Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Going the Extra Mile: Article 14 of Portugal's 2001 Law on Religious Freedom Extended to Entrance Examinations for Regulated Professions

Question(s) at stake:

Whether religious time exemptions should be extended by analogy to apply to entrance examinations for regulated professions.

Outcome of the ruling:

Appeal was granted. Bar Association was ordered to exempt the appellant from taking the bar exam on the date initially scheduled and to set a new date for the appellant to take the bar exam on a day other than Saturday.

Topic(s):

- Employment
- State recognition of Groups and Their Practices

Keywords:

- Exemptions
- Freedom of thought, conscience and religion
- Non-discrimination
- Public sector entrance examinations
- Religious holidays and festivals

Tag(s):

- Bar exam
- Seventh-Day Adventist Church
- Duty to differentiate

Author(s):

- Jerónimo, Patrícia (Universidade do Minho, Braga, Portugal)

Country:

Portugal

Official citation:

Central Administrative Court North, Judgment of 8 February 2007, Proc. No. 01394/06.0BEPRT (Tribunal Central Administrativo Norte, Acórdão de 8 de fevereiro de 2007, Processo n.º 01394/06.0BEPRT)

Link to the decision:

http://www.dgsi.pt/jtcn.nsf/89d1c0288c2dd49c802575c8003279c7/39057f09bcfbe5418025728000599faf?OpenDocument&Highlight=0,01394%2F06.0BEPRT

ECLI:

No ECLI number / ECLI number unknown

Date:

08 February 2007

Jurisdiction / Court / Chamber:

Central Administrative Court North, First Chamber

Remedy / Procedural stage:

Appeal to Appellate Court (final)

Previous stages:

- Porto Administrative and Fiscal Court (7 July 2006)

Subsequent stages:

- None

Branches / Areas of law:

Public law, Constitutional law, Administrative law

Facts:

The appellant was a member of the Seventh-Day Adventist Church. She was a legal intern, registered with the Bar Association, at the Porto District Council, and was due to take the bar exam to access the legal profession. The body managing the bar examinations – National Confederation for Education and Training (CNEF) – scheduled the written exam for 8 July 2006, a Saturday. On 12 January 2006, shortly after the date of the exam was announced, the appellant submitted a request to the President of CNEF asking for the scheduling of an alternative exam date that did not fall on a Saturday. She argued that, as a member of the Seventh-Day Adventist Church, she was bound to keep Saturday holy and would be unable to take the exam on 8 July 2006.

In reply to the appellant's request, the President of CNEF held that she had to prove that the annual declaration listing the days for rest, festivities and times of worship periods as required by Article 14(1)(b) of the Law on Religious Freedom (LRF) had been submitted by her religious organization. The appellant was unable to prove this because the Portuguese Union of the Seventh-Day Adventists was of the opinion that it was not necessary to send the information on religious festivities and times of worship to the competent member of government every year, and had not submitted any document pertaining to Article 14 LRF. On 23 February 2006, the President of CNEF rejected the appellant's request. On 22 March 2006, the appellant contested this decision. On 1 June 2006, the appellant was notified that she had not presented any new facts or legal arguments, and that therefore the contested decision had been confirmed.

On 8 May 2006, the appellant submitted a hierarchical appeal to the President of the Bar Association. On 16 June 2006, a member of the Bar Association's General Council rejected the hierarchical appeal and confirmed the decision by the President of CNEF.

The appellant then initiated a special judicial procedure for the protection of rights, freedoms, and guarantees (*intimação para proteção de direitos, liberdades e garantias*) with the Porto Administrative and Fiscal Court, asking the Court to order the Bar Association to exempt her from taking the exam scheduled for 8 July 2006 and to set, with a maximum delay of five days, an alternative date for her to take the exam on a day other than Saturday, under penalty of compulsory pecuniary sanction.

On 7 July 2006, the Porto Administrative and Fiscal Court rejected the appellant's request. It held, in short, that: (a) Article 14 LRF was not applicable to the case at bar, since the appellant was neither a civil servant nor an employee under a work contract, and was also not a public or private school student; (b) entrance examinations for liberal professions were not sufficiently similar to the cases covered by Article 14 LRF to warrant an extensive interpretation of the provision; (c) the setting of an alternative date would place the appellant at an advantage vis-à-vis her colleagues, in breach of the principle of equality; and (d) fundamental rights had to sometimes give way to other rights and obligations.

