

SYMPOSIUM

HEADSCARF BANS, EQUAL TREATMENT, AND MINORITY INTEGRATION IN THE WORKPLACE

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Andrea Pin's Essay¹ on the *Achbita*² and *Bougnaoui*³ cases effectively highlights the significance of the cases and the singularity of the rulings, as well as the tension they create with other European Union norms and policies. The European Court of Justice's (ECJ) rulings in these cases are also in tension with the court's own discrimination law and exacerbate the pressing European question, particularly significant in light of the recent migration crisis, of how best to incorporate ethnic and religious minorities into a society.

One significant arena for such integration is the workplace, where immigrants can interact on a regular basis with citizens and longer-term residents and learn local, social, and cultural norms. The European Union's Common Basic Principles for Immigrant Integration Policy in the European Union states that "[e]mployment is a key part of the integration process and is central to the participation of immigrants, to the contributions immigrants make to the host society, and to making such contributions visible."⁴ Employment not only stands as a space to limit the effects of cultural self-segregation, but also prevents the social disengagement that has been correlated with lack of employment.⁵ For women, the benefits of employment on

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¹ See Andrea Pin, *Is There a Place for Islam in the West? Adjudicating the Muslim Headscarf in Europe and the United States*, 93 NOTRE DAME L. REV. ONLINE 35 (2017).

² Case C-157/15, *Achbita v. G4S Secure Sols. NV*, 2017 EUR-Lex CELEX LEXIS 0157 (Mar. 14, 2017); Case C-157/15, *Achbita v. G4S Secure Sols. NV*, 2016 EUR-Lex CELEX LEXIS 0157 (May 31, 2016).

³ Case C-188/15, *Bougnaoui v. Micropole SA*, 2017 EUR-Lex CELEX LEXIS 0188 (Mar. 14, 2017).

⁴ Council of the European Union Press Release 14615/04, Justice and Home Affairs 20 (Nov. 19, 2004), http://europa.eu/rapid/press-release_PRES-04-321_en.htm?locale=en.

⁵ See Rebecca J. Rosen, *The Mental-Health Consequences of Unemployment*, ATLANTIC (June 9, 2014), <https://www.theatlantic.com/business/archive/2014/06/the-mental-health-consequences-of-unemployment/372449/> (noting how "long-term unemployed people were much

integration has generational effects—in general, research has shown that daughters of employed women are more likely to do better in school, be employed, hold supervisory responsibility, and earn higher hourly wages than the children of unemployed women.⁶

Unemployment of foreign-born workers in Europe, however, according to the Organisation for Economic Co-operation and Development, nearly always exceeds that of native-born residents.⁷ For foreign-born female workers, this is even more stark—their unemployment rate greatly exceeds that of twice the level of native-born female workers, and data shows that foreign-born women are not only less likely to be recruited or hired by employers than natives, but are also less likely to be recruited or hired than migrant men.⁸

Discrimination creates a significant contributing factor to lack of employment for Muslim migrants, who suffer from discrimination on the basis of religion, ethnic origin, and, in the case of women, on the basis of gender.⁹ According to the European Union Agency for Fundamental Rights European Union Minorities and Discrimination Survey in 2009, Muslims on average experienced eight discrimination incidents over a twelve-month period, primarily when looking for work.¹⁰ Seventy-nine percent of Muslim respondents did not report their experiences of discrimination,¹¹ and less than half were aware that the law prohibits discrimination on the basis of ethnicity,¹² even though discrimination on the basis of religion and ethnicity are prohibited under the law of all EU nations.¹³

more likely to report that they had spent two hours or less being social the previous day”); *see also France’s Failure: The Biggest Lesson of the French Riots is that More Jobs are Needed*, *ECONOMIST* (Nov. 10, 2005), <http://www.economist.com/node/5136305>.

6 Kathleen L. McGinn et al., *Mums the Word! Cross-national Effects of Maternal Employment on Gender Inequalities at Work and at Home* 1–3 (Harv. Bus. School, Working Paper No. 15-904, 2015), <https://dash.harvard.edu/bitstream/handle/1/16727933/15-094%20%282%29.pdf?sequence=4>.

7 *See Unemployment Rates*, *ECONOMIST* (Sept. 26, 2015), <https://www.economist.com/news/economic-and-financial-indicators/21666122-unemployment-rates>.

