

## PILN Bulletin, 9 July 2008

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#### **1. Anonymous evidence ruled unfair by House of Lords**

The Law Lords have ruled that a man convicted of a gun killing on the basis of evidence given by anonymous witnesses did not receive a fair trial. The Law Lords said in their ruling: "No conviction should be based solely or to a decisive extent upon the statements and testimony of anonymous witnesses."

The Law Lords argued that it has been a fundamental principle of English Law that the accused should be able to see his accusers and challenge them.

The effect of this ruling is that the defendants in criminal trials now have a legal right to know the identity of witnesses testifying against them. Convicted criminals could appeal and be freed if witnesses refused to reveal their identities in a retrial. To read the judgment, go to <http://www.bailii.org/uk/cases/UKHL/2008/36.html>

#### **2. U.S. Supreme Court bans death sentence for child rape**

The U.S. Supreme Court has struck down a law that would have allowed the execution of someone convicted of raping a child. The court said the Louisiana law would have violated the U.S. Constitution's ban on "cruel and unusual punishment". "The death penalty is not a proportional punishment for the rape of a child," wrote Justice Anthony Kennedy in his majority opinion. The justices voted 5-4 in favour of striking down the law. Citing the forty-five states who had imposed bans on execution for child rape, Justice Kennedy wrote in his opinion that "there is a national consensus against capital punishment for the crime of child rape".

However writing on behalf of the minority of justices who opposed the decision, Justice Samuel Alito said: "The harm that is caused to the victims and to society at large by the worst child rapists is grave." It is the judgment of the Louisiana lawmakers and those in an increasing number of other states that these harms justify the death penalty." To read the judgment, click the link : <http://www.supremecourtus.gov/opinions/07pdf/07-343.pdf>

### **3. International Bar Association launches website to bring together international *pro bono* practitioners**

The International Bar Association (IBA) recognises that the need for legal *pro bono* work is overwhelming and believes that the legal profession has an obligation and a special commitment towards the development of law and the administration of justice. This obligation provides many legal professionals with a fundamental motivation to engage in *pro bono* work.

An increasing number of organisations and individuals around the world are now taking an active role to meet this need. In line with this growing interest, the IBA has developed a new website at [www.internationalprobono.com](http://www.internationalprobono.com), focused on sharing information on current practices in international *pro bono* legal work among practitioners across the world. The site aims to bring together the global community of professionals of every level who are involved in *pro bono* legal work on a local and international scale. According to the IBA, this initiative has resulted in a remarkably user-friendly and versatile site, with multiple features to maximise communication between site users. This versatile and unique resource developed by IBA is a natural extension to its efforts to support the Rule of Law and the global legal profession.

### **4. Human rights principles can guide climate change policy, reports International Council on Human Rights Policy**

The International Council on Human Rights Policy added climate change to its research programme in 2007. The report, prepared by the International Council on Human Rights Policy, [Climate Change and Human Rights: A Rough Guide](http://www.ichrp.org/files/reports/36/136_report.pdf) ([http://www.ichrp.org/files/reports/36/136\\_report.pdf](http://www.ichrp.org/files/reports/36/136_report.pdf)) argues that human rights principles can guide climate change policy by focusing on individual suffering and exposure to risk. This report maps the links between human rights and climate change.

Climate change is and will have immense human consequences. To date, little systematic research has examined the human rights dimensions of climate change, yet almost every human right is threatened. Climate change will create new health risks, threaten food and water supplies, destroy land and livelihoods, and lead to forced migration and conflict. Global warming will cause widespread human suffering that will disproportionately affect people in countries already lacking the resources to meet basic human rights obligations.

Human rights law is relevant because climate change causes human rights violations. But a human rights lens can also be helpful in approaching and managing climate change by placing the human person at the centre of analysis, identifying likely future victims and orienting responses to where needs are greatest. Although

attention to human rights cannot provide answers to every climate change challenge, it can illuminate injustices and offer tools to assist those most at risk. Human rights principles can help mobilise and direct adaptation funding. They provide criteria for evaluating mitigation and technology transfer policies. The report also examines decision-making processes and accountability, the merits of litigation, and a range of ethical and policy dilemmas that climate change generates.

## **5. ICCL calls for surveillance law reform after Strasbourg Court victory**

Leading human rights groups in Ireland and the United Kingdom have called for urgent reform of surveillance laws, after securing a significant victory in their case before the European Court of Human Rights.

The Irish Council for Civil Liberties (ICCL), its UK sister organisation Liberty and British-Irish Rights Watch took their case to Strasbourg because, over a seven year period, all telephone, fax, e-mail and data communications between the UK and Ireland, including legally privileged and confidential information, were intercepted and stored *en masse* by an Electronic Test Facility operated by the British Ministry of Defence.

