Case C-344/20

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

27 July 2020

Referring court:

Tribunal du travail francophone de Bruxelles (Belgium)

Date of the decision to refer:

17 July 2020

Applicant:

L.F.

Defendant:

S.C.R.L.

IN THE CASE OF:

Ms L. F. (‘the applicant’),

V

The S.C.R.L. … (‘the defendant’),

1. Application

The application seeks inter alia a declaration that the defendant infringed the anti-discrimination rules by failing to conclude an internship agreement on the basis, either directly or indirectly, of religious belief and gender/sex.

2. Facts

1 The defendant is a property management company.

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2 The applicant is a Muslim and wears the Islamic headscarf.

3 On 14 March 2018, the applicant submitted an application to the defendant for an internship.

4 At an interview on 22 March 2018, the defendant addressed the issue of the wearing of a headscarf in light of the policy of neutrality promoted within the company and reflected in Article 46 of the terms of employment, worded as follows:

> *'Workers undertake to respect the company's strict policy of neutrality*.
>
> *They 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.'*

5 During that meeting, representatives of the defendant:

– '*… mentioned and explained the requirement of neutrality within the company, citing in particular the example of two employees …. removing their veils on entering the premises'*;

– told the applicant that, as an administrative intern, she would regularly have to greet project developers, consultancy firms, contractors and couriers;

– expressing their positive opinion of her application, asked her if she could agree to comply with that general rule, but the applicant refused.

6 The applicant confirms that on that occasion she indicated that she would refuse to remove her headscarf. No further action was taken on her application.

7 On 24 April 2018, the applicant renewed her application for an internship with the defendant proposing that she wear another type of head-covering.

8 On 25 April 2018, the defendant informed her that that would not be possible, because no head-covering is permitted in the offices, whether it be a cap, a hat or a headscarf.

9 On 9 May 2019, the applicant brought the present action.

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3. Substance

10 According to its Article 1 *, the Law of 10 May 2007 to combat certain forms of discrimination [1] ('the General Anti-discrimination Law') transposes into Belgian law Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, p. 16). Its objective is to create, in the areas it covers, a general framework for combating discrimination on grounds of protected criteria, including religious or philosophical beliefs. It applies to all persons, particularly with regard to '*employment relationships'*. The employment relationship is accorded a broad meaning which includes more than just the employment agreement and also encompasses relationships which are formed as part of unpaid work, work carried out under internship, apprenticeship and work experience agreements.

11 The applicant's application for an internship with the defendant constitutes an employment relationship within the meaning of Article 4(1) of the General Anti-discrimination Law.

12 The following considerations will be set within the legal context of the General Anti-discrimination Law, as well as Directive 2000/78 which it transposes and the case-law of the Court of Justice of the European Union. Particular attention will also be paid to the case-law of the European Court of Human Rights, as regards more specifically the protected criterion of religion at the heart of this dispute, since the European legislature itself was guided, in that regard, by the European Convention of Human Rights and by the Charter fundamental Rights. [2]

3.1. Legal framework

13 The General Anti-discrimination Law prohibits all forms of discrimination, direct or indirect, in the areas which fall within its scope. Direct and indirect discriminations are themselves linked to direct or indirect distinctions.

14 Article 4(4) of the General Anti-discrimination Law establishes the list of protected criteria, namely: *'age, sexual orientation, marital status, birth, financial situation, religious or philosophical beliefs, political opinions, trade union activities,*

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* [NdT: Article 2]

1 http://www.ejustice.just.fgov.be/eli/loi/2007/05/10/2007002099/justel

2 See judgment of 14 March 2017, *G4S Secure Solutions* (C-157/15, EU:C:2017:203, paragraph 28), and judgment of 14 March 2017, *Bougnaoui and ADDH* (C-188/15, paragraph 30).

language, current or future state of health, disability, physical or genetic characteristics, social origin'. This list is longer than that contained in Article 1 of Directive 2000/78.

