

question as to whether the power of the archbishops to declare a Church 'in communion' is sufficient power to override the statutory requirements of the Act of Uniformity and whether an Act of Synod is sufficiently authoritative to do the same. (p 168)

As yet this question has not been tested in the courts.

In summary, this fascinating book is warmly recommended and deserves to be read by historians and lawyers alike. For those interested in the early history of dispensations further information can be found in J Churchill, *Canterbury Administration* (London, 1933) and D Chambers, *Faculty Office Registers 1534–1549* (Oxford, 1966).

RUPERT BURSELL

Chancellor of the Dioceses of Durham and Oxford

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Islam, Europe and Emerging Legal Issues

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There can be little doubt that the enhanced visibility of Islam throughout Europe has resulted in an emergence of legal issues, grounded in religion, with which individual national courts have had to grapple. Many of these cases, because of the way in which they have been decided, have culminated in hearings before the European Court of Human Rights (ECtHR), a Court that, it is asserted in this book, 'has emerged as the most effective transnational human rights institution on earth' (p 2). That may well be right but the theme apparent from the critical studies collected here is that the jurisprudence of the ECtHR illustrates that the record of the Court, when it comes to balancing principles of Islam with the 'traditional values' of Europe, is not an unblemished one.

This notion of 'balancing' is tackled in the opening chapter, where the author examines whether or not the ECtHR, when dealing with cases related to principles of Islam, has followed the usual doctrine of *stare decisis* vis-à-vis similar cases concerning different religions, or whether it has differed in its approach, simply because the religion that is at the heart of the case is Islam. Having reviewed the relevant ECtHR jurisprudence, the author concludes that in some instances (such as when dealing with the autonomy of Muslim religious communities, or religious instruction in public schools) the Court has 'applied to Islam the same principles that it has applied to other religions' (p 59). The author identifies, however, two provisos: one being described as 'Islam in Turkey' (p 60), the

other as ‘the clear endorsement granted by the ECtHR in the last years to the pro-secular policies in France aimed at reducing the visibility of Islam in public spaces that are considered neutral or secular’ (p 61). As regards the former proviso, reference is made to cases such as *Kalac v Turkey*,¹ where the applicant, who held judicial office within the Turkish army, was ordered to take compulsory retirement, the alleged aim being ‘the preservation of respect for the constitutional principle of secularism among army officers’. The Court dismissed the case, noting that pursuing a military career was a voluntary option for the applicant and that he should have been aware that he would be subjected to ‘a system of military discipline that by its very nature implied the possibility of placing on certain of the rights and freedoms of members of the armed forces limitations incapable of being imposed on civilians’.² The French proviso needs little elaboration as the publicity and debate surrounding the controversial 2004 legislation prohibiting, inter alia, the wearing of ‘conspicuous’ religious dress in public schools continues to rage. The author considers the attitude of the Court in this regard to be ‘dangerous’ (p 61) and with just cause. Cases such as *Dogru* and *Kervanci*³ demonstrate that the ECtHR is quite prepared to support European countries that introduce suppressive legislation under the guise of simply promoting ‘neutral’ environments in public arenas. It is convenient for such legislative agendas, as the author rightly observes, to synonymise secular democracies with this idea of ‘neutrality’. In truth, of course, they do not go hand in hand, as ‘neutral public environments’ cater primarily for those who have no religious belief; those who wish to manifest their religion through dress become alienated.

Perhaps understandably, the debate surrounding the wearing of the *hijab* (or ‘Muslim headscarf’) features heavily throughout the various chapters that comprise this work. The author of Chapter 2 is highly critical of the aforementioned French legislation, observing that, while it does not ‘explicitly single out certain religious traditions as favoured or disfavoured’, it does ‘explicitly single out those who are wearing religious garb with a certain more visible degree of “ostentation”’ (p 73). In other words, Christians may continue to wear a discreet cross around their neck, whereas Muslim girls may not wear the *hijab* and Jewish boys may not wear the *kippa*. The law is, unquestionably, discriminatory both in its application and its effect. It is refreshing to see, in Chapter 3, a contribution from a female Muslim scholar who gives a careful, yet emotive, analysis of the *hijab* situation as faced by Muslim women today.

Part II of the book, comprising Chapters 5 to 9, is dedicated entirely to the ‘Islamic headscarf controversy’. Chapter 5 provides, among other things, a

1 *Kalac v Turkey* App No 20704/02 (ECtHR, 23 June 1997).

2 *Ibid.*, at para 28.

3 *Dogru v France* App No 27058/05 and *Kervanci v France* App No 31645/04 (ECtHR, 4 December 2008).

brief but insightful comparative analysis of the legal position across the European countries, noting that in the *Sahin*⁴ case the ECtHR concluded, unconvincingly, that there is no ‘European consensus on the matter’ (p 95) despite acknowledging that state prohibition against the *hijab* is quite clearly the exception and not the rule. The author’s words are provocative at times, particularly when he suggests that ‘if Turkish students were to launch a political campaign against the ban on headscarves ... one might assume that the Court would be somewhat troubled by its conclusions and reasoning in *Sahin*’ (p 102). There is considerable overlap in this part (and sometimes repetition) by the respective contributors, particularly in relation to the case of *Sahin*. Chapters 8 and 9, however, provide an interesting insight into the legislative framework present in Norway and Germany, the latter providing some particularly thought-provoking commentary.

Turning away from the issue of the *hijab*, the final section (Chapters 10 to 13) looks at the European Court ‘and the limits of pluralism’, where much attention is paid to the ECtHR decision in *Refah*⁵ concerning the dissolution of the Refah Party in Turkey, described by one of the contributors as ‘deeply flawed’ (p 209). Further, the way in which the ECtHR has construed Islam, and the principles upon which the religion is based, is vigorously attacked. In one instance it is suggested that the ECtHR might be disposed to think of Islam ‘in stereotypical and prejudicial terms’ (p 229); in another it is claimed that the Court needlessly relied upon ‘pejorative generalisations about a major religion’ (p 271). The final chapter considers how the much-criticised decision of the ECtHR in *Refah* may have implications for the rights of religious associations to acquire legal entity status. This chapter is a probing one and, in conformity with most of the other contributions to the work as a whole, is highly critical of the ECtHR’s inability properly to apply the principles of the European Convention in the context of Islam.

There can be no doubt that this book should attract the interest not only of legal and religious specialists but also of the lay community. It is thought-provoking, insightful and justifiably critical of the approach that the ECtHR has taken when dealing with ‘Islamic cases’. With that in mind, perhaps the judiciary of the ‘most effective transnational human rights institution on earth’ (p 2) should be added to the list of intended readers.

CHRISTOPHER GROUT

Barrister, Acting Registrar of the Qatar International Court

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4 *Sahin v Turkey* App No 44774/98 (ECtHR, 10 November 2005).

5 *Refah Partisi (The Welfare Party) and Others v Turkey* App nos 41340(42)(43)/98 (ECtHR, 13 February 2003).