



## AGM

The AGM of ICP was held in Dublin on 19 September 2009. The Executive Committee for the following year was elected. The following motions were passed:-

1. That the Taoiseach's office or relevant Department request the C.S.O. to produce as early as possible an analysis of the proportion of births to immigrant parents in the "baby boom" of 2008.
- 1(a) That the Director General of the C.S.O. arrange for the production as early as possible of an analysis of the proportion of births to immigrant parents in the "baby boom" of 2008.
2. That the Minister for Justice, Equality and Law Reform ensure that the Private Security Authority require proof of legal residence in the country from applicants for a licence, as the current requirements, including Garda vetting, appear only to require no criminal record.

The Taoiseach's office was notified by letter of motion 1 and they sent a copy of that letter to the C.S.O. A prompt reply was received from the C.S.O. with the following information: Of the 75,065 births registered in 2008, the following is a breakdown of nationality of the mother.

	No.	%
<b>Irish Nationals</b>	56303	75
<b>Non-Irish nationals</b>		
of which:		
United Kingdom	1783	2
EU 15 excl irl and uk	920	1
Accession states (EU15 to EU27)	6076	8
Other	5879	8
Not stated	4104	5
Total births	75065	

I.C.P. suspects that "not stated" would equate with "other".

## Dublin Central By-Election Summer 2009

Patrick Talbot stood in Dublin Central in the By-Election caused by the death of Tony Gregory. He received 614 first preference votes – 676 after transfers. Thanks to all who helped in the campaign. A few members made Trojan efforts – you know who you are.

### **Referendum on Children's Rights**

The last newsletter contained the submission we sent to the Joint Oireachtas Committee which was set up to examine the 2007 wording and make recommendations. Recently the new wording was published. We are even more worried about the consequences of this wording for immigration control. Interestingly, a legal expert from UCC (see below) has pointed out that there would indeed be implications in it for migration matters. Below is an article submitted to the Sunday Business Post with a request that they publish it as a response to an article on Sunday 21<sup>st</sup> by Mark Coen, a postgraduate law student in TCD.

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There is a grave danger that we are about to repeat the mistake of 12 years ago, and put into the constitution measures which will cause us severe difficulties in controlling immigration.

The proposed wording for a referendum on children says the following:

“In the resolution of all disputes concerning the guardianship, adoption, custody, care or upbringing of a child, the welfare and best interests of the child shall be the first and paramount consideration”.

Consider the case of the attempt to deport a foreigner who has a child here. One would expect that in almost all cases it would be better off to be brought up in a developed country like Ireland, than in a developing country such as Nigeria, Pakistan etc. Once that decision was made that would be end of it. The child would have to be allowed to stay and, in its best interests, its parent could not be deported, be they failed asylum seeker or any illegal immigrant. This arises from the phrase “the first and paramount consideration”.

This is not a rhetorical phrase. It has a very specific legal meaning as is explained on p.41 of the Final (3<sup>rd</sup>) Report of the Joint Committee of the Oireachtas on a Referendum on Children.

When this phrase exists, no other competing rights matter, such as our right to protect our borders, or the integrity of our asylum and immigration systems. Without that phrase, a balance would be sought between competing rights; with that phrase, nothing counts except the interests of the child.

Dr. Ursula Kilkelly of UCC, a child law expert, (who in her submission to the committee sought the inclusion of the word “upbringing”) has said that the wording has the potential to impact on areas such as migration, in that the stress on the rights of the child would now have to be taken into account where, for example, an Irish-born child’s mother has been deported.

“It has the potential to re-orientate (sic) the decision-making [process] and recast the framework within which those decisions are made” she said. A very sweeping statement.

We made a submission to the committee warning of such dangers in the 2007 wording. The word “upbringing”, which greatly increases the dangers, was added later. We sought the inclusion of the following as a safeguard:

“No provision of this article may be invoked in any court proceedings regarding deportation”.

We also sought to prevent adoption procedures being used by an “unaccompanied minor” as a stratagem to avoid being deported after reaching the age of 18. The same situation of the welfare and best interests of the child being of “first and paramount consideration” would apply there. We therefore suggested adding to the article:

“No provision may be made by law for the adoption of any child who is resident in the state, but does not enjoy the benefit of long-term residency”. [All submissions may be viewed on the committee’s website].

