 15 working days. She met with the representative of a local asylum seekers' support group but there was a misunderstanding and the applicant averred that it was her belief that the notice of appeal had been lodged on her behalf, when in fact it had not.

The Court granted the relief sought, acknowledging that the applicant had done everything that could be expected of her. The Court noted that the applicant had in no sense contributed to the appeal being out of time, and had consequently suffered an injustice. The Court noted that the applicant had been failed by a person whose role amounted to that of legal advisor, and that, in addition, the statutory provisions governing the powers of the Refugee Appeals Tribunal and the Minister must, insofar as possible, be interpreted as being intended to accord with the principles of constitutional justice, including the right to fair procedures.

Principles

Where an applicant fails to lodge an appeal to the Refugee Appeals Tribunal within the time allowed, in circumstances where the applicant had done everything that could reasonably be expected of her and had in no sense contributed to the situation where her appeal was out of time, it is an injustice not to allow the appeal.

5.4.12 The Decision-Maker's Obligation to Disclose and/or Furnish Information

V.U. v Refugee Applications Commissioner & Anor

[2005] 2 IR 537, [2005] IEHC 146
High Court, Gilligan J, 29/04/2005

Description

The Refugee Applications Commissioner relied on country of origin information in the Section 13 Report that was not furnished to the applicant. The applicant claimed that he was entitled to the documents prior to the decision being made in order to consider and respond to them.

The Court granted the relief sought, finding that Section 11(6) of the Refugee Act 1996 had not been complied with, and that Section 11(6) imposed an obligation on the Commissioner to furnish an applicant with all relevant information prior to the making of the recommendation. The Court noted that the only information that could be excluded from the Commissioner's obligation under Section 11(6) is that which comes under Section 11(7), i.e. anything that might be in breach of inter-State confidentiality.

Principles

Section 11(6) of the Refugee Act 1996 imposes an obligation on the Refugee Applications Commissioner to furnish an applicant with all relevant information prior to the making of the recommendation. The only information that can be excluded from the Commissioner's obligation under Section 11(6) is that which comes under Section 11(7), i.e. anything that might be in breach of inter-State confidentiality.

S.O. v Refugee Appeals Tribunal (Tribunal Member Anne Tait) & Anor

[2006] IEHC 113
Unreported, High Court, Finlay Geoghegan J, 07/04/2006

Description

The applicant, a Nigerian national, claimed asylum for fear of being subjected to a forced marriage and the victim of ritual sacrifice. The

applicant challenged the Refugee Appeal Tribunal's decision refusing her asylum arguing that the decision incorrectly stated that she left the home controlled by her father's brother because of a desire to live with her boyfriend in Lagos, and that the Tribunal had relied upon country of origin information and information from the Garda National Immigration Bureau that it had not disclosed to her.

In granting the relief sought and quashing the Tribunal's decision, the Court found that the error of fact was of significance to the Tribunal's decision, and that the failure to furnish the applicant with documents relied upon was in breach of Section 16 of the Refugee Act 1996 which obliged the Tribunal to disclose to an appellant all information relevant to an appeal.

Principles

Section 16 of the Refugee Act 1996 imposes an obligation on the Refugee Appeals Tribunal to disclose all information to an appellant that is relevant to his or her appeal.

5.4.13 The Decision-Maker's Duty to Consider Up-To-Date Information

N.M.B. v John Ryan (acting as the Refugee Appeals Tribunal) & Ors

[2005] IEHC 13

Unreported, High Court, Finlay Geoghegan J, 24/01/2005 (Leave)

Description

The applicant's husband, who had been granted refugee status, had been due to give evidence at the applicant's oral hearing before the Refugee Appeals Tribunal. The applicant's husband could not attend due to illness, and the Tribunal did not grant an adjournment until such time as the witness might be available. The Tribunal's decision, which upheld the Commissioner's negative recommendation, did not issue until in excess of fifteen months after the hearing, and it did not appear that the Tribunal member considered country of origin information in the interim. The applicant sought to quash the Tribunal's decision by way of judicial review.

The High Court granted leave to seek judicial review, finding, *inter alia*, that the Tribunal Member to whom the appeal was assigned had an obligation to determine the appeal within a reasonable time, and that when giving a determination in excess of three months later was obliged to reconsider up-to-date country of origin information.

Principles

A Tribunal Member to whom an appeal is assigned has a duty to determine the appeal within a reasonable time. A Tribunal is obliged to consider relevant up-to-date country of origin information after an appeal hearing if the Tribunal has not decided the matter in a reasonable amount of time.

5.4.14 The Tribunal's Power to Reassign Cases

G.E. & Ors v Chairman of the Refugee Appeals Tribunal & Ors

[2006] 2 IR 11; [2005] IESC 15

Supreme Court, 16/03/2005

Unreported, High Court, Finlay Geoghegan J, 29/07/2004

Description

The Tribunal Member who had initially heard the applicants' cases had delayed making a decision for a considerable amount of time. The Chairman of the Refugee Appeals Tribunal sought to reassign the applicants' cases to other Tribunal Members.

The High Court granted an order of Mandamus requiring that the original Tribunal Member determine the appeals, finding that in circumstances other than death or ceasing to be a member, the implicit power to reassign to a different Tribunal Member could apply only when a Tribunal Member was unable for a physical or mental reason to determine an appeal, or was unable as a matter of law to issue a valid decision. The respondent appealed the decision to the Supreme Court.

The Supreme Court held that the High Court had erred in concluding that the principles of Constitutional justice and fair procedures required her to restrict the scope of the power conferred on the Chairman of the Tribunal, and held that where circumstances warrant the reassigning of an appeal, the Chairman may do so, so long as he acts fairly and respects

the principles of natural and Constitutional justice. The Court held that the Chairman had made valid decisions in reassigning the applicants' cases.

Principles

Where circumstances warrant the reassigning of an appeal, the Chairman of the Refugee Appeals Tribunal may so reassign the appeal, so long as he acts fairly and respects the principles of natural and Constitutional justice.

5.4.15 Whether the Decisions of the Commissioner and Tribunal Merge

N.A.A. v Refugee Applications Commissioner & Ors

[2007] IEHC54

Unreported, High Court, Finlay Geoghegan J, 23/02/2007

Description

The Commissioner refused the applicant a declaration, and applied Section 13(6) of the Refugee Act 1996 with the result that the applicant would not have an oral hearing on appeal. The applicant's legal representatives filed a notice of appeal, requesting the Tribunal to delay making a decision while the applicant sought to quash the Commissioner's decision on the basis of it being in breach of fair procedures. The applicant was unsuccessful in quashing the Commissioner's decision informally, and brought proceedings in the High Court. Meanwhile, the Tribunal dismissed the appeal. The applicant then also sought to quash the Tribunal's decision on the basis that it affirmed the allegedly defective decision of the Commissioner's office. The respondent argued that the Commissioner's decision was no longer open to review in itself as it had merged with the decision of the Tribunal.

The Court held, in refusing the relief sought, that the decisions had not merged and that the decision of the Commissioner remained susceptible to review, but that the normal position must be that where an appeal is determined an application has thus gone too far, and the High Court will not interfere save where there are special circumstances. The Court stated that such special circumstances would include (a) the nature of the

grounds asserted, (b) whether they could be considered on appeal, (c) when the applicant became aware of such grounds, (d) whether the applicant was prevented from bringing the application before the determination of the appeal, (e) whether the applicant acquiesced, (f) the relevant statutory scheme, (g) the time elapsed, and (h) the fairness of the appeal procedure. The Court held that the facts of the instant case did not disclose such special circumstances.

Principles

Decisions of the Refugee Applications Commissioner do not merge with those of the Refugee Appeals Tribunal. Where an appeal has been determined an applicant will usually be unable to challenge the Commissioner's decision, save where there are special circumstances.

5.4.16 Further Asylum Claims

E.M.S. v The Minister for Justice, Equality and Law Reform

[2004] 1 IR 536

Supreme Court, 10/06/2004

Description

The Minister refused to grant refugee status to the applicant, a South African national. The applicant subsequently asked the Minister to consent to allow him to make a fresh application for asylum pursuant to Section 17(7) of the Refugee Act 1996. The Minister refused to give this consent, and the applicant sought to challenge the refusal by way of judicial review. The applicant contended that the refusal was not subject to the special rules for judicial review in Section 5 of the Illegal Immigrants (Trafficking) Act 2000, and argued that a negative decision under Section 17 of the Refugee Act 1996 should be considered a "refusal" only if it is expressly described as such in that section.

The Supreme Court rejected the applicant's argument, finding that there was no ambiguity in the legislation, and that no basis had been advanced for giving the word "refusal" in Section 5(1)(k) of the 2000 Act anything other than its ordinary and natural meaning.

Principles

A refusal on the part of the Minister to give consent to an applicant to make a further application for asylum under Section 17(7) of the Refugee Act 1996 is subject to Section 5(1)(k) of the Illegal Immigrants (Trafficking) Act 2000.

C.O.I. v The Minister for Justice, Equality and Law Reform

Unreported, High Court, McGovern J, 02/03/2007

Description

The applicant was refused asylum, but his sister-in-law was successful on appeal before the Refugee Appeals Tribunal. The applicant subsequently sought the Minister's consent pursuant to Section 17(7) of the Refugee Act 1996, as amended, to allow him to make a further application for asylum, on the basis that his sister-in-law had been successful before the Tribunal. The Minister refused the request, stating that the new evidence did not significantly add to the likelihood of the applicant qualifying for asylum on the totality of the evidence already available and considered. The applicant challenged this refusal by way of judicial review, claiming that the Minister applied the wrong legal test, and had breached his right to equality of treatment.

The Court quashed the Minister's decision, holding that the Minister had acted unlawfully in refusing his consent to the Section 17(7) application, that the Minister had erred in holding that the comparisons between the two cases were not relevant, that the applicant was entitled to go to the relevant bodies established under the asylum legislation to make a further application, and that, since the right of an applicant to a new hearing is dependant on obtaining the Minister's consent, the Minister is obliged to act fairly and in accordance with the principles of natural justice, and not arbitrarily as in the instant case. The Court held that as Section 17(7) of the Act is a preliminary step in the process of having a new application considered it was important that the respondent not rule out the possibility of an applicant having a further claim considered where there is a realistic prospect that a favourable view could be taken of the new claim in cases where fundamental human rights and issues are at stake.

Principles

A failed asylum seeker is entitled to go to the relevant bodies established under the asylum legislation to make a new application for asylum where there is fresh evidence that another claim has been successful on

essentially the same facts. The Minister should not rule out the possibility of an applicant having a further claim considered where there is a realistic prospect that a favourable view could be taken of the new claim.

5.4.17 Changes in Asylum Procedures and Statutory Schemes

Gutrani v Minister for Justice

[1993] 2 IR 427

Supreme Court, 01/01/1993

Unreported, High Court, O'Hanlon J, 03/06/1992

Description

The von Arnim letter was written in December 1985 on behalf of the Minister for Justice to the then representative of the UNHCR, Mr. R. von Arnim. It set out an agreed procedure for the determination of refugee status in Ireland. The case resulted in the von Arnim letter being upheld as creating a binding obligation on the Minister for Justice. The Court stated that having established such a scheme, however informally, the Minister was bound to apply it to appropriate cases, and his decision would be subject to judicial review.

Principles

The von Arnim letter, written in December 1985, and which set out an agreed procedure for the determination of refugee status in Ireland, on behalf of the Minister for Justice to the then representative of the UNHCR, Mr. R. von Arnim, was binding on the Minister.⁴⁴²

⁴⁴² The Refugee Act 1996 subsequently introduced a procedure for determining asylum claims in the State that superseded the von Arnim letter.

Dascalu v Minister for Justice, Equality and Law Reform

[2002] 1 ICLMD 5

High Court, O'Sullivan J, 04/11/1999

Description

The Romanian applicant had been informed on behalf of the Minister that his application for refugee status was manifestly unfounded. There was, however, no provision for finding a claim manifestly unfounded under the von Arnim procedure that was in force at the time of Mr. Dascalu's application. The von Arnim procedure had since been replaced by the Hope Hanlon procedure that provided for a finding that an application was manifestly unfounded.

The court held that the Minister was entitled to change procedures, and was entitled to do so in respect of applications that had been made under the old procedures, but that the Minister was required to inform the applicant individually that his application was now being dealt with under new procedures that provided for the possibility of finding the claim to be manifestly unfounded. The applicant was granted judicial review because it was held that the Minister for Justice was at fault in not notifying the applicant individually of this fact.

Principles

Where there is a change in procedures, the Minister for Justice is required to notify an applicant that his claim will be processed under new procedures.

Stefan v Minister for Justice, Equality and Law Reform

[2002] 1 ICLMD 5

Supreme Court, 13/11/2001

High Court, Kelly J, 08/06/2000

Description

The applicant had been refused asylum at first instance, but the material used in reaching this decision was defective in that the English translation of the Romanian questionnaire form omitted a portion of the answer to question 84, which provided the applicant with an opportunity to set out the basis of his claim. The applicant appealed to the Appeals Authority, and this appeal was still pending when the matter came on for judicial review.

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The Court held that the defect rendered the decision at first instance either *ultra vires* or in breach of fair procedures. The Court also rejected the argument that the appeal to the Appeals Authority constituted an adequate alternative remedy to that of judicial review, on the basis that an insufficiency of fair procedures at first instance is not cured by a sufficiency on appeal. The matter was remitted for fresh consideration to the Commissioner. The Minister appealed to the Supreme Court.

The Supreme Court refused the appeal, holding that the decision at first instance should be quashed, and that the Hope Hanlon procedure involved two separate decisions, one by the person authorised by the Minister and the other by the Appeals Authority.

Principles

The Hope Hanlon procedures involved two separate decisions. The decision refusing the applicant refugee status was a final decision subject to the applicant's right of appeal. An applicant is entitled to both a primary decision and an appeal in accordance with fair procedures.⁴⁴³

I.U. v Minister for Justice, Equality and Law Reform & Anor

[2001] IESC 81

Unreported, Supreme Court, 28/02/2002

Unreported, High Court, Finnegan J, 03/07/2001

Description

The assessment of the applicant's case was not accompanied by a recommendation. The applicant successfully quashed the decision against him in the High Court. The Refugee Act 1996 came into force while the applicant's case was in being.

The Supreme Court overturned the decision of the High Court, ruling that sufficient progress had been made before the enactment of the 1996 Act to constitute a step towards resolution of the matter. The Supreme Court found that it was not necessary to duplicate steps taken before the enactment of the Refugee Act 1996 even if such steps were unfinished, provided the steps represented a significant and discernable movement towards resolution.

⁴⁴³ The Refugee Act 1996 subsequently introduced a procedure for determining asylum claims in the State that superseded the Hope Hanlon procedure.

Principles

It was not necessary to duplicate steps taken before the enactment of the Refugee Act 1996, even if such steps were unfinished, provided the steps represented a significant and discernible movement towards resolution.

5.4.18 ASYLUM APPLICATIONS ON BEHALF OF MINORS

A.N. & Ors v The Minister for Justice & Anor

[2007] IESC 44

Unreported, Supreme Court, 18/10/2007

Description

The Minister issued the parent and children applicants with deportation orders as failed asylum seekers pursuant to Section 3(2)(f) of the Immigration Act 1999. The applications for asylum were in the parent applicants' names, but not in the children's names. The children had not been issued with refugee status determinations. The applicants challenged the children's deportation orders on the basis that their designation as failed asylum seekers was wrong in law. The High Court granted the applicants leave to seek judicial review, but later refused the substantive relief of orders of Certiorari quashing the deportation orders. The applicants appealed to the Supreme Court as the Court deemed the issue a point of law of exceptional public importance.

The Supreme Court set aside the High Court judgment, and made an order of Certiorari quashing the children's deportation orders, finding that there was no record of any decision refusing asylum applications on behalf of the children. The Court held that such a refusal was a fundamental prerequisite to the Minister's power under Section 3(2)(f) of the Immigration Act 1999. Finnegan J held that where an application by a parent of a minor is unsuccessful, the child is entitled to apply for asylum based on his own circumstances, and that where a child's parents are successful, the child should benefit by virtue of the principle of family unity.

Principles

Section 3(2)(f) of the Immigration Act 1999 cannot apply to children where there is no asylum application on their behalf. Where an application by a parent of a minor is unsuccessful, the child is entitled to

apply for asylum based on his own circumstances. Where a child's parents are successful in an application for asylum, the child should benefit by virtue of the principle of family unity.

5.5 DETENTION OF ASYLUM SEEKERS

Arra v The Governor of Cloverhill Prison & Ors

[2005] 1 IR 379

High Court, Clarke J, 10/12/2004

Description

The applicant was detained pursuant to Section 9(8) of the Refugee Act 1996. He sought bail pending the determination of judicial review proceedings. Counsel for the applicant contended that the granting or otherwise of bail in these circumstances differed in no material respect from those applicable pending a criminal trial, and suggested that the only real considerations were whether the Court was satisfied that the applicant would attend the hearing and be available to be recommitted to prison if unsuccessful. Counsel for the Respondent accepted that these were material considerations, but suggested that the Court had a wider range of matters to take into account than those which the Court would take into account in considering bail pending a trial on a criminal charge.

The High Court refused bail. The Court agreed with the Respondent that it could take into account a wider range of matters as compared with considering bail pending a criminal trial. The Court found that the fact that the applicant had not been charged with any criminal offence was not the issue. The Court stated that the entitlement to bail in criminal proceedings is based on the presumption of innocence, whereas the reason the applicant in the instant case was in detention stemmed from Section 9(8) of the Refugee Act 1996 and, accordingly, the applicant was not in the same position as a person accused of a criminal offence, and consequently had no presumption that went to his benefit that the District Court order was invalid. The Court considered that a significant portion of the applicant's challenge was on Constitutional grounds, that the impugned provision enjoyed a presumption of Constitutionality, and that weight should be given to the fact that detention was on foot of an order, that was manifestly not ill-founded, of a Court of competent jurisdiction. On the evidence, the Court also found that it was probable that the applicant would not attend the trial of the substantive issue.

Principles

A Court may take into account a wider range of matters in applications for bail re Section 9(8) of the Refugee Act 1996, as compared with applications for bail pending a criminal trial.

S.N. v Governor of Cloverhill Prison

[2005] IEHC 471

Unreported, High Court, MacMenamin J, 14/04/2005

Description

The applicant, an Afghan national, arrived in the State and was refused leave to land. When questioned, he said he had a forged Iranian passport for which he paid \$11,000, and that his real ID was in Afghanistan. The Garda concluded that the applicant had made no reasonable efforts to produce identification and that he was in possession of forged identification. The applicant was detained under Section 9(8)(c) and (f) of the Refugee Act 1996, i.e. because he had “not made reasonable efforts to establish his or her identity” and because he “without reasonable cause has destroyed his or her identity or travel documents or is in possession of forged identity documents.” The applicant contended that “without reasonable cause” referred to both destruction of identity documents, and to possession of forged identity documents. On the face of the detention order, the respondent had deleted that part of Section 9(8)(f) that stated “without reasonable cause has destroyed his or her identity or travel documents”. When brought before a District Judge, the District Judge stated that the applicant was a thief and a liar, and the applicant was detained. The applicant had not, however, been shown the relevant information and reports.

The application was construed by the Court as an investigation under Article 40 of the Constitution, and the Court held that the applicant had not been placed on notice of the full case against him, that there was no evidential basis to warrant the comments made by the District Court Judge, that the want of fair procedures that occurred in the District Court was such as to render the proceedings unfair, and that as the District Judge had failed to set out a clear evidential basis for detention pursuant to Section 9(8) of the Refugee Act 1996, the respondent had failed to establish that the Judge had acted within jurisdiction. The Court declined to make a finding regarding the interpretation of Section 9(8)(f) in light of the doctrine of judicial restraint.

Principles

A District Court Judge must set out clearly the evidential basis for detention pursuant to Section 9(8) of the Refugee Act 1996.

5.6 SUBSIDIARY PROTECTION

H & D v Minister for Justice, Equality and Law Reform

[2007] IEHC 277

Unreported, High Court, Feeney J, 27/07/2007

Description

Both applicants had been refused declarations of refugee status, had been refused leave to remain, and were the subjects of deportation orders. Both applied for subsidiary protection contending that they had an automatic right to apply for subsidiary protection pursuant to the European Communities (Eligibility for Protection Regulations 2006) S.I. No. 518/2006 and Council Directive 2004/83/EC. The Minister stated that their applications were invalid and had to be refused as the applicants' deportation orders pre-dated the coming into operation and the transposition of the Directive on 10 October 2006, and that he had no discretion to consider the applications. The applicants sought to quash the Minister's refusals to consider their applications.

The Court found that the intention of the Directive was to identify minimum standards, and that insofar as the Directive identified obligations that did not apply within Ireland prior to the coming into effect of the Directive, the Directive imposed higher standards than those previously in operation. The Court found that the definition of torture that the Minister had to consider prior to the transposition of the Directive was narrower than that contained in Article 15 of the Directive in that previously the definition of torture was limited to acts or omissions done or made or at the instigation of, or with the consent or acquiescence of a public official (Section 186 Criminal Justice Act 2006, as amended). The Court also found that the limitation present in the protection from *refoulement* of provision of Section 5(1) of the Refugee Act 1996, that the threat be on account of an applicant's race, religion, nationality, membership of a particular social group or political opinion, was not present in Article 15 of the Directive, and that with regard to the definition of serious harm in Article 15, it did not appear that

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consideration of Section 5 of the Refugee Act 1996 would result in the Minister having considered in every case matters that he was now obliged to consider under Article 15's definition of serious harm.

The Court held that while people in respect of whom deportation orders are made after 10 October 2006 have an automatic right to apply for subsidiary protection, Regulation 4(2) gives the Minister a discretion to consider applications for subsidiary protection from other applicants, that to reject such applications without regard to that discretion would be in breach of the Minister's obligations, and that if a person who has been refused leave to remain is able to identify new facts or circumstances arising after the determination of that application, the Minister has a discretion to allow such a person apply for subsidiary protection. The Court stated that relevant altered circumstances could include a claim that an applicant's personal position was effected by the Directive's definition of serious harm, and might arise as a result of the passage of a prolonged period of time resulting in altered personal circumstances or alterations in an applicant's country of origin. The Court subsequently quashed the Minister's refusal to consider the applications.

Principles

People in respect of whom deportation orders are made after 10 October 2006 have an automatic right to apply for subsidiary protection. Regulation 4(2) of S.I. No. 518 of 2006 gives the Minister discretion to consider applications for subsidiary protection from other applicants. If a person, whose deportation order pre-dated the transposition of Council Directive 2004/83/EC and who has been refused leave to remain, is able to identify new facts or circumstances arising after the determination of that application, the Minister has discretion to allow such a person apply for subsidiary protection.

2008 CASE LAW UPDATE

N & Anor v Minister for Justice Equality and Law Reform

[2008] IEHC 107

High Court, Charleton J. 24/04/2008

Description

The Nigerian national applicants were failed asylum seekers who subsequently applied for subsidiary protection. The Minister refused

their applications and they sought to quash those decisions by way of review. The applicants argued that subsidiary protection was a right under EU law and not a matter of Ministerial discretion, that they were entitled to a consideration of their claims for subsidiary protection in a manner divorced from the Refugee Act 1996.

The Court refused the relief sought. The Court found that an applicant for subsidiary protection must, as a matter of law, have already ventilated the facts and circumstances regarding the claimed risk of persecution, and that it is only upon rejection of such a claim that applicants are entitled to make an application for subsidiary protection. The Court said that the primary focus in such an application is any risk to which an applicant alleges he or she would be subject if returned, considered in the light of the situation in terms of peacefulness and the functionality of ordinary protection of that country. The Court noted that in defining the right to be protected against serious harm, the legislation focuses on attacks or threats by human agency, and that this definition excludes the state of health of an applicant. The Court said that the primary focus for decision making regarding subsidiary protection was on obtaining reliable and up to date country of origin information, and that it was not necessary for the Minister to engage in a dialogue with an applicant for subsidiary protection. The Court stated that a primary question in considering an applicant's claim for subsidiary protection should be whether what is contended for is new, or has already been the subject of an asylum determination. The Court held that if substantially new material is put forward it must be given a fair and reasoned consideration, and that nothing in the Procedures Directive requires that the decision making process as to whether a non-citizen is entitled to subsidiary protection should be the same as that for refugee status.

Principles

A primary focus in applications for subsidiary protection is any risk to which an applicant alleges he or she would be subject if returned, considered in the light of the situation in terms of peacefulness and the functionality of ordinary protection of that country. A primary question in considering a claim for subsidiary protection is whether what is contended for is new, or has already been the subject of an asylum determination. If substantially new material is put forward it must be given a fair and reasoned consideration.

5.7 DEPORTATION

5.7.1 Deportation and Non-Refoulement

Amadi v Minister for Justice, Equality and Law Reform

[2005] IEHC 338

Unreported, High Court, O'Neill J, 13/10/2005 (Leave)

Description

The applicant claimed a fear of FGM in Nigeria, but failed to obtain asylum or leave to remain in the State, and was issued with a deportation order. She challenged the deportation order, but not the asylum decisions, contending, *inter alia*, that the Minister had not considered Section 4 of the Criminal Justice (UN Convention Against Torture) Act 2000, and favourable country of origin information.

The Court refused leave to seek judicial review, and held that the Minister is not only entitled to have respect to the conclusion of the Refugee Appeals Tribunal, but that in the absence of new evidence which would be sufficiently compelling to persuade him otherwise, he is bound to have regard to the Tribunal's decision.

Principles

The Minister, in deciding whether to make a deportation order, is entitled to have regard to the conclusion of the Refugee Appeals Tribunal.

Izevbekhai & Ors v Minister for Justice, Equality and Law Reform

Unreported, High Court, McKechnie J., 10/11/2006 (*ex tempore*)

Description

A Nigerian mother and her two daughters had been refused asylum in the State and subsequently made applications for leave to remain. Deportation orders were issued, and the applicants sought to challenge these on the basis, *inter alia*, that the Minister failed to consider the daughters' fear of FGM in light of the European Convention on Human Rights and the UN Convention against Torture. The Court granted

leave, finding that if there is an allegation that is not insubstantial that by returning individuals to a certain country they may be subject to torture, then there is a special obligation on the decision-maker to consider all available material and in a general way identify the principal reasons why, in the face of specific material which reasonably leads to the conclusion that there is danger, that there is no danger. The Court also stated that FGM constituted torture.

Principles

If there is an allegation that is not insubstantial that by returning individuals to a certain country they may be subjected to torture, then there is a special obligation on a decision-maker to consider all available material and in a general way identify the principal reasons why, in the face of specific material which reasonably leads to the conclusion that there is danger, that there is no danger. FGM constitutes torture.⁴⁴⁴

5.7.2 Deportation and Medical and Social Needs

O. (A Minor) & Anor v The Minister for Justice, Equality and Law Reform

[2003] 1 ILRM 241
Supreme Court, 06/06/2002

Description

The second-named applicant was pregnant and sought judicial review of her deportation order on the ground, *inter alia*, that her unborn child had a legal personality with rights under the Constitution, including the right to be born under Article 2 of the Constitution, and that the deportation would infringe the right to life of the unborn in that, *inter alia*, there was no stable system of antenatal care in the country to which the applicant was to be deported.

