

Chapter 5

Department of Justice, Equality and Law Reform

5.1 Enforcement of Deportation Orders

Introduction

The Department of Justice, Equality and Law Reform is responsible for implementing Government policy on refugees and asylum seekers. The costs borne on the Vote in 2004 for implementation amounted to €129m.

Within the Department, the Office of the Refugee Applications Commissioner (the Commissioner) considers and decides on applications for refugee status from asylum seekers who wish to remain in Ireland. The Refugee Appeals Tribunal (the Tribunal) decides appeals against Commissioner decisions. Both agencies forward their recommendations to the Ministerial Decisions Unit of the Department of Justice, Equality and Law Reform.

The Ministerial Decisions Unit makes decisions on behalf of the Minister in relation to recommendations made by the Commissioner and the Tribunal on asylum applications. The Minister is, in general, bound by recommendations to grant asylum made by those bodies. In the case of negative recommendations, the asylum seeker is given the options of leaving the country voluntarily, consenting to deportation or making representations to the Minister on a number of grounds as to why he/she should not be deported. Following consideration of the case, including any representations made, leave to remain, on humanitarian or other grounds, may be granted at the discretion of the Minister or (as happens in most cases) the Minister is asked to sign a Deportation Order. The Arrangement Section (within the Repatriation Unit) is responsible for arranging deportation in cooperation with the Garda National Immigration Bureau (the Bureau).

My examination sought to establish the effectiveness of arrangements for enforcing deportation orders. Records of all cases where the Minister had signed an order in 1999 were reviewed to track performance in bringing cases to finality. I also examined a small number of cases from 2003 and 2004 to confirm whether the issues noted from the 1999 cases continued to apply.

Audit Findings

A departmental computer system was first introduced in the Repatriation Unit for the management of deportations in November 1999 and was replaced in October 2004 by a more comprehensive case management system. Migration of data to this system and quality assurance checks will shortly be completed. Table 18 summarises the status of the deportation orders signed by the Minister as recorded on the computer system for the period November 1999 to June 2005. Some 6,300 cases are described as “evaded”. The Department informed me that these are cases where the deportation has not been effected and the case is not being actively pursued. An analysis of the 1,236 cases where orders remain to be enforced indicates that about 20% have been stalled due to Irish Born Child Applications and 10% await the outcome of Judicial Review proceedings. Over half of the cases, however, are awaiting enforcement.

Table 18 Status of Deportation Orders 1999-2004 at 30 June 2005

	1999	2000	2001	2002	2003	2004	2005	Total
Deportation Orders Signed	80	797	1,801	2,195	2,250	2,723	967	10,813
Deported, left State before enforcement or transferred to another	27	262	470	542	498	384	92	2,275

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jurisdiction								
Evaded	30	326	1,089	1,454	1,467	1,449	522	6,337
Through revocation or otherwise, applicant permitted to remain	14	148	189	104	93	384	33	965
Orders remain to be enforced	9	61	53	95	192	506	320	1,236

The audit review noted that the knock on effects of the following factors are likely to have contributed to the rate of enforcement

- Significant delays between the date of application for asylum and the interview with the Commissioner to determine eligibility to remain in the country. These delays ranged from 2 days to over 22 months, averaging over 9 months.
- Significant time taken to translate questionnaires, which applicants were required to complete for the Commissioner. These ranged from 6 days to almost 2 years and averaged around 8 months.
- Widespread failure by applicants to attend the scheduled interview with the Commissioner. This resulted in repeated written reminders to applicants at addresses from which previous correspondence had been returned undelivered.
- Delays of 1 to 3 years from the date a negative recommendation was made by the Commissioner/Tribunal to the time the Department sent the Deportation Order to the Bureau for enforcement.

In order to help assess the effectiveness of the enforcement of deportation orders, I reviewed papers made available to me by the Bureau in relation to a specific deportation operation in April 2005. My review of this operation showed that the Department targeted 456 failed asylum seekers for deportation to an African country. The Department was aware that that country would accept no more than 50 persons on any one flight. An analysis of the outcome of the 456 cases written to is given in Table 19.

Table 19 Analysis of the Deportation Operation

Failed to show	228
Made new Applications	90
No Deportation Order Received in the Bureau	32
Injunctions taken out	16
Undertakings Made by Asylum Seeker	14
Unable to Travel for Medical Reasons	10
Deportation Orders Revoked	8
Held	6
Irish Born Child Applications	5
Other	22
Number finally Deported	25
Total	456

Accounting Officer's Response

In response to my enquiries, the Accounting Officer pointed out by way of background, that the number of persons applying for asylum in 1996 was only 1,179. By 2000, this had increased to almost 11,000 and further increased to a high of 11,600 in 2002. The Government approved additional resources to deal with the backlog of applications that had arisen. The formal establishment of the Office of the Commissioner and the Tribunal absorbed the majority of these resources. A high level of resources was allocated to these units in 2000 – 2001 resulting in increased outputs. As a consequence, the backlogs in the asylum system moved from application processing to the repatriation function. The intended movement of staff from application processing to repatriation did not happen as quickly as expected resulting in an inflow of files to the Repatriation Unit between 2001 – 2004 without the necessary staff resources to consider them.

