

ANNUAL POLICY REPORT ON MIGRATION AND ASYLUM 2010: IRELAND

Corona Joyce

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EMN

European Migration Network



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Study completed by the Irish National Contact Point of the European Migration Network (EMN) which is financially supported by the European Union and the Irish Department of Justice and Law Reform. The EMN has been established via Council Decision 2008/381/EC.

The European Migration Network

The aim of the European Migration Network (EMN) is to provide up-to-date, objective, reliable and comparable information on migration and asylum at Member State and EU-level with a view to supporting policymaking and informing the general public.

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

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The Author

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Abbreviations and Irish Terms

Dáil	Parliament, lower House
DETI	Department of Enterprise Trade and Industry
EASO	European Asylum Support Office
ERF	European Return Fund
Gardaí/Garda Síochána	Police
GNIB	Garda National Immigration Bureau
IBC/05	Irish Born Child Scheme 2005
IBIS	Irish Border Information System
I-BOC	Irish Border Operations Centre
ICI	Immigrant Council of Ireland
IHRC	Irish Human Rights Commission
I/NGO	Intergovernmental Non- Governmental Organisation
INIS	Irish Naturalisation and Immigration Service
IRC	Irish Refugee Council
MRCI	Migrant Rights Centre Ireland
NASC	The Irish Immigrant Support Centre
NERA	National Employment Rights Authority
ORAC	Office of the Refugee Applications Commissioner
Oireachtas	Parliament, both houses
RAT	Refugee Appeals Tribunal
Tánaiste	Deputy Prime Minister
Taoiseach	Prime Minister
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees

EXECUTIVE SUMMARY

Following a very severe contraction during 2009, the decline in the Irish economy stabilised somewhat during 2010. Overall Gross Domestic Product (GDP) increased by 0.25 per cent during 2010. Employment averaged 1.85 million during 2010, a fall of 4.0 per cent on 2009 figures. The rate of unemployment during 2010 averaged 13.25 per cent. With regard to overall migration, an increase in net outward migration from 7,800 in April 2009 to 34,500 in April 2010 saw the highest level of net outward migration since 1989. The total number of immigrants into the State in the year to April 2010 fell by 26,500 to 30,800. Emigration among Irish nationals increased significantly during 2010 (from 18,400 in April 2009 to 27,700 in April 2010) and they were the largest single grouping at 42 per cent. Overall emigration of non-Irish nationals fell during this time period (from 46,800 in April 2009 to 37,600 in April 2010), constituted mainly by nationals of EU12 Member States. Immigration of all non-Irish national groups showed a decline during this time.

In March 2010 a governmental cabinet reshuffle took place, with changes in the names and responsibilities of some departments also announced. The Department of Justice, Equality and Law Reform became the Department of Justice and Law Reform, with responsibility for matters related to equality transferred to a new Department of Community, Equality and Gaeltacht Affairs (formerly the Department of Community, Rural and Gaeltacht Affairs). The Department of Community, Equality and Gaeltacht Affairs also took responsibility for the Office of the Minister for Equality, Human Rights and Integration which had previously been shared across the Departments of Justice, Equality and Law Reform; Community, Rural and Gaeltacht Affairs; and Education and Science. Mary White T.D. was appointed as Minister of State for Integration in March 2010. The Minister for Justice and Law Reform remained the same after this renaming of Department, with Dermot Ahern T.D. continuing in this position.¹ The Department of Enterprise, Trade and Employment was also redesignated as the Department of Enterprise, Trade and Innovation, with Batt O’Keefe T.D. becoming Minister with responsibility for that area.

The *Immigration, Residence and Protection Bill 2010* was published in June 2010. Publication of the 2010 Bill saw the *Immigration, Residence and Protection Bill 2008* withdrawn from the legislative process the following month. As with the 2007 and 2008 Immigration, Residence and Protection Bills, the 2010 Bill sets out a legislative framework for the management of inward migration to Ireland. It lays down a number of important principles governing the presence in the State of foreign nationals, including the obligation on a foreign national who is unlawfully in the State to leave. It sets out statutory processes for applying for a visa, for entry to the State, for residence in the State and for deportation. The Bill

¹ Dermot Ahern T.D. remained in this position until his retirement in January 2011 when he was replaced by Brendan Smith T.D. Alan Shatter T.D. became Minister for Justice, Equality and Law Reform in the new Dáil as of March 2011.

provides for the introduction of a single procedure whereby all grounds for an applicant remaining in the State (protection or otherwise) will be addressed together. The Bill contains provisions in relation to the powers of immigration officers, exchange of information, provision by carriers of advance passenger information, marriages of convenience, special provisions on judicial review and requirements in relation to the departure of foreign nationals from the State. The Bill also lays down new rules relating to the suppression of migrant smuggling and trafficking in persons.

The Bill is broadly similar to the *Immigration, Residence and Protection Bill 2008*, but there are a number of material differences between the two bills. The provision in the 2008 Bill allowing for the detention of protection applicants pending the issue of a protection application entry permit has been removed, with the 2010 Bill allowing for a requirement that the applicant remain in a specified place until the issue of the permit. Under the 2008 Bill, access to State and semi-State services by migrants unlawfully present in Ireland was restricted. The 2010 Bill now provides that goods and services from semi-State bodies are no longer included in the restrictions, and clarifies that access to education will not be denied to migrant children. While the 2008 Bill contained a provision prohibiting asylum seekers and anyone unlawfully resident in the State from getting married in Ireland (even if they wanted to marry an Irish or EEA/Swiss citizen), the ban has been removed from the 2010 Bill and has been replaced with a 'marriage of convenience' test. The 2008 Bill also contained provisions allowing the Minister to refuse a residence permit to a person who had been convicted of an offence in another country, while the 2010 Bill now provides that overseas convictions would only be considered relevant if the offence committed would constitute an offence in Ireland. The 2008 Bill provided for a recovery and reflection period of 45 days for victims of trafficking. The 2010 Bill provides for a longer recovery and reflection period of 60 days, and provides that the Minister may make regulations prescribing a recovery and reflection period exceeding 60 days for child victims of trafficking.

The long title of the Bill stated that it was intended to give effect to EU legislation including *Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of Third Country Nationals; Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof; Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence; EU Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence; Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data; and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in*

Member States for granting and withdrawing refugee status. The Bill lapsed with the dissolution of the 30th Dáil on 1 February 2011.

During 2010, the number of employment permits issued to non-EEA nationals was 7,476, with 3,541 new permits and 3,935 renewals issued. Ireland continued to apply restrictions on access to the labour market for Romanian and Bulgarian nationals during 2010. In general, nationals of such countries must hold an employment permit to access the labour market at first instance.²

A number of developments introduced during 2009, particularly regarding employment permit holders, continued to have effect during 2010. Relevant administrative and legislative arrangements included revised fees for employment permits (introduced in April 2009) and changes to arrangements for work permits and the 'Green Card' scheme (also introduced in April 2009). Changes concerned revised eligibility requirements for new work permits (and in cases of Green Cards, certain categories removed) to apply to prospective first-time entrants to the Irish labour market from 1 June 2009; revised renewal procedures and fees; changes to eligibility for employment permits under the *Spousal/Dependant Scheme*; and the reintroduction of a Labour Market Needs Test.

New arrangements regarding work permit holders on short-term assignments were also announced during 2009. It was also announced that work permits for jobs paying less than €30,000 per annum will only be granted in 'exceptional' cases, and in the case of dependents, spouses and dependants of first-time work permit applicants whose applications were received on or after 1 June 2009 cannot be considered for an employment permit under the *Spousal/Dependant Scheme*. In cases where the application for the principal permit holder's first employment permit was received on or after 1 June 2009, spouses/dependants of Green Card holders and Researchers only are eligible to apply for a Spousal/Dependant Permit. In addition, changes regarding the reintroduction of a Labour Market Needs Test were announced during 2009, with all vacancies for which an application for a work permit is made requiring advertisement with the FÁS/EURES employment network for at least eight weeks, in addition to local and national newspapers for six days. During 2010, new renewal arrangements for Green Card holders were announced with effect from 30 August. In certain circumstances, holders of Green Card permits for a period of two years or those who have been issued with a 'Stamp 4'³ for twelve months as a prior Green Card holder may be eligible for a granting of a 'Stamp 4' permit for a two-year duration. This permit will allow them to remain in the State and obtain

² Exclusions include persons in the State as an employment holder for an uninterrupted period of 12 months expiring on or after the 31 December 2006, and self-employed persons. In addition, Bulgarian and Romanian nationals who have graduated from an Irish third-level institution, and have obtained a qualification at level 7 or higher (primary degree or above) in the National Framework of Qualifications, and who have worked for 12 months or more post-2007 on the basis of being a student, will not require an employment permit after graduation. Employment permit requirements apply only to the first continuous twelve months of employment in the State. At the end of this twelve month period a Bulgarian or Romanian national will be free to work in Ireland without any further need for an employment permit.

³ This person is permitted to remain in Ireland until a specified date.

employment without the requirement of an employment permit. This introduction attracted criticism from NGOs such as the Immigrant Council of Ireland (ICI) who stated that the new policy did not provide the access to permanent residence which Green Card holders were initially assured of.

During 2009, the Minister for Justice and Law Reform announced policy changes regarding employment permits for non-EEA nationals. Applying to both those made redundant after five years working on a permit and to those still in employment, employment permit holders for more than five consecutive years will be provided with immigration permission to reside in Ireland and to work without the need for an employment permit. In November 2010 updated immigration arrangements concerning those eligible under the five year worker and redundancy policy were introduced with immediate effect. In October 2009, the Department of Enterprise, Trade and Employment confirmed that a Labour Market Needs Test will not be required in respect of work permit applications from current and future employment permit holders who have been made redundant. Updated arrangements introduced during 2010 saw a consolidated set of policies introduced, with a general scheme for current holders of work permits (including Spousal/Dependant permits) and work authorisations/visas for at least five consecutive years exempted from the requirement to hold a work permit on the next renewal of their immigration registration. Qualifying persons were to be issued with a 'Stamp 4'⁴ immigration permission on a one-year renewable basis. This applies equally to those who are still in employment and to those with a work permit who, having completed five years work, have since been made redundant. It is also applicable irrespective of whether a person has submitted an application for Long-Term Residence permission. In the case of persons working in Ireland on a work permit for less than five continuous years and who have become redundant involuntarily, and those with five or more years residency but not eligible for the aforementioned waiver, a six-month 'grace period' would be available under which they can seek alternative work without a labour market needs test being applied.⁵

New arrangements commenced operation in June 2010 concerning the issuing of employment permits for non-EEA doctors recruited to the Irish Public Health Service. Certain categories of doctors (specifically, non-internship registrations

⁴ Persons who satisfy the eligibility criteria for this concession will be issued a Stamp 4 immigration permission for 1 year signifying the right to be present in Ireland and to be employed without a work permit. Terms and conditions include:

- Permissions granted may be renewed annually.
- Persons granted the permission are expected to work and to support themselves and any dependents and, if made redundant, the person concerned must seek new employment.
- The holder of this permission cannot become an undue burden on the State.
- The holder of this permission will be free to work in any employment and will no longer be limited to the current employer. Should they subsequently be made redundant they are free to seek other employment.
- It is not long term residence and it cannot be seen as any guarantee of permanent status.
- The Stamp 4 in this situation allows the person to establish a business or become self-employed.
- The concession is being made irrespective of whether the person is currently an applicant for Long Term Residence.

See <http://www.inis.gov.ie/en/INIS/Pages/Policy%20for%205%20year%20workers%20and%20redundant%20workers>.

⁵ The administrative scheme for undocumented migrant workers formerly holding employment permits and who have since become undocumented through no fault of their own closed on 31 December 2009.

within the Trainee Specialist category and non-Consultant Hospital Doctors with a job offer as a Senior House Officer or Registrar in the Public Health Service) will no longer require a work permit. No labour market needs test will apply for recruitment of doctors, with all arrangements to be subject to review in 2011.

During 2010 Ireland continued to participate in *Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting Third Country Nationals for the purposes of scientific research*. Some 369 research Hosting Agreements⁶ were issued during 2010, with the largest nationality groupings representing Chinese nationals (80 agreements), Indian nationals (74 agreements), American nationals (40 agreements), Pakistani nationals (15 agreements) and Iranian nationals (14 agreements).

No review of occupations for which new work permits will not be issued took place during 2010, with a *National Skills Bulletin 2010* published during the year. The 2010 Skills Bulletin showed most of the skills shortages from 2009 persisting in 'small magnitude', particularly in the area of specialised high skills in IT, engineering, finance, sales, healthcare and management.

The National Employment Rights Authority (NERA) continued operation during 2010 and conducted inspections and identified breaches of employment law by 3,903 employers between January and September 2010. This represented 12,000 inspections under individual pieces of employment legislation. Some 1,139 cases involved the various Employment Permit Acts, of which a compliance rate of 76 per cent was found.⁷ In November 2010 it was announced that the NERA would be inspecting persons employing domestic workers such as nannies, housekeepers and cleaners for the first time.⁸ A pilot phase of such inspections was scheduled to begin in the mid-West of Ireland in December 2010, with the aim of ensuring that persons working in private homes were being paid at least minimum wage rates and in receipt of basic labour rights. Cases to inspect would be chosen based on an analysis of the national database of employers and via employers linked to work permits issued to domestic workers. It would also respond in cases where a complaint has been made.

Some 608 applications for family reunification were received by the Irish Naturalisation and Immigration Service (INIS) during 2010, with 298 approvals. Cases representing a total of 161 persons were refused, with a further number of cases representing 147 persons deemed abandoned or withdrawn.

During 2010 there were 1,900 applications for residence in Ireland by spouses of an EU national and under the *EU Free Movement Directive 2004/38/EC*. This represents a slight decrease on corresponding figures during 2009 when 2,070 applications were submitted. The largest main applicant country during 2010 continued to be Pakistan, with almost 20 per cent of all applications. During the

⁶ While each Hosting Agreement represents a single researcher, each researcher may be involved in more than one Hosting Agreement.

⁷ NERA (September 2010). *NERA Quarterly Update*. Available at www.nera.ie.

⁸ The Irish Times (16 November 2010). 'Campaign starts to protect rights of domestic workers'. Available at www.irishtimes.com.

year, the Minister for Justice and Law Reform stated that it was his intention to examine the deploying of biometric technology for visa applications from nationals of Pakistan.⁹

A notice of renewal for non-Irish national parents of Irish born children granted leave to remain under the *Irish Born Child Scheme (IBC/05)* and *Irish Born Child Renewals Scheme, 2007* continued during 2010. Initially announced in December 2009, under the renewal permission to remain is renewed for a further period of three years, save in exceptional circumstances, and subject to conditions. In a Parliamentary Question raised in February 2010, the Minister for Justice and Law Reform noted that '*a total of 14,139 parents are due to have their permission to remain in the State renewed over the course of 2010, with a high proportion of renewals arising in the six-month period from May to October*'.¹⁰ The Immigrant Council of Ireland (ICI) noted in early 2010 that persons following initial notice instructions for renewal to present at either the Garda National Immigration Bureau (GNIB) or their local immigration office were unable to register. While processing for renewals was in operation by February 2010, the ICI highlighted the resulting potential for a gap in the immigration history of a person when applying for citizenship.

In September 2010, a new five-year strategy document framework, *Investing in Global Relationships*, was launched¹¹ which set an objective of increased international student numbers in both overall higher education and English language schools by 50 per cent and 25 per cent respectively by 2015. Regarding access to the labour market, plans were outlined to extend the Graduate Work Scheme to all graduates above a certain level and for up to one year, with conditions under the Scheme subsequently extended during 2010.¹² A related new immigration regime was announced in September 2010. A *New Immigration Regime for Full Time non-EEA Students* report from the Interdepartmental Committee on Student Immigration contained more than 20 recommendations, with a number of these due to come into effect from 1 January 2011. These recommendations include the introduction of a differentiated approach as between 'Degree Programme' courses and those at the 'Language or Non Degree Programme' level, and the introduction of maximum periods of residence in the State on foot of a student permission according to type of course followed. In general, non-EEA student permission will be limited to seven years in total.¹³ Eligible education providers must be included on a State-administered 'Internationalisation Register'. Interim arrangements for current students

⁹ Irish Naturalisation and Immigration Service (7 January 2011). 'Minister Dermot Ahern announces end of year asylum statistics'. *Press Release*. Available at www.inis.gov.ie.

¹⁰ Parliamentary Question Nos.142-145 (17 February 2010).

¹¹ Department of Education and Skills (September 2010). *Investing in Global Relationships*. Available at www.education.ie.

¹² The Graduate Scheme has recently been extended to twelve months for those at level 8 or above of the National Framework of Qualifications. The six-month period still applies to those with level 7 qualifications based on the Framework.

¹³ Except in cases where the course is at PhD level or a programme of study of long duration or where the Minister of Justice and Law Reform is satisfied that 'special circumstances exist'.

affected by the change were also announced, including a six-month concession period applicable in cases for timed-out students to regularise their status.¹⁴

In September 2009 a national *Intercultural Education Strategy, 2010-15* was launched and operates on a five year timeline. The Strategy contains ten key components and five high-level goals of intercultural education. A more intercultural learning environment is promoted via the adoption of a 'whole [of] institution approach', and the strategy identifies a recommendation that cultural diversity, inclusion and integration should be included in the school environment, with specific anti-bullying policies introduced. The development of guidelines on best practice for institutions on the teaching and learning of the language of instruction as an additional language is recommended, as is the development of a post-graduate qualification in English as an additional language. The engagement and effective communication of schools with migrant parents is encouraged.

Introduced during 2010 and with effect from 1 January 2011, updated arrangements concerning immigration arrangements for religious ministers and lay volunteers were announced. The announced arrangements clarified the circumstances in which a person may come to Ireland as either a religious minister (or volunteer) or as a lay volunteer, the supporting documentation required for such an application and the conditions attached for their immigration permission. Persons granted permission to enter Ireland as a religious minister or lay volunteer on or after 1 January 2011 will now be permitted to remain in Ireland for a maximum of three years and will be issued with a 'Stamp 3'¹⁵ immigration permission. Overall issuing and renewal conditions cite that employment in the general labour market is not permitted; that the person must be self-sufficient and not considered to be an 'undue burden' on the State; that the person must have private health insurance for themselves and any dependants (either on a personal or group scheme basis); and that the person must not be considered as a possible threat to public security. In the case of religious ministers, family reunification may be possible on a case-by-case basis (in cases of a spouse/partner and child under 18 years of age, and where a child may attend a State school) and a possible extension of immigration permission may be possible where there is a demonstrated need for the minister to remain in the State. Interim transitional arrangements for persons in the State under both categories were also announced.

Some 162,398 Certificates of Registration (referring to new registrations and renewals) were issued during 2010, representing a slight decrease of two per cent on comparable figures for 2009 when 166,387 Certificates were issued.

Following on from a commitment made in the *Migration Nation* integration strategy in 2008, meetings of a Ministerial Council on Migrant Integration took place during 2010. Set up on a regional basis (Dublin, Rest of Leinster, Munster

¹⁴ Department of Justice and Law Reform (December 2010). 'Internationalisation Register New Arrangements to Apply from 01 January'. Available at www.inis.gov.ie.

¹⁵ Stamp 3 category means that a person is permitted to remain in Ireland on conditions that the holder does not enter employment, does not engage in any business or profession and does not remain later than a specified date.

and Connacht/Ulster), and with the aim of reflecting experiences of integration 'at a local level' and to provide advice on issues faced by migrants, the meetings are chaired by the Minister for Integration and aim to be held two to three times per year in each region.¹⁶ Approximately fifteen to twenty members will constitute each regional forum, with persons appointed for a five year time period.¹⁷ By early 2011, all four regional councils had met. A number of funding initiatives were announced and supported by the Office of the Minister for Integration during 2010. Funding went to a variety of bodies including local authorities, sporting bodies, small grants schemes and anti-racism and integration initiatives. In November 2010 details of a new migrant media internship programme for local and regional newspapers was announced, with two six-month journalism internships for non-Irish nationals to be funded by the Office of the Minister for Integration.

A strategy for cultural diversity and the arts, *Cultural Diversity and the Arts, Policy and Strategy* was launched by the Irish Arts Council in September 2010. The national agency for funding, developing and promoting the arts in Ireland, the Council developed this policy in order to 'support the wider arts sector in developing its thinking and practice'.

During 2010, the Immigrant Council of Ireland (ICI) launched a Racist Incidents Support and Referral Service. With the aim of providing support for those who have experienced or witnessed a racist incident, the Service provides information and referral support as well as data collection of such incidents.

A total of 4,539 applications for naturalisation were approved during 2010, with some 1,101 applications refused. A total of 20,723 applications were processed during 2010, with 15,083 applications deemed to be invalid or ineligible. Overall, some 25,796 applications for naturalisation were received during 2010 with 6,394 certificates issued. Much parliamentary and NGO debate continued to take place about the granting of naturalisation during 2010, particularly in respect of the absolute discretion conferred by statute on the Minister for Justice and Law Reform to decide upon citizenship matters, and refusal of applications for naturalisation based on traffic offences or receipt of social welfare funds such as Disability Allowance.

Some 4,325 Third Country Nationals were found to be illegally present in Ireland during 2010.

Significant media and parliamentary discussion regarding termed 'marriages of convenience' continued during 2010. Reference to the numbers of 'sham marriages' took place in several media articles during the year, with one report of

¹⁶ Office of the Minister for Integration (June 2010). 'Ministerial Council on Integration – Announcement'. *Press Release*. Available at www.integration.ie.

¹⁷ Each forum consisted of the following:

- A Connacht/ Ulster forum which will consist of 15 members
- A Dublin forum which will consist of 20 members
- A Rest of Leinster forum which will consist of 20 members
- A Munster forum which will consist of 20 members.

October 2010 stating that some 75 objections to scheduled civil ceremonies had been lodged by the Garda National Immigration Bureau (GNIB) with State registrars since November 2009.¹⁸ It was also stated that the GNIB had begun an operation targeting suspected 'sham marriages' which 'typically involve male non-EU nationals and women from eastern Europe'. New guidelines for registrars conducting marriage ceremonies were issued in 2010, containing new identification requirements, restrictions on the use of interpreters and the number of persons who may be admitted to a registrar's office. The guidelines were allegedly introduced following 'intense lobbying' by other Member States who had raised concerns about the abuse of their citizens in Ireland following 'sham marriages' conducted to circumvent Irish immigration laws.

Ireland participated in seven joint Frontex return flights during 2010. In the context of the European Return Fund (ERF), a further joint return flight operation took place in conjunction with the United Kingdom in September 2010. Marking the first time such a bilateral joint flight took place involving Ireland, some twenty-one persons were returned from Ireland as part of this operation. Ireland continued to participate in meetings of the Frontex Risk Analysis Network in 2010 and to provide relevant statistical data on a monthly basis. Much media debate during 2010 took place in the latter part of the year and concerning deportation of non-EEA nationals. Commentary centred on the transit and return conditions in the case of 34 Nigerian nationals on a Frontex-organised joint return flight that were returned to Ireland due to the development of engine trouble in Athens. The 34 persons were subsequently returned to Ireland via scheduled flights and provided with accommodation pending a further deportation. The Irish Refugee Council described the subjection of returnees to 'inhumane and degrading treatment' by immigration officers and stated that a formal complaint had been lodged with the Garda Ombudsman Commission.

Some 142 transfer orders to other EU countries were effected under the Dublin Regulation¹⁹ during 2010. A total of 343 deportation orders to non-EU countries were effected during the year. A total of 461 persons returned on a voluntary basis during 2010, with 85 persons receiving administrative assistance provided by the Department of Justice and Law Reform. Some 376 persons were assisted to return voluntarily by the International Organization for Migration (IOM) during 2010 with all eligible for return and reintegration assistance. Persons returned to some 42 countries under the Voluntary Assisted Return and Reintegration Programme (VARRP) including Georgia, Moldova, South Africa, Brazil, Mauritius and Nigeria.²⁰

As discussed in previous reports in this series, a number of High Court reviews against deportation orders by parents of Irish citizen children were initiated in

¹⁸ The Irish Times (27 October 2010). 'Gardaí to meet Latvians over 'sham marriages''. Available at www.irishtimes.com.

¹⁹ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a Third Country National.

²⁰ The Irish Times (29 December 2010). '511 people opt for return to home countries'. Available at www.irishtimes.com.

recent years. These cases continued to take place during 2010. In figures released by the Department of Justice and Law Reform following two prominent such appeals and cited by The Irish Times, at least 12 Irish citizen children left Ireland in 2010 due to the deportation of one of their parents from Ireland.²¹ The decision to deport parents of Irish citizen children was criticised by a number of NGOs including child rights groups who stated that the policy is leading to the 'de facto deportation' of Irish citizens.

Ireland continued to participate in both an EU-Hong Kong readmission agreement and a bilateral agreement with Nigeria during 2010.

In 2010 Ireland ratified both the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children supplementing the UN Convention against Transnational Organised Crime* (17 July 2010) and the Council of Europe *Convention on Action against Trafficking in Human Beings* (1 November 2010). In a Parliamentary Question in January 2011,²² the Minister for Justice and Law Reform stated that between November 2009 and 1 December 2010, a total of 39 cases had been referred by the Garda National Immigration Bureau (GNIB) to the Legal Aid Board for legal assistance and advice for suspected victims of trafficking. In the time of operation of HSE services and up to December 2010, some 56 persons had been referred to the Health Service Executive (HSE) for the devising of individual care plans. The US State Department *Trafficking in Persons Report 2010*²³ saw Ireland moved from a Tier 2 to a Tier 1 country. Tier 1 classification indicates that a country fully complies with the minimum standards for the elimination of trafficking. The report noted that Ireland is a destination, and to an extent, a transit country for persons subjected to trafficking, particularly in the area of forced prostitution and forced labour. It noted that unaccompanied minors in Ireland were vulnerable to trafficking and highlighted outstanding issues such as continued training regarding the identification of victims, provision of specialised services for both adult and child victims of trafficking including secure accommodation, and the appointment of a National Rapporteur in the area. In 2009 the International Organization for Migration (IOM) was awarded a tender from the Anti-Human Trafficking Unit to develop, produce and deliver a counter-trafficking Train the Trainers training manual and three training sessions. The project ran from September 2009 to August 2010, with training sessions held in both years.

Activity regarding the introduction of the first phase of a new border control system continued during 2010. The Irish Border Information System (IBIS) is intended to reduce and possibly eradicate the issue of 'overstayers' in Ireland and will entail all passenger information collected by carriers prior to travel being sent to an Irish Border Operations Centre (I-BOC) where it will be screened against certain watch lists. If a match occurs, the relevant agency will be notified and

²¹ The Irish Times (4 December 2010). 'Irish citizen children 'effectively expelled'. Available at www.irishtimes.com.

²² Parliamentary Question No.585 (12 January 2011).

²³ US State Department (2010). *Trafficking in Persons Report 2010*. Available at <http://www.state.gov/g/tip/rls/tiprpt/2010>.

provided with time to take appropriate measures such as monitoring, intercepting or arresting the passenger. During 2010 further discussions with the project team regarding progression of an Integrated Border Information System (IBIS) for Ireland took place.

Some 133,598 visas were issued by Ireland in 2010. Of this number, 64,493 were re-entry visas, which are issued to nationals of visa required countries who are legally present in Ireland and wish to leave temporarily (holidays, business, visit relatives, etc.) and re-enter the State. Some 69,105 visas for initial entry were issued, of which 23,535 were processed via Irish missions outside Ireland. A total of 7,912 applications were refused. A total of 142,444 visa applications were processed during 2010. As of March, 2010 Ireland began collecting biometric data in the form of fingerprints as part of the visa application process. This process initially began in Nigeria and is expected to extend to other locations at a later date. All visa applicants aged six years and over and who are residing in Nigeria (irrespective of nationality) must present in person to one of the Ireland Visa Application Centres (VAC) in Abuja or Lagos. Criticism by NGOs during 2010 related to the lack of access to a normal appeals procedure for visa applicants who made their application in Nigeria. Overall, the visa office in Nigeria covers the Sub-Saharan Africa region, and within the remit of this office is a liaison function concerning national immigration authorities in the region.

Some 2,790 persons were refused leave to land at Irish ports during 2010, with 3,031 refusals of leave to land.

Some 1,939 applications for asylum were received in 2010. Of these, 1,918 cases referred to new applications for declaration as a refugee. The main stated countries of nationality of those seeking asylum during 2010 were Nigeria (387 applications), China (228 applications), Pakistan (200 applications), Democratic Republic of Congo (71 applications) and Afghanistan (69 applications). A total of 541 applications were outstanding at the Office of the Refugee Applications Commissioner as of the end of 2010. Overall, some 2,192 cases were finalised by the Office of the Refugee Applications Commissioner during 2010. A total of 263 determinations were made under the Dublin Regulation at first instance.

Overall, some 1,548 new appeals were received by the Refugee Appeals Tribunal during 2010, representing activities under new and older procedures and including appeals under the Dublin Regulations. A total of 2,964 overall appeals were completed during 2010, including 94 appeals related to the Dublin Regulation. Some 2,783 decisions were issued. Some 24 positive recommendations were made at first instance during 2010, with 1,309 negative recommendations following interview and 596 cases were deemed negative for other reasons or deemed withdrawn. At appeal stage, some 129 appeals were granted with 2,654 appeals refused. The overall refugee recognition rate during 2010 was 3.4 per cent.

Regarding applications for subsidiary protection, a parliamentary question of November 2010 stated that a total of 6,356 applications for subsidiary protection

had been made between October 2006 and October 2010. Of this number, a decision to grant such a status had been made in respect of 34 cases, with a refusal decision in 1,609 cases.²⁴ During 2010, a total of 1,466 applications for subsidiary protection were received with three applications granted and 517 refused.

During 2010 the issue of direct provision accommodation prompted much debate, particularly regarding a planned dispersal from an accommodation centre in July 2010 which prompted a number of protests based on the short notice of transfer, the lack of consideration of time spent by some residents in the accommodation by the Reception and Integration Agency (RIA) and humanitarian needs. A Value for Money Review²⁵ regarding expenditure on provision of full board (Direct Provision) accommodation services for asylum seekers by the RIA was published during 2010.²⁶ With a primary focus of examining the provision of direct provision services according to aims, efficiency, cost and alternatives, the Review focused on the period of 2005 to 2008. The Review reiterated the effectiveness of the programme, with a recommendation to reduce excess capacity by five per cent to less than ten per cent on present figures and at an estimated saving of €3.9m per year. Recognising a decrease in overall asylum figures, the Review noted that the current direct provision system was not reactive to volatile demand situations and recommended a three-month clause in contracts with service providers.

Ireland continued to participate in the Resettlement Programme for vulnerable refugees in conjunction with UNHCR during 2010 with an annual quota of 200 persons. Refugees are selected for resettlement during the quota year but in many cases may not arrive in Ireland until the following year. During 2010 some 20 refugees were admitted to Ireland under the Resettlement Programme with the majority approved for resettlement during 2010 (17 cases). An additional three Burmese-Karen nationals approved during 2009 were resettled during the year. Some 28 persons were approved or are pending approval under the Resettlement Programme for 2010, with the majority from Iraq (22 persons) followed by Ethiopian nationals (5 persons) and Syrian nationals (1 person). All of the 2010 resettlement figures involved medical cases.

Ireland attended the first meeting of the European Asylum Support Office (EASO) in Malta in November 2010. In accordance with Article 3 of the Protocol on the Position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union (TEU) and to the TFEU, during 2009 Ireland had indicated its intention to take part in the adoption and application of *Regulation 439/2010 of 19 May 2010 establishing a European Asylum Support Office*.

²⁴ Parliamentary Question No.291 (9 November 2010).

²⁵ Reception and Integration Agency (May 2010). *Value for Money & Policy Review, Asylum Seeker Accommodation Programme, Final Report*. Available at www.ria.gov.ie.

²⁶ RIA also provides accommodation to destitute EU12 nationals pending a return home and for alleged victims of trafficking; however these figures remain relatively low.

Some 37 unaccompanied minors applied for asylum in Ireland during 2010. On a national level, activities outlined under commitments in the 2009 *Joint Protocol on Missing Children* and the *Implementation Plan from the Report of the Commission to Inquire into Child Abuse, 2009* continued. The 'equity of care' policy contained within the Implementation Plan sought to end the use of separate hostels for unaccompanied minors and to accommodate them on a similar level with other children in care by December 2010. During 2010 a national policy regarding unaccompanied minors came into operation in which minors over 12 years are assessed for a maximum of six weeks at a centre in Dublin before dispersal to a foster placement. From January 2010, all newly arriving children under 12 years were placed on arrival in a foster care placement. All newly arrived minors over 12 years were placed in one of the four registered residential intake units for four to six weeks, where a preliminary assessment of the minor and their needs is carried out by a social worker in conjunction with qualified residential social care staff, with input from a psychologist if required. All unaccompanied minors are allocated a social worker on arrival, with an initial care plan developed in conjunction with social/care staff. By the end of 2010 (1 December), 35 unaccompanied children were living in foster placements, 24 in children's homes, 15 in hostels and 20 in supported lodgings.²⁷ In figures released in January 2011, the Health Service Executive (HSE) stated that 11 unaccompanied minors went missing from State care during 2010. Of this number, six minors are still missing. The missing minors were from a diverse range of countries including Nigeria, Somalia, Afghanistan and the Democratic Republic of Congo. The report noted that of a total of 512 minors who had gone missing from care between 2000 and 2010, some 72 have been found by authorities.

