Reports of Cases

OPINION OF ADVOCATE GENERAL
ĆAPETA
delivered on 20 November 2025 [1]

Case C-522/24

BG
v
Ministero della Difesa,
joined parties:
Presidenza del Consiglio dei Ministri

(Request for a preliminary ruling from the Consiglio di Stato (Council of State, Italy))

(Reference for a preliminary ruling – Directive 2000/78/EC – The concept of 'belief' under Article 1 of Directive 2000/78 – Personal views about COVID-19 vaccination – Vaccination requirement imposed on military personnel because of the COVID-19 pandemic – Refusal to receive a COVID-19 vaccine which led to suspension from work without pay)

I. Introduction

1. More than two years have elapsed since the COVID-19 pandemic was officially declared no longer a global threat. [2] Nevertheless, the Court of Justice continues to receive requests for interpretation pertaining to the legal issues that arose during the pandemic.

2. The present reference for a preliminary ruling is one such example. The applicant in the main proceedings ('the applicant'), refused to receive the COVID-19 vaccine mandated by Italian legislation for military personnel. He was therefore suspended from work at the Ministero della Difesa (Ministry of Defence, Italy), the defendant in the main proceedings ('the Ministry of Defence' or 'the defendant'), without pay for a period of roughly two months, after which the vaccination requirement was lifted and he returned to work.

3. The applicant argues before the Consiglio di Stato (Council of State, Italy), which is the referring court, that his suspension was discriminatory, alleging that it was solely predicated on his personal views opposing the COVID-19 vaccine, which he believes is an infringement of the provisions laid down by Council Directive 2000/78/EC. [3]

[1] Original language: English.

[2] See, in that respect, the declaration of the Director-General of the World Health Organization made on 5 May 2023, available at: https://www.who.int/news-room/speeches/item/who-director-general-s-opening-remarks-at-the-media-briefing—5-may-2023.

[3] Directive of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, (OJ 2000 L 303, p. 16) ('Directive 2000/78').

II. Facts in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

4. In response to the COVID-19 pandemic, the Ministry of Defence imposed a COVID-19 vaccination requirement on military personnel. That requirement was based on Decreto-legge n. 44/21 (Decree-Law No 44/21). [4]

5. After making the COVID-19 vaccination an essential working requirement for certain categories of professionals, Article 4*ter* of Decree-Law No 44/21 explicitly imposed on employers the obligation to verify that all military personnel (among other categories of workers listed therein [5]) are vaccinated. Failure by an employee to be vaccinated would result in his or her immediate suspension from work. That employee would not face any disciplinary consequences and the employment relationship would be maintained. That same rule also specified that no remuneration or other emoluments would be due during the suspension period. It further stated that the suspension would remain in effect until the person concerned informed the employer that he or she had started or completed the primary vaccination cycle, or until the administration of the booster dose. However, the suspension would not last beyond the deadline of six months, which started on 15 December 2021.

6. The applicant is a member of the military, working for the Ministry of Defence as an engineer, predominantly in an office that he has to himself, but he has frequent meetings with other military and civilian personnel of the same administration, as well as with representatives of external companies.

7. He refused to receive a COVID-19 vaccine but declared himself willing to undergo SARS-CoV-2 tests every 48 hours.

8. By its decision on 10 January 2022, the defendant suspended the applicant without pay. The defendant did not impose any disciplinary action on the applicant, and he kept his job.

9. The applicant challenged that decision by an extraordinary appeal to the President of the Italian Republic.

10. The Consiglio di Stato (Council of State), the referring court, in its advisory capacity, was called upon to provide a binding opinion to the Ministry of Defence, which has the jurisdiction to investigate the appeal and must submit a final decision to the President of the Italian Republic.

11. Before the referring court, the applicant argued that the vaccination requirement was discriminatory and contrary to Article 2(2) of Directive 2000/78 based on the six grounds.

