

Promoting and Protecting Human Rights in Ireland

The Role of the Irish Constitution and European Law

Presidents' Hall, Law Society of Ireland

Saturday, 13th October 2012

IHRC

AN COIMISIÚN UM CHEARTA AN DUINE
IRISH HUMAN RIGHTS COMMISSION



Law Society of Ireland

The Irish Constitution and European Law (in its broadest conception) both seek to promote and protect human rights, the rule of law and democratic traditions but are they fit for purpose in 21st century Ireland?

The 1937 Constitution's focus on fundamental rights predated both the Universal Declaration of Human Rights and the European Convention on Human Rights but the jurisprudence of the Irish courts arguably goes far beyond the fair trial and liberty protections generally available under international law. At the same time, the protections afforded to women, children, privacy and social rights have been criticised as lagging behind European standards. In Ireland, this has prompted a referendum on children's rights and a Constitutional Convention. At the same time, the European Court of Human Rights continues to struggle with an excessive caseload, while the Charter of Fundamental Rights marks an important development in the law of the European Union.

This year the Irish Human Rights Commission (IHRC) and the Law Society of Ireland's 10th Annual Human Rights Conference will examine the effectiveness of the Irish Constitution, the European Convention on Human Rights and the law of the European Union in advancing human rights protection in Ireland. The role of the courts, quasi-judicial and administrative bodies in protecting fundamental rights will also be considered. We hope that the analysis offered on the various topics will stimulate debate and discussion; enrich our understanding of human rights and encourage deeper consideration of how they can be further promoted and better protected in Ireland.

The Conference will open with an overview of the human rights protections afforded by the Irish Constitution. This will develop into a more detailed analysis of how international jurisprudence from the European Court of Human Rights and the Court of Justice have influenced the development of national jurisprudence in the area of Irish constitutional and human rights law. Issues to be addressed will include vindicating citizen's rights in the European Union and the impact of EU law and the Charter of Fundamental Rights. A more individual focus on these areas will follow in the breakout sessions.

Session 1 will focus on the extent of human rights protection under the Irish Constitution in relation to the family, education and criminal justice. The issue of whether there is sufficient latitude in the Constitution to respond to the challenges presented by modern Ireland will be examined and developed by speakers in this session.

Session 2 will address issues surrounding the European Convention on Human Rights. The practical problems of taking a case to Strasbourg and the many challenges facing the Court today will be addressed during this session.

Session 3 will examine the law of the European Union and the Charter of Fundamental Rights. This session will include analysis of the constitutional status of EU law in the Irish courts, the new concept of "EU citizens", implementing guidance from the Court of Justice and EU Accession to the European Convention on Human Rights.

Session 4 will focus on the increased use of quasi-judicial remedies in a variety of areas, including children's rights, equality in the workplace through the new Workplace Relations Commission and the work of the Garda Síochána Ombudsman Commission.

MORNING SESSION

Time	Event	Speakers
10.00	Welcome	Mr. Donald Binchy, President, Law Society of Ireland Mr. Des Hogan, Acting CEO, Irish Human Rights Commission (IHRC)
10.10 – 11.40	Plenary Session Chair	Promoting and Protecting Human Rights in Ireland: The Role of the Irish Constitution and European Law The Honourable Mr. Justice William McKechnie, Supreme Court
10.10-10.20	Opening Remarks	The Honourable Mr. Justice William McKechnie, Supreme Court
10.20-10.40	Human Rights Protection: The Role of the Irish Constitution	The Honourable Miss Justice Mary Laffoy, High Court
10.40-11.00	Vindicating Citizen's Rights in the European Union	Dr. Síofra O'Leary, Court of Justice of the EU and Visiting Professor at the College of Europe, Bruges
11.00-11.20	European Court of Human Rights and National Courts: A Challenging Dialogue	Mr. Michael O'Boyle, BL, Deputy Registrar, European Court of Human Rights
11.20-11.40	Question & Answer Session	
11.40-12.00	Break	Tea, coffee and sandwiches will be served in your chosen session room

