



Council of the
European Union

Brussels, 1 October 2020
(OR. en)

11225/20
ADD 7

JAI 751
FREMP 81
AG 45
POLGEN 168

COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 30 September 2020

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council
of the European Union

No. Cion doc.: SWD(2020) 306 final

Subject: COMMISSION STAFF WORKING DOCUMENT 2020 Rule of Law
Report Country Chapter on the rule of law situation in Ireland
Accompanying the document COMMUNICATION FROM THE
COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL,
THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE
COMMITTEE OF THE REGIONS 2020 Rule of Law Report The rule of
law situation in the European Union



EUROPEAN
COMMISSION

Brussels, 30.9.2020
SWD(2020) 306 final

COMMISSION STAFF WORKING DOCUMENT

2020 Rule of Law Report Country Chapter on the rule of law situation in Ireland

Accompanying the document

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

2020 Rule of Law Report The rule of law situation in the European Union

{COM(2020) 580 final} - {SWD(2020) 300 final} - {SWD(2020) 301 final} -
{SWD(2020) 302 final} - {SWD(2020) 303 final} - {SWD(2020) 304 final} -
{SWD(2020) 305 final} - {SWD(2020) 307 final} - {SWD(2020) 308 final} -
{SWD(2020) 309 final} - {SWD(2020) 310 final} - {SWD(2020) 311 final} -
{SWD(2020) 312 final} - {SWD(2020) 313 final} - {SWD(2020) 314 final} -
{SWD(2020) 315 final} - {SWD(2020) 316 final} - {SWD(2020) 317 final} -
{SWD(2020) 318 final} - {SWD(2020) 319 final} - {SWD(2020) 320 final} -
{SWD(2020) 321 final} - {SWD(2020) 322 final} - {SWD(2020) 323 final} -
{SWD(2020) 324 final} - {SWD(2020) 325 final} - {SWD(2020) 326 final}

Delegations will find attached document SWD(2020) 306 final.

Encl.: SWD(2020) 306 final

ABSTRACT

A number of reforms of the justice system were carried out in 2019 or are under preparation. In particular, an independent Judicial Council was established at the end of 2019. While the perception of judicial independence is already high, the Council will contribute to further promoting judicial independence from the executive and legislative powers. Its Judicial Conduct Committee will be in charge of disciplinary proceedings, while the final decision on dismissal of judges remains a prerogative of the *Oireachtas* (Parliament). A planned reform aims at amending the system for judicial appointment and promotion. It is important that this reform safeguard judicial independence, taking into account the Council of Europe recommendations. A working group is to consider the number and type of judges required to ensure the efficient administration of justice over the next five years. The ongoing review of civil justice could provide an opportunity to improve access to justice in particular through the legal aid system. Digitalisation and the resources of the justice system, including the number of judges, remain a challenge.

Ireland has carried out several reforms aiming at strengthening the fight against corruption, in particular through the Criminal Justice (Corruption Offences) Act of 2018. The Criminal Justice Act included several offences relating to corruption. However, it contains a dual criminality provision, which may limit the scope for prosecuting foreign bribery. Ireland has in place a legal and institutional framework on asset declarations and interests, and codes of conduct and tax clearance obligations, which is currently under review. The Public Sector Standards Bill 2015 lapsed with the dissolution of the *Dáil* (lower House of the Parliament) in January 2020. The Programme of the new Government contains a commitment to reform and consolidate the Ethics in Public Office legislation. Ireland's defamation laws raise concerns as regards the ability of the press to expose corruption. A comprehensive review of Ireland's anti-corruption framework is currently being carried out, and a review of defamation legislation is currently being finalised.

Regarding media pluralism, constitutional guarantees and solid regulatory structures operate within a political culture that avoids intervention in editorial content of media outlets and prevents conflicts of interests in terms of media ownership. The media regulator took steps to update and publish information on media ownership on an annual basis. Freedom of expression and the right to access official information, are well established principles. The frequent use and high costs of defamation cases raise concerns. An independent private scheme established and funded by the print media, consisting of the Press Council and the Press Ombudsman, ensures handling of press complaints, on the basis of a Code of Conduct.

As regards checks and balances, there is an established practice of consultation on draft legislation by the Government and Parliament, and of ex-ante impact assessments. The scrutiny over private Members' bills that pass a certain stage of the legislative process is similarly developed. The independent Irish Human Rights and Equality Commission is well equipped to carry out its functions. While the space for civil society organisations in Ireland is generally considered open, concerns have been raised by civil society organisations as regards constraints on civil society actions in relation to the impact of the current interpretation of the Electoral Act, which imposes restrictions on funding possibilities for civil society organisations.

I. JUSTICE SYSTEM

Ireland is a common law jurisdiction, whose judiciary is divided into a civil and a criminal branch. The court system comprises a court of final appeal (the Supreme Court), a Court of Appeal, and courts of first instance which include a High Court with full jurisdiction in all criminal and civil matters and courts of limited jurisdiction: the Circuit Court and the District Court organised on a regional basis. Two Special Criminal Courts deal with criminal cases about paramilitary, subversive and organised crimes¹. Moreover, a number of specialised tribunals operate in different areas including workplace relations². Since December, 2019, all holders of judicial office are members of a newly established Judicial Council. Judicial appointments are made by the President of Ireland, acting on the advice of the Government. The Judicial Appointments Advisory Board is tasked with the selection of suitable candidates for appointment. The prosecution service is not part of the judicial branch. The Director of Public Prosecutions independently enforces the criminal law in the courts. The conduct of trials on indictment is handled by barristers who are nominated by the Director on a case-by-case basis and prosecute in accordance with the Director's instructions. The Attorney General is the legal adviser to the Government. The legal profession has two types of lawyers – solicitors, represented by the Law Society, and barristers, represented by the Bar of Ireland³. The Legal Services Regulatory Authority, an independent body established in 2016, is Ireland's national statutory regulator for both branches of the legal profession.

Independence

An independent Judicial Council tasked with safeguarding judicial independence was established at the end of 2019. A lengthy reform process had led to the establishment of Ireland's first permanent council for the judiciary. Its main functions under the Judicial Council Act are to consider complaints in relation to judicial misconduct, to ensure the continuous education and training of judges⁴ and to draft guidelines on certain issues including personal injuries' damages. For these purposes, the Council has established a number of Committees including a Judicial Conduct Committee, a Judicial Studies Committee, a Personal Injuries Committee, and a Sentencing Guidelines Committee. The Council is composed of all serving members of the judiciary (around 160 judges), with a board consisting of 11 judges: five *ex-officio* members (the Chief Justice and four court presidents), five judges elected by their peers and one judge co-opted by the other members of the board⁵. The establishment of the Judicial Council could contribute to ensuring the

¹ A panel of serving judges from the High Court, Circuit Court and District Court are appointed to the Special Criminal Court.

² Tribunals also deal with income tax appeals, claims under the equality legislation, immigration applications, town planning and employment matters. These tribunals are presided by qualified specialists and the executive is often involved in their appointment procedures. Their decisions are subject to appeal or review by the Circuit Court or High Court on points of law.

³ Most solicitors work in private practice offering services directly to the public. Other solicitors are 'in-house' solicitors, employed for example by the State or by business. Most barristers specialise in court advocacy and the provision of legal advice and opinions, although they can also work as 'in-house' lawyers.

