

PILA Bulletin, 20 November 2009

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.

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1. Independence of Equality Authority and Irish Human Rights Commission under the spotlight

The first comprehensive review of Ireland's equality and rights infrastructure, released this week, finds that the independence of The Equality Authority and the Irish Human Rights Commission (IHRC) has been severely breached. *Downgrading Equality and Human Rights: Assessing the Impact* was commissioned by the Equality & Rights Alliance (ERA), a coalition of over 130 organisations and activists who work together to make equality and human rights stronger in Ireland and of which FLAC is a member.

The report argues that non-transparent selections and appointments of staff and board members, legislative changes and discretionary budget allocations mean that the bodies fail to meet the independence tests laid down by international standards and law. The study concludes that Ireland does not meet the standards of the UN Paris Principles, the recommendations of the European Commission Against Racism and Intolerance (ECRI) and the EU's Race Directive. It also finds that Ireland spends much less on equality and rights bodies than similar countries. Denmark spends €10m and Northern Ireland spends €9.2m compared to Ireland's €4.89m.

It shows that the budget cuts imposed on the bodies in 2008 have had a significant impact on the work of the IHRC and an unquantifiable impact on the work of the Equality Authority. The IHRC, which lost nearly a third of its budget last year, will 'not be able to exist' if the Government imposes further cuts to the Commission this year, its president, Maurice Manning, warned earlier this year.

The report will be used to fortify a legal complaint already submitted by ERA to the European Commission that Ireland is in breach of EU equality law. For more details, see the ERA's website at www.eracampaign.org. It will also be presented at an ERA conference, *A Fairer Ireland: Putting Equality & Rights at the Heart of Recovery* which will take place on 24 November 2009 at the Radisson SAS, Golden Lane, Dublin 8 from 9.30am to 4.30pm. Registration is open online for the conference at www.eracampaign.org/registration.html.

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2. PILA seminar series review, *Using human rights law for clients: comparing the British and Irish experiences*

PILA held its first seminar entitled, *Using human rights law for clients: comparing the British and Irish experiences* on 16 October 2009. The seminar was very well attended, attracting around 70 people from the Bar, private practice and the voluntary sector. The speaker was Kevin Kerrigan, Associate Dean of the School of Law at the University of Northumbria in Newcastle, practising solicitor and co-author of *Advocacy and Human Rights: using the Convention in Courts and Tribunals*. Kevin discussed the structure of the Human Rights Act 1998 (HRA) and the impact which it has had to date. He then talked through a series of recent HRA decisions and led an interesting discussion as to whether similar issues arose in Irish law. A summary of the discussion will be available shortly on www.pila.ie.

PILA hopes to hold a second seminar shortly. Those interested in attending should continue to check the PILA website and forthcoming issues of the *PILA Bulletin*.

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3. Recent pro bono conferences, London and Budapest

PILA attended two pro bono conferences in November: the PILI (Public Interest Law Initiative) conference from 4 – 6 November 2009 and the LawWorks/Bar Pro Bono Unit Conference on 9 November 2009. Both conferences provided interesting perspectives from NGOs, law firms and in-house lawyers on the following kinds of issues: matching unmet

legal need with legal expertise; the effect of the recession on delivery of pro bono services; pro bono structures within a law firm; managing the relationship between pro bono and legal aid; and the role of professional regulatory bodies in pro bono. Around 200 people attended each conference, attendees at the PILI conference coming from as far afield as Armenia, Brazil, South Africa and the USA. See www.pili.org and www.lawworks.org.uk for further details on pro bono work.

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4. European Court of Human Rights hands down two judgments on prison overcrowding which could have significance for the Irish penal system

The European Court of Human Rights last month handed down judgments in two cases concerning prison conditions which could potentially lead to a similar challenge from prisoners in Ireland who are being kept in overcrowded conditions. The cases of *Orchowski* and *Sikorski* were both taken against Poland on foot of an alleged breach of, amongst others, Article 3 of the Convention which prohibits torture or the infliction of inhuman or degrading treatment or punishment. In these cases, the Court reiterated that where prison overcrowding reached a certain level, the lack of space in a prison could constitute the central factor to be taken into consideration under Article 3.

