

European Court of Justice: Decisions concerning constitutional law relating to the Church

(Update: 2012-10-07)

Parties	Date	Case	Extracts / Content	Catchword	Reference (European Court Reports)
Federal Republic of Germany v Y, Z	05.09.2012	C-71/11, C-99/11	<p>Judgment:</p> <p>57 Freedom of religion is one of the foundations of a democratic society and is a basic human right. Interference with the right to religious freedom may be so serious as to be treated in the same way as the cases referred to in Article 15(2) of the ECHR, to which Article 9(1) of the Directive refers, by way of guidance, for the purpose of determining which acts must in particular be regarded as constituting persecution.</p> <p>58 However, that cannot be taken to mean that any interference with the right to religious freedom guaranteed by Article 10(1) of the Charter constitutes and act of persecution requiring the competent authorities to grant refugee status within the meaning of Article 2(d) of the Directive to any person subject to the interference in question.</p> <p>59 On the contrary, it is apparent from the wording of Article 9(1) of the Directive that there must be a 'severe violation' of religious freedom having a significant effect on the person concerned in order for it to be possible for the acts in question to be regarded as acts of persecution.</p>	Minimum standards for determining who qualifies for refugee status or for subsidiary protection status – Connection between the reasons for persecution and the acts of persecution – Pakistani nationals who are members of the Ahmadiyya religious community	
Missionswerk Heukelbach v Werner eV v Belgium	10.02.2011	C-25/10	<p>Judgment:</p> <p>31 In particular, the possibility that a Member State may be relieved of some of its responsibilities does not mean that it is free to introduce a difference in treatment between,</p>	Inheritance tax – Legacies in favour of non-profit-making bodies – Refusal to	

		<p>on the one hand, national bodies which are recognised as pursuing charitable purposes and, on the other, bodies established in another Member State which are recognised as pursuing charitable purposes, on the ground that legacies left to the latter cannot, even though the activities of those bodies reflect the same objectives as the legislation of the former Member State, have compensatory effects for budgetary purposes. It is settled law that the need to prevent the reduction of tax revenues is neither among the objectives stated in Article 65 TFEU nor an overriding reason in the public interest capable of justifying a restriction on a freedom instituted by the Treaty (see, to that effect, Persche, paragraph 46).</p> <p>32 The Court has also held that, where a body recognised as pursuing charitable purposes in one Member State satisfies the conditions laid down for that purpose in the legislation of another Member State and where its object is to promote the very same interests of the community at large, so that it would be likely to be recognised in the latter Member State as pursuing charitable purposes – a matter which it is for the national authorities of that Member State, including its courts, to determine – the authorities of the latter Member State cannot deny that body the right to equal treatment solely on the ground that it is not established in the territory of that Member State (see, to that effect, Persche, paragraph 49).</p> <p>33 A body which is established in one Member State but satisfies the conditions laid down in another Member State for the grant of tax advantages, is, as regards the grant by the latter Member State of tax advantages intended to encourage the charitable activities concerned, in a situation which is comparable to that of the bodies established in the latter Member State which are recognised as having charitable purposes (see, to that effect, Persche, paragraph 50).</p>	<p>apply a reduced rate where those bodies have their centre of operations in a Member State other than that in which the deceased had actually lived or worked</p>	
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Placania	06.03.2007	C-338/04	<p>Judgment:</p> <p>45. In those circumstances, it is necessary to consider whether the restrictions at issue in the main proceedings may be recognised as exceptional measures, as expressly provided for in Articles 45 EC and 46 EC, or justified, in accordance with the case-law of the Court, for reasons of overriding general interest (see <i>Gambelli and Others</i>, paragraph 60).</p> <p>46. On that point, a certain number of reasons of overriding general interest have been recognised by the case-law, such as the objectives of consumer protection and the prevention of both fraud and incitement to squander on gaming, as well as the general need to preserve public order.</p> <p>47. In that context, moral, religious or cultural factors, as well as the morally and financially harmful consequences for the individual and for society associated with betting and gaming, may serve to justify a margin of discretion for the national authorities, sufficient to enable them to determine what is required in order to ensure consumer protection and the preservation of public order (<i>Gambelli and Others</i>, paragraph 63).</p>	Freedom of establishment; Freedom to provide services; Interpretation of Articles 43 EC and 49 EC; Games of chance; Collection of bets on sporting events; Licensing requirement; Exclusion of certain operators by reason of their type of corporate form	---
Zoé Gaki-Kakouri v Court of Justice of the European Communities	14.04.2005	C-243/04	<p>Judgment: <i>(only in French)</i></p> <p>Motifs de l'arrêt</p> <p>3 Le Tribunal a décrit comme suit les antécédents du litige: «3 La requérante a épousé, en 1981, M. Kakouris, qui a exercé les fonctions de juge à la Cour de justice de 1983 à 1997. Leur mariage a été dissous par divorce prononcé le 26 février 1997, en première instance, puis par jugement définitif rendu le 14 juillet 1998. Le certificat religieux de divorce, dont l'établissement constitue, en Grèce, une formalité nécessaire en cas de mariage religieux, a été délivré le 4 mars 1999. (...)</p> <p>17 À cet égard, le Tribunal a statué comme suit:</p>	Financial regime for members or former members of the Court; Rights of the divorced wife of a former deceased member; Religious document of divorce	OJ C. 132, 28.05.2005 p. 12

