

## **Religious freedom of worker and neutrality of public offices. The ruling of the Court of Justice of the European Union dated 28 November 2023.**

Just over two years after the ruling of 15 July 2021 in joined cases nos. C-804/16 and C-341/19, the Court of Justice of the European Union returns to the issue of the carrying of religious symbols in the workplace, this time with specific regard to the public sector in Belgium. This is a highly topical issue, as demonstrated by the innovations introduced, in this specific area, by the French law 2021-1109 *confortant le respect des principes de la République*.

The case defined by the Grand Chamber of the Court of Luxembourg on 28 November 2023 in case C/148-22 concerns the request of a female worker employed by a dependent municipal body to wear the Islamic headscarf during working hours.

Although the work activity was carried out mainly without contact with users (back office), the Council of the Municipality of Ans (Belgium) prohibited the worker from showing off symbols that revealed her religious beliefs pending the issuing of municipal legislation relating to use of religious symbols within the administration.

Following the requests of the municipal board, the Ans Municipal Council proceeded to modify the regulation by accepting a model of "exclusive neutrality" which imposed on all employees the prohibition of any form of proselytism and the prohibition of wearing "visible signs" of their belonging ideological or religious, regardless of contact or otherwise with users of public services (art. 9).

Complaining about the violation of her right to religious freedom, the worker thus proposed an injunction action before the Labor Court of Liège, challenging both the decisions of the municipal council and the new provisions of the municipal regulation.

Hence the reference for a preliminary ruling to the Court of Justice of the European Union, which was however limited by the referring judge to the verification of the compatibility aspects of the art. 9 of the Ans' municipal regulation with the European Union anti-discrimination law, and specifically with the art. 2, paragraph 2, letter. a) and b) of Directive 2000/78. In other words, the Court was asked to evaluate, firstly, whether the organization of a totally neutral administrative environment and the ban, extended to all employees, from wearing signs that could reveal religious beliefs constituted direct discrimination and, secondly, whether this ban, mainly affecting female workers, could integrate a hypothesis of indirect discrimination based on gender.

Having set the reference in these terms, the preliminary questions on which the Court of Luxembourg was called upon to rule coincided with those already brought to its attention in the judgment defined by the previous ruling of 2021.

The Court's decision to deem the organization of a totally neutral working space compatible with European anti-discrimination law, in accordance with what the Court had already decided in its 2021 ruling for the private sector, therefore appeared predictable in its outcome.

Even in the text of a ruling limited to the examination of anti-discrimination law aspects, the Court's reference to the possible adoption by member states of "another policy of neutrality", implemented through " a general and undifferentiated permission for the wearing of visible signs of beliefs – philosophical or religious in particular – including in contacts with users, or a prohibition on the wearing of such signs limited to situations involving such contacts".

In effect, these alternative solutions seem to constitute organizational models capable of guaranteeing a non-differentiated and uniform provision of public services without requiring a significant compression of the right to religious freedom of workers, in compliance with the art. 22 of the Charter of Fundamental

Rights of the European Union (*The Union shall respect cultural, religious and linguistic diversity*), not even mentioned in the ruling of the Court.

**Fabio Balsamo**

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

28 November 2023 (\*)

(Reference for a preliminary ruling – Social policy – Directive 2000/78/EC – Establishing a general framework for equal treatment in employment and occupation – Prohibition of discrimination on the grounds of religion or belief – Public sector – Terms of employment of a public administration prohibiting the visible wearing of any philosophical or religious sign in the workplace – Islamic headscarf – Requirement of neutrality in contacts with the public, hierarchical superiors and colleagues)

In Case C-148/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal du travail de Liège (Labour Court, Liège, Belgium), made by decision of 24 February 2022, received at the Court on 2 March 2022, in the proceedings

**OP**

v

**Commune d’Ans,**

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Prechal, K. Jürimäe, C. Lycourgos, F. Biltgen (Rapporteur) and N. Piçarra, Presidents of Chambers, M. Safjan, S. Rodin, P.G. Xuereb, I. Ziemele, J. Passer, D. Gratsias, M.L. Arastey Sahún and M. Gavalec, Judges,

