



**Submission
to the Office of the Commissioner
for Human Rights
of the Council of Europe**

26 November 2007

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About the Irish Council for Civil Liberties (ICCL)

The Irish Council for Civil Liberties (ICCL) is Ireland's leading independent human rights watchdog, which monitors, educates and campaigns in order to secure full enjoyment of human rights for everyone.

Founded in 1976, the ICCL has played a leading role in some of the most successful human rights campaigns in Ireland. These have included establishing an independent Garda Síochána Ombudsman Commission, legalising the right to divorce, securing more effective protection of children's rights, decriminalising homosexuality and the introduction of multi-ground equality legislation.

We believe in a society which protects and promotes human rights, justice and equality.

What we do:

- Advocate for positive changes in the area of human rights;
- Monitor government policy to make sure that it complies with international standards;
- Conduct original research and publish reports on issues as diverse as equal rights for all families, the right to privacy, police accountability and judicial accountability;
- Run campaigns to raise public and political awareness of human rights, justice and equality issues;
- Work closely with other key stakeholders in the human rights, justice and equality sectors.

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Introduction

The ICCL welcomes the opportunity to make a submission to the Commissioner for Human Rights of the Council of Europe in relation to his first visit to Ireland. The Commissioner's visit and assessment of Ireland's human rights progress is both timely and necessary. This submission identifies areas of concern which the ICCL believes the Commissioner should consider investigating. They include: (1) efforts to 'rebalance' the criminal justice system; (2) Ireland's response to extraordinary rendition flights; (3) limits and regressive measures in Ireland's anti-discrimination regime; (4) discrimination against non-traditional families; (5) civil society, advocacy and the case of Pavee Point and (6) proposed provisions in the Immigration, Residence and Protection Bill 2007.

1. 'Rebalancing' the Criminal Justice System

Similarly to the United Kingdom, the question of 'rebalancing' the criminal justice system currently dominates Irish political discourse on justice issues.

On 20 October 2006, the then Tánaiste¹ and Minister for Justice, Equality and Law Reform, Mr Michael McDowell, gave a well publicised speech on the need to rebalance the criminal justice system.² The former Tánaiste then established the Balance in the Criminal Law Review Group³ to consider issues⁴ highlighted in his speech and to make recommendations within a five month period. The Review Group issued its final report on 15 March 2007 and on the same day the Tánaiste introduced a raft of new measures via the Criminal Justice Bill 2007.⁵ Provisions within this Bill made significant changes to the criminal justice system and it became law on 6 May 2007, just three weeks before Ireland's General Elections on 24 May 2007. Aspects of the Bill which the ICCL was most concerned about include: new powers to hold people in Garda (police) custody for up to

¹ Deputy Prime Minister.

² This speech was delivered at a public meeting on Limerick city on 20 October 2006. Accessible at: www.michaelmcdowell.ie/releases/20_10_06.html The former Tánaiste's views echoed previous calls by the Director for Public Prosecutions, Mr James Hamilton, to also 'rebalance' the criminal justice system. These comments were made by Hamilton at a Roundhall Criminal Law conference in October 2006.

³ Chaired by Dr Gerard Hogan, a constitutional lawyer, the group did not include a single criminal justice practitioner or any representatives from human rights organisations.

⁴ The issues reviewed included: The right to silence; allowing character evidence of an accused; the exclusionary rule of evidence; requiring the accused to outline the nature of his defence before or at the commencement of a trial; re-opening new evidence; nullifying an acquittal where there is evidence of jury or witness tampering; "with prejudice" appeals in the case of wrongful acquittal; extending alibi evidence rules to other analogous situations; allowing submissions by the prosecution before sentencing and modifying the rule in relation to hearsay evidence.

