



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



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## REPORT

**by Thomas Hammarberg**  
**Commissioner for Human Rights of the Council of Europe**

Following his visit to Ireland  
from 1 to 2 June 2011

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Issue reviewed:

Human rights of vulnerable groups in times of austerity budgets

## **Summary**

Commissioner Thomas Hammarberg and his delegation visited Ireland from 1 to 2 June 2011. During his visit, the Commissioner held discussions on human rights issues with a focus on the protection of vulnerable groups in times of austerity budgets. The Commissioner met with the national authorities and other interlocutors, including civil society representatives.

The present report focuses on the following major issues:

### **1. National system for promoting and protecting human rights**

The Commissioner commends Ireland's well-established system for promoting and protecting human rights, in line with international standards. However, some gaps remain such as the ratification of Protocol No. 12 to the European Convention on Human Rights on the general prohibition of discrimination, and the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT). Noting administrative reforms to make government less costly, the Commissioner stresses the importance of human rights bodies as guarantors of the human rights of the most vulnerable in times of budgetary crisis. He thus calls upon the authorities to protect the independence and effectiveness of these bodies and to avoid limiting their capacity by subjecting them to budget cuts and staff reductions.

### **2. The fight against discrimination**

The Commissioner notes the robust legal and institutional framework in place to combat discrimination, racism and xenophobia. He is, however, concerned about outstanding legislation on gender recognition, which is on the agenda of the current government. A new national action plan to combat racism would also be advisable. Regarding Travellers, the Commissioner notes the on-going discussion on self-determination and hopes that the issue can be resolved soon. He is concerned that budgetary measures affect in particular Traveller children's education and calls upon the authorities to revise any such measures as they could have detrimental effects, thus counter-acting progress already achieved.

### **3. Human rights of persons with disabilities**

The Commissioner commends the continuous efforts of the Irish authorities in the context of their National Disability Strategy. He is, however, concerned that progress made in the area of mental health remains slow, and which can only be partially attributed to the budget crisis. He encourages the authorities to step up their efforts as pledged and invest in community care. Furthermore, he appreciates the review of the Mental Health Act 2001 and the work on the Mental Capacity Bill soon to be introduced. In this context he recommends ratification of the UN Convention on the Rights of Persons with Disabilities as a matter of priority. Furthermore, the Commissioner urges the authorities to ensure that people with disabilities do not fall victim to the budget crisis and to scrutinise all proposals in the field of health care and social services for possible impacts on such persons and their families.

### **4. Human rights of older people**

The Commissioner is worried by reports of alleged neglect and abuse of older people residing in privatised care homes in several European countries, including Ireland. He thus welcomes the intent of the Irish authorities to introduce "whistleblower" legislation to better protect staff working in such institutions when reporting substandard conditions or abuse. An adequate number of skilled staff, regular, appropriate training and strong oversight are core to the providing of a safe environment for the elderly. The Commissioner notes the discussion on possible human rights violations committed in the past in the Magdalene Laundries, in which women and girls resided under apparently very harsh conditions and in many cases involuntarily, and welcomes the establishment of an inter-departmental committee. In view of the age of the women concerned, the Commissioner encourages the authorities to promote reconciliation and quickly put in place restorative measures.

### **5. Children's rights**

The Commissioner appreciates that children's rights have been the focus of public debate in Ireland over the past years, with the Government aiming at reducing child poverty and raising standards in education through the National Action Plan for Social Inclusion 2007–2016. He calls upon the authorities to ensure

that budgetary cuts do not contradict the achievements reached under this policy. The Commissioner believes that a referendum on children's rights with a view to anchoring the "best interests of the child" principle in the Irish Constitution as well as a complete ban on corporal punishment will further enhance child protection in Ireland. He commends the commitment of the authorities to ending the imprisonment of 16 and 17 year old boys in St. Patrick's institution and recommends that the authorities begin the process soon with a pilot group.

#### **6. Human rights of migrants including asylum-seekers**

The Commissioner notes the ongoing work on the Immigration, Residence and Protection Bill 2010 and encourages the authorities to speed up procedures with a view to putting a transparent framework in place, affording sufficient safeguards while processing case files with diligence and without undue delay for migrants and asylum-seekers alike. Commending the provision of mainstream care for separated children seeking asylum, the Commissioner recommends assigning a guardian *ad litem* to better protect such children against trafficking.

The Report ends with the Commissioner's conclusions and recommendations.

The Irish authorities' comments are appended to the Report.

## Introduction

1. The present report follows a visit to Ireland by the Council of Europe Commissioner for Human Rights (the Commissioner) from 1 to 2 June 2011 during which the focus was on the protection of vulnerable groups in times of austerity budgets.<sup>1</sup>
2. The Commissioner wishes to thank the Irish authorities in Strasbourg and Dublin for the assistance they provided in facilitating the independent and effective performance of his visit.
3. In the course of his visit, the Commissioner held discussions with representatives of the national authorities, including the Tánaiste and Minister for Foreign Affairs and Trade, Mr Eamon Gilmore, the Minister of Justice, Equality and Defence, Mr Alan Shatter and the Minister of State with special responsibility for Disability, Equality, Mental Health and Older People, Ms Kathleen Lynch. The Commissioner also met with national human rights bodies, namely the Ombudsman, the Ombudsman for Children, the Press Ombudsman, members of the Irish Human Rights Commission (IHRC), the Equality Authority, and of the Garda Síochána Ombudsman Commission as well as with civil society representatives. At the beginning of his visit, the Commissioner addressed the participants of a conference on disability rights in Dun Laoghaire organised by the Open Society Foundations. Furthermore, upon invitation of the IHRC, the Commissioner engaged in conversation with civil society organisations, delivering a speech in Dublin followed by a discussion with the audience.
4. After years of economic growth since the 1990s, Ireland was affected by the world financial and economic crisis in 2008, with the recession reaching its peak in 2009. A sharp decline of the construction industry and the collapse of the banking system led to a state deficit of an estimated 31% of Gross Domestic Product (GDP) in 2010 and a sharp rise in unemployment from 4.5% in 2007 to almost 12% in 2009, as well as an estimated average of over 13% for 2010 and 2011.<sup>2</sup> As a consequence, in November 2010, Ireland entered into an assistance programme with the EU and the IMF, receiving loans subject to strict conditions aiming at balancing out the budget. A National Recovery Plan 2011 – 2014 was published proposing budgetary measures to reach a state deficit of below 3% of GDP by 2014, mainly by reducing public expenditure.<sup>3</sup> In June 2011 all government departments were asked to produce plans for cuts in their respective areas.<sup>4</sup> The Commissioner is concerned that budgetary measures already undertaken and further proposals may have a severe impact on Irish society, affecting in particular vulnerable groups.
5. In the present report the Commissioner focuses on the following major issues: national system for promoting and protecting human rights (Section I); the fight against discrimination (Section II); human rights of persons with disabilities (Section III); human rights of older people (Section IV); children's rights (Section V); human rights of migrants including asylum-seekers (VI), followed by the Commissioner's conclusions and recommendations (Section VII).

### I. National system for promoting and protecting human rights

6. Ireland currently possesses a well-established system for promoting and protecting human rights in line with international standards, albeit with some gaps to close. The system consists of three pillars, namely complaints bodies, special protection against discrimination and a national human rights institution. Concerned about budget cuts imposed on these bodies, the Commissioner met with their representatives to learn about the impact of such cuts as well as about future plans and challenges.

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<sup>1</sup> During his visit the Commissioner was accompanied by his adviser, Ms Silvia Grundmann.

<sup>2</sup> See The Economic and Social Research Institute (ESRI), [http://www.esri.ie/irish\\_economy/](http://www.esri.ie/irish_economy/) [07/07/2011]

<sup>3</sup> See p. 5 of the Plan, available under <http://www.budget.gov.ie/The%20National%20Recovery%20Plan%202011-2014.pdf> {07/07/2011}.

