

**Equal opportunities in the courtroom**  
**Access to justice for vulnerable social**  
**groups: challenges and solutions in Europe**  
*A View From Ireland*

8 December 2023

Ms. Justice Aileen Donnelly , Supreme Court



# Introduction

- View from Ireland over time.
- Specific risks faced by minorities, marginalised and vulnerable groups in accessing justice.
- Change: systemic and using individual actors.
- Seek progress and not perfection.

# Concept of Access to Justice

Former Chief Justice Frank Clarke in the Civil Legal Aid  
Review 2023:

Access to justice is “*a term that is often used but its meaning is not always carefully understood.*”

# Principles that Underpin Access to Justice

- Access to justice is a complex web of law, processes and services that set out our rights and responsibilities.
- Its meaning changes alongside societal changes.

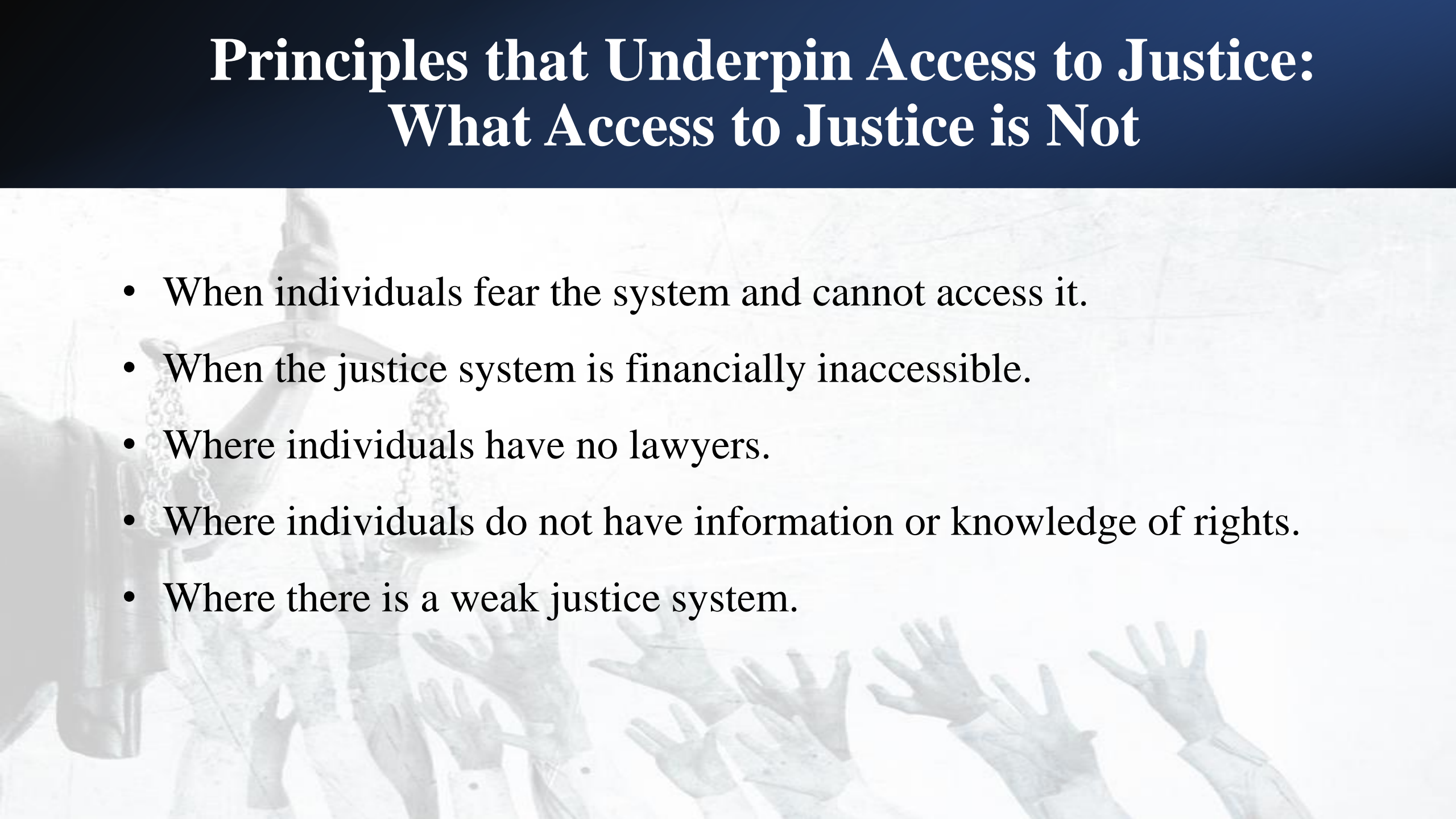
# Principles that Underpin Access to Justice: What is Access to Justice?

- Access to courts, legal representation, effective remedies, right to a fair trial and access to legal aid.
- In line with the rule of law.
- An efficient means to have rights protected and vindicated.

