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**FREEDOM OF THOUGHT, CONSCIENCE
AND RELIGION**



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LIST OF CASES

C-71/11 and C-99/11

C-157/15

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Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

5 September 2012 *

(Directive 2004/83/EC — Minimum standards for determining who qualifies for refugee status or for subsidiary protection status — Article (2)(c) — Classification as a ‘refugee’ — Article 9(1) — Definition of ‘acts of persecution’ — Article 10(1)(b) — Religion as ground for persecution — Connection between the reasons for persecution and the acts of persecution — Pakistani nationals who are members of the Ahmadiyya religious community — Acts by the Pakistani authorities designed to prohibit the manifestation of a person’s religion in public — Acts sufficiently serious for the person concerned to have a well-founded fear of being persecuted on account of his religion — Individual assessment of the facts and circumstances — Article 4)

In Joined Cases C-71/11 and C-99/11,

REFERENCES for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Germany), made by decisions of 9 December 2010, received at the Court on 18 February and 2 March 2011 respectively, in the proceedings

Bundesrepublik Deutschland

v

Y (C-71/11),

Z (C-99/11),

intervening parties:

Vertreter des Bundesinteresses beim Bundesverwaltungsgericht,

Bundesbeauftragter für Asylangelegenheiten beim Bundesamt für Migration und Flüchtlinge,

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot, Presidents of Chambers, A. Rosas, R. Silva de Lapuerta, E. Levits, A. Ó Caoimh, L. Bay Larsen (Rapporteur), T. von Danwitz, A. Arabadjiev and C.G. Fernlund, Judges,

Advocate General: Y. Bot,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 28 February 2012,

* Language of the case: German.

after considering the observations submitted on behalf of:

- Y and Z, by C. Borschberg and R. Marx, Rechtsanwälte,
- the German Government, by T. Henze, N. Graf Vitzthum and K. Petersen, acting as Agents,
- the French Government, by G. de Bergues and B. Beaupère-Manokha, acting as Agents,
- the Netherlands Government, by C.M. Wissels and B. Koopman, acting as Agents,
- the European Commission, by M. Condou-Durande and W. Bogensberger, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 April 2012,

gives the following

Judgment

- 1 These references for a preliminary ruling concern the interpretation of Articles 2(c) and 9(1)(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or Stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12; addendum OJ 2005 L 204, p. 24) ('the Directive').
- 2 The references have been made in proceedings between, on the one hand, the Federal Republic of Germany, represented by the Bundesministerium des Inneren (Federal Ministry of the Interior), in turn represented by the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees) ('the Bundesamt'), and, on the other, Y and Z, Pakistani nationals, concerning the Bundesamt's rejection of their applications for asylum and recognition of refugee status.

Legal context

International law

The Convention Relating to the Status of Refugees

- 3 The Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, vol. 189, p. 150, No 2545 (1954)), entered into force on 22 April 1954. It was supplemented by the Protocol Relating to the Status of Refugees, concluded in New York on 31 January 1967, which entered into force on 4 October 1967 ('the Geneva Convention').
- 4 The first subparagraph of Article 1(A)(2) of the Geneva Convention provides that the term 'refugee' is to apply to any person who 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it'.

The European Convention for the Protection of Human Rights and Fundamental Freedoms

- 5 Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('the ECHR'), is entitled 'Freedom of thought, conscience and religion', and provides as follows:

'1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedom of others.'

- 6 Article 15 of the ECHR, entitled 'Derogation in time of emergency', is worded as follows:

'1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2 ("Right to life"), except in respect of deaths resulting from lawful acts of war, or from Articles 3 ("Prohibition of torture"), 4 (paragraph 1) ("Prohibition of slavery") and 7 ("No punishment without law") shall be made under this provision.

...'

European Union law

The Charter of Fundamental Rights of the European Union

- 7 Paragraph 1 of Article 10 of the Charter of Fundamental Rights of the European Union ('the Charter'), entitled 'Freedom of thought, conscience and religion', is worded in the same terms as Article 9(1) of the ECHR.
- 8 The rights from which there can be no derogation under Article 15(2) of the ECHR are those enshrined in Articles 2, 4, 5(1) and 49 of the Charter.

The Directive

- 9 Recital 3 in the preamble to the Directive states that the Geneva Convention provides the cornerstone of the international legal regime for the protection of refugees.
- 10 As follows from recital 10 in the preamble to the Directive, read in the light of Article 6(1) TEU, the Directive respects the rights, freedoms and principles recognised by the Charter. In particular, it seeks to ensure, on the basis of Articles 1 and 18 of the Charter, full respect for human dignity and the right to asylum of applicants for asylum.
- 11 Recitals 16 and 17 in the preamble to the Directive are worded as follows:

'(16) Minimum standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.

- (17) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.'
- 12 In accordance with Article 1 of the Directive, its purpose is to lay down minimum standards as regards, first, the requirements to be met by third country nationals or Stateless persons in order to receive international protection and, second, the content of the protection granted.
- 13 Article 2 of the Directive states that, for the purposes of the directive:
- '(a) "international protection" means the refugee and subsidiary protection status as defined in (d) and (f);
- ...
- (c) "refugee" means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country ...
- (d) "refugee status" means the recognition by a Member State of a third country national or a Stateless person as a refugee;
- ...'
- 14 Article 3 of the Directive provides that Member States may introduce or retain more favourable standards for determining who qualifies as a refugee and for determining the content of international protection, in so far as those standards are compatible with the Directive.
- 15 Article 4, which is in Chapter II of the Directive, entitled 'Assessment of applications for international protection', sets out the conditions for the assessment of facts and circumstances and provides in paragraph 3 thereof as follows:
- 'The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:
- (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied;
- (b) the relevant statements and documentation presented by the applicant, including information on whether the applicant has been or may be subject to persecution ...
- (c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution ...
- ...'
- 16 Under Article 4(4) of the Directive, the fact that an applicant has already been subject to persecution, or to direct threats of such persecution, is a 'serious indication of the applicant's well-founded fear of persecution', unless there are good reasons to consider that such persecution will not be repeated.

17 Article 6 of the Directive, which is in Chapter II and is entitled ‘Actors of persecution or serious harm’, provides as follows:

‘Actors of persecution or serious harm include:

- (a) the State;
- (b) parties or organisations controlling the State or a substantial part of the territory of the State;
- (c) non-State actors, if it can be demonstrated that the actors mentioned in (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7.’

18 Article 9 of the Directive, which is in Chapter III of the Directive and is entitled ‘Qualification for being a refugee’, defines acts of persecution in paragraphs 1 and 2 thereof as follows:

‘1. Acts of persecution within the meaning of Article 1A of the Geneva Convention must:

- (a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the [ECHR]; or
- (b) be an accumulation of various measures, including violations of human rights, which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).

2. Acts of persecution as qualified in paragraph 1, can, inter alia, take the form of:

- (a) acts of physical or mental violence ...;
 - (b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
 - (c) prosecution or punishment, which is disproportionate or discriminatory;
- ...

19 In accordance with Article 9(3) of the Directive, there must be a connection between the reasons for persecution mentioned in Article 10 and the acts of persecution.

20 Article 10 of the Directive, entitled ‘Reasons for persecution’ and also in Chapter III, provides in paragraph 1 thereof as follows:

‘Member States shall take the following elements into account when assessing the reasons for persecution:

...

- (b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

...

- 21 Under Article 13 of the Directive, a Member State is to grant the applicant refugee status if that person meets, inter alia, the requirements laid down in Articles 9 and 10 of the Directive.

German law

- 22 Paragraph 16a(1) of the Grundgesetz (Basic Law) provides as follows:

‘Persons persecuted on political grounds shall have the right of asylum.’

