

Religious discrimination at the workplace & the CJEU case law regarding headscarves

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dr. H.M.A.E. (Hana) van Ooijen

Assistant professor International & European law



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The Public Prosecution Service must initiate criminal proceedings against the fish store which refused to serve fish to a woman wearing a niqab



Photo AFP of NOS

[2 March 2026 \(ECLI:NL:GHDHA:2026:370 Gerechtshof Den Haag\)](#)

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Specificities

- Criminal law (Art. 429quater CrC)
- Business
- Niqab

RED HERRING



- “Red Herring” refers to diverting someone onto a false trail or distracting a person from the true issue.

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Contrast with today

- Labour law (domestic)
- Workplace
- Headscarf



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Outline

1. EU Directive 2000/78/EC
2. Case law of the Court of Justice
3. Positioning case law within the Directive
4. Takeaways with discussion

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1. Directive 2000/78/EC: Legal landscape

Art. 1 (Purpose):

[...] a general framework for equal treatment in
employment and occupation,
prohibiting *discrimination* on grounds of
religion or belief, [disability, age, or sexual orientation]

Recital (1)

EU Charter
Art. 10(1)
Art. 21(1)
Art. 52(3)

European Convention on Human Rights
Art. 9
Art. 14

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1. Directive 2000/78/EC: Scope

Art. 3(1): Employment and occupation

(a) conditions for access 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.

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1. Directive 2000/78/EC: Grounds of discrimination

Art. 1: Grounds of discrimination: Religion or belief (no definition in Directive) – broad interpretation in line with the ECHR.

Campbell and Cosans (1982): "A certain level of cogency, seriousness, cohesion, and importance"

ECHR, Article 9:
Forum internum

Wide array of religions and beliefs

Absolute

ECHR, Article 9:
Forum externum

Manifestations including religious dress

Subject to limitations

Arrowsmith (1978): *"not very act motivated or influenced by a religion or belief [...]"*

Kokkinakis (1993): *"It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. [...]"*

para. 2:
- Prescribed by law
- legitimate aim (e.g. public safety, public order, health or moral, rights and freedoms of others)
- Necessary in a democratic society

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1. Directive 2000/78/EC: Equal treatment

Art. 1: Principle of equal treatment

Art. 2(2)(a):
Direct discrimination
Less favourable treatment in a comparable situation on a prohibited ground [...], unless

Art. 2(2)(b):
Indirect discrimination
Apparently neutral provision [...] that puts persons of a particular [ground] at a particular disadvantage, unless

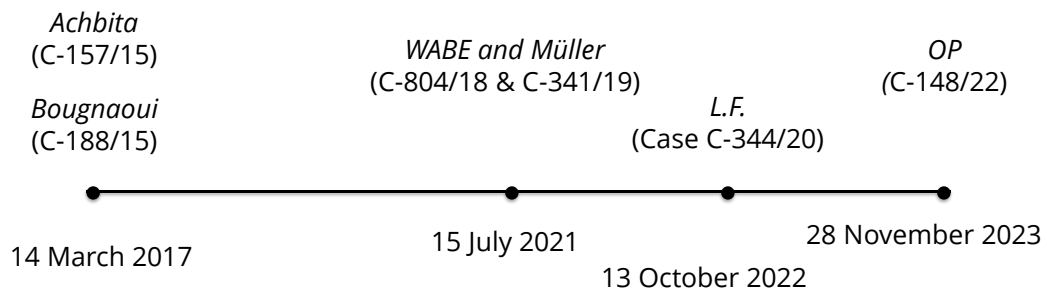
Art. 2(3) and (4):
Harassment/Instruction to discriminate

Art. 4: genuine occupational requirement: differences in treatment permitted where a characteristic constitutes a genuine and determining occupational requirement, provided the objective is legitimate and requirement proportionate.

Art. 2(2)(b)(i): objectively justified
- legitimate aim;
- means are appropriate and necessary

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2. CJEU cases - Timeline



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2. *Samira Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV (C-157/15, 14 March 2017)*

Ms. Achbita, a Muslim receptionist at G4S (a private security company), was dismissed after insisting on wearing an Islamic headscarf in contravention of G4S's internal neutrality rule prohibiting all visible signs of political, philosophical, or religious belief.

1. Does a general neutrality rule constitute direct discrimination?
2. If not, can it amount to indirect discrimination, and how may it be justified

No direct discrimination

A general neutrality rule treats all workers equally — it is not linked to any specific religion.

Potential Indirect Discrimination

If the rule particularly disadvantages persons of a particular religion, it may constitute indirect discrimination.

Justification Conditions

The policy must genuinely pursue for instance neutrality in a consistent, and systematic. Means must be appropriate and necessary (e.g. verify other position with no contact customers)

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2. *Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA (C-188/15, 14 March 2017)*

Ms. Bougnaoui, a Muslim design engineer at Micropole, was dismissed following a customer complaint about her Islamic headscarf. The employer had pre-emptively warned her that wearing a veil might cause difficulties with clients.

Does a customer's wish that services not be provided by a worker wearing a headscarf constitute a genuine and determining occupational requirement (GOR) under Article 4(1)?

