
THE CULTURE OF JUDICIAL INDEPENDENCE

RULE OF LAW AND WORLD PEACE

EDITED BY
SHIMON SHETREET

BRILL | NIJHOFF

The Culture of Judicial Independence

Rule of Law and World Peace

Edited by

Shimon Shetreet



BRILL
NIJHOFF

LEIDEN | BOSTON

Library of Congress Cataloging-in-Publication Data

The Culture of judicial independence : rule of law and world peace / Edited by Shimon Shetreet.
p. cm.

Includes bibliographical references and index.

ISBN 978-90-04-25780-1 (hardback : alk. paper) -- ISBN 978-90-04-25781-8 (e-book : alk. paper) 1. Judicial independence. 2. Rule of law. 3. Peace. I. Shetreet, Shimon, author editor of compilation.

K3367.C86 2014
340'.11--dc23

2014012724

This publication has been typeset in the multilingual "Brill" typeface. With over 5,100 characters covering Latin, IPA, Greek, and Cyrillic, this typeface is especially suitable for use in the humanities. For more information, please see brill.com/brill-typeface.

ISBN 978-90-04-25780-1 (hardback)

ISBN 978-90-04-25781-8 (e-book)

Copyright 2014 by Koninklijke Brill nv, Leiden, The Netherlands.

Koninklijke Brill nv incorporates the imprints Brill, Brill Nijhoff, Global Oriental and Hotei Publishing. All rights reserved. No part of this publication may be reproduced, translated, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior written permission from the publisher.

Authorization to photocopy items for internal or personal use is granted by Koninklijke Brill nv provided that the appropriate fees are paid directly to The Copyright Clearance Center, 222 Rosewood Drive, Suite 910, Danvers, MA 01923, USA.

Fees are subject to change.

This book is printed on acid-free paper.

Table of Cases

- A and others v. Secretary of State for the Home Department (House of Lords)*, [2004] UKHL 56 29
- A & Others v. UK*, and see the UK Supreme Court case *Secretary of State for the Home Department v. AF & Others* (2009) 475
- A v. Secretary of the State for the Home Department* [2005] 2 AC 68, 102 195
- A v. United Kingdom* (Application No. 3455/05), BAILII: [2009] ECHR 301 475
- AB Kurt Kellermann v. Sweden* (26 October 2004) 139
- Abiola v. Federation of Nigeria* [1995] 3 L.R.C. 468 288
- Acting Chairperson: Judicial Service Commission v. The Premier of the Western Cape Province* [2011] ZASCA 53 61
- Adams v. Cape Industries* [1990] 1 Ch. 433, C.A. 83
- AES Ust-Kamenogorsk Hydropower Plant LLP v. Ust-Kamenogorsk Hydropower Plant JSC* [2013] UKSC 35; [2013] 1 W.L.R. 1889 359
- Agrokompleks v. Ukraine* (Application No. 23465/03) (unreported) given 6 October 2011, E.Ct.H.R. 80
- Aguinta, re* 241 F.3d 194, 201 (C.A.2 2001) 288
- Agurdino Srl. V. Moldova* (7359/06) [2012] STC 1; [2011] STI 3266, E.Ct.H.R. 79
- AK Investment CJSC v. Kyrgyz Mobil Tel Ltd.* [2011] UKPC 7, [2011] 1 C.L.C. 205, P.C. 76
- Akhmadova and Sadulayeva v. Russia* no. 40464/02, 10 May 2007 121
- Aksoy v. Turkey* no. 21987/93 ECHR 1996-VI 120, 131
- Aktas v. Adepta* [2011] QB 894, C.A. 265
- Al Karbuteli v. Minister of Defense* 2 P.D. 5, H.C. 7/48 29
- Al-Koronky v. Time-Life Entertainment Group Ltd.* [2006] EWCA Civ. 1123, [2007] 1 Costs L.R. 57, C.A. 84
- Allianz SpA etc. v. West Tankers* (C-185/070 [2009] 1 A.C. 1138, E.C.J. 359
- Almonacid-Arellano et al. v. Chile*, Preliminary Objection, Merits, Reparations and Costs, Judgment of September 26, 2006, Series C No. 154 126
- AMEC Civil Engineering Ltd. v. Secretary of State for Transport* [2005] EWCA Civ. 291, [2005] 1 W.L.R. 2339 350, 352
- Amminstrazione delle Finanze dello Stato v. Simmenthal* [1978] E.C.R. 629, Case 106/77 398
- Anzualdo Castro v. Peru*, Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202 126
- ASM Shipping Ltd. of India v. TTMI Ltd. of England ('The Amer Energy')* [2009] 1 Lloyd's Rep. 293, Flaux J. 340
- Association 21 December 1989 v. Romania* no. 33810/07 and 18817/08, 24 May 2011 121
- Astamirova and others v. Russia* no. 27256/03, 29 February 2009 121

