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Human Rights—2006

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2006 saw a significant number of changes to the criminal law in Ireland with human rights law and a changing system of criminal justice increasingly coming into conflict. These changes culminated with the appointment, during 2006, of a Criminal Law Review Group, mandated to assess whether a 'rebalancing' of rights was needed as between victim and accused in the Irish legal system. Much of the 'rebalancing' agenda had already borne fruit in legislative changes introduced throughout the year.

The Criminal Law (Insanity) Act 2006 reforms the law on criminal insanity, fitness to be tried and related issues, with the aim of bringing Irish law and practice into line with the jurisprudence of the European Court of Human Rights. The Criminal Law (Sexual Offences) Act 2006 provides a replacement provision for section 1(1) of the Criminal Law (Amendment) Act 1935 (Defilement of girl under 15 years of age), which was struck down by the Supreme Court in the *CC* case. In that case, the Supreme Court had concluded that the legislation did not provide a person charged with an offence under that provision with a defence of honest belief as to the age of the girl. The Criminal Law (Sexual Offences) Act 2006 enacts, in gender neutral terms, a replacement provision for the subsection struck down by the Supreme Court, and allows for a defence of *honest belief* that the child against whom the offence was alleged to have been committed had attained 15 years of age. The Criminal Justice Act 2006 contains a comprehensive package of measures designed primarily to strengthen the powers of law enforcement bodies. The main purpose of the Act was to improve the efficiency with which criminal offences are investigated and prosecuted. This legislation also introduced a new system of anti-social behaviour orders, leading to objections, particularly in light of the experience of the operation of anti-social behaviour orders in the United Kingdom under its Crime and Disorder Act 1998. The Irish Human Rights Commission, expressing apprehension at the introduction of such orders in Ireland, noted that the Council of Europe Commissioner for Human Rights had expressed concern at the high level of use of these orders in the United Kingdom.¹

The enactment of the International Criminal Court Act 2006 gives effect to the Rome Statute of the International Criminal Court (ICC), signed by Ireland in July 1998. Because submission to the jurisdiction of the International Criminal Court entailed a partial transfer to the Court of the sovereign power of the State to administer criminal justice, it was necessary to amend the Irish Constitution prior to

¹ See report of the Commissioner for Human Rights on his visit to the United Kingdom 4 to 12 November 2004, Council of Europe document CommDH(2005) 6 of 8 June 2005 at p 36. For the *CC* Case see [2006] IESC 33 (23 May 2006).

ratification of the Rome Statute. The twenty-third amendment of the Constitution inserted Article 29.9, providing that the State may ratify the Rome Statute. The ICC Act 2006 creates domestic offences and associated penalties for ICC crimes of genocide, crimes against humanity and war crimes, repealing the Genocide Convention Act 1973. It enables assistance to be given to the ICC by permitting the arrest and surrender of persons requested. It also provides for freezing of assets and enforcement of orders for fines and other forms of assistance in the investigation of ICC offences.

The International Criminal Court Act was the subject of much lobbying by Amnesty International Ireland, in particular, concerning the non-retroactivity of the legislation and the implications for domestic prosecutions. The Act provides that proceedings cannot be taken in relation to conduct constituting an 'ICC offence' which occurred before the passing of this Act,² with the exception of offences occurring under the Genocide Act 1973.³ This position raises broader questions as to the role of customary international law in domestic law and the difficulties that have arisen in attempting to invoke custom or general principles in domestic proceedings in the past.⁴ The strict dualist position that has been adopted by the Irish courts⁵ and the 'externalising' of custom and general principles is unlikely to provide good ground for the exercise of universal jurisdiction.

In July 2006 the Government published a Scheme for the Criminal Justice (Trafficking in Persons and Sexual Offences) Bill. The Bill was intended to provide a legislative framework to facilitate ratification of the UN Protocol to Prevent Suppress and Punish Trafficking (the Palermo Protocol), implementation of the EU Framework Decision on Combating Trafficking in Human Beings (overdue for implementation since 31 December 2004), and ratification of the 2005 Council of Europe Convention Against Trafficking. Ireland has been identified in the recent US State Department Report on *Trafficking in Persons* as a country both of transit and destination for traffickers. The Scheme of the Bill provides for criminalisation of the offence of trafficking. Its focus, however, is on law enforcement rather than on the protection of victims of trafficking. As such, measures such as the provision of residence permits, rights of access to legal aid, voluntary repatriation, are not provided for. The publication of the Scheme follows on from the Report of the Department of Justice, Equality and Law Reform and *An Garda Síochána* (national police force) in April 2006, which recommended that protections for victims of trafficking be provided for in the proposed Immigration and Residence Bill. The Scheme for the Immigration, Residence and Protection Bill, published in October 2006, however, does not include any provisions on trafficking.

² Section 9(4)

³ Section 7(4)

⁴ See Joe Noonan 'Case Report—*DPP v Clancy et al*' this volume of the *Irish Yearbook of International Law*, p 337; See also L Thornton *Horgan v An Taoiseach Case Report*, OUP International Law in Domestic Courts.

⁵ *In Re O'Láighleis* [1960] IR 93; *Government of Canada v Employment Appeals Tribunal* [1992] IR 484; *The MV 'Toledo' ACT Shipping (PTE) Ltd v Minister for the Marine, Ireland and the Attorney General* [1995] 2 ILRM 30; *Kavanagh v Governor of Mountjoy Prison, the Special Criminal Court, the DPP the Minister for Justice, Equality and Law Reform and the Att Gen.* 29th, [2001] IESC 11 (1st March, 2001); *Horgan v An Taoiseach & Ors* [2003] IEHC 64 (28 April 2003); *Eoin Dubsy v Govt of Ireland, The Minister for Foreign Affairs et al* [2005] IEHC 442

