



Rights News

Autumn 2010

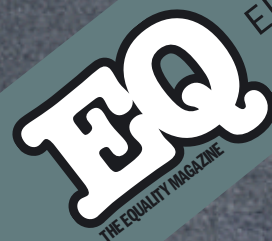
30TH DÁIL
RESUMES



VOLVO



Irish Council for
Civil Liberties



LAUNCH
EDITION
INCLUDED



The Irish Council for Civil Liberties (ICCL) is Ireland’s leading independent human rights watchdog, which monitors, educates and campaigns in order to secure full enjoyment of human rights for everyone. Founded in 1976 by Mary Robinson and others, the ICCL has played a leading role in some of the most successful human rights campaigns in Ireland. These have included establishing an independent Garda Ombudsman Commission, legalising the right to divorce, securing more effective protection of children’s rights, decriminalising homosexuality and the introduction of enhanced equality legislation. We believe in a society which protects and promotes human rights, justice and equality.

What we do

- We advocate for positive changes in the area of human rights.
- We monitor government policy and legislation to make sure that it complies with international standards.
- We conduct original research and publish reports on issues as diverse as equal rights for all families, the right to privacy, policy reform and judicial accountability.
- We run campaigns to raise public and political awareness of human rights, justice and equality issues.
- We work closely with other key stakeholders in the human rights, justice and equality sectors.

How you can help

You can help us to continue our work to monitor, train, conduct research, campaign and lobby for changes in legislation to ensure our rights are protected and promoted.

Please visit our website: www.iccl.ie or phone us on 01 799 4504 to make a donation.

Contact us:

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Cover image courtesy of the photographer
Kyran O’Brien and The Evening Herald

“Following an incident outside the Kildare Street Gates of Leinster House this morning, a truck has now been removed from the area.

Access arrangements are now back to normal and there will be no disruption to the proceedings or workings of the Houses of the Oireachtas today.”

It probably wasn’t what the Oireachtas Communications Unit had planned as its first press release of the latest (and possibly the last) legislative session of the 30th Dáil.

The Irish Council for Civil Liberties does not campaign for political purposes, nor can it condone the actions of Joe McNamara, who has now been charged with criminal damage in relation to his unconventional parking activities on the morning of 29 September 2010. Nonetheless, as his protest dramatically highlighted, it is anything but “business as usual” inside the gates of Leinster House.

If we have entered the endgame of the 30th Dáil, what are the implications for the protection and promotion of human rights in Ireland?

More particularly, how are we to objectively assess whether any future government respects Ireland’s international human rights obligations to a greater extent than the incumbents?

The necessary benchmarks already exist. Just as the European Commission has set tough budgetary targets for Ireland, other international bodies working under human rights treaties have set clear standards that Ireland should reach. For example, the UN Human Rights Committee has recommended that Ireland should “give full effect to the rights of criminal suspects to contact counsel before, and to have counsel present during, interrogation”. Similar recommendations have been made by the European Committee for the Prevention of Torture (CPT) and in the case law of the European Court of Human Rights. Yet, in Ireland, human rights obligations of this nature are honoured



more often in the breach than in the observance.

Civil society organisations have a fresh opportunity to redress this human rights compliance deficit. The Irish authorities are currently preparing for their first hearing under the new United Nations Universal Periodic Review (UPR) process, which scrutinises the human rights records of all UN member states every four years. As a starting point, the Human Rights Council will review the extent to which Ireland has implemented – or failed to implement – the recommendations of other human rights treaty bodies. Civil society organisations can contribute to this process by auditing the State’s compliance with its international obligations and reporting on gaps. The ICCL has recently convened a UPR cross-sectoral steering group of civil society organisations which will assist it to do this in a coherent and professional way.

This work – taking the international standards to which Ireland has voluntarily subscribed and meticulously charting the extent to which the State complies with them – typifies the ICCL’s evidence-based approach to rendering our current and future governments accountable for their actions.

Less headline-grabbing, perhaps, than the politics of protest, but – in the long run – far more likely to provide a sustainable basis on which to advocate for concrete improvements in the lives of vulnerable and disadvantaged people.