No. A GOR must be objectively dictated by the nature of the occupational activities concerned or of the context in which they are carried out. Particular wishes of customers are subjective considerations.

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2. IX v WABE eV and MH Müller Handels GmbH v MJ (C-804/18 & C-341/19, 15 July 2021)

IX (C-804/18): A special needs carer at a child day care centre was suspended for refusing to remove her headscarf under a general neutrality instruction.

MJ (C-341/19): A sales assistant and cashier was told to remove her headscarf; the employer subsequently issued a directive prohibiting "conspicuous, large-sized" religious signs.

1. Does a general neutrality rule constitute direct discrimination?
2. If not, can it amount to indirect discrimination, and how may it be justified

No direct discrimination

Reaffirmed *Achbita*, a general undifferentiated prohibition on all visible signs is not direct discrimination.

Direct discrimination

A prohibition limited to conspicuous signs is inextricably linked to specific religions — it constitutes direct discrimination and cannot be justified under Art. 2(2)(b)(i).

Neutrality policy must meet a genuine need, demonstrated by customer/user wishes (e.g., parents' rights) and adverse consequences if no policy exists.

Appropriate: policy is pursued in a consistent and systematic manner

Strictly necessary: looking at actual scale and severity of the adverse consequences

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2. L.F. v S.C.R.L (C-344/20, 13 October 2022)

A student was denied an internship at a social housing company after refusing to comply with the neutrality policy

Can national legislation that treats religious, philosophical, and political beliefs as distinct grounds for discrimination be considered a "more favourable provision" under Article 8 of Directive 2000/78/EC, even if the Directive itself considers "religion or belief" as a single ground?

The CJEU denied this stating "religion or belief" constitutes a single ground of discrimination. National legislation separating religious from philosophical belief into two distinct grounds cannot qualify as a "more favourable provision" under Article 8(1).

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2. *OP v Commune d'Ans* (C-148/22, 28 November 2023)

A back-office municipal employee sought authorisation to wear a headscarf. The municipality introduced an "exclusive neutrality" rule covering all staff regardless of public contact

1. Can a public administration put in place an entirely neutral administrative environment for all staff (not allowing any signs of religion or belief), whether or not they are in direct contact with the public?

The ECJ recognised that a public administration's desire for an entirely neutral environment is a legitimate aim, subject to strict proportionality — even for employees without public-facing roles

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3. CJEU case law and scope of the Directive

Art. 3(1): Employment and occupation

(a) conditions for access 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 and 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.

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1. Directive 2000/78/EC: Grounds of discrimination

Art. 1: Grounds of discrimination: Religion or belief

L.F. case:

Single ground of discrimination (religious, philosophical and spiritual belief)

ECHR, Article 9:
Forum internum

Wide array of religions and beliefs
Absolute

ECHR, Article 9:
Forum externum

Manifestations including religious dress
Subject to limitations

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1. Directive 2000/78/EC: Equal treatment

Art. 1: Principle of equal treatment

Art. 2(2)(a):

Direct discrimination

Less favourable treatment in a comparable situation on a prohibited ground [...], unless

MJ case: Prohibition of conspicuous, large-sized signs of political, philosophical or religious beliefs

Boungaoui case: No Islamic headscarf (veil)

Customers' requests do not qualify as a genuine occupational requirement

Art. 4: genuine occupational requirement:

differences in treatment permitted where a characteristic constitutes a genuine and determining occupational requirement, provided the objective is legitimate and requirement proportionate.

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1. Directive 2000/78/EC: Equal treatment

Art. 1: Principle of equal treatment

Art. 2(2)(b):
Indirect discrimination
Apparently neutral provision [...] that puts persons of a particular [ground] at a particular disadvantage, unless

Art. 2(2)(b)(i): objectively justified
- legitimate aim;
- means are appropriate and necessary

Achbita case:
internal rule in a private undertaking prohibiting visible wearing of any political, philosophical or religious signs possibly indirect discrimination, unless objectively justified by appropriate and necessary means which pursue a legitimate aim, e.g. political, philosophical and religious neutrality

IX case:
internal rule must be applied in a general and undifferentiated way
Aim: the employer should demonstrate a genuine need
Appropriate: consistent and systematic pursuit of policy
Necessary: strictly limited, seen the actual scale and severity of envisaged adverse consequences.

OP case:
In a general and indiscriminate manner
Aim: entirely neutral administrative environment
Appropriate, necessary and proportionate (context and the various rights and interests)

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4. Takeaways / Discussion questions

1. The EU-Directive sets minimum standards (Art. 8(1)) → How about your state?
2. Member States have discretion (domestic contexts matter) → How about your state?

When dealing with a case:

1. Does a case fall within the scope of the Directive?
2. Is there direct or indirect discrimination – what is the right comparator?
Scrutiny of the policy/criterion/practice.
→ How would you determine whether there is direct or indirect discrimination?
3. In case of indirect discrimination – objective justification?
Scrutiny of the policy/criterion/practice.
→ What variables matter in your view?

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Thank you for your attention!
Please do not hesitate to contact me via:

h.m.a.e.vanooijen@uu.nl



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