The European Court of Human Rights in Strasbourg has found that the rules governing data interception in the United Kingdom did not “as required by the Court’s case-law, set out in a form accessible to the public any indication of the procedure to be followed for selecting for examination, sharing, storing and destroying intercepted material. The interference with the applicants’ rights under Article 8 (the right to privacy) was not, therefore, “in accordance with the law”. It follows that there has been a violation of Article 8 in this case.”

Welcoming the judgment, ICCL Director Mr Mark Kelly said: “The Strasbourg Court has vindicated the ICCL’s belief that data “fishing expeditions” by the intelligence services will fall foul of Article 8 of the European Convention on Human Rights. This ruling has clear implications for Ireland’s lax data interception regime, which will require a thorough overhaul in order to ensure that it meets the standards required by the European Court of Human Rights.”

TJ McIntyre, Chairman of Digital Rights Ireland and lecturer in law in University College Dublin, said that this judgment would be significant for the legal challenge to data retention currently being brought by Digital Rights Ireland in the High Court. “This is a landmark case which casts further doubt on the legality of Ireland’s ‘data retention’ system which tracks the telephone calls and internet use of all citizens without discrimination. It is a clear statement from the Court of Human Rights that indiscriminate surveillance will generally be incompatible with the right to privacy under the European Convention on Human Rights”, Mr McIntyre said.

For more information click the following link:

<http://www.digitalrights.ie/2008/07/01/liberty-v-uk-european-court-of-human-rights-finds-mass-surveillance-system-violates-the-right-to-privacy>

## **6. Individuals have a right to keep handguns for lawful purposes, rules U.S. Supreme Court**

A ban on handguns in Washington D.C. has been ruled unconstitutional by the United States Supreme Court. In a 5-4 decision, the judges upheld a lower court ruling striking down the ban. They said individuals had a right to keep handguns for lawful purposes. The ruling says that the constitution "protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home".

It is the first such case considered by the court in decades and is expected to have effects on gun laws across the United States. Debate over the exact meaning of the constitutional right to keep and bear arms has raged for years. This ruling is of profound importance, as it enshrines for the first time the individual right to own guns and it limits efforts to reduce their role in American life. Since 1976, the private possession of handguns had been prohibited in the nation's capital, while rifles and shotguns were required to be locked away or dismantled.

The D.C. city council in this case argued that the ban was needed to help keep violence and murder rates down. But the measure challenged by a security guard, Dick Heller, who argued that if he was allowed to have a handgun at work, he also had a constitutional right to have one at home. In March last year, a federal appeals court agreed with Mr. Heller that the Second Amendment protected an individual's right to keep and bear arms and that the D.C. ban was unconstitutional. The city appealed against that ruling, with the case going to the Supreme Court. The debate centred on whether the Second Amendment, ratified in 1791, protects an individual's right to possess guns, or simply a collective right for an armed militia.

Read the judgment here <http://www.supremecourtus.gov/opinions/07pdf/07-290.pdf>

## **7. Irish Human Rights Commission calls for establishment of Joint Oireachtas Committee on Human Rights**

The Irish Human Rights Commission would welcome consideration being given to the establishment of a full Joint Oireachtas Committee on Human Rights with similar powers to the parliamentary Joint Human Rights Committee in the United Kingdom, which followed the Human Rights Act 1998. This Committee undertakes inquiries on human rights issues in the UK and reports its findings. It scrutinises all government bills and selects those with significant human rights implications for further examination. The Committee looks at Government action to deal with judgements of the UK courts and the European Court of Human Rights. A Committee formed here on the similar model would have great potential to strengthen parliamentary oversight on the human rights implications of legislation. There could potentially be an important role for such a committee in relation to situations where Irish legislation is deemed incompatible with the European Convention on Human Rights Act 2003, according to Dr. Maurice Manning, IHRC President.

This year we have seen the first two declarations of incompatibility between Irish law and the ECHR (the *Foy* case dealing with the absence of legal recognition of a transgendered person's acquired gender and the *Donegan* case, which concerned the

summary eviction of a local authority tenant without due process rights). Under the ECHR Act 2003, the Commission must be notified of any proceedings where a declaration of incompatibility is being sought. This is an important aspect of the Commission's functions as it alerts us to proceedings in relation to which its *amicus curiae* function (friend of the court) might be usefully utilised. The Commission would be concerned to ensure that such declarations are properly responded to, as they are a clear statement from the Courts of the State's obligations under the European Convention on Human Rights.

In relation to its own legislative review role, the IHRC is concerned that to date the only Minister that has consistently referred legislation to it is the Minister for Justice, Equality and Law Reform. Dr Manning said "legislation emanating from any government department can have human rights implications. So far in 2008, the IHRC has not been referred any legislation, which means that the legislative process is not benefiting from a more systematic use of the Commission's statutory function to scrutinise draft legislation against Constitutional and international human rights standards."

