

# AMNESTY INTERNATIONAL

## PUBLIC STATEMENT

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### **United Kingdom: Judgment of the European Court of Human Rights Eweida and others v the United Kingdom**

Amnesty International welcomes the European Court of Human Rights judgment in *Eweida and others v the United Kingdom* where the Court found that Ms Eweida's right to freedom of religion or belief (article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms) was violated when she had not been permitted to wear a crucifix at work as a uniformed airline check-in staff. Her employer, British Airways, required its staff to comply with a uniform code reflecting its corporate image and identity, and at the time had not permitted staff to wear visible jewellery which did not comply with regulations. The Court ruled that the UK authorities had failed to exercise their positive obligation under article 9 and to ensure that British Airways did not restrict her right to freedom of religion or belief in a way that was incompatible with the Convention. The Court explained that a fair balance had to be struck between the manifestation of Ms Eweida's religious beliefs and the "employer's wish to project a certain corporate image". The Court found that while this aim was "undoubtedly legitimate" it was given "too much weight" by national courts.

In the same judgment the Court found that there was no violation of article 9 alone or in conjunction with article 14 (prohibition of discrimination) in the case of Shirley Chaplin, who had not been permitted to wear a cross on a chain around her neck in her work as a nurse in direct contact with patients. In that case, the court noted that the employer's reasons for asking her to remove the cross, to ensure health and safety on a hospital ward, were inherently of a greater magnitude than the reasons of corporate image which had been invoked in the case of airline staff, and could not be found to be a disproportionate interference with her right to manifest her religion.

Under international human rights law, any restrictions on the right to freedom of expression or the right to manifest one's religion or belief may be subject to only such restrictions as are demonstrably necessary and proportionate for the purpose of achieving a specified legitimate aim such as the protection of public safety, order, health, or morals or the fundamental rights and freedoms of others (article 18.3 of the International Covenant on Civil and Political Rights, ICCPR). Similarly, article 9.2 of the European Convention on Human Rights states that "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".

The Human Rights Committee, the body of independent experts established under the International Covenant on Civil and Political Rights to monitor its implementation by states, has noted that wearing religious symbols is an important component of the rights to freedom of religion and freedom of expression. It has also stressed that the right to freedom to manifest religion or belief cannot be restricted for reasons other than those stated in Article 18(3) of the ICCPR (Human Rights Committee, General Comment no. 22).

Accordingly, while welcoming the Court's finding that Nadia Eweida had suffered a violation of her rights, Amnesty International is concerned that the Court's consideration that "projecting a corporate image" might be a legitimate aim for restricting the right to freedom of religion or

belief is inconsistent with international human rights law as this aim is not mentioned by article 18(3) of the ICCPR.

Two other individual cases considered in the same judgment were those of two individuals who had been dismissed from their work as a result of their refusal on religious grounds to provide services to same-sex couples. Lillian Ladele, a public official responsible for registering births, marriages and deaths, had refused to register same-sex civil partnerships, and Gary McFarlane, a relationship counsellor, had refused to provide psycho-sexual therapy to same-sex couples. They argued that their dismissal amounted to discrimination in their enjoyment of the right to freedom of religion or belief.

The Court concluded that the aim pursued by Ms Ladele's employer was legitimate as it was "to provide a service which ... complied with the overarching policy of being an employer and a public authority wholly committed to the principle of equal opportunities and to requiring all its employees to act in a way which does not discriminate against others". Similarly, the Court noted that Mr McFarlane's employer was pursuing the aim of providing counselling and therapy services without any discrimination. The Court considered that the need to ensure the provision of services to clients without discrimination was a legitimate reason for restricting the right to freedom of religion or belief. In these two specific instances, the Court acknowledged that the restrictions were also proportionate to the aims sought by the two employers.

Amnesty International welcomes the fact that in considering these cases the Court reaffirmed the principle according to which differences in treatment based on sexual orientation require "particularly serious reasons by way of justification".<sup>1</sup>

With regard to these applicants' claims that they had faced discrimination because of their religious beliefs, Amnesty International notes that a difference of treatment based on a prohibited ground, such as religion or belief, does not amount to discrimination if it is based on an objective and reasonable justification. As the Human Rights Committee highlighted, "a difference of treatment may be considered as having an objective or reasonable justification if it is for a legitimate purpose compatible with the human rights obligations of the state" (General Comment 18). Protecting the rights of others, including their right to be free from discrimination on the ground of sexual orientation, is such a legitimate aim.

Moreover, in some occupations, some specific tasks may be essential to the fulfilment of the job requirements. An employee's refusal to perform such tasks may be considered in some instances as an objective and reasonable justification to dismiss him or her. According to Article 4 of the Framework Employment Directive (Directive 2000/43/EC) "a difference of treatment [...] shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate".

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<sup>1</sup> The Court relied on the same principles in the judgments: *Karner v. Austria*, *Smith and Grady v. the United Kingdom* and *Schalk and Kopf v. Austria*