

Questionnaire Response: Access to Justice for the Right to Housing

Ireland

Prepared by Maria Ni Fhlatharta and Dr Padraic Kenna, School of Law NUI Galway.

1. Are the following components of the right to housing subject to hearings and effective remedies before courts and/or tribunals in your country? If yes, please explain which law provides this protection, who has standing to bring claims forward and what court or tribunal adjudicates the claim. Provide an example of a leading case and explain briefly how this may have advanced protection of the right to housing.

a.) Non-discrimination (including accommodation of disabilities) Yes

There is remedy available for people discriminated against under the Equal Status Acts, in particular through complaints made to the designated State Agency – the Workplace Relations Commission.

The Equal Status Acts 2000-2015 (ESA) prohibit discrimination in the provision of goods and services, accommodation and education. They cover the nine grounds of gender, marital status, family status, age disability, sexual orientation, race, religion, and membership of the travelling community. In addition, the Acts prohibit discrimination in the provision of accommodation services against people who are in receipt of rent supplement, housing assistance, or social welfare payment, which acts as a protection on the basis of socioeconomic status.¹

This has been one of the more litigated elements of the ESA in recent years, and a number of cases have come before the WRC Workplace Relations Commission.

The WRC has awarded to a number of persons under the discrimination as a result of refusal of housing benefit. For example in ADJ-00004101, a 2017 adjudication, it awarded €13,365 to a tenant who had experienced a direct loss of €12,365 as a result of discrimination on the basis of housing assistance.² While the WRC is less formal than traditional court mechanisms, it still requires a good deal of support as evidenced in ADJ-00004101, where the tenant was lucky to obtain legal representation through a charity. The WRC noted in this

¹ Equal Status Acts 2000-2015 as explained <https://www.ihrec.ie/guides-and-tools/human-rights-and-equality-in-the-provision-of-good-and-services/what-does-the-law-say/equal-status-acts/>

² ADJ-00004101, adjudication, Workplace Relations Commission, 2017
<https://www.workplacelrelations.ie/en/cases/2017/august/adj-00004101.html>

case that it is confined by maximum compensation of €15000, which could cause some difficulties in appropriate compensation

While there is provision against discrimination against disability, over 3,000 young people with disabilities live in nursing homes. There is a noted lack of accessible housing in Ireland, and the housing standards. Issues relating to people with disabilities and housing are exasperated by a lack of personal supports available.

b.) Security of tenure (including prohibition of eviction without appropriate alternative housing)

While there are legal remedies available to people facing eviction, there is no fundamental right to housing in Ireland. Article 40.5 of the Irish Constitution holds that “The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law”

State policy in Ireland focuses on owner occupation, and those in private rented housing are legally quite vulnerable. Most evictions are from private rented housing, with a six fold increase in evictions taking place between 2010-2015. The law in private rented housing is set out in the Residential Tenancies Act 2004 (as amended). The law creates a range of statutory tenancy provisions, including security of tenure. While security of tenure exists on paper, it can be terminated for a number of reasons, such as property required for landlords family or landlord wishes to sell the property. A three step process is laid out for evictions in the event of rent arrears .

If an eviction is disputed, the State Agency – The Residential Tenancies Board can make a “Determination Order” after an informal hearing. Security of tenure, and a lack of legal enforcement is often cited around housing anxiety with renters.

Those in owner occupation also face difficulties as a result of the financial crisis. At it’s peak in 2014, some 30,000 households were in arrears for over two years, and facing eviction. It is also worth noting that in the recent tracker mortgage scandal, at least 100 evictions took place as a result of unlawful overcharging.

Overall data on evictions has been compiled for publication in Loss of Homes in Europe (2108)³

Mortgage Possession cases in Irish Courts⁴

	2010	2011	2012	2013	2014	2015	2016
Circuit Court proceedings for PDH possession order					8,164	5,021	3,679
Circuit Court order for possession of PDH granted	306	353	258	363	1,063	1,284	1,088

At least 100 households were repossessed by Irish mortgage lenders due to being overcharged on

³ Kenna, P., Nasarre-Aznar, S., Sparkes, P. & Schmid, C.U. (2018) *Loss of Homes and Evictions across Europe – A Comparative Legal and Policy Examination* (Cheltenham, Edward Elgar).