Advocate General: A.M. Collins,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 31 January 2023,

after considering the observations submitted on behalf of:

- OP, by S. Gioe, avocate,
- the Commune d’Ans, by J. Uyttendaele and M. Uyttendaele, avocats,
- the Belgian Government, by C. Pochet, L. Van den Broeck and M. Van Regemorter, acting as Agents,
- the French Government, by D. Colas, V. Depenne, A.-L. Desjonquères and N. Vincent, acting as Agents,
- the Swedish Government, by O. Simonsson and C. Meyer-Seitz, acting as Agents,
- the European Commission, by B.-R. Killmann, D. Martin and E. Schmidt, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 May 2023,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(2)(a) and (b) 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 OP, a member of the contract staff of the Commune d'Ans (municipal authority of Ans; 'the municipality'), concerning the latter's prohibition on its workers wearing any visible sign which might reveal their ideological or philosophical affiliation or political or religious beliefs.

### Legal context

#### *European Union law*

3 Article 1 of Directive 2000/78 provides:

'The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.'

4 Article 2 of that directive, entitled 'Concept of discrimination', 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 Article 3(1) of the said directive states:

'Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

...

(c) employment and working conditions, including dismissals and pay;

...’

### ***Belgian law***

6 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’), transposes Directive 2000/78 into Belgian law.

7 Article 4 of that law states:

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

(1) employment relationships: relationships which cover, inter alia, employment, conditions for access to employment, working conditions and rules on dismissal:

– in both the public and private sectors;

...

(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;

(8) indirect distinction: a situation which arises where an apparently neutral provision, criterion or practice would put persons characterised by one of the protected criteria at a particular disadvantage compared with other persons;

(9) indirect discrimination: an indirect distinction, based on one of the protected criteria, which cannot be justified on the basis of the provisions of Title II;

...’

8 Article 5(1) of the said 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 ...’

9 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.’

10 Article 8 of that law provides:

‘1. 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 Article 5[(1), points 4, 5 and 7], can be justified only by genuine and determining occupational requirements.

2. A genuine and determining occupational requirement can exist only where:

- a particular characteristic related to age, sexual orientation, religious or philosophical belief or disability is genuine and determining by reason of the nature of the specific occupational activities concerned or of the context in which they are carried out, and
- the requirement is based on a legitimate aim and is proportionate to that aim.

3. It is for the court to ascertain, on a case-by-case basis, whether a given characteristic constitutes a genuine and determining occupational requirement.

...’

11 Article 9 of the said law is worded as follows:

‘Any indirect distinction based on one of the protected criteria shall constitute indirect discrimination,

- unless the apparently neutral provision, criterion or practice on which that indirect distinction is based is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary; or,
- unless, in the case of an indirect distinction on the basis of disability, it is demonstrated that no reasonable accommodation can be made.’

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

12 The applicant in the main proceedings has worked for the municipality since 11 April 2016 and has held, since 11 October 2016, the post of ‘head of office’, a function which she performs primarily without being in contact with users of the public service (‘back office’). She has carried out her duties without wearing any signs which might reveal her religious beliefs or making a written claim to that effect until 8 February 2021, the date on which she requested that she be able to wear a ‘headscarf at work’ from 22 February 2021.

13 By a decision of 18 February 2021, the municipal board of the municipality (‘the municipal board’) rejected that application and provisionally prohibited the applicant in the main proceedings from wearing, in the exercise of her professional activity, signs revealing her religious beliefs until general rules on the wearing of such signs within the municipal administration had been adopted.

14 On 26 February 2021, after having heard the applicant in the main proceedings, the municipal board adopted a second decision confirming the prohibition in question until the adoption of such general rules.

15 On 29 March 2021, the municipal board of the municipality amended its terms of employment by inserting a requirement of ‘exclusive neutrality’ in the workplace, understood as prohibiting all municipal workers from wearing, in that workplace, any visible sign that might reveal their beliefs – religious or philosophical in particular – whether or not they were in contact with the public. Article 9 of those terms thus provides, *inter alia*:

‘Workers have freedom of expression in accordance with the principle of neutrality, their duty of discretion and their duty to act in good faith.

