

PROPOSAL:

PROPOSAL FOR A ONE-OFF SCHEME TO CLEAR THE BACKLOG OF PEOPLE IN THE PROTECTION PROCESS BEFORE THE INTRODUCTION OF A SINGLE PROTECTION PROCEDURE

“We need, urgently, to reform our arrangements so as to ensure that asylum applications are dealt with speedily, efficiently (in a single process), fairly and humanely. Those entitled to refugee status deserve to have that status recognised as speedily as possible. Those who do not meet the strict criteria for refugee status, and who do not qualify for subsidiary protection or leave to remain, also deserve to have that decided as quickly as possible. Very long delays in decision-making can, in many instances, create a situation in which an applicant might not have a strict legal right to remain in the country but where, because of the passage of time, it would not be reasonable to expect that person to leave Ireland. This is particularly the case where there are young children who have never known any home other than in Ireland.”

Emily O’Reilly, Ombudsman, 31 July 2013

Introduction

It is widely acknowledged that the international protection system in Ireland, unique in the EU, has led to severe delays in the processing of applications and appeals – for refugee status, subsidiary protection and leave to remain. This is due to a number of factors but paramount amongst them is the split system for the consideration of different claims and delays in consideration of subsidiary protection claims (before the transfer of responsibilities to the Office of the Refugee Applications Commissioner in November 2013) and leave to remain applications by the Department of Justice. In addition, despite the number of Deportation Orders that have been issued, relatively few are effected for a variety of reasons.

On 12th October 2014, there were 4309 people in the Direct Provision system, of which a third were children.¹ The estimated cost for Direct Provision alone in 2014 (excluding daily allowances and other expenses) is €51 million. That is just under €12,000 per resident, whether adult or child, none of which is paid to asylum seekers themselves. Compare that to the amount paid to residents of under €3.5m for 2014 (excluding additional exceptional payments) which is less than €3000 per year for a family of four (two adults and two children). In addition, there are an estimated 4000 people in the protection system who live in the community, supported by relatives or friends and who are not entitled to medical cards or a financial payment. There are therefore less than 8,500 people, including children, who have been in the system for a lengthy period of time. Asylum seekers are not allowed to work or enter business and are therefore forced into idleness and dependency on the State.

Of those awaiting a final outcome, about 1000 are awaiting the outcome of Judicial Review applications in the High Court, 800 are on Deportation Orders which cannot be implemented. Voluntary return is not an option for many, given their limited financial circumstances and the International Organisation for Migration is not permitted by the Department of Justice to assist a person on a Deportation Order. Another 1000 are awaiting an appeal to the Refugee Appeals Tribunal (RAT), some after their cases have already been to the High Court.²

Numbers of new claims for asylum decreased significantly from the high of 11634 in 2002 to its lowest point in 2013 when only 946 claims were registered. Although there has been an increase in claims in 2014 for the first time in 12 years, the numbers are still small and can easily be accommodated within the reception system. These increases have occurred during the biggest refugee crisis in 20 years and the biggest displacement of people (many within countries) since the Second World War.³ Lebanon, with a population the same as Ireland, has received 1.1 million Syrian refugees in three years. That means that one in every five people in Lebanon is a Syrian refugee.

Asylum seekers in Ireland have waited an average of four years for a final decision, many much longer. The impact of that delay and the situation in which people have been forced to live has long term consequences for them and for the country.⁴ Delays, forced idleness, poverty, cramped and

¹ Answer to a PQ by the Minister for Justice, Frances Fitzgerald, 4th November 2014

² Information given during a discussion of the Working Group on the Protection Process, 10th November 2014

³ For more information on the current refugee crisis, see www.unhcr.org

⁴ An IRC publication, *Counting the Cost: Accessing Employment after Direct Provision*, looked at the ability to get work by adults who had spent more than three years waiting for some form of status in Ireland

unsuitable living conditions, transfers coupled with uncertainty and the threat of deportation, has taken its toll on men, women and children and many of them are at breaking point.

The Department of Justice has been running *ad hoc* 'schemes' for a number of years, granting leave to remain to people who have been in the system for a long time. The most recent was a 'scheme' in April 2014 to grant leave to remain to people who have been in the system for five years (so pre-April 2009). But these attempts to clear the backlog have always been under the counter and even denied by the Department of Justice. In addition, there have been inconsistencies and a lack of clarity, further adding to the sense of despair and disillusion. The April 2014 scheme also appears to be on hold given concerns about people giving up their right to a decision on a protection claim in exchange for leave to remain.

