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The Young Human Rights Lawyer



Young Lawyers' Committee

THE YOUNG HUMAN RIGHTS LAWYER

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Dear Reader,

Welcome to the third annual edition of the Young Human Rights Lawyer. Since the journal was started two years ago, this journal has given human rights lawyers who are early in their careers a place to discuss, debate and analyse the issues that interest and concern them. This year, there is more than ever to talk about and we are glad to once again be able to join informed authors with interested audience.

Our articles this year cover matters from each corner of the human rights world. We have essays looking at health, privacy and freedom of expression as well as analysis of important domestic and international cases – as well as discussion of Brexit, an event that looms large in the thoughts of anyone concerned about the future of rights protection in the United Kingdom. The breadth of topics discussed evidences just how pervasive human rights concepts are in so many of the key issues of today and how important it is to be able to give a platform to those who are looking forward toward to shaping these debates in the future.

The quality of the essays in this volume should give you some clue about the high standard of the submissions we received; unfortunately, we are constrained by how much material we can publish, but it is heartening to know how many young lawyers have insightful views and analysis to add to human rights discourse. It would be foolish to imagine human rights issues will be any less prevalent in 2018 than they were in 2017 and we look forward to receiving submissions to next year's edition.

2017 has been a busy year not just for human rights but for the Human Rights Lawyers Association as well. Both the Executive and the Young Lawyers Committees have worked hard to put on a number of important events, including a judicial review competition, two careers days and a number of topical events, and should rightly be commended.

Special thanks go to Young Lawyers Committee members Chloe Ashley, Michael Etienne, Markus Findlay, Jeremy Frost, Michael Harwood, Daniel Holt, William Horwood, Anushka Kangesu and Ayla Prentice for helping pull this journal together, as well as to Executive Committee members Angela Patrick, Shoaib Khan, Rannette Prime, Imogen Pround and Asma Nizami who acted as our editorial board.

The Young Human Rights Lawyer could not be published if it were not for the kind support from our generous sponsors, Church Court Chambers and S&S Solicitors, so I would to offer our thanks and gratitude.

Thank you for reading 2017's Young Human Rights Lawyer. We look forward to you joining us for our fourth edition next year!

Yours faithfully,

Ian Browne

Chair, Young Lawyers' Committee of the Human Rights Lawyers' Association

It is an honour to be asked to write the foreword to this year's Young Human Rights Lawyer. The future of human rights in the United Kingdom looks more uncertain now than at any moment I can remember. It will be for the young lawyers of today to navigate this new and unfamiliar world whilst continuing the fight for dignity, respect, the rule of law and access to justice.

We are living in a time of great cultural and constitutional shifting. On the one hand, we have the #MeToo campaign giving voice to previously unheard victims of sexual assault and harassment, and on the other, Brexit, looming menacingly over the United Kingdom and threatening many of the freedoms and protections we hold dear. For better or for worse, once Brexit is in our rear-view mirror, we will have to contend with the inevitable renewal of attacks on the Human Rights Act and the European Convention on Human Rights.

In some ways globalisation has caused the world to become a smaller place, but sadly many of the troubles we face grow larger. International terrorism, transnational tax avoidance, climate change and mass migration each pose problems for which the solution lies beyond the capabilities of single nation states. Instead, we must look to global ideas and institutions. What are those values that bind us? How can we build a social and economic system that has justice and fairness in its heart? How do we formalise the tolerance and mutual respect that is essential to our beneficial coexistence?

Unfortunately, the spectre of foreign courts and of foreign justice easily stirs up prejudice and resentment. Rather than face up to the difficult task of combating global injustice, many would prefer to retreat into an empty nationalism and reject the opportunity to work in co-operation with our neighbours. We must accept that sometimes it is necessary to sacrifice sovereignty for a higher purpose. Principally, this purpose must be the global institution of human rights. We look across the Atlantic and receive a warning; a reminder of why a democracy needs constraints on elected government. In conflict zones across the world we see the barbarity that can be committed when we drain the humanity from our foes.

In contrast, good law cannot help but be infused with human rights. Respect for the dignity of the individual should not come at the discretion of the government. Majoritarianism should not be the grounds on which to trample on the rights of the few. As we leave the jurisdiction of the European Court of Justice, we must fight to keep the United Kingdom imbued with human rights and the values of a liberal democracy. This is the task I present to the young human rights lawyers of today.

At a time when judges are being attacked in the popular press and when the legal profession faces the crippling, lingering effects of austerity, now more than ever the country needs an influx of bright, brave and ethical young lawyers. The country needs lawyers who are willing to champion unpopular cases, to hold big corporates to account and to challenge the government when it disregards the very rights we draw from our shared humanity.

Helena Kennedy QC

Below the Line: Free speech, privacy and online publishing at the European Court of Human Rights

The European Court of Human Rights ('the Court') has, in three recent findings, dealt with intermediary liability for online comments by a third party. Drawing from the common issues dealt with in the cases, there are signs of different levels of obligations to ensure the balancing between colliding human rights within the online sphere, depending on the type of platform they appear on.

In the case of *Delfi v. Estonia*¹ the applicant was a large news outlet that allowed for third party comments under news articles on the website. The company operated a 'notice and takedown system', with a warning on the comment section that illegal speech was prohibited and would be removed from the section, and a policy of deleting comments at their discretion. Despite this, the Court found that the domestic Estonian courts had not ruled in breach of the applicant's freedom of expression by finding the company liable for comments posted by a third party that were hateful and insinuated to violence. In *Magyar Tartalomszolgáltatók Egyesülete and Index.hu ZRT v. Hungary (MTE v. Hungary)*² there were two applicants. The first was the self-regulatory body of Hungarian internet content providers and the second a company owning one of the major Internet news portals in Hungary. Both ran platforms that allowed third party comments, with similar warnings as the Delfi platform, and a 'notice and takedown system'. The Court found that the Hungarian courts in the case had not performed an exercise balancing the competing rights of freedom of expression as protected under Article 10 and the right to private life as protected under Article 8, resulting in too strict an imposition of liability for third party comments and therefore constituting a breach of the protection afforded to the applicants under Article 10.

The Court declared the application in *Pihl v. Sweden*³ inadmissible. The applicant had been the subject of a defamatory anonymous comment posted on an online blog run by a small not-for-profit association. When he notified the association about the comment, they reacted swiftly to take it down. The application sought redress from Swedish courts, claiming that the association should be held liable for the defamatory comments. The Court found that in rejecting his claim, the Swedish courts had struck a fair balance between the competing rights protected under Article 8 and Article 10 in light of the circumstances of the case. The Court stated that the elements contributing to this were that the comments had not amounted to hate speech or an incitement to violence; the size of the blog and the fact that this was run by a non-profit association that had reacted swiftly to requests, and the short time that they had been online; a period of around nine days.

In all the cases, the domestic courts considered the facts of the situation and the substance of the comments made. This was in contrast to the '*mere conduit*' approached

¹ *Delfi v. Estonia* ([GC] (Application no. 64569/09, ECHR 2015).

² *Magyar Tartalomszolgáltatók Egyesülete and Index.hu ZRT v. Hungary* (Application no. 22947/13, ECHR, 2016).

³ *Pihl v Sweden*. (Application no. 74742/14, ECHR 2017).

derived from European Union law and the e-commerce directive⁴ which relieves intermediaries of responsibility for the actions of third party, provided certain safeguards are put in place. The Court did not reassess the grounds the cases were found on, stating that it was a task for states and not the Court to decide “*the appropriateness of methods chosen by the legislature [...] to regulate a given field.*”⁵

The Court’s findings have contributed to the ongoing discussion on the role of online intermediaries and the level of responsibility that they can be held to with regard to third party expression. Should it be the role of an intermediary to ensure that speech which may be found unlawful in certain jurisdictions will not appear on their corner of the internet? The Court seems to be aware of the debate. In the MTE case they state that: “*the decisive question when assessing the consequence for the applicants is [...] the manner in which Internet portals such as theirs can be held liable for third-party comments. Such liability may have foreseeable negative consequences on the comment environment of an Internet portal, for example by impelling it to close the commenting space altogether. For the Court, these consequences may have, directly or indirectly, a chilling effect on the freedom of expression on the Internet.*”⁶

As established in its case law, the Court has made a deliberate effort to avoid and counter chilling effects on legitimate speech. This may be the reason why the emphasis on analysing the content of the speech in these cases is in question, and how instrumental the outcome of that is in describing what measures were suitable. The Court found that the severity of the comments in the *Delfi* case constituted to hate speech and incitement to violence, assessing the comments to be manifestly illegal and therefore outside the protection of the Convention.⁷ Thus, despite the efforts the news outlet had made to ensure that the comments uploaded to the commenting section were within the law, the Estonian courts did not violate their rights under Article 10 by holding them liable for the comments. “*However,*” the MTE case was “*different. Although offensive and vulgar [...], the incriminated comments did not constitute clearly unlawful speech; and they certainly did not amount to hate speech or incitement to violence.*”⁸ The same applied in the case of *Pihl*.⁹ The Court found that the measures in the latter two cases to prevent illegal comments were sufficient, entailing that imposing liability on the applicant for the third-party comments were in breach of their rights as protected under Article 10. The measures the applicant had in place in the *Delfi* case are describe as: “*a note on its Internet site to the effect that comments were not edited, that the posting of comments that were contrary to good practice was prohibited, and that the applicant company reserved the right to remove such comments. A system was put in place whereby users could notify the applicant company of any inappropriate comments.*”¹⁰ In the *Delfi* case the applicant removed the content following complaints, just as in the *Pihl* case. The Court also points out that the

⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') OJ L 178, 17.7.2000, p. 1–16.

⁵ *Delfi v. Estonia* (§ 90).

