

Atheist Ireland



Submission to consultation process on the establishment of an electoral commission

March 2018

Recommendations

1. The SIPO law needs to be strengthened not weakened. This would enable us, and other Non-Governmental Organisations, to campaign on human rights issues, on a fair and equal basis, in a battle of ideas not bank accounts.
2. Under human rights law as reflected in the IHREC Act, each person has a fair and equal opportunity to participate in the economic, political, social or cultural life of the State. We ask you to vindicate this right.
3. We ask you to consider the following ways that the SIPO law should be strengthened:
 - The SIPO law should continue to apply to all parties, including third parties, at all times, and not just during election or referendum campaigns.
 - While maintaining limits on political donations, the trigger for being accountable should be moved away from political donations and towards political spending.
 - Both political spending and political donations over a set threshold, and their sources, should be published immediately.
 - The law should be modernised to cover international social media campaigns that can influence our democracy from abroad.
 - For referendum campaigns, there should be public funding for both sides, limits on spending, and no anonymous donations, as recommended by the Citizens' Assembly.

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1. Reasons for our specific recommendations

The SIPO law needs to be strengthened further, while maintaining limits on political donations.

The first way is that the SIPO law should continue to apply to all parties, including third parties, at all times, and not just during election or referendum campaigns. If the law did not apply at all times, it would be unable to serve its purpose. Most political influence is sought in between elections and referendums, not just during three weeks every four years.

The SIPO law tries to balance two rights. Those with access to big money have the right to freedom of expression; the rest of us have the right to take part, on the basis of equality, in the conduct of public affairs.

Specifically, under human rights law as reflected in the IHREC Act, each person has a fair and equal opportunity to participate in the economic, political, social or cultural life of the State. We ask you to vindicate this right.

The second way is by setting a different trigger for when a body must declare their funders. This now happens when a body gets certain donations that are described as being for a political purpose.

This means that wealthy bodies can just use their own money. Also the Catholic Church and some campaign groups can claim that donations were not for political purposes. This puts them at an advantage over voluntary groups like Atheist Ireland who comply with the law.

Instead the trigger should happen when a body (whether an organisation or an individual person) spends a certain amount on political purposes. The SIPO Commission itself has recommended this change in its 2016 annual report, and has suggested €5,000 as the relevant amount of spending.

The third way is that both political spending and donations and their sources, above a certain threshold, should be published immediately so that the public knows who is funding what campaigns.

The fourth way is that the law should be modernised to cover international social media campaigns that can influence our democracy from abroad.

The fifth way is by implementing the following recommendations of the Citizens' Assembly on referendums, as decided on the weekend of 13/14 January 2018.

- 68% voted that the Government should provide money to both sides equally in referendum campaigns.
- 98% voted for the Oireachtas to implement a system of spending limits in referendum campaigns for registered political parties, campaign groups, and individuals.
- 72% voted for anonymous donations to registered political parties and campaign groups to be prohibited.

It is worth noting that the Citizens' Assembly did not recommend weakening the SIPO requirements on political donations, despite hearing from experts on, and discussing, this issue.

2. Right to take part in the conduct of public affairs

Article 21 of the Universal Declaration of Human Rights ¹ guarantees equal suffrage within democratic elections. Article 2 of the UDHR prohibits discrimination based on property. The

human right to equal suffrage can be compromised if wealth disparities imply that some special interests have a disproportionate influence on democracy. This is a problem that has been well documented in many countries and this is the issue that the Electoral Act seeks to remedy.

Article 25 of the International Covenant on Civil and Political Rights² also guarantees the right “to take part in the conduct of public affairs,” to vote “at genuine periodic elections which shall be by universal and equal suffrage... guaranteeing the free expression of the will of the electors,” and to access public service “on general terms of equality,” and without any of the distinctions in Article 2, which includes property. The word ‘property’ is translated as ‘fortune’ in the French version and as ‘economic position’ in the Spanish version.

