

Irish Human Rights Commission

**European
Convention
on Human Rights
Guide for
the Civil &
Public Service**

“At a time where every aspect of the Civil and Public Service has been asked to do more for less, it is very important that we remain mindful of the rights of those we serve. This reference guide will be a useful resource to support all parts of the Civil and Public Service in their work.”

**Martin Fraser,
Secretary General,
Department of the Taoiseach,
2012**

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The Irish Human Rights Commission (IHRC) was established under statute in 2000, to promote and protect the human rights of everyone in Ireland. It is Ireland's 'A' Status National Human Rights Institution in compliance with the United Nations Paris Principles. The human rights that the IHRC is mandated to promote and protect are the rights, liberties and freedoms guaranteed under the Irish Constitution and under international agreements, treaties and conventions to which Ireland is a party.

| | |
|-----------------------|---|
| Foreword | 6 |
| How to use this Guide | 8 |
| Jargon Buster | 9 |

Section 1: What are Human Rights? 12

| | |
|--|----------|
| What are Human Rights? | 14 |
| Who are Human Rights for? | 15 |
| Where are Human Rights found? | 16 |
| Who is Responsible for Respecting, Protecting and Fulfilling Human Rights? Role of the State | 16 17 |

Section 2: European Human Rights System 18

| | |
|--|----|
| European System | 20 |
| European Convention on Human Rights | 22 |
| European Court of Human Rights | 24 |
| Taking a Case | 26 |
| Composition of the Court | 26 |
| What happens when there has been a violation of the Convention? | 27 |
| Enforcing Judgments | 29 |

| | |
|--|-----------|
| Section 3: Ireland and the European Convention on Human Rights (ECHR) | 30 |
| Ireland before the European Court of Human Rights | 32 |
| European Convention on Human Rights Act 2003 | 34 |
| Features of the European Convention on Human Rights Act 2003 | 35 |
| Cases featuring 'Declarations of Incompatibility' | 37 |
| Compliance with the ECHR | 38 |
| General Human Rights Compliance Checklist | 40 |

Section 4: The rights contained in the European Convention on Human Rights **42**

| | | |
|----------------|--|----|
| Note on ECHR | 44 | |
| Type of Rights | 46 | |
| Article 1 | Obligation to Respect Human Rights | 48 |
| Article 2 | Right to Life | 49 |
| Article 3 | Prohibition of Torture | 50 |
| Article 4 | Prohibition of Slavery and Forced Labour | 51 |
| Article 5 | Right to Liberty and Security | 52 |
| Article 6 | Right to a Fair Trial | 54 |
| Article 7 | No Punishment Without Law | 56 |
| Article 8 | Right to Respect for Private and Family Life | 57 |
| Article 9 | Freedom of Thought, Conscience and Religion | 60 |
| Article 10 | Freedom of Expression | 61 |
| Article 11 | Freedom of Assembly and Association | 62 |
| Article 12 | Right to Marry | 63 |
| Article 13 | Right to an Effective Remedy | 64 |
| Article 14 | Freedom from Discrimination | 65 |

| | |
|--|----|
| Article 15 Derogation in Time of Emergency | 67 |
| Article 16 Restrictions on Political Activity of Aliens | 68 |
| Protocol 1, Article 2 | 69 |
| Protocol 1, Article 3 | 69 |

Section 5: Examples of Guiding Principles of the European Court of Human Rights **70**

| | |
|--------------------------------------|----|
| Proportionality | 72 |
| Positive Obligations | 73 |
| Margin of Appreciation | 74 |
| Equality and Non-Discrimination | 75 |
| International Human Rights Framework | 77 |

Section 6: Overview **78**

| | |
|---|----|
| The European Convention on Human Rights | 80 |
| European Convention on Human Rights Act 2003 | 82 |
| Irish Human Rights Commission | 83 |
| Human Rights Education and Training Project | 84 |

Foreword

The Civil and Public Service plays a key role in ensuring that the human rights of everyone in Ireland are protected in policy and practice. The Irish Human Rights Commission (IHRC) has developed this Guide on the European Convention on Human Rights to support the Civil and Public Service in their role. It is hoped that the Guide will be a useful tool to all those working in the Service.

Human rights are universally agreed basic standards which belong to everyone and which aim to ensure that every person is treated with dignity and respect.

States are obliged under international law to respect, protect and fulfil human rights. The Government, and through it, the Civil and Public Service, has the primary responsibility to uphold human rights. The State is the primary defender of human rights and the high standards set by the Civil and Public Service in serving the Irish public should be underpinned by the human rights obligations to which Ireland is committed. At the same time, the challenges for Civil and Public Service staff are acknowledged in how they exercise discretion in decision-making. The guiding principles contained in Section 5 will hopefully address these difficulties.

The aim of this Guide is to give an overview of the European Convention on Human Rights and how it applies in the day-to-day work of the Civil and Public Service in Ireland, by way of the European Convention on Human Rights Act 2003.

It complements the *Human Rights Guide for the Civil and Public Service* produced by the IHRC and both publications may be used together.

The 2003 Act is particularly important because of the obligation on the Civil and Public Service as an 'organ of the State' to carry out their functions in a way that is compatible with the European Convention on Human Rights.

This Guide will support you in that duty.



Des Hogan
Acting Chief Executive

IHRC

AN COIMISIÚN UM CHEARTA DUINE
IRISH HUMAN RIGHTS COMMISSION

How to use this Guide

The Guide should be viewed as a reference point on the European Convention on Human Rights and the European Convention on Human Rights Act 2003. It complements the 2010 publication Human Rights Guide for the Civil and Public Service, also produced by the IHRC.

More detailed information, videos and training resources may be found on the IHRC website at www.ihrc.ie/training. Civil and Public Service staff may also access the free, tailored training courses offered by the Irish Human Rights Commission. Please contact training@ihrc.ie for further information.

i Indicates a point of information

Terms included in the 'Jargon Buster' are indicated by **pink** text.

