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Human Rights under Temporary Protection in the EU?

The EU Temporary Protection Directive's Minimum Standards of Treatment as Implemented
for Women and Children fleeing Ukraine to Ireland

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Acronyms

CEAS	Common European Asylum System
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	UN Committee on Economic, Social and Cultural Rights
CRC	UN Convention on the Rights of the Child
CS	Community Sponsorship
CSR 1951	Convention relating to the Status of Refugees (1951) and its Protocol (1967)
DCEDIY	Department of Children, Equality, Disability, Integration and Youth
DoJ	Department of Justice
EU	European Union
HSE	Irish Health Service Executive
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
IO	International Organisation
IOM	International Organisation for Migration
NGO	Non-Governmental Organisation
RSD	Refugee Status Determination
TP	Temporary Protection
TP Directive	Council Directive 2001/55/EC
TPB	Beneficiary of Temporary Protection as per Council Directive 2001/55/EC
UAM	Unaccompanied Minor
UDHR	United Nations Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Human Rights
2015 Act	Ireland's International Protection Act (2015)

Abstract

Since Russia's February 2022 invasion of Ukraine, almost eight million have fled from Ukraine to the EU, triggering the activation of the community's long-dormant Temporary Protection Directive (TP Directive), an instrument designed with an aim of providing immediate rights' and entitlement' access to displaced persons, the majority, in this instance, being women and children.

This thesis asks about the extent to which the EU's TP Directive fosters human rights protection for women and children fleeing from Ukraine to the case study country of Ireland in the implementation by this Member States of the Directive's Minimum Standards of Treatment (MST). It is explained that Temporary Protection Beneficiaries (TPBs) are located in a middle-ground between asylum seekers and refugees. While having strong human rights claims through the TPD, and while Temporary Protection as a governance tool is designed to help alleviate strain on Member State's asylum processing procedures, 'mass influx' events can cause state capacity challenges in other areas that may inhibit the fulfilment of the Directive's MST obligations.

This broad-based study reveals the TP regime's emancipatory potential for access to migration status, employment and economic and social rights. Yet the ability to fulfil these goals is significantly hampered by state capacity issues, manifest in Ireland particularly in housing rights, which negatively impact on women's and children's ability to access other of the Directive's MST entitlements

Keywords: *European Union, temporary protection, minimum standards of treatment, refugee women, refugee children, human rights, Ireland*

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Dedication

For Mum, Dad and Cian – ever my base camp

-

For every person who must flee their home

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This is a European crisis – not just for the neighbouring countries. Even the most Westerly country in the EU, Ireland, is facing a huge crisis and mass influx relative to its capacities and ability to take people - Thesis Interviewee

Ar scáth a chéile a mhaireann na daoine
It is with support from one another that we survive
- Irish Proverb

Chapter 1: Introduction

In the eight months since the Russian Invasion of Ukraine on the 24th of February 2022, almost eight million people² have been displaced from the territory to the European Union (EU). Of this group, approximately 4.5 million have registered for EU Temporary Protection Status³, under the EU's Temporary Protection Directive⁴ (TP Directive), which was formally activated on the 4th of March 2022⁵. The activation has marked an unprecedented move within the Union for responding to the humanitarian needs of persons displaced by war and conflict to within its borders. Those who are granted Temporary Protection Status under this Directive are to be provided with immediate access to the rights and entitlements and states have certain obligations with regards to their treatment, as laid out in Chapter III of the Directive. The aim of this is to harmonise the treatment of beneficiaries of the TP status across Member States, according to these benchmarks for minimum standards of treatment.

² UNHCR Operational Data Portal, 'Ukraine Refugee Situation' <<https://data.unhcr.org/en/situations/ukraine>> accessed 28 October 2022.

³ *ibid.*

⁴ 'Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences Thereof, OJ L212/12, 7 August 2001 (Temporary Protection Directive, TPD).'

⁵ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection 2022 (OJ L).

This new use of a harmonised Temporary Protection regime in Europe brings pertinent questions to the fore in regards to the achievement of human rights of the persons benefitting from this status.

TP is praised by its proponents for its ability to offer pragmatic solutions to gaps in protection that have emerged in the international protection regime rooted in the 1951 Refugee Convention and its 1967 Protocol (CSR 1951). These gaps have emerged in response to migratory trends such as large scale arrivals of persons fleeing states on both Convention and non-persecutory grounds. However even its proponents, and certainly its critics, caution that moving protection outside of, or to the edges of the regimes rooted in international customary and treaty law concerning refugees may risk exposing TP status holders to vulnerability in terms of their ability to fully enjoy their universal human rights, and the additional protection that would be due to them under refugee law. If such complementary regimes are not designed and implemented by states in a way that takes the full spectrum of international obligations into account, the fundamental human rights of these persons in flight may be threatened. Bearing in mind the general tendency towards a recent more managerial style of migration governance and temporary protection's place in that, the question of the human rights compliance of the regime becomes not only one of regional but also of universal importance. Consequently, the rights-based analysis proposed by this thesis may be of value, to both the Ukraine response and the wider scholarship, to assess the extent to which there is compliance of the obligations that are set out in Chapter III of the Directive for Member States to afford Minimum Standard of Treatment to beneficiaries of TP.

The justification for the approach will now follow, but first let us clearly state that the main research question of this thesis will be:

***RQ:** To what extent does the EU's TP Directive foster human rights protection, in the implementation by Member States of the minimum standards of treatment, for women and children fleeing from Ukraine to Ireland?*

Background

In the eight months following the Russian invasion of Ukraine which began on the 24th of February 2022, over 14.5 million people have been displaced by the conflict across the state's border⁶, the largest displacement of persons experienced by Europe since WWII. Of this population, over 4 million have been registered for Temporary Protection or other national schemes across Europe⁷.

In an unprecedented move of solidarity, the European Union activated the 2001 Temporary Protection Directive⁸ (TP Directive) on the 4th of March 2022⁹, granting instant access to certain minimum standards of treatment to all persons who fall within its scope. This implementation occurred in order to respond to the 'mass influx'¹⁰ of persons displaced during the Russian invasion of Ukraine and their arrival in EU territory. The existence of this mass influx needed to be established by the Council of the European Union after the European Commission's proposal for the activation of this long-dormant instrument.

The TP Directive was established in 2001 during the EU's experience of mass displacement of persons to the EU from Kosovo and earlier displacements from former Yugoslavia. This was the first time for the activation of this Directive, which was established in 2001 as the result of deliberations between member states in the 1990s¹¹. The Directive had been devised with the intention of being aligned with EU and international legal standards¹², and while

⁶ UNHCR Operational Data Portal (n 2).

⁷ UNHCR Regional Bureau for Europe, 'Ukraine Situation Flash Update No 33'.

⁸ 'Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences Thereof, OJ L212/12, 7 August 2001 (Temporary Protection Directive, TPD).'

⁹ 'Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection 2022 (OJ L)'

¹⁰ Nuria Arenas, 'The Concept of "Mass Influx of Displaced Persons" in the European Directive Establishing the Temporary Protection System' (2005) 7 *European Journal of Migration and Law* 435.

¹¹ Karoline Kerber, 'Temporary Protection in the European Union: A Chronology' (1999) 14 *Georgetown Immigration Law Journal* 35; Morten Kjaerum, 'Temporary Protection in Europe in the 1990's' (1994) 6 *International Journal of Refugee Law* 444.

¹² Meltem Ineli-Ciger, *Temporary Protection in Law and Practice*, vol 10 (Brill Nijhoff 2018); Hanne Beirnes and others, *Study on the Temporary Protection Directive: Executive Summary*. (European Commission 2016) <<https://data.europa.eu/doi/10.2837/479329>> accessed 19 June 2022.

studies have examined the Directive's compliance with universal human rights standards, including those of economic, social and cultural rights (ESCRs), there has been little chance to see the extent to which these standards are met in its implementation. This is the first point of entry of this thesis and shall be explored in the specific Member State Case Study of Ireland.

An Initial flow of Women and Children

At the same time, and of great relevance to this thesis given the demographics of the flows of persons from Ukraine to the EU and Ireland particularly, there have been calls in recent years for a re-centring of gender concerns in refugee law analyses¹³. Over the years, there have been various examinations of the gendered dimensions of Refugee Law, considering the gender-specific aspects of rights and protections to be afforded persons fleeing persecution and violence under the 1951 Geneva Conventions and other international treaties¹⁴. However, there has been very limited scholarship on the gender-specific rights of beneficiaries of temporary protection statuses – whether they be in harmonised or non-harmonised¹⁵ regimes for minimum standards of treatment.

The fact that the displacement of persons from Ukraine has thus far consisted of mostly women and children offers a moment for responding to these calls for a re-centring of feminist critiques of international refugee law. Much of the analysis since the March 2022 activation of the TP Directive has focused on human rights issues, such as non-discrimination, from a national origin perspective¹⁶ which is deeply important, but this thesis wishes to take a step further with an intersectional appreciation of the diverse identities that

¹³ Efrat Arbel, Catherine Dauvergne and Jenni Millbank, *Gender in Refugee Law: From the Margins to the Centre* (Routledge 2014); Adrienne Anderson and Michelle Foster, 'A Feminist Appraisal of International Refugee Law' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press 2021).

¹⁴ Alison Gerard, *The Securitization of Migration and Refugee Women* (Routledge 2014); Anderson and Foster (n 13).

¹⁵ Hande Sozer, 'Categories That Blind Us, Categories That Bind Them: The Deployment of Vulnerability Notion for Syrian Refugees in Turkey' (2019) 34 *Journal of Refugee Studies* 2775.

¹⁶ Sergio Carrera and others, 'The EU Grants Temporary Protection for People Fleeing War in Ukraine: Time to Rethink Unequal Solidarity in EU Asylum Policy' (2022) 2022-09 <https://www.ceps.eu/wp-content/uploads/2022/03/CEPS-PI2022-09_ASILE_EU-grants-temporary-protection-for-people-fleeing-war-in-Ukraine-1.pdf>.

women and girls fleeing Ukraine have and may experience discrimination under as a result. This thesis wishes to fill the gap in the literature specifically on the EU TP Directive and more widely on TP regimes in general, considering the fact that this movement of persons displaced by the war in Ukraine and coming to the EU is primarily that of women and children, and show that paying attention to the diversity of experiences and protection needs within a group typically designated as ‘vulnerable’¹⁷ warrants closer attention.

The situational justification for this thesis’s argument is that, in light of the mass influx of displaced persons from Ukraine to the EU as a result of the Russian invasion of Ukraine in February 2022, and particularly the fact that, at least in these initial months and owing to the Ukrainian laws on conscription for men that have resulted in the vast majority of displaced persons being women and children, it is pertinent to ask about the extent to which a gendered analysis of the rights of temporary protection beneficiaries can be understood.

Defining Temporary Protection (TP)

The development of the TP Directive gave welcome definitional clarity in both a conceptual and legal sense to what has otherwise been considered an ‘amorphous concept’¹⁸ and as a political tool for pragmatic use in mass influx situations within the EU and the scope of the Common European Asylum System (CEAS)¹⁹.

Scholars have made many attempts to define temporary protection in a universally applicable way, with Joan Fitzpatrick providing the preeminent definitional framework in 1999 drawing together common features of TP regimes throughout the world for the first time in a systematic way for analysis in comparison with international law. However, whether or not this concept ever achieves any future universal and legally binding consensus, as of yet there is no international treaty-based temporary protection regime. The closest one can get to a

¹⁷ ECRE, ‘The Concept of Vulnerability in European Asylum Procedures’ (European Council on Refugees and Exiles 2017) <<https://asylumineurope.org/2017-ii/>>.

¹⁸ Jean-François Durieux, ‘Chapter 9: Temporary Protection: Hovering at the Edges of Refugee Law’ in M Ambrus and R Wessel, *Netherlands Yearbook of International Law 2014*, vol 45 (Asser Press 2014) 249 <https://doi.org/10.1007/978-94-6265-060-2_9>.

¹⁹ Walter Kalin, ‘Temporary Protection in the EC: Refugee Law, Human Rights and the Temptations of Pragmatism’ (2001) 44 *German Yearbook of International Law* 202, 235; Meltem Ineli-Ciger, ‘Time to Activate the Temporary Protection Directive: Why the Directive Can Play a Key Role in Solving the Migration Crisis in Europe’ (2016) 18 *European Journal of Migration and Law* 1.

universal framework is the UNHCR's Guidelines on Temporary Protection or Stay Arrangements²⁰, but even this is not without definitional difficulty of having added the notion of 'stay arrangements'²¹.

*Temporary protection/stay arrangements are **pragmatic “tools”** of international protection, reflected in States' commitment and practice of offering sanctuary to those fleeing humanitarian crises. TPSAs are **complementary** to the international refugee protection regime, being used at times to fill gaps in that regime as well as in national response systems and capacity, especially in non-Convention States²².*

Protection adding Minimum Standards

In order to more clearly define TP for the purpose of the present activation and this thesis research, distinction needs to be made from the outset between temporary *protection* and the pre-existing concept of *temporary refuge*. This distinction is important as it reveals a key element of TP around which this thesis revolves – that of the provision of minimum standards of treatment for those seeking protection under this regime. The notion of states granting temporary refuge to persons fleeing war and humanitarian emergencies is one with an ancient history, wrapped up in the label of 'temporary refuge', which is often argued to be now a customary norm of international law, underpinned by the principle of *non-refoulement*²³. On the other hand, 'temporary protection' began to take over from the term 'temporary refuge' throughout the 1990s, expanding on it and enhancing provisions that states would extend to displaced persons under the new framework. Temporary refuge therefore is an element of, but not the whole of temporary protection. Temporary protection instead brings us beyond simply the protection from refoulement and provides certain guarantees of treatment for the

²⁰ Article 3. UNHCR, 'Guidelines on Temporary Protection or Stay Arrangements' 1 <<https://www.unhcr.org/542e99fd9.pdf>>.

²¹ Durieux (n 18) 248.

²² UNHCR (n 20).

²³ Matthew J. Gibney, 'Between Control and Humanitarianism: Temporary Protection in Contemporary Europe' (2000) 14 *Georgetown Immigration Law Journal* 689; Meltem Ineli-Ciger and Achilles Skordas, 'Temporary Protection', *Max Planck Encyclopedias of International Law* (2019) <<https://opil.ouplaw.com/view/10.1093/law-epil/9780199231690/law-9780199231690-e2200?rskey=WStxgO&result=1&prd=OPIL>>.

persons in their short-term stay before more durable solutions are secured. The minimum standards of treatment offered may not encompass all the rights of refugees as guaranteed under the Refugee Convention²⁴, so this is a trade-off given that there are bound to be persons amongst the protected groups who would qualify for refugee status under the CSR 1951 if asylum processing procedures were not suspended²⁵.

Consequently, in instances of ‘mass influx’ this is where advocates of TP policies claim a solid foothold, as TP has the potential to be used in a manner to avoid mass-denial of rights owing to asylum procedures slowing down or halting by default in the face of more arrivals than destination country’s asylum systems can process in a timely manner²⁶. While there is much debate on this topic, it has been argued that states have expressed a tendency for TP over granting prima facie refugee status, as states in the EU have a history of viewing refugee status as a more integration-oriented one²⁷, while temporary protection can be seen to be understood as a tool with a ‘return-orientation’²⁸ focused on repatriation of temporarily displaced persons, where the withholding of more integration-oriented rights may be pursued as a strategy of the state facing the influx/crisis to signal to the displaced persons that ‘his or her stay in the specific country is only temporary’²⁹. As outlined in the Literature Review (Chapter 2) in the brief history of TP in Europe during the 1990s, this quality of this protection varied greatly in terms of different rights and protections granted³⁰.

UNHCR’s February 2001 Conclusions of their Global Consultations on International Protection concerning the protection of refugees in mass influx situations outlined that the standards of treatment to be afforded to beneficiaries of TP status were an outstanding area for clarification and reinforcement³¹, so the analysis of this thesis is apt and timely.

²⁴ Nadia Yakoob, ‘Report on the Workshop on Temporary Protection: Comparative Policies and Practices’ (1999) 13 *Georgetown Immigration Law Journal* 617; Joan Fitzpatrick, ‘Temporary Protection of Refugees: Elements of a Formalized Regime’ (2000) 94 *American Journal of International Law* 279.

²⁵ Fitzpatrick (n 24).

²⁶ *ibid.*

²⁷ Durieux (n 18) p230; GJL Coles, ‘Approaching the Refugee Problem Today’ in G Loescher and L Monahan (eds), *Refugees in international relations* (Oxford University Press 1989).

²⁸ Durieux (n 18) 236–237.

²⁹ Kjaerum (n 11) 450.

³⁰ Durieux (n 18) 236; Kerber (n 11).

³¹ United Nations High Commissioner for Refugees, ‘Protection of Refugees in Mass Influx Situations: Overall Protection Framework’ (UNHCR) <<https://www.unhcr.org/protection/globalconsult/3ae68f3c24/protection->

The definition of MSTs for the purposes of this paper are those articles of Chapter III of the Directive, excluding Article 11. Thanks to visa liberalisation between the Ukraine and EU Schengen countries, which came into effect on the 11th of June 2017, Ukrainian nationals holding a biometric passport are not required to seek a visa for legal entry into the EU for a short stay³². Combined with the decision in the activation in March 2022 *not* to apply Article 11 of the TP Directive,³³ permitting free movement of TPBs between MSs, given its nonactivation, instead the repercussions of this decisions will set an interesting contextual backdrop for the final conclusions.

Legal Definitions for Use in this Paper

As per Article 2(a) of the Directive, for the purposes of EU Member States' implementation, the Directive defines temporary protection in Article 2(a) as follows:

*'temporary protection' means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection*³⁴

refugees-mass-influx-situations-overall-protection-framework.html> accessed 3 November 2022. paras 13 and 15.

³² 'Visa Liberalisation with Moldova, Ukraine and Georgia' <https://home-affairs.ec.europa.eu/policies/international-affairs/collaboration-countries/visa-liberalisation-moldova-ukraine-and-georgia_en> accessed 3 November 2022.

³³ 'Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences Thereof, OJ L212/12, 7 August 2001 (Temporary Protection Directive, TPD).' (n 4). Article 11 stating "A Member State shall take back a person enjoying temporary protection on its territory, if the said person remains on, or, seeks to enter without authorisation onto, the territory of another Member State during the period covered by the Council Decision referred to in Article 5. Member States may, on the basis of a bilateral agreement, decide that this Article should not apply"

³⁴ *ibid.*, at Article 2(a), emphasis added

Given that Ireland is the Member State case country of analysis in this thesis, we can now note that the definition of TP as per the International Protection Act (2015), which transposes the Directive into Irish domestic legislation, reflects only the first half of the above quoted TP Directive definition, but without subsequent reference to the particular attention to situations where asylum systems may be unable to process the influx³⁵.

Rights-Based Approach to Minimum Standards of Treatment

The human rights-based approach of this thesis, while rooted in the academic literature review that will follow in Chapter 2, stems from the elements of the TP Directive itself which allude to wider obligations that Member States of the EU are bound by in international law, particularly concerning the economic, social and cultural rights (ESCRs) of TPBs which have tended to be restricted by states operating under a ‘securitised’ logic of migration control.

It is the intention of the TP Directive as drafted in 2001 to be in line with international human rights and other legal obligations. As pointed out by Kerber³⁶, recital 10 of the Directive’s preamble refers to Member States’ international obligations concerning refugees, explicitly mentioning the CSR 1951. She also notes that Recital 16 outlines the obligations of international law to which Ireland is party and which prohibit discrimination. Finally she flags that Article 3(2) sets the duty of Member States under the binding force of the Directive itself to implement TP “with due respect for human rights and fundamental freedoms and their obligations regarding non-refoulement”. The preface of “shall” in Article 3(2) indicates the obligatory nature of this provision.

