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NEWS REPORT

Country:	Spain
Title:	Discrimination on the ground of religion due to religious clothing at work
Date:	22 February 2017
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<u>Context</u>	
Issue at stake:	Company must accept that a Muslim woman use the hijab in positions of attention to the public
Ground of discrimination:	Religion/belief
Source:	National court decision (Social Court 1, Palma de Mallorca)
Field:	Employment
Applicable law:	Organic Law 7/1980 on Religious Freedom and RLD 2/2015 of Workers' Statute

Content

Case law:

The claimant is a Muslim woman hired by ACCIONA Airport Services to provide customer service at Palma de Mallorca airport (Balears, Spain) since 2007. When she came to work on 21 December 2015, the claimant told the company her intention to wear the Islamic veil (hijab) during the working day as an expression of her religious sentiment. Initially she was authorized to do so, but the company later changed its position and did not authorize the claimant to wear the hijab anymore. The employer imposed seven increasingly serious labour sanctions for using the hijab (the last one was the suspension of employment and salary for two months for "very serious failure"). The situation caused the claimant loss of remunerations and psychic damages (leading the claimant to seek psychological treatment).

In June 2016, the claimant brought an action against the company ACCIONA Airport Services before the Juzgado de lo Social No 1 of Palma de Mallorca (Social Court No 1, Palma de Mallorca, Spain). As there were sufficient indications that a fundamental right (religious freedom) was being violated, the judge declared the reversal of the burden of proof so that the company could attempt to prove the reasonableness and proportionality of the measures taken against the claimant and the non-discriminatory character of these measures.

The whole argument of the company was based on the fact that, in defence of a good corporate image, all employees in the passenger service department must comply with written rules of uniformity established by the company that do not allow the use of garments not mentioned therein. The claimant maintains, among other reasons, that she was discriminated since other workers can exhibit necklaces with Christian religious symbols.

Decision of the Court:

The Social Court 1 of Palma de Mallorca issued its judgment on 5 February 2017 (case 0031/2017) and declared "the existence of violation of the fundamental right to religious freedom (of the claimant), and consequently the nullity of the (seven) sanctions imposed by the company (...) ordering the company to cease immediately the action contrary to this fundamental right and (... ordering) the restitution of the remunerations left to be received ... and the payment of the compensation for the damages caused". Therefore, the claimant can continue to use the hijab during her work in the company.

The judge's argument begins by pointing out that discrimination on religious or ideological grounds is one of the classic causes of discrimination prohibited in international treaties, the EU Charter of Fundamental Rights and the Spanish Constitution. The judge cites, *inter alia*, the Directive 2000/78 / EC.

The ruling recognizes that the company has the right "to impose on its employees the use of a uniform", but that "there are no unlimited rights" and that this right ceases if it collides with a fundamental right, such as religious freedom. That is why the judge found in favour of the claimant and considered that ACCIONA Airport Services has discriminated against her for religious reasons and violated her fundamental rights by prohibiting her from wearing the hijab, which the sentence considers to be "a manifestation of the religious belief of the worker (...), that it is not comparable to the use of mere adornments". And because in the court case "it is not stated - and the company does not claim it - that the conduct of the worker has caused some type of damage or impairment to the image of the company (...) or prejudice".

Key points of analysis:

Considering the Islamic veil, hijab, a religious symbol, and since religious freedom is a fundamental right recognized in the Spanish Constitution, only a law can set the limits of its exercise. And in Spain there is no law that limits the use of hijab. An internal regulation of a company (or a municipal decision, for example) cannot put any limit to the use of hijab.