



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**The response of the Northern Ireland Human Rights Commission to the
Department of Justice consultation**

'FINE COLLECTION AND ENFORCEMENT IN NORTHERN IRELAND'

1. The Northern Ireland Human Rights Commission ('the Commission') pursuant to Section 69(1) of the Northern Ireland Act 1998 reviews the adequacy and effectiveness of law and practice relating to the protection of human rights. In accordance with this function, the following statutory advice is submitted to the Department of Justice ('the Department') in response to the consultation on 'Fine Collection and Enforcement in Northern Ireland' ('the consultation').
2. The Commission has consistently raised concerns about the numbers of people imprisoned in NI for fine default. For example, the Commission highlighted the issue within its 2012 and 2013 Annual Statements and raised the matter to the UN Committee Against Torture ('CAT Committee') and UN Committee on the Elimination of Discrimination against Women ('CEDAW Committee') during the 2013 examinations.¹
3. The Commission notes that the principal aim of the proposed Fines and Enforcement Bill is the 'reduction of the significant numbers of people currently liable to go to prison for non-payment'.² With this in mind, the Commission welcomes the principle of the proposals and proposed legislation.

¹ See, NIHRC, 'Response to Department of Justice Consultation on Fine Default in Northern Ireland' (October 2011). See also, NIHRC submissions to the UN CEDAW Committee: 'Parallel Report on the 7th Periodic Report of the United Kingdom of Great Britain and Northern Ireland under the Convention on the Elimination of all Forms of Discrimination against Women' (June 2013), paras 32-34; 'Shadow Report on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (May 2008), paras 16-19. See also, NIHRC submission to the Committee Against Torture: 'Parallel Report on the 5th Periodic Report of the United Kingdom under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', para 5.3 - 5.5. See also, NIHRC Annual Statement 2012, p 19-20 and NIHRC Annual Statement 2013, p 20.

² The consultation, para 1.1.

Sentence remission

4. The consultation seeks opinion on whether the 50% sentence remission rule should be changed so that persons who default on fines serve the full period of the sentence.³

5. The European Convention on Human Rights (ECHR), Article 5 states that,

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court...

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law.⁴

6. The ECtHR has noted that 'compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness'.⁵

7. While the ECtHR is less inclined to assess the arbitrariness of a detention and sentence imposed by national courts under Article 5(1)(a), so long as there is a 'sufficient causal connection with a lawful conviction',⁶ it has stated in the context of Article 5(1)(b) as a point of general principle that,

a balance must be drawn between the importance in a democratic society of securing the immediate fulfilment of the obligation in question, and the importance of the right to liberty... The duration of detention is also a relevant factor in drawing such a balance.⁷

8. The Commission notes that prior to the McLarnon case,⁸ upon default of a fine, the court could issue a warrant committing the person to prison. The defaulter did not have the opportunity to make representations to the court before the warrant of commitment was made, and no judicial judgment was exercised as to the period of time of imprisonment. In McLarnon, the NI court held that because the enforcement practice for dealing with non-payment of fines could result in imprisonment, it should be considered a criminal charge under ECHR, Article 6. Consequently, the

³ Ibid., para 7.8.

⁴ See also ICCPR, Article 9.

⁵ *Saadi v United Kingdom*, ECtHR, Application No. 13229/03 (29 January 2008), para 67.

⁶ Ibid., para 71.

⁷ *Vasileva v Denmark*, ECtHR, Application no. 52792/99 (25 September 2003), para 37.

⁸ *Re. McLarnon and Others* [2013] NIQB 40.

judge held that a hearing within which the defendant could make representations is necessary before imprisonment could be imposed.⁹ On 17 February 2014, the Magistrates Courts (Amendment) Rules (NI) 2014 instituted Fine Default Hearings.

