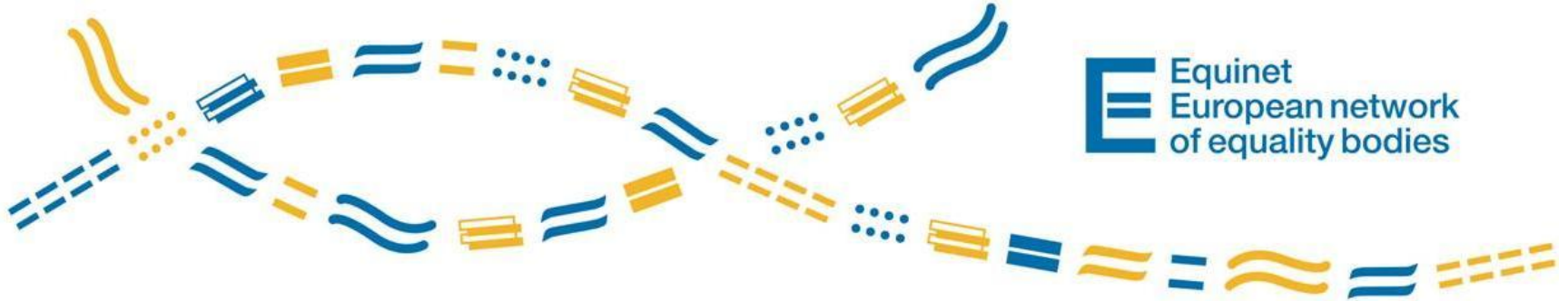


# A QUESTION OF FAITH: RELIGION AND BELIEF IN EUROPE

Tamás Kádár

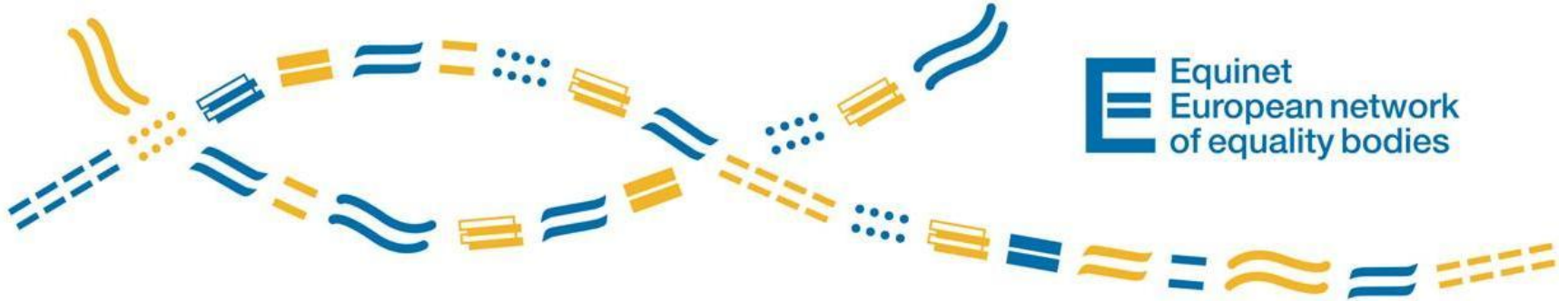
Policy Officer / Acting Director

Equinet – European Network of Equality Bodies



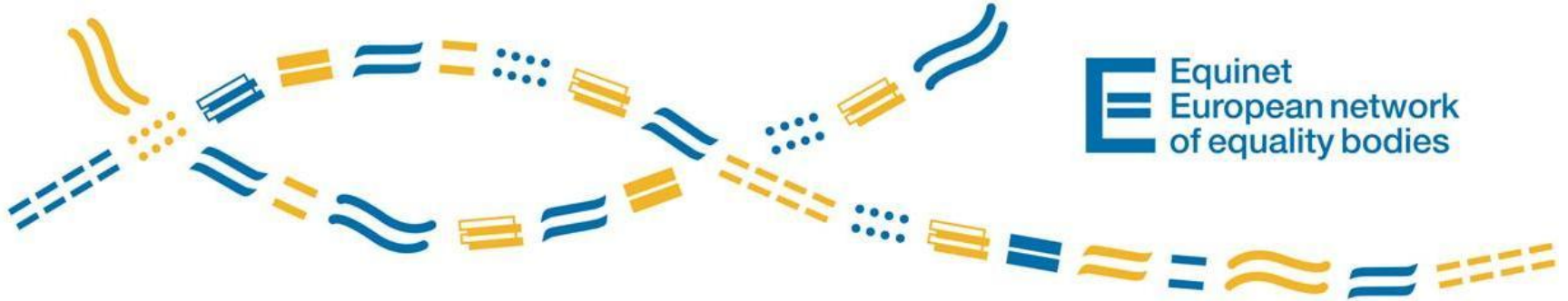
# Outline of the presentation

1. Why focus on religion and belief?
2. Legal framework
3. Cases in the field of employment and conclusions
4. Manifesting religion and conflicts with non-discrimination on the sexual orientation ground



# Why focus on religion and belief?

- Controversial issues, highly present in Europe
- Issues of relationship between ECHR and EU system of protection
- Conflicts with fundamental rights of others - a fine balancing of rights needed
- Conflicts with secularity and neutrality of States and companies



# Legal framework - EU

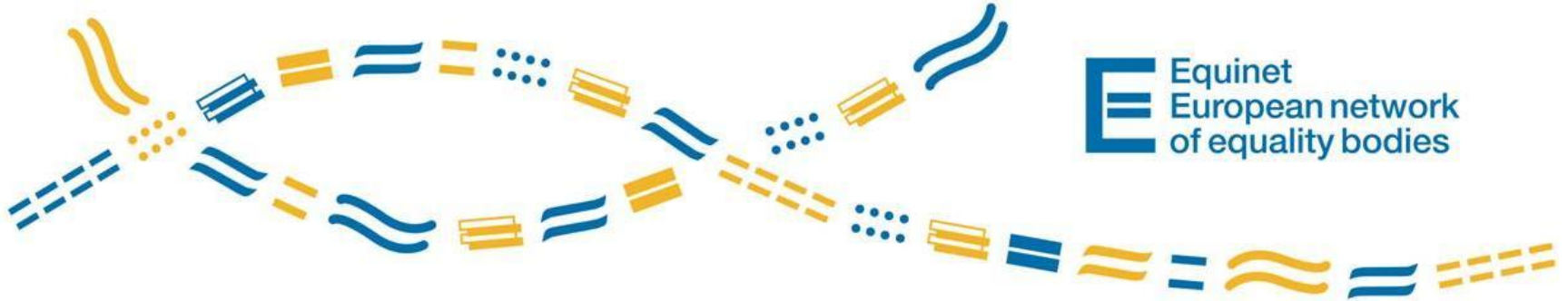
## ➤ Framework Directive 2000/78/EC:

Protection against direct, indirect religious discrimination in employment

The term employment covers a wide range of stages and forms

Exceptions under EU law:

