

Are employers' bans on headscarves at work discriminatory?

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An employer's ban on wearing religious symbols at work – headscarves, in particular – may or may not be directly discriminatory depending on the reason for the ban.

The European Court of Justice determined two cases where female employees had been prohibited from wearing their headscarves in the workplace. In the first, *Achbita*, the employer (G4S in Belgium) had a general policy of religious neutrality at work. Ms Achbita refused to comply with this rule, and was dismissed as a result. In the second, *Bougnaoui*, the French employer asked Ms Bougnaoui to remove her headscarf whilst at work after a customer complained about it. Ms Bougnaoui was dismissed following her refusal. Both women claimed to have been discriminated against on grounds of their religion.

The Court held that the general ban on religious symbols in Ms Achbita's case was not directly discriminatory, in that it applied to all staff equally, but could in principle be indirectly discriminatory. What it came down to is whether the ban was justified. The steer from the ECJ was that the ban on all religious symbols may well be justified.

On the other hand, the employer's decision to dismiss Ms Bougnaoui at the behest of its customer was directly discriminatory. A customer's instruction not to wear a headscarf could not be considered a genuine occupational requirement, as it was subjective to that customer rather than objectively being a demand of the role in context.

Achbita v G4S Secure Solutions NV (Case C-157/15) & Bougnaoui

v Micropole SA (Case C-188/15)

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