Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Balancing Religious Expression in the Workplace: A Legal Analysis of Eweida v. British Airways from the UK Employment Tribunal to the European Court of Human Rights

Question(s) at stake:

Whether a company's uniform policy prohibiting its employees from visibly wearing necklaces with religious symbols constitutes unlawful discrimination on grounds of religion.

Outcome of the ruling:

Ms Eweida's complaints regarding religious discrimination, encompassing direct, indirect, and harassment-related claims, were dismissed by the Employment Tribunal. However, the tribunal noted that while the uniform policy's aim was legitimate, its implementation was disproportionate.

Topic(s):

- Employment
- The Human Body

Keywords:

- Attire
- Religious and cultural symbols
- Cross
- Private sector

Tag(s):

Author(s):

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Country:

United Kingdom

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Eweida v British Airways Plc [2007] UKET 2702689/06

Link to the decision:

https://uk.westlaw.com/Document/I1B85BFB0759311E4B418C98D4BCA4A85/View/FullText.html

ECLI:

No ECLI number / ECLI number unknown

Date:

19 December 2007

Jurisdiction / Court / Chamber:

Employment Tribunal

Remedy / Procedural stage:

First Instance

Previous stages:

None

Subsequent stages:

- Employment Appeal Tribunal, 20 November 2008
- Court of Appeal, 12 February 2010
- Supreme Court, 26 May 2010
- European Court of Human Rights, 27 May 2013

Branches / Areas of law:

Labour Law; Anti-Discrimination Law

Facts:

Ms Eweida (claimant) was a devout Christian who had worked part-time as check-in staff for British Airways (respondent) since 1999. Her job required her to wear a uniform due to the customer-facing nature of her role. Between 2003 and 2006, the claimant complained of incidents she believed showed anti-Christian bias by the respondent.

Before 2004, her uniform had a high neck, and she wore a cross on a necklace underneath. In 2004, a new uniform (called the McDonald uniform) was introduced, which allowed an open neck but prohibited visible adornments around the neck. Between May and September 2006, the claimant wore the cross visibly on at least three occasions. On 20 September 2006, when she refused to conceal the cross, she was sent home and remained unpaid until February.

The claimant initiated the respondent’s grievance procedures, and media attention led the respondent to amend its uniform policy on 1 February 2007, allowing staff to display faith or charity symbols. The claimant returned to work on 3 February 2007.

The claimant complained of direct discrimination, indirect discrimination, and harassment under the Employment Equality (Religion or Belief) Regulations 2003, stating that she was not allowed to wear her Christian cross while workers from other faiths such as Islam, Hinduism, and Sikhism were allowed to manifest their faith openly, due to British Airways’ alleged hostility towards Christianity.

The respondent asserted that the uniform policy was of paramount importance, as it played a critical role in shaping the overall customer experience, served practical business purposes, and maintained a uniform and professional image consistently seen by all customers. Compliance with these uniform standards was not only a contractual requirement but also a fundamental aspect of the company’s identity. With regard to the new uniform policy with an open neck

area, the respondent argued that the cross could still be concealed using a cravat, allowing for the accommodation of a religious symbol while preserving uniformity.

The uniform policy

The uniform policy regarding religious items had the following effects:

- Employees were allowed to wear any religious item they wished under their uniform, as long as it remained hidden and not visible. This category included concealed items like a cross, a star, or a Sikh Kirpan (ceremonial dagger).

- If an employee wanted to wear a religious item visibly outside of their uniform, certain conditions had to be met. The item had to be “mandatory”, meaning it was required by the individual’s faith and the item could not be concealed under the uniform. Management approval was still necessary to wear such items. Examples of items falling into this category included various forms of headgear such as the hijab, turban, or skull cap.

Alleged bias of the respondent against Christianity

The claimant provided several pieces of evidence to support her claim of British Airways’ anti-Christian bias:

- She claimed that the respondent provided Quranic channels on flights to and from the Middle East but denied requests for Christian channels.

- She argued that cultural awareness booklets provided by the respondent after September 2001 were disrespectful to Christianity as they did not acknowledge the existence of Arab Christians and criticized certain Western perceptions of the “East”.

- She alleged that her request for a leave of absence to attend an event led by an Arab Christian preacher was denied on religious grounds.

- She claimed that the company allowed breaks during working hours for Muslims to pray but not for Christians.

- She asserted that the company’s practice of making Christian workers work on Sundays and Christmas demonstrated an anti-Christian bias.

