

## **Case Summary**

**Menteri Dalam Negeri v Titar Roman Catholic Archbishop of Kuala Lumpur** Civil Appeal No. W-01-1-2010

## **Reference Details**

Jurisdiction: Court of Appeal of Malaysia

Date of Decision: 14 October 2013

Case Status: Final unless appealed to the Federal Court

Link to full case: <http://www.kehakiman.gov.my/?q=/node/173>

### **1. Facts of the Case**

The respondent in the case, the Titar Roman Catholic Archbishop of Kuala Lumpur, published a weekly newspaper, "Herald – The Catholic Weekly" ("the publication"), which sometimes included the words "Allah", "Kaabah", "Solat" and "Baitullah" in its text.

In 1986, a government directive was issued in Malaysia prohibiting the use of the words "Allah", "Kaabah", "Solat" and "Baitullah" in all religious publications other than Islamic publications. Between 1998 and 2007 the relevant government authorities sent several letters to the respondent admonishing the use of the proscribed words in the publication. A prohibition letter was sent in April 2007 followed by another letter of admonition in 2007. On 30 December 2008, the government approved the publication permit of the respondent for the publication with three conditions attached. Subsequently, by a letter dated 7 January 2009, the conditions were relaxed but the use of the word "Allah" was still prohibited in the Malay version of the publication and the circulation of the publication was restricted to churches and those who profess the Christian faith.

The respondent requested a judicial review in the High Court of the condition that they may not use the word "Allah" in the publication. The High Court issued an order quashing the government's prohibition of the use of "Allah" by the respondent. The High Court held that:

- (a) the government authorities had not taken into account relevant factors such as the fact that for centuries the word "God" has been translated and used in the Bahasa Melayu and Bahasa Indonesia translations of the bible as "Allah" and that this was the word used for the Christian God by the Bahasa Melayu speaking Christians of parts of Malaysia and was therefore an essential part of the worship and instruction in the faith of those Christians.
- (b) the government authorities had taken into account irrelevant considerations such as: the position of Islam as the state religion under the Constitution; the allowance under Article 11(4) of the Constitution for laws to be passed to control or restrict the propagation of other religions among Muslims; and the confusion that the authorities said could have ensued from the use of the word in Christian publications.

The first and second appellants were the administrative authorities responsible for the prohibition and there were seven other appellants who intervened in the case.

### **2. Law**

National laws:

- Federal Constitution of Malaysia (Articles 3, 10, 11 and 12)
- Printing Presses and Publications Act 1984 (Sections 6, 26)
- Printing Presses and Publications (Licences and Permits) Rules 1984

#### **4. Legal Arguments**

##### **Appellants' Arguments**

The government authorities argued that (i) the relevant minister had acted within his powers in accordance with the law; (ii) that the decision was legal and reasonable; and (iii) the prohibition was in the interest of public safety and public order. In support of its argument regarding disruption of public order, the government authorities argued that Malaysia is very sensitive to religious issues in general and the use of the word "Allah" in particular. They argued that "Allah" is sacred to Muslims as the name of God and refers to the "oneness", and therefore cannot be part of the concept of the Christian trinity. Therefore, to use "Allah" as an interpretation of God may cause disharmony between the Muslims and the Christians.

The remaining appellants adopted the arguments of the government authorities and emphasised the need to protect Islam as the religion of Malaysia as stated in the Federal Constitution and further argued that the decision of the government authorities is non-justiciable.

##### **Respondent's Arguments**

The respondent's position was that:

- (a) the prohibition was illegal, null and void as the government authorities had acted in breach of the principles of administrative law so the decision was ultra vires;
- (b) Article 3(1) of the Federal Constitution protected their right to exercise their religion in peace and harmony and this meant they had a right to use the word "Allah";
- (c) Article 3(1) did not empower the appellant to prohibit the respondent from using the word "Allah";
- (d) the respondent had the right to use the word "Allah" in exercise of its right to freedom of speech and expression under Article 10 of the Federal Constitution;
- (e) the respondent had the right to use the word "Allah" in exercise of its right to freedom of religion under Article 11 of the Federal Constitution; and
- (f) the respondent had the right to use the word "Allah" in exercise of its right to instruct and educate the Catholic congregation in the Christian religion under Article 12 of the Federal Constitution.

#### **5. Decision**

Three concurring judgments were issued by the court. The following analysis distils the concurring views.

