

An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory

Ireland

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1. Civic space developments in 2022

1.1. Legal aid restrictions to be reviewed

Area	Access to justice
Topic	Access to legal aid
Impact	Major

The State-funded civil aid scheme is administered by the Legal Aid Board under the Civil Legal Aid Act 1995.¹ Legal representation and advice under this scheme are not free. Applicants are subject to a strict means test. Additionally, legal aid is not provided in cases before the tribunals for equality cases and social welfare appeals, nor for types of cases relevant to people in poverty and marginalized groups such as Travellers and Roma.

In June 2022, the Minister for Justice announced a comprehensive review of the Civil Legal Aid Scheme, for the first time in its more than 40-year history.² As part of the review process, there will be significant consultations, including a public one, to ensure that the insights of a range of stakeholders regarding the operation of the scheme are taken into account. Waiting times for civil legal aid are a significant issue. As of 31 October 2022, Legal Aid Board Law Centres reported waiting times of up to 28 weeks for an initial consultation with a lawyer.³

Most of the 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. Eviction proceedings are subject to this exception and are excluded from the remit of the civil legal aid scheme. These factors, with strict application of the means test and a merits test, mean legal aid is often not available in cases of housing - including family home repossession - and debt.

¹ Ireland, Houses of the Oireachtas, Civil Legal Aid Act, 1995 (Act 32 of 1995).

² Ireland, Department of Justice (2022), 'Minister Humphreys welcomes opening of public consultation on the Civil Legal Aid Scheme', Press release, 8 December 2022.

³ Ireland, Legal Aid Board (2022), 'Law centre waiting times and other statistical information', October 2022.

Legal Aid representation 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 Workplace Relations Commission. However, persons making complaints often cannot. Where a person alleging discrimination does not have such financial means, this can give rise to an inequality of arms in practice.⁴

The Minister for Justice updated the Government on her plans to commence a review of the Civil Legal Aid Scheme, as committed to in the Justice Plan 2022.⁵ The Review of the Civil Legal Aid Scheme is part of a broader civil justice reform programme the Minister is spearheading across that Plan. This includes, as well, the establishment of a dedicated family court structure, the finalisation of the first national strategy on family justice, an independently chaired Judicial Planning Working Group - which examines the number and type of judges needed over the next five years to ensure access to justice - and the Implementation Plan on Civil Justice Efficiencies and Reform Measures, published by the Minister in June 2022.⁶

1.2. Restrictions on foreign funding for CSOs

Area	Financing framework
Topic	Foreign funding
Impact	Minor

A blanket ban on foreign funding has a serious impact in Ireland, where most independent funding of human rights work comes from trusts and foundations based outside of Ireland.⁷ The Electoral Act 1997 as amended in 2001 prohibits organisations from engaging in fundraising under certain conditions.⁸ This act imposes restrictions and

⁴ Ireland, Free Legal Advice Centres (2021), *FLAC Submission to the Office of the United Nations High Commissioner for Human Rights: Third Review of Ireland under the UN UPR Mechanism*, Dublin, March 2021.

⁵ Ireland, Department of Justice (2022), *Justice Plan 2022*, Dublin, April 2022.

⁶ Ireland, Department of Justice (2022), 'Minister announces review of Civil Legal Aid Scheme', Press release, 2 June 2022.

⁷ Amnesty International, Irish Civil Liberties Union, and Transparency International (2017), *Letter to the Minister of Housing, Planning and Local Government concerning the Amendment of third-party provisions in the Electoral Act 1997*, Dublin, 21 July 2017.