- She argued that the compulsory company training on “Harassment and Bullying” excluded Christianity. Christianity was covered in a separate training called “Diversity and Inclusion”.

Ruling:

The claimant’s complaints regarding religious discrimination, encompassing direct, indirect, and harassment-related claims, were dismissed by the tribunal. Her complaint claiming that the respondent made an unlawful deduction from her pay was also dismissed.

In the assessment of the direct discrimination claim, the tribunal determined that Ms Eweida did not experience unfavourable treatment based on her religion or beliefs when compared to individuals in similar circumstances, in accordance with the provisions of Regulation 3. The court also ascertained that the uniform policy mandated the concealment of any item of jewellery that could be hidden. Any item worn due to a compulsory religious requirement and unable to be concealed under the uniform, if approved, would be allowed. In contrast, any individual – regardless of faith – who wore a religious or cosmetic item around their neck but concealed it beneath a cravat received identical treatment to Ms Eweida when she wore a concealed cross.

As for the indirect discrimination claim, the tribunal identified no evidence to support the notion that the uniform policy created a barrier for Christians. This case was the sole recorded instance of a Christian employee raising concerns about the policy. The tribunal considered testimonies from several practising Christians, including the claimant, none of whom indicated that displaying the cross was obligatory. Importantly, the tribunal ruled on whether there was indirect discrimination according to Regulation 3 of the Employment Equality (Religion or Belief) Regulations 2003, even though this regulation did not contain an explicit provision for “indirect discrimination” as found in its successor, the Equality Act 2010. Regulation 3 of the 2003 regulations, although not expressly

addressing indirect discrimination, contained principles that allowed for the consideration of whether the uniform policy disproportionately affected Christian employees. In this case, the tribunal concluded that the policy did not have a disproportionate impact on Christian employees, and as a result it was ruled in paragraph 33.6. that there was no indirect discrimination.

The tribunal, after hearing from witnesses and reviewing statements from both sides, concluded that the claims of Ms Eweida were neither sufficiently substantiated nor enough to suggest that British Airways had a bias against Christianity. British Airways Christian Fellowship members also testified in favour of the respondent.

Harassment claims were also dismissed due to a lack of supporting evidence that would suggest that Regulation 5 was violated. According to Regulation 5, harassment on the grounds of religion must violate a person's dignity and create an intimidating, hostile, degrading, humiliating, or offensive environment for them.

The tribunal noted that if it had to consider the justification of the uniform policy, it would find that the intended aim was legitimate but disproportionate in its execution. The fact that British Airways amended the uniform policy rules without suffering harm after extensive news coverage supports this conclusion. The tribunal concluded that the blanket ban on all jewellery did not strike the appropriate balance between corporate uniformity, individual needs, and the accommodation of diversity.

Main quotations on cultural or religious diversity:

"The claimant referred to three items from Sikhism: the turban, the bracelet, and the Kirpan. The turban was regarded as a mandatory religious. It was headgear which could not be concealed. It had always been permitted by the respondent. The McDonald policy stipulated that it could only be white or dark blue (R1, 232). The Kirpan was concealed at all times." (para. 10.1.)

"The bracelet was a mandatory item which could be concealed under shirt sleeves, and was concealed. When Sikh staff working in hot climates requested

permission to wear short-sleeved shirts, which would inevitably reveal the bracelet, the matter was considered in accordance with the respondent's process for dealing with uniform issues. The outcome was that Sikh men were permitted to wear short sleeved shirts with the bracelet, so that the bracelet was visible, provided the bracelet was not conspicuous." (para. 10.2.)

"From Islam the claimant referred to headscarves or hijab. We repeat our above comments as to headgear. A form of headscarf was always permitted to be worn by ground staff, whether with or without the uniform. We heard of no issues arising in consequence. When in about 2006 a member of flight crew applied to wear hijab, the application was subjected to risk assessment, and then granted, subject to rules as to the style and appearance of the item (R3, 24)." (para. 10.3.)

"The claimant referred also to the Hindu wrist string and to henna dots painted on the hands of wedding guests: evidence as to use of the former was scant, and was presented on the basis that a wrist string could in any event be concealed. We had no evidence that the latter practice was related to any specific faith and in any event, it was not the subject of managerial approval or acquiescence." (para. 10.4.)

