

Franet National contribution to the Fundamental Rights Report 2022

IRELAND

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Policy and legal highlights 2021

Issues in the fundamental rights institutional landscape	First national artificial intelligence (AI) strategy: Ireland published its first national AI strategy , “a roadmap to an ethical, trustworthy and human-centric design, development, deployment and governance of AI”. It emphasises privacy, data protection, gender balance, and the importance to adopt a human-rights approach and ethical guidelines to AI.
EU Charter of Fundamental Rights	Extradition cases and application of Article 47: Two applicants appealed extradition to Poland under several European Arrest Warrants, arguing violation of rights to a fair trial and effective remedy. The key question is whether the ‘systemic deficiencies in the Polish system [...] amount to a sufficient breach of the essence of the right to a fair trial, requiring the executing authority [Ireland] to refuse surrender.’ The Court requested a ruling from the CJEU and the extradition of both men is pending.
Equality and non-discrimination	Monitoring decent work in Ireland: A report of the Irish Human Rights and Equality Commission revealed that Eastern European migrants experience higher risk of disadvantage around employment in Ireland. The report states that younger respondents, people with disabilities, and Eastern European migrants were particularly at risk of unemployment, were less likely to work in high-skilled jobs and more likely to have lower pay.
Racism, xenophobia & Roma integration	Definition of racism endorsed by the government: An interim report of the Anti-Racism Committee, endorsed by the Minister for Children, Equality, Disability, Integration and Youth, adopted a comprehensive definition of racism in line with the UN Convention for the Elimination of Racial Discrimination. This structural and systemic understanding of racism will inform the National Action Plan Against Racism.
Asylum & migration	Trafficking in human beings: A submission by the Irish Human Rights and Equality Commission to the Council of Europe Group of Experts on Action against Trafficking in Human Beings expresses concerns that the State is “extremely limited in its ability to detect and record incidences of trafficking”, due to its “reliance on a very limited national referral mechanism, and the ongoing inadequacies in the State’s victim identification infrastructure.”
Data protection	Role of data protection regulatory body: The Data Protection Commission imposed a €225 million fine on WhatsApp Ireland

and digital society	Ltd. for failure to meet transparency obligations. The decision is significant for its substance of data protection law and for its implications regarding the relationship between the Data Protection Commissioner and supervisory authorities in other jurisdictions.
Rights of the child	Youth Justice Strategy 2021-2027: The government published the Youth Justice Strategy to provide support and services for children in accordance with their rights under the UN Convention on the Rights of the Child. Governance and advisory bodies have been created, and budget has been allocated.
Access to justice, including victims of crime	Strategy Statement 2021-2023: The Department of Justice published a Strategy Statement setting support of victims of crime as strategic priority. The Department also published a Victims' Charter website which, although not a legal instrument, brings together all the information that a victim might require in an easily navigable form.
Convention on the Rights of Persons with Disability	Civil society participation: The Disability Participation and Consultation Network submitted a response to the State's Draft Report on the implementation of the UN Convention on the Rights of Persons with Disabilities. The response highlighted the lack of reflection of the realities of the everyday lives of persons with disabilities and the barriers they encounter and endure. They draw attention to the lack of data which hinders advocacy and policy progress.

Chapter 1. Equality and non-discrimination

1.1 Legal and policy developments or measures relevant to fostering equality and combating discrimination against EU citizens based on their nationality and against LGBTI people

In June 2021, the Minister for Children, Disability, Integration and Youth announced a wide-ranging review of Ireland's equality legislation (Equal Status Acts 2000-2018 and the Employment Equality Acts 1998-2015). The announcement was made at the closing of a seminar series organised by the Free Legal Advice Clinics (FLAC), and the Law School at Trinity College Dublin, which marked twenty years of entry into force of the Equal Status Act.¹ Enacted to respond to a commitment in the Good Friday Agreement, at the time this placed Ireland among the leaders in Europe on anti-discrimination legislation.² However, the number of complaints taken under the Equal Status Acts has begun to decline and according to FLAC Chief Executive Eilis Barry: "there are now several serious questions about whether the equality code meets our obligations under European and international law, and provides an effective remedy to all those who experience discrimination".³

The government have launched a public consultation, with written submissions due by 29 October 2021.⁴ The review will consider the introduction of a socio-economic ground for discrimination, and the amendment of the gender ground. It will also consider whether the existing legislation adequately addresses issues of intersectionality.

There is little evidence of specific implementation of the EU LGBTIQ equality strategy as of yet, beyond a blog post from NGO LGBT Ireland providing a summary of its main provisions.⁵ However, Ireland has both a LGBTI+ National Youth Strategy (2018-2020)⁶ and a National LGBTI+ Inclusion Strategy (2019-2021),⁷ which between them cover many of the actions set out in the EU strategy. The LGBTI+ Youth Strategy was extended to cover 2021 in light of the

¹ Public Interest Law Alliance (2021), [Announced review of equality law timely and necessary says FLAC](#), PILA Bulletin 30 June 2021.

² Public Interest Law Alliance (2021), [Status check: 20 years of the Equal Status Acts- FLAC Seminar Series](#), PILA Bulletin 30 June 2021.

³ Public Interest Law Alliance (2021), [Announced review of equality law timely and necessary says FLAC](#), PILA Bulletin 30 June 2021.

⁴ Government of Ireland (2021), [Consultation on the Review of the Equality Acts](#), 14 July 2021.

⁵ LGBT Ireland (2020), [The EU LGBTIQ Strategy](#), Blog post, 13 November 2020.

⁶ Government of Ireland, Department of Children and Youth Affairs (2018), [LGBTI+ National Youth Strategy 2018- 2020: LGBTI+ young people: visible, valued and included](#), Dublin, 29 June 2018.

⁷ Government of Ireland, Department of Justice and Equality (2019), [National LGBTI+ Inclusion Strategy, 2019-2021](#), Dublin, 28 November 2019.

impact of Covid on planned actions, and it is likely that the same will be done from the Inclusion Strategy. A piece of research was published in 2021 to complement the National Youth Strategy (see 1.2 below).

There were no legal developments or case law relating to discrimination against EU citizens in 2021. One long standing provision which has the potential for discrimination against EU citizens is the Habitual Residence Condition⁸ whereby in order to access social assistance, individuals must have the right to residence, and must also prove that their centre of interest is in Ireland (that they have close links to Ireland, and that they intend to stay in Ireland for some time). Habitual residence is not defined in Irish law, and the decision is made at the discretion of Deciding Officers in the Department of Social Protection. While returning Irish citizens are not automatically exempt from habitual residence, in practice it is easier for Irish citizens to fulfil the condition.

A 2020 study involving in-depth interviews with 23 public servants involved in habitual residence decisions found that most participants felt that there was too much discretion in the application of the Habitual Residence Condition. Most disallowed cases were appealed, leading to uncertainty, delays, and backlogs of cases.⁹

1.2 Findings and methodology of research, studies, or surveys on experiences of discrimination against EU citizens on the grounds of nationality and against LGBTI people

Eastern European migrants are among those with a much higher risk of disadvantage around employment in Ireland,¹⁰ according to research published in 2021 by the Irish Human Rights and Equality Commission (Ireland's equality body) and the Economic and Social Research Institute (ESRI).

The research selected a set of key indicators for decent work based on a review of international measurement frameworks and a stakeholder engagement process. The researchers then applied these indicators to available large-scale surveys from the Central Statistics Office. Data for analysing access to

⁸ Department of Social Protection of Ireland (2019), [Habitual Residence Condition](#), Dublin, 3 September 2019.

⁹ Ryan, M. and Power, M. (2020), 'Understanding How Decision-Makers Practice Discretion in the Context of the Habitual Residence Condition in the Republic of Ireland', *Irish Journal of Sociology*, Vol. 28, No. 2, pp. 143–67.

¹⁰ McGinnity, F., Russell, H., Privalko, I. and Enright, S., (2021), [Monitoring Decent Work in Ireland](#), Dublin, Irish Human Rights and Equality Commission and Economic and Social Research Institute.

employment, stability and security of work came from the 2019 Labour Force Survey, with a sample size of 15,112 households in the first quarter of 2019 and 14,440 households in the second quarter of the same year. Due to lack of data on ethnicity, religion and employment in the Labour Force Survey, this was supplemented by data from the 2016 Census (4.7 million individuals recorded). Data on adequate earnings comes from the 2018 and 2019 Survey on Income and Living Conditions (the design sample was 9,600 households, with a 46% response rate in 2018). Data on equal opportunity for and treatment in employment comes from the equality modules of the 2019 General Household Survey. The overall sample size for the first quarter of 2019 was 3,791 respondents living in private households. One of the limitations noted is that all data used, apart from the Census data, draws on individuals living in private housing, thereby excluding people living in residential settings, direct provision or who are homeless. The report stresses that while the data dates to pre-pandemic conditions, “any assessment of the equality impact of the pandemic will be informed by understanding the situation prior to the pandemic”.¹¹

The report found that younger respondents, people with disabilities and migrants from outside the EU were particularly at risk of unemployment. However, within the cohort of those at work, young respondents, people with disabilities and Eastern European migrants were all less likely to work in high-skilled jobs. Eastern European migrants were significantly more likely than average to have lower pay and were less likely to be members of trade unions than their Irish counterparts. The research does not speculate on the factors behind these findings, so it is not clear whether this should be seen as discrimination against EU citizens. However, the paper cites previous research which found that migrants on average receive lower earnings returns on their qualifications than Irish nationals, with East Europeans at work experiencing the largest earnings disadvantage.¹² This may therefore be the result of direct discrimination (employers preferring to hire Irish workers with the same qualifications) or indirect discrimination (inadequate mutual recognition of qualifications).

Also in 2021, the Irish Department of Children, Equality, Disability, Integration and Youth,¹³ together with the National University of Galway reviewed research

¹¹ McGinnity, F., Russel, H., Privalko, I. and Enright, S. (2021), [Monitoring Decent Work in Ireland](#), Dublin, Irish Human Rights and Equality Commission and Economic and Social Research Institute, p.ix.

¹² Barrett, A., Bergin, A., et al. (2016), ‘Ireland’s recession and the immigrant-native earnings gap’, in Kahanec, M. and Zimmermann, K. F. (eds), *Labor migration, EU enlargement, and the Great Recession*, Berlin, Springer, pp. 103-122 (cited in McGinnity, F., Russel, H., Privalko, I. and Enright, S. (2021), [Monitoring Decent Work in Ireland](#), Dublin, Irish Human Rights and Equality Commission and Economic and Social Research Institute, p. 70).

¹³ Költő, A., Vaughan, E., O’Sullivan, L., Kelly, C., Saewyc, E. M., & Nic Gabhainn, S. (2021). [LGBTI+ Youth in Ireland and across Europe: A two-phased landscape and research gap analysis](#), Dublin, Department of Children, Equality, Disability, Integration and Youth.

on LGBTI+ youth in Ireland and in Europe since 2000. The goal of the review was to complement the LGBTI+ National Youth Strategy 2018-2020, to understand where there is a strong evidence base for each of the Strategy's objectives, and where there are knowledge gaps. The report highlights that we need to know more about the lives of transgender and intersex young people, the view of parents and families of LGBTI+ young people, and about developing inclusive work environments for LGBTI+ young people. Its recommendations include: more support for parents and families; support for LGBTI+ children and families on availing of LGBTI+ specific resources; and support to existing population health surveys to develop evidence-based measures of sex assigned at birth, gender identity and different dimensions of sexual orientation.

Finally, BeLonG To, a LGBTI+ youth service organisation, published a survey of Irish LGBTI+ youth and their experiences in lockdown;¹⁴ this was the second iteration of a survey carried out initially in 2020. The final sample included 2,279 LGBTI+ young people between the ages of 14 and 24 years from all 32 counties in the Republic of Ireland and Northern Ireland. Of the total, 97% of respondents reported struggling with anxiety, stress and depression, while 56% said that they were not fully accepted in their home environment. Rejection at home can also increase the risk of homelessness, and 119 LGBTI+ young people reported experiencing homelessness in the last year.

There are no studies in 2021 which look at access to healthcare or vaccines of EU migrants or LGBTI people in the Covid 19 pandemic. In May 2021, the Health Service Executive (HSE) published a study on the impact of the Covid-19 pandemic on the health and wellbeing of the population, HSE staff, and on health service capacity and delivery. Among other things, this study looked at the impact of Covid-19 on various groups, including older people, the homeless, people with disabilities and opioid users. The study is descriptive rather than analysing new data. It includes recommendations around younger people, older people and mental health.¹⁵

¹⁴ Belong To Youth Services (2021), [LGBTI+ Life in Lockdown: 1 Year Later Key Findings - The Impact of Covid-19 Restrictions on LGBTI+ Young People in Ireland](#), Dublin, BeLonG To Youth Services.

¹⁵ Crowley, P. and Hughes, A. (2021), [The impact of the COVID-19 pandemic and the societal restrictions on the health and wellbeing of the population, on our staff and on health service capacity and delivery: A plan for healthcare and population health recovery](#), Version 2, Dublin, Health Service Executive.

Chapter 2. Racism, xenophobia and related intolerance

2.1 Findings and methodology of research, studies, or surveys on experiences of ethnic discrimination, racism and hate crime

Published surveys / data

Irish Network Against Racism

The Irish Network Against Racism (INAR) published data on reports of racist hostility and discrimination. The iReport.ie racist incident reporting system collected the highest number of incidents since 2013, 700 incidents in 2020 (there were 530 in 2019), key points include:¹⁶

- 159 Criminal offences¹⁷, including 51 racist assaults, and excluding incitement to hatred reports.
- 99 reports of discrimination in employment or access to goods and services.
- 143 racist incidents which were part of a pattern of harassment (including 61 cases at the standards of criminal harassment).
- Racist language was used in 70 percent of crimes, and in 54 percent of other incidents.
- Only 43% of crimes were reported to police.
- There were 334 cases of racist hate speech reported in total in 2020 almost double that of 2019.¹⁸ The groups most targeted by hate speech in the 2020 reports to iReport.ie were Black-African, Black-Irish and Black-Other (74 in total), Muslim (69), Traveller (35), South Asian (54), Chinese (29), Jewish (23). Seventy reports concerned racism against white-other Europeans, of which 56 concerned racism against Romanians and Roma.
- A new high level of hate speech by extremist groups is reported –Sixty-nine reports were capable of being identified as published directly by extreme hate groups or well-known far-right activists in Ireland.
- Just 14 percent of criminal offences were believed to have been perpetrated by a person under the influence of alcohol or drugs.

¹⁶ Michael, L. (2021), [Reports of racism in Ireland: Data from iReport.ie. Annual Report 2020](#), Dublin, Irish Network Against Racism.

¹⁷ This category includes offences against the person and criminal damage, as well as other offences.

¹⁸ Michael, L. (2020), [Reports of racism in Ireland](#), Dublin, Irish Network Against Racism, p. 7.

