

PILA Bulletin, 25 September 2009

The Public Interest Law Network Bulletin is today being re-launched as the Public Interest Law Alliance Bulletin issued by the Public Interest Law Alliance (PILA), a new project of FLAC.

As many of you will know, PILA was itself launched at the celebration of FLAC's 40th anniversary last April and the project's aim is to promote and facilitate the use of law in the public interest for the advancement and protection of human rights for the benefit of marginalised and disadvantaged people. PILA will work under four main pillars:

- Public interest litigation;
- Law reform;
- Community legal education;
- Legal education.

A new and comprehensive website will be online in the coming months but for now, you can find further information at www.pila.ie.

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

Please feel free to distribute it as widely as you wish. Should you wish to suggest a friend for our PILA Bulletin mailing list, please forward their contact details to us at bulletin@pila.ie.

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1. Public Interest Litigation: Lawyers working for UK NGO Shelter win first pro bono costs order

Two solicitors and a barrister acting on a pro bono basis for the UK-based housing and homelessness organisation, Shelter, have been successful in achieving the first pro bono costs order. The case involved a family who had been threatened with eviction in a dispute over the terms of a sale and leaseback scheme on their home. The family's income left them just outside the income threshold for legal aid eligibility.

Not only did the lawyers win the case but they were also awarded £20,000, the amount that would have been chargeable if they had been charging for their services. Section 194 of the Legal Services Act 2007, provides for 'pro bono costs orders'. This is broadly equivalent to a normal costs order, and is available when the successful party in a case is represented wholly or partly pro bono. The unsuccessful party is ordered by the court to make a payment in an amount equivalent to legal costs to a prescribed charity. The charity prescribed under the act is the Access to Justice Foundation, chaired by Lord Goldsmith, a former UK Attorney General.

The money will be used by the foundation in support of national and regional programmes to further promote pro bono work. Counsel in the case, Andrew Walker said "I would urge all barristers to consider applying for Section 194 orders in their successful pro bono cases. The process is similar to seeking a normal order for costs, and can produce a rewarding extra benefit from your efforts – charitable funds that the Access to Justice Foundation can recycle into supporting yet more pro bono work for those who need it most."

One of the main barriers to public interest litigation in Ireland is the exposure of litigants to adverse cost awards against them as well as their lawyers' costs, costs of expert witnesses etc. One means of addressing this is through a protective cost order which allows a party to the proceedings to apply to the court in advance of a substantive hearing of a case in order to limit the party's risk as to costs. While the High Court in Ireland has held that it has jurisdiction to grant protective cost orders, it does not appear that any such orders have yet been granted. This will be an area central to PILA's research over the coming months.

For further information on Shelter see <http://england.shelter.org.uk/>. For information on the Access to Justice Foundation, see <http://www.accesstojusticefoundation.org.uk/>.

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2. EU body appoints Irish Council for Civil Liberties and the UCD School of Social Justice to monitor racism in Ireland

The Irish Council for Civil Liberties (ICCL) and the School of Social Justice at University College Dublin (UCD) have been chosen by the European Union's Fundamental Rights Agency (FRA) as the FRA's new RAXEN National Focal Point on racism, xenophobia, and related intolerances in Ireland.

Working with the ICCL and the UCD representatives will be a panel of the country's top academic experts as well as the Immigrant Council of Ireland (ICI) which has been subcontracted to develop the communications work of the RAXEN National Focal Point.

FRA appoints National Focal Points as national coordinators, contracted to manage an information network including government departments, research bodies, statutory human rights and equality bodies, NGOs and social partners. Regular reports will be provided by

the National Focal Point groups on racism and related areas in Ireland.

Further information on RAXEN at the FRA can be found at http://www.fra.europa.eu/fraWebsite/research/raxen/raxen_en.htm.

