

# Comments on Ireland's 15th National Report on the implementation of the European Social Charter

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**Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas**  
Irish Human Rights and Equality Commission



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## Introduction

The Irish Human Rights and Equality Commission ('the Commission') is both the national human rights institution and the national equality body for Ireland, established under the Irish Human Rights and Equality Commission Act 2014.

The Commission welcomes the opportunity to comment on a number of matters raised in Ireland's 15th National Report on the implementation of the European Social Charter. The Commission previously commented on Ireland's 14th National Report on the implementation of the European Social Charter.<sup>1</sup>

The Commission notes that under the simplified procedures, the State was required in its 15<sup>th</sup> Report to submit answers to particular questions posed by the Committee. The Commission has reviewed the State's report and has collated information in the following areas, which may be of assistance to the Committee:

- Updates relevant to the State's response to *Collective Complaint No. 100/2013: European Roma Rights Centre v Ireland*;
- Information relevant to Article 1, para 2, including recent research findings on discrimination; updates on the legal framework regarding the gender pay gap, socio-economic discrimination and discrimination compensation; and an update on significant changes in the law regarding access to employment for applicants for international protection;
- Information relevant to Article 15, para 3, including on the National Disability Inclusion Strategy; recognition of Irish Sign Language; and the National Housing Strategy for People with a Disability.

The Commission would welcome the opportunity to engage with the Committee further on the matters discussed in this paper.

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<sup>1</sup> IHREC (2017), *Comments on Ireland's 14<sup>th</sup> National Report on the Implementation of the European Social Charter*. Available at [https://www.ihrec.ie/app/uploads/2017/04/F1-IHREC-Comments-on-Irelands-14th-Report-on-European-Social-Charter\\_April-2017-002.pdf](https://www.ihrec.ie/app/uploads/2017/04/F1-IHREC-Comments-on-Irelands-14th-Report-on-European-Social-Charter_April-2017-002.pdf)

## Collective Complaint No. 100/2013: *European Roma Rights Centre v Ireland*

Further to the Committee's findings of five separate violations in the matter of *European Roma Rights Centre v Ireland*, and noting the contents of the Irish Government's 15<sup>th</sup> National Report of 31 October 2017, the following section seeks to provide updates and commentary which may be useful to the Committee in its 'follow-up' consideration of this Collective Complaint.

### The recognition of Traveller ethnicity

On 1 March 2017, the Irish State formally acknowledged Travellers as a distinct ethnic group in Irish society.<sup>2</sup> The Commission welcomed this development and expressed its hope that with the unequivocal recognition of their distinct culture and identity, the Irish State can better anticipate and respond to the needs of Travellers.<sup>3</sup>

### New information on housing discrimination faced by Travellers

A forthcoming research report on *Discrimination and Inequality in Housing In Ireland*<sup>4</sup> finds that Travellers experience disadvantage in terms of high levels of discrimination and higher risks of homelessness.<sup>5</sup> It also finds that:

- Travellers are 22 times more likely than other white-Irish respondents to report that they have experienced discrimination in access to housing;<sup>6</sup>

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<sup>2</sup> Dáil Debates (2017); Statement of Recognition of the Traveller Community as an Ethnic Group, 1 March 2017, Vol. 941, No. 1, available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2017030100051?opendocument>, accessed on 13 April 2018.

<sup>3</sup> IHREC (2017); Historic Step as Traveller Ethnicity Recognised by State, IHREC Press Release, 1 March 2017, available at <https://www.ihrec.ie/historic-step-traveller-ethnicity-recognised-state/>.

<sup>4</sup> Raffaele Grotti, Helen Russell, Éamonn Fahey, Bertrand Maître, *Discrimination and inequality in housing in Ireland* (Dublin: IHREC and ESRI), (forthcoming 2018). Hereafter 'IHREC ESRI 2018 Discrimination in housing report (forthcoming)'.

<sup>5</sup> IHREC ESRI 2018 Discrimination in housing report (forthcoming), Section 6.

<sup>6</sup> IHREC ESRI 2018 Discrimination in housing report (forthcoming), Section 3.

- While Travellers represent less than 1% of the Irish population, they make up more than 9% of the homeless population.<sup>7</sup>

In addition, research reviewed as part of this study indicates that Travellers experience deficits across multiple measures of housing quality:

- the vast majority (84%) of Travellers living in caravan or mobile home accommodation reside in over-crowded conditions;<sup>8</sup>
- only 16% of Travellers owned their own home, compared to 72% for the non-Traveller population;<sup>9</sup>
- Travellers are exceptionally reliant on social housing, with just under half (49%) being social renters.<sup>10</sup>

## Traveller accommodation conditions

### The Carrickmines tragedy

The inadequacy of Ireland's accommodation provision for Travellers came to national attention following the events of 10 October 2015, during which a fire broke out at a Traveller halting site in Carrickmines in South County Dublin in the early hours of the morning. The fire claimed the lives of ten Travellers, including a young mother who was pregnant and four children.<sup>11</sup> Residents of the halting site in Carrickmines had been living with only basic services for over seven years, pending the provision of a permanent halting site, although no clear timeline appears to have been in place for its provision. A grandparent of two children orphaned by the fire has recently instituted legal proceedings against the relevant local authority, Dún Laoghaire-Rathdown County Council.<sup>12</sup>

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<sup>7</sup> IHREC ESRI 2018 Discrimination in housing report (forthcoming), Executive Summary.

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> For more information see the statement of Pavee Point Traveller and Roma Centre, available at <http://www.paveepoint.ie/letter-to-an-taoiseach/>.

<sup>12</sup> Irish Times (2018); Carrickmines Fire: Family Takes Legal Action Over Fatal Blaze, newspaper article of 23 April 2018. Available at <https://www.irishtimes.com/news/crime-and-law/carrickmines-fire-family-takes-legal-action-over-fatal-blaze-1.3470303/>.

The Commission has stated its view that ‘this tragic event is a shocking illustration of the discriminatory barriers that members of the Traveller community experience in accessing appropriate accommodation, over and above those experienced by the rest of society’.<sup>13</sup> In 2015, the Commission wrote to Dún Laoghaire-Rathdown County Council to raise its concerns that the local authority is not properly vindicating the human rights of Travellers through the discharge of its housing functions. In its letter, the Commission highlighted the requirements of the new Public Sector Duty.<sup>14</sup> The Commission had previously written to all local authorities regarding the Public Sector Duty in September 2014.

