JUDGMENT OF THE COURT (Grand Chamber)

14 March 2017 (*)

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment — Discrimination based on religion or belief — Genuine and determining occupational requirement — Meaning — Customer's wish not to have services provided by a worker wearing an Islamic headscarf)

In Case C-188/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, France), made by decision of 9 April 2015, received at the Court on 24 April 2015, in the proceedings

Asma Bougnaoui,

Association de défense des droits de l'homme (ADDH)

v

Micropole SA, formerly Micropole Univers SA,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič, L. Bay Larsen, M. Berger, M. Vilaras and E. Regan, Presidents of Chambers, A. Rosas, A. Borg Barthet, J. Malenovský, E. Levits, F. Biltgen (Rapporteur), K. Jürimäe and C. Lycourgos, Judges,

Advocate General: E. Sharpston,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 15 March 2016,

after considering the observations submitted on behalf of:

– Ms Bougnaoui and the Association de défense des droits de l'homme (ADDH), by C. Waquet, avocate,

– Micropole SA, by D. Célice, avocat,

– the French Government, by G. de Bergues, D. Colas and R. Coesme, acting as Agents,

– the Swedish Government, by A. Falk, C. Meyer-Seitz, U. Persson, N. Otte Widgren, E. Karlsson and L. Swedenborg, acting as Agents,

– the United Kingdom Government, by S. Simmons, acting as Agent, and by A. Bates, Barrister,

– the European Commission, by D. Martin and M. Van Hoof, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 July 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

2 The request has been made in proceedings between Ms Asma Bougnaoui and the Association de défense des droits de l'homme (Association for the protection of human rights) (ADDH), andMicropole SA, formerly Micropole Univers SA ('Micropole') concerning the latter's dismissal of Ms Bougnaoui because of her refusal to remove her Islamic headscarf when sent on assignment to customers of Micropole.

Legal context

Directive 2000/78

3 Recitals 1, 4 and 23 of Directive 2000/78 state:

'(1) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States and it respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

...

(4) The right of all persons to equality before the law and protection against discrimination constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories. Convention No 111 of the International Labour Organisation (ILO) prohibits discrimination in the field of employment and occupation.

...

(23) In very limited circumstances, a difference of treatment may be justified where a characteristic related to religion or belief, disability, age or sexual orientation constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate. Such circumstances should be included in the information provided by the Member States to the Commission.'

4 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.'

5 Article 2(1) and (2) of the directive provides:

‘1. For the purposes of this Directive, the “principle of equal treatment” shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, ...

...’

6 Article 3(1) of the 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;

...’

7 Article 4(1) of Directive 2000/78 provides:

‘Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.’

French law

8 The provisions of Directive 2000/78 were transposed into French law, notably Articles L. 1132-1 and L. 1133-1 of the code du travail (Labour Code), by Law No 2008-496 of 27 May 2008 laying down various provisions to bring anti-discrimination legislation into line with Community law (*Journal officiel de la République française* (JORF), 28 May 2008, p. 8801).

9 Article L. 1121-1 of the Labour Code states:

‘No one may limit personal rights or individual or collective liberties by any restriction which is not justified by the nature of the task to be performed and proportionate to the aim sought.’

10 Article L. 1132-1 of the Labour Code, in the version in force at the material time, provided as

follows:

‘No person may be excluded from a recruitment procedure or from access to work experience or a period of training at an undertaking, no employee may be disciplined, dismissed or be subject to discriminatory treatment, whether direct or indirect, as defined in Article 1 of Law No 2008-496 of 27 May 2008 laying down various provisions to bring anti-discrimination legislation into line with Community law, in particular as regards remuneration, within the meaning of Article L. 3221-3, incentive or employee share schemes, training, reclassification, allocation, certification, classification, career promotion, transfer, or contract renewal by reason of his origin, his sex, his conduct, his sexual orientation, his age, … his political opinions, his trade union or works council activities, his religious beliefs, his physical appearance, his surname or by reason of his state of health or disability.’

11 Article L. 1133-1 of the Labour Code is worded as follows:

‘Article L. 1132-1 shall not preclude differences of treatment arising from a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.’

12 Article L. 1321-3 of the Labour Code, in the version in force at the material time, provided as follows:

‘Workplace regulations shall not contain:

1° Provisions contrary to primary or secondary law or to the requirements laid down by the collective agreements and understandings as to working practices applicable in the undertaking or establishment;

2° Provisions imposing restrictions on personal rights and on individual and collective freedoms which are not justified by the nature of the task to be undertaken or proportionate to the aim that is sought to be achieved;

3° Provisions discriminating against employees in their employment or at their work, having the same professional ability, by reason of their origin, their sex, their conduct, their sexual orientation, their age … their political opinions, their trade union or works council activities, their religious beliefs, their physical appearance, their surname or by reason of their state of health or disability.’

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

13 It is apparent from the material in the file available to the Court that Ms Bougnaoui met a representative of Micropole, a private undertaking, at a student fair in October 2007, prior to being recruited by Micropole, and that the representative informed her that the wearing of an Islamic headscarf might pose a problem when she was in contact with customers of the company. When Ms Bougnaoui arrived at Micropole on 4 February 2008 for an internship, she was wearing a simple bandana. She subsequently wore an Islamic headscarf in the workplace. At the end of her internship, Micropole employed her, from 15 July 2008, as a design engineer under a contract of employment of indefinite duration.

