

NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

IRELAND, Situation as of 31 December 2005

General Overview

Preliminary Note: this table is accompanied by an explanatory note

COUNTRY:	Constitutional provisions	Specific Legislation	Criminal Law	Civil and Administrative Law	Other jurisdictions
IRELAND					
Norms concerning discrimination in general	Article 40.1.	Prohibition of Incitement to Hatred Act 1989. Unfair Dismissals Acts 1977 to 1993. Employment Equality Act 1998 Equal Status Act 2000	Prohibition of Incitement to Hatred Act 1989. Video Recordings Act 1989. Hotel Proprietors Act 1963. Genocide Act 1973. Employment Equality Act 1998 Equal Status Act 2000	Unfair Dismissals Acts 1977 to 1993. Video Recordings Act 1989. Hotel Proprietors Act 1963. Employment Equality Act 1998 Equal Status Act 2000 Broadcasting Act 2001	No.
Norms concerning	No.	No.	No	No.	No.

racism					
Relevant jurisprudence	Yes.	Yes..	No	No.	No.

EXPLANATORY NOTE

IRELAND / GENERAL OVERVIEW

The history of Ireland is to an important degree a history of strife and discrimination between religious denominations. The founding of Ireland was strongly marked by this dispute and efforts to overcome it, especially in the context of relations with Northern Ireland and the United Kingdom as a whole, are still of great importance today.

Racial discrimination, on the other hand, has never been seen as having the same importance in Ireland. This is largely due to the racial homogeneity of the Irish population. The influential religious division is between Catholic and Protestant Christians of very similar ethnic origins. Constitutional and legislative guarantees against discrimination on the basis of faith and religion are essentially aimed at these two denominations, as other religions are scarcely represented in Ireland. Discrimination against the small number of residents of foreign origin does not have marked political consequences. However, it should be mentioned that it is in respect of the so called travelling community, that the greatest level of non-religious discrimination has been experienced in Ireland. The travelling community in Ireland is in fact not descended from the ethnic group known as Romany, but was originally formed by members of the majority Irish community who wished to adopt an itinerant way of life¹.

The government of Ireland attempted to address discrimination against the travelling community as well as other vulnerable groups by means of two recent bills. The first was the Employment Equality Bill 1997, aimed at outlawing discrimination in the field of employment. The second concerned the Equal Status Bill 1997 which had the purpose of outlawing discrimination in the provision of goods, premises and services, including education, transport and recreational facilities. Both bills refer to the issue of racial discrimination. For example, sections 6(1) and 6(2)(h) of the Employment Equality Bill determined that discrimination shall occur where a person is treated less favourably than another due to the fact that they are of different race, colour, nationality or ethnic or national origins². Moreover, membership of the travelling community were legally recognised as a distinguishing characteristic, allowing travellers to benefit from the protection of the legislation. For example, section 33(1) of the Employment Equality Bill stated that the prohibition of discrimination in employment shall not prevent the taking of measures intended to reduce or eliminate the effects of discrimination against (inter alia) the members of the travelling community.

The Employment Equality Act 1998 came into force on the 18th October 1999, and was amended on the 25th October 2004 by the Equality Act 2004. The Equal Status Act 2000 came into force on the 25th October 2000. It was amended by the Equality

Act 2004 on the 19th July 2004. The Equality Act 2004 came into effect on the 18th July 2004.

The Equality Act 2004 seeks to implement the provisions of the amended Gender Equal Treatment Framework, Framework Employment Directive and Race directive³. The Employment Equality Acts 1998 and 2004 and the Equal Status Act 2000 to 2004 The Employment Equality Act, 1998 and the Equal Status Act, 2000 outlaw discrimination in employment, vocational training, advertising, collective agreements, the provision of goods and services and other opportunities to which the public generally have access on nine distinct grounds.

One of these nine grounds is the race ground which prohibits discrimination on a particular race, skin color, nationality or ethnic origin (Article 6 (h) of the Employment Equality Act and article 3 (2) (h) of the Equal Status Act).

The article 13 of Directive 2000/43/EC states that Member States must designate “a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin”. Such bodies shall have competences to include:

- Providing independent assistance to victims of discrimination in pursuing their complaints about discrimination;
- Conducting independent surveys concerning discrimination; and
- Publishing independent reports and making recommendations on any issue relating to such discrimination.

In Ireland the special bodies are in one hand the Equality Authority, which replaced the Employment Equality Agency. The Equality Authority is an independent body set up under the Employment Equality Act 1998. It was established on 18th October 1999⁴.

On the other hand the Equality Tribunal is the impartial forum to hear or mediate complaints of alleged discrimination under equality legislation. By the Equality Act 2004 the Director of Equality Investigations becomes the Director of the Equality Tribunal, and the Office of the Director of Equality Investigations (O.D.E.I.) becomes the Equality Tribunal. The Equality Tribunal is independent and quasi-judicial and its decisions and mediated settlements are legally binding⁵.

The legal review of the Equality Tribunal of 2004⁶ states that “there were 18 Decisions in 2004, 11 under the Employment Equality Act 1998 and seven under the Equal Status Act 2000. The race ground under both Acts covers colour, nationality, ethnic or national origins. Most of the decisions referred to nationality; two referred to the complainant’s colour⁷, and four raised issues of ethnic identity or national origins⁸”.

Ireland signed the ICERD (International Convention for the Elimination of Racial Discrimination) in 1968 and it was ratified in January 2001, following the enactment of the Employment Equality Act 1998 and the Equal Status Act 2000. One of the legal obligations created by this document and monitored by the Committee for the

Elimination of Racial Discrimination is contained in article 4(a) of the document. This article requires states, amongst other actions, to:

“[...] Declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof [...].”

Having thus signed and ratified ICERD, Ireland is under a legal obligation to ensure that the above conditions are met.

The National Action Plan Against Racism (NPAR) has been developed with reference to the commitments given by participating Ireland at the United Nations World Conference against Racism in Durban held in South Africa in 2001 and the commitment to develop this Plan was reaffirmed in Sustaining Progress, the Social Partnership Agreement 2003-2005. The aim of the NPAR is to provide strategic direction to combat racism and to develop a more inclusive, intercultural society in Ireland⁹.