- Rates of repeat harassment, serious threats, thefts, and workplace racism were slightly down from 2019 rates. These may be attributable to Covid-19 lockdowns and work-from-home policies.
- Of the 111 incidents of illegal racist discrimination¹⁹ reported to iReport.ie. Eleven of these cases (13%) were reported to An Garda Síochána, and 54 (49%) were reported to other organisations. 40 (36%) were not reported to anyone else.
- The INAR report indicates that racial profiling [by Gardaí] continues, and there is no legislation to govern this practice. Of those that reported a crime or racist incident (excluding illegal discrimination) to An Garda Síochána, 27 percent appeared satisfied with the response.
- The INAR report also points to instances of poor responses by Gardaí including refusing to record crimes, failing to attend the scene and collect evidence, failing to take statements from victims and investigate crimes, and failing to communicate updates to victims.
- Institutional racism is evident in the policies and processes of a range of public sector organisations reporting in this period. This despite the Public Sector Equality Duty created by the Irish Human Rights and Equality Act 2014, which obliges public bodies and publicly funded organisations to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.

IHREC noted that NGO reports indicate that racism in society increased in 2020, with a particular growth in online racism via social media. It also noted “the escalation in incidents of far-right rhetoric and racist hate crime”.²⁰

The Workplace Relations Commission (WRC) 2020 annual report notes that ‘race’ was the ground accounting for nearly 17% of referrals under both the Equal Status Acts which covers discrimination in the provision of goods or services and the Employment Equality Acts. which covers discrimination in the workplace.²¹

An Garda Síochána introduced a new online hate crime reporting system²² in July 2020. No disaggregated data by ‘race’ or ethnicity has yet been published from this system.

The Higher Education Authority launched the results of its Race Equality Survey in October 2021 which was the first of its kind to be carried out in the Irish

¹⁹ Discrimination under the [Equal Status Acts 2000-2018](#) and [Employment Equality Acts 1998-2015](#).

²⁰ Irish Human Rights and Equality Commission (2021), [Developing a National Action Plan Against Racism – IHREC Submission to the Anti-Racism Committee](#), 6 September 2021.

²¹ Workplace Relations Commission (2021), [Annual Report 2020](#), 26 April 2021.

²² An Garda Síochána (2020), [Hate Crime Online Reporting](#).

education sector. Historically, there has been a lack of data on minority ethnic groups in higher education in Ireland.²³ According to the HEA Race Equality Survey, more than a third (35%) of staff from minority ethnic groups have been subject to racial and/or ethnic discrimination on campus or online in the course of their work, compared to 16% of White Other respondents and 3% of White Irish respondents.²⁴

IHREC published accounts of equality reviews for Ireland's local authorities, focused on their provision of Traveller-specific accommodation, for the first time. These involved systematic review²⁵ of the issues driving underspend in each and reiterate the findings of the 2019 Independent Traveller Accommodation Review which evidenced a highly uneven record of local authorities in developing Traveller-specific accommodation.²⁶

Published research

The report 'Monitoring Decent Work in Ireland', published by the Economic and Social Research Institute and the Irish Human Rights and Equality Commission, has highlighted that Travellers, and Eastern European migrants are at significantly higher risk of facing employment disadvantages. At least one out of five ethnic minority workers in Ireland report workplace discrimination.²⁷

The report 'Monitoring Adequate Housing in Ireland', published by the Economic and Social Research Institute and the Irish Human Rights and Equality Commission, found that the largest differences in over-crowding rates are between ethnic groups, with Irish Travellers, Black, and Asian minorities reporting worse conditions than other groups, however the authors note that Ireland lacks sufficient disaggregated data to analyse housing discrimination across equality groups.²⁸

²³ The lack of data collection was highlighted in a report on ethnic minority students and staff. The Royal Irish Academy and the British Council in Ireland (2020), [Race, Ethnicity, and Change in Higher Education](#), Dublin, Royal Irish Academy.

²⁴ Kempny, M. and Michael, L. (2021), [Race Equality in the Higher Education Sector. Analysis Commissioned by the Higher Education Authority](#), Dublin, HEA, p.33.

²⁵ Irish Human Rights and Equality Commission (2021), [Equality Reviews](#) (Accounts of the Equality Reviews carried out by local authorities in respect of Traveller-specific accommodation).

²⁶ Independent Expert Group (on behalf of the Minister of the Department of Housing, Planning and Local Government) (2019), [Traveller Accommodation Expert Review](#), July 2019.

²⁷ Irish Human Rights and Equality Commission (2021) [Monitoring decent work in Ireland](#), 2 June 2021.

²⁸ Irish Human Rights and Equality Commission (2021) [Monitoring adequate housing in Ireland](#), 14 September 2021.

2.2 Legal and policy developments or measures relating to the application of the Framework Decision on Racism and Xenophobia and the Racial Equality Directive

Hate Crime Legislation

In April 2021, the Department of Justice, published the General Scheme of the Criminal Justice (Hate Crime) Bill 2021.²⁹ Until this bill, the only legislation in Ireland dealing with hate-based offences is the Prohibition of Incitement to Hatred Act 1989, under which very few prosecutions occurred. The Bill will create new, aggravated forms of certain existing criminal offences, where those offences are motivated by prejudice against a protected characteristic. Part 1 of the Bill addresses Incitement to Hatred, and Part 2 addresses Hate Crime.

IHREC has urged the Hate Crime Bill 2021 be given “absolute priority” from Government in terms of enactment and full commencement.³⁰ The new bill includes as “protected” characteristic: Race, colour, nationality, religion, ethnic or national origin, sexual orientation, gender, and disability. Accordingly, Traveller ethnicity is recognised in the main definitions in the new law, on the same basis as other ethnicities.³¹ Pre-legislative scrutiny is currently under way on this bill. A significant civil society response is that of the Coalition Against Hate Crime.³²

Review of Equality Legislation

The Department of Children, Equality, Disability, Integration and Youth launched a consultation seeking the public’s views on a review of the Equality Acts (Equal Status Acts 2000-2018³³ and the Employment Equality Acts 1998-2015³⁴). The review will examine the functioning of the Acts and their effectiveness in combatting discrimination and promoting equality. It will also include a review of current definitions. The review will examine the operation of the Acts from the perspective of the person taking a claim under its redress mechanisms. It will examine the degree to which those experiencing discrimination are aware of the

²⁹ Department of Justice of Ireland (2021), [General Scheme - Criminal Justice \(Hate Crime\) Bill 2021](#). The General Scheme is a proposed Bill.

³⁰ Irish Human Rights and Equality Commission (2021), [Developing a National Action Plan Against Racism – IHREC Submission to the Anti-Racism Committee](#), 6 September 2021.

³¹ Department of Justice of Ireland (2021), [General Scheme - Criminal Justice \(Hate Crime\) Bill 2021](#), Head 2.

³² Coalition Against Hate Crime Ireland (2021), [Submission to the Oireachtas Joint Committee on Justice on the General Scheme of the Criminal Justice \(Hate Crime\) Bill 2021](#), August 2021.

³³ Houses of the Oireachtas, [Equal Status Act, 2000](#) (Act 8 of 2000), also known as “Equal Status Acts 2000-2018 (the ES Acts)”.

³⁴ Houses of the Oireachtas, [Employment Equality Act, 1998](#) (Act 21 of 1998), also known as “Employment Equality Acts 1998 – 2015 (the EE Acts)”.

legislation and whether there are practical or other obstacles which preclude or deter them from taking an action. The review itself will be undertaken in early 2022 and inform legislative change.³⁵

The Racial Equality Directive (2000/43/EC) outlaws discrimination on the basis of a person's racial or ethnic origin in the areas of employment, education, social security, health care and access to goods and services.³⁶ Discrimination and harassment on the ground of race are prohibited by the Equality Acts. The definition of the "ground of race" in Irish legislation includes colour, nationality or ethnic or national origins.

Anti-Racism Committee

The government established an Anti-Racism Committee at the end of 2019, and this met throughout 2020. The Terms of Reference of the Anti-Racism Committee³⁷ included review of current evidence and outcomes, including identifying data gaps, in relation to racial discrimination in Ireland; to examine and benchmark against international best practice in combating racism; to hold stakeholder dialogue and consultation; to develop a blueprint for a draft national strategy against racism; and to provide a draft anti-racism strategy. The Committee's Interim Report was published on 21 April 2021 and highlights priority issues for a National Action Plan Against Racism for Ireland.³⁸ Those priority issues include five cross-cutting areas and seven specific areas of public policy.³⁹

National Action Plan Against Racism

Ireland's National Action Plan Against Racism is expected to be published early in 2022 by the Department of Children, Equality, Disability, Integration and Youth. Ireland has been without a national plan since 2008.

³⁵ Department of Children, Equality, Disability, Integration, and Youth (2021), [Consultation on the Review of the Equality Acts](#), 6 July 2021.

³⁶ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

³⁷ Government of Ireland, Department of children, equality, disability, integration, and youth (2021) [Approved terms of reference of the Anti-Racism Committee](#), 2 July 2021.

³⁸ Government of Ireland, Anti-Racism Committee (2020), [Interim report to the Minister for Children, Equality, Disability, Integration and Youth](#), 30 November 2021.

³⁹ The cross-cutting areas are: public services; complaints mechanisms/forms of redress; information, communications, media and new technologies; supports for victims of racism; and equal participation in civil, political, economic, social and cultural decision making. The specific areas of public policy are education, employment, access to justice, policing, hate crime and hate speech, accommodation, and health. See Government of Ireland, Anti-Racism Committee (2020), [Interim report to the Minister for Children, Equality, Disability, Integration and Youth](#), 30 November 2021, pp. 14-17.

The Irish Human Rights and Equality Commission (IHREC) published recommendations⁴⁰ to Government on Ireland's National Action Plan Against Racism, calling for the Plan to include clear targets, indicators, timeframes, have a budget line and most importantly to involve the people who are directly affected by racism, and what needs to be done in areas such as policing, education, media, politics, employment, and healthcare, making over 130 specific recommendations for State action. It highlights the need for anti-racism to be promoted across the political and public institutions of the State through systematic training and more diverse recruitment in our police, courts, healthcare, and teaching professions. IHREC explicitly calls for the establishment of a participatory annual public forum on the advancement of anti-racism, and for the plan to have its own specific budget line and designated leadership within Government. The State also needs to prioritise policing and law enforcement in Ireland's National Action Plan Against Racism, as has been done in the European Anti-Racism Action Plan. IHREC also advised the Government that sanctions should apply to public bodies failing to implement actions assigned to them under the National Action Plan Against Racism.

Data collection

The overall shortfall in data on racial or ethnic origin in Ireland has profound consequences for our understanding of racial discrimination in this country – specifically when looking at structural and institutional barriers facing ethnic minorities.⁴¹

IHREC wants to see the National Action Plan Against Racism give direction on the collection and processing of data on racial or ethnic origin across all bodies that are subject to the Public Sector Equality and Human Rights Duty. Ireland has the framework it needs to collect data, but there is a strong reluctance to do so.⁴²

Racial profiling and discriminatory treatment by Gardaí

The European Commission against Racism and Intolerance found negative attitudes amongst Garda members towards minority ethnic groups,⁴³ and IHREC

⁴⁰ Irish Human Rights and Equality Commission (2021), [Developing a National Action Plan Against Racism – IHREC Submission to the Anti-Racism Committee](#), 6 September 2021.

⁴¹ Human Rights and Equality Commission (2021), [Ireland Needs Sanctions for Breaches of Anti-Racism Commitments](#), Press release, 6 September 2021.

⁴² Gibney, S. (2021), '[Opinion: The State must foster an anti-racist culture in public institutions](#)', *The Journal.ie*, 6 September 2021. Sinéad Gibney is a member of the Irish Human Rights and Equality Commission.

⁴³ See European Commission against Racism and Intolerance, [ECRI Report on Ireland \(fifth monitoring cycle\)](#), adopted on 2 April 2019, para 52. See also Gallagher, C. (2020), '[Gardaí have negative view of Travellers, survey finds](#)', *The Irish Times*, 20 August 2020.

noted in its recommendations to Government on the National Action Plan Against Racism that it is aware of reports of racial profiling in the use of stop and search powers.⁴⁴

IHREC published a report 'Ireland's Emergency Powers During the COVID-19 Pandemic'⁴⁵ which found that the Government has persistently blurred the boundary between legal requirements and public health guidance in its COVID-19 response. The report concluded that Garda failure to publish disaggregated data on enforcement of emergency powers runs the risk of concealing human rights violations—particularly for vulnerable and disadvantaged groups—and itself is a significant breach of international human rights standards.

Forthcoming research from the Irish Penal Reform Trust addresses racial and ethnic discrimination in the penal system.⁴⁶

IHREC has recommended, following the CERD Concluding Observations of 2019,⁴⁷ that the Government prioritise legislation to prohibit racial profiling and take measures to address it, including an independent complaints mechanism.⁴⁸

⁴⁴ Irish Human Rights and Equality Commission (2021), [Developing a National Action Plan Against Racism – IHREC Submission to the Anti-Racism Committee](#), 6 September 2021.

⁴⁵ Irish Human Rights and Equality Commission (2021) [Ireland's emergency powers during the COVID-19 Pandemic](#), 24 February 2021.

⁴⁶ In 2020, the [Irish Penal Reform Trust](#) was awarded funding from the Irish Human Rights and Equality Commission to pursue a research and awareness-raising campaign focused on the rights and experiences of migrants and minority ethnic groups in the penal system in Ireland.

⁴⁷ Committee on the Elimination of Racial Discrimination, Concluding observations on the combined fifth to ninth reports of Ireland (23 January 2020) CERD/C/IRL/CO/5-9, para 16. See also Committee on the Elimination of Racial Discrimination, General recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials (17 December 2020) CERD/C/GC/36, paras 38-41.

⁴⁸ Irish Human Rights and Equality Commission (2019), [Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#), Dublin, IHREC.

Chapter 3. Roma equality and inclusion

3.1 Policy developments in regards to the application of the EU Roma strategic Framework for equality, inclusion and participation for 2020-2030

Please put down the name of the national Roma framework/Roma strategy/integrated set of policy measures and the link	National Traveller and Roma Inclusion Strategy 2017 – 2021 (NTRIS)
Please add a hyperlink if the strategy is publicly available.	http://www.justice.ie/en/JELR/Pages/National Traveller and Roma Inclusion Strategy 2017%E2%80%932021
Did an evaluation of the previous Roma inclusion strategy take place? If yes, please provide reference	No. In April 2021, the Minister of State at the Department of Health stated that a review of the NTRIS had been presented to the NTRIS Steering Committee; however, on 18 November 2021, the Minister for Children, Equality, Disability, Integration and Youth stated that the review will be completed by mid-2022. The new strategy will be prepared after completion of the review. ⁴⁹
Does the strategy use the (headline) indicators as suggested in the new portfolio of indicators?	No
Was Roma civil society involved in the development of the strategy? Please provide examples?	No (the strategy is not yet developed but the Steering Committee which oversees the NTRIS includes Traveller and Roma representatives and Civil Society organisations).
Were NHRIs and/or equality bodies involved in the strategy development? Please provide example?	No (the new strategy has not yet been developed).
Does the new strategy link to the operational programmes for the new EU funding period 2021-2027?	No (the new strategy has not yet been developed).

