

Potential role of the IHRC in prison related actions

**IPRT's Sixth Prison Law Seminar: Litigating Prison Conditions
13 July 2010 Distillery Building**

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IHRC Enquiries/ Litigation functions

Independent Statutory Body – Belfast Agreement

- Conduct enquiries (ss.8(f)/ 9)
- Provide legal assistance in litigation (ss.8(j)/10)
- Notified of ECHR 2003 Act cases (S.6 ECHRA)
- Act as *amicus curiae* (or ‘friend of the court’) in suitable cases involving human rights issues (s.8(h))
- Institute proceedings to vindicate the human rights of persons in the State (ss.8(k)/11)

Sections 8 -11 Human Rights Commission Act 2000

European Convention on Human Rights Act 2003

Remit of the Commission

In this Act (other than *section 11*) “human rights” means—

(a) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution, and

(b) the rights, liberties or freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party.

Section 2 Human Rights Commission Act 2000

Enquiries conducted = 3



**Report on an Enquiry
into the Treatment of a
Visitor Refused Leave
to Land in the State**
January 2009

**Enquiry Report on the Human Rights
Issues Arising from the Operation of a
Residential and Day Care Centre for
Persons with a Severe to Profound
Intellectual Disability** March 2010

ECHR Act notifications

- Section 6 formal pleadings
- Order 60A Rules of Superior Courts/ Practice Dir 32
- 340 sets of proceedings HCt/ SCt

Egs Declarations of Incompatibility:

- **Foy**
- **Gallagher**
- **Donegan**
- Gap: Constitutional challenges, cases stated

Amicus Curiae: 2008-10

- Travellers: Lawrence – HCt
- Housing: Pullen – HCt
- Intellectual Disability: DD v Lithuania (E Ct)
- Asylum: “I” – HCt
- Civil Debt: McCann – HCt

Amicus Curiae: 2008-10

- Criminal Legal Aid: Carmody – SCt
- Covert surveillance: Digital Rights – HCt
- False/ no papers asylum: ED – HCt
- Criminal law insanity JD – SCt

Several invitations by Court

E.g. Amicus Curiae: McCann

- District Court orders arrest and imprisonment of Plaintiff at suit of Credit Union for non-payment of civil debt
- Plaintiffs bring H Ct action, IHRC made Notice Party
- January 2009, IHRC applies to appear as *amicus curiae*. Submissions March 09: Constitutional, ECHR, ICCPR, comparative law standards
- May hearing (3 days), June 09 Judgment Laffoy J
- Strikes down Section 6 of the Enforcement of Court Orders Acts (1926 and 1940)
- Not appealed: Enforcement Of Court Orders (Amendment) Act 14 July 2009

Role and Value of *amicus curiae*

- Regarded as authoritative on human rights issues
- Focuses attention of Court on broader human rights issues which may not be otherwise fully ventilated
- Refers to international standards and case law and suggests how these may inform the Constitutional provisions
- Submissions can be drawn on in future cases

Role and Value of *amicus curiae*

From IHRC *Amicus Curiae Guidelines*:

- Neutral, impartial
- Of assistance to Court
- Limit imposition on case (parties' costs/ Court's time)
- Undertakings: to pay own costs, to be as brief as possible, where possible, not to duplicate submissions

Timing/ Nature of intervention

- Usually after pleadings close
- Submission after parties exchange submissions
- Assists in any undertakings to endeavour not to duplicate the arguments of the parties or to make submissions on matters of fact that may be in dispute
- Further, to be as brief as possible in any oral submission so as not to add to the costs of the parties by prolonging the days of hearing.