⁵ The Criminal Justice Act 2007 is accessible at the following location:

<http://www.oireachtas.ie/documents/bills28/acts/2007/a2907.pdf>

seven days, even though an existing seven-day detention measure is rarely used⁶; undue restrictions on the right to silence⁷; new limits on judicial sentencing discretion⁸; unwarranted restrictions on bail and unproven proposals on the use of electronic monitoring.⁹

The ICCL is deeply concerned with the way criminal law and policy has been developed in recent times. Overall, the criminal justice system actually operates very effectively with the Director of Public Prosecutions (DPP) reporting a conviction rate of 94% for 2005.¹⁰ However, new legal measures have been marketed by politicians as targeting organised crime in the absence of any evidence that they are capable of having a real impact.

The Criminal Justice Bill 2007 was presented to the Oireachtas¹¹ less than one year after the enactment of the Criminal Justice Act 2006.¹² It also introduced a range of far-reaching measures which the ICCL was equally concerned about. For example, Section 16 of the 2006 Act permits a statement “relevant” to the proceedings made by a witness to be used in a trial for an arrestable offence where the witness: (a) refuses to give evidence, (b) denies making the statement, or (c) gives evidence which is materially inconsistent with it. The ICCL believes that this section may be incompatible with articles 6(1) and 6(3)(d) of the ECHR. Further, part 11 of the Bill introduces civil orders for anti-social behaviour even though the Gardaí¹³ can already utilise broad provisions in the Public Order Act 1994 (as amended)¹⁴ to deal with public disorder.

Finally, the new Programme for Government includes plans to make further radical changes to the criminal justice system. Under the heading of “Court Procedures” it states that the Government will introduce:

⁶ Refer to Section 47, Criminal Justice Bill 2007. This provision was introduced despite the fact that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) advised Ireland in 1998 that “seven days in police custody without charge is a long period of time” and that “prolonged periods of detention of criminal suspects on police premises can lead to high-risk situations”. Refer to CPT Report to the Irish Government on its visit to Ireland carried out from 31 August to 9 September 1998.

⁷ Refer to Section 28, Criminal Justice Bill 2007.

⁸ Refer to Part III, Criminal Justice Bill 2007.

⁹ Refer to Section 15 of the Criminal Justice Bill 2007 for new provisions on bail and electronic monitoring.

¹⁰ Office of the Director of Public Prosecutions (2006) *Annual Report*, DPP: Dublin, p. 6. Accessible at www.dppireland.ie/filestore/documents/Annual_Report_2006_-_ENGLISH_%28Amend_0908%29.pdf

¹¹ Irish Parliament.

¹² The Criminal Justice Act 2006 is accessible at: <http://www.oireachtas.ie/documents/bills28/acts/2006/A2606.pdf>

¹³ Irish Police Service.

¹⁴ The Public Order Act 1994 is accessible at: <http://www.irishstatutebook.ie/1994/en/act/pub/0002/index.html>

[...] means to ensure that criminal trials can no longer be collapsed because of legal technicalities. This will include legislation and, if necessary, appropriate amendment to the constitution".¹⁵

This proposal appears to be incorporated on foot of a recommendation from the aforementioned Balance in the Criminal Law Review Group which recommended that the exclusionary rule¹⁶ should be relaxed thus giving the courts more discretion to decide on what should be admitted. Moreover, the Programme indicates that the Government will hold a referendum to insert a new article on children. This article will include a new provision allowing the Oireachtas to impose absolute/strict liability for sexual offences against persons under 18 years as well as an unlimited power to dispense with *mens rea* and introduce strict/absolute liability for any type of offences.¹⁷ The latter proposals are particularly worrying for the ICCL as they have the potential to lead to miscarriages of justice.¹⁸ The ICCL also believes that they are potentially incompatible with Article 6 of the ECHR.

