

What gaps are there in the ECHR? What additional protections should be included in a Bill of Rights for Northern Ireland? To what extent are these issues addressed in the Framework Convention and the Languages Charter?

Introduction

Although the right to freedom of religion is included in Article 9 of the ECHR and issues relating to religion and education are addressed in Article 2 of the First Protocol, there is no specific protection in the ECHR for those belonging to other types of minority groups. There is a guarantee of non-discrimination in Article 14 but this is not a freestanding clause and must be invoked in conjunction with another provision. The Framework Convention clearly fills the most obvious gaps in relation to national minorities in Europe and it will be recalled that the UK has adopted an unusually broad approach to the definitional issue, basing its reports to the Advisory Committee on the definition of the term 'racial group' under the Race Relations Act 1976.

As previously indicated, the Explanatory Report to the Framework Convention makes it clear that the instrument contains 'mostly programme-type provisions setting out objectives which the Parties undertake to pursue' rather than 'directly applicable' rights. This is significant when we look to the issue of justiciability, which refers to the ability of courts to provide a remedy for aggrieved individuals claiming a violation of rights recognised under international human rights law. In comparison, relevant provisions of the ECHR were always intended to be justiciable and subject to the jurisdiction of the European Court of Human Rights. With the coming into force of the Human Rights Act 1998, individuals can also rely on their Convention rights in UK courts.

Drafting began on the International Covenant on Civil and Political Rights (ICCPR) (eventually adopted in 1966) at much the same time as the ECHR and an (Optional) Protocol was included that authorised the UN Human Rights Committee to receive petitions from individuals alleging violations of the rights therein. The minority rights provision in Article 27 of the ICCPR is therefore a good example of a justiciable right as the Human Rights Committee exercises quasi judicial functions even if not an international court as such. It provides that: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other

members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

For Discussion

Article 2(1) of the UN Declaration on the Rights of Minorities is a positive formulation of Article 27 of the ICCPR and provides that:

‘Persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.’

A similar provision could be included in a domestic Bill of Rights and there is a precedent for this in the South African Constitution, which provides in s 31 that:

31. Cultural, religious and linguistic communities

1. Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community
 - a. to enjoy their culture, practise their religion and use their language; and
 - b. to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
2. The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

Is there consensus on the use of the term community rather than the term minority? (Note some objections.)

What adjectives should be used to qualify the term?

Given that the Framework Convention does not include justiciable rights, the advantages of incorporation appear questionable and in a number of States domestic effect has been given to the requirements either through the introduction of sectorial legislation or through a generic law on national minorities. The Council of Europe experts, clearly aware both of the nature of the provisions in the Framework Convention and the experiences in other States, suggested the inclusion of a provision in the Bill of Rights stating that:

'The law of Northern Ireland shall give effect to the Framework Convention for the Protection of National Minorities.'¹

In relation to language rights the view of the Council of Europe experts was that a provision could be included: 'Language rights will be protected through legislation to implement the commitments made under the Belfast (Good Friday) Agreement, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.'²

Is there support for or resistance to the inclusion of such provisions in the Bill of Rights?

¹ Council of Europe DG II (2004) 4, para 55

² para 75

What additional protections should be included in a Bill of Rights for Northern Ireland?

Having considered the minutes of the last meeting and the email responses that I have received so far, it appears that there are a number of issues that members of the group would like to see addressed in a Bill of Rights for Northern Ireland – the need to be able to communicate one's culture to the next generation, the right of individuals to be taught their minority language or to receive instruction in the language, interculturalism, the right to self-identification, the role of the media, the parades issue and the issue of religious education. The rest of the paper highlights provisions in the ECHR, the Framework Convention and the Languages Charter that are relevant to these issues. Members have suggested that the protection of non-indigenous languages not protected by the European Charter for Regional or Minority Languages, the status of British and Irish Sign Languages and the language rights of migrant workers also need to be addressed. It is submitted that the situation of these languages could be considered in relation to each of the substantive issues raised. There have also been some suggestions that we spend time discussing the concepts of culture, identity, parity of esteem and culture and language or group rights.

Provisions of the ECHR, the Framework Convention (FC) and the Languages Charter (LC) Relevant to the Substantive Issues Identified by Working Group Members

Need to be able to communicate one's culture to the next generation

Article 5 FC

1. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.
2. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

Right of individuals to be taught their minority language or for receiving instruction in language

Article 12 FC

1. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

Article 14 FC

1. The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.
2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.
3. Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

Article 7(1) LC (Ulster-Scots)

In respect of regional or minority languages, within the territories in which such languages are used and according to the situation of each language, the Parties shall base their policies, legislation and practice on the following objectives and principles:

- (f) the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages;

Article 8 LC (undertakings for Irish in bold)

1. With regard to education, the Parties undertake, within the territory in which such languages are used, according to the situation of each of these languages, and without prejudice to the teaching of the official language(s) of the State:

a.

- i. to make available pre-school education in the relevant regional or minority languages; or
- ii. to make available a substantial part of pre-school education in the relevant regional or minority languages; or
- iii. to apply one of the measures provided for under i and ii above at least to those pupils whose families so request and whose number is considered sufficient; or
- iv. if the public authorities have no direct competence in the field of pre-school education, to favour and/or encourage the application of the measures referred to under i to iii above;

b.

- i. to make available primary education in the relevant regional or minority languages; or
- ii. to make available a substantial part of primary education in the relevant regional or minority languages; or
- iii. to provide, within primary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or
- iv. to apply one of the measures provided for under i to iii above at least to those pupils whose families so request and whose number is considered sufficient;

c.

