

Briefing

On 23rd January 2003, the majority of the Supreme Court of Ireland upheld the right of the Minister for Justice to deport in certain circumstances non-nationals from Ireland even if they were parents of Irish children. However the Court also confirmed that all children born in Ireland are equal Irish citizens irrespective of the nationality or status of their parents. All citizen children have a right of residency in Ireland and cannot be deported.

The Court also said that if the Minister wishes to deport non-national parents of Irish citizen children then he must carry out a detailed and individual examination of the circumstances of each case and establish that grave and substantial reasons in the interest of the common good exist, to interfere with the constitutional rights of the child's right to the company and care of their parents.

It would appear however, that since 23rd January the only part of the Supreme Court's judgement that the Minister wishes to have regard to is his power to deport non-national parents, as he persistently and determinedly refuses to abide by the other rulings of the Court. On 19th February 2003, the Minister withdrew the right for non-national parents to apply for residency – he put out a notice saying that the department “will not accept, consider, acknowledge or process in any way applications [for residency] made in advance of the initiation of the deportation process, irrespective of the manner in which such applications are made.” All applications for residency which had lawfully been made through the Department of Justice's own procedures in advance of that date but not yet processed - approximately 11,000 - were terminated and the families must now await letters of intent to deport from the Minister.

Since July 2003, the Minister has been sending out letters to non-national parents of Irish children advising them that he intends to deport them. If the parents wish to make representations to remain in Ireland, as the parents of Irish citizen children, then they have 15 days to respond to him with reasons why they should be allowed stay. They are not entitled to legal aid or free legal assistance to make their submissions. He confirmed that 10,000 non-national parents are likely to be issued with letters of intent to deport them in the next few months. The Minister has not put in place any procedure to evaluate the impact on the constitutional rights of the child, or the best interest of the child in making his decisions. Despite the words of the Supreme Court, that all Irish citizen children are equal and that the children cannot be deported the Minister has publicly stated on several occasions that he intends to force Irish children to leave Ireland with their parents if he has to, and that their right to reside in Ireland is limited.

On 21st October the Irish Human Rights Commission communicated their recommendations to the Minister, which included a recommendation that those parents who had applied for residency before the Department's change of policy be allowed to remain and that he put in place fair and transparent procedures to deal with future cases. The Minister has ignored those recommendations. The National Consultative Committee on Racism and Interculturalism also recommended that the Irish government grant

residency to those parents who applied before the Minister abolished the right on the 19 February 2003 on the basis that they had a legitimate expectation that they would be able to reside in Ireland with their children. For families who made an application after the 19 February the NCCRI stated that they must be given an opportunity to avail of legal assistance in preparing a submission to the Minister against the deportation order issued against them as part of a fair and humane determination procedure. This too has been ignored.

Instead the Minister has announced significant funding for the IOM to encourage non-national parents to leave Ireland with their children, rather than fight any deportation orders he issues.

In response to the unfair, unjust and what we believe will turn out to prove illegal measures human rights NGOs have been campaigning to ensure that the rights of the Irish children and their migrant parents will be respected. Human rights groups, migrant groups, migrant support groups, church based organisations have all been working together – under the banner of CADIC (Coalition Against the Deportation of Irish Children) - to offer the advice and support to migrant parents which is being denied by the Department of Justice.

The groups have written to the Minister on several occasions to highlight the issues and ask for his response. The Minister has not responded to a single letter. The groups have also asked others to offer their solidarity to Irish children and migrant parents who find themselves facing extreme anxiety and hardship. The campaign has received support from figures such as Mary Robinson, former President of Ireland and former High Commissioner for Human Rights, Patricia McKenna MEP and literary figures like Booker prize author Roddy Doyle. On Universal Children's Day over 70 organisations wrote to the Minister to ask him to implement fair and humane policies. CADIC is now looking for other individuals and organisations to show their support for Irish children and their non-national parents, and sign a letter to the Minister which will be handed to him on 10 December – International Human Rights Day. The letter (below), which calls upon the Minister to implement the recommendations of the Irish Human Rights Commission, can be signed to writing an e-mail, pledging your signature to cadic@eircom.net, or iccl@iol.ie. Please include your name, address and affiliated organisation if appropriate.

Minister for Justice Equality and Law Reform
Michael McDowell TD
Department of Justice Equality and Law Reform
72-76 St Stephen's Green
Dublin 2

Dear Mr McDowell,

We write to you to express our disquiet at the current policy of deporting migrant parents of Irish citizen children. Our concern echoes similar concerns of the human rights organisations, migrant organisations, migrant support organisations and groups organised under the *CADIC* umbrella, as well as those of the Irish Human Rights Commission and the National Consultative Committee on Racism and Interculturalism (NCCRI).

The Human Rights Commission has noted in its recent submissions to you that prior to the Supreme Court decision of January 2003, the Department of Justice Equality and Law Reform had a procedure whereby families of Irish children could lawfully apply for residency. The Human Rights Commission also noted that many of those families who had been in the asylum procedure, abandoned their claims on advice that they could rely on their application for residency. Those families were advised, often by government officials as well as lawyers, and legitimately expected, that they would be able to remain and raise their Irish child in Ireland. Now many families who lawfully applied for residency are having their applications returned to them and are being told that they will not be processed any further, and no consideration will be given of their claims pending the initiation of the deportation process.

This sudden retrospective change in policy is placing the families of Irish citizen children under undue strain, confusion and hardship. The fact that you have announced that these families would not be entitled to free legal advice, is also putting these families under extraordinary financial pressure. The Human Rights Commission recommends that, rather than continue these families' state of uncertainty, you be asked to allow these families to remain in Ireland. Granting these families residency will not affect the integrity of the asylum process. Bearing in mind the high cost of deportations and the potential contribution to be made by these migrant families, many of whom are highly educated professional people, it also makes economic sense to allow this group of people to remain.

We support the HRC's recommendations wholeheartedly and ask you to allow the families of Irish citizen children, whether former asylum seekers or not, to remain, thus ending their limbo and uncertainty, and treating them fairly and with dignity, rather than criminalizing them.

At the same time we are asking you to put in place a transparent and fair procedure for determining future applications for residency from families of Irish citizens. As the Human Rights Commission has stated to you, the rights of the Irish children of these families should form a primary consideration in this procedure. In accordance with their rights under the Irish Constitution and the UN Convention on the Rights of the Child you should factor in not only their risk of exposure to threats to the right to life and bodily integrity, but also the impact their forced removal would have on their welfare and rights to education and health care, and how disruptive or traumatic removal from the State would be for the children concerned.

We would therefore call on you to adopt, as a matter of urgency, the recommendations of the Human Rights Commission and the NCCRI and to resolve the plight of these Irish citizen children and their families in a just and humane way.

Sincerely,