15 he concept of religion is not defined by Directive 2000/78. In the judgment of 14 March 2017, *G4S Secure Solutions* (C-157/15, EU:C:2017:203) ('the judgment in *Achbita*'), the Court specifies the meaning which is to be given to it:

> '*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.'*

16 ccording to Article 4(7) of the General Anti-discrimination Law, direct discrimination means *'direct distinction, based on one of the protected criteria, which cannot be justified on the basis of the provisions of Title II*', which is entitled '*Justification for distinctions'* and comprises Articles 7 to 13.

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17 irect distinction is defined by Article 4(6) of that law, as being *'the situation which arises when, on the basis of one of the protected criteria, a person is treated less favourably than another person either is or has been or would be treated in a comparable situation*'. [3]

18 rticle 7 of the General Anti-discrimination Law provides that *'Any direct distinction based on one of the protected criteria constitutes direct discrimination, unless that direct distinction is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary'*.

19 owever, Article 8(1) of that law provides that a direct distinction based on religious belief can be justified only by *'genuine and determining occupational requirements*'.

20 n general, for there to be direct distinction and therefore direct discrimination, the following three elements must be present:

– a difference in treatment (less favourable treatment);

– persons in a comparable situation;

– a causal link between the treatment in question and the protected criterion (in the present case religious beliefs).

21 he situations being weighed up only need to be comparable. They do not have to be identical. Also, the assessment of that comparability must be carried out not in a global and abstract manner but in a specific and concrete manner. [4]

3.2. Positions of the parties

22 n her pleadings, under the heading 'Existence of direct discrimination' and referring to Articles 4(6) and 8 of the General Anti-discrimination law, the applicant maintains, apparently as the principal argument, that a *'distinction based on the fact that a woman wears a headscarf constitutes a distinction based on religious beliefs and gender*'. In her view and *'in the light of the statement of facts'*, the refusal to hire an intern wearing a headscarf '*cannot be justified by a genuine and determining occupational requirement and has no objective and*

[3] Emphasis added by the [referring court].

[4] Judgment of 12 December 2013, *Hay* (C-267/12, EU:C:2013:823, paragraph 33 and the case-law cited).

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reasonable justification since it cannot be considered, whatever the defendant claims, that simply by wearing the veil the applicant would not respect the principle of neutrality'.

23

or its part, the defendant distinguishes between:

– Discrimination on the basis of gender:

For the defendant, there is nothing to indicate the existence of discrimination on the basis of sex.

– Discrimination on the basis of religious beliefs:

It refers principally to the judgment in *Achbita* to maintain that the prohibition on wearing an Islamic headscarf, which stems from an internal rule of private company prohibiting the visible wearing of any political, philosophical or religious symbol in the workplace, does not constitute direct discrimination based on religion or belief.

3.3. Assessment

3.3.1. Direct discrimination based on gender

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he applicant does not establish facts from which it may be inferred that there has been direct discrimination based on gender.

3.3.2. Direct discrimination based on religious belief

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he fact that the applicant's application for an internship with the defendant was not considered was due entirely to the refusal of the former, who is a Muslim, to remove her headscarf in order to comply with the latter's terms of employment. The defendant's response to the applicant's renewed application leaves no doubt in that regard, since it rejects the proposal that she confine herself to wearing another type of head covering, on the ground that no head covering is permitted in the office.

26

prohibition on wearing religious symbols constitutes an interference in the exercise of the right to manifest her religious beliefs protected by Article 9 ECHR. [5]

[5] See to that effect ECtHR, 15 January 2013, *Eweida and Others* v *Union Kingdom* (CE:ECHR:2013:0115JUD004842010, § 94) (http://hudoc.echr.coe.int/fre ?i= 001-116097); see

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27 he defendant's terms of employment therefore undoubtedly have the effect of restricting the right of workers to manifest their religious beliefs, in particular through clothing.

28 hat means that the rule at issue clearly creates a disadvantage for a worker who wishes to exercise his or her right to manifest his or her religion through clothing. It should also be stated that that treatment is less favourable to that worker than another worker or workers in a comparable situation.

