

## **PILN Bulletin, 6 August 2008**

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### **1. European Court of Justice overturns ban on EU spouses in Ireland**

The European Court of Justice (ECJ) has held that the right of a national of a non-EU Member State who is a family member of an EU citizen to accompany or join that citizen cannot be made conditional on prior lawful residence in another Member State. The case was taken by four couples who had appealed decisions by the Minister to deport them on foot of, in each case, the husband either not being an EU citizen or not having lived lawfully in another EU State. Irish law, which seeks to transpose an EU Directive on the free movement of EU citizens, provides that a national of a third country who is a family member of an EU citizen may reside or join that citizen in Ireland only if they have already been a lawful resident in another Member State. Having married in Ireland, each of the non-EU spouses applied for a residence card as the spouse of an EU citizen but was refused on the ground that he did not satisfy the condition of prior lawful residence in another Member State.

The ECJ held that the directive applies to all EU citizens who move to or reside in a Member State other than that of which they are a national, and to their family members who accompany them or join them in that State. The court ruled that a 2003 ruling of the ECJ in the case of *Akrich* (Case number: C- 109/01) must be reconsidered. The ruling in *Akrich* held that in order to benefit from the rights of entry into and residence in a Member State, the non-EU spouse of an EU citizen must be lawfully resident in a Member State when s/he moves to another in the company of an EU citizen. This cannot depend on prior lawful residence of the spouse in another Member State. A non-EU spouse of an EU citizen can benefit from the directive, irrespective of when and where their marriage took place and of how that spouse entered the host Member State.

Click the following link to read the judgement in the case of *Metock and Others v. Minister for Justice, Equality and Law Reform* of 25 July 2008:

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&newform=newform&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurtfp=jurtfp&alldocrec=alldocrec&docj=docj&docor=docor&docop=docop&docav=docav&docsom=docsom&docinf=docinf&alldocnorec=alldocnorec&docnoj=docnoj&docnor=docnor&typeord=ALLTYP&allcommjo=allcommjo&affint=affint&affclose=affclose&numaff=C-127%2F08&ddatefs=&mdatefs=&ydatefs=&ddatefe=&mdatefe=&ydatefe=&nomusue l=&domaine=&mots=&resmax=100&Submit=Submit>

## **2. UN Human Rights Committee adopts Concluding Observations on Ireland**

Following the examination of the third periodic report of Ireland under the UN International Covenant on Civil and Political Rights, the UN Human Rights Committee adopted its Concluding Observations on Ireland on 24 July 2008. The Observations highlight positive aspects of Ireland's progress in implementing the provisions of the Covenant on civil and political rights in Ireland as well as areas of concern and recommendations. The positive aspects include the establishment of the Garda Síochána Ombudsman Commission and the Irish Human Rights Commission (though recent reports indicate that the Government now intends to merge the Commission with the Equality Authority and the Office of the Data Protection Commissioner). The Committee also welcomed the adoption of the Mental Health Act 2001 and the incorporation of the European Convention on Human Rights into Irish law.

The Observations contain nineteen areas of concern to the Committee, eight of which were mentioned in the previous Concluding Observations on Ireland in 2000. These areas include the incorporation of the Covenant provisions into national law, remedies for domestic violence, access to abortion, religious oaths for judges, the retention of the Special Criminal Court, conditions of detention in Irish prisons, Article 41.2 of the Irish Constitution and permitted derogations to the Covenant.

Other areas of concern include the lack of provisions on taxation and social welfare under the Civil Partnership Bill, imprisonment for failure to fulfil a contractual obligation, detention periods for asylum seekers, the lack of recognition of the rights and interests of victims of human trafficking and a number of provisions under the Immigration, Residence and Protection Bill 2008 such as summary deportation and the lack of independence of the proposed substitute for the Refugee Appeals Tribunal (the Protection Review Tribunal) due to the appointment procedures of its part-time measures.

The Committee requested further information to be forwarded to it within one year on three specific areas: prisons, the State's counter-terrorism measures and extraordinary rendition, and religion in education.

To read the Concluding Observations, please go to:

<http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR.C.IRL.CO.3.doc>

### **3. EU: Protections against direct discrimination / harassment of disabled people in employment extended to non-disabled employees with disabled offspring**

In a judgement of 17 July 2008, the European Court of Justice (ECJ) has ruled that the EU disability directive prohibiting direct discrimination against and harassment of disabled people in employment is not limited to employees who are themselves disabled. It also extends to unequal treatment and harassment of non-disabled employees for reasons connected with the disability of his/her child(ren).