<sup>4</sup> See Civil Service chiefs told to produce radical plans to cut costs, Irish Times, 27 June 2011, <http://www.irishtimes.com/newspaper/archive/2011/0627/Pg001.html> [07/07/2011].

7. The Ombudsman informed the Commissioner that her office saw an increase of 30% in valid complaints received in 2010 compared to 2009 which had already been a record year, due mainly to receiving more complaints about social services and public health care. To meet this challenge, her Office underwent major restructuring as well as process transformation to increase efficiency and speed when dealing with complaints.<sup>5</sup> The Commissioner also learned about the expressed intent of the Government to extend the remit of the Ombudsman to all publicly funded bodies,<sup>6</sup> a protection gap the Commissioner had recommended closing in his 2008 report,<sup>7</sup> as well as about the plan to establish a new parliamentary committee as a formal channel of consultation and collaboration between the *Oireachtas* (the Irish Parliament) and the Ombudsman. The Commissioner welcomes these significant measures aimed at strengthening a major complaints mechanism in times of austerity budgets and recommends completing this process by using the upcoming constitutional referendum planned for autumn this year to firmly anchor this mechanism in the Constitution by giving the Ombudsman constitutional status.
8. In his meeting with the Press Ombudsman the Commissioner learned about the work of this fairly new non-statutory co-regulatory body established in 2008 as well as about its interaction with the Press Council. Most of the complaints received by the Press Ombudsman in 2010 concerned truth and accuracy of press statements.<sup>8</sup> The Commissioner welcomes that the Irish Parliament formally recognised both bodies in 2010 as he believes that they serve a dual purpose, offering the press and the individual alike an alternative to lengthy and costly court proceedings while at the same time enhancing the accountability of the press without unduly restricting its freedom.
9. The Commissioner also visited the Ombudsman for Children and was impressed by the achievements of this rather small office giving children a voice across the country. He learned about the work of the office in revealing deficits in social services and health care<sup>9</sup> as well as in the field of juvenile justice.<sup>10</sup> The Commissioner notes that the Ombudsman for Children may receive individual complaints from juvenile offenders placed in a detention school but that the mandate does not cover the 16 and 17 year old boys imprisoned in St. Patrick's Institution which the Commissioner visited in 2007.<sup>11</sup> The Commissioner deplores this discrepancy as he believes that all children in detention must have the same right of access to an independent complaints mechanism. Therefore, he reiterates his recommendation made in 2008<sup>12</sup> to close this protection gap as a matter of priority.
10. The Commissioner was delighted to meet again with the *Garda Síochána* Ombudsman Commission (GSOC), the police complaints mechanism in operation since spring 2007. The Commissioner believes that such a body can serve as a role model for other countries.<sup>13</sup> He notes with concern that GSOC had never been able to recruit its full complement of authorised staff even before the economic crisis. Yet staff departures cannot be compensated for as GSOC is also subject to the strict recruitment embargo in the public sector which does not allow for replacements. Consequently, the number of investigation officers continues to decrease while GSOC continues to receive about 2000

<sup>5</sup> For details, see Office of the Ombudsman, Annual report 2010, Dublin, June 2011.

<sup>6</sup> Towards Recovery, Programme for a National Government 2011-2016, Political Reform.

<sup>7</sup> Report by the Commissioner for Human Rights Mr. Thomas Hammarberg on his visit to Ireland 26 – 30 November 2007, CommDH(2008)9, Strasbourg 30 April 2008, p. 6 ff, p. 35.

<sup>8</sup> For details, see the Annual Report 2010 of the Press Council of Ireland and Office of the Press Ombudsman, Dublin, April 2011.

<sup>9</sup> For details, see "A Children's Rights Analysis of Investigations", Dr. Ursula Kilkelly, commissioned by the Ombudsman for Children, Dublin April 2011.

<sup>10</sup> For details, see "Young people in St. Patrick's Institution", Report of the Ombudsman for Children, Dublin 2011.

<sup>11</sup> For details, see the Report by the Commissioner for Human Rights Mr. Thomas Hammarberg on his visit to Ireland 26 – 30 November 2007, CommDH(2008)9, Strasbourg 30 April 2008, p. 21.

<sup>12</sup> Ibid, p. 6 ff, p. 35.

<sup>13</sup> See also the Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints against the Police, CommDH(2009)4, Strasbourg, 12 March 2009.

to 2700 complaints per year.<sup>14</sup> The Commissioner is aware that the mandate for the present GOSC commissioners will end in December 2011, making a review of the existing arrangements necessary. The Commissioner encourages the authorities to make the best use of this review in order to maintain and enhance the strength and independence of GSOC. During his visit, the Commissioner was informed that many cases take too long to be processed through the complaints mechanism and might be resolved more quickly through structural or disciplinary measures by the police itself, as they are not of such gravity to require the consideration of criminal sanctions. Thus, the members of the police complaints commission discussed possible legislative changes to be introduced to allow *An Garda Síochána* (the Irish Police) to deal with complaints from the outset. In this context, the Irish Human Rights Commission recommended that any change allowing for the “leaseback” of investigations to the police must be strictly limited to cases involving minor offences or to cases not involving serious misconduct and must be accompanied by appropriate statutory safeguards such as mandatory supervision by GSOC and prior consent of the complainant.<sup>15</sup> While acknowledging the potential for a more efficient treatment of minor complaints, the Commissioner believes that a thorough analysis must be made beforehand to establish robust criteria to ensure that only suitable cases will be referred back to the police force. Otherwise, the reputation and credibility already earned by this still young police complaints mechanism could be at risk.

11. In his meeting with the Equality Authority, the Commissioner discussed the impact of the severe budget cuts this statutory body in charge of combating racial and ethnic discrimination has been facing since 2008. The Commissioner is aware of the discussion to merge the Equality Authority and the National Disability Authority into a new institution that should also take up the mandate of the Combat Poverty Agency and the National Consultative Committee on Racism and Interculturalism (NCCRI), both dissolved in 2008. Noting the importance of public participation when it comes to combating discrimination and thus ensuring quality of life for society at large, the Commissioner calls upon the authorities to carefully assess the impact of the measures taken and any merger proposals with a view to ensuring effective operations as well as to providing for stable, long-term planning.
12. The Irish Human Rights Commission (IHRC), established in accordance with the Good Friday Agreement as an independent national human rights institution in line with the Paris Principles, also saw severe cuts in its annual budgets. Despite this challenge the IHRC continues to be recognised for its quality work on the national and international level. Furthermore, it is particularly affected by the current moratorium on the recruitment of public sector positions as the institution continues to operate with a rather limited number of core staff, which cannot be replaced if departures occur. The Commissioner reiterates that human rights bodies must have an operational stability, including in particular a sufficient number of core staff as well as a predictable budget to be able to fulfil their functions. However, other means of strengthening a human rights institution should also be envisaged, for instance by attaching it to the Irish Parliament. Thus, the Commissioner recommends detaching the IHRC from the executive and making the IHRC directly and fully accountable to the Irish Parliament.
13. The Commissioner is particularly concerned by the fact that all national human rights structures are subject to the general rule employed in the public sector, which prohibits any recruitment of staff, even with a view to filling vacancies. The Commissioner reiterates the particular importance of national human rights structures in financial crisis periods, since such bodies assist the government in assessing the consequences of budget decisions. Thus, they provide for a balance by protecting the human rights of vulnerable groups and ensuring social cohesion within society. In view of this crucial function, the Commissioner strongly believes that weakening such national bodies through budget cuts will have detrimental effects, which will be more costly to resolve in a long-term perspective. In order to avoid such undesired results, the Commissioner calls upon the government to make an exemption for the national human rights structures from the current moratorium on recruitment in the public sector.