With regards to the history of Article 3(2) and to help for the purposes of interpretation, the Commission’s original proposal only mentioned the protection of human rights as guaranteed by the ECHR³⁷. However, in the subsequent negotiations, there was a lack of agreement

³⁵ ‘International Protection Act 2015’. Section 60(1)

³⁶ Karoline Kerber, ‘The Temporary Protection Directive’ (2002) 4 European Journal of Migration and Law 193, 206.

³⁷ Article 3(2), ‘Commission Proposal for a Council Directive on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences Thereof’. , at 253

amongst the delegations on this point³⁸, with some arguing that there were other international instruments of relevance (for example, the ICCPR and the CAT), and with others arguing that these kind of instruments could be mentioned in the preamble³⁹, so the explicit mention was in the end deleted⁴⁰. There were many iterations and repetitions of the Directive's wording, but eventual the final wording was agreed as is listed in the present Directive⁴¹.

TP as a fix for the Rights Strains of a 'Mass Influx' to International Protection?

In the 1994 UNHCR Conclusions⁴² noted that limitations to existing legal tools of international protection for refugees have arisen in cases of 'mass influx'. While considerable definitional ambiguity indeed was and has continued to be noted in the literature on temporary protection generally⁴³, and with reference to the TP Directive specifically⁴⁴

A Harmonised European TP Regime

Various experts have seen a harmonised TP Directive as a way to react in a more humanitarian way to mass influxes of displaced persons in Europe in particular⁴⁵. In light of the oft-considered 'securitisation'⁴⁶ of migration management in the EU and the critiques of the Common European Asylum System (CEAS) to which the TP Directive pertains, it has been proposed that the TP Directive may be a more humane instrument in the toolbox for deployment in these scenarios. There have been calls for adopting this more humanitarian approach to the reception of displaced persons more widely.

³⁸ Kerber (n 36) 206.

³⁹ Achilles Skordas, 'Temporary Protection Directive 2001/55/EC' in Kay Hailbronner and Daniel Thym (eds), *EU Immigration and Asylum Law: A Commentary* (2nd edn, CH Beck 2016) 1071.

⁴⁰ Kerber (n 36) 206.

⁴¹ Skordas (n 39) 1071.

⁴² UN Doc. A/AC.96/830 1994. para 21

⁴³ GJL Coles, 'Temporary Refugee and the Large-Scale Influx of Refugees' (1978) 8 189; Arenas (n 10); Salvatore F Nicolosi, 'Addressing a Crisis through Law: EU Emergency Legislation and Its Limits in the Field of Asylum' (2022) 17 *Utrecht Law Review* 19; MR Alborzi, *Evaluating the Effectiveness of International Refugee Law: The Protection of Iraqi Refugees*, vol 11 (Martinus Nijhoff Publishers 2006) 207–230.

⁴⁴ Arenas (n 10).

⁴⁵ Ineli-Ciger, 'Time to Activate the Temporary Protection Directive: Why the Directive Can Play a Key Role in Solving the Migration Crisis in Europe' (n 19).

⁴⁶ Gerard (n 14).

If harmonisation of TP regimes in line with international human rights standards is to be considered a potential way forward for the granting of TP status and a future trajectory for responses to mass influxes of displaced persons more generally speaking, then it is apt to assess whether this ‘pragmatic’ solution sufficiently delivers the respect for human rights that it is intended to, both on paper and in practice.

Human Rights and the Directive

Considerable scholarly attention on the EU’s TP Directive has up until now been paid to issues around why the Directive created in 2001 was not activated for just over two decades of its existence⁴⁷. Running parallel to academic conversations on temporary protection and its legal basis more widely speaking, some legal scholarship on the Directive has looked at the degree to which the Directive could be considered to be in line with standards of international law – including Refugee Law and Human Rights Law.⁴⁸

The literature so far has engaged, to the extent that it could, with the general rights compliance of the TP Directive while it has not yet been activated. There have been text-based analyses of the TP Directive’s human rights compliance⁴⁹, but few have so far had the opportunity to analyse this in the implementation phase⁵⁰. This gap shall be addressed throughout the course of the thesis.

Policy Relevance: State Obligations in the Managerial Turn of Temporary Protection

⁴⁷ Meltem Ineli-Ciger, ‘The Missing Piece in the European Agenda on Migration, the Temporary Protection Directive’ [2015] EU Law Analysis Blog 6; Ineli-Ciger, ‘Time to Activate the Temporary Protection Directive: Why the Directive Can Play a Key Role in Solving the Migration Crisis in Europe’ (n 19); Beimes and others (n 12).

⁴⁸ Meltem Ineli-Ciger, ‘A Temporary Protection Regime in Line with International Law: Utopia or Real Possibility?’ (2016) 18 International Community Law Review 278; Karoline Kerber, ‘The Temporary Protection Directive’ (2002) 42 European Journal of Migration and Law 193.

⁴⁹ Kerber (n 36); Kalin (n 19); Skordas (n 39).

⁵⁰ Carrera and others (n 16); Julia Motte-Baumvol, Tarin Cristino Frota Mont’Alverne and Gabriel Guimarães Braga, ‘Extending Social Protection for Migrants Under the European Union’s Temporary Protection Directive: Lessons from the War in Ukraine’ (Social Science Research Network 2022) SSRN Scholarly Paper 4096325 <<https://papers.ssrn.com/abstract=4096325>> accessed 24 June 2022.

In 2019, Ineli-Ciger and Skordas observed that the Global Compact on Refugees (GCR) of 2018 seemed to side line temporary protection, as there were only single mentions of temporary protection in the New York declaration⁵¹ and in the GCR⁵², however they proceeded to argue that this was rather a product of the shift that has occurred in the UNHCR in the context of increasingly complex, protracted and large refugee flows, from individual status determination to migration management⁵³. As Ineli-Ciger and Skordas succinctly put it:

*“Taken together with the UNHCR Guidelines on Temporary Protection of 2014, these terms indicate a ‘managerial turn’ in refugee protection, with temporary protection as one of its pillars.”*⁵⁴

Taken in this light, and if we are to understand that the use of TP regimes to fill gaps in the 1951 CSR regime, we can understand that an analysis of the degree to which such a regime adequately succeeds in extending rights to persons forced to flee war and violence en-masse to Europe is warranted.

The Case Study for Analysis: Ireland

There are several reasons that make Ireland stand out as a particularly exceptional case study for examination in this rights-based analysis TP Directive’s implementation.

Demographic Justification

Ireland is a good case study for the analysis of the specific population of temporary protection beneficiaries under analysis because while as of the week ending 25 September 2022, there had been 54,771 arrivals from Ukraine to Ireland⁵⁵, women and children constitute the largest category of persons arriving to date, at 46% of the cohort being women

⁵¹ UN General Assembly, ‘New York Declaration for Refugees and Migrants, A/ RES/71/1’.

⁵² See para. 63 United Nations, ‘Global Compact on Refugees’ (2018) <<https://www.unhcr.org/5c658aed4.pdf>>.

⁵³ Meltem Ineli-Ciger and Achilles Skordas, ‘Temporary Protection’, *Max Planck Encyclopedias of International Law* (2019) <<https://opil.ouplaw.com/view/10.1093/law-epil/9780199231690/law-9780199231690-e2200?rskey=WStxgO&result=1&prd=OPIL>>.

⁵⁴ See section 31 *ibid*.

⁵⁵ ‘Arrivals from Ukraine in Ireland Series 6 - CSO - Central Statistics Office’ <<https://www.cso.ie/en/releasesandpublications/ftp/p-aii/arrivalsfromukraineinirelandseries6/>> accessed 4 November 2022.

(aged 20 and over) and 35% of the cohort were individuals aged 19 or under⁵⁶. This is contrary to evidence from past Eurostat statistics on the demographics of asylum applicants in Europe which have seen trends of higher numbers of men seeking asylum in EU countries, and thus an under-representation of women being evidenced in the statistics.

Doctrinal Justification

Given the wording of the 2001 TP Directive, Ireland is an interesting case to examine. It was explicitly stated in Preamble 25 of the Directive that Ireland (alongside Denmark) was not bound by the obligations therein⁵⁷. That is because Ireland availed in 2001 of its opt-out clause stemming from the Schengen frameworks⁵⁸. However, in 2003 Ireland requested participation in the TP Directive and was granted such permission by the Commission⁵⁹. Twelve years later, Ireland had finally adopted the Directive into domestic legislation under section 60 of the International Protection Act of 2015, giving force to this EU legislative tool in Irish law, and indeed now rendering the Irish state bound by the obligations of the TP Directive.

Academic Justification

This late transposition of the TP Directive into Irish law means that most of the literature which has engaged in analysis of the Directive to date does not offer comment on Ireland's present regime, as it mostly pre-dates Ireland's adoption of the Directive into law. It having been transposed after the majority of other EU Member States completed their transposition periods means that Ireland missed the original and EU-wide monitoring reports on the transposition of the TP Directive⁶⁰, with most reports and literature to date indicating that Ireland had not transposed the Directive and was not bound by its provisions. Therefore, there are minimal reports on the compliance of Ireland's transposition of the Directive.

⁵⁶ *ibid.*

⁵⁷ 'Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences Thereof, OJ L212/12, 7 August 2001 (Temporary Protection Directive, TPD).' (n 4).

⁵⁸ Cathryn Costello, *The Human Rights of Migrants and Refugees in European Law* (Oxford University Press 2015).

⁵⁹ Hanne Beirnes and others, 'Study on the Temporary Protection Directive: Final Report.' (European Commission 2016) 12 <<https://data.europa.eu/doi/10.2837/561426>> accessed 23 June 2022.

⁶⁰ Beirnes and others (n 12).

Research Questions

Having set the openings that exist for this research, we must now flag the questions that will be answered throughout this investigation.

The overall research question that this thesis seeks to address is **(RQ)** “*To what extent does the EU’s TP Directive foster human rights protection, in the implementation by Member States of the minimum standards of treatment, for women and children fleeing from Ukraine to Ireland?*”. A number of sub-research questions have been formulated given the state of knowledge in the area to seek out answers to this question through the methods that will be briefly outlined in the next section.

The first sub-research question asks about the human rights compliance of the Directive on paper in terms of relevant human rights instruments to which Ireland is party, asking: **(Sub-RQ1)** “*to what extent are the HRs and protection needs of women and children fleeing Ukraine to Ireland being protected **in the text** of the TP Directive?*”

The second sub-research question seeks to establish the human rights compliance of the implementation in practice, asking: **(Sub-RQ2)** “*to what extent are the HRs and protection needs of women and children fleeing Ukraine to Ireland being protected **in the practical implementation** of this Directive?*”

The third sub-research question interrogates the specific chapter of the TP Directive that this thesis wishes to seek clarity on in terms of the implementation in the Irish case. It asks: **(Sub-RQ3)** “*what **challenges and opportunities** are emerging in the national level implementation of the TP Directive that may impact the realisation of the minimum standards of treatment envisioned in the TP Directive, as set out in terms of state obligations towards beneficiaries of TP in Chapter III of the Directive (Articles 8-16)?*”

Structure of the Thesis / Basic Methodology

Methodology

This thesis uses qualitative research methods, availing of literature review, textual analysis, and semi-structured expert interviews.

The literature review spans the academic debates on temporary protection regimes; economic, social, and cultural rights; and feminist critiques of international refugee law to clearly illustrate the research gap that this thesis is filling.

The textual analysis of the TP Directive considers EU and Irish legal and policy documents of relevance, particularly the TP Directive itself and the European Commission's Operational Guidelines, as well as the Irish 'International Protection Act (2015)'.

Expert interviews were conducted with national and EU-level stakeholders involved in the implementation and analysis of the EU's TP Directive – spanning academia, international organisations, and civil society groups. The purpose of these interviews is twofold. Firstly, the opinions and interpretations of EU-level legal experts and their assessment of the rights-situation in a European-wide and theoretical sense of the Directive helps to inform the Chapter 3 text-based analysis of the Directive's wording. Secondly, these interviews and those conducted with Irish NGOs, academics and legal practitioners gather data in this early stage of implementation of the Directive on the situation on the ground, while there is limited availability of reports from the Irish State, NGOs, IOs and other stakeholders on the rights-situation in practice.

Roadmap for Chapters

The subsequent chapters will elaborate the elements outlined above as follows: **Chapter 2** will engage in a review of the literature that engages with the '*advisability*' debate over harmonised temporary protection regimes and particularly the EU's TP Directive, particularly flagging those works that have already analysed the human rights compliance of TP Directive

on paper and will present the gender-critique of refugee law to show the gap in the TP literature that this thesis seeks to fill. **Chapter 3** will present the methodology via which the interviews were conducted, and other data was gathered, as well as outlining the legal guidelines of regional and universal scope which will serve pivotal benchmarks for assessing whether there have been violations of the women and children's Economic, Social and Cultural rights in the current implementation of the Directive in Ireland. **Chapter 4** will be the first of the Analysis Section, presenting the legal doctrinal (text-based) analysis of the TP Directive on paper, addressing the first sub-research question of the thesis and operationalising also the above mentioned Guidelines. **Chapter 5** will then analyse the situation on the ground, assessing the challenges and opportunities for human rights access of women and children that are emerging in the implementation of the Directive in Ireland, under the minimum standards of treatment in Chapter III of the TP Directive, addressing the second and third sub-research questions.

Chapter 2 - Literature Review

“Refugee populations, like all large groups, are diverse populations and the experience of exile will affect them in different ways, as will the rights granted to them. Humane treatment is thus not necessarily at odds with temporary stay.”

Gibney, 1999, p706

Having now introduced the topic and structure of this thesis, what follows in this chapter is an account of the literature to date that has engaged in human rights analyses and critiques of the TP Directive. Given the lack of prior activation of this harmonised TP regime, this section will also, out of necessity, present literature that seeks to examine the human rights compliance of TP regimes in other non-EU jurisdictions in terms of the challenges and opportunities for the protection of adequate standards of living of women and children in such temporary protection settings.

The literature on temporary protection generally has taken consideration of the extent to which TP as an alternative to refugee status in mass influx situations expands the ability of states to deliver the rights of displaced persons, or whether it facilitates derogations on the CSR-1951, and whether this is legally permissible⁶¹. It is a topic of much debate, with many scholars coming down on different sides⁶² but the underlying question has been (as flagged in the introduction) – amidst the diverse forms that TP has taken at different times and in different places throughout the world, *can TP regimes be compliant with international law obligations?* This is a crucial question, and one to which many scholars have proposed possible answers as we shall see throughout the chapter, particularly flagging the Minimum Standards of Treatment (MST).

Moreover, a difficulty that has arisen time and again for women seeking refuge under the 1951 Convention comes at the stage of Status Determination. The lack of explicit reference to

⁶¹ Ineli-Ciger and Skordas (n 53).

⁶² For example of two sides of the debate on whether Derogation is permissible under Article 9 Refugee Convention in mass influx situations see: Alice Edwards, ‘Temporary Protection, Derogation and the 1951 Refugee Convention.’ (2012) 13 Melbourne Journal of International Law 41; Durieux (n 18).

gender and gender-based persecution in the Refugee Conventions has been overcome, over the past decades, through advocacy and the development of guidelines on the matter by the UNHCR and other entities. For example, how asylum claims based on gender grounds should be handled have been elaborated in this way⁶³. However, a less explored area of the refugee woman's experience are her legal rights and access to entitlements after status determination⁶⁴. It is with this pulse of the debate that this thesis engages.

It is considered timely to look at these concerns for the dual reason that (1) as noted by Arbel, Dauvergne and Millbank in 2014 “[t]he work of integrating considerations of gender into the centre of refugee law is incomplete.”⁶⁵ and moreover, (2) that in light of the particular military conscription rules recently instituted by the Ukrainian government, a large proportion of the persons fleeing Ukraine to Ireland are women and children⁶⁶. In terms of added academic value, this research hopes to fill a silence in the debate on the standards of treatment of temporary protection beneficiaries, particularly as they concern women and girls fleeing Ukraine. In order to understand what the activation of the EU's TP Directive may mean for the protection of TP beneficiary women's and children's human rights, we need to situate the forthcoming research and analysis in the wider debates that have surrounded the formalisation of this status in a regional international law instrument. The extent to which this TP Directive of the European Union protects or restricts the rights of those persons who fall into its scope will be explored on this basis.

The standards of treatment afforded to beneficiaries of TP have in the past been noted to differ greatly from context to context and TP programme to TP programme⁶⁷. Fitzpatrick discussed that, in some cases, states can treat TP beneficiaries as they would treat recognised refugees, and in other cases, TP can be used to delay access to services for such beneficiaries and to slow down their integration⁶⁸. After much differentiated treatment under national TP

⁶³ Gerard (n 14) 64.

⁶⁴ Arbel, Dauvergne and Millbank (n 13); Alice Edwards, 'Transitioning Gender: Feminist Engagement with International Refugee Law and Policy 1950-2010' (2010) 29 *Refugee Survey Quarterly* 21, 23.

⁶⁵ Alice Edwards, 'Transitioning Gender: Feminist Engagement with International Refugee Law and Policy 1950-2010' (2010) 29 *Refugee Survey Quarterly* 21, 23.

⁶⁶ Jessica Schultz, 'Senior Researcher, Chr. Michelsen Institute (CMI)' 42, 16.

⁶⁷ Fitzpatrick (n 24) 303.

⁶⁸ Durieux (n 18) 237.

regimes of the 1990s, the aim of the harmonisation of standards of treatment for TPBs at the EU level then was a key motivating factor for the creation of the EU Directive⁶⁹, as will be discussed in greater length in the forthcoming section on the literature on the history of TP implementation and underlying logics in the EU.

Fitzpatrick noted that “[d]isparity in standards of treatment not only can prompt secondary movements, but also implicates concerns about equity, *consistency with basic human rights norms*, and responsibility sharing”⁷⁰ Since the concern over the consistency of the drafting and application of the TP Directive’s MSTs with human rights norms, and particularly ESCRs is the primary focus of this thesis, both in terms of Member State policy and practice, this review will proceed to contextualise the research analysis in the relevant bodies of literature.

Laws and Policies

Past Commentary on the TP Directive

Joan Fitzpatrick posed the question in 2000 as to whether the formalisation of temporary protection, at the universal or regional level, is either likely or advisable⁷¹. Notwithstanding the fact that the 2001 TP Directive was a considerable step towards this regional formalisation of temporary protection in the EU, throughout the subsequent 20 years in which this instrument laid dormant, both elements of this question could be considered to have been ripe in the academic discussions on temporary protection and the TP Directive in particular. While a significant portion of the debate in the past twenty years has continued to revolve around the likelihood of harmonised TP being activated, the *advisability* of the regionalisation of temporary protection which Fitzpatrick engaged with is of greatest concern to this thesis, as these discussions revolve to a significant extent around the degree to which temporary protection enhances, upholds or undermines the rights of (potential) beneficiaries,

TP and Human Rights

⁶⁹ Fitzpatrick (n 24) 303. emphasis added

⁷⁰ *ibid.*

⁷¹ Joan Fitzpatrick, ‘Temporary Protection of Refugees: Elements of a Formalized Regime’ (2000) 94 *American Journal of International Law* 279, 279.

In terms of its relationship to international human rights law, temporary protection has also been explored from a number of angles by scholars in the field. In all its amorphousness as a concept and tool⁷², temporary protection has been argued to have the potential for being a pragmatic tool for migration management⁷³. Nevertheless, proponents of TP hasten to note that employing such a tool has the potential to risk undermining human rights protections for persons displaced in mass influx contexts more than it expands them. If TP takes migration governance outside of the traditional 1951 CSR-rooted asylum apparatus, and if not deployed in a manner that is attuned to obligations of international law, including human rights law, a threat to human rights protection may be at play⁷⁴ as we shall now elaborate.

“At the same time, the discretionary power of States regarding aliens in general and refugees in particular is limited by customary and treaty law in several regards, in particular by the fundamental principle of non-refoulement and these limits also apply to temporary protection”⁷⁵.

Joan Fitzpatrick expressed the concern over states rushing to use temporary protection in the contexts of mass influxes, as “instituting a TP regime may involve a significant dilution in the standards of treatment under the 1951 Convention...states may engage with wishful thinking with respect to the prospects for rapid return and safe repatriation and may implement TP when ordinary refugee status remains feasible”⁷⁶.