Application/ Request

- Application – Notice of Motion, Grounding Affidavit
- Further to s.8(h) HRC Act 2000 and further to Court's inherent jurisdiction
- Request of Court – appearance to assist

Legal Assistance cases

Legal assistance

X&Y v Dept Justice – family reunification

JH v Cavan General Hospital – psychiatric
detention

RT v Fingal County Council – eviction of single
mother

Class Action

- Section 11 HRC Act
- “The Commission may institute proceedings in any court of competent jurisdiction for the purpose of obtaining relief of a declaratory or other nature in respect of any matter concerning the human rights of any person or class of persons. ”

Prison Issues: Sources

- Constitution
- ECHR
- ICCPR
- CPT Standards (2009)
- COE Standards (e.g. European Prison Rules (2006))
- COE Commissioner for Human Rights
- UN Standard Minimum Rules for the Treatment of Prisoners/
UN Basic Principles for the Treatment of Prisoners/
UN Body of Principles for the Protection of All Persons under
Any Form of Detention or Imprisonment
- (Irish) Prison Rules (2007)
- Inspector of Prison's Reports/ Standards
- Academic/ NGO Reports

Article 3 ECHR ILL TREATMENT

- **Kudla v Poland 26 October 2000**

Applicant charged with fraud & forgery. Lengthy criminal proceedings, pre-trial detention. Suicide attempts. Diagnosed “ personality disorder and depressive reaction”.

“State must ensure ...his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance”

Any “discernible shortcoming on the part of the authorities” - while psychological condition made him more vulnerable than the average detainee and his detention may have exacerbated “feelings of distress, anguish and fear” no evidence applicant subjected to ill-treatment of sufficient level of severity

Article 3 ECHR

- **Sulejmanovic v Italy 6 November 2009**

Applicant convicted, imprisoned in detention facility which ostensibly held 1,188 persons but held 1,560 prisoners. Complained of cell size, conditions etc.

Court: CPT Standards – 7m sq. Look at all circs.

where flagrant: violation of Art 3 - *Labzov v. Russia*, 16 June 2005

Otherwise look at all elements – “the ability to use the toilet in a private manner , the cooling available, access to light and natural air , the quality of the heating and respect for basic health requirements”

3-4 m sq. could be violation – lack of space & ventilation but not in this case.

Where applicant detained with 5 others with average area of 2.70 m sq. each - violation Art 3.

Article 3 ECHR

- **Slyusarev v Russia (April 2010):** Delay of 5 months in State authorities procuring new glasses for applicant = violation of Article 3 ECHR - applicant subjected to degrading treatment.

“the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance...”

Article 3 ECHR

- **Ciorap v Moldova 19 June 2007**

Court concludes that the applicant's repeated force-feeding, not prompted by valid medical reasons but rather with the aim of forcing the applicant to stop his protest, and performed in a manner which unnecessarily exposed him to great physical pain and humiliation, can only be considered as torture – breach Art 3.

Article 8 ECHR Right to Private Life

- **Dickson v UK** 4 December 2007

State policy on enabling artificial insemination for married couple: prisoner and ex-prisoner - artificial insemination only realistic hope of applicants having a child together given the second applicant's age and the first applicant's release date:

Absence of the required proportionality assessment in an individual case regarding such a matter of significant importance for the applicants “fell outside any acceptable margin of appreciation so that a fair balance was not struck between the competing public and private interests involved” - violation of Article 8 of the Convention

Article 13: Right to an effective remedy

Kudla v Poland “lack of progress in the proceedings resulted in a total delay of nearly one year and eight months, a delay for which the Court does not find a sufficient justification and which it considers incompatible with the diligence required under **Article 6 § 1**” (hear a case within reasonable time)

“Court considers that the correct interpretation of **Article 13** is that that provision guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1.”

Any of the single remedies referred to, or a combination of them, could not have expedited the determination of the charges against the applicant or provided him with adequate redress for delays that had already occurred. Nor example from domestic practice showing that, by using the means in question, it was possible for the applicant to obtain such a relief.

That would in itself demonstrate that the means referred to do not meet the standard of “effectiveness” for the purposes of Article 13 because, as the Court has already said the required remedy must be effective both in law and in practice – violation of Article 13.

Summary: Interaction with the IHRC

- As a source on human rights law (www.ihrc.ie) or call 858 9601
- Put on Notice/ Send complementary copy of pleadings
- Refer individual to IHRC for preliminary assessment on H Rts grounds
- IHRC functions: advice/ referral/ enquiry/ legal assistance/ amicus curiae/ class action

Further Information

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www.ihrc.ie