14 Having been called, on 15 June 2009, to an interview preliminary to possible dismissal, Ms Bougnaoui was dismissed by a letter of 22 June 2009 that stated as follows:

‘... As part of your duties, you are called upon to take part in assignments for our customers.

We asked you to work for the customer ... on 15 May, at their site in .... Following that work, the

customer told us that the wearing of a veil, which you in fact wear every day, had upset a number of its employees. It also requested that there should be "no veil next time".

When you were taken on by our company, in your interviews with your Operational Manager ... and the Recruitment Manager ..., the subject of wearing a veil had been addressed very clearly with you. We said to you that we entirely respect the principle of freedom of opinion and the religious beliefs of everyone, but that, since you would be in contact internally or externally with the company's customers, you would not be able to wear the veil in all circumstances. In the interests of the business and for its development we are obliged, vis-à-vis our customers, to require that discretion is observed as regards the expression of the personal preferences of our employees.

At our interview on 17 June, we reaffirmed that principle of the need for neutrality to you and we asked you to apply it as regards our customers. We asked you again whether you could accept those professional requirements by agreeing not to wear the veil, and you answered in the negative.

We consider that those facts justify, for the aforementioned reasons, the termination of your contract of employment. Inasmuch as your position makes it impossible for you to carry out your functions on behalf of the company, since we cannot contemplate, given your stance, your continuing to provide services at our customers' premises, you will not be able to work out your notice period. Since that failure to work during the notice period is attributable to you, you will not be remunerated for your notice period.

We regret this situation as your professional competence and your potential had led us to hope for a long-term working relationship.'

15 Ms Bougnaoui considered that dismissal to be discriminatory and brought an action before the conseil de prud'hommes de Paris (Labour Tribunal, Paris, France) on 8 September 2009. On 4 May 2011, the conseil de prud'hommes de Paris (Labour Tribunal, Paris) ordered Micropole to pay compensation in respect of her period of notice because it had failed to indicate in its letter of dismissal the gravity of Ms Bougnaoui's alleged misconduct, and dismissed the remainder of the action on the ground that the restriction of Ms Bougnaoui's freedom to wear the Islamic headscarf was justified by her contact with customers of that company and proportionate to Micropole's aim of protecting its image and of avoiding conflict with its customers' beliefs.

16 Ms Bougnaoui, supported by the ADDH, appealed against that decision to the cour d'appel de Paris (Court of Appeal, Paris, France), which, by decision of 18 April 2013, upheld the decision of the conseil de prud'hommes de Paris (Labour Tribunal, Paris). In its decision, it ruled, in particular, that Ms Bougnaoui's dismissal did not arise from discrimination connected with the religious beliefs of the employee, since she was permitted to continue to express them within the undertaking, and that it was justified by a legitimate restriction arising from the interests of the undertaking where the exercise by the employee of the freedom to manifest her religious beliefs went beyond the confines of the undertaking and was imposed on the latter's customers without any consideration for their feelings, impinging on the rights of others.

17 Ms Bougnaoui and the ADDH brought an appeal against the decision of 18 April 2013 before the Cour de cassation (Court of Cassation). They claimed that the cour d'appel de Paris (Court of Appeal, Paris) had, inter alia, infringed Articles L. 1121-1, L. 1321-3 and L. 1132-1 of the Labour Code. Restrictions on religious freedom should be justified by the nature of the task to be undertaken and should arise from a genuine and determining occupational requirement, subject to the proviso that the objective be legitimate and the requirement proportionate. They argued that the wearing of the Islamic headscarf by an employee of a private undertaking when in contact with customers does not prejudice the rights or beliefs of others, and that the embarrassment or sensitivity of the customers of a commercial company, at the mere sight, allegedly, of a sign of religious affiliation, is neither a relevant nor legitimate criterion, free from any discrimination, that might justify the company's economic or commercial interests being allowed to prevail over the

fundamental freedom of religion of an employee.

18 The Social Chamber of the Cour de cassation (Court of Cassation), before which the appeal lodged by the appellants in the main proceedings was brought, notes that, in its judgment of 10 July 2008, *Feryn* (C−54/07, EU:C:2008:397), the Court of Justice merely ruled that the fact that an employer states publicly that it will not recruit employees of a certain ethnic or racial origin constitutes direct discrimination in respect of recruitment within the meaning of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22), but did not determine whether Article 4(1) of Directive 2000/78 must be interpreted as meaning that the wish of an employer's customer no longer to have that employer's services provided by a worker on one of the grounds to which that directive refers is a genuine and determining occupational requirement, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out.

19 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 4(1) of Directive 2000/78 be interpreted as meaning that the wish of a customer of an information technology consulting company no longer to have the information technology services of that company provided by an employee, a design engineer, wearing an Islamic headscarf, is a genuine and determining occupational requirement, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out?'

