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Provisional text

JUDGMENT OF THE COURT (Second Chamber)

13 October 2022 (*)

(Reference for a preliminary ruling – Social policy – Directive 2000/78/EC – Establishment of a general framework for equal treatment in employment and occupation – Prohibition of discrimination on the ground of religion or belief – Internal rule of a private undertaking prohibiting any manifestation, in the workplace, of religious, philosophical or political belief – Prohibition including words, clothing, or any other means of manifesting those beliefs – Wearing of an item of religious clothing)

In Case C-344/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal du travail francophone de Bruxelles (Belgium), made by decision of 17 July 2020, received at the Court on 27 July 2020, in the proceedings

L.F.

v

SCRL,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, M.L. Arastey Sahún, F. Biltgen (Rapporteur), N. Wahl and J. Passer, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– L.F., by V. Van der Plancke, avocate,

- SCRL, by A. Kamp, avocate, and T. Perdieu, advocaat,
- the Belgian Government, by C. Pochet, L. Van den Broeck and M. Van Regemorter, acting as Agents,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by D. Martin and M. Van Hoof, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 April 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1, Article 2(2)(a) and Article 8(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 L.F., the applicant in the main proceedings, and SCRL, the defendant in the main proceedings, a cooperative limited liability company whose main activity consists of the letting and operating of social housing, concerning the failure by that company to take into consideration the unsolicited application for an internship submitted by the applicant in the main proceedings on account of the latter's refusal to comply with the prohibition, imposed by SCRL on its employees, on manifesting, in particular through their clothing, their religious, philosophical or political beliefs.

Legal context

Directive 2000/78

3 Recitals 1, 4, 11 and 12 of Directive 2000/78 state:

‘(1) In accordance with Article 6 [TEU], 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[, signed in Rome on 4 November 1950,] and as they result from the constitutional traditions common to the Member States, as general principles of [EU] 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.

...

(11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the [FEU] Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.

(12) To this end, any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the [European Union]. ...'

4 Article 1 of that directive 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 that 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 that directive provides:

'Within the limits of the areas of competence conferred on the [European Union], 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 Under Article 8(1) of Directive 2000/78:

‘Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.’

Belgian law

8 The loi du 10 mai 2007 tendant à lutter contre certaines formes de discrimination (Law of 10 May 2007 to combat certain forms of discrimination) (*Moniteur belge* of 30 May 2007, p. 29016), in the version applicable to the dispute in the main proceedings (‘the General Anti-discrimination Law’), is intended to transpose Directive 2000/78 into Belgian law.

9 Article 3 of that law provides:

‘The purpose of this Law is to create, in the fields referred to in Article 5, a general framework for combating discrimination on the grounds of age, sexual orientation, civil status, birth, financial situation, religious or philosophical belief, political belief, language, current or future state of health, disability, physical or genetic characteristics or social origin.’

10 Article 4 of that law, which concerns definitions, states:

‘For the purposes of this Law, the following definitions shall apply:

...

4° protected criteria: age, sexual orientation, civil status, birth, financial situation, religious or philosophical belief, political belief, language, current or future state of health, disability, physical or genetic characteristics, social origin;

...

6° direct distinction: a situation which arises where, on the basis of one of the protected criteria, a person is treated less favourably than another person is, has been, or would be treated in a comparable situation;

7° direct discrimination: a direct distinction, based on one of the protected criteria, which cannot be justified on the basis of the provisions of Title II;

...’

11 Article 5 § 1 of that law provides:

‘With the exception of matters falling within the competence of the Communities or the Regions, this Law shall apply to all persons, as regards both the public and private sectors, including public bodies ...’

12 Article 7 of the General Anti-discrimination Law states:

‘Any direct distinction based on one of the protected criteria shall constitute direct discrimination, unless that direct distinction is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.’

13 Article 8 § 1 of that law provides:

‘By way of derogation from Article 7 and without prejudice to the other provisions of this Title, a direct distinction based on age, sexual orientation, religious or philosophical belief, or disability, in the fields referred to in points 4°, 5° and 7° of Article 5 § 1, can be justified only by genuine and determining occupational requirements.’

