

THE CRIMINAL INJURIES COMPENSATION TRIBUNAL AND THE ‘SAME ROOF’ RULE IN IRELAND: EXCLUSION, INCLUSION AND REFORM

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Abstract: In April 2021, the Department of Justice revised the Scheme of Compensation for Personal Injuries Criminally Inflicted to remove the ‘same roof’ rule which excluded victims of violent crime from its remit who lived with the perpetrator of the crime. This article examines victims’ rights theory and international standards under the Istanbul Convention to examine why this rule was put in place and why further changes to the Scheme are necessary to better accommodate applications from victims of domestic violence and abuse going forward.

Introduction

The Criminal Injuries Compensation Tribunal (‘CICT’) was established by the Irish Government in 1974 and administers the Scheme of Compensation for Personal Injuries Criminally Inflicted. This non-statutory scheme provides a mechanism whereby persons injured as a result of a violent criminal act can apply for monetary compensation from the State in respect of their injuries.² The compensation is paid out of public funds and the formation of the CICT in Ireland took place in the context of the establishment of similar mechanisms in other jurisdictions such as in the United Kingdom (‘UK’) in 1964 which was one of the first such schemes to be put in place in the common law world.³ The manner in which these schemes are operated raises fundamental questions as to the role of the State in the provision of support for victims of crime.⁴ From their inception, victim compensation schemes in many jurisdictions have been established based on the community’s sense of social solidarity with innocent victims of crime.⁵ In Ireland, for example, the CICT can deny or reduce compensation to persons considered to be undeserving of an award for various reasons. The version of the Irish Scheme in operation as recently as April 2021 provided that [n]o compensation [was to] be payable where the offender and the victim were living

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² WN Osborough, ‘The Work of the Criminal Injuries Compensation Tribunal’ (1978) 13(2) *IJ* 320, 320; Scheme of Compensation for Personal Injuries Criminally Inflicted 2021 (2021 Scheme) <http://www.justice.ie/en/JELR/Scheme_of_Compensation_for_Personal_Injuries_Criminally_Inflicted_effective_from_20_April_2021.pdf/Files/Scheme_of_Compensation_for_Personal_Injuries_Criminally_Inflicted_effective_from_20_April_2021.pdf> accessed 16 June 2021.

³ Rob Mawby and Sandra Walklate, *Critical Victimology* (Sage Publications 1994) 149.

⁴ Shane Kilcommins and Luke Moffett, ‘The Inclusion and Juridification of Victims on the Island of Ireland’ in Deirdre Healy (ed), *The Routledge Handbook of Irish Criminology* (Routledge 2015) 382; the British scheme was administered by the Criminal Injuries Compensation Board which was established in August 1964 whilst the Northern Ireland scheme was not established until June 1968.

⁵ Susan Leahy and Eimear Spain, ‘Exploring the Impact of the Victims’ Directive on Service Provision for Victims of Crime in Ireland’ (2017) 68(4) *Northern Ireland Legal Quarterly* 519, 534; Katharina Buck, ‘State Compensation to Crime Victims and the Principle of Social Solidarity’ (2005) 13(2) *European Journal of Crime* 148, 150 – 151.

together as members of the same household at the time the injuries were inflicted.⁶ This provision, otherwise known as the ‘same roof’ rule, effectively prevented many victims of violent crimes from accessing compensation in respect of injuries sustained including victims of domestic violence and victims of child abuse perpetrated by family members in the home.⁷

This article aims to examine this aforementioned provision which was in fact abolished by the Irish Government in April 2021.⁸ Despite this, considerable questions remain in relation to the manner in which the Irish State compensates these particular victims through the establishment and operation of the CICT, such as the retrospective effect of this recent change. This article will commence by examining generally the place of victims of crime in the criminal justice process and the extent to which the State should support victims of crime in the aftermath of their experiences. The early development of victim compensation schemes will also be outlined. The article will then set out the international and regional human rights standards in relation to victims of domestic abuse and compensation schemes generally. Finally, the article will consider the CICT in detail and the express exclusion of domestic abuse victims from the Irish victim compensation scheme will be analysed. Recent reforms will be examined and what this reform says about the State’s priorities in relation to victims of crime will also be determined.

Victims of Crime and Compensation: Theoretical Context

In order to comprehensively understand the creation and development of victim compensation schemes, it is necessary to first consider some conceptual considerations in relation to victimhood as a construct in order to recognise the manner in which victims of crime obtain support and assistance from the State and wider society in response to their plight. Focus will then turn to introducing victim compensation schemes and the exclusion therein of domestic abuse victims from accessing such schemes.

The ‘Deserving’ Victim of Crime: Exploring Constructs of Victimhood

In distinguishing between legal and social classifications of the term ‘victim’, McCullagh comments that ‘the status of being a crime victim is not one that is accorded to all victims of crime’,⁹ and is largely dependent on constructs of victimhood which work to exclude ‘undeserving’ victims from availing of wider community sympathy and support.¹⁰ In discussing conceptions of the term ‘victim’, scholars regularly make reference to Christie’s understanding of the ‘ideal victim’.¹¹ Christie comments that obtaining the status of victim is a subjective process. It is the ‘ideal victim’ who ‘most readily [is] given the complete and legitimate status of being a victim’ based on a number of core characteristics.¹² These

⁶ Scheme of Compensation for Personal Injuries Criminally Inflicted, as commenced in 1974 and as amended in 1986 (Original Scheme), para [10]

<<https://assets.gov.ie/45672/43998e22a52347688cfa401dca1bb9d5.pdf>> accessed 16 June 2021.

⁷ Colin Grant, ‘The Criminal Injuries Compensation Scheme for Personal Injuries Criminally Inflicted: In Need of Reform’ (2020) 30 (4) *Irish Criminal Law Journal* 94, 97 – 98.

⁸ See Department of Justice Press Release, ‘Minister McEntee Announces Reforms to the Criminal Injuries Compensation Scheme’ (Department of Justice 20 April 2021)

<<http://www.justice.ie/en/JELR/Pages/PR21000092>> accessed 16 June 2021.

⁹ Ciaran McCullagh, ‘“Respectable” Victims and Safe Solutions: The Hidden Politics of Victimology’ (2017) 68(4) *Northern Ireland Legal Quarterly* 539, 553.

¹⁰ *ibid* 542.

¹¹ *ibid* 542; Matthew Hall, ‘Victims of Crime: Culture, Politics and Criminal Process in the Twenty-First Century’ (2017) 68(4) *Northern Ireland Legal Quarterly* 469, 472; Nils Christie, ‘The Ideal Victim’ in Ezzat A Fattah (ed), *From Crime Policy to Victim Policy* (Palgrave Macmillan 1986).