Constitutional Law: Ireland

Preliminary Note: this table is accompanied by an explanatory note

Constitutional Provision	Scope	Relevant jurisprudence	Remarks
Article 40.1	Guarantees equality before the law	<i>Quinn's Supermarket Ltd. v. Attorney General</i> [1972] Irish Reports 1; <i>Murtagh Properties Ltd. v. Cleary</i> [1972] Irish Reports 330; <i>Madigan v. Attorney General</i> [1986] Irish Law Reports Monthly 136; <i>The State (Nicolaou) v. An Bord Uchtála</i> [1966] Irish Reports 567.	The provision has never actually been applied to a claim of racial discrimination. Its potential applicability is established by some judicial dicta and the opinions of leading commentators.

EXPLANATORY NOTE

IRELAND / CONSTITUTIONAL LAW

Article 40.1 of the Constitution of Ireland provides:

"All citizens shall, as human persons, be equal before the law.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function".

It was stated by the Supreme Court in *Quinn's Supermarket Ltd. v. Attorney General* [1972] Irish Reports 1, that this clause prohibits discrimination inter alia on the basis of race. Speaking on behalf of the Court, Mr. Justice Walsh said on pages 13-14:

"... this provision is not a guarantee of absolute equality for all citizens in all circumstances but it is a guarantee of equality as human persons and ... is a guarantee related to their dignity as human beings and a guarantee against any inequalities grounded upon an assumption, or indeed a belief, that some individual or individuals or classes of individuals, by reason of their human attributes or their ethnic or racial, social or religious background, are to be treated as the inferior or superior of other individuals in the community".

That case involved a challenge to legislation which restricted shop trading hours and made a specific exception in favour of the Jewish community, allowing butcher shops selling kosher meat to open outside of normal hours. The Court held that this raised "no question of human equality or inequality". It interpreted Art. 40.1 as referring "to human persons for what they are in themselves rather than to any lawful activities, trades or pursuits which they may engage in or follow".

The Irish courts have adhered to this extremely narrow view of the scope of Art. 40.1 ever since. They have held the provision inapplicable to discrimination on the ground of sex in employment (*Murtagh Properties Ltd. v. Cleary* [1972] Irish Reports 330) and on the basis of ownership and occupation of residential property in the field of taxation (*Madigan v. Attorney General* [1986] Irish Law Reports Monthly 136). In fact, in no reported case has the provision actually been applied to a distinction based upon race. This is probably due in part to the continuing doctrinal uncertainty as to whether the guarantee is enjoyed by the citizens against each other, or only as against the State. While the point has not been tested in court and academic opinion is divided, it has been suggested¹⁰ that Art. 40.1 would at least provide a basis of constitutional validity for legislation prohibiting discrimination between private parties, which could otherwise be challenged as restricting the liberty of the subject.

A final point worthy of note is that Art. 40.1 is expressed to apply only to "citizens". Whether this in fact means that the Constitution permits non-citizens to be treated differently before the law has not been settled.

A non-national and non-resident of Ireland invoked Art. 40.1 to challenge the validity of adoption legislation in *The State (Nicolaou) v. An Bord Uchtála* [1966] Irish Reports 567. The Attorney General having expressly refrained from raising the point, the Supreme Court reserved its opinion. Of the three judges who delivered opinions in the High Court below, Mr. Justice Henchy felt that the provision should be extended only to citizens, because it placed a duty upon the State and a corresponding right upon citizens of that State. Mr. Justice Teevan, on the contrary, felt that no one should be denied the protection of rights enshrined in the Constitution simply because he is neither a national nor a resident of Ireland, because those are natural rights which existed before the Constitution. The Irish courts should refuse to hear a foreigner's

assertion of constitutional rights only where that would conflict with the public interest.

This broad view of Mr. Justice Teevan has been adopted in a number of cases where foreigners alleged denial of natural justice or constitutional rights in criminal procedure (for example *The State (Trimbole) v. Governor of Mountjoy Prison* [1985] Irish Reports 550) and in *Finn v. Attorney General* [1983] Irish Reports 154, incidentally to a question of constitutional procedure). Most recently however, Mr. Justice McCarthy of the Supreme Court felt that to allow constitutional challenges by foreigners to treaties entered into by the Irish government in the exercise of its constitutional prerogative to conduct the external relations of the State, would be contrary to the public interest: *McGimpsey and McGimpsey v. Ireland* [1990] 1 Irish Reports 110. This opinion was expressed *obiter* and the rest of the Court did not address the issue.

Criminal Law: Ireland

Preliminary Note: this table is accompanied by an explanatory note

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Publishing or distributing written material to stir up hatred.	Prohibition of Incitement to Hatred Act 1989 Subparagraph 2(1)(a) Equal Status Act 2000 and 2004	Material must be threatening, abusive or insulting. Publication or distribution must be intended or likely to stir up hatred, including racial hatred	Imprisonment and/or fine	<i>Brutus v. Cozens</i> [1973] Law Reports Appeal Cases 854.; <i>Parkin v. Norman</i> [1983] Law Reports Queen's Bench 92.; <i>Masterson v. Holden</i> [1986] 3 All England Law Reports 39	This legislation specifically aims to protect minority groups, including racial groups.
Using words or behaviour or displaying written material to stir up hatred	Prohibition of Incitement to Hatred Act 1989 Subparagraph 2(1)(b)	Words, behaviour or material must be threatening, abusive or insulting. Use or display must be intended or likely to stir up hatred, including racial hatred. An exemption	Imprisonment and/or fine		This legislation specifically aims to protect minority groups, including racial groups.

