

## Ireland

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*Irish Human Rights and Equality Commission (IHREC)*

### Independence and effectiveness of the NHRI

#### International accreditation status and SCA recommendations

The Irish NHRI was [accredited](#) with A status in November 2015. In its recommendations, the SCA encouraged the NHRI to advocate for adequate funding while safeguarding its financial independence.

### Human rights defenders and civil society space

In January 2019, the Commission published a policy statement on the Electoral Acts and Civil Society Space in Ireland (2). It outlined concerns that the definition of the terms 'political purposes' and 'third party' in the relevant legislation are overly broad and include a range of Irish civil society organisations (CSOs), and therefore put **constraints on the advocacy functions of CSOs**.

They may be required to comply with the strict requirements of the legislation, which impacts on their ability to carry out their work and seek funding. The Commission stated it's of the view that the work of CSOs in Ireland, and their sources of funding, should continue to be clearly regulated and subject to high standards of scrutiny, transparency and accountability, but that such regulatory measures should avoid placing undue restrictions on wider civil society activity engaging in legitimate advocacy aiming to influence political decision making and policy making, including with regard to human rights and equality issues.

### References

- Housing and Planning and Development Bill 2019 (available at: [https://www.housing.gov.ie/sites/default/files/public-consultation/files/2019\\_1030\\_general\\_scheme\\_hpd\\_bill.pdf](https://www.housing.gov.ie/sites/default/files/public-consultation/files/2019_1030_general_scheme_hpd_bill.pdf))
- IHREC, Policy Statement on the Electoral Acts and Civil Society Space in Ireland, January 2019, (available at <https://www.ihrec.ie/app/uploads/2019/01/Policy-Statement-on-Civil-Society-and-the-Electoral-Acts-F-11012019.pdf>)
- IHREC, Ireland and the Convention on the Elimination of Racial Discrimination, November 2019, (available at [https://www.ihrec.ie/app/uploads/2019/11/IHREC\\_CERD\\_UN\\_Submission\\_Oct\\_19.pdf](https://www.ihrec.ie/app/uploads/2019/11/IHREC_CERD_UN_Submission_Oct_19.pdf))

## Checks and balances

Concerning **right to information and accountability of state bodies**, January 2019, the Commission noted in its submission to the Committee Against Torture that the government has decided against publishing two independent reports that were critical of state bodies on the basis of legal advice which is not publicly available for scrutiny.(1)

The Commission also noted concern in that submission regarding proposed legislation, the Retention of Records Bill 2019, which would impinge on the rights of survivors of industrial and reformatory schools. The Retention of Records Bill 2019 proposes that, on the dissolution of the Commission to Inquire into Child Abuse, the Residential Institutions Redress Board and the Residential Institutions Redress Review Committee, their records will be deposited in the National Archives where they will be withheld from public inspection for a period of 75 years. These records will include administrative records of the institutions, survivors' personal records, and all relevant documents created by State representatives and the aforementioned bodies. The Commission is concerned that, if enacted, the legislation would significantly weaken survivors' rights to their personal information, contrary to international and European human rights norms. It may also inhibit potential future legal redress, frustrate the nation's recognition of its history of institutional abuse, and run contrary to principles of **transparency and accountability**. (2)

## References

- (1) IHREC, Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland, January 2020, at pp. 12, 29 (available at: <https://www.ihrec.ie/app/uploads/2020/01/Submission-to-the-UN-Committee-against-Torture-on-the-List-of-Issues-for-the-Third-Examination-of-Ireland.pdf>)
- (2) IHREC, Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland, January 2020, at pp. 26 (available at: <https://www.ihrec.ie/app/uploads/2020/01/Submission-to-the-UN-Committee-against-Torture-on-the-List-of-Issues-for-the-Third-Examination-of-Ireland.pdf>)

## Functioning of justice systems

The Commission has raised concerns regarding the **functioning of the wardship jurisdiction** and was recently involved in a case concerning the fairness of procedures in such cases, in its capacity as *amicus curiae*.<sup>(1)</sup> The case *AC v Cork University Hospital* concerned the detention of a woman with dementia in a hospital because the hospital deemed it was in her best interest and the absence of fair procedures in the application to make her a ward of court. In October 2019, the Supreme Court ruled that the High Court did not follow fair procedures in making the woman a ward of court and emphasised the need for the person to be involved in decisions, which impact directly upon them stating “it is essential that the voice of the individual be heard in the process”. The Court raised specific concerns about the absence of legal aid in cases such as these to ensure the person’s interests are protected.

In November 2019, in the shadow report on the Convention on the Elimination of Racial Discrimination, the Commission raised concerns over the fact that civil **legal aid** is not available to cases involving social welfare appeals, housing issues, and employment and equality cases.<sup>(2)</sup> Further, the legal aid scheme does not extend to eviction proceedings, which has a disproportionate impact on Irish Travellers, an indigenous minority ethnic group.