Jargon Buster

| Term | In other words... |
|--------------------------------------|---|
| Admissible | Allowed to be heard in court. This means a case has passed certain technical requirements and will be considered by a court. |
| Applicant | The person who is bringing a case before a court. |
| Binding | Signifies an obligation, or legal duty. |
| Contravened, contravention | To go against or deny the rights in the Convention. |
| Convention/ Treaty | A formal international agreement between states. 'Convention', 'covenant', 'treaty' and 'agreement' are often used interchangeably. |
| Derogation or Reservation | Non-application or non-acceptance of part of a treaty or convention, usually for a limited period of time. |
| Domestic remedy | The solutions available to a person (applicant) at the national level through national courts, courts of appeal or tribunals. |

| Term | In other words... |
|----------------------|---|
| Forseeability | The requirement that the law or administrative measure is sufficiently clear and predictable to allow a person to reasonably foresee the outcome of their actions. |
| Freedom s | The European Convention on Human Rights uses the terms 'rights and freedoms'; this is another way of talking about rights. |
| In force | When a convention or treaty is 'in force' or 'comes into force', it means a state has agreed to be bound by the instrument and its provisions now apply. |
| Inherent | Rights are entitlements which belong to everyone by virtue of being human. |
| Jurisdiction | The extent or territory over which legal or other power extends; it may include extension beyond a state's territorial boundaries and includes any activities carried out under the control of the state. |

| Term | In other words... |
|--|---|
| Margin of appreciation | This is the degree of discretion that the European Court of Human Rights allows to Member States when interpreting the Convention and applying its rights in their own countries. |
| Proportionality | If a decision is taken to restrict a right, the restriction must not be more than is necessary (don't use a sledgehammer to crack a nut). |
| Protocol | An amendment or addition to a treaty or convention. |
| Provision | Used when referring to the content of particular articles within a law, treaty or convention. |
| Ratify/ Ratification | When a state signifies an agreement to be legally bound by the terms of a particular convention or treaty. |
| State Party/ Party to | A 'state party' or a 'party' to a convention/treaty is a country that has agreed to be bound by that particular treaty and is legally bound by its provisions. |
| Universal, interdependent and indivisible | Rights are linked to each other in such a way that non-observance of one right may impact on another. |

Section 1: What are Human Rights?

This section provides a brief overview of what human rights are, where they are found and who is responsible for upholding them.

“The poet Ted Hughes once said that what distinguishes the work we recognize as poetry from other kinds of literary production is the fact that it arises from what he called ‘the ultimate suffering and decision’ in us. It is from that same source, I would suggest, that the victims of human rights abuses derive a strength to endure violations and injustices, and equally it is the place to which workers for human rights must often repair in order to draw out of themselves the will to keep up the work.”

Seamus Heaney

Writer and Righter, Fourth IHRC Annual Human Rights Lecture, 9 December 2009.

What are Human Rights?

Rights are:

- **Universally** agreed basic standards which aim to ensure that every person is treated with dignity and respect.
- **Interdependent and indivisible** means that rights are linked and non-observance of one right may impact on another.
- **Inherent** to all persons without discrimination, and irrespective of the political system of the state. The principle of non-discrimination is at the centre of human rights and features in the major human rights **treaties**.
- Usually set out in law, through international or regional treaties or national legislation, where they form a legal statement of universally accepted principles of how the state should treat its citizens and others within its **jurisdiction**.

Human rights include:

- Civil and Political Rights, such as the right to life, the right to a fair trial and the right not to be subjected to torture.
- Economic, Social and Cultural Rights, such as the right to work, to join a trade union, to health, to education and to an adequate standard of living.

Who are Human Rights for?

Human rights are **universal**, which means they are for everyone. Central to the concept of human rights is respect for the life and dignity of every person.

Where are Human Rights found?

Human rights are usually set out in law. They are found in international (primarily United Nations) or regional (e.g. European) treaties, or in national constitutions or national legislation. The rights which everyone in Ireland has are set out in the Constitution, in national legislation, and in European legislation and international instruments.

Who is Responsible for Respecting, Protecting and Fulfilling Human Rights?

States are obliged under international law to respect, protect and fulfil human rights. The Government and, through it, the Civil and Public Service, has the primary responsibility to uphold human rights by creating the conditions for them to be effective. However, the state does not give people rights. These rights are inherent, which means they belong to everyone.

Role of the State

States agree to **respect**, **protect** and **fulfil** the human rights contained in treaties or **conventions**:

- To **respect** means that states must not interfere with or restrict human rights.
- To **protect** involves passing laws and creating mechanisms to prevent violation of rights by state authorities and by non-state actors.
- To **fulfil** means that states must take positive action to ensure the enjoyment of human rights.

These three principles apply to the rights of all people within the state.

Section 2: European Human Rights System

This section provides a brief overview of how human rights are protected within Europe.

“The founding of the Council of Europe grew out of a determination to overcome past hatreds and conflicts and to promote peace, democracy and human rights on the continent. The European Court of Human Rights, the various monitoring mechanisms, including the European Commission against Racism and Intolerance... and of course the Commissioner for Human Rights all contribute to the general mission of the Council of Europe.”

Nils Muižnieks, Commissioner for Human Rights, Council of Europe

Human Rights Tribute, Tirana, Albania,
5 September 2012.

The European system for human rights protection has two parts:

- 1** The **Council of Europe (COE)** focuses on human rights and the rule of law across its 47 Member States which account for almost the entire continent of Europe. Ireland joined the Council of Europe in 1949. The primary human rights text of the Council of Europe is the European Convention on Human Rights (ECHR). The rights set out in the Convention are enforced by the European Court of Human Rights, which is located in Strasbourg.
- 2** The **European Union (EU)** has 27 Member States, and began as the regional economic common European market. Ireland joined the European Economic Community, the forerunner of the European Union, in 1973. Rights are also protected in the EU by the European Union Charter of Fundamental Rights and the Court of Justice of the European Union, which is located in Luxembourg.

*Although the Council of Europe co-operates with the European Union in many ways, the two organisations are entirely separate in how they are structured and the ways they work. Every member of the European Union was a member of the Council of Europe first. The European Union is now to **ratify** the European Convention on Human Rights and will be legally bound to respect the rights that are contained in the Convention.*

The European Convention on Human Rights

The *European Convention for the Protection of Human Rights and Fundamental Freedoms*, which is usually known as the European Convention on Human Rights (ECHR) was written in 1950 and came **into force** in 1953.

The European Convention on Human Rights is often considered to be the most successful of all regional human rights tools. The rights set out in the Convention can be directly enforced by the European Court of Human Rights against states, and individuals can take cases for alleged breaches of their rights to the Court.

Article 1 of the Convention concerns the 'obligation to respect human rights'; this requires that all **parties to** the Convention make sure that everyone within their jurisdiction has the rights and **freedoms** contained in the Convention.

