

PILN Bulletin, 1 October 2008

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1. Social Charter Body rejects Free Travel Complaint

The European Committee of Social Rights has rejected by 10 votes to 4 a complaint by FLAC and the International Federation of Human Rights (FIDH) about the exclusion of non-resident Irish pensioners from the Free Travel Scheme for older persons. These pensioners, most of whom live in the UK, are not allowed to use the scheme when they return home to visit family and friends.

The Committee, which monitors complaints under the European Social Charter, “recognised the close links that many wish to maintain with public, social and cultural life in Ireland, “but said that restricting access to the scheme to permanent residents of the State was not a breach of the n Social Charter. The former President of the Committee, Jean-Michel Belorgey filed a dissenting opinion saying it was unacceptable for nationals of a country to be excluded from benefits when they returned home simply because they were not residents. A Turkish member of the Committee also filed a dissenting opinion.

This was the first domestic case taken from Ireland under the European Social Charter and despite the disappointing result in this case, it is hoped that other cases on social and economic rights will follow.

The Decision on the Complaint can be found on the Council of Europe website under the heading Social Charter.

2. EU: Retirement age regulations are not discriminatory says advocate-general

Last week in an opinion to the European Court of Justice, an advocate-general of the Court found that a fixed retirement age is not necessarily contrary to EU rules. A branch of the UK based group Age Concern, Heyday, took the case arguing that the UK Employment Equality (Age) Regulations which force people to stop work at or after the age of 65 without compensation, breach the EU Equal Treatment Directive. The Directive bans discrimination on a number of grounds, including age.

The advocate-general, Jan Mazák, did not agree with Age Concern stating that while the UK regulations on mandatory retirement are covered by the Directive, discrimination on the ground of age could be justified in certain circumstances. He stated that allowing employers to compel people to retire at 65 or over can "in principle be justified if that rule is objectively and reasonably justified in the context of national law by a legitimate aim relating to employment policy and the labour market, and it is not apparent that the means put in place to achieve that aim of public interest are inappropriate and unnecessary for the purpose."

The legal opinion has disappointed hundreds of people forced to retire against their wishes who are currently claiming compensation before UK employment tribunals.

While the advocate-general's opinion is not legally binding, it is followed by the court in 80% of cases and the final verdict is expected in March 2009. If the court follows the advocate-general's opinion, the case will return to the High Court in London for a final decision. Heyday hopes that the UK government will not remove the choice for people to work in later life if they wish or need to do so. It says that 80% of requests for postponement of retirement made by workers in the UK last year had been granted.

The advocate-general's opinion can be read here: [Case C-388/07h](#)

3. UK: Public Interest Legal Education Network launches newsletter

Plenet is the Public Legal Education Network of organisations and individuals, working and operating in the field of public legal education. The network was established to continue building the body of knowledge already established relating to legal education. The network has over 260 participants such as statutory bodies, non-profit organisations, legal professionals, researchers, educators and campaigners. It is funded by the Ministry for Justice. In its own words, Plenet "will provide a space for practitioners and researchers to share information and ideas, to promote good practice in delivering public education and to improve awareness of the need for and value of public legal education." It has recently launched the first edition of its bi-monthly newsletter which will provide subscribers with a resource on up-to-date information on public legal education.

If you wish to subscribe, simply email Info@plenet.org.uk. Find out more information at <http://www.advicenow.org.uk/plenet/sign-up.10008.FP.html>.

4. International: Influence of west to promote human rights agenda at the UN weakens, says EU NGO

Long-term voting patterns in favour of the EU at the UN are waning, and with it, the efforts of the EU to use the UN to promote its values and shape the global agenda, according to the European Council on Foreign Relations. Both the EU and the US are currently suffering to effectively exert their influence on issues such as human rights at both the General Assembly and the Human Rights Council. While European human rights policies were supported by 72% of the UN member states a decade ago, last year the figure had dropped to 48%. For the US, the figure dropped to 23%. Despite working hard to achieve resolutions on Burma and Zimbabwe, the EU and US are facing a constant struggle to raise support for global action on these areas and others such as Iran.

The cause of this shift is said to be the sea change in the balance of power towards China, India, Brazil and Russia and other emerging states which exercise increasing clout in voting. Support for Russian and Chinese human rights stances, which defend national sovereignty and non-intervention despite the grievousness of human rights abuses said to be caused by national governments, has increased by 24% from 50% to 74% in the General Assembly.