- Athletic Union of Constantinople v. National Basketball Association (No 2)* [2002] EWCA Civ 830, [2002] 1 W.L.R. 2863 [on s. 67(3)] and *Virdee v. Viridi* [2003] EWCA Civ 41 [on s. 18(5)] *Mousaka Inc v. Golden Seagull Maritime Inc* [2002] 1 W.L.R. 395 347
- Atlanta Decision*, November 9, 1995 C-465/1993 169
- Attorney-General v Jackson* [2006] 1 AC 262 187
- Attorney-General (NSW) v Trethowan* (1931) 44 CLR 394 234
- Attorney-General (NSW) v Quin* (1990) 170 CLR 1 249
- Auckland Casino Ltd v Casino Control Authority* [1995] 1 NZLR 142 284
- Austin v. Michigan Chamber of Commerce*, 494 US 652 (1990) 377
- Austrian Constitutional Court 05.10.1989, G 70/89, Nr. 12.185 457
- Austrian Constitutional Court 12.10.1990, G 73/89 460
- Austrian Supreme Court 06.06.1978 4 Ob 16/78 = SZ 51/75 = ArbSlg 9.703 463
- Austrian Supreme Court 08.04.1997, 1 Ob 2123/96d 461
- Austrian Supreme Court 17.10.1995, 1 Ob 612/95 460
- Austrian Supreme Court Legal Information System RS0008880 463
- Austrian Supreme Court Legal Information System RS0040182 and RS0005394 461
- Australian Building Construction Employees' and Builders Labourers' Federation v Commonwealth* (1986) 161 CLR 88 236
- Australian Capital Television Pty Ltd v Commonwealth (ACTV case)* (1992) 177 CLR 106 241
- Australian Communist Party v Commonwealth* (1951) 83 CLR 1 232
- AXA General Insurance Ltd v. Lord Advocate* [2011] U.K.S.C. 46 400
- Baker v Carr* 369 US 186 (1962) 200
- Bámaca-Velásquez v. Guatemala* Merits. Judgment of November 25, 2000. Series C No. 70 123
- Bámaca-Velásquez v. Guatemala* Reparations and Costs. Judgment of February 22, 2002. Series C No. 91 130
- Barrios Altos* Merits. Judgment of March 14, 2001. Series C No. 237 127
- Baysayeva v. Russia* no. 74237/01, 5 April 2007 121
- Beit Sourik Village Council v. The Government of Israel* PD 59(5) 807(2004), HCJ 2056/04 30
- Belgian Court of Cassation Decision*, 19 February 2010, Arr. Cass., 2010, n°. 114, pages 489–495 142
- BGE 112 Ia 290, 294; BGE 113 Ia 172 ff; BGE 114 Ia 50 ff 369
- BGE 114 Ia 54, 56, 60, 65; Swiss Code of Criminal Procedure of Fifth Oktober 2007, SR 312.0 369
- Bhd & Anor v Raphael Pura* (High Court) Civil Suit No. S2-23-42 (1996) xxxvii
- Blake v. Guatemala*, Merits. Judgment of January 24, 1998. Series C No. 36 122, 128
- Blanco-Romero et al. v. Venezuela*. Merits, Reparations and Costs. Judgment of November 28, 2005. Series C No. 138 124, 131

- BLCT (13096) Ltd. v. J. Sainsbury plc* [2003] EWCA Civ 884, [2004] 1 C.L.C. 24; [2004] 2 P. & C.R. 3 348, 349
- Bodil Lindqvist*, November 3, 2003 C-101/01 169
- Bodruddaza v Minister for Immigration and Multicultural Affairs* (2007) 228 CLR 651 243
- Boumediene v. Bush*, 553 U.S. 723 (2008) 28
- Broken Hill Proprietary v Dagi* [1996] 2 VR 117 241
- Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v. Ireland* (45036/98) (2006) 42 EHRR 1; 19 BHRC 299, E.Ct.H.R. 85
- Buckley and others (Sinn Fein) v Attorney-General and another* [1950] 1 IR 67, 81 186
- Buckley v. Valeo*, 424 US 1 (1976) 376
- Burton v Honan* (1952) 86 CLR 169 233
- Buyuk Camlica Shipping Trading and Industry Co Inc v. Progress Bulk Carriers Ltd.* [2010] EWHC 442 (Comm), [2011] Bus. L.R. D99, Gavin Kealey Q.C. (Deputy High Ct. Judge) 342, 343
- C v. D* [2007] EWCA Civ 1282, [2008] 1 Lloyd's Rep. 239 355
- Çakici v. Turkey* no. 23657/94 ECHR 1999-IV 120
- Campbell and Fell* (28 June 1984) 139
- Canada (Prime Minister) v. Khadr*, 2010 SCC 3 28
- Canadian Pacific Ltd. v. Matsqui Indian Band* [1995] 122 D.L.R. (4th) 129 285
- Cantoral-Huamaní and García-Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167 126, 131
- Caperton v. A.T. Massey Coal Co*, 556 US 868 (2009) 382
- Case Concerning Sovereignty Over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* 2008 I.C.J. 12 (May 23) 324
- Cass*, Grand Chamber, dec. no. 8987/2009 440
- Cass*, Grand Chamber, ord. 27336 of 18.5.2008 440
- Castillo Paez v. Perú*. Judgment of November 3, 1997. Series C No. 34 130
- Castillo Paez v. Perú*. Reparations and Costs. Judgment of November 27, 1998. Series C No. 43 130
- Cetelem S.A. v. Roust Holdings Ltd.* [2005] EWCA Civ 618, [2005] 1 W.L.R. 3555 344, 347
- CGU International Insurance plc v. Astra Zeneca Insurance Co Ltd.* [2006] EWCA Civ 1340, [2007] Bus. L.R. 162; [2007] 1 All E.R. (Comm) 501; [2007] 1 Lloyd's Rep. 142; [2007] C.P. Rep. 4; [2006] 2 C.L.C. 441; [2006] H.R.L.R. 43 344, 346, 348, 349
- Chandler v. Judicial Council of the Tenth Circuit of the US*, 398 US 74 24
- Charkaoui v. Canada*, 2007 SCC 9 28
- Chartbrook Ltd. v. Persimmon Homes Ltd.* [2009] UKHL 38; [2009] 1 A.C. 1001 352
- Cheney v. US District Court of Columbia* 541 U.S. 913 [2004] 288
- Cherney v. Deripaska* [2008] EWHC 1530 (Comm), [2009] EWCA Civ 849 276

