



Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report
- Universal Periodic Review:

IRELAND

1. Background information and Current Conditions

Ireland acceded to the *1951 Convention Relating to the Status of Refugees* in 1956 and to its *1967 Protocol* in 1968. Ireland also acceded to the *1954 Convention relating to the Status of Stateless Persons* in 1962 and to the *1961 Convention on the Reduction of Statelessness* in 1973.

Ireland has a well established refugee status determination system in place. Domestic legal provisions are contained in the Refugee Act, 1996 (as amended) and the European Communities (Eligibility for Protection) Regulations 2006 (Statutory Instrument 518 of 2006). Ireland joined the European Economic Community in 1973 and is party to the Maastricht, Amsterdam and Lisbon EU treaties. However, Ireland made reservations to these treaties, as specified in the Protocols. As a consequence of these reservations, Ireland has to opt in, on a case-by-case basis, on Directives in the area of asylum. Ireland has opted in on the Dublin II Regulation.

In terms of the number of persons of concern to UNHCR in Ireland, as of 31 December 2010, the population was principally comprised of 9,696 recognized refugees and 6,112 persons living in direct provision accommodation for asylum seekers, the vast majority of whom are awaiting a final decision on their application for refugee or subsidiary protection status. As of 31 December 2010, 3,738 applications for subsidiary protection and 1,220 applications for refugee status were pending a final decision. In 2010, the total number of new applications for refugee status amounted to 1,939, which is a significant reduction compared to previous years. The authorities recognized 160 asylum-seekers as refugees and granted subsidiary protection status to two persons in 2010. The recognition rate is particularly low, when compared to other EU member States. The number of stateless persons in the State is not known.

2. Achievements and Best Practices

UNHCR commends the Irish authorities for the following achievements.

2.1 Legal Framework

UNHCR welcomes the national legal provisions which enable persons recognized as refugees by the Irish authorities to apply for naturalization after residing in Ireland for three years, a reduction in the normal requirement of five years. In 2010, 718 refugees naturalized as Irish citizens.

UNHCR welcomes the fact that persons granted subsidiary protection in Ireland are granted the same rights as refugees recognized in Ireland.¹

2.2 Administrative Process

UNHCR welcomes the equity of care policy introduced by the Irish Authorities at the end of 2009 with regard to care provision for separated children. In accordance with the new policy, separated children are cared for within the mainstream care system on an equitable basis with Irish children in care. In practice, this means that separated children are no longer placed in hostels, but are accommodated in registered residential homes or placed in foster care.

In light of practice in other countries, UNHCR welcomes the fact that there is no detention *per se* of asylum-seekers in Ireland. Asylum-seekers are accommodated in open direct provision centres and the standard of accommodation in these centres is in general of good quality, for stays of up to six months. UNHCR is however concerned about the situation of asylum-seekers staying in such centres for longer periods of time.

Detention of asylum-seekers does occur on occasion in connection with a lack of documentation or other issues related to establishing identity. In such circumstances, asylum-seekers may be detained under the criminal law provisions of general immigration legislation or, less frequently, under the administrative detention provisions in the 1996 Refugee Act. UNHCR welcomes the legal provisions, which exempt minors from the administrative detention provisions² and those under 16 years of age from the relevant general immigration provisions.³

2.3 Durable Solutions

UNHCR commends the Irish authorities for their commitment to finding durable solutions for persons of concern. A key demonstration of this commitment is Ireland's high quality resettlement programme and its internationally acknowledged contribution to the development of resettlement practice as one of only six European Union Member States with an established annual resettlement programme.

¹ S.I. No. 518 of 2006 European Communities (Eligibility for Protection) Regulations 2006

² Section 9(12)(a), (b) and (c) of the Refugee Act 1996

³ Section 12 of the Immigration Act 2004

3. Challenges, Constraints and Recommendations

Notwithstanding the achievements and best practices highlighted above, UNHCR wishes to mention a number of concerns relevant to its Mandate. The following is not an exhaustive list, but only refers to the main areas of concern.

