



Religious Diversity and Secular Models in Europe – Innovative Approaches to Law and Policy

# Religare Newsletter

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Religious Diversity and Secular Models in Europe  
Innovative Approaches to Law and Policy



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## Belgium bans 'burqa'

By Jogchum Vrielink (Project Manager)

After France, Belgium is the second European country to introduce a general prohibition on face covering headgear in public life: a so-called 'burqa ban'. It has done so by means of the Act of 1 June 2011 that inserted a new article 563bis in the Belgian Criminal Code. The article renders it an offence to publicly "cover or conceal one's face in whole or in part, so that one is unrecognisable". Exceptions are limited to "legal provisions" and "labour regulations" that explicitly impose or allow face covering in public, and to "local ordinances regarding festivities". Prior to the general prohibition being introduced, many Belgian municipalities already had prohibitions on face covering in place on the basis of local ordinances.

Based on the *travaux préparatoires* the general 'burqa ban' has three main goals: safeguarding public safety; promoting 'living together' (*le vivre-ensemble*), with an emphasis on communication and recognisability; and the protection of women's rights.

The prohibition seems problematic for several reasons. To

begin with, its scope is extremely broad, whereas exceptions are very limited. A strict application would therefore lead to all kinds of bizarre consequences, especially since intent is not required so that negligence suffices, in accordance with general principles of Belgian criminal law.

Furthermore it seems doubtful whether the Belgian legislator's aims sufficiently legitimate the prohibition, and the restriction on religious liberty that it entails. To the extent that face covering presents a safety risk, this tends to be the case only in specific circumstances, so that a general prohibition might be disproportionate. As for the goal of 'living together', the question is whether it is not a matter of individual freedom to decide to have contact with other people in the streets. Regarding women's rights, a distinction can be made between women wearing a face-veil out of choice and those doing so because they are being forced. For the former, a prohibition would not seem to contribute to their rights, but instead limits their autonomy and choice. For women that are coerced to wear a face veil, on the other hand, it would not seem pertinent to combat such oppression by means of fining or imprisoning them.

*An in-depth analysis of the Belgian 'burqa ban' (also by E. Brems and S. Ouald Chaib) will be published in the RELIGARE volume, edited by A. Ferrari, resulting from the workshop held in Como (see p. 2).*

On January 14th, 2011, the third *Religare* consortium meeting took place in Brussels. The morning session was hosted by the Belgian Senate and consisted in a half-open policy meeting.

This session was open by the welcome addresses of Prof. Marie-Claire Foblets, project coordinator and Senator and Prof. Rik Torfs. This gave to the *Religare* partners the opportunity to outline the first inputs of their work and to explain the guidelines and stakes of their upcoming research.



Senator Rik Torfs and K. Alidadi in the Senate

Their presentations were meant to be the preliminary *Religare* policy recommendations. The open discussion with the members of the Advisory board, invited participants and partners was followed by the concluding remarks by Prof. Adam Seligman (Boston University).

The next *Religare* policy meeting will take place in Brussels on June 30th, 2011. In the afternoon, the internal meeting was welcomed by the CEPS. Among several steps forward, two points might be pointed out: a calendar of the *Religare* events for 2011-2012 and the confirmation of a *Religare* book series accepted by Ashgate.



Panel of the work packages leaders of the project

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## THE WORKPLACE ...

This research field is a policy-oriented reflection on the derogations made in the field of labour law for religious legal systems and for individuals for reason of their religious convictions and practices.

This covers issues related to individual religious freedom and non-discrimination on basis of religion and beliefs in the workplace as well as the special provisions made in the area of labour law for religious denominations and religious-ethos companies.

### ***Religion diversity and the European workplace***

*Leuven, 13 January 2011*

Last January, the team dedicating its works to “the Workplace” within the religare project organised an International Symposium titled “Religious diversity and the European workplace”, which took place at the Katholieke Universiteit Leuven. This day-long event brought together an impressive number of junior and more established (legal) scholars from accross Europe working on issues related to religious freedom, religious discrimination and employment .

