

The Human Rights Bulletin

"All human beings are born free and equal in dignity and human rights" - Universal Declaration of Human Rights

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The Human Rights Bulletin

covering significant human rights cases and developments at the UK, European and International levels

Inside this issue:

<u>JUDGMENTS</u>	1
• <u>UK cases</u>	1
• <u>ECHR</u>	10
• <u>International</u>	12
• <u>ECOWAS</u>	12
• <u>African Commission on Human and Peoples' Rights</u>	13
<u>HUMAN RIGHTS DEVELOPMENTS</u>	14

at the heart of human rights

Treasury v Mohammed al-Ghabra; R (on the application of Hani El Sayed Sabaei Youssef) v HM Treasury [2010] UKSC 2, judgment of 27 January 2010

Doughty Street barrister Richard Hermer QC acted on behalf of appellant G

In response to incidents of international terrorism, the UN Security Council passed resolutions (UNSCRs) requiring member states to take steps to freeze the assets of (i) Usama Bin Laden, the Taliban and their associates and (ii) those involved in international terrorism, and established a Consolidated List of persons whose assets member states were obliged to freeze.

The appeals concerned the legality of the Terrorism (United Nations Measures) Order 2006 (the TO) and the Al-Qaida and Taliban (United Nations Measures) Order 2006 (the AQO), made by HM Treasury, pursuant to s1(1) of the United Nations Act 1946, which authorises the making of Orders in Council that are "necessary or expedient" to give effect to UNSCRs.

The TO provides that a person's assets can be frozen on the basis of a "reasonable suspicion". The AQO transposes the UNSCRs concerning the Taliban into domestic law. If a person is named in the List, the AQO provides that his assets will be automatically frozen. A person so named is not afforded any right to challenge such listing before a court.

A, K and M were the subject of asset freezes under the TO. G and HAY were named in the Consolidated List and therefore automatically subjected to asset freezing by the

JUDGMENTS

UK CASES

Article 1 - obligation to respect human rights

Article 5 - right to liberty

Article 6 - right to a fair trial

Article 7 - no punishment without law

Article 8 - right to respect for private and family life

Freezing orders - terrorism suspects - legality of freezing orders - primacy of Parliament

HM Treasury v Mohamed Jabar Ahmed & Ors; HM

AQO. G was included in the List at the request of the UK. HAY's inclusion was at the behest of an undisclosed UN member state and is opposed by the UK.

The issue before the court was whether s1(1) of the 1946 Act gave the Treasury the power to make the TO and AQO.

The Supreme Court unanimously held that the TO should be quashed as *ultra vires* s1(1) of the 1946 Act. It also held by a majority of six to one (Lord Brown dissenting) that Article 3(1)(b) of the AQO must also be quashed as *ultra vires*.

The court noted the far-reaching and serious effect of the asset freezing measures on the individuals concerned and their families. In the absence of Parliamentary control, the court was obliged to carefully examine such drastic measures. It was held that Parliament did not intend that the 1946 Act should be used to introduce coercive measures which interfere with citizens' fundamental rights. By introducing a test of reasonable suspicion under the TO, the Treasury exceeded its power under the 1946 Act. Although this criterion is not relied upon in the AQO, there were no means whereby G or HAY could challenge the decision to list them as terrorists before an independent and impartial judge. Article 3(1)(b) of the AQO therefore had to be quashed.

<http://www.bailii.org/uk/cases/UKSC/2010/2.html>

Article 2 – right to life

Inquest – scope of inquiry and jury questions - Article 2 investigative duty

R (Keith Lewis) v HM Coroner for Mid and North Division of the county of Shropshire [2009] EWCA Civ 1403, judgment of 21 December 2009

Doughty Street barrister Paul Bowen appeared as junior counsel for the claimant.

Mr Lewis's son, Karl Lewis, committed suicide while incarcerated at YOI Stoke Heath. On the night of Karl's death a self-harm form was opened on him, requiring checks during the night. A Prison Officer checked on Karl at 0040 hours and 0120 hours and between these checks Karl hanged himself. When the Prison Officer looked through the observation window of Karl's cell at 0120 and saw him hanging he did not enter the cell. He had no suicide prevention training and no "fishknife", which would have enabled him to cut the ligature. Instead he radioed for assistance, but used the wrong

emergency code, meaning that assistance took longer than it should have done to arrive. The medical evidence was that it was impossible to know whether swifter intervention would have saved Karl's life.

At the inquest the coroner prevented questions being put to the jury about the steps that should have been taken after Karl was found hanging because, as a result of the medical evidence, it was not possible to show that these matters were causative of death. A judicial review was brought arguing that this was an unlawful omission but the application failed. On appeal to the Court of Appeal, the two main submissions before the court were that the question should have been left for the jury because Article 2 requires that an investigation include matters that might prevent future deaths, and that the question of "in what circumstances" a person died includes consideration of matters possibly causative of death, even if not shown to be causative on the balance of probabilities.

The Court of Appeal held that there was a breach of Rule 43 Coroners Rule 1984 (requiring the Coroner to report action that should be taken to prevent the recurrence of further fatalities) because the Rule 43 report in Karl Lewis's case did not include details of the failing set out above. However the court rejected the argument that the Coroner acted unlawfully in not leaving these matters to the jury. Sedley LJ, delivering the lead judgment, explained that it was necessary in terms of the scope of the inquest to consider matters possibly causative of death, and it was open to the coroner to leave these matters to the jury. However, there was no breach of Article 2 in him failing to do so if any failing relevant to preventing future deaths was reported in the Rule 43 report. Importantly, the court also said that where there are disputed facts that form the foundation of matters to be dealt with in a Rule 43 report, it may be necessary to leave these matters to the jury to make relevant factual findings.

<http://www.bailii.org/ew/cases/EWCA/Civ/2009/1403.html>

Article 3 – right to freedom from inhuman and degrading treatment

Disclosure – torture and ill-treatment – knowledge of the UK secret services – Norwich Pharmacal relief

Shaker Aamer v Secretary of State for Foreign and Commonwealth Affairs [2009] EWHC 3316 (Admin), judgment of 15 December 2009

Doughty Street barristers Richard Hermer QC and Charlotte Kilroy appeared for the claimant

The claimant, a British resident detained in Guantanamo Bay, was subject to proceedings before the Guantanamo Task Review Force, which was considering the cases of every detainee in the base. The Task Force had the power to recommend the claimant for release to the UK, transfer to detention in Saudi Arabia or the US, or prosecution in the US.

