

The European Convention on Human Rights (ECHR) was given further effect in Irish law through the ECHR Act 2003¹. Every organ of the state is now required to carry out its functions in a manner compatible with the state's obligations under the ECHR. This means that all legislation must be interpreted by the Irish courts, in so far as possible, in a manner compatible with the ECHR.

However, a study published in 2006 by the Dublin Solicitors Bar Association and the Law Society of Ireland on the impact of the ECHR Act 2003 since it came into force² found that the act had not been decisive in many cases since incorporation. This was because there was already a well-established corpus of constitution-based human rights jurisprudence.

Anti-terrorism measures

The government completed a short consultation in January 2006 with a view to drawing up its first report under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - with four years' delay.

Since 2004, serious allegations have been made that United States (US) aircraft landing at Shannon Airport, in the West of Ireland, may have been transporting people to secret locations where they risk being tortured.³ In December 2005, the Irish Human Rights Commission passed a resolution calling on the government to seek agreement from the US authorities to inspect aircraft landing in Shannon Airport and other Irish airports.⁴ This issue was also subject of an investigation by the Council of Europe and the European Union's (EU) European Parliament.

Published in June 2006, the Council of Europe's report suggested that Ireland could be held responsible for "collusion" in unlawful prisoner transfers by allowing Shannon Airport to be used as a "stopover point" for CIA rendition flights. Senator Dick Marty's report exposed a global "spi-

der's web" of such flights, and clearly indicated that, despite "diplomatic assurances" to the contrary by the US, aircraft used for rendition flights had been refuelling at Shannon Airport.⁵

The Irish Minister for Foreign Affairs Dermot Ahern TD appeared before the European Parliament's investigation on the transport and illegal detention of prisoners (TDIP) in November 2006. He told the committee that there was no evidence that extraordinary rendition had occurred in Irish airports and said that the Irish government were entitled to rely on "diplomatic assurances."⁶ Earlier in the year, the committee found that the CIA was responsible for the "illegal seizure, removal, abduction and detention of terrorist suspects in Europe."⁷

Ill-treatment and police misconduct

The Council of Europe's Committee for the Prevention of Torture paid a week long visit to Ireland in October 2006. Its views on Ireland will be adopted in 2007.

On 9 March 2003 the Irish Government set up a Tribunal of Inquiry (Morris Tribunal) to investigate allegations of police misconduct concerning the police in the Donegal Division.⁸ Over the course of five reports, the Morris Tribunal has reported on the "scandalous conduct"⁹ of certain *Gardaí* (Irish police officers) operating in the Donegal Division.

In August 2006, the Morris Tribunal published three volumes of its investigations.¹⁰ In report five, or "Burnfoot Module," the tribunal found that a certain number of *Gardaí* had been responsible for wrongful arrests and ill-treating suspects in custody, planting hoax explosives evidence and relying on informers to prop up fraudulent investigations for career advancement. Furthermore, Justice Morris found that some *Gardaí* members had planted a gun at a Traveller (a group related to Roma) encampment and subsequently falsely accused and arrested Travellers from the site.

◆ On 1 September 2006, the government published the Report of the Commission of Investigation into the Dean Lyons case.¹¹ The commission had originally been set up to investigate how Dean Lyons, who was a drug addict and homeless, had confessed to and been charged with double murder in 1997. It later turned out that Lyons was innocent and charges against him were dropped. In January 1998, the *Gardaí* also admitted he was innocent. The commission's report into the incident identified problems with how Lyons was questioned and how the case was referred to the director for public prosecutions when there was some doubt among investigating officers as to the guilt of Dean Lyons.

◆ On 20 July, the Barr Tribunal¹² published its final report into the circumstances surrounding the fatal shooting of John Carty at Abbeylara, Co Longford, on 20 April 2000. Carthy was shot when he emerged from his home with a gun after a siege, which had lasted several days. In examining how Carthy was shot, Justice Barr found that there were a series of command failures at the *Garda* scene and that officers had minimal training/experience for the situation.¹³

Criminal justice

In January, the government gave approval for the drafting of a bill to establish a DNA database.¹⁴ In response to a *Dáil* (parliamentary) question on 2 February, the Minister for Justice, Equality and Law Reform Michael McDowell T.D., indicated he is in favour of an extensive DNA database comparable to the United Kingdom's.¹⁵

