

**Joint Committee on Public Service Oversight and Petitions**

**and**

**the Joint Committee on Justice, Defence and Equality**

**Ireland’s Compliance with Article 2 of the European Convention on Human Rights**

**Wednesay 10 June 2015, 9.30am**

**Opening Statement of the Irish Council for Civil Liberties**

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. The following statement reflects the current view of the ICCL in relation to Ireland’s compliance with Article 2 of the European Convention on Human Rights (ECHR).

**Article 2 ECHR**

Article 2 of the European Convention on Human Rights places “a positive obligation” on States to investigate deaths which may have been caused by acts or omissions of the State, its servants or agents.[[1]](#footnote-1)

The obligation requires that provision be made in the State’s judicial system for an official investigation procedure with the capability to ensure that, where lives are lost as a result of dangerous activity, those responsible are held properly to account. Such a procedure should extend to the application of appropriate criminal penalties to the extent that this is justified by the findings from an investigation.

Following the 2001 judgment of the European Court of Human Rights (ECtHR) in *Jordan v UK*, the Court has set minimum standards for procedural safeguards which should be met in the conduct of such investigations. In order to be considered compliant with Article 2, investigations should be independent, effective, prompt, open to public scrutiny, include next-of-kin and be established by the State at its own volition. [[2]](#footnote-2)

In order to guarantee independence, the office conducting such investigations must have sufficient resources and be able to act on its own initiative and to produce findings free from external considerations or influence. To be considered effective, an investigation must have the necessary powers to gather evidence and establish the relevant facts in each case. The element of public scrutiny required must make it possible to secure accountability in practice as well as theory. The inclusion of next-of-kin must be assured to the extent necessary to safeguard their legitimate interests. Investigations must be conducted without undue delay and in a timely manner. Finally, in establishing such investigations, the State should act on its own initiative and not wait for a request of next-of-kin or other person.

The merits of an investigation that adheres to these procedural safeguards has been stated as ensuring:

* so far as possible, the full facts are brought to light;
* culpable and discreditable conduct is exposed and brought to public notice;
* suspicion of deliberate wrongdoing (if unjustified) is allayed;
* dangerous practices and procedures are rectified; and
* those who have lost their relative may at least have the satisfaction of knowing that lessons learnt from his or her death may save the life of another. [[3]](#footnote-3)

It should be noted that the Court has further determined that the obligation to conduct an Article 2 compliant investigation extends, where necessary, to cases of medical negligence. [[4]](#footnote-4) The procedural obligation has been interpreted by the Court as imposing upon the State the duty to have in place an effective judicial system for establishing both the cause of death of the individual under the care and responsibility of health professionals and any responsibility on the part of the latter.

**The Cornoner**

While there can be many forms of investigation, the body in Ireland which, on a statutory basis, most closely embodies the function as envisaged by the Strasbourg Court, is the office of the Coroner. The core function of the Coroner is to investigate sudden and unexplained deaths so that a death certificate can be issued.[[5]](#footnote-5) Under section 17 the 1962 Coroners Act, the Coroner has a duty to hold an inquest into the death of a person where, in his opinion, the death may have occurred in a violent or unnatural manner, or suddenly or from unknown causes, or in a place or in circumstance under which it is required that an inquest should be held.[[6]](#footnote-6) This includes such deaths as occur in custody or detention, as a result of criminal activity, or in a medical or institutional setting.

In July 2012, in response to a parliamentary question on whether the Act complies with the terms of the Convention in relation to the State’s obligations regarding investigation in cases of deaths caused by medical negligence in public hospitals, the former Minister for Justice and Equality replied that he was satisfied that this was the case.[[7]](#footnote-7) The Minister stated that ‘the coroner is an independent officer charged with the investigation of certain reportable deaths. The primary public expression of that investigation is the inquest which seeks factually to discover the circumstances of the person’s death. It provides accessibility to the deceased’s family and affords a sufficient element of public scrutiny”. In relation to the specific inquest in question the Minister stated that he was “satisfied that the inquest met the State’s obligations under Article 2 of the Convention.”