3.1 Legal Framework

The lack of a single protection determination procedure

In 2006, a determination procedure for subsidiary protection status was introduced in Ireland by way of statutory instrument (secondary legislation).

Subsidiary protection status, as defined in the EU Qualification Directive, provides international protection for persons at risk of the death penalty, torture or generalised or indiscriminate violence in the context of internal or international conflict. As such, the subsidiary protection regime extends international protection to persons whose protection needs are additional to the specific criteria set out in the 1951 Refugee Convention.

Under the current arrangements in place in Ireland, persons in need of subsidiary protection must first exhaust the refugee status determination process, prior to making an application for subsidiary protection. Exhausting the refugee status determination process involves receiving a negative decision from the first instance decision making body, a negative decision from the second instance appeal Tribunal and, ultimately, receiving a proposal to deport from the Irish authorities.

It is only upon receipt of a proposal to deport that an application for subsidiary protection can be submitted. UNHCR has two principal concerns about this dual status determination process.

Firstly, files relating to the 40 grants of subsidiary protection made by the Irish authorities to date (i.e. since 2006) indicate that applicants waited on average four years from their original application for refugee status, until being granted subsidiary protection status. A significant proportion of these applicants waited for 5 years or more. Delays of such duration hamper access to international protection and lead to protection gaps, since persons in need of subsidiary protection cannot benefit from essential elements of that protection while awaiting the outcome of the assessment of their claims. In particular, pending a determination on their application, they cannot apply for family reunification or advance in their integration to any meaningful extent, as they do not have access to the labour market, mainstream welfare provisions and permanent status in the State.

Secondly, the dual process is the principal reason for long stays in the direct provision accommodation system, originally designed for stays of up to 6 months. More than 40% of the 6,112 residents in direct provision accommodation centres (as of 31 December 2010) have been living there for 3 years or more. Stays of such extended duration have an adverse impact on the well-being of residents, particularly on their mental health, family

relationships and integration prospects. While awaiting a final decision in the direct provision system, applicants cannot access the labour market, mainstream welfare services or third level education. Long stays of this nature also place a considerable burden on the State.

The introduction of the subsidiary protection procedure by way of statutory instrument in 2006 was an intermediary one, pending the introduction of a single procedure in primary legislation. In 2007, 2008 and 2010, legislative proposals aimed at overhauling immigration, residence and protection law in Ireland were published. The proposals included the provision for a single procedure, but these were not enacted. Ireland is now the only European Union Member State without a single procedure for the determination of refugee and subsidiary protection status. In all other EU Member States the authorities examine all the protection needs of an applicant at the same time.

UNHCR considers that the delayed introduction of the single procedure continues to have a serious impact on the human rights of those within the process at present and on any new asylum-seekers entering the system.

UNHCR has provided advice and comments on the legislative proposals prepared by the authorities to date and has, together with the Irish authorities, prepared a training manual for the decision-makers who will operate the new single procedure. UNHCR remains ready to assist the national authorities in this endeavour and to provide technical support for the introduction of the new procedure.

Recommendations:

- UNHCR recommends the introduction of a single procedure for the determination of all applications for refugee and subsidiary protection status without delay.
- UNHCR recommends that administrative measures be undertaken to speed up the consideration of pending applications for subsidiary protection, which will not benefit from the future introduction of a single procedure.
- UNHCR encourages the Irish authorities to adopt a flexible approach towards asylum-seekers who have been awaiting a decision on their case for a substantial period of time, in particular to facilitate access to educational opportunities and access to the labour market.⁴

The lack of a statelessness determination procedure

Ireland acceded to the 1954 *Convention relating to the Status of Stateless Persons* in 1962 and the *Convention on the Reduction of Statelessness* in August 1973. Provisions relating to the prevention and reduction of statelessness are set out in the Irish Nationality and Citizenship Act 1956, as amended.

⁴ See UN High Commissioner for Refugees, "UNHCR's Response to the European Commission's Green Paper on the Future Common European Asylum System, September 2007" Section 8, at page 21
"UNHCR ... believes that asylum-seekers should have access to the labour market, in any case no later than six months after lodging their application, if a final decision on the claim has not been taken during this time."