- 23 Paragraph 1 of the German Law on asylum procedure (Asylverfahrensgesetz), in the version published on 2 September 2008 (BGBl. 2008 I, p. 1798) (‘the AsylVfG’), states that that Law applies to foreign nationals who apply for protection from political persecution in accordance with Paragraph 16a(1) of the Basic Law, or for protection from persecution in accordance with the Geneva Convention.
- 24 Paragraph 2 of the AsylVfG provides that, in the Federal territory, persons entitled to asylum are to have the legal status defined by the Geneva Convention.
- 25 Refugee status was initially governed by Paragraph 51 of the Law on the entry and stay of foreign nationals on Federal territory (Gesetz über die Einreise und den Aufenthalt von Ausländern im Bundesgebiet).
- 26 By the Law implementing European Union Directives on the right of residence and asylum of 19 August 2007 (Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union) (BGBl. 2007 I, p. 1970), which entered into force on 28 August 2007, the Federal Republic of Germany transposed, among others, the Directive into national law.
- 27 Currently, the conditions for qualifying as a refugee are laid down in Paragraph 3 of the AsylVfG. Under Paragraph 3(1) of the AsylVfG:

‘A foreign national is a refugee within the meaning of [the Geneva Convention] if, in his State of nationality, he is exposed to threats within the meaning of Paragraph 60(1) of the Law on the residence, work and integration of foreign nationals on Federal territory (Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet) in the version published on 25 February 2008 (BGBl. 2008 I, p. 162) (‘the Aufenthaltsgesetz’) ...’

- 28 The first and fifth sentences of Paragraph 60(1) of the Aufenthaltsgesetz, provide as follows:

‘Pursuant to the [Geneva] Convention, a foreign national may not be deported to a State in which his life or liberty is under threat on account of his race, religion, nationality, membership of a certain social group or political convictions. ... In order to determine whether there is persecution for the purposes of the first sentence, it is necessary to apply, ... by way of complement, Article 4(4) and Articles 7 to 10 of the [Directive] ...’

The actions in the main proceedings and the questions referred for a preliminary ruling

- 29 In January 2004 and August 2003 Y and Z, respectively, entered Germany and applied for asylum and protection there as refugees.
- 30 In support of their respective applications, they claimed that their membership of the Muslim Ahmadiyya community, which is an Islamic reformist movement, had forced them to leave their country of origin. In particular, Y stated that on several occasions he had been beaten in his home

village by a group of people and had stones thrown at him at his community's place of prayer. Those people threatened to kill him and reported him to the police for insulting the Prophet Mohammed. Z claimed that he was mistreated and imprisoned as a result of his religious beliefs.

- 31 It is apparent from the orders for reference that Article 298 C of the Pakistani Criminal Code provides that members of the Ahmadiyya religious community may face imprisonment of up to three years or a fine if they claim to be Muslim, describe their faith as Islam, preach or propagate their faith or invite others to accept it. Moreover, under Article 295 C of that code, any person who defiles the name of the Prophet Mohammed may be punished by death or life imprisonment and a fine.
- 32 By decisions of 4 May and 8 July 2004, the Bundesamt rejected Y's and Z's applications for asylum as unfounded, finding that the requirements for being granted refugee status were not satisfied.
- 33 In those decisions, the Bundesamt also held that there were no obstacles to Y's and Z's deportation to Pakistan under the applicable national law and declared them liable to deportation to that country. The Bundesamt justified its decisions essentially on the ground that there was insufficient evidence to support the contention that the applicants in question had left their country of origin on account of a well-founded fear of persecution there.
- 34 Y brought an action against before the Verwaltungsgericht Leipzig (Administrative Court, Leipzig), which, by judgment of 18 May 2007, annulled the Bundesamt's decision and ordered the Bundesamt to place on the record that, as a refugee, Y satisfied the requirements for a prohibition of his deportation to Pakistan.
- 35 Z challenged the Bundesamt's decision before the Verwaltungsgericht Dresden (Administrative Court, Dresden). By judgment of 13 July 2007, that court dismissed his application, taking the view that he had not left his country of origin on account of a well-founded fear of persecution.
- 36 By judgements of 13 November 2008, the Sächsisches Obergerverwaltungsgericht (Higher Administrative Court of the Land Sachsen), respectively:
- dismissed the appeal brought by the Bundesbeauftragter für Asylangelegenheiten (Federal Delegate for Asylum) ('the Bundesbeauftragter') against the judgement at first instance in the case concerning Y, and
 - following an appeal lodged by Z against the judgment concerning him at first instance, varied the judgment, obliging the Bundesamt to place on the record that Z satisfied the requirements laid down in Paragraph 60(1) of the Aufenthaltsgesetz and that it was therefore prohibited from deporting him, as a refugee, to Pakistan.
- 37 That court considered in particular that it was of little consequence whether the applicants had been personally threatened with persecution prior to leaving Pakistan. What was important was that, as active Ahmadis, they would in any event be at risk of collective persecution within the terms of Paragraph 60(1) of the Aufenthaltsgesetz in Pakistan.
- 38 In the event of their return to Pakistan, they could not continue to practice their religion in public without being exposed to a risk of persecution, a factor which must be taken into account in any asylum procedure to determine whether they should be granted refugee status.
- 39 In its judgments of 13 November 2008, the Sächsisches Obergerverwaltungsgericht considered that, for a devout Ahmadi in Pakistan, whose religious convictions include the belief that that faith should be lived in public, the situation in that country constitutes a serious violation of religious freedom. In view of the threat of severe punishment as well as the numerous unimpeded attacks by extremist groups, common sense would suggest that an Ahmadi should refrain from all public acts of worship.

- 40 According to the findings of the Sächsisches Obergerverwaltungsgericht, Y and Z are deeply committed to their faith and their life was actively shaped by it in Pakistan. They continue to practise their religion in Germany and consider that the public practice of their faith is essential in order for them to preserve their religious identity.
- 41 The Bundesamt and the Bundesbeauftragter lodged an appeal on a point of law against those judgments before the Bundesverwaltungsgericht (Federal Administrative Court), arguing that the appeal court had interpreted the scope of Articles 9 and 10(1)(b) of the Directive too broadly.
- 42 Referring to the case-law in Germany before the transposition of the Directive in 2007, according to which there could be deemed to be persecution relevant for the purposes of the right of asylum only where there was interference with the ‘core areas’ of religious freedom, but not where there were restrictions on the public practice of faith, they consider that the restrictions on Ahmadis in Pakistan, which concern the practice of their faith in public, do not constitute interference with those ‘core areas’.
- 43 Moreover, according to the Bundesamt and the Bundesbeauftragter, there is nothing in the findings of the Sächsisches Obergerverwaltungsgericht on how Y and Z practise their faith in Germany to establish that they cannot refrain from certain activities that do not form part of the ‘core areas’ of religious practice.
- 44 According to the referring court, the issue in the cases before it relates to which specific forms of interference with religious freedom, for the purpose of Article 9 of the ECHR, may confer recognition of refugee status within the meaning of Article 2(d) of the Directive. While it is of the view that interference with religious freedom may constitute a ‘severe violation’ of basic human rights within the meaning of Article 9(1)(a) of the Directive, it remains unsure whether forms of interference with religious freedom other than those affecting the essential elements of the religious identity of the person concerned may justify a presumption of persecution that is relevant for the purpose of granting refugee status.
- 45 In those circumstances, the Bundesverwaltungsgericht decided to stay the proceedings and to refer to the Court for a preliminary ruling the following questions, which are worded in almost identical terms in both Cases C-71/11 and C-99/11:
- ‘1. Is Article 9(1)(a) of [the] Directive ... to be interpreted as meaning that not every interference with religious freedom which infringes Article 9 of the ECHR constitutes an act of persecution within the meaning of [the former provision], and that a severe violation of religious freedom as a basic human right arises only if the core area of that religious freedom is adversely affected?
 2. If Question 1 is to be answered in the affirmative:
 - (a) Is the core area of religious freedom limited to the profession and practice of faith in the areas of the home and neighbourhood, or can there be an act of persecution, within the meaning of Article 9(1)(a) of [the] Directive ..., also in cases where, in the country of origin, the observance of faith in public gives rise to a risk to life, physical integrity or freedom and the applicant accordingly abstains from such practice?
 - (b) If the core area of religious freedom can also comprise the public observance of certain religious practices:
 - Does it suffice in that case, in order for there to be a severe violation of religious freedom, that the applicant feels that such observance of his faith is indispensable in order for him to preserve his religious identity,

- or is it further necessary that the religious community to which the applicant belongs should regard that religious observance as constituting a central part of its doctrine,
- or can further restrictions arise as a result of other circumstances, such as the general conditions in the country of origin?

