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NEWS REPORT

Country:	France
Title:	CJEU, 14 March 2017, C-188/15, <i>Asma Bougnaoui, ADDH v. Micropole SA</i> .
Date:	17 March 2017
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<u>Context</u>	
Issue at stake:	Whether the request of a client that an IT engineer intervening on site dress in a neutral manner and remove an Islamic veil can be held to be a genuine and determining occupational requirement
Ground of discrimination:	Religion/belief
Source:	CJEU
Field:	Employment
Applicable law:	Article 4 par. 1 of Directive 2000/78; articles 1121-1, 1132-1 of the Labour Code

Content

Case: Ms Bougnaoui first contacted the respondent employer in October 2007 in the prospect of an internship at an event for the recruitment of young graduates. The employer is an IT engineering firm intervening on clients' premises. At the time of this first contact, it was mentioned to her that wearing the Islamic veil might pose a problem with certain clients. She was recruited.

She arrived at her internship wearing a bandana and eventually attended work wearing an Islamic veil. She was hired at the end of her internship on a permanent contract as IT study engineer in July 2008. In May 2009, a client requested that she remove her veil if she was to return on the premises. In June 2009, Micropole requested that she remove her veil when she was called upon to intervene with clients. She was fired for refusing to remove her veil when in contact with clients. Ms Bougnaoui brought a claim of discriminatory dismissal before the courts, and the Court of cassation referred the case to the CJEU for a preliminary ruling, asking whether the request of a client that an employee remove her Islamic veil can be held to be a genuine and determining occupational requirement.

Decision of the Court: Directive 2000/78 does not define the notion of religion, however in its first recital it refers to the ECHR which, at article 9, defines the protection of freedom of religion as covering the right "to manifest [one's] religion or belief, in worship, teaching, practice and observance." In the same recital, the Directive refers to the Charter of Fundamental Rights, which affords the same protection at article 10 par 1. Therefore, Directive 2000/78 must be interpreted as following the same conception of freedom of religion, which protects not only private faith but public expression of religious faith.

The Court decides that an internal rule that forbids expression of religious, political and philosophical beliefs does not constitute a direct discrimination. However, if this rule creates a disadvantage for persons of certain faiths, it could constitute an indirect discrimination on the ground of religion or belief in the sense of article 2 par 2 b) of the directive. The court concludes that pursuing a policy of neutrality towards the public can constitute a legitimate aim, but the means to carry out this objective must be proportionate and necessary.

The Court further examines whether religious neutrality can constitute a genuine and determining occupational requirement. It stresses that the requirement must not be related to the forbidden ground of discrimination itself, but must be a characteristic related to this ground. It stresses further that it is only in very limited circumstances that religion will be held to constitute a genuine and determining occupational requirement, subject to a strict necessity and proportionality test.

Examining the request of the client in this case, the Court finds that a genuine and determining occupational requirement cannot take the form of the sole desire of an employer to meet particular wishes of a client. The court seems to consider that since it will not be related to "the nature of the particular occupational activities concerned or of the context in which they are carried out", i.e. an appreciation related to the activity itself that must be defined by the employer.

Key points of analysis: This decision of the CJEU must be read jointly with the decision which has been rendered the same day in *G4S Secure Solutions*, C-157/15 regarding the dismissal of an employee working as a receptionist with an employer providing reception services to both private enterprises and public services, that had adopted in house regulations forbidding expression of religious, political and philosophical beliefs.

The Court decides in the *G4S Secure Solutions* case that such an internal rule is legitimate. The *Micropole* case completes the analysis by examining the test applicable to genuine and determining occupational requirement stating that the wishes of a client, by definition, are not related to the employer's own conception of the task itself, and thus do not meet this requirement.

As regards the application of the proportionality test, both cases take the same stand that it will be strictly interpreted, but the *G4S Secure Solutions* case completes the analysis by stating that it will be proportionate in as much as it is applied to employees in contact with the public, but should not lead to dismissal if there is other employment available. Therefore, we can observe from both cases that the Court concludes that forbidding religious signs cannot be a general rule and that it cannot per se form a ground for dismissal.

Internet link source:

Micropole:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=188853&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=125215>;

G4S Secure Solutions:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=188852&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=125307>.