**Deportation**

**Matthew Holmes BL**

**Introduction**

Deportation is a procedure by which the Minister for Justice can order a non-national to leave the state within a specified period and to remain out of the state thereafter.[[1]](#footnote-1) Deportation is perhaps the most well-known method by which foreigners are removed from the state. During the Civil War the state even deported Irish citizens by order of the military courts.[[2]](#footnote-2) Some of the most important decisions in immigration law have been in deportation cases, and these decisions are relied upon in a wide variety of different areas outside of the immigration sphere. Deportation is not the only means by which non- nationals can be removed from the state. EU citizens can be the subject of a removal order but not a deportation order.[[3]](#footnote-3) The English text *Immigration Law and Practise* (Fourth edition) notes that “*there is no easy or principled distinction between the process of deportation and administrative forms of removal”.[[4]](#footnote-4)* Removal is not the focus of this paper.

**Deportation**

A deportation order is an order made by the Minister for Justice requiring any specified non-national to leave the State within a specified period and to remain thereafter out of the State.[[5]](#footnote-5) In *U. v. Minister for Justice, Equality and Law Reform (No. 1)*[[6]](#footnote-6) the High Court found that this is an exclusion from the State of indefinite duration, unless revoked by the Minister. It is an offence to contravene the provisions of a deportation order.[[7]](#footnote-7) In September 2019 the Department of Justice announced that 5028 people had been deported or otherwise removed from the State in 2018.[[8]](#footnote-8) Of these over 95% were refused entry into the State and were returned to the place from which they had travelled. It has been reported that in 2019 293 people who were here illegally or who had failed in an asylum application were deported.[[9]](#footnote-9) The largest number of deportations were to Pakistan, followed by China and Nigeria.

In the United Kingdom deportation has been regulated by statute, or order under statute, since the late eighteenth century.[[10]](#footnote-10) In Ireland the power can be traced back to on a statutory basis to s 11 of the Aliens Order 1925 in the Free State.[[11]](#footnote-11) This was followed by the Aliens Order 1935 which was found to be unconstitutional in *Laurentiu v Minister for Justice Equality and Law Reform.* [[12]](#footnote-12)There the Supreme Court found that the power to expel or deport aliens was inherent in the State by virtue of its nature and not because it has been conferred on particular organs of the State by statute.The power to deport aliens was of an executive nature as it could be exercised by the executive in the absence of legislation. The Supreme Court cited the dicta of Lord Atkinson in *Attorney General for Canada v. Cain* that:

"One of the rights possessed by the supreme power in every State is the right to refuse to permit an alien to enter that State, to annex what conditions it pleases to the permission to enter it, and to expel or deport from the State, at pleasure, even a friendly alien, especially if it considers his presence in the State opposed to its peace, order, and good government, or to its social or material interests”[[13]](#footnote-13)

Similarly, in *AO and DL v Minister for Justice Equality and Law Reform* Hardiman J held that “*It is also important to stress that the nature of this power has been the same throughout recorded history and over a vast range of political and geographical conditions*.”[[14]](#footnote-14) In that case the Supreme Court also noted that here that the power to deport had been regulated by statute almost from the foundation of the State. The Supreme Court has also clarified that the Minister’s decisions in relation to deportation are executive, administrative acts not constituting a legislative act or the making of a regulation.[[15]](#footnote-15) Deportation is not a punishment or sanction, administrative or otherwise. The *Carltona* principle, that civil servants can make decisions in the name of their Minister, applies to deportation orders.[[16]](#footnote-16) This means that deportation orders do not have to be made by the Minister for Justice personally but can be made by their civil servants.[[17]](#footnote-17)

**Deportation Order Procedure**

Deportation orders may be made against the following categories of people under ss 3(2) of the 1999 act (as amended):[[18]](#footnote-18)

(a) a person who has served or is serving a term of imprisonment imposed on him or her by a court in the State,

(b) a person whose deportation has been recommended by a court in the State before which such person was indicted for or charged with any crime or offence,

(c) a person who has been required to leave the State under Regulation 14 of the European Communities (Aliens) Regulations, 1977 (S.I. No. 393 of 1977),

(d) a person to whom Regulation 19 of the European Communities (Right of Residence for Non-Economically Active Persons) Regulations, 1997 (S.I. No. 57 of 1997) applies,

…

(g) a person to whom leave to land in the State has been refused,

(h) a person who, in the opinion of the Minister, has contravened a restriction or condition imposed on him or her in respect of landing in or entering into or leave to stay in the State,

(i) a person whose deportation would, in the opinion of the Minister, be conducive to the common good.[[19]](#footnote-19)

Under s 3(7) A deportation order shall be in the form prescribed or in a form in the like effect. [[20]](#footnote-20) In *K v Minister for Justice and Equality* the Supreme Court held that some deviation from that form is permitted*.*”[[21]](#footnote-21)

Under s 51 of the International Protection Act 2015 the Minister is required to make a deportation order of someone whom the Minister has refused to give a refugee declaration and subsidiary protection to.[[22]](#footnote-22) This does not apply if the person opts to voluntarily return to their country of origin or the Minister gives them permission to remain in the state. Once a deportation order is made under this section it is construed as being a deportation order under s 3, save that certain subsections of s 3 do not apply.[[23]](#footnote-23) O’Donnell J. noted in *K v Minister for Justice and Equality* that “*Many, if not by far the majority, of challenges to deportation orders are made by persons whose applications for asylum have been refused.”[[24]](#footnote-24)*

Irish Citizens cannot be deported.[[25]](#footnote-25) Similarly, EU citizens cannot be deported.*[[26]](#footnote-26)* If the State wants to order an EU citizen to leave the jurisdiction it must rely on the removal procedures which are now found in S.I. No. 548/2015 - European Communities (Free Movement of Persons) Regulations 2015.[[27]](#footnote-27) In *Igunma v Minister for Justice and Equality[[28]](#footnote-28)* Hogan J held that applicant who was married to an EU national should be the subject of a removal order rather than a deportation order. *Igunma* was criticised by Humphreys J in *KP v Minister for Justice and Equality[[29]](#footnote-29)* and distinguishedon the basis that *inter alia* the marriage in *Igunma* was genuine and that *Igunma* was an article 40 application. In *KP* aleave application for judicial review of a deportation order was dismissed where the applicant’s EU Treaty Rights had been revoked following a determination that his marriage to a permanent resident of Latvia was a marriage of convenience. The applicant’s challenge to the deportation order was on the basis that he was the spouse of an EU national and has been given a residence card pursuant to the directive and the European Communities (Free Movement of Persons) Regulations 2006 and 2015. Humphreys J held that “*Legal action designed to enforce 'rights' deriving from a marriage of convenience is an affront to the court and makes a mockery of the constitutional commitments to legality, human rights, and to marriage and the family.” KP* was relied upon by O’Regan J. in *MAK v Minister for Justice Equality and Law Reform.[[30]](#footnote-30)* The Irish High Court referred this issue to the European Court of Justice for a preliminary reference in *Chenchooliah v Minister for Justice and Equality.*[[31]](#footnote-31) There, there was a decision to deport the applicant following the return of her spouse, an EU citizen, to his home state of Portugal. The Minister argued as her spouse was serving a prison sentence in his home country, he was not exercising his EU right to freedom of movement. The Court found that spouses of EU citizens who were at one time covered by the provisions of the EU Free Movement Directive cannot be issued with deportation notices under s 3 as these will result in a deportation order, which imposes an indefinite ban on entry to the State.

*Chenchooliah* has since been applied in a number of cases such as *Nadeem v Minister for Justice Equality and Law Reform* *(no 3)*.[[32]](#footnote-32)In *MA (Pakistan) v Governor of Cloverhill Prison[[33]](#footnote-33)* Humphreys J. found that *Chenchooliah* has no application in marriage of convenience cases. He also found that itis open to the Minister to terminate or withdraw the right under art. 35 of Directive 2004/38/EC and where the Minister has so terminated or withdrawn the right, it is open to the Minister to make a deportation order. Therefore, it can now be said that a spouse of an EU Citizen cannot be deported from the country, unless it has been found to be a marriage of convenience or the EU rights have in some other way been terminated.

When a person is presented with a Deportation order under s 3 it will include a copy of the examination of the file by the Minister which lays out the Minister's examination of the s 3(6) factors and how they apply to the deportee. It will also include an analysis of refoulment, s 4 of the Criminal Justice (UN Convention against Torture) act 2000, and the persons rights under article 8 ECHR.[[34]](#footnote-34) Before a deportee is presented with a deportation order under s 51 they will be provided with a s 49 report on permission to remain which will analyse much the same material. In *II (Nigeria) v Minister for Justice and Equality* Humphreys J held it was an abuse of process to seek an injunction at s 49 stage seeking to restrain the making of a s 51 deportation order. He held that:

“Lest there be any misunderstanding, I want to make it clear that if any applicant wishes to dispute such a conclusion in any future case, such applicant’s legal representatives are under a personal professional obligation to draw the present judgment to the attention of any court in which they may make an *ex parte* application challenging a s 49 decision”.[[35]](#footnote-35)

In *SG (Albania) v Minister for Justice and Equality[[36]](#footnote-36)* he provided the following table which explains exactly when and to what applicants particular type of deportation orders apply

|  |  |  |
| --- | --- | --- |
|  | Deportation Order made pre-31/12/16 | Deportation Order. made post-31/12/16 |
| Applicant not a protection seeker | Category 1 – 1999 Act | Category 2 – 1999 Act |
| Applicant applied for protection pre-31/12/16 and protection application finalised pre-31/12/16 | Category 1 – 1999 Act | Category 4 – 1999 Act |
| Applicant applied for protection pre-31/12/16 and protection application pending as of 31/12/16 | Not applicable | Category 3 – 2015 Act |
| Applicant applied for protection post-31/12/16 | Not applicable | Category 5 – 2015 Act |

The International Protection Office has issued an information notice to applicants advising that new applicants from January 1st 2020 a section 50 (prohibition of refoulment) will only be under taken when the criteria specified under s 51 a to c of the 2015 act become applicable to a person.[[37]](#footnote-37) There are people who the Minister (a) has refused under section 47 both to give a refugee declaration and to give a subsidiary protection to the person, and (b) is satisfied that section 48 (5) does not apply in respect of the person, and (c) has refused under section 49 (4) to give the person a permission under that section.

This means that applicants who are served with s 51 deportation orders will not have *refoulment* considered at permission to remain stage, but will receive a s 50 report, which considers refoulment, with the deportation order if the Minister does not believe refoulment applies to their case.

*Reasons for deportation*

When proposing to make a deportation order the Minister will write to the person who it is proposed to be deported notifying them of the proposed deportation order and the reasons for it.[[38]](#footnote-38) In *F.P. v. Minister for Justice* [[39]](#footnote-39) the Supreme Court found that the Minister was obliged to notify the applicants in writing of his decision and reasons for it. The court also found that the Minister was entitled to do so by letter but that the deportation order itself did not need to contain the reasons for the respondent's decision. In *Dimbo v Minister for Justice Equality and Law Reform* it was found that there needed to be “*grave and substantial reasons*” requiring deportation.[[40]](#footnote-40) The adequacy of the Ministers reasons can be the scrutinised by way of judicial review. [[41]](#footnote-41)

There is a body of case law on the level of detail required in the Ministers reasons. The case of *P.L. & B v Minister for Justice Equality and Law Reform* [[42]](#footnote-42) has been described as “*a fairly typical decision in this field*”.[[43]](#footnote-43) There the three applicants, P, L. and B, who were randomly selected from a large number of similar cases. All that they had been given by way of reasons in the deportation order was that:

“The reasons for the Minister's decision are that you are a person whose refugee status has been refused and, having regard to the factors set out in Section 3(6) of the Immigration Act, , including the representations received on your behalf, the Minister is satisfied that the interests of public policy and the common good in maintaining the integrity of the asylum and immigration system outweigh such features of your case as might tend to support your being granted leave to remain in this State".

The Supreme Court held that this was a sufficient level of reason. In the landmark January 2010 decision *Meadows v Minister for Justice Equality and Law Reform[[44]](#footnote-44)* the Supreme Court held that the general proportionality principle applies to judicial review of administrative decisions.[[45]](#footnote-45) The applicant claimed that claimed that she would be subject to female genital mutilation if returned to Nigeria and that the Minister’s decision to deport her failed to have due regard to the principle of non-refoulement governed by s.5 of the Refugee Act 1996. In this case Murray CJ focused on the reason given by the Minister relating to non-refoulment that *"in reaching this decision the Minister satisfied himself that the provisions of s. 5 (Prohibition of Refoulement) of the Refugee Act are complied with in your case."* ´Chief Justice Murray was not impressed with this. observing that:

“An administrative decision affecting the rights and obligations of persons should at least disclose the essential rationale on foot of which the decision is taken. That rationale should be patent from the terms of the decision or capable of being inferred from its terms and its context.

…

In my view the decision of the Minister in the terms couched is so vague and indeed opaque that its underlying rationale cannot be properly or reasonably deduced. The recommendation with which the memorandum submitted to the Minister with the file is not helpful and adds to the opaqueness of the decision.”[[46]](#footnote-46)

He also found that that the Minister would have no power to make a deportation order in respect of the appellant if he was of the opinion that she was likely to be subjected to a serious assault. He explained that before making a deportation order the Minister is required to consider in the circumstances of each particular case whether there are grounds under s 5 of the Refugee Act which prevent him making a deportation order. In cases where there is no claim or factual material put forward to suggest that a deportation order would expose the deportee to any of the risks referred to in s. 5 *“then no issue as regards refoulement arises and the decision of the Minister with regard to s. 5 considerations is a mere formality and the rationale of the decision will be self evident.”*

The decision *Meadows* is a landmark one which has an impact far beyond the field of immigration law. It has been critically examined by a number of leading authorities. *Kelly: The Irish Constitution* (5th ed) notes that *Even after Meadows, it is not clear precisely what proportionality in this context might mean... Post –Meadows case law has not been entirely clear.[[47]](#footnote-47)* Similarly De Blacam´s *Judicial review* observes that “*the implications of the decision in Meadows have yet to be fully worked out“* [[48]](#footnote-48)Hogan, Morgan and Daly take the view that ”*Meadows did at least engender a more thorough dialogue than in any other set of judgments”.*[[49]](#footnote-49)

A number of High Court decisions post *Meadows* have sought to limit the doctrine of proportionality in Deportation cases.[[50]](#footnote-50) In *Ugbo and Buckley v The Minister for Justice, Equality and Law Reform* Hanna J. distinguished that case from Meadows on the basis that in *Ugbo* there was no real attempt substantiate a claim that the repatriation of the applicant would expose him to any of the risks referred to in s. 5*.*[[51]](#footnote-51) Then in October 2010 Cooke J. held in *O(S) v Minister for Justice, Equality and Law Reform[[52]](#footnote-52)* that:

“It is only exceptionally that the criterion of proportionality will have application in assessing the legality of the judgment made by the Minister in deciding whether a deportation order should be made in the light of humanitarian considerations advanced in representations. Where that principle does arise, the Keegan/O'Keefe test of reasonableness as reaffirmed by the Supreme Court in Meadows will still apply. The balance struck by the decision-maker in the exercise of the statutory discretion will only be unlawful as irrational or unreasonable if it is clear that the result does not flow from the premiss on which the assessment has been made so that it "flies in the face of reason and common sense" in the words of Henchy J.”[[53]](#footnote-53)

Later the same month in *JE v Minister for Justice Equality and Law Reform[[54]](#footnote-54)* he found that the obligation on the respondent to give reasons for a decision did not involve the need for any detailed or narrative statement. In *FE (A Minor) v Minister for Justice and Law Reform* McDermott J. found that it was clear from *Meadows* that judicial review was not to be viewed as an appeal from an administrative decision. He held that the burden of proof remained upon the applicant to establish cogent evidence that the challenged decision was unreasonable in that it was disproportionate having regard to the applicants' constitutional and ECHR rights.[[55]](#footnote-55) Subsequently in *SA v Minister for Justice and Equality [No 2*][[56]](#footnote-56) Humphreys J. was very critical on attempts to rely on the doctrine of proportionality, holding:

“The attempted reliance on ‘proportionality’ is indicative of a current cottage industry whereby a form of impermissible merits-based appeal of the immigration process is sought to be launched under a new guise. While the Supreme Court in [*Meadows v. Minister for Justice and Equality*](https://app.justis.com/case/meadows-v-minister-for-justice-and-equality/overview/c5adn4ytoZWca) [[2010] 2 I.R. 701](https://app.justis.com/case/c5adn4ytozwca/overview/c5adn4ytoZWca) was anxious to stress that in permitting review of immigration decisions based on proportionality it was not upsetting the traditional test for unreasonableness and therefore not authorising a wholesale review on the factual merits, one might be forgiven for wondering whether there could be at least some empirical validity to the view that the expansive interpretations warned against by Hardiman J. (dissenting) (Kearns P. concurring) have animated applicants to a greater extent than authorised by the majority of the court. In terms of how proceedings (including these proceedings) are framed, ‘proportionality’ appears to be viewed by many applicants as a mechanism whereby the court can be invited to simply overturn an immigration decision with which it disagrees.”[[57]](#footnote-57)

In *D.O.A. (Nigeria) v The Minister for Justice and Equality[[58]](#footnote-58)*  he observed that

“Complaint is made that the Minister should have conducted a proportionality analysis for the purposes of art. 8(2) of the ECHR. However, given that the father is an unsettled migrant, there is no requirement to conduct a detailed proportionality analysis, save in exceptional circumstances”

He also took the view in *Odeh v Minister for Justice and Equality*[[59]](#footnote-59) that detailed reasons are not required for the refusal of an ad misericordiam submission against deportation. In *DE v Minister for Justice, Equality and Law Reform[[60]](#footnote-60)* the applicant argued that there are policy guidelines or criteria on the Ministers discretion in relation to s 3(11). They argued that the Minister had adopted, but not published, a policy identified in the Report of the Working Group on the Protection Process and that this policy should be published to allow applicants to make submissions in relation to it. The Supreme Court held that the recommendations of the Working Group were well known to the extent that the applicant’s solicitor was able to rely on them in the representations which he made in this case.