Resorting to temporary protection may mean that there is withholding of full rights that a person would be due under full refugee status if they had the opportunity to seek this status, as is their right under the 1951 Refugee Convention regime. In this sense, *“refugee rights organizations fear that informal and discretionary TP may dislodge refugee protection from the realm of enforceable human rights”⁷⁷*. Therefore, if temporary protection is used as a way, on the one hand, to dilute the rights of displaced persons arriving to a country en-masse, and on the other hand is offered beyond serving its *“short-term strategy to secure the immediate*

⁷² Durieux (n 18).

⁷³ See for example, Ineli-Ciger, ‘Time to Activate the Temporary Protection Directive: Why the Directive Can Play a Key Role in Solving the Migration Crisis in Europe’ (n 19); Kalin (n 19).

⁷⁴ Fitzpatrick (n 24) 289.

⁷⁵ Kalin (n 19) 206.

⁷⁶ Fitzpatrick (n 24).

⁷⁷ *ibid* 280., emphasis added

*physical safety of refugees and a way station to more durable protection*⁷⁸” without a clear end to the temporary status and thus blocking the access to refugee status determination procedures in line with the 1951 Convention, then states run the risk violating the rights of beneficiaries of such statuses in line with the articles of the treaty.

In contrast to the arguments that TP necessarily dilutes the protection of the 1951 Refugee Convention and facilitates derogations where there is no explicit clause to do so, cases have also been made for the fact that Temporary Protection regimes could be implemented in line with international law and human rights standards. A proponent of Temporary Protection as a pragmatic and potentially rights-promoting solution to the processing of persons seeking refuge in mass influx situations is Meltem Ineli-Ciger. In a 2016 work, Ineli-Ciger flagged various frameworks that have given guidelines to states on how to implement TP in line with international law, and therein outlining “how states should regulate the rights and entitlements of temporarily protected persons”⁷⁹.

TP and 1951 CSR Derogation

Some authors argue that instituting Temporary Protection undermines the 1951 Refugee Convention, since states will often suspend refugee status determination (RSD), and there is no clear clause within the Refugee Convention that permits states to derogate from its obligations. The suspension of individual RSD procedures and the granting of only basic MST that does not match up to the treatment that refugee status holders would be accorded should they have had the opportunity to engage in the RSD process, to all TPBs, including those who would qualify as Convention refugees, is understood by some scholars to amount to a derogation of the CSR 1951 and an undermining of the Refugee Convention⁸⁰. There is significant debate over the extent to which this is permissible, as many argue that there is no explicit derogation clause in the 1951 Convention⁸¹, while other argue that Article 9 of the

⁷⁸ *ibid.*, emphasis added

⁷⁹ Meltem Ineli-Ciger, ‘A Temporary Protection Regime in Line with International Law: Utopia or Real Possibility?’ (2016) 18 *International Community Law Review* 278, 278.

⁸⁰ Para 15, Ineli-Ciger and Skordas (n 53).

⁸¹ Durieux (n 18).

Refugee Convention can be considered to hold such a clause and derogation is permissible⁸² or lying in the middle, that only a limited deviation from the Convention can be allowed⁸³.

One of the most interesting examinations of derogations has been conducted by Alice Edwards, who noted that “ implied derogation allowing for temporary protection in mass influx situations is now an accepted feature of the Convention regime”⁸⁴, for which she holds up the EU TP Directive as an example of such implied subsequent agreement. Ineli-Ciger and Skordas have noted that when you accept the permissibility of derogation and that signatories to the Convention can suspend their obligations to the CSR 1951, before making the judgement as to whether a particular regime undermines the Refugee Convention, one then needs to clarify when derogation can be justified, which obligations states can suspend, and until when – ie. every aspect of the regime needs to be examined, including but not limited to the rights and entitlements to be granted under the TP status to TP beneficiaries⁸⁵.

In availing of the scope of this thesis to focus in on a single aspect of the EU’s TP regime, the MSTs provided to TP beneficiaries, we can begin to build the scholarship on the extent to which this regime is in compliance with or derogates from the CSR-1951, according to the letter of the Directive, and even more importantly, according to *subsequent agreement*, as discussed by Alice Edwards⁸⁶. However, given that the assessment of the Derogation of the EU MSs by subsequent agreement would take a much longer timeframe for analysis, the short term and direct goal of this thesis is not to look at the debate from the perspective of whether the TP Directive’s TP regime is undermining the Refugee Convention as a whole, but rather whether it is specifically compliant with the Rights connected with the obligations that the TP Directive imposes on Member States towards persons enjoying temporary protection.

⁸² Edwards (n 62); U Davy, ‘Article 9 1951 Convention’ in A Zimmermann, F Machts and J Dorschner (eds), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary* (Oxford University Press 2011).

⁸³ Jean-Francois Durieux and Jane McAdam, ‘Non-Refoulement through Time: The Case for a Derogation Clause to the Refugee Convention in Mass Influx Emergencies’ in Anne F Bayefsky (ed), *Human Rights and Refugees, Internally Displaced Persons and Migrant Workers* (Martinus Nijhoff Publishers 2006) <<https://brill.com/search?q1=9789004144835>> accessed 2 November 2022.

⁸⁴ Edwards (n 62) 1.

⁸⁵ Para 19, Ineli-Ciger and Skordas (n 53).

⁸⁶ Edwards (n 62) 30–34.

Given that it is too early to assess the degree to which Member States of the EU are complying with their obligations regarding the end of TP and transition, for example, to Durable solutions, we will only be able to make a full assessment of the extent to which the TP Directive upholds or undermines the CSR 1951 in practice after three permissible years of TP status have elapsed – ie, after the 4th of March 2025. However, in order to build a body of work based on longer term assessment, it is now important to assess how the initially active elements of the TP Directive regime are being implemented. Moreover, whether one understands from the side of the Refugee Convention itself whether derogation is permitted or not, states are bound by international obligations under treaty and customary law that are of importance, not necessarily to the overall integrity of the refugee regime, but to individuals and society.

As noted by Alborzi’s evaluation of the effectiveness of international law for the protection of Iraqi refugees, ‘[h]uman rights could be both relevant and effective in dealing with refugees, if all states were scrupulous in living up to their provisions’⁸⁷. However, in this non-EU context, Alborzi surmised that there are persistent grey areas between improved implementation and advancing legal prescriptions – arguing that they revolved around three gaps; (1) normative gaps, (2) applicability gaps and (3) ratification gaps. These were identified with reference to the CSR-1951 and international human rights and humanitarian law treaties but in the EU context, given the positive analyses of past scholars on the broadly positive compliance of the TP MSTs with international norms⁸⁸ that the presence of applicable norms may not be so much the issue as the implementation of such.

Transposition of the TP Directive in Europe

In terms of the effectiveness prior to activation of the TP Directive, observations of the Odysseus Network report⁸⁹ on the transposition of the TP Directive by Member States carried out in 2007 has revealed that there was a considerable diversity on the transposition of some

⁸⁷ Alborzi (n 43) 258.

⁸⁸ Kalin (n 19); Kerber (n 36).

⁸⁹ Gregor Noll and Markus Gunneflo, ‘Directive 2001/55 on Temporary Protection: Synthesis Report’ (Academic Network for Legal Studies on Immigration and Asylum in Europe 2007) <<https://odysseus-network.eu/wp-content/uploads/2015/03/2001-55-Temporary-Protection-Synthesis.pdf>> accessed 27 May 2022.

aspects of the TP Directive into Member State legislation. While no systematic and EU-wide study has been carried out on the experiences and practical access to the minimum standards of treatment contained in the TP Directive has been carried out, some limited studies have looked at a few select countries.

Given the diversity of legal systems and unique legal character of any state, the best way to ascertain an anticipated legal barrier from the literature may be to look at the specific legal context of that state. Given the lack of prior activation of the directive, there is a limited extent to which we can understand the legal and jurisprudential barriers that may emerge without conducting an analysis of the TP Directive ourselves.

Speaking of caveats in the 1998 Proposal for the TP Directive, provisions drafted for implementing several TP obligations in line with national law (namely those articles concerning residence permits, family reunification and employment and social security) were flagged in those early drafting days by Fitzpatrick as having the potential to “undermine the objective of uniform treatment if adopted by the Council”⁹⁰.

TP and the MSTs in Practice

What standard of treatment is to be afforded?

Hypotheses on the expected treatment of TPBs may be created based on past application of EU CEAS law to asylum seekers and refugee and determining, as Walter Kalin did, that the TPB may lie somewhere in the middle of the two in terms of protection to be provided⁹¹. As noted by Koser and Black concerning the rights of TPBs compared to other categories of migrants, and those within the TPB status category itself, that consideration would be required for whether and how rights would be distinguished from asylum seekers and refugees, and urged that the rights should be consistently applied across those with TP status⁹². Fitzpatrick considered it useful to compare the treatment of TPBs to that of either domestic populations or those to be granted to refugees under the CSR1951, noting that

⁹⁰ Fitzpatrick (n 24) 303.

⁹¹ Kalin (n 19) 225.

⁹² Khalid Koser and Richard Black, ‘Limits to Harmonization: The Temporary Protection of Refugees in the European Union’ (1999) 37 *International Migration* 521, 536.

“[l]iving conditions for TP recipients cannot be set above the level enjoyed by the citizens of the state of refuge, but any adverse treatment must be proportional to a legitimate objective”⁹³.

Given that the standards of treatment to be afforded to TP Beneficiaries were previously unclear, but are now concretised in the TP Directive, it is hard to establish in its own right what expected experiences might be prior to the examination of their unique situation. However, looking at the experiences of past groups in between which their treatment is expected to fall may provide a useful starting point. Therefore examination is warranted of (1) the history of the CEAS and human rights challenges that existed in the implementation of other formalised/harmonised regimes (2) the challenges for human rights fulfilment experienced in the implementation of the national-level non-harmonised temporary protection regimes that were in place in some countries before (Ireland included) and (3) the challenges that have existed in the implementation of other TP regimes in other regions, that are modelled on/inspired by the EU regime (eg. the Turkish/Syrian regime), looking in each case at the particular situations of women and children, may be illusory for this analysis.

Some argue that, in line with the progressive stages of the CSR-1951, the quality of treatment under a TP status should improve over time, depending on the evolving needs of the situation. Prior to the drawing up of the TP Directive, Kalin suggested that TP beneficiaries ‘should *progressively* enjoy the social, economic, and cultural rights guaranteed by the Convention as their stay is prolonged’⁹⁴. While he envisioned that access to employment, for example, may be restricted in the first instance, it would be extended over time. *Following* the codification of the TP Directive in 2001, in his initial assessment of the Directive’s consistency with international refugee and human rights law Kalin drew mixed conclusions. He anticipated that it would be less of a legitimate aim to deny education to children than it would be to deny access to the labour market, although over time the need to grant access to the labour market may increase for the sake of the individual’s psychological wellbeing and the balance of the benefit between the individual and the state who is in an economic crisis shifts. At the end of the day, it has been argued by scholars that it is important to determine

⁹³ Fitzpatrick (n 24) 304.

⁹⁴ *ibid.*, emphasis added

“what is temporary about temporary protection”⁹⁵, and from there understand whether the status is a precursor to more permanent refugee or other status, or whether solutions need to be orientated more towards re-integration, however, for states pursuing policies to cater for the rights of TPBs, Koser and Black recommended that it makes little sense simply to orient towards a single solution⁹⁶. All of this is wrapped up in the idea that ESCRs can be offered or withheld as a conscious strategy of the state to *promote* or *deter* integration of the arriving population⁹⁷.

While practices on which rights were extended to TPBs under un-harmonised national regimes throughout Europe in the 1990s, it may then be unsurprising that a unifying feature identified by Durieux has been the withholding of rights in areas with the highest integration potential.⁹⁸ However, if TP provides lower standards of treatment than the 1951 CSR, it has been noted to cause a host of issues – including *psychological uncertainty* for its beneficiaries⁹⁹.

Past Practices in Implementation of EU/TP regimes

In order to move from the abstract to the concrete past experiences of persons seeking protection, we may consider that without the activation of the TP Directive, the situation that would face the women and children fleeing Ukraine to the EU at present is that they would be arriving as asylum seekers and be attempting to apply for RSD immediately. In this respect it is important to note that the history of the reception conditions and access to socio-economic rights of asylum seekers across the various domestic legal systems of EU Member States has been “to deny asylum seekers access to mainstream social supports that are considered fundamental to ensuring all those within a state can enjoy a minimum, if basic, standard of living”¹⁰⁰, which has been considered by academics to lower the socio-economic rights of

⁹⁵ Koser and Black (n 92) 536.

⁹⁶ *ibid.*

⁹⁷ Durieux (n 18) 236.

⁹⁸ *ibid.*

⁹⁹ Fitzpatrick (n 24) 152.

¹⁰⁰ Liam Thornton, ‘Law, Dignity and Socio-Economic Rights: The Case of Asylum Seekers in Europe’ (2014) 24–25 <<http://dx.doi.org/10.2139/ssrn.2715957>>.

asylum seekers, and represent a failure of international and European human rights norms to protect against differentiation that is condemned by these standards¹⁰¹.

Experiences of Women and Children

Based on the above explorations of the treatment to afforded to TPBs as a whole, and in order to be able to frame the gender- and age-specific challenges that we may expect for TPBs in the implementation of the Directive, we can then turn to look at the past literature on the treatment of these cohorts of asylum seekers and refugees alike. It was flagged as early as the 1980s by both the European Parliament and the UNHCR in their respective resolutions that refugee women face specific problems¹⁰².

1. Experiences of Reception

The Frances Webber has flagged the long history of battles for fair treatment of asylum seekers, refugees and other migrants' rights in the UK, in so doing seeking to preserve the universality of human rights and counter the tendency of the British legal and governance systems to pursue exclusionary policies and create obstacles to justice for these groups¹⁰³. By the 1980s and 1990s in the UK, medical care, social housing and social welfare had become restricted for asylum seekers¹⁰⁴.

The documented reception conditions facing asylum seekers and refugees in past studies often reveals “that there are considerable disparities among EU member states. In some states, conditions are far from ‘dignified’”¹⁰⁵. Rather, policies subject asylum seekers to undignified and unsanitary living conditions”, and there may be restrictions on access to

¹⁰¹ Liam Thornton, ‘Law, Dignity and Socio-Economic Rights: The Case of Asylum Seekers in Europe’ (2014) 25 <<http://dx.doi.org/10.2139/ssrn.2715957>>.

¹⁰² Jacqueline Bhabha, ‘Demography and Rights: Women, Children and Access to Asylum’ (2004) 16 *International Journal of Refugee Law* 227, 30.

¹⁰³ F Webber, *Borderline Justice: The Fight for Refugee and Migrant Rights* (Pluto Press 2012).

¹⁰⁴ *ibid* 87–89.

¹⁰⁵ Gerard (n 14) 73.

housing and rights to legal aid. Forced destitution of migrants has been argued to be a strategy of certain states operating under a securitised logic¹⁰⁶.

Connecting with the debates on the failure to activate the TP Directive in the past two decades is the “securitisation of migration” literature. There have been identified tensions in the legal frameworks for refugee protection compared to that of securitisation of migration, the tension of particular note here being that between the rights and entitlements set out for displaced persons in international human rights treaties, compared to the diluted rights and entitlements that can be considered to partially underpin a securitisation approach. As discussed by Hathaway¹⁰⁷ this, the *refugee* protection framework offers particular rights and entitlements to asylum seekers and refugees during reception, but if states pursuing a securitised approach and diluting the rights to be extended to the persons seeking refuge on their territory, there are gendered considerations to be borne in mind¹⁰⁷.

Gerard has noted that the statistics point to the fact that MSs have expressed a preference for granting subsidiary protection or un-harmonised temporary protection. Picking up on the trend in refugee protection in the EU towards the codification of more temporary, ad-hoc and managerial forms of legal statuses¹⁰⁸ such as TP, which has been discussed in previous sections on the managerial turn in migration management, the worry over a potential dilution in rights and restriction in measures afforded to such persons being granted such statuses, warrants a gendered analysis according to Alison Gerard. Noting crucially that...

“[t]he increased use of forms of complementary protection gives rise to questions about the gendered impact of this dilution of legal protections. Seeking asylum is a challenge to illegality, but complementary forms of protection are diluted and partial...the gendered dimension of the impact of diluted legal protection warrants further examination”¹⁰⁹

¹⁰⁶ Webber (n 103).

¹⁰⁷ Gerard (n 14) 73.

¹⁰⁸ J McAdam, ‘The European Union Qualification Directive: The Creation of a Subsidiary Protection Regime’ (2005) 17 International Journal of Refugee Law 461.

¹⁰⁹ Gerard (n 14) 76.

Alison Gerard has noted from a particular gendered lens that any restriction to women's access to rights and entitlements during reception has a considerable chance of having a wide-reaching impact on women. Compared to males in the same situations, allowances may have to stretch further to care for families to whom they have caring responsibilities. Women may also face structural challenges in accessing employment or education, and if based on the restrictions of their status, they manage to secure such access, they may be clustered in low-skills areas of employment, and/or face challenges worsened by lack of available basic childcare¹¹⁰

The reduction of socioeconomic benefits extended towards women asylum seekers and refugees has been flagged as a critical area of concern in past literature on this topic in its own right¹¹¹, but is additionally critical to explore for the understanding of a the ESCR-compliance of the MSTs of the TP Directive for women and children. This brings us back to the questions raised a moment ago on the quality of protection under TP status, and the degree to which it may be anticipated to change over time or duration of stay of the recipient. This will be a key area to watch out for in the analysis of the implementation for women fleeing Ukraine.

Drawing from studies that have examined the implementation of TP regimes *outside* of the EU's jurisdiction may give us an indication of the kind of treatment to be anticipated in the implementation of the EU's TP Directive. We may look at this literature in terms of the extent to which the rights of TP beneficiaries, in particular women and children, have been upheld in these other regimes, in order to identify potential opportunities and challenges in the EU TPD's implementation that will help to answer the related third sub-research question of this thesis.

The Syrian temporary protection regime in Turkey offers an important point of note, Firstly, this regime has been designed to be similar in content to the EU's TP Directive in terms of its

¹¹⁰ *ibid* 75.

¹¹¹ Alice Bloch and Milena Chimienti, 'Irregular Migration in a Globalising World' (2011) 34 *Ethnic and Racial Studies* 1271; Mary Bosworth, Andriani Fili and Sharon Pickering, 'Women and Border Policing at the Edges of Europe' (2018) 44 *Journal of Ethnic and Migration Studies* 2182; Harmit Athwal and Jenny Bourne, 'Driven to Despair: Asylum Deaths in the UK' (2007) 48 *Race and Class* 106.

overlap with international human rights law and convergence with EU standards¹¹². Of huge relevance to the analysis of this paper, particularly concerning Article 13(4) of the Directive for persons with ‘special needs’, a key issue that faced Turkish authorities that would later impact the experiences of reception conditions was the registration of vulnerability data. Owing to inadequacies in the collection of vulnerability data, the Turkish authorities were still dealing with gaps in the protection framework five years on, and refugees with vulnerabilities were not necessarily being adequately identified, guaranteed access to the rights they were due, or planned for accurately¹¹³.

2. Experiences of Borders/Registration

This brings us aptly to the next and closely linked point of registration experiences. Considerable amount of feminist and critical legal scholarship has focused on the challenges facing women in the phases of irregularity that pre-date their entrance into asylum seeker status. Studies on asylum seeking under a securitised logic have outlined the almost impossible challenge of obtaining visas to enter legally posed to asylum seekers before arrival in the state to be able to start their asylum claim¹¹⁴.

