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Chapter 12

The Irish District Court as a site of 'rediscrimination.' Mapping Irish Traveller Experiences in Inequality Cases.

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Introduction.

This chapter provides ethnographic analysis on the adverse experiences of Travellers who have taken equality cases to the District Court (the Court), Ireland's lowest court level. In doing so, we recognise the inability of existing desk-based research to capture emotional and memorial elements of adversarial court appearances for Irish Travellers. Given the importance of centring Traveller experiences of discrimination and marginalisation, we use ethnographic research and interviews with those who had taken cases to the Court. This chapter speaks to existing literature promoting the importance of understanding how justice is experienced through court observation and lived-experience (Pacheco-Vega 2018, Hawilo 2022, Klosterkamp 2022, Roach et al 2016). This allows us to be more sensitive to the experience of Travellers, with follow-up interviews providing further insight into individual experiences which would not be accessible via ethnographic observation.

Ultimately, this chapter highlights the adversarial nature of the Court, as one which alienates and 'others' minorities such as Travellers, 'rediscriminating' instead of vindicating them as victims of discrimination. The research therefore feeds into the need for a broader recognition and understanding of vulnerable court-users experiences to adequately inform reform of equality adjudication bodies, enhance judicial training and enable actions ensuring access to justice for the most vulnerable.

Context.

Irish Travellers (Travellers) are an indigenous minority group, also known as *Minceír* or *Minceírí* (pl) (Binchy 1994). Traditionally nomadic (Helleiner 2003), like many other minority groups (Sinti, Roma, and Romani Gypsies) Travellers have been subject to a history of persecution and attempted enforced assimilation (Haynes et al 2020) facing proliferating levels of exclusion from the most basic of services (Fanning 2012). While the community is small, less than one percent of the population, Travellers experience significant levels of discrimination, disadvantage, and marginalisation (ESRI 2017). Discrimination is described by the community as being a "normal part of the Traveller life" (The Traveller Movement 2017) with little effective remedy within the equality system (Morgan-Williams 2022). At the same time, Travellers have a long history of being over policed and overrepresented in the criminal justice system (Joyce 2022).

Court-based research on Traveller and other minorities (including Roma, Sinti) largely focuses on criminal justice experiences. Joyce et al (2022) undertook participatory research finding trust in the criminal system to be 'low' with Travellers describing their attitude to courts as 'fearful'. While in England and Wales, Shute et al (2005) reported perceptions of unfairness in treatment by court. Ethnographic research by Albrecht (1997) in Germany highlighted that discriminatory treatment did occur in the criminal justice system even if it could not clearly be established that it affected outcomes of trials. While Richardson (2017) detailed the way in which race-neutral due process protections could be adapted by criminal justice personnel to racialise the justice process. Over policing of Travellers as suspects and under policing as victims (Joyce 2022), results in trust in the justice system being deeply damaged.

The research in this chapter focuses on the civil law equality process. Little research has been carried out to date in this area, with this being the first study in Ireland to examine equality litigation in the District Court. A rare example in the Irish context by Judge Caroline Leonard (2002) takes a judicial focus in reflected on racism in Ireland and Sweden but provides little concrete findings other than noting a lack of data and acknowledgment that "Travellers are generally fearful of the legal process" (Leonard 2002, 115).

Method

The authors surveyed Travellers and lawyers based within Munster, Ireland, with experience in the District Court. Five focus groups with 48 Travellers took place, to gain an understanding of minority-group experience of the court as a site for equality adjudication. The data presented here sought to investigate Traveller experience of litigation, interrogating why the Court is

unsuitable for equality cases. Individual follow-up interviews, self-selecting in nature, were then completed with 25 Travellers. Women made up the majority of interviewees as in practice Traveller women play key leadership roles within community organisations in this region of Ireland, are more likely to instigate equality complaints and are often more accessible as research participants. To compliment the qualitative interviews, ethnographic work was undertaken during 13 District Court sittings in Munster, Ireland across a six-month period. Ethnography was used to develop a situational understanding of atmosphere, experience and the general nature of proceedings and is an excellent method for 'understanding complex social settings' and for studying courtroom dynamics and judicial behaviour' (Roach et al 2016, 1).

Our findings are presented through core harms identified both during ethnographic research and interviews, including atmosphere, procedural barriers, and the impact of intergenerational trauma and societal exclusion of minorities such as Travellers. These core harms which shape how Travellers (and other minorities) engage with the District Court indicating that it is perceived as a site of 'rediscrimination'.