At the Human Rights Council in March, the Islamic bloc voted to change the mandate for the council's rapporteur on freedom of expression. In the aftermath of the Danish cartoons crisis, the rapporteur is now charged with the obligation to record blasphemy, with critics arguing that the role has been changed from one of liberty to one of repression. Europe is increasingly marginalised on the Human Rights Council having lost more than half of the votes conducted. As the UN's largest financial investor and the world's largest aid donor, the EU is no longer seeing political gains for its investment, the group said.

The European Council on Foreign Relations is an NGO which was established in late 2007 in order to promote a more integrated European foreign policy in support of shared European interests and values.

To read the full report of the ECFR, follow the link:
http://www.ecfr.eu/content/entry/the_european_union_at_the_united_nations/

5. USA: Laws suits and legislation regarding a civil right to counsel

Across the US, public interest lawyers are increasingly pushing to secure a right to counsel in civil matters for those on low incomes, through litigation and legislation. This would include civil matters relating to property such as foreclosures and evictions, excluded by our own civil legal aid scheme, an area which has become increasingly significant in the current economic climate.

The background to the issue began in the US Supreme Court case of *Gideon v. Wainwright* held in 1963 in which it was decided that individuals charged with crimes had a right to counsel, leading to free lawyers only in criminal matters. In the 1981 case of *Lassiter v. Department of Social Services*, it was argued that a mother, facing the permanent loss of her parental rights, was entitled to counsel. It was held that while a court could appoint a lawyer on a "case by case" basis, a categorical right to counsel does not exist in civil cases

however. A Supreme Court ruling in Washington State in December ruled out a right to legal representation in divorce cases. The case, *King v. King*, centred on a woman who could not afford a lawyer at her divorce trial and lost primary custody of her children. Her husband had an attorney. Other cases are currently before the courts.

Regarding legislation, Louisiana's governor signed a law this summer, providing legal counsel to parents facing termination of parent rights in intra-family adoption disputes. In New York City, a bill is being proposed that would give low-income seniors the right to an attorney in eviction and foreclosure cases. Other states in which right-to-counsel statutes have been proposed in recent years include California, Maryland, Washington and Texas, with bar associations in Hawaii, Minnesota, Massachusetts and New York establishing task forces to establish the right, as called for by the American Bar Association.

While certain lawyers are working on achieving a precedent in this area, others disagree and claim that attorneys being supplied gratis would merely lead to meritless claims and to the waste of taxpayers' money.

For further information on the issue, please consult the website of the US NGO: <http://www.civilrighttocounsel.org> and the Public Library of Law site for further information on cases at <http://www.plol.org/Pages/Search.aspx>.

6. Portugal: Criminal Complaint System goes online

Portuguese authorities have launched a novel system for lodging criminal complaints online. Primarily established to simplify and reduce the administrative burden of filing such complaints, the Online Criminal Complaints System was created in 2007. Lawyers have been entitled to file criminal complaints on behalf of their clients through the online system since September 2008.

The System allows people to file their criminal complaint with the Criminal Authorities online by choosing the type of crime and then completing the blanks relating to date, the facts and the identification of the offender if known. The crimes, against which complaints can be lodged electronically are listed and described in the legislation establishing the system. Included are crimes such as attacks on a person's physical integrity, domestic violence, physical abuse, trafficking in human beings, crime of living on a prostitute's earnings, theft, robbery, arson, domestic violence, crimes against persons, theft, robbery, fraud, extortion, illegal immigration, convenience marriage. To report crimes that are not included online, the public are advised to contact their local police.

This information was kindly supplied by FC Guerreiro Law Firm in Lisbon. The OCCS can be accessed at <https://queixaselectronicas.mai.gov.pt>

In line with this online theme, workers in Canada can now apply for legal aid online through Justice@Work, an Ontario legal aid programme which works with disadvantaged workers, at www.justiceatwork.ca. The basis for the new website is to allow people in rural areas or who cannot attend their offices during regular work-hours to apply for legal aid. Justice@Work will develop presentation modules on employment law topics, easy-to-use self-help materials and updates on new case law that affects low-income workers to be accessible on the website over the coming months.

7. Australia: Government rejects calls for mandatory pro bono work

As reported in the *PILN Bulletin* of 6 August last, in a submission to the federal Government of Australia's review of legal outsourcing, Victoria's Public Interest Law Clearing House (PILCH) had called for the commonwealth to require all law firms working for the federal Government to complete *pro bono* work. It is now clear that the federal Government has rejected this call. However, this week it unveiled legal outsourcing rules that give firms a strong incentive to conduct a certain amount of *pro bono* work. Firms that do not comply with the voluntary *pro bono* targets will be required to report this to the government whose agencies will take this into consideration when deciding the allocation of their legal work. Law firms which work for the federal government will not be required to contractually undertake to complete a set amount of *pro bono* work.

