

# Religious discrimination at the workplace

## APPLYING EU ANTI-DISCRIMINATION LAW

Imane El Morabet

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## Religious discrimination at the workplace



- Legal framework
- Religious clothing and symbols at work
- Religious conscience
- Religious employers
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## Religious discrimination at the workplace

### Legal Framework

(1) Freedom of religion

(2) Prohibition of discrimination based on religion



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## Religious discrimination at the workplace

### Legal Framework

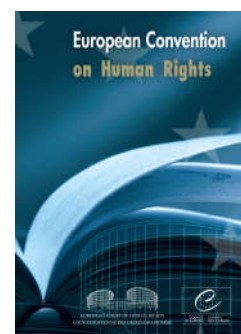
#### Freedom of religion

##### ARTICLE 9

##### Freedom of thought, conscience and religion

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.



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## Religious discrimination at the workplace

### Legal Framework

#### Freedom of religion: Charter of Fundamental Rights of the EU



*Article 10*

##### **Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.



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## Religious discrimination at the workplace

### Legal Framework

#### Freedom of religion

##### 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).



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## Religious discrimination at the workplace

### Legal Framework



#### Article 21

#### Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.



## Religious discrimination at the workplace

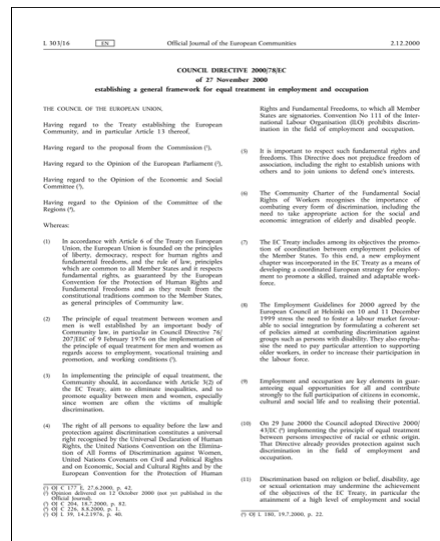
### Legal Framework

#### 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

Article 3

#### Scope

1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

- (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.

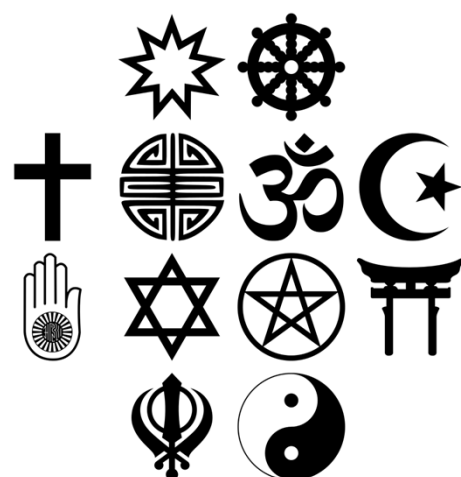
- a) Access to employment, self-employment;
- b) Vocational guidance training and retraining;
- c) Employment and working conditions
- d) Membership and involvement employers organisation or trade union



## 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

##### Freedom of thought, conscience and religion

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.

- 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

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

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

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

CJEU Achbita and Bougnaoui (C-157/15 and C-188/15, 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.



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## Religious discrimination at the workplace

### Religious clothing and symbols – CJEU

CJEU Achbita (C-157/15, 2017)

- Indirect discrimination;
- a policy of political, philosophical and religious neutrality = legitimate aim → freedom to conduct business (article 16 Charter).

Article 16

#### Freedom to conduct a business

The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.



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## Religious discrimination at the workplace

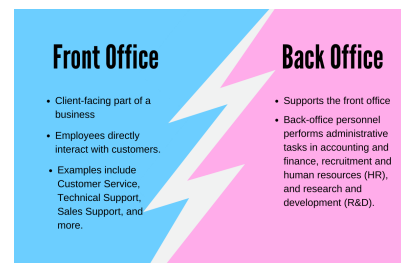
### Religious clothing and symbols – CJEU

CJEU Achbita (C-157/15, 2017)



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.



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## Religious discrimination at the workplace

### Religious clothing and symbols – CJEU

CJEU Bougnaoui (C-188/15, 2017)

MICROPOL  
GROUP

- 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



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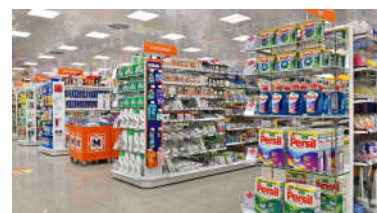
## Religious discrimination at the workplace

### Religious clothing and symbols – CJEU

CJEU IX v WABE and MH v Müller Handel (ref: C-804/18 and C-341/19 year: 2021)

WABE  
WOHNEN | ARBEITEN  
BETREUEN | ENTWICKELN

- WABE: IX was a special needs carer working for Wabe, who runs child day care centres across Germany. Wabe adopted a policy of neutrality and temporary suspended IX for persistently refusing to remove her hijab.
- Müller: MH worked as a customer-facing cashier and did not comply with her employer's requests to remove her hijab at work, as per an internal rule asking employees not to wear 'large-sized signs of political, philosophical or religious beliefs.'



