

# Can Yeginsu

Call: 2007

+442078222000      c.yeginsu@4newsquare.com

**Clerk: Alex Dolby**

a.dolby@4newsquare.com

+442078222036      +447912405151



*He has the gravitas of a natural leader and possesses a giant intellect.*

- Chambers & Partners, 2019

**Can Yeginsu is a leading barrister practising in commercial litigation and international arbitration, civil fraud, professional liability, public law and human rights, and both private and public international law.**

Can is consistently ranked by Chambers Global, Chambers UK Bar, and Legal 500 as an outstanding junior in five practice areas: (i) commercial litigation; (ii) international arbitration; (iii) administrative and public law; (iv) civil liberties and human rights; and (v) public international law.

In 2019, Can was shortlisted for the '*International Arbitration Junior of the Year*' by Legal 500 and appointed to the independent High-Level Panel of Legal Experts on Media Freedom, convened by the former President of the UK Supreme Court, Lord Neuberger, and the UK's Special Envoy on Media Freedom, Amal Clooney, at the request of the UK and Canadian Governments.

Frequently appearing in the Commercial Court, Administrative Court, and the Chancery Division, Can has also acted in over 30 cases in the Court of Appeal, UK Supreme Court and the European Court of Human Rights. In addition, he has experience acting as co-counsel in proceedings before the ECOWAS Community Court of Justice, the Inter-American Court of Human Rights, the Federal Court of Malaysia, the Turkish Constitutional Court, and the Supreme Court of The Gambia. Can is admitted to the Bar of the DIFC Courts.

In his arbitral practice, Can is regularly instructed to act in commercial disputes under the LCIA, ICC, LMAA, and CIArb Rules, as well as in ad-hoc arbitrations under the UNCITRAL Rules. Can also has particular expertise in investor-state arbitration, including claims brought under the ICSID Rules and the ICSID Additional Facility Rules. He has received, and continues to accept, appointments as sole and co-arbitrator.

Can is **Adjunct Professor of Law** at Georgetown Law (Washington D.C.) and Koç University Law School (Istanbul) where he teaches investor-state arbitration. Can is also **Lecturer-in-Law** at Columbia Law School (New York) where he teaches international human rights law. He is the co-author of *The Protections for Religious Rights: Law and Practice* a leading practitioners' text, published by Oxford University Press, and **Partner Fellow** at the Lauterpacht Centre for International Law, University of Cambridge.

In 2013, Can was recognised as one of ten "Stars" practising at the Commercial Bar by Legal Week Magazine where he was identified as possibly one of "*the Bar's true polymaths...able to advocate in a wide variety of legal areas, with seemingly effortless fluency*".

## Privacy Policy

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## Transparency Statement

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## Areas of Expertise

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### Public Law & Human Rights

**“Profound knowledge of freedom of expression and the quality of his work is superb.”** *Legal 500, Civil Liberties & Human Rights, 2021*

**“Extremely bright and able...very good at making a compelling and compact legal argument out of complex matter”** *Chambers & Partners, Civil Liberties & Human Rights, 2019*

**“Insightful, sharp and a pleasure to work with; he always goes above and beyond”** *Legal 500, Administrative & Public Law, 2018*

**“He is exceptionally bright and has a superb knowledge of the law. He has an extraordinary ability to link and make connections between various issues. He has superb insight into cases, turns around work really quickly and it is always of a superb quality. Also, he is delightful to work with”** *Chambers & Partners, Administrative & Public Law, 2018*

**“Rightly instructed in a number of the highest profile cases in the field”** *Legal 500, Civil Liberties & Human Rights, 2018*

**“He has an excellent brain”** *Legal 500, Administrative & Public Law, 2017*

**“Extraordinarily easy to deal with. He can turn work around instantly and do a brilliant job. He doesn’t put a foot wrong”** *Chambers & Partners, Administrative & Public Law, 2016*

**“Works quickly to produce incisive, articulate and persuasive work”** *Legal 500, Administrative and Public Law, 2015*

**“He’s incredible. He’s very nice, easy-going, charming and easy to speak with. He’s very knowledgeable, but is also a very modern barrister. He’s really good with clients”** *Chambers & Partners, Administrative & Public Law, 2015*

Can is one of the leading juniors at the public law and human rights law Bar, with a broad-ranging practice, encompassing:

- judicial review in the commercial, party political funding and regulatory contexts;
- public law challenges to the decisions of coroners;
- claims under the Human Rights Act 1998;
- applications before the European Court of Human Rights and other regional human rights courts; and
- constitutional petitions in European, African and common law jurisdictions.