⁶ Magyar Tartalomszolgáltatók Egyesülete and Index.hu ZRT v. Hungary (§87).

⁷ *Delfi v. Estonia* (§ 140 and §136).

⁸ Magyar Tartalomszolgáltatók Egyesülete and Index.hu ZRT v. Hungary (§64).

⁹ *Pihl v Sweden* (§25).

¹⁰ *Delfi v. Estonia* (§26).

complainant in the *Pihl* case could not have foreseen the comment in question. Although a news outlet as Delfi could anticipate heated comments in the context of certain news articles, it is not unreasonable to fail to anticipate hate speech in the reporting of the closing of an ice road in a remote part of the country, as was the case in the *Delfi*.

The platforms in the respective cases were news companies on one hand and not-for-profit associations on the other. The Court makes a distinction between the obligations of for-profit and not-for-profit platforms¹¹, resting on the notion that the monetary interests of for-profit entities operating online can lie in the increased circulation of boundaries pushing material such as hate speech being hosted on the site. This raises two issues that the Court has not dealt with.

First, with regard to the practical measures for-profit entities should have in place; in light of the measures the applicant had in place in the *Delfi* case, it is hard to see what other measures the applicant could have taken in order to prevent the liability imposed on them other than screening or filtering the comments before them being posted. Still, the Court claims in the MTE case that prior filtering of comments would require “*excessive and impracticable forethought capable of undermining freedom of the right to impart information on the Internet.*”¹² These are somewhat mixed messages as to what practical measures are appropriate. Second, the distinction raises the question of possible responsibility of not-for-profit platforms that host ‘unlawful’ speech uploaded by anonymous third parties. The findings leave open a scope for non-profit platforms that have other interests than monetary of the distribution of material that a for-profit platform would have been held liable for. Such a situation would provide less protection to the rights of individuals that have their Article 8 rights infringed online.

This is an issue in which personal expectations of privacy, cultural norms and technological capacities are all moving swiftly and it is important that the law keeps pace. At present, the jurisprudence is at best unclear and it would be beneficial to everyone if the Court can find an opportunity to develop a more comprehensive line of reasoning on where liability falls in the face of prohibited speech below the line.

Maria Bjarnadóttir

¹¹ Magyar Tartalomszolgáltatók Egyesülete and Index.hu ZRT v. Hungary (§ 62). *Delfi v. Estonia* (§ 113). *Pihl v. Sweden* (§ 37).

¹² Magyar Tartalomszolgáltatók Egyesülete and Index.hu ZRT v. Hungary (§ 82).

Should Data Protection be Protected as a Human Right After Brexit?

As we carry out more of our lives online and through devices such as smartphones, smart appliances and exercise trackers, we are all generating increasing amounts of data. This can be exploited in a variety of ways and for a range of reasons – health data can form the basis of vital scientific research, customer lists are important commercial assets for companies, and governments and security services collect communications data to carry out surveillance (as Edward Snowden so shockingly revealed in 2013). The potential uses and abuses of this data are both amazing and frightening. After the 2016 referendum on the UK's membership of the European Union, the Information Commissioner's Office (ICO) announced that it was conducting an "assessment of the data protection risks arising from the use of data analytics, including for political purposes."

¹ An example of a potential such risk is the use of datasets to build detailed pictures of the personalities and proclivities of individual voters, which can then form the basis of highly individualised campaign messages during elections².

Beyond the possible implications for democracy, the potential for exploitation in innumerable ways of our online selves and the digital traces we leave is worrying from the point of view of our privacy, integrity, and dignity as individuals. This is why data protection – broadly put, the ability to control what is done with our data, why and by whom – is so important. The commercial and political incentives for state and non-state actors to gain access to personal data are also enormous, and the conceivable detriment to individuals and society if protections are removed is considerable.

Jonathon Penny has examined the potential for state surveillance to exert a "chilling effect" on the exercise of freedoms and engagement in legal and often worthwhile activities online³; awareness of being watched and of the likelihood of censure may lead to self-censorship, corroding individuality and stifling debate. Meanwhile, the use of data by corporations for their own ends could be equally hazardous; Dencik, Hintz and Cable have described how the "'datafication" of many aspects of social life" is part of a "political economy in which the prevailing logic is to predict and modify human behaviour as a means to produce revenue and market control"⁴. They also point out that

¹ Elizabeth Denham, "The Information Commissioner opens a formal investigation into the use of data analytics for political purposes" (*ICO News Blog*, 17 May 2017) <https://iconewsblog.wordpress.com/2017/05/17/information-commissioner-elizabeth-denham-opens-a-formal-investigation-into-the-use-of-data-analytics-for-political-purposes/>, accessed 14 July 2017

² Carole Cadwalladr, "The great British Brexit robbery: how our democracy was hijacked" (*The Guardian* website, 7 May 2017), <https://www.theguardian.com/technology/2017/may/07/the-great-british-brexit-robbery-hijacked-democracy>, accessed 14 July 2017

³ Jonathon W. Penny, "Internet Surveillance, Regulation, and Chilling Effects Online: A Comparative Case Study", May 27, 2017, *Internet Policy Review*, 2017 (Forthcoming). Available at SSRN: <https://ssrn.com/abstract=2959611>, accessed 14 July 2017

⁴ Lina Dencik, Arne Hintz and Jonathan Cable, "Towards Data Justice? The ambiguity of anti-surveillance resistance in political activism", 24 November 2016, *Big Data & Society*, December 2016:1-12, <http://journals.sagepub.com/doi/abs/10.1177/2053951716679678>, accessed 14 July 2017

technology companies such as Facebook and Apple have, by putting themselves on the opposite side of the surveillance debate to governments seeking to exert increasingly intrusive powers⁵, managed to present themselves as benevolent protectors of their users' interests⁶, even when this may not be the case. Autonomy is crucial to human dignity and the rule of law, and personal data may be put to uses which chip away at our autonomy as citizens and, more prosaically, as economic actors.

In the European Union (and in the UK, while it remains a member) data protection is regarded as part of the "common constitutional fabric". Article 8 of the Charter of Fundamental Rights of the European Union ("the Charter") provides that "everyone has the right to the protection of personal data concerning him or her"⁷, protecting data protection as a specific human right. The Charter has the same legal status as the Treaties in EU law, which means that the Court of Justice of the European court is ultimately responsible for its interpretation and has strong enforcement powers in relation to national and secondary EU law which conflicts with any of the Charter rights, though these can only be used in cases which concern the implementation of EU law. A number of high-profile cases have entailed the use of these powers, notably *Schrems*⁸, where the European Commission's declaration that the Safe Harbor agreement provided an adequate level of protection of personal data transferred to the US was invalid, and *Watson*⁹, in which the Grand Chamber held that the UK's Data Retention and Investigatory Powers Act 2014 (DRIPA) was incompatible with EU law.

Once the United Kingdom leaves the European Union, the Charter will no longer be binding in domestic law. The draft European Union (Withdrawal) Bill contains no provisions which would bring the Charter into UK law, and the White Paper which preceded it explicitly stated that this would not be done¹⁰. Though, as was emphasised in the White Paper¹¹, withdrawal from the EU will not change the UK's participation in the Convention, currently there will be no specific, enforceable human right to data protection in UK law once the process of leaving the EU is complete.

The Information Commissioner and Amnesty International both argued for the retention of a specific human right to data protection in their submissions to the Joint Committee

⁵ E.g. Alex Hern, "UK government can force encryption removal, but fears losing, experts say", (*The Guardian* online, 29 March 2017), <https://www.theguardian.com/technology/2017/mar/29/uk-government-encryption-whatsapp-investigatory-powers-act>, accessed 14 July 2017

⁶ Lina Dencik, Arne Hintz and Jonathan Cable, "Towards Data Justice? The ambiguity of anti-surveillance resistance in political activism", 24 November 2016, *Big Data & Society*, December 2016:1-12, <http://journals.sagepub.com/doi/abs/10.1177/2053951716679678>, accessed 14 July 2017

⁷ Charter of Fundamental Rights of the European Union, 2000/C364/01, Article 8

⁸ Case C-362/14, *Maximilian Schrems v Data Protection Commissioner*, EU:C:2015:650

⁹ Joined Cases C-203/15 and C-698/15, *Tele2 Sverige AB v Post-och telestyrelsen and Secretary of State for the Home Department v Watson and others*, ECLI:EU:C:2016:970

¹⁰ Department for Exiting the European Union, *Legislating for the United Kingdom's Withdrawal from the European Union*, (White Paper, Cm 9446, March 2017), paragraph 2.23

¹¹ *Ibid.*, paragraph 2.22

on Human Rights' enquiry on the human rights implications of Brexit¹². Amnesty International UK argued that the Charter provided "added protection" above "the safety net provided by the European Convention on Human Rights". The CJEU in *Watson* left open the question of whether the Charter provided stronger protection than the Convention, but it noted both that EU law is not precluded from providing more extensive protection than the ECHR and that Article 8 "concerns a fundamental right which is distinct from that enshrined in Article 7"¹³.

Of course, the United Kingdom already has a well-established data protection law in the form of the Data Protection Act 1998, and the government has stated its intention to implement the forthcoming General Data Protection Regulation (GDPR)¹⁴, which was reflected in the Queen's Speech¹⁵. The stated aims of GDPR include "creating the trust that will allow the digital economy to develop across the internal market" as well as protecting the rights of natural persons and harmonising the protection of those rights¹⁶ and it introduces a number of new rights giving individuals increased access to, and control over, their data. Despite the initial costs of compliance, the aim of increasing consumer trust (and the desire to avoid data breaches and similar incidents which negatively affect corporate reputations) is one shared by many in business. This is not the only reason to adopt high standards and stringent rules in the area of data protection. The "California effect", according to which businesses which operate in several states or countries adopt the toughest standards rather than run different compliance regimes across their organisations, is expected to encourage UK businesses to continue to comply with EU regulation even if legal regulation is rolled back¹⁷.

