

PILA Bulletin, 14 January 2010

Happy New Year from the PILA Bulletin team! This 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. New Year's Resolution – 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. New Preliminary notice: Launch of FLAC's Direct Provision Report, 18 February 2010

FLAC is delighted to announce that the launch of its latest report which analyses the direct provision system in Ireland will take place on 18 February 2010. More details to follow.

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3. FLAC to open new legal advice clinic in NUIG

The official launch of the new NUIG FLAC clinic will take place next Monday at 8pm in the Dillon Theatre at NUI Galway, followed by a reception. Professor Gerry Whyte from Trinity College Dublin and Noeline Blackwell, Director General of FLAC, will speak on the topic: "Is Access to Justice in Ireland in 2010 under Threat?"

NUIG students visiting the FLAC clinic will be able to avail of free legal information from student volunteers and once off advice from trained practitioners from Tuesday, 19 January 2010. It will be based in the student centre on campus.

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4. Government publishes its joint third and fourth periodic report under the United Nations Convention on the Elimination of Racial Discrimination

The joint third and fourth report submitted by the Irish government to the United Nations Committee on the Elimination of Racial Discrimination, the body charged with monitoring the Convention of the same name (CERD), has been published and is available on the FLAC website at <http://www.flac.ie/publications/category/pilabulletin/>. The report is two years overdue. The oral review of Ireland before the UN CERD Committee has not yet been scheduled.

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5. New public interest webpage on LawSociety.ie

Readers may like to note that the Law Society's webpage has been re-designed and is now a new section entitled 'public interest,' where the society will publish its relevant reports.

The webpage may be accessed at <http://www.lawsociety.ie/pages/Consumer-Interest/Reports/>

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6. UK: Local authority entitled to compel a registrar to officiate at the registrations of same-sex civil partnerships despite her objections to such unions

This appeal raised the question of whether the London Borough of Islington are entitled to compel a marriage registrar to register same-sex civil partnerships despite her objections about officiating at such registrations on the grounds of her Orthodox Christian beliefs. In answering unanimously in the affirmative, the Court found that although these acts were contrary to the claimant's private religious views, they were both proportionate and directed to a legitimate aim. The Court noted that the claimant worked for a secular body which had to function in a non-discriminatory fashion. Additionally, her job as a registrar did not stop her worshipping in any fashion she wished to. The claimant also argued that her Article 9 rights of freedom of conscience were infringed and in dismissing this claim, the Court noted how these rights were not absolute.

See *Ladele v. London Borough of Islington* [2009] EWCA Civ 1357 for more information at <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2009/1357.html&query=ladele&method=boolean>

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7. UK: First criminal trial without jury in 400 years takes place in English and Wales Crown Court

The first criminal trial without a jury in over 400 years began in London this week. The case in question concerns an armed robbery alleged to have been carried out by four men at a warehouse at Heathrow in February 2004.

This is the fourth time the case has come to trial, having failed on earlier attempts for reasons including the inability of the jury to come to a decision and interference with the jury. The accused were unsuccessful in a series of legal challenges to prevent the trial proceeding under powers introduced under the Criminal Justice Act of 2003. The appeal court in June last year ruled that the danger of jury tampering was very significant after it considered secret evidence. It is said that the case has, to date, cost more than ten times the proceeds of the robbery in legal costs.

As the case opened this week, the charges were read out by the court clerk as would have been done for a jury and the judge was asked to confirm that he had seen the indictment. The clerk then told the judge that all four defendants had pleaded non guilty and that it was in his charge to determine their guilt.

Readers will no doubt be aware that criminal trials without juries or *Diplock Courts* were introduced into Northern Ireland during the height of the troubles and abolished only in 2007. The Special Criminal Courts in Ireland continue to exist and provides non-jury trials in which three judges take a majority decision.

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8. European Court of Human Rights: European Court of Human Rights finds that UK police powers to 'stop and search' violate Article 8 of the Convention

The European Court of Human Rights (ECtHR) this week, in a case against the United Kingdom, found that the police powers of stopping and searching people without suspicion violates Article 8 of the European Convention of Human Rights which provides for the right of respect for private life.

