



The International Protection Appeals Tribunal and its “Public Sector Duty”

Introduction

Public bodies have a duty to eliminate discrimination, to promote equality and to promote the human rights of staff and service users. This statutory duty arises under [section 42 of the Irish Human Rights and Equality Act 2014](#), the provisions of which will be outlined below. The concepts of discrimination, equality and human rights will be described, and the procedure for notifying the Irish Human Rights and Equality Commission (hereinafter ‘the Commission’) of compliance with the public sector duty will be identified.

The International Protection Appeals Tribunal

The International Protection Appeals Tribunal (hereinafter ‘the Tribunal’) is a quasi-judicial body which determines appeals in relation to international protection and related matters. It must be regarded as a ‘court or tribunal’ of first instance, tasked with performing the judicial scrutiny function provided for in Article 39 of Directive 2005/85 in the context of the international protection system in Ireland.

By the very nature of its work in the provision of an effective remedy for the purposes of Article 47 of the EU Charter of Fundamental Rights, the issue of human rights is an integral part of the Tribunal. In its [Strategy Statement for 2024 – 2026](#), the Tribunal is committed to ‘Fairness, Transparency, Efficiency and Respect’.

The staff of the Tribunal are civil servants (section 61(5)) of the International Protection Act 2015) and accordingly, in their interests, the Tribunal is cognisant of the Equality, Diversity and Inclusion Strategy of the Department of Justice.

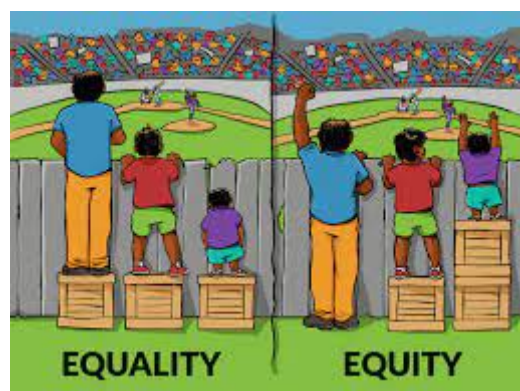
Human Rights

Human rights are universally recognised guarantees to protect individuals or groups of individuals from unlawful action by governments and other state authorities that interfere with fundamental freedoms and human dignity.

Human rights have their foundation in a number of legal instruments. In Ireland, a primary source of human rights is the Constitution, Bunreacht na hEireann 1937, which contains a number of enumerated and un-enumerated rights. By virtue of Ireland's membership of the European Union, the EU Charter of Fundamental Rights provides a further source of rights and guarantees for persons living here. In 2004, the European Convention on Human Rights was incorporated into Irish law with the coming into effect of the European Convention on Human Rights Act 2003. When the rights set out in those instruments are examined, it will be seen that some rights are absolute and non-derogable (e.g. the right to freedom from torture and inhuman or degrading treatment or punishment) while other rights are qualified and derogable (e.g. freedom of expression, the right to privacy). In relation to qualified rights, any interference with the enjoyment of those rights must be in accordance with law and must be proportionate.

Equality

According to Article 1 of the Universal Declaration on Human Rights, "*All human beings are born free and equal in dignity and rights.*" The concept of equality is a relational one: the question to be asked is equal to what? In the context of the 2014 Act, the concept of equality relates to equality of opportunity and equality of conditions.



Equality is enshrined in Irish legislation in a number of statutes: the Employment Equality Acts 1998-2015; the Equal Status Acts 2000-2016; the Disability Act 2005.

Elimination of Discrimination

Under the Employment Equality Acts, discrimination is prohibited on 9 specific grounds:

- Civil status, i.e. Married, single, divorced, widowed;
- Family status, i.e. being a parent or primary carer;
- Sexual orientation;
- Religion;
- Gender, i.e. being a man, woman or trans-person;
- Age;
- Disability;
- Race;
- Membership of the travelling community.

When potential issues of discrimination arise, the Tribunal recognises that there is an onus on it to make reasonable accommodation where possible to assist the person affected by the potential discrimination. Active awareness of the grounds of discrimination on an ongoing basis can assist in avoiding the problem in the first place.

The Tribunal recognises that keeping equality of opportunity in mind does require positive action on the part of an organisation. This is ensured by regular updates of policy and regular staff training on equality, elimination of discrimination and the promotion of human rights.

Section 42 of the Irish Human Rights and Equality Act 2014

The Tribunal, in the performance of its functions, is cognisant of its positive obligation to have regard to the elimination of discrimination, to promote equality of opportunity and treatment of its staff and the persons for whom it provides services, and to protect its staff and the persons for whom it provides services from discrimination.

Therefore, the Tribunal must apply these principles in its dealings with staff and with other stakeholders including Tribunal Members, appellants, legal representatives, Presenting

Officers representing the Minister for Justice at Tribunal hearings, witnesses, and interpreters.

Section 42(2) obliges a public body which is giving effect to the principles set out at section 42(1) to do two things:

- Firstly, the body must have a strategy to deal with its public sector duty;
- Secondly, the public body must report on its developments and achievements in this regard.

Crucially, members of the public should be able to access the strategic aims and the reports prepared by the public body.

Moreover, the Tribunal, in the performance of its functions, has taken active steps to facilitate equality of opportunity. For example, in its [Administrative Practice Note](#), it provides that appellants may seek to have their appeal determined by a Tribunal Member of a particular gender. The Tribunal is aware of the vulnerable people who appear before the Tribunal and training is provided to enable Tribunal Members to deal with vulnerable appellants and children. Training is also provided on LGBTI+ issues. Moreover, the Tribunal Chairperson has issued Guidelines on matters such as [appeals from child applicants](#) and on [taking evidence](#), which are designed to safeguard the rights of applicants in the international protection appeals process.

The essence of the Tribunal's public sector duty is reflected in its Strategy Statement.

All Tribunal staff members are required to complete online training in relation to public sector duty.

November 2024