

State of the Rule of Law in Europe in 2022

Reports from National Human Rights Institutions

Ireland



Ireland

Irish Human Rights and Equality Commission

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Commission was re-accredited as an “A” status NHRI by GANHRI’s Sub-Committee on Accreditation at its June 2021 session (1). The SCA commended the efforts of the Commission to promote and protect human rights in the Republic of Ireland and encouraged the Commission to continue these efforts. The SCA made a number of recommendations in relation to the Commission’s human rights mandate; the process for the selection and appointment of members of the Commission; the provision of adequate funding; and term of appointment of members of the Commission.

The SCA encouraged the Commission to continue to advocate for changes to its enabling law to ensure that all the full range of civil, political, economic, social and cultural rights are covered by the Commission’s mandate. At the same time, the SCA has acknowledged that the Commission has argued that a wider definition of human rights should apply to all of its powers but that the government has argued that a wider definition would attract constitutional difficulties and legal challenge.

Further, the SCA noted that the Commission does not have the explicit mandate to encourage ratification or accession to international human rights instruments; however, it acknowledged that the Commission interprets its mandate broadly to include actions in this regard. The SCA encouraged the Commission to advocate for changes to its enabling law to mandate it with the explicit responsibility to encourage ratification and accession to international instruments.

Acknowledging that the Commission has engaged with policy-makers, society, and government departments on the ratification of the UN OPCAT and provided views on the establishments of an NPM in the country, the SCA noted that the Commission does not have the explicit mandate to monitor places of deprivation of liberty. Therefore, the SCA encouraged the Commission to continue advocating for an explicit mandate to conduct unannounced visits to all places of deprivation of liberty.

The SCA noted that while Section 13 of the enabling law provides certain requirements for the selection and appointment process, including on diversity, pluralism, and publicising of vacancies, the law is silent on a permanent selection criteria and process. The SCA encouraged the Commission to advocate for the formalisation and application of a uniform process that ensures the broad participation of civil society in the selection and appointment process, and the assessment of applicants on the basis of pre-determined and objective criteria.

Additionally, the Commission reported that its mandate has expanded, that its responsibilities are increasing and that it would benefit from additional funding for its existing mandate as well as all expanded powers. The SCA encouraged the Commission to continue to advocate for additional funding to ensure that it can effectively carry out the full breadth of its mandate.

Finally, while acknowledging that in practice, all members of the Commission appointed after its establishment were appointed for five-year terms, the SCA encouraged the Commission to advocate for amendment to its enabling law to provide for a fixed minimum term of appointment for members of the Commission.

References

- (1) GANHRI Sub-Committee on Accreditation, Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA) 14-24 June 2021 (June 2021): <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/EN-SCA-Report-June-2021.pdf>

IHREC, The Irish Human and Equality Commission Retains “A” Status UN Accreditation (press release, 1 September 2021): <https://www.ihrec.ie/the-irish-human-and-equality-commission-retains-a-status-un-accreditation/>

Regulatory framework

The Commission accounts directly to the Oireachtas (Irish Parliament) for its statutory functions and the provisions contained within the Irish Human Rights and Equality Act 2014 ensure its structural and financial independence.

The Commission has a constitutional basis and the mandate to contribute to access to justice for individuals, including through strategic litigation before courts, the provision of legal assistance to individuals and awareness-raising.

In 2021 some changes were introduced to the national regulatory framework applicable to the institution.

Section 5 of the Gender Pay Gap Information Act 2021 inserts a new provision into section 32 of the Irish Human Rights and Equality Act 2014, to allow the Minister for Children, Equality, Disability, Integration and Youth to request the Commission to consider exercising its powers, concerning carrying out equality reviews and the drawing up of equality action plans, under that section. It will be for the Commission to decide whether to exercise its section 32 powers following the Minister's request.

The Commission was designated in October 2020 as Ireland's Independent National Rapporteur on the Trafficking of Human Beings. To fulfil this function, the Commission has established an Anti-Human Trafficking section, and was allocated additional resources in 2021 for staff and operational resources.

The Commission will be designated as the co-ordinating body of the National Preventative Mechanism (the 'NPM') framework under the legislation incorporating the Optional Protocol to the Convention Against Torture (the 'OPCAT'). The Government committed to ratifying and implementing the OPCAT by the end of 2021. The General Scheme of a Bill to ratify and implement the OPCAT is yet to be published. The Commission has emphasised the importance of appropriate funding, staffing, and data access for the effective functioning of the NPM co-ordinating body, and the importance of the involvement of civil society organisations in the operation of OPCAT.