⁴ This also responds to GRECO recommendations. GRECO Fourth Evaluation Round – Evaluation Report, para. 161; GRECO Fourth Evaluation Round – Interim Compliance Report, paras. 48-51.

⁵ According to the data of the European Network of Councils for the Judiciary (ENCJ), the resources available to the Council are comparatively low. Contribution from the ENCJ for the 2020 Rule of Law Report.

independence and quality of the justice system, in line with the Group of States against Corruption ('GRECO') recommendations⁶.

The perceived independence of courts and judges among the general public and among companies is high. The level of independence of courts and judges is perceived as 'fairly or very good' by 74% of the general population and by 76% of companies⁷. This high level of perceived judicial independence has been consistent over the last years.

A planned reform aims at reorganising the system for judicial appointments and promotion. Discussions on this reform have been ongoing for a number of years. In 2017, the Government submitted to Parliament a draft law on this matter, which lapsed with the end of the previous parliamentary term. In the current system, for first-time judicial appointments, the Judicial Appointments Advisory Board (JAAB)⁸ recommends to the Minister for Justice and Equality at least seven candidates for each vacancy⁹. The candidates on the list are not ranked in order of priority and the Government is not bound to select from the list only. Promotions of judges¹⁰ are made by the President of Ireland on the advice of the Government and are not subject to the procedure conducted by the JAAB¹¹. Concerns were raised by GRECO¹² as regards the wide discretion left to the executive power. The draft law on the Judicial Appointments Commission provided for the setting up of a new judicial appointments commission that would include a non-judicial chairperson, and a majority of lay members. The draft law aimed at restricting the number of proposed candidates to a maximum of three, ranked in the order of the Commission's preference, for each judicial vacancy. The draft also proposed that all judicial appointments be subject to this procedure (as distinct from the current process which only deals with first-time judicial appointments). These draft provisions could limit political discretion in judicial appointments. However, the envisaged composition of the new commission raised concerns^{13,14} as it foresaw a majority of lay members. The Programme of the new Irish Government formed in June 2020 contains a commitment to enact the Judicial Appointments Commission Bill within the first six months of its mandate. The Government has committed to engage with stakeholders to make appropriate amendments to the current draft law, to ensure that it enjoys broad support. Such amendments would include ensuring that the Chief Justice is the *ex-officio* chairperson of the body. It is important that this reform take into account Council of Europe recommendations

⁶ GRECO Fourth Evaluation Round – Evaluation Report, para. 124; GRECO Fourth Evaluation Round – Interim Compliance Report, para. 26.

⁷ Figures 44, 46 and 48, 2020 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

⁸ The JAAB is made up of the five court presidents, the Attorney General, a representative from both the Law Society and the Bar Council, and three lay members appointed by the Minister for Justice and Equality.

⁹ Section 16(4) of the Courts and Court Officers Act 1995.

¹⁰ The process is referred to as 'elevation'.

¹¹ Members of the judiciary may write to the Attorney General's Office requesting a promotion to a higher court. Those expressions of interest are considered by the Government while nominating a candidate to fill a judicial vacancy in the relevant court.

¹² An outstanding recommendation of GRECO stressed the need to review the current system for selection, recruitment, promotion and transfers of judges with a view to target the appointments to the most qualified and suitable candidates in a transparent way, without excessive influence from the executive powers. The need of providing appropriate resources to JAAB has also been raised. GRECO Fourth Evaluation Round – Evaluation Report, para. 132; GRECO Fourth Evaluation Round – Interim Compliance Report, para. 37.

¹³ European Commission, Country Reports Ireland, 2018 (SWD(2018) 206 final), 2019 (SWD(2019) 1006 final), 2020 (SWD(2020) 506 final).

¹⁴ GRECO Fourth Evaluation Round – Interim Compliance Report, paras. 35-36.

relating to the composition of the authority taking decisions on the selection and career of judges and its role in the appointment procedure¹⁵.

A new body in charge of disciplinary proceedings against judges has been established, improving accountability of judges. The Judicial Council has established a Judicial Conduct Committee to consider complaints in relation to judicial misconduct, preparing draft guidelines on judicial conduct and ethics for adoption by the Council. Furthermore, the Committee provides advice and recommendations on judicial conduct and ethics. The Committee is composed of the five court presidents as *ex-officio* members, three judges chosen by their peers, and five lay members appointed by the Government from those recommended by the Public Appointments Service. Prior to this reform, the only disciplinary sanction applicable to judges was the removal from office upon resolutions of both houses of Parliament for cases of ‘stated misbehaviour or incapacity’¹⁶. However, such a sanction has never been applied. The reform of the disciplinary sanctions regime could lead to improve the accountability of judges; it should preserve judicial independence in line with EU law¹⁷ and taking into account Council of Europe recommendations¹⁸. Removal from judicial office on disciplinary grounds remains one of the possible sanctions. Where such a sanction is envisaged, the Judicial Conduct Committee will be in charge of making a referral to the Minister for Justice and Equality to bring motions to the houses of Parliament seeking the removal of the judge. Parliament remains in charge of deciding the removal from office of judges and retains its margin of discretion in that regard¹⁹, which could raise concerns about the politicisation of the process. Finally, the scope of judicial review available in cases of disciplinary sanctions or removal from office is limited to the lawfulness of the procedure only, without a possibility to challenge its substance²⁰.

The newly established Personal Injuries Guidelines Committee is in charge of compiling general guidelines as to the level of damages that may be awarded by courts. The establishment of this Committee²¹ follows a recommendation contained in the Report of the

¹⁵ See Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, paras 46-47. The European Court of Justice has, in the context of judicial appointments made by the executive branch upon a request from a council for the judiciary, indicated that for such council to contribute to making the process more objective, it should be sufficiently independent of the legislative and executive and of the authority to which it is required to deliver a judicial appointment proposal. Judgment of the Court of Justice of 19 November 2019, *AK*, joined cases C- 585/18, C- 624/18 and C- 625/18, paras. 137, 138.

¹⁶ Article 35.4.1 of the Constitution.

¹⁷ Judgment of the Court of Justice of 25 July 2018, *LM*, C- 216/18 PPU, para. 67, see footnote 18.

¹⁸ See Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 69. An outstanding GRECO recommendation refers to the need to formally establish a code of conduct for judges and to connect such an instrument to an accountability mechanism. GRECO Fourth Evaluation Round, para. 146; GRECO Fourth Evaluation Round – Interim Compliance Report, para. 43.

¹⁹ Section 89 of the Judicial Council Act 2019.

²⁰ In this context, the Court of Justice has held that ‘*the possibility of bringing legal proceedings challenging the disciplinary bodies’ decisions constitute[s] part of] a set of guarantees that are essential for safeguarding the independence of the judiciary’* (judgment of the Court of Justice of 25 July 2018, *LM*, C- 216/18 PPU, para. 67). Furthermore, the European Court of Human Rights has ruled that judicial review of disciplinary penalties against judges ‘*must be appropriate to the subject-matter of the dispute, that is to say [...] to the disciplinary nature of the administrative decisions in question. This consideration applies with even greater force to disciplinary proceedings against judges, who must enjoy the respect that is necessary for the performance of their duties’* (judgment of European Court of Human Rights of 6 November 2018, *Ramos Nunes de Carvalho e Sá v. Portugal*, application no. 55391/19, 57728/13 and 74041/13, para. 196; see also paras. 176-186. See also Judgment of European Court of Human Rights of 5 May 2020, *Kövesi v. Romania*, application no. 3594/19, para. 154.)