			(...) 118 Plus vraisemblable est l'explication fournie dans le témoignage de M. O., selon laquelle la proposition faite par M. Kakouris à son ancienne épouse de lui verser de l'argent était inspirée par un souci d'apaiser sa conscience et de se mettre en règle avec ses convictions religieuses et morales. Or, force est de constater qu'une telle préoccupation, née alors que les obligations juridiques procédant du mariage se sont éteintes, fait partie des motifs propres à inspirer des actes de courtoisie non créateurs d'effets contraignants.		
K.B. v National Health Service Pensions Agency, Secretary of State for Health	07.01.2004	C-117/01	Judgment: 12. K.B. has shared an emotional and domestic relationship for a number of years with R., a person born a woman and registered as such in the Register of Births, who, following surgical gender reassignment, has become a man but has not, however, been able to amend his birth certificate to reflect this change officially. As a result, and contrary to their wishes, K.B. and R. have not been able to marry. K.B. stated in her pleadings and confirmed at the hearing that their union was celebrated in an adapted church ceremony approved by a Bishop of the Church of England and that they exchanged vows of the kind which would be used by any couple entering marriage.	Equal treatment for men and women; Transsexual partner not entitled to a survivor's pension payable solely to a surviving spouse; Discrimination on grounds of sex	OJ C. 47, 21.02.2004, p. 3
Piergiorgio Gambelli and Others	06.11.2003	C-243/01	Judgment: On the other hand, as the governments which submitted observations and the Commission pointed out, the Court stated in Schindler, Läärä and Zenatti that moral, religious and cultural factors, and the morally and financially harmful consequences for the individual and society associated with gaming and betting, could serve to justify the existence on the part of the national authorities of a margin of appreciation sufficient to enable them to determine what consumer protection and the preservation of public order	Legislation in a Member State which reserves the right to collect bets to certain bodies	OJ C. 7, 10.01.2004, p. 7

			require.		
Bodil Lindqvist	06.11.2003	C-101/01	<p>Judgment:</p> <p>1. By order of 23 February 2001, received at the Court on 1 March 2001, the Göta hovrätt (Göta Court of Appeal) referred to the Court for a preliminary ruling under Article 234 EC seven questions concerning inter alia the interpretation of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).</p> <p>2. Those questions were raised in criminal proceedings before that court against Mrs Lindqvist, who was charged with breach of the Swedish legislation on the protection of personal data for publishing on her internet site personal data on a number of people working with her on a voluntary basis in a parish of the Swedish Protestant Church.</p> <p>(...)</p> <p>39. As the activities of Mrs Lindqvist which are at issue in the main proceedings are essentially not economic but charitable and religious, it is necessary to consider whether they constitute the processing of personal data in the course of an activity which falls outside the scope of Community law within the meaning of the first indent of Article 3(2) of Directive 95/46.</p> <p>(...)</p> <p>45. Charitable or religious activities such as those carried out by Mrs Lindqvist cannot be considered equivalent to the activities listed in the first indent of Article 3(2) of Directive 95/46 and are thus not covered by that exception.</p> <p>(...)</p> <p>86. In that context, fundamental rights have a particular importance, as demonstrated by the case in the main proceedings, in which, in essence, Mrs Lindqvist's freedom of expression in her work preparing people for Communion</p>	Publication of personal data on the internet; Freedom of expression; Compatibility with Directive 95/46 of greater protection for personal data under the national legislation of a Member State	OJ C. 7, 10.01.2004, p. 3