Policing and border management being conducted in exclusionary ways considered often in the literature as deterrence strategies is a manifestation of the state’s securitised approach to immigration¹¹⁵. Women’s experiences of securitised borders and registration/ status determination processes have been flagged as additionally perilous when temporary protection or other complementary regimes do not extend certain rights of the CSR 1951. For example, it has been noted in Australia where family reunification is not permitted under TP, trends see families making dangerous journeys together with women and children

¹¹² Yigit Kader, ‘Registration Insights from Turkey’s Temporary Protection Experience’ (*Asile*, 4 July 2022) <<https://www.asileproject.eu/registration-insights-from-turkeys-temporary-protection-experience/>> accessed 24 July 2022.

¹¹³ *ibid.*

¹¹⁴ Athwal and Bourne (n 111) 106.

¹¹⁵ Bosworth, Fili and Pickering (n 111) 2182.

accompanying male relatives¹¹⁶. Moreover, the role played by identity-based stereotypes in border spaces has been noted in past studies, seeing both gender and ethnicity in particular having been flagged as playing roles in border guards' attitudes and discretion towards applicants¹¹⁷. 'Borders' in this sense of status-determining spaces have been seen in past scholarship as a factor that increases the vulnerability of asylum-seeking women¹¹⁸.

3. Experiences of Status Determination – Procedural failings in the Refugee Protection System for Women

Another key area emphasised in the feminist and critical legal scholarship is the issue of exclusion of women from refugee status and associated protection because of diminished importance attributed to and lack of comprehension of gender-related persecution¹¹⁹. While gender is not a specific ground for seeking protection under the CSR 1951, throughout practice and according to non-binding Gender Guidelines for decision makers, issued by the UNHCR and several states, interpretation and recognition of gender-related persecution has been enhanced, albeit without being accompanied by formal legal backing¹²⁰. The challenge comes from having the onus of proof that gender is a grounds for states to respect non-refoulement, and the lack of automatic consideration of this by the CSR 1951-rooted regime¹²¹ is a challenge and flaw.

“The consequences of these explicit omissions have been two-fold: first, they established the masculine experience as the norm of IRLP; and second, by doing so, they relegated women and women’s experiences to second-class status. This played

¹¹⁶ Sharon Pickering, *Refugees and State Crime* (Federation Press 2005).

¹¹⁷ Bosworth, Fili and Pickering (n 111) 2192.

¹¹⁸ H Crawley, 'Women and Refugee Status: Beyond the Public/Private Dichotomy in UK Asylum Policy' in D Indra (ed), *Engendering Forced Migration: Theory and Practice* (Berghahn 1999); Leanne McKay, 'Women Asylum Seekers in Australia: Discrimination and the Migration Legislation Amendment Act [No 6] 2001(CTH)' (2003) 4 Melbourne Journal of International Law 439; Bosworth, Fili and Pickering (n 111) 2182.

¹¹⁹ Pickering (n 116); Gerard (n 14) 64.

¹²⁰ Gerard (n 14) 64.

¹²¹ Edwards (n 64) 23; Anderson and Foster (n 13).

out in the difficulties women faced in being recognized as refugees in the first place and, subsequently, in refugee women's access to rights, services, and assistance”¹²²

Given that TP does not require people to give testimonies or prove their status – so in a sense it may prove to be somewhat gender-blind in terms of access to the status and associated rights. So certain challenges may be avoided, such as women failing to be interviewed in their own right without their male partner, and difficulties in explaining gender-related grounds for protection; such as hesitancy in speaking about SGBV and a shortage of female translators meaning women having to present via men may also be avoided.¹²³

It may then be the case that in the implementation of the group-based TP Directive status in the Ukraine response in the EU, rather than there being an increased potential for human rights concern for women as a whole, many of the typically “gendered” issues of international protection/RSD may be taken off the table.

Specific to Europe – Treatment of Irregular Migrants

From the studies that had already been conducted on the treatment of TPBs under the newly activated TP Directive during the first three months of implementation, we could understand that treatment generally for TPBs has been mixed – with the most-cited challenge being that of ethnic origin, only compounded by the ample room that has been left by the Council Decision not to apply the TP measure to non-Ukrainian nationals¹²⁴.

As has previously been flagged in this thesis, one of the two aims that the TP Directive pursues is that of harmonising the content and duration of temporary protection granted by Member States in ‘mass influx’ emergency contexts to displaced persons arriving on their lands. Over the past two decades while the Directive has remained a document to only be assessed on paper, scholars and commentators have been broadly positive about the MST aspect of the Directive’s aims, albeit noting a few potential areas of ambiguity that remained.

¹²² Edwards (n 64) 23.

¹²³ Gerard (n 14) 64.

¹²⁴ Carrera and others (n 16) 32.

Although Durieux considers temporary protection “too amorphous a concept’ to advance, fill the gaps in, and complement international refugee law regime rooted in the 1951 Convention, he has acknowledged the importance of the TP Directive’s role in clarifying the ambiguities that had been rife in state practices throughout the 1990s in Europe. Of particular note to the argument of this thesis is the observation that the Directive depicts TP as a “prelude to the ‘normal’ operation of the 1951 Convention”¹²⁵. Noting that complying with high standards may be hard for even wealthy EU member states to obtain, he notes that states “can hardly object, since their domestic legislations are, as a rule, well ahead of Convention standards as regards the rights of lawful foreign residents in general; and human rights law forbids them to discriminate against a class of aliens on the basis of nationality”¹²⁶. This point has been picked up on in the CEPS study on the implementation of the TP Directive in first months following activation¹²⁷.

Now that we have looked at the wider literature on temporary protection and its relationship to the international refugee and human rights law regimes, we can see that there is a solid opening for taking a rights-based analysis of the treatment of women and children TP beneficiaries under the TP Directive, as is being implemented in Ireland. This line of research is warranted not only to fill the academic gap whereby there has been little research to date from a cohort-specific perspective of the unique challenges that may face TP beneficiaries, as has been done more extensively in the case of the literature on refugees and asylum seekers who are already in the state system for seeking international protection.

Now we must turn to elaborate the way in which this analysis will be carried out, both in terms of data collection and analysis of said data in Chapter 3, before we go into the assessment of the human rights compliance of the situations uncovered in practice in Chapter 5.

¹²⁵ Durieux (n 18) 245.

¹²⁶ *ibid.*

¹²⁷ Carrera and others (n 16).

Chapter 3: Data and Methodology

Mixed-method, qualitative, socio-legal research was conducted for the purposes of this thesis in order to assess the extent to which the human rights of women and children fleeing the Ukraine to Ireland are being upheld under the TP Directive's Chapter III provisions. The methods drawn upon included the following. Firstly, a literature review conducted in order to assess the state of knowledge on human rights and temporary protection already extant in the field and to understand the extent to which considerations had been given to the rights in Reception contexts of women and children asylum seekers, refugees and TPBs in Europe and other jurisdictions (see Chapter 2). This facilitated the development of a framework for analysis of the data collected, in Chapter 5. Secondly, semi-structured interviews were carried out with expert stakeholders from academia and NGOs/IOs involved in the implementation of the Directive in Ireland. At the same time, text-based analysis of the Temporary Protection Directive and European Commission's Operational Guidelines for implementation of the Directive was carried out, alongside analysis of the Irish International Protection Act (2015) for its transposition of the TP Directive in Section 60 therein, and other relevant legal and policy instruments and official interpretative texts at EU and National level.

While the literature review and theoretical framework, as indicated above, are well documented elsewhere in the thesis, we will now elaborate the justification and mode of conduct for the interviews carried out.

Description of the Study's Scope

Irish Case Study

The benefits of performing case study research to understand the social world is well documented¹²⁸, and in particular a single case-country study can be highly beneficial for

¹²⁸ John Gerring, *Case Study Research: Principles and Practices* (Cambridge University Press 2007).

understanding and attempting to explain the implications of new phenomena¹²⁹ such as the activation of the TP Directive.

By diving in-depth into an analysis of the way in which the TP Directive has been implemented in Ireland, and the challenges and opportunities that are being experienced in the rollout of the Chapter III MST obligations, we can begin to understand the extent to which the Directive is succeeding in delivering a harmonised level of rights to the beneficiaries of its protection. It is one thing to have analyses completed of the extent to which the norms of the Directive have been successfully transposed into domestic legislation by EU Member States. However now that it has been activated, we must take that analysis a step further to understand the extent to which the TP Directive can be considered to be meaningfully upholding the human rights of persons, especially women and children, fleeing from Ukraine.

Description of the Research Design

As the research question that this thesis seeks to address is evaluative in nature, this thesis has drawn on evaluative methods¹³⁰ as shall now be described below:

Study Population

Table 3.1: Semi -Structured Interview Participants and Characteristics

	Participant	Position	Organisation
European Migration Law and Policy Experts			
1	Prof. Sergio Carrera	Senior Research Fellow and Head of Justice and Home Affairs Unit	Centre for European and Policy Studies (CEPS)
2	TP Expert	Academic Specialising in Temporary Protection,	-

¹²⁹ Alexander L George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (MIT Press 2005).

¹³⁰ Alborzi (n 43); Alan Bryman, *Social Research Methods* (4th edn, Oxford University Press 2012).

		including the EU TP Directive	
3	Prof. Hildegard Schneider	Professor of Law, EU Migration Law	Maastricht University
4	Dr. Evangelia (Lilian) Tsourdi	Assistant Professor of Law, EU Migration Law	Maastricht University
Irish Stakeholder Participants			
NGO Experts (Key Actors)			
5	Claire Mackey	Gateway Project Coordinator	Nasc, Migrant and Refugee Rights Centre, Cork, Ireland
6	Ahmed Hassan Mohammad	Community Sponsorship Support Worker	Doras Luiminí, Limerick, Ireland
7	Tanya Ward	CEO	Children's Rights Alliance, Dublin, Ireland (nationwide)
8	Collette O'Regan	Senior Training and Advocacy Coordinator	LGBT Ireland, Dublin, Ireland (nationwide)
9	IO Representative	-	An IO Providing Technical Assistance to the DoJ (Nationwide)
Independent Experts			
10	Stephen Kirwan	Partner specialising in Immigration and International Law	KOD Lyons Solicitors, Dublin, Ireland
11	Dr. Gillian Wiley	Assistant Professor in International Peace Studies, expertise in Gender, GBV, Human Trafficking and Migration	Trinity College Dublin (TCD), Dublin, Ireland.

An Underpinning Intersectionality Logic

The choice of an intersectionality lens for this thesis's analytical approach was made as a result of past trends and literature in feminist legal theory. As a term coined by Kimberlé Crenshaw in 1989, intersectionality is a concept which was designed to challenge the homogenisation and *essentialisation* of women's identities and experiences¹³¹. Recognising that different aspects of a person's identity can produce different advantages and disadvantages for different people at various times and in diverse contexts, it seeks to facilitate the analysis of multiple experiences¹³². It was important that an intersectional sensitivity informed the sample selection and interview design of this thesis, to account for diverse characteristics of women and children, as in the past there has been a tendency of both data collection and research not to disaggregate data, but instead conflate women and children¹³³. So taking advantage of a slightly more comprehensive and gender-disaggregated collection of data that is occurring at present in the Ukraine response, and also availing of the opportunity to select organisations that work with TPBs of diverse identities, asking them questions to disaggregate the data along the way was of beneficial use to the process.

Within the scoping nature of this thesis, this thesis only wishes to deploy intersectionality in a somewhat simplistic way, to be able to identify the potential intersectional identities of those who may not be enjoying equal access and enjoyments of the minimum standards of treatment which ought to be afforded to all TP beneficiaries. Therefore, the critiques of Nash (2008) and others who have recognised the lack of a 'defined intersectional methodology' do not undermine the validity of this methodological and analytical choice. It is furthermore important, for any conclusions that will be drawn on the experiences of women examined in this study so as to avoid a culturally relativist leaning that we do not simply adopt a homogenous understanding of women's experiences, but rather remain sensitive to the fact that the gender construct varies across times, space and socio-political contexts. Mohanty's

¹³¹ Dina Taha, 'Intersectionality and Other Critical Approaches in Refugee Research An Annotated Bibliography' (2019) 3 <<https://carleton.ca/lern/2019/intersectionality-and-other-critical-approaches-in-refugee-research-an-annotated-bibliography/>>.

¹³² *ibid.*

¹³³ Bhabha (n 102); Thomas Spijkerboer, *Gender and Refugee Status* (Routledge 2017).

caution¹³⁴ in this regard was heeded by ensuring that questions were asked of the interviewees that caused them to reflect on the diversity of the TPB women's and children's identities (see interview guides in annexes 2 and 3).

This is important also because of evidence of discriminatory approaches that have been revealed in the implementation of the TP Directive to date¹³⁵. In light of the varied experiences of persons in the initial stages of border crossing and access to registration, it can be considered timely, in the assessment of access to the minimum standards of treatment and the human rights compliance of this stage of the TP Directive's Implementation, to centre in the methodology and analysis the fact that women and the children are not homogenous groups with uniform needs.

Data Collection: Sources and Methods

Document analysis

In order to carry out a text-based analysis and interpretation of the minimum standards of treatment to be afforded to TPBs fleeing Ukraine to the EU, and Ireland specifically, the documents outlined in Table 3.2 were consulted.

Table 3.2 Corpus Documents for Text-Based analysis of the MST

1	Council Directive 2001/55/EC (TP Directive)
2	Council Implementing Decision (EU) 2022/382
3	Operational Guidelines 2022/C 126 1/01
4	FAQs on Interpretation
5	FAQs on UAMs
6	International Protection Act (2015) (Ireland)

Moreover, updated text-based information about implementation of the Directive in practice, both before and after the interviews to be described next, was gathered by consulting media sources online. This was done by setting up 'Google Alerts' for the following key terms:

¹³⁴ Chandra Talpade Mohanty, *Feminism Without Borders* (Duke University Press 2003).

¹³⁵ Carrera and others (n 16).

- Ukraine AND "EU response" AND migration
- temporary protection directive
- temporary protection directive AND Ireland

Semi-Structured Expert Interviews

Semi-structured expert interviews were carried out with the above-identified experts listed in table 3.1 with two different epistemological functions at different stages of the research process. “As Meuser and Nagel (2009) describe, the expert interview as a qualitative interview based on a topical guide, focusing on the knowledge of the expert, which is broadly characterized as specific knowledge in a certain field of action”¹³⁶.

Exploratory Interviews with EU Experts

The first purpose of using semi-structured interviews in this research stems overall from the novelty of the phenomenon under examination and therefore lack of available scholarship in the area. One of the strengths of semi-structured interviewing is its ability to allow the collection of “new, exploratory data related to a research topic”¹³⁷ from key informants who have personal experiences of a topic of interest. concerning the challenges and opportunities *emerging* in the national level implementation of the Directive, a particular advantage of the expert interviews with the EU academics in this respect was the efficiency they could offer to the generation of initial hypotheses¹³⁸. The expert interviews were also important for understanding the potential generalisability of conclusions emerging at the case study level of analysis.

¹³⁶ Stefanie Doring, “The Problem-Centred Expert Interview”. Combining Qualitative Interviewing Approaches for Investigating Implicit Expert Knowledge’ (2021) 24 International Journal of Social Research Methodology 265, 265.

¹³⁷ Melissa DeJonckheere and Lisa M Vaughn, ‘Semistructured Interviewing in Primary Care Research: A Balance of Relationship and Rigour. Fam Med Com Health 2019;7:E000057. Doi:10.1136/ Fmch-2018-000057’ [2019] Family Medicine and Community Health 1, 2.

¹³⁸ Alexander Bogner, Beate Littig and Wolfgang Menz, ‘Generating Qualitative Data with Experts and Elites’ in Uwe Flick (ed), *The SAGE Handbook of Qualitative Data Collection* (SAGE 2018) 653.

Systematising Interviews with National-Level Experts

Systematising interviews¹³⁹, which had the goal of gaining exclusive knowledge from the experts at national level to support the answering of the thesis's research questions by creating complete information on the MSTs in their implementation, were subsequently carried out, aiming to collect complete information on the experiences of TPB women and children fleeing to Ireland of the implementation of the TP Directive. This was important, firstly, for data generation, given the limited publicly-available data on the facts of relevance in this regard to the research question. Secondly, by engaging in a second level of qualitative interviews it was also possible to triangulate the non-peer reviewed data sources on the Directive's implementation¹⁴⁰. By using the interviews to test the validity of data found elsewhere, these academics and stakeholders could confirm the extent to which topics, discovered for example via news articles, could be considered valid and constitute a challenge or an opportunity for the rights of women and children in the Ukraine displacement to Ireland.

While data collection and validation was the first aim, questions on attitudes and opinions were also included to be able to eventually form some more up-to-date theory-relevant reflections and to assess the positionality of the researcher in the academic debate and, thus, any de-biasing was avoided in preference to the understanding that any interpretative observations were coming from a particular viewpoint. A strength of semi-structured interviews identified by De Jonckheere and Vaughn is that qualitative interviews can be used to probe the attitudes and opinions of interviewees on a given topic¹⁴¹, and this strength was mobilised to achieve the intended ends of this research.

Selection of Interviewees

The stakeholders interviewed were consulted for their intimate knowledge of the implementation of the TP Directive. Taking the definition proposed by Glaser and Laudel

¹³⁹ *ibid* 659.

¹⁴⁰ DeJonckheere and Vaughn (n 137) 2.

¹⁴¹ *ibid*.

(2009) of “‘experts’ as people who possess special knowledge on a social phenomenon which the interviewer is interested in, and expert interviews as a specific method for collecting data about this social phenomenon”¹⁴², and that of Meuser and Nagel (1991), who defined experts in the more elite-driven sense as “persons who are responsible for the development, implementation, or control of a solution, or persons who have privileged access to people or decision-making processes”¹⁴³ the stakeholders were selected based on a mapping of those involved in the ‘Ukraine Response’ in Ireland.

As per the mapping exercise, the researcher extended invitations to interview various kinds of implementation stakeholders, governmental as well as non-governmental. However, the civil servants and TDs of the pertinent governmental departments contacted could not participate, so there has been a reliance on non-governmental sources. An international organisation providing technical assistance to the DoJ however could participate and was able to fill many of the informational gaps on the registration for TP procedures, and there has been widespread recognition of the involvement of NGOs in the implementation of many ESCR/Chapter III entitlements¹⁴⁴, therefore they offer a holistic and third-party account of government actions.

Of particular note is the listing of all the community-based organisations and NGOs who signed the letter to An Taoiseach (the Irish Prime Minister) on the 8th of April 2022, self-describing as “groups fully engaged in the settlement and integration process”¹⁴⁵, and seeking “a meeting to discuss the coordination of national and local responses, and the role of civil society and community responses”. These groups were then systematically contacted by the researcher, chosen for the fact that, by virtue of their involvement with settlement and integration and direct contact with the TPB status holders and arrivals, their knowledge of the experiences of the target group of this research would be the most holistic.

¹⁴² Jochen Glaser and Grit Laudel, ‘On Interviewing “Good” and “Bad” Experts’ in Alexander Bogner, Beate Littig and Wolfgang Menz (eds), *Interviewing Experts* (Palgrave Macmillan) 117.

¹⁴³ Doringe (n 136) 267.

¹⁴⁴ Carrera and others (n 16) 7.

¹⁴⁵ Doringe (n 136) 276.

Interview Questionnaire

Topical guides (see interview questionnaires in the appendices) consisting of a comprehensive list of questions for the academic experts on the TP Directive, particularly with regard to the Chapter III MST obligations, were developed based on the key themes that emerged in the literature review in Chapter 2 and the initial analysis of the corpus documents (Table 3.2). The questions for NGO and IO personnel on the implementation of rights were inspired by both the analytical framework described in Chapter 4 and particularly the survey questionnaires developed by various UN treaty bodies concerned with the rights selected for analysis. These questions were adapted to suit the overlap with the minimum requirements outlined in the TP Directive under Articles 9-16.

Conducting of Interviews

While the interviews were structured by the questions outlined in Appendices II and III, when it comes to semi-structured interviewing, in order to obtain quality data, the interview was not restricted by the order nor explicit content of the questions¹⁴⁶. Rather, it was allowed to unfold in an iterative and interactive way, with active engagement on the part of the interviewer to probe the topics that the interviewee was raising. This active engagement was made possible by having a rigorous understanding of the state of knowledge in the field as available in already published material of relevance to the question, and through thorough familiarisation with the interview guide prior to commencing each interview.