The vast majority of modern business has an online aspect and therefore involve, or even depend on, cross-border data transfer. Under Article 45(1) GDPR, transfers of personal data to third countries (including the UK after Brexit) will be forbidden unless the Commission decides the UK ensures an "adequate level of protection". Absent such a decision, individual data controllers or processors will be responsible for complying with the more cumbersome alternative safeguards listed in Article 46(2) GDPR - an adequacy decision would be far preferable.

If GDPR is implemented in full, the UK and EU will have *prime facie* identical data protection regimes on the day of exit, so a positive adequacy decision would seem likely.

¹² Joint Committee on Human Rights, *The human rights implications of Brexit*, (Fifth Report of Session 201-17, HL Paper 88, HC 695, 19 December 2016), paragraphs 68 and 69

¹³ Joined Cases C-203/15 and C-698/15, *Tele2 Sverige AB v Post-och telestyrelsen and Secretary of State for the Home Department v Watson and others*, ECLI:EU:C:2016:970, paragraph 129

¹⁴ Elizabeth Denham, "How the ICO will be supporting the implementation of the GDPR" (*ICO news blog*, 31 October 2016), <https://iconewsblog.wordpress.com/2016/10/31/how-the-ico-will-be-supporting-the-implementation-of-the-gdpr/>, accessed 14 July 2017

¹⁵ Queen's Speech 2017, 21 June 2017, <https://www.gov.uk/government/speeches/queens-speech-2017>

¹⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L119, Recitals 1, 3 and 7

¹⁷ Alan Beattie, "Why the Brussels effect will undermine Brexit regulatory push", (*The Financial Times* online, 12 July 2017), <https://www.ft.com/content/fd5ca278-6654-11e7-8526-7b38dcaef614>, accessed 14 July 2017

However, alongside the absence of a specific right to data protection, the UK Parliament has recently passed the Investigatory Powers Act 2016, which is already subject to a legal challenge. Liberty, which is bringing the action, states that this is because DRIPA's powers are "replicated and vastly expanded in the Investigatory Powers Act, with no effort to counter the lack of safeguards found unlawful in [*Watson*, which concerned the IPA's predecessor DRIPA]."¹⁸ Among the provisions which the CJEU relied on in *Watson*, when finding that DRIPA infringed EU law, was Article 8 of the Charter, and one of the UK government's stated reasons for neglecting to implement the Charter in UK law post-Brexit is that "it cannot be right that the Charter could be used to bring challenges against the Government, or for UK legislation after our withdrawal to be struck down on the basis of the Charter."¹⁹ The UK government's decision to implement such broad, intrusive surveillance powers even though they have been judged to infringe significantly on privacy and data protection rights may make an adequacy decision significantly less likely²⁰.

In a world where more of our lives are lived online and we generate increasingly vast reams of information, which both public and private actors have an interest in exploiting for their own reasons, the retention of a specifically articulated and strongly enforced human right to data protection therefore seems imperative. Individual control and legal protection of personal data protects privacy and autonomy, which cannot be exploited for financial or political gain but which are fundamental to autonomy and dignity.

Elizabeth Campion

¹⁸ Liberty, "The People vs the Snoopers' Charter: Liberty launches crowdfunded legal challenge to indiscriminate state spying powers in Investigatory Powers Act", (*Liberty website*, 10 January 2017), <https://www.liberty-human-rights.org.uk/news/press-releases-and-statements/people-vs-snoopers%E2%80%99-charter-liberty-launches-crowdfunded-legal>, accessed 14 July 2017

¹⁹ Department for Exiting the European Union, *Legislating for the United Kingdom's Withdrawal from the European Union*, (White Paper, Cm 9446, March 2017), paragraph 2.23

²⁰ Eduardo Ustaran and Vicky Hordern, "The CJEU Gives the UK Government another Brexit Dilemma", (*Hogan Lovells Chronicle of Data Protection Blog*, 22 December 2016), <http://www.hldataprotection.com/2016/12/articles/international-eu-privacy/the-cjeu-gives-the-uk-government-another-brexit-dilemma/> accessed 14 July 2017

A Human Rights Based Approach: Critical Perspective in the Understanding of the 'Meaning-Centred Anorexic Body'

*"The frame with which we look at human rights is the human body. It is the human condition, human embodiment and suffering, that is universal. The body is that which we cannot escape. But in some ways we have forgotten this."*¹

Involuntary treatments are defined as any unwanted psychiatric or non-psychiatric actions, which go against the informed consent, or free will, of an individual.² The involuntary treatment of persons classified as mentally ill is a contentious issue in the fields of health care, medicine, psychiatry, and law.³ Prolific cases of individuals who voluntarily succumb to self-starvation as a way to self-rule⁴ reveals the critical struggle by healthcare practitioners to preserve life while at the same time respecting the individuals personhood.⁵ Research in the field points to the fact that, despite various clinical impositions of treatment options to facilitate the recovery of the anorexic body, there is still a record of sustained high mortality rate, low recovery, and obvious treatment resistance.⁶ *NHS vs. X*,⁷ established that involuntary treatments were shown not to be effective in addressing the underlying anorexia of Ms, X. The treatment professionals unanimously agreed that involuntarily treating Ms X would include; "painful, invasive and wholly unwelcome procedures for Ms X."⁸

On the one hand, advocates for involuntary treatments make strong arguments which justify the reasons for medical treatment inferring that the express consent of the individual is indispensable. Such justification of paternalistic intervention is without consideration to the perils of involuntary treatment as a direct violation of personal autonomy, thereby removing the rights to make informed choices through undue influence or force.⁹ Involuntary or compulsory procedures emphasise the unorthodox forms of restriction and deprivation of rights and liberty.¹⁰ It is imperative that the personal behaviour, actions, and choices of a person are respected, regardless of whether that decision is valid, just or detrimental.¹¹ The era of "doctor knows best" is long past.¹²

¹ Mooney, A. (2016). Human Rights and the Body Hidden in Plain Sight. Oxon, Ashgate Publishing.

² Sjostrand, M., Sandman, L., Karlsson, P., Helgesson, G., Eriksson, S. & Juth, N. (eds.), (2015). 'Ethical Deliberations about Involuntary Treatment: Interviews with Swedish Psychiatrists', 16(1) BMC Medical Ethics, Available from, <http://bmcomedethics.biomedcentral.com/articles/10.1186/s12910-015-0029-5> [Accessed 10th October 2015]

³ Dresser, R. S. (1984). 'Legal and Policy Consideration in Treatment of Anorexia Nervosa Patients', 3(4) International Journal of Eating Disorders, pp. 43-51.

⁴ Kirsty Keywood, Rethinking the anorexic body: How English Law and psychiatry 'think', 26(2003) International Journal of Law and Psychiatry, p. 604.

⁵ Murphy, J. P. & Dunn, W. (2008). 'Transparency in Health Care: An Issue Throughout US History', 133(1) Chest Journal, p.9

⁶ Tan, J. O. A., Hope, T., Stewart, A. & Fitzpatrick, R. (2006). 'Competence to Make Treatment Decisions in Anorexia Nervosa: Thinking Processes and Values', 13(4) Philos Psychiatr Psychol, pp. 267-272.

⁷ *NHS Foundation v X* [2014] EWCOP 35, para 4.

⁸ Giordano, S. (2005). Conceptual and Ethical Issues in the Treatment of Anorexia Nervosa and Bulimia Nervosa. Oxford, Clarendon Press. p. 8

⁹ Matsuek, J. A. & Wright, M. O. (2010). "Ethical Dilemmas in Treating Eating Disorders", 18 European Eating Disorder Review, p.436.

¹⁰ Brunner, R., Parzer, P. & Resch, F. (2005). 'Involuntary Hospitalization of Patients with Anorexia Nervosa: Clinical Issues and Empirical findings', 73(1) Fortschr Neurol Psychiatry Journal, p. 9.

¹¹ Matsuek & Wright, *op. cit.*

Therefore critics of involuntary treatments argue that respecting individual rights and autonomy, which are central parts of medical law and ethics, should be ranked as the most important.¹³ The reasoning is that the process-induced during involuntary treatment involves anti-rights practices, which may infringe on some fundamental rights of an individual.¹⁴ Coggon points out that there is a growing tension on what exactly is involved in involuntary psychiatric treatment and where the legitimacy for such interventions derives from.¹⁵ The conflict of finding a balance becomes evident as treating clinicians attempt to safeguard the lives of people they deemed dangerous to themselves and in the same vain ensuring there is a certain degree of individual freedom should they decide to self-determine.¹⁶

There is an established intersection between anorexia nervosa and the response to the crisis of autonomy and independence. This crisis can occur at any stage of a person's assertion of self-determination, bodily integrity, and right to refuse treatment. In many ways, the anorexic body is relentlessly self-normalizing, reflecting an internal, stable management of self, a "resistance to the cultural norm," regardless of consumer culture illogicalities.¹⁷ For the anorexic woman, denial of their values and choices pronounces the bodies assent as a victim of oppression, disenfranchised from the ability to remain as they are, control and exert influence on her body.¹⁸ The underlying issue in anorexic behavior is exercising control and dominance over the way the body changes or develops.¹⁹ The values of autonomy, the ideals of consent, and inherent dignity are, therefore, very critical to the anorexic body and are also potent attributes in rights protection. The meaning-centred anorexic body is therefore ostentatiously unapologetic of the aesthetical body ideals they embraced. Redefining the body anatomy through self-motivation, self-mastery and control became a symbolic self-accomplishment.

