



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

YOUR RIGHTS INFORMATION NOTE

HUMAN RIGHTS, CONSTITUTIONAL RIGHTS AND OTHER CATEGORIES OF RIGHTS

ABOUT “YOUR RIGHTS”

“*Your Rights*” is a service operated by the Irish Human Rights and Equality Commission (“**IHREC**”) to provide individuals with information in respect of their rights and remedies that may be available should they believe they have suffered a breach of equality and/or human rights law in Ireland. IHREC can only provide information through this service, and cannot provide advice or comment on individual cases. This is not a legal document and it is not a substitute for legal advice.

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HUMAN RIGHTS AND CONSTITUTIONAL RIGHTS EXPLAINED

WHAT ARE HUMAN RIGHTS?

Human rights are rights (entitlements or protections) and freedoms that apply to every person, because they are a human being.

Human rights often become important when a person is engaging with the Government, whether it be a government department, other government institutions from immigration services through to

An Garda Síochána (the police), or local authorities (also known as county councils).

Human rights can be understood as being

- a set of universal basic standards that aim to ensure that every person is treated with a certain level of dignity, which will usually be set out in legal documents;
- not discriminatory, in that they apply to every human being regardless of their personal characteristics, such as gender, race, or disability;
- connected, in that some rights rely on another or an impact on one may have an effect on another.

WHO ARE HUMAN RIGHTS FOR?

Human rights are for every person, they are there to ensure respect for life and the dignity of every human being.

WHERE DO HUMAN RIGHTS COME FROM?

Humans have rights simply by virtue of the fact of being humans. However, most human rights are contained in law and are set out in legal documents. For example, they can be found in each of the following places:

- international legal documents, most of which originate from the United Nations bodies (for example, the United Nations Convention on the Rights of Persons with Disabilities, and the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment); and
- regional treaties, for example in Europe, some human rights laws are set by the European Union - the Charter of Fundamental Rights of the European Union (which is relevant when the law of the European Union applies), and a different body called the Council of Europe which is where the European Convention on Human Rights comes from.

Bunreacht na hÉireann (the Irish Constitution) is the fundamental legal document that provides a framework setting out how Ireland should be governed. It also sets out rights that Irish citizens and, in some instances, those who are present in Ireland but who do not have Irish citizenship (for example, those seeking asylum) have. These are called Constitutional rights and they should be distinguished from “human rights”. Although the rights contained in international and regional legal documents that underpin the system of human rights law and those contained in the Irish Constitution are related and in some respects, similar and influenced by each other. However, many aspects of the rights are different and in some instances, the rights contained within the Irish Constitution offer greater protection than those contained within the international and regional documents outlined above.

Another key difference between these different categories of rights is those which are contained in the Irish Constitution are only for Irish citizens and, in limited instances, those who are not Irish but who are resident in Ireland. In contrast, rights contained in the regional documents outlined above are for citizens of those countries to which they apply, for example, the Charter of Fundamental Rights of the European Union applies to citizens of Member States of the European Union (of which Ireland is one) and the European Convention

on Human Rights applies to people who are in countries that belong to the Council of Europe (of which Ireland is one). Rights provided for in the international legal documents, often put in place by the United Nations, apply to all human beings in the world.

WHOSE RESPONSIBILITY IS IT TO APPLY AND PROTECT HUMAN RIGHTS?

States are responsible for respecting, protecting and fulfilling human rights. The Government has primary responsibility for ensuring this occurs.

The State (Ireland) or the Government of Ireland does not give people human rights, they belong to everyone. The State must therefore:

- **Respect** human rights: This means the Government may only restrict human rights in limited ways and circumstances and, in some instances, certain human rights and Constitutional rights may not be restricted at all.
- **Protect** human rights: The protection of human rights is achieved primarily through passing laws that prevent government institutions, state authorities and other third parties (such as individuals) from interfering with or violating the human rights of people.
- **Fulfil** human rights: The Government must also take steps (known as positive action) to ensure the protection and enjoyment of human rights.

While it is primarily for central government to introduce laws in this country that allow for human rights to be respected, protected and fulfilled, and to create conditions that allow human rights to be effective, it is important that we understand the term “government” in a broad sense when it comes to human rights protection.

A very wide range of institutions (which people may not first think of as being part of the Government), may be involved in or have responsibilities to respect, protect and fulfil human rights, these may include:

- Government departments, such as the Department of Social Protection (which is involved in the administration of social welfare) or the Department of Justice (which is involved in, for example, dealing with immigration applications and requests for asylum);
- An Garda Síochána (which is responsible for policing in the State)
- Local authorities (in other words, county and city councils, which are involved in providing social housing and social housing supports, such as the Housing Assistance Payment);
- Child and Family Agency (which is responsible for child protection services in Ireland and generally supporting and promoting the development, welfare and protection of children and families);
- Adoption Authority of Ireland (which is responsible for adoption services in Ireland).¹

DO HUMAN RIGHTS AND CONSTITUTIONAL RIGHTS APPLY EQUALLY TO EVERYONE?