The rights protected by the European Convention on Human Rights are:

| | |
|------------------------------|--|
| Article 2 | Right to life |
| Article 3 | Prohibition of torture |
| Article 4 | Prohibition of slavery and forced labour |
| Article 5 | Right to liberty and security |
| Article 6 | Right to a fair trial |
| Article 7 | No punishment without law |
| Article 8 | Right to respect for private and family life |
| Article 9 | Freedom of thought, conscience and religion |
| Article 10 | Freedom of expression |
| Article 11 | Freedom of assembly and association |
| Article 12 | Right to marry |
| Article 13 | Right to an effective remedy |
| Article 14 | Prohibition of discrimination |
| Protocol 1, Article 1 | Protection of private property |
| Protocol 1, Article 2 | Right to education |
| Protocol 1, Article 3 | Right to free elections |

i *Section 4 (page 42) explores these rights in more detail and gives examples of relevant cases.*

The rights set out in the Convention have been added to by **protocols** that protect additional rights, such as the right to private property, the right to education, freedom of movement and the right to free elections. Only the states who have signed up to these protocols are obliged to protect the rights they contain. Ireland has ratified every protocol to the Convention to date, except for Protocol 12, which gives an added level of protection against discrimination.

The Convention rights apply to every person who lives in the state, not just nationals or citizens of a state. See, for example, the case of *Hirsi Jamaa and Others v Italy* 2012 (page 48) where a group of immigrants turned away from Italy was protected by the Convention rights, even though they were not Italian citizens.

The European Court of Human Rights

The European Convention on Human Rights is enforced by the European Court of Human Rights, which has the power to hold states accountable for a failure to respect, protect and/or fulfil the rights contained in the Convention. The Court is comprised of 47 judges, one from each Member State.

If someone feels their Convention rights have been violated, they can bring a case to the European Court of Human Rights. There are a few conditions that must be satisfied before they can take their case to the Court:

- The person must have exhausted all **domestic remedies** available to them, such as courts, courts of appeal or tribunals, within the time limit. The **applicant** must be directly and personally the victim of the alleged violation. A complaint may not be made on behalf of another person, unless they are clearly identified as their official representative.
- No application before the Court can be anonymous.
- The case must not have been brought to the European Court of Human Rights before.
- The complaint can only be about rights contained in the Convention (listed on page 45).

As well as individual complaints against states, inter-state cases can be brought before the European Court. Although these cases are rare, they can be important, as in the first inter-state case of Ireland v United Kingdom in 1978, which concerned the prohibition of torture (see www.ihrc.ie/training for further information).

Taking a Case

When a person feels their rights under the Convention have been violated by a **state party to the Convention** and wants to bring their case to the Court, they must first apply to the Court Registrar with the details of the alleged violation.

If the application is deemed **admissible**, or complies with certain requirements set out in the Convention, the case is considered by a chamber of judges. The case may be considered without any need for the applicant or defending state to appear in Strasbourg. In exceptional cases that go to the Grand Chamber, representatives of the applicant and the Member State may attend a court hearing.

Composition of the Court

The Court's composition varies depending on the type of case, and cases may be heard in different ways. For example, a single judge or three-judge committee can rule on the admissibility of a case concerning an issue already covered by established case law. Other cases may be referred to a seven-judge chamber while occasionally cases are referred to the Grand Chamber of 17 judges.

The Grand Chamber of the European Court of Human Rights is made up of the Court's President and Vice Presidents, the Section Presidents and the national judge. When it hears a case, the Grand Chamber does not include any judge who first examined the case.

What happens when there has been a violation of the Convention?

When the Court makes a judgment, the state against whom the judgment is made must carry out any obligations that result from it. When the Court finds that a state has violated the rights of a person, the country must take steps to redress the violation, for example through compensation (called 'specific measures') and make sure that it does not happen again, for example through policy or legislative changes (called 'general measures').

Examples

Some significant steps have been taken by states following a judgment by the European Court:

- Ireland introduced legal aid in civil cases, where it had only been available in criminal cases previously (*Airey v Ireland* 1979);

- Ireland decriminalised homosexuality (Norris v Ireland 1988);
- Ireland changed its laws so that all children had the same status, whether born inside or outside marriage (Johnston v Ireland 1986);
- Belgium took steps to stop discrimination against children born outside of marriage (Marckx v Belgium 1979);
- Finland changed its laws on children in foster care (K.A. v Finland 2003);
- The United Kingdom banned corporal punishment in schools (Campbell and Cosans v UK 1982);
- The Russian Federation improved social protection for Chernobyl victims (Burdov v Russia 2002);
- Bulgaria created an alternative to military service for conscientious objectors (Stefanov v Bulgaria 2001).

i *Judgments from other Council of Europe countries in cases of the European Court of Human Rights are relevant to Ireland as they form part of the previous case law which judges may call upon in making a decision in the Irish Courts.*

Enforcing Judgments

The Committee of Ministers is the Council of Europe's decision-making body and enforces judgments. It is comprised of the Ministers of Foreign Affairs of all the Member States, or their permanent diplomatic representatives.

In judgments from the European Court of Human Rights where violations of the Convention are found, decisions are **binding** on the states concerned. The Committee of Ministers monitors how the judgments are being implemented, both as regards compensation or other specific measures and more general measures such as necessary policy, legal or systemic changes.

Section 3: Ireland and the European Convention on Human Rights

This section briefly describes how Ireland interacts with the European Court of Human Rights and how the European Convention on Human Rights is incorporated into law in Ireland. It also examines the obligations on every 'organ of the State' to carry out their duties in a way that is compatible with the Convention.

“Europe is...confronted with major socio-economic challenges which significantly affect our shared future. These include: growing economic and cultural interdependencies, social exclusion and poverty, integration and disintegration, inequalities, a decreasing sense of trust in democratic institutions and between citizens within and across borders. These challenges are enormous and they call for a common European approach.”

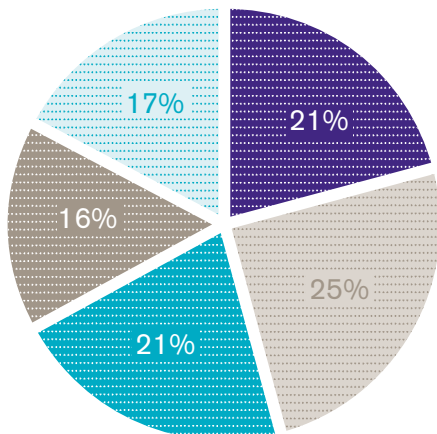
**President Michael D. Higgins
EU Research Awards, 8 June 2012.**

Ireland before the European Court of Human Rights

There are always new judgments being issued by the European Court of Human Rights. So far, almost 30 judgments before the European Court of Human Rights relate to Ireland. Some high profile cases such as *Airey v Ireland* [1979] and *Norris v Ireland* [1988] have resulted in a change in domestic law in Ireland (see pages 55 & 59).

The diagram on the next page (Statistics on Judgments by State 1959-2010) depicts the most common violations found in cases against Ireland (see Section 4 for further information). Most of the violations against Ireland found by the European Court of Human Rights relate to Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life).

