

# ***EU 2020: DEMANDING ON DEMOCRACY***

*Country & Trend Reports on Democratic  
Records by Civil Liberties Organisations  
Across the European Union*

## ***IRELAND***



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# Ireland // Irish Council for Civil Liberties (ICCL)



- The passage of COVID-19 measures lacked transparency and have restricted freedom of assembly.

## Key concerns

- Controversial appointment of new Supreme Court Judge has undermined trust in the judiciary
- Access to justice, length of proceedings and low resources of the judiciary remain important issues
- The Electoral Act restricts the work of civil society organizations, in particular access to funding

## Justice system

### Judicial independence

#### Appointment of judges

The Judicial Appointments Commission Bill of 2017<sup>1</sup> lapsed following the Irish General Election on 8 February 2020.<sup>2</sup> A General Scheme for a new Judicial Appointments Commission Bill 2020<sup>3</sup> has been published but has not yet been progressed through the Dáil (Parliament). Initially, the Minister for Justice,

1 See <https://www.oireachtas.ie/en/bills/bill/2017/71/>

2 See [https://data.oireachtas.ie/ie/oireachtas/electoralProcess/electionResults/dail/2020/2020-05-01\\_33rd-dail-general-election-results\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/electoralProcess/electionResults/dail/2020/2020-05-01_33rd-dail-general-election-results_en.pdf)

3 See [http://www.justice.ie/en/JELR/Pages/General\\_Scheme\\_of\\_the\\_Judicial\\_Appointments\\_Commission\\_Bill\\_2020](http://www.justice.ie/en/JELR/Pages/General_Scheme_of_the_Judicial_Appointments_Commission_Bill_2020)

Helen McEntee proposed that there should be no pre-legislative scrutiny of the Bill but this proposal was rejected by the Oireachtas Justice Committee.<sup>4</sup> This Bill is a priority for the Department of Justice.

The process by which the judiciary are appointed came under scrutiny in November 2020<sup>5</sup> when McEntee was required to answer questions before Parliament in relation to the appointment to the Supreme Court of Mr Justice Seamus Woulfe.<sup>6</sup> The current process involves consideration of (i) candidates which come through the Judicial Appointments Advisory Board, (ii) expressions of interest by current judges and (iii) other qualified judges who have not expressed an interest. The Minister for Justice then chooses one individual, discusses this with party leaders within Government and brings this name before Cabinet for approval. This process has

been criticised in Parliament for its lack of transparency.

*Bodies tasked with safeguarding the independence of the judiciary*

A Judicial Council was formally established on 17 December 2019 made up of the entire Irish judiciary. The first meeting of the Council took place on 7 February 2020 where several committees were established, including committees for a judicial training, conduct, sentencing guidelines and personal injury awards guidelines<sup>7</sup> and non-judicial members were appointed to the committees.<sup>8</sup>

The Judicial Council have met twice in February to agree on new personal injury guidelines drawn up by the Personal Injury Committee. Both meetings were postponed due to the Council's lack of agreement. Memos and letters were circulated from members of

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4 See for instance <https://www.independent.ie/irish-news/politics/tds-block-helen-mcentees-request-to-bypass-scrutiny-of-controversial-bill-to-reform-appointment-of-judges-39988374.html>

5 See <https://www.oireachtas.ie/en/debates/debate/dail/2020-11-19/17/?highlight%5B0%5D=woulfe&highlight%5B1%5D=s%C3%83%C2%A9amus&highlight%5B2%5D=woulfe&highlight%5B3%5D=s%C3%83%C2%A9amus&highlight%5B4%5D=woulfe>

6 See <https://www.oireachtas.ie/en/debates/debate/dail/2020-11-26/32/?highlight%5B0%5D=s%C3%83%C2%A9amus&highlight%5B1%5D=woulfe>

7 See <https://judicialcouncil.ie/about-the-judicial-council/>

8 See <https://www.lawsociety.ie/gazette/top-stories/lay-members-of-key-judicial-council-committees-named/>

the judiciary in strong opposition to the guidelines. The guidelines are expected to pass but they appear to have caused division within the Council.<sup>9</sup>

#### *Accountability of judges and prosecutors*

Under the current regime, there is no formal process for disciplining members of the judiciary. The Judicial Council seek to remedy this through their Judicial Conduct Committee, which will be established in 2021.

