

PILA Bulletin, 3 December 2009

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

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1. High Court gives judgement in asylum test case

An Irishman and his Chinese-born wife have been refused permission to judicially review the State's refusal to allow the woman's widowed mother to live with them in the State. The case brought by the couple, who are both Irish citizens, was seen as a test case as it determined the rights of Irish citizens to have their non-EU dependent relatives live with them in the State.

The High Court found that the couple had failed to make out the "substantial" grounds necessary under law in asylum and immigration proceedings before judicial review proceedings may be brought. The Court was of the opinion that, amongst other things, the

couple's Article 8 family rights of the European Convention of Human Rights was not affected.

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2. Cuts in human rights budgets harm Ireland's image

A perception has developed abroad that Ireland has "fallen from grace" because of budget cuts to the Equality Authority and Irish Human Rights Commission. This remark was made by a London-based human rights lawyer at a conference organised by the Equality and Rights Alliance in Dublin last week.

Colm O'Cinnéide, a member of the European Committee of Social Rights and lecturer at University College London, said Ireland's equality and human rights institutions and infrastructure had previously been praised throughout the EU as best practice models. Now, however, there was a belief that Ireland's current institutional machinery to protect and promote equality is inadequate. He pointed to the danger that arises when a country which is held in good international standing administers budget cuts in such a manner that this will create a precedent for countries which are already not adhering to fundamental human rights standards. He referred to the example of Pakistan citing Ireland's blasphemy laws as an example of best practice at the UN.

For more information on the Equality and Rights Alliance, see <http://www.eracampaign.org/>.

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3. FLAC's Third Annual Dave Ellis Memorial Lecture

FLAC hosted its Third Annual Dave Ellis Memorial Lecture on 1 December 2009 at the Law Society of Ireland in Dublin. Proceedings for the evening were chaired by Noeline Blackwell, Director-General of FLAC with an introduction was made by Peter Ward, Chair of FLAC Council.

The lecture itself was delivered by Dr. Maurice Hayes. He was a member of the 21st and 22nd Seanads and was formerly the Northern Ireland Ombudsman and Boundary Commissioner and was Permanent Secretary of the Department of Health and Social Services (NI).

The lecture was very well attended with around 125 guests from whom a number of interesting questions were put to the speaker. The talk was followed by a wine reception. FLAC would like to thank all those who attended the event and who contributed to making it a memorable evening.

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4. UK: English Bar Standards Board permits joint practices of solicitors and barristers in limited circumstances

The English Bar Standards Board last month announced plans to overhaul current working practices and structures at the bar. In future, joint practices of barristers and solicitors will be allowed in limited circumstances. Barristers will now be permitted to be partners in legal disciplinary practices.

The Board agreed to allow barristers to practice in more than one capacity at the same time. This would enable them to work part-time in legal disciplinary practices while remaining in a self-employed practice. In addition, the board also lifted the prohibition on barristers practicing in partnerships with other barristers. The Board's chairman commented that these developments will "excite a lot of the profession that's been depressed lately by legal aid cuts. It will send a shot of adrenaline through the profession. Hopefully they'll revive and perk up as a result."

Many law firms in England and Wales have to turn away clients because they have exhausted their allocation for this year's legal aid budget. The rise in recession related and family law cases now mean that approved quotas of cases have been used up almost five months before the end of the year.

The Legal Services Commission, which administers the £2 billion legal aid scheme, has advised law firms that clients must be sent to other firms, which means they cannot have their solicitor of choice. In some parts of country, clients have to travel long distances to see a lawyer. A spokesman for the Commission said that law firms had already reported 20,000 more cases between April and August 2009 than over the same period last year.

The Bar Standards Board is the independent regulatory body of the Bar Council in the UK. Its function is to regulate barristers who were called to the bar in England and Wales. It was established in January 2006 following the separation of the regulatory and representative functions of the Bar Council. For further information see: <http://www.barstandardsboard.org.uk/>

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5. UK: Evidence of UK complicity in torture

In a report released last week by Human Rights Watch (HRW), the UK government should order an independent judicial inquiry into the role and complicity of British security services in the torture of terrorism suspects in Pakistan.

The report, *Cruel Britannia: British Complicity in the Torture and Ill-treatment of Terror Suspects in Pakistan*, provides accounts from victims who were tortured in Pakistan by Pakistani security agencies between 2004 and 2007. HRW found that while there is no evidence of UK officials directly participating in torture, UK complicity is clear. A Foreign Office spokesperson stated that, "The government rejects in the strongest possible terms the suggestion that a policy of complicity in torture has been in place." The spokesperson went on to say that some of the cases detailed by HRW had been considered and "rejected" by the UK courts.

A copy of the Human Rights Watch report can be downloaded at: <http://www.hrw.org/en/reports/2009/11/24/cruel-britannia>

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6. Switzerland ban construction of minarets on Mosques

Switzerland became the first country in Europe to ban the construction of minarets on Mosques following a referendum last week. The ban was supported by a majority of 57.5%, 20 percentage points more than predicted in opinion polls in the run-up to the vote. New minarets will not be permitted in the future, but the four minarets which currently exist in Switzerland, out of the country's 150 mosques, will remain.