Workers are required to observe the principle of neutrality, which means that they must refrain from any form of proselytising and that they are prohibited from wearing any overt sign which might

reveal their ideological or philosophical affiliation or political or religious beliefs. This rule applies both to their contacts with the public and to their working relationships with hierarchical superiors and colleagues.

...’

- 16 The applicant in the main proceedings has brought several sets of proceedings seeking a declaration that her freedom of religion had been infringed, including an action for an injunction, brought before the referring court, against the two individual decisions referred to in paragraphs 13 and 14 of the present judgment and against the amendment to the terms of employment at issue in the main proceedings. In support of that action, she claims that she has been discriminated against because of her religion.
- 17 With regard to those individual decisions, the referring court takes the view that the prohibition on the wearing of the Islamic headscarf by the applicant in the main proceedings constitutes a difference in treatment directly based on her religion as compared with other members of the municipality’s staff, since other signs of beliefs – religious in particular – when worn discreetly, have been tolerated by the municipality in the workplace in the past and are still tolerated. Moreover, it takes the view that that difference in treatment is not justified by genuine and determining occupational requirements, within the meaning of Article 8 of the General Anti-discrimination Law, in so far as the applicant in the main proceedings performs her duties primarily in the ‘back office’, and that it therefore constitutes direct discrimination, within the meaning of Directive 2000/78. Consequently, it deemed the action of the applicant in the main proceedings well founded for the period between 18 February 2021, the date of the adoption of the first of those individual decisions, and 29 March 2021, the date of the adoption of the amendment to the terms of employment at issue in the main proceedings.
- 18 Regarding that amendment, the referring court states that its purpose is to ensure that both the actions and the appearance of public officials are strictly neutral, whatever the nature of their duties and the context in which they are carried out. It is of the view that the rule introduced by that amendment appears to constitute indirect discrimination since it is neutral, but that the municipality’s application of it varies in consistency. Thus, according to that court, that rule is ‘exclusive’ as regards the applicant in the main proceedings and ‘more inclusive’ for her colleagues with other beliefs. Accordingly, the said court has provisionally permitted the applicant in the main proceedings to wear a visible sign which may reveal her religious beliefs, but only when she works in the ‘back office’ and not when she is in contact with users or exercising a position of authority.
- 19 However, the referring court has doubts as to the compatibility with the provisions of Directive 2000/78 of a provision of terms of employment, such as that at issue in the main proceedings, which imposes a requirement of ‘exclusive neutrality’ on all workers of a public administration, even those who do not have dealings with users.
- 20 In those circumstances, the tribunal du travail de Liège (Labour Court, Liège, Belgium) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Can Article 2(2)(a) and (b) of [Directive 2000/78] be interpreted as permitting a public administration to put in place an entirely neutral administrative environment and thus to prohibit all members of staff from wearing [signs which might reveal religious beliefs], whether or not they are in direct contact with the public?
- (2) Can Article 2(2)(a) and (b) of [Directive 2000/78] be interpreted as permitting a public administration to put in place an entirely neutral administrative environment and thus to prohibit all members of staff from wearing [signs which might reveal religious beliefs], whether or not they are in direct contact with the public, even if that neutral prohibition appears mostly to affect women, and may thus constitute disguised discrimination on grounds of gender?’

