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Press and Information

Advocate General's Opinion in Joined Cases C-804/18
IX v WABE e.V and C-341/19 MH Müller Handels GmbH v MJ

According to Advocate General Rantos, an employer can authorise, as part of a policy of neutrality, the wearing by its employees of small-scale religious signs

Case C-804/18: WABE, a German charitable association, runs child day care centres. It is non-partisan and non-denominational. IX is a special needs carer and has been employed by WABE since 1 July 2014. At the start of 2016, IX, who is of Muslim faith, decided to wear an Islamic headscarf. From October 2016 to May 2018 she was on parental leave.

In March 2018, WABE adopted service instructions on observing the requirement of neutrality. They prohibited employees from wearing any visible signs of their political, philosophical or religious beliefs in the workplace, including inter alia Christian crosses, Muslim headscarves or Jewish kippahs. WABE employees working at the undertaking's headquarters are not subject to the requirement of neutrality as they have no contact with customers.

Having been informed of the instructions adopted by WABE, IX refused to remove her headscarf and, consequently, received several warnings before being temporarily suspended.

IX challenged WABE's decision before the Arbeitsgericht Hamburg (Labour Court, Hamburg, Germany).

Case C-341/19: MH Müller Handels operates a chain of drugstores in Germany. MJ, who is of Muslim faith, has been employed by that undertaking as a sales assistant and cashier since 2002. On her return from parental leave in 2014, unlike before, she wore an Islamic headscarf. Following her refusal to remove her headscarf, she was instructed by her employer in July 2016 to attend her workplace without any conspicuous, large-scale political, philosophical or religious signs.

MJ challenged her employer's decision and the employer brought an appeal before the Bundesarbeitsgericht (Federal Labour Court, Germany) seeking the dismissal of MJ's action.

The two courts ask the Court of Justice whether these company rules comply with the directive on equal treatment in employment and occupation. [1]

In his Opinion delivered today, Advocate General Athanasios Rantos recalls, first of all, that 'equal treatment' in the directive means that there is to be no direct or indirect discrimination whatsoever on the grounds of, inter alia, religion. He takes the view, referring on the Court's case-law in *G4S Secure Solutions* [2] and *Bougnaoui*, [3] that **the prohibition on wearing any visible sign of** political, philosophical or **religious beliefs in the workplace, which results from an internal rule of a private undertaking, does not constitute direct discrimination on the grounds of religion or**

[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).
[2] Judgment of 14 March 2017, *Centrum voor Gelijkheid van kansen en voor racismebestrijding* v *G4S Secure Solutions*, C-157/15, see also press release No 30/17.
[3] Judgment of 14 March 2017, *Bougnaoui et Association de défense des droits de l'homme (ADDH)* v *Micropole Univers*, C-188/15, see also press release No 30/17.

belief in respect of employees who, due to religious covering requirements, follow certain clothing rules.

The Advocate General goes on to examine whether an internal rule of a private undertaking prohibiting, as part of a policy of neutrality, the wearing of conspicuous, large-scale signs of political, philosophical or religious beliefs is compatible with EU law.

In *G4S Secure Solutions*, the Court referred to the *visible wearing of signs* of religious beliefs in the workplace. It took the view that the prohibition of the wearing of those signs is appropriate for the purpose of ensuring that a policy of neutrality is properly applied, provided that that policy is genuinely pursued in a consistent and systematic manner. The question of the prohibition on wearing *conspicuous, large-scale signs* has not yet been settled by the Court.

The Advocate General observes that the question amounts to whether the *visible* wearing of *small-scale* signs is appropriate. He takes the view in that regard that **a policy of political, philosophical or religious neutrality pursued by an employer, in its relations with its customers, is not incompatible with the wearing, by its employees, of religious signs, whether visible or not, that are small in scale (in other words, discreet) and which are not noticeable at first glance.**

According to the Advocate General, it is not for the Court to define 'small-scale', since the context in which the sign is worn may be a relevant consideration. However, he takes the view that an Islamic headscarf is not a small-scale religious symbol. The national court must therefore examine the situation on a case-by-case basis.

The Advocate General notes that if the prohibition on wearing any visible sign of political, philosophical or religious beliefs in the workplace is permissible, the employer is also at liberty, within the context of the freedom to conduct a business, to prohibit only the wearing of conspicuous, large-scale signs.

The Advocate General concludes that an **internal rule of a private undertaking which prohibits, in the context of a policy of neutrality, only the wearing of conspicuous, large-scale signs of political, philosophical or religious beliefs in the workplace can be justified.** Such a prohibition must be implemented in a consistent and systematic manner, which it is for the referring court to ascertain.

Last, the Advocate General examines whether Member States can apply national legislation that protects freedom of religion in the examination of an instruction based on an internal rule of a private undertaking which prohibits the wearing of signs of political, philosophical or religious beliefs in the workplace. It follows from the German constitutional provisions that an employer's wish to pursue a policy of religious neutrality towards its customers is, in principle, legitimate only if it would suffer economic harm if such neutrality did not exist.

The Advocate General is of the view that account should be taken of the various approaches taken by the Member States to the protection of the freedom of religion. He considers that the German national provisions do not conflict with the directive establishing a general framework for equal treatment in employment and occupation. They do not prohibit a policy of political, philosophical or religious neutrality pursued by an employer, but rather simply lay down an additional requirement for the implementation of such a policy relating to the existence of a sufficiently specific threat of an economic disadvantage for the employer or a relevant third party.

Consequently, the Advocate General concludes that **a national court can apply national constitutional provisions that protect the freedom of religion in the examination of an instruction based on an internal rule of a private undertaking which prohibits the wearing of signs of political, philosophical or religious beliefs in the workplace. However, those provisions must not undermine the principle of non-discrimination laid down in the directive, which is for the referring court to ascertain.**

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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