In this research we first we draw on interviews to show how Travellers, as a socially excluded and marginalised group, perceive the highly adversarial nature of the Court. Interviews focused on Traveller perceptions of case outcomes and ability to secure 'justice'. Quotes have been anonymised with pseudonyms used throughout. We then draw on ethnographic field notes to show how these harms and experiences of the interviewees feeds into a culturally sensitive understand of the issues facing Traveller litigants.

The District Court, Inequality Cases and Barriers to Justice

Building on our existing research considering how the District Court is unsuitable as an equality adjudication body (Morgan-Williams and Donson 2022) our analysis shows that Irish courts, regardless of their level within the system, are understood by the interviewees in this study as operating as largely inaccessible and alien venues for applicants. Basic information as to *how* court hearings work and *what* applicants should expect to happen once in the system is often limited particularly in relation to what might be considered 'less serious' cases at the court of first instance (Leonard 2002). In practice, applicants need legal representation to parse procedural matters including costs, instigation of claim and to act before judge. Even for us, as legal academics, supporting individuals in accessing court supports and legal information can become an impossible task shrouded in opaque bureaucracy.

Yet for excluded groups such as Travellers initially seeking legal representation to help navigate the system can be daunting (Morgan-Williams and Donson 2022). The very nature of the legal process, whether before a court or an equality tribunal, was found by the interviewees, to be a significant barrier to litigation. Even before a case starts, legal processes can feel overwhelming and exclusionary as Lisa told us, perceptions of the 'elite' and the othered litigant shaping access to the Court process:

> The system is still belonging to the government, and they are still going to protect the people with their businesses. I know they have it out in print why there was this court and we won this, and you can do that and the other thing. But I do believe anyone is powerful enough and rich enough to own pubs and things, they are always linked to these people that's making the power, you know. That's why the judges and solicitors and everything like that, you still don't win.

Outside of the main areas of law – criminal, family, personal injury – there are few lawyers who are willing and/or able to represent applicants (Morgan-Williams and Donson 2023) Traveller interviewees highlighted that even getting to speak to a lawyer does not guarantee legal agency (Brinks 2019). For instance, Sarah told us:

> We got onto a solicitor and the solicitor told us, yeah, we can take the case but if you lose the case you are going to be liable for the whole cost of the court and it wouldn't be worth your while doing it. Never done anything about it. So, they are frightening us, they are putting the fear in us straightaway without giving information on the legal system and what you could do and steps you could take.

The lack of clear information about the law and applicants' legal options in taking cases reinforces the status of Travellers as marginalised (Morgan-Williams and Donson, 2022). While this is a broader issue for any potential victim of discrimination, the overwhelming nature of Traveller's day-to-day discriminatory experiences means that it impacts on them particularly sharply. It also highlights how equality cases, at least when brought before the District Court can be regarded as costly, niche, and problematic litigation (IHREC 2022).

This issue was laid bare during our ethnographic work, where on every visit we found ourselves unable to locate basic information such as court schedules, listings and basic support with lodgement of claims (all services which should be readily accessible under the Courts.ie accessibility and customer service charter). The difficulties in finding this basic information for us as lawyers, crystalised the issues for our Traveller interviewees.

Procedural Barriers

During interviews many were clearly concerned about procedural matters before the District Court, including accessibility of information and forms, however a core issue identified by all was the cost of litigation in the absence of civil legal aid. While this is an issue for many potential and actual litigants, Travellers are particularly fearful of this, given high levels of unemployment, homelessness and deprivation. There is more at stake for the Traveller Community - a highly socially excluded group (88.6% unemployment), but who also experience 38 times more discrimination than white settled Irish (IHREC 2022). The majority of our interviewees were reliant on social-welfare and had limited means. The possibility of costs being awarded against them, was therefore a significant deterrent to many of those who spoke to us such as Katie:

> You don't know how much it's going to be; you don't know if you are going to be able to pay it or not. It could be out of your range as well, could be ridiculous kind of money. And how are you going to pay for that kind of money anyway. And you might have to go to prison if you don't pay the fine or whatever it might be, if you don't pay that money what's going to happen. Are they going to send the [bailiffs] around to take what you have, while you don't have much anyway. But you have to go to prison to clear the debt or whatever. So, you are the one punishing yourself.

This was also recognised by the lawyers who highlight the unsuitability of the court for first-instance discrimination claims, particularly when compared to more accessible adjudication bodies within the State where no costs arise. Such adversarial court procedures result in a need for legal representation, which in turn increases costs and risks for potential litigants (Russell 2008, Morgan-Williams 2022).