## Consideration of the questions referred

### *The first question*

- 21 By its first question, the referring court asks, in essence, whether Article 2(2)(a) and (b) of Directive 2000/78 must be interpreted as meaning that an internal rule of a municipal authority prohibiting, in a general and indiscriminate manner, the members of that authority's staff from visibly wearing in the workplace any sign revealing, in particular, philosophical or religious beliefs may be justified by the desire of the said authority to establish an entirely neutral administrative environment.
- 22 As a preliminary point, it should be recalled, first, that the concept of 'religion' in Article 1 of Directive 2000/78 covers 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 (judgment of 14 March 2017, *G4S Secure Solutions*, C-157/15, EU:C:2017:203, paragraph 28). It should be added that that article refers to religion and belief together, as does 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, which refers, among the various grounds of discrimination which it mentions, to 'religion or belief'. It follows 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).
- 23 Second, given that, in accordance with Article 3(1) of Directive 2000/78, that directive is to apply to all persons, as regards both the public and private sectors, including public bodies, a provision such as that in Article 9 of the municipality's terms of employment, which prohibits its staff from visibly wearing in the workplace of any sign of beliefs – philosophical or religious in particular – falls within the scope of that directive. Furthermore, such a provision must be regarded as falling within the scope of 'employment and working conditions' within the meaning of Article 3(1)(c) of the said directive.
- 24 Those clarifications having been made, it should be noted that the referring court's first question concerns both Article 2(2)(a) of Directive 2000/78, relating to 'direct discrimination', and Article 2(2)(b) thereof, relating to 'indirect discrimination'.
- 25 In that regard, it should be recalled that an internal rule decreed by an employer which prohibits in the workplace only the wearing of conspicuous, large-scale signs of beliefs – philosophical or religious in particular – may constitute direct discrimination on the grounds of religion or belief 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, judgments of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraphs 72 to 78, and of 13 October 2022, *S.C.R.L. (Religious clothing)*, C-344/20, EU:C:2022:774, paragraph 31). However, it is not apparent from the order for reference that that is the situation with the rule at issue in the main proceedings.
- 26 Conversely, an internal rule decreed by an employer which prohibits the wearing in the workplace of any visible sign of beliefs – philosophical or religious in particular – does not constitute such direct discrimination since 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).
- 27 Indeed, 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 (judgments



of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 52, and of 13 October 2022, *S.C.R.L.(Religious clothing)*, C-344/20, EU:C:2022:774, paragraphs 33 and 34).

- 28 Therefore, unless the referring court finds that, despite the general and undifferentiated way in which Article 9 of the terms of employment at issue in the main proceedings is worded, the applicant in the main proceedings has been treated differently from other workers who have been permitted to manifest their beliefs – religious or philosophical in particular – by wearing a visible sign revealing such beliefs or in some other way, and that she has as a result suffered direct discrimination on the grounds of religion or belief, within the meaning of Article 2(2)(a) of Directive 2000/78, that court will have to examine whether the rule in Article 9 of the municipality's terms of employment would put persons having a particular religion or belief at a particular disadvantage, effectively constituting indirect discrimination based on one of those grounds, within the meaning of Article 2(2)(b) of that directive.
- 29 In that regard, it is apparent from the Court's settled case-law that an internal rule decreed by an employer prohibiting the visible wearing in the workplace of any sign of beliefs – philosophical or religious in particular – may constitute a difference of treatment indirectly based on religion or belief, within the meaning of that provision, if it is established that the apparently neutral obligation contained in that rule results, in fact, in persons adhering to a particular religion or belief being put at a particular disadvantage (see, to that effect, 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).
- 30 In accordance with Article 2(2)(b)(i) of Directive 2000/78, such a difference in treatment does not, however, amount to indirect discrimination if it is objectively justified by a legitimate aim and if the means of achieving that aim are appropriate and necessary (judgment of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraph 60).
- 31 In that regard, it must be noted that, although it is ultimately for the national court, which has sole jurisdiction to assess the facts and to determine whether and to what extent the provision of the terms of employment at issue in the main proceedings meets those requirements, the Court of Justice, which is called on to provide answers that are of use to the national court, may provide guidance, based on the file in the main proceedings and on the written and oral observations which have been submitted to it, in order to enable the national court to give judgment in the particular case pending before it.
- 32 In the first place, as regards the condition relating to the existence of a legitimate aim, it is apparent, first, from the request for a preliminary ruling that, according to the municipality, the aim of Article 9 of the terms of employment at issue in the main proceedings, which prohibits the visible wearing of any sign which reveals the beliefs – philosophical or religious in particular – of members of the municipality's staff, whether or not they are in contact with the public, is to put into effect the principle of neutrality of the public service, which has its legal basis in Articles 10 and 11 of the Belgian Constitution, in the principle of impartiality and in the principle of neutrality of the State.
- 33 In that regard, each Member State, including, where appropriate, its infra-State bodies, in compliance with the powers conferred on them, must be afforded a margin of discretion in designing the neutrality of the public service which it intends to promote in the workplace. Thus, the policy of 'exclusive neutrality' which a public administration, or municipal administration in this case, intends to impose on its employees, depending on its own context and within the framework of its competences, with a view to establishing within it an entirely neutral administrative environment may be regarded as being objectively justified by a legitimate aim, within the meaning of Article 2(2)(b)(i) of Directive 2000/78. The same may also apply to the choice of another public administration, depending on that administration's own context and within the framework of its competences, in favour of another policy of neutrality, such as a general and undifferentiated permission for the wearing of visible signs of beliefs – philosophical or religious in particular –

