

## **PILA Bulletin, 13 May 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](http://www.pila.ie). For now, the archive of PILA and PILN bulletins can be found at [www.flac.ie/publications](http://www.flac.ie/publications).

If you wish to have an item included please contact [bulletin@pila.ie](mailto: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](mailto:jo.kenny@flac.ie).

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**2. PILA hosts launch of *Irish Human Rights Law Review*, 20 May 2010**

PILA is hosting the launch of a new scholarly publication, *Irish Human Rights Law Review* (IHRLR) on Thursday 20th May at 5.30pm in The Morrison Hotel, Ormond Quay, Dublin 1. Launching the event will be Ombudsman, Emily O'Reilly. The event will also be addressed by the IHRLR editor, Donncha O'Connell, who is currently a Visiting Senior Fellow at the Centre for the Study of Human Rights, LSE, and Michael Farrell, Senior Solicitor with FLAC.

The inaugural issue of the IHRLR contains articles and case notes by, among others: Hon. Justice Michael Kirby of the Australian High Court, Professor Rick Lawson of the University of Leiden, Colm O Cinnéide of UCL, Senator Alex White, BL, Siobhan Phelan, BL, Marie McGonagle and Professor Pat Dolan of NUI Galway and Dr. Alpha Connelly, formerly of the Irish Human Rights Commission. Full details of the inaugural issue and a sample of its contents can be accessed at: [www.claruspress.ie](http://www.claruspress.ie). The complete inaugural editorial, an abridged version of which appeared in The Irish Times of 26th April 2010, can be read here [http://www.claruspress.ie/editorial\\_IHRLR.pdf](http://www.claruspress.ie/editorial_IHRLR.pdf)

The Review, which will be published on an annual basis, should be of interest to practitioners, academics, activists and students involved in various kinds of human rights work and will be available on special offer to those attending the launch. Please RSVP to PILA by telephone at (01) 8728048 or email at [info@pila.ie](mailto:info@pila.ie).

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**3. PILA law seminar series review**

PILA's law seminar series continued last week with a very well attended seminar on international law. The title of the event was *Using international law – the European Social Charter and UN treaty body complaints procedures*.

Kate Fox of the UN Office of the High Commissioner for Human Rights spoke about the use of the UN treaty body individual complaints mechanisms. Such a mechanism allow an individual from a State that has ratified the relevant provisions, to take their complaints under the pertinent treaty against that State. This complaint will be reviewed by a committee who will then issue their view on the matter. Kate pointed out that this is a low cost and uncomplicated means of pursuing a case at an international level and an alternative to going before the European Court on Human Rights; exhaustion of domestic remedies is required however before taking a case under this mechanism. Ireland has ratified the relevant provisions relating to the UN International Covenant on Civil and Political Rights, the UN Convention against Racial Discrimination, the UN Convention against Torture and the UN Convention on the Elimination of Racial Discrimination Against Women. While the views of the committees are not binding in Irish courts without the incorporation of the relevant provisions of the conventions and protocols into Irish law, they are persuasive and Ireland has a good faith obligation under the Vienna Convention on the Law of Treaties to perform its obligations under the international treaties it ratifies.

Colm O'Cinnéide of the European Committee of Social Rights spoke about using the European Social Charter and taking cases to the Committee to vindicate the rights in the Charter. He explained that the Charter is the younger and often ignored sibling of the European Convention on Human Rights and again is an alternative European route that has a low profile in Ireland but is widely used in other European States. That Committee hears complaints which relate to structural and collective issues and unlike other international mechanisms, exhaustion of domestic remedies is not required before taking a case. However, only NGOs with standing before the Council of Europe may bring such a complaint.

The presentations of both speakers are available on the PILA website at <http://www.pila.ie/events/pastevents1/2010/05/07/using-international-law-the-european-social-charter-un-treaty-body-complaints-procedures/>.

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#### **4. High Court refer decision on data retention to the ECJ**

Mr. Justice McKechnie last week ruled in favour of Digital Rights Ireland Ltd (DRI) by referring a case for a preliminary ruling to the European Court of Justice (ECJ). The ECJ has been asked to determine the validity of a European Directive (2006/24/EC) on data retention, looking at whether there is a breach of the rights under the EU and EC Directives, as well as the European Convention on Human Rights and the Charter of Fundamental Rights. DRI also challenged the constitutionality of the Criminal Justice (Terrorist Offences) Act 2005 concerning data retention relating to phone communications.