Yes. The Government cannot discriminate in upholding human rights (in other words it cannot treat people differently, simply because of their human attributes or characteristics, such as their ethnic, racial, social or religious background).

¹ This is a list of examples of government or state institutions involved in and responsible for respecting, protecting, and fulfilling human rights obligations. There are many other examples, and this is not an exhaustive list.

However, the Government may take steps in respect of certain categories of people to ensure that they have the full protection offered by human rights law. For example, the United Nations Convention on the Rights of Persons with Disabilities states in Article 5(3) that States (such as Ireland) must take *“all appropriate steps”* to ensure that *“reasonable accommodation”* is provided. In other words, the Government must take all reasonable steps open to it to ensure that persons with disabilities can enjoy their human rights or have effective human rights in the same way, taking account of their disabilities.

The same approach is taken in the Irish Constitution. Article 40.1 of the Irish Constitution contains what is known as the *“equality guarantee”*. It sets out that all persons are to be treated equally in law and by the law, and that the State (Ireland) cannot *“unjustly, unreasonably or arbitrarily”* discriminate between individuals. However, the Constitution does say that laws in Ireland and/or the Government may have due regard (in other words, take account of), a person’s capacity, and their physical, moral and social function.

This is similar to what is set out in the United Nations Convention on the Rights of Persons with Disabilities (see above), it can be understood as providing the Government with the ability to take positive steps which recognise that certain categories of persons may have difficulties or face challenges in having their human rights totally fulfilled without certain steps being taken to help them to be able to do so. It allows preferential treatment which intends to promote equality of opportunity for disadvantaged persons or to cater for the special needs of persons who because of their circumstances may require assistance to have their human rights protected and fulfilled.

CAN ALL LEGAL DOCUMENTS SETTING OUT CONSTITUTIONAL AND HUMAN RIGHTS REQUIREMENTS BE RELIED UPON IRISH CITIZENS OR PEOPLE LIVING IN IRELAND?

The Constitution of Ireland sets out that certain rights (which are specified in Articles 40-44 of the Constitution) are held by everyone living in Ireland (for more information, please see

section entitled below. When a person believes their constitutional rights have been violated and/or a law does not meet the requirements of the Constitution, they may rely directly on their rights contained in the Constitution and they can institute legal proceedings challenging the situation or action(s) of the Government. IHREC recommends that persons should obtain legal advice before taking such action (for more information, please see the section entitled *“Challenging laws and taking action on foot of violations of human rights and/or constitutional rights”*).

The situation in respect of human rights law is different and quite complicated.

Ireland has what is described as a “dualist approach” to international law. This means that where the Irish Government agrees to enter into and abide by the terms of an international human rights treaty or international human rights agreement, the Government is entering into a legal agreement to abide by and fulfil the terms of that treaty or international agreement. This process is called “ratification”.

Persons who the particular treaty, agreement, or convention relates to have rights as a result of it having been signed by the Government of Ireland. For example, a person with a disability has rights under the United Nations Convention on the Rights of Persons with Disabilities as Ireland has ratified it. The same is true of women in Ireland, who have rights under the [United Nations Convention on the Elimination of all Forms of Discrimination Against Women](#) – another treaty that has been ratified by Ireland.

However, that does not mean that a person can successfully bring the Government to court in Ireland to claim their rights under that treaty or convention have been breached, restricted or violated. A person can only take this action where the international treaty or convention has been made part of Irish law, this occurs when the Oireachtas passes legislation which reflects the terms of the international agreement. This has not occurred, for example, in respect of the United Nations Convention on the Rights of Persons with Disabilities and therefore, people cannot rely upon that international convention in the Irish courts.

Even when the Oireachtas does pass legislation to ensure international human rights treaties become part of Irish law, this does not necessarily mean that all of the obligations become Irish law and can be relied upon in cases before the Irish courts. It may be that the Government and/or the Oireachtas will decide to reflect only part of the international agreement in Irish law.

The [European Convention on Human Rights](#) (“the ECHR”), which is an international convention that was drafted by the Council of Europe, has been integrated into Irish law but only to the extent set out in the [European Convention on Human Rights Act 2003](#) (“ECHR Act”). The ECHR Act incorporates the standards set out in the ECHR in Irish law, which has resulted in the Irish courts being able to consider those standards and the rights contained within the ECHR.

The key parts of the ECHR are as follows:

Section 2: Outlines that when a court is delivering a judgment in relation to an existing piece of legislation passed by the Oireachtas or a practice of the Government, it must examine and apply the Irish law in a manner that reflects the ECHR standards, in so far as it is possible to do that.

Section 3: This provision sets out a requirement for every organ of the State, in other words, every part of the Government (for example, government departments local authorities, An Garda Síochána, the Child and Family Agency, and many more), to perform their tasks in a manner that meets the requirements of the European Convention on Human Rights.

Section 4: The section places an obligation on the Irish Courts to take account of decisions of the European Court of Human Rights when making decisions in relation to cases brought in Ireland that raise issues which relate to the ECHR. It also allows those people who bring the

cases and also those who defend them to make arguments based on decisions of the European Court of Human Rights.