Critics of involuntary treatments of the anorexic body insist that unconsented treatments infringe on the dignity,²⁰ bodily integrity, and autonomy of a person.²¹ Applicable methods such as forced tube feeding and unconsented detentions fuel the clarion call for more transparency and inclusion by healthcare practitioners in administering their duty of care.²² Medical law expert Dubrow, rightly points out that the era of 'the doctors knows best' and absolute paternalism is long gone.²³ Foucauldian literature now

¹² Dubrow, D. (2016). 'Gone are the days of 'doctor knows best'', Available from, <http://neoskopos.com/news/en/Gone-are-the-days-of-doctor-knows-best> [Accessed, 15th May. 2016]

¹³ Lewis, P. (1999). 'Feeding Anorexia Patients who Refuse Food', 7(1) *Medical Law Review*, p. 23.

¹⁴ *Ibid.*

¹⁵ Coggon, J. (2015). 'Alcohol Dependence and Anorexia Nervosa: Individual Autonomy and the Jurisdiction of the Court of Protection', 20(4) *Medical Law Review*, p. 665.

¹⁶ Dresser, R. S. (1984). 'Legal and Policy Consideration in Treatment of Anorexia Nervosa Patients', 3(4) *International Journal of Eating Disorders*, p. 44.

¹⁷ Bordo, S. (1990). "Reading the slender body", in Jacobus, A. E. Keller, F. & Shuttlewood, S. (eds.) *Body Politics: Women and the Discourses of science*. pp. 201-202.

¹⁸ Lawrence, M. (2008). *The Anorexic Mind*. London, Kamac Books.

¹⁹ *Ibid.*

²⁰ Irvin, T. L. (2003). 'Legal, Ethical and Clinical Implications of Prescribing Involuntary, Life-Threatening Treatment: the case of the Sunshine Kid', 48(4) *Journal of Forensic Science*, p. 858.

²¹ Brunner, R., Parzer, P. & Resch, F. (2005). 'Involuntary Hospitalization of Patients with Anorexia Nervosa: Clinical Issues and Empirical findings', 73(1) *Fortschr Neurol Psychiatry Journal*, p. 9.

²² Lewis, P. (1999). 'Feeding Anorexia Patients who Refuse Food', 7(1) *Medical Law Review*, p. 23.

²³ Dubrow, D. (2016). 'Gone are the days of 'doctor knows best'', Available from, <http://neoskopos.com/news/en/Gone-are-the-days-of-doctor-knows-best> [Accessed, 15th May. 2016]

influences contemporary thinkers to objectify the effects of unwanted action over the body.²⁴

A right-based treatment approach emphasises the individuality of persons and empowers them to acknowledge and claim their rights while holding institutions accountable. Implementing a rights based approach provides the meaning-centered anorexic bodies with the opportunity to make decisions that impact their rights and ensure the integration of human rights standards and principles into policy making.²⁵ Samanta & Samanta points out that Article 8 of the Human Rights Act 1998 “gives effect to the right to self-determination and autonomy in the competent patient, even if such choices hasten death”²⁶ English common law also recognises the right to refuse medical treatment as absolute but conflicting with the societal interest of preservation of life.²⁷ Any limitation to treatment refusal, solely based on the sanctity of life was precluded. In *Ms. B v an NHS Hospital*, the court’s decision confirmed the fundamental principle of autonomy, insisting that every person’s body is inviolate. The individual can, therefore, exercise the right to refuse treatment and even while assessing capacity, treatment must be carried out by their best interest.²⁸

The European Convention on Human Rights does not expressly recognise the right of autonomy or the right to refuse treatment however both rights are recognised by the European Court of Human Rights as derived and embedded in the rights protected by the European Convention. Article 9 of the ECHR provides for the protection of freedom of thought, conscience and religion. Article 8 provides for the right to respect private and family life. Article 5 provides for the right to liberty and security, and Article 3 prohibits torture and inhuman or degrading treatment. There is also an obligation on states to protect these rights, which are not exclusive to only capable individuals. Although certain limitations to individual freedom apply when the competence is actively contested or in question, it is almost impossible not to echo the same sentiments as Silber, who insists that autonomy and freedom of choice should trump any consideration.²⁹

Cynthia Chisom

²⁴ Deveaux, M. (1994). ‘Feminism and Empowerment: A critical Reading of Foucault’, 20(2) *Feminist Studies*, http://www2.kobeu.ac.jp/~alexroni/IPD%202016%20readings/IPD%202016_8/Feminism%20and%20Empowerment_%20A%20Critical%20Reading%20of%20Foucault.pdf [Accessed 5th Jan. 2016] pp. 223–247.

²⁵ Care About Rights. [What is a Human Rights Based Approach?](http://careaboutrights.scottishhumanrights.com/whatisahumanrightsbasedapproach.html) Available from, <http://careaboutrights.scottishhumanrights.com/whatisahumanrightsbasedapproach.html> [accessed 2nd Aug 2015]

²⁶ Samanta, A. & Samanta, J. (2005). “The Human Rights Act 1998-Why Should it Matter for Medical Practice?”, 98(9) *Journal of the Royal Society of Medicine*, pp.404-410

²⁷ Wade, K. (2014). “Refusal of Emergency Caesarean Section in Ireland: A Relational Approach”, 22(1) *Medical Law Review*, p.1

²⁸ *Ms B v An NHS Hospital* [2002] EWHW 429

²⁹ Silber, T. (2011). ‘Treatment of Anorexia Nervosa against the Patients Will: Ethical Considerations’, 22(2) *Adolescence Medical State Art Review*, pp. 284–285.

A Fortress built upon *refoulement*?

Numerous policies implemented under the Common European Asylum System (CEAS) in response to the 'crisis' may be challenged in terms of their compliance with international law. This paper will consider the example of an individual Member State's wilful misinterpretation of what constitutes a Convention refugee and the resulting human rights violations.

Following reports of Chechen asylum seekers being refused entry at Poland's eastern border, the Polish Minister of Interior stated that Poland:

[S]hall not succumb to the pressure of those who wish to cause a migration crisis. Our policy is completely different. The Polish border is secure. There is no war in Chechnya, unlike the situation from years past. (...) In my opinion this is an attempt at creating a new migratory route for Muslims to enter Europe. We are all in favour of supporting the needy. We provide financial aid in situations of war, or provide support to refugees in camps, where they are refugees. We also secure the external border of the European Union.

(...) As long as I am the Minister of the Interior, as long as the Law and Justice government is in power, we will not allow for Poland to be endangered with a terrorist threat.¹

The Minister's anxieties exemplify the conflation of all Muslims with terrorists. This stance is of course contrary to Article 3 of the Refugee Convention, which prohibits discrimination on the basis of race or religion.² His statement represents an intentional misrepresentation of the definition of a refugee, solely as an individual fleeing war.³ The continued application of this policy also disregards the life-threatening persecution of homosexuals, recently uncovered in Chechnya. While inspecting the situation at the border, observers from the Human Rights Commissioner's office noted that, in instances where an asylum seeker in any way indicated that they might wish to also work in Poland, the border guards would consider them as economic migrants and refuse them entry on this basis, whether or not they initially claimed asylum.⁴ This practice seems to ignore the realities of life - barring significant independent wealth, all asylum seekers will, sooner or later, seek to become self-sufficient and enter the workforce. On the one hand, asylum seekers are vilified for wishing to enter the EU to take advantage of its welfare system. On the other, they are also refused entry should they express a wish to become economically independent. The need for international protection does not exclude the need to work to support oneself. Perhaps the Polish Border Guard and Minister of Interior ought to be reminded of this simple fact of life while revising this Kafkaesque policy.

¹ TVN, „Czeczenci koczowali na granicy. Szef MSWiA: rzd PiS nie narazi Polski na zagrożenie terrorystyczne” TVN 24, 31.08.2016 <http://www.tvn24.pl/wiadomosci-z-kraju,3/szef-mswia-mariusz-blaszczak-o-czecenach-na-polskiej-granicy,672450.html>, Author's translation, emphasis added.

² Adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

³ Ibid, Article 1A.

⁴ Daniel Flis, “Straz Graniczna nie wpuszcza torturowanych Czecenów. Baszczak nie pozwoli” OKO Press, 27.09.2016, <https://oko.press/straz-graniczna-wpuszcza-torturowanych-czecenow-blaszczak-pozwolil/>.

Aside from the scaremongering tactic of scapegoating asylum seekers, the Minister's statement represents a further worrying trend which has emerged in the EU in recent years. Spurred on by the government's policy, the Border Guard has been refusing entry to asylum seekers at the border with Belarus, regardless of clear statements of intention to claim asylum, justifying their refusal of entry by a 'lack of a valid visa'.⁵ This 'informal' policy represents a clear breach of the *non-refoulement* principle enshrined under Article 33 of the Refugee Convention and accepted as customary international law.⁶ Notably, *non-refoulement* also includes the prohibition on rejecting an asylum seeker at the border.⁷ While Poland may not be under an obligation to grant asylum, its international obligations clearly mean that a lack of a valid travel document or visa, is no excuse⁸ to return the asylum seeker to their country of origin⁹ or force them to remain in inhumane conditions in a third country.

The abovementioned Polish policy of arbitrarily refusing entry to asylum seekers at its border, therefore violates an established *ius cogens*,¹⁰ acknowledged as the 'essential corollary to the right to seek asylum' enshrined in Article 14 of the Universal Declaration of Human Rights.¹¹ Unfortunately, it seems the approach adopted by Poland remains open to Member States as long as the regulations and directives underpinning CEAS do not include a clear cut right of asylum seekers making applications at the border, to be allowed entry in order to have said application 'lodged' and processed 'individually, objectively and impartially'.¹² It appears that the recurring issue underpinning the current 'crisis' in Europe is CEAS' failure to address the 'absence of safe routes to seek asylum from outside the EU'.¹³ In the face of the ongoing mass-influx it appears that, as long as this ambiguity regarding an asylum seeker's right to have their claim processed persists, so will excuses for state sanctioned *refoulement*.