8 *See* EUR. NETWORK OF MIGRANT WOMEN & EUR. WOMEN’S LOBBY, *MIGRANT WOMEN’S INTEGRATION IN THE LABOUR MARKET IN SIX EUROPEAN CITIES: A COMPARATIVE APPROACH* 8–10, 15 (2012).

9 *See* Frédérique Ast & Riem Spielhaus, *Tackling Double Victimization of Muslim Women in Europe: The Intersectional Response*, https://ncpe.gov.mt/en/Documents/Projects_and_Specific_Initiatives/Think_Equal/paper_muslim_women.pdf.

10 EU AGENCY FOR FUNDAMENTAL RIGHTS, *EUROPEAN UNION MINORITIES AND DISCRIMINATION SURVEY* 6–7 (2009), http://fra.europa.eu/sites/default/files/fra_uploads/448-EU-MIDIS_MUSLIMS_EN.pdf.

11 *Id.* at 8.

12 *Id.* at 10.

13 *See* Council Directive 2000/78/EC, *pmb.* ¶ 12, 2000 O.J. (L 303/16) [hereinafter Council Directive 2000/78/EC]; Council Directive 2000/43/EC, *pmb.* ¶ 13, 2000 O.J. (L 180). *See generally* EUR. COMM’N, *KNOW YOUR RIGHTS: PROTECTION FROM DISCRIMINATION* 5 (2015), http://ec.europa.eu/justice/discrimination/files/rights_against_discrimination_web_en.pdf.

Although migrants tend to attribute discrimination to ethnic origin,¹⁴ religion plays a significant role in discrimination against foreign-born job applicants. A study done by a Stanford professor with fictional applicants has shown that in France, “a Christian citizen with an African heritage is two-and-a-half times more likely to get called for a job interview than an equally qualified Muslim citizen with the same ethnic background.”¹⁵ One issue of significant concern to Muslim women in the workplace is the question of whether they are permitted to wear religious dress. In the Netherlands, for example, “more and more companies . . . are implement[ing] new regulations . . . to introduce a restrictive dress code, whereas they used to consider clothes a matter of personal choice.”¹⁶ These new regulations, in conjunction with incidental bans, “make it more difficult for Muslim women wearing a headscarf to gain access to the labour market.”¹⁷ This question of the permissibility of employers discriminating against women who wear religious headscarves came to a head in the ECJ cases of *Achbita*¹⁸ and *Bougnaoui*.¹⁹ As the ECJ’s Advocate General recognized, these are landmark cases, “the impact of which could extend beyond the specific context of the main proceedings and be groundbreaking in the world of work throughout the European Union, at least so far as the private sector is concerned.”²⁰

At first blush, at least in Europe, it may seem improbable to some to assert that retaliatory discrimination for wearing a headscarf should be actionable as religious discrimination. Certainly the European Court of Human Rights has upheld the right of states to prohibit headscarves at public universities²¹ and headscarves worn by teachers of young children in state schools,²² as well as the right to prohibit face-covering veils in public.²³ In this case, however, the concerns for a secular public space and ensuring that the young do not experience coercion in religious matters

14 Foreign-born citizens tend to attribute discrimination to their religion, while foreign-born noncitizens tend to ascribe discrimination against them to their ethnicity. See AMNESTY INT’L, CHOICE AND PREJUDICE: DISCRIMINATION AGAINST MUSLIMS IN EUROPE 31 (2012) [hereinafter AMNESTY INT’L, CHOICE AND PREJUDICE] (citing OPEN SOC’Y INST., *Muslims in Europe: For What Reasons were you Refused a Job*, annex 2 tbl. 73 (2003) (illustrating responses to the question, “for what reasons were you refused a job?”)), <http://www.amnesty.eu/content/assets/REPORT.pdf>.

15 Adam Gorlick, *Stanford Study Shows Muslim Job Discrimination in France*, STAN. REP. (Nov. 22, 2010), <https://news.stanford.edu/news/2010/november/muslim-france-study-112210.html>.

16 AMNESTY INT’L, CHOICE AND PREJUDICE, *supra* note 14, at 51 (citing EQUAL TREATMENT COMM’N, COMMENTS ON THE COMBINED FOURTH AND FIFTH DUTCH REPORT ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: THE HEADSCARF AND ACCESS TO THE LABOR MARKET 8 (2009)).