Enacted in 2006, the Criminal Justice Act¹⁶ contained extensive reforms to the Irish criminal justice system. It included many new powers for police, including increased powers of detention. The act also introduced on-the-spot fines for public order offences, anti-social behaviour orders

and special offences for organised crime, among others. Provisions in the act have been criticized by the Irish Human Rights Commission¹⁷ and the Irish Council for Civil Liberties (ICCL).¹⁸

Freedom of expression

The government introduced the Defamation Bill 2006¹⁹ and the Privacy Bill 2006²⁰ on 7 July. The Defamation Bill essentially sets out parameters for litigation in this area and establishes a Press Council. The Privacy Bill is of most concern from a human rights perspective as its provisions potentially infringe on press freedom. The Irish Human Rights Commission has issued observations on the Defamation Bill²¹ and Article 19 has produced a briefing paper on both bills.²²

Discrimination

In 2006, lesbian, gay, bisexual and trans-gendered (LGBT) persons were denied any legal recognition of their right to form stable, long-lasting, personal and committed relationships. Non-married opposite-sex couples were also denied any kind of similar legal recognition.

In January, the All-Party *Oireachtas* Committee on the Constitution published its Tenth Progress Report on the Family.²³ The committee recommended the introduction of a registered partnership law for both opposite-sex and same-sex couples. However, it advocated only minimal change to its actual object of inquiry – the constitution. According to the ICCL, the committee's stance was based on pragmatic and political reasons rather than human rights concerns.²⁴

In late March, the minister for justice, equality and law reform established a working group on domestic partnership, chaired by a family law practitioner, Anne Colley, to consider legal options for the recognition of non-marital families, including same-sex couples and non-conjugal rela-

tionships.²⁵ The working group published its report in November 2006 outlining a useful set of legal options for the recognition of non-martial families, including opposite-sex, same-sex and non-conjugal family groups. Not only does the report highlight inequalities faced by non-martial families, it also considers the situation of children and marriage for same-sex couples.

The Law Reform Commission published its final report in December 2006 on the rights and duties of cohabitants.²⁶ The commission's final report restricts its recommendations to non-marital couples living in an intimate relationship and proposes that reform should take the shape of a contract/redress model to address the rights and duties of cohabitants.

◆ The High Court issued a judgment in the KAL case²⁷ on 13 December 2006. This legal challenge was taken by Katherine Zappone and Anne Louise Gilligan in order to have their Canadian marriage recognised under Irish law. However, Justice Elizabeth Dunne ruled that same-sex marriage could not be recognised within the Irish constitution. As of early 2007, the case was the subject of an appeal to the Supreme Court.

The Labour Party introduced a private members bill on 14 December 2006 in order to allow same-sex couples to form civil unions comparable to marriage.²⁸

Immigrants

The government published its scheme for the Immigration, Residence and

Protection Bill in October 2006, four years after it was originally promised.²⁹ The main purpose of the bill was to consolidate all existing immigration/refugee law and introduce new measures for the regulation of migrants.

The Irish Human Rights Commission (IHRC) issued *Observations on the Scheme of the Immigration, Residency and Protection Bill 2006*,³⁰ which highlights many human rights concerns with the scheme.

Racism and intolerance

In March 2005, Ireland was examined for the first time under the UN International Convention on the Elimination of All Forms of Racial Discrimination. The UN Committee Against Racism (CERD) subsequently issued observations and recommendations calling for changes in policing, equality law, immigration law, incitement to hatred law and additional funding for human rights bodies and ethnic minority led organisations.³¹

In a new follow-up process, the CERD sent Morten Kjærem to Ireland in June 2006 to investigate Ireland's progress on the CERD observations and recommendations. In response, an alliance of organisations came together to produce a follow-up report to highlight Ireland's lack of progress under the convention.³²

The Council of Europe's European Commission against Racism and Intolerance (ECRI)³³ visited Ireland for the third time in 2006. Its views on Ireland will be adopted in 2007.