In November 2021, the Government published the General Scheme of the Assisted Decision-Making (Capacity) (Amendment) Bill 2021, which will establish the statutory basis for the Commission's role as the Independent Monitoring Mechanism for the United Nations Convention on the Rights of Persons with Disabilities in Ireland.

References

- Department of Children, Equality, Disability, Integration and Youth, "Pay transparency is now one step closer" - Gender Pay Gap Information Bill passes all stages in Dáil and Seanad Éireann (press release, 7 July 2021): <https://www.gov.ie/en/press-release/910ee-pay-transparency-is-now-one-step-closer-gender-pay-gap-information-bill-passes-all-stages-in-dail-and-seanad-eireann/>
- Department of Children, Equality, Disability, Integration and Youth, Cabinet approves General Scheme of the Assisted Decision-Making (Capacity) (Amendment) Bill (press release, 22 November 2021): <https://www.gov.ie/en/press-release/b952e-cabinet-approves-general-scheme-of-the-assisted-decision-making-capacity-amendment-bill/>

- Department of Justice, Justice Plan 2021 (February 2021): <https://www.gov.ie/en/press-release/02a50-minister-mcentee-publishes-justice-plan-2021/>
- Department of Justice, Justice Plan 2021: Mid-Year Progress Report (August 2021): <https://www.gov.ie/en/publication/da0c1-department-of-justice-action-plan-2021-mid-year-progress-report/>
- IHREC, Submission to the Third Universal Periodic Review Cycle for Ireland (March 2021): https://www.ihrec.ie/app/uploads/2021/07/IHREC_UPR_2021_FINAL.pdf

Enabling and safe space

The relevant state authorities have good awareness of the Commission’s mandate, independence and role of the Commission and the institution has adequate access to information and to policy makers, being involved in all stages of legislation and policy making with human rights implications.

However, the Commission would draw attention to its longstanding recommendation for the State to establish a dedicated Oireachtas Committee on human rights, equality and diversity. A dedicated Oireachtas Committee would have a mandate to examine closely the human rights and equality implications of all legislation and policies.

The addressees of the Commission’s recommendations are not legally obliged to provide a timely and reasoned reply. However, the Commission regularly engages with key stakeholders in the policymaking process to follow-up or draw attention to its recommendations. The Commission also assesses developments in relevant areas of legislation and policy against the recommendations it has provided.

Measures necessary to protect and support the institution, heads of institution and staff against threats and harassment and any other forms of intimidation (including SLAPP actions) are in place.

References

- IHREC, Submission to the Third Universal Periodic Review Cycle for Ireland (March 2021): https://www.ihrec.ie/app/uploads/2021/07/IHREC_UPR_2021_FINAL.pdf
- IHREC, Ireland and the International Covenant on Economic, Social and Cultural Rights: Submission to the UN Committee on Economic, Social and Cultural Rights for the List of Issues on Ireland’s Fourth Periodic Report (December 2021): <https://www.ihrec.ie/app/uploads/2022/01/Ireland-and-the-International-Covenant-on-Economic-Social-and-Cultural-Rights.pdf>

NHRI's recommendations to national and regional authorities

- The Commission recommends the State implement the recommendations of the GANHRI Sub-Committee on Accreditation. The Commission would draw particular attention to the Sub-Committee on Accreditation's recommendation on the provision of additional funding to ensure the Commission can carry out the full breadth of its mandate.
- The Commission recommends that the State establish a dedicated Oireachtas Committee on human rights, equality and diversity.
- The Commission recommends that the State ratify and implement OPCAT without further delay; and to ensure that appropriate appropriate funding, staffing, and data access is in place for the NPM co-ordinating body, and the involvement of civil society organisations in the operation of OPCAT.

Human rights defenders and civil society space

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

In the 2020 and 2021 ENNHRI Rule of Law reports, the Commission highlighted concerns around legislation regulating civil society space in Ireland, including the wide definition of 'political purposes' in the Electoral Act 1997 and the exclusion of the advancement of human rights from the definition of 'charitable purpose' in the Charities Act 2009. The Commission referenced these concerns in its submission on the General Scheme of the Electoral Reform Bill, which does not include provisions addressing these issues. While the Commission is of view that the work of civil society organisations in Ireland, and their sources of funding, should continue to be clearly regulated and subject to high standards of scrutiny, transparency and accountability; such legislative and regulatory measures should avoid placing undue restrictions on civil society engagement and advocacy. A report of the Oireachtas Committee on Justice recommended that a definition of 'political purposes' be included in the Bill based on the submissions of the Commission and other civil society organisations.