²¹ The Personal Injuries Guidelines Committee comprises seven judges nominated by the Chief Justice.

Personal Injuries Commission²² and aims at promoting consistency in the level of damages. Moreover, the Sentencing Guidelines and Information Committee²³ is tasked with the drafting of sentencing guidelines. While the guidelines are non-binding, the Judicial Council Act requires a court to have regard to these guidelines and to state the reasons for any departure from such guidelines²⁴. This provision allows to assess the extent to which the guidelines are being followed and could be used by the appellate courts in determining whether or not the reasons given for the departure are justified. In the implementation of such guidelines due regard should be given to the respect of judicial independence not only from undue influences outside the judiciary, but also from within²⁵.

Quality

The justice system budget and the number of judges remain below EU average. While the budget per capita for the justice system, which was EUR 55.7 in 2018, has constantly increased in the last years, the budget as a percentage of GDP has stagnated²⁶. Moreover, a new Courts Act increased the maximum number of ordinary judges of the Court of Appeal from 9 to 15. However, according to 2018 data, the number of judges in Ireland was 160, the lowest number per capita in the EU²⁷. The Programme for Government announced in June 2020 includes a commitment to establish a working group to consider the number of and type of judges required to ensure the efficient administration of justice over the next five years.

A Review Group has been established to assess the administration of civil justice, with a view to *inter alia* improve access to justice and reducing the cost of litigation²⁸. The Review Group will report and make recommendations to the Minister for Justice and Equality later in 2020. These review could address the concerns raised as regards the resources available for the civil legal aid system and the time needed for the Legal Aid Board to assess eligibility for civil legal aid²⁹. Moreover, proceedings before tribunals (e.g. for

²² Second and Final Report of the Personal Injuries Commission, Department of Business, Enterprise and Innovation of Ireland, July 2018.

²³ The Sentencing Guidelines Committee comprises eight judges nominated by the Chief Justice and five lay members appointed by Government from persons recommended by the Public Appointment Service.

²⁴ Sections 92 and 99 which amend Section 22 of Civil Liability and Courts Act 2004.

²⁵ Council of Europe standards requiring the respect of judicial independence not only from undue influences outside the judiciary, but also from within. Judgment of the European Court of Human Rights of 22 December 2009, *Parlov-Tkalčić v Croatia*, para. 86: ‘...*This internal judicial independence requires that they be free from directives or pressures from the fellow judges or those who have administrative responsibilities in the court such as the president of the court or the president of a division in the court. The absence of sufficient safeguards securing the independence of judges within the judiciary and, in particular, vis-à-vis their judicial superiors, may lead the Court to conclude that an applicant’s doubts as to the (independence and) impartiality of a court may be said to have been objectively justified*’. According to the Venice Commission, the practice of guidelines adopted by the Supreme Court or another highest court and binding on lower courts is problematic as regards internal independence (Venice Commission opinion (CDL-AD(2010)004-e, para. 70).

²⁶ Figure 33, 2020 EU Justice Scoreboard.

²⁷ Figure 35, 2020 EU Justice Scoreboard.

²⁸ The Review Group is also looking at improving procedures and practices to ensure timely hearings, the removal of obsolete, unnecessary or over-complex rules of procedure, reviewing the law of discovery, encouraging alternative methods of dispute resolution, reviewing the use of electronic methods of communications including e-litigation, examining the extent to which pleadings and submissions and other court documents should be available or accessible on the internet, identifying steps to achieve more effective outcomes for court users with particular emphasis on vulnerable court users.

²⁹ Irish Law Society, contribution of February 2018 to the Review of the Administration of Civil Justice; the Council of the Bar of Ireland, submission of 25 November 2019 to the Joint Committee on Justice and Equality on Access to Justice and Legal Costs.

claims before the Workplace Relations Commission and the Labour Court) are excluded from legal aid, except for the purposes of asylum cases. This was raised as a concern by the Irish Human Rights and Equality Commission in 2019³⁰. The Review Group will also look at possible ways to encourage the alternative methods of dispute resolution, which could improve the incentives to use alternative dispute resolution methods for which Ireland currently performs very low³¹. Based on the Review Group Report, the Programme for Government includes a commitment to implement reforms to the administration of civil justice covering matters such as the more efficient and effective deployment of court and judicial resources. Moreover, work on the preparation of a new Criminal Justice (Legal Aid) Bill is at an advanced stage. The purpose of the new legislation is to update and strengthen the system of granting criminal legal aid, including transferring responsibility for the administration of the Scheme from the Department of Justice and Equality to the Legal Aid Board.

The Legal Services Regulatory Authority is taking measures to tackle remaining barriers in the legal services market. Since the adoption of the Legal Services Regulation Act 2015, restrictions remain in place in the provision of legal services, hampering competition and thus increasing legal costs³². In 2019, the Legal Services Regulatory Authority introduced a new business model framework for Limited Liability Partnerships. A new framework for Legal Partnerships, which can include barrister-barrister partnerships and barrister-solicitor partnerships, is scheduled to be introduced in 2020. A new provision inserted into the Legal Services Regulation Act in 2019 strengthens requirements for solicitors to keep clients updated with accurate information in respect of legal costs³³. The Authority will also be revisiting the subject of multi-disciplinary practices (involving legal practitioners and other professions) and has opened a public consultation in relation to the possible unification of the professions of barristers and solicitors.

Work is ongoing on the digitalisation of the justice system³⁴. Ireland scores below EU average on the availability of electronic means, information and communications technology for case management and court activity statistics³⁵. The Courts Service has developed a strategic document³⁶ with the objective of delivering digitalisation and supporting the judiciary in the process. This approach seeks to minimise the number of cases that need to be dealt with by the courts system, requiring attendance at hearings only where necessary, holding and managing hearings and case information digitally, as well as adopting a digital model for the filing of court documents. The Courts Service Online (CSOL) project aims to

³⁰ Irish Human Rights and Equality Commission (IHREC), Ireland and the Convention on the Elimination of Racial Discrimination, November 2019, p. 142.

³¹ Figure 30, 2020 EU Justice Scoreboard. The establishment of the Mediation Council, as provided for under the Mediation Act 2017, is currently being progressed with a view to establishment at the earliest opportunity.

³² European Commission, Country Report Ireland, SWD(2020) 506 final.

³³ Moreover, on 7 October 2019, the Office of the Taxing Master was replaced by the Office of the Legal Costs Adjudicators as provided in Part 10 of the Legal Services Regulation Act 2015. It provides for a new and enhanced legal costs regime, leading to greater transparency, and modernised and reformed the previous system for the adjudication of legal costs. A Chief Legal Cost Adjudicator and one Legal Cost Adjudicator were appointed in October 2019. The second Legal Cost Adjudicator has been appointed and will commence work in October 2020.