SOURCES FOR FURTHER INFORMATION:

- Irish Council of Civil Liberties, at www.iccl.ie

Organizations:

- Amnesty International Ireland, at www.amnesty.ie
- Children’s Rights Alliance, at www.childrensrights.ie
- FLAC (Free Legal Advice Centres), at www.flac.ie
- Gay and Lesbian Equality Network, at www.glen.ie
- Immigrant Council of Ireland, at www.immigrantcouncil.ie
- Inclusion Ireland, at www.inclusionireland.ie
- Irish Penal Reform Trust, at www.iprt.ie
- Irish Refugee Council, at www.irishrefugeecouncil.ie
- Irish Traveller Movement, at www.itmtrav.ie
- Pavee Point, at www.paveepoint.ie
- National Consultative Committee on Racism and Interculturalism, at www.nccri.ie
- Women’s Human Rights Alliance, at www.whra.ie
- Centre for Criminal Justice and Human Rights, National University of Ireland, Cork, at www.ucc.ie/en/lawsite/
- Equality Studies Centre, University College Dublin, at www.ucd.ie/esc
- Irish Centre for Human Rights, National University of Ireland, Galway, at www.nuigalway.ie/human_rights/
- Data Protection Commissioner, at www.dataprotection.ie
- Equality Authority, at www.equality.ie
- Irish Human Rights Commission, at www.ihrc.ie
- National Disability Authority, at www.nda.ie
- Office of the Refugee Applications Commissioner, at www.orac.ie
- Ombudsman for Children, at www.oco.ie

Publications:

- Amnesty International, *Breaking Down Barriers: Tackling Racism in Ireland at the level of the State and its institutions*, 2006,
- Children’s Rights Alliance, *From Rhetoric to Rights – Second Shadow Report to the United Nations Committee on the Rights of the Child*, at www.childrensrights.ie/pubs/CRARepUNCRC.pdf
- FLAC, *Public Interest Law in Ireland – The Reality & the Potential*, conference proceedings, 2006
- Irish Council for Civil Liberties, *Equality For All Families*, 2006, at http://iccl.ie/DB_Data/publications/EqualityForAllFamilies1.pdf
- Irish Human Rights Commission, *Making Economic, Social and Cultural Rights Effective: An IHRC Discussion Document*, Irish Human Rights Commission, 2006, at www.ihrc.ie/_fileupload/news/ESCRDiscussion_____Doc.pdf
- Dublin Bar Association/Law Society of Ireland, O’Connell, D., Cummiskey, S. and Mee-neghan, E. with O’Connell, P., *ECHR Act 2003 – A Preliminary Assessment of Impact, 2006*, at www.lawsociety.ie

- ▶ Irish Human Rights Commission, McCutcheon, P. and Coffey, G., *Report into Determination of Life Sentences*, 2006, at www.ihrc.ie/_fileupload/banners/Report-into-Determination-of-Life-Sentences.pdf
- ▶ NGO Alliance, *One Year On: Comments on the Implementation by the Irish Government of the Concluding Observations of the Committee on the Elimination of Racial Discrimination (CERD)*, at http://iccl.ie/DB_Data/publications/NGOAR1YearOnReport.pdf
- ▶ Irish Human Rights Commission, Walsh, J. and Ryan, F., *The Rights of De Facto Couples*, 2006, www.ihrc.ie/_fileupload/banners/DeFactocouples.pdf
- ▶ Women's Human Rights Alliance, *Taking CEDAW Seriously*, conference report, 2006, at www.whra.ie/CEDAW/

Endnotes

- ¹ Enacted on 31 December 2003, at www.ihrc.ie/legal_documents/l1_ehrc.asp.
- ² Dublin Bar Association/Law Society of Ireland, *ECHR Act 2003 – A Preliminary Assessment of Impact*.
- ³ Human Rights Watch statements on "US Secret Detention Facilities in Europe," 7 November 2005; "CIA Whitewashing Torture," 21 November 2005; "List of Ghost Prisoners Possibly in CIA Custody," 30 November 2005.
- ⁴ Irish Human Rights Commission (2006) *Resolution in relation to claims of US aircraft carrying detainees*, www.ihrc.ie/_fileupload/banners/ResoluitionrenditionDecember2005.doc.
- ⁵ Committee on Legal Affairs and Human Rights (June 2006) *Alleged Secret Detentions in Council of Europe*, Council of Europe: Strasbourg, at http://assembly.coe.int/CommitteeDocs/2006/20060124_Jdoc032006_E.pdf.
- ⁶ RTE News "No evidence of illegal rendition, says Ahern," at www.rte.ie/news/2006/1130/rendition.html.
- ⁷ *Irish Times*, J. Smyth, "European Parliament to question Ahern about CIA flights," at www.ireland.com
- ⁸ *The Tribunal of Inquiry into complaints concerning some Gardai of the Donegal Division*, at www.morristribunal.ie.
- ⁹ Morris Tribunal of Inquiry, *Report on the Investigation into the Death of Richard Barron and the Extortion Calls to Michael and Charlotte Peoples*, Government Stationary Office, 2006, p. 507.
- ¹⁰ All three reports are available at www.justice.ie/80256E010039C5AF/vWeb/pcJUSQ6SQJD2-en. A separate document is available from the Irish Council for Civil Liberties (ICCL) outlining how the recommendations from the Morris Tribunal should be implemented in practice, at www.iccl.ie.
- ¹¹ Report of the Commission of Investigation (Dean Lyons Case) (2006), at [www.justice.ie/80256E010039C5AF/vWeb/flJUSQ6T6ERQ-en/\\$File/DeanLyonsRpt.pdf](http://www.justice.ie/80256E010039C5AF/vWeb/flJUSQ6T6ERQ-en/$File/DeanLyonsRpt.pdf)
- ¹² *The Tribunal of Inquiry into the facts and circumstances surrounding the fatal shooting of John Carthy at Abbeylara, Co Longford on 20th April 2000*, at www.barrtribunal.ie/
- ¹³ *Barr Tribunal Report of the Tribunal of Inquiry into the Facts and Circumstances Surrounding the Fatal Shooting of John Carthy at Abbeylara, Co. Longford on 20 April, 2000*, 2006, Government Stationary Office.

