

## Non-discrimination on grounds of sexual orientation: should the law accord exemptions on the basis of freedom of conscience?

Ryan Hill\*

### 1. Introduction

Whether or not to recognise lawful exemption for public service provider employees and private service providers who, on the basis of their religious or moral convictions, regard homosexual relationships as ‘sinful’ or morally unsound and therefore refuse to perform public functions or provide their services to homosexual couples has received considerable attention of late. With the increased legal recognition of the rights of LGTB in many countries, conscience claims of this nature are coming more and more frequently before the courts.<sup>1</sup> State legislators have also begun to consider how to reconcile claims emanating from conscience with the principle of non-discrimination on the basis of sexual orientation.<sup>2</sup>

Implicated in this reconciliation exercise are competing substantive rights. On the one hand is the right to enjoy, without discrimination, the right to privacy and the right to family life. On the other is the right to freedom of thought, conscience and religion or belief which, too, may be coupled to the principle of non-discrimination, this time on the basis of religious or comparative belief and conviction. The potential clashes between these rights generate two key questions for legislators

\* Senior Lecturer in Public Law, School of Law, University of Bedfordshire; Member, Law and Religion Scholars Network (LARSN).

<sup>1</sup> *Bull and another v Hall and another* [2013] UKSC 73; Conseil Constitutionnel, Décision no 2013-353 QPC, 18 October 2013; *Eweida and Others v United Kingdom*, App no 48420/10, 59842/10, 51671/10 and 36516/10 (ECtHR, 15 January 2013).

<sup>2</sup> Section 2, Marriage (Same Sex Couples) Act 2013 (UK); Loi 2013/404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe, *Journal officiel de la république française* no 0114, 18 mai 2013, 8253 (France).



and judges. Firstly, *should* the law recognise certain exemptions for public service provider employees and private service providers on the basis that their conscience is affected by having to provide their services to people who are of a sexual orientation that they feel is an offence to their religious or comparative beliefs? Secondly, if such a right to conscientious exemption is recognised by law, *how much weight* should it be accorded and what should be its limits? These can be abbreviated to a '*should there be recognition?*' question and a '*how much recognition?*' question.

Both these questions call for normative evaluations. Yet arriving at a normative evaluation on matters of conscience is problematic inasmuch as a conscience claim has a significant, if not total, subjective dimension. What this means is that from an outside observer's perspective, the answers to the '*should there be recognition?*' question and the '*how much recognition?*' may well depart substantially from those deemed appropriate by the person seeking to rely on a conscience claim to obtain exemption from the requirements of the prohibition of discrimination on grounds of sexual orientation. Yet if recognition is not granted, or if it is considered to be insufficiently weighty, so that a claimant's conscience is never granted the authority to differentiate between individuals on the grounds of sexual orientation, the question arises as to whether it can really be said that freedom of conscience is a right? Moreover, where the resulting discrimination is not the aim of the conscience claim but rather its consequence, can denial of the claim or its limitation escape accusations of misunderstanding the importance of conscience or, worse, disregarding the significance of religious or comparative beliefs through an assumed superiority of liberal values or secular ideology?

With the above in mind, this paper will consider how human rights law should approach conscience based exemption claims that risk discriminating on the grounds of sexual orientation. It will first explore the '*should there be recognition?*' question and then move on to the '*how much recognition?*' question. From there it will present a case that appeared before the European Court of Human Rights in 2013 which exemplifies the difficulties the exploration reveals.



## 2. *The ‘should there be recognition?’ question*

Allowing ‘conscience’ to form the basis for grounding a rights claim may seem logical once recognition is granted to respecting people’s rights to live in accordance with their own religious or comparative values. Where the conscience claim relates to a religious belief, the claim may well attach to a series of obligations and perceived consequences that accord with the religion’s particular transcendent nature. This makes the issue of conscience for many religious adherents particularly salient since to act contrary to these obligations may well violate norms those individuals consider inviolable. It does not, however, mean that conscience claims of a religious nature are simply a means by which one person is able to impose religious orthodoxy on another. Conscience remains a personal issue that is firmly attached to the religious or comparative belief an individual holds. Thus, for a conscience claim to have validity the claimant must be suggesting a link between the religious or comparative belief held and the actions they personally are being asked to perform, and which are contrary to that religious or comparative belief. Whether religiously derived or of a non-religious moral nature, it is from the internal connection to an individual’s adopted beliefs that respect for conscience can be seen to draw its authority. A conscience claim therefore is respected on the premise that if a person is asked to act contrary to the dictates of their conscience they will face an internal ethical dilemma deriving from their adopted belief. And if compelled to so act, although the person’s belief may remain intact, there would be a degree of coercion taking place that seems to show little regard to the role that belief plays in that individual’s life. The greater the disparity between the perceived requirements of the belief and the action the individual is being compelled to perform, the greater the ethical dilemma and the greater the degree of coercion that individual is being subjected to. International law captures the importance of this personal attachment by specifically assigning each individual a right to choose a religion or belief and not be coerced over a religion or belief.<sup>3</sup> The right protects the individual and not the chosen religion or belief *per se*. But