The issue of 'aged-out' minors turning 18 years continued to prompt significant debate during 2010. Several NGOs called for additional support for unaccompanied minors upon turning 18 years, particularly with regard to their transfer from care to direct provision accommodation. Parliamentary and media debate regarding the removal of unaccompanied minors from State schools in Dublin upon turning 18 years took place during 2010, with a high profile legal case also in media reporting.

During 2010 much media and parliamentary debate regarding domestic abuse and immigration permission took place. The debate centred on cases where the victim of domestic violence is the dependant spouse of the holder of an immigration permission whose permission to remain in Ireland is dependent upon the existence of the relationship. It was debated that such cases result in a victim of domestic abuse being afraid to report incidents due to a fear of becoming undocumented.

²⁷ The Irish Times (10 January 2011). 'Eleven minors pursuing asylum go missing'. Available at <http://www.irishtimes.com/newspaper/ireland/2011/0110/1224287156483.html>.

The formation of a Governance Group for Intercultural Health within the HSE also took place, which comprises membership of national and regional specialists for social inclusion and a range of key HSE personnel working in frontline services. A range of sub-groups were also formed with the remit to undertake 'priority pieces of work' in areas including direct provision, health screening and mapping of services. Prioritised themes of strategy include translation and interpreting, where updates regarding training, resources and conferences were provided, and staff training and resources.

During 2010 Ireland took part in an EU-led dialogue with India on migration. This represents the first such dialogue under the Global Approach to migration to which Ireland has contributed.

No EU Legislation relating to migration or asylum was transposed into legislation in Ireland in 2010. The European Commission brought infringement proceedings against Ireland for its failure to transpose provisions of the Directive on asylum procedures in *Case C-431/10 Commission v. Ireland* on 1 September 2010.²⁸

²⁸ Case C-431/10, OJ C 301, 6.11.2010. On 3 February 2011, the Minister for Justice promulgated the European Communities (Asylum Procedures) Regulations 2011 (S.I. 51 of 2011) and the Refugee Act 1996 (Asylum Procedures) Regulations 2011 (S.I. 52 of 2011). These Regulations are intended to give effect to the Procedures Directive in Irish law, particularly with respect to the conduct of personal interviews, the provision of interpreters and the treatment of unaccompanied minors in the asylum system. On 7 April 2011 the Court of Justice of the European Union declared that Ireland had failed to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2005/85/EC, though it should be noted that the Court's decision was based on the legislative situation prior to the promulgation of the February 2011 statutory instruments.

Chapter 1

Introduction: Purpose and Methodology Followed

This report is the seventh 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. Previous comparable Annual Policy Reports are also available for a number of other EU countries participating in the European Migration Network.

In accordance with Article 9(1) of *Council Decision 2008/381/EC* establishing the EMN, each EMN NCP is required to provide every year a report describing the migration and asylum situation in the Member State, which shall include policy developments and statistical data. The purpose of the EMN report is to continue to provide an insight into the most significant political and legislative (including EU) developments, as well as public debates, in the area of migration and asylum. The EMN *Annual Policy Report 2010* will cover the period 1 January 2010 to 31 December 2010.

Each Member State is tasked with documenting the state of implementation of EU legislation and the impact of European policy developments at national level. Nation-specific significant developments (political, legal, administrative, etc.) in the area of migration and asylum are to be described by each Member State. Finally, Member States are asked to comment on relevant debates. The National Reports will be used both to contribute to the European Commission's Annual Report on the implementation of the Pact and, as per previous reports, to the EMN Synthesis Report, in order to summarise and compare the findings in a comparative perspective useful for policymakers.

1.1 METHODOLOGY

1.1.1 Definition of a Significant Development

For the purpose of the *Annual Policy Report on Migration and Asylum 2010: Ireland*, specific criteria regarding the inclusion of significant developments and/or debates have been adopted to ensure standard reporting across all national country reports. On an EMN central level, the definition of a 'significant development/debate' within a particular year was an event that had been discussed in parliament and had been widely reported in the media. The longer the time of reporting in the media, the more significant the development.

Development will also be considered significant if such developments/ debates then led to any proposals for amended or new legislation.

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

- All legislative developments;
- Major institutional developments;
- Major debates in parliament and between social partners;
- Government statements;
- Media and civil society debates;
- If the debate is also engaged with in parliament, or
- 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.

1.1.2 Sources and Types of Information Used

The sources and types of information used include:

- Published and adopted national legislation;
- Government press releases, statements and reports;
- Published government schemes;
- Media reporting (both web-based and print-media);
- Other publications (European Commission publications; I/NGO Annual Reports; publications and information leaflets);
- Case Law reporting.

Significant constraints were experienced in accessing certain information due to the timing of the *Annual Policy Report on Migration and Asylum 2010: Ireland*. In particular, certain governmental and NGO annual reports for 2010 were not available at the time of writing.

1.1.3 Statistical Data

Statistics, where available, were taken from published first-source material such as Government/Other Annual Reports and published statistics from the Central Statistics Office.

Where noted, and where not possible to access original statistical sources, data were taken from media articles based on access to unpublished documents.

1.1.4 Consulted Partners

In order to provide a comprehensive and reflective overview of national legislative and other debates, a representative sample of core partners were contacted with regard to input on a draft *Annual Policy Report on Asylum and Migration 2010: Ireland*:

- Department of Justice and Law Reform
- Immigrant Council of Ireland (ICI)
- Migrant Rights Centre Ireland (MRCI)
- UNHCR Ireland.

1.2 TERMS AND DEFINITIONS

All definitions for technical terms or concepts used in the study are as per the EMN Glossary.

Chapter 2

General Structure of Political and Legal System in Ireland

2.1 GENERAL STRUCTURE OF THE POLITICAL SYSTEM AND INSTITUTIONAL CONTEXT

Ireland is a parliamentary democracy. The two houses of the Oireachtas (Parliament) are Dáil Éireann (the House of Representatives) and Seanad Éireann (the Senate). The Constitution was enacted in 1937 and it defines the powers and functions of the President, the Government and the Oireachtas. The Government is led by the Taoiseach (the Prime Minister, Brian Cowen T.D. as of year end 2010) and Tánaiste (Deputy Prime Minister, Mary Coughlan as of year end 2010). Each of the Dáil's 166 members is a Teachta Dála (T.D.), who is directly elected by the people. General elections take place at least once every five years. At the end of 2010, the government was the 28th Government of Ireland and was formed on 7 May 2008 following the election of Brian Cowen as Taoiseach. While initially composed of Fianna Fáil, the Green Party, the Progressive Democrats and two independent TDs, following the disbandment of the Progressive Democrats in 2009, by year end 2010 it consisted of Fianna Fáil and the Green Party with the support of three independent TDs.

There are 15 government departments, each headed by a Minister. Three departments are involved in migration management in Ireland. The Department of Justice and Law Reform²⁹ has a range of responsibilities including immigration policy and services, crime and security, law reform and human rights and has overall responsibility for the Irish Naturalisation and Immigration Service (INIS) and the Reception and Integration Agency (RIA). The Department also has political responsibility for the national police force, An Garda Síochána, including the Garda National Immigration Bureau (GNIB).³⁰ The Department of Enterprise, Trade and Innovation³¹ administers the employment permit schemes and formulates economic migration policy. The Department of Foreign Affairs has responsibility for the issuing of visas to immigrants via consular services in countries where the Department of Justice and Law Reform does not operate a

²⁹ Formerly the Department of Justice, Equality and Law Reform until March 2010 and latterly the Department of Justice and Equality from March 2011. For the purpose of this report and for consistency, the term 'Department of Justice and Law Reform' will be used for all references prior to this date.

³⁰ Further information on the specific activities of each government department, including the Irish Naturalisation and Immigration Service (INIS) and the Reception and Integration Agency (RIA) can be found in previously-published reports in this series and Quinn (2009). *The Organisation of Asylum and Migration Policies in Ireland*. Available at www.emn.ie.

³¹ Formerly the Department of Enterprise, Trade and Employment until March 2010. For the purpose of this report and for consistency, the term 'Department of Enterprise, Trade and Innovation' will be used for all references prior to this date.

dedicated visa office. The Garda National Immigration Bureau (GNIB) is responsible for all immigration related to Garda (police) operations in the State and is under the auspices of An Garda Síochána and, in turn, the Department of Justice and Law Reform. The GNIB enforces deportations and border control, and carries out investigations related to illegal immigration and trafficking in human beings. An Garda Síochána has personnel 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.

With regard to applications for asylum and decision-making regarding the granting of refugee status under the *Geneva Convention 1951*, the Refugee Applications Commissioner (commonly referred to as the Office of the Refugee Applications Commissioner [ORAC]) and the Refugee Appeals Tribunal (RAT) are statutorily independent offices. These bodies have responsibility for processing first-instance asylum claims and for hearing appeals, respectively. Both bodies are associated with the Department of Justice and Law Reform and make recommendations on asylum claims and hearings to the Minister of the Department who makes the final decision on whether refugee status is granted or refused.

2.1.1 Main Ministries in the Area of Asylum and Migration

There are four main ministries involved in the area of asylum and migration in Ireland as discussed below.³² In addition the Department of Health and Children, which is responsible for administration of the Health Service Executive (HSE), is tasked with providing care for unaccompanied Third Country National minors in the State.

2.1.1.1 Department of Justice and Law Reform

The Department of Justice and Law Reform³³ is responsible for immigration management and the Minister of that Department has ultimate decision making powers in relation to immigration and asylum. In addition the Garda National Immigration Bureau (GNIB)³⁴ and the Anti-Human Trafficking Unit³⁵ are housed within the Department.

The Irish Naturalisation and Immigration Service (INIS)³⁶ is responsible for administering the statutory and administrative functions of the Minister for Justice and Law Reform in relation to asylum, visa, immigration and citizenship processing, asylum, immigration and citizenship policy, repatriation, and reception and integration. The INIS also brings the Reception and Integration Agency (RIA)³⁷ under its aegis. The Reception and Integration Agency (RIA) is

³² In-depth discussion and analysis on the institutional context of asylum and migration in Ireland is provided in Quinn (2009). *The Organisation of Asylum and Migration Policies in Ireland*. Available at www.emn.ie.

³³ www.justice.ie.

³⁴ <http://www.garda.ie/Controller.aspx?Page=31&Lang=1>.

³⁵ <http://www.justice.ie/en/JELR/Pages/WP09000005>.

³⁶ <http://www.inis.gov.ie>.

³⁷ <http://www.ria.gov.ie>.

responsible for coordinating the provision of services to both asylum seekers and refugees and those awaiting decisions on their applications for subsidiary protection/‘humanitarian leave to remain’. Since 2004 it has also been responsible for supporting the repatriation, on an ongoing basis and for the Department of Social Protection,³⁸ of nationals of the 12 new EU Member States who fail the Habitual Residency Condition attached to social assistance payments and require assistance in returning to their country of origin.

A two-pillar structure exists for asylum application processing, consisting of The Office of the Refugee Applications Commissioner (ORAC),³⁹ and The Refugee Appeals Tribunal (RAT).⁴⁰ Both ORAC and RAT have their own independent statutory existence, while maintaining strong links with the Department.

The Refugee Documentation Centre (RDC)⁴¹ is an independent library and research service within the Legal Aid Board.⁴² The Refugee Legal Service (RLS)⁴³ was established in 1999 to provide a comprehensive legal aid service for asylum seekers and falls within the remit of the statutory, independent body of the Legal Aid Board. Limited immigration advice is included under the remit of the Legal Aid Board.⁴⁴ Additionally, the Legal Aid Board provides legal services on certain matters to persons identified by the Garda National Immigration Bureau (GNIB) as ‘potential victims’ of human trafficking under the Criminal Law (Human Trafficking) Act 2008.

2.1.1.2 Department of Enterprise, Trade and Innovation

The Department of Enterprise, Trade and Innovation⁴⁵ administers the employment permit schemes under the general auspices of the Labour Force Development Division:

- The Economic Migration Policy Unit⁴⁶ 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 Section⁴⁷ implements a labour market driven employment permits system in order to fill those labour skills gaps which cannot be filled through domestic/EU supply. The Employment Permits Section processes applications for employment permits, issues guidelines,

³⁸ <http://www.welfare.ie>. Formerly the Department of Social and Family Affairs until March 2010.

³⁹ www.orac.ie.

⁴⁰ www.refappeal.ie.

⁴¹ <http://www.legalaidboard.ie/lab/publishing.nsf/Content/RDC>.

⁴² www.legalaidboard.ie.

⁴³ http://www.legalaidboard.ie/lab/publishing.nsf/Content/Refugee_Legal_Service.

⁴⁴ The Legal Aid Board website states that ‘Legal aid and advice is also provided in appropriate cases on immigration and deportation matters’. Available at http://www.legalaidboard.ie/lab/publishing.nsf/Content/Refugee_Legal_Service.

⁴⁵ Formerly the Department of Enterprise, Trade and Employment until March 2010 and latterly the Department of Jobs, Enterprise and Innovation from March 2011.

⁴⁶ <http://www.entemp.ie/labour/migration/index.htm>.

⁴⁷ <http://www.entemp.ie/labour/workpermits>.

information and procedures, and produces online statistics on applications and permits issued.

- The Office of Science and Technology 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*.

2.1.1.3 The Department of Foreign Affairs

The Department of Foreign Affairs⁴⁸ has responsibility for the issuance of visas via Irish Embassy consular services in cases where the Department of Justice and Law Reform does not have a dedicated visa office present within the country.⁴⁹ The Department of Foreign Affairs has operative function only and is not responsible for visa policy or decisions, which are the remit of the Department of Justice and Law Reform.

2.1.1.4 Department of Community, Equality and Gaeltacht Affairs

The Office of the Minister of State with special responsibility for Integration Policy⁵⁰ is based within the Department of Community, Equality and Gaeltacht Affairs and is tasked with supporting the integration of legally resident migrants in Ireland.

2.2 GENERAL STRUCTURE OF THE LEGAL SYSTEM

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

The First Stage of the legislative process is the initiation of a Bill (a proposal for legislation) by presentation in either the Dáil or the Seanad. There then follows a series of Stages during which the Bill is examined, debated and amended in both houses. At the Final, or Fifth Stage, a debate takes place on a motion of whether the Bill would now constitute good law. If passed in the motion, the Bill is then passed to the other House, the Seanad, with Second to Fifth stages repeated there. The Seanad has 90 days (or a longer time period if agreed by both Houses) to consider the Bill and either pass the Bill without amendment, return the Bill to the Dáil with amendments or reject the Bill completely. Once a Bill has been passed by both Houses, the Taoiseach presents a copy of the Bill to the President

⁴⁸ www.dfa.ie.

⁴⁹ See Quinn (2009) for further discussion.

⁵⁰ www.integration.ie.

for signature. When the Bill comes to the President for signature, he or she considers whether the new Bill may conflict with the Constitution and may, after consultation with the Council of State, refer the question of whether or not the Bill is constitutional to the Supreme Court. Once the President has signed the Bill it becomes an 'Act' and has legal force.⁵¹

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

As discussed in previous reports in this series, prior to the mid-1990s Irish asylum and immigration legislation was covered under the *Aliens Act 1935* (and Orders made under that Act⁵²), together with the *EU Rights of Residence Directives* which came into effect after Ireland joined the European Union in 1973. Following a sharp rise in immigration flows from the mid-1990s, several pieces of legislation were introduced to deal with immigration and asylum issues in Ireland.

Regarding domestic legislation dealing with refugees and asylum seekers, the most notable piece of legislation is the *Refugee Act 1996*, as amended. In addition, *S.I. No. 518 of 2006* seeks to ensure compliance with *Council Directive 2004/83/EC*.⁵³ Ireland is also a signatory to the *Dublin Convention*, and is subject to the *Dublin Regulation*⁵⁴ which succeeded that Convention and which determines the EU Member State responsible for processing asylum applications made in the EU. Domestic immigration law in Ireland is based on various pieces of immigration legislation, including the *Aliens Act of 1935* and Orders made under it, the *Illegal Immigrants (Trafficking) Act 2000*, and the *Immigration Act 1999, 2003 and 2004*.⁵⁵ The *Immigration, Residence and Protection Bill 2010* constitutes a single piece of proposed legislation for the management of both immigration and protection issues, and by the end of 2010 the Bill was scheduled for Report Stage within the Dáil and remained unenacted at year end. The *European Communities (Free Movement of Persons) (Amendment) Regulations 2008 (S.I.*

⁵¹ Quinn (2009) provides a discussion on the structure of the Irish legal system, specifically the place of immigration and asylum within it.

⁵² *S.I. No. 395/1946 Aliens Order 1946; S.I. No. 128/1975 Aliens (Amendment) Order 1975.*

⁵³ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of Third Country Nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. Quinn (2009) discusses both current and past development of legislation in great detail.

⁵⁴ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a Third-Country National.

⁵⁵ See Quinn (2009) for further discussion on this issue, particularly legislative development.

No. 310 of 2008) was published in July 2008 and amends a 2006 Regulation stipulating that Third Country non-EU nationals married to EU citizens must have resided in another Member State before moving to Ireland.

Ireland has opted into *Directive 2005/85/EC* (the 'Procedures Directive'), but had not given effect to this Directive by way of dedicated legislation by 2010. The European Commission brought infringement proceedings against Ireland for its failure to transpose provisions of the directive in Case C-431/10 *Commission v. Ireland* on 1 September 2010.⁵⁶

Regarding the situation of Ireland concerning an 'opt-in' provision regarding EU measures in asylum and migration, under the terms of the *Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty on the European Union (TEU) and to the TFEU*, Ireland does not take part in the adoption by the Council of proposed measures pursuant to Title IV of the EC Treaty unless Ireland opts into the measure. Ireland has given an undertaking to opt in to measures that do not compromise the Common Travel Area with the UK, which also has an opt-in/opt-out facility.

⁵⁶ *Case C-431/10, OJ C 301, 6.11.2010*. The Seventh Chamber of the Court of Justice of the European Union subsequently (on 7 April 2011) handed down its judgment in the case, declaring that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2005/85/EC, Ireland had failed to fulfill its obligations under Article 43 of that directive, and requiring that Ireland pay the costs of the action (OJ C 160 28.5.2011).

Chapter 3

General Developments Relevant to Asylum and Migration

3.1 GENERAL POLITICAL DEVELOPMENTS

In March 2010 a governmental cabinet reshuffle took place, with changes in the names and responsibilities of some departments also announced. The Department of Justice, Equality and Law Reform became the Department of Justice and Law Reform, with responsibility for matters related to equality transferred to a new Department of Community, Equality and Gaeltacht Affairs (formerly the Department of Community, Rural and Gaeltacht Affairs). The Department of Community, Equality and Gaeltacht Affairs also took responsibility for the Office of the Minister for Equality, Human Rights and Integration which had previously been shared across the Departments of Justice, Equality and Law Reform; Community, Rural and Gaeltacht Affairs; and Education and Science. Mary White T.D. was appointed as Minister of State for Integration in March also. The Minister for Justice and Law Reform remained the same after this renaming of Department, with Dermot Ahern T.D. continuing in this position.⁵⁷ The Department of Enterprise, Trade and Employment was also redesignated as the Department of Enterprise, Trade and Innovation, with Batt O’Keefe T.D. becoming Minister with responsibilities for that area.

Other changes regarding departmental responsibility included the Department of Tourism, Culture and Sport (formerly the Department of Arts, Sport and Tourism); the Department of Education and Skills (formerly the Department of Education and Science); the Department of Social Protection (formerly the Department of Social and Family Affairs).

3.2 MAIN POLICY AND/OR LEGISLATIVE DEBATES

3.2.1 *Publication of the Immigration, Residence and Protection Bill 2010*

The *Immigration, Residence and Protection Bill 2010* was published in June 2010. Publication of the 2010 Bill saw the *Immigration, Residence and Protection Bill 2008* withdrawn from the legislative process the following month. As with the 2007 and 2008 Immigration, Residence and Protection Bills, the 2010 Bill sets out a legislative framework for the management of inward migration to Ireland. It lays down a number of important principles governing the presence in the State

⁵⁷ Dermot Ahern T.D. remained in this position until his retirement in January 2011 when he was replaced by Brendan Smith T.D. Alan Shatter T.D. became Minister for Justice, Equality and Law Reform in the new Dáil as of March 2011.

of foreign nationals, including the obligation on a foreign national who is unlawfully in the State to leave. It sets out statutory processes for applying for a visa, for entry to the State, for residence in the State and for deportation. The Bill would impose an immediate and continuing obligation on a foreign national unlawfully present in the State to leave the State. It sets out novel statutory procedures to be followed in dealing with visa and residence permit applications. The Bill provides for the introduction of a single procedure whereby all grounds for an applicant remaining in the State (protection or otherwise) will be addressed together. The Bill also contains provisions in relation to the powers of immigration officers, exchange of information, provision by carriers of advance passenger information, marriages of convenience, special provisions on judicial review and requirements in relation to the departure of foreign nationals from the State. The Bill also lays down new rules relating to the suppression of migrant smuggling and trafficking in persons.

The Bill is broadly similar to the *Immigration, Residence and Protection Bill 2008*, however a number of differences do exist. The provision in the 2008 Bill allowing for the detention of protection applicants pending the issue of a protection application entry permit has been removed, with the 2010 Bill allowing for a requirement that the applicant remain in a specified place until the issue of the permit. Under the 2008 Bill, access to State and semi-State services by migrants unlawfully present in Ireland was restricted. The 2010 Bill now provides that goods and services from semi-State bodies are no longer included in the restrictions, and clarifies that access to education will not be denied to migrant children. Furthermore, the 2008 Bill contained a provision prohibiting asylum seekers and anyone unlawfully resident in the State from getting married here, even if they wanted to marry an Irish or EEA/Swiss citizen. This ban has been removed from the 2010 Bill and has been replaced with a 'marriage of convenience' test. The 2008 Bill also contained provisions allowing the Minister to refuse a residence permit to a person who had been convicted of an offence in another country. The 2010 Bill now provides that overseas convictions would only be considered relevant if the offence committed would constitute an offence in Ireland. The 2008 Bill provided for a recovery and reflection period of 45 days for victims of trafficking. The 2010 Bill provides for a longer recovery and reflection period of 60 days. The new Bill also provides that the Minister may make regulations prescribing a recovery and reflection period exceeding 60 days for child victims of trafficking.

3.2.1.1 Comments on the Immigration, Residence and Protection Bill 2010

Several submissions on the published Bill were made to the Committee on Justice, Defence and Women's Rights during 2010. Recommendations highlighted in the FLAC submission of October 2010⁵⁸ centred on access to information,

⁵⁸ FLAC (October 2010). Submission of FLAC to Joint Oireachtas Committee on Justice, Defence and Women's Rights. Available at www.flac.ie.

access to an independent appeals mechanism, access to the courts and access to services. Clarity is recommended regarding family reunification for migrant workers and the level of absolute discretion accorded to the Minister for Justice and Law Reform in matters related to family reunification in general. Certain issues regarding the new Protection Review Tribunal are raised, namely that there will be a 'very limited appeal system' if enacted as stands and that the category of persons eligible for review under the proposed legislation (as published, applications refused from those who sought recognition under the Refugee Convention or persons at risk of serious harm under the Qualification Directive) will be limited also. The FLAC submission also calls for transparency in terms of Tribunal decisions by way of reporting and publishing of all decisions by the proposed Protection Review Tribunal. FLAC also recommends that a person's access to both legal information and to the courts is extended, with the proposed detention of protection applicants to whom it is 'not practicable' to issue a protection application entry permit is limited. With limited social welfare services proposed for those considered to be unlawfully in the State, the FLAC submission recommends the inclusion of a provision in legislation that *'no person is to be left destitute or without the necessary provisions for a reasonable quality of life by virtue of the withdrawal or ending of residence status'*.⁵⁹

In a submission to the Committee of November 2010, The Integration Centre concentrated on matters within the Bill related to protection, particularly access to the State, the protection system, detention and removal from the State.⁶⁰ The submission recommends that safeguards are inserted into the Bill regarding carrier liability, and specifically ensuring that carriers are 'exempt from penalties where the protection seeker makes a successful application for protection'. Regarding the protection process, the submission recommends that the needs of vulnerable applicants within the process are protected and that protection needs arising *sur place* are catered for. The Integration Centre also recommends that no restrictions regarding the country of origin (particularly in the case of EU nationals) should be in place for protection applicants; that credibility and recall of vulnerable applicants should only relate to core issues of the applicant's claim; and that a 'safe third country' should ensure respect of human rights and access to the protection determination system with a system which complies with international standards. The submission also recommends that in order to ensure that the principle of *non-refoulement* is respected, a right of return to the protection system should be provided for those deemed withdrawn. Regarding detention, the submission recommends that it is a last resort and for a limited time period. It was also recommended that persons facing removal from the State should also be provided with the opportunity to challenge and prepare for the removal.

⁵⁹ Ibid.

⁶⁰ The Integration Centre (November 2010). Submission to the Committee on Justice, Defence and Women's Rights on the Immigration, Residence and Protection Bill 2010. Available at <http://www.integrationcentre.ie/getattachment/6b9ce1ca-a0e6-4264-8435-359574d14de2/Sub-to-Dail.aspx>.

In a critical overview of the 2010 Bill,⁶¹ the Immigrant Council of Ireland (ICI) highlighted the potential for deportation of persons where an incapacity or mental illness prevents them from proving their entitlement to be in Ireland. The establishment of an independent appeals mechanism is recommended which would ‘provide transparency to the decision-making process and could be more cost effective than the current over-reliance on the courts’. The review notes that the 2010 Bill does not provide for a review mechanism for refusals of residence permission, long-term residence applications, or visa decisions. Additional protection mechanisms for victims of trafficking are recommended, particularly regarding the introduction of safeguards for cases where the granting or renewal of a temporary residence permit for a victim of trafficking is refused. A recommendation for the introduction of a permanent immigration status for persons lawfully resident in Ireland for five years is recommended, as is a governmental commitment to maximum processing times for long-term residency applications. The ICI recommends the clarification of rights to family reunification within the Bill, and also calls for the enshrinement of ‘clear immigration rules’ in primary legislation. Concerns were also raised regarding a provision for ‘no notice removals’ which were provided for in the 2007, 2008 and 2010 Bills. The ICI highlighted the provision as having the potential to breach international human rights law and have cited a similar notice made by the UN Human Rights Committee.

Comments on the *Immigration, Residence and Protection Bill 2010* by the Irish Refugee Council (IRC) in October 2010 focused on four areas: notably a fair and accessible procedure for protection applicants, appeals and remedies, summary deportation and the needs of vulnerable groups including unaccompanied minors.⁶² The requirement for persons to present travel documents at port of entry or face detention is highlighted as not taking account of authorities in certain countries being ‘unable or unwilling’ to issue such a document. The lack of transparency within the proposed protection application system is raised, as is the exclusion of records related to an asylum applicant under the Freedom of Information Acts. The appointment of members of the Protection Review Tribunal by the Minister for Justice and Law Reform is cited as being incompatible with Article 8 of the ‘Procedures Directive’, while an effective appeal and remedy for protection applicants is raised. The IRC commented that with regard to the designation of a safe third country of origin, ‘a country should never be presumed to be safe for all people at all times’. The potential for deportation without notice is also noted, with potential for violation of Article 13 of the *International Covenant on Civil and Political Rights*. The IRC calls for the protection of vulnerable applicants within the protection process, and recommends that the definition of a separated child is aligned with that of the Separated Children in Europe and UNHCR definition.

⁶¹ Immigrant Council of Ireland (September 2010). *The Immigration, Residence and Protection Bill 2010 – a critical overview*. Available at www.immigrantcouncil.ie.

⁶² Irish Refugee Council (2010). *Comments on the Immigration, Residence and Protection Bill 2010*. Available at www.irishrefugeecouncil.ie.

In October 2010, a coalition of organisations (Crosscare Migrant Project, Doras Luimní, Immigrant Council of Ireland, Irish Refugee Council, Migrant Rights Centre Ireland, The Integration Centre and NASC: The Irish Immigrant Support Centre) presented a letter to the Dáil regarding provisions for summary deportation contained within the 2010 Bill. It noted that while current procedures regarding deportation provide an individual fifteen days to make representations to the Minister as to why he/she should be allowed to remain in the State, the 2010 Bill would not permit this provision. The establishment of a 'truly independent appeals mechanism for immigration and protection decisions' is also recommended.

In a related statement, the UNHCR office in Ireland called for the introduction of a single procedure for the determination of applications for refugee and subsidiary protection status as outlined in the 2010 Bill. UNHCR stated that the introduction of such a procedure is important to both ensure 'comprehensive access' to all forms of international protection and to cease long delays in processing new applications as present with the current system.⁶³

Other general issues highlighted by a number of organisations include the 'marriage of convenience' test in the 2010 Bill, and the need for decision makers within the protection decision process to receive on-going training.

3.2.2 Ratification of Counter-Trafficking Legislation

During 2010, Ireland ratified both the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children supplementing the UN Convention against Transnational Organised Crime* (17 July 2010) and the Council of Europe *Convention on Action against Trafficking in Human Beings* (1 November 2010).

3.3 BROADER DEVELOPMENTS IN ASYLUM AND MIGRATION

3.3.1 Migration Flows

Central Statistics Office (CSO) figures for 2010⁶⁴ show an increase in overall net outward migration from some 7,800 in the 12 months to April 2009 to 34,500 in April 2010. This is the highest net outward migration figure since 1989. The total number of immigrants into the State in the year to April 2010 fell by 26,500 to 30,800, while the number of emigrants remained broadly stable at 65,300. Emigration by non-Irish nationals fell during this period by 9,200 to 37,600, while the number of Irish nationals emigrating increased by 9,300 to 27,700. Immigration of all non-Irish national groups showed a decline during this time. Of note, these figures are recognised as a conservative estimate, and revisions are

⁶³ UNHCR (14 February 2011). *UNHCR Ireland statement on need for introduction of single procedure*. Available at http://www.unhcr.ie/feb_statement_2011.html. In addition, UNHCR stated that they had written to political parties contesting the General Election to encourage them to ensure that the introduction of the single procedure is a priority for the new Dáil.

⁶⁴ Central Statistics Office (2010). *Population and Migration Estimates, April 2010*. Available at www.cso.ie.

expected upon publication by the CSO of the results of *Census 2011* and the *Population and Migration Estimates 2011*.

3.3.2 Habitual Residence Condition

Much discussion regarding the implementation of a Habitual Residence Condition (HRC) regarding access to social welfare services took place during 2010. As discussed in the *Annual Policy Report on Migration and Asylum 2009: Ireland*, the *Social Welfare and Pensions (No.2) Act 2009* of December 2009 introduced amendments to the Habitual Residence Condition regarding individuals either seeking or having been granted a protection status. Amendments specified that an individual must have a 'right to reside' in the State to satisfy the HRC and sets forth which persons will be regarded as having a right to reside and which persons will not. Individuals who had applied for asylum or a protection status in Ireland could not be considered as habitually resident while awaiting a determination. Overall, an individual 'who does not have a right to reside in the State' should not be regarded as habitually resident. Criticism on these amendments centred on the exclusion of those within the asylum system.

In a Parliamentary Question in January 2010,⁶⁵ the Minister for Social and Family Affairs clarified that a:

'...deciding officer or appeals officer may not therefore rule that a person, who has been refused permission to remain in the State, or whose application has not yet been determined, satisfies the habitual residence condition. Where a decision is given granting permission to remain, the question of whether that person is habitually resident will be made in the light of the factors set out since 2007 in the Social Welfare Consolidation Act. The determination will be made with effect from the date that permission is granted, or from the date of application for the payment in question if the application was not lodged until after that date'.

In a submission on the HRC to the Joint Oireachtas Committee on Social Protection in October 2010, the NGO FLAC highlighted an overarching principle of 'inconsistent decision-making at first instance and need for adequate training for decision-makers'. It noted that vulnerable groups such as protection applicants and victims of domestic violence where an immigration status is concerned were particularly adversely affected by the HRC. The submission also referenced cross-border issues, with a 'lack of cohesion between the authorities on both sides of the border in ensuring that one State is responsible for this person'.

3.4 INSTITUTIONAL DEVELOPMENTS

As discussed in Section 3.1, a governmental cabinet reshuffle took place in March 2010 with additional changes in the responsibilities and names of some departments. The Department of Justice and Law Reform (formerly the Department of Justice, Equality and Law Reform) retained overall general

⁶⁵ Parliamentary Question No.93 (19 January 2010).

responsibility for immigration, asylum and citizenship matters. Responsibility for the development of economic migration policy and the issuance of employment permits remained within the Department of Enterprise, Trade and Innovation (formerly the Department of Enterprise, Trade and Employment). Responsibility for integration issues was transferred to the Department of Community, Equality and Gaeltacht Affairs.