¹² Christie (n 11) 18 – 19; McCullagh (n 9) 542.

characteristics include that the crime victim must be weak in comparison to the perpetrator of the crime, who is preferably unknown to the victim, they must be entirely innocent in that they contributed in no way to the occurrence of the criminal act and finally, the granting of victim status must not impede the interests of powerful stakeholders in society.¹³

In addition to these characteristics, McCullagh points out that ‘victims must have been going about their legitimate, mundane and everyday lives’ to qualify as a truly innocent and ‘ideal victim’ of crime.¹⁴ If victims must be going about their lawful and typical business to be deemed an ‘ideal victim’, questions arise as to the distinction, if any, between victims of criminal activity in the public sphere and criminal activity in the private sphere. In the public sphere, a victim’s activity might more readily be identified as lawful and typical, whilst the opposite might be the case in relation to victims of criminal activity in the private sphere which was typically not the subject of regulation and intervention on the part of the State.¹⁵ According to Christie, the distinction between public and private sphere crime is also related to the concept of ‘ideal’ offenders. The more distinct and foreign an offender in relation to their victim, the more likely that both offender and victim are ‘ideal’. As perpetrators of domestic abuse are generally known to their victim, the ‘ideal’ status is more difficult to obtain and, therefore, less societal attention is granted to victims in these situations.¹⁶

Additionally, McCullagh comments that the ‘ideal victim’ status is difficult to obtain for many victims of crime.¹⁷ For example, most victims are subject to repeat victimisation, and from society’s perspective, as these victims do not take steps to prevent further victimisation in the future, they are not ‘deserving’ of society’s sympathy and solidarity.¹⁸ Interestingly, for the purposes of this article, victims of domestic violence are regularly subject to repeat victimisation.¹⁹ This denial of victimhood clearly refutes the notion that the conception of the ‘ideal victim’ can ever be employed as a mechanism in which to base legal and policy measures in relation to victims of crime. McCullagh states that compensation for victims of crime is an example of a support where these limitations are put in place in a ‘brutal fashion’.²⁰ Interestingly, Hall is critical of the narrowness inherent in Christie’s conception of the ‘ideal victim’ in that he argues that the status of victimhood is not a ‘static concept’ but rather something that can change over time depending on a variety of cultural factors in relation to different categories victims and crime itself,²¹ including society’s changing deference to authority in recent years,²² and the social capital of individual victims of crime.²³ It is beyond the scope of this article to comprehensively examine Hall’s arguments in detail. In the context of victim compensation schemes, it is sufficient to understand that victimhood is indeterminate and dependent on various influencing factors. It is not, therefore, a phenomenon which endears itself to a simple and straightforward legal definition.

Victims of Domestic Abuse: Constructs and Misconceptions

¹³ Christie (n 11) 19; McCullagh (n 9) 542.

¹⁴ McCullagh (n 9) 542.

¹⁵ Basia Spalek, *Crime Victims: Theory, Policy and Practice* (Palgrave 2017) 63.

¹⁶ Christie (n 11) 19.

¹⁷ McCullagh (n 9) 542.

¹⁸ *ibid* 542.

¹⁹ *ibid*.

²⁰ *ibid* 546.

²¹ Hall (n 11) 472.

²² *ibid* 471 – 472.

²³ *ibid* 474 – 475.

It is unfortunate, therefore, that this important context is not taken into account in relation to society's recognition of victims of crime generally. Moreover, as a consequence, it would appear that victims of domestic abuse have been particularly disadvantaged. For the purposes of this section, focus will first be placed on distinctions between criminal activity that occurs in the public sphere and criminal activity that occurs in the private sphere. This distinction arises out of critical victimology's criticisms of the lifestyle and routine activities theory of positivist victimology scholarship which holds that the risk of becoming a victim increases depending on the individual's particular lifestyle and routine. The lifestyle and routine of individuals varies according to a person's employment status, social life and even their use of public transport and for positivist victimology scholars, including Hindelang, Gottfredson and Garofalo,²⁴ these factors make certain types of individuals more likely to become victims of crime.²⁵ A primary criticism of this position refers to its incorrect focus on criminal activity occurring in the public sphere when in fact a significant number of crimes take place in the private sphere and in victim's homes. Thereby, an individual's propensity to become a victim depends less on their lifestyle, routine and their likelihood of being in a public place but rather on 'structural processes' such as gender.²⁶ Spalek notes that this misconception of crime and crime victims has resulted in the targeting of resources at street crime and burglary and not various other forms of criminal activity which take place away from the public sphere,²⁷ such as domestic abuse and other types of crime that take place within the home.²⁸ Critical victimology's criticisms of the lifestyle and routine activities theory exposes this disregard for crimes occurring in the private sphere, which in turn reveals the manner in which particular victims of crime are treated by the state concerning victim support and compensation.

In discussing the development of victim compensation schemes, Mawby and Walklate link this disregard for this category of victim with the development of the welfare state in the aftermath of the second world war. With the consequential development of health and social protection programmes, Mawby and Walklate state that an 'assumption' developed that poverty had been eliminated and the eradication of the associated issue of violence within the home should also follow. If such violence were to occur, victims were regularly blamed and dismissed as somehow culpable and responsible for such violence.²⁹ Further to this, a primary component of the narrative in relation to victims of domestic abuse is that they are consistently criticised for continuing the cycle of abuse and not acting to prevent further re-victimisation. This is despite the fact that there are a multitude of relevant factors which prevent these victims from fleeing their home and leaving their abuser.³⁰ In addition, there is a premise, especially in relation to victims of domestic violence and intimate-partner violence, that victims must completely leave and have no contact with their abuser in order to benefit from the support and assistance provided by the State and the community as a whole.³¹ According to Hoyle, this ignores the potential benefits that a restorative justice

²⁴ Lorraine Wolhuter, Neil Olley and David Denham, *Victimology, Victimisation and Victims' Rights* (Routledge Cavendish 2009) 15; Sandra Walklate, *Understanding Criminology: Current Theoretical Debates* (Open University Press 2003) 118.

²⁵ Spalek (n 15) 62

²⁶ *ibid* 63.

²⁷ *ibid*.

²⁸ Mawby and Walklate (n 3) 9.

²⁹ *ibid* 73.

³⁰ Carolyn Hoyle, 'Feminism, Victimology and Domestic Violence' in Sandra Walklate (ed), *Handbook of Victims and Victimology* (Willan Publishing 2007) 158 – 159.