MIGRATION LAW

Legislation

Within the legislative field, Ireland transposed two significant E.U. directives. The transposition of the Qualification Directive⁶ by means of the Eligibility for Protection Regulations⁷ made provision for the granting of subsidiary status to third country nationals who, although failing to qualify as refugees as per section 2 of the Refugee Act 1996 (as amended), could request the Minister for Justice, Equality and Law Reform to make a finding of entitlement to subsidiary protection. An individual is entitled to subsidiary protection where there is a risk of 'serious harm' which can consist of the death penalty or execution; torture or inhuman or degrading treatment or punishment, or a serious and individual threat to an individual's life or person by reason of indiscriminate violence in situations of international or internal conflict.⁸ The Eligibility for Protection Regulations introduced a number of factors that those examining claims for refugee (or subsequently subsidiary) status must take account of, including, facts and circumstances in the country of origin, as well as providing definitions of actors of persecution and serious harm, actors of protection, acts of persecution and outlining in detail the precise reasons for persecution,⁹ so as to be eligible for protection as either a refugee or subsidiary status. Those entitled to subsidiary status were granted the same social rights as refugees, although residence permits to those with subsidiary status were to be initially granted for a three year period.¹⁰ The Irish Government did not transpose Qualification Directive measures¹¹ which could have differentiated certain social rights entitlements between those with refugee status and those with subsidiary status.¹² Family reunification of those eligible for subsidiary status¹³ is on par with those entitled to refugee status.¹⁴ The Regulations also outline the reasons for failing to grant, renew, revoke or exclude those from refugee and subsidiary status incorporating some of the provisions on these issues found within the Qualification Directive.¹⁵

⁶ Council Directive 2004/83/EC of 29 April 2004 on the minimum standards for the qualification and status of third country nationals or stateless persons as regards refugees or persons who otherwise need international protection and the content of the protection granted.

⁷ SI 2006/518 European Communities (Eligibility for Protection) Regulations 2006.

⁸ Article 15 of the Qualification Directive as transposed by reg 2 of the Eligibility for Protection Regulations.

⁹ See Articles 4(3), 6, 7, 9 and 10 of the Qualification Directive as transposed by reg 10 of the Eligibility for Protection Regulations.

¹⁰ Regulation 17(1) of the Eligibility for Protection Regulations.

¹¹ Article 24(2) wherein an individual with subsidiary status would have been entitled to a one-year and renewable residence permit; Art 25(2) which would have restricted the right of an individual with subsidiary status from being granted a travel document but for 'serious humanitarian reasons'; Art 28(3) which allows a Member State to limit the social assistance to 'core benefits' provided under the same eligibility conditions as nationals; Art 29(2) wherein health care can be limited to 'core benefits' provided under the same eligibility conditions as nationals and Art 33(2) where Member State's have an option to extend access to integration facilities to those with subsidiary protection.

¹² Regulation 18(1) and reg 19 of the Eligibility for Protection Regulations.

¹³ Regulation 16 of the Eligibility for Protection Regulations.

¹⁴ Section 18 of the Refugee Act 1996 (as amended).

¹⁵ Articles 11, 12, 14, 16, 17 and 19 of the Qualification Directive as transposed by regs 11, 12, 13 and 14 of the Eligibility for Protection Regulations.

The second important statutory transposition of EU law was in the immigration field in relation to the rights of EU citizens and their families to reside and move freely throughout the Union.¹⁶ The transposition of this Directive by the Free Movement of Persons Regulations¹⁷ made significant improvements in guaranteeing the rights of spouses and family members of Union citizens, as well as setting out clearly the right of Union citizens to move freely and reside within the Irish State. This Directive sets out inter alia the right of entry,¹⁸ the right of both Union citizens and non-Union family member(s) to reside for varying periods and the conditions attached there to, including provisions on entitlement to remain in the State, registration of non-Union citizen family members, retention of right to residence by a non-Union citizen or due to death or departure or divorce or annulment¹⁹ grounds for removal from the State, including restrictions that can be applied on the grounds of public policy, public security or public health.²⁰

Scheme for the Immigration Residence and Protection Bill

This Bill, published in October 2006, proposes a 'radical' overhaul, consolidating, but also significantly adding to existing legislation in this field. Notable omissions from the Scheme include human trafficking and family reunification for migrant workers on short-term residence permits. The Scheme proposes stringent restrictions on the right to marry for foreign nationals, raising questions as to compliance, not only with the constitutional provisions on the family, but also with the European Convention on Human Rights (ECHR) and other human rights treaties. As the Irish Human Rights Commission has noted, a 'pressing social need' is not detailed to support the imposition of such restrictions, as required by article 12 ECHR. Safe country practices, following on from developments at EU level, are greatly expanded and include provision for the so-called 'super-safe' countries. Combined with stringent time limits and shifts in the burden of proof, such practices will pose significant obstacles to accessing the asylum process and, as commentators have noted, may increase the risk of *refoulement*. The Scheme includes a number of welcome proposals, such as the introduction of long-term residence permits and a legislative framework for subsidiary protection. The protections provided for separated children remain weak, however, and, in particular, do not provide for the appointment of a *guardian ad litem*. The Irish Refugee Council published a research report on Separated Children/Unaccompanied minors, seeking asylum in Ireland. Drawing on the General Comment No 6 (2005) on the Treatment of Unaccompanied and Separated Children, the Report highlights the failings of the current asylum process in Ireland, and the risks posed by such failings to separated children. Those failings are not addressed in the Scheme.

¹⁶ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of citizens to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 73/148/EEC, 75/35/EEC, 90/360/EEC, 90/365/EEC and 93/96/EEC.

¹⁷ SI 2006/226 European Communities (Free Movement of Persons) Regulations 2006.

¹⁸ Article 5(1) and Art 5(2) of the Directive; reg 4(1) and reg 4(2) of the Free Movement of Persons Regulations.

¹⁹ See Arts 6 and 7, 9, 12 and 13 of the Directive; reg 10 of the Free Movement of Persons Regulations.

²⁰ Article 27 to Art 33 of the Directive; regs 20 to 23 of the Free Movement of Persons Regulations.

Jurisprudence

Irish Courts' jurisprudence on the issues surrounding asylum has markedly grown, as has reference to international legal norms which effect the interaction of asylum law and human rights law. The interaction between Irish constitutional provisions and the ECHR has somewhat added to protection of the rights of asylum seekers within the Irish Republic. The case of *Bode and Others*²¹ revolved around the right of the non-national applicants to remain in Ireland to ensure their citizen children had a right to their care, company and support. An administrative scheme had been established by the Department of Justice, Equality and Law Reform. The IBC/05 Scheme laid out the possibility for non-national parents, who did not have a right to reside within the State, to apply to the Department of Justice, to have their case for residency with their citizen child within the Republic of Ireland considered.²² All the applicants within the eight cases had had their IBC/05 applications refused. The applicants argued that since this scheme gave no consideration to the rights of the Irish citizen child it was contrary to the rights of the citizen child under Article 40.3²³ and 41²⁴ of the Irish Constitution, *Bunreacht na hEireann* and, under Article 8, the right to family life, and Article 14 (in conjunction with Article 8), enjoyment of Convention rights without discrimination under the *European Convention on Human Rights and Fundamental Freedoms* (ECHR).²⁵

