

PILN Bulletin, 28 January 2009

This Bulletin on Public Interest Law is issued by FLAC. If you wish to have an item included please contact piln@flac.ie

Please feel free to distribute it as widely as you wish.

In this Bulletin:

- 1. Further resignations from board of Equality Authority**
- 2. Nigerian woman loses third High Court decision to challenge deportation**
- 3. Equality Tribunal finds obligation on employers relating to providing of employment related documentation to foreign nationals**
- 4. New Declarations of Incompatibility in UK**
- 5. International Bar Association launches Media Law and Freedom of Expression site**
- 6. Historic first trial opens at International Criminal Court**
- 7. New US President signs order to close Guantánamo Bay detention centres and to put a stop to rendition and torture**
- 8. Recent events highlight difference in respect for human rights lawyers**
- 9. FLAC, ICCL and IPRT to host ICCPR follow-up conference, 6 April 2009**
- 10. Equality and Rights Alliance seeks Campaign Coordinator, deadline for applications 6 February 2009**
- 11. Conference on the rights of victims, 7 February 2009**
- 12. Pat Finucane, his life and his legacy: Conference, 14 February 2009**
- 13. NI: Carers and their Rights: one-day training course, 18 February 2009**

1. Further resignations from board of Equality Authority

In addition to those earlier reported in the *PILN Bulletin*, five more members of the board of the Equality Authority have resigned in protest because the Authority can no longer carry out its core functions, in particular its mandate to provide legal support to people who have experiences discrimination.

The board members in question are David Joyce of the Irish Congress of Trade Unions, Dennis O'Flynn and Finola McDonnell of the employers' body Ibec, Louise O'Donnell of the

trade union Impact, and Frank Goodwin of the Carers' Association. Therese Murphy of the National Women's Council of Ireland resigned her position in December as well as Niall Crowley, chief executive, in protest at the 43% cut in funding outlined in the budget 2009. This means that half of the original board have now resigned in protest.

For further information, view the website of the Equality and Rights Alliance at <http://eracampaign.org>.

[Back to top](#)

2. Nigerian woman loses third High Court decision to challenge deportation

Nigerian mother, Ms. Pamela Izevbekhai, has lost her third High Court decision to challenge a deportation order against her and her two daughters. She lost her case against a refusal by the Minister for Justice, Equality and Law Reform to consider her claim for "subsidiary protection" and reverse the deportation orders. She claims that her two daughters would be at risk of female genital mutilation if they were returned to Nigeria. Her 18 month old daughter previously died after undergoing the illegal procedure. In finding his High Court decision, Mr. Justice Brian McGovern said that a significant material change had not been shown to have occurred since the deportation orders were signed in 2005 and therefore the Minister had sufficient reasons for reaching his decision. Her lawyers are now appealing the decision to the Supreme Court.

In November 2008, following an appeal from Ms. Izevbekhai, the European Court of Human Rights intervened and asked the Irish government not to deport her until it had considered her case. Immigration officials have assured her that it will respect this request. The Court says it is fast tracking her case but that it is unlikely that it will be heard this year.

The Minister is entitled to allow a person who has been refused refugee status in Ireland to stay on under subsidiary protection if they would nonetheless be exposed to harm if returned to their country.

[Back to top](#)

3. Equality Tribunal finds obligation on employers relating to providing of employment related documentation to foreign nationals

In the 2008 case of *58 Named Complainants v Goode Concrete Limited*, the Equality Officer found that employers are obliged to issue foreign national employees with contracts of employment as well as health and safety documentation in a language that they understand or in the alternative, to appoint a translator to translate the documents for each employee. The result is viewed as an increase in the burden on employers in terms of providing the documentation to foreign national employees.

This case largely involved foreign nationals employed as truck drivers who alleged discriminatory treatment on the grounds of race as well as discriminatory dismissal, victimization, harassment and equal pay issues. Each were awarded €5,000 as a result of a finding of discriminatory treatment on the grounds of race in terms of the safety documentation and contracts of employment only. The case is currently under appeal.