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## Religious discrimination at the workplace

### Religious clothing and symbols – CJEU

CJEU WABE and MH Müller Handel (ref: C-804/18 and C-341/19 year: 2021)

- Confirmation previous case law
- Need to present a neutral image towards customers or to prevent social disputes= legitimate aim
- A genuine need
- Consistent and systematic manner restricted to employees who are in contact with customers: Limiting the prohibition to large-sized signs cannot be justified
- Proportionate = limited to what is strictly necessary
- Specific context of Member State



## Religious discrimination at the workplace

### Religious clothing and symbols – CJEU

CJEU L.F. v SCRL (ref:C-344/20 year: 2022)

- L.F. who was denied an internship at SCRL, a company whose main activity consists of the letting and operating of social housing, because she failed to adhere to the neutrality policy of the company which asked her to remove her Islamic headscarf.
- The terms of employment: workers can't manifest in any way, either by word or through clothing or any other way, their religious, philosophical or political beliefs, whatever those beliefs may be.



## Religious discrimination at the workplace

### Religious clothing and symbols – CJEU

CJEU L.F. v SCRL (ref:C-344/20 year: 2022)

- Confirmation previous case law: neutrality provisions prohibiting workers from manifesting their religious or philosophical beliefs do not constitute direct discrimination, provided that they are applied in a general and undifferentiated way.

<sup>41</sup> That interpretation is inspired by the concern to encourage, as a matter of principle, tolerance and respect, as well as acceptance of a greater degree of diversity, and to avoid abuse of a policy of neutrality established within an undertaking to the detriment of workers who observe religious precepts requiring the wearing of certain items of clothing.

"This ruling will exclude many Muslim women from the workplace."

Maryam H'madoun,  
Open Society Justice Initiative



## Religious discrimination at the workplace

### Religious clothing and symbols – CJEU

CJEU OP v Commune d'Ans (ref: C-148/22, pending)

- A lawyer by training, is responsible for handling the municipal authority's public contracts and primarily performs her duties without being in contact with the public. She informed the municipal authority that she intended to wear an Islamic headscarf in the workplace. This was not allowed due to a general implicit prohibition on the wearing of signs of conviction within the administration, that was formalised after the request.



## Religious discrimination at the workplace

### Religious clothing and symbols – CJEU

CJEU OP v Commune d'Ans (ref: C-148/22, pending)

Opinion of advocate general Collins (4 May 2023)

- If applied in a general and undifferentiated way, such a rule may be justified by the desire of a municipal authority to put in place an entirely neutral administrative environment.
- It is for the municipal authority to demonstrate that that choice responds to a genuine need.
- The Belgian Labour Court should take into account the apparent absence of any legislative or constitutional obligation in Belgium requiring employees of a municipal authority to observe exclusive neutrality.
- It should be ascertained whether the facts justify the municipal authority's choice. In that regard, the fact that the wearing of signs of philosophical or religious belief is unconditionally permitted in other cities of Belgium legitimately raises the question whether the prohibition at issue is appropriate.



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## 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)*



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## Religious discrimination at the workplace

### Religious employers

Article 4

#### Occupational requirements

1. Notwithstanding Article 2(1) and (2), 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.

2. 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.

- 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.



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## Religious discrimination at the workplace

### Religious employers

CJEU Egenberger (C-414/16, 2016) and IR (C-68/17, 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.



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## 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

### Religious employers



Pending: JK / Kirchliches Krankenhaus C-630/22

Kirchliches Krankenhaus is affiliated to the German Caritas Association and runs, among other things, a hospital. It provides charitable aid by treating and caring for the sick, as part of the mission of the Catholic Church.

JK was employed by KK as a midwife until mid-2014. She was subsequently self-employed. In September 2014, the applicant left the Catholic Church. In 2019 she applied again at KK. JK's allegiance to the Catholic Church was not discussed during a new recruitment interview. She returned the employment contract which the hospital had signed and sent to her beforehand, along with a staff questionnaire, to KK's HR department when her employment commenced on 1 April 2019. In the staff questionnaire she had indicated that she had left the Catholic Church.

After this came to the employer's attention, its HR manager informed the applicant that leaving the Church was in breach of the employment regulations. KK's HR manager gave the applicant notice of termination after she said that she was not willing to rejoin the Church.





## Religious discrimination at the workplace

### Religious employers



Pending: JK / Kirchliches Krankenhaus C-630/22

Is it compatible with EU law, (...) if a national provision provides that a private organisation whose ethos is based on religious principles:

- may deem unsuitable for employment in its establishment persons who have left a particular religious community prior to the establishment of the employment relationship, or
- may require of its staff that they have not left a particular religious community prior to the establishment of the employment relationship, or
- may make it a condition of employment that a member of staff who has left a particular religious community prior to the establishment of the employment relationship rejoin said community,
- If the first question is answered in the affirmative: What, if any, further requirements apply under Directive 2000/78/EC in light of Article 21 of the Charter in order to justify such a difference of treatment on grounds of religion?



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## Religious discrimination at the workplace

### Food for thought



Food for  thought.

- Neutrality policy = freedom to conduct a business vs freedom of religion?
- Distinction front and back office?
- Impact on (Muslim) women?
- Customers' wishes (prejudices?) accepted as justification?



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**Thank you for your attention!**



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