



Pavee Point Opening Statement to the Joint Committee on Justice.

Criminal Justice (Hate Crime) Bill 2021

1. Introduction

I would like to thank you, on behalf of Pavee Point Traveller and Roma Centre, for the invitation to participate in today's meeting on the Criminal Justice (Hate Crime Bill) 2021. Pavee Point is a national non-governmental organization that has been working to challenge racism and promote Traveller and Roma inclusion in Ireland since 1985.

We welcome the Government's plan to introduce hate speech and hate crime legislation in Ireland, and this opportunity to comment on the proposed Heads of the Bill. Pavee Point has advocated for many years for effective legislation which acknowledges that hate speech and hate crime exist in Ireland with devastating impacts for victims. Travellers, Roma, and other groups need protection under the law and this protection must be meaningful and effective.

Today we would like to highlight to the Committee why this legislation is of great importance for Travellers and Roma in Ireland, given the impacts of hate speech and hate crime on both communities. We will also provide our insights on the General Scheme and make recommendations on key measures that we believe are needed in conjunction with the legislation to ensure these crimes are adequately addressed in a way that is effective, accessible and inclusive of Travellers and Roma.

2. Context:

As minority ethnic groups, Travellers and Roma experience persistent racism and discrimination in Ireland, and because of this, they are also subjected to regular instances of hate crime and hate speech by both private and public actors. In our written submission, we list a number of examples such as: the racist remarks made about Travellers by 2018 presidential candidate Peter Casey, and a number of incidents where houses were burnt out, attacked or vandalised by groups of people when they heard that these homes were allocated to Roma or Traveller families.

According to the EU Fundamental Rights Agency in 2020, Irish Travellers have the third highest rate of hate-motivated harassment in Europe at 52%¹. These crimes are rarely reported, due to distrust of authorities, and language and literacy barriers. Research in the UK² also shows that when Travellers and Roma do report these incidents there is a low level of response from authorities due to institutional racism.

Pavee Point believes strongly that hate crime and hate speech cannot be addressed in a vacuum and that this new legislation must be one tool within a wider, holistic approach to tackling institutional and structural racism and other prejudices within Irish society. The upcoming National Action Plan against Racism provides a timely frame for the associated actions and special measures that will be needed to support implementation of this legislation. Further ongoing mechanisms also need to be developed and implemented in collaboration with those groups affected by discrimination, prejudice and racism in order to find meaningful solutions to these significant and deep-rooted problems.

¹ EU FRA (2020) Travellers in Ireland https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-roma-and-travellers-survey-country-sheet-ireland_en.pdf EU FRA (2020) Roma and Travellers in six countries <https://fra.europa.eu/en/publication/2020/roma-travellers-survey>

² Bucks (2020) Hate: "As regular as rain" A pilot research project into the psychological effects of hate crime on Gypsy, Traveller and Roma (GTR) communities



3. Statement of the issue

In our written submission, we comment on all heads of the Hate Crime Bill. We will highlight some key points today:

Part 1 Incitement to Hatred

Head 3(5) The Defences for Publishing or otherwise Disseminating, or Broadcasting Hate Speech,

Pavee Point has some concerns about the extension of the list of defences in Head 3(5), which includes use for political discourse, and materials with a certificate from authorising bodies. The list of defences was much more concise in the 1989 Incitement to Hatred Act and we need to ensure defences are not overly broad.

For example, one defence is: *a reasonable and genuine contribution to literary, artistic, political, scientific, or academic discourse*. Unfortunately, we have seen in recent years in Ireland a more visible presence of far-right organisations and political parties. These groups use hate speech as part of their “political discourse” which incites hatred against a number of protected groups, including Travellers and Roma. Pavee Point also has questions about how ‘reasonable’ and ‘genuine’ contributions are to be assessed in this defence, and whether there will be accompanying standards/guidance for the judiciary?

Part 2 Hate Crime

Head 4 – 6 Named Aggravated Offences:

Pavee Point welcomes the named offences; however, we believe that the legislation could extend this list to acknowledge the differences in how discrimination manifests for all protected groups. For example: people with disabilities experience higher incidences of theft/fraud and gender/disability groups more commonly report being victims of sexual offences³. These offences are currently not included in the aggravated offences list and should be considered.