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

14 On 14 March 2018, as part of her vocational studies in office automation, the applicant in the main proceedings, who is of the Muslim faith and wears the Islamic headscarf, made an unsolicited application to SCRL with a view to completing a six-week unpaid internship there.

15 On 22 March 2018, the applicant in the main proceedings attended an interview with the managers of SCRL, at the end of which they stated that they had a positive opinion of her application and asked her if she could agree to comply with the neutrality rule promoted within SCRL.

16 That neutrality rule is laid down in Article 46 of the terms of employment of SCRL, which provides that ‘workers undertake to respect the company’s strict policy of neutrality’ and that those workers ‘will therefore make sure not to manifest in any way, either by word or through clothing or any other way, their religious, philosophical or political beliefs, whatever those beliefs may be’.

17 The applicant in the main proceedings informed the managers of SCRL that she would refuse to remove her headscarf and comply with that neutrality rule.

18 Given that no further action was taken on her application, the applicant in the main proceedings renewed, in April 2018, her request for an internship with SCRL, offering to wear another type of head covering. In response to that new request, SCRL informed the applicant in the main proceedings that it was unable to offer her such an internship, on the ground that no type of head covering was permitted on its premises, be it a cap, a hat, or a headscarf.

19 In May 2019, having reported a case of discrimination to the independent public body competent to combat discrimination and following exchanges of correspondence between that body and SCRL, the applicant in the main proceedings brought an action for a prohibitory injunction before the referring court. By that action, she complains that there has been a failure to conclude an internship agreement, which she believes to be directly or indirectly based on religious belief, and seeks a declaration that there has been infringement by SCRL of, inter alia, the provisions of the General Anti-discrimination Law.

20 Before the referring court, SCRL argues, relying on the judgment of 14 March 2017, *G4S Secure Solutions* (C-157/15, EU:C:2017:203), that its terms of employment do not give rise to direct discrimination, since they treat all of the undertaking’s workers identically, imposing, in a general and undifferentiated way, inter alia, a requirement that their clothing be neutral; a requirement which precludes the wearing of visible signs of their religious, philosophical or political beliefs.

21 The referring court, while aware of the existence of the judgments of 14 March 2017, *G4S Secure Solutions* (C-157/15, EU:C:2017:203), and of 14 March 2017, *Bougnaoui and ADDH* (C-188/15, EU:C:2017:204), considers that the interpretation of the concept of ‘direct discrimination’ used by the Court in the first of those judgments ‘raises serious questions’. One of the uncertainties expressed by the referring court is its uncertainty regarding the assessment of the comparability of situations, which falls within the jurisdiction of the national courts. Thus, it considers that it is necessary to draw a clear distinction between the power of interpretation conferred on the Court of Justice, on the one hand, and the application of the law to the facts of the case, which falls within the exclusive jurisdiction of the national court concerned, on the other. In the judgment of 14 March 2017, *G4S Secure Solutions* (C-157/15, EU:C:2017:203), the Court relied on the finding that the internal rule prohibiting the visible wearing, in the workplace, of political, philosophical or religious signs was applied in a general and undifferentiated way, but did not rule out, on the basis of evidence not available to it, that the application of that rule to the person concerned might be different from its application to any other worker. As the operative part of that judgment does not reproduce that important nuance, the question arises as to whether the national court retains a certain discretion or whether there is no possibility for that court to assess *in concreto* the comparability of situations when examining whether an internal rule of a private undertaking prohibiting the visible wearing of any political, philosophical or religious sign in the workplace is discriminatory.