<sup>14</sup> For statistics, see <http://www.gardaombudsman.ie/gsoc-garda-ombudsman-CaseThroughput-November2010.htm> [11/07/2011].

<sup>15</sup> See IHRC Policy Statement, Human Rights Compliance of *An Garda Síochána*, April 2009.

## II. Fight against discrimination

14. Ireland possesses a robust legal and institutional framework to combat discrimination, racism and xenophobia. However some gaps remain to be filled, among them the ratification of Protocol No. 12 to the European Convention on Human Rights on the general prohibition of discrimination. Furthermore, little progress appears to have been made on certain issues dealt with by the Commissioner during his 2007 visit, and these still need to be effectively addressed.
15. The Commissioner notes with concern that despite the 1992 Supreme Court judgment in the *X* case, still no legislation is in place to set a framework allowing for abortion in limited circumstances where a woman's life is deemed to be in danger because of pregnancy, in compliance with domestic case law and the Irish Constitution.<sup>16</sup> He observes that this lacuna caused the European Court of Human Rights in 2010 to find Ireland in breach of the right to respect for private life as guaranteed in Article 8 of the European Convention on Human Rights.<sup>17</sup> The Commissioner reiterates that the lack of legislation adversely affects women who do not have the financial means to seek medical services outside the country and are therefore particularly vulnerable. He notes that on 16 June 2011 the Government submitted to the Council of Europe Committee of Ministers an action plan for the implementation of the European Court of Human Rights' judgment in the case of *A., B., and C.*<sup>18</sup> The Commissioner noted with interest that according to the action plan, the Government undertook to establish an expert group by November 2011 to make recommendations on how to implement the above judgment. The Commissioner hopes that this expert group will speedily fulfil its mandate and that a coherent legal framework including adequate services will be put in place without delay.
16. The Commissioner welcomed the entry into force of the Civil Partnership Act on 1 January 2011, which gives same-sex couples rights and responsibilities comparable to those of civil marriage. The Commissioner considers this to be an important step towards ending discrimination in this field. However he remains concerned that still no legislative change has taken place to ensure that transgender persons are afforded accurate legal recognition. He notes that Dr. Lydia Foy, who obtained a High Court ruling in her favour in 2002, to date has not been given a birth certificate stating her female gender. He notes with appreciation the commitment expressed by the authorities to introduce legislation based on the report of the Gender Recognition Advisory Group and hopes that this report will be published soon. He trusts that the authorities will speedily proceed to remedy the current lacuna in line with the European Court of Human Rights' case law.<sup>19</sup>
17. The Commissioner commends the continuous efforts made by the authorities to improve the situation of Irish Travellers, not least the establishment of the National Traveller Monitoring & Advisory Committee in March 2007 as a forum for dialogue.<sup>20</sup> While gradual progress was achieved in the field of education and housing, health<sup>21</sup> and political participation and representation<sup>22</sup> remain of concern. In this context, the Commissioner notes that in 2011 the UN independent expert on the question of human rights and extreme poverty urged Ireland to develop a new National Traveller Health

<sup>16</sup> For details see the Report by the Commissioner for Human Rights Mr. Thomas Hammarberg on his visit to Ireland 26 – 30 November 2007, CommDH(2008)9, Strasbourg 30 April 2008, p. 23 ff.

<sup>17</sup> *A. B., and C. v. Ireland*, Grand Chamber judgment of 16 December 2010, application no. 25579/05.

<sup>18</sup> The action plan was published on the website of the Department of Health, see <http://www.dohc.ie/press/releases/2011/20110616.html>

<sup>19</sup> See *B. v. France*, judgment of 25 March 1992, *L. v. Lithuania*, judgment of 11 September 2007, *Christine Goodwin v. UK*, judgment of 11 July 2002.

<sup>20</sup> For the terms of reference and the list of members, see the first report of the National Traveller Monitoring & Advisory Committee to the Minister for Justice, Equality and Law Reform, December 2009, p. 4 ff.

<sup>21</sup> Life expectancy at birth and infant mortality for Travellers are still significantly lower compared with the general population. For details, see All Ireland Traveller Health Study – Our Geels, commissioned by the Department for Health and Children, September 2010, p. 94 f, p. 87.

<sup>22</sup> See Concluding Observations of the Committee on the Elimination of Racial Discrimination, Ireland, CERD/C/IRL/CO/3-4, 4 April 2011, p. 3, no. 14.

Strategy.<sup>23</sup> The Commissioner appreciates the discussion held in June 2011 between members of the Traveller Policy Division of the Department of Justice and Equality and five national Traveller groups about the recognition of the Traveller community as an ethnic minority group, which has been an issue of concern to international mechanisms for years.<sup>24</sup>

18. The Commissioner was informed that recent cuts made in the 2011 budget affect Travellers' education, in particular by reducing teaching hours, posts, and special needs assistance to children. The phasing out of all Senior Traveller Training Centres is also envisaged. Furthermore, he observes that due to a lack of accurate data, very little is known about the situation of the Roma community living in Ireland, which is still faced with a high level of discrimination. An NGO active in the field estimates that only 30% of Roma children in Ireland attend school and that 95% of Roma women in Ireland cannot read or write in any language.<sup>25</sup> The Commissioner also notes with concern that the National Action Plan against Racism (NAPAR) expired in 2008, so far without any replacement even though certain minority communities are reported to have perceived a high level of racial discrimination and abuse in Ireland.<sup>26</sup>
19. The Commissioner underlines that a systematic approach and close co-operation on all levels are key to the effective eradication of discrimination and to combating racism. He thus recommends that the authorities renew or replace the NAPAR and continue to work closely with all social groups particularly vulnerable to discrimination in the context of developing policies to improve their situation. The Commissioner urges the authorities to abstain from downsizing the education programme for Travellers as the mid and long term effects of such measures could render void previous investments and will make future improvements more costly.

### III. Human rights of persons with disabilities

20. The Commissioner is aware that about ten percent of the population in Ireland is living with a disability either since birth or acquired later through illness, accident or violence.<sup>27</sup> With rising life expectancies, it can be assumed that more people will live for some years with disabilities. Consequently, physical and mental barriers must be removed to make societies inclusive and provide equal opportunities for all citizens, not least through appropriate legislation and its implementation.
21. In this context the Commissioner commends the continuous efforts of the Irish authorities in the context of their National Disability Strategy. The Disability Act 2005 and the Education for Persons with Special Needs (EPSEN) Act 2004, as the key pieces of legislation of the National Disability Strategy, oblige all publicly funded bodies to engage in improving the quality of life of people with disabilities. The main elements of the Disability Act 2005 are: the right to an individual needs assessment with a related service statement and redress; access to public buildings, services and information; sectoral plans for key authorities to ensure integral service planning and provision; and the obligation on public bodies to pro-actively employ people with disabilities.
22. The Commissioner is however aware of criticism expressed towards the Disability Act 2005 as providing only for the limited right to a needs assessment rather than grounding disability rights in a

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<sup>23</sup> See Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, Addendum, Mission to Ireland, A/HRC/17/34/Add. 2, 17 May 2011, p. 18.

<sup>24</sup> See Concluding Observations of the Committee on the Elimination of Racial Discrimination, Ireland, CERD/C/IRL/CO/3-4, 4 April 2011, p. 2 f, no. 12; Second Opinion on Ireland, adopted on 6 October 2006, Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, ACFC/OP/II(2006)007.

<sup>25</sup> Irish Travellers and Roma, Shadow Report CERD, Pavee Point Travellers' Centre, January 2011, p. 36.

<sup>26</sup> See the findings that over 50% of Sub-Saharan Africans in Ireland were faced with discrimination, EU-MIDIS: European Union Minorities and Discrimination Survey, Main Results Report, EU Fundamental Rights Agency (FRA), 2009, p. 9.