[4] Decreto-legge 1 aprile 2021, n. 44 – Misure urgenti per il contenimento dell'epidemia da COVID-19, in materia di vaccinazioni anti SARS-CoV-2, di giustizia e di concorsi pubblici (Decree-Law No 44 of 1 April 2021 on urgent measures to combat the COVID-19 pandemic, vaccination against SARS-CoV-2, justice and public aid), converted by Legge 28 maggio 2021, n. 76 (Law No 76 of 28 May 2021), as amended by decreto legge 26 novembre 2021, n. 172 – Misure urgenti per il contenimento dell'epidemia da COVID-19 e per lo svolgimento in sicurezza delle attività economiche e sociali (Decree-Law No 172 of 26 November 2021 on urgent measures for combating the COVID-19 pandemic and for the safety of economic and social activities), converted with amendments by Legge 21 gennaio 2022, n. 3 (Law No 3 of 21 January 2022).

[5] The COVID-19 vaccination requirement was initially introduced for healthcare professionals and public health workers, then for workers employed in residential social assistance and healthcare facilities, and lastly, among other categories, for personnel in the defence, security and public emergency sectors.

12. First, the applicant claimed that he suffered direct discrimination when compared to civilian personnel with similar duties working for the defendant, since they were not subject to the vaccination requirement. He also asserted that the vaccination requirement was imposed on him at his own risk, contrary to Article 206*bis* of the Legislative Decree No 66/10,[6] according to which the administration, assuming responsibility for vaccinating personnel, may declare that specific vaccines must be administered to military personnel so that they may be deployed in particular operating conditions.

13. Second, he submitted that he suffered indirect discrimination when compared to the vaccinated military personnel, solely based on his objection to receiving the vaccine predicated on his personal view that the vaccines lacked valid scientific grounding. Although the applicant declared himself willing to be tested against SARS-CoV-2 every 48 hours, he was denied that possibility, which was, according to him, contrary to Article 2(2)(b) of Directive 2000/78.

14. Third, because he was suspended from work without pay, the applicant was allegedly prevented from supporting himself and his family, including two minor daughters, for the duration of that suspension. The applicant maintains that that constituted an infringement of Articles 1 and 24 of the Charter of Fundamental Rights of the European Union ('the Charter').

15. Fourth, the applicant originally argued that he was unable to exercise his right to paid annual leave. During the proceedings before the referring court, the applicant ceased to rely on that ground of appeal, given that the obligatory vaccination requirement was abolished as of 25 March 2022.[7]

16. Fifth, the applicant claimed that he was denied effective legal protection, in breach of Article 19 TEU.

17. Sixth, the applicant requested compensation for the discrimination he suffered by means of an exemplary and dissuasive sanction within the meaning of Article 17 of Directive 2000/78.

18. Moreover, the applicant requested that the referring court submit six questions to the Court of Justice for a preliminary ruling, in relation to each ground of appeal.

19. The defendant submitted that the referring court should dismiss the appeal. In its view, the contested vaccination requirement was lawfully established as a specific legal requirement by Article 4*ter* of Decree-Law No 44/21.

20. The referring court rejected the fifth and sixth grounds of appeal and the corresponding questions for a preliminary ruling proposed by the applicant, and noted the applicant's waiver of the fourth ground of appeal. Nonetheless, that court decided to stay the proceedings and refer the remaining questions proposed by the applicant for a preliminary ruling.

21. As a preliminary point, the referring court noted that the questions raised by the applicant are unfounded on the basis that the lawfulness of the national measure requiring healthcare personnel to be vaccinated against COVID-19, also introduced by Decree-Law No 44/21, has already been

[6] Decreto legislativo 15 marzo 2010, n. 66 – Codice dell'ordinamento militare (Legislative Decree No 66 of 15 March 2010 on the Military Law Code).

[7] Article 4*ter*(1)(b) of Decree-Law No 44/21 was repealed by Article 8 of decreto-legge 24 marzo 2022, n. 24 – Disposizioni urgenti per il superamento delle misure di contrasto alla diffusione dell'epidemia da COVID-19, in conseguenza della cessazione dello stato di emergenza (Decree-Law No 24 of 24 March 2022 laying down urgent measures superseding the existing measures to combat the spread of the COVID-19 pandemic, following the end of the state of emergency; 'Decree-Law No 24/22').

examined and confirmed by the Corte costituzionale (Constitutional Court, Italy) in judgments No 14/2023, No 15/2023 and No 185/2023. According to the referring court, the principles expressed in those judgments, which are similar to those expressed in the provisions of EU law invoked by the applicant in his appeal, also apply to the vaccination requirement for military personnel at issue in the main proceedings.

