

PILA Bulletin, 26 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. For now, the archive of PILA and PILN bulletins can be found at www.flac.ie/publications and <http://www.pila.ie/bulletin/bulletinarchive.html>.

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

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1. Launch of Irish Human Rights Law Review

PILA hosted the launch of the *Irish Human Rights Law Review (IHRLR)* by the Ombudsman Emily O'Reilly, last Thursday, 20th May. The *IHRLR* is edited by Donncha O'Connell of the School of Law, NUI Galway and is to be published on an annual basis by Clarus Press. The *Review*, which should be of interest to academics, students, practitioners and activists working in the field of human rights, focuses on the domestic application of international human rights law and the critical analysis of human rights standards and processes.

Opening the launch, Michael Farrell, Senior Solicitor with FLAC stated that "At a time when the human rights of many vulnerable people are under attack as a result of the economic crisis, and the state's human rights and equality infrastructure has been undermined by disproportionate budget cuts, the launch of the *IHRLR* is particularly timely."

In her speech, the Ombudsman Emily O'Reilly stated that the launch of the *Review* presented an opportunity "to begin the process of demystifying human rights and not just for the public, but for the political class, those charged with our public administration and even those charged with engaging with human rights issues in the courts." She went on to state that "through the investigation of complaints a public sector ombudsman is uniquely placed to facilitate good public administration which is based on human rights principles."

Donncha O'Connell the Editor of the *IHRLR* said it must surely now be time to consider further the question of 'constitutionalising' the office of Ombudsman coming up to the seventy-fifth anniversary of the Constitution. He suggested reform could be achieved by the reorganisation of various statutory bodies for the protection and promotion of human rights and equality under a 'constitutionalised' office of Ombudsman with a clear and strong nexus to Parliament (akin to that of the Comptroller & Auditor General) and by reform of the office the Attorney General to remove the potential for conflict in the role of that office as notional guardian of the public interest and legal adviser to the Government.

The speeches by Emily O'Reilly, Donncha O'Connell and Michael Farrell are available on the PILA website at

<http://www.pila.ie/events/pastevents1/2010/05/20/launch-of-irish-human-rights-law-review-by-ombudsman-emily-oreilly/>

The PILA website is currently a work in progress – watch this space for notice of further resources to be posted shortly!

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2. Michael Farrell speaks about Foy case at UCC event (paper attached)

Michael Farrell, senior solicitor with FLAC, was one of the speakers at the recent symposium entitled "Towards a Gender Recognition Framework for Ireland" at the University College Cork on 14 May 2010. The purpose of the half-day symposium was to contribute to the debate leading to the drafting of the Renewed Programme for Government, agreed in October 2009, which includes a commitment to introduce gender recognition legislation in Irish law under the 'Equality' heading. It was hoped to identify the existing protections available to transgender and intersex persons under Irish law and to emphasise the need to introduce gender recognition legislation.

Michael Farrell's paper (attached), entitled "*The Lydia Foy Case – What it means and what happens next*", looks at some of the legal implications of the Lydia Foy case both for the transgender community and more widely.

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3. New FLAC Centre opens in north inner city

On 10 May 2010, FLAC opened a new Free Legal Advice Centre in Sean McDermott Street, Dublin 1. The Centre operates every Monday afternoon from 2pm until 4pm in contrast to the majority of FLAC Centres in Dublin which operate in the evening. This is the only centre in Dublin 1 and will provide an outlet for the residents of the area to receive free legal advice from qualified solicitors or barristers.

There are currently two volunteers giving their time at Sean McDermott Street and FLAC would like to recruit further volunteers for the Centre. If you are interested in becoming a Volunteer Legal Advisor at this centre and in providing free legal advice to members of the community who require such advice, please contact Zsé Varga, FLAC Volunteer and Centres Manager, at volunteers@flac.ie.