In response to this tragedy, the National Directorate for Fire and Emergency Management<sup>15</sup> launched an audit reviewing fire safety arrangements in Traveller accommodation. 2144 units of Traveller accommodation were identified for the purpose of the review, and 2042 of these units were appraised.<sup>16</sup> Among the findings of the audit is the statement that the separation distances between Traveller accommodation units was an ‘issue of concern’ in 57% of the sites appraised.<sup>17</sup>

### **Spring Lane Halting Site, Cork City, County Cork**

The Commission notes that reference is made in the Collective Complaint to the living conditions experienced by Travellers residing at the Spring Lane Halting Site in Cork City. The Commission notes, in this regard, that a review of this halting site was conducted under the

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<sup>13</sup> IHREC (2015): Statement by the Irish Human Rights and Equality Commission in response to recent tragedies at a temporary Traveller halting site at the Glenamuck Road in South Dublin, of 23 October 2015, available at <https://www.ihrec.ie/statement-by-the-irish-human-rights-and-equality-commission-in-response-to-recent-tragedies-at-a-temporary-traveller-halting-site-at-the-glenamuck-road-in-south-dublin/>.

<sup>14</sup> The Public Sector Duty, introduced by virtue of Section 42 of the Irish Human Rights and Equality Commission Act, 2014, obliges all public bodies, including local authorities, to act positively to eliminate discrimination, promote equality of opportunity, and protect human rights in the performance of their functions.

<sup>15</sup> The National Directorate for Fire and Emergency Management is a unit within the Department of Environment, Community and Local Government.

<sup>16</sup> Department of Housing, Planning and Local Government, Review of Fire Safety in Traveller Accommodation Press Summary Release, available at <http://www.housing.gov.ie/local-government/fire-and-emergency-management/fire-safety/review-fire-safety-traveller>

<sup>17</sup> Ibid.

national fire safety audit, and that the site was deemed to contain 'ongoing fire risks'.<sup>18</sup>

While it appears that remedial steps were taken to improve fire safety arrangements on the halting site following the publication of the audit report, the Commission notes that '31 families, comprising 126 people, 59 of whom are under the age of 12 years', continue to reside in ten bays in cramped conditions on the site.<sup>19</sup>

As indicated in the Collective Complaint (at p.31), the site is in poor condition overall. It has flooding issues, lack of toilet facilities, a potholed road network, and sewage and vermin problems. Local Traveller representatives have stated their concern that 'there are people [living on the site] who have no running water or electricity and there are health and safety issues'.<sup>20</sup> While it appears that the site is due to be closed in 2020, the alternative accommodation to be provided by Cork City Council to the residents of the site is unclear.<sup>21</sup>

### **Traveller families seeking relief through the Irish courts**

Traveller families experiencing accommodation difficulties have instituted legal proceedings in the Irish courts seeking to compel local authorities to provide appropriate accommodation. Two examples of interest are discussed below.

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<sup>18</sup> Statement by Mr Mick Barry TD, member of the Irish parliament for the constituency of Cork North-Central (in which the Spring Lane Halting Site is located) to the Joint Oireachtas Committee on Housing, Planning and Local Government debate of 8 March 2018, Oireachtas Debates Vol.3, No.28, available at <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/HPJ2018030800002?opendocument#B00300>

<sup>19</sup> Ibid.

<sup>20</sup> Evening Echo (2017); Spring Lane Halting Site to be Closed by 2020, media report of 15 March 2017, quoting the Chair of the Traveller Visibility Group. Available at <http://www.eveningecho.ie/corknews/Spring-Lane-halting-site-to-be-closed-by-2020-d7cfce76-fe23-49db-9092-64e08ce5f8f4-ds>

<sup>21</sup> Ibid., indicating that a number of families on the site are in favour of group housing schemes, others want accommodation in social housing, while others wish to remain on the site.



### **Proceedings concerning Donegal County Council**

The Commission has granted 54 clients with legal advice/ assistance, under Section 40 of the Irish Human Rights and Equality Commission Act 2014,<sup>22</sup> in relation to housing issues under the 'Traveller' discrimination ground in Irish equality law.

In 2017 the Commission represented a Donegal Traveller family, including two children with serious medical needs, living without basic facilities, including running water. Following the launch of a High Court challenge in August 2017, Donegal County Council agreed, in September 2017, to an order quashing its original decision to defer housing support to the family. The local authority also agreed to reconsider the family's social housing application.<sup>23</sup>

The family, represented by the Commission, argued that the deferral of accommodation was disproportionate and adversely impacted on the rights of their children, such as their right to bodily integrity, to dignity, to freedom from degrading conditions, to nurture and support within the family structure, and to education. The Commission awaits a satisfactory resolution to the case.

### **Proceedings concerning Clare County Council**

In September 2017, the High Court of Ireland granted a Traveller family leave to seek an order directing Clare County Council to provide the family with suitable and permanent accommodation under the 2014-2018 Traveller Accommodation Programme.<sup>24</sup> The family, including nine children, had been living in unhealthy accommodation circumstances for three years, including rat and insect infestation, and sewage seepage around their home. The High Court also ordered Clare County Council to conduct an assessment of the family's circumstances.

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<sup>22</sup> Under Section 40 of the Irish Human Rights and Equality Commission Act, 2014, the Commission can in certain circumstances give assistance, including legal assistance, to a person who has or wishes to bring a matter before the Workplace Relations Commission or the Courts, which relates to the protection of human rights and/or equality.

<sup>23</sup> IHREC (2017); 'Donegal County Council Agrees to Reconsider Housing Application for the Traveller Family Following High Court Challenge', Press Release, 20 September 2017, available at <https://www.ihrec.ie/donegal-county-council-agrees-reconsider-housing-application-traveller-family-following-high-court-challenge/>

<sup>24</sup> Irish Times (2017); Traveller Family in Legal Bid to Move from 'Rat Infested' Site, 1 September 2017.

## The RSM Report

In its 15<sup>th</sup> National Report to the Committee, the Irish Government referred (at footnote 9) to a research report on Traveller accommodation (the RSM Research Report) commissioned by the Housing Agency and published in June 2017.<sup>25</sup> The data presented in the RSM Research Report does not appear to be readily available elsewhere, is significant, and merits consideration by the Committee. The following section presents key findings from this new research.

### Traveller accommodation provision

- The number of Traveller families living on ‘Unauthorised Sites’ increased from 444 to 534 (a 20% increase) between 2010 and 2015.<sup>26</sup>
- The number of Traveller families living in ‘Shared Housing’ increased from 451 to 862 (i.e. by 91%) between 2010 and 2015.<sup>27</sup>
- Since 2000, local authorities provided 6,394 units of accommodation to Traveller families, against their own target of 9,390 units, which represents a delivery rate of 68%.<sup>28</sup>

### Funding of Traveller Accommodation Programmes (TAPs)

- State funding to local authorities under Traveller Accommodation Programmes (TAPs) has reduced significantly since 2000.<sup>29</sup>
- TAP funding for the 2014-2018 period was €33,968,211 or approximately 20% of the 2005-2008 allocation.