			and her freedom to carry out activities contributing to religious life have to be weighed against the protection of the private life of the individuals about whom Mrs Lindqvist has placed data on her internet site.		
Landeshauptstadt Kiel v Norbert Jaeger	09.09.2003	C-151/02	<p>Judgment:</p> <p>10. Directive 93/104 also sets out a series of derogations from several of its basic rules, regard being had to the specific nature of certain activities and subject to fulfilment of certain conditions. In that regard Article 17 provides:</p> <p>1. With due regard for the general principles of the protection of the safety and health of workers, Member States may derogate from Article 3, 4, 5, 6, 8 or 16 when, on account of the specific characteristics of the activity concerned, the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves, and particularly in the case of:</p> <p>(a) managing executives or other persons with autonomous decision-taking powers;</p> <p>(b) family workers; or</p> <p>(c) workers officiating at religious ceremonies in churches and religious communities.</p>	Protection of the safety and health of workers; Directive 93/104/EC; Concepts of working time and rest period; On-call service (Bereitschaftsdienst) provided by doctors in hospitals	OJ C. 264, 01.11.2003, p. 14
Anna Humer	05.02.2002	C-255/99	<p>Summary:</p> <p>A benefit such as the advance on maintenance payments provided for by the Österreichische Bundesgesetz über die Gewährung von Vorschüssen auf den Unterhalt von Kindern (Unterhaltsvorschussgesetz) (Austrian Federal Law on the Grant of Advances for the Maintenance of Children), adopted in 1985, is a family benefit within the meaning of Article 4(1)(h) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No</p>	Regulation (EEC) No 1408/71, definition of 'family benefits, entitlement to benefits abroad, religious studies teacher	OJ C. 84, 06.04.2002, p. 5

			118/97 of 2 December 1996.		
Association Eglise de scientologie de Paris and Scientology International Reserves Trust v The Prime Minister	14.03.2000	C-54/99	Article 73d(1)(b) of the EC Treaty must be interpreted as precluding a system of prior authorisation for direct foreign investments which confines itself to defining in general terms the affected investments as being investments that are such as to represent a threat to public policy and public security, with the result that the persons concerned are unable to ascertain the specific circumstances in which prior authorisation is required.	Free movement of capital, public policy and public security, direct foreign investments, Scientology	Rep. 2000, p. I-1335
Commission of the European Communities v Kingdom of Belgium	29.06.1999	C-172/98	Article 1 of the Belgian Law of 25 October 1919 conferring legal personality on international associations which pursue philanthropic, religious, scientific, artistic or pedagogical objectives - Requirement for there to be Belgian members in order for an association to be granted legal personality - Violation of the obligations under Article 6 of the EC Treaty.	Freedom of establishment, association, Article 6 of the EC Treaty	Rep. 1999, p. I-3999
Landbrugsministeriet - EF-Direktoratet v Steff-Houlberg Export I/S, Nowaco A/S, Nowaco Holding A/S and SMC af 31/12-1989 A/S	12.05.1998	C-366/95	Claim for the repayment of unduly paid refunds on export of beef to Arabic countries, if the beef which was supposed to be exported to Islamic countries proved to contain pork meat.	Repayment of refunds on export	Rep. 1998, p. I-2661
United Kingdom of Great Britain and Northern Ireland v Council of the European Union	12.11.1996	C-84/94	Council Directive 93/104/EC concerning certain aspects of the organization of working time - Action for annulment.	Organization of working time	Rep. 1996, p. I-5755
Semeraro Casa Uno Srl v Sindaco del Comune di Erbusco (C-418/93),	20.06.1996	C-418/93 C-418993 C-420/93	National law which requires retail shops to close on Sundays and public holidays, but does not prohibit working in such shops on those days, thus significantly reducing	Prohibition of certain kinds of Sunday and public-holiday trading	Rep. 1996, p. I-2975

