

Right to work: Dáil narratives on asylum

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Abstract

In May 2017, the Supreme Court ruling that the ban preventing asylum seekers from working was unconstitutional triggered a number of debates in the Dáil, and the government was forced to introduce new legislation. The 'right to work' came into effect one year later, and in the meantime, TDs from all sides of the Chamber discussed the pros and cons of allowing those whose applications for refugee status is still pending to seek employment and to leave the Direct Provision centres where they have been housed since the system was introduced almost twenty years previously, in 1999.

This paper seeks to analyse the political discourse on the right to work for asylum seekers, since the debate extends from the late 1990s right up to the current situation. After having contextualised the issue, both internationally and in Ireland, it will explore the manner in which this debate has been framed in Dáil Éireann, analysing the arguments put forward, either in favour or against, access to the labour market for asylum seekers.

Keywords: Asylum seekers, Right to work, Labour market, Political discourse, Dáil Éireann, EU Reception Conditions Directive

Introduction

In May 2017, the Irish Supreme Court ruled that the ban preventing asylum seekers from working was unconstitutional. This triggered a number of debates in Dáil Éireann¹ and forced the government to introduce new legislation. The right to work came into effect one year later, and in the meantime, Deputies of the Dáil—more commonly known as TDs—from all sides of the Chamber discussed the pros and cons of allowing those whose application for refugee status is still pending to seek employment and to leave the Direct Provision centres where they have been housed since the system was introduced almost twenty years previously, in 1999.

This paper seeks to analyse the political discourse on the right to work for asylum seekers. After having contextualised the issue, both internationally and in Ireland, it will explore the manner in which this debate has been framed in Dáil Éireann, over the twenty years between the introduction of a restricted right-to-work in 1999, and the legislation put forward by the Fine Gael² government in 2018. Thus, it will analyse how the arguments for and against

¹ Lower House of the Irish Parliament.

² Fine Gael and Fianna Fáil are the two main political parties in Ireland, and have been heading governments since the creation of the State. Since the early 1980s, Fianna Fáil or Fine Gael have had to rely on the support of junior partners, such as the Labour Party, the Green Party or the Progressive Democrats. At the 2016 elections,

the right to work have been presented and defended by successive administrations and private members.

Right to work in context

Ireland and the EU

In 1999, access to the labour market was granted for the first time on a restricted basis, as it only concerned those who had applied for asylum on or before 26 July 1999. Furthermore, potential applicants needed to have resided in Ireland for at least twelve months in order to qualify. Although this measure concerned 3,535 people,³ the limitations of the scheme regarding the areas of employment open to potential applicants, added to the complexities involved in obtaining work permits both for employers and employees meant that in the first few months, the uptake was extremely poor and quite disappointing. The Minister for Trade and Employment Mary Harney (Progressive Democrats) admitted that between the introduction of the measure on 26 July 1999 and the end of November 1999, 'a total of 2,100 asylum seekers immediately qualified to seek employment on this basis. To date a total of 90 applications have been received by my Department in respect of such asylum seekers, and a total of 53 permits have been approved'.⁴ In spite of its limited effect, this measure remained, until the 2017 Supreme Court Ruling, a unique opening to the labour market for asylum seekers in Ireland, one that was used as a benchmark for the opponents to this right in the subsequent years.

For those asylum seekers who arrived in Ireland after 26 July 1999, the State imposed a blanket ban on access to the labour market, Ireland thus becoming one of only two countries within the EU to enforce such restrictive measures.⁵ Regimes on access to the labour market vary greatly throughout the EU. In an attempt to harmonise this situation, a Reception Conditions Directive was introduced in 2003,⁶ which objective, among others, was to curtail the potential secondary movements of asylum seekers within the EU. This phenomenon was commonly referred to as 'asylum shopping' in the first decade of the twenty-first century⁷ and became part of the official EU vocabulary,⁸ although the implications of the very expression (and others, such as the opposition of 'genuine vs. bogus') are in themselves problematic,

left-wing parties such as the Anti-Austerity Alliance (AAA) and People Before Profit made notable inroads into Irish political life. However, the main challenger to the two-party system is Sinn Féin, the oldest political party on the island, which only came to prominence in the midst of the peace process in Northern Ireland in which it played a key role.

³ Figures released in Dáil Éireann by the Minister for Trade and Employment Mary Harney, on 20 November 2001.

⁴ Dáil Debates, 30 November 1999.