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<sup>25</sup> RSM (2017); Research Report: Review of Funding for Traveller-Specific Accommodation and the Implementation of Traveller Accommodation Programmes, June 2017. Hereafter ‘RSM Report’.

<sup>26</sup> Ibid. , p.17.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid. p.4. Local opposition to the relevant planning applications, from both settled residents and their elected representatives, delayed planning processes and resulted in opportunities to utilise TAP funding being lost (at p.4). The requirement for public consultation in respect of the relevant planned developments produced racially discriminatory comments and feedback from the public, which blocked accommodation proposals (at p.33).

<sup>29</sup> Ibid. p.20.

- Since 2005, local authorities have been unable to spend €62,451,985 of TAP funding.<sup>30</sup>

### **Factors influencing under-performance by local authorities under TAPs**

- Problems in the planning applications process are the most significant issue limiting the delivery of TAPs.<sup>31</sup>
- The TAP ‘assessment of need’ process underestimates the accommodation needs of Travellers.<sup>32</sup>
- The Traveller Accommodation Act 1998/ TAPs do not provide for sanctions, penalties or other measures of enforcement for local authorities that do not implement their own targets.<sup>33</sup>

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<sup>30</sup> Ibid., p.20.

<sup>31</sup> Ibid., p. 6

<sup>32</sup> Ibid. It is noted that Traveller representatives assert that the assessment of need process ‘significantly’ underestimates this need, see RSM Research Report at p.33. Two key problematic areas identified in relation to the assessment of need process are (i) lack of consultation with Travellers, and (ii) lack of forward planning for family growth, (at p.6). Travellers and their representatives have no say, in some cases, in relation to where halting sites are built, resulting in sites being located away from shops, schools and transport, causing the further isolation of Travellers (at p.33).

<sup>33</sup> Ibid., p.33.

## Article 1, para 2: Right to Work (Non-Discrimination)

The Committee has requested information on any positive measures/actions taken or envisaged by the State to promote equality in employment and to combat all forms of discrimination in employment. The State has provided information on measures taken or envisaged under the auspices of a number of strategies to advance migrant's rights, women's rights, the rights of persons with disabilities, and the rights of Traveller and Roma communities. Further information is provided below with a view to enhancing the Committee's understanding and awareness of equality in the Irish labour market.

### Employment-related findings arising from the IHREC Human Rights and Equality Research Programme

The Irish Human Rights and Equality Commission is funding a Research Programme to contribute to the knowledge base necessary for a better understanding of the gaps in human rights and equality protection in Ireland. The research programme is being undertaken by the Economic and Social Research Institute (ESRI). In 2017-18 reports were published on experiences of discrimination<sup>34</sup> and attitudes to diversity.<sup>35</sup> Forthcoming studies in this programme include studies on Discrimination and Inequality in Housing (forthcoming June 2018); Disability and Discrimination (forthcoming 2018); and Ethnicity and Nationality in the Irish Labour Market (forthcoming 2018).

In general terms the *Experiences of Discrimination*<sup>36</sup> report found that 'the proportion of any work-related discrimination rose steadily over the ten-year period, and the difference between 2004 (7.3 per cent) and 2014 (8.5 per cent) is statistically significant'. The reports

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<sup>34</sup> Frances McGinnity, Raffaele Grotti, Oona Kenny and Helen Russell (2017) *Who experiences discrimination in Ireland? Evidence from the QNHS Equality Modules* (Dublin: IHREC and ESRI). Available at <https://www.ihrec.ie/app/uploads/2017/11/Who-experiences-discrimination-in-Ireland-Report.pdf/>. Hereafter 'IHREC ESRI Experiences of Discrimination Report'.

<sup>35</sup> Frances McGinnity, Raffaele Grotti, Helen Russell and Éamonn Fahey (2018) *Attitudes to Diversity in Ireland* (Dublin: IHREC and ESRI). Available at <https://www.ihrec.ie/app/uploads/2018/03/Attitudes-to-diversity-in-Ireland.pdf/>. Hereafter 'IHREC ESRI Attitudes to Diversity Report'.

<sup>36</sup> IHREC ESRI Experiences of Discrimination Report, p. 20.

also present findings on the experiences of particular groups, which may be of interest to the Committee and will be set out in summary form below.

The *Attitudes to Diversity*<sup>37</sup> report revealed that attitudes towards immigration in Ireland became more negative as unemployment rose in the period 2002-2012. The *Experiences of Discrimination* report found that 'Black respondents were over three times more likely to report discrimination than White Irish respondents', which has consistently increased over time.<sup>38</sup> Furthermore, this research has demonstrated that 'Black respondents are twice as likely to report recruitment discrimination as White Irish'.<sup>39</sup> Noting high unemployment rates and low employment levels among those of black ethnicity, the research concluded that 'rising discrimination in the workplace for those who are employed is a problem'.<sup>40</sup>

In relation to the situation of Irish Travellers, the research found that Irish Travellers are 'almost ten times more likely to report recruitment discrimination than the White Irish' and concluded that:

Given the very low rate of employment among the Traveller population (Watson et al., 2017), these results suggest that discrimination may play a role in accounting for these differences, along with low levels of education and other factors.<sup>41</sup>

The *Experiences of Discrimination* report also demonstrates that in the workplace, 'women are almost twice as likely as men to report discrimination, controlling for other factors'.<sup>42</sup>

Furthermore, the research reveals:

Discrimination around pay and promotion was more frequently mentioned by female respondents, which is consistent with evidence on the gender pay gap and the low female representation in the most senior positions in the Irish labour market.<sup>43</sup>

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<sup>37</sup> McGinnity and Kingston (2017) 'An Irish Welcome? Changing Irish Attitudes to Immigrants and Immigration: The Role of Recession and Immigration'. *The Economic and Social Review*. 48(3), cited in IHREC ESRI Attitudes to Diversity Report', p. 5.

<sup>38</sup> IHREC ESRI Experiences of Discrimination Report, pp 33, 40.

<sup>39</sup> *Ibid.*, p 35.

<sup>40</sup> *Ibid.*, p 40.

<sup>41</sup> *Ibid.*, p. 35.

<sup>42</sup> *Ibid.*, p. 33.