22 The referring court also questions whether the Court of Justice, in the judgments of 14 March 2017, *G4S Secure Solutions* (C-157/15, EU:C:2017:203), and of 14 March 2017, *Bougnaoui and ADDH* (C-188/15, EU:C:2017:204), intended to create a single protected criterion encompassing religious belief, philosophical belief and political belief, such that there is no need to distinguish between those criteria. This would be tantamount to interpreting Article 1 of Directive 2000/78 as meaning that ‘religion or belief’, as referred to in that article, are two facets of a single protected criterion. If religion were to be placed on the same level as non-religious belief, this would significantly reduce the scope of the search for the reference person for the purpose of examining the comparability of situations in the context of assessing the existence of direct discrimination. This would mean that, when faced with an internal rule such as that at issue in the main proceedings, the worker who claims to have a religious belief could not be compared with a worker motivated by philosophical or political belief. Such a question gives rise to another, namely the question whether national legislation which affords separate protection to religious belief, philosophical belief and political belief, and thus is intended to strengthen the degree of that protection by labelling the specific features of each of those beliefs and by making each of them more visible, may be regarded as a national provision which is ‘more favourable to the protection of the principle of equal treatment than those laid down in [Directive 2000/78]’ for the purposes of Article 8(1) of that directive. Lastly, the referring court notes a number of factual criteria which it considers relevant for the purpose of establishing whether a difference in treatment constitutes direct discrimination.

23 In those circumstances, the tribunal du travail francophone de Bruxelles (Brussels Labour Court (French-speaking), Belgium) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 1 of [Directive 2000/78] be interpreted as meaning that religion and belief are two facets of the same protected criterion or, on the contrary, as meaning that religion and belief form different criteria[:] on the one hand, that of religion, including the associated beliefs and, on the other, that of belief, whatever that belief may be?’

(2) If Article 1 of [Directive 2000/78] is to be interpreted as meaning that religion and belief are two facets of the same protected criterion, would that prevent the national court, pursuant to Article 8 of that directive and in order to prevent a lowering of the level of protection against discrimination, from continuing to interpret a rule of national law such as [point 4 of Article 4 of the General Anti-discrimination Law], as meaning that religious, philosophical and political beliefs are separate protected criteria?

(3) Can Article 2(2)(a) of [Directive 2000/78] be interpreted as meaning that the rule contained in a company's terms of employment prohibiting workers from "[manifesting] in any way, either by word or through clothing or any other way, their religious, philosophical or political beliefs, whatever those beliefs may be" constitutes direct discrimination, if the practical application of that internal rule shows that:

(a) a female worker who intends to exercise her freedom of religion by wearing a visible sign (with connotations), in this case a headscarf, is treated less favourably than another worker who adheres to no religion, has no philosophical beliefs and no political allegiance and who, therefore, harbours no need to wear any political, philosophical or religious sign?

(b) a female worker who intends to exercise her freedom of religion by wearing a visible sign (with connotations), in this case a headscarf, is treated less favourably than another worker who [holds] any philosophical or political beliefs but whose need to display them publicly by wearing a sign (with connotations) is less, or even non-existent?

(c) a female worker who intends to exercise her freedom of religion by wearing a visible sign (with connotations), in this case a headscarf, is treated less favourably than another worker who adheres to another or the same religion, but whose need to display it publicly by wearing a sign (with connotations) is less, or even non-existent?

(d) given that beliefs are not necessarily religious, philosophical or political and that they may be of another kind (artistic, aesthetic, sporting, musical, [and so on]), a female worker who intends to exercise her freedom of religion by wearing a visible sign (with connotations), in this case a headscarf, is treated less favourably than another worker who holds beliefs other than religious, philosophical or political beliefs, and who manifests them through clothing?

(e) assuming that the negative aspect of the freedom to manifest religious beliefs also means that a person cannot be required to reveal his [or her] religious affiliation or beliefs, a female worker who intends to exercise her freedom of religion by wearing a headscarf which is not in itself an unambiguous symbol of that religion, since another woman might choose to wear it for aesthetic, cultural or even health reasons and it is not necessarily distinguishable from a simple bandana, is treated less favourably than another worker who manifests his [or her] religious, philosophical or political beliefs verbally, since for the female worker wearing the headscarf [this] implies an even more fundamental infringement of freedom of religion, on the basis of [Article 9(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms] since, unless prejudice is prevalent, the religious significance of a headscarf is not manifest and, more often than not, can only be brought to light if the person who is wearing it is required, if only implicitly, to reveal her reasons to her employer?

