

PILA Bulletin, 1 April 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.

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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.

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2. Upcoming PILA conference and seminar

- In a one-day conference, entitled *Public interest law in action: using law to face current challenges*, PILA will bring together NGOs and lawyers to discuss practical ways to promote the use of law to respond to current challenges such as debt, housing, children's rights, travellers' rights and migrants' rights. These challenges present opportunities: for NGOs to use the law as part of their everyday work and for lawyers to use their legal skills in a new context.

The aim of the conference is to examine the place of and developments in public interest law from an all-island perspective and international speakers from Australia, the UK and the USA will place the discussion in a wider context. Workshops on children's rights, debt, housing and social welfare will provide case studies of public interest law in action in Ireland and a forum to discuss future steps.

Venue: Radisson BLU Royal Hotel, Golden Lane, Dublin 8

Date: Friday, 16 April 2010

Time: Registration: 8.45am, conference: 9.30am – 5pm

There is no charge for this event and CPD points will be available. Lunch and refreshments will be provided. CPD points will be available. Full details on the conference programme and speakers will follow shortly. To reserve your place at the conference or with any queries, please contact us by phone at (01) 8728048 or by email at info@pila.ie.

- On Friday 7 May 2010, PILA will conduct their second seminar titled *Using international law – the European Social Charter and UN treaty body complaints procedures*. Colm O'Cinnéide 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.

This seminar will take place at the Distillery Building, Church Street, Dublin 7 from 4 – 5.30pm. This event is free to all attendees and CPD points are available. Contact Jo Kenny at PILA to reserve your place: jo.kenny@flac.ie or telephone (01) 8728048.

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3. Human Rights Commission publishes report on adults with severe disabilities

The Irish Human Rights Commission (IHRC) has published its Enquiry Report into services for people with intellectual disabilities. It has found that these services fall short of human rights standards and that service, policy and legislative reforms are essential.

The report investigated the situation of a group of adults with a severe to profound intellectual disability in the John Paul Centre, Galway. It found that there were serious gaps in the provision of services to residents or people using the facilities of the Centre and that this has stemmed from systematic problems with the legislative, strategic and policy framework set at national level. Following an examination of the relevant international human rights law and its impact on the individuals in the Centre and on people in similar situations, the IHRC considers that in addition to questions of accountability, standards in relation to the right to health, the right to

education, the right to non-discrimination and the right to a remedy are not being adequately met in Ireland today.

For more on this report click on the link below <http://www.ihrc.ie/home/wnarticle.asp?NID=250&T=N&Print=>

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4. Law Reform Commission publishes consultation paper on jury service

The Law Reform Commission's Consultation Paper on Jury service was launched by the Director of Public Prosecution, James Hamilton, earlier this week. The paper involves an examination of jury service, in particular with regard to qualification, eligibility and selection processes and related matters. It is the first wide-ranging analysis of jury service since the passing of the Juries Act 1976. The main concern raised is that the existing processes for jury selection do not result in the selection of juries that are representative of the community. The current system excuses a wide range of professional persons and public servants from jury service and panels are limited to Irish citizens, excluding long term residents and EU citizens. The Paper has made a number of recommendations including: the replacement of the existing blanket exclusion of professional persons and public servants by an individualised excusal for 'good cause'; jury panels should be based on the electoral registers for both local and European elections; no prohibition from jury service on the basis of physical disability alone and that reasonable accommodation be put in place for hearing and visually impaired jurors to assist them in undertaking the duties of a juror. To view the full list of recommendations please click on the link below.

<http://www.lawreform.ie/news/consultation-paper-on-jury-service.289.html>

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5. ESRI/IZA Study on Active Inclusion of Migrants

The Economic and Social Research Institute (ESRI), in conjunction with the German research institute IZA in Bonn, has been commissioned by the European Commission to conduct research into the receipt of social welfare supports by immigrants across a number of EU countries including Ireland. The research will examine the extent to which immigrants receive social welfare payments and supports and will also explore the reasons for any differences in receipt of social welfare assistance by migrants compared to nationals of a particular country. The project will use EU Statistics on Income and Living Conditions (EU-SILC) data in its findings.

FLAC was invited to attend a roundtable discussion hosted by the ESRI on 29 March and raised issues of concern around the Habitual Residence Condition and the policy of direct provision and dispersal for individuals seeking protection. Participants in the roundtable included representatives of government departments, NGOs working on immigration matters and researchers.

The research is ongoing and the project is due to be completed by the end of 2010. For more information see http://www.esri.ie/research/current_research_projects/search_results/index.xml

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6. UK: Corporate lawyers to give pro bono advice at Lovells international law firm

Lovells has formed a social enterprise unit offering pro bono advice across its international offices to the not-for-profit and fair trade sectors. The aim is to bring together fee earners to help socially minded organisations to use commercial knowledge to generate income which can then be invested back into local communities. One of the first projects involves fifteen lawyers giving advice to Indian cotton farmers. Rural poverty in the area had led to a high incidence of stress and suicide. The farmers formed the Zameen Organic Co-operative and now supply fair trade organic cotton to the UK. The corporate partners at Lovells gave advice on the establishment of the PI Foundation to train the farmers on the commercial aspects of their work while financial lawyers assisted with loan agreements. Two lawyers also work in India to ensure income generated is generated back into the local community.

