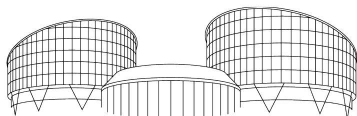

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 012 (2013)
15.01.2013

Right to manifest religion at work is protected but must be balanced against rights of others

In today's Chamber judgment in the case of **Eweida and Others v. the United Kingdom** (application nos. 48420/10, 59842/10, 51671/10 and 36516/10), which is not final[1], the European Court of Human Rights held:

by five votes to two, that there had been **a violation of Article 9 (freedom of religion)** of the European Convention on Human Rights as concerned Ms Eweida;

unanimously, that there had been **no violation of Article 9** of the European Convention, taken alone or in conjunction with **Article 14 (prohibition of discrimination),** as concerned Ms Chaplin and Mr McFarlane; and

by five votes to two, that there had been **no violation of Article 14 taken in conjunction with Article 9** as concerned Ms Ladele.

All four applicants are practising Christians. Ms Eweida, a British Airways employee, and Ms Chaplin, a geriatrics nurse, complained that their employers placed restrictions on their visibly wearing Christian crosses around their necks while at work. Ms Ladele, a Registrar of Births, Deaths and Marriages, and Mr McFarlane, a Relate counsellor complained about their dismissal for refusing to carry out certain of their duties which they considered would condone homosexuality.

The Court did not consider that the lack of explicit protection in UK law to regulate the wearing of religious clothing and symbols in the workplace in itself meant that the right to manifest religion was breached, since the issues could be and were considered by the domestic courts in the context of discrimination claims brought by the applicants.

In Ms Eweida's case, the Court held that on one side of the scales was Ms Eweida's desire to manifest her religious belief. On the other side of the scales was the employer's wish to project a certain corporate image. While this aim was undoubtedly legitimate, the domestic courts accorded it too much weight.

As regards Ms Chaplin, the importance for her to be allowed to bear witness to her Christian faith by wearing her cross visibly at work weighed heavily in the balance. However, the reason for asking her to remove the cross, namely the protection of health and safety on a hospital ward, was inherently more important than that which applied in respect of Ms Eweida and the hospital managers were well placed to make decisions about clinical safety.

In the cases of Ms Ladele and Mr McFarlane, it could not be said that national courts had failed to strike a fair balance when they upheld the employers' decisions to bring disciplinary proceedings. In each case the employer was pursuing a policy of non-discrimination against service-users, and the right not to be discriminated against on grounds of sexual orientation was also protected under the Convention.

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Principal facts

The applicants, Nadia Eweida, Shirley Chaplin, Lilian Ladele and Gary McFarlane, are British nationals who were born respectively in 1951, 1955, 1960 and 1961. They live in Twickenham, Exeter, London and Bristol, respectively.

Chaplin and Eweida

Both applicants believe that the visible wearing of a cross is an important part of the manifestation of their faith.

From 1999 Ms Eweida worked part-time as a member of check-in staff for British Airways and was required to wear a uniform. British Airways' uniform code required women to wear a high necked shirt and a cravat, with no visible jewellery. Any item which a staff member had to wear for religious reasons was to be covered by the uniform or, if this was not possible, approval had to be sought. Until May 2006, Ms Eweida wore a small silver cross on a chain around her neck concealed under her uniform. As a sign of her commitment to her faith, she then decided to wear the cross openly. In September 2006, she was sent home without pay until she agreed to comply with the uniform code. In October 2006 she was offered administrative work without the obligation to wear a uniform or have contact with customers, which she refused. She finally returned to work in February 2007 when the company's policy was changed to permit the display of religious and charity symbols, with the cross and the star of David being given immediate authorisation.

Ms Chaplin worked as a qualified nurse employed by the Royal Devon and Exeter NHS Foundation Trust from April 1989 to July 2010. At the time of the events in question she worked on a geriatrics ward. In June 2007, when new uniforms with V-necks were introduced in the hospital, Ms Chaplin's manager asked her to remove the crucifix on the chain around her neck. Ms Chaplin sought approval to continue wearing her crucifix which was refused on the ground that it could cause injury if a patient pulled on it or if, for example, it came into contact with an open wound. In November 2009 she was moved to a non-nursing temporary position which ceased to exist in July 2010.

