

The Irish International Protection system

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28th June 2011

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Written by Ángel Bello Cortes for the Public
Interest Law Alliance, a project of FLAC – 28

June 2011

1. DEFINITIONS

*In this Act “**a refugee**” means a person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence, is unable or, owing to such fear, is unwilling to return to it, but does not include a person who—*

(a) is receiving from organs or agencies of the United Nations (other than the High Commissioner) protection or assistance,

(b) is recognised by the competent authorities of the country in which he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country,

(c) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes,

(d) has committed a serious non-political crime outside the State prior to his or her arrival in the State, or

(e) has been guilty of acts contrary to the purposes and principles of the United Nations.

“Leave to remain”: residency permit granted at the discretion of the Minister for Justice and Equality after a proposal to deport has been issued, upon consideration of certain factors.

3.—(1) Subject to the provisions of section 5 (prohibition of refoulement) of the Refugee Act, 1996 and the subsequent provisions of this section, the Minister may by order (in this Act referred to as “a deportation order”) require any non-national specified in the order to leave the State within such period as may be specified in the order and to remain thereafter out of the State.

(...)

(6) In determining whether to make a deportation order in relation to a person, the Minister shall have regard to—

(a) the age of the person;

(b) the duration of residence in the State of the person;

(c) the family and domestic circumstances of the person;

(d) the nature of the person's connection with the State, if any;

(e) the employment (including self-employment) record of the person;

(f) the employment (including self-employment) prospects of the person;

(g) the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions);

(h) humanitarian considerations;

(i) any representations duly made by or on behalf of the person;

(j) the common good; and

(k) considerations of national security and public policy, so far as they appear or are known to the Minister.

“person eligible for subsidiary protection” means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

(...)

Serious harm consists of:

(a) death penalty or execution; or

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or

(c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

2. MAIN LEGISLATION

INTERNATIONAL LAW

1951 Geneva Convention
Relating to the Status of Refugees

IRISH LAW

Refugee Act 1996
Immigration Act 1999
Illegal Immigrants (Trafficking) Act 2000
Immigration Act 2004
European Communities (Eligibility for Protection) Regulations 2006 - S.I. No. 518 of
2006

EU LAW

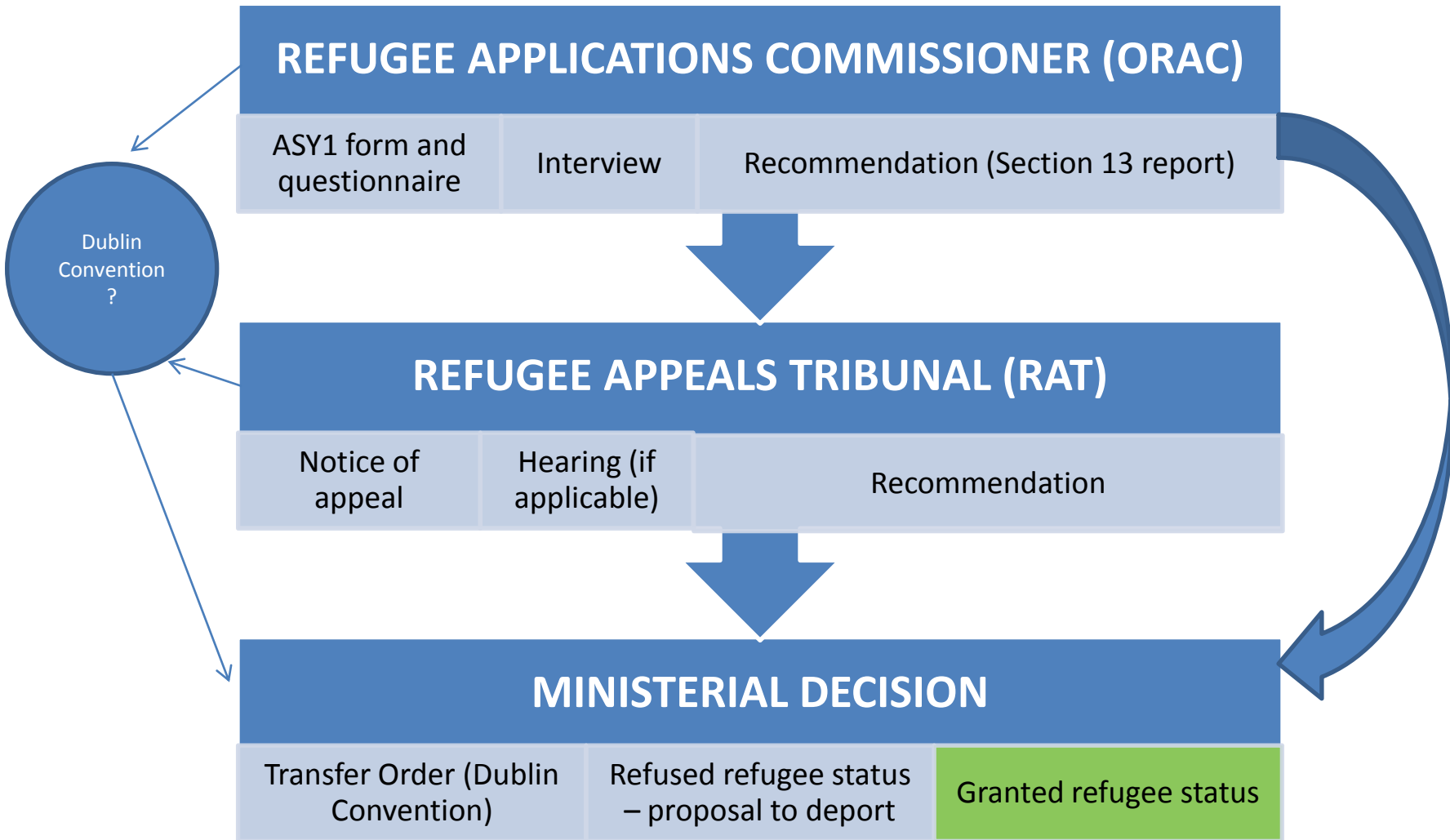
Council Regulation 343/2003 (Dublin II Regulation / “Dublin Convention”)
Council Directive 2004/83/EC (Asylum Qualification Directive)
Council Directive 2005/85/EC (Asylum Procedures Directive)