⁸ Ireland, Houses of the Oireachtas, Electoral (Amendment) Act, 2001 (Act 21 of 1998).

reporting obligations on “third parties” who accept donations over € 100 for “political purposes” defined as “to promote or oppose, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority”.⁹ Investigations are often triggered by complaints to the regulatory body, thus enforcement can be selectively targeted. Donations from foreign sources and from any individual exceeding € 2,500 in any year are prohibited. Restrictions apply all the time, and not just in times of elections or referendums.¹⁰

In late March 2022, the revised Electoral Reform Bill was published by the Irish parliament, and the President signed it into law on 25 July 2022.¹¹ This Act provides the legal basis for a range of significant electoral reforms in line with commitments in the *Programme for Government: Our Shared Future*.¹² However, it does not address concerns over undue restrictions on foreign funding for civil society.¹³

1.3. Charities Act 2009 revision does not include human rights organisations

Area	Financing framework
Topic	Charitable status
Impact	Minor

Ireland has a vibrant and diverse civil society but funding restrictions on Non-Governmental Organizations (NGOs) increase reliance on government funding for core activities in human rights protections. The Government had suggested it had plans to tackle these concerns in the context of the ongoing electoral reform. Those now do not appear to be materialising.

⁹ Ireland, Houses of the Oireachtas, Electoral (Amendment) Act, 2001 (Act 21 of 1998), Sec. 22.

¹⁰ Irish Council for Civil Liberties (2021), *Submission on the General Scheme of the Electoral Reform Bill 2020*, Dublin, May 2021, para. 6.

¹¹ Ireland, Houses of the Oireachtas, Electoral Reform Act, 2022 (Act 30 of 2022).

¹² Ireland, Department of the Taoiseach (2021), *Programme for Government: Our Shared Future*, Dublin, 7 April 2021.

¹³ Irish Human Rights and Equality Commission (2021), *Submission to the Committee on Housing, Local Government and Heritage on the General Scheme of the Electoral Reform Bill*, Dublin, February 2021.

Under the provisions of the Charities Act 2009, the advancement or promotion of human rights is not considered to be a charitable purpose.¹⁴ Political groups can legally apply for court orders to designate themselves as having a “charitable or philanthropic purpose” to raise funds, but human rights organisations cannot obtain such charitable status. As a result of lack of charitable status, human rights organisations are also excluded from applying for charitable tax exemption on funds received, despite the absence of profit motivation. Additionally, the inconsistencies in existing legislation are arguable. If human rights organisations could register as charities, they would be subject to the enhanced oversight and transparency requirements of the Charities Regulator.¹⁵

The Programme for Government includes a commitment to update legislative provisions with the Charities Regulator, to ensure it has the necessary powers to increase trust and confidence in the management and administration of charities.¹⁶ Recent amendments to the Charities (Amendment) Bill, published on 27 April 2022, have been proposed to include “the advancement of human rights” as a charitable purpose, which paves the way for human rights organisations to obtain the status of charities once the bill is enacted.¹⁷ While this advancement has been welcomed, civil society organisations (CSOs) including the Irish Council for Civil Liberties (ICCL) remain concerned about the continued limiting of political advocacy work of charities.¹⁸

One point of concern is due to the Charities Regulator’s updated advice on political campaigning, issued in December 2021. This updated advice further narrows the ability of charities to engage in campaigning and advocacy work and has the potential to impede their effectiveness.¹⁹ Furthermore, organisations with a “significant” focus on political campaigning work cannot be considered as charities, which has implications for organisations that focus on advocacy, as opposed to service delivery.²⁰

¹⁴ Ireland, Houses of the Oireachtas, Charities Act, 2009 (Act 6 of 2009).

¹⁵ O’Gorman, C. *et al.* (2021), ‘Human rights groups and charitable status’, *The Irish Times*, 13 December 2021; Free Legal Advice Centres (2016), *Civil Society Space in Ireland (UPR Factsheet 2)*, 25th Session of the Universal Periodic Review Working Group – Review of Ireland, May 2016.

¹⁶ Ireland, Department of the Taoiseach (2021), *Programme for Government: Our Shared Future*, Dublin, 7 April 2021.

