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Legal Briefings

European Convention on Human Rights Act 2003

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European Convention on Human Rights Act 2003

The European Convention on Human Rights Act 2003 ('2003 Act') came into effect on 1 January 2004 as part of the requirements of the Good Friday Agreement. The Act is based on the European Convention on Human Rights and Fundamental Freedoms agreed by the Council of Europe in 1950.¹ Its appellate court (the European Court of Human Rights (ECtHR)) meets in Strasbourg and significant Irish related judgments from that Court include the *Alrey and Norris* cases.²

The Convention has been incorporated into Irish law at sub-constitutional level, and the long title of the Act describes it as an Act 'to enable further effect to be given, subject to the Constitution, to certain provisions of the European Convention on Human Rights and Fundamental Freedoms...'

The main Articles of the European Convention on Human Rights reproduced in the 2003 Act relate to a whole range of human rights:

- Article 1** obligation to respect human rights
- Article 2** right to life
- Article 3** prohibition of torture
- Article 4** prohibition of slavery
- 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 life
- Article 9** right to freedom of thought, conscience and religion
- Article 10** right to freedom of expression
- Article 11** right to freedom of assembly and association

Article 12 right to marry

Article 13 right to an effective remedy

Article 14 prohibition of discrimination

Article 15 derogations

Article 16 exemption for political activities of aliens

Article 17 prohibition of abuse of rights

Article 18 limitations on permitted restrictions of rights

Article 1 of Protocol 1 right to peaceful enjoyment of possessions

Article 2 of Protocol 1 right not be denied education

Section 2 of the 2003 Act provides that existing legislation in Ireland must be interpreted in a manner compatible with the European Convention on Human Rights (ECHR). This is not absolute and the ‘interpretative obligation’ is only as far as is possible and subject to the existing rules of law which relate to this interpretation.

The 2003 Act represents an important legal development for local authorities in Ireland.³ It ensures that human rights are protected within the legal, policy-making and operational dimensions of Irish local authorities.⁴ Section 3 states that every organ of the State, which includes local authorities, must abide by the State’s ECHR obligations when carrying out its functions.⁵ Under section 4, the national courts are required to take notice of all decisions of the European Court of Human Rights (ECtHR) in deciding cases where the 2003 Act is raised.

A person who has suffered injury, loss or damage as a result of a contravention of this statutory obligation may, if no other remedy in damages is available, institute proceedings in the High Court, and the Court may award damages as it considers appropriate. Section 5 provides for the possibility of a declaration of incompatibility, i.e. the court makes a declaration that the statutory provision or rule of law is incompatible with the State’s obligations under the ECHR. However, where a declaration of incompatibility is granted, the law in question remains in force unless it is changed or abolished by the Oireachtas.

Where a declaration is made, the party involved can write to the Attorney General to receive compensation for any injury or loss suffered by him/her due to the incompatibility concerned, and the Government may grant an *ex gratia* payment of compensation for an amount it deems appropriate (it is however not obliged to grant this compensation). The remedy itself is only available where no other is available or adequate. It is seen as a measure of last resort.⁶ Clearly, this will not lead to any rewriting of laws by the courts, but requires the Government to amend the law as it sees fit.⁷

1. European Convention on Human Rights and Court Decisions

Article 6

Article 6(1) of the ECHR guarantees that everyone has the right to a fair and public hearing of his/her 'civil rights' and obligations within a reasonable time by an independent and impartial tribunal provided by the law. In essence it is understood as the right to a court.⁸ Art. 6 may require new approaches by Irish local authorities since they are involved in the determination of civil rights on a daily basis.⁹

In determining civil rights all public bodies must comply with the procedural requirements flowing from art. 6, such as hearing both sides within a reasonable time, 'equality of arms', offering an independent and impartial tribunal established by law for appeals, procedural protection, adequate time and facilities for preparation of defence, etc.¹⁰

The ECtHR has held in *Bryan v UK* that matters, such as the subject matter of the decision appealed, how the decision was arrived at, and the contents of any dispute, were important factors for art. 6 compliance.¹¹

The administrative decision that impacts on art. 6 rights must be open to appeal and ultimately reviewable by the courts.¹²

While it is not necessary for the appeal to be able to override the original decision with its own opinion, if the case concerns disputed facts, the main decision-making process must have proper safeguards so that the person aggrieved can argue his/her case.