The court divided the issue before it into two parts - whether the decision to prohibit the respondent from the using the word "Allah" in the Malay version of its publication:

- (a) was made in the correct manner from the point of view of administrative law applying rules such as the Wednesbury principle; and
- (b) violated the respondent's constitutional rights.

As regards the question of whether the decision had been correctly taken from the point of administrative law, the court held that the decision was correct on the basis that:

- (a) the relevant minister had the power to impose conditions in publication permits under the law;
- (b) the decision was correctly taken and was “subjectively objective” (sic);
- (c) the relevant authorities had considered all relevant materials before making the decision and the fact that historically “Allah” has been used for “God” in Bahasa Melayu translations of the bible was not a fact that had to be taken into account by the government as the bible was meant only for Christians and was to be used only in churches and by Christians, whereas the publication was a newspaper likely to be used by Christian organisations to disseminate information. Further, the publication was available online and therefore could be accessed by Muslims as well. The fact that Islam is the state religion under the Federal Constitution is a relevant fact that the government could have taken into account; and
- (d) the decision had not been arbitrarily made. The authorities had communicated to the respondent that the reason for the prohibition was unrest and ill-feeling within the community which may lead to a disruption of public order; the prohibition was clearly concerned with possible issues of national security and public order of which the government had been aware of since the 1986 directive; and the court should defer to the decision of the executive in matters of national interest and public order. The use of the word “Allah” in the Malay version of the publication clearly had the potential to disrupt public order and this had been proved by the fact that there had been some disturbances and attacks on churches and mosques following the judgment of the High Court quashing the prohibition on its use by the publication.

In relation to the constitutional arguments, the court held that:

- (a) Article 3(1) of the Federal Constitution provides that Islam is the religion of the Federation but that other religions may be practised in peace and harmony. The fundamental liberties of the respondent had to be considered in this context. In finding that the prohibition did not violate Article 3(1), the court held that:
  - (i) Islam’s constitutional importance was clear as it was “at par with the other basic structures of the Constitution” being in Part I of the Constitution. By contrast, the fundamental liberties only followed in Part II;
  - (ii) the words “peace and harmony” in Article 3(1) were meant to protect the sanctity of Islam as the religion of the country and insulate it from any possible threats, which in Malaysia is the propagation of other religions to the Muslims;
  - (iii) in a judicial review case, the minister who decided to make the prohibition was to be granted a level of discretion and the court was only to decide whether the decision had been made in an arbitrary manner.
  - (iv) in the court’s view, the use of the word “Allah” had the potential to “disrupt the even tempo of the life of the Malaysian community” having an adverse effect on the sanctity envisaged by Article 3(1) and the right of other religions to be practised in peace and harmony. The minister was clearly concerned with national security and public order when making his decision. The court was required to “execute a balancing exercise between the requirement of national security and public order and that of the interest and freedom of the respondent” but was not “to probe for strong evidential proof of national security”.

- (b) There was no violation of the respondent's right to profess, practice and propagate his religion under Article 11. The history of the language of the bible showed that the word "Allah" was not used as the name of God and was not an integral or essential part of the faith and practice of Christianity and therefore the prohibition on its use by the publication did not inhibit the respondent from practising his religion under Article 11.

*Note: The court did not address Article 10 (freedom of speech) or 12 (freedom to educate the Catholic population) of the Constitution.*

In two of the judgments, a number of general comments were made in relation to the use of the word "Allah" by the respondent:

- Judge Dato Abdul Aziz Bin Abdul Rahim, in his judgment, explored the debate on whether Christians should use the word "Allah", and concluded that while the debate did not exist for Arabic speaking Christians who had always used the word for "God", other Christians had themselves not reached a consensus on whether this was appropriate. This indicated that its use was contentious and controversial even in the Christian community and could therefore lead to peace and harmony being disturbed. Further, the use of the word "Allah" by the respondent in its publication will cause unnecessary confusion within the Islamic community and also within Christianity since the Christian conception of God as a trinity was completely opposed to the conception of Allah in Islam.
- Judge Dato' Sri Haji Mohamed Apandi Bin Haji Ali ended his judgment by commenting that: "to refuse to acknowledge the essential differences between religions will be an affront to the uniqueness of world religions" and that "due recognition must be given to the names given to their respective Gods in their respective Holy books; such as 'Yahweh' the God of the Holy Bible; 'Allah' the God of the Holy Quran and 'Vishnu' the God of the Holy Vedas".

The court's overall conclusion was that the minister making the prohibition had not acted in any way that would merit judicial interference in his impugned decision.

### **Remedy**

Appeal allowed.