The Polish example is but one of what has been termed as a group of 'non arrival measures'¹⁴ employed by individual Member States and collectively by the EU and third country states.¹⁵ It therefore appears that the existing state of CEAS caught asylum-seekers in a perpetual Catch 22 situation: they are both unable to obtain valid travel documents in their countries of origin or to enter the states in which they can seek protection, due to their lack of said documents. Not only could they be penalised for

⁵ Sylwia Czubakowska, Micha Potocki, "Dramat na polskiej granicy. Suby nie wpuszczaj rodzin ubiegajcych sio status uchodcy", *Dziennik*, 16.11.2016 <http://wiadomosci.dziennik.pl/wydarzenia/artykuly/535639,dramat-na-polskiej-granicy-straz-graniczna-nie-wpuszcza-rodzin-ubiegajacych-sie-o-status-uchodzczy.html>.

⁶ Erika Feller, Volker Türk, Frances Nicholson, *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, (2003), 9.

⁷ Andreas Zimmermann, *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol – A Commentary*, (2011), 1368.

⁸ Article 31(1), Refugee Convention.

⁹ Daniel Flis, "Baszcak popiera amanie prawa, byl nie wpuci uchodcow", OKO Press, 2.09.2016, <https://oko.press/blaszczak-popiera-lamanie-prawa-byle-wpuszcic-uchodzcow/>.

¹⁰ Op cit n6, 10.

¹¹ Op cit n7, 1335.

¹² Article 10, Directive 2013/32 on common procedures for granting and withdrawing international protection (recast), OJ 2013 L 180/60; Francesco Cherubini, *Asylum Law in the European Union*, (2015), 228.

¹³ Cathryn Costello and Emily Hancox, 'The Recast Asylum Procedures Directive 2013/32/EU: Caught between the Stereotypes of the Abusive Asylum-Seeker and the Vulnerable Refugee' in Vincent Chetail, Philippe De Bruycker, Francesco Maiani (eds.), *Reforming the Common European Asylum System: The New European Refugee Law*, (2016), 389.

¹⁴ Francesco Cherubini, *Asylum Law in the European Union*, (2015), 228.

¹⁵ Op cit n13.

their irregular entry, but their very entry may be prevented as exemplified by the Polish approach to Chechen asylum seekers.

Poland's flagrant contravention of *non-refoulement* sparked 'unprecedented' decisions of the European Court of Human Rights (ECtHR) to impose interim measures, halting two Chechen families' removal to Belarus.¹⁶ The Human Constanta Mission in Brest reported that their first clients, who had attempted to make an application for asylum at the Terespol border crossing on 16 occasions, would have been deported back to the Russian Federation 'since they had stayed in Belarus for more than three months permitted by law'.¹⁷ The ECtHR interim indications are of note, as the applicants in question were technically not yet within the territory of the state allegedly violating their rights and secondly, they had been unable to exhaust all possible domestic remedies, due to the refusal of the head of the Polish Border Guard to even consider their complaint, 'since it was not written in Polish'.¹⁸ The Court requested information regarding both cases and Poland's asylum procedures. Both families' applications for asylum have now been lodged in Poland and await consideration.

Unfortunately, these measures have not always been successful in protecting Chechen asylum seekers from *refoulement* at the Poland-Belarus border. A single man, claiming to be fleeing torture, obtained a similar ECtHR decision, preventing his removal from Polish territory, due to the risk to his life.¹⁹ The Border Guard's sole acknowledgement of the decision was to confiscate the copy held by the Applicant, while refusing him entry to claim asylum for the 28th time.²⁰ The Foreign Ministry's defence of its actions was condemned by prominent Polish NGOs as a contravention of past ECtHR case law²¹ and a misrepresentation of the facts of the case.²²

One can only hope that this unprecedented ECtHR involvement will eventually encourage the solidarity required in the ongoing crisis of EU cooperation and respect for human rights. The question remains whether *refoulement* has now become an unofficial building block of CEAS and national policies, protecting Member States' reluctance to accept asylum seekers.

Brenda Efurhievwe

¹⁶ Human Constanta, 'The European Court of Human Rights intervenes in the situation of refugees at the Belarusian-Polish border' 05.06.2017 <https://www.facebook.com/notes/human-constantia/1902205446705058/>; confirmed by an ECtHR Press Office email of 19.06.17.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ TVN24, "Trybunanakaza chroni ycie Czeczena. Polskie suby to zignoroway", 10.06.2017

<http://www.tvn24.pl/wiadomosci-z-kraju,3/straz-graniczna-kontra-europejski-trybunal-praw-czlowieka,747751.html>

²⁰ Ibid.

²¹ E.g. *Hirsi Jamaa and Others v Italy* [GC], Application No. 27765/09

²² Helsiska Fundacja Praw Czowieka, "Stanowisko MSZ w sprawie decyzji ETPC o niezawracaniu uchodcy na Biaoru jest bezpodstawne - komunikat HFPC i SIP", 12.06.2017 <http://www.hfhr.pl/en/hfhr-and-ali-mfas-statement-regarding-ecthrs-prohibition-of-refugees-return-to-belarus-is-groundless/>

Case Comment: Attorney General for Northern Ireland & The Department for Justice v
The Northern Ireland Human Rights Commission [2017] NICA 42

Background

The draconian nature of Northern Ireland’s abortion laws has recently captured the nation’s attention— the Supreme Court rejected a challenge to the refusal of the Secretary of State for Health to fund NHS abortion services in England and Wales for UK citizens who were ordinarily resident in Northern Ireland;¹ this was followed by Stella Creasy MP’s proposed amendment to the Queen’s Speech, which, on gaining bi-partisan support from backbenchers on both sides of the House, prompted the Government to announce that said funding would soon be made available.²

At present, however, abortion in Northern Ireland is only lawful when ‘...done in good faith for the purpose only of preserving the life of the mother.’³ This is to be understood in a ‘reasonable sense’ – it includes situations where ‘the probable consequence of the continuation of the pregnancy would be to make the woman a physical or mental wreck’ (‘the *Bourne* exception’).⁴

In November 2015, Horner J granted a declaration stating that the regime – insofar as it prohibited abortion where (i) the pregnancy arose as a result of rape or incest, and / or (ii) the foetus was suffering from a fatal foetal abnormality – breached Article 8 of the European Convention of Human Rights (‘ECHR’).⁵ The Northern Irish Attorney General appealed.

Judgment

The Government argued that: (i) the Northern Irish Human Rights Commission (‘NIHRC’) did not have standing ([7]); and even if they did, (ii) the current abortion regime did not breach Article 8 of the ECHR ([75]). In a cross-appeal, the NIHRC argued the regime also breached Articles 3 and 14, as well as Article 8 ([179]). They sought declaratory relief ([6]).

The Court of Appeal unanimously allowed the appeal, setting aside the declarations made by Horner J. Nevertheless, the three judgements differed in both substance and form:

- (a) There was unanimous agreement that the NIHRC had standing ([33] – [46]);
- (b) There was unanimous agreement that the regime did not breach Article 3 or 14 ([50] – [62], [81];

¹ *R (on the application of A and B) (Appellants) v Secretary of State for Health (Respondent)* [2017] UKSC 4.

² J Elgot & H McDonald, ‘Northern Irish Women Win Access to Free Abortions as May Averts Rebellion’ *The Guardian* (London, 29th June 2017) <<https://www.theguardian.com/world/2017/jun/29/rebel-tories-could-back-northern-ireland-abortion-amendment>> accessed 13th July 2017.

³ Criminal Justice Act (Northern Ireland) 1945, s 25; [48] (Morgan LCJ).

⁴ *R v Bourne* [1939] 1 KB 687; *Family Planning Association of Northern Ireland v Minister for Health, Social Services and Public Safety* [2004] NICA 37.

⁵ *In the Matter of the Law on Termination of Pregnancy in Northern Ireland* [2015] NIQB 96.

- (c) Morgan LCJ held that – in light of contemporary standards – the *Bourne* exception should be widened to encompass ‘emotionally devastating situations... [that are not] ...reasonably tolerable in today’s society.’ This widened interpretation – which would catch most cases of rape or incest, and fatal foetal abnormality – heavily influenced the LCJ’s conclusions on the human rights issues ([77] – [79]);
- (d) Gillen LJ and Weatherup LJ rejected the LCJ’s re-interpretation of the *Bourne* exception ([91] – [92] & [125]);
- (e) Morgan LCJ and Gillen LJ found that the regime *did not* breach Article 8 as it fell within the margin of appreciation afforded by Strasbourg ([63] – [81] & [96] – [118]);
- (f) Weatherup LJ expressed a ‘provisional view’ that the regime *did* breach Article 8 insofar as it prohibited abortion in cases where the pregnancy arose as a result of rape or incest; or in cases of fatal foetal abnormality, as the regime did not strike a proportionate balance. Nevertheless, he was not prepared to either re-interpret the legislation or issue a declaration of incompatibility as it would be ‘institutionally [in]appropriate’ ([140] – [178]).

Commentary

This is a disappointing judgment for women suffering the consequences of Northern Ireland’s archaic abortion regime; but it should not come as a shock – the conclusions reached are consistent with Strasbourg jurisprudence on abortion, and domestic jurisprudence on inter-institutional relations; both of which – it must be said – are lacking. Nevertheless, three glimmers of hope shine through the disappointing outcome.