Can holds a particular expertise in **human rights** challenges involving:

- i. The right to freedom of expression. Can has become a preferred choice of counsel for a number of free speech organisations, publishers and media organisations, and has acted as lead counsel on over 25 free speech cases in the Court of Appeal,

Supreme Court, the European Court of Human Rights, as well as other international tribunals. He is Lecturer-in-Law at Columbia Law School (New York) where he co-teaches a seminar on the right to freedom of expression and is one of two barristers appointed as a **Global Freedom of Expression Expert** at Columbia University.

- ii. The right to freedom of thought, conscience and religion. Can was sole counsel in *Rotsztein* and is co-author, with Sir James Dingemans, of the leading practitioner text *The Protections for Religious Rights: Law and Practice*. He has a very busy advisory practice in this area.
- iii. The right to peaceful enjoyment of possessions. Can regularly acts in commercial human rights claims. He was counsel for the successful claimants in *Breyer* (Admin Court and CoA) and is acting for HSH Nordbank in a US \$75 million property rights claim before the ECtHR.

In **judicial review** claims, Can has a particularly strong reputation for: (i) representing coroners in the Administrative Court (he has acted as sole counsel in a number of important reported decisions and is an editor of *Jervis*); (ii) bringing applications against the Legal Ombudsman, Financial Ombudsman Service and Financial Services Compensation Scheme (he was counsel in the Court of Appeal in *Emptage*); and (iii) party political finance cases (he was counsel in the Supreme Court in *UKIP v Electoral Commission*).

Can also conducts **constitutional litigation** abroad, subject to local requirements. He has experience of acting as co-counsel in cases before the Supreme Court of the Gambia, The Federal Court of Malaysia, and the Turkish Constitutional Court.

Can is a member of the Constitutional and Administrative Bar Association (ALBA), as well as Lawyers for Liberty.

## Cases

- **Tulio Álvarez v Venezuela (Inter-American Ct)**

Mr. Alvarez is a journalist who was sentenced under Articles 444 and 77 of the Venezuelan Penal Code for the crime of aggravated defamation, in relation to an opinion column he published in the newspaper *Así es la Noticia* in 2003. He was also banned from leaving Venezuela, and from voting in the country's 2006 elections.

Can is instructed by ARTICLE 19 (leading Anthony Jones and Marie Claire O'Kane) to act in the ongoing proceedings before the Inter-American Court of Human Rights.

- **Aynur Ganbarova and Others v Azerbaijan (ECtHR)**

Acting for ARTICLE 19 (leading Anthony Jones and Diarmuid Laffan), in the proceedings brought by four Azerbaijani journalists, including Khadija Ismayilova, recipient of the UNESCO/Guillermo Cano World Press Freedom Prize, against Azerbaijan in the European Court of Human Rights.

- **Mandl and ors v Hungary (ECtHR)**

Acting for Media Legal Defence Initiative, the Helsinki Foundation for Human Rights, Mass Media Defence Centre, Ossigeno Per L'Informazione, and Media Development Centre in the Art. 10 challenge to Hungarian laws forbidding journalists from entering and reporting from parliamentary premises. The issues raised by this case are of increasing public importance considering the trend of parliaments inside and outside Europe to restricting the media from accessing and reporting from their premises, including recent examples Macedonia and Poland.

- **Navalnyy v Russia (ECtHR)**

Acting for the leading journalists' protection NGO, Media Legal Defence Initiative, in the Article 10 challenge to the extension of defamation liability under Russian law to online blogs which link to third party content. The applicant Aleksey Navalnyy, a prominent Russian opposition politician, alleges that the Russian government is restricting his journalism and activism for political purposes, and the case also raises novel questions of how traditional legal models relating to defamation applies to blogging and web platforms.

- **Ismayilova v Azerbaijan (ECtHR)**

Acting (leading Miranda Butler) for 16 free expression and media freedom organisations intervening in the Art. 8 and Art. 10 application brought against Azerbaijan by UNESCO World Press Freedom Prize winning journalist, Khadija Ismayilova.

- **Rhodes v OPO (SC)**

Led by Adrienne Page QC in the UK Supreme Court in an appeal relating to the proper scope of the tort in *Wilkinson v Downton* ([1897] QB 57) in the appeal of an injunction prohibiting the publication of a memoir by the concert pianist, author and television film maker, James Rhodes. Submissions were focussed on the right to freedom of expression under Article 10, ECHR.