Mr Aamer alleged that during his detention he had made confessions while subject to ill-treatment by his American interrogators, and during which British secret service members had been present. He sought disclosure of any material in the possession of the Secretary of State which supported his case that his confessions had been induced by torture. This material was argued to be necessary to enable the claimant to make submissions to the Task Force, to bring civil actions and to secure the prosecution of the responsible individuals. Mr Aamer relied on the court's *Norwich Pharmacal* jurisdiction to order a party mixed up in the tortious acts of a tortfeasor to provide information to the wronged individual, as developed in the *Binyam Mohamed* litigation.

In applying the *Norwich Pharmacal* test, Lloyd Jones J proceeded on the basis that the Secretary of State had become mixed up in wrongdoing so as to facilitate it. Disclosure of the material to the claimant was also necessary in the circumstances. The disclosure by the UK government to the Task Force of certain evidence relating to the claimant's case, on condition that it was not conveyed to the claimant or his representatives, was inadequate since the claimant's lawyers would be unable to make submissions relying on that evidence. It was also unlikely that the claimant could gain access to the material on application to the Task Force or by *habeas corpus* proceedings. Consequently, Lloyd Jones J granted *Norwich Pharmacal* relief, subject to a further hearing on whether statutory prohibitions on disclosure and public interest immunity precluded disclosure.

<http://www.bailii.org/ew/cases/EWHC/Admin/2009/3316.html>

Article 5 – right to liberty

Immigration detention – secret policy – presumption in favour of detention

R (WL (Congo)) v Secretary of State for the Home Department [2010] EWCA Civ 111, judgment of 19 February 2010 - *Laura Dubinsky appeared as junior counsel for the Appellant KM.*

In WL the Court of Appeal considered the Home Secretary's immigration detention policy as applied to "foreign national prisoners" (FNPs), after the "FNP crisis" in April

2006. Following the crisis the Home Secretary operated a secret policy, which included a presumption in favour of detention and meant that few, if any, FNPs would be eligible for release following completion of their prison sentence if deportation was being pursued. This secret policy conflicted with the Home Secretary's published policy that included a presumption in favour of release.

The Court of Appeal held that national law that authorises detention with a view to deportation may be compatible with Article 5 even if it imposes a presumption in favour of detention pending deportation and that there is no rule of domestic law that precludes a presumption in favour of deportation.

In considering whether it was unlawful for the Home Secretary to have a secret detention policy it was held that it was not unlawful because the law applicable to immigration detention - Paragraph 2, Schedule 3 Immigration Act 1971 taken with the Hardial Singh guidelines - was sufficiently accessible and precise and secret policies were not prima facie unlawful. However, the secret policy under consideration was unlawful because it conflicted with published policy.

As to whether the detention of FNPs was unlawful during the period for which the secret policy operated, the FNP had to show that the policy was applied to them and that the application of the policy was material to the decision to detain in order to prove that detention was unlawful.

Finally, obiter comments were made suggesting that nominal damages might be appropriate if detention was technically unlawful but the FNP would have been detained in any event. While false imprisonment is actionable per se, for the purposes of assessing damages the court could take into account whether an unlawful detention had in practice caused any real loss.

<http://www.bailii.org/ew/cases/EWCA/Civ/2010/111.html>

Article 5 – right to liberty

Parole board hearings – delay post-tariff expiry – damages

R (Ian Gray) v Secretary of State for Justice [2010] EWHC 2 (Admin), judgment of 11 January 2010

At 16 years old the applicant, Ian Gray, was sentenced to Detention for Public Protection in respect of two sexual offences. His earliest release date was 2 October 2008, however the board did not consider his case until 13 February 2009 and their decision was not issued until 24 Feb-

ruary 2009. The Board did not order release or recommend that he be transferred to open conditions. The next Parole Board hearing was scheduled for August 2010.

It was argued that the delay in convening the applicant's first Parole Board hearing gave rise to a violation of Article 5(4). The court agreed that there was a violation on the basis that the delay of 4 months was caused solely by a lack of proper case management. However, the court held that the applicant was not entitled to damages because he was not released by the Board and there was nothing to indicate that there had been a chance of him being released. Furthermore, there was a lack of specific evidence on the impact of the delay on the applicant. In these circumstances, it was held that a declaration that the delay was unlawful sufficed.

<http://www.bailii.org/ew/cases/EWHC/Admin/2010/2.html>

Article 5 – right to liberty

Damages - Article 5(4) and detention reviews – life sentence

R (on the application of Michael Degainis) v Secretary of State for Justice [2010] EWHC 137, judgment of 3 February 2010

The applicant was released on licence having been sentenced to life imprisonment. He was then recalled to prison on 1 July 2006. At a Parole Board hearing on 22 January 2007 it was decided that the recall and future detention were justified and the next hearing was set for July 2008; this hearing did not take place until 23 January 2009, at which point the claimant was transferred to open conditions.

The defendant admitted that the delay amounted to a breach of Article 5(4) and apologised. The issue in the judicial review application was whether the applicant was entitled to damages under Article 5(5) as well as the apology. It was held that the claimant was not entitled to damages because the delay had not extended the time that he had to spend in custody and because there was no specific evidence in relation to the claimant's anxiety or any other effect that the delay had on him. Saunders J found that the right to compensation under Article 5(5) does not necessitate payment of financial compensation and that a finding of a violation may alone be sufficient remedy. Factors that might be relevant to damages were considered and the following conclusions were drawn: i) length of delay is a factor that can be taken into account in assessing the level of frustration or distress, but as a

free standing ground goes to exemplary damages rather than just satisfaction; ii) where the delay results in an extension of the time in custody, damages are normally appropriate; iii) the impact on the claimant is relevant and evidence of the impact is required; and iv) the seriousness of the original offence is not normally a relevant factor because the retributive part of the sentence has been served.

<http://www.bailii.org/ew/cases/EWHC/Admin/2010/137.html>

Article 5 – right to liberty and security

Article 6 – right to a fair trial

Prisoner Transfer Agreements – flagrant breach of Article 6 – “competent court” under Article 5 – foreign criminal proceedings

Samantha Orobator v Governor of HMP Holloway and Secretary of State for Justice [2010] EWHC 58, judgment of 20 January 2010

Doughty Street barristers Edward Fitzgerald QC and John RWD Jones appeared for the claimant

Ms Orobator was convicted of drugs exportation and sentenced to life imprisonment in Laos having been found in possession of 680g of heroin. She subsequently agreed to be transferred to the UK to serve the remainder of her sentence there, pursuant to the Prisoner Transfer Agreement (PTA) between Laos and the UK. Following her arrival in the UK, Ms Orobator claimed that her trial in Laos had constituted a flagrant breach of Article 6, that she had not been convicted by a “competent court” as required by Article 5(1)(a) and that her continued detention in the UK was therefore unlawful.