(f) a female worker who intends to exercise her freedom of religion by wearing a visible sign (with connotations), in this case a headscarf, is treated less favourably than another worker with the same beliefs who chooses to manifest them by wearing a beard (which is not specifically prohibited by the terms of employment, unlike manifestation through clothing)?

Consideration of the questions referred

The first question

24 By its first question, the referring court asks, in essence, whether Article 1 of Directive 2000/78 is to be interpreted as meaning that the words ‘religion or belief’ contained therein constitute a single ground of discrimination or whether, on the contrary, those words refer to separate grounds of discrimination.

25 In order to answer that question, it should be noted that Article 1 of Directive 2000/78 refers to ‘religion’ and ‘belief’ together, as does the wording of various provisions of primary EU law, namely Article 19 TFEU, according to which the EU legislature may take appropriate action to combat discrimination based on, inter alia, ‘religion or belief’, and Article 21 of the Charter of Fundamental Rights of the European Union (‘the Charter’), which refers, among the various grounds of discrimination listed therein, to ‘religion or belief’ (see, to that effect, judgment of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 47).

26 The Court has concluded from this that, for the purposes of the application of Directive 2000/78, the terms ‘religion’ and ‘belief’ must be analysed as two facets ‘of the same single ground of discrimination’ (judgment of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 47).

27 According to that case-law, as is apparent from Article 21 of the Charter, the ground of discrimination based on ‘religion or belief’ is to be distinguished from the ground based on ‘political or any other opinion’ and therefore covers both religious belief and philosophical or spiritual belief (judgment of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 47).

28 As regards the expression ‘whatever those beliefs may be’ used in relation to the beliefs referred to in the terms of employment at issue in the main proceedings, it is sufficient to point out that the protection against discrimination guaranteed in Directive 2000/78 covers only the grounds which are exhaustively listed in Article 1 thereof, so that that directive does not cover political or trade union belief; nor does it cover artistic, sporting, aesthetic or other beliefs or preferences. The protection of those beliefs by the Member States is not, therefore, governed by the provisions of that directive.

29 In the light of those considerations, the answer to the first question is that Article 1 of Directive 2000/78 must be interpreted as meaning that the words ‘religion or belief’ contained therein constitute a single ground of discrimination, covering both religious belief and philosophical or spiritual belief.

The third question

30 By its third question, which it is appropriate to examine second, the referring court asks, in essence, whether Article 2(2)(a) of Directive 2000/78 is to be interpreted as meaning that a provision of an undertaking’s terms of employment which prohibits workers from manifesting, through words, through clothing, or in any other way, their religious, philosophical or political beliefs, whatever those beliefs may be, constitutes, with regard to workers who intend to exercise their freedom of religion and conscience through the visible wearing of a sign or an item of clothing

with religious connotations, direct discrimination ‘on the [ground] of religion or belief’ for the purposes of that directive.

31 In order to answer that question, it should be borne in mind that the Court has, admittedly, held that an internal rule of an undertaking which prohibits only the wearing of conspicuous, large-scale signs of, inter alia, religious or philosophical belief may constitute direct discrimination within the meaning of Article 2(2)(a) of Directive 2000/78 where that criterion is inextricably linked to one or more specific religions or beliefs (see, to that effect, judgment of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraphs 72 and 73).

32 However, in the present case the question put to the Court concerns a rule prohibiting not the wearing of conspicuous, large-scale signs, but rather the wearing, in the workplace, of any visible sign of political, philosophical or religious belief.

33 The Court has also repeatedly held that Article 2(2)(a) of that directive must be interpreted as meaning that an internal rule of a private undertaking prohibiting the wearing of any visible sign of political, philosophical or religious belief in the workplace does not constitute direct discrimination ‘on the [ground] of religion or belief’ for the purposes of that provision provided that it covers any manifestation of such beliefs without distinction and treats 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 (judgments of 14 March 2017, *G4S Secure Solutions*, C-157/15, EU:C:2017:203, paragraphs 30 and 32, and of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 52).