		exists for use or display inside a private residence when it is not heard or seen outside.			
Distributing, showing or playing a recording of visual images or sounds to stir up hatred	Prohibition of Incitement to Hatred Act 1989 Subparagraph 2(1)(c)	Visual images or sounds must be threatening, abusive or insulting. Distribution, showing or playing must be intended or likely to stir up hatred, including racial hatred.	Imprisonment and/or fine		This legislation specifically aims to protect minority groups, including racial groups.
Broadcasting an item to stir up hatred	Prohibition of Incitement to Hatred Act 1989 Section 3	Item must contain visual images or sounds that are threatening, abusive or insulting. Broadcast must be intended or likely to stir up hatred, including racial hatred.	Imprisonment and/or fine		This legislation specifically aims to protect minority groups, including racial groups.
Preparing or possessing written material or recordings of visual images or sounds to stir up hatred.	Prohibition of Incitement to Hatred Act 1989 Section 4	Material or recording must be threatening, abusive or insulting and intended to be distributed, shown, played, displayed, broadcast or	Imprisonment and/or fine		This legislation specifically aims to protect minority groups, including racial groups.

		otherwise published inside or outside of Ireland by any person to stir up hatred.		
Genocide	Genocide Act 1974 Section 2	Committing any of the acts listed in Art. II of the Genocide Convention with intent to destroy, in whole or in part, any of the groups mentioned in Art. II.	Not available	Implements the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.
Supplying or offering to supply a recording of a video work for which no supply certificate is in force	Video Recordings Act 1989 Section 5	Supply certificates may be refused where video works contain material encouraging people to commit crimes or likely to stir up hatred against any group of persons on grounds including race. Private supply does not attract the requirements of the legislation.	Imprisonment and/or fine	This legislation aims to prevent generally undesirable video works from being supplied to the public. Capacity to stir up hatred, including racial hatred, is only one of several grounds on which a video work may be deemed undesirable.
Possessing for the purpose of supply a recording of a video work for	Video Recordings Act 1989 Section 6	Supply certificates may be refused where video works	Imprisonment and/or fine	This legislation aims to prevent generally

<p>which no supply certificate is in force</p>		<p>contain material encouraging people to commit crimes or likely to stir up hatred against any group of persons on grounds including race. Possession for private supply or in expectation of a supply certificate does not attract the requirements of the legislation.</p>	<p>undesirable video works from being supplied to the public. Capacity to stir up hatred, including racial hatred, is only one of several grounds on which a video work may be deemed undesirable.</p>
<p>Exhibiting a video work for which no supply certificate is then in force</p>	<p>Video Recordings Act 1989 Section 11</p>	<p>Supply certificates may be refused where video works contain material encouraging people to commit crimes or likely to stir up hatred against any group of persons on grounds including race. Exhibition in a private dwelling to members of the household and <i>bona fide</i> guests without reward does not attract the</p>	<p>Fine</p> <p>This legislation aims to prevent generally undesirable video works from being supplied to the public. Capacity to stir up hatred, including racial hatred, is only one of several grounds on which a video work may be deemed undesirable.</p>

		requirements of the legislation.		
Breach of statutory duty to provide accommodation, food or drink on request unless there are reasonable grounds for refusal.	Hotel Proprietors Act 1963 Section 12	The offence may be committed only by hotel proprietors. The reasonableness of race as a ground for refusal is strongly doubted.	Fine	This legislation aims to prevent discrimination in general and is not specifically aimed at racial discrimination.

EXPLANATORY NOTE

IRELAND / CRIMINAL LAW

1. Prohibition of Incitement to Hatred Act 1989

1.1. Criminalised conduct

The Prohibition of Incitement to Hatred Act 1989 (hereinafter referred to as "the PIHA") creates five different offences concerning incitement to hatred. All offences have certain basic elements in common.

First, the conduct addressed in each provision, if it is to be punishable, must be "threatening, abusive or insulting". These terms have not been judicially considered in Ireland in the present context, but it is important to note that the British Public Order Act 1986 is drafted in very similar terms to the PIHA. The Irish courts would be likely to attach great weight to British jurisprudence in which the word "insulting" has been interpreted in a non-racial context as the phrase is used in the PIHA.

The House of Lords held in *Brutus v. Cozens* [1973] Law Reports Appeal Cases 854, that the word is to be accorded its ordinary English meaning and that the possible insulting character of conduct is always to be determined as a question of fact in the particular circumstances of each case. It is not possible to say *a priori* that behaviour which affronts other people, even causing them to express resentment and protest, is necessarily insulting. On the other hand, it has also been established that the insulting character of conduct must depend upon the conduct itself, it being irrelevant that no one was actually insulted (*Parkin v. Norman* [1983] Law Reports Queen's Bench 92) or that the defendant did not intend any particular person to be insulted (*Masterson v. Holden* [1986] 3 All England Law Reports 39). The question seems to be whether an ordinary and reasonable person who witnessed the conduct would be insulted.

More generally, the three words must be interpreted together, in which light they give an impression of totally unreasonable and extreme conduct. It is thus to be expected

that racists who express their ideas in moderate and reasoned terms will not be liable to prosecution under the PIHA¹¹.

Secondly, the likely consequence of the conduct addressed must, if it is to be punishable, be "hatred". This phrase is defined in subsec. 1(1) PIHA in wider terms than "racial hatred" is defined in the British Race Relations Act:

"In this Act "hatred" means hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation".

It should be noted that while there is no barrier to the encouragement of hatred against a group of persons solely on account of their political beliefs, hatred against persons living outside the country is as much prohibited as hatred against people in Ireland.

Thirdly, the conduct addressed in each provision, if it is to be punishable, must either be intended by the accused "to stir up racial hatred", or, having regard to all of the circumstances, be likely to stir up racial hatred.

One important consequence of this formulation is that the punishability of racist conduct will largely depend upon the character of the person(s) to whom it is directed. Thus, racist material sent to Members of Parliament or to clergymen is hardly likely to stir them to racial hatred and is therefore not covered by Part III PIHA. The same applies where racist abuse is directed at the members of the hated racial group. On the other hand, it seems that material which is distributed only to confirmed racists can be the subject of prosecution under Part III, because their hatred can be increased or reinforced¹².

We will now turn to the individual offences to which these elements are prerequisite.

1.1.1. Subpara. 2(1)(a) PIHA - Publication or distribution of written material

Subpara. 2(1)(a) PIHA makes it an offence to publish or distribute to the public or any section of the public written material which is threatening, abusive or insulting, if it is intended or likely to stir up hatred.

If the prosecution is able to prove that written material published or distributed by a particular accused was likely to stir up hatred, but cannot prove that he intended to have this effect, a total defence is made available by subsec. 2(2)(a). This requires the defendant to prove that he was not aware of the content of the material and neither suspected nor had reason to suspect that it was threatening, abusive or insulting.