³⁴ It is also noted that the current statistical data on the justice system does not allow reporting on data concerning the disposition time in civil and administrative proceedings in the EU Justice Scoreboard.

³⁵ Figures 27 and 40, 2020 EU Justice Scoreboard.

³⁶ Courts Service, Long-Term Strategic Vision to 2030: Supporting Access to Justice in a modern, digital Ireland.

deliver a single civil case management system to provide a common platform for the civil processes of all jurisdictions. The new system incorporates the facility to make applications and payments online, collect orders and file certain documents electronically. Areas of work benefitting from the new platform include insolvency and small claims, and the procedures in front of the Supreme Court and the Court of Appeal. In 2019, CSOL was further extended to facilitate e-filing of applications to the Office of the Legal Costs Adjudicator. The ongoing review of the civil justice system also looks at reviewing the use of electronic methods of communications, including e-litigation and the extent to which pleadings, submissions and other court documents should be accessible online.

Measures have been taken to facilitate the continued operations of courts during the COVID-19 pandemic. In particular, a programme to facilitate remote hearings commenced in April 2020 and the number of virtual hearing sessions has since increased steadily. In addition, the Supreme Court and the Court of Appeal have made extensive use of virtual hearings in appeal cases. As regards criminal proceedings, there has been a raise in remote applications in criminal matters. Remote hearings are increasingly used for remand hearings, bail applications and adjournments where the accused is in custody³⁷. A new Act of August 2020 allows for the increased use of remote hearings in civil matters and in criminal appeals. It also extends the possibility of electronic filing and transmissions in civil matters, and the possibility of holding remote meetings³⁸. Minor offences continue to be tried in the District Court, albeit with reduced capacity in the courthouses. Priority is given to cases where the accused is in custody. The Courts Service has also prepared a public information video on visiting courts service premises during the period of COVID-19 restrictions.

Efficiency

The ongoing review of the civil justice system looks at improving procedures and practices to ensure timely hearings. The average length of proceedings at first instance in the High Court and Circuit Court was around 750 days in 2018, with an increase of around 70 days from 2017 for the Circuit Court³⁹. The average length of proceedings in the High Court which hears commercial cases at first instance had increased from 287 days in 2017 to 321 in 2018, while the length of personal injuries cases was around 980 days in 2018⁴⁰. The Government has also pledged to reconsider the number of and type of judges required to ensure timely hearings, in order to address certain efficiency challenges⁴¹.

The criminal trial procedure is in course of revision. A revision of the general scheme of the Criminal Procedure Bill was approved by the Government in June 2015, but the publication of the Bill itself has since been deferred on several occasions. The main purpose of this legislation would be to provide greater efficiency and fairness in the trial process and to reduce delays in the criminal justice system generally. Insofar as possible, all contentious matters concerning the process of the trial and the evidence to be admitted would be settled before starting the process in front of the jury and reducing the likelihood of unnecessary

³⁷ There were approximately 400 remote court sessions held in July 2020. In addition, there have been up to 3 000 video-link applications per month to the criminal courts from prisons. Jury trials, which were largely put on hold from March to June, have recommenced.

³⁸ Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020.

³⁹ 749 days at High Court in 2018 (753 days in 2017); 749 days at Circuit Court in 2018 (678 in 2017); and 163 days in District Court in 2018 (120 in 2017).

⁴⁰ Personal injuries cases were 983 days long on average in 2018 and 994 days in 2017.

⁴¹ European Commission, Country Report Ireland, SWD(2020) 506 final.

interruptions of the trial for legal argument. This could also benefit the fight against corruption.

A compensation scheme for cases of excessive length of court proceedings is still lacking. Legislation establishing a compensation scheme to award damages in the event of protracted court proceedings is required by a European Court of Human Rights ('ECtHR') judgment⁴² but remains to be tabled in Parliament. The Government approved the draft Bill that provided for a compensation mechanism in the form of a non-court-based remedy⁴³. In May 2019, the Parliament Joint Committee on Justice and Equality welcomed the attempt to establish the remedy, but expressed doubts that the non-court based model was the most efficient means to do so. The execution of ECtHR judgement is under enhanced supervision by the Council of Europe's Committee of Ministers⁴⁴.

II. ANTI-CORRUPTION FRAMEWORK

The competences and responsibilities for the development and implementation of anti-corruption policies as well as to preventing, detecting, investigating and prosecuting corruption are shared between several authorities. The investigation of corruption offences is the responsibility of the Garda National Economic Crime Bureau, which has set up a specialised Anti-Corruption Unit. The Public Sector Standards Bill 2015 lapsed with the dissolution of the Dáil (lower House of the Irish Parliament) in January 2020. The Programme of the new Government contains a commitment to reform and consolidate the Ethics in Public Office legislation. The Standards in Public Office Commission (SIPO) is responsible for enforcing the Electoral Acts, the Ethics Acts and the Regulation of Lobbying Act 2015. A comprehensive review of Ireland's anti-corruption framework is currently under way. The Government announced in its recent Programme to tackle corruption as a result of a comprehensive review of the anti-corruption framework and increase the effectiveness of anti-corruption measures.

In the 2019 Corruption Perceptions Index of Transparency International, Ireland scored 74/100 and ranked 8th in the EU and 18th globally⁴⁵. 68% of Irish respondents to the most recent Eurobarometer survey⁴⁶ think that corruption is widespread in their country (EU average: 71%), and 25% of people feel personally affected by corruption in their daily lives (EU average: 28%). As regards businesses, 33% of companies consider corruption to be widespread (EU average: 63%). 11% of companies consider that corruption is a problem when doing business (EU average: 37%). 35% of people find that there are enough successful prosecutions to deter people from corrupt practices (EU average: 36%) while 26% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average: 31%)⁴⁷.

The legal and institutional framework for fighting corruption has seen some important modifications recently. The most recent revision concerns the Criminal Justice (Corruption

⁴² Judgment of the Grand Chamber of the European Court of Human Rights of 10 September 2010, *McFarlane v. Ireland*, application no. 31333/06.

⁴³ Compensation for delays in Court Proceedings Bill.

⁴⁴ Last Resolution by the Committee of Ministers of the Council of Europe, CM/Del/Dec(2019)1362/H46-13, 3-5 December 2019.

⁴⁵ Transparency International, 2019 Corruption Perception Index.

⁴⁶ Special Eurobarometer 502 (2019).

⁴⁷ Flash Eurobarometer 482 (2019).

Offences) Act⁴⁸, which was signed into law on 5 June 2018 and commenced operation on 30 July 2018. The Act repealed and replaced previous anti-corruption legislation, while also introducing new offences and higher penalties for corruption offences. Following recommendations issued by the Mahon tribunal of inquiry⁴⁹, new offences have been introduced by the Act, such as making payments to a third party whilst being aware that those payments will be used for a bribe. It also includes extensions to the presumptions of corruption, which had been included in the Prevention of Corruption Amendment Act 2001. Corporate criminal liability has been introduced in the revised legislation in 2018, and a track record is still to be established. The criminal procedure legislation has also been revised (see Justice Section). To be noted that the Government announced in June 2020 that a revision of the Criminal Justice (Corruption Offences) Act 2018 is further envisaged in order to increase the efficiency of the white-collar crime prosecution⁵⁰.