3. Limiting the impact of money on politics supports human rights

If those with more wealth are able to acquire a disproportionate influence in the conduct of public affairs, then such discrimination represents an infringement on these human rights.

This position has been adopted by international human rights bodies. For example, the Overbrook Human Rights Foundation offers grants to NGOs that campaign on human rights, including those campaigning on the human rights breaches that arise from the excessive influence of money on politics.

In 2015 Overbrook gave grants in the area of Money and Politics to eight American public policy organisations including:³

- Demos, whose first overarching commitment is achieving true democracy by reducing the role of money in politics and guaranteeing the freedom to vote.
- Free Speech for People, whose mission is to renew democracy and the United States Constitution for ‘we the people,’ not big money and corporate interests.

These issues have also been discussed at length elsewhere, such as the Harvard Human Rights Journal. For example, in a paper titled ‘The Democracy to Which We Are Entitled: Human Rights and the Problem of Money in Politics’, Fulbright Senior Scholar Timothy Kuhner, discusses whether we have a human right to a democracy or a plutocracy.

Such considerations include the ongoing influence of money on the political process and the formation of new law in many circumstances, which include the periods both during or outside of an election process.

4. Atheist Ireland’s experience with the SIPO Commission

Atheist Ireland is registered with the SIPO Commission as a Third Party. We have never found SIPOC to be ambiguous or inconsistent in their interpretation or enforcement of the Act. Complying with it has not in any way prevented us from functioning effectively.

During early 2015 Atheist Ireland contacted SIPOC to see if we had to register under the SIPO law. We went over all of our activities, fully and honestly, and SIPOC explained that we would have to register, as we had received donations for political purposes that exceeded the limit.

The major political activity that we were engaged in, and for which we sought donations, was our political campaign for a secular education system, as well as our political campaigns to change other laws. The Commission was clear to us that the requirement to register applied all of the time, and was not confined to campaigning during elections and referendums. Indeed there was not and is not any referendum being considered in the area of education reform.

In March 2015, Atheist Ireland registered as a Third Party with SIPOC. Since we signed up with SIPOC, we have turned down large political donations, in order to comply with SIPO regulations.

We are a small voluntary organisation and very grateful for any donations. We put all of our lawful donations to good use, and we would never jeopardise our campaigns by not declaring our donations and complying with the law.

During 2017, Atheist Ireland was crowdfunding to use the Freedom of Information Act to seek information about the influence of the Catholic Church in ETB Schools, in order to change the laws governing this. We asked the Commission for guidance about these donations. SIPOC told us that donations for that purpose would be political donations. We complied with that.

5. SIPOC's explanatory notes for Third Parties in 2015

In September 2015, SIPOC issued a set of Explanatory Notes for Third Parties. This made clear that the legal definition of political purposes included:

4. To promote or oppose, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority.

6. Otherwise to seek to influence the outcome of the election or a referendum or a campaign. (Note from Atheist Ireland: it is significant here that 'a campaign' is included separately to an election or a referendum.)

These explanatory notes are not remotely ambiguous. They are indeed all-encompassing, and deliberately so. They have to be if the law is to work. They are the basis upon which we have consistently experienced SIPOC to conduct their work, ever since we signed up as a Third Party.

6. The law was strengthened in 2015 after complaints about Youth Defence

The SIPO law has not changed, but SIPOC has been able to apply them more robustly since 2015. The reason is that the law was then amended, making it an offence to fail to co-operate with enquiries made by the Commission.

SIPOC had previously sought these changes in its 2009 report about enforcement of the law with Third Parties after the Lisbon Treaty. ⁴ In particular, they had difficulties with Libertas, who repeatedly failed to provide required information regarding its donations.

SIPOC made four suggestions for improvements to the law regarding: Criteria for registration as a third party; Registration for a particular campaign; Transparency in funding and expenditure on campaigns; and Sanctions for non-cooperation with the Standards Commission.

