

PILN Bulletin, 20 August 2008

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1. Englishman racially abused in Irish workplace

An English pipe-fitter has been awarded €20,000 in compensation from the Equality Tribunal after being racially abused in his workplace. Mr. C., based in Dublin, complained that his colleagues taunted him because of where he came from. He said that they would say "send the Brit in" to clear the way if they had to enter potentially dangerous spaces at work. Some colleagues, he said, never spoke to him and others deliberately sang Irish songs of a political nature in his presence with negative reports about England's performance in the 2006 World Cup were also read aloud in his presence. By April 2006, Mr. C. the abuse had reached a point where he would eat his lunch alone in his car rather than in the canteen, to avoid the abuse. He also complained that he had been made redundant after two months instead of a less-experienced Irish worker because he was British. One worker is reported to have said "the Brit should be sacked and an Irishman should not be let go" when the issue arose. The Tribunal found that although the man had been racially harassed and was the victim of acts that were blatant and intimidatory, he had not been made redundant because of his nationality. The company denied allegations of the harassment and said Mr. C had never complained to his site manager about the

abuse. It said that he had been laid off because he had less service than other workers.

The director of the Equality Tribunal, Melanie Pine has stated that she is aware of only one other case of a person claiming discrimination because they were English. This related to a claim by a driving instructor that attention had been drawn to his nationality and his previous work for the RAF during an interview with the Department of Education, but this was rejected by the Tribunal in 2003.

For an Irish Times comment on the case, see:

<http://www.irishtimes.com/newspaper/ireland/2008/0813/1218477454451.html>

2. UK: Statutory scheme requiring Secretary of State's permission for marriage by people who were subject to immigration control or were illegal entrants is disproportionate, infringes ECHR

In a case decided by the House of Lord at the end of July, it was held that the statutory scheme that required the Secretary of State's permission for the marriage by people who were subject to immigration control or were illegal entrants was disproportionate and infringed Article 12 of the European Convention of Human Rights (ECHR), scheduled to the Human Rights Act 1998. Article 12 of the ECHR provides for the right to marry and to found a family.

Bringing to mind provisions of the Immigration, Residence and Protection Bill in Ireland, the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 provided that persons who, as non-EEA nationals, requiring leave to enter and remain in the United Kingdom and wishing to marry there other than in accordance with the rites of the Church of England, had to apply to the Secretary of State for a certificate of approval and pay a fee in accordance with the Immigration (Procedure for Marriage) Regulations 2005. Additionally, applicants had to comply with conditions set out in the Immigration Directorates' Instructions that they had at least six months valid leave to enter or remain, of which at least three months was unexpired, or had exceptionally compelling compassionate circumstances.

Having referred to the Strasbourg jurisprudence, it was held that the right to marry protected by Article 12 of the ECHR was to be treated as a strong one which might be regulated by national law both as to procedure and substance but was not to be subjected to conditions which impaired its essence. A national authority might properly impose reasonable conditions on the right of a third-country national to marry in order to ascertain whether a proposed marriage was one of convenience, entered to obtain an immigration advantage, and if so, to prevent it. Section 19 of the Act could be operated consistently with article 12 so as to require those subject to immigration control to give notice of a proposed marriage, enable the appropriate authority to investigate whether it would be one of convenience, and provide for the withholding of permission only where it appeared to be so. The Regulations were also unobjectionable save for one qualification: a fee fixed at a level which a needy applicant could not afford might impair the essence of the right to marry. The prescribed fee of £295 (£590 for a couple both subject to immigration control) could be expected to have that effect. However the conditions set out in the Immigration Directorates' Instructions, though relevant to immigration status, had no relevance to the genuineness of a proposed marriage, which was the sole criterion for determining whether permission should be given. Since the effect of the conditions,

subject to the discretionary compassionate exception, was to impose a blanket prohibition of the exercise of the right to marry by all in the specified categories, irrespective of whether or not the proposed marriages were ones of convenience, the scheme was a disproportionate interference with exercise of the right to marry.

The case citation is as follows: R (Baiai and another) v Secretary of State for the Home Department (Nos 1 and 2); R (Bigoku and another) v Same; R (Tikli) v Sa,e (Joint Council for the Welfare of Immigrants and another intervening) [2008] UKHL 53; [2008] WLR (D) 272.

