



Neutrality or Discrimination? The European Legal Approach to Muslim Women's Religious Freedom in the Workplace

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1 Muslim Women and Religious Dress: The Legal Challenges Across Public, Educational, and Workspaces in the EU

In 2023, the global population reached 8.06 billion people, of whom approximately half — around 4.01 billion — were women.¹ Despite this significant female presence worldwide, data from the Global Gender Gap Report 2024 shows that the overall gender gap score stands at 68.5%, with an even lower score of 60.5% in the area of economic participation and opportunity.²

While gender-based discrimination remains a widespread issue across the European Union, it is incorrect to assume that all women experience it in the same way. Muslim women, in particular, face distinct challenges, especially due to growing restrictions on religious attire such as the hijab, niqab, or burqa. These restrictions are not uniformly applied but vary considerably across EU Member States in terms of legal scope, policy rationale, and institutional level — whether in public spaces, educational settings, or the workplace. While these policies may appear neutral on their face, they can disproportionately affect Muslim women who wear visible religious symbols.³

Across the EU, several countries have introduced legal restrictions on full-face veils in public spaces, primarily justified on grounds of public security and social cohesion. France, Belgium, and Austria — have enacted general bans on full-face veils in public spaces, often justified on grounds of public safety, secularism, and the concept of social cohesion. A leading case in this regard is *S.A.S. v. France* before the European Court of Human Rights, where the Court upheld the French ban on face concealment in public, ruling that it pursued the legitimate aim of preserving the conditions necessary for “living together” (*vivre ensemble*).⁴

¹The World Bank, ‘Female Population (% of total population)’ (2023) <<https://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS>> Accessed 18 May 2025.

²World Economic Forum, ‘Global Gender Gap Report 2024’, (2024) <https://www3.weforum.org/docs/WEF_GGGR_2024.pdf> Accessed 18 May 2025.

³Global Campus of Human Rights, ‘The Hijab Ban and Human Rights of Muslim Women in Europe’ (2023) <<https://www.gchumanrights.org/preparedness/the-hijab-ban-and-human-rights-of-muslim-women-in-europe/>> Accessed 18 May 2025.

⁴*S.A.S. v. France* (Application no 43835/11) [2014] ECHR 695.

Similarly, Bulgaria adopted a nationwide ban in 2016 prohibiting “clothing that partially or completely covers the face” in all public spaces with similar justifications.⁵ In Italy, while there is no specific law targeting religious dress in public, Article 5 of Law No. 152/1975, prohibits the use of helmets or any item that makes personal identification difficult in public spaces, unless justified.⁶ Although originally intended for public safety, this law has occasionally been used to challenge the wearing of the niqab or burqa, even though it was not designed for that purpose.⁷

In the field of education, different Member States have adopted diverse approaches in regulating religious symbols, often drawing on arguments around secularism or the need to foster integration. France is one of the most prominent examples of a restrictive approach, banning all conspicuous religious symbols — including Islamic headscarves — from public schools since 2004.⁸ Norway followed suit in 2018 by banning face-covering garments in all educational institutions, stating that visibility and facial interaction are essential for communication and inclusion in the classroom.⁹ In Germany, where education is a competence of the federal states, no unified national rule exists.¹⁰ However, certain regions such as Berlin have implemented a so-called neutrality law, which prohibits public school teachers from wearing any visible religious symbols, including the hijab. This law has been upheld in local courts, affirming that the State’s interest in religious neutrality can take precedence over individual rights to religious expression.¹¹ On the other hand, most of the Federal States have no explicit ban on headscarves as long as it does not undermine peace at school or indoctrinate students.

⁵Al Jazeera, ‘Bulgaria parliament bans full-face veils in public’, (2016) <<https://www.aljazeera.com/news/2016/9/30/bulgaria-parliament-bans-full-face-veils-in-public#:~:text=Bulgaria%27s%20parliament%20has%20approved%20a%20nationwide%20law,countries%20such%20as%20France%2C%20Netherlands%20and%20Belgium>> Accessed 10 July 2025.

⁶Legge 22 Maggio 1975, n. 152, Disposizioni a tutela dell’ordine pubblico, Art. 5 (Divieto dell’uso di caschi protettivi o di qualunque altro mezzo atto a rendere difficoltoso il riconoscimento della persona).G.U. n.135 del 23-05-1975.<<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1975-05-22:152~art5>> Accessed 10 July 2025.

⁷Monica Coviello, ‘Niqab, hijab, burqa, quando è vietato indossarli in Italia’, (2024), *Vanity Fair*, <<https://www.vanityfair.it/article/niqab-hijab-burqa-vietato-indossarli-italia>> Accessed 10 July 2025.

