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

16 July 2024

Helen McEntee TD
Minister for Justice
51 St. Stephen's Green
Dublin 2
D02 HK52

By registered post and email: minister@justice.ie

URGENT

Your Ref: **DJE-MO-06803-2024**

Our Ref: **OOD024/INA**

Re: **Revocation of Irish naturalised citizenship**
Courts, Civil Law, Criminal Law and Superannuation (Miscellaneous Provisions) Bill 2024

Dear Minister,

Many thanks for your letter, dated 15 July 2024 and received last evening.

We note your position on the proposed amendments on revocation of naturalised citizenship as set out in the Courts, Civil Law, Criminal Law and Superannuation (Miscellaneous Provisions) Bill 2024 (the 'Bill'). However, we remain deeply concerned that the measures contained in the Bill fall short of the standards required.

In relation to some of the key points that you have made in your letter, we would offer the following observations:

Undue haste and lack of opportunity for pre-legislative scrutiny

Your letter provides no satisfactory explanation for the urgency to pass these amendments before the summer recess, bearing in mind that they were published for the first time a week ago (on 9 July 2024).

The Commission repeats its concern that there has been a lack of adequate time and opportunity for appropriate legislative scrutiny of legislative change / a Bill of this significance

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and importance, and particularly where it affects a discrete section of our society – i.e. our fellow Irish citizens, who are Irish by naturalisation. It is important that they, and all sections of our community, can have confidence in the systems in place for the revocation of citizenship, given the huge implications for individuals involved.

Threshold for initiating the revocation process

The Supreme Court's principle focus in *Damache* was on the, then, process of revocation and not on the grounds for revocation under section 19(1) of the Nationality and Citizenship Act 1956 (the '1956 Act').

That said, we repeat our position that that the Bill is an opportunity to revisit the grounds for revocation in section 19 of the 1956 Act, and in particular section 19(1)(b)[1], which was the subject of considerable debate in the Dáil recently. Not only is section 19(1)(b) unclear and open to wide interpretation, it also sets a worryingly low threshold for revocation of citizenship.

There is now an opportunity to revisit the grounds for revocation and the appropriate thresholds.

Timeframes and methods of notification

Under proposed section 4A(2)(b), the Minister may serve notice of their intention to revoke citizenship by leaving such notice on an 'electronic interface' on which the person is registered. This could, for example, be a State portal that the individual had used a number of years ago to apply for naturalisation, and which they do not check regularly. The use of such an interface is not an exceptional measure, and could be used for any revocation of citizenship.

In the event that the person does not check that interface/portal, they might miss the Minister's notice. In other words, if the person does not request a Committee of Inquiry to review the Minister's decision within 14 days of receiving notice of the Minister's decision to revoke, then revocation of citizenship takes effect immediately.

The potential consequences of this are stark. In as little as 6 weeks[2] an individual could be stripped of citizenship. If notification by the Minister is to an electronic interface that they do not check regularly, their citizenship could be revoked without their knowledge.

[1] The Minister may revoke a certificate of naturalisation if he is satisfied that the person to whom it was granted has, by any overt act, shown himself to have failed in his duty of fidelity to the nation and loyalty to the State.
[2] Proposed sections 1C and 1J.

In setting strict timeframes, the Bill appears to take no account of the possibility that naturalized Irish citizens might be travelling abroad to visit family, attend funerals etc. Nor does it take account of the fact that some naturalised Irish citizens may have disabilities, or may be operating in English as a second or third language, and find dealing with official documents challenging.

Composition and independence of the Committee of Inquiry

We welcome the appointment of members of the judiciary to the Committee. We are concerned, however, that they will be in a minority of one, with the Minister retaining significant power on the choice of the majority of Committee members.

It is also of note that proposed section 1P ultimately reserves for the Minister the decision as to the Committee's procedures, including the circumstances in which oral hearings may be held.

Under the proposed amendments, the Minister appoints two other people to the Committee with "*such experience and qualifications as the Minister considers appropriate*". The vagueness of this wording allows considerable discretion to the Minister as to the choice of Committee members, and the criteria for their selection.

Furthermore, there is no clarity in the Bill on whether the Committee of Inquiry is a standing committee for a defined period or an *ad hoc* committee that may be appointed to deal with a single decision of the Minister to revoke naturalised citizenship. Indeed, there appears to be nothing to prevent a Minister from appointing a Committee of Inquiry for a very short period, or indeed on a case by case basis.

Reasons for the Minister's decision

We note your assurance that any decision to withhold information on national security grounds would not be taken lightly. We remain concerned, however, at the breadth of discretion that proposed section 1O[3] gives to the Minister and the Committee to withhold reasons for their decisions, making it impossible for the naturalised citizen facing revocation to answer or to counter the case against them. This does not sit well with the rationale of the Supreme Court in ***AP v. Minister for Justice*** [2019 (IESC) 47][4], regarding the right – even in national security cases - for a person to know the reason for the Minister's decision to the minimum extent necessary to protect national security.

Another significant concern is the degree to which the Bill circumscribes the ability of the

[3] Subsections (1B)(a)(ii), (1E)(a)(ii) and (1M)(a)(i)(II) shall not apply where the Minister or the Committee of Inquiry, as the case may be, considers that specifying the reasons for the decision would be contrary to the interests of national security.
[4] This is a case relating to the Minister's refusal to grant naturalised citizenship.

Committee of Inquiry to inquire into the national security concerns grounding the Minister's decision. We note, from your letter, your intention to provide a Committee of Inquiry with 'sufficient' (but not necessary all available and relevant) evidence to justify a decision to revoke citizenship. Most importantly the Bill, as currently drafted, does not require the Minister to do so.

Under proposed section 1L, the Committee has no right to review the national security evidence that has grounded the Minister's decision to revoke citizenship. The Bill does not require the Minister to provide the evidence of a national security threat grounding their decision to the Committee. Nor, indeed, does the Bill give the Committee the right to seek and obtain this evidence. In short, under this Bill, the Minister of the day is within their legal entitlements to tell the Committee they have information about a national security threat, without the requirement to give that evidence to the Committee, for it to be tested.

Conclusion

We welcome the Minister's intention to address the findings of the Supreme Court in *Damache* with amending legislation. However, the Commission remains unconvinced that the relevant provisions of this Bill, as currently drafted, attain the high standards of natural justice envisioned by the Supreme Court in *Damache*.

We respectfully repeat our request that you remove from the Bill those provisions that provide for the amendment of section 19 of the 1956 Act, to allow the appropriate time for their pre-legislative scrutiny.

As we stated in our previous correspondence, the Commission has no wish to delay the introduction of appropriate legislation in this area. The necessary provisions could be included in another Bill in the autumn, afforded adequate time for consideration by the Oireachtas, and enacted before the end of 2024.

Yours faithfully,

Deirdre Malone,
Director.

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