On appeal before the Central Administrative Court North, the appellant argued that Article 14(3) LRF should be applied to her case by analogy, since the goal of the provision was to protect religious freedom when scheduling exams. The provision read: "If the date set for students' examinations coincides with the day dedicated to rest and worship by their religion, the exam may be taken as a resit or on a new date that does not raise the same objection." With regard to a possible breach of the principle of equality, the appellant noted that she had never requested that the alternative date should be later than the date set for her colleagues and that she had submitted her request with enough time to allow CNEF to manage the scheduling. She argued, on the other hand, that it had been the lower court which had breached the principle of equality, by disregarding that she was in a different situation from that of her colleagues, due to her religion, and that she should be treated differently in order to ensure substantive equality, namely equal opportunities in the access to the legal profession. Finally, she argued that the lower court ruling, by restricting the core of her right to religious

freedom, had breached Article 18(2) and (3) of the Constitution, which set the requirements for the validity of laws limiting fundamental rights.

Both the Bar Association and the Public Prosecutor argued in favour of rejecting the appeal and confirming the lower court decision. The Ombudsman sent the President of the Bar Association an opinion which was added to the case file. In the Ombudsman's view, Article 14(3) LRF "could require, in most situations, the scheduling of an alternative date for the exam, specifically set for the beneficiary of the provision, even if only one person, for example in situations in which there is simply no resit – as is the case with the bar exam – and when the next resit, already scheduled, takes place so far in the future – as is also the case with the bar exam – that it is ultimately impossible, in practice, for the holder of the right which the legislator wanted to safeguard with the provision to exercise the right, resulting in him having to opt between accessing a profession in a timely manner or following the rules dictated by his religion."

Ruling:

The Central Administrative Court North granted the appeal and reversed the lower court ruling. It granted the subpoena against the Bar Association, ordering that it should consider the appellant as exempted from taking the written exam scheduled for 8 July 2006, and that it should set within ten days a new date that does not fall on a Saturday (and is no later than 30 days) for the appellant to take the written exam.

The Court then listed the constitutional and statutory provisions by reference to which the appellant's claims were to be assessed: Article 14 LRF (religious time exemptions) and, from the Constitution, Articles 13 (equality and non-discrimination), 18 (limits to restrictions to rights, freedoms, and guarantees), 19(6) (rights safeguarded in a state of emergency), and 41 (freedom of conscience, religion, and worship).

Focusing on the right to religious freedom, the Court noted that the right had ample grounds in international law, with several international documents having been adopted throughout the twentieth century to promote religious freedom as

a universal human right. The Court held that the Universal Declaration of Human Rights (UDHR) adopted a broad understanding of religious freedom and “vigorously” required that individual religious differences should be respected, based on a political principle according to which one of the state’s fundamental roles was to protect religious choice and not dictate religious conformity. The Court explained that this modern principle of religious freedom was a natural consequence of Enlightenment, and meant that states were required to be neutral in matters of religion and allow citizens to freely choose their beliefs, on the basis of their human dignity and without fear of retaliation. The Court noted that the right to religious freedom pertained to the most intimate and personal dimension of each human being, since it concerned the individual and/or collective search for the meaning of life, and that therefore it was a right with a wide normative scope.

The Court stressed that the right to religious freedom protected not only the dominant or traditional religions, but all religious denominations and communities equally. Therefore, freedom in religious matters involved the possibility of socially expressing diversity as the essence of pluralism, including the freedom to change religion or belief, and the freedom to manifest one’s religion, alone or in community with others, as prescribed by Article 18 of the UDHR.

Relying on direct citations from several academic publications, the Court elaborated on the content and importance of religious freedom, stressing in particular the importance of equal religious freedom as synonymous with the obligation to treat all religions as equally free and worthy of consideration and respect. The passages cited and underlined by the Court included the observation that the principle of equality could involve a duty to differentiate, and that the right to be treated as equal could mean the right to special treatment, even though not all differentiations would be equally legitimate.