⁸Rokhaya Diallo, What has 20 years of banning headscarves done for France?, (2024), *The Guardian*, <<https://www.theguardian.com/commentisfree/2024/apr/12/ban-headscarves-france-secularism-exclusion-intolerance>> Accessed 10 July 2025.

⁹ Burqa and niqab banned at education institutions, University World News (Originally from ‘The Local’), (2018),<<https://www.universityworldnews.com/post.php?story=20180623053712398>> Accessed 10 July 2025.

¹⁰ Eurydice, Germany: Overview (2025), *European Commission Official Website*, <<https://eurydice.eacea.ec.europa.eu/eurypedia/germany/overview>> Accessed 10 July 2025.

In Italy, there is currently no national legislation restricting religious dress in schools, but political debate around the issue is frequent. Right-wing parties have repeatedly called for bans on religious symbols in educational settings, framing the issue in terms of cultural integration and national identity.¹²

Across the majority of EU Member States, there is no explicit legal prohibition on wearing religious clothing or symbols in the private employment sector. This regulatory vacuum is especially notable considering the growing social and political tensions surrounding religious visibility in the workplace, particularly regarding Muslim women's head and face coverings. Moreover, there is a tendency to blur the public-private divide by applying public service standards (like secularism or neutrality) to private actors providing public services, which raises significant normative concerns. It signals a creeping expansion of state ideology into the private sphere, potentially at odds with liberal democratic commitments to pluralism and individual rights. To cite some examples, in Austria, no law directly bans religious clothing in private employment, nor is there legislation that permits employers to implement such restrictions. Nonetheless, national legal interpretation suggests that if the state criminalises an action in public—such as face covering under the Anti-Face-Covering Act — private employers may be permitted to extend this restriction into the workplace by analogy. This logic, while plausible, raises concerns about the expansion of public law rationales into private governance without explicit legislative support.¹³

In Bulgaria, the wearing of face-covering clothing is banned across both public and private employment, but no legal basis exists to ban non-face-covering religious attire. Any such restriction, absent legislative support, would contravene Article 4(1) of the Protection Against Discrimination Act, which prohibits religious discrimination. The absence of national case law further illustrates the underdevelopment of legal protections in this area.¹⁴

¹¹Berlin Labor Court, *Judgment of 9 May 2018*, Ref. 60 Ca 8090/17 (Berlin).

¹²Chiara Lamberti, 'Religious freedom in Italian schools is abused for political gain'(2025), *CNE News*, <<https://cne.news/article/4647-religious-freedom-in-italian-schools-is-abused-for-political-gain>> Accessed 10 July 2025.

¹³Erica Howard, *Religious Clothing and Symbols in Employment: A Legal Analysis of the Situation in the EU Member States* (European Commission, Directorate-General for Justice and Consumers 2017) <<https://doi.org/10.2838/380042>> Accessed 10 July 2025.

¹⁴Ibid.

Article 4 of the German Basic Law guarantees the freedom of religion. In the private sector, employers can only restrict the wearing of religious symbols if they can demonstrate a legitimate and proportionate interest, such as maintaining a neutral corporate image or avoiding workplace conflicts.¹⁵ The public sector presents a more complex challenge. State institutions are expected to uphold religious and ideological neutrality, especially in areas like law enforcement and the judiciary. Yet, neutrality must not be conflated with invisibility of religion. The state can not give the impression that it favors a particular religion.

In contrast, the legal regulations in Poland for example are less clear. Although the Polish constitution also protects freedom of religion in Article 53¹⁶, the relationship between religion and work is often characterised by the cultural reality of a predominantly Catholic society. Although there is no legal ban on headscarves, in conservative contexts a visible religious sign such as the hijab is often met with social scepticism or even rejection, especially in public positions. Current developments, such as the neutrality requirement in Warsaw authorities (2024), show that the state is beginning to emphasise neutrality more strongly as a political expression of secularism as religious symbols, mainly crosses, have been banned from public places in council offices in Warsaw.¹⁷ Nevertheless, the individual wearing of a hijab remains permissible as long as it is not seen as an institutional statement. In practice, this means that discrimination is more difficult to prove and often takes place below the legal threshold.

This fragmented and context-specific legal landscape across Europe reveals the complexity of balancing religious freedom. Judicial interpretation thus plays a crucial role in shaping the application of these rights. Context-sensitive and inclusive interpretations of religious freedom have the potential to prevent the legitimization of workplace rules or practices that, though seemingly neutral, may disproportionately affect women — especially those from religious minority backgrounds — thus fostering a more equitable and inclusive working environment.¹⁸

¹⁵Case C-804/18 and Case C-341/19 [2021] ECLI:EU:C:2021:578 (European Court of Justice, 15 July 2021), <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62018CJ0804>> Accessed 10 July 2025.