The Court held that entitlement to birthright under Article 2 was an entitlement of a person born in Ireland. The Court held that the issue of antenatal care was irrelevant to the legality of the deportation. The court rejected the argument that fair procedures required that the deportation

⁴⁴⁴ The High Court ultimately refused the substantive relief sought [Feeney J, 13/03/2008].

order should specify the reasons for holding that the prohibition on *non-refoulement* did not apply to an asylum applicant, and that the reasons in the deportation order had been sufficient. The Supreme Court dismissed the appeal and found that a deportation order could not be prevented solely on the ground that the subject was pregnant.

Principles

A deportation order cannot be prevented solely on the ground that the subject is pregnant.

O.O. v The Minister for Justice, Equality and Law Reform

[2004] 2 IR 426

High Court, 30/07/2004, Gilligan J.

Description

The applicant had been refused asylum and was the subject of a deportation order. A consultant psychotherapist indicated that the applicant might attempt to take his own life before repatriation was effected. The applicant's solicitor requested that the Minister revoke the order and stated that the therapist's report would be furnished the next day. The following day, however, and before any medical report could be furnished, the Minister's office wrote to the applicant's solicitor indicating that the Minister did not intend to revoke the order. The applicant sought to review this decision on the basis that the Minister had failed to observe fair procedures in dealing with the request to revoke the order.

The Court granted an order of Certiorari quashing the Minister's refusal to revoke the deportation order, finding, *inter alia*, that there was a bona fide risk to the life of the applicant, and that the Minister could not come to a conclusion regarding whether to revoke the order in such circumstances until the report from the psychotherapist was made available

Principles

Where a proposed deportee seeks revocation of a deportation order where there is a bona fide risk to his or her life, the Minister is obliged to consider the relevant medical evidence before determining whether to revoke the order.

Agbonlahor v Minister for Justice, Equality and Law Reform

[2007] IEHC 166

Unreported, High Court, Feeney J, 18/04/2007

Description

The applicants requested that the Minister amend or revoke their deportation orders on the basis that one of them, the first-named applicant's young son, was diagnosed with ADHD, and that deportation would be in breach of his rights under Article 8 of the European Convention on Human Rights. The Minister refused the request, and the applicants sought to challenge the refusal by way of judicial review.

In refusing the relief sought, the Court held that aliens who are subject to expulsion cannot claim entitlement to remain in order to benefit from State assistance, save where there are exceptional circumstances, and that the applicant had not established such exceptional circumstances entitling him to protection.

Principles

Aliens who are subject to expulsion cannot claim entitlement to remain in the State in order to benefit from State medical or social assistance save where there are exceptional circumstances.

5.7.3 Revocation of the Deportation Order

Fitzpatrick v Minister for Justice, Equality and Law Reform

[2005] IEHC 9

Unreported, High Court, Ryan J, 26/01/2005

Description

The applicants, a non-Irish national and an Irish citizen, were a married couple. A deportation order was in being against the non-Irish (Romanian) spouse, who had been deported from the State. The applicants subsequently spent some time together in Romania. They requested that the order be revoked so that they could live together in Ireland as a family unit. The Minister refused to revoke the order, stating that the applicants had not resided together for an appreciable period of time since the deportation order. The applicants contended that the

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Minister had failed to consider the impact of a refusal to revoke the deportation order on the applicants' marital circumstances, as he was obliged to do, that their family rights were infringed, and that the refusal to revoke was disproportionate.

The Court quashed the Minister's decision, finding, *inter alia*, that the reason advanced for rejecting the application was not logically connected to the discretion exercised, that the Minister took irrelevant material into account, and had addressed himself to an issue in respect of a situation that had almost entirely been brought about by the deportation. The court also accepted that the time spent in Romania was appreciable.

Principles

Reasons advanced for rejecting an application to revoke a deportation order should be logically connected to the discretion exercised.

Awe v Minister for Justice, Equality and Law Reform

[2006] IEHC 5

Unreported, High Court, Finlay Geoghegan J, 24/01/2006 (Leave)

Description

The applicants, a Nigerian man and his children, were issued with deportation orders. They requested that the Minister not deport them until he considered up to date medical reports. The Department of Justice responded stating that their deportation was an operational matter and that no further matters could be considered. The applicants applied to the Minister for a revocation of the deportation orders, pursuant to Section 3(11) of the Immigration Act, 1999. The Department of Justice responded to this letter stating that the request was being sent to the relevant Section for attention. The applicants sought an order compelling the Minister to consider and decide the application for revocation of the deportation orders. In granting leave to seek the relief sought, the Court held that the applicant had substantial grounds for contending that, as a matter of fair procedures, the Minister is required to make a determination on the application for revocation within a reasonable period of time.

Principles

It is arguable that the Minister is required, as a matter of fair procedures, to determine an application for revocation of a deportation order, and that a determination be made within a reasonable time.

B.O. v The Minister for Justice, Equality and Law Reform & Ors

[2006] 3 IR 218

High Court, Herbert J, 24/05/2006

Description

The applicant was a Nigerian national to whom the Minister had refused to grant asylum, and who was the subject of a deportation order. The applicant averred that shortly before receipt of the deportation order she learned that her sister was legally resident in the State, and that she had applied to the Minister for family reunification on this basis, and had applied for revocation of the deportation order. There was dispute between the parties regarding whether the application for reunification was properly before the Minister at the material time. The applicant defaulted in the facilitation of her deportation, was classified as an evader and was detained pending deportation. The Minister did not concede that the women in question were sisters, stated that the application for reunification would be considered in due course, but maintained that there was no need for the applicant to be present in the jurisdiction pending the determination of this application. The applicant claimed that it was in breach of fair procedures for her deportation to be effected prior to the family reunification determination, and sought bail. The applicant averred that there would be serious obstacles to her being able to prosecute her claim in the State if returned to Nigeria. The Court had already granted interim relief.

The High Court granted an order continuing the restraining of the deportation order until the application for leave, and held that the applicant had established a serious question to be tried that if she were to be returned to Nigeria her circumstances might become such that she would be unable to continue to prosecute her application for residency. The Court held that Section 5 of the Illegal Immigrants (Trafficking) Act 2000 did not apply to a refusal to revoke a deportation order under Section 3(11) of the Immigration Act 1999. The Court noted that it was unlikely that the applicant would be a burden on the State, and found that the greater risk of doing injustice lay in refusing to grant the relief sought. The Court granted bail as, while it was satisfied that there was a concluded intention to deport, it found that the minimum period likely to elapse before the application for leave could be heard was such that the applicant would not be removed in the remaining permitted weeks of detention. Bail was conditional because the applicant was an evader.

Principles

The balance of convenience tends to favour granting interlocutory injunctive relief restraining deportation in circumstances where a proposed deportee establishes a serious question that he or she would otherwise be unable to prosecute her case. Bail may be granted to a proposed deportee where there is a concluded intention to deport but deportation is unlikely to be effected pending the determination of litigation in the State. Section 3(11) of the Immigration Act 1999 is not subject to the higher standard of review in Section 5 of the Illegal Immigrants (Trafficking) Act 2000.

Cosma v Minister for Justice, Equality and Law Reform

[2006] IESC 44

Unreported, Supreme Court, 10/06/2006

Unreported, High Court, Peart J, 11/05/2004 (Leave); Hanna J, 02/05/2006

Description

The applicant, a failed asylum seeker from Romania, was issued with a deportation order. She requested a revocation of the order, and furnished the Minister with a psychiatric report stating that she had suicidal ideations. The Minister refused to revoke the order, and the applicant sought to quash the deportation order on the basis that her deportation would be in breach of Articles 3 and 8 of the European Convention on Human Rights.

The High Court granted the applicant leave to seek judicial review, but ultimately refused the relief sought, finding that the applicant failed to prove that there was a real and substantial risk that she would kill herself; that the medical reports furnished fell short of what was necessary in terms of analysis of the applicant's condition, and that the applicant had not established that the revoking of the deportation order would avert her suicide.

The applicant appealed to the Supreme Court, and sought an injunction restraining the applicant's deportation pending the outcome of the appeal. The Supreme Court declared that Section 3(11) of the Immigration Act 1999 is not governed by Section 5 of the Illegal Immigrants (Trafficking) Act 2000, and, therefore, that the applicant did not require a certificate from a High Court judge in order to institute an appeal before the Supreme Court on this point. The Supreme Court

refused the injunction, however, holding that Court had an inherent power to grant interlocutory orders pending the hearing of an appeal where such order is necessary to protect the rights of the parties, but that in the instant case no matter had been made out by the applicant to stay the implementation of the validly made deportation order.

Principles

In seeking to revoke a deportation order because of suicidal ideations, an applicant must prove that there is a real and substantial risk of suicide due to the deportation. Analytical medical evidence is required for this purpose. Section 3(11) of the Immigration Act 1999 is not governed by Section 5 of the Illegal Immigrants (Trafficking) Act 2000.

5.7.4 Entitlement to Know Reasons for Deportation

P. L. & B. v Minister for Justice, Equality and Law Reform

[2001] 9 ICLMD

Supreme Court, 30/07/2001

Unreported, High Court, Smyth J, 02/01/2001

Description

The applicants brought judicial review proceedings seeking to quash deportation orders against them. Each had made an unsuccessful asylum application, and each had their appeal turned down.

The High Court quashed the deportation order in only one of the cases. The Court held that in the case of B there was a failure by the Minister to give reasons for the making of the deportation order in the letter of notice, as required under Section 3(a) of the Immigration Act 1999. The High Court certified that the points raised in the cases were of exceptional public importance, and should be appealed to the Supreme Court.

The Supreme Court held that an applicant is entitled to a written notification of the reasons for his or her deportation, but that the Minister had given adequate reasons in two of the three cases. The appeals of P and L were dismissed, and judicial review proceedings taken by B continued. The Court dismissed a cross appeal taken by the Minister.

Principles

Applicants are entitled to reasons for deportations upon being refused refugee status.

5.7.5 Entitlement to Know Destination Country of Deportation

Sibiya v The Minister for Justice, Equality and Law Reform

Unreported, Supreme Court, 07/02/2006

Unreported, High Court, Butler J, 02/12/2004

Description

The applicants were issued with deportation orders, which they sought to challenge on the basis that the orders did not state the country to which they were to be deported.

The High Court rejected the application but certified the applicants' appeal to the Supreme Court as it found the matter to be a point of law of exceptional public importance in the public interest. The Supreme Court dismissed the appeal finding that S.I No. 103/2002 (the Immigration Act (1999) (Deportation) Regulations 2002) served their prescribed purpose, and that while an applicant was entitled to know the country to which he was to be deported, there was nothing requiring an applicant to be notified of the country at the point in time at which the deportation order is made.

Principles

While an applicant is entitled to know the country to which he or she is to be deported, there is nothing requiring an applicant to be notified of the country to which he is to be deported at the time the deportation order is made.

5.7.6 Deportation of Parents of Irish Citizen Children

Fajjonu & Ors v The Minister for Justice & Ors

[1990] 10 ILRM 234

Supreme Court, 08/12/1989

Unreported, High Court, Barrington J, 02/12/1987

Description

Two of the appellants were a non-national married couple who came to Ireland from London in 1981. They failed to report to an immigration officer, as required, and stayed longer than a month without the Minister's permission. They had a son in 1983. In 1984 their situation came to the attention of the Department of Justice, and the Minister asked the husband to leave the State, although no deportation order was made. The appellants sought to restrain the Minister from issuing a deportation order on the ground, *inter alia*, that their child was a citizen of Ireland and entitled to the protection of his rights under Articles 40, 41 and 42 of the Constitution, had a right to remain resident in the State, and had a right to be parented within the State.

The Supreme Court dismissed the appeal but held that where non-nationals had resided for an appreciable time and become a family unit within the State with children who were Irish citizens, then such Irish citizens had a constitutional right to the company, care and parentage of their parents within the family unit. The Court stated that before making a deportation order the Minister would have to be satisfied that the interests of the common good and the protection of the State and its society are so overwhelming in the circumstances of the case as to justify the breaking up of the family. The Court granted the appellants liberty to apply afresh to the High Court should the Minister subsequently attempt to deport them without fulfilling his obligations.

Principles

An Irish-born child has a constitutional right, albeit not absolute, to the company, care and parentage of his or her parents within the family unit unless there are strong reasons in the interests of the common good and protection of the State justifying the contrary.

Lobe & Osayande v Minister for Justice, Equality and Law Reform

[2003] 1 IR 1, [2003] 3 ICLMD 57

Supreme Court, 23/01/2003

Unreported, High Court, Smyth J, 08/04/2002

Description

The Refugee Applications Commissioner and the Refugee Appeals Tribunal determined that both sets of applicants' asylum claims should be processed in other Member States pursuant to the Dublin Convention, and that the applicants should be removed to those countries. The applicants challenged these decisions by way of judicial review. Both couples had an Irish child, and they argued that, pursuant to Article 2 and Article 40.3.1 of the Constitution, the Irish children had a right to reside in Ireland with their parents, and that the families had rights under Article 41.1.1, Article 41.2 and Article 42 of the Constitution.

The Court refused judicial review and held that there were grave and substantial reasons associated with the common good that required that the residence of the parents within the State should be terminated, even though, in order to remain a family unit, their children would also have to leave the State. The Court stated that in determining individual cases, the Minister should take account of factors such as the length of time the family had residence in the State, the effectiveness of the immigration laws of the State, and the provisions of the Dublin Convention. The Court held that the ruling of *Fajujonu v Minister for Justice, Equality and Law Reform*⁴⁴⁵ did not mean that the Minister had no power to deport the parents of an Irish born child.

Principles

The Minister for Justice, Equality and Law Reform has a power to deport non-Irish parents of Irish children where there are grave and substantial reasons associated with the common good to do so, even if Irish children are removed from the State as a consequence. In dealing with such cases, the Minister should take into account factors such as the length of time the family had residence in the State, the effectiveness of the immigration laws of the State, and the provisions of the Dublin Convention.

⁴⁴⁵ [1990] 10 ILRM 234.

M.A. & Anor v The Minister for Justice, Equality and Law Reform

[2007] 3 IR 421

High Court, Peart J, 16/12/2004

Description

The first-named applicant, a Nigerian national, and the mother of an Irish citizen child, had been refused asylum. She applied for leave to remain in the State on the basis, *inter alia*, of her child's constitutional rights. The Minister refused to grant leave to remain and made a deportation order against the applicant on the ground that the interest of the common good in maintaining the integrity of the asylum and immigration systems outweighed matters that supported granting leave to remain. The applicants sought to quash the deportation order, arguing, *inter alia*, that the Minister's decision was disproportionate and not justified under Article 8 of the European Convention of Human Rights.

The High Court granted leave to seek judicial review, and held that the Minister's decision did not disclose any reason for deportation other than the general reference to the integrity of the asylum and immigration systems, and that it was therefore impossible for the Court to carry out its own examination required by ECHR jurisprudence in order to ensure that the principle of proportionality was observed, and that way provide an effective remedy in compliance with Article 13 of the European Convention on Human Rights and Section 4 of the European Convention on Human Rights Act 2003. The Court also held that in cases dealing with rights under the European Convention on Human Rights, the normal test for reasonableness as applied in judicial review proceedings could be too onerous for an applicant, and that to ensure an effective remedy was available a more heightened form of review must be undertaken.

Principles

In determining whether to deport the parent of an Irish child, the Minister is required to give reasons and observe the principle of proportionality. A Court dealing with rights under the European Convention on Human Rights must undertake a more heightened form of scrutiny than the test of reasonableness normally applied in judicial review proceedings.

Elukanlo v Minister for Justice, Equality and Law Reform

[2006] IEHC 211

Unreported, High Court, Dunne J, 04/07/2006

Description

The applicant had been deported to Nigeria after an unsuccessful asylum claim, but thereafter had been readmitted to the State for six months in order to sit his leaving certificate. When the six-month period neared its end, the Minister invited the applicant to make representations regarding why he ought to be allowed to remain in the State, which the applicant duly made. While in the State, the applicant had begun a relationship with an Irish woman, who became pregnant by him. The applicant did not disclose this to the Minister in his representations. The Minister issued the applicant with a deportation order. The applicant brought the matter of his girlfriend's pregnancy to the Minister's attention at that stage, stating that he had not disclosed this matter previously, as he did not want his girlfriend to suffer undue media attention. The applicant sought a revocation of the deportation order in light of the circumstances. A consultant child psychologist averred that the first year of a child's life was of great importance, and that a father should see his child on a daily basis in that period. The applicants sought an injunction restraining deportation pending the full judicial review hearing.

In refusing relief to the first-named applicant (the father), but in granting an injunction restraining that applicant's deportation to the second-named applicant (the child), the Court found that if the evidence of the psychologist was correct, then the balance of convenience favoured granting injunctive relief.

Principles

The balance of convenience favours granting injunctive relief to restrain deportation of the father of a young child pending the outcome of an application for judicial review.

O.O. and Ors v The Minister for Justice, Equality and Law Reform

[2007] IEHC 275

Unreported, High Court, Peart J, 03/07/2007 (Leave)

Description

The applicants were a Nigerian husband and wife and their four children, two of whom were Irish citizen children. The mother had been granted residency pursuant to the “IBC/05” Scheme. The father had been refused residency under that scheme on the basis that he had not lived continuously in the State since the birth of the children. The father had been issued with a deportation order dated before the births of his Irish children. The father was deported to Nigeria in October 2004, returned to Ireland illegally, and was arrested in June 2007 and detained under Section 5 of the Immigration Act 1999. This arrest led to a letter being written on the father’s behalf seeking residency on the basis of his family and domestic circumstances and parentage of Irish children. The applicants sought leave by way of judicial review and an injunction to restrain the father’s deportation pending the judicial review hearing. The applicants contended that the Minister had failed to consider the family-based Constitutional and ECHR rights of the mother and children, and submitted that the deportation order should not be executed until those rights had been considered, and that the father should be entitled to remain in the State pending the consideration. The father’s various applications contained untruths.

The Court granted the applicants leave to apply for judicial review, and held that there were arguable grounds for the contention that the Minister had not considered the constitutional and ECHR rights of the Irish children, and that to remove the father in such circumstances may be in breach of the requirements under Section 3(1) of the European Convention on Human Rights Act 2003, given the State’s obligations under Article 8 of the Convention. The Court declined the application for an interlocutory injunction, however, and held that there was no evidence to show that irreparable loss would be suffered by any of the applicants should the father be deported, that the balance of convenience accordingly favoured not granting the injunction, and that as the father’s conduct was egregious, it would require very compelling circumstances, which were absent, for the Court to allow equity to intervene in favour of granting interlocutory relief.

Principles

The Minister is obliged to consider the constitutional and ECHR rights of Irish children in contemplation of the removal of the father of such children, lest the Minister be in breach of the requirements under Section 3(1) of the European Convention on Human Rights Act 2003. Evidence of irreparable loss may be required if an applicant with family including Irish children seeks an injunction restraining his deportation. Where there is egregious conduct on the part of an applicant, a Court will require very compelling circumstances to allow equity to intervene in favour of granting interlocutory relief.

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Dimbo v Minister for Justice, Equality and Law Reform

[2008] IESC 25

Unreported, Supreme Court, 01/05/2008

[2006] IEHC 344

Unreported, High Court, Finlay Geoghegan J, 14/11/2006

Oguekwe v Minister for Justice, Equality and Law Reform

[2008] IESC 26

Unreported, Supreme Court, 01/05/2008

[2006] IEHC 345

Unreported, High Court, Finlay Geoghegan J, 14/11/2006

Description

The Minister for Justice, Equality and Law Reform introduced a scheme inviting applications for permission to remain in the State from non-national parents of Irish born children before the end of March 2005. This became known as the “IBC/05” Scheme. In the *Dimbo* case, the Minister refused the applications from the child’s parents because they had not lived continuously in the State from the date of the child’s birth. In the *Oguekwe* case, the Minister granted the child’s mother residency, but refused the application from the child’s father for his failure to have been continually resident in Ireland from the date of the child’s birth. The refused applicants had also been issued with deportation orders. The applicants in both cases sought to quash the decisions to refuse permission to remain, and the decisions to make deportation orders

claiming, *inter alia*, that the Minister failed to consider the Constitutional and ECHR rights of the Irish citizen children. The High Court quashed the Minister's decisions to refuse residency and to make the deportation order, and held that the Minister's decisions were in breach of constitutional and ECHR rights. The Minister appealed both matters to the Supreme Court.

The Supreme Court allowed the Minister's appeal on the first issue for the reasons set out in the decision of *Bode & Ors v The Minister for Justice, Equality and Law Reform*. (see section 5.8.1) The Supreme Court dismissed the Minister's appeal on the second issue, and affirmed the decision to quash the deportation order. The Supreme Court agreed with the High Court that the discretion given to the Minister by Section 3 of the 1999 Act was constrained by the obligation to exercise that power in a manner consistent with the constitutional and ECHR rights of the people affected. The Court affirmed that if the Minister was to take a decision to deport the parent of an Irish child he must (i) consider the facts relevant to the personal rights of the citizen child protected by Article 40.3 of the Constitution, if necessary by due enquiry in a fair and proper manner, (ii) identify a substantial reason which requires the deportation of a foreign national parent of an Irish born child, and (iii) make a reasonable and proportionate decision.

The Court held that in the exercise of his discretion, the Minister was required to consider the constitutional and Convention rights of the parents and children, and to refer specifically to the factors he had considered relating to the position of any citizen children. The Court held that the Minister's consideration should be fact specific to the individual child, his or her age, current educational progress, development and opportunities, and that this consideration should not only deal with educational issues, but also with the other matters referred to in Section 3 of the Immigration Act 1999. The Court stated that the extent of the consideration would depend on the facts of the case, and that the Minister's decision was required to be proportionate and reasonable on the application as a whole. The Court did not exercise its discretion to refuse relief to the applicants in the *Dimbo* case, notwithstanding that the second-named applicant in that case had sworn a false affidavit.

Principles

In taking a decision whether to deport the parent of an Irish child, the Minister for Justice, Equality and Law Reform must (i) consider the facts relevant to the personal rights of the citizen child protected

by Article 40.3 of the Constitution, if necessary by due enquiry in a fair and proper manner, (ii) identify a substantial reason which requires the deportation of a foreign national parent of an Irish born child, and (iii) make a reasonable and proportionate decision.

5.7.7 Deportation of Spouses of Irish Citizens

Pok Sun Shun & Ors v Ireland & Ors

[1986] 6 ILRM 593
High Court, Costello J, 28/06/1985

Description

The first-named plaintiff was a native of China who arrived in Ireland in 1978. As a result of what was described as a “serious incident” in 1979 he was informed by the Department of Justice that he would have to leave the country. Later that year he married the second named plaintiff, and they subsequently had three children and, at the time of the hearing in the High Court, his wife was expecting a fourth child. No steps were taken by the authorities on foot of the earlier indication that he should leave the country, and he was in fact given permits by the Department of Labour allowing him to continue to work. When in 1981 he applied to the Minister for a certificate of naturalisation, and made an application for permission to carry on business as a self employed person, however, the Minister refused both applications. The Minister then informed the Plaintiff that he would have to leave the country, but allowed him a stay of a further three months to enable him to prepare for departure. The plaintiffs brought legal proceedings, and sought declarations that the second-named plaintiff (the first-named Plaintiff’s wife) had a right under Article 41 of the Constitution to have her family unit protected and, in particular, to be allowed to cohabit with her husband and to reside within the State. They also sought a declaration that the first-named plaintiff, as the lawful spouse of the second-named plaintiff and father of the third and fourth-named plaintiffs (the children), was entitled to the protection of the Constitution and, in particular, the provisions of Articles 9, 40, 41 and 42.

The Court held that the plaintiffs were not entitled to the declarations sought, and stated that the rights given to the family were not absolute. The Court stated that restrictions are permitted by law as when, for

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example, parents of families are imprisoned, and that these restrictions were permitted for the common good.

Principles

The State is entitled to deport a person even if they are married to or related to an Irish citizen.

Osheku & Ors v Ireland & Ors

[1986] IR 733

High Court, Gannon J, 27/06/1986

Description

Mr. Osheku arrived in Ireland in 1979, claiming he had come on holiday. He married his Irish wife in 1981, and they had an Irish child. The Department of Justice asked Mr. Osheku to leave the country on a number of occasions, and in 1983 the Department told him he could no longer remain in Ireland unless he supplied proof that he could support himself and his dependents. Mr. Osheku did not provide this proof and instituted proceedings to obtain an order preventing his deportation. He challenged the validity of the proposal to deport under the Constitution and the Aliens Act 1935, its statutory orders, and under the Irish Nationality and Citizenship Act 1956.

The Court refused to grant the order and held that deportation would not infringe Mr Osheku's constitutional rights, or those of any of the applicants. The Court held, *inter alia*, that the right to reside in a place of an individual's choice is not a fundamental or constitutional right of a citizen, and that the applicant's marriage did not confer immunity from the sanctions of law regarding his continuous breach of the laws of the State.

Principles

A person may be deported even if they are married, or otherwise related, to an Irish citizen.

A.A. & Anor v The Minister for Justice, Equality and Law Reform & Anor

[2005] 4 IR 564
High Court, Clarke J, 16/11/2005

Description

The applicant, a Nigerian national, married an Irish citizen after a deportation order was made against him. He then requested that the Minister revoke the order in light of the new circumstances. The Minister refused this request, and the applicant sought to quash both the deportation order and the refusal to revoke the order.

The High Court refused leave, stating that the Minister was obliged to consider, *inter alia*, new circumstances in the form of family rights such as those that arose in the instant case, but finding that it appeared that the Minister had taken into account the fact of the possible impending marriage in declining to revoke the order. The Court noted that the applicant had been in the relationship for sixteen months prior to the marriage, and had known of the proposed deportation and of the precarious nature of his status in the State since December 2002.

Principles

The Minister for Justice is obliged to consider new circumstances in the form of family rights where a proposed deportee seeks revocation of a deportation order.

5.7.8 Deportation and the Right to Establishment

Goncescu and Ors v Minister for Justice, Equality and Law Reform

[2003] IESC 44
Unreported, Supreme Court, 30/07/2003
[2002] 8 ICLMD 88,
High Court, Smyth J, 24/06/2002

Description

The Romanian and Czech applicants sought to quash deportation orders made against them on the grounds that the orders were contrary to their

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rights of establishment under European law. The applicants contended that they had effective rights of establishment under European Association Agreements between the European Union and candidate countries seeking membership of the Union.

The High Court refused to quash the deportation orders. The court held that it could not be the law that a person entering a State on one basis could, when plans do not work out, seek to convert a non-existent right to remain in the State into such a right, by invocation of European Agreements. The High Court held that the right of establishment was circumscribed by the European Agreement, which entitled Member States to apply their rules regarding entry and stay in the Member States. Although leave to apply for judicial review was refused, the High Court certified that the case involved points of law of exceptional public importance and that it was desirable in the public interest that an appeal should be taken to the Supreme Court.