Given the impact which these recent and proposed amendments are likely to have on individual rights, **the ICCL believes that it is essential for the Commissioner for Human Rights to review this area and makes appropriate recommendations to the Irish Government.**

¹⁵ Programme for Government (June 2007), accessible at: http://www.taoiseach.gov.ie/attached_files/RTF%20files/NewProgrammeForGovermentJune2007.rtf

¹⁶ The exclusionary rule provides that evidence which has been obtained unconstitutionally should not be put before a judge or jury in a criminal trial (refer to *The People v. O'Brien* [1965] IR 142). The rationale behind the rule is that constitutional rights are paramount and evidence which has been obtained in violation of the constitutional rights of the defendant should not be admitted in evidence.

¹⁷ The Government already published a referendum bill with a new article on children. Refer to the Twenty-Eighth Amendment of the Constitution Bill 2007 which is accessible at: <http://www.oireachtas.ie/documents/bills28/bills/2007/1407/b1407d.pdf>

¹⁸ Refer to the ICCL's *Response to the Twenty-Eighth Amendment of the Constitution Bill 2007*, available from the ICCL.

2. Extraordinary Rendition

Reports by both the European Parliament and the Council of Europe have expressed serious concern about the use of Irish airspace and Irish airports as 'stopovers' for flights involving the unlawful transfer of detainees by foreign agencies such as the CIA and their operation of aircraft which came from or were bound for countries associated with extraordinary rendition routes, the transfer of detainees and their illegal detention.¹⁹

The report by the European Parliament also names a number of people who were transferred through Irish airports for this purpose. Ireland could be held responsible for "active or passive collusion (in the sense of having tolerated or having been negligent in fulfilling the duty to supervise) - involving secret detention and unlawful inter-state transfers of a non specified number of persons whose identity so far remains unknown".²⁰

There have been no searches of flights by Irish authorities and no independent inquiry has been initiated to establish whether Irish airports assisted in the rendition process. The State is arguing that it is entitled to rely on diplomatic assurances from the United States Government to the effect that Irish airports have not been used to facilitate rendition. The Irish Human Rights Commission (IHRC) has stated that mere acceptance of diplomatic assurances is not adequate to discharge Ireland's positive obligations to actively ensure that torture, inhuman or degrading treatment or punishment is not facilitated by the State²¹ under the Article 7 and paragraph 9 of General Comment 20 of the Covenant²² and under section 4 of the Criminal Justice (United Nations Convention Against Torture) Act 2000.²³ Having conveyed their concerns to the State in late 2005, the Irish Human Rights Commission received a letter on 5 April 2006 from the Minister for Foreign Affairs stating that he rejected their advice regarding the impermissibility of diplomatic assurances in this context and failing to address the Commission's concerns with regard to the State's obligation to investigate allegations of rendition.²⁴

¹⁹ European Parliament Report: RR\382246EN.doc of 30 January 2007, para. 121-126, http://www.europarl.europa.eu/compar/tempcom/tdip/final_report_en.pdf

²⁰ Council of Europe, Committee on Legal Affairs and Human Rights: Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states AS/Jur (2006) 16 Part II, 7 June 2006, para. 289

²¹ Irish Human Rights Commission, *Resolution in Relation to Claims of US Aircraft carrying Detainees*, 23 December 2005, <http://www.ihrc.ie/fileupload/banners/ResoluitionrenditionDecember2005.doc>

²² General Comment 20: Replaces General Comment 7 concerning prohibition on torture, inhuman and degrading treatment or punishment (Art. 7), 10 March 1992 [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument)

²³ Section 4(1) Criminal Justice (United Nations Convention Against Torture) Act 2000 No. 11 of 2000 http://www.bailii.org/ie/legis/num_act/2000/en.act.2000.0011.1.html

²⁴ Irish Human Rights Commission, Submission to the European Parliament's *Temporary Committee on Rendition*, 28 November 2006, p. 2

