

YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW — VOLUME 17, 2014
CORRESPONDENTS' REPORTS

IRELAND¹

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Legislation — Measures to deal with establishment of a DNA database

• *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014*

The *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* was enacted to provide assistance to An Garda Síochána (Irish Police) in the investigation of serious crime and identifying serial offenders across a broad range of areas, including homicide, rape, sexual and other serious assaults. The Act provides for the establishment of a DNA database to assist in the investigation of serious crime and also to assist in finding and identifying missing or unknown persons. It will also play a crucial role in the investigation of what have become known as ‘cold cases’; and the identification and prosecution of perpetrators. In addition, it will be of assistance in cases where there is an alleged miscarriage of justice, by providing crucial information to assist in the determination of whether an individual has been wrongly convicted and imprisoned. The Act replaces the legal framework for the collection of forensic evidence from suspects and puts it on a statute-only footing.

The establishment of a DNA database is overdue. The usefulness of a DNA database stems from its capacity to link crime scenes and to identify suspects. Such information will be valuable to the Garda (police) in relation to identifying prolific offenders involved in volume crime such as burglary, but also in relation to serious offences against the person, such as homicide and sexual offences. It will facilitate co-operation with other police forces in relation to criminals who travel from one country to another to engage in criminal acts or to evade criminal accountability.

The Act contains comprehensive provisions in the area of international co-operation. The Act will facilitate Ireland in meeting its obligations under EU law and any international agreements which require the state to maintain DNA and fingerprint databases for criminal investigation purposes. It will facilitate the searching of other states’ databases, on a reciprocal basis and under strict conditions. Schedules 2 and 3 of the Act contain the texts of the Prüm Council Decision, and the agreement between the EU and Iceland and Norway applying aspects of the Prüm Council Decision are set out.

The Act comprises 13 Parts, 172 sections and four Schedules. Part 1 deals with preliminary and general issues. Sections 2 and 3 provide definitions and interpretations that are central to understanding the overall framework of the Act.

Parts 2 to 7 contain important provisions in relation to taking various samples from different categories of persons. First, it is the purpose for which a sample is required that

¹ Information provided by Professor Ray Murphy, Irish Centre for Human Rights, National University of Ireland Galway, Ireland.

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determines the type of sample that may be taken. For example, where a sample is required from a person solely for the purposes of the database, the sample will be either a mouth swab or plucked head hairs. These are the least intrusive types of samples and do not require medical input. Second, where samples are required from a suspect for the purposes of a particular investigation, the type of sample will be determined by the nature of the offence concerned, the circumstances of its commission and the evidence taken from the crime scene. For example, swabs from the skin of the suspect may be required to determine whether the suspect had contact with a particular substance or a victim. The Act permits a broad range of what are termed intimate and non-intimate samples to be taken for forensic testing in connection with a particular investigation. The term 'forensic testing' is broadly defined and includes the generation of DNA profiles but is not limited to it.

Part 2 is concerned with the taking of samples from persons in Garda (police) custody. It is important to note, however, that not all suspects in custody will be subject to the Garda powers to take samples. The powers only apply to those in custody under one of the existing detention powers listed in section 9. Subject to a limited exception, the effect is that only those suspects detained in connection with serious offences (offences attracting a maximum prison sentence of five years or more), may be required to provide a sample.

Section 11 provides for the taking of samples from persons in custody for the purposes of the database, namely, the investigation of criminal offences generally. There is no requirement that they assist in the particular investigation at hand. Samples taken under this section will be instrumental in populating the database and ensuring its effectiveness as a source of intelligence. Bearing in mind the non-intrusive nature of the sample, the consent of the suspect is not required. The taking of samples under section 11 for the purpose of the database must be justified not only by the gravity of the offence for which the person has been detained, but also by the nature of the offence.

Part 12 deals with international cooperation with recognised international police forces and Interpol. In this context, chapters 5 and 6 provide for technical amendments to the *Criminal Justice (Mutual Assistance) Act 2008* and the *International Criminal Court Act 2006* respectively.

Legislation — Measures to deal with establishment of a new court of appeal

• *Court of Appeal Act 2014*

The background to this Act is that a constitutional referendum was held on 4 October 2013 and the proposal to amend the Irish Constitution of 1937 to establish a Court of Appeal was agreed to by the people of Ireland. This Act gives legislative effect to that proposal. The critical section of the Act is Section 8. It sets out the jurisdiction of the Court of Appeal. The *Courts (Supplemental Provisions) Act 1961* is amended by the insertion of a new section 7A which provides that the Court of Appeal shall be a superior court of record. The Court shall, subject to the Constitution and certain provisions of this Act, have the jurisdiction which was previously vested in the Supreme Court, the Court of Criminal Appeal and the Courts-Martial Appeal Court. The Court may sit in divisions of three judges, and interlocutory applications may be heard either by the President sitting alone, or by another judge sitting alone who has been nominated for that purpose. Provision is also made for a single judgment rule in

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criminal appeal cases, as was the practice in both the Court of Criminal Appeal and the Special Criminal Court.

Legislation — Measures to deal with establishment of a human rights and equality commission

• *Irish Human Rights and Equality Commission Act 2014*

The main purposes of this Act are to:

- provide for the establishment of the Irish Human Rights and Equality Commission;
- to provide for the dissolution of the former Human Rights Commission and the Equality Authority and the transfer of their functions to the new Commission;
- strengthen and enhance the powers of the new Commission;
- introduce a positive duty on public bodies to have due regard to human rights and equality;
- amend the *European Convention of Human Rights Act 2003* to provide for an enforceable right of compensation in the case of unlawful deprivation of liberty due to judicial error in contravention of Article 5 of the Convention; and
- provide for consequential repeal of the *Human Rights Commission Act 2000* and of certain provisions of the *Employment Equality Act 1998* and the *Equal Status Act 2000*.

According to the then Minister for Justice and Equality, Deputy Alan Shatter,

Drawing together in a single, leaner and more streamlined body the main strands of the vital equality and human rights agendas will positively strengthen the ability of the new commission to effectively, efficiently and cohesively promote a culture that respects the human rights and equal status of everyone in our society.²

The new Commission was established with the intention of being recognised, as the Human Rights Commission was, by the UN as Ireland's National Human Rights Institution. Such institutions are accredited for UN purposes in accordance with the provisions of the Paris Principles (1993, as augmented by the 2009 General Observations of the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC) Subcommittee on Accreditation). The Principles are a set of informal rules and best practice standards which set out minimum standards that must be complied with to ensure independent and effective National Human Rights Institutions (NHRIs). The point of the standards is to ensure that NHRIs can operate independently from Government and have the mandate and resources to do their work effectively.

RAY MURPHY

² Ireland, Parliamentary Debates, Parliament (Dail Éireann), Tuesday 8 April 2014, 27 (Mr Alan Shatter TD, Minister for Justice and Equality).