References

- IHREC, Submission to the Committee on Housing, Local Government and Heritage on the General Scheme of the Electoral Reform Bill (February 2021): <https://www.ihrec.ie/app/uploads/2021/02/Submission-to-the-Committee-on-Housing-Local-Govt-and-Heritage-on-the-Electoral-Reform-Bill-Feb-2021.pdf>

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

Access to and involvement of civil society actors in law and policy making

The Commission emphasises the important advocacy role that civil society plays in democratic discourse and in the promotion of human rights. The Commission has called for a more inclusive and enabling environment for civil society actors to participate in the design, implementation and monitoring of legislation and policy. For example, in the Commission’s submission on the General Scheme of the Online Safety and Media Regulation Bill, the Commission recommended that the development and implementation of the legislation should be informed by specific consultations with children and with persons with disabilities and representative groups of persons with disabilities to ensure the legislation meets their requirements.

The Commission has repeatedly highlighted concerns around the level of involvement of persons with disabilities in decision-making processes relating to persons with disabilities. This was particularly notable in the response to the COVID-19 pandemic, where legislation and policies, which have significant implications for the rights of persons with disabilities, were adopted without meaningful engagement with people with disabilities. The Commission has stressed the importance of closely consulting and actively involving persons with disabilities and Disabled Persons Organisations in legislative and policy decision-making processes. To ensure the meaningful participation of persons with disabilities in law and policy making, the Commission has called for the State actively support the further development and involvement of Disabled Persons Organisations by providing sustainable core funding, capacity building and training.

In the Commission’s recommendations on designing a new National Action Plan Against Racism, the Commission called for the Action Plan to explicitly set out how rights holders will be involved in the implementation and monitoring of the Plan. The Commission recommended that the principle of participation be evident in the involvement of all ethnic minority communities in leadership and strategic oversight, evaluation, monitoring, review and implementation throughout the lifetime of the National

Action Plan Against Racism. This participation needs to be directly resourced, given the low socio-economic status of many groups who are subjected to racism, and child / adult care costs must also be covered.

References

- IHREC, Submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill (March 2021): <https://www.ihrec.ie/app/uploads/2021/03/IHREC-Submission-to-the-Joint-Committee-on-Media-Tourism-Arts-Culture-Sport-and-the-Gaeltacht-on-the-General-Scheme-of-the-Online-Safety-and-Media-Regulation-Bill-FINAL.pdf>
- IHREC, Submission to the Third Universal Periodic Review Cycle for Ireland (March 2021): https://www.ihrec.ie/app/uploads/2021/07/IHREC_UPR_2021_FINAL.pdf
- IHREC, Submission to the Oireachtas Joint Committee on Justice, COVID-19 and Civil Liberties (May 2021): <https://www.ihrec.ie/app/uploads/2021/05/Submission-to-the-Oireachtas-Joint-Committee-on-Justice-COVID-19-and-Civil-Liberties-Final-PDF.pdf>
- IHREC, Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee (August 2021): <https://www.ihrec.ie/app/uploads/2021/09/Developing-a-National-Action-Plan-Against-Racism-IHREC-Submission-to-the-Anti-Racism-Committee.pdf>
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- IHREC, Submission on the Review of the Equality Acts (December 2021): <https://www.ihrec.ie/app/uploads/2022/01/IHREC-Submission-on-the-Review-of-the-Equality-Acts.pdf>

NHRI's role in promoting and protecting civil society space and human rights defenders

The Commission continues to engage with State bodies, the Oireachtas and international monitoring mechanisms in support of civil society and human rights defenders both nationally and internationally.

In July 2021, the Commission addressed GANHRI's High-level event on the Global Action Plan to support the protection and promotion of human rights defenders and civic space. The Commission recognised the importance of an enabling environment, both online and offline, for human rights defenders and civil society actors to meaningfully engage in the democratic process. The Commission stressed the importance of setting out clear actions to implement the Marrakech Declaration.

In October 2021, the Commission addressed the pre-session of the Universal Periodic Review of Ireland on a number of issues of concern for civil society including access to justice, gender equality, immigration policy, and the human rights and equality framework.

In June 2021, the Government announced a review of Ireland's Equality Acts. To support civil society groups and individuals to engage in the review process, the Commission and the civil society organisation, FLAC (Free Legal Advice Centres), have launched a joint project, Equality ACTION to encourage and support civil society engagement with the Review.

To empower the advocacy and work of civil society organisations, rights-holder and community led groups, and trade unions in Ireland; the Commission operates a grant scheme to support human rights and equality projects across Ireland, including research programmes, training or resource activities, conferences or events and cultural initiatives. Under its Human Rights and Equality Grants Scheme 2021, the Commission is supporting 28 projects which encompass a range of issues; social exclusion and socioeconomic discrimination; racism and discrimination experienced, in particular, by ethnic and minority communities; and empowering people with disabilities to advocate for their rights.

