

EQUALITY AND NON-DISCRIMINATION

Class #3

SCHEDULLE

Discrimination based on religion

- Legal framework
- Retrospective overview and current issues
- Case-law

LEGAL FRAMEWORK - UN

*Art. 2 (1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, **religion**, political or other opinion, national or social origin, property, birth or other status.*

Art. 18 (1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

International Covenant on Civil and Political Rights

LEGAL FRAMEWORK - UN

Art. 1 (1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

Art. 2 (1) No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or belief.

Art. 2 (2) For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

LEGAL FRAMEWORK - CoE

Art. 9 (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.

*Art. 14 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.”*

European Convention for the Protection of Human Rights and Fundamental Freedoms

LEGAL FRAMEWORK - EU

Art. 10 (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.

*Art. 21 (1) Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, **religion or belief**, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*

(2). Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

Charter Of Fundamental Rights Of The European Union

LEGAL FRAMEWORK - EU

*Recital 11 Discrimination based on **religion or belief**, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.*

Art. 1 The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

LEGAL FRAMEWORK – LEGAL DEFINITIONS

Religion

„freedom of religion is one of the fundamental rights and freedoms recognised by EU law and that the term ‘religion’ must be understood, in that regard, as covering both the forum internum, that is the fact of having a belief, and the forum externum, that is the manifestation of religious faith in public”

CJEU Judgement of 22 January 2019, Cresco Investigation, C-193/17.

According to ECtHR case law, article 9 ECHR applies to:

- the “major” or “ancient” world religions which have existed for millennia or for several centuries, such as: Buddhism, Hinduism, Hare Krishna, Islam, Taoism
- new or relatively new religions such as: the Jehovah’s Witnesses, Mormonism, Neo-Paganism
- various coherent and sincerely-held philosophical convictions, such as: pacifism, veganism, attachment to secularism

CURRENT ISSUES

- Religious intolerance, incl. physical, verbal or symbolic attacks
- Recognition and registration of religious organisations
- Religious Employers/Employment by religious organizations
- Religious symbols
- Unequal treatment with regard to religious holidays

SAMIRA ACHBITA V G4S SECURE SOLUTIONS NV

Samira Achbita v G4S Secure Solutions NV

- CJEU Judgment of 14 March 2017, C-157/15, ECLI:EU:C:2017:203
- Reference for a preliminary ruling - interpretation of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation
- **Applicant in the main proceeding:** Samira Achbita and the Centrum voor gelijkheid van kansen en voor racismebestrijding (Centre for Equal Opportunities and Combating Racism)
- **Defendant in the main proceeding:** G4S Secure Solutions NV
- **National court:** Hof van Cassatie (Court of Cassation, Belgium)
- **Subject matter:** Workplace regulations of an undertaking prohibiting workers from wearing visible political, philosophical or religious signs in the workplace

SAMIRA ACHBITA V G4S SECURE SOLUTIONS NV

Question

Should Article 2(2)(a) of Directive 2000/78 be interpreted as meaning that the prohibition on wearing, as a female Muslim, a headscarf at the workplace does not constitute direct discrimination where the employer's rule prohibits all employees from wearing outward signs of political, philosophical and religious beliefs at the workplace?

Art. 2 (2)(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

CRESCO INVESTIGATION

Cresco Investigation GmbH v Markus Achatzi

- CJEU Judgment of 22 January 2019, C-193/17, ECLI:EU:C:2019:43
- Reference for a preliminary ruling – interpretation of the Charter of Fundamental Rights of the European Union and Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation
- **Applicant in the main proceeding:** Cresco Investigation GmbH ('Cresco')
- **Defendant in the main proceeding:** Mr Markus Achatzi
- **National court:** Oberster Gerichtshof (Supreme Court, Austria)
- **Subject matter:** National legislation granting certain employees a day's holiday on Good Friday

CRESCO INVESTIGATION

Questions

1. Is EU law, in particular Article 21 of the [Charter], in conjunction with Articles 1 and 2(2)(a) of Directive [2000/78], to be interpreted as precluding, in a dispute between an employee and an employer in the context of a private employment relationship, a national rule under which Good Friday is a holiday, with an uninterrupted rest period of at least 24 hours, only for members of the Evangelical Churches of the Augsburg and Helvetic Confessions, the Old Catholic Church and the United Methodist Church, and under which, if an employee [belonging to one of those churches] works, despite that day being a holiday, he is entitled, in addition to the pay received as he is allowed not to work on account of the day being a public holiday, to payment for the work actually done, whereas other employees, who are not members of those churches, do not have any such entitlement?

CRESCO INVESTIGATION

Questions

2. Is EU law, in particular Article 21 of the [Charter], in conjunction with Article 2(5) of Directive [2000/78], to be interpreted as meaning that the national legislation referred to in the first question, which — as measured against the total population and the membership, on the part of the majority of the population, of the Roman Catholic Church — grants rights and entitlements to only a relatively small group of members of certain (other) churches, is not affected by that directive because it concerns a measure which, in a democratic society, is necessary to ensure the protection of the rights and freedoms of others, particularly the right freely to practise a religion?

CRESCO INVESTIGATION

Questions

3. Is EU law, in particular Article 21 of the [Charter], in conjunction with Article 7(1) of Directive [2000/78], to be interpreted as meaning that the national legislation referred to in the first question constitutes positive action for the benefit of members of the churches mentioned in the first question designed to guarantee their full equality in working life and to prevent or offset disadvantages to those members due to religion, if they are thereby granted the same right to practise their religion during working hours on what is an important holiday for that religion, such as otherwise exists for the majority of employees in accordance with a separate provision of national law, because generally employees are not required to work on the holidays for the religion that is observed by the majority of employee?

CRESCO INVESTIGATION

Questions

If it is found that there is discrimination within the meaning of Article 2(2)(a) of Directive [2000/78]:

4. Is EU law, in particular Article 21 of the [Charter], in conjunction with Articles 1, 2(2)(a) and 7(1) of Directive [2000/78], to be interpreted as meaning that, so long as the legislature has not created a non-discriminatory legal situation, a private employer is required to grant the rights and entitlements set out in the first question in respect of Good Friday to all employees, irrespective of their religious affiliation, or must the national provision referred to in the first question be disapplied in its entirety, with the result that the rights and entitlements in respect of Good Friday set out in the first question are not to be granted to any employee?

CRESCO INVESTIGATION

Art. 2(5) This Directive shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.

Art.7 (1) With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds referred to in Article 1.