- Genuine and determining occupational requirements
- Ethos-based organisations

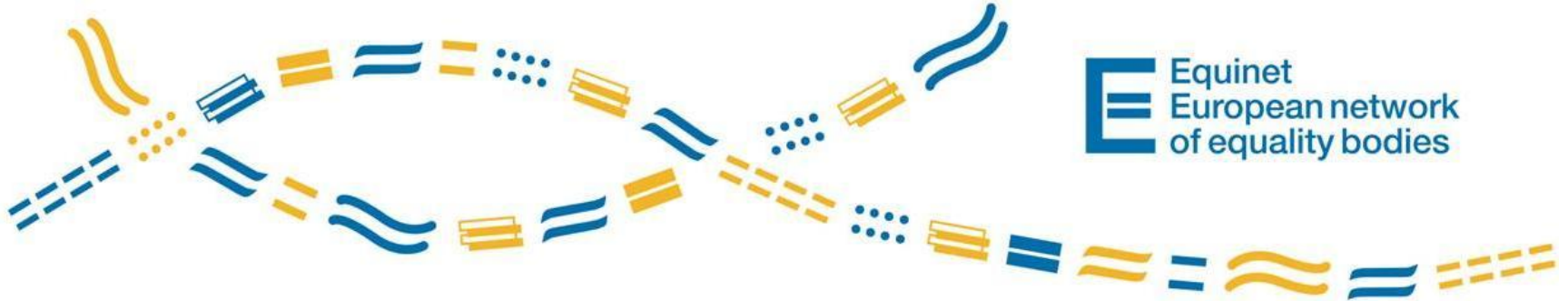


## Legal framework - EU

### ➤ **Proposed Directive COM (2008) 426**

Would cover areas outside employment: social protection, social advantages, education, goods and services

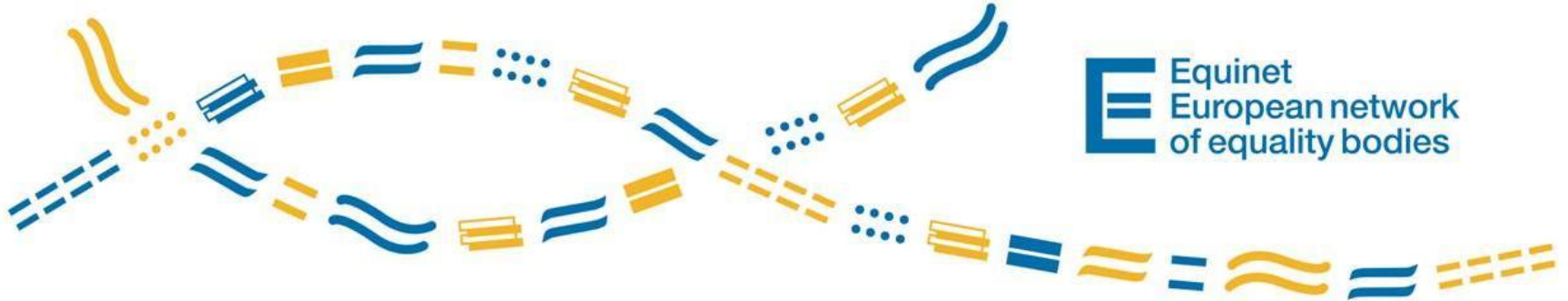
➤ However, many MS have broader protection



# Legal framework – ECHR

## Article 9 of ECHR:

- (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.
- (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.

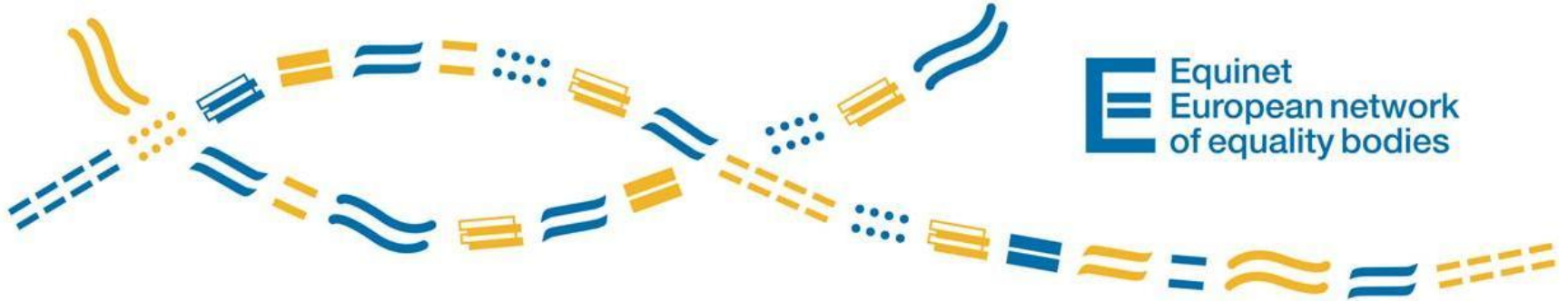


# Legal framework – ECHR

Article 9 of ECHR:

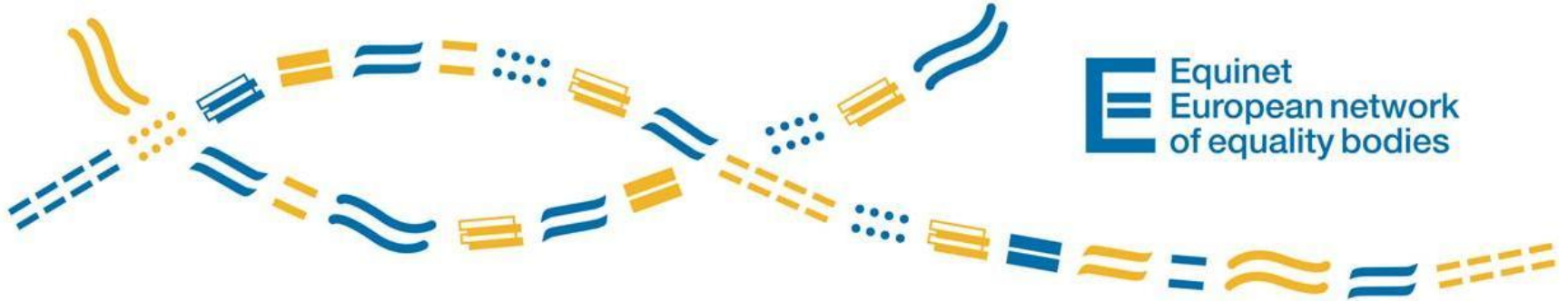
- (2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are
- ✓ prescribed by law and
  - ✓ are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.





