

Nasc Submission to the European Commission on Racism and Intolerance (ECRI) on Ireland's 4th Report Interim Follow Up

Introduction

Nasc, the Irish Immigrant Support Centre, is a non-governmental organisation working for an integrated society based on the principles of human rights, social justice and equality. Nasc (which is the Irish word for link) works to link migrants to their rights through protecting human rights, promoting integration and campaigning for change. Nasc was founded in 2000 in response to the rapid rise in the number of asylum seekers and migrant workers moving to the city of Cork. It is the only NGO offering legal information and advocacy services to immigrants in Ireland's second city. Nasc's legal team assist some 1,000 migrants annually in navigating Ireland's protection, immigration and naturalisation systems. We also assist migrants and ethnic-minority Irish people who encounter community-based and institutional racism and discrimination. Our campaigning strategy is informed by the issues emanating from our legal case work and our day-to-day work with migrants.

Nasc welcomes the opportunity to submit to the European Commission on Racism and Intolerance (ECRI) our comments on the steps the Irish State has taken to implement the Interim Recommendations made in ECRI's 4th Monitoring Report on Ireland. Nasc participated in the joint NGO consultations with the ECRI Subcommittee and the Framework Convention for the Protection of National Minorities Subcommittee in 2012, and we are grateful for the request from ECRI to contribute comments to the Interim review of ECRI's 4th Report on Ireland. The comments below are based on our experience providing advice and support to migrants and our advocacy and campaigning work to bring about legislative and policy reform.

Interim Recommendations

1. Adoption of the Immigration, Residence and Protection Bill

The Irish Government has yet to introduce a revised version of the Immigration Residence and Protection Bill, 2010. In its stead, after prolonged pressure from advocacy groups, legal advisors, politicians, international human rights bodies, and asylum seekers, the Government have just (as of March 2015) introduced the Heads of the International Protection Bill, 2015, deciding to legislate for International Protection separately from Immigration. Although we welcome the introduction, after significant delay, of protection legislation, we have significant reservations about the Bill as it currently stands.

In addition, we remain profoundly concerned that the Government has not introduced updated immigration legislation. The International Protection Bill 2015 only covers one aspect of a very significant and much needed package of legislative and policy reform to protect and promote the rights of migrants and their families in Ireland.

a. Single Procedure

The International Protection Bill, 2015 provides for the introduction of a Single Procedure for dealing with applications for asylum and subsidiary protection. The Heads of Bill were published on 24th March but in its current form Nasc have a number of concerns about the proposed Bill and are currently in the process of fully examining and responding to the current draft.

b. Long Term Residence

No efforts have been made to date to introduce legislative provisions for long term permanent residency outside of citizenship. We remain deeply critical of the Government's failure to reform legislative framework implement immigration reforms, including pathways to secure long term residency.

c. Registration of minors under 16

The Heads of the International Protection Bill 2015 contains a provision providing for the registration of asylum seeker children from age 14. As this Bill is still only at an early stage, we cannot comment further

on the application of this provision. However we are concerned that the application of the best interests of the child principle does not directly apply to all asylum seeking children in the Bill.

2. The Independence of the Workplace Relations Committee

Despite a commitment to radically reform the State's Workplace Relations system, as of March 2015 there has been little in the way of substantial movement in this regard. The timeframe set out in 2011 for reform has not been followed, though some organisational and administrative changes have occurred, including setting up a website, complaints form and a pilot Early Resolution Service. In March 2015, the Minister for Jobs, Enterprise and Innovation put out a call for board members for the Commission. The Workplace Relations Bill was introduced in 2014 but has yet to be debated by the Oireachtas, thus the Commission itself has yet to be established. The Bill is currently being debated in the Seanad and thus we cannot comment extensively on the independence or effectiveness of the body as yet. As members of the Equality and Rights Alliance, we have reservations about the Bill and the type of body the Bill will manifest, including whether the unique nature of equality issues and discrimination cases will be dealt with effectively¹. We are also profoundly concerned at the inordinate delays in establishing the Commission, as we do not know the impact of these delays on those taking complaints during this interim period.

3. The Application of the Habitual Residence Condition

The application of the Habitual Residence Condition continues to be problematic. We are pleased that following on from the '*Person or Number*' report jointly published by Nasc, Crosscare and Doras Luimni additional training has been given to Department of Social Protection staff on the Habitual Residence Condition and new improved guidelines for staff have also been issued. Section 246 of the Social Welfare Consolidation Act, 2005 has also been amended to remove the reference to a presumption that those who did not have two years of residence in

¹ <http://www.irishtimes.com/news/crime-and-law/workplace-relations-bill-set-to-radically-overhaul-employment-disputes-1.2035725>

the Common Travel Area would be presumed not to be habitually resident in the State. This provision had caused a great deal of confusion and we welcome its removal from legislation.

Despite these positive steps, there remain significant issues with the Habitual Residence Condition. The Social Welfare Appeals Office (SWAO) Annual Report 2014 referred to “inconsistency and poor understanding of the legislation in decisions relating to the right to reside...” The SWAO Annual Report also showed that the overall rate of successful appeals had increased again and stood at 56.5% in 2014. We believe that this high rate of success on appeal is largely attributable to poor first instance decision making and that this could be allayed by providing more information to applicants about the Habitual Residence Condition at the time of application and providing access to a database of appeal decisions from the SWAO on a range of issues including the Habitual Residence Condition. We believe that the availability of appeal decisions would enable applicants to become stronger self-advocates and would, over time, lead to greater consistency of decision making by frontline staff.

Further Information

This submission is just an overview of our comments on what steps Ireland has taken to date to implement the Interim Recommendations made by ECRI in their 4th Monitoring Report on Ireland. A representative of Nasc is willing to appear before the ECRI Subcommittee to discuss the comments made in this submission in more detail.

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