



**FLAC briefing for  
Nils Muižnieks,  
Council of Europe  
Commissioner for Human  
Rights**

**November 2016**

## About FLAC

FLAC (Free Legal Advice Centres) is a non-governmental, voluntary organisation which exists to promote the fundamental human right of access to justice. As an organisation, FLAC focuses on the use of law as a tool for social change and on the right of equal access to justice for all. We work particularly on the protection of economic, social and cultural rights. FLAC is an affiliate member of the FIDH.

In our work, we identify and make policy proposals on how the law excludes marginalised and disadvantaged people, principally around social welfare law, personal debt & credit law and civil legal aid. We advance the use of law in the public interest and we co-ordinate and support the delivery of basic legal information and advice to the public for free and in confidence. We also engage in strategic litigation. PILA, a project of FLAC, operates a pro bono referral clearing house which seeks to match the legal needs of social justice NGOs and private practitioners.

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## Overview of Recommendations

### **Recommendation 1: Positive duty on public and statutory bodies**

FLAC would encourage the Commissioner to ask the State how it intends to ensure that all public bodies comply with their obligations under Section 42 of the Irish Human Rights and Equality Commission Act 2014. In particular, FLAC would ask that the State identify which statutory bodies have set out in their strategy statements the human rights and equality issues relevant to their functions and the policies, plans and actions that are already in place or proposed to be put in place to address these issues.

### **Recommendation 2: Equality and Human Rights proofing of the Budget**

FLAC would encourage the Commissioner to ask the State about what measures are being taken to create the necessary institutional frameworks and conditions within government departments to support equality and human rights proofing of budgetary proposals.

### **Recommendation 3: Review of the Gender Recognition Act 2015**

FLAC would urge the Commissioner to ask the State to ensure that young trans, intersex and non-binary persons are meaningfully consulted as part of the review into the operation of the Gender Recognition Act 2015 and that their views and rights are adequately considered in the outcome document and in any amending legislation.

### **Recommendation 4: Review of the Civil Legal Aid Act 1995**

FLAC would urge the Commissioner to encourage the State to undertake a review of the Civil Legal Aid Act 1995 by reference to the requirements of Articles 6 and 13 of the European Convention on Human Rights and Article 47 of the EU Charter of Fundamental Rights. FLAC would also ask the State about how it intends to address lengthy delays within the civil legal aid system.

### **Recommendation 5: Removal of the requirement for victims of domestic violence to make financial contributions for civil legal aid**

FLAC would encourage the Commissioner to seek a response from the State as to whether the requirement for victims of domestic violence to make financial contributions for civil legal aid services where safety, protection or barring orders are being sought, will be abolished.

### **Recommendation 6: Implementation of the McMahon report on Direct Provision**

FLAC would ask the Commissioner in his dialogue with the State to specify when the weekly allowance for asylum seekers living in Direct Provision will be increased to €38.74 for adults and to €29.80 for children in line with the recommendations of the McMahon report. In addition, FLAC would encourage the State, pending the abolition of the Direct Provision system, to provide a statutory underpinning for the Direct Provision allowance, which would help ensure regular reviews of the payment in line with other social welfare payments.

### **Recommendation 7: Allocation of adequate time for consideration of the Social Welfare Bill**

FLAC would encourage the Commissioner to ask the State to allocate adequate time for the proper consideration of Social Welfare Bills.

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**Recommendation 8: Creation of a Social Welfare Appeals Database**

FLAC would urge the Commissioner to raise concerns with the State regarding the lack of a social welfare database and emphasise the need for establishing an anonymised, searchable database of social welfare appeals decisions, including appeals related to the Habitual Residence Condition.

**Recommendation 9: Review of the Habitual Residence Condition**

FLAC would ask the Commissioner to encourage the State to undertake a review of the Habitual Residence Condition so as to eliminate its discriminatory impact on access to social welfare, particularly among vulnerable and marginalised individuals and groups.

**Recommendation 10: Make Child Benefit a truly universal payment**

FLAC would urge the Commissioner to encourage the State to make Child Benefit a universal payment that is not contingent on the fulfilment of the Habitual Residence Condition.

**Recommendation 11: End the practice of providing reduced rates of Jobseekers Allowance to young people under the age of 26**

FLAC would urge the Commissioner to ask the State to provide for equal jobseekers payments amongst all adults over the age of 18.

**Recommendation 12: Ensure access to the necessary legal, financial and social supports including legal representation in repossession and eviction proceedings**

FLAC would encourage the Commissioner to ask the State what measures are being taken to ensure that those at risk of homelessness because of over-indebtedness or unsustainable mortgages have access to the necessary legal, financial and social supports, including legal representation in repossession and eviction proceedings, access to personal insolvency practitioners and housing options.

**Recommendation 13: Restoration of a targeted use of the Mortgage Interest Supplement scheme**

FLAC would urge the Commissioner to ask the State to outline the steps envisaged to implement the recommendation of the Oireachtas Committee on Housing and Homelessness with respect to restoring a targeted use of the Mortgage Interest Supplement payment.