<sup>27</sup> The 2006 census records 393,785 persons with disabilities living in Ireland, Census 2006:Vol. 11, Disability, Careers and Voluntary Activities, Table 1A, p. 1, Central Statistics Office. Publication of a new census is foreseen for 2012.



justiciable, rights-based approach.<sup>28</sup> Furthermore, it seems that due to the budget crisis, implementation of the above act has been hampered since 2009.

23. On the positive side, administrative structures have been substantially improved by establishing the Health Information and Quality Authority (HIQA) under the Health Act 2007 as an independent body in charge of ensuring quality, safety and accountability in Ireland's health and social care services. Within HIQA the Office of the Chief Inspector of Social Services is responsible for the registration and inspection of all institutions providing residential services as well as for assessing whether such services are in compliance with the standards set by HIQA, such as the National Quality Standards of 2009 concerning residential services for people with disabilities.<sup>29</sup>
24. The Commissioner notes with concern that in the area of mental health, progress has been particularly slow since his November 2007 visit. The mental health strategy "A Vision for Change" adopted in 2006 has been criticised by many for lack of implementation.<sup>30</sup> Meanwhile an in-depth enquiry report of the Irish Human Rights Commission published in 2010, albeit concerning the operation of a particular care centre for persons with intellectual disabilities, lays open numerous structural deficits.<sup>31</sup> The Commissioner is aware that the *Taoiseach*, Ireland's Prime Minister, identified mental health as a key social justice issue during the election campaign. The Commissioner was therefore delighted to learn in his meeting with Minister Alan Shatter and Minister of State Kathleen Lynch about progress achieved in the implementation of the commitments contained in the Programme for Government 2011 – 2016.<sup>32</sup> He encourages the authorities to step up their efforts as pledged, and to close unsuitable psychiatric institutions, move residents to suitable community care, and review the Mental Health Act 2001 in consultation with all stakeholders. A mental Capacity Bill in line with the UN Convention on the Rights of Persons with Disabilities should be introduced as soon as possible as these measures will result in major and long-awaited progress for a highly vulnerable group within Irish society.
25. Furthermore, the Commissioner calls upon the authorities to ensure that measures taken to combat the budget crisis do not have unforeseen effects on vulnerable persons with disabilities. He therefore suggests that all budgetary or structural proposals concerning health care and social services be scrutinised thoroughly to identify and assess their possible impact on people with disabilities and their families prior to any decision.
26. The Commissioner notes that Ireland was among the first countries to sign the Convention on the Rights of Persons with Disabilities already in 2007. However, to date it has not ratified this core international human rights instrument which is in force since 2008 and ratified by 100 states. This lacuna is even more surprising in view of the fact that Ireland is bound by the Revised European Social Charter which in its Article 15 enshrines the right of persons with disabilities to independence, social integration and community participation. Ireland is also party to the International Covenant on Economic Social and Cultural Rights (ICESCR) of which Article 12 provides that states recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Commissioner therefore calls upon the Irish authorities to ratify the UN Convention on the Rights of Persons with Disabilities as a matter of priority. In this context, the review of public health policy currently under way provides an opportunity to assess current legislation and its implementation with a view to moving towards a rights-based approach and to close existing gaps in domestic disability

<sup>28</sup> Disability Rights in Ireland: Chronicle of a Missed Opportunity, Jurgen de Wispelaere & Judy Walsh, Irish Political Studies Vol. 22, No. 4, 517-543, December 2007.

<sup>29</sup> Sections 40, 41, 2 of the Health Act 2007.

<sup>30</sup> For details see Report by the Commissioner for Human Rights Mr. Thomas Hammarberg on his visit to Ireland 26 – 30 November 2007, CommDH(2008)9, Strasbourg 30 April 2008, p. 18.

<sup>31</sup> Enquiry Report on the Human Rights Arising from the Operation of a Residential and Day Care Centre for Persons with a Severe to Profound Intellectual Disability, IHRC, March 2010.

<sup>32</sup> Towards Recovery, Programme for a National Government 2011-2016, Mental Health, p. 7.

and health legislation. The Council of Europe Disability Action Plan 2006 – 2015<sup>33</sup> could be usefully drawn upon and serve as a guide for the implementation of disability-related policies.

#### IV. Human rights of older people

27. The Commissioner recalls that the human rights of older people must be acknowledged in daily life. While many elderly persons stay healthy and fit and wish to participate in public life or continue their professional activities, others become fragile and thus vulnerable. A human rights based society must provide opportunities enabling older people to lead a decent life and play an active part in public life, as well as protection of the aging individual, as provided for by Article 23 of the Revised European Social Charter. The more the aging population increases, the more important it becomes that social protection systems, health care, housing policies and also anti-discrimination legislation including in the labour market, are suitable for older people.
28. Care-taking of the elderly is in focus as more people will be in need of it, while costs are raising and budgets are being tightened. In some countries this has already lead to a crisis of privately run care homes where underfunding has led to reduced services.<sup>34</sup> This trend is particularly worrisome as residents in care homes are often vulnerable and thus less able to claim their rights, let alone to defend themselves against abuse. The Commissioner is aware of investigations into allegations of serious physical and verbal abuse of elderly residents of a south Dublin nursing home<sup>35</sup> and trusts that such investigations will be conducted also with a view to drawing general lessons on how to better protect residents of care homes in the future. He welcomes the intent of the authorities to introduce whistle blower legislation, protecting staff members of such homes from negative consequences when reporting substandard conditions or abuse.<sup>36</sup> The Commissioner stresses that an adequate number of skilled staff as well as training opportunities are core to providing a safe environment for the elderly.
29. The Commissioner is well aware of the ongoing discussion of the apparently very harsh conditions under which women and girls resided in the church-run Magdalene Laundries institutions<sup>37</sup> in the past. He notes that in 2010 the IHRC called for a statutory investigation into the matter,<sup>38</sup> as well as the grave concern expressed in 2011 by the UN Committee against Torture. The Committee stated that Ireland failed to protect girls and women who were involuntarily confined between 1922 and 1996 in the Magdalene Laundries, by failing to regulate their operation and inspect them. It is alleged that physical and emotional abuse and other ill-treatment were committed, amounting to breaches of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee also expressed grave concern at the failure by Ireland to institute prompt, independent and thorough investigations into the allegations of ill-treatment perpetrated on girls and women in the Magdalene Laundries.<sup>39</sup>
30. The Commissioner welcomes the decision of the Government to establish an inter-departmental committee as a first step to fully establishing the facts, as well as the willingness of the four religious

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<sup>33</sup> Available under [http://www.coe.int/t/e/social\\_cohesion/soc-sp/integration/02\\_council\\_of\\_europe\\_disability\\_action\\_plan/Council\\_of\\_Europe\\_Disability\\_Action\\_Plan.asp](http://www.coe.int/t/e/social_cohesion/soc-sp/integration/02_council_of_europe_disability_action_plan/Council_of_Europe_Disability_Action_Plan.asp) [07/07/2011].

<sup>34</sup> See "Austerity budgets tend to victimize the most vulnerable", Human Rights Comment of the Commissioner for Human Rights, 14 June 2011.

<sup>35</sup> See "Nursing home residents beaten, kicked, abused, say care workers", Irish Times, 9 June 2011, <http://www.irishtimes.com/newspaper/archive/2011/0609/Pg001.html#Ar00101:49D42B4D6438> [07/07/2011].

<sup>36</sup> In the context of whistle blowing, the European Court of Human Rights recently issued a judgment, stressing the public interest in disclosing information to better protect elderly patients, a particularly vulnerable group of society, see *Heinisch v. Germany*, judgment of 21 July 2011, application no. 28274/08 (not yet final), paras 71, 91.