<sup>3</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art 18(1) and 18(2).



its very existence acknowledges the importance religions and comparative beliefs have in many people's lives.

Although the point of departure for the right to freedom of thought, conscience and religion/belief is fundamentally one of respect for individual liberty in relation to matters of significant importance to each individual, certain limitations may nonetheless apply to how one acts on the obligations attached to one's belief. In determining when limitations might be appropriate, it is the costs of giving effect to an individual's right to act according to the perceived dictates of religion, belief or conscience that needs to be considered. Human rights law has tended to take the view that the freedom internally to adopt a religion or belief of one's choosing enjoys absolute protection from interference, while the external manifestation, or what flows from that freedom in terms of worship, teaching, practice and observance, can be subject to limitations.<sup>4</sup> These limitations stem from the fact that manifestations of religion or belief can have potential consequences for others, including in relation to the rights of others. Conscience claims can certainly carry implications for others and therefore might appear best located within the domain of manifesting one's religion or belief rather than the adopting and holding of the religion or belief. However, it should be pointed out that manifestation of *conscience* is not expressly stated as being subject to limitations under the right to freedom of religion as set out in international law. Encapsulating conscience claims under manifestation of religion or belief may be practically useful in that it allows these claims to be balanced with other rights claims where a conflict occurs. As noted earlier, interfering with conscience based decisions is not strictly an interference with the ability of the individual to retain their beliefs and thus not part of the essential feature of the right to freedom of religion, namely its absolute internal dimension.

However, as Boyle pointed out, it may be incorrect to consider the right to freedom of thought, conscience and religion as one right and more accurate to describe it as constituted of three rights.<sup>5</sup> The UN Human Rights Committee in its General Comment on Freedom of Religion similarly shows some hesitancy in defining the nature of the right

<sup>4</sup> Evidenced for example in ICCPR (n 3) art 18(3).

<sup>5</sup> K Boyle, 'Report on Freedom of Conscience in International Law' in *Freedom of Conscience* (Council of Europe Press 1993) 40.



to freedom of religion as singular, with its assertion that ‘freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief.’<sup>6</sup> Although Boyle may appear to be making a somewhat academic point of little relevance, one might consider whether asking someone to act in a way that breaches their conscience and asking that same person to forgo other forms of manifestation of their religious belief, such as undertaking collective worship or adopting certain clothing, are strictly comparable. With authentic internally endorsed belief, conscience claims seem to engage quite firmly with the individual’s inner belief. This leaves the dichotomous distinction between belief and manifestation somewhat blurred. Moreover, a person might couch a claim in either conscience *or* manifestation terms, indicating that *they* at least recognise a distinction.

Although conscience claims attach to the individual, it is when couched in terms of conscience that a freedom of religion or belief claim fully engages with the question of an individual’s relationship with the community and the individual’s relationship with the State.<sup>7</sup> States and others are no longer merely being requested to be tolerant of believer’s presence in the community. They are being asked to respect the significance of the religion or belief adopted by the individual or individuals and to give the consequences of that respect a certain degree of weight. Leader identifies these forms of claim as falling into three categories: a right against interference; a right of access to common institutions and spaces; and a special right to exemption from community standards.<sup>8</sup> It is the third of these categories that is principally engaged by the issue under discussion here. By their very nature, these exemption claims imply some degree of obligation on others. This is not to say that the State is being asked to either directly or indirectly endorse a particular religion or belief. Rather it is suggesting that toleration, pluralism, democracy and even liberalism, if a State adopts this ideology, require the accommodation of difference and this accommodation may well have repercussions that impact on people other than the individual making the conscience claim.

<sup>6</sup> UN Human Rights Committee ‘General Comment 22, Article 18’ (Forty-eighth session, 20 July 1993), UN Doc CCPR/C/21/Rev.1/Add.4, para 1.

<sup>7</sup> Boyle (n 5) 39.