All but one interviewee consented to being recorded, so 11 recordings were taken via Otter.ai transcription software on the 10 Zoom-based interviews, and in the one in-person interview, Otter.ai was used on a smart device. Recordings allowed for the most comprehensive familiarisation with the explicit and implicit knowledge shared by the experts, and for the identification of interpretative knowledge on top of technical and procedural facts that were transcribed by hand. Listening back to recordings after in the completion of the transcripts generated initially by Otter.ai and then corrected manually by the researcher allowed for the

¹⁴⁶ DeJonckheere and Vaughn (n 137) 5.

greatest familiarity of the researcher with the material, and for picking up on previously unidentified points of note, for example particularly from the exploratory interviews following the completion of the full set of 11.

Data Analysis

While the main fruits and end points of data analysis will be flagged in Chapter 5, we must now note that data analysis started before the interviews, as the areas of the TP Directive of greatest concern for the standards of treatment and ESCRs of migrant women were identified based on past literature¹⁴⁷, precedent in other jurisdictions and The data analysis was conducted in a primarily inductive manner. Atlas.ti software was used to carry out successive rounds of interview coding in the analysis of the interview data collected. This allowed the answering of the third sub-research question of this thesis, concerning the challenges and opportunities to implementing the Chapter III obligations of the TP Directive that may be emerging at Member State-level. Subsequently, an analysis of the human rights frameworks of applicable relevance were identified via literature review of human rights doctrine and sources of relevance to answer the second research question. A brief overview of the full coding process is below:

- Initial transcription and coding of interviews, as soon as interview is completed
- Follow-up on issues identified in literature and relevant media/stakeholder reports/statistical offices
- Re-coding and refining codes on most pertinent human rights topics as identified via frequency statistic
- Re-mapping of most pertinent rights for Article of greatest relevance
- Determination of the current situation and avenues for redress under the TP Directive for women and children beneficiaries in achieving their HRs

Limitations and How to Address Them

¹⁴⁷ Of particular support in this sense were the following works: Skordas (n 39); Kerber (n 36); Kalin (n 19).

Indirectly Reported Experience of MST

While particularly with regard to the NGO interviews, the interviewees themselves were subjects of the research (ie. actors involved in the implementation of the Directive, thus forming part of the institutional landscape under analysis) . However, it meant that one had to rely on reported experience to understand the issues around access to and experience of the MSTs by women and children also from the reports of the experts. Therefore, while interviews were consciously chosen for this specific study for efficiency and generalisability and access reasons, the consequent lack of TP beneficiaries' voices has inevitably missed representing the full range of potential human rights challenges faced in the implementation of the TP Directive. This is particularly important from a critical feminist perspective – the tendency of certain sensitive women's issues to be made invisible, particularly those of a more culturally taboo and covert nature.¹⁴⁸ This warrants further study when the systems of response and implementation have had some chance to adapt to the immediate crisis circumstances and it may be appropriate to engage with TPBs directly.

Access and Availability Challenge to Comprehensive Sample

A significant challenge for this research, and one which is flagged clearly in the literature on expert interviews, was that of access to the experts¹⁴⁹. Despite the researcher's systematic contacting of those agencies and actors mapped for the analysis, noteworthy stakeholders were unavailable, and the oft-cited challenges was surely compounded by the crisis nature of the situation being dealt with by the actors in question. To overcome this availability limitation, any available publications of the NGOs and IOs which have been releasing semi-regular updates/briefings on their analysis of the unfolding situation were consulted in the document analysis section. Concerning access, on this point, the researcher's prior work experience in the NGO space on migration, as well as academic connections, must be noted as a network advantage and one which facilitated greater access to information from these sources. To overcome issues of reputational access at the EU-expert level, the attention of a number of relevant actors and experts was solicited by the supervisor of this research. It is with gratitude the researcher was able to make a number of those connections. Other EU-

¹⁴⁸ Bryman (n 130) 410–411.

¹⁴⁹ Bogner, Littig and Menz (n 138) 653.

level interviewee connections were established by the researcher, using social networking platforms such as LinkedIn, as well as publicly available email addresses. Finally, an adapted form of the snowball method¹⁵⁰ of interviewee sampling was implemented, as seen in the interview guides' final questions, in order to increase access to pertinent actors as iterations of the research developed, particularly at national-level and targeted persons were enquired about to overcome reputational access issues.

¹⁵⁰ Bryman (n 130) 202.

Chapter 4: Human Rights Analysis

Introduction:

Reiterating what was justified in the introduction and literature review chapters, this analysis will revolve around the obligations that Member States have towards TP beneficiaries to provide minimum standards of treatment while they are under this status. The 2016 Odysseus network reports on transposition of the TP Directive across all EU Member states assessed that:

“a clear strength of the TPD is that it establishes minimum standards for granting temporary protection in the event of a mass influx of displaced persons. This objective of the Directive is outlined in the Preamble (8) and Chapter III of the Directive sets out the obligations that Member States have towards persons enjoying temporary protection”¹⁵¹ and moreover that “the rights laid down in Articles 8 to 16 of the TPD largely mirror those stipulated later on in the first and second generation legislative instruments of the CEAS (in particular: the Qualification Directive)”¹⁵² .

Therefore we can understand that now that the TP Directive has been activated, it is important to assess the degree to which these MST provisions are human rights compliant, in line with up-to-date standards at EU and International level and the extent to which they are achieved in practice, as the next chapter will highlight.

Recap of Chapter III Obligations towards persons enjoying temporary protection

Chapter III of the TP Directive (Articles 9 to 16) outlines the specifics of how Member States should treat beneficiaries of temporary protection. These obligations cover the following: the granting of residence permits and visas (Article 8), the outlining of TP provisions in an understandable language (Article 9), the registration of personal data (Article 10), the readmission of people who attempt to move (Article 11), matters concerning employment and

¹⁵¹ Beirnes and others (n 12) 24.

¹⁵² Beirnes and others (n 59).

social security (Article 12), accommodation, social welfare/medical care, need-based fixing of aid, assistance for persons with special needs (Article 13), access to education for both minors and adults (Article 14), comprehensive provisions on family reunification (Article 15) and finally also the treatment of unaccompanied minors (Article 16).

Article of Most Pressing Concern: Housing (Article 13(1))

Following the collection of data from EU and national-level experts, the analysis of the most pressing areas with the greatest potential for non-compliance with the Directive and violation of international human rights norms were analysed.

As can be seen in the chart in **Figure 5.1** below, the most-cited challenges in the first round of coding were related to Article 13(1). In terms of Chapter III obligations, this was the highest cited issue area both by EU academics and Irish NGOs and independent commentators (Frequency calculated by number of times cited by expert divided by duration of the interview). This is evidenced by the below graphs representing the frequency with which each topic was addressed were the following: accommodation, registration, health, education, trafficking, UAMs, employment, family reunification, visas, social welfare, transport and RSD Access are of greatest concern in combined descending order.

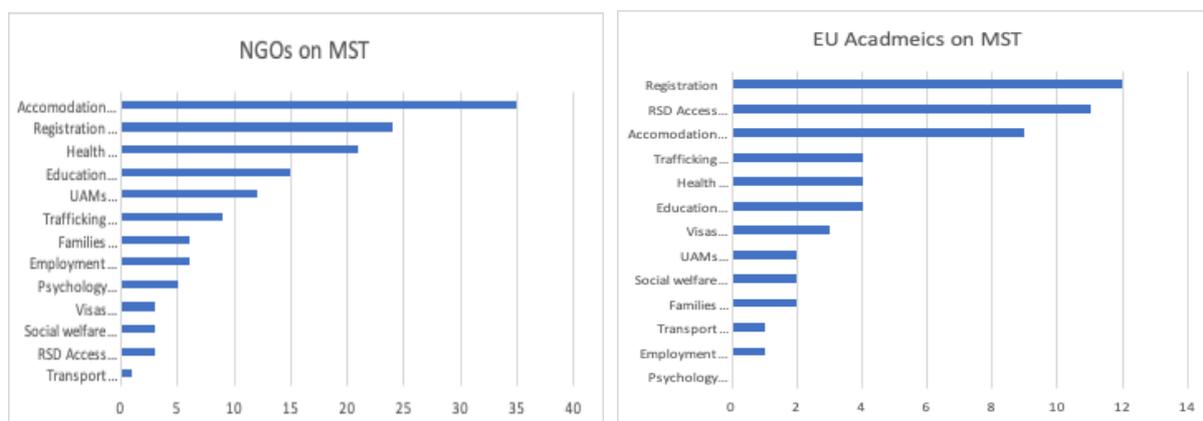


Figure 4.1. Frequency of codes concerning challenges cited across Articles of Chapter III TP Directive by (a) EU Level Experts and (b) National Level Experts

Through the analysis of the interviews in line with the methodology outlined in Chapter 3 it was revealed that the obligation towards TPBs which is experiencing the greatest challenges in implementation is the Article 13(1), the obligation concerning the provision of housing for TPBs.

Given that housing emerged as the most *salient* and *connected* area, we will first examine the human rights protections of potential value for TPBs in interpreting the standards of treatment and course for redress on violations of such that, given the lack of current legislation and guidelines in this area, may be argued for at present, before examining the area of greatest concern in Ireland under these associated frameworks and then, given the connectedness of the other MSTs to housing, briefly discuss the challenges in implementation that emerged in relation to the other articles of Chapter III.

Rights-Based Analysis of Article 13(1) on Housing

Inspired by the evaluation of Alborzi¹⁵³ we are reminded that, as per the focus of this thesis, the human rights framework may provide a filling of the gap for persons in receipt of TP status. Given that this is the line of reasoning supposed to inform the Chapter III obligations on MST of the TP Directive, it is apt that we turn to look now at the degree to which the Implementation of these obligations is experiencing any challenges in implementation. This was the purpose of the interview carried out with experts, as elaborated in Chapter 3, and fleshed out with relevant additional desk-based research, as per the research design.

Moreover, it is crucial that we examine the on-the-ground implementation of the provisions of Article 13(1) of the TP Directive concerning Member States' obligations towards recipients of TP status on accommodation and housing into the broader context of the harmonisation of state obligations towards *asylum* seekers under the CEAS frameworks, we must appreciate that “there is no common standard that determines what asylum seekers’

¹⁵³ Alborzi (n 43).

accommodation should look like”¹⁵⁴. Therefore, the role of international human rights law and norms may become even more relevant as sources of inspiration.

It is noteworthy to note that in light of the particular cohort of concern to this thesis, women and children, additional provisions of the CRC (Article 27) and the CEDAW (Article 14 on rural women) may be of value, particularly in the Irish case where one of the challenges flagged by the NGO stakeholders revolve around the rurality of many of the accommodation centres and pledged housing options, providing the TPB women in such contexts an additional layer of protection.

We can compare this article on the provision of housing to the universal standards guaranteed by Article 11 (1) ICESCR on the

“right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing”.

Walter Kalin argued that, the TP Directive Article 13(1) was “in line with international human rights law requirements if the interpretation of the notions 'suitable' or 'necessary' takes the specific position of temporarily protected persons sufficiently into account”¹⁵⁵. This means that not only must countries with an ‘elevated standard of living’¹⁵⁶ provide assistance for not just for survival and a life in minimal dignity, but also, as per Article 2(2) ICESCR, the State should prohibit discrimination in the exercise of this right, and as such should treat temporarily protected person in an equal manner to other aliens in similar situations.

He argued that temporary protection beneficiaries are situated between asylum seekers and those who have been granted asylum (who are recognised refugees). Because of this, then in determining the meaning of “suitable” accommodation, the State must bear in mind the situation of TPBs as not necessarily being bound, in the immediate arrival of the displaced person, by the obligations towards recognised refugees, but also noting the fact that these

¹⁵⁴ Ingrid Westendorp, ‘A Right to Adequate Shelter for Asylum Seekers in the European Union’ [2022] *Nordic Journal of Human Rights* 17 <<https://doi.org/10.1080/18918131.2022.2085007>>.

¹⁵⁵ Kalin (n 19) 225.

¹⁵⁶ *ibid.*

persons *are* in need of protection and “therefore deserve better treatment than the mere asylum-seekers”¹⁵⁷ .

Taking into account however the fact that many ‘mere asylum seekers’ caught in international protection procedures in EU Member States of today are faced, as a matter of systemic quality, with unreasonably long waiting times for their individual status determinations, the grounds on which this can be understood as non-discrimination are somewhat weak. As argued by Carrera et al (2022) in their paper on the subject, the inability of the CEAS to give rise to adequate and dignified reception conditions for asylum seekers has been sharply highlighted by the TPD’s activation. That is a point for future probing, yet for now we may consider that if the level of rights afforded to TP beneficiaries are supposed to approximate those of the 1951 Convention on the Status of Refugees, then we must also consider the extent to which the most-cited challenge amongst the interviewees in this research is complying with the relevant provisions of this convention, and other associated treaties of relevance, to the right to adequate housing, and the degree to which the regional and international human rights standards may provide a meaningful filling of the gap left in the Refugee Convention in the contexts of mass influxes.

However, the extent to which there is a difference in treatment, in terms of accommodation, is a crucial question to ask in assessing the implementation of Article 13(1). Bearing in mind assessments that have been made of the situation for displaced women under the provisions of the EU’s Recast Reception Conditions Directive, we can flag and anticipate that while states are obliged to provide ‘adequate standards of living’ , they are also (as per Article 13(4) TP Directive) obliged to take into account persons with special needs. This makes the interpretation of this provision significant, and for this we can perhaps turn to the Reception Conditions Directive as a partial guide to anticipate the behaviour of the Irish authorities in this regard.

A significant challenge for this analysis is that “[w]hile the EU has managed to achieve legal and organisational harmonisation of asylum application to a certain extent, there is no

¹⁵⁷ *ibid.*

common standard that determines what asylum seekers' accommodation should look like."¹⁵⁸ So at this initial stage of analysis, we must turn to external points of reference that are to be influential in the direction that CJEU and other regional and international case law may proceed.

Irish Domestic Law of Potential Remedial Value - National Transposition of the TP Directive and other Domestic Remedies

From the first instance, it is important to note that the Irish legislation which transposes the EU's TP Directive ie. Section 60 of the International Protection Act (2015), does not transpose Article 13(1) of the directive explicitly.

Through the analysis of the International Protection Act (2015) we can see then that that with respect to the transposition of Chapter III obligations of the TP Directive, of the eight areas that the analytical literature has drawn out and examined to date, and which inform our analysis of on-the-ground implementation, only explicit reference is made to four of these areas: employment, education, social welfare, access to medical care, with now explicit transposition of the entitlements to housing and family reunification, as well as the provisions for persons with special needs (Article 13(4)) and Unaccompanied Minors (Article 16).

A research report for the Houses of the Oireachtas (Irish Parliament) reaffirms the absence of a comparable provision to Article 13(1) on accommodation or housing rights of TPBs under the International Protection Act (2015), even though the rest of the listed rights, apart from family reunification "are comparable to the entitlements set out in the TPD, though they are set out in less detail in the 2015 Act"¹⁵⁹. This may be contextualised as part of a broader challenge facing housing rights in Ireland, in that it has been noted widely that "[t]here is no express right to housing in Irish law. The basis for protecting rights related to housing often arises out of infringements of other Constitutional rights"¹⁶⁰.

¹⁵⁸ Westendorp (n 154) 17.

¹⁵⁹ Rebecca Halpin, 'Temporary Protection: The Activation of the Temporary Protection Directive in Response to the Crisis in Ukraine' (Houses of the Oireachtas 2022) 1 33.

¹⁶⁰ Mercy Law Resource Centre, 'The Right to Housing in Ireland' (2019) 5 <<https://mercyllaw.ie/wp-content/uploads/2019/06/MLRC-Report-on-Right-to-Housing-in-Ireland-May-2016.pdf>>.

Legislation, Case Law and Government Policy:

The Housing Acts 1966-2014 contain certain rights and duties regarding social housing while Government policy statements such as the Housing Policy Statement and the Homelessness Policy Statement provide non-legislative guidance. Moreover, the Child Care Act 1991 offers child-specific provision in Section 63.

There is case law of potential relevance which sets precedents for the duties on local authorities to perform its functions in a reasonable and rational manner, the right to an independent proportionality assessment in the case of an interference with Article 8 ECHR right to private and family life and moreover, the right of recipients of social housing to gain “habitable and culturally adequate housing”

European Law – Council of Europe Human Rights Protection

The redress for rights violations of the ECtHR has been operationalised in a right to adequate housing context by combining elements of the provisions within the ECHR – namely Articles 2, 3, 4, 6, 8, 14 and Article 1, Protocol 1¹⁶¹.

Moreover, Article 31 European Social Charter (ESC) offers explicit rights protection on housing, however Ireland has opted out of this particular provision¹⁶² and, therefore, while potentially offering greater protection in other jurisdictions, is not of the greatest relevance in this case study

EU Law – the potential for future ECJ action

The Substantive obligations that Member States have under the TP Directive with regards to housing for TPBs come from Article 13(1). This article stipulates that Member states....

¹⁶¹ ibid 9.

¹⁶² European Committee of Social Rights, ‘Fourth Report on the Non-Accepted Provisions of the European Social Charter: Ireland’ (7 September 2021) 3 <<https://rm.coe.int/4th-report-on-non-accepted-provisions-of-the-esc-by-ireland-2021/1680a3c1b4>> accessed 1 November 2022.

...shall ensure that persons enjoying temporary protection have access to suitable accommodation or, if necessary, the means to obtain housing”¹⁶³

As noted in previous legal doctrinal interpretative studies of the TP Directive’s provisions, in reading the Statement of Reasons of the Commission of the original Commission proposal¹⁶⁴, the understanding from a historical perspective may be that suitable accommodation “may be provisional reception centres, public accommodation or single living units”¹⁶⁵, “accommodation centres, or other collective structures or flats”¹⁶⁶.

The fact that Ireland has not transposed the law directly does not mean that the State is not bound by this provision. Member States act as agents of the EU while implementing its laws¹⁶⁷ and given the status of the European Charter of Fundamental Rights as a primary treaty of the EU since 2009 and the coming into force of the Lisbon Treaty¹⁶⁸, and as attested to in case law on other Directives of the CEAS, such as EU Directive 2004/83 on minimum standards for refugees, national authorities have requirements to interpret and apply its provisions in light of rights of the Charter, such as respect for human dignity and the right to asylum¹⁶⁹. For example, taking CJEU case law on the Reception Conditions Directive and concerning Article 34 EU Charter of Fundamental Rights on Social Security and Social Assistance, we may see grounds for redress in line with *Case C-571/10 Kamberaj*¹⁷⁰ and a tendency of the CJEU to advise interpretation of implementation of the TP Directive in line with the Charter of Fundamental Rights, Article 34.

Not only is there a precedent for the dignified treatment of asylum seekers, but, as confirmed in the CJEU decision on *FEDASIL v. Saciri Family*, C-79/13 and reflected in Asylum

¹⁶³ Art. 13(1). ‘Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences Thereof, OJ L212/12, 7 August 2001 (Temporary Protection Directive, TPD).’ (n 4)., emphasis added.

¹⁶⁴ Com 2000 303 at 20 in Kerber (n 36); Skordas (n 39).

¹⁶⁵ Kerber (n 36).

¹⁶⁶ Skordas (n 39).

¹⁶⁷ Paul Craig and Gráinne De Búrca, *EU Law: Text, Cases and Materials* (7th edn, Oxford University Press 2020) 442.

¹⁶⁸ *ibid* 427–428.

¹⁶⁹ *ibid* 442.

