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Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

23 April 2020 (*)

(Reference for a preliminary ruling — Equal treatment in employment and occupation — Directive 2000/78/EC — Article 3(1)(a), Article 8(1) and Article 9(2) — Prohibition of discrimination based on sexual orientation — Conditions for access to employment or to occupation — Concept — Public statements ruling out recruitment of homosexual persons — Article 11(1), Article 15(1) and Article 21(1) of the Charter of Fundamental Rights of the European Union — Defence of rights — Sanctions — Legal entity representing a collective interest — Standing to bring proceedings without acting in the name of a specific complainant or in the absence of an injured party — Right to damages)

In Case C-507/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Supreme Court of Cassation, Italy), made by decision of 30 May 2018, received at the Court on 2 August 2018, in the proceedings

NH

v

Associazione Avvocatura per i diritti LGBTI — Rete Lenford,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, M. Vilaras, E. Regan, P.G. Xuereb and I. Jarukaitis (Rapporteur), Presidents of Chambers, J. Malenovský, L. Bay Larsen, T. von Danwitz, C. Toader, F. Biltgen, K. Jürimäe, C. Lycourgos and N. Piçarra, Judges,

Advocate General: E. Sharpston,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 15 July 2019,

after considering the observations submitted on behalf of:

- NH, by C. Taormina and G. Taormina, avvocati,
- Associazione Avvocatura per i diritti LGBTI — Rete Lenford, by A. Guariso, avvocato,
- the Italian Government, by G. Palmieri, acting as Agent, and by G. De Socio, avvocato dello Stato,
- the Greek Government, by E.-M. Mamouna, acting as Agent,
- the European Commission, by B.-R. Killmann and D. Martin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 31 October 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 2, 3 and 9 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 NH and the Associazione Avvocatura per i diritti LGBTI — Rete Lenford (‘the Associazione’) concerning statements made by NH in a radio programme to the effect that he would not wish to work with homosexual persons in his law firm.

Legal context

European Union law

The Charter

3 Article 11 of the Charter of Fundamental Rights of the European Union (‘the Charter’) is headed ‘Freedom of expression and information’ and provides, in paragraph 1:

‘Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.’

4 Article 15 of the Charter, headed ‘Freedom to choose an occupation and right to engage in work’, provides, in paragraph 1:

‘Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.’

5 Article 21 of the Charter, relating to non-discrimination, states in paragraph 1:

‘Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.’

Directive 2000/78

6 Recitals 9, 11, 12 and 28 of Directive 2000/78 state:

‘(9) Employment and occupation are key elements in guaranteeing equal opportunities for all and contribute strongly to the full participation of citizens in economic, cultural and social life and to realising their potential.

...

(11) Discrimination based on ... sexual orientation may undermine the achievement of the objectives of the [FEU] Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.

(12) To this end, any direct or indirect discrimination based on ... sexual orientation as regards the areas covered by this Directive should be prohibited throughout the [Union]. ...

...

(28) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. ...’

7 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.’

8 Article 2 of the directive, headed ‘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 ...

...’

9 Article 3 of Directive 2000/78 defines the scope of that directive. According to Article 3(1) (a):

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

(a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion’.

10 Article 8 of Directive 2000/78, headed ‘Minimum requirements’, provides, in paragraph 1:

‘Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.’

11 Article 9 of that directive falls within Chapter II, relating to remedies and enforcement. Under the heading ‘Defence of rights’, that article provides, in paragraph 2:

‘Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.’

12 Article 17 of Directive 2000/78, headed ‘Sanctions’, provides:

‘Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. ...’

Italian law

13 Decreto legislativo n. 216 — Attuazione della direttiva 2000/78 per la parità di trattamento in materia di occupazione e di condizioni di lavoro (Legislative Decree No 216 implementing Directive 2000/78 for equal treatment in employment and occupation) of 9 July 2003 (GURI No 187, of 13 August 2003, p. 4), as applicable to the dispute in the main proceedings (‘Legislative Decree No 216’), provides, in Article 2(1)(a):

‘For the purposes of this Decree ..., the “principle of equal treatment” shall mean that there shall be no direct or indirect discrimination whatsoever on the grounds of religion, belief, disability, age or sexual orientation. This principle means that direct or indirect discrimination, as defined below, shall be prohibited:

(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 the grounds of religion, belief, disability, age or sexual orientation’.