⁵ Lithuania was the only other EU member not to grant access to the labour market to asylum seekers, the rationale being that processing of applications is usually less than six months (Karolis Zibas, *Integration of refugees into the labour market in Lithuania: are we getting there?* Brussels, European Commission, Directorate-General for Employment, Social Affairs and Inclusion, 2017. Retrieved from ec.europa.eu/social/BlobServlet?docId=18672&langId=en).

⁶ *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0033>

⁷ Successive Ministers for Justice recurrently used the phrase in the Dáil, between 2005 and 2010, including Michal McDowell, Brian Lenihan and Dermot Ahern. Its use was not particularly noted or criticised.

⁸ The EU Migration and Home Affairs website defines the expression as 'The phenomenon where an asylum seeker applies for asylum in more than one EU State or chooses one EU State in preference to others on the basis of a perceived higher standard of reception conditions or social security assistance'. https://ec.europa.eu/home-affairs/content/asylum-shopping_en (accessed 14 November 2018)

leading to negative and hostile views of asylum seekers.⁹ Asylum shopping assumes that asylum seekers will look for the best possible and most advantageous regime to choose their destination country, thus creating an imbalance among member states. While widely held, this is not supported by solid empirical evidence.¹⁰

The first EU Directive on Reception Conditions was adopted on 27 January 2003 and required that the right to work be granted when the asylum application had been made twelve months previously and was still pending.¹¹ However, individual countries are still free to put in place a number of measures regarding the conditions for granting access in accordance to the national law and can choose to prioritize national and EU/EEA citizens as well as legally resident third-country nationals. Therefore, each state has some leeway to implement its own regime; most (except for Greece and Sweden) impose time restrictions ranging from three to six months, and some implement sector-related limitations (Germany excludes self-employment, while Sweden restricts employment to the unskilled sector).¹²

This provision did not automatically affect Ireland, due to Article 3 of the Protocol on the position of the United Kingdom and Ireland¹³ whereby both countries, by default, opt out of such Directives. Questions as to the reasons for deciding not to opt in the EU Directive were regularly raised in the Dáil, although this issue did not generate many debates. Sinn Féin TD Aengus Ó Snodaigh put a written question on 6 February 2003 to the then Minister for Justice and Equality Michael McDowell who replied that Ireland's position was under consideration. The explanation to a similar question raised by John Gormley (Green Party), one year later, was more specific: 'Many of the key provisions of the directive, although the responsibility of a number of departments and agencies, are already covered by national procedures and, in many areas, our national standards exceed those provided for in the directive'.¹⁴ However, when Pat Rabbitte (Labour Party) further prodded the Minister, it became clear that the main reason for not opting in was the fact that the Directive obliged member states to grant the right to work.

Ireland's asylum strategy in the early part of the twenty-first century was two-pronged: making the processing of applications more efficient while restricting the numbers of asylum applications. This mirrored the approach of the British government, as clearly stated in a UK Home Office memo: 'We maintain the position taken in 2002 that given the majority of asylum claims are dealt with within a few months, the rationale to grant access to the labour market is greatly reduced. Moreover, we wish to maintain the distinct separation between the asylum processes and labour migration channels'.¹⁵ Research has shown how damaging this is to the very people concerned. Indeed, in their study on the UK's selective approach to EU regulations

⁹ See Kerry Moore, "'Asylum shopping' in the neoliberal social imaginary", *Media, Culture and Society* 35 no. 3 (2013), 348-365.

¹⁰ See for instance: Natasha Zaum, *EU Asylum Policies: The Power of Strong Regulating States* (London: Palgrave Macmillan, 2017), 62; Steve Peers, Violeta Moreno-Lax, Madeline Garlick, Elspeth Guild, *EU Immigration and Asylum Law: Text and Commentary*, Revised Second Edition (Leiden: Brill Nijhoff, 2015), 499.

¹¹ These temporal restrictions were brought down to nine months by the subsequent Directive on Reception Conditions of 2013.

¹² European Council for Refugees and Exiles (ECRE), "Mapping asylum procedures, reception conditions, detention and content of protection in Europe". Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0033>

¹³ Decisions made unanimously by the Council of Europe do not bind either the UK or Ireland, although they can nonetheless notify the EU of their decision to take part or adopt said decisions within two months of their adoption

¹⁴ Dáil Debates, 3 November 2004.