including in contacts with users, or a prohibition on the wearing of such signs limited to situations involving such contacts.

- 34 Directive 2000/78 establishes only a general framework for equal treatment in employment and occupation, which leaves a margin of discretion to the Member States and, as the case may be, to their infra-State bodies, allowing them to take account of their own specific context, having regard to the diversity of their approaches as to the place they intend to accord, within their respective systems, to religion and philosophical beliefs in the public sector. The margin of discretion thus afforded to the Member States and, where appropriate, to their infra-State bodies, in the absence of consensus at EU level, must, however, go hand in hand with supervision, by the national and EU judicature, consisting in determining whether the measures taken, depending on the case, at national, regional or local level were justified in principle and proportionate (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 86 and 88 and the case-law cited).
- 35 Moreover, it is apparent from Directive 2000/78 that 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 and, where appropriate, to their infra-State bodies 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).
- 36 Therefore, a provision such as Article 9 of the terms of employment at issue in the main proceedings may be regarded as pursuing a legitimate aim within the meaning of Article 2(2)(b)(i) of Directive 2000/78.
- 37 In the second place, as has been recalled in paragraph 30 of the present judgment, if an internal rule such as that at issue in the main proceedings is not to be regarded as ‘indirect discrimination’ within the meaning of Article 2(2)(b) of Directive 2000/78, it must still be appropriate for the purpose of ensuring that the aim pursued by the employer is properly applied. In the case at hand, this entails that the objective of ‘exclusive neutrality’ which the municipality has set itself is genuinely pursued in a consistent and systematic manner, and that the prohibition on wearing any visible sign of beliefs – philosophical and religious in particular – imposed by Article 9 of the terms of employment at issue in the main proceedings is limited to what is strictly necessary (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 68).
- 38 In that regard, first of all, it will be for the referring court to determine whether the municipality pursues that objective in a genuinely consistent and systematic manner with regard to all employees.
- 39 Next, it should be noted that the legitimate objective of ensuring, through a policy of ‘exclusive neutrality’ as established by Article 9 of the terms of employment at issue in the main proceedings, an entirely neutral administrative environment can be effectively pursued only if no visible manifestation of beliefs – philosophical or religious in particular – is allowed when employees are in contact with users of the public service or with other employees, since the wearing of any sign, even a small-sized one, undermines the ability of that measure to achieve the aim allegedly pursued and therefore calls into question the consistency of that policy (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 77). Such a rule is therefore necessary.
- 40 It will still be for the referring court, in the light of all the factors characteristic of the context in which that rule was adopted, to weigh up the interests at stake, taking into account, on the one hand, the fundamental rights and principles at issue, namely, in this case, the right to freedom of thought, conscience and religion guaranteed by Article 10 of the Charter of Fundamental Rights, the corollary of which is the prohibition of any discrimination based on religion enshrined in Article 21 thereof and, on the other hand, the principle of neutrality pursuant to which the public administration concerned seeks to guarantee, by means of the said rule limited to the workplace, the

users of its services and the members of its staff an administrative environment devoid of visible manifestations of beliefs, philosophical or religious in particular.