17 *Id.*

18 Case C-157/15, *Achbita v. G4S Secure Sols. NV*, 2017 EUR-Lex CELEX LEXIS 0157 (Mar. 14, 2017); Case C-157/15, *Achbita v. G4S Secure Sols. NV*, 2016 EUR-Lex CELEX LEXIS 0157 (May 31, 2016).

19 Case C-188/15, *Bougnaoui v. Micropole SA*, 2017 EUR-Lex CELEX LEXIS 0188 (Mar. 14, 2017).

20 Opinion of Advocate General Kokott, Case C-157/15, *Achbita*, 2016 EUR-Lex at ¶ 6 [hereinafter Opinion of Advocate General].

21 See *Şahin v. Turkey*, App. No. 44774/98, ¶¶ 121–23 (Eur. Ct. H.R. 2005).

22 See *Dahlab v. Switzerland*, App. No. 42393/98, 13 (Eur. Ct. H.R. 2001).

23 See *S.A.S. v. France*, App. No. 43835/11, ¶¶ 157–59, 161–62 (Eur. Ct. H.R. 2014).

are not at issue.²⁴ I think it is also significant, however, that the European Court has focused on the rationale of particular national traditions, such as the French *laïcité* and Turkish secularism, which has prompted deference to local laws under the European Court of Human Rights's doctrine of margin of appreciation.²⁵ The regard for a variety of state approaches to secularity which prompted application of the doctrine of margin of appreciation, however, suggests the ECJ should have obtained the opposite result here, where uniformity is more crucial and a single decisionmaker has already determined at the EU level that religious discrimination should be prohibited Europe-wide on the same basis as discrimination on the basis of disability, age, and sexual orientation.²⁶

As Pin explains, these cases raised the issue of the ECJ's interpretation of the ban on discrimination on the basis of religion or belief under the EU Employment Directive 2000/78 ("the directive").²⁷ The directive bans direct and indirect employment discrimination based on religion, belief, age, disability, or sexual orientation.²⁸ A key question raised in the cases was whether a ban on headscarves constitutes *direct* or *indirect* discrimination when it is implemented as part of a general ban on wearing visible political and philosophical symbols or because of complaints by clients.²⁹ This Essay argues that the ECJ erred in finding that such general bans do not involve direct discrimination.

The ECJ in *Achbita* held that the discrimination did not rise to the level of direct discrimination, but may have constituted indirect discrimination.³⁰ Direct religious discrimination is "where one person is treated less favourably than another is, has been or would be treated in a comparable situation" on account of religion.³¹ Note that making a determination of direct discrimination is not the final stage of the analysis. Direct discrimination does not violate the directive so long as it either "constitutes a genuine and determining occupational requirement, provided that the

24 See, e.g., Opinion of Advocate General, *supra* note 20, ¶¶ 6, 32 (recognizing that this case involves the private sector).

25 See *S.A.S.*, App. No. 43835/11 at ¶ 25; *Şahin*, App. No. 44774/98 at ¶¶ 29, 30, 112, 116.

26 See *Şahin*, App. No. 44774/98 at ¶ 109 ("Where questions concerning the relationship between State and religions are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance. This will notably be the case when it comes to regulating the wearing of religious symbols in educational institutions, especially . . . in view of the diversity of the approaches taken by national authorities on the issue."); see also Council Directive 2000/78/EC, *supra* note 13 (highlighting the directive's purpose in the title, which reads: "Establishing a General Framework for Equal Treatment in Employment and Occupation"); ERICA HOWARD, EUR. PARLIAMENTARY RES. SERV., IMPLEMENTATION OF THE EMPLOYMENT EQUALITY DIRECTIVE: THE PRINCIPLE OF NON-DISCRIMINATION ON THE BASIS OF RELIGION OR BELIEF (Jan. 2016), [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536345/EPRS_STU\(2016\)536345_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536345/EPRS_STU(2016)536345_EN.pdf).

27 See Pin, *supra* note 1, at 39–42.

28 See Council Directive 2000/78/EC, *supra* note 13, at pmb. ¶ 12.

29 See Case C-157/15, *Achbita v. G4S Secure Sols. NV*, 2017 EUR-Lex CELEX LEXIS 0157, ¶¶ 32, 34, 44 (Mar. 14, 2017); Case C-188/15, *Bouagnaoui v. Micropole SA*, 2017 EUR-Lex CELEX LEXIS 0188, ¶ 33 (Mar. 14, 2017).