⁴Courts Service of Ireland, Statistics and Annual Reports 2010-2016

<<http://www.courts.ie/Courts.ie/Library3.nsf/pagecurrent/D171C224DF0083D180257FB10043BD33?opendocument&l=en>>

their mortgages.

Summary of evictions in Ireland 2010-2015

	2010	2011	2012	2013	2014	2015
RTB – Eviction-related cases referred	580	709	2,162	2,483	3,020	3,182
RTB – Illegal evictions		79	202	228	263	320
Local Authority Initiated evictions rented housing	1,564	1,549	1,738	1,840		
Local Authority actual evictions rented housing	44	70	83	22		
LA Low cost home ownership schemes - repossessions ⁵	89	103	129	111	68	80

c.) Adequacy standards (habitability, access to water, sanitation, services, health and safety

etc.) Yes/No

Rental housing standards has long been a contentious issue in Ireland with enforcement devolved to local authorities. This has proven to be ineffective, and a large amount of citizen reporting has attempted to uphold existing housing standards.

With regard to social housing, a number of cases have highlighted inadequacy of housing standards as a violation of human rights including the Collective Complaint to the Council of Europe, European Committee of Social Rights. The International Federation for Human Rights (FIDH) v. Ireland decision found that Ireland had failed to take sufficient and timely measures to ensure the right to housing of an adequate standard for many families living in local authority housing across the country. The Committee found Ireland in violation of Article 16 of the Revised Social Charter.⁶

In domestic courts, a number of cases have arisen with regard to social housing standards. In *Doherty v South Dublin County Council*,⁷ the applicants, an elderly couple who were members of the travelling community sought a declaration that the failure of the respondents to ensure that the applicants were provided with appropriate housing was a breach of the respondents' duties under then Housing Acts 1966 to 2005, as interpreted in the light of the s. 2 of the European Convention on Human Rights Act 2003; was in breach of s. 3 of the European Convention on Human Rights Act 2003; was in breach of the Equal Status Acts. While there were clear issues with standard of housing here, the courts were reluctant to intervene.

Charleton J. stated obiter that "Cases to date show a reluctance to require State authorities to intervene with forms of welfare as an aid to the exercise of rights. Whether welfare is provided, and at what level, and in what particular circumstances, is essentially a matter of political decision."⁸

⁵<<http://www.housing.gov.ie/housing/statistics/house-prices-loans-and-profile-borrowers/local-authority-loan-activity>>

⁶ International Federation for Human Rights (FIDH) v. Ireland
[https://hudoc.esc.coe.int/eng#{%22ESCDIdentifier%22:\[%22cc-110-2014-dmerits-en%22\]}](https://hudoc.esc.coe.int/eng#{%22ESCDIdentifier%22:[%22cc-110-2014-dmerits-en%22]})

⁷ *Doherty v South Dublin County Council (No 2)* [2007] IEHC 4, [2007] 2 IR 696,
<https://app.justis.com/case/doherty-v-south-dublin-county-council-no-2/overview/c4Ktn4udmZWca>

⁸ *Doherty v South Dublin County Council (No 2)* [2007] IEHC 4, [2007] 2 IR 696, Paragraph 46

A code of standards for rented housing was introduced in 2017. SI No. 17/2017 - Housing (Standards for Rented Houses) Regulations 2017. Available at:
<http://www.irishstatutebook.ie/eli/2017/si/17/made/en/print>

d.) Non-retrogression (review of effect on right to housing of program cuts, removal of legal protections or austerity measures)

No

The principle of non-retrogression is not used in Irish courts in relation to human rights enforcement or indeed at all.

e.) Progressive Realization – (obligation to take reasonable measures, establish and meet goals and timelines, prioritize the most disadvantaged, allocate maximum available resources, etc.)

Not used in Ireland.