MIDDLE SESSION

12.00 - 13.35	Session 1	Session 2	Session 3	Session 4
Theme	The Role of the Irish Constitution – 75 years on – in Promoting and Protecting Human Rights	European Convention on Human Rights - Redress & Remedies: Obstacles and Access to Justice	EU Law and the Charter of Fundamental Rights - Redress & Remedies: Obstacles and Access to Justice	Quasi-Judicial Remedies and Fundamental Rights: The increased effectiveness of Quasi-Judicial Remedies
Chair	The Honourable Mr. Justice Gerard Hogan, High Court	Mr. Des Hogan, Acting CEO, IHRC	Ms. Barbara Nolan, Head of Representation, European Commission Representation in Ireland	Ms. Noeline Blackwell Director General, FLAC (Free Legal Advice Centres Ltd.)
Topic	The Irish Constitution: The Family and Human Rights	European Convention on Human Rights: Taking a Case to the European Court of Human Rights	EU Law and Human Rights: Implications for Legal Practice in Ireland	Child Welfare and Rights: Role of the Ombudsman for Children
Panelist	Mr. Gerard Durcan, SC	Mr. James MacGuill, MacGuill & Co	Mr. Patrick Dillon-Malone, BL	Ms. Emily Logan, Ombudsman for Children
Topic	The Irish Constitution: Education and Human Rights	European Court of Human Rights: Role of National Human Rights Institutions	EU Law and Human Rights: Evolution of Law, Policy and Practice	Promoting Human Rights: Addressing complaints against members of An Garda Síochána
Panelist	Dr. Dympna Glendenning, BL	Ms. Sinéad Lucey, Senior Enquiries and Legal Officer, IHRC	Dr. Suzanne Kingston, BL, School of Law, University College Dublin	Mr. Kieran FitzGerald, Commissioner, An Garda Síochána Ombudsman Commission
Topic	The Irish Constitution: Criminal Justice and Human Rights	European Court of Human Rights: in Practice	EU Accession to the European Convention on Human Rights	Safeguarding equality in the new Workplace Relations Commission
Panelist	Mr. Mark Lynam, BL	Ms. Anna Austin, Head of Division in the Registry of the European Court of Human Rights	Dr. Hannes Krämer, Legal Service, European Commission, EU Chief Negotiator for EU accession to the ECHR	Ms. Síle Larkin, Legal Advisor, The Equality Tribunal

AFTERNOON SESSION

13.40-14.30	Plenary Session The Role of the Irish Constitution and European Law: Conclusions & Recommendations	Chair Mr. Michael Finucane, Chair of the Law Society of Ireland Human Rights Committee
13.40-13.45	Awards: Annual Human Rights Essay Prize 2012 Conferral: Certificate in Human Rights 2012	Presentation by the Human Rights Committee
13.45 – 14.30	Concluding Panel	The Honourable Mr. Justice Gerard Hogan, High Court Mr. Des Hogan, Acting CEO, IHRC Dr. Hannes Krämer, Legal Service, European Commission, EU Chief Negotiator for EU accession to the ECHR Ms. Síle Larkin, Legal Advisor, The Equality Tribunal
14.30	Close of conference	

SPEAKER BIOGRAPHIES

The Hon. Mr. Justice William McKechnie

Mr. Justice William McKechnie completed his undergraduate studies in University College Cork, Ireland, studied to become a Barrister in Kings Inns, Dublin, Ireland and completed a Masters in European Law in University College Dublin, Ireland.

He was called to the Bar in 1972 and admitted to the Inner Bar in 1987. As a Barrister he practised in the area of commercial, chancery and local authority law, and had a special interest in medical negligence.

He was a member of the Bar Council for several years and was elected Chairman in 1999 and re-elected in 2000.

Mr. Justice McKechnie was appointed a High Court Judge in 2000 and was in charge of the competition list from 2004 until his later appointment to the Supreme Court. As such he presided over all competition cases both civil and criminal. He has determined a number of cartel cases including: the beef and sugar sectors; the car industry; ferry ports; and public transport.

He also has a special interest in Human Rights and how such Rights can be articulated in various branches of the law. He made the first Declaration of Incompatibility under the European Convention on Human Rights Act, 2003, in the Transgender case of *Foy -v- An t-Ard Chláraitheoir*.