The case DEC-E208-020 can be read in full at <http://www.equalitytribunal.ie/index.asp?locID=139&docID=1770>

[Back to top](#)

4. New Declarations of Incompatibility in UK

There have been three decisions by the UK courts this month about Declarations of Incompatibility with the European Convention on Human Rights, made under the Human Rights Act, 1998. The 1998 Act is the equivalent of the ECHR Act, 2003 in this jurisdiction. The House of Lords granted one declaration and overturned another, while the High Court of England and Wales made one new declaration.

In ***R (Wright) v S/State for Health***, the House of Lords granted a declaration that a section of the Care Standards Act, 2000 was incompatible with the Convention because it allowed care workers to be banned from working with vulnerable people where a complaint had been made against the care worker but before s/he had a chance to answer the allegations.

In ***R (Black) v S/State for Justice***, the Lords overturned a declaration that a section of the Criminal Justice Act, 1991 was incompatible. Under the section longterm prisoners could be released after they had served half their sentences if the Parole Board so recommended, but the Minister had the final say. The Court of Appeal had held that this was incompatible because it left the final decision to the executive rather than the courts. The Lords said that such prisoners had no entitlement to release so it was not impermissible to leave the decision to the executive.

In the cases of ***R (F) and (Thompson) v S/State for Justice***, the High Court held that a section of the Sex Offenders Act, 2003 was incompatible because it allowed for sex offenders to be placed on the Sex Offenders Register indefinitely with no provision for a review of whether this was still necessary. One of the offenders had been aged 11 when he was convicted.

Declarations of incompatibility have become an important part of UK jurisprudence over the last decade and so far the British government has changed the law where declarations have been made and upheld.

[Back to top](#)

5. International Bar Association launches Media Law and Freedom of Expression site

The International Bar Association's (IBA) Media Law Committee have teamed up with the IBA's Human Rights Institute (IBAHRI) to launch a new website aimed at legal professionals and organisations that work to defend freedom of expression around the world.

The IBA hopes that the site will create a global community of media lawyers for the purposes of mutual support and discussion. They say that the website will "act as a point of information sharing, capacity building and networking for those involved in media work all over the world. In particular, it will provide details of, and links to, local and global

organisations working in the sector." Members of the site will be encouraged to submit their own resources and news items and to promote their events. They will be able to access range of related sites and resources, including country summaries of national and international guarantees for freedom of expression, media law cases of particular interest and the latest global media law and freedom of expression news.

There is no charge to enter the site. The Media Law and Freedom of Expression website is located at <http://www.probono.net/medialaw/>.

[Back to top](#)

6. Historic first trial opens at International Criminal Court

More than six years after its establishment, the International Criminal Court began to hear its first case on Monday. Established under the Rome Statute in 1998, the International Criminal Court was set up to try cases of alleged genocide, crimes against humanity and war crimes, in cases where national courts fail to do so as a court of last resort. It was set up as a permanent institution to replace ad hoc tribunals such as those relating to Rwanda and the Former Yugoslavia. While 108 states have ratified the Rome Statute, notable among those who have not are the USA, China, India and Israel. This case will be seen as a test of the court's credibility.

Monday's case relates to the conflict in Congo and the role of Thomas Lubanga, the former head of the Union of Congolese Patriots (UPC). He faces charges of conscripting children under 15 and sending them into battle. Human rights groups have criticised the prosecutor for limiting the charges against Lubanga to recruitment of child soldiers in light of the fact that the UPC is said to be responsible for mass killings, torture and rape in the Congo amidst fighting between Congolese forces and militias and armies from Rwanda and Uganda in 1998.

Lubanga has pleaded not guilty to using child soldiers during 2002 and 2003. The prosecutor, Luis Moreno-Ocampo, stated that the UPC "recruited and trained hundreds of children to kill, pillage and rape....They cannot forget what they suffered, what they did, what they saw." Lubanga claims he was fighting to prevent rebels and foreign fighters from plundering the vast mineral wealth of Congo's eastern Ituri region.