3. THE ASYLUM PROCESS

REFUGEE APPLICATIONS COMMISSIONER (ORAC)

REFUGEE APPEALS TRIBUNAL (RAT)

THE MINISTER FOR JUSTICE AND EQUALITY – IRISH
NATURALISATION AND IMMIGRATION SERVICE (INIS)



4. LEAVE TO REMAIN / SUBSIDIARY PROTECTION / DEPORTATION PROCESS

THE MINISTER FOR JUSTICE AND EQUALITY – IRISH
NATURALISATION AND IMMIGRATION SERVICE (INIS)

GARDA NATIONAL IMMIGRATION BUREAU (GNIB)

PROPOSAL TO DEPORT (Section 3 letter)- OPTIONS

Consent to deportation

Applications for
“humanitarian” leave to
remain(LTR) and/or subsidiary
protection(SP)

Voluntary repatriation

DETERMINATION OF SUBSIDIARY PROTECTION APPLICATION (SP)

Granted
SP

Refused SP

DETERMINATION OF LEAVE TO REMAIN APPLICATION (LTR)

Granted
LTR

Refused LTR

DEPORTATION ORDER

DEPORTATION ORDER

GNIB reporting
requirements until
removal

Possible administrative
detention (max 8
weeks)



REMOVAL FROM THE STATE

5. OTHER APPLICATIONS

Application under Section 17.7 of the Refugee Act 1996

- Seeks re-entry into the asylum process (ORAC stage)
- Non suspensive effect
- *“New elements or findings have arisen or have been presented (...) which makes it significantly more likely that the person will be declared to be a refugee, and the person was, through no fault of the person, incapable of presenting those elements or findings for the purposes of his or her previous application (...)”*

Application under Section 3.11 of the Immigration Act 1999

- Seeks the revocation of a deportation order
- Non suspensive effect
- Must be based on new facts and circumstances – either protection issues or matters considered under Section 3 of the Immigration Act 1999

6. ENTITLEMENTS

REFUGEE STATUS

Stamp 4 card

(Entitled to work/run a business/
access to social welfare payments)

UN Convention Travel Document

Family Reunification

SUBSIDIARY PROTECTION STATUS

Stamp 4 card

(Entitled to work/run a business/
access to social welfare payments)

UN Convention Travel Document

Family Reunification

LEAVE TO REMAIN STATUS

Stamp 4 card

(Entitled to work/run a business/
access to social welfare payments)

Passport required - travel document rarely
granted

FAMILY REUNIFICATION STATUS

Stamp 4 card

(Entitled to work/run a business/
access to social welfare payments)

Passport required - travel document rarely
granted

ASYLUM SEEKER

Temporary Residency Certificate
Direct Provision

FAILED ASYLUM SEEKER

(awaiting SP/LTR decisions)

“Status letter”
Direct Provision

DEPORTEE

GNIB reporting requirements
Possible administrative detention
Direct Provision

7. WHO'S WHO

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REFUGEE APPLICATIONS COMMISSIONER (ORAC)

- Registration / fingerprinting / referral to Reception and Integration Agency (RIA)
- First instance determination of Dublin II Regulation procedure (“Dublin Convention”) / transfer requests
- Investigation and first instance determination of asylum applications
- Investigation of refugee family reunification applications

REFUGEE APPEALS TRIBUNAL (RAT)

- Determination of asylum appeals (oral hearings / written appeals)
- Determination of Dublin II Regulation appeals (non-suspensive)

THE DEPARTMENT OF JUSTICE AND EQUALITY – IRISH NATURALISATION AND IMMIGRATION SERVICE (INIS)

MINISTERIAL DECISIONS UNIT

- Grants refugee status
- Revokes refugee status
- Determines Section 17.7 applications
- Returns documents to the refugee

REPATRIATION UNIT

- Issues section 3 proposal to deport
- Determines LTR and SP applications
- Renews LTR and SP residency
- Revokes LTR and SP residency
- Issues deportation orders
- Determines Section 3.11 applications