The first is Weatherup LJ’s ‘provisional view’ that the regime breaches Article 8. This is a partial victory for those in favour of liberalising Northern Irish abortion laws on human rights grounds; it is also a blueprint for those who believe there is a need for more careful consideration of whether the state has discharged the requisite burden of justification in human rights cases.⁶ Weatherup LJ’s judgment stands apart for its careful dissection of the justificatory claims put forward by the state, and its sensitive consideration of proportionality. Although it is disappointing that Weatherup LJ ruled out the availability of a remedy, his searching proportionality analysis will force the Supreme Court to grapple – once again – with the efficacy of its *Nicklinson* guidance on inter-institutional relations.⁷

The second glimmer of hope is Morgan LCJ’s attempted widening of the *Bourne* exception, which was rejected by both Gillen LJ and Weatherup LJ. This represented a novel attempt to ameliorate the harshness of the current regime by widening access to abortion on welfare grounds, judged by contemporary societal standards. With respect, Gillen LJ and Weatherup LJ were too hasty in their dismissal of Morgan LCJ’s interpretation as a threat to legal certainty and stability – it is entirely within the

⁶ The nature of the analysis has parallels with Lord Kerr’s in *R (Nicklinson) v Ministry of Justice* [2014] UKSC 38.

⁷ For an insightful overview of that guidance see: M Elliot, ‘The Right to Die: Deference, Dialogue and the Division of Constitutional Authority’ *Public Law for Everyone* (June 26th 2014) <<https://publiclawforeveryone.com/2014/06/26/the-right-to-die-deference-dialogue-and-constitutional-authority/>> accessed 13th July 2017.

bounds of legitimate judicial interpretation to develop legal tests in line with contemporary standards.⁸ Morgan LCJ's interpretation was a modest one, which softened the boundaries of the current regime in an attempt to draw the most desperate of cases inside the legal regime.

The third glimmer of hope is Gillen LJ's implicit criticism of the way in which the law is interpreted and applied in practice.⁹ Gillen LJ believed that some of the women who were refused abortions in the circumstances outlined in affidavit evidence filed by the NIHRC could have accessed a legal abortion in Northern Ireland under the existing law – this may suggest that the law is being interpreted and applied too stringently in practice. But even if it does, it is unlikely that medical professionals will take the lead in this area for fear of prosecution – it may then be time for patients who are refused abortions in particularly traumatic circumstances to assert their rights by challenging the limits of the current regime through declaratory relief.

The Supreme Court will be forced to tackle these issues on appeal; it is hoped that it will take the opportunity to carefully examine the necessity of the current regime in light of the hardship which it continues to inflict.¹⁰

Conor Fegan

⁸ [76] - [79] (Morgan LCJ) c.f. [91] - [92] (Gillen LJ) & [125] (Weatherup LJ).

⁹ [117] (Gillen LJ).

¹⁰ It has been confirmed that the case is going to the Supreme Court:
<https://twitter.com/HumanRightsLawA/status/884465729596260357>

Defending the Legitimacy of the Human Rights Act in the Aftermath of Brexit

The Human Rights Act (HRA) has been called a 'brilliant'¹ legal development and 'a thing of intellectual beauty'²; a milestone that finally saw the UK brought in line with other nations by allowing domestic courts to enforce fundamental rights. However, the praise and celebration of human rights law has quietened and dissent grows louder, with its expansion viewed suspiciously. The HRA is allegedly an obstacle that undermines parliamentary sovereignty by giving too much power to the judiciary, courtesy of s3 of the HRA. This threat resulted in proposals for its repeal and the proposed introduction of a British Bill of Rights (BBR), which would regain power from Strasbourg, maintaining Parliamentary supremacy.³ Although the current political agenda is focusing on negotiating Brexit, the Government has promised to address the human rights legal framework afterwards, suggesting a resurgence in calls for a BBR at the conclusion of Brexit. One might argue that post-Brexit the HRA will gain deeper importance as an instrument to safeguard fundamental rights due to the uncertainty in how the EU Charter of Fundamental Rights and EU laws will be viewed in the Great Repeal Bill. The growing criticism of human rights law by the media, academics and politicians is symptomatic of a deeper doubt about the legitimacy of the HRA and European jurisprudence, as demonstrated by the backlash to the *Miller*⁴ judgment.⁵ Critics perceive the HRA as an impediment to the nation's sovereignty, citing its incompatibility with British sentiments and common sense. For many, human rights law has transgressed its original purpose. This issue goes beyond British shores and echoes can be heard throughout Europe. Unfortunately, the response of HRA proponents has proved futile and done little to protect human rights law from harsh and unjustified attacks. Trivialisation is hardly an effective shield. Many may view the notion of a crisis to the HRA and human rights law as a hyperbolic statement, a paranoid conception with no or very little basis. Yet if the HRA is to survive this attack, denial, dismissiveness and disdain will not protect the HRA or explain its legitimacy.

Defending the legitimacy of the HRA involves actively dismantling the suppositions offered, including the outrageous claim that the common law adequately protects individuals' human rights. Proponents of the HRA must persuasively argue that the HRA provides a more rigorous form of protection and often clarifies the common law. The notion that common law alone is sufficient is laughable, when one considers the degree of protection awarded by the HRA and the inconsistency in cases prior to it. This is perfectly encapsulated by *R v Ministry of Defence ex p. Smith*⁶, where the *Wednesbury unreasonableness* test failed to protect the claimant's rights. In addition to affording a higher level of protection by means of the test of proportionality, the HRA has frequently clarified vague areas of common law. One important example is the right to

¹Ewing, 'The Human Rights Act and Parliamentary Democracy' [1999] 62 MLR 79.

² *ibid.*

³ Human Rights Act 1998, s3.

⁴ *R (Miller) v Secretary of State for Exiting the European Union* [2017] 2 W.L.R. 583.

⁵ James Slack, 'Enemies of the people: Fury over 'out of touch' judges who have 'declared war on democracy' by defying 17.4m Brexit voters and who could trigger constitutional crisis' *The Daily Mail* (London, 4 November 2016)

<<http://www.dailymail.co.uk/news/article-3903436/Enemies-people-Fury-touch-judges-defied-17-4m-Brexit-voters-trigger-constitutional-crisis.html>> accessed 3 June 2017.

⁶ [1996] QB 517.

protest, contrasting Dicey's assertions that 'at no time has there in England been any proclamation of the right to liberty of thought or to freedom of speech'⁷ and that 'it can hardly be said that our constitution knows of such a thing as any specific right of public meeting.'⁸ Indeed decisions like *Laporte*⁹ 'have ... served, under the influence of the HRA, to solidify and extend the right to protest'¹⁰, as it undermines the previous orthodoxy in *Duncan v Jones*¹¹ that there is no recognition in law of any right to public gatherings. The right to protest under common law was ill-defined, thus the HRA has sharpened and created common law rights, and has had a significant impact by giving domestic effect to articles 10 and 11. Undoubtedly, the HRA protects individuals' rights more effectively than common law alone, and has often eradicated the legal vacuum and uncertainty in many areas.

In order to effectively defend the HRA, proponents must distance themselves from their repetitive chanting that the HRA protects the rule of law and democratic principles, which is now falling on deaf ears. The accusation that human rights law is expanding in an unforeseen and undesirable way is not particularly convincing, especially as it is viewed as democratic-overreach. The image often evoked is that of a vine, dominating and swamping the native species- an unwanted consequence. Firstly the most effective defence, to this criticism, is to clearly demonstrate that common law and human rights law develops in a similar manner: incrementally by a series of clarifications and legal reasoning from democratically and politically approved texts. Indeed, it also offers an opportunity to question our understanding and assumptions of morality and justice. Secondly, one must confront the symbol the *Hirst*¹² case has become for an over-bearing and autocratic Strasbourg, for the judgment sparked political hostility. Critics have argued that the judgment contradicted British sensibilities, as the then-Prime Minister, David Cameron stated that the thought of prisoners' suffrage made him 'physically sick'¹³. This opposition is mirrored across Europe, with Russia enacting legislation to undermine Strasbourg when contrary to Russian norms, and French politicians calling for restrictions on external influence.¹⁴ The supposed 'slavish adherence of UK's courts to Strasbourg's rulings... is a fiction,'¹⁵ as demonstrated by *Saunders*¹⁶ where the domestic Courts refused to follow Strasbourg, who later reversed its stance. Paradoxically, MPs have no qualms with many of Strasbourg's findings, indeed cross-party praise has often been the result. Thus, the issue regarding prisoners' voting rights emanates from the disparity between domestic law and the principles held by Strasbourg's majority. This critique of the advocates of the BBR is widely accepted by many judges including Sir Stephen Sedley, who justifies Strasbourg's finding as 'our law

⁷ *R v Chief Constable of Gloucestershire*[2006] UKHL 55, [127].

⁸ *ibid.*

⁹ *ibid.*

¹⁰ Elliott and Thomas, *Public Law* (2 edn, OUP 2014).

¹¹ [1936] 1 KB 218 [222].

¹² *Hirst v the United Kingdom (No 2)* [2005] ECHR 681.

¹³ Aldridge, 'Can 'physically ill' David Cameron find a cure for his European law allergy?' *The Guardian* (London 6th May 2011).

¹⁴ Philip Leach and Alice Donald, 'Russia Defies Strasbourg: Is Contagion Spreading?' (*EJIL:Talk!*, 19 December 2015) accessed 15 June 2017.

¹⁵ Sedley, 'Human Rights and the Whirligig of Time' [2016] 20 *Edinburgh Law Review*.

¹⁶ *Saunders v The United Kingdom* [1997] 23 EHRR 313.