After a welcome by Prof. Marie-Claire Foblets, *Religare* coordinator, Prof. Lucy Vickers (see the picture below) of Oxford Brookes University (UK), addressed the keynote for this event. Then, two panel discussions took place in the morning.

The first panel “European components of the religion and the workplace debate” brought together papers by Prof. Kristin Henrard, Saïla Ouald-Chaib and Prof. Hans-Martien ten Napel.

In the second panel, chaired by Prof. Prakash Shah (Queen Mary University, London), three comparative papers were presented by Hana van Ooijen, Katayoun Alidadi and Gabrielle Caceres, followed by question from the audience and a discussion by Julie Ringelheim (University of Louvain, Belgium).

This fully packed symposium continued with two more panels in the afternoon, with the first panel chaired by Prof. Stefan Sottiaux (Katholieke Universiteit in Leuven, Belgium) focusing on country case studies : Turkey (Mine Yilderim and Rossella Bottoni), France (Rim-Sarah



*Prof. Lucy Vickers introducing the seminar in Leuven*

Alouane) and Belgium (Jogchum Vrieling and Efrat Tzadik).

The last panel of the day, chaired by Prof. Cole Durham (Brigham Young University, USA), dealt with the faith-based organisations. This issue was addressed by Yves Stox, Prof. Louis-Léon Christians and Amandine Barb. Prof. Titia Loenen (Utrecht University, the Netherlands) ensured the closing address.

### ***The Burqa affair across Europe: Between public and private***

*Como, 4-5 April 2011*

In connection with the *Religare* research area “Religion and public space”, the University of Insubria (Italy) organised an international workshop about the full veil issue across Europe. This event brought together in Como several European specialised scholars.

It started with an introduction by Prof. Alessandro Ferrari (University of Insubria), followed by a paper by Prof. Silvio Ferrari (University of Milano), which highlighted the stakes raised by the burqa issue in relation to the public/private divide.

Two thematic papers dealt with burqa and Islam (Prof. Roberta Aluffi, University of Torino) on the one hand and burqa and gender on the other hand (Prof. Letizia Mancini, University of Milano). The three following panels consisted in outlining the wide range of domestic situations in France (A. Fornerod), the United Kingdom (M. Hill), the Netherlands (A. Overbeeke), Italy (A. Ferrari), Spain (A. Motilla), Belgium (J. Vrieling and E. Brems) and in the Northern Countries (L. Christoffersen). The workshop endend with the closing papers by Professors Ralph Grillo (Sussex centre for Migration Research) and Prakash Shah (Queen Mary University).

*Panel of the workshop in Como*





European Court of Human Rights

## Focus on case law

### Workplace and Domestic Case Law

#### Denmark

*Eastern High Court 14-01-2008*  
*“Ramadan” case (17.afd., n. B-2339-06)*

In 2004 A. applied for a temp job at a treatment home for young children, to B. A and B agreed on a number of trial shifts. During one of these, A. was to participate in the children’s lunch. She avoided eating due to the Ramadan. After the shift, A. was informed by phone that she would not be hired.

The Court found it proven that A. not eating during the children’s meal contributed to B’s decision not to hire her. B. is found to have indirectly discriminated A. due to her religion in contravention of Act n. 459 of 12. June 1996 on prohibition against discrimination in respect of employment etc., as changed by Act n. 253 of 7. April 2004, implementing the Council Directives 2000/43/EC and 2000/78/EC. It is further assumed by the Court that A. did not eat due to the Ramadan. The Court notes that B. has not relied on the discrimination being justified under the circumstances.

#### France

*Court of cassation, 12-07-2010*  
*n. 08-45.509*

An engineer was dismissed on the ground of professional serious misconduct. According to the company which employed him, he had voluntarily made loose a market after he had said to the customer that he would refuse to undertake the project if this one should take place in the Middle-East (Algeria and Afghanistan). Due to his religious beliefs (he is Jewish), he deemed that he ran risks there.

The Court of appeal had decided that this was unfair dismissal and condemned the company to pay damages to the employee.

