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]