³¹ *ibid* 158.

approach might bring to this issue where efforts are made to repair the relationship if the parties themselves are so agreeable and the victim is not at any risk.³²

Victim Compensation and the Place of Domestic Abuse Victims

Justifying the Establishment of Victim Compensation Schemes

The position of victims of crime and the general role of the State in relation to crime prevention has shifted throughout history. Whilst victims of crime still largely occupy a peripheral role in modern criminal justice systems, their position continues to shift and their role continues to be ‘re-imagined and re-configured’ as a result of different stakeholders within the justice system demanding increased protections and supports for victims of crime.³³ These stakeholders include victims’ rights organisations, politicians, the media and academics who in their own manifestations and for their own reasons campaign for the revival of the victim in the criminal justice process.³⁴ These demands were initiated in the aftermath of the second world war when it was recognised that victims of crime lacked a voice in both legal and policy fora concerning criminal justice issues.³⁵ In the decades that followed and with varying degrees of success, this ‘victims’ rights movement’ took many forms and secured incremental advances for victims of crime in the provision of information, support and participatory rights throughout the criminal process.³⁶

Victim compensation schemes were established in parallel with the development of this movement. In identifying justifications for the establishment of victim compensation schemes, Miers argues that proposals advocating for the setting up of these schemes were ‘the product of a distinct shift in government concern about the place of the victim in the criminal justice system’ in the 1950’s and 1960’s.³⁷ Further to this, Miers notes that the momentum for the establishment of many of these schemes throughout the common law world developed in the aftermath of a particularly high profile and serious crime of violence perpetrated against an especially vulnerable victim in a particular jurisdiction. According to Miers, the occurrence of such a crime frequently led to a public campaign in support of victims of crime generally which politicised the individual victim’s suffering. This process typically culminated in the recognition amongst politicians that political capital could potentially be gained by way of victim advocacy in relation to the setting up of compensation schemes.³⁸ In Britain, the prominent penal reformer, Margery Fry, campaigned for the establishment of such a scheme throughout the 1950’s on the basis that the State should collectively insure its citizens who are all at risk of becoming victims of crime.³⁹ This notion of collective insurance became very popular in the aftermath of the second world war with the development of the wider welfare state. According to Mawby and Walklate, the

³² *ibid* 162 – 164.

³³ Tony Kearon and Barry S Godfrey, ‘Setting the Scene: A Question of History’ in Sandra Walklate (ed), *Handbook of Victims and Victimology* (Willan Publishing 2007) 24.

³⁴ Shane Kilcommins and others, *The Victim in the Irish Criminal Process* (MUP 2018) 28 – 29.

³⁵ Mawby and Walklate (n 3) 69.

³⁶ Leahy & Spain (n 5).

³⁷ David Miers, *State Compensation for Criminal Injuries* (Blackstone Press 1997) 10. It should be noted that particular reliance is placed on Miers throughout this article due to his extensive scholarship on the issue of state compensation schemes for victims of violent crime. Focusing especially on the operation of the British scheme, no other scholar has written at such length concerning this issue.

³⁸ *ibid*.

³⁹ Mawby and Walklate (n 3) 72.

establishment of state compensation mechanisms in respect of criminal injuries was ‘not far removed’ from these developments.⁴⁰

Miers states that contractarian conceptions of the State’s role became a significant justification for the putting in place of victim compensation schemes. As the State had monopolised the prevention, investigation and prosecution of criminal activity, it was only reasonable that the State should compensate innocent and blameless victims of crime in respect of injuries sustained especially in light of the difficulties that victims experience in terms of securing compensation from the offender.⁴¹ Additionally, in establishing these schemes, governments made clear that access to these compensation schemes was not to be seen as a right of victims of crime but rather a recognition of the community’s sympathy and social solidarity with victim’s plight.⁴² Miers is critical of the core theoretical basis for the establishment of victim compensation schemes for a number of reasons and argues that the absence of a sound justification ultimately led to significant problems with the design and operation of the schemes themselves.⁴³ One of Miers’ rationales relates to a fundamental flaw in the contractarian foundation of the schemes in that, whilst the State has a duty to protect its citizens from the occurrence of criminal activity, its duty in relation to criminal injuries compensation extends no further than its duty to provide health and education services. In this manner, victims of crime deserve no more than ‘an equitable share in public resources’ in respect of injuries sustained and if the provision of compensation is to extend any further, the provision of compensation in respect of criminal injuries should be justified on the basis that crime is a distinct harm.⁴⁴ Cane agrees with Miers’ rationale and submits that crime victims are not a distinct group and criminal injuries compensation from the State should be strictly limited to similar amounts available from social welfare in respect of work-place accidents and other misfortunes experienced by individuals.⁴⁵

In this manner, Miers maintains that victim compensation schemes represent ‘an expression of populist values about crime’ whereby the political class and wider society could only ever support the establishment and continued development of these compensation schemes or risk standing accused of not being on the side of crime victims.⁴⁶ Whilst other arguments in favour of these schemes have been advanced by advocates, including that it is better that losses fall on the community as a whole and not on individuals,⁴⁷ Miers submits that the absence of a sound foundation led to the development of problems in relation to the operation of victim compensation schemes. For example, in Britain, Miers notes that the 1961 Home Office Working Party, which was set up to examine how best to establish a victim compensation scheme, considered two options in relation to how to establish the scheme. One option was based on the model of the industrial industry scheme which favoured periodic pension-like payments akin to traditional social welfare payments. The other option was lump-sum compensation payments based on personal injury damages which typically involve greater sums than traditional welfare payments. Miers notes that no specific reason was advanced for the favouring of the lump-sum option.⁴⁸ As the schemes

⁴⁰ *ibid.*

⁴¹ Miers (n 37) 4.

⁴² *ibid* 11; Buck (n 5) 150 – 151.

⁴³ Miers (n 37) 12.

⁴⁴ *ibid* 4.

⁴⁵ Peter Cane, *Atiyah's Accidents, Compensation and the Law* (CUP 2018) 289.

⁴⁶ Miers (n 37) 12.

⁴⁷ *ibid* 7.

⁴⁸ *ibid* 12 – 13.

themselves resulted in significant sums of public monies being advanced to victims, it is perhaps no surprise that access to the scheme was limited to innocent and blameless victims of crime.

State Compensation and the Exclusion of Domestic Abuse Victims

The problems associated with this limitation are at the core of this article's focus. Specifically, why were domestic abuse victims seen as undeserving of access to these compensation schemes? From its inception in 1964, under the scheme in operation in Britain, injuries arising from 'offences committed against a member of the offender's family living with him at the time' were excluded. This was until an amendment was made to the scheme in 1979 which provided that this category of victim were entitled to access the scheme but only if the offender had been prosecuted and the offender and victim were unlikely to live together again in the future.⁴⁹ According to Miers, there were a number of reasons for the putting in place of this rule, which excluded many adult and child victims of criminal activity in the home, including a perceived 'difficulty [in] establishing the facts and distributing blame, the possibility of fraud and the administrative problem of ensuring that the assailant did not benefit' from the compensation payment.⁵⁰ It is largely agreed that these various factors were a relevant consideration at the time in which victim compensation schemes were established. However, it is argued that they reveal the nature and extent of a number of misconceptions in relation to the domestic abuse victims and victims of crime in general in play at this time.

