

PILA Bulletin, 28 January 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.

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

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- 1. Standing notice – 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. Update: 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 News available on FLAC website

FLAC has published the latest issue of *FLAC News*, its quarterly newsletter. This edition and the archive can be found at <http://www.flac.ie/publications/flac-news-194-octdec-2009/>.

Should you like to receive the *FLAC News* in hard copy, please contact us at bulletin@pila.ie.

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4. Supreme Court clarifies criteria for judicial review of administrative decisions affecting fundamental rights in *Meadows* case

The Supreme Court last week handed down its judgment in the *Meadows* case. By a majority of three to two, the Court allowed the Applicant leave to judicially review a deportation order. The case clarifies the criteria for judicial review of administrative decisions affecting fundamental rights. Where such rights are at issue, the Court should have regard to the proportionality of the decision when assessing the reasonableness of administrative decisions. Fennelly J said this did not provide any significant change in the law, only an elaboration of the principles already implicit in the law. Denham J said earlier case-law on judicial review had been construed 'too narrowly' and judicial review should be an effective remedy especially where, as in asylum cases, access to the Courts has been curtailed by law.

In this case, the Applicant, Meadows came here in 1999 and completed her Leaving Certificate but was unable to pursue a career in nursing because she was refused refugee status. She claims that if she is deported, she would be subjected to female circumcision. It was found that the order of deportation did not properly address any potential harm which may come the Applicant should she be returned to Nigeria. Murray CJ found the Minister's decision to be too vague so that its rationale could not be deduced. Ms Meadows's factual claims for asylum status were rejected in two separate independent hearings, but she now asked the Court to review the Minister for Justice's consequential decision to deport her on the basis he must provide substantial and specific justification for that to a Court.

In a lengthy dissenting judgment, Hardiman J considered that this case would open a kind of flood-gates where every attempt to deport a failed asylum seeker will end in the Courts, 'which are already swamped by such cases.'

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5. Update: ERA complaint to the EU Commission not accepted

ERA have been informed by the EU Commission that they have assessed the alliance's complaint that the Irish Government has used the cover of financial cutbacks to mount a targeted attack on Irish Equality and Human Rights institutions and they do not intend to launch infringement proceedings on the basis of the complaint. ERA lodged the complaint in September 2009 following the savage cuts to the equality and human rights sector, contending the cutbacks 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% in October 2008 while cuts to other Justice departmental agencies were in the order of just 2-5%.

The reason given by the Commission for not accepting the complaint is that the Directives are 'minimum standards' only. Thus they do not specify an amount in regard to the level of funding a member state should provide to a body, which is up to the member state to decide. While the Commission regrets the funding cuts to the Equality Authority, the Commission is not convinced that the current level of funding is an obstacle to the full performance of the tasks provided for in the directives. They did however state that if ERA has any new material 'clearly demonstrating an infringement of community law as the budget cuts have rendered the functioning of the EA impossible or excessively difficult, please send this to us ... within six weeks of the date of this letter'.

While the complaint has not been accepted, the exercise of making the complaint was worthwhile in terms of raising the issue at EU level and it also exposes a weakness in the EU directives that needs to be addressed.

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

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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6. Ireland nominates Anastasia Crickley to the Committee of the International Convention on the Elimination of All Forms of Racial Discrimination

Ms Crickley is currently the Inaugural Chair of the Management and Executive Boards of the European Union (EU) Fundamental Rights Agency (2007-2010), the agency responsible for collecting information and data on fundamental rights, providing advice to the EU and its member States, and promoting dialogue with civil society in order to raise public awareness of fundamental rights. She is also Head of Department of Applied Social Studies, National University of Ireland, Maynooth.

Ms Crickley was, amongst other things, Chair of the EU Monitoring Centre on Racism and Xenophobia (2003–2007) and later a Personal Representative of the Chair-in-Office of the Organisation for Security and Board member (2002–2006). She is currently a member of the Council of State, an advisory body that aids and counsels the President. She was Chairperson of the Irish National Consultative Committee on Racism and Interculturalism (1998–2008) and Founder and Chairperson of Pavee Point National Travellers Centre which promotes the rights of Roma and Travellers in Irish society.

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7. European Court of Human Rights: Application seeking to broaden the Court's approach to standing in a case concerning alleged abuses at psychiatric hospital in Romania

Last month, an application (*Malacu and others v Romania*, 55093/09) was lodged with the European Court of Human Rights (ECtHR) on behalf of five patients who died at the Poiana Mare Psychiatric Hospital, Romania in 2004. The patients suffered from various mental health problems and spent long periods in social care institutions. They died from an alleged combination of poor care, inadequate treatment and substandard living conditions in the hospital. The hospital in question does not enjoy a good reputation and from a two year period starting in 2002, 155 patients died whilst in its care.