34 In that regard, the Court has explained that, since every person may have a religion or religious, philosophical or spiritual belief, such a rule, provided that it is applied in a general and undifferentiated way, does not establish a difference in treatment based on a criterion that is inextricably linked to religion or to those beliefs (see, to that effect, judgment of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 52).

35 In order to reach that conclusion, the Court took care to recall that the right to freedom of conscience and religion, which is enshrined in Article 10(1) of the Charter and forms an integral part of the relevant context in interpreting Directive 2000/78, corresponds to the right guaranteed in Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and, under Article 52(3) of the Charter, has the same meaning and scope (judgment of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 48). According to the case-law of the European Court of Human Rights, the right to freedom of thought, conscience and religion enshrined in Article 9 of that convention ‘is one of the foundations of a “democratic society” within the meaning of the convention’ and is, ‘in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life’ as well as ‘a precious asset for atheists, agnostics, sceptics and the unconcerned’, contributing to ‘the pluralism indissociable from a democratic society, which has been dearly won over the centuries’ (ECtHR, 15 February 2001, *Dahlab v. Switzerland*, CE:ECHR:2001:0215DEC004239398).

36 In that regard, it should be added that it is apparent from the documents before the Court that SCRL is not alleged to have failed to apply the terms of employment at issue in the main proceedings in a general and undifferentiated way; nor is it alleged that the applicant in the main proceedings has been treated differently from any other worker manifesting his or her religion or religious or philosophical belief through the visible wearing of signs or clothing or in any other way.

37 It is also apparent from the settled case-law of the Court that an internal rule such as that at issue in the main proceedings may constitute a difference in 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 (judgments of 14 March 2017, *G4S Secure Solutions*, C-157/15, EU:C:2017:203, paragraph 34, and of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 59).

38 According to Article 2(2)(b)(i) of Directive 2000/78, such a difference in treatment would nonetheless not constitute indirect discrimination, within the meaning of Article 2(2)(b) of that directive, if it were objectively justified by a legitimate aim and the means of achieving that aim were appropriate and necessary.

39 As regards the condition relating to the existence of a legitimate aim, an employer's desire to display, in relations with both public- and private-sector customers, a policy of political, philosophical or religious neutrality may be regarded as legitimate. 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, in particular 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 (judgment of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 63).

40 However, the Court has also specified that the mere desire of an employer to pursue a policy of neutrality – while in itself a legitimate aim – is not sufficient, as such, to justify objectively a difference in treatment indirectly based on religion or belief, since such a justification can be regarded as being objective only where there is a genuine need on the part of that employer, which it is for that employer to demonstrate (judgment of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 64).

41 That interpretation is inspired by the concern to encourage, as a matter of principle, tolerance and respect, as well as acceptance of a greater degree of diversity, and to avoid abuse of a policy of neutrality established within an undertaking to the detriment of workers who observe religious precepts requiring the wearing of certain items of clothing.

42 Having regard to the foregoing, the answer to the third question is that Article 2(2)(a) of Directive 2000/78 must be interpreted as meaning that a provision of an undertaking's terms of employment which prohibits workers from manifesting, through words, through clothing, or in any other way, their religious or philosophical beliefs, whatever those beliefs may be, does not constitute, with regard to workers who intend to exercise their freedom of religion and conscience through the visible wearing of a sign or an item of clothing with religious connotations, direct discrimination 'on the [ground] of religion or belief' for the purposes of that directive, provided that that provision is applied in a general and undifferentiated way.

The second question

43 By its second question, the referring court asks, in essence, whether Article 1 of Directive 2000/78 is to be interpreted as precluding provisions of national legislation, which are intended to ensure the transposition of that directive into national law and which are construed as meaning that religious, philosophical and political beliefs constitute three separate grounds of discrimination, from being taken into account as 'provisions which are more favourable to the protection of the

principle of equal treatment than those laid down in [that directive]' for the purposes of Article 8(1) thereof.