“Access to justice means more than being able to swing open the courtroom door, it’s about being able to properly and fairly engage with our legal system irrespective of factors such as your age, your gender, your ethnicity, whether you are a disabled person or what your job or income is.”

Sinéad Gibney, Irish Human Rights and Equality Commission

# Principles that Underpin Access to Justice: What Access to Justice is Not

- When individuals fear the system and cannot access it.
  - When the justice system is financially inaccessible.
  - Where individuals have no lawyers.
  - Where individuals do not have information or knowledge of rights.
  - Where there is a weak justice system.
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- The background of the slide features a faded, light-colored image. On the left side, a hand is shown holding a scale of justice, symbolizing law and equity. On the right side, a group of hands is raised, suggesting a crowd or a public gathering. The overall theme is related to justice, rights, and social equity.

# Defining Vulnerable and Marginalised Groups

- Those who have difficulty in activating their rights and are faced with barriers including a history of discrimination, lack of information about rights, and a justice system that is hard to access.
- Definition highly dependent on the national context.
- Groups may be marginalised by virtue of social exclusion or disempowered by a lack of resources.
- Segments of society who are significantly constrained or completely silenced in voicing or pursuing claims through democratic processes.
- Examples in Ireland:
  - Homeless and/or in active addiction.
  - Members of the Traveller or Roma Community.
  - Racial Minorities and migrants.
  - Members of the LGBTQIA+ community.
  - Economically disadvantaged.
  - Victims of domestic violence.



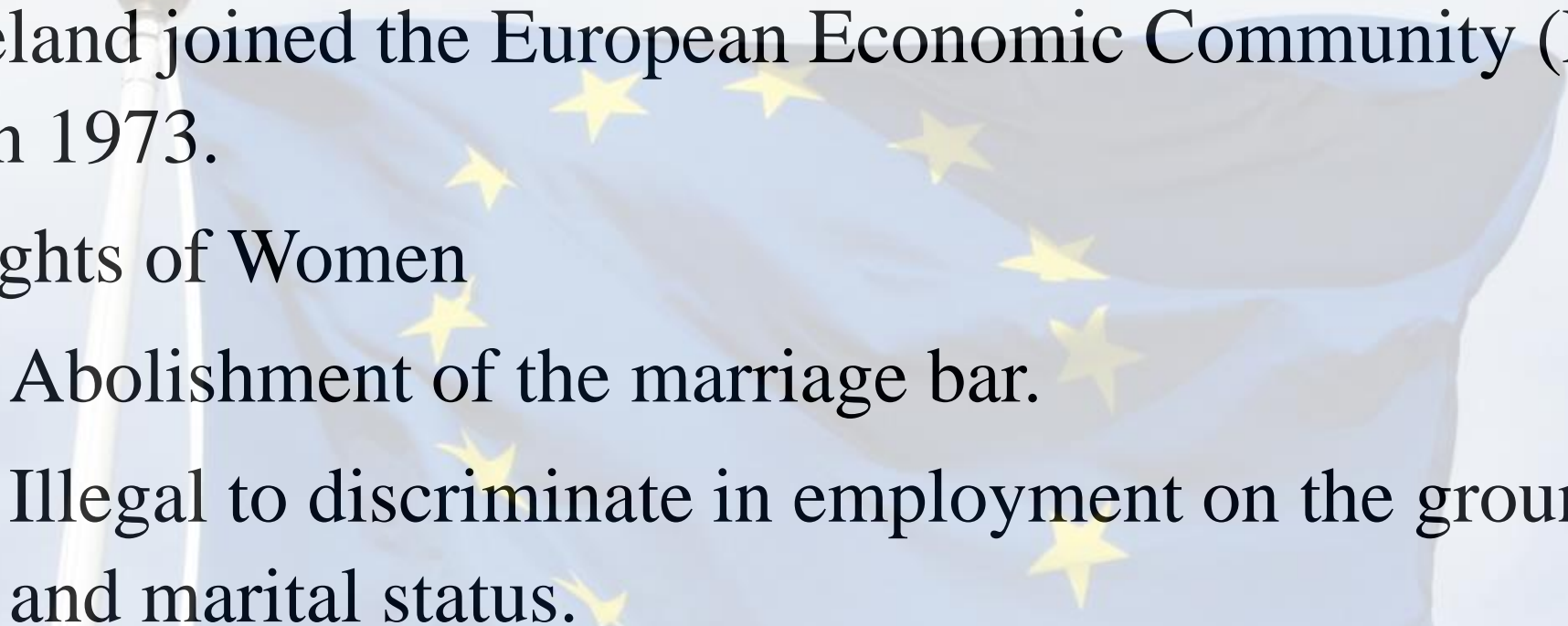


# Major Developments: Constitutional Rights

- *State (Healy) v Donoghue* [1973] IR 325
- *Norris v Attorney General* [1984] IR 36
- *Norris v Ireland* (Application No 10581/83) date delivered  
26 October 1988