Ms Justice Finlay Geoghegan accepted the constitutional argument that the IBC/05 Scheme failed 'in so far as is practicable' to defend and vindicate the personal rights of the citizen child to live in the State, be reared and educated with due regard for his/her welfare. In relation to the ECHR grounds, without needing to examine the Article 14 argument, the Court found, in relation to Article 8 and the protection of the family, that while there was no interference with the ability of the family to form relationships, each citizen child who lived in the State since his/her birth had a right to a private life, including the right to form and develop relationships as found by the European court in *Sisjiva and Others v Latvia*.²⁶ The child's exercise of rights is dependent on the presence of parents in the State, and on the parents' ability to provide for their children by inter alia working and providing a stable environment wherein to live so that the citizen child may develop. Ms Justice Finlay Geoghegan found a positive obligation under Article 8 in light of *Knutzer v Germany*²⁷ meaning that the parent of the citizen

²¹ *Bode v Minister for Justice, Equality and Law Reform* [2006] IEHC 341 (14 November 2006) is the principle judgment in this series of seven other co-joined proceedings on the same substantive issues.

²² This scheme arose as a result of the judgement in *Lobe and Osayende v Minister for Justice, Equality and Law Reform* [2003] 1 IR 1 which held that non-national parents do not have an automatic entitlement to remain in the Republic of Ireland with their Irish citizen child and non-national parents could be subject to deportations. As a result of this the Department of Justice set up the IBC/05 Scheme to deal with persons who had given birth to Irish citizen children. A general policy was adopted of granting those persons permission to remain in the State provided that they fulfilled certain criteria. All the applicants in these proceedings were deemed not to have fulfilled some of the criteria. In all there were 17,917 applications under the IBC/05 Scheme with 16,693 requests for residence granted and 1,119 refusals.

²³ This article outlines the duty of the State to respect, and as far as practicable, defend and vindicate, the personal rights of its citizens.

²⁴ This article sets out the 'inalienable and imprescriptable' rights accorded to the marital family.

²⁵ Ireland incorporated the ECHR by virtue of the European Convention on Human Rights Act 2003. Of particular significance to this case was s 3 of the 2003 Act which obliges all organs of State to perform its functions in a manner compatible with the ECHR.

²⁶ Application No 60654/00 *Sisjiva and Others v Latvia* (European Court of Human Rights, 16 June 2005), para 102.

²⁷ *Knutzer v Germany* (2002) 35 EHRR 653 at para 62.

child has a right to remain in the State and that a fair balance must be struck between the needs of the individual child and the community. Any decision to refuse a parent(s) residency without considering the right to the private life of a child violated Article 8(1). The State did argue that this was within its margin of appreciation under Article 8(2). The Court found that the Minister for Justice, Equality and Law Reform had acted contrary to the State's obligations under the ECHR by not examining the right to private life of the child citizen.

The deportation of individuals continued to raise questions of compatibility with European human rights law. In the case of *Cosma*,²⁸ the applicant claimed to be suicidal, and counsel argued that were a deportation order to be enforced and proceeded with, this would result in a violation of Article 3 and Article 8 of the Convention. The Court found that since the deportation order was made prior to the commencement of the ECHR Act 2003, the Article 3 and Article 8 jurisprudence could only be of a persuasive authority.²⁹ In relation to Article 3, Mr Justice Hanna examined both the *D*³⁰ case and the *Soering*³¹ case, and found that the principles in these cases greatly contrasted with the situation of the applicant. The Court was referred to a British House of Lords case of *Razgar*³² where the applicant was to be returned to Germany, which was the first safe country he reached. The House of Lords, in examining Article 8, noted that the ability to function socially and to preserve mental stability was a precondition to the effective enjoyment of ones human rights. In this case, Hanna J noted the circumstances of that particular case wherein the Secretary of State had not considered Mr Razgar's asylum claim as he deemed it to be manifestly unfounded, and compared it to the situation of Ms Cosma, who had her full procedural rights respected with a process for determining both her asylum and leave to remain claims. Mr. Justice Hanna was not satisfied that the applicant established a 'real and substantial risk' of self-harm and found the medical reports to be far short of 'objective' diagnosis of her condition. None of the relevant ECHR related cases, Hanna J noted, deal with a bare threat of suicide in response to deportation; in any case, the applicant had not established that the deportation alone would avert threatened suicide.

The Irish courts have once again reasserted the principle that there is an obligation to consider refugee claims from asylum seeking children, where their parent/guardian 'as primary protector of the best interests of the child' requests such separate determination of claims.³³ The legal basis for such a decision is based on the Refugee Act 1996 in light of Article 12 (on measures to combat the illicit transfer and non-return of children abroad) and Article 22 (on the rights of asylum seeking children) of the United Nations Convention on the Rights of the Child (CRC).³⁴ With regard to procedures within the refugee determination process, the Irish High Court has found

²⁸ *Cosma v The Minister for Justice, Equality and Law Reform* [2006] IEHC 36 (15 February 2006).

²⁹ The issue of retrospective application was decided in *Dublin City Council v Fennell* [2005] 2 ILRM 288, where the Supreme Court found that the ECHR Act 2003, which incorporated the ECHR into Irish law, could not have a retrospective effect on actions taken or decisions made by organs of the State.

³⁰ *D v The United Kingdom* (1997) 24 EHRR 423.

³¹ *Soering v. The United Kingdom* [1989] ECHR 14.

³² *R(Razgar) v Secretary of State for the Home Department* [2003] EWCA Civ 840.

³³ *Dada & Ors v Minister for Justice, Equality and Law Reform and Ors* [2006] IEHC 166 (31 January 2006).

³⁴ [2006] IEHC 166, (31 January 2006), per MacMenamin J.

that there is no right, either under the Constitution, or the ECHR Act 2003 for an applicant to demand that his/her interview with the status determination bodies be audio or visually recorded.³⁵

FAMILY LAW

While asylum and migration cases had seen some developments from a human rights law perspective in 2006, international human rights treaties played a relatively minor role in other areas of Irish jurisprudence in 2006. In the light of cases such as *In re O'Laighléis*³⁶ and *Kavanagh v Governor of Mountjoy Prison*³⁷ in which the Irish Supreme Court clearly held that unincorporated international treaties were of merely persuasive authority, this position is perhaps unsurprising.³⁸ For example, the UN Convention on the Rights of the Child was certainly ripe for consideration in two adoption-related decisions that arose in 2006,³⁹ but was practically ignored in both. In the most prominent of these cases—*N & Another v Health Services Executive & Another*⁴⁰ (also known as ‘the Baby Ann Case’)—only McGuinness J mentioned the UN Convention on the Rights of the Child in her judgment and criticised the lack of individual legal representation for the child on its basis. In the case of *CC v Ireland & Others*,⁴¹ the Supreme Court utilised the Canadian Charter of Fundamental Rights and resulting case law⁴² in finding that the strict liability offence of statutory rape was contrary to personal rights provisions and the presumption of innocence under the Irish Constitution,⁴³ but did not make use of the provisions of international human rights treaties to which Ireland is a party.