In August 2020, Supreme Court Judge Seamus Woulfe attended a dinner at the Oireachtas Golf Society with more than 80 guests, including high-profile politicians, in apparent breach of public health guidelines. Several individuals resigned from their positions in government as a result of this incident. But Mr Woulfe did not. The Chief Justice, Frank Clarke, wrote to former Chief Justice and retired Judge, Susan Denham, to conduct an informal review of the incident and the behaviour of Mr Woulfe. This process, which had no statutory basis, was consented to by Mr Woulfe. The “Denham Report” was published on 29 September 2020.<sup>10</sup> It found that Mr Woulfe had failed to consider whether, as a Supreme Court Judge,

his attendance at the dinner might amount to an impropriety, or might create the appearance of an impropriety, to reasonable members of the public. However, the report found that it would be unjust and disproportionate to seek Mr Woulfe’s resignation.

In subsequent correspondence between the Chief Justice and Mr Woulfe, the Chief Justice expressed the view that Mr Woulfe should resign. Judge Woulfe refused but offered not to sit on the Court until February and to sit on the High Court in the interim to assist with the case load there. It was suggested by media reports that an informal resolution was reached in which Judge Woulfe would not sit on the Court for three months.<sup>11</sup> It is unclear to what the pair eventually agreed, but Judge Woulfe did not sit on the Supreme Court until February 2021 and has only sat to hear leave to appeal matters as opposed to substantive hearings. Judge Woulfe has sat on the Court of Appeal since February 2021. It is unclear when he will resume normal duties.<sup>12</sup>

An attempt to impeach Judge Woulfe was unsuccessfully pursued by opposition parties in government however, as the standard, set out in Article 35.4 of the Irish Constitution

9 See <https://www.irishlegal.com/article/judges-dissent-from-proposed-personal-injury-guidelines>

10 See <https://judicialcouncil.ie/assets/uploads/documents/report-1-10-20.pdf>

11 See <https://www.rte.ie/news/2021/0204/1195010-justice-seamus-woulfe-supreme-court/>

12 See <https://www.irishtimes.com/news/crime-and-law/s%C3%A9amus-woulfe-sits-for-first-time-as-supreme-court-judge-today-1.4475403>

which states that a Judge can only be removed “for stated misbehaviour or incapacity”, was viewed as too high for a case of this nature. There is currently no formal disciplinary process for members of the judiciary except for impeachment.<sup>13</sup>

#### *Remuneration for judges and prosecutors*

Judicial pay was increased by Parliament by 2% on 8 December 2020, restoring it to the same level as it was prior to the financial crisis in 2008. Judicial pensions were also restored to previous levels. Parliament were legally obliged to make the increases on account of the Public Service Stability Agreement.<sup>14</sup>

#### *Public perception on the judiciary*

There has been intense public debate surrounding both the appointment of Seamus Woulfe to the Supreme Court, and his attendance at the Oireachtas Golf Society dinner in August 2020 (see above). The media coverage of both the event, the subsequent fallout between

the members of the Supreme Court and Mr Justice Woulfe, and the attempted impeachment by opposition parties<sup>15</sup> are likely to affect the public’s perception on the independence of the judiciary.

*In November 2020, further media attention focused on the appointment of Mr Justice Woulfe. Members of Parliament criticised the lack of transparency and some claimed that judiciary appointments are entirely political and lack independence.<sup>16</sup> This incident may further harm the reputation of the judiciary’s independence.*

### **Quality of justice**

#### *Accessibility of courts*

The current civil legal aid system in Ireland is very restrictive and requires that the applicant have a disposable income of less than 18,000 EUR per year. There are limited exceptions to these strict means requirements, such as cases

13 See <https://www.irishtimes.com/news/politics/motion-seeking-to-impeach-woulfe-to-be-moved-in-d%C3%A1il-this-week-1.4416238>

14 See <https://www.forsa.ie/other-benefits/pay-and-conditions/national-agreements/>

15 See <https://www.rte.ie/news/politics/2020/1201/1181699-politics-dail/>

16 See <https://www.oireachtas.ie/en/debates/debate/dail/2020-11-19/17/?highlight%5B0%5D=woulfe&highlight%5B1%5D=s%C3%83%C2%A9amus&highlight%5B2%5D=woulfe&highlight%5B3%5D=s%C3%83%C2%A9amus&highlight%5B4%5D=woulfe>, <https://www.oireachtas.ie/en/debates/debate/dail/2020-11-24/3/?highlight%5B0%5D=s%C3%83%C2%A9amus&highlight%5B1%5D=woulfe>

which involve child protection and family law.<sup>17</sup> This system has been criticised for being prohibitive and a barrier to access to justice by a number of bodies such as the Public Interest Law Alliance (PILA) and Free Legal Advice Centres (FLAC), as well as being subject to criticism by Chief Justice Frank Clarke.