22. Concerning the first ground of appeal, the referring court noted that Directive 2000/78 lays down rules for equal treatment at the workplace, which apply in normal circumstances. However, as stated in Article 2(5) of that directive, those rules remain without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security and for the protection of health. It further stated that the vaccination requirement was established due to the exceptional circumstances and that COVID-19 vaccines had been certified as safe. The legislative decision to introduce the vaccination requirement for military personnel – who, unlike civilian personnel, are called upon in cases of emergency to protect public safety and have contact with the community as members of the armed forces – was a reasonable and appropriate measure at the time in order to safeguard the health of both military personnel and the general public. Thus, according to the referring court, the position of military personnel and civilian personnel is not comparable and, therefore, there is no ground for the discrimination alleged by the applicant.

23. Concerning the second ground of appeal, the referring court noted that the vaccination requirement was not disproportionate since no other suitable measure existed at the time. The testing method, as an alternative requirement to vaccination, was used in more general settings for access to public places by individuals not belonging to the categories subject to the vaccination requirement. However, the cost of those tests, which had to be repeated every two to three days, would not be sustainable and would impose an intolerable burden on the healthcare system. Moreover, as the test results were not available immediately after the test, they were already obsolete because the person tested could have become infected in the time between getting tested and receiving the results.

24. Concerning the third ground of appeal, the referring court noted that the suspension of non-vaccinated employees, which lasted slightly over two months, was consistent with the employer's duty of care and that the right to work enshrined in the Constitution does not necessarily mean having the right to work if that poses a risk to public health and the worker chooses not to comply with the provisions on workplace safety, including the COVID-19 vaccination requirement. Thus, although contrary to the personal views of the applicant, the vaccination requirement was a reasonable and proportionate measure in the interests of public health, and the applicant's deliberate breach of that requirement therefore justifies his suspension from work without pay.

25. In those circumstances, the Consiglio di Stato (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Given that the administration has not deemed it necessary to introduce a specific vaccination requirement for the military pursuant to Article 206*bis* of decreto legislativo n. 66/10 (Legislative Decree No 66/10), assuming responsibility for the effects of the vaccine, does Directive [2000/78] preclude the transposition of decreto-legge n. 172/21 (Decree-Law No 172/21), in so far as it amends decreto-legge n. 44/21 (Decree-Law No 44/21) by adding [Article 4*ter*(1)(b)], which introduces compulsory vaccination for a member of the military contrary to his personal views, since it requires him to voluntarily submit to such medical

treatment, still in the trial phase, at his own risk, as an additional prerequisite for being able to work in the same working environment as civilian workers who are not required to undergo vaccination, despite the fact that they perform duties that, from the point of view of contagiousness and the potential for person-to-person transmission, are similar to those performed by the military?

(2) Given that, according to Italian legislation on access to the workplace, even in crowded settings such as public transport, stadiums and restaurants, for workers not referred to in Decree-Law No 172/21, a vaccination certificate or negative COVID test carried out within the previous 48 hours [is] considered equivalent, does Article 2(2)(b) of Directive [2000/78] preclude a measure such as Decree-Law No 172/21 in so far as it amends Decree-Law No 44/21 by adding [Article] 4*ter*(1)(b), which introduces compulsory vaccination for a member of the military contrary to his personal views, as a prerequisite for working in the same working environment as military personnel who, in line with their personal views, have chosen to be vaccinated even in the absence of a requirement to do so, despite the fact that the member of military staff who is not vaccinated is willing, and in any event is already required, to produce proof of a negative COVID test at intervals of less than 48 hours?

(3) Does the measure referred to in Decree-Law No 172/21, supplementing Decree-Law No 44/21, in which Article 4*ter*(3) renders employees who have been suspended for failing to comply with the vaccination requirement unable to provide for their family and offer the protection and care necessary for the well-being of minor daughters, infringe Articles 1 and 24 of the [Charter] pursuant to Article 24 of the Charter?'