The flagrant breach argument was based on a number of aspects of the proceedings. The claimant contended that the convicting court was not independent or impartial in that Lao courts generally, and this court in particular, were subject to executive interference. Further, Ms Orobator lacked legal representation during key points in the process, she was intimidated into making incriminating statements, denied the opportunity properly to prepare her case and had an incompetent lawyer who was subject to executive influence.

The Court of Appeal rejected these submissions. The ECtHR in *Drodz and Janousek v France and Spain* [1992] 14 EHRR 745 and the House of Lords in *RB (Algeria) v SSHD* [2009] UKHL 9 had set a high test for flagrant breach of Article 6. While there were severe shortcomings in Ms Orobator's prosecution and trial, the court had not

lacked independence or impartiality, the trial was public, the claimant gave evidence, the court had provided reasons for its decision and executive interference had not been established. Neither were the limitations in her access to legal representation, the nature of her ill-treatment or her lawyer's deficiencies sufficient, individually or cumulatively, to give rise to a flagrant breach.

There was therefore no breach of the ECHR and Ms Orobator's detention in the UK was lawful. However, given the significant mitigating factors in Ms Orobator's case, the court ordered that her minimum term of imprisonment should be 18 months.

<http://www.bailii.org/ew/cases/EWHC/Admin/2010/58.html>

Article 6 – right to a fair trial

Disciplinary procedures – legal representation – right to fair trial

R (on the application of G) v X School Governors [2010] EWCA Civ 1, judgment of 20 January 2010

Doughty Street barrister [Paul Draycott](#) acted for the respondent

G had been employed as a teaching assistant at a school. He faced disciplinary procedures arising from an alleged abuse of trust with a pupil. The procedures culminated in a hearing before a disciplinary committee. G sought legal representation at that hearing and at a hearing of his pending appeal against the committee's decision to dismiss him. However, G was informed by the appellant school governors (X) that, as an employee, he could only be represented by a colleague or trade union representative. Further, the Secretary of State was notified of the circumstances of G's dismissal so that he could decide whether to place G on the statutory register of persons prohibited from working with children.

In the lower court, the judge held that G was entitled to legal representation at the hearings by reason of his Article 6(1) right to a fair hearing in a "civil" matter. X appealed against this decision.

The issues before the Court of Appeal were (i) whether the disciplinary proceedings were determinant of G's right to practice his profession for the purposes of Article 6 and (ii) whether Article 6 required that G be allowed the opportunity of legal representation in the disciplinary proceedings.

The Court of Appeal dismissed the appeal. (1) Where an

individual is subject to two or more sets of proceedings, and a "civil right or obligation" will be determined in one of them, he may enjoy Article 6 procedural rights in any of the others if the outcome of that other will have a substantial influence or effect on the determination of the civil right or obligation. The disciplinary proceedings were effectively determinant of G's right to practice his profession because of the "substantial influence" that the finding in those proceedings would have on the Secretary of State's decision whether to place him on the barred list - so Article 6 was engaged. (2) Article 6 "civil" limb did not necessarily entail a right to legal representation but may do so. The level of procedural protection guaranteed by Article 6 depended on what was at stake. Given the effect that an advocate might have in the disciplinary proceedings, in the instant case Article 6 "civil" required that G should be afforded the opportunity to arrange for legal representation in those proceedings.

<http://www.bailii.org/ew/cases/EWCA/Civ/2010/1.html>

Article 6 – right to fair trial

Housing Act 1996 – duty to ensure suitable accommodation provided to homeless people – whether Article 6(1) engaged in appealing decision of local housing authority that duty was discharged

Tomlinson and Ors (FC) v Birmingham City Council [2010] UKSC 8, judgment of 17 February 2010

Under the Housing Act 1996, local housing authorities have a duty to ensure that suitable accommodation is provided to homeless people who meet certain criteria. If an applicant is dissatisfied with a local housing authority's decision that its duty has been discharged, he may appeal to the county court – but only on a "point of law".

In the instant case, the dispute between the applicants and Birmingham City Council as to whether the Council had discharged its duty turned entirely on a point of fact. The applicants argued that the lack of a fact-finding jurisdiction for a county court on appeal put that aspect of the system in breach of Article 6(1).

Two main issues rose to be determined: (1) whether an appeal to the county court involved the determination of a "civil right" for the purposes of Article 6(1); and (2) if so, whether Article 6(1) required that a court hearing such an appeal must itself be able to determine issues of fact such as those raised in the present case.

The Supreme Court unanimously dismissed the appeal. A decision taken by a local housing authority under the

Housing Act 1996 that it has discharged its duty is not a determination of the applicant's "civil rights" for the purposes of Article 6(1) and therefore lies outside the protection of that Article. The appeal procedure as a whole complies with Article 6(1).

<http://www.bailii.org/uk/cases/UKSC/2010/8.html>

Article 6 – right to fair trial

Disclosure – criminal proceedings – prosecution evidence

McInnes v Her Majesty's Advocate [2010] UKSC 7, judgment of 10 February 2010

The appellant had been convicted before the Scottish High Court of Justiciary of "assault to the victim's severe injury", permanent impairment and the danger of his life and of his attempted murder. He appealed this conviction on the ground that the non-disclosure of police interviews given by a prosecution witness had rendered his trial unfair. His case was that these interviews would have enabled his lawyer to undermine the witness's identification of the appellant as the perpetrator and might have affected the jury's verdict. The appeal court had rejected this argument on the basis that the test for a breach of Article 6 was not whether the lack of access to the documents could have made a difference to the outcome, but whether they would have been of material assistance to the defence.

The issue before the Privy Council was therefore the correct test to be applied in an appeal against conviction based on non-disclosure of evidence. Lord Hope held that two questions arose: was there a duty to disclose the material and, if so, what consequences proceeded from the breach of this duty? His Lordship found that there was such a duty, given that the evidence may have materially weakened the Crown's case or strengthened that of the defence. As to the consequences of the breach, the court had to consider whether, had it not occurred, there was a real possibility that the jury would have arrived at a different verdict.

Lord Brown gave a different formulation of the test which he considered consistent with Lord Hope's: that is, whether, had the document been disclosed, the jury might reasonably have come to a different conclusion.

Since this test had in substance been applied by the appeal court, the appeal was dismissed.

