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Court of Justice of the European Union

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Judgment in Joined Cases C-804/18 and C-341/19  
WABE and MH Müller Handel

**A prohibition on wearing any visible form of expression of political, philosophical or religious beliefs in the workplace may be justified by the employer's need to present a neutral image towards customers or to prevent social disputes**

*However, that justification must correspond to a genuine need on the part of the employer and, in reconciling the rights and interests at issue, the national courts may take into account the specific context of their Member State and, in particular, more favourable national provisions on the protection of freedom of religion*

IX and MJ, who are employed in companies governed by German law as a special needs carer and a sales assistant and cashier respectively, wore an Islamic headscarf at their respective workplaces.

Taking the view that the wearing of such a headscarf did not correspond to the policy of political, philosophical and religious neutrality pursued with regard to parents, children and third parties, IX's employer, WABE eV asked her to remove that headscarf and, following her refusal, temporarily suspended her from her duties on two occasions and gave her a warning. MJ's employer, MH Müller Handels GmbH, following her refusal to remove that headscarf at her workplace, first transferred her to another post in which she could wear that headscarf and then, after sending her home, instructed her to attend her workplace without conspicuous, large-sized signs of any political, philosophical or religious beliefs.

IX brought an action before the Arbeitsgericht Hamburg (Hamburg Labour Court, Germany) seeking an order that WABE remove from her personal file the warnings concerning the wearing of the Islamic headscarf. As for MJ, she brought an action before the national courts seeking a declaration that Müller Handel's instruction was invalid and compensation for the damage suffered. MJ's action before those courts was upheld and Müller Handel subsequently brought an appeal on a point of law before the Bundesarbeitsgericht (Federal Labour Court, Germany).

In that context, the two courts decided to refer questions to the Court of Justice concerning the interpretation of Directive 2000/78.<sup>1</sup> The Court was asked, inter alia, whether an internal rule of an undertaking, prohibiting workers from wearing any visible sign of political, philosophical or religious beliefs in the workplace, constitutes, with regard to workers who observe certain clothing rules based on religious precepts, direct or indirect discrimination on the grounds of religion or belief; in what circumstances a difference of treatment indirectly based on religion or belief resulting from that rule may be justified and what elements must be taken into consideration in examining the appropriateness of such a difference of treatment.

In its judgment, delivered by the Grand Chamber, the Court explains inter alia the circumstances in which a difference of treatment indirectly based on religion or belief, resulting from such an internal rule, may be justified.

**Assessment of the Court**

<sup>1</sup> 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).

The Court examines, first of all, in connection with Case C-804/18, whether an internal rule of an undertaking, prohibiting workers from wearing any visible sign of political, philosophical or religious beliefs in the workplace, constitutes, with regard to workers who observe certain dress codes based on religious precepts, direct discrimination on grounds of religion or belief, prohibited by Directive 2000/78.<sup>2</sup>

In that respect, the Court notes that the wearing of signs or clothing to manifest religion or belief is covered by the 'freedom of thought, conscience and religion'.<sup>3</sup> In addition, 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.

Furthermore, the Court recalls its case-law according to which such a rule does not constitute direct discrimination 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, to dress neutrally, which precludes the wearing of such signs. The Court considers that that finding is not called into question by the fact that some workers observe religious precepts requiring certain clothing to be worn. Although a rule such as that referred to above is indeed capable of causing particular inconvenience for such workers, that has no bearing on the finding that that rule, reflecting a policy of neutrality on the part of the undertaking, does not, in principle, establish a difference in treatment between workers based on a criterion that is inextricably linked to religion or belief.

In the present case, the rule at issue appears to have been applied in a general and undifferentiated way, since the employer concerned also required an employee wearing a religious cross to remove that sign. The Court concludes that, in those circumstances, a rule such as that at issue in the main proceedings does not constitute, with regard to workers who observe certain clothing rules based on religious precepts, direct discrimination on the grounds of religion or belief.

The Court examines, secondly, whether a difference of treatment indirectly based on religion or belief,<sup>4</sup> arising from such an internal rule, may be justified by the employer's desire to pursue a policy of political, philosophical and religious neutrality with regard to its customers or users, in order to take account of their legitimate wishes. It answers that question in the affirmative, while identifying the elements on which that conclusion is based.

In that regard, the Court notes, first of all, that an employer's desire to display, in relations with customers, a policy of political, philosophical or religious neutrality may be regarded as a legitimate aim. The Court states, however, that that mere desire is not sufficient, as such, to justify objectively a difference of 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. The relevant elements for identifying such a need are, inter alia, the rights and legitimate wishes of customers or users and, more specifically, as regards education, parents' wish to have their children supervised by persons who do not manifest their religion or belief when they are in contact with the children.