¹⁵ Quoted in Richard Plender (2008), 'EU Immigration and Asylum Policy – The Hague Programme and the way forward', *ERA Forum*, 9, p. 308.

on migration and asylum, the authors of a report on the Directive for the Migration Observatory concluded that 'The failure to opt in to EU measures clearly diminishes migrants' and refugees' rights'.¹⁶ The Irish government, throughout the years, has remained deaf to the appeals of those TDs who underlined the inhumane aspect of ban on the right to work.

Following the 2017 Supreme Court's Ruling declaring the ban unconstitutional, the Irish government announced in February 2018 its decision to opt in the recast Directive on Reception.¹⁷ Interestingly, the statement made by Minister for Justice Charlie Flanagan was an indirect admission of the failure of the Irish State up until then to meet the basic requirements of asylum seekers:

Opting into the Directive is a very positive development for the entire protection system and for applicants and their families while they await a final decision on their application. In addition to labour market access, the Directive also includes important provisions in relation to children's rights, health, education and material reception conditions for applicants, which includes housing, food, clothing and a daily expenses allowance.¹⁸

Right to work: The campaign in Ireland

The campaign to give asylum seekers the right to work dates back to the late twentieth century, when the number of applications was on the increase. In 1997, the Association for Refugees in Ireland was established, with the objective, among others, to put pressure on the government to grant the right to work.¹⁹ Four years later, the campaign had gathered momentum, as it had brought on board a number of organisations such as IBEC (Irish Business and Employers Confederation), ICTU (Irish Congress of Trade Unions) and CORI (Conference for Religious in Ireland). In June of that year, to mark World Refugee Day, a report commissioned by the Irish Refugee Council and backed by an umbrella grouping of trade unions and employers, *The Right to Work – The Right to Dignity* demanded the right to work six months after having lodged an asylum application.²⁰

Attempts at demonstrating the damages caused by the ban on access to the labour market were repeatedly made over the following years. The United Nations High Commissioner for Refugees (UNHCR) stated as early as 2007 that restrictions on the right to work could have 'lasting and debilitating effects on asylum-seekers, compelling them to conduct their lives on the margins of society' and recommended a progressive granting of access to the labour market.²¹ However, as mirrored in the Dáil debates, interest in the issue declined with the financial crisis of 2008, to be reignited with a lengthy intervention from an independent TD, Thomas Pringle, in September 2014. The following month, Minister of State Aodhán Ó Ríordáin (Labour) announced the setting up of a working group to look into the Protection process, headed by former High Court Judge Bryan McMahon, which led to the

¹⁶ Migration Observatory (2014), *The UK, the Common European Asylum System and EU Immigration Law*, <https://migrationobservatory.ox.ac.uk/resources/primers/the-uk-the-common-european-asylum-system-and-eu-immigration-law/>

¹⁷ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection. Retrieved from <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013L0032>

¹⁸ Statement by the Minister for Justice and Equality on the right to work for asylum seekers, 9 February 2018. <http://www.inis.gov.ie/en/INIS/Pages/statement-on-right-to-work-asylum-seekers-090218>

¹⁹ Paul Cullen, "Refugees set up body to defend rights", *The Irish Times*, 23 June 1997.

²⁰ "IBEC, Unions Call for Refugee work rights", *The Irish Times*, 20 June 2001.

²¹ United Nations High Commissioner for Refugees (UNHCR), "Note on the Integration of Refugees in the European Union", May 2007. Retrieved from <http://www.unhcr.org/463b462c4.pdf>

publication of a Report in June 2015.²² In the meantime, an asylum-seeker organisation, Mouvement of Asylum Seekers in Ireland (MASI), had been established, which vigorously campaigned from the outset for the abolition of Direct Provision and the introduction of the right to work.²³

In 2015 a Working Paper submitted by the Jesuit Refugee Service Ireland²⁴ weighed the pros and cons of allowing asylum seekers to work. Looking at all the possible ramifications that introducing such legislation would entail, the report nevertheless concluded that in spite of a number of limitations and mitigating factors, the negative impact of preventing asylum seekers from entering the labour market far outweighed the positive. The report itself, however, took some assumptions for granted, such as the fact that it would constitute a pull factor and would lead to an increase in number of applications. Although it 'fundamentally support[ed] the extension of the right to work', and made a strong case for its introduction, it also suggested limiting the working week to twenty hours or restricting eligibility based on the length of time awaiting decision at First Instance (nine months) or even the length of time within the Protection Process (three years). These proposals attempted to placate those who feared a sudden surge in applications, thus falling short of the demands voiced by asylum seekers and their supporters.