30 *Achbita*, 2017 EUR-Lex at ¶¶ 32, 34, 44.

31 Council Directive 2000/78/EC, *supra* note 13, at ch. 1, art. 2, § 2(a).

objective is legitimate and the requirement is proportionate,³² or if the organization has an “ethos of which is based on religion or belief.”³³ So even if an organization’s ban on religious symbols is direct discrimination, as this Essay argues it is, it may still be permissible if the organization can show that it is a genuine and determining occupational requirement or that it is required by the organization’s ethos—for example, as a French court held, a preschool care center can determine that secularity is part of its ethos.³⁴ A determination that discrimination is direct, however, is important because it raises the level of justification that must be used to overcome it.³⁵ This Essay argues that the discrimination in *Achbita*, however, cannot be justified.

The Advocate General recognized that the ECJ has adopted a broad understanding of the concept of direct discrimination and has “always assumed such discrimination to be present where a measure was inseparably linked to the relevant reason for the difference of treatment.”³⁶ It is interesting that, as an initial matter, Advocate General Kokott in *Achbita* suggested that religious claims should be treated differently because religion is different—it deals with modes of conduct based on subjective decisions or convictions rather than an immutable characteristic.³⁷ Fortunately, the court did not follow this recommendation. This would, in essence, have devalued all religious claims and eliminated any possibility of direct religious discrimination based on religious manifestations. Although there are a range of claims associated with religious conduct that may be relevant to the proportionality of the genuine and determining occupational requirement analysis, these should not be used to devalue religious claims as an initial matter.

The court did, however, follow the Advocate General’s recommendation in holding that there is no sign in *Achbita* that religious individuals have been treated less favorably than others because the company policy also encompasses bans on visible signs of political or philosophical beliefs, and thus is “neutral from the point of view of religion and ideology.”³⁸ As the court stated,

In the present case, the internal rule at issue in the main proceedings refers to the wearing of visible signs of political, philosophical or religious beliefs and therefore covers any manifestation of such beliefs without distinction. The rule must, therefore, be regarded as treating all workers of the undertaking in the same way by requiring them, in a general and undifferentiated way, inter alia, to dress neutrally, which precludes the wearing of such signs.³⁹

32 *Id.* at ch. 1, art. 4, § 1.

33 *Id.* at ch. 1, art. 4, § 2.

34 *See Afif v. Ass’n Baby-Loup*, Cour d’appel [CA] [regional court of appeal] Paris, Nov. 27, 2013, S 13/02981.

35 *See* Council Directive 2000/78/EC, *supra* note 13, at ch. 1, art. 2, § 2(b). Indirect discrimination may be justified if the “criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.” *Id.* at ch. 1, art. 2, § 2(b)(i).

36 Opinion of Advocate General, *supra* note 20, ¶ 44.

37 *Id.* ¶ 45.

38 *Id.* ¶ 51; Case C-157/15, *Achbita v. G4S Secure Sols. NV*, 2017 EUR-Lex CELEX LEXIS 0157, ¶ 30 (Mar. 14, 2017).

39 *Achbita*, 2017 EUR-Lex at ¶ 30.

Denying the existence of religious discrimination simply because a discriminatory rule also employs other forms of nonbarred discrimination (such as ideology) is logically problematic. It is equivalent to saying that an employer's "appearance policy" does not involve direct discrimination based on ethnic origin if the policy prevented the employer from hiring applicants of African descent, applicants who are overweight, and female applicants who have short hair. Just because the forbidden basis of discrimination, in that case ethnic origin, is combined with a few permissible bases for discrimination makes it no less forbidden.⁴⁰ Simply because the policy applies to all employees also cannot redeem the invidious discrimination.