In the Justice Plan 2021<sup>18</sup> recently published by the Department of Justice, the Minister for Justice has proposed to expand the civil legal aid system to improve access to justice.

#### *Resources of the judiciary*

In 2020, the European Commission for the Efficiency of Justice published its annual report on the efficiency of the legal systems in each Member State. According to the report, Ireland spent just 0.1% of GDP on its judicial system in 2018, the lowest of the 46 jurisdictions reviewed in the report. The report also showed that Ireland still has one of the lowest number of judges per capita, with only 3.3 judges per 100,000 people compared to an average of 21.<sup>19</sup>

In October 2020, the Government announced it was allocating a substantial budget to the Department of Justice resulting in a total budget of just over 3 billion EUR, a marked increase from previous years. These funds have been allocated across the various sectors, including the Courts Service, the Prison Service and the Gardaí (the national police service). Minister for Justice, Helen McEntee, has stated that the increased budget will allow for the modernisation and reform of the legal system.<sup>20</sup>

#### *Training of justice professionals*

At present, there is no formalised training provided to judges when they are appointed to the bench. Instead, the education of members of the judiciary has been carried out by the Association of Judges of Ireland Committee for Judicial Studies. Due to a lack of funding, this Committee organises only one annual training day for the judges of each Court and an additional judicial conference day which all judges attend once a year. Judges are also

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17 See <https://www.legalaidboard.ie/en/our-services/legal-aid-services/how-do-i-apply-for-civil-legal-aid/>

18 See [http://www.justice.ie/en/JELR/Department\\_of\\_Justice\\_Action\\_Plan\\_2021.pdf/Files/Department\\_of\\_Justice\\_Action\\_Plan\\_2021.pdf](http://www.justice.ie/en/JELR/Department_of_Justice_Action_Plan_2021.pdf/Files/Department_of_Justice_Action_Plan_2021.pdf)

19 See <https://rm.coe.int/evaluation-report-part-2-english/16809fc059>

20 See <http://www.justice.ie/en/JELR/Pages/PR20000237>

selected to attend conferences and international training events relevant to their area of work.<sup>21</sup>

The Judicial Studies Committee will be taken over by the Judicial Council on foot of the Judicial Council Act 2019. The purpose of the committee is to ensure a more consistent and high-quality educational programme for members of the judiciary.

#### *Digitalisation of the justice system*

The digitalisation of the Courts system in Ireland has become a priority of the Courts Service and the Department of Justice since the beginning of 2020. Prior to the pandemic, the Courts Service announced the launch of the “Modernisation Programme”, a 2-year programme which seeks to improve the use of technology within the Courts and to reduce the time and cost of accessing legal services.<sup>22</sup> The Courts Service IT system was allocated 5 million EUR in the Department of Justice budgetary plan.<sup>23</sup>

The pandemic has expedited the use of technology in the Courts, with the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 making provision for the use of videolink in lieu of live hearings. In civil matters,

the judiciary facilitate hearings and motions online via a platform called “Pexip”, except for jury trials and non-urgent personal injury matters. In criminal matters, accused persons can be arraigned over videolink and, if in custody, can attend any hearings and applications via Pexip.

### ***Fairness and efficiency of the justice system***

#### *Length of proceedings*

In April 2020, the European Court of Human Rights (ECtHR) delivered its decision in the case of *Keaney v Ireland*. In that case, the Applicant claimed that the delay of over 11 years between the date of initiation of proceedings to the date of judgment of final appeal in the Supreme Court was excessive. The ECHR found that this delay was excessive and a violation of Article 6 of the European Convention on Human Rights. The Court further found that there was no effective remedy for delay of this nature in the Irish courts. The Court noted that Ireland has persistently not met its obligations in this regard and that lengthy delays in litigation were systemic. Although the concurring opinion of Judge O’Leary noted that some progress had been made with

21 See <https://aji.ie/supports/judicial-education/>

22 See <https://www.courts.ie/acc/alfresco/8b21c2bf-4d7f-453f-8703-80a91aa063d2/CourtsServiceNewsDec20.pdf/pdf>

23 See <http://www.justice.ie/en/JELR/Pages/PR20000237>

the introduction of case management and the expansion of the Court of Appeal, Judge O’Leary was still of the view that Ireland is not doing enough to meet its obligations under Article 6.<sup>24</sup>