Ahead of the vote, the Swiss government warned that voting for the ban would damage Switzerland's image abroad. The Minister of Justice admitted that the government had underestimated the depth of public resentment and fear of Islamic fundamentalist tendencies "which reject our national traditions and which could disregard our legal order". However, the debate surrounding the referendum looks set to continue as some legal experts have argued that the proposed ban contradicts Swiss and international law. Some have already predicted that challenges will be brought to the European Court of Human Rights as it is possible that the referendum may offend provisions of the European Convention on Human Rights.

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7. Public Interest Litigation: Australian Court delivers Landmark decision on Protective Costs Orders

A recent case in Australia has highlighted the significance of Protective Costs Order (PCOs) in public interest litigation. A party to a proceeding may apply for a PCO seeking costs protection in the event that they are unsuccessful. This may involve no costs award against them or a cap on the amount of such an adverse award. It will generally allow them to recover costs if successful.

In *Blue Mountain Conservation Society Inc. v. Delta Electricity*, the Environmental Defenders Office (EDO) sought a protective costs order in the Land and Environment Court on behalf of the plaintiffs in proceedings claimed to be in the public interest. The EDO had stated that the defendants would not proceed with the action unless the potential costs were limited by the court. They demonstrated that as the case involved the pollution of drinking water by the defendants, the case was of critical importance and interest to the public.

The judgement elaborated upon the factors which should guide a court when it is asked to grant a PCO. Among the factors were that this was a test case involving novel questions of law in relation to the operation of the Act in question; the case was in the public interest; that the plaintiff would derive no financial benefit from the proceeds and that its counsel were acting pro bono. The defendant intends to appeal the decision.

For more information, see *Blue Mountain Conservation Society Inc. v. Delta Electricity* (2009) NSWLEC 150.

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8. Two papers attached

Included in this week's bulletin are two recent conference papers. The first is that of Michael Farrell, senior solicitor in FLAC, presented a paper on the Social Welfare Appeals Office to the Law Society and Irish Human Rights Commission Annual Conference in November 2009.

Secondly, attached is a paper by Martin O'Brien, Programme Director of the Reconciliation and Human Rights Programme of Atlantic Philanthropies who delivered a speech entitled, *A Stock-Take: Human Rights and the Agreement* in October 2009.

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9. Amnesty International invites written submissions from organisations involved in health and housing, deadline 14 December 2009

Amnesty International Ireland (AI) is coordinating an NGO report representing the experience of rights-holders that will be presented to the United Nations Committee on Economic Social and Cultural Rights at the same time as the Irish government's next report on the International Covenant on Economic, Social and Cultural Rights

AI is working with a number of partner organisations to compile this report. They have also held a regional consultation meetings around the country so that as many voices as possible are heard. Those unable to attend these meetings have the opportunity to make a written submission. The deadline for submissions is Monday 14th December 2009. For more information, contact Ruth Gallagher in Amnesty International Ireland at rgallagher@amnesty.ie.

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10. Community Legal Education: Housing law and policy course, Ballymun Community Law Centre in association with NUI Galway School of Law.

Ballymun Community Law Centre in conjunction with the School of Law at the National University of Ireland, Galway will host a housing law and policy course. The course will be presented by Dr Padraic Kenna, author of the definitive work on Irish Housing Law, *Housing Law and Policy in Ireland*, together with other guest lecturers. The aim of this course is to familiarise participants with the principles and practices governing housing Law and policy in Ireland.

The course is being offered on Tuesdays, from 18.00 to 20.00 beginning on 19 January 2010 to 30 March 2010. It will take place at the Council Chamber Civic Offices, Ballymun. For more information about the course, contact the Ballymun Community Law Centre on (01) 8625805.

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11. Events: Immigrant Council of Ireland information session for organisations working with migrants, Athlone, 8 December 2009

The Immigrant Council of Ireland will present a half day information session on the rights and entitlements of migrants living and working in Ireland. This is aimed at staff and

volunteers of Citizens Information centres, staff and volunteers of community and voluntary organisations offering services to migrants and statutory agencies that offer services to migrants.

Topics to be covered include:

- Information on the recent changes to the work permits system and the rights of those who have been made redundant and
- Information on the rights of family members of migrants living in Ireland

The session will take place on Tuesday the 8th December 2009 at the Sheraton Hotel, Athlone, from 10am-1pm and will cost €30 per participant.

Please RSVP to Gill Kennedy at: gillian@immigrantcouncil.ie or (01) 645 8045.

The Immigrant Council of Ireland (ICI) is a national, independent non-governmental organisation that promotes the rights of migrants through information, legal advice, advocacy, lobbying, research and training work. The ICI is also an Independent Law Centre.

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12. Law Reform Commission to launch its report on Defences in Criminal Law, 14 December 2009

The President and the Commissioners will welcome attendees to the launch of the Law Reform Commission's report on *Defences in Criminal Law* on 14 December 2009. Mr. Dermot Ahern, T.D. will launch the report. The event will take place at the Law Reform Commission office at, 35 – 39 Shelbourne Road, Ballsbridge, Dublin 4. The report will be available on www.lawreform.ie from 2.30 pm on the day of the launch.

RSVP (acceptance only) to (01) 637 7600 or legalsupport@lawreform.ie

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Visit the website: <http://eracampaign.org/weblog/>.