

LIBERTIES RULE OF LAW REPORT 2022

IRELAND



Irish Council for
Civil Liberties

CityWide 
CityWide Drugs Crisis Campaign

★ **European
Movement**
Ireland

 **Environmental Law Officer**
NIEN
Irish Environmental Network

 **flac**
promoting access to justice


INCLUSION IRELAND
National Association for People with an Intellectual Disability


ILMI
INDEPENDENT LIVING
MOVEMENT IRELAND

itm Irish Traveller
movement

 **CIVIL
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EUROPE**

Foreword

This country report is part of the Liberties Rule of Law Report 2022, which is the third annual report on the state of rule of law in the European Union (EU) published by the Civil Liberties Union for Europe (Liberties). Liberties is a non-governmental organisation (NGO) promoting the civil liberties of everyone in the EU, and it is built on a network of national civil liberties NGOs from across the EU. Currently, we have member and partner organisations in Belgium, Bulgaria, the Czech Republic, Croatia, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden.

Liberties, together with its members and partner organisations, carries out advocacy, campaigning and public education activities to explain what the rule of law is, what the EU and national governments are doing to protect or harm it, and to gather public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

The 2022 Report was drafted by Liberties and its member and partner organisations and covers the situation in 2021. It is a ‘shadow report’ to the European Commission’s annual rule of law audit. As such, its purpose is to provide the European Commission with reliable information and analysis from the ground to feed its own rule of law reports and to provide an independent analysis of the state of the rule of law in the EU in its own right.

Liberties’ report represents the most in-depth reporting exercise carried out to date by an NGO network to map developments in a wide range of areas connected to the rule of law in the EU. The 2022 Report includes 17 country reports that follow a common structure mirroring and expanding on the priority areas and indicators identified by the European Commission for its annual rule of law monitoring cycle. Thirty-two member and partner organisations across the EU contributed to the compilation of these country reports.

Building on the country findings, the 2022 Report offers an overview of general trends on the rule of law in the EU and compiles a series of recommendations to national and EU policy makers, which suggest concrete actions the EU institutions and national governments need to take to address identified shortcomings.

[Download the full Liberties Rule of Law Report 2022 here](#)

Table of contents

About the authors	4
Key concerns	6
Justice system	7
Anti-corruption framework	19
Media environment and freedom of expression and of information	22
Checks and balances	29
Enabling framework for civil society	33
Disregard of human rights obligations and other systemic issues affecting the rule of law framework	36
Fostering a rule of law culture	41
Contacts	42

Ireland

About the authors

This report has been coordinated and authored by the Irish Council for Civil Liberties (ICCL), with inputs from CityWide Drugs Crisis Campaign, European Movement Ireland, FLAC-Free Legal Advice Centres, Inclusion Ireland, Independent Living Movement Ireland, Irish Traveller Movement and The Environmental Law Officer of the Irish Environmental Network. This submission represents a compilation of a wide array of material and expertise from the aforementioned organisations in their areas of concern.



The **Irish Council for Civil Liberties (ICCL)** is Ireland's oldest independent human rights body. It has been at the forefront of every major rights advance in Irish society for over 40 years. ICCL helped decriminalise homosexuality and legalise divorce and contraception. We drove police reform, defending suspects' rights and in recent years, we led successful campaigns for marriage equality and reproductive rights.



CityWide Drugs Crisis Campaign is a national network of community activists and

community organisations that are involved in responding to Ireland's drugs crisis. Set up in 1995 by the Inner City Organisations Network (ICON) to bring together Dublin communities that were struggling with the heroin crisis, CityWide now works nationally linking communities across the country dealing with a range of substance issues.



European Movement Ireland's mission is to develop the connection between Ireland and Europe, and to achieve greater public understanding of and engagement with the European Union and with our European partners. We do this by providing objective information and by stimulating debate. Our aim is to reach a wide range of audiences throughout Ireland, and we co-operate with the Government and with like-minded organisations. Separately, we work to inform our European colleagues, through international networks such as European Movement International, about the role Ireland plays in Europe and the EU, and the role that the EU plays in Ireland.



Irish Environmental Network is a network of individual environmental Non-Government Organisations (NGOs) that work individually

and, as appropriate, jointly to protect and enhance the environment, and to place environmental issues centre stage in Ireland and internationally. The IEN works to promote the interlinked principles of environmental, social and economic sustainability. In representing the environment its Members represent a common good and not self-interest. As a network, IEN is greater than the sum of its parts, with synergies developing from working together and sharing knowledge, skills, strengths and experience. The Network acts on behalf of its Members to secure core and other funding for their activities. The input provided here is from the Environmental Law Officer of the IEN who advocates on environmental law matters.



Free Legal Advice Centres-FLAC is a human rights organisation which exists to promote equal access to justice for all. FLAC's vision is of a society where everyone can access fair and accountable mechanisms to vindicate their rights.



Inclusion Ireland: Established in 1961, Inclusion Ireland is a national, rights-based advocacy organisation that works to promote the rights of people with an intellectual disability. The vision of Inclusion Ireland is that of people with an intellectual disability living

and participating in the community with equal rights. Inclusion Ireland's work is underpinned by the values of dignity, inclusion, social justice, democracy and autonomy and we use the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) to guide our work.



Independent Living Movement Ireland-ILMI works collectively to create an Independent Living Movement in Ireland led by disabled people, promoting a rights-based social model of disability and challenging a charity/medical view of disability. ILMI are working towards the removal of societal barriers that prevent active equal participation of disabled people, challenging the denial of people's rights, and promoting the philosophy of Independent Living.



Irish Traveller Movement (ITM): Established in 1991, ITM is the national advocacy and membership platform which brings together Travellers and representative organisations to develop collective solutions on issues faced by the community to achieve greater equality for Travellers. ITM represents Traveller interests in national governmental, international and human rights settings. ITM challenges racism - individual, cultural and

structural - which Travellers face and promotes integration and equality.

Key concerns

While some developments were registered in the area of **justice**, a number of concerns remain. It is welcome that a number of long-promised reviews in respect of the justice and court systems are underway, however 2022 must see action beyond reviews and consultations. Time bound and adequately funded plans for the delivery of key reforms in areas such as legal aid and court reform must now be delivered. It is also of note that while spending on the justice system increased marginally in 2021, Ireland remains either close to or at the bottom of the league in terms of spending on its justice system in a comparative European sense. The continued use of the Special Criminal Court remains a serious concern notwithstanding an ongoing review of the Offences Against the State Act.

Similarly, in the area of **corruption**, while it is welcome to see some movement in respect of the need to update public ethics legislation, the timeframe the government is proposing to progress new legislation is slow and does not reflect the urgent need for progress in this area. While work on the transposition of Directive 2019/1937 continues, it is disappointing that this has not been completed by the December 2021 deadline and that the government have chosen to derogate from a number of key provisions.

While it is welcome to see progress in a number of areas with regard to media **freedom, pluralism and freedom of expression**, certain provisions of forthcoming legislation on hate crime and online safety create freedom of expression concerns. Similarly, a forthcoming police powers bill may impede the protection of journalistic sources. The review of the Freedom of Information regime is to be particularly welcomed as civil society have been highlighting flaws in the existing legislation for a number of years. The long-promised reform of Ireland's defamation laws failed to materialise in 2021, despite a report on the matter being furnished to the Minister for Justice.

The continued curtailing of debate and the side-stepping of parliamentary process with respect to the passage of COVID-19 regulations remains a serious concern, negatively affecting the system of **checks and balances**. This is now particularly true as the emergency phase of the pandemic has ended. While the swift passage of legislation may have necessitated the curtailment of normal parliamentary process in 2020, it is wholly unjustified in 2021. This disregard of other parliamentary procedures with respect to the passing of legislation, as outlined below, is also of concern.

Civil society organisations continue to face certain hurdles in carrying out their work. While the publication of the draft Electoral Reform Bill was welcome, it was disappointing to see that no steps have been taken to address the civil society freedom issues in the context of the bill, despite noting them as an issue for NGOs. It had also been hoped that 2021 would see a long overdue review of the

2009 Charities Act commence, but this is yet to materialise. The progression of the Housing Planning and Development Bill in its current form remains a key concern from the perspective of judicial review for environmental NGOs.

The persistent failure to effectively address certain **systemic human rights issues** also continues to impact the national rule of law environment. 2021 has seen progress in a number of areas of concern, these include steps to end direct provision and actions for survivors of mother and baby homes and abuse survivors in day schools. However, it is of concern that the government is not fully engaging in these processes to ensure the needs and concerns of survivors are addressed. With respect to mother and baby home survivors and survivors of abuse in day schools, groups have expressed disappointment and serious concern with proposed compensation schemes and other bills. Regarding direct provision, while the commitment to ending the system is welcome, the government have not engaged with the need for independent inspections of these facilities to ensure that those seeking international protection are being housed in safe and appropriate spaces. Concern also remains with regard to the lack of implementation and action on a number of items in the National Traveller and Roma Inclusion Strategy which will only serve to further marginalise Travellers and Roma people.

Against this background, the government has invested in supporting civil society to **raise awareness about the state of rule of law** in Ireland and about the EU monitoring and

reporting mechanism. ICCL benefitted from a grant to that effect, and hosted two events in 2021 to facilitate a discussion on the rule of law situation domestically and to inform other civil society organisations about the opportunity to report on rule of law issues and encourage them to take part in the reporting process feeding the European Commission's annual rule of law audit. This joint report is the result of those efforts.

State of play

- ↑ Justice system
- Anti-corruption framework
- ↑ Media environment and freedom of expression and of information
- ↓ Checks and balances
- ↓ Enabling framework for civil society
- ↑ Systemic human rights issues

Legend (versus 2020)

- Regression: ↓
- No progress: –
- Progress: ↑

Justice system ↑

Key recommendations

- Complete comprehensive review of the legal aid system, which should include, inter alia; provision for an enhanced civil legal aid system.

- Complete the review of the Offences Against the State Act and ensure that all courts comply with international fair trial standards.
- Increase overall levels of investment in the Irish courts/justice system to ensure that the system is accessible, accommodative and time efficient.

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

The Judicial Appointments Commission Bill of 2017¹ lapsed following the Irish General Election on 8 February 2020.² A General Scheme for a new Judicial Appointments Commission Bill 2020³ has been published and pre-legislative scrutiny of this Bill commenced in May 2021.⁴ The final report of the pre-legislative scrutiny process was published in October 2021.⁵ As of December 2021, the

revised legislation which should take account of the findings of the pre-legislative scrutiny process has not been published by the Department of Justice.

