

PILN Bulletin, 23 July 2009

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1. European Court of Human Rights finds three "firsts" in case relating to disability

The European Court of Human Rights has recently made a number of rulings for the first time in a case relating to disability. The case involved a tax payable by a man who was exempted from military service in Switzerland because of his disability (diabetes), in spite of his wish to carry out his military service and where the alternative of carrying out civil service is only available to conscientious objectors.

The Court made its first ever ruling that Article 14 (on discrimination) had been violated on the grounds of disability. The court reiterated that Article 14 contains a non-exhaustive list of prohibited grounds, which also includes discrimination based on disability. The court also found a violation under Article 8 relating to the right to physical integrity relating to the exercise of a person's right to private and family life.

The Court referred for the first time to the UN Convention on the Rights of Persons with Disabilities. It made explicit reference to the Convention as the basis of the existence of a European and universal consensus on the need to protect persons with disabilities from

discrimination. Reflecting Article 2 of the Convention, the Court ruled that the Swiss authorities had failed to provide the human rights concept of reasonable accommodation to Mr. Glor in order to find a solution which relates to his particular individual circumstances.

The judgement in the case of *Glor v. Switzerland*, (application no. 13444/04) is only available in French:

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=glor%20%7C%2013444/04&sessionid=26979658&skin=hudoc-en>

To view the Court's press release in English click:

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=13444/04&sessionid=26979718&skin=hudoc-pr-en>

The UN Convention on the Rights of Persons with Disabilities can be viewed here:

<http://www.un.org/disabilities/convention/conventionfull.shtml>

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2. South Africa: Constitutional Court rules that unsuccessful litigants in cases involving constitutional matters should not be ordered to pay costs

Last month, the South African Constitutional Court judged the approach to be taken by the courts in making costs awards in constitutional litigation. The facts of the case related to a public-interest NGO called Biowatch and governmental authorities. After making several unsuccessful requests for certain information from the respondent authorities, Biowatch launched an application in the High Court for an order requiring the furnishing of the information from the governmental authorities. The High Court granted eight out of eleven requests and it was subsequently held that the non-disclosure of the information constituted an infringement of Biowatch's constitutionally-protected right of access to information.

However, because of what was termed the sweeping nature of Biowatch's requests, the Court held that the government authorities should not pay Biowatch's costs. A multi-national company had also intervened in the case to protect the confidentiality of information it had supplied to the governmental authorities. The Court held that Biowatch had compelled that company to intervene and should therefore pay its costs.

Biowatch's appeal was rejected as was its request for leave to appeal to the Supreme Court. It then applied to the Constitutional Court firstly to request leave to appeal and secondly against the failure of the High Court to order the governmental authorities to pay its costs and against the order that Biowatch should pay the multi-national company's costs.

Sachs J. gave the unanimous decision of the court that the High Court had been wrong in failure to give appropriate attention to the fact that this was a constitutional matter in which Biowatch was seeking to vindicate constitutional rights. The general rule in South African constitutional litigation is that an unsuccessful litigant ought not be ordered to pay costs in proceedings against the state, unless the application is deemed frivolous or vexatious or in any other way manifestly inappropriate. Biowatch was in fact largely successful in its case and the sweeping nature of its requests had not prevented the matter from being fully dealt with. As a result of this, the Court ruled that the governmental authorities should pay Biowatch's costs.

In relation to the multi-national company, Sachs J. held that the litigation related to the failure of state officials to meet their constitutional obligations and did not relate to any dispute between Biowatch and the company. He said that Biowatch had secured a great deal of information, while the company succeeded in protecting the confidentiality of some of the data it had provided. This was a new area of law, in which all the parties were feeling their way. In these circumstances, the costs award against Biowatch in favour of the company should be set aside, and there should be no order as to costs.

