

Religious discrimination at the workplace and the CJEU case law regarding headscarves



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1

1

Key rules

- [Directive 2000/78/EC](#) of 27 November 2000 establishing a general framework for equal treatment in employment and occupation
 - [General framework for combating discrimination on the grounds of religion](#) or belief, disability, age or sexual orientation as regards employment and occupation (Art. 1)
 - [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 the grounds of religion] (Art. 2(2) a)
 - [Indirect discrimination](#) shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion (...) at a particular disadvantage compared with other persons (Art. 2(2) b)

2

Key rules

- Charter of Fundamental Rights of the European Union
 - Article 10: Freedom of thought, conscience and religion
 - = Everyone has the right to freedom of thought, conscience and religion.
 - = Freedom to manifest his religion or belief in worship, teaching, practice and observance. (...)

3

CJEU 14 March 2017, case C-157/15, Samira Achbita v G4S Secure Solutions NV

Case 1

4

Facts: religion expression v. neutrality guidelines

- The **employee, of Muslim faith**, began working as a receptionist for a private company.
- At the time, the company had an **unwritten rule prohibiting employees from wearing visible signs** of their political, philosophical or religious convictions in the workplace.
- During the course of her contract, the employee informed her superiors that **she now intended to wear an Islamic headscarf during working hours**.
- In response, **management informed her that wearing a headscarf would not be tolerated**, as the visible display of political, philosophical or religious symbols was contrary to the **neutrality** to which the company was committed.
- After a period off work, she informed her employer that she would be returning to work wearing an Islamic headscarf.
- The **works council then approved an amendment to the internal regulations** stipulating that "*it is forbidden for employees to wear visible signs of their political, philosophical or religious convictions in the workplace, or to perform any rites deriving therefrom*".
- Due to the employee's persistent desire to wear a headscarf in the workplace, she was dismissed.

5

Meaning of « religion »: internal/external

- The concept of 'religion' in Article 1 of that directive should be interpreted 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**.
 - In so far as the ECHR and, subsequently, the Charter use the term 'religion' in a broad sense, in that they include in it the freedom of persons to manifest their religion, the **EU legislature must be considered to have intended to take the same approach when adopting Directive 2000/78** + religion or belief' are two facets of a single protected criterion

6

Company's internal rule: direct discrimination?

- The **internal rule at issue** refers to the wearing of visible signs of political, philosophical or religious beliefs and therefore covers any manifestation of such beliefs without distinction
 - The rule must be regarded as **treating all workers of the undertaking in the same way** by requiring them, **in a general and undifferentiated way**, inter alia, to dress neutrally, which precludes the wearing of such signs
 - = **since every person is likely to have a religion/beliefs, none is especially aimed at when all religious signs are excluded**
 - = neutrality measure covers all religions in the abstract.
 - + **in practice the internal rule was not applied differently to Ms Achbita** as compared to any other worker
- = No direct discrimination

7

...indirect discrimination?

- Difference of treatment indirectly based on religion or belief by company's rule **if the apparently neutral obligation it encompasses results, in fact, in persons adhering to a particular religion or belief being put at a particular disadvantage"**
- such a difference of treatment does not, however, amount to indirect discrimination if it is **objectively justified by a legitimate aim and if the means of achieving that aim are appropriate and necessary.**

8

...indirect discrimination?

- The desire to display, in relations with both public and private sector customers, **a policy of religious neutrality must be considered a legitimate aim.**
 - An employer's wish to project an image of neutrality towards customers **relates to the freedom to conduct a business that is recognised in Article 16 of the Charter** and is, in principle, legitimate,
 - ...notably where the employer involves in its pursuit of that aim **only those workers who are required to come into contact with the employer's customers**

9

...indirect discrimination?

- A **policy of neutrality is properly applied if it is genuinely pursued in a consistent and systematic manner**
 - it is for the referring court to ascertain whether G4S had, prior to Ms Achbita's dismissal, established a general and undifferentiated policy of prohibiting the visible wearing of signs of political, philosophical or religious beliefs in respect of members of its staff who come into contact with its customers
- It must be determined whether the **prohibition is limited to what is strictly necessary**
 - What must be ascertained is whether the prohibition on the visible wearing of any sign or clothing capable of being associated with a religious faith or a political or philosophical belief **covers only G4S workers who interact with customers.**

10

Main findings

- The ruling **validates the principle of neutrality clauses** in company
- However, the drafting of company internal rules must be rigorous
 - It must **not be drafted in such a way as to stigmatize a given religion** (or religions), in which case direct discrimination - without the possibility of justification - would be characterized.
 - The neutrality clause should then be **reserved for staff in contact with customers**, at least if the legitimate objective is neutrality in relations with customers.
 - It is important to ensure that the **neutrality policy vis-à-vis customers is consistent**, which would not be the case, for example, if the employer had been tolerant in the past of the display of religious symbols despite the neutrality rule
 - it is up to the judge hearing the case to ascertain whether, while taking into account the constraints inherent in the company, and without the company having to bear an additional burden, **it would have been possible, in the face of such a refusal, to offer her a job not involving visual contact with these customers**, rather than dismissing her