## **Corruption**

### ***Measures to prevent corruption***

The Public Sector Standards Bill 2015,<sup>25</sup> which intended to provide a consolidated ethics standard for all public officials, lapsed on 14 January 2020 after the dissolution of the Dáil. The Council of Europe’s Group of States against Corruption (GRECO) published an Evaluation Report for Ireland in 2014 in which it recommended the establishment of a new consolidated legal/ethical framework for Ireland.<sup>26</sup> In the annual report of the Standards in Public Office Commission (SIPO) – an independent body that oversees ethics, electoral, state finance and lobbying legislation – published in June 2020, the Commission

referred to GRECO giving Ireland a rating of “globally unsatisfactory” partly as a result of the delay in enacting the Bill. The Commission have called for the immediate establishment of an ethical framework akin to that set out in the 2015 Bill as a matter of urgency.<sup>27</sup>

## **Media environment and freedom of expression and of information**

### ***Media authorities and bodies***

The Future of Media Commission was set up by the Government in September 2020 to examine the future of the media in Ireland, including Ireland’s public service broadcasters, commercial broadcasters, print and online media platforms. The Irish Council for Civil Liberties (ICCL) has made a submission to the Future of Media Commission.<sup>28</sup>

In this submission they highlighted:

24 See [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-202411%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-202411%22]})

25 See <https://www.oireachtas.ie/en/bills/bill/2015/132/>

26 See [http://www.justice.ie/en/JELR/Greco%20Eval%20IV%20Rep%20\\_2014\\_%203E%20Final%20Ireland.pdf/Files/Greco%20Eval%20IV%20Rep%20\\_2014\\_%203E%20Final%20Ireland.pdf](http://www.justice.ie/en/JELR/Greco%20Eval%20IV%20Rep%20_2014_%203E%20Final%20Ireland.pdf/Files/Greco%20Eval%20IV%20Rep%20_2014_%203E%20Final%20Ireland.pdf)

27 See <https://www.sipo.ie/reports-and-publications/annual-reports/2019-SIPOC-AR-English.pdf>

28 See <https://futureofmediacommission.ie/wp-content/uploads/286.-ICCL-Submission.pdf>

- The importance of a free flow of accurate and timely information from government to the public service media to engender trust in the reliability of news from public service outlets. ICCL argued that the participation from all sectors of the community in public service programming, with a focus on including traditionally marginalised groups, is vital to ensure inclusion, diversity and equality. ICCL highlighted the importance of S.42 of the Irish Human Rights and Equality Commission Act 2014 which imposes a statutory obligation on public bodies to perform their functions in guiding considerations of equality, non-discrimination and human rights.
- The economic benefit to public broadcasters that comes from strong data protection. ICCL and the Dutch national broadcaster NOP, found new economic evidence that strong data protection creates a level playing field on which publishers can finally compete with Google and Facebook and protect their businesses from other digital media market hazards. Strong data rights enforcement also removes conditions for disinformation.
- Urgent law reforms that are needed to protect the freedom of all media, including the public service media, from undue interference. This includes reforming the Defamation Act 2009; properly legislating for hate speech in a way that protects

freedom of expression; and regulating social media content in a manner that protects but doesn't disproportionately interfere with the rights to free expression and information.

ICCL considers that the Defamation Act 2009 has a number of flaws that together constitute an ongoing disproportionate impact on the right to freedom of expression and have a chilling effect on expression, public debate and the right to participate in public life, including for the media.<sup>29</sup>

### ***Framework for the protection of journalists and other media activists***

The protection of journalistic sources was recently considered by the High Court of Ireland in the case of *Corcoran v An Garda Síochána & Ors*.<sup>30</sup> In that case the plaintiff, a journalist, attended an event in which a gang of masked individuals assaulted several individuals who had been securing a dwelling house from which the occupants had earlier been evicted following a court order. The plaintiff took videos on his phone of the incident and posted them online. The Gardaí wished to analyse the phone of the plaintiff for the purposes of the investigation, but the plaintiff refused to hand the phone over to

29 For a full exposition of ICCL's concerns see submission to the Department of Justice on reform of the Defamation Act, <https://www.iccl.ie/wp-content/uploads/2021/01/ICCL-Defamation-Act-Submission-3.4.20.pdf>