<sup>43</sup> *Ibid.*

In relation to the situation of persons with disabilities, the *Experiences of Discrimination* report revealed that ‘those with a disability reported much higher workplace discrimination in 2004 than those without a disability; this gap narrowed in 2010 but rose again in 2014’.<sup>44</sup> People with a disability were over twice as likely to report workplace discrimination as those without a disability in 2014.<sup>45</sup> Furthermore, the research highlighted that individuals with a disability ‘are more than twice as likely to report discrimination in recruitment as those without a disability’.<sup>46</sup>

## Updates on legal framework

The State has asserted that ‘Ireland has a strong legislative framework in place to prevent discrimination in the workplace’.<sup>47</sup> The Commission has a statutory role to keep the effectiveness of equality law, including the Employment Equality Acts 1998-2015, under review.

### Compensation in discrimination cases

It is noted that in its 2016 Conclusions, the Committee found that Ireland was not in conformity with Article 1(2) with respect to the upper limits on the amount of compensation that may be awarded in discrimination cases.

In its 2017 report to the UN Committee on the Elimination of Discrimination Against Women<sup>48</sup>, the Commission noted that Irish equality law places an upper limit on the amount of compensation that may be awarded to a victim of discrimination.<sup>49</sup> Similar limitations on

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<sup>44</sup> Ibid., p. v.

<sup>45</sup> Ibid., p. 34.

<sup>46</sup> Ibid., p. 35.

<sup>47</sup> State report, p 7.

<sup>48</sup> IHREC (2017) *Ireland and the Convention on the Elimination of all forms of Discrimination Against Women*, pages 90-91. Available at <https://www.ihrec.ie/app/uploads/2017/02/Ireland-and-the-Convention-on-the-Elimination-of-All-Forms-of-Discrimination-Against-Women.pdf>. Hereafter cited as ‘IHREC (2017) CEDAW Report’.

<sup>49</sup> Section 82(4) of the Employment Equality Acts 1998–2015 provides that the maximum amount that can be paid in compensation is the greater of 104 weeks’ pay or €40,000 where the complainant was in receipt of remuneration at the time of the referral of the claim or at the date of dismissal, or in any other case €13,000. Section 27(2) of *the Equal Status Acts 2000–2015* provides that the maximum amount of redress is the amount that may be awarded by the District Court, currently €15,000.

compensation in other EU Member States have been found to be incompatible with EU law.<sup>50</sup> This has led Ireland's compliance with EU law being questioned, particularly in relation to the question of 'whether the legislation includes real and effective compensation'.<sup>51</sup> In gender discrimination cases, the complainant may refer their case to Circuit Court,<sup>52</sup> where compensation is not limited<sup>53</sup> but the individual may face other barriers such as increased costs, particularly if the claim is lost.<sup>54</sup>

### **Gender pay gap**

The Commission has previously made the following observations on the legal framework that gives effect to the principle of equal pay:

One of the issues with the current legislative framework is that an individual claimant must identify a specific named comparator, who is performing 'like work' for the same or an associated employer. This requires a potential claimant to gather information on the pay of a male colleague. While the claimant has a right to information under section 76 of the Employment Equality Acts 1998-2015<sup>55</sup> there

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<sup>50</sup> In *Marshall v Southampton & South-West Hampshire Area Health Authority (No.2)* [1993] European Court Reports I-4367 the Court of Justice of the European Union held that the setting of a national upper limit on the award of compensation was not permissible as this could not properly fulfil the requirement that a remedy must be effective. EU equality law requires the provision of effective, proportionate and dissuasive remedies: Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, Article 17; Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 15; Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services, Article 14; Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Article 25 – Article 18 of the Recast Directive also prohibits the fixing of a prior upper limit of compensation except in relation to cases involving access to employment.

<sup>51</sup> European Commission (2016) Country report: Ireland – Gender equality: How are EU rules transposed into national law, p 47. This report relates to the period 1 January 2014 – 1 July 2015 and was prepared by Frances Meenan for the European network of legal experts on gender equality and non-discrimination. Available at: [http://ec.europa.eu/justice/gender-equality/files/ge\\_country\\_reports\\_d1/2015-ie-country\\_report\\_ge\\_final.pdf](http://ec.europa.eu/justice/gender-equality/files/ge_country_reports_d1/2015-ie-country_report_ge_final.pdf)

<sup>52</sup> Section 77(3)(b) of the Employment Equality Acts 1998–2015; Section 21(1A) of the Equal Status Acts 2000–2015.

<sup>53</sup> Section 82(3) of the Employment Equality Acts 1998–2015; Section 27(5) of *the Equal Status Acts 2000–2015*.

<sup>54</sup> IHREC (2017) CEDAW Report p. 35-36.

<sup>55</sup> The claimant has a right to information under section 76 of the Employment Equality Acts 1998-2015 but there is no obligation on the employer to provide this information. In *Handels- og Kontorfunktionærernes Forbund I Danmark v Dansk Arbejdsgiverforening, acting on behalf of Danfoss (C-109/88)* [1989] ECR 3199, the Court of Justice of the European Union held that if the pay system is completely lacking in transparency, the burden of proof shifts to the employer to show that the pay system is not discriminatory.

is no obligation on the employer to provide this information. As a result, it can be very difficult for claimants to prove an equal pay case.<sup>56</sup>

It may be of interest to the Committee to note that in 2017, a Private Members Bill the Irish Human Rights and Equality Commission (Gender Pay Gap Information) Bill 2017 was introduced. The purpose of the Bill is to develop a 'Gender Pay Gap Information Scheme that would require employers to publish information in relation to the pay of their employees for the purpose of showing whether there are differences in the pay of male and female employees and, if so, the nature and scale of such differences'.<sup>57</sup> Since then the Government of Ireland has indicated that it is currently developing legislative proposals on the same matter.<sup>58</sup>

The State report also refers to envisaged actions to reconcile family and work obligations.<sup>59</sup> While welcoming some measures taken by the State to support parents with childcare responsibilities, such as the introduction of Paternity Leave and Paternity Benefit in September 2016 as well as the intended publication of a Family Leave Bill<sup>60</sup>, the Commission has highlighted the barrier that prohibitive childcare costs represent to women's participation in the labour market, particularly for women living in rural areas, and has recommended further action to ensure that access to affordable, quality childcare.<sup>61</sup>

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<sup>56</sup> Remarks by IHREC Chief Commissioner Emily Logan at a symposium on "*Rising to the challenge - addressing Ireland's gender pay gap*" in January 2018, jointly hosted by the Departments of Business, Enterprise and Innovation and of Justice and Equality, available: <http://www.genderequality.ie/en/GE/12.%20Chief%20Commissioner%20Emily%20Logan%20IHREC.pdf/Files/12.%20Chief%20Commissioner%20Emily%20Logan%20IHREC.pdf>. See further: Bolger, Bruton and Kimber (2012) *Employment Equality Law* (Roundhall: Dublin), para 11.04.

