



*Directorate-General for Library,
Research and Documentation*

RESEARCH NOTE

Judicial review of employment relationships involving churches or religious undertakings

[...]

Subject: Analysis of the influence, since 1999, of the status that each Member State accords to churches and religious denominations and of the scope of review exercised by national courts with regard to recruitment and dismissal by churches and religious undertakings

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SUMMARY

INTRODUCTION

1. In accordance with Article 17(1) TFEU, ‘the Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States’. In addition to that assertion, in primary law, of the legislative and organisational specificities provided by national law in the ecclesial domain, certain acts of secondary legislation provide for special arrangements based on religion or belief. Those provisions include Article 4(2) of Directive 2000/78/EC,¹ which allows, in essence, ecclesial employers² to provide for a difference of treatment based on religion or belief.
2. It is in that regulatory context that the present research note seeks to determine the influence of the status that each Member State accords to churches³ as to the scope and intensity of review exercised by national courts with regard to recruitment and dismissal by churches and religious undertakings in the light of, inter alia, the rights and obligations set out in Directive 2000/78/EC and, in particular, Article 4(2) thereof. It focuses on case-law in this area after 1999 and any references to earlier case-law or national legislation clearly indicate that fact.
3. Although the research initially concerned the laws of 24 Member States,⁴ no relevant case-law concerning ecclesial employers or on the basis of which to draw conclusions on the scope of the review that may be exercised in that regard could be found in the legal systems of **Bulgaria, Denmark, Estonia, Finland, Lithuania, Poland** and **Portugal**. The same is true of **France** where there is a strict separation of the state from the church (principle of secularism),⁵ and where the question of the

¹ 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).

² For the purposes of the summary, that term refers both to churches as such and religious undertakings taking advantage, as an employer in the context of an employment relationship, of special arrangements based on religious belief.

³ For the purposes of this note, it is not necessary to make a distinction between the different words used in the Member States to refer to entities which have been accorded a special status on religious grounds (religious churches, denominations, associations or communities etc.); the word used to that effect is ‘churches’. That word must be understood as being devoid of any denominational references, in particular Christian. Likewise, the conditions for according that special status, in particular with regard to the internal structure of entities in question and their legal form, are not examined.

⁴ The legal systems of Cyprus, Luxembourg, Malta and the United Kingdom could not be examined.

⁵ With the exception of the three départements of Alsace-Moselle and the overseas départements which have alternative arrangements.

conduct of a worker that would be contrary to the religious leanings of an undertaking is not addressed from the perspective of judicial review, but from the point of view of the worker causing an objective disturbance thus making it impossible to maintain the employment relationship. The specific character of an undertaking with particular leanings, which is not covered by a special status accorded to a church, is taken into account by the courts, without being a decisive factor in their analysis.

4. Contributions have subsequently been made with regard to the legal systems of thirteen Member States, namely **Germany, Belgium, Croatia, Spain, Greece, Hungary, Ireland, Italy, Latvia, the Netherlands, Slovenia, Sweden and the Czech Republic**, as well as in respect of the case-law of the European Court of Human Rights (**ECtHR**).⁶
5. On that basis, it is necessary, first of all, to clarify the status accorded to churches in the Member States examined (I.) in order to establish the influence that it may have on the exercise of judicial review in cases of recruitment and dismissal in the context of employment relationships involving entities which have been accorded that status (II.). Lastly, the particular importance of the status accorded to churches in certain Member States and its possible impact on the relationship between national legal systems and European Union law should be noted (III.).

I. THE STATUS ACCORDED TO CHURCHES BY THE MEMBER STATES

6. Out of the Member States examined, only **Greece** has a State church system, establishing the ‘sovereignty of State law’ in the ecclesial domain.⁷ The State is therefore able to regulate all administrative matters of the Church.
7. The other Member States examined have ‘intermediary’ systems,⁸ in so far as the principle of separation between the Church and the State includes the existence of a

⁶ Contributions in respect of Romania and Slovakia have not been made since the outcome of the proceedings in the case-law selected in those legal systems is no different to that in the other Member States examined.

⁷ At least this is the dominant position in Greek constitutional doctrine, with a minority arguing that Greece has a *sui generis* system of cooperation and coexistence. It should be noted that a constitutional reform bill providing for the separation of the State and the Church, in line with the Orthodox Church and its historical role, was lodged in March 2017.

