individual in question was or appeared to be genuine. Though it was ultimately for the court or tribunal to make the final decision, it was admissible opinion evidence which was entitled to respect and the exercise should not start with any predisposition to reject the evidence because it did not fit in with some view formed as to the credibility of the appellant. The evidence should be considered on its merits and without any preconception – based upon an assessment of the individual appellants – that it was suspect or otherwise fell to be disregarded.

The Inner House disagreed with the conclusion of the UT that, in each case, there had been no error of law in the decision of the FTT and no lack of adequate reasoning. In the case of TF, the FTT judge had failed to grapple with the problem of there being independent evidence supporting the appellant's claim to have converted to Christianity and the fact that, if it was just a pretence, he managed to pull the wool over the eyes of those who were in the best position to assess his sincerity. The FTT and the UT had erred in law in both cases, had failed properly to take account of the independent evidence relating to the genuineness of the appellants' conversions and had failed to give adequate reasons for disregarding that evidence. The two appeals were allowed, the decisions of the FTT and the UT were set aside, and the appeals against the decisions of the Secretary of State were remitted to a differently constituted FTT for a rehearing in each case. The issue of expenses was reserved. [Frank Cranmer]

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JQ v IR

Grand Chamber, Court of Justice of the European Union: Lenaerts P, Tizzano V-P, Biltgen, Rapporteur and 12 others, 11 September 2018
[2018] EUECJ C-68/17
Roman Catholicism – remarriage – occupational requirement

JQ, a Roman Catholic, was Head of Internal Medicine at a hospital managed by IR, a limited company under the supervision of the Archbishop of Cologne. He divorced his first wife and remarried in a civil ceremony; when IR discovered that JQ's first marriage had not been annulled, it sacked him on the grounds that he had infringed his duty of loyalty under his employment contract. He challenged his dismissal on the grounds that a non-Roman Catholic employee would not have been treated in the same way, and the German Federal Labour Court asked the CJEU for an advisory opinion as to the application of the Equal Treatment Directive.

The Grand Chamber ruled that the decision of a church or other organisation with an ethos based on religion or belief that manages a hospital to require its

employees performing managerial duties to act in good faith and behave in a way that differs depending on the faith or lack of faith of the individual employee was, in principle, reviewable by the national courts. It was therefore for the national court to satisfy itself that any religion or belief requirement was genuine, legitimate and justified in the light of the ethos in question. However, the Grand Chamber added that, although it was for the Federal Labour Court to judge the instant case on the facts, it did not believe that adherence to the Roman Catholic Church's teaching on marriage was necessary for the promotion of IR's ethos because of the importance of JQ's role in the hospital: giving medical advice and care and managing the Internal Medicine Department. In the Grand Chamber's view, therefore, it did not appear to be a genuine occupational requirement for his post.

The Grand Chamber replied to the Federal Labour Court as follows:

1. The second subparagraph of Article 4(2) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning:

– first, that a church or other organisation the ethos of which is based on religion or belief and which manages a hospital in the form of a private limited company cannot decide to subject its employees performing managerial duties to a requirement to act in good faith and with loyalty to that ethos that differs according to the faith or lack of faith of such employees, without that decision being subject, where appropriate, to effective judicial review to ensure that it fulfils the criteria laid down in Article 4(2) of that directive; and
– second, that a difference of treatment, as regards a requirement to act in good faith and with loyalty to that ethos, between employees in managerial positions according to the faith or lack of faith of those employees is consistent with that directive only if, bearing in mind the nature of the occupational activities concerned or the context in which they are carried out, the religion or belief constitutes an occupational requirement that is genuine, legitimate and justified in the light of the ethos of the church or organisation concerned and is consistent with the principle of proportionality, which is a matter to be determined by the national courts.

2. A national court hearing a dispute between two individuals is obliged, where it is not possible for it to interpret the applicable national law in a manner that is consistent with Article 4(2) of Directive 2000/78, to provide, within the limits of its jurisdiction, the legal protection which individuals derive from the general principles of EU law, such as the principle prohibiting discrimination on grounds of religion or belief, now enshrined in Article 21 of the Charter of Fundamental Rights of

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the European Union, and to guarantee the full effectiveness of the rights that flow from those principles, by disapplying, if need be, any contrary provision of national law. [Frank Cranmer]

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Lachiri v Belgium

European Court of Human Rights: Spano P, Lemmens, Karakaş, Vučinić, Griţco, Kjølbro and Mourou-Vikström JJ, 18 September 2018
[2018] ECHR 727
Hijab – court appearance – ECHR

Mrs Lachiri's brother had been assaulted and died of his wounds. His attacker was committed for trial on charges of assault and wounding resulting in unintentional death. She and other members of her family appealed against that decision to the Chamber of Indictments of the Brussels Court of Appeal, arguing that he should be tried for murder. On the day of the hearing, the court usher told her that she could not enter the hearing room unless she removed her hijab, the President of the Chamber of Indictments having so decided under Article 759 of the Judicial Code. Mrs Lachiri refused to comply and did not attend the hearing. Relying on Article 9 ECHR (right to freedom of thought, conscience and religion), she complained that her exclusion infringed her freedom to manifest her religion under that Article.

The Second Section noted that the hijab was a head covering rather than, as in *SAS v France* App no 43835/11 (ECtHR, 1 July 2014), a face veil. As to whether the impugned restriction was proportionate to the aim pursued and whether the reasons adduced by the national authorities were relevant and sufficient, the court noted that the applicant was a civil party, with other family members, in the context of criminal proceedings following the death of her brother. The facts of the case did not suggest that she had behaved at the courtroom entrance in a way that was disrespectful or a threat to the smooth running of the hearing. The need for the restriction at issue had not been established and the infringement of her Convention rights was not justified in a democratic society. Accordingly, there had been a violation of Article 9. [Frank Cranmer]

See above, pp 48–53, for a longer comment on this case.

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