"In light of the events of September 2001, the respondent made available a booklet on cultural awareness (R1, 1031–7). The booklet was for the benefit of staff who might be unfamiliar with the characteristics of Arab culture and whose work brought them into contact with Arab customers. It set out some basic information about Islam, as the predominant religion of the Arab world, with the comment that 'Whereas most of the Arab World is Muslim, not all Muslims are Arabs and not all Arabs are Muslims' (R1, 1032)." (para. 14.1.)

"Commenting on the September 11 events, it mentioned that in consequence of those events, '[M]any westerners have a distorted and stereotypical view of "Muslims" and the Islamic religion. Islam is a rich and dynamic religion – it is fact, the second largest religion in the world – but in the west, its true meaning and beliefs have been overshadowed by menacing headlines, and images of guntoting militants'." (para. 14.2.)

“Immediately after those words was the heading, ‘Islamic society’s misconceptions of the west’ and then, ‘Likewise, certain social problems in Western society, such as prostitution, alcoholism, high crime and sexual promiscuity, have coloured the way in which Muslims perceive the west. This should be kept in mind’.” (para. 14.3.)

“The claimant considered the booklet disrespectful to Christianity, first in failing to make any reference to the Arab Christian minority; and secondly by setting out the passage quoted at 14.3 above. She relied on these as evidence of anti-Christian bias on the part of the respondent.” (para. 14.4.)

“We find these observations misconceived. The claimant has first misunderstood the nature and purpose of the document: it is no more than an introduction to aspects of Arab life for non-Arab staff serving Arab passengers. The respondent made a legitimate judgement about the selection and presentation of the contents.” (para. 14.5.)

“The claimant’s objections to the depiction of the West fail to analyse the context, namely that those observations plainly appear in a section about misconceptions which two cultures may have about each other. Like the Qur’anic channel, this issue illustrates the claimant’s misinterpretation of events around her, and her inability to assess the reasoning of management.” (para. 14.6.)

“There was only one item of which we heard which could be concealed, but which was permitted to be worn visibly, which was the Sikh bangle. We have set out our findings at 10.1 and 10.2 above. However, the comparison between the bangle and the cross breaks down immediately on consideration. For adherents of the Sikh faith, the bangle is mandatory, and it was agreed in this case that the cross is not mandatory for Christians. When the bangle could be concealed under the uniform, it was required to be concealed. However, the bangle ceases to be concealable under the uniform if the wearer wears a short-sleeved shirt. At that point, the bangle falls into the same category as headgear, i.e. it is a mandatory religious item which cannot be concealed under the uniform, and it may therefore be displayed. The anomaly of the bangle is that, although mandatory, it is

sometimes concealable under the uniform and sometimes not, depending on the choice of uniform shirt. In either event, the circumstances are not comparable with those of the claimant." (para. 31.10.)

"The tribunal heard evidence from a number of practising Christians in addition to the claimant. None, including the claimant, gave evidence that they considered visible display of the cross to be a requirement of the Christian faith; on the contrary, leaders of the Christian Fellowship had stated that, 'It is the way of the cross, not the wearing of it, that should determine our behaviour'. (R1, 780). The claimant's evidence was that she had never breached the uniform policy before 20 May 2006, and that the decision to wear the cross visibly was a personal choice, not a requirement of scripture or of the Christian religion. There was no expert evidence on Christian practice or belief (although that possibility had been canvassed at the PHR in June)." (para. 33.4.)

"We would not consider the requirement proportionate because it fails to distinguish an item which represents the core of an individual's being, such as a religious symbol, from an item worn purely frivolously or as a piece of cosmetic jewellery. We do not consider that the blanket ban on everything classified as 'jewellery' struck the correct balance between corporate consistency, individual need and accommodation of diversity." (para. 33.11.)

Main legal texts quoted in the decision:

- Employment Equality (Religion or Belief) Regulations 2003
- Human Rights Act 1998
- Article 9 of the European Convention on Human Rights

Cases cited in the decision:

Azmi v. Kirklees MBC [2007] UKEAT I.R.L.R. 484 *McClintock v. DCA* [2008] UKEAT IRLR 29 *Igen Ltd v. Wong* [2005] IRLR 258 *Madarassy v. Nomura International* [2007] IRLR 246

Commentary

Balancing Religious Expression in the Workplace: A Legal Analysis of Eweida v. British Airways from the UK Employment Tribunal to the European Court of Human Rights

Eweida is a landmark case that offers valuable insights into the conflicts between company policies and the right to religious manifestation in the workplace. This commentary starts from the initial phase of the case, where the Employment Tribunal examined the company's uniform policy and the events that led to the case. The UK appeal courts for the most part affirmed the tribunal's judgment, though they also made additional or differing findings that are discussed in this commentary.