The report, which makes reference to several submissions, makes no reference to our concerns. It is extraordinary that the lessons of 1998 and the Belfast Agreement have not been learned. On that occasion we warned of the consequences of copper-fastening in the constitution the right to citizenship of anyone born on the island of Ireland. The Referendum Commission, which at that time gave both sides of the argument, specifically mentioned the dangers this could pose for immigration control.

In the euphoria surrounding the Agreement, this was ignored. Six years later, after incalculable damage, it was necessary to have another referendum to fix the problem. Now we have another “motherhood” which nobody is supposed to question.

There is, in fact, no need for this referendum. The State has already got the legal tools to protect children as Gerard Hogan S.C. has indicated, as has Adrian Hardiman of the Supreme Court.

Alan Shatter has contradicted his own arguments on the matter. On the one hand he has claimed that a recent horrific family case proves that we need this referendum. On the other, he has referred to the “grotesque and indefensible failure” of the then Western Health Board to intervene effectively in that case. It is precisely because they had the legal tools to intervene that the failure was “indefensible”. If they did not have the tools, because of the constitution, there could be nothing “indefensible” about it.

There are just short of 6,000 children currently in care. That is a very sad fact, but it provides 6,000 proofs that the legal tools exist to protect children. The very same politically correct constituency which in 2004 did not want us to escape from the abusive entanglement of the 1998 referendum now advocates a repeat of that abuse. Either safeguards, such as we suggest, must be added or this unnecessary amendment should be defeated.

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### **Recent Court Rulings**

There have been a couple of Supreme Court rulings recently one of which would give us heart; the second otherwise.

In December 2009 the Supreme Court ruled that the State was correct in saying that it did not have to allow into the country the husbands of women who had got residency rights in Ireland because of having a child who was born here before January 1, 2005, and therefore had citizenship. Obviously we would consider this very good news.

A recent judgement, the Meadows Judgement, had been eagerly awaited by immigration lawyers. They were hoping that the court would rule that a much more stringent test was required in certain deportation cases. Unfortunately, in this case, things went their way.

Judge Adrian Hardiman, in a dissenting judgement, expressed great worries about the implications of this. The following from the Irish Times explains the matter:

A Nigerian woman's successful Supreme Court case will in practice ensure every attempt to deport a failed asylum seeker will end in the courts, "which are already swamped by such cases", Mr Justice Adrian Hardiman said.

Asylum cases represent more than half of judicial review cases, and the majority decision in favour of Abosede Oluwatoyin Meadows, who claims risk of female genital mutilation (FGM) if deported, would make seeking judicial review "much easier", he said. In his 100-page dissenting judgment, he said the case represented "a major revolution in our immigration arrangements" and administrative law.

Ms Meadows had challenged "long accepted" criteria for judicial review and he believed the result was to introduce "in substance if not in formula" into our law the English approach to judicial review, known as "anxious scrutiny". This was "neither necessary nor desirable".

While the majority court did not believe its decision had "so drastic an effect", he failed to see how the decision was not "a massive change" from a position where a judicial review applicant had to show there was "no" evidence to support the impugned decision.

Ms Meadows's factual claims for asylum status were rejected in two separate independent hearings, but she now asked the court to review the Minister for Justice's consequential decision to deport her on the basis he must provide substantial and specific justification for that to a court. This was "wrong and unnecessary and I fear it will be grossly wasteful of time and resources".

It had been claimed the Minister failed to properly consider evidence relating to Ms Meadows's fear of FGM, but part of that evidence was the view of the United Nations High Commission for Refugees that FGM was "a fast dying practice" in Nigeria. Mr. Justice Nicholas Kearns agreed with Mr. Justice Hardiman and said Ms Meadows's constitutional rights had been "fully vindicated" by previous hearings, appeals and judicial review options.

He was against "recalibrating" the principles outlined in previous court decisions relating to the test for judicial review, which had "stood the test of time". He also did not believe the test of proportionality had a role to play in determining whether the court should intervene to quash a decision made after two unchallenged merit-based appeal hearings.

Expansion of the existing criteria for judicial review would represent "a significant hiking up of judicial activism" and, in this case at least, a "quite inappropriate encroachment" into the decision-making functions of the executive. He believed the majority decision would lead to merit-based reviews of ministerial decisions by judges who had "no constitutional mandate" for those.

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