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7. UK: Vicarious Liability for Abuse of Non-Catholic

The UK Court of Appeal has found that a sufficient connection exists between that which a priest, who was responsible for youth work, was employed to do and his sexual abuse of a non-catholic boy whom he met through that work, to hold his employer an archdiocese of the Catholic Church, to be vicariously liable for that abuse. The Master of the Rolls said that the claimant's case was that the archdiocese was responsible for the wrongful acts of the priest, whether it had acted in a blameworthy manner or not.

In *Lister v Hall Ltd.* ([2001] 1 AC 215) Lord Steyn held that the correct test was whether the employees torts were so closely connected with his employment that it would be fair and just to hold his employers vicariously liable. In the instant case the tortfeasor was a Catholic priest and the claimant a non-Catholic having nothing to do with the Church, therefore the claimant's case was less distinguishable. However the Court took a number of factors into account such as the fact that the priest was dressed in clerical clothing when he met the claimant, priests had a special role of trust and responsibility and in a sense were never off duty, and they had a degree of general moral authority which was unique to the role.

The Court stated that it was important to look at the nature of the employer and that the vulnerable and the oppressed were a particular concern for the Church. Here the priest's association with the claimant began when he was given special responsibility for youth work at the Church, and the Court was of the view that when he was effectively grooming the twelve year old, he was ostensibly carrying out one of his specifically assigned church functions. While the Church accepted responsibility for an altar boy or member of the congregation, it claimed this case was different in that the victim came into contact with the priest by non-church means. However, the Court held that the progressive stages of intimacy were only possible because of the abuser's status as a priest and authority and because of his position no one would question his being alone with the claimant. This provided the close connection between what the priest was authorised to do and the abuse.

To view the judgement in the case of *MAGA v Trustees of the Birmingham Archdiocese of the Roman Catholic Church* [2010] EWCA Civ 256; [2010] WLR (D) 76, please follow the link http://www.lawreports.co.uk/WLRD/2010/CACiv/MAGA_v_TrusteesofBirminghamRCC.html

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8. European Court of Human Rights: segregation of Roma children in Croatian school found to be discriminatory

The Grand Chamber of the European Court of Human Rights has found the Croatian Government to be in breach of Article 14 (non-discrimination) together with Article 2 of Protocol 1 (right to education), on grounds of racial discrimination of fourteen Roma school children. The children

concerned had been put into separate classes on the basis of their lack of proficiency in the Croatian language, which the Government argued was to help their language skills. The Court stated that the segregation and the racially charged context in which it took place constituted deferential treatment for the purposes of Article 14, and that the burden of proof was on the Government to show that it was justified, appropriate and necessary. It was held that this segregation could only be permissible if it served to bring their language skills up to the appropriate level upon which time they would be transferred into a mixed class. It examined the factors involved in the applicant's placement in the separate classes and stated that there must be appropriate safeguards put in place.

In considering issues such as whether there was a legal basis for this type of segregation, the tests used to assess the applicant's language ability, the type of curriculum for these separate classes, and how the applicants progress was monitored, the Court concluded that there were no adequate safeguards in place capable of "ensuring that a reasonable relationship of proportionality between the means used and the legitimate aim said to be pursued was achieved and maintained". In its judgment the Court analysed the extent to which the Croatian authorities took positive steps to compensate for the applicant's linguistic and cultural differences noting the failure to provide special language classes and the lack of involvement of social services to address the problems of Roma children.

To view the judgment in the case of *Oršuš and Others v Croatia* (Application no. 15766/03), 16 March 2010

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=ORSUS%20%7C%20Others%20%7C%20v%20%7C%20Croatia&sessionid=50309339&skin=hudoc-en>

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9. Serbia Apologises for Massacre of 8000 Muslims

Serbia's parliament has apologised for the Serb massacre of 8000 Muslims in 1995. The apology, which came after a deeply divided debate over the country's role in the conflict, fell short of calling the killings genocide. The ruling democratic and socialist coalition in Belgrade put forward a document which was narrowly carried apologising for the crime. The move came as Serbia continues its bid to become a member of the EU. "We are taking a civilised step of politically responsible people, based on political conviction, for the war crime that happened in Srebrenica", said Branko Ruzic, whose Socialist party was led by Slobodan Milosevic in the 1990s. Opponents rejected the move and denied western accusations of mass executions. The Bosnian Serb political leader at the time, Radovan Karadzic, is being prosecuted at The Hague for allegedly masterminding Serb atrocities, including that at Srebrenica. He has not entered a plea and denies any involvement. Families of victims expressed disappointment that the declaration failed to call the killings genocide, the term applied to the massacre by both the European Parliament and the International Court of Justice.