<sup>57</sup> Presentation from Senator Ivana Bacik, who introduced the Bill to parliament, at a symposium on "*Rising to the challenge - addressing Ireland's gender pay gap*", January 2018, available: <http://www.genderequality.ie/en/GE/11.%20Senator%20Bacik%20-%20GPG%20Symposium%20-%2010Jan2018.pdf/Files/11.%20Senator%20Bacik%20-%20GPG%20Symposium%20-%2010Jan2018.pdf>

<sup>58</sup> See:

[https://www.taoiseach.gov.ie/DOT/eng/News/Government\\_Press\\_Releases/Government\\_Legislation\\_Program\\_Spring\\_Summer\\_2018.html](https://www.taoiseach.gov.ie/DOT/eng/News/Government_Press_Releases/Government_Legislation_Program_Spring_Summer_2018.html)

<sup>59</sup> State report, p. 8.

<sup>60</sup> Minister of State for New Communities, Culture and Equality, Aodhán Ó Ríordáin TD, Parliamentary Questions: Written Answers [13279/15], 31 March 2015.

<sup>61</sup> IHREC (2017) CEDAW Report, p. 95.



## Discrimination of the grounds of socio-economic status

In 2017 the Commission welcomed the publication of the Equality (Miscellaneous Provisions) Bill 2017 and the emerging consensus on the principle of prohibiting discrimination on the basis of ‘disadvantaged socio-economic status’.<sup>62</sup> The Commission has emphasised that employment discrimination against people living in areas facing socio-economic challenges, should be prohibited in law under the Employment Equality Acts (EEA). This approach would allow people seeking employment to ensure that their applications are assessed on their skills, qualifications and ability rather than on social background or postal address. The Commission previously expressed the view that ‘adding a new prohibition in law to provide equal opportunities for people irrespective of their socio-economic status in seeking and securing employment, can be a catalyst in breaking cycles of deprivation’.<sup>63</sup> In its comments on the draft legislation, the Commission reaffirmed its position that ‘Irish equality law should be amended to prohibit discrimination based on socio-economic status’.<sup>64</sup>

## Right to work of applicants for international protection

The State report also refers to a recent Supreme Court judgment, namely *NHV v Minister for Justice and Equality*. The proceedings were brought by a Burmese national who had been refused permission to work in an accommodation centre for asylum-seekers (known as ‘direct provision’), where he had been living for several years. In May 2017 the Supreme Court held that in circumstances where there is no time limit on the asylum process, the absolute prohibition on seeking employment is unconstitutional.<sup>65</sup>

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<sup>62</sup> Dáil Éireann heard cross-party support, in principle, for the proposal to prohibit discrimination on the basis of disadvantaged socio-economic status, see ‘Equality (Miscellaneous Provisions) Bill 2017: Second Stage [Private Members]’ Parliamentary Debates: Dáil Éireann, 8 November 2017, Vol. 961 No. 2 (available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2017110800042>)

<sup>63</sup> IHREC (2017) Challenging Employment Discrimination Directly Can Boost Disadvantaged Areas Such as Dublin Inner City [press release] (available at <https://www.ihrec.ie/challenging-employment-discrimination-directlycan-boost-disadvantaged-areas-dublin-inner-city/>).

<sup>64</sup> IHREC (2017) *Observations on the Equality (Miscellaneous Provisions) Bill 2017*, available: <https://www.ihrec.ie/app/uploads/2018/01/Observations-on-Equality-Miscellaneous-Provisions-Bill-2017.pdf>

<sup>65</sup> [2017] IESC 35, para 22. The IHREC appeared as *amicus curiae* (‘friend of the court’) in the case – for further information see: <https://www.ihrec.ie/commission-seeks-engagement-government-oireachtas-right-work-people-direct-provision/>.

Following the delivery of the judgment, the Government has also indicated its intention to opt-in to the EU recast Reception Conditions Directive, which provides, inter alia, for access to the labour market for international protection applicants.<sup>66</sup> As of 9 February 2018, interim measures have been introduced to address the Supreme Court judgment. Asylum seekers are now entitled to apply or have a prospective employer apply for a work permit under the Employment Permits Act 2003, as amended. In order to qualify for these interim measures, applicants must satisfy four criteria to be eligible for an employment permit, namely:

- there must be a job offer from an employer;
- fees attaching to the employment permit application must be paid;
- the job must be in an eligible sector of employment;
- the job must attract a minimum salary of €30,000.

An administrative scheme to allow applications for permission to engage in self-employment has also been launched.<sup>67</sup>

The Commission has prepared a policy paper on access to the labour market for applicants for international protection.<sup>68</sup> The paper outlines the Commission's views on these interim measures, as well as a number of considerations which should inform the provision of effective access to the labour market for asylum seekers once the State opts into the recast Reception Conditions Directive. Some relevant observations from the paper are outlined below.

Reception and Integration Agency data indicates that, as at December 2017, there is a total of 3,897 direct provision residents of working age.<sup>69</sup> The number of applications for

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<sup>66</sup> Article 15 of Directive 2013/33/EU of the European Parliament and the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

<sup>67</sup> Statement by the Minister for Justice and Equality on the right to work for asylum seekers, 9 February 2018. Applications for self-employment under the new administrative scheme are eligible if on the date of application the applicant is waiting on a first instance recommendation for 9 months or more.

<sup>68</sup> IHREC (March 2018), Access to the labour market for applicants for international protection.

<sup>69</sup> Aged between 18 and 65 years old. This represents 73% of the total of 5344 residents of direct provision as at December 2017. Reception and Integration Agency, *Monthly Statistics Report December 2017*, p. 5. Available at

<http://www.ria.gov.ie/en/RIA/RIA%20Monthly%20Report%20December%202017.pdf/Files/RIA%20Monthly%20Report%20December%202017.pdf>

declaration as a refugee made in 2017 was 2,972 applications.<sup>70</sup> The provisions of the Employment Permits Act 2003, as amended were not drafted to meet the particular circumstances of asylum seekers. While precise data on the skill set and qualifications of asylum seekers are not available,<sup>71</sup> it is clear that the combination of salary restrictions and ineligible sectors of employment pose a significant barrier to entry-level employment. The most realistic means for asylum seekers of accessing employment under the interim scheme will therefore likely be through its self-employment provisions, which, in principle, permit access to non-salaried employment at rates of pay lower than, and in sectors excluded by, the provisions of the Employment Permit Acts 2003, as amended.