30 See [https://www.courts.ie/acc/alfresco/f2600e9b-f6b2-4a68-a580-3d6fae359a81/2020\\_IEHC\\_382.pdf/pdf](https://www.courts.ie/acc/alfresco/f2600e9b-f6b2-4a68-a580-3d6fae359a81/2020_IEHC_382.pdf/pdf)

the Gardaí for fear that it would reveal his journalistic sources. The Gardaí obtained a search warrant for the home of the plaintiff; the only item seized during the search was the plaintiff's phone. The plaintiff initiated proceedings, arguing that there was no formal legislative structure in place for an individual to challenge a warrant based on journalistic privilege.

The High Court held that the phone could lawfully be retained and searched by the Gardaí pursuant to the warrant. However, it limited the search to strict terms. The Court also stated: “the public interest in the protection of journalistic sources is outweighed by the countervailing public interest in ensuring that all relevant evidence is available in the pending criminal proceedings, and the related public interest in the proper investigation of criminal offences.”

## ***Freedom of expression and of information***

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### *Abuse of criminalisation of speech*

Ireland, in a referendum in 2018, voted with 64.85% in favour of removing the prohibition on blasphemy from the Constitution.<sup>31</sup> The offence was officially abolished in January

2020 after the enactment of the Blasphemy (Abolition of Offences and Related Matters) Act 2019.<sup>32</sup>

### *Censorship and self-censorship*

The General Scheme of the Online Safety and Media Regulation Bill was published in January 2020.<sup>33</sup> The Bill is a substantial overhaul of the regulation of online content and platforms. The Bill establishes a Media Commission, including an Online Safety Commissioner who will have extensive powers to oversee the enforcement of the new regulations and to impose financial sanctions on a variety of online platforms who do not regulate their content in accordance with the new provisions.

## ***Other issues related to checks and balances***

### ***Process for preparing and enacting laws***

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#### *Transparency of the legislative process*

Transparency of the legislative process with regards to the passage of new COVID-19

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31 See <https://www.rte.ie/news/2018/1027/1007130-blasphemy-referendum/>

32 See <https://data.oireachtas.ie/ie/oireachtas/act/2019/43/eng/enacted/a4319.pdf>

33 See <https://www.gov.ie/en/publication/d8e4c-online-safety-and-media-regulation-bill/>

pandemic restrictions has been a serious issue in Ireland. Once passed, the contents of legislation and regulations are not communicated in a clear and transparent way, including the intentional “marketing” of certain legal requirements to “obfuscate what was a legal requirement and what was not to ensure greater compliance with the wider public health guidelines”.<sup>34</sup>

A report released by the Irish Human Rights and Equality Commission (IHREC) in February 2021 finds that the Irish Government has persistently blurred the lines between legal requirements and public health guidance during its response to the pandemic.<sup>35</sup> The report finds that human rights and equality scrutiny has been all but side-lined in the government’s response to the pandemic.<sup>36</sup> There has been a significant dearth of sufficient legislative scrutiny surrounding COVID response measures, with legislation being steamrolled through the legislature on a regular basis.

#### *Rules and use of fast-track procedures*

The formulation, communication and enforcement of emergency legislation, regulations, and policing powers due to the COVID-19 pandemic have been a particular concern

during the reporting period. There has been a significant delegation of power to the Minister for Health, who has made 67 sets of regulations since the start of the pandemic. ICCL has repeatedly highlighted the need for emergency powers and procedures to be time-bound, necessary, and proportionate. Ireland’s emergency legislation had an initial sunset clause of 9 May 2020, which could be extended “in the public interest” by the Minister for Health – an incredibly broad threshold for extension.

Since the advent of the emergency legislation and the transfer of power to the Minister for Health, various regulations (such as limits on travel within the state) have been applied retrospectively and not published for several days after they were made.

In many cases the government has sought the quasi-legal enforcement of public health advice, which is oftentimes indistinguishable from actual legal regulations. This has the potential to erode the principle of legality in Ireland.