In *Harish v Minister for Justice Equality and Law Reform* Humphreys J. observed that;*[[61]](#footnote-61)*

“The fact that the applicant was unlawfully present in the State at the time of the making of the deportation order is certainly not irrelevant to the level of reasons that is required. The duty to give reasons is to give the main reasons for the decision, not necessarily an extravagant or detailed level of reasons that might be of interest to an applicant, and that duty was certainly complied with here.”

*Deportation proposal*

A person who it is proposed to be deported must be notified of the proposed deportation by the Minister under s 3(3) of the Immigration act 1999. Where necessary and possible, the person shall be given a copy of the proposal in a language that they understand.[[62]](#footnote-62) It will explain to the proposed deportee that they may consent to a Deportation Order, leave the State voluntarily or submit a Humanitarian Leave to Remain application.[[63]](#footnote-63) A grant is available to those who voluntarily return.[[64]](#footnote-64) Humphreys J. found in *Leng v Min for Justice* [[65]](#footnote-65) that a proposal to deport that does not in and of itself infringe any rights of the applicant. He was of the view that:

“The circumstances in which judicial review of a mere proposal to deport an applicant is available must be extremely limited and confined to cases where the Minister had no jurisdiction to make the proposal (see by analogy cases such as *Stefan v. Minister for Justice* [2001] 4 I.R. 203, *G.O. v. Minister for Justice and Equality* [2015] IEHC 646 (MacEochaidh J.). The correct response to such a proposal, if a recipient wishes to challenge it, is to write to the Minister setting out representations and if needs be legal argument as to why the proposal should not be converted into an actual decision. Where the proposal was based on a fundamental error such as to deprive the Minister of any jurisdiction - for example where the applicant was in fact an EU citizen with an entitlement to be present in the State - judicial review would be a legitimate option despite the alternative remedy of making representations. But where the applicant is a person who is prima facie liable to having a deportation order made against him or her, as is clearly the case here, judicial review is not an appropriate first response to such a proposal.”[[66]](#footnote-66)

In *Shao v Minister for Justice & Equality (No 1)*[[67]](#footnote-67) he held that *"it is not normally appropriate to challenge a mere proposal, particularly after an actual decision has been made. The proposal is superseded by the decision and subsumed into it”.*

Under ss 3(3)(b) a person who has been notified of a proposal may, within 15 working days of the sending of the notification, make representations in writing to the Minister and the Minister shall (i) before deciding the matter, take into consideration any representations duly made to him or her under this paragraph in relation to the proposal, and (ii) notify the person in writing of his or her decision and of the reasons for it and, where necessary and possible, the person shall be given a copy of the notification in a language that the person understands.[[68]](#footnote-68) MacMenamin J held in *CRA and OEA v Minister for Justice, Equality and Law Reform[[69]](#footnote-69)* that

“as a corollary of facilitating the making of representations to the minister in advance of a decision to make a deportation order pursuant to s. 3 there is an onus upon an applicant to provide the necessary detail for such consideration at that time if it is within the procurement of the applicant.”

A person who has been refused asylum can make representations about subsidiary protection where this has not been hitherto analysed-[[70]](#footnote-70) In practise very few of these cases remain since the coming into force of the International Protection Act 2015.

Under ss 3(4) the Minister’s notification of a proposal to deport must include-

 (a) a statement that the person concerned may make representations in writing to the Minister within 15 working days of the sending to him or her of the notification,

 (b) a statement that the person may leave the State before the Minister decides the matter and shall require the person to so inform the Minister in writing and to furnish the Minister with information concerning his or her arrangements for leaving,

(c) a statement that the person may consent to the making of the deportation order within 15 working days of the sending to him or her of the notification and that the Minister shall thereupon arrange for the removal of the person from the State as soon as practicable, and

 (d) any other information which the Minister considers appropriate in the circumstances.

The minister is not required to make give a notification of a proposal to deport to[[71]](#footnote-71)

(a) a person who has consented in writing to the making of a deportation order and the Minister is satisfied that he or she understands the consequences of such consent,

(b) a person to whom paragraph (c), (d) or (e) of subsection (2) applies, or

(c) a person who is outside the State.

Under ss 3(6) the Minister is required to have regard to the following when determining whether to make a deportation order;

(a) the age of the person;

(b) the duration of residence in the State of the person;

(c) the family and domestic circumstances of the person;

(d) the nature of the person’s connection with the State, if any;

(e) the employment (including self-employment) record of the person;

(f) the employment (including self-employment) prospects of the person;

(g) the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions);

(h) humanitarian considerations;

(i) any representations duly made by or on behalf of the person;

(j) the common good; and

(k) considerations of national security and public policy, so far as they appear or are known to the Minister.

In *H v Minister for Justice and Equality [[72]](#footnote-72)* Barret J found that the Minister, in requiring that the Applicant prove ‘*with certainty’* that he was ordinarily and continuously resident in the State during a certain period imposed an unreasonable and unlawful standard of proof on the applicant. The appropriate standard of proof for the Minister to apply in relation to factual matters relevant to a decision on whether to make a deportation order is the balance of probabilities. The deportation order was quashed.

The Supreme Court in *P. v. Minister for Justice* [[73]](#footnote-73) considered in some detail the obligations of the Minister in dealing with representations made pursuant to s. 3(3)(b). They found the Minister must have regard to the matters set out in s 3(6), take the representations into account, and notify the person in writing of his decision. Subsection. 3(3)(a) of the Act of 1999 provided that the Minister must notify and give reasons for the proposed deportation order; the word “*reasons*” (plural) embraced the singular “*reason*”, and where the applicants had only been given one reason for their deportation this was still sufficient and there wasn’t a minimum requirement of two reasons needed for deportation. The Minister was obliged specifically to consider the common good and considerations of public policy. As part of this he was entitled to identify the maintenance of the integrity of the asylum and immigration systems as a reason for deportation. It was also held that where one of a number of reasons is given by the Minister, he cannot afterwards rely on any other uncommunicated reasons to defend his compliance with the subsection.

*P* was subsequently relied upon by the Supreme Court in *G.K. v. Minister for Justice and Equality.[[74]](#footnote-74)* There the applicants were given notice of the issue of deportation orders in respect of them and they were invited to make representations pursuant to s. 3(3)(b) as to why a deportation order should not be made. They took judicial review proceedings claiming that their representations were not considered. The Supreme Court held that a person claiming that a decision-making authority had, contrary to its express statement, ignored representations which it had received needed to produce some evidence, either direct or inferential, of that proposition before he could be said to have an arguable case. The Supreme Court found that there was no evidence of this here.

The Supreme Court in *Gorry* found thae

In *Oguntola v Governor of Cloverhill Prison[[75]](#footnote-75)* a deportation flight to Lagos was returned to Ireland after the aircraft was refused permission to enter Algerian airspace. The question arose as to whether the Notification of Detention was defective thereafter on account that the applicant had already left Irish airspace. The Deportation Order was still in force and the Garda Sergeant on the Flight re-arrested the applicant as he believed the applicant would fail to comply with the Order. He had been served with a 3(3)(b)(ii) Notice proposing his deportation. It was found that this notice was spent as he had been removed from the jurisdiction but that the arrest was lawful under s 5 of the Immigration Act (as amended by S. 10 (b) of the Illegal Immigrants (Trafficking) Act and Schedule 6, part 18 of the Health Act 2004).

*Time limits*

When served with a deportation order a person will be given a date by which to leave the country, if they do not leave the country themselves by this date, they are liable to be deported and the Minister may impose conditions on them under s 3(9)(a)(i). A person who does not comply with these conditions is liable to arrest and detention under s 5 of the act. Where a person who has consented in writing to the making of a deportation order is not deported from the State within 3 months of the making of the order, the order shall cease to have effect.[[76]](#footnote-76) There is no statutory time limit within which the Minister must make a deportation order following the service of a proposal notice. In *Akinkoulie v Minister for Justice Equality and Law Reform[[77]](#footnote-77)* it was held that there may be an obligation upon the Minister to consider representations made under s. 3 of the Act of 1999 in a timely fashion. Clarke J. was not of the view that a failure to do so would put an applicant in a position where the Minister could not deport them. Section 3(9)(b) provides a 3-month notice period in writing for aliens who are ordinarily resident in the state for five years or more and who are currently employed in the State or engaged in business or the practice of a profession in the State. They must be given notice in writing at least 3 months prior to their deportation. This does not apply to a person (i) a person who has served or is serving a term of imprisonment imposed on him or her by a court in the State, or (ii)a person whose deportation has been recommended by a court in the State before which such person was indicted for or charged with any crime or offence.

*Requirements for a deportation order*

Under ss 3(6) the Minister is required to have regard to a number of different matters laid out above when determining whether to make a deportation order. Any deportation order is subject to the prohibition on refoulment.[[78]](#footnote-78) In *A.O. and D.L. v. Minister for Justice*[[79]](#footnote-79), Hardiman J. was of the view that amongst the matters the Minister was entitled to have regard to when making a Deportation Order *was "the length of time a person had been in the State and his or her family or domestic circumstances; to the constitutional rights of all persons, including the Irish born child and the State itself."* The Supreme Court in *Oguekwe v Minister for Justice* [[80]](#footnote-80) affirmed a High Court finding that the discretion given to the Minister to make a deportation order is constrained by the obligation to exercise that power in a manner which is consistent with and not in breach of the constitutionally protected rights of persons affected by the order. It was also accepted that the Minister is also constrained by s 3 of the European Convention on Human Rights Act 2003. *Oguekwe* was followed by the Supreme Court which found that:

“The Minister must balance the relevant considerations to arrive at a lawful, reasonable and proportionate decision. That the starting point is recognition of the constitutional rights at play does not mean that the Applicants' rights are afforded any presumptive priority or undue weight. The balance may well weigh in favour of the removal or exclusion of the non-national spouse. However, this conclusion cannot lawfully be reached if the relevant constitutional rights and interests of the Applicants have not been recognised by the Minister and weighed in the balance.”[[81]](#footnote-81)

In *Kouaype v Minister for Justice Equality and Law Reform* Clarke J held that, in general terms, there are two statutory prerequisites to the making of a deportation order-

(1) The Minister is required to be satisfied that none of the conditions set out in s. 5 of the 1996 Act are present; and

(2) The Minister is also required to consider the humanitarian and other factors set out in s. 3(6) of the 1999 Act insofar as they are known to him. In this latter context it obviously follows that the Minister is required, *inter alia*, to have regard to any representations on those matters which are made by or on behalf of the person concerned.[[82]](#footnote-82)

Clarke J. also held that the Minister is obliged under s 3(6) to afford the person concerned an opportunity to make submissions and, provided that the submissions are made in accordance with the Act, to consider them. If no submissions are made the Minister is obliged to consider the matters set out in s. 3(6) *"so far as they appear or are known to the Minister"*. She explained that:

“The weighing of the various matters which might legitimately be taken into account under the section and which have been loosely described as "humanitarian grounds" is, in accordance with those authorities, entirely a matter for the first respondent. In the absence of evidence that the first respondent did not give the person concerned an opportunity to make submissions in accordance with the statute or did not consider those submissions, it does not seem to me that that aspect of the first respondent's decision is reviewable by the courts.”[[83]](#footnote-83)

In *Sivsivadze v Minister for Justice Equality and Law Reform* there was a challenge to the constitutionality of sss 3(1) and 3(11).*[[84]](#footnote-84)* The Supreme Court there found that although a deportation order made pursuant to s.3 does not contain any limitation period on the duration of the effect of the order, its effect may be brought to an end at any time should the Minister in his discretion consider it appropriate to do so. The Supreme Court went on to find that:

“The making of a decision to amend or revoke a deportation order by the Minister invariably arises on the application of the person the subject of the deportation order. In any event, the Minister, when the occasion arises for him to make a decision as to whether to amend or revoke such an order, is again bound to exercise his statutory power in a manner compatible with the Constitution. This means that he must take into account all relevant factors, including any fundamental rights concerning the family and any right to family life, where relevant, of those directly affected by such an order. As the learned President correctly pointed out in his judgment in the High Court in this case, s.3(11) is not to be confined to enabling the Minister to amend or revoke a deportation order only when there has been a change of circumstances arising between the time of ‘ the making of the deportation and the time of its implementation’ (although any such change in circumstances would, of course, be relevant factors). Similarly, there is nothing in sub-section 11 of s.3 to suggest that the Minister is confined to making an amendment or revocation of an order under s.3 subsequent to deportation only when there has been a change of circumstances in the situation of the deportee or those affected by the order, such as members of his family. Whenever an application to revoke a deportation order is made the Minister acts having regard to all the pertinent circumstances of the case and, again, a change of circumstances (or the fact of no change of circumstances) may be relevant, but the important point is that the decision is made having regard to all the relevant circumstances as they are at that time. Whether a decision to make a deportation order (or not to revoke one) interferes with a person's fundamental rights depends on the circumstances of the case. More important, whether any such interference is proportionate or disproportionate must depend on the particular circumstances of the case. Thus, in making any such decision, the Minister must take into account such factors as the statute or the Constitution require him to take into account and his decision pursuant to s.3(11) may be the subject of judicial review, brought by those directly and adversely affected.”[[85]](#footnote-85)

Under s 3(9)(a)1 (as amended) where the Minister has made a deportation order , the notice under subsection (3)(b)(ii) may require the person the subject of the deportation order to do any one or more of the following for the purpose of ensuring his or her deportation from the State:

(I) present himself or herself to such member of the Garda Síochána or immigration officer at such date, time and place as may be specified in the notice;

(II) produce any travel document, passport, travel ticket or other document in his or her possession required for the purpose of such deportation to such member of the Garda Síochána or immigration officer at such date, time and place as may be specified in the notice;

(III) co-operate in any way necessary to enable a member of the Garda Síochána or immigration officer to obtain a travel document, passport, travel ticket or other document required for the purpose of such deportation;

(IV) reside or remain in a particular district or place in the State pending removal from the State;

(V) report to a specified Garda Síochána station or immigration officer at specified intervals pending removal from the State;

(VI) notify such member of the Garda Síochána or immigration officer as may be specified in the notice as soon as possible of any change of address.