The Supreme Court upheld the High Court findings and held that the system of prior control of applications for establishment by non-nationals by Member States was compatible with the Europe Agreements. It held that the appellants had no right to remain in the State, having been made the subject of deportation orders, for the purpose of seeking to make an application for establishment under those agreements. The Court also held that the applicants were entitled, as they always were, to make such applications from their home States. The Court drew attention to the fact that, at the time when all the appellants notified the Minister of their wish to exercise establishment rights under the European Agreements, their applications for asylum had been terminated, and that they therefore at that point had no lawful entitlement to remain in the State.

Principles

The right of establishment under European law was circumscribed by the European Agreement, which entitled Member States to apply their rules regarding entry and stay in the Member States.

5.7.9 Deportation and Voluntary Return

Okenla v Minister for Justice, Equality and Law Reform

[2006] IEHC 251

Unreported, High Court, MacMenamin J, 13/07/2006

Description

The applicant was the subject of a deportation order. He claimed to have been unaware of the deportation order until he was arrested, and that he had been making arrangements to leave the State voluntarily. His legal representatives had furnished the Department of Justice with a letter stating that the applicant intended to leave the State. The applicant consulted with his then legal representatives while in detention, but then instructed new legal representatives, and instituted judicial review pleadings challenging the deportation order on the basis that he had been denied access to legal advice, and that the deportation order ought not to have been made when he was arranging to leave the State voluntarily.

The Court refused the relief sought and found that the applicant had not been denied legal advice, and could have instituted proceedings at least from the time of his arrest, at which time he must have known there was a deportation order in being against him. The Court further held that the applicant had not discharged the onus of proof that he had intended to leave the State voluntarily as the letter sent by his legal representatives in this regard did not satisfy the criteria of Section 3(4)(b) of the Immigration Act 1999 because it was not from the applicant's solicitors of record, was ambiguous as to the date of intended departure, and provided no confirming documentary evidence that he was leaving the State.

Principles

In order to discharge the onus of proof that an applicant intends to leave the State voluntarily, it is necessary to satisfy the criteria of Section 3(4)(b) of the Immigration Act 1999. The appropriate correspondence should be furnished by an applicant's solicitors of record, should be clear as to the date of intended departure, and should provide appropriate documentary evidence that the applicant is leaving the State.

5.7.10 Detention of Proposed Deportees

B.F.O. v Governor of Dóchas Centre

[2005] 2 IR 1; [2003] 8 ICLMD 118
High Court, Finlay Geoghegan J, 08/05/2003

Description

The applicant sought leave to judicially review, *inter alia*, the decision by the Minister to refuse her application for residency based on her parentage of an Irish born child. The proceedings also dealt with an Article 40 Inquiry concerning the applicant's detention at Mountjoy women's prison in Dublin. The applicant was a Nigerian national who arrived in Ireland with her young child. She applied for asylum, and while her application was pending she moved from the reception centre at Mosney to stay with a friend. The applicant later moved again, and neglected to inform the Minister of her new address, as required under the Refugee Act 1996. The applicant then gave birth to a son and, with assistance from the Refugee Legal Service, applied for residency based on her Irish born child. The applicant subsequently presented herself and her son at Waterford Garda Station to supply her new address. A garda arrested her and transferred her, with her child, to prison in Dublin. The arresting garda stated that the applicant was on record as having a deportation order issued against her, and had failed to present for deportation.

In regard to the Article 40 inquiry the High Court found that the applicant could not have been deported from the State due to a pending Court decision on the Irish born child issue. The court also found that the power of detention under the Immigration Act 1999 is exercisable only for the purpose of ensuring deportation. While the Minister claimed that it was permissible to detain the applicant in the circumstances, the court concluded that there must be a "final or concluded intention to deport" an individual before they could be detained, and therefore ordered the applicant's release.

The court quashed the Minister's decision to refuse the application for residency, finding that the procedure by which that decision was taken could not objectively be considered to have been fair. The court based this conclusion, *inter alia*, on the fact that the applicant had made the application under the administrative system in force before the decision was given in *Lobe and Osayande v Minister for Justice*, and had been deprived

of a chance to make representations in light of that important new development, partly because she had been imprisoned.

Principles

There must be a final or concluded intention to deport as a precondition for detention pursuant to the Immigration Act, 1999.

5.8 RESIDENCY

5.8.1 Residency on the Basis of Parentage of an Irish Citizen Child

O.E.G. v Minister for Justice, Equality and Law Reform

Unreported, High Court, Laffoy J, 27/05/2004

Description

The applicants had applied for asylum, and later withdrew their asylum claims and applied for residency on the basis of their parentage of an Irish born child. The Minister for Justice, Equality and Law Reform refused the latter application, and subsequently issued deportation orders. The applicants applied to have the deportation orders quashed on the basis that their rights under the Constitution to a family life were being interfered with.

The High Court held that parentage of an Irish born child gave no right of residence in the State. It also held that the applicants had not established any arguable grounds for challenging the decisions to deport them in accordance with Section 3 of the Immigration Act 1999. The court found that persons who were the subject of immigration control did not need to be given an opportunity to make representations in relation to policy in that sphere.

Principles

Parentage of an Irish born child gives no right of residence in the State.

Bode and Ors v The Minister for Justice, Equality and Law Reform

[2006] IEHC 341, [2007] IESC 62

Unreported, Supreme Court, 20/12/2007

Unreported, High Court, Finlay Geoghegan J, 14/11/2007

Description

In December 2004 the Minister announced revised arrangements for processing claims from non-national parents of Irish children for permission to remain in Ireland. A notice setting out details of the scheme was published in January 2005. This notice invited applications for permission to remain in the State from non-national parents of Irish born children before January 1 2005. The arrangements became known as the “IBC 05” Scheme. In the instant case, the parents of an Irish citizen child applied to the Minister for permission to remain in Ireland pursuant to the Scheme. The child’s mother was granted residency, but the father was not because he had not been continually resident in Ireland from the date of the child’s birth. The applicants sought to quash this decision, claiming that refusing his application for failure to meet a requirement of continuous residency without considering the rights, including welfare rights, of the child was in breach of the child’s rights under Articles 40.3 and 41 of the Constitution, and was in breach of the State’s obligations under Article 8 of the European Convention on Human Rights, and consequently in breach of Section 3 of the European Convention on Human Rights Act 2003.

In granting the relief sought, the High Court held that the Minister’s decision was in breach of the citizen child applicant’s rights under Article 40.3 and under Section 3 of the European Convention on Human Rights Act 2003, and that the applicants were entitled to an order quashing the Minister’s decision refusing the citizen child’s father’s residency application. The Court further stated that there was nothing in any of the documents outlining the terms of the scheme that precluded anyone who was not continuously resident in the State from the date of birth of a citizen child from making an application. The Court stated that the citizen child was central to the scheme, and that the Minister was bound to act in a manner consistent with the State’s obligation to defend and vindicate, as far as practicable, the personal rights of the citizen, including the right to live in the State and to be reared and educated with due regard for welfare. The Court stated that these rights are qualified, and that the Minister may decide, for good and sufficient reason, in the interests of the common good, that a parent be refused permission to remain, even if this would not be in the best interests of the child, so

long as such a decision is not disproportionate to the ends sought to be achieved. The respondents appealed the High Court's decision to the Supreme Court, arguing, *inter alia*, that the High Court had misdirected itself in law and fact.

The Supreme Court allowed the appeal, finding that both the application and the High Court were misconceived, that the scheme was established by the Minister exercising executive power, that the requirements of the scheme were set out clearly, and included a requirement of continuous residence, that it was not intended that the Minister would consider constitutional or ECHR rights, that there was no interference with any such rights, such rights being appropriately considered under Section 3 of the Immigration Act 1999, and that consequently the High Court's analysis was premature.

Principles

Applications pursuant to the "IBC/05" Scheme were properly subject to the requirements of the scheme as set out, and which included a requirement of continuous residence. The Minister was not obliged to consider applicants' constitutional or ECHR rights in determining applications pursuant to the scheme, such rights being appropriately considered pursuant to Section 3 of the Immigration Act 1999, as amended, on foot of proposed deportation.

5.8.2 Residency on the Basis of Marriage to an Irish Citizen

T.C. & Anor v Minister for Justice, Equality and Law Reform

[2005] 4 IR 109

Supreme Court, 20/06/2005

Description

The Romanian applicant, having been deported to Romania, married an Irish citizen and thereafter sought to revoke the deportation order. The Minister for Justice, Equality and Law Reform refused his request stating that the couple had not been residing together as a subsisting family unit. The applicants challenged the Minister's refusal, contending that in requiring them to have lived together as a subsisting family unit for an

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appreciable time, the Minister had fettered his discretion with a fixed policy.

The Court dismissed the application, finding that an appreciable period is a flexible notion capable of adaptation to the facts in specific cases, and that the Minister is entitled to consider the length of time during which parties have lived together as a family unit.

Principles

The Minister is entitled to consider the length of time during which parties have lived together as a family unit in deciding whether to grant residency to a non-EU national married to an Irish citizen.

Ezeani v Minister for Justice, Equality and Law Reform

Unreported, High Court, Hanna J, 11/10/2005

Description

The applicant, a Nigerian national and trainee solicitor resident in London, married an Irish woman. The applicant averred that he and his wife lived together in Ireland, and that he travelled to the UK regularly in order to continue his legal studies. The applicant applied for residency on the basis of the marriage. The Minister refused the application, stating that the two were not living together as man and wife. The decision stated further that Garda enquiries revealed various matters including that the second-named applicant was living with another man. The applicants challenged the refusal on the basis, *inter alia*, that matters had been held against them in their application without the various reports being put to them so that they might respond.

The Court quashed the Minister's refusal of residency, finding that serious allegations had been made, and that the applicants had a legal and constitutional right to properly confront those allegations, and that they should have been appraised of the information on file. The Court stated that where an inquisitorial body becomes possessed with material that is significantly damaging to an applicant to an extent that it weights heavily against them, then the pendulum must swing in favour of the applicant.

Principles

Where serious allegations are made, an applicant for residency based on marriage to an Irish citizen has a legal and constitutional right to

properly confront those allegations, and should be informed of information on file concerning the allegations.

K.M. v The Minister for Justice, Equality and Law Reform

[2007] IEHC 234

Unreported, High Court, Edwards J, 17/07/2007

Description

The first-named applicant applied to the Minister for permission to remain in the State on foot of his marriage to the second-named applicant, an Irish citizen. Upon receipt of the application, the Minister's office notified the applicant that such applications for residency in the State were taking approximately 12 to 14 months to process. Subsequently, the Minister indicated that the process was taking in the region of 11 months. The applicants sought, *inter alia*, an order compelling the Minister to determine the application within a reasonable amount of time, and damages for breach of their constitutional and ECHR rights.

In refusing the relief sought, the Court found that an entitlement to a prompt decision is an aspect of constitutional justice, that substantive fairness includes a duty not to delay in making a decision to the prejudice of fundamental rights, and that, where there has been a delay, that the factors relevant to a consideration of whether a delay is so unreasonable or unconscionable as to constitute a breach of fundamental rights include (1) the period of delay, (2) the complexity of the issues to be considered, (3) the amount of information to be gathered, (4) the reasons advanced for the time taken, and (5) the likely prejudice to the applicant. The Court found that six months was an appropriate period for the gathering of information and the making of enquiries, and that having regard to the complexity of the issues for consideration, the Minister's duty to consider the application judicially, and the imperative of promptitude in order to minimise prejudice, a further three to six months would be reasonable for the decision-making process itself, and that if an applicant were kept waiting for a decision longer than twelve months the Court would have no hesitation in finding the delay to be unconscionable. The Court held that the Minister was not therefore in breach of the instant applicants' rights in requiring them to wait for a period of a minimum of eleven months.

Principles

The Minister should process applications for residency on the basis of marriage to an Irish citizen within 12 months.

5.8.3 Residency and EU Treaty Rights

Case C-459/99 - MRAX v Etat Belge

[2002] ECR I-6591, European Court of Justice, 25/07/2002

Description

The Mouvement contre le racisme, l'antisémitisme et la xénophobie ASBL (Movement to combat racism, anti-semitism and xenophobia; "MRAX") applied to the Belgian Council of State for annulment of a 1997 Ministerial Circular requiring a visa for the purpose of contracting a marriage in Belgium or of reuniting a family on the basis of a marriage contracted abroad. MRAX argued that the Circular was incompatible with the Community Directives on free movement and residence. The Belgian Council of State asked the European Court of Justice, by way of a preliminary reference, whether a Member State may adopt measures to (a) send back nationals of a non-member country married to a Community citizen at the border without being in possession of a valid identity document or visa, and (b) refuse to grant such people a residence permit and issue an expulsion order against them if their status is irregular because they entered or remained in the Member State unlawfully. The Council of State also asked whether foreign nationals married to Community nationals were entitled to the procedural guarantees provided for by Community law where they are refused a residence permit, or where an expulsion order is made against them for not being in possession of a valid visa.

The Court found that the right of residence of nationals of non-member countries married to Community citizens derives directly from Community law, irrespective of whether a residence permit has been issued by a Member State. The Court held that a Member State may make the issue of a residence permit conditional upon production of the document with which the person entered its territory, and that the competent national authorities may impose penalties for failure to comply with controlling provisions, so long as the penalties are proportionate. The Court also confirmed that a Member State could

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create measures derogating from freedom of movement on grounds of public policy, public security or public health, but that such measures must be based exclusively on the personal conduct of the individual concerned.

The Court held that a decision refusing a residence permit, or ordering expulsion, based exclusively on a failure to comply with the legal formalities relating to the control of foreign nationals was disproportionate. The Court observed that the Community provisions did not require a visa to be valid in order for a residence permit to be issued, and that an expulsion order from a national territory on the sole ground that a visa had expired was manifestly disproportionate.

The Court held that Community law provided a minimum procedural guarantee for persons to whom freedom of movement applies and their spouses where they are refused a residence permit or their expulsion is ordered before the issue of a permit, and that if such entitlement were excluded in the absence of a valid identity document or visa, the guarantees would be rendered redundant.

Principles

The right of residence of nationals of non-member countries married to Community citizens derives directly from rules of Community law.

Case C-109/01 - Secretary of State for the Home Department v Hacene Akrich

[2002] ECR I-9607, European Court of Justice, 23/09/2003

Description

Mr Akrich, a Moroccan citizen, was deported from the UK. He returned there illegally and married a British citizen while unlawfully in the State. He applied for leave to remain, but was refused and deported to Ireland, where his spouse was established. His spouse subsequently took up a position in the UK, and Mr Akrich applied to the UK for leave to enter as the spouse of a person settled there. Mr and Mrs Akrich stated to the UK authorities that they intended to return to the United Kingdom because they had heard about EU rights. The Secretary of State refused the application, finding that the move to Ireland was deliberately designed to manufacture a right of residence, and to evade immigration law. Mr Akrich appealed against this refusal. The Immigration Appeal Tribunal asked the ECJ whether, in such circumstances, the Member State of origin could refuse a spouse who is a national of a non-member

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country the right to enter the State, and whether it could take into account the fact that the motive was to claim the benefit of Community rights on returning to the Member State of origin.

The Court held that under Community law a Member State is obliged to grant leave to enter and remain to the spouse of a national of that State who has gone, with his or her spouse, to another Member State in order to work there as an employed person and who returns to settle in the territory of the State of which he or she is a national, but that Community law and, in particular, Regulation (EEC) 1612/68 on freedom of movement for workers, referred only to freedom of movement within the Community and was silent in regard to access to the territory of the Community. The Court held that in order to benefit from the right to install himself with the citizen of the Union, the spouse must be lawfully resident in a Member State when he moves to another Member State to which the citizen of the Union migrates.

The Court stated that the motives of the citizen intending to seek work in a Member State were irrelevant, and that such conduct could not constitute abuse even if the spouse did not have a right to remain in the Member State of origin at the time when the couple installed themselves in another Member State. The Court stated that there would be an abuse if the Community rights had been invoked in the context of marriages of convenience entered into in order to circumvent the national immigration provisions. The Court stated that where a marriage is genuine the authorities of the State of origin must take account of the right to respect for family life under Article 8 of the Convention on Human Rights.

Principles

A national of a non-EU state married to an EU citizen may reside in the citizen's state of origin where the citizen, after making use of their right to freedom of movement, returns to their home country with their spouse in order to work, provided that the spouse has lawfully resided in another Member State.

Case C-200/02 - Zhu & Chen v Secretary of State for the Home Department

[2004] ECR I-9925, European Court of Justice, 19/10/2004

Description

Ms Chen, a Chinese national travelled to Belfast in order to give birth to her daughter Catherine on the island of Ireland (i.e. in Northern Ireland or the Republic). The child was immediately registered as an Irish citizen as provided for under the Irish Constitution as it then stood. The family wished to reside in the UK but was refused permission to do so by the Home Office. To the Chinese government the child was an Irish national. As a foreigner she could apply to stay in the country of her parents for not more than 30 days at a time and then only with the permission of the authorities. The expulsion of Ms. Chen from the UK would therefore lead to the separation of mother and daughter.

The Court held that denying Ms. Chen the right to reside in the UK to be with her daughter, who enjoyed such a right, would be “manifestly” contrary to her daughter’s interests and would be contrary to Article 8 of the European Convention on Human Rights on the right to respect for family life. Ms Chen had to be able to invoke a right of residence deriving from that of her young child because the contrary would result in entirely depriving her daughter’s right to reside in the UK of any effectiveness.

Principles

A Member State cannot deny residency to the mother of a child with citizenship in that Member State as to do so would be contrary to that child’s interests and contrary to Article 8 of the European Convention on Human Rights.

Case C-1/05 - Jia v Migrationsverket

[2007] ECR I-1, European Court of Justice, 09/01/2007

Description

Ms Jia, a Chinese national, was granted a visitor’s visa for entry into the Schengen states for a visit of a maximum of 90 days. She entered the Schengen states via a Swedish airport, and subsequently applied to the Swedish authorities for a residence permit, on the basis that she was related to a national of a Member State. The Swedish authorities refused

the application and the Applicant appealed the decision to Sweden's Aliens Appeal Board. The Board asked the European Court of Justice whether, in light of the judgment in *Akrich*, Article 10 of Regulation (EEC) No 1612/68 was to be interpreted as meaning that a national of a non-Member State related to a worker must be lawfully within the Community in order to have the right permanently to reside with the worker.

The Court noted that it was not alleged that Ms Jia had been residing unlawfully in a Member State or that she had been seeking to evade national immigration legislation. The Court found that the condition of previous unlawful residence in another Member State, as formulated in the judgment in *Akrich*, could not be transposed to Ms Jia's case and could not apply to such a situation.

Principles

Community law does not require Member States to make the grant of a residence permit to nationals of a non-Member State, who are members of the family of a Community national who has exercised his or her right of free movement, subject to the condition that those family members have previously been residing lawfully in another Member State.

S.K. & Anor v Minister for Justice, Equality and Law Reform & Ors

[2007] IEHC 216

Unreported, High Court, Hanna J, 28/05/2007

Description

The first-named applicant applied for asylum on arrival in the State. He subsequently married the second-named applicant, an Estonian national. The first-named applicant had made a previous application for asylum in Belgium, and a transfer order pursuant to Council Regulation (EC) No. 343/2003 was made to remove him to Belgium. The applicants requested that the first-named applicant be granted residency on the basis of his marriage to an EU national, pursuant to Directive 2004/38/EC. The Minister refused the application on the basis that the applicants had not submitted evidence that the first-named applicant had been lawfully resident in another Member State before coming to Ireland, as S.I. No. 226/2006, which implemented the Directive, required. The applicants sought to quash this decision on the basis that the statutory instrument was *ultra vires* the Directive.

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The High Court refused the relief sought, finding that the first-named applicant's aim was to circumvent the State's immigration laws, that the second-named applicant was probably aware of this, and that the applicant's dishonesty should weigh in the balance in considering the rights at issue. The Court held that the Directive was intended to apply to families that were established in a Member State prior to moving to a host Member State, and that there was no apparent infirmity in the Minister's decision.

The applicants appealed to the Supreme Court after the High Court certified that the matter disclosed a point of law of exceptional public importance in the public interest. The appeal remains pending at the time of writing.

Principles

An applicant's dishonesty should weigh in the balance in considering rights at issue in an application for residency in the context of EU Treaty rights. Directive 2004/38/EC is intended to apply to families that were established in a Member State prior to moving to a host Member State.

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Case C-127/08-Metock and Ors v Minister for Justice, Equality and Law Reform

Unreported, European Court of Justice, 25/07/2008

Unreported, High Court, Finlay Geoghegan J., 14/03/2008

Description

The Irish legislation transposing Directive 2004/38/EC provided that a national of a third-country who is a family member of a Union citizen may reside with or join that citizen in Ireland only if he is already lawfully resident in another Member State. In each of the cases a third-country national arrived in Ireland and applied unsuccessfully for asylum, but while resident in the State married an EU citizen. The Minister for Justice, Equality and Law Reform, and the Court, accepted that these were not marriages of convenience. Each of the non-EU spouses subsequently applied for a residence card as the spouse of a Union citizen. The applications were refused on the ground that the spouse did not satisfy the condition of prior lawful residence in another Member State. The applicants sought to quash these decisions by way of judicial review. The High Court asked the Court of Justice whether such a condition of prior lawful residence in another Member State is compatible with the Directive.

The Court of Justice found that the application of the Directive was not conditional on previous lawful residence in another Member State, and that the Directive applied to all EU citizens who move to or reside in a Member State other than their State of origin, and to their family members who accompany or join them. The Court considered that its judgment in *Akrich* had to be reconsidered, and that the benefit of rights could not depend on prior lawful residence of the spouse in another Member State.

The Court found that if EU citizens were not allowed to lead a normal family life in the host Member State, the exercise of their guaranteed freedoms would be seriously obstructed, since they would be discouraged from exercising their rights of entry into, and residence in, that Member State. The Court observed that Member States could refuse entry and residence on grounds of public policy, public security or public health, the refusal being based on an individual examination of the particular case. The Court also observed that the Member States could refuse any right conferred by the Directive in the case of abuse of rights or fraud.

The Court also held that a non-Community spouse of a Union citizen who accompanies or joins that citizen can benefit from the Directive, irrespective of when and where their marriage took place and of how that spouse entered the host Member State. The Court stated that the Directive did not require that the EU citizen must have already founded a family at the time when he moves, in order for his family members to enjoy the rights established by the Directive. The Court also stated that it made no difference whether the family members of an EU citizen enter the host Member State before or after becoming family members of the citizen.

Principles

The right of a national of a non-EU citizen who is a family member of a union citizen to accompany or join that citizen cannot be made conditional on prior lawful residence in another Member State. In the case of spouses, it does not matter when or where the marriage took place or how the non-EU national spouse entered the host Member State. The Directive does not require that the EU citizen to have already founded a family at the time when he moves. It makes no difference whether the family members of an EU citizen enter the host Member State before or after becoming family members of the citizen.

5.8.4 Residency and Time Spent in Detention

State (Goertz) v Minister for Justice & Anor

[1948] IR 45

Supreme Court, 05/05/1947

Unreported, High Court, 23/04/1947

Description

Mr. Goertz arrived in Ireland without permission in 1940 and remained undetected for over a year. He was then arrested and detained for five years. In 1946 he was released and worked for a time as a secretary. The Minister for Justice issued orders in 1947 for Mr. Goertz's arrest, detention and deportation back to Germany. Mr. Goertz argued that a person ordinarily resident in Ireland should be given three months notice of a proposed deportation.

The High Court found that the five-year period of detention could not be treated as a period of ordinary residence and refused to quash the deportation order. The Supreme Court upheld this finding.

Principles

Time spent in detention cannot be treated as a period of ordinary residence.

5.9 NATURALISATION

5.9.1 Naturalisation and Time Spent as an Asylum Seeker

Robert & Anor v Minister for Justice, Equality and Law Reform

[2004] IEHC 348

Unreported, High Court, Peart J, 02/11/2004

Description

The Minister refused the Applicants' requests for naturalisation on the basis that time spent in the asylum process did not contribute towards the residence requirement of five years. The Applicants sought to review the Minister's decision, arguing, *inter alia*, that he had fettered his discretion in the exercise of the "absolute discretion" conferred on him in deciding whether to issue the applicants with certificates of naturalisation, by adhering to a policy not to take into account time spent in the asylum process in applications for naturalisation.

The High Court granted leave, but ultimately refused the applications, finding, *inter alia*, that the Minister had exercised his wide discretion in a manner on foot of a logical and fair policy which he was entitled to have regard to, that the granting of citizenship is a privilege and not a right, and that the Minister's policy permitted consideration to be given to any particular or exceptional circumstances in individual cases which might justify a departure from that policy. The Court said that the policy of the Minister in not taking into account the time spent by an asylum seeker in the asylum process, in the case of a person who entered the State for the purpose of claiming asylum, and subsequently withdrew that application

prior to completion of that process, is completely logical and fair, provided that the discretion exercised is not fettered by a rigid adherence to the policy in a way that precludes consideration of particular exceptional circumstances.

Principles

Where an asylum applicant withdraws his claim and subsequently applies for naturalisation, time spent in the asylum process will not normally be relevant in calculating residence in the State for the purposes of seeking naturalisation.

5.10 JUDICIAL REVIEW

5.10.1 Removal During the Fourteen-Day Period

Adebayo and Ors v Commissioner of an Garda Siochana

[2006] 2 IR 298; [2004] IEHC 359, [2006] IESC 8
Supreme Court, 6/03/2006
Unreported, High Court, Peart J., 27/10/2004

Description

This case involved three separate applicants who challenged, *inter alia*, the decisions to deport them notwithstanding that they had sought judicial review of their deportation orders. The first-named applicant filed an application for leave to bring judicial review proceedings seeking an order quashing his deportation order. The applicant's solicitor faxed a letter to the Repatriation Unit of the Department of Justice informing the authorities that judicial review proceedings had been filed. No undertaking was given not to deport the applicant, and no interim injunction had been granted. The authorities did not consider there to be any obligation not to deport the applicant. Having received no reply from the Department, the applicant's solicitor sought an interim injunction, which was granted. The applicant was, nonetheless, deported.

The High court ordered that the applicants should be facilitated in their return to the State for the purpose of continuing to prosecute their judicial review proceedings in respect of the deportation orders made

against them. The Court stated that the deliberate disobedience of a court order was a matter of the utmost gravity, but found that the Commissioner had not been aware of the making of the order. The Respondents appealed the decision to the Supreme Court.

The Supreme Court held, *inter alia*, that no deportation may be implemented during the currency of the fourteen day period pursuant to Section 5 of the Illegal Immigrants (Trafficking) Act 2000, and that if an application for leave to seek judicial review is brought within that period no deportation order may be implemented until the court determines the application for leave, and only then if the court does not order otherwise upon the granting of leave. The Court stated that, having regard to the nature and intent of the legislation, it was likely that a court, exercising its discretion, would normally grant an injunction if leave were granted. The Court also stated that people who challenge deportation orders outside the fourteen day period have *prima facie* no right to remain in the State, and that the State is perfectly entitled to implement deportation in those cases.

Principles

Deportation may not be implemented during the fourteen day period pursuant to Section 5 Illegal Immigrants (Trafficking) Act 2000.