Independence and powers of the body tasked with safeguarding the independence of the judiciary

A Judicial Council was formally established on 17 December 2019⁶ made up of the entire Irish judiciary. The Council Published its first annual report in July 2021.⁷

Accountability of judges and prosecutors

Under the current regime, there is no formal process for disciplining members of the judiciary. The Judicial Council seek to remedy this through their Judicial Conduct Committee which is in the process of establishment. The Judicial Conduct Committee of the Council concluded its work drafting guidelines concerning judicial conduct and ethics in June 2021 and submitted them for review by the Board of the Judicial Council. The draft

1 See <https://www.oireachtas.ie/en/bills/bill/2017/71/>

2 See https://data.oireachtas.ie/ie/oireachtas/electoralProcess/electionResults/dail/2020/2020-05-01_33rd-dail-general-election-results_en.pdf

3 See http://www.justice.ie/en/JELR/Pages/General_Scheme_of_the_Judicial_Appointments_Commission_Bill_2020

4 <https://www.oireachtas.ie/en/press-centre/press-releases/20211014-justice-committee-publishes-report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-judicial-appointments-commission-bill-2020/>

5 <https://www.oireachtas.ie/en/press-centre/press-releases/20211014-justice-committee-publishes-report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-judicial-appointments-commission-bill-2020/>

6 <https://judicialcouncil.ie/about-the-judicial-council/>

7 <https://judicialcouncil.ie/assets/uploads/documents/Annual%20Report%202020%20English.pdf>

guidelines include guidance for judges as to the matters to be considered when deciding on recusal from presiding over legal proceedings. The Board will in due course review, and may modify, those draft guidelines before the Judicial Council considers them for adoption. The latest date that this can be completed by is 28th June 2022.⁸ No resolution has been implemented to address the issues noted in the report of the previous cycle in respect of the conduct of Supreme Court Judge the Hon Mr Justice Seamus Wolfe, and the associated issues of confidence this has created.^{9,10,11}

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

Prior to the determination by the High Court of a Judicial Review taken by Ireland's oldest NGO – An Taisce the National Trust for Ireland, challenging a decision of An Bord Pleanála (the national planning authority) in

respect of the building of a cheese factory, statements were made by members of the Oireachtas and An Taoiseach¹² on the matter. This led to some considerable concern about the purpose and intent of such statements on a matter which was then sub judice, and how it accorded with Standing Order 69 in Dáil proceedings.¹³ The Judicial Appointments Commission Bill 2020 has completed the pre-legislative scrutiny process¹⁴ and a revised version is due for publication in 2022.

Other issues affecting judicial independence

In February 2021, the Minister for Justice announced a review of the Offences Against the State Act and the role of the Special Criminal Court in the Irish Judicial System.¹⁵ ICCL has called for the immediate abolition of the Court. ICCL's submission¹⁶ to the review group highlight six areas of particular concern:

- the absence of a jury;

8 <https://judicialcouncil.ie/judicial-conduct-committee/>

9 <https://judicialcouncil.ie/news/statement-and-report-arising-from-review-by-ms-justice-denham/>

10 <https://www.irishtimes.com/news/crime-and-law/full-text-of-denham-report-concerning-mr-justice-s%C3%A9amus-woulfe-1.4369637>

11 <https://www.irishtimes.com/news/crime-and-law/letters-in-full-what-chief-justice-said-to-mr-justice-seamus-woulfe-over-golfgate-dinner-and-his-reply-1.4404867>

12 <https://www.oireachtas.ie/en/debates/debate/dail/2021-03-31/13/>

13 https://data.oireachtas.ie/ie/oireachtas/parliamentaryBusiness/standingOrders/dail/2021/2021-01-27 consolidated-dail-eireann-standing-orders-january-2021_en.pdf

14 <https://www.oireachtas.ie/en/press-centre/press-releases/20211014-justice-committee-publishes-report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-judicial-appointments-commission-bill-2020/>

15 <https://www.gov.ie/en/press-release/51927-minister-mcentee-appoints-independent-review-group-to-examine-the-offences-against-the-state-acts/>

16 <https://www.iccl.ie/2021/the-special-criminal-court-must-be-abolished/>

- the dual role of judges as both judge and jury;
- the extensive powers of the public prosecutor (DPP);
- claims of privilege by gardaí;
- and the acceptance of beliefs and inferences as evidence.

The right to a trial by a jury of one's peers is a strongly-protected Constitutional right in Ireland. ICCL believes there is little evidence to suggest that jury intimidation is widespread, but if so, this is an issue which should be addressed by measures such as anonymous juries and by legislation at every level of the courts system. It is inappropriate and out of line with the practices and protections of an adversarial, common-law jurisdiction for judges to act as both judge and juror at the Special Criminal Court. The DPP's power to decide what cases go to the Court is far too broad and immensely difficult to challenge. The DPP should be required to provide the reasons they are sending a case to the Court, and those reasons should be open to challenge. At the Court, gardaí can claim privilege and refuse to give important documents to the defence. Gardaí may also present their belief that someone is guilty without having to show any other evidence. Negative inferences may be drawn from a suspect's silence. These practices are clearly contrary to fair trial rights

and should end immediately. ICCL's favoured course of action is the abolition of the Court, with the consideration of alternative means of ensuring the safety of juries and witnesses. Pending the abolition of the Court ICCL also proposes immediate reforms in how the Court currently operates.

Quality of justice

Accessibility of courts: legal aid system

The current civil legal aid system in Ireland is very restrictive and requires that the applicant have a disposable income of less than €18,000 per year. There are limited exceptions to these strict means requirements, such as cases which involve child protection and family law.¹⁷ This system has been criticised for being prohibitive and a barrier to access to justice by a number of bodies such as the Public Interest Law Alliance (PILA) and Free Legal Advice Centres (FLAC), as well as being subject to criticism by Chief Justice Frank Clarke.¹⁸

In May 2021, the Department of Justice announced its Justice Plan 2021,¹⁹ within which the Minister for Justice proposed to review and expand the civil legal aid system to improve access to justice.²⁰ While welcoming the review, FLAC told the Department

17 See <https://www.legalaidboard.ie/en/our-services/legal-aid-services/how-do-i-apply-for-civil-legal-aid/>

18 <https://www.lawlibrary.ie/2021/10/03/access-to-justice-conference-friday-1st-october-2021/>

19 See http://www.justice.ie/en/JELR/Department_of_Justice_Action_Plan_2021.pdf/Files/Department_of_Justice_Action_Plan_2021.pdf

20 <https://www.justice.ie/en/JELR/Pages/PR21000132>

of Justice in July 2021,²¹ to specifically have regard for the eligibility criteria for legal aid, highlighting the ongoing absence of civil legal aid for families facing eviction. This is vitally important. As Mr Justice Max Barrett said in a judgment delivered in May 2020, the lack of legal aid in some circumstances can lead to a “mockery of justice”. He said: “Very often (perhaps more often than not) a debtor, because he is down on his luck, has to represent himself in the court and the hearing becomes something of a mockery of justice, with the debtor often completely floundering, not sure what to say or do, often (understandably) upset to the point of tears, and trying to compete against a barrister whose skill-set comprises knowing the law and arguing a case in open court.”

It is also of note that following a government announcement of a review of equality law in June 2021,²² FLAC²³ and other organisations²⁴ have called for legal aid to be made available to victims of discrimination and for other civil legal purposes. Inclusion Ireland²⁵ in their submission also noted the barriers which result in the persistent under-reporting of discrimination against for people with intellectual disabilities. The current absence of access to legal aid and dedicated legal services to support victims of discrimination to take complaints

has been pointed out. Groups such as people with disabilities, Travellers and others have highlighted the complexity of the procedure, the lack of reasonable accommodation to support people to access justice, and the limited outcomes that often dissuade people to take complaints.

An important negative development is the maintenance within the legislative programme of the General Scheme of a bill,²⁶ intended to radically overhaul the existing rules on Judicial Review in environmental cases, and to do so in a non-progressive way with a view to making JR in such cases more difficult to pursue, including but not limited to changes to rules on costs and locus standi. In December 2021, the relevant Joint Oireachtas Committee was preparing for pre-legislative scrutiny of the proposed changes in 2022. It is important in the context to realise the issue of costs in Irish JR remains a particular significant concern with the European Commission, with the 2019 Environmental Implementation Review Report for Ireland²⁷ stating i.a.: “Extremely high litigation costs — which can leave litigants owing hundreds of thousands of euros — present a greater barrier to environmental litigation than legal standing. For limited litigation categories, Irish legislation adopted

21 https://www.flac.ie/assets/files/pdf/joint_letter_on_civil_legal_aid.pdf

22 <https://www.gov.ie/en/press-release/24864-minister-ogorman-announces-review-of-the-equality-acts/>

23 <https://www.flac.ie/news/latestnews/2021/06/22/announced-review-of-equality-law-timely-and-necess/>

24 <https://www.flac.ie/news/latestnews/2021/07/29/43-ngos-and-advocates-join-flacs-call-on-justice-m/>

25 Inclusion Ireland 2021”Submission on the Review of the Equality Acts”

26 *The Housing and Planning and Development Bill*, 2019

27 https://ec.europa.eu/environment/eir/pdf/report_ie_en.pdf

in 2011 provides a form of cost protection. In case C-470/16, *North East Pylon*, the Court of Justice ruled that the requirement that costs not be prohibitively expensive applied to environmental litigation in general, and not just these limited categories. However, Ireland has yet to create a system that ensures that environmental litigants are not exposed to unreasonable costs”.

Resources of the judiciary

In 2020, the European Commission for the Efficiency of Justice published its annual report on the efficiency of the legal systems in each Member State. According to the report, Ireland spent just 0.1% of GDP on its judicial system in 2018, the lowest of the 46 jurisdictions reviewed in the report. The report also showed that Ireland still has one of the lowest number of judges per capita, with only 3.3 judges per 100,000 people compared to an average of 21.²⁸ In its 2021 Rule of Law Report the European Commission again criticised Ireland as having the lowest number of judges per inhabitant in the EU stating that this ‘could also affect the efficiency of the Irish justice system.’²⁹ In September 2021 the government announced the nomination of 5 new High Court judges.³⁰

In October 2021, the Government announced it was allocating a 5.3% increase to the annual budget for the Department of Justice resulting in a total budget of just over €3.1 billion. These funds have been allocated in a number of areas, including increases in policing and administrative staffing for Gardaí. The Courts Service will receive a total of €164 million in 2022. There is also provision for administrative staff to support additional judges, as well as the recruitment of specialist staff to improve the service’s technology capacity.³¹ However, as noted by the 2021 Rule of Law Report by the European Commission, the government’s plans to improve the situation are insufficient and more immediate measures are necessary.