**Recommendation 14: Implementation of the European Committee of Social Right's decision in *ERRC v Ireland* and recognition of Travellers as an ethnic minority**

FLAC would ask the Commissioner, in his dialogue with the State to seek specific detail as to how the findings of the Committee are being remedied, and whether a greater impetus at a national level for the delivery of Traveller accommodation will be considered. In addition, FLAC would urge that the State be asked for specific details as to whether the legislative framework governing evictions is to be repealed or amended. Furthermore, FLAC would ask the Commissioner to ask the State as to when Travellers will be recognised as a distinct ethnic minority and if the State can explain what, if any, residual barriers to such recognition remain.

**Recommendation 15: Ensure an accessible, user-friendly forum for hearing employment and equality claims**

FLAC would ask the Commissioner to encourage the State to ensure that the Workplace Relations Commission provides an accessible, user-friendly forum for the referral of claims under employment protective legislation and claims of discrimination under the Equal Status Act.

**Recommendation 16: Initiation of an information campaign in relation to the prohibition on discrimination in housing on grounds of being in receipt of social welfare payments**

FLAC would ask the Commissioner to encourage the State to ensure that the Irish Human Rights and Equality Commission and the Workplace Relations Commission engage in a joint information campaign about the new prohibition on discrimination in the provision of housing on the basis of being in receipt of rent supplement or other social welfare payments.

**Recommendation 17: Enable deaf persons to serve on juries**

FLAC would urge the Commissioner to ask the State how it intends to align domestic legislation with the UN Convention on the Rights of Persons with Disabilities with respect to enabling deaf persons to serve on juries.

**Recommendation 18: Enable visually impaired people to exercise their right to a secret ballot in all elections**

FLAC would encourage the Commissioner to ask the State to examine ways in which the right of visually impaired people to a secret ballot can be respected in all future elections.

## Introduction

FLAC welcomes the invitation to provide this briefing to Mr. Nils Muižnieks, Council of Europe Commissioner for Human Rights, on the occasion of his country visit to Ireland. FLAC's submission highlights some positive developments that have occurred since the former Commissioner, Thomas Hammarberg's, official country visit to Ireland in June 2011, issues which remain of concern and issues which have arisen in the interim.

FLAC invites the Commissioner to raise the following matters in his engagement with the relevant state authorities, and, if appropriate, include them in the Country Report that will follow as a means of prompting positive change in these areas.

## Positive developments

- **Human Rights Infrastructure**

The Irish Human Rights and Equality Commission Act 2014 contains a new provision which seeks to mainstream human rights and equality through the creation of a positive duty on a broad range of public and statutory bodies to promote equality of opportunity and protect the human rights of their staff and the persons to whom they provide services to. The public sector duty is a stand-alone mandatory requirement for a broad range of public and statutory bodies, including the Departments of Social Protection, Finance and Justice and Equality, the Legal Aid Board, the HSE, the Courts Service, the Workplace Relations Commission etc., to take cognisance of human rights and equality standards in their work; to ensure compliance with those standards and to promote the development of those standards in a proactive way.

Public bodies must set out in an accessible manner in their strategic plan an assessment of the human rights and equality issues they believe to be relevant to their functions and purpose. They must also identify the policies, plans and actions that are already in place or proposed to be put in place to address these issues. Further under the terms of the Public Service Management Act 1997, there is a statutory requirement on all government departments and statutory bodies to produce a strategy statement once every three years, or within six months of the appointment of a new minister.

The advent of the public sector duty is a welcome development. However, FLAC is concerned that almost two years on, implementation of and compliance with the duty has been mixed and piecemeal. Recently, FLAC provided submissions to a number of government departments, drawing their attention to the mandatory obligations imposed on all public bodies by the positive duty with respect to the development of their strategy statements.<sup>1</sup>

**Recommendation 1: FLAC would encourage the Commissioner to ask the State how it intends to ensure that all public bodies comply with their obligations under Section 42 of the Irish Human Rights and Equality Commission Act 2014. In particular, FLAC would ask that the State identify which statutory bodies have set out in their strategy statements the human rights and equality issues relevant to their functions and the policies, plans and actions that are already in place or proposed to be put in place to address these issues.**

- **Equality and Gender Proofing of the Budget**

In addition to the public sector duty, the new Programme for Government contains a progressive commitment to equality and gender proof budgetary proposals as a means of advancing equality, reducing poverty and strengthening economic and social rights.<sup>2</sup> However, the institutional arrangements required to support equality and gender proofing within government departments have yet to be put in place.

Disappointingly, Budget 2017, which was announced in October 2016, did not adequately reflect the new Programme for Government commitment to equality and gender proof budgetary proposals. For example, budget statements delivered by the Department of Finance and the Department of Public Expenditure and Reform did not include an equality and human rights statement. Furthermore, a national proofing committee to advance the institutional framework for such proofing and ensure all Departments are involved has yet to be established.