¹⁶Polish Senate, Constitution of the Republic of Poland – Chapter II: Freedoms, Rights and Duties, Article 53 on freedom of conscience and religion, Senate of the Republic of Poland (English translation) <[Senate of the Republic of Poland / About the Senate / The Constitution / Chapter II](#)> Accessed 10 July 2025.

¹⁷Notes From Poland, Warsaw bans display of religious symbols in city hall (*Notes From Poland*, 16 May 2024) <<https://notesfrompoland.com/2024/05/16/warsaw-bans-display-of-religious-symbols-in-city-hall/>> Accessed 10 July 2025.

¹⁸Alison Stuart, ‘Freedom of Religion and Gender Equality: Inclusive or Exclusive?’ (2010) 10(3) *Human Rights Law Review* <https://www.researchgate.net/publication/249277994_Freedom_of_Religion_and_Gender_Equality_Inclusive_or_Exclusive> Accessed 18 May 2025

In this context, the concept of intersectionality becomes essential, as it serves as a crucial tool for analyzing how various forms of oppression — such as sexism, racism, and religious discrimination — can interact with one another, generating experiences of exclusion and marginalization that cannot be understood through a one-dimensional analysis.¹⁹

This study, therefore, focuses on Muslim women, a group frequently subjected to intersectional discrimination that combines sexism, Islamophobia, and, in many cases, racism. In the workplace, these women face numerous obstacles: from limited access to employment and the undervaluation of their skills, to exclusion from career opportunities and leadership roles. Visible signs of their faith, such as the hijab, often become targets of prejudice and social exclusion. In many instances, Islamophobia, fueled by distorted media and political narratives, contributes to the reinforcement of negative stereotypes that directly impact the professional lives of Muslim women.²⁰

The aim of this report is to examine how the jurisprudence of the relevant courts addresses workplace discrimination against Muslim women, focusing on whether an intersectional approach is adopted or if the analysis remains fragmented. It presents a systematic overview of European legislation, legal instruments, and doctrinal sources to assess the extent to which multiple forms of oppression are recognized and protected under current legal frameworks.

2 What is Intersectionality?

The concept of intersectionality owes much to the history of feminist and anti-racist movements. Although the term was coined only at the end of the 20th century, its essence was already present, at least implicitly, in the thought and activism of Black women long before. One of the most significant examples of this awareness is found in the famous speech “Ain’t I a Woman?” delivered in 1851 by Sojourner Truth, born Isabella Baumfree, during the Women’s Convention in Akron, Ohio. In her speech, Truth highlighted the dual discrimination she faced, both as a woman and as a Black person, challenging the dominant feminist narratives of the time that tended to represent only the experiences of middle-class white women.²¹

¹⁹Doyin Atewologun, ‘Intersectionality Theory and Practice’ (2018) *Oxford Research Encyclopedia of Business and Management* <https://scholar.google.ro/citations?view_op=view_citation&hl=en&user=Q-Ws3tgAAAAJ&citation_for_view=Q-Ws3tgAAAAJ:5nxA0vEk-isC> Accessed 18 May 2025.

²⁰Lucia Duque Teva, ‘The Protection of Muslim Women “freedom of religion” in the Workplace’ (*European Student Think Tank*, 2 April 2025) <[The Protection of Muslim Women ‘freedom of religion’ in the Workplace](https://www.european-student-think-tank.org/en/publications/the-protection-of-muslim-women-freedom-of-religion-in-the-workplace) - EST.> Accessed 18 May 2025.

It was not until 1989 that the term “intersectionality” was officially coined by U.S. scholar and theorist Kimberlé Williams Crenshaw. In her essay, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics”, Crenshaw analyzed how anti-discrimination laws were unable to recognize and address the experiences of Black women because they treated gender and race discrimination as separate entities. Crenshaw argues that intersectionality is not simply the sum of oppressed identities but a way of understanding how these identities intersect, generating new dynamics that require alternative political and legal approaches.²² Since then, the concept has been applied in numerous fields, from education to healthcare, politics to economics, becoming an essential reference in social sciences and movements for social justice.²³ This theoretical framework is particularly useful for understanding the compounded forms of discrimination faced by Muslim women.

On this matter, the report from the European Union Agency for Fundamental Rights sheds light on how intersectionality manifests in the lived experiences of Muslim women in Europe. It highlights how women who visibly express their religious faith, such as by wearing a headscarf, are disproportionately subjected to exclusion and discrimination — not only during the job search but also within the workplace itself. Religious attire, in this context, becomes more than a personal expression of belief; it often triggers prejudice and reinforces systemic barriers. Despite the existence of a European legal framework intended to protect religious freedom and ensure equality in employment, the report notes a persistent gap between legal provisions and their enforcement. This is further complicated by victims’ reluctance to report discriminatory incidents, often due to fear of retaliation or a lack of trust in institutional responses.²⁴

²¹VM Mays and N Ghavami, ‘History, Aspirations, and Transformations of Intersectionality: Focusing on Gender’ in CB Travis and others (eds), *APA Handbook of the Psychology of Women: History, Theory, and Battlegrounds* (American Psychological Association 2018) 543. <<https://psycnet.apa.org/record/2017-45479-028>> Accessed 18 May 2025.