References

- Equality ACTION, Guide to the Review Process & Introduction to the Equality Acts (November 2021): <https://www.ihrec.ie/app/uploads/2021/11/Equality-ACTION-Submission-Support-Note-Nov-2021.pdf>
- GANHRI, High-level event on GANHRI's Global Action Plan to support the protection and promotion of human rights defenders and civic space (2021): <https://ganhri.org/hrd-and-civic-space-event-2021am/>
- IHREC, Human Rights and Equality Grants 2021 Announced (press release, 17 September 2021): <https://www.ihrec.ie/human-rights-and-equality-grants-2021-announced/>

NHRI's recommendations to national and regional authorities

- The Commission recommends that legislative and policy measures to regulate civil society organisations should avoid placing undue restrictions on civil society engagement and advocacy.
- The Commission recommends that the State ensure the active and informed participation of individuals in the development, implementation and monitoring of legislative, executive and administrative decisions that concern them.

Checks and balances

The Commission has identified concerns around the process of legislating for emergency powers in its response to COVID-19. The Commission has highlighted gaps in transparency and in our systems of democratic accountability including a lack of human rights and equality expertise in decision-making structures. The delegation of legislative power to the Minister for Health resulted in a black hole for the consideration of human rights and equality concerns.

The Commission has repeatedly raised its concerns on how the State is meeting its human rights obligations for people with disabilities. The Commission has particularly emphasised the need for the State to ratify the Optional Protocol to the CRPD, which would allow people with disabilities to make individuals complaints directly to the UN. Ireland is one of only three EU member states to have neither signed nor ratified the Optional Protocol. In order to support accountability and transparency, the Commission has called for the Government to make an annual statement to the Dáil (Lower House of the Oireachtas) on Ireland's progress on the implementation of the CRPD.

References

- IHREC/COVID-19 Law and Human Rights Observatory, Ireland's Emergency Powers During the COVID-19 Pandemic (February 2021): <https://www.ihrec.ie/app/uploads/2021/02/Irelands-Emergency-Powers-During-the-Covid-19-Pandemic-25022021.pdf>
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- IHREC, Commission Calls on Government to Establish Annual Dáil Statement on Progress on Ireland’s Disability Rights Obligations (press release, 17 June 2021): <https://www.ihrec.ie/commission-calls-on-government-to-establish-annual-dail-statement-on-progress-on-irelands-disability-rights-obligations/>

Trust amongst citizens and between citizens and the public administration

The Commission notes several relevant findings of its Annual Poll for 2021:

- Two-fifths (40%) of respondents believe the efforts made to fight human rights abuses in Ireland are effective, a decrease on 2020 levels (52%).
- 48% rate the efforts made in Ireland to fight all forms of discrimination as not effective.
- Close to nine in ten (87%) agree that people with disabilities face barriers in participating fully in Irish society, a similar proportion to 2020 (86%).
- A significant majority (79%) agree that people with less money generally get a worse outcome in a legal challenge.
- Two-thirds (67%) agree with the statement: Ireland’s response to COVID-19 has increased the solidarity I feel to older, vulnerable and minority groups.
- One-quarter (24%) agree that they feel left out of society.
- Two-fifths (43%) of respondents agree with the statement: I don’t feel that the value of what I do is recognised by others.
- One-third (35%) of respondents report they feel some people look down on me because of their job situation or income.

References

- IHREC/Amárach Research, IHREC Annual Poll 2021 (2021): <https://www.ihrec.ie/app/uploads/2021/12/IHREC-Amarach-Research-Survey-2021-29122021.pdf>

NHRIs as part of the system of checks and balances

As part of the system of checks and balances, the Commission regularly engages with Government departments, public bodies, Oireachtas Committees and international monitoring mechanisms.

In 2021, the Commission made a submission to the Universal Periodic Review as well as a Submission to the UN Committee on Economic, Social and Cultural Rights to inform its preparation of the List of Issues for Ireland. The Commission has also made a number of

appearances before Oireachtas Committees on certain issues, including on disability and Direct Provision.

In addition to a number of other legislation observation submissions referenced in this report, in 2021 the Commission also submitted observation on proposed legislation, including:

- Smuggling of Persons Bill
- Criminal Justice (Exploitation of Children in the Commission of Offences) Bill
- Dying with Dignity Bill
- Certain Institutional Burials (Authorised Interventions) Bill
- Housing and Planning and Development Bill 2019
- Birth Information and Tracing Bill

In the 2021 ENNHRI Rule of Law report, the Commission highlighted its recent designation as Ireland's National Rapporteur on Trafficking of Human Beings. In October 2021, the Commission submitted its report to Council of Europe Group of Experts on Action against Trafficking (GRETA) on Ireland's compliance with the Convention. The Commission also met with the EU Network of National Rapporteurs on Trafficking in Human Beings to provide its update on Ireland's progress.