Overall, it is clear that the exclusion of domestic abuse victims from accessing victim compensation schemes is out of step with contemporary understandings of victimhood as a construct. First, facts in relation to crimes in the domestic space are difficult to establish, partly because resources are typically focused on public and not private sphere crimes.⁵¹ Further to this, it is not a question of distributing blame and perceived difficulties therein but rather it is question of victims of domestic abuse regularly being blamed for their plight despite the fact that these crimes are now more widely understood not to be the fault of the victim but the responsibility of the offender only.⁵² Finally, then, the fact that compensation is denied to these victims out of a concern that the offender will benefit ignores the fact that this category of victim struggles to break the cycle of abuse partly as a result of offender control and manipulation and partly as a result of inadequate support and assistance from the State more generally.⁵³

This section commenced with an examination of the place of victims of crime in the criminal justice system. It was demonstrated that victims were at the periphery of the justice system in the period following the second world war and there was a momentum of sorts to better provide for the needs of crime victims. It was seen that victim compensation schemes were one method in which to do this. Despite this, the early development of these schemes lacked a sound foundation which led to issues in relation to the categories of crime victim eligible for compensation. As a result of the identification of these issues, amongst other problems, attempts were made at an international level to set down minimum standards in this area. The development of these standards will now be examined in the next section with a particular focus on the Istanbul Convention.

⁴⁹ David Miers, *Criminal Injuries Compensation: State and Offender Compensation for Violent Crime* (OUP 2018) paras 3.96 – 3.97.

⁵⁰ *ibid* para 3.96.

⁵¹ Spalek (n 15) 62 – 63.

⁵² Mawby & Walklate (n 3) 73.

⁵³ McCullagh (n 9) 542.

Compensation, Domestic Abuse and the Istanbul Convention

There are a number of international and regional legal instruments which obligate States Parties to establish and fund compensation schemes for victims of crime, each of which set down minimum standards which States must abide by. One of the first instruments of this kind was the European Convention on the Compensation of Victims of Violent Crimes which opened for signature by States Parties of the Council of Europe on 24 November 1983.⁵⁴ At this time, there were many victim compensation schemes established in Europe and elsewhere throughout the 1960's and 1970's with differing levels of compensation provision throughout the various jurisdictions. These international and regional instruments can therefore be understood as attempts to harmonise the provision of compensation for victims of crime which was seen as a key protection offered by the State to victims.⁵⁵ In addition to these important international and regional instruments, the European Union has instigated its own harmonisation measures in this area with a particular focus on cross-border victims of crime.⁵⁶ Whilst the European Convention and EU law have an important role to play in the context of victim compensation schemes, this section will focus on the provisions of the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence as this instrument sets down specific standards in relation to this category of victim and their rights to state compensation.

This Convention was opened for signature by States Parties of the Council of Europe on 11 May 2011 and sets out a comprehensive list of obligations which aim to prevent the occurrence of violence against women and domestic violence.⁵⁷ The Istanbul Convention itself is primarily concerned with achieving this important goal by obligating States to take steps to prevent such violence, protect women and prosecute the perpetrators of such violence when it occurs. For the purposes of the Istanbul Convention, domestic violence is defined as 'all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim'.⁵⁸ Victims of domestic violence are entitled to all the protections and rights set out in the Istanbul Convention. Specifically, the Istanbul Convention also sets down standards in relation to compensation. Article 30(2) states that '[a]dequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or State-funded health and social provisions.'⁵⁹ Further to this, Article 30(3) provides that the compensation shall be granted within a reasonable time.⁶⁰

⁵⁴ Council of Europe, *European Convention on the Compensation of Victims of Violent Crimes*, European Treaty Series – No 116 (1983).

⁵⁵ Mawby and Walklate (n 3) 148 – 149.

⁵⁶ Joëlle Milquet, *Strengthening Victims' Rights: from Compensation to Reparation: For a New EU Victims' Rights Strategy 2020-2025: Report of the Special Adviser, Joëlle Milquet, to the President of the European Commission, Jean-Claude Juncker* (European Commission 2019) 5
<https://ec.europa.eu/info/sites/default/files/strengthening_victims_rights_-_from_compensation_to_reparation_rev.pdf> accessed 19 July 2021.

⁵⁷ Council of Europe, *Convention on Preventing and Combating Violence against Women and Domestic Violence*, European Treaty Series – No 210 (2011).

⁵⁸ *ibid* Article 3.

⁵⁹ *ibid* Article 30(2).

⁶⁰ *ibid* Article 30(3).

Importantly, whilst Ireland ratified the Istanbul Convention on 8 March 2019, a reservation was entered by Ireland which reserved ‘the right not to apply the provisions’ of Article 30(2).⁶¹ Unfortunately, the first evaluation report on Ireland is not due until late 2023 and it is therefore difficult to analyse the precise reasons for the reservation. Was the reservation put in place due the exclusion of domestic abuse victims from accessing the Irish victim compensation scheme? Will this reservation shortly be ended or will it at least not be renewed upon expiry in 2024 due to the abolition of the exclusion? It is important to note also that several other States have entered reservations in the context of Article 30(2) for various reasons including that their own victim compensation scheme already provides sufficient provision.⁶²

The implementation of the Istanbul Convention in States Parties is monitored by both the Group of Experts on Action against Violence against Women and Domestic Violence (‘GREVIO’), which is comprised of a panel of experts from the States Parties, along with the Committee of the Parties, which is comprised of representatives from the governments of the States Parties. In May 2021, GREVIO published a review of its monitoring work since its inception and the findings and conclusions from this report provide some very useful information in terms of the manner in which victim compensation schemes are established in the various States Parties in the context of domestic abuse victims. For example, in Montenegro, victims of domestic violence are entitled to free legal aid when seeking compensation from the offender,⁶³ and in Sweden, children who have witnessed domestic violence and who have suffered trauma are entitled to compensation from the State.⁶⁴ Despite this, according to GREVIO, several challenges exist including a significant absence of available data in relation to the number of victims who receive compensation and the type and amount of compensatory relief provided.⁶⁵ In addition, GREVIO found that the eligibility criteria for many victim compensation schemes is too restrictive such as strict requirements in relation to the seriousness of the criminal act and the nature and extent of the injuries sustained.⁶⁶ Finally, GREVIO notes the widespread issue of delay which is experienced by victims in their attempts to secure compensation which ‘can act as a deterrent to pursuing further action’ on the part of the victim.⁶⁷ Overall, from the work of GREVIO, it is clear that victim compensation schemes throughout Europe experience many similar problems including that of restrictive eligibility criteria and delay all which act to deter victims from seeking compensation. Despite this, the rights set out in the Istanbul Convention must be implemented as a matter of international law. Whilst Ireland has entered a reservation in relation to Article 30(2), Article 30(3) in relation to the granting of compensation within a reasonable time is binding on Ireland. It will, therefore, be interesting to examine how these issues are dealt with in the Irish context.