Section 5: This provides Irish Courts with the power to declare Irish legislation or certain sections of it to be incompatible with the requirements of the ECHR (for more information, please see the section entitled *“Do all laws in Ireland meet human rights requirements and/or the requirements of the Constitution?”*).

Where there is a conflict between the law and the rights contained in the Constitution and that contained in the ECHR, the Constitution always takes precedence.

The Charter of Fundamental Rights of the European Union applies in relation to decisions or acts of the Government that are governed by the law of the European Union, for example, in relation to equality law or data protection.

CHALLENGING LAWS AND TAKING ACTION ON FOOT OF VIOLATIONS OF HUMAN RIGHTS AND/OR CONSTITUTIONAL RIGHTS

WHAT CATEGORIES OF HUMAN RIGHTS AND CONSTITUTIONAL RIGHTS CAN BE RESTRICTED OR INTERFERED WITH?

Absolute rights or unqualified rights

There are certain human rights and/or Constitutional rights that can never be interfered with or restricted. These are called “absolute rights”. An example of this is the right to not be subjected to torture or inhuman and degrading treatment. It will never be lawful for the State or the Government (including institutions such as the Army or

An Garda Síochána) to subject anyone to this type of treatment no matter the reason for doing so.

An extreme example of this would be where a person was thought to know where a bomb was hidden. It would not be lawful for An Garda Síochána to torture that person in order to obtain that information, even though it may lead to saving many more lives.

This human rights protection is provided in many legal documents, such as:

- Article 3, [European Convention on Human Rights](#);
- Article 2, [United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#).

The Courts have also said that the Constitutional right to bodily integrity includes the right to not be subjected to torture or inhuman and degrading treatment, so the prohibition has protection in the Constitution too.

Another “absolute right” that cannot be interfered with or restricted is the right to freedom of thought or to **hold** religious and non-religious beliefs.

However, there are categories of rights that can be interfered with or restricted in certain circumstances, these are known as “limited rights” or “qualified rights”.

Limited rights

Limited rights can be restricted in specific situations, for example the right to liberty (also known as the right to freedom) which is protected by a number of international and regional legal documents, such as Article 5 of the [European Convention on Human Rights](#). It is also provided for in the Constitution.

While everyone has the right to liberty or freedom, it is limited in that it relies upon the State being able to take action such as placing someone in prison if they have a criminal conviction or in certain instances where mental health legislation requires a person to be kept in a hospital against their will.

Qualified rights

Government institutions may interfere with or restrict certain rights, in certain circumstances. These are known as “qualified rights” which include, for example:

- the right to respect of private and family life;
- the right to manifest or practise a person’s religion or belief;
- the right to freedom of expression (in other words, to express or state out loud a person’s thoughts); and/or
- the right to freedom of assembly (in other words, the right to gather in a group or protest).

WHEN CAN HUMAN RIGHTS AND CONSTITUTIONAL RIGHTS BE INTERFERED WITH OR RESTRICTED?

As stated above, “absolute rights” may never be interfered with and/or restricted (for more information, please see the section entitled, “*What Categories of Human Rights and Constitutional Rights can be restricted or interfered with?*”).

Certain conditions must be satisfied before limited or qualified rights can be interfered with or restricted.

Take qualified rights as an example – there may be instances where such rights need to be balanced against other people’s rights or the rights of the wider community. Ultimately, the courts make the decisions on whether this balance has been correctly and legally struck.

In order for the Government to be able to interfere with a qualified right, the following criteria must be fulfilled:

- the interference must be allowed under the law;

- the interference or restriction must be to try and fulfil a **legitimate aim**, which include:
 - the protection of other people’s rights;
 - the protection of national security;
 - public safety;
 - the prevention of crime; and/or
 - the protection of health.

- the interference or restriction must be **necessary** in a democratic society, in other words, it must be necessary to achieve the legitimate aim;

- the interference or restriction must be **proportionate** (for more information, please see the section below entitled “*What is proportionality*?”).

Practical examples of qualified rights being lawfully restricted may include where the law sets out that it is illegal to make statements of racial hatred. This interferes with the right to freedom of expression, but it is necessary in order to protect the rights of others, public safety and/or national security.

It may also be lawful for the police to carry out a search of a person’s home or other property, and this would result in an interference with or a restriction being place on the right to privacy and/or the right to respect for a person’s dwelling or home. However, it may be necessary to

prevent crime, for national security reasons or to protect public safety. The need to obtain a warrant from a court acts a legal safeguard in that instance.

WHAT IS PROPORTIONALITY AND WHAT RELEVANCE DOES IT HAVE IN UNDERSTANDING HUMAN RIGHTS AND CONSTITUTIONAL RIGHTS?

As set out above, any interference with a person's constitutional and/or human rights must be proportionate to the legitimate aim or the objective which is to be achieved by that interference.

In other words, legal rules or actions of the Government must not interfere with individuals' constitutional and/or human rights any more than is necessary to achieve the legitimate aim or the objective of, for example, the protection of health or the prevention of crime.