<p>Semeraro Mobili SpA v Sindaco del Comune di Erbusco (C-419/93), RB Arredamento Srl v Sindaco del Comune di Stezzano (C-420/93), Città Convenienza Milano Srl v Sindaco del Comune di Trezzano sul Naviglio (C-421/93), Città Convenienza Bergamo Srl v Sindaco del Comune di Stezzano (C-460/93), Centro Italiano Mobili Srl v Sindaco del Comune di Pineto (C-461/93), Il 3C Centro Convenienza Casa Srl v Sindaco del Comune di Roveredo in Piano (C-462/93), Benelli Confezioni SNC v Sindaco del Comune di Capena (C-464/93), M. Quattordici Srl v Commissario straordinario del Comune di Terlizzi (C-9/94), Società Italiana Elettronica Srl (SIEL) v Sindaco del Comune di Dozza (C-10/94), Modaffari Srl v Sindaco del Comune di Trezzano sul Naviglio (C-11/94), Modaffari Srl v Comune di Cinisello Balsamo (C-14/94), Cologno Srl v</p>		<p>C-421/93 C-460/93 C-461/93 C-462/93 C-464/93 C-9/94 C-10/94 C-11/94 C-14/94 C-15/94 C-23/94 C-24/94 C-332/94</p>	<p>their sales, including sales of goods produced in other Member States of the Community, with a consequent reduction in the volume of imports from such States.</p>		
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Sindaco del Comune di Cologno Monzese (C-15/94), Modaffari Srl v Sindaco del Comune di Osio Sopra (C-23/94), M. Dieci Srl v Sindaco del Comune di Madignano (C-24/94) and Consorzio Centro Commerciale "Il Porto" v Sindaco del Comune di Adria (C-332/94)					
Dominikanerinnen-Kloster Altenhohenau v Hauptzollamt Rosenheim	23.11.1995	C-285/93	Allocation of a reference quantity for the direct sale of milk produced on the agricultural holding belonging to the convent which was previously used for consumption by the pupils of the elementary and boarding school also run by the convent.	Reference quantity for direct sales, sales by a convent	Rep. 1995, I-4069
TV10 SA v Commissariaat voor de Media	05.10.1994	C-23/93	National legislation designed to maintain a pluralist, non-commercial radio and television broadcasting system and thus forms part of a cultural policy whose aim is to safeguard the freedom of expression in the audiovisual sector of the various components, in particular social, cultural, religious and philosophical ones, of the Netherlands.	Freedom to provide services, broadcasting network	Rep. 1994, p. I-4795
Punto Casa SpA v Sindaco del Comune di Capena and Comune di Capena and Promozioni Polivalenti Venete Soc. coop. arl (PPV) v Sindaco del Comune di Torri di Quartesolo and	02.06.1994	C-69/93 C-258/93	Article 30 of the Treaty is to be interpreted as not applying to national rules on the closure of shops which apply to all traders operating within the national territory and which affect in the same manner, in law and in fact, the marketing of domestic products and of products from other Member States.	Prohibition on certain kinds of Sunday trading	Rep. 1994, p. I-2355

Comune di Torri di Quartesolo					
Vereniging Veronica Omroep Organisatie v Commissariaat voor de Media	03.02.1993	C-148/91	National legislation designed to maintain a pluralistic, non-commercial radio and television broadcasting system and thus forms part of a cultural policy whose aim is to safeguard the freedom of expression in the audiovisual sector of the various components, in particular social, cultural, religious and philosophical ones, of the Netherlands.	Freedom to provide services, broadcasting network	Rep. 1993, p. I-0487
Rochdale Borough Council v Stewart John Anders	16.12.1992	C-306/88	Article 30 of the Treaty is to be interpreted as meaning that the prohibition which it lays down does not apply to national legislation prohibiting retailers from opening their premises on Sundays.	Prohibition of Sunday trading	Rep. 1992, p. I-6457
Reading Borough Council v Payless Diy Ltd, Wickes Building Supplies Ltd, Great Mills (South) Ltd, Homebase Ltd, B & Q Plc.	16.12.1992	C-304/90	Article 30 of the Treaty is to be interpreted as meaning that the prohibition which it lays down does not apply to national legislation prohibiting retailers from opening their premises on Sundays.	Prohibition of Sunday trading	Rep. 1992, p. I-6493
Council of the City of Stoke-on-Trent and Norwich City Council v B & Q plc	16.12.1992	C-169/91	Article 30 of the Treaty is to be interpreted as meaning that the prohibition which it lays down does not apply to national legislation prohibiting retailers from opening their premises on Sundays.	Prohibition of Sunday trading	Rep. 1992, p. I-6635
Commission of the European Communities v Kingdom of the Netherlands	25.07.1991	C-353/89	A cultural policy with the aim of safeguarding the freedom of expression of the various (in particular, social, cultural, religious and philosophical) components of a Member State may constitute an overriding requirement relating to the general interest which justifies a restriction on freedom to provide services. Limitation of the re-transmission of	Freedom to provide services, radio and television programmes, advertising	Rep. 1991, p. I-4069