# Key cases in the field of employment

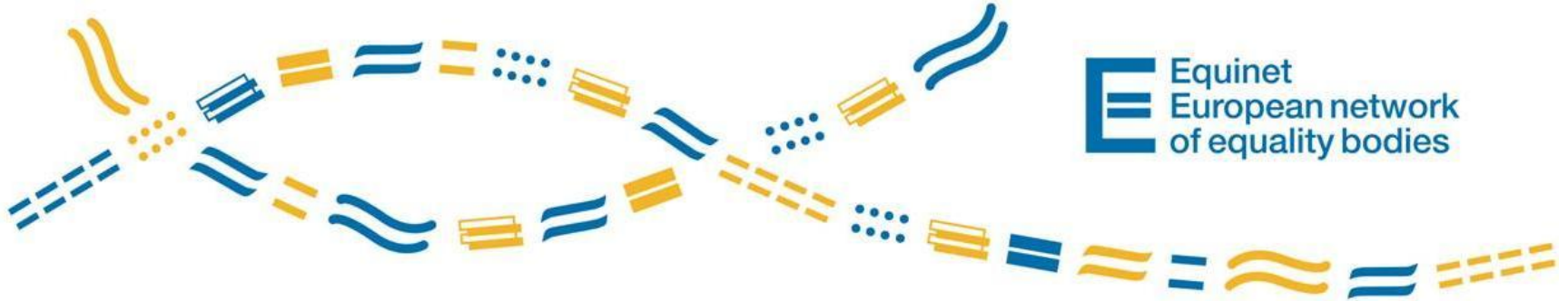




# Schools and furthering children's education

## Azmi case (UK) [2007] ICR 1154

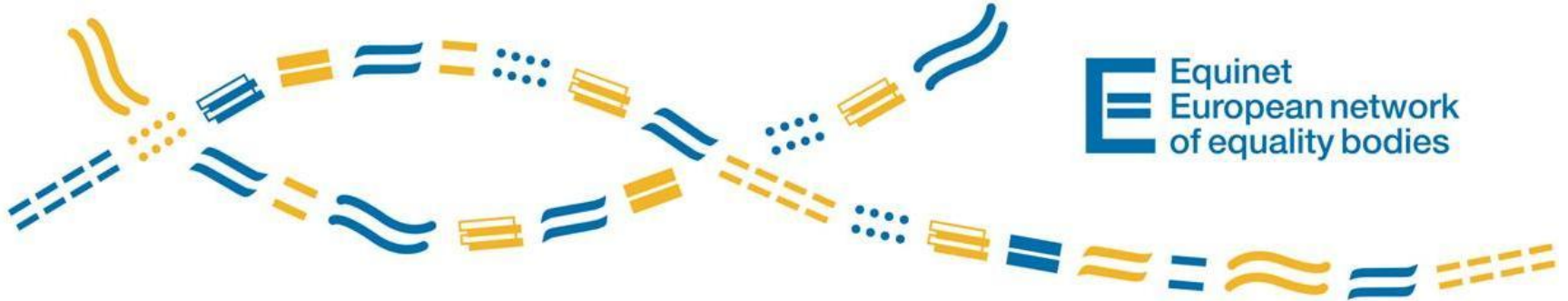
- Classroom assistant wanting to wear full veil
- EAT: no direct discrimination, possible indirect?
- Discrimination justified as proportionate and legitimate so that children can better understand
- Links to conflict between freedom of religion and rights of the children



## Health and safety concerns

### **‘Headscarf case’ (Austria)** GAW II/8/2007; GKB II/27/07

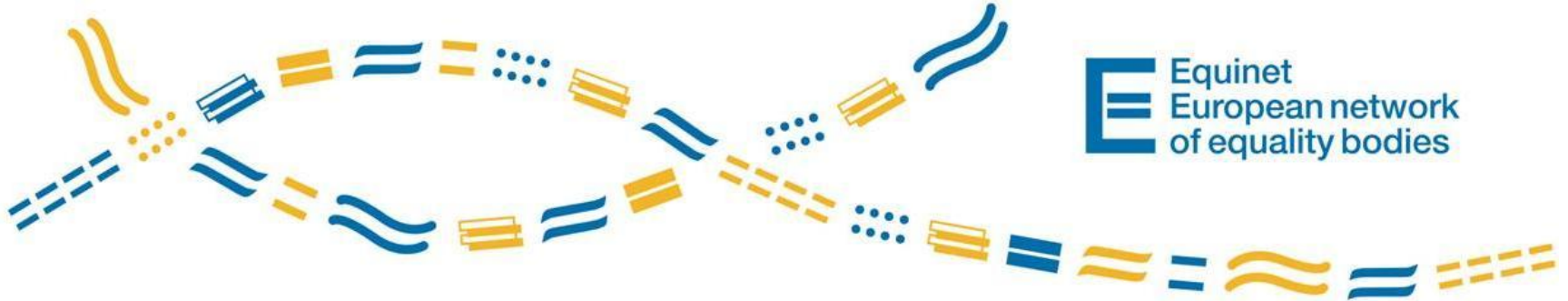
- Muslim woman wearing a headscarf applied for a job as a sewer in a textile company
- Offered job, but on condition of not wearing any headscarf – outcome: not accepted for the job
- Company invoked security reasons for the prohibition
- Equal Treatment Ombud argued direct and alternatively indirect religious discrimination arguing even if indirect, measure was not appropriate and necessary
- Equal Treatment Commission accepted justification as legitimate and proportionate



# Dress codes

**Eweida v British Airways (UK)** EWCA CV 80, Court of Appeal  
see also Chaplin v Devon and Exeter Hospital [2010] ET

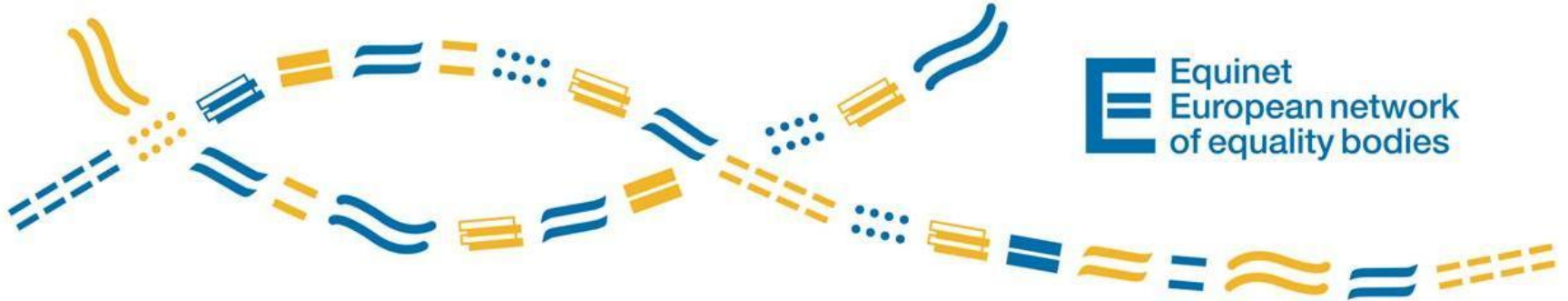
- Ms Eweida worked as a stewardess at British Airways
- She was refused permission to wear a necklace with a cross over her uniform as this was in breach of her employer's dress code
- Other religious groups such as Muslims and Sikhs were permitted to wear headscarfs and turbans
- Eweida refused to do administrative work which would have not required a uniform
- BA eventually changed its policy to permit wearing of cross but would not refund salary while Eweida was suspended.



# Dress codes

**Eweida v British Airways (UK)** EWCA CV 80, Court of Appeal  
see also Chaplin v Devon and Exeter Hospital [2010] ET

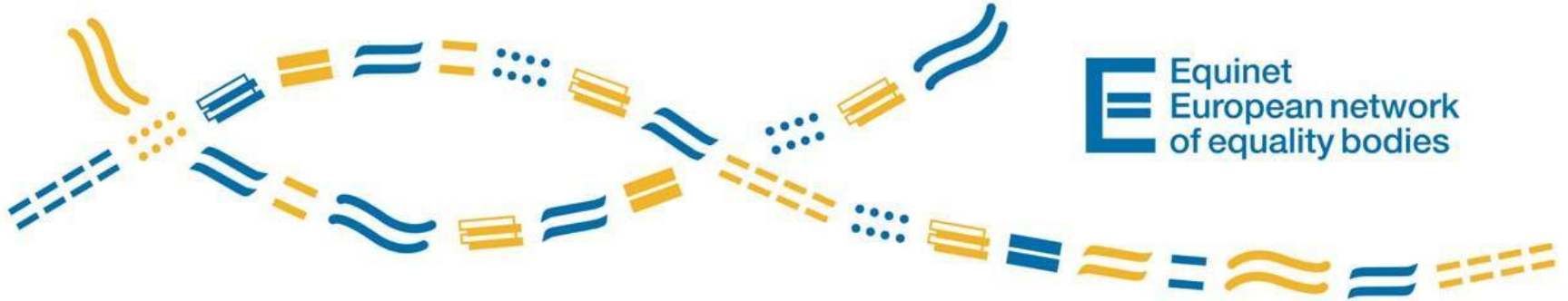
- Ms Eweida brought claims of direct and indirect discrimination, harassment and Article 9 ECHR violation
- Court of Appeal: no indirect discrimination and no breach of Art. 9
  - Wearing a cross not a mandatory requirement of her religion, therefore unable to prove particular disadvantage of Christians
  - Article 9 does not protect every act motivated by religion
  - She voluntarily accepted a role that doesn't accommodate her practice and there are other means to practice her religion (outside workplace, but she was also offered backroom post)



