

Roundup of reactions to this week's Euro Court rulings

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By Terry Sanderson

This week's European Court of Human Rights judgements on the so-called "religious discrimination" cases have brought to a head the long-running battle being fought by evangelical Christians to give their faith special recognition and special privileges.

Of course, they also provided the Prime Minister an opportunity to try to placate the evangelical anger at his Government for arguing at the ECtHR that the British courts had been right to reject Nadia Eweida's claims. Mr Cameron tweeted that "Delighted that principle of wearing religious symbols at work has been upheld – people shouldn't suffer discrimination due to religious beliefs."

Has he not noticed that hundreds of thousands of people wear crosses every day at work without a problem, and that discrimination on grounds of religion or belief has been illegal for years?

Cameron must have breathed a sigh of relief that at least one of the cases was upheld – despite the Government arguing to the Court that it should not have been. If all the cases had been lost, he would have been in big trouble not only from the former Archbishop of Canterbury Lord Carey and his mob, but from his own pious backbenchers who are already fulminating over his gay marriage plans.

But so successful has been the propaganda campaign conducted by the Christian lobby groups on these cases that they are now irrecoverably shrouded in a fog of confusion and misinformation.

This was reflected in the reaction of the British press, which decided to all but ignore the three key cases that were upheld and play up the one small victory obtained by Nadia Eweida, to give the impression that something significant has changed.

It hasn't.

Perhaps the most egregious of these newspaper headlines took up the whole front page of the London *Evening Standard* on Tuesday: "Workers win the right to wear a cross" – as though there was ever a time when workers didn't have a right to wear a cross. Nor did the paper mention that the "right to wear a cross" at work is still not absolute.

The *Daily Telegraph* — which has, of course, been one of the chief allies of the evangelical groups in spreading their exaggerations and misinformation — continued its silly campaign with hysterical claims that the cases dismissed by the Court meant that Christians are now "legally excluded from certain jobs".

An article in the paper quoted solicitor Paul Lambdin, a partner at Stevens & Bolton, who said: "It appears that those Christians, Muslims and others who disagree with same sex marriage and/or civil partnerships will be excluded from certain jobs. These cases demonstrate the difficulty of divorcing a belief from its practice. The practical effect is that Miss Ladele, Mr McFarlane and

others with similar religious convictions may be lawfully excluded from certain jobs."

Of course, no-one can be "excluded" from a job on the basis of their religion alone. The equality law that they despise so much specifically protects Christians from such prejudiced treatment. It would have been much more accurate for him to write "some Christians will exclude themselves from taking such jobs because they don't want to carry out all of the duties involved", but that would have contradicted the victim narrative the *Telegraph* has so assiduously fostered.

Ironically, the only people who can be "lawfully excluded" from jobs are those who want to work in an organisation with a religious ethos (such as a state-funded "faith school") and don't happen to be of the 'right' religion. Christians won't hesitate to keep out those they don't approve of.

Other papers were rather more even-handed. In the *Independent*, Jerome Taylor wrote:

Those with theologically inspired opposition to same-sex relationships are allowed to be anti-gay. They can disapprove of same-sex relationships, publicly speak out against them and say gays are damned to eternal hellfire if they like.

"But where the courts are often asked to draw a line is when a religious person directly impinges the rights of a gay person. It's a classic example of the liberalism espoused by J S Mill. Generally, we should be allowed to do, say and believe what we like – so long as what we do doesn't harm (and that does not include causing offence) to others.

By backing Britain's legal system in three out of the four cases the Court has effectively reinforced a point it has made many times before. But it's an important one to restate again and again: religious rights don't trump rights of others unless there is a very good reason. A balance has to be struck and in these cases, the Court ruled, the British courts had done the right thing.

For the Christian lobby, who have portrayed these legal fights as part of a wider battle to counter faith being marginalised and persecuted, it's a loss. What the European Court of Human Rights hasn't done is give Christians – or any other religion – carte blanche to discriminate against others on the grounds of belief. And it means future claims where Christians have discriminated against gay men and women when offering services (such as a B&B room) and then pleaded religious freedom are less likely to succeed.

The Eweida "victory" (which blogger Adam Wagner referred to it as "a whiff of tokenism") was almost cancelled out by the rejection of nurse Chaplin's crucifix case on health and safety grounds.

Jerome Taylor offered this crumb of comfort to the defeated Christians – but they may find it hard to swallow:

"The legal point that competing rights don't automatically trump each other might protect Christians one day. After all, if a gay B&B owner refuses to accommodate a Christian because of their beliefs; or a gay person refuses to marry a Christian couple; or provide them relationship counselling – there's a strong chance they'd win their case in the courts for the same reasons."

The *Guardian* quoted Claire Dawson, at the solicitors Slater & Gordon. She said:

The court has recognised the right of individuals to have some accommodation made for the expression of their religious beliefs in the workplace in a way that is reasonable and does not interfere with the rights of others. This decision seeks to strike a fair balance between the right to express religious belief, and the rights of others in the workplace.

What this decision has told us is that employers are not obliged to make those accommodations in circumstances where they may conflict with protecting the rights of others, whether that be health and safety or equality. Employers will be obliged in many cases to accommodate reasonable requests relating to uniform.

It is important to remember that discriminating against a person purely because of their religion, as opposed to the way they wish to express certain religious beliefs, is completely prohibited by UK law. This decision does not change that."