**Recommendation 2: FLAC would encourage the Commissioner to ask the State about what measures are being taken to create the necessary institutional frameworks and conditions within government departments to support equality and human rights proofing of budgetary proposals.**

- **Recognition of the Person before the Law, the Right to Privacy and Family Life and the Right to Non-Discrimination in relation to transgender persons**

The Gender Recognition Act 2015, enacted in July 2015 and commenced in September of the same year, enables trans persons, for the first time, to achieve full legal recognition in their preferred gender. The legal recognition process is based on the principle of self-determination, meaning that trans persons can self-declare their gender by way of a statutory declaration without the need for a medical assessment. 149 Gender Recognition Certificates were issued within the first nine months of the commencement of the Act.<sup>3</sup>

Despite this significant and welcome advance, issues with the legislation remain. The gender recognition procedure for 16 and 17 year olds is restrictive, requiring certification from two medical practitioners, parental consent and a court order. In addition, trans children under the age of 16 cannot obtain legal gender recognition under any circumstance. Furthermore, persons with a non-binary gender identity and intersex people may not benefit from the 2015 Act as the legislation has been interpreted as only providing the option of male or female. Section 7 of the 2015 Act requires the Government to undertake a review of the operation of the Gender Recognition Act in 2017.

**Recommendation 3: FLAC would urge the Commissioner to ask the State to ensure that young trans, intersex and non-binary persons are meaningfully consulted as part of the review into the operation of the Gender Recognition Act 2015 and that their views and rights are adequately considered in the outcome document and in any amending legislation.**

## Issues of concern

- **The Right of Fair Procedures and Access to Justice in relation to civil legal aid**

There is a high degree of likelihood that some provisions of the Civil Legal Aid Act 1995 as presently drafted are incompatible with the protections afforded to the right to a fair hearing guaranteed by Article 6 of the ECHR and may deny access to an effective remedy pursuant to Article 13. The 1995 Act excludes a number of areas of law, including defamation and housing, from the civil legal aid scheme. In addition, legal aid is not available for a range of quasi-judicial tribunals that make legally binding decisions outside of the court, including the Workplace Relations Commission, the Labour Court and the Social Welfare Appeals Office.

The Legal Aid Board itself has acknowledged that the continued exclusion of some areas of the law from the civil legal aid scheme leaves the State open to a legal challenge.<sup>4</sup> In 2005, the Department of Justice and Equality initiated a preliminary examination of the implications of the *Steel & Morris* judgment for Ireland, a decision of the European Court of Human Rights relating to the blanket exclusion of areas of law from a civil legal aid scheme.<sup>5</sup> However it is unclear if this review was ever completed.<sup>6</sup>

In addition to the limited scope of the scheme, waiting times for consultations with Legal Aid Board solicitors can be lengthy.<sup>7</sup> Latest data available from the Legal Aid Board shows that people can be waiting up to 25 weeks for an initial consultation with a solicitor.<sup>8</sup> In total, 8 Law Centres have waiting times of 16 weeks or more. Furthermore, waiting times for second appointments can also be excessive, with maximum waiting times over 20 weeks in 10 Law Centres.

**Recommendation 4: FLAC would urge the Commissioner to encourage the State to undertake a review of the Civil Legal Aid Act 1995 by reference to the requirements of Articles 6 and 13 of the European Convention on Human Rights and Article 47 of the EU Charter of Fundamental Rights. FLAC would also ask the State about how it intends to address lengthy delays within the civil legal aid system.**

- **Access to Justice for victims of domestic violence**

Civil legal aid services in Ireland play a vital role in ensuring that people with limited financial resources who have experienced domestic violence can access the protection of the legal system. In particular, civil legal aid provides victims of domestic violence with access to the courts for safety, protection and barring orders.

One of the barriers facing victims of domestic violence in accessing justice and protection is the requirement to pay financial contributions for state-funded civil legal aid. In 2013, the minimum contribution for legal aid services provided by the Legal Aid Board increased from €50 to €130.<sup>9</sup> Frontline organisations working with victims of domestic violence have reported that, despite the existence of a waiver of fees in exceptional circumstances,<sup>10</sup> the 2013 increase in legal fees for advice and representation provided by the Legal Aid Board puts legal assistance out of reach for most women who are victims of domestic violence and reliant on state payments.<sup>11</sup>

Typically, the Legal Aid Board requires that a person pay a financial contribution before instituting legal proceedings. As a result, people in receipt of legal aid must wait for a decision in respect of



their waiver application before a Legal Aid Board solicitor will file court proceedings. FLAC is concerned that victims of domestic violence may need immediate court protection and may not be able to wait the length of time required in respect of a decision on a waiver.

