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Court of Justice of the European Union

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Advocate General's Opinion in Case C-188/15
Bouagnaoui and ADDH v Micropole SA

Advocate General Sharpston considers that a company policy requiring an employee to remove her Islamic headscarf when in contact with clients constitutes unlawful direct discrimination

An entirely neutral dress code policy may also constitute indirect discrimination which will be justified only if it is proportionate to the pursuance of a legitimate aim, including the interests of an employer's business

Ms Asma Bouagnaoui is a Muslim woman who was employed as a design engineer by Micropole SA, an IT consultancy company. She entered into a contract of employment on 15 July 2008. Whilst in employment she wore, at times of her choice, an Islamic headscarf which covered her head but left her face exposed.

As part of her duties, Ms Bouagnaoui was required to meet Micropole's clients on their premises. Following a complaint from one of those clients that Ms Bouagnaoui's headscarf had "embarrassed" its employees and requesting that "there should be no veil next time", she was asked to confirm that she would comply with that request on her next visit. She refused to do so and was dismissed on 22 June 2009. Micropole concluded that her refusal to remove the headscarf made it impossible for her to carry out her functions on behalf of the company. Ms Bouagnaoui then challenged her dismissal before the French courts.

The French Court of Cassation, before which the case is now pending, has asked the Court of Justice whether a requirement not to wear an Islamic headscarf when providing IT consultancy services to clients can be regarded as a "genuine and determining occupational requirement" and therefore falls outside of the scope of the prohibition on discrimination on the grounds of religion or belief provided for by Directive 2000/78.¹

In today's Opinion, Advocate General Eleanor Sharpston notes the wide differences that exist between the legal systems of the Member States in relation to the wearing of religious apparel and religious signs at work. That is particularly so as regards public-sector employees. Since, however, the present case involves employment in the private sector, she restricts her observations to that area alone. She considers that the freedom to manifest one's religion or belief falls within the scope of the Directive as it is an intrinsic part of the freedom of religion. Ms Bouagnaoui was treated less favourably on the ground of her religion since a design engineer who had not chosen to manifest his or her religious belief would not have been dismissed. The Advocate General therefore concludes that **Ms Bouagnaoui's dismissal amounted to direct discrimination on the ground of religion or belief**. The dismissal will be lawful only if one of the derogations provided for in the Directive applies.

The Directive provides that, in some circumstances, a difference in treatment that would otherwise amount to discrimination may be removed from its scope if the difference is based on a characteristic which constitutes an "occupational requirement". The Advocate General considers that this derogation must be interpreted strictly. The requirement must be a "genuine and determining" one, which is proportionate to the legitimate objective pursued.

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).

In the Advocate General's view, the derogation cannot apply in the present case. In particular, **there is nothing to suggest that Ms Bougnaoui was unable to perform her duties as a design engineer because she wore an Islamic headscarf. Indeed, Micropole's letter terminating her employment had expressly referred to her professional competence.** Although the freedom to conduct a business is a general principle of EU law, it is subject to limitations, including the need to protect the rights and freedoms of others. Direct discrimination cannot be justified on the ground of potential financial loss that might be caused to the employer.

The Advocate General then considers the remaining derogations available as regards direct discrimination and concludes that none of these can apply to the present case.

First, the Advocate General rejects the idea that a prohibition on employees wearing religious attire when in contact with customers of their employer's business may be necessary for the protection of individual rights and freedoms necessary for the functioning of a democratic society. In any event, in the present case, there does not appear to be any relevant national legislation enacted to give effect to that derogation.

Secondly, the derogation for "occupational activities within churches and other public or private organisations, the ethos of which is based on religion or belief" cannot apply given the nature of Micropole's activities.

The Advocate General therefore concludes that Ms Bougnaoui's dismissal constituted direct discrimination, to which none of the derogations provided for by the Directive apply.

Finally, the Advocate General briefly considers the legal position should the present case be found to concern indirect discrimination, either because the Court of Justice disagrees with her when delivering judgment or because new matters of fact may subsequently be placed before the national court. The Advocate General observes that a **company policy imposing an entirely neutral dress code is likely to result in indirect discrimination. Such a policy can be justified if it pursues a legitimate aim and is proportionate.** A neutral dress-code policy might be in the interests of the employer's business and therefore constitute a legitimate aim. However, the Advocate-General remarks that it is difficult to see how, in the present case, Micropole's prohibition could be regarded as proportionate. This is, however, ultimately a question for the national court.

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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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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