<sup>37</sup> For information, see IHRC Assessment of the Human Rights Issues Arising in relation to the "Magdalen Laundries", November 2010.

<sup>38</sup> *Ibid.*, p. 29.

<sup>39</sup> Concluding observations of the UN Committee against Torture (UN-CAT), Forty-sixth session 9 May-3 June 2011, no. 21

congregations involved to collaborate in the matter. In view of the age of the women affected, the Commissioner encourages the authorities to speed up the procedures and quickly put in place a restorative and reconciliation process.

## V. Children's rights

31. Children's rights have been in the focus of public debate in Ireland over the past years, with the Government aiming at reducing child poverty and raising standards in education through the National Action Plan for Social Inclusion 2007 – 2016. Despite substantial progress made up until the financial crisis, children continue to be the group most at risk of poverty in Ireland, with single parent families in particular struggling to ensure basic means. According to official data, 18.6% of children are at risk of poverty, with 8.7% of children living in consistent poverty in 2009, which is an increase of 38% in comparison to 2008.<sup>40</sup> The Commissioner is concerned that budgetary measures resulting in reduced child benefit and funding of public services in core areas like health care and education, along with the introduction a charge of € 0,50 on all prescribed medicines will affect families to the detriment of their children. NGOs informed the Commissioner that children with special educational needs, with English as a second language and Traveller children have been particularly affected.
32. The Commissioner calls upon the government to ensure that budgetary measures taken or foreseen will not contradict the achievements and goals of the National Action Plan for Social Inclusion. He reminds the authorities of their responsibilities under the UN Convention on the Rights of the Child (CRC), not least its Article 27 obliging state parties to recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. The Commissioner trusts that the development of the new National Children's Strategy 2012 – 2017 will take due account of international human rights standards. Furthermore, he welcomes the elevation of the post of the Minister for Children and Youth Affairs to a full ministry and the establishment of the new Department of Children and Youth Affairs as well as the creation of a Child and Family Support Agency to improve child welfare and protection services.
33. The Commissioner is aware of the express intent of the current government to hold a referendum on children's rights. Since the 2006 recommendation of the UN Committee on the Rights of the Child<sup>41</sup> to give the "best interests of the child" principle constitutional status, government initiatives for a respective referendum have stimulated broad and critical discussion in Irish society. The Commissioner commends this discussion and in particular the continuous work of the Joint Committee on the Constitutional Amendment on Children. He believes that the third and final report of the Joint Committee<sup>42</sup> provides an excellent basis for informed discourse and parliamentary decision. He hopes that the Committee's key recommendation to amend the Irish Constitution introducing an article that would ensure better protection of the rights of the child will be followed and a referendum will be held soon. He takes note of the Committee's proposal for a new Article 42, explicitly incorporating the principle of the best interests of the child into the resolution of all disputes concerning guardianship, adoption, custody, care or upbringing of a child, as well as in adoption matters.<sup>43</sup> While in principle appreciating this proposal as a major step forward towards better child protection, the Commissioner recalls the underlying rights-based approach of the UN Child Rights Convention. He therefore reiterates his 2008 recommendation to incorporate into the constitutional amendment the best interests of the child as a general principle, not limited to dispute resolution, in line with the UN Convention.

<sup>40</sup> Survey on Income and Living Conditions 2009, Central Statistics Office, Nov. 2010, pp. 35, 77.

<sup>41</sup> UN Committee on the Rights of the Child Concluding Observations on Ireland, 29 September 2006, CRC/C/IRL/CO/2.

<sup>42</sup> Joint Committee on the Constitutional Amendment on Children, Third Report, Twenty-eight Amendment of the Constitution Bill 2007, Proposal for a constitutional amendment to strengthen children's rights, Final Report, February 2010.

<sup>43</sup> See proposed Article 42, nos. 3 and 5.

34. Following the discussion in Ireland, the Commissioner believes that the time is right to unconditionally ban corporal punishment and abolish the much criticised common law defence of “reasonable chastisement”. In this context, the Commissioner recalls that the European Committee on Social Rights found Ireland in breach of Article 17 of the Revised Social Charter already in December 2004<sup>44</sup>, and that the UN Committee on the Rights of the Child reiterated its previous recommendations to ban all forms of corporal punishment including within the family.<sup>45</sup> The Commissioner is convinced that fears are unfounded that such a ban would lead to the criminal prosecution of parents on a large scale, as judicial authorities enjoy a margin of discretion. A complete ban would send a strong signal of respect for children to society at large and would bring Ireland into line with its international obligations.
35. In his meeting with the Ombudsman for Children, the Commissioner learned about progress made in the field of juvenile justice, diverting children away from the criminal justice system. He invites the Irish authorities to further reform the juvenile justice system, aligning it fully with international and European standards. Prevention of juvenile offending and diversion or restorative justice are elements to be considered in this process. In this context, the Commissioner’s Issue Paper on juvenile justice may be a source of inspiration.<sup>46</sup> The Commissioner further highlights that detention of children can only be used as a measure of last resort and for the shortest possible period of time.
36. He appreciates the express commitment of the new government to end the ongoing imprisonment of children in St. Patrick’s institution, an outdated prison facility the Commissioner had visited in 2007. It is part of the Mountjoy prison complex in Dublin dating back to 1850, where 16 and 17 year old boys are detained, but young adults up to the age of 21 are also kept. The Commissioner appreciates the plans of the authorities to further develop the Children Detention School model and to provide for sufficient capacity in Lusk, where three detention schools are already located. He is however concerned that no time frame has been given as to when the St. Patrick’s children will be moved to Lusk. In view of already existing structures, the Commissioner recommends that the authorities start phasing out St. Patrick’s immediately by moving a pilot group to Lusk and integrate the experience made into the planning process for the enhancement of the detention schools.

## **VI. Human rights of migrants including asylum-seekers**

37. Over the last few years, due to its fast growing economy, Ireland has become a country of net immigration, a development that called for an overhaul of the outdated immigration framework. Asylum legislation and procedures are complex and lengthy as no single protection determination procedure is in place. The Immigration, Residence and Protection Bill introduced in 2008 and its 2010 revision sought to address these deficits. However, comprehensive reform is still pending. An NGO active in the field informed the Commissioner that every year about 2 000 people seek their assistance mainly regarding issues of family reunion, long term residence, access to employment for spouses/dependents and in particular access to social protection. Of particular concern is the application of the Habitual Residence Condition (HRC) to migrants, as problems seem to have increased greatly since the economic recession. The HRC requires everybody applying for social welfare payments and child benefit to show a connection to the state. Decisions are made by an assessment of this condition based on five factors, including length and continuity of migrants’ residence in Ireland or in any other particular country and the nature and pattern of employment.<sup>47</sup> Although an exemption applies for EU citizens, this exemption seems to be applied unevenly forcing

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<sup>44</sup> World Organisation against Torture (OMCT) v. Ireland, decision on the merits, 7 December 2004, complaint no. 18/2003.

<sup>45</sup> UN Committee on the Rights of the Child Concluding Observations on Ireland, 29 September 2006, CRC/C/IRL/CO/2.

<sup>46</sup> “Children and juvenile justice: proposals for improvements”, Commissioner for Human Rights Issue Paper, CommDH/IssuePaper(2009)1, 19/06/2009.

<sup>47</sup> The remaining three other factors are length and purpose of any absence from Ireland, applicant’s main centre of interest and future intention of applicant concerned as they appear from all circumstances.

applicants into lengthy appeal procedures, and returning Irish citizens have also been affected.<sup>48</sup> The Commissioner notes that new guidelines on the proper application of the HRC and its five factors were issued on 17 June 2011<sup>49</sup> and hopes that they will remedy the situation.