¹⁷ Ireland, Houses of the Oireachtas (2022), ‘Social Protection Committee to discuss the General Scheme of the Charities (Amendment) Bill 2022 with the Charities Regulator and the Irish Council for Civil Liberties’, Press release, 4 October 2022.

¹⁸ Irish Council of Civil Liberties (2022), *Submission on the General Scheme of the Charities (Amendment) Bill (2022)*, June 2022.

¹⁹ Charities Regulator (2021), *Guidance on Charities and the Promotion of Political Causes*, Dublin, September 2021.

²⁰ Irish Council of Civil Liberties (2022), *Submission on the General Scheme of the Charities (Amendment) Bill (2022)*, June 2022.

2. Promising practice in 2022

2.1. Supporting public authorities in countering discrimination, hate crime, and hate speech.

The Incitement to Violence or Hatred and Hate Offences Bill was published on 28 October 2022.²¹ The new legislation will criminalise any intentional or reckless communication or behaviour that is likely to incite violence or hatred against a person or persons because they are associated with a protected characteristic. The penalty for this offence will be up to five years' imprisonment.²² The Bill was revised to include the 'demonstration test' and is scheduled for discussion at the Justice Committee for 21 February 2023.

Civil society action has been crucial to building support for the creation of new legislation in this area and facilitating widespread engagement in the consultation process through educational resources and dialogue. A significant civil society response arrived from the Coalition Against Hate Crime, an alliance of civil society organisations representing a wide range of minority and marginalised groups including disabled people, LGBT people, ethnic minorities and migrants.²³ The Coalition carried out a large number of public campaigns, it established resources for the education of NGOs and activists as well as the public, and conducted research on the impact of legislative gaps.²⁴ These actions gained international support from the United Nations Convention on the Elimination of All Forms of Racial Discrimination, the European Commission on Racial Discrimination, and other bodies for new legislation.

The Irish Network Against Racism and other members of the Coalition Against Hate Crime have been instrumental in supporting *An Garda Síochána* (the national police

²¹ Ireland, Houses of the Oireachtas, Incitement to Violence or Hatred and Hate Offences Bill (2022) (Bill 105 of 2022).

²² Ireland, Department of Justice (2022), 'New Bill to tackle hate crime and hate speech includes clear provision to protect freedom of expression', Press Release, 28 Oct 2022.

²³ The Coalition Against Hate Crime Ireland is made of twenty-one civil society individual organizations and networks.

²⁴ Coalition Against Hate Crime Ireland (2021), *Submission on the General Scheme of the Criminal Justice (Hate Crime) Bill 2021*, submitted to the Joint Committee on Justice, August 2021.

authority) to develop hate crime reporting systems, improve recording, and develop new training for all members of the police service.

2.2. CSOs contributing to law and policy making (including involvement in public consultations)

The Bill on Termination of Pregnancy Safe Access Zone reached the joint committee stage on 19 October 2022.²⁵ The Bill will establish exclusion zones, thus limiting protest rights in the vicinity of medical facilities. The Irish Council for Civil Liberties (ICCL) also recommended including in the Bill a national awareness programme to reduce and prevent harmful harassment occurring outside termination facilities without having to resort to criminal sanctions against protesters in the first instance.²⁶ The ICCL has explained that while it defends the right to protest, this right is not absolute, and that restrictions should be necessary and proportionate:

“We consider that the introduction of safe access zones, when narrowly defined and in pursuit of the protection of the rights to privacy, safety, bodily integrity, including the right to mental and physical health, and the right to access healthcare without discrimination, can constitute a proportionate interference with the right to protest.”²⁷

A collaborative effort between the government and civil society organisations resulted in the publication of the “Values and Principles for Collaboration and Partnership Working with the Community and Voluntary Sector”.²⁸ The document is meant to

²⁵ Ireland, Houses of the Oireachtas (2022), ‘Joint Committee on Health to meet for Pre-legislative scrutiny of the general scheme of the Bill on Termination of Pregnancy Safe Access Zones’, Press release, 8 November 2022.

