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studio legale

The right of the employer to impose a dress code to its employees based on religious neutrality

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On March 14, 2017 (C-157/15, *Samira Achbita e Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*) the Court of Justice of the European Union (CJEU) ruled that, **under certain circumstances, the behaviour of an employer who prohibits its employees from wearing an Islamic headscarf at work may not be considered as discrimination in the workplace.**

Such prohibition must arise from a **general and undifferentiated company policy** prohibiting the visible wearing of any political, philosophical or religious signs in the workplace. The company's rule must cover any manifestation of such beliefs without distinction, and must be regarded as treating all the workers of the company in the same way by requiring them, in a general and undifferentiated way, to dress neutrally, which precludes the wearing of such signs. If so, **there would be no direct discrimination based on religion or belief** within the meaning of Article 2, para 2(a) of the Council Directive 2000/78/CE of November 27th, 2000. In fact, the company's rule would cover any manifestation of such beliefs without distinction, while, according to such piece of the European legislation, "*direct discrimination shall be taken to occur only where one person is treated less favourably than another is, has been or would be treated in a comparable situation*" on the grounds of religion or belief.

The adoption of such a general and undifferentiated company policy must also be objectively justified by a legitimate aim. Otherwise, it would amount to an indirect discrimination within the meaning of Article 2, para 2(b) of the Council Directive 2000/78/CE, according to which "*indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief ... at a particular disadvantage compared with other persons*". As to **the legitimate aim** justifying the adoption of such a kind of policy, the Court stated that it **could be the pursuit, by the employer in its relations with its customers, of a policy of political, philosophical and religious neutrality**. In fact, the wish of the employer to project an image of neutrality towards customers relates to the freedom of conducting a business, as recognised by Article 16 of the Charter of Fundamental Rights of the European Union. In order to be legal, however, such a policy should apply to those workers only who are expected to come into contact with the customers of the employer.

In other words, a restriction of the freedom of religion of the employees could be legally imposed by the employer and would not amount to a discrimination on the workplace only if it generally and indiscriminately applies to any manifestation of such a religious belief without distinctions, and only if it is required for the achievement of a legitimate aim of the employer, such as that of projecting an image of religious neutrality of the company towards customers.