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ESSEX COURT CHAMBERS
BARRISTERS

**The Case Law of the CJEU on
Freedom of Religion**

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- Article 17 TFEU
- Declaration 11 Treaty of Lisbon

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- Article 19 TFEU- Contrast Article 18 TFEU
 - Article 10 Charter of Fundamental Rights
 - Prohibition of discrimination on grounds of religion or belief – a general principle
 - Directive 2000/78 establishing a general framework for equal treatment in employment and occupation OJ 200 L303/16 (the 'Framework Employment Directive')

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- Article 1 Framework Employment Directive:
 - The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion....as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment'.

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- Religion?
 - Broad interpretation following approach of ECHR
 - ‘Article 1 should be interpreted as...covering both the *forum internum*, that is the fact of having a belief and the *forum externum*, that is the manifestation of religious faith in public.
 - Case C-157/15 Achbita judgment para 28

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- Religious Organisation?
 - Self Determining?
 - Case C-68/17 IR v. IQ Advocate General Wathelet

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- Case C-157/15 Achbita
 - ...the prohibition on wearing an Islamic scarf, which arises from an internal rule of a private undertaking prohibiting the visible wearing of any political, philosophical or religious sign in the workplace, does not constitute direct discrimination based on religion or belief...'

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- 'Direct Discrimination?
 - Indirect Discrimination?
 - Objective Justification?

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- Case 188/15 Bougnaoui
 - Article 4 (1) Framework Employment
 - Recital 23
 - ‘...it is only in very limited circumstances that a characteristic related, in particular to religion, may constitute a genuine and determining occupational requirement’. (para 38)

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- Case C-188/15 Bougnaoui
 - ‘...the willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic scarf cannot be considered a genuine and determining occupational requirement.....’ (para 41)

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- **Case C-414/16 Vera Egenberger**
 - Article 4 (2)
 - ‘...the genuine, legitimate and justified occupational requirement..is necessarily and objectively dictated, having regard to the ethos of the church or organisation concerned by the nature of the occupational activity concerned, or the circumstances in which it is carried out, and cannot cover considerations which have no connection with that ethos or with the right of autonomy of the church or organisation. That requirement must comply with the principle of proportionality.’ (para 69)

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- Remedies under national law?
 - Effective remedy including possibility of
 - judicial review

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- **Case C-426/16**
 - **Liga van Moskeen Islamitische**
 - Judgment of 29 May 2018
 - Obligation to use approved slaughterhouses; demand for ritual slaughtering at precise time of the year over a short period of time
 - Limitation on freedom of religion?
 - Article 10 Charter

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- **Case C-193/17 Achatzi - Pending**
 - Day of holiday for members of certain churches, if work performed payment for that work in addition to payment for day of holiday - payment for work performed on those days in accordance with contract of employment denied to members of other churches.

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- **Case C-68/17 IR v. JQ**

 - **Opinion Advocate General Wathelet 31 May 2018**

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- **The Kucudeveci Case law**
 - General principle of non-discrimination of old age.
 - General principle of non-discrimination on the grounds of religion or belief?
 - **Advocate General Sharpston Bougnaoui**
Para 62
 - **Case C-414/16 Vera Egenberger** para 76

- **Exceptions and Derogations –**
- **The Implications of Case 236/09 Test Achats**