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4. Dolphin's Barn residents claim violation of human rights

Residents of City Council flats in Dolphin's Barn are attempting to vindicate their human rights under the UN International Covenant on Economic, Social and Cultural Rights (ICESCR), which Ireland has ratified, claiming the damp, mould and sewage conditions in which they live are a violation of their right to an adequate standard of living. The flats in which the residents are living date back to the 1950s and were due to be regenerated by Dublin City Council in late 2009. The City Council plans had included their demolition and replacement with a variety of social and affordable housing, private apartments, retail and commercial units, and community buildings; however such plans fell through when a public private partnership collapsed. Regeneration is still one of the options being considered by the Council but to date no commitment has been given.

The residents' case, presented by a resident's group living in the local authority housing, was heard yesterday before a unique human rights commission panel which included Dr Maurice Manning, president of the Irish Human Rights Commission, and Dr Padraic Kenna, NUIG lecturer specialising in housing law. The residents claimed how the dire everyday realities which they face are breaching basic housing standards under General Comment 4 of the UN Committee on Economic, Social and Cultural rights.

Rory Hearne of Rialto Rights in Action Project outlined how people cannot be expected to continue to live with "damp black walls in their children's bedrooms... or not being able to take a bath or shower in their own homes". He continued, "Today people are saying enough is enough, that their human rights are being denied and that they want to work with Dublin City Council and the Government to bring about reasonable improvements".

Dr. Maurice Manning, speaking at the human rights hearing, outlined that the living conditions in these flats put the State and Dublin City Council, as its agent, in breach of ICESCR, with the evidence given representing "a breach of the criteria laid down by the UN in relation to what constitutes adequate housing".

For more information, contact Edel Hackett, PCC, on 0872935207.

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5. Major reform in libel law removes privilege inequity between Oireachtas members and witnesses

The inequity between the legal rights and protection enjoyed by Oireachtas members of committees and those who attend the committees as witnesses has been rectified with the first major reform of libel law since the 1960s. Section 17(2)(l) of the Defamation Act 2009 affords a right of absolute privilege for the evidence of witnesses appearing before Oireachtas committees. Prior to this reform, witnesses attending committees of the Oireachtas were only allowed a qualified privilege for the evidence given. Witnesses thus were previously afforded less legal protection than politicians, the latter enjoying absolute privilege for statements made in parliament.

However, where the witness is directed by a committee to cease giving evidence on a certain matter but they fail to do so, they will lose the absolute privilege protection. From that point on, their evidence will only enjoy the protection of the qualified privilege.

To view the Defamation Act 2009 in full, please follow the link <http://www.oireachtas.ie/documents/bills28/acts/2009/a3109.pdf>

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6. High Court clarifies right of audience of barristers

A High Court judgment from Mr. Justice Hedigan has clarified the right of audience of barristers in the District Court. The case being heard involved a man who was remanded in custody after a District Court Judge refused to hear an application for bail because his barrister was not attended by a solicitor. Finding that the man had been unlawfully detained, Hedigan J. outlined that there was some uncertainty over the right of an instructed barrister to appear without attendance from a solicitor and was glad of the opportunity to clarify the matter. The Judge ruled that by "virtue of their call to the bar by the Chief Justice of Ireland", barristers do have a right of audience in the District Court where instructed but not attended by a solicitor.

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7. Amendments to Civil Partnership Bill

The Cabinet has agreed to a number of amendments to the Civil Partnership Bill, the most notable of which being the amendment increasing from three to five years the period of cohabitation in order to ensure that only relationships of substantial duration qualify for claims involving maintenance, property, pension rights and the estates of a deceased cohabitant. A limitation has also been introduced in relation to the ability to benefit from a deceased cohabitant's estate if the relationship ended more than two years before the death, with the exception of a situation where the person remained financially dependent until the date of death.

With regard to tax, including stamp duty, and social welfare, civil partners are to be treated the same as spouses with legislative provisions to be provided for in Finance and Social Welfare Bills.

To view the details of the Civil Partnership Bill 2009, please follow the link <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2009/4409/document1.htm>

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8. UK: Pakistani students deemed "security risk" to the State win fight to remain in UK

Two students from Pakistan who were arrested in anti-terror raids have won their appeals against deportation from the UK following a sitting of the Special Immigration Appeals

Commission. The students were among a group of men who were arrested under the Terrorism Act in April 2009 for their alleged involvement in a suspected bomb attack in Manchester, but were subsequently released without charge. The two students lodged an appeal against their deportation, and this week the Special Immigration Appeals Commission has found in their favour. The Commission ruled that even though they pose a threat to UK national security, the pair could not be deported as they would be at risk of detention, ill-treatment or torture if they were returned to Pakistan, in breach of Article 3 of the European Convention on Human Rights.

