

Legal Aid

SUMMARY OF KEY ISSUES FROM PREVIOUS CYCLES

Access to legal advice and representation is necessary for vulnerable groups to challenge discrimination and assert their rights. As outlined in FLAC’s UPR Submission to the Office of the United Nations High Commissioner for Human Rights and in separate Fact Sheets (on the topics of Equality and Issues Affecting Travellers and Roma), Ireland has previously received several recommendations in relation to the promotion of equality, the elimination of discrimination and in relation to the situation of vulnerable and marginalised groups.

NATIONAL FRAMEWORK

Ireland’s State-funded civil aid scheme is administered by the Legal Aid Board under the provisions of the Civil Legal Aid Act 1995. Legal representation and advice under this scheme is not free and applicants are also subject to a very strict means test. In Ireland, legal aid is not provided in cases before the tribunals which deal with equality cases and social welfare appeals. Legal Aid is therefore unavailable for many types of cases which are particularly relevant to people living in poverty and marginalized groups such as Travellers and Roma.

An “Action Plan” published by the Department of Justice in February 2021 commits the Department to a review of the civil legal aid scheme in the third quarter of 2021 for the purpose of bringing forward “proposals for reform”.

CHALLENGES

1. Waiting times for civil legal aid is a significant issue. In January 2021, Legal Aid Board Law Centres reported waiting times of up to 44 weeks for an initial consultation with a lawyer.
2. The vast majority of advice and representation provided by the Legal Aid Board relates to family law. Civil legal aid is not available for “disputes concerning rights and interests over land”; the Legal Aid Board takes the general view that eviction proceedings are subject to this exception and are excluded from the remit of the civil legal aid scheme. These factors, combined with the strict application of the means test and a “merits test” mean that legal aid is often not available in cases related to housing (including family home repossession) and debt.

IMPACTS

In 2019, UNCERD expressed its “concern about the lack of legal aid provided for appeals concerning social welfare, housing and eviction, which has a significant adverse impact on Travellers and other ethnic minority groups to claim their rights”. As noted in a separate Fact Sheet, Roma face particular difficulty in accessing social security payments and complex issues such as the Habitual Residence Condition and EU Law are often dealt with at social welfare appeals. The absence of civil legal aid for “disputes concerning rights and interests over land” and waiting lists also means Travellers encounter difficulties accessing legal aid for forced evictions which may occur with little or no notice.

CHALLENGES

3. Legal Aid is not provided in cases before the tribunals which deal with equality cases and social welfare appeals. Employers and businesses can often afford to pay for private legal representation in equality cases before the WRC; however persons making complaints often cannot. Where a person alleging discrimination does not have such financial means and is faced with an experienced legal team on the other side, this can give rise to an inequality of arms in practice.

IMPACTS

In 2011, the former UN Special Rapporteur on extreme poverty and human rights noted her concern that “several areas of law that are particularly relevant for people living in poverty” are excluded from the scope of the Legal Aid Board. In 2015, UNCESCR expressed concern regarding the exclusion of certain areas of law from the civil legal aid scheme “which prevents especially disadvantaged and marginalised individuals and groups from claiming their rights and obtaining appropriate remedies, particularly in the areas of employment, housing and forced evictions, and social welfare benefits”. Thereafter, UNCESCR recommended that the remit of the Legal Aid Board be expanded and that civil legal aid services be made available in a wider range of areas.

RECOMMENDATIONS

1. Ireland must commit to a comprehensive, independent review of the civil legal aid system which examines the functions of the Legal Aid Board, its resources, the criteria for legal aid (including the means test, and financial contributions), the areas of law covered, and the methods of service delivery. This review should ensure that Ireland complies with its obligations under regional and international human rights instruments.
2. Ireland must ensure equal treatment before tribunals and, in particular, designate the Social Welfare Appeals Office, the Workplace Relations Commission and Labour Court as “prescribed” tribunals for the purposes of Section 27(2)(b) of the Civil Legal Aid Act 1995.

QUESTIONS

Ireland should be asked to provide further details in relation to the forthcoming review of the Civil Legal Aid Scheme, along with details of when the review will commence.

SOURCES

FLAC Submission to the Office of the United Nations High Commissioner for Human Rights: Third Review of Ireland under the UN UPR Mechanism, available at: <https://www.flac.ie/publications/flac-submission-to-the-office-of-the-united-nation/>

CONTACT DETAILS

Caroline Smith, flacmedia@flac.ie. www.flac.ie