



Complaints concerning Travellers' removal from living on roadside in Limerick rejected

In its decision in the cases of [Faulkner v. Ireland \(application no. 30391/18\)](#) and [McDonagh v. Ireland \(no. 30416/18\)](#) the European Court of Human Rights has unanimously declared the applications inadmissible. The decision is final.

The Court found that there was no basis to conclude that the court order to vacate the land had been disproportionate or that the Court proceedings as a whole had been unfair, noting the applicants' representation by counsel before the High Court. It highlighted the applicants had been illegally occupying the site and had not been left homeless by the orders, accommodation having been found for them with State support. It concluded that the Irish authorities had acted within their discretion.

Principal facts

The applicants, Christina Faulkner and Bridget McDonagh, who are sisters and members of the Traveller community (a recognised ethnic group in Ireland), live in Limerick (Ireland).

Both applicants moved with their families to a roadside in Coonagh, a suburb of Limerick, in 2013. Ms Faulkner alleged that she had not been offered adequate housing in the area, while the Government asserted that she had rejected the accommodation that the Council had offered. Ms McDonagh's family was not offered permanent accommodation, but was given emergency accommodation in a hotel, although they continued to use the roadside site during the day. However, the family returned to the site fulltime in 2017 owing to the effects of hotel living on Ms McDonagh's husband's mental health.

In 2017 Limerick City and County Council initiated proceedings to have the applicants and others living on that site removed. This was urgent because the occupation of the site delayed construction of a new ring road to address traffic problems in the city. During these delays, the building contractor claimed large sums of money for the lack of access from the Council, which in turn obtained orders from the Circuit Court for the site to be vacated. This occurred at a time when the applicants, who had very limited financial means, had yet to find legal representation and so they sought to represent themselves when the matter first came up in court. Once they obtained legal aid, they applied to have the orders suspended so as to allow sufficient time to find another place to live. The Circuit Court declined to do so, only allowing some additional days for the applicants to move on.

The applicants remained on the site. They appealed against the original orders, highlighting the difficulties they had in obtaining accommodation elsewhere, and separately against the Circuit Court's refusal to suspend those orders pending their substantive appeal. This second matter was dealt with by the High Court within a few days. That court was satisfied that the first-instance court had dealt with the matter correctly, and noted that in the meantime the Council had offered the applicants' families accommodation elsewhere. It furthermore noted the liability of the Council to pay substantial contractual penalties and the illegality of the applicants' remaining on the land, and upheld the original order.

The applicants later left the site and some months later, with support from the Council, obtained housing in the Limerick area. They did not pursue their substantive appeal.

Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 14 June 2018.

Relying on Article 8 (right to respect for one's home), the applicants complained that the orders to vacate the site on which they had been living illegally had interfered with their rights, and that the authorities had not examined the proportionality of the orders. The applicants also complained, under Article 6, about the manner in which the proceedings had been conducted at first instance. The Court decided to include this aspect in its examination of the main Article 8 complaint.

The Traveller Equality and Justice Project, the Irish Human Rights Commission and the European Roma Rights Centre were all given leave to intervene in the proceedings as third parties.

The decision was given by a Chamber of seven judges, composed as follows:

Mārtiņš Mits (Latvia), *President*,
Síofra O'Leary (Ireland),
Stéphanie Mourou-Vikström (Monaco),
Lado Chanturia (Georgia),
Arnfinn Bårdsen (Norway),
Mattias Guyomar (France),
Kateřina Šimáčková (the Czech Republic),
and also Victor Soloveytschik, *Section Registrar*.

Decision of the Court

The Court was satisfied that the roadside site in Coonagh was where the applicants had lived at the relevant time and thus the court orders had been an interference with their right to respect for their "homes". The Court was also satisfied that the aims of the authorities – the improvement of the road network, with consequent benefits for the economy, and ensuring public safety around a large building site – had been legitimate.

The key question was whether the interference could be regarded as "necessary in a democratic society", that is to say whether it had pursued a pressing social need and the action taken had been proportionate to the relevant aims. In such matters, the Court allowed a "margin of appreciation", or discretion, to the national authorities, which could be broader or narrower depending on the exact issues, interests and circumstances of a given case. A very important consideration in this context was whether the decision-making process followed had been fair and had ensured that individual interests had been duly safeguarded. Also relevant was whether the home in question had been legally established or not, and whether alternative accommodation had been available to those who had been required to move on. The vulnerable position of the members of the Traveller community, while not granting immunity from general legal duties, could be relevant to how laws had been implemented in relation to this group, and some special consideration had to be given to their needs and particular lifestyle. The right to respect for one's home under Article 8 did not, however, include as such a right to housing, a right to live in a particular location or a right to have one's housing problems solved by the authorities.

There were three strands to the Court's analysis. It firstly examined the criticism that the domestic legal framework was ill-adapted to deal adequately with cases involving members of the Traveller community. It did not agree with this criticism, finding that under domestic law it was the courts that decided on the removal of individuals illegally occupying sites, and that their approach, as guided by domestic case-law, reflected the essential principles of Article 8 of the Convention, in particular the need to ensure proportionality.

The second strand concerned the conduct of the proceedings. The Court found it difficult to accept that, although they had been heard in person by the Circuit Court before the orders had been made, the applicants had been in a position to effectively participate in that first hearing without legal representation. It also doubted that the Circuit Court had taken account of all of the circumstances relevant to the proportionality of the orders. However, the proceedings should be assessed as a whole. By the time the case came before the High Court, the issue of legal representation had been solved. As for proportionality, although the High Court had only considered the issue of suspending implementation of the orders, which had been a narrower exercise than the substantive appeal would have involved, it had nonetheless identified and evaluated the essential interests in play and addressed the key point as to whether there had been sufficient justification to postpone the applicants' departure from the site.

Lastly, the Court made its own evaluation of the interference, clarifying that its role was not to sit in appeal on the merits of the orders, but to verify whether the domestic authorities – referring to both the local authority and the courts – had remained within their margin of appreciation. As the context of the case – the construction of a new road – fell within the sphere of social and economic policy, it was justified to allow a broad margin of appreciation. The same applied for the aim of ensuring safety at the site. Another reason for allowing broad discretion was that a central element in the proceedings had been the availability of suitable alternative accommodation provided or funded by the authorities. This had involved the allocation of public resources, and had affected many claimants. In addition, the applicant's occupation of the site had been illegal, meaning that their position had to be regarded as less strong. Their status as members of a vulnerable minority had to be taken into account here, as well as the efforts made by the local authorities before, during and after the proceedings to help them secure accommodation. However, the Court emphasised that it was not its task to review compliance with the statutory obligation that local authorities in Ireland are under to provide accommodation. It noted that the orders had not left the applicants homeless, and that subsequently they had been granted, or assisted in obtaining, accommodation in the locality.

For these reasons, there was no basis to conclude that the court order to vacate the land had been disproportionate to the legitimate aim pursued of improving infrastructure and public safety. The Irish authorities had acted within their discretion, and so the applications were declared inadmissible as manifestly ill-founded.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.