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ANNUAL REPORT ON MIGRATION AND ASYLUM 2017: IRELAND

ANNE SHERIDAN



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This European Migration Network Study, compiled according to commonly agreed specifications, provides a coherent overview of migration, asylum trends and policy developments for 2017. The report consists of information gathered primarily for the EU-level synthesis report of the EMN *Annual Report on Migration and Asylum 2017*. All reports are available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/index_en.htm

This report has been accepted for publication by the Institute, which does not itself take institutional policy positions. The report has been peer reviewed prior to publication. The author is solely responsible for the content and the views expressed do not represent the position of the Economic and Social Research Institute, the Irish Naturalisation and Immigration Service, the Department of Justice and Equality, or the European Commission, Directorate-General Migration and Home Affairs.

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ABBREVIATIONS AND IRISH TERMS

AIDA	Asylum Information Database
AkiDwA	Akina Dada wa Africa
AMIF	Asylum, Migration and Integration Fund
An Garda Síochána	national police force
API	Advance Passenger Information
CEDAW	UN Convention on the Elimination of All Forms of Discrimination Against Women
CJEU	Court of Justice of the European Union
CSO	Central Statistics Office
CTA	Common Travel Area
Dáil	Parliament, lower house
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EEA	European Economic Area
EMN	European Migration Network
EROC	Emergency Reception and Orientation Centre
EU	European Union
FGM	Female Genital Mutilation
FLAC	Free Legal Advice Centres
GNIB	Garda National Immigration Bureau
GNPSB	Garda National Protective Services Bureau
GRETA	Council of Europe Group of Experts on Action against Trafficking in Human Beings
HSE	Health Services Executive

HSEOL	Highly Skilled Eligible Occupations List
ICEL	Ineligible Categories of Employment List
ICI	Immigrant Council of Ireland
IEM	International Education Mark
IHREC	Irish Human Rights and Equality Commission
IIP	Immigrant Investor Programme
ILEP	Interim List of Eligible Programmes
ILO	International Labour Organisation
INIS	Irish Naturalisation and Immigration Service
IOM	International Organization for Migration
IPAT	International Protection Appeals Tribunal
IPIU	Irish Passenger Information Unit
IPO	International Protection Office
IRC	Irish Refugee Council
IRP	Irish Residence Permit
IRPP	Irish Refugee Protection Programme
ITF	International Transport Workers Federation
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersex
MRCI	Migrant Rights Centre Ireland
Nasc	The Irish Immigrant Support Centre
NCP	National Contact Point
NFQ	National Framework of Qualifications
NWCI	National Women's Council of Ireland
ODA	Official Development Assistance
OPMI	Office for the Promotion of Migrant Integration
ORAC	Office of the Refugee Applications Commissioner
Oireachtas	Parliament, both houses

PNR	Passenger Name Records
QQI	Quality and Qualifications Ireland
RAT	Refugee Appeals Tribunal
RIA	Reception and Integration Agency
SDGs	Sustainable Development Goals
Seanad	Parliament, upper house
STEP	Start-up Entrepreneur Programme
SWAI	Sex Workers Alliance Ireland
Tánaiste	Deputy Prime Minister
Taoiseach	Prime Minister
Tusla	Child and Family Agency
UAM	unaccompanied minor
UN	United Nations
UNCAT	United Nations Convention Against Torture
UNHCR	United Nations High Commissioner for Refugees
WRC	Workplace Relations Commission

EXECUTIVE SUMMARY

The purpose of this report is to provide an overview of trends, policy developments and significant debates in the area of asylum and migration during 2017 in Ireland.

STATISTICAL OVERVIEW

According to end of year figures for 2017, there were 127,955 non-EEA nationals with permission to remain in Ireland, compared to just over 115,000 at the end of 2016. The top ten nationalities, accounting for 66% of all persons registered, were Brazil (14.6%); India (13.5%); China (9%); USA (7.4%); Pakistan (5.7%); Nigeria (4.2%); Philippines (3.6%); Malaysia (2.7%); Canada (2.6%); and South Africa (2.5%).

A total of 11,361 employment permits were issued during 2017, an increase of 17.4% over the 2016 total of 9,373. As in 2016, India was the top nationality, with 3,827 permits.

The estimated population of Ireland in the 12 months to April 2018 stood at 4.86 million, an overall increase of 64,500 since April 2017. This was due to the combined natural increase in the population and net inward migration, which was at the highest level since 2008. Central Statistics Office (CSO) figures released in August 2018 estimate that the number of newly arriving immigrants increased year on year to 90,300 at April 2018 from 84,600 at end April 2017.¹ Non-Irish nationals from outside the EU accounted for 34.2% of total immigrants. Net inward migration of non-EU nationals is estimated at 20,900.

Non-EU nationals were the largest immigrant group in the year to April 2018. There was a small increase of 1,000 in returning Irish nationals, from 27,400 to 28,400. Outward migration of Irish nationals continued to decrease in the year to April 2017 (28,300) from its peak in 2012 (49,700). Net outward migration of Irish nationals in 2018 was 100, a decrease of 99.6% from its peak in 2012 (29,600).

A total of 110,403 visas, both long and short stay, were issued in 2017. The approval rate for visas was 89%.

A total of 3,746 persons were refused entry to Ireland in 2017 and were returned to the place they had travelled from. A total of 140 persons were deported from Ireland in 2017, with 181 persons availing of voluntary return, of whom 96 were assisted by the International Organization for Migration (IOM).

¹ Central Statistics Office (2018).

There were 314 persons granted permission to remain following a consideration under section 3 of the *Immigration Act 1999*. In addition, 72 persons were granted permission to remain under the new provisions under section 49 of the *International Protection Act 2015*.

There was an increase of just over 30% in applications for international protection (2,926) received by the International Protection Office (IPO) in 2017 from the 2,244 applications for refugee status received by the Office of the Refugee Applications Commissioner (ORAC) in 2016. The applications in 2017 cover both refugee status and subsidiary protection under the new single procedure.

The IPO also had a significant caseload to be dealt with under the transitional provisions of the *International Protection Act 2015*. Both refugee status and subsidiary protection cases were transferred from the former ORAC and appeals which had been pending at the end of 2016 at the former Refugee Appeals Tribunal (RAT) were also transferred to the IPO for consideration of subsidiary protection and permission to remain. Some 2,800 of these cases remained to be processed at the end of 2017.

The International Protection Appeals Tribunal (IPAT) received 887 appeals during the year and issued decisions in 606 cases. Some 231 of these decisions were in relation to Dublin III Regulation cases.

The main nationalities of first instance applications for international protection in 2017 were Syria, Georgia, Albania, Zimbabwe and Pakistan. Top countries of origin for appeals lodged were Pakistan, Nigeria, Zimbabwe, Malawi and South Africa.

The Irish Naturalisation and Immigration Service (INIS) received a total of 442 applications for family reunification under the *International Protection Act 2015*, in respect of 1,090 subjects. Some 62 subjects were approved. INIS also processed applications which had been submitted in 2016 under the *Refugee Act 1996* during 2017. There were 729 subjects approved in 2017 under the provisions of the *Refugee Act 1996*.

During 2017, a total of 75 suspected victims of trafficking were identified, compared to 95 victims reported in the 2016 report of this series. See Chapter 8 for further explanation regarding changes to trafficking statistics reporting in 2017. Fifty-one of these victims were third-country nationals.

LEGISLATION

2017 was the first full year of implementation of the single procedure under the *International Protection Act 2015*. The Act was fully² commenced from 31 December 2016. The *International Protection Act 2015 (Procedures and Periods for Appeal) Regulations 2017* were signed into law on 29 March 2017.

The *European Union (Subsidiary Protection) Regulations 2017* were introduced to take into account the judgment of the Court of Justice of the European Union (CJEU) in the case *C-429/15 E.D. v Minister for Justice and Equality* and of the Irish Court of Appeal in the case *E.D. v Minister for Justice and Equality*.³ These regulations applied to persons who had been refused refugee status in Ireland since the introduction of the *European Communities (Eligibility for Protection) Regulations 2006*⁴ and who had been invited to make applications for subsidiary protection under those Regulations or the subsequent *European Union (Subsidiary Protection) Regulations 2013*,⁵ but had not made the application within the 15 working day time limit or had not had their application considered on the basis that that time limit to make an application had expired.

The Criminal Law (Sexual Offences) Act 2017 was signed into law in February 2017. The Act was partially commenced (including provisions in relation to the sexual exploitation of children and the purchase of sexual services) on 27 March 2017.

Other relevant instruments which were introduced related to civil legal aid, employment permits, visas and return. A list of legislation is included in Chapter 2.

CASE LAW

There were a number of significant cases related to migration and asylum during 2017 in the areas of international protection, return, legal migration and irregular migration. Case summaries are included under thematic headings throughout the Report.

UNITED NATIONS-RELATED DEVELOPMENTS

Ireland was examined by the United Nations Convention Against Torture (UNCAT) Committee in July 2017 on its second periodic report regarding implementation of the Convention. Issues in relation to migration and international protection which were considered by the Committee included migration-related detention; data on

² Other than paragraphs (b), (f), (i), (j), (l), (m) and (p) of section 6(2). Section 6(2) (j) came into operation in 2018 via the *International Protection Act 2015 (Section 6(2)(j)) (Commencement) Order 2018* (S.I. No. 119 of 2018).

³ *ED v Minister for Justice and Equality* (No. 2) [2017] IECA 20.

⁴ S.I. No. 518 of 2007.

⁵ S.I. No. 426 of 2013.

refusals of leave to land; and reception conditions. The situation of migrants and asylum seekers was one theme in a wider examination of Ireland by the Committee. In its concluding observations, the UNCAT Committee welcomed the introduction of the *International Protection Act 2015* and the information provided by Ireland that asylum seekers are only placed in detention as a measure of last resort. However, the Committee expressed concern about places of detention used for immigration detainees and made recommendations in relation to ensuring that persons detained for immigration reasons and remand and convicted prisoners are not held together in the same location. One of the Committee's other recommendations was to establish a formalised vulnerability screening mechanism for torture victims.

As reported for 2016, Ireland had submitted its sixth and seventh periodic reports to the UN Convention for the Elimination of Discrimination Against Women (CEDAW) Committee in September 2016. Ireland's examination before the Committee took place in February 2017. In its concluding observations, the Committee made recommendations in relation to trafficking and exploitation for prostitution. The Committee noted the objective of the Criminal Law (Sexual Offences) Bill 2015, which entered into law in 2017, to reduce the demand for sexual services and requested that Ireland include information on the impact of this legislation after three years in its next periodic report.

INTERNATIONAL PROTECTION

2017 was the first year of the implementation of the single application procedure under the *International Protection Act 2015*. The single procedure allows for applications for international protection (refugee status and subsidiary protection) as well as permission to remain to be processed as part of a single procedure. The International Protection Office (IPO) replaced the Office of the Refugee Applications Commissioner (ORAC) from 31 December 2016. The IPO is an office within the Irish Naturalisation and Immigration Service (INIS) with responsibility for processing applications for international protection. It also considers, as part of the single procedure process, whether applicants should be given permission to remain. The first instance appeals body the International Protection Appeals Tribunal (IPAT), replacing the Refugee Appeals Tribunal (RAT), was established on 31 December 2016.

The Supreme Court made a landmark judgment in the case *NVH v Minister for Justice and Equality* in May 2017. This case concerned a challenge by an asylum seeker against the ban in Irish law on access to the labour market for asylum seekers in the *Refugee Act 1996* and re-enacted in the *International Protection Act 2015*. The judgment found that the absolute prohibition on the right to work – in circumstances where there is no temporal limit on the asylum process – was

contrary to the constitutional right to seek employment. The judge adjourned the form of Order to be made for six months to allow the Government and legislature to consider a response. An Inter-Departmental Taskforce was formed to consider options and propose solutions.

The Taskforce recommended to Government that the best option available to the State was to opt into the EU recast *Reception Conditions Directive (2013/33/EU)*, and the Government decided for Ireland to exercise its discretion to participate in the Directive under Protocol 21 of the Treaty of Lisbon in November 2017. A motion of approval for Ireland's participation in the Directive was debated and passed by the Oireachtas in January 2018.

Progress continued to be made during 2017 on implementing the over 170 recommendations of the *Report to Government on Improvements to the Protection Process including Direct Provision and Other Supports to Asylum Seekers (McMahon Report)*, and the Department of Justice and Equality published progress reports in February and July 2017. Two of the changes introduced in 2017 were an increase in the allowance paid to both adults and children in direct provision accommodation to €21.60 per week from August 2017, and the introduction of self-catering facilities in some accommodation centres. From 3 April 2017, residents in direct provision centres could make complaints to the Ombudsman and Ombudsman for Children offices.

RESETTLEMENT AND RELOCATION

The Irish Refugee Protection Programme (IRPP) was established in 2015 and provides that Ireland will take in up to 4,000 persons, primarily through a combination of relocation and resettlement.

A total of 515 persons arrived in Ireland on relocation from Greece in 2017. A total of 273 persons were resettled in Ireland in 2017. By the end of 2017, 755 persons had arrived to Ireland under the relocation strand of the IRPP and 792 persons under the resettlement strand of the programme.

An Emergency Reception and Orientation Centre (EROC) was opened in Ballaghaderreen, Co. Roscommon in January 2017, in addition to the two which were opened in 2016. The purpose of the EROCs is to provide initial accommodation for asylum seekers relocated to Ireland while their applications for refugee status are processed. They are also used to provide temporary initial housing for refugees arriving under the resettlement strand of the IRPP.

NAVAL OPERATIONS IN THE MEDITERRANEAN

Ireland continued to participate in naval operations in the Mediterranean during 2017. Up to October 2017, Ireland's participation had been in search and rescue operations on the basis of a bilateral agreement with the Italian navy. In July 2017, Dáil Éireann approved the participation of members of the Irish Permanent Defence Forces in EU NAVFOR MED Operation Sophia. Irish naval vessels transferred to Operation Sophia from October 2017.

ECONOMIC MIGRATION

The *Employment Permits Regulations 2017* were introduced on 3 April 2017. The purpose of the new regulations was to consolidate all existing employment permits regulations made since 2014. The Regulations also provided for changes to the Highly Skilled Eligible Occupations List (HSEOL) and Ineligible Categories of Employment List (ICEL) following a review in 2016 and additions were made to the HSEOL and exemptions from the ICEL. Both lists were reviewed in quarters 2 and 4 of 2017 to assess the continued relevance of the lists to the skills needs of the Irish economy. No further changes were made in 2017.

The Minister for Business, Enterprise and Innovation asked officials in 2017 to undertake a review of the policies underpinning the employment permits regime, in light of strong economic and employment growth. This review was conducted in 2018.

INTERNATIONAL STUDENTS

A number of commitments in the *International Education Strategy 2016–2020* were progressed during 2017. One of the commitments related to the development of an International Education Mark (IEM). In May 2017, the Irish Government approved a draft outline of legislation – the Qualifications and Quality Assurance (Amendment) Bill – which included provision for the International Education Mark. The purpose of the mark is to ensure quality assurance standards for the international education sector.

A revised Third Level Graduate Programme was announced in June 2017 which applied to the graduating classes of 2017 onwards. Under the new programme, graduates at level 8 of the National Framework of Qualifications (NFQ) can avail of a period of residence in the State of up to 12 months after graduation, subject to an overall limit on their time in the State, as both a student and on this programme, of seven years. Graduates at level 9 or above of the NFQ can avail of a period of up to 24 months after graduation, subject to an overall time limit in the State of eight years.

ADMINISTRATIVE CHANGES

From 11 December 2017, the Garda National Immigration Bureau (GNIB) card was replaced by the Irish Residence Permit (IRP).

The new IRP is the Irish EU Common Format Residence Permit. It does not give rise to any changes to the rights or entitlements of the non-EEA national holder.

BORDERS AND VISA POLICY

In June 2017, Ireland added Georgia and Ukraine to the list of countries whose nationals are required to hold a transit visa.

Government approval was obtained in May 2017 for the establishment, staffing and funding of the Irish Passenger Information Unit (IPIU) required to implement the EU Directive 2016/681/EC on Passenger Name Records (PNR). The EU Directive is aimed at the prevention and prosecution of terrorist offences and serious crime.

On 30 November 2017, automatic border control e-gates were introduced at Terminals 1 and 2 of Dublin Airport, available to national and EU/EEA e-passport holders over 18 years of age. It is envisaged that they will be extended to other categories of passengers as the programme develops.

Plans were progressed during 2017 for the redevelopment of Transair House, an existing facility at Dublin Airport, for use as a Garda station, office accommodation and detention facilities, including for those refused permission to enter the State.

INTEGRATION

The *Migrant Integration Strategy – A Blueprint for the Future*, which provides the framework for Government action on migrant integration from 2017 to 2020, was published in February 2017.

The Strategy is intended to cover EEA and non-EEA nationals including economic migrants, refugees and those with legal status to remain in Ireland. It is directed at Government departments; public bodies; the business sector; and community, voluntary, faith-based, cultural and sporting organisations, as well as at families and individuals.

A Monitoring and Coordination Committee was established under the Strategy and met during 2017. A progress report on the work of the Strategy was to be brought to Government in 2018.

Funding for integration projects was announced during 2017. For example, the Communities Integration Fund was launched alongside the Strategy in February 2017. A total amount of €500,000 was made available throughout 2017 to local community-based groups to promote integration in their areas; for example, local sports clubs, faith-based groups, theatrical or cultural organisations. The funding was not only to be targeted at migrant organisations. Grants of up to €5,000 were allocated to 131 organisations running a wide range of projects.

CITIZENSHIP AND NATURALISATION

A total of 8,199 citizenship certificates were issued in 2017. This compares with 10,044 certificates issued in 2016. The top nationalities awarded citizenship included Poland, Romania, India and the United Kingdom.

INIS noted a large surge in applications for Irish citizenship by British nationals in the wake of the Brexit referendum. Based on application data, the United Kingdom was the third highest nationality making applications in 2017, with 819 applications.

MIGRATION, DEVELOPMENT AND HUMANITARIAN AID

Ireland pledged an additional €3 million to the EU Emergency Trust Fund for Africa in 2017. Ireland's total €6 million contribution covers the period 2016–2020.⁶

Ireland provided €25 million in humanitarian aid for the Syrian crisis in 2017. In total Ireland provided €181 million to major humanitarian crises in 2017, including in Myanmar and Bangladesh; South Sudan, Somalia, Nigeria and Yemen; and the Democratic Republic of Congo, Central African Republic, Sudan and Eritrea.⁷

TRAFFICKING

The *Criminal Law (Sexual Offences) Act 2017* was signed into law in February 2017. The Act was partially commenced (including provisions in relation to the sexual exploitation of children and the purchase of sexual services) on 27 March 2017. As reported for previous years, the passage of this legislation was a priority for the Irish Government. The Act outlaws the purchase of sexual services from a prostitute or a trafficked person. The objective of these provisions in the Act is to target the trafficking and exploitation of persons through prostitution.

⁶ Department of Foreign Affairs and Trade (13 December 2017) Response to Parliamentary Question 53159/17. Available at www.kildarestreet.com.

⁷ Department of Foreign Affairs and Trade (2018), pp. 41–45.

Labour exploitation in the fishing industry continued to be an issue in 2017. As a result of An Garda Síochána operational interventions and investigations under the North Atlantic Maritime Project, a total of 19 potential victims of trafficking were identified in the fishing industry in 2017.

In May 2017, the Workplace Relations Commission (WRC) submitted a report to the International Labour Organisation (ILO) – *Report of WRC Enforcement of the Atypical Workers Permission Scheme in the Irish Sea Fishing Fleet* – detailing its enforcement of the sector since February 2016.

Ireland was downgraded to Tier 2 status by the US State Department *Trafficking in Persons (TIP) Report 2018*, which covered developments for 2017. The TIP report measures the efforts of States to eliminate human trafficking against the minimum standards set in the US Trafficking Victims Protection Act. Ireland had held Tier 1 status since 2011. According to the Tier 2 rating, Ireland does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so.

The Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) published its second evaluation report on Ireland in 2017. The GRETA report acknowledged progress made by Ireland in a number of areas in line with previous GRETA recommendations, including legislative reform and the inclusion of the Garda Síochána Human Trafficking Investigation and Coordination Unit (HTICU) in the Garda National Protective Services Bureau (GNPSB). However, it expressed concerns and made recommendations in a number of areas, in particular in relation to victim identification.

CHAPTER 1

Introduction

This report is the fourteenth in a series of Annual Policy Reports, a series which is intended to provide a coherent overview of migration and asylum trends and policy development during consecutive periods beginning in January 2003. From 2016 these reports are called Annual Reports on Migration and Asylum.⁸ Previous comparable Annual Policy Reports are available for a number of other EU countries participating in the European Migration Network (EMN). The purpose of the EMN report is to provide an insight into the most significant political and legislative (including EU) developments at Member State level, as well as public debates, in the area of migration and asylum.

In accordance with Article 9(1) of Council Decision 2008/381/EC establishing the EMN, the EMN National Contact Points (NCPs) in each Member State and Norway are tasked with providing an annual report detailing the migration and asylum situation in the State, including policy developments and statistical data. The information used to produce this report is gathered according to commonly agreed EMN specifications developed to facilitate comparability across countries. Each EMN NCP produces a national report and a comparative synthesis report is then compiled, which brings together the main findings from the national reports and places them within an EU perspective. Since 2009, EMN Annual Policy Reports also contribute to the Commission's Annual Reports on Immigration and Asylum, reviewing progress made in the implementation of asylum and migration policy.

All current and prior reports are available at www.emn.ie.⁹

The EMN *Annual Report on Migration and Asylum 2017: Ireland* covers the period 1 January 2017 to 31 December 2017.

1.1 METHODOLOGY

For the purposes of the 2017 report, specific criteria regarding the inclusion of significant developments and/or debates have been adopted to ensure standard reporting across all national country reports. On an EMN central level, a 'significant development/debate' within a particular year was defined as an event that had been discussed in parliament and had been widely reported in the media. The longer the time of reporting in the media, the more significant the development.

⁸ This is to bring the title of the national reports in line with the title of the EU-level synthesis report, *EMN Annual Report on Migration and Asylum 2016*.

⁹ Available National Reports from other EMN NCPs can be found at http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/index_en.htm.

Developments will also be considered significant if they subsequently led to any proposals for amended or new legislation.

A significant development is defined in the Irish report as an event involving one or more of the following:

- any legislative development;
- major institutional developments;
- major debates in parliament and between social partners;
- Government statements;
- media and civil society debates;
- the debate is also engaged with in parliament;
- items of scale that are discussed outside a particular sector and as such are considered newsworthy while not being within the Dáil remit;
- academic research.

Sources and types of information used generally fall into several categories:

- published and adopted national legislation;
- Government press releases, statements and reports;
- published Government schemes;
- media reporting (both web-based and print media);
- other publications (e.g. European Commission publications, and annual reports, publications and information leaflets from IGOs and NGOs);
- case law reporting.

Statistics, where available, were taken from published first-source material such as Government/other annual reports and published statistics from the Central Statistics Office. Where noted, and where it was not possible to access original statistical sources, data were taken from media articles based on access to unpublished documents. Where possible, verified data have been used; where provisional data have been included, this has been highlighted.

In order to provide a comprehensive and reflective overview of national legislative and other debates, a sample of core partners were contacted with regard to input on a draft report:

- Department of Business, Enterprise and Innovation;
- Department of Justice and Equality;
- Child and Family Agency, Tusla;
- Immigrant Council of Ireland (ICI);
- International Organization for Migration (IOM);
- Irish Refugee Council (IRC);
- Migrant Rights Centre Ireland (MRCI);
- Irish Immigrant Support Centre (Nasc);
- International Protection Office (IPO);
- International Protection Appeals Tribunal (IPAT);
- UNHCR Ireland.

All definitions of technical terms or concepts used in the study are as per the EMN Migration and Asylum Glossary 6.0.¹⁰

Three departments are involved in migration management in Ireland (see Figure 1.1).

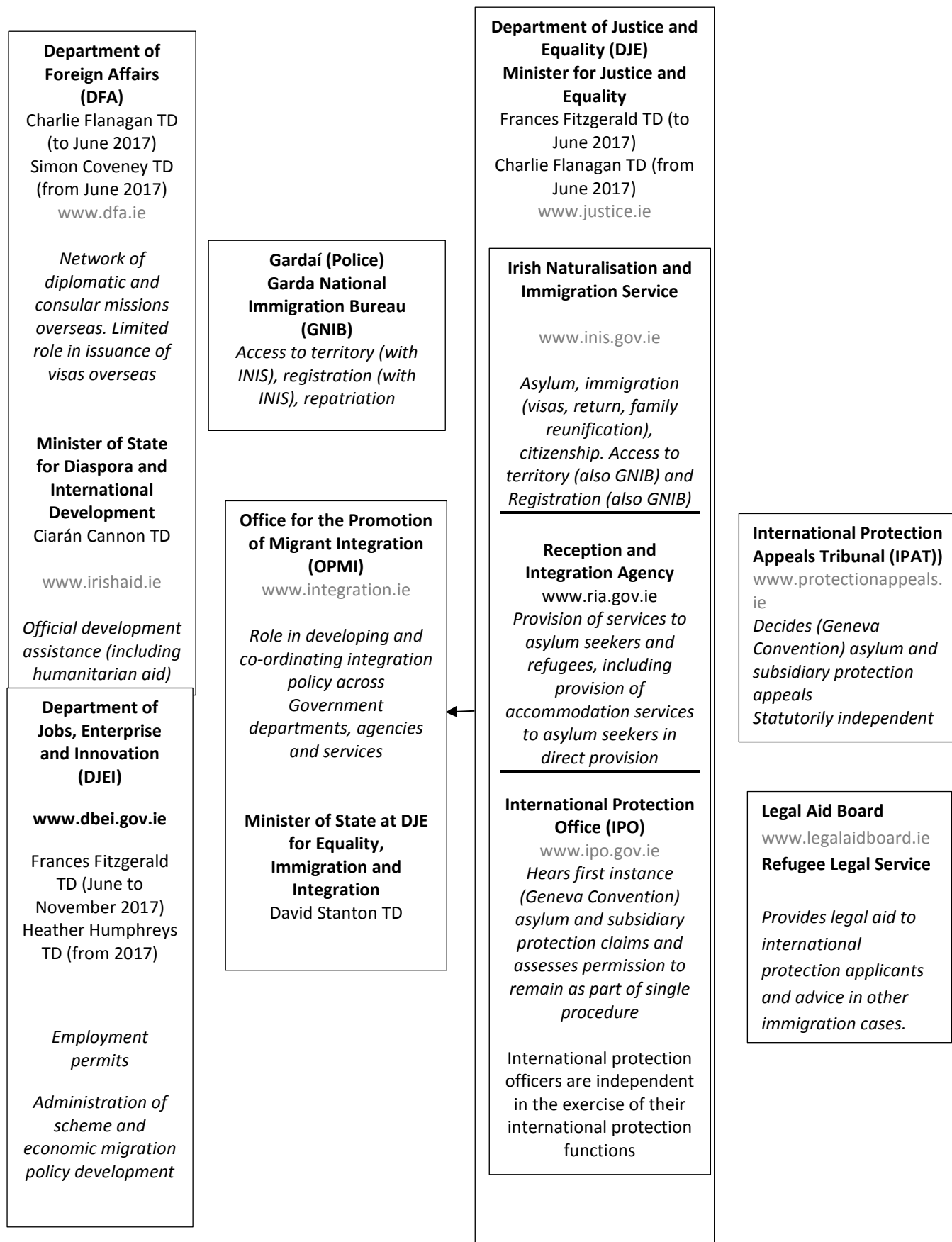
In addition, the Child and Family Agency, Tusla, is responsible for administration of the care for unaccompanied third-country minors in the State and sits under the Department of Children and Youth Affairs.

¹⁰ Available at www.emn.ie and http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/glossary/index_a_en.htm.

1.2 STRUCTURE OF MIGRATION AND ASYLUM POLICY

1.2.1 Institutional context

FIGURE 1.1 INSTITUTIONS IN IRELAND WITH RESPONSIBILITY FOR ASYLUM AND IMMIGRATION 2017



Department of Justice and Equality

The Department of Justice and Equality¹¹ is responsible for immigration management. The Minister for Justice and Equality has ultimate decision-making powers in relation to immigration and asylum. The Garda National Immigration Bureau (GNIB) is responsible for all immigration-related Garda operations in the State and is under the auspices of An Garda Síochána (national police force) and, in turn, the Department of Justice and Equality. The GNIB enforces deportations and border control, and carries out investigations related to illegal immigration and trafficking in human beings. Since 2015, the Irish Naturalisation and Immigration Service (INIS)¹² of the Department of Justice and Equality has implemented a civilianisation project to take over frontline border control functions at Dublin Airport. GNIB also carries out the registration of non-EEA nationals, who are required to register for residence purposes, at locations outside Dublin. Since 2016, the registration function is carried out by INIS in Dublin. An Garda Síochána has personnel specifically dealing with immigration in every Garda district, at all approved ports and airports, and at a border control unit attached to Dundalk Garda Station.

In addition, the Anti-Human Trafficking Unit¹³ is part of the Department of Justice and Equality. There are three other dedicated units dealing with this issue: the Human Trafficking Investigation and Co-ordination Unit in the Garda National Protective Services Bureau (GNPSB), the Anti-Human Trafficking Team in the Health Service Executive (HSE) and a specialised human trafficking legal team in the Legal Aid Board (LAB). Dedicated personnel are assigned to deal with prosecution of cases in the Office of the Director of Public Prosecutions (DPP), as well as in the New Communities and Asylum Seekers Unit within the Department of Social Protection which is tasked with providing assistance to suspected victims not in the asylum system with their transition from direct provision accommodation to mainstream services for the duration of their temporary residency.

INIS is responsible for administering the statutory and administrative functions of the Minister for Justice and Equality in relation to asylum, visa, immigration and citizenship processing; asylum, immigration and citizenship policy; and return decisions. The Reception and Integration Agency (RIA) is a separate office within the Department of Justice and Equality and is responsible for arranging accommodation and working with statutory and non-statutory agencies to coordinate the delivery of other services (including health, social services, welfare and education) for applicants for international protection.¹⁴ Its staff include

¹¹ www.justice.ie.

¹² www.inis.gov.ie.

¹³ www.justice.ie/en/JELR/Pages/WP09000005.

¹⁴ See www.ria.gov.ie, 'Functions and Responsibilities'.

officers from the Department of Education and Skills and Tusla (the Child and Family Agency). Since 2004, it has also been responsible for supporting the voluntary return, on an ongoing basis and for the Department of Social Protection,¹⁵ of destitute nationals of the 13 Member States that have joined the EU since 2004. It also provides accommodation to suspected victims of trafficking pending a determination of their case and during the 60-day recovery and reflection period.

With regard to applications for asylum and decision-making on the granting of refugee status under the 1951 Geneva Convention Relating to the Status of Refugees, a two-tier structure exists for asylum application processing. Up to 31 December 2016, this consisted of the Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT). Since 31 December 2016, with the commencement of the *International Protection Act 2015*, these bodies have been replaced by the International Protection Office (IPO) and the International Protection Appeals Tribunal (IPAT). These bodies have responsibility for processing first-instance applications for international protection and for hearing appeals, respectively. The IPO is an office within INIS responsible for processing applications for international protection under the *International Protection Act 2015*. It also considers, as part of a single procedure, whether applicants should be given permission to remain. International protection officers are independent in the performance of their international protection functions. The IPAT is independent in the performance of its functions under the *International Protection Act 2015*.¹⁶ The Department of Justice and Equality ensures that both bodies have input into the co-ordination of asylum policy.

Since 31 December 2016, the single application procedure for international protection claims under the *International Protection Act 2015* has entered into operation. Under the single application procedure, applications for refugee status, subsidiary protection and permission to remain are assessed as part of a single procedure. This replaced the former sequential process whereby applications for refugee status were assessed under the *Refugee Act 1996* and applications for subsidiary protection under the *European Union (Subsidiary Protection) Regulations 2013* (S.I. No. 426 of 2013).

Under section 47(1) of the *International Protection Act 2015*, the Minister is bound to accept a positive recommendation of refugee status of the international protection officer or a decision to grant refugee status in relation to an appeal heard by the IPAT, but retains a discretion not to grant refugee status to a refugee on grounds of danger to the security of the State or to the community of the State

¹⁵ www.welfare.ie.

¹⁶ Section 61(3)(b) of the International Protection Act 2015.

where the refugee has been convicted of a particularly serious crime.¹⁷ The Minister shall refuse a refugee declaration where an international protection officer has recommended that the applicant be refused refugee status but be granted subsidiary protection status, and has not appealed the decision not to grant refugee status. The Minister is also bound by a recommendation or decision on appeal in relation to subsidiary protection status, under section 47(4) of the Act. The Minister shall refuse both refugee status and subsidiary protection status where the recommendation is that the applicant be refused both statuses and the applicant has not appealed the recommendation or when the Tribunal upholds the recommendation not to grant either status. The Minister also refuses both refugee and subsidiary protection status in circumstances where appeals are withdrawn or deemed to be withdrawn.

Under section 49 of the *International Protection Act 2015*, the Minister is bound to consider whether or not to grant permission to remain to an unsuccessful applicant for international protection. Information given by the applicant in the original application for international protection, including at interview, and any additional information which the applicant is invited to provide are taken into account.

From 31 December 2016, INIS is responsible for investigating applications by beneficiaries of international protection to allow family members to enter and reside in the State and for providing a report to the Minister on such applications, under sections 56 and 57 of the *International Protection Act 2015*.

The Refugee Documentation Centre (RDC)¹⁸ is an independent library and research service within the Legal Aid Board.¹⁹ The specialised Services for Asylum Seekers office within the Legal Aid Board provides ‘confidential and independent legal services’ to persons applying for asylum in Ireland. Legal aid and advice is also provided in ‘appropriate cases’ on immigration and deportation matters.²⁰ Additionally, the Legal Aid Board provides legal services on certain matters to persons identified by the Human Trafficking Investigation and Co-ordination Unit of An Garda Síochána as ‘potential victims’ of human trafficking under the *Criminal Law (Human Trafficking) Act 2008*.

The Office for the Promotion of Migrant Integration (OPMI) also comes under the auspices of the Department of Justice and Equality.²¹ With a focus on the promotion of the integration of legal immigrants into Irish society, the OPMI has a mandate to develop, lead and co-ordinate integration policy across Government

¹⁷ Section 47(3), *International Protection Act 2015*.

¹⁸ www.legalaidboard.ie/lab/publishing.nsf/Content/RDC.

¹⁹ www.legalaidboard.ie.

²⁰ *Ibid.*

²¹ www.integration.ie.

departments, agencies and services. Ireland joined the UNHCR-led resettlement scheme in 1998. The OPMI co-ordinates the resettlement of refugees admitted by Ireland under the Programme, as well as the administration of EU and national funding for the promotion of migrant integration.

The Irish Refugee Protection Programme (IRPP) was approved by Government on 10 September 2015 in response to the migration crisis. Under this programme, the Government confirmed that Ireland will take in a total of 4,000 persons, primarily through a combination of relocation under the EU relocation mechanism and the UNHCR-led programme currently focused on resettling refugees from Lebanon.

Department of Business, Enterprise and Innovation

The Department of Business, Enterprise and Innovation²² (formerly the Department of Jobs, Enterprise and Innovation) administers the employment permit schemes under the general auspices of the Labour Affairs Development Division.

The Economic Migration Policy Unit contributes to the Department's work in formulating and implementing labour market policies by leading the development and review of policy on economic migration and access to employment in Ireland.

The Employment Permits Section²³ implements a skills-oriented employment permits system in order to fill the labour and skills gaps that cannot be filled through EEA supply. The Employment Permits Section processes applications for employment permits; issues guidelines, information and procedures; and produces online statistics on applications and permits issued.²⁴

The Office of Science, Technology and Innovation deals with the administration of applications from research organisations seeking to employ third-country national researchers pursuant to Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research.

Department of Foreign Affairs and Trade

The Department of Foreign Affairs and Trade²⁵ has responsibility for the issuance of visas via Irish Embassy consular services in cases where the Department of Justice and Equality does not have a dedicated Visa Office within the country.²⁶ The Department of Foreign Affairs and Trade has operative function only and is not

²² www.dbei.gov.ie.

²³ www.dbei.gov.ie/en/What-We-Do/Jobs-Workplace-and-Skills/Employment-Permits.

²⁴ Department of Jobs, Enterprise and Innovation, April 2015.

²⁵ www.dfa.ie.

²⁶ See Quinn (2009) for further discussion.

responsible for visa policy or decisions, which are the remit of the Department of Justice and Equality.

Irish Aid, under the auspices of the Department of Foreign Affairs and Trade, administers Ireland's overseas development and humanitarian aid programme, with a particular focus on reducing poverty and hunger in countries in sub-Saharan Africa.²⁷

1.2.2 General structure of the legal system

The Irish asylum process sits outside the court system. Immigration matters are dealt with on an administrative basis by the Minister for Justice and Equality. In accordance with the Constitution, justice is administered in public, in courts established by law, with judges appointed by the President on the advice of the Government. Independence is guaranteed in the exercise of their functions. The Irish court system is hierarchical in nature and there are five types of courts in Ireland, which hear different types and levels of cases. In ascending hierarchical order, these are:

- the District Court;
- the Circuit Court;
- the High Court;
- the Court of Appeal;
- the Supreme Court.

The relevance of the courts in relation to asylum and immigration cases is generally limited to judicial review.²⁸ Judicial review focuses on assessing the determination process through which a decision was reached to ensure that the decision-maker made their decision properly and in accordance with the law. It does not look to the merits or the substance of the underlying case.²⁹

As discussed in previous reports in this series, prior to the mid-1990s Irish asylum and immigration legislation was covered under such instruments as the Hope Hanlon procedure and the *Aliens Act 1935* (and Orders made under that Act),³⁰ together with the relevant EU free movement Regulations and Directives³¹ which

²⁷ www.irishaid.ie.

²⁸ There is a statutory appeal to the courts against decisions to revoke refugee status under section 52 of the *International Protection Act 2015*.

²⁹ Available at www.citizensinformation.ie.

³⁰ Aliens Order 1946 (S.I. No. 395 of 1946); Aliens (Amendment) Order 1975 (S.I. No. 128 of 1975).

