

PILA Bulletin, 11 February 2010

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

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

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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.

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. FLAC to launch new report on direct provision, 18 February 2010 and regional launch in Limerick on 22 February 2010

FLAC will launch a new report on direct provision entitled *One Size Doesn't Fit All*. The report updates and elaborates on some of the key concerns about the system of direct provision and dispersal and examines the system of direct provision in the context of government policy, domestic law and international human rights standards. This event will take place on Thursday 18 February 2010 at 11am in the Georgian Suite, Buswell's Hotel 23-25 Molesworth Street, Dublin.

The launch will be accompanied by a screening of *Living in Direct Provision*, a series of short films produced by Integrating Ireland and the Refugee Information service in collaboration with FOMACS. The film speaks to a variety of issues affecting asylum seekers and families living in the direct provision system.

As spaces are limited please RSVP to: campaigns@flac.ie or at (01) 874 5690 by 12 February 2010

Limerick organisation Doras Luimni, which works to protect the rights of migrants, will host the regional launch of the report in the Hunt Museum, Rutland Street, Limerick on 22 February from 10am to 11:30am. The screening of *Living in Direct Provision* will again take place.

Please RSVP to: Siobhan O'Connor, Advocacy and Campaigns Officer, Doras Luimni on 061-310328 or s.oconnor@dorasluimni.org

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3. Northern Ireland Agreement includes legal aid call

The Agreement reached in the Northern Ireland negotiations on 5th February last and endorsed by the British and Irish governments, includes a call for greater resources for "legal services for the disadvantaged".

The 'Agreement at Hillsborough Castle' provides for the establishment of a new Department of Justice in Northern Ireland and for a new section on justice issues in the Northern Executive's Programme for Government. The Agreement suggests that the Justice programme should include:

"7... Full provision of adequate funding and other resources for legal services to the disadvantaged in society, ensuring equality of access to justice for all".

The Agreement also incorporates a letter from British Prime Minister Gordon Brown about funding to support the transfer of policing and justice powers to Belfast. It includes a commitment for substantial extra funding for legal aid in Northern Ireland.

The suggestions for the programme of the Justice Department include as well a Victims Code of Practice and a requirement that the Public Prosecution Service make full disclosure to victims except where this might prejudice the interests of justice.

The two governments which have backed the Agreement might consider including similar provisions in their own programmes for government.

The full Agreement is attached.

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4. UK: Government loses torture appeal

The UK Court of Appeal yesterday ordered the government to reveal evidence of MI5 complicity in the torture of former Guantanamo detainee Binyam Mohamed.

The three appeal Judges dismissed the Government's assertion that disclosure of a seven paragraph summary of classified CIA information showing what British agents knew of Mohamed's torture would threaten intelligence sharing between Britain and the US, and therefore endanger Britain's national security.

The Government was appealing a High Court decision last year which ruled that the seven paragraphs should be published as the risk to national security was "not a serious one" and there was "overwhelming" public interest in disclosing the material.

The Court of Appeal said the case raised issues of "fundamental importance", of "democratic accountability and ultimately the rule of law itself". It went on to say the publication of the material was compelling since they concerned the involvement of wrongdoing by agents of the state in the "abhorrent practice of torture". The material helped to "vindicate Mr Mohamed's assertion that UK authorities had been involved in and facilitated the ill-treatment and torture to which he was subjected while under the control of USA authorities".

Mohamed was detained in 2002 in Pakistan, where he was questioned incommunicado by an MI5 officer. The US flew him to Morocco, Afghanistan, and Guantánamo Bay, where he says he was tortured with the knowledge of British agencies.

The High Court ruling last year stated it was clear from the evidence "that the relationship of the United Kingdom government to the United States authorities in connection with Binyam Mohamed was far beyond that of a bystander or witness to the alleged wrongdoing".

The UK foreign office has now published the disputed paragraphs and they can be accessed here:

<http://www.fco.gov.uk/en/news/latest-news/?view=News&id=21735373>

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5. UK: Supreme Court quashes Orders for freezing assets of suspected terrorists

Last month the UK Supreme Court, in its first case quashed Orders freezing the assets of suspected terrorists, advising that the government had exceeded its powers. The Orders were designed to implement various UN Security Council Resolutions (UNSCRs) intended to prevent the financing of terrorism, pursuant to section 1 of the United Nations Act 1946. The UNSCRs required member states to freeze the assets of Al-Qaida, the Taliban and their associates, and those involved in international terrorism.