Labour exploitation of vulnerable groups, in particular migrants, is not an uncommon phenomenon.<sup>72</sup> In discussions with direct provision residents, the Commission has noted the vulnerable financial and social position in which asylum seekers can be placed by their exclusion from the labour market.<sup>73</sup> The 2015 Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers raised concerns about the participation of some international protection applicants in the informal economy, and the risk of exploitation arising from this.<sup>74</sup> Labour exploitation of vulnerable migrants also has a significant gender dimension. Migrant women are, for

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<sup>70</sup> This represents an increase as compared to applications made in 2016 (2,244), but is lower than the 2015 figure of 3,276 applications. Data from the Office of the Refugee Applications Commissioner/ International Protection Office, as presented in Reception and Integration Agency, *Monthly Statistics Report December 2017*, p. 2. Available at

<http://www.ria.gov.ie/en/RIA/RIA%20Monthly%20Report%20December%202017.pdf/Files/RIA%20Monthly%20Report%20December%202017.pdf>

<sup>71</sup> Officials indicated this in response to questions posed at an information session on the right to work for international protection applicants held by the Department of Justice, Department of Business, Enterprise and Innovation, and the Department of Employment Affairs and Social Protection in Dublin on 31 January 2018.

<sup>72</sup> See IHREC (2015), *Statement on human trafficking and exploitation of migrant workers in the fishing industry*, <https://www.ihrec.ie/statement-on-human-trafficking-and-exploitation-of-migrant-workers-in-the-fishing-industry/>. Also in 2016 the Commission submitted an extensive report to the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) which inter alia addresses the issue of forced labour in the domestic sector. This is discussed below in the next section.

<sup>73</sup> For example, in discussions with women in direct provision centres in Kerry and Galway in 2016 as part of the Commission's research on Ireland's implementation of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), respondents drew a clear link between the common public knowledge that applicants cannot work and 'have no money', and their vulnerability to stigma, harassment and labour market exploitation in the community.

<sup>74</sup> See para 5.40. Available at:

[http://www.justice.ie/en/JELR/Pages/Working\\_Group\\_on\\_Improvements\\_to\\_the\\_Protection\\_Process](http://www.justice.ie/en/JELR/Pages/Working_Group_on_Improvements_to_the_Protection_Process).

example, over-represented in the domestic and care work sector, as well as subject to labour exploitation as au pairs and child minders.<sup>75</sup>

Excluding asylum seekers from access to legitimate entry-level or minimum wage employment, would seem not to address these concerns. While permitting asylum seekers access to self-employment is a welcome measure, providing access to entry level and lower paid employment solely via non-salaried self-employment arrangements may serve to further perpetuate asylum seekers' vulnerability to labour exploitation.

The Commission is therefore of the view that the interim measures are insufficient in their scope to provide effective or meaningful access to employment, or to safeguard against potential exploitation and discrimination in the work place.

The Minister for Justice and Equality has indicated that 'access to the labour market for eligible applicants will be on more generous terms' on the completion of the opt-in process to the Reception Conditions Directive.<sup>76</sup> The Commission welcomes the indication that access to the labour market will be wider than under the current scheme, but is concerned at the suggestion that significant sectoral restrictions on employment may be retained. The Commission is of the view that sectoral restrictions on accessing the labour market for asylum seekers should be limited to the greatest possible degree. It is further of the view that any limitations placed on access to labour must be accompanied by effective safeguards against discrimination on grounds of 'race', ethnicity or migration status.

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<sup>75</sup> See MRCI (2013) *Workers in the Home Care Sector: Preparing for the Elder Boom in Ireland* <https://www.mrci.ie/wp-content/uploads/2015/09/Migrant-Workers-in-the-Home-Care-Sector-Preparing-for-the-Elder-Boom-in-Ireland.pdf>; MRCI (2012) *Exploitation of Au Pair Workers in Ireland: Briefing Paper and MRCI Recommendations*. [http://www.mrci.ie/wp-content/uploads/2012/10/Au\\_Pair\\_Worker\\_Brief\\_and\\_Recommendations.pdf](http://www.mrci.ie/wp-content/uploads/2012/10/Au_Pair_Worker_Brief_and_Recommendations.pdf).

<sup>76</sup> Minister for Justice (23 January 2018), Briefing Note for Oireachtas Members on Directive 2013/33/EU. Sourced via Dr. Liam Thornton at <https://liamthornton.ie/tag/briefing-note-for-oireachtas-members-receptionconditions-directive-11-1-2018/>. The Minister has indicated that the current self-employment scheme will mirror that put in place once opt-in to the Recast Directive is completed.

## Article 1, para 2: Right to Work (Prohibition of Forced Labour)

### Prohibition of forced labour

The Committee has requested information on the existence of forced labour in the domestic environment and in family business, particularly information on laws enacted to combat this type of forced labour and on the steps taken to apply such provisions and monitor their application. The State has provided information on the legal framework, including the law applicable to domestic workers. In 2016 the Commission submitted an extensive report to the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) as part of the Second Evaluation Round which provides detailed information on the law, policy and practice in this area in Ireland.<sup>77</sup>

### Legal framework on human trafficking

The Commission has highlighted gaps in the legislative framework on human trafficking, particularly in relation to the identification and non-punishment of victims as well as legal support and remedies for victims.<sup>78</sup> These concerns were echoed by individuals and organisations during the Commission's 2016 CEDAW consultation.<sup>79</sup>

The Second National Action Plan to Prevent and Combat Human Trafficking contains a commitment to review the identification process,<sup>80</sup> but the Commission has expressed concern about the operation of the administrative immigration arrangements, which was

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<sup>77</sup> IHREC (2016) Submission to GRETA in advance of its Second Evaluation Round of Ireland, available: <https://www.ihrec.ie/app/uploads/2016/12/IHREC-Submission-to-GRETA-2016.pdf>. Hereafter 'IHREC 2016 GRETA Submission'. See also: Recommendation CP(2017)29 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland, adopted on 13 October 2017, available: <https://rm.coe.int/cp-2017-29-irl-en/168075e9d0>

<sup>78</sup> IHREC 2016 GRETA Submission, pp. 32-35. The Commission has noted that the lack of civil legal aid before the Workplace Relations Commission is an impediment to victims of trafficking and exploitation, and that they have faced difficulties in securing payment of awards. See also: IHREC (2015) Submission to the Committee on the Elimination of All Forms of Discrimination against Women, available: [https://www.ihrec.ie/app/uploads/download/pdf/ihrec\\_submission\\_to\\_cedaw\\_loipr\\_2015.pdf](https://www.ihrec.ie/app/uploads/download/pdf/ihrec_submission_to_cedaw_loipr_2015.pdf)