The Judge addressed two central issues of public interest law: standing and costs. In finding that DRI could assert rights of privacy, McKechnie J outlined that the plaintiff was a "sincere and serious litigant" who raised issues which are of "great importance to the public at large". The impugned provisions were found to affect "almost all of the population"; this action was thus deemed an effective way of protecting the "public good" due to the fact that the retention of personal telecommunication data could potentially affect persons' rights of privacy and communication. Taking a pragmatic approach, the Judge pointed out that if DRI were debarred from taking this action, it would be unlikely that individual mobile phone users would litigate the matter.

Further, because of the "significant public importance" that the matters raised, the Judge rejected the State's request for security of costs, ruling that "it is of great importance to define

the legitimate legal limits of modern surveillance techniques used by governments". It was found that the submissions of the Irish Human Rights Commission, acting as *amicus curiae*, served to affirm the contention that the case raises matters which affect persons' human rights.

For more information on the case of *Digital Rights Ireland Ltd v The Minister for Communication, Marine and Natural Resource & Others*, please see [www.digitalrights.ie](http://www.digitalrights.ie)

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## **5. State's judges give unanimous support for establishment of judicial council**

The State's judges have given unanimous support for the establishment of a Judicial Council Bill which will provide for the establishment of a judicial council which would hold the judiciary to account. Following a recent meeting of the State judiciary, Chief Justice Murray welcomed the draft and expressed hope for the furtherance of it by the Government.

It is intended that the Bill will establish a judicial council which will be representative of the judiciary of all the courts. It will address issues of judicial conduct and standards, and will establish an investigative procedure for complaints of breaches of ethics by judiciary members. While the council will have lay representation, the majority of the members will be judges.

For more on the Judicial Council Bill, please see [http://www.justice.ie/en/JELR/Pages/Civil\\_law\\_reform\\_proposed\\_legislation](http://www.justice.ie/en/JELR/Pages/Civil_law_reform_proposed_legislation)

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## **6. UK: Landmark equal pay judgment could result in multi-million pound payout for female workers**

A landmark judgment was reached last week by the Birmingham City Council Tribunal concerning the Equal Pay Act 1970. The Employment Tribunal found that female employees of the city council, such as cleaners and cooks, were systematically underpaid and discriminated against, with women earning far less than males working on the same pay grade. Whilst the two groups were receiving the same basic pay, bonuses had become part of the males' earnings while women were effectively never considered under the bonus scheme.

The Council attempted to justify the bonuses as a "genuine reward for productivity", but the Judge deemed this to be a "sham". The Tribunal will assess the amount of compensation to be paid to the employees concerned, it being estimated to run into a multi-million pound payout.

For more information on the judgment, please see [http://www.gmb.org.uk/newsroom/latest\\_news/gmb\\_wins\\_huge\\_equal\\_pay\\_case.aspx](http://www.gmb.org.uk/newsroom/latest_news/gmb_wins_huge_equal_pay_case.aspx)

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## **7. UK: Lord Justice Laws rejects special legal protection for Christianity**

In a High Court decision concerning an appeal from a marriage guidance counsellor who was dismissed from his job for refusing to provide sex therapy to homosexual couples, Lord Justice Laws rejected the notion that Christianity is deserved of special protection from the law. In giving a witness statement in support of the dismissed guidance counsellor, Lord Carey, a Christian leader, had expressed concern over recent court decisions against Christians. He claimed that

these decisions could lead to "civil unrest" and called for a specialist panel of the judiciary to hear cases which involve the practice of religious beliefs.

In rejecting the application to appeal the dismissal, Lord Justice Laws ruled that to provide special protection of the law to Christianity would be "irrational" and "deeply inimical to the public interest". The Judge further highlighted the distinction between the protection of the law of the "right to hold and express a belief" and the protection of the law of the "substance" of that belief.

To view the judgment in the case of *McFarlane v Relate Avon Ltd* [2010] EWCA Civ B1, 29 April 2010, please follow the link <http://www.bailii.org/ew/cases/EWCA/Civ/2010/B1.html>.

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## **8. UK: Legal action taken by Public Interest Lawyers over detention centre conditions**

The High Court has given permission for a judicial review into the cases of four female detainees at Yarl's Wood detention centre following claims of inhuman and degrading treatment. Public Interest Lawyers (PIL) are challenging the UK government's detention policy, claiming that the treatment of their female clients at the detention centre amount to breaches of the European Convention on Human Rights. The women, who had engaged in a six-week hunger strike in protest of their alleged mistreatment, claim they had been held in prison-like conditions and subjected to racial insults. PIL further contend that their client's confidential and legally privileged correspondence from their solicitors were opened and read by staff of the detention centre.