Since 2015, the Commission has consistently used its legal standing to contribute to the execution of the European Court of Human Rights judgement in the case of Louise O'Keefe. In its written submissions to the Council of Europe's Committee of Ministers, the Commission has set out that the State's redress scheme put in place for victims of sexual abuse in schools is unduly restrictive. Under the State's restrictive interpretation of the O'Keefe judgment, a victim of child sexual abuse is required to establish the existence of a prior complaint before the State's liability was triggered. Placing the onus on victims to explain how their abuse could have been prevented is redundant when the O'Keefe ruling made clear Ireland failed to put in place effective mechanisms of child protection in Irish schools. The Commission has, as a result, asked the Council of Europe to transfer this case to an "enhanced supervision" process which would see Ireland more closely monitored on its implementation of the 2014 O'Keefe ruling.

In the 2021 ENNHRI Rule of Law report, the Commission outlined concerns raised regarding the final report of the Mother and Baby Homes Commission of Investigation. The Commission exercised in *amicus curiae* function in two leads cases challenging aspects of the final report of the Commission of Investigation into Mother and Baby Homes. In the High Court, the State acknowledged that the Commission of Investigation breached its

statutory duty to provide the survivors, who were identifiable in the report, with a draft copy of the final report before its publication. The Commission also submitted independent advice to the Government on its planned redress scheme for survivors of Mother and Baby Homes and other related institutions. The Commission called for the design and implementation of the redress scheme to be underpinned by human rights and equality principles. The Commission also stated that a redress scheme should not be bound by the significant limitations of the Commission of Investigation's report and recommendations. The Commission emphasised that redress extends beyond financial compensation, and the Scheme should be designed to facilitate apologies from officials representing the State and relevant private entities to survivors. The Commission further recommended that provisions seeking to deny or limit liability should not find expression in the proposed scheme.

The Commission appeared as *amicus curiae* in a High Court case concerning driving licences for asylum seekers. The High Court found that the applicants are lawfully resident in the State, and therefore eligible for a licence. The Commission has also appeared as *amicus curiae* in cases concerning the eviction of a Traveller family, a disability assessment of a boy, and a father's eligibility for a carer's allowance.

In July 2021, the Commission published accounts of equality reviews for Ireland's 31 local authorities which focused on their provision of Traveller-specific accommodation to Members of the Traveller Community. The reviews highlighted a number of overarching issues including the underspend in the drawing-down of allocated funds for Traveller-specific accommodation; poor information gathering to inform decision-making; and failings to identify Traveller's true accommodation preference.

References

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- IHREC, Submission to the Joint Committee on Children, Disability, Equality and Integration on the General Scheme of a Certain Institutional Burials (Authorised Interventions) Bill (February 2021): <https://www.ihrec.ie/app/uploads/2021/02/IHREC-Submission-to-the-Joint-Committee-on-Children-Disability-Equality-and-Integration-on-the-General-Scheme-of-a-Certain-Institutional-Burials-Authorised-Interventions-Bill-FINAL.pdf>

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- IHREC, Accounts of First Council-by-Council Equality Review on Traveller Accommodation in History of State Published (press release, 14 July 2021): <https://www.ihrec.ie/accounts-of-first-council-by-council-equality-review-on-traveller-accommodation-in-history-of-state-published/>
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NHRI's recommendations to national and regional authorities

- The Commission recommends that emergency legislation be subjected to strict human rights and equality standards and oversight. Equality and human rights expertise should be included in decision-making structures, including in the systems to implement and scrutinise decisions. This includes ensuring effective consultation with groups likely to be particularly impacted by emergency legislation.
- The Commission recommends the Government make an annual statement to the Dáil on Ireland's progress in implementing the UNCRPD; and to prioritise the ratification of the Optional Protocol to the UNCRPD.
- The Commission recommends the State overhaul the approach to investigating historical human rights abuses to ensure that all allegations of such abuse are afforded timely, independent, thorough and effective victim-centred investigations, in line with international human rights standards.
- The Commission recommends that the State ensure that redress schemes for human rights abuses are based on the right to truth, justice, reparation, non-recurrence and memory processes, and include clarity on rights of access to personal data and legislative measures to ensure that those who died in institutions receive dignity in death.

