Prison Complaints and Obstacles to Prisoner Litigation

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- Sources of Law
- Recent Developments in Ireland
- Recent developments in ECtHR
- Tales of prisoner complaints and litigation
- Potential areas of litigation

SOURCES of LAW

Sources

- Irish Prison Rules 2007
- The Prisons Act 2007
- European Prison Rules

Inspector of Prisons

Inspector of Prisons Report 10th September 2010

Guidance on Best Practice relating to Prisoners' Complaints and Prison Discipline

- The prisoners' complaint procedure governed by Rules 55 to 57 of the Irish Prison Rules 2007.
- Rule 61 of the European Prison Rules requires that:-
- "a prisoner who is found guilty of a disciplinary offence shall be able to appeal to a competent and independent higher authority."
- 6.25 At paragraph 55 of their 2nd General Report the CPT stated that prisoners should have a right to:-"appeal to a higher authority against any sanctions imposed."

CPT visit to Ireland: Overcrowding

• "In the three and a half years since the CPT's last periodic visit to Ireland the prison population has expanded considerably, rising from some 3,150 in October 2006 to over 4,000 by the end of January 2010. At the same time, the Irish Prison Service has struggled to provide sufficient capacity to accommodate the increasing prison population. The official operational capacity of some 4,100 belies the very real overcrowding that exists in a number of prison establishments, such as Cork and Mountjoy Prisons and the female unit at Limerick Prison, where many inmates have to sleep on mattresses on the floor due to insufficient beds and a lack of space. As was the case in 2006, the de facto overcrowding, combined with the conditions in certain of the old and dilapidated prisons, raises real concerns as to the safe and humane treatment of prisoners."

CPT visit to Ireland: Thornton Hall

"The CPT also wishes to place on record that it has serious" misgivings about the construction of very large prison complexes, which have historically proven difficult to manage and unable to deliver the targeted services required of the various population groups within them. The information relating to the design and functioning of the Thornton Hall complex remains unclear and much will depend on whether the individual units (male, female, training unit, etc.) will be run as separate entities or under one management. An emphasis on economies of scale is understandable but the possible negative implications for day-to-day contact between prisoners and staff, opportunities for the delivery of a purposeful regime and prisoners contacts with the outside world need to be carefully considered. Recent debates in other European countries on large prison complexes have pointed to their unsuitability for catering to the needs of a diverse population of more than 2,000 inmates.

CPT visit to Ireland: Conditions

- The poor physical fabric of **Cork Prison** was described in the CPT's report on its first visit to Ireland in 1993, and few improvements have been made over the years. Cork Prison is limited in space and as the numbers of inmates have risen there has been no corresponding increase in the facilities workshops, showers, toilets; visiting and medical facilities; to cope with the additional burden. In sum, the overall conditions of detention have deteriorated further.
- The 138 operational cells, originally designed for single occupancy, measured between 7.5 and 9 m² and were equipped with two beds (usually a bunk bed), one small cupboard and a desk and chair(s). At the time of the visit, most cells were accommodating two inmates; however, at least 25 cells were holding three inmates with one person having to sleep on a mattress on the floor. During the day, these prisoners had to stow away their mattresses and had no place where to sit or to store their personal belongings. Further, most cells benefited from very little natural light and had poor artificial lighting, and a number of cells on the third level of A and B Wings had water leaking into them from the roof. The poor conditions were exacerbated by the lack of in-cell sanitation. The situation was particularly bad in those cells being used to hold two or three prisoners on protection, as they could spend up to 23 hours locked up together in the cell. The air in a number of these cells was rank and humid. In one cell in C Block, three prisoners on protection who were accommodated together did not possess a chamber pot^[15] and had to share a bottle for the purpose of urinating; if necessary, they defecated into a plastic bag. In the CPT's view, apart from representing a health hazard, such treatment is degrading.