MILITARY LAW

Addressing the often thorny question of human rights in the context of military justice, the Defence (Amendment) (No 2) Bill 2006 focuses in particular on the disciplinary provisions of Part V of the Defence Acts and seeks to amend and update its Code of Discipline having regard to prevailing human rights norms. The Bill makes significant structural and procedural changes to military justice, providing for the summary disposal of disciplinary charges; the establishment and jurisdiction of the summary court-martial; the appointment of the Court-Martial Administrator, the

³⁵ *Hakizimana v Minister for Justice, Equality and Law Reform & Ors* [2006] IEHC 355 (14 November 2006), per Feeney J.

³⁶ [1960] IR 93.

³⁷ [2002] 3 IR 97.

³⁸ See Art 29.6, *Bunreacht na hÉireann* (‘Constitution of Ireland’) requiring treaties to be incorporated in order for them to have domestic effect in Ireland.

³⁹ *Attorney General v Dowse and another; Dowse and another v Adoption Board and another* [2006] I.E.H.C. 65—applicants seeking *in camera* hearing for the removal of an adoption from the foreign adoptions register following their highly-publicised decision to no longer parent the child; *N & Another v Health Services Executive & Another* [2006] IESC 60—concerning the decision of biological parents to revoke consent to adoption when the child was settled with the prospective adopters and had been resident with them for approximately two years.

⁴⁰ *Ibid.*

⁴¹ [2006] IESC 33.

⁴² *Hess and Nguyen v The Queen* [1990] 2 SCR 906.

⁴³ Arts 38.1, 40.3.1, 40.3.2 and 40.4 of the Irish Constitution.

Director of Military Prosecutions and a military judge. The Bill establishes the membership of a court-martial board and provides for the award and execution of punishments by courts-martial.

GENDER AND LAW

The Consortium on Gender Based Violence, a consortium of Irish human rights, humanitarian and development agencies, Irish Aid and Government agencies, published a *Guidance Note on Institutionalising Gender Based Violence Prevention and Response within Organisations*. This follows on from the recommendations published in a 2005 Report on *Gender Based Violence: A Failure to Protect, a Challenge to Action*. The Consortium is aimed at developing capacity on GBV prevention and response within Irish development agencies, both internally and within field work, and reflects a priority commitment in the *White Paper on Irish Aid* to address GBV as a human rights concern.

AMICI CURIAE

Amici Curiae and third party intervenors have played important roles in bringing international human rights law arguments into domestic legal proceedings. In Ireland, jurisprudence on the role of such intervenors and on *amici curiae* is relatively underdeveloped. In the *Doherty v South Dublin County Council* case, the Supreme Court considered the scope of the statutory power of the Equality Authority⁴⁴ to act as *amicus curiae*.⁴⁵ The Equality Authority sought to provide assistance to the court regarding the proper interpretation of the EU Race Directive⁴⁶ arguing that the issues raised had broad implications for the Travelling Community in Ireland. At first instance Quirke J found that the Equality Authority would be able to furnish assistance to the court at the direction of the Trial Judge.⁴⁷

On appeal to the Supreme Court, the State reiterated its opposition to the granting of such a role, noting that the Equality Authority was expressly entitled to intervene in proceedings in a number of specified cases which, the State submitted, implied that the *Oireachtas* (the national parliament) had not intended to grant a broad power. This position was supported by the contrasting manner in which the Human Rights Commission Act 2000 conferred express power on the Commission to act as *amicus curiae*. The Supreme Court examined the more general provisions concerning the role of the Authority in the Equal Status Acts and the Equality Act 2004. Fennelly J delivering the majority verdict for the Court,⁴⁸ found that the power to act as an *amicus curiae* was included under the general powers of the Equality Authority, which tasked

⁴⁴ The Equality Authority is a statutory body.

⁴⁵ *Doherty v South Dublin County Council and Others (Equality Authority, Notice Party)*, Supreme Court [2006] IESC 57 (Hearing Date 31 October 2006).

⁴⁶ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

⁴⁷ Ex tempore judgment of 22 May 2006.

⁴⁸ Macken J dissented, expressing concern that the role which the Equality Authority would play in the proceedings would be an oppositional one, unsuited to a first instance consideration of the issues. He found that a role as *amicus curiae* was not reasonably incidental to any of the powers granted by the legislation.

it to ‘work towards the elimination of prohibited conduct’.⁴⁹ However, he did describe it as a power of relatively modest proportions, likely to be exercised ‘sparingly’⁵⁰ and contingent on the determination by the trial judge that the Equality Authority could provide assistance to the Court.

THE EUROPEAN CONVENTION ON HUMAN RIGHTS

In the main, the European Convention on Human Rights was the predominant international human rights treaty in operation in the Irish courts and, even then, its impact was relatively muted given its sub-constitutional incorporation by the European Convention on Human Rights Act 2003.⁵¹ The case law relating to the Convention and, indeed, the ECHR Act 2003 tended to focus on two matters—(a) retroactive application of the ECHR Act 2003, and (b) the relationship between the Convention and the Constitution. In addition, the High Court did decide one significant case on the role of Convention considerations in extradition proceedings⁵² and considered the Convention’s role in determining the requirements of due process.⁵³

Retroactive Application

Since its incorporation in 2003, the scope of the European Convention on Human Rights has been controversial. In *Dublin County Council v Fennell*⁵⁴ the Supreme Court had already held that the interpretive obligations contained in the ECHR Act 2003 did not apply to cases concerning matters that arose prior to 31 December 2003 (ie prior to incorporation), however the matter of the weight to be given to decisions of the Strasbourg Court relating to matters arising prior to that date had long been contentious.

