

PILA Bulletin, 4 March 2010

The Bulletin on Public Interest Law is issued by the Public Interest Law Alliance, a project of FLAC.

A new and comprehensive PILA website will be online in the coming months, until then you can find further information about the project at www.pila.ie. For now, the archive of PILA and PILN bulletins can be found at www.flac.ie/publications.

If you wish to have an item included please contact bulletin@pila.ie.

Please feel free to distribute the bulletin as widely as you wish. If you would like to suggest a friend for our PILA Bulletin mailing list, please forward their contact details to us at the same address.

In this week's bulletin:

- 1. Standing notice – Join the PILA lawyers' register!**
- 2. Save the dates! Upcoming PILA events**
- 3. FLAC launches Direct Provision report**
- 4. Attorney General ordered to pay costs in frozen embryo case**
- 5. Law Centre successfully settles equality case against local authority re married 17 year olds**
- 6. Inclusion Ireland launches petition calling on Government to introduce modern capacity legislation**
- 7. UK: Crown Prosecution Service publishes clarification on law concerning the assisting or encouraging of suicide**
- 8. UK: Court of Appeal in England finds it permissible to prohibit Christian employees from wearing crosses at work**
- 9. UK: European Anti-Racism Committee Reports on UK**
- 10. Reform Plan for European Court of Human Rights**
- 11. EU Rights Commissioner Outlines Programme**
- 12. France Condemned for Treatment of Travellers**
- 13. ECJ makes landmark rulings on immigrant parents**
- 14. The IBA Women Lawyers' Interest Group Outstanding International Woman Lawyer Award**
- 15. Internship opportunity with the Equality and Rights Alliance**
- 16. Call for Papers: Conference on the Convention on the Rights of the Child**
- 17. Event: Irish Society of International Law's annual Séan Lester Lecture, 11 March 2010, Dublin 7**

- 1. Standing notice – Join the PILA lawyers' register!**

One of PILA's objectives is to develop pro bono initiatives to match legal expertise with the legal needs of the NGOs with which PILA will be working. By means of an informal lawyers' register PILA intends to involve practitioners in public interest law e.g. community legal education, legal research, law reform submissions, case-work.

We would be delighted to hear from practitioners in all areas of work and in particular those with expertise in any of the following areas: charities; corporate governance; employment; equality; family; housing; human rights; immigration and asylum; landlord and tenant; mental health; public law; and social welfare.

If you are interested in the opportunity to apply your legal skills in a new context, please contact PILA's Legal Officer, Jo Kenny, at jo.kenny@flac.ie.

2. Save the dates! Upcoming PILA events

On Friday 16 April 2010 PILA is hosting a one day conference on how public interest law is operating in the current changing climate. The conference will include the following speakers among others: Andrea Durbach of PILCH in Australia, Ed Rekosh of PILI in Budapest and Mark O'Brien of Probono.net in New York.

On Friday 7 May 2010 PILA will conduct their second seminar *Using International Law for clients*. Colm O'Conneide of the European Committee of Social Rights and Kate Fox of the UNHCR will be speaking on using the European Social Charter and the UN Treaty Body mechanisms respectively.

More details for both events to follow.

3. FLAC launches Direct Provision report

FLAC successfully launched its report detailing massive shortcomings in the State's system of direct provision and dispersal of asylum seekers on 18 February 2010 in Dublin. Entitled *One Size Doesn't Fit All*, the report analyses the state's treatment of asylum seekers awaiting decisions on their status and highlights the system's failure to respect the basic human rights of people who have come to Ireland for protection from persecution in their home countries. It calls for the abolition of the system but, failing this, asks the Government to operate the system with greater transparency and accountability and to respect the fundamental human rights of those in the system.

The report and executive summary can be downloaded at <http://www.flac.ie/publications/category/reports/> and is available in paperback in the FLAC office.

4. Attorney General ordered to pay costs in frozen embryo case

In the recent case of Roche v. Roche, the Supreme Court upheld the judgment of the trial judge and found in favour of the male respondent. It will be recalled that there was a dispute as to the use of frozen embryos in that case between an estranged husband and wife. Earlier this week, the Supreme Court ordered that the Attorney General (AG) pay the

costs of both parties in the High Court and it made no order as to costs with regard to the appeal. The AG had been joined as a notice party to the proceedings.

For the Court, Murray CJ stated that 'There is no doubt that the issues in this case touched on a subject matter of singular public importance. The issues included questions of constitutional law which were profound and complex on novel aspects of both the right to life and reproductive rights stemming from modern developments in bio-medicine which permit a frozen embryo to exist outside the womb. In resolving these issues the Court acknowledged the moral status of the embryo and the point or circumstances in which the constitutional protection for the life of the unborn has legal effect.'

This case is in accordance with other Irish authorities on costs which set the bar at a very high standard for there to be any deviation from 'costs follow the event' rule.

PILA is currently undertaking research on costs in public interest cases and will have written resources on this issue available on its new website in April 2010.