The applicants complained that they had less than the domestic statutory 3m² of living space per person in the various detention facilities where they were imprisoned. In both these cases it was established beyond reasonable doubt that for substantial periods of time the applicants' cells had been overcrowded. Consequently, they were left with less than the statutory minimum "humanitarian" amount of space. This was further aggravated by a lack of exercise, particularly outdoor exercise; a lack of privacy and frequent transfers. The Court held unanimously that the distress and hardship endured by the applicants had exceeded the unavoidable level of suffering inherent in detention, in violation of Article 3.

In *Orchowski*, the Court also stated that solving the systemic problem of overcrowding may necessitate the mobilisation of significant financial resources. However, it stressed that lack of resources cannot in principle justify prison conditions which are so poor as to reach the threshold of treatment contrary to the convention.

Given the development of the ECHR law in this area and the worsening problem of overcrowding within the Irish penal estate, it is possible that similar challenges to those brought in *Orchowski* and *Sikorski* may follow from this jurisdiction.

To read the judgements in these cases, see [Orchowski -v- Poland](http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=37555898&skin=hudoc-en&action=request) (Application No 17885/04) at <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=37555898&skin=hudoc-en&action=request> and [Norbert Sikorski -v- Poland](http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=37555898&skin=hudoc-en&action=request) (Application No 17599/05) at <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=37555898&skin=hudoc-en&action=request> (in French only).

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5. Human trafficking victim wins \$768,000 in Californian court

The plaintiff in this landmark case is an Indonesian woman who served as a domestic servant for a wealthy Californian couple. This couple confiscated her passport, withheld all pay, required her to work 16 hours a day all week without leave or holiday and restricted

her movement outside the house. In addition, they subjected the plaintiff to verbal abuse, psychological coercion, and instructed her to lie and say she was a family member if law enforcement officials ever called to the premises. They also told her that if she left the house she would be raped or arrested.

Jurors rejected the defense claim that the plaintiff came to California voluntarily, was a guest in the residence and fabricated the enslavement story in order to obtain a T-Visa. The judgment comes after a two year collaboration between a team of lawyers from O'Melveny & Myers LLP, who worked on the case on a pro bono basis, and Bet Tzedek, a non-profit legal services agency. Meaning 'The House of Justice' in Hebrew, Bet Tzedek provides free legal services in matters involving consumer rights, elder law, housing, public benefits and workers' rights to low-income, disabled and elderly people of all racial and religious backgrounds. According to Paul McNamara, Partner at O'Malley & Myers, 'the verdict sets a new standard for enforcement of this law and establishes precedent under a never-before litigated measure.'

For more information on the case see O'Melveny & Myers LLP press release at <http://www.omm.com/newsroom/news.aspx?news=1319> or Bet Tzedek at <http://www.bettzedek.org/>.

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6. Legal Education: Bristol University's Innocence Project murder case referred back to English Court of Appeal

A murder case that has been under investigation by the University of Bristol Innocence Project (UoBIP) has been referred back to the Court of Appeal by the Criminal Cases Review Commission (CCRC).

In 2003, Simon Hall was convicted of murder. A central piece of evidence in his trial were a number of black fibres which were found at the scene, in his vehicle and at his parent's home. The fibres were later said to be 'indistinguishable' from those found at the crime scene. In the absence of other evidence linking Hall to the crime and doubts concerning the reliability of the fibres as evidence, members of the UoBIP began investigating the case. The team volunteered hundreds of hours to produce various submissions to the CCRC on the limitations of the fibers' evidence, and on the possible utility of new DNA techniques on biological samples found at the crime scene. The team also uncovered new evidence in unused evidence that may conclusively prove Hall's innocence.

The UoBIP, based within the University's School of Law, involves students working on real cases concerning long-term prisoners who maintain their innocence, have exhausted the criminal appeals system and have no legal aid. The students work under the supervision of UoBIP founder, Dr Michael Naughton, and are supported with pro bono legal assistance.

For more information on the Bristol University Innocence Project, see the <http://www.bris.ac.uk/law/aboutus/law-activities/innocence-project.html>.