- Cherney v. Deripaska* (No. 2) [2009] EWCA Civ 849, [2009] 2 C.L.C. 408 84
- Chevron Corporation (USA) and Texaco Petroleum Company (USA) v. Ecuador*, UNCITRAL Arbitration, Final Award, 31 August 2011 317
- Chief Constable of the North Wales Police v Evans* [1982] 1 WLR 1155, HL 207
- Chiovenda, Satta*; Civil Cassation, dec. no.21585 of 2009 439
- Chu Hoi Dick & Another v Secretary of Home Affairs* [2007] HKEC 1471 211
- Chu Kheng Lim v Minister for Immigration* (1992) 176 CLR 1 236
- Chu Woan Chyi & Others v Director of Immigration* [2007] HKEC 553 211
- Chu Yee Wah v Director of Environmental Protection* [2011] 5 HKLRD 469, CA 208
- Citizens United v. Federal Election Commission*, 558 U.S. 50 (2010) 375, 377
- Clarke v. Marlborough Fine Art (London) Ltd.* [2002] 1 W.L.R. 1731 256
- Clayton v Heffron* (1960) 105 CLR 214 234
- Clean Air Foundation Ltd & Another v Government of HKSAR* [2007] HKEC 1356 202, 207
- Clenae Pty Ltd et al v Australia and New Zealand Banking Group Ltd* (M2 of 200), High Court of Australia, 176 A.L.R. 644 xxxvii
- Clyde & Co v. Bates van Winkelhof* [2011] EWHC 668 (QB), Slade J 270
- Colegrove v Green* 328 US 549 (1946) 200
- Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of 31 August, 2011. Series C No. 232 122
- Copeland v. Smith* (Practice Note) [2000] 1 W.L.R. 1371, C.A. 257
- Council of Civil Service Unions v Minister of State for Civil Service* [1985] AC 374 30, 205
- Council of State, ch. VI, dec of 17.6.2003, no. 3447 440
- CPIO (Central Public Information Officer) *Supreme Court v. Subhash Chandra Agrawal* CLXII Delhi Law Times 135 (2009) Per Judge S. Ravindra Baht 294
- Cyprus v. Turkey* no. 25781/94 ECHR 2001-IV 129
- D v Director of Immigration* [2013] HKEC 428, CFA 166
- Daly v Secretary of State for the Home Department*; [2001] 3 All E.R. 433 [2001] 2 WLR 1622, HL 206
- Dato' Tan Heng Chiew v. Tan Kim Hor* [2006] 1 C.L.J. 577 283
- Daventry District Council v. Daventry & District Housing Ltd.* [2011] EWCA Civ 1153, [2012] 1 W.L.R. 1333 353
- Davis Contractors Ltd. v. Fareham U.D.C.* [1956] A.C. 696, H.L. 360
- Debled v. Belgium* (22 September 1994) 139
- De Cubber v Belgium*, Merits, App no 9186/80, Case No 8/1983/64/99, A/86, (1985) 7 EHRR 236, [1984] ECHR 14, IHRL 48 (ECHR 1984), 26th October 1984, European 369
- Decision of the Italian Constitutional Court, no. 272 of December 6, 2012 438
- Demorca v. Opportunity Equity Partners Ltd.* [2007] 3 L.R.C. 1 P.C. 283
- Dimes v. Grand Junction Canal* [1852] 10 E.R. 301 284

- Durand y Ugarte*. Merits. Judgment of August 16, 2000. Series C No. 68 127
- Durand and Ugarte v. Peru*. Reparations and Costs. Judgment of December 3, 2001. Series C No. 89 123
- Durham Holdings v New South Wales* (2001) 205 CLR 399 241
- Eastgate v Rozzoli* (1990) 20 NSWLR 188 234
- Ebner v Official Trustee in Bankruptcy* (M131 of 1999) xxxvii
- Egan v Willis* (1998) 195 CLR 424 233
- Ellsberg v. Mitchell*, US Court of Appeals for the District of Columbia Circuit (1986) 112
- El-Masri v. Tenet* 437 F. Supp. 2d (E.D.Va. 2006) 110
- El-Masri v. the Former Yugoslav Republic of Macedonia* [GC] no. 39630/09, 13 December 2012 107
- El-Masri v. United States* 479 F. 3d (4 Cir. 2007) 110
- El-Masri v. United States* 552 US 947 (2007), cert. denied 114
- Employment Div. Dept of Human Resources v. Smith*, 49 US 872 (1990) 93
- English Churches Housing Group v. Shine* [2004] EWCA Civ 434 270
- Erich Stauder v. City of Ulm, Sozialamt*, Case 29/69 [1969] E.C.R. 41 (EUR-Lex) 102
- Evan Rees et al v Richard Alfred Crane* [Appeal From the Court of Appeal of Trinidad and Tobago], Privy Council, [1994] 2 AC 173 xxxvii
- Ex parte Pinochet Ugarte* (No. 2), House of Lords, [1999] 1 All ER 577 23
- Farm Assist Limited (in liquidation) v. The Secretary of State for the Environment, Food and Rural Affairs* (No. 2) (2009) [2009] EWHC 1102 (TCC), [2009] B.L.R. 399; 125 Con. L.R. 154 219
- Federal Constitutional Court (BVerfG), decision from 30 June 2009, 1 BvR 893/09 219
- Fillipini v. San Marino* (dec. 26 August 2003) 139
- Findlay v. The United Kingdom*, 1997-I, no. 30 47
- Fisher v Austria* (37950/97) [2001] ECHR 348 (29 May 2001) 476
- Flaminio Costa v. ENEL* [1964] E.C.R. 585, Case 6/64 398
- Fortis, Hof von Cassatie von Belgie,, P.11.1750.W.* 142
- Freedom Under Law v. JSC* (52/2011) [2011] ZASCA 59 55
- Frontier Petroleum Services Ltd. v. The Czech Republic*, UNCITRAL, Final Award, 12 November 2010 317
- Funnell v Whangarei Schools Board* [1973] AC 660 at 679 146
- GEA Group Aktiengesellschaft v. Ukraine*, ICSID Case No. ARB/08/16, Award, 31 March 2011 310
- Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221 124, 131
- Geogas SA v. Trammo Gas Ltd. ('The Baleares')* [1993] 1 Lloyd's Rep. 215, C.A. 355
- German Federal Constitutional Court, Unterhaltspflicht bei fehlgeschlagener Sterilisation oder Fehlerhafter genetischer Beratung, NJW 1998, 519 460

