

European Union, CJEU, C-157/15: Request for a preliminary ruling from the Hof van Cassatie (Belgium) lodged on 3 April 2015

Deciding bodies and decisions

CJEU, Opinion of AG Kokott, C-157/15, Achbita, ECLI:EU:C:2016:382

Area of law

Non-discrimination

Subject matter

Company ban on wearing visible religious, political or philosophical symbols - dismissal for wearing headscarf - concept of discrimination based on religious belief - justification

Summary Facts Of The Case

On 12 June 2006, Ms Achbita, a receptionist, was dismissed by G4S Secure Solutions, her employer, because of the wearing of the Islamic headscarf. This behaviour was regarded by her employer as incompatible with the company's neutrality principle and, in particular, with the company rule according to which "employees are prohibited, in the workplace, from wearing any visible signs of their political, philosophical or religious beliefs and/or from giving expression to any ritual arising from them".

Ms Achbita, joined by the Belgian Centre for Equal Opportunities and Combating Racism, challenged in vain her dismissal before the Labour Court (Antwerpen) and the Higher Labour Court (in appeal). The Belgian Court of cassation referred a preliminary ruling to the Court of Justice.[1]

[1] In *Arbeidsrechtbank Tongeren, Joyce V. O. D. B v. R. B. NV*, No. 11/2142/A, 2 January 2013, a Labour Court in Belgium ruled that a general requirement made by an employer for employees not to wear religious symbols does not constitute a genuine occupational requirement as defined by the Anti-Discrimination Act.

Relation to the scope of the Charter

The case concerns the interpretation of EU Council Directive 2000/78/EC on equal treatment in the area of employment and occupation, hence the case falls within the scope of EU law, consequently the Charter is applicable pursuant to Article 51(1) therein.

Diagram



Case timeline representation

Sources - EU and national law

- Charter, Article 10, Freedom of religion
- Charter, Article 21, Non-discrimination
- EU Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation

Comments

Role of the Charter

In her Opinion, delivered on 31 May 2016, AG Kokott considered that :

“1) The fact that a female employee of Muslim faith is prohibited from wearing an Islamic headscarf at work does not constitute direct discrimination based on religion within the meaning of Article 2(2)(a) of Directive 2000/78/EC if that ban is founded on a general company rule prohibiting visible political, philosophical and religious symbols in the workplace and not on stereotypes or prejudice against one or more particular religions or against religious beliefs in general. That ban may, however, constitute indirect discrimination based on religion under Article 2(2)(b) of that directive.

2) Such discrimination may be justified in order to enforce a 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 that connection, the following factors in particular must be taken into account:

- the size and conspicuousness of the religious symbol,
- the nature of the employee’s activity,
- the context in which she has to perform that activity, and

– the national identity of the Member State concerned.”

She also referred to Articles 10 (freedom of religion) and 16 (freedom to conduct a business) of the Charter in order to interpret some concepts laid down by the Directive (more particularly, the concept of direct and indirect discrimination, on the one hand, and the possible grounds of justification of an indirect discrimination, on the other hand).