A garda or immigration officer is empowered to arrest and detain such a person without a warrant, if they have reasonable cause to suspect that the person has failed to comply with any of these requirements, or has destroyed his identity documents, or is in possession of forged identity documents, or intends to avoid removal from the State.[[86]](#footnote-86)

*Detention and deportation*

Deportation is a civil matter, not a criminal matter.[[87]](#footnote-87) However, someone who is the subject of a deportation order may be arrested and detained under s 5 of the Immigration act 1999 for the purpose of ensuring their departure from the State. This provision was upheld as constitutional by the Supreme Court in *In the matter of Art.26 and the Illegal Immigrants (Trafficking) Bill 1999* [2000] 2 IR 360. In *CA v Governor of Cloverhill Prison* Mr Justice Hogan was of the opinion that this is preventative civil detention and held that “*a measure of this kind is one which is and must always remain an exceptional one in any free and democratic society*”. [[88]](#footnote-88) He found in *Omar v Governor of Cloverhill Prison[[89]](#footnote-89)* that where an applicant was arrested in his family home for the purpose of this section, without a warrant, that the detention was therefore unlawful. The section was later amended.[[90]](#footnote-90)

Under s 20 of the International Protection Act 2015 An immigration officer or a member of the Garda Síochána may arrest an applicant over the age of eighteen[[91]](#footnote-91) without warrant where they suspect, with reasonable cause, that the applicant—

(a) poses a threat to public security or public order in the State,

(b) has committed a serious non-political crime outside the State,

(c) has not made reasonable efforts to establish his or her identity,

(d) intends to leave the State and without lawful authority enter another state,

(e) has acted or intends to act in a manner that would undermine—

(i) the system for granting persons international protection in the State, or

(ii) any arrangement relating to the Common Travel Area,

or

(f) without reasonable excuse—

(i) has destroyed his or her identity or travel document, or

(ii) is or has been in possession of a forged, altered or substituted identity document,

and an applicant so arrested may be taken to and detained in a place of detention.

The applicant must be brought, as soon as is practicable, before a District Court Judge in the District where they are detained. The judge can order they be released, either on conditions akin to bail under s 20(3)(b) or unconditionally if the immigration officer or garda do not believe that any of the above conditions apply. The District Judge can also commit the person concerned to a place of detention for a period not exceeding 21 days from the time of his or her detention. This section can be contrasted with the criminal case of *Olafusi v Governor of Cloverhill Prison*.[[92]](#footnote-92) There it was found to be unconstitutional to refuse bail to someone on the basis that their identity could not be ascertained. O’Neill J. held that ”*It may well be the case that difficulties are encountered in the identification of people who are found not to have normal proof of identification, but, be that as it may, the criminal justice process cannot be used or adapted to facilitate the ascertainment of the identity of such a person.”*

There was a challenge to the constitutionality s 9(8)(c) and (f) of the Refugee act 1996 in *Arra v Governor of Cloverhill Prison[[93]](#footnote-93) .* These provisions are identical to 20(c) and (f)(i) of the 2015 act. The applicant claimed they allowed for preventative detention. Ryan J. did not accept this. He found the section struck a balance between the rights of the applicant and the rights of the State to exercise control over the flow of immigrants into the State in the interest of the common good. He found that it was legitimate to seek to establish the identity of applicants for refugee status. He also found that there were a number of protections for the applicant, similar to those which can also now be found in s 20.

In *HH v The Governor of Cloverhill Prison*[[94]](#footnote-94) the applicant, a Bangladeshi National, was required to present himself to the office of the Garda National Immigration Bureau, Burgh Quay, Dublin for the purpose of making arrangements for his removal from the State. He did so on a number of occasions but no arrangements were made for his removal from the state. He had applied to revoke the deportation order during this. On the third occasion he presented himself to the Gardai he was arrested under s 5(1)(a) of the 1999 Act and taken to Cloverhill Prison. The sole ground for the arrest and detention appears on the face of the warrant, namely that Garda Dillon with reasonable cause suspected the Applicant, against whom a deportation order was in force, had failed to leave the State within the time specified in the Order. Barton J followed the dicta of Humphreys J. in *J.A. (Cameroon) v Governor of Cloverhill Prison No. 2*[[95]](#footnote-95) that:

### “The routine detention of asylum seekers and illegal immigrants may well be objectionable as Hogan J. commented in *Li* but that is not a reason to erect some sort of extraordinary or even unduly high barrier to the detention of such persons. If there is a continuing intention to deport and an absence of any insurmountable impediment to carrying out that removal within the period allowed by statute, that is a sufficient legal basis for the detention.” [[96]](#footnote-96)

He also followed the dicta of Humphreys in *Trang and Vu v Governor of the Dochas Centre[[97]](#footnote-97)* that:

“It seems to me that the requirements of Art. 5 of the ECHR are satisfied by Irish law, as outlined in the Trafficking Bill case, that detention must be “necessary” and that there is a reasonable prospect of carrying it out within the eight-week period or such period as is extended under the 2015 Act.”[[98]](#footnote-98)

Barton J accepted the submissions of the Minister that a continuing intention to deport the person in breach of the deportation order is a necessary requirement for s 5(1)(a). The arrest must not be for some other purpose such as the prevention of crime. He found that continuing detention in circumstances where it becomes evident that deportation cannot be implemented within the eight-week period or in certain circumstances the extended period would amount to an abuse of power. He ultimately found for the Minister holding that:

“The exercise of the power of arrest and detention in the circumstances already outlined was neither grossly disproportionate, excessive or unnecessary and consequently was not a misuse of power such as to render its exercise an unlawful interference with the Applicant's constitutional right to liberty, on the contrary his breach of the terms of the order rendered him liable to arrest and detention for the purposes of implementing the order at any time. Accordingly, having regard to the conclusions reached for the reasons given the Court finds that the arrest and detention of the Applicant was lawful”.[[99]](#footnote-99)

Mr Justice Cook in *B& R v Minister for Justice Equality and Law Reform* noted that:

“It is clear that where a non-national is illegally in the State following the rejection or withdrawal of an asylum application, there is no entitlement to such temporary leave or postponement of deportation. It is entirely a matter at the discretion of the Minister, even if, being based on the statutory power to make or delay the making of a deportation order, it is a discretion which must be exercised in accordance with the terms of the Act and in a reasonable and fair manner.”[[100]](#footnote-100)

The Supreme Court ordered the release of an Algerian National in *Kadri v Governor of Wheatfield Prison*. The Supreme Court found that it was unlawful to hold the appellant for more than 8 weeks from the original period of detention (even where there had been a fresh breach of the same grounds of deportation), as section 5 (6) (a) of the Act of 1999 provides that “a person shall not be detained under this section for a period or periods exceeding 8 weeks in aggregate.” *[[101]](#footnote-101)*

Bail under s 5(7) was at issue in *FR AKA JS (Pakistan) v Minister for Justice & Equality (No 2).[[102]](#footnote-102)* Here application for bail was refused. The applicant had sought an injunction restraining her deportation, which was refused.[[103]](#footnote-103) Humphreys J found that the purpose of s. 5(7) is to enable an applicant to *apply* to remain in the State pending the determination of his or her proceedings (his emphasis). He went on to find that:

“it is in general, and certainly here, inappropriate, to release on bail a person who is detained for the purposes of imminent deportation if they would not meet the test for an interlocutory injunction. That is doubly so if an interlocutory injunction has actually been refused. To grant bail under those circumstances is to grant an injunction by other means.”[[104]](#footnote-104)

 He went on to note that this issue was not addressed in case law or textbooks but the two takeaway points are:

“(i).the fact that a jurisdiction, whether inherent or statutory, exists in a particular case is not in itself a reason to exercise that jurisdiction; and

(ii).the grant of bail to a person detained for the purpose of imminent deportation who does not meet the criteria for, or has actually been refused, an injunction, is generally inappropriate.”[[105]](#footnote-105)

The position of children and s 5 is discussed in *P.O. v Governor of the Dochas centre.[[106]](#footnote-106)*

*Service*

A deportation order is only valid if it is preceded by a properly served notice under s. 6 of the 1999 Act. That provision allows four methods of service which were summarised by Judge Humphreys J. in *Shao v Minister for Justice & Equality (No 1)* as follows; [[107]](#footnote-107)

(i). Personal delivery.

(ii). Recorded post to the address most recently furnished to the registration officer.

(iii). Recorded post to the address most recently furnished to the Refugee Applications Commissioner, now the International Protection Office.

(iv). In a case where an address for service has been furnished, service at such an address.

The Supreme Court in *SE v Minister for Justice and Equality[[108]](#footnote-108)* found that under s 3 of the 1999 requires service of the notification of a proposal to deport, and the notification of the decision to deport, but does not require service of the deportation order itself. In the companion case of *K* noted that “*It is however difficult to envisage the circumstances that a deportation order would be put into effect without being served upon or notified to the person concerned”.[[109]](#footnote-109)* TheSupreme Court held in *E* that placing a deportation notice on file does not constitute *“service by registered post at the last known address”* for the purposes of the Immigration Act.[[110]](#footnote-110)There the applicant had not provided an address. In *S.E. v. Minister for Justice and Equality* O'Donnell J. noted that there might be a *“lacuna”* in the 1999 Act in respect of service where no address whatever was furnished by an applicant.[[111]](#footnote-111)

In *Margine v Minister for Justice Equality and Law Reform* [[112]](#footnote-112) the letter proposing deportation was not actually received by the applicant since the envelope was returned to the Minister's office marked "gone away" in March 2002. Subsequent letters to the applicant by the Minister about deportation all went to the same address. A deportation order was made in May 2002 and he was notified of it by post to the same address in June 2002.The applicant claimed he had not been validly served with the deportation order. Peart J. found that the Deportation Order was valid and that the applicant had been properly notified of the proposal since the Minister complied with the statutory requirement to send such notification to the last address notified to the authorities. It was no fault of the part of the authorities that the applicant moved address without complying with his obligation to notify his change of address. The Supreme Court came to a similar conclusion in *DP v Governor of the Training Unit.[[113]](#footnote-113) DP* was relied upon in both *Q W v Minister for Justice Equality and Law Reform[[114]](#footnote-114)* and *MA (Pakistan) v Governor of Cloverhill Prison.*[[115]](#footnote-115) Hogan J. said that in circumstances where the applicant had engaged in correspondence with the Minister at a particular address, that:

“it may be, of course, that by engaging in correspondence with the Minister in this fashion, the applicant – perhaps tacitly or impliedly – might be taken to have furnished an address for service to the Minister for the purposes of s. 3 (6) (b) [of the Immigration Act, 1999]”[[116]](#footnote-116)

In *Shao v Minister for Justice & Equality (No 1)* there was an issue raised with the service of the deportation proposal rather than the order. [[117]](#footnote-117) Humphreys J held:

“Merely sending a document to the wrong address does not make it invalid. Such a mistake may make a subsequent step invalid but the proposal as such is not invalid merely because there is a wrong address stated in it. The time to make representations does not begin to run in the case of an improperly addressed letter until the applicant gets sufficient actual or deemed notice of it, but certiorari of a proposal is normally totally inappropriate in the absence of ultra vires or mala fides. The proposal was not ultra vires because the applicant was at all material times unlawfully present in the State following the expiry of his very ephemeral permission, nor is it alleged to be, still less shown to be, mala fides.” [[118]](#footnote-118)

There the fact that a notice was sent to Broadmeadows rather than Broad Meadow, was a *de minimis* mistake which was held to be of no significance. Mr Justice Humphreys later reversed his decision in this case when it he found that the State had misled the court by “obscuring” details about the applicants address, contained in a Freedom of Information request his solicitor made which was relied upon for evidence in the review.[[119]](#footnote-119) It had emerged a GNIB officer had not communicated the applicant’s address to the local registration officer or entered it on GNIBs information system. Humphreys found that the applicant’s conduct in giving an address to the GNIB officer does not constitute furnishing an address for service and consequently the statutory provisions regarding service were not complied with. He reversed his original decision and granted *certiorari.* As the previous decision was overturned on the basis of new facts, rather than on the law, it can be taken that the principles given in it still stand.

*Revocation of a deportation order*

There is no appeal against the making of a deportation order, save judicial review.[[120]](#footnote-120) It is, however, open to the Minister to revoke a deportation order. Under s. 3(11) of the 1999 Act the Minister *“may by order amend or revoke an order made under this section including an order under this subsection.”* Unless a deportation order has been revoked then the person subject to it cannot re-enter the country. An application to the minister to revoke a deportation order does not have a suspensive effect and a deportation order remains valid and of full effect unless and until the minister makes a decision to revoke it.[[121]](#footnote-121) In *Sivivadze* Murray J noted that *”Section 3(11) in any event ensures that a deportee can apply at any time within reason to the Minister for a revocation or amendment of the deportation and it is incorrect to describe the deportation order as simply indefinite, and no more.”[[122]](#footnote-122)*  The issue of whether the Minister can place any conditions on the applicant before considering their application to revoke was considered in *Ashade v Governor of the Dochas Centre[[123]](#footnote-123),* there Eagar J found the Minister could not place a condition that the applicant would present themselves to GNIB before the minister would consider whether torevoke the deportation order. Hogan J. was of the opinion in *Efe* that an application to revoke a deportation order was a “*tailor made remedy”* for cases where new facts come to light after a decision to deport is made, and that the courts can quash a Minister´s failure to revoke if necessary.*[[124]](#footnote-124)* New circumstances under which the Minister may revoke a Deportation order could, for example, include a change in family circumstances (considered below) or a threat to the life of the deportee (see the chapter on refoulment).

Cook J.considered the duties of the Minister during an application to revoke in *M.A. v. Minister for Justice, Equality and Law Reform.[[125]](#footnote-125)* He held that:

"When an application to revoke is made to the Minister under s. 3(11) of the Act, the Minister has in effect two duties. He is required to consider carefully and fairly the reasons that are put forward for revocation; and he must also verify that since the deportation was made no change of circumstances has occurred, either so far as concerns the applicant or the situation in the country of origin, which would bring into play any of the statutory prohibitions in the return of a failed asylum seeker to the country of origin…otherwise… in dealing with an application to revoke, the Minister is not obliged to embark on any new investigation or inquiry; nor is he obliged to enter into any exchange of observations and replies or into any debate with the applicant or the applicant's legal representatives or even perhaps to supply any extensive narrative statement of his reasons for refusal. Once it is clear to the court that the Minister has properly discharged those two functions, a decision to refuse to revoke a valid order of deportation will not be interfered with."

In *00 v Minister for Justice Equality and Law Reform* the High Court held that;

“All procedures and discretions provided for under statute, including the discretion to revoke a deportation order pursuant to s. 3 (11) of the Immigration Act, must be exercised in accordance with the requirements of constitutional justice which involves a duty to consider the evidence before making a decision”.*[[126]](#footnote-126)*

The High Court has held that the court has a somewhat more limited role than the role it has in a challenge to an original adverse decision.[[127]](#footnote-127) In *PO and SO v Minister for Justice Equality and Law Reform* the Supreme Court noted that;

“The process of giving an opportunity to an applicant to be heard, however, is not to be mistaken for the strict procedures within a criminal trial and nor are rules of evidence applicable. A fair procedure must be adopted. That is not in any way to be equated with criminal trial or civil trial procedures. This is an inquiry and not a trial.”[[128]](#footnote-128)

In *I (E) and Others (Minors) v Min for Justice[[129]](#footnote-129)* it was held that In considering an application to revoke a deportation order, the issue before the Minister is not whether there is a substantial reason for the making of a deportation order, but whether the matters brought to his attention in the application warrant it being changed.

Humphries J was of the view in *AB (Albania) v Minister for Justice and Equality[[130]](#footnote-130)* that as long as the s. 3(11) decision considers the submissions made (which does not need to be a narrative discussion), and as long as the Minister legitimately satisfies himself that the deportation would be lawful, then the s. 3(11) decision should not be quashed. He went on to review the case law on quashing a Minister’s decision under s 3(11) and found that *“a s. 3(11) decision should be quashed only in exceptional circumstances*.” Similarly, in *O and Another v Minister for Justice* McDermott J held that *“This Court's role in reviewing any decision under s. 3(11) of the Immigration Act, has been held to be more restricted than its role in reviewing a deportation order.”[[131]](#footnote-131)*

The Supreme Court has considered in a number of cases when the Minister should accept submissions for the revocation of a deportation. In *Smith and Others v Minister for Justice and Equality* [[132]](#footnote-132) the Supreme Court upheld the High Court finding that:

“Is well settled that the Minister is not obliged to entertain an application for revocation under s. 3(11) unless it is based upon some new fact or information or some change of circumstance which has come about since the deportation order was made and which, it establish, would render the implementation of the deportation order unlawful.”

