

Ireland¹

IHF FOCUS: freedom of expression and the media; peaceful assembly; rule of law; fair trial and detainees' rights; torture, ill-treatment and police misconduct; right to privacy; ethnic minorities; intolerance and racial discrimination; asylum seekers; women's rights; the mentally disabled or ill.

Despite publishing a bill to incorporate the European Convention on Human Rights (ECHR) in Irish legislation in 2001, the Irish government failed to enact this legislation in 2002 and Ireland remained the only one of the 44 member states of the Council of Europe where the convention did not have domestic force of law. The means of incorporation being proposed by the government have been heavily criticized by both human rights organizations and the legal professions.² It has been argued by these groups that the proposed model of incorporation may not fulfill the requirements of providing an effective remedy to litigants as guaranteed by article 13 of the convention. As of the end of 2002, the government had not indicated that it was willing to amend the bill to take any of these criticisms on board.

Most human rights concerns in Ireland in 2002 were related to violations of the freedom of expression and assembly, police misconduct and accountability, rights of Travellers and threats to the right to seek political asylum. Emergency powers legislation were still in force and new anti-terror laws jeopardized the right to fair trial and privacy. In addition, holding juvenile delinquents in inadequate detention conditions caused serious concern, as did a rise in racist incidents. Legal measures threatened to curb the rights of mentally ill persons and of disabled persons and the law on abortion remained very restrictive.

Freedom of Expression and the Media

There have been several controversial libel actions taken by politicians in recent years,³ some of which have resulted in large awards by the courts. These awards have led to concerns that Irish defamation law is in need of reform, and although this reform has been promised for several years, the government has failed to produce any proposals on the matter. In December 2002 the government announced that a review group was being established to study the area and to report to government in early 2003.

A case dealing with freedom of expression issues was brought against Ireland before the European Court of Human Rights in 2002.

- *Murphy v. Ireland* involved a challenge to section 10(3) of the 1988 Radio and Television Act, under which “no advertisement shall be broadcast which is directed towards any religious or political end or which has any relation to an industrial dispute.” The applicant filed a complaint under articles 9 (freedom of religion) and 10 (freedom of expression) of the ECHR. The Irish High Court and the Supreme Court both had held that section 10(3) constituted a reasonable limitation on the right to communicate and there were good reasons in the public interest for the ban. The applicant’s complaint was that his program

¹ Based on a report by the Irish Council of Civil Liberties (ICCL) to the IHF, February 2003.

² See IHF, *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America, Report 2002 (Events of 2001)*, at www.ihf-hr.org

³ *Ibid.*

directed to “discovering more about the resurrection” was prevented from being broadcast. The European Court of Human Rights held a hearing on the case on November 7. The judgment in the case is likely to revolve around whether or not the legislative ban on this kind of advertising is a proportionate measure with which to pursue the common good. It is expected in mid-2003.

- A further case relating to religious advertising arose in relation to an advertising campaign by a group calling themselves “Power to Change,” consisting of an alliance of the main Christian churches. The national television and radio broadcaster RTE refused to run any of the coalition’s television advertisements and “Power to Change” failed in an attempt to acquire a mandatory injunction on the station to run the advertisements. The coalition complained that it had worked together with the broadcaster to ensure that the advertisements did not infringe Irish law banning religious advertising and that RTE’s refusal to carry the advertisements was conveyed to the group only immediately before the adverts were due to be broadcast. Eventually the advertising campaigns were carried by British commercial stations, which were available in 80% of Irish homes.
- In December, RTE also refused to run a radio advertisement for the newspaper *The Irish Catholic*, which included the phrase “these are hard times for the Catholic Church, so hard it’s easy to forget all the good the church does.” RTE and the Broadcasting Commission held that the proposed advertisement “does address the merits of adherence [to the Catholic Church] and therefore cannot be broadcast.”

Freedom of Assembly

As was the case in 2001, concerns continued to be expressed about the use of the 1994 Public Order Act against political protesters. The most contentious provisions of the act were sections 6 & 8. Section 6 made it an offence to “use threatening, abusive or insulting words or behaviour” and section 8 gave wide powers to *gardaí* (the Irish police force) to move anyone who was “loitering” or using “threatening, abusive or insulting words.”

