



Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas
Irish Human Rights and Equality Commission

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Lanzarote Committee – The Committee of the Parties to the Convention on the Protection of
Children against Sexual Exploitation and Sexual Abuse

Council of Europe

Avenue de l'Europe F-67075

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France

8 December 2023

**RE: Supplementary information to Ireland's response to the third monitoring round's first
thematic questionnaire focused on legal frameworks.**

Dear Sir/Madam,

The Irish Human Rights and Equality Commission welcomes the opportunity to provide
supplementary information on Ireland's response to the third monitoring round's *First
Thematic Questionnaire focused on legal frameworks of the Protection of Children against
Sexual Abuse in the Circle of Trust*.

Since its appointment as National Anti-Trafficking Rapporteur in 2020, the Commission has
raised serious concerns regarding the inadequate State response to addressing trafficking of
children for the purpose of sexual exploitation, which remains the most prevalent form of child
trafficking in Ireland. Globally, it is estimated that 41 percent of child trafficking experiences

are facilitated by family members and/or caregivers;¹ bringing this form of harm squarely within the scope of the thematic area.

The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse ('Lanzarote Convention') entered into force in Ireland on 1 April 2021. This is Ireland's first engagement with the Committee. The purpose of this letter is to respond to the Lanzarote Committee's invitation to provide additional information on the stated thematic area.

We are available to discuss the information presented below as required, and look forward to continued engagement with the Lanzarote Committee during the next stages of this procedure and in subsequent evaluations. As Ireland's A-Status NHRI, we will be available to support the Committee's understanding of the domestic context as it prepares its third Implementation Report; to promote the outcomes of the process, and; to monitor the implementation of recommendations.

Yours sincerely,



Sinéad Gibney
Chief Commissioner

¹ United States Department of State, Office to Monitor and Combat Trafficking in Persons 'Navigating the Unique Complexities in Familial Trafficking', (2021). Available at https://www.state.gov/wp-content/uploads/2021/06/Navigating-the-Unique-Complexities-in-Familial-Trafficking_LOW.pdf

The legislative confusion between the offences of trafficking a child for the purpose of sexual exploitation and offences of sexual exploitation of a child *simpliciter*

There have been no successful prosecutions for child trafficking in Ireland. In 2022, five children were identified as victims of trafficking; four of these were victims of sexual exploitation; all of which were girls. The markedly lower than the EU-average number of identified child victims of trafficking in Ireland coupled with the complete absence of identified cases in 2020 and 2021², reflects the challenges associated with the identification and categorisation of child victims of trafficking for the purpose of sexual exploitation and sexual exploitation of a child *simpliciter* in Irish law. One source for this confusion is the legislative conflation in the Child Trafficking and Pornography Act ('1998 Act') that defines trafficking of minors for the purposes of sexual exploitation separately from all other human trafficking of adults or children contained in Criminal Law (Human Trafficking) Act 2008. The combined effect of the judgment in *People (DPP) v LS & PS*³ and the Department of Justice's decision to reclassify offences pursuant to section 3(2) of the 1998 Act⁴ would appear to reduce or minimise the extent to which section 3(2) of the 1998 Act might be understood as applying to cases involving trafficking for sexual exploitation. Trafficking in persons is understood to be a process rather than as a single offence and while the 1998 Act contains a number of single

² IHREC Second Evaluation Report (2023) 'There were no child trafficking victims identified in Ireland in 2020 and 2021. Over the period 2013 to 2020, there were 34 child victims of trafficking identified in the State, the majority of whom were female and were trafficked for child sexual exploitation. 9% of all victims identified were children. This proportion is significantly lower than the EU average where 22% of all victims identified were child victims'

³ [2021] IECA 308. The Court of Appeal decision in *People (DPP) v LS & PS* effectively held that section 3(2) of the *Child Trafficking and Pornography Act 1998* includes a standalone offence of sexual exploitation of a child without a requirement that the circumstances surrounding the commission of the offence involved trafficking. However, the converse is not the case; there is no standalone offence of trafficking in section 3(2) without an element of sexual exploitation.