5.10.2 Extension of Time

G.K. v Minister for Justice, Equality and Law Reform

[2002] 1 ILRM 401

Supreme Court, 17/12/2001

[2002] 1 ILRM 81

High Court, Finnegan J, 06/03/2001

Description

The High Court granted an extension of time to the applicants to judicially review a refusal of asylum by the Appeals Authority, and a decision of the Minister for Justice, Equality and Law Reform to make a deportation order. The Court listed the factors relevant in determining applications of this nature: (i) the period of the delay, (ii) whether the delay was inexcusable and, if so, whether the balance of justice was in favour of or against granting an extension, (iii) the *prima facie* (at first

sight) strength of the applicant's case, (iv) the complexity of the legal issues, (v) language difficulties and difficulties obtaining an interpreter, and (vi) any other personal circumstances affecting the applicant. The Minister appealed the decision of the High Court to the Supreme Court.

The Supreme Court refused the extension of time, holding that the applicants had delayed for a period of nearly a year, during most of which time they were legally represented, and had provided no reason for the delay. The Court found that the time limits could only be extended where the High Court considers that there is good and sufficient reason for extending the period, and where the substantive claim is arguable. In the instant case the applicants' ground for seeking the relief was that the Minister did not consider representations for leave to remain in the State. The Court held that the applicants provided no arguable case in relation to this ground.

Principles

The time limits for the institution of judicial review proceedings can only be extended where the High Court considers that there is good and sufficient reason for extending the period, and where the substantive claim is arguable.

Gabrel v Minister for Justice, Equality and Law Reform

[2001] 6 ICLMD 55

High Court, Finnegan J, 15/03/2001

Description

The court refused an extension of time for applying for judicial review where the applicant had been legally represented at all stages. It was argued that the applicant did not apply for judicial review due to the lack of diligence of her legal advisors.

The Court held that a litigant is vicariously liable for the default of his legal advisors (with some exceptions) and that in this case there was no good reason for extending time. The Court did, however, grant the applicant judicial review because the deportation order with which the applicant was served was defective by reason of its failure to state the date of the proposed deportation, and the country to which she was to be deported.⁴⁴⁶

⁴⁴⁶ See *Sibiya v The Minister for Justice, Equality and Law Reform*, Unreported, Supreme Court, 07/02/2006, discussed at section 5.7.5 of this text.

Principles

A litigant is usually vicariously liable for the default of his legal advisors.

B v Governor of the Training Unit Glengariff Parade

[2002] IESC 16

Unreported, Supreme Court, 05/03/2002

Unreported, High Court, 30/01/2002

Description

The applicant sought leave to extend time, if necessary, pursuant to the Illegal Immigrants (Trafficking) Act 2000 to bring judicial review proceedings challenging the deportation order made against him. The applicant argued that the Minister had not complied with the notification requirements of the statutory scheme. The applicant made his original asylum application at a Dublin address. He later moved to Dundalk and registered there with the Gardai. The deportation notice was sent to the Dublin address. The appellant argued that since the Act of 2000 came into force, the notice of deportation should have been given to him at the address he notified in September 2000 to the Immigration Officer at Dundalk Garda Station, and that the deportation order had not been notified to him. The High Court refused to extend time, and the applicant appealed to the Supreme Court.

Allowing the applicant appeal without the leave of the High Court, but dismissing the appeal as such, the Supreme Court found that as the applicant had changed address without informing the authorities, was found to have known about the existence of the deportation order, and had not complied with the statutory period for the taking of judicial review proceedings, there was not a good or sufficient reason to allow the extension of time sought.

Principles

A refusal by the High Court of an extension of time can be appealed to the Supreme Court without leave of the High Court.

Saalim v Minister for Justice, Equality and Law Reform

[2002] 6 ICLMD106
Supreme Court, 05/03/2002

Description

The High Court refused to extend time for the applicant to seek leave to apply for judicial review. The High Court found that although the fault had been the solicitor's rather than the applicant's, this was not sufficient reason to extend the time for the purposes of Section 5 of the Illegal Immigrants (Trafficking) Act 2000. The Applicant appealed this decision to the Supreme Court.

The Supreme Court, in allowing the appeal, held that there were good and sufficient reasons for extending the time for the application for judicial review as the applicant had an arguable case, the extent of the delay was short, the case straddled a time of transition in the law, the reasons for the delay were largely the culpability of legal advisors, and the State was not prejudiced by the delay. It was made clear, however, that the fact that the applicant was not to blame for the delay was not in itself sufficient reason to extend time limits.

Principles

Factors relevant to extending time for leave to apply for judicial review include (i) whether the applicant had an arguable case, (ii) the extent of the delay, (iii) whether there is a transition in the law, (iv) whether the legal advisors are largely culpable, and (v) whether the State is prejudiced by the delay. That an applicant is not to blame for a delay in instituting proceedings is not in itself a sufficient reason for the purposes of Section 5 Illegal Immigrants (Trafficking) Act 2000 to extend the time for the institution of proceedings.

C.S. (a minor) v Minister for Justice, Equality and Law Reform

[2005] 1 IR 343, [2004] IESC 44
Supreme Court, 27/07/2004

Description

The applicants were granted leave to apply for judicial review by the High Court challenging, *inter alia*, their deportation. In granting leave, the High Court also extended the 14 day time limit provided for in the Illegal

Immigrants (Trafficking) Act 2000 for making judicial review leave applications. The Minister appealed against the extension of time.

The Supreme Court dismissed the Minister's appeal in relation to the extension of time, finding that when considering whether there is good and sufficient reason to extend time the court should consider the merits of the substantive case, and not simply the merits of the application to extend time. The Supreme Court found that the conclusions of the High Court had been reached by a proper exercise of its discretion.

Principles

When considering whether there is good and sufficient reason to extend time limits for judicial review the Court should consider the merits of the substantive case, and not simply the merits of the application to extend time.

5.10.3 Amending Grounds

S.M. v Minister for Justice, Equality and Law Reform

[2005] IESC 27

Unreported, Supreme Court, 03/05/2005

Description

The applicant had sought judicial review of her refusal of asylum, and of her deportation order. She then sought to amend her statement of grounds to include four further grounds. The applicant sought to explain the delay in seeking to amend the grounds by stating that there had been a change of counsel.

The Court stated that two of the amended grounds were essentially sought in the original notice of motion, while the remaining two were new causes of action. Accordingly, the Court was of the view that the latter two grounds were *prima facie* out of time under Section 5 of the Illegal Immigrants (Trafficking) Act 2000, and that the Court would have to be satisfied that there were good and sufficient reasons for extending the periods in which such new claims could be made. Noting that there had been a change of counsel, the Court stated that a change of counsel explains delay only if it can be shown that there was a serious error made by the original counsel. The Court held that in the instant case the

applicant had not adequately explained the delay with regard the two grounds deemed out of time.

Principles

If an applicant seeks to amend his statement of claim to add grounds that are essentially new grounds, such an application is subject to the usual time limit under Section 5 of the Illegal Immigrants (Trafficking) Act 2000, and the Court would have to be satisfied that there is good and sufficient reason for extending the period in which such new claims could be made. Where a change of counsel is cited as a reason for the delay in seeking to amend, an applicant will have to show that there was a serious error made by the original counsel.

5.10.4 Discovery

G.S. v The Minister for Justice, Equality and Law Reform

[2004] 2 IR 417

High Court, Peart J, 19/03/2004

Description

The applicant had been granted a declaration of refugee status, but this status was subsequently revoked by the Minister under Section 21(1)(9) of the Refugee Act 1996 i.e. that he was a person whose presence in the State poses a threat to public policy, on the applicant's return to the State after completing a sentence of imprisonment in Belgium relating to a conviction for people trafficking. The Minister furnished certain documents relating to his decision, but did not furnish documents said to include legal advice and information received from the Belgian authorities, which the Minister wished to claim privilege on. The applicant submitted that these documents were relevant and necessary and sought their discovery.

The Court found certain documents whose discovery was sought were clearly identified, that they were relevant and that the difficulty was that the applicant had no way of knowing until he saw them whether they could be helpful to his case or a hindrance to the Respondent's. The Court held that, on balance, the applicant must be in a position to make his best possible case at the leave stage, that it was arguable that the documents may have assisted him in making submissions regarding the

proposed revocation, and ordered limited discovery. The Court held that the matter of privilege could be dealt with subject to the usual rules.

Principles

An applicant should be in a position to make his or her best possible case at the leave stage and fairness requires that an applicant have prior to his application for leave the material that has been relied upon in making the impugned decision, subject to the rules of privilege.⁴⁴⁷

P. v Refugee Appeals Tribunal

[2006] IEHC 152

Unreported, High Court, de Valera J, 26/04/2006

Description

The applicant, having been granted leave to seek judicial review, sought discovery by the Minister of documents relating to statistics and records of cases assigned to the Tribunal Member dealing with the applicant's case, and the audio recording of the hearing. The Tribunal contested the application for discovery.

The Court, in granting discovery, found that, as the applicant had leave to seek review, there were substantial grounds to the applicant's claim, and that discovery should be restricted to such documents as are necessary for the purpose of ensuring a proper and comprehensive hearing of the facts and arguments. The Court ordered discovery of statistics already compiled and available, documents regarding the assignment and cases, and the audio recording of the hearing.

Principles

When leave has been obtained in an application to review a refugee status determination, and it is therefore taken that an applicant's claim has substantial grounds, discovery may be appropriate, but should be restricted to such documents as are necessary for the purpose of ensuring a proper and comprehensive hearing of the facts and arguments.

⁴⁴⁷ See also *K.A. v The Minister for Justice, Equality and Law Reform* [2003] 2 IR 93; High Court, Finlay Geoghegan J

5.10.5 Costs

Garibov v Minister for Justice, Equality and Law Reform

[2006] IEHC 371

Unreported, High Court, Herbert J, 16/11/2006

Description

The Minister issued the applicant, a cancer sufferer, with a deportation order. The examination of file disclosed that there were humanitarian considerations. The applicant sought to quash the deportation order. Over two years later, and while judicial review proceedings were in being, the Minister granted the applicant leave to remain, and revoked the deportation order. The applicant then sought to withdraw his application for judicial review, with costs, on the basis that he was right to bring proceedings as he had done.

In awarding costs to the applicant, the High Court held that it was reasonable for the applicant to have sought leave in the circumstances, that the Minister could have granted leave to remain two years previously, and that the Court had to consider (a) whether the decision to commence proceedings was a proportionate reaction, (b) whether the decision to commence proceedings was clearly based on relevant rules and principles, (c) whether the decision to commence proceedings was unstateable or for the purpose of delay, and (d) whether the applicant had afforded the respondents a reasonable opportunity of addressing and responding to the claim before commencing proceedings.

Principles

If an applicant for judicial review withdraws his application and also seeks costs, the court has to consider (a) whether the decision to commence proceedings was a proportionate reaction, (b) whether the decision to commence proceedings was clearly based on relevant rules and principles, (c) whether the decision to commence proceedings was unstateable or for the purpose of delay, and (d) whether the applicant had afforded the respondents a reasonable opportunity of addressing and responding to the claim before commencing proceedings.

5.10.6 Amicus Curiae

H.I v Minister for Justice, Equality and Law Reform

[2004] 1 ILRM 27

Supreme Court, 14/07/2003

Description

The appellant had applied to the High Court for, *inter alia*, an order of certiorari quashing the decision of the Minister to refuse her refugee status. She also sought declarations that Section 16 (regarding appeals to the Refugee Appeals Tribunal) and Section 17(1) (regarding the declaration that person is a refugee) of the Refugee Act 1996 were repugnant to the Constitution.

The High Court refused to grant the relief sought, but certified that its decision involved a point of law of exceptional public importance and that it was desirable that an appeal should be taken to the Supreme Court. The United Nations High Commissioner for Refugees applied to the Supreme Court for leave to appear as *amicus curiae* in the appeal. This was the first time the UNHCR had taken such a step. The Supreme Court agreed that an issue of public interest had arisen, and the UNHCR might be in a position to assist the Court by making written and oral submissions on the question of law certified by the High Court provided the UNHCR bore its own costs.

Principles

Where relevant issues of public interest arise, the UNHCR might be in a position to assist the court by appearing as *amicus curiae* by making written and oral submissions.

5.10.7 Appeals to the Supreme Court

Gritto v Minister for Justice, Equality and Law Reform

[2005] IEHC 75

Unreported, High Court, Laffoy J, 16/03/2005

Description

The applicant, having been refused leave, applied to the High Court to certify that the matters at issue raised a point of law of exceptional public importance and that it was desirable in the public interest that an appeal be taken to the Supreme Court. The points raised by the applicant included that by virtue of being parents of an Irish child they were in a different position to failed asylum seekers wishing to reside in the State, and that the standard of review in the circumstances ought to be the higher standard of anxious scrutiny as children's rights were at issue.

The Court refused to certify the appeal, finding that in determining whether to certify, it must consider the point of law involved, and not its determination on the point of law, and that it involves a higher threshold than merely a point of law of public importance, and that the requirements under Section 5(3)(a) of the Illegal Immigrants Act 2000 were cumulative. The Court held that the point raised regarding the standard of review had been appealed to the Supreme Court in a separate case, and that the Court did not therefore wish to ask the Supreme Court to entertain a moot.

Principles

In determining whether to certify an appeal to the Supreme Court pursuant to Section 5(3)(a) of the Illegal Immigrants (Trafficking) Act 2000, the Court must consider the point of law involved, and not its determination on the point of law. The requirements of certification that the matters at issue raise "a point of law of exceptional public importance and that it is desirable in the public interest that an appeal be taken to the Supreme Court" involves a higher threshold than merely a point of law of public importance, and are cumulative.

6. ORGANISATIONS AND AGENCIES

Information on agencies and organisations working in the field of immigration and asylum is presented below. The majority of the information is based on that supplied on the websites of the relevant organisations. Two other useful sources are directories prepared by the Immigrant Council of Ireland (2006) and Integrating Ireland (2004).⁴⁴⁸

Africa Centre

Address	9c Lower Abbey Street, Methodist Church Building, Dublin 1, Ireland
Telephone	+353-1-8656951
Fax	+353-1-8656951
Website	http://www.africacentre.ie
Email	info@africacentre.ie
Category	NGO
Objectives	The objective of the Africa Centre is to advance attitudes, policies and actions that promote tolerance, justice and social inclusion for African communities in Ireland and to encourage a more positive Africa-Ireland exchange.
Activities	At present, the work of Africa Centre falls under two broad themes: 1) Promotion of community participation of the African immigrant community in Ireland. In this regard, the centre works to challenge barriers to integration and to promote the active participation of the African community in society in Ireland. 2) Awareness raising and Africa-Ireland exchange. The aim is to use

⁴⁴⁸ We have endeavoured to include most national-level organisations in the field although some omissions are inevitable. Some prominent local/regional-level organisations have also been included.

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the presence of Africans in Ireland to fight the often negative representation of Africa/Africans and to promote a more balanced and positive Africa-Ireland exchange. Key actions on the above themes at present include: civic and political participation; collaboration and networking with other stakeholders; development education and organisational development.

Contact Eric Yao, Coordinator

Akidwa

Address 9c Lower Abbey Street, Dublin Central Mission, Dublin 1, Ireland

Telephone +353-1-8148582

Website <http://www.akidwa.ie>

Email info@akidwa.ie

Category NGO

Objectives Akidwa works to promote equality for African women living in Ireland so as to ensure positive change and social justice. Fundamental to their work is the belief that women's rights are human rights. The organisation believe that that African women face particular barriers to their empowerment, therefore the following human rights are some of those that underpin Akidwa's work: to be free from racism, discrimination and stereotyping; to live free of poverty; to be respected as an equal in Irish society.

Activities Akidwa provide support and information for African women living in Ireland. They promote and support the networking of African women's groups in Ireland. Through awareness raising, education and training the organisation aims to empower African women. The organisation also aims to influence policy in order to promote the integration of African women through advocacy work locally, regionally and nationally.

Contact Salome Mbugua, National Director

Amnesty International (Irish Section)

Address	48 Fleet Street, Dublin 2, Ireland
Telephone	+353-1-6776361
Fax	+353-1-6776392
Website	http://www.amnesty.ie
Email	info@amnesty.ie
Category	NGO
Objectives	Amnesty International is an NGO working towards the full application of the Universal Declaration of Human Rights and other international human rights standards. Amnesty International undertakes research and action focused on preventing and ending human rights abuses.
Activities	Amnesty International is involved in a large number of awareness raising campaigns dealing with human rights abuses racism.
Contact	Fiona Crowley, Research and Legal Officer

ARCSS - Asylum Seeker and Refugee Counselling and Support Service

Address	ARCSS Project, Co. Meath, Ireland
Telephone	+353-41-9829780
Fax	+353-41-9829386
Website	www.spirasi.ie
Email	arcss@spirasi.ie
Category	Joint Project between NGO and Statutory Body (HSE)
Objectives	The overall aim of the ARCSS project is to provide a dedicated counselling and support service to asylum seekers and refugees in the HSE North Eastern Area. The service was developed specifically to address the impact of trauma experienced by clients in their country of origin. More recently the remit of the service has extended to include adults who are experiencing stress and trauma as a result of their current living situation.

Activities	The project comprises two elements, a dedicated counselling service and a support service. The support service is provided by the ARCSS Project Worker based at Mosney Accommodation Centre. The project worker has a key role in liaising with residents in relation to their health and social care needs and providing support on to those attending counselling as well as on issues surrounding the asylum process. Counselling is provided by qualified counsellor/therapists employed on a contract basis under the management and supervision of Rian Counselling Service (HSE). Mosney is the largest accommodation centre in the country catering for asylum seekers, with a capacity of 800 people.
Contact	Audrey Crawford

Cáirde

Address	19 Belvedere Place, Dublin 1, Ireland
Telephone	+353-1-8552111
Fax	+353-1-8552089
Website	http://www.cairde.ie
Email	info@cairde.ie
Category	NGO
Objectives	Cáirde is an NGO which aims to build the capacity of minority ethnic community organisations to identify their own needs, to develop an awareness of the policy context within which services are planned and delivered and to act collectively in identifying the health and wellbeing concerns of their communities. Cáirde targets at risk or disadvantaged minority ethnic groups and provide tailored supports to build their capacity i.e. women, people living with HIV, Roma etc. The organisation also provides information and advocacy services.
Activities	Cáirde aims to tackle minority ethnic health inequality by initiating programmes and actions which model community development approaches to tackling health inequality and which address the wider factors that influence health at the community level, factors

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including; accommodation; education and training; employment; childcare; financial security; residency status; racism and discrimination and other asylum/immigration issues. Cáirde acts to articulate its activities at community level into the policy system through a coherent programme of research and policy development.

Centre for the Care of Survivors of Torture (CCST)

Address	213 North Circular Road, Dublin 7, Ireland
Telephone	+353-1-8389664
Fax	+353-1-8683504
Website	http://www.ccst.ie
Email	clientservices@ccst.ie
Category	NGO
Objectives	The Centre for the Care of Survivors of Torture (CCST) is a non-profit humanitarian organisation that provides multidisciplinary healthcare, in co-operation with the statutory health services, free of charge to survivors of torture.
Activities	The CCST offer medical consultations, medico-legal reports, psychiatry, counselling, physiotherapy, physical therapy and various complimentary therapies, Chinese medicine and group therapies. The Centre also runs an outreach service and provide vocational guidance counselling.

Children's Rights Alliance

Address	4 Upper Mount Street, Dublin 2, Ireland
Telephone	+353-1-6629400
Fax	+353-1-6629355
Website	http://www.childrensrights.ie
Email	info@childrensrights.ie

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Category	NGO
Objectives	The Children's Rights Alliance provides information on children's rights and services in Ireland. The Alliance's objective is to secure the implementation in Ireland of the principles and provisions of the UN Convention on the Rights of the Child.
Activities	The Alliance promotes compliance with the National Children's Strategy and assists the Ombudsman for Children. The alliance also undertakes research and various projects aimed at eliminating child poverty in Ireland and promoting the rights of the child.

Comhlámh

Address	10 Upper Camden Street, Dublin 2, Ireland
Telephone	+353-1-4783490
Fax	+353-1-4783738
Website	http://www.comhlahm.org
Email	info@comhlahm.org
Category	NGO
Objectives	Comhlámh is an organisation that supports Irish Development Workers and campaigns on social justice, human rights and development issues.
Activities	Comhlámh campaigns for global justice and human rights in Ireland and abroad; provides support for returned development workers; promotes understanding of global issues and cultures through courses, public meetings, the media etc.

Crosscare Migrant Project

Address	1a Cathedral Street, Dublin 1, Ireland
Telephone	+353-1-8732844
Fax	+353-1-8727033
Website	www.migrantproject.ie

ORGANISATIONS AND AGENCIES

Email	migrantproject@crosscare.ie
Category	NGO
Objectives	Crosscare (formerly Emigrant Advice) aims to provide a quality information and support service in order to enable people involved in a migration decision or experience, especially the most vulnerable, make informed choices; through our engagement with clients and in collaboration with others to effect positive change in migration policy.
Activities	Crosscare Migrant Project provides information and advocates on behalf of emigrants, returnees and immigrants through its walk-in, outreach, phone and email services, website, publications, and support to generalist information services.
Contact	Yvonne Flemming, Co-Coordinator

**Department of Enterprise, Trade & Employment
Government of Ireland**

Address	Kildare Street, Dublin 2, Ireland
Telephone	+353-1-6312121
Fax	+353-1-6312827
Website	http://www.entemp.ie
Email	info@entemp.ie
Category	State Body
Objectives	The Department of Enterprise Trade and Employment is responsible for growing Ireland's competitiveness and quality employment.
Activities	In the context of immigration, the Department of Enterprise, Trade and Employment has responsibility for the administration of the Employment Permit Programme for international workers and the formulation of relevant legislation.

Equality Authority, The

Address	2 Clonmel Street, Dublin 2, Ireland
Telephone	+353-1-4173333
Fax	+353-1-4173331
Website	http://www.equality.ie
Email	info@equality.ie
Category	Independent State Body
Objectives	The Equality Authority is an independent body with the objective of promoting and defending the rights established in the equality legislation (Employment Equality Act, 1998 and the Equal Status Act, 2000) and providing leadership in raising public awareness of equality issues, promoting diversity and mainstreaming equality considerations.
Activities	The Equality Authority has a strong research and information function. The organisation runs a Public Information Centre and library, publishes newsletters, information leaflets and holds various events. The Equality Authority also has an in-house Legal Service that may, where the case has strategic importance, provide free legal assistance to those making complaints of discrimination.
Contact	Niall Crowley, Director Laurence Bond, Head of Research

European Commission Against Racism and Intolerance (ECRI)

Address	Avenue de l'Europe, 67075 Strasbourg Cedex
Telephone	+33 -(0)-388412000
Website	http://www.coe.int/t/E/human_rights/ecri
Email	combat.racism@coe.int
Category	European Body
Objectives	The European Commission against Racism and Intolerance (ECRI) was set up following a decision of the 1 st Summit of Heads of State and Government of the

Member States of the Council of Europe, in October 1993. ECRI's task is to combat racism, xenophobia, anti-semitism and intolerance at the level of the greater Europe and from the perspective of the protection of human rights.

Activities ECRI monitors phenomenon of racism and racial discrimination by closely examining the situation in each of the Member States of the Council of Europe and by drawing up country reports containing its analyses and recommendations. ECRI's programme also focuses on general themes of particular importance in combating racism, xenophobia, anti-semitism and intolerance, through the elaboration and adoption of general policy recommendations. Finally the organisation works to spread ECRI's anti-racist message as widely as possible among the general public and to make its work known in all relevant spheres

European Foundation for the Improvement of Living and Working Conditions

Address Wyattville Road, Loughlinstown, Dublin 18, Ireland
Telephone +353-1-2043100
Fax +353-1-2826456
Website <http://www.eurofound.europa.eu>
Email press.officer@eurofound.europa.eu
Category European Body
Objectives The Foundation is a European Agency set up by the European Council to contribute to the planning and design of better living and working conditions in Europe.
Activities The Foundation works to provide information, advice and expertise – on living and working conditions, industrial relations and managing change in Europe – for key actors in the field of EU social policy on the basis of comparative information, research and analysis. Themes of interest to the Foundation are: employment and

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working conditions; work–life balance; industrial relations and partnership and social cohesion.

Contact Jorma Karppinen, Director

Free Legal Advice Centres (FLAC)

Address 13 Lower Dorset Street, Dublin 1, Ireland

Telephone +353-1-8745690

Fax +353-1-8745320

Website <http://www.flac.ie>

Email info@flac.ie

Category NGO

Objectives Free Legal Advice Centres (FLAC) is a NGO which provides legal services for those living in poverty and campaigns on behalf of those on low incomes.

Activities FLAC operates a telephone help line which gives information on general rights and entitlements as well as free legal advice clinics around the country. FLAC also campaigns on issues such as child benefit for asylum applicants.

Contact Noeline Blackwell, Director General

(FRA) European Union Agency for Fundamental Rights

Address Rahlgasse 3, A – 1060 Vienna, Austria

Telephone +43(1)580 30 – 60

Email administration@fra.europa.eu

Category European Body

Objectives The European Union Agency for Fundamental Rights (FRA) is a body of the European Union (EU), and is being built on the European Monitoring Centre on Racism and Xenophobia (EUMC). The objective of the Agency is to provide the relevant institutions and authorities of the Community and its Member States

when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights.

- Activities** The FRA is tasked with: 1) Information and data collection and analysis: To collect, analyse and disseminate objective, reliable and comparable information on the development of fundamental rights in the EU; to develop methods and standards to improve the quality and comparability of data at EU level; to carry out and encourage scientific research and surveys. 2) Co-operation with civil society and awareness-raising: to raise public awareness of fundamental rights; to promote dialogue with civil society; establish a network through a Fundamental Rights Platform. 3) Advice to EU institutions and Member States: to formulate and publish conclusions and opinions to the EU institutions and the Member States when implementing Community law; to publish an annual report on fundamental rights in the EU, and thematic reports based on its research and surveys, also highlighting examples of good practice regarding fundamental rights. The NCCRI is the designated 'National Focal Point' for the EU FRA in Ireland and therefore carries out the RAXEN reporting for Ireland.
- Contact** Anastasia Crickley, Chairperson

Galway Refugee Support Group

- Address** No.3 The Plaza, Headford Road, Galway, Ireland
- Telephone** +353-91-779083
- Email** refugee.galway@ireland.com
- Category** NGO
- Objectives** The Galway Refugee Support Centre is an NGO that works to assist refugees and asylum seekers in the Galway area.
- Contact** Triona Nic Giolla Choille

Garda National Immigration Bureau (GNIB)

Address	13/14 Burgh Quay, Dublin 2, Ireland
Telephone	+353-1-6669100
Website	http://www.garda.ie/angarda/gnib.html
Email	gnib@iol.ie
Category	State Body
Objectives	The Garda National Immigration Bureau (GNIB) is responsible for all Garda operations pertaining to immigration matters in the State.
Activities	The Garda National Immigration Bureau members apply the law in relation to immigration within the state. Their duties include the registration of immigrants and carrying out deportation orders that are issued by the Minister for Justice, Equality and Law Reform.