3. If Question 1 is to be answered in the affirmative:

Is there a well-founded fear of persecution, within the meaning of Article 2(c) of [the] Directive ..., if it is established that the applicant will carry out certain religious practices – other than those falling within the core area – after returning to the country of origin, even though they will give rise to a risk to his life, physical integrity or freedom, or can the applicant reasonably be expected to abstain from such practices?’

46 By order of the President of the Court of 24 March 2011, Cases C-71/11 and C-99/11 were joined for the purposes of the written procedure, the oral procedure and the judgment.

Consideration of the questions referred

Preliminary observations

47 It appears from recitals 3, 16 and 17 to the Directive that the Geneva Convention constitutes the cornerstone of the international legal regime for the protection of refugees and that the provisions of the Directive for determining who qualifies for refugee status and the content of that status were adopted to guide the competent authorities of the Member States in the application of that convention on the basis of common concepts and criteria (Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08 *Salahadin Abdulla and Others* [2010] ECR I-1493, paragraph 52, and Case C-31/09 *Bolbol* [2010] ECR I-5539, paragraph 37).

48 The Directive must, for that reason, be interpreted in the light of its general scheme and purpose, and in a manner consistent with the Geneva Convention and the other relevant treaties referred to in Article 78(1) TFEU. As is apparent from recital 10 in the preamble thereto, the Directive must also be interpreted in a manner consistent with the rights recognised by the Charter (see, to that effect, *Salahadin Abdulla and Others*, paragraphs 53 and 54; *Bolbol*, paragraph 38; and Joined Cases C-411/10 and C-493/10 *N.S. and Others* [2011] ECR I-13905, paragraph 75).

Questions 1 and 2

49 By the first two questions referred in both cases, which it is appropriate to consider together, the Bundesverwaltungsgericht asks, in essence, whether Article 9(1)(a) of the Directive is to be interpreted as meaning that any interference with the right to religious freedom that infringes Article 10(1) of the Charter may constitute an ‘act of persecution’ within the meaning of that provision of the Directive and whether a distinction must be made between the ‘core areas’ of religious freedom and its external manifestation.

50 In that regard, it must be borne in mind that, under Article 2(c) of the Directive, the term ‘refugee’ refers, in particular, to a third country national who is outside the country of his nationality ‘owing to a well-founded fear of being persecuted’ for reasons of race, religion, nationality, political opinion or membership of a particular social group and is unable or, ‘owing to such fear’, unwilling to avail himself of the ‘protection’ of that country.

- 51 The third country national concerned must therefore, on account of circumstances existing in his country of origin and the conduct of actors of persecution, have a well-founded fear that he personally will be subject to persecution for at least one of the five reasons listed in the Directive and the Geneva Convention, one such reason being that person's 'religion'.
- 52 Article 13 of the Directive provides that the Member State concerned is required to grant refugee status to the applicant if he qualifies under, *inter alia*, Articles 9 and 10 thereof.
- 53 Article 9 of the Directive defines the factors which make it possible to regard acts as constituting persecution. In that regard, Article 9(1)(a) of the Directive, to which the Bundesverwaltungsgericht refers in its first two questions, states that the relevant acts must be 'sufficiently serious' by their nature or repetition as to constitute a 'severe violation of basic human rights', in particular the unconditional rights from which there can be no derogation, in accordance with Article 15(2) of the ECHR.
- 54 Moreover, Article 9(1)(b) of the Directive states that an accumulation of various measures, including violations of human rights, which is 'sufficiently severe' as to affect an individual in a manner similar to that referred to in Article 9(1)(a) of the Directive, is also to be regarded as amounting to persecution.
- 55 Article 9(3) of the Directive provides that there must be a connection between the reasons for persecution, which include religion, as established in Article 10(1)(b) of the Directive, and the acts of persecution.
- 56 The right to religious freedom enshrined in Article 10(1) of the Charter corresponds to the right guaranteed by Article 9 of the ECHR.
- 57 Freedom of religion is one of the foundations of a democratic society and is a basic human right. Interference with the right to religious freedom may be so serious as to be treated in the same way as the cases referred to in Article 15(2) of the ECHR, to which Article 9(1) of the Directive refers, by way of guidance, for the purpose of determining which acts must in particular be regarded as constituting persecution.
- 58 However, that cannot be taken to mean that any interference with the right to religious freedom guaranteed by Article 10(1) of the Charter constitutes an act of persecution requiring the competent authorities to grant refugee status within the meaning of Article 2(d) of the Directive to any person subject to the interference in question.
- 59 On the contrary, it is apparent from the wording of Article 9(1) of the Directive that there must be a 'severe violation' of religious freedom having a significant effect on the person concerned in order for it to be possible for the acts in question to be regarded as acts of persecution.
- 60 Acts amounting to limitations on the exercise of the basic right to freedom of religion within the meaning of Article 10(1) of the Charter which are provided for by law, without any violation of that right arising, are thus automatically excluded as they are covered by Article 52(1) of the Charter.
- 61 Nor can acts which undoubtedly infringe the right conferred by Article 10(1) of the Charter, but whose gravity is not equivalent to that of an infringement of the basic human rights from which no derogation can be made by virtue of Article 15(2) of the ECHR, be regarded as constituting persecution within the meaning of Article 9(1) of the Directive and Article 1A of the Geneva Convention.

- 62 For the purpose of determining, specifically, which acts may be regarded as constituting persecution within the meaning of Article 9(1)(a) of the Directive, it is unnecessary to distinguish acts that interfere with the ‘core areas’ (‘forum internum’) of the basic right to freedom of religion, which do not include religious activities in public (‘forum externum’), from acts which do not affect those purported ‘core areas’.
- 63 Such a distinction is incompatible with the broad definition of ‘religion’ given by Article 10(1)(b) of the Directive, which encompasses all its constituent components, be they public or private, collective or individual. Acts which may constitute a ‘severe violation’ within the meaning of Article 9(1)(a) of the Directive include serious acts which interfere with the applicant’s freedom not only to practice his faith in private circles but also to live that faith publicly.
- 64 That interpretation is likely to ensure that Article 9(1) of the Directive is applied in such a manner as to enable the competent authorities to assess all kinds of acts which interfere with the basic right of freedom of religion in order to determine whether, by their nature or repetition, they are sufficiently severe as to be regarded as amounting to persecution.
- 65 It follows that acts which, on account of their intrinsic severity as well as the severity of their consequences for the person concerned, may be regarded as constituting persecution must be identified, not on the basis of the particular aspect of religious freedom that is being interfered with but on the basis of the nature of the repression inflicted on the individual and its consequences, as observed by the Advocate General at point 52 of his Opinion.
- 66 It is therefore the severity of the measures and sanctions adopted or liable to be adopted against the person concerned which will determine whether a violation of the right guaranteed by Article 10(1) of the Charter constitutes persecution within the meaning of Article 9(1) of the Directive.
- 67 Accordingly, a violation of the right to freedom of religion may constitute persecution within the meaning of Article 9(1)(a) of the Directive where an applicant for asylum, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 of the Directive.
- 68 It should be noted that where, in accordance with Article 4(3) of the Directive, the competent authorities carry out an assessment of an application for international protection on an individual basis, they are required to take account of all the acts to which the applicant has been, or risks being, exposed, in order to determine whether, in the light of the applicant’s personal circumstances, those acts may be regarded as constituting persecution within the meaning of Article 9(1) of the Directive.
- 69 Given that the concept of ‘religion’ as defined in Article 10(1)(b) of the Directive also includes participation in formal worship in public, either alone or in community with others, the prohibition of such participation may constitute a sufficiently serious act within the meaning of Article 9(1)(a) of the Directive and, therefore, persecution where, in the country of origin concerned, it gives rise to a genuine risk that the applicant will, inter alia, be prosecuted or subject to inhuman or degrading punishment by one of the actors referred to in Article 6 of the Directive.
- 70 In assessing such a risk, the competent authorities must take account of a number of factors, both objective and subjective. The subjective circumstance that the observance of a certain religious practice in public, which is subject to the restrictions at issue, is of particular importance to the person concerned in order to preserve his religious identity is a relevant factor to be taken into account in determining the level of risk to which the applicant will be exposed in his country of origin on account of his religion, even if the observance of such a religious practice does not constitute a core element of faith for the religious community concerned.