SIPOC also sought this increase in its powers of enforcement in order to be able to take action against Youth Defence. ⁵ In 2012 Youth Defence had published billboard advertisements showed images of young, distraught women and fetuses and carrying slogans such as 'Abortion tears her life apart,' and 'There's always a better answer,' with the word 'always' underlined.

The Advertising Standards Authority received more than 100 complaints about Youth Defence's billboard ads, which were described as 'offensive and inaccurate'. However, the Advertising Standards Authority said it was powerless to do anything about the concerns because banning the ads would amount to a breach of freedom of speech.

SIPOC then received complaints about Youth Defence refusing to register as a Third Party. SIPOC said that it was 'firmly of the view' that the activities of Youth Defence could be defined as 'political purposes,' but that it did not have the legal powers to force Youth Defence to furnish any information or documents that the Commission needed to do its work.

In 2013 SIPOC wrote to Phil Hogan, the then environment minister, seeking an increase in its powers of enforcement over organisations involved in political activity. SIPOC's chairman, Justice

Matthew Smith, told Minister Hogan that it was ‘impossible for the commission to operate effectively’ in the area of abortion campaigning. ⁶

The Act was strengthened in 2015, to include sanctions for non-cooperation with the Standards Commission. It is this strengthening of the Act, after problems with Libertas and Youth Defence, that has enabled SIPOC to implement the law more robustly in recent cases.

7. The amendment to the Electoral Act in 2015

In 2015, Section 5 of the Electoral (Amendment) Act 2015 made it an offence to fail to co-operate with enquiries made by the Commission. It did this by amending Section 4 of the Electoral Acts 1997. Section 4 previously read:

4.4. The Public Offices Commission may make such inquiries as it considers appropriate and may require any person to furnish any information, document or thing in the possession or procurement of the person which the Commission may require for the purposes of its duties under this Act.

The amendment added:

4.4 (a) Where a person fails to comply with a requirement made of him or her under subsection (4) within such time as the Standards in Public Office Commission considers reasonable, it may direct the person to furnish it with such information, document or thing specified in the direction within such period of time mentioned in the direction and, if the person fails to comply with the direction within that period, the person commits an offence and is liable on summary conviction to a class D fine. ⁷

SIPOC welcomed this in its 2015 annual report, saying that:

The Standards Commission welcomes the amendment of Section 4 of the Electoral Acts 1997 as amended. The Commission had previously requested that sanctions for non-cooperation with the Standards Commission should be reviewed (2009 Report on Third Parties at the Referendum on the Treaty of Lisbon 2008). In particular, the Commission had recommended that failure to cooperate with enquiries made by the Standards Commission under section 4(4) of the Electoral Act should constitute an offence. Section 5 of the Electoral (Amendment) Act 2015 now makes it an offence to fail to co-operate with enquiries made by the Commission. ⁸

8. Irish NGOs can receive unlimited donations under the SIPO law

There is no blanket ban on funding for Irish Non-Governmental Organisations under SIPO legislation, for either domestic or foreign donations, and for either non-political or political purposes.

As the most obvious example, with regard to general donations, the Together For Yes campaign lawfully raised €500,000 in a week in the run-up to the abortion referendum.

With regard to foreign donations:

(a) unlimited foreign donations for non-political purposes

An Irish NGO can receive unlimited foreign donations, from any individual foreign donor, for non-political purposes, such as those listed in point 7 above.

(b) almost Unlimited foreign donations for political purposes

There are legitimate and proportionate conditions for how an Irish NGO can receive foreign donations for political purposes.

- The donor has to have a relevant connection to Ireland, either through being an Irish citizen living abroad or being a corporate body with a relevant office based in Ireland.

- Such a donor can give the same amount as a donor in Ireland can give for political purposes.

Within these legitimate and proportionate conditions, an Irish NGO can receive almost unlimited foreign donations, specifically for political purposes. They just have to get those by way of a large number of small foreign donations, rather than a small number of large foreign donations.