The McMahon report was more far-reaching in its implications, as it recommended the right to work after a period of nine months. However, it did not go as far as advocating the abandonment of the direct provision system, which in the eyes of many Human Rights organisations constitutes at its very core a denial of dignity and human rights. As pointed out by Liam Thornton, 'even if the recommendations are implemented, [it] continues the system of degradation of, and intimate control over, other human beings' lives'.²⁵ McMahon subsequently expressed disappointment at the inaction of the Irish government:²⁶ one year after the publication, hardly any of the 173 recommendations had been implemented,²⁷ a criticism echoed a month later by President Higgins himself,²⁸ as well as by Migrant organisations such as Nasc who published a report in 2017 which concluded that after verification, only twenty recommendations had been implemented.

When the government finally introduced the right to work, the granting of the work permit (payable by the employee or the employer) was conditioned upon three main prerequisites: a job offer, minimum salary levels (30K per annum),²⁹ and a restricted access to

²² Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers (2015), *Final Report*.
<http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process.%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process.%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf>

²³ For more information on this movement see <https://www.masi.ie/>

²⁴ Jesuit Refugee Service Ireland (2015), Right to Work Evaluating the Case for Extending the Right to Persons Seeking Protection in Ireland, Dublin, Submission to Working Group on Protection Process.

[http://www.justice.ie/en/JELR/Evaluating%20the%20Right%20to%20Work%20-%20JRS%20Ireland%20Working%20Paper%20\(submitted%202024.02.2015\).pdf/Files/Evaluating%20the%20Right%20to%20Work%20-%20JRS%20Ireland%20Working%20Paper%20\(submitted%202024.02.2015\).pdf](http://www.justice.ie/en/JELR/Evaluating%20the%20Right%20to%20Work%20-%20JRS%20Ireland%20Working%20Paper%20(submitted%202024.02.2015).pdf/Files/Evaluating%20the%20Right%20to%20Work%20-%20JRS%20Ireland%20Working%20Paper%20(submitted%202024.02.2015).pdf)

²⁵ Liam Thornton, "Failings in direct provision have still to be addressed", *The Irish Times*, 21 July 2015.

²⁶ Nasc, *Working Paper on the Progress of Implementation of the McMahon Report*, December 2017, <http://www.nascireland.org/wp-content/uploads/2017/12/Nasc-Working-Group-Report-Dec-2017.pdf>

²⁷ Kitty Holland, "Treatment of Asylum Seekers 'mean' and 'narrow', says report author", *The Irish Times*, 26 April 2016.

²⁸ Sarah Bardon, "Higgins criticises lack of asylum reform", *The Irish Times*, 21 May 2016.

²⁹ Department of Justice and Equality, *Information Booklet Access To The Labour Market For Eligible International Protection Applicants*, 9 February 2018. Retrieved from

the labour market as seen in the lengthy list of ineligible employment.³⁰ The nine-month waiting period, although in line with the European directive and with the recommendation of the McMahon Report, was considered too long by organisations such as the Irish Refugee Council. In its 2018 paper, it advocated a six-month period and no restrictions, as well as concrete actions to help asylum seekers effectively access the labour market,³¹ fundamentally reiterating the recommendations made in their paper the previous year.³² After much debate, in July 2018 the government abolished the payment of the permit and the restrictions on the professions available to asylum seekers.

Data

The data analysed in the next section was extracted from the online Dáil Debates, from 1999 when the question of the right to work first arose, to 2018 when legislation was finally passed by the Irish parliament. In order to sieve through all the debates available on the website, the terms 'asylum seeker' and 'employment' were combined. The search engine does not allow for expressions such as 'right to work' or 'access to the labour market' to be factored in, as it identifies each individual word within the expression. The initial search yielded 486 hits, although after having eliminated a number of duplicate debates, as well as private member questions on individual asylum cases, the database was narrowed down to seventy-two debates.

The arguments for and against access to the labour market were then identified. A close reading of the speeches revealed the repetitive nature of the debate over the years on both sides. Hence, those supporting the right to work favoured a humanitarian and pragmatic approach, while their opponents sought to delegitimise asylum seekers and never lost sight of the pull factor that the right to work could represent, this being accompanied at times by nativist undertones. Therefore, these trends were used as sub-categories under which to classify the arguments developed.