14 Article 3(1)(a) of that legislative decree is worded as follows:

‘The principle of equal treatment without distinction on grounds of religion, belief, disability, age or sexual orientation shall apply to all persons as regards both the public and private sectors and shall be entitled to judicial protection, in accordance with the formal requirements laid down by Article 4, with specific reference to the following areas:

(a) access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions’.

15 Article 5 of Legislative Decree No 216 provides:

‘1. Trade unions, associations and organisations representing the rights or interests affected under a mandate given by a public or certified private instrument, failing which the mandate shall be void, shall have standing to bring proceedings under Article 4 in the name and on behalf of, or in support of, the person subject to the discrimination, against the natural or legal person responsible for the discriminatory behaviour or act.

2. The persons referred to in paragraph 1 shall also have standing in cases of collective discrimination where it is not automatically and immediately possible to identify individuals affected by the discrimination.’

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

16 It is apparent from the file submitted to the Court that NH is a lawyer and that the Associazione is an association of lawyers that defends the rights of lesbian, gay, bisexual, transgender or intersex persons (LGBTI) in court proceedings.

17 Taking the view that NH had made remarks constituting conduct that was discriminatory on the ground of workers’ sexual orientation, contrary to Article 2(1)(a) of Legislative Decree No 216, the Associazione brought proceedings against NH before the Tribunale di Bergamo (District Court, Bergamo, Italy).

18 By order of 6 August 2014, that court, sitting as an employment tribunal, ruled NH’s conduct to be unlawful in so far as it was directly discriminatory, NH having stated, in an interview given during a radio programme, that he would not wish to recruit homosexual persons to his law firm nor to use the services of such persons in his law firm. On that basis, the Tribunale di Bergamo (District Court, Bergamo) ordered NH to pay EUR 10 000 to the Associazione in damages and ordered extracts from that order to be published in a national daily newspaper.

19 By judgment of 23 January 2015, the Corte d’appello di Brescia (Court of Appeal, Brescia, Italy) dismissed NH’s appeal against that order.

20 NH appealed in cassation against that judgment before the Corte suprema di cassazione (Supreme Court of Cassation, Italy), the referring court. In support of the appeal, NH alleges, *inter alia*, misapplication of Article 5 of Legislative Decree No 216 in so far as the appeal court recognised that the Associazione had standing, and infringement or misapplication of Article 2(1) (a) and of Article 3 of the legislative decree, on the grounds that he expressed an opinion with respect to the profession of lawyer in a situation where he was not presenting himself as an employer but as a private citizen, and that the statements at issue were not made in any concrete professional context.

21 The referring court notes that, in its judgment, the appeal court found, first, that ‘in a conversation during a radio programme, [NH] made a series of statements gradually elicited by his interviewer ... in support of his general aversion to a particular category of individuals that he would not wish to have around him in his firm ... nor in the hypothetical choice of his co-workers’ and, second, that there was no current or planned recruitment procedure at that time.

22 In that context, the referring court queries, in the first place, whether an association of lawyers, such as the Associazione, constitutes a representative entity for the purposes of Article 9(2) of Directive 2000/78. In that regard, it notes, in particular, that Commission Recommendation 2013/396/EU of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union law (OJ 2013 L 201, p. 60) and Communication COM(2013) 401 final from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, entitled ‘Towards a European Horizontal Framework for Collective Redress’, set out, among the relevant criteria for determining an entity’s standing to bring a representative action, not only the link between the objective laid down by the statutes of the entity concerned and the rights which it is claimed have been infringed, but also the non-profit-making character of that entity.

23 In the present case, the standing of the Associazione was recognised by the appeal court in the light of the Associazione’s statutes, according to which that association ‘aims to contribute to the development and dissemination of the culture and respect for the rights of [LGBTI] persons’, ‘by drawing the attention of the legal world’, and ‘manages the formation of a network of lawyers ...; [and also] fosters and promotes judicial protection and the taking of representative action before national and international jurisdictions’.

24 The referring court states that, under Italian law, where discrimination in matters of employment is directed against a category of persons rather than against an identified victim, Article 5(2) of Legislative Decree No 216 does recognise the entities mentioned in that provision as having standing, those entities being regarded as representing the interests of the injured parties collectively. Nevertheless, the referring court is doubtful as to whether an association of lawyers whose principal objective is to provide legal assistance to LGBTI persons can, merely because its statutes provide that it also aims to promote respect for the rights of those persons, be recognised as having standing to bring proceedings, including in respect of a claim for damages, against employment-related discrimination on the basis of its own direct interest.