The Court also noted, on the other hand, that fundamental rights were not absolute and that they could and should suffer restrictions necessary to ensure the safeguarding of other constitutionally protected rights or interests, as explicitly allowed by Article 18(2) of the Constitution and reaffirmed by Article 6

LRF. The Court pointed out that even Article 41(2) of the Constitution prescribed that no one could be persecuted, deprived of rights or exempted from civic duties because of his religious beliefs or practice, adding that this provision prohibited all discrimination based on religion, either negative or positive.

About Article 14 LRF, the Court observed that it implemented Article 41 of the Constitution by recognizing the right to enjoy the holy days of one's religion, which was already implied in Article 10(c) LRF. It added that paragraphs 2 and 3 of Article 14 LRF were a natural consequence of that right for students who were members of religions with holy days different from the official holidays.

The Court held that the lower court ruling had made an inadequate and incorrect interpretation of Article 14(3) LRF when it refused its application to the appellant's case. The Court held that, in the absence of a specific provision on religious' exemptions for entrance examinations for regulated professions, Article 14(3) should apply, since it was apt to also regulate the type of exam that the appellant was bound to take, with the necessary adjustments. That would be the correct and constitutionally compliant interpretation, furthermore consistent with the special obligations of public bodies (or bodies exercising public functions, as was the case with the Bar Association) to respect rights, freedoms and guarantees, and with Articles 9 and 10 of the Civil Code on interpretation of statutory provisions and integration of statutory lacunae.

The Court rejected the lower court's finding that the setting of an alternative date would place the appellant at an advantage vis-à-vis her colleagues. The Court noted that the appellant had never asked for a later date and had submitted her request with sufficient time for the Bar Association to schedule her exam for an earlier date. Citing approvingly the Ombudsman's opinion on the applicability of Article 14(3) LRF, the Court concluded that the appellant's enjoyment of her right to religious freedom required, not only that she be exempted from taking the exam on the scheduled date, as had eventually been acknowledged by the Bar Association, but also that the Bar Association should set a new date compatible with the appellant's exercise of her "inviolable fundamental right," because by not doing so the Bar Association would violate the core of the appellant's religious

freedom, in breach of Articles 13 and 41 of the Constitution.

The Court asked itself whether this conclusion was barred by the requirement in Article 14(1)(b) LRF that the appellant's religious organization must have submitted a declaration on religious festivities and times of worship to the competent member of government. The Court answered in the negative. It explained that Article 14(1)(b) applied to work schedules, classes, and exams alike, and that the declaration was a formal requirement introduced by the legislator to provide objectivity and legal certainty to the discipline of religious exemptions in the context of employment and education. While holding the requirement to be justified, the Court expressed concern that individual believers could be hindered in their right to religious freedom by an omission on the part of their religious organization and therefore by something entirely out of their control. Similarly, the Court questioned whether Article 14(1)(a) did not violate the right to freedom of religion by only covering employees with flexible working hours and excluding all others. The Court found, however, that these questions were not relevant for the case at bar, since what it had to do, per Article 10 of the Civil Code, was to integrate the lacuna found in the LRF by devising an adequate provision, in line with the "spirit of the legal system," and in compliance with the principle of interpretation and integration of laws in accordance with the Constitution.

The Court held that it was legitimate to take the regime set by Article 14 LRF as the basis for addressing the case at bar, with the necessary adjustments, given that the training for and access to a liberal profession was not minimally covered by the letter of the provision. In spite of the concerns expressed earlier, the Court held that when applied to employment and education the requirement in Article 14(1)(b) was justified. It found, however, that the same could not be said for a situation such as the one at bar, since it was not clear which member of government would be competent to receive the declaration, as the Bar Association was not under governmental supervision. The Court held furthermore that it would be inadequate to require that religious organizations send the annual declaration to the Bar Association, because that would mean that religious

organizations would have to submit the annual declaration to an infinite number of bodies in order to ensure that their members could legitimately and freely exercise their right to freedom of religion. According to the Court, that did not seem to have been the legislator's purpose and was not the best interpretation and application of Article 41 of the Constitution, since such a requirement would very likely result in an illegitimate, illegal and even unconstitutional restriction of the right to religious freedom. The Court noted, in any case, that while there was no obligation to submit the declaration to the Bar Association under Article 14(1)(b) LRF, the appellant had nevertheless enclosed with her initial request a declaration issued by her religious organization on the duty to keep Saturday holy.