The case was initiated by the claimant on 15 December 2006 and quickly gained widespread attention, drawing comments from prominent figures like the UK Prime Minister and the Pope. This heightened media coverage led to a public outcry against British Airways, with allegations of anti-Christian bias and favouritism towards other religions.

In response to the growing controversy, British Airways decided to revise its uniform policy on visible "jewellery", introducing a new one on 19 January 2007. The claimant, Ms Eweida, was able to return to work on 3 February 2007, but she did not receive payment for the period she couldn't work due to her non-compliance with the uniform policy, as per contractual rules.

The chronological structure of the judgment of the Employment Tribunal provides an illuminating account of the tensions between Ms Eweida and British Airways. From the introduction of new uniform rules in 2004 until May 2006, Ms Eweida did not visibly wear the cross necklace at work. According to the paragraph 22.1 of the ruling, the respondent noted that she mainly started wearing it visibly after a company-mandated sensitivity training that she left due to her perception of religious favouritism towards religions other than Christianity.

In paragraphs 18.4.9 and 19.4.5 of the first instance judgment, the tribunal expressed concerns about Ms Eweida's overall attitude, noting that her unwavering dedication to her faith sometimes appeared to result in a lack of

empathy toward her colleagues, the company, and the industry in which she worked. It pointed out in paragraph 7.4 that she occasionally misinterpreted the plain language used by the company and her colleagues due to this attitude.

While the tribunal stated that the company's uniform policy could have been more accommodating of specific garments, it found no evidence to suggest that the policy created a barrier for Christians; on the contrary, significant evidence indicated the opposite. Ms Eweida was the only instance where British Airways authorities had encountered a Christian employee raising concerns about the uniform policy. Furthermore, there was no evidence that Christians were discouraged from applying for jobs, denied employment if they did apply, or faced obstacles in advancing within the organization. Considering these factors, the tribunal concluded that the policy did not place Christians at a particular disadvantage. As a result, the claim of indirect discrimination was unsuccessful.

In its 12 February 2010 judgment, the Court of Appeal affirmed the findings of the tribunal and also pointed to the reasoning of the famous *Begum* ruling of the House of Lords from 2006, stating that if individuals can find ways to circumvent limitations on their religious expression, there is no interference with Article 9. In *R (on the application of Begum) v. Headteacher and Governors of Denbigh High School* [2006] UKHL 15, it was argued that the possibility of the applicant transferring to a school where she could wear a jilbab meant that there was no violation of Article 9, and in *Eweida* a similar line of thought suggests that the option to either wear a cravat over the cross or change jobs would rule out a violation.

The Court of Appeal also cited the 1997 case *Kalaç v. Turkey* (App. no. 20704/92, 01 July 1997, ECLI:CE:ECHR:1997:0701JUD002070492), where the European Court of Human Rights (ECtHR) stated that Article 9 does not protect every act motivated or inspired by a religion or belief and that individuals may need to take the specific requirements of their occupation into account. It also found that British Airways' company uniform policy was, in fact, proportionate. It asserted that the dress code had been in force for a considerable period and had not caused any known issues for the applicant or any other staff member.

Overturned in Strasbourg

For the ECtHR, the fact that wearing a cross was not a mandatory religious requirement, combined with Ms Eweida's inconsistent practice of doing so, did not exclude it from the protection of Article 9 of the European Convention on Human Rights. This stood in contrast to the initial ruling of the Employment Tribunal, as evidenced in paragraph 33.4 of the judgment, where the tribunal considered testimony from other practising Christians about the significance of wearing cross necklaces. The ECtHR, however, clarified that while not every act motivated by a belief qualifies as a "manifestation" of that belief under Article 9, the connection between the act and the belief must be evaluated on a case-by-case basis. The court emphasized that Article 9, as a cornerstone of democratic society, protects not only widely recognized or mandatory religious practices but also individual expressions of belief, even if they are not universally observed or deemed compulsory within a particular faith.

ECtHR acknowledged the "Begum defence" by the UK courts, asserting that if an applicant can circumvent limitations imposed on rights granted by Article 9, such limitations would not constitute interference. However, it emphasized that this consideration should only come into play after a careful weighing of competing interests and a thorough evaluation of the proportionality of the imposed restriction.