3.2 Legal and policy developments or measures directly or indirectly addressing Roma/Travellers inclusion

⁴⁹ Minister for Children, Equality, Disability, Integration and Youth (2021), [Review of Traveller Inclusion Policy, Education and Health: Discussion](#), Joint Committee on Key Issues affecting the Traveller Community debate, Dublin, 18 November 2021.

Traveller accommodation remained a key policy issue during the reporting period. In May 2021, the Ombudsman for Children's Office (OCO) published the report *No End in Site; An investigation into the living conditions of children living on a local authority site*.⁵⁰ The OCO investigation found that the local authority failed to consider the best interests of children; failed to maintain the site; failed to maintain transparent or accountable records; failed to account for the disadvantages experienced by Travellers in effectively securing accommodation; and failed to meet their obligations in relation to the Traveller Accommodation Programme.

In July 2021, the NHRI, the Irish Human Rights and Equality Commission (IHREC), published accounts of statutory equality reviews for Ireland's local authorities, focused on their provision of Traveller-specific accommodation.⁵¹ The equality reviews arose from failures nationally to draw down ring-fenced capital budget to meet obligations on Traveller-specific accommodation. The local authorities were invited to conduct a review of practices, procedures, and other relevant factors in relation to the drawdown of capital funding and the provision of Traveller-specific accommodation services. According to IHREC,⁵² the key issues to emerge across the reviews included the following:

- Underspend is driven by structural issues in how funding is allocated and drawn down, but also by a frequently inadequate deficient process for identifying actual and future housing needs.
- Travellers' true accommodation preference (i.e., Traveller-specific accommodation v. social housing) is not adequately transparent and does appear to have been independently verified over time.

IHREC has made a series of recommendations to local authorities, and asked councils to report to it by the end of August 2021, specifying the actions taken, or intended to be taken within specific timeframes. The Commission is to consider these reports and assess what further action, if any, is necessary.

Traveller accommodation was included in the Land Development Agency Act 2021.⁵³ Under section 15 of the Act, local authorities may request the Agency (a commercial state-sponsored body set up to coordinate the use of State land) to provide services in relation to the development of sites for housing and urban development, in certain circumstances. This expressly includes sites that are

⁵⁰ Ombudsman for Children's Office (2021), [No End in Site; An investigation into the living conditions of children living on a local authority site](#), Dublin, May 2021.

⁵¹ Irish Human Rights and Equality Commission (2021), [Equality Reviews](#) (Accounts of the Equality Reviews carried out by local authorities in respect of Traveller-specific accommodation).

⁵² Irish Human Rights and Equality Commission (2021), [Accounts of First Council-by-Council Equality Review on Traveller Accommodation in History of State Published. Reviews Across Local Authorities Recommends Systemic Change](#), Press Release, 14 July 2021.

⁵³ Houses of the Oireachtas, [Land Development Agency Act](#) (Act 26 of 2021).

fully or partially intended to secure the implementation of all or part of an accommodation programme, within the meaning of the Housing (Traveller Accommodation) Act 1998 (section 15(a)).

On 16th September 2021, the Department of Education published new Guidelines on the Use of Reduced School Days.⁵⁴ This followed concerns expressed about the inappropriate use of reduced timetables as an informal suspension to deal with perceived difficult behaviour in the classroom. Young people disproportionately affected include those from the Traveller and Roma communities.⁵⁵ The Department states that the Guidelines provide clarity to school authorities and parents/guardians around the use of reduced school days in schools, to ensure that this practice is limited to only those circumstances where it is necessary and, that where such usage occurs, schools follow best practice with the interests of the student to the fore. The guidelines also set out the process for schools to notify the use of reduced school day. However, the Guidelines do not require that the ethnicity of the young person be recorded and reported on. The Children's Rights Alliance noted that a child-friendly version of the Guidelines would be useful, and that parents will also need a lot of support to be able to challenge any misuse of the practice.⁵⁶

Also, in the sphere of education, several universities announced appointments (NUIG)⁵⁷ or vacancies (Maynooth University) vacancies for Traveller education or outreach officers, with the aim of improving access for the Traveller community. The Traveller Culture and History in Education Bill was debated in Dáil Éireann (Parliament) on 1 July 2021 and progressed to the committee stage of the legislative process.⁵⁸

In the area of health, the publication of the Traveller Health Action Plan is still awaited. In relation to the Covid-19 vaccination programme, the Health Service

⁵⁴ Government of Ireland, Department of Education (2021), [The Use of Reduced School days. Guidelines for schools on recording and notification of the use of Reduced School days](#), Dublin, 16 September 2021.

⁵⁵ Pavee Point Traveller & Roma Centre (2021), [Opening Statement to the Joint Oireachtas Committee on Education and Further and Higher Education, Research, Innovation and Science. Session on Traveller Education, with reference to Inequality, Digital Divide and the Impact of Reduced Timetables](#), Dublin, June 2021

⁵⁶ Children's Rights Alliance (2021), [Government's Long-Promised Guidelines on Reduced Timetables Published - Children's Rights Alliance Response](#), Press Statement, 16 September 2021.

⁵⁷ NUI Galway Marketing and Communications (2021), [NUI Galway appoints Traveller Education Officer](#), Galway, 13 September 2021.

⁵⁸ Dáil Éireann (2021), [Traveller Culture and History in Education Bill 2018: Second Stage \[Private Members\]](#), Debate, 2 July 2021.

Executive (HSE, national health service) produced Traveller vaccine information posters and videos.⁵⁹

⁵⁹ Health Service Executive, National Social Inclusion Office (2021), [Traveller COVID-19 Vaccination programme](#) (resources).

Chapter 4. Asylum, visas, migration, borders, and integration

4.1 Number of beneficiaries of international protection, protection status revoked in 2021

Country	Cessation of refugee status		Cessation of subsidiary protection	
	Number of refugee status revoked	Main reasons	Number of subsidiary protection status revoked	Main reasons
Ireland	N/A ⁶⁰	N/A	N/A ⁶¹	N/A

⁶⁰ Minister for Justice (2021), [Answer to Parliamentary Question 693](#), 3 March 2021. The data corresponds to 2020. There is no data available for 2021 in the statistical data publicly offered by the Immigration Service Delivery within the Department of Justice and Equality.

⁶¹ Minister for Justice (2021), [Answer to Parliamentary Question 693](#), 3 March 2021. The data corresponds to 2020. There is no data available for 2021 in the statistical data publicly offered by the Immigration Service Delivery within the Department of Justice and Equality.

4.2 National border monitoring mechanisms

Country	Legal source providing for border monitoring	Organisation(s) responsible for monitoring	Is the monitoring body at the at same time the National Preventative Mechanism? (Y/N)	Are reports publicly available? [if yes, please add hyperlink]	Number of monitoring operations in 2021	Is monitoring (at least partially) funded by the EU? If so, under which modalities?
Ireland ⁶²	N/A	N/A	N/A	N/A	N/A	N/A

⁶² Ireland has not set up an independent national border mechanism according to the EU New Pact on Migration and Asylum (proposed in September 2020).

Chapter 5. Information society, privacy, and data protection

5.1 Legal and policy developments or measures that have been implemented related to data protection and private life with regards to security issues

Cybercrime

The most important Irish development in 2021 was a ransomware attack on the public health service (the Health Service Executive or HSE) which exfiltrated data, encrypted stored data, and sought a ransom to refrain from publishing the stolen data and to provide a decryption tool.⁶³ It resulted in the shutdown of all affected information systems within the HSE, many for several weeks, and a huge impact on patient care including widespread cancellation of elective surgeries, outpatient appointments and radiology services.⁶⁴ Two weeks after the attack, 50% of outpatient appointments were still being cancelled each day, with patient information sharing and scan sharing largely inoperative.⁶⁵ The attack was described by ministers as “the most significant cybercrime attack on the Irish state”.⁶⁶

The attack was widely attributed to a Russian cybercrime group⁶⁷ and the Irish government raised the attack with the Russian government.⁶⁸ The group unexpectedly provided a decryption key for the encrypted files around this time, which

⁶³ National Cyber Security Centre (2021), '[Ransomware Attack on Health Sector](#)', *NCSC Alert* 2105161000-NCSC, 16 May 2021.

⁶⁴ Winterburn, M. and Houghton, F. (2021), 'Cybersecurity, Ransomware Attacks and Health: Exploring the Public Health Implications of the Recent Cyberattack on Ireland's Health Service', *Medicina Internacia Revuo*, Vol. 29, No. 116, pp. 160-163; Anderson, T. and Torreggiani, W. C. (2021), 'The Impact of the Cyberattack on Radiology Systems in Ireland', *Irish Medical Journal*, Vol. 114, No. 5, p. 437; Pender, E., Coffey, B. *et al.* (2021), 'Knowledge Is Power – Surveying Patients' Understanding During HSE IT Shutdown', *Irish Medical Journal*, Vol. 114, No. 7, p. 427.

⁶⁵ O'Regan, E. '[Patients Paying the Real Price in HSE Cyber Attack – Which Paul Reid Says Will Cost €100m](#)', *Irish Independent*, 28 May 2021.

⁶⁶ BBC (2021), '[Cyber Attack “Most Significant on Irish State”](#)', 14 May 2021.

⁶⁷ Umawing, J. (2021), '[Threat Spotlight: Conti, the Ransomware Used in the HSE Healthcare Attack](#)', *Malwarebytes Labs*, 28 May 2021.

⁶⁸ Clarke, V., and McQuinn, C. (2021), '[Coveney Discusses Health Service Cyberattack with Russian Foreign Minister](#)', *The Irish Times*, 18 May 2021.

some observers have described as a public relations move to mitigate the unwanted attention drawn to the gang by an unusually high-profile attack on a state agency.⁶⁹

Following the attack there was widespread criticism that the National Cyber Security Centre (NCSC) had been underfunded, with funding (exclusive of payroll) for the decade prior to the attack of just €14 million and salaries within the NCSC significantly below those in private industry.⁷⁰ In response, funding for the NCSC has been increased with the number of staff to be expanded from 25 at the start of 2021 to 45 within 18 months and 70 within 5 years. The role of Director of the NCSC has also been re-advertised at a doubled salary of €184,000.⁷¹

In addition to the criminal investigation into the attack, there have been two further legal responses which should be noted. First, the HSE obtained an injunction from the High Court against the “persons unknown” responsible for the attack, and anyone having knowledge of the injunction, restraining them from sharing any information obtained from the attack.⁷² The aim of this injunction was to facilitate takedown of stolen information from hosting providers and search engines.⁷³ Second, the Garda National Cyber Crime Bureau has stated that it seized a number of domain names used by the attackers.⁷⁴ This appears to be the first time that domain names have been seized by the Garda Síochána, and there is no public information as to what legal basis was used for this.⁷⁵

Data retention

⁶⁹ Lally, C. (2021), '[Government Insists “No Ransom Will Be Paid” after Getting HSE Decryption Tool](#)', *The Irish Times*, 20 May 2021; National Cyber Security Centre (2021), '[Lindy Cameron Speaking to the IIEA](#)', 25 June 2021.

⁷⁰ McQuinn, C., O'Halloran, M., et al. (2021), '[State Spending on Cybersecurity Criticised as “Paltry”](#)', *The Irish Times*, 19 May 2021

⁷¹ Government of Ireland, Department of the Environment, Climate and Communications (2021) '[Government Agrees Significant Expansion of the National Cyber Security Centre](#)', *Gov.ie*, 13 July 2021.

⁷² Carolan, M. (2021), '[HSE Secures Injunctions Restraining Sharing of Hacked Data](#)', *The Irish Times*, 20 May 2021.

⁷³ A private hospital which was also affected by the attack obtained a similar injunction. Aodhan O'Faolain, A. (2021), '[Hospital Secures Court Injunction against Those behind Private IT System Cyber Attack](#)', *TheJournal.ie*, 25 May 2021.

⁷⁴ Lally, C. (2021), '[Gardaí Seize Infrastructure from HSE Cyber Attack Gang](#)', *The Irish Times*, 5 September 2021.

⁷⁵ An Garda Síochána (2021), '[Several Domains Used in Ransomware Attacks Seized by the Garda National Cyber Crime Bureau \(GNCCB\)](#)', *Garda.ie*, accessed 19 September 2021.

The legal challenge brought by convicted murderer Graham Dwyer to the Communications (Retention of Data) Act 2011 continued during 2021 and a hearing of the preliminary reference in that case took place on Monday 13 September before the Grand Chamber of the Court of Justice of the European Union (CJEU).⁷⁶ On 18 November 2021, CJEU's Advocate General, Manuel Campos Sánchez-Bordona, issued an opinion related to the case, arguing that "the general and indiscriminate retention of traffic and location data is justified only by the protection of national security, which does not include the prosecution of offences, including serious offences."⁷⁷ He also stated that in Ireland, "access by the competent national authorities to retained data does not appear to be subject to prior review by a court or an independent authority, as required by the case-law of the Court, but to the discretion of a police officer of a certain rank."⁷⁸ Although the opinion is not binding, the CJEU may adopt it because it is based on previous rulings of the CJEU.⁷⁹ According to legal experts, if the opinion is held, it would have a significant impact on how European police gathers evidence, and how they use technology for that purpose.⁸⁰ A decision is expected in March 2022.

Regulation of digital services

Pre-legislative hearings on the Heads of an Online Media and Safety Regulation Bill (the OSMR Bill) took place in parliament throughout the first half of 2021 before the Joint Committee on Tourism, Culture, Arts, Sport and Media, with submissions

⁷⁶ Supreme Court of Ireland [Case C-140/20](#) of 25 March 2020, G.D. v The Commissioner of the Garda Síochána, Minister for Communications, Energy and Natural Resources, Attorney General.

⁷⁷ Court of Justice of the European Union (CJEU), [Advocate General's Opinion in Joined Cases C-793/19 SpaceNet and C-794/19 Telekom Deutschland, in Case C-140/20 Commissioner of the Garda Síochána and Others and in Joined Cases C-339/20 VD and C-397/20 SR](#), Press release No 206/21, 18 November 2021.

⁷⁸ Court of Justice of the European Union (CJEU), [Advocate General's Opinion in Joined Cases C-793/19 SpaceNet and C-794/19 Telekom Deutschland, in Case C-140/20 Commissioner of the Garda Síochána and Others and in Joined Cases C-339/20 VD and C-397/20 SR](#), Press release No 206/21, 18 November 2021.

⁷⁹ Court of Justice of the European Union (CJEU), [C-623/17](#), Privacy International, and Joined Cases [C-511/18](#), [C-512/18](#) and [C-520/18](#), La Quadrature du Net and Others, 6 October 2020.

⁸⁰ Pitchers, C. (2021), '[EU top court adviser issues opinion on police use of phone location data Access](#)' *Euronews*, 18 November 2021.

and oral evidence from a range of stakeholders.⁸¹ The OSMR Bill has been relatively uncontentious insofar as it would transpose the revised Audiovisual Media Services Directive; however there has been significant debate as to the provisions of the Bill which would go beyond the scope of the AVMSD to cover other internet services such as social media, private online file storage (such as Google Drive) and even private communication services.

