

SUMMARY SHEETS : ARTICLE 10 ECHFR

"Freedom of thought, conscience and religion"

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.*
2. *The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right."*

Content and scope of the article

General:

The EU legislature referred to the constitutional traditions common to the Member States as general principles of EU law. Among the rights emerging from these common traditions and reaffirmed in the Charter of Fundamental Rights of the European Union, is the right to freedom of conscience and religion enshrined in Article 10(1) of the Charter. 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. **The Charter uses the term "religion" broadly, encompassing individuals freedom to manifest their religion.**


It can be assumed that the EU legislature intended to take the same approach when adopting [Directive 2000/78](#). Consequently, the term "religion" in Article 1 of the Directive should be interpreted as covering both the *forum internum* – the internal aspect of belief- that and the *forum externum* – the external manifestation of religious faith in public.

Freedom of religion is a fundamental right and the cornerstone of a democratic society.

Interference with this right may be so serious that it warrants the same legal protections as the cases referred to in Article 15(2) of the ECHR. The right guaranteed in Article 10(1) of the Charter corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope.

Matters involving freedom of thought and religion fall largely beyond the Union's field of competence, with few exceptions, notably in the area of labour relations. [Directive 2000/78](#) dated 27 November 2000 establishes a general framework for equal treatment in employment and occupation.

The provision should also be used with Article 21 which prohibits discrimination, particularly on religious grounds.



On the one hand, any internal rule implemented by an employer that prohibits only the wearing of conspicuous, large-scale signs of philosophical or religious beliefs in the workplace may constitute direct discrimination on the grounds of religion or belief within the meaning of Article 2(2)(a) of [Directive 2000/78](#) where that criterion is inextricably linked to one or more specific religions or beliefs.

On the other hand, an internal rule that prohibits the wearing of any visible sign of beliefs, whether philosophical or religious does not constitute direct discrimination. This is because it applies uniformly to all employees, requiring them, in a general and undifferentiated way, to dress neutrally, which precludes the wearing of such signs.

Indeed, since everyone may hold a religious, philosophical or spiritual belief, such a rule, if applied generally and without differentiation, does not create a distinction in based on a criterion that is inextricably linked to religion or belief.

According to the Court's settled case-law, however, an internal rule implemented by an employer prohibiting the visible wearing in the workplace of any symbols of belief may constitute a difference of treatment indirectly based on religion or belief, if the neutral requirement actually places individuals adhering to certain religions or beliefs at a particular disadvantage.

In accordance with Article 2(2)(b)(i) of [Directive 2000/78](#), such a difference in treatment does not, however, amount to indirect discrimination if it is objectively **justified by a legitimate aim and if the means to achieve that aim are necessary and proportionate.**

An employer's aspiration to project an image of neutrality towards customers is closely tied to the freedom to conduct a business, a right safeguarded under Article 16 of the Charter. This aim is generally regarded as legitimate, particularly when the neutrality rule is applied exclusively to employees who engage directly with customers. The view that pursuing such an objective may justify, within specific limits, certain restrictions on the freedom of religion finds support in the case law of the European Court of Human Rights (ECtHR) under Article 9 of the European Convention on Human Rights (ECHR). Notably, in its judgment of 15 January 2013 in *Eweida and Others v. United Kingdom* (CE:ECHR:2013:0115JUD004842010, paragraph 94), the ECtHR acknowledged this interpretation.

Example : Case law about religion and labour relation

ECJ, Gd. Ch., C-804/18 and C-341/19, 25/02/2021, *IX v WABE* and *MH Müller Handels GmbH v MJ*

These preliminary rulings concern the interpretation of the Council Directive 2000/78/EC of 27 November 2000 which establishes a general framework for equal treatment in employment and occupation, and Articles 10 and 16 of the ECHR .

A prohibition on wearing any visible form of expression of political, philosophical or religious beliefs in the workplace **may be justified by the employer's need to present a neutral image towards customers or to prevent social conflicts.**

However, this justification must reflect **a genuine need on the part of the employer** and national courts may take into account the specific context of their Member State including national provisions that provide stronger protections for freedom of religion.

CJEU Case Law

- ECJ's most relevant cases in Labour law

CJEU, Grd. Ch., C-148/22, 28/11/2023, *OP v Commune d'Ans*

Keywords: public service and religious freedom - Islamic headscarf and workplace, neutrality of the public service and workplace - policy of exclusive neutrality and legitimate aim - Article 2(2)(b)(i) of Directive 2000/78.

ECJ, Grd. Ch., C-157/15, 14/03/2019, *Samira Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding, V G4S Secure Solutions N*

Keywords: prohibition of Islamic headscarf and workplace, direct and indirect discrimination - policy of political, philosophical and religious neutrality - aim appropriate - Article 2(2)(a) of Directive 2000/78.

