

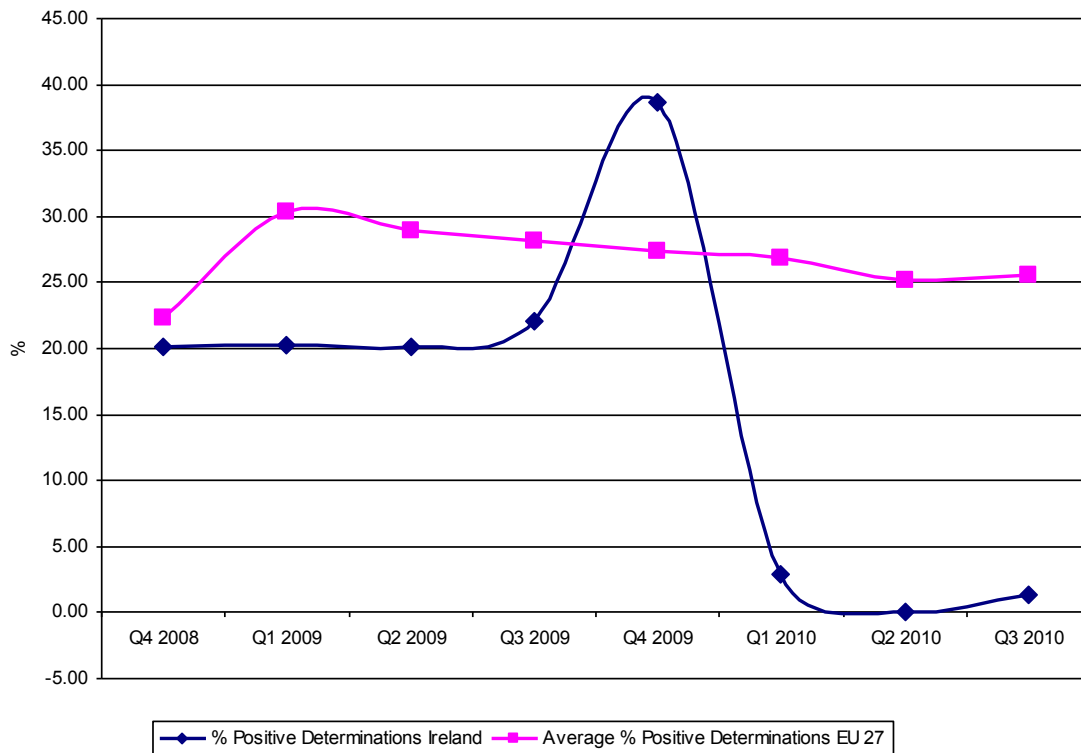
# Ireland: Alternative Report to the UN Committee Against Torture May 2011\*

By SPIRASI

## Article 3 - Refoulement

In general the protection system in Ireland, until very recently, provided adequate provision for asylum seekers so as not to evoke concerns around refoulement. Since the beginning of 2010 according to Eurostat a marked decline in positive determinations in favour of claims for protection raises legitimate concerns that refoulement is now a possibility. During 2010, 98.5% of decisions made by the Irish authorities in protection claims in the first three quarters of 2010 were negative.

% Positive Determinations First Instance Decisions (Source: Eurostat)



The above graph shows the trend over the last eight quarters for positive first instance decisions being made for either: refugee status, subsidiary protection and humanitarian reasons (Eurostat)<sup>1</sup> in Ireland compared with the average of EU states. Ireland made

\* Elements of this are also included in the report titled "Joint Shadow Report to the First Periodic Review of Ireland under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment"

<sup>1</sup> [http://epp.eurostat.ec.europa.eu/portal/page/portal/population/publications/migration\\_asylum](http://epp.eurostat.ec.europa.eu/portal/page/portal/population/publications/migration_asylum)

positive determinations in 24% of decisions on average from Q4 2008 to the end of 2009, this was just below the EU average for the same period of 27%. However from Q1 in 2010 the Irish state dropped far below this EU average with an average of only 1.4% positive determinations being made in contrast to an EU average of 25.8%. This drop in positive determinations cannot be explained by a differential country of origin caseload as the country profile for asylum applications over the period concerned did not significantly change (ORAC)<sup>2</sup>. When it is taken that on average between 10 and 35% of applicants for asylum in the EU are likely to be survivors of torture (Loutan et al 1999)<sup>3</sup> than a conclusion can only be drawn that the extremely low rates of positive determination indicates that the eventual refoolment of survivors of torture is a serious and real concern.

Access to Medical-legal reports:

SPIRASI provides documentation for the protection determination process in Ireland through the mechanism of medical legal reports (MLRs). These reports are provided at first decision instance to the Office of the Refugee Applications Commissioner (ORAC) and at second instance to Refugee Appeals Tribunal (RAT). MLRs are provided through a legal aid mechanism that is used by the Refugee Legal Service (RLS). In 2006 a 'Framework Document for the Production, Interpretation and Use of Medical Legal Reports in Determining Refugee Status was agreed by SPIRASI, ORAC, RAT, RLS and the UNHCR. All reports are produced in accordance with the guidelines of the Istanbul Protocol.