44 In order to answer that question, it should be borne in mind that, as is apparent from paragraph 28 of the present judgment, the protection against discrimination guaranteed in Directive 2000/78 covers only the grounds exhaustively listed in Article 1 of that directive, so that that directive does not cover the political belief to which that question refers.

45 In addition, as is apparent from the answer to the first question, the words 'religion or belief' contained in Article 1 of Directive 2000/78 must be interpreted as constituting a single ground of discrimination, covering both religious belief and philosophical or spiritual belief.

46 That having been stated, it is apparent from the request for a preliminary ruling that the second question raised by the referring court is intended, in essence, to clarify the degree of discretion enjoyed by the Member States when introducing or maintaining provisions which are more favourable to the protection of the principle of equal treatment than those laid down in Directive 2000/78, as referred to in Article 8(1) thereof.

47 As regards the interpretation of Article 8(1) of that directive, the Court has held that national constitutional provisions protecting the freedom of religion may be taken into account as more favourable provisions, within the meaning of that provision, in examining the appropriateness of a difference in treatment indirectly based on religion or belief (judgment of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 90).

48 In order to reach that conclusion, the Court recalled that Directive 2000/78 establishes a general framework for equal treatment in employment and occupation, which leaves a margin of discretion to the Member States, in particular as regards reconciling the different rights and interests concerned, taking into account the diversity of the approaches of the Member States as regards the place accorded to religion or belief within their respective systems. The margin of discretion thus afforded to the Member States in the absence of a consensus at EU level must, however, go hand in hand with supervision, by the EU judicature, consisting in determining whether the measures taken at national level were justified in principle and proportionate (judgment of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 86 and the case-law cited).

49 The Court added that the framework thus created shows that, in Directive 2000/78, the EU legislature did not itself effect the necessary reconciliation between the freedom of thought, conscience and religion and the legitimate aims that may be invoked in order to justify unequal treatment, for the purposes of Article 2(2)(b)(i) of that directive, but left it to the Member States and their courts to achieve that reconciliation (judgment of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 87 and the case-law cited).

50 The Court concluded from this that Directive 2000/78 allows account to be taken of the specific context of each Member State and allows each Member State a margin of discretion in achieving the necessary reconciliation of the different rights and interests concerned, in order to ensure a fair balance between them (judgment of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 88).

51 In that regard, the Court has held that, in the context of examining whether a prohibition similar to that at issue in the main proceedings is necessary, it is for the national courts, having regard to all the material in the file in question, to take into account the interests involved in the case and to limit the restrictions 'on the freedoms concerned to what is strictly necessary' (judgment

of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 83 and the case-law cited).

52 It therefore follows from that case-law that Article 8(1) of Directive 2000/78 does not preclude a national court from ascribing, in the context of balancing diverging interests, greater importance to those relating to religion or belief than to those resulting from, *inter alia*, the freedom to conduct a business, provided that such an approach stems from its domestic law. In such a situation, the freedom of conscience and religion may therefore be afforded greater protection than other freedoms, such as the freedom to conduct a business recognised in Article 16 of the Charter, with that protection producing its effects at the stage of the assessment of whether there is justification for indirect discrimination for the purposes of the case-law referred to in paragraph 39 of the present judgment.

53 It must be pointed out that this is not the situation of the provisions of national legislation under examination in the present case. Indeed, according to the explanations provided by the referring court, those provisions have the effect of treating ‘religion’ and ‘belief’ as separate grounds of discrimination.

54 The degree of discretion afforded to the Member States cannot go so far as to enable those States or their national courts to split one of the grounds of discrimination exhaustively listed in Article 1 of Directive 2000/78 into several grounds without calling into question the wording, the context and the intended purpose of that ground and undermining the effectiveness of the general framework for equal treatment in employment and occupation introduced by that directive.

55 Given that the ground of discrimination constituted by ‘religion or belief’ covers all workers in the same way, a segmented approach to that ground, according to the aim pursued by the rule concerned, would have the result of creating subgroups of workers and thus of undermining the general framework for equal treatment in employment and occupation introduced by Directive 2000/78.

