

Religious discrimination at the workplace

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This training session is funded under the 'Rights, Equality and Citizenship Programme 2014-2020' of the European Commission.

The legal framework

- Charter of Fundamental Rights of the European Union
- TFEU
- Directive 2000/78
- Convention for the Protection of Human Rights and Fundamental Freedoms

The Charter

- Chapter II - Freedoms

Art. 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 of conscientious objection is recognized, in accordance with the national laws governing the exercise of this right..

The Charter

- Chapter III - Equality

Article 20 - Equality before the law

Everyone is equal before the law.

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.

TFEU Treaty

- Article 10

In defining and implementing its policies and activities, the Union shall aim to combat all discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

TFEU Treaty

Art. 19

1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Directive 2000/78

- 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.

Directive 2000/78

- 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..

The ECHR

- 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.

Legal framework

- Different sources (EU law, European Convention on Human Rights, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, Convention No. 111 of the International Labour Organization)
- Variety of interpretations
- Very sensitive issue in some countries
- The understanding of discrimination related to religion is complex:
 - Fundamental freedom and a right (not to be discriminated against)
 - May involve other gender-related discrimination, originally
 - Right not to be discriminated against, Right to have religious opinions taken into account

The questions

- The definition of "religion" and beliefs
- The field of exceptions
 - interpretation of Article 4 § 1 of the Directive: the genuine and determining occupational requirement
 - interpretation of Article 4 § 2: ethos-based organisations
- The boundaries between direct and indirect discrimination
- Intersectional discrimination

Case law

- CJUE, GC 14 March 2017, C-157/15, Samira Achbita v. G4S Secure Solutions NV
- CJUE, GC 14 March 2017, C-188/15, C- Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v. Micropole SA
- CJUE, GC 17 April 2018, C- 414/16, Vera Egenberger v. Evangelisches Werk für Diakonie und Entwicklung eV.
- CJEU, GC 11 Sept. 2018, C-68/17, IR v. JQ
- CJUE, GC 22 Jan. 2019, C-193/17, Cresco Investigation GmbH v. Markus Achatzi

One definition (Case G4S)

- For the Court of Justice, a broad definition must be retained
- From the preamble of the Directive, the Court refers to the ECHR and the Charter and accepts that a common interpretation of the concept of religion must prevail.
- It is necessary to retain a broad conception which is understood as covering "both the forum internum, namely the fact of having convictions, and the forum externum, namely the public manifestation of the religious faith".

Direct and indirect discrimination

- If an internal rule prohibits the wearing of any visible sign of political, philosophical or religious convictions, this is not direct discrimination.
- But it can be indirect discrimination.
- The rule is then analyzed: it must pursue a legitimate objective and it must be necessary and proportionate.
- Thus, "An employer's desire to display an image of neutrality towards customers relates to the freedom of enterprise, recognized in section 16 of the Charter and is, in principle, legitimate" (G4S decision).

Direct and indirect discrimination

- On proportionality: the clauses must concern only the employees who are in contact with the customers; the policy of neutrality of the employer must be pursued in a coherent and systematic way; taking into account the constraints of the company, and without this constituting an additional burden, the employer must seek if there is not another position for the employee.
- Towards a lighter reasonable accommodation obligation?

Direct discrimination

- In the case of direct discrimination, analysis of permitted exceptions
 - Art. 4 § 1 of the Directive (Bougnaoui judgment)
 - Art. 4 § 2 of the Directive (Egenberger, IR)
 - Art. 2 § 5 and Art. 7 § 2 of the Directive (Cresco)

To be continued

Pending Cases :

C-344/20

C-341/19

C-804/18