

Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence
Council of Europe
Avenue de l'Europe F-67075
Strasbourg Cedex
France

27 February 2023

RE: Follow-up to the evaluation visit to Ireland by the Group of Experts on Action against Violence against Women and Domestic Violence ('GREVIO')

Dear Sir/Madam,

The Irish Human Rights and Equality Commission welcomes the opportunity to provide follow-up information to GREVIO on Ireland's implementation of the Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention'). This letter follows our close engagement with GREVIO throughout the baseline evaluation procedure, including through the publication of a policy statement on Ireland's ratification of the Istanbul Convention in 2019,¹ submission of a comprehensive parallel report in 2022,² and engagement with GREVIO during the evaluation visit in 2023. The purpose of this letter is to respond to GREVIO's request for further information on matters which were considered during the evaluation visit in February 2023.

We are available to discuss the information presented below as required, and look forward to continued engagement with GREVIO during the next stages of this procedure and in subsequent evaluations. As Ireland's A-status NHRI, we will be available to support the Committee's understanding of the domestic context as it prepares Ireland's Baseline Evaluation Report; to promote the outcomes of the process; and to monitor the implementation of recommendations.

Yours sincerely,



Sinéad Gibney
Chief Commissioner

¹ IHREC, [Statement on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (2019).

² IHREC, [Ireland and the Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (2023).

Remedies against An Garda Síochána and the State for victims and survivors of domestic, sexual and gender-based violence

The State owes duties to individuals under the Irish Constitution and the European Convention on Human Rights ('ECHR'). As an organ of the State, An Garda Síochána ('AGS'), undertakes State functions in relation to crime prevention and investigation. The functions of AGS set out in legislation are: to preserve peace and public order; protect life and property; vindicate the human rights of each individual; protect the security of the State; prevent crime; and bring criminals to justice, including by detecting and investigating crime.³ However, the existence of these statutory functions does not itself create legal remedies in cases where AGS fails to carry out these functions.⁴

In Ireland, the primary way that individual rights are protected in the courts is through tort law, a branch of private law which provides redress for civil wrongs. Individual members of AGS can be sued in tort law for breaching their duties, for example by arresting unlawfully, trespassing, driving carelessly or leaking information to the media. However, the extent to which individual members of AGS can be sued for failing to protect victims and survivors of domestic, sexual and gender based violence ('DSGBV') is less clear. At present, the position of the law is that damages under tort law will generally not be awarded in the context of a failure to protect victims from crimes, due to public policy considerations.⁵ Experts and practitioners in the field suggest that this position may change in the future due to developments in other jurisdictions,⁶ and academic commentary questioning the current position.⁷

With regard to public law, 3(1) of the *European Convention on Human Rights Act 2003* provides that every organ of the State shall perform its functions in a manner compatible with the State's obligations under the Convention. S. 3(2) states that:

A person who has suffered injury, loss or damage as a result of a contravention of subsection (1), may, if no other remedy in damages is available, institute proceedings to recover damages in respect of the contravention in the High Court

³ [An Garda Síochána Act 2005](#), s. 7 (1).

⁴ [An Garda Síochána Act 2005](#), s. 7 (5), stating that s. 7 does not confer 'a right in law ... to— (a) require the Garda Síochána to perform a function or provide a service referred to in this section or to desist from any action, or (b) seek damages for a member of the Garda Síochána's performance of, or failure to perform, such function or for his or her provision of, or failure to provide, such service.'

⁵ See for example, *Lockwood v Ireland*, where the court found that applying tort law to individual members of AGS would 'cripple the capacity of An Garda Síochána... to carry out its duties effectively and with expedition'.

⁶ See the English case of *Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4.

⁷ Dermot Walsh, [Liability for Garda Negligence in the Prevention and Investigation of Crime](#) (2013).