In deciding whether a certain measure or action is proportionate, a court must take account of all factual circumstances.

CHALLENGING LAWS AND TAKING ACTION ON FOOT OF VIOLATIONS OF HUMAN RIGHTS AND/OR CONSTITUTIONAL RIGHTS

WHEN A PERSON HAS BEEN DISCRIMINATED AGAINST, SHOULD THEY INSTITUTE A CASE IN THE COURTS?

Generally speaking, when a person has been discriminated against either by a private organisation or person (a supplier of goods and services such as a shop or cinema, or by their employer) or by the Government in its role in supplying goods and services (such as social housing supports), this will fall under the [Equal Status Acts 2000-2018](#) and/or the [Employment Equality Acts 1998-2015](#).

For that reason, these types of cases should usually be instituted at the Workplace Relations Commission (although there are some exceptions to this rule). The IHREC has a full guide on instituting a case at the Workplace Relations Commission and the legal framework surrounding it, go to [: How you bring a case to the Workplace Relations Commission under the Employment Equality Acts and the Equal Status Acts.](#)

DO ALL LAWS IN IRELAND MEET HUMAN RIGHTS REQUIREMENTS AND/OR THE REQUIREMENTS OF THE CONSTITUTION?

The Constitution requires that any law enacted by the Oireachtas or any legal rules introduced by a government minister in line with their powers must conform with the requirements of the Constitution.

All laws are considered to meet the requirements of the Constitution unless a court deems that to be otherwise. This is called the presumption of constitutionality.

Where it is demonstrated to the satisfaction of a judge that a piece of legislation, or part of it, does not conform with the requirements of the Constitution, that judge may strike the entirety of the legislation down, or only the offending parts of it, resulting in it becoming invalid.

All laws are also presumed to meet the requirements of the European Convention on Human Rights (the “ECHR”), which is part of Irish law insofar as is provided for in the European Convention on Human Rights Act 2003 (the “ECHR Act”).

Section 5 of the ECHR Act 2003 provides the High Court, the Court of Appeal and the Supreme Court (known as the “Superior Courts”) with the power to declare that an act of the Oireachtas or a section of it is incompatible with the ECHR. When the Superior Courts declare that legislation is not compatible with the ECHR, the law remains in place and it then falls to the Government to decide what steps to take.

If a person is able to demonstrate that legal rules may, or already have, negatively impacted them, they may be able to challenge the legislation by instituting court proceedings. IHREC recommends that any such persons seek legal advice prior to doing so.

HOW DOES A PERSON CHALLENGE THE ACTIONS OF THE STATE OR DECISIONS MADE BY IT IN THE COURTS?

If a person believes their rights (other than those protected by the Equal Status Acts 2000-2018 or the Employment Equality Acts 1998-2015) have been breached or that the legal rules currently in place do not conform with the requirements of the Constitution or ECHR, it may be open to them to institute a legal challenge.

There are two ways by which they could do so::

- [judicial review](#); or
- [plenary proceedings](#).

Judicial review is a mechanism whereby an application is made to the High Court to challenge a decision and/or the decision-making process of administrative and public bodies. Generally, applications for judicial review must be instituted within 3 months of a decision having been made, but some applications for judicial review in respect of immigration and asylum matters must be made in a much shorter period.

Plenary proceedings are issued in the High Court where there is a real dispute between the parties and/or the amount of the plaintiff's claim is not specific or easy to calculate. When a plenary summons is issued, the next step is for the parties to exchange pleadings, for example, a statement of claim and defence. Eventually, the case will be given a date for a trial and there may be evidence given by witnesses.

IHREC recommends that anyone who believes their legal rights have been infringed by a decision of the Government and/or the application of legal rules should seek legal advice.

WHAT IS THE EUROPEAN COURT OF HUMAN RIGHTS AND CAN ANYBODY BRING A CASE TO THE EUROPEAN COURT OF HUMAN RIGHTS?

The European Court of Human Rights is an international court based in Strasbourg in France. It is an institution of the Council of Europe, and there is a judge from each member state. The Court makes decisions about complaints against States (countries) in relation to allegations that they have breached or failed to meet the requirements of the European Convention on Human Rights.

Individuals can make complaints or applications to the Court if they feel their rights under the European Convention on Human Rights have been breached or violated. The Court in Strasbourg decides whether rights under the European Convention on Human Rights have been violated and it publishes written judgments (a decision). When the European Court of Human Rights issues a judgment, the State has a legal duty to comply with it, but the European Court of Human Rights has no way of enforcing this duty.

Irish legislation, the European Convention on Human Rights Act 2003 requires the Irish courts to take account of judgments of the European Court of Human Rights when making decisions about cases in Ireland.

Before a person can bring a case to the European Court of Human Rights they must have first exhausted all of the domestic remedies available to them, but what does that mean? It means that if you are bringing a case, a person must bring it as far as possible within the Irish legal system before going to the European Court of Human Rights. This generally means that a person must use all appeal mechanisms that are available to them in the Irish courts system before trying to institute a case at the European Court of Human Rights.

