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

30 April 2021

President, Fifth Section
European Court of Human Rights
Council of Europe
F-67075 Strasbourg
Cedex France

Our Ref: **201953/0001/AB**

Your Ref: **ECHR-LE5-IP3**
PMC/DFA/sbr

Re: Applications nos. 30391/18 and 30416/18 Christina FAULKNER against Ireland and Bridget MCDONAGH against Ireland lodged on 14 June 2018 and 14 June 2018 respectively (Communicated on 25 August 2020)

Dear President,

We refer to the above matter and our letter of the 8th February 2021 and enclosures therein.

We have considered the Replying Observations of the Government of Ireland to the Third Party Submissions of the Irish Human Rights and Equality Commission dated 12th April 2021 ('Replying Observations'). We note that paragraph 28 in the Replying Observations state that '*It is striking, and unacceptable, that Murray is not mentioned in the IHREC's submissions'*.

IHREC respectfully submits as the National Human Rights Institution granted leave to intervene as Third Party by this Court that it would be appropriate in light of the above comment in paragraph 28 of the Replying Observations to file a short replying submission addressing the Court on *Meath County Council v Murray* [2018] 1 IR 189 and referenced in the *Statement of Facts and Questions* furnished by the Court.

We hereby seek the permission of the Court to file the attached IHREC Replying Submissions (one page) dated 30th April 2021 to the Replying Observations of the Government of Ireland to the Third Party Submissions of the Irish Human Rights and Equality Commission dated 12th April 2021.

IHREC remains respectfully available to the Court to make supplemental written and/or oral submissions.
We would be obliged if you could acknowledge receipt of this letter.

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Yours faithfully,

_____,
Michael O'Neill,
Head of Legal.

No signature due to Covid 19 Working Arrangements

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FIFTH SECTION

Application nos. 30391/18 and 30416/18
Christina FAULKNER against Ireland
And Bridget MCDONAGH against Ireland
Lodged on 14 June 2018 and 14 June 2018 respectively

IHREC Replying Submissions dated 30th April 2021
to the
Replying Observations of the Government of Ireland to the Third Party Submissions of the Irish Human Rights and Equality Commission dated 12th April 2021

1. IHREC wishes to supplement its submission by referring to the judgment of the Irish Supreme Court in *Meath County Council v Murray* ("*Murray*"),[1] a case in which Supreme Court rejected the summation of the principle of proportionality provided in *Fortune*,[2] without fully endorsing the judgment in *Kinsella*[3] and without providing for a standalone proportionality assessment.

2. In *Murray*, the Supreme Court identifies a list of factors (some of which *may* be relevant to the issue of proportionality) that a court is permitted (as opposed to mandated) to consider.[4] The Supreme Court said the weight to be attributed to each factor will depend on the case,[5] but in *Murray* it endorsed a strict hierarchical approach.[6] Crucially, it placed a much greater emphasis on the starting point being that a demolition order should be made to protect the public interest in upholding planning controls,[7] and rejected the position adopted in *Fortune* that compelling reasons to justify a demolition order in respect of a dwelling must be shown.

3. While the Supreme Court in *Murray* considered its approach to conform with the judgments of this Court,[8] particularly *Chapman*, it is arguable that the judgment fails to take full account of the developing jurisprudence of the Court which mandates a proportionality assessment.[9] In contrast, *Murray* does not provide for a standalone proportionality assessment. Further, the Supreme Court places an overriding emphasis on the public interest objective of protecting the integrity of the planning system to the detriment of the balancing exercise that should be undertaken to ensure an excessive burden is not imposed on individuals who are said to have carried out an unauthorised development. Consequently, IHREC considers that the approach in *Murray* does not afford the sufficiently robust protections required by this Court's jurisprudence.[10] It is considered that the absence of such protections has the potential to result in a disproportionate impact on Travellers.[11]

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[1] [2018] 1 IR 189, referenced in the *Statement of Facts and Questions* furnished by the Court.

[2] *Wicklow County Council v. Fortune (No 1)* [2012] IEHC 406 and *Wicklow County Council v Fortune (No 2)* [2013] IEHC 255.

[3] [2015] IEHC 229.

[4] [2018] 1 IR 189, §92. See: *Statement of Facts and Questions,* p.10.

[5] [2018] 1 IR 189, §93.

[6] [2018] 1 IR 189, §§91 and 120-124.

[7] Placing such emphasis on the unlawfulness of the development has been viewed as problematic. See: *Winterstein v. France,* Application no.27013/07, 17 October 2013, §156: *"In the present case, the domestic courts ordered the applicants' eviction without having analysed the proportionality of this measure…Once they had found that the occupation did not comply with the land-use plan, they gave that aspect paramount importance, without weighing it up in any way against the applicants' arguments…that approach is in itself problematic, amounting to a failure to comply with the principle of proportionality: the applicants' eviction can be regarded as 'necessary in a democratic society' only if it meets a 'pressing social need', which is primarily for the domestic courts to assess."* [emphasis added]. See also: *Yordanova and Ors v. Bulgaria,* Application no. 25446/05, 24 September 2012, §123.

[8] [2018] 1 IR 189, §141.

[9] See: *Yordanova and Ors v Bulgaria,* Application no.25446/05, 24 September 2012, §144, in which the Court stipulated that the legislation underpinning a removal order must require a proportionality analysis, which includes an assessment of the impact of an eviction/demolition on an individual(s) circumstances, to comply with Article 8.

[10] Neither the judgment in *Murray* nor the Planning and Development Act 2000, explicitly acknowledge the need to take account of and/or protect minorities in such planning decisions. See: *Hirtu v. France,* Application no.24720/13, 14 August 2020, §70: *"[I]t reiterates that the Roma constitute a disadvantaged and vulnerable minority…which implies that special attention should be paid to their particular needs and way of life, both within the regulatory framework for planning and when taking decisions in individual cases…"* See also: *Chapman v. United Kingdom,* Application no.27238/95, §96.

[11] Neither *Murray* nor the 2000 Act integrate the positive obligations placed on the State to *inter alia,* make offers of accommodation where it is necessary to make an eviction order against members of a minority group. See, for example: *Hirtu v. France,* Application no.24720/13, 14 August 2020, §70.