29 irect discrimination has a priori greater visibility, owing to the fact that it is directly connected to the protected criterion. Thus, in *Maruko*, the Advocate General considered that there was no direct discrimination within the meaning of Article 2 of Directive 2000/78 in a situation in which the homosexual complainant had been refused a survivor's pension on the grounds that he was not married to his partner and was therefore not a 'widower', since the refusal was not based on the protected criterion, namely sexual orientation. [6] That is also what led to the Court to consider, in the light of the fact that a legal provision which had been criticised, relating to absences because of illness, applied in the same way to disabled and non-disabled persons who had been absent for more than 120 days on those grounds, that that provision *'does not contain direct discrimination on grounds of disability, in so far as it uses a criterion that is not inseparably linked to disability'*. [7]

30 n the judgment in *Achbita*, the Court concluded that no direct discrimination was generated by an internal rule of the company which *'refers to the wearing of visible signs of political, philosophical or religious beliefs and therefore covers any manifestation of such beliefs without distinction*' since such a 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*' (paragraph 30).

31 owever, the Court's case-law is not a rigid collection of established and immutable principles. The interpretation given by the Court of Justice regarding the question referred for a preliminary ruling binds the national court but leaves it free to assess

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also, with regard to education, ECtHR, 10 November 2005, *Leyla Şahin* v *Turkey* (CE:ECHR:2005:1110JUD004477498, § 78) (http://hudoc.echr.coe.int/fre ?i= 001-70954) .

6 Opinion of Advocate General Ruiz-Jarabo Colomer in *Maruko* (C-267/06, EU:C:2007:486, point 96).

7 Judgment of 11 April 2013, *HK Danmark* (C-335/11 and C-337/11, EU:C:2013:222, paragraph 74).

whether it is sufficiently enlightened by the preliminary ruling or whether it is necessary for it to make a further reference to the Court. [8] In a different case, the court may choose to ask the Court again about a question which has already been addressed, if it considers that the reply given lacks clarity or that the interpretation provided relates to a specific factual situation, or if controversy remains and certain arguments do not seem to have been taken into consideration.

32 ome academic lawyers [9] consider that the Court's conclusions in the judgment in *Achbita* are incorrect .

33 he existence of direct discrimination, within the meaning of Directive 2000/78, '*presupposes, first, that the situations being weighed up are comparable*' [10] and '*the assessment of that comparability must be carried out not in a global and abstract manner, but in the specific and concrete manner'*. [11] The *'appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with the rules of national law or practice*'. [12] It is therefore for the referring court *'to take account of all the circumstances surrounding the practice at issue, in order to determine whether there is sufficient evidence for a finding that the facts from which it may be presumed that there has been direct discrimination ... have been established*'. [13] In particular, the assessment of comparability falls within the jurisdiction of the national court. [14] It is therefore important to distinguish between, on the one hand, the interpretive power of the Court and, on the other hand, the application of the law to the facts of the case which falls within the jurisdiction of the national court.

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8 Judgment of 24 June 1969, *Milch-, Fett- und Eierkontor* (29/68, EU:C:1969:27, paragraph 3).

9 BUSSCHAERT, G. and DE SOMER, S., 'Port des signes convictionnels au travail: la Cour de justice lève le voile ? A propos de l'arrêt Achbita n°C 157/15 du 14 mars 2017', J.T.T., 2017, p. 279(https://www.stradalex.com/fr/sl_rev_utu/search/jtt_2017-fr ?docEtiq=jtt2017_18p277&page= 5); WATTIER, S., 'L'impact du fait religieux sur le droit social et économique de l'Union européenne', J.D.E., 2020, p. 97 (https://www.stradalex.com/fr/sl_rev_utu/search/jtde_2020-fr ?docEtiq=jtde2020_3p94&page= 4); BRIBOSIA, E. and RORIVE, I., 'Affaires Achbita et Bougnaoui:entre neutralité et préjugés', R.T.D.H., no 112, 2017, p. 1027 (https://www.stradalex.com/fr/sl_rev_utu/search/rtdh_2017-fr ?docEtiq=rtdh2017_112p1017) .