- German Federal Court (BGH), decision from 13. February 1995, AnwZ (B) 77/94, in: NJW-RR 1995, p. 888 219
- German Federal Court (BGH), decision from 10. October 2011, AnwZ (B) 10/10, in: NJW 2012, p. 615 219
- Ghaidan v. Godin-Mendoza [2004] U.K.H.L. 30 398
- Goiburú et al. v. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153 131
- Goldberg v. Kelly, 397 U.S. 254 (1970) 163
- Goldman v. Weinberger, 475 US 503 (1986) 95
- Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil, Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219 123, 131
- Gomillion v. Lightfoot 364 US 339 (1960) 200
- Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 US 418 (2006) 93
- Government of USA v. Montgomery (No. 2) [2004] UKHL 37, [2004] 1 W.L.R. 2241, H.L. 85
- Green v. Blake [1948] 1R 242 at 268 145
- Grievs v. the United Kingdom (16 December 2003) 139
- Halpern v. Halpern (No. 2) [2007] EWCA Civ 291 269
- Hamdan v. Rumsfeld, 126 S. Ct. 2749 (2006) 28
- Hamdi v. Rumsfeld, 542 US 507 (2004) 28
- Helow v. Secretary of State for the Home Department [2008] 1 WLR 2416 23, 294
- Henry Boot Construction Ltd. v. Alstom Combined Cycles Ltd. [2005] EWCA Civ 814, [2005] 1 W.L.R. 3850 352
- Herut, forum coexistence in the Nege 43
- Hirst v. United Kingdom (No. 2) (74025/01) (2006) 42 E.H.R.R. 41 399
- Hlophe v Constitutional Court of South Africa 57
- Hlophe v Freedom Under Law and Others CCT 46/11 61
- Hlophe v Premier of the Western Cape Province 61
- Hughes and Vale Pty Ltd v Gair (1954) 90 CLR 203 234
- Hysan Development Co Ltd v Town Planning Board [2012] HKEC 1266 202
- Iftakhar Khan v President of the Fiji Islands, HBJ007/00L (High Court of Fiji Lautoka) [2002] NZAR 393; 2000 NZAR LEXIS 90 xxxvii
- In re Inquiry Concerning a Judge (Young), 1999 UT 81 (1999) 329
- Interfoto Picture Library Ltd. v. Stiletto Visual Programmes Ltd. [1989] Q.B. 433, C.A. 357
- Investors Compensation Scheme v. West Bromwich Building Society [1998] 1 W.L.R. 896, HL 352, 354
- Imakayeva v. Russia no. 7615/02, 9 November 2006 121
- Impregilo S.p.A. v Islamic Republic of Pakistan, ICSID Case No. ARB/03/3, Decision on Jurisdiction, 22 April 2005 306
- Ipek v. Turkey no. 25760/94 ECHR 2004-II 120
- Italian Constitutional Court 1956 no. 1 156

Italian Constitutional Court 1960 no. 13	154
Italian Constitutional Court 1964 no. 14	168
Italian Constitutional Court 1965 no. 98	167
Italian Constitutional Court 1969 no. 15	163
Italian Constitutional Court 1970 nos. 68, 69, 70	172
Italian Constitutional Court 1971 nos. 64, 169	171
Italian Constitutional Court 1972 nos. 10, 199	171
Italian Constitutional Court 1973 nos. 34, 142, 176, 183	168, 171
Italian Constitutional Court 1974 nos. 17, 54, 259	169, 171
Italian Constitutional Court 1975 no. 251	171, 172
Italian Constitutional Court 1976 nos. 172, 202	171
Italian Constitutional Court 1978 no. 16	172
Italian Constitutional Court 1979 no. 117	171
Italian Constitutional Court 1981 no. 148	173
Italian Constitutional Court 1982 no. 28	173
Italian Constitutional Court 1983 nos. 215, 223, 226, 252	173
Italian Constitutional Court 1984 nos. 170, 245	168, 173
Italian Constitutional Court 1985 nos. 113, 164	168, 173
Italian Constitutional Court 1986 nos. 137, 178	173
Italian Constitutional Court 1987 nos. 266, 286, 616	173
Italian Constitutional Court 1988 nos. 146, 217	155, 173
Italian Constitutional Court 1989 nos. 232, 310	168, 173
Italian Constitutional Court 1991 nos. 47, 168, 243, 366	155, 165, 174
Italian Constitutional Court 1992 no. 379	174
Italian Constitutional Court 1993 nos. 10, 26, 38, 443, 462, 463, 464, 474, 478	163, 174
Italian Constitutional Court 1994 nos. 1, 2, 210, 218, 308, 384	168, 174
Italian Constitutional Court 1995 nos. 11, 94, 438, 509, 536	154, 168, 174
Italian Constitutional Court 1997 nos. 14, 42	174
Italian Constitutional Court 2000 nos. 10, 11, 31, 51	175, 176
Italian Constitutional Court 2001 nos. 73, 225	155, 165
Italian Constitutional Court 2002 nos. 263, 304, 306, 379, 407	165, 174, 175
Italian Constitutional Court 2003 nos. 41, 46, 303	175, 176
Italian Constitutional Court 2004 nos. 2, 14, 24, 25, 32, 120, 154, 272, 284, 347, 348, 372, 378, 379	164, 165, 174, 175
Italian Constitutional Court 2005 nos. 45, 49, 108, 163, 245, 250, 252, 385, 432, 451, 469	164, 174, 175, 176
Italian Constitutional Court 2006 nos. 4, 12, 61, 80, 200, 209, 244, 280, 324, 394	164, 174, 175, 176
Italian Constitutional Court 2007 nos. 77, 182, 290, 348, 349, 367, 369, 378, 390, 392, 396, 430, 454, 464	163, 164, 166, 174, 175, 176