This marginalisation can have significant risks for all victims, particularly women and children who are disproportionately affected by domestic violence, who can be left in extremely vulnerable and dangerous situations. In light of ongoing concerns that victims of domestic violence are discouraged from accessing the civil legal aid scheme for financial reasons, FLAC has called for the abolition of legal aid fees for victims of domestic violence where safety, protection or barring orders are being sought.<sup>12</sup>

**Recommendation 5: FLAC would encourage the Commissioner to seek a response from the State as to whether the requirement for victims of domestic violence to make financial contributions for civil legal aid services where safety, protection or barring orders are being sought, will be abolished.**

- **The Right to an Adequate Standard of Living including Adequate Food, Housing and Mental and Physical Health in relation to Asylum Seekers living in Direct Provision**

FLAC has called for the abolition of the Direct Provision system.<sup>13</sup> Pending abolition, FLAC has recommended a range of measures to improve the current reception system for asylum seekers.

Asylum seekers living in Direct Provision receive a weekly allowance of €19.10 per adult and €15.60 per child. While the child rate of payment was increased by €6 to €15.60 in January 2016, the adult rate has remained unchanged since it was first introduced in 2000. These rates of payment are not adequate and do not meet the basic needs of asylum seekers. Furthermore, there is no statutory basis for the payment of the Direct Provision allowance or for the setting of the amounts paid.<sup>14</sup>

In June 2015, the final report of the Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, referred to as the McMahon report, recommended that the Direct Provision weekly allowance for adults be increased to €38.74 and to €29.80 for children.<sup>15</sup>

**Recommendation 6: FLAC would ask the Commissioner in his dialogue with the State to specify when the weekly allowance for asylum seekers living in Direct Provision will be increased to €38.74 for adults and to €29.80 for children in line with the recommendations of the McMahon report. In addition, FLAC would encourage the State, pending the abolition of the Direct Provision system, to provide a statutory underpinning for the Direct Provision allowance, which would help ensure regular reviews of the payment, in line with other social welfare payments.**

- **The Right to Social Security**

In previous years, little time has been allocated to review and debate the potential significance of amendments to the Social Welfare Bill (which provides a statutory underpinning to the social welfare measures announced in the annual budget but may also encompass other important issues) in both the Dáil and the Seanad. While more time has been allocated to consider the 2016 Bill as compared to other years, the legislation is still progressing through the Oireachtas at a very quick

pace. FLAC is concerned that there is an increased risk that vulnerable and marginalised groups will be adversely affected when social welfare legislation is not properly scrutinised.

**Recommendation 7: FLAC would encourage the Commissioner to ask the State to allocate adequate time for the proper consideration of Social Welfare Bills.**

- **The Right to Social Security, the Right of Fair Procedures and Access to Justice in relation to the social welfare appeals system**

The Social Welfare Appeals Office, which provides an appeals service with regard to entitlement to social welfare payments, does not maintain a public database of previous decisions.<sup>16</sup> The lack of such a database presents all individuals taking social welfare appeals with practical difficulties in interpreting how the legislation is interpreted and applied, especially those taking appeals related to complex legal issues such as the Habitual Residence Condition (an extra qualifying condition for means-tested social welfare payments and Child Benefit).<sup>17</sup>

In its 2016 follow-up conclusions, the European Commission against Racism and Intolerance (ECRI) noted that the Irish authorities had only published a very low number of social welfare appeals cases related to the Habitual Residence Condition (HRC) and that no consistency in publishing such decisions could be observed.<sup>18</sup> The ECRI reiterated its 2013 call to publish appeals decisions related to the HRC in order to ensure a “sufficient level of predictability” in decision-making.

**Recommendation 8: FLAC would urge the Commissioner to raise concerns with the State regarding the lack of a social welfare appeals database and emphasise the need for establishing an anonymised, searchable database of social welfare appeals decisions, including appeals related to the Habitual Residence Condition.**

- **The Right to Social Security in relation to the Habitual Residence Condition (HRC)**

Despite repeated calls from regional and international human rights bodies and experts, the Government has refused to initiate a review of the Habitual Residence Condition and its discriminatory impact on vulnerable groups accessing social welfare payments. The Habitual Residence Condition is an additional qualifying condition for all means-tested social welfare payments and Child Benefit by which an applicant has to show a connection to the State by reference to a number of interrelated and, to some extent, subjective factors. In its application, the Habitual Residence Condition disproportionately affects vulnerable groups such as migrants, Travellers and Roma which experience considerable challenges in terms of establishing a connection to Ireland, by reason of either their nomadic way of life or the inherent barriers that migrants experience in integrating into a new country and proving their connection to the State.<sup>19</sup>

**Recommendation 9: FLAC would ask the Commissioner to encourage the State to undertake a review of the Habitual Residence Condition so as to eliminate its discriminatory impact on access to social welfare, particularly among vulnerable and marginalised individuals and groups.**

- **Non-Discrimination, Best Interests of the Child and the Right to Social Security in relation to Child Benefit**