5. Law Centre successfully settles equality case against local authority re married 17 year olds

The Irish Traveller Movement Law Centre recently settled a case taken against a Local Authority who refused to assess for housing a legally married couple both aged 17 years. Most Local Authority housing policies state that you must be 18 years of age to be assessed for housing. This policy is out of sync with the law on the age of majority (The Age of Majority Act 1985), which states that you become an adult once a) you reach the age of 18 years or b) once you legally marry, whichever comes first. The married couple was forced to live in cramped conditions on a crowded bay on a halting site with the parents of the husband, as the Local Authority believed they still needed legal guardians.

The Law Centre filed a complaint with the Equality Tribunal on the grounds of indirect discrimination claiming that the policy disproportionately affects Travellers as they are statistically more likely to marry while under the age of 18. The matter was expedited due to the urgent housing needs of the young couple. The matter was settled before it reached the Tribunal. The couple is now on the housing list (with medical priority), their housing application has been back-dated to the date it was originally legitimately made and they are now entitled to Rent Supplement and social welfare allowance by virtue of an agreement with the Community Welfare and Social Welfare Offices.

6. Inclusion Ireland launches petition calling on Government to introduce modern capacity legislation

Inclusion Ireland has launched a petition calling on the Government to introduce modern capacity legislation. 30 March will mark the third anniversary of Ireland signing the UN Convention on the Rights of Persons with Disabilities. One of the central areas of the Convention is Article 12, Equal Recognition and Capacity on an equal basis with others. Ireland's current capacity legislation dates back to the Lunacy Act of 1871.

Their petition may be found and signed at <http://www.inclusionireland.ie/signup.asp>

7. UK: Crown Prosecution Service publishes clarification on law concerning the assisting or encouraging of suicide

Last month the Crown Prosecution Service (CPS) in England published further clarification on the law concerning the assisting of suicide. The CPS was anxious to stress that encouraging or assisting suicide is still an offence which can carry up to fourteen years imprisonment. The clarifications are published on foot of a House of Lords ruling in the case of Debbie Purdy, a terminally ill woman. The House found that her husband had the right to know under what circumstances he might be charged if he helped her leave the country for an assisted suicide abroad. Over 5000 individual and groups made submissions since the interim guidelines were published last year.

The Director of Public Prosecutions, Keir Starmer QC stated that 'The policy is now more focused on the motivation of the suspect rather than the characteristics of the victim. The policy does not change the law on assisted suicide. It does not open the door for euthanasia. It does not override the will of Parliament. What it does is provide a clear framework for prosecutors to decide which cases should proceed to court and which should not.'

The guidelines may be viewed at

http://www.cps.gov.uk/publications/prosecution/assisted_suicide_policy.html

8. UK: Court of Appeal in England finds it permissible to prohibit Christian employees from wearing crosses at work

The Court of Appeal in England has dismissed an appeal by an employee of British Airways, Nadia Eweida, against a finding of the Employment Appeals Tribunal. In doing so, it endorsed the view that a prohibition on the wearing of crosses does not represent direct or indirect discrimination. This is because it is not generally considered to be a requirement of the Christian faith to wear a cross as a visible display of their faith.

Further, the Court noted how the employee had acted in conformity with the dress code for approximately six years before raising any complaint and indeed, she was the only complainant. However, in placing the case in a general context of employment discrimination it appears somewhat at odds with the general principle that protection from discrimination should be interpreted in a broad fashion. Indeed, given how anti-discrimination law now protects non-traditional beliefs such as climate change the judgment may be open to criticism.

For more information, see <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2010/80.html&query=eweida&method=boolean>

9. UK: European Anti-Racism Committee Reports on UK

The European Commission against Racism and Intolerance (ECRI) recently published its fourth Report on the UK. While recognising some positive developments by the UK authorities, ECRI expressed concern about a rise in the number of racist incidents and the disproportionate effect of anti-terrorist measures on black and other ethnic minorities, and on Muslims in particular. The Report also noted a high level of hostility and prejudice towards Gypsies and Travellers.

The ECRI Report called for urgent action to provide legal aid for people taking discrimination cases, to provide adequate accommodation for Gypsies and Travellers and to address the under-representation of ethnic minorities in the police.

The Report is available at <http://www.coe.int>

10. Reform Plan for European Court of Human Rights

The European Court of Human Rights is stretched to breaking point at the moment with a backlog of 120,000 cases waiting to be heard and up to 50,000 new cases being lodged each year. Figures show that 90% of new applications to the Court are inadmissible or manifestly unfounded and 50% of the cases that are admissible are repetitive cases where the issue of principle – such as illegal or excessive detention – has already been decided.

A high level conference of the 47 member states of the Council of Europe met in Interlaken in Switzerland on 18 and 19 February to discuss the crisis facing the Court. It started with some good news. Russia has at last ratified Protocol 14 to the European Convention on Human Rights, which provides for streamlining the Court's procedures and filtering out the inadmissible and repetitive cases at an early stage. The Protocol will come into operation shortly.