Further rules were introduced such as the introduction of a common form of tendering legal services and the abolition of expensive "mini tenders" for firms already on government panels. The National Pro Bono Resource Centre has established an "aspirational target" of thirty-five hours *pro bono* work per year and if firms are not part of this scheme, they will be requested to nominate a *pro bono* target of up to 15% of the value of their government work. While PILCH had called for mandatory *pro bono* hours, it warns that the non-binding nature of the targets may well mean that little weight is attached to them by government agencies as no mechanism exists for accountability for failure to reach targets.

For further information, see the website of the Australia National Pro Bono Resource Centre: <http://www.Nationalprobono.org.au>

8. Meeting – 1968-2008 Civil Rights then and now

A public meeting will be held on Thursday 16th October in Liberty Hall at 7.45 pm to mark the 40th anniversary of the Civil Rights movement in Northern Ireland and housing and other struggles in the Republic, and to look at the Civil and Human Rights challenges facing us today. Speakers will include Bernadette McAliskey, Austin Currie,, Michael Farrell, Michael Halpenny (SIPTU) and Joanna McMinn, Chair of the Equality and Rights Alliance. Organised by the Civil Rights 1968 Commemoration Committee www.nicivilrights.org.

9. Reminder: ATD Fourth World marks United Nations International Day for the Eradication of Poverty, 17 October 2008

Anti-poverty organisation, ATD Fourth World will commemorate the UN International Day for the Eradication of Poverty on 17 October 2008 in Dublin by unveiling a commemorative stone quoting the founder of ATD, Joseph Wresinski in English, Irish and French.

The event will take place at the Famine Memorial, Custom House Quay at 11.00am on 17 October 2008. The public is also invited to visit the exhibition of UN Day metal sculptures and messages in the Dublin Civic Offices from the 15 -19th September and to write a message of support or sign on-line at www.oct17.org/en.

10. Chambers Ireland human resources conference on diversity in the workplace, 22 October 2008

Chambers Ireland in conjunction with the European Commission Directorate General for Employment, Social Affairs & Equal Opportunities will host a conference entitled *The*

Business Case for Diversity. It will aim to show companies how they can support their business through their human resources practice such as encouraging workplace diversity because this supports innovation, productivity, and competitiveness. Featuring a combination of business case studies and practical advice, organisers hope to show how a well-implemented diversity policy can make a business more productive and successful.

The conference, which is free of charge, will be held on 22 October 2008 from 9am-4pm at the Palatine Room, National Museum of Ireland, Collins Barracks. Lunch and refreshments will be provided.

To reserve your place at the event, please contact tippingthebalance@chambers.ie or call 01 400 4321.

11.Conference: European Convention on Human Rights – Five Years On, 8 November 2008

The Irish Human Rights Commission and the Law Society of Ireland will host a conference entitled *European Convention on Human Rights – Five Years On* to be held on 8 November. Its aim is to give an overview of the impact of the European Convention on Human Rights (ECHR) Act since its enactment in 2003, to examine the practical implications of the European Convention on Human Rights Act in different areas of law and to demonstrate the impact of human rights standards on shaping legislative developments in Ireland.

Speaking at the event will be:

Geoffrey Shannon, Solicitor; Michael O’Higgins SC; Rosemary Horgan, Solicitor; Siobhan Mullally, Co-Director of the Centre for Criminal Justice and Human Rights, UCC; Hilikka Becker, Immigrant Council of Ireland and Ursula Kilkelly, Law Lecturer, UCC.

There is no charge for the event which will take place from 9.15am to 3.30pm at the Law Society on Blackhall Place, Dublin 7. There are 5 Group Study (General) CPD hours for the event.

12.Open Door Network, Annual Conference, 21 November 2008

The Open Door Network’s Annual Conference 2008 will take place on 21 November in Tralee. The theme of this year’s conference is “A time to tell...a time to listen: exploring the effects of violence against women and children”. Speakers at the event will include: Joanna McMinn, Director of the National Women’s Council of Ireland, Fergus Hogan, Joint academic Coordinator of WIP Centre for Social & Family Research, Patricia Mulhall, Brigidine nun and teacher, Sophie Magennis, Head of Policy & Research for the Ombudsman for Children, Bernie McCarthy, Counsellor with Kerry Rape & Sexual Health Centre and presenter of Say It schools programme.

The venue for the event is Siamsa Tire, Tralee, Co. Kerry. Entrance costs €100 with concessions available. For further information and to book your place, please contact Jo or Catherine on 066 7185472 or opendoornetwork@eircom.net.

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