

The Law and Religion Cases Catchwords List

Jessica Giles, editor¹

This 'Law and Religion Cases Catchwords List' sets out a list of the catchwords, in alphabetical order according to subject matter, of law and religion cases from the Oxford Journal of Law and Religion between 2012-2018. The case notes, including the catchwords, were edited and authored by the teams listed below².

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¹ My thanks to Oxford University Press for permission to create this catchword list. My thanks also to the wonderful OUP editorial teams that saw the case notes through the publishing process.

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² Case notes in the OJLR are attributed to specific authors. These can be identified by accessing the case notes in the OJLR.

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At a glance: key words index

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Statutory right to practice religion
Supply of services
United States Constitution
Vicarious liability
Voluntary association

Law and Religion Catchwords List⁵

ABORTION

Abortion – Provision of abortion service – Extent of state’s obligation to provide – National health service legislation providing for free treatment for those ordinarily resident in England – Funded by tax payers in England – Legislation imposing qualified duty on Secretary of State to provide services ‘to such an extent, as he considers necessary to meet all reasonable requirements’ – 15-year-old Northern Ireland national travelling to England and receiving abortion at cost of £600 – Mother claiming judicial review of Secretary of State’s policy refusing to exercise discretionary power to provide abortion free through the National Health Service to women from Northern Ireland on grounds that trauma and stress would have been reduced if service had been free of charge – High Court dismissing claim, rejecting both public law and human rights challenges – Whether fact that approximately 1000 women travelling from Northern Ireland to England each year for abortion services constituting reasonable requirement that abortion services be provided free of charge to women from Northern Ireland – Whether Secretary of State for Health had acted irrationally in not exercising power to require abortion services to be provided to young women from Northern Ireland on same basis as for young women in England on grounds that all were UK citizens – Whether amounting to discrimination in enjoyment of right to private life – European Convention on Human Rights, art 14 in conjunction with art 8 – National Health Service Act 2006 s 3(1)(c), (d)

R (A (A child) & Anor) v Secretary of State for Health

[2015] EWCA Civ 771: Court of Appeal (Civil Division); Moore-Bick, Elias, and McCombe LJ: 22 July 2015

[2016] OJLR 5(1) 170-171

Abortion – Provision of abortion services – Extent of state’s obligation to provide – Claimant A deciding to undergo an abortion – Supported in her decision by her mother claimant B – A UK citizen usually resident in Northern Ireland – Abortion lawful in Northern Ireland only in narrow circumstances – A travelling to England to undergo abortion – A unable to access free abortion services under National Health Service (NHS) in England – Free abortion services provided for those usually resident in England – Secretary of State not exercising power to direct that abortion services be provided free of charge to all UK citizens and residents whether or not usually resident in England – Claimants filing judicial review challenging Secretary of State’s failure to make a direction – Claimants arguing Secretary of State’s failure to make a direction was unlawful – Whether Secretary of State acted irrationally in failing to make a direction – Whether Secretary of State acted unlawfully in failing to make a direction – Whether Secretary of State’s failure to make a direction amounted to discrimination in respect of the claimants’ enjoyment of their right to respect for private and family life on the ground of usual residence – European Convention on Human Rights, art 14 in conjunction with art 8 – National Health Service Act 2006, ss 1, 3, and 7 – NHS (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, reg 3(7)

⁵ The list is for the most part in alphabetical order according to the first three catchwords. Due to the diversity of jurisdictions, there is some difference in terminology used in the catchwords. This means that in some instances cases appear under a general heading relating to the topic of the case.

R (on the application of A and B) v Secretary of State for Health

[2017] UKSC 41: Hale, Deputy President, Kerr, Wilson, Reed, Hughes JJSC; Reed and Hughes JJSC concurring; Kerr and Hale JJSC dissenting: 14 June 2017

[2017] OJLR 6(3) 631

Human rights – Freedom of religion or belief – Conscientious objection to abortion
– Doctors’ right to freedom of conscience – Women’s right to health – Provisional administrator’s decree obliging Family Advice Bureaux doctors to issue both certificate of pregnancy and certificate for undergoing its voluntary interruption – Whether doctors of Family Advice Bureaux, who objected to ‘morning-after pill’, entitled to refuse to issue certificate of pregnancy or certificate for undergoing voluntary interruption of pregnancy – Whether entitled to refuse the prescription and administration of ‘morning-after pill’ – Italian Constitution, art 32 – Law 194/1978, art 9 – Provisional administrator’s decree of 22 May 2014

Tribunale Amministrativo regionale del Lazio, sentenza no 8990/2016

No 8990/2016: Regional Administrative Tribunal of Lazio, Italy: Sapone (President), Biancofiore (Counsel, Drafter of the Judgment), Storto (Counsel): 2 August 2016

[2017] OJLR 6(1) 201-202

ADOPTION

Adoption – Adoption order – Ability to apply – Non-married persons wishing to adopt child – Regulations preventing consideration of unmarried couples whether same-sex, opposite sex or in civil partnership as potential adopters as a couple – Regulations additionally preventing consideration of persons in civil partnership as potential adopters – Whether irrational – Whether breach of affected persons’ Convention rights – Human Rights Act 1998, sch 1, pt I, arts 8, 14 – Adoption (Northern Ireland) Order 1987 (SI 1987/2203), arts 14, 15

Application by the Northern Ireland Human Rights Commission for Judicial Review (Compatibility of the Adoption (Northern Ireland) Order 1987 with the European Convention for the Protection of Human Rights and Fundamental Freedoms)

[2012] NIQB 77: High Court of Justice (Northern Ireland), Queen’s Bench Division: Treacy J: 18 October 2012

[2013] OJLR 2(2) 473

ADMINISTRATIVE LAW

Administrative law – Legal Profession Act – Lawful application thereof – Constitutional law – Canadian Charter of Rights and Freedoms – Freedom of conscience and religion – Federation of Law Societies of Canada and Minister of Advanced Education approving proposal of private evangelical Christian institution, Trinity Western University (TWU), to offer law degree – Law Society of British Columbia holding binding referendum on approval status of proposed law school based on Society’s opposition to TWU admissions policy – Law Society refusing, pursuant to Law Society Rules, to grant TWU

status as approved faculty of law due to University's code of conduct prohibiting sexual intimacy outside of traditional marriage – Minister of Advanced Education revoking consent to proposed TWU law program – On TWU's application for judicial review, Supreme Court of British Columbia setting aside decision not to approve law school – Society appealing judicial review – Whether appeal granted – Whether Law Society had statutory authority to refuse approval of law school on basis of admissions policy – Whether Society Benchers unlawfully sub-delegated or fettered their decision-making authority – Whether TWU denied procedural fairness – Whether Law Society's decision reasonably balanced statutory objectives of Legal Profession Act against TWU's religious freedom rights under Canadian Charter – Law Society Rule 2-27(4.1) / 2-54(3); Legal Profession Act, SBC 1998, c 9, ss 3, 13, 21(1)(b); Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11; Trinity Western University Act SBC 1969, c 44 s 3(2a)

Trinity Western University v The Law Society of British Columbia

2016 BCCA 423: Court of Appeal for British Columbia, Canada: Bauman CJ, Newbury, Groberman, Willcock, Fenlon JJ: 1 November 2016

[2017] OJLR 6(1) 207-210

Administrative law – Vires of regulations – Standard of review – Constitutional and statutory law – Human rights – Freedom of conscience and religion – Federation of Law Societies of Canada (FLSC) approving proposed law school at Trinity Western University (TWU) even in light of Community Covenant prohibiting sexual intimacy outside marriage between a man and a woman – Nova Scotia Barristers' Society (NSBS) regulations providing only for adoption of FLSC's sanctioned law degree – NSBS amending regulations to permit its discretion to act in public interest and determine, notwithstanding FLSC approval, whether TWU unlawfully discriminating in admissions or enrolment policies or requirements on grounds prohibited by Canadian Charter or Nova Scotia Human Rights Act – NSBS passing resolution that law school would not be approved unless TWS excluded law students from the Covenant and restricting ability of TWU law graduates to article in Nova Scotia – TWU seeking judicial review at Nova Scotia Supreme Court – Supreme Court holding amended resolution invalid and quashing NSBS resolution – NSBS appealing the decision – Whether amended regulation ultra vires the Legal Profession Act – Whether resolution unauthorized by Act and its regulations – Whether constitutional issue – The Legal Profession Act, SNS 2004 c 28; Nova Scotia Human Rights Act c 214, RS, 1989, as amended by 1991 c 12; 2007 c 11; 2007 c 14, s 6; 2007 c 41; 2008 c 59; 2012 c 51; Canadian Charter of Rights and Freedoms, pt I of the Constitution Act, 1982, being sch B to the Canada Act 1982 (UK), 1982 c 11

The Nova Scotia Barristers' Society v Trinity Western University

2016 NSCA 59: Court of Appeal For Nova Scotia, Canada: Fichaud, Beveridge, Farrar, Bryson, Bourgeois JJ: 26 July 2016

[2017] OJLR 6(1) 210-213

Administrative and statutory law – Public interest – Standard of review – Constitutional law – Freedom of conscience and religion – Unenumerated equality right of sexual orientation – Proposal of private evangelical Christian Trinity Western University (TWU) to offer law degree approved by Canadian Federation of Law Societies – Law Society of Upper Canada (LSUC) denying accreditation to law school proposal because of alleged discriminatory nature of TWU admissions policy, including code of conduct prohibiting sexual intimacy outside of traditional marriage – Ontario Divisional Court

dismissing TWU application for judicial review – Whether 2001 Supreme Court of Canada’s ruling in favour of TWU determinative – Whether ruling’s standard of review applicable – Whether Divisional Court is correct that LSUC reasonably balanced statutory objectives of Law Society Act (LSA) against religious freedom rights of TWU – Law Society Act, RSO 1990, c L8, s 4; Ontario Human Rights Code, RSO 1990, c H-19, s 6; Canadian Charter of Rights and Freedoms, pt I of the Constitution Act, 1982, being sch B to the Canada Act 1982 (UK), 1982, c 11

Trinity Western University v The Law Society of Upper Canada

2016 ONCA 518: Court of Appeal for Ontario, Canada: MacPherson, Cronk, Pardu
JJ: 29 June 2016

[2017] OJLR 6(1) 213-215

ADVERTISEMENT CONTROL

Advertisement control – Administrative decision making – Improper purpose – Christian organization applying to public authority to run advertising campaign on buses implying homosexuality capable of being ‘cured’ – Mayor expressing opinion on advertising decision and public authority refusing permission during Mayoral election campaign – Upon Christian organization’s claim for judicial review of refusal, court ruling infringement of claimant’s right to freedom of expression lawful – Case remitted to High Court – Whether Mayor instructed public authority to refuse advertisements – Whether public authority’s refusal to advertise made for improper purpose of advancing electoral campaign of Mayor – Greater London Authority Act 1999, s155

R (Core Issues Trust Ltd) v Transport for London

[2014] EWHC 2628 (Admin): Queen’s Bench Division (Administrative Court):
Lang J: 30 July 2014

[2015] OJLR 4(1) 163-164

ARBITRATION

Arbitration – Arbitrator – Appointment – Joint venture for purposes of property investment including arbitration clause – Arbitrators to be members of Ismaili community – Whether person appointing arbitrator “employer” – Whether restriction on eligibility for appointment constituting discrimination on religious grounds – Whether membership of religious community “genuine occupational requirement” – Employment Equality (Religion or Belief) Regulations 2003 (SI 2003/1660), Regulations 2(3), 6(1), 7(3) – Council Directive 2000/78/EC, Article 3.

Hashwani v Jivraj: London Court of International Arbitration and others intervening

([2011] UKSC) 40: Supreme Court (England and Wales): Lord Phillips of Worth Matravers PSC, Lord Walker of Gestingthorpe, Lord Mance, Lord Clarke of Stone-cum-Ebony, Lord Dyson JJSC: 27 July 2011

[2012] OJLR 1(1) 298-299

BROADCASTING

Broadcasting – Control of advertisements – Political advertising – First and second claimant radio station and publisher proposing advertisement stating surveys showed over 60 per cent of active Christians considered to be marginalized at work – Intending to use advertisement to obtain data to inform public debate and to make fairer society – Broadcasting regulatory body refusing clearance to radio station because ‘directed towards a political end’ and in breach of Broadcasting Code and therefore contrary to prohibition on political broadcasting – Judge at first instance dismissing claimants’ claims for review of refusal on grounds that proposed advertisement political advertising and that prohibition of political advertising did not infringe claimant’s freedom of expression rights – Whether advertisement infringing statutory prohibition of political advertising – Whether intention of broadcaster relevant – Whether advertisement ‘directed towards a political end’ – Communications Act 2003, ss 319, 321

R (on the application of London Christian Radio Ltd) v Radio Advertising Clearance Centre

[2013] EWCA Civ 1495: Court of Appeal (England and Wales) (Civil Division): Lord Dyson MR, Richards, Elias LJ: 19 November 2013

[2014] OJLR 3(2) 368

CHARITY

Charity – Trustees – Power to appoint – Gurdwaras used by Sikh community as meeting place for worship established under charitable trust – Trust deeds conferring power on successor to Holy Saint to remove trustees – Claimants seeking declaration that removal and replacement of defendants as trustees and officers of Gurdwaras by successor to Holy Saint lawful – Defendants disputing legitimacy of successor and consequently of appointment of new trustees – Counterclaiming for permanent stay or strike out of case on grounds that issues concerning subjective religious beliefs and internal affairs of religious body non-justiciable – Whether issue justiciable

Shergill and others v Khaira and others

[2012] EWCA Civ 983: Court of Appeal (England and Wales) (Civil Division): Mummery, Hooper, Pitchford LJ: 17 July 2012

[2013] OJLR 2(2) 482

Charity – Trustees – Power to appoint and remove – Gurdwaras established under charitable trust to practise and promote beliefs of Sikh religious sect – Dispute as to whether particular individual was spiritual successor having power under trust deed to appoint and remove trustees – Claim for declarations that defendants were lawfully removed and claimants lawfully appointed by spiritual successor – Whether issue involving determination of religious belief – Whether justiciable

Shergill and others v Khaira and others

[2014] UKSC 33: Supreme Court (England and Wales): Lords Neuberger, Mance, Clarke, Sumption, and Hodge JJ: 11 June 2014

[2014] OJLR 3(3) 525

CHARTER OF RIGHTS

Charter of Rights – Freedom of religion – Right to fair hearing – Right to make full answer and defence – Muslim witness at preliminary hearing in sexual assault trial wanting to testify with face covered by niqab – Whether requiring witness to remove niqab interference with right to religious freedom – Whether permitting niqab creating serious risk to trial fairness – Whether accommodation possible – If not, whether salutary effects of requiring witness to remove niqab outweighing deleterious effects – Canadian Charter of Rights and Freedoms, ss 2(a), 7, 11(d)

R v NS

(012 SCC 72, [2012] 3 SCR 726): Supreme Court of Canada: McLachlin CJ and LeBel, Deschamps, Fish, Abella, Rothstein, and Cromwell JJ: 20 December 2012

[2014] OJLR 3(1) 175

CHILDREN

Children – Care proceedings – Care or supervision order – Parents separating and agreeing shared residence order for 4-year-old son – Father attending Anglican church and adhering to principles of Christian faith – Raising concerns of impact of mother’s beliefs as Jehovah’s witness on son and seeking to restrict extent to which mother able to involve son in practice of her religion – Whether parent enjoying right to share religious beliefs and practices with their child – Children Act 1989, s1 – Children Act 1998, s1 – Human Rights Act 1998, Sch 1, Pt 1, arts 8, 9, 14

Re N (A child: Religion: Jehovah’s Witness)

[2011] EWHC B26 (Fam): High Court of Justice of England and Wales (Family Division); Bellamy HHJ, sitting as a Judge of the High Court: 24 August 2011

[2012] OJLR 1(2) 536-537

Children – Care proceedings – Female genital mutilation (FGM) – Blood found in nappy of one-year-old girl – Foster carer reporting ‘irregular genitalia’ when aged 2 – Whether child subjected to or at risk of any form of FGM – World Health Organisation (WHO) FGM Typology – Whether all forms of FGM including WHO Type IV amounting to ‘significant harm’ for the purposes of the Children Act 1989, s 31(2) – Whether law of England & Wales distinguishing for this purpose between WHO Type IV FGM and male circumcision

B and G (Children) (No 2)

[2015] EWFC 3: Family Court (England and Wales): Sir James Munby, President of the Family Division, High Court of England & Wales: 14 January 2015

[2016] OJLR 5(3) 622

Children – Care proceedings – Local authority powers – Newborn twins subjects of interim care orders shortly after birth – Single mother with long-standing mental health problems, wanting to name son ‘Preacher’ and daughter ‘Cyanide’ (‘chosen names’) – Efforts by local authority to encourage mother to choose alternative names unsuccessful – Local authority applying to court to invoke its inherent jurisdiction to prevent mother registering chosen names – High Court ruling local authority had wrongly sought to invoke inherent jurisdiction but declared that given that registration of birth and naming children

were 'aspects of parental responsibility', local authority could prevent mother registering chosen names – Issuing injunction prohibiting mother registering chosen names – Whether naming of child and registration of child's birth were acts of parental responsibility – Whether local authority having power to prevent a mother naming and registering children with chosen names – Whether court could use inherent jurisdiction to prevent registration of chosen names – Children Act 1989; Births and Deaths Registration Act 1953; European Convention on Human Rights (ECHR)

Re C (Children)

[2016] EWCA Civ 374: Gloster LJ, King LJ, and David Richards LJ: 14 April 2016

[2016] OJLR 5(3) 626

Children – Child arrangements order – Circumcision in accordance with religious belief – Leave to remove to a non-Hague convention country – Father ('F') devout Muslim born in Algeria with dual Algerian and British nationality – Mother ('M') grew up in Devon – M and F undertook Islamic marriage ceremony in 2009 but never legally married – Two sons born ('L and B') aged 6 and 4¾ – M and F separated in 2012 due to various issues including domestic violence and threats from F to abduct L and B – M no longer observing Muslim faith – F enjoying staying contact with L and B – Whether in L's and B's best interests to be circumcised in accordance with F's Muslim practice and religious beliefs – Whether F should be permitted to take L and B to visit family in Algeria – Whether time spent by L and B with F should be extended – European Convention on Human Rights; Hague Convention on the Civil Aspects of International Child Abduction 1980; Children Act 1989

Re L and B (Children) (Specific issues: temporary leave to remove from the jurisdiction; circumcision)

[2016] EWHC 849 (Fam): Roberts J: 5 April 2016

[2017] OJLR 5(3) 623

Children – Consent to medical treatment – Court procedure – Ten-year-old child suffering from severe and aggressive form of cancer – Child and parents refusing consent to urgent surgery and preferring Chinese medicine – Opinion of doctors that surgery necessary despite risks – Child potentially taken from England to Poland by parents – NHS Trust seeking declaration of lawfulness in relation to medical treatment – Whether court should override the parents' refusal of consent – Whether English or Polish courts having jurisdiction – Whether court should exercise its inherent jurisdiction or make a specific issue order pursuant to section 8 of the Children Act 1989 – Council Regulation (EC) No 2201/2003 of 27 November 2003

Re JM (A Child)

[2015] EWHC 2832 (Fam): High Court (Family Division): Mostyn J: 7 October 2015

[2016] OJLR 5(1) 173

Children – Declaration of parentage – Revocation of adoption order – X and Y civil partners since 2009 – Following intrauterine insemination at clinic regulated by Human Fertilisation and Embryology Authority, C1 born to X in 2010 – Some years later following same treatment at another clinic, C2 born to Y – No issues arose in relation to C2 – Issue arose in relation to C1 – X and Y believed relevant forms signed, as legally required, to ensure both X and Y legal parents of C1 – X and Y registered as C1's parents on birth certificate in good faith – Clinic later informed X and Y that Y's consent forms misplaced –

Due to erroneous view of law, clinic, and solicitors informed X and Y of only solution, Y to adopt C1 – Y's application to adopt C1 approved by adoption order in 2014 – X and Y concerned about differences between children where C1 adopted and C2 not – Whether declaration of parentage could be ordered – Whether adoption order could be revoked – Family Law Act 1986, s55A; Human Fertilisation and Embryology Act 2008, s36

Re O (Human Fertilisation and Embryology Act 2008: Adoption Revocation)

[2016] EWHC 2273 (Fam): High Court of Justice (Family Division): Sir James Munby P: 13 September 2016

[2017] OJLR 6(2) 430-431

Children – Orders with respect to children – Arrangements after death – 14-year-old child terminally ill with cancer – Legally unable to make a will – Desiring cryo-preservation of body after death – Desiring that estranged father not see her body – Estranged father disagreeing with daughter's wishes – Mother supporting daughter's wishes – National Health Service trust agreeing to allow team of cryonics volunteers immediate access to body at time of death – Whether court to order mother to be solely responsible for arrangements after daughter's death – Whether daughter's wishes to be adhered to – Senior Courts Act 1981, s 116(1)

Re JS (A Child) (Disposal of Body: Prospective Orders)

[2016] EWHC 2859 (Fam): High Court of Justice (Family Division): Jackson J: 10 November 2016

[2017] OJLR 6(2) 413-414

Family law – Care proceedings – Potential radicalization of children – Child B, a 16-year-old girl, reported missing during attempt to travel to Syria to join extremist organization – Court granting local authority's application for removal of B from family on grounds of attempt to travel to Syria and terrorism-related offences and on basis that B had been exposed to extreme ideology whilst in parental home and continued to be at risk of serious emotional harm in parental home – B's placement in interim care proving unsatisfactory – Whether B radicalized through exposure to, or lack of restriction from accessing material relating to extremism – Whether such views were held and promoted within the family home, putting the child's welfare at risk – What order to make in relation to B

London Borough of Tower Hamlets v B

[2016] EWHC 1707 (Fam): High Court (Family Division): Hayden J: 13 June 2016

[2017] OJLR 6(2) 428-429

Family proceedings – Care orders – Children – Care proceedings relating to three children – Mother arrested at airport with children – Evidence suggesting mother taking children to Syria to join Islamic State – Local authority seeking final care orders in respect of all three children – Whether orders should be made on the evidence – Whether children at risk of significant harm – Children Act 1989, s 31(2)

Leicester City Council v T

[2016] EWFC 20: Family Court: Keehan J: 28 January 2016

[2016] OJLR 5(3) 621-622

Human Rights – Freedom of religion or belief – Right to family and private life – Freedom of expression – Interference with – Claimant A father of child S – S reporting that A had hit him – Police discovering internet blogs by A during investigation – Blogs expressing views against abortion and same sex marriage – Police finding blogs potentially relevant to investigation by council's social services department – Police sending blogs to council's social services department – Family Court requesting welfare report from the council – Council report not supporting shared residence or contact between A and S – Family Court making a finding of fact that A hit S – Family Court dismissing A's applications for shared residence and direct contact – Family Court permitting only indirect contact between A and S on three occasions during the year – Refusing permission to appeal – Whether council's recommendations against direct contact between the claimant and his child interfered with claimant's right to private and family life – Whether council's recommendations interfered with claimant's right to freedom of religion or belief – Whether council's recommendations interfered with claimant's freedom of expression – Whether council's recommendations interfered with claimant's right to marry – Whether council's recommendations interfered with claimant's right to protection against discrimination – European Convention on Human Rights, arts 8, 9, 10, 12 and 14 – Children Act 1989, ss 7, 17 and 47

A v Cornwall Council

[2017] EWHC 842 (QB): High Court of Justice (England and Wales), Queen's Bench Division (Exeter District Registry): Dingemans J: 28 April 2017

[2017] OJLR 6(3) 632

CIVIL AND POLITICAL RIGHTS

Civil and political rights – Freedom of religion – Passports – Naturalized French citizen originally from India and of Sikh belief granted French passports in 1989, 1991, 1995, and 2000 but renewal refused in 2005 citing photograph in turban violating Decree of 2001 and 2005 – Claimant asserting decrees inappropriate and disproportionate violation of religious freedom protections of European Convention on Human Rights ("the Convention") and International Covenant on Civil and Political Rights ("the Covenant") – All claimant appeals to French tribunals rejected, citing, inter alia, justifiable limitations to international instruments in interest of public safety and justifiable fraud-prevention intentions of French decrees – Claimant not bringing claim before Conseil d'Etat because of negative ruling in previous driver's license photo claim and subsequent similar judgment against him in European Court of Human Rights – Whether communication admissible under Covenant Optional Protocol requiring exhaustion of domestic remedies – Whether application of French law violating Covenant prohibition of discrimination and restrictions on freedom to manifest religion or belief and freedom of movement – Decrees no 2001-185 and 2005-1976, art 5; European Convention on Human Rights, arts 9, 14; International Covenant on Civil and Political Rights, arts 2, 12, 18(3), 26, Optional Protocol, art 5 para 2(a); UN Office of the High Commissioner for Human Rights, general comments nos 18, 22

Mann Singh v France

(Communication No 128/2010): United Nations Human Rights Committee: Mr Ben Achour, Mr Bouzid, Mr Flinterman, Mr Iwasawa, Mr Kälin, Ms Majodina, Mr Matadeen, Mr Neuman, Mr Rodríguez-Rescia, Mr Salvioli, Ms Seibert-Fohr, Mr Shany, Mr Vardzelashvili, Ms Waterval, Members: 26 September 2013

COMPANY

Company – Name – Prohibition of names ‘contrary to good morals’ – Nightclub company registering trading name ‘Club Vatican!’ in Finnish Companies Register – Organizing events such as ‘Sinful Sunday’ and offering drinks like ‘Vatican Sin’ – Catholic Church in Finland bringing action to remove trading name from Companies Register and seeking order prohibiting use of name for activities concerned – District Court dismissing claim – Catholic Church appealing – Whether Church having standing to bring claim – Whether trading name sufficiently well established and distinct such that the public could distinguish it from the activities of the Catholic religion and the Vatican or whether the trading name was likely to misguide the public – Whether name prohibited because it was an international name requiring consent prior to use for industrial or commercial purposes and no consent obtained – Whether trading name was contrary to good morals or public order – Whether definition of ‘contrary to good morals’ to be determined from perspective of minority community affected rather than that of average person – Whether use of name intentional criminal act of degrading religion – Act on Trade Names 128/1979, ss8, 9, 10 – Penal Code 39/1889, s10, Chap 17 – Constitution 731/1999, s11

The Catholic Church in Finland v Restindil & Co Oy

Case no S 13/1432: Helsinki Court of Appeal: Esa Hakala, Jussi Heiskanen, Ilkka Lahtinen JJ: 17 April 2014

[2015] OJLR 4(1) 161-163

CONFLICT OF LAWS

Conflict of laws – Adoption – Welfare of child – Child from Algeria entrusted under kafalah to married couple living in France – Couple thereby making benevolent commitment to ensure support, education and protection of child – Algerian law prohibiting adoption – French law providing that adoption permissible only where permissible according to child’s national law and where child ‘adoptable’ – Whether child entrusted to couple under kafalah ‘adoptable’ – Whether adoption or Kafalah providing for best interests of child – Whether Algerian law applicable – French Civil Code, Article 370-3

In the case of X

(No 9-10439): Cour de Cassation (Court of Cassation, France), 1er Chambre Civil: Charruault (President), Vassallo, Speaker: 15 December 2010

[2012] OJLR 1(1) 302-303

CONSTITUTIONAL LAW

Constitutional law – Canadian Charter of Rights and Freedoms – Freedom of religion—Non-denominational public school closed in rural Saskatchewan – Catholic minority group petitioning Government of Saskatchewan to create separate denominational school division – Defendant Catholic School Division No 212 created –

School reopening as Catholic separate school with majority of non-Catholic students – Education legislation prescribing funding based on student enrolment without regard to religious affiliation – Plaintiff School Division No 204 seeking declaration that funding provisions unconstitutional to the extent they funded attendance of non-Catholic students in Catholic separate schools – Whether public funding for non-Catholic students in Catholic schools constitutionally protected right or privilege in relation to denominational schools – Whether, in the absence of constitutional protection, funding provisions violation of freedom of conscience and religion – Whether violation of equality rights – Constitution Act, 1867, 30 & 31 Vict, c 3, s 93, as modified by Saskatchewan Act, 1905, 4-5 Edw VII, c 42, s 17(1) – Constitution Act 1982, Part I, Canada Act (UK) 1982, C 11, Sch B, s 2(a) and 15 – Education Act, 1995, SS 1995, c E-02 - Education Funding Regulations, RRS, c E-0.2

Good Spirit School Division No 204 v Christ The Teacher Roman Catholic Separate School Division No 212

2017 SKQB 109: Saskatchewan Court of Queen's Bench (Canada): Layh J: 20 April 2017

[2018] OJLR 7(1) 166

Constitutional law – Canadian Charter of Rights and Freedoms – Freedom of conscience and religion – Interference with – Private religious university (TWU) sought accreditation for new law school from Canadian Federation of Law Societies – Law Society of British Columbia (LSBC) denying accreditation due to University's code of conduct prohibiting sexual intimacy outside of traditional marriage – Judicial review of Law Society's decision on grounds of breach of religious freedom – BC Court of Appeal found breach unreasonable – Law Society appealing – Whether Law Society decision reasonable within the Doré/Loyola administrative law framework giving deference to original decision-maker in accordance with decision maker's expertise – Whether Law Society entitled to take into account admissions policy of law schools – Whether Law Society entitled to hold referendum of membership in considering approval of proposed law school – Canadian Charter of Rights and Freedoms, Part I of the Constitution Act 1982, being Schedule B to the Canada Act 1982 (UK), 1982, ch 11, preamble, ss 1, 2(a) – Legal Profession Act, SBC 1998, c 9, s 3, 13 – Law Society Rules, r 2-27

Law Society of British Columbia v Trinity Western University 2018 SCC 32: Supreme Court of Canada: McLachlin CJ, Abella, Moldaver, Karakatsanis, Wagner, Gascon, Cote, Brown, and Rowe JJ: 15 June 2018

[2018] OJLR 7(3) 572-573

Constitutional law – Canadian Charter of Rights and Freedoms – Freedom of conscience and religion – Schools – Private Roman Catholic school requesting exemption from teaching secular Ethics and Religious Culture Course and proposing equivalent course from perspective of Catholic belief – Minister of Education refusing exemption on grounds proposal failing to meet statutory objectives of recognition of others, pursuit of common good, openness to human rights, and diversity – Court allowing school's judicial review application of Minister's refusal – Whether Minister's decision proportionately balancing religious freedom with statutory objectives of mandatory program – Whether Minister's insistence that proposed alternative program be entirely secular in approach reasonable given objectives of program – Whether decision infringing freedom of religion under Charter – Regulation respecting the application of the Act

respecting private education, CQLR, c E-9.1, r 1, s 22; Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11

Loyola High School v Quebec (Attorney General)

2015 SCC 12: Supreme Court of Canada: Abella J (LeBel, Cromwell and Karakatsanis J concurring), McLachlin CJ and Moldaver J (Rothstein J, concurring): 19 March 2015

[2015] OJLR 4(2) 319-320

Constitutional law – Canadian Charter of Rights and Freedoms – Freedom of conscience and religion – Proposal of private evangelical Christian university to offer law degree approved by Canadian Federation of Law Societies – Law Society of British Columbia refusing to accredit the proposed law school due to University’s code of conduct prohibiting sexual intimacy outside of traditional marriage – University’s judicial review application of Law Society’s denial allowed – Whether Society improperly fettered its discretion by delegating to its membership whether to approve the school of law proposal – Whether there was proper consideration and balancing of Charter rights – Legal Profession Act, S.B.C. 1998, c 9; Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11; Trinity Western University Act SBC 1969, c 44 s 3(2) .

