

Legal environment and space of civil society organisations in supporting fundamental rights

Ireland

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1 Five most significant civic space developments in 2020

1.1 Commencement of legislation decriminalising blasphemy as an offence under Irish law

On 18 January 2020, Minister for Justice and Equality Charlie Flanagan T.D. commenced¹ the Blasphemy (Abolition of Offences and Related Matters) Act 2019.² The Act abolished any law by which blasphemy and blasphemous libel were deemed an offence in Irish law and repealed provisions of the Defamation Act 2009 which provided police the power to seize blasphemous material and which criminalised the publication or utterance of blasphemous matter. The Act also amended the Censorship of Films Act 1925 and the Censorship of Films (Amendment) Act 1925 to remove references to 'blasphemous' as grounds under which a film may be censored. The repeal of the blasphemy laws was welcomed by the Irish Council for Civil Liberties (ICCL), Atheist Ireland, the Humanist Association of Ireland and Humanists International who had long campaigned to remove constitutional provisions and corresponding criminal law on blasphemy that they viewed had a chilling effect on freedom of expression. The ICCL further noted that the repeal of the laws has been a watershed moment for freedom of expression in Ireland.³ It described as inherently contradictory the position of the Irish Government who had championed freedom of expression through its engagement with the UN while criminalising aspects of it at home. The view of atheist and humanist organisations, expressed by Humanist International, is that blasphemy laws unduly target atheists and humanists. The repeal of these laws ensures that people including organisations from a secular, atheist or humanist outlook can discuss and criticise religion openly, free from fear of censorship or prosecution.⁴

¹ Ireland, Department of Justice and Equality (2020), [Blasphemy \(Abolition of Offences and Related Matters\) Act 2019 \(Commencement\) Order 2020](#) S.I. No 13 of 2020, 16 January 2020.

² Ireland, Department of Justice and Equality (2020), [Blasphemy \(Abolition of Offences and Related Matters\) Act 2019](#), 21 December 2019.

³ Irish Council for Civil Liberties (ICCL) (2020), [ICCL welcomes abolition of blasphemy law; highlights more than 40 years defending freedom of expression](#), press release, 18 January 2020.

⁴ Humanists International (2020), [Blasphemy Laws abolished in Ireland](#), press release, 21 January 2020.

1.2 Government departments monitoring social media activity of journalists, campaigners during the pandemic

In August 2020, in details released under Freedom of Information requests to the newspaper, *The Sunday Independent* indicated that the Department of Justice monitored the social media accounts of prominent public figures, civil society organisations and activists critical of the State's system of direct provision for asylum seekers.⁵ In a statement, the Movement of Asylum Seekers in Ireland (MASI), an independent voluntary organisation campaigning on issues relating to asylum, expressed alarm at the use of public resources including staff at the Department of Justice to monitor social media activity of the organisation.⁶ Subsequently, documents obtained under Freedom of Information by the Examiner Newspaper Group purported to show that Government departments monitored and recorded social media activity of prominent public figures, journalists, activists and campaigners including from civil society organisations.⁷ The newspaper Irish Examiner obtained records of analysis of social media content from the Department of Health and the Department of Education including relating to Twitter, Reddit and other popular message board forums. The newspaper reported that much of the content focused on topics such as the popularity of news programmes, concern for chief medical officer to more contentious topics such as outbreaks of COVID-19 in direct provision centres, anti-mask sentiment, and opposition to social distancing. Social media content generated by campaigners and patient advocates were also included in briefing reports to department officials. Speaking on the topic, a member of the leading opposition party expressed concern at the impact that such monitoring might have on groups and individuals choosing to criticise Government policy.⁸ Reports provided to departmental officials and ministerial advisers contained names and identities used on social media, content and analysis by officials.

