

Judicial Communications Office

Thursday 18 October 2012

Court grants Northern Ireland Human Rights Commission's application to judicially review NI adoption law

Summary of Judgment

Mr Justice Treacy, sitting today in the High Court in Belfast, granted the Northern Ireland Human Rights Commission's (NIHRC) application for judicial review. The application challenged adoption legislation on grounds that it is unjustifiably discriminatory in acting as a bar to unmarried couples and those in a civil partnership from even being considered as potential adopters. It was contended that the legislation breached Articles 8 and 14 of the European Convention on Human Rights and Fundamental Freedoms.

The NIHRC expressed itself to be "gravely concerned" that Northern Ireland remained out of step with England, Wales and Scotland where unmarried couples, irrespective of marital status, sexual orientation or whether or not they had entered into a civil partnership, can apply to be considered for adoption.

The NIHRC accepted that it would have preferred a suitable individual or couple to have brought the case but stated:

"... as a result of, among other things, uncertainty, fear of identification, and the potential of a negative impact on their application, it is our understanding that no individual/couple was willing to bring an application to the court on the terms advanced in this application".

The NIHRC case was supported by C who provided two affidavits following her experiences with various adoption agencies. C is a lesbian who has been in a long term relationship and both she and her partner are keen to be considered as adoptive parents. They also wish to enter into a civil partnership.

The NIHRC argued that the outworkings of Articles 14 and 15 of the Adoption (Northern Ireland) Order 1987 breached the Article 8 rights, when conjoined with Article 14, of unmarried couples.

It also argued that the discriminatory approach evidenced in the legislation was not necessary or rationally connected to its aim which was to regard the welfare of the child as the most important consideration.

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Mr Justice Treacy outlined that under the law as presently stated:

- a. If you are a married couple, you can only adopt as a couple;
- b. If you are an unmarried person, you can only adopt as an individual;
- c. Therefore, if you are an unmarried person, you are not eligible to adopt as a couple. This is the state of affairs which was addressed in **Re P [2008] UKHL 38** and ruled unlawful and it is contended here that the ruling in Re P has not been effectively implemented with the effect that there remains an impermissible bar to applying to adopt if you are an unmarried couple.
- d. If you are an unmarried person who has entered a Civil Partnership, you may not apply to adopt either as an individual or as a couple.

The Judge highlighted that there is no right to adopt, either in convention law or domestic law, and said that the sole purpose of adoption is to advance and promote the welfare of the child by providing a safe and secure environment in which that child can grow to adulthood. He said statute had, however, created a legal opportunity in the form of the right to apply to adopt. The Judge said the right or opportunity to adopt fell squarely within the ambit of Article 8 and that Article 14 secured the right to enjoy that opportunity without discrimination on any prohibited ground.

Mr Justice Treacy said that justification for retaining the current eligibility criteria had been demolished by the judgment in Re P:

“...it is clear that the difference in treatment cannot be justified on any grounds and unmarried couples are suffering an ongoing breach of their Art 8 rights read together with Art 14 by the continued denial to them of the legal opportunity to apply to adopt jointly which is available to those who enjoy the status of being married.”

He also went on to say that:

“The difference in treatment of persons in a civil partnership affected by Art 14 and Art 15 [of the legislation], as amended, is even more deleterious. Not only do they suffer the same discrimination that unmarried opposite sex couples experience when applying to adopt jointly, they also suffer unjustifiable discriminatory treatment when compared against individual members of an opposite sex couple who can apply to adopt as an individual. This is despite the fact that the commitment evinced by choosing to enter a civil partnership ought to be similar to marriage in indicating the security of that relationship.”

Mr Justice Treacy said he could find no basis for the contention that the current eligibility criteria served the best interests of the child. He said excluding persons from the whole adoption process on the sole basis of their relationship status could only serve to narrow the pool of potential adopters.

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In reaching his decision the Judge said:

“Adopting a child is no small undertaking. This is even more so nowadays when the profile of children who need adoptive families has changed dramatically. “Looked after” children who require permanent adoptive homes tend to be older and often have special needs. They also often retain some links with their biological families. A loving, permanent, stable home is infinitely preferable to growing up in care. The potential benefit to a child adopted in such circumstances is immeasurable. As well as a huge benefit to the child, these adopters also provide an invaluable service to the State.

The most important consideration is that decisions are made in the best interests of the child. Issues relating to the sexual orientation, lifestyle, race, religion or other characteristics of the parties involved must of course be taken into account as part of the circumstances. But they cannot be allowed to prevail over what is in the best interests of the child.”

Accordingly Mr Justice Treacy allowed the application for judicial review.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website (www.courtsni.gov.uk).
2. The **Northern Ireland Human Rights Commission** has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights, advising on legislative and other matters which ought to be taken to protect human rights, advising on whether a bill is compatible with human rights and promoting understanding and awareness of the importance of Human rights in Northern Ireland.
3. **Article 8 ECHR** provides:
 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country,

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for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. **Article 14 ECHR** provides:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

5. The full judgment of the House of Lord case, **Re P** can be accessed via the link below.

<http://www.bailii.org/uk/cases/UKHL/2008/38.html>

ENDS

If you have any further enquiries about this or other court related matters please contact:

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