Trinity Western University v The Law Society of British Columbia

2015 BCSC 2326: The Supreme Court of British Columbia: Hinckson CJ: 10 December 2015

[2016] OJLR 5(2) 372-374

Constitutional Law – Canadian Charter of Rights and Freedoms – Freedom of conscience and religion – Interference with – Private religious university (TWU) sought accreditation for a new law school from Canadian Federation of Law Societies - Law Society of Upper Canada (LSUC) denied accreditation on grounds of TWU’s code of conduct prohibiting sexual intimacy outside traditional marriage – TWU claiming judicial review of Law Society’s decision on grounds of breach of religious freedom – Ontario Divisional Court and Ontario Court of Appeal refusing Claim – TWU appealing to Supreme Court – Whether Law Society decision reasonable within the Dore/Loyola administrative law framework giving deference to original decision maker in accordance with decision maker’s expertise – Whether Law Society entitled to take into account admissions policy of law school – Whether there had been a proportionate balance of Charter protections and statutory objectives – Canadian Charter of Rights and Freedoms, Part I of the Constitution Act 1982, being sch B to the Canada Act, 1982 (UK), ch 11, preamble, ss 1(2) – Law Society Act, RSO 1990, c L.8, ss 4.1, 4.2

Trinity Western University v The Law Society of Upper Canada

2018 SCC 33; Supreme Court of Canada: McLachlin CJ, Abella, Moldaver, Karakatsanis, Wagner, Gascon, Cote, Brown, and Rowe JJ: 15 June 2018

[2018] OJLR 7(3) 570-571

Constitutional law – Canadian Charter of Rights and Freedoms – Freedom of conscience and religion – Proposal of private evangelical Christian university to offer law degree approved by Canadian Federation of Law Societies – Nova Scotia Barristers’ Society refusing to recognize law degree unless student code of conduct prohibiting sexual intimacy outside of traditional marriage changed – University’s judicial review application of Barristers’ Society’s denial allowed – Whether Society having jurisdiction to regulate law schools – Whether Society’s action consistent with Canadian legal values – Legal Profession Act, SNS 2004, c28, Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11; Trinity Western University Act SBC 1969, c 44 s3(2); Human Rights Act RSNS 1989, c214

Trinity Western University v Nova Scotia Barristers’ Society

[2015] NSSC 25: Supreme Court of Nova Scotia, Canada: Campbell J: 28
January 2015

[2015] OJLR 4(2) 318-319

Constitutional law – Establishment of religion – Free exercise of religion – Due process of law – Violation of – First Amendment prohibiting government establishment of religion and discrimination in free exercise thereof – Fifth Amendment guaranteeing due process of law – Prison officials denying inmate permission to make Humanism religious assignment on grounds Humanism not a religion – Inmate and American Humanist Association seeking declaratory, injunctive, and monetary relief – Defendant federal prison authorities filing motion to dismiss under Federal Rules of Civil Procedure for failure to state claim – Prison Religious Services Department adding Humanist Study Group to religious program schedule and providing Humanist study materials – Whether plaintiffs’ claims moot – Whether plaintiffs failing to state Establishment Clause claim and Equal Protection claim – Whether cause of action against individual defendants under Bivens improper because claim under Religious Freedom Restoration Act could have been brought – Whether defendant federal prison authorities entitled to qualified immunity from suit – Whether court having jurisdiction over regional prison director – Whether plaintiffs failing to allege personal involvement of regional prison director – Federal Rules of Civil Procedure (FRCP) Rule 12(b)(6), 12(b)(1); US Const Amends 1, 5; Bivens v Six Unknown Federal Narcotics Agents, 403 US 388 (1971); Religious Freedom Restoration Act of 1993 (RFRA)

American Humanist Association and Jason Michael Holden v United States

No 3:14-cv-00565-HA: United States District Court for the District of Oregon,
Portland Division: Haggerty J: 30 October 2014

[2015] OJLR 4(1) 168-170

Constitutional law – Freedom of religion and conscience – Free exercise of religion – Pharmacy and pharmacists objecting for reasons of conscience to delivering or dispensing ‘Plan B’ emergency contraceptive drugs – Objectors bringing action against State officials challenging Regulations prohibiting facilitated referrals for obtaining drugs – Preliminary injunction ensuring Regulations suspended until decision reached – Circuit court setting aside injunction – Objectors seeking permanent injunction – Whether preliminary injunction constituting law of case – Whether Regulations violating Free Exercise and Equal Protection Clauses of First Amendment – Whether Regulations

violating Due Process Clause of Fourteenth Amendment – US Const Amends 1, 14, WAC 246–863–095, 246–869–010, 246–869–150(1)

Stormans et al v Selecky et al

(Case No C07 5374 RBL): United States District Court, Western District of Washington at Tacoma: Bench Trial, Leighton J: 27 February 2012

[2012] OJLR 1(2) 540-541

Constitutional Law – Freedom of religion and conscience – Free exercise of religion
– *Washington Pharmacy Quality Assurance Commission adopting two new administrative rules – ‘Pharmacist responsibility rule’ defining unprofessional conduct to include (1) destroying or refusing to return lawful prescription unfulfilled (2) violating patient’s privacy (3) unlawfully discriminating against patient – Pharmacists provided with exemption based on religious, moral, philosophical, or personal objections – ‘Delivery rule’ requiring that pharmacy ‘deliver lawfully prescribed drugs or devices to patients ... in a timely manner consistent with reasonable expectations for filling the prescription’ – No provision for religious exemptions – Plaintiff pharmacies refusing to supply contraceptives on religious grounds – Whether rules neutral and generally applicable – Whether survived rational basis review – Whether violated a fundamental right to refrain from taking human life – Wash Admin Code § 246–863–095 – Wash Admin Code § 246–869–010*

Stormans Inc and others v Wiesman and others

(Docket nos 12–35221, 12–35223): United States Court of Appeals for the Ninth Circuit: Graber, Clifton, Murguia JJ: 23 July 2015

[2016] OJLR 5(3) 630-631

Constitutional law – Freedom of religion and conscience – Interference with – *City and mayor reciting prayers at public municipal meetings, making sign of the cross – Religious symbols prominent in meeting rooms – Atheist attending meetings and requesting that prayers cease and symbols be removed – Mayor refusing request – Mouvement laïque québécois (MLQ) taking complaint to Human Rights Commission – Commission refusing investigation of symbols but finding prayer discriminatory and sufficient evidence existing to submit to Human Rights Tribunal – City adopting by-law to regulate prayers but mayor and councillors continuing as before – Tribunal granting application and finding prayer showing preference for one religion at expense of others and breaching state’s duty of neutrality – Court of Appeal finding no discrimination on ground of freedom of conscience and religion – Whether statutory right to appeal Human Rights Tribunal decision was by way of appeal or judicial review – Standards applicable on judicial review – Whether (1) recitation of prayer at start of each council meeting and (2) by-law regulating recitation violating religious neutrality of state and interfering with freedom of conscience and religion – Quebec Charter of Human Rights and Freedoms, CQLR, ch C-12, ss 3, 10; Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, ch 11, preamble, ss 1, 2, 27; Règlement VS-R-2008-40, City of Saguenay, November 3, 2008*

Mouvement laïque québécois v Saguenay (City)

2015 SCC 16: Supreme Court of Canada: McLachlin CJ, LeBel, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, and Gascon JJ: 15 April 2015

[2015] OJLR 4(3) 536-537

Federal constitutional law – Establishment of religion – Advancement of religion – Endorsement of religion – Sponsorship of religion – Favouring or preferring religion – Inhibiting, interfering with, or coercing religion – Board meetings and membership – Education – Prayer and meditation – Plaintiff attending board meetings at Birdville High School (BISD) as student and later as alumnus – Plaintiff objecting to student-led ‘invocations’ and ‘student expressions’ at meetings as favouring religion over non-religion – With American Humanist Association, plaintiff suing for monetary damages from individual school board members, and for declaratory and injunctive relief – Plaintiffs alleging BISD policy, practice, and custom of permitting, promoting, endorsing prayers violating Establishment Clause – BISD moving for summary judgment, asserting invocations either (1) qualifying as private speech, (2) satisfying conventional Establishment Clause tests, or (3) fitting within legislative prayer exception to those tests – District court granting summary judgment to defendants on ground of legislative prayer exception – Plaintiffs bringing appeal – Whether invocations constituting legislative prayer rather than school prayer for purposes of legislative prayer exception to Establishment Clause – Whether student-led legislative prayers violating Establishment Clause – Whether board members standing and bowing heads during invocations violating Establishment Clause – US Const Amend 1

American Humanist Association v McCarty

(Nos 15-11067 and 16-11220): United States Court of Appeals for the Fifth Circuit: Smith, Clement, Southwick JJ: 20 March 2017

[2017] OJLR 6(2) 406-407

Federal constitutional law – First Amendment – Establishment Clause – Free speech – Public school district policy inviting students to deliver a statement, which could include a prayer, during monthly school-board meetings – Content of statements at the discretion of students subject to requirement they be relevant and not obscene – Board selecting speakers randomly from list of volunteers – Board meetings held on District property – Former student belonging to American Humanist Association challenged public school district policy – Complaining at invitation to ‘join’, ‘stand’, or ‘bow’ in participation – Trial court refusing challenge to school policy – Whether school board prayer is more akin to legislative prayer or school prayer – Whether public school policy inviting students to deliver statements violation of Establishment Clause – US Const Amend 1

American Humanist Association v Birdville Independent School District (851 F.3d 521)

United States Court of Appeals for the Fifth Circuit: Smith CJ writing in a unanimous decision: 20 March 2017

Federal constitutional law – First Amendment – Free exercise of religion – Statutory rights – Clergy-penitent privilege – Mandatory reporting laws – Plaintiffs suing priest and Roman Catholic Church to testify that (i) minor had told priest in confession she was being abused by a parishioner, (ii) defendant priest negligently advised the minor during the sacrament of confession on at least three separate instances that she needed to personally handle the alleged sexually abusive situation, and (iii) defendant negligently failed to immediately report abuse to minor’s parents and the proper law enforcement personnel – Priest claiming exemption from mandatory reporting under the clergy-penitent privilege and that allowing plaintiff to introduce evidence of confessions at issue would place undue burden on his First Amendment right to free exercise of religion – Whether

confidentiality of sacramental confession subject to mandatory reporting laws – Whether priest ‘mandatory reporter’ when administering Sacrament of Penance, requiring him to report information learned during a sacramental confession – Whether allowing plaintiff to reference or introduce evidence of confessions at issue would place an undue burden on defendant’s right to free exercise of religion in violation of Establishment Clause – Whether District Court’s procedure violating Establishment Clause because Court could not determine what constituted the Sacrament of Reconciliation in the Catholic Church – US Const Amend 1; Louisiana Child Code art 609, Louisiana Child Code art 603, Louisiana Const art 1, s8

Mayeux and Mayeux v Charlet, Jr, deceased, and Others

Docket Nos 2016-CA-1463, 2016-CW-0506: Supreme Court of Louisiana: Weimer, Guidry, Clark JJ: 28 October 2016

[2017] OJLR 6(1) 200-201

Federal and State constitutional law – First Amendment – Freedom of speech – Freedom of expression – Free exercise of religion – Motion for preliminary injunction – Due to deeply held religious convictions, defendants refusing to design wedding cake for same-sex marriage—Upon administrative complaint of same-sex married couple and through Department of Fair Employment and Housing, State of California applying for preliminary injunction to enjoin the conduct as unlawfully discriminatory – Whether the artistic expression of baking a cake outweighing the State’s interest in preventing discrimination under neutral generally applicable public accommodation laws – Whether baking a wedding cake is considered artistic expression protected under First Amendment free speech doctrine – Whether the application of California’s public accommodation law to compel a cake baker to design and create a cake which violated her sincerely held religious belief about same-sex marriage violated the Free Speech or Free Exercise Clauses of the First Amendment – Whether state public accommodation laws can be used to ‘compel speech’ – Whether the Unruh Civil Rights Act directly restrains religion – Whether the Defendants violated the Unruh Act by denying complainants full and equal services on the basis of sexual orientation – US Const Amend 1; Unruh Civil Rights Act, Civil Code s 51

Department of Fair Employment and Housing v Cathy’s Creations, Inc

(BCV-17-102855): Superior Court of California, Kern County, Bakersfield Dept 11: Lampe J: 5 February 2018

[2018] OJLR 7(2) 348-349

CONSTITUTIONAL RIGHTS

Constitutional rights – Constitutional guarantee of independence of religious societies – Right of institutions to the undisturbed practice of religion – Freedom of association – Senior departmental medical employee remarrying after divorce but without prior annulment of previous marriage – Hospital dismissing employee on grounds of conduct contrary to Catholic teaching – Federal Employment Court upholding ruling of unlawful dismissal – Applicant sponsor of a Catholic hospital bringing claim for infringement of religious freedom rights – Whether judgment of Federal Employment Court breached applicant’s right of religious freedom – Federal Constitution, arts 4, 140; Weimar Constitution, art 137(3)

Constitutional complaint by C

Case no 2 BvR 661/12: German Federal Constitutional Court (Second Chamber): Landau, Huber, Hermanns, Müller, Kessel-Wulf, König JJ and Voßkuhle (President): 22 October 2014

[2015] OJLR 4(3) 538-539

Constitutional rights – Free exercise of religion – Establishment of religion – Ministerial exception – Statutory rights – Freedom from discrimination based on gender – First Amendment barring government interference in decisions of religious groups regarding employment of ‘ministers’ – Federal and state laws prohibiting discrimination on basis of gender – Faith-based religious organization (IVFC) requiring annual recommitment to policy that employees honor marriage vows – Female employee terminated for failing to reconcile marriage – Employee asserting similarly situated male employees not terminated and filing complaint with Equal Employment Opportunity Commission (EEOC) and Michigan State Department of Civil Rights – EEOC declining to file suit on employee’s behalf but giving employee right to sue – Employee filing suit in District Court for gender discrimination – Court granting IVFC motion to dismiss under FRCP 12(b)(6), citing ministerial exception as affirmative defense – Employee appealing on basis IVFC waived ministerial exception and discrimination claims therefore valid – Whether IVFC qualifying organization for asserting exception – Whether exception can be waived – Whether exception may be asserted against state law claims – Whether individual supervisors not able to claim ministerial exception in personal capacities can be liable state law – Federal Rules of Civil Procedure (FRCP) 12(b)(6); US Const Amends 1, 14; Title VII of Civil Rights Act of 1964, 42 UCS s 2000e et seq; Elliot-Larsen Act, Mich Comp Laws s 37.2101 et seq

Conlon v InterVarsity Christian Fellowship/USA

Docket no14-1549: US Court of Appeals Sixth Circuit: Batchelder J joined by Beckwith DJ and by Rogers J in part; Rogers J concurring in part: 5 February 2015

[2015] OJLR 4(2) 323-324

Constitutional rights – Freedom of religion and conscience – Right to ideological freedom and conscientious objection by pharmacists – Right to sexual and reproductive health – Pharmacist, co-owner of pharmaceutical establishment, refusing to stock contraceptives, including Levonorgestrel 0’750 mg, the ‘píldora del día después’ (the pill of the day) on ethical grounds – Sanction imposed by regional public administration for failure to comply with regional secondary legislation requiring pharmacy to stock minimal levels of medication – Whether sanction amounting to infringement of pharmacists right to ideological freedom and conscientious objection – Whether failure to stock contraceptives infringement of women’s right to sexual and reproductive health – CE, arts 15, 16

Tribunal Constitucional 145/2015

Tribunal Constitucional, Grand Chamber, Spain: Andrés Ollero Tassara, Presiding Judge, Francisco Pérez de los Cobos Orihuel, Presidente, doña Adela Asua Batarrita, doña Encarnación Roca Trías, don Fernando Valdés Dal-Ré, don Juan José González Rivas, don Santiago Martínez-Vares García, don Juan Antonio Xiol Ríos, don Pedro José González-Trevijano Sánchez, don Ricardo Enríquez Sancho y don Antonio Narváez Rodríguez JJ: Sentencia 25 June 2015

[2016] OJLR 5(3) 632-633

Constitutional rights and guarantees – Freedom of religion or belief – Secular state

– **Interference with** – Government proposing law declaring Lord of Miracles (Señor de los Milagros) patron of Peru – Evangelical Christian complaining Lord of Miracles symbol of Catholic Church and proposal therefore unconstitutional violation of religious freedom – Whether bill violating objective right to religious freedom and principle of secularism in Article 50 of Peruvian Constitution – Constitution of Peru, chap I, art 2, cl 2, cl 3 and art 50; Bill no 4022/2009-PE

Moreno Cabanilla v President of the Council of Ministers and others
(No STC 03372-2011-PA/TC): Tribunal Constitucional de Peru (Constitutional Court of Peru): Urviola Hani, Mesia Ramirez, Beaumont Callirgos, Eto Cruz, Alvarez Miranda JJ; Mesia Ramirez J concurring: 19 March 2013

[2014] OJLR 3(1) 185

Constitutional rights – United States – Equal protection under law – Plaintiffs married lesbian couples conceiving children through artificial insemination – Applying to have the female spouses' names included on the minor children's birth certificates – State Department of Health and defendant interim director denying their request – State Supreme Court upholding defendant's decision ruling *inter alia* (i) that a female spouse of a mother did not have the same biological nexus to the child that a biological male parent had (ii) it was a matter for the legislature, not the judiciary, to determine rights of female spouses to be included on birth certificate – Plaintiffs granted writ of certiorari to appear before the United States Supreme Court – Whether previous Supreme Court ruling that same-sex couples had right to marry reached concerns over birth certificate designation for marital same-sex couples who conceived through artificial insemination – Whether state code violated constitutional rights of same-sex couples in refusing to list both couples on birth certificate – ark Code s 20–18–401

Pavan et al v Smith

Docket no 16-992: Supreme Court of the United States: Roberts, CJ Ginsburg, Kagan, Breyer, Sotomayor, Kennedy, JJ; Gorsuch JSC dissenting, joined by Thomas and Alito JJ: 26 June 2017

[2017] OJLR 6(3) 628

Constitutional rights – United States – Equal protection under law – Sexual orientation – Right of same-sex couples under California state constitution to undergo marriage ceremony – Right removed by amendment restricting valid marriage as between man and woman – Same-sex couple denied marriage ceremony claiming amendment contrary to right of equal protection under US Constitution – Equal protection clause requiring legitimate reason for selective removal of existing right from minority group – Whether desire to uphold traditional view of marriage legitimate reason – US Const Amend 14

Perry v Brown

(Nos 10-16696 and 11-16577): United States Court of Appeals for the Ninth Circuit: Reinhardt and Hawkins JJ; N R Smith J dissenting in part: 7 February 2012

[2012] OJLR 1(2) 541-542

Constitutional rights – United States – Federal procedure – Standing to defend – California citizen initiative defining marriage as between a man and a woman challenged

by same-sex couples in federal district court as unconstitutional violation of equal protection and due process – Named defendant government officials refusing to defend – District court granting initiative proponents permission to intervene and standing to defend – Declaring initiative unconstitutional – State Supreme Court certifying to federal circuit court authority of intervenors to defend – Circuit court affirming opinion of district court – Whether standing granted by district court sufficient for persistence of ‘actual controversy’ through all stages of litigation – US Const art 3

Hollingsworth v Perry

(Docket no 12-144): Supreme Court of the United States: Roberts CJ joined by Scalia, Ginsburg, Breyer, and Kagan JJ; Kennedy, Sotomayor, Thomas, and Alito JJ, dissenting: 26 June 2013

[2013] OJLR 2(2) 469

Constitutional rights – United States – Fourteenth Amendment – Right to marry – Definition of marriage – *Several states defining marriage in state constitutions or laws as a union between one man and one woman – Citizens alleging these states violating Fourteenth Amendment of Federal Constitution by denying them the right to marry or to have marriages lawfully performed in another state given full recognition – Several federal district courts ruling in favor of citizens – Sixth Circuit Court of Appeals reversing in favor of states – Whether Fourteenth Amendment requires states to extend the definition and status of marriage to same-gender couples – US Const Amend 14*

Obergefell v Hodges

(Docket no 14-556): Supreme Court of the United States: Kennedy J joined by Breyer, Kagan, Ginsburg, and Sotomayor JJ; Roberts, CJ dissenting, joined by Scalia and Thomas JJ; Scalia J dissenting, joined by Thomas J; Thomas J dissenting, joined by Scalia J; Alito J dissenting, joined by Scalia and Thomas JJ: 26 June 2015

[2015] OJLR 4(3) 537-538

Constitutional rights – United States – Free Exercise of Religion – *State’s Department of Natural Resources Scrap Tyre Program offering reimbursement grants to qualifying non-profit organizations that installed playground surfaces made from recycled tires – State grants specifically offered to help public and private schools, non-profit day-care centres, and other non-profit entities – Departmental policy of denying grants to applicants owned or controlled by inter alia a church, based on State’s constitution stipulating that Department could not provide financial assistance directly to a church – Claimant preschool and day-care centre operating on church property of Trinity Lutheran Church denied grant, pursuant to the policy, solely because it was a religious organization – Claimant suing Missouri Department of Natural Resources for being categorically disqualified from receiving grants under its playground resurfacing programme because of its religious status – Whether state’s express policy of denying grants to any religious organization, sect, or other religious entity violated free exercise clause of the First Amendment by denying the claimant an otherwise available public benefit on account of its religious status – Whether state can exclude religious organizations from receiving a generally available public benefit simply because they are religious – Whether government constitutionally required to treat religious organizations equally under the principles of neutrality – Whether the equal treatment of a religious organization was an endorsement of religion by the state – US Const Amend 1; Missouri Const art 1, s7*

Trinity Lutheran Church of Columbia, Inc v Comer, Director, Missouri Department of Natural Resources

Docket no 15–557: Supreme Court of the United States: Roberts CJ, Kennedy, Alito, Kagan, Breyer, Thomas, Gorsuch JJ (except as to footnote 3); Thomas and Gorsuch JJ, concurring in part; Gorsuch and Thomas JJ, concurring in part; Breyer J, concurring; Sotomayor and Ginsburg JJ, dissenting: 26 June 2017

[2018] OJLR 7(1) 173

Constitutional rights – United States – Right to privacy – Abortion – State law prohibiting abortion following determination of detectable heartbeat in unborn child except in cases of medical emergency – Any physician violating provision liable for felony – Clinic sole abortion provider in state and clinic’s managing director claiming law was unconstitutional restriction on right to abortion – Whether United States Supreme Court’s established jurisprudence permitting prohibition on abortion prior to viability – Whether law imposing undue burden on women’s constitutional right to abortion – Whether Supreme Court should reevaluate current standard governing abortion restrictions – ND Cent Code § 14–02.1

MKB Management Corp and another v Stenehjem and others

(Docket no 14-2128): United States Court of Appeals for the Eight Circuit: Shepherd J for a unanimous three-judge panel of the Court: 22 July 2015, *cert denied* 25 January 2016

[2016] OJLR 5(2) 374-375

Constitutional rights – United States – Standing to defend – Federalism / State sovereignty – Equal protection under the law – Due process of law – Federal Defense of Marriage Act (DOMA) defining marriage as union of man and woman for all purposes in federal law – Same-sex couple legally married in Canada and living in New York State where marriage recognized as valid – Upon partner’s death widow barred by DOMA from estate tax exemption otherwise available to surviving partner of heterosexual married couple – Widow claiming DOMA violating principle of federalism and constitutional principles of due process and equal protection under law – United States Executive declining to defend constitutionality of DOMA in court while continuing to enforce law – Congressional Bipartisan Legal Advisory Group (BLAG) voting to intervene in litigation to defend constitutionality – Second Circuit Court of Appeals upholding district court ruling that DOMA unconstitutional and ordering refund of taxes paid – United States refusing to comply – United States and BLAG appealing to Supreme Court – Whether US agreement with widow’s legal position precluding further review – Whether appeal by BLAG establishing controversy sufficient for Supreme Court jurisdiction under Article 3 – Whether DOMA violating principles of federalism – Whether violating basic due process and equal protection principles applicable to federal government under Fifth Amendment – US Const art 3; US Const amend 5; The Defense of Marriage Act, 110 Stat 2419 s 3; Qualified domestic trust, 26 USC s 2056(a)

United States v Windsor

(Docket no 12-307): Supreme Court of the United States: Kennedy, Ginsburg, Breyer, Sotomayor, and Kagan JJ; Roberts CJ, dissenting; Scalia and Thomas JJ dissenting, joined by Roberts CJ as to part I; Alito J dissenting, joined by Thomas J as to parts II and III: 26 June 2013

[2013] OJLR 2(2) 468-469

(1) Federal and State constitutional rights – Free speech and assembly – Free exercise of religion – Freedom of conscience – Federal and State statutory rights– Religious land use – Substantial burden upon – Equal terms – Under zoning ordinance business district in City not zoned for religious institutions – City denying petition from Church to amend zoning ordinance to permit purchase of property in business district for religious use – Church challenging ordinance’s prohibition on religious assemblies as violating its First Amendment free speech and assembly rights and protection of free exercise of religion, and Minnesota constitutional right of conscience – Church asserting ordinance violating its rights under the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) substantial burden and equal terms provisions – City amending ordinance to permit churches as conditional uses in district and granting Church a conditional use permit for ‘assembly’ purposes, requiring certain expenditures for improvements – Church unable to purchase desired property at increased price required by the conditional use provisions – Both City and Church moving for summary judgment on Church’s claims of substantial burden of its rights, including unequal treatment when compared to secular assemblies and institutions, and defamation by libelous statement on City’s website – Whether action justiciable – Whether City’s ordinances violating First Amendment rights – Whether City’s ordinance and decision resulting in unequal treatment of Church when compared to secular institutions similarly situated as to regulatory purpose, in violation of RLUIPA – Whether summary judgment should be granted on the Church’s claims – US Const Amend 1 – Civil Action for Deprivation of Rights, 42 USC s 1983 –RLUIPA, 42 USC ss 2000cc to 2000cc-5 – Minnesota Code of Ordinances s 155.001 – 155.999, B-1 (the Zoning Ordinance)

(2) Defamation – Harm to reputation – Official immunity and qualified privilege – Church alleging City statements that the Church would not agree to the space limit libelous – Whether statements defamatory under Minnesota law – Whether City able to claim official immunity and qualified privilege

Riverside Church v City of St Michael

Civil No 15-1575 (DWF/JSM): United States District Court for the District of Minnesota: Frank J: 31 August 2016

[2017] OJLR 6(1) 197-199

CONTRACT

Contract – Intention to create legal relations – Religious Organisation – Claimant alleging admittance in 1992 as international member of second defendant Society – Second defendant Society not incepted until 1999 – Membership of second defendant Society confined to those invited to join and elders – Claimant satisfying neither criteria – Claimant expelled from fellowship of the Society in 2011 – Action brought by claimant for slander arising from process leading to expulsion – Application for permission to add claim for breach of contract in respect of process leading to expulsion – Whether intention to create legal relations could be established between the parties – Whether contractual relationship between the parties could be established – Whether permission to amend claim should be granted

Otuo v Morley (1) and Watch Tower Bible and Tract Society of Great Britain (2)

[2016] EWHC 46 (QB): High Court of Justice (Queen's Bench Division), Sir David Eady: 15 January 2016

[2016] OJLR 5(3) 643

CRIMINAL LAW

Crime – Aggravating circumstances of trivial motivation – Religiously motivated offences – Muslim father attempting to kill daughter for having sexual relationship with non-Muslim man, outside of marriage – Father judging daughter's behaviour as serious violation of Islam's precepts and cause of disgrace for his family – Father sentenced with aggravating circumstance of trivial motivation – Father lodging appeal, challenging ruling in several parts, including above-mentioned aggravating circumstance – Whether finding of aggravating circumstance legitimate – Whether breach of father's religious principles could be regarded as trivial motivation – Criminal Code, art 61

Corte di Cassazione – Sez. I Penale 51059/2013 Court of Cassation – Criminal section, Italy: 18 December 2013

[2014] OJLR 3(2) 354

Criminal law – Child sex abuse – Damages by way of compensation – Catholic priest convicted of child sex abuse – Whether parish church, where priest carrying out his duties at the time of the crime, was responsible for criminal compensation in civil court – Whether diocese jointly liable with the parish church – Italian Civil Code, arts 2043, 2049

Tribunale, Prima Sezione Civile, Como

Decision no 34/2016: No 34/2016: First Instance Tribunal, Civil Division, Como, Italy: Alessandro Petronzi J: 14 January 2016

[2018] OJLR 7(1) 174

Criminal law – Derogatory remarks in respect of Holy Prophet – Penalty for – Christian woman under sentence of death for blasphemy appealing sentence on grounds (1) witnesses interested and inimical, (2) evidence of extra-judicial confession discrepant, (3) witnesses not examined through standard of Tazkiyah-al-Shuhood as required in blasphemy cases, (4) witnesses inconsistent, (5) inordinate delay in lodging complaint, (6) false story concocted by witnesses, (7) sworn statement of appellant expressing full respect to Holy Prophet, (8) investigating officer neither visited place of occurrence nor interrogated people of vicinity – Whether defence evidence adequate – Whether mitigating circumstance could alter death sentence – Whether application of Tazkiyah-al-Shuhood standard required – Pakistan Penal Code (Act XLV of 1860) (PPC) s 295C; Constitution of the Islamic Republic of Pakistan ch 3A: Federal Shariat Court (FSC), art 203D, cl 3(b); Hudood Laws (HL) (1979)

Mst Asia Bibi v The State

Capital Sentence Reference no 614/2010 / Criminal Appeal no 2509/2010: Lahore High Court: Muhammad Anwaarul Haq, Syed Shabaz Ali Rizvi JJ: 5 November 2014

[2015] OJLR 4(1) 147-149

Criminal law – Sentencing – Possession with intent to supply – Production of

cannabis for religious purposes – Defendant Rastafarian perceiving smoking of cannabis to be a sacrament – Also taking drug as pain relief for medical condition – Pleading guilty to producing cannabis – Also convicted of possessing cannabis with intent to supply – Court ordering consecutive sentences of six months for each offence – Defendant appealing sentence on grounds sentences imposed were manifestly excessive, that he ought, for offence of producing cannabis, to have received a community sentence, and that sentence for supply was excessive

Regina v John-Lewis (Caleb Charles)

[2013] EWCA Crim 2085: Court of Appeal (England and Wales) (Criminal Division): Lady Justice Macur DBE, Silber J, HHJ Gilbert QC (Sitting as a Judge of the Court of Appeal Criminal Division): 31 October 2013

[2014] OJLR 3(2) 355

Criminal law – Sentencing – Religiously aggravated intentional harassment, alarm, or distress – Defendants urinating in front of adults at prayer and children – Pleading guilty to religiously aggravated intentional harassment, alarm, and distress – One defendant also convicted of assault by beating – Court ordering six-month suspended sentences – Appeal to Court of Appeal – Whether sentences imposed were unduly lenient – Crime and Disorder Act 1998, s 31(1)(b)

Attorney General’s Reference (Nos 143 & 144 of 2015)

[2016] EWCA Crim 21: Court of Appeal (England and Wales) (Criminal Division): Davis LJ, Cox J, HHJ Kinch QC (Sitting as a Judge of the Court of Appeal Criminal Division): 29 January 2016

[2016] OJLR 5(3) 645-646

Criminal law – Sentencing – Royal Prerogative of Mercy – Applicant completing prison term for sectarian murder – After release convicted of additional historical sectarian murder – Requesting Secretary of State exercise Royal Prerogative of Mercy and take into account time already served when considering accelerated release for second murder – Grounds for exercise of Royal Prerogative of Mercy – Whether applicant having legitimate expectation of exercise of Royal Prerogative of Mercy – Whether Secretary of State’s lack of policy concerning exercise of Royal Prerogative lawful – Northern Ireland (Sentences) Act 1998, s10(6)

In the Matter of an Application by Robert James Shaw Rodgers for Judicial Review

[2014] NIQB 79: Queen’s Bench Division (Northern Ireland): Stephens J, 18 June 2014

[2014] OJLR 3(3) 525-526

DAMAGES

Damages – Sovereign Immunity from suit – Waiver – Prison officials refusing to allow inmate to participate in religious service or use chapel while on cell restriction – Inmate claiming state thereby burdening religious exercise of institutionalized person and failing to use least restrictive means of furthering compelling governmental interest in program

receiving federal financial assistance – Seeking to recover damages for violation of entitlement to religious exercise – Whether acceptance of federal assistance by state amounted to unequivocal waiver of state immunity from suit – Religious Land Use and Institutionalized persons Act of 2000 (RLUIPA) – 42 USC §§ 2000bb-1-4, 42 USC §§ 2000cc-1,2(a); 42 USC §§ 2000cc-5(4)(A); USCA Const Art 1, § 8, cl 1; USCA Const Amend 1; USCA Const Amend 11.

Sossaman v Texas

(Docket No 08-1438): Supreme Court of the United States: Thomas J with Roberts CJ and Scalia, Kennedy, Ginsberg, and Alito JJ, Sotomayor J dissenting with Breyer J: 20 April 2011

[2012] OJLR 1(1) 299

Discrimination

Discrimination – Sexual orientation – Less favourable treatment – Patron of football club, perceived by public opinion as playing leading role in management of club, making homophobic statements to mass media and ruling out recruitment of homosexual football player by club – Patron lacking legal capacity to bind or represent club in recruitment policy but perceived by public as capable of exerting decisive influence – Non-governmental organization promoting, inter alia, gay rights claiming discrimination in club's recruitment policy – Whether there existed 'facts from which it may be presumed that there has been discrimination' in the recruitment policy of the club despite patron's lack of legal capacity – Whether burden of proof, which fell on respondent once prima facie case of discrimination made out, resulting in legal requirement to achieve impossible proof by requiring production of evidence interfering with privacy rights – Whether national law limiting sanctions available to a warning, where finding of discrimination made after expiry of six-month period from the date on which events took place, was 'effective, proportionate and dissuasive sanction' – Council Directive 2000/78/EC, arts 2(2)(a), 10(1), 17

Asociația ACCEPT v Consiliul Național pentru Combaterea Discriminării

(Case C-81/12): Court of Justice of the European Union (Third Chamber): M Ilešič, President of the Chamber, V Skouris, President of the Court, acting as Judge in the Third Chamber, E Jarašiūnas, A Ó Caoimh (Rapporteur) and C G Fernlund, JJ, N Jääskinen, Adv Gen: 25 April 2013

[2013] OJLR 2(2) 478-479

Discrimination – Sex – Less favourable treatment – Mixed-sex school (School) having complete segregation of male and female pupils over certain age for all lessons, breaks, school clubs, and trips – Office for Standards in Education, Children's Services and Skills (Ofsted) Inspection Report stating such segregation unlawful – Appeal against judicial review finding that School's segregation of pupils by sex did not constitute less favourable treatment – Whether loss of opportunity for girls to learn and socialize with boys constituting less favourable treatment – Whether loss of opportunity for boys to learn and socialize with girls constituting less favourable treatment – Whether loss of opportunity for girls to socialize confidently with boys (and vice versa) and/or to learn to socialize confidently in preparation for personal, educational, and work-related contexts on leaving School constituting less favourable treatment – Whether each loss of opportunity imposing particular detriment on girls because female sex is group with minority of power in society

– *Whether segregation constituting less favourable treatment of girls as it amounted to an expressive harm caused by the necessary implication girls are inferior or otherwise relevantly different to boys in day-to-day social and working contexts – Equality Act 2010 ss13, 85*

HM Chief Inspector of Education, Children’s Services and Skills v The Interim Executive Board of Al-Hijrah School (The Secretary of State for Education and others intervening)

[2017] EWCA Civ 1426: Sir Terence Etherton MR, Gloster and Beatson LJ: 13 October 2017

[2018] OJLR 7(1) 165

Discrimination – Sexual orientation – Less favourable treatment – Plaintiff homosexual ordering cake from defendant bakery to include slogan ‘Support Gay Marriage’ – Defendant company directors initially accepting but subsequently telephoning to refuse to fulfil order, offering a refund and explaining that bakery was Christian business and order should not have been taken – Whether refusal amounting to direct or indirect discrimination on grounds of sexual orientation, if so whether relevant provisions could be read down to take account of defendant directors’ rights to manifest religious belief – Whether defendants having right not to be compelled to express or commit them to a viewpoint – Human Rights Act 1998, Sch 1, Pt 1, arts 8, 9, 10, 14, 17 – Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 – Fair Employment and Treatment Order 1998

Lee v Ashers Baking Co Ltd & Ors

[2015] NICty 2: Northern Ireland County Court: Brownlie DJ: 19 May 2015

[2016] OJLR 5(3) 633-634

Discrimination – Sexual orientation – Less favourable treatment – Plaintiff ordering cake from defendant for-profit bakery company to include slogan ‘Support Gay Marriage’ – Defendant Christian bakery directors initially accepting but subsequently refusing to fulfil order on basis that company and opposed to same-sex marriage – Plaintiff claiming direct discrimination on grounds of sexual orientation – Attorney General for Northern Ireland issuing devolution notice stating devolution issue as to whether there was power to make, confirm, or approve subordinate equality legislation – Attorney General issuing Notice of Incompatibility of Subordinate Legislation with defendants’ freedom of religion and freedom of expression – District judge ruling that in light of ongoing debate as to whether Northern Ireland Assembly should legislate on same-sex marriage, plaintiff’s support for same-sex marriage was political opinion – Concluding defendants directly discriminating against plaintiff on grounds of sexual orientation and on grounds of religious and political belief – Appeal by way of case stated – Whether refusal to supply iced cake amounting to direct discrimination on grounds of sexual orientation or on grounds of religious belief or political opinion – Whether defendants having right not to be compelled to express or be committed to a viewpoint – Whether relevant provisions should be read down to take account of defendant directors’ rights to manifest religious belief – Whether subordinate equality legislation valid – Human Rights Act 1998, Sch 1, Pt 1, arts 8, 9, 10, 14, and 17 – Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 – Fair Employment and Treatment Order 1998

Lee v McArthur, McArthur and Ashers Baking Co Ltd

[2016] NICA 39: Court of Appeal in Northern Ireland: Morgan LCJ, Weatherup and Weir LJ: 24 October 2016

[2017] OJLR 6(1) 215-218

Discrimination – Sexual orientation – Less favourable treatment – Couple running guest house on Christian principles and only letting double rooms to married heterosexual couples – Refusing to allow homosexual couple to stay in double room – Whether refusal amounting to discrimination against homosexual couple – If so whether any interference with Christian couple's right to freedom of religion – Human Rights Act 1998, Sch 1, Pt 1, arts 8, 9, 14 – Equality Act (Sexual Orientation) Regulations 2007 (SI 2007/1263), Regulation 3(1)(4)

Preddy and another v Bull and another

[2012] EWCA Civ 83: Court of Appeal (England and Wales) (Civil Division); Sir Andrew Morrit C, Hooper and Rafferty LJJ: 10 February 2012

[2012] OJLR 1(2) 540

Discrimination – Sexual orientation – Less favourable treatment – Homosexual couple in civil partnership refused a double room by hoteliers – Hoteliers holding sincere religious belief that sexual intercourse outside traditional marriage sinful – Homosexual couple claiming damages pursuant to subordinate legislation for unlawful discrimination on grounds of sexual orientation – Hoteliers conceding refusal amounting to indirect discrimination – Whether refusal direct discrimination – If not whether indirect discrimination could be justified – Whether subordinate legislation compatible with hoteliers' right to manifest religion – Human Rights Act 1998, Sch 1, Pt 1, art 9 – Equality Act (Sexual Orientation) Regulations 2007 (SI 2007/1263), reg 3(1)(4)

Preddy v Bull (Liberty intervening), Hall v Same (Same intervening)

[2013] UKSC 73: Supreme Court of the United Kingdom: Lord Neuberger of Abbotsbury, President, Baroness of Hale of Richmond, Deputy President, Lord Kerr of Tonaghmore, Lord Hughes, Lord Toulson JJSC: 27 November 2013

[2014] OJLR 3(2) 362-363

Freedom of religion or belief – Discrimination in enjoyment thereof – Municipality issuing two ordinances prohibiting 'burqinis' in swimming pools (no 99/2009) and anything preventing or hindering identification in all public areas (no 100/2009) – Exhibiting placards reading 'wearing burqas, burqinis, or niqabs is forbidden in all public areas' and depicting women wearing full veil accompanied by symbol of no parking – Association for legal studies on immigration (ASGI) and four private citizens suing municipality for discrimination based on ethnicity and religious belief and practices – Municipality revoking ordinance no 99/2009 and replacing challenged placards with placards reading 'No face covering (without just cause)' – Whether persons not directly affected by discrimination having legal standing – Whether court empowered to make declaratory judgment in respect of conduct which had already ceased – Whether general ban on face coverings (ordinance no 100/2009) discriminatory with respect to ethnicity or religion – Whether placards reading 'No face covering (without just cause)' discriminatory – Municipal ordinances no 99/2009, no 100/2009, and no 18/2014 – art 7.1 Directive 2000/43/CE – art 43 Legislative decree no 286/1998 – arts 1, 2, and 5.3 Legislative decree no 215/2003 – art 5 Law. no 152/75 – Home office decree 23 April 2007.