1.1.2. Subpara. 2(1)(b) PIHA - Use of words or behaviour or display of written material

Subpara. 2(1)(b) PIHA makes it an offence to use threatening, abusive or insulting words or behaviour, or to display written material which is threatening, abusive or insulting, if it is intended or likely to stir up hatred.

The phrase "written material" is defined in subsec. 1(1) PIHA to include "any sign or other visible representation". It can thus be expected to include banners carried at demonstrations, cartoons drawn without words and graffiti drawn onto movable or immovable objects¹³.

The prohibited conduct can render a person liable even if it was committed in a private place, but there is a specific exception in subpara. 2(1)(b) PIHA for conduct inside a private residence which is not seen or heard by anyone outside the residence. Furthermore, under subpara. 2(2)(b)(i), it is a sufficient defence for the accused to prove that he was inside a private residence and that he had no reason to believe that anyone outside would see or hear his conduct. The phrase "private residence" is defined in subsec. 2(3) PIHA to mean any structure used as a dwelling and to include a tent, caravan, vehicle vessel or other temporary or movable structure. However, any structure or part of a structure in which a public meeting is being held is deemed thereby not to be a private residence and a meeting may be public even if members of the public are admitted only if they have authorisation or are paying.

Subpara. 2(2)(b)(ii) makes available essentially the same defence as is created in subpara. 2(2)(a) (refer to point 1.1.1, above).

1.1.3. Subpara. 2(1)(c) PIHA - Distributing, showing or playing a recording

Subpara. 2(1)(c) PIHA makes it an offence to distribute, show or play to the public or any section of the public any visual or sound recording which is threatening, abusive or insulting, if it is intended or likely to stir up racial hatred.

The defence created by subpara. 2(2)(a) (refer to point 1.1.1, above) is also applicable to this offence.

1.1.4. Sec. 3 PIHA - Broadcasting

Sec. 3 PIHA makes it an offence to include in any broadcast or in any cable television or radio service any item involving visual images or sounds which are threatening, abusive or insulting, if this is intended or likely to stir up racial hatred.

This offence may be committed, simultaneously or separately, by the broadcaster, by any and all producers and directors of the item and by performers who actually engage in the offending conduct. Subsecs. 3(3), (4) & (5) PIHA provides specialised defences for each of these possible categories of accused persons. These defences follow the model of those provided for the offences in section 2. However, broadcasters and cable distributors will escape liability only if they prove that it was not reasonably practicable for them to remove the offending material from the programme. Subsec. 3(6) provides an additional defence for all categories of accused, in that they may attempt to prove that they did not know and had no reason to suspect that the relevant item was threatening, abusive or insulting.

1.1.5. Sec. 4 PIHA - Preparation or possession of material likely to stir up hatred

Sec. 4 PIHA makes it an offence to make or prepare or to have in one's possession any written material or any visual or sound recording which is threatening, abusive or

insulting, if one has a view to distributing, publishing, displaying, showing or playing it to the public or any section of the public in Ireland or abroad and if that is intended or likely to stir up racial hatred. The offence may be committed by a person who keeps such material for future publication by another as well as those who intend to publish themselves.

Subsec. 4(2) makes available essentially the same defence as is created in subpara. 2(2)(a) (refer to point 1.1.1, above). On the other hand, subsec. 4(3) reverses to some extent the burden of proof on the offence itself. It suffices thereby for the prosecution to show that the accused was in possession of offending material and that it is reasonable to suppose that it was not intended for his personal use. The onus is then upon the accused to prove that it was not foreseen that the material would be distributed, published, displayed, shown or played to the public or any section of the public in Ireland or abroad.

1.2. Consequences of committing criminalised conduct

Prosecutions under sections 2, 3 or 4 of the PIHA may only be brought with the express consent of the Director of Public Prosecutions.

In order to understand the penalties that may be imposed upon conviction of a defendant, it is important to understand the procedural distinction between "summary conviction" and "conviction on indictment". The second type of conviction may be returned only if the accused has been given the opportunity to be tried by jury. On summary proceedings, the accused is normally tried by a judge sitting alone. It is for the prosecution to decide whether to proceed summarily or on indictment.

1.2.1. Penalties

The penalties for offences under the PIHA are set out in section 6.

Where a defendant has been convicted on indictment, he may be sentenced to imprisonment or to a fine or to both. The term of imprisonment may not exceed two years. The fine may not exceed IRL£ 10,000.

Where a defendant has been convicted summarily, he may also be sentenced to imprisonment or to a fine or to both punishments. The maximum term of imprisonment in this case is six months. The maximum fine is presently fixed at IRL£ 1,000.

Pursuant to section 7 PIHA, an offence under the Act may be committed by a corporate person as well as by a natural person. Corporate persons are not subject to punishment by imprisonment. However, where a corporation is proved to have committed an offence and the prosecution proves that this occurred with the consent, or connivance or was attributable to neglect on the part of any director, manager, secretary or similar officer of the corporation, then that officer is also deemed to have committed the same offence.

1.2.2. Other consequences

A power of direct arrest without warrant is provided for offences under subsec. 2(1)(b) PIHA, but not for other offences under secs. 2, 3 or 4. Where a police officer suspects that a person has committed an offence under those other provisions, subsec. 10(2) allows him to require that person to give his name and address and to make an arrest upon refusal or where he reasonably suspects that the name and/or address given are false.

A power to search premises is provided for offences under secs. 3 and 4 PIHA, but only where a warrant has been issued. Subsec. 9(1) allows a police officer to apply to a District Court justice or to a Peace Commissioner for a warrant where he reasonably suspects that prohibited written materials or recordings are in the possession of a particular person. Subsecs. 3(7), (8) and (9) make detailed provision for the use of transcripts of broadcasts as evidence in proceedings under the Act.

Subsec. 9(2) creates offences that are committed by persons who obstruct or interfere with police officers carrying out a search under the authority of a warrant or who are present on premises to which a warrant relates and either refuse to give their names and addresses when required to do so or give false or misleading names or addresses. All of these offences may only be prosecuted summarily. The penalty provided for obstruction or interference is a maximum six months imprisonment and/or a fine not exceeding IRL£ 1,000. The penalty provided for failure to give one's true name and address is a fine not exceeding IRL£ 500.