The Terrorism (United Nations Measures) Order 2006 allowed assets to be frozen on the basis of a "reasonable suspicion" of involvement in terrorism. The Court unanimously held that this test created a serious interference with the fundamental rights of individuals and families going beyond that required by the Resolutions; thus, in introducing such a test, the Treasury had exceeded its power under the 1946 Act and the Order was *ultra vires*.

The Al-Qaida and Taliban (United Nations Measures) Order 2006 provided that if a person is named in the UN Security Council's Consolidated List, their assets in the UK are automatically frozen. The majority of the Court (Lord Brown dissenting) quashed Article 3(1)(b) of this Order, as there were no means by which the applicants could challenge the decision to list them as terrorists before an independent and impartial judge.

The Court also stated the government should have sought Parliament's approval for the asset freezing regime, rather than creating it automatically. In his judgement, Lord Hope noted: "even in the face of the threat of international terrorism, the safety of the people is not the supreme law. We must be just as careful to guard against unrestrained encroachments on personal liberty."

To read the judgement in full, please see

http://www.supremecourt.gov.uk/docs/uksc_2009_0016_judgment.pdf

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6. UK: English Bar Council to judicially review Ministry of Justice's consultations on new criminal legal aid work fees

The Bar Council and Criminal Bar Association of England will attempt to judicially review the consultation process of new criminal legal aid fees undertaken by the Ministry of Justice. It is claimed that the process was inadequate and unfair. The Bar Council feels that the conduct of the consultation by the Ministry and the Legal Services Commission has been so flawed that judicial review is the only option left open to the Bar.

It has been twenty years since the Council last judicially reviewed the Government. Paul Mendelle QC, Chairman of the Criminal Bar Association, stated, 'our concern is not simply about fee levels or the interests of the profession – it is about the need to ensure that the justice system functions well, and that criminal trials are carried out effectively and in the public interest. We must protect the justice system and ensure that this process, which underpins the Rule of Law and our democratic way of life, convicts the guilty and acquits the innocent.'

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7. UK: Home Office to pay compensation to Bolivian family for imprisoning them whilst their case was under judicial review

A Bolivian refugee family in the UK are to be paid compensation from the Home Office for being imprisoned whilst their case was under review. Damages were agreed in the High Court after the Home Office accepted that the family should have been freed whilst they were judicially reviewing a deportation order. Solicitors representing the family argued the detention contravened the UN Convention on the Rights of the Child as it failed to prioritise the welfare of the child. They also argued that being the subject of detention after a dawn raid had left some of the children with psychiatric problems.

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8. UK: National Equality Panel in the UK publishes *An Anatomy of Economic Inequality*

The independent National Equality Panel has published a new report on equality entitled *An Anatomy of Economic Inequality*. The panel was established in 2008 at the invitation of the Rt. Hon. Harriet Harman MP, Minister for Women and Equality and was asked to investigate the relationships between the distributions of various kinds of economic outcome on the one hand and people's characteristics and circumstances on the other. The report finds that inequalities in earnings and incomes are high in Britain, both compared with other industrialised countries, and compared with thirty years ago. It also finds that deep-seated and systematic differences in economic outcomes remain between social groups across all of the dimensions examined.

The report concludes that achieving 'equality of opportunity' is very hard when there are such wide differences between the resources which people and their families have to help them fulfill their diverse potentials.

To access the report please see

http://www.equalities.gov.uk/national_equality_panel/publications.aspx

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9. European Court of Human Rights: Detention of children in transit centre deemed to be inhuman and degrading treatment

The European Court of Human Rights (ECtHR), in a case against Belgium (*Muskhadzhiev and others v. Belgium*, 41442/07) last month found the detention of child asylum seekers can amount to treatment violating Article 3 of the European Convention on Human Rights (ECHR) which prohibits inhuman or degrading treatment and unlawful detention violating Article 5 of the ECHR, the right to liberty and security - even if the children are accompanied by their parents.

The applicant and her four children, Russian nationals who fled from Chechnya, sought asylum in Belgium but were refused on the basis that they had spent time in Poland. The Polish authorities agreed to take charge of them, by virtue of the European Council

Regulation of 18 February 2003 and the applicants were ordered to leave the country. They were placed in a closed transit centre run by the Belgian Aliens Office for over a month before being sent back to Poland.