<sup>8</sup> S Leader, ‘Toleration without Liberal Foundations’ (1997) 10 Ratio Juris 139, 143.



From the discussion presented so far therefore, the ‘*should there be recognition?*’ question over conscientious exemption seems to be moving towards receiving a positive answer. Conscience is a key feature that gives meaning to the right to freedom of religion; conscience exists somewhere between holding a belief and manifesting that belief; attending to pluralism, democracy and toleration naturally generates some impact on larger society. However, no substantive content has yet been suggested in relation to what form of exemption is being requested and what counter justifications competing rights and interests present. The discussion has suggested that the nature of a conscience claim relates to a subjective ‘feeling’ in the claimant, albeit connected to something they may consider to be an essential ‘truth’. But it does not follow automatically that subjective feeling alone is sufficient to justify respecting and ensuring a substantive conscience claim. The acceptability of some forms of ‘difference’ may be beyond the acceptable scope of the right to freedom of thought, conscience and religion/belief. For example, if a person’s conscience claim can show no clear link to a religious or comparative belief, a question arises over whether their conscience as defined by the right to freedom of thought, conscience and religion or belief is actually engaged at all.<sup>9</sup> If conscience is viewed as distinct from religion or belief this question may be unimportant. However, if conscience is a facet of a collective right that includes freedom of religion and belief then some relationship to a religious or comparative belief appears necessary.

This raises a further question as to whether or not the belief itself should or does fall within the scope of the right to freedom of thought, conscience and religion or belief. Although courts have avoided defining religion, the quality of a belief in terms of cogency, seriousness, cohesion and importance has been considered relevant.<sup>10</sup> This qualitative threshold for belief has been recognised as attaching to conscientious exemption claims as well.<sup>11</sup> Moreover, even where a belief has achieved sufficient cogency, seriousness, cohesion and importance, not all claims

<sup>9</sup> See for example *Skugar and Others v Russia*, App no 40010/04 (ECtHR judgment, 3 December 2009).

<sup>10</sup> *Campbell and Cosans v United Kingdom*, App no 7511/76; 7743/76 (ECtHR judgment, 25 February 1982) para 36.

<sup>11</sup> *Bayatyan v Armenia*, App no 23459/03 (ECtHR [GC], judgment 7 July 2011) para 110.



purporting to attach to the belief will necessarily fall within the scope of the right to freedom of thought, conscience and religion. For example, if the substance of a claim is not worthy of respect in a democratic society or is incompatible with human dignity then it will be unable to rely on the human rights canon.<sup>12</sup>

Admittedly, some people may feel that discrimination on the basis of sexual orientation is sufficiently anathema to human dignity to not be worthy of respect in a democratic society. At a principled level this view has some attraction. Non-discrimination is a fundamental feature of human rights equally applying to all. Thus, where one person's claim diminishes the equal status of another it is the person making the claim who must expect limitation. However, there are a number of problems in adopting this line of reasoning in the case of conscience claims. Firstly, non-discrimination is not a self-defining principle. For example, failing to allow a religious person to follow the dictates of their conscience may in itself be discriminatory. Claims for conscientious exemption before the courts are often tied to conjunctive claims of discrimination.<sup>13</sup> Secondly, non-discrimination is not an absolutely unlimited right. Some forms of discrimination may be acceptable where the grounds are considered justifiable, such as with regard to affirmative action programmes aimed at achieving a critical mass of an underrepresented group in politics, education or in the boardroom. Thirdly, there are separate principled grounds for supporting freedom of conscience that exist beyond the substance of any conscience claim. For example, the fundamental liberties enshrined in the right to freedom of religion and freedom of expression have a long history dating back as far as the condemnation of Socrates and are built on another fundamental rights principle; namely 'freedom'. This freedom stands opposed to State supported orthodoxy that would silence non-conformity. Although largely used to stand against religious or ideological orthodoxy, there is a growing body of people within religious circles who view modern Western secularism as aggressive, oppressive and certainly not value neutral.<sup>14</sup>

<sup>12</sup> *Kalaç v Turkey*, App no 20704/92 (ECtHR, judgment 1 July 1997) para 27.

<sup>13</sup> See *Eweida and Others* (n 1).