[in this field is] less than coherent'¹⁷ because although all British prisoners cannot vote, those serving up to twelve months can stand for election. Thirdly, the allegation of democratic over-reach is not a new one, as there has always been unresolved tension between self-governance and international commitment to respect individuals' rights.¹⁸ An example is the viewpoint of Judicial Power Project's submitted to the Joint Committee of Human Rights (JCHR) which says that where international human rights laws are 'largely inimical ...to the rule of law and to democratic self-governance,'¹⁹ such an attack must be confronted and the legitimacy crisis recognised. Human rights law is vital in protecting other nationalities and marginalised groups within a democracy. Therefore, one must undermine these simplistic and emotive arguments about parliamentary sovereignty and Strasbourg's democratic-overreach in a far more sophisticated and rational manner. Merely repeating the hollow mantra regarding rule of law will not suffice.

The BBR's proponents argue that the HRA threatens parliamentary sovereignty domestically and internationally, and the BBR addresses this imbalance. It is said that, domestically, section 3²⁰ gives rise to juristocracy and a shift to legal constitutionalism as unelected judges can create law with unexpected interpretations.²¹ The risks are overstated, as politically-aware judges interpret law with Parliament's intention in mind as demonstrated in *Godin-Mendoza*²², and will defer to Parliament in highly-political cases such as the *Belmarsh* case²³. Consequently, the structure of the HRA allows for democratic dialogue to occur, and political constitutionalists must resist caricaturing an open-dialogue to the capturing of power by judges. Indeed, despite the 'PR disaster' surrounding the Human Rights Act, a BBR is unlikely to command greater respect.²⁴ For as long as the UK remains a signatory to the ECtHR, certainly this parliamentary session, the BBR would be unnecessary, since the Act is already our bill of rights. Despite Theresa May's intentions to withdraw from the ECtHR, there are such fierce cross-party protectors that this eventuality is unlikely, especially when considering that a state of national emergency is required to withdraw. Although the BBR provides a sense of ownership, it raises a very important question: what are the set of "British values" that will form the foundation of this legal development? One cannot base a constitution on mere sentiments with no coherency or consensus. Indeed, discussions within the BBR's committee highlighted the lack of a consensus about what the BBR would entail. Vocal critics Philippe Sands and Helena Kennedy, members of the Commission, argued that unless the Bill would reinforce the Convention, 'alarm bells should be ringing'²⁵; a standpoint supported by the European Union Committee.²⁶

¹⁷ Sedley, 'Human Rights and the Whirligig of Time' [2016] 20 *Edinburgh Law Review*.

¹⁸ Benhabib, *Another Cosmopolitanism* (OUP, 2008).

¹⁹ Joint Committee of Human Rights, 'The Human Rights Implications of Brexit' (2016) <<https://www.publications.parliament.uk/pa/jt201617/jtselect/jtrights/695/695.pdf>> accessed 10 April 2017.

²⁰ Human Rights Act 1998, s3.

²¹ Ewing, 'The Resilience of the Political Constitution' [2013] 14 *German Law Journal* 2111.

²² *Ghaidan v Godin-Mendoza* [2004] UKHL 30.

²³ *A and others v Secretary of State for the Home Department* [2004] UKHL 56.

²⁴ Kyneswood, 'Can The Proposed British Bill Of Rights And Responsibilities Command Greater Respect Than The UK Human Rights Act 1998?' [2005] 3 *IALS Student Law Review*.

²⁵ Philippe Sands and Helena Kennedy, 'In Defence of Rights' (*London Review of Books*, 3 January 2013) <<https://www.lrb.co.uk/v35/n01/philippe-sands/in-defence-of-rights>> accessed 3 June 2017.

Even after leaving the EU, one cannot leave Europe, a fact many will have to face. There will have to be legal dialogue and co-operation, and HRA enthusiasts will have to be more effective in their defence, especially in this time of great uncertainty. No one knows how the relationship between Strasbourg and Britain will change- if it does at all - and whether Scotland will remain part of the UK. Constitutional changes seem to be the order of the day, but we must fervently defend the HRA - in a rational and coherent manner. We must defend the legitimacy of the HRA as it enters stormy waters so that once the political storm settles, the HRA is still intact.

Ayan Hersi

²⁶ European Union Committee, 'The UK, the EU and a British Bill of Rights' (2016)
<<https://www.publications.parliament.uk/pa/ld201516/ldselect/lducom/139/139.pdf> > accessed 10 April 2017.

Belcacemi and Oussar v Belgium: A Disappointing Development in the European Court of Human Rights' Full-Face Veil Ban Saga

The saga of cases before the European Court of Human Rights (ECtHR) involving partial and full-face veil bans is far from extensive, but it is well documented. All four cases have raised Article 8 (private and family life) Article 9 (right to freedom of religion), and Article 10 (freedom of expression) issues.¹ Whilst the ECtHR acknowledged that in every case before it at least one of the abovementioned rights was interfered with, it found that all restrictions were legitimate, proportionate, and necessary in a democratic society. Despite this consistency in decision-making, the ECtHR has availed itself of different justifications for the legitimacy, proportionality and necessity of the interferences with these rights. This paper will first analyse the latest development of the ECtHR's caselaw in this field, the *Belcacemi and Oussar v. Belgium* judgment,² in light of the previous jurisprudence. Second, this essay will critically engage with the reasoning of the ECtHR, and consider its dangerous implications – namely, the absorption of minorities by the majority, the role of the State as a moral authority, and jurisprudential inconsistency.

Belcacemi: Novelty or Repetition?

At first sight, the *Belcacemi* ruling is not a novel one – not unlike its predecessor on the matter of full-face veils, *S.A.S. v France*,³ it concerned the introduction of a full-face veil ban in public spaces. All three applicants admitted to occasional exceptions to their use of the veil – whether externally required or self-imposed –, and did not claim the right to be able to use the full-face veil indiscriminately and in all circumstances. The only tangible differences between both cases are that the former involves two applicants who were fined for use of the full-face veil, rather than an applicant unsure of their rights following a full-face ban; and the fact that Belgium, in addition to a fine, introduces the possibility of imprisonment as punishment for breach of the law. Both cases illustrate a welcome departure from the ECtHR's reasoning in its previous cases *Dahlab v Switzerland*⁴ and *Şahin v Turkey*⁵, both of which dealt with the use of Islamic headscarves in educational premises. In these cases, the ECtHR upheld the respective States' arguments on the basis of gender inequality concerns,⁶ under the assumption that women could not, of their own volition, wear Islamic headscarves.

S.A.S. v France was the first case before the ECtHR concerning a full-face veil ban; and it is perhaps the higher degree of face-concealment in comparison to that concerned in its previous jurisprudence that prompted the Court to distance itself from the *Dahlab* and *Şahin* rulings in strong terms. The Court's first landmark observation was that a State could not rely on gender inequality in order to ban a practice which was actively defended by women.⁷ Its second remark was that human dignity could not justify a blanket ban on the wearing of the full-face veil in public places – all the more so since it

¹ European Convention on Human Rights.

² App no 37798/13 (ECHR, 11 July 2017).

³ App no 43835/11 (ECHR, 1 July 2014).

⁴ ECHR 2001-V 447.

⁵ (2005) 44 EHRR 99.

⁶ *Dahlab*, 463; *Şahin*, [111].

⁷ *S.A.S.*, [119].

did not have any evidence capable of leading it to consider that women wearing the full-face veil intended to offend, or express a form of contempt against, others.⁸ The ECtHR found that there had been an interference with the right to a private and family life, as well as the rights to freedom of religion and expression. However, the Court found that the restrictions on these rights were lawful insofar as they sought to guarantee the conditions of ‘living together’ as part of the ‘protection of the rights and freedoms of others’ objective.⁹ *Belcacemi* echoed this ruling by emphasizing the ‘living together’ element – however, it stopped short of addressing its shortcomings, and went further than *S.A.S.* in that it adopted a reasoning inconsistent with consolidated precedent.

Living Together: Absorbing the Minority Within the Majority

The first issue with this reasoning was manifested by the Applicants themselves, who underlined that ascribing the relevant law with an objective of ‘living together’ was equivalent to prioritizing homogeneity over difference, and upholding a certain concept of what ‘living together’ meant.¹⁰ Whilst the ECtHR acknowledged in its judgment that the law effectively restricted pluralism – insofar as it prevented some women from fully expressing their personality and convictions –,¹¹ it concluded that the law at issue was ‘a choice of society’.¹² The difficulty of the ECtHR in coming to its decision is illustrated by its deference to regional politics, justifying the wide margin of appreciation afforded to Belgium on the grounds of a lack of consensus between Member States for or against the use of the full-face veil in public.¹³ However, for all the importance it was given, the concept ‘living together’ is undefined in the judgment, and is used as an umbrella term to encompass subjective notions of community and integration. In addition to the already existing margin of appreciation, the ‘living together’ element introduces yet another layer of discretion.

Making the State a Moral Authority

In addition, introducing a new *social* legitimate objective undermines the public safety argument. If public safety is indeed at stake, introducing a ‘living together’ element achieves little, insofar as the ECtHR chooses to enforce a specific – and subjective – morality over a select group of individuals, rather than simply relying on objective security risks. In the latter case, the argument is clearly intended to protect the whole of society against danger; whereas in the latter, a strict number of values are upheld as prevailing over others – thus separating morally compliant citizens from those morally deviant, i.e. those whose values differ from those of the majority, or simply follow a different order. In other words, the overriding requirement for ‘living together’ sets individuality as the price to be paid for integration, which is now legally enforceable. This is confirmed by the Belgian Constitutional Court’s view that the prohibition on the

⁸ *ibid* [120].

⁹ *ibid* [141]-[142].

¹⁰ *Belcacemi*, [37].

¹¹ *ibid* [52].

¹² *ibid* [53].