Information on how to and the rules surrounding instituting a case at the European Court of Human Rights can be found [here](#), at that part of the Court's website, you will find a number of guides that have been created by the Court.

The most important rules to be aware of are as follows:

- the time within which an application must be lodged at the European Court of Human Rights has recently reduced from six months to four months. A person wishing to make an application now only has **four months** from the final decision of the courts in Ireland. More information in relation to this change can be found [here](#).
- the application must not be anonymous;
- the application must not relate to an issue that has already been examined by the Court in detail;
- the application must be about the actions of the State, in this case, Ireland;
- the application must be submitted by a person who the actions of the State directly impact or by a person close to another person that has been directly impacted, e.g. a spouse or a parent;
- the person making the application must show, if their case was proven, that they have suffered a "significant disadvantage", for example, in a case where the Applicant had claimed a breach of the right to a fair trial (protected by Article 6 of the European Convention on Human Rights), they could only show that they had lost a very small sum of money (€90), and therefore their case was not dealt with by the Court;
- the person making the application must have exhausted their domestic remedies (see above).

IF A PERSON DOES NOT WISH TO TAKE ACTION IN THE COURTS, DO THEY HAVE OTHER OPTIONS?

Yes, there are other complaints mechanisms available if a person does not wish to or should not take legal action through the courts. Those options include:

An Garda Síochána

If a person believes a crime has been committed against them or another person, and it is an emergency, they should contact and report that allegation to An Garda Síochána (the Irish police force) by telephoning “999”.

If it is not an emergency, the person should call the Garda Confidential Line on 1800 666 111, or their [local Garda station](#).

If a person is deaf, hard of hearing or speech-impaired, they may report a crime (in cases of emergency) by SMS text message using the number “112”. The telephone device has to be [registered first](#).

More information on reporting crimes can be found on the [An Garda Síochána website](#).

The Ombudsman

The Ombudsman has the power to and is tasked with examining complaints with regard to a range of public bodies. Information on how to make a complaint can be found [here](#).

Generally, the Ombudsman cannot investigate decisions or actions of public bodies if they are the subject of litigation (cases in the Courts), unless there are special circumstances which would make it proper for him to do so.

The Ombudsman may draw conclusions in relation to the actions of a public body towards a person and he may make recommendations in respect of the decision(s) or action(s) of public bodies, but he has no power of enforcement.

The Ombudsman for Children

The Ombudsman for Children or the Office of the Ombudsman for Children (the “OCO”) in Ireland is a statutory office established by the Ombudsman for Children Act 2002. The OCO promotes the rights and welfare of children through a number of processes, for example, amongst other things the Office provides advice to ministers of government in respect of policy and/or promotes awareness among the public of matters relating to the rights and welfare of children.

The OCO also has the power to investigate the actions of public bodies, including schools, in respect of their dealings with children. Matters that relate solely to actions taken in respect of a child will usually fall within the remit of the OCO, as opposed to the Ombudsman.

The OCO can make recommendations but also has no power of enforcement. Information on how to make a complaint to the OCO can be found [here](#).

Garda Síochána Ombudsman Commission

The Garda Síochána Ombudsman Commission, more commonly known as “the Garda Ombudsman” or “GSOC”, is responsible for investigating complaints in relation to the conduct of members of An Garda Síochána (the Irish police force).

Once a complaint is made, GSOC must first decide whether it is “admissible” (in other words, a complaint that it is legally permitted to deal with). GSOC makes this decision based on the following criteria that are set out in section 87 of the [Garda Síochána Act 2005](#):

- the complaint must be made by or on behalf of a member of the public by a person who is authorised to do so by that person (as set out in section 83 of the Garda Síochána Act 2005);
- the conduct that is claimed would be “misbehaviour” by that member of Garda Síochána Act if it was proven to be true;
- the complaint has been made within 12 months of the conduct being complained about having occurred (or if an extension of time is granted by GSOC under section 84(2) of the Garda Síochána Act 2005, which it can do if there is “good reason for it”);
- the complaint is not “frivolous or vexatious”, in other words, it is not totally without merit and/or submitted with a bad motive.

GSOC cannot investigate the actions of members of An Garda Síochána who are not on duty unless their actions (if proven) would discredit An Garda Síochána.

The Data Protection Commission

Individuals are entitled to raise a concerns with the Data Protection Commission (“DPC”) in relation to the manner in which an organisation has handled their personal data and/or the level of access they have been provided with.

The Data Protection Commission provides comprehensive information on [its website](#) on how to submit a complaint.

Office of the Information Commissioner

Persons who are not satisfied with how a request for information under the Freedom of Information Act 2014 has been handled may submit an application for a review (a type of complaint mechanism) by the Office of the Information Commissioner.

The types of decisions which the Information Commissioner may review are detailed on [its website](#), and information on how to submit an application for a review can be found [here](#).

RIGHTS UNDER THE CONSTITUTION AND THE ECHR

WHAT RIGHTS ARE SET OUT IN THE CONSTITUTION?

