Is it lawful to ban a Muslim woman from wearing her headscarf at work?

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An employer's policy against staff wearing visible symbols of their faith – a head scarf worn by a Muslim woman, in this case – is not discriminatory, according to an opinion of the Advocate General.

Ms Achbita was employed by G4S in Belgium as a receptionist from 2003 and is a practicing Muslim. G4S in Belgium operates a policy which prohibits staff from wearing visible symbols of their religious, political or philosophical beliefs at work. This policy was initially unwritten but later became part of the company's code of conduct.

Ms Achbita had initially worn her headscarf outside of working hours, but in April 2006 informed G4S that she would be wearing it at work in observance of her religious beliefs. G4S dismissed Ms Achbita in June 2006 for failing to abide by the code of conduct in not removing her headscarf. Ms Achbita brought a claim for direct religious discrimination.

The case went before the Court of Justice of the European Union. Advocate General Kokott determined that the dress code did not directly discriminate on grounds of religion or belief but, even if it did, it could be justified as a genuine occupational requirement.

The Advocate General held that the ban on religious and political symbols applied equally to all employees of all faiths, including, for example, a male Sikh employee who wanted to wear a turban at work, or a Christian wearing a crucifix. The Advocate General stated that some characteristics are immutable, such as sex or age, but the wearing of a head covering or other religious symbol was a subjective choice.

The Advocate General accepted that it could be said that the policy was indirectly discriminatory. However, even if that were so, the Advocate General was of the view that the measure was justified. G4S had a genuine occupational requirement for neutrality which did not prevent staff from having religious beliefs, but only from wearing symbols of that belief at work. G4S served a wide variety of clients and its staff had face-to-face contact with many people. The Advocate General therefore considered that the policy was essential to avoid

G4S or its clients being associated with the employee’s faith.

This decision is surprising and problematic. Many would struggle to agree that some religious symbols are entirely optional – many Muslim women feel compelled by their beliefs to wear a headscarf, just as many Sikh men do not regard the wearing of a turban as discretionary. Perhaps the decision was affected by two factors: the culture of secularism in Belgium; and the fact that Ms Achbita had previously complied with the policy.

Even if the CJEU issues a judgment which aligns with this opinion (which is not automatic, especially as a different Advocate General in a separate but similar case has taken the reverse view), it is unlikely to give employers across the EU sweeping permission to implement similar policies.

Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV C-157/15

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