In this case, a legal secretary, Ms. Coleman, working for the defendants, a solicitors firm in London, gave birth to a son who had poor health and required special care, with his mother as the primary carer. After ceasing her employment, Ms. Coleman brought a claim of constructive dismissal against the defendants, alleging breaches of UK disability legislation transposing into domestic law the EU disability directive establishing a general framework for equal treatment in employment and occupation. At the employment tribunal, Ms. Coleman claimed that on return from maternity leave, she was treated in a way that parents of non-disabled children would not have been. For example, she had not been allowed to return to her existing job, had less flexible working hours and had been subjected to abusive and insulting comments about herself and her child. It was held that the 2000/78 Directive was to be interpreted as meaning that the prohibition of direct discrimination was not limited only to people who were themselves disabled. The purpose of the directive, regarding employment and occupation, was to combat all forms of discrimination on the ground of disability.

Read the judgement in the case of *Coleman v Attridge Law (a Firm) and Another Case*, C-303/06 at <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&newform=newform&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurftp=jurftp&alldocrec=alldocrec&docj=docj&docor=docor&docop=docop&docav=docav&docsom=docsom&docinf=docinf&alldocnorec=alldocnorec&docnoj=docnoj&docnoor=docnoor&typeord=ALLTYP&allcommjo=allcommjo&affint=affint&affclose=affclose&numaff=C-303%2F06&ddatefs=&mdatefs=&ydatefs=&ddatefe=&mdatefe=&ydatefe=&nomusue l=&domaine=&mots=&resmax=100&Submit=Submit>

To view the Council Directive 2000/78.EC of 27 November 2000, go to [http://ec.europa.eu/employment\\_social/news/2001/jul/directive78ec\\_en.pdf](http://ec.europa.eu/employment_social/news/2001/jul/directive78ec_en.pdf)

### **4. New UN High Commissioner for Human Rights appointed**

Former UN High Commissioner for Human Rights Louise Arbour has been succeeded by Navenathem Pillay. Ms. Pillay's appointment was confirmed by a consensus of the UN General Assembly on 28 July 2008. Her four-year term will begin on 1 September 2008.

Ms. Pillay, a South African, has served as a judge on two of the most important international criminal courts in the modern era, spending eight years with the International Criminal Tribunal for Rwanda, including four years as its President, and the past five years on the International Criminal Court in the Hague. Both of these courts deal with the extreme end of the human rights spectrum -- war crimes,

crimes against humanity and genocide, and are at the cutting edge of the development of international law in these areas.

Judge Pillay will be the fifth UN High Commissioner for Human Rights to be appointed since the office was founded 15 years ago. She will head an organisation that now has just under 1000 staff working in 50 countries with a total annual budget of some US\$ 150 million. Judge Pillay gave a lecture at the Centre for Criminal Justice and Human Rights at University College Cork in February of this year.

## **5. UK: School guilty of indirect discrimination on religious grounds**

A UK High Court has found in favour of a Sikh-Welsh girl fighting for her right to wear a symbol of her religion in school. The *Kara* is a steel bangle worn by Sikhs, usually on the wrist of the hand they use most. The case "does not concern or resolve the issue of whether the wearing of the Kara should be permitted in the schools" in the UK.

Having worn the *kara* for two years without comment, Ms. Watkins-Singh's teachers asked her to remove it in line with the school's "no jewellery" policy. Having been refused a request that an exception be made as the bangle did not constitute jewellery, Ms. Watkins-Singh was warned that she would be segregated if she continued to wear it. Segregation involved nine weeks of being taught in a classroom alone, except for a teaching assistant. She was not allowed to use the school canteen or to walk in the corridors when other students were present. She was not allowed to join her friends in the school playground and was accompanied to the lavatory by a teacher. She was suspended in November 2007.

Although the school considered that it had offered reasonable accommodation by allowing the girl to wear the *kara* if it was not on display, it was held to have been in breach of race relations and equality laws, the former because Sikhs are considered a race.

The case of *The Queen on the application of Sarika Angel Watkins-Singh (A child acting by Sanita Kumari Singh, her Mother and Litigation Friend v. the Governing Body of Aberdare Girls' High School and Rhondda Cynon Taf Unitary Authority, High Court, Administrative Court, 29 July 2008* can be read at <http://www.bailii.org/ew/cases/EWHC/Admin/2008/1865.html>. The citation for the case is [2008] EWHC 1865 (Admin).