- **R. (Miranda) v SoS for the Home Department (CA)**

Instructed as lead counsel by Article 19, English PEN and Media Legal Defence Initiative in the High Court and Court of Appeal intervening in the challenge brought to the use of the Terrorism Act 2000 to detain David Miranda when he was carrying material from the Edward Snowden NSA leaks. The Court of Appeal issued a rare declaration of incompatibility, concluding that the Terrorism Act power used were incompatible with Art. 10, ECHR.

- **Breyer Group Plc v DECC (CA)**

Led by Patrick Lawrence QC, in a £195 million claim for damages under s. 8 of the Human Rights Act 1998 for violation of the Claimants' rights under Article 1 of the First Protocol (ECHR), following the government's proposed retrospective changes to the feed-in-tariffs scheme for solar photovoltaic installations. Successful in the trial of preliminary issues at first instance ([2014] EWHC 2257) and in the Court of Appeal ([2015] EWCA Civ 408). Trial settled in 2017.

- **R. (Rotsztein) v HM Senior Coroner (Admin)**

Instructed in judicial review proceedings relating to the approach to be taken by coroners when ordering invasive post mortem examinations in circumstances where the family of the deceased has raised religious objections under Art. 9, ECHR. The case was identified by the court as one of public importance and is now the leading authority in this area.

- **BIJ & Ross v UK (ECtHR)**

Led by Hugh Southey QC in Art. 10 ECHR challenge to the lawfulness of the UK's contribution to worldwide government systems of communications interception.

- **Big Brother Watch v UK (ECtHR)**

Instructed (led by Hugh Southey QC) in an application before the European Court of Human Rights challenging the scope of the secret interception and use of communications by the UK under the Regulation of Investigatory Powers Act 2000.

- **HSH Nordbank v Republic of Turkey (ECtHR)**

Acting for a European Bank (leading Anthony Jones) on a US \$75 million property rights claim before the ECHR challenging a state's handling of enforcement proceedings relating to ship mortgages. The application raises arguments under Art. 6 of the Convention and Art. 1 of the First Protocol, and is the first case before the Strasbourg Court specifically concerned with the Convention compliance of the international ship financing and enforcement regime.

- **Gambian Press Union, Jammeh & Ceesay v The Gambia (SC)**

Acting as lead co-counsel on behalf of leading journalists in The Gambia in a challenge before the Supreme Court of The Gambia to the constitutionality of certain sedition and criminal defamation laws on the basis that they violate fundamental human rights under the Gambian Constitution, the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights.

Related proceedings are being brought at the regional level in the Court of Justice of the Economic Community of West African States for which Can is also instructed.

- **Emptage v FSCS (CA)**

Acted (led by Mark Cannon QC) for the successful applicant in a landmark judicial review [2012] EWHC 2708 of the FSCS's decision to award compensation pursuant to the compensation scheme established under part XV of the Financial Services and Markets Act 2000, and administered by FSCS. The case raised important issues of principle about the proper application of the Scheme to cases where an applicant has borrowed money pursuant to a regulated mortgage contract.

Can also appeared successfully resisting the FSCS's appeal in the Court of Appeal [2013] EWCA Civ 729.

- **Sik and Sener v Turkey (ECtHR)**

Instructed as sole counsel by PEN International to intervene in two successful applications before the European Court of Human

Rights relating to press freedom.

- **R (Aly) v HM Coroner (Admin)**

Acted as sole counsel successfully defending the Coroner in resisting a judicial review application challenging his decision to direct a postmortem examination. The Claimant had sought to argue that the decision constituted, in the circumstances of the case, a disproportionate interference with her right to manifest her religious beliefs under Article 9 and her right to respect for her private and family life under Article 8.

- **UKIP v The Electoral Commission (SC)**

Appeared (led by Patrick Lawrence QC) before a seven-strong UK Supreme Court, acting for UKIP in its successful appeal in respect of the proper interpretation of the domestic law on the funding of political parties in the United Kingdom and its compatibility with the European Convention. This case remains the leading authority on the law of political donations.

- **R (Mack) v HM Coroner (Admin)**

Acted as sole counsel successfully defending the Coroner in judicial review proceedings in which the Claimant raised issues in relation to: (i) the scope of the inquest and Art. 2, ECHR; (ii) the law on circumstances in which a coroner must, alternatively may, decide to sit with a jury; and (iii) the law on “neglect”.