<http://www.bailii.org/uk/cases/UKSC/2010/7.html>

Article 6 – right to a fair trial

Disclosure – criminal proceedings – witness – previous convictions – outstanding charges – materiality

Allison v Her Majesty's Advocate [2010] UKSC 6, judgment of 10 February 2010

The appellant had been convicted in the High Court of Glasgow of four drugs offences. He appealed against conviction and sentence on several grounds, one of which relied on the prosecution's failure to disclose previous convictions and outstanding charges relating to a witness who had died before the trial, but whose police interview had been introduced as prosecution evidence. The appellant argued that this failure resulted in a breach of his right to a fair trial.

The appeal court had dismissed the appeal on the basis that the failure to disclose the previous convictions had not resulted in a miscarriage of justice. Mr Allison's representative had, even without knowledge of the witness's criminal record, so discredited his evidence that it was difficult to see how disclosure of the convictions would have bolstered the defence's attack on his credibility. The court had also concluded that, because of the presumption of innocence, the witness's outstanding charges could not, in any case, properly have been deployed in the appellant's defence.

Mr Allison appealed to the Privy Council on the ground that the appeal court had erred in considering that the failure to disclose the outstanding charges was not a breach of Article 6. The court agreed that it had been an error to conclude that a witness's outstanding charges could not properly be raised by the defence. Indeed the non-disclosure of these charges had breached the appellant's right to a fair trial. However, there was no basis for arguing that their non-disclosure had made any material difference to the jury's consideration of the witness's evidence. As a result, there was no miscarriage of justice and the appeal was dismissed.

<http://www.bailii.org/uk/cases/UKSC/2010/6.html>

Article 6 – right to a fair trial

Article 10 – freedom of expression

Control principle – public interest immunity – open justice – rule of law – freedom of expression – democratic accountability

R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (Guardian News and Media Ltd

and others intervening) [2010] EWCA Civ 65, judgment of 10 February 2010

Doughty Street barristers Gavin Millar QC and Guy Vassall-Adams appeared for the first interested party; and Geoffrey Robertson QC and Alex Gask appeared for the second interested party

This appeal was brought by the Foreign Secretary against a decision of the Divisional Court to publish seven paragraphs that had been redacted from an earlier open judgment of the court, despite the Foreign Secretary having stated in more than one Public Interest Immunity Certificate that such publication would lead to a real risk of serious harm to the national security of the UK.

The respondent, B, had applied for judicial review of the Foreign Secretary's refusal to provide information about his detention, treatment and rendition that was relevant to his defence of charges of terrorism in the US. The Divisional Court made a *Norwich Pharmacal* order quashing the Secretary of State's refusal.

Paragraphs redacted from the court's judgment summarised accounts given to UK intelligence services by the US intelligence services about B's treatment in custody, and about an interview of B by a British security official.

Ultimately, the Divisional Court held that it was appropriate to include the redacted paragraphs as, despite the Foreign Secretary's claims, the risk to national security presented by their publication was not serious and there was an overwhelming public interest in their disclosure.

A US court subsequently found that B had been subjected to torture.

The Foreign Secretary contended (i) that publication would breach the "control principle" (i.e. that when intelligence is shared between states, the confidentiality of the information was vested in the state originally disclosing the information); (ii) that publication would thereby lead to a review of intelligence sharing between the two countries and (iii) such review might lead to a less productive intelligence sharing regime, contrary to the public interest in national security.

The court rejected the appeal. The control principle was not a principle of law in this jurisdiction. B had a personal interest in seeing the full reasoning of the court. There was also a public interest in publishing the redacted paragraphs based on open justice, the rule of law, freedom of expression and democratic accountability. There was no certainty that the resultant review in intelligence sharing would result in any change.

The risk that any review would produce disadvantageous national security arrangements was inevitable whenever a court decided to reject a claim to preserve confidentiality on grounds of public interest immunity. Publication of the redacted paragraphs would not reveal information which would be contrary to national security and, significantly, the information was essentially already within the public domain due to the US proceedings.

<http://www.bailii.org/ew/cases/EWCA/Civ/2010/65.html>

Article 8 – right to respect for private and family life

Article 10 – freedom of expression

Anonymity orders – freedom of expression – right to private life – public interest in open justice

Application by Guardian News and Media Ltd & Ors in HM Treasury v Mohamed Jabar Ahmed & Ors; HM Treasury v Mohammed al-Ghabra; R (on the application of Hani El Sayed Sabaei Youssef) v HM Treasury [2010] UKSC 1, judgment of 27 January 2010

Doughty Street barristers Geoffrey Robertson QC and Anthony Hudson appeared for the applicants

The substantive appeals (reported above) involved five individuals. A, K, M and G were appellants; HAY was the respondent and cross-appellant in an appeal by the Treasury. When the appeals were lodged before the Supreme Court, the individuals' names were concealed as a result of anonymity orders.

At the start of the appeal hearings, Guardian News and Media Ltd and other members of the press made an application to have the orders set aside. The Supreme Court was shown material demonstrating that G's identity as someone subject to a freezing order was already in the public domain and therefore decided to set aside the order in his case and to name him. Consideration of the application relating to A, K, M and HAY was postponed until after the substantive hearing.

A, K and M had been designated under the Terrorism (United Nations Measures) Order 2006 on 2 August 2007 and were thereby subjected to an asset freeze. HAY's name was added to the UN Security Council Sanctions Committee's Consolidated List on 29 September 2005.

HAY stated that his identification in any report of the proceedings would lead to identification of his wife and children. He also feared that the Egyptian authorities would

act against his family members in Egypt.

M feared that his identification would damage his reputation and would lead to loss of contact with the local Muslim community for himself and his family. He argued that an anonymity order was required in order to protect his Article 8 rights.

A and K had left their addresses and had not contacted their solicitors. Their Counsel was therefore unable to put forward compelling submissions on their behalf.

The Supreme Court unanimously set aside the anonymity orders in respect of A, K, M and HAY.

HAY had been named at the time of his inclusion on the Consolidated List and he had featured in the press and broadcast media. There was no evidence that his family in Egypt had been adversely affected. The court held that there had never been the slightest justification for making an anonymity order in his case and he was named.

The court found that a press report identifying M would engage Article 8. The Article 10 rights of the press were also clearly engaged. In the circumstances, there was a powerful, general public interest in identifying M and he was named.

Neither A nor K appeared to have any substantial Article 8 interest to counteract the Article 10 interest of the press and the two men were therefore named.