11

CJEU 14 March 2017, case C-188/15, Asma
Bougnaoui v Micropole SA

Case 2

12

Facts: Customer's wish of neutrality

- In October 2007, prior to being hired by the private company, Ms B. met a company representative at a student fair, who informed her that wearing an Islamic headscarf could pose a problem when she came into contact with the company's customers.
- When she arrived at the company for her final internship, she wore a simple bandana.
- Later, *she wore an Islamic headscarf in the workplace.*
- At the end of her internship, the company hired her as a design engineer on July 15, 2008.
- On June 15, 2009, she was summoned to an interview prior to possible dismissal, and her employment was terminated.
- The letter stated, among other things, that "*We asked you to work for the customer ... on 15 May, at their site in Following that work, **the customer told us that the wearing of a veil, which you in fact wear every day, had upset a number of its employees. It also requested that there should be "no veil next time".***"

13

Occupational requirements

- Member States may provide that a *difference of treatment which is based on a characteristic related to [religion] shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement*, provided that the objective is legitimate and the requirement is proportionate

[If the requirement of neutrality is not based on a written internal rule, the discrimination would be direct = "occupational requirement" is the only way to justify the "religion measure"]

14

Occupational requirements

- Does the willingness of an employer to take account of a customer's wish no longer to have services provided by a worker who has been assigned to that customer by the employer and who wears an Islamic headscarf constitute a genuine and determining occupational requirement?
 - it is only in very limited circumstances that a characteristic related to religion may constitute a genuine and determining occupational requirement
 - the concept of a 'genuine and determining occupational requirement' cannot cover subjective considerations, such as the willingness of the employer to take account of the particular wishes of the customer.

15

Main findings

Only in very limited circumstances can a characteristic linked to religion constitute an occupational requirement

- the concept of a 'genuine and determining occupational requirement', cannot cover subjective considerations, such as the willingness of the employer to take account of the particular wishes of the customer
- willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf cannot be considered a genuine and determining occupational requirement

16

CJEU 15 July 2021, case C-804/18 and C-341/19, IX v WABE eV

Case 3

17

Facts

- The first case involved an employee of a daycare whose internal regulations prohibited its employees from wearing any visible sign of a political, philosophical or religious nature when in contact with children or their parents.
- Having presented herself on three occasions wearing an Islamic headscarf, she received two warnings, the legality of which she contested.
- The second case involved a commercial company where a sales consultant, who also wore a headscarf, had refused to apply the new internal directive banning the wearing of large, conspicuous signs of a religious, political or philosophical nature in the workplace.

18

Direct discrimination? (input 1)

- where the criterion of wearing **conspicuous, large-sized signs of religious beliefs is inextricably linked to one or more specific religions or beliefs**, the prohibition imposed by an employer on its employees on wearing those signs on the basis of that criterion will mean that some workers will be treated less favourably than others on the basis of their religion or belief
 - direct discrimination is not totally ruled out in the presence of an internal rule of neutrality = it presupposes that a **distinction is made among prohibited signs** = **direct discrimination** may therefore be established.

19

Indirect discrimination? (input 2)

- If the internal rule prohibiting WABE's employees from wearing visible signs of political, philosophical or religious beliefs when they are in contact with parents or children, **in practice concerns certain religions more than others...**
 - according to the findings of that court, the rule **concerns, statistically, almost exclusively female workers who wear a headscarf because of their Muslim faith**: the Court therefore starts from the premiss that that rule constitutes a difference of treatment indirectly based on religion

20

Indirect discrimination? (input 3)

- (a) The mere desire of an employer to pursue a policy of neutrality is not sufficient, as such, to justify objectively a difference of treatment indirectly based on religion
- (b) in order to establish the existence of objective justification, account may be taken of the rights and legitimate wishes of customers or users
 - parents' right to ensure the education and teaching of their children in accordance with their religious, philosophical and teaching beliefs or their wish to have their children supervised by persons who do not manifest their religion or belief when they are in contact with the children

21

Indirect discrimination? (input 3)

- (c) Neutrality policy justify by risk of adverse consequences?
 - The prevention of social conflicts within company and the presentation of a neutral image of the employer vis-à-vis customers may correspond to a real need on the part of the employer
 - It must still be verified whether the internal rule is appropriate for the purpose of achieving the aim pursued and whether that prohibition is limited to what is strictly necessary

22

CJEU 13 October 2022, case C-344/20, L.F. v SCRL

Case 4

23

Facts: drafting of neutrality clause

- Applicant, of the [Muslim faith and wears the Islamic headscarf](#), made an unsolicited application to SCRL with a view to completing a six-week unpaid internship there
- the applicant attended an interview with the managers of SCRL, and asked her if she could agree to comply with the neutrality rule promoted within SCRL: *Workers 'will make sure not to manifest in any way, either by word or through clothing or any other way, their religious, philosophical or political beliefs, whatever those beliefs may be'.*
- the applicant refused, renewed her application, offering to wear another type of head covering.
- SCRL informed the applicant that it [was unable to offer her such an internship](#)

24

Indirect discrimination?

- Justification is objective only where there is a genuine need on the part of that employer
- That interpretation is inspired by the concern to encourage, as a matter of principle, tolerance and respect, as well as acceptance of a greater degree of diversity, and to avoid abuse of a policy of neutrality established within an undertaking to the detriment of workers who observe religious precepts requiring the wearing of certain items of clothing
- This ruling confirms:
 - Tight control that judges must exercise over internal company rules on religious matters + spirit of neutrality must not disregard the quest for diversity
 - Directive 2000/78 does not cover political or trade union belief; nor artistic, sporting, aesthetic or other beliefs or preferences