

EU law on visible religious belief at work

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Phase 1: Customer Preferences

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C-157/15 Achbita – the facts

- Receptionist for G4 in Antwerp, Belgium
- Refused to remove headscarf
- G4 quickly adopted rules on ‘no visible signs of political, philosophical or religious belief’ and dismissed her
- Also, case C-188/15 Bougnaoui, same day

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Achbita – the ruling

- Indirect not direct discrimination (greater effect on some groups than others). Although for national judge to decide.
- Business desire for ‘neutrality towards customers’ could justify the rule – as long as measures don’t go beyond what is necessary
- But the rule must be completely consistent – all beliefs, religions, signs. Otherwise direct discrimination and per se prohibited.

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Achbita - critique

- ‘Neutrality’ – does that just mean ‘concession to customer prejudice’?
- ‘Beyond what is necessary’ - Court was not interested in evidence (although national court should be)
- CHEZ/Nikolova says a rule is direct discrimination if adopted by reason of a prohibited ground
 - So, let’s be honest: was this rule motivated by a specific dislike of headscarves or not?
- What is a sign of philosophical or political belief? Jeans? Long hair? A suit?

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Phase 2: Explaining and nuancing

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C-804/18 and C-341/19 WABE – the facts

- A child care organisation and a business – joined cases – both dismissed women for wearing headscarves
- National court asked similar questions to Achbita
- The business had a rule on ‘no large religious signs’

- Also C-344/20 LF, around the same time

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WABE – the ruling

- The business lost – rule has to be consistent, universal, equal: no large signs is a way of picking out headscarves and leaving small crucifixes alone. Direct discrimination. Prohibited.
- The child care organisation – as in Achbita, could have greater effect on some groups (indirect discrimination) but could be justified.
 - Respecting ‘legitimate’ wishes of customers is part of right to run a business
 - Such as desire to have children educated in a certain way
 - But mere desire to be ‘neutral’ is not enough – there must be an objective need- for example evidence of a risk of ‘loss of income’
 - MS (including their courts) may give greater protection to religious freedom – directive does not fix the balance between freedom of religion and freedom to conduct a business, but leaves a certain margin of discretion. (Also C-344/20 LF)

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WABE - critique

- So economic interests trump religious freedom (unless MS intervene to prevent this). Remarkable in EU law. C.f. free movement: 'merely economic interests' do not justify restrictions.
- Court is slippery on respecting customer wishes – it says they should be 'legitimate', but then says loss of income can justify a rule – which is just concession to prejudice.
- It treats parental wish that their children not see headscarves as obviously legitimate. Why? Evidence of need? What is the harm?

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Phase 3: the 'neutral' state

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C-148/22 OP v Commune d'Ans – the facts

- Woman working at Belgian municipality began wearing a headscarf
- Municipality quickly adopted a 'no visible signs' rule and dismissed her
- No contact with public – about preserving a 'neutral administrative environment'

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Commune d'Ans – the ruling

- For national court to balance rights and decide if prohibition is justified – can give more protection to religious freedom.
- But in principle 'neutrality' can justify such a rule (provided it is universal etc etc)
- National court also asked about sex discrimination – ECJ says no need to consider, different directive (!!)

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Commune d'Ans – critique (1)

- Neutrality appears to be a 'magic word' – product of state sensitivities and history
- But tradition cannot justify restrictions as such – or discrimination law would achieve nothing (it's *about* overcoming the past)
- So what is neutrality – what interest does it serve?
 - Peaceful workplace? if employees of different religions can't work together, get new employees!
 - Trust of the public in the state? Code for prejudice
 - Transparency would be more appropriate than invisibility – these rules protect existing religious power networks within the state

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Commune d'Ans – critique (2)

- According to the Court's methodology (C-389/20 TGSS) religious sign rules are sex discrimination
 - But they would never dare say that economic interests or administrative neutrality justify sex discrimination, so they avoid the issue
 - There are different degrees of protection of equality in EU law – sex/gender, then race, religion at the bottom.

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Conclusions

- Core problem 1: Laicite is a deal between the state and Catholicism. Cutting-and-pasting it to Islam, Judaism, Sikhism isn't equality, it's protectionism.
- Core problem 2: Europeans don't believe in equality of religions, but they signed Treaties and directives saying they do. Courts are left trying to reconcile principles with prejudice.