

Rule of Law in Ireland | 2019

Observations and proposals.

January 2019

1. Introduction

1. The Society has been invited to provide a brief overview of rule of law issues arising in Ireland and our suggestions to improve its awareness and offer solutions to any obstacles that arise.
2. For the purposes of this paper, we will contain our views to developments in Ireland; however a more comprehensive analysis would frame it within both a European and international context.

2. Courts System: delivering justice

3. During the period of the economic downturn and attendant crisis, resourcing of our Courts system suffered a reduction of 25%, by comparison to pre-crisis levels. During this period, investment in personnel – in particular judicial staff (judges and researchers) – and in ICT was not maintained at adequate levels. Issues such as accessibility and expedience in judicial process were further compromised at a regional level by the closure of a number of District Courts.
4. The Society has led sustained campaigns in highlighting the deficiency of court resourcing, its impact on access to justice and the rule of law.
5. In 2018, the Courts Service announced a Review of the Administration of Civil Justice. Its stated aim is to advance changes with a view to improving access to civil justice in the State, promoting early resolution of disputes, reducing the cost of litigation, creating a more responsive and proportionate system and ensuring better outcomes for court users.
6. The Society has participated fully as a member of the Review Board, and has already contributed reform proposals in areas such as streamlined Court rules and procedures, eServices and the increased promotion of dispute resolution mechanisms such as ADR / Mediation.
7. The announcement of a forthcoming legislative instrument providing for the appointment of an additional six Court of Appeal judges will go a significant way in improving the ability of citizens and businesses to access justice in a timely manner.

3. Policing reform: changes being monitored

8. The Commission on the Future of Policing in Ireland launched a comprehensive consultation with stakeholders, including members of the public during late 2017 and early 2018.
9. As part of the Law Society's submission, the issues of Rule of Law, fair procedures and legal representation were central. Relevant submissions included
 - To ensure a key role for solicitors in overseeing and tempering police powers of detention and to place the solicitors' role in attending interviews on a statutory footing.
 - To review the adequacy of the current legal aid provision for detainees in police stations. An alarmingly low rate of just 8% of interviews are being attended by solicitors. The Society attributes the exceptionally low threshold for eligibility for legal aid as one of the causes for such low rates of legal representation during police station interviews.
 - That clear policies and procedures should be introduced in police stations which enhance the protection of confidentiality in solicitor-client communications.
10. The Final Report of the Policing Commission – while not adopting all of the Law Society's recommendations - acknowledged that a key value of the organisation was its understanding of the centrality of a human rights based approach:

First Principle. Human Rights Are The Foundation And Purpose Of Policing.

- a. The justification for police powers to arrest, search or detain, and thereby to curtail the rights of some individuals in certain circumstances, is rooted in the duty of the police to serve and protect society as a whole. Police have to exercise these powers appropriately, effectively and with fairness to everyone.
- b. An Garda Síochána should have a human rights strategy, and a human rights unit within the organisation to develop, implement and monitor the strategy.
- c. Legislation defining police powers of arrest, search and detention should be codified, with statutory codes of practice.

4. Rule of Law: Our international obligations

11. The State's Periodic Report to the **United Nations Committee on the Elimination of Racial Discrimination** was reviewed by the Society's Human Rights Committee. A number of deficiencies in respect of our international obligations were identified by the Society, together with relevant proposals:
 - a. Focused and distinct legislation is required to address the nuanced issue of entities with racist objectives. Prompt enactment of the Criminal Justice (Aggravation by Prejudice) Bill 2016 is urged to ensure the formal recognition of racial motivation and prejudice as an aggravating factor in sentencing for criminal offences. The Society also supports the continuing review of current legislation on racially motivated crimes, including online hate speech.
 - b. The State must reinforce its efforts to reduce the amount of time that protection applicants spend in direct provision. The Society also encourages the State to move forward with its intention to

give asylum seekers the right to work where their claim remains undetermined within nine months, on the basis that this right will promote greater integration and interculturalism.