Garda Racial and Intercultural Office

Address	Harcourt Square, Dublin 2, Ireland
Telephone	+353-1-6663150
Category	State Body
Objectives	The Garda Racial and Intercultural Office operates within Community Relations Section. The office has a national remit with responsibility for the development and monitoring of the implementation of organisational policies and strategies, which deal with racial, ethnic, religious and cultural diversity.
Activities	The Garda Racial and Intercultural Office undertook an EU funded programme entitled “Intercultural Ireland, Identifying the Challenges for the Police Service”. Staff at the office are currently developing a recording mechanism within the Garda Pulse crime recording programme, which will capture data concerning racially motivated incidents. Links have also been established with the Irish Victim Support organisation concerning racial issues and it is intended that victims of racially motivated crime will be referred to this service. An

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initiative currently being explored by the Racial and Intercultural office is the development of a network of contact individuals within the many minority ethnic communities in Ireland.

Contact Jonathan O'Mahony, Mary Gormley

Immigrant Council of Ireland

Address 2 St. Andrew Street, Dublin 2, Ireland

Telephone +353-1-6740202

Fax +353-1-6458031

Website <http://www.immigrantcouncil.ie>

Email info@immigrantcouncil.ie

Category NGO

Objectives The Immigrant Council of Ireland is an NGO responding to the needs of immigrants (particularly migrant workers and their families) in Ireland.

Activities The information role of the Council is an important one. Free advice and information is offered to immigrants as well as general information on their rights and entitlements. The Council's work also has a policy dimension directed at the development of 'humane and just' legislation. In addition the ICI offers training to service providers involved with immigrants in Ireland.

Contact Denise Charlton, Chief Executive Officer
Aoife Collins, Information Officer

Immigration Control Platform

Address P.O. Box 6469, Dublin 2, Ireland

Website www.immigrationcontrol.org

Email icp@iol.ie

Category NGO

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- Objectives** The aim of the Immigration Control Platform is to address the phenomenon of immigration to Ireland and to lobby Government for a tight immigration policy. Immigration Control Platform is an Irish NGO. It is a voluntary organisation funded by membership subscription and donation.
- Activities** The Immigration Control Platform lobbies the government for a tight immigration policy. The ICP raises awareness of its priority concerns by issuing press statements and maintaining a website. It has stood candidates for election on the immigration issue. It has engaged in leafleting and occasionally in other activities such as pickets.
- Contact** Aine Ni Chonail, Public Relations Officer

Integrating Ireland

- Address** 17 Lower Camden Street, Dublin 2, Ireland
- Telephone** +353-1-4759473
- Website** <http://www.integratingireland.ie>
- Email** info@integratingireland.ie
- Category** NGO
- Objectives** Integrating Ireland is an independent network of community and voluntary groups working to promote the human rights, equality and full integration in Irish society of asylum seekers, refugees and immigrants.
- Activities** Integrating Ireland promotes the participation of refugees, asylum seekers and immigrants within member organisations, helps organisations to develop common policy positions, promotes public education, holds forums and makes available relevant publications, lobbies the government, provides training, guidance and advice to groups, and provides a platform for networking among members of the network.
- Contact** Aki Stavrou, Director

International Education Board Ireland

Address	International Education Board Ireland, IPC House, 35-39 Shelbourne Road, Dublin 4, Ireland
Telephone	+353-1-6144838
Fax	+353-1-6144850
Website	http://www.educationireland.ie
Email	info@educationireland.ie
Category	State Associated Agency
Objectives	IEBI's objectives include promoting Ireland as a quality destination for students and trainees; supporting the international activities of Irish education institutions; acting as a national point of contact and referral to and from Irish suppliers of education services and the international market place; promoting Irish education expertise as a valuable resource for international institutions, development agencies and governments; liaising with education interests and government around barriers to the development of the international education sector.
Activities	Established by the Irish government in 1993, the International Education Board has representation from Universities, Institutes of Technology, Independent Colleges and Language schools as well as from other Government Departments and agencies. IEBI is supported by Enterprise Ireland, Embassies and the Irish Tourist Board. The IEBI responds to enquiries from overseas students, and promotes Irish education overseas via advertising, developing and circulating generic information and by participating at education fairs, seminars and workshops.
Contact	John Lynch, Chief Executive

International Organization for Migration (IOM), Mission in Ireland

Address	7 Hill Street, Dublin 1, Ireland
Telephone	+353-1-8787900
Fax	+353-1-8787901
Website	http://www.iomdublin.org
Email	info@iomdublin.org
Category	Intergovernmental organisation
Objectives	Established in 1951, IOM is the leading inter-governmental organization in the field of migration and works closely with governmental, intergovernmental and non-governmental partners. IOM is dedicated to promoting humane and orderly migration for the benefit of all. It does so by providing services and advice to governments and migrants. IOM works to help ensure the orderly and humane management of migration, to promote international cooperation on migration issues, to assist in the search for practical solutions to migration problems and to provide humanitarian assistance to migrants in need, including refugees and internally displaced people.
Activities	IOM opened an office in Ireland in 2001, with Ireland becoming a full member government of IOM in 2002. The IOM Mission in Ireland operates voluntary assisted return and reintegration programmes for irregular migrants or asylum seekers who wish to return home voluntarily. To support these, IOM Dublin operates a number of projects to provide information on return and reintegration to people considering return. IOM also works on issues around human trafficking. IOM Dublin also undertakes a number of research projects looking at migration flows to Ireland.
Contact	Siobhan O’Hegarty, Senior Programme Manager

Irish Business and Employers Confederation (IBEC)

Address	IBEC Head Office, Confederation House, 84/86 Lower Baggot Street, Dublin 2, Ireland
Telephone	+353-1-6051500
Fax	+353-1- 6381500
Website	http://www.ibec.ie
Email	info@ibec.ie
Category	Private Organisation
Objectives	Irish Business and Employers Confederation is an umbrella organisation representing a variety of Irish businesses and employers. It has approximately 7,500 member businesses and organisations.
Activities	IBEC aims to shape policies and influence decision-making. The organisation represents business and employer's interests to Government, state agencies, the trade unions, other national interest groups, and the general public. IBEC develops and reviews policy on relevant topics through consultation with members and undertaking research.
Contact	Danny McCoy, Director of Policy

Irish Congress of Trade Unions (ICTU)

Address	31/32 Parnell Square, Dublin 1, Ireland
Telephone	+353-1-8897777
Fax	+353-1-8872012
Website	http://www.ictu.ie
Category	Trade Union
Objectives	Congress is a single umbrella organisation for trade unions in Ireland representing a wide range of interests both in the Republic and in Northern Ireland.
Activities	Congress has a number of functions, for example: representing the interests of workers in respect of economic, employment, taxation and social protection issues, especially with government; providing

information, advice and training to unions and their members; assisting with the resolution of disputes between unions and employers and influencing government economic and social policies through direct contacts and via the National Partnership process. The ICTU is involved in campaigning for workers rights including immigrant workers.

Irish Council for Civil Liberties (ICCL)

Address	DMG Business Centre, 9-13 Blackhall Place, Dublin 7, Ireland
Telephone	+353-1-7994504
Website	http://www.iccl.ie
Category	NGO
Objectives	The Irish Council for Civil Liberties is a non-governmental organisation that works to promote and defend human rights and civil liberties.
Activities	ICCL runs campaigns and makes submission on issues such as criminal justice, equality, ECHR and immigrants' rights.
Contact	Mark Kelly, Director

Irish Council for International Students

Address	41 Morehampton Road, Dublin 4, Ireland
Telephone	+353-1-6605233
Fax	+353-1-6682320
Website	http://www.icosirl.ie
Email	office@icosirl.ie
Category	NGO
Objectives	The Irish Council for International Students is an independent, non-governmental and non-profit organisation established in 1970. The Council aims to enhance the quality and benefits of international

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education in Ireland by working with the main educational institutes, government departments and development agencies both in Ireland and abroad. The Council is made up of representatives from Irish universities, Institutes of Technology and other institutions involved in international education and training at post-secondary level.

- Activities** The Council offers student advice and support to international students and to their advisers, as well as training and information workshops to staff of member colleges. The Council administers Irish Government (Department of Foreign Affairs) funded Study Fellowship Programmes and works to promote good policy and practice in international education, through research, publications and conferences.
- Contact** Sheila Power, Chief Executive

The Irish Council of Imams

- Address** 19 Roebuck Road, Clonskeagh, Dublin 14, Ireland
- Telephone** +353-1-2080009
- Fax** +353-1-2609603
- E-mail** aliselim_2000@yahoo.com
- Objectives** This council represents an unprecedented Muslim initiative in Ireland that provides a theological Muslim body that represents Muslims in Ireland. The Irish Council of Imams is formed of most of the qualified Imams in Ireland.
- Activities** The Irish Council of Imams is an authorised, specialised, official Muslim body formed to express the Islamic verdicts on issues occurring in the Irish Arena. It encourages positive Muslim integration into the Irish society; embarks on social and educational programmes for Imams; makes a positive contribution into sorting out social and family problems; co-operates in relevant issues with concerned offices and organisations; collaborates with people of other faiths via dialogue on commonalities; endeavours to reach Muslim consensus

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on Muslim occasions in Ireland; seeks to spread the spirit of the Islamic tolerance.

Contact Imam Hussein Halawa, Chair; Sheikh Yahia Al-Hussein, Deputy Chair; Ali Selim, Secretary General

Irish Human Rights Commission

Address 4th Floor, Jervis House, Jervis Street, Dublin 1, Ireland

Telephone +353-1-8589601

Fax +353-1- 8589609

Website www.ihrc.ie

Email info@ihrc.ie

Category Independent State Body

Objectives The Human Rights Commission was formally established in 2001 as part of the undertakings given by the Government in the Belfast Agreement. It parallels a similar commission set up in Northern Ireland in 1999. The Commission is responsible for monitoring human rights in Ireland i.e. those rights, liberties and freedoms guaranteed by the Constitution and by any treaty or convention to which the State is a party.

Activities The Commission reviews Irish law with regard to human rights and makes recommendations to the Government on such matters; it consults with relevant national and international bodies, undertakes research and educational activities. The Commission also conducts inquiries into human rights abuses and take cases to court on behalf of individuals and groups. It can also offer its expertise to the courts in such matters. It participates in the Joint Committee of Representatives drawn from the Commissions in both the Irish and Northern Ireland jurisdictions thus providing a forum for human rights issues on the island of Ireland.

Contact Alpha Connelly, Chief Executive Officer

Irish Naturalisation and Immigration Service (INIS)

Address	Department of Justice, Equality & Law Reform, Government of Ireland, 13/14 Burgh Quay, Dublin 2, Ireland
Telephone	+353-1-6167700
Website	http://www.justice.ie
Email	info@justice.ie
Category	State Body
Objectives	The Department of Justice, Equality & Law Reform has responsibility for crime and state security, the criminal justice system, criminal and civil law, equality and immigration and asylum.
Activities	The Immigration and Asylum Policy Divisions of the Department has responsibility for the further development of the national immigration policy and the implementation of the Government's asylum strategy. The Office of the Refugee Applications Commissioner, The Refugee Appeals Tribunal and the Reception and Integration Agency fall within the remit of the Department of Justice, Equality and Law Reform. The Irish Naturalisation and Immigration Service (INIS) is an executive office within the Department of Justice, Equality and Law Reform is responsible for managing the administrative functions of the Department in relation to immigration.

Irish Penal Reform Trust

Address	53 Parnell Square West, Dublin 1, Ireland
Telephone	+353-1-8741400
Fax	+353-1-8733174
Website	http://www.iprt.ie
Email	info@iprt.ie
Objectives	The Irish Penal Reform Trust is a non-governmental organisation campaigning for the rights of people in prison and the reform of Irish penal policy.

Activities The Irish Penal Reform Trust campaigns through conferences and events, produces policy papers and conducts research on Irish penal policy. A membership service is offered.

Irish Refugee Council

Address Second Floor, Ballast House, Aston Quay, Dublin 2, Ireland

Telephone +353-1-7645854

Fax +353-1-8730088

Website www.irishrefugeecouncil.ie

Email info@irishrefugeecouncil.ie

Category NGO

Objectives The Irish Refugee Council (IRC) is an independent membership-based non-governmental organisation which works closely with asylum seekers, refugees, community organisations, NGOs, UNHCR and Government to promote a fair and humane protection system.

Activities The Council's current strategic plan focuses on policy development, research, advocacy and public awareness under four headings:

- 1) A fair and transparent asylum and protection system
- 2) Adequate accommodation and rights for asylum seekers in 'direct provision'
- 3) Protection and rights for separated children
- 4) Awareness of asylum seekers and refugees, their lives, aspirations and rights.

Contact Robin Hanan, Chief Executive

Islamic Cultural Centre of Ireland

Address	19 Roebuck Road, Clonskeagh, Dublin 14, Ireland
Telephone	+353-1-2080000
Fax	+353-1-2080001
E-mail	info@islamireland.ie
Website	www.islamireland.ie
Objectives	The ICCI aims at facilitating cultural and religious services.
Activities	In Nov 1996 the Islamic Cultural Centre of Ireland at Clonskeagh, Dublin 14 was established evolving into a distinguished landmark and elite Islamic edifice not only in Ireland but in Europe as a whole. Since its inauguration, the ICCI has embarked on a wide range of religious and cultural activities. The Islamic Cultural Centre of Ireland offers facilities for daily prayers and religious celebrations and the general welfare of the community including a Muslim National School, a library, a mortuary, a shop and a restaurant. The ICCI has participated in and organized numerous functions serving integration e.g. health awareness, world cultural activities. Huge efforts for the accomplishment of the reciprocal processes of integration have been exerted in parallel with sincere endeavours to organize religious functions.
Contact	Sumayah, Community Coordinator

Islamic Foundation of Ireland

Address	163 South Circular Road, Dublin 8, Ireland
Telephone	+353-1-4533242
Fax	+353-1-4532785
Website	www.islaminireland.com
Email	info@islaminireland.com
Category	Religious Organisation
Objectives	The Islamic Foundation of Ireland established the first mosque in Ireland in 1976. It also helped to establish

mosques in other cities in Ireland. The Islamic Foundation of Ireland has been the official representative of Muslims in Ireland since its inception. It looks after the religious, educational and social needs of Muslims in Ireland.

- Activities** The Foundation runs the Dublin Mosque and Islamic Centre. The Foundation also organises prayers and study circles, Islamic Lectures, Islamic Courses, Summer Camps etc and distributes free literature on Islam. Facilities at the Islamic centre include a library, and a Halal shop and restaurant.
- Contact** Iman Al-Hussein, Director

Lithuanian Association in Ireland

- Address** 17 St. John's Bridge Walk, Lucan, Co. Dublin, Ireland
- Telephone** +353-879171245/08682288305
- Website** <http://langas.net/tp/airija>
- Category** NGO
- Objectives** The organisation was established to help the growing number of Lithuanian nationals in Ireland to settle and to build up a sense of community.⁴⁴⁹
- Activities** Activities of the Lithuanian Association in Ireland include: organising of Lithuanian concerts and other events; running 4 Lithuanian weekend schools (Dublin, Cork, Galway, Dundalk) for Lithuanian children; maintaining a mailing list of Lithuanians in Ireland (approx. 1,000 members); publishing information for Lithuanians in Ireland online; organising monthly Lithuanian gatherings in Dublin and Cork and organising non-regular Lithuanian meetings in other cities and towns.
- Contact** Linas Jakucianis

⁴⁴⁹ Information taken from Immigrant Council of Ireland, 2006.

Louth African Women's Support Group, The

Address	Ait Na nDoine, 2 Grange Close, Muirhevnamor, Dundalk, Co. Louth, Ireland
Telephone	+353-42-9326645
Category	NGO
Objectives	The main aim of the Louth African Women's Support Group is to raise awareness about cultural diversity by participating in all aspects of the Irish society, without having to relinquish cultural identity also to give a common voice and enable self representation.
Activities	The group also acts as a social outlet for women to stop the marginalisation of black and minority ethnic groups. The group also sets about uniting the African populace by facilitating get together, challenge racism and discrimination on the grounds of gender, ethnicity, race, religion, etc.
Contact	Titilola Ossai

Metro Eireann

Address	34 North Frederick St., 3rd Floor, Dublin 1, Ireland
Telephone	+353-1-8783441
Fax	+353-1-868 9142
Website	www.metroeireann.com
Email	info@metroeireann.com
Category	Newspaper
Objectives	Metro Eireann is a multi cultural newspaper with a special focus on immigrant, asylum-seeker and refugee issues.
Activities	Metro Eireann produces a newspaper organises debates, conferences and seminars, provides training in multicultural understanding and generally promotes cultural understanding through the arts, entertainment and sport.
Contact	Chinedu Onyejelem, Editor

Migrant Rights Centre Ireland

Address	55 Parnell Square West, Dublin 1, Ireland
Telephone	+353-1-8897570
Fax	+353-1-8897579
Website	http://www.mrci.ie
Email	info@mrci.ie
Category	NGO
Objectives	The MRCI is a national organisation concerned with the rights of migrant workers and their families. Established in 2001 to bridge a gap in support structures and information provision for migrant workers and their families, it has since evolved to become a national organisation concerned with: A. Provision of supports to migrant workers and their families. B. Empowering migrant workers through community work practice. C. Achieving policy change.
Activities	The activities of MRCI can be divided into three key programmes areas: <ol style="list-style-type: none">1) The Drop In Centre Programme provides information, advice and assistance to migrant workers and their families who are in situations of vulnerability.2) Community work: the active participation and inclusion of migrant workers at all levels of society is a strategic aim of MRCI pursued through community work.3) Through the Policy Engagement Programme, MRCI seeks to contribute constructively to the formation of migration policy which recognises the human rights of migrant workers and their families.
Contact	Siobhan O'Donoghue, Coordinator; Jacqueline Healy, Drop In Centre Coordinator

NASC Irish Immigrant Support Centre

Address	Enterprise House, 35 Main Street, Cork City, Ireland
Telephone	+353-21-4317411
Fax	+353-21-4317002
Website	http://www.nascireland.org
Email	info@nascireland.org
Category	NGO
Objectives	“Nasc” which takes its name from the Irish word “Link” is a non-Governmental organisation that seeks to respond to the needs of immigrants in the area of Cork, Ireland. Their aim is to contribute to an environment of social inclusion for all communities, based on the principles of equality, social justice and human rights.
Activities	NASC provides three types of support: One to one Advice & Advocacy (they run a drop-in service for any immigrant, refugee, migrant worker or asylum-seeker from any part of the world and provide help and advice on a range of different issues); Group Capacity Building (they are a Community Development Organisation and work through our subgroups such as our Social & Cultural, Women’s and Speakers Panel Groups); Policy & Campaigning (key areas of focus are on Family Reunification, Integration, Direct Provision, and Access to Education, Employment and Enterprise).
Contact	Gertrude Cotter, Director

National Consultative Committee on Racism and Interculturalism (NCCRI)

Address	Third Floor, Jervis House, Jervis Street, Dublin 1, Ireland
Telephone	+353-1-8588000
Fax	+353-1-8727621
Website	http://www.nccri.ie
Email	info@nccri.ie
Category	Independent State Body

- Objectives** The National Consultative Committee on Racism and Interculturalism (NCCRI) is an independent expert body focusing on racism and interculturalism. The NCCRI is a partnership body which brings together government and non-government organisations to: develop an inclusive and strategic approach to combat racism by focusing on its prevention and promoting an intercultural society; contribute to policy and legislative developments and seek to encourage dialogue and progress in all areas relating to racism and interculturalism; encourage integrated actions towards acknowledging, celebrating and accommodating cultural diversity; establish and maintain links with organisations or individuals involved in addressing racism and promoting interculturalism at national, European and international level; provide a national framework for responding to and consulting with key European and international bodies on issues related to racism and interculturalism.
- Activities** As an expert organisation on racism and interculturalism, the NCCRI has an important advisory role in relation to government and non-government organisations and seeks to influence relevant policy. The NCCRI has a Training and Resource Unit which provides anti-racism and intercultural awareness training to government and non-government organisations and other groups. The Community Development Support Unit (CDSU) provides assistance and support to community groups working with minority ethnic groups. The NCCRI also provide a system for monitoring racist incidents and work towards information and Public Awareness. NCCRI is the designated 'National Focal Point' for the EU FRA and therefore carries out the RAXEN reporting for Ireland to the European Union.
- The NCCRI is the designated organising body for the European Year of Intercultural Dialogue 2008.
- Contact** Anastasia Crickley, Chairperson; Philip Watt, Director

National Economic and Social Council

Address	16 Parnell Square, Dublin 1, Ireland
Telephone	+353-1-8146300
Fax	+353-1-8146301
Website	http://www.nesc.ie
Email	info@nesc.ie
Category	State Body
Objectives	The National Economic and Social Council's main task is to advise the Government on the development of the national economy and the achievement of social justice. In addition to advising the Government, the Council provides a forum for debate and the exchange of views between interested parties. Members include trade unions, business organisations and agricultural organisations, representatives from the community and voluntary Sector and a number of public servants and independent members to the Council.
Activities	The National Economic and Social Council publishes reports and a research series based on work that is considered to be a potential contribution to wider policy debate but on which the Council has not adopted a position.
Contact	Dr Rory O'Donnell, Director

National Qualifications Authority of Ireland

Address	5th Floor, Jervis House, Jervis Street, Dublin 1, Ireland
Telephone	+353-1-8871500
Fax	+353-1-8871595
Website	http://www.nqai.ie
Email	info@nqai.ie
Category	State Body
Objectives	The National Qualifications Authority of Ireland is the Irish centre for the recognition of international awards. The Authority represents Ireland in a European Network

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of centres known as ENIC/NARIC (European National Information Centre/National Academic Recognition Information Centre) and NRP (National Reference Point) which promote the recognition of international awards throughout Europe.

Activities The Authority works towards the establishment and maintenance of a framework of educational qualifications. Building on the framework, the Authority also has a number of other functions in relation to liaising with bodies to facilitate recognition of international awards in Ireland and of Irish awards internationally.

Office of the Minister for Integration

Address Dun Aimhirgin, 43-49 Mespil Road, Dublin 4, Ireland

Telephone +353-1-6473000

Fax +353-1-6473119

Email info@justice.ie

Category State Body

Objectives The Office of the Minister for Integration and has a cross Departmental mandate to develop, drive and coordinate integration policy across other Government Departments, agencies and services. The Office will be involved in the development of a long-term national policy on integration which will be informed by widespread consultation at a national level, properly structured objective research and international experience. Overall, responsibility for the promotion and coordination of integration measures for all legally resident immigrants rests with the Office of the Minister for Integration. In general the actual delivery of integration services is the responsibility of mainstream Government departments.

Activities A cross-Departmental Group was established by Government in February 2007 to carry out a review of existing integration policy and to provide an initial assessment of future policy options. This group will continue its work under the chair of the Minister for

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Integration. In February 2007 the Government also started the process of consultation with NGOs and key stakeholders by holding a major conference on Integration Policy. A follow-up workshop took place in December 2007. This process of consultation and policy development will continue throughout 2008 through various initiatives as outlined below.

Task Force on Integration: A Task Force on Integration will be established to identify key issues affecting immigrant communities; consult widely with the immigrant and indigenous populations; visit communities; examine previous research and report back with specific recommendations.

Ministerial Council for Immigrants: A Ministerial Council for Immigrants will be set up during 2008 to allow ongoing input by immigrants into policy and implementation issues.

Immigrant Commission: An “Immigrant Commission” will be established that will include a broad representation of stakeholders. The Commission will advise the Minister on all aspects of developments in the integration area.

Strategic Studies: The Office will continue to promote and fund strategic studies geared to informing policy development in the integration area.

Funding Streams: Provision has been included in the 2008 budget of the Office to provide seed funding to promote integration activities.

Resettlement: The Office of the Minister for Integration also coordinates the Governments Resettlement Quota programme.

Office of the Refugee Applications Commissioner (ORAC)

Address	79-83 Lower Mount Street, Dublin 2, Ireland
Telephone	+353-1-6028000
Fax	+353-1-6028122
Website	http://www.orac.ie
Email	oracmail@orac.ie

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Category	State Body
Objectives/ Activities	Established in 2000 by the Refugee Act 1996 (as amended). The key statutory responsibilities of the office are to investigate applications from those who seek a declaration of refugee status and to issue appropriate recommendations to the Minister for Justice, Equality and Law Reform on such applications, and to investigate applications by refugees to allow family members to enter and reside in the State and to report to the Minister on such applications. It is also the Commissioner's responsibility to direct the presentation of the Commissioner's case to the Refugee Appeals Tribunal where recommendations made by the Commissioner are appealed to the Tribunal.
Contact	David Costello, Refugee Applications Commissioner

Pavee Point

Address	46 North Great Charles Street, Dublin 1, Ireland
Telephone	+353-1-8780255
Fax	+353-1-8742626
Website	http://www.paveepoint.ie
Email	pavee@iol.ie
Category	NGO/Partnership
Objectives	Pavee Point is an NGO working to improve the lives of Travellers in Ireland.

Polish Information and Cultural Centre⁴⁵⁰

Address	56-57 Lower Gardiner Street, Dublin 1, Ireland
Telephone	+353-1-6729997
Fax	+353-16334705
Website	www.polishcentre.ie
Category	Private organisation
Objectives	The Polish Information and Cultural Centre has two stated objectives: to research and publish information on economic migration from Poland to Ireland and to work on the integration of the Polish community into Irish society.
Activities	Free services consist of an information desk and the organisation of information seminars (focused on different topics such as migrant workers rights, medical care in Ireland, Social Welfare), employment law advice, FÁS and employment advice, tax advice, a notice board, accommodation lists (in co-operation with Focus Ireland), information on job offers. Paid-for services include: CV preparation, translations and English classes. Cultural activities include the production of a monthly newspaper <i>Szpila</i> , promotion of Poland through participation in conferences, festivals, and European projects in co-operation with the Embassy of the Republic of Poland in Dublin, and the promotion of Polish artists in Ireland, independent projects: events, parties, artistic projects.
Contacts	Magdalena Kerdelewicz

⁴⁵⁰ Information received from Immigrant Council of Ireland, 2006.

Reception and Integration Agency (RIA)

Address	Block C, Ardilaun Centre, 112-114 St. Stephens Green West, Dublin 2, Ireland
Telephone	+353-1-4183200
Fax	+353-1-4183271
Website	http://www.ria.gov.ie
Email	RIA_inbox@inbox.ie
Category	State Body
Objectives	(Note that the Integration Unit is now operating at the Office of the Minister of State with special responsibility for Integration Policy). Under the aegis of the Department of Justice, Equality and Law Reform, the Reception and Integration Agency has responsibility for planning and coordinating the provision of services to asylum seekers, refugees and persons granted leave to remain.
Activities	The Reception and Integration Agency has responsibility for planning and co-ordinating the provision of services to both asylum seekers and refugees; the accommodation of asylum seekers through direct provision; operation of the selection and resettlement of programme refugees; in relation to all immigrants, monitoring, promoting and facilitating effective integration initiatives; and co-ordinating and developing integration policy.
Contacts	Steve Magner, Assistant Secretary

Refugee Appeals Tribunal (RAT)

Address	6/7 Hanover St. East, Dublin 2, Ireland
Telephone	+353-1-4748400
Fax	+353-1-4748410
Website	http://www.gov.ie/refappeal
Email	info@refappeal.ie
Category	State Body

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- Objectives** The Refugee Appeals Tribunal was established in October 2000 and decides appeals of those asylum seekers whose applications for refugee status has not been recommended by the Office of the Refugee Applications Commissioner. The Tribunal is a statutorily independent body and exercises a quasi-judicial function under the 1996 Refugee Act.
- Activities** The Refugee Appeals Tribunal hears appeals of negative decisions made by the Refugee Applications Commissioner. Oral appeals are held except in the case of certain applications where the appeal is based on written evidence only. The RAT either confirms the negative decision made by the ORAC or makes a positive decision and informs the Ministerial Decision Unit accordingly where a final declaration is made.