Where a conviction relating to written material or recordings is returned pursuant to the PIHA, the convicting court is empowered by subsec. 11(1) to order that any prohibited material produced before it be forfeited and either destroyed or otherwise disposed of. However, such orders take effect only when the appeal process is exhausted, or when the time to appeal expires without an appeal having been filed. In addition, anyone claiming to be the owner of the material or to have any legal interest therein must be afforded an opportunity to show why forfeiture should not be ordered.

2. Video Recordings Act 1989

2.1. Criminalised conduct

The primary purpose of the Video Recordings Act 1989 (hereinafter referred to as "the VRA") is to establish a system of censorship and classification for video recordings available to the public. The administrative aspects of the VRA are discussed in our report entitled "Ireland: Civil and Administrative Law". In addition, the VRA creates a number of offences to prevent and punish the distribution of video works in breach of the system of classification and the most important of these offences will be mentioned here.

Some definitions are applicable to all of the relevant offences. One is the definition of "supply" set out in subsec. 1(1) VRA:

"'supply' means supply in any manner, whether or not for reward and, therefore, includes supply by way of sale, letting on hire, exchange or loan ..."

Subsec. 2(1) defines the term "exempted supply" with the aim of restricting the application of the VRA to video recordings distributed for profit to the public. Supply that is neither for reward, nor in the course or furtherance of a business is thus exempted, as is an *ad hoc* supply not made with a view to eventual supply to the public and supply in a number of situations authorised by statute.

2.1.1. Sec. 5 VRA - Supplying recordings of uncertificated video works

Subsec. 5(1) prohibits the supply and the making of offers to supply recordings of video works in respect of which no supply certificate is in force.

The burden is upon the prosecution to show that the supply made or offered was not an exempted supply. Subsec. 5(2) makes a defence of reasonable error available to defendants. The accused must prove that he reasonably believed either that a supply certificate was in force or that the relevant supply was or would have been an exempted supply.

2.1.2. Sec. 6 VRA - Possessing recordings of uncertificated video works

Subsec. 6(1) prohibits the possession for the purpose of supply of recordings of video works in respect of which no supply certificate is then in force.

The burden is upon the prosecution to show that the supply intended was not an exempted supply. Subsec. 6(2) makes a number of defences available to defendants. The accused may attempt to prove that he reasonably believed either that a supply certificate was in force or that the relevant supply was or would have been an exempted supply. Alternatively, the accused may attempt to convince the court that he did not intend to supply the recordings until a supply certificate was granted.

2.1.3. Sec. 11 VRA - Exhibiting recordings of uncertificated video works

Subsec. 11(1) creates an offence of making uncertificated recordings available for public viewing. The offence may be committed by persons who cause or permit or are concerned in causing or permitting recordings of video works in respect of which no supply certificate is then in force, to be viewed. Exhibition of such recordings is permitted only in a private dwelling by members of the household and *bona fide* guests without charge.

Subsec. 11(3) makes a defence of reasonable error available to defendants. The accused must prove that he reasonably believed that a supply certificate was in force for the relevant video work at the relevant time.

2.2. Consequences of committing criminalised conduct

2.2.1. Penalties

While the penalties for offences under the VRA are set out in each of the relevant provisions, they do vary greatly and will thus be treated together.

Offences under secs. 5 and 6 may be tried summarily or on indictment.

Where a defendant has been convicted on indictment, he may be sentenced to imprisonment or to a fine or to both punishments. The term of imprisonment may not exceed three years. The fine is within the discretion of the court and no maximum sum has been fixed. The guiding principle is that the defendant should not be allowed to draw a financial profit from his unlawful conduct.

Where a defendant has been convicted summarily, he may also be sentenced to imprisonment or to a fine or to both. The maximum term of imprisonment in this case is twelve months. The maximum fine is presently fixed at IRL£ 1,000.

Offences under secs. 11 and 12 may only be tried summarily. A fine is the only penalty allowed for in each case. It may not exceed IRL£ 1,000 for an offence under sec. 11 and IRL£ 500 for an offence under sec. 12.

Pursuant to sec. 27 VRA, an offence under the Act may be committed by a corporate person as well as by a natural person. Corporate persons are not subject to punishment by imprisonment. However, where a corporation is proved to have committed an offence and the prosecution proves that this occurred with the consent or connivance or was attributable to neglect on the part of any director, manager, secretary or similar officer of the corporation, then that officer is also deemed to have committed the same offence.

2.2.2. Other consequences

The VRA provides virtually the same powers of arrest, search and forfeiture as does the PIHA discussed under point 1.2.2, above. It also provides subsidiary offences for persons who obstruct or interfere with police officers acting under a search warrant or who fail to give their names and addresses and the penalties are the same as those provided in the PIHA.

3. Hotel Proprietors Act 1963

3.1. Criminalised conduct

Sec. 12 of the Hotel Proprietors Act 1963 (hereinafter referred to as "the HPA") makes it a criminal offence to commit a breach of duty under, *inter alia*, sec. 3 HPA. The duty imposed by that provision is discussed in our report entitled "Ireland: Civil and Administrative Law".

The offence may be committed only by a hotel "proprietor", defined in subsec. 1(1) HPA as the person in fact carrying on the business of the hotel.

3.2. Consequences of committing criminalised conduct

An offence under sec. 12 HPA may only be prosecuted in summary proceedings. Where the defendant is convicted, he may be fined a sum not exceeding IRL£ 100.

4. Employment Equity Act 1998 and 2004

4.1 Criminalised Conduct

The Employment Equity Act 1998 and 2004 create different offences concerning employment. It provides that “Every person who— (a) fails or refuses to supply to the Authority information required by it and specified in a notice under *section 59(1) (a)*, (b) fails or refuses to produce or send to the Authority any document in that person's power or control as required by a notice under *section 59(1)(b)*, (c) on being duly summoned as a witness by a notice under *section 59(1)(c)*, fails or refuses to attend before the Authority, (d) being in attendance as a witness before the Authority, refuses to take an oath or affirmation when required by the Authority to do so or to answer any question to which the Authority may require an answer, or (e) does anything which, if the Authority were a court of justice having power to commit for contempt of court, would be contempt of court, shall be guilty of an offence.