⁴ In its 2017 Annual Report on Trafficking in Human Beings in Ireland, the Department of Justice announced that it was reclassifying the reporting of data under section 3(2) of the *Child Trafficking & Pornography Act 1998 (as amended)*. Between 2009 and 2013, victims of crimes prosecuted under section 3(2) of the *Child Trafficking & Pornography Act 1998 (as amended by Criminal Law (Human Trafficking) Act 2008)*, had been reported as victims of human trafficking. The rationale for the reclassification since the 2017 report is stated as "reporting practice elsewhere" and "the specific details of the cases in question". This is vague and difficult to substantiate in any meaningful way. Insofar as the reclassification was motivated by the fact that charges brought under section 3(2) of the 1998 Act "relate to offences of sexual exploitation", it is unclear what relevance this has in circumstances where sexual exploitation is one of the recognised forms of exploitation pursuant to article 3(a) of the Protocol on Trafficking in Persons. Another reason given for the reclassification was that "generally, the offence has been committed against an Irish child, without the involvement of a 3rd party and without any commercial element" in circumstances where the offender is usually known to the victim and "the offence has occurred without any significant movement or 'act'...." See Department of Justice (2017) *Annual Report on Trafficking in Human Beings in Ireland*, pp. 5-6

offences, it would appear incapable of capturing the complexities of child trafficking to a sufficient extent.

The Commission recognises that although *some* offences committed under section 3(2) of the 1998 Act do not involve an element of trafficking, this does not exclude the possibility that some offences *may* include an element of trafficking. As such, there is a real risk that the retrospective reclassification of data collection in the 2017 Department of Justice Annual Report may obscure the true extent of child trafficking in the State. Where cases of child trafficking for the purpose of sexual exploitation are not identified as such, child victims are deprived of the trafficking-specific protections, assistance and supports necessary for their safety and recovery⁵. Moreover, criminal investigations may not be sufficiently resourced and targeted to gather evidence to support trafficking convictions, thus concealing the true extent of the criminal operations.

The Commission reiterates its recommendation that the Department of Justice (as National Coordinator on Human Trafficking) achieves clarity on reporting of offences under Section 3(2) of the 1998 Act by distinguishing between cases that involve trafficking of children for sexual exploitation and those which involve sexual exploitation of children *simpliciter* (i.e. without any element of trafficking), as this is essential for allowing greater accuracy in recognising and reporting on child trafficking cases⁶.

The Risk to Children in Residential Care of Sexual Exploitation

A recent study revealed how children and teenagers in residential care, particularly girls, are being targeted in an organised manner with the purpose of sexually exploiting them.⁷ The findings of the report highlight a grave concern about the safety of children and young people

⁵ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA .

⁶ IHREC, Trafficking in Human Beings in Ireland: Second Evaluation of the Implementation of the EU Anti-Trafficking Directive (2023), p. 30; IHREC, Trafficking in Human Beings in Ireland Evaluation of the Implementation of the EU Anti-Trafficking Directive (2022). p. 25

⁷ Canning M., Keenan M. and Breslin B. (2023) [Protecting Against Predators: Scoping Study on the Sexual Exploitation of Children and Young People](#), pp. 59-60

in State care. Children and young people, and in particular girls, who go missing while in State care, are being targeted for sexual exploitation in an organised manner by coordinated networks, or gangs, of predatory men⁸. While we welcome the announcement that Department of Children, Equality, Disability, Integration and Youth and Child and Family Agency (Tusla) senior management will prioritise the review of the findings and recommendations of this report during their review of child sexual exploitation, the Commission shares the concerns that immediate action has not been taken to alleviate the risks faced by children in care.⁹

The Commission recommends that the State urgently investigate the co-ordinated grooming of children, especially girls, under the care of the Child and Family Agency (Tusla)¹⁰.