ECJ, Gd. Ch., C-68/17, 11/09/2018, *IR c. JQ*

Keywords: church and loyalty and religious freedom in workplace, remarriage and dismissal - occupational requirement - principle of proportionality - Article 4(2) of Directive 2000/78.

ECJ, Gd. Ch., C-414/16, 17/04/2018, *Vera Egenberger c/ Evangelisches Werk für Diakonie und Entwicklung Ev*

Keywords: church and loyalty and religious freedom in workplace - recruitment procedure - membership of a church - genuine, legitimate and justified occupational requirement - principle of proportionality - article 4(2) of Directive 2000/78.

ECJ, Gd. Ch., C—188/15, 14/05/2017, *Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA*

Keywords: religious freedom and prohibition of Islamic headscarf – dismissal - genuine and determining occupational requirement - principle of proportionality - article 4(1) of Directive 2000/78.

ECJ, Gd. Ch., C-157/15, 14/03/2017, *G 4S Secure Solutions*

Keywords: religious freedom and prohibition of Islamic headscarf - legitimate aim - patently neutral obligation - direct and indirect discrimination - article 2(2)(a) of Directive 2000/78.

- Other cases

ECJ, Gd. Ch., C—426/16, 29/05/2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen VZW and Others v Vlaams Gewest*,

Keywords: religious rituals - specific method of slaughter animal prescribed by religious rights - restriction on the right to freedom of religion - protection of animal welfare is the main objective pursued by Regulation - article 4 No 1099/2009.

ECJ, Gd. Ch., C—71/11 and C-99/11, 05/09/2012, *Y, Z*

Keywords: Refugee and religious freedom - act of persecution - grant refugee status - article 2(d) of the Directive 2004/83/EC of 29 April 2004.

Highlights

Strategic Analysis:

- Lawyers must determine whether the case falls within the scope of EU law to invoke the Charter effectively. For instance:
 - In employment law, does the dispute involve the application of EU anti-discrimination directives?
 - In immigration, is there a link to relevant EU asylum regulations or directives?
- If EU law does not apply, alternative instruments such as the European Convention on Human Rights (ECHR, Article 9) or national constitutional protections may provide stronger grounds.

Preparation for Preliminary References:

- When EU law is applicable, lawyers should carefully draft preliminary questions to clarify how Article 10 should be interpreted.
- Questions could address:
 - The scope of permissible restrictions on religious expression.
 - How Article 10 interacts with other rights, such as the right to private life (Article 7) or non-discrimination (Article 21).
- Example: In *CJEU, Bougnaoui v. Micropole SA (C-188/15)*, the court examined the balance between religious freedom and workplace policies.

Interaction with Other Rights:

- Article 10 often strengthens arguments involving:
 - Non-discrimination (Article 21), particularly where religious minorities face unequal treatment.
 - Freedom of expression (Article 11), especially in cases where expressing religious opinions intersects with public debates.
 - Right to asylum (Article 18), providing additional grounds for protection in cases of religious persecution.

Developing Cross-Cutting Arguments:

- When invoking Article 10, link it to broader EU legal principles, such as proportionality or subsidiarity, to show how the restriction or action undermines the Charter's values as a whole.
- Cite relevant CJEU case law to demonstrate how Article 10 has been interpreted in similar contexts, emphasizing both individual rights and institutional obligations

Correspondence with other European/International instruments

- European Convention on Human Rights, Article 9
- European Social Charter, Article 18



Further readings

- *Opinion case ECJ, Gde. Ch., C-804/18 and C-341/19, 11/09/2018, IR c. JQ : [CURIA- Documents \(europa.eu\)](https://eur-lex.europa.eu/uri/CELEX/docnum/180911I0001_1-1)*
- *La conciliation entre le principe de neutralité du service public et le droit de la non-discrimination religieuse : un acte manqué ?* A. Husser, RDLF 2024 chron. n°08 : [Commentaire](#) par [Alexis Husser](#),
- Djelassi, R. Mertens, S. Wattier, « *Principe de neutralité dans les entreprises privées: la Cour de justice étoffe sa jurisprudence relative à l'interdiction des signes religieux* », RTDH, 2022, n°130, pp. 383 et suiv.
- G. Gonzalez, *La liberté de religion à l'épreuve de la jurisprudence de la Cour de justice de l'Union européenne*, Rev. trim. dr. h., 2020, pp. 103-120

G. Gonzalez, "Article 10 Liberté de pensée, de conscience et de religion", in Charte des droits fondamentaux de l'Union européenne commentaire article par article, 3ème ed., dir. F. Picod, C. Rizcallah et S. Van Drooghenbroeck, Bruylant , p. 271 et s.