FAMILY REUNIFICATION UNIT

- Determines family reunification applications

RECEPTION AND INTEGRATION AGENCY (RIA)

- Manages the direct provision scheme

TRAVEL DOCUMENTS SECTION

- Issues UN Convention travel documents
- Issues Irish “soft cover” travel documents

DUBLIN II UNIT (DUBLIN CONVENTION UNIT)

- Final decision on Dublin II Regulation procedure /
- Issues Transfer Orders

GARDA NATIONAL IMMIGRATION BUREAU (GNIB)

- Immigration control at ports of entry
- Reception of asylum seekers at ports of entry
- Monitors/investigates
- Powers of arrest and administrative detention. Can also impose reporting requirements
- Execution of deportation orders

CHIEF STATE SOLICITOR'S OFFICE (CSSO), ASYLUM SECTION

- Represents ORAC /RAT / Minister (INIS) / GNIB / prison governors in High Court/Supreme Court/ECJ/ECHR proceedings

8. ASYLUM / SP DETERMINATION CRITERIA

“(…)

- 3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:
 - (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied;*
 - (b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;*
 - (c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;*
 - (d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether these activities will expose the applicant to persecution or serious harm if returned to that country;*
 - (e) whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship.**

- 4. The fact that an applicant has already been subject to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.*

5. *Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation, when the following conditions are met:*

(a) the applicant has made a genuine effort to substantiate his application;

(b) all relevant elements, at the applicant's disposal, have been submitted, and a satisfactory explanation regarding any lack of other relevant elements has been given;

(c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

(d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and

(e) the general credibility of the applicant has been established.”

Article 4 of Council Directive 2004/83/EC (Asylum Qualification Directive) – extract

9. LEAVE TO REMAIN DETERMINATION CRITERIA

“Leave to remain”: residency permit granted at the discretion of the Minister for Justice and Equality after a proposal to deport has been issued, upon consideration of certain factors.

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(c) the family and domestic circumstances of the person;

(d) the nature of the person's connection with the State, if any;

(e) the employment (including self-employment) record of the person;

(f) the employment (including self-employment) prospects of the person;

(g) the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions);

(h) humanitarian considerations;

(i) any representations duly made by or on behalf of the person;

(j) the common good; and

(k) considerations of national security and public policy, so far as they appear or are known to the Minister.

Section 3 of the Immigration Act 1999

9. FAMILY REUNIFICATION

FAMILY REUNIFICATION

- Section 18 Refugee Act 1996 (refugees) and
- Regulation 16 of the European Communities (Eligibility for Protection) Regulations 2006 (persons granted subsidiary protection)
- Absolute right in respect of spouse and minor children, or parents if the refugee / person granted SP is a minor
- Any other family member – Ministerial discretion . Must establish dependency.
- It is essential to provide original documentation, and the translations must be accurate.

REFUGEE FR

- The application is made to the Minister (FR Section, INIS). The file is sent to ORAC.
- ORAC investigates the application and corresponds with the applicant. A report is issued and the file is sent back to the Minister (FR Section, INIS) for decision.
- The Minister (FR Section, INIS) will make further enquiries and issue a decision.

SUBSIDIARY PROTECTION FR

- The application made to the Minister (FR Section, INIS). The Minister will investigate the application and issue a decision.

10. EU STATISTICS

EU ASYLUM POSITIVE DECISIONS

Malta	70%	Hungary	23%
Estonia	50%	Luxembourg	14%
Netherlands	46%	France	13%
Denmark	41%	Poland	11%
Italy	39%	Romania	11%
Slovakia	38%	Greece	2.8%
Finland	37%	Cyprus	1.9%
Sweden	36%	Ireland	1.3%
Lithuania	33%	Latvia	*
Portugal	33%	Slovenia	*
Bulgaria	32%		
Czech Republic	29%		
Austria	28%		
Spain	26%		
Britain	24%		
Germany	24%		
Belgium	23%		

*Source: Eurostat asylum applicants and first instance decisions in third quarter 2010.
* represents two or fewer first instance decisions recorded in the reference period*

11. USEFUL LINKS

The Economic and Social Research Institute: Handbook on immigration and asylum in Ireland 2007.

<http://www.tara.tcd.ie/bitstream/2262/25280/1/RS005.pdf>

Citizens Information: The asylum process in Ireland

http://www.citizensinformation.ie/en/moving_country/asylum_seekers_and_refugees/the_asylum_process_in_ireland/

Irish Refugee Council

<http://www.irishrefugeecouncil.ie/index.php>

Irish Naturalisation and Immigration Service (INIS)

<http://www.inis.gov.ie/>

Office of the Refugee Applications Commissioner

<http://www.orac.ie/>

Refugee Appeals Tribunal

<http://www.refappeal.ie/>

Refugee Caselaw (Prof. James Hathaway)

<http://www.refugeecaselow.org/Home.aspx>

UNHCR Refworld

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain>

Asylumlaw.org

<http://www.asylumlaw.org/>