Ireland – subject matter of violation judgments



- Right to a fair trial (Art. 6) 21%
- Length of proceedings (Art. 6) 25%
- Right to respect for private and family life (Art. 8) 21%
- Right to an effective remedy (Art. 13) 16%
- Other rights 17%

Council of Europe, September 2011

European Convention on Human Rights Act 2003

Although Ireland was one of the original countries to sign up to the ECHR in 1950, the Convention was not brought directly into Irish law until quite recently. The signing of the Good Friday/Belfast Agreement in 1998 involved commitments to bring the Convention into domestic law in all parts of the island of Ireland, resulting in the European Convention on Human Rights Act 2003 (ECHR Act).

The ECHR Act gives effect in domestic law to the **provisions** of the European Convention on Human Rights so that Irish people can claim a breach of these rights before Irish courts. It also means that cases concerning the Convention may be argued in the Irish Courts, and a **remedy** provided, without the need to make a complaint to the European Court of Human Rights.

- i** *The ECHR Act means that the rights contained in the Convention are now directly part of Irish law and, subject to certain conditions, Irish courts are obliged to interpret any law in a way that is compatible with the Convention.*

Features of the European Convention on Human Rights Act 2003

The main articles of the European Convention on Human Rights are reproduced in the ECHR Act. Sections 2 to 5 of the Act set out the effect which the Act gives to the ECHR in Irish Law:

Section 2 imposes an obligation on all Courts to interpret Irish law in a manner compatible with the European Convention on Human Rights.

Section 3 creates a statutory obligation on every 'organ of the State' to act in compliance with the Convention provisions. This obligation applies to the actions of Civil and Public Servants in how decisions may impact on the rights of members of the public.

O'Donnell v South Dublin County Council [2007]

This case concerned the living conditions of a Traveller family where three of the family members were severely disabled. Judge Laffoy held that the Council's failure to provide a second mobile home to ensure adequate accommodation for the family was a failure of their duties under Section 3 of the ECHR Act and therefore the Court could order a remedy to ensure compliance with the Act.

Section 4 provides that the Courts will take ‘judicial notice’ of the case law of the European Court of Human Rights, meaning it may be used in arguments before the Irish Courts, when a person seeks to assert a right under the ECHR Act.

Section 5 sets out the possibility for ‘declarations of incompatibility’. An Irish Court may find that a provision of legislation or rule of law is incompatible with the State’s obligations under the ECHR.

Cases Featuring ‘Declarations of Incompatibility’

Foy v An t-Ard Chláraitheoir & Others [2007]

Lydia Foy is a transgender woman who was refused a birth certificate with her new name and gender. Following two similar cases in the European Court of Human Rights where the UK was found to be in breach of the Convention for failing to recognise transgender persons, the Irish High Court could not see any remedy in existing Irish law and made a Declaration of Incompatibility, stating that the existing Irish law is not compatible with the Convention. It is now up to the Oireachtas to decide how to change the law on this issue.

Donegan v Dublin City Council [2012]

In this case, a Declaration of Incompatibility was also found in relation to Section 62 of the 1966 Housing Act, which provides for a statutory procedure for the repossession of a local authority dwelling. The State appealed the decision to the Supreme Court but the Supreme Court agreed with the High Court decision that there was a violation of Article 8, because the applicants had no other ‘adequate legal remedy’ available to them in relation to the Local Authority’s decision to evict them.

Compliance with the ECHR

Under the ECHR Act, Irish Courts must interpret and apply law in Ireland in line with the European Convention on Human Rights 'insofar as possible'. If this is not possible, the Court may find that Irish legislation or practice is not in line with the Convention. In this case, it can either find that the State has breached its statutory duty or it can make a Declaration of Incompatibility which must then be considered by the Oireachtas.

Whenever a Declaration of Incompatibility is sought in legal proceedings, the Attorney General and the Irish Human Rights Commission are formally notified (Section 6 of the ECHR Act).

*Section 3: Ireland and the
European Convention on Human Rights*

When staff in the Civil and Public Service apply human rights compliant procedures in decisions made on matters such as housing, welfare or policing, there is a much reduced likelihood of cases being brought in the High Court against the State, or later brought against Ireland before the European Court of Human Rights in Strasbourg. Human rights compliance may be verified by considering the checklist on the following page.

General Human Rights Compliance Checklist

Are **all** staff in a management capacity familiar with the relevant domestic, European and international human rights standards applicable to their work?

Have all internal policy documents been cross-checked against these standards?

Is there a standard practice in place to proof existing and new policies against these standards?

Are operational staff familiar with the standards relevant to their job, in a clear, understandable and practical way?

Are there clear and confidential procedures for dealing with concerns/complaints from staff or public?

Is there a system in place to collect relevant information and regularly report on human rights compliance?

Is there an internal focal point to deal with human rights compliance, risk and reporting?

*Section 3: Ireland and the
European Convention on Human Rights*

Have you received details or information of United Nations human rights treaty monitoring body reports that might be relevant to your Department / Section?

Have the observations and/or recommendations relevant to your work from these reports been analysed and addressed?

Is there a policy on dignity and respect in the workplace for staff?

Do you have a 'whistleblowers' policy?

Is training in human rights made available to staff?

This checklist is available for download on www.ihrc.ir/training

Section 4: The rights contained in the European Convention on Human Rights

This section provides a brief overview of each of the rights contained in the Convention.

“The governments signatory hereto, being members of the Council of Europe... Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend...”

Preamble to the European Convention on Human Rights, 1950.

- i** *The European Court of Human Rights considers complaints under the European Convention on Human Rights and decides whether ECHR rights have been violated. The Court interprets the Convention rights and clarifies their meaning.*

Article 1 of the Convention concerns the ‘obligation to respect human rights’; this requires that all parties to the Convention make sure that everyone within their jurisdiction has the rights and freedoms contained in the Convention.