The conference adopted a Declaration which re-affirms the fundamental right of individual application to the Court and stresses the need for the member states to be much more proactive in spreading information about the Convention and the Court's case law, and also in trying to ensure that public authorities comply with the Convention so as to prevent violations of the Convention arising in the first place.

Amnesty International has expressed concern that some states appeared to support charging fees for applying to the Court but this was not endorsed by the conference. A copy of the Interlaken Conference Declaration is available at http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/europa/euroc.Par.0133.File.tmp/final_en.pdf.

11. EU Rights Commissioner Outlines Programme

The new EU Commission Vice President for Justice, Fundamental Rights and Citizenship, Ms Viviane Reding, set out her priorities for this new post in a speech to the Interlaken Conference on the future of the European Court of Human Rights on 18 February.

Ms Reding said that, following the Lisbon Treaty, the EU would quickly accede to the European Convention on Human Rights and accept the jurisdiction of the Court of Human Rights in Strasbourg. She also stressed that the EU Charter of Fundamental Rights was now legally binding both on the EU itself and on member states when they are implementing EU law.

Commissioner Reding said she would try to ensure that all future EU legislation and national legislation on EU issues in the member states conformed to the Charter. She pointed out as well that the Charter went beyond the European Convention on Human Rights (ECHR) because it included some economic and social rights as well. Commissioner Reding said

that EU accession would strengthen the ECHR and confirm Strasbourg as “the European capital of fundamental rights protection”.

A copy of Commissioner Reding’s speech is attached.

12. France Condemned for Treatment of Travellers

The European Committee of Social Rights, in a strongly worded decision, has recently upheld a complaint against France for its treatment of Travellers and Roma. The Committee, which hears complaints under the European Social Charter, held that France had failed to provide adequate stopping places for Travellers, the conditions at some of the sites that were provided were unacceptable, and evictions were often accompanied by police brutality. It held that the conditions in which Travellers and Roma had to live led to social exclusion and amounted to discrimination in relation to the right to accommodation.

The full decision is available at www.coe.int/socialcharter.

13. ECJ makes landmark rulings on immigrant parents

Two recent decisions of the European Court of Justice have ruled that the primary carer parent of the child of an EU migrant worker enjoys a right of residence in the host state for so long as the child is in education. This is the case notwithstanding that the EU migrant worker has since left the family home or has ceased work. Significantly, the ECJ found that in the circumstances of both cases, this right of residence was not conditional on the primary carer having sufficient resources and sickness insurance.

The cases are: *Ibrahim* C-310/08 and *Teixeira* C-480/08, both available at http://curia.europa.eu/jcms/jcms/Jo1_6308/.

14. The IBA Women Lawyers' Interest Group Outstanding International Woman Lawyer Award

The IBA Women Lawyers' Interest Group invites you to nominate a female lawyer who you believe is deserving of this prestigious award. The Award, which includes a US\$5000 donation to a charity of the winner’s choice is generously sponsored by LexisNexis and will be presented at the 4th World Women Lawyers' Conference being held in London from 15-16 April 2010

Nominations must be submitted and received by Monday 8 March 2010. Further information may be found at <http://www.ibanet.org/>.

15. Internship opportunity with the Equality and Rights Alliance

The Equality and Rights Alliance (ERA) is seeking an intern to support the communications and advocacy work of the ERA Campaign. This is a non-paid position for 12 hours per week, initially for a six month period. Interested applicants can send a CV to rachel@eracampaign.org. Closing date for receipt of CVs is Thursday March 11 at 5pm.

The Equality and Rights Alliance is a not- for- profit coalition of over 130 civil society groups and activists, established to lobby for a strengthened equality and human rights statutory infrastructure in Ireland.

16. Call for Papers: Conference on the Convention on the Rights of the Child

The Convention on the Rights of the Child 1989 will be 21 years old in 2010. The School of Law, Magee, University of Ulster will mark this milestone on June 19-20, 2010 with a multi-disciplinary 2-day international conference involving academics, practitioners, and students from the fields of law and child protection. The conference will consist of a number of keynote speaker plenary sessions, round table discussions and break-out panels with a Gala conference dinner on the Saturday evening and a range of sight-seeing and/or social events over the course of the conference weekend. Abstracts of around 250 words should reach the conference committee by Friday 16 April 2010.

Please see <http://www.socsci.ulster.ac.uk/law/> for further details.

17. Event: Irish Society of International Law's annual Séan Lester Lecture, 11 March 2010, Dublin 7

Patricia O'Brien, the United Nations' most senior lawyer, is to speak at this year's Irish Society of International Law's annual Séan Lester lecture. Her lecture is entitled *Legal Challenges Facing the United Nations: An Appraisal from the Legal Counsel's Perspective* and it will address the need to promote the international rule of law, the relationship between peace and justice and managing post conflict situations as well as the enhancement of the UN itself.

Ms O'Brien was appointed to the UN as Under-Secretary-General for Legal Affairs and UN Legal Counsel in August 2008. She is the head of the UN's Office of Legal Affairs. The lecture will take place at 6.30pm on Thursday 11 March 2010 in St Michan's Church, Church Street, Dublin 7.

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