And adding

“There are very sound reasons of policy why that test is appropriate. As this Court pointed out in [Okunade v Minister for Justice [2012] IESC 49](https://login.westlaw.ie/maf/wlie/app/document?src=doc&linktype=ref&&context=13&crumb-action=replace&docguid=I0631809C7E394A28A4B5CB7438E53706), one of the problems which currently besets the Irish immigration system is the lengthy period of time which it frequently takes before there is a final resolution of all the issues arising in relation to the attempts by many individuals to establish a lawful basis for remaining in the State. Some of the reasons for such delays in the system are addressed in Okunade. However, as pointed out in my judgement in that case, there are very good reasons why, provided the process is not expedited to the extent that it becomes unfair, persons who are found to be entitled to remain in Ireland should be told so in as short a time as is possible and why persons who are found not to be entitled to remain in Ireland should be given a final decision to that effect in a similar time frame, so that the undoubted complications which arise from persons spending a long period of time in the country before such final decision is made do not arise. “

There it was also held that there is an obligation on persons seeking to have the Minister to revoke a deportation order to put before the Minister all relevant materials and circumstances on which reliance is sought to be placed. *Smith* was relied upon by Charleton J in *Esmé v The Minister for Justice and Law Reform.*[[133]](#footnote-133)There he found that:

“the requirement for some new information was referred to by Clarke J as “some special or unusual factors”. This kind of assessment requires a balanced approach by decision makers. Where the same facts are reiterated, a different decision cannot be expected. Where, however, there is a genuine change of circumstances or where new facts have come to light it may be that there can be an accumulative effect on the proper balance to the stuck in making the decision.”[[134]](#footnote-134)

The High Court in *B. M. (Eritrea) v Minister for Justice and Equality[[135]](#footnote-135)* J found that:

“An application seeking the revocation of a deportation order pursuant to s. 3(11) of the Immigration Act, must be based upon new circumstances or materials which were not before the respondent at the time of the making of the deportation order, or were not capable of being presented at that time. In the absence of "special" circumstances or a "compelling explanation" as to why such material was not or could not have been advanced previously, the respondent cannot be required to reassess the deportation order.”

There the applicant had been granted refugee status which was revoked following a conviction for rape, a deportation order then issued. The applicant failed to make representations to the Minister prior to his deportation but claimed that this was due to his imprisonment and isolation. The High Court found this was special circumstances and that the applicant was not precluded from judicially reviewing the refusal to revoke the deportation order. The Court went on to find that the Minister had not applied the correct legal principles and his findings were *“unrealistic and unreasonable*”. The refusal to revoke was quashed.

The Supreme Court in *PO and SO v Minister for Justice Equality and Law Reform*[[136]](#footnote-136) found that in making decisions pursuant to s. 3(11), the Minister must first have regard to the materials which have been furnished previously. The Minister must then consider new facts, materials or circumstances. It is only when new material was advanced that a revocation application pursuant to s. 3(11) could be properly considered. If there are new facts, materials or circumstances which could be material to an overall assessment of the position, the officials should take an overall view as to the circumstances, including those new matters addressed. In making such decisions, the Minister is obliged to operate within the boundaries of natural and constitutional justice, and also to decide in accordance with the international obligations which have been incorporated into domestic law by the Oireachtas. The Minister is not entitled to act unconstitutionally and must determine every application on its merits. This includes operating within the boundaries of the Act of 1999 itself, and, more broadly, the Constitution, the European Convention on Human and the principle of proportionality, all of which must be applied to the circumstances of the case. There is no obligation to embark on a new investigation or inquiry. What is involved in making decisions of this type is not a policy decision, but rather involves the exercise of a margin of appreciation relating to the facts of individual cases. MacMenamin J pointed out that the Minister, in considering an application under s.3(11) has two duties.

“She must consider carefully and fairly the reasons put forward for revocation. She must also verify that there has been no change in circumstances since the making of the deportation order, either insofar as concerns the applicants, or the situation in the country of origin, which would bring into play any of the statutory prohibitions for the return of a failed asylum seeker to the country of origin. There is no obligation to embark on a new investigation or inquiry, or to enter into an exchange of observations or replies with an applicant. There is no suggestion that the Minister is operating a blanket policy, which would allow for no exceptions.”[[137]](#footnote-137)

He also held that the exercise by the Minister of the power under s. 3(11) was a matter of discretion and the absence of guidelines or policy did not vitiate a decision made by the Minister.

“The existence of guidelines may assist. On the other hand, guidelines may also trammel a discretion where too rigidly formulated. In other circumstances the availability of guidelines, such as those in relation to children who are Irish citizens but whose parents are non-nationals, may indicate the broad approach to be taken in individual cases”[[138]](#footnote-138)

In *U.M. (Pakistan) v Minister for Justice Equality and Law Reform* the High Court found that a refusal to revoke a deportation order was lawful where the applicant had evaded his presentation requirements for 6 years.[[139]](#footnote-139) He arrived in the State from Pakistan in June 2011. His applications for asylum and subsidiary protection were refused and a deportation order was made in August 2012. He then evaded his presentation requirements for 6 years, during which he entered a relationship with an EU citizen. They had a child in January 2016. In July 2018 his solicitors applied for revocation of the deportation order. In August, 2018 the applicant presented to the GNIB for the first time since the making of the deportation order. In May, 2019 the revocation application was refused. He then sought *inter alia* certiorari of the refusal to revoke the deportation order. Similarly, in *C.M. v*. *Minister for Justice Equality and Law Reform*[[140]](#footnote-140) it was held that the Minister was entitled to have regard to evasion in the deportation context.

Peart J. in *IM v. Minister for Justice, Equality and Law Reform* [[141]](#footnote-141) criticised the undesirability that an applicant should be permitted to *“drip feed”* grounds from time to time, or that applicants should react at the *“eleventh hour*” to the prospect of deportation by submitting fresh applications for leave to remain, where the grounds are such to have been capable of communication at a much earlier stage, and in fact at a time when representations were made originally on their behalf.

The applicant in *Seredych v Minister for Justice Equality and Law Reform (no 3.)[[142]](#footnote-142)* had been made the subject of a deportation order following his conviction for a sexual assault. Following the grant of a deportation order, he applied for International Protection, which was refused in 2018. When the applicant left the State, the IPAT set aside the refusal of international protection, but the Minister refused to revoke a deportation order or grant a visa to return on receipt of his fresh application for International Protection. It was held that the Minister was incorrect in refusing to revoke the deportation order. He had initially been granted residency as the father of an Irish Citizen child but was seeking to return to apply for protection. Humphreys J. found that:

“If this case was still an immigration case I would have had no problem in holding that it was well within the Minister's discretion to consider that the State's interest in visiting upon the applicant the consequences of his offence against the injured party here outweigh the interests and rights, whether as to family or private life or otherwise, of the applicant, his wife and the seven children potentially affected (being the child of his first marriage, his three step-children and the three children of his second marriage). But this case is no longer an immigration case, it is a protection case and that changes everything… here there is a significant factual change - the grant of permission to make a re-application for protection. That changes the legal conclusion.”[[143]](#footnote-143)

He quashed the Ministers refusal to revoke the deportation order and gave an order remitting that decision back to the Minister with a direction to reconsider the matter in accordance with the judgment.

In *00 v Minister for Justice Equality and Law Reform* the decision of the Minister for Justice not to revoke a decision to deport an applicant where there were grounds to believe he would commit suicide was struck down where it had been made without allowing the applicant any opportunity to read and comment on a psychotherapist’s report retained by the Minister.[[144]](#footnote-144)

**ECHR rights and Deportation**

The provisions of the European Convention on Human Rights have effect in Irish domestic law thanks to the European Convention on Human Rights Act 2003. Under s 2 of the act the Courts must interpret and apply laws, so far as is possible, in a manner *“compatible with the State's obligations under the Convention provisions.”* Section 3 of the act requires every organ of the State to perform its functions in a manner compatible with the State's obligations under the Convention provisions.[[145]](#footnote-145) Article 3 Rights were at issue in *YY v Minister for Justice Equality and Law Reform.[[146]](#footnote-146)* Article 3 provides that no one shall be subjected to torture or inhuman or degrading treatment. Article 3 rights are considered in more detail in the chapter on refoulment. Article 13 rights have not been touched on in many cases but in *NM v Minister for Justice Equality and Law Reform* [[147]](#footnote-147) the court found judicial review was the effective remedy where the Minister refuses to readmit someone against whom a deportation order has been made to the asylum process. By far the most important ECHR Right in the deportation process is article 8 which protects the right to respect for private and family life. Family rights are often relied upon in an effort to prevent deportation or to get the Minister to revoke a deportation order. It is on this right that almost all of the case law turns.

**Article 8 – Right to respect for private and family life**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 8 rights will be read in tandem with other rights, in particular any Constitutional rights.*[[148]](#footnote-148)* Late attempts to judicially review a deportation order on the basis that there wasn’t a proper consideration of article 8 were criticised by O’Regan J. in *MAK v Minister for Justice Equality and Law reform.[[149]](#footnote-149)* There no particular article 8 right had been identified by the applicant in making the application. O’Regan J. found the application to be a

 “Collateral attack on the deportation order in circumstances where the applicant was afforded ample opportunity to raise Article 8 issues prior to the making of the deportation order but for his own reasons choose not to at a time when he was legally represented by solicitors who are particularly conversant with the immigration law process”[[150]](#footnote-150)

There was a detailed examination of the applicant article 8 rights and how they relate to state immigration controls and deportation in *Agbonlahor v Minister for Justice Equality and Law Reform* [[151]](#footnote-151). There Feeney J reviewed a number of decisions where the European Court of Human Rights considered the meaning of private life as referred to within article 8, finding it clear that private life extends beyond the concept of privacy. The ECtHR considered that "*moral and physical integrity*" formed part of private life within the terms of article 8 but that not every act or measure which adversely affects moral or physical integrity will interfere with a right to respect to private life guaranteed by Article 8. An act does not have to be so severe as to breach article 3 in order to breach article 8. It was found, that mental health and the desirability that it be treated could form part of one's private life capable of being protected by article 8.

Feeney J noted that Court of Appeal in England considered the relationship between article 8 and immigration law in *R. (Mahmood) v. Home Secretary*[[152]](#footnote-152)*.* There after considering European jurisprudence Lord Phillips drew the following conclusions in relation to the potential conflict between the respect for family life and the enforcement of immigration controls:

"(1) A state has a right under international law to control the entry of non-nationals into its territory, subject always to its treaty obligations.

(2) Article 8 does not impose on a state any general obligation to respect the choice of residence of a married couple.

 (3) Removal or exclusion of one family member from a state where other members of the family are lawfully resident will not necessarily infringe on article 8 provided that there are no insurmountable obstacles to the family living together in the country of origin of the family member excluded, even where this involves a degree of hardship for some or all members of the family.

(4) Article 8 is likely to be violated by the expulsion of a member of a family that has been long established in a state if the circumstances are such that it is not reasonable to expect the other members of the family to follow that member expelled.

(5) Knowledge on the part of one spouse at the time of marriage that rights of residence of the other were precarious militates against a finding that an order excluding the latter spouse violates article 8.

(6) Whether interference with family rights is justified in the interests of controlling immigration will depend on

1. (i) the facts of the particular case and
2. (ii) the circumstance prevailing in the state whose action is impugned."

Feeney J found that whilst these principles focus on the issue of the separation of family members, the first two principals were equally applicable in the context of private life. Both sides in this case relied on the House of Lords' decision in *R. (Razgar) v. Home Secretary.*[[153]](#footnote-153) there five questions where posed by Lord Bingham which must be answered in deciding whether a deportation would constitute an undue interference with a deportee's rights under article 8. These were adopted by Feeney and are:

(1) will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?

(2) if so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?

(3) if so, is such interference in accordance with the law?

(4) if so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?

(5) if so, is such interference proportionate to the legitimate public end sought to be achieved?"

Feeney J. also adopted the finding in that case that decisions taken pursuant to the lawful operation of immigration control of a State will be proportionate in all save a minority of exceptional cases. He found that the Strasbourg authorities on article 8 impose an obligation on contracting states not to interfere with the private lives of individuals. The authorities identify that there is an extension of that principle in relation to extradition type cases but that that extension is extremely limited and exceptional and only arises where there is a genuine and true risk that the authorities in the receiving state would commit acts upon an individual which would breach that person's rights under the Convention in the event that he is removed to that country. The court also found that in this particular cases the alleged breaches of the applicants' right to their private lives would at most be an indirect consequence of their deportation and given that such deportation was in pursuance of a lawful immigration policy it could not be said that the respondent had failed to respect the applicants' rights. In analysing article 8 it found that whilst article 8 did not protect one's private or family life *per se*, it guaranteed respect for these rights. The notion of "respect" and its requirements varied considerably from case to case and contracting states enjoyed a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention.

He adopted the finding of Lord Hope in *N. v. Home Secretary[[154]](#footnote-154)* that:

"The function of a judge in a case of this kind, however, is not to issue decisions based on sympathy. Just as juries in criminal trials are directed that they must not allow their decisions to be influenced by feelings of revulsion or of sympathy, judges must examine the law in a way that suppresses emotion of all kinds. The position that they must adopt is an austere one. Some may say that it is hard hearted. But the fact is that there are at least two sides to any argument. The consequences if the decision goes against the appellant cannot sensibly be detached from the consequence if the decision is in her favour. The argument, after all, is about the extent of the obligations under article 3 of the European Convention on Human Rights. It is about the treaty obligations of the contracting states. The Convention, in keeping with so many other human rights instruments, is based on humanitarian principles. There is ample room, where the Convention allows, for the application of those principles. They may also be used to enlarge the scope of the Convention beyond its expressed terms. It is, of course, to be seen as a living instrument. But an enlargement of its scope in its application to one contracting state is an enlargement for them all. The question must always be whether the enlargement is one which the contracting parities would have accepted and agreed to be bound by."

Feeney J found that this also applied to article 8 as well as article 3.

The Court of Appeal in *C.I v Minister for Justice and Equality[[155]](#footnote-155)* took a similar approach to article 8. Theyheld when determining what will have consequences of such gravity as to engage article 8 that;

“In a similar way it appears to me that if an individual decides to travel to a new State and claim asylum the permissible and inevitable application to him of immigration laws, if he fails, will necessarily involve some degree of interference with any private life established in the host State in which he is permitted to remain pending a decision on his asylum claim.

This analysis also informs my conclusion that in considering the gravity of the consequences of deportation on the right to respect for private life of an individual who has never been permitted to reside in the host State (other than pending a decision on an asylum claim), it is permissible to take into account that it is a private life consisting of relationships including educational and social ties formed at a time when the right of the individual to remain in the State is precarious.”[[156]](#footnote-156)

The court found it important to note that it was refusing the Minister's submission that persons who were never lawfully present in the State (other than being permitted to enter and/or remain to pursue an asylum claim) are not capable of establishing a private life within Ireland *“in the sense of educational or other social or community ties potentially capable of protection pursuant to Article 8.”* The Court of Appeal went on to consider the principles set out in ECHR case law. The approach it set out was (1) to identify a potential interference to a right under Article 8 and (2) to look at whether the proposed deportation would have consequences of such gravity for the physical and moral integrity of the individual so as to engage the responsibility of the State under article 8(1). This should be considered on the individual facts and circumstances of the case as well as the seriousness of the consequences for the applicant over and above the normal consequences of the impact on an individual. When Article 8(1) s engaged then any proposed deportation must be examined under Article 8(2). The Court of Appeal relied upon the judgment of the House of Lords in *R(Razgar) v Home Secretary* and discussed at length the 5 questions laid out by Lord Bingham. 53

In *SA v Minister for Justice and Equality [No 2*][[157]](#footnote-157) Humphreys J. observed that *“in line with ECHR jurisprudence, the Supreme Court has also clarified, as has the Court of Appeal, that where an applicant's status is precarious his or her rights under art. 8 of the ECHR are minimal if they exist at all*”. Subsequently on *Harish v Minister for Justice Equality and Law Reform* he explained that*[[158]](#footnote-158)*

“One can endeavour to summarise the legal position here as follows. In deciding whether the deportation of a migrant engages art. 8 of the ECHR (as applied by the 2003 Act), it is lawful for the Minister to have regard to:

(i) whether and to what extent the applicant’s status has been settled or unsettled over the full period of presence in the State;

(ii) whether and over what period the applicant’s presence is State has been lawful or unlawful;

(iii) the personal circumstances of the applicant;

(iv). whether and to what extent those circumstances involve matters causing something above and beyond ordinary disruption if the applicant is required to leave the State; and

(v) whether and to what extent the applicant’s private and family life was formed at a time when his or her status was unsettled, or indeed unlawful.”