³¹ Relevant EU legislation included Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC on freedom of movement for workers within the Community, 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, 72/194/EEC on the right of citizens of the

came into effect in Ireland after it joined the European Union in 1973. Following a sharp rise in immigration flows from the mid-1990s, several pieces of legislation were introduced to deal with immigration and asylum issues in Ireland.

The *International Protection Act 2015* sets out the domestic legal framework regarding applications for international protection and replaces the *Refugee Act 1996* (as amended) and the *European Communities (Subsidiary Protection) Regulations 2013* (as amended). The *Refugee Act 1996* was largely repealed, apart from some transitional provisions. While Ireland participated in some of the first generation of instruments under the Common European Asylum System (the *Qualification Directive 2004/83/EC* and *Procedures Directive 2005/85/EC*), Ireland does not participate in the ‘recast’ *Qualification Directive (2011/95/EU)* and *Procedures Directive (2013/32/EU)*. Ireland does not participate in the original *Reception Conditions Directive (2003/9/EC)*. Ireland has opted into the revised *Reception Conditions Directive (2013/33/EU)*, and the *European Communities (Reception Conditions) Regulations 2018* came into operation on 30 June 2018.^{32,33}

Ireland is also a signatory to the ‘Dublin Convention’, and is subject to the ‘Dublin Regulation’ which determines the EU Member State responsible for processing asylum applications made in the EU. Regulation 604/2013³⁴ (‘the Dublin III Regulation’) came into force on 29 June 2013. The *European Union (Dublin System) Regulations 2014* were adopted for the purpose of giving further effect to the Dublin III Regulation. These regulations were amended by the *European Union (Dublin System) (Amendment) Regulations 2016* in 2016.³⁵

S.I. No. 310 of 2008 amended the *European Communities (Free Movement of Persons) (No. 2) Regulations 2006* (S.I. No. 656 of 2006) following the Metock judgment of the European Court of Justice (ECJ). The *European Community (Free Movement of Persons) Regulations 2015* (S.I. No. 548 of 2015) which came into operation on 1 February 2016 give further effect to EU Directive 2004/38/EC and revoke the 2006 Regulations, subject to transitional provisions.

Union and their family members to move and reside freely within the territory of the Member States, 73/148/EEC on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services, 75/34/EEC concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity, 90/364/EEC on the right of residence, 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity, and 93/96/EEC on the right of residence for students.

³² S.I. No. 230 of 2018.

²⁶ Note that the European Commission in July 2016 launched proposals to replace the Asylum Qualifications and Procedures Directives with Regulations and to further recast the Reception Conditions Directive.

³⁴ *Regulation (EU) No. 604/2013* (Dublin III Regulation) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. See *EMN Asylum and Migration Glossary 3.0*, available at www.emn.ie.

³⁵ S.I. 140 of 2016. Available at www.irishstatutebook.ie.

Domestic immigration law in Ireland is based on various pieces of legislation including the *Aliens Act 1935* and Orders made under it; the *Illegal Immigrants (Trafficking) Act 2000*; and the *Immigration Acts 1999, 2003 and 2004*. The *Employment Permits Act 2006* as amended and secondary legislation made under it set out the legal framework for the employment permits schemes in Ireland.

Regarding the situation of Ireland concerning an ‘opt-in’ provision on EU measures in asylum and migration, under the terms of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union (TFEU), Ireland does not take part in the adoption by the Council of proposed measures pursuant to Title V of the TFEU unless it decides to participate in the measure pursuant to a motion of the Houses of the Oireachtas. Under Declaration number 56 to the TFEU, Ireland has declared its

*firm intention to exercise its right under Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice to take part in the adoption of measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union to the maximum extent it deems possible.*³⁶

³⁶ Declaration by Ireland on Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice (TFEU). Ireland also ‘affirms its commitment to the Union as an area of freedom, security and justice respecting fundamental rights and the different legal systems and traditions of the Member States within which citizens are provided with a high level of safety’. An example is Ireland’s participation in Council Directive 2005/71/EC (‘the Researchers’ Directive’).

CHAPTER 2

Statistical and political overview

2.1 POLITICAL DEVELOPMENTS

Leo Varadkar was elected as leader of Fine Gael and became Taoiseach in June 2017.

There was a reshuffle of cabinet ministers in June 2017. Charlie Flanagan TD replaced Frances Fitzgerald TD as Minister for Justice and Equality. David Stanton remained as Minister of State at the Department of Justice and Equality with responsibility for Equality, Immigration and Integration.

Frances Fitzgerald TD was Minister for Business, Enterprise and Innovation until November 2017.

2.1.1 Brexit

Negotiations on the withdrawal of the United Kingdom from the European Union took place during 2017. The EU–UK Joint Progress Report on progress during the first phase of the negotiations under Article 50 of the Treaty on the European Union was published on 8 December 2017. The progress report recognised that

the United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (Common Travel Area), while fully respecting the rights of natural persons conferred by Union law. The United Kingdom confirms and accepts that the Common Travel Area and associated rights and privileges can continue to operate without affecting Ireland's obligations under Union law, in particular with respect to free movement for EU citizens.³⁷

During 2017, the Irish Naturalisation and Immigration Service (INIS) participated in discussions on the Irish Government position on Brexit, to plan for the protection of the Common Travel Area. According to INIS, 'Ireland and the United Kingdom have always cooperated closely on immigration and border matters, particularly in relation to keeping the CTA secure. Ireland and the UK will continue to cooperate on these issues after the UK leaves the EU, and both Governments have publicly declared their commitment to making sure there is no hard border on the island of

³⁷ Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union, 8 December 2017, paragraph 54. Available at <https://ec.europa.eu>.

Ireland.³⁸ Continued participation in these discussions is included as one of the key objectives for INIS in 2018.³⁹

2.2 LEGISLATION

The following pieces of legislation relevant to migration, international protection and trafficking in human beings were enacted during 2017.

- *Civil Legal Aid (International Protection Appeals Tribunal) Order 2017* (S.I. No. 81 of 2017);
- *Criminal Law (Sexual Offences) Act 2017* (No. 2 of 2017);
- *Criminal Justice (Victims of Crime) Act 2017* (No. 28 of 2017);
- *Employment Permits Regulations 2017* (S.I. No. 95 of 2017);
- *European Union (Subsidiary Protection) Regulations 2017* (S.I. No. 409 of 2017);
- *International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017* (S.I. No. 116 of 2017);
- *Immigration Act 1999 (Deportation) (Amendment) Regulations 2017* (S.I. No. 74 of 2017);
- *Immigration Act 2004 (Visas) (Amendment) Order 2017* (S.I. No. 264 of 2017).
- *Immigration Act 2004 (Registration Certificate Fee) (Amendment) Regulations 2017* (S.I. No. 277 of 2017).

2.3 UNITED NATIONS DEVELOPMENTS

2.3.1 United Nations Convention Against Torture (UNCAT)

Ireland was examined by the United Nations Convention Against Torture (UNCAT) Committee on Ireland's second periodic report regarding implementation of the Convention in July 2017. This report had been submitted to the Committee in 2015. Issues in relation to migration and international protection which were considered by the Committee included migration-related detention, in particular places of detention; refusals of leave to land; and reception conditions. The situation of migrants and asylum seekers was one theme in a wider examination of Ireland by the Committee.

³⁸ Irish Naturalisation and Immigration Service (2018a), p. 22.

³⁹ Ibid., p. 32.

Ireland's delegation was headed by the Minister of State at the Department of Justice and Equality. In his opening address, the Minister of State focused on developments since the submission of the second periodic report. Regarding migration and international protection, he reported on the commencement of the *International Protection Act 2015*, and its objective of shortening the international protection process and reducing the length of time applicants spend in State accommodation.⁴⁰

The Irish Human Rights and Equality Commission (IHREC),⁴¹ the Immigrant Council of Ireland (ICI),⁴² the Irish Refugee Council (IRC)⁴³ and Spirasi⁴⁴ made submissions to the Committee. All of the submissions raised concerns about immigrant detainees being detained in mainstream prisons and the lack of dedicated immigration detention facilities in Ireland. Spirasi noted the detrimental impact of such detention conditions on previous victims of torture.⁴⁵

The IRC submission also highlighted issues of concern, including lack of disaggregated data relating to asylum seekers in immigration-related detention and in relation to refusals of leave to land,⁴⁶ and the need for vulnerability assessments and procedures in relation to reception and in the international protection procedure.⁴⁷ The submission also highlighted concerns with aspects of the *International Protection Act 2015*, including provisions in relation to periods of detention for asylum seekers; consent for medical examinations;⁴⁸ inadmissibility procedures and age assessment.⁴⁹

Spirasi's submission focused on the right to rehabilitation of victims of torture set out in the UNCAT Committee's *General Comment No. 3*.⁵⁰ The submission noted that 'the State's obligation to provide "the means for as full rehabilitation as possible" refers to the need to restore and repair the harm suffered by a victim whose life situation, including their dignity, health and self-sufficiency may never be fully recovered as a result of the pervasive effect of torture'.⁵¹ Spirasi considered that its own services to victims of torture represented a step towards rehabilitation but did not meet the criterion of 'full rehabilitation' set out in the *General*

⁴⁰ Department of Justice and Equality (2017a).

⁴¹ Irish Human Rights and Equality Commission (2017a).

⁴² Immigrant Council of Ireland (2017a).

⁴³ Irish Refugee Council (2017a).

⁴⁴ Spirasi is a humanitarian non-governmental organisation that works with asylum seekers, refugees and other disadvantaged migrant groups, with special concern for survivors of torture (Spirasi, 2017).

⁴⁵ Spirasi (2017), p. 9.

⁴⁶ Irish Refugee Council (2017a), pp. 4–5.

⁴⁷ *Ibid.*, pp. 6–7.

⁴⁸ *Ibid.*, p. 5.

⁴⁹ *Ibid.*, p. 12.

⁵⁰ UN Committee Against Torture (2012).

⁵¹ Spirasi (2017), pp. 2–3.

*Comment.*⁵² Furthermore, the submission argued that conditions in direct provision accommodation can further negatively impact on rehabilitation.⁵³ The submission also called for more comprehensive vulnerability and health screening for all protection applicants, with identification and screening for victims of torture to be put on a statutory basis.⁵⁴ Another issue highlighted by the submission was the need for sustainable funding for Spirasi to continue to produce medico-legal reports in a timely manner for protection applicants, and the strengthening of training for decision makers in relation to assessing medical evidence and dealing with victims of torture.⁵⁵

The ICI submission raised additional concerns, including in relation to victims of domestic violence, victims of trafficking and stateless persons. For example, while acknowledging the administrative supports that exist, the submission recommended that independent immigration status for victims of domestic violence be on a statutory footing, and that there be better access to supports, including social welfare supports, for victims of domestic violence.⁵⁶ Regarding victims of trafficking, the submission highlighted ongoing concerns of the ICI regarding the victim identification mechanism in Ireland for victims of trafficking, in particular that there are some different procedures in place for non-EEA nationals and other suspected victims (see also Chapter 8). Better access to civil legal aid for victims was also recommended.⁵⁷ The submission highlighted that Ireland does not have a formal statelessness determination procedure in place, although Ireland is a party to the international Statelessness Conventions⁵⁸ and has some statutory protections, for example in relation to naturalisation and naturalisation fees. However, the submission argued that the lack of a determination procedure makes these provisions difficult to access in practice.⁵⁹

In its concluding observations,⁶⁰ the Committee welcomed the adoption of the *International Protection Act 2015* and also information provided that asylum seekers are placed in detention only as an exceptional measure. However, the Committee remained concerned that prisons and some Garda stations are used for immigration-related detention alongside remand and convicted prisoners and also lack of progress on development of dedicated immigration detention facilities at Dublin Airport.⁶¹ The Committee also regretted that Ireland had not provided data

⁵² Ibid., p. 3.

⁵³ Ibid., pp. 3–4.

⁵⁴ Ibid., pp. 10–13.

⁵⁵ Ibid., pp. 13–15.

⁵⁶ Immigrant Council of Ireland (2017a), pp. 1–3.

⁵⁷ Ibid., pp. 7–9.

⁵⁸ 1954 Convention on the Status of Stateless Persons; 1961 Convention on the Elimination of Statelessness.

⁵⁹ Immigrant Council of Ireland (2017a), pp. 9–10.

⁶⁰ UNCAT (2017).

⁶¹ The Minister of Justice and Equality has said that completion is expected by end 2018. Department of Justice and Equality (12 June 2018) Response to Parliamentary Question 25597/18. Available at www.justice.ie.

on persons refused leave to land who were not subsequently admitted to pursue an asylum claim, disaggregated by country of origin for 2016. The Committee recommended that Ireland should:

- (a) *Enshrine in its legislation the principle that detention of asylum-seekers should be used as a measure of last resort, for as short a period as possible and in facilities appropriate for their status;*
- (b) *Establish a formalized vulnerability screening mechanism for torture victims and other persons with special needs, provide them with care and protection to avoid re-traumatization, including during international protection procedures;*
- (c) *Provide adequate funding to ensure that all persons undergoing the single procedure under the International Protection Act have timely access to medico-legal documentation of torture, ensure that all refugees who have been tortured have access to specialized rehabilitation services that are accessible country-wide and to support and train personnel working with asylum-seekers with special needs;*
- (d) *Ensure that persons detained for immigration purposes are not held together with remand and convicted prisoners, are informed about their situation in a language they can understand and have effective access to legal advice and to the process of application for international protection;*
- (e) *Ensure that all persons who are refused 'leave to land' are provided with access to legal advice and information regarding international protection in a language that they can understand, and provide the Committee with data on the countries of origin of persons denied 'leave to land' and the point of embarkation for the State party to which they were returned in its next periodic report.⁶²*

The Irish Refugee Council, Spirasi and the International Rehabilitation Council for Torture Victims issued a joint press statement welcoming the concluding observations. The organisations also acknowledged 'the seriousness with which the Irish State engaged with the review process and the openness with which State delegates responded to questioning and engaged with civil society on key issues'.⁶³

The Minister of State at the Department of Justice and Equality noted the positive developments overall which the Committee had noted about Ireland – these included the *International Protection Act 2015* and the *Immigration Guidelines for Victims of Domestic Violence* introduced by INIS in 2012. The Minister said that

⁶² UNCAT (2017), paragraph 12.

⁶³ Irish Refugee Council, Spirasi and International Rehabilitation Council for Torture Victims (2017).

Ireland looked forward to building on the progress made and further updating the Committee on progress in 2018.⁶⁴

2.3.2 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

As reported for 2016, Ireland prepared for the examination of the sixth and seventh periodic reports of Ireland regarding CEDAW during 2016.⁶⁵ The National Women’s Council of Ireland (NWCI) prepared a shadow report which was submitted to CEDAW in January 2017. The shadow report incorporated contributions from a wide range of NGOs, including those in the migration sphere – the Immigrant Council of Ireland and the Migrant Rights Centre of Ireland (MRCI). The Irish Human Rights and Equality Commission (IHREC) also made a submission in January 2017. Among other issues, the shadow report highlighted concerns in relation to the protection of vulnerable women in situations of domestic violence and in relation to trafficking.⁶⁶

Ireland’s examination before the CEDAW Committee took place in February 2017. In its concluding observations, the Committee made recommendations in relation to trafficking and exploitation by prostitution. The Committee expressed concern that Ireland remained a source and destination country for trafficking in persons for sexual and labour exploitation, and in particular that prosecution and conviction rates are low. The Committee also expressed concern at the lack of a formal identification mechanism for victims of trafficking, involving NGOs.⁶⁷ However, the Committee noted the *Criminal Law (Sexual Offences) Bill 2015*⁶⁸ and its objective to reduce the demand for sexual services, ‘which allegedly drives trafficking and the exploitation of women for purposes of prostitution’.⁶⁹ The Committee recommended that Ireland include information on the impact of the Criminal Law (Sexual Offences) Bill 2015 three years after its entry into law, in its next periodic report.⁷⁰

⁶⁴ Department of Justice and Equality (2017b).

⁶⁵ Sheridan (2017) (print version), pp. 15–16.

⁶⁶ Ibid., p. 14.

⁶⁷ UN CEDAW Committee (2017), paragraph 31.

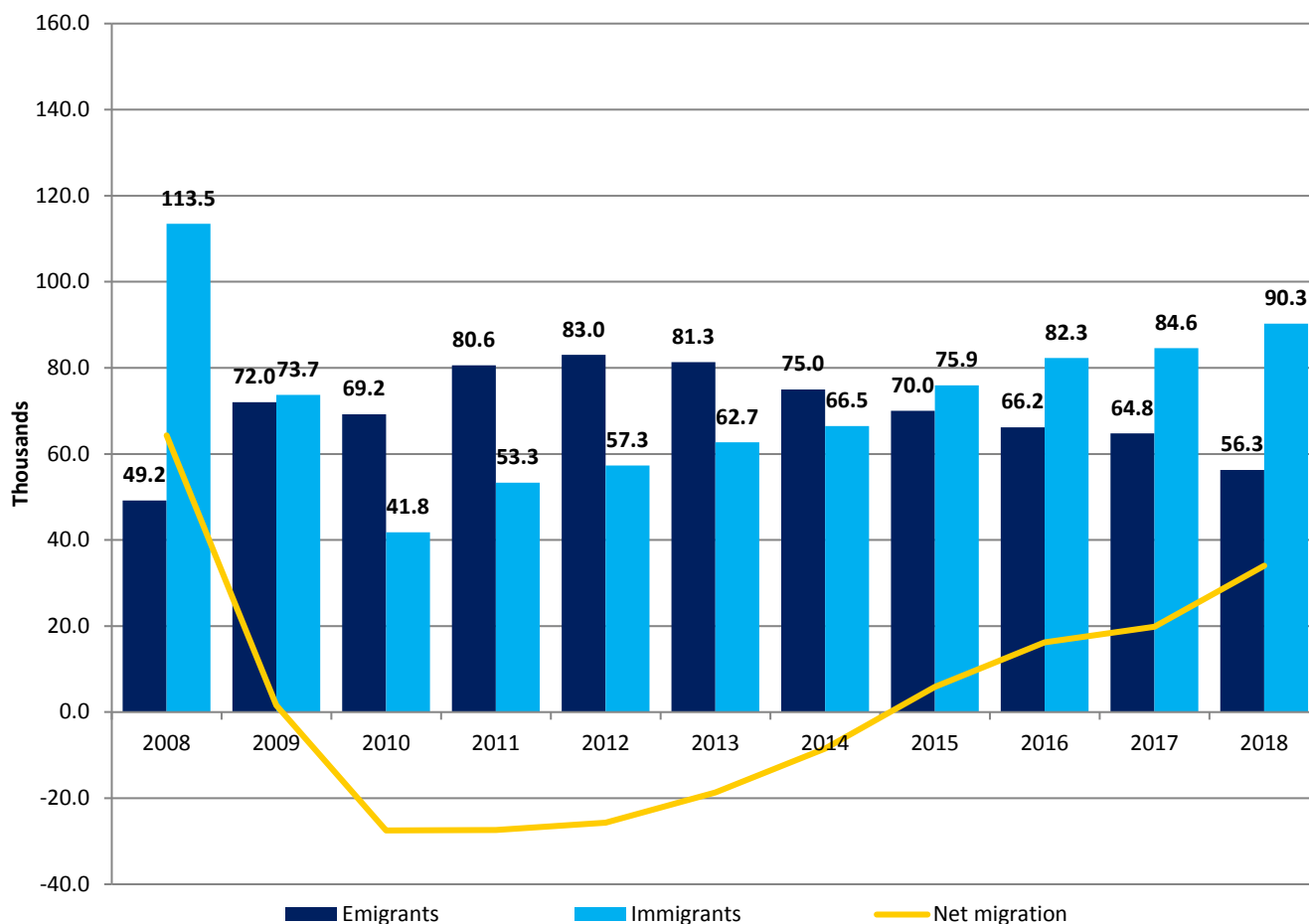
⁶⁸ The *Criminal Law (Sexual Offences) Act 2017* came into operation in 2017. See Chapter 8.

⁶⁹ UN CEDAW Committee (2017), paragraph 32.

⁷⁰ Ibid., paragraph 33.

2.4 POPULATION AND MIGRATION ESTIMATES

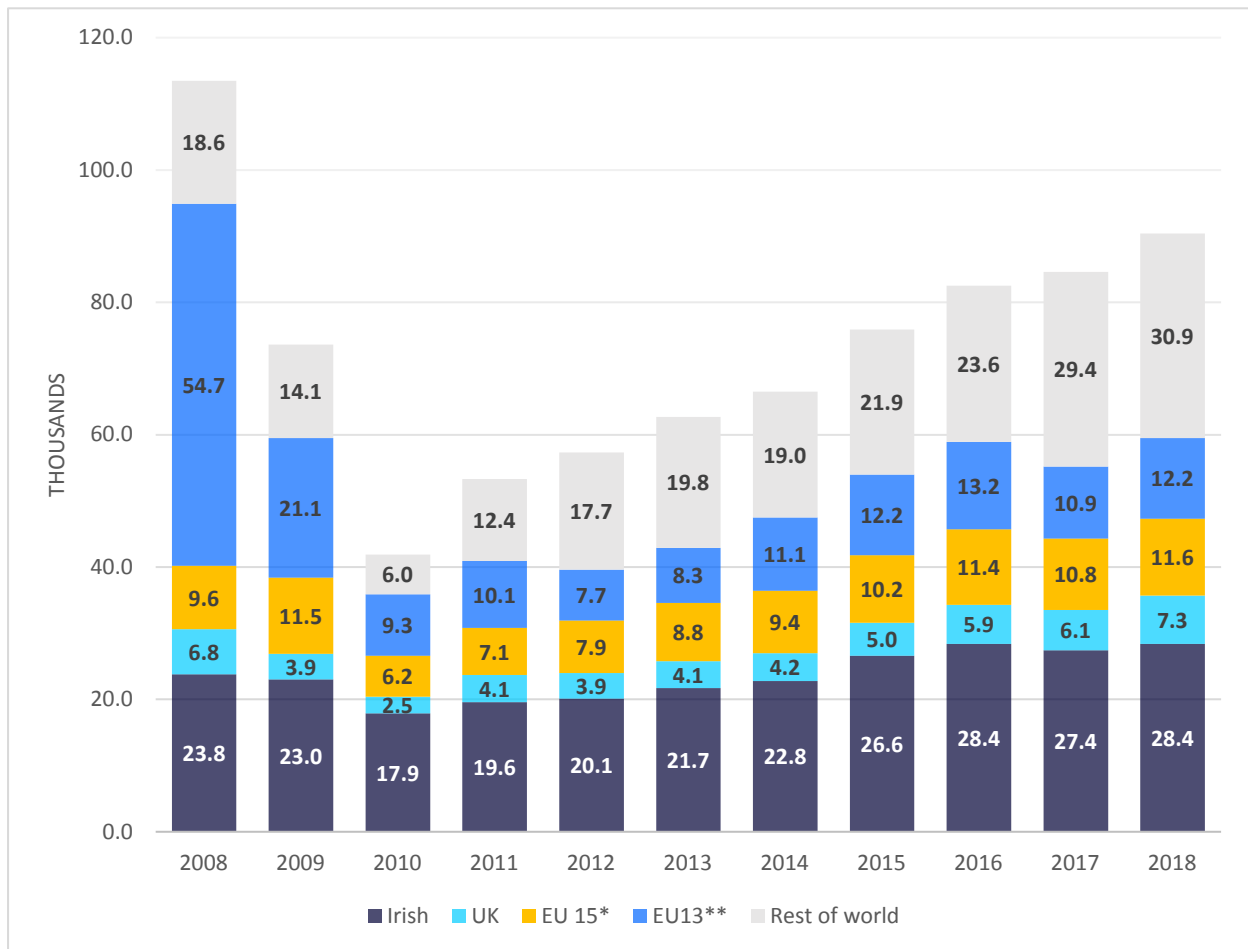
FIGURE 2.1 GROSS AND NET MIGRATION, IRELAND 2008–APRIL 2018



Source: *Population and Migration Estimates, CSO.*

Figure 2.1 shows gross and net migration for Ireland for 2008 to April 2018. Total net inward migration for Ireland continued to rise, to 34,000 – the highest level of net migration since 2008. Non-Irish nationals from outside the EU continued to display strong migration flows, accounting for 30,900 (34.2%) of total immigrants (see Figure 2.2) and 10,000 (17.7%) of total emigrants (see Figure 2.3). This resulted in a total net inward migration figure for non-EU nationals of 20,900.

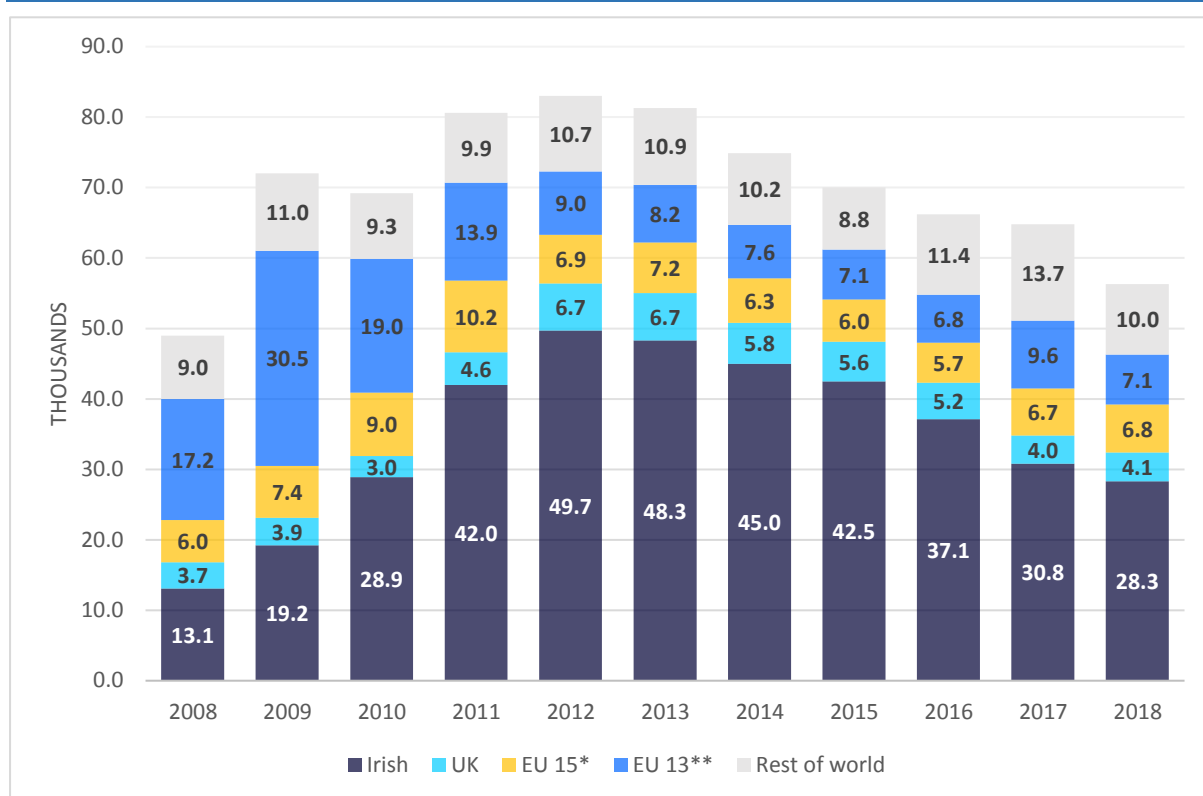
FIGURE 2.2 ESTIMATED IMMIGRATION TO IRELAND, 2008–APRIL 2018



Source: *Population and Migration Estimates, CSO.*
 Notes: *EU15 excluding UK and Ireland; **EU13 Member States that joined in 2004, 2007 and 2013.

As shown in Figure 2.2, the estimated total number of immigrants to Ireland increased year on year to 90,300 in April 2018 from 84,600 in April 2017, an increase of 6.7%. The largest group of immigrants during this period were non-EU nationals, showing a small increase of 1,500 over 2017. Immigration by UK nationals also increased by 1,200 over 2017. As in the year ending April 2017, non-EU nationals remained the largest immigrant group. There was a small increase of 1,000 in returning Irish nationals from 27,400 in 2017 to 28,400 in the year ending April 2018.

FIGURE 2.3 ESTIMATED EMIGRATION FROM IRELAND, 2008–APRIL 2018



Source: *Population and Migration Estimates, CSO.*

Notes: *EU 15 excluding UK and Ireland; **EU13 Member States that joined in 2004, 2007 and 2013.

As Figure 2.3 shows, there was an overall drop of 13.1% in the numbers emigrating from Ireland in the year ending April 2018, from 64,800 in 2017 to 56,300. The largest decrease was among non-EU nationals – the number of non-EU nationals emigrating decreased by 3,700 from 13,700 in 2017 to 10,000 in the year ending April 2018. Emigration by Irish nationals continued to decrease since its peak of 49,700 in 2012.

CHAPTER 3

Legal migration

3.1 ECONOMIC MIGRATION

3.1.1 Statistics

According to end-of-year figures for 2017, 127,955 non-EEA nationals were given permission to live in Ireland compared to just over 115,000 in 2016. The top 10 registered nationalities, which account for 66% of all nationalities registered, were Brazil (14.6%); India (13.5%); China (9%); USA (7.4%); Pakistan (5.7%); Nigeria (4.2%); Philippines (3.6%); Malaysia (2.7%); Canada (2.6%); and South Africa (2.5%).⁷¹

A total of 11,361 employment permits were issued during 2017: 9,401 new permits and 1,960 renewals.⁷² This was an increase over the 2016 total of 9,373 employment permits.⁷³ As for 2016, the top nationality was India, with 3,827 permits.⁷⁴ The top three sectors were the service industry; medical and nursing; and industry.⁷⁵

3.1.2 Legislation

The *Employment Permits Regulations 2017* commenced on 3 April 2017.⁷⁶ The purpose of the new Regulations was to consolidate all existing employment permits regulations made since 2014.

The Regulations also provided for changes to the Highly Skilled Eligible Occupations List (HSEOL) and Ineligible Categories of Employment List (ICEL) following a review which was conducted during 2016. The changes to the lists were as follows.

Highly skilled occupations in short supply (HSEOL): Academics who hold a qualification equivalent to National Framework of Qualifications Level 10 in a given discipline awarded no less than two calendar years prior to the date of application for an employment permit, with a minimum of one academic year of relevant teaching experience, and where the employment concerned is in an Irish university or Institute of Technology, were added to the list.

⁷¹ Irish Naturalisation and Immigration Service (2018a), p. 10.

⁷² Department of Business, Enterprise and Innovation (2018a).

⁷³ Sheridan (2017) (print version), p. 83.

⁷⁴ Department of Business, Enterprise and Innovation (2018a).

⁷⁵ Department of Business, Enterprise and Innovation (2018b).

⁷⁶ S.I. No. 95 of 2017.

General skills in short supply – Ineligible Categories of Employment List (ICEL): Exemptions from the ICEL list on a temporary basis were provided for the following occupations.

- Heavy goods vehicle drivers who have a category CE or C1E driving licence subject to a maximum quota of 120 General Employment Permits;
- Meat deboners – a second tranche of 160 General Employment Permits quota was released.⁷⁷

3.1.3 Review of HSEOL and ICEL

The Economic Migration Policy Unit of the Department of Business, Enterprise and Innovation made calls for submissions for review of the HSEOL and ICEL in quarter 2 and quarter 4 of 2017. Occupations on the HSEOL are professional positions in medicine, ICT, sciences, finance and business and are eligible for Critical Skills Employment Permits. Those on the ICEL are generally lower skilled occupations and are deemed ineligible for the grant of employment permits.

These reviews are conducted twice yearly in order to assess the continued relevance of the lists to the skills needs of the Irish economy. The rationale underpinning the inclusion on or omission from the lists of any particular occupation is driven by skills demands in the economy and is based on, in the first instance, research undertaken by the Expert Group for Future Skills Needs, co-ordinated by the National Skills Council, subsequently augmented by a consultation process.

Following the quarter 2 review, no changes were due to be made to either list, and the lists effective from 3 April 2017 remained in place for 2017.

3.1.4 Employment permits for HGV drivers

On 3 April 2017, a quota of 120 HGV drivers in possession of a valid category CE or C1E driving licence was included in the Employment Permits Regulations (see above). The Department of Business, Enterprise and Innovation announced on 29 November 2017 that it had been agreed, in consultation with the Department of Transport, Tourism and Sport and the Road Safety Authority, that permits could be granted to holders of valid mutually recognised licences for a period of up to two years. At the time of the announcement, mutual recognition agreements for valid CE/C1E licences were in place with South Africa, Australia, Japan and South Korea. At renewal stage, an Irish licence will be required to be submitted.⁷⁸

⁷⁷ Department of Business, Enterprise and Innovation (2017a).

⁷⁸ Department of Business, Enterprise and Innovation (2017b).

3.1.5 Employment permits for employees of employment agencies

During 2017, the Department of Business, Enterprise and Innovation provided clarification on the granting of employment permit applications to prospective employees of employment agencies. The advice clarified that an agency worker is a worker who is to work under a contract of employment for an employer other than the employment agency. Such a worker is not an employee of the employment agency for the purposes of obtaining an employment permit under the employment permits legislation and the application from the employment agency will be refused. However, there may be situations where no contract for employment with a separate employer exists, and the worker is paid and under the direct supervision of the employment agency, even though the work takes place on a third-party site. In such circumstances, the employment relationship can be deemed to be directly between the employment agency and the worker and the employment agency may make the employment permit application.⁷⁹

3.1.6 Review of employment permits policy

In 2017, in light of strong economic and employment growth, the Minister for Business, Enterprise and Innovation asked officials to review the policies underpinning the employment permits regime, to ensure that it remains supportive of Ireland's current labour market needs, be they skills or labour shortages in certain sectors. The review would examine the reduction of limitations for lower skilled occupations in the employment permits regime, in light of labour shortages in certain sectors. This review took place in 2018.⁸⁰

3.1.7 Atypical Working Scheme

During 2017, 2,781 of the 2,923 applications received were approved under the Atypical Working Scheme, which provides for employment contracts in the State that are short-term⁸¹ (90 days or less) and/or are not facilitated by the employment permit process. Contracts under the Atypical scheme can be for less than or greater than 90 days.⁸²

Permissions granted were largely in the medical sector – non-EEA national nurses undertaking the adaptation process prior to the application for an employment

⁷⁹ Department of Business, Enterprise and Innovation (2017c).

⁸⁰ The report of the review was published in September 2018. The review will be discussed further in the 2018 report of this series. Department of Business, Enterprise and Innovation (2018c).

⁸¹ Subject to the employment type in accordance with the lists published by the Department of Business, Enterprise and Innovation. Correspondence with Irish Naturalisation and Immigration Service: Immigration and Citizenship Policy Division, February 2018.

⁸² See Atypical Working Scheme – Criteria on www.inis.gov.ie.

permit, and non-EEA national locum doctors. Additionally a significant number of permissions were granted to engineers and computer skills specialists.⁸³

As reported for previous years, the Atypical Working Scheme was expanded to include permission for non-EEA workers to work in the Irish fishing fleet in December 2015. A total of 131 applications in respect of non-EEA national workers for the Irish fishing fleet were approved in 2017.⁸⁴ Issues regarding the situation of non-EEA national workers in the Irish fishing fleet are discussed further in Chapter 8.

3.2 STUDENTS AND RESEARCHERS

3.2.1 International students

International Education Mark (IEM)

As reported for 2016, the *International Education Strategy for Ireland 2016–2020* was published in October 2016.⁸⁵ A number of commitments in that Strategy were progressed during 2017.

One of these commitments related to the development of an International Education Mark (IEM), which was originally planned to come onstream in 2016.⁸⁶ The *International Education Strategy* committed as a strategic priority to ‘Ensure Ireland’s International Education offering is underpinned by a robust regulatory environment in order to safeguard Ireland’s reputation internationally. The IEM will be developed and legislation enacted to enhance our quality framework for international education in this regard.’⁸⁷

In May 2017, the Irish Government approved a draft outline of legislation to include provision for the International Education Mark (IEM). Announcing the Qualifications and Quality Assurance (Amendment) Bill, the Minister for Education said:

The new Bill will allow for the introduction of the International Education Mark, which is a significant part of the Government’s International Education Strategy which will grow the value of the sector by one third to €2.1 billion. Only providers who meet the robust quality assurance

⁸³ Correspondence with Irish Naturalisation and Immigration Service, Immigration and Citizenship Policy Division, February 2018.

⁸⁴ Correspondence with Irish Naturalisation and Immigration Service, Immigration and Citizenship Policy Division, January 2018.

⁸⁵ Sheridan (2017) (print version), pp. 88–89.

⁸⁶ Department of Justice and Equality (2015), p. 1.

⁸⁷ Department of Education and Skills (2016), p. 42.

procedures of QQI⁸⁸ will be allowed to carry the Mark. This will benefit both education and training providers and students by highlighting those providers who are delivering high quality educational services.⁸⁹

As reported for 2016, as the IEM was not implemented in 2016, the lifespan of the Interim List of Eligible Programmes (ILEP) (which lists the eligible educational programmes for immigration purposes) had to be extended.⁹⁰ A total of 929 new programmes were added to the ILEP across three updates taking place in March, August and December 2017, including both Higher Education and English language (ELT) programmes. This comprised a mix of new providers having a programme listed on the ILEP for the first time and existing providers having additional programmes listed.⁹¹

Education in Ireland Information Campaigns

The Education in Ireland⁹² website at www.educationinireland.com promotes third-level education opportunities for international students, including non-EEA national students, in Ireland. For non-EEA national students, the website includes information on immigration requirements. For example, in 2017, the website highlighted the increase in the duration of the Graduate Programme for postgraduate students (reported at section 3.2.2 below).⁹³

Education in Ireland and participating colleges continued to participate in international education fairs throughout 2017, including in China,⁹⁴ Malaysia,⁹⁵ Nigeria,⁹⁶ India⁹⁷ and Thailand.⁹⁸

3.2.2 Reform of student immigration regime

Revised Third Level Graduate Programme

As reported for 2016, plans were in progress to amend the Third Level Graduate Scheme to extend the duration of the Scheme for students at postgraduate level. The *International Education Strategy 2016–2020* committed that: ‘the current 12 month stay back permission for international students will be amended to further

⁸⁸ QQI (Quality and Qualifications Ireland) is an independent State agency responsible for promoting quality and accountability in education and training services in Ireland. See www.qqi.ie.

