

# Courthouse Protests

A BALANCING OF RIGHTS  
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# Introduction:

- This talk will focus on the tension between protecting the right of people to gather outside court to express their feelings in relation to a particular case or criminal justice issue and the duty of the Garda Síochána to protect the suspect and other court users.
- We have seen many examples of public attending courts in large numbers with the notable example of the charging of Josef Puzka with the murder of Aisling Murphy.
- We have no Data available on whether there is a race element to these gatherings and I will comment on that later.

# What do we mean by courthouse protests?

- Large gatherings of people who are expressing solidarity with an individual or a cause. Or an expression of disdain or anger.
- Sometimes they are protesting against a specific issue eg the powers of the special criminal court, water charges, covid restrictions.
- They can be spontaneous or organised.



# Do Courthouse gatherings amount to protests?

- Some gatherings seem to be completely spontaneous and peaceful and while arguably not amounting to a protest still require crowd control.
- Understandable and possibly necessary outpouring of grief/solidarity/disdain. Where possible they are and should be facilitated in a way that does not diminish the rights of the accused or other court users.
- Are spontaneous courthouse gatherings predictable? eg high profile cases/activity on social media.
- Requirement for planned and careful policing strategies.
- Necessitates a collaborative approach between IPS/AGS/Court Service to ensure safety of all attending court.
- Need for good courthouse design and modification to ensure safe entrance and egress for all attending court.



# Are they legal?

- Whether they are spontaneous or organised they must be peaceful
- Legal if they are peaceful and do not breach the Criminal Justice (Public Order) Act, 1994 or other laws.
- eg Breach of the Peace
- Drunk and Disorderly
- Public Order Act does not cater specifically for courthouse gatherings and is more suited to large ticketed events such as concerts.

# Criminal Justice (Public Order) Act (1994)

- Gives Gardaí powers to deal with crowds
- S. 21 permits a superintendent or higher ranking garda to authorise barriers if they are of the view that it is necessary in the interests of safety or for the purpose of preserving order.
- Members of the public can be diverted away from such barriers.
- Liable to fine if they breach s.21

# ICCL Report to UN Human Rights Committee May 2022

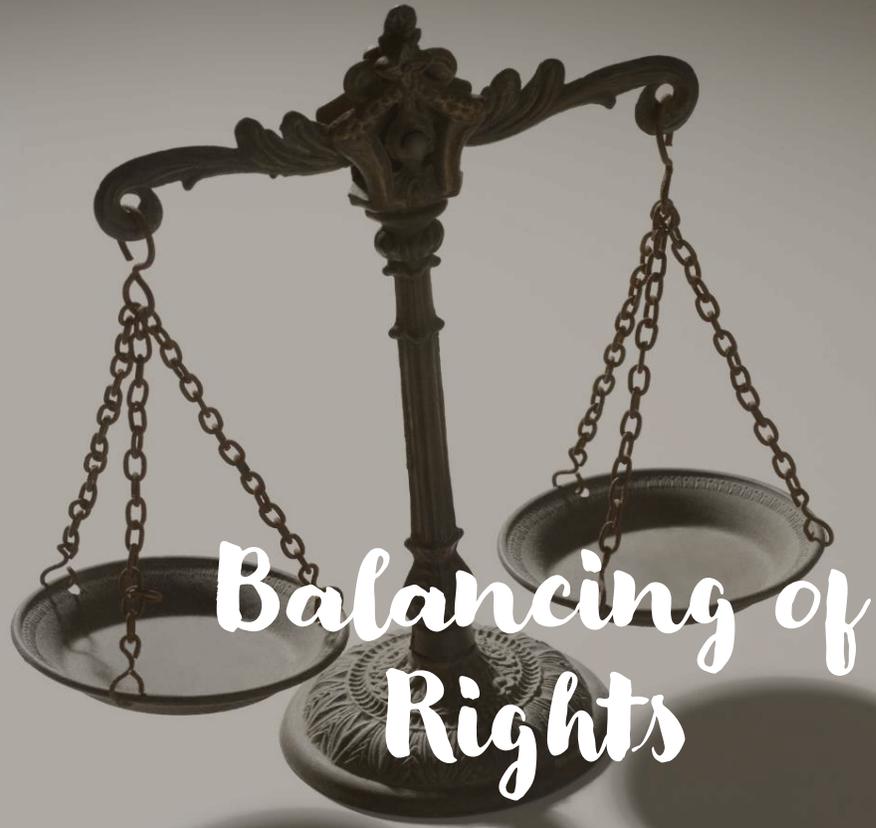
“Research carried out by ICCL in 2019, which included consultations with a variety of protest groups indicated that there are significant discrepancies in the policing of protest across Ireland. In general, protests are facilitated by AGS in large urban centres, where the protests follow planned routes that have been agreed in advance with AGS. Where the topic of a protest has general public support AGS are more likely to facilitate the protest. In contrast, when a number of factors are present AGS are less likely to facilitate protests and more likely to interfere with the exercise of the right. These include when a protest takes place spontaneously without prior consultation with AGS, in a rural area far from urban centres, or where the protest concerns a topic that does not necessarily have widespread public support.”