2. What measures have been taken or are planned to improve access to justice for the right to housing? Please include, where applicable, measures relating to

i) education of lawyers, advocates and potential rights claimants;

The State takes no role in relation to human rights legal education. Charitable and voluntary organisations and grass roots advocacy networks carry out the majority of education with regards to human rights and housing.

ii) barriers facing women and other groups;

Women are overwhelmingly represented in arrears and eviction cases. Marginalised groups are over represented in homeless statistics. A significant number of the cases that are raised in court concern members of the travelling community. Charitable organisations, from travellers rights groups to anti homelessness organisations “fill in the gaps” here.

iii) access to legal representation;

There are significant barriers to accessing legal representation in housing cases – with over 70% of home loan debtors facing repossession having no legal representation. In 7% of cases people represented themselves.

iv) making hearings and other procedures more accessible and less intimidating or costly;

Many of the cases involving housing and human rights in Ireland take place through the Residential Tenancies Board (RTB) or the Workplace Relations Commission. While these are less formal, there are limits on the remedies available. It is unclear if they are actually more accessible and less costly.

v) more effectively addressing systemic issues;

Ireland has so far failed to address systemic issues around housing with a property rights pro-market approach being dominant. Homelessness figures have risen significantly in recent years among households with children.

vi) ensuring implementation of remedial orders.

n/a

3. Please identify where responsibility lies for education and training of judges and administrative decision-makers regarding their international human rights obligations. What measures have been taken to ensure that domestic law is interpreted as far as possible to provide for effective remedies for the right to housing?

Judicial education is under the authority of the judiciary itself.⁹ Continuing education for the Irish judiciary is facilitated by the Committee for Judicial Studies. The background to the establishment of this body (and its predecessor the Judicial Studies Institute) was the enactment of section 19 of the Courts and Court Officers Act, 1995, which provides that:

“A person who wishes to be considered for appointment to Judicial office shall undertake to the Board (The Judicial Appointments Advisory Board) his or her agreement, if appointed to Judicial Office, to take such course or courses of training or education, or both, as may be required by the Chief Justice or President of the Court to which that person is appointed.”

The Judicial Studies Committee has extremely limited financial resources and is accordingly unable to provide the type of continuing training and education that is common in other jurisdictions. In the circumstances its activities are confined to the organisation of annual one-day conferences. In addition there is a one day annual National Judges’ Conference at which topics relevant to judges of all jurisdictions are discussed.¹⁰

This set up is not as extensive as other jurisdictions, and the result is that it is impossible to ensure that the judiciary receives appropriate education on international human rights obligations and on housing remedies.

4. Are you aware of examples in your country of community-based initiatives to provide hearings and remedies for the right to housing outside of formal court or tribunal processes? How have they been supported and how effective have they been? Do these operate at the national or subnational level, and do decisions create precedents that can be relied upon by others?

⁹ <https://aji.ie>

¹⁰ <https://aji.ie/supports/judicial-education/>

There is significant community concern as a result of the housing crisis in Ireland. Much grass roots action has taken place, including the occupation of vacant properties and large protests. This has not resulted in any substantial community based housing hearings or remedies.

5. What role does your National Human Rights Institution play in ensuring access to justice for the right to housing? Are there other human rights bodies that play a role in this respect, such as an ombudsperson?

Ireland's NHRI institution – The Irish Human Rights and Equality Commission [IHREC] plays a minimal role in access to justice and housing. IHREC do provide information on the “Rights and Remedies” available under equality legislation. Within that, it will only focus on violations of the equal status acts, and not on broader issues of housing law. It offers limited information and has submitted amicus curiae briefs in a small number of housing cases, but is unable to provide legal advice in many cases.

Ireland's Ombudsman occasionally intervenes in housing issues, and takes complaints from public sector tenants.¹¹

The report will be presented to the 40th session of the Human Rights Council in March 2019.

The Special Rapporteur on the right to adequate housing welcomes responses and submissions

of relevant reports or studies by 17 November 2018. Submissions can be sent to

srhousing@ohchr.org(cc: registry@ohchr.org).

In order to facilitate processing of the information, submissions in English, French or Spanish are appreciated. If not requested otherwise, responses and submissions received will be published on the website of the Special Rapporteur.

¹¹ <https://www.ombudsman.ie/>