⁸⁹ Department of Education and Skills (2017a).

⁹⁰ Correspondence with Irish Naturalisation and Immigration Service, February 2017.

⁹¹ Correspondence with Irish Naturalisation and Immigration Service, Immigration and Citizenship Policy Division, February 2018.

⁹² Enterprise Ireland manages the Education in Ireland national brand under the authority of the Minister for Education and Skills. Enterprise Ireland is responsible for the promotion of Irish higher education institutions overseas. See www.educationinireland.com.

⁹³ ‘Ireland: 24 month stay back option’, News, available at www.educationinireland.com.

⁹⁴ The China Education Expo, October 2017. See www.educationinireland.com.

⁹⁵ The Star Education Fair, Malaysia, 2017. See www.educationinireland.com.

⁹⁶ Education in Ireland Fairs, Nigeria, September 2017. See www.educationinireland.com.

⁹⁷ Education in Ireland Fairs, India, February and November 2017. See www.educationinireland.com.

⁹⁸ The OCSC International Education Expo 2017, Thailand. See www.educationinireland.com.

incentivise high performing students to come to Ireland and to remain on after their studies, to meet the present skills and language needs as identified by business.’⁹⁹

The Third Level Graduate Scheme is intended to allow graduates to work while remaining in Ireland to seek employment and to apply for an employment permit.

On 1 June 2017, a revised Third Level Graduate Programme¹⁰⁰ was announced which applied to the graduating classes of 2017 onwards. Qualifying persons under this Programme may work full time for the duration of their residence permission under the Programme. These new rules do not apply to a person who graduated prior to 1 January 2017.

The Third Level Graduate Programme is open to graduates at Level 8 or above of the National Framework of Qualifications – i.e. with an honours-level bachelor’s degree, or above, awarded by a recognised Irish awarding body.

Graduates at Level 8 can avail of a period of residence in the State of up to 12 months or such shorter period as would bring their overall time spent in the State (as both a student and on this programme) to a total of seven years.

Graduates at Level 9 (postgraduate qualifications) can avail of a period of up to 24 months’ residence permission or such shorter period as would bring their total time in the State (both as a student and on this programme) to eight years. This residence permission is granted for 12 months initially. It can be renewed for a further 12 months (subject to the eight-year limit) when the graduate satisfies the immigration authorities that s/he has taken appropriate steps to access suitable employment at a graduate level.¹⁰¹

Transitional arrangements apply for graduates at Level 7 of the National Framework of Qualifications – i.e. with ordinary-level bachelor’s degrees – who could avail of a six-month residence permission under the previous scheme. Persons seeking to avail of this transitional arrangement must have been enrolled, on or before 31 May 2017, on a programme leading to an award at Level 7 on the National Framework of Qualifications. These transitional arrangements will cease to apply after 31 December 2019. Students enrolled after 31 May 2017 in a

⁹⁹ Department of Education and Skills (2016), p. 42.

¹⁰⁰ Irish Naturalisation and Immigration Service (2017a).

¹⁰¹ Irish Naturalisation and Immigration Service, July 2017. Response to EMN ad hoc query 2017.1189.

programme leading to an award at Level 7 will not be permitted to avail of the Third Level Graduate Programme.¹⁰²

3.3 IMMIGRANT INVESTOR AND ENTREPRENEUR PROGRAMMES

During 2017, 143 applications were received under the Start-Up Entrepreneur Scheme (STEP).¹⁰³ The STEP was established to stimulate productive investment in the State and to offer residency in the State with its associated advantages to business professionals who have a proven record of success, and their immediate family members. The STEP was devised to facilitate the relocation of international entrepreneurs who have a business that would potentially fit the Enterprise Ireland High Potential Start Up (HPSU) eligibility criteria.¹⁰⁴

A total of 334 applications were received under the Immigrant Investor Programme (IIP) in 2017.¹⁰⁵ By the end of 2017, applications for investments to the value of €570.7 million had been processed through the IIP.¹⁰⁶

A limited internal review of the Investor Programme was concluded by the Irish Naturalisation and Immigration Service (INIS) in the third quarter of 2017. However, this review examined the Programme only up to December 2016. As the Programme had gained momentum only in the second half of 2016, it was felt that it would be difficult to conduct an in-depth evaluation at that stage. A further comprehensive evaluation and analysis is planned.¹⁰⁷

Migrant Rights Centre Ireland (MRCI) announced the *Building Better Futures* programme in October 2017 on National Women's Enterprise Day. This tailored training programme in entrepreneurship was run by the MRCI in conjunction with the DCU Ryan Academy. The programme aimed to provide free training for 25 migrant women in entrepreneurship skills.¹⁰⁸

3.4 IRISH RESIDENCE PERMIT (IRP)

In Ireland, non-EU/EEA and non-Swiss nationals (aged 16 and over) who are present in the State for longer than 90 days are required to register for immigration

¹⁰² Irish Naturalisation and Immigration Service (2017a), paragraph 16. Available at www.inis.gov.ie.

¹⁰³ Correspondence with Irish Naturalisation and Immigration Service, Immigration and Citizenship Policy Division, January 2018.

¹⁰⁴ Department of Justice and Equality: Irish Naturalisation and Immigration Service, August 2017. Response to European Migration Network Ad Hoc Queries 2017.1200 and 2017.1201 – Start-up policies for third country nationals.

¹⁰⁵ Correspondence with Irish Naturalisation and Immigration Service, Immigration and Citizenship Policy Division, January 2018.

¹⁰⁶ Department of Justice and Equality (30 January 2018) Response to Parliamentary Question 4461/18. Available at www.justice.ie.

¹⁰⁷ Department of Justice and Equality (26 October 2017) Response to Parliamentary Question 45547/17. Available at www.justice.ie.

¹⁰⁸ Migrant Rights Centre of Ireland (2017a).

purposes. The registered person receives a registration certificate, previously known as the Garda National Immigration Bureau 'GNIB card'.

From 11 December 2017, the GNIB card was replaced by the Irish Residence Permit (IRP).

The new IRP is the Irish EU Common Format Residence Permit.¹⁰⁹ It includes a new design based on EU colour and layout rules; new information including a brief description of the immigration permission and the permission stamp number; and a microchip containing photo, fingerprints and personal details. The new IRP does not give rise to any changes to rights or entitlements for the non-EEA national.

The introduction of the card was accompanied by some changes to the administrative arrangements regarding registration.¹¹⁰ The INIS published a 'walk-through' information note on the registration process on its website.¹¹¹

3.5 PRE-CLEARANCE SCHEME FOR MINISTERS OF RELIGION AND LAY VOLUNTEERS

In December 2017, the INIS announced that the Immigration Scheme for Admission of Ministers of Religion and Lay Volunteers would be closed for the first three months of 2018, pending preparation of a new scheme with revised conditions of entry. The new procedure will include a pre-clearance procedure applicable to all applicants, whether or not they are visa-required nationals.^{112,113}

3.6 VISA POLICY

3.6.1 Statistics

Approximately 125,500 entry visa applications for both short and long stays were received by Ireland in 2017, an increase of 1% on 2016, and a cumulative increase of 41% since 2012. The approval rate for entry visa applications was 89%. The top five nationalities applying for visas in 2017 were India (21%); China (13%); Russia (11%); Nigeria (5%); and Turkey (4%).¹¹⁴

¹⁰⁹ Department of Justice and Equality (6 February 2018) Response to Parliamentary Question 5708/18. Available at www.justice.ie.

¹¹⁰ Irish Naturalisation and Immigration Service (2017b).

¹¹¹ Irish Naturalisation and Immigration Service (2017c).

¹¹² Irish Naturalisation and Immigration Service (2017d).

¹¹³ The new pre-clearance procedure came into operation from 30 April 2018 and will be discussed in the 2018 report of this series. See Irish Naturalisation and Immigration Service (2018b).

¹¹⁴ Correspondence with Irish Naturalisation and Immigration Service, February 2018.

A total of 110,403 visas were granted in 2017, an increase of 5,831 on 2016. The top five countries for which visas were decided were India (20.6%); China (13.4%); Russia (11.1%); Pakistan (5.1%); and Nigeria (4.6%).¹¹⁵ The top five countries where visa applications were lodged were India, China, Russia, United Kingdom and Saudi Arabia.¹¹⁶

There was a small decrease in the approval rate over 2016 – to 89% from 90%. According to INIS, this was because INIS processed and refused a large number of outstanding EU Treaty Rights visa applications from previous years. When these cases are excluded, the overall grant rate was 90%, as in 2016.¹¹⁷

3.6.2 Legislation

In June 2017, Ireland added Georgia and Ukraine to the list of countries whose nationals are required to hold a transit visa.¹¹⁸

3.7 CASE LAW

3.7.1 INIS Policy Document on non-EEA Family Reunification

Nwosu v Minister for Justice and Equality [2017] IEHC 372

In this case, Faherty J considered a challenge to a refusal of a join spouse visa on the basis of the failure to satisfy the requirements of the INIS Policy Document on non-EEA Family Reunification.

The first named applicant was a health care worker and an Irish citizen. The second named applicant was a business owner and a Nigerian citizen. The first named applicant was born in Nigeria but moved to Ireland in 2002. In 2008, she was granted three years' permission to remain in the State. In her grounding affidavit, the first named applicant averred that she met the second named applicant in 2009 when she went to Nigeria on holiday. During that time they became romantically involved. After she returned to Ireland they maintained their relationship by way of electronic communication. The first named applicant returned to Nigeria to visit the second named applicant on numerous occasions thereafter. In 2011, the first named applicant's permission to remain in the State was renewed for a further three years.

On 27 June 2014, the applicants were married in a registry office in Lagos. The first named applicant remained in Nigeria until July 2014. On 20 September 2014, she

¹¹⁵ Irish Naturalisation and Immigration Service (2018a), p. 13.

¹¹⁶ European Migration Network (2018a).

¹¹⁷ Irish Naturalisation and Immigration Service (2018a), p. 13.

¹¹⁸ Immigration Act 2004 (Visas) (Amendment) Order 2017 (S.I. No. 264 of 2017).

became an Irish citizen. In or about February 2015, the second named applicant applied to the respondent for a visa to join the first named applicant in Ireland. This application was refused by the respondent by decision dated 8 April 2015.

On 19 May 2015, the applicants, through their solicitor, applied for a review of the respondent's decision. By letter dated 11 June 2015, the second named applicant was informed of the respondent's decision to refuse the application for a review. In summary, the reasons for the refusal were the same as those which were set out in the first instance refusal, namely that the granting of the visa 'may result in a cost to public funds' and 'may result in a cost to public resources'. The applicants were informed that their appeal had been examined in accordance with the 'Policy Document on Non-EEA Family Reunification' (the Policy Document) which, the applicants were informed, had been prepared 'in accordance with public policy and in observance of the constitutional, ECHR and other rights of the parties and of society in general' and that such rights had been examined in the particular circumstances of the second applicant's case including the correspondence dated 19 May 2015 from the applicants' solicitor and all supporting documentation. The applicants subsequently instituted judicial review proceedings challenging the refusal of the visa, and leave was granted by MacEochaidh J on 13 July 2015.

The applicants submitted that the Minister erred manifestly in law and acted unreasonably and irrationally and fettered her own discretion in solely applying the terms of the Policy Document in order to refuse the application. It was argued that the Minister applied the Policy Document to the application in respect of the finances of the first named applicant and refused the application as a result without also and simultaneously considering and weighing in the balance the rights of the applicants pursuant to the European Convention on Human Rights (the Convention) and the Constitution. It was further contended that the proportionality exercise undertaken by the Minister was unlawful as the visa was refused based solely on financial considerations and prior to any assessment of the individual rights in question. The applicants also complained that the Minister fettered her own discretion in applying strictly the terms of the Policy Document in order to refuse the application by applying the strict and rigid policy in all of the circumstances and failing to consider at all the first named applicant's current and future income and employment status in the State. This was so in circumstances where there was evidence before the Minister that the first named applicant's financial position had altered dramatically since the original application.

In relation to the application of the Policy Document regarding minimum financial income which the applicants did not meet, Faherty J rejected the challenge to the rationality and reasonableness of the finding that the second named applicant's presence in the State was likely to put pressure on the family's financial resources with the likelihood of a cost to public funds and public resources. Having regard to

the minimum income threshold set out in the Policy Document (namely a cumulative gross income over and above any State benefits of not less than €40,000 in the preceding three years), and the fact that the applicants fell short of this threshold, it was held that the Minister's decision was within the parameters of reasonableness. Faherty J also rejected the applicants' complaint that the decision-maker did not properly assess or weigh the applicants' rights under the Constitution or otherwise fettered her discretion, and accordingly refused the reliefs sought.

Principles: The Minister was entitled to refuse an application for a join spouse visa on the basis that the applicants did not meet the minimum income threshold set out in the INIS Policy Document on non-EEA Family Reunification and therefore finding that the grant of the visa was likely to put pressure on the family's financial resources with the likelihood of a cost to public funds and public resources.

3.7.2 Whether students are to be regarded as settled migrants

WS v Minister for Justice and Equality [2017] IEHC 128; Rughoonauth v Minister for Justice and Equality (No.2) [2017] IEHC 241; SO v Minister for Justice, Equality and Law Reform [2017] IEHC 326

There were a number of conflicting decisions of the High Court in 2017 concerning whether students should be regarded as settled migrants for the purposes of an art.8 assessment of their rights when the Minister makes a deportation order.

In *WS v Minister for Justice and Equality* [2017] IEHC 128, the applicant was a Malaysian citizen who arrived initially in Ireland in 2007 with his wife. They had secured a visitors' permission to remain for 90 days; however, they had overstayed this period by approximately two years when they returned to Malaysia in 2009. In July 2009 the applicant secured a one-year valid student visa and his wife and child accompanied him without permission save that they were visa-exempt for a period of 90 days. The student visa expired on 22 July 2010.

On 7 June 2012 the solicitor on behalf of the applicant engaged with the respondent to regularise the position of the applicant, which engagement culminated in a three-option letter of 14 February 2013. Subsequently, by letter of 5 March 2013, representations were made on behalf of the then 3 applicants. A letter of 10 October 2013 from the respondent required further documents and also requested that the applicants furnish any other information necessary for the application. By response of 15 October 2013 it was indicated that no further information was to be forthcoming.

The Minister subsequently made a deportation order on 27 March 2014, and the applicant instituted proceedings challenging same on the basis that the

consideration of the private life rights of the applicant flew in the face of common sense in that it was found that the decision to deport did not constitute an interference of such gravity as to engage art.8 of the ECHR. It was complained that no reason or rationale was provided. It was also complained that the Minister erred in his interpretation of ‘consequences of such gravity’ and erred generally in the application of the test enunciated in *R. (Razgar) v Secretary of State for the Home Department* [2004] 2 A.C. 368 insofar as the Minister failed to assess whether or not the interference fell into one of the exceptions set out in art.8(2) of the ECHR. The proceedings initially related to the private life rights of all three of the family members; however, following the decision in *Dos Santos v Minister for Justice* [2015] IECA 210; [2015] 3 I.R. 411; [2015] 2 I.L.R.M. 483 and *CI v Minister for Justice* [2015] IECA 192; [2015] 3 I.R. 385; [2015] 2 I.L.R.M. 389, the application on behalf of the wife and the child was abandoned and the matter proceeded on the basis of an application on behalf of the husband only (who held a student permission for a one-year period between 2009 and 2010). The applicant asserted that he should be assessed as a settled migrant from July 2009 to July 2010 when he had a valid student visa, relying on the decisions of the Court of Appeal in *CI* as well as *Luximon v Minister for Justice* [2016] IECA 382; [2016] 2 I.R. 725; [2017] 2 I.L.R.M. 35 and *Balchand v Minister for Justice* [2016] IECA 383; [2016] 2 I.R. 749; [2017] 2 I.L.R.M. 55.

In resisting the argument that the applicant might be considered a settled migrant for any portion of his time in Ireland including as a student between July 2009 and July 2010, the Minister referred to the fact that student permission was particularly restricted and did not have the same liberties as permission to work in the State, for example, it is not possible to bring family members into the State on foot of a student permission where it is possible at least to apply in respect of an individual who is within the State on work permission. The Minister also referred to various European Court of Human Rights decisions such as *Jeunesse v Netherlands* (2015) 60 E.H.R.R. 17, *Uner v Netherlands* (2007) 45 E.H.R.R. 14 and *Balogun v United Kingdom* (2013) 56 E.H.R.R. 3 to the effect that it should be assumed that when the European Court of Human Rights refers to ‘settled migrants’ it is doing so in relation to parties who for the majority of the period in a given country are there with permission as opposed to being there illegally or without permission.

Having reviewed the Strasbourg jurisprudence, O’Regan J concluded that she was not satisfied that the conditions which might have attached to a student visa would preclude such a person from being considered to be a settled migrant for the period for which they have permission. Accordingly, O’Regan J concluded that the applicant for the period from July 2009 to July 2010 was a settled migrant as opposed to being a party during that particular period of time who might be considered to be within the State in a precarious position. However, O’Regan J went on to reject the applicant’s challenge to the decision to make a deportation

order in respect of him, notwithstanding the absence of a proportionality assessment pursuant to art.8(2) on the basis that the breach of art.8(1) was not sufficient to engage art.8(2). This conclusion was reached by reference to the limitations in the nature of the representations put before the Minister on behalf of the applicant in respect of the extent of his private life in the State. Accordingly, the challenge to the deportation order was refused. O'Regan J subsequently refused a certificate of leave to appeal (*WS v Minister for Justice and Equality* [2017] IEHC 282).

Humphreys J in *Rughoonauth v Minister for Justice and Equality (No.2)* [2017] IEHC 241 disagreed with the decision of O'Regan J in *WS* that a student should be regarded as a settled migrant for the period in respect of which that permission was held. Humphreys J held that a distinction must be drawn between persons present in the State unlawfully and persons present in the State on a precarious basis. Humphreys J held that students fell into the latter category, and that it was only in exceptional circumstances that art.8 would be violated by the deportation of a person who does not have *both* a lawful and a settled immigration status. Accordingly, it was held that there were no substantial grounds to seek to quash the deportation orders in this case because each applicant had been in the State either unlawfully or on time-limited student permissions and it was therefore clearly open to the Minister to hold that the consequences of each applicant's removal were not of such gravity as to require a proportionality assessment under art.8(2).

However, in *SO v Minister for Justice, Equality and Law Reform* [2017] IEHC 326, O'Regan J subsequently reaffirmed her finding in *WS* that a student permission gives rise to the applicant being characterised as a 'settled migrant' for that period, notwithstanding the decision of Humphreys J in *Rughoonauth*.

The decisions in *SO* and *Rughoonauth* are under appeal and are scheduled to be heard by the Court of Appeal in October 2018.

Principles: Rughoonath – Non-nationals who are resident in the State on student permissions should not be regarded as settled migrants.

WS – The conditions attached to a student visa did not preclude such a person from being considered to be a settled migrant for the period for which they have permission.

3.7.3 Whether Irish citizen has constitutional right to reside in the State with non-national spouse

Gorry v Minister for Justice and Equality [2017] IECA 282; Ford v Minister for Justice and Equality [2017] IECA 281; ABM v Minister for Justice and Equality [2017] IECA 280

In these cases, the Court of Appeal considered whether, and to what extent, it may be said that an Irish citizen has a constitutional right to reside in the State with his or her non-national spouse.

In each case, one of the applicants was an Irish citizen and was married to the other applicant who was a foreign national. The marriages in question took place in either Ireland or Nigeria, and all three were recognised by the Minister as lawful marriages. Each application for judicial review sought an order of certiorari of an immigration decision by the Minister which in substance precluded or refused permission for the non-national spouse of the Irish citizen to remain in the State or to enter the State. In each of the proceedings, the second applicant was a national of Nigeria and not a citizen or national of any EU or EEA state.

The High Court decisions in *Gorry* ([2014] IEHC 29) and *Ford* ([2015] IEHC 720) granted orders of certiorari of the Minister's decision. The application was refused in *ABM* ([2016] IEHC 489). All three High Court judgments considered the appropriate approach required of a decision maker in relation to an immigration decision concerning a non-national spouse of an Irish citizen where the Irish citizen relied upon rights conferred or protected by the Constitution (and in particular Art.41) and both spouses also relied on rights under art.8 of the European Convention on Human Rights.

The High Court judgments differed in the conclusions reached on certain of these issues. In particular, the judgments in *Gorry* and *ABM* reached different conclusions both as to the approach required by art.41 of the Constitution and the test to be applied in considering the State's obligations under art.8 of the ECHR. In broad approach the judgment in *Ford* followed that in *Gorry*.

Finlay Geoghegan J delivered the main judgment in each case, effectively holding that the Minister did not consider the constitutional rights of the applicants in accordance with law. It was held that an Irish citizen does not have an automatic right pursuant to the Constitution to cohabit with his or her non-national spouse in Ireland, as such a constitutional right would appear to be contrary to the inherent power of the State to control immigration subject to international obligations. This was so even if one considered that any such constitutional right was a prima facie right or was not an absolute right and may be limited. However, it was held that the applicants in each case as a lawfully married couple and a family

within the meaning of Art.41, and the Irish citizen spouses in each case, had constitutionally protected rights to have the Minister consider and decide their application with due regard to:

1. the guarantee given by the State in Art.41.1.2° to protect the family in its constitution and authority;
2. a recognition that the applicants in each case were a family, a fundamental unit group of society possessing inalienable and imprescriptible rights which rights included a right to cohabit which was also an individual right of the citizen spouse which the State must, as far as practicable, defend and vindicate (Art.41.1 and Art.40.3.1°);
3. a recognition that the decision that the family should live in Ireland was a decision which they had the right to take and which the State had guaranteed in Art.41.1 to protect; and
4. a recognition of the right of the Irish citizen to live at all times in Ireland as part of what Art.2 refers to as the 'birthright ... to be part of the Irish Nation' and the absence of any right of the State (absent international obligations which do not apply) to limit that right.

Finlay Geoghegan J held that the Constitution places corresponding obligations on the Minister to take the decision as to whether or not to permit the non-national spouse of an Irish citizen to reside in Ireland with due regard to each of the above constitutional rights of the applicants. However, it was accepted that the Minister, in taking the decision, may also take into account other relevant considerations in accordance with the State's interests in the common good.

Finally, Finlay Geoghegan J held that the 'insurmountable obstacles' test set out by the European Court of Human Rights remained applicable to a consideration by the Minister (if necessary) of the application pursuant to his obligations under s.3 of the *European Convention on Human Rights Act 2003* having regard to art.8 of the *European Convention on Human Rights* relating to deportation of the non-national spouse of an Irish citizen.

The Supreme Court has granted leave to appeal in each case (*Gorry* [2018] IESCDET 56; *Ford* [2018] IESCDET 55; and *ABM* [2018] IESCDET 54).

Principles: The Minister did not consider the constitutional rights of the applicants in accordance with law, in particular

1. *the guarantee given by the State in Art.41.1.2° to protect the family in its constitution and authority;*

2. *a recognition that the applicants in each case were a family, a fundamental unit group of society possessing inalienable and imprescriptible rights which rights included a right to cohabit which was also an individual right of the citizen spouse which the State must, as far as practicable, defend and vindicate (Art.41.1 and Art.40.3.1°);*
3. *a recognition that the decision that the family should live in Ireland was a decision which they had the right to take and which the State had guaranteed in Art.41.1 to protect; and*
4. *a recognition of the right of the Irish citizen to live at all times in Ireland as part of what Art.2 refers to as the 'birthright ... to be part of the Irish Nation' and the absence of any right of the State (absent international obligations which do not apply) to limit that right.*

3.7.4 Damages for breach of EU law

Ogieriakhi v Minister for Justice and Equality [2017] IESC 52; [2017] 2 I.L.R.M. 340

The availability of damages for breach of EU law was considered by the Supreme Court in this case. The plaintiff's wife, a French national, lived and worked in the State between 1999 and the end of 2004, and the plaintiff resided here throughout that period and beyond. In 2007, the plaintiff applied for permanent residence pursuant to art.16 of Directive 2004/38/EC and reg.12 of the Irish implementing regulations, the European Communities (Free Movement of Persons) (No.2) Regulations 2006 (S.I. No. 656/2006).

The Minister refused this application on two principal grounds. First, the plaintiff's wife had left the State in December 2004. Under the then-current regime, the plaintiff had no further right of residence, and he was refused an extension of leave to reside in 2005. That gave rise to a question whether it was possible for him, as a person whose presence was not authorised at the time, to acquire rights on the coming into force of the new Directive and domestic regulations in 2006. Second, the plaintiff and his wife had, as a matter of fact, separated and were not living together before she left. In the Minister's view, that raised the question whether he could be said, as a matter of law, to have been legally residing with her either before or after her departure.

If the correct view had been taken of the plaintiff's application, it would have been clear that he was entitled to permanent residence and was therefore entitled to continue to work without the need to obtain a work permit. The plaintiff was dismissed by his employer in October 2007 because he did not have a work permit.

After the decision in *Secretary of State for Work and Pensions v Lassal (Case C-162/09)* [2010] E.C.R. I-9217, the Minister undertook to review the plaintiff's application for permanent residence and in November 2011, he was granted permanent residency.

The plaintiff subsequently initiated proceedings claiming damages for breach of European Union law and for breach of constitutional rights.

The High Court (Hogan J) decided to refer certain questions to the Court of Justice of the European Union (see [2013] IEHC 133). After receipt of that Court's ruling, Hogan J held that the plaintiff was entitled to damages for loss suffered by reason of the failure on the part of the State to properly implement the Directive (2014] IEHC 582; [2015] 1 I.L.R.M. 344). He also awarded damages in respect of the dismissal on the basis that it constituted a breach of the plaintiff's constitutional right to a good name.

This decision was overturned in its entirety by the Court of Appeal ([2016] IECA 46; [2016] 1 I.L.R.M. 504). The Court of Appeal considered that the conditions for the jurisdiction to award damages for failure to implement EU measures had not been met. In finding that the breach by the State was not sufficiently serious, the court ruled that the mistake had been honest and excusable, and found that the Directive had not been sufficiently clear and precise to give rise to liability for the error in interpretation. The Court of Appeal further held that there was no applicable national legal principle under which the plaintiff was entitled to damages.

By determination dated 16 June 2016 (see [2016] IESCDT 66), the plaintiff was granted leave to appeal to the Supreme Court on the following issues:

- a. whether an honest and excusable misunderstanding on the part of the State officials as to the requirements of a Directive is a significant factor in considering whether or not the breach of the Directive was serious;
- b. whether a person who has suffered damage as a result of the incorrect transposition of a Directive in this State is entitled to claim damages under domestic law, or is confined to the criteria established by the Court of Justice of the European Union in *Francovich* and *Brasserie du Pêcheur*;
- c. whether the finding that the failure of the State to implement the Directive correctly did not give rise to damages under the principles set out in *Francovich* and *Brasserie du Pêcheur* necessarily entailed a finding that the plaintiff had no right to damages under domestic law, including under the Constitution;

- d. whether the plaintiff, as a person who was dismissed because of the application to him of regulations which failed to properly implement the Directive, had any remedy under domestic law;
- e. whether the obligation to mitigate loss can require a person in the plaintiff's position to accept an unwritten offer of employment.

The Supreme Court dismissed the appeal. O'Malley J delivered the judgment of the court, noting that State liability for loss and damage caused by infringements of EU law for which the State could be held responsible was inherent in the system of the Treaty. It was noted that the right to reparation arose when three conditions were met: the rule of law infringed must be intended to confer rights on individuals; the infringement must be sufficiently serious; and there must be a direct causal link between the breach of the obligation and the damage sustained by the injured party.

In respect of the second condition, O'Malley J noted that the decisive test for finding that an infringement of EU law was sufficiently serious was whether the Member State concerned 'manifestly and gravely disregarded the limits of its discretion'. The standard was not as high as that required for the establishment of misfeasance in public office, since that concept was inconceivable in the case of a legislature. To impose that standard would, in practice, make it impossible or extremely difficult to obtain reparation for a breach where it was attributable to a national legislature. It was held that the factors which the competent court may take into consideration included the clarity and precision of the rule breached, the measure of discretion left by that rule to the national or Community authorities, whether the infringement and the damage caused was intentional or involuntary, whether any error of law was excusable or inexcusable, the fact that the position taken by a Community institution may have contributed towards the omission, and the adoption or retention of national measures or practices contrary to Community law. O'Malley J also held that good faith on the part of officials was relevant to the extent that a finding of improper motivation would probably be decisive as against the State. However, good faith and honest misapprehension could not be sufficient to excuse the State from liability in an appropriate case. Similarly, a mistake as to the true meaning of a legal measure might be shared with the authorities of one or more other Member States, and yet, objectively, be clearly wrong.

Applying this test in the instant case, O'Malley J held that the applicant was not entitled to *Francovich* damages. Furthermore, it was held that while it was possible, depending on the facts of a given case, that a breach of EU law could as a matter of fact be accompanied by features giving rise to independent claims under Irish law, what could not be done was to find a free-standing right to damages under national law where the *Francovich* criteria were not satisfied, if the wrong

done was a wrong under EU law. The latter was a separate legal order, with autonomous concepts that must be applied uniformly throughout the Union.

Principles: The plaintiff/appellant was not entitled to Francovich damages because the error of law made by the Minister in refusing his application for permanent residence was not inexcusable.

CHAPTER 4

International protection

4.1 INTERNATIONAL PROTECTION STATISTICS

The single application procedure under the *International Protection Act 2015* was implemented in 2017.¹¹⁹ Applications for refugee status, subsidiary protection and permission to remain are now assessed as part of a single application procedure, replacing the former sequential process under the *Refugee Act 1996* and subsidiary protection regulations.¹²⁰ The statistics for 2017 in this Report, therefore, no longer show separate applications for subsidiary protection status as in earlier years.¹²¹ However, as reported at section 4.2.1 below, applications for subsidiary protection under the earlier regulations were made during 2017 under specific conditions as a result of the judgment in the case *ED v Minister for Justice and Equality*.¹²²

4.1.1 Protection applications

During 2017, a total of 2,926 applications for international protection status were submitted to the International Protection Office (IPO). These figures include relocation cases from Greece under the EU relocation programme. This was an increase of approximately 30% over applications for refugee status submitted to the Office of the Refugee Applications Commissioner (ORAC) in 2016, when 2,244 applications were made. It should be noted that the applications in 2017 cover both refugee and subsidiary protection status under the new single procedure. In 2016, 431 new applications for subsidiary protection had also been submitted to ORAC.¹²³

As Figure 4.1 below shows, the main countries of origin for applicants in 2017 were Syria, Georgia, Albania, Zimbabwe and Pakistan.

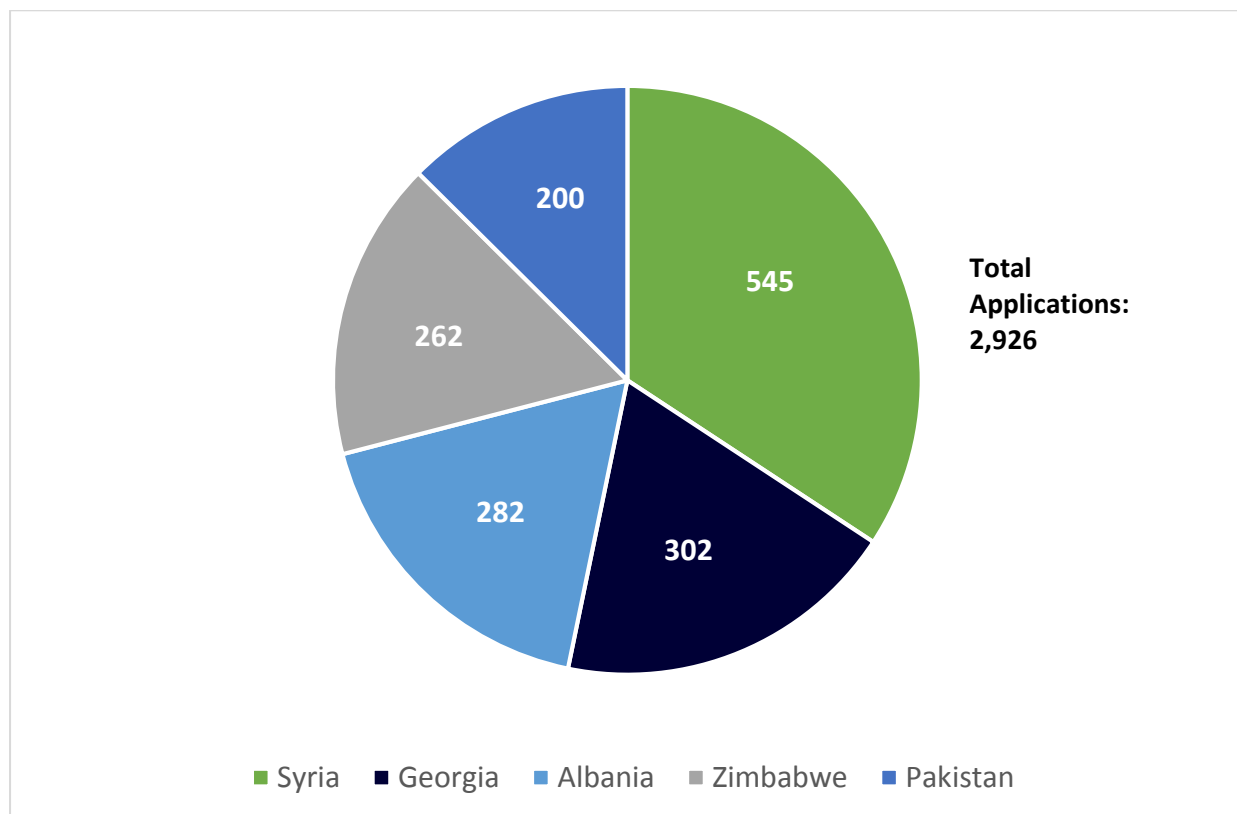
¹¹⁹ For further detail on the single application procedure and the commencement of the *International Protection Act 2015*, see Sheridan (2017).

¹²⁰ European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013).

¹²¹ In previous years, statistics were sourced from the Office of the Refugee Applications Commissioner (ORAC) *Annual Report*. The International Protection Office (IPO) did not publish an annual report in 2017 and statistics in relation to protection applications have been sourced from published monthly IPO statistical reports and parliamentary questions,

¹²² *ED v Minister for Justice and Equality* [2017] IECA 20.

¹²³ Sheridan (2017) (print version), p. 27.

FIGURE 4.1 TOP FIVE NATIONALITIES FOR INTERNATIONAL PROTECTION APPLICATIONS 2017

Source: *International Protection Office Statistics, December 2017.*

As in 2016, Syria was the top nationality for protection applications in 2017. These applications were mostly relocation cases.¹²⁴ The second highest nationality for protection applicants was Georgia, with 302 applications. Applications from Georgian nationals increased by over 300% over 2016 (73 applications). While Ireland is not part of the Schengen area, the increase in Georgian applicants coincided with the introduction of visa-free travel in the Schengen area¹²⁵ for Georgian nationals. Applications from nationals of Albania and Zimbabwe were also in the top five nationalities in 2016. Of interest, Ireland accounted for 32.5% of protection applications from nationals of Zimbabwe in the EU in 2017. By contrast, Ireland's share of Syrian applications was 0.52%.¹²⁶ According to Eurostat (rounded) figures on first instance decisions for 2017, Ireland made a total of 885 decisions. Of the positive decisions, there were 640 grants of Geneva Convention status, 50 of subsidiary protection status and 70 of humanitarian status. Some 125 applications were rejected. Of the total positive decisions, 485 related to applicants with Syria as the country of citizenship.¹²⁷

¹²⁴ Correspondence with International Protection Office, October 2018.

¹²⁵ Short-stay Schengen visas. Schengen visa liberalisation for Georgia came into effect on 23 March 2017.

¹²⁶ European Migration Network (2018a).

¹²⁷ Eurostat – First instance decisions on applications by citizenship, age and sex. Annual aggregated data (rounded). Table migr_asydcfsta. Data extracted 17/10/2018. Available at <https://ec.europa.eu/eurostat>.

In addition to new applications, the IPO inherited a significant caseload to be processed under transitional provisions of the *International Protection Act 2015*. This included cases transferred from the former Refugee Appeals Tribunal (RAT) and refugee status and subsidiary protection cases transferred from the former ORAC. Some 1,550 asylum cases had remained on hand in ORAC at end 2016.¹²⁸ All asylum cases were transferred to the new IPO for processing under the transitional provisions of the new Act.¹²⁹ In addition, more than 1,800 refugee status appeals which had been pending at the end of December 2016 were transferred from the RAT to the IPO for consideration of subsidiary protection and permission to remain.¹³⁰ Some 406 subsidiary protection cases were outstanding at the beginning of 2017, of which 48 remained at the end of the year.^{131, 132} Out of the overall total of 5,100 applications which were awaiting processing in the IPO at the end of 2017, some 2,800 were applications which had been transferred under the transitional arrangements.¹³³

4.1.2 Appeals

Throughout 2017, a total of 887 appeals in relation to international protection were received by the International Protection Appeals Tribunal (IPAT).¹³⁴ This contrasts with 1,559 new appeals in relation to refugee status, and 219 subsidiary protection appeals,¹³⁵ which were submitted to the RAT in 2016. Some 454 appeals were on hand at the beginning of 2017. It should be noted that the majority of the appeals received by the IPAT in 2017 were those included in the transitional arrangements under the *International Protection Act 2015*; this issue is covered in greater detail at section 4.2.2 below. In addition, it was not until the second half of 2017 that a significant number of appeals were returned to the IPAT under the transitional arrangements, accounting for almost 79% of the total number received. The majority of the refugee status appeals that had been pending before the IPAT's predecessor, the RAT, in 2016 were transferred to the IPO for consideration of applicants' entitlement to subsidiary protection under the new

¹²⁸ Office of the Refugee Applications Commissioner (2017).

¹²⁹ Parliamentary Question 17649/17. Available at www.justice.ie.

¹³⁰ International Protection Appeals Tribunal (2018), p. 9.

¹³¹ Irish Naturalisation and Immigration Service (2018a).