The Court of cassation upholds the previous ruling. Indeed, the Court observes that the employee had argued of this risk, due to his religious belonging, while answering to the questions of the customer. Moreover, he had previously informed the company of such a risk, whose reality had been established. Finally, it had not been proved that the market was lost because of the employee’s revelations related to his religious belonging and the consequences he feared. Accordingly, the employee’s behaviour was not guilty and could not lead to a dismissal.

*ECHR, Siebenhaar v. Germany, 03-02-2011*  
*n. 18136/02 – Article 9 ECHR*

Collecting the relevant case law related to the issues addressed by the project will be an important asset of RELIGARE. Accordingly, each newsletter offers to focus on an important decision handed out recently.

**The facts** - The applicant, Astrid Siebenhaar, is a German catholic and had been hired as a childcare assistant in a day nursery run by a protestant parish. Then she was employed as the head of a kindergarten run by another protestant parish. Her employment contract provided that the Protestant Church labour law was enforceable. This implies the employees’ loyalty to the Church and forbids them to be members of organisations, whose views or activities are not compatible with the Church’s mandate.

The protestant parish had been informed anonymously that the applicant was member of a religious community named the Universal Church/Brotherhood of Humanity and taught catechism. After she had been convoked for a hearing, the applicant was dismissed without notice. In a decision of 1999, the Labour Court of Pforzheim held that this breach in her obligation was a justified ground of dismissal. Then, the labour Court of Baden-Württemberg deemed that the applicant’s obligation of loyalty did not justify a dismissal without notice, while the Federal Labour Court overturned her appeal, judging that her involvement in catechism lessons and her responsibilities in the religious community could fairly let the Protestant parish think that it could influence her work with children.

Eventually, the Constitutional Federal Court declined to examine Mrs Siebenhaar’s case. She lodged an application with the European court of human rights in 2002.

**The ECHR decision** - The Court had to assess whether the balance between the applicant’s right to freedom of religion under article 9 and the Convention rights of the Protestant Church afforded sufficient protection to the applicant against her dismissal. The Court reiterates that the religious communities’ autonomy is protected under article 9 of the Convention.

The Court deems that Germany complies with its obligation towards litigants in labour law since it affords a labour jurisdictional system. The European judge notes that, according to the Labour Federal Court, due to her commitment in the Universal Church the applicant did not respect her employer’s ideals. It results in the German labour courts’ decisions that they have taken all the relevant elements into account. The dismissal of the applicant was necessary to preserve the Protestant Church’s credibility and this prevailed over the interest of the employee in keeping her position. In addition, he short duration of the labour relationship had to be taken into account.

There had been no violation of article 9.



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## RELIGARE EVENTS

What	When	Where
Religare Expert Seminar	October 20-21th, 2011	<i>International Center for Minority Studies and Intercultural Relations</i> , Sofia (Bulgaria) , co-organised with University of Milano This event will be an opportunity to bring together the Religare member who carry out the sociological survey within the project. Along this meeting, the Religare group working on Religion and public space will organise a workshop on "Accommodating religion in the public space. Looking beyond Europe" with, among others, contributions about Israel, Turkey and India.
Religare Expert Seminar	December 13-15th, 2011	Tel Aviv University, Cardozo Law School (NY) & University of Milano <i>Venue: Jerusalem</i> Workshop on 'Religious Perspectives on the Public Sphere: Neutrality, Pluralism and the Secular'

## RELATED EVENTS

Title	Date	Venue
Anthropology and Cultural Psychology of Religion(s) Hermeneutics – Practices – Life Contexts	September 11-14th, 2011	Friedrich-Alexander University, Erlangen-Nürnberg (Germany) <i>Center for "Anthropology of Religion(s)"</i> This four days long event concentrates on the consequences on anthropology of religion studies of the implementation of a third religion in German universities.
Volunteering, religion and social capital	December 7-9th, 2011	University of Antwerpen, Belgium <i>Universitair Centrum Sint-Ignatius (UCSIA)</i> This workshop aims to investigate how the concept of volunteerism in faith-based organisations and congregational groups changed over time and what motivates people today to become a volunteer. Deadline to submit abstracts: August 15th, 2011, <a href="http://www.ucsia.org">www.ucsia.org</a> .