

Briefing Paper on the findings of ‘Changing Ireland, Changing Law’

Professor Ivana Bacik and Dr. Mary Rogan

Background to the project

Professor Ivana Bacik, Trinity College Dublin, and Dr Mary Rogan of Dublin Institute of Technology were awarded Irish Research Council funding for a legal research project entitled ‘Changing Ireland, Changing Law’ (CICL). This project, funded by the Irish Research Council’s ‘Engaging Civic Society’ stream of its New Foundations scheme, seeks to promote public debate, discussion and reflection on how law and social change interact in Ireland. Additional funding was also secured from the Trinity College Dublin Equality Fund and Arts & Social Sciences Benefactions Fund. The project entailed a series of four seminars, which took place between May - October 2015, and which explore the relationship between legal action and social change. It will result in a publication in early 2016 on how public interest litigation has influenced or contributed to social change in Ireland.

The seminars were organised in partnership with the Public Interest Law Alliance (PILA) (the lead partner), the National Women’s Council (NWCL), the Gay & Lesbian Equality Network (GLEN), and the Immigrant Council of Ireland (ICL). Each seminar brought together former litigants, lawyers, civil society organisations, academics and all those interested in the connections between law and social change. The seminars gave rise to key recommendations to improve access to justice and public interest litigations in Ireland.

Themes emerging

The following key themes emerged from the seminars and discussion.

The critical role of NGOs and civil society organisations in social reform

Well-funded, professional NGOs are central to a well-functioning society. The NGO sector needs support to maintain its activity in challenging times for funding. NGOs contribute to Irish life and society through raising awareness of issues in need of reform and putting forward proposals for change. Litigation may be part of this, but a variety of strategies are employed to promote social reform.

Navigating state bodies

A key theme emerging across all the seminars was the difficulties faced by people in navigating the administrative structures of the state. Seeking to vindicate one’s rights in administrative processes can be very challenging. One of the key factors in this regard is the reluctance of some public bodies in some instances to give reasons for their decisions. When a person is negatively affected by the decision of a public body, the lack of reasons leaves them unable to rectify any matters which gave rise to the negative decision, and unsure of the way forward. Delay is also a difficulty.

Navigating the legal process

A very strong theme across the seminars concerned the intimidating hurdles faced by those who do use litigation to vindicate their rights. Often already vulnerable as a result of the circumstances which have led them to litigation, the legal process can be overwhelming. A critical factor in this respect is the very limited provision for civil legal aid. Added to this is the very real prospect of being pursued by the state for costs. The financial implications of any case have a major chilling effect on those who needed to go to court to vindicate their rights.

The personal toil of legal action cannot be underestimated. The long period of time which many cases take, publicity, and the fact that the process may be difficult to understand, all pose major difficulties for litigants in public interest cases. The adversarial nature of the legal process also means that litigants can find that their stories and experiences are lost. The courage of those litigants who have taken public interest cases, and the lawyers who represent them, should be recognised.

Can alternatives to litigation be developed to vindicate rights?

The legal process, with its high stakes nature, delays, and high costs may not be the appropriate mechanism for the vindication of rights in many instances. Rights-proofing policy and regulatory impact assessments can assist as preventative measures. Ireland's appearances before international human rights bodies have an important role to play. Other mechanisms, such as mediation and alternative legal processes should be examined. A further key issue is the lack of a class action procedure in Ireland. Individual cases can set very important precedents, but class actions have a much greater chance of creating systemic change.

List of participants

NGOs

Rachel Power, PILA; Orla O'Connor, National Women's Council of Ireland; Brian Sheehan, GLEN; Catherine Cosgrave, Immigrant Council of Ireland.

Former litigants

Máirín de Burca; Dr. Micheline Sheehy Skeffington; Senator David Norris; Senator Katherine Zappone; Dr. Ann Louise Gilligan; Gandhi Mallak; Dr. Lydia Foy.

Academics and lawyers

Professor Yvonne Scannell; Mary O'Toole SC; Professor Aileen McColgan; Professor Mark Bell; Dr. Patricia Brazil BL; Professor Cathryn Costello; Maeve O'Rourke BL; Professor Gerry Whyte; Kevin Brophy, solicitor.



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