⁶¹ Council of Europe, *Reservations and Declarations by Ireland for Treaty No.210 - Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence*

<<https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=210&codeNature=2&codePays=IRE>> accessed 19 July 2021.

⁶² Council of Europe, *Reservations and Declarations for Treaty No.210 - Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence* <<https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=210&codeNature=0>> accessed 19 July 2021.

⁶³ Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), *Mid-term Horizontal Review of GREVIO Baseline Evaluation Reports* (Council of Europe 10 May 2021) para [316] <<https://rm.coe.int/horizontal-review-study-2021/1680a26325>> accessed 22 July 2021.

⁶⁴ *ibid*, para 316.

⁶⁵ *ibid*, para 317.

⁶⁶ *ibid*, para 321.

⁶⁷ *ibid*, para 322.

Ireland and the Criminal Injuries Compensation Tribunal

The CICT was established on a non-statutory basis under the auspices of the Department of Justice on 8 May 1974 and operated on a retrospective basis in respect of injuries sustained as a result of violent criminal acts from 1 October 1972.⁶⁸ The CICT retrospectively considered applications from this date in response to the Dublin paramilitary bombings of 1972 and 1973 where three people were killed and nearly 200 injured. In addition to assessing compensation in respect of routine victims of violent crime, the CICT subsequently considered applications from victims of the Dublin and Monaghan bombings of 1974 where 33 civilians were killed and nearly 300 injured.⁶⁹ In the initial years following its establishment, the number of applications for compensation submitted to the CICT increased year-on-year as a result of an increased awareness of the CICT's existence amongst victims of crime themselves, along with the relevant stakeholders.⁷⁰ Despite this, according to Senator Brendan Ryan, addressing Seanad Éireann in 1991, since its inception, the CICT has 'trundled along, almost unheard of, almost inaccessible, in an almost secretive silence, behind a door which did not open'.⁷¹ These comments are as applicable today and despite a near half century of operation, the CICT has largely gone about its work behind closed doors and has generally existed unbeknownst to the community at large. This section will examine the establishment and operation of the CICT since its inception in 1974 through to its present day operation in 2021 and onwards to the future as reform is considered and debated in relation to this important issue. The exclusion of victims of domestic abuse from its remit will be at the core of this examination.

The Background and Development of the CICT

The Text of the Original Scheme

The Original Scheme was laid before the Oireachtas in February 1974 and provided for the establishment of the CICT which was originally comprised of a chairperson and six members who had to be practicing barristers or solicitors and who were appointed by the Minister for Justice on a part-time basis.⁷² The CICT accepted applications for *ex gratia* compensation only in respect of personal injuries, including fatal injuries, received which were 'directly attributable to a crime of violence' and such a crime could include situations involving arson and poisoning.⁷³ In the context of the Original Scheme, the term *ex gratia* should be understood as compensation paid merely out of a moral obligation and not as a result of a legal obligation on the State.⁷⁴ Additionally, applications could be made by persons injured in the course of assisting a member of An Garda Síochána preventing a crime, by persons injured in attempting to stop a crime in a public place or by persons injured in attempting to save a human life.⁷⁵ In addition to persons directly injured in such circumstances, a person responsible for the care of a person directly injured was eligible to apply for compensation as well as dependants of persons fatally injured.⁷⁶ According to the Original Scheme, a person

⁶⁸ Department of Justice, *Criminal Injuries Compensation Tribunal: First Annual Report for the Year 1974* (Stationary Office 1975) 4 – 5.

⁶⁹ Osborough (n 2) 320.

⁷⁰ Department of Justice, *Criminal Injuries Compensation Tribunal: Fourth Annual Report for the Year 1977* (Stationary Office 1981) 3.

⁷¹ Seanad Éireann Debates Vol 129 No 5, 29 May 1991; Kilcommins and Moffett (n 4) 386, fn 13.

⁷² The Original Scheme (n 6) para 17.

⁷³ *ibid* para 1.

⁷⁴ Miers (n 49) para 1.11.

⁷⁵ The Original Scheme (n 6) para 4.

⁷⁶ *ibid* para 3.

cannot be compensated twice which means that compensation paid under the Scheme will be reduced according to the value of compensation received from other sources such as from the offender.⁷⁷ Furthermore, compensation was to be calculated on the basis of civil damages and from 1986, compensation could only cover loss of earnings and out-of-pocket expenses such as medical costs and not pain and suffering incurred as a result of the injuries sustained.⁷⁸ Moreover, compensation payable from the CICT is cash-limited meaning that the CICT can only pay out a certain amount of monies each year as provided by the Oireachtas. As a result, if the total amount of compensation payable exceeds the total monies provided, certain applicants will have their awards delayed until the next fiscal year when new monies are provided by the Oireachtas.⁷⁹

Importantly, decisions of the CICT at first instance could be made by an authorised officer of the CICT if the total value of the claim did not exceed £250.00. If the value of the claim exceeded this amount, first instance decisions were taken by a single member of the CICT and it was open to applicants to appeal such first instance decisions to a panel of three different CICT members.⁸⁰ The proceedings of the CICT were to be conducted by way of *viva voce* and in private.⁸¹ Moreover, applicants were entitled to have their legal advisors present but the CICT did not award legal costs and legal aid was not available for applicants.⁸² It is unclear the impact of these restrictions and the question of whether the CICT is a lawyer-free forum as a result warrants further empirical study due to a lack of available data from the CICT in relation to the issue. Separately, then, the applicable limitation period was three months, however, the CICT did have discretion to waive this requirement in exceptional circumstances. Indeed, in the early years of the CICT's operation, it is apparent that this was regularly waived by virtue of the fact that many victims delay the question of compensation and focus instead on assisting the police in relation to apprehending and prosecuting the offender.⁸³ Apart from the bringing of judicial review proceedings in the courts, a decision of the CICT could not be challenged or overturned by way of external appeal.⁸⁴

Crucially, the CICT can deny or reduce awards of compensation in certain circumstances including if the applicant cannot satisfy the CICT that 'all reasonable efforts were made by or on behalf of the [applicant] to notify An Garda Síochána of the offence and to cooperate with them',⁸⁵ if the value of the claim was less than £50.00;⁸⁶ if the applicant had not given all reasonable assistance to the CICT;⁸⁷ if the applicant was responsible, either by way of provocation or otherwise, for the injuries sustained;⁸⁸ or if the applicant's conduct, character and way of life make it inappropriate for a full award to be made.⁸⁹ Crucially, for the purposes of this article, 'no compensation [was to] be payable where the offender and the victim were

⁷⁷ *ibid* paras 5 and 16.