Training of justice professionals

At present, there is no formalised training provided to judges when they are appointed to the bench. Instead, the education of members of the judiciary has been carried out by the Association of Judges of Ireland Committee for Judicial Studies. Due to a lack of funding, this Committee organises only one annual training day for the judges of each Court and an additional judicial conference day which all judges attend once a year. Judges are also

28 See <https://rm.coe.int/evaluation-report-part-2-english/16809fc059>

29 European Commission (2021), Rule of Law report. *Country Chapter for Ireland* (Brussels, 20.7.2021, SWD(2021) 715 final)

30 <https://www.lawsociety.ie/gazette/top-stories/2021/09-september/five-new-high-court-judges-nominated>

31 <https://www.lawsociety.ie/gazette/top-stories/2021/10-october/justice-budget-to-rise-by-5.3-next-year#:~:text=The%20Government%20has%20allocated%20an,4.7%25%20to%20%E2%82%AC270%20million.>

selected to attend conferences and international training events relevant to their area of work.³²

The Judicial Studies Committee will be taken over by the Judicial Council on foot of the Judicial Council Act 2019. The purpose of the committee is to ensure a more consistent and high-quality educational programme for members of the judiciary. A number of trainings as part of this programme have taken place in 2021.³³

Digitalisation

In February 2021 the Courts Service launched their 2021-2023 strategic plan,³⁴ a key element of this plan being to progress the courts' modernisation programme. The report sets out how the modernisation programme will "fundamentally transform how the Courts Service delivers services and develops a modern, best-in-class Courts system, delivering a more efficient and user-friendly experience for all those who attend, work in and pay for the Courts. This ambitious plan focuses on redesigning services around the user, leveraging digital technology to streamline services and processes, and ultimately delivering a Courts system that enhances Ireland's international reputation". This programme was awarded €1 million towards its work in the Department of Justice Budget for 2022.

The pandemic has expedited the use of technology in the Courts, with the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 making provision for the use of videolink in lieu of live hearings. This has continued into 2021. In civil matters, the judiciary facilitate hearings and motions online via a platform called "Pexip", except for jury trials and non-urgent personal injury matters. In criminal matters, accused persons can be arraigned over videolink and, if in custody, can attend any hearings and applications via Pexip. The Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 also provides for the use of an audio only link in the definition of electronic communication in s31(6) for hearings by designated bodies. Regrettably, this has been relied upon by certain of the designated bodies (e.g. The Forestry Appeals Committee, FAC) in order to conduct hearings by telephone line only, even in circumstances where the appellant has objected to this. For example, where the appellant has outlined the poor quality of their telephone line, and the inequality and unfairness of the proceedings where other parties to the proceedings have internet access or are present, and where the impact of sustained usage of the phone impacts for the hearings considerably impacts on other members of the household – in circumstances where multiple hearings are scheduled back-to-back over a number of days. Even in circumstances where an appellant had been notified of an electricity

32 See <https://aji.ie/supports/judicial-education/>

33 <https://www.irishtimes.com/news/crime-and-law/new-to-the-bench-judges-to-be-trained-for-the-first-time-1.4676043>

34 <https://www.courts.ie/content/courts-service-strategic-plan-2021-%E2%80%93-2023-published>

ou tage – the FAC insisted on continuing with the hearings, despite the fact that the electricity for the appellants internet and even offline access to their laptop was compromised given the duration of the laptop battery. Such matters have been brought to the attention of the relevant minister, given the Civil Law and Criminal Law (Misc. Provision) Act 2020 in s31(2) and relevant forestry legislation provide for considerations in respect of acting in the interests of justice and fairness. However, such escalations resulted in no change in these instances.

Use of assessment tools and standards

It is essential that the Courts Service develop its website to improve access to persons with disabilities. FLAC recognises that technology may be developed for the Courts Service to allow for conduct of work online, so it is imperative that people with visual impairments or motor impairments who are unable to access a webpage, much less submit or retrieve information are not excluded from these services because they cannot access the technology.³⁵

The Programme for a Partnership Government under the heading “Courts and Law Reform”³⁶ contains a commitment to the commissioning of an annual study on court efficiency and sitting times, benchmarked against international standards, to provide accurate measurements

for improving access to justice. Comprehensive data is required in relation to lay litigants and persons in need of legal aid, and persons facing repossession of their family homes or evictions in order to be able to devise accurate and effective measures for improving access to justice.

Translation of other languages and sign language interpretation in the Courts

The Courts Service regularly facilitates interpretation services for those whom English is not their first language. The provision of the interpretation service is outsourced to private operators, however anecdotal evidence suggests that the quality of interpretation provided can be patchy. Legal interpretation requires not only the ability to speak in two or more languages, but also familiarity with legal terminology and differences in dialects and vocabulary in the relevant languages, as well as simultaneous interpreting skills. There is a clear need for standards and regulation in this area in order to ensure that those who do not have sufficient fluency in English can still access justice.

FLAC welcomed the enactment of the Irish Sign Language Act 2017 making Irish Sign Language an official language of the State and placed an obligation on courts to take all reasonable steps to allow persons competent in Irish Sign Language to be heard in ISL as

35 Rei-Anderson, Cody and Reynolds, Graham J. and Wood, Jayde and Wood, Natasha, Access to Justice Online: Are Canadian Court Websites Accessible to Users with Visual Impairments? Alberta Law Review, Vol. 55, No. 3, 2018. Available at SSRN: <https://ssrn.com/abstract=3143971>

36 https://www.merriestreet.ie/merriestreet/en/imagelibrary/programme_for_partnership_government.pdf

well as a duty on public services to provide free interpretation services when accessing statutory services.

FLAC also welcomed the provisions in the National Disability Inclusion Strategy 2017-2021 which included plans to increase the number of sign language interpreters, a registration scheme and quality assurance measures, and professional training for sign language interpreters. These are progressive measures, but we also recognise that the presence of an interpreter can change the dynamic of legal interactions and court proceedings. We further note there is a lack of awareness among many in the justice system about both deaf people and their language and the nature of interpreted interaction and the fact that interpretation services can sometimes create additional barriers for a deaf person to overcome. As such, it is essential that the Courts provide effective ISL interpretation or other appropriate mechanisms to accommodate deaf people where necessary.

We note that the National Disability Authority are engaging with An Garda Síochána and with the Courts Service in relation to developing proposals to improve the response of both organisations in interacting with people with disabilities in accessing the justice system,³⁷ however, data concerning specific progress in this regard is currently unavailable. As well as access to public buildings, the legislation requires access to information including

sectoral plans for government departments requiring that access for people with disabilities becomes an integral part of service planning and provision. FLAC acknowledges that the Courts Service has appointed a Disability Liaison Officer and disabled access and facilities are included in all court building and refurbishment projects, however this work is ongoing and there is no easily accessible information online that indicates which buildings are accessible or not.³⁸ One of the aims of the review should be to ensure that people with a disability can participate fully in the justice system, and that disability issues are not considered in isolation but integrated in all areas of access to justice.

Fairness and efficiency of the justice system

Length of proceedings

In April 2020, the European Court of Human Rights (ECtHR) delivered its decision in the case of *Keaney v Ireland*. In that case, the Applicant claimed that the delay of over 11 years between the date of initiation of proceedings to the date of judgment of final appeal in the Supreme Court was excessive. The ECtHR found that this delay was excessive and a violation of Article 6 of the European Convention on Human Rights. The Court further found that there was no effective remedy for delay of this nature in

³⁷ National Disability Inclusion Strategy 2017-21 DE

³⁸ Report of the Commission on the Status of People With Disabilities

the Irish courts. The Court noted that Ireland has persistently not met its obligations in this regard and that lengthy delays in litigation were systemic. Although the concurring opinion of Judge O’Leary noted that some progress had been made with the introduction of case management and the expansion of the Court of Appeal, Judge O’Leary was still of the view that Ireland is not doing enough to meet its obligations under Article 6.³⁹ The Keaney case was one of many to come before the ECtHR on the length of proceedings in Ireland and Keaney was chosen by the Court as a lead case on the issue. In 2021 another case came before the ECtHR, *Gilligan v Ireland* in which it was argued that the length of proceedings amounted to a breach of Article 6. However, in that case no violation was found as the Court found that the appellants themselves had caused the delay.⁴⁰ However, it remains to be seen whether the State’s implementation of the Keaney judgment will be effective and whether this case will lead to systemic reform in terms of length of proceedings. Case management in respect of JR in the Superior Courts for environmental cases appears to have reduced to some extent the practice of allowing the State respondents seek numerous

adjournments, which contributed substantially to delays in such proceedings.

Quality and accessibility of court decisions

Appellants and their representatives should be given access to any previous decisions which may be relevant to their case in quasi-judicial tribunals. Anonymised searchable databases should be established in Quasi-Judicial Tribunals and made available to the public. This was recommended⁴¹ by the UN Special Rapporteur on Extreme Poverty and Human Rights regarding the Social Welfare Appeals Office following her visit to Ireland in January 2011 but remains unimplemented.

Corruption of the judiciary

The anti-corruption watchdog GRECO has criticised Ireland’s judicial election process as being overly politicised. There was a controversy surrounding the appointment of former Attorney General Seamus Wolfe as a member of the Supreme Court in 2020. However, the new Judicial Appointments Commission Bill 2020 is intended to address these concerns.⁴² This Bill has completed the pre-legislative

39 See <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-202411%22%5D%7D>

40 <https://hudoc.echr.coe.int/eng-press?i=003-6967495-9379224>.

41 <https://www.dfa.ie/media/dfa/alldfawebsitemedia/newspress/publications/2011-unhcr-independent-report-mission-to-ireland.pdf>

42 <https://www.oireachtas.ie/en/press-centre/press-releases/20210614-justice-committee-resumes-pre-legislative-scrutiny-of-the-general-scheme-of-the-judicial-appointments-commission-bill-2020/>.

scrutiny process⁴³ and a revised version is due for publication.

Review of the administration of justice

FLAC contributed to the recent Review of the Administration of Justice and welcome a number of its recommendations. However, we have sought consultation in relation to the implementation of its recommendations. Civil society was not strongly represented on the review group. FLAC was especially dismayed to hear from the Minister that legislation is planned in relation to judicial review as we have particular concerns about those recommendations being implemented. We very much welcome the proposed long overdue reform of rules and procedures but have some concerns that review recommendations if implemented will put too much onus on an unrepresented litigant to identify with clarity their claim. It is vital that these reforms are equality, human rights and poverty proofed as is required by Section 42 of the IHREC Act.

Discrimination in the justice sector

The Public Sector Duty (PSD) was introduced pursuant to section 42 of the Irish Human Rights and Equality Act 2014. It provides an important legislative mechanism for mainstreaming racial and ethnic equality and protecting the human rights of ethnic minorities. In fulfilling their duties under the 2014 legislation, public bodies - including those involved

in the administration of the criminal justice system - must consider the human rights and equality impact of their policies, services, budgets, procedures and practices. The PSD requires public bodies to take a proactive approach to tackling institutional discrimination and promote the mainstreaming of an equality perspective in all their functions.