Earlier cases relying on Convention arguments had resulted in the Irish courts rejecting the significance of those decisions to their deliberations. In *Norris v Attorney General*,⁵⁵ for example, the Supreme Court refused to follow *Dudgeon v United Kingdom*⁵⁶ notwithstanding its clear appositeness as both cases comprised challenges to the same piece of legislation (ie sections 61 and 62 of the Offences against the Person Act 1861). This can be contrasted with the later decision of the Supreme Court in *Society for the Protection of Unborn Children v Grogan (No 5)*⁵⁷ in which Keane J (as he then was) relied to a considerable degree on the Strasbourg court’s decision in *Open Door Counselling v Ireland*⁵⁸ in his dissent. This situation of uncertainty as to the weighting to be given to Convention jurisprudence relative to matters arising prior to incorporation was not, as already mentioned, resolved by the *Fennell* decision.

⁴⁹ Equal Status Act, 2004, s 39(a).

⁵⁰ *Ibid.*

⁵¹ For more on the incorporation of the European Convention on Human Rights see generally Kilkelly (ed), *The ECHR and Irish Law*, (Bristol, Jordan, 2004).

⁵² *Attorney General v Russell* [2006] IEHC 164.

⁵³ *Crowley v Roche Products Ltd & Others* [2006] IEHC 6.

⁵⁴ [2005] 1 IR 604.

⁵⁵ [1984] IR 36.

⁵⁶ [1981] 4 EHRR 149.

⁵⁷ [1998] 4 IR 343.

⁵⁸ [1993] 15 EHRR 244

While the Court of Criminal Appeal did not completely resolve this matter in *People (DPP) v Matthews*,⁵⁹ it did shed some light on the current judicial approach to the question. The case concerned a challenge by Matthews to the use of anonymous statements by the Prosecution in the course of a trial by the Special Criminal Court. According to Matthews this practice undermined his right to a fair trial under Article 6, ECHR as the witnesses could not be cross-examined. The events that formed the basis of the prosecution in this case had taken place in June 2003—some six months before the introduction of the ECHR Act—and the Court therefore found that Convention case law was not binding in its considerations. Importantly, however, the Court went on to hold that even where the matters at issue had arisen prior to incorporation, the Convention case law ought to be given substantial weight in recognition of its importance.

Relationship between the ECHR and the Constitution

Section 2 of the European Convention on Human Rights Act 2003 imposes an interpretive obligation on the Irish courts *viz*:

- (1) In interpreting and applying any statutory provision or rule of law, a court shall, in so far as is possible, subject to the rules of law relating to such interpretation and application, do so in a manner compatible with the State's obligations under the Convention provisions.
- (2) This section applies to any statutory provision or rule of law in force immediately before the passing of this Act or any such provision coming into force thereafter.

Since its promulgation in 2003, however, section 2(1) has given rise to some difficulties, particularly in terms of the order of arguments before domestic courts. Because the Convention operates on a sub-constitutional level there are some uncertainties as to whether Convention arguments should be made before constitutional arguments, or whether they are to be set to one side and made only when constitutional arguments have been dispensed with and have not, of themselves, resolved the issues before the Court.

The case law from the High Court shows two distinctive approaches to this question. In *Carmody v Minister for Justice, Equality and Law Reform*⁶⁰ Laffoy J held that arguments based on the Convention ought to be heard before arguments based on the Constitution as a result of the doctrine of constitutional avoidance.⁶¹ In contrast, O'Neill J in *Law Society of Ireland v Competition Authority*⁶² held that constitutional matters ought to be considered before Convention arguments, which would then only be reached if constitutional argument did not settle the matter.

2006 saw the Supreme Court reject an opportunity to indicate a preference for either approach to this issue. In *Ward v Governor of Portlaoise Prison*⁶³ the applicant argued

⁵⁹ [2006] IE CCA 103.

⁶⁰ [2005] 2 ILRM 1.

⁶¹ This doctrine requires judicial restraint in considering constitutional matters only where the issue at hand could not be resolved by reference to other sources of law. The doctrine was espoused by Finlay CJ in *Murphy v Roche* [1987] IR 106. For a critical discussion of Laffoy J's approach in this case see Hogan, 'The Value of Declarations of Incompatibility and the Rule of Avoidance' (2006) *Dublin University Law Journal* 408.

⁶² [2005] IEHC 455.

⁶³ [2006] IESC 39.

that the High Court's refusal to hear arguments on the basis of the Convention deprived him of his right to a fair hearing. While this case did not deal directly with the *Carmody/Law Society* controversy, a decision that one had a right to make Convention arguments might well have indicated an unwillingness to relegate Convention-based argumentation to the extent suggested by *Law Society*. The Supreme Court, however, did not rule on this question and instead sent the case back to the High Court for reconsideration.⁶⁴

There is also some question as to the relationship between the Convention and Constitution in terms of defining the scope of Constitutional rights. The incorporation of the Convention certainly created an opportunity for the substance of constitutional rights in Ireland to be expanded in certain cases in order to take into account relevant ECHR jurisprudence. However, as O'Connell et. al. noted in their 2006 study *ECHR Act 2003: A Preliminary Assessment of Impact* the Convention has not, thus far, played such a role.⁶⁵ This is reflected by the 2006 High Court decision in *Irish Municipal Public and Civil Trade Union v Ryanair Ltd.*⁶⁶

This case concerned a claim by the applicant trade union that its members' right to association was violated by Ryanair's policy of not engaging in collective bargaining. Ryanair, on the other hand, claimed that the right to association was not infringed as it was prepared to listen to, although not negotiate with, the trade union and that this did not in any way violate its employees' right to association. The competing claims essentially focused on whether the right to association as contained in Article 40.6, *Bunreacht na hÉireann* could be interpreted as including a 'protection against an employer offering financial inducements to its employees and threatening to impose penalties upon such employees, or both, with the object or effect of inducing the employees to refrain from carrying on collective bargaining through a trade union' on the basis of the European Court of Human Right's decision on the scope of Article 11, ECHR in *Wilson v United Kingdom*.⁶⁷ This claim formed part of a wide matrix of litigation between these two parties based substantively in the Labour Court,⁶⁸ and as a result the High Court declined to decide the matter of the appropriate relationship between the Convention and Constitution:

The instant case certainly involves the investigation of questions of general importance in the context of recent changes in domestic law, which raise issues as to the impact of the State's international obligations on its domestic law. Given that context it is impossible to conclude that the plaintiffs' claim must fail. Apart from that, and notwithstanding the comprehensiveness and thoroughness of the submissions made on behalf of the parties, It is

⁶⁴ The case was decided in January 2007 and, having considered constitutional arguments relating to the right to a fair trial and concluded that the applicant's constitutional rights had not been infringed, the Court found that there had been no violation of his Convention rights without consideration of any ECHR case law or other reference to the Convention—*Ward v Minister for Justice, Equality and Law Reform* [2007] IEHC 39.