In *Tsfayo v UK*,¹³ there was a violation of art. 6(1) as the Appeal Board was lacking in independence and was viewed as being partial since it contained Councillors of the local authority where the decision was being challenged.

Article 8

Art. 8 guarantees everyone the right to respect for his/her private and family life, home and correspondence. 'Home' is an autonomous concept and is not determined by domestic law. It also does not depend on a person's lawful occupation of the premises.¹⁴

The public authority can only interfere with the exercise of this right when it is:

- (a) In accordance with the law, and
- (b) Is necessary in a democratic society for national security, public safety or the economic well-being of the country, for the prevention of crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

An interference will be ‘necessary in a democratic society’ for a legitimate aim if:

- (a) It answers a pressing social need, and
- (b) It is proportionate to the legitimate aim pursued (*Chapman v UK*).¹⁵

The ECtHR defers to the margin of appreciation that national authorities have, as they are, in principle, in a better position than the ECtHR to evaluate local needs and conditions. (The ‘margin of appreciation’ is the leeway given by the ECtHR to the Contracting States when it decides whether there has been a violation of the ECHR).¹⁶ In the housing-related cases, interference with the privacy of the home was found to be justified on the grounds of legitimate social and economic policies, and of the implementation of social justice, where evictions orders were suspended and rents frozen.¹⁷

In *Blecic v Croatia*,¹⁸ the ECtHR stated that in matters such as housing, State intervention is often needed to secure social justice and public benefit and that therefore the margin of appreciation is particularly important.

The case of *Connors v UK* concerned gypsies being evicted from a local authority site under a process which did not comply with art. 6 (similar to S 62 of the Housing Act 1966).¹⁹ The ECtHR stated in that case that the margin of appreciation of the national authorities in relation to art. 8 depends on the case, and on the level of intrusion into the personal sphere of the applicant. The procedural safeguards available will be especially important and such procedural safeguards must be strong where the case involves an individual’s key rights such as home.

The ECtHR stated that gypsies are in a particularly vulnerable position and special consideration should be given to their needs and their different lifestyle both in the regulatory framework and in reaching decisions. It concluded the judicial review in the case was not a sufficient procedural safeguard, as there was no chance of examining the facts in dispute between the parties, and the eviction could not be justified as a pressing social need or as proportionate.

In *McCann v UK*,²⁰ the applicant successfully argued that he had no opportunity to have the proportionality of a decision to evict him examined by an independent tribunal. The court found there was a lack of procedural safeguards and therefore a violation of art. 8. It stated that judicial review was not suitable for the resolution of sensitive factual questions which are better left to the County Court who orders possession.²¹ It stated that *Connors* was not confined to cases involving gypsies.

In *Doherty & Anor v South Dublin County Council and Ors*²² Charleton J refused to find a breach of the ECHR obligations in circumstances where an elderly Traveller couple in poor health, living in a caravan with only basic electricity, no internal plumbing, toilet or central heating were refused a centrally heated, insulated and plumbed caravan. The elderly couple had refused an offer of a two-bedroomed ground floor apartment.

Charleton J adopted a minimalist and emergency type approach to the interpretation of the ECHR obligations on the State, stating that “Where, however, a plea is made that the court should declare the absence of welfare support to be wrong in a particular situation of itself, the applicant should show a complete inability to exercise a human right from his or her own means and a serious situation that has set the right at nought with the prospect of serious long term harm. Any proposed intervention by the court should take into account that it is the responsibility of the legislature and executive to decide the allocation of resources and the priorities applied by them.”²³

However, in *O’ Donnell v South Dublin County Council*²⁴ Laffoy J found that there had been a breach of ECHR art. 8 obligations where the local authority had failed to provide a second caravan for three severely disabled Traveller children living in a mobile home on a temporary site. The court ordered that the local authority provide a wheelchair accessible caravan, with indoor and wheelchair accessible shower, toilet, sanitary facilities and central heating. Laffoy J distinguished this case from the *Doherty* case on the grounds of the level of disability and dependency of the children, the degree of care and supervision required, and the appalling housing conditions in which they were living. The court held that even in the absence of a statutory requirement, a local authority may be found to have acted (or failed to act) in breach of art. 8. Balancing the general interest and the cost of providing this second mobile home at €58,000, the court felt that this did not impact on the economic well-being of the State. However, it was pointed out that this case did not lead to a requirement on the State to provide two de luxe mobile homes for every Traveller family.