The new Programme for Government indicates that it will prioritise effective enforcement of the Criminal Justice (UNCAT) Act, 2000 and the Geneva Convention Acts 1962-1998 together with encouraging/supporting the Gardaí in investigation under these statutes; however, it does not state that the Government will hold a public inquiry as recommended by the Parliamentary Assembly of the Council of Europe. Moreover, the ICCL remains concerned about the Government's persistence in accepting diplomatic assurances from the United States. **The ICCL therefore asks the Commissioner for Human Rights to pay particular attention to this issue upon his visit to Ireland and to make appropriate recommendations in this regard.**

3. The Limits to Ireland's Anti-Discrimination Regime

Ireland's equality regime essentially consists of formal equal treatment measures and is not designed to bring about substantive equality. The Employment Equality Acts (EEA) 1998-2004 prohibit discrimination in relation to employment on the basis of: gender, family status, marital status, age, disability, sexual orientation, religious belief, race and membership of the Traveller community.²⁵ The Equal Status Acts (ESA) 2000-2004 outlaw discrimination on the same grounds with regard to goods, services and education. While the range of grounds covered by Ireland's existing equality law compares favourably with other EU countries, in virtually all other respects we lag behind our European counterparts.²⁶ Lastly, the Equality Act 2004²⁷ amends the acts in order to transpose provisions from three EU directives.²⁸

Despite the introduction of these acts, the ICCL does not believe that the Irish Government is fully committed to dealing with prejudice and discrimination. For example, the Equality Authority²⁹ and Equality Tribunal³⁰ are poorly resourced. In 2006 the Equality Authority only received an extra 1.5% in funding³¹ with the result that it cannot perform all its functions³² and there is currently a three year waiting list for persons taking a case to the Equality Tribunal.

²⁵ The Employment Equality Act 1998 is accessible at:

<http://www.irishstatutebook.ie/1998/en/act/pub/0021/index.html>

²⁶ The Equal Status Act 2000 is accessible at:

<http://www.irishstatutebook.ie/2000/en/act/pub/0008/index.html>

²⁷ The Equality Act 2004 is accessible at:

<http://www.oireachtas.ie/documents/bills28/acts/2004/A2404.pdf>

²⁸ The Race Directive (2000/43/EC); the Framework Employment Directive (2000/78/EC) and the Gender Equal Treatment Directive (2002/73/EC).

²⁹ The Equality Authority is an independent agency set up under the EEA to work towards eliminating discrimination in employment, promote equality of opportunity, provide information to members of the public, assist persons to take discrimination cases, prepare submissions for Ministers and invite businesses to carry out equality reviews. Refer to www.equality.ie

³⁰ The principal role of the Equality Tribunal (Office of the Director of Equality Investigations) is to investigate and mediate complaints of discrimination in relation to employment and access to goods, services and education. www.equalitytribunal.ie

³¹ The EA received €5,451,000 in grant aid for 2005 and €5,531,000 in 2006. Source: Department of Justice, Equality and Law Reform (June 2006), *ibid.*

³² Refer to Equality Authority Annual Report for 2006 (2007) available at:

<http://www.equality.ie/index.asp?locID=136&docID=684>

The Government has also undermined the effectiveness the ESA by amending it to include new exemptions to allow for discrimination against non-citizens in relation to education and same-sex couples with regard to social welfare.³³ Further, the Government also amended the ESA because of approaches made by the Vintners Association to transfer jurisdiction from the Tribunal to hear complaints against publicans and hoteliers to the District Court.³⁴ As a result it is much more difficult for vulnerable people to challenge discrimination by hoteliers and publicans as they generally require legal representation in District Court adversarial hearings, which was not the case in relation to Equality Tribunal inquiries. Other weaknesses in the ESA relate to its scope. It does not cover all state functions, activities and controlling duties and this has been acknowledged by the UN Committee Against Racism (CERD). CERD recommended that the ESA should be amended to include government functions.³⁵ Further, the Irish Government has still not ratified Protocol 12 to the ECHR and it is the view of the ICCL that Protocol 12 would remedy many of the current inadequacies in Ireland's equality regime.

