

Table of Contents

- ***ECHR turns down Church of Scientology's claim against Belgium***
 - ***Three new religious movements win their case against France at the European Court***
 - ***Right to manifest religion at work is protected but must be balanced against rights of others***
 - ***British Airways Christian employee Nadia Eweida wins case***
 - ***Judgment to be announced in UK religious freedom and employment cases***
-

ECHR turns down Church of Scientology's claim against Belgium

RAPSI (19.09.2013) - The European Court of Human Rights (ECHR) declared inadmissible an application filed by the Church of Scientology claiming that the Belgian authorities had breached the church's rights by issuing statements to the media on a pending investigation.

In 1997, a judicial investigation was launched against the Belgian applicant association ASBL Eglise de Scientology on charges of fraud and embezzlement. Between 1999 and 2007, numerous Belgian newspapers published comments featuring accusations made by public prosecutors.

The association then filed various criminal complaints, seeking to intervene as a civil party to the proceedings, but those complaints were shelved.

Meanwhile, the association attempted to have the proceedings against it declared inadmissible, arguing that the prosecutors had breached the secrecy of the investigation, thus disregarding its rights to the presumption of innocence and a fair hearing. This application was declared admissible but unfounded, and its appeal of the issue was dismissed in 2008.

Notably, proceedings have not yet fully wrapped. According to a statement released Thursday by the ECHR: "The hearing before the Committals Division for the finalising of the pretrial proceedings was adjourned in 2010. According to the information in the parties' observations, the proceedings are still pending at that stage."

In August 2008, the applicant turned to the ECHR, claiming that its rights under Article 6 of the European Convention on Human Rights (Convention) had been violated. According to the statement: "Relying on Article 6 § 1 the Church of Scientology complained of a violation by the prosecution of its right to a fair hearing, alleging that prosecutors had publicly giving their opinion on charges against it before the submissions for the prosecution had been made at the stage of the finalising of the pretrial proceedings."

Additionally, the applicant had complained that prosecutors breached the presumption of innocence by making public statements reflecting their views of the applicant's guilt.

With regard to Article 6, Section 1 of the Convention, which deals with fair trial rights, the court held that the application was premature as all domestic remedies had not yet been exhausted.

With regard to Article 6, Section 2, which deals with the presumption of innocence, the court held that "the application was manifestly ill-founded and had to be rejected" owing to the nature of the evidence submitted in support of the claim.

As explained in the court's statement: "There had been no audio or video recording of those statements, nor had they been transcribed in documents emanating from the authorities in question, such as procedural documents or official press releases. The only evidence produced by the applicant association consisted of press articles for which the relevant journalists were solely responsible, and it was highly possible that those articles did not accurately reflect the nuances of the remarks in question." The ECHR added that the evidence had not demonstrated that the authorities had breached their duty of discretion.

17 conscientious objectors win their case against Armenia in Strasbourg

RIA Novosti (08.05.2013) – The Armenian government on Wednesday allocated €112,000 (\$145,226) to the Ministry of Justice to pay damages and legal fees to 17 conscientious objectors in compliance with a 2012 ruling by the European Court of Human Rights, the government press service said.

In 2004, 17 young male Armenian Jehovah's Witnesses began performing alternative civilian service. After a year, they refused to continue, saying they could no longer serve under the control and supervision of the military in good conscience.

The members of the international religious organization were arrested and prosecuted. Some were held in pretrial detention for several months, and 11 were eventually sentenced to prison terms from two to three years.

The European court ruled that the criminal prosecutions and detentions were illegal because in 2005, there was no law in Armenia that made it a crime to abandon alternative civilian service.

The court held that Armenia violated the men's right to liberty and security as protected under Article 5 of the European Convention on Human Rights.

Although the government later dropped the criminal charges against the 17 men, Armenia refused to compensate them for the unlawful criminal prosecutions and detentions. The court therefore ordered Armenia to pay compensation for moral damages and legal fees.

Three new religious movements win their case against France at the European Court

Registry of the European Court (01.02.2013) - The European Court of Human Rights has today notified in writing the following three Chamber judgments, none of which is final:

The Religious Association of the Pyramid Temple/Association Cultuelle Du Temple Pyramide v. France (application no. 50471/07) The Association of the Knights of the Golden Lotus/Association Des Chevaliers Du Lotus D'Or v. France (no. 50615/07) The Evangelical Missionary Church and Salaûn/Eglise Evangelique Missionnaire et Salaûn v. France (no. 25502/07).

In these three cases the applicants relied, in particular, on Article 9 (right to freedom of thought, conscience and religion), alleging that the fact that they had been required to pay tax on hand-to-hand gifts infringed their right to manifest and exercise their freedom of religion.

The Religious Association of the Pyramid Temple is a not-for-profit association which was set up on 3 April 1991 and dissolved on 10 August 1995 and the aim of which was the construction of a place of worship in Castellane (France). The Association of the Knights of the Golden Lotus is a not-for-profit association set up in 1971 and dissolved on 16 September 1995. It was dedicated to the practice of a new religion known as Aumism. Following tax assessment procedures, sums of more than 2.5 million euros and 37,000 euros respectively were recovered from the associations in question, after the tax authorities' inspection revealed gifts entered in their accounts. When the associations refused to declare the gifts, the authorities automatically imposed a tax rate of 60% in accordance with Article 757 of the General Tax Code, which states that hand-to-hand gifts are subject to gift tax. The associations were also ordered to pay an 80% surcharge.