⁷⁸ *ibid* para 6.

⁷⁹ *ibid* para 18.

⁸⁰ *ibid* para 25.

⁸¹ *ibid* paras 26 and 29.

⁸² *ibid* para 27.

⁸³ Department of Justice, *Criminal Injuries Compensation Tribunal: Second Annual Report for the Year 1975* (Stationary Office 1977) 3; Osborough (n 2) 321.

⁸⁴ The Original Scheme (n 6) para 2.

⁸⁵ *ibid* para 23.

⁸⁶ *ibid* para 9.

⁸⁷ *ibid* para 11.

⁸⁸ *ibid* para 13.

⁸⁹ *ibid* para 24.

living together as members of the same household at the time the injuries were inflicted.⁹⁰ As stated above, this rule has now been abolished. Despite this, questions remain as to the implications of this change and these will be discussed in further detail below.

The Original Scheme in Context: Domestic Abuse in Ireland

With the text of the Original Scheme itself set out, this subsection will examine the Original Scheme in the context of its time and will outline a number of reasons as to why the CICT was established in such a way so as to exclude victims of domestic abuse by virtue of the ‘same roof’ rule under paragraph 10. In the first instance, according to Nugent, the inclusion of paragraph 10 and the denial of compensation to these victims ‘stemmed from a mentality prevalent in society at [the] time, that there was no way of knowing what went on behind the closed doors of houses, and society should not try to find out.’⁹¹ Whilst it is correct to state that this mentality existed in Ireland and elsewhere at this time, which was previously discussed in this article, there can be no doubt as to existence of domestic abuse and societal awareness of such crimes at this time. The first shelter for victims of domestic abuse was established in Ireland in 1974 and the first rape crisis centre was set up in Dublin in 1977.⁹² At this time, the presence and impact of the women’s movement in Ireland developed significantly,⁹³ and the first domestic violence legislation was enacted in 1976.⁹⁴ It is clear, therefore, that there was at least some political will to address the problem of domestic violence and to put in place appropriate supports for these victims. Clearly, this political will did not extend to the issue of victim compensation and it is maintained that this mentality is not the sole reason for the inclusion of paragraph 10 in the Original Scheme. It was recognised, albeit perhaps reluctantly and certainly at a glacial pace, that victims of intimate-partner violence deserved at least some level of protection in the form of shelters and barring orders but did not deserve compensation from the State in respect of injuries sustained in violent assaults in the home.

The question is, therefore, why were victims of domestic abuse specifically excluded from accessing compensation from the CICT? Miers comments in relation to the perceived ‘difficulty [in] establishing the facts and distributing blame, the possibility of fraud and the administrative problem of ensuring that the assailant did not benefit’ from the compensation payment are all relevant.⁹⁵ However, the reasons for the inclusion of paragraph 10 in the Original Scheme go further, and are indicative of the fact that the CICT and victim compensation schemes generally were established on the basis of the community’s social solidarity with truly innocent and blameless victims of crime only. This solidarity did not extend to victims of domestic abuse as society perceived these victims to be at fault for their plight and therefore undeserving of compensation from the State, as discussed previously in this article. As mentioned, paragraph 10 has now been removed from the Scheme as a result of an amendment made in April 2021. The next section will now examine this amendment and reform in the Irish context will be considered in detail.

Reform in Ireland: Compensating Victims of Domestic Abuse

⁹⁰ *ibid* para 10.

⁹¹ James Nugent, ‘Review of the Scheme of Compensation for Personal Injuries Criminally Inflicted’ (1999) 4(6) *Bar Review* 286, 286; Grant (n 7) 97.

⁹² *Kilcommins and others* (n 34) 2.

⁹³ *ibid*.

⁹⁴ Family Law (Maintenance of Spouses and Children) Act 1976.

⁹⁵ Miers (n 49) para 3.96.

The CICT has experienced and continues to experience a number of challenges in relation to its operation. These challenges include issues in relation to the internal structure of the CICT, considerable delays present in awards of compensation being paid out to victims, the presence of a restrictive limitation period of three months, the absence of provision for legal aid for applicants and limitations in relation to the categories of compensation that can be awarded, amongst others. It is beyond the scope of this article to examine this suite of issues in detail. Instead, this section will examine the content of recent reform measures and reform proposals in relation to the CICT with a particular focus on reform of the ‘same roof’ rule in Ireland. Specifically, the exclusion of domestic abuse victims will be considered in order to gain an insight into the State’s priorities in terms of supporting victims of crime generally. There has been numerous calls for reform of the CICT since its inception. Despite this, the Scheme itself has only been amended twice; once in 1986 where the provision for pain and suffering was removed from the Scheme and again in April 2021 where, as previously stated, the provision excluding domestic abuse victims from the Scheme was removed. Additionally, a number of other amendments to the Scheme were introduced as a result of the April 2021 reforms.

In advance of setting out these most recent reform measures, it is interesting to note the persistent message emanating from the Irish Government that the CICT was under review and reform proposals in relation to its operation would be forthcoming in due course. Nugent notes this narrative as far back as 1997 in a Department of Justice discussion paper.⁹⁶ Indeed, in response to several parliamentary questions concerning reform of the CICT, successive Justice Ministers in recent years have repeated this message that the CICT is under review and reform would be forthcoming.⁹⁷ Eventually, in response to these calls for reform and in response to persistent concerns in relation to the multitude of problems faced by the CICT, the Law Reform Commission (‘LRC’) were requested to conduct a review of the CICT and present comprehensive proposals for reform. Such a review was included as part of the LRC’s Fifth Programme of Law Reform,⁹⁸ and the LRC commenced this work in 2020 and at the time of writing their review is still being conducted.⁹⁹ In February 2022, the LRC published their Consultation Paper on the issue and have opened a consultation process. In their Consultation Paper, the LRC detailed the multitude of barriers facing victims in accessing compensation at the CICT and presented a suite of provisional proposals on how to comprehensively reform the Scheme.¹⁰⁰ In light of the fact that the LRC is currently conducting such a review of the CICT, the issue is what are the contents of the reforms introduced in April 2021 and why were such reforms made before the conclusion of the LRC’s review? Specifically, why did the Irish Government decide to abolish the exclusion of domestic abuse victims from accessing the CICT and what are the implications for the CICT of this reform, other reform measures and future proposals for reform?

Recent Reform Measures at the CICT

⁹⁶ Nugent (n 91) 286.

⁹⁷ Seanad Deb 12 October 2017, vol 253, col 11; Dáil Deb 20 February 2019, Questions (116, 117, 118, 119).

