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## **Book Review of Samantha Knights, Freedom of Religion, Minorities and the Law (Oxford: Oxford University Press, 2007) in (2008) 8(2) Human Rights Law Review 404-407.**

Langlaude, S. (2008). Book Review of Samantha Knights, Freedom of Religion, Minorities and the Law (Oxford: Oxford University Press, 2007) in (2008) 8(2) Human Rights Law Review 404-407. *Human Rights Law Review*, 8(2). <https://doi.org/10.1093/hrlr/ngn003>

**Published in:**  
Human Rights Law Review

**Queen's University Belfast - Research Portal:**  
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## Book Review

Samantha Knights, *Freedom of Religion, Minorities and the Law* (Oxford University Press, Oxford, 2007, 256 pp., £45) ISBN 978-0-19-929062-8 (hb)

The study of the law of religious freedom has become more prominent in recent years as conflicts multiply. Recent prominent issues include the wearing of religious clothing, especially the Islamic headscarf, in educational establishments and courts of law,<sup>1</sup> land use and cultural issues such as the project of the Mega Mosque in East London, or requests for exemptions to the Equality Act (Sexual Orientation) Regulations 2007.

The aim of the book seems to be to cover key areas involving the interplay of law and religion in the domestic and European court systems. In particular, Samantha Knights tries to examine how minority religious beliefs are accommodated, or not, by the law of the majority. This is done in a practical way and is much more aimed at practitioners than academics specialising in the law of religious freedom. Knights being a barrister at Matrix Chambers, the 'practical' feel to the book is welcome.

There are seven chapters in the book. Chapter 1 is 'context and background', Chapter 2 is 'legal framework', Chapter 3 is 'the balance of competing interests', Chapter 4 is 'education', Chapter 5 is 'employment', Chapter 6 is 'immigration and asylum' and Chapter 7 is 'planning, prisons, and health and safety'.

Chapter 1 opens with an account of various introductory issues such as the development of freedom of religion, cultural diversity and multiculturalism and the place of religion in British society. The chapter highlights that several systems on the relationship between the state and religions are possible and have been established throughout Europe. What is important to note is that whatever the system and whatever the relationship between the state and various religions practised in the country, 'in practice the state is unable to ensure a total dissociation from religious affairs or to free itself from providing support to religious groups whether directly or indirectly. In this respect arguably the precise relationship matters less than the practical effects for individuals and various religious groups' (p. 15). This would have an impact on how religious minorities are treated. Knights concludes that in order to protect the vulnerable and minorities against the majority, one should look to balancing relevant competing interests, which is a theme that she develops in Chapter 2.

Chapter 2 provides an overview of the relevant legal framework on freedom of religion. At the domestic level this includes common law, the Race Relations Act 1976 (RRA), the Human Rights Act 1998 (HRA), the Equality Act 2006 (EA), EC directives and other European instruments such as the 1995 Framework Convention for the Protection of National Minorities and the EU Charter of Fundamental Rights. Apart from these, a reference to the Racial and Religious Hatred Act 2006 would have been

1 On religious dress, see Equal Treatment Advisory Committee of the Judicial Studies Board, *Equal Treatment Bench Book*, April 2007, at chapter 3.3, available at <http://www.jsboard.co.uk/downloads/ettb.3.religion.pdf> [last accessed 8 February 2008].

useful and the omission is surprising. It is true that the Act has not come into force yet but an exploration of its key provisions would be relevant. In particular, the Act creates the offence of 'stirring up hatred against people on religious grounds' which has the potential of restricting freedom of speech and freedom to manifest one's religion. Knights then takes the reader through relevant case-law of the European Convention on Human Rights (ECHR) i.e. that under Article 9 and Article 14. ECHR case-law is well known and has been extensively dealt with in other books. What is useful here is that Knights picks key issues and sees how and when they have been addressed by domestic and ECHR case-law. This allows for an analysis in context, not limited to either England and Wales or the ECHR alone.

Chapter 3 aims to highlight the importance of balancing competing interests between an individual and third parties. Knights explains that the ECHR does not provide guidelines as to how to deal with competing interests—it is first up to the domestic courts to carry out a balancing exercise in a given case, which will then be supervised by the European Court of Human Rights (ECtHR). Knights considers domestic and ECHR case-law and suggests that cases are best left in the hands of domestic courts, with a wide margin of appreciation likely to be given by the ECtHR. She then turns to the relationship between individual and group rights, parental and child rights and minority/majority rights, dealing with relevant domestic and ECHR case-law in these three instances. She highlights the conflicts between these groups and the difficulty to strike a balance. However, Knights gives no indication of how to approach these conflicts—one would have hoped for a little more guidance. This means that the reader is not more advanced despite the conceptual difficulties of balancing competing rights and interests.

