

SUMMARY

# **ECJ 15 July 2021, joined cases C-804/18 and C-341/19 (WABE), Religious Discrimination**

## ***IX – v – WABE eV and MH Müller Handels GmbH – v – MJ, German cases***

### **Summary**

An employer's need to present a neutral image may justify a prohibition on any visible expression of beliefs, but must correspond to a genuine need, notwithstanding the specific national context and more favourable national provisions.

### **Questions**

Must Article 1 and Article 2(2)(a) of Directive 2000/78 be interpreted as meaning that 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 based on religion or belief, within the meaning of that directive?

Must Article 2(2)(b) of Directive 2000/78 be interpreted as meaning that a difference of treatment indirectly based on religion and/or gender, arising from an internal rule of an undertaking prohibiting workers from wearing any visible sign of political, philosophical or religious beliefs in the workplace, 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?

Must Article 2(2)(b)(i) of Directive 2000/78 be interpreted as meaning that 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 it is sufficient that that prohibition is limited to conspicuous, large-sized signs provided that is implemented consistently and systematically?

Must Article 2(2)(b) of Directive 2000/78 be interpreted as meaning that national constitutional provisions protecting the freedom of religion may be taken into account as more favourable provisions within the meaning of Article 8(1) of that directive in examining the appropriateness of a difference of treatment indirectly based on religion or belief?

### **Ruling**

Article 1 and 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 an undertaking, prohibiting workers from wearing any visible sign of political, philosophical or religious beliefs in the workplace, 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, for the purpose of that directive, provided that that rule is applied in a general and undifferentiated way.

Article 2(2)(b) of Directive 2000/78 must be interpreted as meaning that a difference of treatment indirectly based on religion or belief, arising from an internal rule of an undertaking prohibiting workers from wearing any visible sign of political, philosophical or religious beliefs in the workplace, 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, provided, first, that that policy meets a genuine need on the part of that employer, which it is for that employer to demonstrate, taking into consideration, inter alia, the legitimate wishes of those customers or users and the adverse consequences that that employer would suffer in the absence of that policy, given the nature of its activities and the context in which they are carried out; secondly, that that difference of treatment is appropriate for the purpose of ensuring that the employer's policy of neutrality is properly applied, which entails that that policy is pursued in a consistent and systematic manner; and, thirdly, that the prohibition in question is 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.

Article 2(2)(b)(i) of Directive 2000/78 must be interpreted as meaning that indirect discrimination on the grounds of religion or belief resulting from an internal rule of an undertaking prohibiting, at the workplace, the wearing of visible signs of political, philosophical or religious beliefs 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. A prohibition which is limited to the wearing of conspicuous, large-sized signs of political, philosophical or religious beliefs is liable to constitute direct discrimination on the grounds of religion or belief, which cannot in any event be justified on the basis of that provision.

Article 2(2)(b) of Directive 2000/78 must be interpreted as meaning that national provisions protecting the freedom of religion may be taken into account as more favourable provisions, within the meaning of Article 8(1) of that directive, in examining the appropriateness of a difference of treatment indirectly based on religion or belief.

---

**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2021-07-15

**Case number:** joined cases C-804/18 and C-341/19