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Press and Information

Advocate General's Opinion in Case C-157/15
Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV

In the view of Advocate General Kokott, a ban on wearing headscarves in companies may be admissible

If the ban is based on a general company rule which prohibits political, philosophical and religious symbols from being worn visibly in the workplace, such a ban may be justified if it enables the employer to pursue the legitimate policy of ensuring religious and ideological neutrality

Samira Achbita, who is of Muslim faith, worked as a receptionist for the Belgian company G4S Secure Solutions, which is an undertaking that provides security and guarding services as well as reception services. After having worked for three years for the company she insisted that she should be allowed to go to work in future wearing an Islamic headscarf. She was dismissed as a result, since G4S prohibits the wearing of any visible religious, political and philosophical symbols. Supported by the Belgian Centre for Equal Opportunities and Combating Racism, she brought an action before the Belgian courts seeking damages from G4S. Her action was unsuccessful before the first two tiers of courts. The Belgian Court of Cassation, before which the case is now pending, has made a request to the Court of Justice for a preliminary ruling seeking clarification of the prohibition under EU law of discrimination on the grounds of religion or belief.[1]

In today's Opinion, Advocate General Juliane Kokott takes the view that there is **no *direct* discrimination** on the ground of religion where an employee of Muslim faith is banned from wearing an Islamic headscarf in the workplace, provided that that ban is founded on a general company rule prohibiting visible political, philosophical and religious symbols in the workplace and not on stereotypes or prejudices against one or more particular religions or against religious beliefs in general. If that is the case, there is no less favourable treatment *based on religion*.

That ban may constitute ***indirect* discrimination** based on religion,[2] but **may, however,[3] be justified** in order to enforce a legitimate[4] policy of religious and ideological neutrality pursued by the employer in the company concerned, in so far as the principle of proportionality is observed in that regard.

In a case such as the one at hand, the **proportionality test** is a delicate matter in the context of which the Court of Justice should grant the national authorities, in particular the national courts, a measure of discretion which they may exercise in strict accordance with EU rules. Accordingly, it is **ultimately** for **the Belgian Kassationshof** to strike a fair balance in the present case between the conflicting interests, taking into account all the relevant circumstances of the case, in particular the

[1] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16). For simplicity's sake, the term 'discrimination based on religion' will be used throughout.
[2] In practice, the rule is capable of putting individuals of certain religions or beliefs — in this case, female employees of Muslim faith — at a particular disadvantage by comparison with other employees.
[3] As being a genuine, determining and legitimate occupational requirement, within the meaning of Article 4(1) of the directive.
[4] The policy of neutrality at issue here does not exceed the bounds of the discretion it enjoys in the pursuit of its business. At G4S such a policy is essential, not only because of the variety of customers served by the company, but also because of the special nature of the work which G4S employees do in providing those services, which is characterised by constant face-to-face contact with external individuals and has a defining impact not only on the image of G4S itself but also and primarily on the public image of its customers.

size and conspicuousness of the religious symbol, the nature of Ms Achbita's activity and the context in which she must perform her activity, as well as the national identity of Belgium.

Indeed, in the view of Advocate General Kokott, there can be no doubt, in principle, that the ban at issue in this case is **appropriate** for achieving the legitimate objective pursued by G4S of ensuring religious and ideological neutrality. The ban is **necessary** for the purposes of implementing that company policy. Less intrusive but equally suitable alternatives for achieving the objective pursued have not been identified during the proceedings before the Court.

Finally, so far as concerns **proportionality in the narrow sense**, in Advocate General Kokott's view, the ban at issue in the present case does not unduly prejudice the legitimate interests of the female employees concerned and must therefore be regarded as proportionate.

For many people religion is indeed an important part of their identity and the freedom of religion is one of the cornerstones of a democratic society.

While an employee cannot 'leave' his sex, skin colour, ethnicity, sexual orientation, age or disability 'at the door' upon entering his employer's premises, he may be expected to moderate the exercise of his religion in the workplace, be this in relation to religious practices, religiously motivated behaviour or (as in the present case) his clothing. The measure of restraint which an employee can be required to exercise depends on a comprehensive assessment of all the relevant circumstances of the case in question.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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