<http://www.bailii.org/uk/cases/UKSC/2010/1.html>

Article 8 – right to respect for private and family life

Entry clearance – Commonwealth citizens – historical discriminatory immigration laws

Patel, Modha, Odedra v Entry Clearance Officer (Mumbai) [2010] EWCA Civ 17, judgment of 25 January 2010

The common issue in these three appeals against refusals of entry clearance by the Mumbai entry clearance officer (ECO) was the extent to which the history of discriminatory treatment of Commonwealth citizens by the UK could inform the court's assessment of the appellants' Article 8 rights.

The Commonwealth Immigration Act 1968 had restricted the right of Commonwealth citizens to settle in the UK. Subsequently, the Special Quota Voucher Scheme was

introduced to permit certain Commonwealth citizens who were heads of their household, along with their dependants, to settle in the UK. However, since the scheme was applied in a manner which discriminated between men and women on the grounds of their marital status, it was abolished in 2002.

The mother of the first appellant, Mrs Patel, was a British Overseas Citizen who had gained UK citizenship. Although the appellant's father gained entry clearance, the appellant did not. At a second-stage reconsideration, the Immigration Judge considered her Article 8 claim by reference to the date of the hearing, by which point the appellant lived an independent life. The Court of Appeal held this was a mistake: had the judge considered her claim as of the date of the ECO's decision, at which point the appellant still lived with her family, her Article 8 rights would have been engaged. It would have been disproportionate to expect the mother to leave the UK to pursue her family rights, especially given the historical injustices she had suffered under the earlier immigration regimes. The appeal was therefore allowed.

In the Modha appeal, two sisters were denied entry following the recognition of their father as a British citizen and the entry clearance gained by their mother. The Immigration Judge in the second-stage reconsideration had rejected the sisters' appeal on Article 8 grounds on the basis that the parents had chosen to separate themselves from their daughters. The Court of Appeal dismissed this reasoning, holding that the separation had taken place in anticipation of a reunion in a country of which they should always have been citizens, had it not been for the historical discriminatory immigration laws. Since there was inadequate evidence on which to make a proper finding under Article 8, the appeal was remitted to be re-determined in the light of the appeal court's analysis.

The Odedara appeal concerned the case of a brother and sister whose parents had settled in the UK. On first-stage reconsideration, the Immigration Judge had found that there was no relationship of dependency between the brother and the parents, and none, except for a financial dependency, between the sister and the parents. Neither had the parents sought to visit the children despite having the resources to do so. Article 8 was therefore not engaged and the appeal was dismissed.

<http://www.bailii.org/ew/cases/EWCA/Civ/2010/17.html>

Article 10 – freedom of expression

Interim injunction – open justice – right to a fair hearing – right to private life – right to reputation – right to free expression

LNS v Persons Unknown [2010] EWHC 119 (QB), judgment of 29 January 2010

The applicant, John Terry (identified only as “LNS” in the proceedings), applied for an injunction prohibiting the publication of certain information by third party media organisations. The information was as follows: (1) the fact of a specified personal relationship between LNS and another person who is named (“the other person”); (2) details of that relationship including certain specific consequences of it; (3) information leading to the identification of LNS or the other person; and (4) any photographs evidencing or relating to the fact or details of these matters.

LNS accepted that certain of the information he sought to protect was true. There was evidence that the information was already circulating by word of mouth.

An interim injunction was granted substantially in the form sought, including prohibition of reporting its existence, pending the determination of the application the following week.

The application was ultimately refused. (1) In the circumstances, LNS was not likely to establish that there had been a breach of a duty of confidence to the claimant; nor was he likely to succeed in defeating a defence that publication would be in the public interest. (2) A claim for misuse of private information was unlikely to succeed at trial. While LNS had shown that a real risk of publication existed, he was not likely to succeed in establishing that publication of the fact of the relationship should be prohibited. (3) While the freedom to live as one chooses is one of the most valuable freedoms, so is the freedom to criticise (within the limits of the law) the conduct of other members of society as being socially harmful or wrong. The nub of LNS’s application was a desire to protect his reputation, particularly in light of his business interest in various sponsorship deals. If defamation occurred, damages would provide an adequate remedy. An injunction was not necessary or proportionate.

<http://www.bailii.org/ew/cases/EWHC/QB/2010/119.html>

*Article 14 – prohibition of discrimination
Article 1, Protocol 1 – protection of property*

Prisoners detained in psychiatric hospitals – benefits – discrimination – statutory construction

R (D & M) v Secretary of State for Work and Pensions; R (EM & Others) v Secretary of State for Work and Pensions [2010] EWCA Civ 18, judgment of 27 January 2010

Doughty Street barrister [Paul Bowen](#) appeared as sole counsel for the claimants RD & PM and appeared as junior counsel for the claimants in EM & Others

The key issue in these appeals was whether changes to the welfare benefits regime, specifically the denial of benefits to all convicted and sentenced patients detained or transferred to psychiatric hospitals under the Mental Health Act 1983, was discriminatory or unlawful on construction of the applicable Regulations.

The treatment of two groups of patients was considered: patients transferred to hospitals from prison under s 47 Mental Health Act 1983, and convicted prisoners subject to hospital orders under 45A Mental Health Act 1983. The appellants alleged a breach of Article 14 on the basis of disability, taken in conjunction with Article 1, Protocol 1 (protection of property), within the ambit of which it was accepted the denial of benefits fell. It was argued that discrimination arose because other mental health patients were entitled to welfare benefits, including those who had been transferred to hospital under s 37 Mental Health Act after conviction but who were not sentenced; the point being that those being treated for mental health problems should not be punished while receiving treatment and there was no justification for treating those detained under s 47 and s 45A differently to others. The court dismissed the discrimination ground of appeal finding that the difference in treatment was between prisoners and non-prisoners and was justified because those not receiving benefits were serving a prison sentence.

However, in D & M post-tariff lifers succeeded on the construction ground in relation to income support payments. The applicable Regulations said that persons detained under s 47 and s 45A were denied income support until the “*earliest date at which he could have been released in respect of, or from, the prison sentence, if he had not been detained in hospital*”. The appellants argued that the earliest date at which they could have been released was the date on which their tariff expired, while the Secretary of State argued the expiry of tariff was not the relevant date because they still had to satisfy the pa-

role board of their eligibility for release. The reality of the Secretary of State's interpretation was that post-tariff lifers would have no prospect of satisfying the test until they no longer needed to be detained under Mental Health Act powers, at which point they would be entitled to a parole board hearing. The appellant's interpretation was accepted.