Refugee Documentation Centre (RDC)

- Address** Legal Aid Board, Montague Court, Montague Street, Dublin 2, Ireland
- Telephone** +353-1-4776250
- Fax** +353-1-6613113
- Email** Refugee_Documentation_Centre@legalaidboard.ie
- Category** Independent State Body
- Objectives** The Refugee Documentation Centre (RDC) was established as an independent service operating under the aegis of the Legal Aid Board
- Activities** The role of the Centre is to provide a research and query service for key Organisations involved in the asylum process; to build and maintain a collection of objective and up to date country of origin (COI), asylum, immigration, legal and human rights documentation for general access; to provide training on country of origin information research; to undertake other research activities and provide a lending and research library service; to cooperate with similar agencies elsewhere to enhance knowledge of the country of origin research area. Members of the public and other agencies may

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make an appointment to use the Documentation Centre to conduct their own research.

Contacts Fiona Morley, Manager; Zoe Melling, Librarian

Refugee Information Service (RIS)

Address 27 Annamoe Terrace, Off North Circular Road, Dublin 7, Ireland

Telephone +353-1-8382740

Fax +353-1-8382482

Website <http://www.ris.ie>

Email info@ris.ie

Category NGO

Objectives The Refugee Information Service is an NGO which exists to counter social exclusion through the provision of a specialist information, referral and advocacy service to asylum-seekers and refugees.

Activities The RIS provide an information service to asylum seekers and refugee from their offices in Dublin and Galway. They also run an outreach 'clinic' service in areas of Dublin and Galway where refugees and asylum-seekers live in significant numbers.

Contact Josephine Ahern, Director; Ruth O'Dea, Information and Training Officer

Refugee Legal Service (RLS)

Address Montague Court, Montague Street, Dublin 1, Ireland

Telephone +353-1-4760265

Fax +353-1-4760271

Website <http://www.legalaidboard.ie>

Email dublinrls@legalaidboard.ie

Category Independent State Body

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- Objectives** The Refugee Legal Service was established by the Legal Aid Board to provide independent legal services to persons applying for asylum in Ireland. The Legal Aid Board is an independent statutory body providing legal services in civil matters.
- Activities** The Refugee Legal Service provides, for a nominal fee, legal representation and services to asylum seekers and those whose case is in the appeal process.

Ruhama

- Address** Senior House, All Hallows College, Drumcondra, Dublin 9, Ireland
- Telephone** +353-1- 836 0292
- Fax** +353-1- 836 0268
- Website** <http://www.ruhama.ie>
- Email** admin@ruhama.ie
- Category** NGO
- Objectives** Ruhamas mission is to: 1) reach out to and provide support services to women involved in prostitution and other forms of commercial sexual exploitation 2) based on individual need, to offer assistance and opportunities to explore alternatives to prostitution 3) work to change public attitudes, practices and policies which allow the exploitation of women through trafficking and prostitution.
- Activities** Ruhama is a voluntary organisation that offers outreach services, training and development to women involved in prostitution. The organisation also has a research and awareness-raising role.
- Contact** Geraldine Rowley

Spiritan Asylum Services Initiative (SPIRASI)

Address	213, North Circular Road, Dublin 7, Ireland
Telephone	+353-1-8389664
Fax	+353-1-8683504
Website	http://www.spirasi.ie
Email	info@spirasi.ie
Category	NGO
Objectives	SPIRASI is a Non Governmental organisation working with non-nationals in Ireland.
Activities	SPIRASI offers educational courses to non-nationals including English languages for all levels, computer skills training and a Health Information Service. SPIRASI houses a Centre for the Care of Survivors of Torture, which offers medical and psychosocial services for survivors. In addition the organisation facilitates immigrant artists and exhibitions of intercultural art. The organisation is also involved in a number of research projects.
Contact	Michael Begley, Director

Sport Against Racism Ireland (SARI)

Address	20 Upper Baggot Street, Dublin 2, Ireland
Telephone	+353-1-6688869
Fax	+353-1- 6687962
Website	http://www.sari.ie/
Email	info@sari.ie
Category	NGO
Objectives	Sport Against Racism Ireland is a not-for profit organisation that supports and promotes cultural integration and social inclusion through sport.
Contact	Frank Buckley, Chief Executive Officer

**United Nations High Commissioner for Refugees (UNHCR)
Representation in Ireland**

Address	Suite 4, Merrion House, 1-3 Lower Fitzwilliam Street, Dublin 2, Ireland
Telephone	+353-1-6314510
Fax	+353-1-6314616
Website	http://www.unhcr.ch
Email	iredu@unhcr.ch
Category	United Nations Refugee Agency
Objectives	The United Nations High Commissioner for Refugees (UNHCR) provides protection and assistance to the world's refugees. UNHCR was created by the United Nations General Assembly and began work in 1951, initially aiding more than one million European refugees following World War II. In 2004 the number of people 'of concern' to UNHCR is more than 20 million worldwide. UNHCR's most important responsibility, known as "international protection", is to ensure respect for the basic human rights of refugees, including their ability to seek asylum and to ensure that no one is returned involuntarily to a country where he or she has reason to fear persecution. UNHCR has maintained a Representation in Ireland since 1998.
Activities	In Ireland, the organisation promotes international refugee agreements, monitors government compliance with international law and provides assistance in the area of refugee law training to the main statutory agencies dealing with asylum. UNHCR is also engaged in raising public awareness of the plight of refugees.
Contact	Manuel Jordao, Representative; Steven O'Brien, Assistant Public Information Officer

Vincentian Refugee Centre

Address	St. Peter's Church, Phibsboro, Dublin 7, Ireland
Telephone	+353 -1-8102580
Fax	+353 -1-8389950
Website	http://www.vincentians.ie
Email	refugeecentrephibsboro@eircom.net
Category	NGO
Objectives	The Vincentian Refugee Centre is run by the Irish Vincentian Order and works to involve the local community with refugees in developing a model of a "Welcoming Community" which recognises and values cultural diversity in a multi-ethnic society.
Activities	The Vincentian Refugee Centre offers a wide range of services including: information provision on social welfare and health, an accommodation and housing service, language training, public awareness raising programmes and communication with the media, social events and general integration with the local community, an outreach programme, special services for unaccompanied/separated children, both in terms of integration and education, a women's group, Liaison and advocacy work on behalf of Asylum Seekers/Refugees and a platform for Asylum Seekers/Refugees to express their views to the community.
Contact	Sr. Breege Keenan, Administrator

WorkFair

Address	P.O. Box 11234, Dublin 7, Ireland
Telephone	+353-85-8164946
Website	www.workfair.org
Email	info@workfair.org
Objective	WorkFair is an initiative directed at combating labour exploitation of migrant workers in Ireland. WorkFair is a voluntary-run, confidential service that will provide

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information, free legal advice and legal representation to migrant workers in relation to employment law issues.

Activities

WorkFair operates fortnightly drop-in free advice clinics staffed by practicing barristers, a schedule of which is available on our website. In addition, WorkFair offers legal representation in relation to employment issues before the Rights Commissioner, Employment Appeals Tribunal, the Equality Authority and the ordinary courts. Persons may be referred to the scheme from other groups or organisations catering to the needs of migrant communities. If an applicant's language needs are not catered to within the scheme, or if a large number of applicants have a similar set of circumstances, consultations can be arranged by special appointment.

Initial advice is given at the drop-in clinics and if an applicant's case comes within the scheme's criteria, the person will be referred to the scheme's panel of solicitors.

Contact

Niall Buckley

7. RESEARCHERS, RESEARCH INSTITUTES AND RESEARCH PROGRAMMES

The following is a list of unaffiliated individual researchers, research organisations (and associated researchers) and finally research programmes with an interest in migration/asylum.⁴²⁶

7.1 INDIVIDUAL RESEARCHERS

Barrett, Alan

Position	Senior Research Officer, The Economic and Social Research Institute
Telephone	+353-1-8632000
Fax	+353-1-8632100
Email	alan.barrett@esri.ie
Address	Whitaker Square, Sir John Rogerson's Quay, Dublin 2, Ireland
Website	http://www.esri.ie
Category	Research Centre
Experience	Alan Barrett's (PhD Michigan State University) main research areas are labour economics and environmental economics. He is programme coordinator of migration research in the ESRI. He has worked extensively on migration issues and has also written on other labour

⁴²⁶ While we have attempted to provide as comprehensive a list as possible it is inevitable that some researchers have been omitted.

topics such as training and the distribution of earnings. Alan is a Research Fellow with IZA (Institute for the Study of Labor) in Bonn, Germany, and is a regular visiting lecturer at Trinity College Dublin.

Bushin, Naomi

Position Marie Curie Excellence Grant Research Fellow, Migrant Children Project, University College Cork

Email N. Bushin@ucc.ie

Address Geography Department, University College Cork, Cork City, Ireland

Experience Dr Naomi Bushin is a Marie Curie Excellence Grant Research Fellow with the Migrant Children Project at University College Cork. Research interests include family migration; children's experience of migration; children in the asylum system; migration from EU Accession countries; migrant children and education.

Byrne, Rosemary

Position Senior Lecturer, Law School, Trinity College Dublin

Email rbyrne@tcd.ie

Address Law School, Trinity College Dublin, Dublin 2, Ireland

Experience Rosemary Byrne (B.A. Columbia, 1986, J.D. Harvard, 1992) is a senior lecturer in international and human rights law, a Human Rights Commissioner for the Irish Commission for Human Rights and a Research Fellow at the Institute for International Integration Studies. Her research on migration is in the area comparative asylum law and she is the editor-in-chief of The Refugee Law Reader.

Chiyoko King-O’Riain, Rebecca

Position Senior Lecturer, Department of Sociology, National University of Ireland, Maynooth

Telephone +353-1-7083941

Fax +353-1-7083528

Email Rebecca.King-Oriain@nuim.ie

Address Department of Sociology, National University of Ireland, Maynooth, County Kildare, Ireland

Website <http://sociology.nuim.ie>

Experience Dr Rebecca Chiyoko King-O’Riain (BA, MA, PhD) is a lecturer at the Department of Sociology, Maynooth University. She is currently working on a number of projects exploring the impact that globalisation, and specifically new transnational communities, are having on racialized definitions of Irishness both in the realm of the state (Irish language requirements, citizenship and racial/ethnic enumeration on the Census) and in terms of the experiences of people themselves in Ireland. She is especially interested in the transnational experiences of people who spend time in China/Ireland and Poland/Ireland.

Christie, Alistair

Position Lecturer, Department of Applied Social Studies, University College Cork

Telephone +353-21-4902228

Fax +353-21-4903443

Email a.christie@ucc.ie

Address William Thompson House, Donovan’s Road, Cork, Ireland

Website <http://www.ucc.ie/en/DepartmentsCentresandUnits/AppliedSocialStudies/>

Experience Professor Alistair Christie lectures at University College Cork in the Department of Applied Social Studies. His

research interests include: globalisation, citizenship and social work, social exclusion and histories of social work.

Conroy, Pauline

Position Co-Director, Ralaheen Ltd.
Telephone +353-1-6793400
Fax +353-1-6793406
Email info@ralaheen.ie
Address Unit 21, Central Hotel Chambers, 7/9 Dame Court, Dublin 2, Ireland
Category Research and Graphic Design Company
Experience Pauline Conroy (PhD) is the co director of Ralaheen Ltd – a research and graphic design company. She has conducted research on a broad range of topics including disability and lone parenting, trafficking and integration.

Darmody, Merike

Position Research Analyst, The Economic and Social Research Institute
Telephone +353-1-8632000
Fax +353-1-8632100
Email merike.darmody@esri.ie
Address Whitaker Square, Sir John Rogerson's Quay
Dublin 2, Ireland
Website <http://www.esri.ie>
Category Research Centre
Experience Merike Darmody holds a PhD in Human Sciences from University College Dublin. Her interests are in sociology of education, inequality in education, lifelong learning, field of study, student workload in higher education, comparative education and qualitative research methods. She is currently involved in a study of newcomer

(immigrant) students in Irish primary and post-primary schools.

Duffy, David

Position Research Officer, The Economic and Social Research Institute

Telephone +353-1-8632000

Fax +353-1-8632100

Email david.duffy@esri.ie

Address Whitaker Square, Sir John Rogerson's Quay, Dublin 2, Ireland

Website <http://www.esri.ie>

Category Research Centre

Experience David Duffy (PhD National University of Ireland, Maynooth) is a Research Officer at the ESRI, Dublin. His work focuses on the macro-economy and on the housing market. He has written on topics such as the assimilation of immigrants into the Irish labour market and the housing tenure of immigrants in Ireland.

Egan, Suzanne

Position Lecturer, Faculty of Law, University College Dublin

Telephone +353-1-7168741

Email Suzanne.Egan@ucd.ie

Address University College Dublin, Belfield, Dublin 4, Ireland

Website <http://www.ucd.ie/law>

Category Educational Institute

Experience Suzanne Egan lectures in International and European Human Rights Law at University College Dublin and is a Commissioner on the Irish Human Rights Commission. She is a qualified barrister with a Master of Laws.

Fanning, Bryan

Position Senior Lecturer in School of Applied Science, University College Dublin

Telephone +353-1-7168578

Email bryan.fanning@ucd.ie

Address Social Science Research Centre, Library Building, University College Dublin, Dublin, Ireland

Website <http://www.ucd.ie/appsocsc>

Category Research Centre

Experience Bryan Fanning (BA, DMS, PhD) is a Senior Lecturer in the School of Applied Social Science at UCD. His research interests include immigration, the Irish welfare economy and intellectual debates in twentieth century Ireland. He is currently Director of the MSocSc (Social Policy) Programme.

Feldman, Alice

Position Lecturer in Sociology, University College Dublin

Telephone +353-1-7168510

Email alice.feldman@ucd.ie

Fax +353-1-7161125

Address UCD School of Sociology, Newman Building, University College Dublin, Dublin 4, Ireland

Website <http://www.ucd.ie/sociology>

Category Educational Institution

Experience Alice Feldman (MA, PhD) is a lecturer in Sociology at University College Dublin. Her research interests include: identity, diversity and citizenship in Ireland and Europe; social movements, civil society and ethnic diversity; research methods; and indigenous peoples, colonialism and self-determination.

Gilligan, Robbie

Position	Professor and Head of School, Social Work and Social Policy, Trinity College Dublin
Telephone	+353-1-8961331
Fax	+353-1-6712262
Email	robbie.gilligan@tcd.ie
Address	School of Social Work and Social Policy, Trinity College Dublin, Dublin 2, Ireland
Website	http://www.socialwork-socialpolicy.tcd.ie
Category	Educational Institute
Experience	Robbie Gilligan is Professor of Social Work and Social Policy at Trinity College Dublin. He is Head of the School of Social Work and Social Policy, and Associate Director of the Children's Research Centre at TCD.

Gilmartin, Mary

Position	Lecturer, Department of Geography, National University of Ireland, Maynooth
Telephone	+353-1-7086617
Email	mary.gilmartin@nuim.ie
Address	Department of Geography, National University of Ireland, Maynooth, Co. Kildare, Ireland
Website	http://geography.nuim.ie
Category	Educational Institute
Experience	Dr Mary Gilmartin (BA, MA, PhD) is a lecturer at the Department of Geography, Maynooth University. Her research interests include the geographies of migration, belonging and identity.

Gray, Breda

Position Senior Lecturer in Women's Studies, Department of Sociology, University of Limerick

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Fax +353-61-202569

Email breda.gray@ul.ie

Address University of Limerick, Castletroy, Limerick, Ireland

Website <http://www.ul.ie/womensstudies/>,
<http://www.ul.ie/sociology/>

Experience Breda Gray (B.Soc.Sc.(UCD), MSW (UBC, Vancouver), MA and PhD (Lancaster University)) lectures in the Sociology Department at the University of Limerick. Her research interests include women and migration; the politics of belonging – citizenship, globalisation, diaspora and multiculturalisms; gender, memory and life narratives and the gender of Irish modernity.

Grossman, Alan

Position Lecturer, Centre for Transcultural Research and Media Practice, Dublin Institute of Technology

Telephone +353-1-4027129

Email alan.grossman@dit.ie

Address: Centre for Transcultural Research and Media Practice, School of Media, Dublin Institute of Technology, Aungier Street, Dublin 2, Ireland

Website <http://ctmp.dit.ie>

Category Educational Institute

Experience Alan Grossman (BSc, MSc, PhD) is a Lecturer and filmmaker in the Centre for Transcultural Research and Media Practice, DIT. His research and teaching interests include: cultural politics of identity, migration and diasporic formations, visual ethnography and lens-based practice, intercultural/accented cinema.

Hughes, Gerard

Position Visiting Professor, School of Business, Trinity College Dublin

Telephone +353-1-8961479

Fax +353-1-6799503

Email gehughes@tcd.ie

Address: School of Business, Trinity College, University of Dublin, Dublin 2.

Website <http://www.business.tcd.ie/research/faculty>

Category Educational Institute

Experience Gerard Hughes (PhD Trinity College, University of Dublin) is a Visiting Professor at the School of Business, Trinity College Dublin and a Visiting Professor at the Department of Economics, University College Cork. His research focuses on pension financing, the cost and distribution of pension tax expenditures, pension reform, migration (with particular reference to the effects of migration from Eastern Europe on the Irish labour market), and occupational employment forecasting.

Kelleher, Patricia and Carmel

Telephone +353-27-73344

Address Allihies, Beara, Co. Cork, Ireland

Category Research Consultants

Experience Patricia Kelleher Ph.D. is a Research Consultant with Kelleher Associates. Kelleher Associates research on equality and diversity issues.

Lentin, Ronit

Position	Senior Lecturer in Sociology, School of Social Science and Philosophy, Trinity College Dublin
Telephone	+353-1-8962766
Email	rlentin@tcd.ie
Address	School of Social Science and Philosophy, Trinity College Dublin, Dublin 2, Ireland
Website	www.tcd.ie/sociology/mphil.php
Category	Educational Institute
Experience	Ronit Lentin (PhD) is Senior Lecturer in Sociology, coordinator of the Global Networks project in the Institute for International Integration Studies (IIS), member of the Trinity Immigration Initiative research programme where she focuses on migrant networks and course coordinator of the MPhil in Ethnic and Racial Studies which offers specialist theoretical and practical training in issues relating to migration, 'race' and ethnicity in Irish, European and global contexts. Her research and teaching interests include race critical theory, global migration networks, racism in Ireland, genocide and Holocaust studies, and Israel-Palestine.

Loyal, Stephen

Position	Lecturer in Sociology, School of Sociology, University College Dublin
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Fax	+353-1-7161125
Email	Steven.Loyal@ucd.ie
Address	Room A003, Hanna Sheehy-Skeffington Building, University College Dublin, Dublin 4, Ireland
Website	http://www.ucd.ie/sociology
Category	Educational Institute
Experience	Stephen Loyal (BA, MA, PhD) lectures in Sociology at University College Dublin. His research interests include

migration, ethno-racial domination, social stratification, sociological theory, historical sociology and sociology of knowledge.

Mac Éinrí, Piaras

Position Lecturer, Department of Geography, University College Cork; Director of the Irish Centre for Migration Studies.

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Email p.maceinri@ucc.ie

Address Department of Geography, University College Cork, Western Road, Cork, Ireland

Website <http://www.ucc.ie/academic/geography/>

Category Educational Institution

Experience Piaras Mac Éinrí researches migration to and from Ireland and is Director of the Irish Centre for Migration Studies.

MacFarlane, Anne

Position Lecturer in Primary Care, Department of General Practice, National University of Ireland, Galway

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Fax +353-91-495558

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Address Department of General Practice, National University of Ireland, Galway, Ireland

Website www.nuigalway.ie/general_practice/

Category Educational Institution

Experience Anne (MA, PhD) is a Lecturer in Primary Care at the Department of General Practice, NUI, Galway. Her research draws on the disciplines of health promotion and the sociology of health and illness. Her research emphasizes community participation in primary health care and includes experience of participatory action

research methods and the use of peer researchers in projects with refugees and asylum seekers. Anne is interested in 'whole system' analyses of health care with on-going work about patients' and professionals' experiences of language barriers in general practice.

McGinnity, Frances

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Email fran.mcginnity@esri.ie

Address Whitaker Square, Sir John Rogerson's Quay, Dublin 2, Ireland

Website <http://www.esri.ie>

Category Research Centre

Experience Dr McGinnity (PhD Nuffield College Oxford) is a Senior Research Officer at the ESRI. Her research interests are in labour market inequality-unemployment, temporary employment, part-time work, gender and racial discrimination. She is also interested in work-life balance, time-use and migration. She is currently involved in a study of newcomer (immigrant) students in Irish primary and post-primary schools.

Muhlau, Peter

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Address Department of Sociology, Trinity College Dublin, Dublin 2, Ireland

Website <http://www.social-phil.tcd.ie/index.php>

Category Educational Institute
Experience Peter Muhlau is Lecturer in Sociology at Trinity College Dublin. Research interests include migration and Labour Market/Women and Minorities.

Mullally, Siobhán

Position Lecturer, Faculty of Law, University College Cork
Telephone +353-21-4902699
Fax +353-21-427 0690
Email s.mullally@ucc.ie
Address University College Cork, Cork, Ireland
Website <http://www.ucc.ie/law>
Category Educational Institute
Experience Dr Siobhán Mullally (B.C.L., LL.M., PhD) is a lecturer in the Faculty of Law, University College Cork. She teaches courses in Human Rights Law; Public International Law; Immigration and Refugee Law and International Criminal Law. Siobhan has published widely in the fields of human rights law; immigration and refugee law; gender and law.

Munck, Ronnie

Position Professor of Sociology and Theme Leader: Internationalisation, Interculturalism & Social Development, Dublin City University
Telephone +353-1-7007898
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Address Dublin City University, Dublin 9, Ireland
Website <http://www.dcu.ie/themes/international/index.shtml>
Category Educational Institute
Experience Ronnie Munck is Professor of Sociology and Theme Leader: Internationalisation, Interculturalism & Social Development at Dublin City University.

Mutwarasibo, Fidele

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Address 2 St Andrew Street, Dublin 2, Ireland

Website <http://www.immigrantcouncil.ie>

Category NGO

Experience Fidele Mutwarasibo has published on immigration, integration and political representation of immigrants in Ireland. He is a PhD candidate at UCD, School of Sociology.

Ní Laoire, Caitríona

Position Research Fellow, Department of Geography, University College Cork

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Address Department of Geography, Bloomfield Terrace, University College Cork, Cork, Ireland

Website <http://www.ucc.ie/academic/geography>

Category Educational Institute

Experience Dr Caitríona Ní Laoire was a full-time researcher on the Narratives of Migration and Return project in UCC during 2003-2005, which involved collecting life narratives of Ireland's recent return migrants. She is currently Team Leader on the four-year Migrant Children research project (2005-2009), funded by a Marie Curie Excellence Grant. She has particular responsibility for Strand D of the research, focusing on children of return migrants. Her research interests lie in the areas of Irish migration, return migration, childhood/youth, rurality, gender and masculinities.

O'Brien, Áine

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Website <http://ctmp.dit.ie>

Category Educational Institute

Experience Áine O'Brien (BA, PhD) is a Senior Lecturer and filmmaker in the Centre for Transcultural Research and Media Practice, DIT and Director of FOMACS. Her research and teaching interests include: race, class, ethnicity and the transnational migrant family, cultural memory, gendered migration, material cultural practices and living archives; cultural studies methodologies and lens-based production.

O'Connell, Philip J.

Position Research Professor, Director of the Irish National Contact Point for the European Migration Network, The Economic and Social Research Institute

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Address Whitaker Square, Sir John Rogerson's Quay, Dublin 2, Ireland

Website <http://www.esri.ie>

Category Research Centre

Experience Philip J. O'Connell (PhD Indiana University, Bloomington) is a Research Professor at the ESRI, Dublin. His work focuses on education, training, the

labour market, the quality of work and migration. Philip is Director of the Irish National Contact Point of the European Migration Network, which is located at the ESRI.

Pillinger, Jane

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Category Researcher
Experience Dr Pillinger is an independent researcher and policy advisor.

Quinn, Emma

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Address Whitaker Square, Sir John Rogerson's Quay, Dublin 2, Ireland
Website <http://www.esri.ie>
Category Research Centre
Experience Emma Quinn is National Coordinator of the Irish National Contact Point of the European Migration Network. She has worked on research into labour migration, migration and asylum policy development, return migration and the experience of discrimination.

Ruhs, Martin

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Fax +44-1865-274718

Email martin.ruhs@compas.ox.ac.uk

Address COMPAS (Centre on Migration, Policy and Society), University of Oxford, 8 Banbury Road, Oxford OX2 6QS, England

Website <http://www.compas.ox.ac.uk>

Category Research Centre

Experience Martin Ruhs is the Senior Labour Market Economist, working predominantly within the COMPAS programme on 'Migration Management'. The objectives of this programme are: to gather evidence on the economic and social impacts of migration; to assess the impact of immigration and integration policy tools; to assess the effectiveness of migration governance arrangements within government and civil society and to discuss the role of economic, political, legal and ethical considerations in the design of migration and integration policies, and to evaluate national and international policy options.

Sawhney, Rashmi

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Website <http://ctmp.dit.ie>

Category Educational Institute

Experience Rashmi Sawhney (BSc, MA, PhD) is a Lecturer in the Centre for Transcultural Research and Media Practice, DIT. Her research and teaching interests include: migrant-media cultural production, postcolonial studies, globalisation and diaspora cultures, South Asian studies, gender, history, memory and film.

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Category Research Centre

Experience Dr. Emer Smyth is a Senior Research Officer at the Economic and Social Research Institute. Her areas of interest include education, school to work transitions, and women's employment. She is currently involved in a study of newcomer (immigrant) students in Irish primary and post-primary schools.

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Category Researcher

Experience John Stanley (BA; MSc) researches immigration and refugee law and is a practising barrister.

Veale, Angela

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Category Educational Institute
Experience Dr Angela Veale is a Lecturer in Applied Psychology at
University College Cork. Research and publications
focus on youth in adversity, in particular asylum seekers
and separated children in Ireland.

Ward, Tanya

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9-13 Blackhall Place, Dublin 7, Ireland
Website <http://www.iccl.ie>
Experience Tanya Ward is a Senior Research and Policy Officer with
Irish Council for Civil Liberties. She has published on
asylum, refugee and migration issues, paying particular
attention to education.

White, Allen

Position Post-Doctoral Researcher, University College Cork
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Cork, Ireland
Website http://www.ucc.ie/academic/geography/pages/staff/white_a.htm
<http://migration.ucc.ie/children/>
Category Educational Institute
Experience Dr Allen is a postdoctoral researcher working on the Marie Curie funded Migrant Children Project. His specific responsibility is to explore the experiences and issues faced by children of refugees and asylum seekers in Ireland. He has published research on the role that legal, social and political discourses play in the marginalisation of groups like asylum-seekers and refugees, the ways this marginalisation contributes to social inequalities in local places and spaces and the importance of policies that address the needs of these excluded groups.