- 71 Indeed, it is apparent from the wording of Article 10(1)(b) of the Directive that the scope of protection afforded on the basis of persecution on religious grounds extends both to forms of personal or communal conduct which the person concerned considers to be necessary to him – namely those ‘based on ... any religious belief’ – and to those prescribed by religious doctrine – namely those ‘mandated by any religious belief’.
- 72 In the light of the foregoing considerations, the answer to the first two questions referred in both cases is that Article 9(1)(a) of the Directive must be interpreted as meaning that:
- not all interference with the right to freedom of religion which infringes Article 10(1) of the Charter is capable of constituting an ‘act of persecution’ within the meaning of that provision of the Directive;
 - there may be an act of persecution as a result of interference with the external manifestation of that freedom, and
 - for the purpose of determining whether interference with the right to freedom of religion which infringes Article 10(1) of the Charter may constitute an ‘act of persecution’, the competent authorities must ascertain, in the light of the personal circumstances of the person concerned, whether that person, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 of the Directive.

Question 3

- 73 By the third question referred in both cases, the Bundesverwaltungsgericht seeks to ascertain, in essence, whether Article 2(c) of the Directive must be interpreted as meaning that the applicant’s fear of being persecuted is well-founded where such a person can avoid exposure to persecution in his country of origin by abstaining from certain religious practices.
- 74 For the purpose of answering that question, it must be observed that it concerns a situation in which, as is the case in the main proceedings, the applicant has not already been subject to persecution or to direct threats of persecution on account of his religion.
- 75 It is the absence of such a ‘serious indication of the applicant[s] well-founded fear’ within the meaning of Article 4(4) of the Directive which explains the need on the part of the referring court to ascertain the extent to which it may be open to the court, where the applicant cannot claim that his fear is based on the fact that he has already been subject to persecution on account of his religion, to require that on his return to his country of origin he should continue to avoid the real risk of being persecuted.
- 76 It should be noted in that regard that, in the system provided for by the Directive, when assessing whether, in accordance with Article 2(c) thereof, an applicant has a well-founded fear of being persecuted, the competent authorities are required to ascertain whether or not the circumstances established constitute such a threat that the person concerned may reasonably fear, in the light of his individual situation, that he will in fact be subject to acts of persecution.
- 77 That assessment of the extent of the risk, which must, in all cases, be carried out with vigilance and care (*Salahadin Abdulla and Others*, paragraph 90), will be based solely on a specific evaluation of the facts and circumstances, in accordance with the rules laid down in particular by Article 4 of the Directive.
- 78 None of those rules states that, in assessing the extent of the risk of actual acts of persecution in a particular situation, it is necessary to take account of the possibility open to the applicant of avoiding the risk of persecution by abstaining from the religious practice in question and, consequently, renouncing the protection which the Directive is intended to afford the applicant by conferring refugee status.

- 79 It follows that, where it is established that, upon his return to his country of origin, the person concerned will follow a religious practice which will expose him to a real risk of persecution, he should be granted refugee status, in accordance with Article 13 of the Directive. The fact that he could avoid that risk by abstaining from certain religious practices is, in principle, irrelevant.
- 80 In the light of the above considerations, the answer to the third question referred in both cases is that Article 2(c) of the Directive must be interpreted as meaning that the applicant's fear of being persecuted is well-founded if, in the light of the applicant's personal circumstances, the competent authorities consider that it may reasonably be thought that, upon his return to his country of origin, he will engage in religious practices which will expose him to a real risk of persecution. In assessing an application for refugee status on an individual basis, those authorities cannot reasonably expect the applicant to abstain from those religious practices.

Costs

- 81 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Articles 9(1)(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or Stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that:**
 - **not all interference with the right to freedom of religion which infringes Article 10(1) of the Charter of Fundamental Rights of the European Union is capable of constituting an 'act of persecution' within the meaning of that provision of the Directive;**
 - **there may be an act of persecution as a result of interference with the external manifestation of that freedom, and**
 - **for the purpose of determining whether interference with the right to freedom of religion which infringes Article 10(1) of the Charter of Fundamental Rights of the European Union may constitute an 'act of persecution', the competent authorities must ascertain, in the light of the personal circumstances of the person concerned, whether that person, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 of Directive 2004/83.**
2. **Article 2(c) of Directive 2004/83 must be interpreted as meaning that the applicant's fear of being persecuted is well founded if, in the light of the applicant's personal circumstances, the competent authorities consider that it may reasonably be thought that, upon his return to his country of origin, he will engage in religious practices which will expose him to a real risk of persecution. In assessing an application for refugee status on an individual basis, those authorities cannot reasonably expect the applicant to abstain from those religious practices.**

[Signatures]



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

14 March 2017*

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment — Discrimination based on religion or belief — Workplace regulations of an undertaking prohibiting workers from wearing visible political, philosophical or religious signs in the workplace — Direct discrimination — None — Indirect discrimination — Female worker prohibited from wearing an Islamic headscarf)

In Case C-157/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hof van Cassatie (Court of Cassation, Belgium), made by decision of 9 March 2015, received at the Court on 3 April 2015, in the proceedings

Samira Achbita,

Centrum voor gelijkheid van kansen en voor racismebestrijding

v

G4S Secure Solutions NV,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič, L. Bay Larsen, M. Berger, M. Vilaras and E. Regan, Presidents of Chambers, A. Rosas, A. Borg Barthet, J. Malenovský, E. Levits, F. Biltgen (Rapporteur), K. Jürimäe and C. Lycourgos, Judges,

Advocate General: J. Kokott,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 15 March 2016,

after considering the observations submitted on behalf of:

- the Centrum voor gelijkheid van kansen en voor racismebestrijding, by C. Bayart and I. Bosmans, advocaten,
- G4S Secure Solutions NV, by S. Raets and I. Verhelst, advocaten,
- the Belgian Government, by L. Van den Broeck and M. Jacobs, acting as Agents,

* * Language of the case: Dutch.

— the French Government, by G. de Bergues, D. Colas and R. Coesme, acting as Agents,

— the United Kingdom Government, by J. Kraehling, S. Simmons and C.R. Brodie, acting as Agents, and by A. Bates, Barrister,

— the European Commission, by G. Wils and D. Martin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 31 May 2016,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(2)(a) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).
- 2 The request has been made in proceedings between Ms Samira Achbita and the Centrum voor gelijkheid van kansen en voor racismebestrijding (Centre for Equal Opportunities and Combating Racism; ‘the Centrum’), and G4S Secure Solutions NV (‘G4S’), a company whose registered office is in Belgium, concerning the prohibition by G4S on its employees wearing any visible signs of their political, philosophical or religious beliefs in the workplace and on engaging in any observance of those beliefs.