Findings

Between 1999, the year when the right to work was first discussed in Dáil Éireann, and 2017, when the Supreme Court decision forced the Irish government to introduce legislation, the frequency of the debates, while variable, denotes a general lack of interest in this issue on the part of the Irish TDs. Indeed, the question was only discussed a handful of times a year, with the exception of the early part of the century. Interestingly, while the issue dominates the debates on asylum in the early 2000s, it is Direct Provision that has more salience in the later period.

Advocating the Right to work

In the first sub-category, arguments are human rights based. The main points raised by the speakers are as follows, in order of frequency:

- The right to work is a basic human right;

<http://www.inis.gov.ie/en/INIS/Information%20Booklet%20for%20Applicants%20on%20Access%20to%20Labour%20Market.pdf/Files/Information%20Booklet%20for%20Applicants%20on%20Access%20to%20Labour%20Market.pdf>

³⁰ The full list of ineligible employment is available at:

<https://dbei.gov.ie/en/What-We-Do/Workplace-and-Skills/Employment-Permits/Employment-Permit-Eligibility/Ineligible-Categories-of-Employment/>

³¹ Irish Refugee Council (IRC), "Recommendations on the Transposition of the EU recast Reception Conditions Directive (2013/33/EU)". Dublin: IRC, 24. Retrieved from https://www.irishrefugeecouncil.ie/wp-content/uploads/2018/03/IRC-Recommendations-on-the-Transposition-of-the-EU-recast-Reception-Conditions-Directive_Final.pdf

³² IRC, *Policy Paper: The Right To Work For International Protection Applicants*, 2017. Retrieved from <https://www.irishrefugeecouncil.ie/wp-content/uploads/2017/07/IRC-Right-to-Work-Policy-Paper-30.06.17.pdf>

- Denying the right to work leads to oppression, depression, and marginalisation;
- This generates a double discrimination for asylum seekers, who have to live on low subsistence levels and who are negatively perceived by the rest of the population;
- Given its history, Ireland should show more compassion.

Arguments in the second sub-category are pragmatic, as the right to work is viewed in terms of the potential contribution that asylum seekers can make to Irish society:

- Its introduction is a practical way of addressing the skills shortage, as well as racism and stereotypes;
- Asylum seekers are skilled and intelligent;
- This measure would save the Exchequer money.

Arguments against the right to work

The first sub-category consists of arguments aimed at delegitimising asylum seekers.

- There is a recurrent binary opposition between so-called bogus and genuine asylum seekers (the first being also called economic migrants);
- Asylum seekers generate a financial burden;
- The high numbers stretch the capacity of the system to process applications, rendering it inefficient.

The second sub-category develops the pull factor arguments in which the nativist dimension is never totally absent:

- The number of asylum seekers increased three-fold after the introduction in July 1999 of a limited access to the labour market;
- 'Charity begins at home'; the interests of the Irish worker must take priority;
- The right to work would create a situation of unfair competition, as employers unable to exploit Irish workers will exploit this other source of labour, thus indirectly damaging the prospects of the Irish workers.

Analysis

The nature of the debates on the right to work underwent a profound change over time. Early debates (1999 to 2008) show the extent to which some TDs were misinformed, and far from exempt from prejudices. Thus the confusion between asylum seekers and economic migrants was frequently made, leading to the occasional use of the term 'bogus' until 2008 when it disappears entirely from the Dáil vocabulary.³³ Furthermore, some TDs asked the Minister, on a number of occasions, to confirm that rumours according to which asylum seekers benefited from subsidies unavailable to Irish citizens (to buy cars, for instance) were unfounded, showing not only how widely held these stereotypes were, but the general confusion within the Dáil itself on the asylum system.³⁴ From 2008 to 2014, a time-frame corresponding to the years of the banking crisis, the issue of the right to work for asylum seekers was as good as buried, being only occasionally raised (once a year on average). The debate was reignited in September 2014 when Independent TD Thomas Pringle put forward a private motion denouncing the system of direct provision and demanding the introduction of the right to work. This was

³³ A search combining the word 'bogus' with 'asylum seekers' yielded 34 hits, although the term was also used by the advocates to denounce government policy.