To follow this case or find out more information on the ICCT, please visit the court's website at <http://www.icc-cpi.int/home.html&l=en>.

[Back to top](#)

7. New US President signs order to close Guantánamo Bay detention centres and to put a stop to rendition and torture

After his inauguration on Tuesday 20 January 2009, US President Barack Obama has gone further than the anticipated move of ordering the close of Guantánamo and has set about closing down the Central Intelligence Agency (CIA) network of secret prisons as well as banning torture and rendition. He has also ordered a review of the use of military trials for terror suspects.

It is estimated that 245 men are currently being detained at the Cuban detention centres, most of whom have been locked up for years without being charged. UN Special Rapporteur on Torture, Manfred Nowak, has welcomed the closure of the centres and has previously stated that he knows of three reliable accounts of torture at the facility. A review of the treatment of prisoners at Guantanamo is to be completed within thirty days and the centre is to close within a year.

Obama has ordered a taskforce, headed by the Attorney General and the secretaries of defence, state and homeland security to review the intelligence and information on each detainee in Guantanamo and to determine whether they are to be tried or released.

In a move to reject and reverse the legal standards of the Bush administration, Obama has said that his administration will not be guided by the opinions on torture and detainees issued since the terrorist attacks of September 2001 by the Justice Department. The CIA is to follow the US army field manual on interrogations which forbids techniques such as waterboarding and has renewed the commitment of the US to the Geneva Convention on the treatment of detainees. A taskforce has also been established to review whether new guidelines are required for intelligence officials and there will also be a review of the case of the only "enemy combatant" on US soil, Ali Saleh Khalah al-Marri.

[Back to top](#)

8. Recent events highlight difference in respect for human rights lawyers

In recent weeks, a top human rights lawyer was honoured in Australia for his work while a Russian counterpart was gunned down in Moscow.

As part of Australia Day celebrations 2009, Julian Burnside QC was recognised for his work as a refugee rights advocate and for his longstanding work in Australia giving voice to issues affecting the country's vulnerable groups. He was appointed an Officer in the Order of Australia. Julian is known in particular for his opposition to the mandatory detention of asylum seekers.

In stark contrast, Stanislav Markelov, a thirty-four year old Russian human rights lawyer was shot in the head and killed in the middle of a busy street on the afternoon of 19 January. Markelov worked as a lawyer for the newspaper *Novaya Gazeta*, whose special correspondent Anna Politkovskaya was murdered in Moscow in 2006. The paper's co-owner Alexander Lebedev last night said Markelov had dealt with Politkovskaya's case. He was apparently killed for his work defending opponents of the pro-Kremlin government in Chechnya. Markelov was one of Russia's most prominent human rights advocates. As well as his work for *Novaya Gazeta*, he represented the family of an 18-year-old Chechen woman who was murdered and raped in 2000 by a drunken Russian army colonel.

[Back to top](#)

9. FLAC, ICCL and IPRT to host ICCPR follow-up conference, 6 April 2009

In July 2008, Ireland was reviewed by the UN Human Rights Committee under the UN International Covenant on Civil and Political Rights (ICCPR). As a result, the Committee produced its observations and recommendations as to how Ireland should best progress the developments already made to further the civil and political rights agenda in the State. The

aim of this conference is to ensure that the ICCPR process does not end here; focus must be maintained on the implementation of the Committee's recommendations and in raising awareness of both the process and the recommendations in Ireland. We are delighted that among those speaking at the event are three members of the Committee who reviewed Ireland:

- Judge Elisabeth Palm, Rapporteur on Ireland and former judge of the Swedish courts and former Vice-President of the European Court of Human Rights;
- Judge Rajssoomer Lallah, former Chief Justice of the Supreme Court in Mauritius;
- Professor Michael O'Flaherty, Co-Director of the Centre for Human Rights at the University of Nottingham and the Irish elected member of the UN Human Rights Committee.

The conference will take place on 6 April 2009, please see www.rightsmonitor.org for further details.

