



## European network of legal experts in gender equality and non-discrimination

### FLASH REPORT

<b>Country:</b>	Germany
<b>Title:</b>	Duties of Loyalty
<b>Date:</b>	9 June 2015
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<b><u>Context</u></b>	
<b>Issue at stake:</b>	Employment and religion
<b>Ground of discrimination:</b>	Religion, sexual orientation
<b>Source:</b>	Policy development
<b>Field:</b>	Employment
<b>Applicable law:</b>	Art. 9 General Act on Equal Treatment

### **Content**

**Policy development:** The Conference of German Bishops has decided to amend its internal rules applicable to employees of the Catholic Church and its organisations. According to the new rules, re-marrying after divorce will be regarded as a severe breach of the duties of loyalty justifying dismissal only in exceptional circumstance. A precondition is that the second marriage will cause significant upheaval in the community of employees or the professional environment and compromises the credibility of the Catholic Church. For employees with a specific religious mission the severity of the breach is assumed. The same rule applies for Registered Partnerships of same-sex couples. This means that a homosexual employee who concludes a Registered Partnership will only be dismissed in exceptional circumstances. In this case, too, the registered partnership needs to cause significant upheaval in the community of employees or the professional environment and to compromise the credibility of the Catholic Church. These rules have to be adopted in the various dioceses to become effective.

**Key points of analysis:** The rules liberalise the treatment of re-marrying couples and – decisive for the area of discrimination law - same-sex couples. The amendment indicates a step toward a more differentiated treatment of breaches of loyalty as interpreted by the Catholic Church, not least regarding the kind of work performed. This has substantive consequences for an important problem of discrimination law: This problem concerns the question to which degree religious communities are entitled to treat employees because of their sexual orientation disadvantageously, concretely, to dismiss them, given Art. 4.2 Directive 2000/78/EC. The new guidelines restrict the possibilities within the Catholic Church more narrowly than in the past.

**Analysis:** This liberalisation has to be seen in the context of public critique of the treatment of the Catholic Church of such cases in the past. It is important to remember the background of this decision: The religious communities in Germany enjoy as employers a wide margin of discretion as to the duties of loyalty that they impose on their employees. Given the social significance of especially the Christian Churches as

employers in the social sphere (child care, hospitals etc.), these matters are of substantive practical importance.

**Internet link source:**

<http://www.dbk.de/presse/details/?suchbegriff=grundordnung&presseid=2795&cHash=f7f556c89939c3780a06cee2ed56eb6c>