⁸ Or, in the words of the ECtHR, ‘concordat’, see Guide on Article 9 — Freedom of thought, conscience and religion, 2015, p. 41 et seq.

specific domain for churches free from State intervention.

8. The various arrangements of that status may include systems establishing, in general, a cooperative relationship between the State and churches (**Spain**) or, more expressly, systems promoting self-determination or independence to regulate the internal affairs of churches (**Germany, Croatia, Hungary, Ireland, Italy, the Czech Republic, Slovenia, Sweden**). Similarly, the systems may be based on the freedom of internal organisation of ecclesiastical entities or religions (**Belgium, the Netherlands**) or provide for the prohibition of State intervention in the religious activities of ecclesial organisations (**Latvia**).
9. It will be noted that among the States which have such an intermediary system, eight have a concordat-type relation with the Holy See (**Germany, Croatia, Spain, Hungary, Ireland, Italy, Latvia, Slovenia**) and, where appropriate, agreements with the representative bodies of other religious denominations or religions.
10. Notwithstanding terminological differences, the intermediary systems do not seem to have genuine structural differences,⁹ in so far as churches enjoy more or less a broad degree of freedom with regard to administrative and organisational matters which are considered to be internal affairs.
11. In the vast majority of legal systems examined, the aforementioned degree of freedom is not only enjoyed by the churches themselves, but also by any associated entities, such as religious undertakings.¹⁰

II. INFLUENCE OF THE STATUS ACCORDED TO CHURCHES ON THE SCOPE OF JUDICIAL REVIEW

12. Since recruitment and dismissal decisions involve an entity enjoying a degree of freedom granted to it on account of its special status, the grant of such a status may, in the majority of the Member States examined, limit the scope of judicial review exercised by the national courts. That limitation should be understood as being a

⁹ The many differences between the legal systems examined concerning the configuration of relations between churches and the State, for example with regard to the existence of an ecclesial tax, are not addressed in this note.

¹⁰ This is certainly not the case in **Belgium** where such undertakings have contractual freedom and may rely on national legislation transposing Directive 2000/78/EC.

derogation from the review, especially with regard to proportionality, of such a decision taken in the context of purely secular employment relationships.¹¹ Its scope varies, however, in line with the legal systems examined.

13. The case-law identified concerning judicial review with regard to recruitment and dismissal by churches and religious undertakings relates, on the one hand, to the relationship between a church and a person carrying out ecclesiastical duties¹² (A.) On the other, it concerns relations subject to national employment law, involving a church either as an employer or as a body issuing religious approval (B.).

A. JUDICIAL REVIEW OF RELATIONSHIPS INVOLVING THE EXERCISE OF
ECCLESIASTICAL DUTIES

14. The principle of the absence of review by the national courts of relationships involving the exercise of ecclesiastical duties (1.) may be adjusted in certain cases involving State law (2.).

1. THE ABSENCE OF JUDICIAL REVIEW AS A PRINCIPLE

15. Relationships involving the exercise of ecclesiastical duties strictly speaking seem, in general, to relate above all to ecclesial law and not national employment law, at least in so far as the commencement and termination of those duties is concerned. The application of ecclesial law alone rather than national employment law thus excludes, as a general rule, review by the national courts.¹³ The established case-law of the **ECtHR** in that regard does not preclude such an approach.¹⁴
16. Accordingly, in **Latvia**, the recruitment and dismissal of a priest cannot be subject to judicial review, in so far as it falls outside the scope of State law. Likewise, in

¹¹ For the purposes of the present note, the judicial review of purely secular employment relationships is considered a 'normal review'.

¹² Those duties are generally understood as being carried out by members of the clergy (priest, pastor, imam, etc.) and are directly related to the church's proclamatory mission. Relationships between members of the clergy and the churches may be governed by the law relating to the employment of civil service officials, especially since the churches may be registered as legal entities under public law.

¹³ The role of ecclesiastical courts is not examined in this note.

¹⁴ With regard to a certain number of actions based on a violation of Article 6(1) ECHR (the right of access to a court), the **ECtHR** has observed that that provision is not intended to create new substantive rights that have no legal basis in the State concerned, but rather to provide procedural protection for the rights recognised in national law.

Germany, until a turnaround in the case-law in 2014,¹⁵ with regard, for example, to decisions relating to the commencement or termination of duties of a priest or pastor, the national courts declined jurisdiction to hear such cases on the ground that relations between churches and priests or pastors fall within the scope of ecclesial law and, consequently, the internal affairs of churches. In essence, the same approach has been adopted in **Croatia, Hungary, the Czech Republic and Slovenia**.

