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U.S. Department of State

Ireland Report on Human Rights Practices for 1997

Released by the Bureau of Democracy, Human Rights, and Labor, January 30, 1998.

IRELAND

Ireland is a parliamentary democracy with a long tradition of orderly transfer of power. The Government is headed by a President and a Prime Minister, and there is a bicameral Parliament. The judiciary is independent.

The national police are under the effective civilian control of the Minister of Justice and have sole responsibility for internal security. Ireland's principal internal security concern has been to prevent the spillover of terrorist violence from Northern Ireland. The Irish Republican Army's (IRA) declaration of a cease-fire on July 19 led to the start of substantive political negotiations between key parties to the conflict.

Ireland has an open, market-based economy that is highly dependent on international trade. It is a large net recipient of funds from the European Union (EU) designed to raise per capita gross national product to the EU average. Despite strong economic growth over the past few years, unemployment remains 10.8 percent.

The Government generally respected the human rights of its citizens. Human rights problems arise primarily from: prison overcrowding and substandard facilities; instances of abuse by police and prison officials; the continuation of special arrest and detention authority and the nonjury court; discrimination and violence against women; abuse of children; the occasional censorship of films, books, and periodicals; discrimination against refugees; and a lack of explicit antidiscrimination legislation,

especially in relation to persons with disabilities and "travelers" (an itinerant ethnic community).

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Political and Other Extrajudicial Killing

There were no reports of political or other extrajudicial killings.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits such practices, and security personnel generally did not employ them.

While mistreatment of persons in police custody is not widespread, an unspecified number of cases have been filed by detainees claiming damages for injuries sustained while in police custody. No official public action has yet been taken in the case of two persons accused of murdering a police officer in 1996, who alleged that they had been severely beaten while in police custody and who appeared in court with physical injuries consistent with their allegations.

Ireland has a low incarceration rate (76 inmates per 100,000 population), and the prison regime is generally liberal. However, the physical infrastructure of many prisons is barely adequate: facilities are plagued by chronic overcrowding, requiring doubling-up in many single-person cells. Although 2 new prisons have been built, most of the country's 14 prisons are very old buildings that were originally intended for other uses; as a result, many cells do not have toilets and running water. The Government is in the process of upgrading prison facilities to improve sanitary conditions and to meet statutory health and safety standards.

According to the Justice Department, no cases had been filed against the State for alleged mistreatment of prisoners as of October, although an unspecified number of complaints were being processed by individual prison governors.

The Government continued to arrest and incarcerate at Portlaoise prison persons involved in paramilitary activity. Conditions for these inmates are the same, if not better, than those for the general prison population.

The Government began a 3-year prison construction plan to build 800 new cells and a new women's prison annex at Mountjoy prison.

International human rights monitors are permitted to visit prisons without reservation.

d. Arbitrary Arrest, Detention, or Exile

The Constitution stipulates that no person shall be deprived of personal liberty without due process under the law. A detainee has the right to petition the High Court, which is required to

order release unless it can be shown that the person is being detained in accordance with the law. Under the 1984 Criminal Justice Act, the maximum period of detention for questioning in most cases is 12 hours, plus a possible extension of 8 hours overnight to allow a detainee to sleep.

Detention without charge is permitted for up to 48 hours, however, in cases covered by the 1939 Offenses Against the State Act. This act allows police to arrest and detain for questioning anyone suspected of committing a "scheduled offense," i.e., one involving firearms, explosives, or membership in an unlawful organization. Although the stated purpose of the act is to "prevent actions and conduct calculated to undermine public order and the authority of the state," it is not restricted to subversive offenses. Therefore, the police have broad arrest and detention powers in any case involving firearms. However, under the terms of the decommissioning law enacted in February in support of the Northern Ireland peace process, proceedings may not be instituted against persons in relation to any offense that may be committed in the course of decommissioning illegally held arms in accordance with an approved arms decommissioning scheme.

The act also provides for the indefinite detention, or internment, without trial of any person who is engaged in activities that are "prejudicial to the preservation of public peace and order or to the security of the state." While this power has not been invoked since the late 1950's, the Government could do so by simply issuing a proclamation. There are no provisions for the 1939 Offenses Against the State Act be renewed; it continues indefinitely.

The Criminal Justice (Drug Trafficking) Act of 1996 permits detention without charge for up to 7 days in cases involving drug trafficking. To hold a suspected drug trafficker for more than 48 hours, however, the police must seek a judge's approval.