The commitment of the Department of Justice and Equality to upholding and vindicating human and individual rights as a core element of its criminal justice sectoral strategy is welcomed as a means of the DJE meeting its obligations pursuant to the PSD.

Protective Costs Orders

Part 11 of the Legal Services Regulation Act 2015, Legal Costs in Civil Proceedings, sets out when a court may order someone involved in proceedings to pay the costs of a case, including the costs of another party. Section 169 provides that a party who is entirely successful in civil proceedings is entitled to an award of costs against the unsuccessful party. However, a court may choose not to make this order in certain instances which are outlined in the same section. These do not include cases which seek to clarify the law in the public interest. In the experience of FLAC, the costs incurred by litigants in vindicating their rights is one of the biggest barriers to accessing justice. Not only do applicants incur their own legal fees, they also run the risk of incurring

43 <https://www.oireachtas.ie/en/press-centre/press-releases/20211014-justice-committee-publishes-report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-judicial-appointments-commission-bill-2020/>

those of their opponent. Public interest litigation is inherently unpredictable, as the case is often being litigated because the law is not clear and needs clarification. In our legal system, such cases are almost always brought by an individual who is personally concerned with the outcome.

Such cases are usually against the State office of the State, because ultimately it is the responsibility of the State to protect, defend and promote the rights of its people. As is the nature such examinations of the law, the public interest litigant is bringing a benefit to the public but, in facing the significant resources of the State, bears a personal risk over and above that normally borne by someone who goes before the courts. FLAC would like to see the exceptions to the rule that costs ‘follow the event’ expanded to include Protective Costs Orders (PCO) for litigants taking cases that are in the public interest. This would provide certainty as to costs at the outset of litigation. Such an order could provide that there will be no order as to costs, that the plaintiff’s liability for costs will be capped at a certain amount, or that the defendant will pay costs, even if the plaintiff is unsuccessful. In practice, while the Irish courts have occasionally departed from the usual costs rules in public interest cases, they have not developed specific rules for public interest litigation comparable to other common law jurisdictions. FLAC is concerned that the availability of PCOs is not specifically recognised in legislation. FLAC

recommends that the courts should be specifically authorised to take into account the public interest nature of a case and that rules on costs be extended to expressly include the granting of Protective Costs Orders in public interest law cases.

It is concerning in this regard that the General Scheme of the Housing and Planning and Development Bill 2019, a proposed piece of legislation – includes provisions which would alter negatively the current protection against costs for environmental cases, and it also proposes to remove the discretion currently of the court to award costs in favour of an applicant “in a matter of exceptional public importance and where in the special circumstances of the case it is in the interests of justice to do so⁴⁴ in a broad swathe of environmental cases.”

Multi-party actions

Another barrier for litigants whose cases advance the public interest is the absence of a multi-party actions. Multi-party actions (MPAs) can be an important vehicle for enhancing access to legally enforceable remedies, particularly for vulnerable groups. By taking proceedings as a group, litigants have greater combined resources that may enable them to deal with the challenges of legal action collectively and allow them gain strength in numbers. MPAs equally allow groups to pursue litigation where the individual compensation might be nominal e.g. restoration of

44 Section 50B(4) of the Planning and Development Act 2000 currently allows the Court discretion to award costs to an unsuccessful applicant in matters of “exceptional public importance and where in the special circumstances

a small social welfare benefit or refund of the cost of goods or services purchased.

MPAs are also seen to increase the efficiency of the courts and to reduce the costs of legal proceedings for all parties by enabling common issues to be dealt with in one action. Ireland currently has no formal rules for MPAs, save for procedures around representative actions and test cases. As these procedures are not specifically designed to operate as class actions, their use is not as common or popular as class actions in jurisdictions that have dedicated procedures. Both representative actions and test cases are subject to certain limitations that deter their use. The Law Reform Commission produced a report in 2005 on multi-party litigation which concluded that ad hoc arrangements have been used to deal with multi-party litigation and that a more structured approach should be available based on principles of procedural fairness, efficiency and access to justice.

The Superior Court Rules Committee has the power of making and changing the rules of the superior courts but as of yet has not implemented the LRC proposal. FLAC recommends that the Law Reform Commission's recommendations on multi-party actions be given due consideration with a view to the introduction of a new litigation procedure to provide for class actions. FLAC further recommends examination of the following issues

which may increase access to justice for disadvantaged groups and individuals: developing the laws on standing to allow NGOs bringing actions on behalf of their members; allowing a greater use of the amicus curiae application; increasing the discretion of a judge to award costs to an unsuccessful litigant modifying the doctrine of mootness so that courts can deal with issues which may be moot for the immediate parties, but which may continue to affect many others; devising more effective methods of extending the benefits of judicial decisions to those who are not directly party to the litigation; examining the rules of funding of litigation.

Anti-corruption framework –

Key recommendations

- Urgently progress the review and update of Ireland's outdated public ethics legislation to a level at least commensurate with the shelved 2015 Standards in Public Office Bill.
- Complete the transposition of EU directive 2019/1937 on protected disclosures and reverse the

of the case it is in the interests of justice to do so" and Head 6 of the new General scheme proposes to delete that discretion. S.50B albeit in the Planning and Development Act acts across multiple sectors for environmental decisions involving certain key environmental directives.

decision to derogate from a number of provisions of the directive.

- Conduct a public consultation on national measures required to address SLAPP litigation and implement stringent dissuasive penalties in respect of those pursuing SLAPP as a measure to deter the public and organisations from exercising their access to justice and public participatory and access to information rights.

Levels of corruption

While there is no evidence of widespread corruption in Ireland, it is worth noting that the country fell two places (from 18th to 20th) in the 2020 Corruption Perception Index.⁴⁵ This fall in perception may stem from the lack of progress on a number of long promised reforms in the areas of public ethics and transparency which have been identified elsewhere in this submission.

Framework to prevent corruption

Integrity framework including incompatibility rules

On November 25th 2021 the Government announced that a review of Ireland's existing statutory framework for Ethics in Public Life is underway.⁴⁶ The Review of Ethics Legislation will seek to respond to outstanding recommendations of the Moriarty and Mahon tribunals. The government have also stated that the review will take account of more recent developments including:

- The 'Hamilton Report' recommendations on preventing economic crime and corruption,
- The Council of Europe's Group of States against Corruption (GRECO) recommendations on reform of Ireland's statutory framework for ethics; and
- The Standards in Public office Commission's experience of administering the current framework.

It is expected that this reform process will progress over 2022 and legislation based on the review would be published in Q4 2022.

According to NGOs, the absence of an updated legal/ethical framework for public

⁴⁵ <https://www.transparency.org/en/cpi/2020/index/nzl>

⁴⁶ <https://www.gov.ie/en/press-release/aec32-minister-mcgrath-launches-public-consultation-on-review-of-ethics-legislation/>

officials following the lapse of the Public Sector Standards Bill 2015 has made it extremely difficult to hold public officials to account for their actions. This includes actions taken by public officials to put in place contracts (Service Level Agreements) with NGOs which prohibit the use of funding for any activity that involves criticism of government policy, effectively limiting the scope and nature of NGO advocacy work. It also includes threats, either implicit or explicit, that receipt of statutory funding will be contingent on not expressing critical views on government policy.

General transparency of public decision-making

The Lobbying Register, which was established consequent to the Regulation of Lobbying Act, 2015 does not allow for searches against a Designated Public Official, DPOs – which impedes the practical ability to determine the lobbying focus on key officials. The system also does not capture the internal effect of lobbying more junior members of staff who may have been targeted by lobbying to DPOs. A number of key bodies and agencies are also excluded from the lobbying register – e.g. An Bord Pleanála and The Environmental Protection Agency, EPA.

Rules on preventing conflict of interests in the public sector

The government have voted to delay or have not progressed a number of opposition tabled bills on conflict of interest which have received parliamentary approval in the last 12 months, including the Regulation of Lobbying (Amendment) Bill 2020⁴⁷ and the Regulation of Lobbying (Post-Term Employment as Lobbyist) Bill 2020.⁴⁸ These bills remain within the parliamentary process and have not become law. It is however expected that the government itself will bring forward proposals in this area in 2022 with a long-awaited review of public ethics legislation.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

The government has begun the transposition of EU directive 2019/1937 on protected disclosures. A draft bill, which would amend existing protected disclosure legislation to incorporate the provisions of the directive, was published in May 2021.⁴⁹ Several sessions of pre-legislative scrutiny were held by the responsible parliamentary committee in September and October but the legislation was not enacted before the deadline set out in the

47 <https://www.oireachtas.ie/en/bills/bill/2020/62/>

48 [https://www.oireachtas.ie/en/bills/bill/2020/49/#:~:text=Regulation%20of%20Lobbying%20\(Post%2DTerm%20Employment%20as%20Lobbyist\)%20Bill%202020,\(Bill%2049%20of&text=Bill%20entitled%20an%20Act%20to,to%20provide%20for%20related%20matters.](https://www.oireachtas.ie/en/bills/bill/2020/49/#:~:text=Regulation%20of%20Lobbying%20(Post%2DTerm%20Employment%20as%20Lobbyist)%20Bill%202020,(Bill%2049%20of&text=Bill%20entitled%20an%20Act%20to,to%20provide%20for%20related%20matters.)

49 <https://www.gov.ie/en/press-release/d263a-minister-mcgrath-publishes-general-scheme-of-protected-disclosures-amendment-bill/>

directive of December 2021. It is of concern that the government have chosen to derogate from the directive in a number of areas which would serve to strengthen protections for whistleblowers, e.g. limiting the requirements to establish internal whistleblowing channels to companies with more than 49 employees. ICCL and others have called on the government to reverse this decision and further strengthen whistleblower protections in a pre-legislative scrutiny session in September 2021.⁵⁰

Investigation and prosecution of corruption

Strategic litigation against public participation (SLAPPs)

There has been a notable increase in anecdotal reports of the amount of Strategic Litigation Against Public Participation (SLAPP) being pursued against applicants for Judicial Review in environmental cases. This has the potential to undermine the lawful right to exercise pursuit of Access to Justice. The State has arguably failed to implement a system sufficient to accord with its obligations under Article 3(8) of the UNECE Convention on Access to Information, Public Participation

in Decision- Making and Access to Justice in Environmental Matters, the Aarhus Convention, in respect of ensuring there is i.a. no penalisation, harassment or persecution of environmental defenders.⁵¹

Media environment and freedom of expression and of information

Key recommendations

- Progress the review of the Freedom of Information system to ensure a regime that is transparent, user-friendly and accessible, and implement solutions which bring Ireland's Access to Environmental Information regime into compliance with the UNECE Aarhus Convention.⁵²
- Amend both the Online Safety and Media Regulation and the Criminal Justice (Hate Crime) Bills to ensure that freedom of expression is protected.