The Commission was also involved, as *amicus curiae*, in a Supreme Court case relating to the **European Arrest Warrants system and the right to a fair trial**. In November 2019, the Supreme Court held that systemic deficiencies in a particular system, where far reaching, could by themselves amount to a sufficient breach of the essence of the right to a fair trial. It held that while the systemic changes in Poland were viewed as serious and grave, they

could not themselves be sufficient to cross the threshold of a real risk of breaching his right to a fair trial.(3)

In July 2019, the Commission welcomed the ratification of the Istanbul Convention, but noted concerns regarding access to justice in that context, including the **lack of provision for children to make applications for protection and safety orders** in their own right, delays in accessing court-ordered expert reports; and the lack of accredited training, regulations or quality assurance mechanisms in place for legal interpretation services.(4)

In July 2019, the Commission also welcomed the decision of Mr Justice Iarfhlaith O’Neill, that survivors of child sexual abuse in National Schools cannot be excluded from the **State’s ex gratia payment scheme** because they have not established a ‘prior complaint’ against their abuser. Mr Justice O’Neill found the State’s requirement of a ‘prior complaint’ for an applicant to the ex gratia scheme to be eligible for a payment is incompatible with *O’Keeffe v Ireland* and Article 13 of the ECHR. The Commission called for the Government to overhaul its ex gratia scheme to ensure effective remedy to those who are being denied justice by State inaction.(5)

### References

- (1) AC v Cork University Hospital[2019] IESC 73, at p. 149. See also IHREC (2019) Commission Welcomes Supreme Court Ruling Clarifying Individual’s Rights and Protections in Ward of Court Case(available at: <https://www.ihrec.ie/commission-welcomes-supreme-court-ruling-clarifying-individuals-rights-and-protections-in-ward-of-court-case/>)
- (2) IHREC, Ireland and the Convention on the Elimination of Racial Discrimination, November 2019, at p. 142, (available at [https://www.ihrec.ie/app/uploads/2019/11/IHREC\\_CERD\\_UN\\_Submission\\_Oct\\_19.pdf](https://www.ihrec.ie/app/uploads/2019/11/IHREC_CERD_UN_Submission_Oct_19.pdf))
- (3) IHREC, Human Rights and Equality Commission Welcomes Clarity Set Out in Significant Right to Fair Trial Case, 12 Nov 2019 (available at: <https://www.ihrec.ie/human-rights-and-equality-commission-welcomes-clarity-set-out-in-significant-right-to-fair-trial-case/>)
- (4) IHREC, Statement on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence, July 2019, p. 8 (available at: <https://www.ihrec.ie/app/uploads/2019/06/Statement-on-Ratification-of-CoE-Convention-on-Preventing-and-Combating-Violence-Against-Women-and-Domestic-Violence.pdf>)
- (5) IHREC, Irish Human Rights and Equality Commission welcomes Mr Justice Iarfhlaith O’Neill’s interpretation of Louise O’Keeffe’s Strasbourg judgment as too restrictive, 8 July 2019 (available at: <https://www.ihrec.ie/irish-human-rights-and-equality-commission-welcomes-mr-justice-iarfhlaith-oneills-interpretation-of-louise-okeeffes-strasbourg-judgment-as-too-restrictive/>)

## In-focus section on COVID-19 measures

### Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

So far, in response to COVID-19 outbreak, the government has passed two pieces of legislation. The Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 gives the power to the Minister for Health to regulate for restrictions on travelling and mass gatherings, and gives powers to medical officers and police to detain persons for failing to self isolate. The Act creates new criminal offences for refusing to self-isolate, with punishment of a €2,500 fine or a 6 month prison sentence, or both. The new powers within this Act are time limited.

The second piece of legislation is the Emergency Measures in the Public Interest (COVID-19) Act 2020. Among other things, this Act puts a moratorium on evictions and rent increases, and amends the Mental Health Act 2001. These amendments include provisions to allow for remote hearings of the mental health tribunals for assessments of an order to detain someone, to permit written submissions rather than oral, reduces the required number of people sitting on the tribunals from three to one, and allows for the period for review by a Tribunal to be extended by up to 28 days.

In a letter to the Taoiseach (Prime Minister), the Commission recognised that it can be necessary to take exceptional measures to safeguard the health of the community and the lives of individuals and emphasised that such measures must be necessary, proportionate and non-discriminatory, and their implementation must be informed by human rights and equality principles (1).

The Commission discussed issues relating to COVID-19 and disability with its statutory Disability Advisory Committee.

#### *References*

- (1) IHREC, Letter to An Taoiseach in relation to the COVID-19 Pandemic, 25 March 2020 (available at: <https://www.ihrec.ie/app/uploads/2020/03/IHREC-Letter-to-An-Taoiseach-March-2020.pdf>)