He delivered the 4th Annual Centre for Criminal Justice and Human Rights Lecture at UCC on the 4th March 2010 entitled: "Respectable Criminality: Discussion on White Collar Crime".

Mr. Justice McKechnie was Chairman of the Valuation Tribunal from 1995 to 2000 and since 2002 has been the Chair of the Editorial Board of the Judicial Studies Institute Journal. He has been a member of the Courts Service Board and also of the Rules Making Committee.

In June 2010 he was appointed to the Supreme Court of Ireland.

In the same year he was also elected President of the Association of European Competition Law Judges (AECLJ), which represents each of the 27 Member States of the European Union, as well as Judges from the Court of Justice and the General Court of the European Union and from the EFTA Court.

The main purpose of the AECLJ is to provide a forum for the exchange of knowledge and experience in the field of competi-

tion law among the judiciary across the European Union, thereby promoting a coherency and consistency of approach, particularly in the context of the modernisation of the application of Articles 101 and 102 of the TFEU, under EC Regulation 1/2003.

He is a Bencher of the Honourable Society of King's Inns.

The Hon. Miss Justice Mary Laffoy

Miss Justice Laffoy graduated from University College Dublin with a BA degree in 1968. Subsequently, between 1968 and 1971 she studied law at University College Dublin and at the Honourable Society of King's Inns in Dublin. She was called to the Bar in July 1971.

Miss Justice Laffoy practised as a barrister from the Michaelmas term 1971 until her appointment to the High Court. She was admitted to the Inner Bar in the Michaelmas term of 1987.

Miss Justice Laffoy was appointed a Judge of the High Court in April 1995. She has been, and continues to be, primarily involved in civil litigation.

Dr. Síofra O'Leary

Dr. Síofra O'Leary, BCL (UCD), PhD (European University Institute) is a référendaire in the chambers of Judge Aindrias Ó Caoimh at the Court of Justice of the European Union. She has previously served as a référendaire for Judges Fidelma Macken and Federico Mancini. She is also a Visiting Professor at the College of Europe, Bruges, where she teaches a course on EU Social and Employment Law and Policy.

Before working at the Court, she was the Assistant Director for the Centre of European Legal Studies at the University of Cambridge and a Fellow of Emmanuel College. She was previously a Visiting Fellow at the Faculty of Law, University College Dublin, a Postdoctoral Fellow at the University of Cádiz, Spain and a Research Associate at the Institute for Public Policy Research, London.

She is the author of two books entitled *The Evolving Concept of Community Citizenship* (Kluwer, 1996) and *Employment Law at the European Court of Justice* (Hart Publishing, 2001) and has published extensively in academic journals and EU law monographs on the protection of fundamental rights in the EU, EU employment law, the free movement of persons and services and EU citizenship.

Mr. Michael O'Boyle, BL

Born in 1950 in Belfast, Northern Ireland. Previously Registrar of the First and Fourth Sections of the Court. Author of various articles in the field of public law and human rights and co-author (with Professors Harris and Warbrick) of the Law of the European Convention on Human Rights, Butterworths, 1995, the second edition of which was published by Oxford University Press in March 2009.

Educated in Queens University, Belfast, (LLB), the Harvard Law School (LLM) and the International Institute of Human Rights, Strasbourg (Diploma in the international and comparative law of human rights). Barrister-at-Law and former Lecturer in Public Law, Faculty of Law, Queens University. Deputy Registrar of the Court since 13 February 2006.

The Hon. Mr. Justice Gerard Hogan

Gerard Hogan was appointed a judge of the High Court in October 2010. He was previously a lecturer in law at Trinity College, Dublin 1982-2007 and a Senior Counsel from 1997-2010.

Mr. Gerard Durcan, SC

Gerard Durcan is a Senior Counsel who practices in the area of family and child care law.

Dr. Dympna Glendenning, BL

Dr. Glendenning is a barrister with experience in education law. In an earlier career she was a teacher and school principal. She is author of Education and the Law, 2nd ed. (2012) Bloomsbury and Religion, Education and the Law (2008), Tottel.