Wickham, James

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Dublin 2, Ireland
Website <http://www.social-phil.tcd.ie/index.php>
Category Educational Institute

Experience James Wickham is Senior Lecturer in Sociology and Director of the Employment Research Centre at Trinity College Dublin. His research is on employment in its social context, especially in high technology work in Ireland. Within the Trinity Immigration Initiative he is researching the labour market careers of migrants; he is also researching the connections between transport, sustainable development and employment. Much of his work is carried out through European projects organised through the ERC. He is a Fellow of Trinity College Dublin and in 1998 was awarded a Jean Monnet Personal Chair in European Labour Market Studies.

Wylie, Gillian

Position Lecturer in International Peace Studies, Trinity College Dublin

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Email wylieg@tcd.ie

Website <http://www.tcd.ie/ise/>

Category Educational Institute

Experience Gillian Wylie (Ph.D University of Aberdeen) lectures in international peace studies and has undertaken research into trafficking for the purposes of sexual exploitation into Ireland. She is also working on the issue of trafficking for labour exploitation in Ireland.

Yurdakul-Bodemann, Gokce

Position	Lecturer in Sociology, School of Social Science and Philosophy, Trinity College Dublin
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Address	School of Social Science and Philosophy, Trinity College Dublin, Dublin 2, Ireland
Email	gokce.yurdakul@tcd.ie
Website	http://www.tcd.ie/sociology
Category	Educational Institute
Experience	Gokce Yurdakul-Bodemann (PhD. University of Toronto) is Lecturer in Sociology, and also teaches a course on citizenship and immigrant incorporation with transatlantic comparison at the MPhil in Ethnic and Racial Studies. She is the principle investigator of the research project on “Jews and Turks in Germany: Political Representation, Immigrant Integration and Minority Rights”, which is funded by the Canadian Social Sciences and Humanities Research Council. Her research and teaching interests include comparative migration studies, “race” and ethnicity, racism and anti-racism, gender and women, Islam and Muslim communities in Europe.

7.2 RESEARCH ORGANISATIONS

Central Statistics Office (CSO)

Address	Central Statistics Office, Skehard Road, Cork, Ireland
Telephone	+353-21-4535000
Website	http://www.cso.ie
Email	information@cso.ie
Category	State Body
Objectives	The Central Statistics Office is the body responsible for compiling most Irish official statistics. The CSO collects,

compiles, analyses and disseminates statistical information relating to the economic and social life of Ireland. The organisation is also responsible for coordinating the official statistics of other public authorities and for developing the statistical potential of administrative records.

- Activities** The CSO regularly produces statistics in the following areas: Agriculture, Building and Construction, Crime, Distribution and Services, External Trade, Economy, Industry, Industrial Employment, Prices, Transport and Tourism, Vital Statistics, Demography and Labour Force, as well as, a variety of periodicals and publications.
- Publications include Population and Migration Estimates, Quarterly National Household Survey and Censuses.
- Contact** Deirdre Cullen, Senior Statistician

Economic and Social Research Institute, The

- Telephone** +353-1-8632000
- Fax** +353-1-8632100
- Email** admin@esri.ie
- Address** Whitaker Square, Sir John Rogerson's Quay, Dublin 2, Ireland
- Website** <http://www.esri.ie>
- Category** Research Centre
- Objectives** The ESRI is an independent research institute that produces research relevant to Ireland's social and economic development, with the aim of informing policy formation and societal understanding.
- Activities** The ESRI has conducted research on a wide range of social and economic subjects. Current research interests include demographics, health, housing, macroeconomics, social capital, regional studies and labour market/migration. The Irish National Contact Point of the European Migration Network is also located within the ESRI.

Associated Researchers Alan Barrett, Senior Research Officer
Frances McGinnity, Research Officer
Philip J. O'Connell, Research Professor
Emer Smyth, Senior Research Officer
Merike Darmody, Research Analysts
Emma Quinn, Research Analyst

Employment Research Centre, Trinity College Dublin

Address Trinity College Dublin, 2 College Green, Dublin 2, Ireland

Telephone +353-1-6081875

Fax +353-1-6771300

Website <http://www.tcd.ie/ERC>

Email jwickham@tcd.ie

Objectives Employment Research Centre (ERC) is a group of researchers at Trinity College Dublin with backgrounds in sociology, economics and political science. The Centre researches on employment policies and practices in Ireland and Europe.

Activities The ERC carries out long term funded research projects and hosts seminars and symposia. These activities promote discussion between Irish and International academics, policy makers and other relevant social actors. To encourage discussion in a wider arena the ERC publish newsletters which provide information on the state of current projects. They also produce a Labour Market Observatory where they explore issues that are specifically relevant to the world of work especially in Ireland. The ERC carries out short-term contract research, consultancy in equal opportunities (audits and evaluations), and labour market analysis. The ERC also has a teaching role with Trinity College Dublin's postgraduate researchers.

Associated Researchers James Wickham, Employment Research Centre
Peter Muhlau, Department of Sociology

**Institute for International Integration Studies, Trinity College
Dublin**

Address	The Sutherland Centre, Trinity College Dublin, College Green, Dublin 2, Ireland
Telephone	+353-1-8963888
Fax	+353-1-8963939
Website	http://www.tcd.ie/iiis
Email	iiis@tcd.ie
Objectives	The IIS works to promote research on global and regional integration, the implications of international integration for economic and social development and the resultant challenges posed for decision makers in the public and private sectors.
Activities	The IIS brings together researchers from a large number of academic departments including business, economics, history, law, political science and sociology. The Institute members conduct research; hold conferences and seminars and host visiting academics.
Associated	Professor Philip Lane, Director of the IIS
Researchers	Rosemary Byrne, Law School Ronit Lentin, Department of Sociology Peter Muhlau, Department of Sociology James Wickham, Department of Sociology

**Irish Centre for Human Rights, National University of Ireland,
Galway**

Address	National University of Ireland, Galway, Galway, Ireland
Telephone	+353-91-493948
Fax	+353-91-494575
Website	http://www.nuigalway.ie/human_rights
Email	humanrights@nuigalway.ie
Category	Research Centre

- Objectives** Irish Centre for Human Rights focuses on the study and promotion of human rights and humanitarian law.
- Activities** The Centre offers various Master programmes and houses a growing number of doctoral researchers. The Centre hosts summer schools and conferences, and undertakes research in the area of human rights in Ireland and internationally.
- Contact** Prof. William Schabas, Director

**Irish Centre for Migration Studies, Department of Geography,
University College Cork**

- Address** Migration Studies, Department of Geography, National University of Ireland, Cork, Ireland
- Telephone** +353-21-902889
- Fax** +353-21-903326
- Email** migration@ucc.ie
- Website** <http://migration.ucc.ie>
- Activities** The Irish Centre for Migration Studies promotes the study of historical and contemporary migration, to and from Ireland, within a comparative international framework, using new information and communication technologies. The Centre is inter-disciplinary in nature and aims to approach the subject of migration from a range of social science, humanities and cultural perspectives
- Associated
Researcher** Piaras Mac Éinrí, Director

Policy Institute, The, Trinity College Dublin

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Telephone +353-1-6083486

Fax +353-1-6770546

Website <http://www.policyinstitute.tcd.ie>

Email policy.institute@tcd.ie

Objectives The Policy Institute is a multidisciplinary research centre located in Trinity College Dublin. The Centre's mission is to advance new and innovative ideas in research and education in public policy, by promoting active debate and engagement between the academic and public policy communities in Ireland, and by supporting the analysis and development of effective policy solutions. The Policy Institute is based in the School of Social Sciences and Philosophy which includes the Departments of Political Science, Economics, Sociology and Philosophy, within the Faculty of Social and Human Sciences.

Activities The Policy Institute pursues three main areas of research: better government and public sector reform; social citizenship and social cohesion; and economic growth, structural change and spatial development.

Associated

Researcher James Wickham, Chair

Ralaheen Ltd

Address Unit 21, Central Hotel Chambers, 7/9 Dame Court,
Dublin 2
Ireland

Telephone +353-1-6793400

Fax +353-1-6793406

Email info@ralaheen.ie

Objectives Ralaheen Ltd. is a research and graphic design company.

- Activities** Ralaheen has conducted research on a broad range of topics including disability and lone parents, equality, integration and trafficking.
- Associated Researcher** Pauline Conroy, Co-Director

7.3 RESEARCH PROGRAMMES

European Migration Network (EMN), Irish National Contact Point

- Telephone** +353-1-8632000
- Fax** +353-1-8632100
- Email** emn@esri.ie
- Address** Whitaker Square, Sir John Rogerson's Quay, Dublin 2, Ireland
- Website** <http://www.esri.ie>; <http://emn.sarenet.es>
- Category** European Network
- Objectives** The overall objective of the EMN is to improve the availability of, and access to, information concerning migration and asylum at European and Member State level in order to support policy- and decision-making in the EU. This will involve providing the Community, its Member States and, as a longer term objective, the wider public with objective, reliable and comparable information on the migration and asylum situation.
- Activities** The analysis and research activities of the EMN include research reports, policy analyses and comments. The network has developed three basic research and analysis tools. 1) EMN Research Studies offer a broad look into specific topics of current interest in relation to the migration and asylum situation in the European Union and its Member States. 2) Annual Policy Reports focus on current legislative and political developments in the Member States and examine the implementation of EU legislation at national level. 3) Public Annual Reports on

Statistics in the field of Migration, Asylum and Return analyse and interpret migration and asylum figures provided in the Eurostat Public Annual Report. The European Migration Network also focuses on network building among interested parties in the Member States.

Contact Emma Quinn, Corona Joyce

Migrant Children: Children's and Young People's Experiences of Immigration and Integration in Irish Society, Department of Geography, University College Cork (UCC)

Address University College Cork, Cork, Ireland

Telephone +353-21-4903842

Website http://www.ucc.ie/academic/geography/pages/migrant_children.htm

Email c.nilaoire@ucc.ie

Objectives This research programme aims to contribute to the understanding of immigration and integration among children and young people in contemporary Irish society. It seeks to map the social worlds of migrant children and youth at the local level in different contexts. The research will produce in-depth analysis of the nature and extent of integration, drawing on current ideas of transnationalism, citizenship and geographies of childhood, and will propose recommendations.

Activities The research programme is interdisciplinary in nature and involves four interrelated strands, each one corresponding to a specific immigrant group: (1) Refugee and asylum-seeking children's experience and integration into Irish Society. (2) From Central and Eastern Europe to Ireland: children's and young people's experiences of migration and integration. (3) Latin American and/or Asian children in Ireland. (4) Children and return migration: Children's and young people's experiences of moving to Ireland with their return migrant parent(s).

Contact Dr Caitriona Ní Laoire, Team Leader
Dr Naomi Bushin

Migration and Citizenship Research Initiative, Department of Sociology, University College Dublin (UCD)

Address	Humanities Institute of Ireland, University College Dublin, Belfield, Dublin 4, Ireland
Telephone	+353-1-7164685
Website	http://www.ucd.ie/mcri
Email	marie.williams@ucd.ie
Objectives	The Migration and Citizenship Research Initiative is located in the Humanities Institute of Ireland at UCD. It is a multidisciplinary research infrastructure and network that supports national and international research. The collective interests of the staff, postgraduates and partners cover three thematic research areas: 1) Identity, citizenship and civil society, including community development and integration, civic and political participation and cultural capital. 2) Immigration, social policy and institutional change including: interculturalism and inequalities in health, education, employment and mobility, housing, and residency. 3) Regional and global trends and transformations in EU policy and European integration, culture, diaspora and development.
Activities	Research projects underway include: Bridging the research-policy divide: evidence-based practice in Irish integration policy; intercultural capital in Irish civil society; integration in Ireland: The experiences of Indian, Nigerian, Lithuanian and Chinese communities and integration through participation: developing best practice models in Europe.
Contact	Marie Williams, Coordinator

**Centre for Transcultural Research and Media Practice, Dublin
Institute of Technology**

Address	Dublin Institute of Technology, Aungier Street, Dublin 2, Ireland
Telephone	+353-1-4027129
Fax	+353-1-1-4023288
Website	http://ctmp.dit.ie
Email	alan.grossman@dit.ie
Objectives	The CTMP promotes the critical application of postgraduate lens-based research in the interdisciplinary areas of migration and cultural studies. It offers a distinctive research environment dedicated to scholarly and public understandings of migration, transcultural relations and new and established identity formations in Ireland and beyond.
Activities	CTMP brings together researchers from a variety of academic fields including cultural studies, film production, visual anthropology, journalism, law and media studies. Centre staff and students conduct research, hold seminars and host visiting academics
Associated Researchers	Dr Glenn Jordan, University of Glamorgan, Wales Dr Roshini Kempadoo, University of East London Dr Roberta McGrath, University of Napier, Scotland Professor Mica Nava, University of East London Dr Cahal McLaughlin, University of Ulster

Trinity Immigration Initiative, School of Social Work and Social Policy, Trinity College Dublin

Address	Trinity College Dublin, College Green, Dublin 2, Ireland
Website	http://www.tcd.ie/immigration
Email	immigration@tcd.ie
Objectives	The first key initiative of the Trinity Immigration Initiative (TII) is a major <i>Research Programme on Diversity, Integration and Policy</i> . The programme is a unique and multidisciplinary suite of six interlocking projects which will: 1) address key challenges posed by the unprecedented numbers of migrants arriving in Ireland in recent years, and 2) help Irish society develop appropriate policies and practices for the new reality.
Activities	There are six research projects planned as part of the TII Research Programme on Diversity, Integration and Policy: 1) Parallel Societies or Overlapping Diversities. This national survey of immigrant and Irish populations and their employing organisations will explore the degree of social integration of immigrants and will compare the labour market and work experience of Irish and non-Irish national groups. 2) National Policy Impacts. This project will provide analysis of key policy challenges and options facing government and civil society in relation to the impact of immigration. 3) Migrant Careers and Aspirations. This study will allow the exploration of issues ranging from their relationship to the home country to their relations with Irish workers and their experience of Irish attitudes. 4) Action Research on Community Relations. Through a case study of a high stress community in Dublin, the project will generate evidence on current issues and what can be done to promote positive relations with in local schools and neighbourhood. 5) Migrant Networks – Facilitating Migrant Integration. This collaborative project will map migrants’ networking activities in the fields of religion, culture, media, advocacy, and gender, and explore how these networks facilitate both migrants’ social, cultural and political integration in Ireland and their cultural expression. 6) English Language Support Programme. This programme will develop a practical and cost-

effective approach to the teaching of English as a second language in post-primary schools.

Contact Professor Robbie Gilligan, Head of School of Social Work & Social Policy

RAXEN

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Category European Body

Objectives The European Information Network on Racism and Xenophobia (RAXEN) was one of the key tools of the EU Monitoring Centre on Racism and Xenophobia (EUMC) to provide the European Union and its Member States with information and research on the phenomena of racism, xenophobia and anti-Semitism. The EUMC has recently been replaced by the European Agency of Fundamental Rights (FRA) although RAXEN continues to operate as before.

Activities National Focal Points in each Member State gather information that is presented in various analytical reports, data collection bulletins, comparative reports, and online in the RAXEN database.

Contact Fiona McGaughey, Karla Charles, Research and Policy Officers, NCCRI, RAXEN Ireland Representatives.

8. RESEARCH PUBLICATIONS

The emergence of research on immigration and asylum is relatively recent in Ireland. Traditionally migration research has focused on emigration and the resulting Irish ‘diaspora’ abroad. As the balance has shifted towards migration into Ireland researchers have begun to respond. The following list includes research on immigration and asylum, published mainly in recent years, with a national as opposed to local scope. This list is not exhaustive but we have tried to represent the main publications in the field. While the list mainly contains immigration and asylum-related research, occasional publications on other issues (for example racism) are included.

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APPENDIX A: GLOSSARY

Application for Asylum

The application made by a person who arrives at the frontiers of the State seeking asylum in the State or seeking the protection of the State against persecution, may apply to the Minister for Justice, Equality, and Law Reform for a declaration of refugee status (Section 8, Refugee Act 1996).

Application for Asylum Questionnaire

Administrative form given by the Refugee Applications Commissioner to asylum applicants. It contains fifty-four questions divided into five parts: (1) biographical information, (2) supporting documentation, (3) the basis of the application, (4) travel details, and (5) completion of the Questionnaire. Applicants are requested to complete and return the Questionnaire within ten days of receipt.

ASY 1 Form

Administrative form to record basic information relating to an applicant, including the reason for the application, the applicant's identity, nationality, country of origin, and route travelled (C.f. Section 8(2) of the Refugee Act 1996).

Asylum Applicant

A person who has made an application for a declaration under Section 8 of the Refugee Act 1996.

Blue Card Directive

Draft EU Directive (Directive on the conditions for entry and residence of third-country nationals for highly qualified employment) that seeks to promote legal immigration by skilled workers. It aims to provide a fast-track procedure for admission of highly qualified third-country workers based on common criteria. It would provide for a work permit ("Blue Card") entitling workers to socio-economic rights and favourable conditions for family reunification.

Benefit of The Doubt (in asylum applications)

Should only be given when all available evidence has been obtained and checked, and when the examiner is satisfied as to the applicant's general credibility, and that the applicant's statements are coherent and plausible, and do not run counter to generally known facts (UNHCR Handbook, Paragraph 204).

Burden of Proof (in Refugee Status Determination)

The obligation to prove a fact. While the burden of proof in principle rests on the applicant for asylum, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. In some cases it may be for the examiner to use all the means at his disposal to produce

the necessary evidence in support of the application (UNHCR Handbook, Paragraph 196).

Carrier Liability

Being held responsible and fined for bringing an undocumented immigrant to the State (Section 2, Immigration Act 2003).

Certificate of Registration

Certificate issued by the Garda National Immigration Bureau (GNIB) to lawfully resident non-Irish nationals who expect to stay in the State for more than three months. It verifies that the person has registered with their registration officer. The Certificate of Registration contains the person's photo, registration number, relevant immigration stamp, and an expiry date. A certificate of registration card contains one of a number of different immigration stamps.

- Stamp number 1: issued to non-EEA nationals who have an employment permit or business permission.
- Stamp number 2: issued to non-EEA national students who are permitted to work under certain conditions.
- Stamp number 2A: issued to non-EEA national students who are not permitted to work.
- Stamp number 3 is issued to non-EEA nationals who are not permitted to work.
- Stamp number 4 is issued to people who are permitted to work without needing an employment permit or business permission: Non-EU EEA nationals; Spouses and

dependants of Irish and EEA nationals; People who have permission to remain on the basis of parentage of an Irish child; Convention and Programme refugees; People granted leave to remain; Non-EEA nationals on intra-company transfer; Temporary registered doctors; Non-EEA nationals who have working visas or work authorisations.

- Stamp number 4 (EU FAM) is issued to non-EEA national family members of EU citizens who have exercised their right to move to and live in Ireland under the European Communities (Free Movement of Persons) Regulations 2006. People holding this stamp are permitted to work without needing an employment permit or business permission, and they can apply for a residence card under the 2006 Regulations.
- Stamp number 5 is issued to non-EEA nationals who have lived in Ireland for at least eight years and who have been permitted by the Minister for Justice, Equality and Law Reform to remain in Ireland without condition as to time. Holders of this stamp do not need an employment permit or business permission in order to work.
- Stamp number 6 can be placed on the foreign passport of an Irish citizen who has dual citizenship, and who wants their entitlement to remain in Ireland to be endorsed on their foreign passport.

Cessation (of Refugee Status)

The circumstances in which the 1951 Geneva Convention shall cease to apply to someone who would otherwise be in a position to avail of its protection (Article 1C of the 1951 Refugee Convention. C.f., Section 21 of the Refugee Act 1996, and Article 11 of Council Directive 2004/83/EC).

Convention

Reason/Ground/Nexus

One of the reasons for the persecutory treatment given in the 1951 Refugee Convention: race, religion, nationality, political opinion, or membership of a particular social group. It is immaterial whether an applicant actually possesses the racial, religious, national, social or political characteristic that attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution (Article 10(2) of Directive 2004/83/EC).

Country of Habitual Residence

The country in which an asylum applicant resided and where he had suffered or fears he would suffer persecution if returned (UNHCR Handbook, Paragraph 103)

Country of Origin

The country or countries of nationality of an applicant for protection or, for stateless persons, of former habitual residence (Article 2(k) of Council Directive 2004/83/EC).

Country of Origin Information

Reports, news articles, and other documents on conditions and

events and any other relevant matters in a protection applicant's country of origin or habitual residence. Examiners in the asylum process depend on up-to-date and reliable country of origin information (COI) to evaluate an applicant's evidence in light of what is known about the conditions in that country.

Credibility

Assessment of an asylum seeker's credibility is indispensable where the case is not sufficiently clear from the facts on record (UNHCR Handbook, Paragraph 41). The process by which the credibility of an applicant is assessed is a matter within the remit of the High Court insofar as it goes to an applicant's entitlement to fair procedures.

Declaration of Refugee Status

Refugee status is recognition of a pre-existing status, not a conferment of a right.

Deportation Order

Ministerial Order requiring a non-national to leave the State within such period as may be specified, and to remain thereafter out of the State (Section 3(1) Immigration Act 1999).

Direct Provision

Support system for asylum-seekers whereby all accommodation costs, together with the cost of meals and snacks, heat, light, laundry, and maintenance are paid directly by the State. Asylum seekers in receipt of direct provision are currently in receipt of an allowance of €19.10 per adult and €9.60 per child per week.

Discrimination

Will amount to persecution only in certain circumstances, for example if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned (UNHCR Handbook, Paragraph 54).

Dublin Convention

Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (97/C 254/01). Signed in Dublin on 15 June 1990. It came into force on 1 September 1997. It was replaced by Council Regulation EC No 343/2003 (“the Dublin Regulation”).

Dublin Regulation

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. The Regulation’s legislative predecessor was the Dublin Convention. The Regulation allows for the transfer of an asylum applicant in a Member State to another participating State deemed responsible for processing the claim by virtue of its being the first country in the common area in which the applicant arrived as a refugee.

Economic Migrant

A person who voluntarily leaves his or her country in order to take up residence elsewhere and who is

moved exclusively by economic considerations (c.f. UNHCR Handbook, Paragraph 62). The fact that a refugee might also be an economic migrant does not deprive him of his status as a refugee.

EEA National

A national of a Member State of the European Economic Area (EEA). The EEA is constituted by EU Member States, Iceland, Liechtenstein and Norway.

Employment Permit

Permit generally required by non-EEA to work in the State. There are three types: “Green Card” permits, work permits and intra-company transfer permits.

EU Citizen

Every person holding the nationality of a Member State is a citizen of the EU (Article 17(1) of the amended EC Treaty established Citizenship of the European Union; Article 1 of Directive 2004/38/EC).

EURODAC

A centralised database of fingerprints established by Regulation (EC) No 2725/2000 for the collation and comparison of fingerprints of asylum applicants and illegal aliens. Assists in determining which Member State is to be responsible for examining an asylum application under Council Regulation (EC) 343/2003. Abbreviation of “European Dactyloscopy”.

Exclusion (from Refugee Status)

The circumstances in which the Convention shall not apply to

someone who would otherwise be in a position to avail of its protection (Article 1(D) to (F) of the Refugee Convention. C.f. Article 12 of Council Directive 2004/83/EC, and Section 2 of the Refugee Act 1996).

Exclusion Order

A Ministerial Order to exclude a specified non-national from the State (Section 4 of the Immigration Act 1999).

Family Reunification

A principle of immigration law permitting follow-up immigration of family members once one family member has become established in the State. In Irish refugee law, if the Minister is satisfied that a person the subject of an application for family reunification is a member of the family of the refugee, the Minister is obliged to grant permission to the person to enter and reside in the State. Otherwise, the Minister has discretion to grant permission to any other dependent member of the family of a refugee to enter and reside in the State (Section 18 of the Refugee Act 1996).

Family Unity, Principle of

The unity of the family is an essential right of a refugee. The rights granted to a refugee should be extended to members of his family (The Final Act of the Conference that adopted the 1951 Refugee Convention. C.f. Article 8 of Council Directive 2003/9/EC, and Article 23 of Council Directive 2004/83/EC).

Female Genital Mutilation (FGM)

Often referred to as female circumcision, refers to all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural, religious or other non-therapeutic reasons. The World Health Organisation distinguishes between three types of FGM: (1) excision of the prepuce, with or without excision of part, or all, of the clitoris, (2) excision of the clitoris with partial or total excision of the labia minora, (3) excision of part or all of the external genitalia and stitching/narrowing of the vaginal opening (i.e. infibulation) (WHO; *Female Genital Mutilation: An Overview*, 1998).

First Country of Asylum

A country can be considered to be a first country of asylum for an applicant for asylum if (a) he has been recognised in that country as a refugee and can still avail himself of that protection, or (b) he otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*, provided that he will be re-admitted to that country (Article 26 of Council Directive 2005/85/EC).

Form 1/Form 2 Notice of Appeal

Applicants for asylum who appeal a decision of the Refugee Applications Commissioner must file a notice of appeal within a strict time limit on either a "Form 1" or a "Form 2" notice of appeal,

depending on the nature of the appeal. (S.I. No. 424 of 2003)

Further/Subsequent Asylum Application

A person to whom the Minister has refused to give a declaration may not make a further application for a declaration under this Act without the consent of the Minister (Section 17(7) of the Refugee Act 1996. C.f., Article 32 of Council Directive 2005/85/EC).

Garda National Immigration Bureau (GNIB)

Responsible for all immigration-related Garda operations in the State. It issues the immigration certificate of registration, or “GNIB card”, to non-EU nationals.

Human Trafficking

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation (the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (“the Palermo Protocol”). C.f., Articles 1, 2 and 3 of Framework Decision 2002/629/JHA and the Criminal Law (Human Trafficking) Act 2008).

Humanitarian Leave to Remain

See “Leave to Remain”.

IBC/05 Scheme

An administrative scheme by which the Minister for Justice, Equality and Law Reform invited applications for permission to remain in the State from non-national parents of Irish children born before January 1 2005. A call for renewal under the Scheme was made in early 2007.

Identity Papers (of a Refugee)

Contracting States are obliged to issue identity papers to any refugee in their territory who does not possess a valid travel document (Article 27 of the 1951 Refugee Convention).

Internal Relocation

The proposition that while conditions in one part of a country are such that there is a serious possibility of persecution for a Convention reason if sent back, there are other parts of the same country where there is no such a risk (C.f. Article 7 of Council Directive 2004/83/EC). Also described as “the internal flight alternative” or “the internal protection principle”.

Irish-Born Child

Anyone born in the Republic of Ireland before 2 December 1999 or born on the island of Ireland between 2 December 1999 and 31 December 2004 is entitled to be an Irish citizen. Anyone born in the Republic of Ireland after 31 December 2004 is not automatically entitled to Irish citizenship.

Irish Naturalisation and Immigration Service (INIS)

The section in the Department of Justice, Equality and Law Reform responsible for administering the Department's administrative functions in relation to asylum, immigration, visa, and citizenship matters.

