



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

NEWS REPORT

Country:	Germany
Title:	Religious exceptions in German employment law
Date:	13 April 2016
Expert:	Mahlmann, Matthias
<u>Context</u>	
Issue at stake:	Religious exception in employment
Ground of discrimination:	Religion/belief, age
Source:	Federal Labour Court (Bundesarbeitsgericht), 17 March 2016 – 8 AZR 501/14 (A)
Field:	Employment
Applicable law:	Art. 9 General Act on Equal Treatment

Content

Case development:

The case concerns an employer who is affiliated with the Protestant Church in Germany and bound by the internal regulations of the Protestant Church in Germany on employment. The employer published a job advertisement for a limited-term contract to write a shadow report on the International Convention on the Elimination of All Forms of Racial Discrimination. The advertisement contained a passage that precondition for an application was membership in the Protestant Church or a church associated with the Working Group of Christian Churches in Germany (Arbeitsgemeinschaft Christlicher Kirchen). The plaintiff who is not a member of a religious community remained in the first round of assessing the candidates but was not invited for an interview. The plaintiff argued that she was not considered for the job because of her religious beliefs.

Decision of the Court:

After two lower instance decisions (the first instance finding the complaint in part well-founded, the second instance dismissing the claim), the Federal Labour Court has formulated a preliminary reference to the CJEU.

The first question is whether an employer can determine himself whether a certain religious orientation is a genuine, legitimate and justified for a certain professional activity?

The second question is whether Art. 9.1 General Act on Equal Treatment on justification of unequal treatment on religious ground is applicable in this case? The question refers to the following formulation of Art. 9.1. General Act on Equal Treatment that provides: "A difference of treatment on the grounds of religion or belief of employees of a religious community, facilities affiliated to it (regardless of their legal form) or organisations which have undertaken conjointly to practice a religion or belief, shall not constitute discrimination where such grounds constitute a justified occupational requirement for a particular religion or belief, having regard to the ethos of the religious community

or organisation in question and by reason of their right to self-determination”.

The third question concerns a clarification of the content of Art. 4.2 Directive 2000/78/EC dealing with occupational requirements.¹

Key points of analysis:

This preliminary reference is of crucial importance for clarifying the legal framework in which organisations with a religious ethos can rely on religious exceptions in employment. Given the importance of the Christian Churches as employers in Germany, this is of great practical significance. So far, religious organisations enjoy a wide discretion as to the application of religious exceptions to equal treatment.

Internet link source:

[http://juris.bundesarbeitsgericht.de/cgi-bin/rechtsprechung/document.py?Gericht=bag&Art=pm&Datum=2016&nr=18549&pos=0&anz=15&titel=Ber%FCcksichtigung der Konfession bei der Einstellung](http://juris.bundesarbeitsgericht.de/cgi-bin/rechtsprechung/document.py?Gericht=bag&Art=pm&Datum=2016&nr=18549&pos=0&anz=15&titel=Ber%FCcksichtigung+der+Konfession+bei+der+Einstellung).

Last accessed 11 April 2016.

¹ Article 4.2. (Directive 2000/78/CE):

Member States may maintain national legislation in force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. This difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground. Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.