Finally, it is worth mentioning that the Government has not transposed all aspects of the aforementioned EU directives and as a result of which the European Commission is currently taking formal action against Ireland.³⁶

³³ Section 49 of the Equality Act 2004 amended the Equal Status Act to allow the Minister for Education and Science to discriminate on the basis of nationality when providing further and higher education grants. This section is in direct response to a decision from the Equality Tribunal in 2003. The Tribunal decided that further and higher education grants are a service and that 'non-nationals' who are denied access to this service are being directly discriminated against. In its decision, the Tribunal advised the then Minister for Education and Science, Noel Dempsey TD, that his current scheme was discriminatory and should be amended accordingly. Instead of taking on board the Tribunal's recommendation, the Government decided to amend the ESA; Section 19 of the Social Welfare (Miscellaneous Provisions) Act 2004 was introduced to amend the main social welfare act to restrict the definition of 'spouse' or 'couple' to a married couple and to opposite sex cohabiting couples for state welfare schemes. This amendment was included by the Department of Social and Family Affairs to reverse the outcome of a successful Equal Status case and has the effect of restoring discrimination against persons in same-sex couples.

³⁴ The Intoxicating Liquor Act 2001 is accessible at

<http://193.178.1.79/2003/en/act/pub/0031/index.html>

³⁵ Committee on the Elimination of Racial Discrimination (14.04.05) *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ireland*, (CERD/C/IRL/CO/2).

³⁶ Refer to European Commission Press Release (27.06.07) "Commission acts to close gaps in race" accessible at:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/928&format=HTML&aged=1&language=EN&guiLanguage=en> Refer to Equality Coalition (2004) *Equality Bill 2004*, accessible from the ICCL website:

http://iccl.ie/DB_Data/publications/EqualityCoalitionSubmissionontheEqualityBill.pdf

The ICCL encourages the Commissioner for Human Rights to assess Ireland's progress in dealing with prejudice and discrimination paying particular attention to regressive measures adopted by the Irish State.

4. Discrimination Against Non-Traditional Families

As is the case in many other countries, domestic relationships in Ireland have become more diverse in the past 30 years. Cohabitation is a growing phenomenon that now has widespread social acceptance. Recent statistics from the Central Statistics Office (CSO) reveal that cohabiting couples represent 11.6 per cent of all family units in 2006.³⁷ The census also shows that the number of same-sex couples stood at 2,090 in 2006 and the number of lone parents at 189,200.

Despite these changes in the population, the Irish State has been slow to afford any legal recognition to these family groups and has traditionally promoted a narrow view of intimate relationships. The Irish Constitution, as interpreted by the Irish courts, only affords married families constitutional recognition and Article 41 has been used to uphold discrimination against children born outside marriage³⁸, unmarried fathers³⁹ and gay men.⁴⁰ Moreover, the State has also enacted legislation that specifically discriminates against same-sex couples. For example, Section 19 of the Social Welfare (Miscellaneous Provisions) Act 2004 was introduced to amend the main social welfare act to restrict the definition of 'spouse' or 'couple' to a married couple and to opposite sex cohabiting couples for state welfare schemes. This amendment was included by the Department of Social and Family Affairs to reverse the outcome of a successful Equal Status case and has the effect of restoring discrimination against persons in same-sex couples.

The Residential Tenancies Bill 2003 also discriminates against same-sex couples. Section 39 relates to the termination of tenancies upon death and protects surviving family members from termination of a tenancy if the main tenancy holder dies. Surviving family members protected include: (i) a spouse of the tenant, (ii) a person who was not a spouse of a tenant but who cohabited with the tenant as husband and wife in the dwelling for a period of at least 6 months ending on the date of the tenant's death, (iii) a child, stepchild or foster child of the tenant, or a person adopted by the tenant under the Adoption 20 Acts 1952 to 1998, being in each case aged 18 years or more or a (iv) a parent of the tenant.