To download the full judgement in the case of *Biowatch Trust v Registrar Genetic Resources and Others*, Case CCT 80/08 [2009] ZACC 14 follow the link:

<http://www.constitutionalcourt.org.za/site/Biowatch-Trustees.htm>

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3. US President nominates renowned human rights lawyer to his team

US President Barack Obama has announced his intention to nominate human rights lawyer Mr. Michael H. Posner to the position of Assistant Secretary of State for Democracy, Human Rights and Labor at the Department of State. Mr. Posner is the President of US human rights organisation *Human Rights First* which works on a wide range of issues such as abuses relating to the armed conflict in Iraq, business and human rights, discrimination, anti-torture and refugee protection.

Mr. Posner has been president of *Human Rights First* and worked in human rights worldwide for more than 30 years. Trained as a lawyer in Chicago, Posner has been a lecturer at Yale Law School and Columbia University Law School. He is a regular public commentator and his opinion essays have been widely published across the US. He has also testified before the U.S. Congress on a range of human rights and refugee issues.

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4. Chechnya: Award-winning human rights campaigner murdered

One of Russia's most renowned human rights activists was abducted from her home in Chechnya and executed last week. Natalia Estemirova's body had been dumped on a main road in Ingushetia. She had been shot in the head and chest.

She had been a strong critic of the Kremlin and was an opponent of Ramzan Kadyrov, Chechnya's pro-Kremlin president. Estemirova had been a close friend of journalist, writer and fellow Kadyrov opponent, Anna Politkovskaya who was shot dead outside her apartment in Moscow in 2006. Estemirova was the head of the Chechnya branch of Russia's oldest human rights group, Memorial.

Human rights activists in Russia have expressed outrage at the killing. The director of Human Rights Watch in Russia has stated that Natasha was working at "the forefront of some of the most intense human rights investigations in Chechnya". She went on to say that "she was targeted because of her work. I have no doubt her killing was to silence her."

Estemirova had recently collaborated on two reports into punitive house burnings and extra-judicial killings in Chechnya, which are alleged to have been carried out by Kadyrov's forces. Kadyrov has indicated that he will sue over claims that he was behind her murder.

She was 50 years old and is survived by her fifteen year old daughter.

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5. India: Dehli court decriminalises homosexuality

A court in Dehli in India has decriminalised homosexuality but only in Dehli, India's capital rather than the country in its entirety. The High Court in Dehli held that to criminalise consensual gay sex violated the fundamental rights set down in India's constitution. The verdict is open to challenge in India's Supreme Court.

The British colonial era law, put in place 148 years ago outlawed sex between people of the same gender because it was "against the order of nature" and was punishable by up to ten years imprisonment. Conviction rates under the law were infrequent but it had been used as a tool for harassment of the gay community. While the law itself can only be amended by India's parliament, the ruling should protect people from police abuse and criminal charges.

A largely conservative country, India is slowly accepting homosexuality in some parts, particularly in bigger cities. However, senior government officials and politicians have expressed strong anti-gay sentiments as have bishops and representatives of the Catholic Church.

To view the judgement in the case of *Naz Foundation v. Government of NCT of Dehli & Others*, WP(C) No.7455/2001, click on the following link:

http://www.nazindia.org/judgement_377.pdf

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6. Job & Internship opportunities:

- **Campaign Researcher: Older & Bolder**

Older & Bolder is an alliance of eight non-governmental organisations in the age sector in Ireland. The members of the alliance are committed to a joint campaign for the development and implementation of a National Positive Ageing Strategy for Ireland. The member organisations are: Active Retirement Ireland, Age & Opportunity, Age Action Ireland Ltd., Alzheimer Society of Ireland, Carers Association, Irish Hospice Foundation, Irish Senior Citizens Parliament and the Senior Help Line.

The alliance now wants to employ a Campaign Researcher to join the existing staff of two, a Project Director and an Administrative Assistant. Candidates for this post should write, stating why they would like to undertake the job, with their Curriculum Vitae to the Project Director, Older & Bolder, Jervis House, Jervis St., Dublin 1. Electronic applications may be forwarded to mary.cleary@olderandbolder.ie

The closing time and date for applications is 2 p.m. on Friday, August 7 2009.

