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NEWS REPORT

Country:	Belgium
Title:	Prohibiting an employee from wearing the headscarf at work is not discriminatory: a decision in line with the previous national case law
Date:	22 July 2015
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<u>Context</u>	
Issue at stake:	On 18 May 2015, the Labour Tribunal of Brussels ruled that the prohibition to wear the headscarf at work did not constitute discrimination on the ground of religion or belief. The Labour Tribunal referred to previous similar decisions of the Labour Courts of Appeal of Brussels and Antwerp.
Ground of discrimination:	Religion/belief
Source:	National court decision: Labour Tribunal of Brussels
Field:	Employment
Applicable law:	<ul style="list-style-type: none">- Federal Act of 10 May 2007 pertaining to fight certain forms of discrimination (General Anti-discrimination Federal Act)- Article 9 of the European Convention of Human Rights- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

Content

Case: The case concerns a Muslim woman (henceforth: the applicant) who worked as a cashier in a supermarket of Brussels (henceforth: the defendant). In July 2009, the applicant was hired with a student specific contract for one month. Since then, she continued working there during the summer and the weekends.

On Friday 13 September 2013, the applicant called her employer to tell him that she decided to wear the Islamic headscarf during the working hours. Her employer replied that it would not be tolerated. As a consequence, the applicant did not go to work the next Sunday and never came back.

On 5 December 2013, the applicant asked her former employer to pay compensation for damages because of the termination of the contract. In January 2014, the Inter federal Centre for equal opportunities wrote to the defendant to ask for explanations about the situation. The Centre did not get any reply despite numerous reminders. The applicant brought the action before the Labour Tribunal of Brussels. She notably claimed that she had been discriminated against on the ground of her religion/belief and asked for 3.470,88 EUR compensation for pecuniary damages.

Decision of the Court: In the ruling of 18 May 2015, the Labour Tribunal of Brussels dismissed the applicant.

Firstly, the Tribunal noted that the applicant did not go to work the week after the litigious call. According to the jurisdiction, the applicant should have gone to work and tried to find an agreement with her employer. It also noted that the attempt at conciliation of the Inter federal Centre for equal opportunities occurred more than 4 months after the call.

In addition, the Tribunal ruled that there was no direct or indirect discrimination. Regarding direct discrimination, it considered that the applicant did not bring any evidence that she had been treated differently from the other employees on the ground of her religion/belief. Regarding indirect discrimination, it noted that the work regulations enshrined a "neutrality policy" and requested from the employees to wear clothes with the name of the company. Therefore, the Tribunal concluded that even though this neutrality policy could have disadvantaged the applicant, this was considered as proportionate and reasonably justified.

In its motivation, the Tribunal referred to the previous case law of the Labour Courts of Appeal of Brussels and Antwerp:

- The decision of 15 January 2008 of the Labour Court of Appeal of Brussels where the Court considered that a company could justify the lay-off of an employee wearing the headscarf on objective consideration linked to its corporate image¹;
- The decision of 23 December 2011 of the Labour Court of Appeal of Antwerp. In this decision, the Court held that the lay-off of an employee wearing the headscarf, in order to preserve the neutral image of the company, was not unreasonable and that there was no indirect discrimination against Muslim employees (see flash report 1256-BE-71). It also concluded to the absence of direct discrimination. The applicant brought the case before the Court of cassation which submitted a preliminary ruling to the Court of Justice of the European Union (CJEU) on 9 March 2015 (see flash report 35-BE-ND).

Key points of analysis:

- Prohibiting employees from wearing the headscarf at work is not discriminatory
- A decision in line with the previous national case law
- No reference to the preliminary ruling pending before the CJEU

Internet link source: The decision is available on the following link: <http://www.diversite.be/tribunal-du-travail-bruxelles-18-mai-2015>.

¹ Bribosia, E. & I. Rorive, *Belgium country report on measures to combat discrimination – 2013*, available at <http://www.non-discrimination.net/countries/belgium>.