- Italian Constitutional Court 2008 nos. 15, 17, 154, 155, 214, 306 163, 174, 176
- Italian Constitutional Court 2009 nos. 11, 106, 241, 311, 317 163, 175, 176
- Italian Constitutional Court 2010 nos. 3, 188, 197, 211, 315 175, 176
- Italian Constitutional Court 2011 nos. 24, 29, 174 176
- Italian Constitutional Court 2013 nos. 1, 13, 168 165, 175
- Itochu Corporation v. Johann M.K. Blumenthal GMBH & Co KG* [2012] EWCA Civ 996;
[2013] 1 All E.R. (Comm) 504; [2012] 2 Lloyd's Rep. 437; [2012] 2 C.L.C. 864 349
- J. Nold, Kohlen- und Baustoffgrohandlung v. Commission*, Case 4/73 [1974] ECR 491 103
- Janowiec and others v. Russia* no. 55508/07 and 29520/09, 16 April 2012 121
- Johnston v. Chief Constable of the Royal Ulster Constabulary*, Case C-222/84, [1986] ECR 1651 103
- Joint Stock Co. Aeroflot - Russian Airlines v. Berezovsky* [2012] EWHC 3017 (Ch), Floyd J. 80
- Jones v Kaney* [2011] 2 AC 398 190, 191, 192
- Kable v Director of Public Prosecutions* (1996) 181 CLR 51 238, 248
- Kadi*, September 3, 2008 C-402/05 169
- Kaya v. Turkey* no. 22729/93 ECHR 1998-I 120, 128
- Kirk v Industrial Relations Commission (NSW)* (2010) 239 CLR 531 243
- Koya v State* [1998] FJSC 2 284
- Kuesinka v. Russia*, App No. 29492/05n EurCtHR (2005) 36
- Kurt v. Turkey* no. 24276/94 ECHR 1998-III 120, 123
- La Cantuta v. Peru*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162 126, 131
- Lai Tak Shing v Director of Home Affairs* [2006] HKEC 1873, CA 212
- Langa v Hlophe*, [2009] ZASCA 36 57
- "Las Dos Erres" Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211 126
- Leung v Secretary of Justice* [2006] HKEC 1763, CA. 208
- Liselotte Hauer v. Land Rheinland-Pfalz*, Case 44/79, [1979] ECR 3727 103
- Liyanage v R* [1967] 1 AC 259, PC 203
- Liyanage v The Queen* [1967] 1 AC 259 185, 203
- Locabail Ltd. v. Bayfield Properties Ltd. & Associated cases* [2000] 1 All E.R. 65 19, 285, 286
- Local Government Board v Arlidge* [1915] AC 120 at 138 145
- Local Government Byelaws (Wales) Bill 2012 - Reference by the Attorney General for England and Wales* [2012] U.K.S.C. 53 400
- London Underground Ltd. v. Citylink Telecommunications Ltd.* [2007] EWHC 1749 (TCC), [2007] 2 All E.R. (Comm) 694; [2007] BLR 391; 114 Con LR 1, Ramsey J. 354, 355
- Mail and Guardian Limited v Judicial Service Commission* [2009] ZAGPJHC 29 59
- Majlis Perbandaran Pulau Pinang v. Sykt. Sg. Glugor Cooperative* [1999] 3 C.L.J. 65 283

- Malaysia v. Singapore*, 2003 I.C.J. 324
- Man O'War Station Ltd. v. Auckland City Council* [2002] 3 N.Z.L.R. 577 283
- Mapiripán Massacre" v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134 13
- Markin v. Russia*, Application No. 30078/06 476
- Massacres of El Mozote and nearby places v. El Salvador*. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252 107, 131
- Maxwell v Department of Trade and Industry* [1974] 1 WLR 583 147
- McCarthy ex p* [1924] 1 KB 256 at 259, [1923] All ER Rep 233 287
- McConnell v. FEC* 540 U.S. 93 (2003) 377
- McDonald v Cain* [1953] VLR 411 234
- McGraw-Hinds (Aust.) Pty Ltd v Smith* (1979) 144 CLR 633 232
- McLean v Workers' Union* [1929] 1 Ch 602 at 624 144
- M.D.U. v. Italy* (dec. 28 January 2003) 139
- Medcalf v. Mardell* [2003] 1 A.C. 120, H.L. 257
- Medova v. Russia*; Art. 41 ECHR 131
- Merchant International Co. Ltd. v. Natsionalna Aktsionerna Kompaniia Naftogaz Ukrainy* [2012] EWCA Civ 196, [2012] 1 W.L.R. 3036; [2012] 2 All E.R. (Comm) 1; [2012] C.P. Rep. 25; [2012] 1 C.L.C. 396, C.A. 73, 82
- Mereworth v Ministry of Justice* [2011] EWCA Civ 1796, CA 204
- Metropolitan Properties Ltd. v. Lannon* [1968] 3 All E.R. 304 282
- Miller v Miller* [2006] UKHL 24, at para 4 153, 196
- Minister for Immigration and Ethnic Affairs v Teoh* (1994) 183 CLR 273 237
- Mondev International v. United States*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002 317
- Morel v. France* (6 June 2000) 139
- Morris v. United Kingdom*, Nr. 2689/65, European Court of Human Rights, 26.02.2002 449
- National Federation of Independent Business v Sebelius* US 567 US __ (2012) 201
- Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1 240
- Neira Alegria* Reparations and Costs. Judgment of September 19, 1996. Series C No. 29 126
- Ng Ka Ling and Others v Director of Immigration* [1999] 1 HKC 291, CFA 207
- Ng Ngau Chai v Town Planning Board* [2007] HKEC 1207 208
- Nicaragua v. United States*, 1986 I.C.J. 323
- Nicholas v The Queen* (1998) 193 CLR 173 236
- Niemietz v. Germany*, Series A, no. 251 (1992) 16 EHRR 97 104
- Nold*, May 14, 1974 C-4/73 169
- North Range Shipping Ltd. v. Seatrans Shipping Corporation* [2002] 1 W.L.R. 2397, CA 347