38. During his visit the Commissioner learned about the significant progress made in the care of separated children seeking asylum who are now being placed into mainstream care mainly using foster services. He believes that assigning a guardian *ad litem* would complete this positive development and serve as an additional safeguard against the high risk of being trafficked which these vulnerable children otherwise run.
39. During his meeting with Minister Alan Shatter, the Commissioner expressed his concern about the overall length of asylum procedures under the current dual system which is unique among the 27 EU member states. While refugee status is determined by the Office of the Refugee Applications Commissioner, with an average processing time of eight to ten weeks for non-prioritised cases in 2010,<sup>50</sup> subsidiary protection and leave to remain is assessed by the Department of Justice. According to a UNHCR case file analysis, applicants have waited on average four years from their application for refugee status until being granted subsidiary protection.<sup>51</sup> During this period, they are provided with accommodation in accordance with a direct provision and dispersal system which was introduced in 2000. Thus applicants stay for years in reception centres where their basic needs are met and also receive a weekly allowance of € 19.10 per adult and € 9.60 per child. UNHCR as well as an NGO have criticised this system, originally designed for stays up to six months, for its negative consequences regarding mental health, family relationships and integration prospects.<sup>52</sup> The Commissioner was thus delighted to be informed by the Minister of Justice that work on comprehensive legislation to introduce a single procedure and arrive at greater transparency of decisions with a view to substantially decreasing the amount of time necessary for a final decision will continue.

## VII. Conclusions and recommendations

### *National system for promoting and protecting human rights*

40. The Commissioner warmly welcomes the ratification by Ireland of the Council of Europe Convention on Action against Trafficking in Human Beings and its implementation into domestic law. He urges the authorities to ensure that this important step is not contradicted by undesired effects of possible budget cuts affecting preventive and supportive mechanisms and programmes.
41. Acknowledging the numerous measures already in place to combat violence at home, the Commissioner encourages the authorities to speedily sign and ratify the new Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence to serve as a role model in this respect.

<sup>48</sup> For details see Submission to the Joint Oireachtas Committee on Social Protection on the Habitual Residence Condition and returned emigrants, Crosscare, October 2010, available under [http://www.migrantproject.ie/documents/CrosscareSubmissiontotheJointOireachtasCommitteeonSocialProtectionontheHabitualResidence\\_000.pdf](http://www.migrantproject.ie/documents/CrosscareSubmissiontotheJointOireachtasCommitteeonSocialProtectionontheHabitualResidence_000.pdf) [1/07/2011]

<sup>49</sup> <http://www.welfare.ie/EN/OperationalGuidelines/Pages/habres.aspx> [07/07/2011].

<sup>50</sup> Annual Report 2010, Office of the Refugee Applications Commissioner, published 4 July, available under [www.orac.ie](http://www.orac.ie).

<sup>51</sup> Submission by the UN High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: Ireland, p. 3, available under [http://www.unhcr.org/refworld/country,...\\_IRL,,4d8867982,0.html](http://www.unhcr.org/refworld/country,..._IRL,,4d8867982,0.html) [07/07/2011].

<sup>52</sup> As of December 2010, more than 40 % of the 6 112 residents in direct provision accommodation centres had been living there for three years or more, *ibid.*, see also "One size doesn't fit all", A legal analysis of the direct provision and dispersal system in Ireland, 10 years on, FLAC, November 2009.

42. The Commissioner welcomes the expressed intent of the Irish Government to proceed with the ratification of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT). In this context the Commissioner encourages the authorities to make more efficient use of their national human rights protection structures already in place. The mandate of the Ombudsman for Children should be enhanced to cover individual complaints from juvenile offenders while they are imprisoned.
43. Enhancing the effectiveness and independence of existing human rights bodies is core to human rights protection in times of budget cuts, in particular if no human rights action plan is in place to provide guidance for decision makers and society alike. As such bodies provide for a balance, ensuring social cohesion, they should be exempted from the current moratorium on recruitment in the public sector.
44. Recalling the Paris Principles, the Commissioner recommends promoting the independence of the Irish Human Rights Commission (IHRC) by detaching it from the executive and submitting it to direct parliamentary control, including as regards its budget.
45. The Commissioner notes with concern the cuts made to the budget of the Equality Authority and calls upon the government to carefully assess the impact of current and future budgetary and structural decisions on the core functions of this body as well as on public participation and the need for stable long term planning.
46. The Commissioner is aware that the Garda Síochána Ombudsman Commission (GSOC) is overburdened mainly due to complaints that ought to be resolved through structural or disciplinary measures rather than requiring criminal sanctions. The Commissioner recommends proceeding with the utmost care when considering proposals to refer cases back to the police force for investigations in order not to risk the reputation of this still very young police complaints mechanism which may serve as a role model across Europe.

#### *Fight against discrimination*

47. The Commissioner welcomes the commitment of the Irish authorities to combating all forms of discrimination and racism. He encourages the government to step up efforts and improve data collection on racist and xenophobic incidents as well as to broaden the basis for in-depth research on underlying motives. He further believes that ratification by Ireland of Protocol No. 12 to the ECHR on the general prohibition of discrimination would send a strong signal across Europe.
48. The Commissioner reiterates his previous recommendation to clarify the scope of legal abortions through a coherent legal framework including adequate services in line with domestic jurisprudence and the European Court of Human Rights case law without further delay.
49. The Commissioner welcomes the express commitment of the Irish authorities to introducing appropriate legislation on transgender issues based on the report of the Gender Recognition Advisory Group soon to be published. He calls upon the government to ensure without further delay that transgender persons can obtain a birth certificate reflecting their actual gender.
50. The Commissioner reiterates that close co-operation with Travellers and their participation in political decision-making is imperative to ensure the success of policies and programmes designed for Travellers. In this context, he calls upon the government to assess carefully all budgetary cuts in order to avoid any undesired effects on health and housing programmes as well as to abstain from any cuts in the Travellers' education budget. The Commissioner recommends that the authorities strengthen their efforts to effectively combat discrimination, and in particular racism, and renew or replace the 2008 National Action Plan against Racism (NAPAR).

*Human rights of persons with disabilities*

51. The Commissioner commends certain progress made in the context of the National Disability Strategy including the mental health strategy “A Vision for Change” but remains concerned at the slow pace of its implementation. He recommends proceeding with the mental capacity draft law without further delay as well as a systematic review of current mental health legislation, ensuring the participation of all stakeholders and effective compliance with international standards. In this context, the Commissioner recommends reviewing domestic disability and health legislation with a view to moving towards a rights-based approach and closing existing gaps. Furthermore, he strongly encourages the Irish government to sign and ratify promptly the UN Convention on the Rights of Persons with Disabilities, a core instrument for the protection of persons with disabilities.
52. As a safeguard against unforeseen and unwanted effects of budget decisions, the Commissioner recommends that the authorities put a mechanism in place to ensure that all budget or structural proposals concerning health care and social services are scrutinised thoroughly to identify and assess their possible impact on people with disabilities and their families prior to any decision.

*Human rights of older people*

53. The Commissioner welcomes the commitment of the Irish Government to investing in more and better care for older people. He recommends scrutinising social protection, health care and housing policies with a view to ensuring the full participation of older people and thus enhancing suitability. The Commissioner is aware of the particular vulnerability of older people requiring care and underlines the importance of an adequate number of skilled staff as well as strengthening existing control mechanisms and ensuring regular inspections in all care institutions.
54. In view of the age of the women having resided in the Magdalene Laundries, the Commissioner strongly encourages the authorities to put a restorative and reconciliation process in place without further delay.

