

European Committee for the Prevention of Torture - Request for Information

Immigration Related Detention (Administrative Detention)

Nasc is currently concerned about the treatment of persons who are deprived of their liberty for Immigration related offences, people detained on foot of a refusal of permission to land (administrative detention) and people detained pending deportation. (S.4 (3) (a) to (k) of the *Immigration Act 2004* and S.5 *Immigration Act 2003*).

Nasc would be particularly concerned that the rights of persons detained, following a refusal of permission to land, are not adequately protected. We have a number of concerns here:

1. There is no formal recognition of the rights to inform a person of their choice of their detention in domestic legislation.
2. Access to a lawyer and access to medical care is not provided for in legislation.
3. A 2005¹ report highlighted the fact that these people are not being provided with information in a language that they understand to outline their rights and explain the legal procedures and their legal rights and entitlements.
4. This category of persons can be detained for a period of up to 8 weeks (S.5 (3) (a) *Immigration Act 2003* without judicial oversight.
5. According to the Department of Justice figures issued in 2013, 1,877 people were refused permission to land in the State. There is very little known about this group of people. It is unknown how many were detained, for what period, and where they were detained. Those detailed under Section 5 (2) of the Immigration Act have a very limited right of review. The decision to detain can be reviewed by a superior member of an Garda Siochana. An action in the High Court can also be brought under a habeas corpus application under Article 40 (4). We believe that a clear right to appeal the decision to both refuse entry and detention to an independent body must be provided for.
6. All immigration related detainees are detained with the general prison population, which is contrary to best practice.

¹ Immigration Related Detention In Ireland *Mark Kelly Human Rights Consultants November 2005*

I. Immigration Related detention:

According to the Irish Prison Services' annual report², in the last two years there have been 796 committals to Irish prisons for immigration related offences. This figure does not include migrants who were detained for other offences and subsequently received a deportation or removal order or those who were detained for a short periods elsewhere as they were refused permission to land.

Detention for immigration purposes is sometimes referred to as administrative detention as it is detention without a conviction, and usually takes place in order that a further administrative measure can take place (i.e. deportation or expulsion).

People detained for immigration reasons are a particularly disadvantaged group - away from the public eye, they may not have access to services which are made available for migrants. In our experience of working with this group, many are unaware of their rights and entitlements or may not be able to exercise them because of language and/or literacy difficulties. They may also experience problems due to cultural differences. These issues are compounded for detainees who are not entitled to legal aid.

II. **Direct Provision**

There are 4,353 persons availing of direct provision accommodation in 34 centres, some 38% of whom are children under 18 years of age. 68% of those resident in direct provision accommodation have been there for three years or longer.

1. The remit of the Health Information and Quality Authority (HIQA), an independent authority responsible for driving quality, safety and accountability in residential services should be extended to cover the inspection of Direct Provision Centres.
2. The remit of the Ombudsman for Children should be extended to cover the children in Direct Provision Centres.
3. Children in Direct Provision should be provided with a safe and child-appropriate environment. We are concerned that the living conditions in Direct Provision Centres which allow for children to live in close proximity to non-family members are a risk to children.

² Irish Prison Service Annual Report 2013 accessed at: <http://www.justice.ie/en/JELR/Pages/PB14000057>

III. EU Citizens in Prison

In 2014 63 EU nationals were returned to their countries of origin on foot of an EU Removal Order

EU nationals who are served with notices of intention to issue a removal order while they are in incarceration should be provided with timely access to legal aid to contest the removal orders.

IV. Criminalisation of begging and the ethnic profiling and incarceration of members of the Roma Community

The *Criminal Justice (Public Order) Act 2011* has led to the criminalisation and incarceration of members of the Roma Community. We believe that the members of the Roma Community, in particular women, who victims of ethnic profiling and that the legislation was specifically targeted towards Roma Community. While the 2011 Act was being debated in the Dail chamber, the words ‘Roma’ or ‘Roma Gypsy’ were referenced twelve times and ten references were made to ‘non-nationals’. It is apparent from that the motivation behind the legislation was the policing and regulation of the Roma community. Within an 8-month period of its enactment, more than five hundred arrests were made in Dublin city centre alone. Two-thirds of these were foreign nationals, mainly from the Roma community.

Section 2 of the *Criminal Justice (Public Order) Act, 2011* criminalises aggressive begging³ and section 4⁴ provides the Gardaí with the discretion to decide whether the begging may be characterised as aggressive.

Sections 1 and 4 of the *Criminal Justice (Public Order) Act, 2011* which unjustly target members of the Roma Community should be repealed.

³ Section 2, *Criminal Justice Act (Public Order Act), 2011*:

- A person who, while begging in any place—
 - (a) harasses, intimidates, assaults or threatens any other person or persons, or
 - (b) obstructs the passage of persons or vehicles,

is guilty of an offence and is liable, on summary conviction, to a class E fine or imprisonment for a term not exceeding one month or both.

⁴ Section 4 (1) *Criminal Justice Act (Public Order Act), 2011*

- 4.— (1) A member of the Garda Síochána may arrest without warrant any person whom he or she suspects, upon reasonable grounds, of having committed an offence under section 2 or 3 .