Functioning of the justice system

The Commission has repeatedly highlighted concerns with the operation of the civil legal aid system, including the minimum financial contribution. This has proven to be barrier to access to justice for those on low incomes, women, victims of domestic violence, victims of trafficking and labour exploitation, international protection applicants, Travellers, Roma, and minority ethnic communities. Ireland's civil legal aid system does not cover representation before quasi-judicial tribunals and bodies dealing with social welfare appeals, housing issues, and employment and equality cases. The Government committed to a review of the system and to bring forward proposals for reform by the end of 2021; however, the Government did not publish proposals by the end of 2021. The Government has also not published its One Year Follow Report, due December 2020, to the Committee on the Elimination of Racial Discrimination on Ireland's implementation of the Committee's recommendations on legal aid.

The Commission has expressed concern about the proposed structure of the new Judicial Appointments Commission ('JAC') as it is contrary to international guidance on ensuring independence of such bodies as it is proposed that fewer than half of the members are judges. The Commission recommended that members of the judiciary should be increased to at least half of those who sit on the JAC; as well as removing the Attorney General from membership of the JAC, to ensure independence from the Government. The Commission also called for the membership of the JAC to reflect the diversity of the population, and recommended the proposed legislation require the JAC to publish statements on how they will pursue the objectives of improving diversity in the judiciary and to collect and publish disaggregated equality data in relation to both candidates and appointments to the judiciary.

The Commission is of the view that the current Irish system of child and family law proceedings are not child, family or disability friendly. In the Commission's submission on the General Scheme of the Family Court Bill, the Commission identified persistent issues with the family court system including chronic delays in court proceedings, delays in conducting assessments of children and adults, inconsistent approaches to hearing views of the child, adversarial approaches to proceedings, inconsistency in decisions, and a lack of specialist training for judges and legal practitioners. To bring the Bill in line with human rights and equality standards, the Commission recommended that the family court system should put in place better processes to determine the best interests of the child and ensure the right of the child to be heard is adequately protected. The Commission also recommended strengthened protection for marginalised groups who are disproportionately represented in child and family law proceedings.

The Commission has consistently expressed concern in submissions to international monitoring mechanisms, in particular the Human Rights Committee, about the existence and operation of the non-jury Special Criminal Court. In 2021, the Government launched an independent review of the Offences Against the State Acts, which govern the operation of the Special Criminal Court. In the Commission's submission to the Independent Review Group, the Commission raised concern with the functioning of the Court including the implications for a right to a fair trial with the rules of admission of evidence; the use of belief evidence and inference drawing from the conduct of an accused or the silence of an accused when questioned in detention. The Commission recommended that the Special Criminal Court be abolished and the Offences Against the State Acts be repealed as ordinary courts are adequate to secure the effective administration of justice and the preservation of public peace and order without resorting to non-jury trials.

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Role of the NHRI in contributing to the effective functioning of justice systems

The Commission's legal functions include amicus curiae interventions, legal assistance to individuals and equality reviews.

Recent examples of the Commission's amicus curiae interventions include:

- DPP v. RK and LM (Court of Appeal): on the admission of Garda (Irish police force) belief evidence, and the appropriate balance to be struck between the vital public interest in protecting Garda investigations and the procedural safeguards required for a fair trial.
- Director of Public Prosecutions v. JD (Supreme Court): on the rights of an accused person where the Gardaí failed to interview the accused in relation to an indictable offence before charging them with that offence.

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NHRI's recommendations to national and regional authorities

- The Commission recommends the State ensure that the planned review of the civil legal aid scheme is underpinned by international human rights and equality standards; has the scope to address all of the barriers to accessing legal aid in a timely manner; is structured with clear timeframes for reform and dedicated resources; and ensures the participation of rights holders, civil society organisations and other key stakeholders.
- The Commission recommends that the State ensure that the proposed Judicial Appointments Commission aligns with international standards on judicial

independence, and that the membership of the Judicial Appointments Commission reflects the diversity of Irish society.

- The Commission recommends the State abolish the Special Criminal Court and repeal the Offences Against the State Acts. If the State decides not to abolish the Special Criminal Court or repeal the Offences Against the State Acts, the Commission recommends that the State should strengthen procedural safeguards in the use of the Court and the legislation. This includes independent and parliamentary oversight.

Media freedom, pluralism and safety of journalists

In the 2021 Rule of Law report, the Commission referred to its submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill, which will transpose the revised Audiovisual Media Services Directive into Irish law. In its observations, the Commission recommended that the financial independence of the Media Commission, to be established under the Bill, be strengthened by ensuring that grants for budgetary allocation to the Media Commission should be subject to a separate vote in the Oireachtas. The Commission also recommended that the Bill be amended to exclude reference to removal of members of the Media Commission in the interests of the effective and economical performance of the functions of the Commission. To support a pluralist media environment, the Commission has called for the membership of the Media Commission to reflect the nature and diversity of Irish society.