Over the past number of years SPIRASI has received a decrease in requests for MLRs that cannot be explained by the decrease in asylum applications to the state, please see table below:

Year	MLR's Requested	Asylum Applications	MLR's Requested as a % of Asylum Applications	% Reduction in MLRs Accepted	% Reduction in Asylum Applications
2007	199	3,933	5.06%		
2008	168	3,807	4.41%	-15.58%	-3.20%
2009	131	2,660	4.92%	-22.02%	-30.13%
2010	65	1,939	3.35%	-50.38%	-27.11%

In addition the rate of reports as seen against the number of asylum applications is remarkably low when the expected incidence of torture amongst asylum seekers should be higher. (IBID)

The majority of service users at SPIRASI are claiming protection on the basis of torture in determining a well founded fear of persecution and serious harm. However from what we know of the 2,741 asylum seekers who have accessed our services since 2001 only

<sup>2</sup> <http://www.orac.ie/pages/Stats/2010.htm>

<sup>3</sup> EUROPEAN JOURNAL OF PUBLIC HEALTH VOL. 9 1999 NO. 2  
<http://eurpub.oxfordjournals.org/content/9/2/93.full.pdf>

some 1,245 reports have been requested, an up-take of only 45%. It is highly probable that MLRs should be requested from SPIRASI in many more instances than is now occurring. Several reasons may exist for this lack of up-take of medical legal reports and more research would need to be conducted to determine these reasons. However it can be argued that the lack of mandatory health screening that includes an element of the early detection of severe trauma and torture amongst newly arrived asylum seekers is a major contributory factor.

Recommendations:

- When claims of torture are made during the protection determination process, the state should be responsible for requesting and resourcing an independent medical legal report produced according to the guidelines of the Istanbul Protocol. As per the judgement of the RC vs Sweden Case (9 March 2010) at the European Court of Human Rights.
- Tools for the early identification of survivors of torture should be introduced in the current health screening process at reception centres.
- An urgent independent investigation/review into the systems and decisions for cases processed during 2010 to occur.

## Article 14 – Redress and Rehabilitation

A right to compensation and rehabilitation for survivors of torture is explicitly stated in Article 14 of the CAT:

*“Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.”<sup>4</sup>*

Few international treaties provide such an explicit statement of the right to care. The CAT calls on states to make the “means for as full rehabilitation as possible” along with other forms of redress, an “enforceable right”.

When reviewing the National Report of Ireland to UNCAT it is clear that the state views the Article purely in terms of redress through the courts system for victims in Ireland. Financial compensation for a victim of torture should only be seen as a single aspect of rehabilitation. It should also be noted that presently survivors of torture who have been tortured by another state who are resident in Ireland have no recourse to assistance to facilitate a claim against that state for financial redress.

From the perspective of asylum seekers and refugees, SPIRASI is the core response to the rehabilitation needs of survivors of torture from this group. The Centre has provided assistance to over 3,150 survivors of torture since 2001 and on average provides care to 850 individuals per annum. The services of the Centre consist of:

- Holistic assessment
- Care plan that includes primary health care providers and regular multi-disciplinary case review
- Resourcing and stress management groups
- Group therapy
- Individual therapy
- Art therapy
- Music therapy
- Complimentary therapies
- Psychosocial Support
- Mentoring and Integration Assistance
- Interpreters
- Case support
- Medical-Legal Reports

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<sup>4</sup> United Nations Convention Against Torture 1984, Article 14.

As the UN special rapporteur on torture stated in 2004:

*“These types of assistance are interdependent and mutually reinforcing, when they are jointly offered, in terms of their impact on the victims’ lives, responding to the multifaceted nature of the effects of torture on the individual”*<sup>5</sup>

The Centre in Ireland has had great difficulty in sourcing sustainable and secure funding over the recent past. However in 2010 the Health Services Executive, the body tasked with providing health care in the Irish state, stepped up its financial commitment to the Centre. The situation has therefore greatly improved with 75% of the required resources for the provision of services now coming from the Irish state. Given the financial situation in the country at present however SPIRASI is becoming increasingly uneasy with being over dependent on such state resources. It is hoped that a new income source that has been voted into the budget of the European Union as a pilot action in 2011 will come on stream as quickly as possible.

Recommendations:

- That the Irish state commits to maintaining the financial commitment made in 2010 to the SPIRASI rehabilitation centre.
- That the Irish state commits to the provision of a mechanism to assist survivors of torture to obtain redress from external states.
- To ensure the provision of a more comprehensive response in terms of rehabilitation to victims of torture of the Irish state.

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<sup>5</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the 59th session of the General Assembly, A/59/324, 1 September 2004, par. 59.

## **Immigration Related Detention**

Evidence compiled in the United Kingdom by the Medical Foundation for the Care of Victims of Torture<sup>6</sup> suggests that where Immigration Related Detention exists there is a distinct possibility that survivors of torture will be detained. “Detention of torture survivors can have serious psychological effects. It can compound the effects of previous detentions.”<sup>7</sup> This is in contravention of Article 14 of the convention.

The situation in Ireland is such that immigration detention related decisions do not take into account that a person has had an experience of torture in their pre-migratory environment. No framework exists where a person can be identified as a survivor of torture to prevent their detention. SPIRASI the rehabilitation centre for survivors of torture has received cases of survivors of torture who have been detained in Irish prisons.

### Recommendations:

- Agreement by the state not to detain survivors of torture or other vulnerable groups in Immigration Related Detention.
- A framework to be agreed between the state and NGOs on the identification of survivors of torture prior to detention, including comprehensive physical and mental health screening on arrival to detention.
- In accordance with Article 10 of the convention prison authorities should receive training on the identification of survivors of torture who have been detained for immigration related reasons.

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<sup>6</sup> Susi, D & Salinsky, M, Protection not prison: torture survivors detained in the UK, Medical Foundation for the Care of Victims of Torture, 2001.

<sup>7</sup> IBID