Article 13 and 14

Art. 13, the right to an effective remedy, is to provide a means at national level for individuals to obtain relief for violations of their ECHR rights.

Art. 14 has occasionally been raised in relation to housing. It states that the enjoyment of ECHR rights are to be secured without discrimination on any ground, such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, but only in connection with rights contained in the ECHR.

In *Larkos v Cyprus*, the State tenant argued that he enjoyed less security of tenure than a private tenant and that therefore art. 14 was breached.²⁵ The ECtHR agreed that he was in a similar position to a tenant renting from a private landlord. As no reasonable and objective grounds were provided by the State for not extending the protections available to private tenants to State tenants, there was discrimination under art. 14.²⁶

Other Articles

Other Articles which are applicable to local authorities in exercising their functions are: art. 3 (prohibition on torture, inhuman and degrading treatment); art. 5 (right to liberty and security); and art. 1 of Protocol 1 (right to respect for possessions).²⁷

2. Irish Case Law relating to the 2003 Act and Section 62 of the Housing Act 1966

There are a number of cases where the 2003 Act has been cited in the Irish Courts. The Irish Human Rights Commission (IHRC) and the Attorney General are informed of cases where a declaration of incompatibility is sought, but not other situations where the Act is cited.²⁸

The major impact of the 2003 Act is likely to be in the culture shift required to accept that local authorities now have ‘positive obligations’ to ensure that Convention rights are secured. The doctrine of positive obligations requires States to protect individual persons from threats to their Convention rights or to assist them to achieve full enjoyment of those rights.²⁹ There is a general obligation on the State under Article 1 to secure Convention rights for all persons under the jurisdiction of the State.

In recent times, the 2003 Act has been invoked in housing cases, mainly in connection with section 62 of the Housing Act 1966 (HA 1966). S 62 provides for a summary procedure (a procedure before the District Court) for the recovery of possession of dwellings let by local authorities.³⁰ A District Court Judge has no discretion but to issue a warrant once the formal proofs are in order. These involve proof that:

- The dwelling was provided under tenancy by the local authority under the Housing Act 1966.
- There is no tenancy in the dwelling (i.e. it has been terminated by a valid notice to quit)
- Possession was duly demanded, and
- In the event of non-compliance, the demand made it clear that an application for a warrant would follow.³¹

The courts initially took a restrictive stance against those mounting claims against local authorities under S 62. In *McConnell v Dublin City Council*,³² the court refused to overturn a decision to evict the applicants and the challenge to S 62 failed. The court held that the mandatory nature of S 62 (that the District Court judge must grant a warrant if the proofs are in order) did not amount to an unnecessary interference in the judicial area. The local authority tenant could still seek judicial review, which must be brought 'promptly'.³³

The case of *Dublin City Council v Fennell*,³⁴ another S 62 case, mainly addressed the issue as to whether the 2003 Act could be applied to cases arising before its enactment.³⁵ The Supreme Court held that it had no such retrospective effect as it would then conflict with art. 15.5.1° in the Constitution.³⁶

In *Gifford v Dublin City Council* the plaintiff sought an order preventing the defendant from taking steps to enforce a warrant for possession under S 62 pending a decision on the incompatibility of the section with ECHR obligations.³⁷ The court stated that even if a declaration of incompatibility was pronounced here, it would not affect the validity or enforcement of S 62 or a warrant for possession obtained by the Council. It ruled that the possibility of judicial review and the fact that the Council cannot recover possession of the dwelling without a court order is sufficient to ensure the necessary degree of respect for the plaintiff's rights under Articles 6, 8, 13 and 14 ECHR, and the order was refused.

In *Leonard v Dublin City Council*,³⁸ the court refused to find a breach of art. 6 (right to fair procedures). There was no challenge made by the applicant to the validity of the decision by the Council to issue a notice to quit against her, and nor was there a challenge to the notice to quit itself as served, which were considered important factors in the case.

Dunne J held that art. 6 and art. 8 obligations were satisfied through the availability of judicial review safeguards.