3. South Africa: Applicant, who successfully brought constitutional case demanding better housing, dies aged 39

A South African woman, Irene Grootbroom, who sought to achieve better housing for the poor through the courts died, aged just 39 earlier this month in her shack in the Wallacedene area. Ms. Grootbroom spearheaded a Constitutional Court case in 2000 for proper housing for the poor. This involved an application to court on behalf of 510 children and 290 adults living in deplorable conditions in Wallacedene, demanding better housing. The benchmark judgment declared that the state was obliged to devise and implement "a comprehensive and co-ordinated programme to realise the right of access to adequate housing. She was visited by a local Cape Town newspaper a few days before her death, she said "When it rains water seeps through every crevice. I try to repair it but I can't do much. "I was supposed to get a house but I'm still in a shack with my sister-in-law and her three children. They keep promising us. I'm sick and tired of the whole thing." ". At the time of her death after a short illness, she was living in an informal settlement still on the housing list.

To read the full story, please click the following link:

http://www.int.iol.co.za/index.php?art_id=vn20080804110512425C272924&set_id=1&click_id=13&sf=

4. UK: Rape victim told that alcohol consumption before their attack may reduce compensation

It has been reported that UK rape victims seeking compensation are having their payouts reduced if they had been drinking alcohol before they were attacked. The Criminal Injuries Compensation Authority (CICA) has been applying a clause which states that awards in all types of cases can be reduced if the consumption of alcohol "contributed to the circumstances that gave rise to the injury". CICA has confirmed that over past year, fourteen rape victims (representing 1% of all rape-related applications) were told that they would have their payout cut due to alcohol consumption.

One woman, who believes that she was raped after her drink was spiked, was told that the standard award of £11,000 (€13,961.30) would be reduced by 25%. The full award was reinstated after her solicitor argued that the practice amounted to indirect sexual discrimination. There was no arrest for the attack which took place four years ago and police have apologised to her after an internal investigation found a string of failings in the application. In a statement, CICA later claimed that its policy was not to reduce awards to victims on the ground of alcohol consumption and stated that it is the view of the organisation that "a victim of rape is not in any way

culpable due to alcohol consumption. It is never an individual's fault if he/she is raped; regardless of how much alcohol he/she has drunk."

To read the story in full, please click here:

<http://www.guardian.co.uk/uk/2008/aug/12/ukcrime.law>

5. UK: Update on computer hacker extradition case

As an update to our piece in the PILN Bulletin of 24 June 2008 on the possible extradition of a UK computer hacker who is accused of gaining access to 97 US military and NASA computers from his London home. The Government of the United States have sought his extradition to stand trial on charges of fraud-related activity in connection with the hacking.

He lost his appeal against an extradition to the US to face the charges at the House of Lords last month but has won a two-week stay on the extradition at the European Court of Human Rights (ECHR). The authorities have warned that without his co-operation and a guilty plea the case could be treated as terrorism and he could face a long jail sentence. On 29 July 2008, McKinnon lodged an application with the ECHR (application no. 36004/08). He complained principally under Article 3 of the Convention (prohibition of inhuman or degrading treatment) about the conditions of detention he

Mr McKinnon sought interim measures under Rule 39 of the Rules of Court to prevent his extradition to the United States while the Court considered his application. On 12 August 2008 the Acting President of the Chamber to which the case has been allocated decided to indicate to the Government of the United Kingdom, under Rule 39 of the Rules of Court, that the applicant should not be extradited to the United States before midnight on 29 August 2008. This was in order to allow the Chamber to examine the request at the earliest opportunity, namely at its meeting on 28 August 2008.

Under Rule 39 of the Rules of Court the Court may indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.

6. U.S.A: Legislation expanding a student loan forgiveness programme for students who become legal aid lawyers, state or local prosecutors and public defenders signed into law

A loan forgiveness programme, contained in the Higher Education Opportunity Act which updates existing programs and creates new ways to make higher education accessible and affordable is being expanded for students who become legal aid lawyers, state or local prosecutors, and public defenders. .

The new law amends the Omnibus Crime Control and Safe Streets Act of 1968 to direct the US attorney general to assume the obligation to repay student loans for borrowers who agree to remain employed, for at least three years, as: (1) state or local criminal prosecutors; or (2) state, local, or federal public defenders in criminal cases. It allows a borrower and the attorney general to enter into an additional loan

repayment agreement, after the required three-year period, for a successive period of service which may be less than three years. It also limits the amount paid under the program on behalf of any borrower to \$10,000 per calendar year and \$60,000 total.

