



Religious or political convictions, a criterion unlike the rest?

Ingrid Aendenboom, ERA, 12 July 2016

BRUSSELS 15 MAY 2015 SESSION 1



This training session is funded under the 'Rights, Equality and Citizenship Programme 2014-2020' of the European Commission.

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



March 16 • p 2

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

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



March 16 • p 3

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?

-



March 16 • p 4

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?



March 16 • p 5

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?



March 16 • p 6

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?



March 16 • p 7



Interfederaal Gelijkekansencentrum
Centre Interfédéral pour l'Égalité des chances
Interföderales Zentrum für Chancengleichheit