³⁴ See for instance Dáil Debates, 15 October 2000.

followed by the announcement by Minister of State Ó Ríordáin of a working group to be chaired by Justice Bryan McMahon,³⁵ the objectives of which included looking at the right to employment. The debate, from then on, became fundamentally human-rights based. Although government representatives spoke out on a number of issues related to Direct Provision, they remained conspicuously silent on the right to work until they were obliged to move on the issue after the Supreme Court ruling. The debates were then re-centered to focus on the types of schemes that would be implemented for the employment of asylum seekers, with the opposition criticising the limited options that the initial government proposal offered.

In its initial stages, the debate reveals an instrumentalist approach to immigration on all sides. The insistence on the skills of asylum seekers,³⁶ which was meant to underline the counter-productiveness of the ban, was a double-edged argument as its case rested on utilitarian factors rather than humanistic principles (asylum seekers should be allowed to work because they are skilled, because the economy needs them). O'Donoghue indicated that this argument did not hold much sway, taking this as an opportunity to hold the upper moral ground:

I do not hold with the view that because one immigrant has a specific skill, he or she should be allowed to work before an individual who does not have a specific skill which might benefit the economy. I regard that as the worst type of racism because it is based on the capacity of one individual to get on in the world over another individual's inability to do so.³⁷

The debate, in its early years, was set against the backdrop of a rapid growth in the Irish economy. Efforts to recruit abroad resulted in 54,589 work permits being issued for 2000 and 2001 combined³⁸. In contrast, by the end of July 2000, approximately half of those asylum seekers entitled to work, representing 1,787 people, availed of the 1999 measure.³⁹ Furthermore, 74% of all migrant workers employed on work permits in 2002 were engaged in what may be seen as relatively 'low-skilled jobs'⁴⁰. These figures show that the refusal to let asylum seekers work had little if anything to do with economics. Rather, they point to the determination of the Irish State to be in a position to decide who entered the country and how or why. As by definition, asylum seekers are unpredictable, whether regarding origins, qualifications or numbers, their sheer presence was seen, at the outset, as a problem, one which had one solution only: curbing the number of arrivals. Statements to the effect that the system for processing asylum applications could be 'overwhelmed'⁴¹ or 'become swamped and abused by those seeking a better life',⁴² not only made asylum seekers directly responsible for the limitations and inefficiency of the system, but pointed to the fear of the State losing control. In this regard, the introduction of Direct provision served, among others, that crucial purpose: to give the State the ultimate control over the population of asylum seekers.⁴³

³⁵ Dáil Debates, 30 September 2014.

³⁶ In 1999, John Gormley quoted a survey according to which 80% had a third level qualification, a finding that was dismissed by Minister of Justice O'Donoghue, who pointed to the limitations of the sample and the scope of the study (Dáil Debates, 6 May 1999).

³⁷ Dáil Debates, 3 March 1999.

³⁸ Martin Ruhs, "Managing the immigration and employment of non-EU Nationals in Ireland", *Studies in Public Policy* 19 (2005), 113

³⁹ Steven Loyal and Ciaran Staunton, "The Dynamics of Political Economy in Ireland: The case of asylum seekers and the right to work", *the Journal of Sociology* 10 no. 2 (2001), 39.