## **6. Australia: Call for mandatory *pro bono* work**

In a submission to the federal Government of Australia's review of legal outsourcing, Victoria's Public Interest Law Clearing House (PILCH) has called for the commonwealth to require all law firms working for the federal Government to complete *pro bono* work. It suggests that the quantity of *pro bono* work completed should be equivalent to at least 5% of their government billings. Recent data suggests that the best model would require firms on the Government's panel to provide a combined total of a minimum of \$20 million in free work annually. The scheme has already been rolled out in Victoria. The definition adopted by PILCH is *pro bono* work that assists the disadvantaged, promotes the public interest or enhances access to justice.

The notion of moving away from the traditional "voluntarist ethic" of *pro bono* work and the move towards mandatory contributions diverges from the views of most state law societies and the National *Pro Bono* Resource Centre in Australia. In its own submission, the Resource Centre has however suggested that added weight be given during the tender process to firms that voluntarily complete *pro bono* work in the allocation of paid work to private firms.

PILCH claims that the Victoria scheme "is a more effective way of encouraging a *pro bono* culture within the profession than the resource centre's aspirational target of having lawyers complete 35 hours of *pro bono* work each year." They argue that it is only reasonable that law firms that are benefiting from large amounts of public money being spent on legal services contracts to be required to put some of that money back into the community.

#### **7. UK: Ban on unmarried couple's adoption rights found incompatible with HRA**

Articles 14 & 15 of the Adoption (Northern Ireland) Order 1987 have been held to be incompatible with an unmarried couple's rights under the European Convention on Human Rights, specifically Article 8 on the right to family and private life and Article 14 on non-discrimination as scheduled to the Human Rights Act 1998. The provisions of the Order prevented an unmarried couple from being considered as potential adoptive parents.

You can read the judgement in the case, *In re P* [2008] UKHL 38; [2008] WLR (D) 198, at the following link:

<http://www.lawreports.co.uk/WLRD/2008/HLPC/june0.4.htm>

#### **8. Former U.S. Senator George Mitchell receives Scales of Justice Award**

The non-profit organisation, *Equal Justice Works*, has named Former U.S. Senator George Mitchell a 2008 Public Interest Law Leader by awarding him the Scales of Justice Award as part of its Equal Justice Awards 2008. The Awards are given annually to honour the outstanding public interest contributions of an individual, law school dean, and law school faculty or staff. The group listed as among its reasons for award the former Senator "his personal commitment to public service throughout his career. Senator Mitchell remained dedicated to public service at home and abroad during his service as the U.S. Attorney for the state of Maine, as a U.S. District Court Judge, and later as U.S. Senator and Majority Leader". The Senator was appointed to the role of US Special Envoy to Northern Ireland in 1995. The award ceremony will take place on 16 October. For further information, see <http://www.equaljusticeworks.org/events>

#### **9. Minister of State to launch African-Irish Hall of Fame**

Minister of State for Overseas Development, Peter Power TD, will officially launch the African-Irish Hall of Fame Awards 2008. The Awards project is an initiative of the African *Voice* Newspaper. The Awards will take place on 18 September 2008 from 10am - 2pm at the Irish Aid Centre, O'Connell Street, Dublin 1. For further

information on the event, please contact Malcolm Eremionkhale on 087 2618184 or e-mail to [theafricanvoice@gmail.com](mailto:theafricanvoice@gmail.com)

**10. PROGRESS towards Equality conference, Belfast, 1 September 2008**

A number of organisations, including the British Institute of Human Rights, Advice UK, Advice Now and Advice NI, are hosting a conference entitled "PROGRESS towards Equality: Applying an Equality and Human Rights Approach to Advice Giving." The aims of the conference are to:

- Increase awareness of discrimination and human rights, what people's rights are and who can help to take action;
- Increase networking among a range of equality and advice groups to counter discrimination;
- Increase awareness of European Union campaigns to promote diversity and combat discrimination;
- Identify issues requiring action by the Equality Commissions in the UK and the European Commission.

The event will take place at the Holiday Inn, Ormeau Avenue in Belfast on 1 September 2008 from 10am - 4pm. Attendance at the conference is free but booking is recommended as places are limited. The booking form can be downloaded from <http://www.communityni.org/>

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