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ЮРИДИЧНІ НАУКИ

# EQUALITY IN THE ASPECT OF RELIGIOUS FREEDOM IN LABOR RELATIONS

***Summary.*** *The article is analysed possibilities of employees to wear visible religious symbols in their workplace, refusion of employee to perform his/her work duties on the basis of religious beliefs, exemption of employee from performing his labor duties for the solemnization of religious rites.*

*The author analyses wearing visible religious symbols in the workplace based on the European Court of Human Rights case Eweida and Others v. the United Kingdom. In this case ECHR judged in when the prohibition of wearing religious symbols in the workplace will be unlawful and in which situation such a prohibition will be justified.*

*The next article's part is concerned with influence of religious beliefs on work duties. To give an answer on this issue the author uses the Ukrainian and the English case.*

*After that the author explains the refusal of the employee to release him from performing labor duties for the implementation of religious rites should be not only adequately reasoned, but also clearly justified.*

*The last question that author rises is: does not it violate the legal equality of religious associations to consolidate the Christmas in Ukraine on the Gregorian calendar as a public holiday?*

*Summing up, the author states the problem of legal equality in the aspect of religious freedom in the field of labor relations should be solved both on the national and on international level.*

***Key words:*** *legal equality, religious freedom, labor relations, religious symbols in the workplace.*

**Statement of the problem.** Issues of legal equality that arise in the context of religious freedom in the process of labor relations is a widespread problem. They also arise from the requirements, which are set for candidates for vacancies, when the labor relations have not yet begun, and last till the end of the labor relations between the employee and the employer.

There have always been many religious communities since the beginning of mankind. Each of them was concentrated on a certain territory, but progress is ongoing and with the development of telecommunications, means of transportation and other factors religion is being spread throughout the world. Globalization has facilitated not only goods and services transfer, but also labor force began to move.

**Analysis of recent researches and publications.** The research of this problem was made by well-known scientists as D. Vovk, L. Vickers, A. Bradney, Sir T. Etherton, R. Trigg and others.

**Formulation purposes of article (problem).** To find better working and living conditions, people began to move from their home countries to another, where traditions and culture are distinct as well as its religion.

A person needs opportunities to earn for a living by working. The right to work is an important socio-economic right of a person. Thus, religious freedom is an important personal right.

Even if the State is secular and ideologically as neutral as possible, this does not mean that it must be indifferent to the problems of religion and in no way resolve them. Indeed, the State can have a historical and cultural connection with a particular religion, but this should not be an argument in making decisions and affect somehow its activities in general.

That is why in my work I want to consider some issues of legal equality in aspects of religious freedom in labor relations.

**The main material. The first question which comes to my mind is whether employees can wear visible religious symbols in their workplace?**

The answer to this question is not unambiguous, based on the following:

In accordance with part 1 of Article 9 of European convention of human rights:

1. 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.

In the judgment in case Eweida and Others v. the United Kingdom, ECHR stated the following:

The first applicant

11. ... Of the items of clothing considered by British Airways to be mandatory in certain religions and which could not be concealed under the uniform, authorization was given to male Sikh employees to wear a dark blue or white turban and to display the Sikh bracelet in summer if they obtained authorization to wear a shortsleeved shirt. Female Muslim ground staff members were authorized to wear hijab (headscarves) in British Airways approved colours.

She decided to start wearing the cross openly, as a sign of her commitment to her faith. But employer refused.

13. ... on 19 January 2007 to adopt a new policy. With effect from 1 February 2007, the display of religious and charity symbols was permitted where authorised. Certain symbols, such as the cross and the star of David, were given immediate authorisation...

94. ...Nonetheless, the Court has reached the conclusion in the present case that a fair balance was not struck. On one side of the scales was Ms Eweida's desire to manifest her religious belief. As previously noted, this is a fundamental right: because a healthy democratic society needs to tolerate and sustain pluralism and diversity... On the other side of the scales was the employer's wish to project a certain corporate image. The Court considers that, while this aim was undoubtedly legitimate, the domestic courts accorded it too much weight. Ms Eweida's cross was discreet and cannot have detracted from her professional appearance. There was no evidence that the wearing of other, previously authorized, items of religious clothing, such as turbans and hijabs, by other employees, had any negative impact on British Airways' brand or image. Moreover, the fact that the company was able to amend the uniform code to allow for the visible wearing of religious symbolic jewellery demonstrates that the earlier prohibition was not of crucial importance.

However, according to part 2 of Article 9 of European convention of human rights, mentioned rule is not absolute:

2. 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.