In assessing whether such a need exists, particular relevance should be attached to the fact that the employer has adduced evidence that, in the absence of such a policy of neutrality, its freedom to conduct a business<sup>5</sup> would be undermined, in that, given the nature of its activities or the context in which they are carried out, it would suffer adverse consequences.

The Court then states that that difference in treatment must be appropriate for the purpose of ensuring that that policy of neutrality is properly applied, which entails that that policy is pursued in a consistent and systematic manner. Lastly, the prohibition on wearing any visible sign of political,

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<sup>2</sup> Article 1 and Article 2(2)(a) of Directive 2000/78.

<sup>3</sup> Protected by Article 10 of the Charter of Fundamental Rights of the European Union.

<sup>4</sup> Within the meaning of Article 2(2)(b) of Directive 2000/78, which prohibits any indirect discrimination on the grounds of, inter alia, religion or belief, unless the provision, criterion or practice from which it derives is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

<sup>5</sup> Recognised in Article 16 of the Charter of Fundamental Rights.

philosophical or religious beliefs in the workplace must be limited to what is strictly necessary having regard to the actual scale and severity of the adverse consequences that the employer is seeking to avoid by adopting that prohibition.

Thirdly, the Court examines, in connection with Case C-341/19, whether indirect discrimination on the grounds of religion or belief resulting from an internal rule of an undertaking prohibiting the wearing of visible signs of political, philosophical or religious beliefs in the workplace, with the aim of ensuring a policy of neutrality within that undertaking, can be justified only if that prohibition covers all visible forms of expression of political, philosophical or religious beliefs or whether a prohibition limited to conspicuous, large-sized signs is permissible, provided that is implemented consistently and systematically.

It points out, in that regard, that such a limited prohibition is liable to have a greater effect on people with religious, philosophical or non-denominational beliefs which require the wearing of a large-sized sign, such as a head covering. Thus, where the criterion of wearing conspicuous, large-sized signs of the aforementioned beliefs is inextricably linked to one or more specific religions or beliefs, the prohibition on wearing those signs based on that criterion will mean that some workers will be treated less favourably than others on the basis of their religion or belief, which would amount to direct discrimination, which cannot be justified.

Should direct discrimination not be found to exist, the Court observes that a difference of treatment such as that at issue in the main proceedings would, if it results in a particular disadvantage for persons adhering to a particular religion or belief, constitute indirect discrimination which can be justified only if the prohibition covers all visible forms of expression of political, philosophical or religious beliefs. It notes, in that regard, that a policy of neutrality within an undertaking may constitute a legitimate objective and must meet a genuine need on the part of the undertaking, such as the prevention of social conflicts or the presentation of a neutral image of the employer vis-à-vis customers, in order to justify objectively a difference in treatment indirectly based on religion or belief. Such a policy can be effectively pursued only if no visible manifestation of political, philosophical or religious beliefs is allowed when workers are in contact with customers or with other workers, since the wearing of any sign, even a small-sized one, undermines the ability of that measure to achieve the aim allegedly pursued.

Fourthly, the Court holds that national provisions protecting the freedom of religion may be taken into account, as more favourable provisions,<sup>6</sup> in examining the appropriateness of a difference of treatment indirectly based on religion or belief. In that regard, it notes, in the first place, that, when examining whether the restriction resulting from a measure intended to ensure the application of a policy of political, philosophical and religious neutrality is appropriate, within the meaning of Article 2(2)(b)(i) of Directive 2000/78, account must be taken of the various rights and freedoms in question and that 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. That ensures that, when several fundamental rights and principles enshrined in the Treaties are at issue, the assessment of observance of the principle of proportionality is carried out in accordance with the need to reconcile the requirements of the protection of the various rights and principles at issue, striking a fair balance between them. It notes, in the second place, that, by not itself carrying out, in Directive 2000/78, 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, and by leaving it to the Member States and their courts to achieve that reconciliation, the EU legislature allowed account to be taken of the specific context of each Member State and allowed each Member State a margin of discretion in achieving that reconciliation.

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<sup>6</sup> Within the meaning of Article 8(1) of Directive 2000/78, which refers to provisions which are more favourable to the protection of the principle of equal treatment than those laid down in that directive. That would be the case, for example, of national provisions making the justification of a difference of treatment indirectly based on religion or belief subject to higher requirements than those set out in Article 2(2)(b)(i) of Directive 2000/78.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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