25 In the second place, the referring court questions the limits imposed on the exercise of the freedom of expression by the legislation combating discrimination in matters of employment and occupation. It observes that the protection against discrimination afforded by Directive 2000/78 and Legislative Decree No 216 covers the creation, carrying on and termination of an employment relationship and thus affects economic activity. Those instruments appear to it however to be unrelated to the freedom of expression and do not seem to seek to limit that freedom. Furthermore, the application of those instruments would be subject to there being a real risk of discrimination.

26 Consequently, it questions whether, in order for a situation of access to employment falling within Directive 2000/78 and the national implementing legislation to be established, there must be at least an ongoing individual recruitment negotiation or public offer of employment, and whether, in the absence thereof, mere statements which do not have, at the very least, the characteristics of a public offer of employment are protected by the freedom of expression.

27 In those circumstances, the Corte suprema di cassazione (Supreme Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 9 of Directive [2000/78] be interpreted as meaning that an association composed of lawyers specialised in the judicial protection of LGBTI persons, the statutes of which state that its objective is to promote LGBTI culture and respect for the rights of LGBTI persons, automatically, as a legal person having a collective interest and as a non-profit association, has standing to bring proceedings, including in respect of a claim for damages, in circumstances of alleged discrimination against LGBTI persons?’

(2) On a proper construction of Articles 2 and 3 of Directive [2000/78], does a statement expressing a negative opinion with regard to homosexuals, whereby, in an interview given during a radio entertainment programme, the interviewee stated that he would never appoint an LGBTI person to his law firm nor wish to use the services of such persons, fall within the scope of the anti-discrimination rules laid down in that directive, even where no recruitment procedure has been opened, nor is planned, by the interviewee?’

Consideration of the questions referred

The second question

28 As a preliminary point it must be noted that, by its second question, which it is appropriate to examine first, the referring court refers both to Article 2 of Directive 2000/78, relating to the concept of discrimination, and to Article 3, relating to the scope of the directive. However, it is apparent from the request for a preliminary ruling that what is at issue in the main proceedings is not whether the statements made by NH fall within the concept of ‘discrimination’, as defined by the first of those provisions, but whether, having regard to the circumstances in which those statements were made, they fall within the material scope of the directive in so far as it refers, in Article 3(1)(a), to ‘conditions for access to employment ... or to occupation, including selection criteria and recruitment conditions’.

29 Consequently, the Court considers that, by its second question, the referring court is asking, in essence, whether the concept of ‘conditions for access to employment ... or to occupation’ in Article 3(1)(a) of Directive 2000/78 must be interpreted as covering statements made by a person during an audiovisual programme according to which that person would never recruit persons of a certain sexual orientation to his or her undertaking or wish to use the services of such persons, even though no recruitment procedure had been opened, nor was planned.

30 Article 3(1)(a) of Directive 2000/78 provides that it is to apply, within the limits of the areas of competence conferred on the Union, to all persons, as regards both the public and private sectors, including public bodies, in relation to conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion.

31 That directive does not refer to the law of the Member States for the purpose of defining ‘conditions for access to employment ... or to occupation’, but it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union (see, to that effect, judgments of 18 October 2016, *Nikiforidis*,

C-135/15, EU:C:2016:774, paragraph 28, and of 26 March 2019, *SM (Child placed under Algerian kafala)*, C-129/18, EU:C:2019:248, paragraph 50).

32 In addition, in so far as that directive does not define the terms ‘conditions for access to employment ... or to occupation’, they must be interpreted by reference to their usual meaning in everyday language, while also taking into account the context in which they occur and the purposes of the rules of which they are part (see, to that effect, judgments of 3 September 2014, *Deckmyn and Vrijheidsfonds*, C-201/13, EU:C:2014:2132, paragraph 19, and of 29 July 2019, *Spiegel Online*, C-516/17, EU:C:2019:625, paragraph 65).

33 As regards the terms of Article 3(1)(a) of Directive 2000/78, it must be noted that the phrase ‘conditions for access to employment ... or to occupation’ covers, in everyday language, circumstances or facts the existence of which must be established in order for a person to be able to secure particular employment or a particular occupation.