Tribunale di Torino – sez. I civile, ordinanza 4 aprile 2014

Court of Turin – Civil Section: 14 April 2014

[2015] OJLR 4(1) 165-167

Human Rights – Freedom of religion or belief – Discrimination – Education – Claimant atheist father of atheist school student – School Creed recited at most school assemblies including phrase ‘And love of God’ – Students not required to attend part of assembly at which School Creed recited – Students reciting Creed permitted to omit the phrase or substitute ‘God’ with appropriate alternative – Claimant lodging complaint on behalf of daughter with Equal Opportunity Commission of Western Australia alleging discrimination by Director General of the Department of Education – Claimant arguing daughter subject to discrimination on ground of religious conviction in area of education – Commissioner for Equal Opportunity dismissing complaint – Whether claimant’s daughter treated less favourably or suffering other detriment in relation to non-atheist comparator – Equal Opportunity Act 1984, ss 53 and 61

Jason Camp on behalf of Charlotte Camp v Director General, Department of Education

[2017] WASAT 79: State Administrative Tribunal of Western Australia: Mansveld J: 29 May 2017

[2018] OJLR 7(1) 162

Human rights – Freedom of religion and belief – Sex Discrimination (Gender reassignment) – Family from ultra-orthodox Jewish community (‘Charedi community’) – Transgender father leaving Charedi community to become a woman – Separated from mother and seeking direct contact with children – Mother refusing contact due to potential ostracization of family by the community – Whether a harmful reaction from community likely – Whether direct contact with father in children’s best interests – Children Act 1989, s 1 – European Convention on Human Rights, art 8

J v B (Ultra-Orthodox Judaism: Transgender)

[2017] EWHC 4: High Court of Justice (Family Division): Peter Jackson J: 30 January 2017

[2017] OJLR 6(2) 415-416

EDUCATION

Education – Local education authority – Statutory duties – Secretary of State issuing new subject content for religious studies (RS) GCSE – Parents and children’s litigation friends claiming judicial review of Secretary of State’s subject content and assertion that new subject content was ‘consistent with the requirements for the statutory provision of religious education (RE) in current legislation’ – Claiming that subject content and assertion giving unlawful priority to teaching of religious views as compared to non-religious views – Whether claim should fail as speculative, premature, or misdirected – Whether assertion encouraged those responsible for determining syllabus of RS GCSE to believe, or to act, on the basis that RS GCSE course containing prescribed subject content fulfilled statutory requirements for RE – Whether breach of duty to take care that information or knowledge be conveyed in pluralistic manner – Human Rights Act 1998, Sch 1, p t 1, arts 9 and 2 of Protocol No 1; Education Act 2002

R (Fox and ors) v Secretary of State for Education

[2015] EWHC 3404 (Admin): Queen's Bench Division (Administrative Court):
Warby J: 25 November 2015

[2016] OJLR 5(2) 369-370

Education – School's admission policy – Compliance with national admissions code – *Jewish state school's oversubscription criteria according priority to Orthodox Jews – Determination of Orthodox Jew status by arrangements for admission, including Rabbi Reference Form and Supplementary Information Form – Objection by Fair Admissions Campaign – Whether forms conformed with Schools Admissions Code – Specifically, whether asking if family observed laws of family purity (relating to sexual aspects of marriage) complied – Whether two different tests to determine Orthodox Jew status complied – Whether question on supplementary form, but not set out elsewhere in arrangements for admission, regarding priority admission if child attended Orthodox Jewish primary school complied – Whether faith practice requirements complied – Use of adjudicator's power to consider arrangements as a whole – Schools Standards and Framework Act 1998 – School Admissions (School Admissions Arrangements and Co-ordination of Admissions Arrangements) (England) Regulations 2012/8 – School Admissions Code December 2014*

The Academy Trust for Hasmonean High School

ADA2990: Office of the Schools Adjudicator: Mr Phil Whiffing, Schools
Adjudicator: 7 October 2015

[2016] OJLR 5(2) 179-180

Education – School chaplaincy – Public funding – *Australia – School partaking in federal government funding scheme allocating money from consolidated revenue fund to provide for individual schools to buy in chaplaincy services – Parent with children attending participating school - Parent's children not taking part in school chaplaincy services – Parent claiming use of executive power to fund scheme unconstitutional – Whether parent having standing to challenge scheme – Whether scheme beyond executive power of Commonwealth – Whether appointment of chaplain under scheme contrary to constitutional prohibition against 'religious test' for public appointment – Constitution of Australia, ss 61, 116*

Williams v Commonwealth of Australia

[2012] HCA 23: High Court of Australia: French CJ, Gummow, Hayne, Heydon,
Crennan, Kiefel and Bell JJ: 20 June 2012

[2012] OJLR 1(2) 535-536

EMPLOYMENT

Discrimination – Age – Less favourable treatment – *Garry Abrams (First Claimant) member of EAD Solicitors LLP (LLP) – Prior to retirement First Claimant setting up limited company (Claimant) to replace First Claimant as member of LLP – First Claimant continuing to provide services to LLP through Claimant – LLP objecting to Claimant offering First Claimant's services after time First Claimant would normally have retired – At preliminary hearing Employment Tribunal ('ET') determining the word 'person' included*

corporations therefore open to Claimant to bring claim for age discrimination against LLP – Whether limited company could bring claim for direct discrimination where it had suffered detrimental treatment due to protected characteristic of someone with whom it was associated – Equality Act 2010, ss 45(2) and 13(1); Interpretation Act 1978, s 5 and Sch 1

EAD Solicitors LLP and Others v Garry Abrams (Also known as: EAD Solicitors LLP v Garry Abrams Ltd)

UKEAT/0054/15: Employment Appeal Tribunal: Langstaff J (President): 5 June 2015

[2016] OJLR 5(3) 639-640

Employment – Contract of employment – Breach of contract – Employer deciding to demote housing manager on grounds of misconduct for making comments on his Facebook page including that same-sex marriage in church was ‘an equality too far’ – Employee suing employer for breach of contract following disciplinary demotion – Whether demotion breach of contract – Whether demotion amounting to wrongful dismissal – Correct approach to measure of damages

Smith v Trafford Housing Trust

[2012] EWHC 3221 (Ch): High Court (England and Wales) (Chancery Division) (Manchester District Registry): Briggs J: 16 November 2012

[2013] OJLR 2(2) 480-481

Employment – Contract of employment – Care workers employed by council in residential home for disabled children required to work by shift rota outside normal working hours including weekends – Christian care worker refusing on religious grounds to work on Sundays and resigning when disciplined by council – Care worker claiming discrimination on grounds of religion in that council applying provision, criterion, or practice which put persons of her religion or belief at disadvantage compared with persons who did not share that belief – Employment Tribunal ruling that belief that Sunday should be day of rest not core component of Christian faith and dismissing claim – Employment Appeal Tribunal upholding Employment Tribunal’s decision – Whether Employment Tribunal correct – Whether requirement for Sunday working proportionate means of achieving legitimate aim – European Convention on Human Rights, art 9 – Employment Equality (Religion or Belief) Regulations 2003 (SI 2003/1660), reg 3

Mba v Merton London Borough Council

[2013] EWCA Civ 1562: Court of Appeal (Civil Division): Maurice Kay LJ, Vice President, Elias and Vos LJJ: 5 December 2013

[2014] OJLR 3(2) 364-365

Employment – Contract of employment – Church minister – Ordained minister in Church of England bringing claim in employment tribunal for detrimental treatment and constructive unfair dismissal – Tribunal ruling at prehearing review that claimant neither ‘employee’ nor ‘worker’ within the meaning of statutory provisions and therefore not entitled to bring claim – Claimant appealing to Employment Appeal Tribunal – Whether claimant ‘employee’ – Whether ‘worker’ – Employment Rights Act 1996, ss43K (as inserted by Public Interest Disclosure Act 1998, s1), 230(1)(3).

Sharpe v Worcester Diocesan Board of Finance Ltd and another

[2013] UKEAT/243/12: Employment Appeal Tribunal: Cox J (Sitting Alone): 28 November 2013

[2015] OJLR 4(1) 164-165

Employment – Contract of employment – Teachers of religion – Employment relationship between teachers of religion and educational authorities regulated by an Agreement between the Kingdom of Spain and Holy See – Disposición Adicional Tercera whereby teachers of religion (who were not civil servants) in State schools were subject to employment relationship regulated by specific framework – Revocation of declaration of suitability as a teacher by the diocesan bishop automatically brought the employment contract to an end, and the educational authority could not question or challenge such a decision, which was legally binding – Teacher of Catholic religion subject to temporary suspension of employment status and of salary by education authority due to finding of inconsiderate treatment of his school pupils – However, plaintiff, a few days before suspension, receiving letter from bishopric informing him that procedure to determine his ecclesiastical suitability initiated – Bishopric determining teacher unsuitable subsequent to educational authority decision to suspend – Teacher appealing dismissal decisions – Social Court dismissing appeal – Whether the fact that the dismissal had been agreed by the educational authority prior to the withdrawal of the ‘missio canonica’ by the bishop of Malaga invalidated the dismissal decisions of the educational authority and the bishopric – Disposición Adicional Tercera of the Ley Orgánica 2/2006, 3 May, on Education, developed by Real Decreto 696/2007, 1 June, art 7.b); Code of Canon Law, Canons 35, 36, 48–58

Tribunal Superior de Justicia de Murcia, Sala de lo Social, Sección 1, Sentencia

(rec 564/2015) Tribunal Superior de Justicia de Murcia (rec 564/2015): Francisco Javier Vela Torres, Presiding Judge, José Luis Barragán Morales, Manuel Martín Hernández, Carrillo JJ: 21 December 2015

[2016] OJLR 5(3) 637-638

Employment – Discrimination – Religion or belief – Private employer managing sickness benefit scheme – Dismissing claimant employee for wearing an Islamic headscarf in form of woolly hat – Whether private employment law applicable where employer participating in provision of public service – Whether principle of laïcité applicable – Whether personnel could be required to be religiously neutral – Whether the dismissal was null – Constitution of 1958, art 1 – Labour Code – European Convention on Human Rights, art 9

Mme X v Caisse primaire d’assurance maladie de Seine-Saint-Denis; et autres

(No 12-11.690): Cour de cassation (Court of Cassation) France, Chambre sociale (Social Chamber): Bailly (President), Huglo (Speaker): 19 March 2013

[2013] OJLR 2(2) 477

Employment – Discrimination – Religion or belief – Private employers running private crèche – Dismissing claimant from post as assistant director for wearing Islamic headscarf contrary to principles of laïcité in internal crèche regulations – Court of Appeal dismissing claim on ground inter alia that crèche personnel should be neutral and young children should not have to be confronted by ostentatious manifestations of religion – Whether

principle of laïcité applicable – Whether private employment law applicable – Whether the applicant’s religious liberty at work should give way to principle of laïcité – Whether personnel could be required to be religiously neutral – Whether the crèche’s internal regulations were clear and precise – Whether the dismissal was null – Constitution of 1958, art 1 – Labour Code – European Convention on Human Rights, art 9

Mme Fatima X, épouse Y v Association Baby Loup

No 11-28.845: Cour de cassation (Court of Cassation) France, Chambre sociale (Social Chamber): Bailly (President): Huglo (Speaker): 19 March 2013

[2013] OJLR 2(2) 478

Employment – Discrimination – Religion or belief – Private employer running private crèche – Aim of the crèche to look after young children in a deprived suburb of Paris and to help with the social and professional integration of women in that neighbourhood – Dismissing claimant from post as assistant director for wearing Islamic headscarf contrary to principle of laïcité in crèche internal regulations – Court of Cassation upholding claimant’s claim that she had been discriminated against – Case sent back before the Court of Appeal of Paris for retrial and finding against the claimant – Whether the crèche internal regulations could prevent claimant from wearing Islamic headscarf on the ground that young children should not be exposed to ostentatious manifestations of religion – Whether dismissal lawful – Labour Code

Mme Fatima X, épouse Y v Association Baby Loup

No 13–28.369: Cour de cassation (Court of Cassation, France), Assemblée plénière (Plenary Assembly): Lamanda (President), Truchot (Speaker): 25 June 2014

[2014] OJLR 3(3) 521

Employment – Discrimination – Religion or belief – Claimant ordained Pentecostal Christian Minister employed by respondent as gardener/horticulturalist at HM Prison Littlehey – Volunteered to help at services in prison chapel – Making homophobic comments during service and quoting from Bible passage – Complaint by prisoners – Claimant consequently subjected to disciplinary proceedings – Appealing from unsuccessful claim in Employment Tribunal – Whether Employment Tribunal erred in holding that treatment of which Claimant complained was not ‘because of’ or ‘related’ to his religion or belief – Whether Employment Tribunal erred in relying on group disadvantage as a condition precedent for Claimant to establish indirect discrimination where art 9 European Convention on Human Rights (ECHR) rights engaged – Whether Employment Tribunal failed to undertake a proper balance between Claimants’ rights under art 9 and art 10 of ECHR and proposed limitation of those rights – Equality Act 2010, ss 13, 26, 19(2)(b), and 19(2)(d), art 9

Trayhorn v The Secretary of State for Justice (Religion or Belief Discrimination)

[2017] UKEAT 0304/16/0108: Employment Appeal Tribunal: Slade J: 1 August 2017

[2018] OJLR 7(1) 168

Employment – Discrimination – Religion or belief – Employee holding belief that public sector improperly wasteful of public money – Submitting a number of efficiency suggestions to employer police force – Claiming consequently suffering discrimination on

grounds of a philosophical belief – Threshold for philosophical belief – Whether ECtHR jurisprudence requires a belief to be philosophical – Whether a belief in ‘proper and efficient use of public money in the public sector’ could amount to a philosophical belief and receive protection under Equality Act 2010 – Whether correct approach had been taken to the five criteria set out in Grainger – European Convention on Human Rights art 9 – Equality Act 2010 ss 6, 10

Harron v Chief Constable of Dorset Police United Kingdom

(UKEAT/0234/15/DA): Employment Appeal Tribunal: Langstaff J: 12 January 2016

[2016] OJLR 5(3) 638-639

Employment – Discrimination – Religion or Belief – *Muslim chaplain employed by Prison Service – Pay for chaplains related to length of service – No Muslim chaplains before 2002 – Muslim chaplains therefore paid less than Christian chaplains – Whether pay system partly based on length of service resulted in indirect discrimination – Equality Act 2010, s 19*

Naeem v Secretary of State for Justice

[2015] EWCA Civ 1264: Court of Appeal of England and Wales (Civil Division): Lord Dyson MR, Lewison, Underhill LJJ: 9 December 2015

[2016] OJLR 5(3) 640-641

Employment – Discrimination – Religion or belief – *Muslim employee working as security guard – Employer under contractual requirement to provide security guards on site for duration of operating hours – Muslim employee requesting permission to attend mosque on Fridays – Employer unable to accede to request due to operational needs of business – Whether requirement to remain on site was provision, criterion or practice that placed employee at a disadvantage – Whether proportionate means of achieving a legitimate aim – Whether discrimination on grounds of religion or belief – Employment Equality (Religion or Belief) Regulations 2003 (SI 2003/1660), regulation 3 as amended.*

Cherfi v G4S Security Services Ltd

(UKEAT/379/10/DM): Employment Appeal Tribunal (England and Wales): His Honour Judge Reid QC, Mr A Harris and Mrs M V McArthur BA FCIPD: 24 May 2011

[2012] OJLR 1(1) 297-298

Employment – Discrimination – Religion or belief – *Respondent private undertaking employing first claimant design engineer on employment contract of indefinite duration – Upon appointment explaining corporate policy of neutrality to claimant that while company respected opinion and religious beliefs of everyone, claimant would be in contact internally or externally with companys’ customers and would not be able to wear her Islamic headscarf in all circumstances – Respondent dismissing claimant after claimant refusing to remove her Islamic headscarf when sent on assignment to customer’s site – Court of cassation, France, referring question to Court of Justice of European Union – Whether customer’s request that respondent deny claimant right to wear headscarf was genuine occupational requirement by reason of nature of particular occupational activities concerned or the context in which they were carried out – Council Directive 2000/78/EC of 27 November 2000, art 4(1)*

Bouagnaoui and Another v Micropole SA

Case C-188/15: Court of Justice of the European Union (Grand Chamber): Lenaerts, President; Tizzano, Vice-President; Silva de Lapuerta, Ilesič, Bay Larsen, Berger, Vilaras and Regan, Presidents of Chambers; Rosas, Borg Barthet, Malenovský, Levits, Biltgen (Rapporteur), Jürimäe and Lycourgos, JJ; Sharpston, AG: 14 March 2017

[2017] OJLR 6(3) 620

Employment – Discrimination – Religion or belief – Respondent private undertaking employing first claimant as receptionist on employment contract of indefinite duration – Unwritten rule, later transposed into workplace regulation, that workers could not wear visible signs of their political, philosophical or religious beliefs in the workplace – Respondent dismissing claimant on account of her continuing insistence that she wear the Islamic headscarf to work – Higher Labour Court ruling that the dismissal could not be considered unjustified since the workplace regulation did not give rise to direct discrimination, and no indirect discrimination or infringement of individual freedom or of freedom of religion evident – Court of Cassation, Belgium, referring question to Court of Justice of the European Union – Whether prohibition on wearing headscarf at the workplace constituted direct discrimination where employer's rule prohibited all employees from wearing outward signs of political, philosophical, and religious beliefs at workplace – Council Directive 2000/78/EC of 27 November 2000, art 2(2)(a)

Achbita and Another v G4S Secure Solutions NV

Case C-157/15: Court of Justice of the European Union (Grand Chamber): Lenaerts, President; Tizzano, Vice-President; Silva de Lapuerta, Ilesič, Bay Larsen, Berger, Vilaras and Regan, Presidents of Chambers; Rosas, Borg Barthet, Malenovský, Levits, Biltgen (Rapporteur), Jürimäe and Lycourgos, JJ; Kokott AG: 14 March 2017

[2017] OJLR 6(3) 622

Employment – Discrimination – Religion or belief – Private employers running private crèche – Aim of crèche to look after young children in deprived suburb of Paris and to help with social and professional integration of women in that neighbourhood – Dismissing claimant from post as assistant director for wearing Islamic headscarf contrary to principle of laïcité in internal crèche regulations – Court of Cassation upholding claimant's claim that she had been discriminated against – Case sent back before Court of Appeal of Paris for retrial – Whether crèche's internal regulations could prevent claimant from wearing Islamic headscarf on the ground that young children should not be exposed to ostentatious manifestations of religion – Whether dismissal was null – Labour Code – UN Convention on the Rights of the Child ('UNCRC'), art 14 – European Convention on Human Rights, art 9

Madame Fatima L'epouse A v Association Baby Loup

(No S 13/02981): Cour d'appel de Paris (Court of Appeal of Paris), France: Degrandi (First President): 27 November 2013

[2014] OJLR 3(2) 363-364

Employment – Discrimination – Religion or belief – Private employer running private crèche – Aim of the crèche to look after young children in a deprived suburb of Paris and to help with the social and professional integration of women in that neighbourhood – Dismissing claimant from post as assistant director for wearing Islamic headscarf contrary

to principle of laïcité in crèche internal regulations – Court of Cassation upholding claimant’s claim that she had been discriminated against – Case sent back before the Court of Appeal of Paris for retrial and finding against the claimant – Whether the crèche internal regulations could prevent claimant from wearing Islamic headscarf on the ground that young children should not be exposed to ostentatious manifestations of religion – Whether dismissal lawful – Labour Code

Mme Fatima X, épouse Y v Association Baby Loup

No 13–28.369: Cour de cassation (Court of Cassation, France), Assemblée plénière (Plenary Assembly): Lamanda (President), Truchot (Speaker): 25 June 2014

[2014] OJLR III-521

Employment – Freedom of religion or belief – Interference with – Harassment in workplace – Just compensation for – Evangelical Christian work supervisor, with consent of employer, inviting pastor into workplace to perform religious celebrations designed to ‘cleanse the bodies and souls of employees’ – Pastor, in attempting to pray with claimant Catholic employee, suggesting that claimant ‘possessed’ and that pastor could help ‘get the demon out of her body’ – Employee resisting supervisor’s attempts to convert her and consequently suffering changes to work assignments – Employee feeling harassed, coerced, proselytized, and discriminated against – Employee resigning and suing employer for violation of constitutional right to freedom of religion and statutory right to freedom from harassment in workplace – Lower court ruling employee’s constitutional right to freedom of religion had been violated and that employer was vicariously liable for damage suffered by claimant – Awarding damages of R\$5,000 – Employee appealing on grounds compensation insufficient – Whether compensation awarded sufficient for damage resulting from moral harassment – Brazil Federal Constitution, art 5 s V; Civil Code of 2002, art 94; Labor Code, art 883; Law no 8.177/91, 39 § 1

Alves v Vale Transporte Metropolitan S/C Ltda

(Procedure no TST-RR-400-79.2010.5.09.0004): Tribunal Superior do Trabalho Acórdão 7a Turma (Superior Labor Court Bench no 7), Brazil: Vieira de Mello Filho J: 19 September 2013

[2014] OJLR 3(1) 185-186

Human rights – Freedom of religion or belief – Discrimination in exercise thereof – Christian NHS manager (‘manager’) disciplined by East London NHS Foundation Trust (‘Foundation Trust’) for harassing Muslim junior member of staff (‘complainant’) – Complaints against manager included interactions which complainant characterised as ‘grooming’ including praying with complainant, laying on of hands and giving book to complainant concerning conversion to Christianity of Muslim woman – Following Foundation Trust’s disciplinary procedure, manager found guilty of serious misconduct – Foundation Trust giving final written warning, reduced to first written warning on appeal – Employment Tribunal (‘ET’) dismissing manager’s claims of direct and indirect discrimination and harassment on grounds of religion – Whether ET erred in seeing manager’s religion or belief as context and not an exercise of manager’s Article 9 freedom of religion rights – Whether ET further erred in failure to properly test proportionality of Foundation Trust’s response in terms of disciplinary sanction and failure to consider alternative of mediation – European Convention on Human Rights, art 9; Equality Act 2010

Wastenev v East London NHS Foundation Trust

UKEAT/0157/15: Eady J: 7 April 2016

[2016] OJLR 5(3) 641-642

Human Rights – Freedom of religion or belief – Interference with – Discrimination in exercise therefore – Airline temporarily denying member of check-in staff right to wear crucifix outside uniform on basis of uniform policy prohibiting the wearing of religious symbols without authority – Hospital trust denying nurse right to wear crucifix outside uniform on health and safety grounds – Registrar holding office with local authority before civil partnerships lawful, once civil partnerships lawful authority imposing equality and diversity policy, consequently denying her right to refuse to officiate at civil ceremonies on grounds that same-sex unions contrary to her religious beliefs – Counsellor accepting job with counselling service knowing that job involved psycho-sexual therapy work with same-sex couples, subsequently seeking to avoid same-sex counselling on religious grounds – Whether wearing of crucifix, refusal to officiate at civil ceremony, and refusal to counsel same-sex couples on religious grounds amounting to manifestation of religion – Whether employers' denials to check-in staff, nurse and counsellor of exercise of religious freedom amounting to infringement of fundamental right to manifest religion – Whether employers' and local authority's denials of religious freedom in each case amounting to discrimination in enjoyment of fundamental right to manifest religion – Whether restrictions imposed by employers and local authority proportionate – European Convention on Human Rights, art 9, art 9 in conjunction with art 14

Eweida, Chaplin, Ladele and McFarlane v United Kingdom

(Application nos 48420/10, 59842/10, 51671/10, 36516/10): European Court of Human Rights (Fourth Section): Björgvinsson, Bratza, Garlicki, Hirvelä, Kalaydjieva, Vučinić, De Gaetano JJ, Bratza and Björgvinsson JJ joint partially dissenting, Vučinić and De Gaetano joint partially dissenting: 15 January 2013

[2013] OJLR 2(1) 218-220

Employment – Unfair dismissal – Discrimination – Employee dismissed for gross misconduct on grounds he was unmanageable – Employment tribunal ruling employee had been fairly dismissed but had suffered unlawful discrimination and harassment on grounds of his protected belief in democratic socialism – Employee appealing against dismissal ruling – Employer cross – appealing against unlawful discrimination and harassment ruling – Whether tribunal erred in holding that dismissal both fair and unlawfully discriminatory – Whether equality legislation provided less protection for philosophical as opposed to religious beliefs – Whether employee had suffered unlawful discrimination and harassment – Equality Act 2010, s 10

General Municipal and Boilermakers Union v Henderson

UKEAT/73/14: Employment Appeal Tribunal: Mrs Justice Simler: 13 March 2015

[2015] OJLR 4(3) 539-540

Employment – Unfair dismissal – Discrimination – Employee dismissed for gross misconduct on grounds he was unmanageable – Employment tribunal ruling dismissal fair but employee suffering discrimination and harassment due to belief in democratic socialism – Employment appeal tribunal ruling (i) equality legislation protected philosophical as well as religious beliefs, (ii) left-wing democratic socialism was a protected characteristic for purposes of that legislation, (iii) employee had been fairly dismissed, (iv) that there was insufficient evidential basis for employment tribunal's finding

of unlawful discrimination and harassment resulting from protected belief, (5) there were inadequacies in Employment Tribunals findings – Employee appealing against dismissal of his claims for discrimination and harassment – Whether Employment Appeal Tribunal should have remitted case to employment tribunal given deficiencies in Employment Tribunal reasoning

Henderson v General Municipal and Boilermakers Union

[2016] EWCA Civ 1049: Court of Appeal (Civil Division): Underhill, Briggs LJJ: 11 October 2016

[2017] OJLR 6(1) 218-219

Employment – Unfair dismissal – Discrimination on grounds of religion – Liability for damages – National legislation providing (1) anything done by person ‘in the course of employment’ treated as also having been done by employer (2) anything done by person ‘acting as agent’ treated as having been done by both agent and other person (3) person who knowingly aided another to do unlawful act treated as having carried out that act (4) employee or agent for whom employer liable deemed to have aided doing of act by employer – Employee and volunteer of non-profit making advice centre both discriminated against on grounds of religious faith and unfairly dismissed – After dismissal directors of company making malicious complaints with no foundation about employee and volunteer to police – Employment tribunal awarding damages including aggravated damages and ruling advice centre and two directors responsible for managing company jointly and severally liable for damages – Tribunal having regard *inter alia* to post-employment conduct in assessing aggravated damages – Whether directors acting as ‘agents’ aiding advice centre to do unlawful act – Whether jointly and severally liable with advice centre for damages – Whether post-employment conduct relevant to assessment of damages – Employment Equality (Religion or Belief) Regulations 2003, Regs 22, 23, 31(3)

Bungay and another v Saini and another

[2011] UKEAT 331: Employment Appeal Tribunal (England and Wales): Silber J, Mr T Stanworth, Ms P Tatlow: 27 September 2011

[2012] OJLR 1(2) 534

Employment – Unfair dismissal – Discrimination – Unordained music director employed by Catholic parish church to select music for religious services and provide piano accompaniment during services – Employee music director suing employer on grounds of unfair dismissal for violation of age discrimination legislation and disabilities legislation – Whether employee’s lawsuit barred by ‘ministerial exception’ doctrine of the First Amendment on grounds that claim concerned employment relationship between religious institution and its minister – Whether Catholic parish music director ‘minister’ falling within ‘ministerial exception’ doctrine – Whether *Hosanna-Tabor* decision obviated previous Fifth Circuit ministerial exception precedent set forth in *Starkman v Evans* – USCA Const Amend 1; Americans with Disabilities Act of 1990, 42 USC sec 12101ff; Age Discrimination in Employment Act of 1967, 29 USC sec 621ff

Cannata v Catholic Diocese of Austin et al

(Docket no 11-51151): United States Court of Appeals for the Fifth Circuit: Dennis J for a unanimous three-judge panel of the Court: 24 October 2012.

[2013] OJLR 2(1) 230

Employment – Unfair dismissal – Discrimination – Employer church and school

training and holding out 'called teachers' as 'ministers of religion' – 'Called teachers' having minimal religious leadership or instructional responsibilities but having role distinct from that of 'lay teachers' and most of churches' members – Employer dismissing 'called teacher' on grounds of 'insubordination and disruptive behavior' and for threatening to take legal action – Equal Employment Opportunity Commission suing employer on grounds that called teacher unfairly dismissed – Employer claiming suit barred by First Amendment since claim concerned employment relationship between religious institution and its minister – Whether Free Exercise and Establishment Clauses of First Amendment barring suits brought on behalf of ministers against their churches claiming termination in violation of employment discrimination laws – Whether called teacher with minimal religious duties 'minister' falling within 'ministerial exception' doctrine – Whether called teacher's suit barred by 'ministerial exception' doctrine – Whether Americans with Disabilities Act controlling as 'neutral law of general applicability' – USCA Const Amend 1; Americans with Disabilities Act of 1990, 104 Stat 327, 42 USC § 12101 et seq

Hosanna-Tabor Evangelical Lutheran Church and School v Equal Employment Opportunity Commission

(Docket no 10-553): Supreme Court of the United States: Roberts CJ for a unanimous Court. Thomas J concurring. Alito J concurring, with Kagan J: 11 January 2012

[2012] OJLR 1(2) 526-527

Employment – Unfair dismissal – Ministerial exception – Catholic parochial school failing to renew contract of its 'lay principal' – Lay principal filing action alleging violation of federal and state employment law – Defendant school moving for summary judgment on basis of 'ministerial exception' derived from First Amendment – District court granting motion in favour of Defendant on all claims – Circuit court applying Supreme Court ruling on 'ministerial exception' – Whether parochial school principal was minister for purposes of 'ministerial exception' – Fed R Civ P 56(a); US Const Amend 1; Title VII of Civil Rights Act of 1964 (42 USC s 2000c ff); NY Exec Law s 296 ff

Fratello v Roman Catholic Archdiocese of New York

Docket No 16-1271: United States Court of Appeals for the Second Circuit: Sack, Lohier and Woods JJ: 14 July 2017

[2018] OJLR 7(1) 160-161

Federal rules of procedure – Standard of judgment – Actionable claim – Federal constitutional law – First Amendment – Ministerial exception – Ecclesiastical abstention – Right of association – State constitutional law – Freedom of conscience – Enjoyment of religious opinion – Federal and state statutory law – Employment – Discrimination on basis of pregnancy and sex – Discrimination on the basis of marital status – Breach of contract – Intentional infliction of emotional distress – Unmarried pregnant employee of Christian university fired after refusing to cease non-marital cohabitation – Plaintiff filing action alleging discrimination contrary to federal employment law and asserting state-law claims for breach of contract and intentional infliction of emotional distress – Plaintiff moving for summary judgment – Defendant moving for summary judgment on basis of sincerely held religious beliefs of non-profit Christian university protected by doctrines of 'ministerial exception' and 'ecclesiastical abstention' – Whether restrictions on cohabitation constituting form of marital status discrimination – Whether ministerial exception doctrine requiring dismissal of action – Whether ecclesiastical abstention doctrine requiring court to decline to adjudicate – Fed

R Civ P 56(a); US Const Amend 1; Or Const Art 1 §§ 2, 3; Title VII of the Civil Rights Act of 1964 (42 USC § 2000e et seq); Or Rev Stat § 659A.030(1)

Richardson v Northwest Christian University

(Case No 6:15-cv-01886-AA): United States District Court for the District of Oregon: Aiken J: 16 March 2017

[2017] OJLR 6(2) 420-422

Federal rules of procedure – Standard of judgment – Actionable claim – Federal statutory law – Employment – Gender nonconformity – Sexual orientation – Hostile work environment – Equal treatment – Lesbian security officer at Georgia hospital harassed, physically assaulted, passed over for promotion, denied equal pay or equal work, and targeted for termination for failing to carry herself in ‘traditional woman[ly] manner’ – Officer suffering retaliation for lodging complaint with employment office – Officer voluntarily leaving employment and filing pro se complaint in district court alleging sex-based discrimination, discrimination based on sexual orientation, and retaliatory treatment – Plaintiff granted leave to proceed in forma pauperis – Complaint dismissed sua sponte for failure to state a claim under federal rules – Whether Title VII providing a cause of action for discrimination based on gender non-conformity – Whether Title VII providing a cause of action for discrimination based on sexual orientation – Whether retaliation claim valid given plaintiff failure to object to district court dismissal – 28 USC § 1915(e)(2)(B)(ii); Fed R Civ P 12(b)(6); Title VII of the Civil Rights Act of 1964 (42 USC § 2000e et seq)

Evans v Georgia Regional Hospital

(No 15-15234): United States Court of Appeals for the Eleventh Circuit (panel): Martinez J (District, sitting by designation), Pryor J (Circuit) concurring, Rosenbaum J (Circuit) concurring in part, dissenting in part: 10 March 2017

[2017] OJLR 6(2) 419-420

Federal statutory law – Employment – Equal rights under the law – Discrimination on basis of sex – Federal rules of procedure – Waiver – Federal constitutional law – Sovereign immunity – Openly lesbian part-time adjunct professor at state community college repeatedly applying for full-time positions – Applications rejected by college – Part-time contract not renewed – Professor filing charge with Equal Employment Opportunity Commission (EEOC) alleging discrimination based on sexual orientation – Receiving right-to-sue letter and filing pro se action in district court alleging sex discrimination under Civil Rights Act (Title VII) – College moving to dismiss for failure to state a claim on which relief can be granted – District court granting dismissal – Seventh Circuit panel affirming dismissal – Whether sexual orientation constituting sex discrimination under Title VII – Whether plaintiff’s failure to advance in the court below claims raised on appeal constituting waiver of the claims – Whether state college protected from suit by sovereign immunity – Title VII of the Civil Rights Act of 1964 (42 USC § 2000e et seq); 42 USC § 1981 (Equal rights under the law); US Const Amend 11 (Sovereign immunity)

Hively v Ivy Tech Community College of Indiana

(No 15-1720): United States Circuit Court of Appeals for the Seventh Circuit (en banc): Wood CJ, Posner, Flaum, Easterbrook, Ripple, Rovner, Williams, Hamilton JJ (majority); Posner J (concurring); Flaum J joined by Ripple J (concurring); Sykes J joined by Bauer and Kanne JJ (dissenting): 4 April 2017

[2017] OJLR 6(2) 422-424

EUROPEAN UNION

European Union – Area of freedom, security, and justice – Judicial cooperation in civil matters – Jurisdiction – Matrimonial matters – Council Regulation (EC) No 2201/2003 – Applicant claiming to be heir of second respondent's first wife – Second respondent having died in France in 1971 – Applicant claiming that respondent's second marriage in France bigamous – Whether an action for annulment of marriage by a third party following the death of one of the spouses fell within the scope of the Regulation – Whether such a third party was an 'applicant' within the meaning of article 3(1) of the Regulation, able to rely on the grounds for jurisdiction set out in that provision – Whether proceedings could properly be brought in Poland or must be brought in France

Mikołajczyk v Czarnecka and Czarnecki

(Case C-259/15): Court of Justice of the European Union (Second Chamber): Ilešič (President), Prechal, Rosas, Toader (Rapporteur) and Jarašiūnas, JJ; Wathelet (Advocate General): 13 October 2016

[2017] OJLR 409-410

European Union – Area of freedom, security, and justice – Judicial cooperation in civil and commercial matters – Matrimonial matters – Mr M and Ms S dual Syrian/German nationals – Marrying in Syria – Mr M's representative subsequently pronouncing the divorce formula before the religious sharia court in Latakia (Syria) – Application for recognition of private divorce in Germany – Reference by national court to Court of Justice of the European Union for a preliminary ruling to determine whether the scope of Regulation No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, included cases of private divorce, in this instance one pronounced by unilateral declaration of a spouse before a religious court in Syria on the basis of Sharia – Council Regulation (EU) No 1259/2010 – Consistency with Council Regulation (EU) No 2201/2003

Sahyouni v Mamisch

Case C-372/16: Court of Justice of the European Union (First Chamber): Silva de Lapuerta (Rapporteur), President of the Chamber; Fernlund, Bonichot, Arabadjiev and Regan, JJ; Saugmandsgaard Oe, AG: 20 December 2017

[2018] OJLR 7(2) 361-362

European Union – Freedom of movement – Freedom of reception – Claimant company in first Member State operating television channel in that Member State – Television channel commissioning programs from company in second Member State – Third party complaining that claimant company and television channel broadcasts supporting terrorist organization and containing violent images – First Member State ruling broadcasts did not infringe European rules prohibiting 'incitement to hatred on grounds of race, sex, religion or nationality' and allowing broadcasts – Second member state prohibiting broadcasts as conflicting with 'principles of international understanding' – Whether European concept of 'incitement to hatred on grounds of race, sex, religion or nationality' including national concept of infringement of 'principles of international understanding' – Whether prohibition of broadcasts contrary to freedom of reception – Whether Member State permitted to derogate from principle of freedom of reception – Council Directive 89/552/EEC (OJ 1989 L 298, p 23) as amended (OJ 1997 L 202, p 60),

Articles 2a, 22a

Mesopotamia Broadcast A/S METV v Bundesrepublik Deutschland; Roj TV A/S v Bundesrepublik Deutschland

(Joined Cases C-244/10 and C-245/10): Court of Justice of the European Union (Third Chamber): Lenaerts (President of Chamber), Silva de Lapuerta (Rapporteur), Arestis, Malenovský and von Danwitz JJ: 22 September 2011

[2012] OJLR 1(1) 293-294

European Union – Freedom of movement – Rights of entry and residence – Child from non-EU state entrusted to EU citizen under kafalah – Whether kafalah ‘international adoption’ – Whether child entitled to enter and reside in EU Member State – Law No 184/1983 on adoption and foster care, as amended by Law No 476/1998 – Consolidated Law on Immigration No 286/98 – Legislative Decree No 30/2007

EKA v Italian Ministry of International Affairs

(No 4868): Corte Suprema di Cassazione (Supreme Court of Cassation, Italy) Sezione Unite Civile: Adamo (President), Macionce, Speaker: 1 March 2011

[2012] OJLR 1(1) 301-302

European Union – Patent – Biotechnical inventions – Patenting of human embryo contrary to order public and morality – Registered proprietor owning German patent concerning isolated and purified neural precursor cells, processes for their production from embryonic stem cells and use of neural precursor cells for treatment of neural defects – Pluripotent nature of embryonic stem cells offering new prospects for the production of cells for transplantation – Patent seeking to enable resolution of technical problem of producing almost unlimited quantity of isolated and purified precursor cells obtained from embryonic stem cells – Public interest group challenging patent – National patent court ruling precursor stem cell ‘human embryo’ and therefore unpatentable – Whether precursor stem cell ‘human embryo’ – Whether use of human embryo for scientific research forming subject matter of patent application ‘uses of human embryos for industrial or commercial purposes’ – Whether technical teaching unpatentable even if use of human embryos not forming part of technical teaching claimed with patent, but necessary precondition for application of that teaching – Parliament and Council Directive 98/44/EC, art 6(2)(c) (OJ 1998 L 213, p 13)

Brüstle v Greenpeace eV

(Case C-34/10): Court of Justice of the European Union (Grand Chamber): Skouris President, Tizzano, Cunha Rodrigues, Lenaerts, Bonichot, Safjan (Rapporteur) Presidents of Chambers, Prechal, Rosas, Silva de Lapuerta, Schiemann, Šváby, Berger, Jarašiunas, JJ: 18 October 2011

[2012] OJLR 1(2) 528-529

FEDERAL STATUTORY RIGHTS

Federal statutory rights – Free exercise of religion – Burden upon – Federal statute granting religious freedom rights to ‘persons’ and covering ‘any exercise of religion, whether or not compelled by, or central to, a system of religious beliefs’ – Federal regulation requiring owners of for-profit businesses to provide employee group insurance policies including coverage of four contraceptive drugs considered as abortifacents –

Christian owners of for-profit businesses asserting requirement to provide abortifacients to be a burden upon free exercise of religious belief – Third Federal Circuit Court holding that for-profit corporation could not ‘engage in religious exercise’ under statute or First Amendment and that government mandate imposed no requirements on business owners in their personal capacity – Tenth Federal Circuit Court holding businesses to be ‘persons’ protected under statute – Whether closely held for-profit organization capable of exercising religious freedom rights – Whether statutory requirement to provide insurance violation of organizations’ religious freedom rights – Whether burden placed on for-profit organization furthering compelling government interest – Whether less restrictive alternatives available – Religious Freedom Restoration Act of 1993 (‘RFRA’), 42 USC §§2000bb–1(a), (b) as amended by Religious Land Use and Institutionalized Persons Act (‘RLUIPA’), §2000cc–5(7)(A); Patient Protection and Affordable Care Act of 2010 (‘ACA’), 42 USC §300gg–13(a)(4)

Burwell v Hobby Lobby Stores, Inc together with Conestoga Wood Specialties Corp v Burwell

Docket nos 13-354, 13-356: Supreme Court of the United States: Alito J joined by Roberts CJ, Scalia, Kennedy, and Thomas JJ; Kennedy J concurring; Ginsberg J dissenting joined by Sotomayor J, and Breyer and Kagan JJ in part; Breyer and Kagan JJ, dissenting: 30 June 2014

[2014] OJLR 3(3) 518

Federal statutory rights – Free exercise of religion – Burden upon – Federal regulations requiring nonprofit organizations providing health insurance for employees to cover cost of contraceptives as part of insurance plans unless submitting form to insurer or government stating objections on religious grounds – Organizations objecting to requirement as substantial burden on exercise of religion in violation of federal Religious Freedom Restoration Act – Supreme Court hearing seven consolidated petitions from judgments of four Circuit Courts of Appeal – Whether petitioners’ religious exercise substantially burdened – Whether government has compelling interest in so burdening – Whether regulations least restrictive means of serving interest – Whether contraceptive coverage could be provided to employees through petitioners’ insurance companies without notice from petitioners – Religious Freedom Restoration Act of 1993 (RFRA), 42 USC §§ 2000bb–1(a), (b) as amended by Religious Land Use and Institutionalized Persons Act (RLUIPA), §§ 2000cc–5(7)(A); Patient Protection and Affordable Care Act of 2010 (ACA), 42 USC §§ 300gg–13(a)(4)

Zubik and others v Burwell and others

(Docket nos 14-1418 and others): Supreme Court of the United States: Per Curiam Opinion of Roberts CJ, and Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, and Kagan JJ; Sotomayor J, joined by Ginsburg J, concurring: 16 May 2016

[2016] OJLR 5(3) 629-630

HUMAN RIGHTS: FREEDOM FROM INHUMAN AND DEGRADING TREATMENT

Human rights – Freedom from inhuman or degrading treatment – Freedom of religion or belief – Discrimination in exercise thereof – Group of Jehovah’s Witnesses complaining of thirty cases of religiously motivated violence and assault by extremist

orthodox believers: at least four of which allegedly carried out with the direct participation of police and other representatives of the authorities – General Prosecutor’s Office failing to bring prosecutions –Parliamentary Assembly of the Council of Europe passing resolution condemning government’s failure to act – UN Human Rights Committee and Committee against Torture as well as European Commission against Racism and Intolerance, amongst others, expressing concerns – Whether verbal and physical abuse to which victims subject amounting to inhuman and degrading treatment – Whether authorities’ failure to prevent violence infringement of state’s positive obligation to protect applicants from inhuman and degrading treatment – Whether failure to protect applicants from violence amounting to infringement of freedom of religion and whether discrimination in enjoyment therefore – Whether effective national remedy available – European Convention on Human Rights arts 1, 3, 9 separately and in conjunction with art 14, 13.