The hearing is expected to take place in the next few months and will be an important challenge to the UK government's treatment of asylum seekers.

For more information on this case, see [http://www.publicinterestlawyers.co.uk/law\\_uk/human\\_rights/news.php?id=122](http://www.publicinterestlawyers.co.uk/law_uk/human_rights/news.php?id=122)

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## **9. E.U: ECJ rules social security benefits cannot be withheld from spouses of persons linked with Al-Qaeda**

The ECJ has ruled that the family members of suspect associates of Bin-Laden, Al-Qaeda or the Taliban cannot be denied social security benefits. The ECJ addressed the right to free enjoyment of property and the right to family life.

Following the implementation of UN measures introduced after 11 September 2001, the UK introduced regulations which froze the benefits of suspects and their families. In examining the relevant provision of Council Regulation (EC) No 881/2002, the ECJ ruled that the UK's interpretation had been too wide; finding that by making a fixed level of social security or social assistance benefits available to the spouses to meet the basic expenses of the household, "it is hard to imagine how those funds could be turned into means that could be used to support terrorist activities".

To view the judgment in the case of *M and Others v Her Majesty's Treasury*, Case C-340/08, 29 April 2010, please follow the link

<http://curia.europa.eu/jurisp/cgi-bin/gettext.pl?where=&lang=en&num=79899570C19080340&doc=T&ouvert=T&seance=ARRET>

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**10. Job vacancies: The PILS Project seeks a Solicitor and Project Manager to cover Maternity Leave, Belfast, deadline 4 June 2010**

The PILS Project is seeking a Solicitor and Project Manager to cover maternity leave commencing in August 2010. The post is for 6 months duration with potential for extension.

The closing date is 5pm, Friday 4 June 2010. To discuss this post/project, interested individuals should contact Melissa Murray on 04890446201.

For an application form, job information and further details, please contact Melissa Murray in writing (hard copy or e-mail) at The PILS Project, Arthur House, 41 Arthur Street, Belfast, BT1 4GB or [Melissa@pilsni.org](mailto:Melissa@pilsni.org). Interviews will be held on 15 June 2010.

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**11. "Towards a Gender Recognition Framework for Ireland", Symposium hosted by UCC, 14 May 2010**

University College Cork is hosting a symposium entitled "Towards a Gender Recognition Framework for Ireland". Speakers will include Prof. Andrew Sharpe, School of Law, Keele University, Prof. Stephen Whittle, School of Law, Manchester Metropolitan University, Ms. Eilís Barry, Barrister at Law, Mr. Michael Farrell, Senior Solicitor, Free Legal Advice Centres and Irish Human Rights Commission and Ms. Tanya Ní Mhuirthile, Faculty of Law, University College Cork.

The event will take place in the Brookfield Health Sciences Complex in UCC on Friday 14 May 2010 from 10.30am to 2pm. Further information is available from Noreen Delea, Faculty of Law, UCC on (021) 490 2728 or [ccjhr@ucc.ie](mailto:ccjhr@ucc.ie). For full details and a booking form for the symposium, see <http://www.ucc.ie/en/ccjhr/fullstory,97981,en.html>

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**12. Launch of Law Reform Commission's Interim Report on Personal Debt Management and Debt Enforcement, 17 May 2010**

The Law Reform Commission is launching its interim report on Personal Debt Management and Debt Enforcement by Dermot Ahern TD, Minister for Justice, Equality and Law Reform. The event will take place at the Law Reform Commission, Dublin 4, on Monday 17 May 2010 at 4pm. RSVP to (01)6377600 or [events@lawreform.ie](mailto:events@lawreform.ie)

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**13. The Equality Authority is holding a legal conference on "Expanding Equality Protections in Goods and Services: Irish and EU Perspectives", 21 May 2010, Dublin 2**

The Equality Authority is holding a legal conference on the theme of equality protections in goods and services. The conference is aimed at an EU and Irish audience of legal practitioners, policymakers, academics, students, equality NGOs and social partners. Attendance at this conference qualifies for CPD points.