Mr. Mark Lynam, BL

Mark Lynam graduated from TCD and was called to the Bar in 2004. He mainly practises in the areas of Criminal law, Judicial Review and Regulatory Law. Areas of specialisation include prisoners' rights, mental health law and childcare law. He has acted in several cases in which the constitutionality of legislation affecting vulnerable individuals has been challenged, including the recent Damache case.

Mr. Des Hogan

Des Hogan is Acting Chief Executive of the Irish Human Rights Commission (IHRC). Mr. Hogan was previously IHRC Deputy Chief Executive and Director of Enquiries, Legal Services and Administration. Prior to that he was Senior Caseworker with the IHRC. Before joining the Commission, Mr. Hogan worked for the Australian Human Rights and Equal Opportunity Commission and for Amnesty International in a number of countries.

Mr. James MacGuill

James MacGuill is a solicitor practising in Dundalk and Dublin principally in the field of public law. He is a Past President and current council member of the Law Society of Ireland. He is currently an Irish delegate to the CCBE and one of that body's nominees to the EU Justice Forum. He has appeared personally before the European Court of Human Rights in the case of *McFarlane v Ireland*.

Ms. Sinéad Lucey

Sinéad Lucey is Senior Enquiry and Legal Officer at the Irish Human Rights Commission. Prior to that Ms Lucey was Legal Consultant to the Irish Traveller Movement's Legal Unit.

Ms. Anna Austin

Anna Austin qualified as a Solicitor from the Incorporated Law Society of Ireland in 1991. Having worked for 6 years with A&L Goodbody in Dublin, she joined the European Commission for Human Rights in 1994 and, subsequently, the new (full time) European Court of Human Rights in 1998. On secondment

from those institutions on two occasions, she was the Deputy Ombudsperson for Bosnia and Herzegovina in 1997 and Head of the Office of the Investigating Judges of the Khmer Rouge Tribunal in Cambodia 2008-2009. She is currently a Head of Division in the Registry of the European Court of Human Rights, which deals with cases against Macedonia, Montenegro, Serbia, Bosnia and Herzegovina, Albania, Ireland and the United Kingdom.

Ms. Barbara Nolan

Ms. Barbara Nolan has been an official with the European Commission in Brussels since 1989. She is currently Head of the European Commission Representation in Ireland.

Prior to this, she was attached to the Commission in Brussels and was in charge of the policies of reform and modernisation of Higher Education and the Erasmus student exchange programme. She has held a number of other management positions in the Commission including in the areas of Anti-Discrimination Policy and Communications.

She was the European Commission's Spokesperson for Employment, Social Affairs and Health matters from 1993-1999 and was also the Commission's Spokesperson for Justice and Home Affairs 1993-1994.

Barbara studied economics and politics at University College Dublin and at the College of Europe, Bruges, Belgium. She is married and has one son.

Mr. Patrick Dillon-Malone, BL

Patrick Dillon-Malone is a practicing barrister with a specialist background and expertise in European Community and International and European Human Rights Law. He is a former legal advisor in the Legal Directorate of the Council of Europe.

Dr. Suzanne Kingston, BL

Dr. Suzanne Kingston, BL is a barrister practising at the Irish bar, where her practice includes EU law, judicial review and commercial law. She has frequently appeared before the EU courts, including acting as sole counsel on behalf of Ireland and as sole external counsel on behalf of the European Commission. She lectures in EU law at UCD, and was formerly a référendaire at the European Court of Justice.

Dr. Hannes Krämer

Dr. Hannes Krämer is a member of the legal service of the European Commission and the EU's chief negotiator of its accession to the ECHR. Having previously worked at the German Federal Ministry of Justice and the Court of First Instance, he joined the European Commission in 2003. He holds a doctorate from the University of Heidelberg and has published widely in EU law.

Ms. Noeline Blackwell

Noeline Blackwell, Director General, FLAC (Free Legal Advice Centres Ltd.) Noeline qualified with a degree in law and worked as a solicitor in private practice, running her own general law practice in Dublin until 2005 when she joined FLAC as director general. In private practice, she developed a particular interest and expertise in family law, refugee law and immigration law. She sits on the boards of two leading immigrant rights NGOs, the Immigrant Council of Ireland and the Irish Refugee Council and is a trustee of Front Line, the Dublin-based international Foundation for human rights defenders at risk. She is also a board member of the statutory agency, the Citizens Information Board. She has formerly served as a director and chairperson of the Irish section of Amnesty International and on its European Union board and as chairperson of the International Human Rights Trust. She is also a member of the Law Society's Human Rights Committee and its Family Law Committee and chairs its working group on civil legal aid.