Chapter 4 deals with education. Knights first reviews the statutory framework, which includes Education Acts, RRA, EA and HRA. She then discusses the following legal issues: state provision for faith schools, school admissions, the curriculum, religious symbols in schools, discipline, time off and transport. In particular, she highlights the potential conflict between the child's right to education under Article 2 of Protocol 1 of the ECHR and the parents' right to religious freedom under Article 9. However more could be said about the balance of competing interests. According to the ECtHR, when there is a conflict between the parents' right to respect for their religious convictions and the child's right to education, the interests of the child prevail.<sup>2</sup> Following the *Begum* case, which Knights discusses at length, the High Court has since decided *R (on the application of X) v Y High School* in February 2007.<sup>3</sup> As in *Begum*, the acceptance of the school uniform devised in consultation with local Muslim groups may well represent mainstream Muslim beliefs but, once again, such decisions are not very tolerant of minority beliefs.

Chapter 5 deals with employment. Again, Knights first reviews the statutory framework, which includes Employment Acts, RRA, EA, Employment Equality (Religion or Belief) Regulations 2003 and the HRA. She then discusses the following legal issues: implied terms, fairness, contracting out of ECHR rights, engagement and dismissal, working hours and time off, clothing, religious symbols and religious employers. Knights highlights that the employee of a private firm does not benefit from the protection of the HRA although it remains to be seen whether and how any indirect

2 See *Martins Casimiro and Cerveira Ferreira v Luxembourg*, Application No. 44888/98, Judgment of 27 April 1999, unreported; and *Çiftçi v Turkey*, Application No. 71860/01, Judgment of 17 June 2004, unreported.

3 [2006] EWHC 298 (Admin), per Silber J.

horizontal effect may be developed by the courts through sections 3 and 6 of the HRA. Knights goes through relevant domestic and ECHR case-law. When there is a conflict between an employee's religious obligations and the terms of his contract of employment, the courts have generally found in favour of the employer. Clearly the courts are not rigorous in requiring employers to accommodate their employees' religious beliefs. One could wonder whether Article 9 is really meaningful in this context—Tom Lewis put it well when he refers to 'the inability of the Court to put its finger on quite why religious freedom is valued in the first place'.<sup>4</sup>

Chapter 6 deals with immigration and asylum and when religious freedom may be relevant in that context. The beginning of the chapter exposes the wealth of statutes, rules and regulations dealing with this issue in English law. The treaty and statutory framework includes the 1951 Refugee Convention, Immigration and Asylum Acts, Immigration Rules and Home Office policies, RRA, EA and HRA. Knights draws attention to specific legal issues, in particular fear of persecution on religious grounds and she points out the difficulty applicants have in bringing claims based on religion or belief. She also discusses child and family law and the entry of religious workers in the United Kingdom. Other legal issues include conscientious objection to military service. Religious minorities are perhaps more at risk of persecution and Knights' treatment of the issue ties in well with the rest of the book. She discusses domestic and ECHR case-law when relevant but domestic case-law is scarce. Much more relevant seem to be the guidelines issued by the UN High Commissioner for Refugees and how they may be interpreted in the domestic context. The guidelines point to the difficulties that applicants may have, issues which are not unheard of: the definition of religion, the scope of protection and forced conversions for example. On the issue of forced conversions, it is also possible to mention the reports of the UN Special Rapporteur on Freedom of Religion and Belief and the numerous accounts of kidnappings, forced marriages, forced circumcisions and compulsory attendance at religious services across the world.<sup>5</sup>

In the last chapter, Knights examines four miscellaneous public law issues: health and safety regulations, animal rights, planning law and prison law. She examines in turn protective headgear, prohibited substances and objects, rituals, burials and ceremonies; meat slaughter regulations; use of land and access to holy sites; worship, diet and clothing requirements in prison. Knights herself acknowledges that these areas of law are unconnected and not easily discussed but she does a good job of pulling them together. They are particularly interesting in that they usually ask public authorities to accommodate the wishes of religious minorities. She mainly discusses domestic regulations and the few cases that have been brought before domestic and European courts. Useful reference could also be made to the jurisprudence of the UN Human Rights Committee on Article 18 of the International Covenant on Civil and Political Rights.

What is missing is a general bibliography at the end of the volume. It would also have been helpful to have a final conclusion pulling everything together. It may not have been the author's purpose yet considering her expertise her conclusions would have been valuable. What is to be even more regretted is the lack of analysis of the balance of competing interests. In particular, the reader would expect Knights to carry out the work of Chapter 3 in Chapters 4–7, i.e. in the specific situations of

4 Lewis, 'What Not to Wear: Religious Rights, the European Court, and the Margin of Appreciation', (2007) 56 *International and Comparative Law Quarterly* 395 at 396.

5 See <http://www.ohchr.org/english/issues/religion/index.htm> [last accessed 8 February 2008].

education, employment, immigration and asylum, planning, prison and health and safety law.

Nonetheless, Knights' treatment of the issues and case-law is to be commended. To this reader, the strength of the book lies in the presentation of domestic and European cases as well as legislation. Academics will already be familiar with much of the material presented but for civil law, public law and human rights practitioners, and the judiciary (the primary market of the book), this volume will be an invaluable resource.

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