9. The Commission advises that while in past cases the ECtHR has held Article 5(1)(b) to apply to the fine default context,¹⁰ the institution of Fine Default hearings in NI implies that Article 5(1)(a) is a more appropriately engaged. **The Commission advises that the Department should consider the concept of arbitrariness under ECHR, Article 5(1)(a) as it further progresses its legislation.**
10. The Commission draws to the Department's attention a number of additional standards which outline context specific factors that should be taken into account depending upon the individual defendant and the initial offence for which the fine was imposed.
11. The Council of Europe (CoE) Recommendation 1469 (2000) on 'mothers and babies in prison' invites Member States to,

recognise that custody for pregnant women and mothers of young children should only ever be used as a last resort for those women convicted of the most serious offences and who represent a danger to the community.¹¹
12. From April 2012-April 2013 there were 1,700 receptions into custody in NI for non-payment of a fine.¹² This is a 30% increase when compared to the previous twelve months.¹³ The CJINI follow-up review on 'the enforcement of fines' published in July 2012, noted that imprisonment places undue pressures upon women and that half the women in prison in 2011 were sent there for fine default.¹⁴
13. In 2013, the Commission raised the issue with the CAT Committee and with the CEDAW Committee. It advised the CAT Committee of the detrimental impact imprisonment for fine default has on the already over-populated NI prison estate. It further advised the CEDAW Committee of the disproportionate impact upon women.
14. **The Commission advises that the Department should re-consider the use of imprisonment for fine default on pregnant women and**

⁹ Ibid., para 27.

¹⁰ *Airey v Ireland*, ECtHR, Application No. 6289/73 (7 July 1977).

¹¹ CoE Recommendation 1469 (2000) (adopted on 30 June 2000), para 5(iii).

¹² DOJ Research and Statistics Branch 'The NI Average Prison Population in 2012' Research and Statistics Bulletin 6/2013 p 2.

¹³ Ibid.

¹⁴ CJINI 'The enforcement of fines: a follow-up review of inspection recommendations' (July 2012), Foreword, p v.

mothers of young children on the basis of the CoE Recommendation 1469 (2000).

15. The International Covenant on Civil and Political Rights (ICCPR), Article 11 states that 'no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation'. The Human Rights Committee has expressed concern about laws which 'in effect' permit imprisonment for failure to fulfil a contractual obligation.¹⁵ This has included fine default. For example, the Committee recently requested the Irish State party to,

provide statistics on the number of individuals who were imprisoned for non-payment of court ordered fines ... during the reporting period...[and]... clarify what steps are being taken to ensure that no one is imprisoned for failure to pay a ... fine that he or she cannot pay.¹⁶
16. The ECHR, Article 1 of Protocol 4, specifies an almost identical prohibition to Article 11.¹⁷ In the Explanatory Report, the expert's elaborate that the purpose of the provision is to 'prohibit[.]... any deprivation of liberty for the sole reason that the individual had not the material means to fulfil his contractual obligations'.¹⁸
17. With specific regard to the subject of non-payment of TV licences, the Commission notes that the Criminal Justice Inspection investigation report on the issue has recommended that the enforcement of a TV licence fee should not be handled by the criminal justice system and proposed that this offence should be treated 'by analogy with civil court judgments' and 'should not be subject to imprisonment'.¹⁹
18. Most recently, the Commission notes that the Deregulation Bill currently passing through the Westminster Parliament contains a proposed duty to review the appropriateness of criminal sanctions for non-payment of a TV licence.²⁰
19. **In accordance with the comments of the UN Human Rights Committee, the Commission advises that it is appropriate for the Department to introduce measures which ensure that persons who cannot pay fines are not imprisoned.**

Supervised activity order

¹⁵ UN HRC, 'Concluding Observations on Ireland', (30 July 2008), para 18.

¹⁶ UN HRC, 'List of Issues to Ireland', (22 November 2013), para 21.

¹⁷ The UK has signed but not ratified ECHR, Protocol 4.