*The Constitution provides for the following “**personal rights**” which are written down in Article 40 of the Constitution:*

Article 40.1 – Equality before the law

The Constitution sets out that all persons are to be treated equally in law and by the law, and that the State cannot “*unjustly, unreasonably or arbitrarily*” discriminate between individuals. However, the Constitution does say that laws in Ireland and/or the Government may have due regard (in other words, take account of), a person’s capacity, and their physical, moral and social function (for more information, please see the section entitled “*Do Human Rights and Constitutional Rights apply equally to everyone?*”).

Article 40.3.2 – The right to life

The right to a person’s life is protected by the Constitution. This right also involves the Government having an obligation to take appropriate measures to safeguard everyone’s lives by making laws to protect citizens and those resident in Ireland and, in certain circumstances, ensuring that steps are taken to protect a person’s life if it is at risk.

The Courts have ruled that the right to life in the Constitution does not encompass the right to euthanasia, in other words, to unnaturally accelerate your death (for example, in cases of terminal illness).

The right to life in the Constitution used to extend to “the unborn” during pregnancy, but this changed in 2018, following a referendum and the subsequent introduction of the [Health \(Regulation of Termination of Pregnancy\) Act 2018](#). These steps resulted in the legalisation of abortion in certain circumstances.

Article 40.4 – Personal liberty

Article 40.4 sets out that every Irish citizen and those in Ireland have the right to liberty, in other words, they have the right to freedom.

However, there is a condition attached to this, as it also states that the law (enacted by the Oireachtas) may set out exceptions to this right. Detention can therefore occur in certain circumstances, for example, where a person is believed to or is found guilty of actually committing a crime.

Where a person believes their liberty has been restricted, in that they have been detained, without it being done lawfully, they may ask the High Court to order the release. This is called a *habeus corpus* application, and the IHREC recommends that any person who believes they are in this situation should seek legal advice.

Article 40.6.1.i – Freedom of expression

The Constitution provides people with the right to freely express their views and opinions. However, the right can be restricted or limited as long as this is provided for in law and it is done in a proportionate way (for more information, please see the section entitled “*What is*

proportionality and what relevance does it have in understanding human rights and constitutional rights?”). The Constitution allows for restrictions to be placed on the right in the interests of public order and morality (for example, hate speech or speech that would incite violence are unlawful as such categories of speech may have a dangerous impact on public order).

The Constitution also protects the right to a good name in Article 40.3.2. The law in relation to harming people’s reputations is complicated, described as “the law of defamation”. However, it is important to be aware that the right to freedom of expression does not permit people to say whatever they like about other people or companies and organisations, as this may have legal consequences.

Article 40.6.1.ii – Freedom of assembly

Everyone has a right to assemble or meet peacefully and without weapons. Like the right to freedom of expression, this can also be limited or restricted in the interests of public order and morality. For example, the law prevents or restricts meetings that are focused on causing a danger to the public.

Article 40.6.1.iii – Freedom of association

The Constitution provides people with the legal right to form associations or unions. These may include, for example, sporting, social, charitable, commercial or political unions. However, this right is also limited and the law restricts certain types of associations and unions in order to protect public order and morality.

*The Courts have ruled that some personal rights flow from Article 40 of the Constitution even though they are not actually written down in the Constitution, these are called “**unenumerated rights**” and they are just as important as the rights written down in the Constitution, they include:*

The right to fair procedures

The right to fair procedures involves a very wide-ranging set of rights, such as:

- ***The right to be heard:*** Where an institution of the Government or a public authority is planning to or considering making a decision that may be detrimental to a person or impact their rights, that person has a right to be told about this by the institution before the decision is made. They also have right to make representations or comment on the decision that the public body plans to take, before the decision is taken. In order to be able to do so, the right requires that they be provided with all information that the institution is considering before making the decision. In some circumstances, this aspect of the right may involve having an oral hearing, where a person is able to put their views and arguments across in person, for example, the Courts have said that in applications for asylum where a decision-maker may making findings in relation to a person's credibility (whether they are telling the truth or not), they should be provided with an opportunity to put their side across in person at an oral hearing.
- ***The right to be provided with reasons for the decision:*** When an institution of Government or another public authority makes a decision that may be detrimental to a person or impact on their rights, that person has a right to be provided with details of the decision and the reason for the decision, in a timely manner. This will usually require that the person be provided with a written decision and that sufficient detail is provided for them to be able to understand what the decision is and why it was reached. This is a very important aspect of the right, to ensure that a person can challenge the decision or action of the Government institution in the Courts, if necessary.
- ***The principle against bias:*** This rule means that a person who is making a decision on behalf of a Government institution, that may negatively impact another person or effect their rights, must be independent and impartial. They should not be someone

that has something to gain from the decision or that has a personal interest in it. Where the Government institution offers an appeal of its first decision, this should be conducted by someone who was not involved in the original decision-making process. For instance, if a local authority refused to place a person on its housing list, and offered for the person to address that decision in an appeal, the person who the decision impacts may request that a different official deal with their appeal.