While children's groups have welcomed these provisions as providing for greater child protection,⁸² the leading Irish civil liberties group, the Irish Council for Civil Liberties (ICCL), has argued that the Bill, while well-meaning, is not legally sound. An ICCL submission contends that it is unclear who is the subject of the regulation, and it outlines four areas of concern: (a) the vague definition of "harmful online content", as it is not clear in the proposed legislation who could be subject to regulation and/or when, (b) the role and function of an "Online Safety Commissioner" are not provided, (c) individual Internet users could be subject to regulations used for licenced bodies, and (d) the regulation of private communications services and the role of the Media Commission remain undefined. The ICCL considers that the Bill is problematic, and it may restrict freedom of expression and private communications.⁸³

The submissions of Digital Rights Ireland⁸⁴ support the criticisms made by the ICCL and argue in addition that the OSMR Bill is unlikely to meet the standards required by the ECHR and CFR insofar as it: (a) Would apply to entirely private communications; (b) would require the removal of material which "humiliated" a person – a term so wide that it could include cartoons satirising politicians; (c) would allow the executive (rather than the legislature) to further widen the definition of "harmful content"; (d) Would not provide individuals with a right to be heard before an order is made censoring

⁸¹ For the Heads of Bill and related documents such as the regulatory impact analysis see Government of Ireland, Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (2020), [Online Safety and Media Regulation Bill](#), 10 January 2020.

⁸² See e.g.: Children's Rights Alliance (2021), '[Submission on the General Scheme of the Online Safety and Media Regulation Bill](#)', 16 March 2021.

⁸³ Irish Council for Civil Liberties (2021), '[ICCL submission on the Online Safety and Media Regulation Bill](#)', 8 March 2021.

⁸⁴ McIntyre, T. J., (2021), '[Submission to Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht: General Scheme of the Online Safety and Media Regulation Bill](#)', 26 May 2021.

their speech, nor a right to any judicial review of such an order; and (e) would permit state access to information about private communications in a manner which did not meet the requirements of the CJEU line of caselaw in this area.⁸⁵

The Data Protection Commission (DPC) made submissions on the draft Bill, summarised by the Committee as follows:

“[...] The Data Protection Commission (DPC) noted that the Bill, in its current form, expressly excludes material that violates data protection or privacy law from being within the regulatory scope of the Media Commission, thus constituting a regulatory lacuna. The DPC remarked, however, that the Media Commission should be given full regulatory power over all forms of harmful online content, regardless of the involvement of personal data in such content.

In its reasoning as to why such matters should fall within the remit of the Media Commission, the DPC highlighted its receipt of numerous requests relating to content takedown, despite the inefficacy of the data protection regime in accounting for such requests, and despite the inappropriacy of the tools at the disposition of the DPC for handling such matters”.⁸⁶

In relation to hate speech, the OSMR Bill would include “material which it is an [*sic*] criminal offence to disseminate under Irish [or Union law]” within the meaning of “harmful online content”, therefore bringing certain forms of incitement to hatred within the wider duties proposed by the Bill for designated online services (including the online safety code, compliance

⁸⁵ Most recently, Case C-623/17: Reference for a preliminary ruling from the Investigatory Powers Tribunal — London (United Kingdom) made on 31 October 2017 — Privacy International v Secretary of State for Foreign and Commonwealth Affairs and Others; Joined Cases C-511/18, C-512/18 and C-520/18: Judgment of the Court (Grand Chamber) of 6 October 2020 (requests for a preliminary ruling from the Conseil d’État, Constitutional Court — Belgium, France) — La Quadrature du Net and others; French Data Network and Others; and Ordre des barreaux francophones et germanophone and Others.

⁸⁶ Joint Committee on Tourism, Culture, Arts, Sport and Media (2021), ‘[Report of the Joint Committee on the Pre-Legislative Scrutiny of the General Scheme of the Online Safety and Media Regulation Bill](#)’, Dublin, House of the Oireachtas, 33.

notices, and complaints handling mechanism).⁸⁷ It would not, however, expand the categories of hate speech which are currently prohibited by Irish law.

E-evidence

In early 2021 the Department of Justice published the General Scheme (Heads of Bill) of a proposed Garda Síochána (Powers) Bill.⁸⁸ While most of that Bill is beyond the scope of this note, the provisions of Part 4 are relevant in that this Part proposes to widen all search warrants in relation to digital evidence. This Part would permit: Search and seizure of computers and mobile phones; compelled decryption of encrypted files; powers to demand passwords/biometric authentication for computers and mobile phone at the scene of a search; and remote searches of computers and cloud services in locations other than the location being searched – permitting a copy to be taken of a person’s webmail, cloud storage or online banking files.

Significantly, these powers would automatically attach to *all* search warrants, rather than being granted on a case-by-case basis; this aspect of the Bill has been heavily criticised. Senator Michael McDowell (former Minister for Justice and Attorney General), for instance, has noted that:

“If a search warrant for a premises yields nothing mentioned in the warrant, the searching members may still demand the production of these items and require any person there to provide access to them by passwords or decryption keys. With the exception of legal and other privilege for which special protections are provided, it will be an offence punishable by arrest and imprisonment for up to five years not to grant gardaí access to such IT equipment and the information stored on them. [...] Private citizens have legitimate spheres of personal privacy. [...] Is there even to be a defence of “reasonable defence of privacy”? It’s not in the Bill”.⁸⁹

⁸⁷ Government of Ireland, Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (2020), [Online Safety and Media Regulation Bill](#), 10 January 2020, Head 49A.

⁸⁸ Government of Ireland, Department of Justice (2021), [Garda Síochána \(Powers\) Bill](#).

⁸⁹ McDowell, M., (2021), [Michael McDowell: True Extent of New Powers Sought by Gardaí a Cause for Concern](#), *The Irish Times*, 16 June 2021.

Similarly, T. J. McIntyre, Chair of Digital Rights Ireland has argued that:

“Very few countries have laws requiring password disclosure and, in several jurisdictions, notably Canada and several US states, courts have held that mandatory disclosure of passwords is incompatible with the right to silence and the privilege against self-incrimination. Even in those jurisdictions where password demands are permitted, they are usually exceptions to the usual rule and can generally only be made on the basis of some special circumstances. In the UK, for example, a notice to disclose a password can only be issued where a judge finds that such a notice is proportionate, that there is no other reasonably practicable way to access the relevant information, and that access is necessary for purposes such as national security or the prevention or detection of crime. The current proposal – by providing for password demands indiscriminately, in relation to every search warrant – is unprecedented.”⁹⁰

Data Protection Commission WhatsApp fine and Consistency Mechanism

During 2021 the Data Protection Commission imposed a fine of €225 million euro on WhatsApp Ireland Ltd. for failure to meet transparency obligations.⁹¹ While the decision is significant in relation to the substance of data protection law, it is perhaps more significant for its implications regarding the relationship between the Data Protection Commissioner and supervisory authorities in other jurisdictions.

The WhatsApp decision came following use of the consistency mechanism by other concerned supervisory authorities, who challenged some of the findings made by the Data Protection Commission as well as the level of the proposed fine. Those challenges were largely successful before the European Data Protection Board (EDPB), which issued a binding decision⁹² requiring the Data Protection Commission to amend its draft decision to, *inter alia*: Find several additional violations of the

⁹⁰ McIntyre, T. J., (2021), '[New Garda Powers Bill Must Go Back to the Drawing Board](#)', *The Irish Times*, 17 June 2021.

⁹¹ Data Protection Commission (2021), '[In the Matter of WhatsApp Ireland Limited DPC Inquiry Reference: IN-18-12-2](#)', Dublin, Data Protection Commission.

⁹² European Data Protection Board (2021), '[Binding Decision 1/2021 on the Dispute Arisen on the Draft Decision of the Irish Supervisory Authority Regarding WhatsApp Ireland under Article 65\(1\)\(a\) GDPR](#)', 28 July 2021.

transparency principle; review the basis on which the fine was calculated (including giving greater weight to the turnover of the Facebook group of companies); and shorten the period given to WhatsApp to come into compliance, from 6 months to 3 months. The effect of this decision was to significantly increase the fine imposed on WhatsApp, from a range of €30-€50 million euro in the draft decision to €225 million in the final decision.

The EDPB decision comes at a time when there is ongoing criticism of Irish enforcement of the GDPR,⁹³ and represents the first significant use of the consistency mechanism to provide for stronger enforcement of individual rights against a firm where the Data Protection Commission is the lead supervisory authority. The EDPB decision has now been challenged by WhatsApp before the General Court (and the domestic decision of the Data Protection Commission has been challenged by way of both appeal and judicial review before the Irish High Court), making it likely that the case will also provide the first judicial guidance on the procedural rights of parties in such cases and on the interaction of the consistency mechanism and national law.⁹⁴

5.2 Artificial intelligence and big data

Actor*	Type**	Description	Are Human Rights issues mentioned? (yes/no)	Reference
Government of Ireland	Government/Parliamentary	The first Irish government national artificial intelligence strategy was published in July 2021. It has eight	Yes. The proposed AI Regulation emphasises	Government of Ireland, AI - Here for Good: A

⁹³ See e.g. T.J. McIntyre, 'Regulating the Information Society: Data Protection and Ireland's Internet Industry', in *Oxford Handbook of Irish Politics*, ed. David Farrell and Niamh Hardiman (Oxford: Oxford University Press, 2021).

⁹⁴ Case T-709/21, *WhatsApp Ireland v Comité européen de la protection des données*.

		<p>strands, with recommendations under the following headings:</p> <p>Building public trust in AI</p> <p><i>Strand 1: AI and Society</i></p> <p><i>Strand 2: A Governance Ecosystem That Promotes Trustworthy AI⁹⁵</i></p> <p>Leveraging AI for economic and societal benefit</p> <p><i>Strand 3: Driving Adoption of AI in Irish Enterprise</i></p> <p><i>Strand 4: AI Serving the Public</i></p> <p>Enablers for AI</p> <p><i>Strand 5: A Strong AI</i></p>	<p>privacy, data protection, gender balance, and the importance to adopt a human-rights approach/framework and ethical guidelines to AI; however, it does not go into these issues in detail.</p>	<p><u>National Artificial Intelligence Strategy for Ireland</u>, Dublin, July 2021.</p>
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⁹⁵ As part of ongoing discussions on AI regulations, Strand 2 proposes mainly: (a) to engage "in discussions at EU level to define a horizontal regulatory framework for AI"; (b) "Consider an appropriate mechanism for ensuring a coordinated approach by Irish regulators to Digital, including AI, as part of the forthcoming National Digital Strategy"; (c) "Investigate the potential and requirements of regulatory sandboxes for AI"; and (d) "Continue to advocate within multilateral fora for an ethical and human rights-based approach to AI".

		<p><i>Innovation Ecosystem</i></p> <p><i>Strand 6: AI Education, Skills and Talent</i></p> <p><i>Strand 7: A Supportive and Secure Infrastructure for AI</i></p> <p><i>Strand 8: Implementation of the Strategy</i></p>		
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Chapter 6. Rights of the child

6.1 Measures taken during the COVID 19 to ensure the well-being of children living in poverty and the protection of children from violence

<p>Measures to address the specific vulnerabilities of children living in poverty</p>	<p>During 2021, the Irish Government continued to pay the Pandemic Unemployment Payment to those who found themselves out of work as a result of COVID 19. There was no additional or supplemental payment for single headed families or additional payments for those with children or other dependants. This was despite the ESRI Report entitled: <i>The Dynamics of Child Poverty in Ireland Evidence from the Growing Up in Ireland Survey</i>, published in May 2021 which pointed to being a child of a single headed/lone parent family being a significant poverty risk factor for children in Ireland. Additional risks included: relationship breakdown, unemployment, and lack of education of mothers and membership of an ethnic minority. Re partnering was also found to increase economic vulnerability for children, possibly because of loss of income supports due to the third-party income.⁹⁶ In July 2021, the Government published the <i>Pathways to Work Strategy 2021-2025</i>⁹⁷ with the aim of getting over 75,000 people back to employment post COVID. The strategy includes a package of supports for youth unemployment with the aim of reducing it from 44% to 12.5%. The Government extended the Schools Meals Programme over the summer months, to assist those disadvantaged by COVID 19 and by means of the Residential Tenancies Act 2020⁹⁸ and Residential Tenancies Act (No.2)⁹⁹ they extended the protection for tenants to include extended notice periods for those affected by COVID 19 until 12th January 2022. In January 2021, the Irish Government published the 'Updated Guidance on Continuity of Schooling: Supporting Pupils at risk of disadvantage' document whereby schools were encouraged to share digital devices and to find alternative methods of communication to include post, email, and/or text for those who do not have access to technology.¹⁰⁰ The Government launched a consultation process on the Digital Strategy for Schools 2021-2027 (consultation process closed on 18th June 2021) and have committed to</p>
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⁹⁶ Maitre, B., Russell, H. and Smith, E. (2021), [The Dynamics of Child Poverty in Ireland Evidence from the Growing Up in Ireland Survey](#), *Research Series* No. 121, Dublin, Economic and Social Research Institute.

⁹⁷ Government of Ireland, Department of Social Protection (2021), [Pathways to Work Strategy 2021-2027](#), 12 July 2021.

⁹⁸ Houses of the Oireachtas, [Residential Tenancies Act 2021](#) (Act 5 of 2021).

⁹⁹ Houses of the Oireachtas, [Residential Tenancies \(No. 2\) Act 2021](#) (Act 17 of 2021).

¹⁰⁰ Government of Ireland, Department of Education (2021), [Updated Guidance on Continuity of Schooling: Supporting Pupils at risk of disadvantage. For post-primary schools](#), January 2021.

	<p>allocating €200 million as part of the Government Project Ireland 2040.¹⁰¹ The Digital Strategy aims to be informed by “learnings from the current strategy and the experience of teachers, school leaders, students and parents with the embedding of digital technologies across the curriculum and the opportunities provided by this, as well the impact of remote learning during COVID-19”.¹⁰²</p>
<p>Measures to protect children from violence</p>	<p>Following the publication of the General Scheme of the Online Safety and Media Regulation Bill,¹⁰³ submissions were made by the Children’s Rights Alliance in Ireland (July 2021) calling for an individual complaints mechanism for children who wish to lodge an appeal to the Commission where an online platform has not complied with the Codes of Practice on Digital Safety. At present Head 50A of the proposed Bill provides for a ‘systemic complaints system’ or ‘super complaints’ designed for nominated bodies, such as expert Non-Governmental Organisations (NGO). The Alliance calls for a ‘known, accessible, affordable, and child-friendly avenues through which children, as well as their parents or legal representatives, may submit complaints and seek remedies’¹⁰⁴ as per Council of Europe, ‘Recommendation CM/Rec (2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment’ (COE 2018)¹⁰⁵ and Articles 6 and 19 of the European Convention on Human Rights.¹⁰⁶ In addition, on a positive note, the Ombudsman for Children published a report entitled Digital Voices: Progressing Children’s Right to be heard through social and digital media highlighting the positive aspects of communicating online for children and young people.¹⁰⁷ A report published by the National Advisory Council for Online Safety following extensive empirical research (interviews with 765 children and 765 adults and survey responses with 387</p>

¹⁰¹ Department of Education of Ireland (2021), ‘[Minister Foley announces development of a New Digital Strategy for Schools](#)’, Press release, 6 April 2021. See also, Kilcoyne, A. (2021), Living and learning with Covid 19: reimagining the digital strategy for schools in Ireland, *Irish Educational Studies* Vol. 40, No. 2, pp. 247-253.

