Key Issues: **Equal treatment – indirect discrimination – female worker prohibited from wearing Islamic headscarf**

Case: **Samira Achbita v G4S Secure Solutions NV**

Reference: **Case C-157/15, CJEU (Grand Chamber), 14 March 2017**

Legislation: **Directive 2000/78/EC**

G4S is a private undertaking which provides reception services for customers in both the public and private sectors. On 12 February 2003, Ms Achbita, a Muslim, started to work for G4S as a receptionist. She was employed by G4S under an employment contract of indefinite duration. There was, at that time, an unwritten rule within G4S that workers could not wear visible signs of their political, philosophical or religious beliefs in the workplace. In April 2006, Ms Achbita informed her line managers that she intended, in future, to wear an Islamic headscarf during working hours. In response, the management of G4S informed Ms Achbita that the wearing of a headscarf would not be tolerated because the visible wearing of political, philosophical or religious signs was contrary to G4S's position of neutrality. On 12 May 2006, after a period of absence from work due to sickness, Ms Achbita notified her employer that she would be returning to work on 15 May and that she was going to wear the Islamic headscarf. On 29 May 2006, the G4S works council approved an amendment to the workplace regulations, which came into force on 13 June 2006, according to which '*employees are prohibited, in the workplace, from wearing any visible signs of their political, philosophical or religious beliefs and/or from engaging in any observance of such beliefs'*.

On 12 June 2006, Ms Achbita was dismissed on account of her continuing insistence that she wished, as a Muslim, to wear the Islamic headscarf at work. She received a severance payment equivalent to three months' salary and benefits acquired under the terms of her employment contract.

Following the dismissal of the action brought by Ms Achbita in the Labour Court, Antwerp, Belgium against her dismissal from G4S, Ms Achbita lodged an appeal against that decision with Higher Labour Court. The appeal was denied on the ground, in particular, that the dismissal could not be considered unjustified since the blanket ban on wearing visible signs of political, philosophical or religious beliefs in the workplace did not give rise to direct discrimination, and no indirect discrimination or infringement of individual freedom or of freedom of religion was evident.

Ms Achbita appealed to the Court of Cassation, Belgium on a point of law that, by holding that the religious belief on which G4S's ban is based is a neutral criterion and by failing to characterise the ban as the unequal treatment of workers as between those who wear an Islamic headscarf and those who do not, on the ground that the ban does not refer to a particular religious belief and is directed to all workers, the Higher Labour Court misconstrued the concepts of '*direct discrimination*' and '*indirect discrimination*' as referred to in Article 2(2)

of Directive 2000/78. In those circumstances, Court of Cassation decided to stay the proceedings and to refer a question to the Court of Justice for a preliminary ruling on the interpretation of Article 2(2).

Consideration by CJEU

The purpose of Directive 2000/78 is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

Article 2(1) of Directive 2000/78 states that 'the "*principle of equal treatment*" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1 of that directive. Article 2(2)(a) of the directive states that, for the purposes of Article 2(1), direct discrimination is to be taken to occur where one person is treated less favourably than another in a comparable situation, on any of the grounds, including religion, referred to in Article 1 of the directive.

It is necessary to determine whether the internal rule at issue in the main proceedings gives rise to a difference in treatment of workers on the basis of their religion or their belief and, if so, whether that difference in treatment constitutes direct discrimination within the meaning of Article 2(2)(a) of Directive 2000/78.

In the present case, the internal rule at issue in the main proceedings refers to the wearing of visible signs of political, philosophical or religious beliefs and therefore covers any manifestation of such beliefs without distinction. The rule must, therefore, be regarded as treating all workers of the undertaking in the same way by requiring them, in a general and undifferentiated way, inter alia, to dress neutrally, which precludes the wearing of such signs. It is not evident from the material in the file available to the Court that the internal rule at issue in the main proceedings was applied differently to Ms Achbita as compared to any other worker. Accordingly, it must be concluded that an internal rule, such as that at issue in the main proceedings, does not introduce a difference of treatment that is directly based on religion or belief, for the purposes of Article 2(2)(a) of Directive 2000/78.

The CJEU held that:

1. Article 2(2)(a) of Council Directive 2000/78/EC 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.

2. 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.

Why is this decision important?

This judgment has been reported widely and has generated much comment. However, as is clear from paragraph 2 in the final section above, the CJEU did not decide that employers can ban the wearing of headscarves. It is important that any rule should be apply to all employees and be capable of objective justification. A rule simply prohibiting the wearing of Islamic headscarves by employees would most likely be a breach of the Directive.

CLfE (3/2017)

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