10 Judgment of 10 May 2011, *Römer* (C-147/08, EU:C:2011:286, paragraph 41).

11 Ibidem, paragraph 42.

12 Directive 2000/78, recital 15.

13 Judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria* (C-83/14, EU:C:2015:480, paragraph 80).

14 Judgment of 10 May 2011, *Römer* (C-147/08, EU:C:2011:286, paragraph 52).

34 The above should clarify the reading of the judgment in *Achbita*, since it seems apparent that the Court relies on the finding that there had been a '*general and undifferentiated*' application of the internal rule prohibiting the wearing of visible signs of political, philosophical or religious beliefs in the workplace, but does not exclude the possibility that, on the basis of material in the file which it has not received, that rule may have been applied to the person concerned differently from the way in which it was applied to any other worker. [15]

35 However, that qualification in the grounds of the judgment does not appear to be reflected in its operative part: *'Article 2(2)(a) of Council Directive 2000/78/EC of 27 November 2000 ..., 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*'.

36 Does the national court still have any discretion or is it deprived of any opportunity to assess comparability in this case? More particularly, in the face of an internal rule such as that which is at issue in the present case, can the national court still conclude that there has been direct discrimination?

37 In an order delivered in a similar case, [16] the referring court has already held that it *'cannot seriously be disputed that A's terms of employment, which specifically prohibit the wearing of any sign of religious belief, results in ''less favourable or disadvantageous treatment'' for adherents of a religion which, according to them, prescribes the wearing of a particular sign or for whom the wearing of a given sign is of greater importance and who intend to exercise their freedom of religion, as opposed to the other members of A's staff*'.

38 As regards the prohibition laid down by the defendant's terms of employment, the same observation may be made from different points of view:

– the applicant 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

[15] Judgment in *Achbita*, paragraphs 30 and 31.

[16] 26 November 2015, R.G. 13/7828/A, paragraph 81, extracts and note in *A.P.T.*, 2016, p.491 (https://www.stradalex.com/en/sl_rev_utu/search/apt_2016-fr ?docEtiq=apt2016_4p491)

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philosophical beliefs and no political allegiance and who, therefore, harbours no need to wear any political, philosophical or religious sign; [17]

– the applicant 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;

– the applicant 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;

– given that beliefs are not necessarily religious, philosophical or political and that they may be of another kind (artistic, aesthetic, sporting, musical, etc.), [18] the applicant who wishes 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;

– assuming that the negative aspect of the freedom to manifest religious beliefs also means that a person cannot be required to reveal his religious affiliation or beliefs, [19] the applicant 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 religious, philosophical or political beliefs by word, since for the worker wearing the headscarf that implies an even more fundamental infringement of freedom of religion, on the basis of Article 9 .1 of the ECHR 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, which has indeed been the situation in this case; [20]

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[17] See also the Opinion of Advocate General Sharpston in *Bougnaoui and ADDH* (C-188/15, EU:C:2016:553, point 88)

[18] Ibidem, point 110.

[19] See Guide on Article 9 of the European Convention on Human Rights, updated on 31 December 2019, p. 23, https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf

[20] See above paragraph 2, chronology of the facts.

– the applicant 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.

39 In the judgment against which an appeal in cassation was brought before the referring court in *Achbita*, the Higher Labour Court, Antwerp had considered that there was nothing in the file to indicate that the employer company *'had taken a more conciliatory approach towards any other employee in a comparable situation, in particular as regards the worker with different religious or philosophical beliefs who consistently refused to comply with the ban'*. This approach to the issue of comparability is flawed in that it seeks the person of reference only among workers who come under the same protected criterion and, even worse, among workers who come under the same artificially enlarged protected criterion. That amounts to saying, absurdly, that a company rule which prohibits the recruiting of any 'black' worker creates no difference in treatment and does not constitute direct discrimination, on the grounds that any 'black' worker who seeks employment with the employer concerned would have his application rejected.

