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FLASH REPORT

Country:	Germany
Title:	Constitutional complaint in Egenberger case
Date:	1 July 2019
Expert:	Matthias Mahlmann
<u>Context</u>	
Issue at stake:	Constitutional complaint against implementation of CJEU, Egenberger
Grounds of discrimination:	Religion or belief
Field of application:	Employment
Source:	Constitutional complaint
Applicable law:	Art. 4.2 Directive 2000/78/EC

Content

Case: The *Diakonie* which is part of the Protestant Church in Germany has lodged a constitutional complaint against the decision of the Federal Labour Court¹ implementing the decision of the CJEU, *Egenberger*.²

The constitutional complaint argues that the decision of the Federal Labour Court impermissibly limits the autonomy of religious organisations which is guaranteed by the German Basic Law, Art. 4. The CJEU, the complainant argues, has not properly assessed the German constitutional law and acted beyond its competences (*ultra vires*) by the restrictions of anti-discrimination law of the autonomy of religious organisations it set out in *Egenberger*.

There is no date set when this case is going to be decided.

Key points of analysis: The constitutional complaint means a fundamental challenge to the decision of the CJEU in *Egenberger*, intending to reverse this decision. In addition, it presents an equally fundamental challenge to the supremacy of EU law in the area of anti-discrimination law, as the complainant argues that the CJEU had no competence to disregard German constitutional law in the area of the freedom of religious organisations and consequently acted *ultra vires*. The case may thus have far reaching ramifications for the relation of Union law and the law of Member States.

Internet link source: <https://www.ekd.de/diakonie-klagt-vor-bundesarbeitsgericht-44274.htm>.

¹ Federal Labour Court (Bundesarbeitsgericht, BAG), 25 October 2018, 8 AZR 501/14.

² CJEU, Judgment of 17.4.2018, C-414/16, *Egenberger*.