The competences and responsibilities for the development and implementation of anti-corruption policies as well as for preventing, detecting, investigating and prosecuting corruption are shared between several authorities in Ireland. *An Garda Síochána* (Police) has the responsibility for carrying out all policing duties in the Irish State, including the criminal investigations in the fight against corruption. *An Garda Síochána* also has members on secondment to external agencies to support and co-ordinate the investigation of financial crime, including the office of the Director of Corporate Enforcement, the Competition and Consumer Protection Commission, and the Department of Employment Affairs and Social Protection. The investigation of corruption offences is the responsibility of Ireland's national police service, *An Garda Síochána*. The Garda National Economic Crime Bureau (GNECB), has set up a specialised Anti-Corruption Unit which has exclusive responsibility for the investigation of foreign bribery and corruption and for the investigation of domestic bribery and corruption of national importance. The Anti-Corruption Unit acts as a centre of excellence for the investigation, prevention and disruption of bribery and corruption, and in this regard the unit provides assistance to other national and local units, when required. The Unit was established to act as organisational lead for the investigation of corruption and bribery. Its operational scope includes prevention, detection, disruption and investigation of cases of bribery and corruption. The Unit proactively seeks out cases and gathers bribery and corruption related intelligence. In relation to the overall resources dedicated to fighting corruption, the Anti-corruption Unit within GNECB is currently operating at limited capacity, with only three out of six positions filled⁵¹.

Following completion of corruption investigations by *An Garda Síochána*, a file is submitted to the office of the Director of Public Prosecutions, unless the investigation was discontinued due to insufficient evidence. Corruption investigations conducted by the GNECB are supported by relevant national operational units, such as the Financial Intelligence Unit and, regarding the seizure of assets deemed to be the proceeds of crime, the Criminal Assets Bureau, which is an independent multi-agency body. Upon completion, all corruption investigations conducted by *An Garda Síochána* are referred to the office of the Director of Public Prosecutions (DPP). The DPP has no investigative functions but cooperates regularly with *An Garda Síochána* and other investigating agencies during the

⁴⁸ The Act was signed into law on the 5 June 2018.

⁴⁹ The Mahon Tribunal was an inquiry into certain planning matters and payments to politicians and issued six recommendations related to the fight against corruption: <https://planningtribunal.ie/>.

⁵⁰ Programme for Government June 2020.

⁵¹ The issue of resources has been raised as a challenge when it comes to investigations, as well as obtaining electronic surveillance for such corruption cases can be difficult as they rank lower in terms of priority in relation to terrorist or organised criminal group cases.

course of criminal investigations, particularly in providing relevant legal and prosecutorial advice. There are also a number of complex corruption investigations where a file will be submitted for legal guidance to the DPP, usually to the Special Financial Crime Unit before the investigation is completed. In June 2019, the Garda Inspectorate began a review into how the *Gardaí* tackle corruption within their own ranks.

An assessment of the anti-corruption structures and procedures in criminal law enforcement is ongoing. In 2018, the Minister for Justice and Equality appointed a former DPP and anti-corruption expert, to chair the review into whether the various State bodies involved in anti-corruption measures are cooperating effectively, with a view to identifying any gaps or impediments. The Review Group is due to present its findings later in autumn 2020. The Government announced in its Programme adopted in June 2020 to tackle corruption and follow-up the review and increase the effectiveness of anticorruption measures.

Some high-level corruption cases have been dealt with by Tribunals of Inquiry. Such procedures are generally very lengthy and, in some cases courts, considered the evidence as inadmissible. Tribunals have been labelled ‘a lengthy, expensive but unsatisfactory means of exposing corruption’ by Transparency International Ireland⁵². There have been 10 tribunals since 1991. The Moriarty Tribunal into payments to politicians and the Mahon Tribunal into planning matters, ran for fourteen and sixteen years, respectively.

Prevention of corruption and promotion of integrity measures are in place. These are set out in a number of pieces of legislation, including the Ethics Acts⁵³ and the Regulation of Lobbying Act 2015⁵⁴. The Regulation of Lobbying Act has made it mandatory to make information on lobbying activities and outreach to public officials publicly available on a web-based Register of Lobbying. Established under the Ethics Acts, SIPO is an independent supervisory authority with a number of responsibilities in preventing corruption and conflicts of interest. Inter alia, it is tasked with the administration of the ethics frameworks for the public sector and with lobbying regulation. Under the Regulation of Lobbying Act, SIPO can to investigate non-compliance, and prosecute other contraventions on a summary basis, such as failure to submit a return by the statutory deadline. The part of the Act, which provides for investigation and enforcement provisions entered into force on 1 January 2017. The Register of Lobbying is overseen by SIPO.

General rules and procedures concerning conflicts of interest are set out in the Ethics Acts. SIPO publishes guidelines on compliance with the provisions of these Acts. Furthermore, SIPO is responsible for managing the disclosure of interests and tax clearance regimes, as well as for investigating and reporting on possible contraventions of the Ethics legislation. These SIPO functions relate to office holders (including Ministers and Ministers of State), the Attorney General, special advisers and holders of designated directorships and occupiers of designated positions in the public sector. The Protected Disclosures Act, which establishes a comprehensive legal framework for the protection of whistle-blowers and protection against reprisals, is in place since 2014. Transparency International reports that while the enactment of whistleblowing legislation in 2014 was followed by an increase of 115% in persons demanding specialist legal advice or guidance since 2011, some issues

⁵² Transparency International Ireland, ‘Submission to the Department of Justice and Equality Review Group consultation on anti-fraud and anti-corruption structures and procedures’, 2019.

⁵³ The Ethics in Public Office Act of 1995 and the Standards in Public Office Act of 2001.

⁵⁴ Regulation of Lobbying Act 2015.

remain regarding follow-up action⁵⁵. Results from a Eurobarometer survey show that 32% respondents think that there is no protection for those who report corruption⁵⁶.

The investigation and monitoring of ethics compliance faces some legislative and structural obstacles. The Ethics Acts allow SIPO to appoint an inquiry officer to do a preliminary inquiry following a complaint, which may avert reputational damage when the allegations turn out to be without foundation. However, when SIPO launches an own-initiative inquiry, it cannot appoint an inquiry officer. This has the practical impact that the threshold to launch a full investigation on its own initiative is quite high. Furthermore, a full investigation hearing may only proceed when all six members of SIPO are present, while the rest of SIPO's work can be pursued with a quorum of three members. Resources are also rather limited in view of the wide remit of competence of SIPO.

III. MEDIA PLURALISM

The Irish Constitution names the State as guarantor for the exercise fundamental rights, amongst them freedom of expression and freedom of the press, subject to public order and morality⁵⁷. The Broadcasting Authority of Ireland was established by the Broadcasting Act of 2009. Access to information is covered by the Freedom of Information Acts of 1997, 2003 and 2014, and protection to whistle-blowers is provided by the Protected Disclosures Act of 2014. A consultation on the review of the Irish defamation law took place in late 2016 and the Government taking office in 2020 has pledged reforms in this area⁵⁸.

