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Taighde Éireann
Research Ireland



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Introduction: Criminalizing Asylum in Ireland (TEARMANN)

Project funded by Taighde Éireann/ Research Ireland, in partnership with Irish Research Council

RQ: To what extent is the prosecution of asylum-seekers for arriving in Ireland without a valid travel document compatible with Ireland's international obligations?

Very early stages - feedback very welcome!

Presentation structure



Context



Problem



Aims



Novelty



Research questions



Areas for feedback



An anti-refugee march in Dublin. RollingNews.ie photo.

Context

Irish Independent

[News](#) [Opinion](#) [Business](#) [Sport](#) [Life](#)

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Gardaí prosecute almost 100 people arr into Ireland without passports

Cabinet Committee on Immigration told of significant drop in people pres
without travel documentation



Problem: Conflict between domestic and international law?

Immigration Act 2004: It is an offence, punishable by up to 12 months in prison or a €3,000 fine, for an adult to land in the State without a valid travel document.

International Protection Act 2015, section 20: Provides for arrest without warrant and detention of a person who has not made reasonable effort to establish their identity, or has, without reasonable excuse, destroyed, his identity document, or been in possession of a forged, altered or substituted identity document.

Problem: Conflict between domestic and international law?

Article 31(1) of the 1951 Refugee Convention, which binds Ireland, provides that states ‘shall not impose penalties, on account of their illegal entry or presence, on refugees [...].’

There is also scholarly authority supporting the contention that such prosecutions may violate international human rights law (Costello and Ioffe 2021).

Aims

Academic aims: TEARMANN will examine to what extent these prosecutions comply with Ireland's international and EU law obligations.

Personal aims:

1. Impactful research
2. Make connections with refugee stakeholder community
3. Strategic funding



Novelty

Although there are some studies examining prosecutions in the context of the Refugee Convention (Holiday 2019, Taylor 2024), other rules of international law have generally not been examined in detail (exception: Costello and Ioffe, 2021).

Commentators have not generally considered the compatibility of domestic law with international obligations in this context, except for the UK (Holiday 2020). However, the UK case is different from the Irish context because there is a statutory defence to this kind of offence (Home Office 2024).

Research question 1: What are the circumstances in which asylum- seekers are prosecuted for failure to present a valid travel document at the border?

- ▶ This will help us to determine the extent of this phenomenon, whether it is becoming more frequent, who it affects, whether individuals with particular characteristics are being targeted (eg gender, nationality), and its legal justification.

Methodology

- ▶ Desk review of media/ NGO reports
- ▶ Semi-structured interviews with key informants (e.g. asylum-seekers who have been prosecuted, lawyers involved in cases, representatives of the Director of Public Prosecutions who are involved with prosecutions, NGOs who represent and assist asylum-seekers in these circumstances, and representatives of the Garda National Immigration bureau who encounter these asylum-seekers at the border).

Research question 2: What is the impact of such prosecutions on asylum-seekers?

E.g. personal harm (eg stigma, imprisonment) and/or legal harm (eg. difficulties in future in relation to naturalisation).

- Understanding to what extent the facts at hand have caused harm is the second step in assessing whether a practice is lawful.
- Data gathered via the same interviews relating to sub-question 1

Research question 3: To what extent are these prosecutions compatible with Ireland's international obligations?

- ▶ Engage in a detailed literature review of relevant international and domestic law, as well as court decisions in other states that have considered the compliance of such practices with international obligations . This will determine the relevant international obligations applicable to such practices.
- ▶ We will assess the facts and harm caused against international standards to determine if these prosecutions are a violation of international/ EU law.
- ▶ This will help us understand the extent to which the law can be challenged at a domestic or international court, allow us to make recommendations for reform etc.





Areas for feedback

- ▶ Literature I should be paying attention to
- ▶ Not an EU law expert – where to start?
- ▶ Any other tips?
- ▶ Thank you!!!