Joan, a lawyer, noted that bringing these equality cases before the District Court included a "significant risk for clients in terms of costs orders being made against them, together with court fees for filing pleadings." She noted this was particularly dissuasive for Traveller litigants, stressing that "this financial impediment doesn't exist in [other equality bodies]." She also highlighted the "lack of meaningful support for clients with additional needs" going to the Court.

In our own legal work, running the Traveller Equality & Justice Project Clinic, we have seen first-hand the deterrent effect of possible costs being awarded again those who lose their discrimination cases before the Court. When informed of the possible costs burden (max €15,000), many of our service-users have simply chosen to abandon their cases, rather than face untenable legal cost awards. This is a worrying trend, resulting in significant impact on equality case progression for minority victims of discrimination.

Atmosphere

Like many courts of first instance, the District Court is often a mixture of chaos and highly bureaucratic formality. For those who do proceed to hearing, notwithstanding the potential costs burden, the intimidating architecture, the 'atmosphere' and highly adversarial and formal environment, coupled with a high police presence, lends itself to an intimidating and exclusionary space. This further alienates vulnerable litigants, including Travellers. As Gill and colleagues (2021, 63) note "layout, corridors, waiting areas, lines of sight, forms of address and body language all contribute to creating legal atmospheres characterised by formalism and gravity" which can be highly intimidating for litigants (see also Bezdek, 1991; Carlen, 1976). This formality manifests as an overtly formal and almost unwelcoming environment within which interviewees spoke often of the sense of the building and 'coldness'. The idea of being an outsider with the building acting as a physical and emotional barrier to justice is very much part of this, building from unfamiliarity with the formality of the legal atmosphere (Rowden, 2018; Rock, 1993). This was recognised by Sophie who says:

> It's the stillness and the coldness… you know you are going in there and you are going to be judged because of who you are, and you don't know… are they going to see you as a person. It can be [a] very daunting place.

This was also noted within our ethnographic research, wherein we felt on edge, alien and excluded from the lawyers, judges and court staff going through the motions, while we and the other observers and litigants were mainly sat at their mercy, helpless until given direction (stand, sit, exit, be quiet). This othering is recognised by Klosterkamp (2022) speaks to the structural violence and normative order of the courtroom and how its expansions limit and restrict not only bodily movements but also the display of emotions, prioritising justice for ideal victims. Victims are expected not be loud or overly emotional. While observers are often told to be silent or admonished for speaking amongst themselves by judges and clerks. This lends itself to the creation of a feeling of being 'on edge' within the space, for fear of falling foul of the process. Yet members of minority groups such as Travellers may not understand or be versed in the archaic deference required in a strict court setting (Flower 2021; Faria et al 2019). One of the few academic descriptions of the District Court in fact makes specific reference to Travellers adding to the chaos and noise of the court (O'Nolan 2013). The sense of the courthouse then for Traveller litigants is that they are at an immediate disadvantage: "you're already being judged on who you are". This in turn leads to Travellers feeling as though

they need to supress their identity if they want to get through the process, Rosemarie recognised this:

> [Y]ou're thinking, am I respectable enough, do I look OK? What is she going to say, what is he going to say, what's the solicitor thinking?' Those not 'in the loop', the 'Courtroom outsiders,' struggle to understand the highly adversarial and often unwritten rules of the Court often seamlessly navigated by the 'insiders' (Hawilo et al 2022).

The interviewees consistently spoke to this perceived alienation and described the idea of court as "frightening" and "daunting." The ebbs and flows of court activity, familiar to lawyers, court officials and judges, are a mystery to the unfamiliar litigant such as Sharon who says, "I know I was never in a courtroom in my life, I walked in, I did feel intimidated. I felt that I was overpowered by all these people." This unfamiliarity is compounded by what appears to the outsider as the unstructured nature of the proceedings which can result in long waits, sitting in uncomfortable and public spaces as Annemarie tells us: "I think a lot of anxiety had built up over the four hours (waiting), I suppose panic started to set in: the what's if and what not. But when we got in, it still felt very challenging being in the building itself." Court proceedings can therefore be a strange, slow process for the uninitiated; applicants wait in an uninformed confusion worried about missing their case, or some other vital moment (Hawilo 2022).

Gill et al., (2021) writing within the asylum appeals process highlights the disorientation that is felt by vulnerable groups as they interact with legal institutions. This is compounded by the lack of autonomy many experience, particularly where lawyers act as gatekeepers within the process. Legal representation is largely regarded as a key access to justice component. While interviewees, such as Michelle, highlighted that "there's no one for me, nobody for me only the solicitor walking alongside me", it was also common for litigants to have had no real explanation of the process or what to expect in court (Flower 2019) Vulnerable applicants are therefore heavily reliant upon the guiding hand of the lawyer.