The regulator for audiovisual media services, the Broadcasting Authority of Ireland (BAI) is considered to be effective, transparent and independent⁵⁹. The Broadcasting Act of 2009⁶⁰ contains a number of provisions seeking to ensure that the BAI is legally distinct from the government and functionally independent of government and any other body. Its independence was assessed to be at very low risk by the Media Pluralism Monitor Report on Ireland in 2018-2019 (MPM 2020). The BAI is comprised of nine members. Five members, including the Chairperson, are appointed by the Government following nomination by the Minister for Communications, and four members are appointed by the Government following nomination by the same Minister, but having regard to the advice of a parliamentary committee. The Act sets a high threshold for the removal of a member of BAI by the Government, requiring that 'resolutions are passed by each House of Parliament calling for his or her removal'.

In January 2020, the Minister for Communications introduced a draft Online Safety and Media Regulation Bill in order to transpose parts of the revised AVMSD. The new Government's programme envisages to enact the Bill. The revised Audiovisual Media Services Directive (AVMSD) sets out a range of specific guarantees for the independence

⁵⁵ Transparency International, Speak up report 2017.

⁵⁶ Special Eurobarometer 502 (2019).

⁵⁷ Personal Rights, Article 40, para. 6.1.

⁵⁸ Ireland ranks 13th in the 2020 World Press Freedom Index, 2 places up from 2019. Reporters without Borders, Ireland. The Defamation Act 2009 provides that the Minister for Justice can give statutory recognition to a self-regulating body for the print media to be known as the "Press Council", provided that it satisfies the criteria as to independence and other matters, set out in Schedule 2 of the Act. In 2010, the Minister for Justice made an Order under the 2009 Act to recognise the Press Council of Ireland as the Press Council for the purposes of the Defamation Act. The Press Council is therefore a non-statutory body but is recognised by statute.

⁵⁹ 2020 Media Pluralism Monitor, p. 10, as confirmed by information received in the context of country visit.

⁶⁰ Broadcasting Act 2009.

and effectiveness of national media regulators. Ireland is currently in the process of transposing the revised AVMSD. The new Bill also creates an Online Safety Commissioner and reconfigures the existing BAI into a Media Commission with the responsibility for the entire audiovisual sector (broadcasting, on-demand audiovisual services and online platforms, including social media).

The Press Council of Ireland (PCI) and the Office of the Press Ombudsman (PO) consider press complaints⁶¹. They cover newspapers (print and online), magazines and online-only news publications that are members of the Press Council. The PCI has 13 members. Seven, including the Chair, are independent members appointed following a public competition. The remaining six members are drawn from the press industry. The PCI appoints the PO following a public competition. The PO receives complaints from members of the public and seeks to resolve them by conciliation or mediation. If not possible, the PO will make a decision based on the Code of Practice. The PCI decides on appeals from decisions of the PO and on complaints referred to it directly by the PO.

In 2019 the BAI concluded a contract with Dublin City University to update and publish annually the information on ownership and control arrangements and changes thereto. Irish company law does not require any company, media-related or otherwise, to disclose publicly who holds the beneficial interest in its shares⁶². As regards BAI-licensed radio and television media outlets, the public may consult – at the BAI offices – any contracts signed by the BAI, which include information relating to media companies' ownership structures. Furthermore, the 2014 Competition and Consumer Protection Act states that in the case of media mergers or acquisitions, the undertakings involved must notify the Minister for Communications of details relating to the ownership of those undertakings. The Act also requires the BAI to prepare and publish a report describing the ownership and control arrangements for undertakings operating a media business in Ireland. Furthermore, the report sets out changes to ownership and control arrangements of such undertakings over the previous three years and provides an analysis of the effects of such changes on media pluralism in Ireland. Two such reports have already been produced: one covering the period of 2012-2014 and the other covering 2015-2017⁶³. The revised AVMSD encourages Member States to adopt legislative measures providing that media service providers under their jurisdiction make accessible information concerning their ownership structure, including the beneficial owners. The MPM 2020 Report for Ireland deems transparency of media ownership to be at medium risk, slightly improving from previous assessments due to changes following the transposition of the EU's Anti-Money-Laundering Directive (November 2018) and the abovementioned Competition and Consumer Protection Act.

There are no specific rules on state advertising in media. The MPM 2017 Report for Ireland⁶⁴ raised the issue of the lack of specific rules other than standard procurement provisions, concerning the placement of state advertising in media. The legal framework remains the same. Nevertheless, it appears that the only noteworthy issue reported since then

⁶¹ The PCI and PO result from a process originating in 2004 when the industry formed a Press Industry Steering Committee comprising representatives of publishers and journalists. The process led to the establishment of the PCI in 2007 and PO in 2008 and the elaboration of a Code of Practice. <https://www.pressombudsman.ie/>.

⁶² A registry of beneficial ownership was set up in Ireland. Members of the public can request to acquire access to a restricted set of beneficial ownership information.

⁶³ Both reports can be accessed at the following link: <https://www.bai.ie/en/news-and-information/publications/>.

⁶⁴ 2020 Media Pluralism Monitor, p. 10.

was the controversy over local and regional newspapers being asked to publish content promoting a government development plan ‘Ireland 2040’ in a manner that seemed to blur the boundary between editorial and advertising content⁶⁵.

The Irish Government has taken a number of measures to ensure that journalistic investigations do not lead to intimidation and reprisals. While Ireland does not have any specific national mechanism aimed at ensuring the safety of journalists, the framework for the protection of journalists appears to be robust. For example, the Protected Disclosures Act 2014 protects workers who speak up about wrongdoings in the workplace. No alerts have been posted in relation to Ireland on the Council of Europe platform to promote the protection of journalism and safety of journalists, since its establishment in 2015.

The new Government has pledged to reform the defamation laws. The objective would be to ensure a balanced approach to freedom of expression, the right to protection of good name and reputation, and the right of access to justice. Frequent defamation suits, high costs of defence and high damages awarded by Irish courts are seen as an inducement to self-censorship and a constraint to media freedom, also to the detriment of the fight against corruption. A consultation on the review of the Irish defamation law took place in late 2016 and early 2017, and is currently being finalised with a view to reforming legislation early in 2021⁶⁶. In 2017, the European Court of Human Rights held, in the context of a EUR 1.25 million award in a defamation case in Ireland, that unpredictably large awards of damages in defamation cases are considered capable, in principle, of having a chilling effect on media’s right to freedom of expression and therefore require particularly careful scrutiny. The case was brought and decided under the Defamation Act 1961⁶⁷.

Access to information is overall ensured⁶⁸. The Freedom of Information Acts of 1997, 2003 and 2014 oblige government Departments and other public bodies to publish information on their activities and to make information they hold available to citizens. Compliance with the Act is generally good. The imposition of a fee for freedom of information requests in 2003 diminished the number of requests, but the fee was removed following the 2014 Act.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Ireland has a bicameral parliamentary system: Parliament (*Oireachtas*) comprises a Lower House (*Dáil Éireann*), and an Upper House (*Seanad Éireann*). Government Ministers and members of Parliament have the right of legislative initiative. The Constitution states that the Government must answer to the Lower House. Constitutional review is carried out by the High Court with a right of appeal to the Court of Appeal and the Supreme Court. The President may, after consultation with the Council of State⁶⁹, refer a Bill to the Supreme Court for constitutional review. The Irish Human Rights and Equality Commission is Ireland’s national human rights and equality institution.