26. The applicant in the main proceedings, the French and Italian Governments and the European Commission submitted written observations to the Court.

27. A hearing was held on 10 July 2025, at which the applicant in the main proceedings, the Italian Government and the Commission presented oral argument.

III. Analysis

28. The first two questions of the referring court should be treated together. By those questions, that court in essence asks whether the Italian legislation imposing a COVID-19 vaccination requirement on military personnel is contrary to Directive 2000/78, on the ground that it introduces discriminatory treatment prohibited by that directive.

29. In order to answer those questions, it is first necessary to assess whether Directive 2000/78 is applicable to the legislation such as the one described by the referring court (A).

30. If that directive is applicable, it is necessary to assess whether the national legislation at issue represents direct or indirect discrimination and, in the latter case, whether such discrimination can be justified (B).

A. Proposed answer: Directive 2000/78 is not applicable to the circumstances of the present case

1. Unequal treatment based on professional categories

31. Directive 2000/78 prohibits discrimination in the context of employment and occupation on the basis of the following grounds: religion or belief, disability, age and sexual orientation. [8]

32. It is established case-law of the Court that the grounds listed in Article 1 of Directive 2000/78 are exhaustive and that that directive is not concerned with discrimination on the basis of professional category or place of work. [9]

33. It is apparent from the national legal framework that the provision imposing the mandatory COVID-19 vaccination initially concerned healthcare professionals and public health workers, was then extended to include workers employed in residential social assistance and healthcare facilities, and lastly, personnel in the defence, security and public emergency sectors, including military personnel working for the Ministry of Defence.

34. However, civilian personnel working for the Ministry of Defence did not fall within the scope of that obligation and were not obliged to receive a COVID-19 vaccine to continue working.

35. Thus, the vaccination requirement established under Article 4*ter* of Decree-Law No 44/21 established a difference in treatment between the military and civilian personnel working for the Ministry of Defence. That difference in treatment is based on the functions occupied by those two groups of persons respectively. However, such a difference is not one of the prohibited grounds of discrimination within the meaning of Directive 2000/78.

36. Therefore, as submitted by the French Government and the Commission, a difference in treatment between military and civilian personnel with regard to the COVID-19 vaccination requirement does not trigger the application of Directive 2000/78.

37. Consequently, the applicant cannot rely on that directive to claim that the Italian legislation at issue was prohibited on the ground that it establishes a difference in treatment between military and civilian personnel working at the Ministry of Defence.

2. Belief as the prohibited ground under Directive 2000/78

38. One of the grounds of discrimination prohibited by Directive 2000/78 is 'religion or belief'. Thus, that directive may be applicable if the legislation at issue did in fact establish a direct or indirect difference in treatment on the grounds of the applicant's personal belief.

39. The question that arises is, therefore, whether the personal views of the applicant, for which he chose not to be vaccinated, can be classified as a 'belief' within the meaning of Article 1 of Directive 2000/78.

[8] Article 1 of Directive 2000/78.

[9] See judgment of 17 October 2024, *Zetschek* (C-349/23, EU:C:2024:889, paragraph 25 and the case-law cited).

40. Directive 2000/78 does not provide a definition for what constitutes a belief for the purposes of applying that directive. [10]

41. Nevertheless, the Court's case-law provides some guidance to understanding the meaning of that concept.

42. The Court has noted that, because Article 1 of Directive 2000/78 refers to the concepts of 'religion' and 'belief' together, for the purposes of the application of that directive, those two terms must be analysed as *two facets of the same single ground of discrimination*, covering both religious belief and philosophical or spiritual belief. [11]

43. Furthermore, the Court has held that discrimination on the ground of 'religion or belief' must be distinguished from discrimination based on the ground of a 'political or any other opinion'. [12]

44. In that sense, the Court explained that Directive 2000/78 'does not cover political or trade union belief; nor does it cover artistic, sporting, aesthetic *or other beliefs or preferences*'. [13]

45. In addition, the Court has recalled that the right to freedom of conscience and religion, as enshrined in Article 10(1) of the Charter, forms an integral part of the relevant context in interpreting Directive 2000/78. [14] That Charter right corresponds to the right enshrined in Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which protects the 'freedom of thought, conscience and religion'. Therefore, the interpretation of the concept of 'belief' under the ECHR is also relevant for understanding that concept within the context of EU law.

