



**Institute of Public Administration
Governance Forum Briefing in cooperation with IHRC**

Standards and Codes of Conduct – Doing it right and achieving more.

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Human Rights and the Public Sector

Introduction

Are human rights relevant to our Public Sector? Or are human rights something we hear about that affects other people in other countries? Human rights are relevant to the Public Sector and do effect everyone on the island of Ireland.

How are human rights relevant to the Public Sector?

Human rights are universal – so they affect everyone everywhere – including Ireland! Thankfully we have a lot to be proud of on our human rights record both home and abroad but equally there remains considerable work to be done. Human Rights are protected in law by Bunreacht na hÉireann, European legislation and international instruments – and this all has direct consequences for the work of the Public Sector.

I would like to begin today's presentation with considering the human rights framework in relation to the Public Sector and end by examining how our very attitudes and behaviour in and through our work, can have a direct effect on protecting, respecting and fulfilling human rights.

The Legal Framework

- **Constitution**

The Constitution is the primary source of law in Ireland and all legislation passed by the Oireachtas must be drafted to be compatible with it. The Constitution sets out a number of fundamental rights such as Article 38.1 – Right to a fair trial, Article 40.1 – Equality before the law, Article 41 – Protection of the family. The Courts have also interpreted the Constitution as including other human rights that are not explicitly listed. These are referred to as unenumerated rights and include the rights to bodily integrity, to freedom from torture, inhuman or degrading treatment or punishment and the right to privacy. While areas such as Torture or ill-treatment may not seem applicable in modern day Ireland, cases have been taken by individuals against the State explicitly referencing torture, inhuman and degrading treatment. This may arise for example, in relation to treatment in prisons, schools or hospitals.

Thus in the case of the *State (Richardson) v The Governor of Mountjoy Prison*¹ Mr Justice Barrington found that “[t]he State has failed in its duty under the Constitution and the [Prison] Rules to protect the prosecutrix’s health and to provide her with appropriate facilities to maintain proper standard of hygiene and cleanliness.² Concerning health, in a case concerning a sterilisation and the duty of care owed by hospitals, Mr Justice Kelly in *Byrne v Ryan*³, held that a hospital could not escape liability by arguing that the physician who carried out the sterilisation was a private consultant: the consultant was part of the hospital organisation and it was liable. In the famous European Court case of *Campbell and Cosans v the United Kingdom*⁴ on corporal punishment in schools, the Court held that a system of school punishment which did not allow for an exemption for individual pupils from that punishment failed to respect their parents convictions under Article 2 of Protocol No. 1 of the Convention which deals with the right to education.

- **European legislation**

This brings us to the European system of rights protection which consists of two systems – The Council of Europe under which falls the European Convention on Human Rights and the European Court of Human Rights and Committee for the Prevention of Torture for example - and the European Union under which falls the European Charter of Fundamental Rights and the Court of Justice. The European Union is currently negotiating to become a party to the European Convention on Human Rights, which will reinforce the ECHR as the primary body of human rights law in Europe and mean that some of its provisions will invariably become directly effective in Irish law through EU legislation.

- **ECHR Act 2003**

The ECHR is the basis of the European Human Rights system and is legally binding in Ireland through the European Convention on Human Rights Act 2003. The ECHR is enforced through the European Court of Human Rights and States have a duty to

¹ [1980] ILRM 82; see J M Kelly, *The Irish Constitution*, Hogan and Whyte, Lexis Nexis Butterworths, Fourth Ed, 2003 at 1421.

² [1980] ILRM 82 at 93.

³ [2007] IEHC.

⁴ (1982) 24 EHRR 293 at paragraphs 37-41.

enforce judgements from the European Court of Human Rights. As noted, there have been more than 25 judgements of the European Court of Human Rights involving Ireland.

Under section 2 of the European Convention on Human Rights Act 2003, Irish Courts must interpret and apply law in Ireland in line with the ECHR insofar as possible, while under section 3, subject to certain exceptions, every organ of the State must perform its functions in a manner compatible with the ECHR.

Thus in *Pullen & Ors v Dublin City Council*⁵ Ms Justice Irvine found that a local authority had violated the Plaintiffs family rights under the ECHR in evicting them summarily from their home and awarded compensation accordingly.

International Human Rights Framework

- **UN**

As a member of the UN Ireland is expected to uphold the principles of the UN and to protect the rights set out in international treaties through its laws, policies and practices. Ireland has ratified 6 of the 9 International Conventions including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

- **CERD**

For example in February 2011 in its concluding observations on Ireland, the Committee on the Elimination of all Forms of Racial Discrimination, which oversees the convention of that name, recommended that Ireland “strengthens its efforts to sensitise relevant civil servants on human rights issues particularly against racism and intolerance by ensuring that human rights training is mainstreamed in the civil service. In this regard, the Committee invites the State party to develop a coordinated work plan with the Irish Human Rights Commission (IHRC) that allows the IHRC to raise awareness and provide human rights training to all civil servants including the *Garda Síochána* (Police) and the Judiciary.”

- **UPR**

The UN also introduced a new procedure to monitor a state’s human rights record called the UPR – Universal Periodic Review. This process looks at a State’s human rights record every four years and Ireland was examined under this procedure in October 2011. Actions the Irish State were asked to address range from the structural: ratification of the Convention on the Rights of People with Disabilities, ensure the new Human Rights and Equality Commission is an effective agent for enhancing the country’s commitment to human rights, to the practical: design policies to provide for equal opportunities to members of the Traveller community, with special focus on access to health care, education and housing.

⁵ [2008] IEHC 379.

As the CEO of a public body you may hear phrases such as “we have different legal advice on that matter” or “we should seek the Attorney General’s opinion as the legal framework here is open to interpretation”. All that is very well but the point I would like to make is that by the time you are having this conversation it may be too late to address the human rights issue arising.