Begheluri and Others v Georgia

Application no 28490/02: European Court of Human Rights (Fourth Section):
Ziemele (President), Hirvelä, Nicolaou, Tsotsoria, Mahoney, Wojtyczek,
Vehabović JJ: 2 October 2014

[2015] OJLR 4(1) 156-158

HUMAN RIGHTS: FREEDOM FROM RELIGIOUS INTOLERANCE AND DISCRIMINATION

Freedom from religious intolerance and discrimination – Infringement of – Federal prosecutors appealing denial of request to remove from YouTube videos containing negative depictions of African–Brazilian beliefs – Whether videos infringing rights of depicted groups – Law12.966/2014

Ministério Público Federal v Google Brasil Internet Ltda

Ação Civil Pública (Civil Action) no 0004747-33.2014.4.02.5101
(2014.51.01.004747-2): 17^a Vara Federal do Rio de Janeiro (17th Federal Court
of Rio de Janeiro): Eugenio Rosa de Araujo J: 28 April 2014

[2015] OJLR 4(1) 167

HUMAN RIGHTS: FREEDOM OF ASSEMBLY AND ASSOCIATION

Human Rights – Freedom of assembly or association – Effective remedy for breach – Freedom of assembly or association in conjunction with freedom from discrimination – Moldovan non-governmental organization providing information to and assisting Lesbian, gay, bisexual and transgender community – After following appeal procedure receiving final refusal for request for peaceful demonstration a year and a half after lodging request despite provision of initial five-day time limit prescribed by law – Whether, in light of time taken for refusal, organization able to obtain effective remedy before national authority for breach of Convention right – Whether organization discriminated against in comparison with other organizations due to its promotion of the interests of gay community – European Convention on Human Rights, art 11 in conjunction with art 13 – art 11 in conjunction with art 14

Genderdoc-M v Republic of Moldova

(Application no 9106/06): European Court of Human Rights (Third Section):
Casadevall (President), Gyulumyan, Myjer, Sikuta, Ziemele, Lopez Guerra,
Pardalos JJ: Myer J concurring, Gyulumyan and Ziemele JJ dissenting: 12 June

2012

[2013] OJLR 2(1) 223

Human rights – Freedom of assembly and association – Freedom of expression – Interference with – Defendant members of ‘Occupy Movement’ setting up encampment next to St Paul’s cathedral in City of London to protest against perceived inability of traditional democratic institutions to cope with world’s most pressing problems – Majority of area taken up with encampment consisting of land owned by local authority – Also using open land owned by cathedral including churchyard – Local authority seeking orders for possession, removal of tents and prohibition of future encampment – High Court granting orders – Defendants applying for leave to appeal – Whether defendants entitled to invoke freedom of expression and freedom of assembly in respect of maintenance of camp – Limits to right of lawful assembly and protest – Human Rights Act 1998, Sch I, Pt I, arts 10 and 11

City of London v Samede and others

[2012] EWCA Civ 160: Court of Appeal (England and Wales) (Civil Division): Lord Neuberger MR, Stanley Burnton and McFarlane LJ: 22 February 2012

[2012] OJLR 1(2) 533-534

Human rights – Freedom of assembly and association – Right to form trade union – Interference with – 35 members of clergy and lay staff of Orthodox Church forming union to protect members’ rights – President of union petitioning court to grant legal personality to union and allow entry into register of trade unions – First instance court granting legal personality and registering union – County court allowing archdiocese’s appeal on grounds (i) priests exercising managerial functions therefore prohibited from forming trade union, (ii) clergy required by canon law to obtain consent from synod to form trade union, (iii) restriction necessary to protect orthodox Christian tradition, (iv) church should not be required to consult with independent body before reaching decisions on ecclesiastical matters – Whether restriction imposed by archdiocese amounting to interference with priest’s and lay staff’s freedom of association – Whether interference with church’s freedom of religion and association – European Convention on Human Rights, arts 9 and 11

Sindicatul “Păstorul cel Bun” v Romania

(Application no 2330/09): European Court of Human Rights (Third Section): Casadevall, Myjer, Šikuta, Ziemele, Tsotsoria, Poalelungi, Pardalos JJ; Ziemele and Tsotsoria JJ dissenting: 31 January 2012

[2012] OJLR 1(2) 525-526

Human rights – Freedom of assembly and association – Right to form trade union – Interference with – 35 members of clergy and lay staff of Orthodox Church forming union to protect members’ rights – President of union petitioning court to grant legal personality to union and allow entry into register of trade unions – First instance court granting legal personality and registering union – County court allowing archdiocese’s appeal and revoking registration on grounds (i) priests exercising managerial functions therefore prohibited from forming trade union, (ii) clergy required by canon law to obtain consent from synod to form trade union, (iii) restriction necessary to protect Orthodox Christian tradition, (iv) church should not be required to consult with independent body before reaching decisions on ecclesiastical matters – European Court of Human Rights

Third Section ruling violation of right to freedom of association on grounds interference with union's right to form not proportionate in light of government goal – Whether special features of clergy duties sufficient to remove relationship between clergy and Church from ambit of art 11 – Whether aim of protecting Church's interests legitimate, prescribed by law, and necessary in a democratic society to preserve Church's religious autonomy – European Convention on Human Rights, arts 9, 11

Sindicatul 'Păstorul cel Bun' v Romania

(Application No 2330/09): ECtHR (Grand Chamber): Spielmann, Raimondi, Villiger, Berro-Lefèvre, Zupančič, Steiner, Jočienė, Popović, Nicolaou, López Guerra, Bianku, De Gaetano, Nußberger, Sicilianos, Møse, Jäderblom, Wojtyczek JJ; Wojtyczek J concurring; Spielmann, Villiger, López Guerra, Bianku, Møse, Jäderblom JJ partly dissenting: 9 July 2013

[2014] OJLR 3(1) 182-183

HUMAN RIGHTS: FREEDOM OF EXPRESSION

Freedom of religion or belief – Freedom of expression – Criminal law – Mr D detained under a suspicion of entrapment charge for sharing videos on his Facebook profile paying tribute to jihad and ISIS in Syria – Tribunal of Surveillance ordering Mr D's release pending trial – Whether a 'like' on a Facebook page or video sufficient grounds for prosecution for entrapment – Whether small group paying tribute to jihad and to Islamic groups fighting in Syria could be considered terrorist association – Italian Criminal Code, arts 270 and 414

Corte Suprema di Cassazione, Quinta sezione penale, decision no 55418/2017 : No 55418/2017

Supreme Court of Cassation, Fifth Criminal Division, Italy: Vessichelli, President; Scotti, Catena, Miccoli, Counsellors; Fidanzia, Counsellor and rapporteur: 12 December 2017

[2018] OJLR 7(2) 359

Human Rights – Freedom of expression – Interference with – Two US authors with Islamophobic views seeking entry to the United Kingdom to speak at rally soon after religiously motivated murder of serviceman on British street – Entry refused by Home Secretary on Police advice that visit would not be conducive to public good, would undermine community cohesion, and could cause serious violence – US authors' application for permission to make claim for judicial review of Home Secretary's decision refused – Appeal to Court of Appeal – Whether Home Secretary's exclusion order based on 'unacceptable behaviours' policy lawful – Whether infringement of right to freedom of expression – Whether US authors' should be permitted to make claim for judicial review – Human Rights Act 1998, Sch 1, Pt 1, art 10.

R (Geller & Anor) v Secretary of State for the Home Department

[2015] EWCA Civ 45: Court of Appeal (England and Wales) (Civil Division): Patten, Tomlinson, and Floyd LJJ: 5 February 2015

[2015] OJLR 4(3) 540-541

Human Rights – Freedom of expression – Interference with – Church elders placing advertisement in newspaper in opposition to Gay Pride March – Advertisement quoting scripture and inviting readers to gospel witness against act of sodomy – Advertising

Standards Authority concluding that text did not condone and was not likely to provoke violence but that some of text was homophobic and likely to cause or had caused serious offence on grounds of sexual orientation and therefore was in breach of British code of advertising – Whether interference with church elders' right to freedom of expression – Human Rights Act 1998, Schedule 1, Part 1, Article 10

In re Kirk Session of Sandown Free Presbyterian Church

[2011] NIQB: 26 High Court in Northern Ireland: Treacy J: 22 March 2011

[2012] OJLR 1(1) 295

Human rights – Freedom of expression – Interference with – *Non-profit association aiming to make contact with extraterrestrials, advocating human cloning and genocracy – Subject to criminal complaints about sexual practices involving children – Swiss land management directorate refusing to allow association to put posters up on public facilities on grounds association engaged in activities considered immoral and contrary to public order – Whether infringement of association's right to freedom of expression – European Convention on Human Rights, art 10*

Mouvement raëlin suisse v Switzerland

(Application no 16354/06): European Court of Human Rights (Grand Chamber): Bratza (President), Tulkens, Casadevall, Bîrsan, Myjer, Villiger, Hirvelä, Sajó, Lazarova Trajkovska, Bianku, Power-Forde, Poalelungi, Vučinić, Pardalos, Yudkivska, Pinto de Albuquerque, Keller JJ: Bratza J concurring, Tulkens, Sajó, Lazaroa, Trajkovska, Bianku, Power-Forde, Vučinić and Yudkivska JJ dissenting: 13 July 2012

[2013] OJLR I-224

Human rights – Freedom of Expression – Interference with – *Turkish criminal code imposing criminal penalties for incitement to evade military service – Applicant conscientious objector and part of gathering of Anti-Militarist Platform in front of Israeli consulate in Istanbul in support of Israeli conscientious objectors – Applicant read out statement for press entitled 'We are in solidarity with the Israeli conscientious objectors' – Sentenced to five months imprisonment by Istanbul criminal court – Decision upheld on appeal – Whether interference with freedom of expression necessary in a democratic society – European Convention on Human Rights, art 10*

Savda v Turkey (No 2)

Application no 2458/12: European Court of Human Rights (Second Section): Laffranque, Karakaş, Vučinić, Lemmens, Turković, Fridrik Kjølbro, Mourou-Vikström JJ: 15 November 2016

[2017] OJLR 6(2) 427-428

Human rights – Freedom of expression – Interference with – *Applicant clothing company making references to religious figures in advertisements – State Consumer Rights Protection Authority ('SCRPA') receiving complaints about advertisements – SCRPA seeking opinion of Lithuanian Advertising Agency ('LAA') – LAA stating that advertisements breaching Code of Advertising Ethics – SCRPA forwarding opinion and complaints to State Inspectorate of Non-Food Products – Inspectorate finding that advertisements might be in violation of national Law on Advertising – Applicant company submitting to SCRPA that references to 'Jesus' and 'Mary' intended as emotional*

interjections common in spoken Lithuanian – Also arguing that in absence of a State religion, the interests of one group, namely practising Catholics, could not be equated to those of society as a whole – SCRPA finding that advertisements contrary to public morals and in violation of the Law on Advertising – Applicant companys' complaints to regional administrative court and Supreme Administrative Court dismissed – Supreme Administrative Court finding that inappropriate use of symbols of a religious nature contrary to universally accepted moral and ethical norms – President of Supreme Administrative Court's application to re-examine the case on the basis that there may have been an unlawful or disproportionate restriction on applicant company's freedom of expression refused – Whether ban infringement of freedom of expression – Whether necessary and proportionate interference with freedom of expression for the protection of morals and the rights of others – Whether contracting state exceeding margin of appreciation – European Convention on Human Rights, art 10

Sekmadienis Ltd v Lithuania

Application no 69317/14: European Court of Human Rights (Fourth Section):
Yudkivska, President, De Gaetano, Vehabovic, Kuris, Ransoni, Ravarani,
Paczolay JJ; De Gaetano J concurring: 30 January 2018

[2018] OJLR 7(2) 349-351

Human Rights – Freedom of expression – Interference with – *Church members carrying out anti-homosexual demonstration against United States government's political and moral conduct – Displaying signs near funeral of military service member – Deceased's father claiming damages for intentional infliction of emotional distress – Whether speech of public concern and consequently protected by First Amendment – Whether freedom of speech within the meaning of the First Amendment shielded picketers from liability in tort – Whether captive audience doctrine applied – USCA Const Amend 1; US Sup Ct Rule 14.1(g), 28 USCA*

Snyder v Phelps

(Docket No 09-751): Supreme Court of the United States: Roberts CJ, with
Scalia, Kennedy, Thomas, Ginsburg, Breyer, Sotomayor and Kagan JJ, Breyer J
concurring, Alito J dissenting: 2 March 2011

[2012] OJLR 1(1) 294

Human Rights – Freedom of expression – Interference with – *Citizens distributing anti-homosexual literature in secondary school – Supreme Court convicting for agitation against national or ethnic group – Whether law on agitation against national or ethnic group sufficiently clear – Whether interference with freedom of expression necessary in democratic society for protection of reputation and rights of others – Whether nature and severity of penalties imposed proportional to offence – European Convention on Human Rights, arts 7 and 10*

Vejdeland and others v Sweden

(Application no 1813/07): European Court of Human Rights (Fifth Section):
Spielmann, Fura, Jungwiert, Nussberger, Zupančič, Villiger, Yudkivska JJ;
Spielmann J concurring joined by Nussberger J; Zupančič J concurring;
Yudkivska concurring joined by Villiger J: 15 March 2012

[2013] OJLR 2(1) 222

Human Rights – Freedom of expression – Public nudity – Applicant having sincerely held belief in inoffensiveness of the naked human body and expressing this by appearing nude in public places – Between July 2003 and July 2012 arrested for 42 offences in Scotland – Offences primarily for breach of the peace but also breach of bail conditions and contempt of court, arising from refusal to wear clothes in court – Applicant complaining that UK had violated right to freedom of expression, freedom of religion, and right to privacy as a result of criminal actions brought against him and in relation to his subsequent treatment in prison – Whether applicant’s belief in inoffensiveness of the naked human body (i) was a form of expression, (ii) was protected by the right to privacy, and (iii) amounted to a religious belief – Whether UK law on public nudity within margin of appreciation – Whether G had exhausted domestic remedies before bringing claim – European Convention on Human Rights, arts 8, 9, and 10

Gough v United Kingdom

Application no 49327/11: European Court of Human Rights (Fourth Section):
Ziemele, President, Hirvelä, Bianku, Tsotsoria, Mahoney, Wojtyczek, Vehabović
JJ 28 October 2014

[2015] OJLR 4(2) 326

Human rights – Freedom of expression – Religion or belief – Public authority rejecting applications for public advertisements that were ‘likely to cause widespread or serious offence’ or ‘related to matters of public controversy or sensitivity’ – Public authority permitting advertisement on bus by organization working for equality for homosexuals – Refusing advertisement by Christian organization implying homosexual orientation capable of being changed – Judge at first instance ruling infringement of claimant’s right to freedom of expression lawful – Claimant appealing and adducing fresh evidence – Whether refusal to advertise contrary to claimant’s Convention right to freedom of expression – Whether Convention right to manifest religion or belief infringed – Whether refusal unlawfully discriminating against claimant – Human Rights Act 1998, Sch 1, Pt I, arts 9, 10, 14 – Equality Act 2010, ss 12(1), 149(1)

R (Core Issues Trust) v Transport for London

[2014] EWCA Civ 34: Court of Appeal (England and Wales) (Civil Division) Lord
Dyson MR, Briggs, Christopher Clarke LJ: 27 January 2014

[2014] OJLR 3(2) 366-367

Human rights – Freedom of expression – Right to private and family life – Interference with – Prime Minister’s Office and Home Office press release announcing coming into force of revised Prevent Duty Guidance under Counter-Terrorism and Security Act 2015 (CTSA) – Guidance explaining how further educational institutions should give effect to their duty under CTSA – Press release referring to campus events featuring ‘hate speakers’ – Extremism Analysis Unit (EAU) within Home Office opposing inclusion of names in press release – Claimant named on press release as expressing views contrary to British values on campus – Claimant seeking judicial review of revised Guidance documents as claiming to be adversely affected by being named on press release – Claiming documents unlawful since going beyond powers conferred upon Secretary of State by CTSA – Claiming documents failing to comply with duty in CTSA to have particular regard to duty to ensure free speech in higher education institutions – Claiming documents breaching common law and free speech rights under art 10 of the European Convention on Human Rights since lacking clarity, legitimate need, and proportionality – Also that collection, storage, and dissemination of data by EAU breaching rights under art

8 of the Convention and amounting to unauthorized 'directed surveillance' under Regulation of Investigatory Powers Act 2000 – Whether Guidance documents ultra vires – Whether failing to comply with duty to have particular regard to ensure free speech in higher education institutions – Whether infringement of right to freedom of expression – Whether infringement of right to private and family life – Whether collection, storage, and dissemination of data breaching art 8 rights – Whether amounting to unauthorized directed surveillance – CTSA 2015, ss 26, 29, and 31 – Education (No. 2) Act 1986, s 43 – Regulation of Investigatory Powers Act 2000, s 26 – CTSA 2015 (Risk of Being Drawn into Terrorism) (Guidance) Regulations 2015 SI 2015/1697

Butt v Secretary of State for the Home Department

[2017] EWHC 1930 (Admin): High Court of Justice (England and Wales), Queen's Bench Division (Administrative Court): Ouseley J: 26 July 2017

[2018] OJLR 7(1) 170

HUMAN RIGHTS: FREEDOM OF RELIGION OR BELIEF and FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Human rights – Freedom of religion or belief – Best interests of the child – Interference with – Mayor of Chalon-sur-Saône deciding to end substitute menus in school canteens – Decision meaning children not eating pork not provided with alternatives – Municipal council of Chalon-sur-Saône approving regulation of school canteens entailing removal of all menu substitutions – Claimant Muslim Legal Defence League (LDJM) applying to annul mayor of Chalon-sur-Saône's decision – Claimant arguing decision marred by incompetence and violating freedom of conscience and religion – Municipality of Chalon-sur-Saône dismissing application – Whether measure ending substitute menus falling within sphere of constitutional principle of free administration of territorial authorities – Whether giving due consideration to the best interests of the child – Code of Administrative Justice – United Nations (UN) Convention on the Rights of the Child, art 3(1)

Ligue de défense judiciaire des musulmans et autres

No 1502100, 1502726: Le tribunal administratif de Dijon (Dijon Administrative Court), France: Mr A, President-Rapporteur, and Mr B, Public Rapporteur: 28 August 2017

[2018] OJLR 7(1) 163

Human rights – Freedom of religion or belief – Determination of civil rights and obligations 'within a reasonable time' – Effective remedy for violation of Convention rights – Public prosecutor instructing police in 1995 to restrict religious organization's access to places where it could hold meetings based on concern that the organization's influence upon its members could lead to an increased risk of psychological problems – Religious organization meeting in members' homes – Police search of home and seizure of property of member of religious organization declared unlawful by national courts – No damages awarded because police had acted on prosecutor's orders – Whether state had provided a determination of applicant's civil rights and obligations 'within a reasonable time' – Whether applicant's right to freedom of religion or belief had been breached – Whether applicant had been denied an effective remedy – European Convention on Human Rights, arts 6 § 1, 9, and 9 § 2 in conjunction with art 13.

Dimitrova v Bulgaria Application no 15452/07

European Court of Human Rights (Fourth Section); Raimondi (President); Hirvelä, Bianku, Tsotsoria, Mahoney, Wojtyczek, JJ; Panova, ad hoc judge: 10 February 2015

[2015] OJLR 4(3) 542-543

Human rights – Freedom of religion or belief – Discrimination in exercise of – Civil service Examination Board of State of Paraná setting civil-service examination for the position of police investigator on Saturday morning – Denying Seventh-day Adventist right to sit examination on Saturday evening in order that he might observe Adventist's obligatory Sabbath on Saturday morning – Lower court granting injunction in claimant's favor on grounds of equality for candidates in public service positions and constitutional right to freedom of religion – Whether civil services' refusal to offer alternative examination time amounting to discrimination on grounds of religion – Constitution of the Federative Republic of Brazil of 1988 art 3, para IV, and art 5, para VI

Estado do Paraná v Loewen: (Apelação Cível (Civil Appeal) no 934.028-1)

Foro Central da Comarca da Região Metropolitana de Curitiba 3ª Vara da Fazenda Pública, Falências e Recuperação Judicial (Central Court of the Judicial District of the Metropolitan Region of Curitiba 3rd, Court of Exchequer, Bankruptcy and Judicial Recovery): Calixto J: 18 September 2012

[2013] OJLR 2(2) 479-480

(1) Human Rights – Freedom of religion and belief – Discrimination in exercise thereof – Austrian law providing that recognized religious societies exempt from laws concerning employment of foreigners – Registered religious community of Jehovah's Witnesses seeking declaratory decision that pastoral work to be carried out for it in Austria by two Philippino citizens was exempt from employment of foreigners provisions – National court ruling only ministers performing pastoral duties belonging to recognized religious societies exempt – Whether discrimination against religious community in exercise of freedom of religion – European Convention on Human Rights, art 9 in conjunction with art 14

(2) Human Rights – Right to peaceful enjoyment of possessions – Freedom from discrimination in exercise of – Austrian law providing that recognized religious societies exempt from payment of tax – Registered religious community of Jehovah's Witnesses receiving donation and seeking exemption from tax – National court ruling religious community could not rely on tax privilege reserved for religious society and that religious community was not a charitable institution since its constitutional documents addressed its activities to its members alone and it did not promote interests of general public – Whether discrimination against religious community in exercise of right to peaceful enjoyment of possessions – European Convention on Human Rights, art 14 in conjunction with art 1 of Protocol 1

Jehovas Zeugen in Österreich v Austria

(Application no 27540/05): European Court of Human Rights (First Section): Vajic (President), Lorenzen, Steiner, Lazarova Trajkovska, Laffranque, Sicilianos, Møse, JJ: 22 September 2012

[2013] OJLR I-225

Human rights – Freedom of religion or belief – Fair trial – Effective remedy – Domestic law requiring witnesses in criminal trials to state name, place of birth, home address, age, and religion – Director of Greek human rights NGO called as witness in criminal proceedings – Head of anti-Semitism issues for NGO joined as civil party in criminal proceedings – Director informing court he was atheist to avoid taking religious oath – Nevertheless having to reveal not an orthodox Christian – Head revealing her Jewish faith – Whether obligation to reveal religious convictions infringement of Director's freedom of religion – Whether national law providing effective remedy for infringement – Whether right to fair trial engaged – European Convention on Human Rights arts 6, 9, 13, 41, 46

Dimitras and Gilbert v Greece

Application no 36836/09: European Court of Human Rights (First Section): Trajkovska (President) and Turković JJ: 2 October 2014

[2015] OJLR 4(1) 160

Human rights – Freedom of religion or belief – Freedom from discrimination in exercise thereof – Members of Alevi religious minority group ('Members') petitioned Turkish government complaining Religious Affairs Department confined activities to Sunni school of Islamic thought and disregarded all other faiths – Members' requests included same religious public service for Alevi faith followers as majority Sunni followers, recognition of Alevi religious leaders and cemeteries being granted status of places of worship – Government refusing requests, application for judicial review dismissed, appeal dismissed – Whether government's refusal interfered with Alevi's right to freedom of religion – Whether discrimination against Alevi on grounds of their religion – European Convention on Human Rights, art 9 in conjunction with art 14

Izzettin Doğan and others v Turkey

Application no 62649/10: European Court of Human Rights (Grand Chamber): Raimondi (President), Spielmann, Sajó, Karakaş, Casadevall, Villiger, Bianku, Laffranque, Keller, Potocki, Lemmens, Silvis, Vehabović, Spano, Motoc, Kjølbro, Grozev: 26 April 2016

[2016] OJLR 5(3) 618-619

Human rights – Freedom of religion or belief – Freedom of expression – Interference with – Claimant student on Sheffield University's MA in Social Work course leading to professional registration – Claimant making online comments on news website describing same-gender relations as a sin – Comments drawn to attention of Sheffield University authorities – University authorities initiating investigation – Departmental investigating team holding concluding that there were areas of fitness to practise (FTP) concern – FTP Panel finding serious breach of professional requirements to keep high standards of personal conduct and to make sure behaviour did not damage public confidence in the profession – Panel noting lack of evidence that claimant would refrain from presenting his views in the same way in future – Concluding that claimant should be removed from course and permitted to enrol on another programme not leading to professional qualification – Claimant appealing decision as manifestly unreasonable – Alleging being sanctioned for lawful expression of orthodox religious views outside of a work context and despite their having no impact on his work and professional abilities – Appeals Committee of the Sheffield University Senate rejecting appeal – Claimant bringing judicial review challenge against decision to remove him from university course – Whether decision to remove claimant from university course unlawful interference with his rights to freedom of religion

and freedom of expression – Whether decision arbitrary and unfair in substance – Human Rights Act 1998 – European Convention on Human Rights, arts 9 and 10

R (on the application of Ngole) v University of Sheffield

[2017] EWHC 2669 (Admin): Collins Rice J: 27 October 2017

[2018] OJLR 7(2) 351-352

Human Rights – Freedom of religion or belief – Funding of religious bodies – Cooperation agreement between the Spanish State and religious bodies – International Agreement between Spanish State and the Holy See allowing Spanish income tax payers to opt to donate 0.7 per cent of their taxes to the Catholic church – Spanish state's agreement with the Federation of Evangelical Religious Entities of Spain (FEDERE) including no such provision – Treasury refusing FEDERE request for tax benefit – FEDERE appealing to the Administrative Section of the National Audience – Whether sufficient juridical or factual reasons to require that Treasury grant FEDERE direct financing through income tax – Agreement between the Holy See and the Spanish State, 3 January 1979 – Agreement with Federation of Evangelical Religious Entities of Spain 1992

Audiencia Nacional (Sala de lo Contencioso-Administrativo, Sección 7)

Sentencia no 894/2015, de 25 Mayo 2015: No 894/2015 National Audience, Sala de lo Contencioso-Administrativo, sección 7a: José Luis López-Muñiz Goñi (Ponente): 25 May 2015

[2017] OJLR 6(3) 629

Human Rights – Freedom of Religion or Belief – Funding of Religious Bodies – Cooperation Agreements between State and Religious Bodies – Special Regional Law of Navarra partially repealing exemption from the Tax on Estates for religious bodies by limiting that exemption to estates of Roman Catholic Church and other bodies with an agreement of co-operation with the State 'as long as they "are" used for the purposes of worship and liturgy' – President of Spanish government appealing against unconstitutional nature of this Law – (1) Whether exemption only applicable when estates were used exclusively for the purposes of worship and liturgy (2) Whether Special Regional Law of Navarra (Ley Foral) 10/2013, of 12th March unconstitutional in the light of the Cooperation Agreement between State and Catholic Church (3) Whether Special Regional Law of Navarra unconstitutional in the light of Cooperation Agreements with other religious bodies – Whether Special Regional Law of Navarra in breach of collective religious freedom – Organic Law on Religious Freedom 7/1980 – Spanish Constitution, art 16 - Statute on the Regional Framework and Powers of Navarra (Estatuto de Autonomía)

Constitutional Court Case No 207/2013

Constitutional Court, Spain: Santiago Martínez-Vares, Chair of the panel: 5 December 2013

[2014] OJLR 3(2) 359

Human Rights – Freedom of religion or belief – Interference with – Respondent state imposing compulsory military service without provision for alternative civil service – Imprisoning applicant Jehovah's witness for refusal to carry out military service on grounds of religious belief – Whether applicant's conviction violation of right to freedom of religion – European Convention on Human Rights, Articles 4(3)(b), 9

Bayatyan v Armenia

(Application no 23459/03): European Court of Human Rights (Grand Chamber): Costa (President), Rozakis, Bratza, Lorenzen, Tulkens, Vajič, Garlicki, Gyulumyan, Spielmann, Jaeger, Jebens, Hirvelč, Trajkovska, Bianku, Poalelungi, Vučinič, Raimondi JJ: 7 July 2011

[2012] OJLR 1(1) 292-293

Human rights – Freedom of religion or belief – Interference with – Russian law providing that ‘a religious organisation’ was a voluntary association of Russian nationals and permanent residents of Russia formed for the profession and dissemination of faith and duly registered as legal entity – Justice Department carrying out religious study and refusing to register Church of Scientology of St Petersburg as ‘religious organisation’ on grounds of ‘non-religious’ nature of group as well as on technical grounds and on ‘unreliability’ of group’s existence for fifteen years – Refusal upheld on appeal to St Petersburg City Court – Whether refusal to register as religious organization violation of right to freedom of religion in the light of freedom of association – European Convention on Human Rights, art 9 in conjunction with art 11

Church of Scientology of St Petersburg & Others v Russia

Application no 47191/06: European Court of Human Rights (First Section); Berro-Lefèvre, Laffranque, Pinto de Albuquerque, Sicilianos, Møse, Turković, Dedov: 2 October 2014

[2015] OJLR 4(1) 155-156

Human rights – Freedom of religion or belief – Interference with – Respondent Muslim former member of Royal Bahamian Defence Force – Appellants Commodore of the Force, the Attorney General and three individuals involved in charging or seeking to discipline the respondent – 1993 Memorandum allowing non-Christians to fall out during Christian prayers – 2006 Memorandum requiring all personnel to remain present for prayers during ceremonial parades and colours ceremonies – ‘Caps off’ order issued immediately before prayers – Respondent leaving colours ceremonies when prayers were about to take place – Respondent charged with disobedience – Respondent challenging constitutionality of 2006 Memorandum and claiming damages – Appellants arguing that 2006 Memorandum did not infringe respondent’s rights and/or was justified to ensure efficient administration of the Force – Respondent awarded \$10,000 damages at first instance – Court of Appeal dismissing appellants’ appeal – Whether requirement to remain present during prayers hindered the respondent in the enjoyment of his freedom of conscience – Whether requirement to remain present during prayers justified to ensure efficient administration of the Force – The Constitution of the Bahamas, art 22 – Coral Harbour Temporary Memorandum No 20/93 (‘the 1993 Memorandum’) – Temporary Memorandum No 67/06 (‘the 2006 Memorandum’)

Commodore Royal Bahamas Defence Force and Others v Laramore (Bahamas)

[2017] UKPC 13: Judicial Committee of the Privy Council: Mance, Kerr, Sumption, Reed and Hughes LJJ: 8 May 2017

[2017] OJLR 6(3) 626

Human rights – Freedom of religion or belief – Interference with – Buddhist inmate filing appeal to Surveillance Court of Novara against prison administration denial of Buddhist chaplaincy and vegetarian meals – Surveillance Court refusing to initiate judicial

procedure on ground fundamental rights not engaged – Surveillance Court rejecting complaint by informal procedure – Applicant challenging decision in Court of Cassation alleging violation of religious freedom by prison administration – Whether Surveillance Court should have activated judicial procedure to decide case on the merits – Whether denial of chaplaincy and refusal to accommodate religious dietary requirements could found appeal based on right to freedom of religion – Italian Constitution, arts 2, 8, 9, 19 – Prison Law Code, arts 14ter and 69

Corte di Cassazione – Sez. I Penale 41474/2013

Court of Cassation – Penal section, Italy: 7 October 2013

[2014] OJLR 3(2) 356-357

Human rights – Freedom of religion or belief – Interference with – Applicant religious association Foundation for Republican Education and Culture – Applicant running the Yenibosna Cultural Centre including a ‘cemevi’ which was a place of worship dedicated to the exercise of religion of Alevi – Legislation providing that electricity bills of places of worship would be paid from a fund administered by the Directorate of Religious Affairs – Applicant applying for but being denied an exemption from having to pay electricity bills – Court’s decision being based on the Directorate’s assessment that Alevism was not a religion and that cemevis were not places of worship – Whether discrimination in enjoyment of right to religious freedom – Whether refusal by authorities to grant the status of place of worship to the Yenibosna Centre violation of right to freedom of religion – European Convention on Human Rights, art 14 in conjunction with art 9, art 9

Cumhuriyetçi Eğitim Ve Kültür Merkezi Vakfı v Turkey

Application no 32093/10: European Court of Human Rights: Raimondi (President), Karakaş, Sajó, Keller, Lemmens, Spano, Kjølbros; Sajó partly dissenting 2 December 2014

[2015] OJLR 4(2) 324-325

Human rights – Freedom of religion or belief – Interference with – Application for judicial review of blasphemy law by coalition of NGOs – Whether the Blasphemy Law in breach of constitutional right to freedom of religion – Constitutional review – Presidential Decree No 1/PNPS/1965 on the Prevention of the Misuse/Insulting of a Religion (made into a law by Law 5/1969, known as the Blasphemy Law) arts 1–4 – Indonesian Constitution arts 1(3), 28D(1), 28 E, 28I, 28 J(2), 29 – ICCPR, art 18

Decision No 140/PUU-VII/2009

Constitutional Court, Republic of Indonesia: Moh. Mahfud MD (CJ), Achmad Sodiki, M. Arsyad Sanusi, M. Akil Mochtar, Muhammad Alim, Ahmad Fadlil Sumadi, Hamdan Zoelva, Harjono (concurring opinion) and Maria Farida Indrati (dissenting opinion): 19 April 2010.