He also found that the constitutional protection of marriage does not apply to marriages of convenience.[[159]](#footnote-159)

In *Jacks v Minister for Justice and Equality[[160]](#footnote-160)* the High Court found that the applicant’s non-settled nature in her time in the State and the lack of exceptional circumstances were such that the respondent was lawfully permitted to order her deportation, and this did not offend art 8 of the ECHR.

The interaction between Article 8 Rights and Constitutional Rights under article 41 were considered in great detail by the Supreme Court in *Gorry.[[161]](#footnote-161)*McKechnie J. was of the opinion that the constitutional recognition and guarantee are stronger than that contained in the ECHR. He went on to find that:

“It should be acknowledged from the outset that even if the protections of Article 41 of the Constitution are stronger than those under Art 8 ECHR, it is clear that any rights thereunder are not absolute and may have to yield to the interests of the State in maintaining an orderly immigration system. The State undoubtedly has a right to control immigration. This entails the power to regulate, inter alia, the entry, residence and removal of non-nationals from the State. This is regarded as an inherent power of the sovereign State, though it is given effect and regulated by statute.”[[162]](#footnote-162)

Article 8 rights are at the core of some of the following types of cases and will be analysed there in turn.

**Deportation and family and child rights**

Deportation and family rights

Article 41.3.1 of the Constitution provides that "*The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.*

Notwithstanding the constitutional protection of marriage, having an Irish spouse is not, of itself, enough to prevent deportation. This has been the law since the earliest deportation cases, *Pok Sun Shum v Ireland*[[163]](#footnote-163) and *Osheku v Ireland.[[164]](#footnote-164)* In *Osheku* it was held that family rights, whilst significant, were not absolute and could be curtailed where this was necessary to achieve the common good. The European Court of Human Rights in *Abdulaziz & Ors v. The United Kingdom*[[165]](#footnote-165) held that there is no general obligation on a State to respect the choice by a married couple of the country of matrimonial residence; that States enjoy a wide margin of appreciation in this area; that it is relevant whether there are any special reasons why the couple should not be expected to reside in the country to which the spouse is being deported; and that it is relevant whether they were aware, when they married, of the problems of entry and limited leave available. Similar principles were set out in the UK in *R (Mahmood) v. The Secretary of State for the Home Department.*[[166]](#footnote-166)

Mr Justice Hardiman found in *FP v. Minister for Justice*[[167]](#footnote-167) that the state had the right to deport a spouse of an asylum seeker whose application has not yet been finalized. He held:

"In so far as it is submitted that Article 41.3.1 of the Constitution in some way precludes the respondent from deciding to deport one partner while the other's application for leave to remain is pending, I would reject that proposition. If the applicant's wife is successful in avoiding deportation she will be enabled lawfully to remain in the State but she will not therefore be obliged to do so. Only if it were thought arguable that the applicant's marital status restrained the respondent's freedom of action as a matter of law could this aspect of his circumstances avail him on the present application. The State's obligation to protect with special care the institution of marriage and protect it against attack cannot, in my view, be invoked to limit the respondent's discretion in relation to an individual applicant whose application for asylum has been refused."[[168]](#footnote-168)

Similarly, in *McHugh & Asemota v. The Minister for Justice and Equality* [[169]](#footnote-169), it was held that marriage to an Irish national did not of itself confer on the foreign national an automatic right to reside in Ireland. The court there also found that arresting a foreign national in advance of his wedding for the purpose of giving effect to an otherwise valid deportation order was not unlawful. Since a non-national spouse of an Irish citizen may be deported and does not have an absolute right to reside or choose to reside in Ireland, a fiancée cannot be in a stronger legal position than the married spouse. The High Court held in *Ugbo and Buckley v The Minister for Justice, Equality and Law Reform*[[170]](#footnote-170)that the Minister was under no obligation to expressly refer to Article 41 of the Constitution and his failure to do so did not vitiate the decision that was reached. The Supreme Court decision in *P.O. v. Minister for Justice and Equality[[171]](#footnote-171)* held that deportation of a non-settled migrant would breach art. 8 of the ECHR only in exceptional circumstances. The Supreme Court held:

“The (High Court) judge concluded that the Minister's conclusion, that the deportation would not have the consequence of such gravity as to amount to a failure to respect the rights to private or family life, was a reasonable one. The fact that an applicant may derive benefits from continuing residence in the State, whether they be social or educational, did not amount to exceptional circumstances as would give rise to an entitlement to remain in Ireland. As a general principle, a state is entitled to control entry into its territory. Article 8 does not entail a general obligation for a state to respect immigrants' choice of the country of their residence, or to authorise family reunions in that territory”.[[172]](#footnote-172)

When considering to revoke a deportation order of a non-national who is married to an Irish citizen, the Minister for Justice is entitled to take into account the length of time during which the parties had lived together as a family unit.[[173]](#footnote-173) Where a non-national requests the revocation of a deportation order on the grounds that he is about to get married, the Minister for Justice is obliged to consider the rights of all concerned, and he must take into account other factors including the duration of the relationship or marriage.[[174]](#footnote-174)

The Supreme Court in *Gorry[[175]](#footnote-175)* found that:

“A non-national (meaning a person who is not a citizen of Ireland or any other EU Member State or any EEA State) has no right to be in Ireland unless he or she obtains permission from the Minister (unless some other obligation is imposed on the State pursuant to EU law or international law, which is not the case here). Presently the requirement to obtain such permission is imposed by section 4 of the Immigration Act 2004, as amended (see para. 16, supra).

It follows, as is clear from the authorities, that a married couple comprising an Irish citizen spouse and a non-national spouse do not have an automatic right to reside together in Ireland simply by virtue of their marriage and that the State is not obliged to respect the choice of residence of such a couple.”

McKechnie J found that: The State has an inherent and statutory power to control the entry of non-nationals into Ireland. As discussed above, such a person has no right to be in Ireland unless he or she obtains permission from the Minister. This is not automatically changed by the mere fact of their marriage: to hold otherwise would not be conducive to an orderly immigration system.[[176]](#footnote-176)

O’Donnell J there was reluctant to find that the Constitution protects a right to cohabitation.

Family rights where the child was unborn were analysed by the High Court in *OE v Minister for Justice, Equality and Law Review[[177]](#footnote-177)* . This issue then came before the Supreme Court in *M v Minister for Justice and Equality*.[[178]](#footnote-178) at a politically sensitive time shortly before the referendum repealing the 8th amendment. There the Supreme Court found that the then constitutional rights of the unborn were confined to the right to life/ right to be born guaranteed in Article 40.3.3° and the Minister was not obliged to treat the unborn as having other constitutional rights. It did find, however, that the Minister is obliged to consider the fact of pregnancy of the partner of a proposed deportee as a relevant factor in any decision to revoke a deportation order and is obliged to give separate consideration to the likely birth in Ireland of a child of the potential deportee. The Minister is also obliged to take account of the fact that the unborn child, if born, will enjoy significant constitutional rights when born. Whilst the Minister must consider the constitutional rights when born of an unborn either on an application for revocation or a proposal to deport, the weight to be attached to the potential interference with such rights will depend on all the facts and circumstances of the applicant and unborn concerned and is a matter for the Minister, as is the balance to be struck with the interests of the State in reaching a proportionate decision in accordance with the principles set out by Denham J. in *Oguekwe v. Minister for Justice*.[[179]](#footnote-179)

The Court of Appeal in *[Gorry v. Minister for Justice and Equality](https://app.justis.com/case/gorry-v-minister-for-justice-and-equality/overview/aXednZCZnZCdl)* [[180]](#footnote-180) was of the view that the Minister should first identify any constitutional rights as between a non-national and an Irish citizen spouse as the primary locus of protection, however this should not be generalised to mean that the Minister is obligated to identify any and all constitutional rights in respect of any and all applicants. On appeal the Supreme Court agreed holding:[[181]](#footnote-181)

“I consider it entirely appropriate that the Minister, when considering an application of the nature just mentioned, should first recognise and appropriately put in the balance the rights of the Applicants. I do not see this as inconsistent with the text of Article 41; rather, it arises from it. It is entirely proper that these rights should be acknowledged by the Minister and weighed against the State interests which may militate against granting the application. Indeed, it is difficult to see how the Minister could propose to carry out the requisite balancing exercise without first identifying and weighing the relevant constitutional rights of the Applicants. I cannot therefore find fault with the approach of the Court of Appeal in finding that the Minister must appropriately identify the relevant constitutional rights of the Applicants in order that they may be weighed in the balance.”

In *Jahangir v Minister for Justice and Equality*[[182]](#footnote-182) the High Court noted that the applicant's family life was considered by the Minister under the ECHR rather than the Constitution. The Court also held that there was no obligation on the part of the Minister to expressly and precisely identify the constitutional rights of the applicant.

Humphreys J. refusedanapplication for an injunction restraining a deportation order in *SMA (Nigeria) v Minister for Justice and Equality[[183]](#footnote-183)* where the applicant had not provided the documentation to support a claim under Zambrano that he was the father of an Irish Citizen Child.

In *Jin Ping Huang v Minister for Justice and Equality[[184]](#footnote-184)* Mrs Justice Burns considered a case where a Chinese national lived with his sister and her husband, who had Irish Citizen children. She noted that *“In the case of Ezzoudhi v. France [No. 47160/99] the ECHR determined that relationships between adult relatives do not necessarily attract the protection of Article 8 without elements of dependence involving more than normal emotional ties.*” And found that in this particular case there was no evidence of a relationship of dependency beyond what could be deemed normal emotional ties. She noted the case of *Boyle v. The United Kingdom[[185]](#footnote-185)* where family life was found to exist between a nephew and his uncle who was deemed by the domestic authorities to be a “good father figure” to him. She noted that whilst he had bonded with his younger relatives there was no claim that their parents were failing in their parental duties towards them.

*Deporting parents of Irish citizen children*

Being the parent of an Irish citizen child is not in itself enough to prevent the deportation of a non-national. Initially the leading case was *Fajujonu v Minister for Justice.[[186]](#footnote-186)* There the Supreme Court ruled that the Irish children of alien parents, as Irish citizens had a constitutional right to the company, care and parentage of their parents within a family unit. *Prima facie* and subject to the exigencies of the common good the children were entitled to exercise such rights within the State. The Supreme Court also held that their parents as aliens had no particular constitutional rights to remain in Ireland, they were entitled to assert a choice of residence on behalf of their infant children, in the interests of those infant children. As a result, the Minister could only order the deportation of the family where there was a grave and substantial reason associated with the common good. The fact the family had spent had been resident in the state for some time and made its home here was a factor to be considered. In *AO and DL v The Minister for Justice, Equality and Law Reform*[[187]](#footnote-187) the Supreme Court held that *Fajujonu* did not mean that the Minister had no power to deport the parents of an Irish born child. The Supreme Court held that the Minister has the power to deport non-Irish parents of Irish children where there are grave and substantial reasons associated with the common good to do so, even if Irish children are removed from the State as a consequence. Infant Citizens do not have an automatic constitutional entitlement to the care and custody of their parents in the State for an indefinite period merely by virtue of the fact they were born in the State. The length of residency of the non-national members of the family was a relevant factor in considering whether to deport them.

Following the signing of the Good Friday Agreement Citizenship was available to anyone born on the Island of Ireland. This was an issue of some controversy as it was felt that a number of foreigners were coming to the country and having children in order to stay there.[[188]](#footnote-188) This culminated in the 27th amendment to the constitution in June 2004 which limited citizenship to those who have least one parent who is an Irish citizen or who is entitled to be an Irish citizen is not entitled to Irish citizenship or nationality, unless provided for by law.

In *Alli v The Minister for Justice, Equality and Law Reform*[[189]](#footnote-189) the High Court held that it was reasonable to expect the family of a Nigerian father of an Irish child to travel with him to Nigeria and that the making of a deportation order did not infringe their constitutional rights under article 41.

Denham J. set out a non-exhaustive list of factors in *Oguekwe v Minister for Justice*[[190]](#footnote-190) which the Minister should consider when making a decision to make a deportation order of a parent of an Irish born citizen child.

1. The Minister should consider the circumstances of each case by due inquiry in a fair and proper manner as to the facts and factors affecting the family.

2. Save for exceptional cases, the Minister is not required to inquire into matters other than those which have been sent to him by and on behalf of applicants and which are on the file of the department. The Minister is not required to inquire outside the documents furnished by and on behalf of the applicant, except in exceptional circumstances.

3. In a case such as this, where the father of an Irish born child citizen, the mother (who has been given residency), and the Irish born citizen child are applicants, the relevant factual matrix includes the facts relating to the personal rights of the Irish born citizen child, and of the family unit.

4. The facts to be considered include those expressly referred to in the relevant statutory scheme, which in this case is the Act of 1999, being:-

(a) the age of the person/s;

(b) the duration of residence in the State of the person/s;

(c) the family and domestic circumstances of the person/s;

(d) the nature of the person's/persons' connection with the State if any;

(e) the employment (including self-employment) record of the person/s;

(f) the employment (including self-employment) prospects of the person/s;

(g) the character and conduct of the person/persons both within and (where relevant and ascertainable) outside the State (including any criminal convictions);

(h) humanitarian considerations;

(i) any representations duly made by or on behalf of the person/persons;

(j) the common good; and

(k) considerations of national security and public policy; so far as they appear or are known to the Minister.

5. The Minister should consider the potential interference with rights of the applicants. This will include consideration of the nature and history of the family unit.

6. The Minister should consider expressly the Constitutional rights, including the personal rights, of the Irish born child. These rights include the right of the Irish born child to:-

(a) reside in the State,

(b) be reared and educated with due regard to his welfare,

(c) the society, care and company of his parents, and

(d) protection of the family, pursuant to Article 41.

The Minister should deal expressly with the rights of the child in any decision. Specific reference to the position of an Irish born child of a foreign national parent is required in decisions and documents relating to any decision to deport such foreign national parent.

7. The Minister should also consider the Convention rights of the applicants, including those of the Irish born child. These rights overlap to some extent and may be considered together with the Constitutional rights.

8. Neither Constitutional nor Convention rights of the applicants are absolute. They require to be considered in the context of the factual matrix of the case.

9. The Minister is not obliged to respect the choice of residence of a married couple.

10. The State's rights require also to be considered. The State has the right to control the entry, presence, and exit of foreign nationals, subject to the Constitution and international agreements. Thus the State may consider issues of national security, public policy, the integrity of the Immigration Scheme, its consistency and fairness to persons and to the State. Fundamentally, also, the Minister should consider the common good, embracing both statutory and Constitutional principles, and the principles of the Convention in the European context.

11. The Minister should weigh the factors and principles in a fair and just manner to achieve a reasonable and proportionate decision. While the Irish born child has the right to reside in the State, there may be a substantial reason, associated with the common good, for the Minister to make an order to deport a foreign national who is a parent of an Irish born child, even though the necessary consequence is that in order to remain a family unit the Irish born child must leave the State. However, the decision should not be disproportionate to the ends sought to be achieved.

12. The Minister should consider whether in all the circumstances of the case there is a substantial reason associated with the common good which requires the deportation of the foreign national parent. In such circumstances the Minister should take into consideration the personal circumstances of the Irish born child and the foreign national parents, including, in this case, whether it would be reasonable to expect family members to follow the first named applicant to Nigeria.

13. The Minister should be satisfied that there is a substantial reason for deporting a foreign national parent, that the deportation is not disproportionate to the ends sought to be achieved, and that the order of deportation is a necessary measure for the purpose of achieving the common good.

14. The Minister should also take into account the common good and policy considerations which would lead to similar decisions in other cases.

15. There should be a substantial reason given for making an order of deportation of a parent of an Irish born child.

16. On judicial review of a decision of the Minister to make an order of deportation, the Court does not exercise and substitute its own discretion. The Court reviews the decision of the Minister to determine whether it is permitted by law, the Constitution, and the Convention.