In *Donegan v Dublin City Council*,³⁹ the plaintiff challenged the decision to end his tenancy because of his son's alleged anti-social behaviour. The court held that S 62 was incompatible with art. 8 ECHR as it allowed the District Court to grant a warrant for possession where there was a factual dispute between the tenant and the local authority, without having an independent review of the dispute.

However, drawing on the recent ECtHR case of *McCann v UK*⁴⁰ Laffoy J held that it is the outcome of S 62 HA 1966 which gives rise to an interference with the tenant's art. 8 rights, and not the termination of the tenancy. Judicial review was held not to be a real procedural safeguard, as this procedure does not address issues arising of a factual nature.

The court stated that the interference had a legitimate aim of ensuring good estate management and preventing anti-social behaviour. However, the decision-making process which led to the measure was not fair or affording due respect to art. 8, and was not proportionate to housing management requirements. The court issued a Declaration of Incompatibility under S.5, stating that S 62 was incompatible with art. 8 of ECHR.⁴¹

In *Dublin City Council v Gallagher*,⁴² succession rights were refused to a tenant's son and the local authority sought his eviction under S 62 HA 1966. It was held that the dwelling here was clearly a home under art. 8 and that the grant of the S 62 HA 1966 warrant would be a gross interference with the defendant's right to respect for his home. As the loss of a home was the most extreme form of interference, any person at risk should be able to have the sensitive factual questions involved determined by an independent tribunal.

There was no appeal process to the Council's decision and the issue could not be opened again in the S 62 hearing. The in-house process by the Council was neither an adequate hearing nor resolution of the factual dispute and was not proportionate. Thus the defendant's rights under art. 6 and 8 ECHR and his right to fair procedures under art. 40 of the Constitution had not been properly protected in the whole process.

The court ordered a second Declaration of Incompatibility under S.5, as S 62 did not comply with art. 8 of the ECHR.

In *Pullen v Dublin City Council [No. 1]*, the local authority instituted S 62 HA 1966 proceedings against the plaintiffs.⁴³ The plaintiffs admitted having disagreements with neighbours, but strongly denied anti-social behaviour. They also claimed that the defendant could have sought their eviction by S.14 of the Conveyancing Act 1881, which

would have allowed the District Court to examine the merits of the application for possession and given the plaintiffs a full opportunity to defend allegations against them.

The court held that the housing authority's process here denied the plaintiffs the opportunity of a fair hearing by an independent tribunal on their supposed wrongdoing contrary to art. 6. It agreed that the ECtHR has shown a degree of flexibility for administrative bodies (Councils) forced to deal with issues such as housing, and that judicial review might be sufficient if it could amount to a full hearing. However, the court deemed that this was a wholly ineffective remedy in Ireland in relation to S 62 HA 1966, as the facts were hotly disputed.

The court also found that the plaintiffs' art. 8 rights were breached, as the local authority had chosen to use S 62 HA 1966 instead of S.14 of the Conveyancing Act 1881, which allowed a hearing. The court then examined whether the interference could be necessary in a democratic society (art. 8(2)). It stated that it is not enough to show that S 62 is a useful tool for dealing with anti-social behaviour. While the defendant's aim of swiftly recovering possession of houses from those engaged in anti-social behaviour was laudable, it was not proportionate, and in fact, the Council investigation had taken one year. As only 10-12 tenants were evicted using S 62 HA 1966 every year, the court stated that the section could not be seen as a vital procedure.

The court stated that the defendants therefore did not perform their functions compatible with the State's obligations under Articles 6(1) and 8 ECHR.⁴⁴

In *Byrne v Dublin City Council*,⁴⁵ the applicant sought an interlocutory injunction (a temporary order until the permanent order is made) to stop the Council from evicting her from her residence. The court held that there was a serious question to be tried as to whether S 62 HA 1966 infringes the applicant's ECHR rights. The 'serious question to be tried' here must not merely relate to whether a breach of ECHR rights is threatened, but rather to whether the threatened action would be unlawful as constituting a breach of S.3 itself.

The court also ruled that as the applicants could find themselves homeless if they were evicted, damages were not an appropriate remedy here, and the balance of convenience favoured the court granting an interlocutory injunction. It stated that, in principle, it was open to the court to grant such an order and it was incorrect to view damages as the only remedy, but would leave the decision to the court in the full hearing of the case. However, it emphasised that there was a difference between restraining an administrative action, which would infringe the State's ECHR obligations, and the suspension of S 62, which the court had no power to do.