17. Similarly, in **Belgium**, the principle of the organisational autonomy of each religious denomination precludes judicial review of the fairness of dismissal proceedings in respect of a church minister.
18. As for **Italy**, it should be observed that, in accordance with the Lateran Treaty, the central governing bodies of the Catholic Church are free from any form of interference from the Italian State and the Italian courts do not have the jurisdiction to intervene, for example, to ensure the reinstatement of a dismissed priest.
19. A notable exception to the absence of judicial review of relationships involving the exercise of ecclesiastical duties is **Greece**, which has a State church system. Indeed, all administrative acts are subject to review by the administrative courts, in so far as the ecclesiastical bodies apply State legislation. Only acts that are specifically religious and dogmatic, in particular 'spiritual' disciplinary actions such as excommunication, are not subject to judicial review by the State.

2. MITIGATION OF THE ABSENCE OF JUDICIAL REVIEW IN AREAS WHERE THERE EXISTS A LINK TO STATE LAW

20. In certain cases, mitigation of the absence of judicial review of relationships involving the exercise of ecclesiastical duties may be observed, in particular with regard to disputes in the areas of civil liability, salaries, pecuniary rights and social security. While the reasons for such a limited review may not necessarily be seen in the relevant case-law, they seem to be based, generally speaking, on the principle of the separation of church and State and on the right to effective judicial protection.
21. In **Germany**, since 2014, relationships concerning the exercise of ecclesiastical duties may be subject to judicial review where the person concerned alleges

¹⁵ In that regard, see *infra*, paragraph 21.

infringement of State law, in particular with regard to salaries, social security and the enforceability of decisions handed down by ecclesiastical courts. However, due to the right to self-determination of churches, judicial review is limited to compliance with fundamental constitutional principles and guaranties, in particular the prohibition on acting arbitrarily. Likewise, in **Croatia** and the **Czech Republic**, judicial review may focus on issues of remuneration, pecuniary rights and social security. Further, in **Italy**, national courts have jurisdiction to rule on the legality of a decision taken by a body of the Holy See where the dispute may result in a financial penalty.

22. In **Slovenia**, national courts have jurisdiction to review matters of ecclesial law which are decisive in ruling on a claim for non-material damage caused to a priest by his dismissal from the clerical state, when ruling on a claim for compensation based on State law. They also have jurisdiction to review social security decisions concerning, inter alia, members of the clergy, since the State is required, in accordance with State legislation implementing an agreement entered into with the church, to pay social security contributions on behalf of members of the clergy.
23. Lastly, in **Ireland**, although the independence of a religious institution to manage its own administrative and disciplinary affairs is well established, judicial review nevertheless covers due process rights, that is to say, inter alia, respect of the adversarial principle and rights of the defence. The question of exercising judicial review in the context of decisions taken in the religious domain has not been expressly settled by the case-law.

B. JUDICIAL REVIEW OF EMPLOYMENT RELATIONSHIPS

24. The case-law of the Member States concerning employment relationships which, although not directly related to the exercise of ecclesiastical duties, are connected with the special status accorded to churches, relates to two situations, namely, employment relationships involving an ecclesial employer (2.) and employment relationships entered into with the State but subject to the existence of religious approval (3.). In both cases, the ECtHR examines compliance with the same criteria set out in its case-law (1.).

1. SCOPE OF JUDICIAL REVIEW IN THE LIGHT OF THE CASE-LAW OF THE ECtHR

25. It is apparent from the settled case-law of the **ECtHR** that, while it is not for the national authorities to examine the substance of disputed decisions of churches or the doctrinal positions adopted by churches, the national courts are required to carry out a detailed assessment of the circumstances of the case and to strike a balance between the interests at issue.¹⁶

26. In the context of the review carried out by the national courts, which appears to be procedural in nature in that it must involve striking a balance between the interests at issue and focus on whether there is an adequate statement of reasons,¹⁷ the courts are required to consider all of the relevant factors when examining the proportionality of a dismissal by an ecclesial employer or a decision not to renew an employment contract following the withdrawal of religious approval. These elements include, more particularly:

- how close the activity of the person concerned is to the Church's proclamatory mission and the nature of the post;
- acceptance of the duty of loyalty by the person concerned on a voluntary and informed basis when entering into the employment contract;
- the public or otherwise nature of the circumstances of the person concerned, in particular with regard to their public profile;
- the consequences for the person concerned of the conduct at issue, in particular the damage caused and the possibility of finding alternative employment.

