



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Ref: CommHR/SG/sf 115-2012

Mr Alan SHATTER, TD
Minister for Justice, Equality and Defence

Strasbourg, 9 November 2012

Dear Minister,

Following our meeting in Dublin on 18 October 2012 and the fruitful conversation we had, I would like to continue our discussion on certain issues concerning human rights protection in Ireland.

During my visit, I noted the ongoing debate on the current asylum system and in particular the criticism expressed towards the system of direct provision for the reception of asylum seekers. I understand that due notably to excessively lengthy asylum procedures, many asylum seekers end up staying in accommodation provided by the government under this system for years, although the system was originally designed to accommodate asylum applicants for up to six months. I am aware that the Office of the United Nations High Commissioner for Refugees and non-governmental organisations active in the field have constantly highlighted the negative consequences of this scheme on mental health, family relationships and integration prospects, and its detrimental impact on asylum-seeking children.

I thus appreciate your commitment to publishing long-awaited comprehensive draft asylum legislation early next year with a view to remedying the situation and speeding up decision-making while securing due diligence and transparency of the process, in line with internationally agreed standards. I encourage you to introduce the respective bill as a matter of priority.

Furthermore, I learned about the action you have taken with respect to children being detained in the much-criticised and outdated prison facilities of St. Patrick's Institution. I warmly welcome that you have ordered a stop to the detention of 16-year old boys in that facility and that you envisage its closure in 2014. Nevertheless, also in view of the highly critical report of the Inspector of Prisons, Judge Reilly, published recently on this facility and the fact that young offenders need education rather than a prison environment, I hope you will consider a speedier process, possibly by identifying those remaining young offenders who could already be transferred to a detention school.

During our meeting we also discussed current obstacles to signing and ratifying the new Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), namely the requirement to introduce emergency barring orders against the perpetrators of violence, without creating any possible conflict with property rights vested in the Irish Constitution.

I am aware that already in 2007, Ireland established the National Office for the Prevention of Domestic, Sexual and Gender-based Violence ("Cosc"), adopting a coordinated and cross-sectoral approach. Since this approach is a leading principle of the Istanbul Convention, I hope that Ireland can swiftly move towards its signature and ratification. In this regard, I would greatly appreciate further information as to how issues still hampering Ireland's accession to the Convention are being resolved.

The merger of the Irish Human Rights Commission and the Equality Authority will shape the human rights protection system in Ireland for a long time. I welcome the setting up, at your initiative, of a Working Group composed of representatives of both bodies and the government, which developed the initial framework for the reformed Commission. I note that public consultations were also held on the matter. The importance of civil society input is accentuated in times of austerity budgets to ensure an open and participatory process.

Preserving the accomplishments and high reputation that the Irish Human Rights Commission and the Equality Authority have earned at national and international level is a particularly crucial task. Building on the experience gained and the culture of human rights and equality developed by the two bodies will also be key to the successful implementation of the merger. I thus welcome your explicit commitment to strengthening the national human rights protection landscape in Ireland by creating a more effective and independent Commission for protecting human rights and equality.

I note that a panel of five highly respected persons, endorsed by the *Oireachtas* and chaired by the Ombudsman, Ms Emily O'Reilly, is now in place to select the members of the new Commission. I highly appreciate the active involvement of the Parliament and strongly recommend its further participation in the process of setting up the new Commission, establishing a dialogue with the Commissioners and ensuring adequate funding for the reformed Commission. I believe that the Parliament's involvement should be formally strengthened in the legislation which will regulate the procedures for establishing future selection panels. The Belgrade principles on the relationship between national human rights institutions and parliaments (Belgrade, 22-23 February 2012) can provide useful guidance for ensuring a fruitful interaction between the Commission and the *Oireachtas*.

The independence of the new Commission should be clearly reflected in the way its members are appointed, the manner in which its staff is selected and recruited and in the arrangements for the allocation of its budget. I was pleased to learn that the new body will have a full-time Chief Commissioner. The Chief Commissioner will have a key role in creating a culture of independence for the Commission, both externally and internally. The diversity of the members of the Commission and their expertise in human rights and equality will also be essential for the Commission's success. The Paris Principles should guide the legislation to be drafted as well as the operations of the new Commission. The *Opinion of the Commissioner for human rights on national structures for promoting equality*, a copy of which is attached, provides further guidance on the matter from a European perspective and with a particular emphasis on equality. It will also be important to ensure that the Equality Tribunal dealing with individual complaints under equality legislation be able to continue to fulfill its quasi-judicial function in an independent manner.

I look forward to a continuing constructive dialogue with you on these matters.

Yours sincerely,

Nils Muižnieks