



Pavee Point Seminar

The Impact of the Habitual Residence Condition on Travellers and Roma in Ireland

Dr Maurice Manning

President of the Irish Human Rights Commission

Oak Room, Mansion House

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Introduction

I would like to thank Pavee Point for the invitation here today. Last week at the UPR Session in Geneva we witnessed again the importance of Traveller representative organisations speaking for themselves directly to the UN. It was a powerful and impressive presentation by Martin Collins. When people suggest that ethnicity is not an important issue, they are missing a very important point. It is an essential building block in the long fight of Travellers for the full realisation of their human rights.

Universal Periodic Review

At Geneva last week the IHRC was pleased to stand up and say clearly that the Government needs to act on the ethnicity recognition issue. As Martin Collins commented, Ireland will soon face the Committee on the Elimination of All Forms of Racial Discrimination and will need to explain its position. The Government has said it is concerned that not all Travellers agree with the concept of recognition of ethnicity. This is something I would like to hear more information on in addition to how they would propose to elicit and document such views.

One thing at least is more than clear, they cannot stand still on this issue in the face of increasing international criticism. I have written to Minister Shatter to ask him about the discussions currently underway on this issue and highlighting the need to ensure that there is proper Traveller participation in these discussions.

Habitual Residence

Turning to habitual residence, it is clear that this is permitted under European Union law. The question though is what is the *impact* of this provision and whether it is discriminatory against Travellers, Roma or other groups.

While I very much look forward to hearing the experts here today I would propose to make some general observations which may prompt part of the discussion.

Habitual Residence Condition (HRC)

From a human rights perspective, legislation – whether Irish or European - may impact on human rights negatively or positively. Legislation which leaves substantial discretion to officials to deal with individuals is more likely to give rise to bigger discrepancies. The Habitual Residence Condition is a highly discretionary test, and there is little guidance as to how it should be applied under the Social Welfare Act. By its nature the Habitual Residence Condition may thus produce quite arbitrary results.

Before 2005 there was no such test and Travellers and others could move between the UK and Ireland without much concern for losing a long term entitlement to Social Welfare or Child benefit.

Since 2007 the test has been set out more fully in legislation and it clearly has the potential to impact on Travellers moving between the two jurisdictions insofar as that is what many Travellers do: travel!

Thus the test may have the potential to indirectly discriminate against Travellers in light of their nomadic tradition. It is a core fact of their way of life that they may travel between

jurisdictions on a regular basis, without the intention of ever remaining in the UK long term or relinquishing their more long term ties with Ireland. However it may be as a result of this nomadic practice that Travellers may lose social welfare entitlements as a result of the Habitual Residence Condition. If the Habitual Residence Condition, despite not being directed specifically at Travellers, nonetheless has a much greater impact on the Traveller community then it may be considered indirectly discriminatory under human rights law. The fact that it has not been challenged in the courts to date is perhaps surprising.

Obviously loss of social welfare entitlements can have a devastating impact on families and children, insofar as it will also impact on their ability to secure accommodation and avoid destitution. The IHRC has called for the impact of the Habitual Residence Condition on different sections of Irish society to be reviewed to ensure that it is not resulting in denial of access to essential services. The Habitual Residence Condition needs to be reformed and more stringent proofing of the impact of economic and budgetary policies particularly on people in vulnerable situations needs to be put in place.

Returning to my earlier comments on the UPR, is it fair to say that the Habitual Residence Condition may be seen as linked to recognition of Traveller ethnicity? Let me put it this way: if the State fully recognised Travellers as an ethnic group, this would immediately place an obligation on the State to recognise and more importantly respect aspects of Travellers' culture such as nomadism. The IHRC sought to argue this point in the High Court in the *Lawrence* case in 2008 which concerned the criminal trespass legislation. But in relation to the Habitual Residence Condition, if the State recognised Travellers ethnicity and hence nomadism, this would immediately call into question the application to Travellers of the Habitual Residence Condition, when they have a regular pattern of travelling abroad for periods of time, but always returning to Ireland.

I will leave you with that question and look forward to learning more about the impact of the Habitual Residence Condition on Travellers and Roma.

Thank you.