[2012] OJLR 1(2) 527-528

Human Rights – Religion or belief – Interference with – Health workers - Petitioner senior midwives having supervisory and support role on labour ward where terminations carried out – Objecting to terminations on religious grounds and exercising statutory right not to ‘participate’ in abortion – Seeking declaration that right extending to not supervising staff directly involved with patients undergoing terminations – Whether supervision and

support of such staff within meaning of participation in abortion – Whether requirement to supervise and support amounting to interference with petitioners’ manifestation of religious beliefs – Abortion Act 1967, s 4(1) – Human Rights Act 1998, Sch 1, Pt 1, art 9

Doogan and another v Greater Glasgow and Clyde Health Board

[2012] CSOH 32; Doogan and another v Greater Glasgow and Clyde Health Board: Court of Session (Outer House) (Scotland): Lady Smith: 29 February 2012

[2012] OJLR 1(2) 532-533

Human Rights – Freedom of religion or belief – Interference with – Health workers

– Petitioners senior midwives having supervisory and support role on labour ward where terminations carried out – Objecting to terminations on religious grounds and exercising statutory right not to ‘participate’ in abortion – Seeking declaration that right extending to not supervising staff directly involved with patients undergoing terminations – Whether supervision and support of such staff within meaning of participation in abortion – Whether requirement to supervise and support amounting to interference with petitioners’ manifestation of religious beliefs – Abortion Act 1967, s 4(1) – Human Rights Act 1998, sch 1, pt 1, art 9

Doogan and another v Greater Glasgow and Clyde Health Board

[2013] CSIH 36; Court of Session Inner House (Extra Division): Lord Mackay of Drumadoon, Lady Dorrian, Lord McEwan: 24 April 2013

[2013] OJLR 2(2) 481

Human Rights – Freedom of religion or belief – Interference with – Healthworkers –

Petitioner senior midwives having supervisory and support role on labour ward where terminations carried out – Objecting to terminations on religious grounds and exercising statutory right not to ‘participate’ in abortion – Seeking declaration that right extending to not supervising staff directly involved with patients undergoing terminations – Whether supervision and support of such staff within meaning of participation in abortion – Abortion Act 1967, s 4

Doogan and another v Greater Glasgow and Clyde Health Board

[2014] UKSC 68; Supreme Court (Scotland): Baroness Hale of Richmond DPSC, Lord Wilson, Lord Reed, Lord Hughes, Lord Hodge JJSC: 17 December 2014

[2015] OJLR 4(2) 328-329

Human Rights – Freedom of religion or belief – Interference with – Regional Council refusing application of eight Moldovan nationals to confirm status and register religious denomination of Christian Orthodox Church – Supreme Court of Moldova ordering Regional Council to issue relevant confirmation – Enforcement of Court’s judgment postponed pending outcome of civil proceedings concerning church property – Parliament subsequently adopting law eliminating requirement for confirmation of existence of religious denominations prior to registration – Whether refusal to confirm status and register church violation of right to freedom of religion – European Convention on Human Rights, art 9 in conjunction with arts 6, 11

Fusu Arcadie and others v The Republic of Moldova

(Application no 22218/06): European Court of Human Rights (Third Section): Casadevall, President, Bîrsan, Myjer, Šikuta, Ziemele, Tsotsoria, JJ Răducanu, ad hoc J: 17 July 2012

[2013] OJLR 2(1) 225

Human rights – Freedom of religion and belief – Interference with – Violent disruption of Muslim prayers outside Sofia Mosque by protestors from right-wing Bulgarian political party known for anti-Islamic views – Failure of Bulgarian authorities to take adequate steps to prevent or investigate disruption – Complaint by a worshipper at the mosque – Whether violation of right not to be subject to inhuman or degrading treatment, freedom of religion and private and family life either alone or in conjunction with right not to be discriminated against – European Convention on Human Rights, art 9.

Karahmed v Bulgaria

Application no 30587/13: European Court of Human Rights (Fourth Section); Raimondi (President), Hirvelä, Nicolaou, Tsotsoria, Kalaydjieva, Wojtyczek, Vehabović, JJ: 24 February 2015

[2016] OJLR 366

Human Rights – Freedom of religion or belief – Interference with – Defendant charged with witness intimidation – Refusing, on grounds of religious belief, to remove niqab to reveal face during proceedings in Crown Court – Whether requirement that defendant remove niqab interference with freedom to manifest religious belief – Balancing right to fair trial against rights and freedoms of others – Human Rights Act 1998, Sch 1, Pt 1, art 9

R v D(R)

The Crown Court at Blackfriars: HH Judge Peter Murphy: 16 September 2013

[2014] OJLR 3(1) 176

Human rights – Freedom of religion or belief – Interference with – Applicant arrested in 2005, tried and found guilty in 2014, on appeal case remitted to first instance court – Length of proceedings exceeding proscribed limit for pretrial detention in Hungarian law and applicant consequently granted house arrest at friend's location – Applicant, at own request, moved to new location at campsite – Campsite considered unsuitable location for winter residence – Applicant allowed to visit mother and terminally ill father during house arrest – Anonymous note about Applicant's intentions – Applicant's request to attend Mass refused – Whether infringement of right to liberty and security of the person – Whether infringement of the right to fair trial – Whether infringement of right to freedom of religion – European Convention on Human Rights, arts 5(3), 5(4), 6(1), 8, 9

Süveges v Hungary

Application no 50255/12: European Court of Human Rights (Fourth Section): De Gaetano (President), Sajó, Zupančič, Tsotsoria, Wojtyczek, Kūris, Kucsko-Stadmayer JJ; Wojtyczek partly dissenting: 5 January 2016

[2016] OJLR 5(2) 377

Human rights – Freedom of religion or belief – Interference with – Claimant recognized religious group in Brazil – Secretary of State refusing claimant's application for licence to import, possess, and supply hoasca tea for the purposes of consumption by its

congregation – Hoasca containing Class A drug controlled under Misuse of Drugs Act 1971 – Claimant seeking judicial review of Secretary of State’s decision, arguing decision breach of its members’ rights to manifest their religion or beliefs – Claimant’s application for judicial review refused on the papers – Claimant making renewed application for judicial review – Whether decision infringement of right to freedom of religion of members of claimant’s congregation – Whether necessary and proportionate interference with right to freedom of religion or belief – European Convention on Human Rights, art 9 – Misuse of Drugs Act 1971, s 7 – United Nations (UN) Convention on Psychotropic Substances 1971, art 7

Beneficent Spiritist Center União do Vegetal v Secretary of State for the Home Department

[2017] EWHC 1963 (Admin): High Court of Justice (England and Wales), Queen’s Bench Division (Administrative Court): Sir Ross Cranston: 28 June 2017

[2018] OJLR 7(1) 169

Human rights – Freedom of religion or belief – Interference with – Applicant beekeepers registering for Value Added Tax purposes in order to recover input tax – Applying for exemption from online filing of VAT returns on grounds that Seventh-day Adventist faith requiring believers to keep themselves righteous for second coming of Christ by acting in accordance with their own conscience – Applicants interpreting ‘righteous’ to mean abstaining from use of computers – HM Revenue and Customs finding that applicant’s practice was personal preference falling outside tenets of definable faith and that applicants were not therefore entitled to exemption because they were not ‘practicing member[s] of a religious society whose beliefs [were] incompatible with the use of electronic communications’ in accordance with Regulations – Application for review – Whether exemption arising because beliefs of society, or beliefs of individual member, incompatible with use of electronic communications – Whether refusal of exemption infringement of right to manifest religious belief – Whether secondary legislation compliant with fundamental rights – Human Rights Act 1998, Sch1, Pt 1, art 9 – Finance Act 2002, s 135 – Value Added Tax Regulations SI 1995/2518 as amended, reg 25A

Blackburn and others v HM Revenue and Customs Commissioners

[2013] UKFTT 525 (TC): First-Tier Tribunal Tax Chamber: Her Honour Judge Barbara Mosedale: 2 October 2013

[2014] OJLR 3(1) 187-188

Human rights – Freedom of religion or belief – Interference with – Workplace – Manifestation of religion – Reasonable accommodation – Italian code for criminal procedure requiring presence of prosecution and counsel for defendant at hearings concerning the immediate production of evidence (‘incidente probatorio’) – Presence of counsel for complainant optional – Counsel for complainant unable to attend incidente probatorio due to requirements of Jewish religion that he celebrate Jewish festival – Judge refusing counsel’s application to postpone hearing – Whether denial to postpone hearing constituting restriction of right to manifest religion – Law no 101 of 8 March 1989 regulating the relations between the State and the Union of Italian Jewish Communities, arts 2, 4 and 5 – Code of Penal Procedure, art 401, regulating the procedure for the incidente probatorio – European Convention on Human Rights, art 9

Francesco Sessa v Italy

(Application no 28790/08): European Court of Human Rights (Second Section):
Tulkens (President), Popovic, Berro-Lefèvre, Sajó, Raimondi, Pinto de
Albuquerque, Keller JJ: 3 April 2012

[2012] OJLR 1(2) 530-531

Human Rights – Freedom of religion or belief – Interference with – Applicant convicted and sentenced to six years imprisonment for armed robbery – Once in prison undertaking bible study course but also performing fundamental rituals of Vaishnavism including prayer, meditation and reading of literature – Prison authority finding and confiscating incense sticks – Refusing applicant's request for single cell in order to perform rituals of Vaishnavism undisturbed by other prisoners – Whether prisoner's choice to educate themselves on religious or other topics relevant to assessment by court of prisoner's adherence to one particular belief system – Whether prisoner victim of alleged infringement of freedom of religion – Whether interference with freedom of religion – Whether limitations on prisoner's freedom necessary in a democratic society – European Convention on Human Rights, art 9

Kovaļkovs v Latvia

(Application no 35021/05): European Court of Human Rights (Third Section):
Casadevall, Bîrsan, Myjer, Šikuta, Ziemele, Tsotsoria, Pardalos JJ: 31 January
2012

[2012] OJLR 1(2) 542-543

Human Rights – Freedom of religion or belief – Interference with – Military law – Defendant applying for discharge from UK Navy on ground of conscientious objection to war in Afghanistan – Claim rejected – Defendant, having given notice of appeal, refusing to undergo weapons training programme for service personnel about to be deployed in Afghanistan – Defendant charged with intentionally disobeying lawful command – Judge advocate directing that circumstances of defendant's refusal no defence to charge – Whether misdirection – Human Rights Act 1998, Sch 1, Pt I, art 9

Regina v Lyons

[2011] EWCA Crim 2808; Courts-Martial Appeals Court: Toulson LJ, Openshaw,
Hickinbottom JJ: 1 December 2011

[2012] OJLR 1(2) 531-532

Human rights – Freedom of religion or belief – Interference with – Seville Bar Association taking by way of statutory designation Immaculate Conception as its patron saint – Barrister member objecting to designation – Whether symbol breach of fundamental right to religious freedom – Whether breach of principles of equality and non-denominational nature of Bar – Constitución Española de 1978, Article 16(1)

Sentencia del Tribunal Constitucional 34/2011

Spanish Constitutional Court (Second Chamber): Montalvo, Vera, Arribas,
Hernando (ponente), Álvarez, de los Cobos Orihuel JJ: 28 March 2011

[2012] OJLR 1(1) 291-292

Human Rights – Freedom of religion or belief – Interference with – Appointment of teachers of Catholic religion in state schools subject to 1979 Agreement with the Holy See on Education and Cultural Affairs – Teacher employed by education administration in accordance with nomination by diocesan bishop for an official licence to teach in the name

of the Catholic Church (missio canonica) – Subsequent withdrawal of the diocesan nomination as a result of teacher’s secular marriage with a divorcee – Spanish Supreme Court upholding Recurso de amparo remedy for the protection of constitutional rights – Upon remittal to Social Court, that court declaring dismissal void and ordering temporary reinstatement – Supreme Court subsequently ruling its judgment had ‘ex tunc’ effects such that contract valid from outset – Reinstatement of teacher on indefinite contract without missio canonica – Lack of missio canonica amounting to extinction of employment relationship — No valid reasons for withdrawal of missio canonica – Whether dismissals valid - Real Decreto 696/2007, on teachers of religion, art 7

Sentencia del Tribunal Supremo (Sala de lo Social, Sección 1a)

Sentencia no 876/2016, de 20 de Octubre (2016): Sentencia no 876/2016: Tribunal Supremo (Sala de lo Social, Sección 1a): Excmo. Sr. D. José Manuel López García de la Serrana, Ponente: 20 October 2016

[2017] OJLR 6(3) 630

(1) Human rights – Freedom of religion or belief – Interference with – (2) Separation of church and state – Interference with – State imposing mandatory requirement that crucifix be displayed in court rooms – Judge refusing to hold hearing in courtrooms where crucifix displayed – State providing courtroom without crucifix – Judge continuing to refuse on grounds of ongoing violation of his rights because single courtroom without crucifix amounting to creation of ghetto mentality and because fact of crucifixes in other court rooms violating principle of secularism – State taking disciplinary action and removing judge from post – Whether interference with freedom of religion or belief – Whether judge entitled to argue by way of defence that presence of crucifix violated principle of secular state – Whether judge entitled to refuse to sit because of failure to display symbol of Jewish Religion – Italian Constitution, Articles 2, 3, 7, 8, 19, 20 – Legislative Decree No 216/2003 implementing Directive 2000/78/EC on equal treatment in employment and working conditions, Article 2 – Law No 654/1975 ratifying and implementing the International Convention on the Elimination of all Forms of Racial Discrimination of 1966, Article 3 – Law No 101/1989 Rules for the regulation of relations between the State and the Union of Italian Jewish Communities – Civil Code Articles 1460, 2044, 2045 – Penal Code Articles 52 and 54.

T L v Ministry of Justice

(No 5924): Corte Suprema di Cassazione (Supreme Court of Cassation), Italy, Sezioni Unite Civili: de Luca (President), Segreto, Speaker: 14 March 2011

[2012] OJLR 1(1) 290-291

(1) Human Rights – Freedom of religion or belief – Interference with - Manifestation of belief – (2) Secularism – Interference with – City of Ilhéus, Bahia, Brazil, enacting law that local public schools start the school day with morning prayer known as ‘The Lord’s Prayer’ (‘The Lord’s Prayer ordinance’) – Private citizen requesting that Local Public Ministry (MP-BA) challenge law on grounds that it violated the principle of secularism and the constitutional right to freedom of religion of students of different faiths by forcing them to recite the ‘Lord’s Prayer’ every morning – MP-BA filing direct action of unconstitutionality on those grounds – Whether law violation of principle of secularism – Whether interference with students’ right to freedom of thought conscience and religion – Municipal Ordinance no 3.589— Constitution of the Federative Republic of Brazil of 1988, art 3, para IV; art 5, para VI

Ação Direta de Inconstitucionalidade da Lei Municipale no 3.589 de 12

dezembro de 2011 (Direct Action on the Unconstitutionality of Municipal Ordinance 3.589)

(Docket no 001.0.12285/2012 (SIMP)): Ministério Público da Bahia no 04/12, Tribunal de Justiça do Estado da Bahia (Public Prosecutor, Court of the State of Bahia): Rosa CJ: 18 April 2012

[2013] OJLR 2(1) 234-235

Human rights – Freedom of religion or belief – Manifestation of religion by wearing religious garment – Freedom of movement – Interference with – Claimant Association for Defence of Human Rights – Collective against Islamophobia in France (ADDH-CCIF) applying for the suspension of the execution of the Mayoral decree of Cagnes-sur-Mer banning the wearing of manifestly religious clothing on the beach – Juge des référés of the Nice Administrative Court rejecting the application – Appeal to Conseil d’Etat – Whether mayoral decree necessary for the maintenance of public order – Whether consequences of the application of the decrees constituted an emergency situation – General Code of Local and Regional Authorities, arts L. 2212-1, 2212-2 and 2213-23 – Code of Administrative Justice, arts L. 511-2 and L. 521-2

Association de défense des droits de l’homme – Collectif contre l’islamophobie en France

No 403578: Conseil d’Etat (Council of State), France: Juge des référés: 26 September 2016

[2017] OJLR 6(1) 203-204

Human rights – Freedom of religion or belief – Manifestation of religion by wearing religious garment – Interference with – Applicant Muslim woman living in municipality of Dison choosing to wear niqab – By-law adopted in June 2008 by municipalities of Pepinster, Dison and Verviers in the Vesdre police area – Article 113bis of by-law banning wearing of clothing concealing face, at all times and in any public place – Applicant seeking annulment of art 113bis before Council of State arguing Article expressly aimed at banning niqab – Arguing ban interfering with Articles 8, 9 and 10 rights and constituting discrimination contrary to Article 14 of the European Convention on Human Rights – Arguing interference not pursuing a legitimate aim since wearing a veil could not be the subject of a blanket ban, secularism not being a constitutional principle – Also that ban disproportionate in absence of problem or threat of problem to public order, and thus of pressing social need – Municipalities arguing that by-law aimed at guaranteeing public security and not at regulating or limiting exercise of any religion – Council of State declaring application for annulment inadmissible – Council of State ruling that Article 113bis merely applying general ban on any item hiding a person’s identity in Article 113 to a particular case, without modifying either its meaning or scope – Whether infringement of applicant’s right to a fair trial – Whether infringement of applicant’s right to private life – Whether ban infringement of applicant’s right to freedom of religion or belief – Whether ban discriminatory – Whether ban necessary and proportionate interference with right to private life and freedom of religion or belief – Whether necessary for the protection of the rights and freedoms of others – Whether contracting state exceeding margin of appreciation – European Convention on Human Rights, arts 6, 8, 9, and 14

Dakir v Belgium

Application no 4619/12: European Court of Human Rights (Second Section): Spano, President, Laffranque, Karakaş, Vučinić, Lemmens, Griçco, Mourou-Vikström JJ; Spano and Karakaş JJ concurring: 11 July 2017

[2018] OJLR 7(1) 176

Human Rights - Freedom of religion or belief – Manifestation of religion by wearing religious garment – Interference with – Claimant French national wearing Islamic headscarf employed on fixed-term contract in public hospital – Non-renewal of contract following claimant’s refusal to remove headscarf contrary to principle of laïcité and neutrality of public services – Whether non-renewal of contract infringement of claimant’s right to freedom of religion or belief – Whether non-renewal necessary and proportionate interference with right to freedom of religion for the protection of the rights and freedoms of others – Whether contracting state exceeding margin of appreciation – European Convention on Human Rights, art 9

Ebrahimian v France

Application no 64846/11: European Court of Human Rights, Fifth Section: Casadevall, Yudkivska, De Gaetano, Potocki, Jäderblom, Pejchal, O’Leary JJ; De Gaetano J dissenting; O’Leary J partly dissenting: 26 November 2015

[2016] OJLR 5(2) 365-366

Human rights – Freedom of religion of belief – Manifestation of religion by wearing religious garment – Interference with – Applicant hijab-wearing devout Muslim woman – Applying to join criminal proceedings as civil party in order to seek damages – In accordance with decision of presiding judge, court usher telling the applicant to remove her hijab before entering courtroom – Applicant refusing and not attending hearing – Applicant unsuccessfully challenging decision – Whether exclusion of the applicant from the courtroom on the sole ground that she refused to remove her hijab constituted a restriction of her right to manifest her religion – Whether interference prescribed by law – Whether pursued a legitimate aim – Whether necessary in a democratic society – European Convention on Human Rights, art 9

Lachiri v Belgium

Application no 3413/09: European Court of Human Rights (Second Section): Spano, President, Lemmens, Karakas, and Kmolbro JJ; Vucinic and Gritco JJ concurring; Mourou-Vikstrom J dissenting: 18 September 2018

[2018] OJLR 7(3) 569-570

Human rights - Freedom of religion or belief – Manifestation of religion by wearing religious garment – Interference with – Claimant French national devout Muslim wearing burqa and niqab without coercion from family or husband to reflect religious, cultural, and personal convictions – Wearing of garments not absolute but worn in private or public, according to applicant’s wishes – French criminal code banning individuals from wearing garments concealing face in public places – Whether absolute ban infringement of applicant’s fundamental rights to private life and manifestation of religious belief – European Convention on Human Rights, arts 8 and 9

SAS v France

Application no 43835/11: European Court of Human Rights, Grand Chamber: Spielmann, Casadevall, Raimondi, Ziemele, Villiger, Zupančič, Steiner, Hajiyev, Trajkovska, Bianku, Yudkivska, Nussberger, Møse, Potocki, Lemmens, Jäderblom, Pejchal JJ; Nussberger and Jäderblom JJ, partly dissenting: 1 July 2014

[2014] OJLR III-520

Human rights – Freedom of religion and belief – Religious organization – Claimant Afghan national entering UK in 2007 concealed in back of lorry – Encountered by immigration officials and claiming asylum – Application refused – Subsequent application for judicial review of Secretary of State’s refusal dismissed – Further appeal on grounds removal infringed right to freedom of religion – Afghanistan Islamic Culture Centre (AICC) intervening, arguing failure of Secretary of State to take into account benefit claimant provided to community and impact of removal on community infringing religious freedom rights of religious community – Whether removal infringing religious freedom rights of religious community – Human Rights Act 1998, s 13; art 9, Sch 1

R (Hamat) v Secretary of State for the Home Department

[2016] UKUT 286 (IAC): Upper Tribunal (Immigration and Asylum Chamber):
Jordan HHJ: 6 June 2016

[2017] OJLR 6(1) 205-206

Human Rights – Freedom of religion and belief – Right to assemble and right to demonstrate – Conflict – Association of Atheists and Free Thinkers informing authorities of demonstration in Madrid on Maundy Thursday – Demonstration coinciding with traditional Roman Catholic processions – Aims and purposes of atheist demonstration to spread atheist beliefs and enhance secularism, offensive to Roman Catholics – Atheist demonstration prohibited by Provincial Representative of Central Government in Madrid on grounds of protection of public order and protection of religious freedom – Whether prohibition of demonstration proportionate – Whether legitimate restriction of the right to assemble and demonstrate - Law 29/1998, de la Jurisdicción Contencioso Administrativa – Spanish Constitution arts 16 (religious freedom), 21 (right to assemble and right to demonstrate)

Sala de lo Contencioso-Administrativo, Judgment 209/2014

No 209/2014: Superior Court of Justice of Madrid: Doña Amparo Guilló Sánchez
Galiano, Chair: 14 April 2014

[2015] OJLR 4(1) 158-160

Human Rights – Freedom of religion and belief – Right to personal autonomy – Interference with – Medical practitioner – Medical treatment, consent to – Refusal of blood transfusion – Argentinian Constitution providing that private actions of individual were subject only to judgment of God and lay outside court’s jurisdiction provided actions not offending public order, public morality and no injury to third party – Argentinian law permitting competent adults to make advance directives concerning medical treatment – Adult, competent Jehovah’s Witnesses writing advance directive, witnessed by notary public, refusing blood transfusion in event of medical treatment – Hospitalized and unconscious on admission – Father of patient seeking injunction to enable medical practitioners to carry out life saving blood transfusion – Whether declaration valid to exclude lifesaving treatment – Whether reason existing to limit personal autonomy and freedom of religion or belief of patient – Constitution of Argentina, art 19 – Law 26.529, art 11

Corte Suprema de Justicia de la Nación, Judgment A253 XLVIII

Corte Suprema de Justicia de la Nación (Supreme Court of Justice of the Nation), Argentina: Highton de Nolasco, Fayt, Petracchi, Maqueda: 1 June 2012

[2012] OJLR 1(2) 531

HUMAN RIGHTS: RIGHT TO A FAIR TRIAL

Human rights – Right to a fair trial – Infringement of – Pastor in Hungarian Calvinist church removed from service by ecclesiastical courts – State labour, civil, and Supreme Courts ruling claim had no basis in civil law – Whether nature of Applicant's relationship with church excluding right to bring civil claim – Interference with right to fair trial – European Convention on Human Rights, art 6

Károly Nagy v Hungary

Application no 56665/09: European Court of Human Rights (Grand Chamber): Nußberger, De Gaetano, Potocki, Wojtyczek, Griţco, Motoc, O'Leary, Ranzoni, Ravarani, Eicke JJ; Sicilianos J dissenting; Sajó, López Guerra, Tsotsoria, Laffranque JJ dissenting; Pinto de Albuquerque J dissenting; Pejchal J dissenting: 14 September 2017

[2018] OJLR 7(1) 175

HUMAN RIGHTS: RIGHT OF PARENT TO FREEDOM OF RELIGION AND BELIEF

Human rights – Freedom of religion or belief – Interference with – Teaching of 'compulsory religion and ethics classes' in state schools – Three out of fourteen applicants parents of children at relevant time – Applicants, adherents of the Alevi faith, an unorthodox minority branch of Islam, complaining that content of compulsory classes based on Sunni understanding of Islam, treating Alevism as tradition or culture but not as belief system – Exemption from classes available for children of Jewish and Christian but not Alevi faith – Applicant parents requesting that Ministry of Education initiate consultation process, including members of the Alevi community, to overhaul curriculum of classes to include Alevi culture and philosophy – Directorate of Religious Education attached to Ministry of Education refusing consultation – Council of State rejecting appeal from Ankara Administrative Court's dismissal of applicant's challenge of that refusal – Whether refusal to provide consultation leading to overhaul of curriculum infringement of right of parents to ensure education and teaching of their child in conformity with their own religious and philosophical convictions – Whether discrimination in enjoyment of right to religious freedom – European Convention on Human Rights, art 9 in conjunction with art 14, art 2 of Protocol 1

Mansur Yalçın and others v Turkey

Application no 21163/11: European Court of Human Rights: Raimondi (President), Karakaş, Sajó, Vučinić, Kūris, Spano, Kjølbros; Sajó, Vučinić and Kūris partly dissenting: 16 September 2014

[2015] OJLR 4(1) 151-152

Human rights – Freedom of Religion or belief – Interference with – Schools – State requirement for teaching of pluralist ethics and religious culture in schools – Parents objecting that requirement amounting to interference with parental right to teach child religion of parent only – Burden of proof required to demonstrate infringement of right to freedom of religion – Charter of human rights and freedoms, RSQ, c C-12, s 3 – Education Act, RSQ, c I-13.3, s 222

S L v Commission scolaire des Chênes

2012 SCC 7: Supreme Court of Canada: McLachlin CJ, Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ: 17 February 2012

[2013] OJLR 2(1) 233-234

Human rights – Freedom of religion or belief – Right to raise children in accordance with religious beliefs – Interference with – Applicants, Muslim parents of two minor daughters residing in the canton of Bâle-Ville, refusing to send daughters to mixed swimming lessons forming part of obligatory school programme in Bâle-Ville – School denying exemption in reliance on compulsory nature of schooling – Exemptions from swimming lessons only granted after puberty – Head of the Department of Public Education imposing fines on applicants for breach of parental responsibilities – Appeal against imposition of fines rejected by Bâle-Ville Court of Appeal – Federal Tribunal subsequently ruling failure to grant exemption not amounting to violation of applicants' right to freedom of religion and belief – Whether refusal to grant exemption and imposition of fines had basis in law – Whether imposition of fines necessary and proportionate interference with right to freedom of religion for the protection of the rights and freedoms of others or protection of public order – Whether contracting state exceeding margin of appreciation – European Convention on Human Rights, art 9

Osmanoğlu and Kocabaş v Switzerland

Application no 29086/12: European Court of Human Rights (Third Section): López Guerra, President, Jäderblom, Keller, Lubarda, Pastor Vilanova, Poláčeková, Serghides JJ: 10 January 2017

[2017] OJLR 6(2) 425

Human rights – Right of parent to freedom of religion or belief – Interference with – art 155 of Civil Code empowering judge to adopt measures in moral and material interest of child where parents separating – Court of appeal awarding joint custody to parents upon their separation – Mother becoming Jehovah's Witnesses after separation and disagreeing with Catholic father over child's religious education – Mother's religious influence increasing child's disorientation already produced by parent's separation – Court ruling joint custody conditional upon mother's non-involvement of child in her religious choices – Whether prohibition to manifest religion in presence of child violated parent's right to freedom of religion – Whether prohibition discriminating against mother – Whether prohibition on mother to involve child in her religious choices violated right of parent to bring up children according to his/her religious belief – European Convention on Human Rights arts 1, 9 and 14; TEU art 6(2); Italian Constitution, arts 3(1), 19 and 30; Italian Civil Code, arts 147 and 155.

Corte di Cassazione Sentenza 9546/2012

Court of Cassation, Sezione I Civile, Italy: 12 June 2012

[2013] OJLR 2(2) 471-472

Human Rights – Right of parent to freedom of religion and belief – Right of child to bodily integrity and self-determination – Balancing of rights – Circumcision – Male circumcision for religious reasons without medical indication as part of religious tradition – Lawfulness – Defendant doctor performing lege artis circumcision on 4-year-old male child using a scalpel under local anaesthesia – Wound sutured and home aftercare provided by

defendant in evening of same day – Two days later, child brought by mother to A & E because of secondary bleeding – Child unable to give consent to circumcision – Parental right of personal care under German Civil Code – Socially adequate behaviour under religious tradition as exempting doctor's conduct from criminal liability for bodily harm – Whether in light of religious traditions circumcision in best interest of child – Interpretation of criminal law – Balancing of constitutional right to freedom of religion of parents and right to bodily integrity and self-determination of child – German Basic Law, arts 2, 4, 6 – German Civil Code, sec 1627 – German Criminal Code, secs 17, 223, 224

Amtsgericht Köln (County Court of Cologne) Judgment no 528 Ds 30/11 and Landgericht Köln (District Court of Cologne) Judgment no 151 Ns 169/11

(Docket no 528 Ds 30/11): Amtsgericht Cologne: 21 September 2011

(Docket no 151 Ns 169/11): Landgericht Cologne judgment dismissing the prosecution appeal against the judgment of the Amtsgericht Cologne of 21 September 2011: 7 May 2012

[2013] OJLR I-217

Human Rights – Right to education – Interference with - *School placing crucifix on wall in each classroom – Parent and children complaining of infringement of principle of secularism – Whether interference with right to freedom of thought conscience and religion – Whether interference with parent's and childrens' right to education and teaching in conformity with their own religions and philosophical convictions – Whether contracting state exceeding margin of appreciation – European Convention on Human Rights, Article 9, Protocol No 1, Article 2*

Lautsi v Italy

(Application no 30814/06): European Court of Human Rights (Grand Chamber): Costa (President), Rozakis, Bratza, Lorenzen, Casadevall, Bonello, Vjić, Maruste, Kovler, Jebens, Hirvelä, Malinverni, Nicolaou, Power, Kalaydjieva, Poalelungi, Raimondi JJ: 18 March 2011

[2012] OJLR 1(1) 289-290

Right to religious freedom – Right of parents to educate their children in accordance with their own convictions – *Mother arguing her right to access Islamic religious teaching for her children in the public educational system violated – No teachers in the region approved by the Islamic Commission of Spain – Approval required by Memorandum of Cooperation between State and Islamic Commission of Spain – Regional authorities could not comply with the request due to the lack of teachers and appointment of approved teachers was not within their control – Whether there had been a denial of the right of the claimant to have her children receive an education in the Islamic religion in the state school where they were studying – Whether had there not been such a denial, the necessary requirements would have been met for teaching and enabling the applicant's children to attend – Spanish Constitution, arts 14, 16 and 27.3 – Organic Law 8/1985, of July 10, regulating the right to education – Organic Law 1/1990, of October 3 of General Regulation of the Educational System – Law 26/1992, of November 10, approving the Memorandum of Cooperation between the Spanish State and the Islamic Commission of Spain, art 10*

Tribunal Superior de Justicia de La Rioja, Sala de lo Contencioso-Administrativo, Seccion 1, Sentencia no 63/2017 de 23 febrero

Sala de lo Contencioso-Administrativo, Seccion 1, Spain : Don Jesus Miguel

Escanilla Pallas, Presidente ; Don Alejandro Valentin, Dona Carmen Ortiz
Lallana, Magistrados 23 February 2017

[2018] OJLR 7(2) 353-354

HUMAN RIGHTS: RIGHT TO HEALTH

Right to health – Patient’s right to self-determination – Cessation of life-sustaining treatment – Court of Appeals of Milan declaring legitimacy of cessation of life-sustaining treatment of patient in permanent vegetative state – Parent of patient requiring health service to cease life-sustaining treatment – Regional Directorate-General for Health (Lombardy Region) rejecting request pursuant to (1) LEA (Essential Levels of Care) established by decree of the President of Council of Ministers (2) the professional and ethical duties of health personnel, which included the provision of life-sustaining treatment and (upon appeal) (3) withdrawal of life-sustaining treatment amounting to murder of a consenting adult – Regional Administration supporting Court of Appeals judgment, but failing to require cessation of life-sustaining treatment – Upon parent’s appeal Regional Administrative Court (TAR) annulling Regional Directorate-General’s refusal on grounds of infringement of patient’s right to health – In addition ruling patient entitled to be cared for by public health service even when refusing life-sustaining treatment – Lombardy Region appealing – Whether life-sustaining treatment being a ‘medical treatment’ – Whether public health service compelled to interrupt life-sustaining treatment – Whether health personnel guilty of criminal offence if carrying out patient’s wishes for interruption of life-sustaining treatment – Whether regional health administration entitled to refuse interruption of treatment on grounds of professional ethics – Italian Constitution arts 2, 3, and 32 – Criminal Code arts 51 and 579 – Legislative decree no 502/1992 – Decree of the President of the Council of Ministers of 29 November 2001.