In *AO v Minister for Justice Equality and Law Reform (no 2)* Hogan J found that*[[191]](#footnote-191)*

 “Article 42.1 of the Constitution envisages that it is the “right and duty” of the parents of a child to provide for its education, welfare and upbringing. Insofar as the Constitution speaks of it being the “duty” of parents, it is because that the child enjoys -presumptively, at least- the right to have both of its parents engaged in that vital and responsible task. This is because, as O'Donnell J. put it in Nottinghamshire C. C. v. B. [2011] IESC 48, [2012] 2 I.L.R.M. 170, 217:

‘…the Articles [41 and 42] at least in general terms, state propositions that are by no means eccentric, uniquely Irish or necessarily outdated: there is a working assumption that a family with married parents is believed to have been shown by experience to be a desirable location for the upbringing of children; that as such the family created by marriage is an essential unit in society; that accordingly, marriage and family based upon it is to be supported by the State. Consequently the State's position is one which does not seek to pre-empt the family, but rather seeks to supplement its position so that the State will only interfere when a family is not functioning and providing the benefits to its members (and thus the benefits to society) which the Constitution contemplates. In that case, the State may be entitled to intervene in discharge of its own duty under the Constitution and to protect the rights of the individuals involved.’

I would merely add that the active involvement of both parents in child-rearing is also inherently desirable from the child's perspective, even if the parents are not married, assuming always that this is feasible and practicable.”

Subsequently in *E.A. and Another v Minister for Justice [[192]](#footnote-192)* he was of the view that the Supreme Court has confirmed that there is constitutional right of the child to the care and company of its parents.[[193]](#footnote-193) In *PA v Minister for Justice and Equality[[194]](#footnote-194)* was an application for an interlocutory injunction where Hogan J. had to balance the constitutional rights of a young child to the care and company of his parents against the interests of the State in effective immigration control and the general integrity of the asylum system. There the applicant’s father had lied claiming to be a Sudanese national in danger in Sudan, when he was in fact Nigerian. He had been deported and re-entered the country under a British passport. He had lied to the Minister he was living with the applicant’s mother when they were separated and it was not disputed that this was because he thought that he would have a better chance of securing a more favourable decision from the Minister. Hogan J found that:

“i. The applicant has manipulated the asylum system and has engaged in egregiously wrongful conduct. He has no personal merits which would entitle him to administrative or judicial protection.

ii. The applicant is not entitled to rely on the decision of the Court of Justice in Zambrano. Given that the mother has refugee status in this State, she cannot realistically be expected to return to or even visit Nigeria and there is almost no prospect that the effect of the deportation order would be to result in the child leaving Ireland or the territory of the Union.

iii. The court must, however, approach this application not from the perspective of the father, but rather from that of the child. It must accordingly seek to ensure, where possible, that the substance of the constitutional right of the child as guaranteed by Article 42.1 to the care and company of his parents is protected.

iv. In the present case, were Mr. A. to be deported, the likelihood is that the child would have no further personal contact with him during his minority, thus depriving the child of the essence of that constitutional right.

v. It is reason that I consider that Mr. A. has satisfied the Campus Oil criteria and I will therefore grant an interlocutory injunction restraining his deportation. I will discuss with counsel the form of that order and will give further directions for the early hearing of this application.”

A decision deporting a Nigerian national who was in loco parentis of an Irish citizen child was found to be unlawful in *Babatunde v Minister for Justice*[[195]](#footnote-195). The minister had found that was no family life between the applicant and the child as the applicant was not married to the child’s mother and had not adopted the child. Mr Justice Barrett held that the Minister erred in concluding that no family life within the meaning of Art 8 ECHR existed between them. He followed the decision of the European Court of Human Rights in *K and T v Finland*[[196]](#footnote-196), holding that the existence of family life within the meaning of Art.8 is not established by proof of biological relationship. He observed that

”In the context of personal and family relationships, the old formalities are greatly crumbling, and new realities and relationships and diversely blended forms of families presenting: decision-makers and decision-making must make due allowance for this.”[[197]](#footnote-197)

He also held that the Minister erred in failing properly to consider the child’s rights pursuant to Art.8 ECHR. He applied observation of the European Court of Human Rights in *Balogun v. The United Kingdom*[[198]](#footnote-198) that *“the totality of social ties between settled migrants … and the community in which they are living constitutes part of the concept of ‘private life’ within the meaning of Article 8”.* and found that Mr Babatunde's removal from Ireland would effectively place the child in a position where he had to choose between (I) a private life in Ireland and (II) family life within the meaning of Art.8 ECHR. He was also of the opinion that as the applicant had worked as a physicist in Nigeria and had worked here whilst he had permission to do so he could not see how the applicant’s deportation was necessary to maintain the economic well-being of the State. He found that the Minister’s decision had breached the principles laid out in *Oguekwe* and remitted it back to the Minister for further consideration.

The Supreme Court in *Esmé v The Minister for Justice, Equality and Law Reform*[[199]](#footnote-199) on the other hand found that family rights are only constitutionally protected for parents and not for grandparents of Irish Citizen Children.

In *Bakare v. Minister for Justice and Equality[[200]](#footnote-200)* the father of an Irish Citizen child was refused residency in the state. Hogan J found that it had not been shown that he would be at risk of leaving the state or the territory of the EU as a result and therefore *Zambrano*  and EU law did not apply.

*Non-citizen children*

In *Dos Santos v Minister for Justice and Equality*[[201]](#footnote-201) a family of Brazilians sought to prevent their deportation on the basis of the rights of the family children. The Court of Appeal held that *Oguekwe* does not apply to non citizen children. The court found that there was nothing to warrant the interpretation of s. 3(6) as requiring the Minister, when considering the deportation of a child, to consider the child's best interests as “a primary consideration” as set out in the United Nations Charter on the Rights of the Child or to expressly decide whether deportation was consistent with the child's best interests. What s. 3(6) required was for the Minister (i) to identify whether the relevant person was a child or not, (ii) if so, to determine the age of the child, and (iii) to then consider the remaining relevant matters set out in the subsection to a child of that age. In this case the deportation of the applicants would not give rise to any more serious consequences than those that would normally flow from the movement of a family from one jurisdiction to another. Therefore, the decision did not have consequences of such gravity as to potentially engage article 8 rights.

In *O (P) & O (S)(an Infant) v Min for Justice* [[202]](#footnote-202) It was contended that the non-citizen child had commenced school and that he would benefit from the Irish education and health systems. The court found whilst he had commenced school, he was still very young and his immediate and extended family reside in Nigeria. The determination by the Minister that article 8 rights were not engaged was therefore reasonable.

Employment record

*ANA v. Minister for Justice[[203]](#footnote-203)* Mrs Justice Burns stated:-

“13. The argument is made that the Respondent did not have proper regard to the job offer as she negated the positive effect of this offer by reference to the fact that the Applicant did not have permission to reside or work in the State and that there was no obligation on the Minister to grant him permission to remain so as to facilitate

his employment. However, that is not a misstatement of fact or law by the Respondent or something which the Respondent should not take into consideration in the overall balancing exercise which the Respondent must engage in. It is an entirely accurate summation of the position which the Respondent found himself: he had an offer of work but did not have permission to remain in the country or have a work visa. The reference to not having such permissions did not override the job offer which the Applicant had, as asserted by the Applicant, nor has the Respondent treated them as such.

14. The Applicant seeks to rely on a judgment of this Court in *MAH v. Minister for Justice[[204]](#footnote-204)* in support of the proposition that having regard to a lack of permission to remain or work is not an appropriate consideration pursuant to s.3(6)(f) of the 1999 Act. In MAH, the Respondent had positively found that that Applicant had reasonable work prospects for reasons which were specified. Having made that finding, the Respondent relied on the fact that the Applicant did not have permission to remain or a work visa to nullify the finding that her work prospects were reasonable. This Court set out at paragraphs 28 and 29:-

“Section 3(6) clearly places a mandatory onus on the Respondent to consider particular, specified issues when determining whether a deportation order should issue in respect of a proposed deportee. Whilst the Respondent did consider the Applicant’s employment prospects, she reversed the clearly positive outcome in respect of that heading by having regard to the fact that the Applicant does not hold a work visa in respect of such employment

prospects, nor has permission to remain in the State. These are inappropriate matters to have regard to under this sub-heading. Had the Applicant a work visa or a permission to remain in the State, a consideration pursuant to s.3(6) of the 1999 Act would not arise in the first place. Accordingly, what s.3(6) requires of the Respondent is to initially consider each of the sub-headings on a standalone basis and to then engage in a balancing act to determine whether a deportation order should issue having regard to all issues mandated to be considered pursuant to s.3(6).

29. Incorrectly, the Respondent nullified the separate consideration of the good employment prospects which the Applicant was found to have by reference to her not having a work visa or permission to be in the State. These issues are separate to her employment prospects: they can clearly be taken into account by the Respondent in the balancing exercise which she must conduct but they should not be utilised in a compartmentalised determination

regarding her employment prospects simpliciter. This was an error on the Respondent’s part.”

15. The error which the Respondent fell into in MAH did not occur in the instant case. The fact that the Applicant does not have permission to remain or a work visa is noted as a fact, but it is not utilized to make a determination that the Applicant does not have reasonable work prospects, which was the error which the Respondent made in MAH. Instead, it is noted as a fact to be considered as part of the balancing exercise which the Court referred to in MAH.

16. Neither is *Lin v. Minister for Justice and Equality (No.2)[[205]](#footnote-205)* relevant to the instant matter. In Lin, the Respondent made factual errors inthe course of her considerations which vitiated the subsequent deportation decision reached. No factual error was made by the Respondent in this matter.”

This was relied upon by Mrs Justice Burns in *Jin Ping Huang v Minister for Justice and Equality.[[206]](#footnote-206)* There she found where the applicant did not have permission to work in the state and where there was no obligation on the respondent to grant such permission there was no error in the Ministers approach to determining his employment history and prospects.

**Judicial Review and Deportation**

Someone who has been the subject of a deportation order has the right to challenge that by judicial review. Under s 5(1) of the Illegal Immigrants (Trafficking) Act, 2000 (as amended) a person shall not question the validity of a deportation order or notice other than through judicial review. They must have substantial grounds for this challenge. The application for leave must be made on notice. Someone who is challenging their deportation by judicial review has the right to remain in the state whilst doing so. In *Adebayo v Commissioner of the Garda Siochana* the Geoghegan J. held that:

“I take the view that no deportation may be implemented during the currency of the fourteen day period and that if in fact an application for leave is brought within that period no deportation order may be implemented until the court determines the application for leave and only then if the court does not order otherwise upon the granting of leave. Having regard to the very nature of this legislation and its intent it would seem likely that a court properly exercising its discretion would normally grant the stay or the injunction as the case might be if leave was being given.”[[207]](#footnote-207)

Similarly in *A(APA)(a Minor) v Minister for Justice Equality and Law Reform [[208]](#footnote-208)* Cooke J. held:

“Taking that approach to the application of s. 5, the following propositions can, in the judgment of the Court, be stated:

(a) By deporting a failed asylum seeker within fourteen days of the communication of a deportation order under s. 3 of the Act of 1999 the Minister would act in a manner which is incompatible with his obligations under the ( European Convention on Human Rights)Act of 2003 unless the person concerned has expressly waived his entitlement to make an application for judicial review:

(b) Where an application for judicial review of a deportation order is made within the fourteen day period and alleges that the order is unlawful as a violation of a right or freedom under the Convention, the Minister would act in a manner incompatible with his obligations under the Act of 2003 by deporting the person concerned prior to the return date of the motion for the leave application:

(c) The Minister is not obliged to give an undertaking not to deport but in a case where there is good reason to believe that deportation is about to take place within the 14 day period or prior to the return date of an application for leave commenced within that period, the Court should exercise its discretion to restrain deportation in order to preserve the effectiveness of the remedy consistently with the obligations of the State under Article 13:

(d) Where no application for judicial review is commenced within the fourteen day period, the Minister is entitled to assume that no challenge to the validity of the order is to be made and that the deportation may therefore be implemented:

(e) When an application for leave to seek judicial review commenced with the 14 day period comes before the Court or upon an earlier application on the part of the Minister to have the proceeding dismissed as unfounded, any continuing restraint upon the implementation of the deportation order is dependent upon the applicant establishing an entitlement to an interlocutory injunction to restrain deportation. This follows from Order 84, r. 20 (7) of the Rules of the Superior Courts which provides that where an order of certiorari is sought the grant of leave only operates as a stay where "the Court so directs":

(f) The grant of an injunction remains a matter for the discretion of the Court according to the established principles and, bearing in mind the duty to make the application in good faith and with full, honest disclosure of all relevant information, the application of s. 5 by the court in a manner compatible with the Article 13 obligation does not deprive it of its entitlement to refuse relief, even on an ex parte application, if there is compelling reason to consider the application unfounded, vexatious or made in bad faith. Article 13 requires that the remedy be genuinely available and that it be effective in preventing the threatened violation of the Convention when necessary; it does not guarantee the applicant a favourable outcome to every application:

(g) Where an application for judicial review is commenced after the expiry of the 14 day period, the Minister is entitled to proceed with the deportation unless an interim injunction to restrain the deportation has been obtained. (See the observations to that effect of Geoghegan J. in Adebayo at page 314.) Furthermore, upon such an application the Court has no jurisdiction to grant an injunction unless it is satisfied that there is good and sufficient reason to extend the time in order to enable leave to be sought. The validity of the order may only be questioned by the making of an application under Order 84 so that the Court cannot grant an injunction which questions the validity of the order unless it is satisfied that it will have jurisdiction to entertain the application for leave.”

The fourteen-day period referred to is the fourteen days within which an applicant could challenge a deportation order by judicial review. This period has subsequently been extended to twenty-eight days by section 34 of the Employment Permits (Amendment) Act 2014. Someone who has been the subject of a deportation order does not have the right to remain in the jurisdiction to take other civil claims[[209]](#footnote-209) or to defend criminal proceedings.[[210]](#footnote-210)

In *Nawaz v Minister for Justice, Equality and Law Reform* the Supreme Court found that the test whether s 5 of the Illegal Immigrants Trafficking Act applies to a case, and whether that case should be taken by way of judicial review, is one of substance rather than form. [[211]](#footnote-211) Therethe applicant sought to challenge the constitutionality of s 3 of the immigration act 1999. He commenced this by way of issuing plenary proceedings through the Central Office seeking *inter alia* a declaration s 3 was unconstitutional. He did not take judicial review proceedings and follow the requirements of s 5. Whilst s 5 does not expressly mention constitutional challenges, however the Supreme Court found that the effect of the action would be to question the validity of the deportation order. The applicant would not have had locus standi to bring the case if he was not at risk of deportation and the action was a pre-emptive strike *“clearly one designed to question the validity of any order which might be made.”* The Supreme Court went on to hold that any constitutional challenge whichhas as its *natural and intended consequence the rendering invalid of such a measure already adopted or such a measure should it be adopted”* would be caught by s.5. Judge Clarke (as he then was) did find that judicial review proceedings which were already in being could be amended to include a constitutional challenge.

In in *JE v Minister for Justice Equality and Law Reform[[212]](#footnote-212)* Cooke J. found that the basis upon which a challenge can be raised to a deportation order is limited. He relied on the finding of Clarke J. in *Kouaype v Minister for Justice*[[213]](#footnote-213)that:

"For all of the above reasons it seems to me that the grounds upon which a decision by the Minister to make a deportation order in the case of a failed asylum seeker can be challenged are necessarily limited. Without being exhaustive it seems to me that it would require very special circumstances for such a review to be possible unless it can be shown that:

(a) the Minister did not consider whether the provisions of s. 5 applied. Where the Minister says that he did so consider and in the absence of any evidence to the contrary this will be established;

(b) the Minister could not reasonably have come to the view which he did.

(c) the Minister did not afford the applicant a statutory entitlement to make representations on the so-called 'humanitarian grounds'; or,

(d) the Minister did not consider any such representations made within the terms of the statute, or the factors set out in s. 3(6) of the Act of 1999 or (possibly) the Minister could not reasonably have come to the conclusion he did in relation to those factors."

