



Religious or political convictions, a criterion unlike the rest?

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Contents of the presentation

1. The background to the two cases
2. The reasoning behind the Belgian case
3. Analysis of the issues
4. Analysis of the conclusions of C-157/15 and questions which they raise



Two cases, very similar but not exactly the same...

C-157/15: Achbita – Prohibition by employer
C-188/15 – Rejection by client



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Reason for the question in C-157/15

Is this a matter of direct or indirect discrimination?

What about the genuine and determining occupational requirement?

Does a private/commercial enterprise become an identity-based enterprise (“entreprise de tendance”) by making provision for neutrality in its business?

Can the private/commercial enterprise act in accordance with discriminatory requirements set by customers when the Court ruled otherwise in Feryn, C-54/07?

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Question 157/15

Should Article 2(2)(a) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation 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?



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Question C-188/15

Must Article 4(1) of Council Directive 78/2000/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (4) be interpreted as meaning that the wish of a customer of an information technology consulting company no longer to have the information technology services of that company provided by an employee, a design engineer, wearing an Islamic headscarf, is a genuine and determining occupational requirement, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out?



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Conclusions and questions

- Introduction
- The prohibition does not target the religion but the need to actively demonstrate a belief
- Margin of discretion based on the fundamental right of the entrepreneurial freedom
- The legitimate objective
- Has there been an excessive violation of the rights of the worker?



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