50 https://www.oireachtas.ie/en/debates/debate/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/2021-09-29/3/

51 <https://www.gov.ie/en/publication/a85dc-aarhus-convention-national-implementation-reports/#2021>

52 Serious findings of non-compliance were established against Ireland on foot of communication ACCC/C/2016/141 https://unece.org/sites/default/files/2021-04/ece_mp.pp_c.1_2021_8_eng.pdf

- Commence the long overdue review of Ireland's defamation laws to ensure the media are empowered to report without undue interference.

Media and telecommunications authorities and bodies

Independence, enforcement powers and adequacy of resources of media and telecommunication authorities and bodies

The Future of Media Commission was established by the Government in September 2020 to examine the future of the media in Ireland, including Ireland's public service broadcasters, commercial broadcasters, print and online media platforms. As part of its work, the Commission hosted 6 "thematic dialogues" over the course of 2021.⁵³ The Commission's final report has been submitted to the Taoiseach and the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media, Catherine Martin but it has yet to be made public as of January 2022.⁵⁴

Safety and protection of journalists and other media activists

Rules and practices guaranteeing journalist's independence and safety

A review of Ireland's defamation laws has been ongoing since 2016. A 2019 report on the review of the 2009 Defamation Act has been with the Minister for Justice since September 2021 but no action has been taken and this minister has delayed the announcement of a review which was due to commence in October 2021.⁵⁵ This need for a review of Ireland's defamation laws is urgent given the chilling effect the law as it stands has on journalists, a point which was highlighted⁵⁶ by the European Commissioner for Justice Didier Reynders at a meeting of the Oireachtas committee for European Affairs in March 2021.

Confidentiality and protection of journalistic sources

In June 2021, the Department of Justice published a draft policing reform bill. The General

53 <https://futureofmediacommission.ie/#>

54 <https://www.independent.ie/business/media/funding-rte-looks-likely-to-remain-a-big-challenge-41046603.html>

55 <https://www.independent.ie/irish-news/news/justice-minister-helen-mcentee-again-reneges-on-pledge-to-publish-long-overdue-report-on-defamation-law-41158308.html>

56 <https://www.irishtimes.com/news/politics/ireland-s-defamation-laws-are-being-used-to-pressure-journalists-eu-commissioner-1.4504781?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fnews%2Fpolitics%2Fireland-s-defamation-laws-are-being-used-to-pressure-journalists-eu-commissioner-1.4504781>

Scheme of the Garda Síochána (Powers) Bill⁵⁷ provides for a general search warrant provision, as recommended by the Law Reform Commission (LRC). However, Head 15(6) of the draft bill is not in line with the LRC's recommendation that urgent applications should be made to the High Court, not the District Court. It is questionable whether such an application would be appropriate at the District Court level. Clarification on why LRC's recommendation was departed from in this instance is needed. In addition, the provisions under Head 15 fail to take into account a recent High Court case concerning a journalist who refused to give the police the password to his phone, and the comments made by Mr Justice Garrett Simmons, who warned: "The interpretation of the legislative provisions governing search warrants contended for by both parties has the consequence that there is, arguably, no statutory procedure prescribed under domestic law whereby the right to protection of journalistic sources is attended with legal procedural safeguards commensurate with the importance of the principle at stake. This might well represent a breach of the European Convention on Human Rights." "A District Court judge who has to consider

an application for a search warrant, under this Head, should have to consider additional legal procedural safeguards in respect of journalists and publishers who have a constitutional right to protect their sources but who may find themselves subjected to a search."⁵⁸

Access to information and public documents

Following on from a political scandal in the summer of 2021 related to the proposed appointment of a former government Minister to a UN Special Envoy role,⁵⁹ the government announced a review of the 2014 Freedom of Information Act.⁶⁰ The review, which is being led by the Department of Public Expenditure and Reform, has commenced gathering initial inputs from stakeholders. It is expected that the review will be completed in mid-2022.⁶¹

Ireland has still failed to respond to the finding of the UNECE Aarhus Convention Compliance Committee in case ACCC/C/2016/141,^{62,63} which found Ireland's system of review for AIE decisions to be non-compliant, given the failure to put in place measures to ensure appeals determined by the OCEI were determined in a timely manner, and in

57 <https://www.gov.ie/en/press-release/6ed9f-garda-powers-to-be-modernised-and-updated-under-new-bill-from-minister-humphreys/>

58 <https://www.irishexaminer.com/news/courtandcrime/arid-40200825.html>

59 [TheJournal.ie; September 6th 2021 "Zapponegate: Ex-Minister texted Coveney to say thanks for 'incredible opportunity' in March"](#)

60 [Freedom of Information Act \(2014\)](#)

61 [Department of Public Expenditure and Redform: Review of the Freedom of Information Act](#)

62 In English: https://unece.org/sites/default/files/2021-04/ece_mp.pp_c.1_2021_8_eng.pdf

63 In French: https://unece.org/sites/default/files/2021-04/ece_mp.pp_c.1_2021_8_fre.pdf

maintaining a system where the courts may rule that information requests fall within the scope of the AIE Regulations without issuing any directions for their adequate and effective resolution thereafter.⁶⁴ For the Meeting of the Parties in October 2021 Ireland reported on progress, and the Bureau's report⁶⁵ subsequently adopted by the Parties indicates neither issue has been resolved.⁶⁶ These failures significantly impede the effectiveness of the regime for access to environmental information required under EU Directive 2003/4/EC⁶⁷ and the Aarhus Convention.

Freedom of expression and of information

Abuse of criminalisation of speech

The General Scheme of the Criminal Justice (Hate Crime) Bill 2021 was published in April 2021.⁶⁸ The Bill is aimed at introducing hate crime legislation in the Irish system, as well as reviewing the provisions on incitement to hatred which date back to 1989.⁶⁹ While the need for reform – including in relation to its

application to the online sphere – has been raised by multiple stakeholders,⁷⁰ there is a need to ensure that legislation seeking to criminalise any form of speech is drafted in a way that ensures full respect for the right to freedom of expression.

As currently drafted, the General Scheme contains a definition of “hatred” which is not aligned to international and regional human rights standards. The offence of incitement to hatred must be drafted in a way that fully respects the right to freedom of expression, which entails the right to shock, disturb and offend. Civil society has called for a closer aligning of the offence with international standards, in particular standards that call for an explicit connection between incitement and a particular act of discrimination, hostility and violence. Clarity and precision are vital to ensure that all persons understand where the threshold is between criminal and non-criminal speech and behaviour. It was also noted that in the new legislation, sentencing must be proportionate, highlighting that community sentencing options should be available supporting restorative justice options.

64 Paragraph 133 of Findings: https://unece.org/sites/default/files/2021-04/ece_mp.pp_c.1_2021_8_eng.pdf

65 https://unece.org/sites/default/files/2021-08/ece.mp_pp_2021.52_ac.pdf

66 <https://unece.org/env/pp/cc/decision-vii8i-concerning-ireland>

67 DIRECTIVE 2003/4/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

68 [https://www.justice.ie/en/JELR/General_Scheme_Criminal_Justice_\(Hate_Crime\)_Bill_2021.pdf/Files/General_Scheme_Criminal_Justice_\(Hate_Crime\)_Bill_2021.pdf](https://www.justice.ie/en/JELR/General_Scheme_Criminal_Justice_(Hate_Crime)_Bill_2021.pdf/Files/General_Scheme_Criminal_Justice_(Hate_Crime)_Bill_2021.pdf)

69 <https://www.irishstatutebook.ie/eli/1989/act/19/enacted/en/print#sec6>

70 See e.g. ECRI, Fifth report on Ireland (adopted on 2 April 2019 / published on 4 June 2019), para 34 -35.

In order to avoid abuse of criminalisation of speech, civil society have also called on the government to ensure that the new Bill is only one pillar of a suite of measures necessary to combat hate speech. Other forms of hate speech, which might cause deep offence for example but do not reach a criminal threshold, should be combated by other means, including education, monitoring, alternative remedies and an enabling environment for powerful counter-speech.

Censorship and self-censorship, including online

The General Scheme of the Online Safety and Media Regulation Bill was published in January 2020.⁷¹ The Bill is a substantial overhaul of the regulation of online content and platforms. It seeks to, among other things, transpose the amended Audiovisual Media Services Directive [Directive (EU) 2018/1808] into Irish law; to dissolve the Broadcasting Authority of Ireland, and to establish a Media Commission which will regulate audiovisual media services, sound media services, and designated online services.

The general scheme provides for the Media Commission to create online safety codes and to issue guidance materials and advisory notices in relation to harmful online content and age-inappropriate online content. It provides for the commission to audit user complaint mechanisms operated by designated online services; to direct a designated online

service to take specified actions, including to remove or restore individual pieces of content; to conduct investigations and inquiries; to issue compliance notices; to issue warning notices if a service does not provide a satisfactory justification in relation to any alleged non-compliance; and, where the Commission deems necessary, to apply to seek sanctions.

There is troubling vagueness in respect of the definition of harmful content which gives rise to freedom of expression and censorship concerns. This is particularly the case in respect of cyberbullying material with such material being defined as “material which is likely to have the effect of intimidating, threatening, humiliating or persecuting a person to which it pertains...”

As the scheme currently sits, the bill will seek to reduce a feeling that does not need to have actually been felt by anyone, and there is no requirement that the material be abusive or threatening. There are concerns that the material could lead to disproportionate restrictions on the right to freedom of expression; could lead to the unjustified removal of material, self-censorship, prior restraint; and companies using more strenuous filtering measures, use of algorithms, AI. The scheme also provides no safeguards for literary, artistic, political, scientific or academic discourse, and fair and accurate reporting; and does not differentiate between age groups, i.e. children versus adults. The scheme provides that the Media Commission will be able to expand the

71 See <https://www.gov.ie/en/publication/d8e4c-online-safety-and-media-regulation-bill/>

definition of harmful online content, thereby compounding the problem as it would permit extension of censorship by the executive.

In addition, the vastly wide-ranging list of services which could potentially be subjected to regulation under the OSMR bill will, on the face of it, see the expressions of members of the public subjected to codes in a way usually designed for licensed bodies in Ireland. These measures will extend to essentially all human interactions online with no adequate procedural safeguards for individuals whose speech may be censored as per the Constitution, the European Convention of Human Rights, and/or the Charter of Fundamental Rights.