Consiglio di Stato 4460/2014: Sentenza no 4460

Council of State, Italy: 2 September 2014

[2015] OJLR 4(1) 153-155

HUMAN RIGHTS: RIGHT TO JUDICIAL PROTECTION AGAINST ACTS OF PUBLIC ADMINISTRATION

Human rights – Right to judicial protection against acts of public administration – Constitution stipulating that relations between state and ‘religious denominations’ to be governed by laws based on agreements between respective representatives (‘intese’) – Agreements having legal effect only after subsequent parliamentary approval – ‘Political acts’ of government not justiciable in court of law – Presidency of Council of Ministers refusing to open negotiations for agreement with Union of Atheists and Rationalist Agnostics (UAAR) on grounds that UAAR was not ‘religious denomination’ – Whether decision not to enter into negotiations was a ‘political act’ – Whether justiciable in court of law – Whether Council of Ministers obliged to enter into negotiations with UAAR – Italian Constitution, arts 8.3, 24, 113 – Code of Administrative Procedure, art 7.1 – Royal Decree n 1054/1924, art 31

Consiglio di Stato 6083/2011 Council of State, Italy: 18 November 2011

[2013] OJLR 2(1) 226-227

HUMAN RIGHTS: RIGHT TO LIFE

Human rights – Right to life – Freedom from inhuman and degrading treatment – Interference with – Applicant Iranian national claiming asylum in Switzerland – Asylum claim based on political activities in Iran resulting in alleged torture and detention – Claim rejected as asylum authorities finding that allegations not credible – Applicant seeking reconsideration of asylum claim application – Also seeking temporary admission on grounds including conversion to Christianity while in Switzerland – Arguing that conversion to Christianity giving rise to risk of ill-treatment if returned to Iran – Claim rejected on grounds that conversion to Christianity would not expose him to real risk of ill-treatment unless he had proselytized or attracted public attention to his faith – Appeal to Federal Administrative Court dismissed as ill-founded on ground that conversion only presented a risk where an individual had manifested their Christian faith in such a way as to make it visible to the outside world – Court finding no indication that Iranian authorities were aware of applicant's conversion – Applicant making application for temporary admission based on conversion and participation in a demonstration in Switzerland against the persecution of Christians by Iranian authorities – Claim rejected since mere participation in a demonstration against Iranian Government insufficient for applicant to be perceived as concrete threat by Iranian authorities – Asylum authorities finding no indications of Iranian authorities having taken any measures against applicant – Appeal to Federal Administrative Court dismissed as manifestly ill-founded – Whether applicant's deportation to Iran would constitute violation of right to life and protection against ill-treatment – European Convention on Human Rights, arts 2 and 3

A v Switzerland

Application no 60342/16: European Court of Human Rights (Third Section)
Jaderblom, President, Lubarda, Keller, Pastor Vilanova, Polackova, Serghides,
Schukking JJ: 19 December 2017

[2018] OJLR 347-348

Human rights – Right to life – Freedom from inhuman and degrading treatment – Interference with – Applicant Iranian national claiming asylum in Sweden – Asylum claim based on political activities in Iran – National authorities aware of applicant's sur place conversion from Islam to Christianity – Applicant not relying on conversion as ground for asylum – Asylum on political grounds refused – Applicant requesting stay of deportation relying on conversion as a new circumstance – Migration Board refusing to re-examine asylum request – Applicant appealing against refusal maintaining that previous non-reliance meant conversion should be considered a new circumstance – Migration Court rejecting applicant's appeal since authorities in original proceedings had been aware of conversion – Whether national authorities should have carried out risk assessment of applicant's conversion of their own motion – European Convention on Human Rights, arts 2 and 3

FG v Sweden

Application no 43611/11: European Court of Human Rights, Grand Chamber:
Raimondi, President, Spielmann, Sajó, Casadevall, Ziemele, Steiner, Nicolaou,
Bianku, Laffranque, Pinto de Albuquerque, Sicilianos, Jäderblom, Pejchal, Dedov,
and Spano JJ; Bianku J concurring; Jäderblom J partly concurring, partly
dissenting, partly joined by Spano J; Sajó J concurring; Ziemele, De Gaetano,
Pinto de Albuquerque, and Wojtyczek JJ jointly concurring: 23 March 2016

[2016] OJLR 5(3) 619-620

Human Rights – Right to life – Interference with – Tetraplegic patient in dependent and vegetative state – Doctors believing him to be resistant to daily care, initiating collective 'Leonetti Act' consultation procedure and deciding to withdraw patient's nutrition and reduce hydration on grounds of unreasonable obstinacy – Disagreement between relatives as to best interests of patient – Dissatisfied relatives obtaining urgent injunctions to force hospital to resume feeding and hydration – Conseil d'État receiving expert evidence and ruling (1) that fact that patient had lost autonomy did not justify by itself a decision to withdraw support; (2) in addition to medical factors, doctor in charge of patient should consider wishes patient expressed previously and views of person of trust, of members of patient's family or failing that another person close to patient; (3) in absence of any advanced directive patient could not be assumed to want life support turned off – Conseil d'État concluding that hospital complied with all requirements of Leonetti Act procedure and taking into account all the evidence that artificial nutrition and hydration could be withheld on grounds of unreasonable obstinacy – Dissatisfied relatives complaining to European Court of Human Rights – Whether relatives 'victims' so as to establish standing to bring a complaint before the European Court – Whether implementation of Conseil d'État's ruling would be violation of right to life of relatives in their capacity as patients' close relatives – European Convention on Human Rights art 2

Lambert and Others v France

Application no 46043/14: European Court of Human Rights (Grand Chamber): Spielmann, President, Raimondi, Villiger, Berro, Hajiyev, Šikuta, Nicolaou, Tsotsoria, De Gaetano, Nußberger, Sicilianos, Møse, Potocki, Jäderblom, Pejchal, Gričco, Kūris, JJ; Hajiyev, Šikuta, Tsotsoria, De Gaetano, Gričco jointly partly dissenting: 5 June 2015 (rectified 25 June 2015)

[2016] OJLR 5(1) 174-175

Human rights – Right to life – Right to die – Right to respect for private and family life – End-of-life decisions pertaining to the instigation and aiding of suicide – Mr A was a tetraplegic man on artificial respiration and alimentation, suffering from bilateral cortical blindness, contractions, and spasms, his cognitive functions were intact – D taking Mr A to Switzerland for the purpose of undergoing voluntary euthanasia – Whether assisting Mr A to travel to Switzerland to undergo voluntary euthanasia amounted to the instigation and aiding of a suicide – Whether aiding a man already determined to undergo voluntary euthanasia, to implement his will by taking him to Swiss clinic by car amounted to aiding suicide – Whether art 580 of the Italian Criminal Code punishing instigation and aiding of suicide constitutionally legitimate – Italian Constitution arts 3, 13, 25 second para, art 27 third para, art 117 – European Convention on Human rights, arts 2 and 8

Tribunale di Milano, Corte d'Assise, order 14 Febbraio 2018

Court of Assize of Milan, Italy: Mannucci Pacini, President; Simi de Burgis, Judge; Marco Cappato, Defendant: 14 February 2018

[2018] OJLR 7(2) 360-361

Human rights – Right to life – Right to private and family life – Interference with – First applicant infant child CG – Second and third applicants CG's parents – CG suffering from infantile onset encephalomyopathic mitochondrial DNA depletion syndrome – Hospital

seeking order from High Court for CG's artificial ventilation to be withdrawn – Hospital arguing withdrawal of artificial ventilation in CG's best interests – Application opposed by CG's parents – CG's parents proposing nucleoside treatment – High Court granting application for artificial ventilation to be withdrawn – High Court finding medical consensus that nucleoside treatment would be futile – High Court finding that nucleoside treatment not in CG's best interests – CG's parents arguing before Court of Appeal that High Court judge erred by relying solely on the 'best interests' test – CG's parents arguing that the correct test is whether treatment would likely cause CG 'significant harm' – Court of Appeal dismissing the appeal – Court of Appeal finding that High Court entitled to conclude that nucleoside treatment would be futile – Supreme Court refusing permission to appeal since no point of law of general, public importance identified – Supreme Court concluding that welfare of the child paramount consideration – Whether granting order to withdraw artificial ventilation violation of right to life – Whether granting order to withdraw artificial ventilation violation of private and family life – Whether granting order to withdraw artificial ventilation necessary and proportionate interference with private and family life for the protection of health or morals and the rights and freedoms of others – Whether contracting state exceeding margin of appreciation – European Convention on Human Rights, arts 2 and 8

Charles Gard and Others v the United Kingdom

Application No 39793/17: European Court of Human Rights (First Section): Sicilianos, President, Pardalos, Pejchal, Wojtyczek, Harutyunyan, Eicke, and Ilievski, JJ: 27 June 2017

[2017] OJLR 6(2) 619

HUMAN RIGHTS: RIGHT TO PEACEFUL ENJOYMENT OF POSSESSIONS

Human Rights – Right to peaceful enjoyment of possessions – Discrimination in exercise thereof – Spanish decree stipulating that priests and ministers of all registered churches to be treated as salaried employees and covered by social security scheme – Initially applying to Catholic priests only – Catholic priests' previous years of service taken into account – Law applying to ministers 22 years later with no possibility of counting earlier years of service – Whether difference in treatment between Evangelical ministers and Catholic priests in calculation of pension rights discriminatory – Whether difference in treatment based solely on grounds of religious belief justified – European Convention on Human Rights art 9, art 14 taken together with art 1 of Protocol no 1

Manzanas Martín v Spain

(Application no 17966/10): European Court of Human Rights (Third Section): Casadevall, Bîrsan, Gyulumyan, Šikuta, López Guerra, Tsotsoria, Poalelungi JJ: 3 April 2012

[2013] OJLR 2(1) 228-229

Human Rights – Right to peaceful enjoyment of possessions – Right to a fair and public hearing – Interference with – 19th-century legislation disentailing ecclesiastical goods, except for strictly religious place of worship – Cistercian-style church located in private estate belonging to applicant company – In absence of specific title to property, special procedure by means of certificate of bishop applied to enrol church in property register in favour of the Catholic Church – Ownership dispute arising as a result of proof

of registration by means of the deed of sale in favour of applicant company – Whether entry in property register in favour of Church infringement of applicant company's right to peaceful enjoyment of possessions – Whether procedure for review of decision to enrol in favour of Church infringement of applicant's right to a fair and public hearing – European Convention on Human Rights, art 6, art 1 of Protocol no 1

Affaire Sociedad Anónimis del Ucieza c Espagne

Application no 38963/08: European Court of Human Rights (Third Section):
Casadevall (President), Gyulumyan, Šikuta; López Guerra, Silvis, Gričco, Motoc
JJ: 4 November 2014

[2016] OJLR 5(1) 180-181

HUMAN RIGHTS: RIGHT TO PRIVATE AND FAMILY LIFE/RESPECT FOR PRIVATE AND FAMILY LIFE

Family law – Marriage – Validity – Applicant 30-year-old male domiciled in Australia – Travelling to Middle East to marry 16-year-old female foreign national – Returning to Australia with pregnant wife and when wife 17 years old applying to Australian court for declaration of validity of marriage – Australian law setting marriageable age at 18 years – Judge having discretion to prospectively authorize underage marriage where circumstances of the case so exceptional and unusual as to justify the making of the order – Whether Court having jurisdiction to declare marriage valid – Marriage Act 1961 (Cth) ss 11, 12 and 88D - Domicile Act 1982 (Cth) ss10 and 12

Eldaleh

[2016] FamCA 1103: Family Court of Australia: McClelland J: 21 December 2016

[2017] OJLR 6(2) 408

Human Rights – Freedom of religion or Belief – Respect for Family life – Interference with – Practising Catholic teacher of Catholic religion in state school marrying divorcee in civil ceremony – Diocesan bishop failing to renew contract of employment under authority of agreement between State and Holy See – Whether discrimination on grounds of religion or belief – Whether interference with freedom of religion or belief – Whether interference with right to marry with full legal equality – Constitución Espanola de 1978, Articles 14, 16, 32 – Agreement between the Holy See and the Spanish State, 3 January 1979

Sentencia del Tribunal Constitucional 51/2011

Spanish Constitutional Court (Full Chamber): Pascual Sala Sánchez (President), Eugeni Gay Montalvo, Javier Delgado Barrio, Elisa Pérez Vera, Ramón Rodríguez Arribas, Manuel Aragón Reyes, Pablo Pérez Trepms, Francisco José Hernando Santiago, Adela Asua Batarrita, Luis Ignacio Ortega Álvarez and Francisco Pérez de los Cobos Orihuel JJ: 14 April 2011

[2012] OJLR 1(1) 296

Human rights – Right to family and private life – Civil partnerships – Enactment of Marriage (Same Sex couples) Act 2013 (MSSCA) legalizing same-sex marriage – Civil Partnership Act 2004 (CPA) allowing same-sex couples to enter into civil partnerships staying in force – Lack of changes to CPA meaning different-sex couples excluded from civil partnerships – Claimants heterosexual couple seeking judicial review of government's

failure to extend civil partnerships to different-sex couples – Arguing that introduction of MSSCA rendering CPA incompatible with right to family life in conjunction with right not to be discriminated against – Claim dismissed at first instance and on appeal – Court of Appeal ruling that interference with right to non-discrimination in enjoyment of family life justified – Claimants appealing to Supreme Court – Secretary of State accepting that inequality of treatment between same-sex and different-sex couples engaging right to non-discrimination in enjoyment of family life – Whether justification of inequality including consideration of period of time during which Secretary of State could investigate how best to eliminate inequality or whether justification must be directed exclusively to the very existence of the discrimination – Whether inequality of treatment constituting violation of the right to private and family life – Whether inequality of treatment discriminatory – Civil Partnership Act 2004, sections 1 and 3 – The Marriage (Same Sex Couples) Act 2013 – European Convention on Human Rights, Articles 8 and 14 – Human Rights Act 1998, section 4

R (on the application of Steinfeld and Keidan) v Secretary of State for International Development

[2018] UKSC 32: Supreme Court (England and Wales): Hale, President, Kerr, Wilson, Reed, Black JJSC

[2018] OJLR 7(3) 575-576

Human Rights – Right to family and private life – Civil partnerships – Claimant opposite-sex couple wanting to formalize relationship – Opposed to marriage on ideological grounds and wanting to enter into civil partnership – Legislation precluding opposite-sex couples registering as civil partners – Claimants issuing judicial review proceedings seeking declaration of incompatibility – Whether legislation prohibiting opposite-sex couples from registering as civil partners incompatible with prohibition of discrimination and right to private and family life – Civil Partnership Act 2004, ss 1, 3(1)(a); Marriage (Same Same-Sex Couples) Act 2013; Human Rights Act 1998, Sch 1, arts 8, 14 .

Steinfeld v Secretary of State for Education

[2016] EWHC 128 (Admin): Queens Bench Division (Administrative Court): Andrews J: 29 January 2016

[2016] OJLR 5(2) 375-376

Human rights – Right to family life and private life – Civil partnerships – Claimants opposite-sex couple wanting to enter into civil partnership – Domestic law precluding opposite-sex couples from registering as civil partners – Claimants issuing judicial review proceedings seeking declaration of incompatibility – Court of first instance ruling that domestic legislation compatible with claimants fundamental rights– Claimants appealing to Court of Appeal – Whether legislation prohibiting opposite-sex couples from registering as civil partners incompatible with prohibition of discrimination and right to private and family life – Civil Partnership Act 2004, ss 1, 3(1)(a) – Marriage (Same-Sex Couples) Act 2013 – Human Rights Act 1998, Sch 1, arts 8, 14

Steinfeld and Anor v Secretary of State for Education

[2017] EWCA Civ 81: Court of Appeal (England and Wales) (Civil Division): Arden, Beatson and Briggs LJJ, Arden LJ dissenting: 21 February 2017

[2017] OJLR 6(2) 411

Human rights – Right to family and private life – Discrimination in exercise thereof
– Greek government enacting law enabling official form of partnership other than marriage for two adults of opposite sex – Law aiming to (i) ensure fathers having equitable share of parental responsibility without couple having to marry, (ii) regulate social phenomenon of unmarried different-sex couples having children, (iii) protect children born outside marriage, (iv) protect single parent families, and (v) strengthen institution of marriage and family in traditional sense – Applicant same-sex couples together with not-for-profit association making applications directly to European Court of Human Rights claiming law amounting to discrimination on grounds of sexual orientation – Whether not-for-profit association ‘victim of a violation of the convention’ – Whether domestic remedies exhausted despite absence of any domestic litigation – Whether Greek legislation discriminating against applicant same-sex couples in enjoyment of right to private and family life – Convention for the Protection of Human Rights and Fundamental Freedoms, art 8 in conjunction with art 14, arts 34, 35

Vallianatos and others v Greece

(Application nos 29381/09, 32684/09): European Court of Human Rights (Grand Chamber): Spielmann (President), Casadevall, Raimondi, Ziemele, Villiger, Berro-Lefèvre, Lorenzen, Jočienė, Lazarova Trajkovska, Bianku, Nußberger, Laffranque, Pinto de Albuquerque, Sicilianos, Møse, Potocki, Pejchal JJ; Casadevall, Ziemele, Jočienė and Sicilianos JJ, concurring; Pinto de Albuquerque J, partly concurring, partly dissenting: 7 November 2013

[2014] OJLR 3(1) 183-184

Human rights – Right to family and private life – Discrimination in enjoyment of
– Court denying divorced father access to child on ground that imposition on child of religious convictions based on adherence to Hit Gyülekezete, causing psychological harm – Whether denial of access amounting to discrimination against father on religious grounds when compared to parent with no religious belief – European Convention on Human Rights, art 14 in conjunction with art 8

Vojnity v Hungary: (Application no 29617/07)

European Court of Human Rights (Second Section): Raimondi (President), Lorenzen, Popović, Sajó, Vučinić, Pinto de Albuquerque, Keller JJ (unanimous decision): 12 February 2013

[2013] OJLR 2(2) 470-471

Human Rights – Right to family and private life – Discrimination in exercise thereof
– Austrian law permitting second partner adoptions of other partner’s child for heterosexual but not for same-sex couples on grounds that child’s best interests served by maintaining relationship with parents of different genders – Mother bearing child outside marriage and having sole custody – Subsequently forming stable relationship with same-sex partner – Mother’s same-sex partner seeking to adopt child – Child’s father, who had regular contact with child, refusing consent – Court refusing to consider whether to override father’s lack of consent and refusing adoption order on basis that not in child’s best interests – Whether discrimination in enjoyment of right to family life when situation of same-sex partner wanting to adopt compared to that of heterosexual partner – European Convention on Human Rights, art 8 in conjunction with art 14

X and others v Austria

(Application no 19010/07): European Court of Human Rights (Grand Chamber); Raimondi, Vajić, Garlicki, Lorenzen, Steiner, Hajiyev, Myjer, Mose, Potocki JJ,

Spielmann J concurring, Casadevall, Ziemele, Kovler, Jočienė, Šikuta, de Gaetano and Sicilianos JJ, joint partly dissenting: 19 February 2013

[2013] OJLR 2(2) 472-473

Human rights – Right to family and private life – Freedom from inhuman and degrading treatment – Interference with – Termination of pregnancy, except to save mother’s life or if continuation would make her a ‘physical or mental wreck’, constituting criminal offence in Northern Ireland – Maximum penalty life imprisonment – Northern Ireland Human Rights Commission claiming law criminalizing abortion in cases involving serious malformation of the foetus (SMF), including a fatal foetal abnormality (FFA), or as a result of rape and incest (sexual crime) infringing fundamental human rights and seeking declaration that existing law incompatible with human rights legislation – Whether law criminalizing abortion for cases of SMF, FFA, or sexual crime infringement of right to freedom from inhuman and degrading treatment – Whether infringement of right to private life – Criminal Justice Act 1945, s 25 – Offences Against the Person Act 1861, ss 58, 59 – Human Rights Act 1998, Sch 1, arts 3, 8 – European Convention on Human Rights, arts 2, 3, 8, and 14

The Northern Ireland Human Rights Commission’s Application: In the Matter of an Application for Judicial Review by the Northern Ireland Human Rights Commission. In the Matter of the Law on the Termination of Pregnancy in Northern Ireland

[2015] NIQB 96: High Court of Justice Northern Ireland (Queen’s Bench Division): Horner J: 30 November 2015

[2016] OJLR 5(1) 168-169

Human rights – Right to family and private life – Freedom of religion or belief – Interference with – Ordained priest petitioning for dispensation from celibacy – Marrying in civil ceremony and fathering five children – Obtaining employment as teacher of Catholic religion and morals in State high school – Subsequently receiving dispensation from celibacy – Priest’s affiliation with ‘optional celibacy’ movement being made public – Diocese and Ministry of Education not renewing teaching contract on grounds that publicity concerning marital state giving rise to scandal in breach of conditions imposed under terms of dispensation from celibacy – National court upholding decision – Whether non-renewal of contract infringement of priest’s right to respect for private and family life – Whether non-renewal of contract in keeping with Church’s right to freedom of religion and freedom of association – European Convention on Human Rights, arts 8, 9, 11

Fernández Martín v Spain

(Application no 56030/07): European Court of Human Rights (Third Section): Casadevall, Bîrsan, Gyulumyan, Myjer, Poalelungi, Saiz Arnaiz JJ; Saiz Arnaiz partially dissenting: 15 May 2012

[2012] OJLR 1(2) 524

Human rights - Right to family and private life – Freedom of religion or belief – Interference with – Ordained Catholic priest marrying and fathering five children – Employed in State high school to teach religion and ethics – Receiving dispensation from celibacy on condition that behaviour did not give rise to scandal – Membership in ‘optional celibacy’ movement made public – Upon direction of bishop Ministry of Education failing to renew contract of employment on grounds that publicity giving rise to scandal – Whether

non-renewal of contract infringement of priest's right to respect for private and family life – Whether non-renewal necessary and proportionate interference with right to private and family life on grounds of autonomy of religious communities – European Convention on Human Rights, art 8

Fernández Martínez v Spain

Application no 56030/07: European Court of Human Rights, Grand Chamber: Spielmann, President, Raimondi, Villiger, Berro-Lefèvre, Šikuta, Nicolaou, Sajó, Power-Forde, Karakaş, Nußberger, Potocki, Lemmens, Jäderblom, Gričco, Vehabović, Dedov, Saiz Arnaiz JJ; Spielmann, Sajó, Karakaş, Lemmens, Jäderblom, Vehabović, Dedov, Saiz Arnaiz JJ jointly partly dissenting; Spielmann, Sajó, Lemmens JJ jointly partly dissenting; Sajó J partly dissenting; Dedov J partly dissenting: 12 July 2014

[2014] OJLR 3(3) 522

Human Rights – Right to family and private life – Freedom of religion or belief – Discrimination in enjoyment thereof – Lombardy regional council banning wearing of face coverings in hospitals and public offices – Whether ban entailed direct or indirect discrimination on grounds of religion – Whether interference with private and family life – Lombardy Regional Council resolution no X/4553, 10 December 2015

Tribunale Ordinario di Milano, Prima Sezione Civile

Ordinanza 20 Aprile 2017: Civil Court of Milan, First Division, Italy: Flamini J: 20 April 2017

[2017] OJLR 6(3) 624

Human rights—Right to family and private life—Freedom of religion – Interference with – Claimant forcibly admitted to Vilnius Psychiatric Hospital following breakdown – Diagnosed with acute psychosis – Hospitalization lasting 52 days – Claimant previously attending Ojas Meditation Centre, Lithuanian branch of Osho religious movement – While hospitalized documentary shown on national television discussing claimant under a pseudonym, interviewing her doctor, mother and sister, and referring to Ojas Meditation Centre – Information about claimant's treatment also provided to her mother – Claimant bringing civil claim against hospital – Regional court finding claimant had been unlawfully deprived of liberty since period of detention against her will went beyond 48-hour time-limit after which hospital had failed to apply for court order – Also finding that doctor had disclosed claimant's diagnosis, place of treatment and previous study in the USA to journalists without her consent – Also that other information allowed applicant's identity to be established despite use of a pseudonym – Also that attempting to change her attitude to non-traditional religion had violated her freedom of religion – Court of Appeal upholding findings on deprivation of liberty but overturning those on privacy and freedom of religion – Court finding lack of evidence that documentary had led to claimant's identification and thus breach of privacy – Also that providing health-related information to her mother could not be regarded as breach of her right to privacy since mother had been aware of prior instances of psychiatric treatment and was a close relative – Also finding that critical approach of claimant's doctors to her meditative practices had not in itself restricted her freedom of religion – Appeal on points of law refused – Whether disclosing of information by hospital to journalists and her mother violation of private life – Whether inability to practise religion during hospitalization violation of right to freedom of religion and belief – Whether contracting state exceeding margin of appreciation – European Convention on Human Rights, arts 8 and 9

Mockutė v Lithuania

Application no 66490/09: European Court of Human Rights (Fourth Section): Yudkivska, President, De Gaetano, Pinto de Albuquerque, Vehabovic, Kuris, Ranzoni, Paczolay JJ; Yudkivska and Ranzoni JJ partly dissenting: 27 February 2018

[2018] OJLR 7(3) 577-578

Human rights – Right to family and private life – Interference with – Claimant's infant baptism in Catholic Church recorded in Church's register of baptisms – Church subsequently recording claimant's renunciation of baptism as an adult but refusing to remove the record of baptism from register – Court of first instance granting claimant's claim to have name completely expunged from register – Church appealing – Whether recording of name on register of baptism interference with private life and right to protect personal data – Civil Code, art 9 – Law of 6 January 1978

Association Diocésaine de Coutances

(No RG/1103427): Cour d'appel de Caen (Court of Appeal of Caen), France, Première chambre civile (First Civil Chamber): Maussion (President): 10 September 2013

[2014] OJLR 3(1) 186-187

Human rights – Right to family and private life – Interference with – Applicant Australian journalist invited to private meeting in Turkey to discuss Christianity – Attendees secretly filming journalist with hidden camera and subsequently broadcasting footage in Turkey without blurring his image – Criminal court finding applicant innocent of crime of insulting God and Islam – Applicant's claim against presenter and producer of program for damages dismissed by district court on ground there existed an interest in informing the public – Court of Cassation ruling that applicant's right to private life had been breached as a result of use of hidden camera and by use of terms such as 'pedlar of religion' and 'bigot' used in documentary broadcast – On referral back district court endorsing initial judgment – Upheld on referral to Court of Cassation on grounds footage did not concern applicant's private life but was a documentary on a topical issue of interest to public – Whether failure of the Turkish state to provide sufficient protection for the applicant and refusal of judicial authorities to grant compensation violated applicants right to respect for private life – European Convention on Human Rights art 8

Bremner v Turkey

Application no 37428/06: European Court of Human Rights (Second Section): Lemmens, Karakaş, Keller, Turković, Kūris, Spano, Kjølbro: 13 October 2015

[2016] OJLR 5(1) 181-182

Human rights – Right to family and private life – Interference with – Married couple of Belgian nationality ('first and second applicants') bringing third applicant, who was niece of second applicant and a Moroccan citizen, into Belgium to adopt her – Biological parents of third applicant agreeing to kafala arrangement for first and second applicants to 'look after all [the third applicant]'s interests...and provide for the general needs of her life; to travel with her, whether inside or outside Morocco, and to accommodate her with them when abroad' – Kafala arrangement certified and approved by Moroccan tribunal in charge of notarial matters in 2002 – Act of simple adoption drafted by Belgian notary in 2003 and third applicant arrived in Belgium in 2005 – Belgian courts refusing to approve the act of

adoption on grounds that (1) third applicant had been entrusted to first and second applicants by biological parents and not by competent authorities of the state of origin of biological parents, as required by relevant Belgian legislation, and (2) because adoption would create a new legal status between the three applicants that had not been foreseen by kafala arrangement – Third applicant originally granted residence permit, renewed at regular intervals, albeit on a temporary basis, but causing administrative problems – No residence permit in place for seven-month period – Third applicant eventually granted indefinite leave to remain in 2014 – Whether Belgian authorities refusal to recognize kafala, refusal to agree adoption, and delay in regulating third applicant's residency status violation of right to family and private life – Whether discrimination in enjoyment of right to family and private life – European Convention on Human Rights, art 8, art 14 in conjunction with art 8

Chbihi Loudoudi and Others v Belgium

Application no 52265/10: European Court of Human Rights (Second Section): Raimondi (President), Karakaş, Vučinić, Keller, Lemmens, Kūris, Spano JJ; Karakaş, Vučinić and Keller dissenting: 16 December 2014

[2015] OJLR 4(3) 543-545

Human Rights – Right to family and private life – Interference with – Prospective parents healthy carriers of cystic fibrosis – Requesting medically-assisted procreation and genetic screening to avoid transmitting disease to offspring – Italian law limiting in vitro fertilization to sterile couples or those where man having sexually transmissible disease – Italian law prohibiting pre-implantation diagnosis but permitting medically assisted termination of pregnancy when foetus showing signs of cystic fibrosis – Whether prohibition on IVF and pre-implantation diagnosis interference with respect for private and family life – European Convention on Human Rights, art 8

Costa and Pavan v Italy

(Application no 54270/10): European Court of Human Rights (Second section): Tulkens (President), Popović, Berro-Lefèvre, Sajó, Raimondi, Pinto de Albuquerque, Keller, JJ, Jočienė, Karakaş, additional JJ: 28 August 2012

[2013] OJLR 2(1) 237

(1) Human Rights – Right to family and private life – Interference with – (2) Discrimination – Sexual orientation – Less favourable treatment – Cohabiting lesbian couple in civil partnership applying for 'simple adoption order' by one partner of other's biological child – Respondent state tribunal refusing application as contrary to law and having legal implications running counter to applicants' intentions and child's best interests – Whether law concerning anonymous donor insemination applicable – Whether violation of respect for applicants' family and private life – Whether discrimination against same-sex couple in comparison with opposite sex couples – European Convention on Human Rights, art 14 in conjunction with art 8

Gas and Dubois v France

(Application no 25951/07): European Court of Human Rights (Former Fifth Section): Spielmann, Costa, Jungwiert, Zupančič, Villiger, Berro-Lefèvre, Yudkivska JJ; Costa J concurring joined by Spielmann J; Spielmann J concurring separately joined by Berro-Lefèvre J; Villiger J dissenting: 15 March 2012

[2013] OJLR 2(1) 235-236

Human rights – Right to family and private life – Interference with – Discrimination in enjoyment of – Married male attempting after gender-reassignment surgery to obtain state identity number as female – Statutory requirement that transgendered individual be unmarried or convert marriage to civil partnership with consent of spouse – Spouse withholding consent to convert marriage – Whether statutory requirement violation of right to private life and right to marry and found family – Whether discrimination in exercise of right to private life when compared to unmarried transgender persons – European Convention on Human Rights, art 8, art 12, and art 14 in conjunction with art 8

H v Finland

(Application no 37359/09): European Court of Human Rights (Fourth Section):
Garlicki (President), Hirvelä, Nicolaou, Bianku, Kalaydjieva, Vučinić, De Gaetano,
JJ (unanimous): 13 November 2012

[2013] OJLR 2(1) 236

Human rights – Right to family and private life – Interference with – Discrimination in enjoyment of – Married male attempting after gender-reassignment surgery to obtain state identity number as female – Statutory requirement for obtaining number requiring transgendered individual be unmarried or convert marriage to civil partnership with consent of spouse – Spouse refusing for religious reasons and in interests of child to consent to dissolution of marriage – Whether protection of right to private life under European Convention entailing positive obligation on Member State to provide legal recognition of new gender within marital relationship – European Convention on Human Rights (ECHR) arts 8, 12, and 14 in conjunction with arts 8 and 12

Hämäläinen v Finland

Application no 37359/09: European Court of Human Rights, Grand Chamber:
Spielmann (President), Casadevall, Raimondi, Villiger, Berro-Lefèvre, Hajiyev,
Jočienė, Hirvelä, Sicilianos, Møse, Potocki, Gričco, Vehabović JJ; Ziemele J
concurring; Sajó, Keller, Lemmens JJ dissenting: 16 July 2014

[2015] OJLR 4(1) 149-150

Human rights – Right to family and private life – Interference with – Six Italian nationals of same sex complaining that Italian legislation did not allow them to marry or enter into any other type of civil union and consequently that they had no means of legally safeguarding their relationships – Further that they were being discriminated against as a result of their sexual orientation – Whether, at the date of the court case, Italy had failed to comply with a positive obligation to ensure respect for the applicants' private and family life, in particular through failing to provide a legal framework allowing them to have their relationship recognized and protected under domestic law – Whether same-sex couples having right to marry in Italy – Whether prohibition on same-sex marriage in Italian law amounting to discrimination in enjoyment of right to family and private life – European Convention on Human Rights arts 8, 12, and 14 in conjunction with 8

Oliari and Others v Italy

Application nos 18766/11 and 36030/11: European Court of Human Rights
(Fourth Section): Hirvelä, Raimondi, Bianku, Tsotsoria, Mahoney, Vehabović,
Grozev JJ; Mahoney, joined by Tsotsoria and Vehabović concurring: 21 July
2015

[2016] OJLR 5(1) 176-177

Human rights – Right to family and private life – Interference with – Applicants entering into gestational surrogacy arrangement – Child born in Russia through surrogacy arrangement – Applicants registered as child’s parents in Russia – Birth certificate not indicating that child born through surrogacy arrangement – Colletorto municipal authority refusing to register child’s birth – Applicants charged with misrepresentation of civil status and violation of adoption legislation – DNA testing showing lack of biological ties between applicants and child – Minors Court removing child from applicants in reliance on the lack of biological ties and doubts as to applicants’ child-raising capacities – Child placed in social-service care with a view to adoption – Refusal to register Russian birth certificate confirmed on the ground that its registration contrary to public policy – Minors Court stripping applicants of capacity to continue acting in adoption procedure initiated by them as applicants neither parents nor relatives of the child – Whether child’s placement in social-service care interference with applicants’ right to respect for private and family life – Whether child’s placement in social-service care necessary and proportionate interference with right to private and family life for the prevention of disorder and protection of the rights and freedoms of others – European Convention on Human Rights, art 8

Paradiso and Campanelli v Italy

Application no 25358/12: European Court of Human Rights (Grand Chamber): López Guerra, President, Raimondi, Lazarova Trajkovska, Nußberger, De Gaetano, Hajiyeve, Bianku, Laffranque, Pinto de Albuquerque, Potocki, Lemmens, Jäderblom, Wojtyczek, Gritco, Dedov, Grozev, O’Leary JJ; Raimondi J concurring; De Gaetano, Pinto de Albuquerque, Wojtyczek and Dedov JJ concurring; Dedov J concurring; Lazarova Trajkovska, Bianku, Laffranque, Lemmens and Grozev JJ dissenting: 24 January 2017

[2017] OJLR 2017 6(2) 412-413

Human rights – Right to family and private life – Interference with – Italian couple undergoing in vitro fertilization treatment in Italy – Before embryos implanted male partner killed in conflict in Iraq – Female partner subsequently requesting clinic release embryos to her for donation for stem cell research – Clinic refusing on grounds stem cell research using embryos created by IVF process within Italy unlawful – Whether choice to donate embryos for stem cell research encompassed by right to private life – Whether refusal to release embryos interference with right to private life – Whether choice to donate embryos encompassed by right to peaceful enjoyment of possessions – European Convention on Human Rights art 8, art 1 of Protocol 1

Parrillo v Italy

Application no 46470/11: European Court of Human Rights (Grand Chamber): Spielmann, President, Casadevall, Raimondi, Viliger, Berro, Ziemele, Nicolaou, Sajó, Power-Forde, Vučinić, Yudkivska, De Gaetano, Laffranque, Pinto de Albuquerque, Keller, Vehabović, Dedov JJ, Pinto de Albuquerque J concurring, Dedov concurring, Casadevall, Raimondi, Berro, Nicolaou, and Dedov joint partly concurring, Casadevall, Ziemele, Power-Forde, De Gaetano, and Yudkivska joint partly dissenting: 27 August 2015

[2016] OJLR 5(1) 171-172

Human rights – Right to family and private life – Interference with – Appellant diagnosed with terminal motor neurone disease – Seeking to challenge blanket ban on assisted dying through judicial review – Seeking declaration of incompatibility under Human Rights Act that would find ban to be incompatible with right to respect for private

life – Proposing alternative statutory scheme aimed at sufficiently protecting the weak and vulnerable in society and at showing that blanket ban was unnecessary and disproportionate interference with right to private life – Permission to bring judicial review proceedings initially refused, subsequently granted on appeal by Court of Appeal – Claim for judicial review dismissed by Divisional Court – Whether blanket ban on assisted suicide necessary and proportionate – Human Rights Act 1998, section 4 – Suicide Act 1961, section 2(1) – European Convention on Human Rights, Article 8

R (Conway) v Secretary of State for Justice

[2018] EWCA Civ 1431: Court of Appeal (England and Wales) (Civil Division): Sir Terence Etherton MR, Sir Brian Leveson P and King LJ: 27 June 2018

[2018] OJLR 7(3) 578-579

Human rights – Right to family and private life – Interference with – Two female Indian nationals entering UK on student visas – Subsequently entering into civil partnership and later marrying – Applying for leave to remain on basis of family life as would face difficulties living as same-sex married couple in India – Leave to remain refused – Appeals rejected by First-tier and Upper Tribunals – Whether removal to India in breach of right to respect for family life – European Convention on Human Rights, arts 8(1) and 8(2)

SB (India) v Secretary of State for the Home Department

[2016] EWCA Civ 451: Court of Appeal (Civil Division): Moore-Bick, Gloster, David Richards LJJ: 12 May 2016

[2016] OJLR 5(3) 620

Human rights – Right to family and private life – Interference with – Applicant issued with canonical mandate to teach Roman Catholic religion in schools, subsequently offered indefinite contract at two schools – Divorcing and remarrying in civil ceremony – Applicant’s canonical mandate consequently revoked on grounds of new marriage violation of the Church’s teachings – Withdrawal of canonical mandate resulting in applicant losing contracts to teach Roman Catholic religion – Whether dismissal infringement of right to private life – Whether infringement justified – European Convention on Human Rights, art 8

Travaš v Croatia

Application No 75581/13: European Court of Human Rights (Second Section): Karakaş (President), Laffranque, Vučinić, Gričco, Turković, Kjølbros, Mourou-Vikström JJ: 4 October 2016

[2017] OJLR 6(1) 194-195

Human Rights – Right to family and private life – Protection of personal data – Interference with – Refusal of blood transfusions by Jehovah’s Witnesses – Public Prosecutor’s Office inquiring into the lawfulness of Jehovah’s Witnesses practices – Prosecutor requesting that hospitals submit medical records of Jehovah’s Witnesses – Disclosure of Jehovah’s Witnesses’ medical files – Whether disclosure necessary to ensure patients’ safety, to protect the rights of medical personnel treating Jehovah’s Witnesses, and to safeguard rights of minor patients – Whether disclosure of medical files proportionate to legitimate aims pursued – European Convention on Human Rights, art 8

Avilkina and others v Russia

(Application no 1585/09): European Court of Human Rights (First Section): Berro-Lefèvre (President), Steiner, Hajiyev, Sicilianos, Møse, Turković, Dedov JJ

(unanimous): 6 June 2013

[2014] OJLR 3(1) 181

Human rights – Right to family and private life – Right to enter into registered partnership – Interference with – Applicants heterosexual couple wanting to enter into registered partnership – Domestic law precluding different-sex partners from entering into registered partnership – Applicants claiming discrimination based on sex and sexual orientation contrary to arts 8 and 14 of the European Convention on Human Rights before Administrative Court and Constitutional Court – Constitutional Court dismissing complaint – Finding that not granting different-sex couples access to registered partnership not a violation of art 14 of the Convention taken in conjunction with art 8 – Administrative Court dismissing complaint as unfounded – Whether exclusion from registered partnership infringement of applicants' right to family life and discriminatory – Whether exclusion necessary and proportionate interference with right to family life and freedom from discrimination – Whether contracting state exceeding margin of appreciation – European Convention on Human Rights, arts 8 and 14

Ratzenbock and Seydl v Austria

Application no 28475/12: European Court of Human Rights (Fifth Section):
Nussberger, President, Tsotsoria, Potocki, Grozev, Mits, Kucsko-Stadlmayer and Huseynov JJ; Mits J concurring; Tsotsoria and Grozev JJ dissenting: 26 October 2017

[2018] OJLR 7(2) 362-363

Human rights – Right to family and private life – Right to a fair trial – Interference with – Public service – Deputy prefect transferred because of religious beliefs and because his wife wore a veil – Whether transfer breached his right to respect for private life in conjunction with his freedom of thought, conscience and religion – Whether hearing of judicial review claim within a reasonable time – European Convention on Human Rights, arts 6 and 8

Sodan v Turkey

Application no 18650/05: European Court of Human Rights (Second Section):
Karakaş, Vučinić, Lemmens, Gričco, Turković, Kjølbros JJ, Laffranque (President):
2 February 2016

[2016] OJLR 5(2) 367-368

(1) Human rights – Right to family and private life – Right to freedom of religion or belief – Interference with – (2) Data protection – Personal data – Cancellation of registration – Catholic Personal Prelature refusing claimant's request to cancel registration of membership and provide confirmatory certificate on grounds that it held no current data, the registration had been voluntary and registration could not be cancelled – Conceding willingness to annotate data to protect claimant's privacy – Whether agreement between Holy See and Kingdom of Spain, protecting inviolability of archives, registers and other documents of ecclesiastical institutions from any interference from the State, applicable to citizen exercising right to protection of personal data – Whether withdrawal by individual from religious organization amounting to manifestation of religious belief – Whether refusal to cancel registration of membership interference with right to manifest religion, right to privacy and right to protection of personal data – Constitución Española, arts 16, 18.4 – Ley Orgánica de Protección de Datos, arts 3, 4.5 – International Agreement

on Juridical Affairs between the Holy See and the Kingdom of Spain, art 1.6

Sentencia del Tribunal Supremo, Sala de lo Contencioso-Administrativo 5960/2008

(Appeal no 5960/2008): Supreme Court, Division of Administrative Litigation (Sixth Section of the Third Chamber): 10 November 2011

[2013] OJLR 2(1) 237-238

Human rights – Right to family and private life – Right to marry – Interference with
– Applicant filing petition for divorce – Applicant wanting to marry new partner – Domestic law not granting divorce to party at fault in absence of consent from innocent party – Requirement that consent not be unreasonably withheld – Applicant’s wife refusing to consent to divorce – Lublin Regional Court refusing to grant divorce on the basis of wife’s refusal – Applicant appealing on the grounds that wife’s refusal should not be determinative – Lublin Court of Appeal dismissing applicant’s appeal – Whether refusal to grant divorce violated applicant’s right to private and family life and right to marry – European Convention on Human Rights, arts 8 and 12

Babiarz v Poland

Application no 1955/10: European Court of Human Rights (Fourth Section): Sajó, President, De Gaetano, Pinto de Albuquerque, Wojtyczek, Motoc, Kucsko-Stadlmayer, Bošnjak JJ; Sajó J dissenting; Pinto de Albuquerque J dissenting: 10 January 2017

[2017] OJLR 6(2) 410

Human rights – Right to family and private life – Right to marry – Interference with
– Same-sex couple filing appeal against Municipal Civil Registrar’s refusal to publish bans of marriage – Refusal upheld by civil courts of first and second instance – Neither Italian Constitution nor Civil Code providing gender-related definition of marriage – Civil Code regulating marriage between man and woman but not between same-sex couples – Constitutional Court’s existing ruling on analogous case upholding current legislation under (1) Constitutional principles of human dignity and equality, (2) European Convention on Human Rights and Charter of Fundamental Rights of the European Union relying on state’s margin of appreciation on regulation of same-sex partnerships, (3) Court’s lack of jurisdiction to extend right to marry to same-sex couples – Same-sex couple requesting referral to Constitutional Court for alleged unconstitutionality of Civil Code on basis of (a) denial of right to contract marriage on an equal basis to non-homosexuals, (b) discrimination based on sexual orientation, (c) limitation of legal capacity based on sexual orientation, (d) diminution of social dignity of homosexual persons, (e) prevention of development and expression of personality within type of union widely recognized by international and European human rights charters – Whether court should overrule previous ruling on same-sex marriage – Whether exclusion of same-sex couples from right to marry unlawful under multi-level (international, European and national constitutional) system of human rights protection – Italian Civil Code arts 107, 108, 143, 143 bis, 143 ter, 153 bis – Italian Constitution arts 2, 3, 10.1, 22, 29, 117 – Charter of Fundamental Rights of the European Union arts 9 and 21 – European Convention on Human Rights, arts 8, 12, and 14.

