

# 'Regulating sham marriage and trafficking: the experience of Ireland'

**Hestia Project Conference**

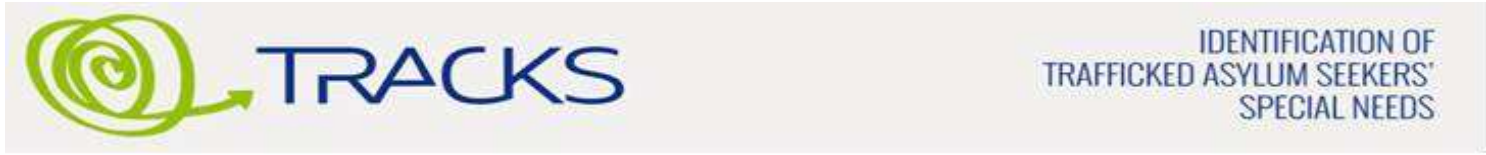
Catherine Cosgrave

Riga, November 2016

# About Us

- Established in 2001
- Non-governmental organisation
- Independent Law Centre since 2006
- Service provision:
  - ✘ Information & Advocacy service on rights and entitlements
  - ✘ Legal Advice & Representation
  - ✘ Racist Incidents Report and Referral Service
- Lobbying/Policy, Research and Communications
- Education and Training

# Trafficking Research & Projects



IDENTIFICATION OF  
TRAFFICKED ASYLUM SEEKERS'  
SPECIAL NEEDS



Immigrant Council  
of Ireland  
GLOBALISATION,  
SEX TRAFFICKING  
AND PROSTITUTION:  
THE EXPERIENCES  
OF MIGRANT WOMEN IN IRELAND

*The Immigrant Council of Ireland  
in collaboration with  
the Women's Health Project (IHE)  
and Itahama*

# Regulating EU Free Movement

- **EU:**
  - Citizenship Directive 2004/38/EC
- **Ireland:**
  - Free Movement Regulations 2006 and 2008 (now revoked)
  - Free Movement Regulations 2015

# Restrictions on Free Movement

## Article 27 Directive / Regulation 19(1)

Permitted interference – public policy, security or public health

Not to serve economic ends

Proportionate

Based exclusively on personal conduct

# Restrictions on Free Movement

- Article 35

Member States may adopt measures to refuse, terminate or withdraw rights under Directive in cases of:

Abuse of rights or fraud, e.g. marriages of convenience

Proportionate

Procedural safeguards – access to judicial and administrative to appeal / review

# Restrictions on Free Movement

- **Article 35 / Regulation 24**

Member States may adopt measures to refuse, terminate or withdraw rights under Directive in cases of Abuse of rights or fraud

Proportionate

Procedural safeguards – access to judicial and administrative to appeal / review

Regulation 24 (2) “fraudulent means” includes ‘marriages of convenience’ (but not defined).

# Judicial Scrutiny

- Case C-127/08 **Metock** and others v Minister for Justice [2008]
- **Tagni** v Minister for Justice [2010]
- **Izmailovic & Anor** v Minister for Justice [2011]
- **Mahmood and Atif** v. Minister for Justice and Equality [2016]



# Legislative Developments

- Civil Registration (Amendment) Act 2014:

Definition of 'marriage of convenience' Powers of registrar to form opinion & whether any impediment to marriage

Criteria for forming opinion

- See also Regulation 28(6) of the 2015 Regulations

# Criteria for forming opinion

- Speak a common language?
- Length of time known to each other
- Number and frequency of meetings prior to marriage
- Prior history of cohabitation
- Familiarity with others personal details
- Immigration status
- Commitment to mutual emotional and financial support
- Payment of monies, other than culturally appropriate dowry
- Any other information which gives reasonable grounds

# Registrar's powers

- Receives objection / forms opinion, refer to Superintendent Registrar for investigation
- Marriage registration form not issued
- Department of Justice notified
- Section 58

Notify parties of objection

Grounds

Right of appeal to Circuit Family Court

# Outcomes?

Irish Times: 'Give me back my deported husband'



# Regulation of Trafficking

- UN Convention on Elimination of Discrimination Against Women (CEDAW)
- UN Convention Against Transnational Organised Crime and Trafficking Protocol
- CoE Convention on Action Against Trafficking in Human Beings
- EU Trafficking Directive 2011/36/EC on preventing and combatting trafficking
- Ireland opt-out of Directive 2004/81/EC on residence permit issued to TCN VOTs
- EU Victims Directive 2012/29/EU

# Domestic legislation

- Criminal Law (Human Trafficking) Act 2008  
Labour / Sexual Exploitation
- Criminal Law (Human Trafficking) Amendment Act 2013  
Forced labour, forced begging and forced engagement in criminal activities

# Identification, Support and Assistance to VOTs

- Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (2008, updated 2011)

Provide for:

- Recovery and reflection
- Six month temporary residence permission
- Changes of status
- Social protections and benefits, employment and education/training

# Some things to consider

- Scope of the AIAs? Apply to ‘foreign nationals’
- Effective identification procedures?

See GRETA reports

P v Chief Superintendent of the GNIB &  
Ors (2015)



# Recent developments

- Commencement of Civil Registration Act 2014
- Referrals and identification of EU citizens
- Operation Vantage – investigation and prosecutions
- Media coverage / training / awareness raising

# Contact Details

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