While Child Benefit is classified as a universal payment, a number of children living in the State are denied this payment due to the application of the Habitual Residence Condition. Prior to the introduction of the Condition, Child Benefit was paid to the parents of all children living in the State regardless of their immigration status. However, the children of asylum or protection applicants and other persons not regarded as habitually resident are now denied the payment. This is so, irrespective of how long such persons have been living in the State, and how integrated those children are into their local community.<sup>20</sup>

**Recommendation 10: FLAC would urge the Commissioner to encourage the State to make Child Benefit a universal payment that is not contingent on the fulfilment of the Habitual Residence Condition.**

- **The Right to Social Security in relation to Young People under the age of 26**

Young people under the age of 26 years who are eligible for a jobseekers payment receive a lesser amount than those aged over 26. In October 2016, the Government announced that all weekly social welfare payments would be increased by €5. However, young jobseekers under the age of 26 will not receive the same level of increase, despite the fact that they currently receive reduced social welfare payments.

From March 2017, young jobseekers aged 18 – 24 will receive a weekly payment of €102.70 and those aged 25 will receive €147.80 per week. By contrast, those aged 26 and over will receive an increase of €5 meaning their weekly payment will amount to €193. The Minister for Social Protection has argued that this is a targeted measure aimed at protecting young people from welfare dependency by incentivising them to avail of education and training opportunities.<sup>21</sup>

The disparate treatment appears to be based on an assumption by the State that adults below the age of 26 are able to live with parents or family members and do not require the same level of state support. The measure is a generalised one, not specific to the circumstances or realities of each young person in receipt of social welfare. Concerns have been expressed that these age-related social welfare cuts increase the vulnerability of people under the age of 26 to homelessness, particularly those who are already disadvantaged or without family supports such as LGBTI persons, migrants, victims of domestic violence, Travellers and Roma.<sup>22</sup>

**Recommendation 11: FLAC would urge the Commissioner to ask the State to provide for equal jobseekers payments amongst all adults over the age of 18.**

- **Protection of the Family Home and over-indebtedness**

The mortgage arrears and personal debt crisis has resulted in thousands of people either losing – or at risk of losing – their homes. The most recently available figures show that at the end of June 2016, some 82,092 mortgage accounts for principal dwelling houses were in arrears (11% of PDH mortgages). The number of such accounts in arrears for more than 90 days was 57,571; but

worryingly 34,980 accounts were in arrears of more than two years, with an average arrears figure of over €60,000 per account.

While there has been some progress in seeking to address this issue, including the introduction of new legislation, the Personal Insolvency Act 2012, and the establishment of a new scheme of financial and legal advice for people in mortgage arrears facing repossession, the pace of resolution has been far too slow given the scale of the problem.

In the absence of a more radical state approach to resolving arrears and insolvency, including debt write-down in appropriate cases, a properly functioning mortgage-to-rent scheme and enhanced powers for courts to impose settlements, finding a long-term sustainable solution is still out of reach for many people.

#### Mortgage Interest Supplement

The Mortgage Interest Supplement scheme provided short-term income support to borrowers who were unable to meet their mortgage interest repayments. The basic purpose of Mortgage Interest Supplement was to ensure that a person who suffers a temporary loss of income will not have their family home repossessed due to an inability to meet mortgage interest repayments. In effect therefore, the Supplement provided a safety net for people temporarily struggling with mortgage repayments, particularly those who are unemployed or ill.

However, since 1 January 2014, the Mortgage Interest Supplement scheme has been closed to new entrants and the scheme is being wound down over a four-year period (by the end of 2017) for the 9768 claimants who were still in receipt of the Supplement at the start of 2014. The closure of the scheme to new claimants means that people experiencing short-term income difficulties cannot access social welfare assistance to meet mortgage interest repayments.

In July 2016, the Oireachtas Committee on Housing and Homelessness recommended that a targeted use of Mortgage Interest Supplement be restored to assist people with a short-term mortgage arrears problem but this appears not to have been acted upon.<sup>23</sup>

**Recommendation 12: FLAC would encourage the Commissioner to ask the State what measures are being taken to ensure that those at risk of homelessness because of over-indebtedness or unsustainable mortgages have access to the necessary legal, financial and social supports, including legal representation in repossession and eviction proceedings, access to personal insolvency practitioners and housing options.**

**Recommendation 13: FLAC would urge the Commissioner to ask the State to outline the steps envisaged to implement the recommendation of the Oireachtas Committee on Housing and Homelessness with respect to restoring a targeted use of the Mortgage Interest Supplement payment.**

- **Non-Discrimination, Equality before the Law and the Right to Housing in relation to Travellers and Roma**

#### Traveller ethnicity

Notwithstanding numerous calls by both UN and Council of Europe human rights bodies, the Irish Government has failed to recognise Travellers as a distinct ethnic minority.<sup>24</sup> A cross-party Parliamentary Committee rejected “all identifiable potential excuses or concerns that could be deployed by this State to justify the continued denial of Traveller ethnicity” and recommended that the State officially recognise Travellers as an ethnic minority.<sup>25</sup> In legal terms, the State’s stance removes Travellers from the protection of EU Equality Directives, and also various UN human rights protections, most obviously the UN Convention on the Elimination of all Forms of Racial Discrimination (CERD).