⁶⁵ O'Connell, Cummiskey, Meneghan and O'Connell, *ECHR Act 2003: A Preliminary Assessment of Impact*, (Dublin, Dublin Solicitor's Bar Association & Law Society of Ireland, 2006), p 119.

⁶⁶ [2007] ILRM 45, [2006] IEHC 118.

⁶⁷ [2002] 35 EHRR 523, [2002] ECHR 30668/96.

⁶⁸ For more on the other litigation between these parties see, eg O'Sullivan, 'Employment Update' 2005 1(1) *Irish Business Law* 21, 22; 'Cases and Comment: Ryanair v Irish Municipal, Public and Civil Trade Union/Irish Airlines Pilots Association (Labour Court)' (2005) 2(1) *Irish Employment Law Journal* 31; 'Cases and Comment: Ryanair v The Labour Court and Irish Municipal Public and Civil Trade Union (Supreme Court)' (2007) 4(1) *Irish Employment Law Journal* 24.

rather unsatisfactory that the novel and difficult questions of law raised should be determined on an application of this nature.⁶⁹

The High Court's eschewal of this issue is both understandable in the circumstances and disappointing; however it is unlikely that there will be too significant a delay before this matter arises before the Courts again, particularly since it is widely thought that the Convention offers 'value added' to the Constitution in relation to certain rights, particularly family-related rights.

The ECHR and 'Legal Process'

In *Attorney General v Russell*⁷⁰ the High Court was asked to prevent the extradition of Russell to the United States on the basis of Article 3 (prevention of torture, inhuman and degrading treatment or punishment) of the Convention. The extradition charges against Russell related to vehicular manslaughter, vehicular assault, forgery and theft, but Russell claimed that his extradition would violate Article 3 as he had been subjected to death threats prior to his flight from the United States which the police had not actively pursued. In addition, he claimed that he would be held in solitary confinement pending trial and if convicted and that such conditions would violate his Article 3 rights. Russell also claimed that the conditions in American prisons, including the alleged high incidence of 'male-rape' constituted inhuman and degrading treatment contrary to Article 3. Russell's claim was, therefore, that Ireland's positive obligations under Article 3 to not engage in *refoulement* extended to an obligation not to extradite him to the United States.

The High Court held that any death threats outside of the prison environs could not be acted upon as Russell would be in detention and that the solitary confinement to which he may be subjected would be for his own safety and not violatory of Article 3. Referring to Bingham LJ's interpretation of the European Court of Human Rights decisions on *non-refoulement*,⁷¹ as cited with approval by Laws LJ in *R (Birmingham and others) v Director of the Serious Fraud Office*,⁷² Peart J held that an applicant was required to show strong grounds for believing that the extradition would result in a violation of Article 3 rights. Russell had not succeeded in doing that in this case. It is worthy of note that Peart J based the majority of his reasoning on domestic legal considerations and comparative law, and referred to the Convention only in terms of its interpretation in *Birmingham* rather than engaging in any sustained consideration thereof himself.

Although the Convention has been utilised to a particularly significant degree in the consideration of due process requirements, last year the High Court in *Crowley v Roche Products (Ireland) Ltd & Others*⁷³ confirmed that the European Convention on Human Rights was not in itself a due process factor *per se*; rather it is one of a number of factors to be weighed in the traditional test for due process in civil litigation. This case related to delay. Crowley claimed that the delay in litigation was inordinate

⁶⁹ See above above n 66 *per* Laffoy J.

⁷⁰ Above n 62.

⁷¹ *R (on the application of Ullah) v Special Adjudicator, Do v Secretary of State for the Home Dept* [2004] 3 All ER 785, [2004] 2 AC 323, *per* Bingham LJ at para 24.

⁷² [2006] All ER 268, para 111.

⁷³ [2006] IEHC 6.

and that any resulting trial would violate his Article 6 entitlements (fair trial). The pre-2003 Irish law on this matter is the so-called *Primor* test.⁷⁴ This provides that even where Rules of Court have been violated by inordinate and inexcusable delay, litigation may still proceed where the ‘balance of justice’ requires it.

Crowley’s argument was that the incorporation of the European Convention on Human Rights essentially displaced the *Primor* test. The Court, however, held that the practical approach taken to Article 6(1) by the European Court of Human Rights (ie. to ask whether the litigation has proceeded within a reasonable time of the statements of claim etc having been served and concentrating in particular on delays caused by the State⁷⁵) is analogous to the Irish ‘balance of justice approach’ (particularly in the assessment of ‘reasonableness’). As a result, the court held, the appropriate role for the Convention in such circumstances is to be taken into consideration in the weighing operation, together with the other important considerations (ie nature of the litigation (with more weight given to civil rights litigation)⁷⁶, prejudice to the defendant arising from his status as defendant,⁷⁷ any loss of opportunity to seek an indemnity or contribution arising from the delay,⁷⁸ and whether the delay was caused by the client or by his legal representation).⁷⁹

UN HUMAN RIGHTS TREATY BODIES

The Committee on the Rights of the Child issued its Concluding Observations on Ireland’s Second Periodic Report under the Convention on the Rights of the Child on 29 September 2006.⁸⁰ The Concluding Observations include proposals for constitutional and statutory reform as well as more specific policy initiatives. The Committee noted legislation adopted since consideration of the First Report, and the ratification of international treaties relevant to the protection of the rights of the child, including: The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts in November 2002; The International Convention on the Elimination of All Forms of Racial Discrimination in December 2000; and The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in April 2002.

While welcoming the adoption of the National Children’s Strategy 2001, the Committee expressed regret that some of its previous recommendations had not been fully addressed, in particular, those related to the status of the child as a rights holder and the need for a child rights-based approach in policies and practices. Noting the State’s obligations under Article 12, it recommended that the State ‘. . . strengthen its efforts to ensure, including through Constitutional provisions, that children have the right to express their views in all matters affecting them and to have those views given due weight’.⁸¹ The Committee also criticised the failure to provide for a comprehensive

⁷⁴ The test was espoused in *Primor Plc v Stokes Kennedy Crowley & Ors* [1996] 2 IR 459.

⁷⁵ See *Buchholz v Federal Republic of Germany* [1981] 3 EHR 597; *Zimmerman and Steiner v Switzerland* [1983] 6 EHRR 17; *Guincho v Portugal* [1984] 7 EHRR 223; *Scopelliti v Italy* [1993] 17 EHRR 493.