There is, at present, no discrete procedure for the determination of statelessness in Ireland. In the absence of a formal statelessness determination system, statelessness claims may be processed through what is informally known as the “humanitarian leave to remain process”(HLTR).⁵ This process involves neither a declaration of statelessness, nor the award of a specific status. It results in the granting of leave to remain under Ministerial discretion, but the Minister does not give any specific reasons for the decision. In order to give full effect to its obligations under the 1954 Convention, Ireland should be encouraged to establish a procedure to ensure that stateless persons on its territory are recognized and granted a form of status from which the rights and duties of the 1954 Convention will flow.

The lack of a statelessness determination procedure is a lacuna common to many other States worldwide and UNHCR welcomes the willingness of the Irish authorities to further examine the incidence of and issues facing stateless persons in Ireland.

Recommendation: UNHCR encourages the State to pursue its consideration of the options for introducing a discreet statelessness determination procedure.

3.2 Administrative Process

Family Reunification

UNHCR welcomes the national legal provisions in the Refugee Act, 1996, as amended, which set out a right to family reunification for persons determined to be refugees by the State. UNHCR also takes this opportunity to acknowledge the close cooperation between the national authorities and UNHCR with regard to the family reunification process and the proactive efforts often undertaken by the authorities to resolve complex and or urgent cases.

Notwithstanding the positive work undertaken to support family reunification, UNHCR is concerned at the length of the decision-making process, which is currently between 18 to 24 months for a decision on a family reunification application. UNHCR would encourage the authorities to apply requirements as to the production of documentary evidence and the definition of the family in line with relevant UNHCR guidelines and standards.

Unlike “Convention Refugees”, resettled refugees do not enjoy an entitlement to family reunification in the provisions of the national law. As one of only 6 EU Member States with an established annual resettlement programme and as a leader in the development of resettlement practice, UNHCR would encourage the authorities to extend the existing legal provisions on family reunification to resettled refugees.

Recommendation:

⁵ This is more correctly described as a consideration of why the applicant ought not to be deported from the State under Section 3 of the Immigration Act, 1999, leading to a grant of leave to remain if successful.

UNHCR recommends the strengthening of the family reunification process by reducing processing times, relaxing evidentiary and interpretation rules and by extending the national legal provisions on family reunification to resettled refugees.

Transfers under Dublin II to Greece

In light of the current situation in Greece, UNHCR has called on all EU Member States participating in the Dublin II Regulation system to refrain from transferring asylum-seekers to Greece and to determine their claims in their national asylum processes, pursuant to Article 3(2) of the Dublin Regulation.

A significant number of EU member States have suspended transfers to Greece. The European Court of Human Rights, in the recent case of *MSS v Belgium and Greece*, held that the transfer of an asylum-seeker to Greece was in violation of the European Convention on Human Rights on a number of grounds, including exposure to reception conditions in Greece which were in violation of Article 3 of the Convention. Several more EU Member States suspended transfers to Greece in the wake of this judgment.

In this context, UNHCR Ireland has submitted written observations to the Court of Justice of the European Union (CJEU) in the joined cases of *N.S v Secretary of State for the Home Department in United Kingdom and M.S and Others v Refugee Applications Commissioner and the Minister for Justice, Equality and Law Reform Ireland*.⁶ These cases, which involve a challenge to decisions by the Irish and UK authorities to transfer asylum-seekers to Greece are likely to be heard by the CJEU in the summer of 2011.

So far, approximately 30 decisions by the Irish authorities to transfer asylum-seekers to Greece have been challenged before the Irish High Court and are effectively suspended pending the decision of the CJEU.

Recommendation:

UNHCR Ireland encourages Ireland to refrain from the practice of transferring asylum-seekers to Greece and to determine all claims in the national asylum process, pursuant to Article 3(2) of the Dublin Regulation.

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⁶ *N.S v Secretary of State for the Home Department in United Kingdom and M.S and Others v Refugee Applications Commissioner and the Minister for Justice, Equality and Law Reform Ireland.*, C-411/10 C-493/10, Submission February 2011.