The Home Secretary, relying on national security grounds, expressed disappointment that the deportation was not ordered.

To view the judgment in the case of *Abid Naseer & Others v. Secretary of State for the Home Department*, SIAC, 18 May 2010, see http://www.siac.tribunals.gov.uk/Documents/outcomes/1_OpenJudgment.pdf

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9. UK: Article 8 ECHR invoked in eviction case

In a recent English High Court case, an application was made for judicial review of a decision to evict a man from Council housing in London, with the claimant relying on Article 8 of the European Convention on Human Rights.

It was argued that a claim against him for possession of property occupied by him under a license was incompatible with the claimant's right to respect for his home under Article 8, and further that the requirement that any interference from a public authority with the exercise of the right to respect for one's home must be in accordance with the law and necessary in a democratic society was not met. In particular, the claimant contended that section 3 of the Eviction Act 1977 was incompatible with Article 8 because consideration could not be given to the personal circumstances of the defendant to possession proceedings.

In his judgment, Cranston J referred to English, Irish and Strasbourg jurisprudence in the area. The Irish housing cases of *Donegan v Dublin City Council* [2008] IEHC 288 and *Dublin City Council v Gallagher* [2008] IEHC 354 were discussed, with the judge distinguishing Irish legislation and concluding that judicial review in Ireland was more limited in scope.

Dismissing the judicial review application, the judge ruled that it could not be concluded that section 3 of the Eviction Act 1977 was incompatible with Article 8 because section 3 had no greater effect than to prohibit an owner from re-possessing property without seeking a possession order from a court. It was further held that the manner of proceedings in the county court in relation to claims for possession was not incompatible with Article 8 as nothing in section 3 prevented a County Court from considering the personal circumstances of the claimant.

To view the judgment in the case of *Regina (Coombes) v Secretary of State for Communities and Local Government and another* [2010] EWHC 666 (Admin) in full, please follow the link <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2010/666.html&query=coombes&method=boolean>

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10. International: Gay marriage legalised in Portugal while gay couple sentenced to 14 years imprisonment in Malawi

The Portuguese President has ratified a bill which allows gay couples to marry, outlining that there are other pressing issues such as unemployment and poverty which the country must deal with. While the new legislation removes any gender references in Portugal's marriage laws, it stops short of allowing adoption by same-sex couples. This ratification follows a four-day visit from Pope Benedict XVI to predominantly Catholic Portugal, during which he condemned gay marriage as a "dangerous threat to the common good".

Portugal is the sixth country in Europe to legalise same-sex marriage, joining Spain, Belgium, the Netherlands, Norway and Sweden, while several other European states permit civil partnership.

A Malawian gay couple has been sentenced to 14 years in prison following a conviction for unnatural acts and gross indecency. The sentenced couple was Malawi's first same-sex couple to carry out a symbolic marriage ceremony last December, with their own arrest following two days later.

The judgment, which applied laws dating back to the colonial era, has been met with international condemnation, raising fears that this case could set a precedent for other African countries to follow. Anti-homosexuality movements have already been increasing across several African countries, including an Anti-homosexuality Bill in Uganda which would introduce punishment of a life sentence, or even death, for homosexuals.

The Irish Minister of State for Overseas Development, Peter Power has deemed the sentence "entirely disproportionate and against international human rights principles", and has outlined that Ireland, along with our EU partners, is calling on the Government of Malawi to meet its commitments to protect the rights of all individuals, regardless of their sexual orientation. The couple have been separated and will carry out their sentences in prisons 40 miles apart.