(2) The court by which a person is convicted of an offence under *paragraph (a)*, (b) or (c) of *subsection (1)* may require the person to comply with the notice referred to in that paragraph.

(3) A person to whom a notice has been delivered under *section 59(1)(a)* who— (a) makes a false statement when supplying to the Authority information specified in the notice, or (b) alters, suppresses, conceals or destroys a document specified in the notice, shall be guilty of an offence¹⁴.

4.2 Consequences of committing criminalised conduct

In case of criminalised conduct, the Employment Equity Act 1998 and 2004 states that “If an employee is dismissed in circumstances amounting to victimisation, the employee's employer shall be guilty of an offence and if, in a prosecution for an offence under this section, it is proved— (a) that the employee was dismissed, and (b) that the employee, in good faith, did one or more of the acts specified in *paragraphs (a) to (d)* of *section 74(2)*, that proof shall, without more, be evidence until the contrary is proved, that the sole or main reason for the dismissal of the employee was that the employee, in good faith, did one or more of those acts.

(2) Subject to *subsection (4)*, on a conviction of an offence under this section, the court may, if it thinks fit and considers that the Labour Court would have power to do so— (a) make an order for the re-instatement of the employee by the employer, or (b) make an order for the re-engagement of the employee by the employer.

(3) Subject to *subsection (4)*, if the court by which a person is convicted of an offence under this section does not make an order under *subsection (2) (a)* or (b), it may, if it thinks fit, in addition to imposing a fine for the offence, order the employer to pay to the employee concerned such amount of compensation as, subject to *subsection (5)*, the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the employer or the employee concerned.

(4) The court shall not exercise its powers under *subsection (2)* or (3) unless the employee concerned consents.

(5) The amount of compensation which may be ordered under *subsection (3)* shall not exceed either— (a) the amount which, having regard to *subsections (4)* and (5) of

section 82, the Labour Court order by way of compensation under *section 82(2)* on a claim for redress in respect of the dismissal, or (b) if the order is made by the District Court, £5,000 or such other amount as may stand prescribed for the time being by law as the limit of that court's jurisdiction in tort, and, in applying any provision of *section 82* for the purposes of *paragraph (a)*, any reference to the date of the reference shall be construed as a reference to the date of the dismissal and any reference to the date of the Labour Court's determination shall be construed as a reference to the date of the conviction of the offence.

(6) Where, on conviction of an employer for an offence under this section, the court makes an order under *subsection (2) (a)* or (b) or *subsection (3)*— (a) whether or not the employer appeals against the conviction or sentence, the employer may appeal against the order to the court to which an appeal lies against the conviction, and (b) the court hearing an appeal against the conviction or sentence, or an appeal against the order alone, may revoke or vary the order and, in particular, where the order was made under *subsection (3)*, may vary the amount of the compensation.

(7) Where the court makes an order under *subsection (3)* for the payment of an amount of compensation— (a) without prejudice to any right of appeal by any other person, the employee concerned shall have a right of appeal, limited to the amount of the compensation, to either the High Court or, as the case may be, to the judge of the Circuit Court in whose circuit is situated the district (or any part thereof) of the judge of the District Court by whom the compensation was ordered, and (b) to the extent of the amount of compensation paid, the payment by the employer of the compensation shall be a good defence in any civil proceedings brought by the employee concerned in respect of the remuneration which the employee would have received if the dismissal had not occurred.

(8) Where an appeal is brought under *subsection (7) (a)*, the decision of the High Court or, as the case may be, the judge of the Circuit Court shall be final¹⁵.

And that “A person who is guilty of an offence under any provision of this Act shall be liable— (a) on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 1 year or both, or (b) on conviction on indictment, to a fine not exceeding £25,000 or to imprisonment for a term not exceeding 2 years or both.

(2) If the contravention in respect of which a person is convicted of an offence under any provision of this Act is continued after the conviction, that person shall be guilty of a further offence on every day on which the contravention continues and for each such offence shall be liable on summary conviction to a fine not exceeding £250 or, on conviction on indictment, to a fine not exceeding £1,500.

(3) Summary proceedings for an offence under any provision of this Act may be instituted by the Minister or the Authority »¹⁶.

5. Equal Status Act 2000 and 2004

5.1 Criminalised Conduct

The article 12 of the Equal Status Act 2000 and 2004 states that « a person shall not publish or display or cause to be published or displayed an advertisement which indicates an intention to engage in prohibited conduct or might reasonably be understood as indicating such an intention ».

Is guilty of an offence the person who makes a statement which the person knows to be false with a view to securing a publication or display in contravention of subsection (1) of the Equal Status Act 2000 and 2004 shall, upon the publication or display being made.

The Equal Status Act states that “A person shall not procure or attempt to procure another person to engage in prohibited conduct.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence ».

5.2 Consequences of committing criminalised conduct

The article 43 of the Equal Status Act gives the offences generally: “(1) A person guilty of an offence under any provision of this Act shall be liable— (a) on summary conviction, to a fine not exceeding £1,500 or imprisonment for a term not exceeding one year or both, or (b) on conviction on indictment, to a fine not exceeding £25,000 or imprisonment for a term not exceeding 2 years or both.

(2) If the contravention in respect of which a person is convicted of an offence under any provision of this Act is continued after the conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence shall be liable on summary conviction to a fine not exceeding £250 or, on conviction on indictment, to a fine not exceeding £1,500”.