Ms. Emily Logan, Ombudsman for Children

Emily Logan is Ireland's first Ombudsman for Children. She was appointed to this position by Her Excellency, President Mary McAleese, following an open competition and interview process involving fifteen children and three adults. On 18th December 2009 she was re-appointed for a second term of six years.

Established in 2004 the Ombudsman for Children's Office is an independent, statutory organisation that accounts to the Oireachtas. The Office is one of a growing number of international offices dedicated to the promotion and safeguarding of children's rights through independent investigation of public bodies, with a total of 40 across Council of Europe member states. In 2008 she was appointed Chair of the European Network of Ombudsmen for Children and remains on the Executive.

Emily Logan has spent 30 years working with or on behalf of children. Having originally trained as a paediatric nurse in Dublin's Temple Street University Hospital, she spent ten years in the UK working at Great Ormond Street Hospital, holding both clinical and laterally, the senior management position as Manager of the medical directorate.

She returned to Ireland where for six years preceding her appointment she held two senior positions in public administration; Director of Nursing at Our Lady's Children's Hospital Crumlin, and later Director of Nursing at Tallaght Hospital. Her academic achievements include: MSc in Psychology, MBA in Health Services Management and an LLM in Human Rights Law at QUB.

Mr. Kieran FitzGerald

Mr. Kieran FitzGerald was appointed to the Garda Síochána Ombudsman Commission on 12th December 2011.

Mr FitzGerald previously served as head of Communications and Research for the Garda Síochána Ombudsman Commission. He has been a producer, reporter and researcher with RTÉ and he has worked on programmes that included The Late Late Show, Prime Time and Liveline.

He was News and Current Affairs Journalist of the Year in 1999 and he is a former chair of the Dublin Broadcasting Branch of the National Union of Journalists. Since 2002 he has been engaged as a lobbyist and consultant specialising in environmental and media issues.

Ms. Síle Larkin

Síle is a solicitor and is a graduate of University College, Cork and Trinity College, Dublin. She has been the Legal Advisor to the Director of the Equality Tribunal since 2006. She is also a qualified mediator.

The Equality Tribunal is the independent quasi-judicial body which is primarily responsible under Irish equality legislation for investigating and deciding complaints of discrimination in employment or in the provision of goods, services and facilities. The Tribunal also provides a statutory mediation service.

She provides general legal advice and training to the staff of the Tribunal in employment, equality and administrative law. She represents the Tribunal in all civil proceedings to which it is a party and also advises the Tribunal on its legal obligations as a public service provider including data protection and freedom of information legislation.

As Legal Advisor, Síle has addressed legal practitioners, academics and general audiences at conferences in Ireland and in Europe on equality and discrimination issues.

Síle was previously a solicitor in the Equality Authority for six years representing complainants in equality cases before the Equality Tribunal, the Labour Court and the Superior Courts. Prior to that she worked mainly in the area of family and childcare law.

She is on the Steering Committee of the Irish Women Lawyers Association and is also a member of the Employment Law Association of Ireland, the Irish Centre for European Law and the Dublin Solicitors Bar Association. She is also the Irish representative on the Board of the European Women Lawyers Association.

Mr. Michael Finucane

Michael Finucane, the current Chairperson of the Law Society Human Rights Committee, is the principal of the firm Michael Finucane Solicitors. He qualified as a solicitor in 2000 and has worked in most fields of litigation, with particular emphasis on criminal defence, judicial review, Coroner's Inquests and civil and constitutional actions against the State. He is former chairperson of the Irish Council for Civil Liberties and has appeared as an NGO delegate before the United Nations Human Rights Commissions in Geneva and the UN General Assembly in New York.

To confirm your place at this timely conference please RSVP by emailing:
humanrightsconference@lawsociety.ie

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