Main quotations on cultural or religious diversity:

- "From the UDHR arises a vigorous determination that individual religious differences must be respected, based on a political principle that a fundamental role of the state is to protect religious choice and not dictate religious conformity. This modern principle of religious freedom, through which states declare their neutrality on religious issues, allowing each citizen to individually, on the basis of his own human dignity, adopt his religious beliefs without fear of reprisal, is a natural consequence of Enlightenment. In the UDHR there was an option for a broad view of religious freedom, positive and negative freedom, individual, family and institutional freedom; private and public freedom."
- "This right relates to the most intimate and personal dimension of each human being to the extent that it concerns the individual and/or collective search for an answer to the questions about the existential and ethical meaning of human life, its origin and reason for being, while it is certain that religion is as old in the life of human societies as human beings themselves. It is a right whose scope extends to religious conduct practised in private or in public, individually or collectively. It is, therefore, a right, freedom and guarantee with a wide normative reach. It protects not only the dominant

religion or traditional religions, but equally all religions and religious communities."

- "Freedom in matters of religion requires, therefore, the possibility of social expression of diversity as the essence of pluralism, including '*the freedom to change one's religion or belief, and freedom, either alone or in community with others*...' (Article 18 of the UDHR), a provision which is applicable in our legal system per Article 16(2) of the Constitution which determines the formal reception of the UDHR by taking it as standard for the interpretation of constitutional and legal provisions on fundamental rights. It should be noted that religious freedom, in its individual dimension, includes, among others, the freedom to observe days of rest and celebrate the holidays and ceremonies in accordance with the precepts of one's own religion [Article 6(h) of the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief (1981)], received in our legal system per Article 16(1) of the Constitution."
- "It must, however, be kept in mind that, in what concerns their exercise, constitutional rights, including religious freedom, do not have the nature of absolute rights, since they can and must allow for the restrictions that are necessary to ensure the enjoyment of other rights or interests also constitutionally granted, as explicitly established by Article 18(2) of the Constitution, and as is also prescribed in Article 6 of the Law on Religious Freedom. In this case and as noted earlier Article 41(2) of the Constitution prescribes that '*no one may be persecuted, deprived of rights or exempted from civic obligations or duties because of his convictions or religious observance*,' a provision which encapsulates a prohibition of any discrimination based on religious reasons, be it negative or positive."
- "Considering the terms under which the right to religious freedom is developed and affirmed, we have no doubt that, in the absence of an explicit provision on exemption from entry exams for a certain profession, we must use the provision in Article 14(3) of the Law on Religious Freedom, which is

apt to also regulate the type of exam such as the one the appellant is due to take, all without prejudice to the natural, adequate and due interpretation of the legal terminology '*students assessment exercises*,' in what is a correct and constitutionally compliant interpretation, respectful of the special subordination of public entities or entities exercising public functions (as is the case with the Bar Association) to the rights, freedoms and guarantees, in particular the right to religious freedom, and by effect of the regime set by Articles 9 and 10 of the Civil Code."

- "It should be noted that, contrary to what was held by the appealed decision, this understanding does not result in placing the appellant in a position of advantage vis-à-vis the other candidates taking the same exam by giving her more time to prepare. In reality, it cannot be considered and argued that the appellant, given the request made and the earliness with which the request was submitted, would be placed in a situation or position of advantage vis-à-vis the other candidates because she never asked for a possible alternative exam to be given after the date already scheduled, it being possible for said exam to take place at an earlier date, given the earliness with which she raised the issue with the Bar Association."
- "The appellant's effective enjoyment of the right to religious freedom required and commanded, more than the simple justification of her absence and the right not to take the final exam on the scheduled date, which was actually acknowledged by the Bar Association, the scheduling of a new date that was adequate to the exercise of that inviolable fundamental right, since by not doing so the Bar Association hindered the appellant's right."
- "We understand, therefore, that the ultimate goal expressed by that legal provision was to avoid that one important part of the right to religious freedom (freedom of worship and to publicly celebrate the religious festivities of one's own religion), a subject and area so sensitive, was left to the purview and dependent on the interpretation and subjective or even arbitrary understanding of the employer or of the school board, aiming to

