

Justiciability of economic, social and cultural rights in Ireland

Please note: the information contained in this document and elsewhere on the PILA website is for information purposes only, it is not to be construed as legal advice. FLAC accepts no responsibility for actions taken on foot of this website or for the content of external websites or information sources referred to within it.

What are economic, social and cultural rights?

Economic, social and cultural rights, commonly referred to as ESC rights, are basic human rights. They include the right to social security, work, education, healthcare, housing, food, water and cultural life.

What is meant by a justiciable human right?

A justiciable human right means that when a right is violated, the alleged victim can take their claim before an independent and impartial body, and if the claim is upheld, be granted a remedy, which can then be enforced. Remedies can include an order to compel state bodies or other individuals to act in such a way as to fulfil a right, or protect a right from being breached.

Are economic, social and cultural rights justiciable in Ireland?

While civil and political rights are justiciable in Ireland, both the legislature and the judiciary have traditionally taken a conservative position on the justiciability of ESC rights. There is limited protection of ESC rights in Irish law. Furthermore, Irish courts have argued that judicial enforceability of ESC rights may have cost implications for the Exchequer or interfere with the separation of powers. The prevailing view is that courts should not enforce ESC rights as to do so would be undemocratic and would amount to unelected officials in the judiciary ordering the Oireachtas how to spend public money.

This argument was used by the Supreme Court in *T.D. v Minister for Education* in dismissing an application brought by an individual with special needs, who had sought to establish that the State had failed to ensure his right to education. It was held that the formation of social and economic policy lies strictly within the remit of the elected Government, and it was not for the courts to decide on the scope of the right.

Similarly, in *Sinnott v Minister for Education*, the Supreme Court held that there was no constitutional obligation on the State to provide free primary education to an adult for as long as he or she is able to benefit from that education. The Chief Justice stated that the Supreme Court could not find in favour of Mr Sinnott as this would 'involve the judicial arm usurping the function of the Oireachtas and the executive in the proper distribution of the resources available to the State'.

Why is justiciability important?

Judicial enforcement enables courts to review policies and ensure that they are consistent with constitutional principles and obligations under international human rights law. It also affords victims a remedy when their ESC rights are violated. Where ESC rights are not enforceable, victims encounter severe

difficulties accessing justice for violations. Furthermore, justiciability creates greater accountability in the delivery and realisation of ESC rights.

Are ESC rights protected in the Constitution?

ESC rights are currently protected in a limited manner in the Irish Constitution. While the right to free primary education and the right to private property are expressly protected in the Constitution, other implied or 'unenumerated' rights have been recognised by the courts, such as the right to found a family and the right to earn a livelihood. Article 45 of the Constitution also specifically lays out guiding principles for the State in promoting the welfare of people in the socio-economic field, including a guarantee to "safeguard the economic interests of the weaker sections of the community". However, the principles in Article 45 are not enforceable before the courts.

In February 2014, the Government-established Constitutional Convention – which was tasked with discussing proposed amendments to the Irish Constitution – considered the inclusion of ESC rights. It voted in favour of inserting into the Constitution a provision that 'the State shall progressively realise ESC rights, subject to maximum available resources and that this duty is cognisable by the Courts'. In its official response to the Convention's report, the Government failed to indicate whether it accepted the Convention's recommendation, referring it instead to the Oireachtas Committee on Housing for further consideration.

Does Ireland have any obligations regarding the protection of ESC rights under international instruments?

Yes. Ireland is a party to a number of international treaties which oblige the State to respect, protect and fulfil ESC rights. Ireland ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1989. The ICESCR guarantees the protection of a range fundamental rights such as the right to health, housing, education, work and social security. Under the ICESCR, the Irish Government is obliged to progressively realise ESC rights over time, to provide a basic level of subsistence that enables everyone to live in dignity, to refrain from taking retrogressive measures and to use the maximum resources available to it to realise ESC rights.

The UN Committee on Economic, Social and Cultural Rights monitors implementation of the ICESCR. The Government is required to periodically report to the UN Committee detailing the measures it has taken to implement the Covenant. Thereafter, the UN Committee undertakes an examination of the state report. Ireland's last examination took place in June 2015. For more on Ireland's 2015 examination under ICESCR, check out the [Our Voice, Our Rights](#) website.

An Optional Protocol to the International Covenant on Economic, Social and Cultural Rights was adopted in 2008, providing for an individual complaints mechanism that allows individuals seek justice for violations of their ESC rights at the international level. Despite signing the Optional Protocol in March 2012, Ireland has yet to ratify it. As a result, alleged victims cannot present individual complaints against Ireland to the UN Committee on Economic, Social and Cultural Rights at present.

ESC rights are also protected in other human rights treaties which Ireland has ratified, such as the UN Convention on the Rights of the Child, the UN International Convention on the Elimination of all forms of Racial Discrimination and the UN Convention on the Elimination of all forms of Discrimination against Women.

At a regional level, the [European Social Charter](#) to which Ireland is a State Party, also protects a number of ESC rights such as housing, health, employment and social welfare. The European Committee of Social Rights assesses compliance with the Charter through examination of periodic reports and of complaints from certain domestic and international non-governmental organisations through a collective complaints mechanism. PILA has assisted in bringing a [complaint to the European Committee of Social Rights](#) which

alleges that Irish laws, policies and practices on Local Authority housing do not comply with the Charter, including standards relating to housing, social protection and anti-discrimination.

PILA (Public Interest Law Alliance)

PILA is a public interest law network that seeks to engage the legal community and civil society in using the law to advance social change.

PILA was established in 2009 as a project of FLAC (Free Legal Advice Centres), an independent human rights organisation that promotes equal access to justice for all.

PILA aims to:

1. Driving and growing a diverse alliance of people and organisations who are committed to the development of public interest law in Ireland.
2. Promoting and facilitating pro bono in order to build the capacity of organisations to engage in public interest law work.
3. Mobilising emerging lawyers through clinical legal education programmes with a focus on public interest law.
4. Conducting research on barriers to public interest litigation in Ireland, raising awareness and working to remove these barriers.

What is public interest law?

Public interest law is the law that goes to the very core of our society – affecting the rights, well-being, health, or finances of our people as a whole – but, most commonly, the law that advocates for those who are disadvantaged or marginalised.

It involves using law reform, litigation and legal education as tools of change. We approach public interest law work in its broadest sense; not specifically having to involve the courts, but also assisting vulnerable groups to participate in processes that affect them.

PILA Pro Bono Referral Scheme

Central to PILA's work is the Pro Bono Referral Scheme, which supports social justice non-governmental organisations (NGOs), independent law centres and community organisations in obtaining legal assistance where they do not have the resources or in-house expertise.

PILA receives and assesses requests for assistance from over 110 NGOs, filtering matters that meet our criteria and referring them on to a pro bono barrister, solicitor or law firm with suitable skills.

The Pro Bono Referral Scheme gives NGOs access to:

- Legal advice – on organisational issues or in line with policy and campaign work;
- Law reform working groups – where lawyers and NGOs come together to work to implement social change;
- Litigation support – including pre-litigation advices and casework; and
- Legal education sessions – to better equip NGO staff in navigating the law.