

R (ALR and others) v Chancellor of the Exchequer

Press Summary: For release at 10am, 13 June 2025

This summary is provided by the Court for the assistance of those reporting the Court's judgment, which was handed down this morning (neutral citation [2025] EWHC 1467 (Admin)). It does not form part of that judgment. References in square brackets are to numbered paragraphs of the judgment of the Court.

Introduction

- 1 Sections 47-49 of the Finance Act 2025 (the challenged provisions) impose value added tax (VAT) on private school fees, as foreshadowed in the Labour Party Manifesto in 2024. In these three linked judicial review claims, the claimants are children attending private schools, the parents of some of these children and four entities which run private schools.
- 2 The claimants seek declarations against the Chancellor of the Exchequer under s. 4 of the Human Rights Act 1998 that the challenged provisions are incompatible with the European Convention on Human Rights. The children and parents rely on the right to education in Article 2 of the First Protocol (“A2P1”) both on its own and read together with the prohibition of discrimination in Article 14 ECHR. The schools rely on the right to property in Article 1 of the First Protocol (“A1P1”), both on its own and read together with Article 14 ECHR. The Secretary of State for Education intervenes to argue, alongside the Chancellor, that the challenged provisions are compatible with these rights.
- 3 After a hearing in March and April 2025, the Divisional Court—Dame Victoria Sharp (President of the King’s Bench Division), Lord Justice Newey, and Mr Justice Chamberlain—today dismisses all three claims.

The claimants

- 4 In Claim 1, there are 12 claimants. Seven are children. Some of their parents are also claimants. Each child is said to have a special need to attend a private school, because he or she has special educational needs (SEN), practises a particular faith (the claimants include Charedi Jews and Muslims), has suffered sexual harassment (so needs to attend a single sex school), or is a foreign national who needs access to a foreign curriculum.
- 5 The Claim 2 claimants are children with SEN but with no Education and Health Care Plan (EHCP). They say that only private schools can offer the special educational provision which meets their SEN.
- 6 The Claim 3 claimants include Evangelical Christian schools providing low-cost private education for parents requiring a holistic Christian education and children and parents who attend these schools. The Ninth and Tenth Claimants no longer pursue their claims because their school put its expansion plans on hold indefinitely so as to remain below the VAT threshold.
- 7 Details of the individual claimants are set out in Annex A to the judgment.

Claims based on the right to education in A2P1

- 8 The Court held that the case law of the European Court of Human Rights (the Strasbourg Court) makes clear that states have a broad margin of discretion in this sphere, subject to a requirement that any regulation should not “impair the very essence of the right”. This generates minimum requirements which the state must comply with. The state must not engage in indoctrination and must offer education in the state’s official language or one of them: [55]-[56].
- 9 However, the right to education is unusual in that it typically involves the deployment by the state of limited public resources. This requires a state to make a series of policy choices about the organisation of the educational system, some of which are likely to be controversial. This is why the Strasbourg Court has framed the right conferred by A2P1 as a right of access to the educational system existing at any given time and as excluding any obligation to establish at their own expense or subsidise education of any particular type or at any particular level. It is generally sufficient for the purposes of A2P1 if there is a mainstream state school a child can attend: [57]-[58].
- 10 The Government parties are wrong to say that A2P1 would in principle permit the prohibition of private schools altogether and therefore wrong to say that A2P1 is not engaged at all: [59]. However, the claimants correctly accept that the imposition of a payroll or property tax would not “impair the very essence of the right”, even if its result was to cause fees to increase by 20% (in a case where the tax is fully passed on). This shows that A2P1 implies no duty to refrain from all acts which might hinder access to private schools. There is no principle in the Strasbourg case law that justifies singling out a measure imposing a tax on the fees charged for educational services—alone among state actions hindering access to private education—as impairing the very essence of the A2P1 right: [60]-[65].
- 11 As to proportionality, the challenged provisions are in the field of social and economic strategy and taxation policy. Their aim was redistributive. For all these reasons, they attract a broad margin of appreciation at the international level. At the domestic level, the challenged provisions enact a manifesto commitment and were debated in Parliament, where all the objections now advanced by the claimants, and others, could be and were made. Although it is not open to the court to consider the quality or cogency of the debate in Parliament, the court can take into account that the debate included consideration of the extent to which the measure would raise revenue, the effect of the measure on children with SEN, the position of children attending faith schools, and the timing of the measure. The measure takes the form of primary legislation, enacted very recently. All these factors point to a very broad margin of discretion at the domestic level: [83]-[87].
- 12 The fact that the UK is the only Council of Europe state which imposes VAT or any similar tax on education services does not point towards a narrow margin of appreciation, because the convergence does not imply any common moral view: [89]-[98].
- 13 The challenged measure pursues the legitimate aims of raising revenue, ensuring fairness, protecting those with acute needs and minimising the administrative burden and the potential for abuse. These were sufficiently important to justify the limitation of A2P1. The process used by the Government supplied a rational basis to conclude that the measure would lead to a net revenue gain: [109]-[115].
- 14 Applying the appropriate margin of discretion, there was no less intrusive means of implementing the measure without unacceptably compromising the achievement of the