¹³² 'Of the 406 pending, 64 of these will be processed under the European Union (Subsidiary Protection) Regulations 2013 and 234 cases will fall to be processed under the *International Protection Act 2015*. The remaining 108 cases were applications for Subsidiary Protection which were never commenced as there were pending asylum applications for these applicants. Under the Single Procedure these applications will be considered as one and the separate subsidiary protection application will cease to exist.' Office of the Refugee Applications Commissioner (2017).

¹³³ Department of Justice and Equality (30 January 2018) Responses to Parliamentary Questions 3928/18, 3929/18 and 3930/18. Available at www.justice.ie.

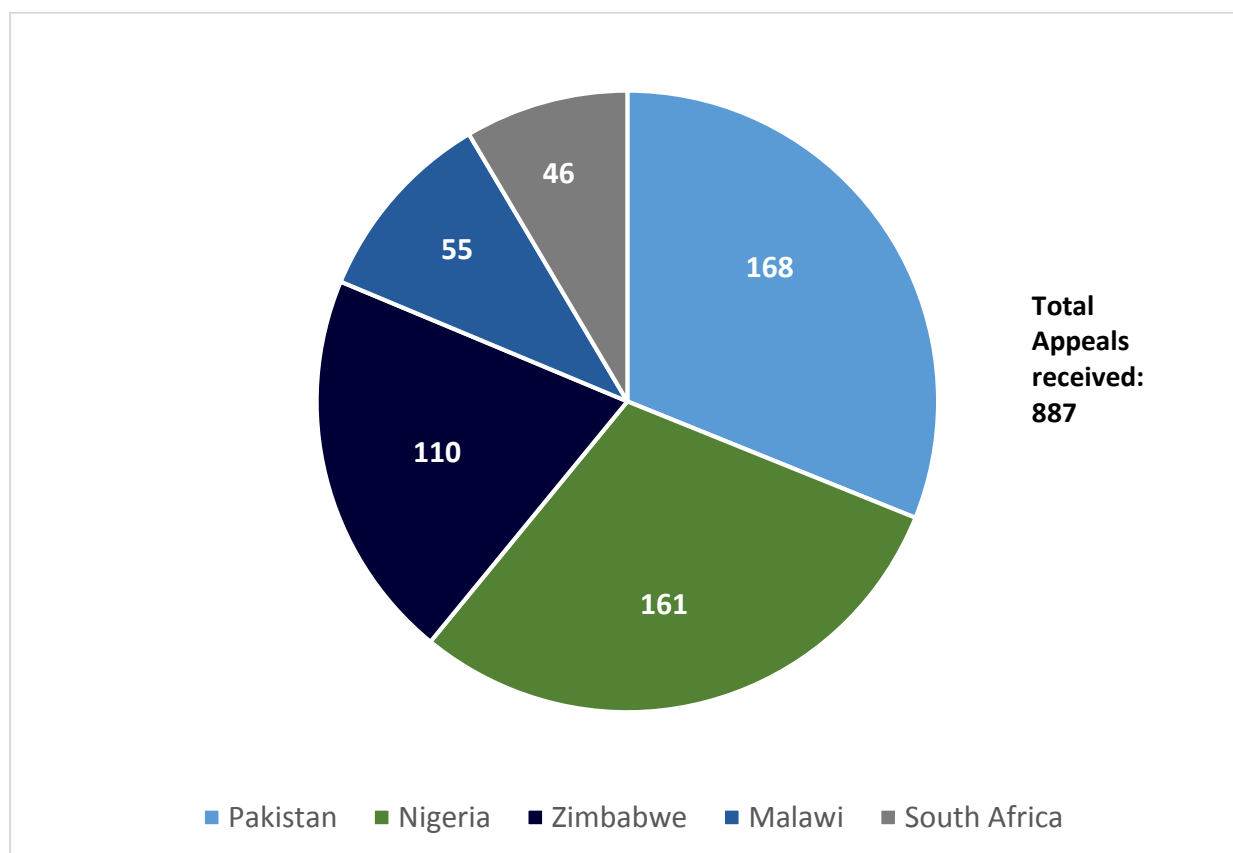
¹³⁴ International Protection Appeals Tribunal (2018), p. 29. A total of 887 appeals were received by the Tribunal in 2017 – 22 remained at the pre-acceptance stage at the end of the year (*ibid.*, p. 45).

¹³⁵ Refugee Appeals Tribunal (2017), p. 9.

legislation.¹³⁶ Pending subsidiary protection appeals and appeals under the Dublin III Regulation were retained and decided by the IPAT.¹³⁷

As shown in Figure 4.2 below, the top five countries of origin for appeals received by the Tribunal during 2017 were Pakistan, Nigeria, Zimbabwe, Malawi and South Africa.

FIGURE 4.2 TOP FIVE NATIONALITIES OF APPELLANTS TO INTERNATIONAL PROTECTION APPEALS TRIBUNAL, 2017



Source: *International Protection Appeals Tribunal Annual Report 2017*

Decisions were issued in 606 cases. The breakdown of decisions between the different types of appeals, including those in relation to transitional provisions under the *International Protection Act 2015*, are set out in Table 4.1 below. This includes appeals in relation to the new functions of the IPAT regarding appeals against inadmissibility decisions under section 21 of the *International Protection*

¹³⁶ Correspondence with International Protection Appeals Tribunal, October 2018

¹³⁷ International Protection Appeals Tribunal (2018).

Act 2015, and appeals against refusal to permit a subsequent application under section 22 of the *International Protection Act 2015*.

TABLE 4.1 BREAKDOWN OF DECISIONS ISSUED BY INTERNATIONAL PROTECTION APPEALS TRIBUNAL IN 2017

Dublin III Regulation decisions issued	231
Refugee status decisions issued under the transitional provisions of the <i>International Protection Act 2015</i>	15
Total number of substantive international protection (subsidiary protection only) decisions issued	14
Total number of subsidiary protection decisions issued under the transitional provisions of the <i>International Protection Act 2015</i>	235
Total number of single procedure substantive international protection decisions issued	93
Inadmissibility appeals decisions issued	8
Appeals against refusal to permit subsequent application – decisions issued	10
TOTAL	606

Source: *International Protection Appeals Tribunal Annual Report 2017*.¹³⁸

The IPAT affirmed the first instance recommendation in 294 cases and set aside the first instance recommendation in 76 cases relating to international protection, subsidiary protection, subsequent appeals and inadmissible appeals. The total set asides – where the appellant’s appeal was successful – came to 21% of the total decisions.¹³⁹

Under the Dublin III Regulation, which establishes the criteria and mechanisms for determining the Member State responsible for examining an application for international protection, the IPAT affirmed the original recommendation in 210 cases and set aside the recommendation in 19 cases. The total set asides – where the appellant’s appeal was successful – came to 8% of the total Dublin decisions.¹⁴⁰

4.1.3 Permission to remain

Permission to remain under section 49 of the *International Protection Act 2015* was granted by the Minister for Justice and Equality to a total of 72 persons in 2017.¹⁴¹

¹³⁸ International Protection Appeals Tribunal (2018), pp. 39–42.

¹³⁹ *Ibid.*, p. 48.

¹⁴⁰ *Ibid.*, p. 49.

¹⁴¹ Correspondence with Repatriation Division, INIS, September 2018.

4.1.4 Transfers under the Dublin Regulation

A total of 56 applicants for international protection were transferred under the Dublin III Regulation to the EU country in which they had first made an application during 2017.¹⁴²

4.1.5 Family reunification

During 2017, some 442 family reunification applications were received under the *International Protection Act 2015* in respect of 1,090 subjects. Some 62 subjects were approved. The top five nationalities of subjects accepted were Syria (354), Afghanistan (149), Democratic Republic of Congo (78), Iraq (59) and Pakistan (52). In addition, applications that had been received in 2016, under the *Refugee Act 1996*, were processed during 2017. There were 729 subjects approved in 2017 under the provisions of the *Refugee Act 1996*.¹⁴³

4.1.6 Judicial review

During 2017, 497 judicial review applications were submitted to the High Court on the ‘asylum list’, a small increase over the 458 applications in 2016. It should be noted that cases on the asylum list include not only asylum-related cases but also judicial review against Ministerial decisions in other immigration matters; for example, naturalisation, EU Treaty rights and family reunification. Some 189 judicial reviews on this list were resolved by the High Court in 2017, with 143 cases settled out of court. Orders were made in a total of 980 cases.¹⁴⁴

The Court of Appeal received 32 new asylum list appeals during the year, with 21 cases pending from the beginning of 2017. Some 25 cases were determined in court during the year and two were withdrawn out of court. The Court of Appeal also had 34 asylum list ‘Article 64’¹⁴⁵ appeals pending before it which had been transferred from the Supreme Court.¹⁴⁶

The Supreme Court delivered the landmark judgment in *NVH v Minister for Justice and Equality* in May 2017, relating to the right to work for asylum applicants (see section 4.9 for case summary).

Chief Justice Frank Clarke noted in the *Courts Service Annual Report 2017* that an initiative to reduce waiting times in the High Court asylum list at pre-leave stage

¹⁴² Irish Naturalisation and Immigration Service (2018a).

¹⁴³ Correspondence with Family Reunification Unit, INIS, October 2018.

¹⁴⁴ Courts Service of Ireland (2018), p. 54.

¹⁴⁵ These cases had been initiated before the Supreme Court prior to the establishment of the Court of Appeal on 28 October 2014 but had not been fully or partly heard prior to the Court of Appeal establishment date and were transferred to the Court of Appeal for determination. These cases are known as Article 64 cases.

¹⁴⁶ Courts Service of Ireland (2018), pp. 87–88.

had proved particularly effective. Waiting times at the pre-leave application stage were reduced in the High Court asylum list from four months in 2016 to one week in 2017.¹⁴⁷

As reported for 2016, it was decided, with the agreement of the Department of Justice and Equality, that the IPAT, because it is *ex officio* following the issue of its decision, would no longer participate in judicial reviews from the commencement of the *International Protection Act 2015*, save in exceptional circumstances,¹⁴⁸ where allegations of *mala fides* are made or where Tribunal procedures are being challenged.¹⁴⁹ The IPAT reported that once the cases on hands are dealt with, it will not be dealing with future judicial reviews.¹⁵⁰

At the beginning of 2017, the IPAT had 146 active judicial reviews on hand. Responsibility for 65 of these was transferred to the Department of Justice and Equality's Legal Support Services Unit in the first quarter of 2017. The IPAT continued to deal with a remainder of the judicial reviews which had been initiated prior to the establishment of the IPAT on 31 December 2016, 47 of which were determined during 2017. At the end of 2017, the IPAT had 40 active judicial reviews on hand. The Legal Services Support Unit of the Department of Justice and Equality had approximately 114 judicial reviews on hand with the Tribunal named as a respondent at the end of 2017.¹⁵¹

4.2 LEGISLATIVE, ADMINISTRATIVE AND INSTITUTIONAL DEVELOPMENTS

4.2.1 Legislative developments

New regulations relating to subsidiary protection applications

The European Union (Subsidiary Protection) Regulations 2017 came into operation on 2 October 2017. These regulations were introduced to take account of the judgment of the Court of Justice of the European Union (CJEU) in the *Case C-429/15 ED v Minister for Justice and Equality* and of the Irish Court of Appeal in the same case, *ED v Minister for Justice and Equality*¹⁵² (see section 4.9 for case summaries). The regulations applied to persons who had been refused refugee status in Ireland since the introduction of the European Communities (Eligibility for Protection) Regulations 2006¹⁵³ and who had been invited to make applications for subsidiary

¹⁴⁷ Ibid., p. 7.

¹⁴⁸ Sheridan (2017) (print version), p. 40.

¹⁴⁹ International Protection Appeals Tribunal (2018), p. 16 and correspondence with International Protection Appeals Tribunal, October 2018.

¹⁵⁰ Ibid.

¹⁵¹ Ibid., p. 17.

¹⁵² *ED v Minister for Justice and Equality* (No. 2) [2017] IECA 20.

¹⁵³ S.I. No. 518 of 2006.

protection under those Regulations or the subsequent European Union (Subsidiary Protection) Regulations 2013,¹⁵⁴ but had not made the application within the 15 working day time limit or had not had their application considered on the basis that the 15 working day time limit to make an application had expired.

The 2017 Regulations provided for a 30 working day timeframe from 2 October 2017 up to and including 13 November 2017 for applicants to request to be admitted to the subsidiary protection process. Applicants were obliged to complete a statutory declaration stating the basis on which they were eligible to apply under the new Regulations; that they had not been granted refugee status or subsidiary protection in the State or any other EU Member State; and that they were present in the State on 2 October 2017. Applications that meet the conditions for acceptance under the new 2017 Regulations are to be processed under the *European Union (Subsidiary Protection) Regulations 2013*.¹⁵⁵

Time periods for appeal under the International Protection Act 2015

The *International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017* were signed into law on 29 March 2017.¹⁵⁶ The Regulations set out the time periods for appealing recommendations of an International Protection Officer under the *International Protection Act 2015*.

The time periods are (a) 10 working days in relation to recommendations that an application is inadmissible;¹⁵⁷ (b) 10 working days in relation to refusal to make a subsequent application;¹⁵⁸ (c) 15 working days in relation to recommendations to refuse refugee status or both refugee and subsidiary protection status;¹⁵⁹ and (d) 10 working days in relation to accelerated appeals procedures in certain cases.¹⁶⁰ An applicant may also request an extension of the prescribed period.

The Regulations also set out in detail the procedures for making an appeal to the IPAT under the *International Protection Act 2015*. The Regulations set out the forms to be used (1) when making an appeal against a recommendation refusing refugee status only or both refugee status and subsidiary protection status; (2) against a recommendation that an application is inadmissible; and (3) against a refusal of permission to make a subsequent application.

¹⁵⁴ S.I. No. 426 of 2013.

¹⁵⁵ International Protection Office (2017c).

¹⁵⁶ S.I. No. 116 of 2017.

¹⁵⁷ Section 21(6) of the International Protection Act 2015.

¹⁵⁸ Section 22(8) of the International Protection Act 2015.

¹⁵⁹ Section 41(2)(a) of the International Protection Act 2015.

¹⁶⁰ Section 43(a) of the International Protection Act 2015.

Civil legal aid

The *Civil Legal Aid (International Protection Appeals Tribunal) Order 2017*¹⁶¹ came into operation on 8 March 2017. This Order designated the IPAT as a body at whose proceedings civil legal aid may be provided by the Legal Aid Board. This Order replaced the *Civil Legal Aid (Refugee Appeals Tribunal) Order 2005*, which was revoked.

4.2.2 Administrative developments

Transitional arrangements for applications made before commencement of the International Protection Act 2015

In January 2017, the International Protection Office (IPO) published guidance on transitional arrangements for international protection applicants who had made applications prior to the commencement of the single application procedure under the *International Protection Act 2015* from 31 December 2016.¹⁶²

Existing applications were divided into four categories, set out in Table 4.2 below.

¹⁶¹ S.I. No. 81 of 2017.

¹⁶² International Protection Office (2017a).

TABLE 4.2 CATEGORIES OF APPLICATION FOR TRANSITIONAL ARRANGEMENTS UNDER INTERNATIONAL PROTECTION ACT 2015

Category 1	<p>Applicants who had made applications for refugee status in respect of which a recommendation had not been made under the <i>Refugee Act 1996</i>. Such applications were transferred to the IPO for determination on both refugee status and subsidiary protection grounds under the <i>International Protection Act 2015</i>. If the determination is negative on both grounds, the Minister for Justice and Equality immediately proceeds to examining grounds for permission to remain on existing papers submitted. Applicants can provide supplementary information.</p>
Category 2	<p>Applicants whose negative recommendations for refugee status were on appeal to the Refugee Appeals Tribunal and the appeal had not been determined prior to commencement of <i>International Protection Act 2015</i>. Such applicants are deemed to have made an application under the <i>International Protection Act 2015</i> and their files are transferred to the IPO for determination on subsidiary protection grounds only. The original recommendation in relation to refugee status remains in place. If the determination of subsidiary protection is also negative, the Minister for Justice and Equality immediately proceeds to examining permission to remain grounds.</p> <p>The original appeal on refugee status grounds is transferred to the new appeals body – the IPAT. If the application for subsidiary protection is also refused, the two appeals are heard together.</p>
Category 3	<p>Subsidiary protection applications made before the commencement date of the new legislation and where the investigation of the application had not been started by the Office of the Refugee Applications Commissioner (ORAC). In such cases the application was transferred to the IPO for determination of subsidiary protection grounds only. The earlier determination in relation to refugee status (and a determination related to appeal of the refugee status determination, if applicable) remains in place.</p>
Category 4	<p>Subsidiary protection applications where investigation had commenced prior to the commencement date. These applications are considered under the previous subsidiary protection regulations in force. This also applies to appeals.</p>

Source: *International Protection Office (2017a)*.

As noted in section 4.1 above, some 2,800 of these cases remained on hand for processing in the IPO at the end of 2017.

Processing times for international protection applications and appeals

The waiting time for a non-prioritised application for international protection to reach the initial interview stage increased significantly in 2017. The Minister for Justice and Equality said that it was not possible to calculate an accurate median processing time for international protection applications in 2017, due to the different case types on hand which were returned to the IPO under the transitional

provisions in the *International Protection Act 2015*.¹⁶³ The Minister subsequently said that it was estimated it would take 19 months for a non-prioritised application made in January 2018 to reach interview.¹⁶⁴ In 2016, the waiting time for an initial interview had been 16 weeks.¹⁶⁵ The increase in waiting times has been highlighted by commentators, including UNHCR and the Irish Refugee Council (IRC).¹⁶⁶ UNHCR Ireland commented on the detrimental effect on individuals of long periods of time waiting in State-provided accommodation, and that: *the key underlying issue is not the accommodation necessarily but rather processing times*. UNHCR also commented that shorter processing times would result in savings for the State, in terms of the annual cost of a place in direct provision.¹⁶⁷ The Irish Refugee Council commented that there was a need for more resources and training in the International Protection Office to cope with the transition to the new procedure.¹⁶⁸ A briefing document for the incoming Minister for Justice and Equality from June 2017 stated that: *the intention is to process the approximately 4,000 cases on hands as quickly as possible and to reach a point whereby new cases will be dealt with within a 9 month timeframe. The provision of staff resources to achieve this is an immediate priority*.¹⁶⁹

Cases which were transferred under transitional procedures for applications made before the commencement of the *International Protection Act 2015* accounted for a significant proportion of this backlog. Some 2,800 applications transferred under the transitional arrangements were awaiting processing in the International Protection Office at the end of 2017, out of the overall total of 5,100 applications awaiting processing at the end of the year.

However, once the new single application procedure was up and running, some 2,400 single procedure interviews were scheduled in 2017. This included cases received from applicants who were relocated from Greece as part of the Irish Refugee Protection Programme (IRPP) Some 750 recommendations in respect of the grant of international protection were made by the IPO in 2017.

The Minister for Justice and Equality also noted at the same time that prioritised cases could expect to be scheduled for interview more quickly, and in the case of

¹⁶³ Department of Justice and Equality (22 November 2017) Response to Parliamentary Question 49492/17. Available at www.justice.ie.

¹⁶⁴ Department of Justice and Equality (30 January 2018) Response to Parliamentary Questions 3928/18; 3929/18; 3930/18. Available at www.justice.ie.

¹⁶⁵ Arnold et al. (2018).

¹⁶⁶ UNHCR (2017, 2018), Irish Refugee Council (2017b).

¹⁶⁷ UNHCR (2018).

¹⁶⁸ Irish Refugee Council (2017b).

¹⁶⁹ Department of Justice and Equality (2017f), p. 79.

applications under the Irish Refugee Protection Programme (relocation cases), the waiting time was 8–12 weeks.¹⁷⁰

The average length of time taken by the IPAT to process and complete substantive international protection appeals including transition cases in 2017 was approximately 125 days. The average length of time taken to process all categories of appeals, including legacy asylum appeals, in 2017 was 133 days.¹⁷¹

The impact of a future increased caseload on the IPAT was also raised during the year. The Minister for Justice and Equality said that the reverting of categories of cases from the IPAT to the IPO *has added significantly to the IPO's caseload, but has freed up the restructured and resourced Appeals Tribunal process considerably.*¹⁷² However, in its 2017 Annual Report, the IPAT emphasised that it needed to be adequately equipped for an expected increase in caseload. It noted that it is expected that a significant proportion of the transferred cases would be returned to the Tribunal for appeal, in addition to any appeals arising from the cases pending in ORAC which were transferred to the IPO and new protection applications. The Annual Report states: *It is therefore likely that the caseload of the Tribunal will rise significantly over the coming period and it is imperative that the Tribunal is equipped, both with regard to staffing numbers and the availability of Tribunal Members who are trained and experienced in the efficient delivery of high quality determinations of international protection applications.*¹⁷³

Prioritisation procedure in the International Protection Office (IPO)

A prioritisation procedure for the examination of international protection applications was introduced in February 2017. The Chief International Protection Officer, in accordance with section 73 of the *International Protection Act 2015*, accorded priority to certain classes of applications. UNHCR provided advice on the prioritisation of certain classes of applications and supported the IPO in providing training programmes to its Protection Panel and IPO staff for the new international protection process. A joint UNHCR IPO note on the prioritisation of applications for international protection under the *International Protection Act 2015* was published on 27 February 2017.¹⁷⁴

¹⁷⁰ Department of Justice and Equality (30 January 2018) Response to Parliamentary Questions 3928/16, 3929/18 and 3930/18. Available at www.justice.ie.

¹⁷¹ International Protection Appeals Tribunal (2018), p. 44.

¹⁷² Department of Justice and Equality (30 January 2018) Response to Parliamentary Questions 3928/18, 3929/18 and 3930/18. Available at www.justice.ie.

¹⁷³ International Protection Appeals Tribunal (2018), p. 10.

¹⁷⁴ International Protection Office and UNHCR (2017).

Two processing streams were established. Stream 1 consisted of the majority of applications scheduled mainly on the basis of oldest cases first. Stream 2 comprised certain categories of cases as follows:

1. the age of applicants (unaccompanied minors (UAMs) in the care of Tusla, the child and family agency; UAM applicants who have now aged out; applicants aged over 70 not part of a family group);
2. the likelihood that applications are well-founded (based on a medico-legal report);
3. the likelihood that applications are well-founded due to the country of origin or habitual residence of applicants – UNHCR recommended prioritisation of applications relating to the following countries on the basis of country of origin information, protection determination rates in EU Member States and UNHCR position papers indicating the likely well-foundedness of applications from such countries – Syria, Eritrea, Iraq, Afghanistan, Iran, Somalia and Libya;¹⁷⁵
4. health grounds – on the basis of evidence submitted, certified by a medical consultant, of an ongoing severe/life-threatening medical condition.

The prioritisation procedure is kept under ongoing review. The IPO emphasised that prioritisation relates solely to the scheduling of interviews and does not predetermine any recommendation to be made. All applications, whether prioritised or not, receive the same full and individual assessment under the procedure.¹⁷⁶

UNHCR supported the prioritisation *as a means to enable the early identification of, for example, likely well-founded cases and cases involving children or the elderly.*¹⁷⁷

Provision of interpretation

In line with the provisions of section 35 of the *International Protection Act 2015*, the IPO provides applicants, wherever necessary, with the assistance of an interpreter at both their preliminary and substantive interviews. Interpretation is provided in a language that the applicant may reasonably be supposed to understand and in which he or she is able to communicate.

¹⁷⁵ Correspondence with UNHCR Ireland, October 2018.

¹⁷⁶ International Protection Office and UNHCR (2017).

¹⁷⁷ International Protection Office and UNHCR (2017), paragraph 4.

Applicants are also informed in writing, when they initially apply, of their entitlement to be provided with the services of an interpreter as well as their entitlement to consult with a legal representative.¹⁷⁸

Quality assurance

A Quality Assurance Committee was established in mid-2017 comprising representatives of the UNHCR and the IPO staff to oversee the IPO's in-house quality procedures.¹⁷⁹

Guidelines of Chairperson of the International Protection Appeals Tribunal

Section 63(2) of the *International Protection Act 2015* provides that the Chairperson may issue the members with guidelines on the practical application and operation of the Act, and on legal developments in relation to international protection. In addition, section 63(3) provides that the Chairperson may issue guidelines to the Registrar in relation to the assignment of appeals.

The following guidelines were in place at the end of 2017:

- Guideline No. 2017/1: UNHCR Eligibility Guidelines;
- Guideline No. 2017/2: Access to Previous Decisions;
- Guideline No. 2017/3: Effect of Order of Certiorari;
- Guideline No: 2017/4: Guidance Note on Country of Origin Information;
- Guideline No: 2017/5: Appeals from Child Applicants;
- Guideline No: 2017/6: Medico-Legal Reports;
- Chairperson's Guidelines on Assigning and Re-assigning Appeals by the Registrar.¹⁸⁰

These guidelines are available on the Tribunal website: www.protectionappeals.ie.

4.2.3 Institutional developments

As reported for 2016, the ORAC was replaced by the IPO and the former RAT was replaced by the IPAT from 31 December 2016.

¹⁷⁸ Correspondence with International Protection Office, February 2018.

¹⁷⁹ Ibid.

¹⁸⁰ International Protection Appeals Tribunal (2018).

Appointments to International Protection Tribunal

Membership of the IPAT rose from 25 to a total of 75 members at the end of 2017.¹⁸¹ The *International Protection Act 2015* provides that appointment of members of the IPAT may only take place following a competition organised by the Public Appointments Service.¹⁸²

A competition to appoint new part-time Tribunal members was organised in the early part of 2017 which resulted in the creation of a panel of 80 successful candidates who were in receipt of specialist training, including by a UNHCR-appointed international protection determination expert,¹⁸³ in several tranches in the latter part of the year. These part-time members were appointed by the Minister for Justice and Equality for a period of three years.

By December 2017, a total of 74 part-time members had been appointed to the IPAT.¹⁸⁴

The former Chairperson of the RAT, who had been deemed appointed as Chairperson of the IPAT, resigned on 22 April 2017. The Deputy Chairperson, who had been appointed from 31 December 2016, was appointed as Chairperson on an interim basis. Following a competition held by the Public Appointments Service in the autumn of 2017, the interim Chairperson was appointed as Chairperson of the IPAT in January 2018. A Deputy Chairperson was appointed from 13 February 2017. Both these appointments are for a period of five years.

The *International Protection Act 2015*¹⁸⁵ also provides for the appointment of a Registrar who, in consultation with the Chairperson, is tasked with the management and administration of the Tribunal and with assigning the appeals to be determined to the members of the Tribunal.

4.3 RECEPTION

4.3.1 Right to work for asylum applicants

A landmark judgment was made by the Irish Supreme Court on 30 May 2017 in the case *NVH v Minister for Justice and Equality*¹⁸⁶ (see section 4.9 for full case summary). This case concerned a challenge by an asylum applicant against the ban

¹⁸¹ Ibid.

¹⁸² Section 62(4) of the International Protection Act 2015.

¹⁸³ Correspondence with UNHCR, October 2018.

¹⁸⁴ Correspondence with Irish Naturalisation and Immigration Service, International Protection Policy Division, February 2018.

¹⁸⁵ Section 66(1) of the International Protection Act 2015.

¹⁸⁶ *NHV v Minister for Justice and Equality* [2017] IESC 35.

in Irish law on access to the labour market for asylum applicants in the Refugee Act 1996 and re-enacted in the International Protection Act 2015.

The judgment found that the absolute prohibition on the right to work – in circumstances where there is no temporal limit on the asylum process – was contrary to the constitutional right to seek employment. The judge adjourned the form of Order to be made for six months in order to allow the Government and legislature to consider a response.

The Irish Human Rights and Equality Commission (IHREC), who had been an *amicus curiae* for the case, welcomed the outcome. The Commission recommended that: strong consideration be given to allowing Direct Provision residents to work and that Direct Provision residents over the age of 18 receive education and training in preparation for seeking employment, once they leave the system.¹⁸⁷

The Irish Refugee Council (IRC) published a policy paper on the right to work for international protection applicants in July 2017, in which it recommended that the right to work should apply six months from the date of the protection application, noting also UNHCR advice in this regard.¹⁸⁸

Following a Government decision in July 2017, an Inter-Departmental Taskforce was established to examine the implications of the judgment and to propose solutions. The Taskforce included representatives from a broad range of relevant Government Departments, including Employment Affairs and Social Protection; Education; Health; Business, Enterprise and Innovation;¹⁸⁹ Housing, Planning and Local Government; and Children and Youth Affairs.

The Taskforce recommended to Government that the best option available to the State was to opt into the EU (recast) Reception Conditions Directive (2013/33/EU), and the Government decided for Ireland to exercise its discretion to participate in Directive 2013/33/EU under Protocol 21 of the Treaty of Lisbon, on 22 November 2017. The Government established an Implementation Group to oversee the opt-in procedure and the practical arrangements for eligible applicants. The Minister for Justice and Equality commented: The decision to opt into the 2013 EU (recast) Reception Conditions Directive is a significant one. It provides a framework that will enable International Protection applicants to access the work-force in circumstances where their application for international protection status has not received a first instance decision within the timeframe set by the Directive. The

¹⁸⁷ Irish Human Rights and Equality Commission (2017b).

¹⁸⁸ Irish Refugee Council (2017c).

¹⁸⁹ The Department of Business, Enterprise and Innovation has responsibility for employment permits schemes.

Directive sets out the framework and parameters for this and by exercising our opt-in will bring us into line with the rest of the European Union.

In order to opt into the Directive, a motion of approval was required to be passed by both Houses of the Oireachtas, and formal approval by the European Commission of Ireland's application to participate in the Directive was required.¹⁹⁰ The motion of approval was debated and passed by the Oireachtas in January 2018.¹⁹¹ The approval process with the European Commission was subsequently initiated.¹⁹²

The decision to opt into the recast Reception Conditions Directive was broadly welcomed. UNHCR Ireland commented: This development will, in tandem with other improvements and reforms to the accommodation system for asylum-seekers, help to restore public confidence in the direct provision system. It will also ensure better integration prospects for refugees.¹⁹³ UNHCR recommended that the access to the labour market should be granted no later than six months after lodging the protection application. UNHCR also urged the Government to make efforts to reduce overall processing times for protection applications, pointing out that: deploying an adequate number of staff to the decision making bodies would ensure that only small numbers of applicants would ultimately need to have recourse to any new provisions on labour market access.¹⁹⁴

4.3.2 Reception conditions

Progress continued to be made during 2017 on implementing the 173 recommendations of the *Report to Government on Improvements to the Protection Process including Direct Provision*¹⁹⁵ and other Supports for Asylum seekers (McMahon Report). In total, three progress reports were published by the Department of Justice and Equality – in June 2016, February 2017 and July 2017. The Third Progress Report of July 2017 stated that 98% of the Report's recommendations had been fully or partially implemented – 133 fully and 36 in progress.¹⁹⁶

A key concern in the McMahon Report was the length of time spent by asylum seekers in direct provision accommodation. According to the Department of Justice

¹⁹⁰ Department of Justice and Equality (2017c).

¹⁹¹ Dáil Debates (23 January 2018) *Reception Conditions Directive: Motion*. Available at www.kildarestreet.com.

¹⁹² The European Commission decision accepting Ireland's participation in the Reception Conditions Directive was published in the *Official Journal of the European Union* on 23 May 2018 (OJEU L126, vol. 61, 23 May 2018). Further detail on the scope of the right to work will be reported in the 2018 report of this series.

¹⁹³ UNHCR (2017).

¹⁹⁴ Ibid.

¹⁹⁵ Direct provision: the system of reception for asylum seekers in Ireland, whereby all asylum seekers are offered accommodation on a full-board basis in a reception centre and a small weekly allowance is paid.

¹⁹⁶ Department of Justice and Equality (2017g).

and Equality, the average length of time spent in State-provided accommodation centres had gone down from 38 months in 2015 to 23 months at the end of 2017.¹⁹⁷

One recommendation which was progressed throughout 2017 was the provision of self-catering or communal cooking facilities in State-provided accommodation centres. Self-catering, via the establishment of a food hall where residents can select and cook their own food, had been fully implemented in three centres by the end of 2017, in addition to communal cooking facilities in a number of other centres.¹⁹⁸

Parliamentary questions during 2017 questioned the self-catering system put in place, for example in the Mosney Accommodation Centre,¹⁹⁹ where food items could be bought by residents in a food hall for preparation of meals, on a points-based system. The non-monetary nature of the system and the range of food items available were questioned. The Minister for Justice and Equality commented that full consultations had been undertaken with a representative group of residents in Mosney on the new system and 600 products were available in the Mosney food hall. The Minister also said that the system was subject to ongoing review.²⁰⁰

From August 2017, the allowance paid to residents in direct provision State-provided accommodation was increased to €21.60 per week per adult and €21.60 per week per child. This was an increase of €2.50 per week for adults and €6 per week for children over the previous rates.²⁰¹ The recommendation in the McMahon Report had been for an increase to €38.74 for adults and €29.80 for children per week.²⁰²

As reported for 2016, the Minister for Justice and Equality committed to extending the remit of the Offices of the Ombudsman and the Ombudsman for Children to residents of direct provision centres. From 3 April 2017, complaints from residents of direct provision centres could be accepted by the Ombudsman and Ombudsman for Children offices.²⁰³ In January 2018, the Ombudsman published a commentary on complaints to the Ombudsman regarding direct provision to date.²⁰⁴ During 2017, the Ombudsman's Office received 97 formal complaints from residents in direct provision centres.²⁰⁵ The Office's remit also covers the Emergency Reception

¹⁹⁷ Irish Naturalisation and Immigration Service (2018a), p. 26.

¹⁹⁸ Department of Justice and Equality (2017d).

¹⁹⁹ Parliamentary Questions 24753/17 and 24334/17 of 23 May 2017 and 23140/17 and 23130/17 of 16 May 2017. Available at www.justice.ie.

²⁰⁰ Response to Parliamentary Question 23140/17, 16 May 2017. Available at www.justice.ie.

²⁰¹ Department of Social Protection (2017).

²⁰² Working Group to Report to Government on Improvements in the Protection Process including Direct Provision and Supports to Asylum Seekers (2015), Recommendation 5.30.

²⁰³ Office of the Ombudsman (2017).

²⁰⁴ Office of the Ombudsman (2018a).

²⁰⁵ Office of the Ombudsman (2018b).

and Orientation Centres (EROCs) under the Irish Refugee Protection Programme (IRPP), and issues in relation to the EROCs are discussed at section 4.4.1 below. Complaints received included those about transfers between direct provision centres, as well as the quality of food and standard of accommodation.²⁰⁶ The Ombudsman commented that ‘sometimes residents are reluctant to complain and some complaints arise as a result of cultural differences’. He further commented that ‘we have found that the most effective way to deal with complaints is to meet with residents and centre managers to discuss the issues being raised. This has resulted in many complaints being resolved on the spot.’²⁰⁷ A factsheet was published explaining the remit of the Ombudsman to people living in direct provision. The factsheet is available in English, Arabic, Urdu, Russian and French.²⁰⁸ The Office of the Ombudsman liaised with the Ombudsman for Children’s Office with regard to their respective remits.²⁰⁹ The role of the Ombudsman for Children is discussed in Chapter 5.

The pilot scheme to provide access to student supports for school leavers in the protection system (other than those at the deportation order stage) was extended for the academic year 2017/2018.²¹⁰ Eligibility criteria remained the same as for 2016/2017.²¹¹ The scheme opened for applications on 10 August 2017. However, the scheme was again criticised by the Irish Refugee Council for being too restrictive in its eligibility criteria.²¹² RTÉ reported that applications for the scheme dropped from 39 in 2015 to 15 in 2016 and five in 2017. Two applications were successful in the first two years and one in 2017.²¹³

A number of higher education institutions offered refugee scholarships in 2017. The National University of Ireland at Galway continued its ‘Inclusive Centenaries Scholarship Scheme’ which had been launched in 2016. The scheme is targeted at applicants for and beneficiaries of international protection and permission to remain. Each scholarship covers all applicable fees, a living allowance and accommodation costs.²¹⁴ Dublin City University continued its University of Sanctuary Scholarship Scheme for 2017/2018. The University of Limerick offered 15 one-year Mature Student Access Certificate (MSAC) scholarships in 2017, and was awarded University of Sanctuary status.²¹⁵

²⁰⁶ Office of the Ombudsman (2018a).

²⁰⁷ Office of the Ombudsman (2018b).

²⁰⁸ Office of the Ombudsman (2017).

²⁰⁹ Office of the Ombudsman (2018a), p. 8.

²¹⁰ Department of Education and Skills (2017b).

²¹¹ See Sheridan (2017) (print version), p. 43.

²¹² *Ibid.*, p. 44.

²¹³ RTÉ (2018).

²¹⁴ NUI Galway (2018).

²¹⁵ Places of Sanctuary Ireland (2018).

As reported for 2016, the level of progress in relation to the McMahon Report recommendations claimed in the Government Progress Reports was questioned by the NGO sector. Nasc, the Irish Immigrant Support Centre, which had been a member of the original Working Group, published a shadow audit of the McMahon Report recommendations in December 2017.²¹⁶ Many of the areas of progress on the report's recommendations, including the introduction of the single procedure, general improvement in living conditions, access to the labour market and opting into the Reception Conditions Directive, were welcomed. However, the Nasc audit argued that only 20 of the recommendations had been fully implemented, and only 51% could be considered to be 'implemented or in progress'. The Nasc research highlighted that the implementation rate was particularly problematic in respect of the recommendations that were the responsibility of Government departments or agencies, other than the Department of Justice and Equality.²¹⁷

A particular concern was lack of progress in relation to the development of a multidisciplinary system of vulnerability assessment.²¹⁸ The Irish Refugee Council (IRC), in its June 2017 submission to the UN Convention Against Torture (UNCAT) Committee, also raised the need for a holistic vulnerability assessment as part of both the reception system and asylum procedures.²¹⁹ The UN Committee Against Torture, in its 2017 Concluding Observations, recommended that Ireland '(b) Establish a formalized vulnerability screening mechanism for torture victims and other persons with special needs, provide them with care and protection to avoid re-traumatization, including during international protection procedures.'²²⁰

Recommendations made by the UNCAT Committee relating to Ireland and submissions made by a number of organisations to the Committee, which touch on reception conditions among other issues, are discussed in Chapter 2.

