

# HUMAN RIGHTS IN IRELAND

## THE ACCOUNTABILITY OF THE CRIMINAL JUSTICE SYSTEM

**December 2, 2014 Vicky Conway accountability, an garda síochána, judiciary, prosecution**

Last summer the Government announced that a review panel of barristers was being tasked with reviewing over 200 cases in which Garda misconduct or failures in Garda investigation were being alleged. Recently, the Minister confirmed that the number of cases being reviewed has now risen to 305.

Seven barristers (two senior counsel, five junior counsel) have been appointed to undertake this task. By early November they had considered 140 cases, so it is clear that its work will continue well into the New Year. The individual determinations are not going to be published though some leaks have begun to appear in Irish newspapers (The Sunday Times reported last weekend that the review into the investigation of the death of Fr Molloy found no wrongdoing).

The panel will make recommendations to the Minister, though it is not entirely clear what the responses might be. The team of lawyers are not interviewing the complainants, a decision which has been a source of dissatisfaction for many concerned.

One of the cases being considered by the panel relates to the death of Shane O'Farrell, a 23 year old from Carrickmacross, who was killed by a hit and run driver in 2011. His mother holds a picture of him in the image above. Shane's family have substantial misgivings about the response to his death by gardaí, the DPP and prosecutors, as well as the courts and judiciary. Some media reports on his case can be found here and here.

Zigimantas Gridzuiska, the driver of the car, had 42 previous convictions and was on bail at time of Shane's death. He was prosecuted for dangerous driving causing death, but the judge directed that he be found not guilty of this charge due to a lack of evidence as there were no immediate witnesses to the crash (though a woman did testify to seeing a similar coloured car driving at a dangerous speed on the same road minutes earlier). He was instead convicted of leaving the scene and failing to call the emergency services. He was then given the choice of an 8 month sentence or to leave the country, to return to Lithuania and not return for 10 years. He chose the latter, though as Carrickmacross is just 10 miles from Northern Ireland, he could potentially return very close to home, where his family have remained.

The allegations of the O'Farrell family concerning the handling of the case run to pages. They state that relevant information was not entered on PULSE which may have prevented Mr Gridzuiska being granted bail, something which would have meant he could not have been on the road when Shane died. They state that this man was stopped by gardaí an hour before the car hit Shane. The car, they state, was not roadworthy and not lawfully insured, but nonetheless was waved on by the garda. They state that he should not have been permitted to keep driving it on that day.

The concerns are not limited to the garda investigation, but also to the trial. They have serious concerns about statements made by gardaí in court during the case. They have concerns about decisions taken by and actions of prosecuting counsel. And they have concerns about statements and decisions made by the trial judge.

The review panel mentioned above will only consider allegations concerning gardaí. These allegations are also being investigated by GSOC at present. But what happens in Ireland if you wish to allege prosecutorial or judicial misconduct? Mr O'Farrell's family state that they believed that when it came to the trial the State would secure justice and they feel betrayed and revictimised by the system. They want their concerns examined.

The report of the Group of States Against Corruption, published recently, focused on corruption among politicians, the judiciary and prosecutors in Ireland. While satisfaction with the judiciary and prosecutors is noted there are concerns about accountability. The Irish judiciary has been working on creating a code of judicial ethics since 2011, a task welcomed in the report. The report calls for the creation of an accountability mechanism for the judiciary. The Minister for Justice has confirmed that legislation for a Judicial Council, which will investigate allegations of misconduct, will be published early next year.

As regards prosecutors, the report notes that they are subject to criminal law and to the disciplinary code of the civil service. Complaints from the public are dealt with internally, often by the prosecutor concerned, a fact which prompted 'some concern' in the report. The DPP's Victim's Charter indicates at the end how to make a complaint. A policy document for such complaints was issued internally in 2012. The report concludes:

***“it would be preferable if a more independent structure within the DPP or, ultimately, an external mechanism for dealing with complaints against prosecutors were to be established in order to avoid that the processing of complaints are handled by the same person who was involved in the matter complained of.”***

One alternative, which has been voiced for Ireland in recent weeks, is the creation of a Criminal Justice Inspectorate which would examine the performance and operation of each aspect of the criminal justice system. This has the benefit of recognising that for those who engage with the system, they rarely engage with one element of it, but often experience the system in its totality.

The allegations of the O'Farrell family display the difficulties of navigating the Irish criminal justice system for victims, and the hurdles that exist when an individual wishes to complain about that system. They initially made complaints to GSOC which were unsuccessful and then the Minister for Justice, Alan Shatter, in one of his final acts, ordered a review of the case. The allegations then also fell within this larger review. But none of that addresses their concerns: they believe various agencies within the criminal justice system have both acted wrongly and further hidden the wrongdoing of other agencies. I can't comment on the veracity of these claims but at present there are no mechanisms in Ireland which can explore such allegations. It is understandable that the O'Farrell's wish to ensure that the truth about what happened to their son becomes known, and that any wrongdoing by the State (if there is any) is exposed, both to hold them to account and to prevent others facing similar experiences. The only way of achieving this at present is to attempt the arduous task of trying to convince government to hold a public inquiry into the matter. As victims of state injustice will attest, that is a gruelling process and one which, in circumstances such as these, families should not have to undertake to get answers to their questions.

<http://humanrights.ie/criminal-justice/the-accountability-of-the-criminal-justice-system/>