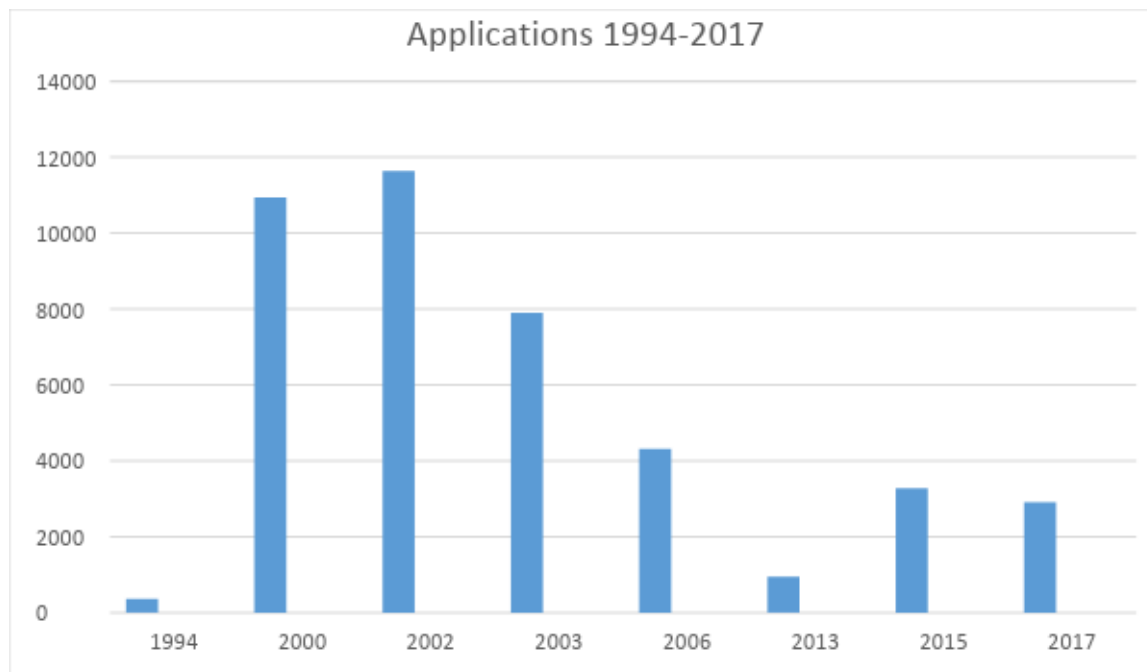
⁴⁰ The policy on work permits became more restrictive from 2003, in the run-up to the EU enlargement, with the prospect of the arrival of new migrant workers from the accession states, and the decision was taken to reduce the number of work permits granted to non-skilled workers. See Ruhs, 42.

⁴¹ O'Donoghue, 13 November 2001

⁴² Liz O'Donnell, 12 October 2005)

⁴³ The Irish government did not go so far as putting in place a system of quotas, but the reason for not doing so was simply that it 'would not be possible under the terms of the Refugee Act 1996' (Dáil Debates, 29 January 2005).

From 2000 to 2005, therefore, curbing the number of asylum seekers becomes a top priority. At the turn of the twentieth century, the rise in the number of applications was indeed substantial:



Source: ORAC,⁴⁴ AIDA⁴⁵

The ban on the right to work became the main weapon of those who sought to curb the flood of applications, which was entirely ascribed to the restricted measure introduced in 1999. In latter years, the decline in the numbers was in turn mainly ascribed to the blanket ban. However, other factors were at play: the amendment of the Constitution in 2004, cancelling the automatic right to Irish nationality for those born in Ireland; the change in the 'safe country of origin' list which excluded all ten EU accession states, Bulgaria, Romania, Croatia and South Africa.⁴⁶ Furthermore, research has clearly shown that there is no correlation between the right to work and the increase in demand for asylum.⁴⁷ Nevertheless, the limited access to the labour market granted in 1999 became, after 2000, a benchmark and a counter-example, and was used as such until 2012.

This 'pull factor' argument led to the conflation of the categories of asylum seekers and economic migrants, with the latter being both sought after if actively recruited, or shunned if not invited. Asylum seekers became suspicious, they were not coming for political reasons but in order to work. Thus when O'Donoghue stated that they could apply for a work permit from their home countries, he was in fact undermining the very concept of asylum, not only by overtly questioning the motives of those seeking asylum but by suggesting that they had a choice. The suspicion was deeply-rooted. The Minister believed that it was 'easy' to obtain a permit, which he described as a mere 'rubber-stamping' exercise. In turn, this led to a hierarchy

⁴⁴ Office of the Refugee Applications Commissioner (ORAC) website. Online, last update 31 December 2016. <http://www.orac.ie/>

⁴⁵ European Council of Refugees and Exiles (ECRE), Asylum Information Database (AIDA). Online, last update January 2019. <https://www.asylumineurope.org/>

⁴⁶ In 2001, 2.8% asylum seekers were from Croatia and 13.1% from Romania. These figures further increased in 2002 with 14.4% from Romania and 2.7% from Poland. See ORAC, op. cit.

⁴⁷ Lucy Mayblin and Poppy James, Policy Briefing: *Access to the labour market as a 'pull factor' for asylum seekers: What the research shows*. Retrieved from <https://asylumwelfarework.files.wordpress.com/2015/03/is-access-to-the-labour-market-a-pull-factor-for-asylum-seekers-long.pdf>

within the broad category of migrants, the invited and the uninvited, the genuine and the bogus. As some TDs correctly pointed out, it fed into the stereotypes that asylum seekers were exploiting the system and were not 'genuine'.