# Dress codes

**Eweida v British Airways (UK)** EWCA CV 80, Court of Appeal  
see also Chaplin v Devon and Exeter Hospital [2010] ET

- Cases taken to ECtHR claiming breach of Art. 9 and 14
- Equality and Human Rights Commission of Great Britain intervened and provided submissions
- Key arguments:
  - No need to establish that the practice is required by the religion
  - Setting too high a threshold for establishing Article 9 interference



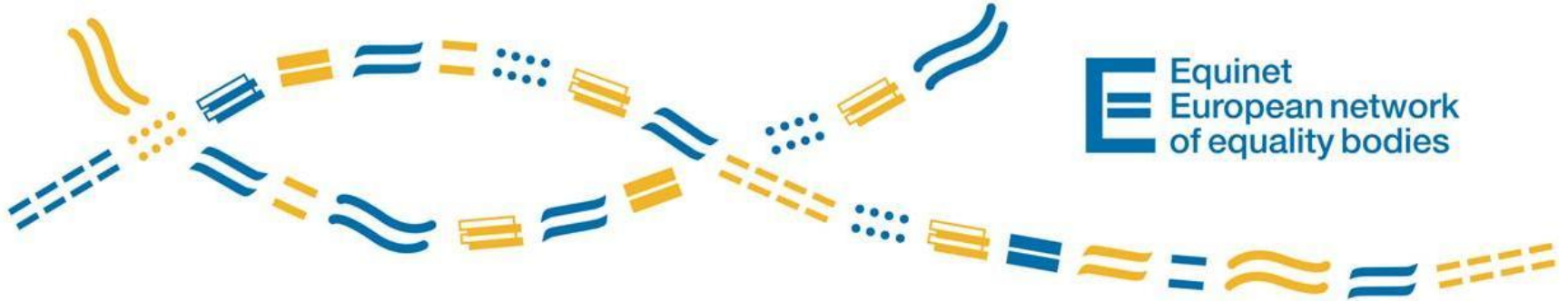
## Effect on the functioning of the organisation

### Ahmad case (1981) 4 EHHR 128 and

Dismissal due to refused permission to change of working hours to attend mosque on Fridays. He claimed violation of Art. 9.

European Commission of HR: Art. 9 rights are not absolute, circumstances to be taken into account. Mr Ahmad freely entered into a full-time contract 6 years ago, without informing his employer of the potential need to attend mosque on Fridays. Interest of the education system also taken into account.





## **Employer's wish to remain neutral**

### **Danish headscarf case:**

Plaintiff serving customers in a supermarket dismissed due to wearing headscarf. She claimed indirect discrimination.

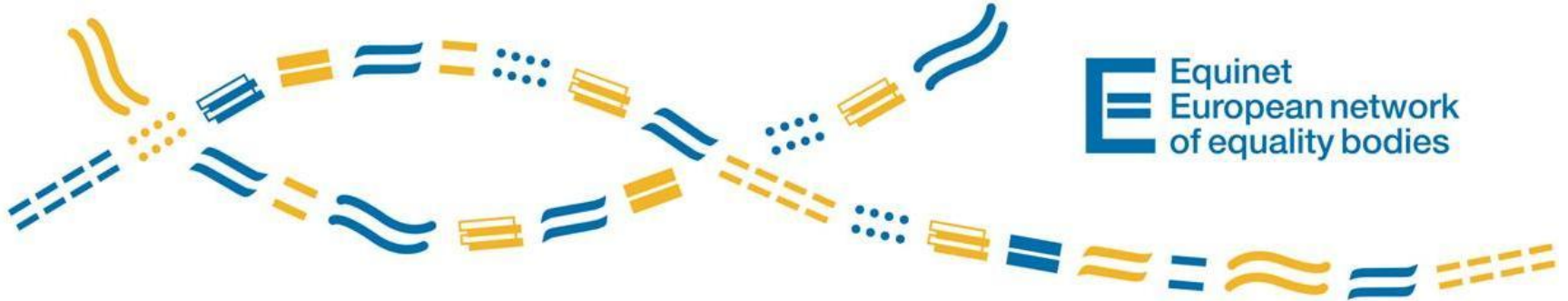
Supreme Court accepted that a company's wish to remain neutral was a legitimate aim and that the clothing requirement to reach this was appropriate and necessary.

### **Belgian headscarf case:**

Complainant working at the company since 2003, decided to wear headscarf in 2006. Employer refused, on ground of neutrality that the company pursues.

Court accepted neutrality of the company as a legitimate aim and the means appropriate and necessary.



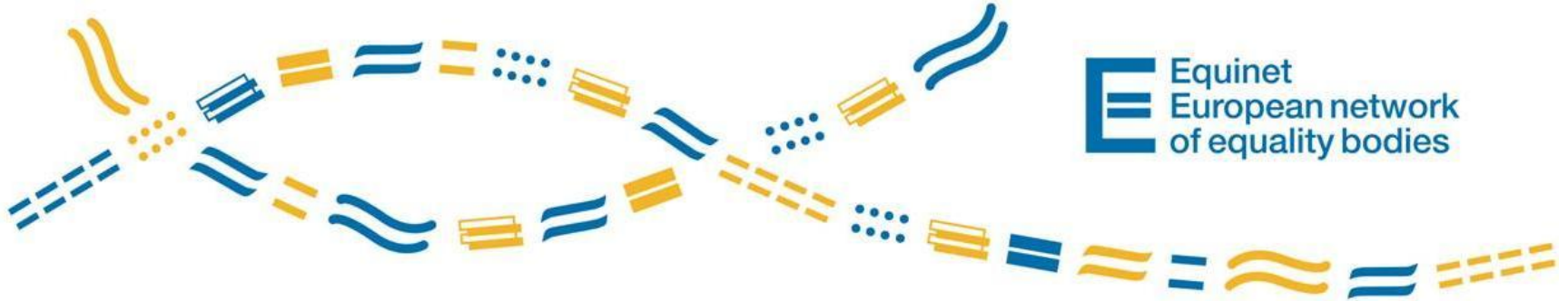


## Lessons learnt

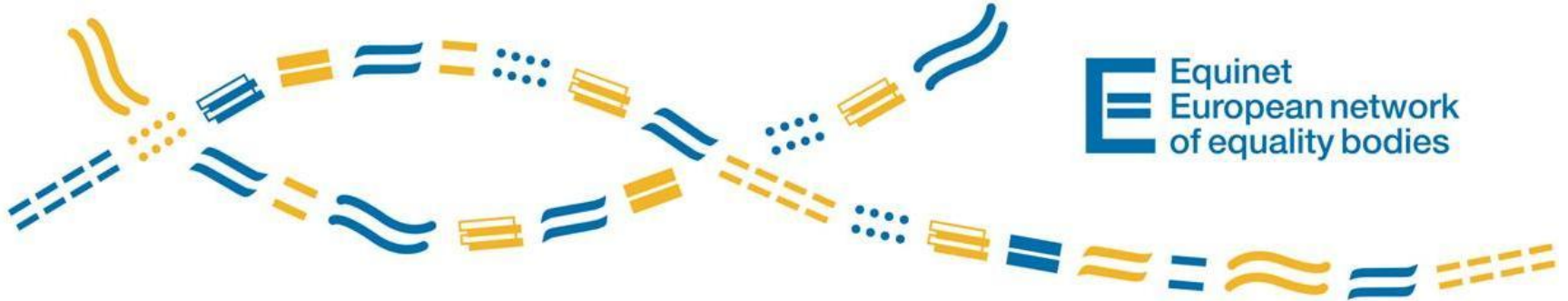
Domestic courts and the ECtHR seem to adopt a strict and narrow interpretation to Art 9, with most cases dismissed.