40 That reasoning renders the anti-discrimination rule meaningless, since it will be enough to find that all persons covered by the same protected criterion are subject to the same regime under the measure at issue to conclude that there is no unfavourable treatment or any disadvantage and, consequently, to rule out the existence of any discrimination. That reasoning also conceals the fact that two workers sharing the same religion do not necessarily feel the same need to express their beliefs through clothing and that those differences are sources of disadvantages for the worker who attaches great importance to wearing a religious symbol. In that regard, it should be pointed out that the right to freedom of religion denotes views that attain a certain level of cogency, seriousness, cohesion and importance and that, provided this is satisfied, '*the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs or the way in which those beliefs are expressed* [21] and that *'there is no requirement on [the person concerned] to establish that he or she acted in fulfilment of a duty mandated by the religion in question'*. [22]

41 The judgment in *Achbita* seems to follow the same simplistic reasoning, which contains an apparent discrepancy. The Court precludes the existence of direct discrimination on the grounds that it does not consider that the internal rule at issue *'was applied differently [to Ms Achbita] as*

[21] ECtHR, 15 January 2013, *Eweida and Others* v *United Kingdom* (CE:ECHR:2013:0115JUD004842010, § 81) (http://hudoc.echr.coe.int/fre ?i= 001-116097).

[22] Ibidem, § 82.

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compared to any other worker', but it nevertheless opens the door to an examination of the case from the point of view of indirect discrimination which might stem from the finding that the internal rule, which appears to be neutral, *'results, in fact, in persons adhering to a particular religion or belief being put at a particular disadvantage*'. [23] Now, if the internal rule does not create any disadvantage for the worker covered by the protected criterion from the point of view of direct discrimination, how can there be indirect discrimination, since there is a basic assumption that there is no disadvantage?

42 Moreover, in order to assess the existence of direct discrimination, the Court appears to merge religious beliefs, philosophical beliefs and political beliefs into a single protected criterion. Does that mean that those criteria are not to be distinguished from each other, although Article 1 of Directive 2000/78 nevertheless seems to make a distinction by indicating *'religion or belief'*, in the same way as Article 4(4) of the General Anti-discrimination Law refers to *'religious or philosophical beliefs, political beliefs'*? That is to say, is Article 1 of Directive 2000/78 to be interpreted as meaning that religion and belief are two facets of the same protected criterion or, on the contrary, that religion and belief form two distinct criteria, on the one hand, that of religion, including the associated beliefs and, on the other hand, that of belief, whatever that belief may be?

43 The reply to this question is crucial, because if religion is classed in the same category as beliefs other than religious beliefs, that limits the scope for seeking the reference person. That would lower the level of protection given to the persons concerned. Where there is a rule such as the rule at issue, a worker who holds religious beliefs cannot be compared with a worker who holds philosophical beliefs or political convictions.

44 Finally, if it were necessary to consider that religion and belief are two facets of a single protected criterion within the meaning of Article 1 of Directive 2000/78, it would have to be noted that that is not the interpretation given in national law by Article 4(4) of the General Anti-discrimination law, which clearly refers to *'religious or philosophical beliefs, political beliefs'*. In view of the fact that the protection afforded separately for religious, philosophical and political beliefs is likely to strengthen the degree of that protection by highlighting their specific features and making them more visible, should the national court not be authorised to continue to promote that diversity when applying the law to the facts?

45 Directive 2000/78 lays down '*minimum requirements*' leaving Member States free to introduce or maintain more favourable provisions and its implementation *'should not serve to justify any regression in relation to the situation which already prevails in each Member State*' (recital 28). This is reflected in Article 8 of that directive which provides:

[23] Judgment in *Achbita*, paragraphs 31 and 34.

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‘*1 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.*

2 The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.’

46 In the light of the foregoing considerations and in order better to define the concept of direct discrimination which is at the heart of this dispute, it is necessary to refer the following questions to the Court for a preliminary ruling

4. Questions referred for a preliminary ruling

1) Must Article 1 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation 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 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation education 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 Article 4(4) of the Law of 10 May 2007 to combat certain forms of discrimination, as meaning that religious, philosophical and political beliefs are separate protected criteria?

3) Can Article 2(2)(a) of Directive 2000/78/C of 27 November 2000 establishing a general framework for equal treatment in employment and occupation be interpreted as meaning that the rule contained in a company's terms of employment prohibiting workers from *‘manifest[ing] in any way, either by word or through clothing or any other way, their religious, philosophical or political beliefs, whatever those beliefs may b*e’ 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,

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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 hold 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, etc.), 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 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 religious, philosophical or political beliefs verbally, since for the female worker wearing the headscarf that implies an even more fundamental infringement of freedom of religion, on the basis of Article 9.1 of the ECHR 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)?

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