The “Constitutional Tort” in Ireland: Another Perspective on the Convergence Debate Regarding Tort Law and Human Rights

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Article 40.3 of the Constitution of Ireland, as far as relevant, provides:

1° The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.
2° The State shall, in particular, by its laws protect as best it may from unjust attack and in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.

The inter-relationship between the “constitutional tort” in Ireland and orthodox common law tort claims has long been the source of judicial and academic debate. This is intensifying. At a time when, internationally, academic and judicial focus is increasingly being placed on the arguments in favour of and against the convergence of tort law and human rights law with specific reference to the European Convention on Human Rights, it is submitted that emerging approaches in the Irish courts concerning the relationship between the constitutional tort and orthodox tort doctrine may provide a distinctive additional lens through which to analyse this debate. This is particularly relevant in 2014, given a number of recent judicial signals of an increased willingness to expand the notion of the constitutional tort, after many years of apparent unwillingness to do so.

In this paper, recourse will be had to instructive and related precedents from other constitutional traditions, as well as to the ongoing convergence debate in the ECHR-context referred to above, in formulating a thesis from an Irish constitutional tort perspective on the convergence of human rights and tort law.