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10. USA: Washington State Bans Shackling of Pregnant Inmates

Washington State has signed a bill forbidding state prisons, county jails and juvenile correctional facilities from shackling female inmates who are in or are recovering from labour and severely restricts the use of restraints on inmates in their third trimester. The move comes a year after Cassandra Brawley, a former inmate of the Washington Corrections Centre for Women, filed a lawsuit against the Department of Corrections, for breach of her constitutional rights during the delivery of her son. Ms. Brawley claims that when she was taken from the prison to the hospital she was shackled with a belly chain and that during birth she was shackled to the bed with an

ankle cuff. This type of restraint is not only an infringement of a woman's constitutionally protected right to reproductive freedom, but it also singles out women of colour and poor women who are over represented in the prison system. Ms. Brawley's attorney welcomed the bill and said that Washington is the seventh State to place restrictions on the shackling of pregnant inmates. She said that the American College of Obstetricians and Gynaecologists and the American Medical Association condemn the practice as being demeaning and inhumane and believe it is medically dangerous to women and their babies. The case is scheduled for hearing in June.

<http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Session%20Law%202010/2747-S.SL.pdf>

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11.USA: Supreme Court: "Originalist versus Activist"

An interesting debate between Justice Scalia and Justice Breyer was recently featured on the US public service channel C-Span. The issue under debate is to what extent judges are entitled to shape the law to take into account changes in values or social conditions. To view the debate please click on the link below.

<http://www.olswang.com/blogs/scotuk2/article.asp?id=628>

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12.USA: New York Law Schools Safe Passage Immigration Project

As part of the Justice Action Centre of the New York Law School, Safe Passage Immigration Project trains and mentors pro bono attorneys to represent children needing immigration assistance. According to a recent study an estimated 43,000 unaccompanied illegal immigrant children were removed from the US in 2007 and 50 to 70 percent who appeared before an immigration judge had no legal representation. Although these children are entitled to legal representation the federal government does not provide this as immigration is a civil matter. The Safe Passage Immigration Project helps social service providers, foster-care providers and not for profit organisations screen juveniles and identify immigration issues and it brings together pro bono attorneys and volunteer law students who provide direct service for special immigrant juvenile status cases.

<http://intprobono.blogspot.com/>

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13.EU: FEANTSA Events

FEANTSA is co-organising two events on 14 April and 6 May 2010.

- Ending homelessness is possible! How can the EU effectively contribute to the fight against homelessness?
Wednesday 14th April 2010, 15:00 – 18:00, European Parliament, Brussels

Hearing and debate for the launch of the FEANTSA 'Ending Homelessness' campaign and of "Ending Homelessness: A Handbook for Policy Makers".

Speakers include: László Andor, Commissioner responsible for Employment, Social Affairs and Inclusion; Phillipe Courard, Belgian Secretary of State for Social Integration and the Fight against Poverty and a panel of MEPs.

For more information: <http://www.feantsa.org/code/EN/pg.asp?Page=1263>

- European Conference "Housing Rights from Theory to Practice", Thursday 6th May 2010, 9:00-18:30, University of Barcelona

Co-organised with the University of Barcelona and FEANTSA member Associacio Prohabitatge, the conference is the highlight of the Housing Rights Watch project for 2010, which is a European network of interdisciplinary groups of associations, lawyers and academics who are committed to promoting the right to housing to all.

The goal of the conference is to explore the theoretical background to housing rights at the international, at the European and at the national level, to share experience on the practical implementation of housing rights and to provide a forum for existing and potential correspondents of the Housing Rights Watch network.

Speakers include: representatives from the Council of Europe (Régis Brillat and Lauri Sivonen), the EU FRA (Michael Beis), Spanish authorities, NGOs and academics.

More information about Housing Rights Watch is available at: <http://feantsa.horus.be/code/EN/pg.asp?Page=1126>
More information about the conference is available at: <http://feantsa.horus.be/code/EN/pg.asp?Page=1262>

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14.DCU to host Inaugural Annual Law and Society Lecture, 21 April 2010

The School of Law and Government at Dublin City University will host its first annual Law and Society Lecture in April this year. The lecture will be delivered by Professor Richard Collier of Newcastle University Law School and will be entitled *Fatherhood, Law and Personal Life: Rethinking Debates about Fathers and Law*. Professor Collier's primary research interests concern questions around law and gender, with a particular focus on issues surrounding men and masculinities, ranging from law, families and social change to legal education, crime and criminology.

The lecture will take place at the Mella Carroll Lecture Theatre, Nursing Building, DCU on Wednesday, April 21st at 6.30pm with a reception to follow.

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