#### European Committee of Social Rights decision in *ERRC v Ireland*

In 2013, the European Roma Rights Centre, in partnership with the Irish Traveller Movement, submitted a collective complaint to the European Social Committee (‘the Committee’) in relation to the alleged breach by the State of articles 16 (protection of the family), 17 (protection of children) and 30 (protection from poverty and social exclusion) of the Revised European Charter (‘the Charter’) either taken alone or in conjunctions with Article E (non-discrimination provision).

The Committee published its decision on 16 May 2016,<sup>26</sup> and found Ireland to be in breach of Article 16 of the Charter in relation to insufficient provision of accommodation for Travellers; the inadequate condition of many Traveller sites, and the absence of safeguards for Travellers threatened with eviction. The Committee of Ministers adopted a resolution in relation to the Decision on 5 October 2016, recording the finding of the Committee together with the response of the State.<sup>27</sup>

The response of the State does not outline any concrete measures that will necessarily address the findings of the Committee in relation to the provision of accommodation. The State, in its response, invokes the existing structures established under the Housing (Traveller Accommodation) Act 1998, but which have already failed to deliver any substantial amount of Traveller specific accommodation, both permanent and transient, and has not addressed the poor conditions in Traveller accommodation to date.

In relation to the legislative framework governing evictions, the Committee found that two legislative provisions are in breach of the Charter; namely section 19A of the Criminal Justice (Public Order) Act 1994 (‘the criminal trespass legislation’) and section 10 of the Housing (Miscellaneous Provisions) Act 1992 (as amended). The Committee sets out the *de minimus* legal requirements that must attend an eviction before it may be considered lawful under the Charter.<sup>28</sup> The only adequate response to this finding appears to be repeal or significant amendment to the impugned legislation and a review of the Civil Legal Aid Act 1995, to ensure Travellers have recourse to legal advice and representation in relation to evictions.<sup>29</sup> However, the State’s response suggests non-binding guidelines for local authorities be adopted in relation to evictions and more data gathering. It appears that the State may in fact be ignoring the import of the decision.

**Recommendation 14: FLAC would ask the Commissioner, in his dialogue with the State to seek specific detail as to how the findings of the Committee are being remedied, and whether a greater impetus at a national level for the delivery of Traveller accommodation will be considered. In addition, FLAC would urge that the State be asked for specific details as to whether the legislative framework governing evictions is to be repealed or amended. Furthermore, FLAC would ask the Commissioner to ask the State as to when Travellers will be recognised as a distinct ethnic minority and if the State can explain what, if any, residual barriers to such recognition remain.**

- **The Right of Fair Procedures, Access to Justice, Non-Discrimination and Equality before the Law**

Ireland's employment protection and equality infrastructure has been subject to significant change in recent years.<sup>30</sup> The Employment Appeals Tribunal, an independent body established to provide a fair, inexpensive and informal means for employees to seek remedies for infringements of their statutory employment rights and protections, was abolished in 2015. The Equality Tribunal, a dedicated tribunal which was established to investigate, hear and decide claims under the Equal Status and Employment Equality Acts, was also abolished.

Since October 2015, all complaints and disputes under employment and equality legislation are dealt with by the Workplace Relations Commission. All appeals of employment claims are dealt with by the Labour Court.

The operation of the Workplace Relations Commission has been subject to criticism.<sup>31</sup> The form used for referring claims is complicated and inaccessible, and there is uncertainty and confusion about the conduct of the hearings. Furthermore, civil legal aid is not available for claims dealt with by the Workplace Relations Commission or the Labour Court.

#### Discrimination against social welfare recipients

The Equal Status Act was amended in 2015 to include a prohibition on discrimination in the provision of accommodation on the basis of receipt of certain social welfare payments. This measure introduces a form of socio-economic status as a prohibited ground of discrimination under equality legislation for the first time. While welcome, awareness of this provision appears to be low.