Chapter 4

Legal Immigration and Integration

4.1 ECONOMIC MIGRATION

A number of developments introduced during 2009, particularly regarding employment permit holders, continued to have effect during 2010.

Revised fees for employment permits were introduced in April 2009, the same month in which changes to arrangements for work permits and the 'Green Card' scheme were also announced. All taking effect from 1 June 2009, changes concerned revised eligibility requirements for new work permits (and in cases of Green Cards, certain categories removed) to apply to prospective first-time entrants to the Irish labour market from 1 June 2009; revised renewal procedures and fees; changes to eligibility for employment permits under the *Spousal/Dependant Scheme*; and the reintroduction of a Labour Market Needs Test. New arrangements regarding work permit holders on short-term assignments were also announced. Work permits for jobs paying less than €30,000 per annum will only be granted in 'exceptional' cases and with regard to dependents, spouses and dependants of first-time work permit applicants whose applications were received on or after 1 June 2009 cannot be considered for an employment permit under the *Spousal/Dependant Scheme*. In cases where the application for the principal permit holder's first employment permit was received on or after 1 June 2009, spouses/dependants of Green Card holders and Researchers only are eligible to apply for a Spousal/Dependant Permit. In addition, changes regarding the reintroduction of a Labour Market Needs Test were announced during 2009, with all vacancies for which an application for a work permit is made requiring advertisement with the FÁS/EURES employment network for at least eight weeks, in addition to local and national newspapers for six days.

In August 2009, the Minister for Justice and Law Reform announced policy changes regarding employment permits for non-EEA nationals who have held permits for five years or more, and easing of the immigration rules for redundant non-EEA migrant workers. Applying to both those made redundant after five years working on a permit and to those still in employment, employment permit holders for more than five consecutive years will be provided with permission to reside in Ireland and to work without the need for an employment permit.

In October 2009, the Department of Enterprise, Trade and Employment confirmed that a Labour Market Needs Test will not be required in respect of

work permit applications from current and future employment permit holders who have been made redundant.

4.1.1 *Developments within the National Perspective*

Stated government policy in Ireland is to limit the issuance of new employment permits to highly-skilled, highly-paid positions; non-EEA nationals who are already legally resident in the State on valid employment permits; or where there is an officially recognised scarcity of workers of a particular type or qualification.⁶⁶

The number of employment permits issued to non-EEA nationals during 2010 was 7,476, with 3,541 new permits and 3,935 renewals issued. Of this number, a total of 3,429 work permits were issued (including 1,418 renewals); 562 Green Cards were issued (including 1 renewal); 332 Intra-Company Transfers were issued (including 69 renewals); 3,147 permits under the Spousal/Dependant Scheme were issued (including 2,445 renewals); and 6 training permits were issued (including 2 renewals).⁶⁷ At the end of December 2010, a total of 18,987 non-Irish nationals held work permits.⁶⁸

A total of 76,645 non-Irish nationals were present on the Live Register in December 2010, a slight decrease on December 2009 figures when 77,519 non-Irish nationals were present. While the overall number of persons present on the Live Register increased between December 2009 and 2010, the proportion of non-Irish nationals fell slightly from 18.3 per cent to 17.5 per cent. Of December 2010 figures, EU15-27 nationals comprised the largest single group (42,198) followed by UK nationals (17,855).⁶⁹

Ireland continued to apply restrictions on access to the labour market for Romanian and Bulgarian nationals during 2010. In general, nationals of such countries must hold an employment permit to access the labour market at first instance.⁷⁰

During 2010 Ireland continued to participate in *Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting Third Country Nationals for the purposes of scientific research*. Some 369 research Hosting Agreements⁷¹ were issued during 2010, with the largest nationality groupings representing Chinese nationals (80 agreements), Indian nationals (74 agreements), American

⁶⁶ Parliamentary Question No.144 (27 January 2011).

⁶⁷ Department of Enterprise, Trade and Innovation.

⁶⁸ The Irish Times (4 January 2011). 'Work permits to foreign nationals drop 19%'. Available at www.irishtimes.com.

⁶⁹ The Central Statistics Office (February 2011). *Live Register*. Available at www.cso.ie.

⁷⁰ Exclusions include persons in the State as an employment holder for an uninterrupted period of 12 months expiring on or after the 31 December 2006, and self-employed persons. In addition, Bulgarian and Romanian nationals who have graduated from an Irish third-level institution, and have obtained a qualification at level 7 or higher (primary degree or above) in the National Framework of Qualifications, and who have worked for 12 months or more post 2007 on the basis of being a student, will not require an Employment Permit after graduation. Employment permit requirements apply only to the first continuous twelve months of employment in the State. At the end of this twelve month period a Bulgarian or Romanian national will be free to work in Ireland without any further need for an employment permit.

⁷¹ While each Hosting Agreement represents a single researcher, each researcher may be involved in more than one Hosting Agreement.

nationals (40 agreements), Pakistani nationals (15 agreements) and Iranian nationals (14 agreements).

4.1.1.1 Impact of the Crisis on Economic Migrants

As discussed in Quinn (2010), Barrett and Kelly (2010)⁷² used labour force survey data to investigate the impact of the current economic recession on economic migrants in Ireland. It was found that the recession was particularly severe on immigrants in terms of greater losses in employment and higher unemployment. Nationals from the EU12 Member States experienced the most significant job losses.

Between Q1 2008 and Q4 2009 the number of non-Irish nationals employed in Ireland fell by 87,500, a fall of 25 per cent while the number of non-Irish nationals unemployed grew by 24,500, an increase of over 100 per cent. The increase in the number who declared themselves as being inactive grew by only 2,700 or two per cent. However, in absolute terms the biggest adjustment was in the number still in Ireland which fell by 60,200 or 12 per cent.⁷³

Barrett et al. forecast that net outward migration will reach 100,000 over the two year period April 2010 to April 2012.⁷⁴

4.1.1.2 Administrative Changes

During 2010 a number of immigration policies which had been introduced during 2009 and related to the employment situation of non-EEA immigrants both continued and were modified in some cases.

Operational from June 2010, new arrangements were announced concerning the issuing of employment permits for non-EEA doctors recruited to the Irish Public Health Service.⁷⁵ Certain categories of doctors (specifically, non-internship registrations within the Trainee Specialist category and non-Consultant Hospital Doctors with a job offer as a Senior House Officer or Registrar in the Public Health Service) will no longer require a work permit. No labour market needs test will apply for recruitment of doctors, with all arrangements to be subject to review in 2011.

New renewal arrangements for Green Card holders were announced with effect from 30 August 2010. In certain circumstances, holders of Green Card permits for a period of two years or those who have been issued with a 'Stamp 4'⁷⁶ for twelve months as a prior Green Card holder may be eligible for a granting of a 'Stamp 4'

⁷² Barrett, A. and Kelly, E. (2010). 'The Impact of Ireland's Recession on the Labour Market Outcomes of its Immigrants'. *ESRI Working Paper 355*. Available at www.esri.ie.

⁷³ Barrett and Kelly stress that the data used are from repeated cross sections and not a panel and therefore changes over time could be the result of a changing mix of individuals as opposed to changes in the circumstances of individuals. However, with the proviso that it may be too early to be sure, it is concluded that these data are certainly consistent with a tendency for employment losses to have resulted in outflows.

⁷⁴ Barrett et al. (2011). *Quarterly Economic Commentary, Winter 2010*. Available at www.esri.ie.

⁷⁵ Department of Enterprise, Trade and Innovation (2010). 'New Procedures for Employment Permits for Doctors'. Available at www.deti.ie.

⁷⁶ This person is permitted to remain in Ireland until a specified date.

permit for a two-year duration. This permit will allow them to remain in the State and obtain employment without the requirement of an employment permit.⁷⁷ NGOs such as the Immigrant Council of Ireland (ICI) have highlighted that while initially Green Card holders had been promised ‘access to permanent residence’ after two years, the new policy does not meet this commitment.

In November 2010 updated immigration arrangements concerning those eligible under the five year worker and redundancy policy were introduced with immediate effect.⁷⁸ Initial arrangements for both groups were introduced in October 2009 and concerned persons working in Ireland in possession of a work permit for at least five years and those made redundant. The 2010 updated arrangements saw a consolidated set of policies introduced, with a general scheme for current holders of work permits (including Spousal/Dependant permits) and work authorisations/visas for at least five consecutive years exempted from the requirement to hold a work permit on the next renewal of their immigration registration. Qualifying persons are to be issued with a ‘Stamp 4’⁷⁹ immigration permission on a one-year renewable basis. This applies equally to those who are still in employment and to those with a work permit who, having completed five years work, have since been made redundant. It is also applicable irrespective of whether a person has submitted an application for Long-Term Residence permission. In the case of persons working in Ireland on a work permit for less than five continuous years and who have become redundant involuntarily, and those with five or more years residency but not eligible for the aforementioned waiver, a six-month ‘grace period’ will be available under which they can seek alternative work without a labour market needs test being applied.⁸⁰

4.1.1.3 Recognition of Qualifications

Regarding the recognition of qualifications, in 2010 provisions were made for the introduction of a *Qualifications and Quality Assurance (Education and Training) Bill* under which an amalgamated qualifications and quality assurance agency, provisionally titled the Qualifications and Quality Assurance Ireland (QCAI), will be

⁷⁷ Department of Enterprise, Trade and Innovation (2010). ‘Revised renewal immigration arrangements for Green Card Holders’. Available at <http://www.deti.ie/labour/workpermits/greencardholderimportantnotice.htm>.

⁷⁸ Department of Justice and Law Reform (2010). ‘Policy for 5 year workers and redundant workers’. Available at <http://www.inis.gov.ie/en/INIS/Pages/Policy%20for%205%20year%20workers%20and%20redundant%20workers>.

⁷⁹ Persons who satisfy the eligibility criteria for this concession will be issued a Stamp 4 immigration permission for 1 year signifying the right to be present in Ireland and to be employed without a work permit. Terms and conditions include:

- Permissions granted may be renewed annually.
 - Persons granted the permission are expected to work and to support themselves and any dependents and, if made redundant, the person concerned must seek new employment.
 - The holder of this permission cannot become an undue burden on the State.
 - The holder of this permission will be free to work in any employment and will no longer be limited to the current employer. Should they subsequently be made redundant they are free to seek other employment.
 - It is not long term residence and it cannot be seen as any guarantee of permanent status.
 - The Stamp 4 in this situation allows the person to establish a business or become self-employed.
 - The concession is being made irrespective of whether the person is currently an applicant for Long Term Residence.
- See <http://www.inis.gov.ie/en/INIS/Pages/Policy%20for%205%20year%20workers%20and%20redundant%20workers>.

⁸⁰ The administrative scheme for undocumented migrant workers formerly holding employment permits and who have since become undocumented through no fault of their own closed on 31 December 2009.

established. This new agency will serve to bring together the National Qualification Authority of Ireland (NQAI); the Further Education and Training Awards Council (FETAC); and the Higher Education and Training Awards Council (HETAC) under one organisation. In January 2010 the Government approved the general scheme of the *Qualifications and Quality Assurance (Education and Training) Bill*. At present, the National Qualifications Authority of Ireland (NQAI) is responsible for the recognition of international qualifications. An International Qualifications Database is maintained which contains information regarding foreign qualifications, education and training systems. It lists the foreign qualifications that have been processed to date by the NQAI and states the advice that has been issued regarding the comparability of the qualifications in Ireland. The NQAI has established a National Framework of Qualifications which facilitates the recognition process with each foreign qualification compared to an Irish qualification when recognised.⁸¹

4.1.1.4 Workplace Exploitation

The National Employment Rights Authority (NERA) is an office under the auspices of the Department of Enterprise, Trade and Innovation (DETI) and tasked with securing compliance with employment rights legislation, including investigating alleged breaches of employment law. In figures released to the end of September 2010, it stated that the office had undertaken inspections and identified breaches of employment law by 3,903 employers between January and September 2010. This represented 12,000 inspections under individual pieces of employment legislation. Some 1,139 cases involved the various Employment Permit Acts, of which a compliance rate of 76 per cent was found.⁸²

In a policy brief published during 2010, the Migrant Rights Centre Ireland (MRCI) continued to advocate against exploitation of migrant workers and for better general conditions. The MRCI noted levels of exploitation within the domestic worker sector and stated that approximately one-third of all MRCI formal complaints are taken by workers employed in the hotel and restaurant sector which they cited as the largest sector of employment for non-Irish nationals. The MRCI highlighted the vulnerability of migrant workers due to a number of factors: employment permit restrictions regarding movement to another employer; fear of immigration authorities and changes to their permission to remain in Ireland; weak enforcement policies; and a culture of non-compliance in many low-wage sectors in which large numbers of migrant workers are employed. It noted that these vulnerabilities can often make it 'extremely difficult and risky' for migrant workers to challenge employers. Policy recommendations by the MRCI in this area included 'true freedom of movement' for employment permit holders; passing of the Employment Law Compliance Bill, including amendments which would allow NERA inspectors to introduce 'on-the-spot' fines against employers who are found to have broken the law; and to legislate so that all workers have

⁸¹ www.nfq.ie.

⁸² NERA (September 2010). *NERA Quarterly Update*. Available at www.nera.ie.

the right to exercise their employment rights, and ensure there are no barriers to legal redress.⁸³

In November 2010 it was announced that the National Employment Rights Authority (NERA) would be inspecting persons employing domestic workers such as nannies, housekeepers and cleaners for the first time.⁸⁴ A pilot phase of such inspections was scheduled to begin in the mid-West of Ireland in December 2010, with the aim of ensuring that persons working in private homes are *'getting paid at least the minimum wage and enjoying basic labour rights such as annual leave and a contract'*. It was stated that the campaign by the NERA had been launched in response to statements by NGOs regarding 'slave-like' conditions in some cases.⁸⁵ Cases to inspect will be chosen based on an analysis of a national database of employers and via employers linked to work permits issued to domestic workers. It will also respond in cases where a complaint has been made.

Media discussion regarding the rights of domestic workers employed by persons with diplomatic immunity also occurred during 2010. Following on from a high-profile case in 2009 concerning the invocation of diplomatic immunity by the South African Ambassador to Ireland in a case taken by a domestic worker, debate continued to centre on provisions for such workers under Irish law in 2010. The Migrant Rights Centre Ireland (MRCI) and the Irish Congress of Trade Unions (ICTU) called for the creation of safeguards for domestic staff working in diplomatic households by introducing a *'detailed and clear application procedure for granting diplomatic visas to domestic and other household workers'* and for said visa to state that the diplomatic employer agrees to comply with an existing code of practice for protecting anybody employed in another person's home. It also called for the right of inspection by the National Employment Rights Authority (NERA) of such diplomatic households.⁸⁶

4.1.1.5 Undocumented Workers

In September 2009, the Minister for Justice and Law Reform announced a Scheme for foreign nationals who have become undocumented through no fault of their own after previously holding a work permit. The Scheme was announced with the purpose of providing a temporary immigration permission of four months within which to seek legitimate employment, or if they are already employed, within which to obtain an employment permit from the Department of Enterprise, Trade and Innovation. This scheme closed on 31 December 2009. During 2010, organisations such as the MRCI advocated for a mechanism to remain available for people to regularise their situation. The MRCI highlighted

⁸³ Migrant Rights Centre Ireland (2010). Ending the Race to the Bottom: Changing the Balance for Migrant Workers in Ireland. *Policy Brief*. Available at www.mrci.ie.

⁸⁴ The Irish Times (16 November 2010). *'Campaign starts to protect rights of domestic workers'*. Available at www.irishtimes.com.

⁸⁵ Ibid.

⁸⁶ The Irish Times (27 November 2010). *'Hidden abuse of diplomats' domestics'*. Available at www.irishtimes.com.

that such a mechanism is needed as *'people will continue to become undocumented within the system as it is currently designed'*.⁸⁷

4.1.1.6 'Migrant Workers Convention'

In December 2009 the Joint Committee of the Northern Ireland Human Rights Commission and the Irish Human Rights Commission launched a consultation process on the protection of the human rights of migrant workers on the island of Ireland.

In February 2010 the Migrant Rights Centre Ireland (MRCI), the Immigrant Council of Ireland (ICI) and other stakeholders⁸⁸ produced submissions to the Joint Committee of Representatives of the two Human Rights Commissions in which they recommended certain policy changes in order to ensure compliance with the Migrant Workers Convention (MWC).⁸⁹ The MRCI, for example, highlighted the principle that *'safeguarding basic, safe and fair working conditions for all workers, including those who are undocumented is expressly protected in the MWC'*. The MRCI stated that certain factors contributed to the present vulnerability of migrant workers including restrictions regarding moving employer, weak enforcement policies and a culture of non-compliance among relevant sectors in which a concentration of migrant workers is found. The MRCI recommended that legislation is introduced which provides that all workers, regardless of legal status, have the right to exercise their employment rights and not experience barriers to legal redress. The submission highlighted that at present, the right *'not to be required to perform forced or compulsory labour is not guaranteed in Ireland'* and calls for legislation in the area. A further recommendation is made regarding the right to 'due process' for domestic workers employed by diplomatic staff. The MRCI submission to the Joint Committee called for a 'broad regularisation' scheme which is 'inclusive of all categories of undocumented people in Ireland'. The right of access to medical and other services is also recommended, as is the access to social protection and welfare benefits irrespective of legal status.

In October 2010 the Joint Committee called on the UK and Irish governments to commit to a number of 'key' international human rights standards including the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*.⁹⁰

4.1.2 Developments from the EU Perspective

In terms of the ***European Pact on Immigration and Asylum***, Ireland continued to implement policies for labour migration (*I(a) Implement policies for labour*

⁸⁷ Migrant Rights Centre Ireland (Spring 2010). *Migrant Ireland*. Available at www.mrci.ie.

⁸⁸ Immigrant Council of Ireland (February 2010). *'Response to the Consultation Paper on the Migrant Workers Convention'*. Available at http://www.immigrantcouncil.ie/images/stories/Response_to_the_Consultation_Paper_on_the_Migrant_Workers_Convention.pdf.

⁸⁹ UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

⁹⁰ Irish Human Rights Commission (2010). *'Joint Committee Meeting in Dublin calls on British and Irish Governments to commit to key international standards'*. *Press Release*. Available at www.ihrc.ie.

migration) by introducing and modifying a number of policies. New arrangements were announced concerning the issuing of employment permits for non-EEA doctors recruited to the Irish Public Health Service in June 2010.⁹¹ New renewal arrangements for Green Card holders were announced with effect from 30 August 2010. In certain circumstances, holders of Green Card permits for a period of 2 years or those who have been issued with a 'Stamp 4'⁹² for twelve months as a prior Green Card holder may be eligible for a granting of a 'Stamp 4' permit for a two-year duration. This permit will allow them to remain in the State and obtain employment without the requirement of an employment permit.⁹³ Updated immigration arrangements concerning those eligible under the five year worker and redundancy policy were introduced with immediate effect in November 2010,⁹⁴ where a consolidated set of policies were introduced, with a general scheme for current holders of work permits (including Spousal/Dependant permits) and work authorisations/visas for at least five consecutive years exempted from the requirement to hold a work permit on the next renewal of their immigration registration.

Regarding the aim of increasing the attractiveness of the EU for highly qualified workers and facilitation of students and researchers (*l(b) increase the attractiveness of the EU for highly qualified workers and further facilitate the reception of students and researchers*), in September 2010, a new five-year strategy document framework, *Investing in Global Relationships*, was launched⁹⁵ which sets an objective of increased international student numbers in both overall higher education and English language schools by 50 per cent and 25 per cent respectively by 2015. Regarding access to the labour market, plans were outlined to extend the Graduate Work Scheme to all graduates above a certain level and for up to one year, with the Scheme subsequently extended during 2010.⁹⁶ A related new immigration regime was announced in September 2010. A *New Immigration Regime for Full Time non-EEA Students* report from the Interdepartmental Committee on Student Immigration contained more than 20 recommendations, with a number of these due to come into effect from 1 January 2011. These recommendations include the introduction of a differentiated approach as between 'Degree Programme' courses and those at the 'Language or Non-Degree Programme' level, and the introduction of maximum periods of residence in the State on foot of a student permission according to type of course followed. In general, non-EEA student permission will

⁹¹ Department of Enterprise, Trade and Innovation (2010). 'New Procedures for Employment Permits for Doctors'. Available at www.deti.ie.

⁹² This person is permitted to remain in Ireland until a specified date.

⁹³ Department of Enterprise, Trade and Innovation (2010). 'Revised renewal immigration arrangements for Green Card Holders'. Available at <http://www.deti.ie/labour/workpermits/greencardholderimportantnotice.htm>.

⁹⁴ Department of Justice and Law Reform (2010). 'Policy for 5 year workers and redundant workers'. Available at <http://www.inis.gov.ie/en/INIS/Pages/Policy%20for%205%20year%20workers%20and%20redundant%20workers>.

⁹⁵ Department of Education and Skills (September 2010). *Investing in Global Relationships*. Available at www.education.ie.

⁹⁶ The Graduate Scheme has recently been extended to twelve months for those at level 8 or above of the National Framework of Qualifications. The six-month period still applies to those with level 7 qualifications based on the Framework.

be limited to seven years in total.⁹⁷ Eligible education providers must be included on a State-administered 'Internationalisation Register'. Interim arrangements for current students affected by the change were also announced, including a six month concession period applicable in cases for timed-out students to regularise their status.⁹⁸

During 2010 Ireland continued to participate in *Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting Third Country Nationals for the purposes of scientific research*. Some 369 research Hosting Agreements⁹⁹ were issued during 2010, with the largest nationality groupings representing Chinese nationals (80 agreements), Indian nationals (74 agreements), American nationals (40 agreements), Pakistani nationals (15 agreements) and Iranian nationals (14 agreements).

During 2010 Ireland participated in meetings of the Expert Group FREEMO on the Right of Free Movement of Persons (Directive 2004/38 EC).

Regarding activities under the ***Stockholm Programme***, actions regarding the improvement of skills recognition and labour matching took place during 2010 (*1(b) Improving skills recognition and labour matching*). No review of occupations for which new work permits will not be issued took place during 2010, with a *National Skills Bulletin 2010*¹⁰⁰ published during the year. The 2010 Skills Bulletin showed most of the skills shortages from 2009 persisting in 'small magnitude', particularly in the area of specialised high skills area in the area of IT, engineering, finance, sales, healthcare and management.

Regarding skills recognition, provisions were made during 2010 for the introduction of a *Qualifications and Quality Assurance (Education and Training) Bill* under which an amalgamated qualifications agency, Qualifications and Quality Assurance Ireland (QCAI), will be established.

4.2 FAMILY REUNIFICATION

4.2.1 Developments within the National Perspective

4.2.1.1 Applications for Family Reunification

Applications for family reunification representing a total of 608 persons were received by the Irish Naturalisation and Immigration Service (INIS) in 2010, with approvals in the case of 298 persons. Overall, some 606 decisions were processed

⁹⁷ Except in cases where the course is at PhD level or a programme of study of long duration or where the Minister of Justice and Law Reform is satisfied that 'special circumstances exist'.

⁹⁸ Department of Justice and Law Reform (December 2010). 'Internationalisation Register New Arrangements to Apply from 01 January'. Available at www.inis.gov.ie.

⁹⁹ While each Hosting Agreement represents a single researcher, each researcher may be involved in more than one Hosting Agreement.

¹⁰⁰ Expert Group on Future Skills Needs (2010). *National Skills Bulletin 2010*. FÁS: Dublin.

in 2010 with cases representing a total of 161 persons refused, and a further number of cases representing 147 persons deemed abandoned or withdrawn.¹⁰¹

Regarding applications for family reunification by recognised refugees and overseen by the Office of the Refugee Applications Commissioner (ORAC), during 2010 a total of 323 applications (representing 581 persons) were received by the ORAC. Some 317 cases (representing 576 dependants) were commenced during the year, with 260 cases (representing 493 dependants) considered completed with a report sent to the Minister for Justice and Law Reform. As of year end, some 177 cases (representing 313 persons) remained outstanding with the ORAC. The main countries of nationality of those submitting applications for family reunification during 2010 were Somalia (42 cases), Sudan (42 cases), Iraq (34 cases), Nigeria (27 cases) and Afghanistan (32 cases).¹⁰²

4.2.1.2 Family Reunification & Irish Citizen Children in the Context of Renewals under the IBC/05 Scheme

As discussed in the *Annual Policy Report on Migration and Asylum 2009: Ireland*, in December 2009 a notice of renewal was announced for non-Irish national parents of Irish born children granted leave to remain under the *Irish Born Child Scheme (IBC/05)* and *Irish Born Child Renewals Scheme, 2007*. In previous years non-Irish parents of Irish-born children had been able to apply for residency in Ireland based on the Irish citizenship of their child. After a referendum in 2004 and a subsequent Constitutional amendment, changes in citizenship provisions were enacted in the *Irish Nationality and Citizenship Act 2004*, which commenced in January 2005. Under the 2009 call for renewal which continued in operation during 2010, permission to remain will be renewed for a further period of three years, save in exceptional circumstances, and subject to conditions. In a Parliamentary Question raised in February 2010, the Minister for Justice and Law Reform noted that ‘a total of 14,139 parents are due to have their permission to remain in the State renewed over the course of 2010, with a high proportion of renewals arising in the six-month period from May to October’.¹⁰³

In early 2010 the Immigrant Council of Ireland (ICI) noted that persons following notice instructions for renewal to present at either the Garda National Immigration Bureau (GNIB) or their local immigration office, were informed that further instruction from the Irish Naturalisation and Immigration Service (INIS) was needed in order to proceed with renewing permission to remain in the State.¹⁰⁴ While processing for renewals was in operation by February 2010, the ICI highlighted the resulting potential for a gap in the immigration history of a person when applying for citizenship. It was also noted that persons had reported being offered a three-month temporary permit (at a cost of €150 per permit) as a stop-gap measure which would result in their subsequently paying a further €150 for

¹⁰¹ Department of Justice and Law Reform (2011). *Annual Report 2010*. Available at www.justice.ie.

¹⁰² Office of the Refugee Applications Commissioner (2011). *December Monthly Statistics*. Available at www.orac.ie.

¹⁰³ Parliamentary Question Nos.142-145 (17 February 2010).

¹⁰⁴ Immigrant Council of Ireland (4 February 2010). *ICI News Bulletin – Issue 60*. Available at www.immigrantcouncil.ie.

renewal of permission to remain. In response to a Parliamentary Question noting the potential for a lapse in a person's immigration permission, the Minister stated that '*...the renewal of permission to remain for those persons in employment whose permission is due to expire is being prioritised*'.¹⁰⁵

4.2.1.3 Family Reunification and Irish Citizen Children

2010 saw much litigation in respect of non-Irish unlawfully resident parents of Irish citizens. Typically, where the IBC/05 scheme was not applied, family unification in respect of such Irish children was and is considered in the context of whether to deport such parents. As discussed below in the context of returns, 2010 High Court decisions relating to challenges to deportation orders made against non-Irish parents of Irish children tended to follow the decision in *Alli (a minor) & Anor v. Minister for Justice, Equality and Law Reform*.¹⁰⁶ In that case, Clark J. had held that 'the aim of the State to maintain control of its own borders and operate a regulated system for control, processing and monitoring of non-national persons in the State' constituted a substantial reason allowing deportation of a non-national parent of an Irish citizen. Such decisions persisted, despite the Opinion of 30 September 2010 of Advocate General Sharpston in Case C 34/09 *Zambrano*.

4.2.1.4 Irish Human Rights Commission Submission to the UN CERD Committee on the Examination of Ireland's Combined Third and Fourth Periodic Reports

In a submission to the UN CERD Committee on the Examination of Ireland's Combined Third and Fourth Periodic Reports,¹⁰⁷ in 2010 the Irish Human Rights Commission (IHRC) called for the elaboration of basic principles concerning family reunification for categories of migrant workers in primary legislation. The submission stated that the IHRC considers that full consideration of the requirements of Article 8 of the European Convention on Human Rights should be taken, with family reunification dealt with in a 'positive, humane and expeditious manner' where the 'best interests of child assessment' should be considered where possible.

4.2.2 Developments from the EU Perspective

4.2.2.1 Directive 2003/86/EC

Regarding the 'Family Reunification Directive' (2(b) *The Directive on family reunification, the importance of integration measure*) under the **Stockholm Programme**, Ireland does not participate in *Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification*.

¹⁰⁵ Parliamentary Question Nos.142-145 (17 February 2010).

¹⁰⁶ *Alli (a minor) & Anor v. the Minister for Justice, Equality and Law Reform* [2009] IEHC 595.

¹⁰⁷ Available at www.ihrc.ie.

4.2.2.2 Family Reunification & Refugees

In terms of the *European Pact on Immigration and Asylum*, and specifically the aim to regulate family migration more effectively (*l(d) To regulate family migration more effectively*), during 2010 a total of 323 applications (representing 581 persons) were received by the Office of the Refugee Applications Commissioner (ORAC). Some 317 cases (representing 576 dependants) were commenced during the year, with 260 cases (representing 493 dependants) considered completed with a report sent to the Minister for Justice and Law Reform. As of year end, some 177 cases (representing 313 persons) remained outstanding with the ORAC. The main countries of nationality of those submitting applications for family reunification during 2010 were Somalia (42 cases), Sudan (42 cases), Iraq (34 cases), Nigeria (27 cases) and Afghanistan (23 cases).¹⁰⁸

4.2.2.3 Case Law regarding Family Reunification and Refugees

Mohammed Hussein Ahmed Hamza & Anor v. Minister for Justice, Equality and Law Reform [2010] IEHC 427, High Court, 25 November 2010

The Applicant was a Somali refugee who had made an application for family reunification pursuant to S.18 of the *Refugee Act, 1996*. The Minister, in refusing the application, questioned the validity of the marriage under Irish law. The Minister told the applicant that he could instead apply to the Circuit Court for a declaration of his marital status.

Cooke J. held that the Minister could not delegate to any third party, including a Circuit Court Judge, the decision he was required to make under the *Refugee Act 1996*, namely, whether the person comes within the definition of a family member or that the person concerned and the refugee are parties to a subsisting marriage. The Court held that the entitlement of a refugee to seek family reunification with a spouse under the 1996 Act was not circumscribed by conditions of domicile or minimum ordinary residence. The Court said that the issues that arise in relation to the recognition of family relationships in the case of refugees will be materially different, both as regards formalities of proof and conflict of laws. Cooke J. noted that the Circuit Court has no inquisitorial competence or investigative function in adjudicating upon the application but is effectively dependent on the evidence adduced by the parties before it. By contrast, the provisions in the *Refugee Act 1996* equip the Minister, with the assistance of the report from the Refugee Applications Commissioner to obtain and furnish such information as to local laws, customs and social conditions as may be required to assess the validity of the claim made and the authenticity of documents produced to substantiate it; or to confirm that conditions are such in the country in question that the explanation given for the absence of formal proofs is credible or not.

¹⁰⁸ Office of the Refugee Applications Commissioner (2011). *December Monthly Statistics*. Available at www.orac.ie.

Cooke J. said that it was inevitable that the circumstances which gave rise to applications under section 18 of the *Refugee Act* would frequently involve situations in which formal proof of a marriage ceremony is either nonexistent or impossible to obtain.

The Court concluded that the provision at issue, section 18(3)(b)(i) of the *Refugee Act 1996*, does not require that the Minister be satisfied that the refugee and spouse be parties to a marriage which is recognisable as valid in Irish law, or that any particular documentary proof of the foreign ceremony be produced. It requires, merely, that the refugee and spouse are married and that the marriage is subsisting at the date of the application. It does not define the term 'marriage'. A refugee who is able to demonstrate the existence of a subsisting and real marital relationship with the person who is the subject of the application is entitled to have the marital relationship recognised for the purposes of reunification under section 18 unless some reason of public policy intervenes to prevent its recognition.

4.2.2.4 Third Country National Scientific Researchers

Ireland has opted into *Council Directive 2005/71/EC on a specific procedure for admitting Third Country Nationals for the purposes of scientific research* under which there is an obligation to provide family reunification for Third Country National Researchers Under the Spousal/Dependant Work Permit Scheme, spouses and dependants of Hosting Agreement Holders have greater ease of access to employment in the State and are:

- Permitted to apply for an employment permit in respect of most occupations
- Permitted to work part-time on a Spousal/Dependant Work Permit
- Not required by the employer in question to undertake a labour market test (by advertising the job with FÁS/EURES and with newspapers in advance of making an employment permit application)
- Exempt from paying an application fee.