avoid recourse to the fact of '*public knowledge*' and, thereby, introduce more rigour and objectivity in this instance. As a condition for avoiding possible arbitrary decisions and solutions that would render impossible the timely and effective exercise of the right to religious freedom, the legislator required compliance with that formal requirement [submission of annual declaration – Article 14(1)(b)], a requirement that ensures objectivity and effectivity to the legitimate exercise of this right in its compatibility with other potentially conflicting interests and rights. This limitation or restriction of the right would therefore be considered adequate, necessary and proportionate vis-à-vis other conflicting interests in terms, first and foremost, of the recognition and respect for the rights and freedoms of others in conflict with them, and, also, of the satisfaction of fair demands and interests in matters of public safety and discipline with regard to employment relations, either public or private, and the functioning of the school system in a democratic society."

- "A question that may however arise is that of knowing whether such a legal regime is not likely to breach the right to religious freedom in practice when, due to an omission of the submission of the annual declaration by the church or religious community to which a given individual person is a member, he is not granted leave from work or classes and school exams, and is thus prevented from worshiping, taking part in festivities and fulfilling the duties imposed by his beliefs, being in that way 'punished' by a lack of compliance with a formality that he does not control, nor can control, and which does not concern him since the law neither imposes on him any duty to control nor grants him a power to impose such action. Is there not a breach of an individual right and freedom constitutionally qualified as '*inviolable*' when the active subject holding that right is deprived of the right based on the omission of a formality that is manifestly not his fault? Similarly, is there not also a breach of the right to religious freedom when Article 14(1)(a) of the Law on Religious Freedom restricts that right only to employees rendering their work under a regime of flexible working hours leaving all others out?"

- “From the established facts follows that the Bar Association is in possession, because it received it in a timely manner, of unequivocal information that the appellant as a member of the Seventh-Day Adventist Church has Saturday as day of rest, knowledge that was communicated about six months before the date scheduled for the final exam and therefore far enough in advance to allow or to have allowed it to reconcile the schedules with the observance and respect for the appellant’s request as based on the right to religious freedom. In fact, although there is no duty to communicate such information to the Bar Association, we have ascertained that the Bar Association was, substantially and materially, in possession of information in all things similar to that which it would obtain if that declaration had been submitted.”
- “Therefore in a correct interpretation and adequate implementation of the legal framework in compliance with the Constitution in terms of optimizing and ensuring the effective and full respect for the rights, freedoms and guarantees, in particular, the right to religious freedom, the Bar Association should have scheduled a date for the final exam compatible with the request that the appellant submitted in the exercise of her legitimate right. When deciding the case, we must keep in mind that fundamental rights are also recognised as rights of every human being as an individual and as a member of the social formation where he develops and forms his personality.”

Main legal texts quoted in the decision:

Domestic law

- Articles 13, 16, 17, 18, 19, 20, 41, and 268 of the Constitution
- Articles 6, 10, and 14 of the Law on Religious Freedom (Law No. 16/2001, of 22 June 2001)
- Articles 1, 2, 36, 109, 110, 111, 140, 146, 147, and 149 of the Code of Procedure for Administrative Courts
- Articles 2, 660, 664, 684, and 690 of the Code of Civil Procedure

- Articles 9 and 10 of the Civil Code
- Article 1 of Law No. 15/05, of 16 January 2005
- Bar Association General Training Regulation (Regulation No. 42-A/2002, of 29 October 2002, repealed by Regulation No. 52-A/05/2005, of 1 August 2005)

International law

- Article 18 of the Universal Declaration of Human Rights
- Article 6 of the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
- International Covenant on Civil and Political Rights
- OSCE 1989 Vienna Final Document

Cases cited in the decision:

Relevant Portuguese case law

- Judgment of the Supreme Administrative Court, Case No. 0978/04, 18 November 2004

Commentary

Going the Extra Mile: Article 14 of Portugal's 2001 Law on Religious Freedom Extended to Entrance Examinations for Regulated Professions