Legal context

Directive 2000/78

- 3 Recitals 1 and 4 of Directive 2000/78 state:

‘(1) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States and it respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

...

- (4) The right of all persons to equality before the law and protection against discrimination constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories. Convention No 111 of the International Labour Organisation (ILO) prohibits discrimination in the field of employment and occupation.’
- 4 Article 1 of Directive 2000/78 provides:

‘The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.’

5 Article 2 of the directive provides:

‘1. For the purposes of this Directive, the “principle of equal treatment” shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, ...

...

5. This Directive shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.’

6 Article 3(1) of Directive 2000/78 states as follows:

‘Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

...

(c) employment and working conditions, including dismissals and pay;

...’

Belgian law

7 The purpose of the wet ter bestrijding van discriminatie en tot wijziging van de wet van 15 februari 1993 tot oprichting van een Centrum voor gelijkheid van kansen en voor racismebestrijding (Law to combat discrimination and amending the Law of 15 February 1993 establishing a Centre for Equal Opportunities and Combating Racism) of 25 February 2003 (*Belgisch Staatsblad*, 17 March 2003, p. 12844) was, inter alia, to implement the provisions of Directive 2000/78.

8 Article 2(1) of that law states:

‘There is direct discrimination where a difference of treatment which is not objectively or reasonably justified is directly based on sex, alleged race, colour, background, national or ethnic origin, sexual orientation, marital status, birth, property, age, faith or belief, current or future state of health, disability or a physical characteristic.’

9 Article 2(2) of that law provides:

‘There is indirect discrimination where an apparently neutral provision, criterion or practice, as such, has a detrimental effect on persons to whom one of the grounds of discrimination referred to in paragraph 1 applies, unless that provision, criterion or practice is objectively and reasonably justified.’

The dispute in the main proceedings and the question referred for a preliminary ruling

10 G4S is a private undertaking which provides, inter alia, reception services for customers in both the public and private sectors.

11 On 12 February 2003, Ms Achbita, a Muslim, started to work for G4S as a receptionist. She was employed by G4S under an employment contract of indefinite duration. There was at that time an unwritten rule within G4S that workers could not wear visible signs of their political, philosophical or religious beliefs in the workplace.

12 In April 2006, Ms Achbita informed her line managers that she intended, in future, to wear an Islamic headscarf during working hours.

13 In response, the management of G4S informed Ms Achbita that the wearing of a headscarf would not be tolerated because the visible wearing of political, philosophical or religious signs was contrary to G4S’s position of neutrality.

14 On 12 May 2006, after a period of absence from work due to sickness, Ms Achbita notified her employer that she would be returning to work on 15 May and that she was going to wear the Islamic headscarf.

15 On 29 May 2006, the G4S works council approved an amendment to the workplace regulations, which came into force on 13 June 2006, according to which ‘employees are prohibited, in the workplace, from wearing any visible signs of their political, philosophical or religious beliefs and/or from engaging in any observance of such beliefs’.

16 On 12 June 2006, Ms Achbita was dismissed on account of her continuing insistence that she wished, as a Muslim, to wear the Islamic headscarf at work. She received a severance payment equivalent to three months’ salary and benefits acquired under the terms of her employment contract.

17 Following the dismissal of the action brought by Ms Achbita in the arbeidsrechtbank te Antwerpen (Labour Court, Antwerp, Belgium) against her dismissal from G4S, Ms Achbita lodged an appeal against that decision with the arbeidshof te Antwerpen (Higher Labour Court, Antwerp, Belgium). The appeal was denied on the ground, in particular, that the dismissal could not be considered unjustified since the blanket ban on wearing visible signs of political, philosophical or religious beliefs in the workplace did not give rise to direct discrimination, and no indirect discrimination or infringement of individual freedom or of freedom of religion was evident.

18 As regards the lack of direct discrimination, the arbeidshof te Antwerpen (Higher Labour Court, Antwerp) noted more specifically that it was common ground that Ms Achbita was dismissed not because of her Muslim faith but because she persisted in wishing to manifest that faith, visibly, during working hours, by wearing an Islamic headscarf. The provision of the workplace regulations infringed by Ms Achbita was of general scope in that it prohibited all workers from wearing visible signs of political, philosophical or religious beliefs in the workplace. There was nothing to suggest that G4S had taken a more conciliatory approach towards any other employee in a comparable situation, in particular as regards a worker with different religious or philosophical beliefs who consistently refused to comply with the ban.

- 19 The arbeidshof te Antwerpen (Higher Labour Court, Antwerp) rejected the argument that the prohibition, within G4S, on wearing visible signs of religious or philosophical beliefs constituted in itself direct discrimination against Ms Achbita as a religious person, holding that that prohibition concerned not only the wearing of signs relating to religious beliefs but also the wearing of signs relating to philosophical beliefs, thereby complying with the criterion of protection used by Directive 2000/78, which refers to ‘religion or belief’.
- 20 In support of her appeal on a point of law, Ms Achbita argues, in particular, that, by holding that the religious belief on which G4S’s ban is based is a neutral criterion and by failing to characterise the ban as the unequal treatment of workers as between those who wear an Islamic headscarf and those who do not, on the ground that the ban does not refer to a particular religious belief and is directed to all workers, the arbeidshof te Antwerpen (Higher Labour Court, Antwerp) misconstrued the concepts of ‘direct discrimination’ and ‘indirect discrimination’ as referred to in Article 2(2) of Directive 2000/78.
- 21 In those circumstances, the Hof van Cassatie (Court of Cassation) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:
- ‘Should Article 2(2)(a) of Directive 2000/78 be interpreted as meaning that the prohibition on wearing, as a female Muslim, a headscarf at the workplace does not constitute direct discrimination where the employer’s rule prohibits all employees from wearing outward signs of political, philosophical and religious beliefs at the workplace?’

Consideration of the question referred

- 22 By its question, the referring court asks, in essence, whether Article 2(2)(a) of Directive 2000/78 must be interpreted as meaning that the prohibition on wearing an Islamic headscarf, which arises from an internal rule of a private undertaking imposing a blanket ban on the visible wearing of any political, philosophical or religious sign in the workplace, constitutes direct discrimination that is prohibited by that directive.
- 23 In the first place, under Article 1 of Directive 2000/78, the purpose of that directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.
- 24 Article 2(1) of Directive 2000/78 states that ‘the “principle of equal treatment” shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1’ of that directive. Article 2(2)(a) of the directive states that, for the purposes of Article 2(1), direct discrimination is to be taken to occur where one person is treated less favourably than another in a comparable situation, on any of the grounds, including religion, referred to in Article 1 of the directive.
- 25 As regards the meaning of ‘religion’ in Article 1 of Directive 2000/78, it should be noted that the directive does not include a definition of that term.
- 26 Nevertheless, the EU legislature referred, in recital 1 of Directive 2000/78, to fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (‘the ECHR’), which provides, in Article 9, that everyone has the right to freedom of thought, conscience and religion, a right which includes, in particular, freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