⁶⁵ Irish Times, Regional newspapers reject claims about Government ‘advertorials’, 27 February 2018.

⁶⁶ It should also be recalled that ‘Member States should put in place a comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear’ (Recommendation (CM/Rec(2016)4) of the Committee of Ministers of the Council of Europe).

⁶⁷ Judgment of the European Court of Human Rights of 15 June 2017, *Independent Newspapers (Ireland) Limited v. Ireland*, application no. 28199/15.

⁶⁸ The indicator ‘Protection of Right to Information’ in the MPM 2020 Report scores a low risk, p. 10.

⁶⁹ A body composed of current and former office holders representing the executive, the legislature and the judiciary, and persons appointed by the President, advising the President on the exercise of his or her discretionary powers.

A practice of consultation process of draft Bills and Laws exists. Parliament is not required to hold public consultations when it considers draft legislation, although it regularly chooses to do so, either by a general call for submissions or by engaging with the most relevant stakeholders. Moreover, before the Government publishes a Bill, there is usually a consultation process. The relevant Department may publish a Green Paper setting out the Government's ideas and inviting opinions from individuals and organisations. Before a Bill is finalised, a general scheme of the Bill may be published. The general scheme of a Government Bill undergoes scrutiny by a parliamentary Committee before the text of the Bill is finalised. The relevant Committee may invite stakeholders to participate by attending meetings to discuss the general scheme of the Bill. At the end of the pre-legislative scrutiny, the Committee produces a report and lays it before the Houses of Parliament. The report makes recommendations on the Bill based on the Committee's scrutiny. Documents laid before the Houses of Parliament are available to the public online. Private Members' Bills undergo a similar process of scrutiny by a parliamentary Committee only if they pass the second stage in the Lower House⁷⁰. Policy briefings of the research service of the Parliament include an appraisal of the ex-ante impact assessment prepared by the Government. The research service also prepares policy analysis in relation to private Members' bills⁷¹.

Legislative measures to tackle the COVID-19 pandemic were adopted via normal legislative procedure, with a focused discussion. These legislative measures include the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Bill 2020⁷² and the Emergency Measures in the Public Interest (COVID-19) Bill 2020⁷³, which grant the Minister for Health extensive powers to restrict the freedom of all individuals in order to prevent the further spread of COVID-19 in Ireland. The emergency powers remain in operation until 9 November 2020, when they will cease to have effect unless a resolution is passed by both Houses of Parliament to approve the continuation of the measures. The High Court has dismissed a challenge against these laws which claimed them to be disproportionate and unconstitutional⁷⁴. The so-called guillotine motions were used on both Acts. Guillotines are used in cases of some urgency where the Houses decide to shorten the time allocated to table amendments, debate a Bill and vote on all remaining stages. In 2019, there were two guillotine questions used out of a total of 53 Acts/Bills enacted that year. Moreover, emergency procedures exist, but have not been used in recent times⁷⁵.

⁷⁰ Input from Ireland for the 2020 Rule of Law Report and information received in the context of the country visit.

⁷¹ European Parliament Research Service, Better Regulation practices in national parliaments, p. 27.

⁷² The Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020, was signed into law by the President of Ireland on 20 March 2020. The Act provides powers to the Minister for Health to make regulations to introduce measures to slow down the spread of the virus. These include the power to: restrict travel to and from and within Ireland; restrict gatherings of people; ensure that businesses implement safeguards to protect staff and customers; and close premises, such as schools.

⁷³ The Emergency Measures in the Public Interest (COVID-19) Act 2020 was signed into law on 27 March 2020 by the President of Ireland. The Act provides the Government with the means to introduce a range of extraordinary measures and safeguards to prevent, minimise, limit or reduce the risk of persons being infected with COVID-19. Under the Act, measures can be introduced in areas such as housing and planning, health and social care, mental health, defence, temporary wage subsidies, redundancies and other areas.

⁷⁴ Judgment of the High Court of 13 May 2020, O'Doherty & Waters v. Minister for Health & Attorney General.

⁷⁵ The Constitution provides a mechanism whereby the Prime Minister may request the Parliament to abridge the time that the Upper House spends considering a Bill if it is considered that the legislation 'is urgent and immediately necessary for the preservation of the public peace and security, or by reason of the existence of a public emergency, whether domestic or international'. This request must be agreed to by Lower House and the President. However, any legislation enacted on foot of this provision would only remain in force for 90

The Irish Human Rights and Equality Commission is accredited with ‘A’ status⁷⁶. In its recommendations, the UN Global Alliance of National Human Rights Institutions encouraged the Human Rights and Equality Commission to advocate for adequate funding while safeguarding its financial independence.

Ireland has a vibrant and diverse civil society, although funding restrictions have raised some concerns. Civic space in Ireland is open⁷⁷ but concerns have been raised by civil society organisations as regards constraints on civil society actions in relation to the impact of a prohibition under the Electoral Acts for donations to be given for political purposes to a candidate, political party/accounting unit, elected official, or third party, by a person other than an Irish citizen, who is not ordinarily resident on the island of Ireland, or by a body corporate or unincorporated body of persons that does not maintain an office on the island of Ireland from which at least one of its principal activities is based. The prohibition applies regardless of the amount. SIPO has interpreted the relevant legislation as also comprising certain activities carried out by civil society organisations, such as advocacy work also outside electoral periods. This has raised concerns among civil society organisations⁷⁸. In January 2019, the Irish Human Rights and Equality Commission published a policy statement on the Electoral Acts and Civil Society Space in Ireland⁷⁹. It outlined concerns that the definition of the terms ‘political purposes’ and ‘third party’ in the Electoral Act are overly broad and include a range of Irish civil society organisations, which are therefore constrained in their advocacy functions. The Irish Human Rights and Equality Commission was of the view that such regulatory measures should avoid placing undue restrictions on wider civil society activity that engages in legitimate advocacy and aims to influence political decision-making, including with regard to human rights and equality issues. SIPO stated⁸⁰ that it will look at these matters in the context of a link to elections or referendums, e.g. donations to organisations for the purpose of lobbying to have a referendum. EU law requirements⁸¹ and Council of Europe standards⁸² should be duly taken into account with regard to access to funding for civil society organisations.

days unless both Houses agree that it should remain in force for a specified longer period. This mechanism has never been used. The Constitution also allows for the Houses of Parliament to resolve that a ‘time of war or armed rebellion’ exists, and during that time a small category of legislation passed (quite narrowly applied) can be removed from judicial oversight. Its last use ended in 1995.

⁷⁶ The Irish Human Rights and Equality Commission was accredited with ‘A’ status in November 2015 by the UN Global Alliance of National Human Rights Institutions (GANHRI), Sub-Committee on Accreditation (SCA), Accreditation Report – November 2015.

⁷⁷ Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

⁷⁸ Amnesty International Ireland, Front Line Defenders, The Wheel, Transparency International Ireland, Uplift and the Irish Council for Civil Liberties (2020), Submission to the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Mr Clément Nyaletsossi Voule.

⁷⁹ IHREC, Policy Statement on the Electoral Acts and Civil Society Space in Ireland, January 2019.

⁸⁰ SIPO, Annual Report for 2019.

⁸¹ Judgment of the Court of Justice of 18 June 2020, *Commission v. Hungary*, C-78/18.