- Nottinghamshire County Council v Secretary of State for the Environment* [1986] 1 All ER 199; [1986] AC 240, HL 184, 206
- Office of Government Commerce v Information Commissioner* [2008] EWHC 737 204
- Omega Omega Spielhallen v. Bonn*, Case C-36/02 [2004] ECR I-9609 103
- Omnibridge Consulting Ltd. v. Clearsprings (Management) Ltd.* [2004] EWHC 2276 (Comm), Siberry Q.C. (deputy High Court judge) 343, 353
- Orhan v. Turkey* no. 25656/94 ECHR 2002-IV 120
- Othman v. the United Kingdom*, no. 8139/09, 17 January 2012 116
- P v. S and Cornwall County Council*, Case C-13/94 [1996] ECR I-02143 103
- Pabla Ky v. Finland* (22 June 2004) 139
- Padovani* (26 February 1993) 139
- Pellegrini v. Italy* [2002] EHRR 44, E.Ct.H.R. 85
- Pennington Ex parte* [1975] 2 All E.R. 78 282
- Piersack v. Belgium* (Application No. 8692/79) [1982] ECHR 139, 276, 449
- Pinochet No. 2* [1999] 1 All E.R. 577 282
- Plaintiff S157/2002* [2003] HCA 2, (2003) 211 CLR 476 242
- Plama v Bulgaria*, Decision on Jurisdiction, 8 February 2005, paras.118-120 and 132; *Bayindir v Pakistan* 306
- Plonim v. Minister of Defense* 54 (1) P.D. 721, DNP 7048/97 29
- Plymouth C.C. v. D. R. Jones (Yeovil) Ltd.* [2005] EWHC 2356, Coulson J. 354
- Polyukhovich v Commonwealth* (1991) 172 CLR 1 236
- Porter v. Magill* [2002] 1 All E.R. 465, [2001] 2 WLR 37 283
- Porter v. Magill* [2002] 2 AC 357 23, 294
- Pravednaya v. Russia* (Application No. 69529/01) 18 November 2004, E.Ct.H.R. 79
- President of Republic of South Africa v. South African Rugby Football Union* [1999] (4) S.A. 147 285
- Pretty* [2002] 1 AC 800 186
- Procola v. Luxembourg*, A326 14570/89 (1995) 47, 296
- Public committee against torture in Israel v. State of Israel*, H.C. 5100/94, 53(4) P.D. 617 29
- Public committee against torture v. The Government of Israel*, HCJ 769/02 29
- Public Prosecutor v Mohamed Ezam Bin Mohd Nor*, Criminal Trial No 45-06 of 2001 [2001] 3 MLJ 34 xxxvii
- R (Alconbury Development Ltd & Others) v Secretary of State for the Environment, Transport and the Regions* [2001] UKHL 23; [2001] 2 WLR 1389, HL 210
- R (Gentle and Another) v the Prime Minister* [2006] EWCA Civ 1689, CA 206
- R (on the application of Chester) v. Secretary of State for Justice*, U.K.S.C. 2012/0151 400
- R (Jackson) v. Attorney-General* [2005] U.K.H.L. 56 400
- R (on the application of Abbasi) v Secretary of State for Foreign and Commonwealth Affairs* [2003] UKHRR 76 205