34 However, the terms of that provision do not by themselves enable a determination to be made as to whether statements made outwith any current or planned procedure to recruit a person to particular employment or to a particular occupation fall within the material scope of that directive. It is necessary, therefore, to consider the context of Article 3(1)(a) and the objectives of the directive.

35 In that regard, it must be noted that Directive 2000/78 was adopted on the basis of Article 13 EC, now, after amendment, Article 19(1) TFEU, which confers on the Union the power to take appropriate action to combat discrimination based, inter alia, on sexual orientation.

36 In accordance with Article 1 of Directive 2000/78, and as is clear from the title of, and preamble to, the directive, as well as from its content and purpose, the directive is intended to establish a general framework for combating discrimination on the grounds, inter alia, of sexual orientation as regards ‘employment and occupation’, with a view to putting into effect in the Member States the principle of equal treatment, by providing everyone with effective protection against discrimination based, in particular, on that ground (see, to that effect, judgment of 15 January 2019, *E.B.*, C-258/17, EU:C:2019:17, paragraph 40 and the case-law cited).

37 In particular, recital 9 of that directive emphasises that employment and occupation are key elements in guaranteeing equal opportunities for all and contribute strongly to the full participation of citizens in economic, cultural and social life and to realising their potential. In that respect also, recital 11 of the directive states that discrimination based inter alia on sexual orientation may undermine the achievement of the objectives of the FEU Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.

38 Directive 2000/78 is thus a specific expression, within the field that it covers, of the general prohibition of discrimination laid down in Article 21 of the Charter (see, to that effect, judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 47).

39 In the light of that objective and having regard to the nature of the rights which Directive 2000/78 seeks to safeguard and to the fundamental values that underpin it, the concept of ‘conditions for access to employment ... or to occupation’ within the meaning of Article 3(1)(a) of the directive, which defines the scope of that directive, cannot be interpreted restrictively (see, by analogy, judgments of 12 May 2011, *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291,

paragraph 43, and of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480, paragraph 42).

40 Thus, the Court has already ruled that Directive 2000/78 is capable of applying in circumstances that involve, in employment and occupation, statements concerning ‘conditions for access to employment ... or to occupation, including ... recruitment conditions’, within the meaning of Article 3(1)(a) of Directive 2000/78. In particular, it has found that that concept may cover public statements made in relation to a particular recruitment policy even though the system of recruitment under consideration is not based on a public tender or direct negotiation following a selection procedure requiring the submission of applications and pre-selection of applicants having regard to their interest for the employer (see, to that effect, judgment of 25 April 2013, *Asociația Accept*, C-81/12, EU:C:2013:275, paragraphs 44 and 45).

41 It has also held that the mere fact that statements suggestive of a homophobic recruitment policy do not come from a person who has the legal capacity directly to define the recruitment policy of the employer concerned or to bind or represent that employer in recruitment matters is not necessarily a bar to such statements falling within that employer’s conditions for access to employment or to occupation. In that regard, the Court has made clear that the fact that the employer did not clearly distance itself from the statements concerned, and the perception of the public or social groups concerned, are relevant factors which the court hearing the case may take into account in the context of an overall appraisal of the facts (see, to that effect, judgment of 25 April 2013, *Asociația Accept*, C-81/12, EU:C:2013:275, paragraphs 47 to 51).

42 Furthermore, the fact that no negotiation with a view to recruitment was under way when the statements concerned were made does not preclude the possibility of such statements falling within the material scope of Directive 2000/78.

43 It follows from those considerations that while certain circumstances, such as the non-existence of a current or planned recruitment procedure, are not decisive for the purposes of determining whether statements relate to a particular recruitment policy and, therefore, fall within the concept of ‘conditions for access to employment ... or to occupation’ within the meaning of Article 3(1)(a) of Directive 2000/78, it is nevertheless necessary, in order for such statements to fall within the material scope of that directive, as defined in that provision, that they be capable in fact of being related to the recruitment policy of a given employer, which means that the link between those statements and the conditions for access to employment and to occupation with that employer must not be hypothetical. Whether such a link exists must be assessed by the national court hearing the case in the context of a comprehensive analysis of the circumstances characterising the statements concerned.