Judicial Review

A means for the High Court to exercise its supervisory function over inferior decision-making bodies, such as the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal, as well as over administrative decisions, including those made in the various immigration processes. Judicial review is not concerned with the substance of decisions, but with the decision-making process.

Leave to Remain

Permission to stay in the State. Often referred to as "Humanitarian Leave to Remain" as humanitarian matters are among the matters which the Minister is obliged to consider when determining whether to make a deportation order or grant leave to remain. Other matters that the Minister is obliged to consider are the person's employment prospects, character and conduct, and any representations (Section 3(6) Immigration Act 1999).

Membership of A Particular Social Group

One of the five Convention grounds or reasons. Membership of a particular social group includes membership of a trade union or a

group of persons whose defining characteristic is their belonging to the female or the male sex or having a particular sexual orientation (Section 1 Refugee Act 1996. C.f., Article 10(1)(d) of Council Directive 2004/83/EC).

Michigan Guidelines on International Refugee Law

Biennially published guidelines that reflect the consensus of leading refugee law jurists and scholars at colloquia held on challenges in International Refugee Law at the University of Michigan Law School, USA. The Guidelines seek to develop the intellectual framework for resolution of problems facing international refugee law.

Nationality (as a ground for asylum)

One of the five convention grounds or reasons. In this context it is not to be understood only as "citizenship", but may refer also to membership of an ethnic or linguistic group and may overlap with the term "race" (UNHCR Handbook, Paragraph 74). The concept of nationality includes membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State (Article 10(1)(c) of Council Directive 2004/83/EC).

Naturalisation

The procedure whereby citizenship is granted to a foreign national. The Minister for Justice, Equality and Law Reform may grant an application for naturalisation, if

satisfied that an applicant satisfies certain “conditions for naturalisation” (Section 15(1) of the Irish Nationality and Citizenship Act 1956, as amended). The Minister has discretion to grant naturalisation to certain categories of applicant, including refugees, where the conditions for naturalisation are not complied with (Section 16 of the 1956 Act, as amended).

Non-Refoulement, Principle of
States party to the Refugee Convention are prohibited from expelling or returning (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. (C.f. Section 5 of the Refugee Act 1996, and Article 21 of Council Directive 2004/83/EC)

Past Persecution
It may be assumed that a person has a well-founded fear of being persecuted if he or she has already been the victim of persecution for one of the reasons enumerated in the 1951 Convention (UNHCR Handbook, Paragraph 45). The fact that an applicant has already been subject to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated (Article 4(4) of Council Directive 2004/83/EC).

Permanent Residence Card
Card issued to a non-EU national family member of an EU citizen who has lived in the State for five years or more.

Permanent Residence Certificate
Letter issued to an EU citizen who has lived in Ireland for five years or more.

Persecution
A threat to life or freedom can always be inferred as persecution. Whether other prejudicial actions or threats amount to persecution will depend on the circumstances of the case. An applicant may have been subjected to various measures not in themselves amounting to persecution but that justify a claim to well-founded fear of persecution on “cumulative grounds” (UNHCR Handbook, Paragraphs 51-53). Acts of persecution must (a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, or (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner (Article 9(1) of Council Directive 2004/83/EC).

Political Opinion
One of the five Convention grounds or reasons. Can be real or imputed. Includes the holding of an opinion, thought or belief on a matter related to the potential actors of persecution and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the

applicant (Article 10(1)(g) of Council Directive 2004/83/EC).

Procedures Directive

Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

Programme Refugee

A person to whom leave to enter and remain in the State for temporary protection or resettlement as part of a group of persons has been given by the Government and whose name is entered in a register established and maintained by the Minister for Foreign Affairs, whether or not such a person is a refugee within the meaning of the definition of refugee (Section 24 of the Refugee Act 1996).

Protection Review Tribunal

Body proposed by the Immigration, Residence and Protection Bill 2008 for determining refugee and protection appeals. It would replace the Refugee Appeals Tribunal.

Qualification Directive

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.

Race (as a ground for asylum)

One of the five Convention grounds or reasons. In this context it is to be understood in its widest

sense to include all kinds of ethnic groups that are referred to as “races” in common usage (UNHCR Handbook, Paragraph 68). The concept of race includes considerations of colour, descent, or membership of a particular ethnic group (Article 10(1)(a) of Council Directive 2004/83/EC).

Reception and Integration Agency (RIA)

The body that coordinates the provision of services to asylum seekers and refugees, implementation of integration policy for all refugees and people granted leave to remain or temporary protection in the State, and the provision of direct provision, residential accommodation and ancillary services to asylum seekers while they are in the asylum process. Established under the aegis of the Department of Justice, Equality and Law Reform.

Reception Directive

Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

Recovery and Reflection Period

Non-EU national victims of human trafficking are entitled to a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities (Article 6(1) of Directive 2004/81/EC).

Refugee

Someone who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (Article A of the Refugee Convention. C.f., Section 2 of the Refugee Act 1996, and Article 2(c) of Council Directive 2004/83/EC). Article 2(d) of Council Directive 2004/83/EC limits the possible recognition of refugee status to third country nationals or stateless people.

Refugee Appeals Tribunal (RAT)

Independent body responsible for dealing with asylum appeals (Sections 15 and 16 of the Refugee Act 1996, as amended).

Office of the Refugee Applications Commissioner (ORAC)

Independent body responsible for determining refugee status at first instance (Sections 6, 11, 13 of the Refugee Act 1996, as amended).

Refugee Convention, The

The Convention relating to the status of refugees done at Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967.

Refugee Sur Place

A person who was not a refugee when he left his country, but who becomes a refugee later. A person can become a refugee *sur place* due to circumstances arising in his country of origin during his absence, or as a result of his own actions (UNHCR Handbook, Paragraphs 94-96. C.f. Article 5 of Council Directive 2004/83/EC)

Religion (as a ground for asylum)

One of the five Convention grounds or reasons. The concept of religion includes the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief. (Article 10(b) of Council Directive 2004/83/EC).

Removal

Expulsion of certain categories of people from the State without a deportation order (C.f., Section 5 of the Immigration Act 2003 and Section 5 of the Immigration Act 1999)

Residence Card

Card issued to a non-EEA national family member of an EU citizen who has lived in the State for three or more months.

Returns Directive

Draft EU Directive that seeks to establish common EU rules on the deportation of illegal immigrants.

Safe Country of Origin

A country designated as such by order of the Minister for Justice, Equality and Law Reform having had regard to (i) whether the country is a party to and generally complies with obligations under the Convention Against Torture, the International Covenant on Civil and Political Rights, and, where appropriate, the European Convention on Human Rights, (ii) whether the country has a democratic political system and an independent judiciary, and (iii) whether the country is governed by the rule of law. An applicant from a designated safe country of origin is presumed not to be a refugee unless he or she shows reasonable grounds for the contention that he or she is a refugee (Section 11A of the Refugee Act 1996, as amended). A third country may be designated as a safe country of origin, in accordance with certain provisions, for a particular applicant for asylum only if: (a) he or she has the nationality of that country; or (b) he or she is a stateless person and was formerly habitually resident in that country; and he or she has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her qualification as a refugee (Article 31 of Directive 2005/85/EC).

Safe Third Country

A country which is neither the asylum-seeker's country of origin nor the country in which he or she claims asylum in which the asylum applicant will be treated in accordance with certain principles:

(a) life and liberty not threatened on account of race, religion, nationality, membership of a particular social group or political opinion, (b) the principle of non-*refoulement* respected, (c) prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and (d) possibility exists to request refugee status and receive protection in accordance with the 1951 Geneva Convention (Article 27 Directive 2005/85/EC).

Section 13 Report

The report that the Refugee Applications Commissioner is required to prepare after an asylum interview that sets out the Commissioner's findings and recommendation and whether the applicant should be declared to be a refugee (Section 13 of the Refugee Act 1996).

Serious Harm

Can be either (a) the death penalty or execution, (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin, or (c) a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict (Article 15 of Council Directive 2004/83/EC; Regulation 2 of S.I. No. 518 of 2006).

Serious Non-Political Crime

Must be a capital crime or a very grave punishable act (UNHCR Handbook, Paragraph. 155).

Standard of Proof

An asylum applicant's fear of persecution is well-founded if the claimant can establish, to a reasonable degree that his continued stay in his country of origin has become intolerable (UNHCR Handbook, Paragraph 42). Various descriptions as "a reasonable chance", "substantial grounds for thinking", and "a serious possibility" and have been summarised as representing a proof equating to "a reasonable degree of likelihood."

Subsidiary Protection (Persons Eligible For)

A third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country (Article 2(e) of Council Directive 2004/83/EC)

Subsidiary Protection Status

The recognition by a Member State of a third country national or a stateless person as a person eligible for subsidiary protection (Article 2(f) of Council Directive 2004/83/EC)

Temporary Protection

A procedure of exceptional character to provide, in the event of a mass influx or imminent mass

influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection. (Article 2 of Council Directive 2001/55/EC).

Temporary Residence Certificate

The certificate issued by the Refugee Applications Commissioner to asylum applicants. It contains personal details and a photograph of the applicant (Section 9(3) of the Refugee Act 1996).

Torture

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions (Article 1(1) of the UN Convention

Against Torture. C.f., Section 1 of the Criminal Justice (United Nations Convention Against Torture) Act, 2000, as amended).

Transfer Order

An Order requiring an applicant, in respect of whom a determination has been made that he or she should be transferred to another Member State pursuant to Council Regulation (EC) No 343/2003, to leave the State on or before such date or within such period as may be specified in the order, and to go to the relevant Council Regulation country (Regulation 7 of S.I. No. 423 of 2003 (Refugee Act 1996 (Section 22) Order 2003).

Unaccompanied Minor

Persons below the age of eighteen who arrive in the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person (Article 2(h) of Council Directive 2003/9/EC). Also referred to as Separated Children.

UNHCR Handbook

The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. Published by the United Nations High Commissioner for Refugees. Provides a practical guide to the determination of refugee status. Of strong persuasive value in determining whether a person is a refugee.

United Nations High Commissioner for Refugees (UNHCR)

The body mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide. Primary purpose is to safeguard the rights and well being of refugees. Strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country.

Visa

Pre-clearance certificate stating that the non-Irish national identified is permitted by the Irish government to be present at the frontier of the State for the purpose of seeking permission to enter the State.

Voluntary Return

An asylum seeker's decision to return voluntarily to his or her country of origin. An applicant can return voluntarily at any stage of the asylum process as long as a deportation order had not been issued and the Gardai do not object.

Vulnerable Person

Member States are obliged to take into account the specific situation of vulnerable people such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, in the national legislation implementing provisions relating to

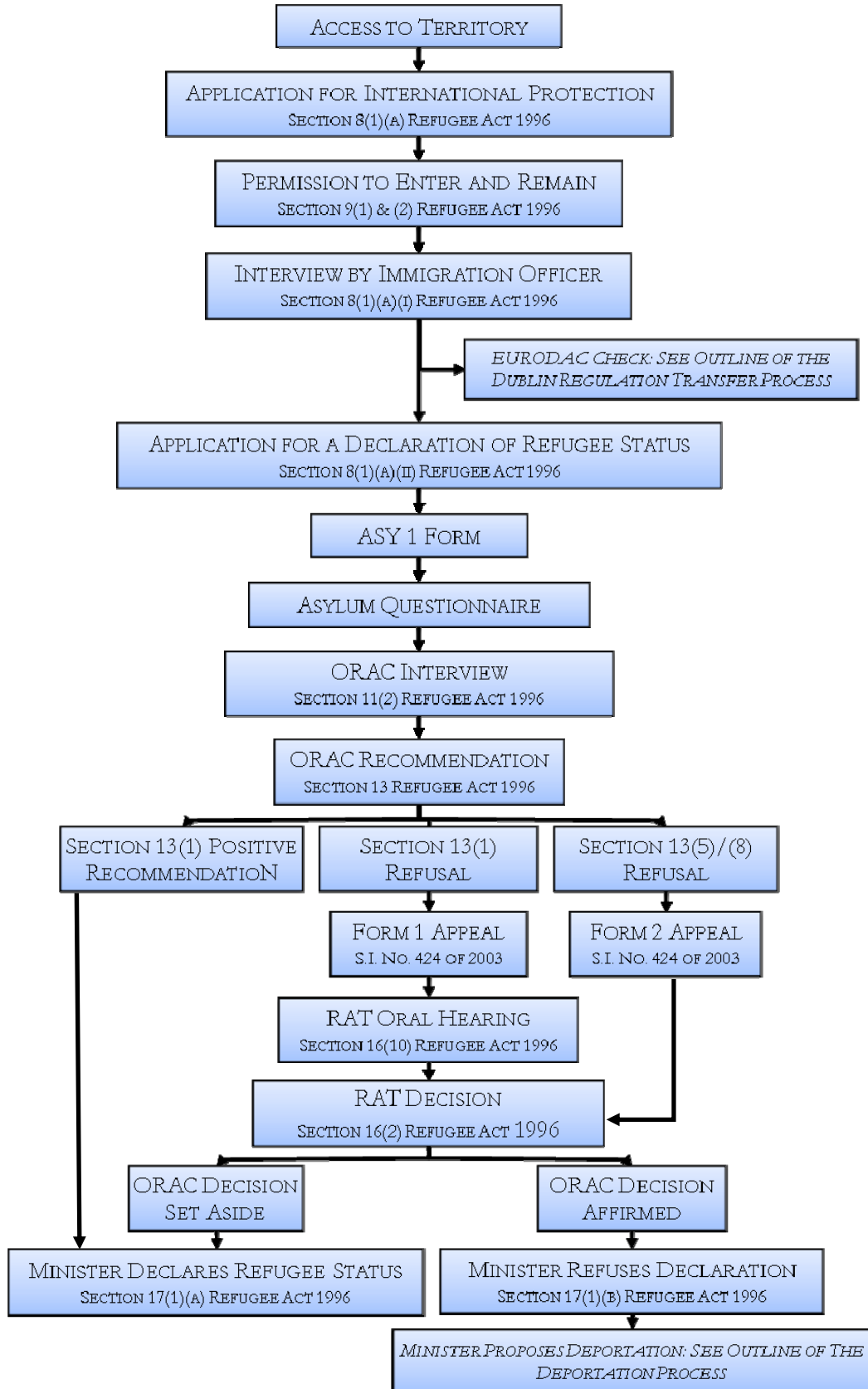
material reception conditions and health care of refugees (Article 17 of Council Directive 2004/9/EC, and Article 20 of Council Directive 2004/83/EC)

Well-Founded Fear

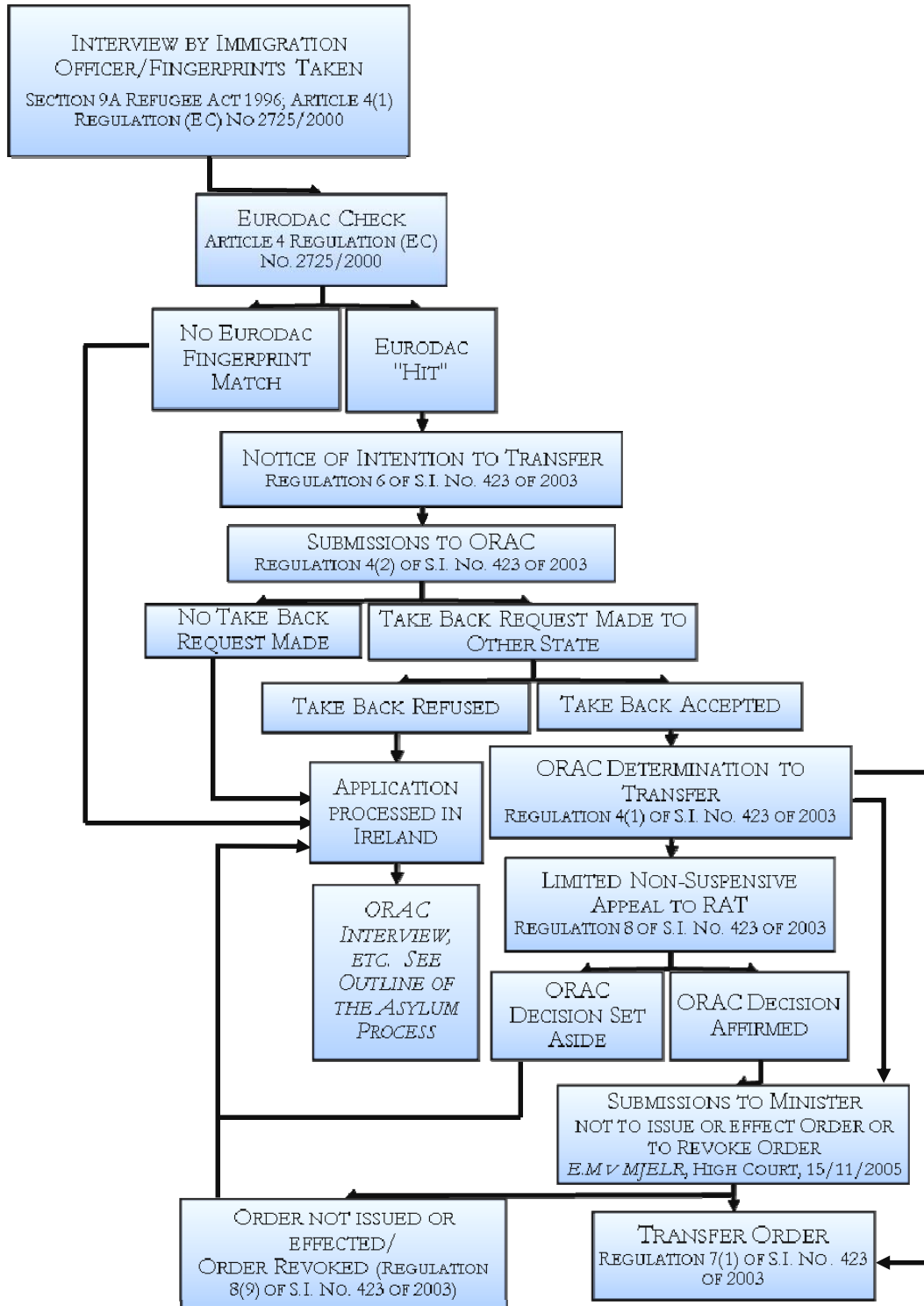
The UNHCR states that as the qualification “well-founded” is added to the element of fear, an applicant’s frame of mind must be supported by an objective situation, and that the term “well-founded fear” therefore contains a subjective and an objective element, and that in determining whether well-founded fear exists,

both elements must be taken into consideration (UNHCR Handbook, Paragraphs 37-50). The Michigan Guidelines on Well-Founded Fear state that reference to distinct “subjective” and “objective” elements of the well-founded fear standard risks distortion of the process of refugee status determination, and that reliance on a subjective element to particularize the inquiry into well-founded fear is, unnecessary, and may result in the devaluation of evidence of real value to the assessment of actual risk.

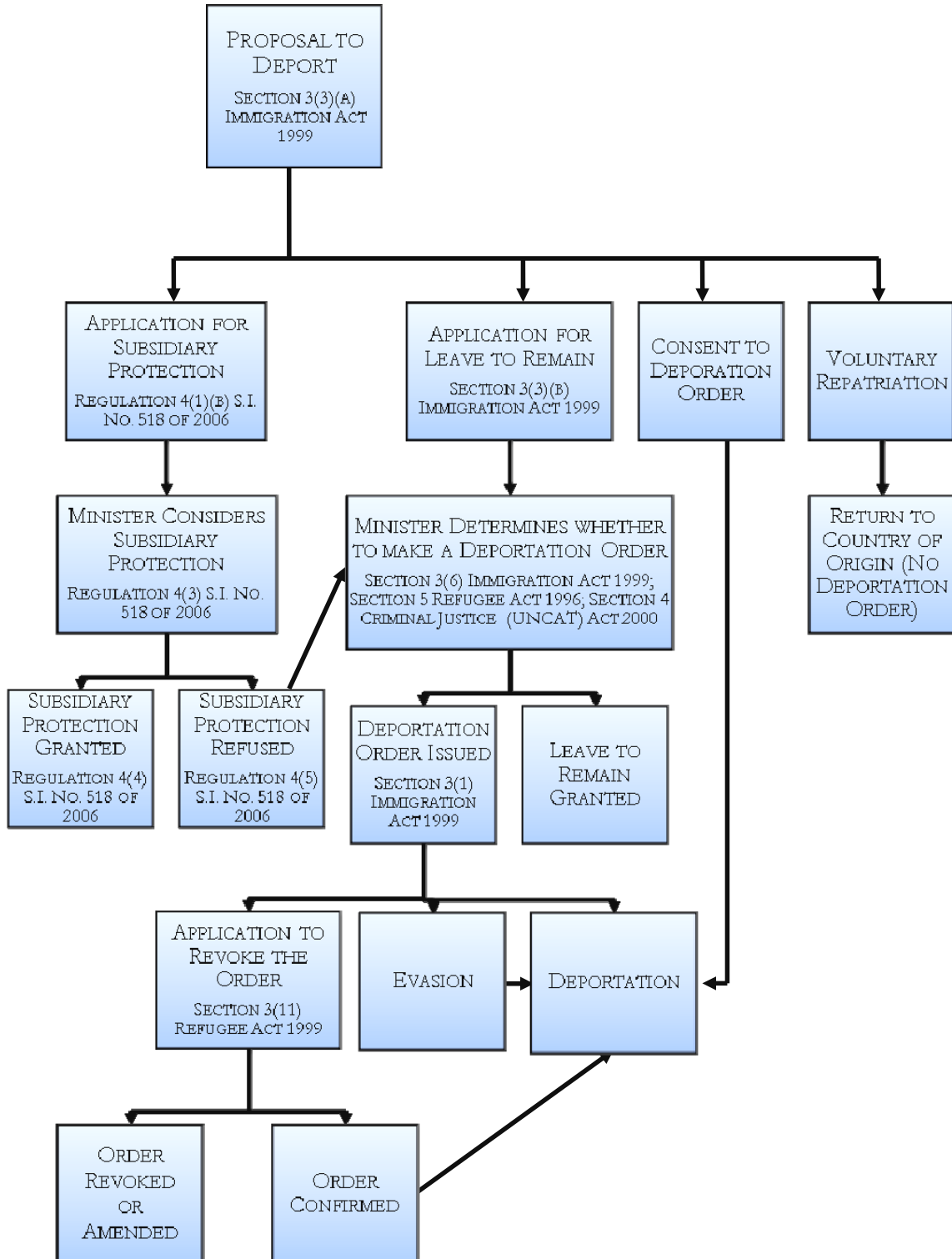
APPENDIX B: SCHEMATIC OUTLINE OF THE IRISH ASYLUM PROCESS



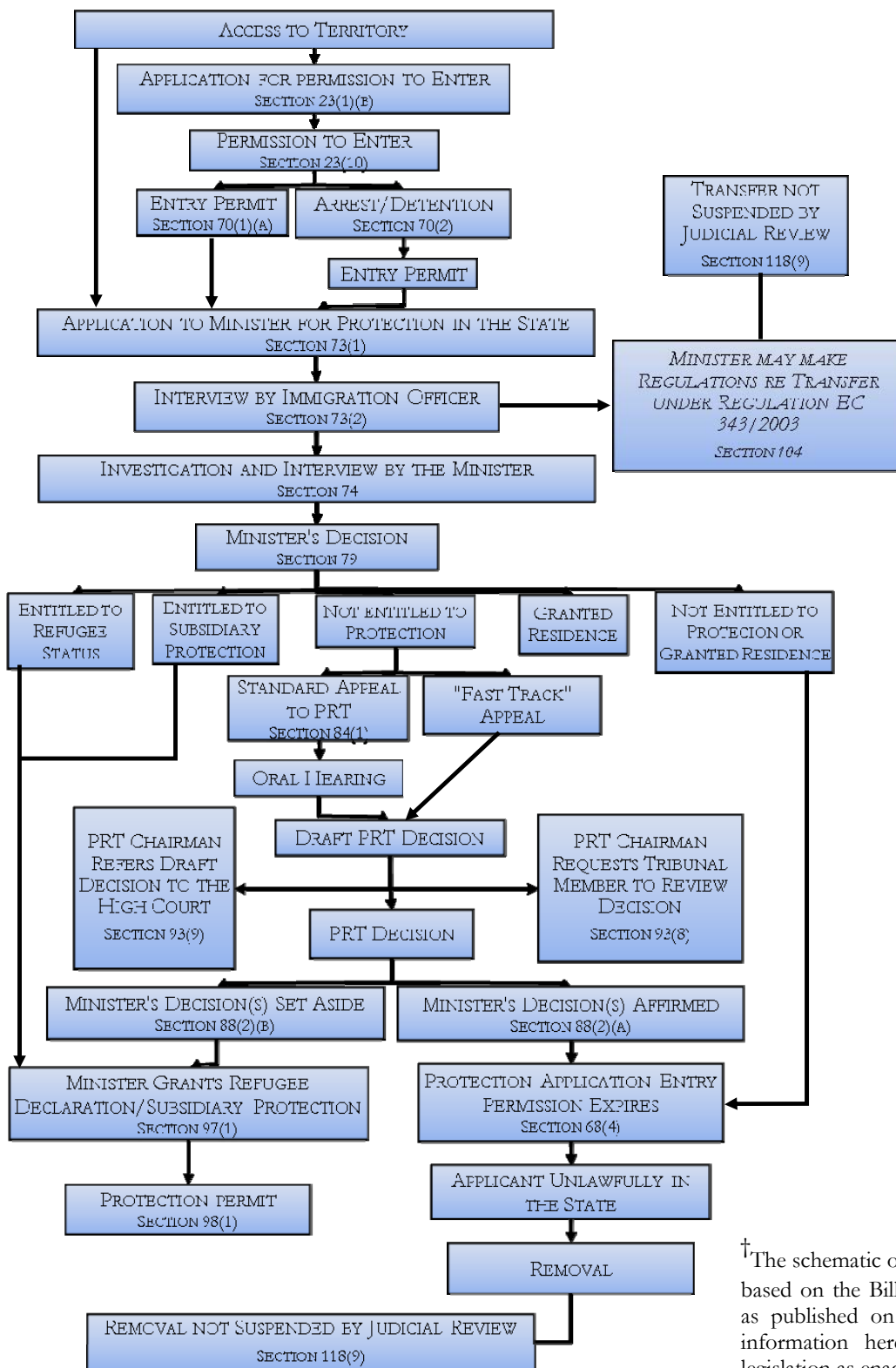
APPENDIX C: SCHEMATIC OUTLINE OF THE IRISH TRANSFER PROCESS UNDER REGULATION EC 343/2003 (“THE DUBLIN REGULATION”)



APPENDIX D: SCHEMATIC OUTLINE OF THE DEPORTATION PROCESS FOR UNSUCCESSFUL ASYLUM SEEKERS



APPENDIX E: SCHEMATIC OUTLINE OF THE ASYLUM, TRANSFER, AND REMOVAL PROCESS PROPOSED BY THE IMMIGRATION, RESIDENCE AND PROTECTION BILL 2008[†]



[†]The schematic outline presented here is based on the Bill's proposed provisions as published on 29 January 2008. All information here is provisional. The legislation as enacted is likely to differ.

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