Both applicants lodged claims with the Employment Tribunal complaining in particular of discrimination on religious grounds. The Tribunal rejected Ms Eweida's claim, finding that the visible wearing of a cross was not a requirement of the Christian faith but the applicant's personal choice and that she had failed to establish that British Airways' uniform policy had put Christians in general at a disadvantage. Her appeal to the Court of Appeal was also subsequently rejected and the Supreme Court refused her leave to appeal in May 2010. Ms Chaplin's claim was also rejected in May 2010, the Tribunal holding that the hospital's position had been based on health and safety grounds and that there was no evidence that anyone other than the applicant had been put at particular disadvantage. Given the Court of Appeal's decision in Ms Eweida's case, Ms Chaplin was advised that an appeal had no prospect of success.

Ladele and McFarlane

Both Ms Ladele and Mr McFarlane are Christians, who believe that homosexual relationships are contrary to God's law and that it is incompatible with their beliefs to do anything to condone homosexuality.

Ms Ladele was employed as a Registrar by the London Borough of Islington from 1992 to 2009. When the Civil Partnership Act came into force in the United Kingdom in December 2005, she was informed by her employer that she would henceforth be required to officiate at civil partnership ceremonies between homosexual couples. When Ms Ladele refused to sign an amended contract, disciplinary proceedings were brought against her

in May 2007 which concluded that, if she failed to include civil partnership ceremonies as part of her duties, she would be in breach of Islington Council's equality and diversity policy and her contract could be terminated.

Mr McFarlane worked for Relate[2] as a Counsellor from May 2003 to March 2008. In 2007 he started a post graduate diploma in psycho sexual therapy which deals in particular with sexual dysfunction and aims to improve a couple's sexual activity by improving the relationship overall. By the end of 2007 Mr McFarlane's superiors as well as other therapists had expressed concern that there was conflict between his religious beliefs and his work with same-sex couples. In January 2008 a disciplinary investigation was opened. In March 2008 Mr McFarlane was dismissed summarily for gross misconduct on the ground that he had stated that he would comply with Relate's Equal Opportunities Policies and provide counselling to same-sex couples without any intention of doing so. A subsequent appeal was rejected.

Both applicants brought proceedings before the Employment Tribunal on grounds of religious discrimination; Mr McFarlane also claimed that he had been unfairly and wrongfully dismissed. Both claims were rejected on appeal on the basis that their employers were not only entitled to require them to carry out their duties but also to refuse to accommodate views which contradicted their fundamental declared principles – and, all the more so, where these principles were required by law, notably under the Equality Act (Sexual Orientation) Regulations 2007. Ultimately, in March 2010 Ms Ladele was refused leave to appeal to the Supreme Court and, in April 2010, Mr McFarlane was refused permission to appeal again to the Employment Appeal Tribunal as there was no realistic prospect of it succeeding, given that Mr McFarlane's case could not sensibly be distinguished from Ms Ladele's.

Complaints, procedure and composition of the Court

All four applicants complained that domestic law had failed adequately to protect their right to manifest their religion. Ms Eweida, Ms Chaplin and Mr McFarlane relied on Article 9 (freedom of religion), taken alone and in conjunction with Article 14 (prohibition of discrimination), while Ms Ladele complained only under Article 14 taken in conjunction with Article 9.

The applications were lodged, respectively, with the European Court of Human Rights on 10 August, 29 September, 27 August and 24 June 2010. The Court communicated[3] all four applications to the United Kingdom Government on 12 April 2011 and asked both parties to submit their observations.

The Court authorised to intervene as third parties in the proceedings and to submit written observations[4]: the Equality and Human Rights Commission; The National Secular Society; Dr Jan Camogursky and The Alliance Defense Fund; Bishop Michael Nazir-Ali; The Premier Christian Media Trust; the Bishops of Chester and Blackburn; Associazone "Giuseppi Dossetti: i Valori"; Observatory on Intolerance and Discrimination against Christians in Europe; Liberty; the Clapham Institute and KLM; the European Centre for Law and Justice; Lord Carey of Clifton; and, the Fédération Internationale des ligues des Droits de l'Homme (FIDH, ICJ, ILGA-Europe).

[2] Relate is a national organisation which provides a confidential sex therapy and relationship counselling service.

[3] In accordance with Rule 54 of the Rules of Court, a Chamber of seven judges may decide to bring to the attention of a Convention State's Government that an application against that State is pending before the Court (the so-called "communications procedure").

[4] under Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court.

