[IE] Publication of Bill to Incorporate ECHR

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Tarlach McGonagle
Institute for Information Law (IViR), University of Amsterdam

In April 2001, the European Convention on Human Rights Bill was published by the Irish Government. The purpose of this piece of draft legislation is to incorporate the European Convention on Human Rights into the national legal order, thereby making rights under the Convention enforceable in the Irish courts. One result of this is that the media, in particular, will benefit from the strengthening of existing constitutional protection for freedom of expression by virtue of the incorporation of Article 10 of the European Convention.

The introduction of the Bill was deemed necessary as Ireland has a dualist legal régime and Bunreacht na hÉireann (the Constitution of Ireland), 1937, provides at Article 15.2.1 that the power of making laws for the State is vested exclusively in the Oireachtas (Houses of Parliament). The Constitution also states that "no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas" (Article 29.6).

The Bill will, when enacted, give further effect, subject to the Constitution, to certain provisions of the European Convention and to a selection of Protocols thereto. The provisions in question are Articles 2-14 of the Convention and the relevant Protocols are Nos. 1, 4, 6 and 7. These provisions and Protocols are, in all cases, subject to any derogation the State may enter pursuant to Article 15 of the Convention ("Derogation in time of emergency"). The form of incorporation provided for by the Bill - at the sub-constitutional level - means that in the event of conflict between the provisions of the Constitution and of the Convention, the former would prevail. However, it is expected that in practice, judicial interpretation will seek to harmonise the provisions of both instruments.

Section 2(1) of the Bill states that the courts shall interpret and apply any statutory provision or rule of law "in a manner compatible with the State's obligations under the Convention provisions." This section will apply to any statutory provision or rule of law entering into force after, or already in force at the time of, the Bill's promulgation as law. The Bill also provides that the High Court and the Supreme Court (when exercising its appellate jurisdiction) may make a declaration that a statutory provision or rule of law is incompatible with the State's obligations under the Convention provisions (section 5(1)). However, such a declaration of incompatibility "shall not affect the validity, continuing operation or enforcement of the statutory provision or rule of law in respect of

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which it is made" (section 5(2)(a)). It will then be a matter for the Government to consider what steps should be taken to remedy the situation.

Although Ireland ratified the Convention in 1953, it is, apart from Armenia and Azerbaijan (which acceded to the Council of Europe on 25 January 2001), the only one of the Council of Europe's 43 Member States which has yet to give domestic effect to the European Convention. In the cases of each of the two newest Member States of the Council, this objective will become a fait accompli on the imminent completion of their respective ratification processes.

The European Convention on Human Rights Bill, 2001, No. 26 of 2001, available at

http://www.gov.ie/bills28/bills/2001/2601/default.htm

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