Specific observations:

- Legitimate aims accepted if proportionate: interest of children in education; health and safety; efficient functioning
- Dress codes and neutrality of employer: courts appear to be too reluctant to establish religious discrimination – a more thorough analysis of proportionality might be needed
- Courts take a narrow approach in accepting practices as manifestation of religion



# Manifesting religion and conflicts with other fundamental rights

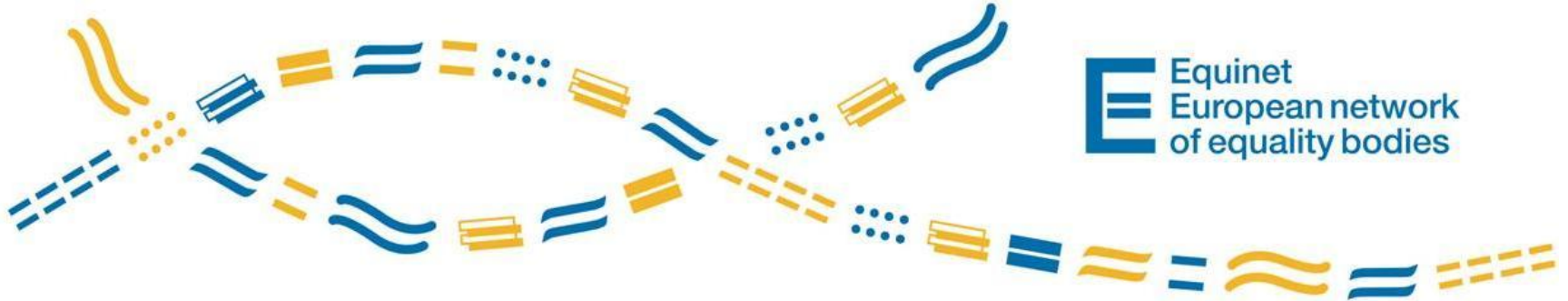


# Conflicts with non-discrimination on the ground of sexual orientation

## 1. Conscientious objection cases

### Ladele case (UK) – registering same-sex partnerships

- Registrar of marriages at a Local Council
- Refused on religious grounds to carry out civil partnership ceremonies, was threatened with dismissal
- Claimed direct & indirect religious discrimination, harassment
- Court: No direct D or harassment as reason for treatment was refusal to conduct civil partnership ceremonies
- Indirect D: legitimate aim for Council to adhere to 'dignity for all principle' – appropriate and necessary?

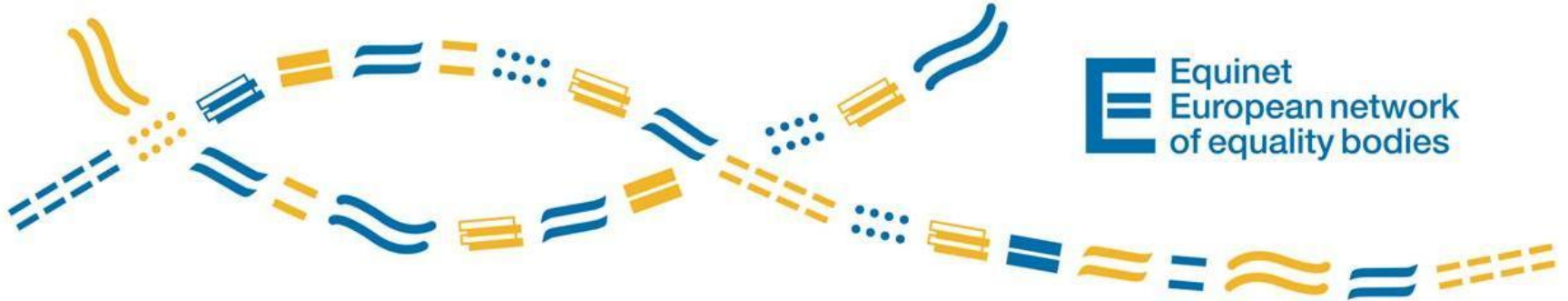


# Conflicts with non-discrimination on the ground of sexual orientation

## Ladele case (UK) – registering same-sex partnerships

No indirect discrimination:

- Exempting her would undermine the Council's non-discrimination policies
- Did not violate her Art. 9 rights, she remained free to hold her belief and worship as she wished
- She was employed in a public job working for a public authority and she was required to perform a secular task.
- Her refusal amounted to discrimination against lesbian and gay service users



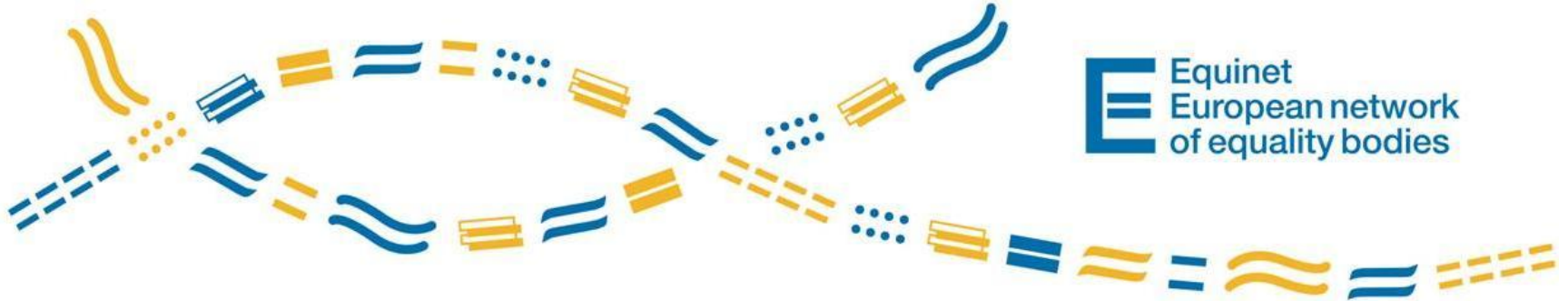
## **Conflicts with non-discrimination on the ground of sexual orientation**

### **Ladele case (UK) – registering same-sex partnerships**

Article 9 claim also failed:

- Art. 9 doesn't require to be allowed to manifest one's religion at any time and place of one's own choosing
- Art. 9 mainly protects personal convictions and religious beliefs, although also acts that are closely linked, such as acts of worship or devotion, forming part of a religion
- Art. 9 can be limited to protect the rights of others, in this case lesbian and gay people

