

# DUBLIN II

## national asylum procedure

## in Ireland



### Partner organization

Irish Refugee Council

### Contacts:

Louise Sarsfield Collins

@ [Louise@irishrefugeecouncil.ie](mailto:Louise@irishrefugeecouncil.ie)

☎ +353 1 764 5854

### Coordinator organization

Forum réfugiés (France)

### Contact:

Matiada Ngalikpima

@ [mnkalikpima@forumrefugies.org](mailto:mnkalikpima@forumrefugies.org)

☎ +33 145 416 771



# National Asylum procedure in Ireland

## Introduction

In Ireland the Irish Naturalisation and Immigration Service (INIS) is the primary body with responsibility for asylum, immigration, citizenship and visas. The INIS is responsible for administering the functions of the Minister for Justice, Equality and Law Reform. The primary legislation on asylum is contained in the Refugee Act 1996, which is the main point of reference for immigration and asylum law. Those seeking protection need to register with the Office for Refugee Applications Commissioner (ORAC) by filling in a form. ORAC then perform a follow up interview and produce a report recommending whether or not an applicant should be granted asylum. A negative recommendation from ORAC can be appealed to the Refugee Appeals Tribunal (RAT). This is normally a written appeal, but in some circumstances an applicant can request an oral hearing. If this appeal fails, the applicant will then be invited to apply for Subsidiary Protection and/or to make representations as to why he or she should not be deported. He or she will also be advised that it is open to him or her to leave the state voluntarily or consent to the making of a deportation order.

## What are the different forms of protection existing in Ireland?

**Refugee Status:** Refugee status is granted if an applicant meets the requirements set out in Section 2 of the Refugee Act 1996. It provides protection against return to the person's country of origin or residence, and includes the right to family reunification of immediate family members.

A recognised refugee is entitled to work or operate a business; to access medical care; social welfare; to practice his / her religion freely; to access education services; to reside in the State; to freely travel within the State; to have access to the Courts; to be a member of a trade union; to acquire, own and sell real and personal property etc. Recognised refugees are entitled to a residence permit, and may also apply for a 1951 Convention Travel Document.

**Subsidiary Protection:** Those deemed in need of international protection, but who do not qualify as a refugee under the Refugee Act 1996 can be granted subsidiary protection. With subsidiary protection, an applicant does not have to show a nexus to the serious harm feared. This means that unlike when applying for Refugee status, the applicant does not need to show why he / she will be subject to serious harm or on what grounds he / she fears being subject to serious harm.

A beneficiary of subsidiary protection is entitled temporarily to the same rights as those granted refugee status, normally for a period of three years, renewable. The Minister can revoke or refuse to renew subsidiary protection on a number of grounds, including where protection is no longer required due to a change in circumstances.

## Procedure for claiming asylum

### 1- Submission of the asylum application

The Refugee Act provides that persons arriving at the frontiers of the state seeking asylum are initially dealt with by an INIS Immigration Officer. This officer conducts a preliminary interview with the applicant. The purpose of this interview is to establish inter alia: whether the person wishes to make an application for a declaration for refugee status and, if so, the general grounds upon which the application is based, the identity of the person and their nationality, transport and route taken to reach Ireland as well as the legal basis for entry into or presence in the State. This interview should be conducted in the presence of an interpreter where necessary and possible. A written record (ASY1) is kept and the applicant is entitled to a copy. Applicants over 14 are fingerprinted and photographed. Persons who do not present themselves at the frontiers of the State may apply directly at the Office of the Refugee Applications Commissioner (ORAC) in Dublin, and conduct the preliminary interview there.

The applicant is issued with an Asylum Seekers' Temporary Residence Card and an information leaflet on the asylum procedure. This information leaflet is currently available in 24 languages. The applicant is also referred to the Reception and Integration Agency (RIA), who are responsible for co-ordination and provision of reception services and accommodation to asylum seekers.

The next stage is for the applicant to complete a detailed questionnaire, which requires him or her to provide biographical and other personal details as well as travel particulars. This questionnaire must be completed and submitted to ORAC within 6 or 7 working days. The applicant may seek free legal advice from the Refugee Legal Service (RLS) or privately arranged legal advice in the completion of the questionnaire.

### 2- How the application is considered

A substantive interview is then carried out by an ORAC caseworker. During this interview, the services of an interpreter may be used. The applicant is also entitled to have a legal representative present during the interview. A copy of notes taken by the ORAC caseworker at this interview may be requested later.