# ICCL Report

“During different phases of the Irish State’s Covid-19 pandemic response, numbers who could gather together in public and in private were severely limited. Although there was no direct reference to protest in the regulations that restricted gatherings, AGS interpreted the regulations as applying to protest. As a result, on numerous occasions, protests were disbursed even where efforts were clearly made to comply with health guidance, including mask wearing and social distancing. This had a chilling effect on protest in general and inconsistent approaches by AGS were noted by the oversight body, the Policing Authority.”





- Right to protest - freedom of expression and assembly
- Right of access to the courts
- ARTICLE 34.1 of the Constitution:
- Justice shall be administered in courts established by law... and, save in such special and limited cases as may be prescribed by law, shall be administered in public.

# Right to protest- PEACEFULLY

- ECHR (Article 10 Freedom of Expression and Article 11 Freedom of Assembly)
- Constitution – Art 40.6 – Freedom of Expression, freedom of Assembly and freedom of Association
- European Charter of Fundamental Rights and Freedoms
- International Covenant on Civil and Political Rights

# The rights of the Accused...

- ECHR - Article 6 - right to fair trial  
Article 3 - Right not to be subjected to inhuman or degrading treatment.
- Presumption of innocence - Article 6.2 ECHR/Constitution
- Right to bodily integrity - Art.40.3.1 Constitution - unenumerated right

# Know your rights as a prisoner – Dec 2020 – ICCCL and IPRT

“How will I be treated on the way to prison?”

- You have the right to be hidden from the public as much as possible while being taken to and from prison.
- You should not have to suffer insult or publicity of any kind.
- The vehicle in which you are travelling should be safe and comfortable.”

(Rule 50 – Prison Rules)



# Garda Human Rights Strategy 2022-2024

- Action listed in Strategy :  
“Focus on Vulnerable Persons to include a review of policies, procedures and operational orders”.
- How Action will be achieved:  
“Continued revision of priority policy areas”
- Which include:  
“Arrest and detention (Custody Management) and Public Order”

# *Garda Commissioner – Human Rights Strategy Foreward (May 2022)*

“It is essential that all Garda Personnel respect and protect the human rights of all individuals in our daily interactions with persons to whom we provide services. It is incumbent upon us to respond respectfully, and consider the needs of those with whom we interact in whatever capacity that interaction takes place.”

# ECTHR Decisions:

- In *Razvozhayev v. Russia and Ukraine and Udaltsov v. Russia*, 2019, the first applicant was found guilty of leading a number of individuals to break through a police cordon, and the witnesses confirmed that he had the intention to do so. Given that the breaking of the cordon led to the escalation of violence at a crucial moment and triggered clashes, the Court considered the first applicant's deliberate acts to fall outside the notion of "peaceful assembly" protected by Article 11. It therefore dismissed the first applicant's complaint as incompatible with the provisions of the Convention.

# ECTHR Contd.

- Ekrem Can and Others v. Turkey, 2022,
- The applicants' complaint concerned not only the fact that they had been prevented from making a statement but predominantly that the police intervention in respect of their protest action, resulted in their forcible removal from the courthouse.
- The Court considered that one year and eight months' imprisonment was a disproportionately severe sanction for a nonviolent courthouse protest. The Court also noted that the applicants had been held in pre-trial detention for more than one year and eight months (which it considered to be very long periods) for acts that fell within the purview of Article 11 (assembly). The Court therefore found a violation of that provision.