4.2.2.5 Third Country National Family Members of European Union Citizens

As discussed in previous reports in this series (notably the *Annual Policy Report on Migration and Asylum 2008: Ireland*), during 2008 several cases concerning Third Country National spouses of an EU citizen residing in Ireland were taken to the European Court of Justice (ECJ) (headed by the *Metock* case),¹⁰⁹ with the ECJ subsequently finding that the Government must not prevent Third Country spouses of EU citizens from living in Ireland on the basis of not having prior lawful residence in a Member State, and thus providing residency rights to significant

¹⁰⁹ Case C-127/08. *Metock and Ors v Minister for Justice, Equality and Law Reform*, Unreported, European Court of Justice, 25/07/2008; Unreported, High Court, Finlay Geoghegan J., 14/03/2008.

numbers of non-EU national spouses who had been served with ‘intent to deport’ notices by the Department of Justice and Law Reform beginning in 2007. It also caused the Government to amend a 2006 Regulation stipulating that Third Country non-EU nationals married to EU citizens must have resided in another Member State before moving to Ireland, and in July 2008 the *European Communities (Free Movement of Persons) (Amendment) Regulations 2008 (S.I. No. 310 of 2008)* was published.

In 2010 there were 1,900 applications for residence in Ireland by spouses of an EU national and under the *EU Free Movement Directive 2004/38/EC*. This represents a slight decrease on corresponding figures during 2009 when 2,070 applications were submitted. The largest main applicant country during 2010 continued to be Pakistan, with almost 20 per cent of all applications. As discussed in Section 5.1.2.1, in early January 2011 the Minister for Justice and Law Reform stated two-thirds of these 2010 applications involved ‘an EU partner from the Baltic States’ and his intention to examine the deploying of biometric technology for visa applications from nationals of Pakistan.¹¹⁰

4.2.2.6 Other European Union Citizens

As in previous years, during 2010 media, parliamentary and NGO discussion continued to take place regarding the enjoyment of a more liberal regime by non-EEA family members of non-Irish European Union citizens in comparison to non-EEA family members of Irish citizens.

4.2.2.7 Case Law regarding Third Country National Family Members of European Union Citizens

4.2.2.7.1 Review of Refusal to Issue Residency Card to the Third Country National Spouse of an EU National

Singh and Sledevska v. Minister for Justice, Equality and Law Reform [2010] IEHC 86, High Court, 17 February 2010

Mr. Singh, an Indian citizen married Ms. Sledevska, a Latvian citizen. In January 2009 Mr. Singh applied to the Minister under the *European Communities (Free Movement of Persons) Regulations, 2006* for a residence card as the spouse of a European Union citizen exercising EU Treaty rights in the State. These regulations were replaced by the *European Communities (Free Movement of Persons) (No. 2) Regulations 2006* which were amended by the *European Communities (Free Movement of Persons) Regulations 2008*. He provided no evidence of Ms. Sledevska’s employment and his application was refused in June 2009. In July 2009, Mr. Singh requested a review, and when Ms. Sledevska returned to work after giving birth to their daughter in August 2009, he supplied the Minister with evidence of her employment. No decision on the review had been taken by

¹¹⁰ Irish Naturalisation and Immigration Service (7 January 2011). ‘Minister Dermot Ahern announces end of year asylum statistics’. *Press Release*. Available at www.inis.gov.ie.

February 2010 when the Applicants initiated judicial review proceedings. The Applicants sought the leave of the High Court to apply by way of judicial review for an order of certiorari quashing the Minister's refusal and an order of mandamus requiring him to determine their review.

The High Court refused leave to seek an order of certiorari because the application for judicial review was out of time [the time limit for certiorari is set by Order 84 of the Rules of the Superior Courts at six months from the date of the impugned decision] and no explanation had been given as to why time might be extended. The Court further observed that no arguable case could be made out as to the existence of any legal defect in that refusal decision because the Minister had no option but to question whether Ms. Sledevska was a European Union citizen residing in the State in exercise of her rights under the 2006 Regulations. The Minister had been given no information in relation to her arrival in the State or any evidence of her ever having been employed at any point prior to the date of Mr. Singh's application. The Court concluded that the Minister's reason for refusal was clearly justified and even inevitable. The Court then considered the application for an order of *mandamus* and concluded that the decision of the Minister was still pending and there was no basis for asserting that it had been wrongfully refused. Material ingredients for the review were still being submitted in September 2009 and thus, it could not be said that the decision on the review had been so extensively delayed as to warrant it being treated as an unlawful refusal.

4.2.2.7.2 *Failure to Decide whether to Issue a Residence Card to a Third Country National Spouse of an EU National in a Timely Fashion*

Tagni v. Minister for Justice, Equality and Law Reform [2010] IEHC 85, High Court, 12 March 2010

The Applicant was a Cameroonian citizen and a failed asylum seeker. He married a Polish citizen in Ireland in December 2005. In February 2006 he applied for a residence card as the spouse of a European Union citizen exercising EU Treaty rights. His application was made under Regulation 1612/68 but was dealt with under the *European Communities (Free Movement of Persons) Regulations 2006*, which transposed the 'Free Movement Directive' into Irish law. These regulations were replaced by the *European Communities (Free Movement of Persons) (No. 2) Regulations 2006* which were amended by the *European Communities (Free Movement of Persons) Regulations 2008*. The Applicant was initially granted a residence card valid for one year. Following the decision of the European Court of Justice in the *Metock* case the Minister was requested to withdraw the original decision and to issue a five-year residence card in its place. The matter was dealt with as a review of the original decision rather than as a fresh application. The relationship between the Applicant and his wife subsequently broke down and he was unable to obtain current documentation regarding her work status and her maternity leave. In November 2008, the Minister refused the Applicant's application for a residence card and issued a proposal to deport him. When the

Applicant requested that the Minister review his decision, the Minister accepted this request and rescinded his proposal to deport the Applicant. Questions were raised by the Minister on the bona fides of the Applicants marriage, and he attempted to satisfy the Minister in this regard. By June 2009 no decision had been made and the Applicant launched judicial review proceedings seeking, inter alia, an order requiring the Minister to determine the review and a declaration that the Minister failed to determine the review within a reasonable time. Leave for judicial review was obtained and the substantive application was heard by the High Court. The Minister issued a decision refusing the Applicant a residence card after the hearing but before the judgment had been handed down.

In a comprehensive review of the law in the area, the High Court noted that Article 10 of the 'Free Movement Directive' specifies the documents that must be presented to ground a residence card application. However, the Court found that in cases of doubt, the Minister may seek further proof to verify the circumstances that are said to give rise to the right being asserted. There is an onus on applicants to cooperate with the verification process and if the Minister has not been provided with the information that he requires in a timely manner such as to enable him to verify the claim within the required six-month period he would be entitled to render a decision refusing the application on the basis that the claim has not been verified. In that event there does not appear to be any impediment in the Directive to an applicant making a fresh application when the required material is to hand, or alternatively requesting a review of the decision based upon the existing evidence. The Court held that there is no fixed time limit in respect of a review but that a decision upon a review must be rendered within a reasonable time. Where the Minister, at the end of the six months, finds himself with a suspicion, unsupported by clear evidence, that the claim may be fraudulent, and which suspicion requires further investigation, he may have no choice but to grant the residence card on the basis that he has the power to immediately revoke it if clear evidence of fraud should subsequently emerge. The Court noted that where a decision is rendered outside of six months, an applicant may be entitled to take an action claiming damages against the State for any prejudice caused to him on account of the unlawful delay, assuming that he or she can prove loss and damage on account of such prejudice. Because a decision had been made, the Applicant was not entitled to a mandatory order, but the High Court made a declaration that the Minister was guilty of failing to render his decision within a reasonable time.

4.2.2.7.3 Whether a Delay in Deciding Upon a Review Regarding Residency in Respect of a Third Country National Spouse of an EU National under EU law Depends Upon the Nature and Terms of the Review Requested

Druzinins and Druzinina v. Minister for Justice, Equality and Law Reform [2010] IEHC 84, High Court, 16 March 2010

The Applicants were a married couple, the husband Latvian, the wife Belarusian. Mr. Druzinins found employment in Ireland in September 2007. His wife and

stepdaughter moved to Ireland to join him in December 2008. In January 2009 Ms. Druzinina applied to the Minister for a residence card under Regulation 6 of the *European Communities (Free Movement of Persons) Regulations 2006*. These regulations were replaced by the *European Communities (Free Movement of Persons) (No. 2) Regulations 2006* which were amended by the *European Communities (Free Movement of Persons) Regulations 2008* as the spouse of a European Union citizen. She provided evidence to the Minister that her husband was in employment. The Regulations require that applications for residence cards for spouses of European Union citizens be determined within six months, and further provide for a review of applications which are refused. In June 2009 the Minister wrote to her saying that he had checked this information and discovered that her husband had been made redundant in February 2009. For this reason he refused her a residence card and warned that her permission to be in the State would expire in July 2009.

Ms. Druzinina's solicitors then submitted to the Minister that Mr. Druzinins, as a job seeker, was still exercising his EU Treaty rights under Regulation 6(2)(a) and requested that the Minister review his decision. Ms. Druzinina's permission to remain in the State expired in July 2009. In August 2009 the Minister sought further information for the purposes of such a review. The information was duly furnished to the Minister. In September and October Ms. Druzinina's solicitor's pressed the Minister for a decision, stressing the six-month time limit and the difficulty created for her by the expiry of her permission to remain in the State. In November 2009 judicial review proceedings were initiated. As part of their reliefs, the Applicants sought an order obliging the Minister to issue a residence card to Ms. Druzinina and an injunction requiring the Minister to issue a temporary permission pending to her pending the outcome of the proceedings. In February 2010, two days after leave for judicial review was granted by the High Court, the residence card was issued by the Minister and the proceedings became moot save for the issue of costs. In considering the matter of costs, the High Court considered whether the residence card for Ms. Druzinina had been wrongfully refused or unlawfully delayed.

The Court did not accept that there was any obligation on the Minister to conduct any inquiry into the applicant's changed circumstances with a view to seeing whether they entitled him to qualify under any other condition of Regulation 6(2). This decision was made within six months of the application. Accordingly, the Minister's refusal of the residence card for Ms. Druzinina was correct based on information before Minister at the time he made the decision.

The Court held that the six-month time limit does not apply to the review but that if the review of the decision is directed only at correcting an error made by the Minister on the original application without altering its basis or requiring new facts or documentation to be considered, it would be consistent with the time limit imposed by Regulation 7 (2) that the decision should be taken well within a further six-month period. Whether or not there is delay in deciding upon a review as such will depend upon the nature and terms of the review requested, the error

alleged, the submissions made and the other circumstances of the individual case. The Court held that the period of ten weeks between the application for a review and the initiation of the proceedings was not so excessive as to amount to a wrongful refusal on the part of the Minister.

However, the Court stated that the Minister ought to have granted Ms. Druzinina a temporary permission while he was reviewing his refusal of her initial application, and that his failure to do so meant that the Applicants' initiation of judicial review proceedings was neither unreasonable nor premature. The Court concluded that the balance of justice would be served by awarding the Applicants 50 per cent of their costs against the Minister.

4.2.2.7.4 Entitlement of an EU National's Third Country National Family Member to take up Employment Operates as an Adjunct to the Right of Residency

Decsi and Zhao v. Minister for Justice, Equality and Law Reform; Levalda and Syed v. Minister for Justice, Equality and Law Reform, [2010] IEHC 342, High Court, 30 July 2010

Mr. Decsi, a Hungarian citizen married Ms. Zhao, a Chinese national, in March 2010. Ms. Zhao applied to the Minister under the *EC (Freedom of Movement) (No. 2) Regulations 2006* for the issue of a residence card. Ms. Levalda, a Latvian national married Mr. Syed, a Pakistani national that same month and made a similar application.

Both cases related to a recent change in policy on the part of the Minister in relation to the granting of provisional residence permission to spouses or family members of EU citizens pending a decision on their application for a residence card under the provisions of the Regulations. Both concerned the point in time at which the spouse of an EU citizen who is not a national of a Member State is entitled to take up employment, and whether he or she was entitled to take up employment as from the date of acknowledgment of receipt of the application for a residence card or whether he or she must wait until the Minister has given a decision on the application.

Both Ms. Zhao and Mr. Syed were entitled to work under the terms of their relevant visas at the time of their marriages, but were then granted Stamp 3¹¹¹ permissions to remain in the State pending the determination of their applications under the Regulations. Under the terms of their Stamp 3 permissions, they were not permitted to work.

The Court considered whether the entitlement to take up employment conferred by Article 23 of Directive 2004/38/EC (implemented by Regulation 18(1)(b)) accrues to the spouse of the European Union citizen upon arrival in the State (if already married to the European Union citizen) and dates from the date of marriage or accrues only from the issue of the residence card. In the judgment of the Court, the entitlement of the spouse of a European Union citizen to take up employment was not dependent upon or delayed until the issue of the residence

¹¹¹ Issued to non-EEA nationals who are not permitted to work.

card, but was exercisable at least from the receipt of the acknowledgment of the application. The Court noted that the residence card does not confer the right to reside but is merely evidence of the exercise of that right. The Court observed that it was not the right of residence as such which was at issue in the present cases, but the entitlement of a family member to seek and take up employment and the point in time at which that entitlement is exercisable. The Court found that the entitlement to take up employment operates in parallel or as an adjunct to the right of residence.

The Court granted declaratory relief that the right of Ms. Zhao and Mr. Syed to reside in the State and their entitlement to take up employment were exercisable as and from the date of the receipt of the acknowledgment notice issued by the Minister pursuant to Regulation 7(1)(c) of receipt of a valid application for a residence card, but remain liable to revocation with retroactive effect in the event that the Minister lawfully refuses to issue the residence card within the period of six months prescribed.

4.2.2.7.5 Directive 2004/38/EC Obliges the Minister to Insist Upon Proof of Nationality and Identity by Means of the Production of a Passport in the Case of a Third Country National Family Member of a European Union Citizen Asserting EU Residency Rights

Zada and Sirkovskaja v. Minister for Justice, Equality and Law Reform and the Commissioner of An Garda Síochána, [2010] IEHC 341, High Court, 1 October 2010

The Applicants were a married couple: Mr. Zada was an Iranian national who had unsuccessfully applied for asylum in Ireland; Ms. Sirkovskaja was an Estonian national in full time employment. The Applicants married in February 2007 and Mr. Zada applied for a residence card under Article 9 of Directive 2004/38/EC as a family member and spouse of a European Union citizen. The application was approved and Mr. Zada was informed that in order to obtain the residence card he was required to attend at a Garda Station and produce a valid passport as proof of identity. Mr. Zada claimed not to possess a passport from his country of origin and attended at Waterford Garda Station where he produced his national identity card. His request for a residence card was refused because of the non-production of a valid passport.

In October 2009 the Applicants obtained leave to seek judicial review in order to compel the Minister to issue a residence card to Mr. Zada. In its judgment on the substantive application, the High Court (Cooke J.) found that, upon a reading of the Directive, the requirement of a presentation of a valid passport is mandatory in the case of a non-national of an EU Member State. The alternative of presentation of a national identity card, open to a European Union citizen, is not permitted. The Court dismissed the submissions of the Applicants that the case-law of the Court of Justice of the EU supported Mr. Zada's position, saying that they related to an earlier legislative context and were thus distinguishable.

The Court was satisfied that the Directive obliged the Minister to insist upon proof of nationality and identity by means of the production of a passport in the

case of a family member who is not a national of a Member State of the European Union. The Court further found that the *EC (Freedom of Movement) (No.2) Regulations 2006* as amended had not failed to give effect to the Directive and that the Minister's insistence on the production of a passport could not be said to be invalid as disproportionate even if the Minister did retain some margin of discretion to derogate from the otherwise mandatory condition. The Court also noted that the Applicant was not a stateless person who could not possibly produce a passport. Accordingly, the Court refused the application for judicial review.

4.3 OTHER LEGAL MIGRATION

4.3.1 *Developments within the National Perspective*

4.3.1.1 Education

4.3.1.1.1 *Non-EEA Student Immigration*

On 1 September 2009, the Department of Justice and Law Reform published a set of proposals for reform of non-EEA student immigration and launched a public consultation process on the issue.¹¹² The proposals contained more than 20 discussion items including capping the length of time a person can spend in Ireland as a student at no more than five years in further education or two years at English language classes; introducing a two-tier system to facilitate the targeting of incentives towards the upper end of the academic spectrum; a stronger inspection process; possible changes in respect of visas; and new guidelines on work placement or internship.

In September 2010, a new five-year strategy document framework, *Investing in Global Relationships*, was launched.¹¹³ Seeking to 'enhance Ireland's competitive position as a centre for international education', the document sets an objective of increased international student numbers in both overall higher education and English language schools by 50 per cent and 25 per cent respectively by 2015. Estimating that approximately 9,000 non-EEA students were studying in further education institutions during 2009, the strategy document sets a target of increasing the economic impact of the international education sector for Ireland by some €300 million to approximately €1.2 billion by 2015.

Regarding international students, a 'strengthened immigration and visa regime' is envisioned with strategic partner countries and agreed jointly between the education and immigration authorities. The alignment of immigration rules with specific courses will be introduced, with visas for degree programmes fast-tracked. Students on short-term English language courses will be viewed as

¹¹² Department of Justice, Equality and Law Reform (1 September 2009). 'Ahern to overhaul student immigration regime'. *Press Release*. Available at <http://www.justice.ie/en/JELR/Pages/Ahern%20to%20overhaul%20student%20immigration%20regime>.

¹¹³ Department of Education and Skills (September 2010). *Investing in Global Relationships*. Available at www.education.ie.

‘educational tourists’ and will not be required to fulfil standard student conditions for entry.

Regarding access to the labour market, plans were outlined to extend the Graduate Work Scheme to all graduates above a certain level and for up to one year, with the Scheme subsequently extended during 2010.¹¹⁴ An overall review by the Interdepartmental Committee on Student Immigration of access to the labour market by non-EEA students is proposed for 2011. In a further change from previous practice, the strategy document provides for children of PhD candidate programme or certain other agreed programmes to be educated in a State-funded school. Other students who choose to pay an ‘immigration levy’ to cover associated State costs may also place their children in State-funded schools while in Ireland.

In this context, a related new immigration regime for international students was announced in September 2010. A *New Immigration Regime for Full Time non-EEA Student*¹¹⁵ report from the Interdepartmental Committee on Student Immigration contained more than 20 recommendations designed to ‘*reform the student immigration regime in a manner that is better integrated with Ireland’s immigration policy generally while providing a stronger regulatory framework for the sustainable development of the international education sector*’, with a number of recommendations due to come into effect from 1 January 2011. These recommendations include the introduction of a differentiated approach as between ‘Degree Programme’ courses and those at the ‘Language or Non-Degree Programme’ level, and the introduction of maximum periods of residence in the State on foot of a student permission according to type of course followed. In general, non-EEA student permission will be limited to seven years in total.¹¹⁶ Eligible education providers must be included on a State-administered ‘Internationalisation Register’. Interim arrangements for current students affected by the change were also announced, including a six month concession period applicable in cases for timed-out students to regularise their status.¹¹⁷

Feedback on the arrangements centred on the late publishing of rules towards the end of December 2010. In an e-bulletin summary in early December 2010, the Immigrant Council of Ireland (ICI) noted that they had received a number of calls since details of the new regime had been announced, with a lack of clarification regarding the rules to take effect on 1 January 2010 causing ‘a great deal of anxiety’ for those whom it would impact.¹¹⁸

¹¹⁴ The Graduate Scheme has recently been extended to twelve months for those at level 8 or above of the National Framework of Qualifications. The six-month period still applies to those with level 7 qualifications based on the Framework.

¹¹⁵ Department of Justice and Law Reform (2010). *New Immigration Regime for Full Time Non-EEA Students*. Available at <http://www.inis.gov.ie/en/JELR/BookletA4.pdf/Files/BookletA4.pdf>.

¹¹⁶ Except in cases where the course is at PhD level or a programme of study of long duration or where the Minister of Justice and Law Reform is satisfied that ‘special circumstances exist’.

¹¹⁷ Department of Justice and Law Reform (December 2010). ‘*Internationalisation Register New Arrangements to Apply from 01 January*’. Available at www.inis.gov.ie.

¹¹⁸ Immigrant Council of Ireland (December 2010). *ICI News Bulletin – Issue 79*. Available at www.immigrantcouncil.ie.

4.3.1.1.2 Intercultural Education Strategy

In September 2010 a national *Intercultural Education Strategy, 2010-15* was launched with the aim of ensuring that ‘inclusion and integration within an intercultural learning environment becomes the norm’.¹¹⁹ The Strategy operates on a five-year timeline and contains ten key components and five high-level goals of intercultural education. A more intercultural learning environment is promoted via the adoption of a ‘whole [of] institution approach’. The Strategy recommends that cultural diversity, inclusion and integration should be included in the school environment, with specific anti-bullying policies introduced. The development of guidelines on best practice for institutions on the teaching and learning of the language of instruction as an additional language by the Department of Education and Skills is also recommended, alongside a recognition that student language learning should not preclude exclusion from mainstream environments. The need for a wide range of teaching and learning methods used for the acquisition of the language of instruction is identified, as is the development of the ‘Accessing Intercultural Materials’ (AIM) information portal on the topic of immigrants, for use by students, parents, educators, researchers and policymakers. The development of a post-graduate qualification in English as an additional language is encouraged as is the engagement and effective communication of schools with migrant parents.

4.3.1.1.3 Immigration Arrangements for Religious Ministers and Lay Volunteers

With effect from 1 January 2011, updated arrangements concerning immigration arrangements for religious ministers and lay volunteers were announced during 2010. The announced arrangements clarified the circumstances in which a person may come to Ireland as either a religious minister (or volunteer) or as a lay volunteer, the supporting documentation required for such an application and the conditions attached for their immigration permission.

Persons granted permission to enter Ireland as a religious minister or lay volunteer on or after 1 January 2011 will now be permitted to remain in Ireland for a maximum of three years and will be issued with a ‘Stamp 3’¹²⁰ immigration permission. Overall issuing and renewal conditions include:

- Employment in the general labour market is not permitted;
- The person must be self-sufficient and not considered to be an ‘undue burden’ on the State;
- The person must have private health insurance for themselves and any dependants (either on a personal or group scheme basis);
- The person must not be considered as a possible threat to public security.

¹¹⁹ Department of Education and Skills and the Office of the Minister for Integration (2010). *Intercultural Education Strategy, 2010-15* Available at http://www.education.ie/servlet/blobServlet/mig_intercultural_education_strategy.pdf

¹²⁰ Stamp 3 category means that a person is permitted to remain in Ireland on conditions that the holder does not enter employment, does not engage in any business or profession and does not remain later than a specified date.

In the case of religious ministers, family reunification may be possible on a case-by-case basis (in cases of a spouse/partner and child under 18 years of age, and where a child may attend a State school) and a possible extension of immigration permission may be possible where there is a demonstrated need for the minister to remain in the State.

Interim transitional arrangements for persons in the State under both categories were also announced. Persons already in Ireland as a minister of religion prior to January 2011 will be provided with a 'Stamp 3' status; this permission to remain in the State may be renewed for a further 12 months when next for renewal, and may be provided with further renewal of a 12 month duration in subsequent years provided that they meet all the specified conditions for general renewal as outlined above. In the case of lay volunteers, evidence must be shown that all costs in the State will be borne by the sponsoring organisation. In addition, only persons issued with a permission to remain prior to January 1 2011 will be eligible for an extension of a further 12 month renewal.

4.3.1.1.4 Research

A 2010 article, *Immigration and school composition in Ireland*,¹²¹ looked at how immigrant students are distributed across schools across Ireland and whether schools containing immigrant students differed from those who do not. Based on responses to the survey of principals from 735 primary schools and 448 second level schools, immigrant students are shown to have made up approximately ten per cent of the primary school-going population and six per cent of the second-level population in 2007. At primary level, over three quarters of immigrant students were non-English speaking. At second level, some 70 per cent of these immigrant students were non-English speaking. The article noted that results showed that school segregation in Ireland was not high in comparison to international standards, particularly at second-level.

Overall, the representation of immigrant students across schools is noted as requiring contextualisation in terms of 'wider demographic trends, residential patterns, parental choice of schools and school admissions policies'. Higher proportions of immigrant students in urban schools and in designated disadvantaged (DEIS) schools were found at second level. As at primary level, lower proportions of immigrant students were found in Irish- rather than English-medium schools. No significant difference was found in the representation of immigrants in fee-paying schools.

The level of clustering of immigrant students was more pronounced in primary schools than in second level schools, with primary schools showing either a higher proportion of immigrant students than second level schools, or none at all (44 per cent had no immigrant students, while almost ten per cent of primary

¹²¹ Byrne, D., McGinnity, F., Smyth, E. and Darmody, M. (2010). 'Immigration and school composition in Ireland'. *Irish Educational Studies*, 29: 3, 271 — 288.

schools had over 20 per cent immigrant students). By contrast, 90 per cent of second level schools recorded immigrants in the study body.

Byrne et al. highlight that the nationality of immigrant students in schools is important for a range of reasons, particularly as an indicator of English language competency which may have a crucial impact on learning outcomes and as an indicator for 'cultural distance' where certain nationalities may be seen as 'further' from Ireland than others, in terms of customs, cultural reference points, religion and a shared identity (or lack of it). The mix of nationalities in a school is also highlighted as important, particularly in terms of how immigrant students settle in, integrate and develop on a social and academic level. The presence of a number of co-nationals in the same school as an immigrant child may provide for an opportunity to settle in initially, but their 'social and linguistic integration' may be delayed. The communication of information via translated materials by the school is also noted as easier when fewer languages are present.

The range of nationalities in primary and second level was found to vary, with schools containing immigrant students showing a range of different national groups in their student body, particularly at second level. National groups were found to be not as mixed at primary level, which would suggest that may be a certain amount of local residential segregation which influences primary school intakes, but this gets 'diluted' at second level, where schools have larger catchment areas. Looking at primary and second level schools together, East European nationals were cited as being mostly likely to be the dominant group, at 33 per cent of second level schools and 40 per cent of primary schools. In 61 per cent of second level schools and almost 80 per cent of primary schools, Africans, Asians or West Europeans were found to constitute over half of the immigrant student body.

4.3.1.2 Certificates of Registration

Some 162,398 Certificates of Registration (referring to new registrations and renewals) were issued during 2010, representing a slight decrease of two per cent on comparable figures for 2009 when 166,387 Certificates were issued.

A Certificate of Registration is issued by the Garda National Immigration Bureau (GNIB) to lawfully resident non-EEA nationals who expect to stay in the State for more than three months. It verifies that the person has registered with their registration officer. The Certificate of Registration contains the person's photo, registration number, relevant immigration stamp, and an expiry date. A Certificate of Registration contains one of a number of different immigration stamps.¹²² In 2010 notable increases in the numbers of Stamps for categories 5

¹²² Categories of Stamps are as follows:

Stamp number 1: issued to non-EEA nationals who have an employment permit or business permission.

Stamp number 1A: issued to a person permitted to remain in Ireland for the purpose of full-time training with a named body (main category concerns non-EEA nationals studying accountancy) until a specified date. Other employment is not allowed.

Stamp number 2: issued to non-EEA national students who are permitted to work under certain conditions.

Stamp number 2A: issued to non-EEA national students who are not permitted to work.

and 4 EUFAM occurred, while numbers of registration under Stamp 1 decreased by 34 per cent.

4.3.1.3 Long-Term Residence Permission

In response to a Parliamentary Question on 7 January 2010 it was stated that the average waiting time to process applications pertaining to non-EEA nationals who have completed 60 months' legal residency on work permit, work visa or work authorisation conditions and who are seeking permission to remain under the administrative long-term residency scheme was 16 months. The Minister also noted that '*If there is no change in the volumes being received during 2010, it is anticipated that the processing time can be reduced further*'.¹²³

4.3.2 Developments from the EU Perspective

Regarding information provision under the *European Pact on Immigration and Asylum (l(e) to strengthen mutual information on migration by improving existing instruments where necessary; l(f) Improve information on the possibilities and conditions of legal migration)*, during 2010 Ireland continued to participate in the European Migration Network,¹²⁴ had limited interaction with ICONet and continued involvement with the European Migration Portal website. In addition, updated arrangements concerning immigration arrangements for religious ministers and lay volunteers were also announced during 2010, with effect from 1 January 2011. The arrangements clarify the circumstances in which a person may come to Ireland as either a religious minister (or volunteer) or as a lay volunteer, the supporting documentation required for such an application and the conditions attached for their immigration permission.

During 2010, Ireland continued not to 'opt-in' to *Council Directive 2003/109/EC* of 25 November 2003 concerning the status of Third Country Nationals who are long-term residents.

Stamp number 3: issued to non-EEA nationals who are not permitted to work.

Stamp number 4: issued to people who are permitted to work without needing an employment permit or business permission: non-EU EEA nationals, spouses and dependants of Irish and EEA nationals, people who have permission to remain on the basis of parentage of an Irish child, Convention and Programme refugees, people granted leave to remain, non-EEA nationals on intra-company transfer, temporary registered doctors, non-EEA nationals who have working visas or work authorisations.

Stamp number 4 (EU FAM): issued to non-EEA national family members of EU citizens who have exercised their right to move to and live in Ireland under the *European Communities (Free Movement of Persons) Regulations 2006*. People holding this stamp are permitted to work without needing an employment permit or business permission, and they can apply for a residence card under the 2006 Regulations.

Stamp number 5: issued to non-EEA nationals who have lived in Ireland for at least eight years and who have been permitted by the Minister for Justice, Equality and Law Reform to remain in Ireland without condition as to time. Holders of this stamp do not need an employment permit or business permission in order to work.

Stamp number 6: can be placed on the foreign passport of an Irish citizen who has dual citizenship, and who wants their entitlement to remain in Ireland to be endorsed on their foreign passport.

¹²³ Parliamentary Question No.621 (7 January 2010).

¹²⁴ It exercised its option to notify the Council and the Commission via Article 4 of the fourth Protocol set out in the *Treaty of Amsterdam*, approved by Commission Decision adopted on 28 April 2009, reference COM (2009) 2708 in respect of *Council Decision 2008/381/EC of 14 May 2008*.

4.4 INTEGRATION

4.4.1 *Developments within the National Perspective*

4.4.1.1 New Minister Appointed

As referenced earlier, a new Minister for Integration was appointed in March 2010, with a change of responsible Department. Mary White T.D., a member of the Green Party, was appointed Minister for Equality, Integration and Human Rights in March 2010. That same month, the Department of Community, Equality and Gaeltacht Affairs took responsibility for the Office of the Minister for Integration which had previously been shared across the Departments of Justice, Equality and Law Reform; Community, Rural and Gaeltacht Affairs; and Education and Science.

4.4.1.2 Ministerial Council on Migrant Integration

Following on from a commitment made in the *Migration Nation* integration strategy in 2008, in June 2010, it was announced that a Ministerial Council on Migrant Integration was to be established. Set up on a regional basis (Dublin, Rest of Leinster, Munster and Connacht/Ulster), and with the aim of reflecting migrants' experiences of integration 'at a local level' and to provide advice on issues faced by migrants, the meetings are chaired by the Minister for Integration and aim to be held two to three times per year in each region.¹²⁵ Approximately fifteen to twenty members will constitute each regional forum, with persons appointed for a five year time period.¹²⁶ Applications were sought from migrants who have been legally resident in Ireland for at least two years; applications from international protection applicants were not eligible. Almost 500 applications for membership of the Council were received, representing 76 nationalities,¹²⁷ with eventual selection considering a balance between countries of origin, geographical residence in Ireland and gender. By early 2011, all four regional councils had met.

4.4.1.3 Funding

A number of funding initiatives were announced and supported by the Office of the Minister for Integration during 2010. In January 2010 the Office approved funding for a number of local authorities and other organisations to 'carry out measures to promote the integration of immigrants into Irish society'.¹²⁸ Listed

¹²⁵ Office of the Minister for Integration (June 2010). 'Ministerial Council on Integration – Announcement'. *Press Release*. Available at www.integration.ie.

¹²⁶ Each forum consisted of the following:

- A Connacht/ Ulster forum which will consist of 15 members
- A Dublin forum which will consist of 20 members
- A Rest of Leinster forum which will consist of 20 members
- A Munster forum which will consist of 20 members.

¹²⁷ Office of the Minister for Integration (18 January 2011). 'Minister White chairs meeting of Inter-Departmental Group on Integration'. *Press Release*. Available at www.integration.ie.

¹²⁸ Office of the Minister for Integration (29 January 2010). 'Funding Approved by Office of the Minister for Integration'. *Press Release*. Available at www.integration.ie.

funded initiatives included the Employment for People from Immigrant Communities (EPIC) project; a local multicultural project; small grants schemes and other integration measures promoted by local authorities; conversational English classes for immigrants conducted by local volunteers; and the employment of development officers with a role in promoting integration through a specified sport. Two subsequent funding announcements were made in December 2010; an initial €968,000 announced on 3 December, and a further €1,360,000 announced on 16 December. Funding within the initial stream was described as being with a focus on *'local authorities who have plans for local activities that encourage integration, sporting bodies that encourage and enhance diversity within their sports, and national organisations with a certain focus on improving the quality of migrants' lives through the provision of either services or information'*.¹²⁹

Funding in the latter stream saw the number of local councils receiving funding for projects rise to 25, with additional funding for organisations involved in anti-racism and integration initiatives.¹³⁰

Details of a new migrant media internship programme for local and regional newspapers were announced in November 2010. Two six-month journalism internships for non-Irish nationals are to be funded by the Office of the Minister for Integration with the aim of providing an opportunity for newspapers to *'document issues of immigration and integration in their regular editions, helping communities to understand the challenges and perspectives of migrants'*.¹³¹

4.4.1.4 Arts Strategy

A strategy for cultural diversity and the arts, *Cultural Diversity and the Arts, Policy and Strategy* was launched by the Irish Arts Council in September 2010. The national agency for funding, developing and promoting the arts in Ireland, the Council developed this policy in order to *'support the wider arts sector in developing its thinking and practice'*. A five-year strategy to enhance the capacity of the Arts Council and the capacity of the arts sector in the area of cultural diversity is outlined, with actions in the area of structures and operations; resources and supports; and partnerships.