[Back to top](#)

10. Equality and Rights Alliance seeks Campaign Coordinator, deadline for applications 6 February 2009

The Equality and Rights Alliance (ERA) is currently advertising the position of Campaign Coordinator, a person with significant project management experience to co-ordinate the ERA Campaign who will work with the Steering Committee to implement the lobbying, communication and alliance-building strategies of ERA.

Details of the position are available at www.eracampaign.org and applications should be made by sending a CV and covering letter by email to recruitment@eracampaign.org or by post to Equality & Rights Alliance Co-ordinator, DMG Business Centre, 9-13 Blackhall Place, Dublin 7.

[Back to top](#)

11. Conference on the rights of victims, 7 February 2009

The Federation for Victim Assistance will host a conference on victims' rights on Saturday 7 February. The Federation is a voluntary federation for the victims of crime and the conference will take place at the Green Isle Hotel, Naas Road, Dublin.

Speakers will include Pat Cox former president of the European Parliament, Professor Marc Groenhuijsen, Assistant Garda Commissioner Louis Harkin and journalists Carol Coulter, *Irish Times* legal affairs editor and Ger Colleran, editor of *The Star* newspaper.

For booking information, please contact the National Office of the Federation at 066 7119830 or email to fedva@eircom.net.

[Back to top](#)

12.Pat Finucane, his life and his legacy: Conference, 14 February 2009

British-Irish Rights Watch is to hold a conference to commemorate the twentieth anniversary of the murder of Belfast solicitor Patrick Finucane in 1989. At the conference, Mr. Finucane will be remembered by his wife, Geraldine, this will be followed by a series of lectures and discussions on issues of policing, detention and prisoners' rights, inquests and the intimidation of lawyers and collusion.

A football match will be played in his honour on 15 February at 11am in the Trinity College Park.

The conference will take place on Saturday 14 February 2009 at the Edmund Burke Theatre in Trinity College, Dublin. There is a fee of €115 (concessions €25) to attend. To register, contact Finucane Conference, BIRW, 13b Hillgate Place, London SQ12 9ES, UK or soraya.nadji@birw.org.

Thirty-nine year old Pat Finucane was shot dead at his home in Belfast. He had acted as solicitor on behalf of a range of high profile figures such as hunger striker Bobby Sands and other IRA and INLA hunger strikers in the Maze Prison in 1983.

[Back to top](#)

13.NI: Carers and their Rights: one-day training course, 18 February 2009

This course looks at the legal position of carers within the community care system. It focuses on the rights of carers to assessment and services and the impact of the Carers and Direct Payments Act (Northern Ireland) 2002. The course also explores the role of the carer where the person being cared for lack capacity to make decisions.

The course will take place on 18 February from 10am to 4pm at Law Centre (NI) offices. Fees depend on membership and voluntary status (£75-180). Application forms should be returned to Deborah Hill at Law Centre (NI), 124 Donegall Street, Belfast, BT1 2GY either by Tel: (028) 9024 4401, Fax: (028) 9023 6340 or by email at: deborah.hill@lawcentreni.org by Friday 6 February 2009. This course will count as 5 hours towards Bar Council and Law Society Continuing Professional Development

[Back to top](#)

PILN Bulletin Issued on 28 January 2009

Public Interest Law Network Ireland - PILN
FLAC (Free Legal Advice Centres Ltd.)
13 Lr Dorset Street, Dublin 1
Tel: 01-874 5690 Fax: 01-874 5320
LoCall: 1850-350 250 Web: <http://www.flac.ie>

Free Legal Advice Centres Ltd is a company limited by guarantee not having a share capital, registered in Dublin, Ireland. Company registration number 49413. Directors: Don Crewe, Iseult O'Malley, Peter Ward, Paul O'Connell, Róisín Webb

NB: The information in this e-mail may be confidential and may be legally privileged. It is intended for the listed addressee(s). Access to this e-mail by anyone else is unauthorised. If you are not the intended recipient, any distribution, copying, or other actions taken in reliance on it are prohibited and may be unlawful. The opinions and advice contained in this e-mail may not be those of FLAC.