On the basis of the findings of the preliminary interview, the completed questionnaire, the substantive interview and any relevant documentation, including country of origin information, the ORAC caseworker prepares a report on the application which will incorporate a recommendation on whether or not refugee status should be granted, as well as the reasons for this recommendation.

In order to assist in evaluating the applicant's story, the ORAC caseworker may avail of the help and resources of the ORAC Research Section, who in turn source information from the Refugee Documentation Centre.

If it is recommended that the applicant be granted refugee status, ORAC notifies the Minister for Justice and Law Reform, who is bound by the recommendation except where questions of national security or public policy arise. Where a recommendation is negative, ORAC notifies the applicant.

### 3- Rights of the asylum seeker

- The applicant is entitled to have a legal representative present during the interview.
- The interview is conducted in English.
- An interpreter will be provided where necessary.

#### **4- How long does it take on average to process an asylum application**

Prioritised applicants in 2008 were scheduled for interview within 9-12 days from the date of receipt of application questionnaire, and completed within a maximum of 8 days, leaving a processing time of 17-20 days. Other applicants in 2008 were processed to completion within 18-20 days. In 2008, 28.4% of applicants were prioritised.

These figures do not include cases which could not be processed for compelling or medical reasons and are a stark improvement on longer asylum processing times in the past.

Applicants are prioritised if their country of origin is deemed safe, or where a court orders the prioritisation of an asylum seeker who is in custody. Safe countries from which applications are prioritised are: Croatia, Nigeria and South Africa.

## **Rights of the asylum seekers**

### **1- Access to legal aid**

The Refugee Legal Service (RLS) is an independent body set up by the Legal Aid Board that provides free legal aid to assist asylum seekers in their asylum application. The RLS will provide a Caseworker and a Solicitor. Asylum seekers in receipt of less than €18,000 per year need only pay the minimum contribution fee, which can be as low as €10.

### **2- Accommodation**

The Reception and Integration Agency (RIA) provide asylum seekers with full board accommodation. This consists of a bed and three meals a day in a Direct Provision Centre.

### **3- Travel**

An asylum seeker must not leave the State without permission from the Minister for Justice, but may travel freely anywhere in Ireland (the Republic only).

### **4- Study**

Asylum seekers under the age of 16 are required to attend primary and secondary school and may stay in school until they reach the age of 18. Those over 18 can partake in any course provided by private or voluntary groups but cannot participate in State funded third level education, post leaving certificate courses (PLC), Vocational Training Opportunity Schemes (VTOS) nor FÁS courses.

### **5- Access to social & medical care services**

Asylum seekers can apply for a medical card which will give them access to free medical treatment and services.

### **6- Allowances**

A Social Welfare allowance scheme provides residents in the Direct Provision system with €19.10 per adult per week and €9.60 per child per week. Further payments including a clothing allowance, a maternity and transport allowance can be applied for through a local Community Welfare Officer. Residents of self-catering facilities are entitled to a basic weekly payment in line with that provided for unemployed Irish citizens, but these facilities are rare and are being phased out.

### **7- Volunteer Work**

Asylum seekers in Ireland are not permitted to work, but are permitted to volunteer with organisations and businesses.

### **8- Issuance of a temporary stay permit**

ORAC provide asylum seekers with a Temporary Residence Card after the preliminary interview stage.

### **9- Social Rights and Detention Provisions**

Asylum seekers are generally not detained, and have normal social rights.

## Outcomes and consequences

The asylum procedure has two possible outcomes:

### 1- The asylum application is granted

If the ORAC Caseworker recommends to the Minister for Justice and Law Reform to grant refugee status, and he or she has no objections on grounds of national security or public policy, a letter confirming refugee status will be issued. This letter can be used to apply for a residence permit. A recognised refugee has the same basic rights as an Irish citizen, with the exception of some voting rights. The refugee can also apply for a 1951 Convention Travel document, apply for Family Reunification for immediate family members and may apply for Irish citizenship after 3 to 5 years. Years awaiting determination of asylum status can be counted toward citizenship, in recognition of the fact that refugee status is declaratory as opposed to constructive.

### 2- The asylum application is rejected

Applicants who receive a negative recommendation arising from the ORAC Caseworkers report are expected to leave the country voluntarily, or may face deportation.

Alternatively, an unsuccessful asylum seeker may appeal to the Refugee Appeals Tribunal (RAT). The RAT is an independent body, given statutory authority to examine negative recommendations by ORAC. Normally, an appeal must be made within 15 working days after the negative recommendation. This appeal is normally in writing, but in certain circumstances an applicant may be able to request an oral hearing as part of the appeal.