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3. ERA complaint to European Union

ERA has lodged a complaint to the EU Commission following the savage cuts to the equality and human rights sector. ERA members contend that the Irish Government has used the cover of financial cutbacks to mount a targeted attack on Irish Equality and Human Rights institutions. This has undermined the ability of the Equality Authority to function as a designated national body under EU equality directives. In particular, the combination of a budget cut and an accelerated decentralisation programme have undermined the ability of the Equality Authority to effectively fulfil its prescribed functions. The Authority's budget was cut by 43% last October while cuts to other Justice departmental agencies were in the order of just 2-5%. In addition, the McCarthy report has recommended a further 10% reduction in the Authority's non-pay budget.

The complaint was prepared by Orlagh O'Farrell who worked formerly as a lawyer with the European Commission and is the Irish member of the EU's network of independent legal experts on anti-discrimination law.

ERA has also submitted a petition to the EU Parliament on this issue. ERA has received the support of all opposition MEPs who are signatories to the petition.

For more information and to read the full text of both the complaint and petition, go to: <http://www.eracampaign.org/complaint-to-the-eu>.

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4. Training for UK judges

The Judicial Studies Board in the UK, which celebrates its 30th anniversary this year, is becoming a Judicial College which has launched a strategy of training for the 1,900 full-time Crown and county court judges in England and Wales. A review of judges' training needs was undertaken in 2006 by Dame Professor Hazel Genn, now Dean of the Law School at University College London. Her work concluded that training need to be more tailored to the specific needs of individual judges and that the focus of the training should be on practical skills rather than on substantive law. She further found that more teaching could be done online and that judges should embrace the electronic age.

The prospectus for the course, from which judges can chose their own training courses, includes chapters on civil law, criminal law, family law, magisterial law, the craft of judging and electronic resources; there are 15 courses in total. In the craft of judging course, judges will act out courtroom scenarios, one judge taking the part of the judge and another part of the defendant and be videoed, and then review each others performance. It consists of four half day modules covering issues such as delivering an oral judgement and case management. The courses will run from April 2010 to 2012. Each course has its own director, a practising judge, and there are more than 100 tutor judges to run small groups.

Judges will have “protected time” to ensure that the training is not undertaken in their personal time.

A number of recommendations were made in relation to the training of the Irish judiciary by the Irish Council for Civil Liberties in their report *Justice Matters*. See <http://www.iccl.ie/justice.php>.

The prospectus for courses can be viewed at http://www.jsboard.co.uk/downloads/judicial_prospectus_web_240809.pdf and further information can be found at the website of the Judicial Studies Board at <http://www.jsboard.co.uk/>.

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5. Transsexual prisoner succeeds in fight to move to women’s prison

A male to female transsexual being held at a prison in the UK has won her high court case to be transferred to a women’s prison. The decision quashed that by the British justice secretary, Jack Straw, to continue to detain the prisoner, referred to as A, in a male prison. The judge based his refusal to follow the justice secretary’s decision on the European Convention of Human Rights stating that her continued detention in a male prison “is in breach of her rights under Article 8 [right to private and family life] under” that Convention. It was expected that the transfer be effected within a few weeks of the judgement.

The judge described how A, though born male, had had her new gender recognised in law and her birth certificate amended to reflect her female sex. Having undergone hair removal treatments and hormone treatment, A was still forbidden from wearing skirts or blouses in the prison where she was being held in a “vulnerable prisoners” wing. She could not be permitted to undergo gender reassignment surgery while remaining in a men’s prison. The prison authorities and the Department of Justice argued in the case that A would be no more likely to be accepted by inmates at a female prison and would be obligated to spend protracted periods in segregation at an extra cost of £80,000 per annum. They further argued that the move to a female prison may affect her mental health and make it more difficult to reduce her level of risk to society in order to win early release from her sentence. A is serving a life sentence for manslaughter and attempted rape committed as a man.

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6. European Court of Human Rights clarifies the obligations of the state to protect women from domestic violence

In June 2009, the European Court of Human Rights (ECtHR) ruled that Turkey was in violation of its obligations to protect women from domestic violence and in a landmark decision held that gender-based violence is a form of discrimination under the European Convention on Human Rights (ECHR).