The right to bodily integrity

The State cannot unjustifiably with a person's body, unless it does so in a manner that is proportionate (for more information, please see the section entitled "*What is proportionality and what relevance does it have in understanding human rights and constitutional rights?*").

As detailed above, this right also requires the State to not subject a person to torture, inhuman or degrading treatment and to take positive steps to prevent people being subjected to such treatment.

The right to privacy

The Courts have decided in a number of cases that the right to privacy covers a number of different aspects of a person's private life - the right to vote by secret ballot in elections, to have the confidentiality of their private written communications and telephone conversations protected, to not have information in relation to their sex life published, and the protection of marital privacy.

However, like many other rights under the Constitution, the right to privacy may be limited or restricted by law and in the interests of common good, public order and morality.

The right to earn a livelihood

Everyone in Ireland has the right to work and earn a wage or a salary, this includes those seeking asylum in Ireland.

Children's rights are given a special status in the Constitution and they have additional rights separate to those of their parents, which are written down in Article 42A of the Constitution:

Article 42A – The Rights of Children

Article 42A was introduced into the Constitution in 2015, following a referendum. Article 42A sets out that children have the right to have their best interests be the paramount consideration (the most important factor) when it is necessary for the State to intervene to protect their safety and welfare. For example, if the Child and Family Agency applies to a judge to obtain an order to bring children into care, the judge dealing with the case must place what they believe the child's best interests to be, at the centre of the case.

Children also have a right to have their views heard and considered (depending on their age and level of maturity) in court cases which involve decisions being made in relation to them.

These rights may arise in a wide range of cases involving adoption, divorce and separation, child protection, and many more.

The "dwelling" in other words, people's homes, also have special protections attached to it in the Constitution:

Article 40.5 – The inviolability of the dwelling

The Constitution states clearly that a person's dwelling cannot be entered except in situations that the law provides for. This means that no one can enter a person's home without a legal right to do so.

An Garda Síochána may only do so if they have a warrant or if they have a belief that a crime is about to be committed imminently.

The Courts have said that many categories of homes are protected by this Article of the Constitution, including caravans and mobile homes. Courts can only permit bodies such as local authorities to interfere with people's homes (for example, by removing a caravan that is unlawfully placed on public land) if it is proportionate to do so.

WHAT RIGHTS ARE SET OUT IN THE ECHR?

Article 2 – Right to life

Article 2 of the European Convention on Human Rights ("ECHR") provides protection to the right to life. This means that the Government cannot try to end anybody's life and it also requires the Government to take measures to safeguard everyone's life.

A hypothetical example of the steps that may need to be taken to safeguard someone's life in a specific situation could involve a local authority having to provide alternative housing or a refuge to a person seeking to flee domestic violence where their or their children's lives are at risk.

When a person dies in custody or in another place where they are detained, for example, a mental health facility, there must be an independent investigation. This is also the case where a person dies in circumstances that involve the State, for example, if they are shot and killed by a member of

An Garda Síochána. The IHREC has published [a guide](#) relating to the specific rights of family members at inquests, which has a dedicated section in relation to Article 2 of the ECHR.

The European Court of Human Rights (“ECtHR”) has also published a [guide](#) in relation to the right to life under Article 2.

Article 3 – Freedom from torture and inhuman or degrading treatment

Government institutions cannot subject any person to torture, inhuman or degrading treatment. In some instances, this may also prohibit the Government from deporting someone who is seeking asylum in this country.

There are no circumstances where this type of treatment is permitted (for more information, please see the section entitled, “What categories of human rights and constitutional rights can be restricted or interfered with?”).

Torture occurs when someone deliberately causes serious and cruel, physical or mental suffering to another person. The reason for the treatment is important, for example, to punish someone or seek to obtain information from them.

Inhuman treatment is treatment that causes intense physical or mental suffering. Degrading treatment is treatment that is extremely humiliating and undignified.

A number of issues must be considered before treatment can be categorised as degrading, including the duration of the treatment, its physical or mental effects, and the personal characteristics of the person who is subjected to it.

The European Court of Human Rights (“ECtHR”) has also **published a** [guide](#) **in** relation to Article 3 of the ECHR.

Article 4 – Freedom from slavery and forced labour

The right to be protected against slavery is absolute. This means it can never be restricted (for more information, please see the section entitled, “What categories of human rights and constitutional rights can be restricted or interfered with?”).

Limitations are placed on the right to freedom from forced labour in that it does not apply to prison or community service, work that the Government requires in a state of emergency, or other civic obligations such as serving on a jury.

The European Court of Human Rights (“ECtHR”) has also published a [guide](#) in relation to [Article 4 of the ECHR](#).

Article 5 – Right to liberty and security

This provision means that a person cannot be denied their personal freedom and/or detained unless it is necessary and provided for in law.

There are certain restrictions that can be placed on this right, for example, if a person is found guilty of a crime and detained in prison, if there is a reasonable suspicion that a person has committed a crime and/or someone is trying to stop them from committing a crime, and/or a person who has a mental health condition that requires them to be detained to protect their safety or the safety of others.