<http://www.bailii.org/ew/cases/EWCA/Civ/2010/18.html>

ECHR Cases

Article 1 – obligation to respect human rights

Article 2 – right to life

Right to life – obligation to conduct a full and timely investigation into a death

Mihail Railean v Moldova (Application no 23401/04), judgment of 5 January 2010

The applicant's son, a Ukrainian national, was hit by a car in Moldova on 2 January 2001 and died a few hours later in hospital. The driver fled the scene of the accident. A criminal investigation was initiated but then suspended on 14 November 2001 on the grounds that it had been impossible to identify the driver. The car had belonged at some stage to a police officer (S). The investigation was reopened in 2003. S was eventually charged and put on trial. He was acquitted on 23 May 2007. Appeals to the Court of Appeal and the Supreme Court failed.

The applicant alleged that the Moldovan authorities had failed to conduct a full and timely investigation into the death of his son, contrary to their Article 2 obligations.

The authorities submitted that a thorough investigation had been carried out immediately after the car accident. The state could not be held responsible for the failure where it was impossible to identify the person responsible for another person's death.

The court held that the obligation to protect the right to life under Article 2, read in conjunction with Article 1, required that there should be an effective official investigation when individuals have died in suspicious circumstances. The scope of the obligation is one of means, not result. Any deficiency in the investigation which undermines its ability to establish the cause of death, or the person or persons responsible will risk falling foul of this standard.

In the instant case, the investigation into the matter started nine days after the event. The government submitted no reasons for this delay. The court observed that various state bodies had acknowledged deficiencies in the investigation.

The court further noted that the investigation lasted for over five years, and involved interruptions which the authorities themselves subsequently recognised were unlawful. In the circumstances, such a long period of investigation does not satisfy the requirement of promptness implied in the procedural obligation under Article 2. Accordingly, there had been a violation of Article 2.

http://www.ius.info/EUII/EUCHR/dokumenti/2010/01/CASE_OF_RAILEAN_v._MOLDOVA_05_01_2010.html

Article 3 – prohibition of inhuman and degrading treatment

Article 13 – right to an effective remedy

Article 14 – prohibition of discrimination

Article 3 of Protocol No. 1 (right to free elections)

Article 1 of Protocol No. 12 (general prohibition of discrimination)

Elections – legislatures – racial or ethnic discrimination – constitutional provisions – justification – internal conflict – civil war – proportionality

Sejdic and Finci v Bosnia and Herzegovina (Application nos 27996/06 and 34836/06), judgment of 22 December 2009

The applicants were prominent public figures of Bosnia and Herzegovina, of which they were also citizens. Mr Sejdic was of Roma origin and Mr Finci was Jewish. The latter had informed the authorities of his intention to stand for the House of Peoples, the second chamber of the Parliamentary Assembly in Bosnia and Herzegovina, and for the Presidency, but was told that he was ineligible on account of his Jewish origins. The Bosnian Constitution distinguished between “constituent peoples”, those who declared an allegiance as a Bosniac, Croat or Serb, and “others”, who declared no such allegiance and who were excluded from both political institutions.

The Grand Chamber's analysis focused principally on Article 14 (read with Article 3 of Protocol 1 – free elections) and Article 1 of Protocol 12 (free-standing prohibition on discrimination). The applicants relied on both sets of articles in relation to their ineligibility to stand for the House of Peoples but only on the latter provision in relation to their inability to run for the Presidency.

As regards the rules relating to the House of Peoples, the Grand Chamber confirmed that Article 3 of Protocol 1 was engaged, since its provisions applied to any parliamentary chamber which is filled by direct elections. The state argued that these rules, which amounted to difference in treatment on the basis of racial or ethnic origin, could be justified under Article 14 because of their aim of ending conflict and maintaining peace. The court rejected these submissions. The evidence was that significant positive developments had occurred since the signing of the Dayton peace agreement. Further, power-sharing arrangements which did not lead to the exclusion of minority representatives were found to exist. Finally, the state had already committed, pursuant to various international instruments, to review its electoral structures. For these reasons, the rules were not proportionate and therefore breached Article 14, read with Article 3, Protocol 1. On this basis, it was not necessary to consider the compatibility of the House of Peoples electoral rules with Article 3 Protocol 1 alone or Article 1 Protocol 12.

In relation to the presidential election rules, the court held that an identical test to that entailed by Article 14 should be applied under Article 1 Protocol 12. Consequently, the applicants' ineligibility for the Presidency was in violation of Article 1 Protocol 12.

<http://www.unhcr.org/refworld/docid/4b44a28a2.html>

Article 8 – right to family life

Residency disputes – non-enforcement of domestic court orders – passage of time and impact on Article 8

Dabrowska v Poland (Application no 34568/08) judgment of 2 February 2010

The applicant mother in this case argued that her Article 8 rights were breached as a result of failures to enforce court orders providing that her son should reside with her rather than his father.

In February 2006 the applicant's husband took their son on holiday, then failed to return with him to their family home and moved into a new flat and thereafter hindered the applicant's contact with her son. The applicant filed for divorce and during proceedings in May 2006 it was ordered that the son be returned to live with the mother, with a contact arrangement with his father. However, the father refused to voluntarily return the son and court-appointed guardians failed to enforce the court order. The mother made several complaints and tried to have the orders enforced through court proceedings. Despite

the courts eventually recognising the failure on the part of the guardians and ordering forced removal of the child if necessary, continued attempts by the guardians to return the son to his mother failed. In September 2007 the divorce was finalised and on the basis of expert evidence the court decided that it was in the child's best interests to reside with his mother. However, in early 2009 the child remained with his father due to the authorities' failure to enforce the judgment. On 2 April 2009, following an application by the father, a court ordered that the issue of custody should be re-examined and the son should live with his father in the interim. The mother appealed this decision and the appeal failed so she made an application to the ECtHR.

The ECtHR found that the mother's Article 8 rights had been breached. The court held that the lapse of time and the ineffectiveness of the enforcement of binding domestic decisions were caused largely by the authorities' handling of the case and no justification was put forward for these failures. The court emphasised that future relations between parent and child should not be determined by the mere effluxion of time and that failures on the part of the authorities had breached the applicant's Article 8 rights.

<http://cmiskp.echr.coe.int/tkp197/viewhbk.asp?sessionId=48873104&skin=hudoc-en&action=html&table=F69A27FD8FB86142BF01C1166DEA398649&key=79848&highlight>

Article 9 – freedom of thought, conscience and religion

Identity cards – right not to be obliged to disclose one's religion – freedom not to manifest one's religion or belief

Isik v Turkey (Application no 21924/05), judgment of 2 February 2010

In 2004, the applicant applied to a court in Turkey requesting that his identity card feature the word "Alevi" rather than the word "Islam". Until 2006, it was obligatory for the holder's religion to be indicated on an identity card.