*Section 4: The rights contained in the
European Convention on Human Rights*

The rights protected by the ECHR are:

| | |
|------------------------------|---|
| Article 2 | Right to life |
| Article 3 | Prohibition of torture |
| Article 4 | Prohibition of slavery and forced labour |
| Article 5 | Right to liberty and security |
| Article 6 | Right to a fair trial |
| Article 7 | No punishment without law |
| Article 8 | Right to respect for private and family life |
| Article 9 | Freedom of thought, conscience and religion |
| Article 10 | Freedom of expression |
| Article 11 | Freedom of assembly and association |
| Article 12 | Right to marry |
| Article 13 | Right to an effective remedy |
| Article 14 | Prohibition of discrimination |
| Protocol 1, Article 1 | Protection of private property |
| Protocol 1, Article 2 | Right to education |
| Protocol 1, Article 3 | Right to free elections |

For the full text of the Convention articles, please
see www.ihrcc.ie/training

Type of Rights

Not all the Convention rights operate in the same way. Some of the rights contained in the European Convention on Human Rights are what is known as **absolute or unqualified rights**. Absolute or unqualified rights may not be **derogated** from, under any circumstances, and include:

- Article 3 Prohibition of torture
- Article 4(1) Prohibition of slavery
- Article 7 No punishment without law

Other rights are known as **qualified rights**. Qualified rights may be interfered with, or derogated from under limited circumstances, in order to protect certain interests. Qualified rights include:

- Article 8 The right to respect for private and family life
- Article 9 Freedom of thought, conscience and religion
- Article 10 Freedom of expression
- Article 11 Freedom of assembly
- Protocol 1, Article 1 Protection of private property

*Section 4: The rights contained in the
European Convention on Human Rights*

When considering a State's interference with a right, the European Court of Human Rights considers whether the interference serves a legitimate aim. If it does, the Court then considers whether the interference was necessary and proportionate. For more information on **proportionality**, please see Section 5 of this Guide.

For information on a 'proportionality test', see **www.ihrc.ie/training**

Article 1, Obligation to Respect Human Rights

Living in a country that has agreed to the Convention entitles everyone to the rights it contains, whether they are a citizen or not.

As the Irish Government has signed the Convention, and made it part of Irish law, it has promised to give everyone in the State, or under its jurisdiction, all of the rights contained in the Convention. This includes citizens, visitors, migrant workers, asylum seekers and refugees.

Hirsi Jamaa and Others v Italy [2012]

A number of Somalian and Eritrean migrants travelling from Libya were intercepted at sea by the Italian authorities and sent back to Libya. The Court found that Italy had **contravened** a number of Convention rights by their actions, and that the violations did fall within Italy's jurisdiction within the meaning of the Article 1 obligation to respect human rights. The Court said that, even when a state operates outside its territory, the Convention rights apply.

Article 2, Right to Life

This Article puts an obligation on the State to refrain from intentionally and unlawfully taking someone's life and to safeguard the lives of people in their jurisdiction, for example through taking positive steps to introduce laws and criminal penalties that make it illegal to take a life. The Article has two parts:

- Everyone's right to life is protected by law.
- Deprivation of life may not contravene the article if it results from 'the use of force which is no more than absolutely necessary':
 - In defence of any person from unlawful violence;
 - In order to effect a lawful arrest or prevent the escape of a person lawfully detained;
 - When acting lawfully to prevent a riot.

Where a suspicious death occurs, Article 2 has been interpreted as requiring the state to investigate it properly.

Kontrová v Slovakia [2007]

In this case, taken by a mother whose two children were murdered by her husband, the Court found that Slovakia had violated Article 2. This was because the police had failed to properly pursue an incident of domestic violence against the applicant thus failing to take appropriate positive action to protect the lives of the applicant's children.

Article 3, Prohibition of Torture

Article 3 provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. This Article is an absolute prohibition, and may not be derogated from, even in times of war or public emergency. The Court applies a 'severity test' which decides what sort of conduct falls within the scope of Article 3. Ill-treatment must pass a minimum level of severity to be considered a violation.

For further information on this severity test, please see www.ihrac.ie/training

Ireland v UK [1978]

This was the first case between two states to be brought before the European Court. It concerned the use of five sensory deprivation and disorientation techniques (including sleep deprivation, exposure to noise and withholding food and drink) in places of detention in Northern Ireland. A violation of Article 3 was found, as the treatment was inhuman and degrading, although it was not at the time considered severe enough to amount to torture.

Z v UK [2001]

A Local Authority in the UK failed to separate four children from their mother, even though it was clear that the children were being subjected to an unacceptable level of abuse and neglect over a four-year period. The Court found that the Local Authority should have removed the children from their mother as soon as it became aware of abuse that might amount to inhuman or degrading treatment and a violation of Article 3 was found.

Article 4, Prohibition of Slavery, Servitude and Forced Labour

No one may be treated as a slave or made to work by force. This Article outlines four types of work that are not to be considered as forced or compulsory labour:

- Work done during legitimate detention or on conditional release;
- Compulsory military service;
- Community service in a public emergency;
- Any work forming part of a normal civic obligation.

Siliadin v France [2005]

A 15 year old girl was brought from Togo to France. Her journey was paid for but her passport was confiscated by her employers when she arrived in France. She was then forced to work for 15 hours a day, seven days a week with no pay. The Court found a violation of Article 4 because French criminal legislation at the time had failed to protect her from servitude.

Article 5, Right to Liberty and Security

This Article guarantees a person's right to liberty and security. It protects against being unlawfully detained and describes the only circumstances under which a person may be lawfully detained, such as following conviction by a criminal court, for failure to obey a court order, or to ensure that a person attends court.

Article 5 also clearly sets out the procedures that must be followed when a person is arrested or detained. The Convention says arrest or detention can only be lawful if it is on one of six permitted grounds. These are:

- If convicted by a criminal court;
- For failure to obey a court order;
- To ensure that a person attends court if there is reasonable suspicion that they have committed a crime;
- To ensure a minor receives educational supervision or attends court;
- If a person is 'of unsound mind', alcoholic, addict, 'vagrant' or carries an infectious disease;
- To prevent unauthorised entry into a country of a person who has been deported or extradited.

*Section 4: The rights contained in the
European Convention on Human Rights*

Even if the arrest or detention is lawful, the Court may still find a violation of Article 5 if the deprivation of liberty is thought to be unreasonable.

DG v Ireland [2002]

DG was under the age of 18, had a criminal history and was considered to be a danger to himself and others. It was decided to place him in a high-support secure educational facility for 16-18 year olds. Since no such place was available at the time, the Irish High Court allowed that he could be detained for a period of time in St Patrick's Institution for Young Offenders. The European Court of Human Rights found that this type of detention was not lawful for the purposes of educational supervision and found a violation of DG's Article 5 rights.

Article 6, Right to a Fair Trial

More cases are brought before the European Court of Human Rights concerning Article 6 than any other Convention article.

Article 6 protects the right to a fair trial in both criminal and civil cases. In summary:

- Everyone is entitled to a fair and public hearing within a reasonable amount of time, by an independent and impartial body established by law.
- Everyone charged with a criminal offence is innocent until proven guilty.
- Everyone charged with a criminal offence has certain minimum rights:
 - To be informed promptly of the charges against her/him in a language she/he understands;
 - To have time and facilities to prepare a defence;
 - To defend himself or have legal assistance;
 - To have witnesses examined;
 - To have an interpreter if required.