⁹⁸ Law Reform Commission, *Report: Fifth Programme of Law Reform* (LRC 120 – 2019) 9 <https://www.lawreform.ie/_fileupload/Programmes%20of%20Law%20Reform/LRC%20120-2019%20-%20Fifth%20Programme%20of%20Law%20Reform.pdf> accessed 14 July 2021

⁹⁹ Grant (n 7) 99.

¹⁰⁰ Law Reform Commission, *Consultation Paper: Compensating Victims of Crime* (LRC CP 67 – 2022) <https://www.lawreform.ie/_fileupload/consultation%20papers/Compensating%20Victims%20of%20Crime%20LRC%20CP%2067-2022.pdf> accessed 17 February 2022.

In order to answer these particular questions, it is necessary to examine the relevant Department of Justice press release published in April 2021 announcing the amendments to the Scheme.¹⁰¹ This press release announced a revised Scheme based on ‘recommendations from officials of the Department of Justice and the Department of Public Expenditure and Reform.’ In setting out this revised Scheme, Minister for Justice Helen McEntee acknowledged the CICT’s value in terms of supporting victims of crime and further acknowledged the need for reform. According to the press release, a number of amendments were made to the Scheme as of 20 April 2021 including the doubling of the CICT membership from seven to 14, specific provision for compensation in respect of mental distress caused to dependants of fatally injured victims of crime, the anonymised publication of select CICT decisions, the provision of a maximum limitation period of two years for exceptional cases whilst retaining the formal limitation period of three months, updated monetary limits on minimum levels of compensation, the provision of compensation in respect of crimes investigated by the Garda Síochána Ombudsman Commission and finally, the abolition of paragraph 10 in the ‘interests of fairness’. Additionally, the press release announced that references to the *ex gratia* nature of the Scheme were to be removed in line with Directive 2004/80/EC and potential awards of €75,000 or more were to be decided at first instance by three CICT members ‘with a view to ensuring improved governance in complex cases where large amounts of public funds are being awarded.’

With the content of the April 2021 reforms set out, it is important to note again that these changes took place in advance of the LRC’s review being completed. This surprising and unanticipated announcement was peculiar to say the least and is somewhat indicative of the manner in which the Irish Government makes decisions in this area which is very much ‘in an almost secretive silence’ as described by Senator Ryan and as alluded to above.¹⁰² Generally speaking, the April 2021 reforms are to be welcomed but in many ways these amendments to the Scheme raise more questions than answers in relation to victims of crime and specifically in relation to victims of domestic abuse. Whilst it is hoped that such questions will be addressed in the context of future reform, it is worth setting out here the precise problems that remain.

Whilst it is to be welcomed that paragraph 10 has now been abolished, the Irish Government and the CICT itself has offered no guidance on whether this amendment will apply retrospectively to domestic abuse which took place before the limitation period and to victims who previously applied and were rejected by virtue of paragraph 10. Unfortunately, the CICT generally does not publish figures in relation to the number of applications received and rejected as a result of this paragraph. Despite this, it is clear that such applicants do exist as according to the CICT’s *Fourth Annual Report* for 1977, two such applications were rejected as a result of the rule.¹⁰³ Furthermore, according to the *Fifth Annual Report* for 1978, another two such applications were rejected.¹⁰⁴ Figures are not included for other available years, however the judgment of Allen J in *Vonkova v Criminal Injuries Compensation Tribunal* is an indication that such victims have applied and have been rejected by the CICT in the past.¹⁰⁵ In these judicial review proceedings, the applicant was the mother of a murder victim who was living with the perpetrator at the time in which the murder took place. An application

¹⁰¹ Department of Justice Press Release (n 8).

¹⁰² Seanad Deb 29 May 1991, vol 129, col 5.

¹⁰³ *Fourth Annual Report for the Year 1977* (n 70) 4.

¹⁰⁴ Department of Justice, *Criminal Injuries Compensation Tribunal: Fifth Annual Report for the Year 1978* (Stationary Office 1981) 11.

¹⁰⁵ *Vonkova v Criminal Injuries Compensation Tribunal* [2019] IEHC 13.

was made to the CICT and it was rejected as a result of paragraph 10. Proceedings were initiated by way of judicial review and the subject matter of Allen J's judgment concerned itself with the applicant's request to add a further relief in the statement of grounds after the leave application was granted.¹⁰⁶ These proceedings demonstrate that the issue of retrospectivity is a relevant one in a situation today where such victims can now make applications to the CICT. This issue, therefore, needs to be addressed as part of any future reform. Whilst a direction was published on the CICT's website at the time of the amendment, stating that 'applications lodged with the Tribunal on or prior to 20/4/2021 will continue to be dealt with under the terms of the Scheme that applied at the time of application',¹⁰⁷ further clarification is needed for victims of domestic abuse as many of these victims would not have applied to the Scheme at all by virtue of paragraph 10.

Reform in the UK and Lessons for Ireland

The experience of the UK's various victim compensation schemes demonstrates that the retrospectivity issue needs to be addressed in a more detailed and comprehensive manner sooner rather than later. In the UK, there are a number of schemes in operation. At their respective inceptions, each scheme contained similar provisions to paragraph 10 which prevented victims of crime from accessing compensation where they lived together with the perpetrator as members of the same household.¹⁰⁸ This rule was changed on a prospective basis only throughout the late 1970's and 1980's for cases whereby the innocence of the victim is unquestionable, the perpetrator has been prosecuted, bar some good reason as to why this has not occurred and there is no prospect of the perpetrator benefiting from the compensation so much so that the victim and perpetrator have stopped living together and are unlikely to live together in the future.¹⁰⁹ According to Miers, whilst the UK schemes changed and developed over the years in various ways, the prospective nature of the rule was maintained to ensure administrative efficiency and financial confidence in how the schemes operate.¹¹⁰ Miers points out that the prospective nature of the rule has led to significant unfairness in terms of how legitimate victims of crime access compensation. In relation to the British scheme, crimes that occurred within the home before 1 October 1979 are excluded which means that victims of child abuse in the home could not access compensation in situations where criminal prosecution very legitimately occurs many years after the crime itself.¹¹¹ According to Miers, there are also situations involving modern slavery where technically, victim and perpetrator might live together in the same household and are therefore excluded from accessing the scheme.¹¹²

The retrospective exclusion under the British scheme was unsuccessfully challenged in *R v Criminal Injuries Compensation Board*.¹¹³ Despite this, the now statutory nature of the UK schemes and the enactment of the Human Rights Act 1998 has shifted matters and led to a number of successful legal challenges to the prospective nature of the rule.¹¹⁴ In Northern

¹⁰⁶ *ibid* [11].

