



IPRT Submission to the Irish Human Rights & Equality Commission Consultation on Strategy Statement 2019-2021

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About IPRT

Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for rights in the penal system and the progressive reform of Irish penal policy. Our vision is one of respect for human rights in the penal system, with prison as a sanction of last resort. We are committed to respecting the rights of everyone in the penal system and to reducing imprisonment. We are working towards progressive reform of the penal system based on evidence-led policies and on a commitment to combating social injustice.

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Proposal

IPRT welcomes the opportunity to make a brief submission to the Irish Human Rights and Equality Commission (IHREC) on its [Strategy Statement 2019-2021](#).

IPRT believes one of the sustained goals of the Commission should be its continued leadership in *'making equality and human rights real.'* This strategic aim is largely reflective of the Commission's vision of *'an inclusive Ireland where human rights and equality are respected, protected and fulfilled for everyone, everywhere'* and its mission *'to build a fair and inclusive society that protects and promotes human rights and equality in Ireland.'*¹

One approach in achieving this aim is ensuring domestic equality legislation protects the most disadvantaged and that this group are fully benefitting from such legislation. In this respect, IPRT proposes that a key priority for IHREC should be promoting the equality of individuals through extending the currently protected grounds and recognising a tenth protected ground of 'social origin' and/or 'socio-economic status', to be interpreted specifically and explicitly to include those with criminal convictions in domestic legislation, including in the [Employment Equality Act 1998](#) and the [Equal Status Act 2000](#).

Rationale

Part of IHREC's mandate is to ensure that *'a person's ability to achieve his or her potential is not limited by prejudice, discrimination, neglect or prohibited conduct.'*²

A concern to prohibit discrimination on the basis of social origin/socio-economic status is evident in many international legal instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the ILO Convention No.111, Discrimination (Employment and Occupation) Convention, 1958. This concern recognises that discrimination on the basis of social origin/socio-economic status is pervasive and operates as a constraint on an individual's social mobility.³ It has been said that:

*prohibiting discrimination on the basis of social origin/socio-economic status would serve the objectives underpinning the adoption of equality legislation, namely the pursuit of a more equal and just society. It would also promote a more sophisticated intersectional approach to discrimination, leading to greater recognition of the multiple forms of discrimination that many groups face*⁴

IPRT echoes the position of the Equality and Rights Alliance on the interrelationship and intersectional nature of inequality and discrimination –

Socio-economic disadvantage by its very nature impedes full and equal access to all human rights and in particular to economic and social rights. Persons experiencing

¹ Ibid., p.4

² Irish Human Rights and Equality Commission, *Strategy Statement 2016-2018*, p.1

³ *Extending the Scope of Employment Equality Legislation: Comparative Perspectives on the Prohibited grounds of Discrimination*, Shane Kilcommins, Emma McClean, Maeve McDonagh, Siobhaan Mullally and Darius Whelan, 2004; last accessed at <http://www.inis.gov.ie/en/JELR/Discrimination.pdf/Files/Discrimination.pdf>

⁴ ibid

*socio-economic disadvantages face a number of human rights violations, including their right to education, right to adequate housing or right to work. These human rights violations are exacerbated by the discriminatory treatment such groups also face. A socio-economic status ground in equality legislation thus also supports and enables a more holistic response to socio-economic disadvantages, involving both human rights and equality-based arguments and actions. This is particularly significant in a context where the equality body also has a wider human rights mandate acting as a National Human Rights Institution, as it stimulates such comprehensive responses to socio-economic disadvantage within one institution.*⁵

Indeed, this is not a new proposal; in 2013 the Irish Human Rights Commission (IHRC) identified discrimination against a person with a criminal conviction as an issue and recommended that a prohibition on discrimination on grounds of criminal conviction could be introduced into legislation.⁶ However, in its recent submission on *Observations on the Equality (Miscellaneous Provisions) Bill 2017* while the Commission established that the definition of socio-economic status is best developed by listing key practical and identifiable features of difference across social and suggested a number of indicators, it did not include criminal convictions or connections to intergenerational cycles of offending.