- c. The State is urged to widen the scope of family reunification and to consider the impact of the lack of a formal appeal system on applicants' right to access to justice. The Constitutional right of personal liberty and freedom, as well as international obligations, arise in the treatment of immigration detainees and international protection applicants.
- d. Consideration should be given to prescribing the Workplace Relations Commission as a Tribunal for the purposes of the Civil Legal Aid Act. This would mean that individuals who consider they have been discriminated against in their employment or in relation to accessing goods and services would have the possibility of being legally aided subject to the relevant means test and merits test that apply under the Civil Legal Aid Act.

12. **Irish Rule of Law International** is a joint initiative of the Law Society of Ireland and the Bar of Ireland as well as the Law Society of Northern Ireland and the Bar of Northern Ireland, dedicated to promoting the rule of law in developing countries. IRLI seeks to harness the skills of Irish and Northern Irish lawyers in using the law as a means of tackling global injustice and empowering all people to live in a society free from inequality, corruption and conflict.

13. The Society views the **solidarity with our EU lawyer colleagues on matters relating to the rule of law** as an important component of our ethical and professional responsibility. Correspondence from both branches of the profession (barristers and solicitors) has issued to our Prime Minister and Minister for Justice in condemning the threat to judicial independence in Poland in recent years.

5. Integrity of law making

14. As the representative body for solicitors in Ireland, the Law Society actively seeks to engage with Government on the development of legislation and policies that impact on the public and practitioners. We engage with Government through attendance at Parliamentary Committees, participating in consultations and face to face interactions with relevant stakeholders on a range of issues.

15. Reforms in court procedures, family law, criminal law and litigation, as well as issues such as safeguarding the importance of solicitor-client confidentiality and legal professional privilege are some of our enduring priorities.

16. The Society appreciates the degree to which the profession is consulted in law making, however there is always room for improvement. We continue to advocate for the need for early consultation on proposals and *ex-post* evaluations.

6. Education and Information: A strategic response

17. Two of the Society's strategic goals, insofar as they relate to the issue of rule of law, include:

- “We will use our voice, our experience and our relationships to represent the solicitors’ profession and to champion their contribution to the Irish economy, **the vindication of citizens’ rights and the rule of law**
- We will provide **a strong voice in policy debates** in order to inform decision-making on matters pertaining to the justice system and law reform.

18. Examples of our activities include but are not limited to the following:

- a. **Annual Human Rights Conference.** Recent themes have included “Brexit and Human Rights” and “Capacity in Ireland: Balancing rights and practical realities”; which bring together the public, academics, practitioners and policy makers.
- b. **Public Legal Education Programmes**, which include:
 - i. **Street Law:** As part of our commitment to access to justice, we introduced Streetlaw in 2013. Now in its fifth year, our Streetlaw Programme is run in collaboration with Georgetown University Law Centre, Washington DC and the Trinity College Access Programme (TAP).

Streetlaw aims to bring the law to life in the classroom by teaching pupils about how the law applies to them through interactive learner-centered lessons.
 - ii. **Prison Law:** This initiative places trainee lawyers in a prison setting to teach law. The programme aims to promote legal literacy, equality and access to law while also teaching high cognitive and social skills to enhance a participant’s effectiveness in legal matters.
- c. **Legal Guides for the Public.** Developed by the Society in collaboration with the profession, they are provided free of charge to the public on the main legal issues that impact citizens’ lives.
- d. **Communications.** The Society’s communications channels and publications are all available to practitioners and guest contributors, and provide a platform for continuous analysis on emerging human rights and rule of law priorities in Ireland. Our award winning legal website and monthly publication continues to promote the work of the CCBE, and the Society’s membership.
- e. **Policy Committees.** The Society is extremely fortunate to have highly engaged and passionate policy committees that relate specifically to the issue of rule of law. The work of participating practitioners in the respective fields includes commenting on draft legislation, providing solutions to Government and agencies on the delivery of key legal services as well as contributing to the ongoing promotion of human rights and the rule of law. Relevant Committees include:
 - i. Human Rights Committee
 - ii. Employment and Equality Law Committee
 - iii. Criminal Law CommitteeFamily and Child Law Committee