4.3.3 Draft National Standards for Direct Provision Centres

The McMahon Report recommended that a standard-setting committee be established *to reflect Government policy across all areas of service in direct provision* as well as an inspectorate independent of the Reception and Integration Agency (RIA) to monitor the standards set.²²¹

On 3 February 2017 the Standards Advisory Committee was convened to develop a draft standards document.²²² The membership of the group included

²¹⁶ Nasc (2017c).

²¹⁷ Including the HSE, the Department of Education and Skills, the Department of Social Protection and Tusla.

²¹⁸ Nasc (2017b).

²¹⁹ Irish Refugee Council (2017a).

²²⁰ UNCAT (2017), paragraph 12(b).

²²¹ Department of Justice and Equality (2018b), pp. 2–3.

²²² The draft National Standards were issued for public consultation on 16 August 2018. See Department of Justice and Equality (2018a)

representatives of the Departments of Justice and Equality and Children and Youth Affairs, the HSE National Office for Social Inclusion, AkiDwa, the Children’s Rights Alliance, Core Group of Asylum Seekers and Refugees, Jesuit Refugee Service, Nasc, Spirasi and UNHCR.²²³ The National Standards were developed within three interconnected strands, Governance, Accommodation and People, each prepared by a Working Group. Members of the Standards Advisory Group met regularly at plenary meetings to input and advise on all aspects of the National Standards.²²⁴

4.3.4 Reception capacity and housing

At end 2017, the portfolio of the Reception and Integration Agency consisted of 34 centres throughout Ireland,²²⁵ with a contracted capacity of 5,503 persons.²²⁶ At the end of 2016, the contracted capacity was 5,230 persons.²²⁷ According to the RIA’s December 2017 monthly report, the occupancy rate was approximately 93% (5,096 persons) at end December 2017.²²⁸ Over the period 2010 to 2016, the average occupancy rate as a percentage of capacity was 86%.²²⁹

Problems were identified during 2017 in relation to both reception capacity and finding housing for persons who had been granted status and were moving out of the protection system and State accommodation. The Irish Refugee Council noted in its *Impact Report 2017* that it *assisted more than 3000 people over the year on a wide variety of issues, the most challenging of which was accessing accommodation, both for people in the asylum procedure and those who have status and are trying to leave Direct Provision.*²³⁰ A briefing prepared for the incoming Minister for Justice and Equality in June 2017 identified ‘being in a position to respond to any rapid increase in demand for accommodation’ as a key immediate issue.²³¹ As of 14 November 2017, there were 639 persons with status residing in direct provision centres or in an EROC, 430 of whom had been granted international protection and 209 of whom had been granted leave to remain.²³²

In September 2017, the *Irish Times* reported that a number of single, male residents in direct provision centres with deportation orders had been sent letters

²²³ Department of Justice and Equality (2018b), Appendix 3.

²²⁴ Correspondence with UNHCR Ireland, October 2018.

²²⁵ One reception centre in Dublin, two self-catering centres and 31 accommodation centres. Department of Justice and Equality (2017d).

²²⁶ Department of Justice and Equality: Reception and Integration Agency (December 2017) *Reception and Integration Agency Monthly Report December 2017*. Available at: www.ria.gov.ie.

²²⁷ Sheridan (2017) (print version), p. 44.

²²⁸ Department of Justice and Equality: Reception and Integration Agency (December 2017) *Reception and Integration Agency Monthly Report December 2017*. Available at www.ria.gov.ie.

²²⁹ Sheridan (2017) (print version), p. 44.

²³⁰ Irish Refugee Council (2018).

²³¹ Department of Justice and Equality (2017f), p. 27.

²³² Department of Justice and Equality (22 November 2017) Response to Parliamentary Question 49530/17. Available at www.justice.ie.

requiring them to leave their accommodation within one month.²³³ Nasc issued a statement strongly condemning what it called ‘a catastrophic shift in policy’ requiring residents to leave accommodation, whereas previously RIA had continued to accommodate persons with deportation orders. Nasc considered that

the Department has a duty of care, to provide housing to people who have claimed asylum and who seek accommodation from it until such time as those people are either granted asylum or subsidiary protection, granted leave to remain or leave the country voluntarily or by deportation.^{234,235}

In a parliamentary question of 25 October 2017, the Minister of State at the Department of Justice and Equality said that a distinction had to be made between an applicant seeking international protection and persons who had exhausted all due process and were issued with deportation orders obliging them to remove themselves from the State. The Minister of State pointed to the capacity issues within the reception system and the need to provide accommodation for those seeking status. The Minister said:

*Continuing to allocate limited accommodation to people who are legally obliged to remove themselves from the State would undermine our laws and adversely impact our capacity to assist those who are seeking refugee status. At current rate of demand, accommodation capacity in the Centres will run out for all applicants within a number of weeks unless remedial action is taken. In order to meet our international obligations, we must apply the law and we must do so in a fair and transparent way. It will become increasingly difficult to meet the needs of those seeking international protection if those who have exhausted every legal avenue and been found not to qualify remain in the State and in accommodation provided by the State.*²³⁶

4.4 RELOCATION AND RESETTLEMENT

4.4.1 Irish Refugee Protection Programme (IRPP)

As reported for previous years, in September 2015, the Irish Government established the IRPP. Under the Programme, Ireland agreed to accept up to 4,000

²³³ *Irish Times* (2017a).

²³⁴ Nasc (2017a).

²³⁵ Nasc also referred to case law discussed in the Free Legal Advice Centre (FLAC) report *One Size Doesn't Fit All* (2008) relating to the right to housing, including homeless asylum seekers and destitution. Correspondence with Nasc, October 2018.

²³⁶ Department of Justice and Equality (25 October 2017) Response to Parliamentary Question 45206/17. Available at www.justice.ie.

asylum seekers and refugees overall into Ireland under relocation and resettlement programmes at the earliest time possible.²³⁷

Ireland voluntarily opted into two EU decisions on Relocation – Council Decision (EU) 2015/1523 of 14 September 2015 and Council Decision (EU) 2015/1601 of 22 September 2015.

Table 4.3 shows a breakdown of arrivals under IRPP relocation and resettlement from 2015 to 2017.

TABLE 4.3 ARRIVALS UNDER RELOCATION AND RESETTLEMENT STRANDS OF THE IRISH REFUGEE PROTECTION PROGRAMME (IRPP), 2015–2017

Year	Relocation arrivals			Resettlement arrivals		
	Adults	Minors	Total	Adults	Minors	Total
2015				73	90	163
2016	132	108	240	167	189	356
2017	283	232	515	123	150	273
TOTAL	415	340	755	363	429	792

Source: Irish Naturalisation and Immigration Service (2018a).

Relocation

Ireland admitted a total of 515 persons under the EU relocation programme in 2017.²³⁸ Some 240 persons had been admitted in 2016.²³⁹ All of the persons admitted under the relocation strand were assisted by the International Organization for Migration (IOM), the UN Migration Agency, from Greece. As reported for 2016, there had been difficulties between the Irish and Italian authorities relating to security assessments on Italian soil by An Garda Síochána of applicants for relocation.²⁴⁰ With that in mind, no applicants were transferred from Italy in 2017 and the Minister of State at the Department of Justice and Equality stated in December 2017 that ‘it has [...] not been possible for Ireland to take asylum seekers from Italy despite the most intensive efforts by Ireland to resolve

²³⁷ Department of Justice and Equality (6 February 2018) Response to Parliamentary Question 5510/18. Available at www.justice.ie.

²³⁸ Ibid.

²³⁹ Sheridan (2017) (print version), p. 46.

²⁴⁰ Ibid.

the impasse, both bilaterally with Italian counterparts at official, diplomatic and Ministerial level, and at EU level'.²⁴¹

A total of 2,622 persons was originally envisaged under the relocation strand of the IRPP – 1,089 from Greece, 623 from Italy and 910 who remained unallocated by the European Commission.²⁴² As the expected number did not become available for relocation, Ireland addressed the balance of approximately 1,800 places in the IRPP by additional resettlement commitments for 2018 and 2019 and the introduction of the new Irish Humanitarian Assistance Programme (IHAP) for family members announced in November 2017 (see section 4.4.3).

It was expected that the total commitment from Greece of 1,089 persons would be met by early 2018.²⁴³ The Minister of State at the Department of Justice and Equality commented:

*It should be noted that proportionally Ireland has taken one of the highest numbers under the EU Relocation Programme. Once the final transfers from Greece take place early next year, Ireland will have relocated more than 3% of the EU's total figure. This represents a strong commitment by Ireland to EU solidarity, given that we represent less than 1% of the total population of the EU.*²⁴⁴

Resettlement

A total of 273 persons, of Iraqi and Syrian nationality, were resettled to Ireland, with the assistance of IOM, under the UNHCR resettlement programme in 2017. By 7 December 2017, Ireland had admitted 785 refugees from Lebanon out of its commitment of 1,040 persons under the resettlement strand of the IRPP (over the period 2015–2017). The balance of the 1,040 was expected to arrive in early 2018.²⁴⁵

The Minister for Justice and Equality announced resettlement commitments of 600 for 2018 and 600 for 2019, as part of the European Commission/UNHCR pledging exercise for 2018 and 2019.²⁴⁶ These commitments are to be met within the overall total of 4,000 persons under the IRPP. The commitment of 600 for 2018 includes

²⁴¹ Department of Justice and Equality (7 December 2017) Response to Parliamentary Question 52459/17. Available at www.justice.ie.

²⁴² INIS (2018a), p. 28.

²⁴³ Relocation from Greece was completed by March 2018 with a total of 1,022 persons. Department of Justice and Equality (24 April 2018) Response to Parliamentary Question 17594/18. Available at www.justice.ie.

²⁴⁴ Department of Justice and Equality (7 December 2017) Response to Parliamentary Question 52459/17. Available at www.justice.ie.

²⁴⁵ Ibid.

²⁴⁶ Department of Justice and Equality (2017e).

persons from 2015–2017 due to arrive in early 2018. Thus the additional commitment is for 345 refugees in 2018 and 600 in 2019.²⁴⁷

There were calls during the year for Ireland to make commitments to take in additional persons under the IRPP. The Joint Committee on Justice and Equality in its *Report on the Migrant Crisis* called for the Government to increase its commitment ‘without putting an exact figure on it’.²⁴⁸ The Irish Refugee and Migrant Coalition (IRMC) recommended that the Government resettle 4,500 persons by 2020.²⁴⁹

4.4.2 Emergency Reception and Orientation Centres (EROCs)

As reported for 2016, among the measures agreed under the IRPP was the establishment of EROCs, which are used to provide initial accommodation for asylum seekers relocated from Greece while their applications for international protection status are processed. EROCs are also used to provide temporary initial housing for refugees arriving under the resettlement element of the IRPP. The two streams are accommodated separately.

The facilities and services provided include onsite education, health and social protection services, orientation classes and IRPP clinics.²⁵⁰

An EROC was opened in Ballaghaderreen, Co. Roscommon in 2017.²⁵¹ During 2017, three EROCs were operational.²⁵² The relevant services are provided locally or at the centre. The mode of service provision is determined on a case-by-case basis, depending on the local situation and the individual circumstances of the asylum seekers. Services such as schooling and English classes are being provided directly to the children and adults at the centre.²⁵³

The opening of the EROC in Ballaghaderreen in January 2017 received a lot of media attention, in particular in relation to alleged lack of information from the Department of Justice and Equality to the local community.²⁵⁴ A briefing note on the IRPP provided by the Department of Justice and Equality to Roscommon County Council on the rationale for choosing Ballaghaderreen as a location stated

²⁴⁷ Department of Justice and Equality (24 April 2018) Response to Parliamentary Question 17594/18. Available at www.justice.ie.

²⁴⁸ Joint Committee on Justice and Equality (2017).

²⁴⁹ Irish Refugee and Migrant Coalition (2017a), p. 12.

²⁵⁰ Sheridan (2017) (print version), p. 49.

²⁵¹ Department of Justice and Equality (14 February 2017) Response to Parliamentary Question 7178/17. Available at www.justice.ie.

²⁵² Monasterevin, Clonea Strand and Ballaghaderreen. See Arnold et al. (2018).

²⁵³ Department of Justice and Equality (13 February 2018) Response to Parliamentary Question 6702/18. Available at www.justice.ie.

²⁵⁴ thejournal.ie (2017).

that ‘the property in Ballaghaderreen was selected because it was only one available that met requirements and would be ready in reasonable time’. The following general considerations were, however, ‘not ignored’ in its selection:

- *the accommodation capacity of the EROC*
- *its potential for on-site services*
- *the potential availability of school placements for children of a school-going age*
- *the availability of GPs within reasonable travelling distance*
- *the proximity of local hospitals*
- *the experience of the location in having asylum seekers previously*
- *availability of other local services including public transport and shopping*
- *potential for the centre managers to provide additional services to both residents and local population*
- *potential benefits to local commerce.*²⁵⁵

The briefing document prepared for the incoming Minister for Justice and Equality in June 2017 identified challenges in relation to the IRPP as:

1. *Difficulties in procuring further Emergency Reception and Orientation Centres (EROCs) in which to accommodate arrivals, which in turn slows the rate at which asylum seekers can be brought from Greece to Ireland.*
2. *Inability to find suitable accommodation in communities in a reasonable timeframe for those who are ready to move out of the EROCs and into the community.*
3. *Difficulties with service provision to our arrivals whether in EROCs or in the community. This is emerging as a very significant issue.*²⁵⁶

Once the EROC in Ballaghaderreen was opened, there was also a lot of media attention in relation to the positive efforts made at integration of the residents into the local community. Arnold et al. reported that the Irish Refugee and Migrant Coalition (IRMC) considered Ballaghaderreen a good example of civil society and the local community providing support.²⁵⁷ A TV documentary, *True Lives – Ireland’s Refugee Hotel*, was made by BBC/TV3 and aired in November 2017.²⁵⁸

²⁵⁵ Irish Refugee Protection Programme (2017).

²⁵⁶ Department of Justice and Equality (2017f), p. 25.

²⁵⁷ Arnold et al. (2018), p. 34.

²⁵⁸ *Irish Times* (2017b).

The Office of the Ombudsman noted particular trends in concerns raised to it by residents of the EROCs. One of these was a particular need for dental care in excess of the treatment covered by the medical card provided to residents. Residents of EROCs also complained to Ombudsman staff about: the unrealistic expectations they say they were given before they arrived in Ireland, namely that they would be housed in local communities within a matter of weeks and have all their health issues addressed.²⁵⁹

The Ombudsman noted that this perception was strongly challenged by the IRPP. The Ombudsman Office also welcomed the positive interaction with the IRPP in its work to date.^{260,261}

The Department of Justice and Equality noted that it has been working closely with the Irish Red Cross to resettle asylum seekers in pledged accommodation. The INIS Annual Review for 2017 states that 54 people have been matched with accommodation.²⁶²

4.4.3 IRPP Humanitarian Admissions Programme (IHAP)

In November 2017, the Minister for Justice and Equality announced a Humanitarian Admissions Programme (IHAP) to be met from the existing commitment of 4,000 persons under the IRPP. The IHAP scheme proposes up to 530 places for persons from the top 10 refugee-producing countries as listed in the UNHCR Annual Global Trends Report to join their family in Ireland. The family members are to be immediate family members that fall outside the scope of the *International Protection Act 2015*. Proposers are to be asked to prioritise a small number of family members so that the maximum number of families can benefit. In addition, due to pressures on housing supply in Ireland, priority may be given to proposers who can meet their family members' housing needs.^{263,264}

Nasc, in November 2016, had made a presentation to the Joint Oireachtas Committee on Justice and Equality during which it expressed concerns about the discretionary nature of decisions made under the INIS *Policy Document on non-EEA Family Reunification*, and made recommendations including the introduction of a family-linked humanitarian admission programme.^{265,266} The Joint Committee published its report on the Migration Crisis in 2017. One of its recommendations was to introduce a humanitarian admission programme for family members of

²⁵⁹ Office of the Ombudsman (2018a), p. 14.

²⁶⁰ Ibid.

²⁶¹ See also Arnold et al. (2018) for discussion of challenges regarding EROCs.

²⁶² INIS (2018a), p. 28.

²⁶³ Department of Justice and Equality (2017e).

²⁶⁴ Correspondence with INIS Policy Unit, August and October 2018.

²⁶⁵ See Sheridan (2017) (print version), pp. 36–37.

²⁶⁶ Correspondence with Nasc, October 2018.

Syrian and other refugees *who are naturalised citizens of Ireland but who have immediate or extended family members who are displaced or living in great danger in conflict zones. It calls on the Government to introduce a humanitarian admission programme, with transparent and clearly defined criteria, to deal with visa applications in a more sensitive way and offer a safe and legal route for people to flee conflict zones and be reunited with family members in Ireland.*²⁶⁷

4.5 FAMILY REUNIFICATION

4.5.1 *International Protection (Family Reunification) (Amendment) Bill 2017*

As reported for 2016, concerns were expressed by non-governmental commentators about the revised rules for family reunification introduced by the *International Protection Act 2015*. Under the new legislation, the definition of a family member covers spouses, civil partners, children (under 18) of the sponsor and parents/siblings of the sponsor (if sponsor and siblings are under age 18). Other dependent family members can make applications for family reunification under the terms of the *INIS Policy Document on non-EEA Family Reunification*. Family members outside the scope of the *International Protection Act 2015* are eligible to make applications under the IHAP, discussed in section 4.4.3 above.

The *International Protection (Family Reunification) (Amendment) Bill 2017* was initiated in Seanad Éireann in July 2017. It went through Second Stage and Committee Stage in Seanad Éireann during 2017.²⁶⁸ The Bill proposed changes to the *International Protection Act 2015* to reinstate the discretionary power of the Minister for Justice and Equality, which had been provided for under section 18(4) of the *Refugee Act 1996*, to allow dependent family members, other than immediate family members, to enter the State. It also proposed to remove the 12-month time limit on family reunification applications. In the Second Stage debate in Seanad Éireann in July 2017, the Minister for Justice and Equality said:

I am reluctantly opposing the Bill. In doing so I emphasise that existing avenues for the admission of more extended family members are already available under the provisions of the non-EEA policy document on family reunification, which allows beneficiaries of international protection and other non-EEA migrants residing lawfully in Ireland to make an application at any time. As Minister, I can and do apply this discretion as regards the economic conditions for sponsors set down in the policy document and in cases of humanitarian need. Such applications on humanitarian grounds

²⁶⁷ Joint Committee on Justice and Equality (2017).

²⁶⁸ See *International Protection (Family Reunification) (Amendment) Bill 2017* at www.oireachtas.ie for details on passage of this Bill through the legislative process. The Bill was at Final Stage in Seanad Éireann on 7 March 2018.

*are examined on a case-by-case basis and I intend to continue this practice.*²⁶⁹

The Government was defeated in the vote on the Bill at Committee Stage in Seanad Éireann in November 2017.²⁷⁰ As at October 2018, the Bill had not yet been initiated in Dáil Éireann.

4.5.2 EMN Ireland conference

EMN Ireland, the Irish National Contact Point of the European Migration Network at the ESRI, held its national conference, ‘Migrant Family Reunification: Policy and Practice’ on 27 November 2017. One of the themes covered by the conference was refugee family reunification, with a presentation on the international context from UNHCR, and presentations on the Irish context covering the new humanitarian admission programme for refugees; a pilot community sponsorship project – Nasc & Wicklow Syria Appeal Community Sponsorship Project; and the Travel Assistance Programme, run, since 2015, in partnership between UNHCR and IOM Ireland in co-operation with the Irish Red Cross (IRC).²⁷¹ In 2017, 158 persons, including 16 Syrian families (45 individuals) travelling from Syria, Lebanon and the UAE, were assisted in their journey to Ireland under this programme.^{272,273}

4.6 COMMUNITY SPONSORSHIP

Proposals for community sponsorship models in relation to refugee resettlement were examined and discussed by Government and NGOs during 2017. As noted in section 4.5.2 above, Nasc developed a pilot community sponsorship project – the Nasc & Wicklow Syria Appeal Community Sponsorship Project. Nasc worked closely with community group Wicklow Syria Appeal to provide housing and other integration supports such as education, language and community supports to a Syrian refugee family who arrived through refugee family reunification. The aim of the pilot project was to provide a template for the introduction of a national community sponsorship programme. According to the Irish Refugee and Migrant Coalition (IRMC), Ireland made a commitment to a community sponsorship programme at the annual Concordia summit in New York in September 2017, which was welcomed by coalition members.²⁷⁴

In October 2017, the Minister for State at the Department of Justice and Equality, in response to a parliamentary question, said that community sponsorship models were being examined by officials in the IRPP *as a prospective way of furthering*

²⁶⁹ Seanad Éireann, Second Stage Debate, 19 July 2017. Available at www.oireachtas.ie.

²⁷⁰ Seanad Éireann, Committee Stage Debate, 8 November 2017. Available at www.oireachtas.ie.

²⁷¹ EMN Ireland (2017).

²⁷² Ibid., p. 14.

²⁷³ Correspondence with UNHCR Ireland and IOM, the UN Migration Agency, October 2018.

²⁷⁴ Irish Refugee and Migrant Coalition (2017b).

Ireland's resettlement programme and fostering links between host communities and new arrivals. The Minister also said that officials from the IRPP were examining the success of the Canadian Government's Private Sponsorship of Refugees Program and the progress of the UK Community Sponsorship scheme. The Minister indicated that the IRPP was willing to work with NGOs interested in developing a community sponsorship model.²⁷⁵ He further indicated that he expected progress towards this goal during 2018.²⁷⁶

A team of Global Refugee Sponsorship Initiative (GRSI)²⁷⁷ delegates visited Ireland on 1–3 November 2017 to offer advice and information to Government and civil society representatives on community refugee sponsorship.²⁷⁸

4.7 EU NAVAL OPERATIONS

As reported for previous years, Ireland continued to participate in naval operations in the Mediterranean during 2017. Up to October 2017, Ireland's participation had been in search and rescue operations on the basis of a bilateral agreement with the Italian navy. Ireland had not participated in EU Operation Sophia, the objectives of which include 'to identify, capture and dispose of vessels and enabling assets used or suspected of being used by migrant smugglers or traffickers'.²⁷⁹

In 2016, the Taoiseach indicated that Ireland had no plans to deploy navy vessels or personnel to Operation Sophia at that time, and any participation by Ireland in Operation Sophia would be subject to the applicable national statutory requirements.²⁸⁰ Dáil Éireann approved the participation of members of the Irish Permanent Defence Forces (Irish navy) in EU NAVFOR MED Operation Sophia on 13 July 2017. This completed the 'Triple Lock' mechanism of UN, Government and Dáil approval which is required before the Irish Defence Forces can be deployed overseas as part of an international force.²⁸¹

The motion to participate in Operation Sophia was debated in Dáil Éireann on 12 and 13 July 2017. Reservations were expressed about participation in the operation, and the diverting of the Irish navy from a purely humanitarian search and rescue focus. Concerns were also expressed about the training of the Libyan

²⁷⁵ Department of Justice and Equality (3 October 2017) Response to Parliamentary Question 41798/17. Available at www.justice.ie.

²⁷⁶ Department of Justice and Equality (11 October 2017) Response to Parliamentary Question 43178/17. Available at www.justice.ie.

²⁷⁷ GRSI is a partnership of five organisations – the Canadian Government, UNHCR, the Open Society Foundations, the Radcliffe Foundation and the University of Ottawa. It aims to help other countries to set up their own community-based sponsorship models.

²⁷⁸ Correspondence with UNHCR Ireland, October 2018.

²⁷⁹ Sheridan (2017) (print version), p. 54.

²⁸⁰ Ibid.

²⁸¹ Government Press Service (2017).

navy and coastguard foreseen by Operation Sophia.²⁸² The IRMC called for the Government to provide transparency in relation to its activities in relation to Operation Sophia and to ensure that its humanitarian mandate and human rights obligations are upheld.²⁸³

Irish naval vessels transferred to Operation Sophia from October 2017, with the LÉ *Niamh* setting off on the first three-month mission.²⁸⁴

Speaking following the Government decision, the Minister with responsibility for Defence said: ‘In addition to Ireland’s contribution to the humanitarian effort in the Mediterranean to date, Ireland will now be making a contribution to addressing some of the root causes of migration and human trafficking.’²⁸⁵

4.8 RESEARCH

The Irish Refugee Council (IRC) continued to participate in the European Council for Refugee and Exiles (ECRE) Asylum Information Database (AIDA) in 2017. The IRC prepared a 2017 update to the Country Report for Ireland which included information up to 31 December 2017, where available.²⁸⁶ The Country Reports provide a detailed overview of all aspects of a country’s asylum system – covering legislation, the application procedure, due process, reception conditions and the content of international protection. The 2017 report covered developments such as the Department of Children and Youth Affairs report on children in direct provision²⁸⁷ and issues regarding capacity in accommodation centres, including the transitioning to mainstream accommodation of persons with status and the continued accommodation of holders of deportation orders.

The College of Psychiatrists of Ireland published a position paper in March 2017 – *The Mental Health Service Requirements in Ireland for Asylum Seekers, Refugees and Migrants from Conflict Zones*.²⁸⁸ The paper argued that little has been done in Ireland to meet the specific mental health needs of this group, who are particularly vulnerable. The arrangements in place are that mental health needs are to be met by the local mental health services, the same services as are available to Irish nationals. However, the paper argued that the needs of refugees and asylum seekers are different and require a nuanced response. It noted that refugees and asylum seekers suffer higher rates of anxiety and depressive disorders than other sections of society and have up to 10 times the level of post-traumatic disorder

²⁸² Dáil Éireann (12 and 13 July 2017) Motion: Defence Forces Operations. Available at <http://oireachtas.ie>.

²⁸³ IRMC (2017a), p. 10.

²⁸⁴ *Irish Examiner* (2017).

²⁸⁵ Government Press Service (2017).

²⁸⁶ European Council for Refugees and Exiles (2018).

²⁸⁷ Department of Children and Youth Affairs (2017).

²⁸⁸ College of Psychiatrists of Ireland (2017).

(PTSD) of the indigenous population. The paper identified barriers to care for the asylum seeker, including transport to appointments; childminding; language; availability of past clinical records; and cultural barriers in the attitude to mental health issues. One of the key recommendations of the paper was for specific care and resources for this group:

Those who provide mental health services for asylum seekers, refugees and migrants should have the necessary mental health skills and appropriate training along with protected time in order to care for their unique needs. It is not acceptable to consider this group's situation as 'equitable' simply because they can potentially access the same services.²⁸⁹

The IRMC published *Pathways to Protection and Inclusion* in October 2017. The report was a briefing paper summarising major EU and Irish policy developments in relation to the global humanitarian crisis and mass movements of refugees and migrants since January 2016. The paper set out recommendations for the Irish Government in relation to safe and legal routes for people in need of international protection; a robust asylum and immigration system with adequate integration supports; and Ireland having a role in the EU to uphold humanitarian aid commitments and human rights obligations and to address the root causes of conflict and inequality. Specific recommendations included broadening the legal definition of family reunification; establishing and piloting a community sponsorship programme; and introducing a regularisation scheme for undocumented migrants.²⁹⁰

EMN Ireland published *Family Reunification of non-EU Nationals in Ireland* in March 2017.²⁹¹ This study was the Irish national report of the EMN study *Family Reunification of Third-Country Nationals in the EU plus Norway*.²⁹² The study investigated family reunification policy, law and practice in Ireland, covering both the *INIS Policy Document on Non-EEA Family Reunification* and the amended rules in the *International Protection Act 2015*. The study highlighted some key differences between the EU and Ireland, including that Ireland does not participate in the EU Family Reunification Directive 2003/86/EC, which governs family reunification rules in all other EU Member States except the UK and Denmark. The report highlighted that the lack of a specific legal entitlement to family reunification for non-refugees is considered a challenge by NGOs.

²⁸⁹ Ibid., p. 6.

²⁹⁰ IRMC (2017a).

²⁹¹ Arnold and Quinn (2017).

²⁹² European Migration Network (2017).

4.9 CASE LAW

NHV v Minister for Justice and Equality [2017] IESC 35

Section 9 of the *Refugee Act 1996* provided that a person seeking asylum is entitled to enter the State and remain while the application for refugee status is processed. Section 9(4) also provided, however, that an applicant shall not seek or enter employment before final determination of his or her application for a declaration. Pending the determination of an application for refugee status, applicants are required to live in State-provided accommodation known as direct provision, and provided in addition with an allowance of €19²⁹³ per week.

The appellant was a native of Burma who arrived in Ireland on 16 July 2008, and applied for refugee status on the following day. His application was refused at first instance and on appeal by the RAT in 2009. That decision was challenged and quashed on judicial review in July 2013. His application was then reconsidered by the RAT, which resulted in a further refusal by the RAT in November 2013. That decision was quashed on consent in February 2014, and accordingly the appellant's case was sent back to the RAT for further consideration. At that point, the appellant had been in direct provision for almost six years and faced a further significant delay before his application was finalised. Even then, in the event that his application was unsuccessful, he could have applied for subsidiary protection, which, it was anticipated, could take a number of years.

Since his arrival in the State, the appellant had been living in direct provision in County Monaghan. In May 2013, he was offered employment. He was unable to take up that offer of employment because of the provisions of section 9(4) of the *Refugee Act 1996*. He applied to the Minister for Justice for permission to take up the offer of employment. The Minister refused on the grounds that such employment was precluded by section 9(4).

The appellant commenced judicial review proceedings seeking to challenge that interpretation of s.9(4) and/or to seek a declaration of the incompatibility of s.9(4) with the Charter of the European Union, the European Convention on Human Rights, and the Constitution. His claim was dismissed by the High Court (McDermott J) ([2013] IEHC 535). The Court of Appeal, by a majority (Ryan P, Finlay Geoghegan J; Hogan J dissenting) ([2016] IECA 86), upheld that decision. The appellant appealed to the Supreme Court.

The Supreme Court allowed the appellant's appeal. O'Donnell J, who delivered the judgment of the court, accepted that the obligation to hold persons equal before the law 'as human persons' means that non-citizens may rely on constitutional

²⁹³ This increased to €21.60 per week from August 2017.

rights, where those rights and questions are ones which relate to their status as human persons, but that differentiation may legitimately be made under Article 40.1 having regard to the differences between citizens and non-citizens, if such differentiation is justified by that difference in status. In principle therefore, the Court accepted that a non-citizen, including an asylum seeker, may be entitled to invoke the unenumerated personal right including possibly the right to work which has been held guaranteed by Article 40.3 if it can be established that to do otherwise would fail to hold such a person equal as a human person.

O'Donnell J held that the 'right to work' should be conceived of as a freedom to seek work which implies a negative obligation not to prevent the person from seeking or obtaining employment, at least without substantial justification. O'Donnell J recognised that work is connected to the dignity and freedom of the individual which the Constitution seeks to promote. O'Donnell J stated that the Constitution is intended to permit, and perhaps encourage, without outside interference, the development of the human personality in his or her relations with other persons, citing *Botta v Italy* (1998) 26 E.H.R.R. 241 at p.256. He noted that the Constitution is set on a foundation of the essential equality of the human person, and it guarantees first life and then personal liberty, and freedoms radiating outwards from that: freedom of thought and conscience, freedom of expression, freedom to associate with others, family rights and the right to acquire, hold and transfer property, among others.

O'Donnell J concluded that a right to work at least in the sense of a freedom to work or seek employment is a part of the human personality and accordingly the Article 40.1 requirement that individuals as human persons are to be held equal before the law means that those aspects of the right which are part of human personality cannot be withheld absolutely from non-citizens. That then raised the question as to whether legitimate distinctions may be made between citizens and non-citizens, and in particular those whose only connection to the State is that they have made an application for asylum status which has not yet been determined.

The court accepted that there were a number of legitimate considerations justifying a distinction between citizens and non-citizens who are asylum seekers and in particular permitting a policy of restriction on employment, such as the possibility that a right to work might act as a 'pull factor' for asylum seekers. The court also accepted that even if some employment was to be permitted after some time, it did not follow that any employment should be permitted: it may be legitimate to limit that to defined areas of the economy, perhaps where there is a demonstrated need.

However, O'Donnell J pointed out that s.9(4) did not merely limit the right severely: it removed it altogether. Because there was no limitation on the time during which

an application for asylum must be processed, s.9(4) could amount to an absolute prohibition on employment, no matter how long a person was within the system. The court could not accept that if the right was in principle available, it was an appropriate and permissible differentiation between citizens and non-citizens, and in particular between citizens and asylum seekers, to remove the right for all time from asylum seekers. O'Donnell J noted that in this case the applicant was in the system for more than eight years, and during that time was prohibited from seeking employment. The court was satisfied that the point had been reached when it could not be said that the legitimate differences between an asylum seeker and a citizen could continue to justify the exclusion of an asylum seeker from the possibility of employment. O'Donnell J referred to the damage to the individual's self-worth, and sense of themselves, as exactly the damage which the constitutional right seeks to guard against, and referred to the appellant's affidavit evidence of depression, frustration and lack of self-belief in that regard. Accordingly, the court was satisfied in principle to hold that in circumstances where there is no temporal limit on the asylum process, then the absolute prohibition on seeking of employment contained in s.9(4) (and re-enacted in s.16(3)(b) of the 2015 Act) was contrary to the constitutional right to seek employment.

Principles: The absolute prohibition on asylum seekers seeking employment, coupled with the absence of a maximum time limit on the processing of asylum applications, meant the prohibition was in breach of the constitutional right to seek employment.

ED v Minister for Justice and Equality (No.2) [2017] IECA 20

The applicant was a Ghanaian national who applied for refugee status in 2010, which was refused following a decision of the RAT in January 2011. She applied for subsidiary protection on 8 October 2013. By decision dated 5 November 2013 the Minister for Justice and Equality refused to entertain this application for subsidiary protection, contending that she had not made the application within the administrative deadline of 15 days from the date of the issuing of a proposal to deport her (which issued in 2011).

The applicant subsequently instituted judicial review proceedings, arguing that the 15-day time limit infringed the principle of equivalence because no similar time limit was contained in respect of refugee applications. The applicant's proceedings were rejected by the High Court on 16 October 2014 ([2014] IEHC 456). The applicant appealed to the Court of Appeal and on 10 June 2015, the court decided to make a reference to the Court of Justice pursuant to Article 267 TFEU ([2015] IECA 118) in the following terms:

First, can an application for asylum which is governed by domestic legislation which reflects a Member State's obligations under the Qualification Directive be regarded as an appropriate comparator in respect of an application for subsidiary protection for the purposes of the principle of equivalence?

Second, if the answer to the first question is in the affirmative, is it relevant for this purpose that the time limit imposed in respect of applications for subsidiary protection (i) has been imposed simply administratively and (ii) that the time limit serves important interests of ensuring that applications for international protection are dealt [with] within a reasonable time?

The decision of the Court of Justice was delivered on 20 October 2016. The court first held that the principle of equivalence did not apply, given that the differing procedures concerned 'two types of applications based on EU law.' The principle of equivalence was therefore engaged only where the comparator was between an application based on national law on the one hand and that based on EU law on the other. However, the Court of Justice went on to reformulate the question asked to consider whether the 15 day time limit breached the principle of effectiveness, despite the fact that this issue had not been argued before the High Court or the Court of Appeal.

The Court of Justice in its judgment concluded that the principle of effectiveness must be interpreted as precluding a national procedural rule, such as that at issue in these proceedings, which requires an application for subsidiary protection status to be made within a period of 15 working days of notification, by the competent authority, that an applicant whose asylum application has been rejected may make an application for subsidiary protection. The proceedings then resumed before the Court of Appeal to apply the decision of the Court of Justice and reach a final determination in the proceedings.

The Court of Appeal held that it was bound to give effect to the decision of the Court of Justice. The effect of that decision was to hold unambiguously that the 15 working day time limit governing applications for subsidiary protection violated the EU principle of effectiveness. In the light of that decision the Court of Appeal was satisfied that it was obliged to suspend the operation of the 15-day rule so that it could no longer provide the legal basis for any administrative decision which had previously sought to apply that rule on the premise that it was of full force and effect.

In the present case the Minister refused to permit the applicant to submit an application for subsidiary protection on the ground that it was out of time by reference to the 15-day rule. In view of the court's conclusions regarding the effect of the Court of Justice's decision and its binding character, it followed, therefore,

that the Minister's decision was based upon a rule which had been conclusively adjudicated to be contrary to EU law. It followed in turn that the Minister's decision of 5 November 2013 which refused to permit the applicant to make an application for subsidiary protection on this ground must be quashed.

Principles: This decision established that the 15-day administrative deadline for submission of applications for subsidiary protection in Ireland was in breach of EU law.

AO v Refugee Appeals Tribunal [2017] IECA 51

The applicant was a Nigerian national who was born in May 1991. She arrived in the State on 9 January 2007 when she was 15 years old and applied for asylum. The applicant claimed to have been threatened with forced marriage and attempted rape. She said she was given assistance by the African Refugee Foundation ('AREF') before ultimately leaving Nigeria. As part of her asylum claim the applicant submitted a refugee card and a letter from AREF to corroborate her account. The applicant's refugee claim was rejected at first instance and appeal in part on credibility grounds; in particular, the authenticity of the AREF documents was not accepted. The applicant instituted judicial review proceedings arguing that the Tribunal should have made efforts to verify the documents before reaching a conclusion that they were not authentic. The High Court (Barr J) found in favour of the applicant and held that there was a duty on the decision-maker to take steps to investigate the authenticity of the documents. The High Court subsequently certified two points of law of exceptional public importance for the purposes of an appeal in the following terms:

- (i) Whether the effect of this court's judgment is to require the Refugee Appeals Tribunal to adopt an investigative role not provided for in the provisions of the *Refugee Act 1996* (as amended)?
- (ii) Whether by effectively placing an obligation on the Refugee Appeals Tribunal to contact the creator/author of a document tendered as evidence by the applicant, the court's judgment requires the Refugee Appeals Tribunal to act contrary to the duty of confidentiality imposed on it by s.19(1) of the *Refugee Act 1996* (as amended)?

The Court of Appeal held that a decision-maker is not obliged as a general rule to conduct his or her own investigations in order to establish the authenticity of a document relied on by an applicant for international protection, although there may be special circumstances where this is required. It was held that while it is clear from the decision of the European Court of Human Rights in *Singh v Belgium* (2 October 2012) that Contracting States may be under such an obligation in particular cases where the authenticity of the documentation is critical and the

implications for the claimants otherwise potentially grave, the Court of Appeal was satisfied that there was no general rule to this effect.