Although the standard for intentional discrimination in the United States is slightly different from direct discrimination in the European Union, the U.S. Supreme Court's recent ruling that Pin mentions, *EEOC v. Abercrombie & Fitch Stores, Inc.*,⁴¹ involving a company's neutral ban on headgear, is instructive. The Court stated:

Abercrombie's argument that a neutral policy cannot constitute "intentional discrimination" may make sense in other contexts. But Title VII does not demand mere neutrality with regard to religious practices—that they be treated no worse than other practices. Rather, it gives them favored treatment, affirmatively obligating employers not "to fail or refuse to hire or discharge any individual . . . because of such individual's" "religious observance and practice."⁴²

Here, too, the directive does not merely require that employers treat religion neutrally as compared to other types of practices, but affirmatively obliges that "any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community."⁴³

Even if the ECJ had determined that the ban on headscarves constituted direct discrimination, of course, it could still be permissible if "by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate."⁴⁴ It is important to note what is not a genuine and determining occupational requirement. Advocate General Kokott suggested that the employer's

40 Curiously, the Advocate General suggests that "[t]he position would certainly be different, it is true, if a ban such as that at issue here proved to be based on stereotypes or prejudice in relation to one or more specific religions—or even simply in relation to religious beliefs generally. In that event, it would without any doubt be appropriate to assume the presence of direct discrimination based on religion." Opinion of Advocate General, *supra* note 20, ¶ 55. This is imposing a higher standard for religion than that used for other forms of discrimination. Direct discrimination based on age, for instance, does not need to be shown to be because of prejudice against older people—a direct limitation based on age simply violates the directive. See Council Directive 2000/78/EC, *supra* note 13, at pmb. ¶ 12.

41 135 S. Ct. 2028 (2015); see also Pin, *supra* note 1, at 35.

42 *Abercrombie*, 135 S. Ct. at 2034 (alterations in original) (quoting 42 U.S.C. §§ 2000e(j), 2000e-2(a)(1) (2012)).

43 Council Directive 2000/78/EC, *supra* note 13, at pmb. ¶ 12.

44 *Id.* at ch. 1, art. 4, § 1.

dress code in *Achbita* is the equivalent of cases where dress codes are “essential . . . for reasons of hygiene or safety at work (such as . . . laboratories, kitchens, factories or on construction sites),” and that, “taking into account the employer’s discretion in the pursuit of its business, [it is] by no means unreasonable for a receptionist such as Ms. Achbita to have to carry out her work in compliance with a particular dress code.”⁴⁵

Fortunately, the ECJ did not reach this issue. Finding that a headscarf ban in this kind of case is a genuine and determining occupational requirement would ignore the text of the directive, which states that genuine and determining occupational requirements should only apply “[i]n very limited circumstances.”⁴⁶ The ECJ has emphasized that “[t]he case-law has demonstrated a measured use of this exception and a desire to interpret it strictly,” and noted in 2011 that “*Wolf* is the only case in which, up to now, the Court has found the exceptional circumstances of Article 4(1) of Directive 2000/78[, the genuine and determining requirement,] to exist.”⁴⁷ In *Achbita* and *Bouagnaoui*, neither the nature of the activities (receptionist⁴⁸ or computer work⁴⁹), nor the context (a standard business environment) suggests that regulation of headgear should be a genuine and determining occupational requirement.⁵⁰

Even if it somehow were a “genuine and determining occupational requirement”⁵¹ for employees not to wear any headgear, then the employment policy should still fail the requirement that the objective be legitimate and the requirement proportionate. The context of both cases suggests that the objectives of the headgear bans were merely to prevent women from wearing religious headscarves. In both cases, company policy against visible symbols or headgear was not introduced or made official until the companies were presented with the case of a woman wearing a religious headscarf. There was no evidence that the policies had ever been applied

45 Opinion of Advocate General, *supra* note 20, ¶¶ 82, 84 (footnotes omitted).

46 Council Directive 2000/78/EC, *supra* note 13, at pmb. ¶ 23 (“In very limited circumstances, a difference of treatment may be justified where a characteristic related to religion or belief, disability, age or sexual orientation constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate. Such circumstances should be included in the information provided by the Member States to the Commission.”).

47 Opinion of the Advocate General Villalón, Case C-447/09, *Prigge v. Lufthansa AG*, 2011 E.C.R. I-08003, ¶¶ 61, 62. The Court further noted that that the fact that the *Wolf* case involved ensuring public security “had some bearing on the decision of the Court in that case.” *Id.* ¶ 62.