²²Kimberlé Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) *University of Chicago Legal Forum* Vol. 1989, Article 8. 1-31. <<https://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8/>> Accessed 18 May 2025.

²³Milda Pinem, ‘Applying an Intersectionality Approach to Multiple Dimensions of Social Life’ (2023) 12(2) *Jurnal Ilmu Sosial dan Humaniora* 228. <https://www.researchgate.net/publication/373705347_Applying_an_Intersectionality_Approach_to_Multiple_Dimensions_of_Social_Life> Accessed 18 May 2025.

²⁴European Union Agency for Fundamental Rights, ‘Being Muslim in the EU — Experiences of Muslims’ (2024) <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2024-being-muslim-in-the-eu_en.pdf> Accessed 18 May 2025.

3 EU Primary and Secondary Legislation on the Right to Freedom of Religion at Work

Primary EU law, which forms the constitutional foundation of the Union, is mainly found in the Treaties and the Charter of Fundamental Rights of the European Union (CFR). Among the most relevant provisions is Article 10 of the Charter, which guarantees everyone the right to freedom of thought, conscience, and religion, explicitly including the freedom to manifest one's faith through symbols or attire such as the headscarf²⁵ and Article 21, which prohibits all forms of discrimination, including those based on religion or belief, serving as a key instrument to challenge unjustified bans on religious symbols in the workplace.²⁶ These two articles serve as foundational pillars for employees seeking to challenge workplace rules that may infringe on religious freedom. For instance, when a public or private employer enforces a dress code that prohibits wearing the headscarf, the employee may invoke Articles 10 and 21 CFR to claim that her rights have been violated.

Moreover, if such a policy disproportionately affects Muslim women, it may be considered indirect discrimination and can also be challenged under Article 14 of the ECHR, which prohibits discrimination in the enjoyment of the rights and freedoms set forth in the Convention.²⁷ The combination of Articles 10 and 21 CFR with Article 14 ECHR strengthens the legal basis for challenging headscarf bans that have an unequal impact on certain religious or gender groups. Equally important is Article 23 of the Charter, which ensures gender equality, a crucial aspect when assessing measures that predominantly affect Muslim women, for whom the headscarf is a visible and obligatory expression of faith. In addition, Article 16 of the Charter guarantees the freedom to conduct a business, encompassing the employer's right to organize and present the enterprise according to Union and national law, which includes the interest in maintaining a neutral image toward customers and third parties.²⁸

²⁵Charter of Fundamental Rights of the European Union [2000] OJ C364/1 – (10) <https://www.europarl.europa.eu/charter/pdf/text_en.pdf> Accessed 18 May 2025.

²⁶Ibid. (21).

²⁷European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) ETS No 5, 13 <https://www.echr.coe.int/documents/d/echr/convention_eng> Accessed 18 May 2025.

²⁸Alimat Babatunde, 'The Protection of Muslim Women: Freedom of Religion in the Workplace' (*European Student Think Tank*, 2 April 2025) <<https://esthinktank.com/2025/04/02/the-protection-of-muslim-women-freedom-of-religion-in-the-workplace/>> Accessed 18 May 2025.

Lastly, Article 157 (3) of the Treaty on the Functioning of the European Union (TFEU) empowers the EU to adopt measures aimed at securing full equality in employment and occupation, including preventing indirect discrimination. This is especially pertinent since workplace neutrality requirements tend to disproportionately restrict Muslim women's access to employment compared to Muslim men, who generally do not wear conspicuous religious symbols.²⁹

Secondary legislation concretizes these principles through directives that establish concrete rules for equality and non-discrimination in the workplace.³⁰ Among these, four directives are particularly relevant when addressing the challenges faced by Muslim women who wear the headscarf: Directive 2000/78/EC, Directive 2000/43/EC, Directive 2006/54/EC, and Directive 2010/41/EU.³¹

Directive 2000/78/EC creates a general framework for equal treatment in employment and occupation, explicitly prohibiting discrimination based on religion or belief. It serves as the primary legal tool for challenging workplace policies that ban visible religious symbols, such as the Islamic headscarf, especially when such policies result in indirect discrimination against certain religious groups.³²

In implementing the principle of equal treatment regardless of racial or ethnic origin, Directive 2000/43/EC reflects the Community's obligation under Article 3(2) of the EC Treaty to eliminate inequalities and promote equality between men and women, recognising that women are frequently subject to multiple forms of discrimination.³³

²⁹Consolidated version of the Treaty on the Functioning of the European Union [2008] OJ C115/117, Art 157 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12008E157>> Accessed 18 May 2025.