Publication of information and transparency

There are certain categories of information that are not published routinely by government departments meaning that civil society, journalists and researchers must attempt to access this via Freedom of Information (FOI) legislation. For example, the Department of Social Protection (DSP) continually refuses to routinely publish their circulars. As a result, members of the public and NGOs etc, must request them via FOI. Once the FOI is submitted, departmental practice is that DSP staff will contact the applicant and state that

they may provide the FOI response outside of the scope of the FOI structure if the official request is withdrawn. This speeds up the process but is clearly unnecessary and an obvious demonstration of making accessing information more difficult for the applicant, even where they are entitled to receive this information under the legislation, while simultaneously making it easier for staff to not have to draft an FOI schedule. If Departments broadened the categories of what they routinely publish, this could be avoided. It is common practice for Departments to provide large documents in a manner that makes it more difficult to analyse. Often, they will provide photocopies of printed computer files. Elsewhere they will provide large tracts of scanned documents meaning that it cannot be searched. The costs of accessing information held by Departments is not only routinely excessively high, but there is no clarity as to how the rates are set. Costs associated with copying a retrieval is also an issue.

The issue of timeliness and directions in the context of reviews of Access to environmental information requests noted earlier⁷² – serve to compromise the efficacy of the system, in addition to similar issues noted for the FOI regime above. Additionally, a public consultation on a comprehensive review of the AIE regulations concluded in April 2021.⁷³

72 Findings of non-compliance against Ireland in [case ACCC/C/2016/141](#)

73 <https://www.gov.ie/en/consultation/53b81-public-consultation-on-the-review-of-the-access-to-information-on-the-environment-aie-regulations-2007-2018/>

However, despite the findings having been finalised in November 2020,⁷⁴ in a letter⁷⁵ to the Compliance Committee of the Aarhus Convention in May 2021 Ireland was still unable to provide any indication update on when the new legislation would be provided.

Legislation and practices on fighting disinformation

In January 2021, the government published the general scheme of the Electoral Reform Bill (2020).⁷⁶ The draft bill went through an extensive period of pre-legislative scrutiny ending in July. A key component of this legislation is the establishment of an Electoral Commission, an institution which Ireland is unusual in a comparative sense for not having. As part of the pre-legislative scrutiny process, a number of academics and members of civil society called on the government to equip the to-be-established commission with powers to address and counter dis/misinformation.⁷⁷ While the subsequent committee report recommends that; “the proposed bill provide for the maintenance of electoral integrity and the protection against election interference as an explicit function of the Electoral Commission”,⁷⁸ there is no

explicit recommendation on the topic of dis/misinformation. It is expected that the government will publish a revised Bill taking into account the content of the committee’s report in the new year and the legislative process will commence thereafter.

The parliamentary committee which oversaw the pre-legislative phase of the Online Safety and Media Regulation bill has since produced a report⁷⁹ within which it is calling for ‘disinformation’ to be included in the bill. Disinformation was not previously included in the general scheme of the bill. The report contains no details as to how this will be included in a bill which already includes a vast amount of purposes.

SLAPPs

As noted earlier, there has been a notable increase in the anecdotal report on the amount of Strategic Litigation Against Public Participation, SLAPP litigation being pursued against applicants for Judicial Review in environmental cases. This has the potential to undermine the lawful right to exercise pursuit of Access to Justice. The State has

74 https://unece.org/sites/default/files/2021-04/ece_mp.pp_c.1_2021_8_eng.pdf

75 Para 6 https://unece.org/sites/default/files/2021-05/frPartyC141_21.05.2021_update.pdf

76 [The General Scheme of the Electoral Reform Bill \(2020\)](#)

77 [Joint Committee on Housing, Local Government and Heritage debate - Tuesday, 2 Feb 2021](#)

78 [Joint Committee on Housing, Local Government & Heritage Report on Pre-Legislative Scrutiny of the General Scheme of the Electoral Reform Bill 2020 July 2021](#)

79 https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_tourism_culture_arts_sport_and_media/reports/2021/2021-11-02_report-of-the-joint-committee-on-the-pre-legislative-scrutiny-of-the-general-scheme-of-the-online-safety-and-media-regulation-bill_en.pdf

arguably failed to implement a system sufficient to accord with its obligations under Article 3(8) of the UNECE Convention on Access to Information, Public Participation in Decision- Making and Access to Justice in Environmental Matters, the Aarhus Convention, in respect of ensuring there is i.a. no penalisation, harassment or persecution of environmental defenders.⁸⁰

Checks and balances

Key recommendations

- Conduct an urgent human rights assessment of existing COVID-19 regulations and a review of the decision-making processes of government in the context of the pandemic.
- Withdraw the general scheme of the Housing and Planning and Development Bill 2019, and instead implement a system with clear and compliant rules for Judicial Review in environmental cases, including, in particular, on costs. This will serve to minimise the ability to intimidate applicants on their exposure to prohibitively expensive costs, and avoid a chilling effect on those considering judicial review affording

them the required level of certainty which the CJEU indicated was essential in case c-427/07,⁸¹ para 55, and the case law cited.

- The Constitutional role of both Houses of the Oireachtas and the President in making law has been severely compromised in 2021, and there is no transparency or clarity on how the approach of this Government compromising this is to be mitigated against. There is a need for consultation within the Oireachtas and with the wider public on safeguards to ensure these practices are not continued.

Process for preparing and enacting laws

Impact assessments, public consultations and transparency of the legislative process

The transparency of the legislative process with regards to the passage of new, or renewal of COVID-19 pandemic restrictions remains a serious issue in Ireland. Organisations have consistently raised the issue of the lack of public consultation, insufficient parliamentary oversight, and poor communication of laws and regulations regarding the pandemic. These concerns were highlighted by ICCL in

80 <https://www.gov.ie/en/publication/a85dc-aarhus-convention-national-implementation-reports/#2021>

81 Judgment of the Court, 16 Jul 2009, case c-427/07, Commission v Ireland, EU:C:2009:457.

a landmark June 2021 report; “Human Rights in a Pandemic”.⁸²

The National Marine Planning Framework, (NMPF), is Ireland’s maritime spatial plan, pursuant to Directive 2014/89/EU,⁸³ and is of major significance given Ireland’s marine territory is more than 7 times that of its terrestrial territory, and given the major expansion envisaged particularly of offshore renewables. In April 2021, the Government tabled a motion without debate in the Seanad to pass the plan before the response to legal advice sought was returned to the Joint Oireachtas Committee on Housing Local Government and Heritage from the Office of Parliamentary Legal Advisors, (OPLA). That advice concerned the role of the Oireachtas on this plan under s.73(2) of the Planning and Development (Amendment) Act 2018 and specific rights of the Committee in respect of the draft NMPF. When the advice came back it confirmed the entitlement of any committee of either or both Houses to make reports resolutions or recommendations on the plan laid before the Oireachtas - but the Government’s move to table a motion without debate in the Seanad effectively acted to subvert that right.

Pursuant to Article 15 of the Irish Constitution, both Houses of the Oireachtas have a Constitutional role in the making of law for the State. Article 20 also clearly provides for the right of the Seanad to amend any bill, unless it be a money bill. However, the practice of the Government to table a schedule for all Seanad stages of a bill to occur over Monday to Tuesday has compromised this Constitutional role of the Seanad. This issue has arisen in circumstances where a Minister of the Government, appearing before the Seanad, has not been able to entertain amendments, as they would not be able to revert to cabinet for approval prior to the scheduled conclusion of the bill in the Seanad.⁸⁴ This issue compounds the practice of guillotining legislation often with very short periods of debate and compounds the issue of short periods to review published legislation and table amendments to it, even in circumstances where there is no compelling urgency to such timeframes explained or justified.

Rules and use of fast-track procedures and emergency procedures

The formulation, communication and enforcement of emergency legislation, regulations, and policing powers due to the COVID-19

82 <https://www.iccl.ie/wp-content/uploads/2021/06/Human-Rights-in-a-Pandemic.pdf>

83 Directive 2014/89/EU of the European parliament and of the council of 23 July 2014 establishing a framework for maritime spatial planning

84 See link of comments from Senator Alice Mary Higgins in the debate on the Maritime Jurisdiction Bill 2021 on what happens when a bill is scheduled to complete without an intervening cabinet meeting during and how this operates to preclude acceptance of amendments from the Seanad: <https://www.oireachtas.ie/en/debates/debate/seanad/2021-06-01/14/>

pandemic remain a concern. The significant delegation of power to the Minister for Health remains in place. ICCL has repeatedly highlighted the need for emergency powers and procedures to be time-bound, necessary, and proportionate. Ireland's emergency legislation had an initial sunset clause of 9 May 2020, which could be extended "in the public interest" by the Minister for Health – an incredibly broad threshold for extension. These extensions have been renewed a number of times by parliament, most recently until December of 2021 following truncated debates. New legislation, which consolidated existing acts into a single piece of legislation was passed in December 2021. This legislation gives the Minister the power to request that parliament extend existing COVID-19 regulations until June 2022.⁸⁵

Since the advent of the emergency legislation and the transfer of power to the Minister for Health, various regulations (such as limits on travel within the state) have been applied retrospectively and not published for several days after they were made. In many cases the government has sought the quasi-legal enforcement of public health advice, which is oftentimes indistinguishable from actual legal regulations. This practice continues to have

the potential to erode the principle of legality in Ireland.

Regime for constitutional review of laws

In July 2021, President Higgins wrote to the Oireachtas to raise concerns about the volume of complex legislation he has been asked to consider in short periods of time, given his Constitutional role to review and sign legislation within a short, specified period.⁸⁶ A government statement was issued⁸⁷ in response, however, there has been little transparency on actions taken or measures implemented to ensure this issue does not re-occur.

Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions

In December 2020, the Minister for Justice welcomed the submission of a report by a Review Group set up to review and make recommendations to reform the administration of civil justice in the state. The Review Group made over 90 recommendations in order to make the civil justice system more efficient and easier for people to access. In October

85 <https://www.irishtimes.com/news/health/legislation-to-extend-covid-emergency-powers-passed-by-d%C3%A1il-1.4750499>

86 <https://www.rte.ie/news/2021/0729/1238070-higgins-letter-oireachtas/>

87 <https://www.oireachtas.ie/en/press-centre/press-releases/20210730-statement-following-meeting-of-dail-business-committee-and-seanad-committee-on-parliamentary-privileges-and-oversight-to-discuss-letter-received-from-president-higgins/>

2021 the acting Minister for Justice indicated that the government would publish legislation to address these recommendations at least partially.⁸⁸

An Bord Pleanála, a third-party appeals body and a decision-maker of first instance in certain planning matters, maintain a hard copy file for their planning decisions, and this information contains i.a. important correspondence relating to the decisions. However, despite the fact such decisions can be for strategic infrastructure developments, and/or appeals which can arise anywhere in the country, the information is not available online. Inspection of this file may be critical for those considering JR. Also one particularly compelling example of issues with the lack of access to information arose in the context of a substitute consent application for the Derrybrien Windfarm, an application seeking to regularise a development which had been found unlawful by the Court of Justice in 2008.⁸⁹ The commencement for a further period of public consultation on the critical matter of exceptional circumstances justifying the regularisation ran from the date of the receipt by the Board from the applicant of the new public notifications on the consultation. However, the Boards online file did not reflect the receipt of the notices for most of the consultation period, and the public were not therefore clear on the timeline for this critical

consultation. This is a notable and most high profile and significant case, where a further judgment⁹⁰ of the Court in 2019 effectively found Ireland in contempt for its failure to resolve the part of the 2008 judgment relating to the Windfarm, and fines against the State are ongoing and in excess of €16 million.