- i. to make available secondary education in the relevant regional or minority languages; or
- ii. to make available a substantial part of secondary education in the relevant regional or minority languages; or

- iii. to provide, within secondary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or
- iv. to apply one of the measures provided for under i to iii above at least to those pupils who, or where appropriate whose families, so wish in a number considered sufficient;

d.

- i. to make available technical and vocational education in the relevant regional or minority languages; or
- ii. to make available a substantial part of technical and vocational education in the relevant regional or minority languages; or
- iii. to provide, within technical and vocational education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or
- iv. to apply one of the measures provided for under i to iii above at least to those pupils who, or where appropriate whose families, so wish in a number considered sufficient;

e.

- i. to make available university and other higher education in regional or minority languages; or
- ii. to provide facilities for the study of these languages as university and higher education subjects; or
- iii. if, by reason of the role of the State in relation to higher education institutions, subparagraphs i and ii cannot be applied, to encourage and/or allow the provision of university or other forms of higher education in regional or minority languages or of facilities for the study of these languages as university or higher education subjects;

f.

- i. to arrange for the provision of adult and continuing education courses which are taught mainly or wholly in the regional or minority languages; or

- ii. to offer such languages as subjects of adult and continuing education; or
 - iii. if the public authorities have no direct competence in the field of adult education, to favour and/or encourage the offering of such languages as subjects of adult and continuing education;
 - g. to make arrangements to ensure the teaching of the history and the culture which is reflected by the regional or minority language;
 - h. to provide the basic and further training of the teachers required to implement those of paragraphs a to g accepted by the Party;
 - i. to set up a supervisory body or bodies responsible for monitoring the measures taken and progress achieved in establishing or developing the teaching of regional or minority languages and for drawing up periodic reports of their findings, which will be made public.
2. With regard to education and in respect of territories other than those in which the regional or minority languages are traditionally used, the Parties undertake, if the number of users of a regional or minority language justifies it, to allow, encourage or provide teaching in or of the regional or minority language at all the appropriate stages of education.

Interculturalism

Article 6 FC

1. The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.
2. The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

Article 12 FC

1. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.
2. In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.
3. The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

Right to Self-Identification

Article 3 FC

1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.
2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in

the present framework Convention individually as well as in community with others.

The Media

Article 10 ECHR

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 9 FC

1. The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.
2. Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.
3. The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions

of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.

4. In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.

Article 11 LC – Media (undertakings for Irish in bold)

1. The Parties undertake, for the users of the regional or minority languages within the territories in which those languages are spoken, according to the situation of each language, to the extent that the public authorities, directly or indirectly, are competent, have power or play a role in this field, and respecting the principle of the independence and autonomy of the media:
 - a. to the extent that radio and television carry out a public service mission:
 - i. to ensure the creation of at least one radio station and one television channel in the regional or minority languages; or
 - ii. to encourage and/or facilitate the creation of at least one radio station and one television channel in the regional or minority languages; or
 - iii. to make adequate provision so that broadcasters offer programmes in the regional or minority languages;
 - b.
 - i. to encourage and/or facilitate the creation of at least one radio station in the regional or minority languages; or
 - ii. to encourage and/or facilitate the broadcasting of radio programmes in the regional or minority languages on a regular basis;
 - c.
 - i. to encourage and/or facilitate the creation of at least one television channel in the regional or minority languages; or

- ii. to encourage and/or facilitate the broadcasting of television programmes in the regional or minority languages on a regular basis;
 - d. to encourage and/or facilitate the production and distribution of audio and audiovisual works in the regional or minority languages;
 - e.
 - i. to encourage and/or facilitate the creation and/or maintenance of at least one newspaper in the regional or minority languages; or
 - ii. to encourage and/or facilitate the publication of newspaper articles in the regional or minority languages on a regular basis;
 - f.
 - i. to cover the additional costs of those media which use regional or minority languages, wherever the law provides for financial assistance in general for the media; or
 - ii. to apply existing measures for financial assistance also to audiovisual productions in the regional or minority languages;
 - g. to support the training of journalists and other staff for media using regional or minority languages.
- 2. The Parties undertake to guarantee freedom of direct reception of radio and television broadcasts from neighbouring countries in a language used in identical or similar form to a regional or minority language, and not to oppose the retransmission of radio and television broadcasts from neighbouring countries in such a language. They further undertake to ensure that no restrictions will be placed on the freedom of expression and free circulation of information in the written press in a language used in identical or similar form to a regional or minority language. The exercise of the above-mentioned freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or

public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

3. The Parties undertake to ensure that the interests of the users of regional or minority languages are represented or taken into account within such bodies as may be established in accordance with the law with responsibility for guaranteeing the freedom and pluralism of the media.

The Parades Issue

Article 10 ECHR

1. Everyone has the right to freedom of expression. this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11 ECHR

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the

protection of the rights and freedoms of others. this article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Religious Education

Article 9 ECHR

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

Article 2 Protocol 1 ECHR

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.

Note Reservation made at the time of signature, on 20 March 1952

At the time of signing the present (First) Protocol, I declare that, in view of certain provisions of the Education Acts in the United Kingdom, the principle affirmed in the second sentence of Article 2 is accepted by the United Kingdom only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure.

Period covered: 18/5/1954 -

Although the obligation in Article 2 is not very strong and the usefulness of the second sentence is further limited by the UK's reservation to the second sentence, it is strengthened to some extent by the requirement of non-discrimination in Article 14.

Article 14, ECHR

The enjoyment of the rights and freedoms set forth in this Convention shall 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.