The European Court of Human Rights (“ECtHR”) has also published a [guide](#) in relation to [Article 5 of the ECHR](#).

Article 6 – Right to a fair trial

People charged with criminal offences or who are before the courts in other categories of cases have the right to a fair and public trial. Article 6 involves a number of requirements including the hearing taking place within a reasonable period of time, being dealt with by an independent and impartial decision-maker, and ensuring that all parties have all the information upon which the decision is based made available to them.

It also involves, in certain instances, a person being provided with legal aid to ensure their right to a fair trial is fulfilled. Factors that will be considered in deciding whether a person should be granted access to legal aid include:

- the importance of what is at stake for a person involved in a case;
- the vulnerability of the person involved in the case and their ability to represent themselves;
- the emotional involvement of the person involved in the case and the impact this may have on their case;
- the need to use expert evidence and to question witnesses.
- There is time when the public and press may not be allowed to access court hearings, and this can be permitted by the ECHR, such examples may include where the hearing relates to family law matters or children.

The European Court of Human Rights (“ECtHR”) has also published a [guide](#) in relation to Article 6 of the ECHR and criminal law, as well as a [guide](#) relating to Article 6 of the ECHR and civil law.

Article 7 – No punishment without law

Article 7 ensure that nobody can be charged with a criminal offence for an action that was not a crime at the time the action.

The European Court of Human Rights (“ECtHR”) has published a [guide](#) in relation to Article 7 of the ECHR.

Article 8 – Respect for your private and family life

Article 8 protects your right to respect for your private life, your family life, your home and your correspondence (letters, telephone calls and emails, for example).

The right to a private life under the ECHR covers a very large number of areas. It includes a person’s right to determine their sexual orientation and to not be persecuted as a result of it, the right of a person to consent or refuse medical treatment, and many more areas. It also means that sensitive documents, such as medical records or official records should be kept securely and not shared, except with a person’s permission or in certain limited circumstances.

The concept of family life is separate from a “private life” but both are interlinked. The right to enjoy a family life means that a person should be able to have family relationships without the Government interfering. It covers a wide range of relationships, including between a couple that is not married, an adopted child and his or her parents, and even a foster parent and fostered child in some circumstances.

The “home” is specifically protected under Article 8 of the ECHR. Under Article 8 of the ECHR, a home does not have to be a dwelling house, it can be a caravan or mobile homes, a tents or other structure that a person lives in. The right to respect for a person’s home is the right it without unlawful or disproportionate interference, and this applies whether or not a person owns their home (it could apply to a rental property or social housing, for example). Nobody can enter or interfere with a person’s home without a legal right to do so.

For example, the police may only do so if they have a warrant or if they have a belief that a crime is about to be committed imminently. Courts can only permit bodies such as local authorities to interfere with people’s homes (for example, by removing a caravan that is unlawfully placed on public land) if it is proportionate to do so (for more information, please see the section entitled, “What categories of human rights and constitutional rights can be restricted or interfered with?”, above).

There are certain instances, where it is provided in Irish law, necessary and proportionate, that the State can interfere with the right in order to:

protect national security;

protect public safety;

protect the economy;

protect health or morals;

prevent disorder or crime; or

protect the rights of other people.

The European Court of Human Rights (“ECtHR”) has published a [guide](#) in relation to Article 8 of the ECHR.

Article 9 – Right to respect for freedom of thought, belief and religion

This right protects both those who have religious beliefs and want to practice them and those who do not have religious beliefs. It protects the right to outwardly act upon any beliefs, for example, by wearing religious clothing such as a headscarf in a public space.

Limitations can only be placed on aspects of this right in very limited circumstances where it is proportionate and necessary to protect public safety, public order, health, or the rights and freedoms of other people.

The European Court of Human Rights (“ECtHR”) has published a guide in relation to Article 9 of the ECHR.

Article 10 – The right to freedom of expression

The ECHR provides people with the right to freely express their views and opinions. However, the right can be restricted or limited as long as this is provided for in law and it is done in a proportionate way (for more information, please see the section entitled “*What is proportionality and what relevance does it have in understanding human rights and constitutional rights?*”). Restrictions that can be placed on the right include:

- protect national security, territorial integrity (the borders of the state) or public safety;

- prevent disorder or crime;
- protect health or morals;
- protect the rights and reputations of other people;
- prevent the disclosure of information received in confidence; and
- to maintain the authority and impartiality of judges.

The European Court of Human Rights (“ECtHR”) has published a [guide](#) in relation to Article 10 of the ECHR.

Article 11 – The right to freedom of assembly and association

The ECHR also provides people with a right to assemble, such as a protest if it is done peacefully and/or to be a member of an association such as a trade union or other grouping. This right can also be limited or restricted in the interests of national security or public safety, to prevent disorder or crime, to protect health, or protect rights and freedoms of others. Limitations can only be placed on the right if they are necessary, proportionate and permitted by Irish law.

The European Court of Human Rights (“ECtHR”) has published a [guide](#) in relation to Article 11 of the ECHR.

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