

Religious clothing and symbols in employment

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State of Play in the Member States

Member State	Legislation in force?	Legislative proposal?	Debates?	Case law?
Austria	Yes	No	Yes	Yes
Belgium	Yes	No	Yes	Yes
Bulgaria	Yes	No	Yes, but not much	No
Croatia	No	No	Yes	No
Cyprus	No	No	No	No
Czech Republic	No	No	No	No
Denmark	Only in relation to judges	No bill yet	Yes	Yes, 1 case
Estonia	No	No	No	No
Finland	No	No	No	Yes, 2 cases
France	Yes	No	Yes	Yes
Germany	Yes, state level	No	Yes	Yes
Greece	No	No	No	No
Hungary	No	No	Yes, but only in relation to one case	Yes, 1 case
Ireland	No	No	Yes, Academic debate only	Yes
Italy	No	No	No	Yes
Latvia	No	Yes	Yes, on draft law	Yes
Lithuania	No	No	No	No
Luxembourg	No	Yes, minister to prepare bill	Yes. But only on the wearing of the face veil	No
Malta	No	No	No	No
Netherlands	No	Yes	Yes	Yes
Poland	No	No	No, but research by Equality Body planned	Yes
Portugal	No	No	No	No
Romania	No	No	No	No
Slovakia	No	Proposed but rejected	Some after proposal	No
Slovenia	No	Proposed but rejected	No	No
Spain	attempts at local level	No	Yes	Yes
Sweden	No	No	No	Yes
UK	No	No	Yes	Yes

Employment Equality Directive

Council Directive 2000/78/EC of 27 November 2000
Establishing a General Framework for Equal Treatment in
Employment and Occupation

Religion or belief, prohibited conduct:

- direct discrimination
- Indirect discrimination (can it be justified? proportionate means to achieve a legitimate aim)
- Harassment
- Instruction to discriminate
- Victimisation



Freedom of thought, conscience and religion

Article 10 EU Charter

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

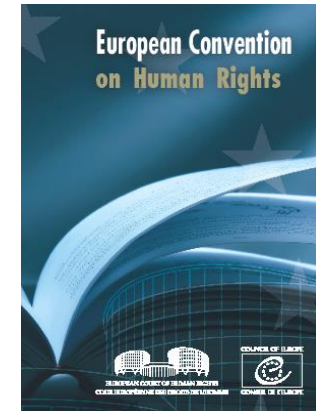
Article 9 ECHR

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.

Article 52(3) EUCFR

In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, **the meaning and scope of those rights shall be the same as those laid down by the said Convention.** This provision shall not prevent Union law providing more extensive protection.

Restrictions on the freedom to manifest religion



- Article 9(2) ECHR:
- three part justification test:
- it must be prescribed by law;
- be necessary in a democratic society by fulfilling a pressing social need;
- have a legitimate aim;
- and, the means used to achieve that aim must be proportionate and necessary;
- The legitimate aims: public safety; public order; health; and, the rights and freedom of others.

Justification of restrictions on Article 9



ECtHR:

- ECtHR now fairly readily accepts that the wearing of religious clothing or symbols **is a manifestation** of a person's religion or belief; the CJEU also accepts this
- **Wide margin of appreciation** (no common consensus in Europe)
- Bans on the wearing of religious clothing and symbols are **generally held to be justified** under Article 9(2) ECHR
- Recent ECtHR case law has clarified the legitimate aim of '**the protection of the rights and freedoms of others**': under this aim, the ECtHR has accepted **state neutrality** and the preservation of the conditions of '**living together**', but it has rejected **gender equality** and **human dignity**
- And, **public safety** can only be accepted as a legitimate aim if there is concrete evidence of a threat

Article 52(1) EU Charter of Fundamental Rights

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.



Article 4(1) Directive 78/2000/EC

Genuine and determining occupational requirement:

- Nature of the particular occupational activities
- Context in which they are carried out
- Must have a legitimate objective
- Must be proportionate



Article 4(2) Employment Equality Directive

- applies to organisations with a **religious ethos**
- two parts:
 - such an organisation can apply a genuine, legitimate and justified occupational requirement, where this is required by the nature or the context of the job and as long as this does not justify discrimination on another ground;
 - and, an organisation with a religious ethos can require employees to act in good faith and with loyalty to the organisation's ethos.
- Not all Member States have implemented the exceptions in Article 4(2)
- The interpretation of Article 4(2) is in need of clarification by the CJEU