48 See Case C-157/15, *Achbita v. G4S Secure Sols. NV*, 2017 EUR-Lex CELEX LEXIS 0157, ¶ 11 (Mar. 14, 2017).

49 Case C-188/15, *Bouagnaoui v. Micropole SA*, 2017 EUR-Lex CELEX LEXIS 0188, ¶ 13 (Mar. 14, 2017).

50 Opinion of Advocate General, *supra* note 20, ¶ 16. The Advocate General suggests that neutrality of the employees is “absolutely crucial” because it provides services characterized by “constant face-to-face contact with external individuals and has a defining impact not only on the image of G4S itself but also and primarily on the public image of its customers.” *Id.* ¶ 94. There is no physical imperative, such as a health and safety need, about a face-to-face context, however, that creates a genuine need to ban headscarves, but simply the cultural assumptions of customers or employers.

51 Council Directive 2000/78/EC, *supra* note 13, at ch. 1, art. 4, § 1.

in any other situation, further suggesting pretext. As the ECJ recognized in previous cases and in *Bouagnaoui*, the demand of a customer that he or she not be served by employees of a particular banned category, such as race or ethnic origin, does not constitute a legitimate objective.⁵² Future cases of this sort should focus on possible pretext and illegitimacy of the objectives.

Even if one assumes that there was a company policy against visible religious and political symbols, however, that was not merely pretextual, the policy should still fail the proportionality requirement. The ECJ requires that measures adopted to achieve the legitimate objectives of the law must be appropriate and not go beyond what is necessary in order to achieve those objectives.⁵³ The need for a business to have uniformity in the presentation of its employees may theoretically be appropriate, but banning headscarves and religious symbols as part of this uniformity should not be necessary to achieve those objectives. Women in many countries and industries wear headscarves while they interact with the public. In *Achbita*, both France and the Commission suggested that the company's rule is "too general and indiscriminate" and that it could provide its female employees with a uniform including an optional headscarf in a matching color and style that could be worn on a voluntary basis.⁵⁴

Finally, the ECJ, in determining proportionality, has held that measures must not, even if appropriate and necessary, give rise to any disadvantages that are disproportionate to the objectives pursued. A complete ban on participation in the workforce of Muslim women who wear headscarves in order to obtain a marginally more "neutral" company policy seems an inappropriate proportionality balance. The Advocate General suggested that a headscarf ban does not make it "unduly difficult for Muslim women to integrate into work and society" because Ms. Achbita worked as a receptionist without a headscarf before she started wearing one for religious reasons.⁵⁵ This seems to suggest that the whole project of integration depends solely on Muslim women refusing to wear headscarves, which posits a very crabbed idea of what integration involves. Given the importance of integration, especially in light of the immigration crisis, however, this Essay suggests that this takes the wrong approach to the balancing of employer needs and the religious expressions of employees. As the report of the 1995 World Summit for Social Development explained and the U.N. has emphasized, "[s]ocial integration represents the attempt

⁵² *Bouagnaoui*, 2017 EUR-Lex at ¶ 40; see also Case C-54/07, *Racismebestrijding v. Feryn NV*, 2008 E.C.R. I-05187, ¶¶ 16, 25 (holding that an entrepreneur illegitimately refused to hire Moroccans because of the wishes of his customers).

⁵³ See Opinion of the Advocate General Geelhoed, C-491/01, *Queen v. Sec'y of State for Health ex parte British Am. Tobacco (Invs.) Ltd.*, 2002 E.C.R. I-11453, ¶ 230; Opinion of the Advocate General Léger, Case C-84/94, *United Kingdom v. Council*, 1996 E.C.R. I-5758, ¶ 121; Case 137/85, *Gesellschaft mbH v. Bundesanstalt für Landwirtschaftliche Marktordnung*, 1987 E.C.R. 4587, ¶ 15.

⁵⁴ Opinion of Advocate General, *supra* note 20, ¶¶ 104–05.

⁵⁵ *Id.* ¶ 124.

not to make people adjust to society, but rather to ensure that society is accepting of all people.”⁵⁶

⁵⁶ DEPT OF ECON. AND SOC. AFFAIRS OF THE UNITED NATIONS, PARTICIPATORY DIALOGUE: TOWARD A STABLE, SAFE AND JUST SOCIETY FOR ALL 1 (2007), [http://www.un.org/esa/socdev/publications/prteprty_dlg\(full_version\).pdf](http://www.un.org/esa/socdev/publications/prteprty_dlg(full_version).pdf).