The applicant's request was dismissed on the basis of an opinion the court had received from the legal adviser to a public body. The court found that the term "Alevi" referred to a sub-group of Islam, and that the indication "Islam" was thus correct.

Before the Strasbourg court, the government contended that (i) the indication of religion on identity cards did not compel Turkish citizens or the applicant to disclose their

religious convictions and beliefs; and (ii) since the law had been changed in 2006, the applicant could no longer claim that he was a victim of an Article 9 violation because all Turkish citizens could now request that information about their religion be left blank or changed.

The ECtHR held, *inter alia*, that: (i) The government's first argument was not persuasive. The state's assessment of the applicant's faith was a breach of its duty of impartiality and neutrality in such matters. (ii) The fact of having to apply to the authorities in writing for the deletion of the religion in civil registers and on identity cards, and the mere fact of having an identity card with the "religion" box left blank, obliged an individual to disclose, against his or her will, information concerning an aspect of his or her religion or most personal convictions. This was undoubtedly at odds with the principle of freedom not to manifest one's religion or belief.

The breach had arisen not from the refusal to indicate the applicant's faith (Alevi) on his identity card, but from the very fact that his identity card contained an indication of religion, regardless of whether it was obligatory or optional. Accordingly, there had been a breach of Article 9.

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=861895&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

Article 1 of Protocol 1 – right to peaceful enjoyment of one's possessions

Article 41 – just satisfaction

Just satisfaction – constructive expropriation – method of calculation – deprivation of property

Guiso-Gallisay v Italy (Application no 58858/00), judgment of 22 December 2009

The Italian authorities had occupied land belonging to the applicants with a view to its expropriation and development. A complaint was brought under Article 1 Protocol 1 on the ground that this occupation, which had not been accompanied by a formal expropriation order and compensation, had interfered with the applicants' peaceful enjoyment of their possessions in a manner that was incompatible with the principle of legality. The ECtHR found for the applicants on the question of breach, but reserved judgment in determining the quantum of just satisfaction to be awarded under Article 41.

In its reserved judgment the Chamber deviated from its existing jurisprudence on calculating just satisfaction in

constructive expropriation cases. The method hitherto employed had been to base the award on the market value of the land, adjusted for inflation and increased by the appreciation resulting from the buildings subsequently erected by the expropriating authorities. In its decision the Chamber adopted a new method based on the market value of the property on the date on which the applicants had lost the right to ownership, plus interest accruing up to the date of judgment, and subtracting any compensation already received.

The applicants appealed to the Grand Chamber on the ground that this new basis for calculation eliminated any distinctions between lawful and unlawful expropriations, and permitted states to "ratify" constructive expropriations, thus tending to encourage this practice. The Grand Chamber rejected these submissions. An approach to compensation based on the current value of the land had the potential to provide for arbitrary outcomes, based on the value of the type of development undertaken by state authorities and not necessarily on the intrinsic value of the land. Further, this method would attach a punitive or deterrent purpose to the award, rather than the proper aim of compensating applicants. The court went on to determine that the appropriate approach to just satisfaction in constructive expropriation cases was to base the compensation on the value of the land as of the date of the loss of ownership, as supplemented by both interest and the intervening effects of inflation, less any compensation already received.

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=860275&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

INTERNATIONAL CASES

ECOWAS

Article 17 African Charter on Human and Peoples' Rights – right to education – ECOWAS court and human rights – standing in human rights cases

Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria and Universal Basic Education Commission, Suit No. ECW/CCJ/APP/08/08, Community Court of Justice of ECOWAS, judgment of 27 October 2009

This case concerned a preliminary objection to proceedings brought by SERAP alleging violations of the

right to education, right to dignity, right to peoples of their wealth and natural resources and the right of peoples to economic and social development guaranteed by the African Charter. The defendant's preliminary objection argued: (1) that ECOWAS did not have jurisdiction over the human rights to education because this was enshrined in domestic law; (2) that the right to education was not enforceable; and (3) that the plaintiff did not have standing. The defendants failed on all three grounds. In relation to (1) the court held that, under Article 9(4) of the Supplementary Protocol on the Court of Justice, ECOWAS had jurisdiction to determine cases of human rights violations that occur in any member state and that the court could therefore have jurisdiction over alleged breaches of the African Charter. The fact that African Charter rights were domesticated in Nigerian law could not oust jurisdiction. In considering issue (2) the court found that the right to education is justiciable, as are all rights contained in the African Charter. In answer to (3) the court held that the applicant did have standing, though unable to show that he had suffered any damage, loss or personal injury. The court accepted the plaintiff's argument that in cases concerning human rights a more flexible approach to standing, in line with international practice, should be adopted. The court held that since human rights are public rights then any public spirited individual should be able to challenge an alleged breach even if not personally affected.

<http://www.crin.org/resources/infoDetail.asp?ID=21322>

African Commission on Human and Peoples' Rights

Right to religion

Right to property

Right to cultural life

Right to free disposition of natural resources

Right to development

Indigenous peoples – indigenous title to land – property rights – dispossession of land – collective rights – limitation of rights – African Charter

Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya, African Commission on Human and Peoples' Rights, judgment of 4 February 2010

The complainants were two organisations acting for the Endorois, an indigenous community living in the Lake Bogoria region of Western Kenya. They claimed that the Endorois' displacement by the government from their ancestral lands had violated their rights to religion, property,

culture, development and to the free disposition of natural resources under the African Charter.

The Endorois had lived in the Lake Bogoria area for centuries, and had been largely accepted by neighbouring tribes as the owners of this land, although the British authorities claimed title to the land during the colonial period. At independence, the British claim to the land passed to Kenyan County Councils. In 1973 the Kenyan government gazetted the land as a game reserve and from 1978 the Endorois were denied access to the land. An agreement was made to pay certain Endorois families 3,150 Kenyan shillings (about £30), but this had not been respected.

The Commission held that the Endorois people qualified as a distinct tribal group whose members enjoyed rights collectively: their self-identification as an indigenous people was also a further essential component of their identity.

As regards the alleged violation of the Endorois' religious rights, the Commission found that the Endorois' removal from their land had rendered the maintenance of their religious practices, centred around this land, virtually impossible. Given the narrow interpretation of any limitation on this right, no justification for the restriction was made out and a breach was established.

In relation to the Endorois' property rights, the Commission held that peoples who have unwittingly lost possession of their ancestral land are entitled to restitution or other land of equal extension and quality. The Commission found that the Endorois' land had been encroached upon, and that, since this displacement had not been proportionate or in accordance with national or international law, it had resulted in a breach of their property rights.