<sup>14</sup> See 'Pope Benedict XVI warns against "aggressive secularism" in Britain' *Telegraph* (London, 10 September 2010) <[www.telegraph.co.uk/news/worldnews/the-pope/8006272/Pope-Benedict-XVI-warns-against-aggressive-secularism-in-Britain.html](http://www.telegraph.co.uk/news/worldnews/the-pope/8006272/Pope-Benedict-XVI-warns-against-aggressive-secularism-in-Britain.html)> accessed 14 Aug 2014; see L Smith, 'Former archbishop Lord Carey attacks David Cameron



Allowing the principle of non-discrimination to automatically trump a conscience claim would face a further problem. For example, for many religions homosexual relationships will only be acceptable if one accepts a liberal interpretive approach to that religion's written doctrine. Yet a great many religious believers are unwilling to adopt such readings as legitimate within the normative constraints their religion proscribe. Therefore, where a more literal or orthodox interpretation is accepted as correct by an individual, if being able to act on one's conscience is to mean anything, claims for exemption from compulsion to perform acts at odds with this interpretation seem naturally to follow. Moreover, where a claimant's interpretation is supported by a large body of opinion within their particular religious or belief community, including among its clergy, the justification for respecting a conscience claim deriving from that interpretation increases. The question thus turns on *how much* difference to accommodate and not on *whether or not* to accommodate difference of a controversial or demanding nature.

### 3. *The 'how much recognition?' question*

How one views the importance of conscience claims may well relate to the relationship one has with a religious or comparative belief. Factors influencing this relationship might include the degree to which one interprets religious precepts as binding, the consequences one perceives follow from a breach of these precepts, or simply one's devout loyalty to the faith, irrespective of perceived consequences. Historically, religious martyrs have been prepared to die for their beliefs rather than betray their conscience, indicating the potential weight conscience can have for certain individuals. Conversely, for those with no particularly strong religious or comparative affiliation, conscience claims may be viewed somewhat sceptically. Where these conscience claims appear to be at odds with modern societal values, they may even be met with some hostility. This is likely to be more pronounced where fulfilling the claim

for "aggressive secularism" in the Government's approach to same-sex marriage' *Independent* (London, 30 March 2013) <[www.independent.co.uk/news/uk/politics/former-archbishop-lord-carey-attacks-david-cameron-for-aggressive-secularism-in-the-governments-approach-to-samesex-marriage-8554864.html](http://www.independent.co.uk/news/uk/politics/former-archbishop-lord-carey-attacks-david-cameron-for-aggressive-secularism-in-the-governments-approach-to-samesex-marriage-8554864.html)> accessed 14 Aug 2014.



would impose some form of harm or unwanted obligation on others who do not share the particular belief. After all, respecting a person's freedom to have a belief may be readily endorsed from a variety of perspectives, but allowing that person's belief to bind someone who does not share the belief adds a dimension that exceeds the requirement of respecting an individual's freedom and starts to move towards enforcing the dictates of the belief itself. Limitation provisions that apply to manifestation of religion or belief or acts motivated by religion or belief serve the purpose of keeping these outward impositions of some people's beliefs on others in check. Nonetheless, arriving at a principled position that would provide clear guidance on the degree to which conscience claims of the type under consideration should be curtailed is far from straightforward.

#### 4. *Case study: Ms Ladele's claim in Eweida and Others v United Kingdom*

In the combined applications in *Eweida and Others v UK* before the European Court of Human Rights, the claim made by Ms Ladele, and the way in which it was approached by the judges, illustrate how difficult it is to arrive at a balance between conscience claims and the right not to be discriminated against on the basis of one's sexual orientation. Ms Lillian Ladele, a devout Christian, was employed by a UK local authority from 1992 to 2009 as a registrar of births, deaths and marriages. In 2005 the Civil Partnership Act came into force and Ms Ladele was informed by her employer that her role would now include officiating at civil partnership ceremonies between homosexual couples. Refusing to agree to this role on the basis of a sincerely held conviction that civil partnerships are contrary to God's law, she found herself in breach of the local authority's equality and diversity policy. Following a number of concessions from her employer, Ms Ladele was nonetheless left with a duty to carry out certain obligations she still felt breached her religious obligations. Following a process of claims for discrimination before employment tribunals under the UK's Employment Equality (Religion or Belief) Regulations 2003, Ms Ladele eventually lost her case before the Court of Appeal, with the court deciding that Ms Ladele's desire to have her religious views respected should not be allowed '... to



override [the local authority's] concern to ensure that all its registrars manifest equal respect for the homosexual community as for the heterosexual community.'<sup>15</sup> Following a refusal of permission to appeal to the UK's Supreme Court, Ms Ladele petitioned the European Court, relying on Article 14 in conjunction with Article 9 of the European Convention on Human Rights.

