

CASE NOTES

EDITED BY JUSTIN GAU

Barrister, Deputy Chancellor of the Diocese of Lincoln

AND RUTH ARLOW

Barrister, Deputy Chancellor of the Diocese of Chichester

Re an exhumation

Birmingham Consistory Court: Cardinal Ch, June 2007

Exhumation – exceptional circumstances

The deceased had been brutally murdered 23 years previously by an unknown person with sexual motives. The deceased's ashes had been buried at some distance from the family home in order to ensure a private burial and to avoid unwelcome and invasive publicity. The chancellor granted a faculty for the exhumation of the deceased's ashes and for their reinterment in a cemetery closer to the family. The chancellor found that exceptional circumstances existed in this case, the family having come to realise that they had made an error in burying the deceased's remains so far away. [RA]

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R (on the application of Swami Surayanda) v The Welsh Ministers

Court of Appeal: Pill, Thomas and Lloyd LJJ, July 2007

Hindu temple – Article 9 – slaughter of sacred bullock – public health

The Welsh Assembly Government (sued as the Welsh Ministers) appealed the decision of HHJ Hickinbottom (sitting as a deputy high court judge), in which he quashed a decision of the Welsh Minister of Sustainability and Rural Development ordering the slaughter of a bullock (Shambo), kept by the Community of the Many Names of God at Skanda Vale Temple, Wales.¹ The Court of Appeal allowed the appeal.

The community comprised a Hindu sect at the temple complex in rural west Wales, where Shambo was installed as the temple bullock and revered as sacred.

¹ For the first instance judgment, decided on 16 July 2007, see *R (on the application of Swami Suryananda) v The Welsh Ministers* [2007] EWHC 1736 (Admin).

The community held as a fundamental tenet of their beliefs the sanctity of all life; thus the slaughter of Shambo would constitute a sacrilegious act and a serious desecration of the temple and its beliefs. In December 2004, Shambo tested inconclusive for bovine tuberculosis (bTB), prompting an exchange of correspondence between the Department for Environment, Food and Rural Affairs and the temple leaders. After several re-tests, Shambo tested positive on 24 April 2007 for the presence of *M Bovis* bacterium (an infection of bTB but not necessarily the disease, which is detected through post-mortem testing). Pursuant to her discretion under the Animal Health Act 1981 section 32, as applied by Article 4 of the Tuberculosis (Wales) Order, the Minister made arrangements for Shambo's slaughter, which the community sought to challenge on the basis that it infringed the community's right to freedom of religion under Article 9 of the European Convention on Human Rights.

Pill LJ quoted the *Government Veterinary Journal* for September 2006, which referred to bTB as 'the most difficult animal health programme we face in Great Britain today', imparting a comprehensive analysis of the scientific evidence as to the seriousness and negative effects of bTB to cattle health and potential cost, however slight, to human health, which underlined the necessity of the Government's 'surveillance and slaughter' policy. Pill LJ categorised the litigation as 'the clash between the duties of the appellants as an agriculture and health authority and the rights of the members of the community to practise and manifest their religious beliefs and practices'. Thomas LJ, concurring, considered the only real matter in dispute to be the question of proportionality under Article 9.

Applying Lord Bingham of Cornhill's analysis in *R (on the application of Begum) v Governors of Denbigh High School* [2007] 1 AC 100, at paragraph 30, the Court of Appeal was required to make an objective value judgment assessing the proportionality of the decision, which involved a careful analysis of expert evidence to determine whether interference with the Article 9 right was justifiable under the qualifications to the right: Was the action proscribed by law? What was the legitimate objective? Was the proposed action proportionate in scope and effect to the achievement of that objective? The court considered:

- i. The nature of bTB and how the disease spreads;
- ii. The increase in incidence of the disease in the UK, and particularly rural south-west Wales, with the probability of this region becoming a bTB hotspot;
- iii. The success of the surveillance and slaughter policy elsewhere in the EU;
- iv. The importance of agriculture to the local and national economy;
- v. The need for post-mortem tests to validate the infection of the disease and the subsequent difficulty in risk assessment for the rest of the herd;

- vi. The lack of treatment for bTB; and
- vii. The difficulty in providing facilities for bio-hazard-free isolation of infected animals.

Reasons iii, v and vii were forwarded as considerations by the Court of Appeal as to why the alternatives to slaughter, such as isolation, could not be justified. The Court of Appeal considered that the expertise of the Chief Veterinary Officer, as well as that of other official veterinary experts, was to be preferred on the issue of public health. Thomas LJ stated that it was unnecessary for the Minister to research or to spell out in any greater detail the effect on the community's religious beliefs because she had proceeded to make her decision on the assumption that the interference with the community's Article 9 rights would be serious and grave.

Case note supplied by Jeremy A Brown

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Re St Peter and St Paul's, Chingford

Arches Court of Canterbury: Cameron, Dean; Kaye and Tattersall Chs,
July 2007

Telecommunications – pornographic material

Pulman Ch had dismissed a petition for the installation of telecommunications equipment in the tower of the church on the basis that it was wrong for a church to facilitate transmission of pornography to mobile telephones, or to gain financial advantage thereby, however slight or modest. The court heard fresh evidence, including the use of filtering techniques used by network providers. The court noted that, if the network provider used the church to enhance its network, then it would be making material more readily available to people within the catchment area, but it did not follow that they would thereby be actively promoting pornography. The responsibility for accessing the Internet and the choice of site lay with the individual. The argument that no mobile phone equipment should be placed in the church unless and until all pornography was excluded was rejected on the basis of the advantage to adults and children of having good reception when communicating. The court concluded that the chancellor had failed to carry out any balancing exercise at all in this case and that therefore it could consider the matter afresh. The court identified that the risk to children associated with the Internet is that they may view pornography or be drawn into sexual abuse. The court identified the filtering techniques available to parents and the telecommunications companies and concluded that they were a reasonable and welcome response to countering the