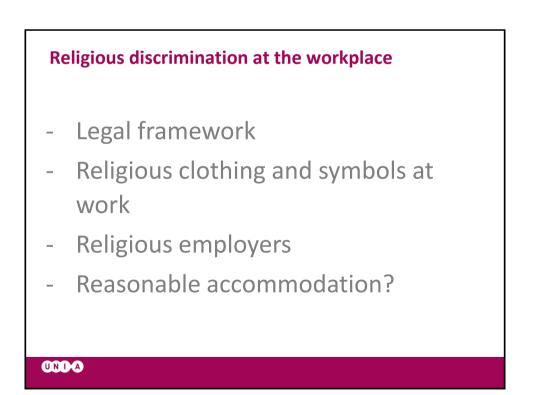
UNIA
Applying EU Anti-Discrimination Law
Religious discrimination at the workplace
Imane El Morabet Unia
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Religious discrimination at the workplace

Legal framework

Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

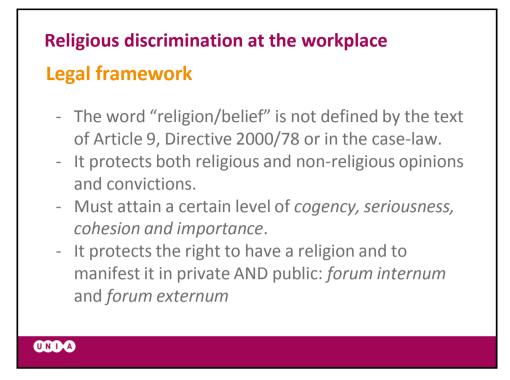
Article 3- Scope

(a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

(c) employment and working conditions, including dismissals and pay;(d) membership of, and involvement in, an organisation of workers or

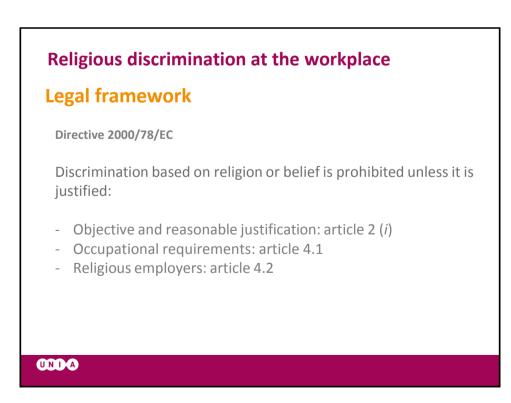
employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.













Religious discrimination at the workplace Religious clothing and symbols

ECHR Eweida and others v. the UK (2013): case of Mrs. Chaplin

A nurse in a public hospital had to remove her cross pendant for safety reasons

No violation of article 9 ECHR:

- Importance for employee to have the possibility to manifest her religion by wearing a visible cross
- Protection of public health and safety in hospital is of greater importance
- Wide margin of appreciation



Religious discrimination at the workplace Religious clothing and symbols

ECHR Ebrahimian v. France (2015)

Muslim woman was employed as a social worker in the psychiatric service of a French public hospital. She was asked to remove her headscarf, she refused. Her employment contract didn't get renewed.

No violation of article 9 ECHR:

- Guaranteeing strict religious neutrality to preserve the rights and interests of users of public services is a legitimate aim
- Respect for the religious beliefs and spiritual orientation of users
- The principle of secularism-neutrality is giving more weight
- Wide margin of appreciation

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Religious discrimination at the workplace Religious clothing and symbols

CJEU Achbita and Bougnaoui (2017)

A receptionist works in a private security company and got dismissed because she decided to wear a hijab 3 years after she was hired. The employer referred to a genaral neutrality policy that prohibits all visible signs of political, philosophical or religious convictions.

A design engineer with the French information technology company. She wore a hijab at work but was told by her employer to remove it while visiting a client after the client's staff had complained about her appearance – and when she refused to do so, she was dismissed.



Religious discrimination at the workplace Religious clothing and symbols

CJEU Achbita (2017)

- Indirect discrimination;
- a policy of political, philosophical and religious neutrality = legitimate aim → freedom to conduct business (article 16 Charter)
- IF:
- visual contact with the customers;
- coherent and systematic manner;
- assignement of a different job, without any visual contact with the customers is not possible.

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Religious discrimination at the workplace Religious clothing and symbols

CJEU Bougnaoui (2017)

- No intern rule
- Direct distinction based on religion
- Genuine and determining occupational requirement ?
- Willingness to take account of the discriminatory wishes of a customer → no justification



Religious discrimination at the workplace Religious employers

Article 4.2: Occupational requirements

Member States may maintain national legislation in force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organisations <u>the ethos of which is based on religion or belief</u>, a difference of treatment based on a person's religion or belief shall <u>not constitute discrimination</u> where, by <u>reason of the nature of these activities or of the context in which they are carried out, a person's</u> <u>religion or belief constitute a genuine, legitimate and justified occupational requirement, having</u> <u>regard to the organisation's ethos.</u> This difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground.

Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them <u>to act in good faith and with loyalty to the organisation's ethos</u>.



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Religious discrimination at the workplace

Religious employers

CJEU Egenberger (2016) and IR (2017)

Egenberger: Non-confessional applicant was not invited for an interview for an 18-month contract to draft a study on racial discrimination. The vacancy notice had an invitation to communicate the confession. The position was filled with an applicant of the Protestant confession.

IR: A man who managed one of the clinics of the Roman- catholic Church got dismissed on grounds that he had divorced and remarried, without annulment of the fist marriage. His second marriage was found invalid under canon law en therefore a breach of his loyalty obligations to his Catholic employer according to the rules set by the archbishop of Cologne.



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