The Court stated that the extreme vulnerability of a child was paramount and took precedence over a child's status as an illegal alien. Here, the applicant children had been held for over a month in a centre which, as several reports demonstrated, was not designed to house them and which independent doctors had noted caused the children serious psychological and psychotraumatic damage. This represented a failure of the authorities in their duty to protect the children; the presence of the mother did not exempt the state from this duty. Thus, the Court concluded that there had been a violation of Article 3 of the ECHR in respect of the four children. The Court also found that there had been a violation of Article 5 § 1 in respect of the children, because even though they were accompanied by their mother, they were kept in a centre designed for adults and ill-suited to their extreme vulnerability.

The judgement is available in French only. Please see <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Muskhadzhiyeva%20%7C%2041442/07&sessionid=45422659&skin=hudoc-en>

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10. International: Muslim veils to the fore once again in France

Last month, the French Parliamentary Committee charged with examining the practices of radical Islam published their recommendations. The report follows months of consultations, having taken evidence from about 200 experts. The Committee has proposed a ban on the wearing of veils in certain public places such as hospitals, government offices and schools, though veils have already been banned in schools since 2004. There was considerable dissension within the Committee however, as the socialist members declared in July that they would be not taking part in any final vote as they believed that Sarkozy, the French Premiere, was using the Committee as a political vehicle.

Sarkozy had earlier said that the veil was 'unwelcome' in France. The Committee also recommended that anyone showing visible signs of "radical religious practice" be refused residence permits and citizenship. This point was brought into sharp focus last week when the French Government refused citizenship to a man who insisted his wife wear the veil.

Meanwhile in Britain, ex-UKIP leader Nigel Farage said veils were a symbol of an "increasingly divided Britain" and called for their total ban. The British National Party has already called for the veil to be banned in schools.

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11. International: International Criminal Court to rehear charges of genocide against Bashir

The International Criminal Court in The Hague, Netherlands, is to rehear the case for charging President of Sudan Omar al- Bashir with the crime of genocide. Bashir is currently is the subject of an arrest warrant from the Court dating from last year. That warrant

already includes five counts of crimes against humanity and two counts of war crimes. However, the Court had earlier rejected the charge of genocide against Bashir.

Last week, the Appeal Chamber unanimously reversed this decision and directed the Pre-Trial Chamber to decide anew whether or not the arrest warrant should be extended to cover genocide. It was argued in the Appeal Chamber that an incorrect standard of proof had been used by the pre-Trial Chamber. Bashir is wanted in connection to the Courts investigation into Darfur. Bashir is the first sitting head of state to be charged by the ICC. The arrest warrant against him marks the Court's determined efforts to end impunity.

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12. Article attached on lesbian couple case

Included in this week's bulletin is an article written by Michael Farrell, Senior Solicitor with FLAC for the latest edition of the Law Society Gazette. It is entitled "Court rejects 'de facto families' in lesbian couple case".

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13. Events: School of Law, Queens University Belfast conference on *Disability, Discrimination and Human Rights*, 20 February 2010

The Human Rights Centre in the School of Law at Queen's University, Belfast in collaboration with Disability Action's Centre on Human Rights for People with Disabilities are holding a conference on *Disability, Discrimination and Human Rights - Recent National and International Developments* on 20 February.2010 in the university.

For further information please contact Dara Toal on 028 9029 7880 or email daratoal@disabilityaction.org

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14. The Faculty of Law, University College Cork, conference on *Mental Health Law*, 26 February 2010

The Faculty of Law, University College Cork, and the Mental Health Lawyers Association are jointly organising a conference on Mental Health Law which will take place in Brookfield Health Sciences Complex, UCC, Cork on Friday 26 February from 10 a.m. to 4.30 p.m. The conference will be followed by the launch of a new book on *Mental Health Law and Practice* by Dr Darius Whelan. Dr Mary Henry, former independent Senator, will speak at the launch.

For full details and a booking form for the conference, see <http://www.ucc.ie/en/lawsite/eventsandnews/events/mentalh2010/>

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15. Faculty of Law, University College Cork, 4th Annual Criminal Justice and

Human Rights Lecture, 4 March 2010

Mr Justice McKechnie, judge of the High Court, will deliver a lecture entitled *Respectable Criminality* on Thursday 4 March 2010 in UCC at 6.30pm at The Centre of Criminal Justice and Human Rights, Faculty of Law, University College Cork. The lecture will be chaired by Dr. David Riordan, Judge of the District Court.

Those interested should RSVP via email to ccjhr@ucc.ie by 10 February 2010.

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