- 41 In the light of the foregoing considerations, the answer to the first question is that Article 2(2)(b) of Directive 2000/78 must be interpreted as meaning that an internal rule of a municipal authority prohibiting, in a general and indiscriminate manner, the members of that authority's staff from visibly wearing in the workplace any sign revealing, in particular, philosophical or religious beliefs may be justified by the desire of the said authority to establish, having regard to the context in which it operates, an entirely neutral administrative environment provided that that rule is appropriate, necessary and proportionate in the light of that context and taking into account the various rights and interests at stake.

### *The second question*

- 42 By its second question, the referring court asks, in essence, whether Article 2(2)(a) and (b) of Directive 2000/78 must be interpreted as permitting a public authority to organise an entirely neutral administrative environment by prohibiting all the members of its staff from visibly wearing signs which reveal, in particular, philosophical or religious beliefs, whether or not those staff members are in direct contact with the public, where that prohibition appears mostly to affect women and is therefore liable to constitute indirect discrimination on the grounds of sex.
- 43 In that regard, it should be borne in mind that it follows from the spirit of cooperation which must prevail in the operation of the preliminary reference procedure that it is essential that the national court set out in its order for reference the precise reasons why it considers that a reply to its questions concerning the interpretation of certain provisions of EU law is necessary to enable it to give judgment in the dispute that has been brought before it (judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C-64/16, EU:C:2018:117, paragraph 20 and the case-law cited).
- 44 According to the Court's settled case-law, in the context of the cooperation between the Court of Justice and the national courts, the need to provide an interpretation of EU law which will be of use to the national court means that the national court is bound to observe scrupulously the requirements concerning the content of a request for a preliminary ruling, expressly set out in Article 94 of the Rules of Procedure of the Court of Justice (judgment of 19 April 2018, *Consorzio Italian Management and Catania Multiservizi*, C-152/17, EU:C:2018:264, paragraph 21 and the case-law cited).
- 45 Thus, first, in accordance with Article 94(a) of the Rules of Procedure, it is essential that the referring court define the factual and legislative context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based. In the procedure established by Article 267 TFEU, the Court is empowered to give rulings on the interpretation of EU legislation only on the basis of the facts which the national court puts before it (judgment of 2 March 2023, *Bursa Română de Mărfuri*, C-394/21, EU:C:2023:146, paragraph 60 and the case-law cited).
- 46 Second, as is stated in Article 94(c) of the Rules of Procedure, it is essential that the order for reference contain a statement of the reasons which prompted the national court to inquire about the interpretation of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the main proceedings (judgment of 2 September 2021, *Irish Ferries*, C-570/19, EU:C:2021:664, paragraph 133 and the case-law cited).
- 47 It must also be emphasised that the information provided in orders for reference serves not only to enable the Court to give useful answers but also to ensure that it is possible for the governments of the Member States and other interested parties to submit observations in accordance with Article 23 of the Statute of the Court of Justice of the European Union. It is the Court's duty to ensure that that opportunity is safeguarded, given that, under that provision, only the orders for reference are

notified to the interested parties (judgment of 2 September 2021, *Irish Ferries*, C-570/19, EU:C:2021:664, paragraph 134 and the case-law cited).

- 48 In the case at hand, as regards the existence of possible indirect discrimination on the grounds of sex, referred to in the second question, it should be recalled that that ground falls within the scope of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23), which, in Article 2(1)(b) thereof, expressly defines the concept of indirect discrimination on grounds of sex, and not within the scope of Directive 2000/78, which is the only act to which that question relates.
- 49 Furthermore, the order for reference does not contain any information enabling ascertainment of the factual situation on which the second question is based or of the reasons why an answer to that question – in addition to the answer to the first question – is necessary in order to resolve the dispute in the main proceedings.
- 50 Accordingly, the second question is inadmissible.

### Costs

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

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

**Article 2(2)(a) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation**

**must be interpreted as meaning that an internal rule of a municipal authority prohibiting, in a general and indiscriminate manner, the members of that authority's staff from visibly wearing in the workplace any sign revealing, in particular, philosophical or religious beliefs may be justified by the desire of the said authority to establish, having regard to the context in which it operates, an entirely neutral administrative environment provided that that rule is appropriate, necessary and proportionate in the light of that context and taking into account the various rights and interests at stake.**

[Signatures]

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\* Language of the case: French.