*Children’s rights*

55. The Commissioner welcomes the continuing discussion of an amendment to the Irish Constitution to enshrine and thereby enhance the protection of children’s rights. He believes that the time is right for such an amendment to incorporate the best interests of the child as a general principle in the Irish Constitution, in line with the UN Convention on the Rights of the Child. Furthermore, he reiterates his recommendation for an outright ban of corporal punishment of children, implementing agreed European and international standards.
56. The Commissioner strongly welcomes the commitment of the Irish authorities to developing further the system of alternative sanctions for juvenile delinquents and to apply the Children Detention School model also to 16 and 17 year old children once appropriate structures are in place. He recommends that the authorities begin immediately with a pilot group from St. Patrick’s institution to speed up the process and end the imprisonment of children in adult facilities.

*Human rights of migrants including asylum-seekers*

57. The Commissioner is concerned at the lack of an overhaul of the overly complex asylum and immigration system. He urges the Irish authorities to complete work on current draft legislation with a view to ensuring transparent, speedy decision-making subject to judicial review, taking into account internationally agreed principles, such as the right to respect for family life and the best interests of the child. In this context, the Commissioner welcomes the progress made for separated asylum-seeking children, placing them into mainstream care and reiterates his previous recommendation to assign a guardian *ad litem* to each separated child as an additional safeguard to combat trafficking in human beings.

## **APPENDIX**

### **IRISH OBSERVATIONS ON THE REPORT BY THE COMMISSIONER FOR HUMAN RIGHTS, MR. THOMAS HAMMARBERG, ON HIS VISIT TO IRELAND, 1-2 June 2011**

As a founding member of the Council of Europe, the promotion and protection of human rights is a priority for Ireland, both domestically and on the international stage. Ireland strongly supports the work of the Council and attaches the highest importance to its efforts in the core areas of human rights, democracy and the rule of law.

Ireland thanks the Commissioner for his constructive and helpful report and is grateful for his kind words on the quality of co-operation received. The Irish authorities will give careful attention to the report's recommendations, which will aid their ongoing work to identify and implement improvements in protection of the human rights of all citizens of and residents in Ireland.

In its programme, the Government for National Recovery, which took office on 9 March 2011, committed itself to "protecting the vulnerable and to burden-sharing on an equitable basis". It also said it would "strive to ensure that every one of our citizens has an effective right, free from discrimination, to contribute to the economic, social and cultural life of the nation."

Ireland looks forward to continued cooperation with the Commissioner for Human Rights in the future.

Ireland would like to take this opportunity to make the following observations.



## Comments

The comments refer to individual passages in the Commissioner's report; the numbering corresponds to the numbering of the relevant sections and paragraphs of the report.

Comments and statements on individual recommendations can be found under the sections to which the recommendations refer.

### **I. National system for promoting and protecting human rights**

#### **(Report paragraphs nos. 6-13; recommendations nos. 40-46)**

*Paragraph 9 (and 36 and recommendation 56):*

The Minister for Justice and Equality shares the Commissioner's view that all children in detention must have the same right of access to an independent complaints mechanism.

The Minister notes the views of the Commissioner on the remit of the Ombudsman for Children but has a difference of view on how access to an independent complaints mechanism should be achieved for different categories of children in detention. At present, the Ombudsman for Children may receive individual complaints from juvenile offenders in the detention schools in Oberstown (males under the age of 16 and females under the age of 18). This does not apply to young offenders detained in St Patrick's Institution (males aged 16 and 17 years old) on the grounds that it accommodates both children and adults and already comes under the remit of the independent Inspector of Prisons, as well as the visiting committee for this institution.

It is Government policy to end the practice of detaining 16 and 17 year olds in St Patrick's Institution. This will be achieved by carrying out the necessary redevelopment of the Oberstown detention school campus. By its nature, this project will take a number of years to complete, even if financial approval is granted. When this has been achieved, all children in detention will be in custody in Oberstown and will come under the remit of the Ombudsman for Children. The question of funding for the Oberstown redevelopment project is to be addressed later this year in the context of the Government capital expenditure review.

*Paragraph 10 and recommendation 46:*

The Garda Síochána Ombudsman Commission (GSOC) was established under the Garda Síochána Act 2005 as the mechanism for independent oversight of policing in Ireland. Ireland is pleased that the Human Rights Commissioner of the Council of Europe is of the view that GSOC can serve as a role model for such bodies across Europe.

GSOC currently has 87 staff, 35 of whom are investigators with statutory powers. Its budget is approximately €9m annually and Ireland is of the view that this level of resources is sufficient to enable GSOC to fully discharge its role.

It is acknowledged that because of the level of complaints and referrals made to GSOC, there is an accumulation of complaints and investigations awaiting decision and completion. Concerted efforts have been made to address this issue but it is likely to remain a challenge. In this context GSOC has made proposals for amendments to the Garda Síochána Act 2005, including a proposal to permit it to refer a wider range of complaints to the Garda Commissioner for investigation. It should be made clear at this point however, that it does not propose to send to the Garda Síochána any matter where it believes a criminal offence is disclosed, but rather those where, on balance, the likely outcome would be that the matter would be dealt with under the disciplinary procedures rather than the criminal process.

These proposals are still under consideration. No decision has been taken as to whether, or to what extent, any such changes will be made. In coming to a decision the Government will bear in mind both the case made by the Ombudsman Commission for the changes and any counterbalancing considerations, including the recommendations in Mr Hammarberg's report.

*Paragraph 11:*

The Government of Ireland has no proposals to merge the Equality Authority and the National Disability Authority.

## **II. Fight against discrimination**

### **(Report paragraphs nos. 14-19, recommendations nos. 47-50)**

*Paragraph 17:*

The 2009 report of the National Traveller Monitoring and Advisory Committee<sup>53</sup> gave extensive consideration to the question of recognising Travellers as a distinct ethnic group. The 2009 Report stated that “Some members of the committee felt that it was debatable as to whether the majority of Travellers would welcome such a development and that it could serve to further marginalise Travellers”. The Committee recommended that the “Government should open discussions with these groups on Traveller ethnicity with a view to exploring ways in which this issue can be progressed”.

In light of this recommendation the Traveller Policy Division of the Department of Justice & Equality has had initial discussions with the five National Traveller Groups about ethnicity. These discussions have shown that there is a divergence of opinion among Irish Travellers as to whether they wish to be recognised as a distinct ethnic group. There is a need for discussions to take place in the Traveller community around this issue and for full consideration to be given to the implications and consequences of any such recognition.

This matter was also discussed at a seminar on Ireland’s Third State Report under the Council of Europe Framework Convention on the Protection of National Minorities, which took place in

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<sup>53</sup> This Committee includes individuals drawn from different sectors, such as Traveller organisations, individual Traveller nominees and government departments.

November 2010. A number of individuals from the Travelling community voiced their opinions both for and against declaring Travellers to be a distinct ethnic group. While there was much disagreement among those present it was agreed that a national discussion amongst Travellers must be instigated in order to make a final determination on the issue.

*Recommendation 50:*

A key aspect of Government strategy in relation to Travellers is an integrated approach among agencies operating under the County and City Development Boards. This approach is outlined in the Report of the High Level Group on Traveller Issues which also includes the following priority recommendation:

“To ensure effective consultation between Travellers, Traveller Organisations and statutory bodies to support the development of interagency cooperation and to facilitate improved communications, including conflict resolution, at national, regional and local level.”

In addition to the High Level Group, which focussed particularly on the effective functioning of state agencies, a National Traveller Monitoring and Advisory Committee (NTMAC) was established in March 2007. This committee replaced the Traveller Monitoring Committee which reported on implementation of the 1995 Task Force Report. The NTMAC provides a broadly based and inclusive forum for dialogue between the relevant social partners. Its establishment followed on a commitment in the national partnership agreement, *Towards 2016*, to give concentrated attention to achieving greater progress for Travellers. The NTMAC, which includes four national Traveller organisations along with a number of prominent individual Traveller representatives, has a specific remit to advise on policy in relation to the Traveller Community, and in this regard presented its first report to the Minister in 2010. The committee has an essential input to the ongoing process of improving and refining the effective delivery of supports and services to the Traveller Community.