However, provisions under the Coroners Act 1962 and subsequent amending acts do not enable the Coroner to make findings of fact against individuals who may be responsible for the death in the course of the investigation for the purposes of imposing criminal or civil liability. Section 30 of the 1962 Act explicitly states that questions of civil or criminal liability shall not be considered or investigated at an inquest and accordingly every inquest shall be confined to ascertaining the identity of the person in relation to whose death the inquest is being held and how, when, and where the death occurred.[[8]](#footnote-8) In addition, section 31 of the Act specifically prohibits the Coroner from engaging in censure or exoneration of any person in relation to the verdict.[[9]](#footnote-9)

These provisions serve to negate the former Minister’s suggestion that a Coroner’s inquest complies with the criteria for an Article 2 investigation as established by the European Court of Human Rights. As it is limited to determining the how, when and where of death but - crucially, neither who nor why - an inquest does not satisfy one of the central tenets of Article 2 compliance, that of establishing and attributing responsibility. Furthermore, there must be a full and effective investigation of a death at a coroner’s inquest if this is realistically the only opportunity for the State to perform its procedural obligations.

The ICCL also considers that Ireland is failing to meet its procedural obligations under the Convention in cases involving deaths or serious injuries in custody. In the cases of **Brian Rossiter** (who died in custody in September 2002); **Terence Wheelock** (who died in custody in September 2005); **Dwayne Foster** (who died in custody in March 2006) and **Gary Douche** (died in custody in August 2006) significant concern arose in relation to whether the investigations into these deaths met with ECHR procedural obligation requirements of independence, effectiveness, promptness and transparency, a fact highlighted by the ICCL in its reporting to international treaty monitoring bodies including the Council of European Committee for the Prevention of Torture and the UN Human Rights Committee.

**Coroner’s Bill 2007**

It has been suggested that the Coroners Bill 2007[[10]](#footnote-10) may broaden the remit of a coronial inquest system in Ireland (similar to reforms undertaken in the UK) and in the process, meet the obligations for compliance with an Article 2 investigation. However, the Bill, now almost 6 years old, remains at Oireachtas Committee stage.[[11]](#footnote-11) The options that remain open to the State in the circumstances outlined above are the often prohibitively expensive full public inquiry model or, in cases of suspected criminal conduct, a full criminal investigation.

**Conclusion**

The Irish Council for Civil Liberties considers that, in the areas of deaths in custody and medical negligence, Ireland does not comply with Article 2 of the European Convention on Human Rights and that this is a serious matter requiring urgent legislative attention.

1. Jacobs,White and Ovey, *The European Convention on Human Rights*, 5th edn (2010, Oxford) at 161 [↑](#footnote-ref-1)
2. *Jordan v UK*, (2001) 37 EHRR 52 [↑](#footnote-ref-2)
3. *R (Amin) v Secretary of State for the Home Department* [2003] UKHL 51 [↑](#footnote-ref-3)
4. Powell v UK, (no. 45305/99) 5 April 2000 cf. Karen Reid, The Practitioners Guide to European Convention on Human Rights, 3rd edn (2007, Thompson) at 558 [↑](#footnote-ref-4)
5. Coroner Service, <http://www.coroners.ie> [↑](#footnote-ref-5)
6. Section 17, Coroners Act 1962 [↑](#footnote-ref-6)
7. Parliamentary Question Number 504 & 505, 3 July 2012, Dáil Éireann. Available at: <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2012070300328?opendocument> [↑](#footnote-ref-7)
8. Section 30, Coroners Act 1962 [↑](#footnote-ref-8)
9. Section 31, Coroners Act 1962 [↑](#footnote-ref-9)
10. Coroners Bill 2007. Available at http://www.oireachtas.ie/documents/bills28/bills/2007/3307/b3307s.pdf [↑](#footnote-ref-10)
11. Parliamentary Question Number 504 & 505, 3 July 2012, Dáil Éireann. Available at: <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2012070300328?opendocument> [↑](#footnote-ref-11)