The case involved a woman who together with her mother had suffered years of brutal domestic violence at the hands of her husband. In spite of complaints to the police and prosecuting authorities, the women were not adequately protected. The woman’s mother was killed by her husband. The Court outlined the nature of State obligations concerning violence in the family. It recognized the seriousness of the issue of domestic violence

across Europe and noted the “invisibility” of the crime created difficulties. It also focused on the vigorousness with which States must respond to the issue. It was stated that domestic violence is neither a private or family matter but one of public interest with demands effective State action. The Court relied on international and comparative law and *Interights* appeared as a third party and made written submissions in the case.

Crucially in its first such ruling, the Court recognised the failure of a State to adequately respond to gender-based violence as a violation of Article 14 of the ECHR, relating to non-discrimination. This brings the Court’s interpretation into line with other international human rights bodies which recognize violence against women as a means of inequality.

The full judgement of the case is available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=851046&portal=hbk m&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

The third party intervention of Interights can be read at: www.interights.org/opuz.

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7. Community Legal Education: NUI Maynooth offers course in Equality Studies in Training and Development

The National University of Ireland, Maynooth is offering an NUI Certificate Course in Equality Studies in Training and Development. The course is “designed to raise participants’ knowledge and understanding of equality and diversity issues in contemporary Ireland.” It is aimed at adult educators, trainers and others working with people with diverse needs in training and development. The course is open to anyone who is employed in or has experience in training and/or working with people with diverse needs and be committed to participate and collaborating online. Delivery of the course is offered on a flexible learning mode over six months and requires an average commitment of six-eight hours per week; collaboration in online activities; completion of projects and assignments and attendance at three face-to-face workshops.

Modules for the course include The Shape of Irish Society which includes a focus on the Irish State and Legal system and Equality in a Diverse Ireland which looks at Equality through the Employment Cycle and Labour Law and Social Partnership for example. The Certificate is a National University of Ireland Certificate Level 7 and carries 20 credits in the European Credit Transfer System.

The course costs €1,100 and applications should be made, by 25 September, to the Department of Adult and Community Education, NUI Maynooth, Maynooth, Co. Kildare, by phone at 01 7086013 or by email at equalitystudies@nuim.ie.

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8. Law Society offers Certificate in Human Rights

The Law Society of Ireland Diploma Programme is offering a new course, a Certificate in Human Rights. The course aims to introduce participants to the international, regional and national human rights framework. It will also provide practical guidance on enforcing

human rights in the legal arena. The overall objective is to encourage participants to develop skills necessary for pursuing human rights based arguments including practice and procedure, using human rights legal databases and issues identification.

The course is offered for practitioners, trainee solicitors and students over a nine week period on Saturdays, beginning on October 10 2009. The lecturers will consist of barristers and solicitors who have demonstrated expertise in the area. Applicants should forward fees (€1,280) and applications to the Diploma Team at the Law Society. Tel: (01) 6724802, Email: diplomateam@lawsociety.ie, Website: www.lawsociety.ie.

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9. Job vacancies: AkiDwA seeks Employment Officer (Equality for Women Measure), deadline for applications: 2 October 2009

AkiDwA, The Migrant Women's Network Ireland, wishes to recruit an employment officer for a 6 month, full time position for an Equality for Women Measure project. Established in 2001, AkiDwA is an ethnic minority-led national network of migrant women living in Ireland. The organisation promotes the strengthening of capacity of immigrant and migrant women to access their rights and entitlements, in particular with regard to health services, education and the labour market.

The purpose of this 6 month, full time role is to deliver AkiDwA's Equality for Women Measure programme, as approved by the Department of Justice, Equality and Law Reform.

The deadline for applications is 2 October 2009. For further information and to apply, contact AkiDwA at 9B Lower Abbey Street, Dublin 1. Email: salome@akidwa.ie; tel: 00353 (0)1 8148582; website: www.akidwa.ie.

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10. Conferences & Events: Date for your Diary: Seminar on the European Convention on Human Rights for practitioners, 16 October 2009

The Public Interest Law Alliance will be holding an **ECHR seminar** for practitioners on, Friday, 16 October 2009 at 4 – 5.30 PM. The seminar is entitled *Using human rights law for clients: comparing the British and Irish experiences*.