<sup>79</sup> IHREC (2017) CEDAW Report

<sup>80</sup> Department of Justice and Equality (2016) Second National Action Plan to Prevent and Combat Human Trafficking in Ireland.

found to be inadequate by the High Court for the purpose of transposing the EU Directive on Trafficking.<sup>81</sup> The Commission has recommended that the identification process be placed on a statutory footing, which should include a clear statement regarding the rights and entitlements that flow from a positive decision. Fair procedures must be afforded to the potential victim throughout the process.<sup>82</sup> GRETA has also recommended that the State ensure that victims are identified proactively and without delay.<sup>83</sup>

The Commission has also expressed concern that victims of labour exploitation are currently not afforded representation for cases before the Workplace Relations Commission under the *Civil Legal Aid Act 1995*.<sup>84</sup> This issue came before the Irish courts and ultimately resulted in the award of compensation to an undocumented migrant.<sup>85</sup> The Commission has recommended that statutory rights to assistance, including legal aid, protection and compensation should be available to all potential victims of trafficking, regardless of the potential victim's nationality or immigration status. GRETA has also recommended that the State improve the provision of assistance to victims of trafficking and that avenues to compensation are easily accessible to trafficked people.<sup>86</sup>

The Commission has recommended that the *Employment Equality Acts 1998–2015* be amended to ensure that domestic workers are protected from discriminatory recruitment practices.<sup>87</sup> The UN CEDAW Committee also made a similar recommendation in 2005.<sup>88</sup>

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<sup>81</sup> P v The Chief Superintendent of the Garda National Immigration Bureau & Ors [2015] IEHC 222. See also: Irish Human Rights and Equality Commission (2015) Outline Submissions of the Amicus Curiae in the case of: P v The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland and the Attorney General, Dublin: Irish Human Rights and Equality Commission, available : <http://www.ihrec.ie/publications/list/p-v-chief-superintendent-of-the-garda-national-im/>

<sup>82</sup> IHREC 2016 GRETA Submission.

<sup>83</sup> Recommendation CP(2017)29 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland, adopted on 13 October 2017.

<sup>84</sup> IHREC 2016 GRETA Submission.

<sup>85</sup> *Hussein v The Labour Court* [2015] IESC 58, available: <http://www.courts.ie/Judgments.nsf/597645521f07ac9a80256ef30048ca52/67B523D012E20C6280257E6F0053FABF?opendocument>. For commentary on the case see: <http://humanrights.ie/economic-rights/mohammad-younis-succeeds-in-the-supreme-court/#more-22032>

<sup>86</sup> Recommendation CP(2017)29 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland, adopted on 13 October 2017.

<sup>87</sup> IHREC (2017) *CEDAW report*, p. 91.

<sup>88</sup> UN Committee on the Elimination of Discrimination against Women (2005) *Concluding comments: Ireland*, CEDAW/C/IRL/CO/4-5, para. 37. Section 2 of the *Employment Equality Acts 1998–2015*.

## Anti-trafficking monitoring mechanism

The State has committed to considering establishing an ‘independent monitoring mechanisms for oversight of anti-trafficking, including the possibility of putting in place of a National Rapporteur’ in action 65 of the Second National Action Plan.<sup>89</sup> The establishment of a National Rapporteur is required by Article 19 of the EU Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. This was also recommended by GRETA in its First Evaluation of Ireland.<sup>90</sup> The Commission has recommended that an independent dedicated National Rapporteur be appointed to monitor developments in relation to trafficking as well as to ensure that the State complies with its obligations under domestic and international human rights standards.<sup>91</sup>

## Existence of forced labour in domestic environment and family business

The Commission previously raised concerns with the UN Human Rights Committee that the State had invoked data protection restrictions ‘to excuse inaction in relation to the taking of concrete measures to identify and protect vulnerable persons at risk of exploitation’.<sup>92</sup> GRETA has also identified the importance of collating ‘comprehensive statistical information on both trends in human trafficking and the performance of the main actors in the fight against trafficking’ from a human rights perspective.<sup>93</sup>

The Commission has previously raised concerns about labour exploitation in Ireland. For example, in 2015, the Commission recommended that the Government take steps to

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<sup>89</sup> Department of Justice and Equality (2016) Second National Action Plan to Prevent and Combat Human Trafficking in Ireland.

<sup>90</sup> Council of Europe Group of Experts on Action against Trafficking in Human Beings (2013) [Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round](#), GRETA(2013)15, p.27

<sup>91</sup> IHREC 2016 GRETA Submission.

<sup>92</sup> Irish Human Rights and Equality Commission Designate (2014) Submission to the UN Human Rights Committee on the Examination of Ireland’s Fourth Periodic Review under the International Covenant on Civil and Political Rights, para. 119. Available at <http://www.ihrec.ie/download/pdf/20140616113130.pdf>

<sup>93</sup> Council of Europe Group of Experts on Action against Trafficking in Human Beings (2013) [Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round](#), GRETA(2013)15, p.27. <http://www.coe.int/en/web/anti-human-trafficking/ireland>

regularise the status of vulnerable non-EU nationals who have found themselves the subject of labour exploitation in the fishing industry.<sup>94</sup> In its 2016 Annual Report, the Commission also provided an overview of a labour exploitation case where the Commission provided legal assistance, including legal representation before the Workplace Relations Commission, to an EU national who was subject to severe labour exploitation at a family-run bed and breakfast. This included claims for non-payment of wages, holidays, rest breaks and overtime, as well as alleged discrimination on grounds of race, disability, gender and civil status. The case was settled before it was heard before the Workplace Relations Commission, having been listed for hearing in September 2016.<sup>95</sup>

During its 2016 CEDAW consultation, the Commission was informed that racism and discrimination experienced by migrant women workers is often closely linked to the worker's immigration status, particularly in the case of undocumented workers.<sup>96</sup> The Commission has expressed the view that the value of migrant women workers' labour must be recognised through the introduction of a regularisation scheme for undocumented migrants in order to ensure that all migrant women workers are protected from discrimination.<sup>97</sup>

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<sup>94</sup> IHREC (2015), Statement on human trafficking and exploitation of migrant workers in the fishing industry, available:

<https://www.ihrec.ie/statement-on-human-trafficking-and-exploitation-of-migrant-workers-in-the-fishingindustry/>.

<sup>95</sup> *A former employee v An employer*, IHREC (2017) *Annual Report 2016*, available:

<https://www.ihrec.ie/app/uploads/2017/06/IHREC-Annual-Report-2016.pdf>

<sup>96</sup> This was raised in written submissions from Nasc The Irish Immigrant Support Centre, Migrant Rights Centre Ireland, and the Immigrant Council of Ireland. The Commission also held a focus group meeting with migrant women where this issue was raised. See also Migrant Rights Centre Ireland (2012) *Who cares? The Experience of Migrant Care Workers in Ireland*, available at <http://www.mrci.ie/resources/publications/leaflets-reports/who-cares-the-experience-of-migrant-care-workers-in-ireland-nov-2012/>

<sup>97</sup> IHREC (2017) CEDAW Report, p 90-91.