46. In *Vavřička*, the European Court of Human Rights (ECtHR) found that a mandatory vaccination requirement does not infringe the ECHR, because personal opposition to vaccination does not fall within the concept of belief protected under Article 9 thereof. In particular, that court considered that such personal opposition is to be regarded as a critical opinion and not as a belief which enjoys protection under the ECHR. [15] In that case, the ECtHR found that it had no basis for classifying his opposition to compulsory vaccination as a philosophical belief, since Mr Vavřička told the national court that his objection to vaccination was based on his view that it was

[10] A definition of the concept of 'belief' is equally not provided in the legislation of the Member States or at the international level. However, some Member States provide explanatory documentation accompanying legislation, offering guidance for defining the concept of belief. For example, in the Netherlands, the term 'philosophy of life' (that is to say, broad philosophies, such as humanism, which, however, does not extend to every view of society) was adopted to explain what the concept of 'belief' could encompass. In Italy, on various occasions, the national courts have considered that 'belief' as a protected ground covers, for instance, trade union affiliation and the personal belief that one should refuse to carry arms, in the case of conscientious objectors. See, in that respect, European Commission – Directorate-General for Justice and Consumers, Chopin, I. and Germaine, C., *A Comparative Analysis of Non-discrimination Law in Europe 2024 – The 27 EU Member States compared – Prepared by Isabelle Chopin and Catharina Germaine for the European network of legal experts in gender equality and non-discrimination*, Publications Office of the European Union, 2024, pp. 18 and 19.

[11] See judgments of 15 July 2021, *WABE and MH Müller Handel* (C-804/18 and C-341/19, EU:C:2021:594, paragraph 47); of 13 October 2022, *SCRL (Religious clothing)* (C-344/20, '*SCRL (Religious clothing)*', EU:C:2022:774, paragraph 26); and of 28 November 2023, *Commune d'Ans* (C-148/22, EU:C:2023:924, paragraph 22).

[12] See *SCRL (Religious clothing)*, paragraph 27 and the case-law cited.

[13] See *SCRL (Religious clothing)*, paragraph 28 (emphasis added).

[14] See *SCRL (Religious clothing)*, paragraph 35 and the case-law cited.

[15] See ECtHR, 8 April 2021, *Vavřička and Others v. the Czech Republic*, CE:ECHR:2021:0408JUD004762113, '*Vavřička*', §§ 335 and 337. In that case, six applicants challenged the Czech Republic's statutory duty to vaccinate children against several infectious diseases. One applicant had been fined for failing to vaccinate his children, whereas others were parents whose children were denied preschool admission due to non-compliance with the vaccination requirement. All the applicants invoked Article 8 ECHR and three of them invoked Article 9 ECHR. The ECtHR dismissed the claims based on Article 9 ECHR as inadmissible.

primarily harmful to his own health and the health of his children. That court thus considered that a 'critical opinion on vaccination is not such as to constitute a conviction or belief *of sufficient cogency, seriousness, cohesion and importance* to attract the guarantees of Article 9'. [16]

47. It follows from the foregoing that a personal opinion opposing vaccination – such as one based on health-related concerns – cannot be regarded as a philosophical belief and, in principle, does not enjoy the protection afforded by Directive 2000/78.

48. To conclude, Directive 2000/78 does not, in principle, prohibit national legislation which introduces compulsory vaccination for a member of the military contrary to his or her personal views.

3. Application to the circumstances of the present case

49. It follows that the applicant cannot hold his personal views on the vaccination requirement for military personnel against his employer, which was implementing domestic legislation introducing compulsory vaccination for military personnel.