The final report of the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill presented a number of recommendations on amendments to the Bill, which relate to the concerns raised by the Commission, including:

- highly precise detail is given as to the roles and responsibilities of the Media Commission and of the Online Safety Commissioner;
- no possible source of infringement of independence should be placed upon the Media Commission or upon the Online Safety Commissioner;
- any provision allowing for the removal of commissioners, either by the Minister or by the Department, be removed from the General Scheme of the Bill;
- the Media Commission and the Online Safety Commissioner are satisfactorily resourced, with the level of staffing and expertise adequate to allow optimal operational capacity and enforcement;

- there is a pluralistic and diverse-oriented approach taken during the legislative process for the present Bill and during the regular work of the Media Commission and the Online Safety Commissioner, with full participation sought from all sects of Irish society, including liaising with vulnerable groups to ensure that their lived experience is reflected.

The Commission has emphasised that a strong link can be observed between editorial decisions and the emergence of online and real-world hate speech and incidents, meaning it is imperative that media professionals adhere to journalistic ethics and codes of practice, and that such codes of practice are responsive to the modern media environment. The Commission has called for the Press Council of Ireland's Code of Practice, which prohibits the publication of material intended or likely to cause grave offence or stir up hatred based on protected characteristics, to be updated in light of ongoing developments in respect of the legislative framework on hate speech. African-Irish young people report that negative narratives and stereotypes in the media are a pervasive barrier to integration, whereas authentic representation facilitates inclusion and has a significant impact on emotional wellbeing. More diverse representation within the media professions will help to ensure more authentic representation, for example, by promoting more inclusive editorial decision making.

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NHRI's recommendations to national and regional authorities

- The Commission recommends that the National Action Plan Against Racism includes an action for a strategy to encourage the media to promote diversity within its professions, increase the visibility and positive representation of ethnic minorities, and better equip people to discuss issues concerning race, racism and anti-racism.
- The Commission recommends that the State ensure the proposed Media Commission is structurally and financially independent, and that its membership reflects the diversity of Irish society.

Corruption

The current legislation in Ireland concerning protection for whistle-blowers, the Protected Disclosures Act 2014, is recognised as being very strong by international standards. However, it is difficult to conduct a meaningful assessment of its effectiveness as the case law that has developed since 2014 is relatively small and there is no data available on the total number of protected disclosures made each year and the outcome of such disclosures.

Against this background, the Commission submitted legislative observations on the Protected Disclosures (Amendment) Bill 2021, which provides for the transposition of the EU Whistleblowing Directive (EU) 2019/1937. While acknowledging the international leadership role that Ireland has taken to date in the area of protected disclosures, the Commission is concerned that the State has taken an unnecessarily cautious approach to transposing the Directive rather than further enhance the existing protections. The Commission has emphasised the importance of ensuring the transposition of the Directive into Irish law is used as an opportunity to further strengthen the legal safeguards in the Protected Disclosures Act and that no existing protections are weakened or removed in the process. In terms of access to justice, the Commission has emphasised the importance of ensuring workers (particularly women, minorities and people in precarious work situations) are facilitated to make protected disclosures and are protected in the process.

The Commission has highlighted troubling attitudes and treatment towards those who make protected disclosures. The labelling of someone as a 'whistle-blower' and the negative connotations it has gained in media reports and society is a real concern for those who simply wish to report a wrongdoing. The experience and fear of the potential negative impact that making a disclosure will have on an individual's career and personal life can be a barrier to reporting a concern. This is reflected in research where a relatively

high number of people stated that fear of losing their job, harming their career or isolation from colleagues would deter them from speaking up.

References

- IHREC, Observations and Recommendations on the General Scheme of the Protected Disclosures (Amendment) Bill 2021 (November 2021): <https://www.ihrec.ie/app/uploads/2021/11/Observations-and-Recommendations-on-the-General-Scheme-of-the-Protected-Disclosures-Amendment-Bill-2021.pdf>

NHRI's recommendations to national and regional authorities

- The Commission recommends that the State should ensure that the transposition of the EU Whistle blower Directive in the Protected Disclosures (Amendment) Act does not result in any diminution in protections for individuals who make a protected disclosure, instead the legal safeguards for individuals should be strengthened.
- The Commission recommends that the fear of negative consequences on career and personal life around making a protected disclosure should be taken into consideration by the State during the drafting process to ensure that there is adequate resources and supports in place for those who choose to make a protected disclosure.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

In the 2021 ENNHRI Rule of Law report, the Commission highlighted the lack of regard to human rights and equality standards in emergency law-making in the context of Covid-19. The Commission outlined a number of concerns, including:

- Blurred boundaries between guidance and regulations, leading to confusion among people;
- Concerning gaps in transparency and in the systems of democratic scrutiny;
- Certain groups were potentially disproportionately affected by policing powers but there is a lack of comprehensive and detailed disaggregated data to clarify this; and

- Defects in the law making and review process have led to a lack of human rights and equality expertise in decision-making structures, or in the systems that implement and scrutinise these decisions.