²⁶ Irish Council for Civil Liberties (2022), *ICCL Submission to the Joint Committee on Health on the General Scheme of the Health (Termination of Pregnancy Services (Safe Access Zones)) Bill 2022*, Dublin, October 2022.

²⁷ Irish Council for Civil Liberties (2022), *ICCL Submission to the Joint Committee on Health on the General Scheme of the Health (Termination of Pregnancy Services (Safe Access Zones)) Bill 2022*, Dublin, October 2022, para. 5.

²⁸ Government of Ireland (2022), *Values and Principles for Collaboration and Partnership Working with the Community and Voluntary Sector*. Prepared by the Department of Rural and Community Development supported by the Cross Sectoral Group on Local and Community Development, Dublin, June 2022.

provide the foundation for all consultation, collaboration and partnership working between the community and voluntary sector and central and local government. Although the document is only inspirational at the moment and does not have immediate policy implications, it responds to the government’s “Sustainable, Inclusive and Empowered Communities”, which is a five-year strategy to support the community and voluntary sector in Ireland.²⁹ Both, the strategy and the values and principles, were prepared by the Department of Rural and Community Development supported by the Cross Sectoral Group on Local and Community Development.

²⁹ Government of Ireland (2019), *Sustainable, Inclusive and Empowered Communities. A five-year strategy to support the community and voluntary sector in Ireland, 2019-2024*. Prepared by the Department of Rural and Community Development supported by the Cross Sectoral Group on Local and Community Development, Dublin, 2019.

3. Visa for human rights defenders

3.1. Entry and stay for human rights defenders at risk

Dedicated visa scheme for HRDs at risk available in your country	Yes
Other type of visa or alternative legal entitlement or derogation clause applied to HRDs	No

The Irish Government, through multilateral and bilateral engagements including development cooperation, promotes the protection of Human Rights Defenders and the creation of an enabling environment for civil society.³⁰ Ireland does not have any legal definition for a human rights defender.³¹

Ireland's approach to the integration of the role of Human Rights Defenders is informed by the UN Declaration on Human Rights Defenders and the EU Guidelines on Human Rights Defenders.³² The Department of Foreign Affairs and Trade has developed its own Guidelines for Embassies³³ on engaging with and protecting Human Rights Defenders, while the Irish Aid Civil Society Policy has as its primary objective to support an enabling environment for civil society to organise and engage with government and its own broader constituencies.³⁴ Ireland engages with HRDs in a number of different ways.

Ireland provides political support to Human Rights Defenders through the special Humanitarian Visa System for Human Rights Defenders at risk³⁵ and through political engagement by Irish Ministers and Ambassadors – individually or in cooperation with

³⁰ Office of the High Commissioner of Human Rights (2022), *Input of Ireland to the Special Rapporteur on Human Rights Defenders' questionnaire*, Geneva, October 2022.

³¹ Office of the High Commissioner on Human Rights (2018), *Questionnaire on the situation of human rights defenders. Response of Ireland*, Geneva, May 2018.

³² European Union (2022), *EU Guidelines on Human Rights Defenders. European Implementation Assessment*, August 2022.

³³ Ireland, Department of Foreign Affairs and Trade (2010), *Guidelines for Irish Embassies and Missions on Human Rights Defenders*, Dublin, 2010.

³⁴ Ireland, Department of Foreign Affairs (2008), *Irish Aid's Civil Society Policy*, Dublin, 2008.

³⁵ Ireland, Department of Justice, Office for the Promotion of Migrant Integration (2015), *Irish Refugee Protection Programme*, Dublin, 2015.

other EU and donor countries – in Irish Aid’s nine Key Partner Countries. Ireland, with Spain, is one of only two EU member states that have a dedicated humanitarian visa scheme for human rights defenders and their families.³⁶

An application must be submitted through the Irish Embassy or consular representation in the applicant’s country of usual residence.³⁷ If there is no representation in the country concerned, the application should be made to the appropriate representation in a neighbouring country. Exceptionally, the application can be made directly to the Department of Foreign Affairs in Dublin (via the Human rights Unit).