The Application is taken on the patients' behalf by two NGOs called the Center for Legal Resources and Interights. These organisations seek to change the Court's requirements on standing in order to permit them to file this Application on the patient's behalf. Current standing rules state that Applicants who are deceased may only be represented by their family. The NGOs argue that such an approach is symptomatic of the sort of procedural barriers that people with disabilities often have to face in their access to justice throughout Europe. Moreover, the NGOs argue that the application on behalf of the patients is justified on the basis that they have no next of kin, that no alternative source of representation is available, and that the highest Romanian Court has already recognised the Center for Legal Resources standing to act on the Applicants' behalf. The NGOs further maintain that it is in the best interest of the realisation of human rights for the Court to hear this complaint.

For more information on Interights, see <http://www.interights.org/home/index.htm>.

To find out more about the Centre for Legal Resources, see http://www.crj.ro/english/MassMedia.aspx?subcategory_id=2.

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8. Russia backs reform at the European Court of Human Rights

Russia has finally agreed to support Protocol 14, a plan which would see considerable reform at the European Court of Human Rights. The reforms will reduce the number of judges which sit at certain preliminary stages and it is hoped it will speed the processing of cases up by 25%. Russia was the last of the European Council's 47 members not have ratified the proposals. Russia had earlier refused to back the protocol stating that it was incompatible with Russian law. The Russian President, Dmitry Medvedev, is said to have exerted pressure to have the reforms backed by the Dumas. The ECtHR currently has about

100,000 cases pending before it. Twenty-eight per cent of the cases currently pending involve Russia.

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9. UK: 2009 UK *Pro Bono* award

Andrew Walker of Maitland Chambers has won the 2009 Sydney Elland Goldsmith Bar Pro Bono Award. Mr Walker undertook a complex *pro bono* case, successfully representing a couple who had been the victims of a 'sale and rent back' scheme. The couple and their children faced eviction when the purchaser defaulted on the mortgage. Walker successfully argued that the Court set aside the transaction.

Special mention this year was given to: 1) Paul Troop, Jude Bunting, Richard Reynolds, Fouzia Khan, James Mehigan and Greg O'Ceallaigh (all of Toops Chambers) for working to seek access to justice for the families of individuals killed or injured in a peaceful demonstration by a UN operated police force; 2) Philip Evans of QEB Hollis Whiteman Chambers for his work with Innocence Network UK and 3) The Savernake Hospital Team (Neil Garnham QC, Mathew Gullick, Guy Opperman, Caroline Stone and Jamie Williams) for their involvement in a legal campaign by the local community of East Wiltshire to resist the closure of their local hospital, which served over 50,000 people.

Interestingly, the team involved in the *Savernake* case had successfully applied to the High Court for a protective costs order in their action which was later affirmed by the Court of Appeal. It is estimated that the value of *pro bono* work in England and Wales has increased significantly since 2007 from £338m to a current estimate of £399m.

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10. UK: English High Court grants judicial review in case of extraditing Gary McKinnon to the US

The High Court in England has said that the Home Secretary may have acted unlawfully by pursuing the extradition of Gary McKinnon, an Asperger's sufferer who faces a potential lengthy prison sentence of up to 60 years in the US for hacking into NASA and US Military computers. The Judge said that medical evidence which suggested McKinnon would be a high suicide risk in an American jail was, as yet, 'unchallenged and unqualified.' The Court found that two issues were raised by the application for leave to seek judicial review. The first was whether the Home Secretary was compelled by the medical evidence to refuse to surrender McKinnon to the US under Section 6 of the Human Rights Act, and secondly, whether the medical evidence which suggests that McKinnon would be suicidal constitutes a fundamental change in circumstances previously considered by the Home Secretary. The hearing is due to begin in April or May.

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11. UK: High Court in England rules compensation may be payable to terror suspects detained on control orders

The High Court in England has quashed control orders against two terror suspects, known as AE and AF. The orders were imposed in 2006 and confined the two suspects to their houses for 16 hours per day and forbade them from using mobile phones or the internet. In June, a House of Lords ruling found that when the State seeks a control order, a summary or 'gist' of the allegations must be provided. The state failed to do this in the case of the two concerned and the Court quashed the order *ab initio*. The Home secretary has vowed to appeal the ruling. In the UK, three control orders have so far been quashed and twelve are still in force. In principle, the ruling clears the way for the two suspects to seek compensation.