- ¹⁴ *Irish Times*, C. Coulter, "Bill to establish DNA database to be published," 26 January 2006, at www.ireland.com.
- ¹⁵ See parliamentary debates, at <http://debates.oireachtas.ie/DDebate.aspx?F=DAL20060202.xml&Dail=29&Ex=All&Page=1>
- ¹⁶ www.oireachtas.ie/documents/bills28/acts/2006/A2606.pdf
- ¹⁷ Irish Human Rights Commission (2006) *Final Observations on the Criminal Justice Bill 2004* www.ihrc.ie/_fileupload/banners/FINAL_Obs_Criminal_Justice_Bill.doc
- ¹⁸ Irish Council for Civil Liberties (ICCL) *ICCL Submission on the Criminal Justice Bill (as initiated and its amendments)* http://iccl.ie/DB_Data/publications/ICCLSubmissionCJB2004.pdf.
- ¹⁹ At www.oireachtas.ie/documents/bills28/bills/2006/4306/b4306s.pdf.
- ²⁰ *Ibid.*
- ²¹ Irish Human Rights Commission, *Observations on the Defamation Bill 2006*, 2006, at www.ihrc.ie/_fileupload/banners/Observations-on-the-Defamation-Bill-2006.doc.
- ²² Article 19, *Article 19 Review of Ireland's Defamation and Privacy Bills*, 2006, at www.article19.org/pdfs/press/ireland-priv-def-pr.pdf.
- ²³ All Party Oireachtas Committee on the Constitution, *Tenth Progress Report – The Family*, at www.constitution.ie/reports/10th-Report-Family.pdf.
- ²⁴ ICCL, *Equality for All Families*, June 2006, at www.iccl.ie.
- ²⁵ Irish Human Rights Commission, *Resolution in relation to claims of US aircraft carrying detainees*, www.justice.ie/80256E01003A21A5/vWeb/pcJUSQ6NRJWQ-en.
- ²⁶ The Law Reform Commission, *Rights and Duties of Cohabitants*, 2006, www.lawreform.ie/Cohabitants%20Report%20Dec%201st%202006.pdf.
- ²⁷ At www.kalcase.org/.
- ²⁸ Civi Unions Bill, 2006, at www.oireachtas.ie/documents/bills28/bills/2006/6806/b6806d.pdf.
- ²⁹ [www.justice.ie/80256E010039C5AF/vWeb/flJUSQ6TDJ3V-en/\\$File/Scheme.pdf](http://www.justice.ie/80256E010039C5AF/vWeb/flJUSQ6TDJ3V-en/$File/Scheme.pdf)
- ³⁰ Irish Human Rights Commission, *Observations on the Immigration, Residence and Protection Bill*, at www.ihrc.ie/_fileupload/banners/Observations-on-the-Scheme-of-the-Immigration-Residence-and-Protection-Bill.doc.
- ³¹ CERD, *Consideration of reports submitted by States Parties under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Ireland*, 2005, at www.ihrc.ie/_fileupload/publications/CERDCIRLCO2.pdf.
- ³² NGO Alliance, *One Year On: Comments on the Implementation by the Irish Government of the Concluding Observations of the Committee on the Elimination of Racial Discrimination*.
- ³³ ECRI, at www.coe.int/t/E/human_rights/ecri/