Following approval in 1996 of a referendum calling for stricter bail laws, legislation was enacted in May that is designed to allow a court to refuse bail to a person charged with a serious offense where it is reasonably considered necessary to prevent the commission of a serious offense by that person. A serious offense is defined by reference to a schedule of offenses contained in the bill and must be one that carries a penalty of 5 years' imprisonment or more. However, by year's end the Justice Minister had not signed a statutory order which would allow the courts to implement the law's provisions. The lack of accommodations for prisoners was cited as the reason for the delay.

The authorities do not impose exile.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government respects this provision in practice. The judiciary provides citizens with a fair and efficient judicial process.

The judicial system includes 23 district courts, 8 circuit courts, the High Court, the Court of Criminal Appeal, and the Supreme Court. Judges are appointed by the President on the advice of the Government.

Most criminal cases are prosecuted by the Director of Public Prosecutions, a state official with semiautonomous status. Jury trial is the norm. The accused generally may choose his or her attorney. For indigent defendants, the state assumes the cost of counsel.

However, the Constitution explicitly allows "special courts" to be created when "ordinary courts are inadequate to secure the

effective administration of justice and the preservation of public peace and order." In 1972, under the 1939 Offenses Against the State Act, the Government set up a nonjury "Special Criminal Court" (SCC) to try "scheduled offenses" (see Section 1.d.). Largely a reaction to the spillover of paramilitary violence from Northern Ireland, the SCC has been justified over the years as addressing the problem of jury intimidation in cases involving defendants with suspected paramilitary links.

Three cases were completed in the Special Criminal Court between January and June, and 13 cases were pending as of October. In addition to "scheduled offenses," the Director of Public Prosecutions can have any nonscheduled offense tried by the SCC where he is of the opinion that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order in relation to a trial of a person on such charges and so certifies in writing.

In lieu of a jury, the Special Criminal Court always sits as a three-judge panel. Its verdicts are by majority vote. Rules of evidence are essentially the same as in regular courts, except that the sworn statement of a police chief superintendent identifying the accused as a member of an illegal organization is accepted as prima facie evidence. Sessions of the SCC are usually public, but the judge may exclude certain persons other than journalists. Appeals of SCC decisions are allowed in certain circumstances.

There were no reports of political prisoners.

f. Arbitrary Interference With Privacy, Family, Home, or Correspondence

The Supreme Court has affirmed that, although not specifically provided for in the Constitution, the inviolability of personal privacy, family, and home must be respected in law and practice. This ruling is fully honored by the Government.

In 1996 the High Court upheld a referendum that removed the ban on divorce. The Government enacted implementing legislation allowing courts to grant divorces under certain circumstances.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides individuals with the right to "express freely their convictions and opinions." Freedom of the press, however, is subject to the qualification that it not "undermine public order or morality or the authority of the state." Publication or utterance of "blasphemous, seditious, or indecent matter" is prohibited. While the press, in practice, operates freely, the 1961 Defamation Act (which puts the onus on newspapers and periodicals accused of libel to prove defamatory words are true) and the 1963 Official Secrets Act (which gives the State wide scope to prosecute unauthorized disclosures of sensitive government information) are believed to result in some self-censorship.

Broadcasting remains mostly state controlled, but under the 1988 Radio and Television Act, private sector broadcasting is growing. There are 21 independent radio stations, and negotiations are proceeding for an independent television station. The Broadcasting Complaints Commission oversees standards and investigates complaints about programming. The 1960 Broadcasting Act empowers the Government to prohibit the state-owned radio and television network from broadcasting any matter that is "likely to promote or incite to crime or which would tend to undermine the authority of the state." It was on this basis that the Government banned Sinn Fein (the legal political front of the IRA) from the airwaves from 1971 to 1994.

Films and videos must be screened and classified by the Office of the Film Censor before they can be shown or sold. Distributors must pay a fee of about 11 cents (7 Irish pence) per foot of film, which is used to finance the censor's office. Under the 1923 Censorship of Films Act, the censor has the authority to cut or ban any film that is "indecent, obscene or blasphemous" or which tends to "inculcate principles contrary to public morality or subversive of public morality." No films were banned in 1997. Decisions of the censor can be appealed to a nine-member appeal board, but neither the censor nor the appeal board is required to hear arguments or evidence in public or to state the reasons for its decisions.