- 27 In the same recital, the EU legislature also referred to the constitutional traditions common to the Member States, as general principles of EU law. Among the rights resulting from those common traditions, which have been reaffirmed in the Charter of Fundamental Rights of the European Union ('the Charter'), is the right to freedom of conscience and religion enshrined in Article 10(1) of the Charter. In accordance with that provision, that right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. As is apparent from the explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), the right guaranteed in Article 10(1) of the Charter corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope.
- 28 In so far as the ECHR and, subsequently, the Charter use the term 'religion' in a broad sense, in that they include in it the freedom of persons to manifest their religion, the EU legislature must be considered to have intended to take the same approach when adopting Directive 2000/78, and therefore the concept of 'religion' in Article 1 of that directive should be interpreted as covering both the *forum internum*, that is the fact of having a belief, and the *forum externum*, that is the manifestation of religious faith in public.
- 29 It is necessary, in the second place, to determine whether the internal rule at issue in the main proceedings gives rise to a difference in treatment of workers on the basis of their religion or their belief and, if so, whether that difference in treatment constitutes direct discrimination within the meaning of Article 2(2)(a) of Directive 2000/78.
- 30 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.
- 31 It is not evident from the material in the file available to the Court that the internal rule at issue in the main proceedings was applied differently to Ms Achbita as compared to any other worker.
- 32 Accordingly, it must be concluded that an internal rule such as that at issue in the main proceedings does not introduce a difference of treatment that is directly based on religion or belief, for the purposes of Article 2(2)(a) of Directive 2000/78.
- 33 Nevertheless, according to settled case-law, the fact that the referring court's question refers to certain provisions of EU law does not mean that the Court may not provide the referring court with all the guidance on points of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to those points in its question. It is, in this regard, for the Court of Justice to extract from all the information provided by the referring court, in particular from the grounds of the order for reference, the points of EU law which require interpretation in view of the subject matter of the dispute (see, inter alia, judgment of 12 February 2015, *Oil Trading Poland*, C-349/13, EU:C:2015:84, paragraph 45 and the case-law cited).
- 34 In the present case, it is not inconceivable that the referring court might conclude that the internal rule at issue in the main proceedings introduces a difference of treatment that is indirectly based on religion or belief, for the purposes of Article 2(2)(b) of Directive 2000/78, if it is established — which it is for the referring court to ascertain — that the apparently neutral obligation it encompasses results, in fact, in persons adhering to a particular religion or belief being put at a particular disadvantage.

- 35 Under Article 2(2)(b)(i) of Directive 2000/78, such a difference of treatment does not, however, amount to indirect discrimination within the meaning of Article 2(2)(b) of the directive if it is objectively justified by a legitimate aim and if the means of achieving that aim are appropriate and necessary.
- 36 In that regard, it must be noted that, although it is ultimately for the national court, which has sole jurisdiction to assess the facts and to determine whether and to what extent the internal rule at issue in the main proceedings meets those requirements, the Court of Justice, which is called on to provide answers that are of use to the national court, may provide guidance, based on the file in the main proceedings and on the written and oral observations which have been submitted to it, in order to enable the national court to give judgment in the particular case pending before it.
- 37 As regards, in the first place, the condition relating to the existence of a legitimate aim, it should be stated that the desire to display, in relations with both public and private sector customers, a policy of political, philosophical or religious neutrality must be considered legitimate.
- 38 An employer's wish to project an image of neutrality towards customers relates to the freedom to conduct a business that is recognised in Article 16 of the Charter and is, in principle, legitimate, notably where the employer involves in its pursuit of that aim only those workers who are required to come into contact with the employer's customers.
- 39 An interpretation to the effect that the pursuit of that aim allows, within certain limits, a restriction to be imposed on the freedom of religion is moreover, borne out by the case-law of the European Court of Human Rights in relation to Article 9 of the ECHR (judgment of the ECtHR of 15 January 2013, *Eweida and Others v. United Kingdom*, CE:ECHR:2013:0115JUD004842010, paragraph 94).
- 40 As regards, in the second place, the appropriateness of an internal rule such as that at issue in the main proceedings, it must be held that the fact that workers are prohibited from visibly wearing signs of political, philosophical or religious beliefs is appropriate for the purpose of ensuring that a policy of neutrality is properly applied, provided that that policy is genuinely pursued in a consistent and systematic manner (see, to that effect, judgments of 10 March 2009, *Hartlauer*, C-169/07, EU:C:2009:141, paragraph 55, and of 12 January 2010, *Petersen*, C-341/08, EU:C:2010:4, paragraph 53).
- 41 In that respect, it is for the referring court to ascertain whether G4S had, prior to Ms Achbita's dismissal, established a general and undifferentiated policy of prohibiting the visible wearing of signs of political, philosophical or religious beliefs in respect of members of its staff who come into contact with its customers.
- 42 As regards, in the third place, the question whether the prohibition at issue in the main proceedings was necessary, it must be determined whether the prohibition is limited to what is strictly necessary. In the present case, what must be ascertained is whether the prohibition on the visible wearing of any sign or clothing capable of being associated with a religious faith or a political or philosophical belief covers only G4S workers who interact with customers. If that is the case, the prohibition must be considered strictly necessary for the purpose of achieving the aim pursued.
- 43 In the present case, so far as concerns the refusal of a worker such as Ms Achbita to give up wearing an Islamic headscarf when carrying out her professional duties for G4S customers, it is for the referring court to ascertain whether, taking into account the inherent constraints to which the undertaking is subject, and without G4S being required to take on an additional burden, it would have been possible for G4S, faced with such a refusal, to offer her a post not involving any visual contact with those customers, instead of dismissing her. It is for the referring court, having regard to all the material in the file, to take into account the interests involved in the case and to limit the restrictions on the freedoms concerned to what is strictly necessary.

44 Having regard to all of the foregoing considerations, the answer to the question put by the referring court is as follows:

- Article 2(2)(a) of Directive 2000/78 must be interpreted as meaning that the prohibition on wearing an Islamic headscarf, which arises from an internal rule of a private undertaking prohibiting the visible wearing of any political, philosophical or religious sign in the workplace, does not constitute direct discrimination based on religion or belief within the meaning of that directive.
- By contrast, such an internal rule of a private undertaking may constitute indirect discrimination within the meaning of Article 2(2)(b) of Directive 2000/78 if it is established that the apparently neutral obligation it imposes results, in fact, in persons adhering to a particular religion or belief being put at a particular disadvantage, unless it is objectively justified by a legitimate aim, such as the pursuit by the employer, in its relations with its customers, of a policy of political, philosophical and religious neutrality, and the means of achieving that aim are appropriate and necessary, which it is for the referring court to ascertain.

Costs

45 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 2(2)(a) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the prohibition on wearing an Islamic headscarf, which arises from an internal rule of a private undertaking prohibiting the visible wearing of any political, philosophical or religious sign in the workplace, does not constitute direct discrimination based on religion or belief within the meaning of that directive.

By contrast, such an internal rule of a private undertaking may constitute indirect discrimination within the meaning of Article 2(2)(b) of Directive 2000/78 if it is established that the apparently neutral obligation it imposes results, in fact, in persons adhering to a particular religion or belief being put at a particular disadvantage, unless it is objectively justified by a legitimate aim, such as the pursuit by the employer, in its relations with its customers, of a policy of political, philosophical and religious neutrality, and the means of achieving that aim are appropriate and necessary, which it is for the referring court to ascertain.

[Signatures]



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

14 March 2017*

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment — Discrimination based on religion or belief — Genuine and determining occupational requirement — Meaning — Customer's wish not to have services provided by a worker wearing an Islamic headscarf)

In Case C-188/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, France), made by decision of 9 April 2015, received at the Court on 24 April 2015, in the proceedings

Asma Bougnaoui,

Association de défense des droits de l'homme (ADDH)

v

Micropole SA, formerly Micropole Univers SA,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič, L. Bay Larsen, M. Berger, M. Vilaras and E. Regan, Presidents of Chambers, A. Rosas, A. Borg Barthet, J. Malenovský, E. Levits, F. Biltgen (Rapporteur), K. Jürimäe and C. Lycourgos, Judges,

Advocate General: E. Sharpston,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 15 March 2016,

after considering the observations submitted on behalf of:

- Ms Bougnaoui and the Association de défense des droits de l'homme (ADDH), by C. Waquet, avocate,
- Micropole SA, by D. Célice, avocat,
- the French Government, by G. de Bergues, D. Colas and R. Coesme, acting as Agents,
- the Swedish Government, by A. Falk, C. Meyer-Seitz, U. Persson, N. Otte Widgren, E. Karlsson and L. Swedenborg, acting as Agents,

* Language of the case: French.