¹⁰² Department of Education of Ireland (2021), ‘[Minister Foley announces development of a New Digital Strategy for Schools](#)’, Press release, 6 April 2021.

¹⁰³ Government of Ireland, Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (2021), [Online Safety and Media Regulation Bill](#), 10 January 2021.

¹⁰⁴ Government of Ireland, Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (2021), [Online Safety and Media Regulation Bill](#), 10 January 2021, p. 2.

¹⁰⁵ Council of the European Union, Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment, 4 July 2018, para 24.

¹⁰⁶ [European Convention on Human Rights](#), 2013.

¹⁰⁷ O’Neill, B., Dinh, T., and Lalor, K. (2021), [Digital Voices: Progressing children’s right to be heard through social and digital media](#), Dublin, Ombudsman for Children’s Office and Technological University Dublin.

	adults) found that 22% of children referred to being upset by bullying online and 24% to 'people being nasty'. ¹⁰⁸
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6.2 Legal and policy developments or measures relating to criminal proceedings

Legislative changes	Ireland is not taking part in the adoption of the Directive on procedural safeguards for children ¹⁰⁹ in accordance with Protocol No 21 (Articles 1 and 2) on the position of Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol. Therefore, it is not bound by it or subject to its application. No legislative measures have thus been taken during 2021 for the transposition of the Directive. The position remains as per the provisions of The Child Care Act 2001, as amended by the Criminal Justice Act 2006.
Policy developments	The <i>Youth Justice Strategy 2021-2027</i> was published. It aims to provide support and services for children in accordance with their rights under the UNCRC. These services will include: Early intervention and preventative work; family support; diversion from crime; supervision; support in the community and support post release (See more at Promising Practice). Following the publication of the results of the Greentown Research Project by the Department of Justice ¹¹⁰ , the Government announced the allocation of 4.3 million euro to projects to tackle the problem of children being groomed into organised crime. Since the publication of the strategy, a Governance and Strategy Group has been established and a cross agency approach taken to provide oversight and support for the strategy. A Youth Justice Advisory Group, chaired by Minister James Browne and a further Research Evidence into Policy Programmes and Practice (REPPP) Advisory Group are in place. The Government allocated additional funds of 6.7 million in Budget 2022 to begin and deliver on commitments to expand and improve support services through Youth Diversion Programmes. Specific concerns (e.g., knife crime) are also been addressed. ¹¹¹ Minister for Children, Equality, Disability, Integration and Youth Affairs, Roderic O’Gorman announced Government funding of €150,000 alongside Hub na nÓg training

¹⁰⁸ Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (2021), [Report of a National Survey of Children, their Parents and Adults regarding Online Safety](#), Dublin, 15 November 2021.

¹⁰⁹ European Parliament (2016), Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, L 132.

¹¹⁰ Government of Ireland, Department of Justice (2021), [Greentown Research Project](#), 27 January 2021.

¹¹¹ Minister for Justice (2021), [Answer to Parliamentary Question 163](#), 25 November 2021.

	to support the Implementation of the National Framework for Children and Young Peoples’ Participation in Decision-making. ¹¹² This initiative will include training for professionals to build capacity for departments, agencies and organisations to facilitate the practice of listening to young people and to giving them a voice in day-to-day decision making. ¹¹³
Other measures or initiatives	See the Youth justice strategy 2021-2027 as mentioned above.

Chapter 7. Access to justice

7.1 Legal and policy developments or measures relevant to the implementation of the Victims’ Rights Directive and the EU strategy for Victims’ Rights 2020-2025

Ireland has fully transposed the Victims’ Directive since the end of 2017, and the Commission’s infringement proceedings in respect of the Directive do not include Ireland.¹¹⁴ To date, there has been no reported discussion of the EU Strategy for Victims’ Rights 2020-2025 in the websites of the Department of Justice, the Oireachtas (Irish Parliament) or the Victims of Crime Office. Nor has the Strategy been discussed by the principal victims’ organisations – Rape Crisis Network, Dublin Rape Crisis Centre and Women’s Aid.

Nevertheless, the Irish government has been active in the area of victims’ rights. The Department of Justice provided a total of €4,208,666.14 in funding for victims of crime to date in 2021.¹¹⁵ The funding was given to organisations whose remit is supporting victims of crime in general. Of that amount, €2,865,460.34 was provided to organisations with a focus on victims of domestic, sexual and gender-based crime. This figure is an increase from €1.712

¹¹² Department of Children, Equality, Disability, Integration and Youth (2021), [‘Minister O’Gorman announces funding to support implementation of the National Framework for Children and Young People’s Participation in Decision-making’](#), Press release, 24 September 2021.

¹¹³ Government of Ireland, Department of Children, Equality, Disability, Integration and Youth (2021), [National Framework for Children and Young Peoples’ Participation in Decision-making](#), 14 April 2021.

¹¹⁴ European Commission, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Strategy on Victims’ Rights (2020-2025), COM(2020) 258 final.

¹¹⁵ Minister for Justice (2021), [Answer to Parliamentary Question 652](#), 11 May 2021.

million in 2019.¹¹⁶ In October, the Department of Justice announced an allocation of €4.9 million for victims of crime.¹¹⁷

In February 2021, the Department of Justice published a new Victims' Charter website.¹¹⁸ The purpose of this site is to bring together all the information that a victim of crime might require in an easily navigable form.¹¹⁹ Note that the Charter specifically states it is "not a legal document and does not give you any legal rights".¹²⁰ In the same month, the Department published a *Strategy Statement 2021-2023*,¹²¹ to be implemented through a *Justice Plan 2021*, which sets supporting victims of crime as a strategic priority.¹²² Among other things, the government has committed itself to the following:

- Revision the Criminal Injuries Compensation Scheme by Q2 (Action 128).
- Creation of a Victim's Forum by Q2 (Action 125)
- Develop new specialist training programmes for police and legal professionals involved in the investigation and trial of sexual offences by Q4 (Action 130)
- Develop intermediaries' scheme for victims of sexual offences, and establish an agreement with a third level institution to provide appropriate training and accreditation, by Q4 (Action 131)
- Complete a mapping exercise to determine where gaps exist in the provision of support for victims by Q2 (Action 133)

In its Justice Plan 2021 Mid-Year Progress Report, the Department of Justice indicated that most of these objectives have been achieved.¹²³ The Sex Offenders Amendment Bill is at an advanced stage of drafting and a first meeting of a Victims' Forum is anticipated in the third quarter of 2021 (there is no published indication that this occurred). The government announced revisions to the Criminal Injuries Compensation Scheme in April 2021, the first such revision since 1986.¹²⁴ These revisions include raise the number of Board members to increase efficiency, and updating the award limits (which have remained constant since 1974). Any payments will no longer be made on an *ex-gratia*

¹¹⁶ Minister for Justice (2020), [Answer to Parliamentary Question 1040](#), 3 November 2020.

¹¹⁷ Minister for Justice (2021), [Answer to Parliamentary Question 104](#), 21 October 2021.

¹¹⁸ Government of Ireland, Department of Justice (2021), [Victims' Charter](#).

¹¹⁹ Government of Ireland, Department of Justice (2021), '[Minister McEntee launches new Victims Charter website](#)', Press release, 4 February 2021.

¹²⁰ Government of Ireland, Department of Justice (2021), [Victims' Charter](#), p. 2.

¹²¹ Government of Ireland, Department of Justice (2021), [A safe, fair and inclusive Ireland: Statement of Strategy 2021-2023](#).

¹²² Government of Ireland Department of Justice (2021), [Justice Plan 2021](#).

¹²³ Government of Ireland, Department of Justice, [Justice Plan 2021: Mid-Year Progress Report](#), Dublin, 2021.

¹²⁴ Government of Ireland, Minister for Justice (2021), '[Minister McEntee announces reforms to the Criminal Injuries Compensation Scheme](#)', Press release, 20 April 2021.

basis. As regards training for intermediaries, a request for tenders opened in April 2021.

The United States Department of State published its *Trafficking in Persons Report for 2021* in July, and Ireland was placed on a Tier 2 Watch List for the second consecutive year.¹²⁵ The authors pointed to the failure to convict any offenders under legislation enacted in 2013, the “systemic deficiencies in victim identification, referral, and assistance, and [the absence of] specialized accommodation and adequate services for victims”. The Irish government expressed its disappointment at this conclusion, suggesting that insufficient weight had been placed on recent improvements. The Minister has made available over €1 million in core funding for organisations working with trafficked persons, and a further €107,000 in funding for awareness raising.¹²⁶ In May 2021, the government approved a proposal for a revised National Referral Mechanism to make it easier for human trafficking victims to receive support.¹²⁷ The NRM is a way for State agencies to cooperate and share information about potential victims. And in June 2021, the State recorded its first conviction under the human trafficking legislation.¹²⁸

In November 2021, Mr Justice Peter Charleton, a Supreme Court judge, and Orlaith Cross, a judicial assistant to the Supreme Court, published an article in which they explore how to better serve victims within criminal trials. They examine “the advance preparation of victims by counsel, greater control of cross-examination at trial, ticketing of advocates, closer communication with victims, the assertion of rights to privacy, and reform to the admission of self-serving statements from the accused”.¹²⁹ The authors explore those aspects in light of the Victims Directive.

7.2 Measures addressing violence against women

The Department of Justice provided a total of €3,297,000 in funding for awareness raising and training, of which €1,487,761.36 was allocated to

¹²⁵ US Department of State (2021), [Trafficking in Persons Report](#), June 2021, pp. 302-305.

¹²⁶ Minister for Justice (2021), [Answer to Parliamentary Question 277](#), 1 April 2021.

¹²⁷ Government of Ireland, Department of Justice (2021), [Government approves proposal for a revised National Referral Mechanism to make it easier for human trafficking victims to come forward and receive supports](#), Press release, 11 May 2021.

¹²⁸ Government of Ireland, Department of Justice (2021), [Minister Naughton welcomes the first convictions for Human Trafficking handed down yesterday](#), Press release, 11 June 2021.

¹²⁹ Charleton, P. and Cross, O. (2021), ‘Towards A Presumption Of Victimhood: Possibilities for Re-Balancing the Criminal Process’, *The Irish Judicial Studies Journal*, Vol. 5, No. 2, pp. 1-25.

organisations focused on domestic, sexual and gender-based violence.¹³⁰ In response to increased domestic violence since the outbreak of COVID-19,¹³¹ the Department has allocated a total of €5.35 million to combat domestic, sexual and gender-based violence in 2022.¹³² The Department is also taking the lead in the development of a new national strategy on domestic, sexual and gender-based violence.¹³³ This new strategy has not yet been published.

During the pandemic lockdown, the government and the Garda Síochána were aware of the risks that the restrictions posed to victims of domestic violence, and to that end introduced a multi-faceted campaign to assist these victims. The main components were the “Still Here” campaign and *Operation Faoiseamh*. The former focused on raising awareness among those suffering domestic violence, and to ensure that they were aware that “[r]estrictions on movement do not apply to a person escaping from a risk of harm or seeking to access essential services”.¹³⁴ Under *Operation Faoiseamh*, which commenced on 1 April 2020, the Gardaí proactively reached out to previous victims of domestic abuse to offer reassurance, support and specialised resources.¹³⁵ These initiatives continued into 2021 and are still continuing. The Department of Justice issued figures showing that up to early September 2021, the Gardaí dealt with 24,686 domestic violence incidents.¹³⁶ At the end of June 2021, however, the Commissioner of the Gardaí was forced to issue an apology after it transpired that over 3,100 calls from domestic violence victims were cancelled between 2019 and October 2020.¹³⁷ Those calls were from victims who were in need of Garda assistance. The Garda Commissioner stated that it had been caused by “technological and procedural failings” as well as gardaí “not adhering” to practices set down for combating domestic violence. On 30 November 2021, the

¹³⁰ Minister for Justice (2021), [Answer to Parliamentary Question 652](#), 11 May 2021.

¹³¹ Doyle, J. (2020), [Domestic violence and COVID-19 in Ireland. L&RS Note](#), Dublin, Oireachtas Library & Research Service; also, Women's Aid Ireland (2021), [Annual Impact Report 2020](#), Dublin, Women's Aid.

¹³² Minister for Justice (2021), [Answer to Parliamentary Question 104](#), 21 October 2021.

¹³³ Government of Ireland, Department of Justice (2021), [Department of Justice to lead new whole of government national strategy to tackle Domestic, Sexual and Gender-Based Violence](#), Press release, 14 July 2021.

¹³⁴ Government of Ireland, Department of Justice (2021), [If Your Home Isn't Safe, Support is Still Here](#). Public awareness campaign on domestic abuse during the Covid-19 pandemic.

¹³⁵ An Garda Síochána formed the [Garda National Protective Services Bureau](#) (GNPSB) in 2017 to oversee investigations into particularly serious offences, including sexual crime, human trafficking, child exploitation and domestic violence. Protective Services Units have now been formed in each Garda division. [Operation Faoiseamh](#) is now on Phase 3.

¹³⁶ Government of Ireland, Department of Justice (2021), [Answer to Parliamentary Question 553](#), 15 September 2021.

¹³⁷ Lally, C. (2021), [Garda Commissioner apologises to domestic violence victims whose 999 calls were cancelled](#), *Irish Times*, 24 June 2021.

Policing Authority published an interim update¹³⁸ by Mr. Derek Penman (a former Chief Inspector of Constabulary in Scotland) on the preliminary examination of the cancelled calls (Computer Aided Dispatch, CAD). The report states the real scale of the ongoing investigation: Out of 1.4 million incidents recorded nationally on the CAD system between 1 January 2019 and 31 October 2020, there were almost 203,000 cancelled incidents. The report also indicates that 114 crimes reported in domestic violence calls were missed due to calls being cancelled. That means they were never recorded and never investigated.¹³⁹

The Department of Justice's *Justice Plan 2021* set out several commitments concerning domestic, sexual and gender-based violence, especially the implementation of the *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences*, published in July 2020.¹⁴⁰ This review, known as the O'Malley Report after Thomas O'Malley, SC who chaired it, made multiple recommendations to improve the position of victims in sexual cases. The *Justice Plan* makes the following commitments:

- Publish legislation to allow for pretrial hearings in sexual cases, organised crime and white-collar crimes (Action 52) Q2
- Publish Sex Offenders Amendment Bill to improve post-release monitoring (Action 123) Q2
- Publish a new Sexual Offences Bill (Action 129)
- Support training programmes for those who come into contact with victims of coercive control (Action 132)

In May 2021, the Oireachtas enacted the Criminal Procedure Act 2021 which allows for pretrial hearings, but the legislation is not yet in force.¹⁴¹ This legislation has been welcomed by the Rape Crisis Network Ireland,¹⁴² The drafting of the Sex Offenders' Management Bill has not yet been completed,¹⁴³ and the Sex Offences Bill is due by the end of this year.