This meant that, unlike its previous case law in similar issues, the ECtHR took a more protective stance in favour of Article 9. In the case of *Konttinen v. Finland* (App. no. 24949/94, 12 March 1996, ECLI:CE:ECHR:1996:1203DEC002494994), the Commission rejected the applicant's claim as he was not compelled to change his religious views or prevented from practising his religion because he had the freedom to resign when his work hours clashed with his religious beliefs. Similarly, in the case of Jewish Liturgical Association *Cha'are Shalom Ve Tsedek v. France* (App. no. 27417/95, 27 June 2000, ECLI:CE:ECHR:2000:0627JUD002741795), the applicants' challenge to France's ritual slaughter rules was dismissed because they could obtain meat meeting their religious standards from neighbouring Belgium.

In *Eweida* the ECtHR's perspective was that the visible display of a cross necklace was unlikely to undermine the corporate interests asserted by British Airways, considering it a discreet form of religious expression. The presence of employees from diverse religious backgrounds who wore their respective religious attire indicated that visible religious symbols also did not create issues for the airline's image or the functionality of the workplace.

The ECtHR's ultimate finding was that, especially in the absence of any encroachments on British Airways' corporate interests, domestic authorities had failed to strike a fair balance between the applicant's right to manifest her religion and the company's corporate policies by affording too much weight to the aims of the company. Thus, it was concluded that the UK authorities failed to protect Ms Eweida's right to manifest her religion, in breach of the positive obligation under Article 9.

Judges Bratza and Bjorgvinsson dissented from the majority ruling regarding Eweida. They believed the UK Court of Appeal had appropriately balanced the interests at stake in favour of British Airways. Key points included Eweida's initial compliance with the dress code for two years, her refusal to await the outcome of her internal grievance before visibly wearing her cross, British Airways' conscientious handling of the issue – including offering her temporary back-office work during the policy review – and the eventual relaxation of the policy to accommodate her. The judges also addressed the application of indirect discrimination in UK courts, noting that they required proof of "group disadvantage", which Ms Eweida could not provide (Leigh and Hambler 2014).

The aftermath of Eweida in the UK

In the same judgment, the ECtHR also addressed *Chaplin*, another case that involved an employee seeking to wear a visible cross necklace at work. In *Chaplin* , the court unanimously determined that the health and safety concerns of both staff and patients took precedence over the employee's right to wear a visible crucifix on a necklace. Although the employer's decision interfered with the employee's rights protected under Article 9 of the European Convention on

Human Rights, it was justifiable on grounds of health and safety.

Historically, individuals in cases similar to those in *Eweida* and *Chaplin* might have been expected to resign from their jobs and seek alternative employment. This was the line of reasoning used by the European Commission of Human Rights in *Ahmad v. the United Kingdom* (App. no. 8160/78, 12 March 1981) and UK courts in *Copsey v. WWB Devon Clays Ltd* [2005] EWCA Civ 932, where the court stated that both applicants were free to resign if their religious obligations conflicted with their job duties. Mr Ahmad wanted to attend Friday prayers and Mr Copsey did not want to work on Sundays.

Consistency in Strasbourg

It is often the case that in disputes involving religious garments, the ECtHR employs the doctrine of the "margin of appreciation", allowing states significant leeway in balancing competing interests under Article 9 of the European Convention on Human Rights. The *Eweida* case marked a notable exception, as the ECtHR conducted a more rigorous proportionality analysis, requiring concrete evidence of interference with the employer's interests. This approach contrasted with the court's usual deference to state authorities in such cases, as exemplified by *Ebrahimian v. France* (App. no. 64846/11, 26 November 2015, ECLI:CE:ECHR:2015:1126JUD006484611), decided just two years later.

In *Ebrahimian*, the applicant, a social assistant in a Paris hospital, had her temporary contract not renewed because she refused to remove her Islamic headscarf. The hospital cited complaints from patients and colleagues as the reason. The decision was challenged in French courts, but it was upheld, citing the French laicite principle and public service neutrality.

Unlike *Eweida*, where the court sought a concrete encroachment on British Airways, the ECtHR did not engage in such a rigorous proportionality analysis in *Ebrahimian*. Instead, it deferred to the French authorities' assessment and accepted their argument based on abstract principles, without demanding concrete evidence of disruption caused by the headscarf. This difference in approach highlights a shift from a more evidence-based, context-specific analysis

in *Eweida* to a more deferential stance towards state policies, limiting the protection of individual religious expression in the workplace.

Literature related to the main issue(s) at stake:

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