He noted that the Refugee Act, 1996 was technically inadequate to address the large-scale increase in applications which arose since its enactment. In addition an elaborate legislative basis for the deportation process (introduced by the Immigration Act 1999) has been shown to be cumbersome and insufficiently streamlined to deal with speedy processing and enforcement of the large increase in deportation orders arising. New legislative proposals are in preparation to address this issue. Furthermore, he stated there was a need to put in place additional legislation (Immigration Act, 2003) to further streamline the Refugee Act, 1996 to deal with the large number of unfounded applications for asylum being received.

He stated that an increasing number of judicial reviews and the slowness of the judicial process in dealing with them had limited the Department's and the Bureau's ability to swiftly process and enforce deportation orders. Other factors outside the control of the Bureau *viz.* applications for Irish Born Child status and the non-availability of travel documents from diplomatic missions also impact on the enforcement of orders.

However, he was of the view that the overall average of orders enforced since November 1999 (23%) compared favourably with international experience. Over 60% of Deportation Orders issued are deemed 'evaded', in that the persons fail to report to the Bureau as requested in the notification letter sent to them. The legal effect of this is that the persons concerned can be arrested and detained pending their removal for failing to comply with the instruction to report but, in practice, the Bureau told the Accounting Officer that most of those 'evading' are believed to already have left the State of their own accord and have been removed from the social welfare system on the basis of exchanges of information between the Bureau, the Repatriation Unit and the Department of Social and Family Affairs.

Other delay factors

The Accounting Officer also dealt with the other factors which it was noted had contributed to delays and outlined progress being made.

Interview delays

He informed me that the present position with regard to waiting times for applications to be processed in the Office of the Commissioner and the Tribunal had improved to some 2,739 cases (31 May 2005). This compared with 5,414 at the same time in 2004 and some 10,000 cases in 2000. The number of cases over six months in the asylum system (Commissioner and Tribunal) as at 31 May 2005 stood at 734 as compared to some 6,500 in September 2001. Under new prioritisation arrangements introduced in January 2005, applicants are receiving interviews and decision at first instance within 3 weeks and subsequent appeals are processed within 10 working days.

Translation delays

He informed me that the Commissioner holds questionnaires submitted in support of asylum applications for translation until an interview has been scheduled for the application in question. This is done for reasons of efficiency and economy because of the numbers who do not attend for interview or withdraw from the process. From an average time of 8 months in 2003/4, questionnaires are now translated in less than 4 months.

Failure to Show for Interview

Applicants who fail to show are deemed to have withdrawn and the Commissioner makes a negative recommendation in these cases. As regards failed delivery of correspondence he said desk based and other related procedures are used to check the validity of addresses. It would not be practical from a resource point of view to go beyond these. In any event the Department believes that a significant number of such applicants have left the jurisdiction. Further attempts to trace these people would require additional resources and it is therefore considered that the priority, for efficiency and economy reasons, should be to process those applicants who were interested in having their applications investigated.

Analysis of the Deportation Operation

In the case of the deportation operation involving the 456 failed asylum seekers to the African country, the Accounting Officer said that the numbers targeted could be high multiples of the number actually deported, reflecting the very uncertain and unpredictable environment in which deportation operations are carried out. The high numbers arose from the knowledge that the likely rate of attrition would be high.

He pointed out that in relation to the 228 who failed to show, some were subsequently located in the United Kingdom and the African country. Others have been subsequently deported or will be deported in the future. In each case of 'failure to show' extensive investigations were made in an attempt to locate the individuals concerned. In many cases there was no trace of the individuals after the initial claim for asylum at a port of entry. These people are believed to have claimed asylum for the sole purpose of gaining entry to the State. Others had left their accommodation after receipt of the arrangements letter. The absence of exit checks at departure points from the State and the ease of movement over the land border with Northern Ireland allows for substantial abuse of the common travel area by persons subject to deportation orders.

He also stated that the cases described in Table 19 as 'No Deportation Order Received in the Bureau' refers to persons who had moved from their addresses without permission (in order to avoid deportation) and who were at Ministerial Decisions Unit stage in the process and had been located by the Bureau. The Bureau informed the Department of this and requested that the order be expedited. The Department was unable, for very valid reasons, to provide the orders on time to include the persons concerned in the flight.