Books and periodicals are also subject to censorship. The 1946 Censorship of Publications Act calls for a five-member board to examine publications referred to it by the customs service or a member of the general public. It can also examine books or periodicals on its own initiative. The board can prohibit the sale of any publication that it judges to be indecent or obscene. In 1997 the board banned at least 24 books and 90 periodicals, compared with 46 books and 43 periodicals in 1996.

Academic freedom is respected.

b. Freedom of Peaceful Assembly and Association

The Constitution provides citizens with the right to "assemble peaceably and without arms" and to form associations and unions. However, it also allows the State to "prevent or control meetings" that are calculated to cause a breach of the peace or to be a danger or nuisance to the general public. Under the 1939 Offenses Against the State Act, it is unlawful to hold any public meeting on behalf of, or in support of, an illegal organization. Although the Government prosecutes and incarcerates persons for mere membership in a terrorist organization, it allows meetings and assemblies by some groups that are associated with illegal terrorist organizations.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government does not hamper the teaching or practice of any faith. Even though Ireland is overwhelmingly Roman Catholic, there is no state religion. However, almost all primary and secondary schools are denominational, managed and controlled by the Catholic Church. Religious instruction is an integral part of the curriculum, but there are provisions for parents to exempt their children from such instruction. There is no widespread discrimination against nontraditional religious groups.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

There is complete freedom of movement within the country, as well as freedom to engage in foreign travel, emigration, and voluntary repatriation.

The Government approved a new refugee law in 1996 but, except for provisions relating to the Dublin Convention of 1990, which harmonizes European Union (EU) asylum procedures, it has not been implemented. Under provisions of the Convention, persons who arrive in Ireland from another EU state and claim asylum are to be returned to the EU state from which they arrived to make their claim. Ireland implements its obligations under the 1951 United Nations (U.N.) Convention Relating to the Status of Refugees on an administrative basis. Specific administrative procedures for the determination of refugee status were drawn up in consultation with the U.N. High Commissioner for Refugees; in 1992 the Supreme Court ruled that these procedures were binding on the Minister of Justice. However, as the number of asylum seekers has increased (from only 31 in 1990 to nearly 3,000 in the first 9 months of 1997), these administrative procedures have proved inadequate. In particular there have been complaints

of long delays and a lack of transparency in decisions concerning refugee status. There is an estimated backlog of 4,000 asylum cases. The issue of the provision of first asylum did not arise in 1997; nor were there reports of the forced return of persons to a country where they feared persecution. Allegations of racism in dealing with asylum seekers sparked a public debate on immigration (see Section 5).

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitutional requirement that parliamentary elections be held at least every 7 years has always been met. Suffrage is universal for citizens over the age of 18, and balloting is secret. Several political parties have seats in the bicameral Parliament. Members of the Dail (House of Representatives)--the chamber that carries out the main legislative functions--are popularly elected; in the Seanad (Senate), some members are elected and some are appointed by various bodies. The President is popularly elected for a 7-year term and is limited to 2 terms. An appointed Council of State serves as an advisory body to the President.

Women are underrepresented in government and politics. Although a woman is president, only 20 of the 166 deputies in the Dail and 8 of the 60 senators are women. Three of the 15 government ministers are women, as are 2 of the 17 junior ministers. There are 3 women on the 20-member High Court; only 1 of the 8 Supreme Court judges is a woman. While women participate in all departments of Government, they are underrepresented at senior levels.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

The principal independent organization monitoring domestic human rights problems, the Irish Council for Civil Liberties (ICCL), operates generally without hindrance from the Government. However, with regard to allegations of mistreatment of two suspects held in connection with the murder of a police officer in 1996, the ICCL indicated in a report issued jointly with British Irish Rights Watch in July that its efforts to investigate these allegations did not receive the cooperation of the police authorities. The ICCL report said that "this incident raises serious questions about the attitude of the Garda (police) authorities toward bona fide human rights organizations investigating allegations of human rights abuses in the Republic of Ireland." The ICCL report requested the Irish Government to set up a "fully independent inquiry, headed by a judge and with high court powers to summon and question witnesses, to investigate the treatment of persons arrested in Limerick following Garda McCabe's murder." The Minister of Justice told the Dail in December that, while he would not be prepared to tolerate any abuse of persons in custody, it would not be appropriate to take any action on the allegations pending completion of the murder trials.

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The Constitution, as amended, forbids state promotion of one religion over another and discrimination on the grounds of religious profession, belief, or status. Except as regards employment, however, neither the Constitution nor the law prohibits discrimination on the basis of disability, race, sex, language, or social status.