4.4.1.5 Racist Incidents Support and Referral Service

During 2010, the Immigrant Council of Ireland (ICI) launched a Racist Incidents Support and Referral Service. With the aim of providing support for those who have experienced or witnessed a racist incident, the Service provides information and referral support as well as data collection of such incidents.

¹²⁹ Office of the Minister for Integration (3 December 2010). 'Minister White announces funding allocations for integration initiatives'. *Press Release*. Available at www.integration.ie.

¹³⁰ *Ibid.*

¹³¹ Office of the Minister for Integration (November 2010). 'Minister White announces details of new migrant media internship programme'. *Press Release*. Available at www.integration.ie.

4.4.2 Developments from the EU Perspective

Under the **European Pact on Immigration and Asylum**, the promotion of integration (*I(g) Promote harmonious integration in line with the common basic principles*) took place via activities of the Office of the Minister for Integration. The Office continued to act as the Irish National Contact Point on Integration during 2010. A number of funding initiatives were announced and supported by the Office of the Minister for Integration during 2010, with a focus on promotion of the integration of immigrants into Irish society. With regard to the promotion of information exchange, (*I(h) Promote information exchange on best practices in terms of reception and integration*), the website of the Office of the Minister for Integration, www.integration.ie, continued operation during 2010. The nomination by Ireland of two members to the European Integration Forum continued during 2010, with a new representative appointed during the year. Activities under the **Stockholm Programme** took place during 2010 with regard to the mainstreaming of integration issues (*3(b) to incorporate integration issues in a comprehensive way in all relevant policy areas*). A national *Intercultural Education Strategy, 2010-15* was launched which aims to assist in ensuring that ‘inclusion and integration within an intercultural learning environment becomes the norm’.¹³² A strategy for cultural diversity and the arts was launched by the Irish Arts Council in September 2010. Regarding engagement with civil society (*3(e) improved consultation with and involvement of civil society*), a number of regional Ministerial Councils on Migrant Integration took place during 2010. The promotion of intercultural dialogue (*3(f) to enhance democratic values and social cohesion in relation to immigration and integration of immigrants and to promote intercultural dialogue and contacts*) took place via announcement of a migrant media internship programme for local and regional newspapers funded by the Office of the Minister for Integration.

Regarding *Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law*, the requested date of implementation was November 2011. The Office of the Minister for Integration has stated that Ireland participated in the first meeting of the Expert Group on Council Framework Decision 2008/913/JHA in February 2010 and that ‘following a detailed examination of Irish legislation, Ireland is satisfied that it is in compliance with the Framework Decision by virtue of the provisions in its existing criminal law (*Prohibition of Incitement to Hatred Act 1989 and public order legislation*)’.¹³³

¹³² Department of Education and Skills and the Office of the Minister for Integration (2010). *Intercultural Education Strategy, 2010-15*. Available at http://www.education.ie/servlet/blobServlet/mig_intercultural_education_strategy.pdf.

¹³³ Office of the Minister for Integration (2010). ‘*EU Council Framework Decision on Combating Racism*’. Available at <http://www.integration.ie/website/omi/omiwebv6.nsf/page/managingdiversity-eudevelopmentsEUCouncilFrameworkDecisionCombatingRacism-en>.

4.5 CITIZENSHIP AND NATURALISATION

Section 4.1.1 contains contextual information on the 2005 amendment to the Constitution of Ireland on citizenship, the 2005 *Irish Born Child Scheme*, and the 2007 and 2009 renewals of that scheme.

4.5.1 *Developments within the National Perspective*

A total of 4,539 applications for naturalisation were approved during 2010, with some 1,101 applications refused. A total of 20,723 applications were processed during 2010, with 15,083 applications deemed to be invalid or ineligible. Overall, some 25,796 applications for naturalisation were received during 2010 with 6,394 certificates issued.¹³⁴

In November 2010 it was stated that almost half of the 26,100 persons who applied for Irish citizenship in the 12 months up to 30 June 2010 had their forms returned due to incorrect completion. It was also noted that the average processing times for applications for citizenship was 26 months.¹³⁵

4.5.1.1 Policy Recommendations

During 2010, much parliamentary debate continued to take place around the granting of citizenship and naturalisation. NGOs such as the Immigrant Council of Ireland (ICI) continued to campaign and advocate for changes in the area including to call for the review of absolute discretion conferred on the Minister for Justice and Law Reform to decide upon citizenship applications and of current administrative procedures governing the processing of naturalisation applications. In addition, the ICI called for all legally-resident migrants (and their families) to enjoy fair procedures when applying for long-term residence or citizenship.¹³⁶

Following similar debates in previous years, in 2010 much media focus on the refusal of applications for citizenship and naturalisation took place. Organisations such as the ICI stated instances of persons refused citizenship for reasons such as having penalty points on a driving licence or claiming disability benefit,¹³⁷ and that the State policy on citizenship needed a 'rethink'. Calls for the adoption of 'clear criteria' regarding the granting of citizenship status were also made.

4.5.1.2 Case Law Regarding Naturalisation

Abuissa v. Minister for Justice, Equality and Law Reform, [2010] IEHC 366, High Court, 1 July 2010.

The Applicant was a Palestinian national born in Libya who has been granted refugee status. He applied to the Minister for naturalisation as an Irish citizen. His

¹³⁴ Department of Justice and Law Reform (2011). *Annual Report 2010*. Available at www.justice.ie.

¹³⁵ The Irish Times (15 November 2010). '12,900 citizenship forms ruled invalid'. Available at www.irishtimes.com.

¹³⁶ Immigrant Council of Ireland (2010). 'Long-Term Residence and Citizenship'. *Briefing Paper*. Available at www.immigrantcouncil.ie.

¹³⁷ The Irish Times (4 November 2010). 'Citizenship 'denied for penalty points''. Available at www.irishtimes.com.

application was refused and no reason for the refusal was furnished to him. He sought judicial review of the decision of the Minister refusing him a certificate of naturalisation on the basis that the Minister's failure to give reasons for his refusal was unlawful, in that it made it impossible to determine whether the Minister had accorded with his obligation to act fairly and in accordance with natural or Constitutional justice.

The Court found that the *Irish Naturalisation and Citizenship Act, 1956* gave the Minister absolute discretion, and if the legislature had intended that the Minister should provide reasons, it is highly unlikely that the words 'absolute discretion' would have been used. However, the Court recognised that the Minister's absolute discretion is fettered by the obligation to act fairly and in accordance with the principles of natural justice.

The Court found that there was an important distinction between reviewing the refusal by the Minister because an applicant was not in compliance with the statutory conditions for naturalisation, where a refusal by the Minister does not depend on his discretion, and the quite different proposition of reviewing a decision taken by the Minister in his absolute discretion, which operates only when statutory pre-conditions are met. In the view of the Court, the first is subject to judicial review while the latter decision where no reasons are provided is only reviewable when it can be demonstrated that the Minister acted unfairly, capriciously or *mala fides*.

The Court rejected the Applicant's primary contention that the Minister must provide reasons for his decisions to an otherwise qualified applicant, finding that, as a general proposition, the courts do not review policy decisions in relation to the issue of Irish passport to applicants of any particular nationality or political adherence because such decisions are a feature of government policy over which the Court has a limited review function. The Court further held that Article 34 of the *Geneva Convention 1951* had not been incorporated into Irish law and could not be relied upon by the Applicant and that, in any event, Article 34 did not mandate Contracting States to naturalise refugees, only to facilitate assimilation and naturalisation as far as possible. The Court finally found that Section 18 of the *Freedom of Information Act, 1997* could not be taken as amending in a far reaching way the *Irish Nationality and Citizenship Acts, 1956 to 2004* and could not require the Minister to give reasons for a refusal of naturalisation.

4.5.2 Developments from the EU Perspective

In Case C-135/08 *Rottmann* of 2 March 2010, the Grand Chamber of the Court of Justice held that it is not contrary to EU law for a Member State to withdraw from a citizen of the European Union the nationality of that State acquired by naturalisation when that nationality was obtained by deception, on condition that the decision to withdraw observes the principle of proportionality.

Chapter 5

Illegal Immigration and Return

5.1 ILLEGAL IMMIGRATION

5.1.1 *Developments within the National Perspective*

5.1.1.1 Number of Persons Unlawfully Resident

Some 4,325 Third Country Nationals were found to be illegally present in Ireland during 2010.¹³⁸

5.1.1.2 'Marriages of Convenience'

Much media and parliamentary discussion regarding termed 'marriages of convenience' continued during 2010. News reports in October 2010 concerned two Latvian nationals 'freed' from forced marriages to non-EEA nationals, with reports later that month stating that senior members of the Garda National Immigration Bureau (GNIB) were due to meet Latvian counterparts to discuss cooperation on the arising issue.¹³⁹ Reference to the numbers of 'sham marriages' took place in several media articles during the year, with one report of October 2010 stating that some 75 objections to scheduled civil ceremonies had been lodged by the GNIB with State registrars since November 2009.¹⁴⁰ It was also stated that the GNIB had begun an operation targeting suspected 'sham marriages' which *'typically involve male non-EU nationals and women from eastern Europe'*.

New guidelines for registrars conducting marriage ceremonies were issued in 2010, containing new identification requirements, restrictions on the use of interpreters and the number of persons who may be admitted to a registrar's office. The guidelines were allegedly introduced following 'intense lobbying' by other Member States who had raised concerns about the abuse of their citizens in Ireland following 'sham marriages' conducted to circumvent Irish immigration laws.¹⁴¹

In early 2011, the Minister for Justice and Law Reform stated that the largest non-EU nationality group submitting an application for residence based on marriage

¹³⁸ Eurostat.

¹³⁹ The Irish Times (27 October 2010). 'Gardaí to meet Latvians over 'sham marriages''. Available at www.irishtimes.com.

¹⁴⁰ Ibid.

¹⁴¹ The Irish Times (9 October 2010). 'Guidelines on 'sham marriages' issued following intense lobbying'. Available at www.irishtimes.com.

to an EU national in Ireland under EU Treaty Rights legislation were nationals from Pakistan, constituting almost 20 per cent of all applications. Of this number, *'...almost two-thirds of these Pakistani applications involved an EU partner from the Baltic States. The high incidence of such marriages, several involving asylum seekers, is an ongoing concern that my officials in co-operation with their colleagues in other interested EU states continue to monitor'*.¹⁴²

The Minister also indicated the *'possibility of deploying biometric technology in the context of visa applications from Pakistan'* as a *'matter of urgency'*.¹⁴³

In response to media and governmental discussion of this issue, NGOs such as the Immigrant Council of Ireland (ICI) highlighted the potential for such reporting to stigmatise migrants in genuine relationships. The ICI also stated that previous policies introduced to deter 'marriages of convenience' subsequently affected all non-EEA nationals applying for residency on the basis of marriage to an EU national. The ICI called for the Government to deal with the issue in 'a way that is fair and proportionate and subject to procedural safeguards'.¹⁴⁴

5.1.1.3 Frontex

Ireland participated in seven joint Frontex return flights during 2010.

In context of the European Return Fund (ERF), a further joint return flight operation took place in conjunction with the United Kingdom in September 2010. Marking the first time such a bilateral joint flight took place involving Ireland, some twenty-one persons were returned from Ireland as part of this operation.

During 2010, Ireland continued to participate in meetings of the Frontex Risk Analysis Network and to provide relevant statistical data on a monthly basis.

5.1.2 Developments from the EU Perspective

With regard to the **European Pact on Immigration and Asylum**, and specifically the aim of ensuring that the risks of irregular migration are prevented (*II(c) ensure that risks of irregular migration are prevented*), publication of the *Immigration, Residence and Protection Bill 2010* saw a legislative framework proposed for the management of inward migration to Ireland. It lays down a number of important principles governing the presence in the State of foreign nationals, including the obligation on a foreign national who is unlawfully in the State to leave. The Bill would impose an immediate and continuing obligation on a foreign national unlawfully present in the State to leave the State, and lays down new rules relating to the suppression of migrant smuggling and trafficking in persons. With regard to commitments to develop cooperation between Member States, using, on a voluntary basis and where necessary, common arrangements to ensure the expulsion of illegal immigrant (*II(d) to develop*

¹⁴² Irish Naturalisation and Immigration Service (7 January 2011). 'Minister Dermot Ahern announces end of year asylum statistics'. *Press Release*. Available at www.inis.gov.ie.

¹⁴³ Ibid.

¹⁴⁴ Immigrant Council of Ireland (26 August 2010). *ICI News Bulletin – Issue 72*. Available at www.immigrantcouncil.ie.

cooperation between Member States, using, on a voluntary basis and where necessary, common arrangements to ensure the expulsion of illegal immigrants). Ireland participated in seven joint Frontex return flights during 2010, and in context of the European Return Fund (ERF), a further joint return flight operation took place in conjunction with the United Kingdom in September 2010. Marking the first time such a bilateral joint flight took place involving Ireland, some 21 persons were returned from Ireland as part of this operation.

Ireland does not participate in the ‘*Employer Sanctions Directive*’. Activities under the National Employment Rights Authority (NERA), tasked with securing compliance with employment rights legislation, including investigating alleged breaches of employment law, continued during 2010. *(II(g) take rigorous actions and penalties against those who exploit illegal immigrants).* Ireland has no formal agreements on the mutual recognition of expulsion decisions with any country *(II(h) an Expulsion Decision taken by one Member State (MS) should be applicable throughout the EU and entered into the SIS obliging other MSs to prevent the person concerned from entering or residing).*

Concerning activities under the **Stockholm Programme** related to action against illegal immigration and trafficking in human beings *(4(j) more effective action against illegal immigration and trafficking in human beings and smuggling of persons by developing information on migration routes as well as aggregate and comprehensive information which improves our understanding of and response to migratory flows)*, during 2010, Ireland continued to participate in meetings of the Frontex Risk Analysis Network and to provide relevant statistical data on a monthly basis. Cooperation with Member States regarding termed ‘marriages of convenience’ took place during 2010 when it was reported that senior members of the Garda National Immigration Bureau (GNIB) were due to meet Latvian counterparts to discuss cooperation on the arising issue.¹⁴⁵ Regarding suspected trafficking routes, Ireland continued to collect standardised data on human trafficking during 2010. Anti-Human trafficking training *(4(k) increased targeted training and equipment support)* continued during 2010. With regard to the development of a network of liaison officers *(4(l) a coordinated approach by Member States by developing the network of liaison officers in countries of origin and transit)*, Ireland did not opt into *Council Regulation 377/2004 on the creation of an immigration liaison officers network* or the amending proposal under Article 3 of the Protocol to the TFEU. It has indicated its intention to opt into both these measures under the post-adoption procedure (Article 4 of the Protocol to the TFEU) when the amending regulation has been finally adopted.

¹⁴⁵ The Irish Times (27 October 2010). ‘*Gardaí to meet Latvians over ‘sham marriages’*’. Available at www.irishtimes.com.

5.2 RETURN

5.2.1 *Developments within the National Perspective*

5.2.1.1 Transfers under the Dublin Regulation

Some 142 transfer orders to other EU countries were effected under the Dublin Regulation during 2010.

5.2.1.2 Deportation

A total of 343 deportation orders to non-EU countries were effected during the year. Ireland continued to provide assistance for voluntary return during 2010, both via programmes operated by the International Organization for Migration (IOM) and administrative assistance provided by the Repatriation Unit of the Department of Justice and Law Reform. A total of 461 persons returned on a voluntary basis during 2010, with 85 persons receiving administrative assistance provided by the Department of Justice and Law Reform. Some 376 persons were assisted to return voluntarily by IOM during 2010 with all persons eligible for return and reintegration assistance.¹⁴⁶ Persons returned to some 42 countries under the Voluntary Assisted Return and Reintegration Programme (VARRP) including Georgia, Moldova, South Africa, Brazil, Mauritius and Nigeria.

Much media debate during 2010 took place in the latter part of the year and concerning deportation of non-EEA nationals. An Irish Times article in December 2010¹⁴⁷ cited figures from the Department of Justice and Law Reform that stated that *‘one in five people deported from Ireland since the start of 2010 were children’*. Of the 288 persons deported from Ireland between January and 9 December 2010, some 56 were non-Irish citizens under 18 years with family members over 18 years. Regarding the country of nationality of persons deported, the article stated that 171 persons were deported to Nigeria, with a further 44 people were deported to Georgia. An additional 73 other persons were deported to a range of countries including Moldova, Russia, South Africa, Brazil, China, Kosovo, Mauritius, Albania, Ghana, India, Ivory Coast, USA, Algeria, Croatia, DR Congo, Israel, Kenya, Sudan, Bangladesh, El Salvador and Sierra Leone. A reported €861,617 had been paid by the State for deportations during this timeframe, with ‘over half’ of the costs to be refunded via co-financing through the European Return Fund.

A further development which prompted much media discussion during 2010 concerned the return of 34¹⁴⁸ Nigerian nationals on a Frontex-organised joint return flight due to the development of engine trouble in Athens.¹⁴⁹ At the time of development of engine trouble, the flight held approximately 100 persons on

¹⁴⁶ Department of Justice and Law Reform (2011). *Annual Report 2010*. Available at www.justice.ie.

¹⁴⁷ The Irish Times (27 December 2010). *‘Children account for 20% of deportees’*. Available at www.irishtimes.com.

¹⁴⁸ Figure was initially provided as ‘35’ in this article, but revised to ‘34’ in a later associated news story.

¹⁴⁹ The Irish Times (17 December 2010). *‘Asylum seekers return after deportation plane breaks down’*. Available at www.irishtimes.com.

board from a number of EU Member States including Austria, Britain, France, Hungary and Poland. The 34 persons were subsequently returned to Ireland via scheduled flights and provided with accommodation pending a further deportation. The Irish Refugee Council described the subjection of returnees to 'inhumane and degrading treatment' by immigration officers and called on Minister for Justice and Law Reform to '*halt all deportations pending an independent review of the State's deportation procedures*'.¹⁵⁰ The Irish Refugee Council stated that it had conducted interviews with the persons concerned after their return to Ireland and had '*first-hand testimonies of the harsh treatment of women and children on the flight, including the handcuffing of one mother of two children for more than 24 hours*'. It also alleged that immigration officers had '*used restraints on her chest and legs, and that she was sedated causing distress to her children, one of whom is an Irish citizen*'. This was described the Irish Refugee Council as 'prima facie evidence of an assault' in a letter to the Minister for Justice and Law Reform and stated that a formal complaint had also been lodged with the Garda Ombudsman Commission. The Irish Refugee Council also provided examples of other treatment allegedly conducted on the flight including sanitation provisions, access to refreshments while in Athens and acceptability of accommodation upon return to Ireland where running water was not available for five days.

5.2.1.3 International Organization for Migration

Some 376 persons were assisted to return home voluntarily to 42 countries by the International Organization for Migration (IOM) mission in Ireland in 2010. Two assisted voluntary return programmes operated in Ireland during the year: a general Voluntary Assisted Return and Reintegration Programme (VARRP) and an I-VARRP programme for assisting vulnerable irregular migrants which is operational from March 2010 until February 2011. The I-VARRP programme is co-funded by the European Return Fund and the Department of Justice and Law Reform. Both programmes incorporate a reintegration grant in kind, to a maximum of €600 per single returnee and €1,000 per family group or couple. Of persons who applied to return with IOM Dublin in 2010, some 52 per cent of applications were from irregular migrants, 47 per cent were in the asylum process and one per cent were classified as 'Other'. Some 57 per cent of returnees in 2010 were irregular migrants and 43 per cent were in the asylum process. The age profile of returnees was predominantly between 18 and 39 years, with 63 per cent of all persons who returned within this age group. Some 68 per cent of returnees during 2010 were male, and the majority (64 per cent) represented single males.

With regard to research in the area of voluntary return, a piece of collaborative research between IOM Dublin and UCC entitled *Leave? Remain? Leading factors in voluntary return or remaining in Ireland* is taking place between June 2010 and May 2011. Co-funded by the European Return Fund and the Department of

¹⁵⁰ The Irish Times (23 December 2010). '*Council criticises flight for deportees*'. Available at www.irishtimes.com.

Justice and Law Reform, the research seeks to identify and explore key factors which affect the decisions of asylum seekers and irregular migrants to either remain in Ireland or to return to their country of origin. A final report is due by mid-2011.

5.2.1.4 Return of Third Country National Parents of Irish Citizens

As discussed in previous reports in this series, a number of High Court reviews against deportation orders by parents of Irish citizen children were initiated in recent years. These, and other, cases continued to take place during 2010. In figures released by the Department of Justice and Law Reform following two prominent such appeals and cited by The Irish Times, at least 12 Irish citizen children left Ireland in 2010 due to the deportation of one of their parents from Ireland.¹⁵¹ The decision to deport parents of Irish citizen children was criticised by a number of NGOs including child rights groups who stated that the policy is leading to the ‘de facto deportation’ of Irish citizens. The Immigrant Council of Ireland (ICI) stated that the ‘*effective expulsion of Irish citizen children through the deportation of a parent may be contrary to the European Convention on Human Rights (ECHR) and could ‘leave the Government open to future legal consequences’*. See Section 10.2.6.1 for further discussion on this topic.

2010 High Court decisions relating to challenges to deportation orders made against non Irish parents of Irish children tended to follow the decision in *Alli (a minor) & Anor v. Minister for Justice, Equality and Law Reform*.¹⁵² In that case, Clark J. had held that ‘the aim of the State to maintain control of its own borders and operate a regulated system for control, processing and monitoring of non national persons in the State’ constituted a substantial reason allowing deportation of a non national parent of an Irish citizen. Such decisions persisted, despite the Opinion dated 30 September 2010 of Advocate General Sharpston in *Case C 34/09 Zambrano*.¹⁵³

By contrast, in *J.B. (a minor) and Ors v. Minister for Justice, Equality and Law Reform*,¹⁵⁴ Cooke J., finding that the deportation order made against the mother of an Irish citizen child could mean that she could never be entitled to visit her child in the State as she grows up, granted leave to seek judicial review on the ground that in making a deportation order against the applicant child’s mother, the Minister did not consider and weigh in the balance any less restrictive measure available to him to control the mother’s presence in the country. The matter was again considered in *U & Ors v. Minister for Justice, Equality and Law Reform*,¹⁵⁵ where the Court agreed with the reasoning in J.B. in respect of the exclusionary effect of deportation, and went on to find that the Minister had no discretion in the respect of section 3(1) of the *Immigration Act 1999* in that, even if he had wanted to, the Minister had no power to stipulate a lesser period of

¹⁵¹ The Irish Times (4 December 2010). ‘*Irish citizen children ‘effectively expelled’*. Available at www.irishtimes.com.

¹⁵² *Alli (a minor) & Anor v the Minister for Justice, Equality and Law Reform* [2009] IEHC 595.

¹⁵³ *Gerardo Ruiz Zambrano v. Office national de l’emploi (ONEm)*

¹⁵⁴ *J.B. (a minor) and Ors v Minister for Justice, Equality and Law Reform*, unreported, High Court, 14 July 2010.

¹⁵⁵ Unreported, High Court, 13th December, 2010, Hogan J.

exclusion in the deportation order itself as the Act specifies the consequences of a deportation order and takes the matter out of the Minister's hands.

5.2.2 Developments from the EU Perspective

5.2.2.1 Return of Third Country Nationals

During 2010, Ireland did not take part in the adoption of *Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying Third Country Nationals*.

5.2.2.2 Return of Third Country National Parents of European Union Citizens

On 30 September 2010, Advocate General Sharpston issued her Opinion in the Case of Ruiz Zambrano.¹⁵⁶

Advocate General Sharpston was of the opinion that Articles 20 and 21 TFEU are to be interpreted as conferring a right of residence in the territory of the Member States - based on citizenship of the European Union - that is independent of the right to move between Member States. Those provisions do not preclude a Member State from refusing to grant a derived right of residence to an ascendant relative of a citizen of the European Union who is a national of the Member State concerned and who has not yet exercised rights of free movement, provided that that decision complies with the principle of proportionality.

She further took the view that Article 18 TFEU should be interpreted as prohibiting reverse discrimination caused by the interaction of Article 21 TFEU with national law that entails a violation of a fundamental right protected under EU law, where at least equivalent protection is not available under national law.

She noted, in concluding, that at the material time in the main proceedings, the fundamental right to family life under EU law could not be invoked as a free-standing right, independently of any other link with EU law, either by a non-Member State national or by a citizen of the European Union, whether in the territory of the Member State of which that citizen was a national or elsewhere in the territory of the Member States.

The Advocate General's opinion was cited in litigation in 2010 on behalf of Irish children whose parents faced deportation, particularly in the context of seeking injunctions against removal pending the Court of Justice's determination of the matter. Generally, however, the domestic courts followed the High Court's decision in *Alli (a minor) & Anor v. Minister for Justice, Equality and Law*

¹⁵⁶ Case C-34/09, *Gerardo Ruiz Zambrano v. Office National de l'Emploi*, Opinion of Advocate General Sharpston delivered on 30 September 2010. The Grand Chamber of the Court of Justice subsequently (on 8 March 2011) ruled in its judgment on the case that Article 20 TFEU is to be interpreted as meaning that it precludes a Member State from refusing a Third Country National upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that Third Country National, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen.

Reform,¹⁵⁷ wherein Clark J. held that ‘the aim of the State to maintain control of its own borders and operate a regulated system for control, processing and monitoring of non national persons in the State’ constituted a substantial reason allowing deportation of a non national parent of an Irish citizen. Such decisions persisted, despite the Opinion of the Advocate General in *Zambrano*. Irish policy and case law would change dramatically in 2011 when the Court of Justice handed down its decision in the *Zambrano* case.¹⁵⁸

5.2.2.3 Readmission Agreements

Ireland continued to participate in both an EU-Hong Kong readmission agreement and a bilateral agreement with Nigeria during 2010 (*II(b) To conclude readmission agreements at EU or bilateral level, **European Pact on Immigration and Asylum***). Ireland continued to provide assistance for voluntary return during 2010, both via programmes operated by the International Organization for Migration (IOM) and administrative assistance provided by the Repatriation Unit of the Department of Justice and Law Reform (*II(f) To devise incentive systems to assist voluntary return and to keep each other informed*).

5.2.2.4 Frontex

Ireland participated in seven joint Frontex return flights during 2010. In context of the European Return Fund (ERF), a further joint return flight operation took place in conjunction with the United Kingdom during 2010. Marking the first time such a bilateral joint flight took place involving Ireland, some twenty-one persons were returned from Ireland as part of this operation. A further three return flights, concerning returns from Ireland only, took place during 2010. (*4(f) increased practical cooperation between Member States, for instance by regular chartering of joint return flights, **Stockholm Programme***).

5.2.2.5 Directive 2008/115/EC

During 2010, Ireland did not take part in the adoption of *Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying Third Country Nationals*.

5.3 ACTIONS AGAINST HUMAN TRAFFICKING

5.3.1 Developments within the National Perspective

5.3.1.1 National Action Plan

Administrative and legal provisions for suspected victims of trafficking continued during 2010 including the granting of a period of ‘recovery and reflection’ for suspected victims via a Temporary Residence Permission.

¹⁵⁷ *Alli (a minor) & Anor v the Minister for Justice, Equality and Law Reform* [2009] IEHC 595.

¹⁵⁸ See footnote 154.

As discussed in the *Annual Policy Report on Migration and Asylum 2009: Ireland*, a *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009 – 2012* was published by the Department of Justice and Law Reform in June 2009. An output of the Interdepartmental High Level Group, the National Action Plan outlined previous measures already undertaken by Government in the area, identified areas which required further action and outlined structures which will bring Ireland into line with its international obligations and allow for the ratification of the *Council of Europe Convention on Action against Trafficking in Human Beings* and the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. Action points include awareness (legislative measures and training of officials), protection (services for victims of trafficking, including child victims and provision for a legislative basis for a 'recovery and reflection' period currently in operation on an administrative basis), and prosecution and investigation. Of note, the National Action Plan identified support to source countries and highlights the possibility of '*entering into specific anti-human trafficking bilateral agreements with source countries to support them in their efforts to combat human trafficking*'.

Regarding employment, persons in receipt of the initial 60 days 'recovery and reflection' period cannot work as they are in possession of a 'Stamp 3' immigration status. However, once they are granted a six months Temporary Residence Permission (with a 'Stamp 4') they are entitled to work and enter training programmes. This does not apply if victims are in the asylum system as due to a statutory prohibition in Section 9(4) of the *Refugee Act 1996* which prevents asylum seekers from working. The Health Service Executive (HSE) care plan includes a category on education/training which is to help to ensure that suspected victims are 'job ready' and that any issues which might hinder successful completion of a course are resolved. FÁS, the State Training and Employment Authority, conduct a training needs assessment with a person who has been referred to them as 'job ready' by the HSE to see what type of training courses they might benefit from. Referrals to FÁS are made through the HSE Anti-Human Trafficking Team key worker.

5.3.1.2 Ratification of Legislation

During 2010, Ireland ratified both the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children supplementing the UN Convention against Transnational Organised Crime* (17 July 2010) and the *Council of Europe Convention on Action against Trafficking in Human Beings* (1 November 2010). In a press release to mark the ratification of the UN Protocol, information regarding recent operations in the area was noted, including one tackling the sexual exploitation of females (Operation Abbey).¹⁵⁹

On 3 May 2005, the Committee of Ministers of the Council of Europe adopted the *Convention on Action against Trafficking in Human Beings*. The Convention was

¹⁵⁹ Irish Naturalisation and Immigration Service (21 June 2010). 'Ireland ratifies UN Convention on Transnational Organised Crime and Human Trafficking Protocol'. *Press Release*. Available at www.inis.gov.ie.

opened for signature in Warsaw on 16 May 2005 and entered into force on 1 February 2008. Ireland signed the Convention in 2005 and ratified it on 13 July 2010. The Council of Europe Convention is a comprehensive treaty focussing mainly on the protection of victims of trafficking and the safeguard of their rights. It also aims to prevent trafficking and to prosecute traffickers. The Convention provides for the setting up of an effective and independent monitoring mechanism capable of controlling the implementation of the obligations contained in the Convention. The definition of trafficking is the same as that which is contained in the UN Protocol as referenced above.

5.3.1.3 Administrative Arrangements

Administrative and legal provisions for suspected victims of trafficking continued during 2010 including the granting of a period of 'recovery and reflection' for suspected victims via a Temporary Residence Permission. Arrangements within an administrative framework¹⁶⁰ were introduced on 7 June 2008 to provide for a period of recovery, reflection and residency in the State for identified victims of trafficking in the State pending enactment of the *Immigration, Residence and Protection Bill*. Further amendments to that Scheme are envisaged, and to include clarification on the scope of application of the Arrangements; application of the Arrangements to those under 18 years of age; clarification in relation to family reunification; clarification as to the process to be undertaken where a person to whom this notice applies is refused a refugee declaration; a new provision allowing for an application for change of status to be made; and clarification in relation to exiting the asylum system.¹⁶¹

In addition to the Anti-Human Trafficking Unit (AHTU) within the Department of Justice and Law Reform, there are three other dedicated units dealing with this issue: the Human Trafficking Investigation and Co-ordination Unit in the Garda National Immigration Bureau (GNIB); the Anti-Human Trafficking Team in the Health Service Executive (HSE); and a specialised Human Trafficking legal team in the Legal Aid Board (LAB). Dedicated personnel are also assigned to deal with prosecution of cases in the Director of Public Prosecutions (DPP) Office and in the New Communities and Asylum Seekers Unit in the HSE. The latter assist suspected victims who are not in the asylum system making the transition from direct provision accommodation to mainstream services for the duration of their temporary residency.

Regarding employment, persons in receipt of the initial 60 days 'recovery and reflection' period cannot work as they are in possession of a 'Stamp 3' immigration status. However, once they are granted a six months Temporary Residence Permission (with a 'Stamp 4') they are entitled to work and enter training programmes. This does not apply if victims are in the asylum system as due to a statutory prohibition in Section 9(4) of the *Refugee Act 1996* which

¹⁶⁰ Department of Justice and Law Reform (2008). *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking*. Available at <http://www.inis.gov.ie>.