Absence of an Age-Estimation Assessment Process

Article 11(2) of the Lanzarote Convention requires that ‘Each Party shall take the necessary legislative or other measures to ensure that when the age of the victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance measures provided for children shall be accorded to him or her pending verification of his or her age’. In Ireland, there continues to be no functioning age estimation assessments procedure for young people with the exception of cases referred to the Child and Family Agency (Tusla) services by the International Protection Office. According to the Child and Family Agency (Tusla), their function is confined to assessing whether a person is ‘eligible to receive their services’ under Section 3 of the Child Care Act 1991.¹¹ There appears to be confusion regarding the responsibility for age assessment with agencies when the age of unaccompanied child victims of trafficking is concerned. Such estimation is vitally important as it leads to a special protections and assistance measures to child victims of trafficking for sexual (or other) exploitation.

⁸ Canning M., Keenan M. and Breslin B. (2023) [Protecting Against Predators: Scoping Study on the Sexual Exploitation of Children and Young People](#), p. 4

⁹ Houses of the Oireachtas Dáil Éirean Debates (2023) [Ceisteanna – Questions: Child Poverty](#) (28 June)

¹⁰ IHREC, *Trafficking in Human Beings in Ireland: Second Evaluation of the Implementation of the EU Anti-Trafficking Directive* (2023), p. 31

¹¹ Source: Tusla 2023; [Child Care Act 1991](#)

A very high number (597) of unaccompanied or separated children were referred to the Child and Family Agency (Tusla) in 2022 and according to them, they are unable to produce the final number of those that were confirmed to be children.¹² To illustrate the increase, just 115 unaccompanied children were referred to the Child and Family Agency (Tusla) by the International Protection Office for age estimate assessments between 2016 and 2020, with 48 of them deemed to be children.¹³

The International Protection process would not be relevant to all child victims of trafficking for sexual exploitation, a process within which unique age-assessment rules exist. The International Protection Office age (estimate) assessment procedure is outlined in Section 24 of the International Protection Act 2015 ('2015 Act'), which establishes several minimum standards of protection - such as respect of dignity, consent, interpretation, and others. Section 24(3) of the 2015 Act requires the Child and Family Agency's (Tusla) consent to carry out the age assessment when the applicant is an unaccompanied or separated minor without a responsible adult. According to the International Protection Office, unaccompanied minors encountered by immigration officers are referred to the Child and Family Agency (Tusla) for determination of whether a person is 'eligible for child welfare protection' services.¹⁴ If an applicant is found not to be eligible for child protection services, then such person is treated by the International Protection Office as an adult. If an unaccompanied or separated child is wrongly assessed, then the child is denied access to support and protection, and placed in State Adult Direct Provision accommodation. It goes without saying that such a scenario carries high risk and negative consequences for the young person involved.

In 2022, a sixteen-year-old asylum seeker was placed in State accommodation on his own, sharing a room with another adult man, even though he submitted his birth certificate to the International Protection Officers.¹⁵ At the end of 2022, another young asylum seeker referred to the Child and Family Agency (Tusla) for an age assessment by International Protection Officers was deemed to be an adult by a Tusla social worker and placed in State

¹² Malekmian S. (2023) '[Still No Guidelines for Assessing the Age of Young Asylum Seekers When There's a Dispute](#)', *Dublin Inquirer*, 1 March [accessed 27 April 2023]

¹³ Ibid

¹⁴ Source: International Protection Office 2023

¹⁵ Malekmian S. (2023) '[Still No Guidelines for Assessing the Age of Young Asylum Seekers When There's a Dispute](#)', *Dublin Inquirer*, 1 March [accessed 27 April 2023]

accommodation sharing with adult men.¹⁶ In 2023, this last applicant was able to provide government documentation proving that he was sixteen at the time of the assessment.¹⁷ As the Child and Family Agency (Tusla) does not have an operational age estimation assessment procedure, there is no transparency or appeal process, and limited data and questionable oversight mar these crucial decisions.

The Ombudsman for Children has formally expressed concerns on the performance of age assessments directly to the Chief International Protection Officer and the Director of Services and Integration in the Child and Family Agency (Tusla). The Ombudsman sought a joint response on how both the Child and Family Agency (Tusla) and the International Protection Office intended to carry out their respective statutory duties.