## Article 15, para 3: Rights of Persons with Disabilities

### National Disability Inclusion Strategy 2017-2021

One of the key actions in the National Disability Inclusion Strategy 2017-2021 is the ratification of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). On 20 March 2018 Ireland ratified the UNCRPD and upon ratification entered a reservation to Article 27(1), a declaration and reservation to Article 12 and a declaration to Articles 12 and 14.<sup>98</sup>

As part of the ratification process, the Government of Ireland identified a number of areas of law which required implementation or amendment.<sup>99</sup> These initiatives are also reflected in the National Disability Inclusion Strategy and it may therefore be of assistance to the Committee to note the status of three particular pieces of legislation. Firstly, the Strategy committed to the commencement of the Assisted Decision-Making (Capacity) Act 2015 by early 2018 – at the time of writing the majority of the provisions in that Act had not yet been commenced.<sup>100</sup> Secondly, the Strategy also committed to progressing the Disability (Miscellaneous Provisions) Bill to enactment in 2017 – at the time of writing the Bill is awaiting Committee Stage in Dáil Éireann (lower house of parliament).<sup>101</sup> Thirdly, the Strategy committed to the introduction of ‘statutory safeguards to protect residents of nursing homes and residential centres, and ensure that they are not deprived of liberty, save in accordance with the law as a last-resort measure in exceptional circumstances’. In March 2018, the Department of Health concluded a consultation on draft legislative proposals in that regard.<sup>102</sup>

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<sup>98</sup> See: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&clang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en#EndDec)

<sup>99</sup> Department of Justice and Equality Roadmap to ratification of the UNCRPD. Available: <http://www.justice.ie/en/JELR/Roadmap%20to%20Ratification%20of%20CRPD.pdf/Files/Roadmap%20to%20Ratification%20of%20CRPD.pdf>

<sup>100</sup> See: [http://www.irishstatutebook.ie/eli/isbc/2015\\_64.html](http://www.irishstatutebook.ie/eli/isbc/2015_64.html)

<sup>101</sup> The Commission has commented on an earlier draft of this legislation. See: IHREC (2016) *Observations on the General Scheme of the Equality / Disability (Miscellaneous Provisions) Bill*, available: <https://www.ihrec.ie/app/uploads/2016/11/Observations-on-the-General-Scheme-Equality-Disability-Miscellaneous-Provisions-Bill.pdf>.

<sup>102</sup> See: IHREC (2018) *Submission to the public consultation on Deprivation of Liberty: Safeguard Proposals*. Available: <https://www.ihrec.ie/app/uploads/2018/04/Submission-to-the-public-consultation-on-Deprivation-of-Liberty-Safeguard-Proposals.pdf>

## Recognition of Irish Sign Language

The State Report refers to the Irish Sign Language for the Deaf Community Bill 2016, which has been superseded by the Irish Sign Language Act 2017.<sup>103</sup> The Irish Sign Language Act 2017 was signed into law on 24 December 2017, but the Act has not yet been commenced, which means it is not yet in force.<sup>104</sup>

## National Housing Strategy 2011-2016 for People with a Disability

It is noted in the Third Progress Report on the Implementation of the National Housing Strategy for People with a Disability 2011-2016 that ‘at the end of 2015, 2,725 people were living in congregated settings and the objective is to reduce this figure by one third by 2021 and ultimately, to eliminate all congregated settings’.<sup>105</sup> The Commission has previously stated the following:

The Commission emphasises that community-based care is the preferred policy option which ‘should be underpinned by clear legislative entitlement and dedicated funding provided to ensure that this legislative entitlement is delivered’. The Commission reiterates its recommendation that the State ‘move away from institutional living and ensure that people with disabilities are adequately supported to live in the community’.<sup>106</sup>

More generally, it may be of interest to the Committee to note that according to recent Commission funded research the prevalence of disability is twice as high among the homeless as among the general population.<sup>107</sup> The Commission has previously highlighted a number of human rights and equality concerns in relation to the ongoing housing and

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<sup>103</sup> Available: <http://www.irishstatutebook.ie/eli/2017/act/40/enacted/en/html>

<sup>104</sup> Section 11(2) of the Irish Sign Language Act 2017 provides that the Act will enter into force when the Minister for Justice and Equality issues an order (secondary legislation) prescribing the date upon which the Act or part of the Act will become operational. It is therefore often entirely at the Minister’s discretion to decide when the Act will enter into operation.

<sup>105</sup> P. 23. Available at:

[http://www.housing.gov.ie/sites/default/files/publications/files/third\\_progress\\_report\\_on\\_the\\_national\\_implementation\\_framework\\_for\\_the\\_national\\_housing\\_strategy\\_for\\_people\\_with\\_a\\_disability\\_2011-2016.pdf](http://www.housing.gov.ie/sites/default/files/publications/files/third_progress_report_on_the_national_implementation_framework_for_the_national_housing_strategy_for_people_with_a_disability_2011-2016.pdf)

<sup>106</sup> IHREC (2016) *Observations on the General Scheme of the Equality / Disability (Miscellaneous Provisions) Bill*, p. 36, available: <https://www.ihrec.ie/app/uploads/2016/11/Observations-on-the-General-Scheme-Equality-Disability-Miscellaneous-Provisions-Bill.pdf>

<sup>107</sup> IHREC ESRI 2018 Discrimination in housing report (forthcoming).

homelessness crisis.<sup>108</sup> The Commission has also stated that ‘family homelessness gives rise to particular human rights and equality considerations’ and the State’s response must ‘focus on the long-term housing needs of families experiencing homelessness in order to ensure that homelessness and living in emergency accommodation does not become normalised’.<sup>109</sup>

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<sup>108</sup> See: IHREC (2015) Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights on Ireland’s third periodic review, section 9.2. See also: IHREC (2017) CEDAW Report, sections 6.2 and section 11.4.

<sup>109</sup> IHREC (2017) *The provision of emergency accommodation to families experiencing homelessness*, p 3, available: <https://www.ihrec.ie/app/uploads/2017/07/The-provision-of-emergency-accommodation-to-families-experiencing-homelessness.pdf>



**16 – 22 Sráid na Faiche,  
Baile Átha Cliath, D07 CR20**  
16 – 22 Green Street,  
Dublin, D07 CR20

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