¹⁷⁰ *Servet Kamberaj v Istituto per l’Edilizia Sociale della Provincia autonoma di Bolzano (IPES) and Others* [2012] ECR II- Case C-571/10. para. 80

Directive 2013/32/EU and Directive 2003/9/EC (stemming from Article 63 1, ECT and Article 78 TFEU), States have a positive obligation to provide minimum reception conditions for asylum seekers, whether it be accommodation or financial assistance to allow asylum seekers to access housing, if necessary in the private sector¹⁷¹.

International Human Rights Law

Finally then, as a last resort in terms of human rights remedies, but as a crucial point of relevance for the understanding of the EU TP Directive case study in the wider understanding of the place of MST provisions of TP regimes in addressing the shortcomings of the failure of the 1951 CSR regime in the context of ‘mass influxes’, we may turn to the extent to which international human rights law offers some course of action on potential violations of the right to adequate housing of TPBs. The sources of relevance in this regard for the universal housing rights of women and children are listed in figure 5.2 below.

Figure 4.2. Sources of International and Regional Human Rights Relevance to TPB Housing

<u>UN Treaties/International Law</u>
<ul style="list-style-type: none"> • Article 25(1) UDHR • Article 11(1) ICESCR <ul style="list-style-type: none"> ○ Article 9 on Social Security ○ Article 2(2) on non-discrimination ○ <i>GC No. 4 on Right to Adequate Housing and No. 7 on Forced Evictions</i> • Article 27 CRC • Article 5 (e) (iii) ICERD • Article 14 CEDAW – rural women • (Article 17 ICCPR) • Article 21 CSR 1951*

¹⁷¹ Fentas, ‘Housing-Related Binding Obligation on States From European and International Case Law’ (2016) 12 <<https://www.feantsa.org/download/2016-06-housing-related-binding-obligations6411857525167192995.pdf>> accessed 1 November 2022.

() = indicates indirect protection for right to housing

***If we consider the implementation of the TP Directive needing to comply with the treatment of refugees**

****Ireland has opted out of this article**

Bold = Women and Children-Specific HRs Sources

As has been noted in the scholarship on the universal right to adequate housing, the ICESCR offers the most comprehensive basis for an analysis/claim to this right at universal level¹⁷². The General Comments Nos 4 (1991) and 7 (1997) of the UN Committee on Economic, Social and Cultural Rights (CESCR) have interpreted the right to housing and since these interpretations, there has been acknowledgment that the concept of ‘adequate housing’ is a legal right, warranting protection¹⁷³.

Article 11(1) Right to Adequate Housing

For the purposes of analysis as to whether the housing situation faced by TP beneficiaries in Ireland constitutes ‘adequate housing’ as per Article 11(1) of the ICESCR, we can take the universal aspects of the right identified by the Committee (CESCR) as the benchmark for analysis. These aspects that the Committee have flagged for taking into account in any context, regardless of social, economic, cultural, climatic, ecological or other factors, are the following:

1. Legal security of tenure
2. Availability of services, materials and infrastructure
3. Affordability
4. Habitability
5. Accessibility
6. Location

¹⁷² Ingrid Westendorp, ‘Women and Housing : Gender Makes a Difference’ (Doctoral Thesis, Maastricht University 2007) <<https://doi.org/10.26481/dis.20070601iw>>.

¹⁷³ Westendorp (n 154) 4.

7. Cultural Adequacy

There are two ways that we can seek to understand the obligations that the Irish State has towards TP Beneficiaries under Article 11(1) ICESCR. The ICESCR puts obligations on states, rather than direct rights on individuals, and as such is bound by obligations to progressively realise certain elements, while ensuring the minimum core of rights are fulfilled immediately¹⁷⁴, stemming from the important General Comment No. 3 on States Parties obligations....

“to take steps [...] by all appropriate means”; ‘to achieving progressively; and ‘to the maximum of its available resources’”¹⁷⁵

As per this GC, and guideline number 9 of the Maastricht Guidelines¹⁷⁶, a violation may occur if any significant number of individuals in the state are lacking basic shelter and housing, and thus the State is failing to fulfil its obligations under the ICESCR.

Following the methodology of Henry Shue that has developed in legal doctrine to identify government obligations on ESCRs, states must respect, protect and fulfil their obligations of the ICESCR and a violation may be classified by the Maastricht Guidelines on Violations of ESCRs¹⁷⁷.

Defining a minimum floor for the standards of treatment

We have set the human rights sources that could offer TPB women and children some meaningful redress should their treatment amount to a violation of their housing rights, however, what should the standard of treatment, particularly under their enhanced Article 13(1) rights, actually look?

¹⁷⁴ Westendorp (n 172) 37.

¹⁷⁵ Committee on Economic, Social and Cultural Rights, General Comment 3, The nature of States parties’ obligations 1991.

¹⁷⁶ ICJ, ‘Maastricht Guidelines on Violations of Economic, Social and Cultural Rights’

<<https://www.refworld.org/docid/48abd5730.html>>.

¹⁷⁷ Westendorp (n 172) 37.

While the EU has managed to achieve legal and organisational harmonisation of asylum application to a certain extent, there is no common standard that determines what asylum seekers' accommodation should look like¹⁷⁸

In light of the extensive discussion that has been attributed to the status of TPBs and their relation to the international and regional frameworks that provide for the treatment of persons fleeing their countries of origin for reasons of persecution or violence, we can seek to assess at least in line with the standards that would be attributed to asylum seekers' accommodation at a minimum, and refugee accommodation as an ideal in order to assess the standards that ought to constitute dignified treatment of TPB women and children in terms of housing. The latter has been elaborated above in terms of national legislation, and in respect of asylum seeker standards, Ingrid Westendorp's ¹⁷⁹ proposed concept of an EU right to adequate shelter is extremely helpful for our analysis of the degree to which the in-practice accommodation situation is in line with the human rights and fundamental dignity to be enjoyed by temporary protection beneficiaries. The detailed benchmarks/criteria for each component identified by Westendorp set out under each heading are detailed below:

Figure 4.3: Westendorp's 2022 model of which conditions must be fulfilled before shelter can be qualified as 'adequate'.

Structure	Space	Facilities	Temporariness
Provides protection against weather conditions and health hazards Ie. the location of the shelter's climate and seasons need to	Address the issue of overcrowding 'separate spaces or even different reception areas are reserved for known enemies, as well as for	To be understood in a broad sense "including services, hygiene, access to healthcare, equipment, furniture, and paraphernalia".	Circumstances of temporary shelter should only be endured for as short a period of time as possible

¹⁷⁸ Westendorp (n 154) 18.

¹⁷⁹ Westendorp (n 154).

<p>be taken into consideration</p> <p>As well as cleanliness, hygiene and presence of factors that increase the chances of epidemics and diseases such as mould, asbestos and vermin</p>	<p>unaccompanied girls and women, and other vulnerable groups’</p> <p>Comply with related WHO guidelines on the space needed to avoid mental stress and outbreak of contagious diseases</p> <p>To allow the maintenance of family unity</p>	<p>Eg. electricity, toilets, showers, heating, and potable water.</p> <p>Gender-segregated bathrooms, up to hygiene and privacy standards, and where unrelated men and women live together, with lockable doors – as for bedrooms.</p> <p>Sufficient beds and bedding for each asylum seeker and specific facilities for menstruating or lactating women and girls, eg. appropriate amount of sanitary towels and tampons</p>	<p>Moreover, “people should not be moved from one shelter to another without any obvious reason¹⁸⁰</p>
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¹⁸⁰ ibid 17.

Chapter 5: Analysis of Implementation in Ireland of MST with greatest Human Rights Challenge: Article 13(1) Housing

Since the activation of the TP Directive, it has emerged from analysis of the contextual background literature in all interviews with Irish experts that, in implementation of the Directive, a huge practical issue for the realisation of the MST Obligations of Chapter III that has arisen in the rollout of the measures, is the pressure that has been put on non-asylum-specific services. While we have explored in the literature review that the TP Directive is a tool designed to alleviate strain on the international protection processing systems of Member States, it is emerging that that strain is instead being shifted to other sectors involved in the delivery of the rights and entitlements due to TPBs under Chapter III of the Directive. As we will now explore in this discussion, the housing situation has proven to be one of the largest challenges facing the Irish State particularly in its implementation of the Directive.

As indicated in the Odysseus Network Synthesis Report on the Transposition of the TP Directive across member states, accommodation in Reception Centres is supposed to be where immediate housing, medical and social welfare needs are met¹⁸¹. However, it has emerged that the accommodation and reception capacities of the Irish state are experiencing acute shortages.

Mirroring what has been noted by Carrera et al (2022) and observed in the literature review of this thesis, the provision of services to TPBs at such short notice is creating not just pressure on domestic capacities to deliver such social benefits, but also is creating a dynamic of duality in the systems of provisions for persons seeking international protection. It is beyond the scope of this paper to document fully at this point, but the following assessments, both at EU and national level, indicate the extent to which this is a pervasive problem that needs to be addressed, above all in Member States with pre-existing housing shortages. As indicated by an EU expert, the housing situation is one that pre-dates TP Directive activation, and will only become a more controversial area as the enhancement of the right for persons

¹⁸¹ Noll and Gunneflo (n 89) 35.

fleeing Ukraine does not enhance the right of other asylum seekers and refugees, but rather may side-line their less explicit claims to this right:

Now the problem is housing, because we already have a housing shortage in the EU. We can see it now that the other refugees or asylum seekers will be left behind to some extent, because the Ukrainians have the right of housing and they can now claim it more easily. So, now the problem is not so much for TPBs, but rather it will be one for Afghan and Syrian refugees, etc.

While the interviewees working directly with TPBs, asylum seekers and refugees alike were quick to say that people were trying not to begrudge, but to feel happy for one another, the independent legal expert consulted observed of the system the following:

You're pitting certain classes of people who are fleeing torture, and indiscriminate violence against others, because there are limited resources

This is an extremely challenging point for the policy of TP going forwards at EU and national level, as the fundamental values of non-discrimination will be stretched if the CEAS does not seek additional solutions.

The flexibility that has been opened by the Directive for TP beneficiaries to avail of their own networks and private means of subsistence, while still being able to access the other rights and entitlements of the Directive, was the other key point on accommodation flagged in the EU-level analysis.

Overview of the Actors/ Information Dissemination

Information about services available outside of simply the 'roof over one's head' is getting to persons arriving from Ukraine from several different avenues, depending on how they arrive and are subsequently housed. This point of information dissemination is one aspect of the congregated living / reception centres that the NGO actors praised, as having one's initial stay at such a centre often seems to help with efficient and comprehensive spread of

information to TPBs. However, for those coming through Local Authority housing and via the Red Cross-backed private households, there are also avenues where NGOs and community groups have a large role to play in relaying and helping arrivals to process this information.

As explained by various interviewees, there has been a National Response and a Community Response, with the latter having weekly meetings. The City/County Councils and local community groups involved in the Community response meet weekly, while chosen representatives of different sectors are those who attend the National Response meetings.

A highly innovative feature of the response to emerge, and which was praised by 75% of the interviewees, was the fact of a ‘Slack’ communications channel having been established to improve coordination between the NGO groups involved, allowing a pooling of knowledge, and improved communication of organisations involved in the integration of TPBs.

Suitability of Accommodation

A variety of accommodation channels have been established by IPAS since the start of the Russian invasion.

Table 5.1. Overview of the accommodation arrangements as per the EUAA 2022 Booklet¹⁸² on Ireland

Hotels, Guest Houses, B&Bs. Student accommodation	Families and adults of the same sex are required to share rooms. Single people do not have their own rooms.
Religious Properties (eg. former convents)	Accommodation is often dormitory style where adults of the same sex share accommodation. Where these properties have individual rooms, priority is given to

¹⁸² EUAA, ‘Information on Temporary Protection: Ireland’ (2022) 10
<https://euaa.europa.eu/sites/default/files/2022-06/Booklet_Ireland_EN.pdf> accessed 31 October 2022.

	allocating them to families. Single people do not have their own rooms.
Youth Hostels/Scout Facilities	Accommodation is normally dormitory style.
Local Authority facilities	These are generally emergency camp-bed style accommodation in community centres.
Pledged accommodation from the general public via the Irish Red Cross	Shared and unshared accommodation

It was noted in a June 2022 EUAA informational booklet on Temporary Protection in Ireland that accommodation capacity is very limited, which means that TPBs must often move accommodation when the building is needed for alternative functions. It emerged throughout the interview process that a significant challenge was the widespread use of vacant student accommodation over the summer, which would no longer be available come September.

It was also noted in the EUAA report that housing is allocated to both rural and urban areas and assignment to any particular area simply depends on what accommodation is available upon arrival¹⁸³.

The TP Directive provides flexibility in the obligation it places on states by adding that, rather than providing direct access to housing, “*if necessary, the means to obtain housing*” can be offered instead. It is pertinent in this respect to note that the EEA booklet notes that “[b]eneficiaries of temporary protection may be entitled to apply for state housing support”¹⁸⁴, such as the Rent Supplement Scheme and the Rental Accommodation Scheme. While the social welfare What has emerged is that Ukrainians are indeed eligible for the Rent Supplement Scheme¹⁸⁵, which is a means-tested payment for people living in private rented accommodation, but that in practice this has been extremely difficult to secure – as is the case for all populations in the country at present.

¹⁸³ *ibid.*

¹⁸⁴ *ibid* 11.

¹⁸⁵ Irish Refugee Council, ‘Housing: Important Risk of Homelessness’ (23 October 2022) <<https://www.irishrefugeecouncil.ie/housingukraine>> accessed 3 November 2022.

Government Department Responsible for TPBs and Accommodation Stock

The reception of arrivals from Ukraine is being managed by the DCEDIY's integration division, of which the International Protection Accommodation Service (IPAS) is a part¹⁸⁶. As one of the interviewees noted, the main focus of that division has been on sourcing accommodation for those arriving from Ukraine, however it is also responsible for accommodation of those in the international protection system, so there is what has been described by all interviewees as a balancing act going on. The Department is being supported not only by the community response, but in a formal way, the Irish Red Cross as will be elaborated below.

The Local Authorities are also involved in the housing dimension, and the NGO actors in Cork were quick to praise their coordination role and focus on planning for the full spectrum of needs that people will have, beyond the 'roof over their head'. On the other hand, it was considered that IPAS were less focused on the full integration journey, but left the awareness raising on and provision of additional services to local organisations.

Addressing the Housing Stock Issue

The housing stock issues is one that the Government has been aware of almost since the beginning of the Ukraine Response. By the end of March, it was reported that the Government had been told that spaces available for TPBs would run out "within weeks"¹⁸⁷. All kinds of solutions have been sought since then.

Large-scale tented camp and dormitory-style facilities were set up by the Irish Defence Forces for use throughout the summer months, and it was hoped to be used only 'as a last resort', but used it was¹⁸⁸. While the tented accommodation complex was taken down at the end of the summer of 2022, owing to Ireland's climate being unsuitable for such

¹⁸⁶ 'International Protection Accommodation Services (IPAS)' (2022) <<https://www.gov.ie/en/campaigns/d9f43-international-protection-accommodation-services-ipas/>> accessed 3 November 2022.

¹⁸⁷ Halpin (n 159) 34.

¹⁸⁸ *ibid* 15.

accommodation in winter months, as of October 2022, due to complete unavailability of housing, it is once again being considered by the Government for use.¹⁸⁹

Minister for Housing, Darragh O'Brien TD has been seeking to enact an emergency power to bypass planning rules to help source accommodation¹⁹⁰. This has been welcomed by the construction industry for streamlining the process, but may come at a price for the longer term soundness of legislation in this area¹⁹¹. If congregated living settings are being developed as noted by the interviewees, this is not just a short term investment that will be rendered redundant after the period of temporary protection expires. Whether people remain and pursue refugee or other statuses in Ireland, or repatriate to Ukraine, the accommodation crisis felt by the whole of Irish society can be served by these investments - not least those in the international protection system who at present are also suffering from the acute shortage of housing. However, bearing in mind the years of criticism of Direct Provision congregated accommodation centres, these new builds must be in line with the National Standards and White Paper Recommendations on ending Direct Provision. In the meantime, the largest hotel in the State, Citywest in Saggart, Co. Dublin, has been contracted by the Government for use for up to two years, with the licence permitting up to three people per room¹⁹².

By the time of conclusion of this research, the lack of available housing for TPBs had become so acute that the Irish Government had to initiate informational campaigns to make persons fleeing Ukraine aware that, if they came to Ireland, the Government would not be able to provide housing for them¹⁹³ and unless they had private means of access to

¹⁸⁹ Daniel McConnell, 'Government Is Looking at Using Tents to Shelter Ukrainian Refugees This Winter' (*Irish Examiner*, 23 October 2022) <<https://www.irishexaminer.com/news/arid-40990154.html>> accessed 1 November 2022.

¹⁹⁰ Halpin (n 159) 15; Cormac Fitzgerald, 'Explainer: How "deeply Controversial" Planning Law Changes Could Lead to "Years of Litigation"' (*TheJournal.ie*) <<https://www.thejournal.ie/judicial-review-5814746-Jul2022/>> accessed 1 November 2022.

¹⁹¹ Fitzgerald (n 190).

¹⁹² Michael Staines, 'Ukraine Refugees: Government to Lease Citywest Hotel for Two Years' (*Newstalk*) <<https://www.newstalk.com/news/government-to-lease-citywest-hotel-for-two-years-to-house-ukrainian-refugees-1350198>> accessed 1 November 2022.

¹⁹³ Steven Heaney, 'Ambassador Tells Ukrainians Irish Government Cannot Guarantee Them Accommodation' (*Irish Examiner*, 29 October 2022) <<https://www.irishexaminer.com/news/arid-40994987.html>> accessed 3 November 2022; 'Minister O'Gorman Meets with Ukrainian Ambassador to Provide Update on Accommodation' <<https://www.gov.ie/en/press-release/dfb06-minister-ogorman-meets-with-ukrainian-ambassador-to-provide-update-on-accommodation/>> accessed 3 November 2022.

accommodation, they may be street-homeless¹⁹⁴. This is an issue that needs close monitoring going forwards in terms of complete implementation of the Directive.

Community Support – Striking the Balance

It has been noted in several places¹⁹⁵ that the Irish response has relied heavily on the community and voluntary sector to provide supports such as the coordination of accommodation, teaching English, supporting family placements and so on¹⁹⁶.

In response to the ad-hoc pattern of private individuals opening their homes to persons fleeing Ukraine in the initial days and weeks after the start of the Russian invasion, there was a huge public response with many people offering accommodation privately. On the other hand, initiatives to source accommodation have been introduced from the Government side, for example, 8,000 currently-vacant homes of owners who, under the Fair Deal scheme, are in care or nursing homes, have been obtained to accommodate TPBs¹⁹⁷.

As one of the EU experts noted on the point of NGO involvement in the Ukraine response, we need to assess at the case-study level for each national context, whether the legal characterisation of the involvement of such actors constitutes an additional and voluntary support in the provision of more comprehensive integration capacity to arrivals, or whether their involvement is symptomatic of a more structural breakdown in services. Where the state

¹⁹⁴ ‘Special Government Campaign to Tell Ukrainian Refugees There Is No Housing for Them in Ireland’ (*independent*) <<https://www.independent.ie/irish-news/politics/special-government-campaign-to-tell-ukrainian-refugees-there-is-no-housing-for-them-in-ireland-42093973.html>> accessed 1 November 2022.

¹⁹⁵ Social Justice Ireland, ‘Migrations in Our Common Home’ <<https://www.socialjustice.ie/publication/migrations-our-common-home-responding-care-irelands-response-ukrainian-crisis>>.

¹⁹⁶ *ibid*; ‘Letter to An Taoiseach: Ireland’s National and Local Response to People Fleeing Ukraine’ <https://www.nwci.ie/images/uploads/Letter_to_An_Taoiseach_Re_National_to_Local_Response_for_People_Fleeing_Ukraine_FINAL_08_04_2022.pdf>; ‘Ukraine Crisis: Minister O’Brien Meets with Local Development and Community and Voluntary Sector Reps’ <https://merriestreet.ie/en/News-Room/News/ukraine_crisis_minister_obrien_meets_with_local_development_and_community_and_voluntary_sector_reps.173361.shortcut.html> accessed 1 November 2022.