— the United Kingdom Government, by S. Simmons, acting as Agent, and by A. Bates, Barrister,
— the European Commission, by D. Martin and M. Van Hoof, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 13 July 2016,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 4(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).
- 2 The request has been made in proceedings between Ms Asma Bougnaoui and the Association de défense des droits de l'homme (Association for the protection of human rights) (ADDH), and Micropole SA, formerly Micropole Univers SA ('Micropole') concerning the latter's dismissal of Ms Bougnaoui because of her refusal to remove her Islamic headscarf when sent on assignment to customers of Micropole.

Legal context

Directive 2000/78

- 3 Recitals 1, 4 and 23 of Directive 2000/78 state:

'(1) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States and it respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

...

(4) The right of all persons to equality before the law and protection against discrimination constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories. Convention No 111 of the International Labour Organisation (ILO) prohibits discrimination in the field of employment and occupation.

...

(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.'

4 Article 1 of Directive 2000/78 provides:

‘The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.’

5 Article 2(1) and (2) of the directive provides:

‘1. For the purposes of this Directive, the “principle of equal treatment” shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, ...

...’

6 Article 3(1) of the directive states:

‘Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

...

(c) employment and working conditions, including dismissals and pay;

...’

7 Article 4(1) of Directive 2000/78 provides:

‘Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, 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.’

French law

8 The provisions of Directive 2000/78 were transposed into French law, notably Articles L. 1132-1 and L. 1133-1 of the code du travail (Labour Code), by Law No 2008-496 of 27 May 2008 laying down various provisions to bring anti-discrimination legislation into line with Community law (*Journal officiel de la République française* (JORF), 28 May 2008, p. 8801).

9 Article L. 1121-1 of the Labour Code states:

‘No one may limit personal rights or individual or collective liberties by any restriction which is not justified by the nature of the task to be performed and proportionate to the aim sought.’

10 Article L. 1132-1 of the Labour Code, in the version in force at the material time, provided as follows:

‘No person may be excluded from a recruitment procedure or from access to work experience or a period of training at an undertaking, no employee may be disciplined, dismissed or be subject to discriminatory treatment, whether direct or indirect, as defined in Article 1 of Law No 2008-496 of 27 May 2008 laying down various provisions to bring anti-discrimination legislation into line with Community law, in particular as regards remuneration, within the meaning of Article L. 3221-3, incentive or employee share schemes, training, reclassification, allocation, certification, classification, career promotion, transfer, or contract renewal by reason of his origin, his sex, his conduct, his sexual orientation, his age, ... his political opinions, his trade union or works council activities, his religious beliefs, his physical appearance, his surname or by reason of his state of health or disability.’

11 Article L. 1133-1 of the Labour Code is worded as follows:

‘Article L. 1132-1 shall not preclude differences of treatment arising from a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.’

12 Article L. 1321-3 of the Labour Code, in the version in force at the material time, provided as follows:

‘Workplace regulations shall not contain:

- 1° Provisions contrary to primary or secondary law or to the requirements laid down by the collective agreements and understandings as to working practices applicable in the undertaking or establishment;
- 2° Provisions imposing restrictions on personal rights and on individual and collective freedoms which are not justified by the nature of the task to be undertaken or proportionate to the aim that is sought to be achieved;
- 3° Provisions discriminating against employees in their employment or at their work, having the same professional ability, by reason of their origin, their sex, their conduct, their sexual orientation, their age ... their political opinions, their trade union or works council activities, their religious beliefs, their physical appearance, their surname or by reason of their state of health or disability.’

The dispute in the main proceedings and the question referred for a preliminary ruling

13 It is apparent from the material in the file available to the Court that Ms Bougnaoui met a representative of Micropole, a private undertaking, at a student fair in October 2007, prior to being recruited by Micropole, and that the representative informed her that the wearing of an Islamic headscarf might pose a problem when she was in contact with customers of the company. When Ms Bougnaoui arrived at Micropole on 4 February 2008 for an internship, she was wearing a simple bandana. She subsequently wore an Islamic headscarf in the workplace. At the end of her internship, Micropole employed her, from 15 July 2008, as a design engineer under a contract of employment of indefinite duration.

- 14 Having been called, on 15 June 2009, to an interview preliminary to possible dismissal, Ms Bougnaoui was dismissed by a letter of 22 June 2009 that stated as follows:

‘... As part of your duties, you are called upon to take part in assignments for our customers.

We asked you to work for the customer ... on 15 May, at their site in Following that work, the customer told us that the wearing of a veil, which you in fact wear every day, had upset a number of its employees. It also requested that there should be “no veil next time”.

When you were taken on by our company, in your interviews with your Operational Manager ... and the Recruitment Manager ..., the subject of wearing a veil had been addressed very clearly with you. We said to you that we entirely respect the principle of freedom of opinion and the religious beliefs of everyone, but that, since you would be in contact internally or externally with the company’s customers, you would not be able to wear the veil in all circumstances. In the interests of the business and for its development we are obliged, vis-à-vis our customers, to require that discretion is observed as regards the expression of the personal preferences of our employees.

At our interview on 17 June, we reaffirmed that principle of the need for neutrality to you and we asked you to apply it as regards our customers. We asked you again whether you could accept those professional requirements by agreeing not to wear the veil, and you answered in the negative.

We consider that those facts justify, for the aforementioned reasons, the termination of your contract of employment. Inasmuch as your position makes it impossible for you to carry out your functions on behalf of the company, since we cannot contemplate, given your stance, your continuing to provide services at our customers’ premises, you will not be able to work out your notice period. Since that failure to work during the notice period is attributable to you, you will not be remunerated for your notice period.

We regret this situation as your professional competence and your potential had led us to hope for a long-term working relationship.’

- 15 Ms Bougnaoui considered that dismissal to be discriminatory and brought an action before the conseil de prud’hommes de Paris (Labour Tribunal, Paris, France) on 8 September 2009. On 4 May 2011, the conseil de prud’hommes de Paris (Labour Tribunal, Paris) ordered Micropole to pay compensation in respect of her period of notice because it had failed to indicate in its letter of dismissal the gravity of Ms Bougnaoui’s alleged misconduct, and dismissed the remainder of the action on the ground that the restriction of Ms Bougnaoui’s freedom to wear the Islamic headscarf was justified by her contact with customers of that company and proportionate to Micropole’s aim of protecting its image and of avoiding conflict with its customers’ beliefs.
- 16 Ms Bougnaoui, supported by the ADDH, appealed against that decision to the cour d’appel de Paris (Court of Appeal, Paris, France), which, by decision of 18 April 2013, upheld the decision of the conseil de prud’hommes de Paris (Labour Tribunal, Paris). In its decision, it ruled, in particular, that Ms Bougnaoui’s dismissal did not arise from discrimination connected with the religious beliefs of the employee, since she was permitted to continue to express them within the undertaking, and that it was justified by a legitimate restriction arising from the interests of the undertaking where the exercise by the employee of the freedom to manifest her religious beliefs went beyond the confines of the undertaking and was imposed on the latter’s customers without any consideration for their feelings, impinging on the rights of others.
- 17 Ms Bougnaoui and the ADDH brought an appeal against the decision of 18 April 2013 before the Cour de cassation (Court of Cassation). They claimed that the cour d’appel de Paris (Court of Appeal, Paris) had, inter alia, infringed Articles L. 1121-1, L. 1321-3 and L. 1132-1 of the Labour Code. Restrictions on religious freedom should be justified by the nature of the task to be undertaken and should arise

from a genuine and determining occupational requirement, subject to the proviso that the objective be legitimate and the requirement proportionate. They argued that the wearing of the Islamic headscarf by an employee of a private undertaking when in contact with customers does not prejudice the rights or beliefs of others, and that the embarrassment or sensitivity of the customers of a commercial company, at the mere sight, allegedly, of a sign of religious affiliation, is neither a relevant nor legitimate criterion, free from any discrimination, that might justify the company's economic or commercial interests being allowed to prevail over the fundamental freedom of religion of an employee.