Mark Kelly
Director



Recognising Transgender Rights – Irish Progress May Be Model for Rest of Europe

Thomas Hammarberg | Council of Europe Commissioner for Human Rights

The rights of transgender persons are still ignored or violated, but some signs of understanding are now beginning to appear. One example is the outcome, at long last, of Lydia Foy’s struggle in Ireland. She was registered as male at birth but has lived as a woman since 1992. This summer she finally succeeded in her battle for legal recognition by the Irish state as a woman and for a birth certificate that reflects this reality.

It took the Irish government another two and a half years to accept that Irish law is incompatible with the European Convention. In June 2010 the Irish government withdrew its appeal to the Supreme Court and will now recognise Lydia Foy as a woman.

Most people legally defined as man or woman will experience a corresponding gender identity. Transgender persons, however, do not have such a corresponding identity and may wish to change their legal, social, and sometimes also physical status.

The case initiated by Lydia Foy in 1997 led to a High Court ruling ten years later that Ireland was in breach of the European Convention on Human Rights by not providing recognition of Dr. Foy in her preferred gender. It took the Irish government another two and a half years to accept that Irish law is incompatible with the European Convention. In June 2010 the Irish government withdrew its appeal to the Supreme Court and will now recognise Lydia Foy as a woman.

An inter-departmental working group has been set up by the Irish government to develop a legal framework which respects the human rights of transgender individuals...This could become a good model for other states which are currently considering improving their legal framework.

The Irish government will introduce legislation to recognise transgender persons in their preferred gender including the possibility for them to obtain new birth certificates. An inter-departmental working group has been set up by the Irish government to develop a legal framework which

respects the human rights of transgender individuals. It is crucial that representatives of the transgender community as well as other experts be represented in this working group. This could become a good model for other states which are currently considering improving their legal framework for transgender persons, including Portugal, Hungary and the Netherlands.

Ireland is not the only country where transgender persons have faced obstacles in obtaining legal recognition of their preferred gender. Some Council of Europe member states still have no provision at all for official recognition, leaving transgender people in a legal limbo.

STILL VIEWED AS A MENTAL DISORDER

Ireland is not the only country where transgender persons have faced obstacles in obtaining legal recognition of their preferred gender. Some Council of Europe member states still have no provision at all for official recognition, leaving transgender people in a legal limbo. Most member states still use medical classifications which impose the diagnosis of mental disorder on transgender persons.

Even more common are provisions which demand impossible choices, such as “forced divorce” and “forced sterilisation” requirements. This means that only unmarried or divorced transgender persons who have undergone surgery and become irreversibly infertile have the right to change their entry in the birth register. In reality, this means that the state prescribes medical treatment for legal purposes, a requirement which clearly runs against the principles of human rights and human dignity.

Some positive legal developments can however be found. The Austrian Administrative High Court ruled in 2009 that mandatory surgery could not be a prerequisite for gender change, and in Germany the Federal Supreme Court indicated in 2005 that operative interventions as a precondition for the change of gender are no longer tenable.

FULL RIGHT TO PHYSICAL AND MORAL SECURITY

All countries need to develop expeditious and transparent procedures for changing the name and gender of a transgender person on official documents, in accordance with the case-law of the European Court of Human Rights.

In 2002, in *Goodwin v UK*, the Strasbourg Court’s Grand Chamber stressed that in the twenty first century the rights of transgender persons should be effectively protected by states. They should have the same right to personal development and to physical and moral security enjoyed by others in society. One cannot but agree.

There is a strong need for an informed dialogue about the widespread discrimination against transgender persons in Europe today. One contribution will hopefully be a comparative study, the result of which my office will present early next year, on continued discrimination in all parts of Europe on grounds of sexual orientation and gender identity.

This article was originally published by the Commissioner for Human Rights on 31 August 2010 - <http://www.coe.int/t/commissioner>



The ICCL Kicks off its UN Universal Periodic Review Project



The ICCL has recently launched a dynamic new project on the UN Universal Periodic Review (UPR), aiming to chart gaps in Ireland’s human rights record in advance of the State’s October 2011 examination by the United Nations Human Rights Council.

The UPR

Ireland is due to be examined for the first time under the UPR - a new United Nations human rights monitoring process – in October 2011. The UPR process involves the review of the human rights records of all UN member states once every four years. It is conducted through the Human Rights Council of the UN.