## Qualifications & Memberships

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### Memberships & Committee Positions

- Investment Treaty Forum, British Institute of International and Comparative Law.
- Vice Chairman, British Turkish Lawyers’ Association.
- Bar Liaison Committee, International Committee, and Library Committee, Inner Temple.
- Co-Editor-in-Chief, The Turkish Commercial Law Review.
- Memberships: IBA, COMBAR, LCIA, ICC, ICCA, ASA, BICCL, ALBA, ILI, IPBA, and Lawyers for Liberty.

### Education, Qualifications & Prizes

- **University College, Oxford:** Double First Class B.A. in English Language and Literature; College Scholar, Master’s Scholar, and the Stephen Boyd Memorial Prize recipient for the top First in Finals.
- **Princeton University:** Jane Eliza Procter Fellow.
- **City University, University of London:** First Class LL.B. (1st in year).
- **Harvard Law School:** LL.M. and Cravath International Scholar.
- **Inner Temple:** Treasurer’s Prize, Major Scholar, and Princess Royal Scholar.

**Languages:** Turkish (native speaker), French (working knowledge)

## Insights

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### GCHQ, encrypted chats and IPA 2016

18 July 2019

This article was first published on Lexis®PSL on 8 July 2019. Corporate Crime analysis: An open letter signed by over 50 organisations, including Apple, WhatsApp, Liberty and Privacy International, recently called on the UK Government Communications Headquarters (GCHQ) to abandon a proposal to eavesdrop on encrypted chats. Can Yeginsu and Anthony Jones, barristers at 4 New Square Chambers, explain the background to the proposal and consider some of the related legislation in this area.

### Covered Investment in International Investment Law – Chapter in Investment Treaty Arbitration Review (Ed. Barton Legum, 2019)

1 July 2019



Can Yeginsu (4 New Square Chambers) and Ceyda Knoebel (Gibson Dunn) examine the definition of “investment”, often a critical threshold question of jurisdiction in investor state arbitration.

### **Criminalizing Speech to Protect Religious Peace?**

28 November 2018

Can Yeginsu and John Williams analyse the recent decision of the European Court of Human Rights in *E.S. v. Austrian* an article for Just Security.

### **Covered Investment in International Investment Law – Chapter in Investment Treaty Arbitration Review (Ed. Barton Legum, 2018)**

5 October 2018

Can Yeginsu (4 New Square Chambers) and Ceyda Knoebel (Gibson Dunn) examine the definition of “investment”, often a critical threshold question of jurisdiction in investor state arbitration.

### **The emerging human rights liability of banks? - B.J.I.B. & F.L. 2016, 31(6), 353-355**

1 June 2016

Discusses potential risks and liabilities facing banks regarding their involvement in breaches of human rights. Notes the report "Banks and Human Rights: A Legal Analysis" produced by the UN Environment Programme Finance Initiative and law firm Foley Hoag LLP in December 2015. Considers examples of circumstances in which banks might be subject to criminal prosecutions or civil claims regarding human rights violations.

### **Book: Jackson & Powell on Professional Liability (Sweet & Maxwell, 6th, 7th, 8th editions)**

13 December 2016

The definitive text on professional liability and a comprehensive guide for every practitioner. Can edits the Litigation Chapter (Group Actions and Expert Evidence) with Jonathan Hough QC.

### **Book: The Protections for Religious Rights: Law and Practice (Oxford University Press)**

31 October 2013

The first practitioner work to offer a full and systematic treatment of the law as it pertains to religious rights in the UK and abroad. A practical working aid to a sensitive and important area of increasing litigation and public debate, this text examines the applicable legal instruments, considers the current state of the law, and reviews domestic, comparative, and international case law to provide a comprehensive reference resource that informs on all matters of significance in this area.

### **Londongrad calling: jurisdiction battles in the English courts - D.R.I. 2014, May, 25-36**

10 May 2014

Examines the circumstances when the English courts may accept jurisdiction over a commercial dispute served from outside the jurisdiction against a defendant who is not domiciled in the EU. Outlines the applicable principles. Discusses the Court of Appeal judgment in *Cherney v Deripaska*, and subsequent case law, on whether England could be found to be the appropriate forum for the dispute even when the applicant had conceded that it was not the natural forum.

### **Cross-border challenges**

5 August 2013

Explores the reasons behind the continuing popularity of England as a forum for the resolution of commercial disputes between foreign parties.