However, even in situations were from the lawyers' perspective a case is settled, the exclusion of clients from discussions can leave them feeling disappointed and powerless. It can also reinforce a feeling that the court system is not for them; a lack of justice even in the face of what the solicitor would regard as a success. As noted by Clara:

> [Y]ou are not getting into the court, you are just in a small room and they are just coming up and telling you, you are not hearing what the judge is saying inside, you are not hearing what people … saying. You are only hearing what the solicitor is saying and they are just coming out and telling you what they are hearing inside.

Mary highlighted that while they won financial compensation, they were unhappy because they did not understand the process and did not feel as though their lawyer had treated them with respect: "I felt devalued as a person dealing with that solicitor [lawyer]."

The interviewees also spoke to issues of privacy and need for create intrapersonal engagement from judges to facilitate discussion of painful events as victims of discrimination. However, speaking after a positive court experience, Rosemarie noted that the court room had been "scary, it was like [you] felt like you were just like back in school but with more authority in control of you. So, the judge on the day was absolutely beautiful, made us feel so comfortable." Describing the judge as "open and sympathetic towards a discrimination case" interviewees were very aware that many within the system, lawyers and judges, do not appreciate the pain and humiliation that (day to day) discrimination inflicts (Hawilo, 2022).

Indeed, the public nature of court proceedings means that "where personal information of unknown and disconnected others is disclosed to a broader public audience that centres individual participation in violent events and victimhood, imbued with institutional logic of seeking justice" (Klosterkamp 2022, 1). This was recognised in our ethnographic research, as we experienced the sense of loss of control as we waited for long periods at the mercy of unintelligible court processes. As legal academics, supposedly more familiar with the court as an institution, we too felt alien and lost within the highly adversarial and oftentimes, school-like, District Court environment.

Waiting for a hearing to take place, often for hours, results in Travellers sitting in public spaces. This can lead to feelings of being judged by others in the same space. Traveller women are often highly visible owing to their self-described, "distinct Traveller-look", this feeling of heightened visibility, and fear of being judged as the "typical criminal Traveller up to no good." As Anne-Marie tells us:

> [F]or four hours sitting on a wall waiting outside [the court] because we didn't know when we were going to be called, we had these assumptions that people passing by were saying 'oh look they must be up [for] something'. Not that we were ever there as victims.

Interviewees were highly attuned to their visibility within the court space. Expressing concern that others would doubt their victimhood, making assumptions about their reasons for being at the Court.

Impact of intergenerational trauma

Court proceedings have a particular impact upon many marginalised and vulnerable groups, particularly where their experience of authority and law is one of oppression and fear. This is very much the case for Travellers who have historically been over-policed resulting in excessive criminal justice engagement within the community (Joyce, 2022).

Interviewees recognised the impact of this intergenerational trauma reporting feeling alienated, as though they were on trial, their victimhood being erased by highly adversarial nature of the proceedings as Anne-Marie says "I felt completely in trial that day. I felt I was going in for a punishment even though what happened on the night wasn't punishment enough."

Many interviewees echoed this, highlighting the adversarial approach (not often required in other equality settings) can heighten the adversarial and adverse experience of the hearing process:

> Going in there I didn't feel like a victim, I felt like the person being accused. So that's you see I felt going in there that everyone was against me in there, that it was actually I was on trial, you know instead of being an actual victim, that's how it felt. Because we had never been in there before, that's just my experience.

This has shaped the community's perceptions and experiences of all legal institutions with all courts, whether civil or criminal, being regarded with fear and mistrust as born out in the interview material (see paragraph below – Sophie). This is further reinforced by statistics in relation to the number of Travellers as justice involved persons. The Traveller Justice Initiative highlights that "[a]lthough only accounting for 0.7% of population in the Republic of Ireland, Travellers account for an estimated 10% of the entire prison population and 15% of the female prison population" (TJI; 2020). As one interviewee noted: "you only have to go down to any court in this city or in any part of this country. And you would walk in there and you will see a good few Travellers in there up for minor offences". This over-representation is typical of the treatment of Indigenous and minority ethnic groups in other countries (Costello, 2021).

Unsurprisingly, then, Traveller interviewees in the research were very cognisant of this and the fear that being in court would reflect an outward perception of their presence as being related to criminality. The result is a stripping of victim status and a rediscrimination, even a reinforcement of Traveller identity as being perceived as linked to criminal identity, Sophie noted:

> [S]tanding outside waiting … as everyone passing thought we were criminals, that were discriminated all over again, because standing waiting outside a court room even though we were the victim, people passing assumed oh what are they up for now? What are they after doing?