It is the view of the ICCL that both acts are incompatible with Article 8 and Article 14 of the ECHR and specifically the European Court's decision in *Karner v Austria*.⁴¹

³⁷ Refer to the *2006 Census of the Population – Volume 3 – Household Composition, Family Units and Fertility* http://www.cso.ie/census/census2006results/volume_3/volume_3.html

³⁸ *O'B v S* [1984] IR 316.

³⁹ *The State (Nicolaou) v An Bord Uchtála* [1980] IR 32.

⁴⁰ *Norris v Attorney General* [1984] IR 316.

⁴¹ *Karner v Austria* (2003) ECHR 395.

The prospect of amending constitutional provisions on the family (Articles 41⁴² and 42.1⁴³) is extremely remote. Earlier this year the Government indicated its intention to hold a referendum to insert children's rights into the Constitution. However, the Twenty-Eighth Referendum Bill does not include any proposals to amend the definition of the family based on marriage. The ICCL believes that it is a fallacy to suggest that children's rights can be enhanced without changing the definition of the family and recommend that Articles 41 should be replaced with a definition that is closer to Article 8 of the ECHR.

The ICCL encourages the Commissioner for Human Rights to review Ireland's lack of progress in dealing with inequalities in family life and make appropriate recommendations in this regard.

⁴² Article 41.1.1 "The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law".

⁴³ Article 42.1 "The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children".

5. Civil Society, Advocacy and the Case of Pavee Point

Civil society in Ireland plays a key role in promoting human rights and highlighting issues of concern through advocacy and campaign activities. Pavee Point⁴⁴ is a long established non-governmental organisation (NGO) with a strong record in service provision and campaign/advocacy work on Traveller issues. In recent years, Pavee Point has also hosted the Roma Support Group which is an ethnic group led initiative.

In June 2006 a number of Roma families from Romania arrived in Ireland and set up a make-shift camp with no sanitation, water or resources on a roundabout on the M50, a major roadway. As European Union (EU) citizens, the Roma families had the right to travel to Ireland but were unable to find work or secure work permits. As with all newly arrived EU nationals, the State refused to provide them with emergency accommodation or any substantive support. The ICCL understands groups such as the Pavee Point and Crosscare (a church based organisation)⁴⁵ provided humanitarian assistance and raised the plight of these families through the media.

Most of the families were removed by July 2007. However, the new Minister for Justice, Equality and Law Reform, Mr Brian Lenihan publicly questioned the role of Pavee Point in assisting these families. According to a media report, the Minister said that:

If their [Pavee Point's] involvement was simply to provide humanitarian assistance to these individuals, then I do understand their position. But if their position was that these individuals should be permitted to stay here and that we should set aside the whole immigration law of the State and have a back-door entry policy, then that would be wrong (emphasis added).

The good news is that all of the individuals involved voluntarily agreed to return to Romania and left on a flight. Naturally I'm reviewing this case, both in terms of the legislation and whether it is robust enough to deal with this type of emergency, and secondly, to see if organisations which are funded by the exchequer here are performing their correct roles (emphasis added).⁴⁶

⁴⁴ www.paveepoint.ie

⁴⁵ www.crosscare.ie

⁴⁶ Lally, C. and Healy, A. (27 July 2007) "Pavee's Roma role questioned", *Irish Times*.

www.ireland.com

Following these comments, the Minister requested a senior civil servant to carry out a review of Pavee Point's role in the matter and this exercise is apparently complete.

The ICCL is concerned about this development and the chilling effect it may have on the NGO sector. The Minister seems to suggest that organisations which receive public monies to provide services cannot carry out other functions such as advocacy and campaign activities on behalf of their client group.⁴⁷ The Minister's comments also suggest that organisations which receive funding from the State cannot hold or express different viewpoints from the Government.