Although largely a non-discrimination claim directed towards a perceived unfair dismissal for refusing to officiate at same-sex civil partnership ceremonies, it is the conscience dimension of Ms Ladele's claim that is of interest for this discussion. Firstly, the European Court largely dealt with the claim under 'manifestation of religion'. Ms Ladele accepted this understanding of the nature of her claim but, at the same time, the justification she put forward for her refusal to officiate at civil partnerships was that such unions contravened God's law.<sup>16</sup> Yet, as a devout religious observer, to participate in an action the result of which would be contrary to God's law, as she saw it, seems somewhat poorly captured by the simple notion of 'manifestation of religion'. She was not simply being prevented from observing her religion but, rather, was being called upon to carry out actions which, in her view, would bring her into direct contradiction with the tenets of her faith. This point was raised by Judges De Gaetano and Vucinic, partially dissenting, who reminded the European Court that, with regard to Ms Ladele's claim, the issue to consider was '... not so much one of freedom of religious belief as one of freedom of conscience – that is, that no-one should be forced to act against one's conscience or be penalised for refusing to act against one's conscience'.<sup>17</sup> They went on to add '[A]lthough freedom of religion and freedom of conscience are dealt with under the same Article of the Convention, there is a fundamental difference between the two...'<sup>18</sup> adding that Ms Ladele's conscientious objection 'was *also* a manifestation of her deep religious conviction and belief.'<sup>19</sup> Lastly they referred to and endorsed the European Centre for Law and Justice's view that '[J]ust as there is a difference in nature between conscience and religion, there is also a difference between the prescriptions of conscience

<sup>15</sup> *Ladele v London Borough of Islington* [2009] EWCA (Civ) 1357, para 55.

<sup>16</sup> *Eweida and Others* (n 1) para 23.

<sup>17</sup> *ibid* Joint Partly Dissenting Opinion of Judges Vucinic and De Gaetano, para 2.

<sup>18</sup> *ibid*.

<sup>19</sup> *ibid* para 4 [emphasis in the original].



and religious prescriptions.<sup>20</sup> These points have already been highlighted in this paper's discussion over whether a right to conscientious exemption should be allowed at all.

The second and related problem raised by Ladele's case was that her employment as a registrar began before civil partnerships became legal in the UK. Thus she could not have foreseen the possibility of the conscience clash that she now found herself facing and thus have avoided it through adopting another profession. That is to say, she never contracted with her employer to carry out civil partnership ceremonies even though it logically fell within the remit of her position once such arrangements had been legalised. It is here that the importance of the word 'forced' in the opinion of Judges De Gaetano and Vucinic can be seen. Ms Ladele could have opted to leave her job, so the force was not strictly unavoidable. However, at the point of taking up her position she did not voluntarily agree to carry out actions by which her conscience would be engaged. Importantly, the European Court rejected the premise that failing to act on the possibility of avoidance, either through not taking up a position that might impact on one's conscience or through switching one's employment to remove the impact on one's conscience, would automatically negate a conscientious exemption claim.<sup>21</sup> Nonetheless, the majority of the European Court discounted Ms Ladele's claim despite pointing out that '[R]eligious freedom is primarily a matter of individual thought and conscience'.<sup>22</sup> Rather, the European Court noted that its prior case law recognised that 'differences in treatment based on sexual orientation require particularly serious reasons by way of justification'.<sup>23</sup> Instead of addressing the weight a conscience claim should have in order to assess whether or not it does constitute a 'particularly serious reason',<sup>24</sup> the European Court avoided the question by resorting to the margin of appreciation doctrine which

<sup>20</sup> *ibid* para 3.

<sup>21</sup> *ibid* para 83.

<sup>22</sup> *ibid* para 80.

<sup>23</sup> *ibid* para 105 and citing *Karner v Austria*, App no 40016/98 (ECtHR judgment, 24 July 2003) para 37; *Smith and Grady v United Kingdom*, App no 33985/96 and 33986/96 (ECtHR judgment, 27 September 1999) para 90; *Schalk and Kopf v Austria*, App no 30141/04 (ECtHR judgment, 24 June 2010) para 97.