- In July a number of protesters were tried under the act in relation to a demonstration at a business conference and several were convicted under these provisions. Fines were imposed in a number of the protesters amounting to several hundred euro. Concern was expressed that the convicted protesters will also now have criminal records which will prohibit their international travel.

The policing of public demonstrations came under intense public scrutiny in May.

- During a public event on May 6 in Dublin involving the “Reclaim the Streets” movement (an environmentalist and civil liberties body) several young people were injured by police batons. Police confiscated cameras and video-recording equipment from journalists present, however other independent recordings of the event provided evidence of excessive use of force by police officers, including kicking teenagers who were lying on the ground and the use of batons to persons’ heads, against both criminal law and police regulations. No police officers were injured, nor were any reports received of damage to private property (one group of protesters did damage a car which they themselves owned in protest against the problem of excessive traffic in the city). A number of protesters were charged with public order offences, though many of these charges were later

dropped. At the time of writing seven police officers have been charged with offences arising from the operation, although as of February 2003 none had yet appeared in court.

The incident also highlighted the shortcomings of police accountability structures in Ireland. An internal inquiry was immediately established, but the incident also led to the first “external” inquiry by the Garda Complaints Board. The inquiry was headed by a retired police officer and reported that none of the 127 police officers on duty that day were able to identify any of their fellow officers involved in wrongdoing, even with the aid of photographic evidence.

The Criminal Trespass legislation introduced in May, while being mainly targeted against the Travelling community, also had a potential application to groups of protesters and demonstrators, and particular concerns were expressed about the potential impact of the legislation on trade unions and environmental protesters who felt the need to protest on private property.

The 2002 Criminal Justice (Terrorist Offences) Bill, which was published in December also has a potential impact on the right to protest as it may have the effect of acting as a deterrent against protests where the organizers or participants in a demonstration fear that incidental criminal offences might be committed in the course of a protest. Under the proposed legislation the commission of a wide range of offences during protests, including damage to property could result in persons being charged with terrorist offences. The bill replicates the provisions of the EU Framework Decision on Combating Terrorism, which has proved controversial in many member states. Civil liberties campaigners all across Europe have expressed concern that the wide definition of the EU Framework Decision could easily be used against political, trade union or environmental protesters. However, unlike the EU instrument, the proposed Irish legislation makes no reference to excluding legitimate political protests from the new definition of terrorism.

Rule of Law

Offences Against the State Acts

Ireland continued to retain emergency powers legislation, despite the ending of hostilities in Northern Ireland. 2002 also marked the thirtieth anniversary of the Special Criminal Court, a non-jury court established to hear subversive-related cases, which has been mainly used for non-subversive cases in recent years since the paramilitary ceasefires have been in place.

In May the Hederman Review Committee, set up to look at the continuing operation of the Offences Against the State Acts (emergency powers legislation), submitted its final report recommending the retention of the Special Criminal Court. A minority of the committee, including its chair and a number of leading constitutional lawyers dissented on the central recommendations of the report and the majority view was also strongly criticized by human rights and civil liberties groups. The major paramilitary groups involved in the Northern Ireland conflict have been on ceasefire since the early 1990s.

Kavanagh Case

In October the UN Human Rights Committee heard an application from an Irish citizen, Joseph Kavanagh, claiming that the Irish Government had violated his rights to an effective remedy under article 2, paragraph 3 (a) and article 2, paragraph 3 (b) of the International Covenant on Civil and Political Rights. The committee had found a breach of article 26 of the

covenant in a case heard in 2001.⁴ Joseph Kavanagh had been imprisoned following a conviction for kidnapping. The violation arose because he had been tried without jury in the Special Criminal Court and in Irish law the director of public prosecutions did not have to give a reason for recommending non-subversive cases for non-jury trial.

Joseph Kavanagh remained in prison and was alleging that he had received no effective remedy in the case as he was still suffering from the early violation. He also pointed to the fact that the government had not acted on the earlier finding by amending the procedure by which persons are committed to non-jury trial. The UN committee found that he did not have an admissible case, but on the substantive issue, the government had still failed to remedy the procedure that gave rise to the original violation.