OHCHR meeting in Ljubljana



On 6 and 7 September 2010, Deirdre Duffy, UPR Project Manager, travelled to Ljubljana, at the invitation of the Office of the High Commissioner for Human Rights (Europe Regional Office) for a high-level meeting on the Universal Periodic Review (UPR). Officials from the Department of Justice and Law Reform, the Human Rights Unit of the Department of Foreign Affairs and the Irish Human Rights Commission were also present.

The meeting covered procedural and technical issues around the UPR process for state officials, national human rights institutions and civil society organisations. It was a worthwhile opportunity to engage with the Office of the High Commissioner for Human Rights and with colleagues from other European countries who are working in the UPR, as well as to reflect on the need for effective national coordination of UPR work, respecting the distinct roles of civil society, national human rights institutions and government.

RAXEN Ireland Update

Stephen O’Hare | Research Officer, RAXEN Ireland National Focal Point



RAXEN Ireland - National Focal Point (a consortium of ICCL, School of Social Justice – UCD, and the Immigrant Council of Ireland) continues to report and inform on specific issues for the EU Fundamental Rights Agency (FRA). In September, the FRA launched three new EU wide comparative reports, two in relation to asylum seekers and one relating to the detention of migrants. The reports

relating to asylum seekers entitled “The duty to inform applicants about asylum procedures: The asylum-seeker perspective” and “Access to effective remedies: The asylum seeker perspective” were compiled based on evidence gathered by RAXEN NFPs in all 27 EU Member States. The reports highlight that substantial differences exist between the asylum procedures in the 27 EU Member States, creating an uneven playing field. RAXEN NFPs interviewed almost 900 asylum seekers across the Union to gather evidence about their own experiences of accessing information and effective legal support with more than 50 interviews conducted in Ireland alone. The reports recommend that in order to ensure fair and effective asylum procedures throughout the EU:

- asylum decisions should be provided in a language that the asylum-seeker understands, ideally both in writing and orally
- information about how to appeal should be accompanied by information about accessing legal assistance
- free legal assistance should be made available
- time limits for submitting an appeal should be reasonable, and procedures for lodging an appeal should be as simple as possible
- the asylum-seeker should be involved in the appeals procedure, and should be heard where the facts of the case are disputed

Data from the report on asylum procedures placed Ireland fourth out of twenty seven when it comes to providing information in an applicant’s own language. In Ireland, information on asylum procedures is translated into 24 different languages, behind only Germany (59 languages), Czech Republic (37 languages) and Denmark (28 languages) and ahead of the UK (16 languages), the Netherlands (12 languages) and France (5 languages). The report also found that lengthy periods waiting on a decision in Ireland often impacted negatively on the mental health and well being of many asylum seekers. The reports are available to download at www.raxen.ie.

RAXEN Ireland has also submitted a report to the FRA on racist and related hate crime in Ireland. The report focused on the experiences of migrants, minority ethnic groups (including Travellers), as well as LGBT and religious minorities. Information for the report was compiled with the support of Government Departments, local authorities, state agencies and NGOs throughout the country. The report will be used in the compilation of an EU wide comparative report on racist and related hate crime due for publication in early 2011.



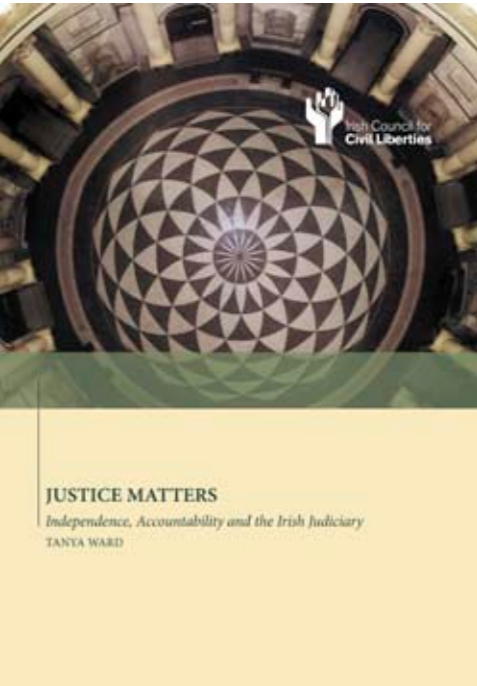
Scheme of Judicial Council Bill a Welcome Development

The scheme of the long-awaited Judicial Council Bill was published on 23 August 2010. The Bill proposes improvements in judicial accountability and judicial professional development.

