

Commissioning New Human Rights Standards

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Commentators and activists in Northern Ireland campaigned long and hard for human rights protections to be included in any long-term solution to the conflict in Northern Ireland. This stance was to some extent vindicated by the Good Friday Agreement which contained parallel undertakings by both the British and Irish governments to promote and protect human rights and standards to an international level. The first of these undertakings is a commitment to incorporate the European Convention on Human Rights into domestic law, the second involves the establishment of Human Rights Commissions.

The European Convention on Human Rights

Ireland and the UK have both ratified (signed) the European Convention on Human Rights, but neither had incorporated it at the time of the signing of the Good Friday Agreement. Effectively, this meant that litigants could not raise issues relating to their rights under the Convention before the courts in these jurisdictions. If they had a good case under the Convention, they first had to exhaust the domestic remedies available, and then take their case to Strasbourg to the European Court of Human Rights. The journey to justice can be slow and expensive, and the governments can be even slower to bring domestic legislation into line with the eventual judgement of the court. In fact, fewer than ten Irish litigants have won cases in the European Court, but they have won important rights there, for example, the right to legal aid. Incorporation of the Convention means that domestic courts have to consider and apply the European Convention in cases that come before them. Appeals to Strasbourg would only be necessary where the domestic application of the Convention is incompatible with the established jurisprudence of the European Court.

In the Good Friday Agreement, both the British and the Irish governments undertook to incorporate the Convention. In Northern Ireland and in England, the Convention will be incorporated into domestic law as and from 2 October 2000, by virtue of the Human Rights Act, 1999. The delay in implementation is attributed to the need for judicial and

professional training programmes. There was speculation that provisions of the Human Rights Act relating to freedom of assembly would be fast-tracked in order to deal with the marching season. However, there were no such plans for other provisions of the Act, dealing with family rights and privacy, which could have been perceived as counterbalancing those provisions. In the circumstances, it was decided not to fast-track any of the provisions, but to await the October implementation.

The Irish government has taken no steps to incorporate the Convention, and Ireland is now the only member of the Council of Europe not to have done so – hopefully, this is a continual embarrassment to the government. It is certainly to their shame. Only litigants from the courts in the Irish Republic will continue to be put to the time and expense of taking their cases to Europe in order to vindicate their rights – rights which the government has already recognised by ratifying the Convention. So why the delay? Incorporation has now the status of a political imperative, and newspaper reports around the time Ireland assumed the presidency of the Council of Europe indicated acceptance of this.

It appears that the delay emanates from an uncertainty relating to the best method of incorporation. This is difficult to understand. Under the Convention, if there is a clash with domestic law, the higher standard should be applied. In many instances, the standards laid down under the constitution are higher than those enshrined in the Convention, which is after all, a compromise between member states of the Council of Europe. If the Convention is incorporated, it will not trump the constitution where those standards are higher, and where the constitutional standards are absent or lower, the Convention standards will apply anyway. The government is quick enough to hold referenda in relation to other international instruments (the Good Friday Agreement itself being one example) so why not enshrine the Convention itself into the constitution, with a proviso that Irish law prevail where it applies a higher level of protection?

Human Rights Commissions

The second undertaking by the governments related to the establishment, North and South, of Human Rights Commissions, as well as a North-South co-ordinating body. These commissions are essential to create a new culture of human rights throughout the island of Ireland. Human Rights commissions can and should raise awareness of rights, guide people through new legislation, inform them as to the ramifications of legislation on their personal rights, assist litigants take cases to courts and other international bodies that vindicate those rights, take the advisory role of *amicus curiae* where the public could be affected by a determination on a rights issue, and investigate alleged abuses of human rights.

Of course, to be effective, Human Rights commissions require resources

and powers. They also require committed and dynamic members. The membership of a commission should be broadly representative, and should not be too lawyer-oriented. This commission's valuable work will mean reaching out to those who need rights education here, not producing learned reports which moulder in the bowels of government departments. A recent report from the Australian Human Rights Commission shows their Chief Commissioner sitting cross-legged on the ground under a tree, talking to native Australians. Now, that is an effective commission.

The Northern Irish Human Rights Commission has already celebrated its first anniversary, having started work in March last year. University professor and former chairperson of the Committee for the Administration of Justice, Brice Dickson, was appointed to the chair of the Human Rights Commission. One of his first comments after his appointment was that 'the Commission will want to be a peoples' commission, keen to interest all who have views on how human rights can be properly protected in this part of the world. Political parties, community organisations and civil liberties groups will be particularly worth consulting'.

The Northern Commission published a draft strategic plan last September, and has unveiled an impressive website. It has also launched the debate on the Bill of Rights for Northern Ireland (which is to be in addition and complementary to the Human Rights Act). However, it should be noted that the commission's powers are not all that could be wished for. It has not been given any significant power to compel the attendance of witnesses or the production of documentation for its inquiries.

Meanwhile, the Irish government produced its legislation for a Human Rights Commission early last July and it received a broad welcome from non-governmental organisations. However, since then, there has been very little activity on the Oireachtas front. It is as though our broad welcome for the legislation has caused them to stop and look for the trap. This is particularly worrying given that there is to be a North-South co-ordinating body on human rights issues. Indeed, one would even begin to wonder about the government's commitment, both to Human Rights and to the Good Friday Agreement. The delay is inexplicable – in December 1998, on the 50th anniversary of the UN Declaration of Human Rights, the Taoiseach Mr. Ahern announced that the Irish commission would 'set, not follow, standards for the best international practice in this field'. He seems to have lost his enthusiasm.

The Human Rights Commission Bill, as published gives a broad definition to the human rights which fall within the Commission's remit, including the rights and freedoms contained in the constitution and those guaranteed by any agreement or instrument to which the state is a party. However, for the purposes of litigation, the function of the Commission is

limited to those rights protected by the constitution or any rights contained in international instruments which the state has incorporated into domestic law. The Irish courts uphold constitutional rights already, so the only new benefits under this definition are those rights contained in international instruments which have been incorporated here. And how many such instruments are there? None. So much for setting standards.

In effect, the Irish government has failed to seize the opportunities presented by the Good Friday Agreement to put its house in order. It has been quick to call on other parties to the Agreement to deliver on promises made, but has failed to deliver on what could have been perceived as the least controversial of the undertakings made. Ironically, it is the British government, whose rights record in the North has for so long been a matter for concern, which is showing up this transgression. It is time to remind the Irish government that under the Good Friday Agreement, human rights belong to all the people of this island, and not just those in the North.

- Since this article was written, the government has moved to establish the Human Rights Commission by the end of June, 2000. It has also promised to incorporate the European Convention on Human Rights in October. The watchdog and campaigning role of the ICCL and others has played an important role in this development.

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