## 8. List of human rights based courses taking place in Europe

- Salzburg University, Salzburg Law School: International Criminal Law, Humanitarian Law and Human Rights Law 3 - 15 August 2008, [www.sbg.ac.at/salzburglawschool](http://www.sbg.ac.at/salzburglawschool)
- Austrian Study Center for Peace and Conflict Resolution (ASPR): Summer Academy on Organization for Security and Co-operation in Europe (OSCE) 10 - 22 September 2008, <http://www.aspr.ac>
- Danish Institute for Human Rights, Copenhagen: International Humanitarian Law 10 September 2008, <http://www.humanrights.dk/calendar>
- Danish Institute for Human Rights, Copenhagen: International Human Rights - Basic Course 24 - 26 September 2008, <http://www.humanrights.dk/calendar>
- Danish Institute for Human Rights, Copenhagen: CEDAW and the Rights-based Approach to Equal Rights for Women 23 October 2008, <http://www.humanrights.dk/calendar>
- Danish Institute for Human Rights Copenhagen: Diversity in Working Life 11 November 2008, <http://www.humanrights.dk/calendar>
- Danish Institute for Human Rights, Copenhagen: Prisons and Human Rights 3 - 4 December 2008, <http://www.humanrights.dk/calendar>
- Helsinki (Erik Castren Institute of International Law and Human Rights): Helsinki Summer Seminar on International Law - Tensions in the Law of Treaties 18 - 29 August 2008, <http://www.helsinki.fi/eci/Events/summerseminar07.htm>
- Abo Akademi Institute for Human Rights: Advanced Course on the International Protection of Human Rights 18 - 29 August 2008, <http://www.abo.fi/instut/imr/courses.htm>
- Centre Andre Cassin, Strasbourg: Session annuelle d'enseignement 30 June - 25 July 2008, [http://www.iidh.org/sa\\_presentation.php](http://www.iidh.org/sa_presentation.php)
- Viadrina European University, Frankfurt: Summer School - The European System of Human Rights Protection 7 - 20 September 2008, <http://www.hrcourse.euv-frankfurt-o.de/schule/Index.html>

- Hungary Central European University: Teaching Law, Human Rights and Ethics 7 - 11 July 2008, [http://www.sun.ceu.hu/02-courses/course-sites/teaching\\_law/detailed.php](http://www.sun.ceu.hu/02-courses/course-sites/teaching_law/detailed.php)
- National University of Ireland, Maynooth: Human Rights Fieldwork - Principles, Strategies and Skills" 26 October - 2 November 2008, <http://www.ihrnetwork.org/hr-fieldwork.htm>
- Amsterdam Whittier Law School: Sexual Orientation and the Law 8 July - 5 August 2008, <http://www.law.whittier.edu/centers/sa-netherlands.asp>
- Switzerland Geneva (United Nations Information Service): [http://www.unog.ch/80256EDD006AC19C/\(httpPages\)/8E865A1942E8E45B80256EF30034C255?OpenDocument](http://www.unog.ch/80256EDD006AC19C/(httpPages)/8E865A1942E8E45B80256EF30034C255?OpenDocument) Graduate Study Programme 7 - 25 July 2008

### **9. Ireland's hearing before the UN Human Rights Committee on the International Covenant on Civil and Political Rights, 14 & 15 July 2008**

The Irish Government will present its Third Periodic Report in an oral hearing before the UN Human Rights Committee (HRC) on Monday 14 & Tuesday 15 July 2008. It is required to inform the Committee on the measures it has adopted to give effect to the International Covenant on Civil and Political Rights in Ireland.

A Shadow Report on Ireland's performance is being presented by three NGOs: FLAC, the ICCL and the IPRT (Irish Penal Reform Trust) at lunchtime on Monday. The Shadow Report itself will be launched in the Westbury Hotel in Dublin 2 at 10:30 on the same day. This report outlines the Irish government's failure to reach goals set out in the last country report. The HRC will publish its report on Ireland later in the summer.

A number of other organisations will also make representations to the HRC in regard to Ireland's report, including the Immigrant Council of Ireland, the Irish Family Planning Association and the Irish Human Rights Commission.

Information on the reporting process as well as comment from NGOs will be available online at a dedicated website ([www.rightsmonitor.org](http://www.rightsmonitor.org)). This site gives full information about the HRC, ICCPR, the role of NGOs, the shadow reporting process, the lunchtime NGO session, and information about the Shadow Report and the organisations who produced and endorsed it. Part of this is a 'resource download library', where related UN, Government, NGO and other documents can be downloaded.

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