Freedom of expression enjoys a special status under the ECHR and the European Court of Human Rights frequently refers to it as "one of the essential foundations of a democratic society".⁴⁸ **The ICCL believes that it is vital that the Commissioner for Human Rights examines the Minister's review of Pavee Point and assesses whether it and any subsequent action is compatible with the ECHR.**

The review of Pavee Point must be understood in the context of existing legislation governing elections. NGOs are required to register themselves as "third parties" if they envisage accepting a donation "for political purposes" exceeding €126.97 and disclose their donors. Donations for political purposes from the same donor during the same year may not exceed €6,348.69. This was recently reviewed by the Office for Democratic Institutions and Human Rights (ODIHR). Given the chilling impact that this can have on NGOs, ODIHR recommended that consideration should be given to amend the 1997 Electoral Act, with a view to specifying and limiting the definition of political purpose to ensure as it is currently so broad that it "may constitute an impediment for legitimate advocacy activities of NGOs".⁴⁹

The Charities Bill 2007⁵⁰ is currently being considered by the Oireachtas. The overall policy aim of the Bill is to reform the law relating to charities in order to ensure greater accountability and to protect against abuse of charitable status and fraud. On the face of the Bill as presented, is not clear whether the promotion of human rights, equality and social justice will be considered to be a charitable purpose under the new system. The Department of Community, Rural and Gaeltacht Affairs issued a consultation paper on the proposed regulatory framework for charities and following on from the responses received, specific recognition of the advancement of human rights and social justice, as well as the promotion of equality and diversity was included in the initial draft Bill.

⁴⁷ The ICCL does accept however the public monies designated for a particular purpose should not be used for something else without the permission of the funder.

⁴⁸ *Handyside v UK* (1979) 1 EHRR 737; *Jersild v Denmark* (1994) 19 EHRR 1; and *Goodwin v UK* (1996) 22 EHRR 123.

⁴⁹ OSCE/ODIHR (11.09.07) *Ireland – Parliamentary Elections 24 May 2007: OSCE/ODIHR Election Assessment Mission Report*, available at: <http://www.osce.org/odihr-elections/24039.html>

⁵⁰ The Charities Bill 2007 is accessible at: <http://www.oireachtas.ie/documents/bills28/bills/2007/3107/b3107d.pdf>

However, in the Bill which was presented to the Dáil in April 2007, this explicit reference to human rights, social justice and equality has been deleted. The ICCL is concerned that this omission could result in a denial of charitable status for some human rights and equality organisations. The ICCL also considers that the lack of express reference in the legislation could damage the public image of human rights and equality bodies. **The ICCL requests the Commissioner on Human Rights to look at these legislative provisions and to make recommendations to the Government.**

6. Immigration, Residence and Protection Bill 2007

One month before Ireland's General Election on 24 May 2007, the Government introduced the Immigration, Residence and Protection Bill 2007.⁵¹ The purpose of the Bill is to set out a consolidated regulatory framework for the "management of inward migration to Ireland" as well as dealing with claims for protection. It is the view of the ICCL that several provisions within in this Bill are unconstitutional and are possibly incompatible with the ECHR. For example, Section 94 of the Bill deals with marriage of foreign nationals and imposes a new requirement on them to seek the permission of the Minister for Justice, Equality and Law Reform before they marry. Not only does this section give the Minister broad powers to refuse permission to a couple who want to marry, it also criminalises anyone who solemnises a marriage without his permission. It appears that this crude restriction on the right to marry is being introduced with a view to controlling unauthorised immigration. However, it is the view of the ICCL that it is a disproportionate interference with the right of men and women to marry (Article 12, ECHR) and privacy and family life (Article 8).

The ICCL urges the Commissioner for Human Rights to review the provisions in the Immigration, Residence and Protection Bill 2007 and make appropriate recommendations designed to render the Bill human rights compliant.

⁵¹ The Immigration, Residence and Protection Bill is accessible at:
<http://www.oireachtas.ie/documents/bills28/bills/2007/3707/b3707s.pdf>