50. The applicant argued before the Court that the vaccination requirement imposed on him by virtue of Article 4*ter* of Decree-Law No 44/21 obliged him to sign an informed consent form which expressly stated that the long-term side effects of COVID-19 vaccines, including the risk of death, remain unknown. In the applicant's view, his uncertainty as to the risks associated with the vaccine was later supported by the fact that a number of individuals who had received the vaccine subsequently fell ill or even died from COVID-19. Accordingly, although the vaccines have been officially described as safe, the applicant concluded that the COVID-19 vaccination programme was primarily driven by the commercial interests of pharmaceutical companies and therefore endangered military personnel, who were obliged to be vaccinated, irrespective of the alleged efficacy and safety of the vaccines. He further maintained that he did not wish to jeopardise his own life by exposing himself to possible side effects in order to contribute to the profit-making activities of pharmaceutical companies.

51. The applicant's opposition to the vaccination requirement was further accentuated by the fact that the government, which imposed that requirement under Article 4*ter* of Decree-Law No 44/21, did not assume any responsibility for the possible adverse consequences arising from the vaccine He further argued that he would not object to the vaccination requirement if it were imposed pursuant to Article 206*bis* of Legislative Decree No 66/10.

52. As is apparent from both the order for reference and the arguments raised by the applicant at the hearing, I consider that the applicant did not produce any evidence to prove that his objection to the COVID-19 vaccination requirement stems from a philosophical belief. Rather, the reasoning for his opposition to that requirement appears to be twofold. First, his opposition is grounded in his critical health-related view that the vaccines were unsafe because, among other reasons, their distribution was predominantly driven by the commercial interests of the

[16] See *Vavřička*, § 335 (emphasis added). That criterion – 'a conviction or belief of sufficient cogency, seriousness, cohesion and importance' – was established in *Campbell and Cosans v. the United Kingdom*. Therein, the ECtHR provided that 'in its ordinary meaning the word "convictions", taken on its own, is not synonymous with the words "opinions" and "ideas", such as are utilised in Article 10 [ECHR], which guarantees freedom of expression; it is more akin to the term "beliefs" (in the French text: "convictions") appearing in Article 9 [ECHR] – which guarantees freedom of thought, conscience and religion – and denotes views that attain a certain level of cogency, seriousness, cohesion and importance.' See ECtHR, 25 February 1982, (CE:ECHR:1982:0225JUD000751176, § 36).

pharmaceutical industry. Second, the applicant was critical of the government's reluctance to accept any responsibility for the potential side effects caused by the vaccine, which is why it did not impose vaccinations on military personnel as an obligation.

53. As the Commission observed at the hearing, the opinion of the applicant is open to change in light of new scientific data, and means that that opinion does not constitute a comprehensive global vision of life grounded in philosophical or spiritual considerations. His opinion appears to be limited to the COVID-19 vaccine itself and is premised on the alleged health risks of that vaccine, which, according to the applicant, were insufficiently assessed in light of the medical scientific evidence available when the COVID-19 vaccination requirement was imposed. His opposition to the vaccine is also an expression of his disagreement with government policy relating to the vaccination requirement.

54. In that sense, the applicant does not appear to be relying on a genuine philosophical belief.

55. All of the above leads me to conclude that the applicant's critical opinion on the vaccination requirement does not constitute a belief protected by Article 1 of Directive 2000/78.

56. Consequently, the applicant cannot rely on Directive 2000/78 in order to challenge the application of Decree-Law No 44/21 by his employer.

57. To sum up, I propose that, in answer to the first and the second questions referred, the Court answer that Directive 2000/78 is not appliable in the circumstances of the case at hand, as the alleged discrimination does not fall within any of the grounds of discrimination prohibited by that directive.

58. Directive 2000/78 prohibits, inter alia, discrimination on the ground of 'belief'. However, personal opinions, based on health concerns or disagreements with a government vaccination policy, do not constitute a 'belief' within the meaning of Directive 2000/78.

B. In the alternative

59. Should the Court, however, find that a personal opinion related to vaccination, based on health concerns or disagreement with a public vaccination policy, is a 'belief' within the meaning of Directive 2000/78, it is necessary to assess whether the treatment of the applicant can be characterised as direct or indirect discrimination, and if so, whether such differential treatment can be justified.