¹⁹⁷ Christina Finn, ‘Urgent Housing: Fair Deal Rule Change to Allow Vacant Houses Be Rented Will Free up 8,000 Units’ (*TheJournal.ie*) <<https://www.thejournal.ie/ukrainian-refugees-housing-capacity-fair-deal-scheme-5730785-Apr2022/>> accessed 1 November 2022.

is failing to provide, in this instance, housing, and the Community Sector is stepping in to avoid the alternative scenario of destitution of persons.

While initially heavily private-individual and NGO-led, formal structures have since developed around housing from NGO and State-provision perspectives. Structurally, as we shall see below, a coordinating infrastructure is emerging.

Private ‘Pledged’ Accommodation

Irish Red Cross Lead

A distinctive feature of the Irish response in terms of the provision of housing has been the phenomenon of ‘pledged accommodation’. This pledge system emerged as a formalisation and standardisation of the initial outpouring of public willingness to house Ukrainians in their private homes. To bring order and regulations to this compassionate development, and so as to avoid the initial problems posed with un-regulated pledges, as well as to bring some security, guidelines and predictability to the situation, the Government, as well as the Red Cross are now working together to act as facilitators in the matching and management of private pledges. Spare rooms and vacant properties can be pledged via the Irish Red Cross online site¹⁹⁸. Since July 26th, the Government has formalised this process further and encouraged the minimum commitment of persons to provide housing for 6 months under the “Accommodation Recognition Payment”¹⁹⁹, a payment open to both persons who have pledged housing via the Red Cross mechanism, and arranged independently with TPBs. There is no requirement attached to this payment for recipients to be Garda (police) vetted, rendering a missed opportunity for the Government to ensure safety and suitability of this accommodation, particularly for single women and children, in a systemic way.

¹⁹⁸ ‘Irish Red Cross - Register of Pledges’ <<https://registerofpledges.redcross.ie>> accessed 1 November 2022.

¹⁹⁹ DCEDIY, ‘Accommodation Recognition Payment’ (26 July 2022) <<https://www.gov.ie/en/service/cfd95-accommodation-recognition-payment/#how-to-qualify>> accessed 3 November 2022.

What emerged from the interviews in terms of the expressed worry over the vulnerability of people to trafficking and exploitation in private housing contexts is that the Irish Red Cross have been the one with the mechanisms to link in with people and do the due diligence in terms of those pledges and follow up and Garda Vetting.

‘Trusted Networks Approach’ - LGBT Ally Homes

A point that emerged as a result of the intersectional approach taken to data collection for this research was that a specific ‘LGBT Safe Hosts’ infrastructure exists in Ireland, also as a product of the infrastructure that exists for coordinating the reception of and catering for programme refugees in Ireland. The way it works is that they, unlike the Red Cross, do not put out a public call for pledges. This is because they do not have the resources to do that level of vetting, and because of the additional vulnerabilities faced by LGBT TPBs. Instead, they use the ‘Trusted Networks Approach’, which had already been established for programme refugees from Afghanistan who arrived in September 2021. The ability to have an LGBT-friendly host has been identified by the national expert as essential and beneficial for after their initial stay in the state-provided reception centres. This is the first time we mention ‘vulnerability’ in this passage on housing, but it will not be the last (*see section 8, forthcoming*).

It was noted that while many people were already aware of LGBT Ireland and had been in touch with the organisation on their journey to Ireland or before departing Ukraine, there was also information made available at the registration and reception centres about the organisation and its services - as attested to by the IO registration worker.

The problem of disruption and uncertainty felt in state-run accommodation, that will be explored in the next section, extends to the Trusted Networks model as well, with hosts having been asked by LGBT Ireland to pledge 3 months minimum to offer at least some degree of short term certainty. However, as with the mainstream services, the demand is highest for places in Dublin and people are expected to be flexible in where they move on to.

Yet the issue of continuity is one that the national experts noted is much easier to maintain when people can be moved within the same region rather than to different counties.

As noted by the EU experts generally on the topic of non-state delivery of services, the extent to which persons may choose not to avail of some aspects of the structures of the state is discretionary, but this does not absolve the state of its obligation to make the option available to those who wish to avail of it. This is a point to watch going forward, particularly if the recent absence of available housing and resulting potential for street homelessness of TPBs continues²⁰⁰.

Knock-On effect of Inadequate Housing Situation – Impact on other MST obligations

The greatest challenge cited by all interviewees concerning housing was the fact that owing to the extremely limited housing stock available in Ireland has created huge challenges for the fulfilment of Ireland obligations to provide TPBs with suitable accommodation or means to access housing.

Moreover, the specific and highly problematic challenge that emerged from all four of the NGO interviewees, who are involved in supporting TPBs based in the community, was the disruption and uncertainty that the shortage of accommodation is causing to TPBs. The fact is that that owing to lack of long term accommodation/housing solutions, TPBs cannot be assured that the accommodation provided to them will be one in which they reside for the duration of their stay. For a publicly salient example, Minister of the DCEDIY, Roderic O’Gorman rejected calls from the public to halt such a relocation decision in Kerry in October 2022²⁰¹, evidencing that this is part of the policy response strategy being taken. Interviewees reported that such relocations cause significant psychological stress and hamper the process of short-term integration in the local communities which open their arms, but

²⁰⁰ ‘Special Government Campaign to Tell Ukrainian Refugees There Is No Housing for Them in Ireland’ (n 194).

²⁰¹ Anne Lucey and Daniel McConnell, ‘Ukrainian Women and Children to Be Moved from Kerry to Make Space for Male Asylum-Seekers’ (*Irish Examiner*, 11 October 2022) <<https://www.irishexaminer.com/news/munster/arid-40980908.html>> accessed 1 November 2022.

become discouraged as the people they come to form attachments with are moved on at extremely short notice.

NGO interviewees have each observed that this disruption and uncertainty has significant knock-on-effects on TPBs' ability to access, in a timely manner, territorially-bound entitlements such as healthcare, education and employment. The challenge that has faced NGOs and other actors helping to provide 'wraparound services' and individual entitlements is how to continue to provide support when it is started in one location and then the person is moved elsewhere.

On Healthcare

The issue of changing accommodation location means that there is a consequential difficulty for re-located TPBs to access a General Practitioner (family doctor who is the point for referral to other healthcare services) and other medical and health-related services. The negative effect caused by this disruption is compounded by the fact that, as will be discussed in the section on the impact of the housing challenges on access to health and medical care, pre-existing delays in GP access have been made severe, particularly in rural towns where the population has sometimes doubled overnight with the arrival of new cohorts of TPBs.

This was flagged by the NGO personnel as particularly problematic from a gender-perspective for pregnant women, and a child's-rights perspective for children with special needs and who are in need of psychological support, an aspect of health and wellbeing services that is reportedly severely under pressure.

On Education

It was cited by all of the NGO interviewees that the disruption caused by TPBs being moved around accommodations is that registration of children in school was problematic. Preferences have been expressed for attendance at Educate Together schools (mixed and non-denominational schools) to accommodate cultural and religious differences cannot often be accommodated as places fill fast. While schools have been noted to be flexible and

welcoming, having an influx of people arrive in a single area to stay in a hotel, community hall, reception centre or other congregated space means that there is great pressure being put on educational services, and the hiring of additional staff, needed to cater for the extra numbers, can become problematic when there is uncertainty around how long and how many pupils need to be accounted for²⁰². The frustration is well-summarised and rings particularly clear in the following quote:

You cannot organise with the school or get the school uniform. If you do, then you're told they're being moved to another space. So suffice to say, it's pointless doing all those things, if you know that they are not staying there long term. You make sure that they apply for ABCD, but then, will they be here once the school's start again in September? Only God knows

On Employment and Social Welfare

People who have successfully found jobs in an area while living in State Accommodation, with Pledge Hosts, or in LGBT Ally Homes, and then had to be relocated to another area are faced with a challenge when moving regarding their job. This is particularly problematic as many people have found work in Service Industry jobs such as the Hospitality Sector, which requires in-person presence. There is fear that, as the disruptive style of accommodating TPBs persists, preference may be expressed by employers for persons who will not be subject to relocation at short notice.

In terms of employment generally though, TPBs avoid a twofold difficulty that has been long documented in the literature on the Right to Work of asylum seekers in Ireland, one of which was the actual entitlement to work, which is not instant for asylum seekers. In the case of TPBs is not a problem thanks to their instant access to the labour market and self-employed

²⁰² Jack Horgan-Jones and Cormac McQuinn, 'Education Spend Rises Significantly Due to Build Costs, Ukraine Crisis, Cabinet to Be Warned – The Irish Times' *The Irish Times* (2 November 2022) <https://www.irishtimes.com/politics/2022/11/02/cabinet-to-be-warned-of-significant-pressures-on-department-of-education-spending/?utm_source=Newsletter&utm_medium=email&utm_content=Cabinet+to+be+warned+of+significant+pressures+on+Department+of+Education+spending&utm_campaign=morning_briefing_digest> accessed 3 November 2022.

activities under Article 12. However the compounding factor of the geographic isolation of many accommodation centres is being felt.

In contrast, social welfare which is not territorially dependent, has been described by all national experts as working extremely efficiently. It just relies on access to the social security number (PPSN) that TPBs are provided with upon registration, and can be applied for at their nearest Ukraine Support Office and collected at any local post office (An Post office) throughout the country ²⁰³.

On Persons with 'Special Needs'

It was noted by the interviewees that persons with 'vulnerabilities' have been given priority when it comes to medical care and access to housing.

As one participant put it

“So on that aspect, I'd say they've been on the ball, supporting vulnerable people, even though the whole group, they're all vulnerable”.

Following a vulnerability assessment that is carried out by the Health Service Executive (HSE) via questionnaire, priority is given to those according to the outcome of that assessment, with the HSE being the state body to follow up on any medical needs that may be identified. The State's largest hotel, the Citywest Convention Centre, has been designated for accommodating vulnerable and medical cases, described by the IO representative often based at the Citywest Registration Point, as pregnant women, single mothers with children and people who have been wounded and/or requiring urgent medical treatment, the majority of whom are known by the State in advance of arrival and expedited in terms of their registration. Given the high numbers of single mothers with children arriving, there is in practice a prioritisation of 'medical cases' as is the sentiment of the Directive in Article 13(4)

²⁰³ Citizens Information, 'Social Welfare Supports for Ukrainian Refugees' (2022) <https://www.citizensinformation.ie/en/moving_country/ukrainian_refugees_in_ireland/social_welfare_supports_for_ukrainian_refugees.html> accessed 3 November 2022.

for accommodation in the Citywest Convention Centre and other state accommodation buildings, however it appears to be that pregnant women are considered amongst this group.

Pregnant Women

However, the housing arrangements being provided for such ‘vulnerable persons’ have been noted to be less than adequate, particularly concerning the needs of women, children and families. The congregated living setting is stressful for pregnant women, and whole families living in a single hotel room was cited by half of the NGO interviewees as a major issue. The space requirements of new-born babies, with the equipment necessary to care for them, as well as the impact of noise, naturally creates a difficult space for a whole family to live in.

LGBTI Women

Safe accommodation was cited as one of the biggest challenges facing the LGBT arrivals, both in the short term, as is faced by all identities of arrivals, but additionally so in the long term for LGBTI persons who have the added layer of perhaps being unable to live in congregated settings without fear of stigmatisation and exclusion.

This is where the national expert reported that being able to exit the state reception conditions once they had availed of the initial congregated and state-organized settings to complete their registrations for services and to be provided with information on the availability of such, then once they're in touch with LGBT Ireland, they know, there's “light at the end of that tunnel, and then moving into an LGBT host situation, it's just really fantastic for them” to continue their integration.

UAMs

The housing arrangements for Unaccompanied Minors is completely separate to all that described above and warrants particular attention. The FAQs issued by the European Commission for this cohort provide useful guidance on standards for practice²⁰⁴, The State

²⁰⁴ European Commission, ‘Unaccompanied and Separated Children Fleeing from War in Ukraine – FAQs on Registration, Reception and Care’ (5 July 2022) <https://home-affairs.ec.europa.eu/system/files/2022-07/FAQs%20UAMs%20and%20separated%20children%20TPD_en_1.pdf> accessed 3 November 2022.

body responsible for the care of UAMs is Tusla, the Child and Family Agency, and a representative is, as obliged by the TP Directive, present at ports of entry to Ireland in order to facilitate identification and placement of UAMs. What emerged is that there is regional variation, as per the literature on past flows²⁰⁵, but the general sense is that where a UAM arrives out of the hours in which a Tusla agent is present, the due follow up and identification of the child is generally happening.

Placements:

There are two ways in which UAMs from Ukraine are being placed; firstly, with foster parents from a pool who have a history of fostering refugees, and secondly, in supported lodgings, which are a residential accommodation where there is contact with a care worker. However, it was also noted that the relevant authorities have been preparing to accommodate UAMs in institutional care settings. As has been done in countries bordering Ukraine, the rules against institutional care have been lifted in Ireland in order to accommodate the anticipated large numbers of children arriving without parents, relatives or other guardians.

The smaller group-setting and fostering approach is preferential to institutionalised care for a multitude of reasons that have been discussed in the literature²⁰⁶. However, this policy has been adopted as a pragmatic approach to deal with the sudden and projected inflows of UAMs.

Trafficking

A huge worry expressed at every level of decision making on the provisions for TPBs has been the heightened risk of human trafficking facing the majority of the initial cohort - women and children. In terms of UAMs, the congregated living settings have proven to be the places where situations have been identified and followed up on. Those involved in the response are on the lookout for warning signs, and it is being striven for that those in management of congregated living settings are trained to also be aware of warning signs,

²⁰⁵ Emma Quinn, Corona Joyce and Egle Gusciute, 'Policies and Practices on Unaccompanied Minors in Ireland' 103, xii,2,9,86.

²⁰⁶ ESRI and others, 'Approaches to Unaccompanied Minors Following Status Determination in Ireland' (ESRI 2018) <<https://www.esri.ie/publications/approaches-to-unaccompanied-minors-following-status-determination-in-ireland/>> accessed 16 June 2022; Quinn, Joyce and Gusciute (n 205).

However, the worries that surround the more private-sector based accommodation are less settled. There is still a great deal of concern in this area, but the involvement of the Government and The Red Cross in the Pledged Accommodation scheme is now a positive step, as ‘due diligence’ can be done to assess the safety of the arrangements.

The EU experts noted that the Reception Conditions Directive provides more specific and detailed provisions for the protection of vulnerable groups and LGBTI refugees, as it has already undergone its second round of formalisation. We can turn to this Directive in subsequent analysis to anticipate the requirements which may be expected for TPBs of this cohort.

Chapter 6: Discussion and Policy Recommendations

Discussion

This thesis has sought to answer the question “*To what extent does the EU’s TP Directive foster human rights protection, in the implementation by Member States of the minimum standards of treatment, for women and children fleeing from Ukraine?*” Through extensive literature review, expert interviews and thematic analysis, steps have been taken towards answering this overarching question, guided by a number of sub-research questions which structured the subsequent chapters.

Chapter 2 set the contextual grounds for the rest of the thesis through a literature review of the works already published on the relationship between temporary protection regimes in general and the EU TP Directive in particular with human rights standards. An emphasis has been placed on the debate in the existing literature around the extent to which temporary protection regimes amount to a derogation from states’ obligations under the 1951 Refugee Convention and its Protocols, in particular concerning the right to seek asylum and the basic rights to be afforded to recipients, as well as the previous analyses of the unique challenges for the achievement of human rights faced in women’s experiences of international protection.

Chapter 3 then outlined the data sources and methodology that informed the research and analysis of the *implementation* of the TP Directive in the first months of activation. Expert interviews were carried out with EU migration law and policy experts as well as with national level stakeholders in the implementation. A prior analysis of the TP Directive on paper allowed for the identification of gaps and lack of clarity in the Directive in terms of human rights compliance, not only informed by knowledge of the literature and human rights structures that it must pertain to, but also through in-practice, lived realities of the Directive’s implementation.

Chapter 4 made strides towards answering the first sub-research question of the thesis, in indicating the extent to which the human rights of women and children fleeing Ukraine are

being protected under the TP Directive on paper - through an examination of the TP Directive's Articles, in light of the Operational Guidelines and answers to Frequently Asked Questions so far published by the European Commission - applying an Economic, Social and Cultural Rights analysis informed by a feminist critique of refugee rights to understand that degree to which the Directive, on paper, may deliver appropriate and sufficient rights protection to women and children fleeing Ukraine to Europe at present. The resulting framework that was used for interview analysis has been included in the Annexes of this thesis as a point of departure for future research.

In Chapter 5, it was shown that an Economic, Social and Cultural Rights analysis that draws on previous literature in the field could be applied to understand the extent to which the TP Directive is succeeding on paper to fulfil human rights obligations at the EU-level in line with international standards. Interviews with expert academics in EU migration and asylum law and policy supported the development of a contextual understanding at the EU-wide level, to be able to interpret the significance of the findings of the Member State case study of Ireland that would be elaborated in the analysis and discussion of the challenges and opportunities emerging in Member State-level practice. The analysis of the Irish stakeholder interviews and documentary research allowed an initial assessment of the extent to which the TP Directive has been implemented in Ireland as it was intended in the drafting. The challenges and opportunities which are emerging at the national level that can have an impact on the realisation of the minimum standards of treatment envisioned in the TP Directive on paper were identified, as well as the significance of those trends for the broader international human rights compliance of the Irish state as an agent of EU law.

Compared to the protection that TPBs would be receiving under asylum status, either in a mass influx event or under less pressurised circumstances, it has been revealed that the TP Directive expands the spread of immediately accessible right for all TPBs from Ukraine. There has been a marked success particularly the areas of employment and social welfare provision, with both EU and national level experts reporting positively on this point.

The greatest challenge identified in the Irish implementation of the TP Directive has been observed to be that of fulfilling the article 13(1) obligations on providing housing and

accommodation for TPBs. On paper, the provisions outlined for this right can be seen to be in line with international standards concerning the right to adequate housing, as observed by past doctrinal analyses of the TP Directive. Yet in practice, pre-existing housing shortages have rendered it very difficult for the Irish State to source and provide accommodation to TPBs upon arrival.

The interesting contribution of this thesis is threefold; firstly we have been able to begin to assess the extent to which the EU's TP Directive is succeeding in offering meaningful rights protection to displaced persons arriving as part of a 'mass influx'. (ie. the degree to which this formalised regime fixes lacunae that have been identified in this respect in the CSR 1951-based refugee protection regime in Europe and the world over). Concluding that the extension of rights is a marked improvement on the treatment that has been afforded to asylum seekers and irregular migrants in the EU in recent decades, with immediate access to rights and avoidance of illegality or criminalisation at the border hugely empowering women and children forced to flee their homes. However, practical implementation challenges are emerging in the fulfilment of ESCR-based entitlements that warrant further monitoring and creative thinking in terms of how to address these capacity/resources gaps. Secondly, we have been able to see the usefulness of the international law frameworks that scholars in the past have held the TP Directive up against – particularly with respect to achieving these rights for the TPB group. Albeit in a cursory manner, the rights that TPBs (in particular in Ireland) may turn to, for redress on violations of their housing rights in particular, have been flagged. Thirdly, we have been able to take this juncture as a point to not only examine the gap in the refugee regime and associated literature on the human rights compliance of TP regimes, but also to look through a critical feminist lens in order to understand the particular challenges faced by the majority group who are coming to Ireland from Ukraine at present, that being women and children. By this means, we may have an improved understanding of the degree to which challenges that have been identified for asylum seekers and refugees of these identities in the past may come to bear on the protection they enjoy under TP as well, understanding that while discrimination at the border and in status determination are not issues posed under this group status, the risk of destitution (as a tool of state migration control) may not yet be ruled out.