To view the judgment in the case of *Republic of Malawi v. Steven Monjeza and Tiwonge Chimbalanga*, 20 May 2010, please follow the link http://southernafricalawcenter.org/news/item/Judgment_Malawi_Gay_Couple

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11. Canadian Law Society relaxes conflict of interest rules in relation to pro bono work

The Law Society of Upper Canada has introduced modifications to conflict of interest rules which will make it easier for volunteer lawyers to assist clients through Pro Bono Law Ontario's (PBLO) "brief services" programmes. Many of the volunteer lawyers working with this programme are young lawyers from large law firms who, under the current Rules of Professional Conduct, must carry out a conflicts search of their firm's client database in order to establish if any excluding conflicts arise. This requirement was causing major delays for the program, resulting in law firms dropping out of the programme and people being turned away due to lack of time to complete the conflict searches.

The modified conflict standard now allows lawyers to provide "brief services" under this programme unless the lawyer actually *knows* of a conflict of interest which would prevent them from taking part. The Rules of Professional Conduct are due to be amended to reflect the change.

For more information on the PBLO conflict of interest rules, see http://www.pblo.org/news/article.298202-LSUC_relaxes_rules_for_lawyers_working_for_free

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12. Job vacancies: FLAC seeking to recruit PILA Manager, deadline 4 June 2010

FLAC is seeking to recruit a Manager for its Public Interest Law Alliance (PILA) project. The Manager will implement PILA's work plan and identify opportunities for and attract funding for PILA. Key deliverables include a comprehensive public interest law website resource, a register of lawyers available to engage in *pro bono* work and significant capacity building in NGOs working for social justice/human rights for marginalised/disadvantaged people.

The Manager position will be for two years and salary will be commensurate with experience.

Applications to include a completed application form and CV should be forwarded by post to Noeline Blackwell, Director General, FLAC, 13 Lower Dorset Street, Dublin 1 or by email to recruitment@flac.ie on or before Friday 4 June 2010.

All applications will be treated in the strictest of confidence. FLAC is an equal opportunities employer.

To download a detailed job description as well as an application form, please follow the link <http://www.flac.ie/about/jobs.html>

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13. 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 02890446201.

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. Interviews will be held on 15 June 2010.

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14. Events: "Judicial Review North – Trends and forecasts 2010", hosted by the Public Law Project, 24 June 2010

The Public Law Project is hosting a conference "Judicial Review North – Trends and forecasts 2010" by practitioners for practitioners with sessions on housing law, social welfare, the equalities duties, freedom of information. The conference will take place in BPP Law School, Manchester on 24 June 2010. Three sessions in particular would be of interest to those in the public interest law field; "The impact of Article 6 and Article 8 ECHR on housing law", "Costs and funding in public law cases", "International law in judicial review and other domestic jurisdictions" and "Social welfare and European Union rights".

For full details of the conference, including the registration form, please follow the link http://www.publiclawproject.org.uk/documents/PLP_JR_North_2010_programme.pdf

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15. Advanced Geneva Training Course on International Human Rights Law and Advocacy, 13-24 September 2010

From 13 to 24 September 2010, the International Service for Human Rights will organise its Advanced Geneva Training Course on International Human Rights Law and Advocacy. The course will be conducted in parallel to the 15th session of the Human Rights Council.

The course is designed for experienced human rights defenders and organisations that have the capacity to use the international human rights system in their work.

The course will consist of 20 to 25 participants from around the world. It is based on an experiential education approach focusing on theoretical and practical aspects of international human rights law, the procedures and practices of the UN human rights mechanisms and the role of NGOs to improve the implementation of human rights treaties and standards.

ISHR will begin reviewing applications as of 20 May and will accept applications until the course is full.

For more information on the course and how to apply, please follow the link http://www.ishr.ch/in-geneva/advanced-geneva-training?utm_source=ISHR+Publications+and+News&utm_campaign=e2bdee58d9-AGTC_20105_7_2010&utm_medium=email

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Free Legal Advice Centres Ltd is a company limited by guarantee not having a share capital, registered in Dublin, Ireland. Company registration number 49413. Directors: Don Crewe, Iseult O'Malley, Peter Ward, Róisín Webb, Liam Thornton.

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FLAC – promoting access to justice <http://www.flac.ie>

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

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Visit the website: <http://eracampaign.org/weblog/>