A hearing took place in public in the Human Rights Building, Strasbourg, on 4 September 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

David Thór **Björgvinsson** (Iceland), *President*,
Lech **Garlicki** (Poland),
Nicolas **Bratza** (the United Kingdom),
Päivi **Hirvelä** (Finland),
Zdravka **Kalaydjieva** (Bulgaria),
Nebojša **Vučinić** (Montenegro),
Vincent A. **de Gaetano** (Malta),

and also Lawrence **Early**, *Section Registrar.*

Decision of the Court

The Court emphasised the importance of freedom of religion, as an essential part of the identity of believers and one of the foundations of pluralistic, democratic societies. Freedom of religion under Article 9 of the Convention includes freedom to manifest one's religious belief, including in the workplace. However, where an individual's religious observance impinges on the rights of others, some restrictions can be made. It is up to the authorities of the Contracting States, in the first place, to decide what is necessary. The Court's task is to review whether the measures taken at national level were justified in principle and struck a fair balance between the various competing rights and interests.

Ms Eweida and Ms Chaplin

The Court considered that there had been an interference with both women's right to manifest their religion in that they had been unable to wear their crosses visibly at work.

As concerned Ms Eweida, who worked for a private company and could not therefore attribute that interference directly to the State, the Court had to examine whether her right freely to manifest her religion had been sufficiently protected within the domestic legal order. In common with a large number of contracting States[5], the UK does not have legal provisions specifically regulating the wearing of religious clothing and symbols in the workplace. However, it was clear that the legitimacy of BA's uniform code and the proportionality of the measures it had taken had been examined in detail by the domestic courts. Therefore, the lack of explicit protection in the UK law in this area did not, in itself, mean that Ms Eweida's right to manifest her religion had been breached. Nonetheless, the Court concluded in her case that a fair balance had not been struck between, on the one side of the scales, her desire to manifest her religious belief and to be able to communicate that belief to others, and on the other side of the scales, her employer's wish to project a certain corporate image (no matter how legitimate that aim might be). Indeed, other BA employees had previously been authorised to wear items of religious clothing such as turbans and hijabs without any negative impact on BA's brand or image. Moreover, the fact that the company had amended the uniform code to allow for visible wearing of religious symbolic jewellery showed that the earlier prohibition had not been of crucial importance. The domestic authorities had therefore failed sufficiently to protect Ms Eweida's right to manifest her religion, in breach of Article 9. It did not consider it necessary to examine separately her complaint under Article 14 taken in conjunction with Article 9.

[5] An analysis of the law and practice relating to the wearing of religious symbols at work across 26 Council of Europe Contracting States demonstrates that in the majority of States the wearing of religious clothing and/or religious symbols in the workplace is unregulated. See § 47 of the judgment.

On the other hand, the reason for asking Ms Chaplin to remove her cross, namely the protection of health and safety on a hospital ward, was inherently of much greater importance. Moreover, hospital managers were better placed to make decisions about clinical safety than a court, particularly an international court which had heard no direct evidence. The Court therefore concluded that requiring Ms Chaplin to remove her cross had not been disproportionate and that the interference with her freedom to manifest her religion had been necessary in a democratic society. Accordingly, there had been no violation of Article 9 as concerned Ms Chaplin. It also found that there was no basis either on which it could find a violation of Article 14 in the case.

Ms Ladele and Mr McFarlane

The Court considered that the most important factor to be taken into account was that the policies of the applicants' employers – to promote equal opportunities and to require employees to act in a way which did not discriminate against others – had the legitimate aim of securing the rights of others, such as same-sex couples, which were also protected under the Convention. In particular, in previous cases the Court had held that differences in treatment based on sexual orientation required particularly serious justification and that same-sex couples were in a relevantly similar situation to different-sex couples as regards their need for legal recognition and protection of their relationship.

The authorities therefore had wide discretion when it came to striking a balance between the employer's right to secure the rights of others and the applicants' right to manifest their religion. The Court decided that the right balance had been struck and therefore held that there had been no violation of Article 14 taken in conjunction with Article 9 as concerned Ms Ladele, and no violation of Article 9 – taken alone or in conjunction with Article 14 – as concerned Mr McFarlane.

Just satisfaction (Article 41)

The court held that the United Kingdom was to pay Ms Eweida 2,000 euros (EUR) in respect of non-pecuniary damage and EUR 30,000 for costs and expenses.

Separate opinion

Judges Bratza and Björgvinsson and De Gaetano and Vučinić expressed partly dissenting opinions which are annexed to the judgment.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en.

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Céline Menu-Lange (tel: + 33 3 90 21 58 77)
Nina Salomon (tel: + 33 3 90 21 49 79)
Denis Lambert (tel: + 33 3 90 21 41 09)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.