According to the Minister for Children, Equality, Disability, Integration and Youth of Ireland, the Child and Family Agency (Tusla) and the International Protection Office have developed and proposed a new protocol to assess the age of unaccompanied minors in order to ensure external oversight of the Child and Family Agency (Tusla) social workers deciding on the age of applicants.¹⁸

We believe that given the increased numbers of vulnerable separated and unaccompanied minors, including potential victims of trafficking whose age is uncertain, the expected National Referral Mechanism must include and define ‘age estimate assessment’ applicable to all relevant cases, regardless of whether or not an international protection application has been made. Additionally, a clarity and certainty is needed in regards to the State agency responsible for age estimation assessments, while the Commission considers the Child and Family Agency (Tusla) – an agency with a focus on childrens’ well-being, to be the appropriate body for this task. Following the achievement of such clarity, detailed policy guidance and training must be provided to ensure that the human rights of those being assessed are upheld and maintained.

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¹⁶ Malekmian S. (2023) [‘In just hours, with no guidelines, a Tusla social worker decided a young asylum seeker was an adult not a child’](#), *Dublin Inquirer*, 12 April [accessed 27 April 2023]

¹⁷ Ibid

¹⁸ Dáil Éireann (2022) [Joint Committee on Children, Equality, Disability, Integration and Youth](#), p. 10

¹⁹ OSCE Handbook – see Age Estimation Assessments. OSCE/ODIHR (2022) [National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons](#). Warsaw: OSCE Office for the Democratic Institutions and Human Rights.

The Commission reiterates its recommendation that the term ‘age estimation assessment’ be included and defined in the Criminal Law (Sexual Offences and Human Trafficking) Bill 2023 and that responsibility for these assessments be carried out by the Children and Family Agency (Tusla). The Assessments must not be based on a medical test and should include an appeal process²⁰.

The Commission reiterates its recommendation that the presumption of minority (unless and until an age estimation assessment proves otherwise) should be included in statute²¹.

Access to Legal Advice for Child Victims of Sexual Exploitation and Trafficking

According to Article 31(3) of the Istanbul Convention ‘Each Party shall ensure that victims have access, provided free of charge where warranted, to legal aid when it is possible for them to have the status of parties to criminal proceedings’. The Commission also notes that the Lanzarote Committee’s First Implementation Report stressed the ‘importance for the child victim of being entitled to representation by a lawyer in his or her own right, particularly in proceedings where a conflict of interest is liable to arise between the child and his or her parents or other parties concerned...and that lawyers representing these children should be trained and well-acquainted with children’s rights and related questions, and be capable of communicating with children at their level of understanding (guideline 39)’²².

In Irish law, child victims of sexual exploitation are ‘witnesses’ in criminal proceedings. As such, they do not have their own legal representation. However, child victims have equal access to legal *advice* (distinct from legal representation) as adult victims, for specified offences, which includes child trafficking offences; provided for in section 26(3)(b) of the Civil Legal Aid Act 1995 (‘1995 Act’).

²⁰ IHREC, Trafficking in Human Beings in Ireland: Second Evaluation of the Implementation of the EU Anti-Trafficking Directive (2023), p. 32

²¹ IHREC, Trafficking in Human Beings in Ireland: Second Evaluation of the Implementation of the EU Anti-Trafficking Directive (2023), p. 32

²² Lanzarote Committee, ‘1st implementation report Protection of children against sexual abuse in the circle of trust: The framework Adopted by the Lanzarote Committee’ (2015) <https://rm.coe.int/1st-implementation-report-protection-of-children-against-sexual-abuse-/16808ae53f>

Where a child is in the care of their (safe) parent/guardian and the child is sufficiently mature, they may instruct their solicitor, but where a child does not have the requisite maturity, the child's parent or guardian will need to give instructions. At present, it is not possible for a (safe) parent/guardian to receive legal aid on behalf of their child under the 1995 Act.

Separately, where a child trafficking victim is in the care of the State, there is no requirement that the Child and Family Agency (Tusla) seek legal advice (legal aid) on behalf of the child. A model for such a mechanism might be section 23D(5)(b) of the Child Care Act 1991. In order to recognise the significant benefit to child victims and to ensure that all children receive the legal support they require and are entitled to, the Commission would urge that consideration be given to providing each child with a 'Children's Legal Advisor' to ensure there is a robust mechanism in ensure children receive legal advice.