Applicants who failed to participate in the process, by withdrawing their application or by not attending an ORAC interview may be barred from appealing to the RAT.

If the RAT appeal is unsuccessful, the unsuccessful asylum seeker will be invited to apply for subsidiary protection and/or to make representations as to why he or she should not be deported. He or she will also be advised that it is open to him or her to leave the State voluntarily or to consent to the making of a deportation order. If the applicant is refused subsidiary protection, the Minister will then consider any representations made in deciding whether or not he or she should be deported or instead whether he or she should be granted leave to remain for humanitarian, non-*refoulement* or other reasons.

In Ireland, an application for subsidiary protection can only be made where an application for refugee status has first failed. A beneficiary of subsidiary protection is entitled to the same rights as those granted refugee status, normally for a period of three years, renewable. The Minister can revoke or refuse to renew subsidiary protection on a number of grounds including where protection is no longer required due to a change in circumstances.

## **Special provisions for unaccompanied minors and vulnerable persons**

Unaccompanied minors, deemed to be less than 18 years of age, are placed in the care of the Health Services Executive (HSE). The HSE appoint a social worker who guides the child through the refugee application process, if this is deemed in the best interest of the child. Other special provisions include the provision of child friendly ORAC interviews, with specially trained staff.

There has been criticism of the services provided to unaccompanied minors, with 310 children disappearing from HSE hostel-style accommodation over a seven year period. Steps have been taken to address this.

# Implementation of the Dublin regulation in Ireland

An asylum seeker can only apply for refugee status in one member country, and must apply in the first member they reach. If not, they may be returned to that member state. This might happen if it can be shown that they have either passed through the border of another member state (by air, sea or land) or made an application for asylum in another member state.

Alternatively, if an applicant's husband, wife or child is a recognised refugee or is pending asylum in another member state, that country should be responsible for the applicant's asylum procedure. If the applicant is an unaccompanied minor, the member country where a parent is residing is responsible for the asylum procedure.

The EURODAC database is designed to ensure that applicants cannot apply for refugee status in two countries simultaneously.

The Dublin regulation was designed to ensure minimum standards for signatory countries and therefore remove the alleged risk of asylum seekers choosing a preferred member state. It also removes the risk of 'asylum seeker in orbit' situations and is an early step toward the harmonisation of various asylum policies in the EU and European area.

## 1- Situation n°1:

### When the asylum seeker falls within the scope of the Dublin regulation while he/she has lodged his/her asylum application in Ireland

#### a) Which procedure is applied?

If an applicant is issued with notification under Dublin regulation concerning his / her return to another member state, he / she has 15 working days to make a written appeal against any negative decision to the Refugee Appeals Tribunal. The initiation of an appeal will not automatically suspend the process, however if the appeal is successful the individual can be subsequently returned to Ireland.

#### b) Which are the competent authorities?

The relevant authorities remain the same as with any application for asylum: INIS at the frontier and ORAC for applications and interviews. When the applicant is issued a notification under the Dublin regulation and wishes to appeal, the body responsible for hearing that appeal is the Refugee Appeals Tribunal.

#### c) May the asylum seeker be detained during the decision-making process?

It is possible for the asylum seeker to be detained, under section 9(8) or 9(13) of the Refugee Act 1996, on the authority of a District Court Judge, for a potentially indefinite period consisting of successive 21 day committals, until their application for asylum has been resolved. Where detained, ORAC and the RAT must ensure that the person's asylum process is dealt with as soon as possible and if necessary before any other applications are for non-detained persons are processed.

Detention normally only takes place where there is reasonable cause to suspect that the asylum seeker poses a threat, has committed a serious non-political crime outside the State, has taken steps to conceal their identity or intends to avoid removal from the state in the event of his / application being transferred to a "safe third country," under the Dublin convention. In 2008, 2.8% of applications received by ORAC were from persons in detention.

**d) Does your national legislation allow for suspending the implementation of the decision in an individual case? If yes, is it implemented in practice?**

Under Section 22 (1) of the Refugee Act, the Minister may make orders as appear necessary to him / her for the purpose of giving effect to the Dublin Convention. Section 22 (2) (h) also provides for the referral of an application for asylum to ORAC, notwithstanding that a convention country has responsibility for examining the application.