³⁰European Law Blog, 'Current Pitfalls of Addressing Intersectional Discrimination in the Workplace in EU Law: Hope for the Future' (*European Law Blog*, 21 October 2024) <<https://www.europeanlawblog.eu/pub/61mr90kp/release/2>> Accessed 18 May 2025.

³¹ It should be noted that, in addition to the directives mentioned, there are other relevant legislative acts, including Directive 2006/54/EC and Directive 2010/41/EU, which are not examined in detail due to brevity.

³²EU Agency for Fundamental Rights, 'Article 16 – Freedom to conduct a business' (*FRA*) <<https://fra.europa.eu/en/eu-charter/article/16-freedom-conduct-business>> Accessed 18 May 2025.

³³Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22.

<<https://eur-lex.europa.eu/eli/dir/2000/43/oj/eng>> Accessed 18 May 2025.

³⁴Thomas Pettigrew, 'Direct vs. indirect discrimination' (*EBSCO*, 2025) <<https://www.ebsco.com/research-starters/sociology/direct-vs-indirect-discrimination>> Accessed 18 May 2025.

Directive 2006/54/EC, focused on gender equality in employment, becomes particularly relevant when neutral rules have a disproportionate impact on women. Since Muslim women are more likely than men to wear visibly religious clothing, restrictions on such attire may constitute indirect gender discrimination.³⁴ This directive reinforces the need to consider the intersection between religion and gender in the evaluation of workplace rules.³⁵

Finally, directive 2010/41/EU complements this framework by extending gender equality protections to self-employed workers and assisting spouses. It ensures that Muslim women engaged in self-employment or family businesses are not excluded from economic participation due to their religious dress, particularly in sectors requiring direct client interaction or access to public contracts.³⁶

4 Implementing Intersectionality in the Jurisprudence of European Courts

For the purpose of addressing the contentious issue at the heart of this report, the two most influential European judicial bodies — the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) — are to be placed in dialogue, therefore structuring a critical examination of their key rulings over the past two decades.

First of all, although existing legal instruments — such as Articles 13 and 14 of the ECHR — provide a foundation for recognising intersectional harms and building progressive interpretive frameworks, both the ECtHR and the CJEU have demonstrated considerable hesitancy in embracing intersectionality in their jurisprudence.³⁷ As Melina Poulin aptly notes, “at the moment it is much easier to deal with sequential forms of discrimination, because each ground can be dealt with in isolation by the CJEU”.³⁸ This observation underscores the inadequacy of a fragmented legal methodology in addressing compound discrimination, and suggests the urgent necessity of judicial reform. Without a reconceptualisation of how overlapping identities function in discriminatory contexts, courts risk perpetuating partial and ineffective justice.

³⁵Consolidated version of the Treaty on the Functioning of the European Union [2008] OJ C115/117, (26) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12008E026>> Accessed 18 May 2025.

³⁶ European Union, Directive 2000/78/EC of the Council and of the European Parliament of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, [2000] OJ L303/16 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0078>> Accessed 18 May 2025

³⁷Veronika Fikfak, ‘Intersectionality in Strasbourg: Ensuring an Effective Protection of Convention Rights’ (*Intersectional Rewrites*, 4 April 2023). <<https://intersectionalrewrites.org/intersectionality-in-strasbourg-ensuring-an-effective-protection-of-convention-rights/>> Accessed 18 May 2025.

To illustrate this, in *Parris v. Trinity College Dublin and Others* (2010), the CJEU held that discrimination could not be inferred from the combination of multiple grounds when each, examined independently, failed to meet the threshold of discrimination.³⁹ This position rests on the implicit premise that discrimination must be assessed along singular axes, thereby excluding more nuanced and entangled realities. Such a rigid framework forecloses the possibility of recognising structural or systemic forms of bias that arise precisely from the intersection of identity markers, thereby demonstrating a broader judicial reluctance to engage with more complex socio-legal harms.

4.1 Case Law in Dialogue

Turning to the case law in substance, it becomes evident that a major number of impactful decisions concern Muslim women, many of whom have either lost their jobs or been disadvantaged in their professional lives for refusing to remove their headscarves or simply for choosing to wear one. This pattern reveals not only institutional discomfort with visible manifestations of non-Christian religiosity but also the gendered contours of religious intolerance.