56 That interpretation cannot be called into question by the argument that it would be likely, as the case may be, to entail a reduced level of protection against discrimination based on religion or religious belief given that, in a situation such as that at issue in the main proceedings, there seems to be nothing to prevent the national courts from interpreting the provisions of national legislation concerned in such a way that, in the context of balancing the diverging interests of a worker and his or her employer, philosophical and spiritual beliefs enjoy the same level of protection as religion or religious belief.

57 Lastly, as regards, more specifically, the line of argument set out by the referring court according to which the existence of a single criterion, encompassing religious and philosophical beliefs, would have the effect of reducing the level of protection against direct discrimination on those grounds, inasmuch as it would impede comparisons between workers motivated by religious belief, on the one hand, and those motivated by philosophical belief, on the other, the following should be specified.

58 First, as has been noted by the referring court, the issue of such comparability is relevant only for the purpose of assessing whether there is direct discrimination. However, the presence of direct discrimination is excluded in circumstances such as those of the case in the main proceedings, as is recalled in paragraph 33 of the present judgment.

59 Second and in any event, the Court has had occasion to specify that the prohibition of discrimination laid down by Directive 2000/78 is not limited only to differences in treatment between persons having a particular religion or belief and those who do not (see, to that effect, judgment of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 49). In other words, the existence of a single criterion, encompassing religion and belief, does not prevent comparisons between workers motivated by religious belief, on the one hand, and those motivated by other beliefs, on the other; nor does it prevent comparisons between workers motivated by different religious beliefs.

60 The objective of Directive 2000/78 also supports an interpretation of Article 2(1) and (2) thereof whereby that directive does not limit the circle of persons in relation to whom a comparison may be made in order to identify ‘discrimination on the [ground] of religion or belief’, for the purposes of that directive, to those who do not have a particular religion or belief (judgment of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 50).

61 Thus, the purpose of Directive 2000/78, as regards employment and occupation, is to combat all forms of discrimination based on religion or belief (see, by analogy, judgment of 26 January 2021, *Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie*, C-16/19, EU:C:2021:64, paragraph 34), it being understood that discrimination ‘on the [ground] of’ religion or belief, for the purposes of that directive, cannot be said to occur unless the less favourable treatment or particular disadvantage at issue is experienced as a result of the religion or belief (judgment of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 49).

62 Having regard to the foregoing, the answer to the second question is that Article 1 of Directive 2000/78 must be interpreted as precluding provisions of national legislation, which are intended to ensure the transposition of that directive into national law and which are construed as meaning that religious belief and philosophical belief constitute two separate grounds of discrimination, from being taken into account as ‘provisions which are more favourable to the protection of the principle of equal treatment than those laid down in [that directive]’ for the purposes of Article 8(1) thereof.

Costs

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

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

- 1. Article 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 words ‘religion or belief’ contained therein constitute a single ground of discrimination, covering both religious belief and philosophical or spiritual belief.**
- 2. Article 2(2)(a) of Directive 2000/78 must be interpreted as meaning that a provision of an undertaking’s terms of employment which prohibits workers from manifesting, through words, through clothing, or in any other way, their religious or philosophical beliefs, whatever those beliefs may be, does not constitute, with regard to workers who intend to exercise their freedom of religion and conscience through the visible wearing of a sign or an item of clothing**

with religious connotations, direct discrimination ‘on the [ground] of religion or belief’ for the purposes of that directive, provided that that provision is applied in a general and undifferentiated way.

3. Article 1 of Directive 2000/78 must be interpreted as precluding provisions of national legislation, which are intended to ensure the transposition of that directive into national law and which are construed as meaning that religious belief and philosophical belief constitute two separate grounds of discrimination, from being taken into account as ‘provisions which are more favourable to the protection of the principle of equal treatment than those laid down in [that directive]’ for the purposes of Article 8(1) thereof.

[Signatures]

* Language of the case: French.