60. Direct discrimination, which is prohibited under Article 2(2)(a) of Directive 2000/78, exists when the difference in treatment is based directly on one of the prohibited grounds laid down in that directive. The Italian legislation at issue is not based on the personal opinion of military personnel in relation to the COVID-19 vaccination. Therefore, that legislation cannot be understood as being directly discriminatory.

61. Indirect discrimination on the basis of belief, which is prohibited under Article 2(2)(b) of Directive 2000/78, would exist if an apparently neutral rule or practice places persons with a particular belief in a disadvantageous position. [17]

[17] See *SCRL (Religious clothing)*, paragraph 37 and the case-law cited.

62. Should the personal opinion of the applicant opposing the vaccination requirement be regarded as a 'belief' within the meaning of Directive 2000/78, the rule introduced by the Italian legislation, which provides for the suspension without pay of military personnel who are not vaccinated, could be regarded as indirectly placing those members of the military in a disadvantaged position compared to other military personnel who have been voluntarily vaccinated.

63. However, indirect discrimination can be justified by a legitimate aim, provided that the means of achieving that aim are appropriate and necessary. [18]

64. As regards the condition relating to the existence of a legitimate aim, the Italian Government explained that the COVID-19 vaccination requirement at issue was imposed as an organisational measure concerning the activities and duties of military personnel during the COVID-19 pandemic. Such a measure pursued a twofold aim: on the one hand, it aimed to protect members of the military from contracting SARS-CoV-2 while carrying out their duties during the COVID-19 pandemic; on the other hand, it aimed to protect public health, while ensuring that those duties were performed properly.

65. In *Nordic Info*, the Court classified the COVID-19 pandemic as a serious threat to public health likely to cause death among various categories of the population and to overburden, or even overwhelm, the national health system. [19]

66. Furthermore, the protection of public health is a manifestly legitimate objective, as affirmed by the Court's settled case-law. Thus, in *Memoria and Dall'Antonia*, the Court provided that 'the protection of public health is one of the overriding reasons in the public interest recognised by EU law and that Member States have a wide margin of discretion in this area'. [20]

67. In a similar situation, the ECtHR ruled, in *Pasquinelli and Others v. San Marino*, that a vaccination requirement imposed by a State on certain healthcare professionals during the COVID-19 pandemic pursued, in the public-health emergency that posed a serious risk to the population as a whole, a legitimate aim of protecting public health and the rights and freedoms of others. Moreover, that court provided that the temporary nature, limited intensity and exceptional context must be taken into account when deciding on the proportionality of the restrictive measures imposed. [21]

[18] See Article 2(2)(b)(i) of Directive 2000/78.

[19] See judgment of 5 December 2023, *Nordic Info* (C-128/22, '*Nordic Info*', EU:C:2023:951, paragraph 120).

[20] See, in that respect, judgment of 14 November 2018, *Memoria and Dall'Antonia* (C-342/17, '*Memoria and Dall'Antonia*', EU:C:2018:906, paragraph 54 and the case-law cited).

[21] See ECtHR, 29 August 2024, *Pasquinelli and Others v. San Marino*, CE:ECHR:2024:0829JUD002462222, §§ 94 to 96 and 128. In 2021, San Marino enacted a law stating that all social and healthcare workers who have direct patient contact should be vaccinated against COVID-19. While vaccination was not compulsory, the law set out a hierarchy of alternative measures for anyone who refused, including reallocation of duties or reassignment to vacant public administration posts that limit patient contact, and use of accrued leave or mandatory antigen testing every 48 hours. Only in situations where those options were impracticable, a temporary suspension from service with a monthly salary was envisaged, conditioned on the performance of socially useful activities. The San Marino legislature justified the scheme on the basis that those workers face a heightened risk of infection and that vaccination is essential to safeguard both vulnerable patients and the continuity of the social healthcare system. A group of workers who refused vaccination were subjected to the above measures and challenged the scheme before the ECtHR, alleging that it infringed Article 8 ECHR and constituted unlawful discrimination under Article 14 thereof, together with Article 1 of Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms. The applicants argued that the differential treatment of vaccinated versus unvaccinated staff lacks sufficient justification under the ECHR.