⁸² Recommendation CM/REC(2017)14 of the Committee of Ministers of the Council of Europe; 2014 Joint Guidelines on Freedom of Association of the Venice Commission and OSCE Office for Democratic Institutions and Human Rights.

Annex: List of sources in alphabetical order*

* *The list of contributions received in the context of the consultation for the 2020 Rule of Law report can be found at (COM website).*

Amnesty International Ireland, Front Line Defenders, The Wheel, Transparency International Ireland, Uplift and the Irish Council for Civil Liberties (2020), Submission to the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Mr Clément Nyaletsossi Voule.

Centre for Media Pluralism and Media Freedom (2020), 2020 Media Pluralism Monitor. <https://cmpf.eui.eu/media-pluralism-monitor/mpm-2020>.

CIVICUS, Monitor tracking civic space: Ireland. <https://monitor.civicus.org/country/ireland/>.

Council of Europe: Committee of Ministers (2019), Resolution CM/ResDH(2016)358 of the Committee of Ministers on excessive length of criminal and civil proceedings and lack of effective remedies.

Council of Europe: Committee of Ministers (2010), Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities.

Council of Europe: Committee of Ministers (2016), Recommendation CM/Rec(2016)4 of the Committee of Ministers to member states on the protection of journalism and safety of journalists and other media actors.

Council of Europe: Committee of Ministers (2017), Recommendation of the Committee of Ministers of the Council of Europe CM/REC(2017)14 on the Legal Status of Non-Governmental Organisations in Europe.

Council of Europe (2020), Platform to promote the protection of journalism and safety of journalists.

Council of Europe: Venice Commission (2010), Report on the Independence of the Judicial System Part I: The Independence of Judges adopted by the Venice Commission at its 82nd Plenary Session (CDL-AD(2010)004-e).

Council of Europe: Venice Commission and OSCE Office for Democratic Institutions and Human Rights (2014), Joint Guidelines on Freedom of Association.

Council of the Bar of Ireland (2019), submission to the Joint Committee on Justice and Equality on Access to Justice and Legal Costs of 25 November 2019.

Court of Justice of the European Union, judgement of 25 July 2018, *LM*, C- 216/18 PPU.

Court of Justice of the European Union, judgement of 19 November 2019, *AK*, joined cases C- 585/18, C- 624/18 and C- 625/18.

Court of Justice of the European Union, judgement of 18 June 2020, *European Commission v Hungary*, C-78/18.

Courts Service, Long-Term Strategic Vision to 2030: Supporting Access to Justice in a modern, digital Ireland.

Directorate-General for Communication (2020), Special Eurobarometer 502: Corruption.

Directorate-General for Communication (2019), Flash Eurobarometer 482: Businesses and corruption.

European Audiovisual Observatory (2019), The independence of media regulatory authorities in Europe.

European Centre for Press & Media Freedom (2020), Mapping Media Freedom.

European Commission (2020), EU Justice Scoreboard.

European Commission (2018), Country Report Ireland, (SWD(2018) 206 final).

European Commission (2019), Country Report Ireland, (SWD(2019) 1006 final).

European Commission (2020), Country Report Ireland, (SWD(2020) 506 final).

European Court of Human Rights, judgment of 22 December 2009, *Parlov-Tkalčić v Croatia*, application no. 24810/06.

European Court of Human Rights, judgment of 10 September 2010, *McFarlane v Ireland*, application no. 31333/06.

European Court of Human Rights, judgment of 15 June 2017, *Independent Newspapers (Ireland) Limited v. Ireland*, application no. 28199/15.

European Court of Human Rights, judgment of 6 November 2018, *Ramos Nunes de Carvalho e Sá v. Portugal*, application no. 55391/19, 57728/13 and 74041/13.

European Court of Human Rights, judgment of 5 May 2020, *Kövesi v. Romania*, application no. 3594/19.

European Network of Councils for the Judiciary (2020), Contribution from the European Network of Council for the Judiciary for the stakeholder consultation for the 2020 Rule of Law Report.

European Parliament (2016), A comparative analysis of media freedom and pluralism in the EU Member States.

European Parliament Research Service, Better Regulation practices in national parliaments.

Freedom House (2020), Freedom in the World 2020.

GRECO (2014), Fourth Evaluation Round – Evaluation report on Ireland on Corruption prevention in respect of members of Parliament, judges and prosecutors.

GRECO (2018), Fourth Evaluation Round – Interim compliance report on Ireland on on Corruption prevention in respect of members of Parliament, judges and prosecutors.

High Court, judgment of 13 May 2020, *O’Doherty & Waters v. Minister for Health & Attorney General*.

Irish Government (2020), Input from Ireland for the 2020 Rule of Law Report.

Irish Human Rights and Equality Commission (2019), Ireland and the Convention on the Elimination of Racial Discrimination, Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland’s Combined 5th and 6th Report, October 2019.

Irish Human Rights and Equality Commission (2019), Policy Statement on the Electoral Acts and Civil Society Space in Ireland, January 2019.

Irish Law Society (2018), Contribution to the Review of the Administration of Civil Justice of February 2018. <https://cadmus.eui.eu/handle/1814/61144>.

Irish Times (2018), Regional newspapers reject claims about Government ‘advertorials’. <https://www.irishtimes.com/news/politics/regional-newspapers-reject-claims-about-government-advertorials-1.3408081>.

Personal Injuries Commission (2018), Second and Final Report, Department of Business, Enterprise and Innovation of Ireland, July 2018.

Reporters without Borders, Ireland. <https://rsf.org/en/ireland>.

Transparency International (2017), Speak up report. https://transparency.ie/sites/default/files/17.12.13_speak_up_report_ie_final.pdf.

Transparency International, 2019 Corruption Perception Index. <https://www.transparency.org/en/cpi>.

Transparency International Ireland (2019), Submission to the Department of Justice and Equality Review Group consultation on anti-fraud and anti-corruption structures and procedures. https://www.transparency.ie/sites/default/files/19.04.26_ti_ireland_wcc_submission_final.pdf.

UN Global Alliance of National Human Rights Institutions (2015), Sub-Committee on Accreditation (SCA), Accreditation Report – November 2015.

Virtual country visit to Ireland in the context of the 2020 Rule of Law Report.

Annex II: Country visit to Ireland

The Commission services held virtual meetings in June 2020 with:

- Bar of Ireland
- Broadcasting Authority of Ireland
- Chair of the Review Group on structures and strategies to prevent, investigate and penalise economic crime and corruption and former Director of Public Prosecutions
- Department of Justice and Equality
- Garda Economic Crime Bureau
- Garda Síochána Ombudsman Commission
- Irish Council for Civil Liberties
- Judicial Appointments Advisory Board
- Judicial Council
- Law Society of Ireland
- Legal Services Regulatory Authority
- National Union of Journalists
- Office of the Director of Corporate Enforcement (ODCE)
- Office of the Director of Public Prosecution
- Public Appointments Service
- Standards in Public Office Commission (SIPO)
- Supreme Court of Ireland
- Transparency International Ireland

* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Press Institute
- Lifelong learning Platform
- Open Society Justice Initiative/Open Society European Policy Institute
- Reporters without Borders
- Transparency International EU