The scheme provides for a Judicial Council to promote judicial education and independence, and a Judicial Conduct Committee, which will provide a mechanism for dealing with complaints against judges.

It is appropriate that the judiciary be able to formally organise itself for the promotion of its independence, standard-setting and the provision of professional support. The scheme should be welcomed for acknowledging the importance of ongoing workplace education and professional development for members of the bench. With regard to the proposed Judicial Conduct Committee, while the vast majority of judges perform their duties with distinction, it has been a major flaw in our system to date that no means exists to hold to account members of the judiciary who fail to meet professional standards. The proposed measures will ensure that such breaches can be appropriately addressed without compromising judicial independence.

While the full detail of the bill remains to be worked out, and while there are a number of outstanding concerns, such as the low proportion of lay members on the proposed Judicial Conduct Committee, this scheme is an important first step towards judicial reform.



The 2007 ICCL study *Justice Matters* recommended that a Judicial Council bill should provide for a Committee to consider complaints made by the public against judges; an informal system for resolving complaints; an investigative panel; sanctions, including reprimand, or removal; and further measures such as counselling and awareness training. *Justice Matters* can be downloaded from the ICCL website at <http://www.iccl.ie/justice-publications.html>



Home Defence: A Barrister Writes



BARRISTER AND COLUMNIST PAUL ANTHONY MCDERMOTT DISCUSSES WHY HE FEELS THE CRIMINAL LAW (DEFENCE AND THE DWELLING) BILL 2010 IS ANOTHER MEASURE THAT FAILS TO ADDRESS THE REAL PROBLEMS IN THE JUSTICE SYSTEM.

The Criminal Law (Defence and the Dwelling) Bill 2010 must go down as one of the daftest pieces of criminal law published in recent times. According to its explanatory memorandum its main purpose is to both clarify and update the law of self-defence for the dwelling. Given that the law is already contained in the Non-Fatal Offences Against the Person Act 1997 it is not clear why it needs updating right now. Nor is it apparent why it needs clarifying, given that lawyers and juries seem perfectly comfortable in operating that law. There is no cadre of wrongly convicted homeowners languishing in prison cells that I am aware of; persons who would have been acquitted if only the new Bill had been around to save them.

The 1997 Act could not be clearer as regards the law of self-defence. It says that you can use such force as is reasonable in the circumstances as you believe them to be in order to protect persons or property. So what precisely are the politicians now trying to tinker with?

Under the 1997 Act a jury could have regard to whether the homeowner had an opportunity to retreat when deciding if reasonable force had been used. The Bill now says that it is immaterial whether you had an opportunity to retreat from the dwelling before using force. That does not make a huge amount of sense since how is a jury supposed to work out whether or not you were acting reasonably if they are not allowed to have regard to the fact that you could have just walked out the back door instead of firing at a drug addict in your hall way.

The Bill also helpfully clarifies that it applies to child burglars. Thus if your finger would previously have hesitated on the trigger upon seeing that the person rummaging around down-stairs was a kid you can now open fire safe in the knowledge that the jury will be told to disregard the fact that you could have walked away instead.

The most indefensible aspect of the new Bill is section 2(7) which states that “The use of force shall not exclude the use of force causing death”. This must be the first time since the 1937 Constitution that killing another human being has been expressly recognised by legislation. For centuries it has been the law that you can rely on self-defence even if your attacker is mortally wounded but this is the first time the Oireachtas will be asked to enact law that positively refers to the intentional killing of another citizen.

Now that politicians have given home owners a licence to kill one wonders of they have thought about what weapons they are supposed to use for the task. Perhaps homeowners can use a rolled-up copy of the Bill to chase intruders out of their home?

The Bill appears designed to lead the public into the belief that it is possible to have a rational confrontation with an intruder. In other words if you have a gun and the intruder does not and if the intruder has perused the Bill in advance then of course it makes sense for the



intruder to flee. However if the intruder happens to be a drug-addled zombie then things are going to go wrong if you confront them since they may not realise that you are exercising the new powers that the Government has given you and may instead think that they are going to be attacked. The chances are someone is going to get hurt.