(or, subject to subsection (3), in the Circuit Court) and the Court may award to the person such damages (if any) as it considers appropriate.⁸

European Court of Human Rights case law shows that Articles 2, 3, 6, 8, 13 and 14 may be engaged where there has been a failure to protect victims of DSGBV.⁹ If there is a finding that an organ of the State has acted in breach of S.3 of the 2003 Act, then damages can be awarded. However, as is clear from the above, it is only possible to pursue remedies under this Act if no remedy is available under tort law or constitutional law.

As regards disciplinary measures, complaints against individual members can be investigated internally under the *Garda Síochána (Discipline) Regulations 2007*, which provide a code of conduct for all members of AGS.¹⁰ Any suspected breaches are subject to internal investigation and may result in dismissal; reduction in rank; temporary reduction in pay; warning; reprimand; caution; advice; or other measures. As this is an internal measure, there is no available data on disciplinary measures taken against members of AGS for failures in duties towards victims and survivors of DSGBV. It is likely that a serious failure towards victims and survivors would result in a disciplinary enquiry.

Complaints against individual members of AGS can also be investigated externally, by the Garda Síochána Ombudsman Commission ('GSOC'). GSOC is an independent body which deals with complaints made by the public against members of AGS. GSOC pursues criminal charges in appropriate cases, but it is unlikely that a complaint against a member of AGS for failing to protect a victim/survivor of DSGBV would result in criminal liability. We note that any recommendations provided by GREVIO in this area can be addressed through legislation currently before the Irish Parliament on reforming the oversight and accountability of AGS.¹¹

Family and child care law proceedings

In our recent meeting during Ireland's evaluation visit, we noted your interest in the area of family and child care law proceedings. In this connection, we wish to highlight research by the Child Care Law Reporting Project, an ongoing project promoting transparency and

⁸ [European Court of Human Rights Act 2003](#), s. 3(2).

⁹ ECtHR case law suggests that there is an obligation on States to put a legislative and regulatory framework of protection in place; to take operational measures to protect specific individuals against a risk of treatment contrary to Article 3 of the Convention; and to carry out an effective investigation into arguable claims of infliction of such treatment. See, *Bevacqua and S v Bulgaria* App. No. 71127/01; *Talpis v Italy* App no. 41237/14; and *P.M. v Bulgaria* App no. 49669/07.

¹⁰ [An Garda Síochána \(Discipline\) Regulations 2007](#).

¹¹ The [Policing, Security and Community Safety Bill 2023](#) proposes to strengthen the governance of AGS, to provide for clear and effective oversight and accountability of AGS, to amend and extend the functions of GSOC, and to provide for related matters.

accountability in judicial child care proceedings. The Project produces periodic court reports and other research. Some key findings relevant to the work of GREVIO include the following:

- The Child Care Law Reporting Project observes significant links between DSGBV and child care proceedings, finding that many children in the system have experienced trauma and suffered harm as a result of DSGBV. Research has demonstrated an increased risk of DSGBV during the Covid-19 pandemic due to stress associated with lockdowns, which was exacerbated by the closure of support services.¹²
- The Project reports that a disproportionate number of families subject to child care proceedings have at least one parent from an ethnic minority or who does not have residency status.¹³ In its analysis of ongoing cases in 2021, it found significant over-representation of Traveller communities; while Travellers comprise 0.6 per cent of the Irish population, Traveller ethnicity was raised in nearly 3 per cent of the Child Care Law Reporting Project's case reports. The report also noted that approximately one in four respondent families included one parent who was a national of another jurisdiction.
- The Project also highlights good practice in judicial child care proceedings. Recently, it noted the successful grant of an interim barring order sought by the Child and Family Agency (Tusla).¹⁴ This was the first time the Project had witnessed an order being initiated by Tusla.

¹² Child Care Law Reporting Project, [Ripe for Reform: An Analytical Review of Three Years of Court Reporting on Child Care Proceedings](#) (2021), pp. 61-62.

¹³ Child Care Law Reporting Project, [Ripe for Reform: An Analytical Review of Three Years of Court Reporting on Child Care Proceedings](#) (2021), pp. 58-60.

¹⁴ Child Care Law Reporting Project, [Case Reports 2022 Volume 2- Introduction](#) (2023).