The aim of Ireland’s scheme is to provide a fast-track approach to processing applications to facilitate recognised Human Rights Defenders to travel to Ireland for short stays (three months maximum) for the purpose of respite, and because of temporary safety issues. There is funding available to Human Rights Defenders during their stay, regulated when applicable by the provisions of the International Protection Act 2015.³⁸ Under that legislation, HRDs as other resettled refugees have the right to work, to receive education, healthcare, etc.³⁹

³⁶ European Union (2022), *EU Guidelines on Human Rights Defenders. European Implementation Assessment*, August 2022.

³⁷ European Union Human Rights Defenders mechanism (2022), ‘Joint Statement: International Civil Society Organisations Call for an Effective and Enabling EU Visa Framework for At-Risk Human Rights Defenders’, Press release, 6 September 2022.

³⁸ Ireland, Houses of the Oireachtas, International Protection Act, 2015 (Act 66 of 2015).

³⁹ Ireland, Houses of the Oireachtas, International Protection Act, 2015 (Act 66 of 2015).

4. Other relevant developments

4.1. Lack of meaningful consultations with civil society in the development of human rights related legislation (Contribution to the rule of law)

Rights of Persons with Disabilities

At the beginning of July 2022, Ireland faced the fifth review of its implementation of the International Covenant on Civil and Political Rights (ICCPR) in Geneva. The Irish Council for Civil Liberties (ICCL) was represented at the hearings and its report to the Committee was endorsed by 37 Irish NGOs. Among many concerns, the ICCL highlighted that:

*“The State is not conducting meaningful consultations with civil society in the development of human rights related legislation. For example, on the implementation of the UN Convention on the Rights of Persons with Disabilities, the State has not responded to concerns raised by disabled peoples organisations regarding Codes of Practice and laws on assisted decision making that are coming into force”.*⁴⁰

The development of new hate crime laws

Similarly, the ICCL was concerned that affected communities were not properly consulted on the development of new hate crime laws. Civil society concerns were not responded to in recent legislative reforms on the electoral system, where donation restrictions for political parties are applied to civil society organisations, thus having a chilling effect. The ICCL observed that *“The State must ensure that all those affected by the passing of new laws that concern rights are fully consulted and their concerns are responded to”*.⁴¹

⁴⁰ Irish Council for Civil Liberties (2022), *ICCL Report to the UN Human Rights Committee*, May 2022; also, Irish Council for Civil Liberties (2022), *ICCL Statement on UN Human Rights Committee’s 5th Review of Ireland*, 4 July 2022.

⁴¹ CIVICUS Monitor Tracking Civic Space (2022), ‘CSOs raise concerns over lack of consultations During Parliamentary Process’, Press release, 10 August 2022.

New parliamentary report highlights need to consult with Disabled People's Organisations

The Joint Committee on Disability Matters launched its report on the participation of people with disabilities in political, cultural, community and public life on 11 October 2022. The report examines inclusion and participation in political, cultural, community and public life, and it makes several recommendations, amongst them, the necessity to mandate the Electoral Commission to enable the promotion, inclusion, facilitation, and participation of persons with disabilities in the electoral and political process.⁴²

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4.2. A statutory review of the law on civil liability for defamation

The Department of Justice in Ireland undertook a statutory review of the law on civil liability for defamation.⁴⁴ This includes consideration of how the current rules should be amended in the light of the possibility of Strategic Litigation against Public Participations (SLAPPs). The report's recommendations for further reform include an anti-SLAPPs mechanism and removing defamation claims' blanket ineligibility for civil legal aid. These recommendations are expected to be taken up in a draft law the government is planning to present in the near future.⁴⁵ This review can impact the operational space of civil society organisations dealing with human and fundamental rights, as it can stop powerful individuals from bringing vexatious legal proceedings to silence valid criticism or debate.⁴⁶