Currently before ECtHR joined with another similar case

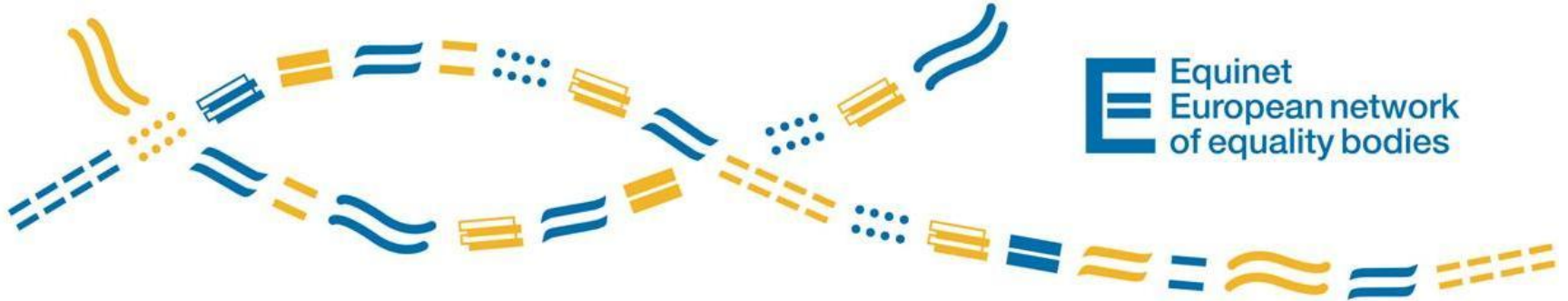


# Conflicts with non-discrimination on the ground of sexual orientation

## Dutch registrar cases – opinions of the Dutch Equal Treatment Commission

- In 2002 decision: if the municipality could accommodate the registrar's request without excessive organisational difficulties, refusing this amounts to indirect D.
- In 2008 decision: ETC came to a different conclusion, one that is similar to the judgment in Ladele, accepting the municipalities conduct as appropriate and necessary to reach a legitimate aim (not discriminating against lesbians and gays).



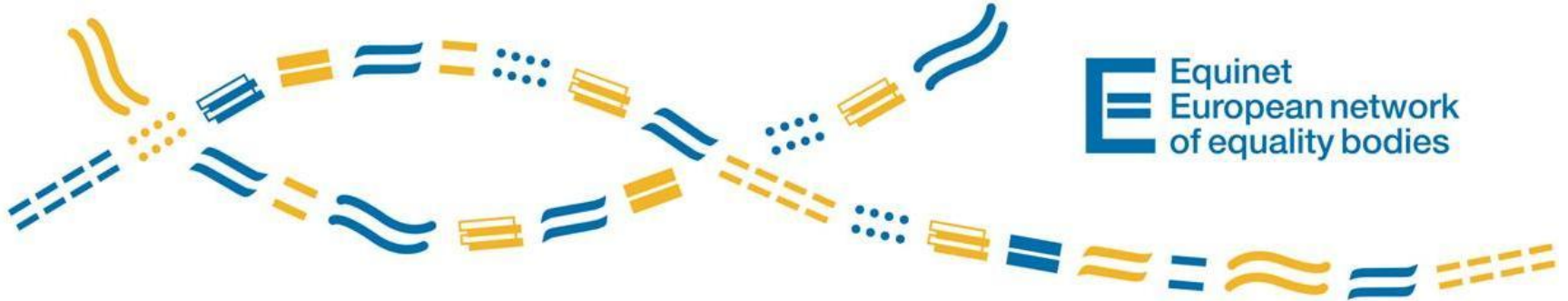


# Conflicts with non-discrimination on the ground of sexual orientation

## Lessons learnt from conscientious objection cases

- Striving to provide a non-discriminatory service can be a legitimate aim for differential treatment. Factors for justification:
  - will employees be able to hold their belief?
  - is it a public job, with secular tasks?
  - would an exemption result in discrimination against others?
- Art. 9 doesn't require to be allowed to manifest one's religion at any time and place of one's own choosing
- A limit to the right to manifest religion is the rights of others – it may not result in discrimination
- Conflicts between religion and sexual orientation is a developing area, necessitating further guidance



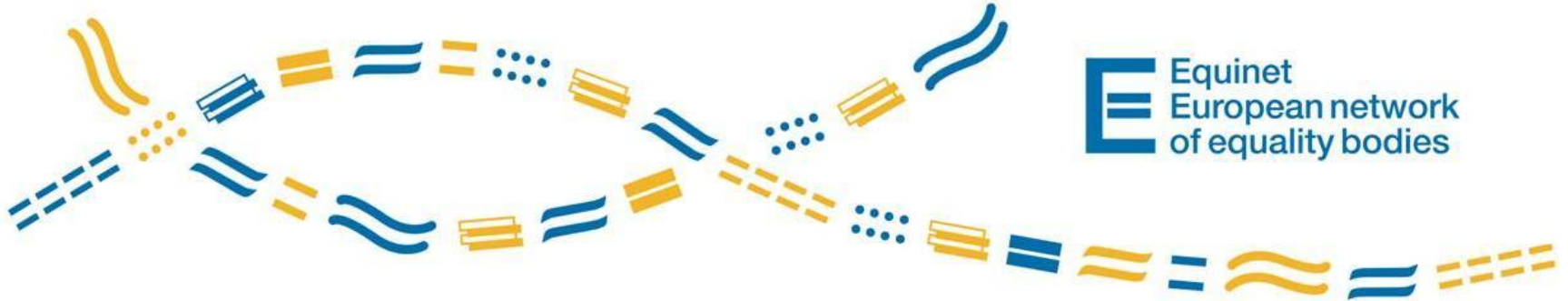


# Conflicts with non-discrimination on the ground of sexual orientation

## 2. Occupational requirements cases

Directive 2000/78/EC Article 4(1)

(...) Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 **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**.

