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Justice, 2019

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The year 2019 was a significant one for criminal-justice-related policy in Ireland. Through an analysis of legislation, annual reports and evidence-based reviews, this paper will briefly address the following themes: sentencing, policing, prisons and the courts. Significantly, a total of 54 bills were passed into law in 2019, one of the highest annual figures of the past decade. As an aside, perhaps the most controversial bill of 2019, the Judicial Appointments Bill, has now lapsed with the dissolution of the Dáil and the calling of a general election. The bill, which was debated for 120 hours in the Seanad alone, is unlikely to be revived by the incoming government. Paradoxically, sections of the Judicial Council Act, 2019, received scant debate prior to enactment. Sections of the Act represent a massive change to the Irish sentencing landscape, and the effects of the legislation are discussed below.

Sentencing

It was a transformative year for the Irish sentencing system. A sentencing guidelines system is now established, under the Judicial Council Act, 2019. This differs from the previous position, which was largely based on judicial precedent. The Irish judiciary have continuously emphasised the importance of discretion to address the individual circumstances of a case, and structuring that discretion has been the bedrock of much of the jurisprudence of the Court of Appeal when considering sentencing appeals.

International debate and comparative legal scholarship on sentencing has, for a number of decades, centred around which of two sentencing systems is preferable: one in which sentencing guidelines structure sentencing, or one in which a judge has discretion to tailor their sentence to the individual circumstance of the case before them. Guidelines are said to eliminate disparity in sentencing; however, arguably, judicial precedent can also promote consistency in sentencing.

The Court of Appeal in Ireland has for some years taken somewhat of a half-way house approach between both, through issuing guideline judgments. These judgments contain recommended sentencing bands for particular offences, and if an appealed sentence appears out of kilter with precedent, the sentence could be overturned. These guideline judgments have been issued by the court concerning crimes of rape, assault causing serious harm, possession of firearms and burglary, for example. The aim was not to set a tariff but to give lower courts ‘a broad level of guidance’ as to appropriate sentencing ranges for the particular offence.¹

However, this is now all due to change. The Judicial Council Act, 2019, establishes a Sentencing Guidelines and Information Committee. O’Malley (2019) writes that the inclusion of this committee came as a surprise – the initial Judicial Council Bill had provided for a Sentencing Information Committee to collate and disseminate information on sentences; however, there was little to no discussion about the introduction of sentencing guidelines, which resulted from amendments made to the bill in the Seanad. These aspects of the Act were introduced without public consultation, and there was little parliamentary scrutiny of the provisions, or any wider debate as to the pros and cons of establishing a formal sentencing guidelines system in Ireland.

Under section 23(2) of the 2019 Act, the functions of the Sentencing Guidelines and Information Committee are to:

- (a) prepare and submit to the Board of the Judicial Council for its review draft sentencing guidelines;
- (b) prepare and submit to the Board for its review draft amendments to guidelines adopted by the Council;
- (c) monitor the operation of sentencing guidelines;
- (d) collate, in such manner as it considers appropriate, information on sentences imposed by the courts; and

¹ *DPP v Ryan* [2014] 2 I.L.R.M. 98.

- (e) disseminate that information from time to time to judges and persons other than judges.

Section 92 of the Judicial Council Act, 2019, further states the following:

A court shall, in imposing a sentence, have regard to sentencing guidelines relevant to the proceedings before it, unless the court is satisfied that to do so would be contrary to the interests of justice and the reasons it is so satisfied shall be stated by the court in its decision.

This section of the Act implies that a court must have regard to the guidelines in imposing sentence. A court must also identify reasons as to why they ought not to have regard to the guidelines, and state these reasons in their decision.

How the Sentencing Guidelines and Information Committee will operate into the future once the relevant section of the Act is commenced and, in particular, how the committee will prepare draft guidelines and collate data on sentencing remains to be seen. It is significant that the Courts Service website does not disseminate decisions on sentencing. This will increase the difficulty for any council or committee charged with monitoring the sentencing system in Ireland as, in the absence of such data, a considerable budget will be needed for the council or committee to function.

Policing

An Garda Síochána's *Annual Report 2018* was published on 20 December. It acknowledges that whilst the last decade has been difficult for An Garda Síochána, the further investment by the government into the Gardaí made changes for the better. The report highlights several figures, including that 416 firearms were seized; €28 million worth of drugs was seized by the Drugs and Organised Crime Bureau; there was an 11 per cent fall in burglaries since the previous year; and there is 89 per cent public trust in the Gardaí, a finding of the Garda Public Attitudes Survey.

Quarterly Public Attitudes Surveys are available for 2019 online.² The survey, which is conducted by Amárach Research on behalf of An Garda Síochána, asks a sample of 1,500 people across the country for their views on a range of issues relating to An Garda Síochána.