The Prisons Act 2007 Part 3

RECENT DEVELOPMENTS IN IRELAND

Recent Developments in Ireland

- Kinsella v Governor of Mountjoy Prison [2011]
 IEHC 235 Date of Delivery: 12/06/2011
 - Hogan J
 - Article 40

Kinsella v Governor of Mountjoy Prison [2011] IEHC 235 Date of Delivery: 12/06/2011

HOGAN J: To sum up, therefore, I have concluded that: A. The detention of the applicant in the padded cell in the manner that I have described for a continuous eleven day period objectively amounts to a breach of the State's obligation under Article 40.3.2 of the Constitution to protect the person of Mr. Kinsella.

B. It cannot *presently* be said that this breach is so serious that it immediately vitiates the lawfulness of his detention. It is clear from the Supreme Court's decision in *McDonagh* that, so far as sentenced prisoners are concerned, the Article 40.4.2 jurisdiction can only be used in quite exceptional cases. Having regard to the fact that the prison authorities are acting from the best of motives in a complex and difficult situation, it would be only fair and proper to give them one further opportunity to remedy the situation. It cannot yet be said that the present case comes within the exceptional category of cases envisaged by O'Higgins C.J. in *McDonagh* and by Clarke J. in *H. v. Russell*.

C. It follows, therefore, that this application for release must technically fail. But if the applicant's circumstances of detention were to continue as heretofore, then, of course, with each passing day, the present case would inch ever closer to the point whereby this Court could stay its hand no longer. In this regard, it should be noted that were these conditions to continue for much longer, the applicant would be justifiably entitled to make a fresh application for release under Article 40.4.2 or to take such further legal steps as he might be advised.

Mulligan v Governer of Portlaoise Prison [2010] IEHC 269,

Mac Menamin J. refusing the application found that

"In general, identified ingredients fall to be considered cumulatively. Only in highly unusual circumstances will one single factor be determinative as to whether there has been a breach of Article 3 or Article 8. Certainly there is no jurisprudence from the ECtHR, Northern Ireland, or Scots Courts which makes out the proposition that the absence of in-cell sanitation or "slopping-out" *per se* constitutes a violation of Article 3. This Court is not empowered to "directly apply" Convention provisions. To seek to create a "new" Convention right is not permissible. The Court must have regard only to established Strasbourg jurisprudence (*McD. v. L.*, [2009] I.E.S.C. 81, Supreme Court, December 2009). Where ECHR violations have been established it has been in circumstances quite distinct from the present proceedings. Violations have been established where there have been what can only be described as extreme conditions of deprivation including the "cumulative vices" of overcrowding, poor hygiene, lack of movement and poor exercise facilities, absent the "balancing factors" described earlier."

IPRT and others v Governor of Mountjoy prison & others [2005] IEHC 305

- Applying the rationale of Henchy J. as outlined in *Cahill v. Sutton* and the views as expressed by Otton J. in R. v. Pollution Inspectorate exp Greenpeace (2) [1994] 4 A.E.R., in particular pp 349-350, the approach I take to this matter is primarily one of discretion. I take into account the nature of I.P.R.T. and the extent of its interest in the issues raised and the remedies which it seeks to achieve and the nature of the relief as sought. I am satisfied that if I were to deny standing to I.P.R.T. those whose interests it represents may not have an effective way of bringing the issues that are involved in these proceedings before the court. I take the view that it is unlikely that individual psychiatrically ill prisoners will be able to command the expertise which is at the disposal of I.P.R.T. and in these circumstances were this court to refuse I.P.R.T. locus standi it appears unlikely that justice would be done between the parties. Counsel for the defendants has placed considerable emphasis on the fact that other psychiatrically ill prisoners are the appropriate persons to maintain these proceedings and that as the proceedings are maintained by I.P.R.T. they represent apart from the two identified plaintiffs, a number of other prisoners who remain unidentified but in this regard I am satisfied that at the trial of the action clearly it is incumbent on the I.P.R.T. to prove their case in accordance with the applicable procedures.
 - In these circumstances I take the view that the I.P.R.T. has *locus standi* to maintain the claims made by it in these proceedings and I decline to grant the defendants the relief as sought in this regard.