The Commission has repeatedly stressed the need for the State to have regard to the human rights and equality impacts of its emergency decision-making, noting the disproportionate effects of the pandemic across various equality groups. While the pandemic is a challenge for the whole country, it is impacting, and will continue to impact, different people more acutely than others, including: women; older people; people with disabilities; residents in Direct Provision; members of the Traveller community; minority ethnic groups; people living in homelessness; people experiencing domestic violence; prisoners, and people in precarious employment. However, there has been a notable lack of consultation with groups likely to be particularly impacted.

The Covid-19 pandemic has had a significant impact on socio-economic rights and has exacerbated many existing inequalities relating to the rights to decent work, housing, health and education, amongst others. The lack of disaggregated data presents significant gaps in our understanding of the differential impact across ethnic minorities during a time of rapid change – including across education, work and employment, contact with the criminal justice system, access to services, housing, access to justice, and health outcomes. Remote education and moves to remote work have illustrated the digital divide in Irish society. Dimensions of digital exclusion include connectivity, material access (including ICT equipment), and digital competency.

The Commission emphasises the importance of addressing poverty and social exclusion in Ireland's continued response to and recovery from the Covid-19 pandemic. The Commission notes that in May 2021, Ireland submitted its draft National Recovery and Resilience Plan ('NRRP') to the European Commission to secure a significant investment of approximately €989 million to mitigate the public health, economic and social crisis caused by the Covid-19 pandemic. In its guidance to Member States, the European Commission stressed the importance of incorporating gender equality and equal opportunities for all as objectives in the plan. However, the Irish NRRP does not specifically reference or address human rights and equality concerns.

From the outset of the pandemic, and from the earliest introduction of legal and policy measures to address it, the Commission has stressed the need for the State to have regard to the human rights and equality impacts of its emergency decision-making. In the 2021 ENNHRI Rule of Law report, the Commission referred to its research report published in February 2021 which found that the Government has persistently blurred the boundary between legal requirements and public health guidance in its COVID-19 response,

generating widespread confusion about the extent of people's legal obligations. In its submission to the Oireachtas Joint Committee on Justice in May 2021, the Commission outlined many of the concerns, expressed above; including reiterating its recommendation for a dedicated Oireachtas Committee on equality, human rights and diversity which in the context of COVID-19 would provide close parliamentary oversight of the implementation of emergency legislation introduced in response to COVID-19, and the equality and human rights implications of COVID-19. To mainstream human rights and equality in emergency decision-making, the Commission also emphasised the importance of the Public Sector Equality and Human Rights Duty to inform decision-making on all aspects of law and policy.

The final report of the Joint Committee on Justice on Civil Liberties during the Covid-19 Pandemic made a series of recommendations, which mirror the concerns and recommendations of the Commission including:

- The difference between public health guidance and regulations should be clear to the public.
- The Government should ensure that minority groups have access to accurate information which has been adapted to best meet their individual needs.
- A regular human rights impact assessment on the impact of the emergency situation and restrictions on at-risk groups be carried out in order to ensure Government takes appropriate and sufficient measures to mitigate negative impacts.
- Detailed and disaggregated data on the use of enforcement powers by the Gardaí should be collected and published.
- Cultural competency training forms an integral part of continuous professional development for all members of An Garda Síochána, to ensure that their powers are being exercised in a non-discriminatory manner, in line with best practice in cultural competency, human rights and equality.
- The views of experts in the fields of human rights, equality and inclusion ought to be sought as part of the democratic oversight of decisions made by the Government, to ensure that the impact of these decisions on individuals' human rights and civil liberties is taken into account.
- Emergency legislation should be subject to robust democratic oversight.

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Most important challenges due to COVID-19 for the NHRI's functioning

The Commission has worked virtually throughout 2021, and has invested in its ICT systems to facilitate this.

NHRI's recommendations to national and regional authorities

- The Commission recommends that any measures put in place to address COVID-19 should be subject to robust democratic scrutiny and accountability; and human rights and equality expertise must be in place in decision-making and oversight structures.
- The Commission recommends that the measures put in place to address COVID-19 must be human rights proofed, and should be informed by the Public Sector Equality and Human Rights Duty.

- The Commission recommends that the State prioritise addressing poverty and social exclusion in Ireland's continued response to and recovery from the Covid-19 pandemic.