In *Pullen v Dublin City Council [No.2]* the court was asked whether it had the power to grant a perpetual injunction (permanent order) when it had already found that the local authority had acted in a manner incompatible with the ECHR. The plaintiffs here relied on art. 13 ECHR (right to an effective remedy), and the fact that damages would be an inadequate remedy, to argue that the court had full power to make such an order.

The court rejected this argument due to the fact that such would be incompatible with the general scheme of the 2003 Act, which did not directly incorporate the ECHR into our legal system, but rather gave effect to it by indirect incorporation. The 2003 Act clearly and expressly states that damages are the appropriate remedy, and it would be wrong to conclude that the legislature could have intended the plaintiff to achieve, by the back door, a remedy that it could not have achieved following a declaration of incompatibility (although there was no such Declaration in this case).

Secondly, if the court were to allow an injunction, it would be infringing on the role of the legislature and would, in effect, render S 62 HA 1988 inoperable, which the court has no power to do under the 2003 Act. Thirdly, an injunction is only granted where there is no remedy provided for in the Act itself, which cannot apply here, as the 2003 Act clearly includes the possibility of damages. This did not conflict with the *Byrne* case above; as the court there, although granting an injunction, stated that the question of a permanent injunction would have to be made by the judge at the trial of action.⁴⁶

Conclusion

The following conclusions can be drawn from the case law on S 62 and the ECHR;

- Irish courts must take notice of ECtHR case law. Local authorities, as organs of the State, must carry out their functions in a manner compatible with the obligations of the ECHR. Judicial review has had a clear impact in identifying and clarifying breaches of obligations arising from the ECHR Act 2003. Currently, the operation of S 62 of the HA 1966 has been found to be incompatible with these obligations in the recent cases of *Donegan v Dublin City Council*,⁴⁷ *Pullen v Dublin City Council*⁴⁸ and *Dublin City Council v Gallagher*.⁴⁹

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- Local authorities are afforded a margin of appreciation when deciding housing issues; however, *Connors* established that this margin is quite narrow when the case involves an individual's key rights, such as housing.
- Where there is a factual dispute as to whether the tenant has breached his Tenancy Agreement leading to notice to quit and S 62 proceedings, the local authority tenant must be afforded the opportunity of accessing an impartial and independent tribunal.
- Proper procedural safeguards under art. 6 ECHR may involve a court hearing on the merits of the case, or an independent or impartial tribunal acting as an appeal body from contested administration decisions which affect any rights contained in the ECHR.
- The court's recent refusal to grant an injunction to prevent a local authority from effecting a S. 62 eviction process effectively limits the impact of the ECHR Act, although two Declarations of Incompatibility have been made in relation to S. 62 of the HA 1966.