<sup>24</sup> A point raised by the claimant, *Eweida and Others* (n 1) para 71.



grants the respondent State considerable leeway where Convention rights compete.<sup>25</sup>

Although the case resulted in an outcome unfavourable to the applicant, the dissenting judgments reinforce many of the points raised so far in this paper but, in addition, bring up a an important issue. If a conscience claim falls within both the right to freedom of conscience *and* the right to manifest a religion or belief, is there a basis for engaging the margin of appreciation? This point was raised by Judges De Gaetano and Vucinic in their dissent<sup>26</sup> and poses a serious question about whether one can assign a right to freedom of conscience and then limit that right in the way the European Court has done without effectively giving with one hand and taking back with the other? At the same time, however, respect for equality on the grounds of sexual orientation is established Convention law and thus commits the European Court to seek a solution that can respect both sets of rights. Locating the right to freedom of religion and belief as absolute in terms of having a conscience but limitable at the point of making a conscience claim might satisfy the two dimensions of the right Judges De Gaetano and Vucinic allude to. However, the effect of such an approach is likely to leave the claimant with a very narrow form of right and might even return us to the initial question of whether or not this form of conscience claim should be recognised at all.

## 5. Conclusion

This paper has set out some of the complexities assigning a right to freedom of conscience present. It has avoided coming down in favour of either side of the debate over the relationship between religious conscience claims and non-discrimination on grounds of sexual orientation for good reasons. For instance, although conscience claims have had little success when confronting the right not to be discriminated against on the grounds of sexual orientation, at the European Court judges are

<sup>25</sup> *Evans v United Kingdom*, App no 6339/05 (ECtHR [GC] judgment, 10 April 2007) para 77.

<sup>26</sup> *Eweida and Others* (n 1) Joint Partly Dissenting Opinion of Judges Vucinic and De Gaetano, para 5.



failing to reach consensus on how to balance the competing rights involved.<sup>27</sup> Moreover, in Ms Ladele's case, the European Court allowed discretion to the State through the use of the margin of appreciation as well as stating that differences in treatment based on sexual orientation might be permissible if particularly serious justification was provided. It further made it clear that failure by a claimant to make use of an option to avoid the engagement of their conscience, such as through taking alternative employment, did not necessarily negate the validity of their conscience claim.

In addition to the European Court's apparent reticence to clearly define the scope of the right to religious conscience when confronting non-discrimination on the grounds of sexual orientation – a reticence witnessed elsewhere with regard to the scope of freedom of religion under the ECHR<sup>28</sup> –, the debate is far from settled elsewhere. To take a few examples, in the UK the question of how to best accommodate people's rights to follow their beliefs while, at the same time, protecting others from discrimination is receiving significant judicial attention, with the Deputy President of the UK's highest court suggesting that the time may be right for a religious conscience clause to be part of UK law.<sup>29</sup> In France the absence of any exemption for public officials from officiating at same sex marriages on the ground of conscientious objection has been challenged.<sup>30</sup> And in the US attempts to pass State legislation allowing for conscientious exemptions at the cost of the LGBT community are repeatedly arising.<sup>31</sup>

The question therefore of how the law should reconcile claims emanating from people's conscience with the principle of non-discrimination on the basis of sexual orientation can be seen to be ongoing, at least within Western liberal States. And it fits within wider

<sup>27</sup> *Eweida and Others* (n 1).

<sup>28</sup> See most recently *S.A.S. v France*, App no 43835/11 (ECtHR judgment [GC], 1 July 2014).

<sup>29</sup> Constituting part of the theme at the Law Society of Ireland 10th Annual Human Rights Lecture, Blackhall Place, Dublin presented by Baroness Hale, Deputy President of the Supreme Court of the United Kingdom (13 June 2014).

<sup>30</sup> Conseil Constitutionnel, Décision no 2013-353 (n 1).

<sup>31</sup> See J Fuller, 'The Arizona "religious rights" bill — and where the fight might move next' *Washington Post* (Washington DC, 24 February 2014) <[www.washingtonpost.com/blogs/the-fix/wp/2014/02/24/the-states-fighting-the-fight-between-religious-rights-vs-gay-rights/](http://www.washingtonpost.com/blogs/the-fix/wp/2014/02/24/the-states-fighting-the-fight-between-religious-rights-vs-gay-rights/)> accessed 14 Aug 2014.



questions of how to approach diversity in an age of increasing globalisation and desecularisation<sup>32</sup> or sacralisation.<sup>33</sup> Legislators and courts will need to approach these questions in more ingenious ways than is presently the case if the right to freedom of religion and belief is to remain a significant right.

<sup>32</sup> PL Berger, *The Desecularization of the World: Resurgent Religion and World Politics* (Ethics and Public Policy Center 1999).

<sup>33</sup> L Woodhead, P Heelas (eds), *Religion in Modern Times: An Interpretive Anthology* (Blackwell 2000) 429.