44 As regards the criteria to be taken into consideration to that end, it must be stated that, as the Advocate General also noted, in essence, in points 53 to 56 of her Opinion, the relevant criteria are, first, the status of the person making the statements being considered and the capacity in which he or she made them, which must establish either that he or she is a potential employer or is, in law or in fact, capable of exerting a decisive influence on the recruitment policy or a recruitment decision of a potential employer, or, at the very least, may be perceived by the public or the social groups concerned as being capable of exerting such influence, even if he or she does not have the legal capacity to define the recruitment policy of the employer concerned or to bind or represent that employer in recruitment matters.

45 Also relevant, second, are the nature and content of the statements concerned. They must relate to the conditions for access to employment or to occupation with the employer concerned and

establish the employer's intention to discriminate on the basis of one of the criteria laid down by Directive 2000/78.

46 Third, the context in which the statements at issue were made — in particular, their public or private character, or the fact that they were broadcast to the public, whether via traditional media or social networks — must be taken into consideration.

47 That interpretation of Directive 2000/78 is not affected by the possible limitation to the exercise of freedom of expression, raised by the referring court, that it might entail.

48 It is true that freedom of expression, as an essential foundation of a pluralist, democratic society reflecting the values on which the Union, in accordance with Article 2 TEU is based, constitutes a fundamental right guaranteed by Article 11 of the Charter (judgment of 6 September 2011, *Patriciello*, C-163/10, EU:C:2011:543, paragraph 31).

49 However, as is apparent from Article 52(1) of the Charter, freedom of expression is not an absolute right and its exercise may be subject to limitations, provided that these are provided for by law and respect the essence of that right and the principle of proportionality, namely if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others. As the Advocate General has pointed out in points 65 to 69 of her Opinion, that is the case here.

50 The limitations to the exercise of the freedom of expression that may flow from Directive 2000/78 are indeed provided for by law, since they result directly from that directive.

51 Those limitations, moreover, respect the essence of the freedom of expression, since they are applied only for the purpose of attaining the objectives of Directive 2000/78, namely to safeguard the principle of equal treatment in employment and occupation and the attainment of a high level of employment and social protection. They are thus justified by those objectives.

52 Such limitations also respect the principle of proportionality in so far as the prohibited grounds of discrimination are listed in Article 1 of Directive 2000/78, the material and personal scope of which is defined in Article 3 of that directive, and the interference with the exercise of freedom of expression does not go beyond what is necessary to attain the objectives of the directive, in that only statements that constitute discrimination in employment and occupation are prohibited.

53 Furthermore, the limitations to the exercise of freedom of expression arising from Directive 2000/78 are necessary to guarantee the rights in matters of employment and occupation of persons who belong to groups of persons characterised by one of the grounds listed in Article 1 of that directive.

54 In particular, if, contrary to the interpretation of the concept of 'conditions for access to employment ... or to occupation' in Article 3(1)(a) of Directive 2000/78 and set out in paragraph 43 of the present judgment, statements fell outside the material scope of that directive solely because they were made outwith a recruitment procedure, in particular in the context of an audiovisual entertainment programme, or because they allegedly constitute the expression of a personal opinion of the person who made them, the very essence of the protection afforded by that directive in matters of employment and occupation could become illusory.

55 As the Advocate General noted, in essence, in points 44 and 57 of her Opinion, in any recruitment process, the principal selection takes place between those who apply, and those who do

not. The expression of discriminatory opinions in matters of employment and occupation by an employer or a person perceived as being capable of exerting a decisive influence on an undertaking's recruitment policy is likely to deter the individuals targeted from applying for a post.

56 Consequently, statements which fall within the material scope of Directive 2000/78, as defined in Article 3 thereof, cannot fall outside the regime for combating discrimination in employment and occupation established by that directive on the ground that those statements were made during an audiovisual entertainment programme or that they are also an expression of the personal opinion of the person who made them regarding the category of persons to which they relate.

57 In the present case, it is for the referring court to assess whether the circumstances characterising the statements at issue in the main proceedings establish that the link between those statements and the conditions for access to employment or occupation within the firm of lawyers concerned is not hypothetical, that assessment being of a factual nature, and to apply in the context of that assessment the criteria identified in paragraphs 44 to 46 of the present judgment.