The current list of offences was developed based on the Department’s wide consultation process, which Pavee Point welcomed and participated in. However, the consultations concentrated primarily on hate speech rather than hate crime, and this may have led to a narrower list of aggravated offences named in the Bill.

Head 4-6 Offences Aggravated by Prejudice

In the current bill the named offences are defined as being.. *motivated by prejudice on the part of the perpetrator against a protected characteristic as defined by section 2 of the Hate Crime Act 2021*.

Pavee Point recommends that this wording is amended in line with the definition used for incitement to hatred within this bill ‘..*hatred against another person or group of people due to their **real or perceived association with a protected characteristic***’. It is important to include the ‘*real or perceived association*’ as it provides consistency in the legislation. It also ensures that the onus is not on the victim of a hate crime to prove membership of a protected group.

Head 8 – Determining whether an offence was motivated by prejudice

Currently, the Bill lists eight bias indicators that can be taken into account when determining the likelihood that an incident was motivated by hate. Pavee Point believes that these bias indicators

³ Crown Prosecution Services Annual Report (2018/19) <https://www.cps.gov.uk/sites/default/files/documents/publications/CPS-Annual-Report-and-Accounts-2018-19.pdf>



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would be better placed in a good practice guide which accompanies the act and is circulated to the judiciary, Gardaí and relevant NGOs.

If the legislation is to be effective, it is important that it includes both a **demonstration** and a **motivation test** of proof for hate crime offences. This would ensure an effective legal remedy, where demonstrations of hate (such as hostile language, gestures, communications etc) would be admissible as evidence of demonstrating hostility⁴. Relying on a motivation test alone could result in difficulties enforcing the legislation. It can be difficult to prove people's thinking/motivation and this could lead to low levels of prosecution, as we saw with the Incitement to Hatred Act 1989.

4. Overall conclusion

Thank you taking the time to consider our submission, in our written submission we provide a long list of recommendations, some of these include:

- For clarity, use the term '**ethnicity**' consistently within the legislation.
- **Review the list of aggravated offences**, considering how discrimination manifests for all named protected groups, and consider the **inclusion of theft/burglary, and sexual crimes as named offences**.
- Ensure the legislation protects people who, due to their *real or perceived* association with a protected characteristic, are victims of hate crime. This is in line with the protections afforded to victims of incitement in Head 3.
- **Review the broad list of defences** for publishing or otherwise disseminating, or broadcasting hate speech, particularly consider the removal of the defence of political discourse, and films and books approved by authorising bodies.
- Within Head 8, **include both a demonstration, and motivation test of proof** for hate crime offences. This is vital to ensure the effectiveness of the legislation and the ability to bring successful prosecutions.
- Roll out **special measures** alongside the legislation to ensure the legislation is implemented effectively and Travellers and Roma feel included and protected by the law.

Some of the additional measures needed in conjunction with the Hate Crime Legislation include:

- Annual targets to reduce the number of race hate crimes against protected groups, including Travellers and Roma.
- Training for all Gardaí and Criminal Justice Personnel on hate speech and hate crime and its impacts on protected categories, and publish guidelines on the investigation, prosecution and working with victims, witnesses or offenders in hate crime cases.
- Mechanisms to gather and publish disaggregated data regarding the prosecution and sentencing of hate crimes in line with human rights standards.
- Public awareness campaign to encourage members of the public to report hate crimes, considering the needs of the different protected groups.
- Anti-racism education and training for An Garda Síochána includes anti-Traveller and Roma racism and discrimination.
- Build trust and confidence among Traveller and Roma communities in the Garda's commitment to respond effectively to their complaints of hate crime, including a commitment to a diverse Garda recruitment policy inclusive of Travellers and Roma.

⁴ Consultation with Lord Mayor of Dublin (2021) How to tackle hate crime and protect our people
<https://www.youtube.com/watch?v=i73hjnBf0AI>