The Department of Justice also committed to continuing the implementation of second national strategy for combatting domestic, sexual and gender-based violence by the end of the fourth quarter (Action 121). This commitment has

¹³⁸ Penman, D. (2021), [Independent Report for the Policing Authority. Interim Update on the Preliminary Examination of the Garda Síochána review of the closure, \(including cancellation\) of Computer Aided Dispatch incidents](#), Dublin.

¹³⁹ Penman, D. (2021), [Independent Report for the Policing Authority. Interim Update on the Preliminary Examination of the Garda Síochána review of the closure, \(including cancellation\) of Computer Aided Dispatch incidents](#), Dublin, p. 22.

¹⁴⁰ Independent Working Group (on behalf of the Department of Justice) (2020), [Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences](#), July 2020.

¹⁴¹ Houses of the Oireachtas, [Criminal Procedure Act 2021](#) (Act 7 of 2021).

¹⁴² Rape Crisis Network Ireland (RCNI) (2021), [RCNI Commentary on the Criminal Procedure Bill 2021 as initiated](#), February 2021.

¹⁴³ Minister of Justice, [Answer to Parliamentary Question 181](#), 3 June 2021.

now been overtaken by events; as noted above, the Department is now leading the development of a new whole-of-government national strategy on domestic, sexual and gender-based violence.

The Dublin Rape Crisis Centre published research on the operation of rape trials following interviews with lawyers and court accompaniment workers.¹⁴⁴ Delays in the processing of rape trials was the biggest concern cited, and pretrial hearings was suggested as a partial solution. Interviewees accepted that rape myths impacted decision-making in rape cases and suggested that juror guidance was needed.

The Harassment, Harmful Communications, and Related Offences Act 2020 came into force in February 2021.¹⁴⁵ The Act is aimed primarily at “revenge porn”: the taking, sending and publication of intimate images without the consent of the person in the image. The maximum penalty available is seven years’ imprisonment.

Chapter 8. Developments in the implementation of the Convention on the Rights of Persons with Disabilities

8.1 CRPD policy and legal developments

Ireland ratified the Convention on the Rights of Persons with Disabilities (CRPD) on 20 March 2018 despite becoming a signatory to the Convention in 2007. Ireland’s first Initial State Report under Article 35 of the Convention submitted December 2020 notes the developments in public policy and legislation. Two policy frameworks promote the rights and inclusion of people with disabilities in Ireland: The *Comprehensive Employment Strategy for People with Disabilities 2015-2024*¹⁴⁶ (CES) which sets a whole-of-government focus on employment for people with disabilities; and the *National Disability Inclusion Strategy 2017-*

¹⁴⁴ Leahy, S. (2021), [Realities of Rape Trials in Ireland: Perspectives from Practice, Dublin](#), Dublin Rape Crisis Centre.

¹⁴⁵ Government of Ireland, Minister for Justice (2021), [Harassment, Harmful Communications and Related Offences Act 2020 \(Commencement\) Order 2021, S.I. No. 53/2021](#).

¹⁴⁶ Government of Ireland, Department of Children, Equality, Disability, Integration and Youth (2019), [The Comprehensive Employment Strategy for People with Disabilities 2015-2024](#), 13 July 2019.

2021¹⁴⁷ (NDIS extended to 2022) which addresses broader equality and includes issues.

The mid-term review of the NDIS¹⁴⁸ highlighted key pieces of legislation that remain outstanding to advance the strategy of the Convention. These include Deprivation of Liberty legislation, fully commencing the Assisted Decision Making (Capacity) Act (due to fully commence in 2022), which would then allow full operation of the Decision Support Service, and reform of Mental Health Legislation to implement the Expert Group recommendations.

The National Disability Authority (NDA) annual review of the CES for 2021 identifies key actions requiring further attention, namely, finalising and publishing the third and final action plan of the CES by year end 2021; addressing the lack of career guidance for learners with disabilities in special and mainstream schooling; implementing policy developed for a national programme of coordinated employment support for persons with disabilities who wish to work; commencement of the early engagement process as recommended in the 2017 Make Work Pay Report; and conducting a fully review of the Make Work Pay actions as committed within the report.¹⁴⁹

The Irish Sign Language Act 2017 conferred official language status on Irish Sign Language. Under the Act public bodies are required to create action plans on how to promote the use of Sign language within their organisations. The NDA has indicated concern that there may be a lack of awareness in the public sector around their obligations to comply with this legislation and that while interpreting services are improving there is need to improve further to meet demand. The NDA has been given responsibility to report on the operation of the act, with a final report due in 2021.

The EU (Accessibility of Websites and Mobile Applications of Public Sector Bodies) Regulations 2020 came into force in September 2020 ensuring that the websites and mobile apps of public bodies in Ireland are accessible to all people, including persons with disabilities. This is of particular importance as many public services including eHealth initiatives expand their services online post-pandemic.

¹⁴⁷ Government of Ireland, Department of Children, Equality, Disability, Integration and Youth (2020), [National Disability Inclusion Strategy 2017-2021](#), 24 February 2020.

¹⁴⁸ National Disability Authority (2020), [Mid-term Review of Progress: The National Disability Inclusion, Strategy and Indicators](#), April 2020.

¹⁴⁹ National Disability Authority (2021), [Comprehensive Employment Strategy 2020: NDA Year-end Assessment 2020](#), May 2021, p. 13.

The Marriage of Lunatics Act 1811 was repealed in February 2020 through the commencement of section 7(1) of the Assisted-Decision-Making (Capacity) Act 2015.

8.2 CRPD monitoring at national level

The Department of Children, Equality, Disability, Integration and Youth is responsible for co-ordinating disability policy across government and acts as the National Focal Point for the Convention in Ireland.

The Irish Human Rights and Equality Commission (IHREC) is the independent monitoring mechanism for the CRPD in Ireland and works with the NDA to conduct this task.¹⁵⁰ While the role of the NDA includes the provision of statistical data and policy advice, collaboration with DPO's at this level would be welcome also to ensure the advocacy and lived experience of persons with disabilities. Instead, a Disability Advisory Committee was internally established to represent the experience of persons with disabilities and their organisations, however, there is currently no mental health perspective in this group.

To respond to the Initial State Report to the UNCRPD, a Disability Participation and Consultation Network (DCPN) was established in 2020 containing funded and non-funded members. Over a series of consultations focusing on 12 articles the DCPN submitted a response to the State's Draft Report in April 2021¹⁵¹. Overall, their consultative response highlighted the lack of centrality and reflection of the realities of the everyday lives of persons with disabilities and the barriers and obstacles they encounter and endure. They draw attention to the lack of data around persons with disabilities which hinders advocacy and policy progress. It also condemns the aspirational content within the initial state report that is not accompanied by concrete implementation actions and targets. To this end, it highlights numerous urgent actions on themes such as equality, education, the cost of disability, respect as experts by experience, accessibility and mobility, employment, health and wellbeing, independence, and community living, and participating in public and political life, that are required to address alignment with the CRPD.¹⁵²

¹⁵⁰ Following CRPD's article 33, IHREC has established a [Disability Advisory Committee](#), composed of a diverse group of persons with lived experience of disability to be part of the monitoring process.

¹⁵¹ Disability Participation and Consultation Network (2021), [Response to the State's Draft Report on the United Nations Convention on the Rights of Persons with Disabilities](#), April 2021.

¹⁵² Disability Participation and Consultation Network (2021), [Response to the State's Draft Report on the United Nations Convention on the Rights of Persons with Disabilities](#), April 2021, pp. 6-7.

Annex 1 – Promising Practices

Thematic area	<p style="text-align: center;">EQUALITY AND NON-DISCRIMINATION</p> <p style="text-align: center;">Please provide one example of a practice to tackle nationality-based discrimination, or discrimination against LGBTI people, such as awareness raising campaigns or training for relevant professionals. Where no such examples are available, please provide an example of an awareness raising campaign held in your country in 2021 relevant to equality and non-discrimination of EU citizens or LGBTI people, preferably one conducted by a national equality body.</p>
Title (original language)	LGBT Champions: Inclusion, Visibility and Equality in Older People’s Care
Title (EN)	
Organisation (original language)	LGBT Ireland
Organisation (EN)	
Government / Civil society	Civil Society
Funding body	Pobal (government supporting communities)
Reference (incl. URL, where	LGBT Champions Programme

available)	
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	2018 to date
Type of initiative	Training of health and social care professionals as 'LGBT Champions'
Main target group	Health and social care professionals, to support LGBT+ people.
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	In Ireland, as LGBT+ People get older they are often forced into the closet due to the fear of not being accepted, and if they can't be open about who they are with their health professionals, their mental and physical health is put in danger. The LGBT+ Champions programmes aims to train health and social care workers to create change in the health care system, making LGBT+ older people visible, safe and assured that they will be accepted even at their most vulnerable time.
Highlight any element of the actions that is transferable (max. 500 chars)	All elements of the initiative are transferable.

<p>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</p>	<p>The Training programme has a specific objective (to enable trained healthcare workers to act as Champions within their organisations) and Champions are equipped to develop an action plan to this effect. LGBT Ireland provide ongoing support to Champions as they implement their action plan, and there is an opportunity to attend a Recall day and to join Champion network events.</p>
<p>Give reasons why you consider the practice as having concrete measurable impact</p>	<p>There are currently 150 LGBT Champions working across 90 services nationally. The programme has a set of key outputs and outcomes and are currently commissioning an external evaluation to assess progress against these indicators, and to inform the future priority steps for the programme.</p>
<p>Give reasons why you consider the practice as transferable to other settings and/or Member States?</p>	<p>What is perhaps worth emulating in this programme is that, unlike more generic anti-discrimination training, the training aims at identifying and supporting champions whose objective is to contribute to further change within their organisations. The Champions are recruited on a voluntary, opt-in basis, so it would be suitable for any type of health or social care setting.</p>
<p>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design,</p>	<p>The programme was initiated based on research with LGBTI+ older people, which found that many of older LGBT+ people in Ireland were not comfortable being open with their health and social care provider about their sexual orientation, sexual identity or sexual expression for fear of rejection or discrimination. The research also found that many older LGBT+ people perceive nursing homes as unwelcoming or insensitive to their healthcare and social needs. During their training, champions hear the lived experiences of older LGBT+ people, and their experiences and concerns regarding health and social care as they age. While the evaluation is to concentrate on surveys and focus groups with the healthcare champions, part of the</p>

<p>planning, evaluation, review assessment and implementation of the practice.</p>	<p>desk review looks at LGBT Ireland’s direct work with older members of the community.</p>
<p>Explain, if applicable, how the practice provides for review and assessment.</p>	<p>The programme is currently (September 2021) commissioning an external evaluation to assess progress against its theory of change and indicators, and to inform the future priority steps for the programme.</p>

Thematic area	<p style="text-align: center;">RACISM, XENOPHOBIA AND RELATED INTOLERANCE</p> <p style="text-align: center;">Please provide one example of a promising practice to address racism and xenophobia. Please give preference to a promising practice about either: active cooperation with CSOs in addressing racism and hate crime; or combating racism and unequal treatment in the context of the COVID-19 pandemic. Where no such practice exists, please provide one example of a promising practice related more generally to combating racism, xenophobia, and related intolerances.</p>
Title (original language)	Definition of racism adopted by the Anti-Racism Committee, endorsed by the Minister for Children, Equality, Disability, Integration and Youth
Title (EN)	
Organisation (original language)	Department of Children, Equality, Disability, Integration, and Youth
Organisation (EN)	
Government / Civil society	Government
Funding body	Government
Reference (incl. URL, where)	Government of Ireland, Minister for Children, Equality, Disability, Integration and Youth (2021), Interim Report to the Minister for Children, Equality, Disability, Integration and Youth. Anti-Racism Committee , 21 April 2021.

available)	
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	21 April 2021 (publication date by Minister). No end date: it will be in use for the rest of the life of the Anti-Racism Committee and should be reflected in the new proposed National Action Plan Against Racism thereafter.
Type of initiative	Adoption of a definition of racism
Main target group	All government and civil society stakeholders
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	<p>The Anti-Racism Committee established a sub-committee (the Definition of Racism Sub-Committee) to develop a definition of racism to guide the work.</p> <p>The definition adopted by this committee, published in its interim report, and endorsed by the Minister views as “the power dynamics present in those structural and institutional arrangements, practices, policies and cultural norms, which have the effect of excluding or discriminating against individuals or groups, based on their identity, as outlined in Article 1 of the International Convention for the Elimination of Racial Discrimination (ICERD)”. (Page 5)</p> <p>This is the first time that a structural and systemic understanding of racism has been endorsed by</p>

	the Irish government and embedded in government structures to develop the National Action Plan Against Racism.
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<p>Highlight any element of the actions that is transferable (max. 500 chars)</p>	<p>The explicit adoption of such a definition by other governments and public bodies is a transferable practice which would significantly further state action against racism.</p>
<p>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</p>	<p>The adoption of the definition has three effects:</p> <ol style="list-style-type: none"> 1. Endorsement by the government sets out a definition which can be shared across public bodies and civil society. 2. The definition has educational impact, in describing racism for the public and key stakeholders. 3. The definition is informing the shape and purpose of the National Action Plan Against Racism, in particular in the way that it will target structural and institutional arrangements, and target 'effects' rather than intent.
<p>Give reasons why you consider the practice as having concrete measurable impact</p>	<p>The reflection of the definition in the National Action Plan Against Racism will provide the benchmark against which progress is measured during the lifetime of the Action Plan. It will facilitate and encourage its adoption and use by civil society and public bodies in their work during the lifetime of the strategy.</p>
<p>Give reasons why you consider the practice as transferable to other settings</p>	<p>The European Commission published a five-year EU action plan against racism in September 2020. This plan is a ground-breaking initiative for racial equality and justice in Europe. For the first time, the EU explicitly acknowledges the existence of structural, institutional, and historical dimensions of racism in Europe and the need to address them through wide-ranging, proactive policies. This is an important shift from the current limited focus on combating racial discrimination by individuals.</p>

<p>and/or Member States?</p>	<p>Member States are encouraged to adopt national action plans against racism and racial discrimination by the end of 2022. It is expected that, by the end of 2021, the Irish Commission, working with national experts, will put together the main principles to produce effective national action plans and will deliver a first progress report by the end of 2023.</p> <p>“The EU and most national policy frameworks almost entirely overlook the existence of structural inequalities aligned to race, ethnicity and religion. Their focus is mainly on individual forms of racial discrimination and hatred, overlooking the other dimensions of racism that are structural, institutional and historical.” (ENAR, 2021)¹⁵³</p> <p>Ireland may be the first state to adopt such a definition in its National Action Plan.</p>
<p>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.</p>	<p>N/A</p>

¹⁵³ [European Network Against Racism](#).