RECENT DEVELOPMENTS IN ECtHR

Solitary Confinement

- E.C.H.R. (Grand Chamber), 8.7.2004, Ilascu and Others v. Moldova and Russia (no. 48787/99)
 - no contact with other prisoners, no news from the outside and no right to contact his lawyer or receive regular visits from his family. His cell was unheated, he was deprived of food as a punishment and he was able to take showers only very rarely. These conditions and a lack of medical care caused his health to deteriorate.
 - The Court held that as a whole these conditions amounted to torture, in violation of Article 3 ECHR

- E.C.H.R., (Grand Chamber), 04.07.2006, Ramirez Sanchez v. France (no 59450/00)
 - The European Court of Human Rights underlined that solitary confinement, even in cases entailing only relative isolation, could not be imposed on a prisoner indefinitely. A State had to periodically review a prisoner's solitary confinement, give reasons for any decision to continue segregation and monitor the prisoner's physical and mental condition

Prison conditions

- E.C.H.R. 15.7.2002 Kalashnikov v. Russia (47095/99)
 - The applicant spent almost five years in pre-trial detention before he was acquitted in 2000 and complained about the conditions in the detention, particularly that his cell was overcrowded (17 m2 for 24 inmates).
 - Although the European Court of Human Rights accepted that there had been no indication of a positive intention to humiliate him, it considered that the conditions of detention had amounted to degrading treatment in violation of Article 3.

Multiple Transfers

• E.C.H.R., 09.07.2009, Khider v. France (n°39364/05)

- The applicant complained of his detention conditions and the security measures imposed on him as a "prisoner requiring special supervision", in particular repeated transfers from one prison to another, prolonged periods in solitary confinement and systematic body searches.
- The European Court of Human Rights held that there had been a violation of Article 3.

Drug Treatment

- E.C.H.R., 29.4.2003, McGlinchey and Others v. the United Kingdom (n°50390/99)
- long history of heroin addiction, sentenced to four months' imprisonment for theft. While in prison she manifested heroinwithdrawal symptoms, had frequent vomiting fits and significantly lost weight.
- her condition deteriorated after one week in prison, she was admitted to hospital, and died.
- The European Court of Human Rights concluded that the prison authorities had failed to comply with their duty to provide her with the requisite medical care, in violation of Article 3.

TALES OF PRISONER COMPLAINTS & LITIGATION

Access & Visits



"I want a change from sniffing for drugs. I want to get into rooting out white collar crime."

- 3 strikes and you're out...
- Article 8 ECtHR
- Appeal review mechanisms for bans
- Procedures followed for bans
- Available remedies for prisoner and for the visitor

Access continued...

- c) Report on Ireland CPT/Inf (2007) 40 stated at paragraph 95 that:- "visits between a prisoner and his relatives should under no circumstances be withdrawn for a prolonged period".
- Rule 60.4 of the European Prison Rules: "Punishment shall not include a total prohibition on family contact".

Report on Azerbaijan CPT/Inf (2009) 28 stated at paragraph 53 that any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts

Foy v Governor of Cloverhill[2010] IEHC 529

• Charleton J.

"the entitlement of the governor of Cloverhill Prison to protect its environment of detention and rehabilitation has led to a general decision whereby screened visits of remand prisoners to their families are the norm. In the context of the problems described, this decision cannot be regarded as unreasonable. A sufficient level of flexibility remains within the system so as to allow for contact between a prisoner and his family where security risks are adjudged to be at an appropriately low level and where such an occasion can fit within the demands for personnel, facilities and rostering of supervision in the context of the governance of the prison as a whole. The application for judicial review is therefore refused."

....Is there anybody out there?

- Responses from the IPS
- Dumbrell v Governor of Castlerea Prison and others [2010] 1077/JR Hedigan J unreported

Hello ALEC...

Thank you...