² See <https://www.garda.ie/en/Information-Centre/Quarterly-Public-Attitudes-Surveys/>

In the first quarter of 2019 the survey found that national crime was viewed as a serious or very serious problem, in contrast with local crime, which respondents did not consider a significant problem. Interestingly, 71 per cent of respondents viewed national crime as a serious or very serious problem, but only 16 per cent of respondents perceived crime in their locality to be serious or very serious. The percentage of respondents that held this view of national crime increased to 79 per cent in the second quarter of 2019, whereas 19 per cent of respondents viewed local crime as less serious than national crime in this second quarter. In the third quarter of 2019 this figure remained the same regarding respondents' views of national crime, at 79 per cent, whilst the respondents' views of the seriousness of local crime dropped by a percentage point to 18 per cent.

Further, during the first quarter the victimisation rate was 4.4 per cent and 85 per cent of victims had reported their incidents to the Gardaí. In the second quarter, the victimisation rate was 5.3 per cent, with 76 per cent of victims stating that they had reported their instance of victimisation to the Gardaí. In the third quarter, the victimisation rate stood at 4.2 per cent, with 82 per cent of victims stating they had reported to the Gardaí. These figures, the survey notes, should be treated with caution, due to the low sample size.

The proportion of respondents who do not worry about becoming a victim of crime had increased from previous years. The percentage of respondents who stated that they did not worry about becoming a victim of crime stood at 55 per cent throughout the year.

A total of 79 per cent of respondents stated that they were satisfied with the services of the Gardaí in their local community in the first quarter, up to 80 per cent for the second quarter, rising to 81 per cent by the third quarter.

Trust in An Garda Síochána remained high, at 90 per cent for the first quarter, and 89 per cent for the second and third quarters.

The report also welcomes the *Commission of the Future of Policing in Ireland Report*, which recognised that the Gardaí are not solely responsible for policing issues. As noted in the commission report, Commissioner Drew Harris emphasises the requirement for joint agency responses to issues such as youth crime, recidivism, child abuse and human trafficking.

Also relevant to considerations of policing in 2019, on 2 August the government announced a 'Health Diversion Approach' to the possession of drugs for personal use. There are two components to the approach, whereby a person in possession of drugs, determined by An

Garda Síochána to be for personal use, on the first occasion would be referred by the Gardaí on a mandatory basis to the Health Service Executive for a health screening and intervention. On the second occasion, An Garda Síochána would have discretion to issue an Adult Caution (Department of Justice and Equality, 2019).

Prisons

The Irish Prison Service published its annual report for 2018 on 23 June. The report highlights that 2018 saw a significant increase in the number of those in custody in Ireland over a short period of time. There was also a significant increase in the lengths of sentences in 2018. The total number of those in prison in Ireland had increased from the start of the year, at 3,631, to 3,911 by the end of the year, an increase of 280 prisoners, or 8 per cent. The average number of women in custody in 2018 was 165, which was a 14.6 per cent increase from the average in 2017 of 144 women in custody. A total of 74 per cent of all committals under sentence in 2018 were for sentences of 12 months or less. The average annual cost of an available, staffed prison space in 2018 was €73,802, a 7 per cent increase on the cost in 2017 of €68,535.

The report also comments, under the heading of ‘Modernisation of the Prison Estate’, that during 2018 the Irish Prison Service modernised accommodation in the Dóchas Centre, Ireland’s women’s prison, and that cells were refurbished in Wheatfield Prison. Refurbishment work was also done to the Prison Service College. Works enabling further building took place in Limerick Prison.

The report provides a snapshot of the prison population on 31 December 2018. A total of 4,204 people were in the prison system, which can be broken down as follows: 3,911 were in custody, 726 people were on remand or awaiting trial, 163 people were on temporary release, 39 people were on the ‘Community Support Scheme’, and 44 were on ‘community return’.

The Parole Board’s *Annual Report 2018* was published by the Department of Justice and Equality on 11 September. The board reviews sentences of eight years or more. In the report, it states that the board aims to review sentences of between eight and fourteen years’ imprisonment once half of that sentence has been served. For those sentenced between fourteen years and life imprisonment, the case is reviewed after seven years have been served.

A total of sixty-three new cases were referred to the Parole Board for review in 2018. All were invited to participate in the process and, overall, forty-one accepted the invitation. Four declined and responses to eighteen invitations had not been received at the time of the report being prepared. The report notes that of the four who declined, three were serving determinate sentences, and of the eighteen who did not respond to the invitation to participate, fifteen were serving determinate sentences.

During 2018 the board convened on 11 occasions and reviewed 122 cases, comprising 45 first reviews and 77 prisoners who were subject to a second or subsequent review. Recommendations were sent to the Minister for Justice and Equality in 111 of the cases reviewed. The minister accepted 92 of those recommendations in full. The types of recommendations made included that the prisoner be reviewable for temporary release, that the prisoner step down to a less secure environment, that allowance be made for family visits, and that prisoners be eligible for temporary release for education or resocialisation.

The average time served in custody for life-sentenced prisoners in 2018 was 17.5 years. This compares with 18 years in 2017. Whilst the first review of life-sentenced prisoners is due to take place after seven years, the report states that release is ‘generally some way off at this stage’.

A total of 348 prisoners were serving life sentences on 31 January. One of those prisoners had served more than 40 years in prison.

