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Court of Justice of the European Union (Grand Chamber) 14 March 2017 – C-157/15

S.A., Centrum voor gelijkheid van kansen en voor racismebestrijding v. G.NV,

advocate general: *J. Kokott*

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

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.

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

Court of Justice of the European Union (Grand Chamber) 14 March 2017 – C-188/15

A. B., Association de défense des droits de l'homme (ADDH) c./ M. SA.

advocate general: *E. Sharpston*

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

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.

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 A. B. and the Association de défense des droits de l'homme (Association for the protection of human rights) (ADDH), andMicropole SA, formerly M. U. SA ('M.') concerning the latter's dismissal of Ms B. because of her refusal to remove her Islamic headscarf when sent on assignment to customers of M..

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

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 Mem-

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

ber 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:

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

(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:

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 discrim-

> '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

ination, 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'.

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

crimination' 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

> 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 B. met a representative of M., a private undertaking, at a student fair in October 2007, prior to being recruited by M., 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 B. arrived at M. 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, M. 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 B. 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 cus-

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 there-

tomers.

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

fore 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

> 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 B. 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 M. 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 B.'s alleged misconduct, and dismissed the remainder of the action on the ground that the restriction of Ms B.'s freedom to wear the Islamic headscarf was justified by her contact with customers of that company and proportionate to M.'s aim of protecting its image and of avoiding conflict with its customers' beliefs.

16 Ms B., 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 B.'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 ex-

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.

ercise 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 B. 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)

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 wear-

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, M. 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 M. argued in support of its request that the Court needed to be made aware of M.'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

ing 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 neut-

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 M.'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,

rality, 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.

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 B.'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 B., 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 M., 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 B. 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 B., 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 ac-

count 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.