The speakers will include: Professor Mark Bell, University of Leicester; Lilla Farkas of the Migration Policy Group; Dr Tony McGlennan from the Bar of Northern Ireland; Colm O Cinneide,

University College London, and Geraldine Hynes, Carol Ann Woulfe and Garret O'Neill, solicitors with the Equality Authority. The conference will be opened by Ms. Mary White, T.D., Minister of State with Responsibility for Equality, Integration and Human Rights. The Hon. Mr. Justice Niall Fennelly, Judge of the Supreme Court (Ireland) and former Judge of the European Court of Justice, and Siobhan Phelan, B.L. will chair the conference.

Download booking form from <http://www.equality.ie/events.html> and email to [info@equality.ie](mailto:info@equality.ie) before Monday 10 May 2010. Please ensure that you save the completed form as a Word 1997/2003 file and include the words "Expanding Equality Protections" in the subject line.

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#### **14. The Irish Penal Reform Trust, launch of report on the "Reintegration of Prisoners in Ireland", 25 May 2010, Dublin 7**

The Irish Penal Reform Trust is launching a new report "...It's like stepping on a landmine": Reintegration of Prisoners in Ireland'. The conference will take place at the MACRO Community Resource Centre, 1 Green St, Dublin 7 on Tuesday 25 May 2010 at 11am. RSVP by 21 May 2010 at <http://www.iprt.ie/events-signup> or alternatively contact Mary at [info@iprt.ie](mailto:info@iprt.ie) or 01 8741400.

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#### **15. Irish Mental Health Lawyers Association seminar, 27 May 2010**

The Irish Mental Health Lawyers Association is holding a seminar and launch of their website [www.imhla.org](http://www.imhla.org) on Thursday 27 May 2010 at 6.00pm in the Distillery Building, 145-151, Church St., Dublin 7.

Miriam O'Callaghan will launch the website followed by brief presentations by Darius Whelan BL on Reforming Mental Health and Mental Capacity Law, Ciaran Craven BL on the Mental Health Act 2001 and Lianne Murphy of PILA on Opportunities for Public Interest Law in Ireland.

The seminar fee is €30 for members and €60 for non-members. CPD points will be awarded for attendance at this seminar. Those wishing to attend should contact Joan Doran Solicitor at 26, Upper Pembroke Street, Dublin 2, Fax 01 637 3933 or email [joan@joandoran.com](mailto:joan@joandoran.com).

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#### **16. The International Law Association in association with the Irish Society of International Law hosting talk on "The Future of the International Criminal Court after the Review Conference", 15 June 2010, Dublin 2**

The Irish branch of the International Law Association in association with the Irish Society of International Law is hosting a talk (followed by Q and A) on "The Future of the International Criminal Court after the Review Conference". An introduction will be given by James Kingston, Legal Advisor from the Department of Foreign Affairs, followed by speaker William A. Schabas, OC MRJA, Director of the Irish Centre for Human Rights and Chair in human rights law at the National University of Ireland, Galway, and President of the ILA-Irish Branch.

The event is taking place in the European Union House, 18 Dawson St, Dublin 2 on Tuesday 15 June 2010 at 6.15pm. RSVP to Carol Noonan, School of Law, University of Limerick on (061) 233688 or [carol.noonan@ul.ie](mailto:carol.noonan@ul.ie) to book a place. A dinner will be arranged (at own expense); please indicate in advance if you propose to attend the dinner, as this will facilitate reservations.



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## **17.E.U: The European Commission Employment, Social Affairs and Equal Opportunities 4<sup>th</sup> Equality Summit, 15-16 November 2010**

The 4th Equality Summit will take place in Brussels and is co-organised by the Belgian Presidency of the European Union and the European Commission.

The objectives for this annual Summit are to promote equal rights and equal opportunities for all in the European Union, and to share knowledge and experiences in order to develop more effective ways of counteracting all forms of discrimination.

The Summit will bring together approximately 500 high-level delegates representing EU Member States, candidate and EEA countries, international organisations, EU-level NGO networks and social partners, business sector, media and academia.

Date: 15 – 16 November 2010

Venue: Brussels

<http://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=248&furtherEvents=yes>

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**Public Interest Law Alliance -  
A project of FLAC (Free Legal Advice Centres Ltd.)  
13 Lower Dorset Street, Dublin 1  
Tel: 01-8728048 / 8745690  
LoCall: 1890 350 250  
Fax: 01-874 5320  
Website: [www.pila.ie](http://www.pila.ie)**

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