Considering 13 years have passed since the enactment of the Defamation Act 2009,⁴⁷ there has been a significant development of online and digital communications. The Review provides additional protection to journalists by recommending that when a

⁴² Ireland, House of the Oireachtas, Joint Committee on Disability Matters (2022), *Participation of People with Disabilities in Political, Cultural, Community and Public Life*, Dublin, October 2022.

⁴⁴ Ireland, Department of Justice (2022), *Report on the Review of the Defamation Act 2009*, Dublin, 11 May 2022.

⁴⁵ Ireland, Department of Justice (2022), *Report on the Review of the Defamation Act 2009*, Dublin, 11 May 2022.

⁴⁶ Collins S. (2022), 'Ireland should do more to protect media and human rights groups from lawsuits, EU commissioner says', *Independent.ie*, 27 April 2022.

⁴⁷ Ireland, Houses of the Oireachtas, Defamation Act, 2009 (Act 31 of 2009).

statement is made as a matter of public interest, the defendant has a defence if they reasonably believed that the publication was in the public interest, and that they acted reasonably in the circumstances for the purpose of verifying the accuracy of the statement. The purpose of these recommendations is to strike a balance between an individual's right to a good name, while also acknowledging the right to freedom of expression. The major proposals arising from the Review include a removal of juries in defamation cases, clearer protection for responsible public interest journalism, reductions of legal costs, awards and delays. Further proposals revolve around measures to encourage prompt correction and apology where mistakes are made, and measures to simplify grant orders directing online service providers to disclose the identity of anonymous defamatory posters.⁴⁸

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4.3. The lack of a national anti-far right strategy to protect civil society

Civil society organisations, *inter alia*, are affected by far right (FR) presence. According to research by the University of Maynooth and Crosscare, almost 67 % of civil society organisations that participated in the research have had staff or clients experiencing threats or violence from the far right. 100 % of the respondents reported online harassment or threats, 75 % verbal harassment or threats, 50 % reported physical harassment or threats, and 40 % reported property damage. Moreover, 80 % felt that the frequency of these attacks had increased over the last five years.⁵⁰

Despite the lack of specific civil society organisations' anti-far right strategy, there is evidence whereby CSOs actively offer inclusive alternatives to counter negative, degrading and violent far right discourse and action. This refers to policies, protocols and training to support staff in countering far right discourse and actions and supporting their populations, who might experience it. In addition, developing coalition building and knowledge sharing with other organisations affected by and concerned with the far right appears necessary. There are psychological and physical tolls of working against

⁴⁸ Ireland, Department of Justice (2022), *Report on the Review of the Defamation Act 2009*, Dublin, 11 May 2022, pp. 25-30.

⁵⁰ Cannon B., King K., Munnely J., and El-Moslemany R. (2022), *Resisting the Far Right. Civil Society Strategies for Countering the Far Right in Ireland*, Dublin, 2022.

the far right, particularly having to sustain internet *trolling* and abuse, including physical forms of it. As a result, there is a significant demand for policies and protocols to manage online harassment and anti-far right and anti-racism training. The research recommends adopting a national anti-far right strategy with a bottom-up, community involvement approach to its construction, placing education and awareness building at its centre. It should also include strategies to tackle inequalities which leave marginalised communities vulnerable to far right exploitation and attempt to find an equal balance between the rights of freedom of expression and the right to freedom from threatening behaviours.⁵¹

⁵¹ Cannon B., King K., Munnely J., and El-Moslemany R. (2022), *Resisting the Far Right. Civil Society Strategies for Countering the Far Right in Ireland*, Dublin, 2022.