



Introduction

- i. Brief overview of relevant provisions of ECHR Act 2003 & ECHR;
- ii. Past Housing Cases;
- iii. Issues encountered by the Centre which could utilise ECHR.



Overview of ECHR Act 2003 & ECHR

- ECHRA 2003 not ECHR-Art.29.6 Constitution;
- Section 2;
- Section 4;
- Section 3;
- Section 5.



Section 2 ECHRA 2003

- Interpretative obligation;
- Limited to Courts;
- Applies to Primary and Delegated Legislation, Common Law;
- Limited by Separation of Powers/Constitution;
- Restricted approach: *DCC v Gallagher/Pullen*



Section 4 ECHRA 2003

- Requires courts to take notice and “*due account*” of the judgments of the European Court of Human Rights.
- Such jurisprudence is guidance only and not binding.



Section 3 ECHR 2003

- Requires “*organs of the State*” to perform their functions compatibly with the Convention;
- Except where they are required by statute to do otherwise;
- Definition of “organ of the State”;
- Expansive approach re savings clause in *Pullen*-organs of the State must perform functions in least violatory manner possible;
- Section 3(2) Damages- “*where no other remedy in damages is available*”. Includes General, Special and Anticipatory Damages;
- *Pullen*-no injunction under section 3(2)-distinguish on the facts-Other administrative law remedies available.



Section 5 ECHRA 2003

- Remedy of last resort;
- Allows the Superior Courts to declare that a statutory provision or rule of law is incompatible with the Convention and cannot be interpreted up in a manner which ensures its compatibility;
- Does not affect “*the validity, continuing operation, or enforcement*” of the provision;
- No automatic damages, entitlement to apply only;
- Success depends on political will;
- Weak remedy.



Relevant Articles of the ECHR

- Article 3;
- Article 6;
- Article 8;
- Article 14.



Article 3

- Prohibits torture, inhuman or degrading treatment or punishment;
- Includes actions of local authorities that force people to live in grossly substandard conditions that endanger health;
- *Bernard v Enfield Borough Council.*



Article 6

- Protects the right to a fair trial;
- Includes fair procedures in administrative actions concerning housing;
- *Connors Case*.



Article 8

- Protects private and family life;
- Home is not dependant on a person's lawful occupation;
- Interference must be proportionate;
- *McCann* case-proportionality of the interference should be determined by an independent tribunal;
- Alternative legal mechanism available-s14 Conveyancing Act 1881.



Article 14

- Prohibits discrimination;
- Only in relation to other Convention Articles.



Procedure

- First Section 2, then sections 3/5;
- Judicial Review (JR) v Plenary;
- Acquiescence/Delay-*Quinn v Athlone Town Council*;
- Traditional Restrictive approach to JR-review of decision making procedure rather than the merits of the decision itself;
- Strasbourg/*Meadows* approach- Proportionality.



Past Housing Cases

- Evictions;
- Standards of Housing.



Evictions

- Section 62 Housing Act 1966;
- *DCC v Fennell*-ECHRA does not have retrospective effect;
- *Donegan v DCC*-alleged anti social behaviour (ASB). Factual Dispute. Declaration of Incompatibility under art. 8 ECHR.
- *DCC v Gallagher*-Succession to tenancy. Factual Dispute. Declaration of Incompatibility under art. 8 ECHR.



Evictions

- *Pullen v DCC*-alleged ASB. Factual Dispute. Breach of s3(1) re arts 6 & 8. Damages under s3(2). No injunction.
- Distinguished *Leonard v DCC*- no factual dispute. Guided by *McCann v UK*.
- *Manchester City Council v Pinnock*- Proportionality to be considered by independent tribunal.
- EctHR-*Kay v UK*, *McCann v UK*.



Standards of Housing

- *O Donnell & Others v SDCC & O Donnell (a minor) v SDCC*-disabled family members living in severely overcrowded accommodation;
- Failure to provide suitable accommodation-breach of article 8.



ECHRA 2003

- Opened up administrative law and practice to healthy scrutiny and comparison with the norms and standards developed by the EctHR;
- Before *Donegan, Gallagher & Pullen*, s62 had withstood Constitutional scrutiny;
- However, s62 still on the statute books and still used;
- More expansive interpretation of the act required.



Issues encountered by the Centre which can utilise ECHR

- 1 Evictions/Succession;
- 2 Discrimination between local authority and private tenants;
- 3 Fair Procedures: Anti Social Behaviour (ASB);
- 4 Duty re ASB;
- 5 Housing Standards/Priority Transfers;
- 6 Accessibility: Obstacles to Housing;
- 7 Civil Legal Aid in Housing Cases.



Evictions/Succession

- Cases still being taken by the Centre;
- Many settled;
- JR reliefs sought in addition to declaration of incompatibility and s3(2) damages.



Discrimination

- Residential Tenancies Act 2004-private tenants only;
- Due to be extended to Voluntary Housing Associations;
- Access to Justice issues;
- Article 14: *Larkos v Cyprus*.



Fair Procedures: ASB

- Serious Consequences of allegations of ASB-Section 14 & 15 Housing (Miscellaneous Provisions) Act 1997-Refusal of Rent Supplement;
- Fair procedures deficiencies in Local Authority ASB strategies;
- ❖ Definition of ASB is very broad and the differing consequences for minor and major breaches are not set out;
- ❖ Inadequacy of investigation procedure;
- ❖ Section 62 still used;
- ❖ No spent complaints policy;
- ❖ Section 14 of Housing (Miscellaneous Provisions) Act 1997;
- ❖ Section 15 of Housing (Miscellaneous Provisions) Act 1997;
- ❖ Lack of an Independent Appeal Mechanism.
- Article 6 & 8 ECHR.



Duty re ASB

- Legal obligation of local authorities to manage and control its housing stock;
- Tenants whose quality of life has been directly affected by ASB, have, under art. 8 ECHR a right to respect for home life;
- Irish Courts may be reluctant to find positive duties;
- *Mowan v Wandsworth London Borough Council.*



Housing Standards/Priority Applications

- Due to reduction in budgets, many local authority homes are not maintained to an adequate standard and regeneration projects have been delayed or put on hold;
- O'Donnell cases-art. 8 claim for disabled persons living in severely sub-standard public authority housing;
- Priority transfer applications on medical grounds.



Accessibility: Obstacles to Housing

- Regulation 22, Social Housing Assessment Regulations 2011 (SI 84/2011)-applicants with equity in property, where no formal legal separation are not eligible for housing;
- Not eligible for Rent Supplement (SI 412/2007);
- Non EEA/Romanian & Bulgarian Nationals;
- Art. 8 ECHR-detrimental effect that the failure to provide housing support has on private and family lives.



Legal Aid

- Section 28(9)(a)(ii) of the Civil Legal Aid Act 1995- no legal aid for “*disputes concerning rights and interests in or over land*”;
- 28 (9) (c) (i) provides private tenants are entitled to legal aid in respect of tenancy disputes (not in the PRTB) but local authority tenants are not so entitled;
- Legal Aid Board is an organ of the State with obligations under s 3 ECHR- arts 14, 6 and 8 ECHR
- Section 2 interpretative obligation.



Thank You.