Whilst preparations are being made to bring in a new protection system to try to avoid the delays and damage happening again, people in the system now need to know that the end of this nightmare is in sight. That can only be done by those still in the system being given decisions that allow them to remain in Ireland and get on with their lives. To do anything else would be a denial of the damage that has been caused to them and would put the blame on them for a system they did not create, did not wish for but could do nothing themselves to change. It is time to face up to the reality that we have to draw a line under the old system before bringing in the new. We owe that to them.

This document sets out the different categories that people come in to and why each of them should be included in a scheme to grant some form of status in Ireland.

People with outstanding protection claims

Protection claims come in two forms – refugee and subsidiary protection claims. People with outstanding protection claims are entitled to a decision as to whether or not they should be given refugee status or subsidiary protection as those forms of status give them greater benefits and more security in the country. Anyone with a protection application outstanding for more than two years, whether at an initial stage or on appeal, should have a decision within six months and, if accepted, status and residence documents issued without delay. If their claim cannot be finally determined within six months, they should have the right to opt for leave to remain to be granted in line with all other people at other stages of the process. People with outstanding protection claims, including those with Judicial Review applications pending (see below), and who wish to opt for leave to remain should be required to give consent in writing indicating that they have received legal advice on the implications of forfeiting their protection application or appeal.

People with Leave to Remain applications pending

Those with outstanding Leave to Remain applications should be granted leave to remain as soon as possible in 2015 without the need for consideration of their individual circumstances in the following cases:

- Families with school age children
- Families with a child or children born in Ireland
- Former separated children who have been moved into Direct Provision
- Adult spouses or partners of different nationalities
- Adults or children with serious physical or mental health issues and their families
- Adults who have been in the system since before 2013
- Separated children in the care of the HSE when there is no realistic possibility of returning them to the care of parents in their countries of origin
- Adults or children with close relatives who already have permission to reside in the State
- Adults or children, whatever their length of residence, who are known to be from countries where there is no possibility of removal to that country because of instability, lack of return options, lack of travel documentation, etc.
- Women whose relationships have broken down as a result of the violence (verbal or physical) in the State and who would be vulnerable on return (either because of violence or stigma)

People with applications pending before the High Court

Applications for JR against the RAT's dismissal of a refugee application:

- Where the case has been pending for 12 months and there is no date set for hearing and without prejudice to the liability for costs of any party, the RAT should proactively seek to have the case remitted and re-heard within six months
- The applicant should also be offered the choice of being granted leave to remain pending a decision on their refugee claim

Applications for JR against Deportation Orders:

- Without prejudice to the state or the parties involved, the case should be returned to the Department of Justice for the Order to be revoked in accordance with the criteria set out below.

People with Deportation Orders

People with Deportation Orders should have those orders revoked and leave to remain granted as soon as possible in 2015 in the following circumstances:

- People from countries where there is no realistic possibility of their removal to that country because of instability, lack of return options, lack of travel documentation, etc.
- People who have been on a Deportation Order for at least 12 months and no attempt has been made to remove them from the State.

Victims of trafficking

Victims of trafficking accommodated in the Direct Provision system are not given protection in the form of an immigration status. Therefore those who are assisting the Gardai in their investigations should also have the option of obtaining leave to remain.

Liability of the State for costs or damages when a Deportation Order is revoked or legal proceedings settled for leave to remain to be granted

The State has been given legal advice that it will be liable for costs and/or damages in circumstances where it revokes a Deportation Order or settles High Court cases. In the circumstances of a defined scheme such as that proposed, there can be no liability. To the contrary, the longer people are kept in their current circumstances, the greater the possibility of the State being liable for harm caused, particularly to adults and children whose health suffers as a result of being institutionalised.

What you can do

If you want to lend your support to this proposal, please write to the Minister for Justice, Frances Fitzgerald TD, at the Department of Justice, 94 St. Stephen's Green, Dublin 2 and let her know that you want her to allow people in the current system to stay in the country. You can also contact your local TD and let them know that you want them to support this scheme and ask for them to let you have a copy of any communication that they send to the Minister for Justice.

Irish Refugee Council

www.irishrefugeecouncil.ie



Doras Luimní

www.dorasluimni.org



“While steps taken by a State are often restrictive of the movement of foreign nationals, the State may also exercise its powers so as to take actions in a particular situation where it has been determined that the common good is served by giving benefits of residency to a category of foreign nationals - as a gift, in effect. The inherent power of the State includes the power to establish an ex gratia scheme of this nature. Such an arrangement is distinct from circumstances where legal rights of individuals may fall to be considered and determined.”

Mr. Justice Denham, 20 December 2007 (Supreme Court judgment in *Bode v. MJELR*)