The applicants in the last case are the association the Evangelical Missionary Church and its president, Éric Salaûn. Following an audit of its accounts and the imposition of tax on the hand-to-hand gifts which this brought to light, the administrative authorities considered that the association could not be classified as a "religious" association for the purposes of claiming the corresponding tax exemptions. The association was therefore obliged to pay more than 280,000 euros (automatic taxation at the 60% rate) to the Treasury.

Violation of Article 9 (in all three cases)

Just satisfaction: EUR 3,599,551 to The Religious Association of the Pyramid Temple; EUR 36,886 to The Association of the Knights of the Golden Lotus and EUR 387,722 to The Evangelical Missionary Church and Salaûn (pecuniary damage), and EUR 49,568 The Religious Association of the Pyramid Temple, EUR 10,000 to The Association of the Knights of the Golden Lotus and EUR 55,000 to The Evangelical Missionary Church and Salaûn (costs and expenses)

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

Registry of the ECHR (15.01.2013) - 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 final¹, 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.

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 Relate2 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 communicated³ 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 observations⁴: 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; Associazione "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).

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 States⁵, 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.

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.

Full judgment available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115881#{"itemid":\["001-115881"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115881#{)

British Airways Christian employee Nadia Eweida wins case

BBC News (15.01.2013) - A British Airways employee suffered discrimination at work over her Christian beliefs, the European Court of Human Rights has ruled.

Judges ruled Nadia Eweida's rights had been violated under Article 9 of the European Convention on Human Rights.

She took her case to the European Court of Human Rights after BA made her stop wearing a cross visibly.

Judges ruled that the rights of three other Christians had not been violated by their employers.

The other cases involved nurse Shirley Chaplin, 57, whose employer also stopped her wearing necklaces with a cross, Gary McFarlane, 51 - a marriage counsellor fired after saying he might object to giving sex therapy advice to gay couples - and registrar Lillian Ladele, who was disciplined after she refused to conduct same-sex civil partnership ceremonies.

All four lost separate employment tribunals relating to their beliefs and made individual applications to the court, but their cases are being heard together.

Ms Eweida, 60, was banned from displaying her white gold cross at work.

The four Christians claimed their employers' actions went against articles nine and 14 of the European Convention on Human Rights, which protected their rights to "freedom of thought, conscience and religion" and prohibited religious discrimination.

Ms Eweida, a Coptic Christian from Twickenham in south-west London, was asked to leave her job in 2006 after refusing to remove her cross.

An employment tribunal found she had not been subjected to religious discrimination but BA later altered its uniform code to allow symbols of faith, including crosses.

Ms Ladele was disciplined by Islington Council, in north London, after saying she did not want to conduct same-sex civil partnership ceremonies. Her lawyers said the service could have been performed by other employees who were prepared to carry them out.

Mr McFarlane, a Bristol relationship counsellor, worked for the Avon branch of national charity Relate but was sacked for gross misconduct in 2008 after saying on a training course he might have an objection to discussing sexual problems with gay couples.

Ms Chaplin, from Exeter, was transferred to a desk job by Royal Devon and Exeter NHS Trust Hospital for failing to remove a confirmation crucifix on a small chain, which she had worn to work for 30 years.

The BBC's Dominic Casciani says judges decided health and safety matters outweighed her religious rights.

Judgment to be announced in UK religious freedom and employment cases

Strasbourg Consortium (08.01.2013) - The Court gives notice that its judgment in the consolidated cases [Eweida and Others v. the United Kingdom](#) (nos. 48420/10, 59842/10, 51671/10 and 36516/10) will be announced on Tuesday, 15 January 2013. Press releases and texts of the judgments will be available at 10 a.m. (local time) on the Court's Internet site (www.echr.coe.int).

From the Court's Press Release: The applicants, Nadia Eweida, Shirley Chaplin, Lillian Ladele and Gary McFarlane, are British nationals who were born in 1951, 1955, 1960 and 1961 and live in Twickenham, Exeter, London and Bristol (UK) respectively. Relying on Article 9 (freedom of thought, conscience and religion) and Article 14 (prohibition of discrimination), they complain that UK law does not sufficiently protect their rights to freedom of religion and freedom from discrimination at work. All four applicants are practising Christians. Ms Eweida, a British Airways employee, and Ms Chaplin, a geriatrics nurse, complain 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 Relate¹ counsellor, complain about their dismissal for refusing to carry out certain of their duties which they considered would condone homosexuality. The Court held a hearing in this case on 4 September 2012.

¹*Relate is a national organisation which provides a confidential sex therapy and relationship counselling service.*

See documents concerning these cases:

<http://www.strasbourgconsortium.org/portal.case.php?pageId=10#caseId=654>

<http://www.strasbourgconsortium.org/portal.case.php?pageId=10#caseId=655>