- R (on the application of Brooks) v. Parole Board* [2008] CA 47
- R (on the application of Girling) v Parole Board and another* [2007] QB 783, CA 203
- R (on the application of Medical Justice) v. Secretary of State for the Home Department* [2011] EWCA Civ 269, [2011] 1 W.L.R. 2852 347
- R (on the application of MM, Majid and Javed) v. Secretary of State for the Home Department* [2013] EWHC 1900; [2013] WLR (D) 280 202
- R (on the Application of Rob Evans) v Her Majesty's Attorney General* [2013] EWHC 1960 (Admin), 12] 204
- R v Baker*, 3 Burrows 1266 184
- R. v. Barker*, 1762, 3 Burr. 1265 184
- R v Bow Street Metropolitan Stipendiary Magistrate et al, ex parte Pinochet Ugarte* (No. 2) (House of Lords) [1999] 1 ALL ER 577, 2 WLR 27 xxxvii, 23, 294
- R v Chaytor* [2011] 1 AC 684, SC 204
- R v Davis* [2008] 1 AC 1128, HL 203
- R v DPP ex p Kebilene & Others* [2000] 2 AC 326, HL 210
- R v Foreign Secretary, Ex p Everett* [1989] QB 811 206
- R v Gough* (1993) 2 All E.R. 724 281
- R v Hickman; Ex parte Fox and Clinton* (1945) 70 CLR 598 242
- R v Hillingdon Borough Council, ex parte Puhlhofer* 1986] AC 484 197, 198
- R v Hinds* [1977] AC 195 at 215 185, 203
- R v Home Secretary, ex parte Fire Brigades Union* [1995] 2 AC 513 188, 215
- R v Kidman* (1915) 20 CLR 425 236
- R v Loumoli* (High Court) [1995] 2 NZLR 656, 1995 NZLR LEXIS 729 xxxvii
- R v Race Relations Board* [1975] 1 WLR 1686 147
- R v. S (RD)* [1997] 118 C.C.C. (3d) 353 285
- R v. Secretary of State for Foreign and Commonwealth Affairs* [2009] EWCA Civ 158, All ER (D) 138 (Dec) 29
- R v. Secretary of State for Foreign and Commonwealth Affairs* [2010] EWCA Civ 65, All EWHC 3316 ER (D) 118 (Feb) 29
- R v. Secretary of State for Transport, ex parte Factortame Ltd.* 398
- R v Smurthwaite* [1994] 1 All ER 898 152
- R. v. Valente* 2 C.C.C. (3d) 417, at 423 (1983) 498
- Rasul v. Bush*, 542 US 466 (2004) 28
- Re A (Children)* [2011] EWCA Civ 1205, [2012] 1 W.L.R. 595; [2012] C.P. Rep. 6; [2012] 1 F.L.R. 134; [2012] 1 F.C.R. 379; [2012] Fam. Law 8, at [16] 257
- Re HK* [1967] 2 QB 617 146
- Re Lowther and the Queen, Lowther v Prince Edward Island*, 118 DLR (4d) 665 xxxvii
- Re Medicaments and Related Classes of Goods* (No. 2) [2001] 1 WLR 700 23, 294
- Re Minister for Immigration and Multicultural and Indigenous Affairs, Ex part Lam* (2003) 214 CLR 1 237

- Rediffusion (Hong Kong) Ltd v Attorney-General of Hong Kong* [1970] AC 1136 234
- Refah v. Turkey* (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98) 476
- Republican Party v. Kelly*, 63 F.Supp.2d (1999) 376
- Republican Party of Minnesota v. White*, 536 U.S. 765 (2002) 374, 375, 376
- Republic Party of Minnesota v. White*, 416 F.3d 738 (8th Cir. 2005) 380
- Rondel v Worsley* 191
- Roquette Frères* (2002) 104
- Royal & Sun Alliance Insurance plc v. BAE Systems (Operations) Ltd.* [2008] EWHC 743 (Comm), [2008] 1 Lloyd's Rep. 712; [2008] 1 C.L.C. 711; [2008] Bus. L.R. D127, Walker J. 345, 356, 360
- Rutili v. Ministre de l'Interieur*, Case 36/75 [1975] ECR 1219 103
- Saipem S.p.A. v The People's Republic of Bangladesh*, ICSID Case No. ARB/05/7, Decision on Jurisdiction, 21 March 2007 302, 303, 304, 305, 306, 311, 314, 315
- Saipem S.p.A. v The People's Republic of Bangladesh*, ICSID Case No. ARB/05/7, Award, 30 June 2009 302, 303, 304, 305, 306, 311, 314, 315
- Salaman* (dec. 22 June 2004) 139
- SaliniCostruttori S.F.A. and Italstrade S.P.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, 16 July 2001 303
- Scarlet Extended*, November 24, 2011 C-70/10 169
- Schiesser v. Switzerland* 364, 367, 368
- Schmidberger v. Austria*, Case C-112/00 [2003] ECR I-5659 103
- Schnitzer v. Chief Military Censor* 42(4) P.D. 617, H.C. 680/88 29
- Schuler (L) AG v. Wickman Machine Tool Sales Ltd.* [1974] A.C. 235, H 360
- Seepersad v Attorney General of Trinidad and Tobago* [2013] 1 AC 659, PC 202
- Serrano-Cruz Sisters v. El Salvador*: Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120 130
- Sheffield United Football Club Ltd. v. West Ham United Football Club plc* [2008] EWHC 2855 (Comm); [2009] 1 Lloyd's Rep. 167 359
- Shell Egypt West Manzala GmbH v. Dana Gas Egypt Ltd.* [2009] EWHC 2097 (Comm), Gloster J. 355, 360
- Sherbert v. Verner*, 374 US 398 (1963) 93
- Slutsker v. Haron Investments Ltd & Anor* [2012] EWHC 2539 (Ch) 276
- Sofianopoulos v. Greece* (dec. 12 December 2002) 139
- Société Ouest Africaine des Bétons Industriels (SOABI) v Senegal*, ICSID Case No. ARB/82/1, Award, 25 February 1988 303
- South African Commercial Catering Workers Union v. Irvin & Johnson Ltd.* [2000] 3 S.A. 705 280
- South Australia v Totani* (2010) 242 CLR 1 238
- Southwark London Borough Council v. Kofi-Adu* [2006] EWCA Civ 281, [2006] HLR 33, C.A. 263