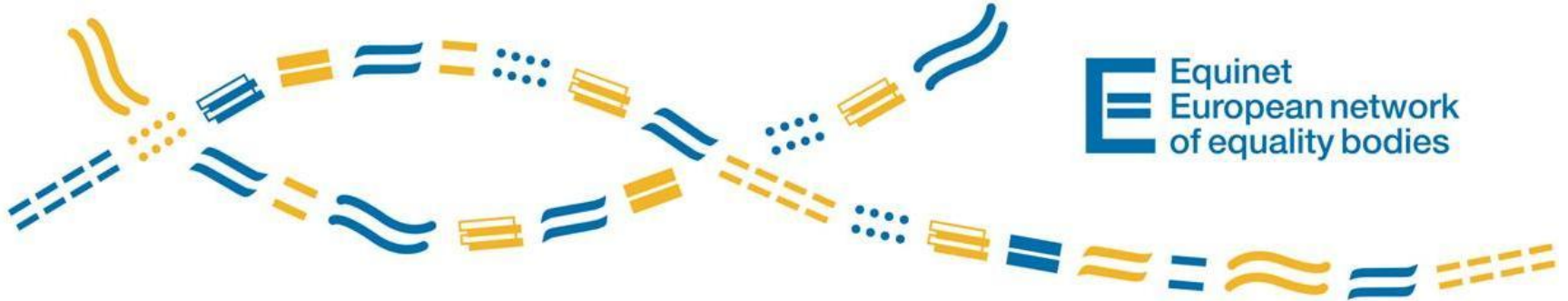


# Conflicts with non-discrimination on the ground of sexual orientation

## 2. Occupational requirements cases

Directive 2000/78/EC Article 4(2) – ethos-based exception

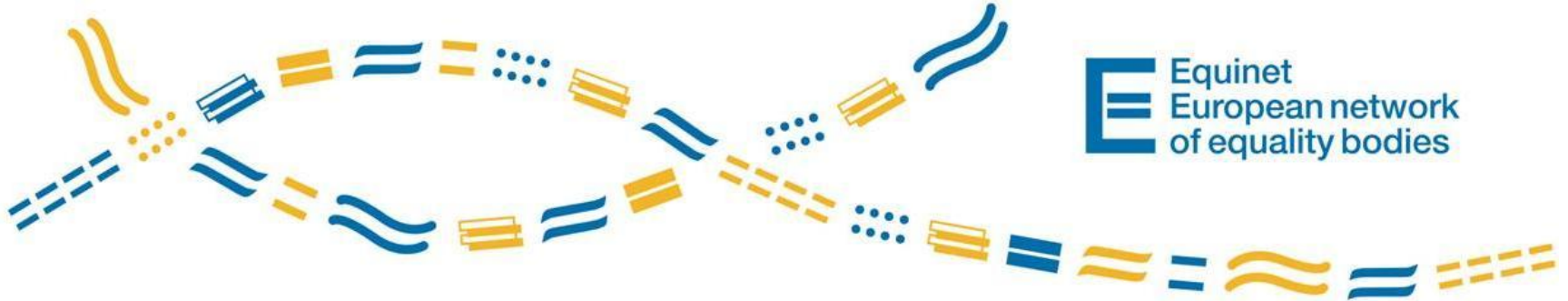
- Possible exception for occupational activities within churches or other ethos-based public or private organisations
- if by reason of the **nature or context of the activities** religion constitutes a **genuine, legitimate and justified occupational requirement**
- it should not justify discrimination on another ground
- these organisations can require individuals working for them to act in good faith and with loyalty to the organisation's ethos



# Conflicts with non-discrimination on the ground of sexual orientation

## Reaney case (UK)

- Mr. Reaney, who was gay, applied for the post of Youth Officer
- He wasn't accepted even though he was the best candidate, as Bishop didn't believe he could remain celibate
- Church of England guidance: clergy cannot enter into sexually active gay relationships
- Claims of direct and indirect discrimination and harassment
- Employment Tribunal on domestic application of the exception in Art 4(1)
  - not for all jobs in an organisation, exception to be narrowly construed
  - only if the post is for purposes of organised religion **and** to comply with doctrines of religion or to avoid conflicts with followers



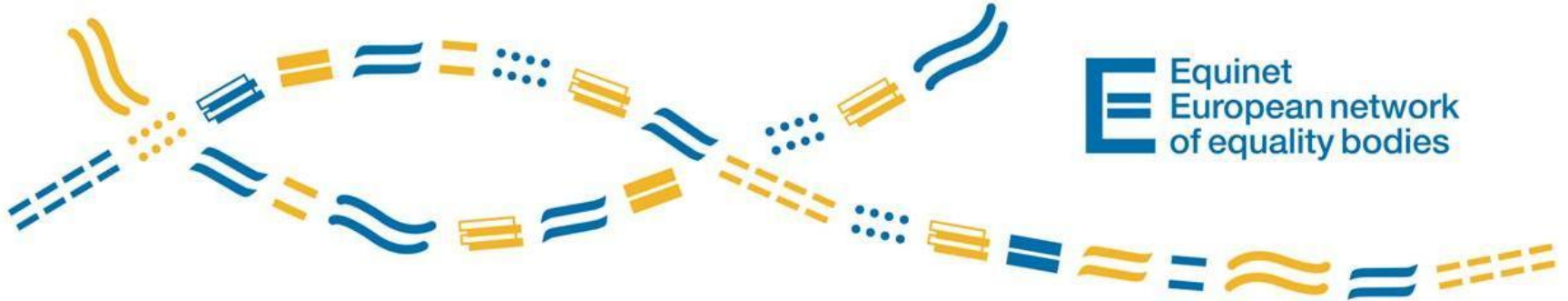
# Conflicts with non-discrimination on the ground of sexual orientation

## Reaney case (UK)

Employment Tribunal decision:

- Youth Officer is representing the Diocese, thus the post falls within the few posts outside clergy where exception may apply
- Exception applied so as to comply with doctrines of religion
- However, Mr. Reaney stated that he was single and intended to remain so, thus decision of Bishop was not justified
- Direct discrimination established and compensation awarded

Commentary: the UK exception based on Art 4(1) and applied in this case may be too broad

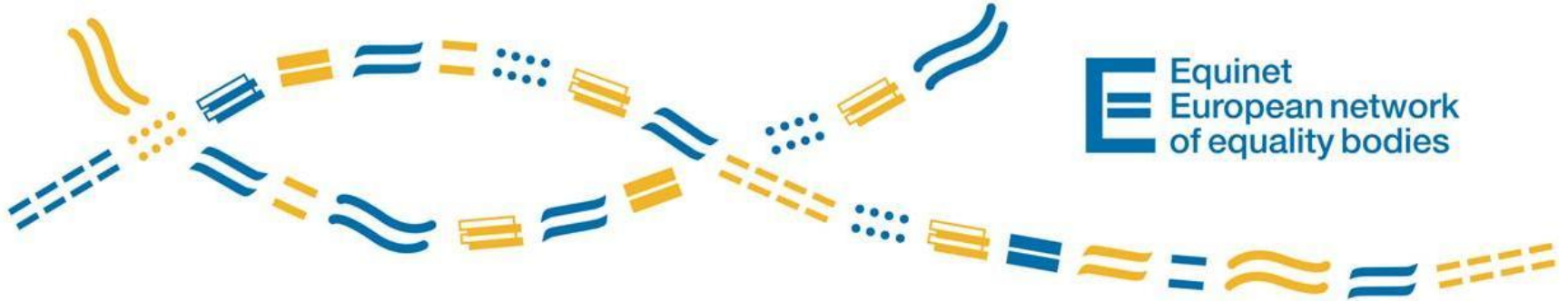


# Conflicts with non-discrimination on the ground of sexual orientation

## Lessons learnt from occupational requirement cases

- Exception needs to be narrowly construed and justified on a case-by-case basis
- Art 4(2) only allows different treatment on the ground of religion or belief and not on other grounds
- All exceptions under Art 4 need to be clearly linked with the nature of the activities carried out
- It appears that a number of countries did not implement correctly Art 4 and provide exceptions going beyond the terms of the Directive
- It appears that clearer guidance on the interpretation of Art 4 (1) and (2) and their differences would be useful and necessary