Corte di cassazione no 2015/2400

Corte di cassazione – sezione civile (Court of Cassation Civil Section – Italy): 9 February 2015

[2016] OJLR 5(1) 177-179

Human rights – Right to family and private life – Suicide – Woman of over eighty, not suffering from illness or incapacity, expressing persistent, reasoned wish to die – Medical practitioners refusing to issue prescription for and health board refusing to supply lethal dose of sodium pentobarbital – Swiss Federal Supreme Court rejecting applicant's appeal – Whether depriving applicant of sodium pentobarbital infringement of right to respect for private life – European Convention on Human Rights, art 8

Gross v Switzerland

(Application no 67810/10): European Court of Human Rights (Second Section): Lorenzen, Sajó, Vučinić, Keller JJ, Raimondi (President), Jočienė and Karakaş JJ, dissenting: 14 May 2013

[2014] OJLR 3(1) 180

Human rights – Right to family and private life – Suicide – Medical treatment – Medicines – Applicant having expressed persistent, reasoned wish to die – Whether depriving applicant of sodium pentobarbital breached her right to respect for private life – Chamber judgment having been given in applicant's favour on 14 May 2013 – Court subsequently being informed applicant had died in 2011 – Applicant having taken steps to prevent her death being communicated by intermediary to her counsel and to the court – Whether applicant's conduct an abuse of the right of petition to the court – European Convention on Human Rights art 35

Gross v Switzerland

Application no 67810/10: European Court of Human Rights (Grand Chamber): Casadevall, Villiger, Gyulumyan, Bianku, Popović, Power-Forde, De Gaetano, Jäderblom, Silvis JJ; Spielmann (President), Ziemele, Berro-Lefèvre, Zupančič, Hajiyev, Tsotsoria, Sicilianos, and Keller JJ dissenting: 30 September 2014

[2015] OJLR 4(1) 152-153

Human rights – Right to marry – Same-sex couples – Two male applicants submitting marriage application to local municipal council – Public prosecutor serving notice of objection to marriage – Marriage ceremony performed despite objection – On public prosecutor's application Bordeaux Tribunal de Grand Instance annulling marriage – Decision upheld by Bordeaux Cour d'Appel and by Cour de Cassation – Whether there had been discrimination based on applicants' sexual orientation in relation to right to marry or right to respect for private and family life – European Convention on Human Rights, art 12 in conjunction with art 14, art 8 in conjunction with art 14

Chapin and Charpentier v France

Application No 40183/07: European Court of Human Rights (Fifth Section): Nußberger, Hajiyev, Møse, Potocki, Vehabović, O'Leary, Mits JJ: 9 June 2016

[2017] OJLR 6(1) 196-197

Marriage – Same-sex marriage – Recognition – Two female French citizens, one of whom iure sanguinis also Italian citizen, contracting lawful marriage in France in accordance with French law – Whether Italian public authority required to transcribe marriage in marital status register for civil effects – Whether transcription conflicted with principles of Italian family law – DPR 396/2000, art 19 – L 218/1995, art 28 – ECHR, art 12

Cassazione, Sezione Civile, sentenza no 2487/2017

Court of Cassation, Civil Section, Decision no 2487/2017: Di Palma (President); Cristiano, Acierno, De Marzo, Counsellors; Campanile, Counsellor and Rapporteur: 31 January 2017

[2018] OJLR 7(1) 172

Social Security – Discrimination – Marital status – Couple living together as man and wife for 23 years and having four children together – After death of partner applicant sole provider for children – Department for Social Development refusing Bereavement Benefit and Widowed Parent's Allowance on grounds that applicant neither married nor a civil partner at date of partner's death – Applicant seeking judicial review – Whether decisions unlawfully discriminated against applicant on basis of marital status – Social Security Contributions and Benefits (NI) Act 1992, ss 36, 39A – Human Rights Act 1998, s6 – European Convention on Human Rights, (ECHR) arts 8, 14

McLaughlin's (Siobhan) Application

[2016] NIQB 11: High Court in Northern Ireland (Queen's Bench Division): Treacy J: 9 February 2016

[2016] OJLR 5(3) 627- 628

HUMAN RIGHTS: RIGHT TO POLITICAL SELF-DETERMINATION

Human Rights – Right to political self-determination – Interference with – Secular state – Costa Rican constitution guaranteeing right to self-determination but prohibiting clergymen and laymen from invoking religious motives or religious beliefs in support of political propaganda – Electoral code prohibiting propaganda based on or making use of religious beliefs or doctrines to encourage citizens to join or leave political parties or offices – Governing body of Costa Rican Catholic Church issuing guide outlining principles voters should look for in candidates and instructing in voting rights, duties, and procedures – Guide distributed free of charge to members of the Church – Citizen group alleging guide violating constitutional right to self-determination and infringing upon voting rights – Whether guide constitutionally impermissible religiously motivated politically biased propaganda – Whether guide violating citizens' constitutional right to self-determination in political decision-making – Political Constitution of the Republic of Costa Rica, art 28; Costa Rican Electoral Code, art 136

Ramírez and others v Catholic Church

(No 4732-E1-2013): Tribunal Supremo de Elecciones (Supreme Electoral Tribunal of Costa Rica): Esquivel J: 25 October 2013

[2014] OJLR 3(1) 184-185

INCITEMENT TO HATE

Incitement to hate – Religious hatred – Serious contempt for class of persons – Respondent publisher of tabloid newspaper published article entitled 'Islam must change' allegedly asserting respondent involved in serious crimes – Applicant claiming article incitement to hatred against him and encouragement of others to discriminate and act violently against him because of his religion – Whether

respondent inciting hatred and serious contempt for a class of persons – Whether publication in the public interest and fair and accurate reporting – Racial and Religious Tolerance Act 2001 (Vic.), ss 8, 11, 25, and 27

Sisalem v The Herald & Weekly Times Ltd

Application no H261/2015; [2016] VCAT 1197: Victorian Civil and Administrative Appeals Tribunal (Human Rights List): J Grainger, Tribunal Member: 19 July 2016

[2017] OJLR 6(2) 429

IMMIGRATION

Immigration – Asylum – Appeal – Afghani national claiming asylum on grounds at risk as a result of marriage of older sister in Afghanistan – Secretary of State for Home Department refusing asylum application – On appeal to First-Tier Tribunal, Tribunal hearing evidence of two female persons attired in niqab, one claiming to be sister – Failing to express any concern about veiled attire of witness; making no enquiries of counsel or witness about issue of attire; making no attempt to establish whether witness might testify without veil or whether accommodation could be made – Tribunal determination containing no evaluation of reliability or credibility of evidence and Tribunal failing to make any adverse credibility findings – Tribunal rejecting asylum, human rights, and humanitarian protection claims, and dismissing appeal in entirety – Asylum seeker appealing to Upper Tribunal – Whether First-Tier Tribunal hearing procedurally unfair – Asylum and Immigration Tribunal (Procedure) Rules 2005, r 45 – Tribunal Procedure (Upper Tribunal) Rules 2008, r 5

AAN (Afghanistan) v Secretary of State for the Home Department

Appeal No: DA/01324/2013: Upper Tribunal (Immigration and Asylum Chamber): McCloskey J, President, Mr Mark Ockelton, Deputy President, Grubb, Upper Tribunal Judge: 14 January 2014

[2014] OJLR 3(2) 365-366

Immigration – Asylum – Child – Iranian father seeking asylum in the United Kingdom with ten-year-old daughter – Both claimants practising Muslims – Arrival in France before travelling to UK – France accepting responsibility under European law to determine claimants' asylum claim – Claimants challenging their return to France – Daughter wishing to wear burka in public, in contradiction with French law – Whether Secretary of State would breach European Convention of Human Rights by returning them to France – Whether return would be in child's best interests – European Convention on Human Rights ('ECHR'), arts 3, 8, 9 – UN Convention on the Rights of the Child, art 3 – Asylum and Immigration (Treatment of Claimants, etc) Act 2004 – Borders, Citizenship and Immigration Act 2009

R (B & Anor) v Secretary of State for the Home Department

[2013] EWHC 2281 (Admin): High Court (England and Wales) (Administrative Division): Mr Justice Hickinbottom: 28 June 2013

[2014] OJLR 3(2) 365

Immigration – Asylum – Child – Malaysian father converting to Islam while six-year-old

boy in United Kingdom – Child likely to be brought up as Muslim and circumcised, contrary to Catholic mother’s wishes, if returned to Malaysia – Mother appealing against Tribunal’s refusal to grant asylum for self and child – Whether return would amount to a flagrant breach of mother’s right to respect for private and family life or freedom of religion – Whether return would be in child’s best interests – European Convention on Human Rights, arts 8, 9

SS (Malaysia) v Secretary of State for the Home Department

[2013] EWCA 888: Court of Appeal (England and Wales) (Civil Division): Moore-Bick, Rimer, and Underhill LJ: 18 July 2013

[2014] OJLR 3(1) 173

Immigration – Asylum – Fear of religious persecution – Iranian Kurdish husband and wife fearing religious persecution due to Shi’ite Muslim husband’s conversion to wife’s Jarestani religion – Couple and two minor children seeking asylum in Norway – Older child developing illness leading to alternative appeal for residence on humanitarian grounds – Norway immigration board refusing claim for asylum and application for residence – Whether couple qualifying as refugees – Whether husband’s conversion to Jarestani religion genuine – Whether fear of persecution sufficient grounds for asylum – Whether family eligible for residence permit on humanitarian grounds – Whether rejection of application in best interests of child – Immigration Act of 1998 Chapter 3, sec 15, sec 16 art 1, sec 17 – Immigration Act of 2008, secs 16-11, sec 38 para 1 – Convention on the Rights of the Child, art 3

Lagmannsrett LB-2011-86996

[2012] LB-2011-86996: Court of Appeal (Oslo, Norway): 6 February 2012

[2013] OJLR 2(1) 227-228

Immigration – Asylum – Fear of persecution – Claimants having no political beliefs – Asylum claims refused on ground that claimants able to feign support for persecutory regime in country of nationality – Whether reasonable to expect claimants to lie about lack of political beliefs to avoid persecution – Convention and Protocol relating to the Status of Refugees (1951) (Cmd 9171) and (1967) (Cmd 3906), art 1A(2)

RT (Zimbabwe) v Secretary for State for the Home Department (United Nations High Commissioner for Refugees intervening)

[2012] UKSC 38: Supreme Court (England and Wales): Lord Hope of Craighead DPSC, Baroness Hale of Richmond, Lord Kerr of Tonaghmore, Lord Clarke of Stone-cum-Ebony, Lord Dyson, Lord Wilson, Lord Reed JJSC

[2013] OJLR 2(1) 228

JUDICIAL REVIEW

Administrative law – Religious institutions – Expansion of judicial review to churches if property rights impacted by church decision – Jehovah’s Witness congregation expelling realtor who subsequently lost half his business as Jehovah’s

Witnesses refused to do business with him – Whether Court can review church decision because of impact on business if church did not follow rules of natural justice

Wall v Judicial Committee of the Highwood Congregation of Jehovah's Witnesses

[2016] ABCA 255: Court of Appeal of Alberta: Paperney JA and Rowbotham JA; Wakeling JA (dissenting): 8 September 2016

[2017] OJLR 6(1) 206-207

Federal civil procedure – Preliminary injunction – Federal administrative law and procedure – Jurisdiction – Administrative exhaustion – Standing – Ripeness – Judicial review – Civil rights – Sex discrimination – Gender identity – Termination of pregnancy – Exercise of religion – Private healthcare providers and eight states bringing action against United States Department of Health and Human Services (HHS) and HHS Secretary, challenging regulation enacted pursuant to Patient Protection and Affordable Care Act (ACA) that prohibits discrimination on basis of gender identity and termination of pregnancy – Healthcare providers and states moving for preliminary injunction prohibiting enforcement of regulation – Whether plaintiffs having standing to maintain action – Whether action ripe for judicial review – Whether ACA non-discrimination provision indicates congressional intent to forbid pre-enforcement review of regulation and therefore precludes judicial review under Administrative Procedure Act (APA) – Whether regulation's inclusion of gender identity within definition of sex discrimination conflicts with Title IX prohibition of sex discrimination in violation of APA and therefore is contrary to law – Whether failure by HHS to include Title IX's religious and abortion exemptions in regulation rendering regulation arbitrary, capricious, and contrary to law in violation of APA – Whether plaintiffs demonstrating substantial likelihood of success on claim that regulation violates Religious Freedom Restoration Act (RFRA) as applied to providers, as required to obtain preliminary injunction prohibiting enforcement of regulation – Whether nationwide injunction warranted to prohibit enforcement of regulation's prohibition of discrimination on the basis of gender identity and termination of pregnancy – Fed R Civ Pro 65 (Injunctions); US Const art 1 § 8 (Spending), US Const art 3 (Justiciability), US Const art 5 (Due process), US Const Amend 1 (Speech); 42 USC § 18116(a) (Non-discrimination), Title VI of the Civil Rights Act of 1964, 45 CFR § 92.301 (Enforcement mechanisms), 45 CFR § 92.4 (Definitions); Religious Freedom Restoration Act (RFRA), codified at 42 USC § 2000bb through 2000bb-4; Administrative Procedure Act (APA), Pub L 79-404, 60 Stat 237; Patient Protection and Affordable Care Act (ACA), Pub L 111-148, 124 Stat 119; Non-discrimination in Health Programs and Activities, 81 Fed Reg 31376-31473, codified at 45 CFR § 92

Franciscan Alliance v Burwell

(Civil Action No 7:16-cv-00108-O): United States District Court for the Northern District of Texas Wichita Falls Division: Order on Motions for Preliminary Injunction: O'Connor J: 31 December 2016

[2017] OJLR 6(2) 418-419

Judicial review – Human Fertilisation and Embryology Authority's (HFEA) Statutory Approvals Committee ('the Committee') – Rationality of decision – Application by parents to export frozen eggs of their late daughter ('A') from London to US – Parents proposed to use eggs to create embryo with anonymous donor sperm, implant embryo in A's mother and bring up any child born as parent's grandchild – Committee deciding insufficient evidence A had given consent to proposed use of eggs after A's death –

Parents' application to export eggs refused ('the Decision') – Appeal against judicial review finding that Decision lawful and rational – Whether HFEA's decision to refuse approval of proposed export and use of parents' deceased daughter's frozen eggs irrational – Human Fertilisation and Embryology Act 1990 ('HFE Act'), s 12, Sch 3

R (on the application of Mr and Mrs M) v Human Fertilisation and Embryology Authority

[2016] EWCA Civ 611: Sir James Munby (President of the Family Division), Arden and Burnett LJJ: 30 June 2016

[2016] OJLR 5(3) 634

Judicial review – Jurisdiction – Administrative tribunal – *Special legal regime on recognized churches in Eastern France – Catholic bishop deciding to replace parish priests with another priest – Priests losing the attached presbytery – Third party applying for interim relief to suspend the bishop's decision – Whether administrative tribunal was competent to rule on the applicant's request – Concordat of 26 Messidor an IX (15 July 1801) – Concordat of 18 Germinal an X (8 April 1802) – Law of 1 June 1924 enforcing civil legislation in Alsace and Moselle – Code of Administrative Justice*

Raymond B v Monseigneur C évêque de Metz

(No 352742): Conseil d'Etat (Council of State, France) (10th and 9th sub-sections joined): Tuot (President): 17 October 2012

[2013] OJLR 2(1) 229-230

Judicial review – Public procurement – Public sector equality duty – *Resolutions passed by local authorities critical of policy of State of Israel in settlements in Occupied Palestinian Territories – Authorities resolving on policies of non-cooperation with companies breaching international law, non-investment in Israel and boycott of produce from settlements in so far as such policies lawful – Claimant organization tasked with challenging anti-Semitism – Seeking judicial review of Authorities resolutions on grounds authority failed to have due regard to need to eliminate discrimination and harassment of Jewish people and need to foster good relations between Jews and non-Jews – Whether claimant organization having standing to bring claim – Whether Authorities were public authorities exercising functions giving rise to a duty – Whether resolutions breached authorities public sector equality duty – Whether authorities failed to fulfil duties regarding making of public supply or works contracts – Equality Act 2010, s 149 – Local Government Act 1988, s 17*

R [Jewish Rights Watch (t/a Jewish Human Rights Watch)] v Leicester City Council

[2016] EWHC 1512 (Admin): Queen's Bench Division (Administrative Court): Simon LJ, Flaux J: 28 June 2016

[2017] OJLR 6(2) 416-417

Judicial review – Northern Ireland – Scope of ministers' powers – *Rationality of decision – Department of Health, Social Services and Public Safety's ('the Department') maintenance of a lifetime ban on males who had had sex with other males ('MSM') donating blood – Appeal against judicial review finding of irrational decision, appearance of bias and the Minister of the Department's ('the Minister') lack of authority on the issue – Cross-appeal against the failure of the trial judge to deal with the respondent's claim that the imposition of a lifetime deferral for MSM was disproportionate and in breach of EU law*

– *Whether the maintenance of a permanent deferral for MSM was disproportionate and contrary to EU law – Whether Minister was empowered to give direction to the Northern Ireland Blood Transfusion Service (NIBTS) on deferral criteria – Whether Minister’s decision was irrational and infected by apparent bias – Directive 2002/98; Directive 2004/33; Charter of Fundamental Rights of the European Union; Judicature (Northern Ireland) Act 1978; Northern Ireland Act 1998*

Re Application by JR 65 for Judicial Review

[2016] NICA 20: Morgan LCJ, Gillen LJ, and Weir LJ: 16 March 2016

[2016] OJLR 5(3) 636

LAW OF SUCCESSION

Law of succession – Freedom to dispose of assets – Interference with – *Spanish law providing that ‘decisions contained in a will which are made when the testatrix is suffering from a final illness, in favour of his/her priest, or relatives up to the fourth degree, or his/her church, chapter, community or religious institute will not be valid’ – Elderly testatrix suffering from illness for 10 years prior to death – Testatrix leaving bequest worth 1 million euros, two years prior to death to Religious Order to which her confessor belonged – Plaintiff executor and heir under deceased aunt’s will seeking annulment of bequest – First instance and provincial court refusing annulment – Whether bequest made ‘when testatrix suffering from final illness’ – Whether bequest invalid according to Spanish law on succession – Spanish Civil Code, art 752*

Supreme Court Decision 255/2015

No 255/2015: Tribunal Supremo, Sala de lo Civil, Sección 1 (Supreme Court of Spain, Civil Division, Section 1): Francisco Marín Castán, José Ramón Ferrándiz Gabriel, Ignacio Sancho Gargallo, Sebastián Sastre Papiol JJ: Francisco Javier Orduña Moreno (Rapporteur): 19 May 2015

[2017] OJLR 6(1) 202-203

LEGAL SYSTEMS

Legal systems – Islamic law – Civil procedure – *First applicant’s husband died intestate in Afghanistan – Second to fifth applicants were sons of first applicant – Respondent, who was administering estate, was child of deceased’s previous marriage – First applicant claimed entitled to share in deceased’s estate under Afghani/Sharia law – Respondent refused claim, disputing authenticity of first applicant’s marriage to deceased – Whether there was a good arguable case to grant a freezing order against the respondent*

Ahadi v Ahadi

[2015] EWHC 3912: High Court (Chancery Division): Snowden J: 21 December 2015

[2016] OJLR 5(3) 644

LOCAL GOVERNMENT

Local Government – Powers – Public prayers – Freedom of Religion or belief – Parish

council empowered to do anything calculated to facilitate or which was conducive or incidental to discharge of any of their functions – That power could not result in provision or practice being applied equally to person's of different religious beliefs but which put some of those persons at a disadvantage compared to others – Parish council placing prayers as first item on agenda for monthly public meetings of council – Not obliging members to attend or participate – Secularist councillor arguing interference with right not to hold or to have to manifest religious beliefs – Majority of councillors rejecting secularist councillor's motions to stop prayers being said – Whether saying of prayers 'conducive or incidental to' discharge by council of functions – Whether saying of prayers as part of council business lawful – Whether indirect religious discrimination against secularist councillors – Whether interference with freedom of belief – Local Government Act 1972, s 99, 111, Pt II of Sch 12 – Human Rights Act 1998, Sch 1, Pt 1, arts 9, 14 – Equality Act 2006, ss 45(3), 52 (now Equality Act 2010, ss 19, 149)

R (National Secular Society) v Bideford Town Council

[2012] EWHC 175 (Admin): High Court of Justice of England and Wales

(Queen's Bench Division, Administrative Court): Ouseley J: 10 February 2012

[2012] OJLR 1(2) 537-538

MARRIAGE

Marriage – Same-sex marriage – Recognition – *Same-sex marriage conducted abroad – Subsequent transcription of marriage in the Italian marital status register for civil effects – Whether transcription contravened principles of Italian family law and principles of public order in family law – Civil Code, art 115 – DPR 396/2000, art 18 – L 218/1995, art 65*

Tribunale Civile – Ordinanza 9 aprile 2014

Order in case no 113/2014: Civil Court of Grosseto: Ottati, President: 9 April 2014

[2014] OJLR 3(3) 523-524

Marriage – Same-sex marriage – Validity – *Husband changing sex during marriage – Tribunal ruling sex change invalidating marriage – Whether existing marriage could be considered valid and registered as a same-sex union at request of transsexual spouse – Italian Constitution – art 31 D lgs 150/2011 and arts 2, 40 L 164/1982*

Corte Costituzionale, sentenza n 170/2014

No 170/2014: Constitutional Court, Italy: Cassese, President; Tesauro, Napolitano, Frigo, Criscuolo, Grossi, Carosi, Cartabia, Mattarella, Morelli, Coraggio, Amato JJ: 11 June 2014

[2014] OJLR 3(3) 523

Marriage – Validity of marriage – Non-marriage – *Man and woman undergoing secret Islamic wedding ceremony in London flat performed in front of Imam and two witnesses but without written contract or written evidence – Consequently failing to meet requirements of Katib al Kitaab – Woman subsequently bearing child – Man divorcing woman over telephone – Woman issuing petition for decree of nullity in order to obtain consequential financial orders for self and child – Whether ceremony having legal effect of 'marriage' so as to enable declaration of nullity to issue – Whether concept of 'non-marriage' in English law – Matrimonial Causes Act 1973, s 11*

El Gamal v Bin Saeed al-Maktoum

[2011] EWHC B27: High Court of Justice (England and Wales) (Family Division):
Bodey J: 22 December 2011

[2012] OJLR 1(2) 536

MENTAL HEALTH

Mental Health – Capacity – Gift to church – MS, an adult, having property and affairs subject to local National Health Service Trust deputyship – Wishing to tithe 10% of his inheritance to The Church of Jesus Christ of Latter-day Saints – Mother and consultant psychiatrist judging MS lacking capacity to make gift – Whether MS having capacity to tithe – Whether MS having capacity to litigate – Mental Capacity Act 2005

A County Council v MS and another

[2014] COP Case no 11413486: Court of Protection (England and Wales):
Eldergill DJ: 20 March 2014

[2014] OJLR 3(3) 528-529

MINISTER OF RELIGION

Minister of Religion – Employment – Contract of employment – Claimant minister of religion appointed in accordance with standing orders to minister to group of congregations – Entitled to stipend, accommodation, pension, holiday and sick pay, subject to possibility of disciplinary proceedings and paying schedule E tax – Subsequently resigning and making claim of unfair dismissal – Whether ‘employee’ under ‘contract of service’ for purposes of unfair dismissal claim – Employment Rights Act 1996, Section 230

Moore v President of the Methodist Conference

(UKEAT/219/10): Employment Appeal Tribunal: Underhill J (President), Mr J D Evans and Mr M Worthington: 15 March 2011

[2012] OJLR 1(1) 296-297

Minister of Religion – Employment – Contract of employment – Methodist minister appointed as superintendent to a circuit of churches – Entitled to stipend, accommodation, pension, holiday and sick pay, paying schedule E tax and subject to possibility of disciplinary proceedings – Tendering letter of resignation and making claim of unfair dismissal – Whether ‘employee’ of the church under ‘contract of service’ for purposes of unfair dismissal claim – Whether freedom of belief engaged in contractual relations between minister and church – Employment Rights Act 1996, s 230 – Human Rights Act 1998, Sch 1, Pt I, art 9

Preston (formerly Moore) v President of the Methodist Conference

[2011] EWCA Civ 1581: Court of Appeal (England and Wales) (Civil Division):
Maurice Kay, Longmore LJ, Sir David Keene: 20 December 2011

[2012] OJLR 1(2) 527

Minister of Religion – Employment – Contract of employment – Methodist minister appointed as superintendent to a circuit of churches – Entitled to stipend, accommodation,

pension, holiday and sick pay, paying schedule E tax and subject to possibility of disciplinary proceedings – Minister tendering letter of resignation and claiming unfair constructive dismissal – Whether ‘employee’ of the church under ‘contract of service’ for purposes of unfair dismissal claim – Employment Rights Act 1996, s 230

Preston (formerly Moore) v President of the Methodist Conference

[2013] UKSC 29: Supreme Court of the United Kingdom: Lord Hope of Craighead DPSC, Baroness Hale of Richmond, Lord Wilson, Lord Sumption, Lord Carnwath JJSC

[2013] OJLR 2(2) 474

Minister of religion – Right to procedural fairness – Interference with – Applicant ordained minister of Bloemendal Church of Christ Mission of the Republic of South Africa – Church executive deciding to ‘dis-fellowship’ applicant from performance of pastoral duties for divorcing his wife and marrying someone else – Applicant claiming judicial review of Church executive’s decision on grounds it failed to provide a fair hearing before reaching decision – Whether court having common law jurisdiction to determine religious disputes – Whether Church violated principles of natural justice and the right to be heard

Fortuin v Church of Christ Mission of the Republic of South Africa and Others

(3626/15) [2016] ZAECPHC 18: High Court of South Africa (Eastern Cape Local Division): Renqe J: 5 May 2016

[2017] OJLR 6(2) 431-432

PATENT

Patent – European Patent – Biological material – Proprietor registering European patent concerning the identification of Neutrokin- α as new member of TNF ligand superfamily, and elucidation of its nucleic acid and amino acid sequences to enable use of known techniques to develop antibodies for therapeutic purposes – No supporting data from in vitro or in vivo studies – Pharmaceutical company challenging patent – European Patent Office ruling patent ‘susceptible of industrial application’ – National court applying more exacting test and ruling patent invalid because specification did not disclose invention ‘susceptible of industrial application’ – Effect on national courts of jurisprudence of European Patent Office – Information required to prove invention ‘susceptible of industrial application’ – European Patent Convention, arts 52, 57

Eli Lilly & Co v Human Genome Sciences Inc

[2011] UKSC 51: Supreme Court (England and Wales): Lord Hope of Craighead DPSC, Lord Walker of Gestingthorpe JSC, Lord Neuberger of Abbotsbury MR, Lord Clarke of Stone-cum-Ebony JSC, Lord Collins of Mapesbury: (Lord Hope of Craighead DPSC, Lord Walker of Gestingthorpe and Lord Clarke of Stone-cum-Ebony JJSC delivered concurring judgments and Lord Collins of Mapesbury agreed): 2 November 2011

[2012] OJLR 1(2) 529-530

PERSONAL RIGHTS OF CITIZENS

Personal rights of the citizen – Right to life of the unborn child – Conflict between

rights – Constitution of Ireland establishing state duty to ‘respect, and, as far as practicable, defend and vindicate’ the personal rights of the citizen and the right to life of the unborn child – Woman carrying 15-week foetus declared brain-dead following ‘catastrophic’ damage to brain – Somatic measures, including mechanical ventilation, feeding by nasogastric tube and medical interventions, applied to provide ‘incubated environment’ for foetus because doctors feared legal consequences of allowing natural death – Woman’s father applying for declaration that somatic measures should cease to allow woman’s dignified death – All seven experts agreeing that woman’s recovery impossible and child had negligible prospect of being born alive – Whether right to life of unborn child engaged – Whether right to life of unborn child should prevail over mother’s personal right to dignified death – Whether withdrawal of life-support lawful – Constitution of Ireland, arts 40.3.1 and 40.3.3

PP v Health Service Executive

[2014] IEHC 622: The High Court of Ireland (Divisional Court): Kearns P, Baker, Costello JJ: 26 December [2014]

[2015] OJLR 4(2) 327-328

PRACTICE

Practice – Parties – Standing – State granting tuition tax credits to income taxpayers who contributed money to student tuition organizations (STOs) – STOs using contributions to provide scholarships to students attending private religious schools – Tax payers arguing government thereby financially supporting religion and violating First Amendment’s Establishment Clause – Whether taxpayers having standing to challenge tax credit – US Const Art III – Ariz Rev Stat Ann Section 43–1089.