⁷⁶ See, eg, *Manning v Benson & Hedges* [2004] IEHC 316.

⁷⁷ See, eg, *Southern Mineral Oil Ltd (in Liquidation) v Cooney*, [1997] 3 IR 549.

⁷⁸ See, eg, *Silverdale v Italtour Ltd.*, [2001] 1 ILRM 464.

⁷⁹ See, eg, *Rogers v Michelin* [2005] IEHC 294.

⁸⁰ CRC/C/IRL/CO/2.

⁸¹ Above n 1 at para 25.

national strategy or measures for the prevention of child abuse. Concerning the office of the Ombudsman for Children, the Committee welcomed the specific inclusion of powers to investigate complaints by children or on their behalf, but expressed concern that limitations related to children in prisons and *Garda* (police) stations could undermine the mandate of the Ombudsman.

Noting the failure to enact a number of outstanding provisions in the relevant Children Acts, the Committee called for further measures to incorporate the Convention into domestic law and to secure full implementation of existing legislation. Specific measures to secure compliance with the State's obligations under the *CRC* were highlighted by the Committee. These included the provision of comprehensive 24-hour services for vulnerable children and young people; the introduction of a statutory requirement for the vetting of all persons seeking to work with children and; the provision of mental health services appropriate to minors. In the context of child poverty, the Committee recommended the introduction of targeted supplements to existing universal child benefit payments and the greater subsidisation of services for vulnerable families.

Regarding the age of criminal responsibility, the Committee was 'very disappointed'⁸² that the Criminal Justice Act 2006 lowered the age of criminal responsibility for serious crimes to ten years. On the introduction of anti-social behaviour orders, they recommended that all alternatives be explored prior to the imposition of such orders. The Committee reiterated its previous recommendation that all forms of corporal punishment in the family be prohibited,⁸³ taking into account the Committee's general comment No 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.

The Committee made a number of observations on the position of children within minority communities, including children belonging to the Traveller community, and refugee and asylum seeking children. The Committee reiterated the concern raised by the Committee on the Elimination of Racial Discrimination⁸⁴ that non-denominational or multi-denominational schools represent less than 1 per cent of the total number of primary education facilities. The Committee expressed concern that unaccompanied children or children separated from their parents might still not receive adequate guidance, support and protection during the asylum process, in particular with respect to access to services and an independent representation. On family reunification, the Committee called for an expanded definition of the family reflecting changing social patterns.

In line with Articles 34 and 35 of the Convention, the Committee reiterated the recommendation by the Committee on the Elimination of Discrimination against Women⁸⁵ on the adoption and implementation of a comprehensive strategy to combat trafficking and to support victims of trafficking, including the provision of shelter, counselling and medical care. Finally, again referring to the recommendations of CERD, they called on the Government to work more concretely towards the recognition of the Traveller community as an ethnic group.⁸⁶

⁸² Above n 1, at para 66.

⁸³ *CRC/C/15/Add.85* para 39.

⁸⁴ Concluding observations on the Initial and Second periodic reports of Ireland (*CERD/C/IRL/CO/2*).

⁸⁵ *CEDAW/C/IRL/CO/4-5*

⁸⁶ *CERD/C/IRL/CO/2* para 20.

Mr Morten Kjærum, Co-ordinator on Follow-up of the Committee on the Elimination of Racial Discrimination (CERD), undertook a country visit to Ireland from 21 to 23 June 2006,⁸⁷ following an invitation from the Irish Government. Ireland was the first State Party to undergo this follow-up process, which seeks to strengthen the effectiveness of the treaty reporting process. As an additional focal point in the treaty reporting process, the follow up visit highlighted the importance of ongoing monitoring and evaluation, beyond the crisis points of treaty reporting. As part of his visit, Mr Kjærum met with Government officials, NGOs and the Irish Human Rights Commission. An on-site visit to an asylum accommodation centre was also made. In preparation for this visit, a follow-up report was submitted by the Government and by the NGO Alliance Against Racism.

In his report to the CERD Committee,⁸⁸ he noted the importance of the visit in the evolution of human rights monitoring, commenting that 'Ireland was viewed as a pioneer in the follow up processes and an example of good practice'.⁸⁹ Specific steps taken were welcomed, including the move towards establishing a Press Council and the commissioning of research on 'race hate crimes' and 'racially aggravated assaults', with a view to possible adoption of legislation in this field. Noting the adoption of the National Women's Strategy, he expressed regret that multiple discrimination was not acknowledged in the Strategy as a barrier to the integration of female Travellers and ethnic minorities.

The progress made in the Employment Permits Bill, 2005, was welcomed. However, the limitations of the Bill, in restricting the mobility of migrant workers in the first twelve months of their employment were criticised. The vulnerable position of domestic workers was again highlighted; Mr Kjærum noted the CERD Committee's General Recommendation No 30 on Non-Citizens and recalled the Concluding Observations of the Committee, which had called for full implementation of legislation pertaining to migrant workers and the issuing of work permits/authorisations directly to employees.

No progress had been made on the disputed issue of recognition of the Travelling Community as an ethnic minority. Mr Kjærum called for further efforts to arrive at a 'common understanding'. Noting that Travellers have a distinct language, culture and traditions, he called on the Government to take into account the principle of self-identification. The creation of the office of the Garda Ombudsman was welcomed. The need for mandatory human rights training for all Garda cadets and police officers of all levels was identified as was the necessity of ensuring that immigration officers were familiar with international human rights obligations. Commenting on the proposed Immigration Bill, (not yet public at that time) Mr Kjærum expressed the view that the Bill would meet the concerns expressed by CERD. Mr Kjaerum concluded by stressing the importance of continuing the transparency, dialogue and continuous evaluation which, he said, had been the overarching goals of the follow-up process.

⁸⁷ The terms of reference for the role of Follow-up Co-ordinator were laid down by the Committee for the Elimination of Racial Discrimination at its 66th Session see CERD/A/60/18 (Annex IV).

⁸⁸ The report was submitted to the Committee at its 69th Session. See CERD/C/69/Misc.9 30 July 2006.

⁸⁹ Above n 4, at para 3.

REPORTS

Extraordinary Rendition

The continued use of Shannon Airport by the United States in the 'War on Terrorism' generated particular concern in 2006 and is covered further in the *International Law in Ireland Report*.⁹⁰ This was particularly so in relation to speculation concerning the suspected use of the airport in the practice of extraordinary rendition, which was the subject of Council of Europe and European Union investigations. The Marty Report (Council of Europe)⁹¹ and the Flava Report (European Union)⁹² both suggest (with varying degrees of conviction) that Ireland may have some tangential involvement in extraordinary rendition. According to the Marty Report Ireland is guilty of 'passive collusion' (p 66), while the Flava Report found that there were some 147 suspect stopovers in Ireland and recommended that the Gardaí ought to conduct random searches of American airplanes in Shannon (para 123).

