

Religious discrimination on the workplace

and how ECRI,
the Anti-Racism Commission
of the Council of Europe,
helps its member States eradicate it

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to the

European Commission against Racism
and Intolerance (ECRI)

Council of Europe

A regional organisation with 47 member States

Promoting

- democracy
- the rule of law and
- respect for human rights

Home to the European Court of Human Rights

The Court examines complaints concerning breaches of an international treaty,

the European Convention on Human Rights (ECHR),

which guarantees inter alia - in its Article 9 -

the right to freedom of thought, conscience and religion.

Case law under the ECHR

Evolution

- from Application No. 8160/78 v. the United Kingdom, Konttinen v. Finland and Stedman v. the United Kingdom (working hours cases)
- as well as Dahlab v. Switzerland and Kurtulmuş v. Turkey (headscarf cases)
- to Eweida and others v. the United Kingdom

The European Commission against Racism and Intolerance (ECRI)

Another
independent human-rights monitoring
body
of the Council of Europe

ECRI's terms of reference

- Combating racism, racial discrimination, xenophobia, antisemitism and intolerance in greater Europe from the perspective of the protection of human rights, in the light of the European Convention on Human Rights, its additional protocols and related case-law.
- “Racial discrimination” shall mean any differential treatment based on a ground such as race, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

ECRI's work

- Country monitoring (9-10 country reports per year; all 47 member States covered in the course of 5-year cycles)
- General Policy Recommendations (14 so far – drafted on the basis of ECRI's country-by-country experience)
- Outreach activities

GPR No. 14 on combating racism and racial discrimination in employment

- Adopted on 22 June 2012
- Goes beyond the case law of the European Court of Human Rights
- Stresses the importance to successful businesses of creating workplace environments where workers are respected and their contributions valued, regardless of their “race” 1, colour, language, religion, nationality or national or ethnic origin

General obligation to combat discrimination in employment

Including religious discrimination

- direct and
- indirect

Moreover, Member States are asked to

- ensure that management and human resources personnel receive the necessary initial training and professional support to be able to interact with ethnically, religiously and linguistically diverse employees and to eliminate and prevent racial discrimination and racial harassment
- enable the equality authority to publish regularly data on employment which is benchmarked and disaggregated by, among others, “race”, colour, language, religion, nationality or national or ethnic origin
- combat multiple discrimination
 - e.g. against Muslim women
- require public authorities - when carrying out their functions, including their employment functions - to promote equality and prevent and eliminate racism, racial discrimination and racial harassment
 - e.g. what to do when a public authority suspects that the proportion of ethnic, religious or linguistic minorities in its employment is low

Member States are also asked to

- require employers to promote equality, prevent and eliminate racism, racial discrimination and racial harassment in employment
 - by identifying and removing barriers to religious minorities' employment
 - and by taking steps, within reasonable time limits, to meet the particular needs of religious minorities such as making a room available to staff for prayer, or, if the employer provides refreshments or meals for staff, meeting dietary requirements
- make employers responsible for ensuring that the workplace is free from racial harassment
 - if an employer mocks his/her employee's religious practice and beliefs and makes derogatory statements to him/her about his/her faith, these statements may amount to harassment on the grounds of religion
- ensure a fair distribution of burden of proof in cases involving allegations of religious discrimination in employment
 - how to handle a situation where the owner of a small manufacturing company only allows staff to take annual leave during designated shutdown periods in August and December, and a Muslim worker who is refused holiday time to undertake the Hajj considers that s/he has been subjected to unlawful indirect discrimination on the grounds of religion

GPR No. 14 is to be read together with the recommendations contained in ECRI's country reports

Issues ECRI has had to deal with:

- Muslim women wearing headscarf
- Orthodox Jewish men refusing to shake hands
- Employment in organisations with a « secular ethos ».

Future challenges

- Employment in faith-based organisations
- Reasonable accommodation in employment
- Customers' preferences
- Conscientious objection in employment
 - PACE recommendation and
 - Case law of the European Court of Human Rights on impact of conscientious objection on other rights

Conclusion

- Litigation approach
- To be supplemented by a non-judicial one?