1.3 COVID Tracker App

On 7 July 2020, the Health Service Executive (HSE) launched *COVID Tracker*, a free downloadable software application ('app') for mobile phones designed to help slow the spread of COVID-19.⁹ The app is designed to alert users if they had been in close contact with another app user who has tested positive for COVID-19. Users are also able to track any symptoms they experienced and get advice on what to do to protect themselves and others. The app is also intended to anonymously warn other app users who had been close contacts in cases where the user tests positive for COVID-19. On 3 June 2020, the ICCL together with a

⁵ The Irish Independent (2020) '[Department of Justice officials monitor posts criticising Direct Provision on social media](#)', 16 August 2020.

⁶ MASI (2020), 'Statement on the Department of Justice monitoring our social media tweets', press release, 20 August 2020.

⁷ Irish Examiner (2020), '[Government monitoring social media of journalists, Tony Holohan, Vicky Phelan and others](#)', News, 11 Nov 2020.

⁸ Sinn Féin (2020), '[Martin Kenny TD questions purpose of Department of Justice monitoring commentary critical of Direct Provision](#)', press release, 17 August 2020.

⁹ Ireland, Health Service Executive (2020), '[Why Use the COVID Tracker App](#)', 7 July 2020 (updated 31 December 2020).

group of academics specialising in law, privacy, data protection, artificial intelligence and related issues from a number of universities and organisations in Ireland, published a set of principles for legislators in implementing new technologies.¹⁰ Among the principles espoused were the need to ensure the app had a clear and limited purpose, be necessary and proportionate to the problem, embrace transparency and promote trust, include sufficient privacy and data protection capability by design and be subject to a sunset clause. A *Report Card* compiled by the ICCL and Digital Rights Ireland, upon reviewing the documents relating to the app's development, was published on 2 July, prior to the release of the app.¹¹ The report praised the HSE and Department of Health for their efforts to be transparent about the development of the app, facilitate scrutiny by NGOs and aiming at the development of a 'rights preserving' technology. The invitation to NGOs to review the source code and operation of the app and to make public their assessment prior to its release is the first known instance of cooperation on technologies of this kind between the state and civil society in Ireland. Previous technological initiatives, such as the roll out of the public services card, had faced stiff criticism from civil society organisations for a lack of accountability and transparency.¹² While several additional concerns in relation to data collection and privacy were noted by civil society groups, including that collection of location data and symptom tracking, extended beyond the single purpose of the app as originally intended; insufficient documentary evidence that the app was effective and the project failed the test of necessity and proportionality, the project was given 'C+' grade and unopposed for use.¹³

1.4 Many state-funded community and voluntary organisations unable to access wage subsidy scheme

In March 2020, the Temporary Wage Subsidy Scheme was introduced to encourage employers to keep employees on the books during the pandemic period.¹⁴ Employers would be paid €410 a week or up to 70 per cent of the employee's previous weekly earning. Employees would not receive more than their previous income under the subsidy scheme. The scheme is open to employers except public sector employers. This included many publicly funded non statutory organisations, charities and community and voluntary organisations funded from public monies. To qualify for assistance, organisations in receipt of public funds were required to demonstrate that their annual income has fallen by more than 25 percent because of the pandemic. The scheme, originally established for a three-week period, continued in operation until 31 August 2020, when it was replaced by the Employment Wage Subsidy Scheme (EWSS) which is expected to

¹⁰ ICCL (2020), [Principles for legislators on the implementation of new technologies](#), press release, 3 June 2020.

¹¹ ICCL and Digital Rights Ireland (2020), [HSE Covid Tracker App: Pre-Release Report Card](#), press release, 2 July 2020.

¹² The Irish Times (2019), 'Public Services Card a flawed fiasco in all aspects', news, 21 September 2019.

¹³ ICCL and Digital Rights Ireland (2020), [HSE Covid Tracker App: Pre-Release Report Card](#), press release, 2 July 2020.