See Secretary of State for Home Department v. AE and AF (<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2010/42.html&query=ae+and+af&method=boolean>) for more information

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12.US: Class action suit filed in LA to defend rights of autistic children to treatment

Lawyers from Public Counsel and a large corporate firm, Dunn & Crutcher LLP last week filed a class action and injunction against a regional center which they claim has terminated the most effective treatment for children with autism. The regional centre is a nonprofit organisation through which the state provides certain services. It suddenly announced it was terminating its funding of a particular programme which had benefitted many autistic children, especially those from low-income families.

The Applicant's contend that the withdrawing of funding of the programme is a misapplication of recent legislation passed by the California Legislature which forbids the funding of experimental programmes.

Public Counsel is the largest *pro bono* public interest law firm in the world. Founded in 1970, Public Counsel is dedicated to advancing equal justice under law by delivering free legal and social services to the most vulnerable members of our community, including abused and abandoned children, homeless families and veterans, senior citizens, victims of consumer fraud and nonprofit organizations serving low-income communities. For more information, visit <http://www.publiccounsel.org>.

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13. Jobs – various positions

- *Raxen Research Officer Position*

The Irish RAXEN National Focal Point (NFP) for RAXEN Europe is currently seeking a Research Officer for a position of up to one-year to join the NFP team of academics and researchers involved in conducting research on the following three discrete and short projects:

1. The Situation of Asylum Seekers: Asylum Procedures and the Right to Work

2. Racist and Related Hate Crimes in the EU
3. A complimentary data collection report on issues relating to racism, xenophobia and related intolerances

The research officer position provides a great opportunity to expand qualitative research and statistical skills, and work with a team of academics, researchers and activists in the area of equality, human rights and social justice.

If you are interested in this position, please send an academic cv, two unedited writing samples and a letter by email explaining why you have the relevant skills for this position to Joanne Garvey, Administrator, ICCL, by email joanne.garvey@iccl.ie by Weds, 10 February 2010. Interviews may be organised in February 2010 and the RAXEN Research Officer will be required to start working on the project as soon as possible.

If you have any queries about this position, please forward them to Joanne Garvey, Tel: (01) 799 4504.

- *UNCHR Ireland currently seeking a Protection Assistant*

UNCHR Ireland is currently advertising a vacancy for a Protection Assistant. The closing date for receipt of applications is 1pm on Friday 5 February 2010. Further information can be obtained at <http://www.unhcr.ie/employment.html>.

- *Vacancy for the UN Special Rapporteur on torture mandate*

There is an upcoming vacancy for the UN Special Rapporteur on torture mandate. Interested candidates need to submit an application to the Office of the High Commissioner for Human Rights (OHCHR) for inclusion on a public roster. The deadline has not yet been set, but it would be advisable for those interested to submit their application by June. Further information is available at <http://www2.ohchr.org/english/bodies/chr/special/nominations.htm>.

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14. ICCL launch of Know Your Rights booklet

The ICCL launched its new *Know Your Rights: Criminal Justice & Garda Powers* pack on Tuesday 26 January 2010. It is the first of a series of booklets designed to inform people about their rights, which the ICCL is rolling out as part of its Know Your Rights public information project.

The booklet is designed to inform the general public, in clear and accessible language, of their rights in the areas of Garda search powers, arrest, interview, detention, provision of bodily samples and public order.

Please see <http://www.knowyourrights.ie/> where you can download the booklet.

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15. Events: Upcoming events at the Law Centre: Northern Ireland

The law centre will hold a course on European law and immigration on 26 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 immigration.

On 4 February 2010, the Centre will hold a course on European social security law. 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.

Finally, there will be a half-day training course on 3 March 2010. This is a short, practical course to equip advisers to carry out legal research using a range of different research tools, refresh their skills and find out how to locate information quickly.

All of these courses run in Belfast and more information about any of these courses may be obtained from Deborah Hill. Tel: (028) 9089 9368 or email deborah.hill@lawcentreni.org.

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16. Events: Centre for Criminal Justice and Human Rights, University College Cork will hold its IV Annual Postgraduate Conference, 29 April 2010

This conference is aimed at those who are undertaking postgraduate research in the areas of criminal law, criminal justice and human rights. The theme for this year's event is "*Borders of Justice: Locating the Law in Times of Transition.*" The best paper of the conference will receive a prize of €200. The organiser's abstracts (max. 300 words) are submitted to the organising committee by Friday, 12th February 2010.

Submissions and further enquiries should be directed to ucclawconf@gmail.com.

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

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

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

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