Section 4: The rights contained in the European Convention on Human Rights

Airey v Ireland [1979]

Johanna Airey wished to have a legal separation from her husband. Because legal aid was only available in criminal cases at the time and not in civil cases, Ms Airey could not afford the legal fees for the court case in Ireland. She took her case to the European Court of Human Rights, which found that her Article 6 rights had been violated because, without legal aid and a lawyer, she had no access to the court. The decision resulted in the introduction of Civil Legal Aid in Ireland.

Tsfayo v UK [2007]

Tiga Tsfayo was an Ethiopian national living in London with indefinite leave to remain in the UK. She had applied to the Housing Benefits Review Board of Hammersmith and Fulham Council (HBRB) to appeal a decision by the London Borough of Hammersmith and Fulham to refuse the payment of backdated council tax and housing benefits. The Council rejected Ms Tsfayo's claim that she had not received the relevant correspondence about the renewal of her benefits. Her subsequent appeal was rejected by the HBRB and the High Court refused a judicial review of the decision. The European Court of Human Rights found a violation of Ms Tsfayo's Article 6-1 rights as the appeal board was not independent of the Council and not impartial in its processes.

Article 7, No Punishment Without Law

Article 7 ensures that punishment cannot be applied retroactively, meaning that no one can be convicted of a crime for something that was not a crime at the time the act occurred. It also guards against increasing a penalty, or a sentence, retrospectively; in other words, a prison sentence cannot be handed down that is longer than what was permitted by law at the time the crime was carried out.

This Article ensures the principle of legal certainty; that the law can only be used as a basis for punishability if it clearly describes criminal behaviour and its consequences. Article 7 ensures that criminal law is clearly defined; the clearer the law is about the offence, the less likely it is that it will be interpreted in different ways.

Kononov v Latvia [2010]

In this case, Vasily Kononov had claimed that his conviction was a violation of his Article 7 rights because the alleged war crimes carried out by him as a soldier in the Soviet Army were not a domestic offence in Latvia at the time of the Second World War. The European Court of Human Rights found that Mr Kononov's conviction had not violated Article 7, because he was convicted of an offence that was a crime under international law at the time that it was committed.

Article 8, Right to Respect for Private and Family Life

This Article protects a person's privacy, family life and the home from unwarranted interference by the state. It also means that if decisions are being taken which will affect a person's privacy or family life, that person must generally be involved in the decision-making process.

This right may be restricted if the restriction is:

- In the interests of national security;
- In the interests of public safety;
- For the economic well-being of the country;
- To prevent disorder or crime;
- To protect health or morals;
- To protect the rights and freedoms of others.

Any interference or restriction must still be proportionate.

i *For more information on proportionality, please see Section 5 of this Guide. For information on a 'proportionality test', see www.ihrc.ie/training*

The Court has interpreted Article 8 to mean that a person has the right to live their own life with privacy. Article 8 cases have included freedom to choose your own sexual identity (*Dudgeon v UK* 1982; *Norris v Ireland* 1988 and *Modinos v Cyprus* 1994); and freedom from intrusion by the media (*Hanover v Germany* 2005). Article 8 has also been applied in environmental matters, and has been interpreted as imposing an obligation on the state to protect individuals from the impact of living near a polluting industry (*Fadeyeva v Russia* 2005).

'Family life' includes the right to have family relationships recognised by law; it is a broad definition and includes, for example, the relationship between a couple that are not married (*Johnson v Ireland* 1986) and a father's right to be involved in the adoption process of his child (*Keegan v Ireland* 1994).

*Section 4: The rights contained in the
European Convention on Human Rights*

**Dudgeon v UK [1982] Norris v Ireland [1988] and
Modinos v Cyprus [1994]**

In earlier European Court cases, laws prohibiting homosexuality were considered justified by the part of Article 8 that protects health and morals. The case brought against the UK by Jeff Dudgeon in 1982 changed this and, for the first time, homosexuality was considered to fall within the scope of private life. This case decriminalised homosexuality in the UK. Ireland followed the same lead with the Norris case and Cyprus followed some years later with the Modinos case.

Connors v UK [2004]

A Traveller family had been living for 13 years on a site provided by a Local Authority for people with a nomadic way of life. They were evicted for anti-social behaviour, using a summary eviction procedure, and no justification had been offered for the eviction and it could not be challenged through the courts. The European Court found a violation of Article 8 as the legal framework applying to Traveller specific accommodation in the UK did not provide the family with proper protection of their rights. The Court said that the position of Travellers as a minority should mean special consideration for their needs and their different way of life, both in the regulatory framework and in how decisions were made.

Article 9, Freedom of Thought, Conscience and Religion

The Article has two parts. It provides that everyone has the right to freedom of thought, conscience and religion. It also provides that these rights may only be restricted in very limited circumstances, such as in the interests of public safety or to protect the rights and freedom of others.

Kokkinakis v Greece [1994]

This case was the first time that the European Court found a violation of Article 9. Mr Kokkinakis was a Jehovah's Witness convicted for acts of proselytism. Mr Kokkinakis argued that obtaining converts was a manifestation of his religion and the ban on proselytism therefore violated his ability to practice his religion freely. The Court found that Greece could not show the applicant's conviction was justified in the interests of public safety, and therefore had violated Article 9 of the ECHR.

Article 10, Freedom of Expression

Article 10 has two parts:

- It protects the right to freedom of expression, including the freedom to hold opinions and ideas without interference from the state. The Article also provides that these rights may be restricted in the interests of public safety, for the prevention of crime, the protection of health or morals, the protection of the rights of others, or for preventing disclosure of information received in confidence.

Open Door and Well Woman v Ireland [1992]

The Court found a violation of Article 10 when the Irish Supreme Court had brought an injunction against Open Door Counselling Ltd and the Dublin Well Woman Centre. The injunction prevented the two organisations from giving out information on abortion services that were legally available in other countries. The European Court found that the restrictions imposed on the two organisations from receiving or imparting information was disproportionate to the aims pursued.

Article 11, Freedom of Assembly and Association

Everyone has the right to assemble with other people in a peaceful way and the right to associate with other people, including the right to form a trade union. This right entitles people to attend and organise marches, as long as they are peaceful, and as long as the right is balanced with the rights of others who wish to use the same space.

Article 11 may be restricted in certain circumstances, such as in the interests of protecting public safety or national security, to prevent crime, or to protect the rights or freedoms of others.