Notes

- 1 Council of Europe, *The European Convention on Human Rights*, ROME 4 November 1950, available at <http://www.hri.org/docs/ECHR50.html> (visited 3 June 2009).
- 2 See D. O'Connell, 'Watch Kettles Boil (Slowly): the Impact of the ECHR Act 2003' in U. Kilkelly ed, *ECHR and Irish Law* (2nd ed, Jordan Publishing, 2009), at 1. For more on the incorporation of the ECHR Act 2003, see T. O'Donnell, 'The ECHR Act 2003 and the District Court: A Personal View from a Judicial Perspective' (2007) 1 *Judicial Studies Institute Journal* 137, pp. 141-143.
- 3 P. Kenna, 'Property, Housing and the Environment' in U. Kilkelly ed, *ECHR and Irish Law* (2nd ed, Jordan Publishing, 2009).
- 4 See P. Kenna, 'Will the European Convention on Human Rights Act 2003 affect Local Government in Ireland?' (2004) 11(2) *Irish Journal of European Law* 198.
- 5 P. Kenna, 'Local Authorities, the European Convention on Human Rights Act and Judicial Review Litigation' *Irish Human Rights Law Review* 2009.
- 6 G. Hogan, 'The European Convention of Human Rights Act 2003' (2006) 12(3) *European Public Law* 331, at 335.
- 7 P. Kenna, *op cit*, note 5.
- 8 Irish Human Rights Commission, *Policy Statement on Section 62 of the Housing Act 1966 for the Recovery of Possession of Local Authority Dwelling* (IHRC, March 2009), at 6.
- 9 See Lowry, 'Practice and Procedure under the European Convention on Human Rights Act 2002' (Nov 2003) *Bar Review* 183.
- 10 Council of Europe. *Short Guide to the European Convention on Human Rights* (1998), pp. 38-50.
- 11 Judgment on 22 November 1995, (1995) 21 EHRR 425. This passage was approved in *Tsfayo v UK*.
- 12 *Begum v London Borough of Tower Hamlets* [2000] 1 WLR 306.
- 13 Judgment on 14 November 2006, (2009) 48 EHRR 18.
- 14 *Buckley v UK*, Judgment on 25 September 1996, (1996) 23 EHRR 101.
- 15 Judgment on 18 January 2001, (2001) 33 EHRR 399.
- 16 Taken from B. Tobin, 'EB v France: Endorsing Un-"Convention"-al Families?' (2008) 11(4) *Irish Journal of Family Law* 78, at 78.
- 17 *Spadea and Scalabrino v. Italy* (1995) 21 EHRR 482.
- 18 Judgment on 14 September 2005, (2004) 41 EHRR 185.
- 19 Judgment on 27 May 2004, (2005) 40 EHRR 9.
- 20 Judgment on 13 May 2008, [2008] ECHR 385.
- 21 This was recently agreed with in *Cosic v Croatia* (Application no. 28261/06, Judgment of 15 January 2009) which stated that any person at risk of an interference of his/her home should in principle be able to have the proportionality and reasonableness of the measure examined by an independent tribunal as contained in Article 8 ECHR, even though, under domestic law, his/her right of occupation has come to an end.
- 22 [2007] IEHC 4.
- 23 *Ibid.*, Para 46.
- 24 [2007] IEHC 204.

- 25 Judgment on 18 February 1999, (1999) 30 EHRR 597.
- 26 Irish Human Rights Commission, *Policy Statement on Section 62 of the Housing Act 1966 for the Recovery of Possession of Local Authority Dwelling* (IHRC, March 2009), at 11.
- 27 For more detail on ECtHR cases on the ECHR, see P. McGarry, 'The European Convention on Human Rights Act 2003: Implications for Local Planning and Housing Authorities' (2006) 13(1) *IPELJ* 3; and especially P. Kenna, *op cit*, note 5.
- 28 *Ibid*, at 77.
- 29 See Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights* (Hart Publishing, 2004).
- 30 For a more in-depth look at the provisions of S 62, see P. Kenna, *Housing Law and Policy in Ireland* (Clarus Press, 2006), pp. 83-6.
- 31 *Dublin City Council v Fennell* [2005] 2 ILRM 288, pp. 292-3.
- 32 Unreported, High Court, 18 January 2005, Smyth J.
- 33 For more on case, see P. Kenna, 'Land Law, Property, Housing and Environment Law', *op cit*, note 5, at 185.
- 34 [2005] 2 ILRM 288.
- 35 See G. Hogan, 'The European Convention of Human Rights Act 2003', *op cit*, note 6, pp. 337-340.
- 36 Article 15.5.1° of the Constitution states: 'The Oireachtas shall not declare acts to be infringements of the law which were not so at the time of their commission.'
- 37 Unreported, High Court, 20 November 2007, Smyth J.
- 38 Unreported, High Court, 31 March 2008, Dunne J.
- 39 Unreported, High Court, 8 May 2008, Laffoy J.
- 40 (2008) 47 EHRR 913.
- 41 The decision is being appealed to the Supreme Court. For more on *Donegan*, see 'Donegan v DCC and the Attorney General: Summary of Judgment by Ms Justice Mary Laffoy' (April-June 2008) 18(2) *Flac News* 4.
- 42 Unreported, High Court, 11 November 2008, O'Neill J.
- 43 Unreported, High Court, 13 December 2008, Irvine J.
- 44 *Byrne v Dublin City Council*, unreported, High Court, 18 March 2009, Murphy J. [2009] IEHC 122, at 150.
- 45 *Ibid*.
- 46 Unreported, High Court, 28 May 2009, Irvine J.
- 47 [2008] IEHC 288.
- 48 [2008] IEHC 379.
- 49 [2008] IEHC 354.

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