**Recommendation 15: FLAC would ask the Commissioner to encourage the State to ensure that the Workplace Relations Commission provides an accessible, user-friendly forum for the referral of claims under employment protective legislation and claims of discrimination under the Equal Status Act.**

**Recommendation 16: FLAC would ask the Commissioner to encourage the State to ensure that the Irish Human Rights and Equality Commission and the Workplace Relations Commission engage in a joint information campaign about the new prohibition on discrimination in the provision of housing on the basis of being in receipt of rent supplement or other social welfare payments.**

- **Non-Discrimination and Equality before the Law and Access to Public Service in relation to Deaf Jurors**

Deaf people are precluded by law from serving on juries in civil and criminal trials in Ireland.<sup>32</sup> The provision of sign language interpreters operating under rules to protect the integrity and confidentiality of jury deliberations would allow deaf people have access on an equal footing to this important public function.<sup>33</sup>

It is relevant to note that the Government is currently in the process of finalising preparations for ratifying the UN Convention on the Rights of Persons with Disabilities (CRPD). Despite this, no steps have been taken, or are indeed planned, to enable deaf persons to serve on juries with appropriate assistance and safeguards in Ireland.<sup>34</sup>

**Recommendation 17: FLAC would urge the Commissioner to ask the State how it intends to align domestic legislation with the UN Convention on the Rights of Persons with Disabilities with respect to enabling deaf persons to serve on juries.**

- **Non-Discrimination and Equality before the Law and Access to Public Service in relation to Visually Impaired People**

The State recently introduced regulations allowing for visually impaired people to vote without assistance in referendums by using a special ballot paper template.<sup>35</sup> While this measure is welcome, visually impaired people must rely on the polling station presiding officer, or a close friend, to complete their ballot paper in elections, which effectively deprives them of their right to a secret ballot.

**Recommendation 18: FLAC would encourage the Commissioner to ask the State to examine ways in which the right of visually impaired people to a secret ballot can be respected in all future elections.**

<sup>1</sup> For more information see <http://www.flac.ie/publications/> [accessed 23 November 2016].

<sup>2</sup> Government of Ireland (2016) *A Programme for a Partnership Government*, Dublin: Dept. of An Taoiseach, p.104.

<sup>3</sup> S. Pollak, '149 people apply for gender recognition under new law', *Irish Times*, 21 November 2016.

<sup>4</sup> In response to a 2011 Parliamentary Question posed by Jerry Buttimer TD, then Minister for Justice, Equality and Defence, Alan Shatter, informed that "the Board suggested that the continued exclusion of defamation might leave the State open to challenge for not providing for the possibility of the provision of legal aid in such cases". Minister for Justice, Equality and Defence, Alan Shatter TD, Parliamentary Questions: Written Answers, [24638/11], 20 September 2011.

<sup>5</sup> In *Steel & Morris v the United Kingdom*, the European Court of Human Rights held that, "[t]he question whether the provision of legal aid is necessary for a fair hearing must be determined on the basis of the particular facts and circumstances of each case and will depend, inter alia, upon the importance of what is at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant's capacity to represent him or herself effectively." *Steel & Morris v UK* (2005) 41 EHRR 22, para.61.

<sup>6</sup> Free Legal Advice Centres (2005) *Access to Justice: A Right or a Privilege*, Dublin: FLAC, pp.13-14.



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<sup>7</sup> The High Court has indicated that an individual should have to wait no longer than two to four months to get an appointment. *O'Donoghue v Legal Aid Board, Minister for Justice, Equality & Law Reform, Ireland and the Attorney General* [2004] IEHC 413, 21 December 2004, Kelly J.

<sup>8</sup> Statistics for September 2016, available at:

[http://www.legalaidboard.ie/lab/publishing.nsf/Content/Applications\\_and\\_waiting\\_times](http://www.legalaidboard.ie/lab/publishing.nsf/Content/Applications_and_waiting_times) [accessed 17 August 2016].

<sup>9</sup> S.I. No. 346/2013 - Civil Legal Aid Regulations 2013.

<sup>10</sup> Waivers are only granted where the Legal Aid Board is satisfied that paying a contribution would cause the person “undue hardship”. While the exact meaning of “undue hardship” is not defined by legislation, the Legal Aid Board considers that it includes situations where the applicant is dependent entirely on supplementary welfare payments or where the applicant is living in Direct Provision and . For more information see <http://www.legalaidboard.ie/en/Contact-Us/Apply-for-a-waiver-of-contribution/> [accessed 21 November 2016].

<sup>11</sup> SAFE Ireland (2014) *Safety in a Time of Crisis: Priorities for Protecting Women and Children impacted by Domestic Violence*, Athlone: SAFE Ireland, p.13.

<sup>12</sup> For more information see FLAC’s submission to the Department of Justice & Equality regarding its Strategy Statement 2016-2019, available at <http://www.flac.ie/publications/submission-dept-of-justice-strategy-statement/> [accessed 21 November 2016].

<sup>13</sup> Free Legal Advice Centres (2009) *Not Fair Enough*, Dublin: FLAC. A number of regional and international human rights bodies have also expressed concern about the Direct Provision system. In July 2015, the UN Committee on Economic, Social and Cultural Rights expressed concern “at the poor living conditions and the lengthy stay of asylum seekers in direct provision centres”. The UN Committee further noted that the Direct Provision system has “a negative impact on asylum seekers’ right to family life, their mental health and their children’s best interests”. UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.14.