This traumatising effect is reinforced by the impenetrable nature of the proceedings highlighted above. The strangeness of the process is both foreboding and alienating. The strength required by members of the community to bring a case is significant and it is characterised by those doing so as part of breaking the intergeneration cycle of trauma and harm. Rosemarie, summed this up for us:

> It's intimidating for the community. We've came from a background of people who weren't educated and you're going into a room with highly educated people, and you're coming from a long line of parents and grandparents, and great grandparents that had a different way of life. Textbook learning and education wasn't the way that our culture, it's not the way we lived our lives in the past. So, it's frightening to be facing educated people….

This alienation further reinforcing the sense of 'not belonging' and exclusion that pervades life for Irish Travellers.

Many interviewees, recognising the lasting impact of intergenerational harms inflicted on Travellers through over-policing and criminalisation, highlighted that traditional court systems are not just daunting, but stand as a symbol of injustice for their community. Interviewees highlighted that a less adversarial, tribunal model (which had previously operated) would be more accessible. In the following excerpt Jane talks about this:

> As a Traveller woman I think it should be back (to a more accessible tribunal system), because going to the courts…? Forget about it! no not going up to the courts no, no, people aren't going to go through the hassle of putting in a case. So, the way I describe it is, it was good (…) because you are not half as nervous. Like I said the last case that I took on, I spoke for basically nearly everybody that was in that room. And there was fire in me, and I didn't care. But would I have done that if I was in front of a judge in a court room? I don't think so.

An adjudication system that sits outside of the courts and is focused on an inquisitorial approach, rather than adversarial one, is more likely to provide accessibility, not just for the Traveller interviewees we spoke to, but for all marginalised groups who may experience discrimination.

Conclusion.

The data presented in this chapter lays bare the harms and intergenerational trauma which Travellers face when taking a case to the District Court. In particular, this ethnographic work explores how Travellers, as a highly socially excluded minority group, both access and experience the Court. Our own reflections on the alienating nature of low-level courts despite our privileged status as legal academics, and their resultant inappropriateness as sites of equality adjudication, was reinforced by interview data from Traveller litigants. Applicants from all communities are likely to experience the same challenges, but as Travellers are the most discriminated against group in Irish society the damaging nature of this legal venue is starkly clear. The failure to provide suitable avenues for redress to enable Travellers to challenge discrimination is ultimately an essential part of responding to both historical and contemporary pervasive racist treatment.

As Russell et al note, general courts, dealing with a myriad of issues from criminal matters to debt, are inappropriate for equality adjudication (Russell 2008). Specialist tribunals are essential to ensuring effective access to justice. The District Court's highly adversarial and opaque procedures, has been shown to effectively 'rediscriminate' victims, enforcing its unsuitability as an equality adjudication body, further entrenching harms, rather than providing recourse.

In speaking to the myriad issues facing Travellers before the District Court, this ethnographic research, considers that these include procedural, structural, and environmental barriers perpetrated within the court are compounded by intergenerational trauma, adverse prior experience with legal institutions, and systemic over policing. Findings revealed a rich narrative of mistrust, fear, shame, and helplessness, created by the perceived inability of the Court to achieve a 'just outcome.'

Finally, we note that while more research is needed to explore the District Court and minority experiences, this research must be appropriate and responsive to the needs and challenges of such communities. Marginalised communities are often over researched in a manner that does not respond to their needs, removing agency over research outcomes and usage. There is a significant danger of being regarded as *using* such groups rather than working collaboratively and in partnership. Appropriate research motivations and design should ensure that both the researcher and community benefit from the data results. The ethnographic work we undertake provides a foundation for understanding how the District Court operates for Traveller litigants. In turn, our research *must* be informed by their community experience and user voice. Adopting

a complimentary ethnographic approach facilitates deeper understanding, wherein our own observations and emotions of courts allows us to engage in open conversations with the Travellers as researcher partners. Exploring key challenges, adopting a fully participatory approach, centring a 'nothing about us without us' ethos that centres the voices of Travellers.

More broadly, this ethnographic data highlights the need for further research which assesses culturally appropriate redress options in recognition of the mistrust and barriers to justice which Travellers face in challenging discriminatory treatment within the Irish equality system. The combination of ethnographic research alongside empirical data gathering through interviews, provided a nuanced insight for us to the harms and barriers which Travellers face as equality litigants before the highly adversarial court. The research presented identifies clearly that the District Court acts as, at best, a barrier to seeking justice for discrimination, and at worst is a wholly avoidable site of rediscrimination.

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