Powers accorded to the courts to carry out judicial review

The General Scheme of the Housing and Planning and Development Bill 2019, proposes to amend and constrain the scope of Judicial Review in planning cases. Additionally, the Planning and Development Act 2000 and the recently enacted Maritime Area Planning Act 2021, allow the Courts impose a requirement for undertakings on an applicant seeking to pursue JR. However, there is no requirement in the legislation that such undertakings should not be prohibitively expensive as would be required under Article 9(4) of the Aarhus Convention and indeed, as clarified by the CJEU in case c-530/11, in the context of developments requiring environmental impact assessment pursuant to Directive 2011/92/EU (now amended by Directive 2014/52/EU).

88 <https://www.lawsociety.ie/gazette/top-stories/2021/10-october/train-up-to-deal-with-sexual-violence-cases-judges-told>

89 Judgment of the Court 3 July 2008, case c-215/06 Commission v Ireland, EU:C:2008:380

90 Judgment of the Court 12 November 2019, case c-261/18 Commission v Ireland, EU:C:2019:955

Implementation by the public administration and State institutions of final court decisions

2021 saw another year where the State's response to the judgment of the EU Court of Justice in case c-215/06 from 2008, and the further judgment in 2019 in case c-261/18 remain outstanding with the fines imposed through the 2019 judgment now standing at over €16 million based on the fines indicated by the Court.⁹¹ Significant delays continued to be experienced in 2021 in implementing legislative responses to CJEU judgments, including in cases dealing directly with Ireland e.g. c-470/16,⁹² and others with implications for Ireland.

Aarhus Convention Compliance Committee

All findings from the Aarhus Convention Compliance Committee remain outstanding.⁹³ However, particularly problematic is the response to communication ACCC/C/2013/107 where Ireland has implemented a partial legislative response, but then also acted to implement a temporary measure

to 31st December 2023,⁹⁴ which arguably significantly limits the effect of the other changes made.

Enabling framework for civil society ↓

Key recommendations

- Revise the Draft Electoral Reform Bill to address inappropriate application of the 1997 Electoral Act (as amended) to the work of civil society organisations.
- Commence an immediate review of the Charities Act 2009 in order to allow for the promotion of human rights to be designated as a charitable purpose and to address other areas of concern for CSOs.
- Withdraw the General Scheme of the Housing and Planning and Development Bill, 2019, and in-

91 Paragraphs 125 and 135 of Judgment of the Court 12 November 2019, case c-261/18 Commission v Ireland, EU:C:2019:955

92 Judgment of the Court 15 Mar 2018, case c-470/16, North East Pylon Pressure Campaign Limited, EU:C:2018:185

93 <https://unece.org/env/pp/cc/decision-vii8i-concerning-ireland>

94 Under The Planning and Development (Amendment) Act 2001 (Commencement) (No. 2) Order 2021 (No. 458 of 2021) which commenced section 7 of the Planning and Development (Amendment) Act 2021, which inserted new sections 42B and 42(1B) into the Planning and Development Act 2000. Given the very specific wording of the new s42B it is a much more limited response than the other changes, made impacts certain of their efficacy until it expires 31 December 2023.

stead implement system with clear and compliant rules for Judicial Review in environmental cases, including in particular on costs.

Regulatory framework

Freedom of association, including registration rules

The 2009 Charities Act does not include the advancement of human rights as a valid charitable purpose for an organisation. Human rights organisations have been compelled to establish and operate different legal structures to ensure their “non-charitable” human rights work is in full compliance with the law. This *modus vivendi* is onerous, inefficient and can be a drain on an organisation’s limited resources. Human rights organisations could experience difficulties in accessing funding and reporting to donors, where those funders require charitable status as a precondition for funding. The unfairness of this situation was highlighted in December 2021 when it was revealed that a political party had exploited a loophole in gambling regulations to register as a charity and avoid fundraising restrictions.⁹⁵ In response, a number of civil society organisations have called for an immediate review of the Charities Act to ensure that the advancement of human rights can be designated as a valid charitable purpose.⁹⁶

Access and participation to decision-making processes

The Maritime Area Planning Act 2021 does not provide for public participation in relation to a wide range of decisions on Maritime Area Consents despite their environmental implications, raising fundamental issues in respect of Article 6 of the Aarhus Convention. It also fails to provide for access to justice in line with Article 9 of the Aarhus Convention. Legislation enacted for the Forestry sector in 2020, via primary and secondary legislation, continues to have a serious effect on public participation and access to justice rights on forestry licencing decisions. On one day alone 1864 forestry felling licence applications were notified for Coillte, the state forestry authority. The effective cost of making submissions on these given the new charges imposed in 2020, even for eNGOs, would have been €37,280, and to appeal them would have been €372,800. The information on the applications was also not uploaded in time, curtailing the already limited timeframe of 30 days the public has to respond. The relevant Minister was contacted by the Environmental Pillar on the matter and while the Minister had discretion under the legislation to extend the consultation period, she chose not to do so. The volumes of applications for felling, afforestation and felling road licences are significant and set to increase, and the fees create a disproportionate burden on

95 <https://www.breakingnews.ie/ireland/taoiseach-fianna-fail-within-legal-framework-to-declare-itself-a-charity-1222780.html>

96 <https://www.irishtimes.com/opinion/letters/human-rights-groups-and-charitable-status-1.4752335>

the public and compromises participation and access to justice.

Financing framework

The 1997 Electoral Act in Ireland poses significant restrictive regulatory burden for civil society. The wording in the Electoral Act used to define ‘political purposes’ (which determines what groups, including community groups, are subject to strict spending rules) is so broad and vague that they can be applied to almost every community group in the country. As a result, any community group (from a large charity to a local Tidy Towns group or community garden) which calls on the local or national government to amend policy or legislation, could be found in breach of the Electoral Act if someone were to donate more than €100 to their cause. A wide range of civil society organisations working on issues as diverse as education and environmental rights have been directly impacted.

The human rights issues presented by the Electoral Act and the implementation of the Act by the Standards in Public Office Commission were highlighted by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the UN Special Rapporteur on the situation of

human rights defenders in a communication to Ireland in December 2020.⁹⁷

The government have brought forward a draft Electoral Reform Bill to address a number of issues including establishing an Electoral Commission. As part of the pre-legislative scrutiny process for this report, the responsible parliamentary committee recommended that the draft bill be amended to address the ‘political purposes’ issue outlined above.⁹⁸ It is expected that the revised version of the Bill will be published in early 2022.

Attacks and harassment

SLAPPs

There has been a notable increase in the anecdotal report on the amount of Strategic Litigation Against Public Participation (SLAPP) litigation being pursued against applicants for Judicial Review in environmental cases. This has the potential to undermine the lawful right to exercise pursuit of Access to Justice. The State has arguably failed to implement a system sufficient to accord with its obligations under Article 3(8) of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, the

97 See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25665>

98 https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_housing_local_government_and_heritage/reports/2021/2021-08-19_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-electoral-reform-bill-2020_en.pdf

Aarhus Convention, in respect of ensuring there is i.a. no penalisation, harassment or persecution of environmental defenders.⁹⁹

Smear campaigns and other measures capable of affecting the public perception of civil society organisations

Prior to the determination by the High Court of a Judicial Review taken by Ireland's oldest eNGO – An Taisce the National Trust for Ireland, challenging a decision of An Bord Pleanála (the national planning authority) in respect of the building of a cheese factory, statements were made by members of the Oireachtas and An Taoiseach¹⁰⁰ on the matter. The sentiment of these statements was echoed by a number of members of parliament^{101,102} in which they framed the work of An Taisce as a “threat to rural Ireland” and suggested the public funding for the organisation should be reviewed.

Disregard of human rights obligations and other systemic issues affecting the rule of law framework

Key recommendations

- Engage with survivors of mother and baby homes and victims of abuse in day-schools to ensure that compensation schemes and schemes designed to address their needs are compliant with human rights standards.
- Address the concerns raised by Traveller and Roma organisations in their submission on Ireland's UPR with respect to rights violations, housing, policing and other issues.
- Expedite the development of a new international protection system for those seeking asylum, and in the interim, ratify OPCAT to ensure that direct provision centres are subject to independent inspections.

99 <https://www.gov.ie/en/publication/a85dc-aarhus-convention-national-implementation-reports/#2021>

100 <https://www.oireachtas.ie/en/debates/debate/dail/2021-03-31/13/>

101 <https://www.fine Gael.ie/an-taisce-a-leading-threat-to-future-of-rural-ireland/>

102 <https://www.irishtimes.com/news/ireland/irish-news/review-of-funds-given-to-an-taisce-demanded-at-fianna-f%C3%A1il-party-meeting-1.4563428>

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

The December 2020 publication of the final report from the Commission of Investigation into Mother and Baby Homes highlighted the widespread human rights violations committed by the church and state during the 20th century, including forced labour and adoption, neglect, and more. The state failed to protect vulnerable women and children placed in its care throughout the 20th century and it continues to fail in adequately protecting them now. Survivors of the Mother and Baby Homes continue to face ongoing human rights violations, including their right to identity and access to personal information.