The legislation does not allow for the suspension of implementation of a decision but a court order may suspend implementation in an individual case, pending an application for judicial review. An example of this is the 3 Test Cases\* (Mamo and Related Cases), whereby the implementation of a Dublin Regulation transfer order is currently suspended, pending an appeal to the Irish Supreme Court and now a referral to the Court of Justice of the European Union. In 2008, 27 cases were taken in relation to the Dublin regulation.

\*Matters: Tigist Mamo (AKA Eden Mamo) v Refugee Applications Commissioner & Anor/Record No. 2008/1243/JR; Ramazan Hussein Mirza v Applications Commissioner & Anor/Record No. 2008/1242/JR; Bryalay Abrahami v Applications Commissioner & Anor/Record No. 2008/1278/JR.

**e) May a vulnerable person or a person affected by a psychological or a physical disease be transferred? Are there any protective provisions in your legislation?**

ORAC have the power to determine whether an application should be transferred to a convention country for examination, as allowed under the Dublin regulation. Alternatively, it can also decide that the application should be examined in the State, even where the Dublin regulation allows for transfer. I.e. ORAC have the power to determine whether there are grounds for an application to be determined in Ireland, notwithstanding the provisions of the Dublin Convention.

With this power, ORAC can decide not to transfer a vulnerable person or a person affected by a psychological or physical disease. There are no statistics available which highlight whether this happens.

**2- Situation n<sup>2</sup>:**

**When the asylum seeker is transferred to Ireland (responsible state for examining the asylum application)**

**a) What are the effects of taking charge and taking back applicants for asylum transferred under the Dublin regulation according to your national legislation?**

In 2008, a total of 86 asylum seekers were transferred to Ireland. An asylum seeker who is transferred to Ireland under the Dublin regulation follows the same standard asylum procedure as followed by applicants who apply on their first arrival in Ireland.

**b) What about the arrival in your country of the transferred asylum seeker**

An asylum seeker transferred to Ireland follows the normal asylum application process.

**c) What are the steps to be undertaken by the asylum seekers?**

**— If he/she has already applied for asylum in the country**

On return to Ireland, the asylum seeker rejoins the application determination procedure at the point where they left. As such, the asylum seeker should notify ORAC and or the RAT of their return and any change of address. The Reception and Integration Agency (RIA) should be contacted where the asylum seeker requires assistance with accommodation and subsistence. An asylum seeker may also request a letter of status from the INIS if they are unsure of the progress of their asylum determination.

**— If he/she hasn't applied yet for asylum in the country**

An asylum seeker transferred to Ireland follows the normal asylum application process. As such, the GNIB officer at the frontier should be informed of the asylum seekers' intent to apply for asylum. If the asylum seeker does not meet a GNIB officer at the frontier, they should make an application directly at the ORAC office.

# Contact information in Ireland

## 1- Partner organisation activities and contact details

### Irish Refugee Council


2<sup>nd</sup> Floor


Ballast House

Aston Quay

Dublin 2

 [www.irishrefugeecouncil.ie](http://www.irishrefugeecouncil.ie)

 +35 317 645 854

 [info@irishrefugeecouncil.ie](mailto:info@irishrefugeecouncil.ie)

**Activities:** Monitoring, Accommodation, Separated Children, Public Understanding and Integration Policy

## 2- Support organizations for asylum seekers


### Refugee Legal Service

48/49 North Brunswick Street

Georges Lane

Dublin 7

 [www.legalaiddboard.ie](http://www.legalaiddboard.ie)

 +35 316 469 600

 [dublinrls@legalaiddboard.ie](mailto:dublinrls@legalaiddboard.ie)


**Activities:** Legal advice and assistance for asylum seekers and refugees.


## 3- Administrations


### Irish Naturalisation and Immigration Service

13/14 Burgh Quay

Dublin 2

 [www.inis.gov.ie](http://www.inis.gov.ie)

 +353-1-6167700

 [immigration\\_mail@justice.ie](mailto:immigration_mail@justice.ie)


**Activities:** Asylum, Immigration, Citizenship and Visas


### Refugee Appeals Tribunal

6-7 Hanover Street

Dublin 2

 [www.refappeal.ie/](http://www.refappeal.ie/)

 +35 314 748 400


 [info@refappeal.ie](mailto:info@refappeal.ie)


**Activities:** Examine Appeals


### Office of the Refugee Applications Commissioner

79-83 Lower Mount Street

Dublin 2

 [www.orac.ie](http://www.orac.ie)

 +35 316 028 000

 [oracmail@orac.ie](mailto:oracmail@orac.ie)

**Activities:** Assess Refugee Application