

Access to the Courts & Judicial Review

SUMMARY OF KEY ISSUES FROM PREVIOUS CYCLES

Ireland accepted a UPR recommendation from the previous cycle which noted the need to “*ensure that disadvantaged and marginalized individuals and groups benefit from better access to the law*” (Switzerland).

NATIONAL FRAMEWORK

Judicial review is the process through which people can hold the State to account in circumstances where the Government or public bodies act outside of the law or in a way that is contrary to their fundamental rights. Judicial review gives effect to the constitutional right of access to the courts, as well as the rights guaranteed in European law and international human rights law.

FLAC has acted in many judicial review cases which have resulted in homeless families being able to access social housing and emergency accommodation, children with disabilities being able to access additional educational supports, and people living in poverty being able to access basic social welfare payments.

The Irish Government is pursuing a significant number of reforms which would severely limit access to judicial review.

CHALLENGES

There are already significant barriers to taking a judicial review case, including the financial risk, the lack of legal aid, restrictive time limits, the requirement to find a legal team to take the case with no guarantee of getting paid, and the legal and financial resources available to the State to contest such cases. There are significant delays and it can take over a year for a judicial review case to be heard.

The Department of Justice have published the General Scheme of the Civil Reform Bill which would overhaul the rules relating to judicial review. The changes would constitute a radical curtailment of access to judicial review.

IMPACTS

The changes contained in the draft Civil Reform Bill are likely to have a disproportionately negative impact on people trying to establish and vindicate their rights to very basic public services. If the changes are implemented, it is very likely that it will be extremely difficult, if not impossible, for the average person to challenge unlawful actions in any case that is complex or is without precedent – in that it involves a new point of law or public interest.

The UN Special Rapporteur on the human right to a clean, healthy and sustainable environment has stated that “*recent proposals for judicial review contained in the General Scheme of the Civil Law Reform Bill 2025 may be regressive...reduce access to justice and [limit]... the possibility of citizens to defend their rights and advance their rights and accountability.*”

CHALLENGES

The Department of Justice has not engaged with stakeholders or held a public consultation in relation to the proposals contained in the 2025 Bill. The Parliamentary Justice Committee has called for the 2025 Bill to be overhauled.

IMPACTS

Under the changes to judicial review which are proposed, it is likely that unlawful decisions of public bodies will go unchallenged and that any incentive for public bodies to correct unlawful action will be diminished. The proposals are likely to reduce effective governance, oversight and accountability, and access to justice.

The proposals in the Civil Refrom Bill could undermine the rule of law in Ireland, the guardrails on executive power, and the basic democratic principles that Government and public bodies should be accountable to the public and that they are required to act within the law.

QUESTIONS & RECOMMENDATIONS

Ireland should be asked to not to proceed with the proposals concerning access to judicial review contained in the Civil Refrom Bull in their current form.

Ireland should be asked to commit to undertake research about the impact of any changes to judicial review, and to engage in consultation with groups who are likely to be impacted by any such changes.

Ireland should commit to ensuring that any changes to judicial review do not block or limit access to the courts, including for disadvantaged groups.

SOURCES

FLAC & ICCL's Joint UPR Submission, as well as FLAC's statement at the UPR Pre-Session and other UPR Factsheets can be accessed at: www.flac.ie/upr

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