The speaker is Kevin Kerrigan, who co-authored "Advocacy in the Courts: using the Convention in courts and tribunals". Kevin is Associate Dean of the School of Law at the University of Northumbria. He is a practising solicitor with experience of criminal and human rights cases in courts at all levels. He is a Human Rights Act consultant.

The event will take place at the Blue Room, in the Law Society of Ireland, Blackhall Place Dublin 7. As places are limited, please contact Jo Kenny, t: (01) 8728048 or e: jo.kenny@pila.ie to confirm your attendance.

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11. *Human Rights Standards and the Past: The Eames/Bradley proposals, a discussion to be hosted at the Human Rights Centre, QUB, 30 September 2009*

A group discussion will be held at the Human Rights Centre at the School of Law in Queen's University in Belfast on the topic of *Human Rights Standards and the Past: The Eames/Bradley proposals*.

Prof. Brice Dickson (of the Human Rights Centre at QUB) and Prof. Kieran McEvoy (Institute of Criminology and Criminal Justice, School of Law, QUB) will lead the discussion. It will take place at Room 101, 27 University Square, Belfast on Wednesday 30 September 2009 from 3-5pm.

Places are limited. To book your place, contact Deaglan Coyle at d.p.coyle@qub.ac.uk or phone 0044 20 9097 3472.

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12. *Strategies for Tackling Forced Labour, seminar, 1 October 2009*

The Migrant Rights Centre Ireland have come together with the Irish Congress of Trade Unions and the Anti-Human Trafficking Unit of the Department of Justice, Equality and Law Reform to organise a seminar entitled *Strategies for Tackling Forced Labour*.

The keynote address will be by Roger Plant, the Head of the Special Action Programme to Combat Forced Labour at the International Labour Organisation followed by panels discussions on Perspectives and Responses to Forced Labour and Good Practice Examples and Future Actions to Tackle Forced Labour.

The event will take place on Thursday 1 October 2009 at the Gresham Hotel, 23 Upr. O'Connell Street, Dublin 1 from 9.15am – 2pm. To register for the event, please go to www.mcri.ie/news_events to download the registration form.

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13. *Early registration for 2009 European Pro Bono Forum, Extraordinary Measures for Extraordinary Times, 5-6 November 2009*

The Public Interest Law Institute (PILI) has opened early and discounted registration for its European Pro Bono Forum, an event dedicated to increasing pro bono activity across Europe. This will be the third annual Forum and it will "explore opportunities presented by the global economic crisis to foster greater commitment to volunteer legal assistance by law firms and private practitioners." The Forum will further explore models for institutionalising pro bono practice, engaging donors and increasing partnerships with between NGOs and law firms. It also aims to engage volunteer legal assistance beyond towns and cities.

Early discounted registration ends today, 25 September 2009. For the agenda and additional information, please visit, www.probonolawyer.eu.

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14.A Fairer Ireland: Equality and Rights at the Heart of Recovery, a conference hosted by the Equality & Rights Alliance, 24 November 2009

The Equality and Rights Alliance (ERA) is hosting a major conference on Tuesday 24th of November, in the Radisson Hotel, Golden Lane, Dublin 8.

The conference will outline:

What a more robust equality and human rights culture and statutory infrastructure would look like, and the positive difference it will make for people experiencing inequality;

Why there is a need for a more robust equality and human rights culture and statutory infrastructure and why it is key to invest in equality in times of economic difficulty;

How a more robust infrastructure can be achieved by: an examination of the key findings of research commissioned by ERA; drawing on informed perspectives of participants at the conference; and inviting key Justice and Equality spokespeople from all the political parties to outline their vision for a more robust infrastructure.

Speakers will include Karen Chouhan who was named a Key Visionary by the Joseph Rowntree Charitable Trust in the UK. Places will be limited so early booking is advisable. Contact Rachel@eracampaign.org for more information.

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We need to protect Human Rights and Equality in Ireland! Join the ERA campaign - today!

Sign the petition: <http://www.ipetitions.com/petition/erapetition/>

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