



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

FLASH REPORT

Country:	Germany
Title:	Dismissal of clinic director because of remarriage
Date:	6 March 2019
Expert:	Mahlmann, Matthias
<u>Context</u>	
Issue at stake:	Religious ethos and legal grounds for dismissal
Grounds of discrimination:	Religion or belief
Field of application:	Employment
Source:	National court decision
Applicable law:	Art. 7, 9 Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz)

Content

Case development: The complainant is of catholic belief and worked as a clinic director in one of the hospitals of an independent legal entity controlled by the Catholic Church, created with the purpose to provide health services. The complainant and his employer concluded an employment contract including internal regulations of the Catholic Church on special duties of loyalty of the employees. This internal regulation provides that conclusion of a marriage that is invalid according to catholic belief is regarded as a breach of such duties of loyalty. The complainant married his first wife according to catholic religious prescriptions. After the divorce from his first wife, he remarried a second time, this time only on the basis of civil law. The complainant was dismissed when his employer took notice of his second marriage that violated religious laws. After a preliminary reference to the CJEU, the Federal Labour Court implemented with this decision the judgment of the CJEU.¹

Decision of the court: The Federal Labour Court (*Bundesarbeitsgericht*), 20 February 2019, 2 AZR746/14, decided that the dismissal of the complainant is not justified. Remarriage cannot be regarded as a breach of duties of loyalty of the complainant. The respective provisions in the employment contract are nil and void according to section 7.2 Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*). These rules discriminate the complainant in comparison to other employees because of his religious belief. There is no justification according to section 9.2 AGG. The duty not to conclude a marriage that is according to the belief and legal system of the Catholic church invalid does not form a genuine and determining, legal, and justified occupational requirement for a clinic director. National German constitutional law does not form an obstacle to these findings, the court argued. European Union law specifies the conditions under which institutions directed by the church are allowed to treat their employees unequally on the ground of their religion. German constitutional law is not violated by these rules of EU law. The Court underlined that the CJEU did not act *ultra vires* but within its competences when handing down the judgment in *JR v Q*.

¹ CJEU, Case C-68/17, *JR v Q*, judgment of 11 September 2018.

Key points of analysis: The judgment implements the decision of the Court of Justice of the EU and reinterprets the German law on the permissibility of unequal treatment on the ground of religion in religious institutions and affiliated organisations. It follows the reasoning of the CJEU in JR v. Q. As a consequence the space to determine special duties of loyalty for a religious institution is considerably limited. In particular, courts have to differentiate between kinds of professional activities when they assess the justification of discrimination on the ground of religion. This development is, however, mainly in line with the internal developments within the Catholic Church that has in recent years changed its practice bringing it closer to the considerations identified by the CJEU.

Internet link source:

https://juris.bundesarbeitsgericht.de/cgi-bin/rechtsprechung/document.py?Gericht=bag&Art=pm&Datum=2019&nr=21974&pos=0&anz=10&titel=K%C3%BCndigung_des_Chefarztes_eines_katholischen_Krankenhauses_wegen_Wiederverheiratung.