Contrary to the conclusion of the High Court in the present case, the Court of Appeal was satisfied that the decision maker could not be faulted for her decision. She conducted a careful review of the documents relied on by the applicant and concluded for stated reasons that they were unlikely to be authentic. In those circumstances the court said it was unnecessary to express any view on the second question.

Principles: This decision establishes that a decision-maker is not obliged as a general rule to conduct his or her own investigations in order to establish the authenticity of a document relied on by an applicant for international protection.

BS and RS v Refugee Appeals Tribunal [2017] IECA 179

The applicants were two Albanian asylum seekers who challenged the decision of the RAT upholding the decision of the ORAC that the United Kingdom was the Member State responsible for determining their applications for asylum. The applicants claimed asylum in Ireland on 16 December 2014, and completed their asylum application questionnaires on 26 December 2014. An information request by the ORAC to the United Kingdom, under Article 34 of the Dublin III Regulation, found that persons whose fingerprints matched those of the applicants (although under different names) had held a valid UK visa for the period 23 October 2014 to 23 April 2015 in contradiction to information given by the applicants in their asylum application questionnaires. ORAC found, pursuant to Article 12.2 of the Regulation, that the UK was the state responsible for examining the applications, as the applicants were in possession of valid UK visas.

This decision was upheld by the RAT and the applicants sought judicial review of that decision on the basis that the request from the ORAC to the United Kingdom under Article 34 of the Dublin III Regulation on the Annex V request form was unlawful because the request form did not comply with Article 34 by reason of the failure to set out the grounds upon which the request was being made, and the failure to state the evidence on which the request was based. The applicants argued that this unlawful request to the UK resulted in transmission of personal information about them in the reply from the UK, in breach of the principle of preventing unauthorised disclosure under the Data Protection Directive 95/46/EC. The applicants also argued that the unlawful request was a breach of their right to protection of privacy under Article 8 of the EU Charter of Fundamental Rights and Article 8 ECHR. They submitted that such data unlawfully obtained should be erased in accordance with Article 34(9) of the Dublin III Regulation and excluded from consideration.

The respondents accepted that the Annex V form was not completed in strict compliance with the Regulation, in particular that it failed to identify that the information was being sought for the purpose of establishing the Member State responsible for determining the applicants' asylum applications, but argued that in substance the request was a valid request and also that any 'frailty' in how the form was completed did not give rise to a right of challenge by the individual who was the subject of the request. The High Court (Humphreys J) found against the applicants on all the grounds put forward. The applicants subsequently appealed the decision to the Court of Appeal.

The three-judge Court of Appeal found against the applicants in a majority 2–1 decision. The judgment was largely based on a consideration of the scope of the effective remedy provisions in the Dublin III Regulation, and the applicants' argument that individually enforceable rights existed in relation to Article 34 requests (which are part of the administrative co-operation measures of the Regulation). The judgment placed emphasis on the CJEU judgment in *Case C-63/15 Ghezelbash*, which found that 'an asylum seeker is entitled to plead [...] the incorrect application of one of the criteria for determining responsibility laid down in Chapter III of the Regulation'. The Court of Appeal accepted that the Dublin III Regulation introduced and enhanced the rights of individual asylum seekers in relation to the making of transfer decisions under the Regulation. However, the court found that the concept of an effective remedy under Article 27(1) of the Dublin III Regulation could not be extended to the point that it could be used to challenge a transfer decision on the basis that the Annex V form was incorrectly completed. Peart J stated:

Where an applicant has an entitlement to an effective remedy, what is envisaged is a remedy to provide him with, or otherwise protect and vindicate some right or entitlement of which he has been wrongfully deprived or denied. It does not extend to a right to rummage around in the undergrowth of paper which has been generated during the asylum process, including the determination of the correct member state responsible under the Regulation, to see if some 'T' has not been crossed or some 'I' has not been dotted, and then cry foul when some infelicity is discovered which has no bearing upon any individual right or entitlement of the applicant which the effective remedy is there to protect.

With regard to the data protection issues raised by the applicants, the Court of Appeal noted that the applicants' fingerprints were lawfully taken by the Irish authorities under section 9A of the *Refugee Act 1996*. The Irish authorities furnished these fingerprints to the UK authorities, who replied that they matched fingerprints held on their records. The Court of Appeal found that the provision of the fingerprints by the Irish authorities to the UK was in pursuit of the legitimate

interest of providing information to ascertain which Member State was responsible for the applicants' applications, in accordance with section 2A of the *Data Protection Act 1988*.

The court also commented that had the personal data (i.e. the fingerprints) been erroneous in some way, a remedy was available in the Regulation for the applicants to request that the data be erased or amended.

The applicants had also argued that both the request and the UK's response to it breached the obligation under the Data Protection Directive (95/46/EC) to avoid unlawful or unauthorised access or disclosure. The applicants argued that the information furnished by the UK in response was provided in breach of Article 34 because there was no evidence that the information gathered by the UK came from a Eurodac enquiry. The Court of Appeal found, however, that the UK did not provide fingerprints in response to the request it received from ORAC, but rather simply confirmed that the lawfully obtained fingerprints which had been submitted to the UK authorities matched fingerprints on their own records. Therefore, the UK could not have provided fingerprints in breach of Article 34 – they simply did not transmit any fingerprints in their reply at all.

There was one dissenting judgment. The dissenting judgment considered that there was insufficient clarity about, in particular, the scope of Articles 34(4) and 34(9) of the Regulation to resolve the issues in the case without making an Article 267 reference to the CJEU. The dissenting judge considered that the question of whether Article 34(4) gives rise to individually enforceable legal rights remained open. The dissenting judge also did not consider it was clear, even if the requirements of Article 34(4) were not met, whether or not Article 34(9) could be invoked to erase otherwise accurate information obtained from the UK authorities.

Principles: The Dublin III Regulation introduced and enhanced the rights of individual asylum seekers in relation to the making of transfer decisions under the Regulation. However, the concept of an effective remedy under Article 27(1) of the Dublin III Regulation could not be extended to the point that it could be used to challenge a transfer decision on the basis that the Annex V form was incorrectly completed. The provision of the appellants' fingerprints by the Irish authorities to the UK was in pursuit of the legitimate interest of providing information to ascertain which Member State was responsible for their asylum applications, in accordance with section 2A of the Data Protection Act 1988.

BW v Refugee Appeals Tribunal [2017] IECA 296

The applicant came to Ireland in 2007. She applied for refugee status in 2011. Her application was unsuccessful. She appealed to the first respondent. The appeal was

a papers-only appeal. The appeal was unsuccessful. The RAT made adverse credibility findings based on matters that had not been put to the applicant and concluded that cumulatively the applicant had not proved that she was a refugee. The applicant challenged the decision by way of judicial review. The High Court (Humphreys J) held that one finding in the decision was invalid but that this did not render the entire decision invalid. The applicant applied for leave to appeal to the Court of Appeal. Humphreys J certified the following for appeal as a question of exceptional importance:

Whether, in the case of a decision that is supported by a number of reasons, one or more of which are unsustainable, the overall conclusion can be upheld if the court considers, as a matter of reason and common sense, and on reading the decision in the round, that the invalid reasons are not major and do not go to the core of the decision, even if: (a) despite not being major and not going to the core claim, they could be said to impact upon, in the sense of being relevant or potentially relevant to, the core claim; (b) the decision is cumulative; or (c) there is no express assignment of weight by the decision-maker to individual factors.

The Court of Appeal found in favour of the applicant, holding that in a papers-only appeal, the applicant remained entitled to an effective appeal remedy in accordance with the purpose and objective of Directive 2005/85/EC. She was also entitled to be afforded fair procedures under Article 40.3 of the Constitution. Her rights in these respects were not diluted or reduced by the fact that she could not require an oral hearing.

The court stated that in a papers-only appeal, the right to an effective appeal remedy was of particular importance where adverse credibility findings had been made against an applicant which had led to her application for refugee status being refused. Even where an applicant had an opportunity of addressing matters which led to an adverse credibility finding, the first respondent must still take particular care to ensure that fair procedures had been applied to the consideration of the appeal. While each case needed to be considered on its own facts, the court stated that as a general principle, where an issue of concern emerged for the first time on a papers-only appeal in relation to a matter which the appellant had not already had a fair opportunity to address and that concern was in relation to something material to the basis on which asylum was being sought, and therefore to the decision whether or not she be granted a declaration of refugee status, the applicant was as a matter of fair procedures entitled to an opportunity to address it before any adverse finding of credibility was made against her.

Whether that opportunity required some form of oral hearing in relation to the concern or could be dealt with fairly and adequately in writing would depend on

the particular facts. It was held that where an applicant was not afforded some opportunity to address some matter of significance that arose for the first time on a papers-only appeal before that matter was relied upon for an adverse credibility finding, the finding in question might have to be set aside, particularly where that finding was objectively material to the basis for a conclusion that the applicant lacked credibility, and the decision on appeal was to uphold the recommendation of the Refugee Applications Commissioner to refuse a declaration.

Where there was a single fact, which was incorrect, within a decision as to credibility reached on a cumulative basis, or where the decision maker had failed to take into account some material fact, or where no opportunity was provided to the applicant to comment upon some matter of material concern to the decision maker upon which in part the adverse credibility finding was based, that might not of itself be sufficient to justify setting aside the overall decision as to credibility. Every case must be considered on its own facts when assessing the materiality of any particular error. The greater the number of reasons that were found to be flawed because the applicant had not been provided with an opportunity to address or otherwise comment upon the matters of concern upon which they were based, the more likely it was that the foundations of the overall decision reached on a cumulative basis were undermined to the extent that it must be set aside.

Principles: Where an issue of concern emerged for the first time on a papers only appeal in relation to a matter which the appellant had not already had a fair opportunity to address and that concern was in relation to something material to the basis on which asylum was being sought, and therefore to the decision whether or not she be granted a declaration of refugee status, the appellant was as a matter of fair procedures entitled to an opportunity to address it before any adverse finding of credibility was made against her.

FF v Minister for Justice, Equality and Law Reform [2017] IECA 273

In this case the Court of Appeal considered the question of whether, where an applicant for subsidiary protection is considered by the decision maker to be a national of Country A, and also to have been granted refugee status and lived in each of Countries B and C, the application may be decided upon the basis that he is a stateless person within the meaning of the Qualification Directive and the regulations transposing that Directive into Irish law.

The applicant was born in Cameroon in 1965. He worked as a journalist and with an NGO and claimed to have experienced persecution in Cameroon, including arrest, detention and torture. He fled to Nigeria in 1999 and was recognised as a refugee there in 2001. He claims to have been threatened by a Cameroonian diplomat in Nigeria, and in 2002 fled to Mali via Ghana. He was granted refugee

status in Mali in 2003 but subsequently left Mali as a result of difficulties with the authorities related to his role in an organisation that was opposed to Female Genital Mutilation (FGM). He arrived in Ireland and claimed refugee status in September 2005. In his initial application he stated his nationality as 'stateless? {Cameroonian}'. His claim was assessed on the basis that he was stateless with reference to each of his countries of habitual residence as Mali, Nigeria and Cameroon.

The applicant was refused refugee status and subsidiary protection and subsequently brought judicial review proceedings challenging the refusal of subsidiary protection on the basis that his claim should not have been assessed on the basis that he was stateless, and that the only country with reference to which his claim should have been assessed was his country of nationality i.e. Cameroon. The High Court dismissed this challenge and the applicant appealed.

The first issue which arose on the appeal was whether an applicant for subsidiary protection may be considered both as a national of a third country and a stateless person simultaneously. The applicant argued that they may not, but the Minister argued that there was a distinction between people who are 'de jure' stateless and 'de facto' stateless, and contended that 'stateless' is used in both senses in the Qualification Directive and that it was therefore possible to be simultaneously both a national of a state and stateless for the purposes of the Qualification Directive and the domestic regulations. The Court of Appeal noted that there was no decision either of the Court of Justice or the Irish courts which recognised the concept of 'de facto' statelessness, and referred to UNCHR reports as well as the decision of the English Court of Appeal in *B2 v Secretary of State for the Home Department* [2013] EWCA Civ 616. It was further noted that the term 'stateless person' is not defined in the Qualification Directive nor in any other EU provision.

The Court of Appeal referred to the decision of the CJEU in *HN v Minister for Justice Equality & Law Reform (Case C-604/12)* (paras.27 and 28) where it was held that the Qualification Directive must be interpreted in a manner consistent with the Geneva Convention. Accordingly, the Court of Appeal concluded that the Qualification Directive in using the term 'a stateless person' in the definition of 'refugee' in Article 2(c) is using this term to connote the second category of persons referred to in the definition of refugee in the Geneva Convention, namely persons 'not having a nationality'. This meant a person who was de jure stateless but did not include a person who was de facto stateless. The Court of Appeal held that a person who is an applicant for subsidiary protection therefore either has a nationality or is stateless but cannot simultaneously be considered as both having a nationality and being stateless. In circumstances where the decision-maker accepted that the applicant was a national of Cameroon, that was the only country against which the applicant's claim should have been assessed, and the decision-

maker therefore erred in law in also assessing the applicant's claim with reference to Mali and Nigeria. Accordingly, the Court of Appeal allowed the appeal and remitted the applicant's application for subsidiary protection to the Minister to be decided in accordance with law.

Principles: The Qualification Directive in using the term 'a stateless person' in the definition of 'refugee' in Article 2(c) is using this term to connote the second category of persons referred to in the definition of refugee in the Geneva Convention, namely persons 'not having a nationality'. This meant a person who was de jure stateless but did not include a person who was de facto stateless.

CHAPTER 5

Unaccompanied minors and other vulnerable groups

5.1 UNACCOMPANIED MINORS

As reported in previous reports in this series, Tusla, the Child and Family Agency, was established under the *Child and Family Agency Act 2013* as an independent legal entity. The Agency, which is overseen by the Department of Children and Youth Affairs, brings together key services relevant to children and families including child protection and welfare services previously operated by the Health Service Executive (HSE), the Family Support Agency and the National Educational Welfare Board. The Social Work Team for Separated Children Seeking Asylum sits under Tusla and provides support, assessment and care to children arriving alone into Ireland.²⁹⁴

5.1.1 Statistics

There were 30 applications for international protection – 23 male and 7 female applicants – made to the International Protection Office (IPO) by unaccompanied minors (UAMs) in 2017.²⁹⁵

A total of 175 referrals were made to the Social Work Team for Separated Children Seeking Asylum (Tusla) in 2017, the highest number of referrals since 2009.²⁹⁶ This compared with 126 referrals made in 2016.²⁹⁷ A total of 111 UAMs were placed in statutory care.²⁹⁸ This included commitments in relation to UAMs under the Irish Refugee Protection Programme (IRPP).²⁹⁹

A total of 30 UAMs were relocated to Ireland during 2017 under the Calais Special Project (CSP) (see section 5.1.2).

According to the Department of Justice and Equality, a total of six UAMs have been brought to Ireland from Greece under the relocation strand of the IRPP, who are

²⁹⁴ Sheridan (2017) (print version), p. 71.

²⁹⁵ Correspondence with International Protection Office, May 2018. European Migration Network (2018b).

²⁹⁶ Tusla (2018), p. 23.

²⁹⁷ Sheridan (2017) (print version), p. 72.

²⁹⁸ Tusla (2018), p. 23.

²⁹⁹ Ibid.

in the care of Tusla.³⁰⁰ Four of these children came to Ireland in 2016 and two in 2017.³⁰¹

5.1.2 Calais Special Project

In November 2016, the Government agreed, following an all-Party motion in Dáil Éireann, to work with the French authorities and some Irish volunteers to identify up to 200 UAMs previously living in the unofficial migrant camp at Calais and who expressed a wish to relocate to Ireland. The CSP was established by Tusla, during 2017, in this regard. A total of 30 children were relocated to Ireland with the assistance of the International Organization for Migration (IOM) in 2017 under the project, three of whom were reunited with family and the remainder placed into statutory care.³⁰² The total for 2017 is broken down by country of origin in Table 5.1 below.

TABLE 5.1 RESETTLEMENT OF UNACCOMPANIED MINORS FROM CALAIS, 31 DECEMBER 2017

Country of Origin	Number
Eritrea	7
South Sudan	4
Afghanistan	15
Ethiopia	3
Syria	1
Total	30

Source: Irish Naturalisation and Immigration Service (2018a).

A first mission to meet UAMs in France took place in January 2017 and included officials from Tusla, the Irish Refugee Protection Programme, and members of An Garda Síochána who carried out security assessments.³⁰³

To co-ordinate Tusla's role in this effort, Tusla established the CSP, which is led by the Separated Children's Team. Additional resources were allocated – including

³⁰⁰ Department of Justice and Equality (20 March 2018) Response to Parliamentary Question 12352/18. Available at www.justice.ie.

³⁰¹ Department of Justice and Equality (24 April 2018) Response to Parliamentary Question 17594/18. Available at www.justice.ie.

³⁰² Irish Naturalisation and Immigration Service (2018a).

³⁰³ Department of Justice and Equality (25 January 2017) Response to Parliamentary Question 3289/17. Available at www.justice.ie.

additional social workers, aftercare workers and administrative support – and three new residential intake units specifically for separated children were opened in 2017.³⁰⁴

5.1.3 Protection applications

The IPO published an information booklet for UAMs applying through Tusla for international protection³⁰⁵ in 2017. The booklet is designed to inform UAMs about the application process, once Tusla has made an application on their behalf.³⁰⁶

As discussed in Chapter 4, the Chief International Protection Officer accorded priority to certain classes of applications in accordance with section 73 of the International Protection Act 2015 in February 2017. UNHCR offered advice on the prioritisation and supported the prioritisation of applications as a means to enable the early identification of, for example, likely well-founded cases and cases involving children or the elderly.³⁰⁷

One category for prioritisation is based on age of the applicant – including UAMs in the care of Tusla, UAMs who have now aged out, and applicants over the age of 70 who are not part of a family group.

Prioritisation relates solely to the scheduling of interviews and does not predetermine any recommendation to be made. All applications, whether prioritised or not, receive the same full and individual assessment under the procedure.³⁰⁸

Appeals

The Chairperson of the International Protection Appeals Tribunal (IPAT) issued Guidelines in Relation to Appeals from Child Applicants in April 2017. These included guidance in relation to all child applicants, including UAMs.³⁰⁹

³⁰⁴ Department of Children and Youth Affairs (4 July 2017) Response to Parliamentary Question 30782/17. Available at www.oireachtas.ie.

³⁰⁵ In Ireland, UAMs arriving at ports of entry are referred to the care of the Separated Children's Team in Tusla. Tusla decides whether it is in the best interests of the child to make an international protection application and makes the application to the IPO on their behalf.

³⁰⁶ International Protection Office (2017b).

³⁰⁷ International Protection Office and UNHCR (2017).

³⁰⁸ *Ibid.*

³⁰⁹ Guideline No. 2017/5, Appeals from Child Applicants. Available at www.protectionappeals.ie.

5.2 OTHER VULNERABLE GROUPS

5.2.1 Migrant children

Children Rights Alliance (CRA) Report Card

The annual Children Rights Alliance (CRA) Report Card covering 2017 marked the developments for refugee and asylum-seeking children as a 'D+', an improvement over the 'D-' grade for this category for 2016. As for 2016, this report based its grading on Government commitments in relation to offering a safe haven for refugees and reforming the direct provision system in the Programme for a Partnership Government 2016–2020.³¹⁰

The grade awarded reflected progress made under the Irish Refugee Protection Programme (IRPP) in relation to relocation and resettlement commitments; certain reforms to direct provision including access to the Ombudsman for Children to make complaints, and the Government plans to opt into the EU Reception Conditions Directive (2013/33/EU). The report card considered that progress on the IRPP commitments was 'steady' and there was 'some' progress towards improving the direct provision system.

The Report Card recommended that Ireland should continue to meet its relocation and resettlement commitments, with priority given to children and UAMs. It recommended radical reform of the direct provision system, including to:

- *Develop and introduce National Standards for reception accommodation centres for people seeking protection and establish, as a matter of urgency, an independent inspectorate to ensure consistency and accountability.*
- *Provide 'own-door' or self-contained accommodation with private living space for families, and nearby access to appropriate play facilities for children.*
- *Develop minimum nutritional standards for Direct Provision accommodation and ensure families have access to their own cooking facilities.*
- *Increase the weekly allowance for refugee and asylum-seeking children to €31.80, to ensure equal treatment between these children and other children whose parents are in receipt of a social welfare payment.*
- *Develop and implement a dedicated child protection and welfare strategy to address the particular needs of families living in reception accommodation and in Direct Provision centres.*³¹¹

³¹⁰ Children's Rights Alliance (2018).

³¹¹ Ibid., p. 127.

Consultation with children living in direct provision accommodation

In July 2017, a report was published on consultations with children and young people living in direct provision accommodation. This report was commissioned by the Department of Children and Youth Affairs on behalf of the Department of Justice and Equality, and interviewed children on their experiences and views about their life in direct provision accommodation. This was the first direct consultation with young persons living in State-provided asylum seeker accommodation.^{312,313}

Strong themes that emerged from the report were children's concerns with the length of time they had to spend in the system; feeling unsafe; and concerns about poor quality of accommodation, lack of facilities and, especially, poor food. Children did speak positively about ease of access to their friends and about certain managers and staff, and some liked the location of their centre if it was near the sea or in Dublin city centre. The report found that the children were largely unaware of the term 'direct provision', therefore the term 'where you live' was used for the research.³¹⁴

The report concluded that:

*The main message that emerges from the data is that on the whole, children and young people living in Direct Provision are dissatisfied with the system and say that their personal wellbeing, family life, private life and social life is adversely affected by long stays in the Direct Provision centres.*³¹⁵

Access of residents of direct provision to the Ombudsman for Children Office

As discussed in Chapter 4, complaints from residents of direct provision centres could be accepted by the Ombudsman and Ombudsman for Children offices from 3 April 2017.³¹⁶

During the Ombudsman for Children's Office (OCO)'s first year, staff from the OCO visited all of the State direct provision accommodation centres and also the three Emergency Reception and Orientation Centres (EROCs) under the IRPP.³¹⁷ The OCO met with over 170 children and young people in direct provision centres.³¹⁸

³¹² Department of Justice and Equality (2017h).

³¹³ Department of Children and Youth Affairs (2017).

³¹⁴ Ibid., p. 10.

³¹⁵ Ibid., p. 6.

³¹⁶ Office of the Ombudsman (2017).

³¹⁷ Office of the Ombudsman for Children (2018), p. 38.

³¹⁸ Ibid., p. 3.

The OCO received 29 individual complaints in 2017 from families about a range of issues including financial supports, accommodation, and other public services. Some complaints received were about the inadequacy of the direct provision allowance and were outside the remit of the OCO to examine. The type of complaints received related to communication, complaint management and management of transfers to different centres or larger accommodation. Most of these complaints were resolved locally.³¹⁹

The OCO commented:

*Our view is that the number of official complaints received about the administration of the Direct Provision system is low. However, this is not an indicator of an effective complaints handling culture or fair and effective administration for children. We believe that the low number of complaints we receive is due to a perception that making complaints would impact negatively on living conditions or lead to an undesirable transfer within the system.*³²⁰

5.2.2 Migrant women

Female Genital Mutilation (FGM)

As reported for 2016, AkiDwa published its multi-annual strategy *Towards a National Action Plan to Combat Female Genital Mutilation 2016–2019* in 2016.³²¹ AkiDwa is a partner organisation in the United to End FGM (UEFGM) project, co-funded by the European Commission and supported by UNHCR. In 2015, the European Commission funded the Cyprus University of Technology for a 24-month project to develop an e-learning tool to provide accessible and culturally appropriate information to a wide range of professionals – including medical professionals, asylum staff, child protection staff, police, social workers and NGOs. The e-learning tool was developed by the Mediterranean Institute of Gender Studies in Cyprus, in partnership with the Italian Association for Women in Development, AkiDwa in Ireland and the Family Planning Association, Portugal. The tool went live across the EU on 3 February 2017, and was launched by AkiDwa in Dublin on 6 February 2017.³²²

ActionAid Ireland ran the AFTER (Against Female Genital Mutilation/Cutting Through Empowerment and Rejection) project between 2016 and 2018. The target area for the project was Cork city and county, where FGM services are not as widely

³¹⁹ Ibid., p. 38.

³²⁰ Ibid., p. 39.

³²¹ Sheridan (2017) (print version), p. 79.

³²² AkiDwa (2017).

available as in Dublin. ActionAid Ireland collaborated with AkiDwa in order to reach wider communities and share experiences.

The AFTER project was supported by the Rights, Equality and Citizenship (REC) programme of the European Union to work with migrant women and girls from Female Genital Mutilation/Cutting (FGM/C) practising countries. The project was implemented across five European countries (Belgium, Ireland, Italy, Spain and Sweden) by six partners.³²³

National Strategy for Women and Girls 2017–2020

The *National Strategy for Women and Girls 2017–2020* was published in 2017.³²⁴ The Strategy highlighted areas where improvements needed to be made for migrant women including improving their socio-economic situation, participation in public life and combating violence against women. The Strategy made cross-references to the Migrant Integration Strategy and the National Traveller and Roma Inclusion Strategy in its commitments. The Strategy also stated that these strategies would be monitored and reported on a gender-disaggregated basis.³²⁵ The Immigrant Council of Ireland (ICI) and the Migrant Rights Centre Ireland (MRCI) made submissions in relation to the Strategy.

5.2.3 Research

In January 2017, the ICI launched the report *Hidden Struggles: Filling Information Gaps Regarding Adversities Faced by Refugee Women in Europe*.^{326,327} This report presented research into the experiences of refugee women in camps in Greece. The research was undertaken in November 2016 by the Refugee Rights Data Project in co-operation with the ICI. It included direct interviews with women living in three Greek refugee camps, as well as a survey of residents (40.6% women) and interviews with camp service providers, including staff and volunteers.³²⁸

Key themes highlighted by the research included that women did not feel safe in the camps, access to healthcare was difficult, and women reported unhealthy, vermin-infested living conditions. Over 80% of the women directly interviewed reported feeling depressed or anxious most of the time. Access to contraception for women was also highlighted as a particular difficulty. Some 74% of service providers interviewed had heard of violence, including sexual and domestic violence, in the camp where they operated. Reporting of violence among the women surveyed was low but this was considered to be influenced by a reluctance

³²³ See <https://actionaid.ie/after-project>.

³²⁴ Department of Justice and Equality (2017i).

³²⁵ Ibid., p. 30.

³²⁶ Immigrant Council of Ireland (2017b).

³²⁷ Refugee Rights Europe (2017).

³²⁸ Immigrant Council of Ireland (2017b).

to discuss these matters directly.³²⁹ The report highlighted a particular problem with gaps in the service provision to respond to sexual and gender-based violence experienced by women at various stages of displacement and to tailor services to address these needs.³³⁰

Overall, the report recommended greater supports and resources for staff and volunteers dealing with sexual and gender-based violence; more language training and female interpreters to improve communication; childcare facilities to allow women to attend the education/language training available; and more women-appropriate services and facilities in camps, for example separate toilets and showering facilities and better facilities for laundry and safe food preparation to allow women to care for their families.³³¹ When the Report was launched the ICI called for Ireland's relocation and resettlement initiatives to be sensitive to gender-specific needs.³³²

³²⁹ Refugee Rights Europe (2017), pp. 37–42.

³³⁰ *Ibid.*, p. 62.

³³¹ *Ibid.*, p. 63.

³³² Immigrant Council of Ireland (2017b).

CHAPTER 6

Integration

6.1 INTEGRATION POLICY

6.1.1 *Migrant Integration Strategy*

The *Migrant Integration Strategy – A Blueprint for the Future*,³³³ which provides the framework for Government action on migrant integration from 2017 to 2020, was published in February 2017.³³⁴

The Office for the Promotion of Migrant Integration (OPMI), an office of the Department of Justice and Equality, has a cross-Departmental mandate to develop, lead and co-ordinate migrant integration policy across other Government departments, agencies and services. As reported in previous years, a cross-Departmental Group on Integration was established in March 2014 with a mandate to review the activities being undertaken by Government Departments and agencies directed to promoting the integration of migrants, preparing a Draft Integration Strategy taking account of the policies and actions already being implemented, and undertaking consultation with key stakeholders.³³⁵

Integration is defined in current Irish policy as the ‘ability to participate to the extent that a person needs and wishes in all of the major components of society without having to relinquish his or her own cultural identity’.³³⁶ The Strategy’s key message is that successful integration is the responsibility of Irish society as a whole.³³⁷

The Strategy is intended to cover EEA and non-EEA nationals, including economic migrants, refugees and those with legal status to remain in Ireland.³³⁸ It is directed at Government Departments, public bodies, the business sector, and community, voluntary, faith-based, cultural and sporting organisations as well as at families and individuals.³³⁹ Table 6.1 summarises the key actions in the Strategy.

³³³ Department of Justice and Equality (2017j).

³³⁴ Department of Justice and Equality (2017k).

³³⁵ Sheridan and Whelan (2016) (online version), pp. 81–82.

³³⁶ Department of Justice and Equality (2017j), p. 11.

³³⁷ *Ibid.*, p. 9.

³³⁸ *Ibid.*, p. 18.

³³⁹ *Ibid.*, p. 9.

TABLE 6.1 KEY ACTIONS IN *MIGRANT INTEGRATION STRATEGY 2017–2020*

Actions aimed at all Government Departments	Specific Actions
<ul style="list-style-type: none"> • Information to migrants in language-appropriate formats. • Ongoing intercultural awareness training for all frontline staff. • Signage in public offices indicating where interpretation is available. • Clear information on how to make a complaint about racist behaviour by staff or another customer. 	<ul style="list-style-type: none"> • The inclusion of a target of 1% for the employment of EEA migrants and people from minority ethnic communities in the civil service (in most cases civil service employment is not open to non-EEA nationals). This issue is important in terms of beginning the process of making the civil service representative of the broader population. • Schools outside the established education system will be encouraged to network with the aim of providing information on child protection and health and safety regulations to them and of developing relationships with them. • The establishment by local authorities of networks aimed at reaching out to hard-to-reach migrant groups so as to help them to engage with Government Departments and to provide information on their needs. • The development of the second National Intercultural Health Strategy. • The establishment of a Communities Integration Fund intended to support organisations in local communities (sports organisations, faith organisations, etc.) to undertake actions to promote the integration of migrants into their communities. • The monitoring of current school enrolment policies over time to assess their impact on the enrolment of migrant students. • The inclusion of a language component in education and training programmes for unemployed migrants with poor English proficiency. • Initiatives to ensure that migrant needs in relation to skills acquisition and labour market activation are addressed. • Initiatives to encourage the business sector to play a role in promoting integration. • The establishment of a working group to examine data gaps in relation to migrant needs and experience.

Source: Department of Justice and Equality (2017j).

Outlining the aims of the Strategy, the Minister of State at the Department of Justice and Equality said:

*This Strategy is targeted at all migrants, both EU citizens and those from outside the EU, including refugees. It is also targeted at foreign-born Irish citizens and their children. The Strategy adopts a Whole-of-Government approach that seeks to build on existing good practice and provide additional supports where needed. It contains a broad range of initiatives in areas such as access to citizenship and public services; education; employment; political participation and more. Its implementation will be overseen by a cross-sectoral committee, on which some of our key civil society organisations working in the area of integration will also have a voice. I am looking forward to the commencement of this work next month.*³⁴⁰

A Monitoring and Coordination Committee was established under the Migrant Integration Strategy and met during 2017.³⁴¹ A progress report on the work of the Strategy is to be brought to Government in 2018.³⁴²

6.1.2 Funding and integration projects

Grants totalling €1.8 million of national funding to help the integration of immigrants were announced by the Minister of State at the Department of Justice and Equality in May 2017.

A total of 15³⁴³ projects are to be delivered over the next three years in a number of locations across the country by public bodies and NGOs who were successful following an open call for applications.

Examples of the integration projects selected for funding include:

- a nationwide project to support English language acquisition;
- an employment and integration project in Dublin for vulnerable and socially excluded immigrants, which will increase the employability of members of the target group;
- a Cork-based project providing practical support and advice to immigrants;

³⁴⁰ Department of Justice and Equality (2017).

³⁴¹ Department of Justice and Equality (28 November 2017) Response to Parliamentary Question 50651/17. Available at www.justice.ie.

³⁴² Department of Justice and Equality (2018c).

³⁴³ Correspondence with Office for the Promotion of Migrant Integration, October 2018.

- a nationwide anti-racism project involving children and young people.³⁴⁴

As reported for 2016, EU funding was made available for integration projects focusing on promoting the integration of non-EU migrants and combating racism and discrimination under the Asylum Migration and Integration Fund (AMIF) (€4.5 million) and employability of migrants under the European Social Fund (ESF) (€3.3 million). Details of the successful projects were announced in January 2017.³⁴⁵

Community engagement

A Communities Integration Fund was launched by the Minister of State at the Department of Justice and Equality, alongside the *Migrant Integration Strategy*, in February 2017. A total amount of €500,000 was made available throughout 2017 to local community-based groups to promote integration in their area, for example local sports clubs, faith-based groups, and theatrical and cultural organisations. The funding was not only to be targeted at migrant organisations. Grants of up to €5,000 were allocated to 131³⁴⁶ organisations running a wide range of projects.^{347,348}

Launching the Fund, the Minister said: ‘The Fund is also intended to stimulate action on migrant organisations by groups that may not have taken action in this area before. The message that we want to communicate is that integration is for everyone and can involve everyone.’³⁴⁹

On 3 October 2017, the Minister launched the Strategic Action Plan of the Drogheda-based intercultural organisation Culture Connect.³⁵⁰ In his address, the Minister emphasised the importance of the role of locally based organisations in connecting with communities and providing links between public services and hard-to-reach groups. He highlighted the core principles in the Culture Connect Strategic Plan to celebrate, share and recognise strength in diversity, to encourage communities to embrace similarities and difference and to challenge racism and discrimination.³⁵¹

³⁴⁴ Department of Justice and Equality (2017m).

³⁴⁵ Department of Justice and Equality (2017n).

³⁴⁶ Correspondence with Office for the Promotion of Migrant Integration, October 2018.

³⁴⁷ Department of Justice and Equality (2017o).

³⁴⁸ Department of Justice and Equality (27 June 2017) Response to Parliamentary Question 29718/17. Available at www.justice.ie

³⁴⁹ Department of Justice and Equality (2017p).

³⁵⁰ Culture Connect, founded in March 2010, is an intercultural, non-profit community organisation working as a support group to individuals, ethnic minority groups, service providers and community groups in Drogheda and the South Louth area. See www.cultureconnect.ie.

³⁵¹ Department of Justice and Equality (2017q).

Vulnerable groups

In November 2017, the Minister of State at the Department of Justice and Equality announced funding from the Dormant Accounts Fund³⁵² of €485,000 to support the labour market integration of female refugees and the female family members of refugees.³⁵³ The seven projects successful in obtaining funding will be administered across Ireland over the course of 2018.

Successful projects were selected according to the following criteria:

- ability to improve the employability of female refugees;
- ability to provide targeted supports that promote access to and participation in education, training, employment and self-employment.

Examples include a project among female refugees in the EROC in Ballaghaderreen to establish a Creative Collective and a project by Nasc providing training, work placements and volunteering experience to female refugees.³⁵⁴

6.1.3 Non-discrimination

National Traveller and Roma Inclusion Strategy

As reported in previous years, work had been ongoing in the preparation of a revised *National Traveller and Roma Inclusion Strategy* to replace the *National Traveller/Roma Integration Strategy 2011*. This Strategy was being developed in response to the *EU Framework for National Roma Integration Strategies*.³⁵⁵

The *National Traveller and Roma Inclusion Strategy 2017–2021*³⁵⁶ was launched on 13 June 2017.

This Strategy contains 149 actions, grouped under 10 themes:

- Cultural Identity;
- Education;
- Employment and the Traveller Economy;
- Children and Youth;

³⁵² The Dormant Accounts Fund is a scheme for the disbursement of unclaimed funds in credit institutions. See www.pobal.ie.

³⁵³ Correspondence with Office for the Promotion of Migrant Integration, October 2018.

³⁵⁴ Department of Justice and Equality (2017r).

³⁵⁵ Sheridan (2017) (print version), p. 103.

³⁵⁶ Department of Justice and Equality (2017s).

- Health;
- Gender Equality;
- Anti-discrimination and Equality;
- Accommodation;
- Traveller and Roma Communities;
- Public Services.

The Minister of State at the Department of Justice and Equality chairs a Steering Group which has the responsibility for monitoring and achieving progress on the implementation of the Strategy. The Steering Group consists of representatives of the Traveller and Roma communities, as well as of representatives of relevant Government Departments and agencies.

As of 5 December 2017 work had begun on approximately 100 of the actions in the Strategy.³⁵⁷

Intercultural engagement and racism

The *Garda Síochána Annual Report 2017* reports on the ongoing activities of the Garda Bureau of Community Diversity and Integration (GBCDI) and the Garda Racial, Intercultural & Diversity Office (GRIDO) during 2017 in building positive relationships with minority communities in Ireland. A focus of the GRIDO office is to build relationships with Muslim communities, to understand the background of the community and their needs, in the light of the dangers of Islamophobic-type prejudice. The GBCDI trains ethnic liaison officers (ELOs) and one of the primary aims is for ELOs to build positive relationships with Muslim communities in order to prevent radicalisation. To this end, Garda ELOs held clinics in Dublin mosques to encourage members of the Muslim community to engage with An Garda Síochána on issues that they otherwise would not have engaged on directly.

The GBCDI also provides anti-discrimination training for Gardaí. For example, in July 2017 a seminar was held for 200 ELOs on upholding human rights and protecting individuals from discrimination in the delivery of policing services. The seminar included presentations on topics such as policing diversity; community policing; Ireland's Black community; the LGBT community; older persons; disability awareness; dementia awareness; and working with our Muslim communities.³⁵⁸

³⁵⁷ Department of Justice and Equality (5 December 2017) Response to Parliamentary Question 51734/17. Available at www.justice.ie.

³⁵⁸ An Garda Síochána (2018), pp. 38–40.