What is particularly striking is how the CJEU “has drawn up a recipe”⁴⁰ for legitimising the notion of “neutrality” — a concept that remains both ambiguous and inconsistent — as a justification for restricting religious expression. Specifically, the Court has justified its statements on the grounds that neutrality prevents workplace chaos from religious expression.⁴¹

³⁸Melina Paulin, ‘Current Pitfalls of Addressing Intersectional Discrimination in the Workplace in EU Law: Hope for the Future?’ (*European Law Blog*, 21 October 2024) <<https://www.europeanlawblog.eu/pub/61mr90kp/release/2>> Accessed 18 May 2025.

³⁹*Parris v Trinity College Dublin and Others* (Case C-443/15) [2016] ECLI:EU:C:2016:897

⁴⁰Melina Paulin, ‘European Court of Justice keeps the door to religious discrimination in the private workplace opened. The European Court of Human Rights could close it’ (*Strasbourg Observers*, 6 September 2022) <<https://strasbourgobservers.com/2022/09/06/european-court-of-justice-keeps-the-door-to-religiousdiscrimination-in-the-private-workplace-opened-the-european-court-of-human-rights-could-close-it/>> Accessed 18 May 2025.

⁴¹Alimat Babatunde, ‘The Protection of Muslim Women: “Freedom of Religion” in the Workplace’ (*Human Rights Working Group*, 2024) <<https://www.humanrightswg.org/articles/protection-of-muslim-women>> Accessed 18 May 2025.

On multiple occasions, it has held that neutrality rules may be justified if they pursue a legitimate aim and employ proportionate means. In *Achbita v. Belgium* (2017), *Bougnaoui v. Micropole SA* (2017) and *Wabe and MH Müller Handel* (2021), all of which concerned the private workplace, the legitimate aim was identified in the employer's freedom to conduct a business, as enshrined in Article 16 of the CFR. In *OP v. Commune d'Ans* (2023) — the first headscarf case concerning the public sector — the justification was grounded in the imperative of maintaining “exclusive neutrality” within public administration.

Likewise, the Court advanced several debatable points, including that bans must apply to all visible religious symbols and should be limited to employees with client-facing duties. The first point testifies a failure to apply an intersectional lens: had the Court adopted such an approach, it might have recognised the disproportionate impact of neutral dress codes on Muslim women.⁴²

For individuals who meet the dual criteria of identifying as women and adhering to the Islamic faith, religious expression almost necessarily involves symbols of visible kind. Thus, facially neutral policies may in practice result in indirect discrimination. The issue here is also methodological: the choice of comparator. Rather than comparing Muslim women to other employees who are not religiously expressive, the Court compares all forms of religious expression equally — akin to comparing workers with different types of disabilities without regard to the particular barriers each faces.⁴³

Regarding the second aspect, the Court's reasoning focuses on the alleged non-neutral perceptions provoked in clients and suggests that offering back-office employment constitutes a reasonable alternative. According to the Strasbourg Observers, however, this solution is deeply problematic, as it limits access to public-facing roles and thus narrows professional opportunities for visibly religious Muslim women.⁴⁴ This reasoning implicitly legitimises prejudiced reactions by customers and fails to interrogate the underlying Islamophobia that motivates such complaints. In *Bougnaoui*, the Court did differentiate between dismissals stemming from a neutrality policy and those driven by customers' complaints, asserting that the latter is not a valid justification unless linked to the employee's functions. However, the Court ultimately reaffirmed the employer's prerogative to conduct their business as preferred, therefore even pursuing a neutrality policy, which in the end could only be imposed to prevent client discomfort. That closes the very same circle.

⁴²Babatunde, 'The Protection of Muslim Women' (*Human Rights Working Group*, 2024).

⁴³Paulin, 'ECJ and religious discrimination' (*Strasbourg Observers*, 2022).

Regarding the methodology of comparison used to assess discrimination, the Court held that the circle of persons in relation to whom a comparison may be made in order to ascertain religious discrimination is not limited in Directive 2000/78. Lastly, the Brussels Labour Court emphasized the applicant's identity as a "female worker who intends to exercise her freedom of religion by wearing a headscarf,"⁴⁵ thereby indirectly acknowledging the compounded discrimination faced by Muslim women. The comparison to male colleagues who wear beards further revealed the gendered dimensions of the neutrality rule. Although the Court refrained from addressing these intersectional aspects explicitly—citing a lack of sufficient material to establish ethnic discrimination—its silence represents a missed opportunity to advance a more inclusive and realistic framework.⁴⁶

However, the Court’s stance shifts when the public sector is involved. A comparison of *Lautsi v. Italy* (2011) and *Dahlab v. Switzerland* (2001) illustrates this discrepancy. In *Lautsi*, the Grand Chamber upheld the presence of crucifixes in Italian classrooms, reasoning that they were “passive symbols” not indicative of indoctrination.⁴⁹ The Court noted that no