¹⁴ Revenue – Irish Tax and Customs (2020), [Temporary COVID-19 Wage Subsidy Scheme](#).

run into 2021.¹⁵ Under the criteria for the EWSS, the threshold for losses in fixed period rose to 30% turnover or sales and must be caused by COVID-19. In its guidelines on the operation of the scheme, Revenue indicated that, companies undertaking a review of the potential drop in their annual turnover should include all sources of trade income, including income from sales, donations and state funding.. This, Revenue acknowledged, would likely result in employers in the public, community and voluntary sectors be ineligible for the scheme as the provision of state funding in these sectors has largely remained static or, in some cases, has increased. This analysis does not take account of the expected fall in income in 2020 for community and voluntary organisations in relation to donations and fundraising income, with many experiencing heavy losses.¹⁶ Community and voluntary organisations often rely on donations and fundraising to cover shortfalls in core organisational costs. A report by the *The Wheel*, a representative organisation for the community and voluntary sector, estimated €1.5 billion in lost funds for charities.¹⁷

1.5 Concerns at chilling effect of provisions governing new laws on online communications

On 28 December 2020, the Harassment, Harmful Communications and Related Offences Act 2020 was signed into law.¹⁸ The law provides for new offences relating to harassment including the recording, distribution, or publication of intimate images without consent and with the intention of causing or being reckless as to harm caused and to provide for the anonymity of victims of those offences. The law also provides a new offence governing the distribution, publishing, or sending of threatening or grossly offensive communication. Enactment of the law was championed by campaigners including the mother of a teenage girl who died by suicide and who is known to have been subjected to online bullying and abuse over a sustained period. Civil liberties organisations noted some concern relating to provisions in the law and the impact these may have on the right to freedom of expression. The ICCL raised concerns relating to the offence set out in Section 4 of the act prohibiting 'grossly offensive communication' which could have a chilling effect on freedom of expression.¹⁹ The term, 'grossly offensive communication' was viewed as vague and may lead to disproportionate interference with freedom of expression. The ICCL noted that contrary to jurisprudence from the European Court of Human Rights, the legislation does not contain a clear definition of 'grossly offensive communication' thereby potentially preventing both perpetrators and victims from distinguishing between communication that is legal and illegal. The Council was also concerned

¹⁵ Ireland, Department of Finance, [Financial Provisions \(COVID-19\) \(No.2\) Act 2020](#), 1 August 2020.

¹⁶ The Irish Times (2020), '[How are Irish charities responding to the fundraising collapse from Covid-19?](#)', news, 26 June 2020.

¹⁷ The Irish Times (2020), '[Charities face fundraising crisis as a result of Covid-19, says Wheel](#)', news, 28 November 2020.

¹⁸ Ireland, Department of Justice and Equality, [Harassment, Harmful Communications and Related Offences Act 2020](#), 28 December 2020.

¹⁹ ICCL (2020), [Re: S.4 Harassment, Harmful Communications and Related Offences Act 2020](#).

that the threshold for harm contained in the legislation includes causing 'alarm or distress' and urged that this threshold be raised to include only 'serious harm or serious distress'.

2 Example of promising practice

COVID-19 Stability Fund launched to assist community and voluntary organisations during pandemic

To offset the impact of lost fundraising and other revenue, the Department of Rural and Community Development, along with the Department of Health and the Department for Children, Disability, Equality and Integration established a €45 million COVID-19 Stability Fund for Community and Voluntary, Charity and Social Enterprises. The fund was intended to be a targeted once-off cash injection for organisations and groups delivering critical front-line services.²⁰ Grants were awarded based on an assessment of need under certain organisational qualifying objectives, including personal and social development of persons who are economically or socially disadvantaged; educational development of persons who are educationally disadvantaged; or persons with a disability. Awards were made from under €5,000 up to a maximum of €200,000 per organisation. Funding helped ensure continued financial viability of many smaller organisations.

²⁰ Ireland, Department of Rural and Community Development (2020), [COVID-19 Stability Fund for Community and Voluntary, Charity and Social Enterprises](#), 7 December 2020.