Whether a child has been taken into the care of the State, in which case the Child and Family Agency (Tusla) are acting *in loco parentis* (and/ or as the child's legal guardian), or where the child is in the care of their parent/guardian, they must have access to a Children's Legal Advisor. The Children's Legal Advisor would act as an advocate for the child to ensure the highest protection and support for the child, regardless of the form of trafficking the child has been subjected to, the family background, and/or the child's immigration status.²³

The Commission is of the view that legal assistance has to be extended to parent/guardians of suspected child victims of trafficking. Similarly, a mechanism would be needed in cases where the Child and Family Agency (Tusla) is acting *in loco parentis* with respect to a suspected child victim of trafficking.²⁴

There are a number of recommendations detailed in the O'Malley *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences* ('O'Malley Report') that are directly relevant to child victims of trafficking. While the full implementation

²³ OSCE/ODIHR (2022) [National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons](#)

²⁴ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p.138

of the O'Malley Report has the potential to assist victims of trafficking for sexual exploitation, the Commission would like to emphasise the importance of the recommendations that relate to the new child sexual exploitation offences created by sections 3 to 8 of the 2017 Criminal Law (Sexual Offences) Act,²⁵ in particular, the need to bring these new child sexual exploitation offences within the free legal aid scheme;²⁶ to extend legal aid to parents/guardians of child victims;²⁷ and; to ensure that all victims receive the same level of support irrespective of their location.²⁸

The Commission recommends that a system of 'Children's Legal Advisors' be established to provide child-specific legal advice to child victims of sexual exploitation and trafficking and, where a child is in the care of the State that the Child and Family Agency (Tusla) shall provide the child with access to a Children's Legal Advisor. Further, that legal aid should be extended to (safe) parents/guardians of child victims of trafficking²⁹.

The Removal of the Suspected Perpetrator from the Family Environment

In the State's response to the first thematic questionnaire, they stated that 'section 11 of the Domestic Violence Act 2018 ('2018 Act') enables the Child and Family Agency (Tusla) to apply for orders on behalf of a person (or a dependent person/child) whose safety or welfare it believes to be at risk of violence and who is being deterred or prevented from making an application because of this risk of violence'³⁰. It is worth noting that the Child Care Law Reporting Project, an ongoing project promoting transparency and accountability in judicial childcare proceedings, recently reported the successful grant of an interim barring order

²⁵ See O'Malley T. (2020) [Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences](#), p.137

²⁶ Ibid, para 7.16

²⁷ Ibid, para 7.17. Needless to say, this would not apply where the parent or adult in question was the suspected or alleged offender.

²⁸ O'Malley T. (2020) [Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences](#), para 9.24

²⁹ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 25

³⁰ Question 7 (c), Ireland's Response (2023). Contribution ID: ff1a1575-2ddf-48f1-a911-9d8fe62a99e6 Date: 20/09/2023 13:20:36

sought by the Child and Family Agency (Tusla).³¹ This was the first time the Project had witnessed an order being initiated by the Child and Family Agency (Tusla).

In our recent submission to GreVio³², the Commission highlighted a number of concerns relating to the limitation associated with Barring Orders, which are also relevant here. The Domestic Violence Act 2018 ('2018 Act') brought about important changes to the substantive and procedural requirements for obtaining interim barring orders and safety orders³³. We welcome the removal of the co-habitation requirement for safety and protection orders, reflecting the increasing prevalence of 'dating abuse', which may occur in the early stages of a relationship³⁴. The wide range of factors the court may consider when granting an order is also welcome³⁵, due to its provision for flexibility in individual cases³⁶. However, there are a number of gaps in the protections available to victims and survivors under the 2018 Act. The requirement that applicants for safety and protection orders are over the age of eighteen is not in line with the rights and evolving capacities of children. The need for children to rely on a parent or child protection services to make an application on their behalf creates a barrier for young women and girls subjected to domestic, sexual and gender-based violence in intimate partner relationships, as well as victims and survivors of parental abuse and victims and survivors in care³⁷. Furthermore, the lack of integration between the 2018 Act and family law on custody and visitation can result in circumstances where victims and survivors must

³¹ Child Care Law Reporting Project, [Case Reports 2022 Volume 2- Introduction](#) (2023).