Civil and Administrative Law: Ireland

Preliminary Note: this table is accompanied by an explanatory note

Provision	Scope	Consequences of breach	Relevant jurisprudence	Remarks
Unfair Dismissals Acts 1977 to 1993, Section 6.	Employment.	Employer may be ordered to reinstate or reemploy the employee or to pay him or her compensation.	Mahalingham v. Health Service Executive [2005] IEHC 186 (11 May 2005)	This legislation prohibits discriminatory dismissals of employees and is not limited to racially motivated dismissals.
Hotel Proprietors Act 1963 Section 3.	Accommodation, food and drink in hotels.	Victims may bring action to recover losses caused to them as a result of		This legislation is not expressly aimed at combating discrimination.

		being unreasonably refused service.	Hotel proprietors are liable whenever they refuse service without reasonable grounds.
Video Recordings Act 1989 Subsection 3(1).	Video recordings intended to be supplied to the public.	Videos which are found to be unfit for viewing may not be supplied to the public.	This legislation complements the criminal prohibition of incitement to hatred on racial and other grounds.

EXPLANATORY NOTE

IRELAND / CIVIL AND ADMINISTRATIVE LAW

1. Unfair Dismissals Acts 1977 to 1993

(a) Prohibition of Discrimination

The Unfair Dismissals Acts 1977, as amended by the Unfair Dismissals (Amendment) Act 1993 (hereinafter together referred to as "the UDA"), penalises employers who dismiss employees unfairly. A dismissal is deemed to be unfair unless substantial grounds can be adduced to justify it. Subsec. 6(2) UDA contains a list of grounds for dismissal which may not be said to justify it. These prohibited grounds include the race, colour, age, religious or political opinions or sexual orientation of the employee and membership of the travelling community.

The UDA applies in principle wherever a person ("the employee") has entered into a contract of service or of apprenticeship with another person ("the employer").

However, the protection afforded by the UDA is subject to a number of exceptions, the most important of which is that the employee must have been continuously in the service of the same employer for at least one year before the date of the dismissal, if he is to benefit from the protection of the UDA. Subsec. 2(2) UDA as amended makes provision for fixed term contracts which expire within the term of a year and are not renewed, so as to prevent employers from structuring their relations with employees so as to avoid the operation of the UDA. Also excluded from the scope of the UDA are persons who have reached normal retirement age, persons employed by relatives or in a household or on a farm in or on which both the employer and the employee reside, and persons who ordinarily work and are resident and domiciled outside Ireland. Very specific exemptions are also made with respect to certain State employees.

On the other hand, persons working under contracts with employment agencies but for the benefit of a third party are now protected by the legislation. Sec. 13 of the 1993 UDA deems the worker to be an employee of the third party and remedies for unfair dismissal may be awarded against the third party when the third party, in circumstances found to be unfair, informs the employment agency that it no longer requires the services of the worker.

It is interesting to note that, by virtue of the definition of the term in sec. 1 UDA, an employee may be said to have been "dismissed" where he himself terminates the contract of employment due to his employers' conduct, which makes such termination reasonable.

(b) Consequences of Discrimination

Employees who claim to have been dismissed unfairly are entitled to complain to the Employment Appeals Tribunal.

The Tribunal, if it finds the claim to be substantiated, may award any one of three different remedies set out in sec. 7 UDA.

First, it may order the employer to reinstate the employee in the same position and under the same terms and conditions, the employment being deemed, for the purposes of salary and entitlements, to have continued uninterrupted.

Secondly, the employer may be ordered to employ the complainant *de novo* in the same position as he held before the unfair dismissal or in another suitable position.

Thirdly, the employer may be required to pay compensation to the employee. Proof by the employee of financial losses caused by the dismissal is not a necessary prerequisite to compensation. However, where no losses are proved, the maximum sum that may be awarded is limited to four weeks' wages for the employment from which the complainant was dismissed. Where losses are proved, the tribunal may compensate the amount of actual damage suffered by the employee in relation to lost wages, reduction in the value of rights, including superannuation, appertaining to the employment, reduction in the level of prospective wages and any other losses proved to have been caused by the dismissal. The sum awarded in this case may not exceed 104 weeks' wages for the employment from which the complainant was dismissed. In any case, the sum to be awarded is that which seems to the Tribunal to be "just and equitable having regard to all the circumstances".

Orders of the Employment Appeals Tribunal are not enforceable *per se*. They may be appealed by either party to the Circuit Court and a further appeal lies to the High Court. Where an employer does not appeal but also does not comply with a Tribunal order, sec. 11 of the 1993 UDA allows either the complainant or the Minister of Labour to apply to the Circuit Court to have the order enforced. On an appeal and on an application for enforcement of a Tribunal order, the Court may simply order the employer, under threat of criminal liability for contempt of court, to carry out the terms of the order. Alternatively, if the order requires the employer to reinstate or to reengage the complainant, the Court may substitute an order requiring the employer to pay compensation. It also has power to add interest to any sum of compensation

awarded and to award compensation specifically for lost wages attributable to any period during which an employer did not comply with an order.

2. Hotel Proprietors Act 1963

(a) Prohibition of Discrimination

Sec. 3 of the Hotel Proprietors Act 1963 (hereinafter referred to as "the HPA") imposes a duty on proprietors of all hotels in Ireland towards all persons who present themselves as requiring sleeping accommodation, food or drink. A "hotel" is defined in subsec. 1(1) HPA as "an establishment which provides or sets itself up as providing sleeping accommodation, food or drink for all comers without special contract ...". Unless he has "reasonable grounds of refusal" in a particular case, the proprietor must provide such facilities and services to all persons who present themselves.

While the provision is obviously not aimed specifically at racism, it does have the effect of prohibiting racial discrimination in the provision of hotel services. While commending the legislation to the parliament at the time, the Irish Justice Minister mentioned that no court would find the customer's colour to be a reasonable ground of refusal. In fact, there have been no reported cases in which sec. 3 HPA was applied to an act of racial discrimination. It should also be noted that under Irish law, statements made in Parliament are normally not admissible for the purpose of interpreting legislation.

(b) Consequences of Discrimination

Where a person himself at a hotel requires sleeping accommodation, food or drink and the proprietor refuses to provide any of these things, that person has the right to bring an action in the tort of breach of statutory duty. The jurisdictional allocations are made in sec. 10 HPA. However, the plaintiff will only be able to recover damages to the amount of the injury (especially financial) that was caused to him as a result of the breach of the statute. If no such losses can be quantified, the plaintiff will only be able to obtain a declaration of his rights.

In addition to these civil consequences, a criminal offence is created by sec. 12 HPA. This is discussed in our report entitled "Ireland: Criminal Law".