Fair Trial and Detainees' Rights

In May, the Council of Europe's Committee for the Prevention of Torture (CPT) visited Ireland for the third time. As well as visiting police stations and prisons, the CPT also visited juvenile detention facilities, mental hospitals and, for the first time, residential homes for the mentally disabled. The CPT communicated the initial findings of its visit to the Irish Government in December and the government was given six months in which to respond.

NGOs who met with the CPT emphasized the particular problems relating to juvenile detention in Ireland, which continued to be seriously in violation of international standards. While there was a slow rate of investment in prevention, early intervention and diversion services for juveniles in Ireland, there was an increase in the provision of detention places suggesting an emphasis on incarceration over rehabilitation.

- In May the European Court of Human Rights gave judgment against the government in the case of *D.G. v. Ireland*, holding that the detention of the applicant, a minor, in St. Patrick's Institution constituted a violation of article 5 of the ECHR. In its judgment the court specifically referred to Ireland's failure to provide specialized detention centers for juveniles.

St. Patrick's is a prison for 16 to 21 year-olds adjacent to Mountjoy, the largest adult prison in the state. Human rights organizations representing children's and prisoners' rights have long advocated the closure of St Patrick's and a report of the Committee of Inquiry into the Penal System (July, 1985), known as the *Whitaker Report*, called for St. Patrick's Institution to be closed down citing unsuitable physical conditions of the building and an inappropriate prison regime.

However, the number of places in St. Patrick's Institution has increased by 47% during the past five years from 163 to 239. In April 2002, the Minister for Justice announced plans to open a "temporary" children's prison wing for 14 and 15-year-olds at St. Patrick's Institution. The proposed re-designation of St. Patrick's Institution is possible only under legislation dating from a 1908 Act. It would not be possible if the 2001 Children Act were implemented, as there is no provision in the 2001 act to detain children under the age of 16 years in a place of detention [section 150]. However many of the provisions of this act were not yet in force.

⁴ Ibid.

In 2002, juveniles aged 14 and 15 years were detained in child detention schools. These centers were managed by the Department of Education and had a specific therapeutic and educational focus. St. Patrick's Institution, on the other hand, is run by the Irish Prison Service and operates a regime not dissimilar from that of an adult prison.

Torture, Ill-Treatment and Police Misconduct⁵

Accountability

The events surrounding the "Reclaim the Streets" demonstration on May 6 and the subsequent reaction of police management and representative association contributed to increased public concern about inadequate accountability structures within the *Garda*.

The system of investigating complaints against police officers dates back to 1986 and involves police in the investigation of complaints against fellow officers. Also in 2002, the government authorities failed to reform this system of investigation. Human rights groups and opposition political parties constantly called for the establishment of a police ombudsman with jurisdiction to investigate such complaints, as exists in Northern Ireland.

A tribunal of inquiry was established to investigate allegation of serious misconduct by police in the Donegal division, including allegations of officers planting drugs and explosives, forging evidence and threatening members of the public. The Morris Tribunal began public hearings in October and it was anticipated that the tribunal would continue hearings throughout 2003.

Right to Privacy

Data Retention

In December, media reports indicated that the government was in the process of drafting data retention legislation that would impose a duty on telecommunication companies and internet service providers to retain data for a 2-4 year period. The government initially claimed that considerations of any such proposals were at an early stage. However, a leaked document from a European Commission questionnaire showed that the Irish government had indicated to Brussels that it intends to introduce legislation providing for a three-year period of retention. Such a period would be well in excess of similar proposals being discussed at a European level and were strongly opposed by human rights organizations and by the telecommunication and internet industry.

Ethnic Minorities

The passing in March of the Housing (Miscellaneous Provisions) Act marked a new low in the victimization of the Traveller community. Although the act was originally presented as routine legislation, amendments to the act criminalizing trespass, and effectively criminalizing nomadism, were introduced at the last minute and without notification to the government's own Traveller Accommodation Consultative Group, which includes Traveller representatives.

⁵ See also Freedom of Assembly.

At the time of enactment the government claimed that the act would only be used against “large-scale commercial encampments.” This was quickly proven to be false with a number of individual families being arrested and having their caravans seized.

- In one notable case four families in Ennis were arrested for parking in the same place they have stayed for over a year.

