



Friday, 25 October 2024

## Weekly International Law Review

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### Executive Summary (One Minute Read)

**Pindo Mulla v Spain** (EuCHR) - In a 9-8 decision, the Grand Chamber found that Rosa Pindo Mulla's rights to respect for private and family life guaranteed by Article 8 of the *European Convention on Human Rights* had been violated when she was given a blood transfusion in emergency surgery despite her express instructions not to have a transfusion because of her religious beliefs

**In the Matter of McAleenon** (UKSC) - Supreme Court held that an individual had the right to compel judicial review of a government decision relating to landfill contamination even though a private right of action against the alleged polluter may have been available

## HABEAS CANEM

### Habeus Halloween



# Benchmark

## Summaries With Link (Five Minute Read)

### **Pindo Mulla v Spain, No 15541/20**

European Court of Human Rights, Grand Chamber

Síofra O’Leary P, Bošnjak, Kucsko-Stadlmayer, Pastor Vilanova, Bårdsen, Ravarani, K?ris, Lubarda, Mits, Mourou-Vikström, Koskelo, Elósegui, Seibert-Fohr, Ktistakis, Krenc, Gnatovskyy, & Bormann JJ

Rosa Pindo Mulla is a resident of Spain and is a Jehovah’s Witness. A tenet of her religious beliefs is an absolute opposition to blood transfusions. After she had medical tests, surgery was recommended. She then executed an advance directive and a lasting power of attorney indicating that she would accept emergency medical treatment but that she rejected any blood transfusion even if her life were endangered. The documents were deposited and recorded according to Spanish law. Rosa Pindo Mulla was admitted to a local hospital with internal bleeding. At the hospital, she signed an informed consent form that stated her rejection of transfusions. As her condition worsened, she was transferred by ambulance to a hospital in Madrid. She agreed to the transfer because she understood that she could be treated without transfusions at the Madrid hospital. She was accompanied by her doctor who advised the doctors in Madrid that the patient was in serious condition. In light of this, doctors in Madrid, who were aware that she was a Jehovah’s Witness, contacted a judge for instructions. Without any knowledge of the patient’s identity, the judge authorised all medical and surgical procedures to save her life. Ms Pindo Mulla, who had not been told of the court order, was given three blood transfusions. She had been conscious but was not told about the court order until the day after the procedure and the transfusions. The legal issue before the court was whether the decision-making process provided sufficient respect for her autonomy. Existing caselaw stated that a competent adult has the right to decide whether to accept medical treatment, including transfusions. The Court held that if the State had put in place procedures for advance directives that the system must operate effectively. Here it clearly did not. Article 8 of the *European Convention on Human Rights* guarantees the right to respect for private and family life. In this case, Article 8 was construed in conjunction with Article 9 that guarantees freedom of thought, freedom of conscience, and freedom of religion. The Court concluded that Ms Pindo Mulla had been deprived of autonomy in her private life because she was unable to observe an important teaching of her religion. This amounted to a violation of her Article 8 rights as informed by her Article 9 rights. Spain was ordered to pay €12,000 for non-pecuniary damage and €14,000 for costs.

[Pindo Mulla](#)

[From Benchmark Friday, 25 October 2024]

### **In the Matter of McAleenon [2024] UKSC 31**

Supreme Court of the United Kingdom

Lord Lloyd-Jones, Lord Briggs, Lord Sales, Lord Stephens, & Lady Simler

Noeleen McAleenon resided near a landfill that was operated by a private firm. Ms McAleenon maintained that the Lisburn and Castlereagh Council had regulatory authority concerning

nuisances like the landfill. She sought judicial review of how the Council had dealt with complaints about the landfill. The government argued that she could not seek judicial review of the Council's actions because she had available to her a private right of action against the alleged polluter. The Court of Appeal sustained this objection and held that there were suitable alternative remedies available to Ms McAleenon and that judicial review was not available to her. The Supreme Court reversed and found that the existence of a private claim in nuisance against the alleged polluter did not constitute a suitable alternative remedy to judicial review of the Council's conduct. The Court stated that the fact that different proceedings could have been brought against another party did not mean that there existed a suitable alternative so as to preclude judicial review. The Court further stated that it is not the courts' role to say that a claimant should have sued someone other than the branch of government whose actions were being questioned.

[In the Matter of McAleenon](#)

[From Benchmark Friday, 25 October 2024]

## Poem for Friday

### Life

By Charlotte Brontë (1816-1855)

LIFE, believe, is not a dream  
So dark as sages say;  
Oft a little morning rain  
Foretells a pleasant day.  
Sometimes there are clouds of gloom,  
But these are transient all;  
If the shower will make the roses bloom,  
O why lament its fall ?

Rapidly, merrily,  
Life's sunny hours flit by,  
Gratefully, cheerily,  
Enjoy them as they fly !

What though Death at times steps in  
And calls our Best away ?  
What though sorrow seems to win,  
O'er hope, a heavy sway ?  
Yet hope again elastic springs,  
Unconquered, though she fell;  
Still buoyant are her golden wings,  
Still strong to bear us well.  
Manfully, fearlessly,  
The day of trial bear,  
For gloriously, victoriously,  
Can courage quell despair !

**Charlotte Brontë** was born on 21 April 1816, in West Yorkshire, UK. She was an English poet and novelist. She was the eldest of the three Brontë sisters. Her siblings were Emily Brontë, Anne Brontë, Branwell Brontë, Elizabeth Brontë, and Maria Brontë. She had a year of formal education at Clergy Daughters' School at Cowan Bridge. Thereafter she and her siblings learned at home, from each other and their parents, and aunt Elizabeth Branwell who lived with the family. She is famous for her novel *Jane Eyre*, which she first published under the pseudonym Currer Bell in 1847. She was married to Arthur Bell Nicholls from 1854 to 1855, for the last 9 months of her life. Nicholls had been the curate

to Charlotte's father, Patrick Brontë, an Anglican clergyman. Charlotte Brontë died on 31 March 1855 in Haworth, England.

Reading by **Patricia Conolly**. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world's leading theatrical centres. She has worked extensively in her native Australia, in London's West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada. Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love's Labour's Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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