



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

### NEWS REPORT

**Country:** Germany  
**Title:** Ethos of religious organisations and the justification of unequal treatment  
**Date:** 24 October 2018  
**Expert:** Mahlmann, Matthias

#### Context

**Issue at stake:** Discrimination based on the ethos of a religious organisation  
**Ground of discrimination:** Religion/belief  
**Source:** CJEU, 11 September 2018, C-68/17 (IR v. JQ); CJEU 17 April 2018, C-414/16 (Egenberger)  
**Field:** Employment  
**Applicable law:** Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

#### Content

**Case development:** The case concerns IR, a limited liability company established under German Law. It is carrying out the work of Caritas (the international confederation of Catholic charitable organizations) as part of the Catholic mission. It operates hospitals in Germany. JQ, a Roman Catholic, worked as Head of the Internal Medicine Department. He remarried after a divorce in 2008. He was dismissed by IR because of his second civil marriage without his first marriage being annulled. JQ brought an action against the dismissal before the German Labour Courts. The Federal Labour Court (Bundesarbeitsgericht) referred the case to the CJEU with the request to clarify on which grounds an unequal treatment can be justified by the duty of loyalty stemming from the ethos of a religious organization. In particular, it asked about the degree of autonomy that religious organizations enjoy in determining the content of these duties of loyalty.

The CJEU held first, that a church or any other organisation the ethos of which is based on religion or belief and which manages a hospital in the form of a private limited company cannot decide to subject its employees performing managerial duties to a requirement to act in good faith and with loyalty to that ethos that differs according to the faith or lack of faith of such employees, without that decision being subject, where appropriate, to effective judicial review to ensure that it fulfils the criteria laid down in Article 4(2) of Directive 2000/78/EC.

Second, it held that a difference of treatment, as regards a requirement to act in good faith and with loyalty to that ethos, between employees in managerial positions according to the faith or lack of faith of those employees is consistent with that directive only if, bearing in mind the nature of the occupational activities concerned or the context in which they are carried out, the religion or belief constitutes an occupational requirement that is genuine, legitimate and justified in the light of the ethos of the church or

organization concerned and is consistent with the principle of proportionality, which is a matter to be determined by the national courts.

Third, it held, a national court hearing a dispute between two individuals is obliged, where it is not possible for it to interpret the applicable national law in a manner that is consistent with Article 4(2) of Directive 2000/78, to provide, within the limits of its jurisdiction, the legal protection which individuals derive from the general principles of EU law, such as the principle prohibiting discrimination on grounds of religion or belief, now enshrined in Article 21 of the Charter of Fundamental Rights of the European Union, and to guarantee the full effectiveness of the rights that flow from those principles, by disapplying, if need be, any contrary provision of national law.

This decision confirms the principles laid down in the decision of 17 April 2018, C-414/16 (Egenberger).<sup>1</sup> Both decisions redraw the line of possible unequal treatment on the grounds of religion in Germany in religious organisations. Up to now, the German legal system gave religious organisations a considerable amount of autonomy in determining the duties of loyalty, imposed on employees, required by the respective faith. In particular, it was regarded a matter of the autonomous decision of the respective religious group itself to determine which particular activities were essential requirements given the overall system of belief. In this sphere of autonomous decision making, there was no state or judicial control on the decisions of the religious communities.

**Key points of analysis:** These questions are of great practical importance because the Christian churches are among the biggest employers in Germany, running in particular a very great number of charitable organizations. The churches held that, given the Christian faith, such activities were part of the area of autonomy enjoyed by religious groups. The decisions of the Court of Justice of the European Union narrowed the area of autonomy considerably, in particular by demanding a test of proportionality of the imposed duty in relation to the particular task performed by the employee, a central issue in the debate about the limits of the autonomy of religious communities.

It remains to be seen, what concrete legal effects these landmark decisions will have in the German legal system and how the courts will implement these clarifications of the relevant legal standards. An indication for the continued importance of these questions is the case reported recently in the German news of a homosexual teacher, who did not receive an employment contract in a catholic gymnasium because he intended to marry his partner. The person concerned is by now employed in a public school.<sup>2</sup> No law suit is up to now reported. The standards set out by the CJEU are applicable to this constellation in the sphere of education, too.

**Internet link source:** Judgment of the Court (Grand Chamber) of 11 September 2018, *IR v JQ*, Case C-68/17, Request for a preliminary ruling from the Bundesarbeitsgericht. Available at: <http://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-68/17>.

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<sup>1</sup> Judgment of the Court (Grand Chamber) of 17 April 2018, *Vera Egenberger v Evangelisches Werk für Diakonie und Entwicklung eV*, Case C-414/16, Request for a preliminary ruling from the Bundesarbeitsgericht. Available at: <http://curia.europa.eu/juris/document/document.jsf?jsessionid=36DC8A498E9A9AED02DD36606AA20D95?text=&docid=201148&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1520687>.

<sup>2</sup> See: <http://www.spiegel.de/karriere/borken-katholisches-gymnasium-schmeisst-homosexuellen-lehrer-raus-a-1230021.html>.