



Press and Information

Court of Justice of the European Union

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Judgment in Case C-68/17

IR v JQ

Dismissal of a Catholic doctor from a managerial position by a Catholic hospital due to his remarriage after a divorce may constitute unlawful discrimination on grounds of religion

The requirement that a Catholic doctor in a managerial position respect the Catholic Church's notion of marriage as sacred and indissoluble does not appear to be a genuine, legitimate and justified occupational requirement, which is nevertheless a matter for the German Federal Labour Court to determine in the present case

JQ, a Roman Catholic, worked as Head of the Internal Medicine Department of a hospital managed by IR, a limited liability company established under German law subject to the supervision of the Archbishop of Cologne (Germany).

When IR discovered that, after his divorce from his first wife, to whom he had been married in accordance with the Roman Catholic rite, JQ had married again in a civil ceremony without his first marriage having been annulled, IR dismissed him. In IR's view, by entering into a marriage that is invalid under canon law, JQ had clearly infringed his duty of loyalty arising under his employment contract.

That employment contract refers to the Basic Regulations on employment relationships in the service of the Church (GrO 1993),¹ which provide that the entry by a Catholic employee performing management duties into a marriage that is invalid under canon law is a serious breach of the duty of loyalty and justifies that person's dismissal. According to the ethos of the Catholic Church, religious marriage is sacred and indissoluble. In that context, it should be noted that the German constitution grants to churches and the institutions affiliated to them a right of self-determination which allows them freely to manage their own affairs within certain limits.

JQ challenged his dismissal before the German labour courts on the ground that his remarriage was not a valid ground for dismissal. In JQ's view, the dismissal was an infringement of the principle of equal treatment because, under the GrO 1993, the remarriage of a head of department of the Protestant faith or of no faith would not have had any consequences for the employment relationship between that person and IR.

In that context, the Bundesarbeitsgericht (Federal Labour Court, Germany) asks the Court of Justice to interpret the Equal Treatment Directive,² which prohibits, in principle, discrimination against an employee on grounds of his religion or belief, while allowing, under certain conditions, churches and other organisations the ethos of which is based on religion or belief to require their employees to act in good faith and with loyalty to that ethos.

By today's judgment, the Court finds that **the decision of a Church or 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) **to subject its employees performing managerial duties to a**

¹ Grundordnung des kirchlichen Dienstes im Rahmen kirchlicher Arbeitsverhältnisse of 22 September 1993 (Amtsblatt des Erzbistums Köln 1993, p. 222).

² Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

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 must be amenable to effective judicial review.³

During that review, the national court hearing the action must satisfy itself that, bearing in mind the nature of the occupational activities concerned or the context in which they are carried out, the religion or belief is a genuine, legitimate and justified occupational requirement in the light of the ethos in question.

Although, in the present case, it is for the Bundesarbeitsgericht to determine whether those conditions are satisfied, the Court observes that adherence to the notion of marriage advocated by the Catholic Church does not appear to be necessary for the promotion of IR's ethos due to the importance of the occupational activities carried out by JQ, namely the provision of medical advice and care in a hospital setting and the management of the internal medicine department which he headed. Therefore, that does not appear to be a genuine requirement of that occupational activity. This is corroborated by the fact that similar posts were entrusted to employees who were not of the Catholic faith and, consequently, not subject to the same requirement to act in good faith and with loyalty to IR's ethos.

In addition, the Court observes that, in the light of the documents submitted to it, the requirement at issue does not appear to be justified. However, it is for the Bundesarbeitsgericht to determine whether IR has established that, in the light of the circumstances of the case, there is a probable and substantial risk that its ethos or its right of autonomy will be undermined.

As regards the point that an EU directive does not, in principle, have direct effect between individuals, but has to be transposed into national law, the Court recalls that it is for the national courts to interpret the national law transposing a directive, as far as possible, in a manner that is consistent with the directive.

Should it prove impossible to interpret the applicable national law (in the present case, the German General Law on equal treatment) in a manner that is consistent with the Equal Treatment Directive, as interpreted by the Court in today's judgment, the Court states that a national court hearing a dispute between two individuals will have to disapply the national law.

In that regard, the Court states that **the prohibition of all discrimination on grounds of religion or belief, now enshrined in the Charter of Fundamental Rights of the European Union, is a mandatory general principle of EU law and is sufficient in itself to confer on individuals a right that they may actually rely on in disputes between them in a field covered by EU law.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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³ In that regard, the Court refers to its judgment of 17 April 2018, *Egenberger* (C-414/16; see also Press Release No [46/18](#)), which relates to the requirement of religious affiliation for a post within the church.