**Observations of Ireland on the draft General Comment no. 35**

**Article 9: Liberty and security of person**

30 May 2014

1. The following are the observations of Ireland on the draft General Comment number 35 of the UN Human Rights Committee (“Committee”), which addresses the right to liberty and security of the person. The observations provided are intended to inform the Committee of Ireland’s existing law and practice and Ireland’s understanding of the content of the obligations imposed by article 9 of the International Covenant on Civil and Political Rights.
2. In relation to paragraph 19, which addresses laws and practices in the field of detention on mental health grounds, Ireland would suggest that the Committee consider whether the second sentence should state clearly that protection of the person from harm includes protection from harm which is likely to result from a person not receiving appropriate treatment for his or her condition. The criterion for detention following a finding of unfitness to be tried or not guilty by reason of insanity under Ireland’s Criminal Law (Insanity) Act 2006 is whether the person is in need of in-patient care or treatment. The definition of mental disorder in Ireland’s Mental Health Act 2001 (“the 2001 Act”) includes cases where failure to admit a person to an approved centre would be likely to lead to a serious deterioration in his or her condition or would prevent the administration of appropriate treatment that could be given only by such admission.
3. In relation to paragraphs 19 and 47, Ireland would draw the Committee’s attention to the review of the 2001 Act, which governs the involuntary detention of persons in an approved centre for mental health reasons, by an Expert Group set up by the Minister for Health and Children in August 2012. This review will introduce a rights-based approach to mental health legislation. The Expert Group is examining many of the issues raised by the Committee in its consideration of issues related to involuntary detention of persons in an approved centre for mental health reasons, with a view to making recommendations on changing the current legislation if it considered necessary and appropriate. The Expert Group is coming towards the end of their deliberations and it is expected that its report will be published in the coming months.
4. On the subject of access to counsel, referred to in paragraphs 23, 35, 46, 58, and 59, Ireland also wishes to draw the Committee’s attention to the recent judgement of its Supreme Court on 6 June 2014 in *DPP v. Gormley and White*, which established as inadmissible “evidence obtained during questioning which occurred after he had requested legal advice and before that legal advice had been obtained”.[[1]](#footnote-1)
1. *Director of Public Prosecutions v. Gormley, Director of Public Prosecutions v. White*, [2014] IESC 17, para. 9.17. [↑](#footnote-ref-1)