As regards the cultural rights complaint, it was held that the Endorois' denial of access to their cultural sites and the damage to their pastoralist way of life had nullified the essence of the Endorois' rights such that a violation was made out. A breach was also established in relation to the free disposition of natural resources claim, since the government had not satisfied the Commission that the Endorois had sufficiently benefited from the economic activities taking place on their ancestral land, and that the duty of compensation or restitution had not been fulfilled. Further, the Endorois' right to development had been violated on the ground that the government had failed adequately to obtain the Endorois' prior informed consent in the designation and development of their land as a game reserve.

The principal recommendations made by the Commission were that the Kenyan government should recognise

the Endorois' right to ownership of the land, restore that land, ensure that the community has unrestricted access to Lake Bogoria and surrounding sites and pay adequate compensation and royalties from existing economic activities.

<http://www.minorityrights.org/9587/press-releases/landmark-decision-rules-kenyas-removal-of-indigenous-people-from-ancestral-land-illegal.html>

HUMAN RIGHTS DEVELOPMENTS

Interlaken Declaration

On 19 February the contracting states of the Council of Europe issued the Interlaken Declaration, which calls for reforms to the operation of the ECtHR. Alongside a reaffirmation of the states' commitment to the Convention and to the right of individual petition, the Declaration outlined an "Action Plan" intended to improve the effectiveness and efficiency of Court procedures and the execution of its judgments. The states recommended enhanced implementation of the Convention at the national level, new mechanisms to filter inadmissible and repetitive applications and modified practices in the Court with the aim of avoiding excessive reconsiderations of national law, applying admissibility criteria uniformly and giving effect to the new procedures under Protocol 14. The Declaration proposed a time-frame extending to 2015 in which these proposals could be implemented and evaluated.

<http://www.echr.coe.int/ECHR/EN/Header/The+Court/Reform+of+the+Court/Interlaken+conference/>

First African Court judgment

On 15 December the African Court on Human and Peoples' Rights handed down its first ruling, in the case of *Michelot Yogogombaye v The Republic of Senegal* (Application No. 001/2008). The application involved a challenge to the Senegalese trial of the former Chadian head of State, Hissene Habre, for war crimes and crimes against humanity, on the basis that the proceedings violated the principle of non-retroactivity of criminal laws under Article 7(2) of the African Charter. The court found that it lacked jurisdiction to hear the application since Senegal had not accepted the right of individual petition to the court under Article 34(6).

<http://www.african-court.org/en/cases/latest-judgments/>

BNP membership policy discriminatory

On 11 March, in an application brought by the Equalities and Human Rights Commission, His Honour Judge Collins, sitting at Central London County Court, ruled that parts of the British National Party's membership policy were likely to be racially discriminatory. Indirect discrimination was identified, in particular, in respect of the requirement that members should support the "continued creation, fostering, maintenance and existence" of the "indigenous British" and that they submit to a home visit by two party officials. An injunction was imposed on the operation of the BNP's membership list pending its amendment to remedy the discriminatory elements.

http://news.bbc.co.uk/1/hi/uk_politics/8564742.stm

Nationwide roll out of child sex offender disclosure scheme

On 3 March 2010, the Home Secretary, Alan Johnson, announced the nationwide roll out of a child sex offender scheme. The scheme is intended to improve protection for children by providing members of the public with a mechanism by which they may enquire about people who are in contact with children.

Under the terms of the scheme, a parent, carer, guardian or other interested party may request that an individual who has access to a child or children is checked to see whether they have a record of committing child sexual offences. If the individual is found to have convictions for sexual offences against children, and poses a risk of causing serious harm to the child or children, this information may be disclosed by the Multi Agency Public Protection Arrangements (MAPPA).

The nationwide roll out of the scheme follows a 12-month pilot of the scheme which covered four police areas and ended in September 2009. An additional 18 forces will roll out the scheme from August 2010, and the government intends that remaining forces begin implementing the scheme by the end of March 2011.

<http://www.crimereduction.homeoffice.gov.uk/violentcrime/violentcrime015.htm>

http://www.direct.gov.uk/en/NI1/Newsroom/DG_171707

DPP publishes new assisted suicide guidelines

On 25 February 2010 the DPP published the new assisted suicide policy to replace the interim policy issued in response to the House of Lords decision in *R*

(on the application of Purdy) v Director of Public Prosecutions [2009] UKHL 45, which required the DPP “to clarify what his position is as to the factors that he regards as relevant for and against prosecution” (paragraph 55). The new policy lists 16 public interest factors in favour of prosecution and 6 public interest factors against prosecution. Keir Starmer, the DPP, has described the new policy as having a “change of focus”; he said that it is now more focused on the motivation of the suspect rather than the characteristics of the victim. He says that the new policy “provides a clear framework for prosecutors to decide which cases should proceed to court and which should not”.

http://www.cps.gov.uk/news/press_releases/109_10/
http://www.cps.gov.uk/publications/prosecution/assisted_suicide_policy.html

Detention of Women and Children Asylum Seekers: Two new reports

In February 2010 Human Rights Watch launched a new report criticising the use of the Detained Fast Track (DFT) process for women asylum seekers and Anne Owers, Chief Inspector of Prisons published her report on Yarl’s Wood Immigration Removal Centre where women and children immigration detainees are held.

The Human Rights Watch report criticises the use of the DFT procedure for women. Cases that can be decided “quickly” are routed into the DFT and the whole process of making a claim, receiving a decision and completing an appeal happens within about two weeks making it difficult for claimants to gather evidence, consult lawyers, and to disclose past mistreatment. Human Rights Watch found that complex claims, where issues such as sexual violence, female genital mutilation, trafficking and domestic violence arise, are routinely and inappropriately being decided in the DFT. Human Rights Watch recommends primarily that the DFT be abolished because of the difficulties claimants face in presenting their claims in such a short timeframe and while detained. Failing abolition they make a series of recommendations including that the selection criteria for fast track to be clarified and that women with complex gender-related claims stop being fast-tracked.

<http://www.hrw.org/en/reports/2010/02/24/fast-tracked-unfairness>

The Chief Inspector of Prisons report criticised the detention of children and states that decisions to detain and maintain detention of children did not appear to be fully informed by considerations of the welfare of children. Although facilities were improved for children in deten-

tion, this did not solve the key issue that detention “clearly and adversely affected children’s welfare”. The report also criticises the facilities provided to the majority population of women and says that they were among the poorest seen in any removal centre and that the lack of activity adds to the depression and anxiety of women detainees.

http://www.justice.gov.uk/inspectors/hmi-prisons/docs/Yarls_Wood_2009_rps.pdf

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