⁴⁸*European Court of Human Rights, Eweida and Others v. UK (Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10)* <<https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-115881%22%5D%7D>> Accessed 18 May 2025.

evidence of proselytising had been presented and thus deemed the symbol non-intrusive. In stark contrast, in Dahlab, the Court upheld a ban on a Muslim teacher's headscarf, despite the absence of any proselytising behaviour. This suggests a double standard: the crucifix, symbol of an objectively powerful and unequivocal religious meaning, sponsored by the state, is treated as benign, while a piece of clothing, worn by an individual equally not assuming proselyting conduct, is construed as inherently problematic on the grounds that she may be asked for explanations regarding the headscarf, at that point not being capable of hiding its religious nature and thus influencing pupils. Such asymmetry reveals a culturally biased understanding of secularism and neutrality.

Similar trends emerge in other rulings such as *Kurtulmuş v. Turkey* (2006) and *Ebrahimian v. France* (2015), concerning respectively the educational and healthcare sectors. Here, the ECtHR emphasised the State's discretionary power in regulating the relationship between public institutions and religion, prioritising the interests of a secular state over individual rights.⁵⁰ This reveals a troubling tendency to prioritise abstract principles of *laïcité* over tangible harms experienced by marginalised individuals. These judgments fail to integrate an intersectional understanding of discrimination, testifying a significant lack of recognition in the interaction of religion and gender.⁵¹

As Howard observes, the CJEU's jurisprudence does not reflect an "inclusion approach"⁵² — one that recognises the centrality of employment to both personal well-being and societal integration. The Court has largely overlooked the extent of prejudice faced by Muslim women stemming from customers' complaints, and rather than addressing these biases, it has relied on the concept of neutrality as a means of exclusion.⁵³

That said, the ECtHR has demonstrated greater sensitivity at least to the diverse meanings of the veil. In *SAS v. France* (2014), the Court resisted reductive interpretations of the veil as inherently oppressive, acknowledging what, according to Zainab Salbi, could be the different roles played by such instrument: it may represent political expression, social

⁴⁹*European Court of Human Rights, Lautsi and Others v. Italy* (Application no. 30814/06) (Grand Chamber 18 March 2011) <[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-104040%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-104040%22]})> Accessed 18 May 2025.

⁵⁰Factsheet, *Religious symbols and clothing* (European Court of Human Rights, September 2024) <<https://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=003-3475850-3914153>> Accessed 18 May 2025.

⁵¹Babatunde, 'The Protection of Muslim Women' (*Human Rights Working Group*, 2024).

⁵²Erica Howard, 'Religious discrimination at the CJEU and the social inclusion approach' (*European Labour Law Journal* 2024, Vol. 15(4) 711-725) <<https://journals.sagepub.com/doi/epub/10.1177/20319525241261030>> Accessed 18 May 2025.

⁵³ Ibid.

affiliation, personal safety, cultural tradition, or a gesture of modesty.⁵⁴

Such recognition of complexity challenges essentialist narratives and paves the way for deeper engagement with the interplay of gender, religion, and identity. This openness provides an important discursive entry point for the adoption of a more intersectional framework.

5 Religious and Gender Equality: EU Policy Beyond the Courts

Inevitably, the time comes to question the adequacy of the response provided so far by the jurisprudence of European courts. From a critical perspective, this response appears unsatisfactory, as it fails to structurally address the multiple and intersectional forms of discrimination affecting this group. However, it is important to note that, alongside legal instruments, the European Union has adopted two key policy strategies that are particularly relevant to this study: the EU Anti-Racism Action Plan 2020-2025 and the EU Gender Equality Strategy 2020-2025.

In the EU Anti-Racism Action Plan, the section dedicated to employment highlights how candidates who openly identify as Muslim on their CVs receive significantly fewer interview invitations compared to equally qualified candidates with a perceived religiously neutral profile. This data confirms the persistence of systemic discriminatory dynamics in the European labour market and has led the European Commission to promote targeted policies, supported by dedicated financial resources, to effectively combat such phenomena. Another strategic point in the Plan concerns the promotion of awareness-raising initiatives about Islam, which is often the target of deeply rooted stereotypes and prejudices. These stigmatizing narratives are frequently reinforced by distorted or partial media representations, contributing to systematic under-representation and fueling discrimination. This underscores the need to foster a more pluralistic, fair, and inclusive media landscape, capable of reflecting the social and cultural complexity of the Union. Ultimately, the European Commission — while acknowledging the challenges posed by the lack of a common methodology — emphasizes the importance of collecting data disaggregated by ethnic or racial origin. It

⁵⁴Zainab Salbi, 'The stories of a headscarf' (*TED*, 29 January 2015) <<https://ideas.ted.com/the-stories-of-a-headscarf/>> Accessed 18 May 2025.