Whilst politicians pat themselves on the back for having come up with the new Bill, nothing is being done to address the real problems with the justice system such as over-crowded prisons and the lack of rehabilitation services. Presumably the fact that those issues would cost money to deal with whereas the Bill occupies a fiscal free zone is the reason for its publication at this point in time.

A version of this article first appeared in The Sunday Times on 25 July 2010. It appears here by kind consent of the author.



ICCL joins Nomination Committee of the NLGF GALAS ‘LGBT International Activist Award’

The ICCL was delighted once again to lend its support to the National Gay and Lesbian Federation (NLGF) GALA Awards, whose second annual event took place in Dublin on 24 September 2010.

The GALAS were set up in 2009 by the NLGF to honour lesbians, gay men, bisexuals and transgendered people and organisations for their contributions to Irish society, both north and south of the border. The awards are also to honour politicians, employers and other people who are committed to advancing equality and social acceptance for LGBT people in Ireland. Last year, the ICCL showed its support for the inaugural GALAS through its sponsorship of the Journalist of the Year Award.

For the 2010 awards, the ICCL joined Amnesty International and Frontline on the nomination committee for a new award category - the ‘International LGBT Activist of the Year’ Award, which recognizes a person or organisation working outside Ireland for the betterment of LGBT rights. The GALA award includes a modest bursary, which will go toward the furtherance of the Award recipient’s work on LGBT issues in his/her home country. Of the nominees, the NLGF committee chose Cameroonian LGBT activist Joel Nana as the bursary and award recipient.



THE NOMINEES



The ICCL nominated **María Rachid**, President of Federación Argentina de Lesbianas, Gay, Bisexuales y Trans (FALGBT), and a major voice in the campaign for marriage equality in Argentina. The success of María Rachid and the Argentinian marriage equality campaign serves as an inspiration and a reminder to us that the Civil Partnership Act is only a step towards full equality for LGBT people in Ireland.



Frontline nominated **Andres Rivera Duarte** of the Chile-based Transsexual Organisation for Dignity of Diversity – OTD, on the basis of his lifelong struggle for justice and human rights for the transgender community in Chile, his courage in overcoming personal disadvantage and discrimination, challenging gender stereotypes and opening the way for others to claim their rights.



Frontline also nominated **MacDarling Cobbinah** of the Centre for Popular Education and Human Rights, (CEPEHRG) Accra, Ghana for his dedication to the human rights of the LGBT community in Ghana and his perseverance for the benefit of the whole community despite an often hostile and violent environment.



The Amnesty International nominee, and eventual award recipient, was **Joel Nana**. Born in Cameroon, Joel campaigns for the rights of LGBT people across the African continent, including Senegal, Malawi, Nigeria, Uganda and South Africa. Last year Joel Nana set up African Men for Sexual Health & Rights, AMSHER: a coalition of organisations from 15 African countries that seeks to promote the sexual health of gay men and transgender women. They face many challenges, but none is more pressing than addressing their lack of access to HIV prevention, treatment, care and support services, often impeded by hostile attitudes.

ICCL NEWS



Know Your Rights

The ICCL will shortly be publishing the third information pack in its *Know Your Rights* series. Published with the support of the Public Interest Law Alliance (PILA), the latest pack will provide a plain English outline of the rights protected under the European Convention on Human Rights (ECHR), and information on how to take a case to Strasbourg.



In the coming year, the *Know Your Rights* project will include the development of further packs, roadshow and outreach activities, and planning for our second annual Know Your Rights month in spring 2011.

New ICCL Executive Board Members



The ICCL is delighted to welcome two new members to its Executive Board.

Niall Mulligan has worked in the community and voluntary sector in Ireland and the UK since 1990, primarily within the areas of addiction, homelessness and justice. He is currently CEO with Dundalk Simon Community.



Siobhán Cummiskey is the managing solicitor of the Irish Traveller Movement Independent Law Centre. She is also a course contributor to the Certificate in Human Rights Law at the Law Society of Ireland and sits on the Human Rights Committee of the Law Society.