CJEU: religion or belief discrimination

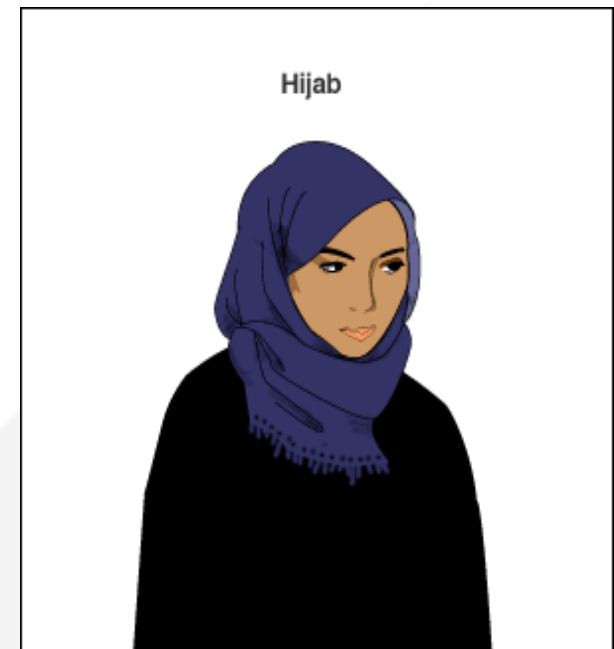
C-157/15: *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*, ECLI:EU:C:2017:203

C-188/15: *Asma Bougnaoui, Association de défense des droits de l'homme (ADDH) v Micropole Univers SA*
ECLI:EU:C:2017:204

See also:

Achbita: Opinion AG Kokott

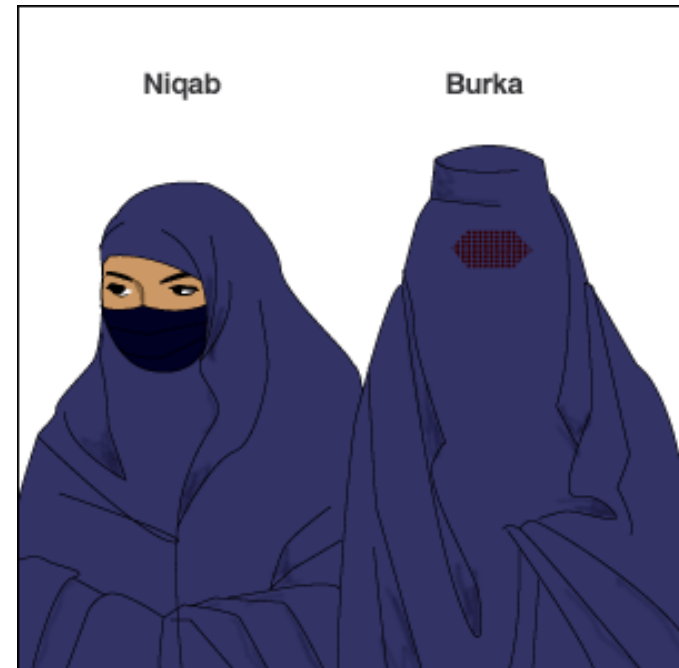
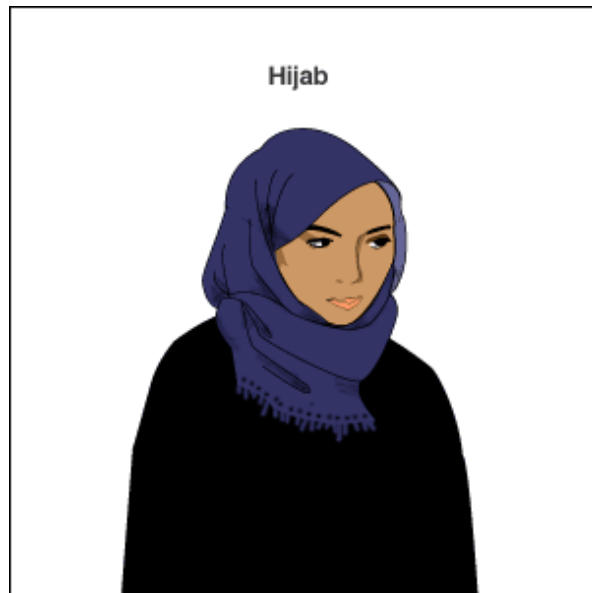
Bougnaoui: Opinion AG Sharpston



National case law

- bans on the wearing of religious clothing and symbols have been **challenged in the courts in a number of MS**
- case law almost exclusively concerns **clothing or symbols of the Islamic religion**, although bans are all formulated in neutral language and ban all religious clothing or symbols
- suggests that **the Muslim religion and its clothing and symbols are particularly problematic in many EU MS**
- **justification** often plays an important role in the case law, but justification test is applied more strictly by courts in some MS than in others and, in some MS, equality bodies will also aim to find a practical solution and avoid cases going to court.
- many MS **distinguish religious clothing and symbols which cover the face and those which do not**
- Generally, **restrictions on face-covering clothing are more easily justified**

Examples



Justifications brought forward in MS (not always successful)

- such clothing is an obstacle to communication in society and the concept of living together;
- it hinders communication with clients;
- It interferes with the corporate image of neutrality;
- It frightens off customers;
- It can endanger public safety and security;
- It can lead to chaos and disruptions of the peace;
- It goes against gender equality

Background report

- Muslim religion and its clothing and symbols appear to be particularly problematic in many EU MS
- linked to the rising tide of **Islamophobia** across Europe
- Linked to debates about immigration and integration
- acts of terrorism linked to Islamic religious motives
- Muslims especially being seen as threat to European societies
- visible expression of religion or belief through religious clothing and symbols in the public space seen as a sign of not wanting to integrate and be part of that society
- great variety between the 28 MS in the relationship between religion and the state