Importantly, the Parole Bill introduced by TD Jim O’Callaghan in 2016 has now become law. The Parole Act, 2019, provides for an independent, statutory Parole Board and sets out a process that the board will make in its decisions. Prisoners serving life sentences will now become eligible to be considered for review after twelve years, up from the current seven years. The operation of the Act, practically speaking, remains to be seen.

Another important 2019 milestone for those interested in prison policy was the visit of the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to Ireland from 23 September to 4 October. It was the CPT’s seventh visit to the country.

The CPT aimed to review the progress of its recommendations from its visit in 2014, regarding the treatment of prisoners on restricted regimes and older persons in prison, as well as the provision of health care in prisons. Particular attention was also paid to the

conditions of detention of persons deprived of their liberty by the police. The CPT examined the treatment of patients in three psychiatric facilities and, for the first time in Ireland, residents with intellectual disabilities in social care establishments. It visited five Garda stations, five prisons, two social care homes and three psychiatric units within hospitals.

Courts

Angela Denning, the newly appointed chief executive of the Courts Service, has pledged to speed up innovation and reform within the organisation. Commenting in *Courts Service News*, Denning stated that, when in court as a registrar, she was often frustrated at the pace of the organisation. She commented that: 'We must not digitise bad habits. First, we need to change how we do our work. There are things we can simplify and make more straightforward for our users by way of collaboration and joined-up thinking' (see 'Courts boss', 2019).

Of further relevance to a consideration of the operation of the courts system in 2019 is the report of Dr Deirdre Healy, University College Dublin, entitled *Exploring Victims' Interactions with the Criminal Justice System: A Literature Review*. The report was published in October and was commissioned by the Department of Justice and Equality.

The introduction to the report notes that, after a long history of neglect, the victims of crime have become increasingly salient in the media and in political discourse. The report identifies six themes regarding best practices in victims' interactions with the justice system as follows: first, effective communication and information sharing; second, coordinated holistic and multidisciplinary approaches; third, supportive and victim-centred responses; fourth, clearly defined victim participation mechanisms, such as victim impact statements; fifth, tailored approaches for victims with specialist needs and experiences, e.g. victims with special needs, victims who are members of an ethnic minority; sixth, equal access and enforcement of rights.

The report cites the following as victim-centred measures that have been adopted in recognition of victims' rights. The Criminal Evidence Act, 1992, allows certain victims in sexual or violent cases to give evidence via video link. Further, the Criminal Justice Act, 1993, introduced victim impact statements for victims of specified offences.

Importantly, the report notes that 'victims who experienced a sense of empowerment during the court process also reported better

outcomes on these same measures', and Dr Healy comments that these findings 'suggest that a sense of procedural justice is particularly important for victims, but that satisfaction can be improved further when processes and outcomes are perceived as fair' (Healy, 2019, p. 29).

Another important report to consider from 2019 is that of Dr Lynsey Black and Professor Claire Hamilton, Maynooth University, titled *An Evidence Review of Confidence in Criminal Justice Systems*, published in December. The report notes that public confidence in the criminal justice system remains an understudied phenomenon in Ireland, despite the increasing prominence of the subject abroad (Black & Hamilton, 2019, p. 11). The project was undertaken with particular reference to three key issues in relation to confidence in criminal justice systems, these being measurement, drivers and interventions.

On p. 63 of the report, the authors analyse international studies of the courts and conclude that ratings of the courts tend to be lower than ratings of the police, and that this holds internationally. The report notes studies which have found that people are generally positive about the fairness of the court system while 'at the same time remaining very critical of the efficiency of courts and of their ability to meet the needs of victims'.

The report found that there was variance in the levels of confidence held by the public in relation to the different functions of the courts, with the courts often seen as being too concerned with the rights of offenders. They cite from an international study, which observed 'a number of perceived shortcomings that often emerge from international surveys about the criminal process such as: a lack of accountability of the court system; inefficient processing of cases; judicial isolation (judges out of touch with what "ordinary people" think); a biased treatment of offenders by courts; and poor treatment of victims, who are seen to be excluded from the criminal process' (Black & Hamilton, 2019, p. 64).

The report found that the public in the UK believed that the courts were too lenient in terms of sentencing. The report cites a study, stating that 'Members of the public are less familiar with, and also have less sympathy with the subtleties of the criminal process, including the "psychologically ambiguous process of sentencing"' (Black & Hamilton, 2019, p. 64).

The report concludes that the proportion of the population in Ireland with confidence in the justice system is lower than in most Scandinavian countries but higher than in many other jurisdictions:

On several measures, the confidence balance would appear to be positive with more people saying that they have confidence in the system than those who say they do not. With regard to trust in the police, moreover, Irish confidence levels appear higher than in other European countries. (Black & Hamilton, 2019, p. 101)

Conclusion

This paper is intended to provide readers with a brief snapshot of justice-related issues in Ireland in 2019. Whilst it is in no means comprehensive, those working or interested in the Irish justice system ought to note the substantial changes that could be brought about through the introduction of the Judicial Council Act, 2019. It is recommended that readers follow up by reading the comprehensive reports commissioned by the Department of Justice and Equality, discussed above in relation to the courts, and that the findings of the CPT be reflected upon in due course.

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