

BEYOND BELIEF? EUROPEAN COURT OF HUMAN RIGHTS RECOMMENDS GREATER PROTECTION OF POLITICAL OPINIONS

EMPLOYMENT

The European Court of Human Rights has upheld a complaint by Arthur Redfearn, a bus driver in Bradford who was dismissed when he stood as a BNP councillor. The Court concluded that UK law did not give sufficient protection against discrimination on grounds of political opinion or affiliation, which put the UK in breach of Article 11 of the European Convention on Human Rights (which guarantees freedom of association). The Government has not yet announced whether it is planning to change the law to extend the existing regime that protects religious and philosophical beliefs to cover political beliefs as well.

Mr Redfearn was employed by Serco as a bus driver, working on Serco's contract with Bradford City Council to transport children and disabled adults. Most of the passengers were Asian and, although there had been no complaints about the standard of his work, when it became known that Mr Redfearn was a BNP candidate in the local council elections, he was reassigned and then, when he was elected, he was dismissed.

He did not have sufficient service to bring an unfair dismissal claim in the Employment Tribunal, so claimed that he had been racially discriminated against, on the basis that the BNP is a whites-only political party. His claim went all the way to the Court of Appeal, but ultimately failed. The Court of Appeal found Mr Redfearn was not dismissed simply because he was white – so he was not directly discriminated against – and that Serco would have dismissed any driver of any race who stood for election for a similarly racially-segregated political party – so he did not suffer indirect discrimination either.

Separate legislation protects against discrimination on grounds of religious or philosophical belief, but was not invoked in this litigation. BNP members have so far failed to persuade the courts that their membership amounts to a philosophical belief, and cases in this area have established that the law will only very rarely protect political beliefs.

The European Convention on Human Rights, which UK courts must have regard to by virtue of the Human Rights Act, guarantees freedom of association. That right can only be interfered with where that is necessary in a democratic society. Having failed in the Court of Appeal, Mr Redfearn asked the European Court of Human Rights to intervene. The Court has drawn a distinction in previous cases between political opinions that are legal but extreme (such as the National Front), and those that are illegal (such as supporting terrorism). The Court gave its judgment in Mr Redfearn's case today, finding by a 4:3 majority that UK law did not give adequate protection from dismissal on grounds of legally-held political opinions or affiliations. It confirmed that protection should be available from day one, and not be subject to the qualifying period for unfair dismissal.

The Government will now have to consider whether to amend the law, presumably by extending the religious and philosophical belief parts of the Equality Act, to cover political opinions. Such a change would be a radical extension to the current law – will we see the Labour Party obliged to recruit Conservative-voting secretaries, or the right-wing press to hire Marxist journalists?

How far religious and other beliefs should be protected is a live issue at the moment, with litigation under both the Equality Act and the European Convention. Last week saw a decision under the Equality Act not to allow a Catholic adoption agency to restrict its services to heterosexual couples, and the European Court is shortly to rule in the well-publicised cases involving Christians wishing to wear a cross at work, refusing to carry out civil partnership ceremonies, and refusing to give counselling to same-sex couples.

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