3. Video Recordings Act 1989

The primary purpose of the Video Recordings Act 1989 (hereinafter referred to as "the VRA") is to establish a system of censorship and classification for video recordings available to the public. Video works which are intended to be supplied or exhibited to the public must be submitted to the Official Censor for classification.

The Official Censor must issue a supply certificate in respect of a video work submitted to him for classification unless he is of the opinion that the work is unfit for viewing. Subsec. 3(1) VRA sets out the grounds upon which the Official Censor may conclude that a work is unfit for viewing. Some of those grounds are relevant to this report.

Subpara. 3(1)(a) permits the refusal of a supply certificate in respect of a work because, *inter alia*:

"the viewing of it -

(i) would be likely to cause persons to commit crimes, whether by inciting or encouraging them to do so or by indicating or suggesting ways of doing so or of avoiding detection, or

(ii) would be likely to stir up hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation ..."

When the Official Censor refuses to grant a supply certificate, any person who is aggrieved has three months in which to bring an claim before the Censorship of Films Appeal Board.

There is no provision for persons aggrieved by the fact that a supply certificate was granted in respect of a particular video work to claim a legal remedy. However, they are able to petition the Official Censor, who is empowered by sec. 7 VRA to issue a prohibition order in respect of any work at any time, even after he has granted it a supply certificate.

Where a person exhibits or supplies copies of a video work which has not been issued a supply certificate or which has been prohibited, the consequences are exclusively penal. The relevant offences are discussed in our report entitled "Ireland: Criminal Law".

4. Employment Equality Act 1998 and 2004

4.1 Prohibition of discrimination

The Employment Equity Act 1998 and 2004 prohibits discrimination across nine grounds (the gender ground, the marital status ground, the family status ground, the sexual orientation ground, the religion ground, the age ground, the disability ground, the race ground, and the traveller community ground); the race ground is the eightieth ground.

The aspects of employment covered by the Employment Equity Act 1998 and 2004 are advertising, equal pay, access to employment, vocational training and work experience, terms and conditions of employment, promotion or re-grading, classification of posts, dismissal and collective agreements. Any of these aspects of employment must be based on consideration of race.

There are different types of discrimination covered by the Acts including indirect discrimination, discrimination by imputation and discrimination by association.

4.2 Consequences of discrimination

The claim of discrimination must be referred in the first instance to the Equality Tribunal. Where the Equality officer finds in favour of the complainant, orders can be made for equal pay, for equal treatment and compensation, an order for reinstatement or re-engagement with or without an order of compensation.

5. Equal Status Act 2000 and 2004

5.1 Prohibition of discrimination

Discrimination has the same definition as the one of the Employment Equality Act 1998 and 2004 that is to say: the treatment of a person in a less favourable way than another person is, has been or would be treated in a comparable situation in any of the nine grounds which exists, existed, may exist in the future or is imputed to the person concerned.

The article 4 (1) states “for the purposes of this Act discrimination includes a refusal or failure by the provider of a service to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, if without such special treatment or facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service”.

The article 5 (1) states “a person shall not discriminate in disposing of goods to the public generally or a section of the public or in providing a service, whether the disposal or provision is for consideration or otherwise and whether the service provided can be availed of only by a section of the public”.

The Equal Status Act 2000 and 2004 prohibits discrimination by an educational establishment in relation to “the admission or the terms or conditions of admission of a person as a student to the establishment, (b) the access of a student to any course, facility or benefit provided by the establishment, (c) any other term or condition of participation in the establishment by a student, or (d) the expulsion of a student from the establishment or any other sanction against the student » and by a Club.

The Equal Status Act 2000 and 2004 provides general exemptions. There are several exemptions which should be read restrictively and not to restrict the general prohibition on discrimination.

For example, is an exemption the fact to treat a person differently if the person is incapable of entering into an enforceable contract.

5.2 Consequences of discrimination

The person claim, except if the claim is in relation to discriminating clubs, are brought to the Equality Tribunal.

The Equality Tribunal can decide to order persons to take specified courses of action or to pay remedies.

Note

¹ Ibid, confirmed by the Committee on the Administration of

Justice, "Racism in Northern Ireland" (Belfast 1992), p. 6.

Note

² A similar clause was contained in section 3(1) and 3(2)(h) of the Equal Status Bill 1997.

Note

³ The Equality Authority, Booklet on "The Employment Equality Acts 1998 and 2004" and the Booklet on "The Equal Status Acts 2000 to 2004" : Council Directive 2002/73/EC of 23 September 2002 amending Council Directive 76/207/EC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions [2002] OJL2 69/15; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22).

Note

⁴ The Strategic Plan of the Equality Act aim at detailing the mission and key objectives of the Equality Authority for 2003 - 2005

Note

⁵ <http://www.equalitytribunal.ie>

Note

⁶

http://www.equalitytribunal.ie/uploadedfiles/AboutUs/legal_review_2004.pdf

Note

⁷ *Leleji v Maplin Electronics, Maphosa v Dublin Bus.*

Note

⁸ *Persaud v Shelbourne Hotel, Tsourova v Trinity College, Bower v Bus Eireann, Axinte v Q Bar.*

Note

⁹ EUMC (European Monitoring Centre on Racism and Xenophobia) – Racism and Xenophobia in the EU Member States - trends, developments and good practice - Annual Report 2003/2004 - Part 2

Note

¹⁰ Casey, J, "Constitutional Law in Ireland" (London, 2nd edition 1992), p. 379.

Note

¹¹ UK Crown Prosecution Service internal guidance on the prosecution of offences in Part III POA, kindly provided by Mr. Keith Thompson, Head of the Prosecution Policy Unit of the CPR Policy Group.

Note

¹² *Ibid*, making an analogy with the decision in *Director of Public Prosecutions v. Whyte* [1972] Law Reports Appeal Cases 849, that pornography can further deprave persons who are already corrupted.

Note

¹³ Ibid.

Note

¹⁴ Article 60 of the Employment Equity Act 1998 and 2004.

Note

¹⁵ Article 98 of the Employment Equity Act 1998 and 2004.

Note

¹⁶ Article 100 of the Employment Equity Act 1998 and 2004