Taking Human Rights Seriously: An Evening with Anthony Lester QC



The ICCL is pleased announce its 3rd Annual Dinner and Lecture for legal practitioners, taking place on Wednesday, 24 November 2010 with special guest speaker Anthony Lester QC, who will give a talk entitled *Taking Human Rights Seriously*. The event includes a drinks reception, lecture and a three course meal in the private dining area of Fallon & Byrne, Exchequer Street, Dublin 2.



The drinks reception is very kindly sponsored by the Bar Council of Ireland.

Space is strictly limited. If you are a legal practitioner and would like to attend, please contact Karen Ciesielski by telephone: 01 799 4504 or Email: karen.ciesielski@iccl.ie

About Anthony Lester QC

Anthony Lester QC is a Liberal Democrat life peer and President of the Human Rights Lawyers Association. He was a founder of Interights (the International Centre for the Legal Protection of Human Rights) and was architect of the Sex Discrimination Act 1975 and Race Relations Act 1976 as special adviser to Home Secretary Roy Jenkins. He has argued many leading cases on human rights in British, European and Commonwealth courts. He campaigned for 30 years for the Human Rights Act and introduced other legislation leading to the Civil Partnership Act, the Forced Marriage (Civil Protection) Act and the Equality Acts. His current initiative is a ground-breaking Defamation Bill. Anthony Lester QC is Adjunct Professor of Public Law at University College Cork and is Joint Editor of Butterworths Human Rights Law and Practice (Third Ed. 2009). He is also a Junior Member of the Bar Council of Ireland and a self-proclaimed "blow-in" of West Cork of 37 years standing.

Marriage Equality to host Renowned LGBT Civil Rights Leader Evan Wolfson

Marriage Equality will be hosting long time LGBT civil rights leader Evan Wolfson during his upcoming visit to Dublin from 12-15th November 2010.



Director of Marriage Equality's US counterpart, Freedom to Marry, Mr Wolfson has spent over two decades as an LGBT rights advocate. He was co-counsel in the historic Hawaii marriage case and argued before the U.S. Supreme Court in *Boy Scouts of America v. Dale*. In other cases, Wolfson championed lesbian and gay military personnel fighting for the right to serve and gay parents wishing to adopt children and preserve visitation rights. He is the author of *Why Marriage Matters: America, Equality and Gay People's Right to Marry*.

Recognizing his longtime civil rights leadership in the movement for marriage equality, in 2004 TIME magazine named him one of the "100 most influential people in the world."

For further details of Mr Wolfson's visit to Dublin, please visit Marriage Equality's website at www.marriageequality.ie.

Law and Human Rights in the Spotlight in November 2010

A series of other events scheduled for November 2010 will place the spotlight on the significance of law and human rights. On 20 November the Law Society Human Rights Committee/ IHRC Annual Lecture will feature UN Human Rights Committee member Michael O'Flaherty, who will speak on Emerging Human Rights Issues. The run-up to the ICCL Lawyer's Dinner will also include the FLAC Annual Lecture on 23 November 2010, which will be given by human rights lawyer Michael Mansfield.

ICCL Human Rights Film Awards enter their Third Year



The ICCL is gearing up to launch the 2011 ICCL Human Rights Film Awards, the third annual instalment of our competition marrying human rights and the art of film.

The ICCL is introducing some new elements to the 2011 competition, most notably an education-focussed young people's stream. The ICCL has received funding from Trócaire to develop a set of teaching materials on human rights and film which will be rolled out to secondary schools in the New Year. The materials will use a number of the shortlisted films from the last two years of the Film Awards as points of discussion for various human rights issues and as inspiration for student-made short films on human rights.



Meanwhile the 2011 Human Rights Film Awards will be running a 'Human Rights in Under a Minute Challenge' – a new stream of the competition calling on young people to create their own 30-60 second human rights film. The winning film will join the shortlist for screening at our Awards gala in summer 2011, and will also enjoy TV and online coverage via RTÉ Young People's Two Tube programme.

We are also delighted to announce a new addition to our Awards Jury in the shape of Ken Wardrop, director of the critically acclaimed documentary *His and Hers*. The ICCL is most grateful to Ken for lending the Awards his support in 2011.

Details of the 2011 competition launch, which will take place in December 2010, will be made available shortly on the ICCL and Human Rights Film Awards websites (www.iccl.ie, www.humanrightsfilmawards.org).