- **Internship: Refugee Information Service**

The Refugee Information Service (RIS) is seeking a communications intern in its Dublin office. The RIS provides a specialist information, advice, advocacy, and referral service for asylum seekers, refugees, people with subsidiary protection and people with permission to remain in Ireland. The RIS specialises in the areas of international protection and the integration of migrants.

The RIS supports the work of statutory and non-statutory agencies that come into contact with our client groups and raises awareness through a comprehensive training service. The organisation works to effect change in Government policy and legislation by developing policy positions, carrying out research and engaging in advocacy. The RIS also implements a comprehensive and sustained communications strategy across all areas of its work.

For further information, contact Wale Mogaji, Head of Communications & Integration at 01 6453090 or wale.mogaji@ris.ie. Interested candidates should email their CV and covering letter stating how their skills, qualifications and experience match the requirements of the internship to Wale Mogajii, Head of Communications & Integration, Refugee Information Service, 1st & 2nd Floors, 18 Dame Street, Dublin 2 or to Cormac@ris.ie. Closing date is Friday 24th July 2009

- **Internship: Equality and Rights Alliance**

The Equality and Rights Alliance (ERA) is seeking an Intern to support the work of the ERA Campaign. This is a non-paid position for 12 hours per week, initially for a six month period. The position is based in Dublin city centre.

The Equality and Rights Alliance is a not-for-profit coalition of over 130 civil society groups and activists, established to lobby for a strengthened equality and human rights statutory infrastructure in Ireland. ERA was initially established in response to Government actions to dismantle the statutory equality and human rights infrastructure by severely cutting the budgets of the Equality Authority and the Irish Human Rights Commission. For more information visit our website at www.eracampaign.org

If you are interested please send a copy of your CV to rachel@eracampaign.org or phone Rachel at (01) 7994511.

Closing date for receipt of CVs: Friday July 24th (Interviews will be held the following week).

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7. Annual Human Rights Lecture, Law Society of Ireland, 27 July 2009

The Law Society of Ireland will host its Annual Human Rights Lecture later this month on *Censorship in a Free Society*. The lecture will be delivered by the Right Honourable Lord Justice Sedley of the UK. Lord Justice Sedley has practised at the Bar of England and Wales for 28 years, specialising in public law and discrimination law before being appointed a judge of the High Court in 1992. He became a Lord Justice of Appeal in 1998 and has sat as an ad hoc judge of the European Court of Human Rights.

His lecture will be followed by a wine reception and admission to the event is free. Advance booking is desirable as places are limited. To book your place, contact Anthea Moore, Law Society of Ireland, Blackhall Place, Dublin 7 (DX79). Tel: (01) 6724961, fax (01) 6724801. Email: a.moore@lawsociety.ie.

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8. European Pro Bono Forum, Budapest, 5-6 November 2009

The Public Interest Law Institute (PILI) is inviting lawyers from law firms, solo practitioners, corporate counsel, representatives of non-profit and nongovernmental organisations, academics, students and those interested in promoting voluntary legal practice to the 2009 European Pro Bono Forum. This is the third annual event which aims to provide “a dynamic multi-national platform for networking and outreach, information exchange and skills transfer, all dedicated to the expansion of pro bono activity in Europe”.

The focus of this year’s event will be on the global economic crisis and its effect on pro bono practice and the non-profit sector.

Early registration for the event ends 25 September 2009 and discounts on costs are available for NGOs, academics and students. For further information and to register, see www.probonolawyer.eu.

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9. Access to Equality: A training course on the Equal Status Acts, ICCL & UCD, autumn/winter 2009

The Irish Council for Civil Liberties (ICCL) and the Equality Studies Centre at the UCD School of Social Justice have come together to devise an educational programme on anti-discrimination law in Ireland for advice givers, community workers and non-governmental organisation (NGO) representatives who work in the area of human rights and social justice. This programme will be delivered in October and November/December 2009 to 12 participants.

For further information contact Tanya Ward, Deputy Director of the ICCL or to register contact Joanne Garvey. Both can be reached at the following email address: info@iccl.ie. Deadline for registration is Friday 11 September 2009. There is a fee of €100 for the course which includes course materials and lunches. Waivers and requests for assistance with related costs will be considered.

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