# *ECTHR Contd. Preventative arrest to ensure non-participation in an assembly.*

In *Schwabe and M.G. v. Germany*, 2011, the Court found the applicants' almost six-day detention, the equivalent of the entire duration of the G8 summit against which they intended to protest, to be a disproportionate measure to prevent the possible incitation of others to free demonstrators detained during the summit. The Court was of the view that there were other effective but less intrusive measures available to the authorities to achieve their aims, such as seizing the banners they had found in the applicants' possession. The Court found a violation of Article 11 of the Convention.



Image of scene as Defendant led away from court in garda custody after first court appearance - Ashling Murphy case.

This case demonstrates a need for improved planning, procedures and processes to ensure a Defendant does "not have to suffer insult or publicity of any kind" on their way to prison (and their way to and from court).

It is also important to uphold the presumption of innocence at this crucial stage of a case and to protect a person's bodily integrity from a hostile crowd.

# Court Infrastructure

- Some Courthouses are designed so that a suspect who is in Garda or IPS custody is not exposed to the public other than in the courtroom. The CCJ and the old Bridewell (Dublin) are good examples.
- There should be a system or procedures for the safe entrance and exit of suspects.
- The Court Service, AGS and IPS should continue to work collaboratively to ensure there are safe practices and procedures in place to avoid an accused person being exposed to an angry crowd. There are many ways this can be improved eg early arrival at court before crowd fully gathers, rear entrance and exit, barriers erected in advance as provided for in s.21 of the POA and collaboration and communication with the crowd by AGS.
- In cases where there might be race or ethnic tensions there may be a role for Garda National Diversity and Integration Unit whose remit includes "Liaising between members of the public and the relevant Garda or other service provider."

# Media Management

- Some cases attract greater social and traditional media coverage and this can lead to increased size and hostility of the crowd attending outside courthouses.
- Is there a need for AGS to contain information while an investigation is on-going to protect the investigation and the suspect from unfair or harmful coverage?
- Can Social Media commentary be better controlled?
- Does it contribute to a mob mentality in the context of courthouse protests?
- Does it have a positive function? eg another outlet for public sentiment; another outlet to voice concerns about the issue at stake eg climate action, government policy, safety of women, safety of people from a particular group or ethnicity.

# UK – naming of Defendants

- Bloomberg LP v ZXC [2022] UKSC Court held that :
- “In general a person under criminal investigation has prior to being charged, a reasonable expectation of privacy in respect of information in relation to that investigation.”
- Leveson Report recommended that suspects remain anonymous pre-charge
- College of Policing Guidance – do not usually identify people who have been arrested before they are charged.

# "How many cops to arrest climate chaos?"

This poster demonstrates frustration at UK Police for arresting Protesters while the issues raised seemed to go unheard.

At Cop26 in Glasgow this type of Policing led to chants of :

"Who do you serve? Who do you protect?"

In Ireland, we are rightly proud of our history of community-based, consensual policing. When the public question who the police are serving and protecting the police have lost respect and trust.

Public Attitude Surveys in Ireland show very high rates of trust in AGS.



# Crowd Control

Stephen Reicher - Expert on the dynamics of Protest. Member of Sage Subcommittee on Behavioural Science UK.

Advocates a fundamental rethink of policing crowds:

“The irony is that the repressive power of the police, supposedly the means of stopping violence, is actually the source of most violence in crowd events”.

He advocates for :

Rights-based Policing - which upholds the right to freedom of peaceful assembly.  
Dialogue Policing - liaison officers act as mediators between the police and the crowd.

Methods used with some success at Cop26 in Glasgow. There seemed to be a lack of consistency and training in the application of this approach.

# *Garda Inspectorate*

Public Order Policing -

A Review of Practices in the Garda  
Siochana.

April 2019

“Key to reducing the likelihood of conflict between the public attending an event and the police is effective engagement and communication.”