The Immigrant Council of Ireland (ICI) ran an anti-racism promotion campaign with Transport for Ireland (TFI) and Dublin City Council in 2017. Over 1,000 posters were displayed on public transport over a two-week period.³⁵⁹

A coalition of NGOs, the National Steering Group Against Hate Crime,³⁶⁰ made a presentation to the Oireachtas on the need for hate crime legislation on 23 March 2017.³⁶¹ The need for amended hate crime legislation was also raised in parliamentary questions throughout the year.³⁶² The Minister for Justice and Equality noted that the Migrant Integration Strategy includes a commitment to review the existing legislation on hate crime.³⁶³ Action 65 of the Migrant Integration Strategy provides that: *the current legislation with regard to racially motivated crime will be reviewed with a view to strengthening the law against hate crime, including in the area of online hate speech.*³⁶⁴

6.1.4 Engagement of diaspora communities

As in other years, celebrations to mark Africa Day were held in 2017, including in Dublin, Cork, Kildare, Kilkenny, Galway and Limerick.³⁶⁵

The events included an exhibition of African art held at Google HQ in Dublin. The exhibition was opened by the Minister of State at the Department of Justice and Equality with responsibility for equality, immigration and integration. Opening the exhibition, the Minister noted the 2016 census figures that show that 11.6% of Ireland's population has a nationality other than Irish and just under 58,000 persons identified themselves as Black African or Black Irish in the census.³⁶⁶

6.1.5 Research

The ICI published *Language and Migration in Ireland* in 2017. This report was the culmination of an Irish Research Council project entitled 'My Story – My Words: Language and Migration'.

³⁵⁹ Immigrant Council of Ireland (2017c).

³⁶⁰ The coalition includes the following organisations: the European Network Against Racism Ireland, the National LGBT Federation, Inclusion Ireland, the Irish Council for Civil Liberties, the Transgender Equality Network Ireland, Pavee Point, the Immigrant Council of Ireland, the Hate and Hostility Research Group from the University of Limerick, the National Youth Council Ireland, Sport Against Racism Ireland, the GLEN – the LGBTI Equality Network, NASC, the Irish Traveller Movement, Age Action, Action Against Racism, Doras Luimní, LoveNotHate, UCD LGBTI Staff Network. National Steering Group Against Hate Crime (2017).

³⁶¹ National Steering Group Against Hate Crime (2017).

³⁶² Department of Justice and Equality (2017) Responses to Parliamentary Questions 15606/17 and 19387/17. Available at www.justice.ie.

³⁶³ Department of Justice and Equality (2 May 2017) Response to Parliamentary Question 19387/17. Available at www.justice.ie.

³⁶⁴ Department of Justice and Equality (2017j), p. 33.

³⁶⁵ Department of Foreign Affairs and Trade (2017a).

³⁶⁶ Department of Justice and Equality (2017l).

As a backdrop to the research, the report noted that the 2016 Census results showed that 612,018 Irish residents spoke a foreign language at home (up 19% from 514,068 in 2011). Polish was the most common language, followed by French, Romanian, Lithuanian, and Russian. Other commonly spoken languages are Spanish, German, Portuguese, Chinese and Arabic.³⁶⁷

The research was conducted by researchers in NUI Galway and the ICI to examine the experience of language among migrants in Ireland. It used an online survey targeting persons in Ireland whose first language was not Irish or English and also conducted two focus groups with migrants from a wide variety of linguistic backgrounds. Migrants were asked questions about their linguistic experience and about language learning in Ireland. The third strand of the research was interviews conducted with migrants involved in cultural production in Ireland – literature, visual arts, film and theatre. The aim of the project was to create a space where migrants would have a voice to tell their stories, leading to ultimate inclusion and recognition.³⁶⁸

Key recommendations from the research were to:

- *view multilingualism as an asset to Irish society, and not a problem to be fixed;*
- *create cultural spaces for the expression of multilingual experiences;*
- *create greater opportunities for linguistic interchange in Irish society;*
- *provide accessible English language classes for all levels and in all educational contexts;*
- *examine the diversity of staff in the public service;*
- *support language teaching, particularly of ‘heritage’ languages;*
- *publish a national Foreign Languages Strategy and establish a Languages Advisory Board;*
- *professionalise, test and monitor interpreting services in Ireland.*³⁶⁹

³⁶⁷ O’Connor et al. (2017), p. 10.

³⁶⁸ Ibid., p. 5.

³⁶⁹ Ibid.

6.2 CITIZENSHIP AND NATURALISATION

6.2.1 Citizenship statistics

A total of 8,199 citizenship certificates were issued in 2017.³⁷⁰ This compares with 10,044 certificates issued in 2016.^{371,372} The top 10 nationalities awarded citizenship were Poland, Romania, India, United Kingdom, Nigeria, Latvia, Philippines, Pakistan, Brazil and China. There were 16 citizenship ceremonies held throughout the year.³⁷³ A total of 11,462 applications for citizenship were made in 2017.³⁷⁴

INIS noted a large surge in applications for Irish citizenship by British nationals in the wake of the Brexit referendum. The United Kingdom was the third highest nationality making applications in 2017, with 819 applications.³⁷⁵ INIS noted, in November 2017, that applications from British citizens were expected to increase. As of 27 November 2017, 292 British nationals had received Irish citizenship in 2017, with over 230 due to attend the citizenship ceremony on that date. Applications are based on Irish association and descent.³⁷⁶

6.2.2 Case law: Revocation of citizenship

NA (Somalia) v Minister for Justice and Equality and UM (Afghanistan) (a minor) v Minister for Foreign Affairs and Trade [2017] IEHC 741

In these cases, the High Court considered the question of whether or not the grant of citizenship and the subsequent issuance of a passport in respect of each of the applicant minors on foot of their natural father's acquiring a declaration of refugee status conferred and/or had the effect of conferring citizenship by birth upon the applicants. This issue arose in circumstances where both of the applicants' fathers had their declarations of refugee status subsequently revoked on grounds of having been unlawfully obtained, as they had made representations to the respective authorities which subsequently turned out to be inaccurate, false and misleading in a material way.

In the first case, the first named applicant, a Somali national, arrived in the State in 2004. She married another Somali national and was granted residence permission based on his refugee status, which he acquired in June 2008. His refugee status was revoked in October 2011 under s.21(1)h of the *Refugee Act 1996*, on grounds

³⁷⁰ Irish Naturalisation and Immigration Service (2018a), p. 14.

³⁷¹ Sheridan (2017) (print version), p. 108.

³⁷² This figure includes certificates of citizenship issued to both EEA and non-EEA citizens. The top nationality for award of citizen certificates in both years was Poland.

³⁷³ Irish Naturalisation and Immigration Service (2018a), p. 14.

³⁷⁴ Ibid., p. 15.

³⁷⁵ Ibid.

³⁷⁶ Department of Justice and Equality (2017t).

that the information provided by him to the decision-maker in his case had been materially false or misleading. The second named applicant was born nine months after his father was recognised as a refugee. The father had resided in Ireland for an aggregate three of the previous four years. This enabled the second named applicant to qualify for Irish citizenship from birth within the meaning of s.6(6)(a)(iii) of the *Irish Citizenship and Nationality Act 1956*. An Irish passport was issued to the second named applicant in 2010.

By decision dated 15 June 2015 the Minister for Justice determined that the second named applicant was not an Irish citizen because the basis on which citizenship rights had been vested (his father's refugee status) was now void. The Minister for Justice found that this operated *ab initio* and that the second named applicant had no entitlement to citizenship rights as a result.

The facts in the second case were broadly similar to those in the first case. The applicant's father, an Afghan national, was granted refugee status on 14 July 2006. A family reunification application was granted on 26 June 2012, allowing the applicant's mother to travel to the State. The applicant was born on 1 June 2013. The father's refugee status was revoked on 10 June 2013. This revocation was notified to take effect from 31 August 2013. This step was taken on similar grounds to those in the first case. On 17 November 2014, the Minister for Foreign Affairs and Trade refused an application made on behalf the applicant for an Irish passport. On 21 January 2015, this refusal was affirmed on appeal on similar grounds to those in the first case.

The applicants relied on Art.9 of the Constitution and ss.19 and 28 of the 1956 Act. It was submitted that no construction of these provisions granted the State the power to strip citizenship that had been acquired at birth until the Oireachtas legislated for it, which it had not. They suggested that this legislative gap had been maintained for policy reasons, namely that the normal motivators for the stripping of citizenship (fraud or misrepresentation by the candidate) cannot be performed by a child.

Stewart J accepted the respondent's submission that many of the applicants' submissions were incorrectly predicated on the assumption that the applicants are entitled to Irish citizenship upon birth. It was held that the applicants were never entitled to Irish citizenship by birth on the facts or by law. Stewart J noted that there is a duty placed upon non-nationals who are seeking to travel to or obtain any form of permission to remain or reside in this State to act with good faith and honesty in their dealings with the immigration and protection authorities. A failure to engage honestly may have the consequence of the permission being revoked or indeed the person disentiitling themselves from seeking reliefs before the courts, citing the decisions of MacMenamin J in *AGAO v Minister for Justice, Equality and*

Law Reform [2007] 2 I.R. 492 and Birmingham J in *GO v Minister for Justice, Equality and Law Reform* [2008] IEHC 190.

Stewart J held that in order to be entitled to acquire Irish citizenship under the *Irish Nationality and Citizenship Act 1956* (as amended), the residence upon which such an application is based must be lawful in the sense of being both bona fide and regular residence before it can give rise to such derivative citizenship rights. Thus, it was held that residence that has been obtained or was based upon fraud, misrepresentation or deceit cannot amount to residence within the meaning of Part 2 of the *Irish Nationality and Citizenship Act 1956* (as amended). The court noted that Part 2 of the 1956 Act governs the entitlement to citizenship for persons born in the State to certain non-nationals, and that Irish citizens are entitled to rights and privileges. Citizenship was described as a privilege, which is bestowed upon non-nationals who are not entitled to citizenship by birth on behalf of the people. Stewart J was satisfied that the acquisition of that citizenship must be lawful and bona fide and rejected the proposition that the acquisition of citizenship that had been acquired effectively through the deceit of the applicant minors' fathers could have the effect of conferring citizenship by birth upon the applicants. The court held that this would fly in the face of the constitutional provisions, the statutory provisions and the established authorities cited in the submissions and referred to by the court.

Stewart J accepted that the applicants at the heart of these two sets of proceedings were entirely without blame, and that neither of them was responsible in any way for the actions of their father and the manner in which their father dealt with the asylum and immigration authorities at an earlier juncture. But despite any sympathy which the court felt towards the minor applicants, it was noted that the court must decide this application based on the legal principles that apply. The situation was that the mere fact of being born on the island of Ireland, its islands or seas no longer carried with it a right to citizenship by birth. Instead, in certain circumstances, a person born to parents who were not nationals of this jurisdiction had an entitlement pursuant to statute to acquire Irish citizenship once certain legal criteria have been fulfilled. The court held that citizenship must be acquired in accordance with law and through lawful means. This meant that the acquisition of such rights and any associated derivative third-party rights must also occur through lawful means. Although the minor applicants concerned in these proceedings were themselves not the perpetrators of any wrongdoing, nevertheless the unfortunate consequence of the unlawful actions of their respective fathers was that each of them was not entitled to Irish citizenship and/or an Irish passport on foot of their father's unlawfully obtained declaration of refugee status.

The court was satisfied that the effect of the revocation of the grant of refugee status to both of the applicants' fathers had the effect of rendering that grant void *ab initio*. It also had the legally unavoidable effect of rendering the grant of citizenship null and void. Therefore, it was held that the Minister for Justice in the first set of proceedings was correct in holding that child was not an Irish citizen because of their determination that the revocation of the father's refugee status had an effect of rendering it void *ab initio*. Similarly, in relation to the second applicant, it was held that the Department of Foreign Affairs was correct in refusing to renew or issue a further passport for the applicant on the basis that his father's refugee status had been revoked, was void *ab initio* and had the effect of negating the grant of citizenship that had been unlawfully and erroneously granted and assigned to the applicant on foot of that unlawfully obtained declaration of refugee status. Accordingly, the applicants' applications were refused.

Principles: Revocation of a person's grant of refugee status on the basis of false and misleading information had the effect of rendering that grant void ab initio. It also had the legally unavoidable effect of rendering the grant of Irish citizenship to the children of such persons null and void.

CHAPTER 7

Irregular migration, borders and return

7.1 STATISTICS

A total of 140 deportation orders were effected in 2017,³⁷⁷ for 99 of which there had been an asylum refusal.³⁷⁸ In addition, 3,746 people were refused entry to Ireland and were returned to the point of origin they had travelled from. A total of 82 EU nationals were returned to their countries of origin on foot of EU removal orders.³⁷⁹

During 2017, 140 persons were returned as part of forced return measures, and 181 persons returned voluntarily, of which 96 were assisted by the International Organization for Migration (IOM) under the Voluntary Assisted Return and Reintegration Programmes (VARRP/IVARRP).³⁸⁰

A total of 314 persons were granted permission to remain following a consideration under section 3 of the *Immigration Act 1999*, in 2017. There were 72 grants of permission to remain under the new legal provisions under section 49 of the *International Protection Act 2015*, which came into operation for the first full year in 2017.³⁸¹

7.2 BORDERS

7.2.1 Refusals of leave to land

A total of 3,746 people were refused leave to land in Ireland in 2017.³⁸² As in other years, the Irish Refugee Council (IRC) expressed concern about the numbers of persons refused entry. In its submission to the UN Convention Against Torture (UNCAT) committee in 2017, the IRC called for transparent data to be made available including numbers, nationality and reason for refusal.³⁸³ See Chapter 2 for further discussion of Ireland's examination by the UNCAT committee.

³⁷⁷ Department of Justice and Equality (16 January 2018) Response to Parliamentary Question 1870/18.

³⁷⁸ Department of Justice and Equality (24 July 2018) Response to Parliamentary Question 32900/18. Available at www.justice.ie.

³⁷⁹ Irish Naturalisation and Immigration Service (2018a), p. 20.

³⁸⁰ Ibid. Assisted Voluntary Return figure includes EU nationals.

³⁸¹ Correspondence with Repatriation Unit, Irish Naturalisation and Immigration Service, September 2018.

³⁸² Irish Naturalisation and Immigration Service (2018a), p. 20.

³⁸³ Irish Refugee Council (2017a), p. 9.

7.2.2 Border control systems and technology

Government approval was obtained in May 2017 for the establishment, staffing and funding of the Irish Passenger Information Unit (PIU) required to implement the EU Directive 2016/681/EC on Passenger Name Records (PNR).³⁸⁴ The EU Directive is aimed at the prevention, detection, investigation and prosecution of terrorist offences and serious crime. The Irish PIU, a unit of the Department of Justice and Equality, was formally established on 25 May 2018 and is based at Dublin Airport.³⁸⁵

As reported for 2016, preparations were underway in 2016 for the Irish authorities to process Advance Passenger Information (API) data from flights originating from outside the European Union, in accordance with the EU API Directive 2004/82/EC as transposed into Irish law via the European Communities (Communication of Passenger Data) Regulations 2011.³⁸⁶ The IPIU processes PNR data for terrorism and serious crime purposes and also API for immigration control purposes. The primary function of the IPIU is to carry out assessments of passengers prior to their scheduled arrival in or departure from the State in order to identify persons who require further examination by the Irish authorities.³⁸⁷

On 30 November 2017, automatic border control e-gates were introduced at Terminals 1 and 2, Dublin Airport, available to national and EU/EEA e-passport holders over 18 years of age. It is expected that they will be extended to other categories of passengers as the programme develops.³⁸⁸ In 2017, the immigration services at Dublin Airport processed 14.8 million arriving passengers.³⁸⁹

The project to civilianise border control operations at Dublin Airport and to transfer those responsibilities from An Garda Síochána (national police force) to the Irish Naturalisation and Immigration Service was completed in October 2017.³⁹⁰

7.2.3 Detention facilities

Plans were progressed during 2017 for the redevelopment of Transair House, an existing facility at Dublin Airport, for use as a Garda station, office accommodation and detention facilities, including for those refused permission to enter the State.³⁹¹

³⁸⁴ Correspondence with Irish Naturalisation and Immigration Service, Border Management Unit, February 2018.

³⁸⁵ *Ibid.*, October 2018.

³⁸⁶ Sheridan (2017) (print version), p. 99.

³⁸⁷ Correspondence with Irish Naturalisation and Immigration Service, Border Management Unit, October 2018.

³⁸⁸ Department of Justice and Equality (2017u).

³⁸⁹ Irish Naturalisation and Immigration Service (2018a), p. 10.

³⁹⁰ Correspondence with Irish Naturalisation and Immigration Service, Border Management Unit, February 2018.

³⁹¹ *Ibid.*, October 2018.

Media sources reported in July 2017 on the detention overnight in the Dóchas women's prison of a Brazilian woman who had been refused entry at Dublin Airport, pending her removal from the State. The *Irish Times* reported that the woman was subsequently released and given permission to remain in Ireland for 10 days. According to the *Irish Times* the Brazilian foreign ministry had reiterated its request to Ireland in relation to its citizens who are denied entry 'to be returned as quickly as possible to the airport of origin or in cases where this is not immediately possible that the Brazilian citizens await leaving Ireland in an adequate location'.³⁹² The Department of Justice and Equality did not comment on individual cases. In October 2017, the Minister for Justice and Equality said that the development phase of the project including detention facilities at Dublin Airport, 'which is under the responsibility of An Garda Síochána and delivered in conjunction with the Office of Public Works (OPW)', was due to commence during Q4 2017.³⁹³

See Chapter 2 for discussion of immigration-related detention in Ireland during Ireland's examination by the UNCAT committee in 2017.

7.3 IRREGULAR MIGRATION

7.3.1 Facilitation of irregular entry (smuggling)

In January 2017, a number of arrests were made as part of an investigation by An Garda Síochána (Operation Polite) into instances of facilitation of unauthorised entry to Ireland uncovered at Dublin Airport, whereby certain arriving third-country nationals were facilitated to bypass immigration controls and enter Ireland.^{394,395} The investigation into the particular case continued throughout 2017.

The Minister for Justice and Equality undertook to work with the Minister for Transport to review procedures in place, stating: 'We need to know how this happened and why. Therefore, in light of the seriousness of the situation, I will work with my colleague Minister Ross to review the procedures in place so that the public can have full confidence in the security of our borders.'³⁹⁶

³⁹² *Irish Times* (2017c).

³⁹³ Department of Justice and Equality (19 October 2017) Response to Parliamentary Question 44531/17. Available at www.justice.ie.

³⁹⁴ RTÉ (2017).

³⁹⁵ An Garda Síochána (2018), p. 16.

³⁹⁶ Dáil Éireann (24 January 2017) 'Topical Issue Debate: The need to address concerns regarding alleged people smuggling at Dublin airport. Response by the Tánaiste and Minister for Justice and Equality, Frances Fitzgerald TD.' Available at www.justice.ie.

7.3.2 Common Travel Area

An initiative between the Irish Garda National Immigration Bureau (GNIB) and the UK immigration service was commenced in 2003 to combat immigration abuses within the Common Travel Area with checks conducted at ports and airports in both jurisdictions.

In Ireland, these checks have been conducted under ‘Operation Sonnet’ with the specific aim of targeting, detecting and preventing illegal immigration into Ireland via the Common Travel Area. These targeted operations are in addition to day-to-day immigration controls.

As a result of two specific days of action in 2017, there were 22 detections for immigration offences.³⁹⁷ In addition, An Garda Síochána carries out routine checks along the border to detect persons attempting to enter the State illegally.

The Minister for Justice and Equality commented:

*The continuation of the Common Travel Area is one of the main objectives of the Government in the Brexit negotiations. The key benefits this brings – free movement of people as well as the wider economic benefits – means we must ensure that it is not abused by persons who are not entitled to such free movement. This requires appropriate checks to be made on the land border to maintain the integrity of the Common Travel Area.*³⁹⁸

7.3.3 Operation Vantage

As reported in the 2015 report of this series, Operation Vantage was established in August 2015 by the GNIB to investigate illegal immigration and identify marriages of convenience as defined under the *Civil Registration Act 2014*. The operation involves co-operation with a number of other State agencies including the Irish Naturalisation and Immigration Service (INIS), the Department of Social Protection, the Revenue Commissioners, the Office of the Director of Corporate Enforcement and the Workplace Relations Commission. The operation focuses on the prevention of immigration abuses, including abuse of free movement through the facilitation of marriages of convenience. It is specifically targeted at those engaged in organised facilitation of marriages of convenience for financial gain. It also focused on those who seek to gain immigration status by engaging in such arranged

³⁹⁷ An Garda Síochána (2018), p. 16.

³⁹⁸ Seanad Commencement Matter (31 January 2018) ‘The need for the Minister for Justice and Equality to outline how many Garda “emigration checkpoint stops” were made along the border in the two years previous to the Brexit referendum and to further outline the number of stops made since the referendum in June 2016.’ Speeches. Available at www.inis.gov.ie.

marriages.³⁹⁹ Under the operation, past cases are also being reviewed with a view to revoking immigration permissions that may have been fraudulently obtained.⁴⁰⁰

In 2017, 31 arrests were recorded under Operation Vantage. In addition, a number of agents who sought to exploit the immigration system between the United Kingdom and Ireland were investigated. According to An Garda Síochána, ‘a joint criminal investigative response continues to form part of our ongoing commitment to protect the immigration legislation and policies between both jurisdictions’.⁴⁰¹

A Europe-wide investigation, coordinated by Europol, is ongoing into the problem of ‘sham marriages’. An Garda Síochána reported that ‘Ireland is working closely with seven other police services across Europe to tackle this abuse’.⁴⁰²

As part of Operation Vantage, the INIS EU Treaty Rights Investigation Unit investigates applications for residence cards by non-EEA national family members of EU citizens who are exercising free movement rights under the EU free movement directive (2004/38/EC). INIS report that almost 1,700 applications for residence cards have been reviewed, and 1,050 of these investigations have been finalised.⁴⁰³ These completed investigations resulted in a combined revocation or refusal rate of 92%. INIS also reported a near 250% increase in the number of revocations in 2017 over 2016.⁴⁰⁴

7.3.4 Undocumented migrants

The issue of regularisation of undocumented migrants continued to be discussed during 2017. As reported for 2016, the Migrant Rights Centre of Ireland (MRCI) had published research on undocumented migrants in Ireland in May 2016, and this issue had been considered by the Oireachtas Joint Committee on Justice and Equality in November 2016.⁴⁰⁵ The Committee published its report in June 2017. It recommended that the Minister for Justice and Equality:

introduce a time-bound scheme, with transparent criteria, to regularise the position of undocumented migrants in Ireland. Such a scheme would give undocumented migrants a window of opportunity to come forward, pay a fee and regularise their situation. Given the urgency of addressing this situation, the scheme should be introduced, initially at least, on an

³⁹⁹ Sheridan and Whelan (2016) (online version), p. 94.

⁴⁰⁰ Irish Naturalisation and Immigration Service (2018a), p. 34.

⁴⁰¹ An Garda Síochána (2018), p. 16.

⁴⁰² Ibid.

⁴⁰³ Irish Naturalisation and Immigration Service (2018a).

⁴⁰⁴ Ibid., p. 21.

⁴⁰⁵ Sheridan (2017) (print version), pp. 123–125.

*administrative basis rather than through legislation. Applications should be administered on a case-by-case basis.*⁴⁰⁶

In October 2017, the Minister for Justice and Equality said that, in light of the publication of the Committee's report, he had asked officials to examine if any of the recommendations could be acted on further. However, this was in the context of public policy considerations and international obligations which he outlined – including cost to public services; possible impact on the Common Travel Area in the context of Brexit; and the commitment of all EU Member States, in the European Pact on Immigration and Asylum of 2008, to only examine regularisation on a case-by-case basis.⁴⁰⁷

The Irish Refugee and Migrant Coalition (IRMC) also recommended, in its policy document *Pathways to Protection and Inclusion*, that the Irish Government introduce a regularisation scheme for undocumented migrants.⁴⁰⁸

7.4 RETURN

7.4.1 Legislative change

The entry into force of the *International Protection Act 2015* on 31 December 2016 brought into operation a new legal base for the deportation of persons who have failed in their protection applications and applications for permission to remain under the Act. The provisions in relation to deportation under section 3 of the *Immigration Act 1999* remain in force for non-protection cases. A flow chart describing both systems is available in the 2016 report of this series.⁴⁰⁹ 2017 was the first full year of operation of the new provisions.

The *Immigration Act 1999 (Deportation) (Amendment) Regulations 2017*⁴¹⁰ were signed on 7 March 2017. These Regulations replaced the First Schedule (Deportation Order) of the *Immigration Act 1999 (Deportation) Regulations 2005*.⁴¹¹

A total of 140 deportation orders were effected in 2017. The top nationalities of persons deported were: China; Nigeria/Pakistan; Mauritius; Brazil; Albania/South Africa.⁴¹²

⁴⁰⁶ Joint Committee on Justice and Equality (2017), p. 26.

⁴⁰⁷ Department of Justice and Equality (19 October 2017) Response to Parliamentary Question 44241/17. Available at www.justice.ie.

⁴⁰⁸ Irish Refugee and Migrant Coalition (2017a), p. 12.

⁴⁰⁹ Sheridan (2017) (print version), p. 130.

⁴¹⁰ S.I. No. 74 of 2017.

⁴¹¹ S.I. No. 55 of 2005.

⁴¹² European Migration Network (2018b), Table 14.

7.4.2 Assisted voluntary return

A total of 175 third country nationals chose to return home voluntarily in 2017. Of that number, 91 applicants were assisted by the IOM, the UN Migration Agency, through its assisted voluntary return and reintegration programmes.

The IOM, funded by the Department of Justice and Equality, offers these programmes for asylum seekers, rejected asylum seekers and other illegally present migrants.

Asylum seekers or asylum seekers who have failed in their claim and who have not had a deportation order made against them, as well as suspected victims of trafficking (identified within the national referral mechanism identification system), are assisted with return under the Voluntary Assisted Return and Reintegration Programme (VARRP). Other illegally present migrants are assisted with return under the Voluntary Assisted Return and Reintegration Programme for Vulnerable Irregular Migrants (IVARRP), which is co-funded by the EU on a 75/25 basis.

Under these programmes, all travel arrangements including flights for such persons are arranged and paid for and, where required, the IOM will assist in securing travel documents and arranging fitness to travel medical assessments and give assistance at the airport at departure, transit and arrival. Persons availing of these programmes can apply for reintegration assistance to allow them to start up a business or enter further education or training when they are back in their country of origin. This takes the form of an 'in-kind' rather than a cash payment.

The top four countries for which IOM Ireland provided assisted return in 2017 were Brazil, Ukraine and Georgia/Malawi.⁴¹³

In December 2017, the INIS invited applications for funding under the return strand of the Asylum Migration and Integration Fund (AMIF) for projects focusing on the voluntary return of third country nationals from 1 January 2018 to 31 December 2018.⁴¹⁴

⁴¹³ Correspondence with the International Organization for Migration, the UN Migration Agency, October 2018.

⁴¹⁴ Irish Naturalisation and Immigration Service (2017e).

7.5 CASE LAW

7.5.1 Challenge to refusal to revoke deportation order based on alleged breach of art.3, European Convention on Human Rights

YY v Minister for Justice [2017] IESC 61

In this case, the Supreme Court considered a challenge to a deportation order based on an alleged breach of art.3, European Convention on Human Rights. The applicant, an Algerian national, was granted refugee status in the State on 15 July 1997 on the basis of false documentation. He was granted travel documentation on 10 October 2000, which allowed him to leave Ireland and commit multiple offences abroad.

The applicant was convicted of a number of terrorism-related offences in France and sentenced to eight years' imprisonment. He applied for asylum in France in January 2009 prior to his release from custody and this application was refused. In response to the applicant's failed attempt to apply for refugee status in France, the Irish authorities initiated proceedings on 10 February 2009 to revoke the applicant's refugee status in Ireland. The applicant re-entered Ireland unlawfully at some point during 2009. The respondent revoked the declaration of refugee status on 5 August 2011 on the basis that the applicant had provided materially false and misleading information to the Irish asylum authorities.

The applicant filed applications for permission to re-enter the asylum process (s.17(7) of the *Refugee Act 1996*), leave to remain (s.3 of the *Immigration Act 1999*), and subsidiary protection (Directive 2004/83/EC). Each of these applications was considered and refused by the respondent.

The applicant commenced judicial review proceedings in the High Court challenging the s.3(1) deportation decision, which that court dealt with by way of a telescoped hearing on 26 October 2016. The matter was adjourned to allow the applicant to make an application under s.3(11) of the 1999 Act for revocation of the deportation order.

The s.3(11) application was made on 22 November 2016. This s.3(11) application was refused by the respondent on 6 December 2016. On 13 December 2016, the High Court (Humphreys J) granted the applicant leave to amend the statement of grounds in order to challenge the s.3(11) decision.

The High Court (Humphreys J) dismissed the applicant's challenge to both the s.3(1) and s.3(11) decisions ([2017] IEHC 176). The High Court (Humphreys J) refused leave to appeal on all grounds of appeal ([2017] IEHC 185) and refused the

applicant a stay on deportation pending an application for leave to appeal to the Supreme Court ([2017] IEHC 334).

The applicant sought leave to appeal directly to the Supreme Court pursuant to Art.34.5.4° of the Constitution. The Supreme Court accepted that as the law stands, a party may apply to appeal directly to that court under Art.34.5.4°, notwithstanding the refusal by the High Court of a leave to appeal to the Court of Appeal. The Supreme Court granted leave on the following grounds ([2017] IESCDET 38):

- (i) Where a Minister orders deportation of an individual and relies on country of origin material which is generally available to conclude that return of an applicant to a country would not be a breach of s.5 of the *Refugee Act 1996*, and/or that there are no substantial grounds for considering that there is a real risk that the applicant will be subjected to treatment contrary to art.3 of the Convention, is the Minister required to notify the applicant of the said material and invite submissions upon it?
- (ii) If the Minister is under such an obligation, is it satisfied, or otherwise affected, by the fact that an applicant was provided with the reasons for the making of a deportation order, including the reference to the said material, and is entitled to apply for a revocation of that order (and did so)?
- (iii) Given that in comparable cases the ECtHR or other reputable national immigration authorities, or in the particular case, the RAT, have made findings that there is a real risk on substantial grounds, if a person in a comparable circumstance [to] the applicant in this case are returned to country X that they will suffer a treatment which is a breach of art.3 of the Convention, did the reasons provided by the Minister for (i) making the deportation order under s.3(1) and (ii), refusing to revoke the deportation order under s.3(11) of the 1999 Act, provide a sufficient lawful basis for the said decision?

The Supreme Court also ordered that the applicant's deportation order be stayed pending the appeal on condition that the applicant would undertake not to challenge the validity of his detention in prison; an undertaking which was given.

The Supreme Court subsequently allowed the applicant's appeal against the decision of Humphreys J dismissing his challenge to the deportation order. O'Donnell J, giving the judgment of the court, noted that it was necessary that a party, and in due course a reviewing court, could genuinely understand the reasoning process when an administrative decision was made. A decision made by decision makers such as the Minister must necessarily consider and apply legal tests. However, such a decision was not to be condemned for failing to achieve the standard of refined logical reasoning and precision of expression of judgments of the superior courts.

O'Donnell J noted that in determining whether an individual could be deported under s.3 of the *Immigration Act 1999*, the respondent was obliged to consider the principle of non-refoulement under s.5 of the *Refugee Act 1996*, and the case law of the European Court of Human Rights in respect of art.3 of the European Convention on Human Rights. The test to be applied was whether there were substantial grounds for believing that there was a real risk of torture or inhuman or degrading treatment, and if so a person could not be surrendered, deported or expelled to such a country. It was noted that the guarantee under art.3 was absolute and applied in all circumstances. Accordingly, although the consequence of refusing deportation or expulsion was that the applicant would remain within the contracting state, it was irrelevant that there might be compelling national security reasons for expulsion from the state. O'Donnell J also noted that when the respondent was considering a deportation decision where it was alleged that there were substantial grounds for considering that there was a real risk of torture or inhuman or degrading treatment, that was not a matter of discretion or indulgence: if the respondent were to conclude that there was such a risk, then he would be obliged by national law implementing the European Convention on Human Rights, and by the Convention itself as a matter of the State's international obligations, not to deport the person. There was a negative right to resist deportation at least to a particular country, which in most cases was the only country who would accept or could be obliged to accept the person. It was noted that it was critically important that the national decision maker apply that test in a searching way with real care and rigour.

However, O'Donnell J also held that the Minister was not required to notify the applicant of any mainstream country of origin information. Obscure material that was going to materially change the picture appearing from the basic and universal material should however be notified. Unless the country of origin material considered was in some respect unusual, there was no obligation on the Minister to confine himself to the country of origin information submitted by the applicant, or to notify the applicant of any additional country of origin information of the same general nature considered by the respondent. The Minister was an office holder obliged by law to be aware of up-to-date information in respect of a country. It was noted that the fact that there was a procedure for applying for revocation of a deportation order under s.3(11) of the 1999 Act was itself a useful safeguard against the possibility that the respondent had relied on information, or an interpretation of existing information, which had genuinely taken the applicant by surprise. While the line between mainstream country of origin information and unusual material might be difficult to draw in some cases, the s.3(11) procedure provided an opportunity to make submissions on any material that was included in the ministerial decision to deport.

Accordingly, the court quashed the Minister's decision refusing to revoke the deportation order in respect of the applicant and remitted the proceedings to the High Court for further management depending on the outcome of the fresh decision.

Principles: The Minister is obliged to consider the principle of non-refoulement under s.5 of the Refugee Act 1996, as informed by the case law of the European Court of Human Rights in respect of article 3 of the European Convention on Human Rights, when deciding whether an individual can be deported under s.3 of the Immigration Act 1999. The test to be applied was whether there were substantial grounds for believing that there was a real risk of torture or inhuman or degrading treatment, and if so a person could not be surrendered, deported or expelled to such a country. The guarantee under article 3 was absolute and applied in all circumstances. Accordingly, although the consequence of refusing deportation or expulsion was that the applicant would remain within the contracting state, it was irrelevant that there might be compelling national security reasons for expulsion from the state.

While the Minister was not required to notify the applicant of any mainstream country of origin information relied on in the decision, obscure material that was going to materially change the picture appearing from the basic and universal material should however be notified.

7.5.2 Child's right to primary education and deportation

KRA v Minister for Justice and Equality [2017] IECA 284

In this case, the Court of Appeal considered the extent to which a non-citizen child's right to primary education was capable of preventing deportation of that child. Ms KRA, the first named applicant, was born in Nigeria in 1975. She married there and had three children. In early 2008, she came alone to Ireland while pregnant and sought asylum. Her baby, the second named applicant, BMA, was born four days later on 14 March 2008. The asylum application was rejected and in March 2009, Ms KRA was notified by the Minister of an intention to make deportation orders. Solicitors on her behalf applied for subsidiary protection, but on 9 November 2009, that also was rejected. On 18 November 2009, the Minister made deportation orders in respect of both applicants and Ms KRA was required to present herself to the Garda National Immigration Bureau on 8 December 2009. She did not do so, but instead went into hiding from the authorities and remained underground for almost five years. Ultimately, she went to solicitors and through them, on 23 October 2014, she made an application for revocation of the deportation orders pursuant to s.3(11) of the *Immigration Act 1999*. On 18 May 2015, the Minister refused to revoke the deportation order. On 3 June 2015, the High Court (Faherty J) granted leave to the applicants to bring judicial review

proceedings in respect of the refusal. Prior to the Minister's refusal to revoke, Article 42A of the Constitution came into force, para.1 of which provides:

'The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.'

The essential case made on behalf of KRA and BMA was, first, that Article 42A.1 conferred on BMA constitutional rights, inter alia, to education which fell to be put into the balance against the interests of the State. It was submitted that her right to free primary education was a natural and imprescriptible right under this Article which could not be defeated otherwise than by a careful balancing against the legitimate interests of the State. Secondly, it was argued that the decision under challenge required a separate consideration of the individual position of BMA in circumstances where she was born in the State, she was attending primary education, she had never resided in the country to which she was to be deported and there was evidence that her education would be impaired if she were deported. Thirdly, it was contended that the conclusion by the Minister that there was a functioning education system in Nigeria was irrational.

On 12 May 2016 ([2016] IEHC 289) Humphreys J rejected the challenge to the Minister's refusal to revoke the deportation order. Humphreys J held that the refusal to revoke the deportation order was not invalidated by a failure to consider properly the child's constitutional right to free primary education pursuant to Art.42A. It was held that the right existed independent of that article which imposed no new obligations on the Minister in respect of immigration control and which made no significant difference to issues of deportation. Humphreys J accepted that the obligation to protect the natural and imprescriptible rights of all children applies to immigration decisions, and that the right to education was one of such rights to be enjoyed by citizens and non-citizens alike. However, it was held that an entitlement to an education did not create an entitlement to remain in the State if the person was here unlawfully; nor did the fact that the destination country had an inferior education system prevent deportation. Furthermore, Humphreys J was satisfied that there was no logical reason why the child's case had to be given separate consideration from her mother.

The court found that s.3(11) did not give an applicant the right to reopen the whole deportation process afresh so that the whole case had to be reconsidered. This applied particularly with regard to the claims to education because that case was available to the applicants when they responded to the Minister's notification of intention to make a deportation order pursuant to s.3 of the *Immigration Act 1999*. Humphreys J noted that the provision for application to the Minister for revocation gave a person whose deportation had been ordered an opportunity to present to

the Minister facts, circumstances and reasons why the order should not now be implemented. The judge said that there was ‘a limitation on the use of s. 3 (11) in that it is confined to new circumstances, albeit that this test can be read broadly to include new legal circumstances’. Otherwise, all deportation orders would be ‘up for permanent renegotiation’ and the time limits would be inoperative. Accordingly, the court held that the applicants were not entitled to litigate an issue, namely, the right to primary education, which they could have raised at the deportation order stage. It was noted that a comparison of the adequacy of Irish and Nigerian education systems was available to the appellants in 2009. The fact that BMA would commence education was foreseeable and could have been litigated then. This was not a new point and in the absence of any significant difference in the legal position of the child as a result of the enactment of Art.42A there was nothing new in the claim that deportation would interfere with her education. The court also rejected the claim based on irrationality.