¹⁶¹ Department of Justice and Law Reform.

prevents asylum seekers from working. The Health Service Executive (HSE) care plan includes a category on education/training which is to help to ensure that suspected victims are 'job ready' and that any issues which might hinder successful completion of a course are resolved. FÁS, the State Training and Employment Authority, conduct a training needs assessment with a person who has been referred to them as 'job ready' by the HSE to see what type of training courses they might benefit from. Referrals to FÁS are made through the HSE Anti-Human Trafficking Team key worker.

During 2010, 69 incidents (representing 78 persons) of alleged human trafficking were reported to An Garda Síochána.¹⁶² In a Parliamentary Question in January 2011,¹⁶³ the Minister for Justice and Law Reform stated that between November 2009 and 1 December 2010, a total of 39 cases had been referred by the Garda National Immigration Bureau (GNIB) to the Legal Aid Board for legal assistance and advice for suspected victims of trafficking. Up to December 2010, some 56 such persons had been referred to the Health Service Executive (HSE) for the devising of individual care plans.

In a position paper published during 2010, the Immigrant Council of Ireland (ICI) raised serious concerns regarding the level of protection offered to victims of trafficking in Ireland.¹⁶⁴ Calling for a standard of proof lower than that used in criminal proceedings in order to correctly identify victims of human trafficking in accordance with the *Council of Europe Convention on Action Against Trafficking in Human Beings*, the ICI cited the 'reasonable grounds' reference within the Convention. It called for an assessment of 'reasonable grounds' as the start of the identification process and that it '*must be clearly distinguished from the conclusive identification of whether someone is a victim or not*'. Citing a policy outlined within the *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009 – 2012* that '*to arrive at a state of mind that a person is a suspected victim of human trafficking the Garda Superintendent must be in possession of sufficient information to afford reasonable grounds for that belief*', the ICI stated that based on practical experience in assisting victims of trafficking, the '*level of information that is currently required before a Garda Superintendent is seen to be in a position to make a recommendation that a suspected victim of trafficking should be granted a 'recovery and reflection period' and subsequently a temporary residence permit, goes beyond what is envisaged by the Convention*'.

The ICI acknowledged that the National Action Plan did state that reasonable grounds were not the same as evidence in the context of contemplation of any criminal offence. The ICI also noted that the granting of a 'reflection and recovery period' provided for in Article 13(1) of the Council of Europe Convention is '*not conditional on their cooperating with the investigative or prosecution authorities*'.

¹⁶² Department of Justice and Law Reform (2011). *Annual Report 2010*. Available at www.justice.ie.

¹⁶³ Parliamentary Question No.585 (12 January 2011).

¹⁶⁴ Immigrant Council of Ireland (2010). 'The Interpretation of 'Reasonable Grounds' in the Context of the Identification of Victims of Human Trafficking'. *ICI Position Paper*. Available at www.immigrantcouncil.ie.

5.3.1.4 Data Collection

The Anti-Human Trafficking Unit of the Department of Justice and Law Reform continued to collect standardised data on human trafficking from the Garda Síochána and several NGOs throughout 2010. Starting in January 2009, the data collection system is based on similar data collection systems being developed at EU level, with part of the standardised collected data including information regarding the routes alleged victims of human trafficking take into Ireland.

5.3.1.5 US State Department Trafficking In Persons Report

The US State Department launched the *Trafficking in Persons Report 2010*¹⁶⁵ in which Ireland moved from a Tier 2 to a Tier 1 country. Tier 1 classification indicates that a country fully complies with the minimum standards for the elimination of trafficking.

The report noted that Ireland is a destination, and to an extent, a transit country for persons subjected to trafficking, particularly in the area of forced prostitution and forced labour. It stated that in recent years the Government has '*made substantial strides in acknowledging Ireland's human trafficking problem and implementing legislation and policies to punish trafficking offenders and protect trafficking victims*'. Regarding countries of origin, it noted that victims of sex trafficking had been reported by NGOs as originating mainly from Nigeria; with labour trafficking victims reportedly consisting of men and women from Bangladesh, Pakistan, Egypt, and the Philippines, though also from South America, Eastern Europe, and other parts of Asia and Africa. The *Trafficking in Persons Report 2010* noted that unaccompanied minors in Ireland were vulnerable to trafficking and that '*The government reported that some children who have gone missing from state care have been found in brothels, restaurants, and private households where they may have been exploited*'.

The report cited governmental figures that some nine of the 47 minors who went missing from State care from 2009 were recovered, with a minimum of one of the minors believed to have been trafficked.

The report noted developments made by Ireland in the area but highlighted outstanding issues such as continued training regarding the identification of victims, provision of specialised services for both adult and child victims of trafficking including secure accommodation, and the appointment of an National Rapporteur '*to draft critical assessments of Ireland's efforts to punish traffickers, protect victims, and prevent new incidents of human trafficking*'.

5.3.1.6 Training

In 2009 the International Organization for Migration (IOM) was awarded a tender from the Anti-Human Trafficking Unit to develop, produce and deliver a counter-trafficking *Train the Trainers* training manual and three training sessions. The

¹⁶⁵ US State Department (2010). *Trafficking in Persons Report 2010*. Available at <http://www.state.gov/g/tip/rls/tiprpt/2010>.

project ran from September 2009 to August 2010, with training sessions held in both years. A total of 40 persons were trained from 14 different organisations; since the completion of this training a total of 180 persons in four organisations have received training on human trafficking given by those who attended the course. In addition, some 139 persons participated in basic awareness training which has been provided by IOM with input from NGOs, the Garda National Immigration Bureau (GNIB) and the Anti-Human Trafficking Unit. Over 60 National Employment Rights Authority (NERA) Inspectors were among these participants.

A continuous professional development training course entitled *Tackling Trafficking in Human Beings: Prevention, Protection and Prosecution* has been designed by the Garda Síochána, assisted by IOM and the United Kingdom Human Trafficking Centre. Some 435 Gardaí received this training, with members of the Police Service of Northern Ireland (PSNI), the United Kingdom Borders Agency (UKBA), the London Metropolitan Police and the Romanian Police also participating in this training. Awareness raising training on human trafficking has also now been delivered to a total of 2,674 probationary Gardaí during their final phase of training. Training on human trafficking including identification has also been provided to Senior Investigating Officers.

5.3.1.7 Funding

In 2010 Ireland continued to support gender equality projects and programmes in both Africa and Asia, and to work closely with partner governments in 9 Programme Countries (Zambia, Mozambique, Malawi, Vietnam, Tanzania, Ethiopia, Uganda, Lesotho and Timor Leste, South Africa, Sierra Leone and Palestine.) Support was also provided to NGOs and multi-lateral agencies including the UN gender entity UN-Women. Other programmes which Ireland provided support for included:

- The Department of Foreign Affairs/ Irish Aid Stability Fund is providing €100,000 in funding towards an OSCE project for the enhancement of anti-trafficking measures in the Ukraine through the development of a National Referral Mechanism.
- Under Phase III of the Irish Aid - ILO Partnership Programme which commenced on 1 August 2008, Ireland is committed to providing €9 million over three years (2008/9 - 2010/1) to the International Labour Organisation.
- Under the Programme Irish Aid is providing funding of €1.8 million over this period to the ILO Special Action Programme to Combat Forced Labour (SAP-FL).

5.3.2 Developments from the EU Perspective

Under the ***European Pact on Immigration and Asylum***, cooperation with countries of origin and transit (*II(e) cooperation with the countries of origin and of transit, in particular to combat human trafficking and to provide better*

information to communities under threat) continued during 2010 via development support and assistance through Irish Aid, funding towards an OSCE project for the enhancement of anti-trafficking measures in the Ukraine through the development of a National Referral Mechanism; the provision of €9 million over three years (2008/9 - 2010/1) to the International Labour Organisation; and providing funding of €1.8 million over this period to the ILO Special Action Programme to Combat Forced Labour (SAP-FL). During 2010, Ireland ratified both the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children supplementing the UN Convention against Transnational Organised Crime* (17 July 2010) and the *Council of Europe Convention on Action against Trafficking in Human Beings* (1 November 2010).

As the Proposal for a *Framework Decision on Preventing and Combating Trafficking in Human Beings and Protecting Victims* was not agreed prior to the Lisbon Treaty, a Proposed Directive was published in March 2010. The purpose of this Proposed Directive is to repeal and replace the 2002 EU Council Framework Decision with additional criminal law provisions to bring it into line with other international instruments. The Proposal also contains additional measures primarily dealing with victim support, prevention, investigation, prosecution and monitoring. During 2010, Ireland indicated its intention to opt in to an EU *Directive on preventing and combating trafficking in human beings, and protecting victims*. In November 2010, the Minister for Justice and Law Reform stated that he had '*sought and obtained the approval of both Houses of the Oireachtas earlier this year to opt into the measure*', and that a number of provisions within the proposed Directive are already provided for under the *Criminal Law (Human Trafficking) Act, 2008* or on an administrative basis. He stated that '*the manner in which outstanding issues will be implemented will be determined in consultation with the Attorney General after the proposed measure is agreed including the timescale for adoption*'.¹⁶⁶

Ireland was part of the EU group negotiating the *UN Global Plan of Action to Combat* (UNGPA) adopted by the UN General Assembly on 30 July 2010. The Plan provides humanitarian, legal and financial aid to victims of trafficking through established means of assistance such governmental, inter-governmental and non-governmental channels.

¹⁶⁶ Parliamentary Question No.218 (23 November 2010).

Chapter 6

Border Control

6.1 CONTROL AND SURVEILLANCE AT EXTERNAL BORDERS

6.1.1 *Developments within the National Perspective*

6.1.1.1 Integrated Border Information System (IBIS)

As discussed in the *Annual Policy Report on Migration and Asylum 2009: Ireland*, in January 2009 the Minister for Justice and Law Reform announced the approval by Government of the first phase of a new border control system. The Irish Border Information System (IBIS) is intended to reduce and possibly eradicate the issue of 'overstayers' in Ireland and will entail all passenger information collected by carriers prior to travel being sent to an Irish Border Operations Centre (I-BOC) where it will be screened against certain watch lists. If a match occurs, the relevant agency will be notified and provided with time to take appropriate measures such as monitoring, intercepting or arresting the passenger. During 2010 further discussions with the project team regarding progression of an Integrated Border Information System (IBIS) for Ireland took place.

6.1.1.2 Visas

During 2010, some 133,598 visas were issued by Ireland. Of this number, 64,493 were re-entry visas, which are issued to nationals of visa required countries who are legally present in Ireland and wish to leave temporarily (holidays, business, visit relatives etc.) and to re-enter the State. Some 69,105 visas for initial entry were issued, of which 23,535 were processed via Irish missions outside Ireland. A total of 7,912 applications were refused.

A total of 142,444 visa applications were processed during 2010.¹⁶⁷

6.1.1.3 Refusal of Leave to Land

Some 2,790 persons were refused leave to land at Irish ports during 2010, with 3,031 refusals of leave to land.

6.1.2 *Developments from the EU Perspective*

With regard to activities under the *European Pact on Immigration and Asylum* during 2010, further discussions with the project team regarding progression of

¹⁶⁷ Department of Justice and Law Reform (2011) *Annual Report 2010*. Available at www.justice.ie.

an Integrated Border Information System (IBIS) for Ireland took place (*III(e) deploy modern technological means for border control*).

6.2 COOPERATION WITH RESPECT TO BORDER CONTROL

6.2.1 Developments within the National Perspective

As of March 2010 Ireland began collecting biometric data in the form of fingerprints as part of the visa application process. This process initially began in Nigeria and is expected to extend to other locations at a later date. All visa applicants aged six years and over and who are residing in Nigeria (irrespective of nationality) must present in person to one of the Ireland Visa Application Centres (VAC) in Abuja or Lagos.

Criticism by NGOs during 2010 related to the lack of access to a normal appeals procedure for visa applicants who made their application in Nigeria. In the NGO Alliance Against Racism response to the *Third and Fourth Periodic Reports of Ireland under the UN International Convention on the Elimination of All Forms of Racial Discrimination*, a 'zero-tolerance' policy to alleged fraudulent visa applications by Nigerians is cited.¹⁶⁸ It stated that as per information on the Embassy of Ireland to Nigeria website, '*such applications will be refused, and no appeal will be permitted*'. If submitted as part of a group, all applications will be refused with no appeal. It was also noted that the policy of refusal without appeal '*is even applied in cases where documents are merely suspected of being false and are not actually proven to be false*', and that a five-year ban from making further visa applications has been instituted.

6.2.2 Developments from the EU Perspective

In terms of the **European Pact on Immigration and Asylum**, as of March 2010 Ireland began collecting biometric data in the form of fingerprints as part of the visa application process. This process initially began in Nigeria and is expected to extend to other locations at a later date (*III(b) generalise the issue of biometric visas, improve cooperation between MSs' consulates and set up joint consular services for visas*). With regard to solidarity measures (*III(d) solidarity with MS subjected to disproportionate influxes of immigrants*), Ireland continued to participate in both Frontex Management Board meetings and risk analysis activities during 2010. Ireland participated in seven joint return activities during the year as well as the Frontex Vega pilot project.

Regarding the **Stockholm Programme**, on foot of the European Court of Justice (ECJ) judgment C-482/08, Ireland does not participate in the Visa Code and gradual roll-out of the VIS. (*6(a) The European Council encourages the*

¹⁶⁸ NGO Alliance Against Racism (2011). Shadow Report In Response to the Third and Fourth Periodic Reports of Ireland under the UN International Convention on the Elimination of All Forms of Racial Discrimination. Available at www.newcommunities.ie.

Commission and Member States to take advantage of the entry into force of the Visa Code and the gradual roll-out of the VIS).

Chapter 7

International Protection, Including Asylum

7.1 DEVELOPMENTS WITHIN THE NATIONAL PERSPECTIVE

7.1.1 *International Protection Statistics*

Some 1,939 applications for asylum were received during 2010, a 28 per cent decrease on corresponding figures of 2,689 applications during 2009. Applications for asylum received during 2010 were at half the level of those received during 2008 (3,866 applications). Of the 2010 applications, 1,918 cases referred to new applications for declaration as a refugee. The main stated countries of nationality of those seeking asylum during 2010 were Nigeria (387 applications), China (228 applications), Pakistan (200 applications), Democratic Republic of Congo (71 applications) and Afghanistan (69 applications).¹⁶⁹

A total of 263 determinations were made under the Dublin Regulation at first instance. A total of 541 applications were outstanding at the Office of the Refugee Applications Commissioner as of the end of 2010.¹⁷⁰ Overall, some 1,548 new appeals were received by the Refugee Appeals Tribunal during 2010, representing activities under new and older procedures and including appeals under the Dublin Regulations. The main stated countries of nationality of appeals during 2010 were Nigeria (330 cases), Pakistan (160 cases), Somalia (71 cases), Afghanistan (70 cases) and Ghana (62 cases). A total of 2,964 overall appeals were completed during 2010, including 94 appeals related to the Dublin Regulation. Some 2,783 decisions were issued. Some 24 positive recommendations were made at first instance during 2010, with 1,309 negative recommendations following interview and 596 cases were deemed negative for other reasons or deemed withdrawn. At appeal stage, some 129 appeals were granted with 2,654 appeals refused.¹⁷¹

The overall refugee recognition rate during 2010 was 3.4 per cent.

¹⁶⁹ Office of the Refugee Applications Commissioner (2011) *Annual Report 2010*. Available at www.orac.ie.

¹⁷⁰ Office of the Refugee Applications Commissioner (2011). *December Monthly Statistics*. Available at www.orac.ie.

¹⁷¹ The Refugee Appeals Tribunal (2011). *Annual Report 2010*. Available at www.refappeal.ie.

Table 7.1: Refugee Recognition Rate, 2004-2010

	2004	2005	2006	2007	2008	2009	2010
Total ORAC Recommendations*	6,878	5,243	4,244	3,808	3,932	3,263	1,787
Total RAT Completed appeals*	6,305	4,029	1,950	1,878	2,568	3,586	2,870
Positive ORAC Recommendations	430	455	397	376	295	98	24
'Positive' RAT Decisions**	717	514	251	203	293	268	129
Total Decisions/Recommendations	13,183	9,272	6,194	5,686	6,494	6,849	4,657
Total Positive Decisions/ Recommendations	1,147	969	648	579	588	366	153
Recognition Rate ORAC	6.3%	8.7%	9.4%	9.9%	7.5%	3.0%	1.3%
Recognition Rate RAT	11.4%	12.8%	12.9%	10.8%	11.4%	7.5%	4.5%
Overall Recognition Rate	8.7%	10.5%	10.5%	10.2%	9.0%	5.3%	3.4%

Source: Derived from Office of the Refugee Applications Commissioner statistics available at www.orac.ie; Refugee Appeals Tribunal statistics available at www.refappeal.ie. Data related to EU Dublin Regulation cases are excluded, including cases deemed withdrawn under s22(8) of The Refugee Act 1996 (as amended) for 2009 and 2010 data.

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

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

There were 936 applications for judicial review in the High Court during 2010 related to asylum¹⁷², an increase of 25 per cent on 2009 figures.¹⁷³

During 2010, a total of 1,466 applications for subsidiary protection were received with three applications granted and 517 refused.¹⁷⁴ A parliamentary question of November 2010 stated that a total of 6,356 applications for subsidiary protection had been made between October 2006 and October 2010. Of this number, a decision to grant such a status had been made in respect of 34 cases, with a refusal decision in 1,609 cases. Of cases outstanding, some 38 applications are from 2006; 402 applications made in 2007; 623 applications made in 2008; 1,529 applications made in 2009; and 1,132 applications made up to October 2010.¹⁷⁵

7.1.1.2 Direct Provision for Applicants for International Protection

During 2010 the issue of direct provision accommodation prompted much media and parliamentary debate, particularly regarding a planned dispersal from an accommodation centre in July 2010. In early July 2010, some 150¹⁷⁶ residents in Mosney Accommodation Centre were informed about plans to relocate them to different hostels. Residents were informed about the transfer shortly before the planned implementation. Several of the residents had resided in the accommodation centre for several years. A protest to resist a move to other

¹⁷² Includes all judicial review applications brought under legislation relating to asylum, immigration and refugees. Respondents include the Office of the Refugee Applications Commissioner, the Refugee Appeals Tribunal and the Minister for Justice and Law Reform. See Courts Service (2011) *Annual Report 2010*. Available at www.courts.ie.

¹⁷³ Courts Service (2011) *Annual Report 2010*. Available at www.courts.ie.

¹⁷⁴ Department of Justice and Law Reform (2011). *Annual Report 2010*. Available at www.justice.ie.

¹⁷⁵ Parliamentary Question No.291 (9 November 2010).

¹⁷⁶ This figure was later revised in media reports to 109 persons.

accommodation centres subsequently took place with an estimated 300 residents taking part. Criticism regarding the move centred on the short notification time and mass transfer which did not appear to take into account individual circumstances.¹⁷⁷ An eventual deadline of the 31 August 2010 was set by the Reception and Integration Agency (RIA) for the transfer of 70 remaining residents from the accommodation centre to an alternative centre in Dublin. NGOs such as the Irish Refugee Council (IRC) stated that it was 'disappointed' at the decision to proceed with the transfers and that the 'letters from RIA do not take people's individual circumstances into account, for example whether they have family living nearby or their medical situation'. The IRC stated that 'RIA has not adequately addressed all the humanitarian issues raised by the residents'.¹⁷⁸ By year end, the majority of the affected residents had transferred accommodation. A December 2010 report by the IRC, *A report by the Irish Refugee Council on the compulsory transfer of residents from Mosney Accommodation Centre by the Reception and Integration Agency, part of the Department of Justice and Law Reform*, saw the organisation highlight that a Joint Oireachtas Committee on Health and Children visit to Mosney on the 22 July 2010 saw Committee members note that the gap in service quality between Mosney and other accommodation centres (in this case, a specific comparison with St. Patrick's in Co. Monaghan) was 'gaping'. The report concluded by stating that it hoped that '*lessons will be learnt by all parties which, in future, will lead to more humane treatment and a better system for the reception of those seeking international protection*'.

A Value for Money Review¹⁷⁹ regarding expenditure on provision of full board (Direct Provision) accommodation services for asylum seekers by the Reception and Integration Agency (RIA) was published during 2010.¹⁸⁰ With a primary focus of examining the provision of direct provision services according to aims, efficiency, cost and alternatives, the Review focused on the period of 2005 to 2008. The Review noted that as of the end of 2008, RIA had '*60 accommodation centres accommodating almost 7,000 asylum seekers and the total cost of the services provided by RIA was over €91m*'. The effectiveness of the programme was reiterated, with a recommendation to reduce excess capacity by five per cent to less than ten per cent on present figures and at an estimated saving of €3.9m per year. Recognising a decrease in overall asylum figures, the Review noted that the current direct provision system was '*not suitable for volatile demand situations... it is difficult to shed excess capacity after a spike and therefore difficult to minimise costs*'. A three-month notice clause in contracts with providers is recommended. Regular invitations to tender are also recommended. A variance in daily charge rate was found according to accommodation centre,

¹⁷⁷ The Irish Times (3 July 2010). '*150 asylum-seekers in Mosney told to move hostels within days*'. Available at www.irishtimes.com; FLAC (2010). *FLAC background note on Transfer of Mosney residents*. Available at www.flac.ie.

¹⁷⁸ The Irish Times (12 August 2010). '*Officials invited to discuss welfare of asylum seekers*'. Available at www.irishtimes.com.

¹⁷⁹ Reception and Integration Agency (May 2010). *Value for Money & Policy Review, Asylum Seeker Accommodation Programme, Final Report*. Available at www.ria.gov.ie.

¹⁸⁰ RIA also provides accommodation to destitute EU12 nationals pending a return home and for alleged victims of trafficking, however these figures remain relatively low.

with the current cost of State-owned centres approximately €6 per person per day cheaper than commercial centres. The annual cost for the provision of accommodation from 2003 to 2009¹⁸¹ was also detailed:

Table 7.2: Annual Cost for Provision of Asylum Seeker Direct Provision Accommodation, 2003-2009

Year	Budget Provision	Outturn
2003	€73m	€77m
2004	€69m	€83m
2005	€71m	€84m
2006	€74m	€79m
2007	€70m	€83m
2008	€74m	€91m
2009	€67.4m	€86.5m provisional

Source: Value for Money Policy Review

Note: RIA payments to contractors for direct provision asylum seeker accommodation.

Three types of alternative accommodation were examined: to allow asylum seekers to claim social welfare payments and rent supplement; to provide self-catering accommodation; and to provide local authority housing. Upon examining these alternatives, the Review concluded that *‘these options would be significantly more expensive than direct provision and concluded that using direct provision has proven to be the correct choice in providing for the accommodation needs of asylum seekers’*.

A report by FLAC, *One Size Doesn’t Fit All*, launched in 2010 looked at ten years of direct provision accommodation.¹⁸² The report stated that a lack of transparency exists within the direct provision and dispersal system, with a specified number of inspections (by the RIA) not undertaken. The report noted that a full register of complaints made by either staff or residents is not retained. In terms of the length of time of persons residing in direct provision accommodation, the report cited that, as of October 2009 32 per cent of residents had lived in direct provision accommodation for more than three years. It was highlighted that the weekly allowance to persons in direct provision (€19.10 per week per adult) had not risen since its introduction ten years previously, while those in receipt had *‘not been included as a target group in anti-poverty and social inclusion strategies’*. The FLAC report recommended that a greater level of care needs to be provided to persons with specific vulnerabilities, whether by age, gender, disability, health, sexual orientation or other reason. An independent complaints procedure for residents is recommended, as is the utilisation of self-catering facilities to the maximum level. The report also stated that as direct provision was *‘always intended as a short-term solution.... those who still do not have a decision after one year should be treated as any other destitute person and given access to Supplementary Welfare Allowance’*.

¹⁸¹ Provisional figures.

¹⁸² FLAC (2010). *One Size Doesn’t Fit All*. Available at www.flac.ie.

7.1.2 Leave to Remain Statistics

During 2010, some 188 persons were granted leave to remain in Ireland under Section 3 of the *Immigration Act 1999 (as amended)*.¹⁸³

7.1.3 Resettlement

Ireland continued to participate in the Resettlement Programme for vulnerable refugees in conjunction with UNHCR during 2010 with an annual quota of 200 persons. Refugees are selected for resettlement during the quota year but in many cases may not arrive in Ireland until the following year. During 2010 some 20 refugees were admitted to Ireland under the Resettlement Programme with the majority approved for resettlement during 2010 (17 cases). An additional three Burmese-Karen nationals approved during 2009 were resettled during the year. Some 28 persons were approved or are pending approval under the Resettlement Programme for 2010, with the majority from Iraq (22 persons) followed by Ethiopian nationals (5 persons) and Syrian nationals (1 person). All of the 2010 resettlement figures involved medical cases.

7.1.4 Case Law Regarding International Protection

7.1.4.1 The Standard of Review in Human Rights Related Asylum/Immigration Cases

Meadows v. Minister for Justice, Equality and Law Reform [2010] IESC 3, Supreme Court, 21 January 2010

The Applicant, a Nigerian citizen, sought asylum in Ireland on the grounds that she would be subjected to female genital mutilation (FGM) in Nigeria. The Refugee Applications Commissioner recommended that she not be declared a refugee, and this recommendation was confirmed by the Refugee Appeals Tribunal (RAT) on appeal. The Applicant sought leave to remain on humanitarian grounds from the Minister, arguing that FGM amounted to torture or inhuman and degrading treatment and that returning her to Nigeria would violate the State's obligations under Article 3 of the ECHR and Article 1 of the UN Convention against Torture. These obligations are incorporated into Irish law by Section 3 of the ECHR Act 2003 and Section 5 of the *Refugee Act, 1996*. The Applicant furnished the Minister with comprehensive submissions on the incidence of FGM in Nigeria. The Minister rejected her application, stating that the provisions of Section 5 of the Act of 1996 had been complied with. The Minister did not address the material submitted by the Applicant or respond to her claim that she was personally at risk. Leave to apply for judicial review was refused by the High Court which, applying the standard of review for reasonableness in *O'Keeffe v. An Bord Pleanála* [that an administrative decision may only be set aside for unreasonableness if it is fundamentally at variance with reason and common sense] concluded that the Minister's decision was not unreasonable. The High

¹⁸³ Department of Justice and Law Reform (2011). Annual Report 2010. Available at www.justice.ie.

Court granted leave to appeal against this decision, and the appeal was heard by the Supreme Court.

By a majority of three to two, the Supreme Court held that in assessing the reasonableness of administrative decisions in cases affecting fundamental rights, the courts are entitled to consider the proportionality of the decision. In his majority judgment, Fennelly J. held that the Supreme Court was not altering the existing test laid down in *O’Keeffe*. Denham J., also for the majority, found that the *O’Keeffe* test had been construed too narrowly and that judicial review had to be an effective remedy. She said that where fundamental rights are factors in a review, they are relevant in analysing the reasonableness of the decision. She further noted that an assessment of proportionality was inherent in any analysis of reasonableness. The Chief Justice found that the Minister’s decision was unacceptably vague and opaque. The majority concluded that there were substantial grounds to believe that Minister’s failure to give reasons for his decision rendered it unreasonable. Leave to seek judicial review was granted, and the Supreme Court remitted the matter to the High Court.

7.1.4.2 Fair Procedures and the Role of Presenting Officers at Asylum Appeal Hearings

F.K.S. v. Refugee Appeals Tribunal and Minister for Justice, Equality and Law Reform [2010] IEHC 137, High Court, 2 March 2010

The Applicant was a national of Cameroon who claimed asylum in Ireland. The Refugee Applications Commissioner recommended that he not be declared a refugee, and this recommendation was affirmed on appeal by the Refugee Appeals Tribunal (RAT). At the RAT hearing, there was no appearance by a representative of the Commissioner (usually known as a Presenting Officer). The Applicant’s Counsel had applied for an adjournment on the basis that the Tribunal had no jurisdiction to proceed with the hearing of an appeal without a Presenting Officer. The RAT refused this application and proceeded to hear the appeal. The Applicant sought to have the decision of the RAT quashed on the basis that the Tribunal had erred in proceeding with his appeal despite the fact that there was no appearance by a representative of the Commissioner at the oral hearing. Leave to seek judicial review was granted in October 2009.

On substantive hearing of the application, the High Court held that although the Commissioner was entitled to be represented and to participate at RAT appeal hearings, the absence of a Presenting Officer did not deprive the RAT of jurisdiction. The presence of a Presenting Officer was not indispensable if the Commissioner did not require one to be present in a specific case and if the Tribunal was satisfied that the hearing could properly be conducted without one. The Applicant’s application for judicial review was accordingly refused.

7.1.4.3 Fair Procedures and Failure to Put Material Information to an Asylum Appellant

P.S. and L.S. v. Refugee Appeals Tribunal and Minister for Justice, Equality and Law Reform [2010] IEHC 177, High Court, 11 May 2010

P.S. was born what was then the USSR in 1974. In 1992 he joined the large number of Jews from the former Soviet Union who emigrated to Israel. At the age of 18 he was conscripted into the Israeli Defence Forces for national service. He was called up every year for reserve training. In 2005 he served in the Occupied Palestinian Territories where he witnessed the killing of a civilian. When he was called up in 2006 he refused to serve. He was prosecuted and given a suspended sentence by an Israeli court martial. He left Israel in October 2006 with his wife, L.S. and came to Ireland to claim asylum. The Refugee Applications Commissioner recommended that he not be declared a refugee because his fear of returning to Israel and being obliged to take up military service was based on his combat experience and not a reason contemplated by the *Geneva Convention on the Status of Refugees, 1951* and the punishment he received for his refusal to serve was not persecution for the purposes of the Convention. The couple waived their right to oral appeal before the Refugee Appeals Tribunal because the facts of their cases were not disputed by the Commissioner. The Commissioner's recommendation was affirmed by the Refugee Appeals Tribunal, which relied on one of its own previous decisions, in which the same Tribunal member had traversed in detail the Israel policy with respect to conscientious objectors. This decision was not furnished to the Applicants in advance of the determination of their appeals. The High Court granted leave to challenge the decisions of the RAT with respect to their appeals by way of judicial review.

The High Court, in its judgment on the substantive application for judicial review, found that the previous RAT decision dealing with the treatment of conscientious objectors in Israel upon which the RAT relied in rejecting the Applicants' appeals was of such substance, importance and materiality that it ought to have been put to the legal representatives of the Applicants for comment before the appeals were determined.

7.1.4.4 Fair Procedures and Failure to Consider Medical Information Properly in an Asylum Appeal

R.M.K. v. Refugee Appeals Tribunal (Denis Linehan) and Minister for Justice, Equality and Law Reform, [2010] IEHC 367, High Court, 28 September 2010

The Applicant was a national of the Democratic Republic of the Congo (DRC) who had arrived in Ireland in 2003 as an asylum seeker. He stated that he was an editor at the State-controlled television network RTNC, and had been imprisoned and tortured as a result of broadcasts which connected Congolese President Joseph Kabila to a massacre in a refugee camp. The Refugee Applications Commissioner did not find his narrative credible and found no evidence of the

massacre referred to by the Applicant. A first appeal to the Refugee Appeals Tribunal was unsuccessful, but the recommendation of the Tribunal was quashed by the High Court and remitted for consideration by another Member. The Applicant's second appeal was heard in September 2008.

The Tribunal was furnished with medical reports which contained objective findings in relation to the injuries on the Applicant's body and described them as 'highly typical' and 'highly consistent or typical of' the maltreatment he described. The Tribunal was also supplied with evidence that there had in fact been a massacre at the refugee camp referred to by the Applicant and that President Kabila had been involved. Contradictory information relating to the closure of the prison in which the Applicant claimed to have been tortured was also before the Tribunal. In his decision, the Tribunal found held that there was a possibility that the prison in question had been closed since 2001 and that he was entitled to take this into account in assessing the Applicant's credibility. In view of his misgivings as to the Applicant's personal credibility, the Tribunal rejected the findings in the medical reports and dismissed the Applicant's appeal.

The Applicant obtained the leave of the High Court to challenge the Tribunal's decision by way of judicial review on the grounds that the Tribunal's finding with respect to the closure of the prison was irrational and that the manner in which the Tribunal dealt with the medical evidence was unlawful. In its judgment on the substantive application for judicial review, the High Court (Clark J.) held that while medical reports are rarely capable of providing clear corroboration of a claim, there are occasions when examining physicians report on objective findings and use language which attach a higher probative value to those findings. Such reports, the Court said, are capable in an objective way of supporting the claim. In such cases, clear and strong reasons must be given if the probative value of the report is to be rejected.

The Court found that the manner in which the medical evidence was rejected by the Tribunal was irrational and that the evidence had not been given adequate consideration. On the grounds that the Tribunal's finding as to credibility lacked the strength and clarity required to reject the findings in the medical reports, the Court granted an order of certiorari quashing the Tribunal's decision and remitting the appeal for reconsideration by another Tribunal Member.