Employer discrimination against those with criminal convictions is an ongoing and significant issue of concern in Europe. A 2016 YouGov survey in the UK, found that 50% of employers would not consider employing an ex-offender.⁷ Research highlights both the dearth of and need for anti-discrimination statutes (rather than simply expungement legislation) to protect this group in Europe:

“As most European anti-discrimination statutes do not cover criminal records, one implication might be that people with convictions should be legally recognised as a disadvantaged group entitled to special employment protection although this would require precise and binding guidelines to be effective.”⁸

“In order to provide individuals with criminal records with a universal and successful remedy against employment discrimination, a statute that explicitly bars employment discrimination based on criminal history needs to be adopted.”⁹

Adding a protected ground to existing equality legislation, expands and embeds protection of this group. There are other imperatives to pursuing this issue including the State’s

⁵ Equality and Rights Alliance [Kadar, Thomas 2016] An analysis of the introduction of socio-economic status as a discrimination ground <http://www.eracampaign.org/uploads/Analysis%20of%20socio-economic%20status%20as%20discrimination%20final.pdf>

⁶ Irish Human Rights Commission, *Submission to the UN Human Rights Committee on Ireland’s Fourth Periodic Report under the ICCPR-List of Issues Stage* (2013) pp.17-18 https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRL/INT_CCPR_IFN_IRL_14924_E.pdf

⁷ YouGov Survey, p.1 https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/42yrwvixdo/YG-Archive-160126-DWPwaves.pdf

⁸ Weaver B. (2018) Time for Policy Redemption? A Review of the Evidence on Disclosure of Criminal Records, *Scottish Centre for Crime and Justice Research*, p. 15

⁹ *Ibid.*, p.388

responsibility to pursue the rehabilitation of ex-offenders under Article 10(3) of the ICCPR¹⁰, the right to privacy under Article 40.3 of the Constitution¹¹ and Article 8 of the European Convention on Human Rights¹²; the right to work under Article 6 of the International Covenant on Economic, Social and Cultural Rights¹³ is also relevant.

There is also precedent for pursuing this approach in other common law jurisdictions. In Canada, the states of Quebec, British Columbia, Ontario and Newfoundland and Labrador all have provisions to ensure protection from discrimination on the basis of criminal records in the area of employment.¹⁴ Under the *Anti-Discrimination Act 1998* in Tasmania, discrimination on the grounds of an irrelevant criminal record is prohibited.¹⁵

While it is correct that Ireland has introduced the *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*¹⁶ there are a number of serious limitations to the current legislation¹⁷ in the employment field, and in any event, its provisions do not extend to the much wider area of equality and non-discrimination in access to all services. In addition, there is currently no broad anti-discrimination provision in this or any other legislation which protects those with criminal convictions. As a result, the ability of those with convictions to achieve his or her potential continues to be limited by prejudice, discrimination and inequality.

The introduction of a “social origin” or “socio-economic status” ground may be challenged on the basis of the status being vague or not immutable. Even if one accepts that it is challenging to conceptualise how one might define “social origin” or “socio-economic status” as a protected ground, the existence of a criminal conviction is a matter of fact and might provide a realistic starting point for an interpretation and explicit example of this protected ground.

Conclusion

IPRT proposes that a key priority for IHREC in its *Strategy Statement 2019-2021* should be promoting the equality of individuals through recognising the protected ground of ‘social origin’ and/or ‘socio-economic status’, to be interpreted **specifically and explicitly** to include those with criminal convictions.

¹⁰ United Nations Human Rights, *International Covenant on Civil and Political Rights*, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

¹¹ Irish Statute Book, *Constitution of Ireland*, <http://www.irishstatutebook.ie/eli/cons/en/html>

¹² *European Convention on Human Rights*, https://www.echr.coe.int/Documents/Convention_ENG.pdf

¹³ United Nations Human Rights, *International Covenant on Economic, Social and Cultural Rights*, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

¹⁴ Linda McKay-Panos, “Human Rights Law and Inclusion of New Grounds – Criminal Record”, Law Now: Relating law to life in Canada, 5 July 2017; date accessed 4 October 2018 <<https://www.lawnow.org/human-rights-laws-and-inclusion-of-new-grounds-criminal-record/>>

¹⁵ Shane Kilcommins et al. “Extending the Scope of Employment Equality Legislation: Comparative Perspectives on the Prohibited grounds of Discrimination” 2004, at 8;<www.inis.gov.ie/en/JELR/Discrimination.pdf/Files/Discrimination.pdf>

¹⁶ Irish Statute Book, *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016* <http://www.irishstatutebook.ie/eli/2016/act/4/enacted/en/html>

¹⁷ IPRT (2016) *Passing of Spent Convictions Legislation a historic step for Ireland, but could go much further*, <http://www.iprt.ie/contents/2856>