Wilson and the National Union of Journalists and Others v UK [2002]

Mr Wilson was employed by Associated Newspapers at the Daily Mail. The editor wrote to all staff offering a 4.5% pay rise to those who signed new contracts giving up the right to have terms and conditions set by collective bargaining, and taking away the recognition of the National Union of Journalists. Mr Wilson refused to sign and was denied the pay increase. The Court found that allowing UK employers to use financial incentives to encourage employees to surrender their trade union rights was a violation of Article 11.

Article 12, Right to Marry

This Article states that men and women have the right to marry and have children, as long as they are both of marriageable age and the marriage is according to the national laws governing marriage. The permission in national law gives authorities flexibility when placing some limitations on marriage but this must not impair the essence of the right to marry.

Johnston v Ireland [1987]

Mr Johnston, a separated man, was in a stable relationship with Ms Williams-Johnston for many years. Divorce was not permitted in Ireland at the time and the couple was unable to marry as Mr Johnson could not obtain a divorce from his first wife. The couple, along with their daughter, took a case to the European Court of Human Rights, saying that their Article 12 rights had been violated. The Court found no violation of Article 12, saying the right to marry did not also mean the right to divorce. The Court did find a violation of Article 8 on behalf of their daughter, as Irish law at the time failed to respect the family life of a child born outside marriage.

Article 13, Right to an Effective Remedy

Convention rights and freedoms may be violated if there is no right to a remedy before a national authority. The authority or body that decides on the remedy must be independent of whatever body is said to have violated the right in the first place.

Chahal v UK [1996]

Mr Chahal was a Sikh separatist who was due to be deported to India, on the basis of national security. The European Court of Human Rights found that his Article 13 rights had been violated when the advisory panel that had considered his appeal against deportation did not offer a fully independent examination of whether Mr Chahal's Article 3 rights (freedom from torture) would be at risk if he was to be deported.

See www.ihrac.ie/training for judgment of the Grand Chamber in *McFarlane v Ireland* [2010] which found Ireland in violation of Article 13.

Article 14, Freedom from Discrimination

Article 14 is not a stand alone right. The article provides that everyone is entitled to enjoy all the rights contained in the Convention, irrespective of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The use of the term 'other status' broadens the reach of this Article and has included other grounds, such as disability, health status and sexual orientation.

The alleged violation must be within the scope of one of the other provisions of the Convention and applicants must show that they are treated less favourably than others in relation to the right.

Protocol 12 would extend this protection to a more general prohibition against discrimination, and not just in relation to the other Convention articles. This Protocol has not yet been ratified by Ireland.

Belgian Linguistics Case [1968]

This was the first Article 14 case brought before the European Court of Human Rights and the first case on the right to education (Protocol 1-2). A group of French-speaking parents claimed their rights and those of their children were being violated when education was only available in the language of the region, in this case Dutch.

The Court found a violation of Protocol 1-2 (right to education) in conjunction with Article 14, in that certain children, solely on the basis of their parents' addresses, did not have access to French-speaking schools.

Article 15, Derogation in Time of Emergency

In times of war, or any other national emergency, the government may 'derogate' or temporarily not comply with some of its obligations under the Convention, as long as the actions are strictly related to the emergency situation and do not contradict any other types of international law.

Derogations must fulfil certain conditions:

- There must be some sort of real public emergency threatening the life of the nation;
- The state must have outlined what rights it intends to limit and what kind of oversight mechanisms will be put in place to monitor the limitations;
- Some rights may not be derogated from under any circumstances. These include the right to freedom from torture, freedom from slavery, and no punishment without law.

Article 16, Restrictions on Political Activity of Aliens

The government cannot restrict political activity simply because a person is not a citizen of that country. There have been very few cases on this point and no judgments to date finding a violation.

Protocol 1, Article 1, Protection of Private Property

The protection of property under this Article has three parts:

- A person has the right to the peaceful enjoyment of their possessions;
- No one may have their possessions taken away, except when provided for in law;
- These provisions may not restrict the state in enforcing laws necessary to control the use of property or secure the payment of taxes or charges.

Dokic v Bosnia and Herzegovina [2010]

Mr Dokic, who was a lecturer in a military school, had bought a flat in Sarajevo but vacated it after the outbreak of the 1992-1995 war in Bosnia and Herzegovina. After the war, Mr Dokic tried to get repossession of his property but was refused. The Court found a violation of Protocol 1, Article 1, because the applicant was treated differently than others on the basis of his Serbian ethnicity in trying to return to his pre-war home.

Protocol 1, Article 2, Right to Education

This Article states that no one will be denied the right to education. It also sets out how the state will respect the right of parents to ensure that education does not conflict with their religious beliefs.

See [Belgian Linguistics case of 1968](#) on page 66.

For further information on religion and education, see www.ihrc.ie

Protocol 1, Article 3, Right to Free Elections

This Article binds states to hold free and secret elections, to ensure that people can freely express who they wish to elect.

i *For a full list of protocols and their provisions, please see www.ihrc.ie/training*

Section 5: Examples of Guiding Principles of the European Court of Human Rights

This section looks at the guiding principles for decisions by the Court. These principles can often be helpful guidelines for Civil and Public Service staff to use when making decisions.

“The Convention is a living instrument which must be interpreted in the light of present-day conditions and of the ideas prevailing in democratic States today.”

Austin and Others v UK, 2012.

Proportionality

As discussed in previous sections, when rights are not absolute, it is important that the decision to interfere or limit such rights is proportionate.

The Court, in trying to measure what might be necessary in a free and democratic society, applies what is known as a 'proportionality test'. Accordingly, any restrictions must:

1. Have a legitimate aim;
2. Be clearly connected to achieving that aim;
3. Limit the right to the least degree possible.

MS v Sweden [1997]

In this case, the transfer of personal and confidential medical information from one public authority to another was questioned. This happened without the consent of the patient. The Court found no violation, as it felt that the measures taken were not out of proportion to the aim of the transfer, the purpose of which was the legitimate need to check information received from the patient against data in the possession of the clinic.

Positive Obligations

Over the period of time since the Convention was adopted, the European Court has decided that many of the articles contained within the Convention place certain **positive obligations** on Member States.

This means that states, because they have signed up to the Convention, are obliged to make sure that the Convention rights are protected in their own state in a proactive way, rather than just preventing violations of the rights.

Öneryıldız v Turkey [2004]

A number of people died as the result of a methane explosion at the municipal rubbish dump where they lived and their relatives took a case to the European Court, claiming the Turkish State was responsible. The Turkish authorities argued that the deaths were unintentional and that the victims had chosen to live beside the dump, aware of the risks of such an environment.