Throughout 2021, the government progressed the General Scheme of a Certain Institutional Burials (Authorised Interventions) which will seek to address a number of issues which are raised by the report. This Bill completed

pre-legislative scrutiny in July 2021.¹⁰³ Details of a redress scheme were published in November 2021,¹⁰⁴ but was met with widespread criticism from survivors.¹⁰⁵

In their submission as part of Ireland's UPR process, the Irish Traveller movement noted a number of ongoing issues related to the lack of progression and implementation of actions committed to in the National Traveller and Roma Inclusion Strategy 2017-2021.¹⁰⁶ Concerns were also highlighted with respect to the inadequate collation of data on Traveller experiences/outcomes and ineffective funding. They also noted persistent and ongoing discrimination against Travellers, including in the national police force, remaining a day-to-day occurrence in 2021.¹⁰⁷

Ethnic profiling and other discriminatory practices in law enforcement

Through its participation in JUSTROM, FLAC became aware of significant concern among the Traveller and Roma communities

103 <https://www.oireachtas.ie/en/press-centre/press-releases/20210715-joint-committee-on-children-disability-equality-integration-and-youth-publishes-report-on-pre-legislative-scrutiny-of-the-general-scheme-of-a-certain-institutional-burials-authorised-interventions-bill/>

104 <https://www.gov.ie/en/press-release/ce019-government-approves-proposals-for-mother-and-baby-institutions-payment-scheme-and-publishes-an-action-plan-for-survivors-and-former-residents-of-mother-and-baby-and-county-home-institutions/>

105 <https://www.thejournal.ie/mother-baby-home-redress-protest-leinster-house-5609527-Nov2021/>

106 <https://www.justice.ie/en/JELR/National%20Traveller%20and%20Roma%20Inclusion%20Strategy,%202017-2021.pdf/Files/National%20Traveller%20and%20Roma%20Inclusion%20Strategy,%202017-2021.pdf>

107 <https://itmtrav.ie/wp-content/uploads/2021/03/Irish-Traveller-Movement-Submission-UPR-National-Report.pdf>

regarding their experience with the criminal justice system. This manifested most frequently through interaction with the Irish police force, An Garda Síochána (AGS). This has been an issue for a considerable length of time. In 2011, the Committee on the Elimination of Racial Discrimination (CERD), the body responsible for monitoring the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), noted in its concluding observations the lack of legislation proscribing racial profiling by AGS and other law enforcement officers and further noted that many non-Irish people are subjected to police stops and the requirement to produce identity cards. The CERD further recommended the adoption of legislation preventing racial profiling and requested the State strengthen its efforts to promote the humane treatment of migrants and people of non-Irish origin by AGS in accordance with international human rights law. More recently in 2019 CERD recommended that the State party: (a) Introduce legislation prohibiting racial profiling; 5 (b) Put in place an independent complaints mechanism to handle racial profiling; (c) Review, in collaboration with communities mostly affected by racial profiling, policy, practices and training of An Garda Síochána; (d) Incorporate racial profiling issues into the training curriculum of police officers.

FLAC submits that at a minimum to ensure that AGS does not engage in discriminatory profiling, it is necessary for specific training to be provided

to each member of AGS in relation to profiling; to have monitoring mechanisms in place that will highlight when discriminatory profiling may be occurring, and where it does occur it should be addressed and individuals should have access to a remedy in respect of same. Specifically, while the Equal Status Acts 2000 to 2018 (ESA) prohibit discrimination in the provision of goods and services, and the provision of accommodation and access to education, on nine grounds including the ground of race and membership of the Traveller community, the scope of the ESA is not comprehensive.

The definition of “services” in section 2 of the ESA includes public services, but has been interpreted as not extending to the performance of all functions of a public body particularly the controlling or regulatory functions of the State. Therefore, the prohibition on discrimination on the ground of race and membership of the Traveller community ground may not always apply to public authorities such as the AGS in performing functions which are not considered to be “services” for the purpose of the ESA. The UN CERD Committee in its most recent report recommended that the functions of public authorities should be explicitly included within the definition of the “services” in Section 5 of the Equal Status Acts.¹⁰⁸ This will ensure that the functions of AGS come within the remit of the prohibition on discrimination, harassment and victimisation and the obligation to provide reasonable accommodation for people with disabilities, thereby enabling individuals to seek

108 https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_COC_IRL_40806_E.pdf

redress if they consider that they have been discriminated against by AGS.

Finally, the Policing Authority Code of Ethics for AGS (the Code), published in 2017, includes a section on respect and equality, however, the Code is not on a statutory footing and a breach alone cannot form the basis of a complaint to GSOC, even where non-compliance is at a systemic level. This is also a significant weakness in the accountability of AGS, and it is submitted that placing the Code on a statutory footing, subject to any necessary amendments, is a modest extension to accountability circumstances where the Code has been widely consulted on and should now in any event be part of the operational requirements of AGS.

Rights of migrants and asylum seekers

In February 2021, the government announced a plan to end the use of direct provision as a system for accommodating asylum seekers in Ireland.¹⁰⁹ A programme board¹¹⁰ was established to progress the plans to end the system and establish a new International Protection Support Service. A three-person independent group was appointed by the responsible Minister in September 2021

to oversee and measure progress.¹¹¹ In December 2021, a regularisation scheme was announced by the Minister for Justice which would allow undocumented migrants and asylum seekers who have been in direct provision for at least 2 years to regularise their status.¹¹² While these steps are hugely welcome, it remains a concern that direct provision centres are not subject to independent inspections. ICCL has requested that the Minister for Justice urgently reform the system of inspections so that they are independent and human rights focused. ICCL have also urged the government to ratify the UN's Optional Protocol to the Convention Against Torture (OPCAT) which requires governments to create a National Preventive Mechanism that would inspect all places of detention. ICCL considers Direct Provision to be de-facto detention.¹¹³

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights

In July 2021, the government launched a revised ex-gratia scheme¹¹⁴ in order to implement the decision of the European Court of Human Rights (ECtHR) in the case of O'Keeffe v

109 <https://www.gov.ie/pdf/?file=https://assets.gov.ie/124757/ef0c3059-b117-4bfa-a2df-8213bb6a63db.pdf#page=null>

110 <https://www.gov.ie/en/press-release/edef3-minister-ogorman-announces-membership-of-the-programme-board-overseeing-the-end-of-direct-provision-as-set-out-in-the-white-paper/>

111 <https://www.gov.ie/en/press-release/9bec5-minister-ogorman-appoints-independent-group-to-track-progress-on-ending-direct-provision/>

112 <https://www.justice.ie/en/JELR/Pages/PR21000292>

113 <https://www.iccl.ie/news/people-in-direct-provision-not-getting-the-care-they-need/>

114 <https://www.gov.ie/en/service/90a42-revised-ex-gratia-scheme/>

Ireland, a case concerning the liability of the state for serious child abuse that occurred with the national school system. Previous state redress schemes for the victims of child abuse have consistently proven to be inadequate and campaigners have highlighted a number of flaws in the revised scheme which may prevent some survivors from being awarded redress.¹¹⁵

Other systemic issues

Data protection and privacy

The COVID Tracker App was launched in Ireland in July 2020 to much fanfare. The Irish government launched a national communications campaign and more than 862,000 people downloaded the voluntary Bluetooth-based app within the first day. By mid-January 2021 the app had about 1.3 million active users and sent close contact alerts to more than 20,000 people.

On 6 November 2020, the ICCL asked the Irish health authorities a list of questions about the app's efficacy and about the Department of Health's measurement of its efficacy. As of December 7, 2021, these questions remain unanswered.

We are living with a pandemic but human rights laws still apply and any interference with privacy must be lawful, necessary and proportionate. As ICCL awaits evidence to illustrate the effectiveness of this app, the necessity and proportionality of the measure is left wanting.

In the summer of 2021, the Government suddenly rushed through legislation to ensure that people had to show either proof of COVID-19 vaccination or recovery to gain access to indoor hospitality settings. It followed An Taoiseach Micheál Martin previously ruling out the idea of domestic vaccine passports, citing concerns for civil liberties. The legislation was passed without any robust, democratic debate; acceptance of amendments; or any data protection, equality or human rights impact assessment prior to its roll-out. Although it was meant to last until October 2021, it has been repeatedly extended and expanded, in its areas of use, and looks set to be used until at least March 2022. Unlike many other EU countries that have been using these systems, Ireland does not provide the option of testing to prove the pass bearer is not Covid positive, nor does it provide any exemption for people who are unable to get a COVID-19 vaccination for medical reasons.

A letter sent by ICCL to the Minister for Health on October 22, 2021,¹¹⁶ asked specific questions about the system:

- (i) What is the purpose of the Government's vaccine certificate system?
- (ii) Why is testing still being omitted from the certificate system?
- (iii) Where is the evidence that the immunity certificate system to date has worked in curbing the transmission of COVID-19?

115 <https://www.irishexaminer.com/news/arid-40342496.html>

116 <https://www.iccl.ie/wp-content/uploads/2021/10/Covid-certificates.pdf>

ICCL has yet to receive a response to these questions and failing the immediate abolishment of the certificate system, testing should be included.¹¹⁷

More generally, ICCL reported in “Europe’s Enforcement Paralysis”¹¹⁸ that Ireland’s Data Protection Commission (DPC) is ineffective. This prevents the effective vindication of a broad set of digital rights in Ireland. It also prevents the vindication of these rights at European level too, because the DPC is the “lead” supervisory authority in the European Economic Area for Google, Facebook, Apple, Microsoft, and many others under the GDPR. ICCL has made several submissions on this matter at national and EU level. However, the problem persists.

Fostering a rule of law culture

Contribution of civil society and other non-governmental actors

In early 2021 ICCL was awarded a grant from the Communicating Europe Initiative in the Department of Foreign Affairs to raise

awareness around the rule of law reporting mechanism in Ireland. The understanding of the importance of the Commission’s rule of law reporting mechanism in Ireland is low and the thematic focus of related events bear that out. For example, in February of 2021, the Minister for European Affairs spoke at an IIEA event on the rule of law situation in Hungary with the Hungarian Foreign Minister.¹¹⁹ Rule of law issues are generally understood to be a problem elsewhere in the EU but not in Ireland.

With this in mind, ICCL hosted two events in 2021 to raise awareness of the situation domestically and to inform CSOs about the reporting process. The first was an event where the Minister of State for European Affairs officially launched the 2021 EU Rule of Law Report in Ireland and a general discussion on the rule of law situation in Ireland was facilitated.¹²⁰ The second event brought together CSOs who were interested in working on a joint submission for the 2022 cycle¹²¹ which has culminated in this report.

117 <https://www.irishtimes.com/opinion/negative-tests-should-be-included-in-covid-pass-1.4732575>

118 <https://www.iccl.ie/wp-content/uploads/2021/09/Europes-enforcement-paralysis-2021-ICCL-report-on-GDPR-enforcement.pdf>

119 <https://www.iiea.com/events/webinar-rule-of-law-in-the-eu>

120 <https://www.lawsociety.ie/gazette/top-stories/2021/09-september/broad-discretion-of-executive-to-choose-judges-criticised-in-rule-of-law-report>

121 <https://www.eventbrite.ie/e/european-commissions-2022-rule-of-law-report-cycle-info-and-networking-tickets-211027778767>

Contacts

Irish Council for Civil Liberties (ICCL)

The Irish Council for Civil Liberties (ICCL) is Ireland's leading independent human rights watchdog. The Irish Council for Civil Liberties monitors, educates and campaigns in order to secure full enjoyment of human rights for everyone.

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The Civil Liberties Union for Europe

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 19 national civil liberties NGOs from across the EU.

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