68. The applicant explained that he was willing to provide proof of a negative COVID-19 test every 48 hours, but that was rejected and he was suspended from work because of his refusal to be vaccinated. Furthermore, the applicant contends that he, even though employed as a member of the armed forces, had an office job, similar to civilian personnel, who did not have to be vaccinated to continue working for the same employer.

69. By those arguments, the applicant is challenging the appropriateness and necessity of the Italian legislation.

70. The Italian Government, while respecting the freedom of opinion of military personnel, imposed a COVID-19 vaccination requirement and gave military personnel a choice to receive or refuse the vaccine. If they refused, regardless of their professional role and the duties they perform, the consequence was the temporary suspension of their employment relationship with the defendant.

71. Despite the applicant's argument that he performed office-related duties as a member of the military, with limited contact with others, such a vaccination requirement could not have been imposed on a case-by-case basis. Instead, it applied equally to all military personnel working for the defendant, whether they believed in the effectiveness and safety of those vaccines or not.

72. As regards the condition relating to the existence of appropriate and necessary means, I agree with the view of the Italian Government, which explained that there were no other appropriate and less restrictive measures in relation to the objective being pursued by that national rule. Even if testing for SARS-CoV-2 might have been considered less restrictive, it would not offer the same level of prevention as vaccination. As such, that solution would have been neither appropriate nor efficient in preventing military personnel from contracting and spreading COVID-19, and it would have risked undermining that government's legitimate public health efforts to curb the impact of the pandemic. Moreover, organising frequent COVID-19 tests at 48-hour intervals for military personnel would require unreasonable efforts and costs, which would be difficult to bear for a healthcare system already concerned with managing the pandemic.

73. Instead, the COVID-19 vaccination requirement was intended to lower the risk of military personnel becoming ill and to reduce the probability that they would subsequently transmit SARS-CoV-2 to others. Moreover, at that time, the greater the proportion of vaccinated people, the less the virus could spread, thereby contributing to the development of a herd immunity.

74. In the light of the foregoing, I am of the view that the national rule satisfies each criterion set out in Article 2(2)(b)(i) of Directive 2000/78, as it pursued the legitimate aim of protecting public health by preventing the spread of COVID-19 through means that were both necessary and proportionate.

75. Consequently, even if the Court finds that Decree-Law No 44/21 may be characterised as indirect discrimination on the basis of a 'belief' within the meaning of Directive 2000/78, I propose that the Court answer that such legislation can, nevertheless, be justified under Article 2(2)(b)(i) of that directive, as it pursued a legitimate aim, namely the protection of public health, including the health of military personnel employed by the Ministry of Defence. Moreover, at the time that the Italian legislature enacted the rule, there were no alternative measures that were both appropriate and less restrictive for achieving that objective.

The third question referred

76. By its third question, the referring court asks whether the suspension without pay of a member of military personnel who refused to receive the COVID-19 vaccine can be considered contrary to Articles 1 and 24 of the Charter.

77. As I have maintained in the present Opinion, personal views concerning a vaccination requirement, such as those expressed by the applicant, do not fall within the concept of belief protected under Article 1 of Directive 2000/78. Even if those views were to represent a belief within the meaning of that directive, the indirect discrimination that results therefrom might be justified by reason of general interest. The consequences resulting from the application of the legislation at issue cannot, therefore, be regarded as violating human dignity or the rights of the child, protected under Articles 1 and 24 of the Charter.

IV. Conclusion

78. In the light of the foregoing considerations, I propose that the Court answer the questions referred for a preliminary ruling by the Consiglio di Stato (Council of State, Italy) as follows:

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

must be interpreted as not precluding a vaccination requirement imposed by national law on a member of the military contrary to his or her personal views.

That directive prohibits, inter alia, discrimination on the ground of 'belief'. However, personal opinions based on health concerns or disagreements with the government's vaccination policy do not constitute a 'belief' within the meaning of Directive 2000/78.