The Government reacted negatively to the conclusions of both reports and asserted that Ireland has fulfilled its positive international obligations in relation to Shannon Airport by virtue of having received diplomatic assurances from the United States that no rendition is carried out through the airport.⁹³ Thus, while the Irish government accepts that it has a positive obligation in relation to extraordinary rendition⁹⁴ and that this practice is illegal in international (and domestic) law,⁹⁵ its position is that the receipt of diplomatic assurances from the United States fulfils Ireland's obligations⁹⁶ (ie they are adequate promises provided by a credible promisor and that relate to matters within the complete control of the promisor⁹⁷).

Michael D Higgins, Labour TD (Member of Parliament), and Spokesperson on Foreign Affairs, tabled a motion calling on the government to, inter alia, establish a credible independent investigation into the existence of secret and extralegal arrangements between Ireland and any other state regarding the use of Irish territory, and to

⁹⁰ Ireland's approach to matters concerning the 'War on Terrorism' and, in particular, extraordinary rendition is considered in full in de Londras, 'International Law in Ireland 2006', this volume of the *Irish Yearbook of International Law*, p 241.

⁹¹ Committee on Legal Affairs and Human Rights (Rapporteur: Dick Marty), *Alleged Secret Detentions and Unlawful Inter-state Transfers Involving Council of Europe Member States*, Draft Report—Part II, 7 June 2006, AS/JUR (2006).

⁹² TCIP (Rapporteur: Giovanni Claudio Flava), *Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners*, 30 January 2007, A6-0020/2007.

⁹³ These positive obligations arise under, inter alia, Art 3 of the European Convention on Human Rights

⁹⁴ "Article 52 'Request in Respect of Unacknowledged Deprivation of Liberty: Reply of the Government of Ireland', 21 February 2006, p. 17

⁹⁵ See, e.g., 22 February 2006, Minister for Foreign Affairs, *Dáil debates*, col 545; 1 March 2006, Minister for Foreign Affairs, *Dáil debates*, col 1809; 29 June 2006, Minister for Foreign Affairs, *Dáil debates*, cols 1690–1691; 20 June 2006, Minister for Foreign Affairs, *Dáil debates*, cols 1770–1771

⁹⁶ See, eg, 22 February 2006, Minister for Foreign Affairs, *Dáil debates*, col 685; 1 March 2006, Minister for Foreign Affairs, *Dáil debates*, col 1810; 7 March 2006 Minister for Foreign Affairs, *Dáil debates*, col 290; 29 June 2006 Minister for State for the Department of Foreign Affairs, Deputy Treacy, *Dáil debates*, cols 1578–1579

⁹⁷ For a discussion of the compatibility of these diplomatic assurances with international standards see, eg, de Londras, 'Ireland's Potential Liability for Extraordinary Rendition Through Shannon Airport' (2007) 25(7) *Irish Law Times* 106

use the full powers available under domestic law to investigate and inspect planes.⁹⁸ The motion, however, was not successful. According to the Government the *Gardaí* (police) have authority to board and inspect planes under the Tokyo Convention, the Air Navigation and Transport Acts 1988 and 1998,⁹⁹ and the Criminal Justice (UN Convention against Torture) Act 2000. As a result, a programme of random inspections was unnecessary and, furthermore, would be an unproductive approach to the handling of these matters with the United States government. This call for inspection of planes in Shannon Airport mirrors the position of the Irish Human Rights Commission formulated in 2005¹⁰⁰ and reiterated in 2006.¹⁰¹

Irish Human Rights Commission Reports

In November 2006, the Irish Human Rights Commission published a Discussion Document on Economic, Social and Cultural Rights, reflecting the commitment to this area in its Strategic Plan, 2003–6. Irish jurisprudence in this area remains underdeveloped, with, as the Commission notes, a reluctance on the part of the judiciary, in particular, to recognise the justiciability of rights claims. The document aims to map out how a framework for the protection of economic, social and cultural rights might be designed and implemented. The document includes an analysis of the increasingly ‘sophisticated and effective’ mechanisms for protecting economic social and cultural rights in international law, and draws on models for enforcement from a number of common law jurisdictions, where engagement with rights claims in this field has led to more positive outcomes.

Other publications of note include a *Report on the Determination of Life Sentences* in the light of the ECHR and the jurisprudence of the European Court of Human Rights. The Report’s primary conclusion is that Irish law does not, currently, comply with the ECHR.¹⁰² The Commission’s *Report on the Rights of De Facto Couples* contributes to the growing body of law reform proposals and policy documents on partnership rights and relationship recognition in Ireland.¹⁰³ The Report examines Irish law in the light of international legal standards, concluding that Ireland falls far short of those standards and is also, increasingly, falling behind other European jurisdictions in developing expanded relationship recognition regimes.

⁹⁸ 13 June 2006, Michael D Higgins TD, Dáil debates, cols 768–775. This call for inspection of planes in Shannon Airport mirrors the position of the Irish Human Rights Commission formulated in 2005 (IHRC Commission Resolution on ‘Rendition’) and reiterated in 2006 (see, eg, 28 November 2006, IHRC Submission to the European Parliament’s Temporary Committee on Rendition; 24 May 2006, IHRC response sent to Minister for Foreign Affairs on 24th May 2006 on the subject of ‘rendition’)

⁹⁹ These Acts empower an authorised person (including a Garda) to board a civilian aircraft where it is suspect that, inter alia, a crime is being committed—Air Navigation and Transport Act 1988, s 33.

¹⁰⁰ IHRC Commission Resolution on ‘Rendition’

¹⁰¹ See, eg, 28 November 2006, IHRC Submission to the European Parliament’s Temporary Committee on Rendition; 24 May 2006, IHRC response sent to Minister for Foreign Affairs on 24 May 2006 on the subject of ‘rendition’

¹⁰² See McCutcheon and Coffey p 101.

¹⁰³ See *Report of the Law Reform Commission on the Rights and Duties of Cohabitants* (2006); *Consultation Paper on the Rights and Rights and Duties of Cohabitees* (2004), the *All Party Oireachtas Committee Tenth Progress Report on the Family, the Civil Partnerships Bill* (2004).