In this case (Eweida and Others v. the United Kingdom)

The second applicant

The controversial position of the ECHR was taken by Chaplin (a nurse at the State Hospital), who also wanted to openly demonstrate his attitude to religion, through the cross. The hospital refused wearing any jewellery or religious symbols, for reasons of hygiene and safety. However, the hospital made an exception to Muslim workers. They could cover their hair with a hijab.

99. The Court considers that, as in Ms Eweida's case, the importance for the second applicant of being permitted to manifest her religion by wearing her cross visibly must weigh 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 of a greater magnitude than that which applied in respect of Ms Eweida. Moreover, this is a field where the domestic authorities must be allowed a wide margin of appreciation. The hospital managers were better placed to make decisions about clinical safety than a court, particularly an international court which has heard no direct evidence.

A similar approach, based on balancing competing interests can be seen in the case of Azmi v Kirklees Metropolitan Borough Council may usefully illustrate how a dress code can be justified as a proportionate means to achieve a legitimate aim. Azmi was a teaching assistant who was dismissed for refusing her employer's instruction to remove her niqab when assisting in class. She was unsuccessful in her claim of direct and indirect discrimination. The Court accepted that the refusal to allow a face covering put Azmi at a particular disadvantage when compared with others. However the Court held that the prima facie indirect discrimination was justified. The restriction on wearing the niqab was proportionate given the need to uphold the interests of the children in having the best possible education [1, p. 110–111].

One can conclude that there should be a balance of interests everywhere, as evidenced by the practice of the ECtHR. On the one hand, when the restriction of religious freedom is clearly discriminatory and unfounded, in particular when equality of all religions is not ensured, courts pay attention to it and protect the right of a person. On the other hand, this right may be limited when it is necessary to protect other rights. In this case, there is no neglection of this right, and such a restriction is justified.

Judgment of the Court (Grand Chamber) of 14 March 2017 (request for a preliminary ruling from the Hof van Cassatie — Belgium) — Samira Achbita v G4S Secure Solutions NV (Case C-157/15).

This is the first verdict of the highest court in the EU as the demonstration of religious symbols at the workplace. An appeal can not be made.

A resident of France was fired from the IT company after the complaint of one of the clients about her hijab. A Muslim from Belgium worked in the security

company G4S Secure Solutions, where the wearing of any religious or political symbols was forbidden by the regulations. To go to work without hijab women refused.

The conclusion of the court:

- Article 2(2)(a) of Directive 2000/78 must be interpreted as meaning that the prohibition on wearing an Islamic headscarf, which arises from an internal rule of a private undertaking prohibiting the visible wearing of any political, philosophical or religious sign in the workplace, does not constitute direct discrimination based on religion or belief within the meaning of that directive.
- By contrast, such an internal rule of a private undertaking may constitute indirect discrimination within the meaning of Article 2(2)(b) of Directive 2000/78 if it is established that the apparently neutral obligation it imposes results, in fact, in persons adhering to a particular religion or belief being put at a particular disadvantage, unless it is objectively justified by a legitimate aim, such as the pursuit by the employer, in its relations with its customers, of a policy of political, philosophical and religious neutrality, and the means of achieving that aim are appropriate and necessary, which it is for the referring court to ascertain.

According to the facts above we can make a conclusion that the right to express religious beliefs, in particular the wearing of religious symbols, is not absolute, and may be limited in the cases specified in part 2 of Article 9 of the Convention (as is in the case with the practice of the ECHR).

That is, the EU Court has set criteria for limiting this right. It may be limited, in particular, when it is necessary to ensure religious neutrality.

A number of the high profile cases relating to religion and belief have involved dress codes, and dress codes are a common way for religion and belief to be manifested in the wider environment. Nonetheless, it seems from the EHRC (the UK's Equality and Human Rights Commission) call for evidence and other research that the law in this regard is reasonably well understood. Although cases still arise at times, in the main, few major issues arise for religious employees or employers with regard to uniforms. Elsewhere in Europe, restrictions on religious dress at work are widely imposed, particularly in the public sector [1, p. 111].

In Ukraine, as in some other countries of the world, this issue is not regulated. ECHR in the case of Eweida and Others v. the United Kingdom stressed the following:

47. An analysis of the law and practice relating to the wearing of religious symbols at work across twenty-six Council of Europe Contracting States demonstrates that in the majority of States the wearing of religious clothing and/or religious symbols in the workplace is unregulated. In three States, namely Ukraine, Turkey and some cantons of Switzerland, the wearing of religious clothing and/or religious symbols for civil servants and other public sector employees is prohibited, but in principle it is allowed to employees of private companies.

However, there is no clear rule that would prohibit or permit the wearing of religious symbols by state employees. Therefore, it is more likely to be a practice than a rule of a law.