Policy Recommendations:

EU-Level Recommendation:

1. Burden Sharing/Solidarity Mechanism needs Meaningful Development

While laying aside the burden-sharing element of the TP Directive for reasons of scope, the focus of this thesis has been the MST. However, the benefit of the exploratory expert interviews in this respect is evident now as we come to make recommendations for next steps in the research and policy action. In a comparison of TP regimes prior to the activation of the TP Directive, Bastaki noted that burden-sharing between states in scenarios where there are issues around capacity and access to certain rights or entitlements may make numbers more manageable and thereby enable host governments to incrementally improve the situation for displaced persons²⁰⁷. This would help to resist a having a backsliding of the rights as is now being seen in the case of Ireland on housing. As noted by an EU expert interviewee...

If the war after a few years does not end, then the EU has to have a strategy for providing these people with durable solutions. So in that case, you need to think about burden-sharing or responsibility-sharing in a more material manner.

This thesis recommends that efforts be put into such burden sharing and solidarity frameworks in the shorter term, during the three-year life cycle of temporary protection under the current activation. When asked their opinion on the longer-term scope of the TP Directive in its present activation form (without the Article 11 restriction on movement) for a matching of the capacities of Member States and the demand of people, the TP expert expressed a positive response, but noted that there are some challenges. The existence of the Solidarity Platform was flagged as positive, but completely underwhelming in its ambition, representing a somewhat scattered informational hub. It was proposed, that in the medium to longer term, this hub could become a resettlement or relocation database and provide greater resources to States in terms of information management and dissemination in line with GDPR laws.

²⁰⁷ Jinan Bastaki, 'Temporary Protection Regimes and Refugees: What Works? Comparing the Kuwaiti, Bosnian, and Syrian Refugee Protection Regimes' (2018) 34 *Refuge* 73, 80.

The key recommendation in this respect is that the Solidarity Platform be used to a greater extent to allow states to broadcast their capacities, rather than relying on word of mouth to spread awareness about conditions that may not meet an individual's/family's requirements. It would also increase accountability and visibility of the solidarity amongst states. So long as states are stretched beyond capacity, they are going to have greater domestic unrest and be less able to meet their international obligations. As reflected in the recent rollout of the 'EU Talent Pool Pilot', aimed at matching persons fleeing Ukraine with employment in the EU²⁰⁸, efforts can be made to coordinate the information spread and matching of persons to opportunities for rights. This is particularly important for women with children, given the geographically-bound nature of schools and the issue of access to education. Ireland should maintain active engagement with any such solidarity platforms as they become available.

Irish National Level Recommendations:

2. Engage in continued monitoring of the fulfilment of the Chapter III obligations and particularly the Right to Housing

It would be recommended that a more comprehensive analysis using the Maastricht and Limburg Principles on the violation and implementation of the ICESCR, given its strength in standard-setting on ESCRs and housing, would be pursued by researchers and advocates on housing solutions that will hopefully be pursued by the State to assess their adequacy.

3. Minimise the risk of a 'dual system' of international protection emerging

By striving for improvements to policy that will benefit the fulfilment of universal human rights for all, minimise the impact of differentiated migration statuses and strengthen the protection of all persons forced to flee, regardless of ethnic origin.

²⁰⁸ European Commission, 'EU Talent Pool Pilot' (*EURES*, 2022) <https://eures.ec.europa.eu/eu-talent-pool-pilot_en> accessed 3 November 2022; Pub Affairs Bruxelles, 'Solidarity with Ukraine: EU Takes New Steps to Provide Certainty and Access to Employment to Beneficiaries of Temporary Protection' (*PubAffairs Bruxelles*, 10 October 2022) <<https://www.pubaffairsbruxelles.eu/eu-institution-news/solidarity-with-ukraine-eu-takes-new-steps-to-provide-certainty-and-access-to-employment-to-beneficiaries-of-temporary-protection/>>.

4. Engage in Legislative reform to strengthen the Right to Housing in Ireland

Given the legislative gap on a direct constitutional or legislative right to housing, a number of recommendations can be made that would benefit not only TPBs, but the wider population in Ireland. From a legislative perspective this this would advise:

1. To pursue ratification of ESC Article 31
2. Work towards elaboration of Constitutional Housing Rights, as are being called for by many in the space²⁰⁹
3. To address the identified transposition issue concerning Article 13(1) of the TP Directive into Irish law via the International Protection Act (2015)
4. To continue to support and strengthen safeguards for women and children in the context of the ‘whole-of-government’ and community sponsorship modelled response being pursued. An example could be to extend Garda Vetting requirements to private households in receipt of Accommodation Recognition Payment.

5. Make use of available funds via the Asylum, Migration and Integration Fund (AMIF) to address the right to adequate housing

As this thesis has discussed, Ireland has an obligation to progressively realise the right to adequate housing. Given that housing capacity and resources have been identified as barriers to fulfilling the right, the use of common European funds to bridge the gaps to any extent possible is to be encouraged. It should also be ensured that any housing built is sensitive to the gender-sensitive needs of women, as also identified in the Government White Paper on

²⁰⁹ Colm Ó Cinnéide, ‘Evidence on The Right to Housing: Briefing Document and Opening Statement’ (Oireachtas Joint Committee on Housing, Local Government and Heritage, 5 July 2022) <https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_housing_local_government_and_heritage/submissions/2022/2022-07-05_opening-statement-prof-colm-o-cinneide-professor-of-law-university-college-london-faculty-of-laws_en.pdf>.

ending Direct Provision²¹⁰, and for the best interests of UAMs²¹¹, persons with Medical and Psychological Needs²¹² and LGBTI persons²¹³.

The Council Implementing Decision has clarified that the AMIF will make EU Funds available to financially support all efforts of Member States to comply with obligations deriving from that activation decision²¹⁴. Ireland is proceeding with opting-in to the AMIF cycle 2021-2027²¹⁵, and it is advised that the Irish State should make use of such funding to fill the adequate housing gap²¹⁶. This is especially important where housing and accommodation is proving in practice to be a cornerstone for the fulfilment of manifold obligations under Chapter III of the TP Directive. Given how uncertain the extent to which a transition to durable solutions will be needed for the Ukraine response, and also in light of the pre-existing housing crisis in Ireland, it is recommended that all housing policies pursued are focused also on the long term, as well as catering for the current emergency.

²¹⁰ Government of Ireland, ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’ 170 <<https://www.gov.ie/en/publication/7aad0-minister-ogorman-publishes-the-white-paper-on-ending-direct-provision/>>.

²¹¹ *ibid* 171.

²¹² *ibid* 169.

²¹³ *ibid* 168.

²¹⁴ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection., Recital 22

²¹⁵ Houses of the Oireachtas, ‘Asylum, Migration and Integration Fund: Motion – Dáil Éireann (33rd Dáil) – Tuesday, 12 Jul 2022 – Houses of the Oireachtas’ (12 July 2022) <<https://www.oireachtas.ie/en/debates/debate/dail/2022-07-12/26>> accessed 4 November 2022.

²¹⁶ As is encouraged, with housing being one of the sectoral areas of the funding programme – see; European Commission, ‘Asylum, Migration and Integration Fund - Factsheet’ Financial instruments 28, 7.

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UN Doc. A/AC.96/830 1994

Appendices

Appendix 1. Background Information Provided to Invited Interviewees

Background Information on Temporary Protection Directive Research Project: Information For Invited Interviewees

Name	Alannah Owens
Address	<ul style="list-style-type: none"> • <i>Was made available to invitees -</i>
Phone	<ul style="list-style-type: none"> • <i>Was made available to invitees -</i>
Email	<ul style="list-style-type: none"> • <i>Was made available to invitees -</i>
Educational Institution Affiliation	The Global Campus of Human Rights (GCHR), Europe / Maastricht University, The Netherlands
Title of Project	Human Rights under Temporary Protection for Women and Children – The EU’s Temporary Protection Directive as Implemented in Ireland
Purpose and Aims of Research	This research aims to examine and analyse the implementation of the EU’s temporary protection directive (TPD) and to identify potential areas of human rights concern for women and children fleeing Ukraine to Ireland in this context.
Main Research Questions	<p>Overall RQ: <i>To what extent does the EU’s TP Directive foster human rights protection, in the implementation by Member States of the minimum standards of treatment, for women and children fleeing from Ukraine to Ireland?</i></p> <ul style="list-style-type: none"> • Sub RQ1: To what extent are the HRs of women and children fleeing Ukraine to Ireland being protected in the text of the TPD? • Sub RQ2: To what extent are the HRs of women and children fleeing Ukraine to Ireland being protected in the practical implementation of this Directive?

	<ul style="list-style-type: none"> • Sub RQ3: What challenges and opportunities are emerging in the national level implementation of the TPD that may impact the realisation of the minimum standards of treatment envisioned in the TPD, as set out in terms of state obligations towards beneficiaries of TP in Chapter III of the Directive (Article 8-16)?
Research Methods Involved	<p>This thesis uses qualitative research methods, availing of literature review, textual analysis, and semi-structured expert interviews.</p> <ul style="list-style-type: none"> • The literature review spans the academic debates on temporary protection regimes; economic, social, and cultural rights; and feminist critiques of international refugee law. • The document analysis considers EU and Irish legal and policy documents of relevance. • Expert interviews are conducted with national and EU-level stakeholders involved in the implementation and analysis of the EU’s TPD – spanning academia, policy makers, international organisations, and civil society.
Time Frame of Research Project	<p>This research project will end at the thesis submission, on the 15th of August 2022. Interviews are planned to be completed by Friday 15th of August 2022.</p>
Form of Assistance Requested	<p>Participation in a brief semi-structured interview, to be conducted on Zoom (link to be sent by Alannah).</p>
Ethical Considerations	<p>Prior to the interview, consent form provided by Alannah to be signed, for full understanding of the project, preparation for interview, and to indicate the participant’s preferences for anonymity, recording, etc.</p>
Anticipated Benefits of the Research	<p>This research is anticipated to provide a helpful mapping and analysis to all the stakeholders working on the rollout of tTemporary protection in Ireland, and offer insights and nuance the academic and practical bases of knowledge for other EU member states and international actors. It will be published on the Global Campus of Human Rights</p>

	<p>publicly accessible repository to further the debate on temporary protection, and facilitate the sharing of knowledge on its implementation, and identify lessons to be learned from the Irish experience.</p>
Planned Demonstration of Benefits	<p>Final copy of thesis to be shared with participants after completion and publication to the GCHR online repository.</p>
Supervisor Details	<p>Prof. Melissa Siegel, Maastricht University</p>

Appendix 2. Interview Guide – EU Academic Experts

Interview Guide

For Semi-Structured Expert Interviews with EU Academics

Hi _____, so lovely to meet you face-to-face. How are you? Thank you so much for taking the time to meet with me today. Your participation is deeply helpful in allowing me to understand more about my research topic. To recap, I am examining the extent to which the human rights of women and children fleeing the conflict in Ukraine are being upheld under the EU's Temporary Protection Directive (TPD). I will first ask some questions about the EU TPD regime and its interaction with international law and human rights standards. I will then specifically hone in on the obligations that states have towards temporary protection beneficiaries regarding minimum standards of treatment (Chapter III of the Directive) and the extent to which they are being upheld in practice in the Ukraine Response for women and children.

As has been explained in the consent form, all the information collected throughout the interview will be kept strictly confidential and will be used exclusively for research purposes. If at any point throughout you wish to stop, end the interview and/or not answer particular questions, please feel free to do so. Your identity will only be disclosed if you have consented to this, and I will record the interview only with your permission.

Introductory Questions:

Do you have any questions about this or anything else to do with the interview/research before we start?

[If the interviewee has given consent for the interview to be recorded....]

Is it okay with you if I now start to record the interview?

Section 1: Questions on the EU TPD as a Regime in IHRL

1. Do you consider the TPD to be protecting a broader category of persons than the 1951 Convention?
2. Do you think that having a harmonised TP regime is encouraging or discouraging a more lenient attitude towards potential derogations from the convention?
3. Can the TP Directive be considered an effective tool for the protection of human rights given the way it is formulated on paper?
4. Can the TP Directive be considered an effective tool for the protection of human rights given the way it is being implemented so far?
5. Do you think that the minimum standards of treatment outlined in the Directive are complying with international human rights obligations in their implementation?
6. Do you see any challenges or scope for effective enforcement by the EU of these measures?

Section 2: TPD MST-Specific Questions

Part A:

1. *Would you be able to answer some specific questions on how the implementation of the entitlements of persons enjoying temporary protection has been unfolding in the EU generally or in Ireland specifically? (if no skip to question 3, if yes continue to question 2)*
2. Have you observed any particular challenges facing women and children benefiting from temporary protection in...?
 1. the granting of residence permits and visas (Article 8),
 2. the outlining of TP provisions in an understandable language (Article 9),
 3. the registration of personal data (Article 10),
 4. the readmission of people who attempt to move (Article 11),
 5. matters concerning employment and social security (Article 12),
 6. access to accommodation (Article 13),
 7. matters concerning social welfare / need-based fixing of aid (Article 13),
 8. access to medical care (Article 13),

9. assistance for persons with special needs (Article 13),
 10. access to education for both minors and adults (Article 14),
 11. provisions for family reunification (Article 15),
 12. the treatment of unaccompanied minors (Article 16).
3. Could you identify whether any particular minimum standards of treatment are proving particularly challenging for member states across the EU to deliver?
 4. Given your broad understanding of the CEAS context and TPD implementation to date, would you have any particular comments to share on the situation of implementation in Ireland?
 5. What impact do you think the suspension of the application of Article 11 has had on the capacity for solidarity and burden sharing in the Ukrainian response?
 6. Does the suspension of Article 11 pose any challenges for achieving minimum standards of treatment across member states?
 7. Which actors do you understand to be the most pivotal in the implementation of the Directive (eg. State Bodies, Local Authorities, IOs, NGOs)?
 8. Does this offer any opportunities or challenges for the protection of TP beneficiaries' rights and entitlements?

Part B: Cohort-Specific Questions

Women

1. Can you identify any particular *challenges* for TP beneficiary women in terms of being provided with minimum standards of treatment?
2. In that context, do you consider any particular rights of women to be at risk of violation?
3. Are there any particular *opportunities* for the protection of women's rights under the TP Directive?
4. In that context, is the TP Directive empowering women with respect to any particular rights?
5. Do you understand there to be any challenges or opportunities for women with any particular characteristics (eg. gender, religion, race/ethnicity, sexuality, disability)?

Children

6. Can you identify any particular *challenges* for TP beneficiary children in terms of being provided with minimum standards of treatment?
7. In that context, do you consider any particular rights of children to be at risk of violation?
8. Are there any particular *opportunities* for the protection of children's rights under the TP Directive?
9. In that context, is the TP Directive empowering children with respect to any particular rights?
10. Do you understand there to be any challenges or opportunities for children with any particular characteristics (eg. gender, religion, race/ethnicity, sexual orientation, disability)?

I will now stop recording.

Closing Remarks:

Thank you so much for that, I really value your time and you sharing your insights with me. I would be delighted to keep in touch and share the results of the thesis when it has been finalised.

Moreover, if you have any questions or wish to clarify anything after we part ways today, please get in touch.

Appendix 3. Interview Guide – National Stakeholders

Interview Guide

For Stakeholders involved in the TPD Implementation in Ireland

Hi _____, so lovely to meet you face-to-face. How are you? Thank you so much for taking the time to meet with me today. Your participation is deeply helpful in allowing me to understand more about the extent to which the human rights of women and children fleeing the conflict in Ukraine are being upheld under the EU's Temporary Protection Directive. I will ask some questions about the obligations that states have towards temporary protection beneficiaries regarding minimum standards of treatment (Chapter III of the Directive) and the extent to which they are being upheld in practice in the Ukraine Response.

As has been explained in the consent form, all the information collected throughout the interview will be kept strictly confidential and will be used exclusively for research purposes. If at any point throughout you wish to stop, end the interview and/or not answer particular questions, please feel free to do so. Your identity will only be disclosed if you have consented to this, and I will record the interview only with your permission.

Introductory Questions:

Do you have any questions about this or anything else to do with the interview/research before we start?

[If the interviewee has given consent for the interview to be recorded....]

Is it okay with you if I now start to record the interview?

A. Warm Up Questions:

1. How has your organisation been involved in the implementation of the minimum standards of treatment to be provided for the beneficiaries of Temporary Protection?
2. How has your organisation been working with other actors in this implementation?
3. How has your relationship with the state been in this implementation?

B. Minimum-Standards of Treatment Related Questions:

- Articles 8 to 16 of the Temporary Protection Directive outline the specifics of how Member States should treat beneficiaries of temporary protection.
- I will now go through the articles one by one so we can identify any potential challenges or opportunities for the protection of human rights that this Directive is engendering for women and children fleeing Ukraine to Ireland.

Section 1: Chapter III Obligations

Have you observed any particular challenges facing women and children benefiting from temporary protection in...?

1. the granting of residence permits and visas (Article 8),
2. the outlining of TP provisions in an understandable language (Article 9),
3. the registration of personal data (Article 10),
4. the readmission of people who attempt to move (Article 11),
5. matters concerning employment and social security (Article 12),
6. access to accommodation (Article 13),
7. matters concerning social welfare / need-based fixing of aid (Article 13),
8. access to medical care (Article 13),
9. assistance for persons with special needs (Article 13),
10. access to education for both minors and adults (Article 14),
11. provisions for family reunification (Article 15),
12. the treatment of unaccompanied minors (Article 16).

Section 2: Identity Consideration Questions

Are you aware of there being any particular challenges for any specific groups of women and/or children in accessing the above entitlements?

(For example, eight grounds of relevance from the Equal Status Acts 2011-2018 listed below:)

1. Gender
2. Civil Status
3. Family Status
4. Religion
5. Sexual Orientation
6. Age
7. Disability
8. Race (including colour, nationality, ethnic or national origins)

Section 3: Closing Questions

1. As the implementation progresses, are you anticipating any particular pipeline challenges for any of the standards we have discussed for women and children?
2. What has been the most helpful factor for your/your organisation's work in the implementation of the TP Directive so far?
3. Any additional comments or remarks?

I will now stop recording.

Closing Remarks:

Thank you so much for that, I really value your time and you sharing your insights with me. I would be delighted to keep in touch and share the results of the thesis when it has been finalised.

Moreover, if you have any questions or wish to clarify anything after we part ways today, please get in touch.

Appendix 4. Informed Consent Form

INFORMED CONSENT

I, _____, agree to be interviewed for the master thesis research on “Safety in Numbers? International protection in the EU under the Temporary Protection Directive for Women and Children Fleeing Ukraine: Case Study of Implementation in Ireland” by Alannah Owens, Maastricht Graduate School of Governance, Maastricht University & Global Campus of Human Rights, Europe.

I understand that all information collected during the study period will be kept strictly confidential and no reference to my identity will be made in the study, unless I give my permission for this (as below). I understand that I can decide not to answer any question, or to stop the interview at any time. I am also aware that I can withdraw consent at any time after the data collection has been completed.

The tapes, transcripts and notes from the interview will become the property of the research project and will be kept anonymous in a secured environment, without any reference to my identity. Only the master student and his/her supervisor will have access to the data. I understand that in addition to the master thesis, the results of this study may be published in academic journals, policy papers or books.

I confirm that I have been informed of the study and the confidentiality and anonymity of this project. I understand that all data is going to be kept anonymous unless I decide to disclose my organizational affiliation and sector and/or name and position (as below). This decision is entirely up to me. I have had the opportunity to ask questions about the study and any questions I had have been addressed. I have been able to think about my participation in the study that is completely voluntary. I have the right to withdraw my consent at any time without needing to give a reason.

I agree/don't agree to participate in **one or more electronically recorded interviews** for this project.

Yes, I agree. No, I don't agree.

I agree/don't agree to **disclose my organizational affiliation and sector for this project**.

Yes, I agree. No, I don't agree.

I agree/don't agree to **disclose my name and position within my organization for this project**.

Yes, I agree. No, I don't agree.

Signature of Interviewee _____ Date _____

If you cannot obtain satisfactory answers to your questions, or have comments or complaints about your treatment in this study, please contact:

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