¹³ *ibid* [55].

full-face veil subscribes to a societal model in which ‘individuals prevail over their cultural, philosophical or religious attachments’.¹⁴

No Integration Without Consistency

Integration is, by any standards, a desirable and legitimate objective – however, for it to be achieved, its application must be consistent. The lack of consultation or deference given to Muslim women by France and Belgium prior to enacting criminal laws against the full-face veil – despite extensive reference to parliamentary and expert reports – illustrates detachment, if not an outright refusal of integration, of those vulnerable communities.¹⁵ By giving effect to laws that fail to take into account the views of individuals affected by them in the name of integration, the ECtHR not only enforces the disenfranchisement and isolation of women within Muslim communities in different countries, but also reveals a foundational hypocrisy of reasoning – not only within the *Belcacemi* judgment, but within its broader jurisprudence. Indeed, the ECtHR has often reiterated the necessity to achieve a balance to ensure ‘the fair and proper treatment of people from minorities and avoid any abuse of a dominant position’, as well as its commitment to ‘dialogue and a spirit of compromise’.¹⁶ Its developing line of rulings on the full-face veil ban fails to meet these standards.

Conclusion

Far from seizing the opportunity to depart from its previous rulings and adopt a novel and inclusive approach to the full-face veil, the ECtHR strengthened the precedent set in its judgment of *S.A.S v France*, repeating its previous mistakes. In circumstances where integration is not an objective consistently adopted throughout the legislative and judiciary, moderate approaches to full-face veil bans are advisable, such as banning the full-face ban in specific settings.¹⁷ However, Austria’s recent introduction of a full-face veil ban in public spaces – with a fine similar to that imposed by France – reveals a turn towards intolerance.¹⁸ One can hope, however unlikely, that the ECtHR will step in to uphold tolerance and diversity, when States cannot.

Laura Lazaro

¹⁴ *ibid* [27].

¹⁵ Maleiha Malik, ‘Full-Face Veils Aren’t Barbaric – But Our Response Can Be’ *The Guardian* (London, 17 September 2013) <<https://www.theguardian.com/commentisfree/2013/sep/17/full-face-veil-not-barbaric-debate-muslim-women>> accessed 14 July 2017.

¹⁶ *Sahin v Turkey* (2005) 44 EHRR 99, [108].

¹⁷ ‘German Parliament Moves to Partially Ban the Burka’ *BBC News* (London, 28 April 2017) <<http://www.bbc.co.uk/news/world-europe-39741315>> accessed 14 July 2017; ‘Norway to Ban Full-Face Veils in Nurseries, Schools and Universities’ *BBC News* (London, 12 June 2017) <<http://www.bbc.co.uk/news/world-europe-40251760>> accessed 14 July 2017.

¹⁸ Dan Bilefsky and Victor Homola, ‘Austrian Parliament Bans Full Facial Veils in Public’ *The New York Times* (17 May 2017) <<https://www.nytimes.com/2017/05/17/world/europe/austria-veil-ban-muslim.html>> accessed 14 July 2017.

Case comment: The Queen (on the application of Campaign Against The Arms Trade) v The Secretary of State for International Trade and interveners (Case No: CO/1306/2016)

Background

Yemen has been engulfed in civil war since 2014, when Houthi rebels overthrew President Hadi. On 25th March 2015, a Coalition led by Saudi Arabia commenced military operations against the Houthi rebels. The UK has provided Saudi Arabia with weapons used in the conflict.

A legal case was brought forward by the Claimant, Campaign Against Arms Trade (CAAT), stating that the UK Government's provision of arms to Saudi Arabia is in breach of the European Council Common Position as the relevant guidance under s.9 of the Export Control Act 2002. Pursuant to Criterion 2c, the Government "*will not grant a licence if there is a clear risk that the items might be used in the commission of a serious violation of International Humanitarian Law.*"¹⁹

The Claimant challenged the Government's compliance with Criterion 2c, arguing that the continued granting of licences for UK arms sales to Saudi Arabia was unlawful in the face of evidence from NGOs, which suggested there was a clear risk of a serious violation of international humanitarian law.

The Respondent, the Secretary of State, claimed that the Government had a "robust" system used to determine the application of Criterion 2c and was working with Saudi Arabia to ensure compliance with international humanitarian law principles.

Judgment

The court ruled that the Secretary of State was entitled to conclude, on the evidence available to him, that there was no clear risk that UK-licensed arms might be used in the commission of a serious violation of international humanitarian law in Yemen.

The court studied both open and closed material and found that the Ministry of Defence (MoD) had a sophisticated strategy in place to determine the risk of unlawful licensing and the conclusion reached was therefore not irrational. Particular weight was attached to evidence that the Saudi government had conducted its own investigations, the court considered these efforts to be significant and it was found acceptable that the Secretary of State took this into account in determining whether British weapons were being used to violate international humanitarian law.

In addition, it was noted that the MoD has engaged with Saudi Arabia regarding the conduct of military operations in Yemen and Saudi officials have confirmed their commitment to comply with international law. This was deemed a sufficient demonstration of a "rigorous process of analysis"²⁰ and negated arguments that the Secretary of State had failed to make adequate inquiries.

¹⁹ COUNCIL COMMON POSITION 2008/944/CFSP

²⁰ Case No: CO/1306/2016 at p21 para 25.

The court held that the Secretary of State was rationally entitled to conclude that: (i) the Coalition were not deliberately targeting civilians; (ii) Saudi process and procedures for compliance with international humanitarian law can be relied upon; (iii) the Coalition was investigating incidents of civilian casualties; (iv) there was ongoing dialogue between UK and Saudi authorities to prevent similar incidents.

In sum, there was found to be no “*real risk*” that there might be “*serious violations*” of international humanitarian law.

Commentary

Saudi Arabia’s intervention in Yemen has precipitated arguably the world’s worst humanitarian crisis, with 82% of the population in need of aid. This landmark ruling is a major set-back in the struggle to keep UK arms licensing in line with international humanitarian law.

The Claimant listed 72 reports of potential ‘serious breaches’ of international humanitarian law, comprised of evidence collected by the European Parliament, Médecins Sans Frontières, Amnesty International and Human Rights Watch. A key point of contention is the court’s scepticism around the work of these groups, stating it is “necessarily reliant on second-hand information”²¹, thereby not the persuasive, credible evidence needed to sway the judgement. David Mepham, UK director at Human Rights Watch, responded by reiterating that HRW repeatedly visited Yemen and conducted numerous on-site inspections.²² It is worth noting the difficulty in providing unequivocal evidence that Saudi Arabia are launching deliberate and wanton attacks on civilians without access to their internal military records. Nevertheless, intelligence provided by human rights groups come as close as might reasonably be expected to proof of Saudi Arabia’s war crimes.

The case centered around whether the ‘real risk’ threshold had been reached. The weight attached to Saudi assurances is controversial; it is reasonable to treat such assurances with caution given the country’s widely criticised human rights record. The court’s confidence that a Saudi-run investigation into its own alleged war crimes will provide a reliable insight is nothing short of irresponsible given the magnitude of the crisis.

The court acknowledged their limited institutional expertise and were cautious not to interfere too heavily in a decision with such important diplomatic repercussions. Nevertheless, there is a judicial responsibility to uphold the rule of law and hold public bodies to account. The CAAT has stated that it will appeal the High Court judgment and with many questions left unanswered, this is unlikely to be the last word on UK arms sales to Saudi Arabia.

Sophie Lucas

²¹ *Ibid*, Para 201.

²² David Mepham, *International Business Times*, <http://www.ibtimes.co.uk/yemen-suffering-hands-saudi-arabia-uk-profiting-1629801>.

**WHO WE ARE: THE YOUNG LAWYERS' COMMITTEE OF THE HUMAN RIGHTS
LAWYERS' ASSOCIATION**

Ian Browne is Chair of the HRLA Young Lawyers' Committee and an Advice Information Officer at human rights organisation Liberty. In 2017 he completed a Winston Churchill Memorial Trust Fellowship around pro bono and access to justice. He was also recently made a trustee of the Hackney Law Centre.

Markus Findlay is Secretary of the HRLA Young Lawyers' Committee. He is a caseworker at the Bar Pro Bono Unit and has previously interned at the International Federation for Human Rights (FIDH) in Paris and Media Legal Defence Initiative (MLDI) in London. He is a graduate of The City Law School, the Diplomatic Academy of Vienna and UCL.

Anushka Kangesu is a barrister at 3 Dr Johnson's Buildings practising in family and civil law. She previously taught law to inmates for the African Prisons Project, in a maximum security prison in Uganda, as part of their rehabilitation and education. She joined the YLC in 2017.

Chloe Ashley was called to the Bar by Inner Temple in 2016. Previously Chloe worked in the NGO sector on death penalty defence litigation and international counter-terrorism policies. Chloe then completed a 12-month pupillage at a well-respected criminal law set in London before joining No5 Chambers, Birmingham as a third-six pupil.

Daniel Holt is an aspiring barrister holding an LLB and LLM in Human Rights Law from Queen Mary University of London. He is Trustee and Chair of the Income Generation Committee at Disability Rights UK. He is also Secretary of Bi Pride UK and Policy and Procedures Executive at Regard.

Jeremy Frost is currently studying on the BPTC and will commence pupillage at Garden Court Chambers in 2018. He is a career-changer having previously studied music and worked for over a decade as a priest in the Church of England.

Michael Etienne is a barrister who trained at Matrix Chambers, where he developed broad experience of public law and human rights. He was called to the Bar by Lincoln's Inn, where he was awarded the Sir Peter Duffy scholarship, which took him to the European Court of Human Rights. He has also worked with the Joint Committee on Human Rights, leading civil liberties law firms and the human rights advocacy group Liberty.

Michael Harwood is a barrister in the Government Legal Department. He previously worked as a Judicial Assistant to Lord Justice Longmore in the Court of Appeal and was recently elected President of the Middle Temple Young Barristers' Association.

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Shoaib M Khan @ShoaibMKhan