The Central Administrative Court North's 2007 judgment on the possibility of applying a religious exemption to the scheduling of the bar exam is the first higher court judgment on record dealing with religious time claims under Article 14 of Portugal's Law on Religious Freedom (adopted by Law No. 16/2001, of 22 June 2001, and last amended by Law No. 159-C/2015, of 30 December 2015). Article 14 reads: 1. Public servants and state agents, as well as employees with a work contract, are entitled, at their request, to suspend work on the weekly day of rest, on the days of the festivities, and on the time periods that are prescribed for observance by their religion, under the following conditions: (a) the work is rendered under the regime of flexible working hours; (b) they are members of a registered church or religious denomination which has submitted to the

competent member of the government, in the previous year, information on the days for rest, festivities and times of worship periods for the current year; (c) there is full compensation for the period during which work is suspended. 2. Under the conditions foreseen in subparagraph 1(b), students enrolled in public or private schools are exempted from class attendance on the days of the week dedicated to rest and worship by their religion, provided that the conditions for normal school performance are safeguarded. 3. If the date set for students' examination coincides with the day dedicated to rest and worship by their religion, the exam may be taken as a resit or on a new examination date that does not raise the same objection.

The judgment is remarkable for a number of reasons, the first of which being the fact that the Court sided with the appellant, affirming the fundamental importance of religious freedom and of religious pluralism. Also noteworthy is the Court's bold recourse to legal analogy to overcome the lacuna found in the Law on Religious Freedom, a technique rarely used in the practice of Portuguese courts.

The case has many similarities with the European Court of Justice (ECJ) judgment of 27 October 1976, *Prais*, C-130/75. While the Central Administrative Court North made no reference to the ECJ judgment, its stress on the earliness with which the appellant had submitted her request (and the fact that it had given the Bar Association ample time to accommodate her request without disruption) is clearly evocative of the reasoning in *Prais*. However, contrary to the ECJ, which found that the exam had to take place on the same date for all the applicants, the Central Administrative Court North had no qualms with the setting of an additional date for the sole benefit of the appellant, possibly because there was no cap on the number of candidates to be admitted to the legal profession (unlike the competition in *Prais*). The Central Administrative Court North rejected the argument that setting an additional date would constitute an unfair advantage in breach of the principle of equality, noting that the appellant had never asked for a later date and had submitted her request with sufficient time for the Bar Association to schedule her exam for an earlier date. It is not entirely clear

whether the Court would have reached a different conclusion on this point if the appellant had requested a later date, allowing her more time to prepare for the exam. In the end, she was indeed granted more time than her colleagues – due to no fault of her own, of course – and this did not seem to bother the Court in the least.

The principle of equality was key to the Court's reasoning, even though a large part of the remarks on this point was second-hand, via direct citation of academic publications. This was namely the case with the remarks about "equal religious freedom" and the "duty to differentiate", which were taken from a journal article by constitutional law professors Gomes Canotilho and Jónatas Machado. The Court's own stance on the duty to differentiate and its limits is not entirely clear, since it does not elaborate on the topic in its own words and does not apply the concept when addressing the particulars of the case at bar. Also, when citing Article 41(2) of the Constitution, again combined with a direct citation from an academic publication, the Court seems to reject the legitimacy of "positive discrimination" (i.e., affirmative action) measures.

The Court was clear in stressing the importance of ensuring religious pluralism, with equal protection of non-traditional and minority religions, which the Court derived from the modern principle of state neutrality in matters of religion. The Court was explicit in holding that the right to religious freedom protects not only the dominant and traditional religions, but all religions equally, and that it protects the social expression of diversity. The Court also made a point of noting the importance of Article 14 of the Law on Religious Freedom for those who are members of minority religions whose holy days are different from the official holidays.

Another interesting aspect of the Court's reasoning is its expression of concern for the potential breach of the right to religious freedom arising from the requirements set by Article 14(1) of the Law on Religion Freedom, namely the use of the concept of "flexible working hours" (which would later come to be the object of Constitutional Court judgments No. 544/2014 and No. 545/2014, of 15 July 2014), and the requirement of an yearly submission by religious

organizations of a declaration on religious festivities and times of worship to the competent member of government. The Court was not entirely consistent in its view about these two requirements, oscillating between doubts as to their constitutionality and the affirmation of their legitimacy. Ultimately, the Court did not find it necessary to fully address the matter, since it concluded that the case at bar amounted to a legal lacuna, which had to be integrated by analogy, under Article 10 of the Civil Code.