In the UK religious requirements are routinely accommodated in terms of uniforms and dress codes at work, and it would seem that a reasonable balance has been struck between the interests of staff who wish to manifest religion at work, and the business needs of the employer. Where there is no good reason to the contrary, staff may wear religious symbols: where employers can provide good reasons, such as health and safety requirements or the requirements of effective service delivery, for restrictions on religious symbols at work, such restrictions are likely to be proportionate [1, p. 111].

**The next question that arises is whether a person can refuse to perform his/her work duties on the basis of religious beliefs?**

Balancing work duties of the employee and his religious beliefs has became the subject of consideration in the case when on religious grounds an actress of Dnipropetrovsk Academic Theater of Opera and Ballet refused to perform the role of "She-devil" in the musical tale "Ai, da Balda" based on the play of Russian distinguished poet Alexander Pushkin. The refusal of the actress, which she declared on December 9, 2006, was motivated by the fact that the role of she-devil contradicts her religion. On January 17, 2007, the employer imposed a disciplinary punishment (admonition) on the actress, against which she appealed in court.

With the decision of the Dnipropetrovsk district court as of 25.05.2007 the suit was dismissed as long as the applicant's religious beliefs were not grounds for refusing to perform work duties. The Court of Appeal of Dnipropetrovsk Oblast revoked this decision (ruling of September 12, 2007) because the disciplinary sanction on an employee was imposed with the violation of the one-month period provided for in Article 148 of the Code of Labor Laws of Ukraine (hereinafter — the Labor Code). The Supreme Court of Ukraine (hereinafter — the SCU) refused to review this judgment of the Court of Appeal for the cassation appeal of the theater regarding it as the meritless suit (the decision of the Supreme Court of Ukraine of 16.01.2008 in the case No. 6–25553s07). The decisions of the higher courts are sensible, but, so to speak, too succinct in terms of motivation. The employer, in fact, imposed a sanction with the violation of the term, which is the reason for remission of the admonition. However, the Court of Appeal and the SCU did not assess the arguments for the possibility of refusing to perform the role of she-devil due to the religious beliefs of the actress, which was important for the development of judicial practice in this category of cases.

The mentioned issues are rather complicated, and not only in Ukrainian law. With regard to English law, Sir Terence Yeserton writes: "One of the most complex and controversial areas of our law today is the resolution of disputes arising from the conflict between, on the one hand, the religious beliefs of the individual and, on the other hand, the actions required of him/her, irrespective of whether this requirement is put forward by the authority, private employer or another individual ".

The Parliamentary Assembly of the Council of Europe in Resolution No. 2036 dated January 29, 2015 "Tackling intolerance and discrimination in Europe with a special focus on Christians" insists on the necessity to maintain freedom of conscience in the workplace while providing access to services that are provided for by law and the lack of discrimination of other persons. In this situation, the ECHR draws attention to the voluntary nature of the choice of place of work and the opportunity to leave it. Nicholas Bratz, a former ECHR president, commenting on cases of wearing religious symbols during one's professional activity, notes that: "The institutions formed on the basis of the ECHR traditionally adhere to the notion that there is no interference with the religion or the expression of views if the person voluntarily agrees to hold a posts where there is a restriction on free exercise of religion and where an employee may resign in order to comply with the religious ceremonies he or she wishes to. "

Significant is the nature of professional activity. Acting work may require the performance of very different roles and reincarnation of both heroes and scammers, both angels and demons. A person voluntarily agreeing to this work must understand that it may fall to play a character whose ethical considerations or actions adverse their religion or worldview. It cannot be said that it implies a total disdain of the artist's beliefs, and therefore in the theaters there may be an institution of consent for a role [2].

Another example is case of Ladele v Islington Borough Council (UK). Ladele sought to be excused from carrying out civil partnerships on the basis of her religious beliefs, but permission was refused. The Court of Appeal held that the refusal to accommodate Ladele's request to be exempt from carrying out civil partnerships was justified as the employer was entitled to rely on its policy of requiring all staff to offer services to all service users regardless of sexual orientation [1, p. 113].

So, when a person signs an employment contract, she deliberately settles for this act and understands the essence of her work duties. Therefore, the refusal to perform them for religious or even other reasons is nothing more than a gross violation of labor discipline. And if the appropriate sanctions against this person are applied, this will not be an encroachment on her religious freedom; it will be a guarantee of fulfillment of labor obligations.