			advertising contained in radio or television programmes broadcast from other Member States.		
Stichting Collectieve Antennevoorziening Gouda and others v Commissariaat voor de Media	25.07.1991	C-288/89	A cultural policy with the aim of safeguarding the freedom of expression of the various (in particular, social, cultural, religious and philosophical) components of a Member State may constitute an overriding requirement relating to the general interest which justifies a restriction on freedom to provide services. Limitation of the re-transmission of advertising contained in radio or television programmes broadcast from other Member States.	Freedom to provide services, radio and television programmes, advertising	Rep. 1991, I-4007
Union départementale des syndicats CGT de l'Aisne v SIDEF Conforama, Arts et meubles and Société Jima	28.02.1991	C-312/89	The prohibition contained in Article 30 of the EEC Treaty, properly construed, does not apply to national legislation prohibiting the employment of staff on Sundays.	Sunday as a day of rest for employees in the retail sector	Rep. 1991, p. I-0997
Criminal proceedings against André Marchandise, Jean-Marie Chapuis and SA Trafitex	28.02.1991	C-332/89	The prohibition contained in Article 30 of the EEC Treaty, properly construed, does not apply to national legislation prohibiting the employment of staff on Sundays after 12 noon.	Sunday as a day of rest for employees in the retail sector	Rep. 1991, p. I-1027
Torfaen Borough Council v B & Q plc	23.11.1989	C-145/88	Article 30 of the Treaty must be interpreted as meaning that the prohibition which it lays down does not apply to national rules prohibiting retailers from opening their premises on Sunday where the restrictive effects on Community trade which may result therefrom do not exceed the effects intrinsic to rules of that kind .	Free movement of goods, prohibition of Sunday trading	Rep. 1989, p. 3851
Juan Jaenicke Cendoya v Commission of the	13.07.1989	108/88	Participation in an open competition on the basis of qualifications - Refusal to recognize a diploma of a Catholic	Refusal to admit a candidate to a	Rep. 1989, p. 2711

European Communities			University (Instituto Católico des Administración y Dirección de Empresas) as equivalent to a university degree.	competition	
Udo Steymann v Staatsecretaris van Justitie	05.10.1988	196/87	Article 2 of the EEC Treaty must be interpreted as meaning that activities performed by members of a community based on religion or another form of philosophy (here: Membership in the Bhagwan-association) as part of the commercial activities of that community constitute economic activities in so far as the services which the community provides to its members may be regarded as the indirect quid pro quo for genuine and effective work.	Economic activities carried out by members of religious communities, freedom to provide services	Rep. 1988, p. 6159
A. J. M. van Roosmalen v Bestuur van de Bedrijfsvereniging voor de Gezondheid, Geestelijke en Maatschappelijke	23.10.1986	300/84	The expression 'self-employed' applies to persons who are pursuing or have pursued, otherwise than under a contract of employment or by way of self-employment in a trade or profession, an occupation, in respect of which they receive income permitting them to meet all or some of their needs, even if that income is supplied by third parties benefiting from the services of a missionary priest (here: roman-catholic priest of the order of the holy Norbert (Praemonstratenserorden), who worked as a missionary in Africa).	Social security, residence requirement, concept of 'self-employed person', priest	Rep. 1986, p. 3097
Vivien Prais v Council of the European Communities	27.10.1976	130-75	If a candidate informs the appointing authority that religious reasons make certain dates impossible for him the appointing authority should take this into account in fixing the date for written tests, and endeavour to avoid such dates.	Competition on the basis of tests, principle of equality	Rep. 1976, p. 1589

Yvonne von Duyn v Home Office	04.12.1974	41-74	Denial of the permission to enter the United Kingdom to a national of the Netherlands when the purpose of entry is the acceptance of a position as secretary at the "Church of Scientology".	Freedom of movement for workers, Scientology	Rep. 1974, p. 1337
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