

**MULTICULTURALISM AND
HEALTHCARE:
THE HOSPITAL BAN ON WEARING
RELIGIOUS SYMBOLS**



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MULTICULTURAL SOCIETY



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- 1MIO or 10% of inhabitants in Belgium => Foreign nationality
- City of Antwerp: 45% of inhabitants are of foreign origin, representing 170 countries
- 41% of school children do not speak dutch at home



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ECHR: ARTICLE 9 Freedom of thought, conscience and religion

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.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.



ECHR: ARTICLE 14 Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Gender Law 10/5/2007: to combat discrimination between women and men

Antidiscrimination Law: 10/5/2007

Antiracism Law: 30/7/1981.



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Direct discrimination: where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on the ground of religion or belief or opinion, disability, age or sexual orientation, race, colour, language, birth or other status. (ex.: price differs on the ground of race; employer refuses Moroccan employees)

Indirect discrimination: where an apparently neutral provision, criterion of practice would put persons having a particular religion or belief/opinion, a particular disability, a particular age, sexual orientation, race, language, colour, at a particular disadvantage compared with other persons, (ex.: difference between full-timers and part-timers)

unless:

that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. (older model to promote an anti-aging product)

Or “it is a genuine and determining occupational requirement” (gender for a male role)



WEARING RELIGIOUS SYMBOLS IN THE WORKPLACE: PUBLIC SECTOR

-UK, Denmark, Sweden, Italy and Spain: no problem for state employees to wear a religious symbol, e.g. a headscarf

-France and Belgium: ban on religious symbols, because of the principle of State neutrality:

“In carrying out his or her duties, a public employee must ensure equal treatment of citizens, whatever their convictions or beliefs. The authorities and the public services must [not only] provide all the guarantees of neutrality; they must also give every appearance of that neutrality, so that the user can be in no doubt of it.”



- People who wear a religious symbol rely on the freedom of religion





ECHR: 26/11/2015: case of Ebrahimian

- Facts: a French public hospital refused to extend an employment contract of a muslima social assistant in the psychiatric department, because of complains of wearing a headscarf.

-ECHR: decided that the principles of neutrality and secularism could be regarded as more important than the principle of freedom of religion.

Hence, a ban of headscarves in a public hospital is legitimate. The public hospital was right in dismissing the muslima Ebrahimian because she refused to work without a headscarf.





ECJ: case of Achbita (2017): private undertakings?

- Facts: Achbita = muslim woman working for G4S which provides reception services for customers.
- She worked for G4S since 2003; in 2006 she informed her employer that she intended to wear an Islamic headscarf during working hours.
- G4S: is contrary to our position of neutrality.
- Achbita was dismissed => European Court of Justice



ECJ: case of Achbita (2017): private undertakings?

- No direct discrimination: ban of any sign of political, philosophical or religious belief and therefore covers any manifestation of such beliefs without distinction

- Indirect discrimination? = if an apparently neutral obligation results in fact in persons adhering to a particular religion being put at a particular disadvantage

- Such a difference of treatment does not, however, amount to indirect discrimination if it is objectively justified by a legitimate aim and if the means of achieving that aim are appropriate and necessary.



ECJ: case of Achbita (2017): private undertakings?

-European Court of Justice: the desire to display, in relations with both public and private sector customers, a policy of political, philosophical or religious neutrality must be considered legitimate.

-An employer's wish to project an image of neutrality towards customers relates to the freedom to conduct a business, which is recognised in art. 16 of the Charter of Fundamental Rights of the EU.

-A company has the right to create a **corporate identity** that promotes a religious and philosophical neutrality.

In fact, the ban of wearing religious signs must be regarded as necessary, when this ban is limited to the members of the staff who come into contact with its customers (↔ back-office)



ECJ: case of Achbita (2017): private undertakings?

-A company has the right to create a **corporate identity** that promotes a religious and philosophical diversity.



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A company has the right to create a **corporate identity** that promotes just one religious or philosophical opinion.





Case of Achbita: Application to hospitals

=> Hospitals have the right to create a policy of neutrality and can ban political, philosophical or religious signs.

WHY?

First reason:

=>A hospital must be accessible for everyone, regardless their sex, race, age, political or religious beliefs, and their sexual orientation.

=>Every patient has the right to a quality healthcare, which may not be influenced by gender, race, age or religion.

=>By introducing a policy of neutrality the hospital stresses that no religion will be favoured or impaired.

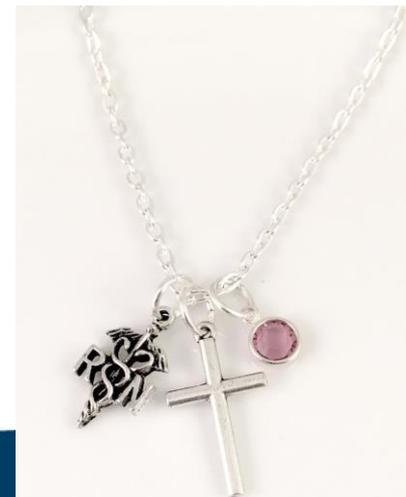


CHAPLIN CASE

WHY?

Second reason: The right of religious freedom can possibly conflict with the hygienic policy or the safety policy of the hospital

=>Chaplin case (ECHR, 2013): chain and cross might cause injury if an elderly patient pulled on it. Also the cross itself would create a risk to health and safety if it were able to swing free; for example, it could come into contact with open wounds.





Case of Achbita: Application to hospitals

=> Hospitals can ban political, philosophical or religious signs.

WHY?

Second reason: The right of religious freedom can possibly conflict with the hygienic policy or the safety policy of the hospital

=> Muslim nurse refused to wear short sleeves ⇔ company clothing was compulsory, because of the risk of infection:

Decision: safety of the patient has priority over the right to religious freedom





MORE GENERALLY: DRESS CODE

= private life \Leftrightarrow good, objective justification
Which one?

-Company clothing = policy



-Company clothing in a hospital: hygienic reasons



-Prison clothes: Mc Feely v. UK:
Identification





MORE GENERALLY: DRESS CODE

= private life \Leftrightarrow good, objective justification

-Banning flip flops or Crocs: = policy

=> All employees + health and safety reasons



-Requiring women to wear high heels:
Problematic: specific to one gender





MORE GENERALLY: LIFE STYLE

-Banning of wearing a beard:

No essential requirement for delivering pizza's
: (Bradley v. Pizzaco):

“not a genuine and determining occupational requirement”

Yes: for hygienic reasons in a food factory (Singh v. Rowntree)

-Tattoo's and bald head: not relevant for a neighborhood supervisor
Arbrb. Antwerp, 30/6/2004)





HOSPITAL: LIFE STYLE AND RELIGION/POLITICS

Same principles as wearing symbols.



erpen



-Art. 35 Charter fundamental rights EU & art. 23 Constitution:
“Everyone has the right to access to health care”.

Without any discrimination on any ground.

=> A physician can't refuse a patient on the basis of religion or religious symbols.



Visitors: in principle: free access to the public space of the hospital

Exception: art. 563bis Criminal Code: it is forbidden to wear clothing which covers completely or largely the face in public spaces.

ECHR, 11/7/2017: Belcacemi and Oussar





2 CONCLUSIONS



1- Concept of neutrality or diversity

- ⇒ Public service: fundamental principle in some countries
- ⇒ Private undertakings: relates to the freedom to conduct a business

2. Hospital: ban = legitimate if it applies to all religions

- ⇒ Direct contact with patients
- ⇒ Part of safety and hygienic policy

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