¹⁸ CoE, Explanatory Report on ECHR, Protocol 4, Article 1, para 5.

¹⁹ CJINI 'The Enforcement of Fines' (March 2010), para 3.5

²⁰ See Deregulation Bill (HC Bill 191), Sections 51 and 52.

20. The consultation seeks opinion on whether courts should be required to impose a Supervised Activity Order in the first instance upon default of a fine.²¹

21. The UN Standard Minimum Rules for Non-Custodial Sentences ('Tokyo Rules') state that,

In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible.²²

22. In July 2008, the UN Committee on the Elimination of Discrimination Against Women (CEDAW) expressed concern about the large number of women imprisoned for minor offences such as non-payment of TV licences, and recalling its previous recommendation made in June 1999, again urged the UK Government to 'intensify efforts to develop alternative sentencing and custodial strategies, including community interventions and services, for women convicted of minor offences'.²³

23. In 2013 the CAT Committee similarly recommended that the State party 'ensure effective diversion from the criminal justice system for petty non-violent offenders [and] increase the use of community sentences' for female offenders.²⁴

24. The Commission again notes that the CJINI follow-up review on 'the enforcement of fines' stated that imprisonment places undue pressures upon women prisoners and that half the women in prison in 2011 were incarcerated for fine default.²⁵

25. **The Commission advises the Department that it should prioritise alternatives to custody such as the Supervised Activity Orders.**

Access to bank accounts and seizure powers

²¹ The consultation, para 4.1 - 4.7.

²² Tokyo Rules, para 2.3.

²³ CEDAW Committee, 'Concluding observations of the Committee on the Elimination of All Forms of Discrimination Against Women, United Kingdom of Great Britain and Northern Ireland' (10 July 2008), para 267.

²⁴ CAT Committee, 'Concluding Observations on the UK', (24 June 2013), para 32.

²⁵ CJINI 'The enforcement of fines: a follow-up review of inspection recommendations' (July 2012), Foreword, p v.

26. The consultation seeks opinion on whether powers should be introduced to allow access to bank accounts where fine payment is being frustrated.²⁶ It also proposes introducing a general power to seize a vehicle for non-payment of a fine.²⁷

27. The ECHR, Article 1 of Protocol 1 states that,

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law...

28. 'Possessions' under Article 1 of Protocol 1 includes vehicles and money deposited in bank accounts.²⁸ However, the ECtHR has recognised that seizure of property, for example under the terms of a loan agreement, can constitute a legitimate interference with the right to property articulated in Article 1 of Protocol 1.²⁹

29. The International Covenant on Social, Economic and Cultural Rights (ICESCR), Article 11 recognises,

the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

30. Enshrined within Article 11 is the obligation to respect existing access to food which requires State parties 'not to take any measures that result in preventing such access'.³⁰

31. Furthermore, the Convention on the Rights of the Child, Article 3 states that,

In all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration.

32. The Commission notes that the consultation commits to developing a Code of Practice to ensure seizure of vehicles would avoid 'unintended consequences for employment or families'.³¹ The consultation also links

²⁶ The consultation, paras 5.1- 5.4.

²⁷ Ibid., para 6.1 - 6.8.

²⁸ *Gayduk and Others v Ukraine*, ECtHR, Application nos. 45526/99; 46099/99... (2 July 2002).

²⁹ *Affaire Tsironis c. Grece*, ECtHR, Application no. 44584/98 (6 December 2001), para 38 (available in French only).

³⁰ ICESCR, General Comment 12, para 15.

³¹ The consultation, para 6.7.

the proposal to access bank accounts to circumstances where 'a bank account might contain more than enough to clear the fine'.³²

33. **The Commission advises the Department that the removal of money directly from bank accounts or the seizure of vehicles should only be possible after an assessment has been conducted to ensure that neither action infringes upon the person's right to an adequate standard of living or compromises the best interests of the child.**

³² Ibid., para 5.1.