# Absence of Data

- There is an absence of Data on Courthouse Protests/Gatherings in general.
- There is an absence of data on the role race plays in such events.
- The problem of the absence of data on the ethnicity of people who come into contact the Garda Síochána is a much wider one.
- The absence of data on the issue of whether suspects who are not originally from Ireland are subjected to more or less abuse outside courthouses make it impossible to offer a view on whether this is a factor in precipitating protests.
- From my unscientific perusal of cases attracting such protests it seems to me that the main causative factor is that the alleged crime evokes a strong emotional response from the public.
- The main factor seems to be an identification with the plight of the victim.

# Importance of Data

- “The collection of data on the police use of powers is both a human rights legal obligation and essential for the delivery of effective services. It is the cornerstone of transparency and enables accountability mechanisms to discharge their functions. It also enables the public – by whose consent and financial contribution the police operate – to judge but also understand their police and support them.”
- Alyson Kilpatrick BL – A Human Rights-Based Approach to Policing in Ireland

# Policing Security and Community Safety Bill

- ICCL Submission:
- “ICCL recommended that AGS, liaising with the Policing Authority, should monitor all areas of policing. This means collecting disaggregated data on: reported incidents of crime; recording rates for hate crime; recording rates for domestic and sexual violence; use of powers to stop, search, question, and enter premises; use of security powers including surveillance and covert operations; use and deployment of cover human intelligence sources; detentions; use of force; arrest, charge and outcome rates; complaints; training delivered; and, the representativeness of the service. Disaggregated data includes data on the grounds under equality legislation, such as age, gender, disability, and race, and others, such as ethnicity. Throughout the Covid-19 pandemic, the Policing Authority have published reports with detailed information on the use of Covid-19 related enforcement powers. ICCL and others have called on AGS to collect and report disaggregated data relating to the use of these powers, specifically in relation to ethnicity.”

# IHREC – Observations on the Garda Síochána (Powers) Bill – April 2022

- In relation to the power to search under (Head 13) –  
“The Commission recommends that, where a person is required to comply with a search, they should be informed that failure to comply is a criminal offence. The Commission recommends that stronger wording to prohibit racial profiling is included in the legislation and that this is accompanied by detailed guidelines, developed in consultation with relevant groups. The Commission recommends that provisions on the collection and retention of data, for the purpose of collecting and reporting disaggregated equality data, are included in the legislation.”

# Notable features of Irish Court protests:

- My observations:
- First day of case generally attracts biggest crowds.
- People video or photograph garda van leaving courthouse – should further measures be taken to protect privacy rights?
- Gardaí seem to hold back crowd by hand.
- Suspect in some cases has to walk to from Garda car through hostile crowd to the courtroom.
- Suspect similarly has to walk from courthouse to the Garda or Prison Van.

# *Garda Commissioner – Policing Authority Meeting – 26.5.2022*

“We want people who come into our custody to be in a safe location where they’re well looked after, we do recognise...when an individual is arrested and brought into our custody that is a time which is full of risk for the individual, we must make sure our care of that individual is compliant with the highest standards in respect of delivering the custody services we provide.”



# Garda Inspectorate Report on Delivering Custody Services – Feb. 2022

- Huge emphasis on safety of the detained person.
- Recommendations include improved governance, procedures, record keeping.
- Also include recommendations on improving general care and treatment of the detained person and managing risk to the prisoner.

# Chief Inspector Mark Toland

“The decision to deprive a person of their liberty is a significant interference with their rights under the Constitution of Ireland and the European Convention on Human Rights. As such, it’s important for the Garda Síochána to have an efficient and effective custody system in place that protects and upholds the rights of persons in custody and keeps them safe”.



# Conclusion:

- Firstly have to acknowledge that the vast majority of Defendants are brought safely to and from Court.
- The Accused should in all cases, no matter what the Court facilities are, be afforded the full the protection of the law whilst charged and in the custody of the State.
- Given the provision of Rule 50 the role of the IPS is crucial and should be adopted by AGS as well.
- There is some room for improvement. In particular, suspects shouldn't be directly exposed to hostile crowds outside court. The scenes outside Tullamore courthouse demonstrate this very clearly.
- The Garda Síochána as reflected in their response to date to the Garda Inspectorate Report on Custody have shown a desire to improve the treatment and safety standard for those in their care. This a good time to include improving the safety standards for those being transferred to and from court.