- 18 The Social Chamber of the Cour de cassation (Court of Cassation), before which the appeal lodged by the appellants in the main proceedings was brought, notes that, in its judgment of 10 July 2008, *Feryn* (C-54/07, EU:C:2008:397), the Court of Justice merely ruled that the fact that an employer states publicly that it will not recruit employees of a certain ethnic or racial origin constitutes direct discrimination in respect of recruitment within the meaning of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22), but did not determine whether Article 4(1) of Directive 2000/78 must be interpreted as meaning that the wish of an employer's customer no longer to have that employer's services provided by a worker on one of the grounds to which that directive refers is a genuine and determining occupational requirement, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out.
- 19 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 4(1) of Directive 2000/78 be interpreted as meaning that the wish of a customer of an information technology consulting company no longer to have the information technology services of that company provided by an employee, a design engineer, wearing an Islamic headscarf, is a genuine and determining occupational requirement, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out?'

Request to reopen the oral procedure

- 20 After delivery of the Advocate General's opinion, Micropole lodged, on 18 November 2016, a request that the oral procedure be reopened pursuant to Article 83 of the Rules of Procedure of the Court of Justice.
- 21 Micropole argued in support of its request that the Court needed to be made aware of Micropole's observations following the delivery of that opinion and that it wished to provide the Court with additional information.
- 22 It should be noted in that regard that the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in accordance with Article 83 of its Rules of Procedure, in particular if it considers that it lacks sufficient information or where the case must be decided on the basis of an argument which has not been debated by the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.
- 23 In the present case, the Court considers, having heard the Advocate General, that it has all the information necessary to enable it to rule on the action before it, and that the action does not have to be decided on the basis of an argument which has not been debated before the Court.
- 24 Micropole's request for the oral part of the procedure to be reopened must therefore be refused.

Consideration of the question referred

- 25 By its question, the referring court asks, in essence, whether Article 4(1) of Directive 2000/78 must be interpreted as meaning that the willingness of an employer to take account of the wishes of a customer no longer to have that employer's services provided by a worker wearing an Islamic headscarf constitutes a genuine and determining occupational requirement within the meaning of that provision.
- 26 In the first place, it should be observed that, in accordance with Article 1 of Directive 2000/78, the purpose of that directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.
- 27 As regards the meaning of 'religion' in Article 1 of that directive, it should be noted that the directive does not include a definition of that term.
- 28 Nevertheless, the EU legislature referred, in recital 1 of Directive 2000/78, to fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), which provides, in Article 9, that everyone has the right to freedom of thought, conscience and religion, a right which includes, in particular, freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- 29 In the same recital, the EU legislature also referred to the constitutional traditions common to the Member States, as general principles of EU law. Among the rights resulting from those common traditions, which have been reaffirmed in the Charter of Fundamental Rights of the European Union ('the Charter'), is the right to freedom of conscience and religion enshrined in Article 10(1) of the Charter. In accordance with that provision, that right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. As is apparent from the explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), the right guaranteed in Article 10(1) of the Charter corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope.
- 30 In so far as the ECHR and, subsequently, the Charter use the term 'religion' in a broad sense, in that they include in it the freedom of persons to manifest their religion, the EU legislature must be considered to have intended to take the same approach when adopting Directive 2000/78, and therefore the concept of 'religion' in Article 1 of that directive should be interpreted as covering both the *forum internum*, that is the fact of having a belief, and the *forum externum*, that is the manifestation of religious faith in public.
- 31 In the second place, it should be noted that it is not clear from the order for reference whether the referring court's question is based on a finding of a difference of treatment based directly on religion or belief, or on a finding of a difference of treatment based indirectly on those criteria.
- 32 If, which it is for the referring court to ascertain, Ms Bougnaoui's dismissal was based on non-compliance with a rule in force within that undertaking, prohibiting the wearing of any visible sign of political, philosophical or religious beliefs, and if it were to transpire that that apparently neutral rule resulted, in fact, in persons adhering to a particular religion or belief, such as Ms Bougnaoui, being put at a particular disadvantage, it would have to be concluded that there was a difference of treatment indirectly based on religion or belief, as referred to in Article 2(2)(b) of Directive 2000/78 (see, to that effect, judgment of today's date, *G4S Secure Solutions*, C-157/15, paragraphs 30 and 34).

- 33 However, under Article 2(2)(b)(i) of the directive, such a difference of treatment does not amount to indirect discrimination if it is objectively justified by a legitimate aim, such as the implementation, by Micropole, of a policy of neutrality vis-à-vis its customers, and if the means of achieving that aim are appropriate and necessary (see, to that effect, judgment of today's date, *G4S Secure Solutions*, C-157/15, paragraphs 35 to 43).
- 34 By contrast, if the dismissal of Ms Bougnaoui was not based on the existence of an internal rule such as that referred to in paragraph 32 of the present judgment, it is necessary to consider, as this Court is invited to do by the question from the referring court, whether the willingness of an employer to take account of a customer's wish no longer to have services provided by a worker who, like Ms Bougnaoui, has been assigned to that customer by the employer and who wears an Islamic headscarf constitutes a genuine and determining occupational requirement within the meaning of Article 4(1) of Directive 2000/78.
- 35 According to that provision, Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 of the directive is not to constitute discrimination where, 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.
- 36 Thus, it is for the Member States to stipulate, should they choose to do so, that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 of the directive does not constitute discrimination. That appears to be the case here, under Article L. 1133-1 of the Labour Code, which it is, however, for the referring court to ascertain.
- 37 That said, it should be borne in mind that the Court has repeatedly held that it is clear from Article 4(1) of Directive 2000/78 that it is not the ground on which the difference of treatment is based but a characteristic related to that ground which must constitute a genuine and determining occupational requirement (see judgments of 12 January 2010, *Wolf*, C-229/08, EU:C:2010:3, paragraph 35; of 13 September 2011, *Prigge and Others*, C-447/09, EU:C:2011:573, paragraph 66; of 13 November 2014, *Vital Pérez*, C-416/13, EU:C:2014:2371, paragraph 36; and of 15 November 2016, *Salaberria Sorondo*, C-258/15, EU:C:2016:873, paragraph 33).
- 38 It should, moreover, be pointed out that, in accordance with recital 23 of Directive 2000/78, it is only in very limited circumstances that a characteristic related, in particular, to religion may constitute a genuine and determining occupational requirement.
- 39 It must also be pointed out that, according to the actual wording of Article 4(1) of Directive 2000/78, such a characteristic may constitute such a requirement only 'by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out'.
- 40 It follows from the information set out above that the concept of a 'genuine and determining occupational requirement', within the meaning of that provision, refers to a requirement that is objectively dictated by the nature of the occupational activities concerned or of the context in which they are carried out. It cannot, however, cover subjective considerations, such as the willingness of the employer to take account of the particular wishes of the customer.
- 41 Consequently, the answer to the question put by the referring court is that Article 4(1) of Directive 2000/78 must be interpreted as meaning that the willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf cannot be considered a genuine and determining occupational requirement within the meaning of that provision.

Costs

- 42 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 4(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf cannot be considered a genuine and determining occupational requirement within the meaning of that provision.

[Signatures]