

Request for a preliminary ruling from the Arbeitsgericht Hamburg (Germany) lodged on 20 December 2018 — IX v WABE e. V.

(Case C-804/18)

(2019/C 182/05)

Language of the case: German

Referring court

Arbeitsgericht Hamburg

Parties to the main proceedings

Applicant: IX

Defendant: WABE e. V.

Questions referred

1. Does a unilateral instruction from the employer prohibiting the wearing of any visible sign of political, ideological or religious beliefs constitute direct discrimination on the grounds of religion, within the meaning of Article 2(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 ⁽¹⁾, against employees who, due to religious covering requirements, follow certain clothing rules?
2. Does a unilateral instruction from the employer prohibiting the wearing of any visible sign of political, ideological or religious beliefs constitute indirect discrimination on the grounds of religion and/or gender, within the meaning of Article 2(1) and Article 2(2)(b) of Directive 2000/78/EC, against a female employee who, due to her Muslim faith, wears a headscarf?

In particular:

- (a) Can discrimination on the grounds of religion and/or gender be justified under Directive 2000/78/EC with the employer's subjective wish to pursue a policy of political, ideological and religious neutrality even where the employer thereby seeks to meet the subjective wishes of his customers?
- (b) Do Directive 2000/78/EC and/or the fundamental right of freedom to conduct a business under Article 16 of the Charter of Fundamental Rights of the European Union in view of Article 8(1) of Directive 2000/78/EC preclude a national regulation according to which, in order to protect the fundamental right of freedom of religion, a ban on religious clothing may be justified not simply on the basis of an abstract capacity to endanger the neutrality of the employer, but only on the basis of a sufficiently specific risk, in particular of a specifically threatened economic disadvantage for the employer or an affected third party?

⁽¹⁾ OJ 2000 L 303, p. 16.