In *Lelimo v. Minister for Justice, Equality and Law Reform* Laffoy J. held that the making of a deportation order cannot be challenged by impugning its execution. Execution is a purely administrative act in which the Gardaí have no discretion. [[214]](#footnote-214)

Mr Justice Barrett in *MH and SH v Lelimo v. Minister for Justice, Equality and Law Reform* noted that:

“previous courts (foreign and domestic) have recognised that delay may be a relevant factor in considering whether deportation is an appropriate remedy: see in this regard the judgment of Lord Bingham in E.B. (Kosovo) v. Secretary of State for the Home Department [2008] UKHL 41, paras. 14-16 (incl.) and the judgment of MacMenamin J. in PO v. Minister for Justice [2015] IESC 64, para.33. The court does not accept that the delay here is insufficiently long to come within this case-law.”[[215]](#footnote-215)

1. Section 3 of the Immigration Act 1999 as amended [↑](#footnote-ref-1)
2. See Hogan, Whyte, Kenny and Walsh,Kelly: *The Irish Constitution (5th edition)* Bloomsbury Professional Dubin 2018 at pgh 7.4.262. The criminal courts are entitled to impose a condition that a foreign national leave the state as part of a suspended sentence *- DPP v Alexiou* [2003} 3 IR 513. This is not an executive act in the nature of the deportation order and does not encroach on the deportation powers of the Minister of Justice. If the accused does not leave the jurisdiction all that will happen is that suspended portion of the sentence will be activated. [↑](#footnote-ref-2)
3. Regulation 3 of in S.I. No. 548/2015 - European Communities (Free Movement of Persons) Regulations 2015 [↑](#footnote-ref-3)
4. Warr, Cole and Middleton *Immigration Law and Practise* (Fourth edition) by (Tottel Publishing, 2008) p 973 [↑](#footnote-ref-4)
5. Section 3 of the Immigration Act 1999 as amended [↑](#footnote-ref-5)
6. *U. v. Minister for Justice, Equality and Law Reform (No. 1)* [2010] IEHC 492 [↑](#footnote-ref-6)
7. s 3(10) Immigration act 1999 [↑](#footnote-ref-7)
8. Department of Justice *Immigration in Ireland Annual Review 2018* page 30 [↑](#footnote-ref-8)
9. <https://www.thejournal.ie/deportation-ireland-5037850-Mar2020/> accessed [↑](#footnote-ref-9)
10. Macdonald and Toal *Macdonald’s Immigration Law and Practise*, (9th ed) (vol 1) Butterworths Lexis Nexis 2014 pg 1493 [↑](#footnote-ref-10)
11. SI no 2/1925 The Aliens Order 1925. Prior to the 1922 constitution it could be found in the Military Courts in *General Regulations for the Trial of Civilians by Military Courts (*2 October 1922) vol XIX of the bound SRO p515 [↑](#footnote-ref-11)
12. *Laurentiu v Minister for Justice, Equality and Law* Reform [1999] 4 IR 26. This landmark case on legislative delegation found that s 5(1)(e) of the Aliens Act 1935, insofar as it delegated the power to deport aliens to the Minister for Justice without setting out principles and policies upon which that power was to be exercised, was not carried over by Article 50 of the Constitution of Ireland 1937 and did not form part of Irish law. See also *Osheku v Minister for Justice* [1986] IR 733 and *Pok Sun Shum v Minister for Justice* [1986] ILRM 393 [↑](#footnote-ref-12)
13. *Attorney General for Canada v. Cain* [1906] A.C. 542 at p. 546, [↑](#footnote-ref-13)
14. *AO and DL v Minister for Justice Equality and Law Reform* [2003] 1 IR 1 at 134 [↑](#footnote-ref-14)
15. *Sivsivadze v Minister for Justice Equality and Law Reform* [2016] 2 IR 403 [↑](#footnote-ref-15)
16. See *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560 This principle has been expressly approved in this jurisdiction by the Supreme Court: see *Tang v. Minister for Justice* [1996] 2 I.L.R.M. 46 and *Devanney v Shields* [1998] 2 I.R. 230. [↑](#footnote-ref-16)
17. see *Tang v. Minister for Justice* [1996] 2 I.L.R.M. 46, *LAT v* *Minister for Justice Equality and Law Reform* [2011] IEHC 404 and *WT v Minister for Justice Equality and Law Reform* [2015] IESC 2015 [↑](#footnote-ref-17)
18. Subsections (e) and (f) make provision for the deportation of failed asylum seekers and those whose claims have been transferred under the Dublin convention. These categories of people may still be deported but this is now found in other legislation discussed elsewhere in this text. [↑](#footnote-ref-18)
19. In *Tang v Minister for Justice Equality and Law Reform* [1996] 2 ILRM 46 the Supreme Court found that the power of the Minister to make a deportation order where he deemed it "conductive to the public good" was not *ultra vires* the Minister*.* In *FP v Minister for Justice* [2002] 2 IR 164 the Supreme Court held that the respondent was entitled to have regard to “*the States’ policy in relation to the control of aliens”.* [↑](#footnote-ref-19)
20. The form of the deportation order can be found in S.I. No. 55/2005 - Immigration Act 1999 (Deportation) Regulations 2005 as amended by S.I. No. 134/2016 - Immigration Act 1999 (Deportation) (Amendment) Regulations 2016. See also SG (Albania) v Minister for Justice and Equality [2018] IEHC 184 at pgs 22, 23 and 61 [↑](#footnote-ref-20)
21. *K v Minister for Justice and Equality* [2019] 1 IR 217 [↑](#footnote-ref-21)
22. The form of a deportation order under this section can be found in S.I. 668 of 2016 International Protection Act 2015 (Deportation) Regulations 2016 [↑](#footnote-ref-22)
23. Subsections (2), (3), (4), (5), (6), (7), (8), (9)(b) and (12) of section 3 [↑](#footnote-ref-23)
24. *K v Minister for Justice and Equality* [2019] 1 IR 217 at pgh 6 [↑](#footnote-ref-24)
25. *Re Article 26 and ss 5 and 10 of the Illegal Immigrants (Trafficking) Bill 1999* [2000] 2 IR 360 at 383 as well as art 3 of Protocol no 4 to the European Convention of Human Rights. The state has deported Irish Citizens in the past. The most high profile example is that of James Gralton, a naturalised American citizen. He was the only Irish Citizen deported for political activity and was the subject of the play and film “Jimmy’s Hall”. See Ryan *Class Conflict in South Leitrim* taken from O’Flynn, Clarke, Hayes and Power ‘*Marxist perspectives on Irish Society* (Cambridge Scholars publishing 2011)’ [↑](#footnote-ref-25)
26. See *B& R v Minister for Justice* [2009] IEHC 333 [↑](#footnote-ref-26)
27. Removal is discussed in the next chapter. [↑](#footnote-ref-27)
28. *Igunma v Minister for Justice and Equality* [2014] IEHC 218 [↑](#footnote-ref-28)
29. *KP v Minister for Justice and Equality* [2017] IEHC 95 [↑](#footnote-ref-29)
30. ###  *M.A.K. v Minister for Justice, Equality and Law Reform* [2017] IEHC 465

 [↑](#footnote-ref-30)
31. Case C-94/18 *Chenchooliah v Minister for Justice and Equality.* [↑](#footnote-ref-31)
32. *Nadeem v Minister for Justice Equality and Law Reform* (no 3) [2019] IEHC 834 [↑](#footnote-ref-32)
33. *MA (Pakistan) v Governor of Cloverhill Prison* [2018] IEHC 95 [↑](#footnote-ref-33)
34. See *II (Nigeria) v Minister for Justice and Equality* [2018] IEHC 392 at pgh 5 [↑](#footnote-ref-34)
35. *II (Nigeria) v Minister for Justice and Equality* [2018] IEHC 392 at pgh 11 [↑](#footnote-ref-35)
36. *SG (Albania) v Minister for Justice and Equality* [2018] IEHC 184 at pgh 21 [↑](#footnote-ref-36)
37. Addendum no 4 to the Information Booklet for Applicant for International Protection (IPO 1). [↑](#footnote-ref-37)
38. Subsections 3(3)(4) and (5) of the Immigration Act 1999 as amended [↑](#footnote-ref-38)
39. *F.P. v. Minister for Justice* [2002] 1 I.R. 164 [↑](#footnote-ref-39)
40. *Dimbo v Minister for Justice Equality and Law Reform* [2008] IESC 26 [↑](#footnote-ref-40)
41. See, *inter alia,* the comments of Hogan J. in *PM v Minister for Justice, Equality and Law Reform* [2012} IEHC 34 and *NM v Minister for Justice Equality and Law Reform* [2018] 2 I.R. 591 [↑](#footnote-ref-41)
42. *P L. & B v v Minister for Justice Equality and Law Reform* [2002] 1 ILRM 16 [↑](#footnote-ref-42)
43. Morgan, Hogan, and Daly *Administrative Law in Ireland* (5th Ed), Thomson Roundhall Dublin 2020 at 886 [↑](#footnote-ref-43)
44. *Meadows v Minister for Justice Equality and Law Reform* [2010] 2 IR 701 [↑](#footnote-ref-44)
45. For more on the proportionality principle in general see the chapter on Principles of Judicial Review [↑](#footnote-ref-45)
46. *Meadows v Minister for Justice Equality and Law Reform* [2010] 2 IR 701 at page 732 [↑](#footnote-ref-46)
47. See Hogan, Whyte, Kenny and Walsh,Kelly: *The Irish Constitution (5th edition)* Bloomsbury Professional Dubin 2018 at pgh 7.1.83 [↑](#footnote-ref-47)
48. De Blacam *Judicial Review (3rd Edition)* Bloomsbury Professional Dublin 2017 [↑](#footnote-ref-48)
49. Hogan, Morgan and Daly *Administraitve Law in Ireland (5th edition)* roundhall Dublin at pgh 17’158 [↑](#footnote-ref-49)
50. For more on proportionality generally see the chapter on Principles of Judicial Review [↑](#footnote-ref-50)
51. *Ugbo and Buckley v The Minister for Justice, Equality and Law Reform* [2010] IEHC 80 [↑](#footnote-ref-51)
52. *O(S) v Minister for Justice, Equality and Law Reform* [2010] IEHC 343 See also *ISOF v Minister for Justice, Equality and Law Reform* [2010] IEHC 457 [↑](#footnote-ref-52)
53. *O(S) v Minister for Justice, Equality and Law Reform* [2010] IEHC 343 at pgh 64 [↑](#footnote-ref-53)
54. *JE v Minister for Justice Equality and Law Reform* [2011] 1 IR 574 [↑](#footnote-ref-54)
55. *FE (A Minor) v Minister for Justice and Law Reform [*2014] IEHC 62 [↑](#footnote-ref-55)
56. *SA v Minister for Justice and Equality [No 2]* [2016] IEHC 646 [↑](#footnote-ref-56)
57. Ibid at Pgh 16 [↑](#footnote-ref-57)
58. *D.O.A. (Nigeria) v The Minister for Justice and Equality* [2019] IEHC 264 at pgh 24 [↑](#footnote-ref-58)
59. *Odeh v Minister for Justice and Equality* [2016] IEHC 654 [↑](#footnote-ref-59)
60. *DE v Minister for Justice, Equality, and Law Reform* [2018] 3 IR 326 [↑](#footnote-ref-60)
61. *Harish v Minister for Justice Equality and Law Reform* [2019] IEHC 879 [↑](#footnote-ref-61)
62. Subsection 3(3)(a) of the Immigration Act 1999. [↑](#footnote-ref-62)
63. This is known as a “three options” letter per McMenanmin J. in *PO and SO v the Minister for Justice* [2015] 3 IR 164 [↑](#footnote-ref-63)
64. <http://www.ria.gov.ie/en/RIA/Pages/Voluntary_Return_FAQs> accessed 5th March 2020 [↑](#footnote-ref-64)
65. *Leng v Min for Justice* [2015] IEHC 681 [↑](#footnote-ref-65)
66. Ibid at pgh 36 [↑](#footnote-ref-66)
67. *Shao v Minister for Justice & Equality* *(No 1)* [2019] IEHC 826 [↑](#footnote-ref-67)
68. Under s 3(10) anyone who contravenes a requirement in a notice under *subsection (3)(b)(ii)* shall be guilty of an offence. [↑](#footnote-ref-68)
69. *CRA and OEA v Minister for Justice, Equality and Law Reform* [2007] 2 I.L.R.M. 209 at pgh 40 [↑](#footnote-ref-69)
70. #  S.I. No. 518/2006 - European Communities (Eligibility for Protection) Regulations 2006

 [↑](#footnote-ref-70)
71. Subsection 3(5) of the Immigration Act 1999 [↑](#footnote-ref-71)
72. *H v Minister for Justice and Equality* [2019] IEHC 836 [↑](#footnote-ref-72)
73. *P. v. Minister for Justice* [2002] 1 I.R. 164 [↑](#footnote-ref-73)
74. *G.K. v. Minister for Justice and Equality* [2002] 2 IR 418 [↑](#footnote-ref-74)
75. *Oguntola v Governor of Cloverhill Prison* [2011] IEHC 347 [↑](#footnote-ref-75)
76. Subsection 3(8) of the Immigration Act 1999 [↑](#footnote-ref-76)
77. *Akinkoulie v Minister for Justice Equality and Law Reform* [2005] 4 IR 564 [↑](#footnote-ref-77)
78. #  Subsection 3(1) of the Immigration Act 1999 as amended/ s 50 2015 act as well as s 5 of the Refugee Act 1996 as amended by s 95 of Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019. The relationship between these two sections is the subject of the decision in *S(G) Albania v* *Minister for Justice Equality and Law Reform* [2018] IEHC 184. See also s 4 Criminal Justice (UN Convention against torture) Act 2000. For more on refoulment see the chapter on refoulment.

 [↑](#footnote-ref-78)
79. *A.O. and D.L. v. Minister for Justice* [2003] 1 I.R. 1 [↑](#footnote-ref-79)
80. *Oguekwe v Minister for Justice* [2008] 3 IR 795. *Oguekwe* was delivered on the same day as *Dimbo* mentioned above. [↑](#footnote-ref-80)
81. [*Gorry v. Minister for Justice and Equality*](https://app.justis.com/case/gorry-v-minister-for-justice-and-equality/overview/aXednZCZnZCdl) [2020] IESC 55 at pgh 195 [↑](#footnote-ref-81)
82. *Kouaype v Minister for Justice Equality and Law Reform* [2011] 2 IR 1 at 5 [↑](#footnote-ref-82)
83. Ibid 1 at 10 [↑](#footnote-ref-83)
84. *Sivsivadze v Minister for Justice Equality and Law Reform* [2016] 2 IR 403 [↑](#footnote-ref-84)
85. Ibid at pgh 52 [↑](#footnote-ref-85)
86. Section 5 Immigration act 1999 as inserted by s 78 International Protection Act 2015 [↑](#footnote-ref-86)
87. See *CA v Governor of Cloverhill Prison* [2017] IECA 46 and *Sivsivadze v Minister for Justice Equality and Law Reform* [2016] 2 IR 403 [↑](#footnote-ref-87)
88. *M (T) v Governor of Mountjoy Prison* [2011] IEHC 336 [↑](#footnote-ref-88)
89. *Omar v Governor of Cloverhill Prison* [2013] 4 IR 186 [↑](#footnote-ref-89)
90. See s 5(11) as substituted by s 78 of the International protection act 2015 [↑](#footnote-ref-90)
91. See ss 20(6) and 20(7) [↑](#footnote-ref-91)
92. *Olafusi v Governor of Cloverhill Prison* [2009] IEHC 558 [↑](#footnote-ref-92)
93. *Arra v Governor of Cloverhill Prison* [2 [↑](#footnote-ref-93)
94. *HH v The Governor of Cloverhill Prison* [2019] IEHC 633 [↑](#footnote-ref-94)
95. ###  *J.A. (Cameroon) v Governor of Cloverhill Prison No. 2* [2017] IEHC 610