# Major Developments: Membership of the European Union

- Ireland joined the European Economic Community (EEC) on 1 Jan 1973.
  - Rights of Women
    - Abolishment of the marriage bar.
    - Illegal to discriminate in employment on the grounds of sex and marital status.
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# Major Developments: European Convention on Human Rights

## *Airey v Ireland* (1979) 2 EHRR 305

- Case concerned a woman who sought a separation order from her abusive husband but did not have the means to go to court.
- The European Commission gave her the necessary legal aid to pursue her case against the Irish government.
- On October 9th 1979, the ECtHR deemed Ireland to be in breach of Articles 6 (access to justice) and 8 (protection for her private and family life) of the Convention.
- They deemed that the lack of free legal aid constituted an obstacle to the right to access to a court.
- The case served as a catalyst for further change and support in legal aid and NGOs e.g. FLAC.

# Major Developments: European Convention on Human Rights

*Foy v An t-Ard Chláraitheoir & Ors* [2007] IEHC 470

- Dr Lydia Foy, a transgender woman, took the first legal case in Ireland seeking a new birth certificate and legal recognition in her female gender.
- High Court in Ireland found against Foy.
- Two days later the judgment of *Goodwin v UK* (Application no. 28957/95) was delivered.
- Subsequent making of a declaration of incompatibility under the European Convention on Human Rights Act 2003.
- Enormous personal sacrifice and courageous determination to bring about change to make Ireland progression in the area of transgender rights.



# Major Developments: Irish Case Law

*Clare County Council v McDonagh & Anor* [2022] IESC 2

Paragraph 1, Mr Justice Hogan, Supreme Court:

“This judgment is being delivered just over 100 years since the first Provisional Government for an independent Irish State was called into being. It is nonetheless salutary to reflect that one hundred years later a distinct group – the Irish Traveller community – still remains a vulnerable minority at the margins of Irish society.

The members of that community have struggled for recognition of their own cultural identity and way of life.”

# Constitutional and Legislative Reform: Children and Article 42A

- Children are a vulnerable group on jurisdiction.
- Introduction of Article 42A in the Irish Constitution.
- Introduction of the Child and Family Relationship Act 2015.





# Institutional Changes: Legal Aid

## **FLAC Free Legal Advice Centres: A Civil Society Organisation**

- Established in 1974 and for decades it has been at the forefront of public interest law.
- Has used litigation to bring about landmark changes in Irish law and society. FLAC remains committed to providing legal assistance to those who may not otherwise be able to challenge injustice and inequality.
- As well as being important to the individual clients, FLAC pursues cases which have the potential to benefit a wider community.

## **Legal Aid Board: Statutory Body to Fund Legal Aid**

- Legal Aid Board was established on 21st December 1979.
- Through enhancing participation and giving voice to citizens seeking to assert their right plays an active part in the broader framework in assisting in modifying laws, policies and practices to better achieve substantive equality.
- Criticised for means testing and eligibility criteria.

# Institutional Changes: Working Groups

Establishment of the Access to Justice Conference.

Commencement of Chief Justice's Working Group on Access to Justice.

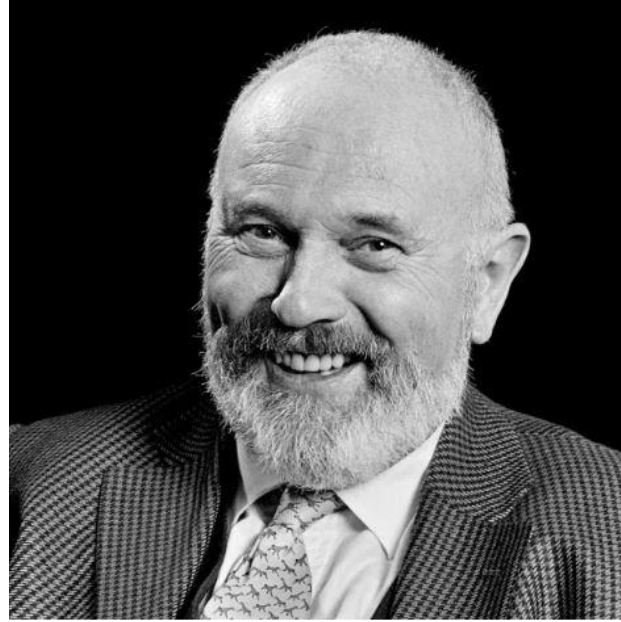




# Access to Justice and Practitioners' Perspective



Mary Robinson



David Norris



Sofiya Kalinova

# Conclusion: A View of Moving Forward

- The system is only as good as it is accessible to those who need it the most.
- Continued debated and implementation of practical measures to make further improvements.
- Task is by no means small, however, positive progress is possible on both an individual and systemic basis.