objective, since delaying the measure to the start of the next academic year would have foregone some £900 million in net revenue (and the arguments about the failure to include exemptions are better considered under Article 14). As to the question of fair balance, information concerning the impact of the measure on lower income households was available to all MPs and peers. The conclusion reached by Parliament that the revenue which would be raised justified the impact on those on lower incomes fell within Parliament's margin of discretion: [116]-[120].

- 15 The alleged discriminatory effect of the measure falls within the ambit of A2P1 and engages Article 14: [136]-[137]. Although the margin of discretion is somewhat narrower under Article 14 than under A2P1 read on its own, Parliament's decision not to create an exemption for each of the claimant groups fell within the relevant margin of discretion. See: in relation to Charedi Jewish children attending independent faith schools, [149]-[160]; Muslim children attending independent faith schools: [165]-[168]; Evangelical Christians: [174]-[176]; French national children attending a French lycée: [181]-[185]; girls who have suffered sexual harassment and abuse: [190]-[195]; and children with SEN but no EHCP: [208]-[225].
- 16 The second sentence of A2P1 does not assist the Claim 3 claimants. The substantive rights guaranteed by A2P1 go no further than the right of access to whatever educational system the state chooses to provide and the right to establish a private school. They do not include any right to require the state to facilitate one child's access to a private school, even if the parent's reason for preferring a private school is a religious one. Nor do they impose any general obligation on the state not to hinder access to private education: [251].

Claims based on the right to protection of property ("A1P1")

- 17 The Strasbourg Court's case law distinguishes between the goodwill of a business, which may constitute a possession for the purposes of A1P1, and an expectation of future income, which does not: [237]. In this case, the claimant schools fall clearly on the wrong side of the line. Insofar as the measure threatens their viability, it does so because it affects the income they can expect to receive in the future. To engage A1P1, it is not enough that the challenged measures make it more difficult for some customers to continue to purchase the relevant services: [243]. This means that there is no interference that the Government must justify. However, if justification were required, the state's margin of appreciation would be wide. That being so, the conclusion that the challenged measure is justified for the purposes of A2P1 entails that it is also justified for the purposes of A1P1: [245].
- 18 As regards the claimant parents, not every decision to impose tax gives rise to a deprivation or interference with the possessions of the person who will end up paying it. None of the parents in this case are obliged to continue to send their children to private schools, and it is therefore doubtful whether the challenged measure interferes with a "possession" of theirs. In any event, even if the A1P1 rights of parents are engaged, any interference with those rights is justified for the same reasons as the interference with the fundamental rights of parents and pupils under A2P1. This analysis is not affected by the claimants' reliance on Article 14. To the extent that Article 14 is engaged at all, any discrimination is justified for essentially the same reason as discrimination in the enjoyment of A2P1 rights against Charedi Jews, Muslims, and Evangelical Christians is justified: [246]-[247].

Article 9 and Parliamentary privilege

- 19 There was a dispute between the parties as to the admissibility of two reports of the National Audit Office and one of the Public Accounts Committee. In Annex B to its judgment, the court gives its reasons for accepting arguments advanced by the Speaker of the House of Commons and the Comptroller and Auditor General as to the admissibility of these reports. The Court holds that NAO reports are “proceedings in Parliament” for the purposes of Article 9 of the Bill of Rights and that the contents of these reports, and that of the Public Accounts Committee, are inadmissible to prove a contested fact. It also finds that neither Article 9 nor any wider principle of Parliamentary privilege precludes the Court from receiving in evidence facts extracted from proceedings in Parliament which are agreed between the parties. In this case, the court was able to proceed on the basis of the agreed version of a schedule of facts prepared by the Claim 2 claimants (which appears at Annex D to the judgment).

Ends