

## Recent Case Law from the ECtHR on religious discrimination

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## EU Equality law and ECtHR

EU Directive 2000/78 – includes religion and belief grounds

Charter of Fundamental Rights of the European Union - article 10

European Convention on Human Rights - article 9  
Lisbon Treaty 2009

## EU Directive protection for religion and belief

EU Directive 2000/78 prohibits

- Direct Discrimination
  - note GOQs
  
- Indirect Discrimination
  - ‘where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief...at a particular disadvantage compared with other persons; unless [it] is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary’
  
- See *Azmi v Kirkless M.C.* [2007] ICR 1154

## ECHR – Article 9

### Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

## *Eweida et al v. United Kingdom* [2013]

Eweida v British Airways

Chaplin v Royal Devon & Exeter NHS Foundation Trust

Ladele v Islington Borough Council

McFarlane v Relate Avon Ltd

## Legal issues from *Eweida et al.*

- problem of individual beliefs
- the 'specific situation' rule
- when is there a 'manifestation' of religion?
- does there need to be a mandatory religious requirement?
- how should religious objections to carrying out part of a job be dealt with?

## The right to resign/specific situation rule

“Given the importance in a democratic society of freedom of religion, the Court considers that, where an individual complains of a restriction on freedom of religion in the workplace, rather than holding that the possibility of changing job would negate any interference with the right, the better approach would be to weigh that possibility in the overall balance when considering whether or not the restriction was proportionate.”

Para 83

## Manifestation

“In order to count as a “manifestation” within the meaning of Article 9, the act in question must be intimately linked to the religion or belief. An example would be an act of worship or devotion which forms part of the practice of a religion or belief in a generally recognised form. However, the manifestation of religion or belief is not limited to such acts; the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case. In particular, there is no requirement on the applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question”

para 82

## Application to Eweida and Chaplin

### Eweida:

Religious rights can be claimed at work, but the employer can restrict the employee's manifestation of religion when it interfered with other rights.

In this case this restriction was unjustified.

### Chaplin:

"the protection of health and safety on a hospital ward, was inherently of a greater magnitude than that which applied in respect of Ms Eweida. Moreover, this is a field where the domestic authorities must be allowed a wide margin of appreciation" (para 99)

## Religious objections to aspects of the job

The restriction on the freedom of religion of Ladele and MacFarlane was justified as proportionate to maintain the rights of others.

The Court reached this conclusion relying on the wide margin of appreciation allowed to states when dealing with issues over which there is a lack of consensus in Europe.

## Lessons?

Court sees both sides of the question:

“the consequences for the applicant were serious: ...ultimately, she lost her job. Furthermore, it cannot be said that, when she entered into her contract of employment, the applicant specifically waived her right to manifest her religious belief by objecting to participating in the creation of civil partnerships, since this requirement was introduced by her employer at a later date.

On the other hand, however, the local authority’s policy aimed to secure the rights of others which are also protected under the Convention.” (para 106)

Note: Reliance on Margin of Appreciation

## Lessons for EU anti-discrimination law?

Both EU equality law and European Human Rights Law take a balancing approach

- Compare balancing approach under Article 9, and the balancing exercise undertaken with respect to indirect discrimination e.g. in *Azmi*.

ECHR protects individual beliefs

- Will EU law be interpreted to comply?

## Lessons for EU Anti-discrimination law

Heavy reliance in ECtHR on margin of appreciation

- how might this work in the EU context?
- Will/should regional variation be allowed in EU equality law?

## Future?

### S.A.S v France

Does the ban on veils uphold gender equality, maintain public safety and avoid Muslim women being cut off from society?

OR

Does the ban ignore the fact that for many women the veil is a 'preciously guarded symbol of their faith' (Liberty's submission to the ECtHR)?