The human resources *HRZone* website thought that although the judgment brought a little more clarity, "new legislation may be still be required to illuminate the situation further."

The site quoted Daniel Peyton, an employer law partner at law firm, McGuireWoods, as saying:

"Looking at the facts of the two crucifix cases, the ECHR's decision seems quite straightforward and comprehensible, whether one agrees with the result or not ie religious freedom trumps corporate image, while health and safety trumps religious freedom."

On the issues of the conflicting rights of gay people and religious people Mr Peyton said:

"The judgement indicated that both were legitimate rights and the UK court system had wide discretion in deciding which one should prevail. As a result, there had been no breach to the individual's right to religious freedom as the discrimination claim trumped it in this instance."

But Peyton warned that this scenario meant such decisions would in future be "subjective, making it almost impossible for employers, particularly companies operating in different global jurisdictions, to make an objective decision".

As a result, the legislature may be forced to step in with regulations regarding which rights have greater weight in which circumstances, he said.

Louise Taft, senior solicitor at law firm, Prolegal, meanwhile, issued a warning note. She said the most important legal point made by the Court was that it no longer appeared necessary for "employees to show anyone else could be disadvantaged by a policy, if their religious convictions mean they cannot comply" (which was why Eweida lost her case in the UK).

As a result, Taft warned that the judgement could "significantly widen the pool of potential claimants for discrimination" and was, therefore, a development of which employers "must take careful note".

The *Guardian* carried a piece from lawyer Joshua Rozenberg who drew attention to the opinion of the two dissenting judges — from Montenegro and Malta — in the Ladele case.

Recalling that civil partnership ceremonies did not exist in 2002 when Ladele became a registrar in London, the judges found that "a combination of back-stabbing by her colleagues and the blinkered political correctness of the Borough of Islington (which clearly favoured 'gay rights' over fundamental human rights) eventually led to her dismissal.

"Minority judgments are written by the judges themselves, unlike the majority ruling which is compiled by officials. The court itself would never have said that gay rights were not human rights."

The dissenting judges also likened Ms Ladele to conscientious objectors of the past who suffered "at the hands of the Spanish Inquisition or a Nazi firing squad".

Mr Rozenberg pointed out that the main reason Eweida had won her case was that BA had backed down so quickly and changed its uniform policy to accommodate her demands, thereby demonstrating that there had been no significant problem with the uniform policy that couldn't have been accommodated.

Rozenberg ultimately thought that the balance had shifted slightly in favour of the Christian activists.

At the most basic level, the ruling shows that there is no easy way of balancing the rights of gay people and the rights of Christians: it all depends on the circumstances. In one sense, the balance is shifting towards Christians: as far as I can see, Eweida's victory is the first defeat for the UK in a case brought under article 9 of the human rights convention, the right to freedom of thought, conscience and religion.

This judgment also strengthens the protection provided by article 9. In the past, the court has held that there was no breach of an employee's religious freedom — from, say, having to work on the Sabbath — if the worker could resign and find another job. That was something of a cop-out. Now, says the court, "the better approach would be to weigh that possibility in the overall balance when considering whether or not the restriction was proportionate". Judge Bratza, the court's British former president, went further and said that earlier decisions to the contrary should not be followed.

In his analysis of the rulings, Robert Pigott, the BBC's religious affairs correspondent, finished by opining that: "The European Court of Human Rights has left a milestone on the road to a secular society."

We hope he is right, but the true significance of these rulings will not be known for some time yet, and they only become binding after three months, or the outcome or refusal of an appeal. Christian Concern is already talking of appealing them to the Grand Chamber of the European Court. The Grand Chamber accepts very few cases for consideration. Let's hope we are not going to have to waste even more time and money on this.

Hopefully, too, more sensible Christians will try to put a brake on these extremists who are bringing their faith into disrepute. As Ruth Gledhill, the *Times* religion correspondent wrote:

One of the more curious features of the Christian faith is how, in the earliest years of the great Christian martyrs, it thrived under persecution. Britain is today hearing increasingly vociferous and at times vitriolic claims by Church leaders that followers of the faith are being persecuted by employers, liberals, the media and even by the Government with its gay marriage proposals. But it does a great injustice to the early Church martyrs to compare what they suffered to what is being served up today to Christians who believe they have particular knowledge of who is less and more equal in the mind of God.

Increasingly, the term Christian itself is in danger of being associated with intolerance, bigotry and homophobia. None can deny that Christians are being truly persecuted in parts of the Middle East, Africa and other trouble spots in the wider global sphere. But in Britain, surely, if any groups are being truly persecuted these would include, among others, homosexuals, long denied the right to marry, and the right to have their love blessed in the established Church and other faith groups.

In the same newspaper, Alan Wilson, the bishop of Buckingham, took his fellow British Christians to task for their "overblown" claims of persecution. He wrote:

The great human rights charters were an attempt to find a new basis for civilisation after what some saw as the failure of Christendom to prevent two world wars. They reflect basic human values. The lesson of yesterday is that the only ground on which a decent world can be built is tolerance and respect for the rights of all — religious, secular, gay or straight.

It's time to tone down talk about persecution here, so that we do not trivialise the harsh realities of persecution overseas.

We'll say amen to that.

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Terry Sanderson was the former president of the National Secular Society. The views expressed in our blogs are those of the author and may not necessarily represent the views of the NSS.

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