In that case, as in many of the prosecutions taken under the act, the relevant local authorities failed to provide these families with housing (the Ennis families had been on waiting lists for two years) and their response was to make homeless the very families they were failing. Some families effected by this legislation mounted a legal challenge to the act and, at this writing, parallel actions are being taken against local authorities for their failure to fulfill statutory requirements to provide basic accommodation. A large collection of legal academics, human rights groups and Traveller organizations have come together to campaign for the repeal of this legislation.

Intolerance and Racial Discrimination

The European Commission against Racism and Intolerance (ECRI) published its second report on Ireland in June.⁶ The report highlighted a number of areas in which racism was particularly manifest in Irish society, most notably in refusal of entry to public places, public misinformation about asylum seekers and refugees and violent assaults and harassment of non-nationals. The ECRI pointed to the poor quality of data-gathering mechanisms on the incidences of racism and discrimination, the need for greater public information and the need for reconsideration of policies relating to asylum seekers and refugees as being key areas requiring government action.

The National Consultative Committee on Racism and Interculturalism (NCCRI) published statistics indicating a dramatic rise in racist incidents in 2002. The NCCRI was particularly critical of elements of the public sector, including immigration officials and the police, against which it had received considerable numbers of complaints of discriminatory behavior. The NCCRI also referred to an increase in the dissemination of racist posters and pamphlets in the period leading up to the general elections in May. While much of this material was anonymous, at least one group that was running for election was linked to the distribution of pamphlets alleging that immigrant groups are responsible for disease and social problems.

- In January, a young Chinese national, Zhao Liu Tao was killed in an apparently racially motivated assault in Dublin.

Amnesty International and other groups also expressed concern that a small number of mainstream politicians had made public statements in relation to asylum seekers that might constitute incitement to hatred.

- During the general election campaign, one sitting member of parliament referred to asylum seekers as “spongers and freeloaders.” Despite such remarks, initially disciplined

⁶ See www.coe.int/T/E/human_rights/Ecri/1-ECRI/2-Country-by-country_approach/Ireland/CBC2-Ireland.asp#TopOfPage

by his party, the member was re-elected with an increased vote and was later appointed chair of a parliamentary committee.

Asylum Seekers

A coalition of human rights groups and trade unions continued to campaign against the enactment of carriers' liability legislation in a proposed immigration bill.

The bill proposes to introduce the concept of carriers' liability into Irish law whereby airline and ferry companies are liable for large penalties if they are found to carry passengers traveling to Ireland without appropriate travel documents and visas. The Irish Council of Civil Liberties stated that, apart from the obvious difficulties involved in placing the burden of immigration controls on the shoulders of private firms, the central problem with such measures is that they have been shown to have the effect of denying persons fleeing persecution the right to claim asylum. It noted that the 1951 Geneva Convention explicitly makes reference to the obvious truth that many of those fleeing persecution will not be in a position to obtain proper travel visas before departure. However, carriers' liability legislation will mean that such refugees will not even have the opportunity to claim asylum as they will be stopped at the point of departure. At the time of writing the legislation is still pending enactment.

Women's Rights

In March, a referendum, which proposed to further restrict Irish abortion law, was rejected by the narrow majority of 50.42% to 49.58%. Voter turnout was relatively high at 42.89%.

The principal element of the government proposal was to exclude the threat that a woman may commit suicide as a result of her pregnancy as a possible ground for a justifying an abortion.⁷

Ireland remained one of the few countries in the world without any legislative provision for abortion, although several studies have indicated that a comparatively large number of Irish women travel to the United Kingdom every year for the purposes of having abortions.

The Mentally Disabled or Ill

In early 2002, the government was forced to withdraw a proposed Disability Bill due to strong opposition from disability rights campaigners.

The proposed bill, which had been promised for six years, attempted to deny disabled persons any enforceable legal rights to the services outlined in the legislation, including rights of access to public transport, to education services, to basic medical services and to needs assessment and advocacy services.

In response, the government established a Disability Legislation Consultative Group to reflect the views of disabled people and experts in the area as to the essential elements required of

⁷ See IHF, op.cit.

rights-based disability legislation in line with the recommendations of the 1996 Commission on the Status of People with Disability. The group will make recommendations to government in 2003.