³² IHREC, ['Ireland and the Council of Europe Convention on preventing and combating violence against women and domestic violence'](#) (2022).

³³ It should be noted that in Ireland, an Emergency Barring Order (within the meaning of Article 52 of the Istanbul Convention) is referred to as an Interim Barring Order, while a Restraining/Protection Order (within the meaning of Article 53 of the Istanbul Convention) is referred to as a Safety Order. Domestic Violence Act 2018, s. 6, 8. This report will also look at three other types of order created by the Domestic Violence Act: a protection order (s. 10) which operates as a temporary safety order to be made while a decision on a safety order is pending; a barring order (s. 7), which prohibits the accused from entering the home for a period of up to three years; and an Emergency Barring Order (s. 9), an exceptional temporary measure created to deal with circumstances where the accused has a proprietary interest. For a guide to these orders, see Women's Aid, [Guide to the new Domestic Violence Act 2018](#) (2019); Citizens' Information, [Safety orders, protection orders and barring orders in Ireland](#) (2022).

³⁴ Thompson, S., Doyle, D., Murphy, M. and Mangan, R., 'A welcome change . . . but early days': Irish Service Provider Perspectives on Domestic Abuse and the Domestic Violence Act 2018 (2022) *Criminology and Criminal Justice* 22 (5).

³⁵ Women's Aid, [Guide on the new Domestic Violence Act 2018](#) (2018), pp. 1-2.

³⁶ GREVIO, [Mid-Term Horizontal Review of GREVIO Baseline Evaluation Reports](#) (2022), p. 135.

³⁷ IHREC, [Ireland and the Rights of the Child](#) (2022), p. 40. See also, Professor G. Shannon, [Twelfth Report of the Special Rapporteur on Child Protection](#) (2019), p. 44.

break barring orders to facilitate court-mandated custody visits³⁸. The 2018 Act does not provide for the removal of the 'property test' in respect of interim barring orders or barring orders³⁹. Since having nowhere to go is reported as the main reason women stay with perpetrators, the existence of the property test is a cause for concern⁴⁰. The high rates of attrition and lenient suspended sentences for breaching interim barring and safety orders also raise concerns about the extent to which the grave impact of domestic, sexual and gender-based violence is recognised⁴¹.

The Commission recommends that the Domestic Violence Act 2018 be amended to allow children to apply for safety and protection orders in their own right⁴².

³⁸ One Family, Child Contact Centre: Key Learnings (2014), p. 5. See also, section 6 in this report on 'custody and access'. Further issues arise when applications are made ex parte, and due to the short return date of Interim Barring Orders and Emergency Barring Orders.

³⁹ The 2018 Act sets out that interim barring orders and barring orders may not be granted by the Court in respect of the property the victim resides at if they have no legal or beneficial interest in the property and the perpetrator does, or if in the court's view the perpetrator's interest is greater than the victim's. The victim does not have to satisfy the property test to be able to get an emergency barring order, but this order can only last for a maximum of eight working days and a new emergency barring order may not be made until a month after the first one expires, unless there are 'exceptional' circumstances which justify the making of a second order in that time.

⁴⁰ Women's Aid, Submission on the Domestic Violence Bill 2017 (2017), p. 15.

⁴¹ Mazzone, M., Unheard and Uncounted: Women, Domestic Abuse and the Irish Criminal Justice System (2019), pp. 42, 50-51. See also, our comments in section 6 of this report on the the incident-based nature of criminal law means that it may not accurately reflect and respond to the continuum of DSGBV offences. 446 Women's Aid and Monica Mazzone, Unheard and Uncounted – Women, Domestic Abuse and the Irish Criminal Justice System (2019), p. 45.

⁴² IHREC, '[Ireland and the Council of Europe Convention on preventing and combating violence against women and domestic violence](#)' (2022). pp. 15, 97-100