



IPRT Submission to the Law Reform Commission on its consideration of its 5th Programme of Law Reform

Proposal #1: Prison Law Review

9 February 2018

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.

IPRT publishes a wide range of policy positions and research documents; we campaign vigorously across a wide range of penal policy issues; and we have established IPRT as the leading independent voice in public debate on the Irish penal system.

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1. What do you suggest as a suitable project for law reform?

IPRT proposes that the Law Reform Commission consider undertaking a comprehensive review of current prison law in Ireland (including the *Prisons Act 2007* and *Prison Rules 2007*) as part of its *Fifth Programme of Law Reform*. The project may examine domestic prison legislation in order to assess if current legislation relating to the prison system in Ireland is (1) coherent (2) comprehensive and (3) compliant with international and European human rights standards and legal developments.

2. What issues have arisen in relation to this area that have caused you concern?

It is over a decade since the introduction of the Prison Act and Prison Rules. Since this primary Act and statutory instrument were introduced in 2007, amendments have been made to the *Prison Rules 2007* in 2013, 2014 and 2017. A key issue that has been identified is that these pieces of legislation intersect 'unhelpfully' with each other in some areas (Rogan, 2014: 8). In addition, a number of other Acts relate to the administration of prisons, for example the temporary release of prisoners is currently governed under the *Criminal Justice Act 1960* with amendments made under the *Criminal Justice (Temporary Release of Prisoners) Act 2003*. Restrictions regarding the release of prisoners who have committed certain offences are outlined under section 15 of the *Misuse of Drugs Act 1977*.

The project may wish to examine the merits consolidating the various pieces of relevant legislation into one single Act in order to promote clarity and coherency. However, there are also issues with the substance of the current law. To take just one example - issue of disciplinary procedures within prison - there are a number of criticisms which may be levelled at the current law, including:

- i. the fact that an appeal following imposition of punishment does not operate to suspend that punishment, meaning that by the time the appeal is heard it is often moot;
- ii. some of the disciplinary offences are extremely vague, particularly the final offence in the Prison Rules schedule of offending in any way against good order;
- iii. there is no clear standard of proof provided; and
- iv. it is unclear whether legal representation is ever permitted and this is potentially in violation of Art. 6 of the European Convention on Human Rights.

The existing legislation also *omits* matters which should be provided for in statute. For example, at the moment, there are no legal rules regulating the circumstances in which the Prison Service can move prisoners between different regime levels, or remove someone from an enhanced regime. In practice, issues very frequently arise in relation to changes in status on the basis e.g. of suspected involvement in prohibited activity. Likewise, while there is a *Parole Bill* in progress, currently there is no statutory basis for the Parole Board, a non-judicial body which wields significant power.

A comprehensive review of prison law should also consider whether domestic law is reflective of and compliant with Ireland's obligations under European and international human rights law. This is a critical area that has never been examined before. While there has been one recent amendment to the Prison Rules in 2017 ostensibly to meet one of the requirements of the *Mandela Rules 2015* to provide for two hours out of cell time, the provision was in fact heavily qualified in deference to prison authorities. With an increasing number of international developments in this area, such the revised *UN Standards Minimum Rules for the Treatment of Prisoners (Mandela Rules) (2015)* and the *UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules) (2010)* as well as a number of significant prison law judgements handed down by the European Court of Human Rights over the last decade, (see *inter alia*, *Kalda v. Estonia* on prisoner access to websites containing legal information, *MS v UK* on mental illness and prolonged

detention, *Wenner v Germany* on access to drug substitution therapy and *Dorneanu v Romania* on terminally ill prisoners), a comprehensive review of the law in this area is both necessary and timely.

3. What problems does this give rise to in practice?

Given that the deprivation of liberty is the most severe sanction which the State can impose, and one which carries with it significant consequences, it is essential that the penal system is both legitimate and *perceived* as legitimate in all its activities. Both in respect of disciplinary proceedings and in respect of Parole Board rulings (decisions which potentially relate to the liberty of the individual) fairness, transparency and legal certainty are of utmost import. The absence of a clear statutory basis for these processes causes considerable distress to those it directly affects and is therefore a matter of considerable concern to IPRT.

The key pieces of legislation governing prisons in Ireland are now over a decade old. Given the significant European and international developments over this period, it is imperative that the legislation is re-examined. Without such review of legislation, it can result in the stagnation of domestic legislation with the human rights of individuals in prison left unprotected. The judiciary have also traditionally taken a non-interventionist approach to what have been frequently described as “operational matters”.

Finally, in the context of a penal system where prisoners do not yet have access to an Ombudsman, where the Inspector of Prisons is not mandated to act on individual complaints and here the IPS “independent investigator panel” is taken partly from the ranks of retired criminal justice officials, the scrutiny of the Law Reform Commission takes on an even greater importance.

4. What would be the potential benefits of reform of this area?

Reforming prison law would potentially:

- provide increased legal certainty in respect of decisions involving deprivations of liberty
- strengthen the protection of human rights of those in a particularly vulnerable position vis-à-vis the State
- promote public confidence and ensure that disposals within our criminal justice system maintain legitimacy and credibility
- support prisoners in accessing their rights
- inform and enhance an understanding of prison law by a number of key audiences including the judiciary, lawyers, defendants and the general public

5. Any other general comments.

In addition to the above, IPRT believes that a comprehensive review of prison law would help identify a need for one coherent piece of legislation that governs the prison system. It would also identify any gaps in prison law that need to be addressed, revised or updated. It would examine if our domestic legislation is in compliance with both European and International human rights law and norms. IPRT believes that as a small and relatively wealthy country, Ireland can work towards being a leading model of international best penal practice and that the proposed project would play a part in identifying what is required to achieve this goal. Finally, we believe that the Law Reform Commission currently has the professional expertise and skills to undertake the proposed project.

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