



**Trinity College Dublin**

Coláiste na Tríonóide, Baile Átha Cliath

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# Religious Discrimination at the Workplace and the CJEU Case-Law Regarding Headscarves

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15 November 2024



**Funded by  
the European Union**

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# 1. Case-law on wearing headscarves

**C–157/15 *Achbita* EU:C:2017:203.**

**C–188/15 *Bougnaoui* EU:C:2017:204.**

**C–804/18 and 341/19 *IX v WABE eV, MH Müller Handels GmbH v MJ* EU:C:2021:594.**

**C–344/20 *LF v SCRL* EU:C:2022:774.**

**C–148/22 *OP v Commune d’Ans* EU:C:2023:924.**



Source:  
<https://pixabay.com/photos/woman-headscarf-people-faith-748211/>

## Case C-157/15 *Achbita v G4S Secure Solutions NV* EU:C:2017:203.

- the employer had a requirement that no visible signs of religious/political beliefs should be worn in the workplace.
- ➔ NOT *direct* but it could be *indirect* discrimination.
- ➔ Is it objectively justified?
- A desire to display religious neutrality = legitimate aim.
- Prohibiting visible religious symbols may be proportionate to that aim.
- cf. *Bougnaoui*: client objection to an employee wearing the headscarf = *direct* discrimination.

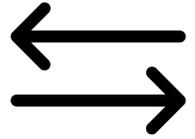


# What appears to be settled in the case-law?

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- Employers' rules that prohibit the wearing of all visible signs of religious, philosophical, or political beliefs do not constitute direct discrimination on grounds of religion or belief.
- Such rules may constitute indirect discrimination unless they are objectively justified.
- Such rules may constitute an appropriate and necessary means of pursuing the employer's aim of projecting an image of neutrality OR upholding neutrality of the public service.

# Where are there evolutions in the case-law?



- Prohibitions on some (but not all) religious symbols may constitute direct discrimination.
- The justification test was applied more rigorously in *WABE and Müller Handels*.
- States enjoy a ‘a margin of discretion in designing the neutrality of the public service’ (§33, *Commune d’Ans*).
- States enjoy a ‘margin of discretion’ when setting a ‘fair balance’ between freedom of religion and other rights and freedoms (§§86-89, *WABE and Müller Handels*).

# Issues yet to be addressed



Source: <https://pixabay.com/photos/prayer-bible-christian-folded-hands-1308663/>

- **Other ways in which employers restrict the manifestation of religious beliefs.**
- **Conscientious objection.**

## 2. Employers with a religious ethos

Arts 4(1) and 4(2), Directive 2000/78

C-414/16 *Egenberger* EU:C:2018:25.

C-68/17 *IR v JQ* EU:C:2018:363.

C-258/24 *Katholische Schwangerschaftsberatung v JB*, pending.



Source: <https://pixabay.com/photos/monastery-cloister-abbey-corridor-3130879/>

# Employment in organisations with a religious ethos

Case C-414/16 *Egenberger* EU:C:2018:257

- **Not hired for a research position in an organization with a religious ethos: discrimination?**
- **Art 4(2), Directive 2000/78 permits differences of treatment on grounds of religion/belief in organizations with an ethos based on religion/belief.**
- **CJEU: there must be an ‘objectively verifiable existence of a direct link’ between the requirement and the activity to be performed (§63).**
- **eg contributing to the mission of proclamation of religion or to ensure credibility to the outside world.**
- **NB. The complainant derived directly effective rights from the prohibition of discrimination in Art 21(1), Charter of Fundamental Rights.**



Source:  
<https://www.anglicannetwork.ca/christianity-anglicanism>

# What appears to be settled in the case-law?

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- **The Court has adopted a narrow interpretation of the Article 4(2) exception for the occupational activities of churches and religious ethos organisations.**
- **There must be a strong connection between the functions of the employee and the requirement to hold religious beliefs / to act in accordance with the organization's ethos.**
- **The Court has focused on consistency of treatment of all employees, irrespective of religious beliefs.**

### 3. Measures for minority religions

Case C-193/17 *Cresco Investigation GmbH v Achatzi* EU:C:2019:43.

**Good Friday = public holiday for certain minority Christian denominations.**

**Was this less favourable treatment of an employee who did not belong to these churches?**



→ **Who was in a comparable situation?**



**Anyone required to work on Good Friday.**

→ **direct discrimination on grounds of religion or belief.**



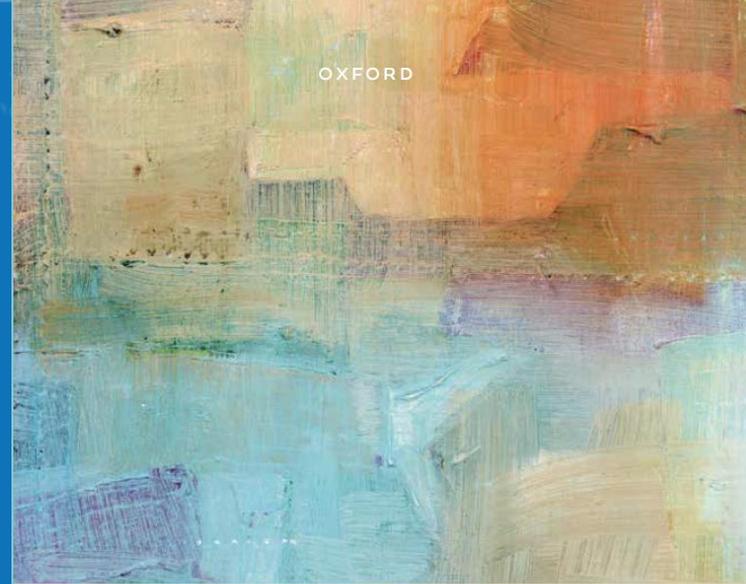
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## Concluding observations:

- The case-law reflects a conception of equality as sameness of treatment.
- The Court has not focused on the fundamental right to freedom of religion.



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AN ETHICAL PERSPECTIVE ON WORK

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