¹⁰⁷ See Criminal Injuries Compensation Tribunal, *Applications lodged with the Tribunal on or prior to 20/4/2021* <[https://www.justice.ie/en/JELR/Applications lodged with the Tribunal on or prior to 20 April 2021.pdf/Files/Applications lodged with the Tribunal on or prior to 20 April 2021.pdf](https://www.justice.ie/en/JELR/Applications%20lodged%20with%20the%20Tribunal%20on%20or%20prior%20to%2020%20April%202021.pdf/Files/Applications%20lodged%20with%20the%20Tribunal%20on%20or%20prior%20to%2020%20April%202021.pdf)> accessed 22 February 2022.

¹⁰⁸ Miers (n 49) para 3.96.

¹⁰⁹ *ibid* para 3.97.

¹¹⁰ *ibid*.

¹¹¹ *ibid* para 3.106.

¹¹² *ibid* para 3.105.

¹¹³ *R v Criminal Injuries Compensation Board* [1994] PIQR 400, 417.

¹¹⁴ *JT v the First Tier Tribunal and the Criminal Injuries Compensation Authority* [2018] EWCA Civ 1735, [67].

Ireland, in *In the Matter of an Application by Mary Meehan and in the Matter of a Decision of CICAPNI v Department of Justice*, the Court of Appeal held that the prospective nature of the Northern Ireland scheme, as it relates to victims of domestic abuse, was unlawful having regard to Article 14 of the European Convention on Human Rights ('ECHR') and Article 1 of the First Protocol of the ECHR.¹¹⁵ In response to this important judgment, the Northern Ireland Department of Justice announced that the scheme would be amended so as to abolish the rule retrospectively.¹¹⁶ Applicants were actively encouraged to apply to the amended scheme within a certain prescribed time period of two years from the date of the amendment.¹¹⁷ A successful challenge was also brought in Britain in *JT v the First Tier Tribunal and the Criminal Injuries Compensation Authority* and as a result, the UK Government committed to changing the operation of the scheme so that retrospective applications could be made.¹¹⁸ Indeed, these changes took effect in 2019.¹¹⁹ Overall, it is beyond the scope of this article to set out comprehensively the specific reasons for the decisions in these cases. They do highlight, however, that the issue of retrospectivity is important and needs to be addressed in the context of reform of paragraph 10. In Ireland, at present, potential applicants to the CICT are in the dark as to their eligibility and the manner in which the CICT will assess their applications. It is hoped, therefore, that a level of clarity can be achieved under future reform measures in relation to victims of domestic abuse that occurred before April 2021.

Bringing About Meaningful and Holistic Reform

Separate to the important issue of retrospectivity, there is also no guidance for this category of victim in relation to the specific manner in which the CICT will assess claims going forward. For example, must the victim have stopped living with the perpetrator as is the case under the schemes in place in the UK? Additionally, will the CICT membership and staff have to undertake training in relation to how best to deal with victims of domestic abuse,¹²⁰ and was any consideration given to the issue of legal aid for these victims in terms of assisting them in accessing the CICT, as other Council of Europe States Parties do? Overall, it is important to say that some of these issues are currently being addressed by the LRC in the context of their review. Whilst the LRC's Consultation Paper sets out comprehensive proposals to reform the Scheme, including placing the Scheme on a statutory footing with detailed guiding principles,¹²¹ along with a proposal to create a statutory and independent national victim's office to consolidate the provision of victim support services, including that of compensation,¹²² the Consultation Paper puts forward no views on the legacy problems that remain for domestic abuse victims as a result of the removal of paragraph 10.¹²³ This

¹¹⁵ *In the Matter of an Application by Mary Meehan and in the Matter of a Decision of CICAPNI v Department of Justice* [2018] NICA 42, [8].

¹¹⁶ Northern Ireland Department of Justice Press Release, 'Justice Minister Announces Changes to the Criminal Injuries Compensation Scheme' (Department of Justice 9 June 2020) <<https://www.justice-ni.gov.uk/news/justice-minister-announces-changes-criminal-injuries-compensation-scheme>> accessed 23 August 2021.

¹¹⁷ Northern Ireland Department of Justice Press Release, 'Long Encourages Applications on Anniversary of the Removal of the Same Household Rule' (Department of Justice 9 June 2021) <<https://www.justice-ni.gov.uk/news/long-encourages-applications-anniversary-removal-same-household-rule>> accessed 23 August 2021.

¹¹⁸ Miers (n 49) para 3.110.

¹¹⁹ Hannah Goldsmith, 'Criminal Injuries Compensation: The Changing Scheme' (*Law Society of Scotland*, 14 September 2020) <<https://www.lawscot.org.uk/members/journal/issues/vol-65-issue-09/criminal-injuries-compensation-the-changing-scene/>> accessed 23 August 2021.

¹²⁰ Dáil Éireann Debates, 20 February 2019, Questions (116, 117, 118, 119).

¹²¹ LRC (n 100) para 3.19.

¹²² *ibid* para 3.93.

¹²³ *ibid* para 1.30.

section has attempted to highlight these problems by examining the contents of the April 2021 reforms and analysing their shortcomings. It is hoped that the LRC's final report will include recommendations in response to these shortcomings which also take into account the lessons inherent in victims' rights theory and the obligations set down under the Istanbul Convention.

Conclusion

According to the 2021 Strategic Priorities and Initiatives Action Plan of the Department of Justice, the Irish Government is committed to commencing the process whereby the Irish scheme would be placed on a statutory basis.¹²⁴ In light of this commitment, this article has attempted to identify key priorities for reform in Ireland in relation to access by victims of domestic abuse to compensation from the CICT. These priorities have been identified in light of key insights from victims' rights theory, international and regional legal standards along with comparative experiences. This author has attempted to answer a number of questions which include why the exclusion was put in place in the first place, which is difficult to definitively determine, along with what recent and future reform proposals in relation to the CICT tell us about how the State responds to the needs of victims. Ultimately, the answer to this latter question depends largely on the content of future reform which needs to effectively and comprehensively confront a number of important issues. Important questions that arise include whether victims will have to follow similar stipulations to those present in the UK, such as proving that they were truly innocent in relation to their injuries, that the perpetrator has been prosecuted and that they have stopped living with and are unlikely to live again with the perpetrator of the crime. Furthermore, in the past, governments have generally sought to restrict access to victim compensation schemes. It must be questioned whether recent reforms in Ireland, along with future reform proposals, indicate a change in this approach? These various questions remain unanswered and the aforementioned issues are yet to be determined by the Irish Government in the context of their reform efforts. It took nearly 50 years for victims of domestic abuse in Ireland to be included in the CICT's remit. Overall, it is hoped that the concerns identified in this article are properly addressed sooner rather than later.

¹²⁴ Department of Justice, *Action Plan 2021 – Strategic Priorities & Initiatives* (Stationary Office 2021) 31 <http://www.justice.ie/en/JELR/Department_of_Justice_Action_Plan_2021.pdf/Files/Department_of_Justice_Action_Plan_2021.pdf> accessed 26 August 2021.