Ryan P delivered the primary judgment of the Court of Appeal (Irvine J concurred but delivered a separate decision on the refusal of injunctive relief). Ryan P held that in circumstances where there was a specific constitutional right dealing with the child’s entitlement or the entitlement of children generally, it was not a reasonable inference that this general provision of protection of rights should be considered to have altered the existing obligations of the State. But even if Art.42A did impose some extra obligation, the question arose as to the nature of the obligation. Ryan P noted that it might be argued that Art.42.4 was limited to citizen children or to children lawfully present in the State. If that were the case, an argument could be made under Art.42A that it would be unlawful to continue the exclusion of children not lawfully present. Ryan P queried how Art.42A could be construed as giving entitlement to a child to live in the State simply for the purpose of education when he or she was not otherwise permitted to be here. Ryan P concluded on this issue (at para.33):

The real question is not whether the second applicant is entitled to free primary education in the State while she is living here, but whether she is entitled to live here in order to avail herself of free primary education. The answer is that she is not.

Accordingly, Ryan P held that the trial judge was correct to hold that Art.42A did not amount to a bar to the deportation of a child who was undergoing primary education in the State. While BMA was undoubtedly entitled to avail herself of the right to education while living in the State, that did not mean that she had a right to live in the State in order to avail herself of education. Ryan P agreed with Humphreys J that the educational rights in the State of the child could not represent a barrier to deportation, otherwise the State’s immigration policy would be impossible to implement.

On the requirement of an individual consideration of the child, separate from her mother, in the deportation process, Ryan P was satisfied that the circumstances of the mother and child in this case did not require separate and individual consideration by the Minister. While it was accepted that there may be circumstances which would necessitate individual assessment, such as in the case of a citizen child who because of citizenship has a prima facie right to live in the State, there was no general rule that any consideration of such a case as the present, involving a mother and young daughter, necessarily required individual assessment. Insofar as the decision of Eagar J in *COO v Minister for Justice and Equality* [2015] IEHC 139 held otherwise, Ryan P was satisfied that it was incorrect. Ryan P was satisfied in the present case that there was no basis for invalidating the Minister's consideration of the revocation application on this ground. It was noted that the application was put before the Minister on a joint basis comprising mother and daughter and it was therefore reasonable for the Minister to consider them together.

Ryan P also held that the Minister was not obliged to make a comparison between the educational opportunities in Ireland and Nigeria before making a decision on the revocation application. That question was, as the High Court noted, a matter that was or could have been ventilated at the stage of consideration of the deportation order, pursuant to s.3(6) of the 1999 Act. Finally, it was held that the applicants had not shown that the Minister's conclusion as to the education system in Nigeria was irrational. Accordingly, the appeal was dismissed.

Principles: Article 42A of the Constitution did not amount to a bar to the deportation of a non-citizen child who was undergoing primary education in the State. The circumstances of the mother and child in this case did not require separate and individual consideration by the Minister. The Minister was not obliged to make a comparison between the educational opportunities in Ireland and Nigeria before making a decision on whether to revoke the deportation order.

CHAPTER 8

Countering trafficking in human beings

8.1 STATISTICS

The Anti-Human Trafficking Unit (AHTU) of the Department of Justice and Equality has realigned the reporting of trafficking statistics beginning in 2017. Statistics from 2017 no longer include victims of crimes prosecuted under section 3(2) of the *Child Trafficking and Pornography Act 1998*, as amended by the *Criminal Law (Human Trafficking) Act 2008*. In addition, in its *Annual Report 2017*, the AHTU has revised trafficking statistics since 2013 to exclude these crimes.⁴¹⁵

According to the AHTU:

*Up to this year, victims of crimes prosecuted under section 3(2) of the Child Trafficking & Pornography Act 1998 [as amended by Criminal Law (Human Trafficking) Act 2008] had been reported as victims of human trafficking. As international evaluations have consistently queried the inclusion of child sexual exploitation statistics, not generally deeming them to amount to trafficking, we have decided to discount these cases to provide a more accurate picture of the extent of trafficking in Ireland, while making our data more comparable to that of other jurisdictions.*⁴¹⁶

Charges brought under section 3(2) of the *Child Trafficking & Pornography Act 1998* relate to offences of sexual exploitation. According to the AHTU *Annual Report 2017*, the offence has generally been ‘committed against an Irish child, without the involvement of a third party and without any commercial element. Furthermore, the offender is usually somebody known to the victim, and the offence has occurred without any significant movement.’ The AHTU acknowledges, however, the value of having some data available on these crimes and undertook to report this information separately to human trafficking data.⁴¹⁷

A total of 75 suspected victims of trafficking, under the revised reporting methods, were identified by An Garda Síochána during 2017. Under the revised reporting methods, this is the same as the number of suspected victims identified in 2016.⁴¹⁸ In the 2016 report of this series, a total of 95 alleged victims of trafficking was reported.⁴¹⁹

⁴¹⁵ Anti-Human Trafficking Unit (2018).

⁴¹⁶ Correspondence with Anti-Human Trafficking Unit, Department of Justice and Equality, August 2018.

⁴¹⁷ Anti-Human Trafficking Unit (2018), p. 5.

⁴¹⁸ Ibid.

⁴¹⁹ Sheridan (2017) (print version), p. 143.

TABLE 8.1 SUSPECTED VICTIMS OF TRAFFICKING IDENTIFIED IN 2017

Gender	45 were female and 30 were male.
Regions of origin	28 were from Africa; 22 were from the European Economic Area (EEA); 19 were from Asia; four from South America; and two from Ireland.
Type of exploitation	35 were exploited in labour trafficking; 31 in sex trafficking; eight in forced participation in criminality and one in forced begging.

Source: Anti-Human Trafficking Unit (2018).

The AHTU noted the increasing trend in labour exploitation in recent years. Under the revised system of reporting, labour exploitation was the main category in 2016 (50.7%) and in 2017 (46.7%). According to the AHTU, this trend towards identification of victims of labour exploitation is also reflected in other EEA countries.⁴²⁰

A total of 51 victims were third-country nationals. Victims from Indonesia, Nigeria and Egypt were the largest discernible groups. Five reflection periods to third-country national victims were granted under national provisions and 60 residence permits were issued.⁴²¹

Two persons were arrested on charges under section 4 of the *Criminal Law (Human Trafficking) Act 2008*.⁴²² There were no trafficking convictions in 2017.⁴²³

8.2 TRAFFICKING IN PERSONS REPORT

Ireland was downgraded to Tier 2 Status in the United States' State Department's *Trafficking in Persons [TIP] Report 2018*, which covers developments for 2017. The TIP report measures the efforts of States to eliminate human trafficking against the minimum standards set in the US Trafficking Victims Protection Act. Ireland had held Tier 1 status since 2011. According to the Tier 2 rating, 'Ireland does not fully meet the minimum standards for the elimination of trafficking, however it is making significant efforts to do so'.⁴²⁴ The report considered that Ireland had made serious efforts in international investigations and increased funding for victim services but the efforts were not 'serious and sustained' compared with the previous year. As in 2017, the 2018 TIP report stated that there had been no

⁴²⁰ Anti-Human Trafficking Unit (2018), p. 8.

⁴²¹ Correspondence with Anti-Human Trafficking Unit, Department of Justice and Equality, May 2018. See European Migration Network (2018b), Tables 15 and 16.

⁴²² Correspondence with Anti-Human Trafficking Unit, Department of Justice and Equality, August 2018. See European Migration Network (2018b), Table 17.

⁴²³ Anti-Human Trafficking Unit (2018), p. 13.

⁴²⁴ US State Department (2018), p. 236.

trafficking convictions since the revision of the *Criminal Justice (Human Trafficking) Act 2013*. It also referred to ‘chronic deficiencies in victim identification and referral’.⁴²⁵

The 2018 TIP Report referred extensively to the reports of the Council of Europe GRETA Committee on Ireland from both 2013 and 2017 in its findings. The findings of GRETA’s 2017 report on Ireland are discussed in section 8.3. The TIP report highlighted an inadequate criminal response to trafficking⁴²⁶, gaps in the victim identification mechanism, and the need for better access to legal representation and psychological advice for victims.⁴²⁷

One issue particularly highlighted by the 2018 TIP Report was the prosecution of persons forced to participate in criminality, for example in cannabis grow houses, and it noted that ‘the trafficking law did not protect victims from prosecution for crimes committed as a result of being subjected to trafficking’. It referred to the GRETA Committee’s recommendation that a specific statutory provision for non-punishment for victims of trafficking be adopted. The report noted that An Garda Síochána had previously increased regional training in detection of cannabis cultivation and included a human trafficking specialist in these arrests.⁴²⁸

In its *18th Newsletter*, the AHTU commented:

*While the AHTU disagrees with the Tier 2 ranking, and with some of the contents of the Report, and have discussed with the US Embassy various improvements in our systems in the past year, the recommendations accompanying the report are being given due consideration and we look forward to further engagement with the US Embassy on this important issue in the year ahead.*⁴²⁹

8.3 GRETA – SECOND EVALUATION ROUND REPORT ON IRELAND

The Council of Europe’s Group of Experts on Action against Trafficking in Human Beings (GRETA) published its second evaluation report on Ireland in September 2017. This report followed the Irish Government’s response to GRETA’s second list of questions in July 2016, and an evaluation visit conducted by GRETA experts to Ireland in December 2016, where they met a wide range of State and civil society actors.⁴³⁰ As reported for 2016, the Irish Human Rights and Equality Commission

⁴²⁵ Ibid., p. 235.

⁴²⁶ Ibid.

⁴²⁷ Ibid., p. 236

⁴²⁸ Ibid.

⁴²⁹ Anti-Human Trafficking Unit, *18th Newsletter*, July 2018, received by email.

⁴³⁰ Sheridan (2017) (print version), p. 145.

(IHREC) and Immigrant Council of Ireland (ICI) made submissions to GRETA for the second evaluation.⁴³¹

The GRETA report acknowledged the progress made by Ireland in a number of areas. These included improvements to the legal framework in line with GRETA recommendations including the extension of the definition of trafficking to include forced criminality and forced begging via the *Criminal Justice (Human Trafficking) Act 2013*, the criminalisation of the purchase of sexual services including from victims of trafficking in the *Criminal Law (Sexual Offences) Act 2017*, and the single application procedure in the *International Protection Act 2015*. The Committee also commended the adoption of the *Second National Action Plan to Prevent and Combat Human Trafficking*, and efforts in relation to awareness raising, international cooperation, increased funding for and partnership with civil society, and training of relevant professionals often carried out in partnership with NGOs. The Committee welcomed the inclusion of the Garda Human Trafficking Investigation and Coordination Unit (HTICU) in the new Garda National Protective Services Bureau (GNPSB), in line with its previous recommendation that victim identification be separated from immigration control.

However, the report also contained several recommendations for Ireland, including some highlighted for immediate action. These recommendations included:

- an urgent review of the victim identification procedure including in light of the High Court judgment in the case *P v Chief Superintendent of the Garda National Immigration Bureau and Ors*, which looked at the victim identification procedure from the point of view where the alleged victim of trafficking was also involved in criminal activity. The Committee also called for Ireland to put in place a specific legal provision on the non-punishment of victims of trafficking in situations where they are compelled to participate in unlawful activities. The Committee recommended that the reviewed identification procedure should cover all victims, including EEA and Irish citizens as well as asylum seekers;
- a review of the practice of accommodating suspected victims of trafficking in accommodation centres intended for asylum seekers and to set up a specialised shelter on a pilot basis as a first step;
- to take steps to ensure that avenues for compensation are easily accessible for trafficked people;
- to take more measures to ensure that trafficking offences are investigated and prosecuted effectively.⁴³² GRETA expressed concern about what it considered

⁴³¹ Ibid., p. 146.

⁴³² Council of Europe (2017), pp. 60–61.

to be ‘the inadequate criminal justice response to human trafficking in Ireland and noted that failure to convict traffickers and the absence of effective sentences engenders a feeling of impunity and undermines efforts to support victims to testify’.⁴³³

The Government’s initial response, by the AHTU, to the immediate recommendations was also included in the report. These comments addressed a number of issues, including the comparability of statistics with other jurisdictions, the victim identification mechanism, the accommodation of victims in accommodation run by the Reception and Integration Agency (RIA) and the number of prosecutions. With regard to victim identification, the AHTU noted that a comprehensive review was ongoing. It also clarified its view that the Administrative Immigration Arrangements for Victims of Trafficking were only one aspect of victim identification and the identification of other categories of victims was not precluded.⁴³⁴

8.4 LEGISLATION

The *Criminal Law (Sexual Offences) Act 2017* was signed into law on 22 February 2017. The Act was partially commenced (including provisions in relation to sexual exploitation of children and the purchase of sexual services) on 27 March 2017. As reported for previous years, the passage of this legislation was a priority for the Irish Government. According to the Department of Justice and Equality, the Act strengthens existing law to combat child pornography, the sexual grooming of children, incest, exposure and other offensive conduct of a sexual nature. It is an offence for a person to pay to engage in sexual activity with a prostitute or a trafficked person, regardless of nationality. The person providing the sexual service – the prostitute – will not be subject to an offence. The purpose of introducing these provisions is primarily to target the trafficking and sexual exploitation of persons through prostitution.

Part 4 (section 27) of the Act contains a specific reporting requirement on the implementation of the Act within three years, including in respect of the number of arrests and convictions and an assessment of the impact of the legislation on the safety and well-being of persons who engage in sexual activity for payment.⁴³⁵

⁴³³ Ibid., paragraph 226.

⁴³⁴ Ibid., pp. 69–72.

⁴³⁵ ‘(2) The report shall include— (a) information as to the number of arrests and convictions in respect of offences under section 7A of the Act of 1993 during the period from the commencement of that section, and (b) an assessment of the impact of the operation of that section on the safety and well-being of persons who engage in sexual activity for payment.’

The AHTU attends the meetings of an NGO-led High Level Working Group to support implementation of the Act.^{436,437}

As reported for 2016, the Sex Workers Alliance Ireland (SWAI) expressed reservations about this legislation, arguing that criminalising the purchase of sex would marginalise sex workers and force them into unsafe situations.⁴³⁸ After the Bill was signed into law in 2017, four organisations – Amnesty International Ireland, HIV Ireland, the Migrant Rights Centre of Ireland (MRCI) and Transgender Equality Network Ireland (TENI) – expressed great reservations about Part IV of the Act, which criminalises the purchase of sexual services. The organisations generally felt that it would not protect vulnerable sex workers and would expose them to further dangers by forcing sex work underground. The groups welcomed the three-year review built into the Act. The MRCI said: *We came out against this law after long consideration, and it is deeply disappointing that it passed today. It will not protect the most vulnerable – migrants, asylum seekers, refugees doing survival sex work. Furthermore, it promotes harmful stigmatisation and obstructs access to justice. We know from our decade of work on human trafficking and forced labour that this approach will not help victims of trafficking.*⁴³⁹

In September 2017, the *Irish Times* reported that the SWAI had said there had been a marked increase in abuse and violent attacks since the passage of the new law earlier in the year.⁴⁴⁰

In response to a parliamentary question in October 2018, the Minister for Justice and Equality said: ‘The part of the Act dealing with the purchase of sex is due to be reviewed in 2020, which review will include an assessment of the impact on the welfare of those who engage in sexual activity for payment, as well as statistics on prosecutions and convictions’.⁴⁴¹

The *Criminal Justice (Victims of Crime) Act 2017* came into law in November 2017.⁴⁴² An Garda Síochána noted that this law put protection for all victims of crime, including human trafficking victims, on a statutory basis.⁴⁴³ Section 15 of the Act provides for an assessment of the victim for the purpose of identifying any

⁴³⁶ Correspondence with Anti-Human Trafficking Unit, Department of Justice and Equality, February 2018.

⁴³⁷ The organisations included are: Sexual Exploitation Research Project UCD; Space International; Ruhama; Immigrant Council of Ireland; Children’s Rights Alliance; National Women’s Council of Ireland; Irish Nurses and Midwives Organisation; One in Four; Sexual Violence Centre Cork; and Doras Luimni.

⁴³⁸ Sheridan (2017) (print version), p. 147.

⁴³⁹ Migrant Rights Centre of Ireland (2017b).

⁴⁴⁰ *Irish Times* (2017d).

⁴⁴¹ Department of Justice and Equality (2 October 2018) Response to Parliamentary Question 39752/18. Available at www.justice.ie

⁴⁴² *Criminal Justice (Victims of Crime) Act 2017* (S.I. No. 28 of 2017); *Criminal Justice (Victims of Crime) Act 2017 (Commencement) Order 2017* (S.I. No. 530 of 2017).

⁴⁴³ An Garda Síochána (2018), p. 13.

protection needs or any special measures needed during the investigation or criminal proceedings. Section 15(2)(f) sets out a list of victims whose particular vulnerabilities should be considered when making this assessment, including victims of human trafficking.

8.5 NATIONAL DEVELOPMENTS

8.5.1 Labour exploitation in the Irish fishing industry

As reported for 2015, new rules regarding the employment of non-EEA fishermen in the Irish fishing fleet were agreed following media allegations of labour exploitation in 2015. A range of measures was agreed by a number of relevant Government departments and agencies, including changes to the Atypical Worker Permission Scheme to provide permission for non-EEA workers to work in the Irish fishing fleet, and a Memorandum of Understanding on enforcement agreed between bodies having oversight in the industry.⁴⁴⁴ A total of 131 applications were approved for non-EEA workers in the Irish fishing fleet under the Atypical Worker scheme in 2017.⁴⁴⁵

In May 2017 the Workplace Relations Commission (WRC) submitted to the International Labour Organisation (ILO) a *Report on WRC Enforcement of the Atypical Workers Permission Scheme in the Irish Sea Fishing Fleet*, detailing the WRC's enforcement of the sector since February 2016.⁴⁴⁶ WRC inspectors carry out inspections for the purposes of monitoring and enforcing compliance with employment rights and employment permits legislation, including National Minimum Wage, Payment of Wages, Organisation of Working Time, Terms of Employment and Employment Agency legislation. Such inspections relate to persons engaged under a contract of employment (employees). Officers from the Department of Transport, Tourism and Sport (DTTAS) inspect for compliance with rest period and maximum working hours requirements in the fishing and merchant shipping sectors.⁴⁴⁷

In the period from February 2016 to the end of 2017, the WRC:

- delivered an educational and awareness campaign within the whitefish sector;

⁴⁴⁴ Lead policy responsibility for the fishing sector resides with the Minister for Agriculture, Food and the Marine and the atypical worker permission is administered by the Irish National Immigration Service (INIS) on behalf of that Department.

⁴⁴⁵ Correspondence with Irish Naturalisation and Immigration Service, Immigration and Citizenship Policy Division, January 2018.

⁴⁴⁶ Workplace Relations Commission (2017).

⁴⁴⁷ *Ibid.*, Appendix 1.

- trained 10 WRC inspectors at the National Fisheries Training College for deployment on fisheries inspections;
- undertook 239 inspections of the whitefish fleet, involving 165 of the 174 operational whitefish vessels over 15 metres in length;
- detected 202 contraventions, relating to 111 vessels;
- initiated five prosecutions where compliance by other means was not secured.⁴⁴⁸

Some 33% of contraventions related to failure to produce or to keep records, 19% related to leave, public holiday and Sunday entitlements, 14% involved the detection of illegal workers while 12% involved a failure to issue payslips. The WRC seeks rectification of contraventions and, where relevant, the payment of any unpaid wages arising from contraventions by means of contravention, compliance and fixed payment notices, while vessel owners who fail to engage with inspectors are prosecuted.

The WRC issued some 112 contravention notices over the period. These notices advise vessel owners of contraventions detected and of the actions required, within a specified deadline, to effect compliance, including the payment of any unpaid wages arising from contraventions. Failure to respond to the contravention notice and/or to effect compliance may result in the issue of compliance notices and/or fixed payment notices, depending on the nature of the contravention and, ultimately, the initiation of prosecution proceedings. To the end of 2017, the WRC had secured one successful prosecution while prosecution proceedings were pending in four other cases.⁴⁴⁹

In addition to ongoing inspection and compliance activities, a targeted WRC operation, Operation Trident, took place from 29 to 31 March 2017, involving unannounced inspections by WRC inspectors at several fishing ports.⁴⁵⁰

As a result of An Garda Síochána operational interventions and investigations under the North Atlantic Maritime Project, a total of 19 potential victims of human trafficking were identified in the fishing industry in 2017. All were offered services under the National Referral Mechanism (NRM) and are assisting An Garda Síochána with investigations.⁴⁵¹

⁴⁴⁸ These data are updated from those included in the 2016 report of this series. See Sheridan (2017) (print version), p. 151.

⁴⁴⁹ Department of Business, Enterprise and Innovation, WRC Liaison Unit, February 2018.

⁴⁵⁰ Workplace Relations Commission (2017), p. 10.

⁴⁵¹ Correspondence with Department of Justice and Equality: Anti-Human Trafficking Unit., February 2018.

The AHTU reported that, following contact from the International Transport Workers Federation (ITF) and the Indonesian Embassy in London, a Spanish-registered fishing vessel was inspected in November 2017 in Castletownbere, Co. Cork, and some 12 fishermen working in extremely poor conditions were discovered. Assistance and services under the NRM were offered to all victims. The AHTU noted that the atypical scheme only applies to Irish vessels and it cannot protect against possible exploitation on vessels registered to other EU Member States as was the case in this instance.⁴⁵²

Concerns about the sector continued to be discussed in 2017, including the publication of a report of the Oireachtas Joint committee on Business, Enterprise and Innovation, *The Situation of non-EEA crew in the Irish Fishing Fleet under the Atypical Worker Permission Scheme* in November 2017.⁴⁵³

The Committee held the hearing on request from two organisations – the ITF and the MRCI – to hear their concerns about the situation of non-EEA crew in the Irish fishing fleet. Having heard the serious issues raised by these two organisations in July 2017, the Committee decided to hold a second meeting with representatives of the Irish fishing sector and a range of Government departments and agencies in September 2017. The second hearing was attended by representatives of fishing sector organisations⁴⁵⁴ and the Sea Fisheries Protection Authority (SFPA); Department of Defence; Naval Service; Marine Survey Office; WRC; and Health and Safety Authority (HSA).⁴⁵⁵

At the July hearing, the MRCI quoted from research it had conducted among non-EEA fishermen. Some 80% of the respondents to the survey held an atypical worker permission; 41.2% reported having experienced discriminatory behaviour and 48% claimed not to feel safe at work. This arose from lack of rest breaks and health and safety issues. The lack of rest breaks was a strong theme in both presentations to the Committee. The MRCI also argued that the atypical scheme was not achieving its purpose of providing an avenue to document workers, and fishers were being let go at the renewal stage as vessel owners were put off by the bureaucracy. This led to a worrying trend of a mix of documented and undocumented workers in the industry.⁴⁵⁶

The Chair of the Committee noted that the second meeting with the range of Government departments and agencies gave an insight into the complexity of the

⁴⁵² AHTU (2018), p. 15.

⁴⁵³ Joint Committee on Business, Enterprise and Innovation (2017).

⁴⁵⁴ Irish South and West Fish Producers Organisation (ISWFPO); Irish Fish Producers Organisation (IFPO); Irish South and East Fish Producers Organisation (ISEFPO); Killybegs Fishermen's Organisation (KFO); National Inshore Fisheries Forum (NIFF).

⁴⁵⁵ Joint Committee on Business, Enterprise and Innovation (2017), p. 2.

⁴⁵⁶ Joint Committee on Jobs, Enterprise and Innovation (2017).

regulation of the fishing sector.⁴⁵⁷ A key recommendation of the Committee's report was that a single Minister be given oversight of the fishing industry. The Committee made a total of 12 recommendations. These included recommendations that the atypical scheme permission be linked to the worker only and not to a vessel or owner; that the scheme be extended to vessels less than 15 metres in length; and for extra funding to be granted to the WRC to enable a rigorous inspection regime to be continued.⁴⁵⁸

8.5.2 Police investigations

According to An Garda Síochána, there has been a renewed emphasis on 'following the money' in human trafficking investigations. Operation Flotilla was initiated in 2017 with the emphasis of identifying money flows from the proceeds of human trafficking.⁴⁵⁹

8.5.3 Review of national identification mechanism

One of the commitments in Ireland's *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland*⁴⁶⁰ is to conduct a fundamental examination of procedures for the identification of victims of trafficking. The AHTU states that this examination was prioritised in 2017 and that it engaged with other State agencies and NGOs in an effort to identify and resolve any deficiencies and to maintain and improve practices in relation to identification procedures in Ireland. A series of meetings were held throughout 2017 including a Victim Identification Working Group in April, and further engagement with An Garda Síochána and major NGOs involved in the identification process, with a view to making any necessary amendments. This work was planned to continue in 2018.^{461,462}

The Department of Justice and Equality describes the National Referral Mechanism as providing a way for all agencies, both State and civil society, to co-operate, identify potential victims and facilitate their access to advice, accommodation and support. Dedicated units in the Department of Justice and Equality, An Garda Síochána, the Health Service Executive (HSE) and the Legal Aid Board work together to ensure a co-ordinated and comprehensive response to human trafficking, and the co-operation extends to a number of other State agencies; for example, the WRC. WRC inspectors are trained to recognise indicators of trafficking and to refer any cases where such indicators are present to the Gardaí. The Office of the Director of Public Prosecutions has a specific unit to deal with cases referred by An Garda Síochána with a view to initiating a prosecution. There is an agreed

⁴⁵⁷ Joint Committee on Business, Enterprise and Innovation (2017), Chair's Foreword, p. iii.

⁴⁵⁸ Ibid., p. 4.

⁴⁵⁹ An Garda Síochána (2018), p. 13.

⁴⁶⁰ Department of Justice and Equality (2016).

⁴⁶¹ Correspondence with Anti-Human Trafficking Unit, Department of Justice and Equality, February 2018.

⁴⁶² Anti-Human Trafficking Unit (2018), p. 16.

statement on the roles and responsibilities of all parties in the NRM and this statement is being reviewed as part of the examination of the identification process.⁴⁶³

As noted elsewhere in this report and in previous years, the system of victim identification in Ireland has been subject to criticism by international commentators and by NGOs. The AHTU states that

*all suspected victims of trafficking are admitted into the National Referral Mechanism as soon as a reasonable grounds identification has been made by the Garda Síochána Human Trafficking Investigation and Coordination Unit. Over and above that, some suspected victims may not have permission to remain in Ireland. Where this is the case, the Administrative Immigration Arrangements allow for the issue of such a permission to people who need it following the completion of the period of recovery and reflection. By the time such a permission is required, identification has already taken place and the granting of such a permission is not identification of the victim.*⁴⁶⁴

According to the AHTU, those who do not require an immigration permission (EEA nationals and those in the International Protection Process), while availing of similar supports under the NRM, have been perceived as lacking formal acknowledgment of their victim status.⁴⁶⁵ For example, this issue is discussed in the TRACKS project report covered at section 8.7.

8.5.4 Funding

In 2017, €360,000 was provided by the AHTU to two organisations, an increase of 14% on 2016 funding levels. Of this, Ruhama was allocated €310,000 and MRCI received €50,000. Activities funded included:

- assessment and referral of suspected victims to An Garda Síochána;
- direct support to victims in exiting the trafficking situation and provision of assistance with accessing accommodation and specialised services;
- long-term supports in a victim's recovery from the trauma of trafficking;
- the provision of training to professionals (including An Garda Síochána);

⁴⁶³ Correspondence with Anti-Human Trafficking Unit, Department of Justice and Equality, February 2018.

⁴⁶⁴ Correspondence with Anti-Human Trafficking Unit, Department of Justice and Equality, October 2018.

⁴⁶⁵ Anti-Human Trafficking Unit (2018), p. 16.

- work to change public attitudes, practices and policies relating to exploitation and trafficking.

In August 2017, the AHTU launched a call for applications for funding from the Dormant Accounts Fund for projects addressing support of victims of human trafficking and persons vulnerable to human trafficking and for awareness-raising projects on the phenomenon of human trafficking. Following a competitive evaluation of the project proposals, three projects were selected for funding to a total of €76,000 – Ruhama, the Sexual Violence Centre Cork and the MRCI. The chosen projects were to be progressed during 2018.⁴⁶⁶

8.5.5 Training and awareness raising

The Human Trafficking Investigation & Co-Ordination Unit (HTICU) within An Garda Síochána and the AHTU continued to raise awareness of the crime of human trafficking to a variety of targeted focus groups during 2017. Both units delivered presentations to Master's and BA students in the Dublin Institute of Technology during the year. The presentations gave a general overview of how human trafficking is combated in Ireland and what social supports are in place for victims of trafficking.

The UN GIFT Box, a piece of public art, to raise awareness of the crime of human trafficking toured Ireland throughout the month of March 2017. GIFT, or Global Initiative to Fight Trafficking, is an initiative of the United Nations and anti-human trafficking NGOs. Act to Prevent Trafficking (APT) is the Irish NGO which co-ordinated the delivery of the GIFT Box to more than a dozen locations around Ireland in collaboration with the Loreto Sisters of Ireland. The initiative was supported by the AHTU through the HTICU.

The Minister for Justice and Equality said, when visiting the Gift Box in Dublin, that:

*Public awareness is a key part of our strategy for combating human trafficking, as outlined in the Second National Action Plan which I launched last October. Those of us who carry the legislative and law enforcement responsibilities to counter this terrible crime need a well-informed public in order to succeed. Groups like APT, Act to Prevent Trafficking, are key to raising public awareness and educating Irish people about the horrors of this crime and what can be done to prevent it.*⁴⁶⁷

⁴⁶⁶ Correspondence with Anti-Human Trafficking Unit, Department of Justice and Equality, February 2018.

⁴⁶⁷ Department of Justice and Equality (August 2017), 14th AHTU newsletter, pp. 1–2. Available at www.blueblindfold.gov.ie.

To coincide with EU Anti-Trafficking Day in October 2017, an awareness-raising activity was undertaken by the HTICU, the AHTU and the Dublin Airport Authority (DAA) involving digital adverts on the indicators of human trafficking being displayed in Dublin Airport.⁴⁶⁸

8.6 INTERNATIONAL CO-OPERATION

8.6.1 Santa Marta Group

Ireland's involvement in the Santa Marta Group⁴⁶⁹ continued in 2017. Ireland is leading in the North Atlantic Maritime Project. The Group continued to meet during 2017 to discuss efforts to combat human trafficking in the fishing industry. As part of the Santa Marta Group, An Garda Síochána conducted investigations into human trafficking in the fishing industry in 2017 (see section 8.5.1 for further information on exploitation/trafficking in the fishing industry). The stakeholder group formed under the umbrella of Santa Marta Group, comprising the Catholic Church, An Garda Síochána, Police Service of Northern Ireland (PSNI), State agencies, and civil society including the Federation of Irish Fishermen, met in June 2017.⁴⁷⁰

8.6.2 Co-operation by police and other enforcement authorities

As part of the Interpol Task Force on Human Trafficking, a member of the HTICU of An Garda Síochána delivered a presentation to the 5th Global Interpol Conference on human trafficking in December 2017 on the phenomenon of cannabis growhouses and the challenges faced in Ireland.⁴⁷¹

An Garda Síochána is part of the Financial Action Task Force (FATF) Project which focuses on identifying financial flows from human trafficking and the smuggling of migrants. It is also part of the Europol EMPACT Group for Human Trafficking that also focuses on financial flows in this area. In 2017, three members of the HTICU received training in money laundering and financial investigations.

Ireland also participated in Joint Action Days on Labour Exploitation, Sexual Exploitation and Child Trafficking in 2017 as part of the Europol EMPACT Group.⁴⁷² For example, the WRC conducted investigations in pop-up car washes and nail bars, as part of the EMPACT co-ordinated work programme. WRC inspectors conducted 81 inspections of nail bars in May 2017. Non-compliance with employment law was

⁴⁶⁸ Correspondence with Department of Justice and Equality: Anti-Human Trafficking Unit, February 2018.

⁴⁶⁹ The Santa Marta Group is an alliance of international police chiefs and bishops working together with civil society to eradicate human trafficking and modern-day slavery. <http://santamartagroup.com>.

⁴⁷⁰ An Garda Síochána (2018), p. 13.

⁴⁷¹ Correspondence with Anti-Human Trafficking Unit, Department of Justice and Equality, February 2018.

⁴⁷² Ibid.

detected in 35 of the premises visited, including 11 breaches of employment permits legislation. Eight of these inspections were conducted alongside An Garda Síochána and eleven in co-operation with Revenue and the Department of Social Protection.

In November 2017, ‘pop-up’ car washes were subject to a focused campaign of inspections. This was a follow-up to a previous EMPACT action in 2016. A total of 101 sites were visited and breaches of employment law were detected, including 43 cases of breaches of the Organisation of Working Time Act.⁴⁷³

8.6.3 Official development assistance

Measures are in place through the Irish Government’s Official Development Assistance Programme, Irish Aid, to support activities that reduce vulnerability to human trafficking in countries of origin and promote the protection of human rights. This includes programme funding to NGOs involved in work linked to combating trafficking. For example, as reported for 2016, approximately €34,000 was allocated to a project on the prevention of Illegal Migration and Human Trafficking in Selected Sub-Cities and Districts of Addis Ababa, Ethiopia.⁴⁷⁴ Current funding includes €120,000 per annum to End Child Prostitution in Asian Tourism (ECPAT) from 2016 to 2018.⁴⁷⁵

In addition, in 2017, the Irish Embassy in the Holy See has contributed to efforts by the International Union of Superiors General (UISG) to counter human trafficking.⁴⁷⁶ In April 2017, Ireland made a contribution of €28,000 to the organisation to support a specific project aimed at combating human trafficking and assisting its victims in Africa. The project is aimed at capacity building, with seven countries of focus – Nigeria, Cameroon, Ghana, Uganda, Kenya, South Africa and Zambia.⁴⁷⁷ Announcing the funding, the Minister for Foreign Affairs and Trade said:

Human trafficking in Africa is increasing with children accounting for 60% of the victims. I am pleased to announce this funding today which will support work in seven countries in Africa to combat human trafficking and assist its victims. Ireland and the Holy See share a commitment to fight human trafficking and this is one example of how we can work together to put our values into action in a way that helps some of the most

⁴⁷³ Workplace Relations Commission (2018), p. 32.

⁴⁷⁴ Sheridan (2017) (print version), p. 117.

⁴⁷⁵ Correspondence with Anti-Human Trafficking Unit, Department of Justice and Equality, February 2018.

⁴⁷⁶ The UISG is an umbrella organisation for some 2,000 women’s religious organisations worldwide and has been active in the fight to combat human trafficking since 2004.

⁴⁷⁷ Correspondence with Anti-Human Trafficking Unit, Department of Justice and Equality, February 2018.

*vulnerable people in the world. This work is vital, practical and engages directly with the communities worst affected by these crimes.*⁴⁷⁸

8.7 RESEARCH

8.7.1 TRACKS project report for Ireland

As reported in 2016, the ICI has been an implementing partner⁴⁷⁹ in the TRACKS – Identification of Trafficked Asylum Seekers’ Special Needs project since the beginning of 2016.⁴⁸⁰ The final Ireland country report for the project *Identification and Response to the Needs of Trafficked Asylum Seekers: Summary Report – National Focus Ireland* was published in October 2017.⁴⁸¹ The purpose of the project was to explore the nexus between asylum and trafficking in human beings, which is of concern in particular in relation to identification of victims of human trafficking in the asylum procedure.⁴⁸²

Ireland’s national report focused on Ireland’s response to the particular needs of asylum seeking victims of trafficking and their entitlements as asylum seekers with special needs.⁴⁸³ It was based on information collected by the ICI through desk research, focus group meetings with stakeholders at national level and interviews with trafficked victims.⁴⁸⁴ The report highlighted the different procedures applying to the identification of victims of trafficking in the asylum process and other third country nationals formally identified by An Garda Síochána through the NRM.⁴⁸⁵ This means that trafficked asylum seekers do not have access to all of the same rights and entitlements as other third country national identified victims, although they do have access to accommodation and medical assistance. In particular, asylum seeking trafficking victims do not have access to the 60-day recovery and reflection period, and a temporary permission to be in the State. Rather they have permission to be in the State, and other rights and entitlements, on the same basis as other asylum seekers.⁴⁸⁶ One of the impacts of this differentiation was lack of an opportunity to access the employment market, as, during the period of preparation of the report, access to the labour market had not yet been granted

⁴⁷⁸ Department of Foreign Affairs and Trade (2017b).

⁴⁷⁹ The project is co-ordinated by a French lead partner, Forum refugees – Cosi, and the implementing partners were the British Red Cross (BRC), Churches’ Commission for Migrants in Europe (CCME), Spanish Commission for Refugees (CEAR), Italian Red Cross (ItRC) and Action for Equality, Support, Antiracism (KISA). There were also a number of implementing partners. Sheridan (2017) (print version), pp. 151–152.

⁴⁸⁰ Sheridan (2017) (print version), p. 151.

⁴⁸¹ Immigrant Council of Ireland (2017d).

⁴⁸² Sheridan (2017) (print version), p. 152.

⁴⁸³ Immigrant Council of Ireland (2017d), p. 11.

⁴⁸⁴ Ibid., p. 10.

⁴⁸⁵ Ibid., p. 17.

⁴⁸⁶ Ibid., p. 18.

to asylum seekers as a result of the judgment in *NVH v Minister for Justice and Equality*.

The report suggested that the different procedures and entitlements lead to a reluctance among trafficking victims to apply for asylum. It noted the recommendation of the Council of Europe GRETA committee that Ireland allow asylum seekers as well as EEA nationals and Irish nationals to be formally identified as victims of trafficking. This has also been a central ongoing concern for the ICI.⁴⁸⁷

The report also found that there were undifferentiated supports for asylum seeking trafficking victims and other asylum seekers. For example, asylum seeking victims of trafficking are housed in the same reception conditions as other asylum seekers and may not have access to gender-specific accommodation.⁴⁸⁸ The report recommended needs assessment for asylum seekers and that Ireland opt into the recast Reception Conditions Directive.⁴⁸⁹ As well as recommending formal identification for victims of trafficking in the asylum process and parity of rights and entitlements with other formally identified victims, the report recommended improved training for staff dealing with victims of trafficking, better reception conditions and routine access for victims to an interviewer/interpreter of the same sex.⁴⁹⁰

⁴⁸⁷ Ibid.

⁴⁸⁸ Ibid., pp. 21–23.

⁴⁸⁹ Ibid., p. 24.

⁴⁹⁰ Ibid.

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