The Court found a violation of Article 2 of the Convention (right to life) saying that there was a positive obligation on the state to put an administrative and legislative framework in place that would protect against any threat to the right to life and ensure that any threat was properly punished. The case proved that negligence may impose positive obligations; the fact that no one had been charged with a criminal offence may amount to an Article 2 violation.

Margin of Appreciation

There are many diverse cultural and legal traditions within the 47 members of the Council of Europe. While it does not permit a violation of rights, the Court allows space to Member States in fulfilling their Convention obligations in what is known as the **margin of appreciation**.

The extent of the margin allowed depends on the nature of the issue that is before the Court. On matters of taxation, for example, the margin of appreciation is quite wide to allow for different fiscal and administrative structures in different states. On matters that involve family life or discrimination, a much narrower margin is allowed by the Court.

Lautsi v Italy [2011]

This case challenged Italian regulations that crucifixes should be displayed on classroom walls in state schools. At first, the European Court of Human Rights had found that Italy was in breach of Protocol 1 Article 2 (right to education) together with Article 9 (freedom of conscience).

This decision was later overturned by the Grand Chamber of the European Court of Human Rights, which said that states should enjoy a wide margin of appreciation in how social or moral issues such as religion and education are reconciled, particularly when there is no European consensus on this issue.

Equality and Non-Discrimination

Article 14 of the European Convention on Human Rights explicitly prohibits discrimination in how all of the other Convention rights should be enjoyed. This means that everyone is entitled to the equal enjoyment of all of the rights in the ECHR.

Larkos v Cyprus [1999]

In this case, the Court found that a Local Authority tenant had less security of tenure than he would have had if he was a tenant of a private landlord. The Court found violations of Article 8 (right to respect for private and family life and home) and Article 14 (prohibition of discrimination) and held that the state should offer the same protection to all types of tenants.

The Vienna Declaration and Programme of Action of the World Conference on Human Rights in 1993 reaffirmed human rights as ‘universal, indivisible, interdependent and interrelated’.

These underpin all human rights, along with other principles such as:

- Dignity
- Respect
- Transparency
- Accessibility
- **Forseeability**

i *This will be explored in more detail at the HRETP tailored training sessions for Civil and Public Sector staff. Further information is also available on www.ihrc.ie/training*



**Good Friday
Peace
Agreement**

**Bunreacht Na
hÉireann/Irish
Constitution
ECHR Act 2003**

**European Union
Charter of
Fundamental Rights**

**International
Human
Rights
Framework**

United Nations

**Council of Europe
European Convention
on Human Rights
Revised European
Social Charter
European Court of
Human Rights**

Section 6: Overview

This section gives an overview of where the European Convention on Human Rights sits within the international human rights legal framework and summarises the rights contained within the Convention and the 2003 ECHR Act.

“One hundred per cent of respondents believed that [human rights] training had made them more aware of how to factor human rights into organisational operations and more than ninety per cent felt that delivering human rights training in their organisation would have a significant effect on how it operates locally.”

IHRC Human Rights Education and Training Project Independent Evaluation, January 2012.

The European Convention on Human Rights

The European Convention on Human Rights (ECHR) covers civil and political rights.

Article 1 of the Convention concerns the 'obligation to respect human rights'; this requires that all parties to the Convention make sure that everyone in their territory has the rights and freedoms contained in the Convention.

The rights protected by the ECHR are:

| | |
|------------------------------|--|
| Article 2 | Right to life |
| Article 3 | Prohibition of torture |
| Article 4 | Prohibition of slavery and forced labour |
| Article 5 | Right to liberty and security |
| Article 6 | Right to a fair trial |
| Article 7 | No punishment without law |
| Article 8 | Right to respect for private and family life |
| Article 9 | Freedom of thought, conscience and religion |
| Article 10 | Freedom of expression |
| Article 11 | Freedom of assembly and association |
| Article 12 | Right to marry |
| Article 13 | Right to an effective remedy |
| Article 14 | Prohibition of discrimination |
| Protocol 1, Article 1 | Protection of private property |
| Protocol 1, Article 2 | Right to education |
| Protocol 1, Article 3 | Right to free elections |

These rights are interpreted and developed by the European Court of Human Rights (see Section 3) and, subject to certain conditions, are directly enforceable before the Irish Courts.

European Convention on Human Rights Act 2003

Main Features

The Act incorporates the provisions of the European Convention on Human Rights into domestic law, allowing them to be directly considered before the Irish Courts.

It must be considered in parallel with the Irish Constitution. However, the Constitution has primacy over the Act in cases where there is any uncertainty.

The Act requires that each organ of the State, such as Government Departments and Local Authorities, 'perform[s] its functions in a manner compatible with the State's obligations under the Convention'.

The ECHR Act sets out the possibility for breach of statutory duty or 'declarations of incompatibility'. An Irish Court may find that a provision of legislation or rule of law is incompatible with the State's obligations under the European Convention on Human Rights.

Irish Human Rights Commission

The Irish Human Rights Commission (IHRC) was established under statute in 2000, to promote and protect the human rights of everyone in Ireland. The human rights that the IHRC is mandated to promote and protect are the entitlements and freedoms guaranteed by the Irish Constitution and the international agreements, treaties and conventions to which Ireland is a party. The IHRC is Ireland's 'A' Status National Human Rights Institution, in compliance with the United Nations Paris Principles and plays an active role internationally, working with the International Coordinating Committee of national human rights institutions. The IHRC also reviews the adequacy and effectiveness of law, policy and practice in the State relating to the protection of human rights and may, for example, conduct enquiries into human rights issues that affect the lives of everyone in Ireland.

It may also offer expertise in human rights law to the Irish Courts as *amicus curiae* or 'friend of the court,' or take legal proceedings to vindicate human rights. The IHRC works to promote understanding and awareness of human rights throughout the State.

Human Rights Education and Training Project

The IHRC's Human Rights Education and Training Project (HRETP) was set up in March 2010 with philanthropic support as a pilot project to deliver human rights training within the Civil and Public Service. The project, which is now in its second phase, works closely within the aims and objectives identified in the UN World Programme on Human Rights Education. The training aims to support the proactive application of human rights in the daily work of the Civil and Public Service. Training is non-legalistic, participatory and practical and all sessions are confidential and non-judgmental.

Feedback from training courses delivered to date has been extremely positive. Around 500 Civil and Public Servants have participated in training, representing a range of government departments and statutory agencies. Participants reported that they found the training beneficial and that the courses consistently met or exceeded expectations.

The IHRC's unique mandate gives it a strategic advantage, not only in carrying out training, but in ensuring its sustainability within the Irish Civil and Public Service in the long term.

IHRC

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IRISH HUMAN RIGHTS COMMISSION

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