SUMMARY

ECJ (Grand Chamber) 14 March 2017, case C-157/15 (Achbita), Religious discrimination

<p>Company regulations that prohibit the visible wearing of political, philosophical or religious symbols do not discriminate directly on grounds of religion. A policy of projecting an image of neutrality is not indirectly discriminatory if pursued consistently and systematically.</p>

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Facts

Ms Achbita was hired by G4S, as a receptionist, in 2003. In 2006 she announced that she would start wearing a headscarf while on duty. This was against the company's unwritten but generally known prohibition against wearing religious, political or philosophical symbols at work (the 'Dress Code'). She was dismissed on account of her continued insistence that she wished, as a Muslim, to wear an Islamic headscarf at work. The day after her dismissal, the Dress Code was formalised in the company's written workplace regulations.

National proceedings

Ms Achbita brought an action for wrongful dismissal, alleging discrimination on grounds of religion. The Belgian Centre for Equal Opportunities joined the proceedings in support of her claim. The court of first instance and the Court of Appeal dismissed her action. She appealed to the Supreme Court. It referred a question to the ECJ. The question was limited to whether

the Dress Code constituted direct discrimination within the meaning of Directive 2000/78.

Opinion of Advocate-General Kokott

The Advocate-General began by examining the distinction between direct and indirect religious discrimination. In the case at hand, there was no discrimination between religions, given that the ban on the visible wearing of religious symbols applied equally to wearing Jewish, Sikh or Christian symbols. There was no discrimination based on religion per se, given that the Dress Code also prohibited the wearing of visible signs of political or philosophical beliefs. There was no evidence that the Dress Code was based on stereotypes or prejudice in relation to one or more religions (in which case there would have been direct discrimination based on religion). Hence, there was no direct discrimination.

The Advocate-General went on to assess whether the indirect differential treatment was objectively justified. She considered occupational requirements (Article 4(1) of the Directive) and the protection of the rights and freedoms of others (Article 2(5)). She concluded that the Dress Code could constitute a genuine and determining occupational requirement, that an employer's desire to project an image of neutrality was a legitimate aim and that the Dress Code could be necessary and proportionate to achieve that aim. Article 2(5) was not markedly independent of Article 4.

ECJ's findings

The concept of 'religion' in the Directive covers both the fact of having a belief and the manifestation of that faith in public. This is in line with ECtHR case law and the EU Charter of Fundamental Rights (Articles 23 to 28).

The Dress Code treats all G4S employees in the same way. It does not introduce a difference in treatment that is directly based on religion or belief. Hence, there is no direct discrimination (§ 30-32).

Although the referring court did not ask whether the Dress Code discriminated indirectly, the ECJ addressed this issue in order to provide the referring court with guidance (§ 33-34).

An employer's desire to project an image of neutrality towards its customers relates to the freedom to conduct a business, as provided in Article 16 of the EU Charter. It its ruling in the Eweida case, the ECtHR held that the pursuit of this aim allows employers, within certain limits, to impose restrictions on the freedom of religion (§ 37-39).

Prohibiting employees from visibly wearing signs of political, philosophical or religious beliefs is an appropriate way to achieve the aim of projecting an image of neutrality, provided that the

prohibition is genuinely pursued in a consistent and systematic manner (§ 40-41).

The referring court will need to determine whether the prohibition at issue was limited to what was strictly necessary. This is the case if the prohibition was limited to G4S employees who interact with customers and it was not reasonably possible for G4S, without taking on an additional burden, to offer Ms Achbita another position not involving visual contact with its customers, rather than dismissing her (§ 42-43).

Ruling

Article 2(2)(a) of Council Directive 2000/78 must be interpreted as meaning that the prohibition on wearing an Islamic headscarf, which arises from an internal rule of a private undertaking prohibiting the visible wearing of any political, philosophical or religious sign in the workplace, does not constitute direct discrimination based on religion or belief within the meaning of that directive.

By contrast, such an internal rule of a private undertaking may constitute indirect discrimination within the meaning of Article 2(2)(b) of Directive 2000/78 if it is established that the apparently neutral obligation it imposes results, in fact, in persons adhering to a particular religion or belief being put at a particular disadvantage, unless it is objectively justified by a legitimate aim, such as the pursuit by the employer, in its relations with its customers, of a policy of political, philosophical and religious neutrality, and the means of achieving that aim are appropriate and necessary, which it is for the referring court to ascertain.

Creator: European Court of Justice (ECJ)
Verdict at: 2017-03-14
Case number: C-157/15 (Achbita)