Where the avoidance of litigation and the promotion of human rights are two key organisational objectives – as I would argue they should be in the public sector - that conversation can be avoided by seeking to address policy and practice through a human rights lens. Being mindful of the core principles of human rights in decision-making is the first step. On that basis the inherent dignity and respect of the person is the first port of call – if asked, can your organisation say it has considered the impact of a measure on the human rights of the people impacted by it? Can it say the policy response is measured, proportionate to the aims sought to be achieved and not unduly intrusive. And if it can say it has addressed the question of whether vulnerable or disadvantaged individuals will be disproportionately impacted on the basis of their identity, you are taking a human rights approach.

Attitudes and Organisational Behaviour

In relation to the ECHR Act for example, why do we need to think about the principles of human rights and not just the legislation? Well, for the simple reason that much of human rights concerns the application of legislation – the checks and balances on discretionary decision making. If we consider the right to a fair hearing under Article 6 of the ECHR, this can apply to applications for licenses, to decisions on housing, or other entitlements. That right is often considered by the European Court in conjunction with other rights, for example the right to private life. It is thus essential for us in the Public Sector to understand that rights are interdependent and indivisible when making any decisions that may affect an individual’s human rights.

So if we are looking at Codes of Conduct or other organisational behaviour control mechanisms, we need to start thinking of how we move beyond merely focusing on the individual organisational risk of human rights legislation to more general public service notions of human rights risk of our policies and responses. Regulatory responses thus need to be more ambitious and I would argue human rights is well placed to be central to these responses as it ultimately involves balancing competing rights.

- **Interdependent and indivisible**

Interdependent and indivisible? That is, by not observing one right you may be impacting on another right and as already mentioned rights are inherent to everyone without discrimination – so no matter what their culture, ethnic background, sexual orientation etc. - everyone has basic human rights, while particular attention is needed for persons from vulnerable or disadvantaged backgrounds. So for example, if a grouping within our society does not have the same access to education or housing, they could under existing legislation, take the State to Court to uphold their human rights. Depending on the evidence presented, the case will be more likely to succeed in circumstances where the Defendant State body cannot demonstrate that its decision was taken in a proportionate, accessible, transparent manner, that it upheld the dignity, respect and

family life of the individuals concerned by addressing the impact of the measure on the individual before it was taken.

- EG: The Right to a Fair trial for example, is covered by Article 6 in the ECHR and is one of the most frequently used articles in cases against the State. The right to fair trial could be considered in conjunction with Article 8, private and family life, Article 13 on effective remedy and/or Article 14 on non-discrimination.

Looking at our own attitudes and behaviours in relation to human rights when drawing up policies, interacting with other staff and customers can prove a really positive experience. It can be challenging but equally rewarding. We can begin to ask ourselves how would I expect to be treated in this situation? How would I like my elderly parents to be treated? Would I be happy if this was my child who was being affected by this situation? What rights do I have as an employee, a customer, and ultimately a citizen?

HRETP – Human Rights Education and Training Project

This is why the IHRC has created the Human Rights Education and Training Project. The project offers free tailored human rights training across the Civil and Public Service. To date the project has directly trained over 300 mostly middle to senior managers across the sector, including 12 Trainers who completed an intensive 2 day Train the Trainer course. The project has also created a learning platform that supplies accessible and creative tools and information on human rights particular to the Public Sector.

Early in the project lifespan it produced a reference Guide on human rights following feedback from stakeholders in the Public Sector. To date 7000 of these have been circulated and copies are available here today to take away with you. We will shortly be publishing an additional reference guide to compliment this focusing on the European Convention of Human Rights Act. Both Guides should be used in addition to training where the potential to drill down into the principles of human rights takes place.

The project has been independently evaluated and its most recent report indicates that the training has been warmly received.

Standards

Standards in public service are constantly increasing, not least because of the regulatory pressures of human rights or citizenship commitments. So to take one example: in the health care sector we see how the Health Information and Quality Authority under the Health Act 2007 now sets standards and monitors them for children, the elderly and soon, the disabled. This regulation has a key social dimension: the protection of the vulnerable. But we know that human rights do not just occur in the field of health or education. The protection of human rights is a key concern of the State. It is why Ireland is applying for membership of the UN Human Rights Council. It is why human rights are increasingly an aspect of good governance and rule of law under Irish Aid. It is who we are. Why then should it not be a key organisational goal for the public service?

Conclusion

Conduct based on human rights, ethics and good values makes a key contribution to the pursuit of Public Sector goals. Organisational behaviour should reflect the State's commitment to human rights principles. Adherence to these principles:

- Strengthens and adds substance to standards, codes of conduct and regulatory concerns which have as their underpinning the respect for the dignity of the person enshrined in the Constitution.
- Is a legal obligation on the State and organs of the State and assists in managing legal risk and avoiding litigation (which is resource intensive).
- Is a useful way for organisations to relate to stakeholders and to demonstrate transparency, accountability in its actions, ensuring the efficient delivery of the policy functions of the State. It thus reinforces the regulatory function.
- There are now many examples of progressive State and public service bodies offering good practice examples via their collaboration with the IHRC on Human Rights Training.

The Council of Europe Commissioner for wrote to the IHRC following publication of our Human Rights Guide to say:

“It is indeed essential to mainstream human rights implementation across government departments and to become aware of the human rights implications of government policies more generally. I am particularly pleased that your human rights guide also stresses the role of local authorities in respecting and protecting human rights...I am sure that the guide can inspire similar initiatives elsewhere in Europe. National Human Rights Institutions are at the forefront in providing human rights training to civil servants.”