Similarly to the lower court, the Central Administrative Court North concluded that the appellant's situation was not minimally covered by the provisions in Article 14 of the Law on Religious Freedom. However, instead of finding that the lack of a minimum correspondence with the letter of the law prevented it from extending the applicability of Article 14(3) to the case at bar, the Central Administrative Court North found that respect for the right to religious freedom required an application of Article 14(3) to the appellant's case, by analogy, with the necessary adjustments. The Court was not very precise in its references to Articles 9 (rules on interpretation) and 10 (rules on integration of lacunae) of the Civil Code, nor on whether it was making use of *analogia legis* (extension of statutory provision foreseen for analogous cases) or of *analogia iuris* (integration by judge-made rule, created within the spirit of the system). At first, it seems that the Court is using *analogia legis*, under Article 10 (1) and (2) of the Civil Code, since it applies a statutory provision – Article 14(3) of the Law on Religious Freedom – which is foreseen for cases analogous to the one at bar. However, the Court also made explicit use of the language in Article 10(3) of the Civil Code, by referring to the "spirit of the system", and dispensed with one of the requirements of Article 14(3), i.e., the annual declaration on religious festivities. Our conclusion is therefore that, taking inspiration from Article 14(3) of the Law on Religious Freedom, the Court devised an ad hoc legal provision to decide the case in line with Articles 13 and 41 of the Constitution.

As a final remark, it is worth noting that, in spite of being commented on in the media and academia, this judgment's finding of a lacuna in the statutory framework did not prompt the legislator to amend the Law on Religious Freedom

to regulate religious exemptions for training and entrance examinations to regulated professions. The Law on Religious Freedom has in the meantime been amended more than once, but none of the amendments touched upon the many problematic aspects of Article 14. The legal lacuna, therefore, persists.

Literature related to the main issue(s) at stake:

Specific legal publications/comments addressing the case

- Moniz, Jorge Botelho. 2021. “Covid-19 em Portugal: A liberdade religiosa na era secular”. *Forum Sociológico* 2 (39): 9–17.
- Moniz, Jorge Botelho. 2021. “Pandemia na era secular: Liberdade religiosa em Portugal nos inícios do surto da Covid-19”. *Revista Angolana de Ciências* 3 (2): 277–296.
- Neto, Luísa. 2009. “*De die ad diem*: os dias úteis ou a utilidade dos dias. Acórdão do Tribunal Central Administrativo Norte (1.ª Secção) de 8.2.2007, P. 1394/06.0BEPRT”. *Cadernos de Justiça Administrativa* 74: 37–54.
- Saiz Arnaiz, Alejandro et al. 2013. *Religious Practice and Observance in the EU Member States*. Brussels: European Parliament.

General legal literature on the topic

- Alidadi, Katayoun. 2017. *Religion, Equality and Employment in Europe: The Case for Reasonable Accommodation*. Oxford: Hart Publishing.
- Bribosia, Emmanuelle and Isabelle Rorive (eds). 2015. *L’Accommodement de la Diversité Religieuse: Regards Croisés – Canada, Europe, Belgique*. Brussels: Peter Lang.
- Gibson, Matthew. 2013. “The God ‘dilution’? Religion, discrimination and the case for reasonable accommodation”. *Cambridge Law Journal* 72 (3): 578–16.

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- Grimm, Dieter. 2014. “Conflicts between General Laws and Religious Norms”. In Susanna Mancini and Michel Rosenfeld (eds), *Constitutional Secularism in an Age of Religious Revival*, 3–13. Oxford: Oxford University Press.
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- Mancini, Susana and Michel Rosenfeld (eds). 2018. *The Conscience Wars: Rethinking the Balance between Religion, Identity, and Equality*. Cambridge: Cambridge University Press.
- Witte Jr., John and Andrea Pin. 2021. “Faith in Strasbourg and Luxembourg? The Fresh Rise of Religious Freedom Litigation in the Pan-European Courts”. *Emory Law Journal* 70 (3): 587–661.

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