7.1.4.5 Fair Procedures & the Record of the Asylum Interview

Hakizimana v. Minister for Justice and Others (Neutral Citation Outstanding)

The Applicant was an asylum seeker who sought to record his interview with the Refugee Applications Commissioner. He claimed that the purpose of making the tape recording was to enable him to have in his possession and for his use a verbatim record of the interview so that he would be in a position to challenge any inaccuracies that might emerge in the notes kept of the interview by the Authorised Officer, and in particular that he would have it available to him in any appeal he might bring in order to check and challenge any discrepancies or

inaccuracies which he felt might be contained in the report of the Commissioner. He was refused permission to do so, and his challenge to this decision was dismissed by the High Court. He appealed to the Supreme Court.

The Supreme Court (Murray C.J.) was satisfied that as a matter of general principle an Applicant is entitled to fair procedures which are appropriate to the nature and gravity of the issues which the deciding bodies have to consider and decide in accordance with the terms of the *Refugee Act 1996*, but noted that it is not the case that the standards to be observed in the asylum process are those of the criminal law or specifically criminal investigations and criminal trials. The Court outlined the procedural safeguards available to the Applicant and on the basis of these, was satisfied that it could not be said that the failure to provide or enable a verbatim record of an interview constituted a denial or breach of the Applicants right to Constitutional justice. Accordingly, the appeal was dismissed and the judgment of the High Court was upheld.

7.1.4.6 Vexatious Litigation

O.J and T.J. and Refugee Applications Commissioner and Others [2010] IEHC 176, High Court, 29 April 2010

The Applicants were Nigerian nationals and asylum seekers, who arrived in Ireland in 2007 to join their mother who had been granted residence under the IBC/05 scheme. In January 2008 she erroneously made applications for refugee status on their behalf. The Refugee Applications Commissioner recommended that they not be declared refugees. An appeal against this recommendation was filed on their behalf. The Applicants then wrote to the Respondents to clarify that they sought to be reunified with their mother and were not seeking asylum. In February 2008 they brought judicial review proceedings seeking to have the applications recognised as being based on their wish to be reunified with their mother rather than being claims for refugee status.

When the matter came before the High Court, Cooke J. found that the application was fundamentally misconceived. He found that applications for asylum had been made to the Commissioner and that the Commissioner had no option but to process and examine them. There was no evidence of any mistake on the part of the Commissioner and there was no basis upon which the report on the Commissioner's investigation of the application could be interfered with as unlawful in those circumstances. As no decision had been made on foot of the report by the Minister, it was unnecessary to seek to quash the report. All that was required was a letter to be written to the Minister pointing out that there had been a mistake, and that no declaration as to refugee status was necessary or appropriate and that the file could be considered as withdrawn and closed. Because of this failure on the part of the Applicants and the fact that the judicial review ought not to have been initiated or continued, the Judge found that the Respondents were entitled to recover their costs against the Applicants. The Court also found that there had been a clear default in the discharge of the duty

owed by legal practitioners to the Court in commencing and continuing the litigation, though it was not suggested that the Applicants' solicitors were guilty of gross negligence. Cooke J. found that costs had been incurred without reasonable cause and he awarded the costs of the proceeding to the Respondents as against the Applicants and ruled that the solicitors for the Applicants indemnify them in respect of the amount of those costs.

7.2 DEVELOPMENTS FROM THE EU PERSPECTIVE

With regard to the ***European Pact on Immigration and Asylum***, Ireland attended the first meeting of the European Asylum Support Office (EASO) in Malta in November 2010 (IV(c) solidarity with MS which are faced with specific and disproportionate pressures on their national asylum systems). In accordance with Article 3 of the Protocol on the Position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union (TEU) and to the TFEU, during 2009 Ireland indicated its intention to take part in the adoption and application of *Regulation 439/2010 of 19 May 2010 establishing a European Asylum Support Office*. The Refugee Applications Commissioner is the representative for Ireland on the EASO Management Board.

Ireland continued to participate in the Resettlement Programme for vulnerable refugees in conjunction with UNHCR during 2010 with an annual quota of 200 persons. Refugees are selected for resettlement during the quota year but in many cases may not arrive in Ireland until the following year. During 2010 some 20 refugees were admitted to Ireland under the Resettlement Programme with the majority approved for resettlement during 2010 (17 cases) (IV(d) *strengthen cooperation with the Office of the United Nations High Commissioner for Refugees to ensure better protection for people outside the territory of European Union Member States who request protection, in particular by moving, on a voluntary basis, towards resettlement within the European Union*).

7.2.1 Case Law Regarding International Protection of EU Relevance

7.2.1.1 Cases with Relevance to Regulation (EC) No. 343/2003

7.2.1.1.1 Preliminary Reference to the Court of Justice on Article 3(2) of the Dublin Regulation (The 'Sovereignty' Clause)

M.E. v. Minister for Justice, Equality and Law Reform and Anor and Four Other Greek Transfer Cases

In July 2010, the High Court referred to the Court of Justice of the European Union five cases relating to transfers of asylum seekers from Ireland to Greece under the Dublin Regulation. The cases arose out of widespread concerns that the Greek asylum system was seriously deficient in its procedures and in its treatment of persons seeking asylum. The Court asked two questions of the European Court:

- (1) Is the transferring Member State under Council Regulation (EC) No 343/2003 obliged to assess the compliance of the receiving Member State with Article 18 of the *Charter of Fundamental Rights and Freedoms of the EU*, Council Directives 2003/9/EC, 2004/83/EC and 2005/85/EC and Council Regulation (EC) No 343/2003?
- (2) If the answer is yes, and if the receiving Member State is found not to be in compliance with one or more of those provisions, is the transferring Member State obliged to accept responsibility for examining the application under Article 3(2) of Council Regulation (EC) No 343/2003?

The Court (Clark J.) made the preliminary reference in judicial review proceedings taken by five asylum seekers seeking to challenge transfer orders to Greece made by the Minister for Justice. The Applicants were nationals of Afghanistan, Iran and Algeria. The Applicants did not deny that they entered the EU through Greece, but alleged that the Greek asylum system was unfair and inhumane. The UNHCR, Amnesty International and the AIRE Centre (the Advice on Individual Rights in Europe Centre, a British NGO) acted as amici curiae before the High Court.¹⁸⁴

It was reported in *The Irish Times* that at the time of the reference there were up to 40 reviews pending in the High Court against transfer orders to Greece made under the Dublin Regulation.¹⁸⁵

7.2.1.1.2 Article 16(2) of Regulation (EC) No. 343/2003

A.W. v. Minister for Justice, Equality and Law Reform and Anor [2010] IEHC 258 High Court, 2 July 2010

A.W., a national of Pakistan, applied ex parte for an interim injunction to restrain his transfer under to the UK under the Dublin Regulation. He had applied for asylum in Ireland but it was subsequently discovered that he had held a visa issued by the UK in September 2008 for two years. The UK acceded to Ireland's request to take charge of the Applicant's asylum application under the terms of Article 9.2 of the Regulation. The applicant objected that he had been out of the territory of the UK for more than three months since he last entered the UK and that the UK entry visa in his passport was not a valid residence document; in the sense of Article 16(3) of the Regulation. He further submitted that the information given to the UK in the exchanges which took place between the UK and Ireland had not mentioned the Applicant's claim to have spent more than three months outside the UK.

The Court refused the application for an interim injunction on the grounds that the Applicant's claim to have been outside the UK for in excess of three months was not relevant because he was in possession of a valid UK residence document.

¹⁸⁴ Advocate General Trstenjak gave her opinion in the case (Case C-493/10 *M.E. v The Refugee Applications Commissioner*) on 22 September 2011. The Grand Chamber of the Court is to give its decision on 21st December 2011. The Court of Justice joined the case with a similar reference from the United Kingdom (Case C-411/10 *N.S. v The Secretary of State for the Home Department*).

¹⁸⁵ *The Irish Times* (30 July 2010). *Asylum Appeal Case Referred to European Justice Court*. Available at www.irishtimes.com.

The issue rather was whether the Applicant was in possession of one of the documents which created a connection between him and a particular Member State other than the one in which he had lodged the asylum application. In addition, Cooke, J. stated that were it not for the fact that the Court was satisfied that no fair issue to be tried as to the validity of the transfer order had been made out, the Court would have exercised its discretion to refuse to entertain the application on the basis of the Applicant's lack of candour.

7.2.1.1.3 Time Limit under Article 20 of the Regulation (EC) No 343/2003

A.W. v. Minister for Justice, Equality and Law Reform [2010] IEHC 90, High Court, 13 January 2010

The Applicant was a national of Algeria who came to Ireland and claimed asylum in August 2005. He did not disclose that he had been refused asylum in Britain in 2003. When this fact was discovered, a request was made to the UK to accept his return pursuant to Article 16(1) of the Dublin Regulation. That request was accepted and the Refugee Applications Commissioner determined that Mr. W. should be transferred to the UK. A transfer order to this effect was made by the Minister pursuant to Article 7 of the *Refugee Act 1996* (S. 22) Order 2003 [which gives the Minister power to make transfer orders] in October 2005. The Commissioner's determination was appealed unsuccessfully to the Refugee Appeals Tribunal. Mr. W's lawyers asked the Minister not to transfer Mr. W. on the grounds of his ill-health – it was claimed that he suffered extreme psychological problems as a result of trauma caused by torture – but these representations were rejected by the Minister. The Minister's decision was challenged by way of judicial review, but was settled between the parties. The Minister agreed to consider further submissions by Mr. W.'s lawyers. These submissions were considered but the transfer order made in October 2005 was confirmed in August 2009. Mr. W. sought the leave of the High Court to challenge the transfer order and the decision to confirm it on the grounds a) that the transfer order had lapsed after six months and b) that the Minister had failed adequately to consider the medical evidence submitted on his behalf. Leave was granted on the grounds that he had raised sufficient arguable doubts about the continuing enforceability of the transfer order having regard to Article 20 of the Dublin Regulation, which deals with the time limits in which transfer orders should be executed.

7.2.1.1.4 Article 21 of Regulation (EC) No 343/2003

E.C. and N.O.C (a minor) v. Minister for Justice, Equality and Law Reform and the Refugee Applications Commissioner; and B.B.N. v. Minister for Justice, Equality and Law Reform and the Refugee Applications Commissioner, [2010] IEHC 304, High Court, 23 July 2010

The Applicants were a Congolese family who sought asylum in Ireland in April 2007. E.C. and B.B.N were husband and wife, N.O.C., their son. They claimed

refugee status in Ireland on the grounds of political persecution in the Congo. B.B.N had fled to Belgium in 2005 and claimed asylum there, only to withdraw her claim when she believed it was safe to return to the DRC. Finding herself and her family the target of renewed persecution, the family fled again, this time to Ireland. When her claim was heard by the Refugee Applications Commissioner, B.B.N. asked that a copy of her Belgian file be obtained. This request was refused on the grounds that under the Dublin Regulation such information could only be obtained for the purposes of establishing which Member State was responsible for the examination of the Application. A negative recommendation was made by the Commissioner in her case and in that of her husband and son, whose claims were heard together. Both E.C. and B.B.N. obtained the leave of the High Court to challenge these recommendations on a variety of grounds. In B.B.N.'s case, these grounds included the failure of the Commissioner to obtain a copy of her Belgian file based on a flawed understanding of Article 21 of the Dublin Regulation.

The High Court quashed the Commissioner's recommendation in B.B.N.'s case because the Commissioner had failed to consider the evidence she had given which predated her flight to Belgium and on the grounds that he had adopted an erroneous interpretation of Article 21 of the Dublin Regulation. The Court noted that this provision entitled but did not require the Commissioner to request access to B.B.N.'s Belgian file from the Belgian government. Her husband's claim was not successful because the matters he complained of could, in the judgment of the Court, be adequately addressed upon appeal to the Refugee Appeals Tribunal.

7.2.1.2 Cases with Relevance to Council Directive 2004/83/EC

Subsequently, on 3 February 2011, the Minister for Justice promulgated the *European Communities (Asylum Procedures) Regulations 2011 (S.I. 51 of 2011)* and the *Refugee Act 1996 (Asylum Procedures) Regulations 2011 (S.I. 52 of 2011)*. These Regulations are intended to give effect to the 'Procedures Directive' in Irish law, particularly with respect to the conduct of personal interviews, the provision of interpreters and the treatment of unaccompanied minors in the asylum system. On 7 April 2011 the Court of Justice of the European Union declared that Ireland had failed to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2005/85/EC, The Court's decision was based on the legislative situation prior to the promulgation of the February 2011 statutory instruments.

7.2.1.2.1 *Subsidiary Protection Claims Cannot be Made by Applicants with a Deportation Order Made Before Transposition of Council Directive 2004/83/EC*

Enitan Pamela Izevbekhai & Ors v. Minister for Justice, Equality and Law Reform, 2010 [IESC] 303 Supreme Court, 9 July 2010

The family, all Nigerian citizens, arrived in Ireland in 2005. Ms. Izevbekhai applied for declarations of refugee status on her own behalf and on behalf of her daughters. The basis of her claim for refugee status was that she was in fear for her own life and the lives of her daughters if they were returned to Nigeria, as a result of threats from the family of her husband to carry out female genital mutilation on her daughters. She claimed that an elder daughter had died in Nigeria as a result of complications arising from female genital mutilation.

Their applications for refugee status in Ireland were refused, and they made representations to the Minister for leave to remain in the State. These representations were rejected and the Minister made deportation orders in respect of the family in November 2005. Ms. Izevbekhai went into hiding and her children were taken into care by the Health Service Executive (HSE). She was later apprehended by Gardaí and placed in detention.

The family obtained the leave of the High Court to challenge the deportation orders by way of judicial review but the substantive applications were refused by the High Court in January 2008. In March 2008, they made applications to the Minister for subsidiary protection pursuant to the *European Communities (Eligibility for Protection) Regulations 2006*, transposed into Irish law the provisions of the Qualifications Directive. Regulation 3(1) states that the Regulations apply to specific protection decisions made on or after the coming into operation of the Regulations on 10 October 2006. The list of decisions includes the notification of an intention to make a deportation order under Section 3(3) of the *Immigration Act 1999* in respect of a person to whom subsection 2(f) of that Section relates; that is, a person whose application for asylum has been refused by the Minister. Regulation 4(1) makes provision for an application for subsidiary protection by such a person. Regulation 4(2) provides that the Minister shall not be obliged to consider an application for subsidiary protection from a person other than a person to whom Section 3(2)(f) of the 1999 Act applies or which is in a form other than that mentioned in paragraph (1)(b).

In his decision on these applications in March 2008, the Minister referred to recent High Court decisions which he summarised as interpreting the Regulations to the effect that the Minister had a discretion under Regulation 4(2) to accept and consider an application for subsidiary protection from an applicant who a) does not have an automatic right to apply (i.e. whose deportation order is dated prior to the coming into force of the Regulations on 10 October 2006) and b) has identified new facts or circumstances which demonstrate a change of position from of that at the time the deportation order was made. The Minister decided that, in the circumstances of the case before him, there were no new facts or circumstances which demonstrated a change of position from of that at the time the deportation order was made and therefore no grounds which would enable him to exercise his discretion.

In March 2008 the High Court (Edwards J.) granted the family leave to apply for judicial review of the Minister's decision not to exercise his discretion under

Regulation 4(2) and to refuse to consider their applications for subsidiary protection. An interlocutory injunction restraining the deportation of the family pending the determination of the proceedings was also granted. In January 2009, the High Court (McGovern J.) delivered judgment on the family's application for judicial review of the Minister's decision to refuse subsidiary protection. The Court applied the interpretation of Regulation 4(2) adopted in the judgment of the High Court (Feeney J.) in *N.H. v. Minister for Justice, Equality and Law Reform* to the effect that Regulation 4(2) had conferred discretion on the Minister to grant subsidiary protection provided that he was satisfied that there were such new or altered facts or circumstances that a change had taken place in the position of the family from that which prevailed at the time the deportation order was made. The High Court was satisfied that the allegedly new material relied upon by the family did not show altered circumstances or new facts but merely amounted to amplification of the case which had been made by the family and, in some cases, corroboration of it. The Court held that there had been nothing irrational in the Minister's decision to conclude that there were no grounds for him to exercise his discretion under Regulation 4(2) of the 2006 Regulations. The Court also held that the Minister had given sufficient reasons for his decision and that he had not improperly fettered his own discretion.

The family appealed this decision to the Supreme Court. The Supreme Court invited the parties to address, as a preliminary issue, whether the Regulations conferred on the Minister a discretion to grant subsidiary protection other than in the cases provided for - specifically a discretion to consider applications from persons in respect of whom deportation orders were made prior to 10 October 2006 where new circumstances were shown to exist.

By a majority of four to one, the Supreme Court (Fennelly J., with whom Murray C.J., Hardiman and Macken JJ. concurred) held that there was no basis in the language of Regulation 4(2), read either alone or together with related provisions which can justify the implication of a discretion to reopen or reconsider deportation orders made prior to 10 October 2006 in response to an application from the subject of such an order for subsidiary protection. Fennelly J. stated that the Regulations, and the Directive which they transpose, conferred a right as from 10 October 2006 to be considered for subsidiary protection on the defined category of persons but that they said nothing about persons in respect of whom deportations have been made prior to that date. He concluded that neither the Regulations nor the Directive conferred on the Minister any discretion to reopen or reconsider a deportation order made prior to 10 October 2006 in response to an application from the subject of such an order for subsidiary protection. In deciding the preliminary issue, the majority effectively dismissed the appeal. In her dissenting opinion, Denham J. wrote that the Regulations establish two situations, one where the Minister is obliged to consider an application for subsidiary protection and another where he is not. She said that the Minister has a discretion to consider applications other than those specifically specified in Regulation 4(2).

7.2.1.2.2. Determinations of Credibility Should be Clear in Asylum Appeal Decisions

W.M.M. v. Refugee Appeals Tribunal (Michelle O’Gorman) and the Minister for Justice, Equality and Law Reform, [2009] IEHC 249 and [2010] IEHC 11, November 2009 and 23 April 2010

The Applicant was a Nigerian national who had travelled to Ireland in order to claim refugee status. She claimed to have been the victim of sexual abuse at the hands of her father and his friends throughout her adolescence. The Refugee Applications Commissioner recommended that she not be declared a refugee. An initial appeal to the Refugee Appeals Tribunal was unsuccessful, but this decision was vacated by agreement. Her appeal was reheard, but was unsuccessful. The Tribunal concluded the Applicant would be able to relocate to Port Harcourt in order to avoid her father and his associates and that, in any event, State protection would be available to her. The High Court (Cooke J.) granted leave to challenge the Tribunal’s decision by way of judicial review on two grounds:

- (1) that in concluding that the Applicant was not a refugee because her claimed risk of persecution could be avoided by internal relocation in Nigeria, the Tribunal erred in law and in complying with the requirements of Regulation 7 of the European Communities (Eligibility for Protection) Regulations 2006 and with the duty to adhere to fair procedures by (a) failing to identify a part of the country as a site for relocation and to conduct the necessary enquiries to verify whether it was a place where the applicant could be reasonably expected to stay without fear of being persecuted or real risk of suffering serious harm; and (b) identifying Port Harcourt for that purpose only after the appeal hearing without such inquiries and without affording the applicant an opportunity of commenting thereon; and
- (2) that in concluding that the Applicant ought not to be declared a refugee because State protection might reasonably be forthcoming to her on return to Nigeria if required, the Tribunal erred in law and applied a wrong legal test in that regard and failed to apply correctly Regulation 5(2) of the said Regulations, having regard to the applicant's personal history and to the effect of the country of origin information as to the ineffectiveness of state protection for victims of rape and sexual abuse.

Upon substantive hearing of the application for judicial review, the High Court (Clark J.) was concerned that the issue of whether the Tribunal addressed the question of whether there were any compelling reasons arising out of previous persecution that might warrant a determination that the Applicant was eligible for protection could not fully be explored because it was not clear from the decision that the Tribunal actually found the Applicant to have been credible in relation to her description of past persecution. The Court stated that if an applicant is found to be entirely credible, then this ought to be stated and that, unless the determination of credibility is spelled out, it can be difficult, if not impossible to assess the validity of a Tribunal decision. The Court said that the

opacity of the decision on the issue of credibility also impeded the assessment of whether the Tribunal Member considered the reasonableness of internal relocation by reference to the Applicant's personal circumstances. On the grounds that the Court could not ascertain fully why the appeal failed, the Tribunal's decision was quashed.

7.2.1.2.3 Importance of Asylum Applicants Showing a Want of State Protection in their Country of Origin

A.Q.S. and K.I.S. v. Refugee Applications Commissioner [2010] IEHC 421, High Court, 23 November 2010

The Applicants were Azeri nationals (husband and wife), who applied for and obtained asylum status in Poland in April 2006. Mr. S. was a journalist who became editor in chief of a prominent opposition newspaper in Azerbaijan in 1994. He complained that during his tenure as editor he was subjected to assaults, threats and blackmail and that agents of the Azeri security forces made an attempt on his life. It was against this background that the couple left Azerbaijan and went to Poland, where they applied for and were granted asylum status. The affidavits supplied by the couple in these proceedings chronicled their treatment in a Polish refugee camp which was 'hard and decidedly unpleasant'. While in Poland, the couple maintained that they were being watched on behalf of the Azeri Government. They left and came to Ireland, where they claimed asylum again. The Refugee Applications Commissioner refused to process their claims, and they sought to have that decision quashed by the High Court.

The High Court (Hogan J.) considered that if the issue in this case solely turned on the question of whether the applicants alleged that they were at risk if returned, then it would have been inevitable that the impugned decision would have to be quashed, since it would have been incumbent on the Commissioner to investigate the credibility of these claims. However, the Court placed emphasis also on the fact that the couple made no attempt to inform the Polish authorities and to invoke their protection in respect of the events that occurred there. The Court held that it is not enough for an applicant to simply allege a fear of persecution: he/she must go further and must generally show that the state in question is either not disposed to granting reasonable protection, or, perhaps, is simply not in a position to do so. The Court noted that there has been no attempt by the Applicants to show that Poland was not in a position to provide some degree of protection. On this basis, the Court concluded that the Applicants could not claim to have a fear of persecution as refugees. For these reasons, the Court upheld the Commissioner's decision.

7.2.1.2.4 Notable Case Law from the European Court of Justice on Directive 2004/83/EC

Case C-175/08 Abdulla re Article 11(1)(e) of Directive 2004/83 & Revocation

In its judgment of 2 March 2010 in *Case C-175/08 Abdulla*, the Grand Chamber of the Court of Justice ruled on the correct interpretation of Article 11(1)(e) of Directive 2004/83/EC. The case involved five Iraqi appellants who had been declared refugees in Germany, but whose status was later revoked as a result of changed circumstances in Iraq. The Grand Chamber ruled, inter alia, that Article 11(1)(e) of Directive 2004/83/EC must be interpreted as meaning that refugee status ceases to exist when the circumstances on the basis of which refugee status was granted have undergone a significant, non-temporary change in the country of origin such that the circumstances which justified the fear of persecution no longer exist, and the competent authorities are able to ensure the necessary protection for that person. The Court emphasized that it is necessary to verify the existence of an effective, accessible, legal system for the detection, prosecution and punishment of acts constituting persecution.

Case C-31/09 Bolbol re Article 12(1)(a) of Directive 2004/83 & Palestinian Refugees

In its judgment in *Case C-31/09 Bolbol*, 17 June 2010, the Grand Chamber of the Court of Justice of the European Union considered a preliminary reference from Hungary in respect of the correct interpretation of Article 12(1)(a) of Directive 2004/83/EC, under which persons who have received protection from an organ or agency such as the United Nations Agency for Palestine Refugees (UNRWA), but for whom this protection has ceased without their position being definitively settled, are ipso facto entitled to protection under the Directive. Ms. Bolbol, a Palestinian stateless person, claimed she was entitled to the protection referred to by the provisions of Article 12(1)(a) of Directive 2004/83/EC, notwithstanding that she had not herself availed of the assistance of UNWRA. The Grand Chamber ruled that, for the purposes of the first sentence of Article 12(1)(a) of Directive 2004/83/EC, a person receives protection or assistance from an agency of the United Nations other than UNHCR, when that person has actually availed himself of that protection or assistance. The Court did not rule on whether, as Ms. Bolbol claimed, a person covered by the scope of Article 1D of the Geneva Convention should be automatically granted refugee status by virtue of this fact alone.

7.2.1.3 Cases with Relevance to Council Directive 2005/85/EC

7.2.1.3.1 Accelerated Procedures & Effective Remedy

H.I.D. v. Refugee Applications Commissioner and Ors; and B.A. v. Refugee Applications Commissioner and Ors (aka Dokie and Ajibola) [2010] IEHC 172, High Court, 19 January 2010

The Applicants in these linked cases were Nigerian asylum seekers who sought leave to challenge decisions of the Refugee Applications Commissioner (and in

the B.A. (Ajibola) case, of the Refugee Appeals Tribunal by way of judicial review. Two important legal issues were raised before the Court in both cases: firstly, is the direction given by the Minister under Section 12(1) of the *Refugee Act 1996* that priority be given to applications for asylum by nationals of Nigeria lawful having regard to the provisions of the 'Procedures Directive' and in particular, the requirement of a minimum standard of processing and scrutiny; and secondly, do the existing arrangements under the *Refugee Act 1996* as provided by appeal to the RAT from the recommendation of the RAC, or by the availability of judicial review by the High Court, constitute an 'effective remedy before a court or tribunal' as required by Article 39 of the 'Procedures Directive'. The High Court was satisfied that both issues raised by the Applicants met, in principle, the threshold of 'substantial grounds' set down by Section 5 of the *Illegal Immigrants (Trafficking) Act 2000*.¹⁸⁶

¹⁸⁶ The substantive application for judicial review was dismissed by the High Court (Cooke J.) on 9 February 2011. The applicants subsequently sought to appeal the matter to the Supreme Court, and in that context the High Court, which was required to certify certain matters raised as matters of exceptional public importance in the public interest in order for an appeal to be made, then referred the following questions to the Court of Justice of the EU in order to determine the request for a certificate:

- Is a Member State precluded by the provisions of Council Directive 2005/85/EC of 1 December, 2005, or by general principles of European Union Law from adopting administrative measures which require that a class of asylum applications defined on the basis of the nationality or country of origin of the asylum applicant be examined and determined according to an accelerated or prioritised procedure?
- Is Article 39 of the above Council Directive when read in conjunction with its Recital (27) and Article 267 TFEU to be interpreted to the effect that the effective remedy thereby required is provided for in national law when the function of review or appeal in respect of the first instance determination of applications is assigned by law to an appeal to the Tribunal established under Act of Parliament with competence to give binding decisions in favour of the asylum applicant on all matters of law and fact relevant to the application notwithstanding the existence of administrative or organisational arrangements which involve some or all of the following:
 - The retention by a government Minister of residual discretion to override a negative decision on an application;
 - The existence of organisational or administrative links between the bodies responsible for first instance determination and the determination of appeals.

Chapter 8

Unaccompanied Minors (and Other Vulnerable Groups)

8.1 DEVELOPMENTS WITHIN THE NATIONAL PERSPECTIVE

8.1.1 Unaccompanied Minors

Some 37 unaccompanied minors applied for asylum in Ireland during 2010.

On a national level, activities outlined under commitments in the 2009 *Joint Protocol on Missing Children*¹⁸⁷ and the *Implementation Plan from the Report of the Commission to Inquire into Child Abuse, 2009*¹⁸⁸ continued. The termed 'equity of care' policy contained within the Implementation Plan sought to end the use of separate hostels for unaccompanied minors and to accommodate them 'on a par with other children in the care system by December 2010'. During 2010 a national policy regarding unaccompanied minors came into operation in which minors over 12 years are assessed for a maximum of six weeks at a centre in Dublin before dispersal to a foster placement. From January 2010, all newly arriving children under 12 years were placed on arrival in a foster care placement. All newly arrived minors over 12 years were placed in one of the four registered residential intake units for four to six weeks, where a preliminary assessment of the minor and their needs is carried out by a social worker in conjunction with qualified residential social care staff, with input from a psychologist if required. All unaccompanied minors are allocated a social worker on arrival, with an initial care plan developed in conjunction with social/care staff. Input regarding an educational plan is provided by the Department of Education and Science. Medical assessments also take place, with a referral to specialist services if necessary.

¹⁸⁷ Health Service Executive (July 2009). *An Garda Síochána and Health Service Executive Joint Protocol on Missing Children*. Available at http://www.hse.ie/eng/services/news/2009_Archive/April_2009/An_Garda_S%C3%A0Dochana_and_Health_Service_Executive%C2%A0_%C2%A0JOINT_PROTOCOL_ON_MISSING_CHILDREN.html. The Protocol sets out the roles and responsibilities of both agencies in relation to children missing from State care, including unaccompanied minors. The Protocol outlines arrangements for addressing issues relating to children in State care who go missing, and sets out the actions to be taken by both organisations when a missing child in care report is made to An Garda Síochána.

¹⁸⁸ Office of the Minister for Children (2009). *Implementation Plan from the Report of the Commission to Inquire into Child Abuse, 2009*. Available at http://www.omc.gov.ie/documents/publications/Implementation_Plan_from_Ryan_Commission_Report.pdf. The Plan contains a review of the number of, and care provisions for, unaccompanied minors. A commitment is made to allocate a social worker to unaccompanied minors in care, and for them to be placed in 'accommodation suitable for their needs and inspected like any other children's hostels'.

Two hostels closed in July 2010 and the remaining two closed on 31 December.¹⁸⁹ By the end of 2010 (1 December), 35 unaccompanied children were living in foster placements, 24 in children's homes, 15 in hostels and 20 in supported lodgings.¹⁹⁰ As highlighted in the Children's Rights Alliance *Report Card 2011*,¹⁹¹ central to this policy of foster placement is that they will be sourced on a national basis with responsibility transferred to the corresponding local community care area team. The Report Card has also called for training, expertise and support for these foster placements, particularly for 'foster families, social workers, teachers and others at the community level'. Regarding provisions for identifying and providing support for minor victims of trafficking, the Health Service Executive (HSE) includes an assessment of the minor as being a victim of trafficking as part of their initial social work assessment. The Joint Protocol is followed when children or young people are reported missing and the Garda website is utilised where appropriate.

In figures released in January 2011, the Health Service Executive (HSE) stated that 11 unaccompanied minors went missing from State care during 2010. Of this number, six minors are still missing. The missing minors were from a diverse range of countries including Nigeria, Somalia, Afghanistan and the Democratic Republic of Congo. The report noted that of a total of 512 minors who had gone missing from care between 2000 and 2010, some 72 have been found by authorities. The HSE attributed the reduction in minors missing from State care during 2010 as due to the closer cooperation between the GNIB and the HSE as outlined in the 2009 Joint Protocol, and including '*fingerprinting of underage people presenting at ports; collaborative interviewing between social workers and Gardaí; and greater surveillance of children at risk of going missing at ports*'.¹⁹²

During 2010, inter-agency separated children training was provided by UNHCR to staff in the Office of the Refugee Applications Commissioner (ORAC), the Health Service Executive (HSE), the Refugee Legal Service (RLS) and the Refugee Appeals Tribunal (RAT). The objective of this training was to equip staff to deal 'sensitively and appropriately' with unaccompanied minors during the refugee status determination process.¹⁹³

8.1.1.1 'Aged-out Minors'

The issue of 'aged-out' minors turning 18 years continued to prompt significant debate during 2010. Both the Children's Rights Alliance and Barnardos¹⁹⁴ have called for additional support for unaccompanied minors upon turning 18 years and their transfer from care to direct provision accommodation. In publications related to 2010, both organisations highlighted the difficulties experienced by

¹⁸⁹ Parliamentary Question No.585 (12 January 2011).

¹⁹⁰ The Irish Times (10 January 2011). '*Eleven minors pursuing asylum go missing*'. Available at <http://www.irishtimes.com/newspaper/ireland/2011/0110/1224287156483.html>.

¹⁹¹ Children's Rights Alliance (2011). *Report Card 2011*. Available at www.childrensrights.ie.

¹⁹² Ibid.

¹⁹³ Office of the Refugee Applications Commissioner.

¹⁹⁴ Barnardos (October 2010). *Aftercare for Separated Children*. Available at <http://www.barnardos.ie/assets/files/what-we-do/Barnardos%20Paper%20on%20Aftercare%20for%20Separated%20Children.pdf>.

unaccompanied minors with regard to this policy of dispersal, including loss of geographical familiarity, loss of support from voluntary organisations which had been working with the minor in their previous location, adjustment to the culture of living in direct provision and vulnerability to the risk of going missing, prostitution and trafficking. Regarding unaccompanied minors missing from care, the Children's Rights Alliance Report Card calls for an urgent protocol between the Health Service Executive (HSE) and An Garda Síochána in relation to the 'accommodation, care and protection of victims, or suspected victims, of child trafficking'.¹⁹⁵

Parliamentary and media debate regarding the removal of unaccompanied minors from State schools in Dublin upon turning 18 years took place during 2010. In an Oireachtas Committee meeting in April 2010, politicians from a variety of political parties cited cases whereby unaccompanied minors were dispersed from accommodation in Dublin to regional accommodation upon turning 18 years, in cases before they had finished State exams. Incidences of 'aged-out' minors subsequently being unable to re-register in a new school due to their age were cited. The Health Service Executive (HSE) stated that it was not their general policy to disperse 'aged-out minors' in the middle of an academic year when it was 'established they were engaged in academic work'.¹⁹⁶ A related case later in the year saw four 'aged-out minors' take a legal case to seek injunctions from the High Court against the HSE to allow them to return to their previous school in Dublin to complete their Leaving Certificate exam. The case was unsuccessful.