To address these and other shortcomings in civil law, the Government in 1993 created the Department of Equality and Law Reform, whose responsibilities were folded into the Department of Justice in 1997. An equal status law and an employment equality law drafted by the Department were passed by the Dail in 1997 but were ruled unconstitutional by the Supreme Court.

Women

A government task force on violence against women issued its report in April. The task force concluded that the problem, in particular domestic violence, is widespread and that many women believe that existing services are incapable of responding to their needs in trying to deal with violence in relationships. The task force found that many women believe that the legal and court systems minimize the seriousness of crimes committed against women, fail to dispense justice, and make women feel at fault for what happened. The task force cited a need to compile more accurate and comprehensive statistics on the nature and extent of the problem, and issued a series of recommendations that are under government review.

The task force found that only a small number of rape cases are ever reported to the police and that an even smaller number lead to criminal proceedings. According to the Dublin Rape Crisis Center, while crime generally fell over the 18 months to June, the level of reported rapes continued to rise. The Center received 6,270 calls between June 1996 and May 1997 and concluded that there was disquieting evidence that rape and sexual assaults--by their very number and frequency--were dulling the response of the public at large. The Center estimated that only 28 percent of rape victims report the crime to police and that only 2 percent of these cases resulted in convictions in 1996. A 1990 act criminalized rape within marriage and provided for free legal advice to the victim. There are 12 women's refuges in the country, funded in part by the Government, with accommodation for about 50 families.

Discrimination against women in the workplace is unlawful, but inequalities persist regarding pay and promotions in both the public and the private sectors. Women hold about 37 percent of public-sector jobs. Working women are also hampered by the lack of adequate child care facilities. The Maternity Protection Act was passed in 1994, providing a woman 14 weeks of maternity leave and the right to return to her job. The Anti-Discrimination (Pay) Act of 1974 and the Employment Equality Act of 1977 provide for protection and redress against discrimination based on gender and marital status. The Employment Equality Agency monitors their implementation. The number of cases brought to the agency has fallen in recent years, but progress in eliminating the differential in earnings has been modest. In 1997 the hourly industrial wage for women was about 70 percent of that received by men, and weekly earnings of women averaged 69 percent of the weekly pay of men.

Children

The Government is committed to the welfare and rights of children, as demonstrated by its ongoing implementation of the 1991 Child Care Act. Education is compulsory for children 6 to 15 years of age. Among other things, the act places a statutory duty on government health boards to identify and help children who are not receiving adequate care and gives the police increased powers to remove a child from the family when there is an immediate and serious risk to health or welfare. The Minister of State (junior minister) for Health has special responsibility for children's policy, including implementation of the Child Care Act. The Status of Children Act of 1987 abolished the concept of illegitimacy and provided for equal rights for children in all legal proceedings.

Sexual abuse of children continued to receive significant media attention, with almost daily reports involving cases of incest or pedophilia. The Dublin Rape Crisis Center reported that 53 percent of contacts with its crisis line involved child sexual abuse. The Government has sought to strengthen procedures for reporting child abuse but has refrained from enacting a mandatory reporting requirement.

People With Disabilities

An estimated 15 percent of the adult population have a disability; 80 percent of those are unemployed. There is currently no legislation to protect persons with disabilities from discrimination in employment or in other matters or to improve their access to buildings or transportation. Few public or private buildings have facilities for people with disabilities. The Government is studying the recommendations of the report issued in 1996 by the Commission on the Status of People with Disabilities. Following the Supreme Court's ruling that the employment equality bill was unconstitutional, the Government stated that it plans to introduce new employment equality legislation.

National/Racial/Ethnic Minorities

There are some 25,000 nomadic people in Ireland who regard themselves as a distinct ethnic group called "travelers," roughly analogous to the Roma of continental Europe. The "traveling" community has its own history, culture, and language. The travelers' emphasis on self-employment and the extended family distinguish them from the rest of Irish society. In 1991 a European Parliament committee reported that in Ireland, "the single most discriminated against ethnic group is the 'traveling people.'" That remained true in 1997.

Travelers are regularly denied access to premises, goods, facilities, and services; many restaurants and pubs, for example, have a policy of not serving them. Despite national school rules that provide that no child may be refused admission on account of social position, travelers frequently experience difficulties in enrolling their children in school. Sometimes they are segregated into all-traveler classes. Of an estimated 4,000 traveler families, about 1,000 live on roadsides or on temporary sites without toilets, electricity, or washing facilities.