Arizona Christian School Tuition Organization v Winn

(Docket No 09-987): Supreme Court of the United States: Kennedy J with Roberts CJ and Scalia, Thomas and Alito JJ Scalia J concurring with Thomas J Kagan J dissenting with Ginsburg, Breyer and Sotomayor JJ: 4 April 2011

[2012] OJLR 1(1) 300

PLACES OF RELIGIOUS WORSHIP

Places of religious worship – Registration – Chapel – Church of Scientology – Registrar General refusing to certify Scientologist chapel as ‘place of meeting for religious worship’ – Whether Scientology a religion – Whether Scientology services acts of worship – Places of Worship Registration Act 1855, s 2

Regina (Hodkin and another) v Registrar General of Births, Deaths and Marriages

[2013] UKSC 77: Supreme Court (England and Wales): Lord Neuberger of Abbotsbury PSC, Lord Clarke of Stone-cum-Ebony, Lord Wilson, Lord Reed, and Lord Toulson JJSC: 11 December 2013

[2014] OJLR 3(2) 362

Places of religious worship – Registration – Church building – Statute requiring local authorities to maintain list of assets of community value – Assets of community value defined as (i) those with current or recent ‘non-ancillary use’ furthering ‘the social well being or interest of the local community’ or (ii) those having realistic prospect of such ancillary use within five years – Effect of listing was potential six-month moratorium on sale to provide community group with opportunity to bid – Listing of church building and adjoining land by City Council on application of local interest group – Owners of church wishing to sell church and avoid six-month moratorium therefore appealing City Council’s decision to list the building – Whether religious interests fall within scope of uses that further ‘the social wellbeing or interests of the local community’ – Definition of ‘ancillary’ and ‘non-ancillary’ uses – Evaluation of realistic future uses – Localism Act 2011, section 88 – Assets of Community Value (England) Regulations 2012 (SI 2012/2421), regulation 11

The General Conference of the New Church and Bristol City Council

[2015] UKFTT CR/2014/0013 (GRC): First-Tier Tribunal (General Regulatory Chamber): Judge Lane, President: 12 February 2015

[2015] OJLR 4(3) 541-542

State schools – Use of school buildings – Religious purposes – Ministers of Religion of the Catholic Church requesting use of school building for the purpose of Easter religious rites after school – Whether the school council permitted to allow use of classrooms for religious rites after school time – Government decree issued under parliamentary delegation 297/1994, art 96 paras 4 and 6 – Law 222/1985, art 16

Tribunale Amministrativo Regionale, Emilia Romagna

Decision no 166/2016: No 166/2016: Regional Administrative Tribunal of Emilia Romagna, Italy: Giuseppe Di Nunzio, President; Italo Caso, Counsellor, Draftsman of Judgment; Ugo De Carlo, Counsellor: 9 February 2016

[2018] OJLR 7(1) 162

PRISONERS’ AND DETAINEES’ RIGHTS

Human rights – Freedom of religion or belief – Protection from discrimination – Interference with – Claimants two Muslim men detained at Brook House immigration removal centre – Brook House operating ‘night state’ or lock-in regime during which detainees confined to their rooms – Lock-in operating between 9.00 pm and 8.00 am – Claimants arguing lock-in discriminating against devout Muslims who are required to pray five times a day since three of these five prayers fall in the lock-in period during the summer and one all year round – During lock-ins, observant Muslim detainees having to perform prayers in rooms shared with one or two other detainees and in close proximity to an unclosed lavatory cubicle – Claimants seeking permission to apply for judicial review on the grounds that conditions and regime at Brook House interfering with required religious observance – Also that conditions and regime having differential and discriminatory impact upon them as Muslims, not experienced by those of other faiths or of no faith at all – Whether SSHD breaching public sector equality duty under Equality Act 2010, s 149 – Whether indirect discrimination without lawful justification contrary to European Convention on Human Rights arts 9 and 14 and Equality Act 2010, s 19 – Equality Act, ss 19 and 149 – European Convention on Human Rights, arts 9 and 14

R (on the application of Hussein and Rahman) v Secretary of State for the Home Department and G4S (Liberty intervening)

[2018] EWHC 213 (Admin): Queen's Bench Division (Administrative Court): Holman J: 1 February 2018

[2018] OJLR 7(2) 354-355

Prisoners' rights – Freedom of religion or belief – Interference with – Prisoner on remand for offence related to terrorism – Prohibited from wearing hijab – Prohibition of hijab justified on basis of the need to protect the security of prisoner, warders had to be able to identify prisoners and veiling impeded identification – Whether prohibition of wearing veil unjustified interference with prisoner's right to religious freedom – Spanish Constitution art 25.2

Audiencia Nacional Sala de lo Penal, Seccion 1, Auto no 530/2017 de 17 julio

Nacional Sala de lo Penal, Seccion 1, Spain : Ilma, Presidente; Sra. Dona Concepcion Espejel Jorquera ; Ilmos. Magistrados, Dona Manuela Fernandez Prado ; Javier Martinez Lazaro, D. Nicolas Poveda Penas ; D Ramon Saez Valcarcel : 17 July 2017

[2017] OJLR 7(2) 358-359

Prisoners' rights – Freedom of religion or belief – Interference with – Prison rules requiring that prisoners provide urine sample for purposes of mandatory drug test – Prisoner undertaking voluntary 3-day fast prior to court appearance as part of religious preparation for hearing – As a result of fast failing to provide sufficiently large sample – Claimant convicted by independent adjudicator of failing to obey lawful order – Whether intention to disobey lawful order – Whether fast manifestation of prisoner's religion – Whether requirement to provide sample interference with prisoner's right to manifest religion – Whether limitations imposed on prisoner's manifestation of religion necessary in democratic society – Human Rights Act 1998, Sch 1, Pt I, art 9 – Prison Rules 1999 (SI 1999/728), r 51 (22)

R (Bashir) v Independent Adjudicator

[2011] EWHC 1108: High Court of Justice (England and Wales) (Queen's Bench Division, Administrative Court): HHJ Pelling QC sitting as a judge of the High Court: 25 May 2011

[2012] OJLR 1(2) 539-540

PROFESSIONAL QUALIFICATION

Professional qualification – Refusal to authorize – Discrimination based on marital status – Discrimination based on sexual orientation – Applicant seeking entry to Anglican Church process of discernment to become priest – Anglican Church's internal rules requiring a candidate for priesthood to be either married to a spouse of opposite sex, or celibate – Church's internal rules also requiring candidates to be 'chaste' – Anglican bishop denying entry to discernment process by reason of applicant's acknowledged unmarried same-sex relationship – Applicant claiming discrimination based on marital status and sexual orientation – Whether actual practice of Church regarding priests in same-sex relationships inconsistent with proclaimed doctrine and therefore not truly

doctrine of Church – Whether complaint falling within statutory organised religion exception to general Human Rights Act prohibition of discrimination on basis of gender or marital status – Whether allowing claim would undermine autonomy of religious institutions – New Zealand Bill of Rights Act 1990, ss 13, 15, 20 – New Zealand Human Rights Act 1993, ss 21(1)(b) and (m), 38, 39(1) – Marriage Act 1955, s 29(2) – Marriage (Definition of Marriage) Amendment Act 2013, s 4 – International Covenant on Civil and Political Rights, art 18

The Gay and Lesbian Clergy Anti-Discrimination Society Inc v Bishop of Auckland

[2013] NZHRRT 36: New Zealand Human Rights Review Tribunal: Haines QC, Chairperson; Cook JP and Hickey, Members: 17 October 2013

[2014] OJLR 3(1) 173-174

RELIGIOUS SLAUGHTER

Religious slaughter – Non-stunned religious slaughter – Animal welfare – Welfare at the Time of Killing Regulations dealing with non-stunned religious slaughter of sheep – V-restrainer equipment used to restrain sheep being moved to be slaughtered in traditional Halal Slaughter – Regulations as drafted and interpreted by Department of Environment, Food, and Rural Affairs stopping use of V-restrainer to hold multiple sheep since slaughterman required to be ready to carry out slaughter immediately after animal placed in V-restraint – Claimant association of meat suppliers applying for judicial review – Seeking declaration that Regulations in respect of V-restrainer unlawful in so far as contrary to welfare of sheep as flock species, as natural flocking instincts meant sheep naturally wanted to follow one another onto V-restrainer – Whether Regulations unlawful – Whether claim brought out of time – Welfare at the Time of Killing Regulations SI 2015/1782, sch 3, para 6(1)(a) – Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing

R (on the application of The Association of Independent Meat Suppliers) v Secretary of State for Environment, Food and Rural Affairs

[2017] EWHC 1961 (Administrative Court): High Court of Justice, England and Wales, Queen's Bench Division (Administrative Court): Fraser J: 27 July 2017

[2018] OJLR 7(1) 179

RELIGIOUS SYMBOLS

Human rights – Freedom of religion or belief – Manifestation of religion by wearing religious garment – Interference with – Applicant Muslim wearing skullcap summoned to appear as witness before state court – Court ordering applicant to remove skullcap – Applicant appearing as summoned but refusing to remove skullcap – Applicant expelled from courtroom, convicted of contempt of court and sentenced to a fine – Applicant alleging violation of rights guaranteed by Constitution and European Convention on Human Rights and discrimination on religious grounds – Appeals Chamber of state court finding that fine imposed on applicant justified but excessive in amount – Finding that requirement to remove all headgear in public institutions basic requirement of life in society – Also that in secular state such as Bosnia and Herzegovina any manifestation of religion in a courtroom forbidden – Applicant imprisoned following failure to pay fine – Constitutional Court finding no breach of arts 9 and 14 of the Convention, fully accepting

state court's reasoning – Finding that automatic conversion of fines into imprisonment breach of art 6 of the Convention and ordering that Criminal Code be amended accordingly – Not quashing decision converting applicant's fine into imprisonment, relying on principle of legal certainty – Whether punishment imposed on applicant for refusing to remove skullcap infringement of applicant's right to freedom of religion or belief – Whether punishment necessary and proportionate interference with right to freedom of religion or belief – Whether necessary for the protection of the rights and freedoms of others – Whether contracting state exceeding margin of appreciation – European Convention on Human Rights, art 9

Mme Asma X and another v Micropole univers

No 2484: Cour de cassation (Court of Cassation) France, Chambre sociale (Social Chamber) : Frouin (President), Huglo (Speaker) : 22 November 2017

[2018] OJLR 7(2) 356-357

Human rights – Freedom of religion or belief – Manifestation of religion by wearing religious garment – *Interference with – Applicants two Muslim women, national of Belgium and national of Morocco, choosing to wear niqab – Law of 1 June 2011 banning wearing of any garment completely or largely concealing face – First applicant consequently ceasing to wear niqab and second applicant remaining at home – Applicants bringing action for suspension and annulment of the Law before the Constitutional Court – Constitutional Court rejecting application for suspension – Two natural persons and an association also seeking annulment of the Law – Constitutional Court dismissing all applications for annulment – Whether ban infringement of right to private life – Whether ban infringement of right to freedom of religion or belief – Whether ban discriminatory – Whether necessary and proportionate interference with right to private life and freedom of religion or belief for the protection of the rights and freedoms of others – Whether contracting state exceeding margin of appreciation – European Convention on Human Rights, arts 8, 9 and 14*

Belcacemi and Oussar v Belgium

Application no 37798/13: European Court of Human Rights (Second Section): Spano, President, Laffranque, Karakaş, Vučinić, Lemmens, Griţco, Mourou-Vikström JJ; Spano and Karakaş JJ concurring: 11 July 2017

[2018] OJLR 7(1) 177

Human rights – Freedom of religion or belief – Manifestation of religious belief – *Wearing turbans for religious purposes at public schools – 2013 circular banning wearing religious symbols in public consequently prohibiting wearing turbans at school – Whether pressing social need for ban in democratic society – Circular 2013/1/omz concerning the ban on the wearing of religious symbols at public schools of Flemish community – Belgian Constitutional Rights, art 24 – European Convention on Human Rights, art 9 – Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, art 2 – International Covenant on Civil and Political Rights, art 18 – Convention on the Rights of the Child, art 28 – Universal Declaration of Human Rights, art 26*

Case no A.209.352/IX-8049 Judgment no 228.751, Case no A.209.352/IX-8049

Raad van State, Afdeling Bestuursrechtspraak IXe Kamer (Council of State of Belgium, Administrative Law Division, 9th Chamber): Van Haegendoren, Seutin, Thys JJ: 14 October 2014

[2016] OJLR 5(3) 625-626

Human rights – Freedom of religion or belief – Religious symbols – Adherent to Sikh faith wearing kirpan in public place – Refusing to hand kirpan in to authorities – Convicted of carrying weapon in public place – Appealing to Supreme Court – Whether conviction for carrying kirpan in public place interference with religious freedom – Whether interference justified – Whether Sikhs should be exempted on religious grounds from the general prohibition of not carrying weapons in the streets and in public place – ECHR, art 9

Corte Suprema di Cassazione, Prima sezione penale

24084/2017: No 24084: Supreme Court of Cassation (Supreme Court of Cassation) (Italy) (First Criminal Division): Mazzei (President); Tardio, Bonito, Vannucci, Counsellors; Novik, Counsellor and Rapporteur: 31 March 2017

[2017] OJLR 6(3) 625

Human Rights – Freedom of religion or belief – Interference with – Prohibition of the full veil – Local authority a) reforming ‘Ordenanza’ (decisions which regulated social activity or behaviour of citizens) concerning citizenship and due coexistence so that people who wore full veil, balaclavas, helmets or any other garments which made identification or visual communication difficult, were prohibited from having access to and staying in facilities of local authorities – b) Modifying in similar manner ‘Reglamentos’ (decisions which regulated certain public services) on (1) Local Archives; (2) Civic centres and local establishments and (3) Service of transport of passengers – Appeal against reforms by association of Muslim women – Whether local authority empowered to regulate matters affecting freedom of religion – Whether interference with Muslim women’s freedom of religion – Whether reform and modification lawful – Ley 29/1998, de la Jurisdicción Contencioso Administrativa – Spanish Constitution, arts 16 and 140 – European Charter of Local Self-Government, art 4.2.

Tribunal Supremo, Sala de lo Contencioso-Administrativo Appeal no 4118/2011

Supreme Court, Division of Administrative Litigation (Seventh Section of the Third Chamber): Chair of the Judiciary Panel Vicente Conde Martín de Hijas: 14 February 2013

[2013] OJLR 2(2) 476-477

Religious symbols – Local authority elections – Use of religious images and subjects within logos of electoral coalitions – National decree prohibiting use of images and subjects of religious nature within logos of electoral coalitions in local authority elections – Political party (‘Popoli democratica’) using image of a medieval knight in the act of piercing dragon – Similarity with the statue of St George present on church building in locality – ‘Popoli democratica’ winning election – Members of opponent political party challenging legitimacy of victory – Whether all symbols with religious roots prohibited on logos – Whether depiction of St George had unambiguous religious meaning – Whether susceptibility of electorate to influence by religious images and subjects to be taken into account in evaluating whether an image made reference to religion – DPR (Decree of the President of the Republic) of May 16, 1960 no 570, Consolidated Law on composition and election of municipal administration, arts 30 and 33.

Consiglio di Stato: Sentenza 1366/2012

Consiglio di Stato (Council of State), Sezione V, Italy: 12 March 2012

[2013] OJLR I-220

Religious symbols – Prohibition in public spaces – Nativity scene – National law prohibiting the placing of any religious signs or emblems in any public place except for buildings used for worship, burial grounds, funerary monuments, museums or exhibitions – Mayor, without formal decision, installing nativity scene in city hall – Citizen and public interest body claiming decision to install ultra vires the majors powers – Administrative tribunal dismissing claim – Appeal to Court of Appeal – Whether nativity scene violation of rule prohibiting placing of religious signs in public places – Law of December 9 1905 on the Separation of Churches and State, art 28

Garcia and another v Commune de Béziers

No 15MA03863: Administrative Court of Appeal of Marseille, France, 5th Chamber: (Bocquet, Marcovici, Hameline) J: 4 April 2017

[2017] OJLR 6(3) 627

REVENUE

Human rights – Freedom of religion or belief – Discrimination in exercise thereof – Right to peaceful enjoyment of possessions – Interference with – Religious organization restricting access to temples to selected class of worshippers – Valuation officer applying 80 per cent reduction in rating of temple in Preston, UK, in view of its use for charitable purposes but refusing full exemption available for buildings used for ‘public religious worship’ – On final appeal House of Lords ruling that full exemption available only for places of religious worship open to the public and that refusal of exemption to temple not falling within ambit of claimant’s right to freedom of religion – Whether discrimination in enjoyment of freedom of religion – Whether state action neutral exercise of legitimate power in religious domain – Whether restriction on religious organization’s freedom of religion reasonable and objective and proportionately pursuing legitimate aim – Whether appropriate and effective domestic remedy available – European Convention on Human Rights, art 9 in conjunction with art 14, art 13

The Church of Jesus Christ of Latter-day Saints v The United Kingdom

(Application no 7552/09): European Court of Human Rights (Fourth Section): Ziemele (President), Hirvelä, Bianku, Tsotsoria, Mahoney, Wojtyczek, Vehabović JJ; Ziemele and Hirvelä JJ joint concurring opinion: 4 March 2013

[2014] OJLR 3(2) 357-358

Revenue – Income tax law – ‘Parsonage exemption’ – Constitutionality of – Standing to challenge – Plaintiffs, an association campaigning for freedom from religion and its co-presidents, contending federal income tax exemptions for ‘ministers of the gospel’ unconstitutional – Whether plaintiffs having standing to challenge exemption – Whether exemptions granted under Internal Revenue Code violating United States Constitution – Internal Revenue Code, 26 USC s 107(1), s 107(2); US Const amend 1; US Const amend 5

Freedom From Religion Foundation v Lew

(No 11-cv-626-bbc): United States District for the Western District of Wisconsin: Barbara B Crabb, District Judge: 21 November 2013

[2014] OJLR 3(2) 361-362

Revenue – Value-Added Tax (VAT) – Exemption from online filing – Compulsory online filing of VAT returns required from all businesses – Exemption granted to person ‘who the Commissioners are satisfied is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications’ – Sole director and shareholder of appellant company claimed to be member of Jimites Sect of the Plymouth Brethren – Commissioners refusing to grant paper submissions – Appellant company appealing – Whether appellant company’s or religious society’s views should be considered – Definition of ‘electronic communications’ – Meaning of ‘incompatible’ – Whether company capable of holding religious beliefs – Whether requirement to file online interfered with company’s right to manifest religion and beliefs – Whether HMRC had acted proportionately – Value-Added Tax Regulations 1995/2518, Reg 25A(6)(a) – European Convention on Human Rights, art 9

**Exmoor Coast Boat Cruises Ltd v HM Revenue and Customs
Commissioners**

[2014] UKFTT 1103 (TC): First-Tier Tribunal (Tax Chamber): HHJ Barbara Mosedale: 17 December 2014

[2015] OJLR 4(2) 332-333

Revenue – Value added tax (VAT) – Exemption from online filing – Compulsory online filing of VAT returns required from all businesses – Taxpayer claiming exemption from electronic filing, in favour of paper filing, as practising member of religious society whose beliefs were incompatible with the use of electronic communications – Taxpayer providing no evidence of practising membership of such a religious society or order – Commissioners refusing to grant paper submissions – Commissioners offering telephone filing – Whether Taxpayer entitled to exemption from electronic filing as practising member of religious society – Whether requirement to file electronically infringed Taxpayer’s right to manifest religion or belief – Whether Taxpayer entitled to exemption from electronic filing due to age, remoteness of location, or any other reason – Value Added Tax Regulations 1995/2518, regulation 25A; Human Rights Act 1998, s 3; European Convention on Human Rights, art 9

**Harvey (t/a Sun Ice Air Conditioning Services) v Her Majesty’s
Commissioners for Revenue & Customs**

TC/2015/02670: First-Tier Tribunal (Tax Chamber): Judge Sarah Allatt, Mr Ian Abrams: 20 April 2016

[2016] OJLR 5(3) 644-645

Revenue – Value added tax – Exemption for supplies in the public interest – EU law providing exemption from VAT for ‘non-profit making organizations with aims of ... religious, patriotic, philosophical, philanthropic or civic nature’ – Governing body of Freemasonry appealing against decision of HMRC refusing public interest exemption – Whether aims of the governing body were the same as those of the lodges and their members – Whether charitable activities deemed to be of philanthropic, philosophical or civic nature – Whether aims falling outside the exemption were incidental or ancillary to those of the requisite character – Whether values of the governing body ‘religious’ – Council Directive 2006/112/EC, art 132(1)(l) – Human Rights Act 1998, Sch I, Pt 1, art 9

**United Grand Lodge of England v The Commissioners for Her Majesty’s
Revenue and Customs**

[2014] UKFTT 164 (TC): First-tier Tribunal (Tax Chamber): Charles Hellier J,

Julian Stafford: 3 February 2014

[2014] OJLR 3(3) 527

SECULARISM

Secularism – State promotion of religion – Shari’ah-compliant financial services – Corporation, wholly owned by State of Kerala for purposes of promoting industrial development, contributing share capital to Islamic non-banking financial institution – Former minister filing writ petitions in public interest challenging decision to invest – Whether state investment amounting to infringement of principle of secularism – Whether also amounting to utilization of the proceeds of tax for the promotion or maintenance of religion – Indian Const art 27

Dr Subrahmanian Swamy, A-77 v State of Kerala, India & Ors

Appeal of WP(C) no 35180 of 2009(S) & 10662/2010: High Court of Kerala: J Chelameswar CJ, PR Ramachandra Menon J: 3 February 2011

[2014] OJLR 3(3) 519-520

SEPARATION OF CHURCH AND STATE

(1) Separation of church and state – Interference with (2) Human rights – Freedom of religion or belief – Discrimination in enjoyment of – Holy cross (Cross of Muela) standing on publicly owned mountain – Private association claiming presence of holy cross breach of principle of state neutrality and amounting to discrimination in enjoyment of freedom of religion or belief in that holy cross was ‘symbol of the Catholicism imposed by the dictatorship of General Franco’ and privileged the Catholic Church – Whether presence of cross compatible with state neutrality – Whether discrimination in exercise of right to freedom of religion or belief – Constitución Española de 1978, arts 14, 16

Sentencia del Tribunal Superior de Valencia 648/2011

(Appeal no 648/2011): Superior Court of Justice of Valencia, Chamber of Administrative Proceedings (Fifth Section): Belmont Mora (President), Vidal Mas, Nieto Martín, JJ: 6 September 2011

[2013] OJLR I-221

Separation of church and state – Interference with – Ritual slaughter – European Union and national requirement that animals be stunned before slaughter – National law permitting ritual slaughter where stunning not permitted by religious requirements for slaughter – Prime minister refusing animal welfare association’s request to repeal law permitting ritual slaughter – Association seeking judicial review – Whether derogation compatible with principle of laïcité and principle of equality – Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing – French Constitution, art 37 – Code of the Country and Sea Fishing, arts L. 214-1, R. 214-70, R. 214-75, L. 214-3 – Code of Administrative Justice, art L. 761-1.

Œuvre d’Assistance aux Bêtes d’Abattoirs

(No 361441): Conseil d’Etat (Council of State), France (3rd and 8th subsections joined): 5 July 2013

[2014] OJLR 3(1) 179

Separation of church and state – Places of worship – State support for religion – *Law providing for separation of church and state prohibiting state subsidy of any cult and prohibiting financing of any association bearing costs of maintenance of any place of worship not owned by state at date of separation of church and state – Later law empowering local authorities to grant long lease in public interest – Town council granting long-lease for parcel of communal land to federation of Muslim associations for building of mosque – Rent amounting to one euro per annum – Claimant, member of town council, challenging grant of lease – Whether lease violating doctrine of separation of church and state – Whether derogation justified – Whether peppercorn rent constituting disguised subsidy of religion – Law of 9 December 1905 on the Separation of Churches and State, arts 1, 2, 13, 19 – General Code of Local Public Entities, art L. 1311-2 – Rural Code, art L.451-1.*

Conseil d'Etat: Judgment No 320796/2011

Conseil d'Etat (Council of State), Assemblée du contentieux, France: 19 July 2011.

[2012] OJLR II-535

Separation of church and state – Places of worship – State support for religion – *Town council awarding grant to state-approved foundation to install lift in basilica – Claimant challenging award of grant – Whether town council empowered to finance maintenance of place of worship – Whether grant violating doctrine of separation of church and state – French Constitution, Article 2 – Law of December 9, 1905 on the Separation of Churches and State, Articles 2, 13 – Law of January 2, 1907 concerning the Exercise of Public Worship, Art 5*

Federation de la Libre Pensée et de L'Action Sociale du Rhone et MP v la Commune de Lyon

(No 308817): Conseil d'Etat (Council Estate, France): 19 July 2011

[2012] OJLR 1(1) 301

Separation of church and state – Priests' stipends – State support for religion – *Law providing for separation of church and state and prohibiting state subsidy of religion – Special legal regime for recognized churches in three départements in Eastern France providing Protestant Church pastors' stipends to be paid for by state – Ex post constitutional review – Preliminary reference on constitutionality of special legal regime – Whether regime complied with principle of laïcité – Law of 18 Germinal, an X (8 April 1802) – Law of 9 December 1905 on the Separation of Churches and State*

Association pour la promotion et l'expansion de la laïcité [Traitement des pasteurs des églises consistoriales dans les départements du Bas-Rhin, du Haut-Rhin et de la Moselle]

(No 2012-297 QPC): Conseil constitutionnel (Constitutional Council) France: Preliminary reference on constitutionality: 21 February 2013

[2013] OJLR 2(2) 474-475

Separation of church and state – Right to secular or non-confessional state – Freedom of religion or belief – Discrimination in enjoyment thereof – *Holy Cross (Cross of Muela) located on publicly owned mountain – Private association claiming that*

(i) the presence of the Holy Cross infringing principle of state neutrality and amounting to discrimination on grounds of religion or belief; (ii) that the Holy Cross a 'symbol of Catholicism, imposed by the dictatorship of General Franco', and infringing principle of equality by privileging the symbol of the Catholic Church and the Catholic religion over and above other faiths and those of no faith – Regional court dismissing claim – Private association appealing – Whether presence of the Cross compatible with state neutrality – Whether amounting to discrimination in the exercise of the right to freedom of religion or belief – Whether infringement of right to equality– Spanish Constitution, arts 14, 16

Tribunal Supremo, Sala de lo Contencioso-Administrativo,

Sección 7ª Judgment of 2 December 2014: No 905/2012: Supreme Court,
Litigation Division: Jorge Rodriguez-Zapata, Presiding J: 2 December 2014

[2015] OJLR 4(2) 329-330

Separation of church and state – Status of places of worship – Allocation of religious buildings to public worship – Roof terrace of a church as a tourist attraction – Whether the town council could organize fee-paying visits on the roof terrace without authorization of the church – Whether accessing the roof terrace could be dissociated from the parts of the church accessible for public worship – Whether this disturbed public worship and should be stopped – Law of 9 December 1905 on the separation of churches and state, art 13 – Law of 2 January 1907 concerning the exercise of public worship, art 5 – Decree no 70-220 of 17 March 1970 – Code of Administrative Justice

Commune des Saintes Maries de la Mer v Abbé de Vregille and another

(No 340648): Conseil d'Etat (Council of State), France (3rd and 8th sub-sections joined): Martin (President): 20 June 2012

[2013] OJLR I-220

STATE CONSTITUTIONAL RIGHTS

State constitutional rights – Right to obtain safety and happiness – Right of competent, terminally ill person to seek medical assistance in ending life – Right of medical personnel to provide services apparently prohibited by statute – Plaintiff in remission from uterine cancer but fearing return of disease – Desiring peace of mind by knowing aid in dying available if suffering in terminal stage of illness unbearable – Plaintiff medical advisors believing mentally competent, terminally ill patient dying by choice not committing suicide – US Constitution making no provision for right to assisted suicide – New Mexico Constitution guaranteeing citizens 'certain, natural, inherent and inalienable rights', including rights of 'enjoying life and liberty and of seeking and obtaining safety and happiness' – New Mexico statute defining 'deliberately aiding another in the taking of his own life' as fourth-degree felony – Whether New Mexico state constitution guaranteeing right not protected under federal constitution to terminate life – Whether New Mexico assisted suicide statute unconstitutional in light of New Mexico Constitution – Whether providing aid in dying exposing medical professionals to prosecution under assisted suicide statute – New Mexico Const art II s 4, NMSA 1978 s 30-2-4 'Assisting Suicide', New Mexico Uniform Health-Care Decisions Act 24-7A-1 to 24-7A-17 NMSA 1978

Morris and others v Brandenburg

(No D-202-CV 2012-02909): State of New Mexico, County of Bernalillo, Second Judicial District Court: Nan G Nash, District Court Judge: 13 January 2013

STATUTORY RIGHT TO FREEDOM OF RELIGION

Statutory right to freedom of religion – Interference with – Agent of United States Internal Revenue Service ('IRS') initiated into Sikh faith and beginning to manifest faith by wearing kirpan to work in federal building – Federal Protective Services ('FPS') determining kirpan qualifying as 'dangerous weapon' prohibited in federal facility by statutory ban under 18 USC s 930(a) – Agent rejecting IRS suggested accommodations as violating conscience and religion mandates and as incompatible with statutory proscriptions and job responsibilities – Agent denied entry when reporting to work wearing kirpan and subsequently not reporting for work – IRS declaring agent AWOL, stopping salary, and subsequently dismissing agent – After exhausting internal administrative remedies, agent bringing claims of religious discrimination against Secretary of Treasury and Department of Homeland Security – District court granting summary judgment to defendants on both claims, denying agent's motion for reconsideration, and dismissing case with prejudice – Whether agent's wearing kirpan result of sincerely held religious belief therefore creating prima facie case under Title VII and Religious Freedom Restoration Act – Whether belief conflicting with requirement of employment – Whether employer informed of belief – Whether claimant suffering adverse employment action for failing to comply with conflicting requirement – Whether FPS action substantially burdening claimant's religious practice – Whether government showing compelling interest in enforcing statute and means selected least restrictive to achieve objectives – Title VII, 42 USC ss 2000e ff; Religious Freedom Restoration Act, 42 USC ss 2000bb ff; 18 USC s 930(a),(d)(1)–(3),(g)(2)

Tagore v United States

(No 12-20214): United States Court of Appeals for the Fifth Circuit: Jones, Dennis, Higginson JJ; 13 November 2013

STATUTORY RIGHT TO PRACTICE RELIGION

Statutory right to practice religion – Substantial burden on – Arkansas Department of Correction (ADC) grooming policy requiring inmates to be clean-shaven other than mustaches and quarter-inch beards for diagnosed dermatological problems – Muslim inmate challenging grooming policy under federal Religious Land Use and Institutionalized Persons Act (RLUIPA), asserting religious belief requiring he grow a beard but offering to maintain only half-inch beard as compromise – ADC rejecting compromise – District and appeals courts dismissing prisoner's complaints – Supreme Court granting certiorari limited to question whether grooming policy violating RLUIPA to extent it prohibits petitioner from growing half-inch beard in accordance with his religious beliefs – Religious Land Use and Institutionalized Persons Act of 2000, 42 USC s 2000 cc-1(a)(1)–(2); Arkansas Administrative Directive 98-04

Holt v Hobbs

Docket no 13-6827: Supreme Court of the United States: Alito J joined by Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Sotomayor, Kagan JJ; Ginsburg J concurring joined by Sotomayor J; Sotomayor J concurring: 20

January 2015

[2015] OJLR 4(2) 331

Statutory right to practice religion – Substantial burden on – Arkansas Department of Correction ('ADC') grooming policy requiring inmates to be clean-shaven other than moustaches and quarter-inch beards for diagnosed dermatological problems – Muslim inmate challenging grooming policy under federal Religious Land Use and Institutionalized Persons Act, asserting fundamentalist belief requiring he grow a beard – Inmate seeking permission to maintain half-inch beard as compromise position – District court granting inmate temporary injunctive relief – Hearing producing evidence of prison officials' particular interest in prison security and extensive efforts to accommodate inmate's religious practices – District court revoking injunctive relief and dismissing complaint – Appeals court affirming but modifying judgment to reflect dismissal not counting as 'strike' – United States Supreme Court granting inmate petition for writ of certiorari – Religious Land Use and Institutionalized Persons Act of 2000 ('RLUIPA'), 42 USC s 2000cc-1(a)(1)-(2)

Holt a/k/a/ Muhammad v Hobbs

(No 12-3185): United States Court of Appeals for the Eighth Circuit: Bye, Arnold, Shepherd JJ (Per Curiam): 6 June 2013 (No 13-6827): Supreme Court of the United States: Order in Pending Case: 3 March 2014

[2014] OJLR 3(2) 355-356

SUPPLY OF SERVICES

Supply of services – Discrimination – Sexual orientation – Constitutional rights – Freedom of speech and freedom of religious exercise – Interference with – State law prohibiting any person in any 'public accommodation' from making distinction, directly or indirectly, in offering or refusing to offer its services to any person because of sexual orientation – Photography business owners holding Christian beliefs and consequently refusing request to photograph same-sex commitment ceremony – Person seeking photography services alleging discrimination based solely upon sexual orientation – Whether business constituting 'public accommodation' – Whether entity's actions motivated by 'impermissible discrimination' based solely on sexual orientation – Whether state legislation's prohibition of discrimination giving rise to violation of Christian's rights under federal and state constitutional law and state statutory law to freedom of speech and expression and religious exercise – Whether 'hybrid rights' claim asserting that either the freedom of expression claim or the compelled-speech claim had a fair probability or likelihood of success on the merits and was therefore colourable, requiring strict scrutiny – Whether New Mexico Religious Freedom Restoration Act applicable in action between private parties – New Mexico Religious Freedom Restoration Act (NMRFRA) [NM Stat Ann 1978 (NMSA) 28-1-22 (2000)] – New Mexico Human Rights Act (NMHRA) [NMSA 28-1- 7(F) (2004)] – NMSA 28-1-2(H) (2007) – US Const Amend 1 – NM Const art II s 11

Elane Photography, LLC v Willock

(Docket No 30,203): Court of Appeals of the State of New Mexico; Garcia, Fry, Wechsler JJ, Fry J concurring, Wechsler J specially concurring: 31 May 2012

[2012] OJLR 1(2) 538-539

UNITED STATES CONSTITUTION

United States Constitution – Discrimination – Sexual orientation – First Amendment – Free Exercise Clause – Free Speech Clause – Same-sex wedding – Commercial baker denied wedding cake to same-sex couple – Plaintiffs filing action alleging violation of state anti-discrimination law – State civil rights commission finding no basis that Free Speech or Free Exercise clauses prevented application of anti-discrimination law – Colorado Court of Appeals affirming decision of Civil Rights Commission – Whether compelling religious vendors to create wedding cakes for same-sex marriage violated Free Speech or Free Exercise clause of the First Amendment – US Const Amend 1; Colo Rev Stat section 24-34-601(2)(a)

Masterpiece Cakeshop, Ltd v Colorado Civil Rights Commission

Docket No 16-111: Supreme Court of the USA: Kennedy J joined by Roberts CJ, Breyer, Alito, Kagan, Gorsuch JJ; Kagan J concurring joined by Breyer J; Gorsuch J concurring joined by Alito J: Thomas J concurring in part and as to judgment joined by Gorsuch J; Ginsburg J dissenting joined by Sotomayor J: 4 June 2018

[2018] OJLR 7(3) 574-575

United States Constitution – Prohibition of establishment of religion – Violation of – Monthly town board meetings opening with prayer offered by clergy selected from list in town local directory – Two citizens attending meetings to speak on local issues alleging town violating Establishment Clause by preferring Christians over other prayer givers, by sponsoring sectarian prayers, and by not seeking to achieve religious diversity – Whether prayer policy impermissible government preference for Christianity thereby establishing religion – District Court granting summary judgment to town, concluding Christian identity of most prayer givers reflecting predominantly Christian character of town's congregations and not official policy or practice of discriminating against minority faiths, concluding First Amendment not requiring town to invite clergy from congregations beyond its borders to achieve religious diversity, rejecting theory that legislative prayer must be non-sectarian – Second Circuit reversing decision and ruling some aspects of prayer program, viewed in totality by reasonable observer, conveying message that town endorsing Christianity – US Const Amend 1

Town of Greece, New York v Galloway et al

Docket no 12-696: Supreme Court of the United States: Kennedy J delivered the opinion of the Court except as to Part II– B, joined by Roberts CJ and Alito J in full, and Scalia and Thomas JJ except as to Part II–B; Alito J concurring, joined by Scalia J; Thomas J concurring in part and concurring in the judgment, Scalia J joining as to Part II; Breyer J dissenting; Kagan J dissenting, joined by Ginsburg, Breyer, and Sotomayor JJ: 5 May 2014

[2014] OJLR 3(3) 524-525

VICARIOUS LIABILITY

Vicarious liability – Employment – Relationships akin to employment – Liability of church trust for tortious acts of priest – Second defendant trust standing in place of and assuming liabilities of bishop – Appointing Roman Catholic priest to ecclesiastical office, without according him employment status or status of independent contractor – Claimant

alleging sexual abuse by priest while in Roman Catholic children's home – Whether relationship between priest and bishop akin to employer and employee – Whether trust capable of being vicariously liable for alleged torts of diocesan priest

E v English Province of Our Lady of Charity and another

[2012] EWCA Civ 938: Court of Appeal (England and Wales) (Civil Division): Ward, Tomlinson and Davis LJJ, Tomlinson LJ dissenting: 12 July 2012

[2013] OJLR 2(1) 232-233

Vicarious liability – Employment – Sexual abuse – Catholic order ('Institute') formed for purpose of providing Christian education to boys – Unincorporated association of its brother members with corporate features, including a hierarchy of authority – Brother members taking vows of chastity, poverty and obedience, living communal life – Employed as teachers by managing body of residential school – Court finding managing body of school vicariously liable for alleged physical and sexual abuse of children by brother teachers – Whether relationship between institute and brothers sufficiently close so as to be capable of giving rise to vicarious liability – Whether acts, or alleged acts, of sexual abuse connected to that relationship in such a way as to give rise to vicarious liability – Whether Institute jointly vicariously liable with managing body for abuse

Various Claimants v The Catholic Child Welfare Society

[2012] UKSC 56: Supreme Court (England and Wales): Baroness Hale of Richmond, Lord Kerr of Tonaghmore, Lord Wilson, Lord Carnwath JJSC, Lord Phillips of Worth Matravers: 21 November 2012

[2013] OJLR 2(1) 231-232

Vicarious liability – Priest – Sexual abuse – Civil liability of Catholic bishop for his diocesan priests' acts – Article 2049 of the Italian Civil Code establishing that employers and procurers of services were responsible for offences committed respectively by employees and appointees, committed in the exercise of their duties – Local bishop sued for damages in respect of sexual abuse committed by parish priest during his ministry – Whether liability under Article 2049 arising in absence of employer-employee relationship – Whether bishop liable for damages arising from offence committed by parish priest – Italian Civil Code, art 2049 – Canon Law Code, arts 515, 519, 521(2), 523, 524, 528(2), and 538.

Tribunale di Lecce: Ordinanza 08/10/2012

Court of Lecce, Sezione I Penale, Italy 8 October 2012

[2013] OJLR 2(2) 475-476

VOLUNTARY ASSOCIATION

Voluntary association – Internal disciplinary proceedings – Policy, practice, and usage of Methodist Church of South Africa, according to Laws and Discipline of the Church (L&D), to recognize only heterosexual marriages – L&D prescribing arbitration in event of breach by minister – Minister, without consulting Superintendent and Bishop, announcing from the pulpit her intention to enter same-sex marriage, and subsequently marrying – Minister suspended and Church disciplinary committees confirming suspension – Minister

challenging disciplinary decision with Convener of Church arbitrational panel – Convener informing minister of arbitrator appointment and affirming minister's right to court review of arbitration decision in event of unlawful or improper proceeding – Arbitration convened but minister taking legal action before conclusion – High Court ruling action premature and ordering arbitration to continue while granting right to appeal – Minister refusing further arbitration process and arbitrator declining jurisdiction – Minister acknowledging Convener's entitlement to sign arbitration agreement on her behalf – Minister seeking discretion of High Court not to enforce arbitration agreement on grounds (i) no valid agreement, (ii) agreement conclusion delayed, (iii) arbitration process violating fundamental rights including right to representation, (iv) arbitrator biased, (v) arbitration futile process – Whether good cause shown for avoiding arbitration – Doctrine of entanglement – Arbitration Act 42 of 1965, s 3(2)

Ecclesia De Lange v The Presiding Bishop of the Methodist Church of Southern Africa for the Time Being

(726/13) [2014] ZASCA 151: The Supreme Court of Appeal of South Africa:
Ponnan, Wallis, Pillay JJA and Fourie and Mathopo AJJA: 29 September 2014

[2015] OJLR 4(2) 320-322