- Spring v Guardian Mutual Assurance* [1995] 2 AC 296 191
- Sramek v. Austria* (GC, 22 October 1984) 139
- State v Hodges*, 695 S.W. 2d 171 (Tenn 1985) 95
- Stauder*, November 12, 1969 C29 169
- Stephens v West Australian Newspapers* (1994) 182 CLR 211 241
- Stewart v Secretary of State for Scotland*, Extra Division, (1996) SLT 1203 xxxvii
- Stoke on Trent City Council v B & Q* [1991] 1 AC 49; [1990] 2 C.M.L.R. 377 208
- Stork & Co. v. High Authority of the European Coal and Steel Community*, Case 1/58, [1959] ECR 17 102
- Street Children (Villagran-Morales et al.) v. Guatemala*, Merits. Judgment of November 19, 1999. Series C No. 63 122
- Stubbs v. AG* [2010] 4 L.R.C. 103 283
- Sub-Committee on Judicial Accountability v Union of India* (Writ Petition (Civil) No. 491 of 1991) (1991) 4 SCC 699 xxxvii
- Sumukan Ltd. v. Commonwealth Secretariat* [2007] EWCA Civ 243, [2007] Bus. L.R. 1075; [2007] 3 All E.R. 342; [2007] 2 All E.R. (Comm) 23; [2007] 2 Lloyd's Rep. 87; [2007] 1 C.L.C. 282 345, 350, 351, 357
- Summers v. Fairclough Homes Ltd* [2012] UKSC 26, [2012] 1 W.L.R. 2004 264
- Surefire Systems Ltd. v. Guardian ECL Ltd.* [2005] EWHC 1860 (TCC), [2005] B.L.R. 534, Jackson 355
- Surratt and others v. Attorney General of Trinidad and Tobago* [2008] 1 A.C. 655, PC 202
- Suratt v Attorney-General of Trinidad and Tobago*, [2007] UKPC 55 (UK) 44, 479
- Sutherland v United Kingdom* (The Times, 13 April 2001), ECHR 208
- Tanrikulu v. Turkey* no. 23763/94 ECHR 1999-IV 120
- Taş v. Turkey* no. 2396/94, 23 October 1999 129
- Te Deum*, The Court of Cassation, P.12.0730.N/1 140
- The 19 Merchants v. Colombia*. Merits, Reparations and Cost. Judgment of July 5, 2004. Series C No. 109 130, 131
- Thint (Pty) Ltd and Zuma v National Director of Public Prosecutions* [2008] ZACC 13 (CC) 53
- Thoburn v. Sunderland City Council* [2002] E.W.H.C. 195 (Admin) 397
- Thoman* (10 June 1996) 139
- Tikoniyaoroi v. State* [2012] 2 L.R.C. 280 284
- Timurtas v. Turkey* no. 23531/94 ECHR 2000-VI 120
- Tiu Tojín v. Guatemala* 126
- Torch Offshore LLC v. Cable Shipping Inc* [2004] EWHC 787 (Comm), [2004] 2 All E.R. (Comm) 365; [2004] 2 Lloyd's Rep. 446; [2004] C.L.C. 433, Cooke J. 342, 344
- Transfield Shipping Inc v. Mercator, 'The Achilles'* [2008] UKHL 48, [2009] 1 A.C. 61 360
- Trujillo-Oroza v. Bolivia*. Reparations and Costs. Judgment of February 27, 2002. Series C No. 92 123

- Trustees of Christian Brothers v Cardone* (Federal Court) (1995) 130 ALR 345 xxxvii
- Trustees of Edmond Stern Settlement v. Simon Levy* [2007] EWHC 1187 (TCC), Judge Coulson QC 352
- United States v. Danielczyk*, 683 F.3d 611 (2012) 382
- United States v. Reynolds* 345 US 1 (1953) 111
- United States v. Will*, 449 US 200 (1980) 492
- Union de Pequenos Agricultores v Council of the European Union* [2003] QB 893 209
- Union Steamship Co of Australia Ltd v King* (1988) 166 CLR 1 240
- Valente v the Queen* (Supreme Court of Canada) 1985 SCR Lexis 71 xxxvii
- Varnum v. Brien*, 763 NW 2d 862 - Iowa: Supreme Court (2009) 384
- Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4 122, 129, 130
- Vernon v. Bosley* (No. 2) [1999] Q.B. 18, C.A. 256
- Victoria v Commonwealth* (PMA case) (1975) 134 CLR 81 235
- Vladimir Berschader and Moïse Berschader v The Russian Federation; Ros Invest Co UK Ltd. v The Russian Federation; Siemens v Argentina* 306
- VTB Capital Plc v. Nutritek International Corp & Ors* [2011] EWHC 1887 (Comm) 276
- W v Registrar of Marriages* [2013] HKEC 716, CFA 210, 215
- Webb v. R* [1994] 122 A.L.R. 41 280, 281
- West Coast Hote v. Parriash*, 300 U.S. 379 (1937) 37
- Wettstein v. Switzerland* (21 December 2000) 139
- White Industries Australia Limited v. The Republic of India*, UNCITRAL Case, Final Award, 30 November 2011 308
- Wisconsin v. Yoder*, 406 US 205 (1972) 93
- Yoav Yitzhak v. Aharon Barak President of the Supreme Court* 54(2), HCJ 1622/00 P D 54 293
- Yasa v. Turkey* no. 22495/93 ECHR 1998-VI 120
- Yukos Capital SARL v. OJSC Rosneft Oil Company* [2011] EWHC 1461 (Comm) 276
- Yukos Capital Sarl v. OJSC Rosneft Oil Co.* [2012] EWCA Civ 855, [2013] 1 All E.R. 223; [2013] 1 All ER (Comm) 327; [2012] 2 Lloyd's Rep. 208; [2012] 2 C.L.C. 549, C.A. (reversing *Yukos Capital Sarl v. OJSC Rosneft Oil Co.* [2011] EWHC 1461 (Comm), [2012] 1 All E.R. (Comm) 479; [2011] 2 Lloyd's Rep. 443; [2011] 2 C.L.C. 129) 82
- Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166 124, 127
- Zuckerfabrik Decision*, November 17, 1993 C-134/92 169