Request to reopen the oral procedure

20 After delivery of the Advocate General's opinion, Micropole lodged, on 18 November 2016, a request that the oral procedure be reopened pursuant to Article 83 of the Rules of Procedure of the Court of Justice.

21 Micropole argued in support of its request that the Court needed to be made aware of Micropole's observations following the delivery of that opinion and that it wished to provide the Court with additional information.

22 It should be noted in that regard that the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in accordance with Article 83 of its Rules of Procedure, in particular if it considers that it lacks sufficient information or where the case must be decided on the basis of an argument which has not been debated by the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

23 In the present case, the Court considers, having heard the Advocate General, that it has all the information necessary to enable it to rule on the action before it, and that the action does not have to be decided on the basis of an argument which has not been debated before the Court.

24 Micropole's request for the oral part of the procedure to be reopened must therefore be refused.

Consideration of the question referred

25 By its question, the referring court asks, in essence, whether Article 4(1) of Directive 2000/78 must be interpreted as meaning that the willingness of an employer to take account of the wishes of a customer no longer to have that employer's services provided by a worker wearing an Islamic headscarf constitutes a genuine and determining occupational requirement within the meaning of that provision.

26 In the first place, it should be observed that, in accordance with Article 1 of Directive 2000/78, the purpose of that 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.

27 As regards the meaning of 'religion' in Article 1 of that directive, it should be noted that the directive does not include a definition of that term.

28 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.

29 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.

30 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.

31 In the second place, it should be noted that it is not clear from the order for reference whether the referring court's question is based on a finding of a difference of treatment based directly on religion or belief, or on a finding of a difference of treatment based indirectly on those criteria.

32 If, which it is for the referring court to ascertain, Ms Bougnaoui's dismissal was based on non-compliance with a rule in force within that undertaking, prohibiting the wearing of any visible sign of political, philosophical or religious beliefs, and if it were to transpire that that apparently neutral rule resulted, in fact, in persons adhering to a particular religion or belief, such as Ms Bougnaoui, being put at a particular disadvantage, it would have to be concluded that there was a difference of treatment indirectly based on religion or belief, as referred to in Article 2(2)(b) of Directive 2000/78 (see, to that effect, judgment of today's date, *G4S Secure Solutions*, C−157/15, paragraphs 30 and 34).

33 However, under Article 2(2)(b)(i) of the directive, such a difference of treatment does not amount to indirect discrimination if it is objectively justified by a legitimate aim, such as the implementation, by Micropole, of a policy of neutrality vis-à-vis its customers, and if the means of achieving that aim are appropriate and necessary (see, to that effect, judgment of today's date, *G4S Secure Solutions*, C−157/15, paragraphs 35 to 43).

34 By contrast, if the dismissal of Ms Bougnaoui was not based on the existence of an internal rule such as that referred to in paragraph 32 of the present judgment, it is necessary to consider, as this Court is invited to do by the question from the referring court, whether the willingness of an

employer to take account of a customer's wish no longer to have services provided by a worker who, like Ms Bougnaoui, has been assigned to that customer by the employer and who wears an Islamic headscarf constitutes a genuine and determining occupational requirement within the meaning of Article 4(1) of Directive 2000/78.

35 According to that provision, Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 of the directive is not to constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

36 Thus, it is for the Member States to stipulate, should they choose to do so, that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 of the directive does not constitute discrimination. That appears to be the case here, under Article L. 1133-1 of the Labour Code, which it is, however, for the referring court to ascertain.

37 That said, it should be borne in mind that the Court has repeatedly held that it is clear from Article 4(1) of Directive 2000/78 that it is not the ground on which the difference of treatment is based but a characteristic related to that ground which must constitute a genuine and determining occupational requirement (see judgments of 12 January 2010, *Wolf*, C−229/08, EU:C:2010:3, paragraph 35; of 13 September 2011, *Prigge and Others*, C−447/09, EU:C:2011:573, paragraph 66; of 13 November 2014, *Vital Pérez*, C−416/13, EU:C:2014:2371, paragraph 36; and of 15 November 2016, *Salaberria Sorondo*, C−258/15, EU:C:2016:873, paragraph 33).

38 It should, moreover, be pointed out that, in accordance with recital 23 of Directive 2000/78, it is only in very limited circumstances that a characteristic related, in particular, to religion may constitute a genuine and determining occupational requirement.

39 It must also be pointed out that, according to the actual wording of Article 4(1) of Directive 2000/78, such a characteristic may constitute such a requirement only 'by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out'.

40 It follows from the information set out above that the concept of a 'genuine and determining occupational requirement', within the meaning of that provision, refers to a requirement that is objectively dictated by the nature of the occupational activities concerned or of the context in which they are carried out. It cannot, however, cover subjective considerations, such as the willingness of the employer to take account of the particular wishes of the customer.

41 Consequently, the answer to the question put by the referring court is that Article 4(1) of Directive 2000/78 must be interpreted as meaning that the willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf cannot be considered a genuine and determining occupational requirement within the meaning of that provision.

Costs

42 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 4(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf cannot be considered a genuine and determining occupational requirement within the meaning of that provision.

[Signatures]

---

* Language of the case: French.