There are an estimated 3 million Irish passport holders living abroad.⁹ If just 500 (or 0.0001%) of them gave an Irish NGO €2,500 a year, that would be €1.25 million a year, specifically for political purposes.

9. United Nations Special Rapporteur on Human Rights Defenders

The SIPO law does not infringe on the human rights of NGOs or Human Rights Defenders in Ireland. The UN Special Rapporteur on Human Rights Defenders has made several statements on the funding restrictions that apply to NGOs in several countries. For example, with respect to the pertinent law in Azerbaijan, the UN Special Rapporteur has said the following:¹⁰

“Even if the legislation does not ban NGO activities without state registration, NGOs are effectively prevented from operating because they cannot open a bank account, obtain a legal status or receive foreign funding.”

We agree with the UN Special Rapporteur, with respect to the restrictions on NGOs imposed by the legislative framework in Azerbaijan. Similar comments have been made by the UN Special Rapporteur on Human Rights Defenders, where blanket funding bans apply to NGOs in other countries. However, no such restrictions are applied to NGOs by the Electoral Act in Ireland.

The UN Special Rapporteur also visited Ireland just six months after the Electoral (Amendment) Act 2012 became law, and subsequently published a detailed report.¹¹ If the Electoral Act had been viewed as representing an abuse of the human rights of NGOs and HRDs in Ireland, it would have formed a central part of this report. However, the UN Special Rapporteur on Human Rights Defenders did not mention the Electoral Act at all.

The report did include an analysis of the legal, institutional and policy framework in which Irish NGOs operate. For example, it referred to difficulties with the Charities Act, Defamation Act, Garda Síochána Act, whistle-blower protection Act and Prevention of Corruption Amendment Bill. Specific recommendations were made in these and other areas, and the concerns of NGOs were outlined in some detail. However, no concerns were expressed in relation to the Electoral Act.

In fact, the UN Special Rapporteur on Human Rights Defenders summarised the legal, institutional and policy framework for HRDs in Ireland as follows:

“The overall legal, institutional and administrative framework in which defenders operate generally meets international standards and is rather conducive to the defence and promotion of human rights.”

It is not credible to suggest that while the UN Special Rapporteur has highlighted concerns with the funding of NGOs in other countries, this same human rights abuse was also apparent in Ireland but was omitted from the Special Rapporteur’s statement following her visit to Ireland. The political funding controls in Ireland are not related to, or equivalent to, the blanket bans on NGO funding that have caused human rights concerns elsewhere.

11. Notes

¹ http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

² <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>

³ <https://static1.squarespace.com/static/54efb9cde4b0a5fce58cd35f/t/56f00c4de32140364ae5bc39/1458572367344/Annual+Report+2015.pdf>

⁴ <http://m.sipo.gov.ie/en/Reports/General-Reports/Reports-on-Third-Parties/-Referendum-on-the-Treaty-of-Lisbon/Third-Parties-Treaty-of-Lisbon.pdf>

⁵ <http://www.irishexaminer.com/ireland/sipo-seeks-powers-to-act-on-youth-defence-complaints-239895.html>

⁶ <http://www.irishexaminer.com/ireland/law-could-force-youth-defence-to-reveal-funds-240128.html>

⁷ <http://www.irishstatutebook.ie/eli/2015/act/62/enacted/en/print#sec5>

⁸ http://www.sipo.ie/en/Reports/Annual-Reports/2015-Annual-Report/AnnualReport2015/media/sipoc_ar_2015_english.pdf

⁹ <http://www.globalirish.ie/issues/how-many-irish-people-live-abroad-an-ean-factsheet/>

¹⁰ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20544&LangID=E>

¹¹ https://www.ihrec.ie/download/pdf/statement_by_un_spec_rapp_of_human_rights_defenders_on_her_visit_to_ireland_nov_2012.pdf