<sup>14</sup> Concerns regarding restrictions asylum seekers face in accessing social security benefits have been voiced by a number of bodies, including by the UN Committee on Economic, Social and Cultural Rights and the UN Committee on the Rights of the Child.

<sup>15</sup> Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers (2015) *Final Report*, Dublin: Working Group on the Protection Process, p.208.

<sup>16</sup> At present, only a limited number of cases are published each year in its annual reports, usually on a thematic basis.

<sup>17</sup> For more information see Free Legal Advice Centres (2012) *Not Fair Enough*, Dublin: FLAC, pp.44-49.

<sup>18</sup> European Commission against Racism and Intolerance (2016) *ECRI conclusions on the implementation of the recommendations in respect of Ireland subject to interim follow-up*, Strasbourg: ECRI.

<sup>19</sup> In July 2015, the UN Committee on Economic, Social and Cultural Rights expressed concern at the discriminatory effect of the Habitual Residence Condition on disadvantaged and marginalised individuals and groups in accessing social security benefits. The Committee recommended that Ireland review the Habitual Residence Condition so as to eliminate its discriminatory impact on access to social security benefits. UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.21.

<sup>20</sup> In January 2016, the UN Committee on the Rights of the Child called on Ireland to make Child Benefit a universal payment that is not contingent on the fulfilment of the Habitual Residence Condition. UN Committee on the Rights of the Child (2016) *Concluding observations on the combined third and fourth report of Ireland*, Geneva: OHCHR, para.70.

<sup>21</sup> Minister for Social Protection, Leo Varadkar TD, Parliamentary Questions: Written Answers, [11806/16], 25 May 2016.

<sup>22</sup> The UN Special Rapporteur on the right to adequate housing has found that homelessness disproportionately affects particular groups, including women, young people, children, indigenous peoples, people with disabilities, migrants and refugees, the working poor, and LGBT people. Office of the High Commissioner for Human Rights (2015) *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, Geneva: OHCHR, p.21.



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<sup>23</sup> Oireachtas Committee on Housing and Homelessness (2016) *Report of the Committee on Housing and Homelessness*, Dublin: Oireachtas Committee on Housing and Homelessness, p.76.

<sup>24</sup> See for instance the UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.33. Advisory Committee on the Framework Convention for the Protection of National Minorities (2012) *Third Opinion on Ireland*, Strasbourg: Council of Europe, p.10.

<sup>25</sup> Joint Oireachtas Committee on Justice, Defence and Equality (2014) *Report on the Recognition of Traveller Ethnicity*, Dublin: Houses of the Oireachtas.

<sup>26</sup> Complaint No. 100/2013.

<sup>27</sup> Resolution CM/ResChS (2016) 4, adopted by the Committee of Ministers on 5 October 2016 at the 1267<sup>th</sup> meeting of the Ministers' Deputies.

<sup>28</sup> Complaint No. 100/2013 at para. 136.

<sup>29</sup> The legal service that was previously provided to Travellers through the Irish Traveller Movement has since ceased due to lack of funding despite the ongoing demand for such a service.

<sup>30</sup> In 2014 the Equality Authority was amalgamated with the Irish Human Rights Commission to form the Irish Human Rights and Equality Commission.

<sup>31</sup> A recent survey of employment law and industrial relations practitioners by the Employment Law Association of Ireland on the disputes system introduced by the Workplace Relations Act 2015, identified significant problems with aspects of how the Workplace Relations Commission (WRC) is operating, including that 3 in 5 practitioners are dissatisfied with how the WRC processes complaints and schedules hearings. For more information see <http://www.elai.ie/news-events/22-elai-survey-of-practitioners-on-dispute-resolution-under-the-workplace-relations-act-2015-one-year-on.html> [accessed 23 November 2016].

<sup>32</sup> Juries Act, 1976.

<sup>33</sup> For more information see a briefing note on the *Clarke* case taken by FLAC [http://www.flac.ie/download/pdf/2010\\_07\\_14\\_clarke\\_case\\_briefing\\_document.pdf](http://www.flac.ie/download/pdf/2010_07_14_clarke_case_briefing_document.pdf) [accessed 21 November 2016].

<sup>34</sup> This is so despite a recent decision from the UN Committee on the Rights of Persons with Disabilities that Australia breached the UN CRPD by refusing to allow deaf persons to serve on juries. The UN Committee held that Australia was under an obligation “to enable [the complainants’] participation in jury duty, providing [them] with reasonable accommodation ... in a manner that is respecting the confidentiality of proceedings, at all stages of the jury selection and court proceedings...”. For more information see Michael Farrell on CPRD finding against Australia on rights of deaf jurors and potential implications for Ireland, available at <http://www.pila.ie/resources/bulletin/2016/06/08/guest-piece-by-michael-farrell-on-cprd-finding-against-australia-on-rights-of-deaf-jurors-and-potential-implications-for-ireland> [accessed 21 November 2016].

<sup>35</sup> S.I. No. 537/2016 - Electoral Regulations 2016.