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7. Community Legal Education: Human Rights Education Association E-learning Course in *Human Rights Litigation*, deadline 1 December 2009

The Human Rights Education Associates (HREA) is an international non-governmental organisation that supports human rights learning through the training of activists and professionals, the development of educational materials and programming and community-building through on-line technologies. It will be hosting a distance learning course which will provide participants with knowledge of the concept, types, venues and strategies of human rights litigation. The course will cover strategic litigation and legal aid both internationally and domestically, and explore a variety of strategies including issue or group oriented litigation, community based services, legal clinics, NGO or law firm resourced actions and others. Participants will be exposed to court ordered structural relief, as well as with conventional victim-centered legal remedies. Non-litigation strategies to maximise the chances of winning cases and to ensure the effective enforcement of decisions are also considered.

The course involves fifty hours of reading, on-line working groups, interaction with students and instructors, and assignments, and is offered over an 11-week period, beginning on 3 February 2010. The course is based on a participatory, active learning approach, with an emphasis on peer-to-peer learning. Participants will do the required reading, prepare individual and group assignments and participate actively in group discussions.

The application deadline is 1 December 2009. More information and application forms can be found at: http://www.hrea.org/index.php?base_id=396

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8. Events: Child and Family 8th Welfare Network Event, Community Policing and Early Intervention, NUIG- Change of date

Please note that this event, which was advertised in the previous *PILA Bulletin*, is now postponed. The lecture was initially to be held in NUIG on 24 November. However, due to the planned day-of-action which is now scheduled for this day the organisers have postponed the event until 2010.

For more details, contact Gillian Browne at Gillian.browne@nuigalway.ie or Tel: 091 495398.

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9. Advice Services Alliance (NI) Civil Justice Conference 2009, Belfast, 20 November 2009

The Advice Service Alliance Northern Ireland (ASA) is a partnership organisation comprising Advice NI, Law Centre NI and the Citizens Advice. Its purpose is to promote the role of independent advice services and to represent the interest of the advice sector to government and other stakeholders. The ASA has organised this conference to further the debate on the future of Civil Legal Services in Northern Ireland in the context of the devolution of policing and justice. Civil legal services is an area which often gets overlooked in this wider debate but which ASA believes is vitally important for citizens seeking legal

redress on important areas of law including those pertaining to social welfare, employment, immigration and consumer issues. At present Northern Ireland lags behind England, Wales and Scotland in reform of civil justice and this conference will explore developments in these jurisdictions and what lessons can be learned in implementing reform here. The conference is aimed at all those involved in legal services including those working in the areas of social welfare law.

The conference will take place in the Belfast Central Mission, and will begin at 9:30am on 20 November 2009. For further information see <http://www.lawcentreni.org/News/News%20items%20and%20adverts/Civil%20Justice%20Conference%20Brochure%202009.pdf>.

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10. Irish Family Planning Association 40th anniversary celebration, 27 November 2009

Irish Family Planning Association will be celebrating its 40th anniversary in the Pillar Room, Rotunda Hospital, Dublin 1 on 27 November 2009 from 6.30pm.

The keynote speaker at the event will be Mr. John Gormley TD, Minister for the Environment, Heritage & Local Government and leader of The Green Party.

RSVP to Richie Keane – (01) 8069444 or richie.keane@ifpa

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11. FLAC's Third Annual *Dave Ellis Memorial Lecture*, 1 December 2009

FLAC's third annual *Dave Ellis Memorial Lecture* will take place on Tuesday 1 December 2009 at 6pm, followed by a wine and cheese reception. The venue will be the President's Hall of the Law Society of Ireland, Blackhall Place, Dublin 8. Dr. Maurice Hayes will deliver this year's address. All are welcome.

For further information, please contact Doreen in FLAC at doreen.mescal@flac.ie or (01) 8745690. You can also check www.flac.ie for updates under the events section.

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12. European Agency for Fundamental Rights Conference, *Making rights a reality for all*, Stockholm 10-11 December 2009

The Fundamental Rights Conference is the European Union's key event on International Human Rights Day and will bring together more than 200 leading figures from EU Member State governments, EU institutions, intergovernmental organizations, local authorities, civil society and specialised bodies on human rights. This year's conference aims to build momentum for *Making rights a reality for all* and will be devoted to the situation of

marginalised groups who are vulnerable to rights violations, discrimination and social exclusion in the EU.

For more information about the event contact the FRA on frc@fra.europa.eu or tel.: +43(1) 58030 654.

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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**

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