Explain, if applicable, how the practice provides for review and assessment.	N/A
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Thematic area	ROMA EQUALITY AND INCLUSION Please provide one example of promising practice related to the two topics addressed in the chapter. Please make the link between the selected practice and the topics explicit.
Title (original language)	The Traveller Culture and History in Education Bill (2018) was unanimously supported in parliament and progresses to its final stages.
Title (EN)	
Organisation (original language)	
Organisation (EN)	Irish Parliament
Government / Civil society	Irish Traveller Movement and other Traveller NGOs such as Pavee Point, and those who are locally active
Funding body	
Reference (incl. URL, where available)	Traveller Culture and History in Education Bill 2018: Second Stage (1 July 2021) https://www.oireachtas.ie/en/debates/debate/dail/2021-07-01/40/
Indicate the start date of the	1 July 2021

promising practice and the finishing date if it has ceased to exist	
Type of initiative	Legislative change
Main target group	Ethnic minority group: Irish Traveller Community
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	<p>The Bill was passed on 1 July 2021 and amended the Education Act 1988 to include Traveller culture and history as an obligatory part of the curriculum at primary and secondary school. This is the first significant legislative inclusion following the recognition of Travellers' ethnic minority status in 2017.</p> <p>While this initiative has positive effects on the self-concept of young Travellers, the rest of society will gain the opportunity to learn about the diversity and wider context of Traveller culture and history. The Traveller Culture and History in Education Bill 2018 is a critical step towards integrity between groups in a culturally diverse context. It combats racism and discrimination in Ireland through educational and cultural development.</p>
Highlight any element of the actions that is transferable (max. 500 chars)	<ul style="list-style-type: none"> • The law is not static and can be amended to rectify the existing deficiencies to combat racism, xenophobia in society • Raising public awareness about minorities' cultures to tackle xenophobia and racism. • Recognition of cultural identity of minority groups to enhance their self-perception and self-confidence. In this way members of minority groups can make great contributions to society.

<p>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</p>	<ul style="list-style-type: none"> ● This Bill facilitates achieving the UN Sustainable Development Goal 4 (Quality Education) which requires realisation of all aspects of the right to education. This entails inclusive and anti-bias teaching. A learning atmosphere which respects students' cultural values is necessary to fulfil the potentials of all students, including Travellers. ● The new bill added Travellers' culture in primary and secondary schools' curriculum, as a result following generation will benefit from it. It educates all members of society from primary school level and covers a large population. It is also timeless, as it is part of the school's curriculum. ● Additionally, it is in line with the aim of the Hate Crime Bill 2021 and supports that bill by preventing hate crimes and hate speech in a sustainable manner through education and cultural development.
<p>Give reasons why you consider the practice as having concrete measurable impact</p>	<p>Schools are the steppingstone in cultural evolution in every society. The impact of the implementation of this bill can be reasonably measured as it deals with the young generation. The impact can be observed in attitudes and public culture.</p>
<p>Give reasons why you consider the practice as transferable to other settings and/or Member States?</p>	<ul style="list-style-type: none"> ● This initiative can be extended to other minority groups in Ireland such as religious minorities, migrants, disabled groups with distinctive cultural and linguistic identities, such as the Deaf community. ● Other member States can follow this initiative to raise public awareness of the importance of cultural diversity in society

<p>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.</p>	<p>The Irish Traveller Movement (ITM) has a significant role in undertaking this initiative. Additionally, other stakeholders such as local Traveller NGOs, Traveller activists and educators have contributed in planning, designing and presenting this bill. It appears that members of this community and related NGOs should be involved in the process of full implementation and its monitoring.</p>
<p>Explain, if applicable, how the practice provides for review and assessment.</p>	<p>N/A</p>

Thematic area	<p style="text-align: center;">INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION</p> <p style="text-align: center;">Please provide one example of a promising practice related to the topics addressed in the chapter, i.e. data protection, and/or artificial intelligence systems.</p>
Title (original language)	WhatsApp fine for failure to meet GDPR transparency obligations
Title (EN)	
Organisation (original language)	Data Protection Commission
Organisation (EN)	
Government / Civil society	Government
Funding body	Not applicable
Reference (incl. URL, where available)	<p>European Data Protection Board (2021), Binding Decision 1/2021 on the Dispute Arisen on the Draft Decision of the Irish Supervisory Authority Regarding WhatsApp Ireland under Article 65(1)(a) GDPR, 28 July 2021.</p> <p>Data Protection Commission of Ireland (2021), Decision of the Data Protection Commission, adopted 20 August 2021, and made pursuant to Section 111 of the Data Protection Act, 2018 and Articles 60 and 65 of the General Data Protection Regulation concerning WhatsApp Ireland Limited.</p>

[DPC Inquiry Reference: IN-18-12-2](#), 20 August 2021.

Taylor, C. and O'Faolain, A. (2021), '[WhatsApp Challenges DPC's €225 Million Fine](#)', The Irish Times, 16 September 2021.

Indicate the start date of the promising practice and the finishing date if it has ceased to exist	July/August 2021
Type of initiative	Finding of GDPR violations and significant fine against large internet firm
Main target group	Internet industry
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	<p>In August 2021 the Data Protection Commission (DPC) issued a fine against WhatsApp Ireland Lt. for €225 million, due to WhatsApp's failures to meet GDPR transparency obligations, including information about how WhatsApp shares user information.</p> <p>In 2020, the DPC issued a draft decision about WhatsApp's violations to other concerned supervisory authorities (CSAs) under Article 60 GDPR, but eight CSAs objected the decision. In June 2021 the DPC triggered the dispute resolution process under Article 65 GDPR. The European Data Protection Board (EDPB) issued a binding decision in July 2021 requiring the DPC to reassess its decision, in particular finding additional violations by WhatsApp, increasing the fine, and reducing the period to come into compliance. The DPC made a final decision in August 2021.</p> <p>WhatsApp brought a judicial review of the DPC's decision and an appeal against the amount of the fine before the High Court and will challenge the decision of the EDPB before the General Court.</p>
Highlight any element of the	This case tests the DPC's ability to enforce the GDPR against the internet industry in Ireland as well as an assessment of whether the GDPR cooperation and dispute resolution process is fit for purpose. At the level of the EDPB, it considers fundamental issues such as the requirement of transparency and the basis on which administrative fines should be calculated and assessed in order to be effective and dissuasive. As such it

actions that is transferable (max. 500 chars)	<p>promises to be an important precedent.</p>
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	<p>As the first major fine and major case to go through the GDPR cooperation/dispute resolution process this case demonstrates the ability of the DPC to tackle major internet firms and provides a template for future actions. The fact that Facebook is bringing an aggressive legal challenge to the fine on three fronts (domestic appeal, domestic judicial review, and action for annulment before the General Court) will stress test the DPC/EDPB procedures and, successful or not, should provide greater legal certainty in this area.</p>
Give reasons why you consider the practice as having concrete measurable impact	<p>The case is the first time a fine of this magnitude has been issued by the DPC and the requirements for WhatsApp to change its practices will take effect across the EU.</p>
Give reasons why you consider the practice as transferable to other settings and/or Member States?	<p>The position of Ireland as the European home of much of the internet industry, and of the DPC as lead regulator for many of those firms, means that this case is important to demonstrate whether the GDPR structure is workable against large internet firms.</p>
Explain, if applicable, how	<p>N/A</p>

the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	
Explain, if applicable, how the practice provides for review and assessment.	N/A

Thematic area	<p style="text-align: center;">RIGHTS OF THE CHILD</p> <p style="text-align: center;">Please provide a promising practice related to the topics addressed in the chapter.</p>
Title (original language)	Online consultation process on the EU Child Guarantee
Title (EN)	
Organisation (original language)	Department of Children, Equality, Disability, Integration and Youth
Organisation (EN)	
Government / Civil society	Irish Government
Funding body	Irish Government
Reference (incl. URL, where available)	https://www.gov.ie/en/consultation/c18a0-consultation-on-the-eu-child-guarantee/
Indicate the start date of the promising practice	On 1 st December, the Minister for Children, Equality, Disability, Integration and Youth announced the launch of an online consultation process seeking stakeholders and the public's views on the EU Child Guarantee. Submissions have to be made by 17 December 2021.

and the finishing date if it has ceased to exist	
Type of initiative	Consultation process on how best to implement the EU Child Guarantee in Ireland.
Main target group	Stakeholders with expertise in child poverty and social inclusion and members of the public.
Indicate level of implementation: Local/Regional/National	National Level.
Brief description (max. 1000 chars)	<p>The Minister for Children, Equality, Disability, Integration and Youth has taken an important step towards the implementation of the EU Child Guarantee Scheme in Ireland by launching an online consultation process seeking the views of the public and key stakeholders with expertise in this area.</p> <p>Key questions posed include:</p> <ul style="list-style-type: none"> • What is working well and enables children to access services/ not working well. • How effective are the current levels of access for children in need of services. • Outcomes to date and what assisted in achieving desired outcomes or what barriers are present. <p>Importantly, views are sought in identifying gaps in services, the most common issues impacting on services, what could be done to improve the 'effectiveness and efficiency' of services. Views are also sought on what stakeholders consider to be the three main priorities which should be addressed.</p> <p>This will have a direct impact on the implementation of the EU Child Guarantee.</p>
Highlight any element of the actions that is transferable	The consultation process will inform the National Action Plan which is due to be submitted to the Commission in March 2022. This will assist the Irish Government in understanding the needs of those most affected by lack of services or barriers to access. Findings, though specific to Ireland, will highlight areas of concern that need to be examined at EU level and the allocation of State and EU resources or supports to those most in need.

(max. 500 chars)	
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	The views sought during this consultation process will inform the implementation of the EU Child Guarantee in Ireland and the preparation of the National Action Plan which will be submitted to the Commission in March 2022.
Give reasons why you consider the practice as having concrete measurable impact	Key stakeholders and members of the public have been asked to provide evidence through examples of scenarios where access to services have been challenging for children and where improvements need to be made. Input from those working on the coalface of accessing services will highlight areas of need for the Government to ensure that changes are made and resources applied where most effective in improving services for children and their parents who try to access services on their behalf. Additional needs as a result of the financial and social exclusion impact of Covid 19 will therefore be identified, particularly for children in the care of the State, suffering from homelessness or from migrant, minority or ethnic backgrounds.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	Information gathered will inform policy and practice in relation to services for children in Ireland and will assist the Government of Ireland in the implementation of the EU Child Guarantee. Issues highlighted will be relevant in addressing childhood poverty generally and the need for services across Member States.
Explain, if applicable, how the practice involves	N/A

beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	
Explain, if applicable, how the practice provides for review and assessment.	N/A

Thematic area	<p style="text-align: center;">ACCESS TO JUSTICE</p> <p style="text-align: center;">Please provide one example of a promising practice related to the topics addressed in the chapter.</p>
Title (original language)	<p style="text-align: center;"><u>No promising practice has been identified for this thematic area.</u></p>

Thematic area	<p align="center">Developments in the implementation of the Convention on the Rights of Persons with Disabilities (CRPD)</p> <p align="center">Please provide one example of a promising practice related to projects or programmes implementing the CRPD or promoting the rights of persons with disabilities.</p>
Title (original language)	Disability Participation and Consultation Network (DPCN)
Title (EN)	Disability Participation and Consultation Network
Organisation (original language)	Disability Participation and Consultation Network
Organisation (EN)	Disability Participation and Consultation Network
Government / Civil society	Civil Society
Funding body	Department of Children, Equality, Disability, Integration and Youth
Reference (incl. URL, where available)	Disability Participation and Consultation Network (DPCN) https://www.gov.ie/en/consultation/a3ef2-launch-of-disability-participation-and-consultation-network/#
Indicate the start	November 2020 - ongoing

date of the promising practice and the finishing date if it has ceased to exist	
Type of initiative	Consultation network of persons with disabilities to respond to the initial draft of State Report to the UNCRPD Committee.
Main target group	Disability organisation, disabled people organisations, disabled people.
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	The DPCN was established to ensure that persons with disabilities are actively engaged and directly consulted in the development of legislation and policies. It's first task was to respond to the State's Draft Report on the implementation of the UNCRPD which it submitted in April 2021. The network operates on a three-tier basis and includes representatives of four grant-funded members along with Inclusion Ireland and over 100 non-funded members, individuals, and disability organisations.
Highlight any element of the actions that is transferable (max. 500 chars)	The creation of a DPCN within each member state is a transferable action.
Give reasons why you consider the practice as	This is the first time that 5 disability organisations: Inclusion Ireland (organising member), AsIAM, the DPO Coalition, Disability Federation Ireland and Mental Health Reform, are working together consulting with over 100 members. Such an active and diverse network, given additional resources, can ensure that participation is active and meaningful. It can also ensure that the voice of disabled people is prioritised and heard directly

<p>sustainable (as opposed to 'one off activities')</p>	<p>when Government makes decisions on disability policy and law. However, the network will need support to formally establish its position and the way in which it will operate its governance, planning and organisational structures.</p>
<p>Give reasons why you consider the practice as having concrete measurable impact</p>	<p>The establishment of the DPCN has meant that some participants have been active in participating their lived experience for the first time with many expressing during the consultation process the valuable learning experience. Such an extensive network not only brings individuals together but ensures the sharing of experiences across disability perspectives in the hope of generating greater long-term solidarity and social power of disabled people.</p>
<p>Give reasons why you consider the practice as transferable to other settings and/or Member States?</p>	<p>The continuation of the DPCN can inspire other member states to support and fund external coalitions that can ensure that government law and policies can prioritise the views and opinions of persons with disabilities prior their enactment. Despite government departments having Disability Consultative Committees a wider diverse network of experiences ensures active consultation and implementation of best practices.</p>
<p>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review</p>	<p>AS the DPCN was recently established they are working to address their governance structure and the way in which they operate in the future.</p>

assessment and implementation of the practice.	
Explain, if applicable, how the practice provides for review and assessment.	The submission on behalf of the DPCN acknowledges criticism of the consultation process in terms of the short timeframe, reduced opportunity to discuss, debate and analyse issues. Others were critical of not being given an opportunity to comment on the DPCN report before being submitted. Acknowledging and addressing these criticisms as the network progresses is key to ensuring its effectiveness.

