



THE BAR  
OF IRELAND

*The Law Library*

Submission by The Human Rights  
Committee of the Council of The Bar  
of Ireland to the Strategic Human  
Rights Committee of An Garda  
Síochána

14 January 2022

# **OBSERVATIONS ON DRAFT GARDA HUMAN RIGHTS STRATEGY**

## **INTRODUCTION**

The Council of the Bar of Ireland (“the Council”) is the accredited representative body of the independent referral Bar in Ireland, which consists of members of the Law Library and has a current membership of approximately 2,200 practising barristers.

The Bar of Ireland is long established and its members have acquired a reputation amongst solicitors, clients and members of the public at large for providing representation and advice of the highest professional standards. At the heart of the independent referral bar are the principles that barristers are independent, owe an overriding duty to the proper administration of justice, and fearlessly defend the interests of their clients in accordance with ethical duties.

In this representative capacity, the Council is pleased to have been invited to make observations on the draft Human Rights Strategy 2022–2024 of An Garda Síochána (the “Draft Strategy”) and is confident that its members’ collective experience and expertise (which informs these observations) will assist it in formulating a human rights strategy which will further embed human rights values in all aspects of its work.

As is to be expected, the Draft Strategy largely addresses organisational and structural matters as to the various mechanisms and processes to be employed by An Garda Síochána in seeking to embed human rights values further within the force. Given the nature of the document, it does not address specific human rights issues (such as the rights of persons detained for questioning) and the Council appreciates that, for a document of this type, this is an appropriate approach to adopt. For that reason, these observations do not, for the most part, address specific issues of human rights law which arise in the work of An Garda Síochána but, instead, address certain general issues arising from the Draft Strategy.

## **THE DRAFT STRATEGY**

By way of an overall general observation, the Council welcomes the continued development of a Human Rights Strategy by An Garda Síochána which is apparent from this document. In particular, the Council welcomes the commitment of An Garda Síochána as set out in the document to continue to embed human rights values throughout the force in a practical and effective manner. It is noted that it is intended that enhanced staffing of the Human Rights Section of An Garda Síochána will remain a priority and it is to be hoped that that intention will be realised. Human rights issues can and do raise difficult and complex issues for members of a police force discharging their duties and such members need proper support in terms of education, training, ongoing promotion of awareness and day-to-day help in order to assist them in navigating the complexities of human rights law in their work.

The Council is of the view that proper respect for, and vindication of, human rights constitute an essential component of a properly functioning democratic society in which individuals are free to seek to live their lives to their full potential. It considers that it is incumbent on all organs of the State to do all within their respective powers to ensure that human rights values underpin all aspects of the State's activities. As the organisation whose members daily occupy the front line in enforcing the rule of law in the State, An Garda Síochána plays a vital role in promoting and vindicating human rights values within the State and in seeking to ensure that there is a meaningful and effective respect for such rights within the State.

## **TRAINING AND EDUCATION**

The Council welcomes the focus in the Draft Strategy on training and education in relation to human rights and, in particular, the statement that *“the provision of human rights training...continues to be a priority for this Strategy.”*

The Council considers it important that members of An Garda Síochána are familiar with the key sources of human rights in Irish law, namely the Constitution of 1937 and the European Convention on Human Rights, as given effect in Irish law under the European Convention on Human Rights Act 2003, and rights and obligations

deriving from Ireland's membership of the European Union, such as under the Charter of Fundamental Rights, where relevant.

The breadth of the human rights contained within the above instruments is considerable, impacting on such important matters as the right to life, right to liberty, right to privacy, and freedom of expression. Greater understanding on the part of An Garda Síochána of its rights and obligations under these instruments will, in the Council's view, lead to enhanced appreciation of the rule of law within the force, a more effective justice system, more efficient and effective policing, and more productive relations between the force and the community.

Prevention of crime and respect for the human rights of suspected criminals frequently raise questions of balancing rights and proportionality. How human rights are respected by An Garda Síochána will turn, in many instances, on the behaviour of individual Gardaí, but caselaw nonetheless shows that responsibility for respecting human rights ultimately rests with the most senior members of the force, particularly in the context of devising and implementing policing strategies. Training needs to be devised accordingly to reflect the need for proper understanding of human rights law at all levels of the force.