Under the programme, the attorney general must give priority in granting repayment benefits to borrowers who have the least ability to repay their loans.

Legal aid attorneys who take part in the programme, which will be administered by the U.S. Department of Education, could individually receive up to \$6,000 per year up to a total amount of \$40,000. In addition to attracting attorneys who might not otherwise find legal aid law a feasible alternative, the program is expected to stem high turnover rates, which will provide offices with better trained and more experienced staff.

The measure also requires the inspector general of the Department of Justice to report to Congress on the cost of the loan repayment program and the impact it has on the hiring and retention of prosecutors and public defenders. The comptroller general is directed to study and report to Congress on the impact of law school accreditation requirements and other factors on law school costs and access, including the impact of such requirements on racial and ethnic minorities.

7. Law Society of Ireland launches its Legal Aid Taskforce Report, 5 September 2008

The Legal Aid Taskforce of the Law Society of Ireland will launch its report entitled *Civil Legal Aid in Ireland: Information for the Profession* on 5 September 2008. It will take place at the President's Hall in the Law Society on Blackhall Place, Dublin 7 at noon. The launch will be chaired by the Law Society's president, Mr. James MacGuill. The Guest Speaker for the event will be Mary Hanafin T.D., Minister for Social and Family Affairs.

RSVP before Wednesday 3rd September 2008 to a.moore@lawsociety.ie or call 01-6724961 / 6724800

8. Digital Story Telling Workshop, aimed at asylum seekers and refugees, hosted by DIT, FOMACS and RIS, starts 16 September 2008;

Dublin Institute of Technology, the Forum on Migration and Communications and the Refugee Information Service is to host a series of Digital Story Telling Workshops. The Workshops are targeted towards Asylum Seekers and Refugees living in Ireland and participating or volunteering with their community or in groups working with or representing asylum seekers and refugees. A total of 20 people will be accepted for the training. They will run from September 16 – December 16 2008 and will take place at DIT, Aungier St., Dublin 2. Participants will be required to attend one workshop each week in this period of time – which will be for 3 hours on one afternoon each week. Each participant will be invited to learn how to make a three minute digital story about your experience and/or your community using images of your choice and your own voice.

This course is free and offered at no cost to participants of member organizations, assistance may be offered for travel by public transportation where needed (this will not include accommodation costs), however if you have special needs re assistance please explain in your application form and course coordinators will contact you to discuss possible assistance.

The deadline for applications is Friday September 5th 2008. Contact Darcy Alexandra, Centre for Transcultural Research and Media Practice, Dublin Institute of Technology, Room 3048 Aungier Street, Dublin 2, Email dalexandra@dit.ie, Tel: +353-1-4027191, <http://www.fomacs.org>.

For information on the application process please contact Monica Anne Brennan Network Coordinator on email regions@integratingireland.ie Tel: 0147 9473 or 0879610897 or your II Regional Officer or Warsami Garaare Refugee Information Services on email warsame.garaare@ris.ie. Tel. 01 645 3070

For questions about the course content or approach please contact Darcy Alexandra on Email dalexandra@dit.ie or tel. 01 4027191.

9. *Judicial Diversity: Strategies for Change* Evening Seminar, hosted by ICCL and Centre for Criminal Justice and Human Rights, University College Cork, 18 September 2008

The Irish Council for Civil Liberties (ICCL) and the Centre for Criminal Justice and Human Rights at University College Cork and are organising an evening seminar on judicial diversity. The purpose of the event is to open up a discussion about the possibilities of achieving greater judicial diversity in Ireland.

This seminar is aimed at members of the judiciary, practitioners, parliamentarians, policy makers, academics, non-governmental organisations (NGOs), students and anyone interested in judicial diversity.

The event is scheduled to take place from 6-8pm on Thursday, 18 September 2008 in the Atrium, the Law Library, Distillery Building, Church Street, Dublin 7.

Baroness Usha Prahsar CBE, Chair of the United Kingdom's Judicial Appointments Commission is the keynote speaker for this event. Other speakers include: Professor Kate Malleson, School of Law, Queen Mary University of London and Dermot Feenan, School of Law, University of Ulster

If you are interested in attending this event please RSVP to Joanne Garvey, ICCL Administrator by 5pm on Monday, 15 September 2008, Tel: (01) 799 4504 or Email: info@iccl.ie

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