Annex 2 – Case Law

Thematic area	EQUALITY AND NON-DISCRIMINATION Please provide one high court decision addressing discrimination against EU citizens based on nationality or against LGBTI people. Where relevant, always highlight any relevance or reference to multiple or intersectional discrimination in the case you report.
Decision date	22 January 2021
Reference details	[2021] IEHC 32, X vs the Minister for Justice and Equality
Key facts of the case (max. 500 chars)	Mr X, a Nigerian national, claimed asylum on the grounds that his life or freedom were threatened in Nigeria because of his bisexuality. His claim was not believed by the Minister and his claim failed. Mr X brought judicial review proceedings challenging the Minister's decision on two administrative grounds, without success. Mr X's deportation order remained in place. However, the Judge made a number of <i>obiter</i> remarks critiquing the Minister's decision to disbelieve Mr X's claim to bisexuality.
Main reasoning/argumentation (max. 500 chars)	Mr X's claim to have had a number of sexual encounters with men was discounted by the State, and the fact that Mr X had apparently not requested the assistance of LGBTI+ organisations nor visited gay bars/clubs in his early days in Ireland was held as proof against him. The Judge questioned whether the State is ' <i>at risk of falling short, in this case, of attaining that general moral ideal which it recognises in its asylum regime</i> ' by refusing to believe Mr X's claims.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Judge critiqued the State's decision-making process in this case, pointing out that granting of asylum is an ' <i>exercise in humanity</i> ' and that by employing flawed logic in disbelieving the claims of Mr X the State is at risk of falling short of that moral ideal.
Results (sanctions) and key consequences or implications of the case	While the actual decision has no direct impact on the treatment of LGBT+ asylum seekers, it has led to calls for the asylum process for LGBTQ applicants to be reviewed, since it highlights the shortcomings within that system.

(max. 500 chars)	
Key quotation in original language and translated into English with reference details (max. 500 chars)	“Quaere, however, whether, given the just-mentioned aspects of Mr X’s case, the State is at risk of falling short, in this case, of attaining that general moral ideal which it recognises in, and seeks to attain through, its asylum regime, for if the Minister is wrong and Mr X is bisexual, he is set to be deported to a country where LGBTI+ people are treated badly and suffer greatly.” (Paragraph 10)

Thematic area	RACISM, XENOPHOBIA AND RELATED INTOLERANCE Please provide the most relevant <u>high court</u> decision concerning the application of <u>either</u> the Racial Equality Directive or the Framework Decision on racism and xenophobia, addressing racism, xenophobia, and other forms of intolerance more generally.
Decision date	30 April 2021
Reference details	[2021] IEHC 302, Mah v Minister for Justice
Key facts of the case (max. 500 chars)	A Somalian national was granted refugee status in Hungary after fleeing from violent threats. After facing further violence, the Applicant arrived in Ireland in 2016, and applied for permission to reside. The Applicant, qualified doctor, volunteers for the Somalian community and the Irish

	<p>Cancer Society. Her lack of legal status meant that she was unable to work. In February 2020, a deportation order was issued to the Applicant, which was the subject of the Judicial Review proceedings before the High Court.</p>
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<p style="text-align: center;">Main reasoning/argumentation (max. 500 chars)</p>	<p>It was argued on behalf of the Applicant that returning her to Hungary would amount to inhumane and degrading treatment, in breach of Article 3 of the Convention of European Human Rights.</p> <p>In the judgment of Ms Justice Burns it is referenced that the Applicant’s rights were not sufficiently protected in Hungary and that the Hungarian government were hostile towards migrants.</p>
<p style="text-align: center;">Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The Court rejected the argument that Article 8 rights could be asserted, relying on case [2021] IEHC 275, MK v Minister for Justice. Due to lack of “exceptional circumstances [...] a proportionality assessment does not arise.”</p> <p>Ms Justice Burns assessed the Respondent’s consideration under the Immigration Act 1999 as amended and stated that the Respondent’s determination in respect of the Deportation Order was vitiated due to failure “to properly consider the Applicant’s employment prospects pursuant to s. 3(6)(f) of the 1999 Act”.</p>
<p style="text-align: center;">Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>Permission to reside was granted by the Court and Applicant’s costs were awarded. The Government through the International Protection Office must have due regard in refusing international protection to conditions pertaining to racism and xenophobia in another EU country where the Applicant has previously been granted protection.</p>
<p style="text-align: center;">Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>“With respect to the reference in the ‘Examination of file under s. 3 of the 1999 Act’ document to the effect that it was not accepted that State protection was not available to the Applicant, this obviously relates to the Applicant’s fear of being the subject of physical or sexual assaults rather than state protection from general xenophobic hatred.” (Paragraph 21)</p> <p>“[...] the Respondent erred in her finding that the Applicant would not be subject to inhuman or</p>

	degrading treatment [...] and that her Article 3 rights pursuant to the European Convention of Human Rights would not be breached [...]” (Paragraph 35)
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Thematic area	ROMA EQUALITY AND INCLUSION Please provide the most relevant high court decision addressing violations of fundamental rights of Roma and Travellers.
Decision date	12 November 2020
Reference details	[2021] IECA 140, Clare County Council v McDonagh
Key facts of the case (max. 500 chars)	The County Council sought to remove the appellants from Council's lands. Interlocutory injunctions pending the trial were granted by the High Court. Injunctions were appealed under the ground that the High Court failed to determine whether the appellants' caravans on the lands constitute a "home" within the meaning of Article 8 of the ECHR such as to attract the protection thereof. If so, whether the interference proposed through the injunctions amounted to a proportionate interference with the right under Article 8 to respect for one's home.
Main reasoning/argumentation (max. 500 chars)	The Court of Appeal held that: (a) the Council had acted reasonably and proportionately, and (b) appellants had acted unreasonably and with the intention of exerting pressure to secure accommodation which the council was not statutorily obliged under to provide. According to the Court, the jurisprudence of the European Court of Human Rights, including the decision in Winterstein v. France (App. No. 27013/07) (Unreported, ECtHR, 17 October 2013), did not assist the defendants, as the site was not their "home" within the meaning of the Convention.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The test for determining whether a habitation comprises a 'home' within the meaning of Article 8 is a factual one: namely, whether the claimant of Article 8 rights can show sufficient and continuous links with the place contended to constitute a "home". The appellants did not establish a legal basis whereby the Council could in law be obliged to divert resources to meet the stated specific accommodation requirements of the appellants.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court of Appeal upheld the granting by the High Court of various injunctions, the effect of which was to order the appellants to remove themselves from certain lands owned by Clare County Council. The Supreme Court issued a determination granting an appeal in this case, focussing on the proportionality issue.

<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>"The appellants lacked the requisite close and continuous links with Cahercallamore which is a prerequisite to establishing a Convention-recognised 'home'." (Paragraph 95)</p> <p>"The appellants did not identify any authority either within the Strasbourg jurisprudence or in domestic law in support of the proposition that they are legally entitled to compel the Council to fulfil their demand for bespoke housing - being Traveller specific accommodation sufficient to accommodate the wider McDonagh family which at the moment would require six distinct units of accommodation." (Paragraph 67)</p>
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<p>Thematic area</p>	<p>ASYLUM, VISAS, MIGRATION, BORDERS AND INTEGRATION Please provide the most relevant high court decision – or any court ruling – relating to the implementation of the <u>right to an effective remedy</u> in the context of storing data in national large-scale databases and in EU IT systems (Eurodac, VIS, SIS) delivered in 2021.</p>
<p>Decision date</p>	<p><i><u>No case law has been identified for this thematic area.</u></i></p>

Thematic area	INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION Please provide the most relevant high court decision related to the topics addressed in the chapter, i.e. data protection, and/or artificial intelligence systems.
Decision date	14 May 2021
Reference details	[2021] IEHC 336, Facebook Ireland Ltd v Data Protection Commission .
Key facts of the case (max. 500 chars)	This judicial review was brought by Facebook challenging the decision of the Data Protection Commission (DPC) to commence an inquiry under the GDPR into its transfer of personal data outside the EU by issuing a Preliminary Draft Decision (PDD). The PDD was based on the investigation which the DPC had carried out into complaints made by Max Schrems and under the Data Protection Directive and the Data Protection Acts 1988 and 2003. The PDD took the fruits of the investigation as the basis for a draft decision under the GDPR.
Main reasoning/argumentation (max. 500 chars)	Facebook challenged the PDD on various grounds including that the DPC had: <ul style="list-style-type: none"> • Failed to carry out an investigation prior to issuing it. • Breached a legitimate expectation that published procedures would be followed. • Pre-judged the issues. • Failed to provide sufficient time to make submissions. • Involved the Commissioner at both the investigation and decision-making stages. • Failed to wait for the European Data Protection Board to issue guidance on the use of supplementary measures. • Singled out Facebook in a way which breached its right to equal treatment.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The High Court accepted that the PDD could be judicially reviewed but it held that the DPC was entitled to rely on material from the investigation it had commenced pre-GDPR and did not have to commence an entirely new investigation. The court rejected all the challenges made by Facebook.
Results (sanctions) and	This case was extremely significant in that it was an aggressive challenge by Facebook to the procedures adopted by the DPC on almost every possible ground. By upholding the procedures adopted by the DPC the case provides much greater legal certainty and a firmer basis for the DPC

<p>key consequences or implications of the case (max. 500 chars)</p>	<p>on which to proceed with other significant investigations.</p>
<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>"I have looked earlier at the provisions of ss. 110 and 111 of the 2018 Act. It is clear that under s. 110(1), the DPC is entitled to commence an inquiry and that it has a wide discretion in terms of the nature and extent of that inquiry. It is entitled to 'cause such inquiry as it thinks fit to be conducted' for the purpose envisaged by the section. Section 12(8) makes clear that subject to the 2018 Act, the DPC is entitled to 'regulate its own procedures.'" (Paragraph 158)</p>

Thematic area	RIGHTS OF THE CHILD Please provide the most relevant high court decision related to the topics addressed in the chapter.
Decision date	19 May 2021
Reference details	[2021] IEHC 287, Board of Management of Salesian Secondary College (Limerick) and Facebook Ireland Limited
Key facts of the case (max. 500 chars)	The plaintiff sought information from Facebook Ireland on the identity of those behind an anonymous Instagram account where 'coarse and vulgar' comments had been posted about school staff (Art 6 (1) (C) of GDPR) in order to 'deal' with individuals by means of 'a disciplinary or pastoral response'. The information was sought one year after the offending account had been voluntarily removed; there were no intended legal proceedings, and no action had been sought by the Gardaí or the Child and Family Agency. The defendant had no objection but required a court order.
Main reasoning/argumentation (max. 500 chars)	The board of management, departing 'from existing case law of the Irish Courts' argued that it was not necessary for there to be intended court proceedings, nor an alleged tortious wrongdoing, that breach of contract was sufficient. They argued that the need to discipline was sufficient. The plaintiff argued in balancing the rights to freedom of expression and privacy, the prima facie evidence of wrongdoing, prevailed over confidentiality. Under Art 6 (1) (C) of GDPR Facebook Ireland Limited had no substantive objection to disclosing the information sought but required a court order.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The issue before the court was the balancing of rights: privacy, protection of personal data and freedom of expression under the Charter of Fundamental Rights of the EU. Specifically, the High Court questioned whether there is an expectation of anonymity on the internet and to what extent this is an aspect of the right to protection of personal data and the right to freedom of expression. The High Court, noting that this had not been addressed by the Court of Justice of the EU, decided to refer the matter for a determination under Article 267 of the Treaty on the Functioning of the EU.
Results (sanctions) and	Clarity is needed on whether persons posting anonymously are, subject to public interest, entitled to protection (Arts. 7, 8, and 11 of the Charter) or if this is qualified in its application to school staff and students. Can schools seek information solely to discipline students or should there have

<p>key consequences or implications of the case (max. 500 chars)</p>	<p>to be a prima facie case of tortious wrongdoing? It will also clarify obligations of social media providers under the Charter and GDPR to disclose identities of those who post anonymously, and whether affected parties should be put on notice of the application and invited to make submissions.</p>
<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>'To adopt the memorable phrase of the Supreme Court of the United States, students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate". School officials may only regulate speech that "would 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school" (Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969), at 506 and 509).' (Paragraph 81).</p>

Thematic area	ACCESS TO JUSTICE Please provide the most relevant high court decision related to the topics addressed in the chapter.
Decision date	24 June 2021
Reference details	[2021] IECA 178, People (DPP) v. Crowley
Key facts of the case (max. 500 chars)	Defendant pleaded guilty to multiple counts of endangerment, aggravated assault, theft and causing criminal damage. Defendant received multiple sentences, mainly running concurrently, but some running consecutively. Defendant appealed against the severity of his sentences. Defendant had 92 previous convictions.
Main reasoning/argumentation (max. 500 chars)	Defendant argued that the use of consecutive sentencing was an error, that the overall sentence was excessive, and most importantly that the trial judge placed too much weight on the victim impact statement which resulted in an overly severe sentence. Court's response was based on the fact that the victim is a witness and not a party.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Sentencing court has an obligation to the victim but only as a member of society; sentences are crafted to reflect justice to society as a whole; victim has no entitlement to a sentence that would provide justice to her individually. Court noted improved position of victims, partly because of the Victims' Directive. Victims entitled to address the court as to victim impact so as to inform the court of the impact the crime has had on him/her.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Sentence reduced due to Judge's failure to consider the totality of the sentence imposed, due to her concern that injustice might be done to the victim. The court noted that justice is not to be done to the victim as an individual; rather justice done to society is justice to the victim. Court expressed concern at unrealistic sentencing expectations among victims, which might feed growth in populist sentiment. Stressed the need for judges to clearly explain to victims the basis of the sentence.

Key quotation in original language and translated into English with reference details (max. 500 chars)

"However, in so far as victims have an entitlement to see justice done, that entitlement inures to them not as individuals but rather as members of society. The court's obligation to do justice at sentencing is owed, firstly, to the public at large, including the victims in the case; and secondly, to the accused... [T]he victim of a crime has no entitlement to expect that a sentence will be crafted to provide individual justice for her." (Paragraph 64)

Thematic area	DEVELOPMENTS IN THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD) Please provide the most relevant court judgment, which quoted the CRPD or prominently referred to the CRPD in the reasoning.
Decision date	10 February 2021
Reference details	[2021] IEHC 70, C. O'C v An Bord Pleanala
Key facts of the case (max. 500 chars)	The case involved a High Court appeal of a planning decision made by local planners in which they refused planning permission for a woman with a psychosocial disability. She had applied to build a separate dwelling on the same plot of land for her family members to live independently. Similar dwellings were only permitted, under regulations, to “those with a definable social or economic need to live in the open countryside”. The Applicant had been refused an appeal at the local level.
Main reasoning/argumentation (max. 500 chars)	Lawyers for the Applicant put forward that the decision to deny planning permission to the Applicant had to be invalidated because planners failed to take into account the State’s obligations under the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD).
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The key issue, in this case, was whether the planning authorities should have considered the UN CRPD when considering the specific request from the Applicant. The Judge dismissed the argument that UN CRPD should have been considered as it was not part of Irish law.
Results (sanctions) and key consequences or implications of the case	The appeal was dismissed on several grounds, including the use of the UN CRPD for being outside of the scope of the pleadings, plus that the UN CRPD was not part of Irish law and therefore did not have to be considered by the planning authorities, or the courts.

(max. 500 chars)	
Key quotation in original language and translated into English with reference details (max. 500 chars)	“In legal submissions, the Applicant alleged that the board’s decision should have been informed by the United Nations Convention on the Rights of Persons with Disabilities, done at New York on 30 March 2007. That claim falls outside the pleadings and thus is not something that can be the basis of a finding in favour of the Applicant. In any event, the Convention is not part of Irish law, so the decision is not invalid for failure to consider it.”