The Court was critical of the fashion in which the powers were used on a habitual basis, rather than in cases of emergency. In this context, they expressed dissatisfaction that the area of Greater London had been designated a 'stop and search' zone for several years. In a further criticism of the practice, the Court found that allowing a 'stop and search' at the discretion of police involved too great a degree of arbitrariness. Thus, there was a danger that certain quarters of the community could be targeted by these measures. The Court found that "...the powers of authorisation and confirmation as well as those of stop and search... are neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse.They are not therefore "in accordance with the law."

For more information, please see *Gillan and Quinton v. UK* (Application no. 4158/05) at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=gillan&sessionid=42736537&skin=hudoc-en>.

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9. European Court of Human Rights: Significant judgment in trafficking case

The European Court of Human Rights last week handed down a judgement in what many regarded as a test-case in human-trafficking. The facts involved the death of a young Russian who had moved to Cyprus. She was working as a 'cabaret artiste' which in reality meant working as a prostitute. Her body was later found in what looked like a failed attempt at escaping the apartment in which her employer was keeping her.

The Cypriot authorities held an enquiry but found that no evidence to suggest criminal liability for her death. Upon the repatriation of her body, the Russian authorities examined the corpse and found that there may be evidence to suggest additional investigation was warranted which Cyprus refused to do. The Application was taken by the deceased's father.

The Court found that whilst no explicit mention is made of trafficking in the Convention, it nonetheless was covered by Article 4 which prohibits slavery and forced labour. The Court expanded the obligation on states not to simply prosecute acts of slavery, but to take positive measures to prevent and protect victims and potential victims. Interestingly, the Application was lodged against two states; Cyprus and Russia and both were found guilty of Article 4 breaches.

Further, the Court found procedural, rather than substantive, breaches to the deceased's right to life. Whilst her death itself was not foreseeable, the steps taken to investigate it by Cyprus were not satisfactory. The Court also found Cyprus to have violated the deceased's right to liberty. This is because she was briefly detained at a police station for no due cause after an attempt to leave her employer and further, they did not release her on her own, but instead into the care of the employers.

To view the judgement in the case of *Rantsev v. Cyprus and Russia* (Application no. 25965/04) at <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=860538&portal=hbkm&source=externalbydocnumber&tabl>.

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10. International: Mexico City becomes first city to legalise gay marriage in South America

Mexico City passed legislation last month which extended marriage to homosexual couples. The legislation will also allow a number of other rights such as the right to adopt children. Only seven countries worldwide allow gay marriages: Canada, Spain, South Africa, Sweden, Norway, the Netherlands and Belgium. Buenos Aires became the first Latin American city to legalise same-sex civil unions for gay and lesbian couples in 2002. And four other Argentine cities later followed suit, as did Mexico City in 2007 and some Mexican and Brazilian states. Only Uruguay has legalised civil unions nationwide. The recent legislative developments in Mexico have not met with universal support however. Much of Mexico remains deeply conservative and the leader of the conservative National Action Party has stated that his party will challenge the legislation in the courts.

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11. Obituary: Sir Ian Brownlie, 1932-2010

Readers may be saddened to learn of the passing of Sir Ian Brownlie. Brownlie was a leading international lawyer from the UK who had appeared in over forty cases in the International Courts of Justice (ICJ). Perhaps his most significant appearance in the ICJ was that as lead counsel for Nicaragua in the case it brought against the US. He not only convinced the Court to accept jurisdiction, but went on to win the case. He also appeared before the House of Lords in the famous Pinochet case of international jurisdiction. Born in 1932, Brownlie was well known as a man of integrity and scholarship and he had published a number of textbooks, many of which are still used today. Brownlie took silk in 1972, and later became a Bencher of Gray's Inns. He held a number of prestigious academic positions during his life including becoming a Distinguished Fellow of All Souls College, Oxford. Ian Brownlie died in a car crash whilst on holiday in Egypt last week.

