



Religious discrimination at the workplace

APPLYING EU ANTI-DISCRIMINATION LAW WEBINAR FOR
LEGAL PRACTITIONERS

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Religious discrimination at the workplace

- Legal framework
- Religious clothing and symbols at work
- Religious conscience
- Religious employers
- Reasonable accommodation?

Religious discrimination at the workplace

Legal framework

(1) Freedom of religion

(2) Prohibition of discrimination based on religion

(1) Freedom of religion: Article 9 § 1 European Convention on Human Rights (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. “

Religious discrimination at the workplace

Legal framework

Article 9 ECHR

Two strands:

- 1) The right to hold a belief and to change one's religion or beliefs (absolute and unconditional)
- 2) To manifest one's beliefs alone and in private, but also to practice them in company with others and in public (not absolute).

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 1- Purpose

*The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of **religion or belief**, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.*

→ **Prohibition of discrimination**

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

Legal framework

- The word “religion/belief” is not defined by the text of Article 9, Directive 2000/78 or in the case-law.
- It protects both religious and non-religious opinions and convictions.
- Must attain a certain level of *cogency, seriousness, cohesion and importance*.
- It protects the right to have a religion and to manifest it in private AND public: *forum internum* and *forum externum*

Religious discrimination at the workplace

Legal framework

Article 9 European Convention on Human Rights

Limitation

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.

Religious discrimination at the workplace

Legal framework

Article 9 European Convention on Human Rights

Limitation

3 conditions:

- 1) Prescribed by law
- 2) 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
- 3) Necessary in a democratic society (proportionality)

Religious discrimination at the workplace

Legal framework

Directive 2000/78/EC

Discrimination based on religion or belief is prohibited unless it is justified:

- Objective and reasonable justification: article 2 (*i*)
- Occupational requirements: article 4.1
- Religious employers: article 4.2

Religious discrimination at the workplace

Religious clothing and symbols

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

Temporary dismissal of employee of British Airways for having refused to conceal her Christian cross, while certain symbols of other religions (such as the turban and the hijab) were allowed.

Violation of article 9 ECHR:

- No fair balance
- Too much weight was given to company's wish to have a certain commercial image
- The cross was "discreet" and no evidence of any negative impact of the wearing of such symbols on the employer's brand or image.

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*

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 general 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;
 - assignment of a different job, without any visual contact with the customers is not possible.

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 conscience

ECHR Grimmark v. Sweden and Steen v. Sweden (2020)

Healthcare professionals refuse to participate in abortion services and were consequently not employed as midwives.

No violation of article 9 ECHR:

- A positive obligation of States with regard to health care
- Duties of midwives
- A proper balance had been struck between the different conflicting interests.

Cf. ECHR Ladele v. UK (2013) and Mcfarlane v. UK (2013)

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 **the ethos of which is based on religion or belief**, a difference of treatment based on a person's religion or belief shall **not constitute discrimination** where, by **reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos**. 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 **to act in good faith and with loyalty to the organisation's ethos**.*

Religious discrimination at the workplace

Religious employers

- Exception for churches and other public or private organisations of which the ethos is based on religion or belief
- Religion or belief is a *genuine, legitimate and justified occupational requirement*
- Obligation of acting in good faith and with loyalty to the organisation's ethos

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 first marriage. His second marriage was found invalid under canon law and therefore a breach of his loyalty obligations to his Catholic employer according to the rules set by the archbishop of Cologne.

Religious discrimination at the workplace

Religious employers

- Religious employers have the autonomy to decide on the hiring criteria with regard to religious affiliation or necessary ethos. The requirements are however subject **to full judicial review**.
- The national authorities must interpret the relevant law in accordance with the Directives. If it is unable to do so, it must, if necessary, disapply the national provision- including the provisions set by the religious employers.
- The requirements laid down by the employer must be checked to see whether, objectively speaking, there is a direct link between the occupational requirement laid down by the employer and the activity in question. This may result from the nature of the activity or the circumstances in which it is carried out.

Religious discrimination at the workplace

Reasonable accommodation?

- Article 5 Directive 2000/78: only for disability
- Accommodation for religion/belief is not mandatory
- CJEU Achbita: *“Offer a post not involving any visual contact with customers, instead of dismissal”*

Thank you for your attention!