intends to launch an initiative to promote a consistent and harmonized approach to equality data collection.⁵⁵

On the other hand, the EU Gender Equality Strategy will be implemented through targeted measures aimed at strengthening gender equality, combined with enhanced gender mainstreaming and an intersectional approach. The actions outlined in this plan focus on combating gender-based violence, closing the employment and pay gaps, and promoting female entrepreneurship, as well as supporting women's participation in STEM and ICT sectors. These goals will be made possible through the allocation of European funds, including the ESF+ and InvestEU programmes.⁵⁶

6 Conclusions

This report has highlighted how Muslim women in Europe suffer from entrenched and overlapping forms of discrimination in the workplace — discrimination that is not adequately addressed by the current jurisprudence of either the CJEU or the ECtHR. Despite formal commitments to fundamental rights, the prevailing legal narratives continue to operate under the guise of neutrality, masking the structural inequalities embedded within dominant social and legal frameworks. The law, as it stands, fails to recognize that neutrality is not an objective absence of bias, but rather a selective erasure of difference — one which protects dominant identities while disempowering those who visibly differ from them.

The CJEU case law, in particular, has reinforced this argument further by validating employer policies that promote so-called “ideological neutrality,” even when such policies disproportionately impact Muslim women. Achbita and Bougnaoui are instances of the institutionalization of a logic that turns religious visibility, especially that of the hijab, into a cause for professional exclusion in the absence of concrete evidence of harm. These rulings reflect more than flawed outcomes; they reveal deeper methodological shortcomings: a reliance on single-axis analysis, abstract balancing tests, and inappropriate comparator groups that ignore how religious expression can be both visible and essential to identity.

⁵⁵European Commission, ‘A Union of equality: EU Anti-racism Action Plan 2020-2025 ’ (2020) <https://commission.europa.eu/document/download/beb25da4-e6b9-459e-89f7-bcd3a8f0c8_en?filename=a_union_of_equality_eu_action_plan_against_racism_2020_-2025_en.pdf> Accessed 18 May 2025.

⁵⁶European Commission, ‘A Union of Equality: Gender Equality Strategy 2020–2025’ (2020) <<https://op.europa.eu/en/publication-detail/-/publication/4ed128c0-5ec5-11ea-b735-01aa75ed71a1>> Accessed 18 May 2025.

This formalistic approach creates legal blind spots and by failing to recognize intersectional discrimination, the courts risk entrenching it. The use of a supposedly neutral standard — applied to all employees regardless of background — produces a false symmetry between those whose religious identity is immaterial and those for whom it is embodied. This erases the lived experiences of Muslim women, whose exclusion from employment is not hypothetical, but structural and recurring. As this report has investigated, these decisions have a chilling effect on visibly Muslim women's access to meaningful employment, particularly in roles that involve public interaction.

Moreover, the true scale of this exclusion remains largely invisible in public and legal discourse. Many women do not report such discrimination — whether due to language barriers, lack of financial means, fear of retaliation, or simple distrust in institutions that have failed to protect them in the past. This silence is not accidental — it is the product of a system that fails to recognize their reality and a lack of reporting does not equate to a lack of injustice.

To move forward, European courts should begin to adopt intersectionality not as a theoretical add-on, but as a practical tool for justice. Two steps could be especially impactful: First, acknowledging the subjective meaning of religious symbols: The headscarf is often reduced to a symbol of oppression, when in reality it may have multiple meanings: faith, dignity, safety, identity, even resistance. Courts must move beyond essentialist interpretations and consider these lived meanings. Recognizing the diversity of reasons for religious attire would prevent reductive judgments and uphold the agency of the wearer; Second, establishing an intersectional reviewing framework: The CJEU and ECtHR should implement doctrinal guidelines on how to proceed with cases involving multiple, intersecting grounds of discrimination. Intersectionality must be made justiciable. This could include creating guidelines, judge trainings, or legal opinions that acknowledge: even when discrimination based on gender or religion alone does not meet the legal threshold, the combined effect at the intersection of identities may still cause significant harm - and should be recognized as unlawful.

This requires more than technical adjustments: it demands a paradigm shift. Rights must no longer be treated as abstract values to balance against speculative business interests, but as forces of transformation — especially for those historically excluded from full participation in public life. Intersectionality does not demand special privilege, it demands visibility, context and recognition.

In this sense, religious freedom needs to be imagined not only as the right to believe privately, but as the right to belong publicly and visibly. For Muslim women, whose identity

is both hyper-visible and systemically erased, this distinction is not theoretical, it is existential. Intersectionality offers the courts a more accurate map of inequality and a path forward that would bring legal reasoning into conformity with the lived experience of those it claims to protect.