8.1.1.2 Case Law Regarding Unaccompanied Minors

S.O. (a minor) v. Minister for Justice, Equality and Law Reform and Michelle O'Gorman, Refugee Appeals Tribunal [2010] IEHC 151, High Court, 5 February 2010

The Applicant was an Afghan national who arrived in Ireland in 2006 as an unaccompanied minor. He claimed asylum on the basis of a fear of persecution both by the Taliban and the new Afghan government. The Refugee Applications Commissioner recommended that he not be declared a refugee. His appeal against the Commissioner's recommendation was heard by the Refugee Appeals Tribunal in 2007. The Tribunal affirmed the Commissioner's recommendation on the grounds that the Applicant's claim was neither credible nor well-founded. The Applicant obtained the leave of the High Court to challenge the Tribunal's decision on the grounds that the Tribunal had paid insufficient regard to his young age in assessing his claim and that the Tribunal had failed to apply a liberal benefit of the doubt having regard to his age. On the grounds that the Tribunal had engaged in impermissible speculation and conjecture in relation to the Applicant's prospect of State protection in Afghanistan, the High Court (Edwards

¹⁹⁵ Children's Rights Alliance (2011). *Report Card 2011*. Available at www.childrensrighs.ie.

¹⁹⁶ As cited in The Irish Times (23 April 2010). 'Minors seeking asylum forced from schools when they turn 18'. Available at www.irishtimes.com.

J.) held that the Tribunal had imputed expectations to the Applicant without any consideration of his maturity or as to whether those expectations were realistic having regard to his maturity and particular circumstances. On the grounds that the Applicant had not been afforded a fair hearing and that a liberal benefit of the doubt had not been applied, the High Court quashed the decision of the Tribunal by Order of certiorari.

8.1.2 Migrant Women

A report by the NGO AkiDwA, *'Am Only Saying it Now': Experiences of Women Seeking Asylum in Ireland*, was published in March 2010.¹⁹⁷ Some 121 women living in direct provision accommodation centres participated in the research via focus group discussions. The report stated that many of the participants felt vulnerable in direct provision accommodation, and considered that 'women, children and/or individuals with special needs were in some cases living in unsafe or unsuitable accommodation'. The need to recognise the 'complexity or consequences' of bringing people from different cultures and nationalities was raised, as was the need to take into account previous experiences and sensitivities when placing in particular centres. Health and mental health risks were also highlighted, particularly regarding anxiety and depression with female residents in cases 'feeling pushed to their limits from the stress of the asylum process: non transparency of decision making processes, long waits for status determination, enforced inactivity, overcrowding and other difficult living conditions in accommodation centres'.

Key recommendations contained within the report include the introduction of gender guidelines in the asylum and reception process, with an integration of such guidelines into future immigration legislation; the introduction of a mandatory code of conduct, training and Garda vetting for all personnel working with individuals protection in the Direct provision accommodation system; regular training for service providers regarding protection issues and the prevention and response of abuse and exploitation; and the introduction of an independent complaint and redress mechanism for all persons seeking protection and residing within Direct Provision accommodation.

8.1.3 Domestic Violence

Much media and parliamentary discussion took place during 2010 regarding domestic abuse and immigration permission. Debate centred on cases where the victim of domestic violence is the dependant spouse¹⁹⁸ of the holder of an immigration permission and whose permission to remain in Ireland is dependent upon the existence of the relationship. It was debated that such cases result in a victim of domestic abuse being afraid to report incidents due to a fear of becoming undocumented. Organisations such as the Immigrant Council of Ireland

¹⁹⁷ AkiDwA (March 2010). *'Am Only Saying it Now': Experiences of Women Seeking Asylum in Ireland*. Available at www.akidwa.ie.

¹⁹⁸ Also relevant in cases of de facto relationships.

(ICI) have commented that there is serious concern that women stay in abusive relationships out of fear of losing their right to reside, being deported and possibly losing access to their children. Citing figures that suggest that domestic violence is a growing problem in immigrant communities, it was estimated that at least *'one-fifth of the women who use refuges, outreach and other domestic-violence support services on any single day are migrants'*.¹⁹⁹ In addition, the risk of ineligibility of victims of domestic violence for any welfare assistance due to their immigration status or because they fail to meet Habitual Residency Conditions (HRC) was cited as a potential barrier to seeking help, alongside a lack of awareness regarding rights.

While it has been acknowledged that Irish officials had been helpful with regard to issuance of an independent permission to remain in Ireland in cases where dependent spouses of employment permit holders experienced domestic abuse, in 2010 several NGOs called for administrative and legislative changes. The ICI called for a change in policy whereby the Irish Government adopts rules similar to that of Britain and Australia in providing migrant women with dependent immigration status their own independent status when they suffer domestic abuse. It also called for the direction of Community Welfare Officers (CWO) to grant welfare support to abused migrant women regardless of whether they satisfy the habitual residency conditions. In a parliamentary discussion in October 2010, a member of the Opposition Fine Gael party called upon the Minister for Justice and Law Reform to give *'serious consideration to granting an independent resident status to migrant women who are victims of domestic violence and who can no longer live with their husbands but who, if they leave home, are currently denied the right to either work or claim social welfare'* while highlighting a lack of relevant provisions in the draft *Immigration, Residence and Protection Bill 2010*.²⁰⁰

8.1.4 Health

Two updates regarding implementation of the *National Intercultural Health Strategy 2007-2012* were published during 2010. The updates outlined how three yearly priorities identified under the Health Service Executive (HSE) *National Service Plan for 2010* are relevant to intercultural health, namely:

- Setting up a Forum with the Department of Justice and Law Reform to progress discussions around the impact direct provision may have on the physical and mental health of asylum seekers and refugees
- Progressing health related recommendations of *Ireland's National Action Plan around Female Genital Mutilation*
- Progressing health related recommendations contained within the National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland.

¹⁹⁹ Safe Ireland figures as cited in The Irish Times (25 September 2010). *'My husband broke my cheekbone once. Another time he tried to strangle me'*. Available at www.irishtimes.com.

²⁰⁰ Alan Shatter T.D., Dáil Debate (6 October 2010).

The formation of Governance Group for Intercultural Health within the HSE also took place, which comprises membership of national and regional specialists for social inclusion and a range of key HSE personnel working in frontline services. A range of sub-groups were also formed with the remit to undertake 'priority pieces of work' in areas including direct provision, health screening and mapping of services.

Prioritised themes of strategy include translation and interpreting, where updates regarding training, resources and conferences were provided, and staff training and resources.

8.2 DEVELOPMENTS FROM THE EU PERSPECTIVE

On a national level, activities outlined under commitments in the 2009 *Joint Protocol on Missing Children*²⁰¹ and the *Implementation Plan from the Report of the Commission to Inquire into Child Abuse, 2009*²⁰² continued (5(a) *develop an action plan, to be adopted by the Council, on unaccompanied minors which underpins and supplements the relevant legislative and financial instruments and combines measures directed at prevention, protection and assisted return, Stockholm Programme*). Regarding assisted return, unaccompanied minors continued to be eligible to apply for assistance under the International Organization for Migration (IOM) Dublin Voluntary Assisted Return and Reintegration Programme (VARRP).

²⁰¹ Health Service Executive (23 July 2009). *An Garda Síochána and Health Service Executive Joint Protocol on Missing Children*. Available at http://www.hse.ie/eng/services/news/2009_Archive/April_2009/An_Garda_S%C3%A0Dochana_and_Health_Service_Executive%C2%A0_%C2%A0JOINT_PROTOCOL_ON_MISSING_CHILDREN.html.

²⁰² Office of the Minister for Children (July 2009). *Implementation Plan from the Report of the Commission to Inquire into Child Abuse, 2009*. Available at http://www.omc.gov.ie/documents/publications/Implementation_Plan_from_Ryan_Commission_Report.pdf.

Chapter 9

Global Approach to Migration

9.1 DEVELOPMENTS WITHIN THE NATIONAL PERSPECTIVE

Ireland operates a visa office in Nigeria which covers the Sub-Saharan Africa region. Within the remit of this office is a liaison function concerning national immigration authorities in the region. The office also promotes legal migration.

A cross-departmental Inter-departmental Committee on Development (IDCD) continued to meet during 2010. Taking place on a bi-annual basis, the Committee contains a representative of the Department of Justice and Law Reform which retains overall responsibility for migration matters.

During 2010 Ireland took part in an EU-led dialogue with India on migration. This represents the first such dialogue under the Global Approach to migration to which Ireland has contributed.

9.1.1 *Global Irish Economic Forum*

During 2010 activities under the auspices of the Global Irish Economic Forum continued. Convened in 2009, the Forum aimed primarily at 'developing a new and more strategic level of engagement with the most influential members of the Irish Diaspora' particularly with regard to contributing to overall efforts at economic recovery. Relevant individuals identified by both the main State Agencies and Ireland's Diplomatic Missions were invited to the 2009 Forum, and a report on proceedings and identified objectives was published by the Minister for Foreign Affairs on 13 October, 2009. Of note, while the initiatives outlined in the Forum Report were not formally endorsed by Government, an Inter-Departmental Committee of senior officials, chaired by the Secretary General to the Government, was established with the aim of examining and taking forward the recommendations contained in the Report. The Committee published Progress Reports in February and October 2010. As part of the follow up by Government, the Minister for Foreign Affairs advised all Diplomatic Missions to develop local Diaspora Strategies 'aimed at supporting and enhancing engagement with local Irish community across a number of key sectors'.²⁰³ It was also acknowledged that there is now 'acceptance across Government and in the private sector that deeper engagement with our Diaspora can play a valuable role in policy and business strategy development'. A permanent global network of

²⁰³ Department of Foreign Affairs (October 2010). *The Global Irish Economic Forum - One Year On*. Available at www.globalirishforum.ie.

identified, influential members of the Diaspora was also established as ‘The Global Irish Network’, and was launched in February 2010.²⁰⁴

9.2 DEVELOPMENTS FROM THE EU PERSPECTIVE

With regard to the ***European Pact on Immigration and Asylum***, Ireland continued to participate as a Member State in all EU-Third Country agreements in force during 2010. During the year Ireland took part in an EU-led dialogue with India on migration. This represents the first such dialogue under the Global Approach to migration to which Ireland has contributed (*V(a) conclude EU-level or bilateral agreements with the countries of origin and of transit containing clause on legal and illegal migration as well as development*). Ireland operates a visa office in Nigeria which covers the Sub-Saharan Africa region. Within the remit of this office is a liaison function concerning national immigration authorities in the region. The office also promotes legal migration (*V(c) cooperation with the countries of origin and of transit in order to deter or prevent illegal immigration*). Ireland participated in the Global Forum on Migration and Development (GFMD) 2010 in Mexico (*V(d) More effective integration of migration and development policies*). A cross-departmental Inter-departmental Committee on Development (IDCD) continued to meet during 2010. Taking place on a bi-annual basis, the Committee contains a representative of the Department of Justice and Law Reform which retains overall responsibility for migration matters.

During 2010 activities under the auspices of the Global Irish Economic Forum continued. Convened in 2009 (*11(h) how diaspora groups may be further involved in EU development initiatives, and how EU Member States may support diaspora groups in their efforts to enhance development in their countries of origin, Stockholm Programme*).

Chapter 10

Implementation of EU Legislation

10.1 TRANSPOSITION OF EU LEGISLATION 2010

No EU Legislation relating to migration or asylum was transposed in Ireland in 2010.

With regard to the participation of Ireland in EU measures in relation to asylum and migration published during 2010, the following took place:

Asylum

A. Legislative acts adopted after entry into force of the Amsterdam Treaty (1May 1999)

Commission Decision 2010/163/EC of 8 March 2010 amending Decision 2008/22/EC of 19 December 2007 laying down rules for the implementation of Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" as regards Member States' management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund

Status: Participating. Ireland is bound by the basic Act and as a consequence by this Decision.

Decision No 458/2010/EU of the European Parliament and of the Council of 19 May 2010 amending Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 by removing funding for certain Community actions and altering the limit for funding such actions

Status: Ireland is participating.

Commission Regulation (EU) No 351/2010 of 23 April 2010 implementing Regulation (EC) No 862/2007 of the European Parliament and of the Council on Community statistics on migration and international protection as regards the definitions of the categories of the groups of country of birth, groups of previous usual residence, groups of next usual residence and groups of citizenship

Status: Applicable to all Member States.

Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office

Status: Ireland is participating.

B. International Agreements

Information relating to the entry into force of the agreement between the European Community and Barbados on the short-stay visa waiver

Status: Information notice only. Ireland is not participating in the agreement.

Information relating to the entry into force of the agreement between the European Community and the Republic of Mauritius on the short-stay visa waiver

Status: Information notice only. Ireland is not participating in the agreement.

Information relating to the entry into force of the agreement between the European Community and the Commonwealth of the Bahamas on the short-stay visa waiver

Status: Information notice only. Ireland is not participating in the agreement.

Information relating to the entry into force of the agreement between the European Community and the Republic of Seychelles on the short-stay visa waiver

Status: Information notice only. Ireland is not participating in the agreement.

External Borders

B. Joint Actions, Joint Positions (Maastricht Treaty); Common Positions, Framework Decisions and Decisions (Amsterdam Treaty) Instruments adopted under the TEC

Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and the Regulation (EC) No 562/2006 as regards movement of persons with a long stay visa

Status: Ireland is not bound as it relates to a part of the Schengen *acquis* in which Ireland does not participate.

Council Decision of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the

Management of Operational Cooperation at the External Borders of the Member States of the European Union

Status: Ireland is not bound as it relates to a part of the Schengen *acquis* in which Ireland does not participate.

Visa

B. Joint Actions, Joint Positions (Maastricht Treaty); Common Positions, Framework Decisions and Decisions (Amsterdam Treaty) Instruments adopted under the TEC²⁰⁵

Council Decision 2010/50/EU of 25 January 2010 amending Annex 2, Schedule A, to the Common Consular Instructions on visas for the diplomatic missions and consular posts, in relation to visa requirements for holders of diplomatic passports from Saudi Arabia

Status: Ireland is not bound as it relates to a part of the Schengen *acquis* in which Ireland does not participate.

Commission Decision 2010/49/EC of 30 November 2009 determining the first regions for the start of operations of the Visa Information System (VIS) (notified under document C(2009) 8542)

Status: Decision not addressed to Ireland, relates to part of the Schengen *acquis* in which Ireland does not participate.

Commission Decision 2010/260/EU of 4 May 2010 on the Security Plan for the operation of the Visa Information System

Status: No recital on position of Ireland, however, Ireland does not participate in Visa Information System.

Immigration

Admission

A. Legislative acts adopted after entry into force of the Amsterdam Treaty (1 May 1999)

Commission Decision 2010/173/EC of 22 March 2010 amending Decision 2008/457/EC of 5 March 2008 laying down the rules for the implementation of Council Decision 2007/435/EC establishing the European Fund for the integration of Third Country Nationals the period 2007 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" as

²⁰⁵ See also, for information purpose, Council Regulation (EC) No 1295/2003 of 15 July 2003 relating to measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2004 Olympic or Paralympic Games in Athens and Regulation (EC) No 2046/2005 of the European Parliament and of the Council of 14 December 2005 relating to measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2006 Olympic and/or Paralympic Winter Games in Turin.

regards Member States' management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund

Status: Ireland is participating. Ireland is bound by the basic Act and as a consequence by this Decision.

Fight against Illegal Migration and Return

A. Legislative acts adopted after entry into force of the Amsterdam Treaty (1 May 1999)

Commission Decision 2010/70/EU of 8 February 2010 amending Decision 2008/458/EC laying down the rules for the implementation of Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" as regards Member States' management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund

Status: Ireland is participating. Ireland is bound by the basic Act and as a consequence by this Decision.

Schengen (Horizontal Issues)/SIS²⁰⁶

Council Regulation (EU) No 541/2010 of 3 June 2010 amending Regulation (EC) No 1104/2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)

Status: Ireland is not participating as development is of a part of the Schengen *acquis* in which Ireland does not take part.

Council Regulation (EU) No 542/2010 of 3 June 2010 amending Decision 2009/724/JHA on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)

Status: Ireland is participating.

Commission Decision 2010/261/EU of 4 May 2010 on the Security Plan for the Central SIS II and the Communication Infrastructure

Status: No recital on the position of Ireland, however, Ireland will be participating in certain aspects of SIS II.

Council Decision 2010/32/EC of 30 November 2009 amending the Decision of the Executive Committee set up by the 1990 Schengen Convention, amending

²⁰⁶ Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention Implementing the Schengen Agreement of 14 June 1985 (OJ L 187 of 10 July 2001, p. 45) is listed under the section on migration.

the Financial Regulation on the costs of installing and operating the technical support function for the Schengen Information System (C.SIS)

Status: Ireland is participating.

10.1.1 Proposed Transposition of EU Legislation

The *Immigration, Residence and Protection Bill (No. 38) 2010* was not enacted into law during 2010 and had reached Committee stage by the end of the year. The Bill was intended to restate and modify certain aspects of Irish law relating to the entry into, presence in and removal from the State of foreign nationals and others, including foreign nationals in need of protection from the risk of serious harm or persecution elsewhere. The long title of the Bill stated that it was intended to give effect to the following pieces of EU legislation:

- *Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of Third Country Nationals;*
- *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof;*
- *Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence;*
- *EU Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence;*
- *Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data; and*
- *Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.*

The Bill lapsed with the dissolution of the 30th Dáil on 1 February 2011.

10.2 EXPERIENCES, DEBATES IN THE (NON-) IMPLEMENTATION OF EU LEGISLATION

10.2.1 European Commission Enforcement Proceedings against Ireland

In June 2010, the European Commission referred Belgium and Ireland to the Court of Justice of the European Union for failing to complete implementation of Council Directive 2005/85/EC (the 'Procedures Directive'). In a press release, Home Affairs Commissioner Cecilia Malmström said '*[t]he fact that Member States apply EU rules differently could affect the whole European asylum system as it may result in lower standards of protection for those fleeing conflicts and persecution. This is not acceptable*'.

She added that: *'[t]hese standards represent fundamental European values, namely to protect the rights of the most vulnerable. It is important to make sure that they are respected. I am ready to help Belgium and Ireland in their work to complete the final steps of their implementation'*.²⁰⁷

The deadline for the implementation of the 'Procedures Directive' was 1 December 2007. In the case of Ireland, the Commission stated that in order to comply fully with the Directive, the Irish government needed to implement, inter alia, requirements concerning the conduct of personal interviews, some guarantees for unaccompanied minors, the obligation to inform asylum applicants of delays in completing the procedure, and procedures for dealing with subsequent applications.

The European Commission brought infringement proceedings against Ireland for its failure to transpose provisions of the Directive in Case C-431/10 *Commission v. Ireland* on 1 September 2010.²⁰⁸

²⁰⁷ European Commission (24 June 2010). 'Asylum procedures: Commission refers Belgium and Ireland to EU Court of Justice for failing to complete implementation of EU rules on asylum procedures'. *Press Release*. IP/10/808. Also see European Commission (8 September 2010). 'Asylum procedures: Commission identifies shortcomings in existing common standards'. *Press Release*. IP/10/1100.

²⁰⁸ *Case C-431/10, OJ C 301, 6.11.2010*. Subsequently, on 3 February 2011, the Minister for Justice promulgated the *European Communities (Asylum Procedures) Regulations 2011 (S.I. 51 of 2011)* and the *Refugee Act 1996 (Asylum Procedures) Regulations 2011 (S.I. 52 of 2011)*. These Regulations are intended to give effect to the Procedures Directive in Irish law, particularly with respect to the conduct of personal interviews, the provision of interpreters and the treatment of unaccompanied minors in the asylum system. On 7 April 2011 the Court of Justice of the European Union declared that Ireland had failed to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2005/85/EC. The Court's decision was based on the legislative situation prior to the promulgation of the February 2011 statutory instruments.

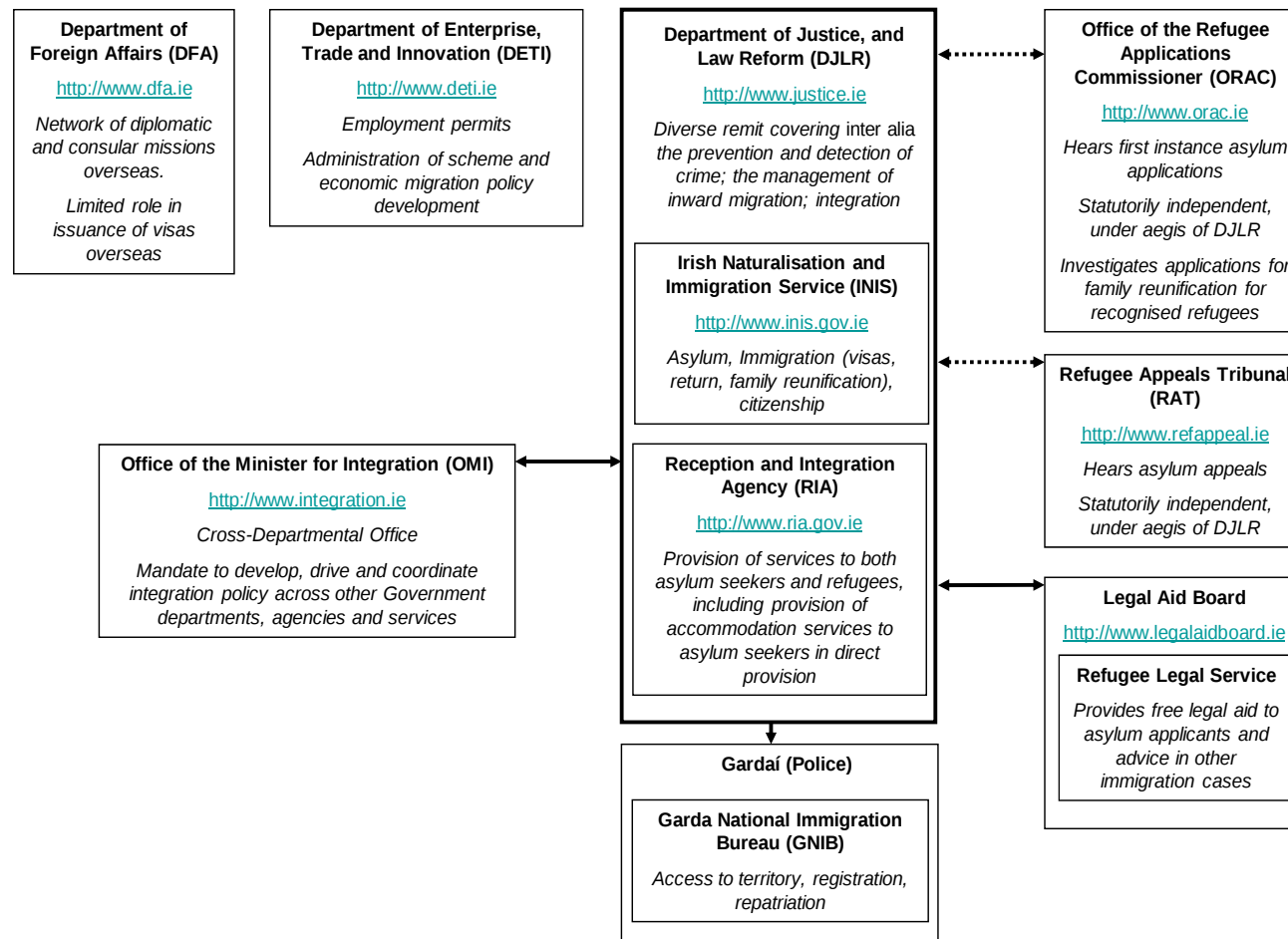
Annex I Major Legislation in the Area of Migration and Asylum

- The *Refugee Act, 1996* set out, for the first time, a system for the processing of asylum applications in Ireland.
- The *Immigration Act, 1999* set out the principles, procedures and criteria, which govern the detention and removal of foreign nationals from the State, and made provision for the issuing of deportation and exclusion orders.
- The *Immigration Act, 2003* introduced carrier liability whereby a carrier can be held responsible and fined accordingly for bringing an undocumented immigrant to the State. Provision was also made for the return of persons refused leave to land, usually by the carrier responsible, to the point of embarkation.
- The *Immigration Act, 2004* included a wide range of provisions that would previously have been contained in the Orders made under the 1935 Act. It made provision for the appointment of immigration officers and established criteria for permission to land. The Act empowered the Minister to make orders regarding visas and approved ports for landing, and it imposed limits on the duration of a foreign national's stay. Certain obligations were imposed on carriers, and persons landing in the State were required to be in possession of a valid passport or identity document. It also outlined a requirement for foreign nationals to register with the Gardaí (police).
- The *Illegal Immigrants (Trafficking) Act, 2000* created an offence of smuggling illegal immigrants, with significant penalties on conviction and extends the powers of An Garda Síochána (Police) to enter and search premises, and to detain in relation to such activities. The Act also contained special provisions in relation to judicial review of decisions in the asylum and immigration processes.
- The statute law governing Irish citizenship is the *Irish Nationality and Citizenship Act, 1956*. The 1956 Act was amended by the *Irish Nationality and Citizenship Act 1986, 1994, 2001 and 2004*.
- The *Employment Permits Act, 2003* was enacted to facilitate the accession of ten new EU Member States in 2004 and introduced particular offences for both employers and employees working in breach of employment permit legislation.
- The *Employment Permits Act, 2006* enabled the introduction of significant changes to the existing employment permits system and came into entry in 2007. Reflecting the general policy of meeting most domestic labour needs from within the enlarged EU, the 2006 Act contained a reformed system with three elements including a type of 'Green Card' for any position with an annual salary of €60,000 or more in any sector, or for a restricted list of

occupations, where skill shortages have been identified, with an annual salary range from €30,000 to €59,999; a re-established Intra-Company transfer scheme for temporary trans-national management transfers; a Work Permit scheme for a very restricted list of occupations up to €30,000 and where the shortage is one of labour rather than skills.

- The *Criminal Law (Human Trafficking) Act, 2008* created offences criminalising trafficking in persons for the purposes of sexual or labour exploitation, or for the removal of their organs, and criminalised the selling or purchasing of human beings.

Annex II Schematic Representation of Immigration and Asylum-Related Institutions in Ireland in 2010 (simplified for illustration purposes)



Annex III Statistical Data

The tables below contain further relevant statistics for the reference year of 2010.

Information regarding applications for asylum (overall; per nationality) is included, as is information regarding work permit renewals and issuances during the year. Overall gross and net migration flows in Ireland since 1987 are also provided.

Table A1: Gross and Net Migration Flows, 1987-2010

<i>Year(ending April)</i>	<i>Outward</i>	<i>Inward ('000)</i>	<i>Net</i>
1987	40.2	17.2	-23.0
1988	61.1	19.2	-41.9
1989	70.6	26.7	-43.9
1990	56.3	33.3	-22.9
1991	35.3	33.3	-2.0
1992	33.4	40.7	7.4
1993	35.1	34.7	-0.4
1994	34.8	30.1	-4.7
1995	33.1	31.2	-1.9
1996	31.2	39.2	8.0
1997	25.3	44.5	19.2
1998	28.6	46.0	17.4
1999	31.5	48.9	17.3
2000	26.6	52.6	26.0
2001	26.2	59.0	32.8
2002	25.6	66.9	41.3
2003	29.3	60.0	30.7
2004	26.5	58.5	32.0
2005	29.4	84.6	55.1
2006	36.0	107.8	71.8
2007	42.2	109.5	67.3
2008	45.3	83.8	38.5
2009	65.1	57.3	-7.8
2010	65.3	30.8	-34.5

Source: CSO, Population and Migration Estimates (various releases). Available at www.cso.ie.

Table A2: Estimated Number of Persons Aged 15 Years and Over Classified by Nationality and ILO Economic Status, July - September 2009 and 2010

Nationality	ILO Economic Status				'000
	<i>In employment</i>	<i>Unemployed</i>	<i>In labour force</i>	<i>Not economically active</i>	
Q3 2010					
Irish nationals	1,625.1	248.9	1,874.0	1,245.1	3,119.0
Non-Irish nationals	226.4	50.1	276.6	117.1	393.7
<i>of which:</i>					
<i>United Kingdom</i>	35.6	7.8	43.4	30.1	73.5
<i>EU15 excl. Irl. & UK</i>	20.6	2.6	23.2	9.1	32.3
<i>Accession states EU15 to EU27</i>	110.8	27.6	138.4	37.3	175.7
<i>Other</i>	59.4	12.1	71.5	40.7	112.2
Total persons	1,851.5	299	2,150.5	1,362.2	3,512.7
Q3 2009					
Irish nationals	1,659.6	225.2	1,884.8	1,208.7	3,093.4
Non-Irish nationals	262.8	54.7	317.5	115.3	432.8
<i>of which:</i>					
<i>United Kingdom</i>	44.1	9.5	53.6	36	89.5
<i>EU15 excl. Irl. & UK</i>	28.2	2.4	30.6	9.2	39.7
<i>Accession states EU15 to EU27</i>	122.1	29.6	151.7	30.3	182
<i>Other</i>	68.5	13.2	81.6	39.9	121.5
Total persons	1,922.4	279.8	2,202.3	1,323.9	3,526.2
Year on year changes					
Irish nationals	-34.5	23.7	-10.8	36.4	25.6
Non-Irish nationals	-36.4	-4.6	-40.9	1.8	-39.1
<i>of which:</i>					
<i>United Kingdom</i>	-8.5	-1.7	-10.2	-5.9	-16
<i>EU15 excl. Irl. & UK</i>	-7.6	0.2	-7.4	-0.1	-7.4
<i>Accession states EU15 to EU27</i>	-11.3	-2	-13.3	7	-6.3
<i>Other</i>	-9.1	-1.1	-10.1	0.8	-9.3
Total persons	-70.9	19.2	-51.8	38.3	-13.5

Source: CSO, various years. Quarterly National Household Survey. Available at www.cso.ie

Notes: Includes 'not stated'.

Data may be subject to future revision.

Data may be subject to sampling or other survey errors, which are greater in respect of smaller values or estimates of change

Table A3: Asylum Applications 1994-2010

<i>Year</i>	<i>Applications</i>
1994	362
1995	424
1996	1,179
1997	3,883
1998	4,626
1999	7,724
2000	10,938
2001	10,325
2002	11,634
2003	7,900
2004	4,766
2005	4,323
2006	4,314
2007	3,985
2008	3,866
2009	2,689
2010	1,939

Source: Office of the Refugee Applications Commissioner. Available at www.orac.ie

Table A4: Applications for Asylum by Main Country of Nationality, 2010

<i>Country</i>	<i>No.</i>	<i>%</i>
Nigeria	387	19.96
China	228	11.76
Pakistan	200	10.31
DR Congo	70	3.61
Afghanistan	69	3.56
Other	985	50.80
Total	1,939	100.00

Source: Office of the Refugee Applications Commissioner, Available at www.orac.ie.

Table A5: Total Registrations by Stamp 2002 – 2010

	2002	2003	2004	2005	2006	2007	2008	2009	2010
Unrecorded	-	-	2,425	1,728	2,182	1,260	2,028	2,391	2,807
Stamp 1	-	-	47,400	30,199	29,872	31,472	31,944	23,417	15,542
Stamp 1A	-	-	-	-	-	-	67	887	708
Stamp 2	-	-	31,338	28,021	29,426	36,019	41,097	41,639	41,415
Stamp 2A	-	-	-	2,198	3,630	3,701	3,845	3,879	4,045
Stamp 3	-	-	13,641	12,663	16,004	17,220	17,437	17,554	16,601
Stamp 4	-	-	38,997	57,220	61,928	63,748	63,658	70,803	73,297
Stamp 4 EUFam	-	-	-	-	916	1,660	3,723	5,208	6,794
Stamp 5	-	-	28	88	117	149	218	548	1,138
Stamp 6	-	-	9	7	11	17	26	61	51
Stamp A	-	-	36	2	2	6	2	-	-
Stamp B	-	-	83	11	2	1	-	-	-
Total Registrations	93,546	127,956	133,957	132,137	144,090	155,253	164,045	166,387	162,398

Source: Department of Justice and Law Reform.

Note: Breakdown of registrations by stamp in 2002 and 2003 is not available.

Table A6: Employment Permits 2004 - 2010

Year	New	Renewals	Issued	Refused	Withdrawn
2010	3,394	3,877	7,271	990	199
2009	4,024	3,938	7,962	1,901	442
2008	8,481	5,086	13,567	2,288	
2007	10,134	13,457	23,604	2,342	
2006	7,298	16,600	24,854	1,191	
2005	7,354	18,970	27,136	1,215	
2004	10,020	23,246	34,067	1,486	

Source: Department of Enterprise, Trade and Innovation. Available at www.deti.ie.

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