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12. Community legal education:

- Respond Housing Association, January – March 2010

Respond are organising four upcoming events. The first of these is a half-day seminar on housing repossessions on 25 January 2010 in Dublin. They are also organising a Chartered Institute of Housing accredited certificate in housing which runs for six weeks in Waterford and a two-day introductory workshop in community development which will run on the 24 and 25 of March 2010. Finally, Respond are also launching a FETAC level 5 accredited certificate in health care, commencing in March 2010 in Oranmore, Galway.

For further information on any of these courses and booking forms, please email caroline.nolan@respond.ie or telephone (01) 8087760

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- Dublin Rape Crisis Centre

On Saturday 16 January 2010, the Dublin Rape Crisis Centre is holding a conference in Dublin Castle on *Rape Law: Victims on Trial?* from 9.00am to 1.30pm. The Conference will be opened by the President of Ireland, Mary McAleese and will be chaired by the Honourable Mr Justice Paul Carney.

Also:

21 January 2010 - A one day workshop on *Working with Issues of Child Sexual Abuse*.
3 February 2010 - A one day course on *Preventing and Dealing with Bullying, Harassment and Sexual Harassment in the Workplace*.
6 February 2010 - The Drumcondra Education Centre in collaboration with DRCC will hold a training seminar *Trauma and the Child: Supporting the children of Refugees and Asylum Seekers, whose parents have experienced Sexual Violence and other Trauma*.
22-25 February 2010 - A four day course on *Sexual Abuse: the Counseling Process*.
September - December 2010 - A twelve day Post Graduate Certificate Course on *Issues in Sexual Violence: the Counselling Process*.

For more information on any of these events, please contact the DRCC on (01) 6614911.

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13. Jobs: Solicitor sought for independent law centre

A solicitor is required for newly established independent law centre working in the homeless sector. Some experience of litigation is essential together with a demonstrable interest in working with people who are disadvantaged.

Initial one year contract. Full-time position. Salary commensurate with experience. Starting date: April 2010.

Job Description and application form available from Caitriona O'Hara at Mercy Law Resource Centre, 25 Cork St., Dublin 8, tel: (01) 4537459 and e-mail: mercylawresource@gmail.com

Closing date for applications: Friday 5 February 2010. Interviews will be held in early March.

Mercy Law Resource Centre is an equal opportunities employer and we welcome applications from every sector of the community.

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14. Events: European and Social Security Law Course, Belfast, 4 February 2010

This course is aimed at experienced advisers, solicitors and barristers who want to update their knowledge of European law as it relates to social security. Both caselaw and legislative developments at European level will be highlighted to ensure that advisers are equipped to use European law in their social security and social assistance cases. It will run from 10.00am to 4pm on 4 February 2010 at the Law Centre in Belfast.

More details may be obtained from Deborah Hill on 048 9023 6340 or Deborah.hill@lawcentreni.org

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15. 8th Child and Family Welfare Network Event, NUIG, 9 February 2010

The Eighth Child and Family Welfare Network Event will this year be held in NUIG on the 9 of February 2010 from 6.00pm to 7.30pm. Chief Inspector Kathleen O'Toole is the key note speaker and she will deliver a talk on *Youth justice - prevention and intervention*.

The Child & Family Research Centre is a joint initiative between HSE West and NUI Galway. For more information, please email Gillian.browne@nuigalway.ie or telephone (091) 495398.

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16. The 8th International Journal of Clinical Legal Education Conference, Northumbria University, 7 - 9 July 2010

The Eighth International Clinical Legal Education Conference will take place next July at Northumbria University in Newcastle upon Tyne. It will focus on the impact that clinical learning might have on the life of future lawyers and thus on the legal systems they help to shape. The annual International Clinical Legal Education Conference serves as a unique forum in which clinical educators from all jurisdictions can come together to discuss all aspects of clinical teaching and learning, to learn from one another and to share best practice.

Please phone the ICLE Conference Centre on +44 191 243 7597 for more information.

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