**The third important question: is it possible for an employee to be exempted from performing his labor duties for the solemnization of religious rites?**

The refusal by an employer of a request for time off for religious observance will put religious individuals at a disadvantage compared to those who do not need time off, and so any such refusal will need to be justified, by taking the balancing approach discussed above. The balancing approach can be seen in the following two cases, where different outcomes were reached, despite the initial similarities of the cases, illustrating how fine a balance is sometimes required. The first case involved a Jehovah's Witness, who was refused permission for time off work on Sundays, making it impossible for her to attend worship. Her claim of discrimination on grounds of religion and belief was upheld, the tribunal deciding that the requirement to work on Sundays was not justified because there were other employees who could have covered the Sunday shift without difficulty. In contrast, in Mba v London Borough of Merton a care worker who was also obliged by her employer to work on Sundays was unsuccessful in claiming religious discrimination. The Court was unanimous in deciding that the refusal to allow Mba time off on the Sunday was, on its facts, a proportionate response by the employer. The employer had endeavoured to arrange the rosters so as to allow her not to work on Sundays while it was possible to do so, and this had been achieved in for nearly two years. However, the management needed workers available every day, and ultimately there was no viable or practical alternative but to require her to be available to work on Sundays [1, p. 111–112].

In this case, the balance of interests should also be taken into account. That is, the refusal of the employee to release him from performing labor duties for the implementation of religious rites should be not only adequately reasoned, but also clearly justified.

Moreover, the employer must organize the release of employees from performing labor duties for the conduct of religious rituals in such a way that there would not be any discrimination on a religious basis. An employer can not set a single day for all employees to take their religious rites because it can discriminate a certain religion.

**And the fourth question is: does not it violate the legal equality of religious associations to consolidate the Christmas in Ukraine on the Gregorian calendar as a public holiday?**

D. O. Vovk notes that the equality of religious associations before the law arising from the neutrality of the state in matters of faith does not mean "equality before the history and culture of the people, as well as the interests of the majority of citizens". The state can approach its relations with different churches in different ways, when it refrains from interfering in interchurch dialogue. The type of state-church relations directly depends on the significance of one or another

religious denomination in public life, as in the past, and today. It is fully integrated into the understanding of the church as an institution of civil society, as in the process of carrying out its activities, the state always listens to the opinion of the most influential subjects of social integration: the most powerful political parties, public and religious organizations. Historical examples and the confessional map of Ukraine make it possible to state that the interaction between the state and the Christian, especially Orthodox churches, was the closest. Given this, the special status in the Ukrainian legislation of Christianity in general and Orthodoxy in particular is not a violation of the rights of other religious communities. Among the manifestations of such status can be singled out: the preamble provision of the Constitution of Ukraine awareness of responsibility before God is formulated precisely on the basis of the Christian tradition; recognition of days off Orthodox holidays of Christ, Easter, Trinity (Article 73 of the Labor Code of Ukraine) [3, p. 183–184].

According to the Law of Ukraine dated November 16, 2017 No. 2211-VIII "On Amendments to Article 73 of the Labor Code of Ukraine on Holidays and Open Days" to the specified religious holidays, during which work is not carried out, Catholic Christmas, which is celebrated on December 25, was added [4].

Also, according to Part 2 of Art. 73 of the Labor Code on the representation of religious communities of other (non-Orthodox) denominations registered in Ukraine, the authorities of enterprises, agencies and organizations provides individuals, who embraces the definite religions, up to three days of rest during the year to celebrate their major holidays with working these days out [5].

Indeed, the closest connection Ukraine has with the Orthodox Church, and the consolidation of Orthodox holidays did not violate the rights of other religious associations. This was justified and historically formed. But were the rights of other religious associations violated by these changes? The legislation provides for the possibility of establishing additional rest days to celebrate their religious holidays, but then these days must be worked out.

On the one hand, the establishment of the December 25th as a day off is justified, since in Ukraine about 30% of all religious organizations celebrate Christmas on this day, and in the whole world, most Christian churches celebrate this holiday on December 25th, even the Orthodox churches (in particular, Bulgaria and Greece). That is, it was done in order to safeguard for the right of a large part of the population of Ukraine to celebrate Christmas on the day that corresponds to their religious and ideological beliefs. But on the other hand, it would be advisable to allow representatives of other religious associations not to work that extra day off to celebrate their great holidays, since the consolidation of all these holidays as state, and not working days, will affect the state's economy.

**Insight from this study and perspectives for further researches in this direction.** So, in my opinion, while considering some problems of legal equality in the aspect of religious freedom in the field of labor relations, it should be noted that these problems need to be resolved not only in their immediate appearance but also they require the development of effective and improving of existing mechanisms of preventive character both on the national and on international level.

In Ukraine, there is no fundamental contradiction between the state and religious associations, but the possibility of their emergence in the future cannot be ruled out. In order to prevent various conflicts it would be advisable to hold various meetings, round tables, conferences with representatives of different confessions (both national, and international), to organize public discussions to ascertain the attitude of society towards religion etc.

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