The Council notes that the Draft Strategy refers to a number of specific areas where human rights instruments are relevant. The Council suggests that, where possible, the section on "Human Rights Training" be more specific and specify the types of training that will be offered, thereby permitting a focus on areas of particular concern.

Examples, which are necessarily not exhaustive, include sexual offences and human trafficking. The Council notes that the O'Malley "Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences" of July, 2020, has highlighted the difficulties experienced by vulnerable witnesses, and by victims of sexual offences in particular, at various stages of the criminal process, from initial reporting of the offence to the conclusion of the trial. The report recommended that:

*'All serving members of An Garda Síochána engaged in front line policing should be trained in the principles and practices to be followed when engaging with victims of sexual crime, and with other witnesses (including suspects) who may be vulnerable by virtue of age, disability or some other factor.'*

Insofar as human trafficking is concerned, over the last year, the Council has held events and heard from practitioners in relation to this matter, and it understands that An Garda Síochána has made significant progress in the investigation and prosecution of this crime. Notwithstanding that, concerns were expressed that victims of this crime can often be in fear of reprisal from traffickers or fear prosecution for other offences or deportation. The Council understands that, in at least one instance, a trial was unable to proceed due to victims being too frightened to give evidence. [An area such as this would therefore seem well placed to benefit from an emphasis on education and training of Gardaí to ensure that victims feel secure, are willing to give evidence, and are confident that their fundamental human rights will be respected when interacting with the criminal justice system.

## **EXPERTISE OF THE BAR OF IRELAND**

The Council considers that the Bar of Ireland is uniquely placed to assist An Garda Síochána in training its officers with regard to their rights and obligations under human rights law. Arising from their expertise in criminal and civil law matters involving the application of Garda powers (ranging from such matters as criminal investigations and evidence gathering to immigration control) members of the Bar are familiar with the rights and responsibilities of the Gardaí in a courtroom setting, which enables them to provide important insights of a practical nature to the force.

The Council would therefore welcome future opportunities to engage with An Garda Síochána with the objective of enhancing understanding of the members of the force in this important area. This could include annual reviews of significant developments in human rights law impacting upon An Garda Síochána and identification of potential future trends in the area, training in respect of particular matters, and assistance in matters such as internal policy reviews affecting human rights.

## **TRANSPARENCY**

The Draft Strategy sets out an action plan to continue the development of the human rights strategy which includes governance and accountability of human rights standards.<sup>1</sup> In order to ensure governance and accountability, a number of mechanisms have been set out in the draft document.

The Draft Strategy does not appear to envisage publication of various internal Garda policies and guidelines which potentially impact upon the human rights of those with whom An Garda Síochána interact. This gives rise to a risk that they may result in arbitrariness and human rights violations.

The Council considers that publication of such policies and guidelines would tend to reinforce respect for the rule of law among members of the force, enhance accountability, and provide foreseeability and accessibility to members of the general public, enabling them to regulate their conduct accordingly. It would also ensure that any potential infirmities in such policies and guidelines can be reviewed before the courts.<sup>2</sup>

## **THE STRATEGIC HUMAN RIGHTS ADVISORY COMMITTEE**

The Council agrees with a general theme running through the Draft Strategy that monitoring and oversight of the implementation of the Human Rights Strategy is an important element in ensuring that its goals are achieved. The Council welcomes the role which has been and continues to be played by the Strategic Human Rights Advisory Committee (“SHRAC”) in this regard. SHRAC has been operating for a number of years, having held its first meeting on 27<sup>th</sup> March, 2019, and the Council believes that an important feature of it is the involvement of members from outside

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<sup>1</sup> Draft Strategy 2022-2024, page 9.

<sup>2</sup> By way of example, the Council notes a number of judicial reviews currently before the High Court challenging an apparent policy of An Garda Síochána to refuse station bail to persons charged with offences under domestic violence legislation.

An Garda Síochána, whom the Council considers make a valuable contribution to the Committee's work.

## **CONCLUSION**

In conclusion, the Council commends the focus which An Garda Síochána is placing on human rights, as exemplified by the Draft Strategy, and would be pleased to offer further observations and assistance if requested.

**11<sup>th</sup> January, 2022**



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