58 Having regard to all the foregoing considerations, the answer to the second question is that the concept of 'conditions for access to employment ... or to occupation' in Article 3(1)(a) of Directive 2000/78 must be interpreted as covering statements made by a person during an audiovisual programme according to which that person would never recruit persons of a certain sexual orientation to his or her undertaking or wish to use the services of such persons, even though no recruitment procedure had been opened, nor was planned, provided that the link between those statements and the conditions for access to employment or occupation within that undertaking is not hypothetical.

The first question

59 By its first question, the referring court asks, in essence, whether Directive 2000/78 must be interpreted as precluding national legislation under which an association of lawyers whose objective, according to its statutes, is the judicial protection of persons having in particular a certain sexual orientation and the promotion of the culture and respect for the rights of that category of persons, automatically, on account of that objective and irrespective of whether it is a for-profit association, has standing to bring legal proceedings for the enforcement of obligations under that directive and, where appropriate, to obtain damages, in circumstances that are capable of constituting discrimination, within the meaning of that directive, against that category of persons and it is not possible to identify an injured party.

60 According to Article 9(2) of Directive 2000/78, Member States are to ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of the directive are complied with, may engage, either on behalf or in support of a complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under the directive.

61 Thus, it follows from the wording of that provision that it does not require an association such as that at issue in the main proceedings to be given standing in the Member States to bring judicial proceedings for enforcement of obligations under Directive 2000/78 where no injured party can be identified.

62 Nevertheless, Article 8(1) of Directive 2000/78, read in the light of recital 28 thereof, provides that Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in that directive.

63 On the basis of that provision, the Court has held that Article 9(2) of Directive 2000/78 in no way precludes a Member State from laying down, in its national law, the right of associations with a legitimate interest in ensuring compliance with that directive to bring legal or administrative proceedings to enforce the obligations resulting therefrom without acting in the name of a specific complainant or in the absence of an identifiable complainant (judgment of 25 April 2013, *Asociația Accept*, C-81/12, EU:C:2013:275, paragraph 37).

64 When a Member State chooses that option, it is for that Member State to decide under which conditions an association such as that at issue in the main proceedings may bring legal proceedings for a finding of discrimination prohibited by Directive 2000/78 and for a sanction to be imposed in respect of such discrimination. It is in particular for the Member State to determine whether the for-profit or non-profit status of the association is to have a bearing on the assessment of its standing to bring such proceedings, and to specify the scope of such an action, in particular the sanctions that may be imposed at the end of it, such sanctions being required, in accordance with Article 17 of Directive 2000/78, to be effective, proportionate and dissuasive, regardless of whether there is any identifiable injured party (see, to that effect, judgment of 25 April 2013, *Asociația Accept*, C-81/12, EU:C:2013:275, paragraphs 62 and 63).

65 Having regard to the foregoing considerations, the answer to the first question is that Directive 2000/78 must be interpreted as not precluding national legislation under which an association of lawyers whose objective, according to its statutes, is the judicial protection of persons having in particular a certain sexual orientation and the promotion of the culture and respect for the rights of that category of persons, automatically, on account of that objective and irrespective of whether it is a for-profit association, has standing to bring legal proceedings for the enforcement of obligations under that directive and, where appropriate, to obtain damages, in circumstances that are capable of constituting discrimination, within the meaning of that directive, against that category of persons and it is not possible to identify an injured party.

Costs

66 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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:

- 1. The concept of ‘conditions for access to employment ... or to occupation’ in Article 3(1) (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 covering statements made by a person during an audiovisual programme according to which that person would never recruit persons of a certain sexual orientation to his or her undertaking or wish to use the services of such persons, even though no recruitment procedure had been opened, nor was planned, provided that the link between those statements and the conditions for access to employment or occupation within that undertaking is not hypothetical.**
- 2. Directive 2000/78 must be interpreted as not precluding national legislation under which an association of lawyers whose objective, according to its statutes, is the judicial protection of**

persons having in particular a certain sexual orientation and the promotion of the culture and respect for the rights of that category of persons, automatically, on account of that objective and irrespective of whether it is a for-profit association, has standing to bring legal proceedings for the enforcement of obligations under that directive and, where appropriate, to obtain damages, in circumstances that are capable of constituting discrimination, within the meaning of that directive, against that category of persons and it is not possible to identify an injured party.

[Signatures]

* Language of the case: Italian.