### **III. Human rights of persons with disabilities**

#### **(Report paragraphs nos. 20-26, recommendations nos. 51-52)**

Ireland welcomes the Commissioner’s positive comments in relation to the National Disability Strategy, the review of the Mental Health Act 2001 and the establishment of the Health Information and Quality Authority.

A Review of the Efficiency and Effectiveness of Disability Services in Ireland is being undertaken. A Steering Group has been established and the objective of the review is to make recommendations that will ensure that the very substantial funding provided for specialist health and personal social disability services is used to maximum benefit.

As part of the overall review, a separate Expert Reference Group was established to look specifically at disability policy. The group’s report proposes what would be a very significant reframing of specialist disability services with a move to individualised supports and the

introduction of individualised budgeting for people with disabilities in order to provide more choice and control. The Report has been circulated to other Departments for their views prior to it being issued for public consultation.

*Paragraphs 23 and 24:*

The National Quality Standards for Residential Services for People with Disabilities developed by the Health Information and Quality Authority (HIQA) clearly set out what a quality, safe residential service for people with disabilities should be and support the delivery of person-centred care in this sector. The Programme for Government includes a commitment to put these standards on a statutory footing and ensure that services are inspected by the Authority. On 16 June 2011, the Minister of State with responsibility for Disability, Older People, Equality and Mental Health announced that she had begun discussions with Health Information and Quality Authority to make progress on this commitment.

*Paragraph 24 and Recommendation 51:*

The Government is committed to a review of the Mental Health Act 2001 which will be informed by human rights standards. In this regard a wide ranging public consultation seeking the views of the public and relevant interested groups/parties will be launched in September 2011.

*Paragraph 25 and Recommendation 52:*

Expenditure on specialist health and personal social services for people with a disability in 2011 will be around €1.5 billion. Special consideration was given to disability and mental health in Budget 2011 through a maximum reduction of just 1.8% in the allocation for the two sectors. The relatively lower reduction of 1.8%, compared to other areas of the health budget, recognizes that these services are provided to vulnerable groups and should help to ensure that existing services are maintained and that priority is given to the delivery of frontline services. Service providers have been asked to work closely together throughout 2011 to ensure the maximum delivery of services in an efficient and effective manner, with priority being given to those in greatest need.

The Health Service Executive was provided with an additional €10m for disability services in 2011 to provide for the anticipated extra demand in emergency residential, respite and personal assistant/home support hours for people with disabilities and day places for school leavers in September 2011.

*Paragraph 26 and recommendation 51:*

It is the Government's intention to ratify the UN Convention on the Rights of Persons with Disabilities (UNCPRD) as quickly as possible, taking into account the need to ensure that all necessary legislative and administrative requirements under the Convention are being met. Ireland does not become party to treaties until it is first in a position to comply with the obligations imposed by the treaty in question, including by amending domestic law as necessary.

The National Disability Strategy comprehends many of the provisions of the UNCRPD. A high-level inter-departmental implementation group, under the chairmanship of the Disability Policy Division of the Department of Justice and Equality, advises on and monitors any changes to legislation, policies, programmes and schemes that may be required to enable ratification of the Convention. The group has developed a programme, on which work is progressing, to address the matters that need to be aligned with the UNCRPD. At the request of the inter-departmental group, the National Disability Authority is preparing an independent advice paper in this respect, the first draft of which is currently being examined.

#### **IV. Children's Rights**

**(Report paragraphs nos. 31-36, recommendations nos. 55-56)**

*Paragraph 36 and recommendation 56:*

The recommendation to move a pilot group from St Patrick's Institution to Oberstown would require a change in the legal designation of the Oberstown detention schools, as well as transparent and legally robust criteria for the selection of young offenders from St Patrick's who might be suitable for such a pilot group. It would also have to have regard to the need to ensure that adequate capacity remains in place in Oberstown to cope with all children under the age of 16 who might be referred to the campus. In all circumstances, it would be essential to prevent the need to send back a young offender from Oberstown to St Patrick's in the event of an increase in court referrals of children under 16. The question of the optimum use of any spare room capacity in the Oberstown campus is kept under review on an ongoing basis and the Commissioner's recommendation is noted.

Please also see above under the comment for paragraph 9 on the Oberstown campus development.

#### **V. Human rights of migrants including asylum-seekers**

**(Report paragraphs nos. 37-39, recommendation no. 57)**

*Paragraph 38 and recommendation 57:*

The Health Service Executive (HSE) has responsibility for children under Section 5 of the Child Care Act 1991. All newly arriving young people (aged 18 years or under), both male and female, are placed in residential children's services. They are allocated a professional social worker on arrival who, together with the social care staff, undertakes a multi-disciplinary assessment. If a child or young person is a suspected victim of trafficking further appropriate assessment and supports are put in place. Children and young people are not "detained"; however, they are provided with supervision and support, and if a child or young person is identified as a flight risk additional supports and supervision are put in place. Medical

assessment is undertaken and referral to specialist medical services is made if required. A psychologist is also available should the young person require an immediate intervention.

When the young person moves to a foster family, referrals are made to on-going support services in the areas where the young person is living. An application for asylum is commenced as soon as is practical and when appropriate for the young person. It is HSE policy to notify all cases of suspected child trafficking to the local Garda Síochána service and the Garda National Immigration Bureau. The HSE will take out a Court Order for a child where this is deemed necessary. A guardian *ad litem* is appointed by the Courts (not the HSE) and it is the Judge who decides if a guardian *ad litem* will be appointed and who it will be.

*Paragraph 39 and recommendation 57:*

On the issue of delays, it should be noted that the median processing time for a final decision by the Minister on an asylum application in the 12 month period to the end of July 2011 was 10 months. Some cases can take significantly longer to complete due to, for example, delays arising from medical issues or because of judicial review proceedings. All asylum applications and appeals are processed in accordance with the Refugee Act 1996 and high quality and fair decision-making in all cases continues to be a key priority at all stages of the asylum process.

Persons who are refused refugee status enter what is commonly referred to as the "leave to remain" process which generally has two elements to it, an application for subsidiary protection and further consideration to be given under Section 3 of the Immigration Act 1999 (as amended) as to why the person should be granted leave to remain. This is separate to the asylum or refugee status determination process. The processing of cases at this point is complex and extremely resource intensive given that where an application for subsidiary protection is lodged in addition to representations for consideration under Section 3 of the Immigration Act 1999 (as amended), the subsidiary protection application must be considered first to assess whether the applicant has an identifiable need for international protection. The investigation of such applications requires a fresh examination of the entire asylum file, the documentation and country of origin information submitted in support of the application, as well as an examination of objective, reputable, up to date country of origin information before a conclusion can be arrived at as to whether or not the applicant is likely to be exposed to 'serious harm' if returned to his/her country of origin. Where such an application is refused, consideration must then be given to the case in accordance with the provisions of Section 3 of the Immigration Act 1999 (as amended), at which point the Minister must make a decision whether or not to make a deportation order in respect of the person.

All of this must be done in strict compliance with the Constitution, together with relevant international law including the European Convention on Human Rights. It will be seen that these are not quick or easy decisions to make and, given the life changing consequences for the persons involved, these are decisions which must be taken with the most scrupulous care and attention. Steps have been taken to speed up the processing of these applications by redeploying staff from the refugee determination bodies primarily.

The Immigration, Residence and Protection Bill 2010, which is currently before the Parliament,

provides for the introduction of a single procedure to determine applications for protection and other reasons to remain in the State. This re-organisation of the protection application processing framework should substantially simplify and streamline the existing arrangements by removing the current multi-layered and sequential processes and provide applicants with a final decision on their application in a more straight-forward and timely fashion.

*ENDS*