Over the years, numerous studies have identified the negative and counterproductive consequences of barring asylum seekers from the labour market. Firstly, this generates dependency on the welfare system which in turn creates a division in society between 'deserving' and 'undeserving' welfare recipients: 'asylum seekers have been cast as the "undeserving", while denied the means (employment) by which to join the "deserving"'.⁴⁸ Furthermore, not allowing asylum seekers to work has been proven to be greatly damaging for society itself. According to a document published by the EU Directorate, 'There is a widely shared consensus among experts that labour market participation is the single most important step to a successful integration into host societies as presumably high numbers of asylum-seekers and refugees will stay in the EU for years'.⁴⁹ While no TD openly made the case that a successful integration would make deportations more difficult, the opposition to the right to work was certainly also fed by this fear.

The positioning of some parties slightly changed throughout the twenty-year period. Until 2015, Fianna Fáil's opposition to the right to work was fierce with the exception of Mary Harney,⁵⁰ who strongly advocated a limited lifting of the ban in 1999 for economic reasons. The party was almost alone in rejecting the right to work in the early 2000s, alongside the Progressive Democrats, led by Michael McDowell. As the Fianna Fáil-Progressive Democrat coalition held an absolute majority between 1997 and 2011, it is hardly surprising that the outcome of the debate tended to favour the opponents of the right to work. On the other side of the spectrum, the Labour Party and Sinn Féin were consistent advocates of the right to work, alongside People before Profit, the Green Party, and Socialist and Independent TDs. However, political positioning has shifted since 2015. In the aftermath of the 2017 Supreme Court ruling, one of the main advocates of allowing asylum seekers to work was a FF deputy, Fiona O'Loughlin, stated in January 2018 that her party had supported the 2015 McMahon recommendation to that effect.⁵¹ Similarly, although the main proponents for right to work came from the ranks of Fine Gael in the first decade of the century, their position had changed by the time they arrived in government in 2011. Minister Alan Shatter set the tone: 'Extending the right to work to asylum seekers would almost certainly have a profoundly negative impact on application numbers, as was experienced in the aftermath of the July 1999 decision to do so', he stated, thus contradicting his colleagues' calls in previous years to let asylum seekers work.⁵²

Conclusion

⁴⁸ Rosemary A. Sales. "The Deserving and the Undeserving? Refugees, Asylum Seekers and Welfare in Britain". *Critical Social Policy* 22 no. 3 (2002), 456.

⁴⁹ Regina Konle-Seidl and Georg Bolits, *Labour Market Integration of Refugees: Strategies and Good Practices*, Directorate General for Internal Policies, Economic and Scientific Policy European Parliament (2016), 11.

[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578956/IPOL_STU\(2016\)578956_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578956/IPOL_STU(2016)578956_EN.pdf)

⁵⁰ Mary Harney was Minister for Trade and Employment of the Fianna Fáil-led government from 1997 to 2004. She was a lone voice within her own coalition government but successfully convinced her colleagues to introduce a limited right to work measure.

⁵¹ Dáil Debates, 5 July 2018.

⁵² Alan Dukes for instance called on the government to 'allow all asylum seekers who have been here for more than six months and who are awaiting a final determination of their application for refugee status the right to seek work'. Dáil Debates, 12 April 2001.

The analysis of the issue of the right to work in the Dáil reveals three broad trends. First, while the manner in which the issue is framed and the discourse surrounding asylum seekers have undoubtedly changed, with less openly hostile statements and more nuanced opinions, the overall sentiment towards asylum seekers remains fundamentally identical. The repeated reluctance of successive governments, be they led by Fianna Fail or Fine Gael, to grant the right to work, shows a latent hostility fed by enduring stereotypes such as the conflation with economic migrants. Secondly, political decisions on this issue are not motivated by ideology or principles—what drives the position of successive governments is numbers. In spite of the fact that the rest of the EU countries (with the exception of Denmark) opted into the EU directives, Irish government representatives reiterated that the right to work constituted a pull factor. No government deviated from this line of thinking, quoting as the only piece of evidence of the so-called 'pull factor theory' an increased number of applications in the early 2000s. Finally, there is an obvious link between the ban on the right to work and the establishment of Direct Provision. This system could not operate if asylum seekers had been permitted to occupy an employment, as this would entail mobility, both geographic and social, as well as an integration process. The main driver behind the government's policy, whether conscious or not, is neither the economy nor human rights: it is the need to control who comes in the country, how and why.

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