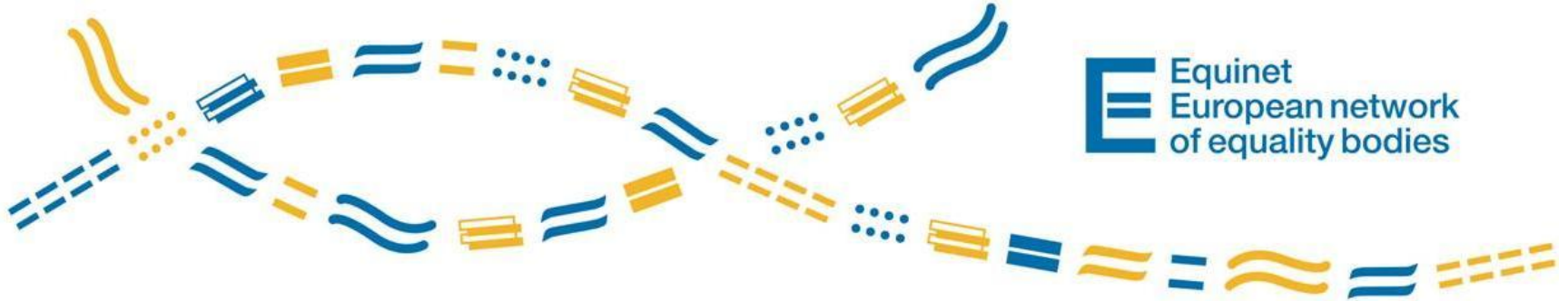


## Conflicts with the rights of children

### HALDE Decision of 6 November 2006 (France)

- Claimant hired by defendant as youth leader to assist at sports and leisure activities for autistic children
- At preparatory meetings she arrived in a headscarf and indicated her refusal to go swimming with the children
- Her contract was terminated based on health&safety of children
- HALDE Decision: no discrimination as the specific requirements of swimming pool safety could legitimately justify the termination

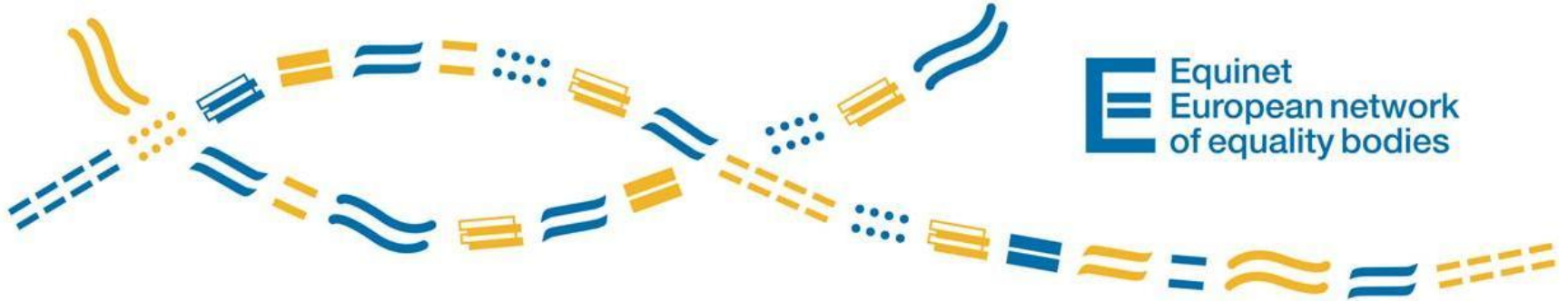
**Lessons learnt:** Religious discrimination can be justified in cases where it is required to protect the best interests of the child (e.g. health and safety, education, or physical integrity)



## Conflicts with gender equality

- Gender equality is a general, mainstreamed principle in Europe – the standard of protection by European courts is very high
- Issues of conflict between freedom of religion and gender equality have arisen in court cases, especially regarding headscarves. Art 9 limitations were generally found justified on ground of security reasons, secularism and/or gender equality.
- In the Dahlab case the ECtHR explicitly held that the headscarf was *'hard to square with the principle of gender equality'*.

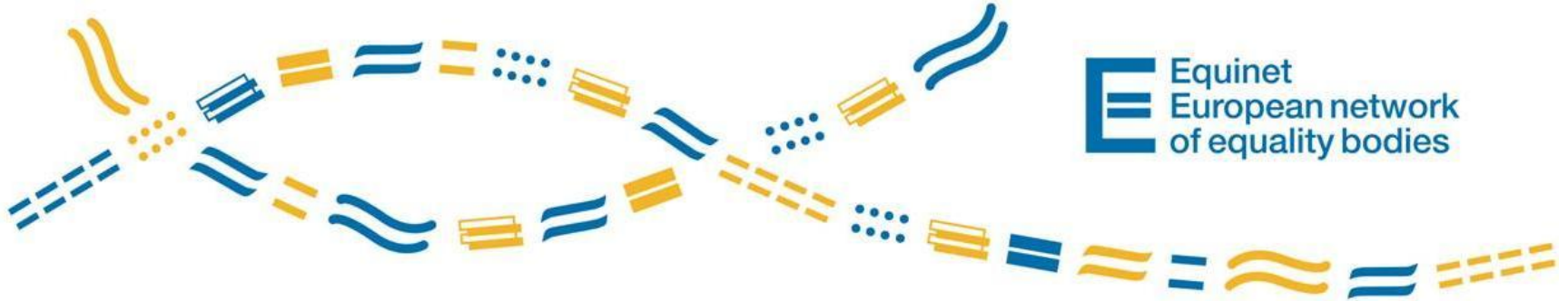




# Conflicts with gender equality

## Handshake-cases (Netherlands, Sweden)

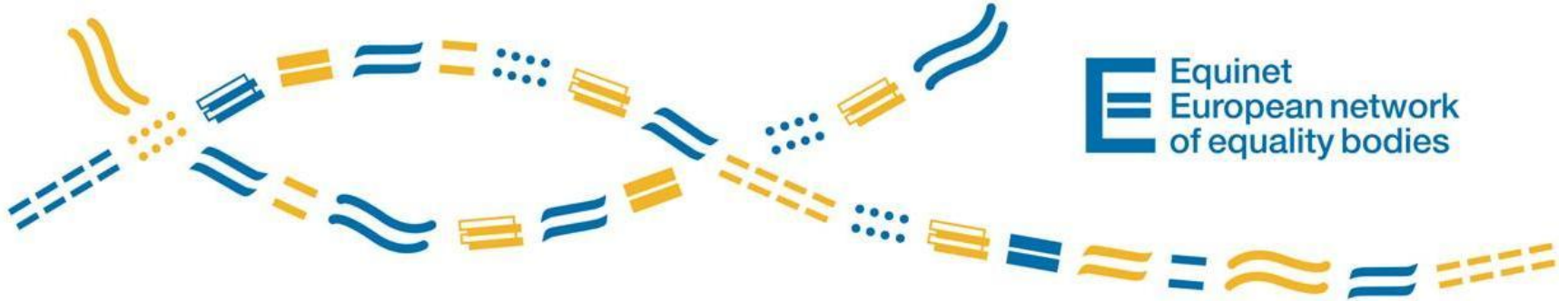
- Complainants observed strict religious requirements and refused shaking hands with the opposite sex.
- Respondents argued among others with gender equality to defend their action against complainants
- Courts accepted gender equality as legitimate aim in general, but did not accept respondents' action as proportionate in the given circumstances as complainants showed respect for and greeted the opposite sex in other ways – in one case direct, in the other indirect discrimination established



# Conflicts with gender equality

## Lessons learnt:

- Decisions accepting the justification of ban on headscarves in schools and workplaces can potentially be detrimental for gender equality, as excluding women from education and employment.
- Norwegian Equality Ombudsman found that refusal to permit wearing a hijab was **both** religious and gender discrimination.
- In cases relating to a religious practice potentially offending persons of a particular sex, a careful consideration is necessary to establish whether opposing the practice is for a legitimate aim and is proportionate



# Contacts

**[www.equineteurope.org](http://www.equineteurope.org)**

Tamas Kadar, Policy Officer / Acting Director

**EQUINET SECRETARIAT**

138 Rue Royale

B-1000 Brussels

**Tel: +32 (0)2 212 3182**

**[info@equineteurope.org](mailto:info@equineteurope.org)**