The equal status bill passed by the Dail would have prohibited discrimination against travelers, among other categories of people, but it did not take effect, as it was ruled unconstitutional by the Supreme Court.

Under new procedures designed to respond to a large influx of asylum seekers--nearly 3,000 by the end of September--more than 500 persons were refused entry and returned to the United Kingdom. Advocates for refugees and other immigrants claimed that nonwhite persons were disproportionately singled out under the new port controls. The influx of asylum seekers, some of whom were migrating for economic reasons, sparked a public debate over how open society is to new immigrants and triggered isolated racist incidents.

Section 6 Worker Rights

a. The Right of Association

The right to join a union is provided for by law, as is the right to refrain from joining. About 55 percent of workers in the private and public sectors are members of unions. Police and military personnel are prohibited from striking, but they may form associations to represent themselves in matters of pay, working conditions, and general welfare. The right to strike is freely exercised in both the public and private sectors. The Industrial Relations Act of 1990 prohibits retribution against strikers and union leaders; the Government effectively enforces this provision through the Department of Enterprise and Employment. In 1997 the number of industrial disputes and the number of work days lost by strikes declined from 1996. The Irish Congress of Trade Unions (ICTU) represents 65 unions in the Republic of Ireland and Northern Ireland. Both the ICTU and the unions affiliated with it are independent of the Government and of the political parties. Unions may freely form or join federations or confederations and affiliate with international bodies.

b. The Right to Organize and Bargain Collectively

Labor unions have full freedom to organize and to engage in collective bargaining. The Anti-Discrimination (Pay) Act of 1974 and the Employment Equality Act of 1977 make the Employment Equality Agency responsible for oversight of allegations of antiunion discrimination. If the Agency is unable to effect resolution, the dispute goes before the Labor Court, which consists of one representative each for the employer and the union, plus an independent chairperson. The Unfair Dismissals Act of 1977 provides various forms of relief in cases of employers found guilty of antiunion discrimination, including the reinstatement of workers fired for union activities.

Most terms and conditions of employment are determined through collective bargaining, in the context of a national economic pact negotiated every 3 years by the "social partners," i.e., representatives of unions, employers, farmers, and the Government. A 3-year agreement negotiated among the social partners in 1996, entitled "Partnership 2000," remains in effect.

The Industrial Relations Act of 1990 established the Labor Relations Commission, which provides advice and conciliation services in industrial disputes. The Commission may refer unresolved disputes to the Labor Court, which may recommend terms of settlement and may set up joint employer-union committees to regulate conditions of employment and minimum wages in a specific trade or industry.

There is an export processing zone at Shannon airport with the same labor laws as the rest of the country.

c. Prohibition of Forced or Compulsory Labor

Forced and bonded labor, including that performed by children, is prohibited by law and does not occur.

d. Status of Child Labor Practices and Minimum Age for Employment

By law children are required to attend school until the age of 15. Under the terms of the Protection of Young Persons Act, which took effect in 1997, employers may not employ those under the age of 16 in a regular full-time job. Employers may hire 14- or 15-year-olds for light work on school holidays, as part of an approved work experience or educational program, or on a part-time basis during the school year (for children over the age of 15 only). The act gives effect to international rules on the protection of young workers drawn up by the ILO and the EU; it sets rest intervals and maximum working hours, prohibits the employment of 18-year-olds for late night work, and requires employers to keep specified records for their workers who are under 18 years of age. The law prohibits forced and bonded child labor, and the Government enforces this prohibition effectively (see Section 6.c.).

e. Acceptable Conditions of Work

There is no general minimum wage law, but there are several minimum rates of pay applicable to specific industrial sectors, mainly those with lower-than-average wages. Although the lowest of these minimum wages is not sufficient to provide a decent living for a family of four, low-income families are entitled to additional benefits such as subsidized housing and children's allowances.

The standard workweek is 39 hours. Working hours in the industrial sector are limited to 9 hours per day and 48 hours per week. Overtime is limited to 2 hours per day, 12 hours per week, and 240 hours in a year. The Department of Enterprise and Employment is responsible for enforcing four basic laws dealing with occupational safety that provide adequate and comprehensive coverage. No significant

complaints arose from either labor or management regarding enforcement of these laws. Recent regulations provide that employees who find themselves in situations that present a "serious, imminent and unavoidable risk" may leave without the employer being able to take disciplinary action.

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