### **The first successful judicial review on Cart principles: R. (Kuteh) v Upper Tribunal - J.R. 2013, 18(1), 134-139**

14 January 2013

Discusses the Administrative Court ruling in *R. (on the application of Kuteh) v Upper Tribunal* (Administrative Appeals Chamber) on whether the refusal of permission to appeal the First-tier Tribunal decision upholding the inclusion of a nurse on the Protection of Children and Vulnerable Adults lists was amenable to judicial review as: (1) the First-tier Tribunal had committed a serious procedural irregularity in ignoring evidence supporting the applicant's claim that he had assaulted a patient in self defence; and (2)

the threat to his career was a "compelling reason" to allow the challenge.

## **Inquests and the "detachable" article 2 obligation: In Re McCaughey - J.R. 2011, 16(3), 290-296**

12 September 2011

Discusses the Supreme Court judgment in *Re McCaughey's Application for Judicial Review* on whether the House of Lords decision in *Re McKerr's Application for Judicial Review*, ruling that an inquest into deaths occurring before the Human Rights Act 1998 entered into force need not meet the procedural requirements of the European Convention on Human Rights 1950 art.2, should be overruled as a consequence of the European Court of Human Rights ruling in *Silih v Slovenia* (71463/01) that, in certain circumstances, art.2 imposed freestanding procedural obligations.

## **The business of sport after the Bribery Act 2010 - S.L.A. & P. 2011**

1 August 2011

Discusses the implications for sport of the coming into force of the Bribery Act 2010 on July 1, 2011. Outlines the key provisions of the Act and comments on its scope. Provides a comparison between the Act and the US Foreign Corrupt Practices Act 1977. Provides illustrative case examples of the Act's potential significance in terms of awarding the rights to stage events and corporate hospitality and entertainment at sporting events. Advises on steps that can be taken to minimise the risk of incurring liability.

## **Conditional fee agreements and human rights: MGN Limited v United Kingdom - J.R. 2011, 16(2), 151-155**

15 March 2011

Comments on the European Court of Human Rights judgment in *MGN Ltd v United Kingdom* (39401/04) on whether: (1) the award of damages to the model Naomi Campbell for breach of confidence, following a newspaper's publication of details and photographs relating to her treatment for drug addiction, was a disproportionate interference with the applicant's rights under the European Convention on Human Rights 1950 art.10; and (2) the success fees claimed by Ms Campbell's solicitors and counsel on top of their base costs under the terms of a conditional fee agreement breached art.10.

## **Smith (Oxfordshire Coroner) in the Supreme Court - J.R. 2010, 15(4), 356-365**

10 December 2010

Comments on the Supreme Court judgment in *R. (on the application of Smith) v Oxfordshire Assistant Deputy Coroner* on whether British service personnel serving overseas remained within the UK's jurisdiction for the purpose of determining if they retained the rights conferred by the European Convention on Human Rights 1950. Considers whether the death of a soldier should have been made subject to an inquest satisfying the procedural and investigative standards implicitly required by art.2 of the Convention.

## **Turkey Packs the Court - The New York Review of Books**

22 September 2010

Discusses the 12 September 2010 constitutional referendum in Turkey.

## **Storm in a teacup: domestic and international conservatism from the Corner House case - J.R. 2008, 13(4), 267-272**

12 December 2008

Considers the House of Lords decision in *R. (on the application of Corner House Research) v Director of Serious Fraud Office* on whether the respondent's submission to the threat that Saudi Arabia would no longer assist the UK with counter-terrorism intelligence if a corruption investigation was not discontinued had been unlawful on the ground that it had not shown that there had been no alternative. Discusses whether this standard unduly restricted the respondent's discretion. Assesses the court's jurisdiction to consider whether the decision complied with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 art.5.

## **Religious Liberty in British Courts: A Critique and Some Guidance - 49 HARV. INT'L L.J. 28 (2008)**

11 April 2008

For centuries, religious liberty in Britain existed as a broad-ranging but principally negative freedom at common law. Individuals



were permitted to do as they pleased in matters of faith, unless the law stated otherwise. Religious liberty, thus conceived, was more passive toleration of religion than any active promotion of religious freedom as a fundamental right. All that changed on October 2, 2000...

## **Deep in the texture: The trials of Orhan Pamuk and of Turkey - The Times Literary Supplement**

3 February 2006

Willingly or not, Orhan Pamuk has become as much a political symbol as a man of letters. February 7, next week, was the date set for Turkey to try its foremost novelist for the crime of “publicly denigrating Turkishness”...