

Overview of the legal cases about freedom of religion



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European Court of Justice (ECJ)

- Placed in Luxembourg
- Dealing with:
 - interpretation of EU law and thus ensuring its uniform application in all EU countries
 - resolving disputes between national governments and the EU institutions
- Who else may contact it? Individuals, businesses or organizations
- Formulation of 2 principles about European law: direct effect and supremacy

European Court of Human rights

- Placed in Strasbourg
- Supranational or international court established by the European Convention on Human Rights
- individuals, group of individuals, non-governmental organisations, state X other state
- Conditions: usually complaint only after there is no possibility of solving the case on national level
- Both courts are superior to national courts, they also shape national law by their decisions

Legal Bases I. (ECJ)

- European law = basic Treaties (TEU, TFEU) and its Protocols, directives, regulations, etc.
- **Basic principles of EU:**
 - **Preamble:** freedom, democracy, human rights
 - **TFEU, Article 19:** fight against discrimination based on gender, race or ethnic origins, religion or beliefs, age or sexual orientation.
 - **Charter of Fundamental Rights** in the Treaty of Lisbon – principles of dignity, freedom, equality and solidarity
 - **Article 10:** Freedom of thought, conscience and religious faith

Legal Bases II. (ECHR)

- **European Convention of Human rights**
- **Article 9:** *„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.“*
- *„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.“*
- A model of state-church(es) relation not compatible with Article 9 rights of religious freedom would make a state unfit for membership in the Council of Europe and for being a contracting party to the Convention

What were we looking for?

- (no)discrimination based on freedom of religion
- (no)violation of freedom of religion
- Cases dealing with religious symbols
- Results (ECHR):
 - 15 cases about freedom of religion
 - 17 cases about religious symbols

Freedom of religion - case 1 (ECJ)

Prais vs. Council (1976)

- Mrs. Prais applied for the job at Council, she was accepted and received the date of the test. In response she wrote to the Council that she was Jewish faith and that the date was Jewish holiday so she was not supposed to travel or write.
- Council denied her request for another date -> she submitted complaint under Article 90 (2) of the Staff Regulation which Council denied.

- Then: application to the ECJ, where she asked to annul the decision of rejecting her request, complaint and she also wanted to annul the results of competition
- **Results:** principles of equality for all of the applicants = same conditions; The applicant could inform the authorities of dates which are suitable for him/her in the applications, but Mrs. Prais did so after she received the date of the tests
- => **no discrimination based on faith**

Freedom of religion - case 2 (ECHR)

Francesco Sessa vs. Italy (2012)

- F. Sessa is a Jewish faith and a lawyer. Replacement of the judge in one of his case invited the parties on two dates which are according to Sessa corresponding with Jewish holidays.
- application for an adjournment denied
- Then: complaint for violation of the freedom of religion

- **Results: no violation** of the law, even the Article 9, because such interference, prescribed by law, was **justified** on grounds of the protection of the rights and freedoms of others – and in particular the **public's right to the proper administration of justice**

Religious symbols - case 3 (ECHR)

Eweida and other against UK (2013)

- Eweida wore a cross on a chain around her neck in her work. She worked in British Airways and this company banned wearing jewelry and religious symbols.
- On the other hand British Airways were a private company and this ban couldn't be directly counted to Great Britain as a member state.
- ECHR didn't see a problem in the absence of legislative which solved wearing religious symbols in work. This law was protected.

- ECHR tested proportionality measures in this case. Courts could have in this case space for discretion. ECHR told that national courts didn't valorize this case fairly and they exceeded this space.
- Courts gave higher importance to company than law on freedom religious belief. **British state authorities violated article 9.**

Religious symbols - case 4 (ECHR)

Dahlab against Switzerland (2001)

- Mrs. Dahlab made conversion to Islam. She was a teacher and she decided to wear Islamic scarf in teaching. Switzerland state authorities banned her to wear scarf.
- Mrs. Dahlab handled her situation in ECHR. She protested that ban on wearing scarf in school violated her freedom to manifest her religious beliefs.
- Dahlab argued that ban on wearing scarf was indirect discrimination from reason of sex. It is codified in articles 9 and 14 Convention on Human Rights

- ECHR automatically made test justify intervention. Ban on wearing scarf was legitimate aim of protection laws and freedoms others, public safety and public order.
- In this case teachers are persons who work in state name and have to hold religious neutrality. This ban was in accordance with the principle of proportionality and therefore was justifiable.
- ECHR refused Dauhab argument and told that “Man in the same situation would carry same treatment as woman.” We can’t speak about discrimination from reason of sex.
- **Switzerland didn’t violate article 9.**

Conclusion

- Europe against other world.
- Good protection of religious freedom in Europe.
- State sovereignty was lost in favour law.
- Better protection human rights is in European Court of Human right in Strasburg.
- Every case is different.

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