

# HEADSCARF BAN AT WORK IN EUROPE: QUESTIONS AND ANSWERS



## WHAT DOES THE EU LAW ON PROHIBITING DISCRIMINATION IN EMPLOYMENT (EMPLOYMENT EQUALITY DIRECTIVE) SAY ABOUT DISCRIMINATION ON GROUNDS OF RELIGION?

The Employment Equality Directive prohibits direct and indirect discrimination on the grounds of religion. Direct discrimination is when one person is treated less favourably than another in a comparable situation because of their religion or belief. Indirect discrimination is when an apparently neutral rule leads to persons of a particular religion of belief being treated less favourably. A rule is not indirect discrimination when it is objectively justified by a legitimate aim.

On 14 March 2017 the Court of Justice of the European Union (not to be confused with the European Court of Human Rights) will decide on the rights of Muslim women to wear a headscarf at work. Many workplaces have no problem with the headscarf, with some employers including it in staff uniforms for example. Other employers have adopted internal bans or dismissed women for choosing to wear the headscarf, even though it does not affect their ability to do their job.

The EU Court will decide on two cases brought by women affected by such practices: Ms Achbita, from Belgium, and Ms Bougnaoui, from France, and decide if prohibiting the headscarf in employment is discriminatory according to EU law, following a request by the highest courts (cour de cassation) in Belgium and France.

### Does dismissal for wearing the headscarf count as discrimination?

The women argue that the dismissal was direct discrimination, because they were treated less favourably than a woman who does not express her religion or belief by wearing a headscarf. G4S's rule would also treat them less favourably than a woman who wears a headscarf as a fashion item.

If the Court rules that there was no direct discrimination, it will decide whether there was indirect discrimination, i.e. whether the employers' approach was more likely to affect Muslims than non-Muslims. The Court will consider if the employers can justify that the dismissal for wearing a headscarf was justified by a legitimate objective and/or that it was an occupational requirement.

The employers argue that they wanted to appear "neutral" on the question of religion. The women argue that a rule which bans religious clothing is not neutral: it is partisan against employees who hold a religious belief expressed through what they wear.

### Why are these cases important?

These are the first cases on religious discrimination to be decided by the EU's highest court. The Court could rule that it is illegal for an employer to dismiss a woman for choosing to wear the headscarf in the EU, or to discriminate when considering recruitment or promotion.

The Court's rulings are legally binding in all 28 Member States of the European Union, regardless of national laws. This decision will therefore have a significant impact – positive or negative – on the right to work for Muslim women, as well as for other groups who express their religious beliefs through clothing (such as Sikhs who wear a turban or Jews who wear a kippah).

In Belgium in 2006, Ms. Achbita worked for the company G4S as a receptionist. She wasn't required to wear a uniform. When she decided to wear her headscarf at work, G4S claimed to have an informal rule barring all employees from wearing clothing expressing a religious, philosophical, or political belief. When she refused to take off her headscarf, G4S dismissed Ms. Achbita. The next day, G4S adopted a written rule. In France in 2009, Ms. Bougnaoui worked as an engineer for Micropole SA. She wore the headscarf as part of her business clothes, without objection from her employer. Her employer directed her not to wear the headscarf at meetings with a customer who didn't like it. Ms. Bougnaoui was dismissed when she refused to stop wearing the headscarf.

### What are the facts of the cases?

Muslim women are one of the most targeted groups in Europe for the visible expression of their faith in public, and in particular at work. A ruling in favour of these women would guarantee their right to take up employment without having to give up their religious practice. It would enable Muslim women to participate fully in the workplace and make the same choices as other people regarding their professional interactions. It would also encourage integration of women who recently arrived into Europe, for example as refugees. The ruling would help counter racist stereotypes that women who wear the headscarf are not full members of society, and speak strongly against racist narratives that they should not be.

### How will a win for the women affect other Muslim women who want to wear the headscarf at work?

### What judgment do we want to see?

We expect the EU Court of Justice to rule that treating an employee less favourably because she wears a headscarf for religious reasons is direct discrimination, and that these cases do not fall under any exception. The supposed "neutrality" amounts to discrimination, and also falsely implies that employers who allow staff to wear the headscarf are in some way not neutral. It also casts a suspicion on employees, who are considered not professional enough to be 'neutral' in their decision making, as if their clothing preempted their professional skills.

A judgment in favour of the women is essential to give effect to the values of pluralism and equality that the European Union holds so dear. The ruling would defend and support the many employers who already practice this equality, welcoming staff of all faiths, upholding their practices as a standard for the whole of Europe. With far-right parties and narratives gaining momentum throughout Europe and beyond, such a judgment would also send a clear signal that the European Union does not give in to such racist discourses and policies.