 [↑](#footnote-ref-95)
96. Ibid at pgh 26 [↑](#footnote-ref-96)
97. *Trang and Vu v Governor of the Dochas Centre* [2018] IEHC 211 [↑](#footnote-ref-97)
98. Ibid at pgh 10 [↑](#footnote-ref-98)
99. *HH v The Governor of Cloverhill Prison* [2019] IEHC 633 at pgh 23 [↑](#footnote-ref-99)
100. *B& R v Minister for Justice Equality and Law Reform* [2009] IEHC 333 at pgh 11 [↑](#footnote-ref-100)
101. *Kadri v Governor of Wheatfield Prison* [2012] 2 ILRM 392 [↑](#footnote-ref-101)
102. *FR AKA JS (Pakistan) v Minister for Justice & Equality (No 2)* [2020] IEHC 70 [↑](#footnote-ref-102)
103. In *FR AKA JS (Pakistan) v Minister for Justice & Equality (No 1)* [2020] IEHC 69 [↑](#footnote-ref-103)
104. Ibid at pgh 6 [↑](#footnote-ref-104)
105. Ibid at pgh 9 [↑](#footnote-ref-105)
106. *P.O. v Governor of the Dochas centre* [2016] IEHC 557 [↑](#footnote-ref-106)
107. *Shao v Minister for Justice & Equality (no 1)* [2019] IEHC 826 at pgh 15 [↑](#footnote-ref-107)
108. *SE v Minister for Justice and Equality* [2018] 3 IR 317 [↑](#footnote-ref-108)
109. *K v Minister for Justice and Equality* [2019] 1 IR 217 at pgh 7 [↑](#footnote-ref-109)
110. *SE v The Minister for Justice Equality and Law Reform* [2018] 3 IR 317 [↑](#footnote-ref-110)
111. Ibidat pghs 16 and 17. Humphreys J considers this lacuna in *Shao (no 1)* [↑](#footnote-ref-111)
112. *Margine v Minister for Justice Equality and Law Reform* [2004] IEHC 127 [↑](#footnote-ref-112)
113. *DP v Governor of the Training Unit* [2001] IESC 113 [↑](#footnote-ref-113)
114. *QW v Minister for Justice Equality and Law Reform* [2012] IEHC 375 [↑](#footnote-ref-114)
115. *MA (Pakistan) v Governor of Cloverhill Prison* [2018} IEHC 95 [↑](#footnote-ref-115)
116. In *M.M. (Georgia) v. Minister for Justice, Equality and Law Reform* [2011] IEHC 529, [↑](#footnote-ref-116)
117. *Shao v Minister for Justice & Equality* (No 1) [2019] IEHC 826. This decision was reversed on the facts for reasons which were discussed below [↑](#footnote-ref-117)
118. *Shao v Minister for Justice & Equality* (No 1) [2019] IEHC 826 at pgh 14. [↑](#footnote-ref-118)
119. *Shao v Minister for Justice & Equality* (No 2) [2020] IEHC 68 [↑](#footnote-ref-119)
120. Section 5(1) of the Immigration Act 1999. [↑](#footnote-ref-120)
121. #  Per MacMenamin J. in *CRA and OEA v Minister for Justice, Equality and Law Reform* [2007] 2 I.L.R.M. 209

 [↑](#footnote-ref-121)
122. *Sivsivadze v Minister for Justice and Equality* [2016] 2 IR 403 at 429 [↑](#footnote-ref-122)
123. *Ashade v Governor of the Dochas Centre*  [2014] IEHC 643 [↑](#footnote-ref-123)
124. *Efe v Minister for Justice, Equality, and Law Reform* [2011} 2 IR 798 [↑](#footnote-ref-124)
125. in *M.A. v. Minister for Justice, Equality and Law Reform. (Unreported, High Court, 17th December, 2009)*  as quoted in *O (P) & O (S)(an Infant) v Min for Justice and Others* [2014] IEHC 141 [↑](#footnote-ref-125)
126. *00 v Minister for Justice Equality and Law Reform* [2004] 4 IR 426 at 432 [↑](#footnote-ref-126)
127. See *C.R.A. v. Minister for Justice, Equality and Law Reform* [2007] 3 I.R. 603 per MacMenamin [↑](#footnote-ref-127)
128. *PO and SO v the Minister for Justice* [2015] 3 IR 164 [↑](#footnote-ref-128)
129. *I (E) and Others (Minors) v Min for Justice* [2011] IEHC 148 [↑](#footnote-ref-129)
130. *AB (Albania) v Minister for Justice and Equality* [2017] IEHC 814 [↑](#footnote-ref-130)
131. *O and Another v Minister for Justice and Others* [2012] IEHC 458 at pgh 11 [↑](#footnote-ref-131)
132. *Smith and Others v Minister for Justice and Equality* [2013] IESC 4 [↑](#footnote-ref-132)
133. *Esmé v The Minister for Justice and Law Reform* [2015] IESC 26 [↑](#footnote-ref-133)
134. Ibid at pgh 21 [↑](#footnote-ref-134)
135. *B. M. (Eritrea) v Minister for Justice and Equality* [2013] IEHC 324 [↑](#footnote-ref-135)
136. *PO and SO v the Minister for Justice* [2015] 3 IR 164 [↑](#footnote-ref-136)
137. Ibid at pgh 16 [↑](#footnote-ref-137)
138. Ibid at pgh 80. Guidelines were in issue in *DE v Minister for Justice, Equality, and Law Reform* [2018] 3 IR 326 [↑](#footnote-ref-138)
139. *U.M. (Pakistan) -v- Minister for Justice Equality and Law Reform* [2019] IEHC 811 [↑](#footnote-ref-139)
140. *C.M. v. Minister for Justice Equality and Law Reform* [2018] IEHC 217 [↑](#footnote-ref-140)
141. *IM v. Minister for Justice, Equality and Law Reform* [2003] I.E.H.C. 75, [↑](#footnote-ref-141)
142. *Seredych v Minister for Justice Equality and Law Reform (no 3.)* [2019] IEHC 730 [↑](#footnote-ref-142)
143. Ibid at pgh 25 [↑](#footnote-ref-143)
144. *00 v Minister for Justice Equality and Law Reform* [2004] 4 IR 426 see also Zola Nanizaya v. The Minister for Justice and Equality [2012] IEHC 126 [↑](#footnote-ref-144)
145. For more on the ECHR and immigration law see chapter 1. [↑](#footnote-ref-145)
146. *YY v Minister for Justice Equality and Law Reform* [2018] 1 ILRM 109 [↑](#footnote-ref-146)
147. *NM v Minister for Justice Equality and Law Reform* [2018] 2 I.R. 591 [↑](#footnote-ref-147)
148. See *Yang v Minister for Justice, Equality and Law Reform* Unreported High Court Charleton J. *ex temp 13th February 2009,* quoted in Brazil “Recent Developments in Asylum and Immigration Judicial Review“, TCD Law School, 27 June 2009 p 17 [↑](#footnote-ref-148)
149. ###  *M.A.K. v Minister for Justice, Equality and Law Reform* [2017] IEHC 465

 [↑](#footnote-ref-149)
150. Ibid at pgh 13 [↑](#footnote-ref-150)
151. *Agbonlahor v Minister for Justice Equality and Law Reform* [2007] 4 IR 309. [↑](#footnote-ref-151)
152. *R. (Mahmood) v. Home Secretary* [2001] 1 W.L.R. 840 at pgh. 55, p. 861. [↑](#footnote-ref-152)
153. *R. (Razgar) v. Home Secretary* [2004] 2 A.C. 368 at pgh 17 p 389 [↑](#footnote-ref-153)
154. *N. v. Home Secretary* [2005] 2 A.C. 296 at p 305 [↑](#footnote-ref-154)
155. *C.I v Minister for Justice and Equality* [2015] IECA 192 [↑](#footnote-ref-155)
156. Ibid at pghs 39 to 40. This passage is frequently relied upon by the state in s 49 reports as well as deportation examinations. [↑](#footnote-ref-156)
157. *SA v Minister for Justice and Equality* [No 2] [2016] IEHC 646 [↑](#footnote-ref-157)
158. *Harish v Minister for Justice Equality and Law Reform* [2019] IEHC 879 [↑](#footnote-ref-158)
159. Ibid at Pgh 12 [↑](#footnote-ref-159)
160. *Jacks v Minister for Justice and Equality* [2019] IEHC 857 [↑](#footnote-ref-160)
161. [*Gorry v. Minister for Justice and Equality*](https://app.justis.com/case/gorry-v-minister-for-justice-and-equality/overview/aXednZCZnZCdl) [2020] IESC 55 [↑](#footnote-ref-161)
162. [*Gorry v. Minister for Justice and Equality*](https://app.justis.com/case/gorry-v-minister-for-justice-and-equality/overview/aXednZCZnZCdl) [2020] IESC 55 at pgh 146 [↑](#footnote-ref-162)
163. *Pok Sun Shum v Ireland* [1986] ILRM 593 [↑](#footnote-ref-163)
164. *Oshedku v Ireland*{1987] ILRM 330. [↑](#footnote-ref-164)
165. *Abdulaziz & Ors v. The United Kingdom* [1985] 7 E.H.R.R. 471 [↑](#footnote-ref-165)
166. *R (Mahmood) v. The Secretary of State for the Home Department* [[2001] 1 W.L.R. 840](https://app.justis.com/document/c4uto5idm2wca/overview/c4uto5idm2Wca). The principles in this case were also cited with approval by Fennelly J in *Cirpaci v Minister for Justice, Equality and Law Reform* [2005] 4 IR 109 [↑](#footnote-ref-166)
167. *FP v. Minister for Justice* [2002] 1 I.R.164 [↑](#footnote-ref-167)
168. Ibid at pgs 176-177 [↑](#footnote-ref-168)
169. *McHugh & Asemota v. The Minister for Justice and Equality* (Unreported, High Court, Hogan J., 9th March, 2012) [↑](#footnote-ref-169)
170. *Ugbo and Buckley v The Minister for Justice, Equality and Law Reform* [2010] IEHC 80 [↑](#footnote-ref-170)
171. *P.O. v. Minister for Justice and Equality* [2015] 3 I.R. 164 [↑](#footnote-ref-171)
172. Ibid at pgh 24. This passage is frequently relied upon by the state in s 49 reports as well as deportation examinations. [↑](#footnote-ref-172)
173. *TC v Minister for Justice* [2005] 4 IR 109. [↑](#footnote-ref-173)
174. *AA v Minister for Justice* [2005] 4 IR 564. [↑](#footnote-ref-174)
175. [*Gorry v. Minister for Justice and Equality*](https://app.justis.com/case/gorry-v-minister-for-justice-and-equality/overview/aXednZCZnZCdl) [2020] IESC 55 at pghs 148-149 [↑](#footnote-ref-175)
176. [*Gorry v. Minister for Justice and Equality*](https://app.justis.com/case/gorry-v-minister-for-justice-and-equality/overview/aXednZCZnZCdl) [2020] IESC 55 at pgh 172 [↑](#footnote-ref-176)
177. *OE v Minister for Justice, Equality and Law Review* [↑](#footnote-ref-177)
178. *M v Minister for Justice and Equality* [2018] 1 I.R. 417 [↑](#footnote-ref-178)
179. *Oguekwe v. Minister for Justice* [2008] 3 I.R. 795 [↑](#footnote-ref-179)
180. [*Gorry v. Minister for Justice and Equality*](https://app.justis.com/case/gorry-v-minister-for-justice-and-equality/overview/aXednZCZnZCdl) [2017] IECA 282  [↑](#footnote-ref-180)
181. [*Gorry v. Minister for Justice and Equality*](https://app.justis.com/case/gorry-v-minister-for-justice-and-equality/overview/aXednZCZnZCdl) [2020] IESC 55 at pgh 183 [↑](#footnote-ref-181)
182. *Jahangir v Minister for Justice and Equality* [2018] IEHC 37 [↑](#footnote-ref-182)
183. *SMA (Nigeria) v Minister for Justice and Equality* [2020] IEHC 86 [↑](#footnote-ref-183)
184. *Jin Ping Huang v Minister for Justice and Equality* [2021] IEHC 630 [↑](#footnote-ref-184)
185. *Boyle v. The United Kingdom* (1995) 19 EHRR 179 [↑](#footnote-ref-185)
186. *Fajujonu v Minister for Justice* [1990] 2 IR 151 [↑](#footnote-ref-186)
187. *L and O v The Minister for Justice, Equality and Law Reform* [2003] 1 IR 1 [↑](#footnote-ref-187)
188. It was described in Dail Debates by the then Minister for Justice "abuse of citizenship” He went on to explain that “The nature of the abuse is that it is possible for somebody with no real connection with Ireland, North or South, to arrange affairs so as to give birth to a child in Ireland, North or South. By virtue of our laws as they currently stand, that child acquires an entitlement to Irish citizenship”. See Dail Debates Weds 21st of April 2004 available at <https://www.oireachtas.ie/en/debates/debate/dail/2004-04-21/3/> accessed 12 2 2020 [↑](#footnote-ref-188)
189. *Alli v The Minister for Justice, Equality and Law Reform* [2010] 4 IR 45 [↑](#footnote-ref-189)
190. *Oguekwe v Minister for Justice* [2008] 3 IR 795 In *Dos Santos v Minister for Justice and Equality* [2015] 3 IR 411 it was noted that *Oguekwe* only applies to children who are Irish Citizen and not to non-national children. [↑](#footnote-ref-190)
191. *AO* v *Minister for Justice Equality and Law Reform (no 2)* [2012] IEHC 79 [↑](#footnote-ref-191)
192. *E.A. and Another v Minister for Justice* [2012] IEHC 371 [↑](#footnote-ref-192)
193. He relied on *Re JH (an infant)* [1985] I.R. 375 [↑](#footnote-ref-193)
194. *PA v Minister for Justice and Equality* [2012] IEHC 371 [↑](#footnote-ref-194)
195. *Babatunde v Minister for Justice* [2019] IEHC 759 [↑](#footnote-ref-195)
196. *K and T v Finland* (Application No. 25702/94) [↑](#footnote-ref-196)
197. *Babatunde v Minister for Justice* [2019] IEHC 759 at pgh 4 [↑](#footnote-ref-197)
198. *Balogun v. The United Kingdom* (Application No. 60286/09) [↑](#footnote-ref-198)
199. *Esmé v The Minister for Justice and Law Reform* [2015] IESC 26 [↑](#footnote-ref-199)
200. *Bakare v. Minister for Justice and Equality* [2016] IECA 292 [↑](#footnote-ref-200)
201. *Dos Santos v Minister for Justice and Equality* [2015] 3 IR 411 [↑](#footnote-ref-201)
202. *O (P) & O (S)(an Infant) v Min for Justice* [2014] IEHC 141 [↑](#footnote-ref-202)
203. *ANA v. Minister for Justice* [2021] IEHC 589 [↑](#footnote-ref-203)
204. *MAH v. Minister for Justice* [2021] IEHC 302 [↑](#footnote-ref-204)
205. *Lin v. Minister for Justice and Equality (No.2)* [2017] IEHC 745 [↑](#footnote-ref-205)
206. *Jin Ping Huang v Minister for Justice and Equality* [2021] IEHC 630 [↑](#footnote-ref-206)
207. *Adebayo v Commissioner of the Garda Siochana* [2006] 2 IR 298 at pgh34. Fennelly J. expressly disagreed with this point at pgh 41 but was in the minority [↑](#footnote-ref-207)
208. *A(APA)( a Minor) v Minister for Justice Equality and Law Reform* [2010] IEHC 297 at pgh 16 [↑](#footnote-ref-208)
209. ###  *DP v Governor of the Training Unit* [2001] 1 IR 492. There Fennelly J also held that: *“A refusal to grant leave to enter the State for such purposes would prima facie be unlawful and unconstitutional and any such difficulty if encountered could be promptly dealt with on application to this Court.”* His decision was upheld by the Supreme Court in *DP v Governor of the Training Unit* [2001] IESC 113 although this particular aspect of the decision was not mentioned in that judgment. Stewart J took a differing view in *AOM v Minister for Justice and Equality* [2016] IEHC 760 saying it was “*out of step with, and does not account for, modern technological advances and the contemporary circumstances in which the Courts now operate”.*

 [↑](#footnote-ref-209)
210. *Okebiorun v Minister for Justice, Equality and Law Reform*, Unreported High Court Smyth J. 9th July 2002 [↑](#footnote-ref-210)
211. *Nawaz v Minister for Justice Equality and Law Reform* [2013] 1 IR 142 [↑](#footnote-ref-211)
212. *JE v Minister for Justice Equality and Law Reform* [2011] 1 IR 574 [↑](#footnote-ref-212)
213. *Kouaype v Minister for Justice Equality and Law Reform* [2011] 2 IR 1 at 5 [↑](#footnote-ref-213)
214. *Lelimo v. Minister for Justice, Equality and Law Reform* [2004] 2 I.R. 178 [↑](#footnote-ref-214)
215. *MH and SH v Lelimo v. Minister for Justice, Equality and Law Reform* [2020] IEHC 360 [↑](#footnote-ref-215)