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34 See page 17 <https://www.iccl.ie/wp-content/uploads/2020/09/ICCL-Submission-to-Covid-Committee-7-Sept-2020-.pdf>

35 See <https://www.ihrec.ie/documents/irelands-emergency-powers-during-the-covid-19-pandemic/>

36 See <https://www.ihrec.ie/app/uploads/2021/02/Irelands-Emergency-Powers-During-the-Covid-19-Pandemic-25022021.pdf>

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## ***Accessibility and judicial review of administrative decisions***

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In December 2020, the Minister for Justice welcomed the submission of a report by a Review Group set up to review and make recommendations to reform the administration of civil justice in the state. The Review Group made over 90 recommendations in order to make the civil justice system more efficient and easier for people to access.

## ***Enabling framework for civil society***

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### ***Freedom of assembly***

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The emergency COVID-19 legislation (provided for by amendments to the Health Act 1947), and the regulations introduced under the Act have significantly restricted the rights to freedom of assembly and freedom of association in Ireland. Several regulations restricting movement within the state have been introduced since April 2020. Under the Irish Constitution and the ECHR, all individuals have the right to gather in public. Limitations to these rights must be proportionate, even in times of public emergency. This requires that not only must these powers be time bound but each time they are used a proportionality assessment must be conducted. The fact that

these restrictions must be necessary and proportionate is not explicit within the legislation. There is a lack of strong safeguards within the legislation to prevent a future government from retaining these restrictive powers.<sup>37</sup>

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### ***Access to funding***

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The Electoral Act in Ireland poses significant restrictive regulatory burden for civil society. The wording in the Electoral Act used to define ‘political purposes’ (which determines what groups, including community groups, are subject to strict spending rules) is so broad and vague that they can be applied to almost every community group in the country. As a result, any community group (from a large charity to a local Tidy Towns group or community garden) which calls on the local or national government to improve conditions for Irish people, could be found in breach of the Electoral Act if someone were to donate more than 100 EUR to them. A wide range of civil society organisations working on issues as diverse as education and environmental rights have been directly impacted.

The human rights issues presented by the Electoral Act and the implementation of the Act by the Standards in Public Office Commission were highlighted by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the UN Special Rapporteur on the situation of

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37 See page 4, <https://www.iccl.ie/wp-content/uploads/2020/03/ICCL-analysis-emergency-COVID19-legislation.pdf>

human rights defenders in a communication to Ireland in December 2020.<sup>38</sup>

## **Other systemic issues affecting rule of law and human rights protection**

### **Failure to protect**

The December 2020 publication of the final report from the Commission of Investigation into Mother and Baby Homes highlighted the widespread human rights violations committed by the church and state during the 20th century, including forced labour and adoption, neglect, and more. The state failed to protect vulnerable women and children placed in its care throughout the 20th century and it continues to fail in adequately protecting them now. Survivors of the Mother and Baby Homes continue to face ongoing human rights violations, including their right to identity and access to personal information.

## **Implementation of judgments by the European Court of Human Rights**

Ireland has still not fully implemented the decision of the European Court of Human Rights (ECtHR) in the case of O’Keeffe v Ireland, a case concerning the liability of the state for serious child abuse that occurred with the national school system. State redress schemes for the victims of child abuse have consistently proven to be inadequate. The state’s most recent Action Plan on implementation of the judgment was issued on 7 December 2020.<sup>39</sup>

## **Impact of COVID-19**

### **Measures affecting human rights that are not legitimate or proportionate**

The COVID Tracker App was launched in Ireland in July 2020 to much fanfare. The Irish government launched a national communications campaign and more than 862,000 people downloaded the voluntary Bluetooth-based app within the first day. By mid-January 2021 the app had about 1.3 million active users and sent close contact alerts to more than 20,000 people.

38 See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25665>

39 See <https://www.education.ie/en/Learners/Information/Former-Residents-of-Industrial-Schools/ECHR-OKeeffe-v-Ireland/>

On 6 November 2020, the ICCL asked the Irish health authorities a list of questions about the app's efficacy and about the Department of Health's measurement of its efficacy. As of 25 February, these questions remain unanswered.

In June 2020, the ICCL and Digital Rights Ireland wrote, in a submission to the Special Committee on COVID-19 Response, that the app would have to be effective and that evidence, continuously reviewed, would have to be established to show how effective it is in the state's efforts to curb the transmission of COVID-19.

They highlighted that the necessity and proportionality of the app would be contingent on this effectiveness and that any deployment of an ineffective app would erode public trust and undermine future efforts to implement solutions.

Although we are living with a pandemic, human rights laws still apply and any interference with privacy must be lawful, necessary and proportionate. As ICCL awaits evidence to illustrate the effectiveness of this app, the necessity and proportionality of the measure is left wanting.