¹⁶ In addition to Article 9 (freedom of thought, conscience and religion) ECHR, that case-law concerns Article 6 (fairness of proceedings and right to a fair trial), Article 8 (right to respect for private and family life), Article 10 (freedom of expression), Article 11 (freedom of assembly and association) and Article 14 (prohibition of discrimination).

¹⁷ See, inter alia, judgments of the ECtHR of 23 September 2010 in *Schüth v. Germany*, ECLI:CE:ECHR:2010:0923JUD000162003 (Germany was found to have violated the right to private and family life enshrined in Article 8 ECHR, on the ground that the German courts had not adequately explained that the interests of a parish took precedence over those of a church musician dismissed for having breached his duty of loyalty by living with another woman after separating from his wife) and of 20 October 2009 in *Lombardi v. Italy*, ECLI:CE:ECHR:2009:1020JUD003912805 (Italy was found to have violated the fairness of proceedings and the right to a fair trial, and freedom of expression enshrined in Articles 6(1) and 10 ECHR on grounds of inadequacy of national judicial review and lack of sufficient information to enable the person concerned to challenge the decision not to renew his contract of employment).

2. EMPLOYMENT RELATIONSHIPS INVOLVING AN ECCLESIAL EMPLOYER

27. After having set out the trends in the case-law of the Member States examined (a.), particular attention will be paid to the criterion of how close the activity of the person concerned is to the Church's proclamatory mission (b.).

a. TRENDS IN THE CASE-LAW OF THE MEMBER STATES
EXAMINED

28. It is not possible from the relevant case-law identified in the various Member States to discern clearly the criteria taken into account when reviewing recruitment and dismissal decisions taken by ecclesial employers. However, two trends emerge: one allowing only limited review, restricted in essence to compliance with the prohibition on acting arbitrarily and the obligation to state reasons and the other amounting to a normal review.

29. Accordingly, on the one hand, in **Germany**, pursuant to constitutional case-law concerning dismissal for breach of the duty of loyalty, judicial review is exercised in two stages. First, with regard to the ecclesial rule at issue, the courts are limited to checking 'plausibility', that is to say ensuring consistency of the statements made by the ecclesial employer with regard to the content and scope of a duty of loyalty and the consequences of a breach of that duty. That review focuses, in particular, on the rule at issue having a religious objective, the existence of a genuine relationship between the employer and the church in question, and that no discrepancy is found between the rule and its implementation. The rule at issue cannot be assessed in accordance with the criteria set out in State law; the courts are limited to verifying compliance with the prohibition on acting arbitrarily and with accepted principles of morality and public policy.

30. Second, German courts seek to strike a balance between all of the interests at issue, in particular the fundamental rights of the employee, while placing more weight on the Church's own view as set out in the rule at issue. In so far as the proportionality of the ecclesial rule itself cannot be examined, that balancing exercise concerns only the practical application of that rule.

31. A comparable approach has been observed in the **Netherlands** in connection with the dismissal by a religious school on the basis that the person concerned did not

belong to the same religious denomination. The Dutch courts carried out a very limited review, first of all checking the need for a requirement to safeguard the ethical principles of the body concerned in the light of the prohibition on acting arbitrarily, in order to strike a balance between the interests at issue. That approach has also been adopted by the Netherlands Institute of Human Rights, an entity competent in matters of equal treatment with powers to issue non-binding opinions, which examines the reasonableness of a decision taken by the body concerned in terms of the existence of an objective link between the ecclesial rule and the commitment to ethical values of that body. In essence, it is a review of compliance with procedural safeguards, in particular the obligation to state adequate reasons for the decision taken.

32. Furthermore, it should be noted that in the **Czech Republic**, in a dispute concerning the dismissal of a layperson not carrying out ecclesiastical activities, the Czech courts carried out a normal review of the alleged professional misconduct. However, no case-law could be identified concerning dismissal for breach of the duty of loyalty.
33. On the other hand, in some Member States, a more comprehensive normal review is exercised. Accordingly, in **Ireland**, any derogation from the prohibition of discrimination on the grounds of religion must be objectively justified and proportional. In that regard, the Irish courts examine whether the measure at issue was reasonable or reasonably necessary by taking into account all the relevant circumstances of the case in the light of the freedom of religion and the profession of religious faith.
34. In **Hungary**, the national courts are required to rule on the rights and obligations of persons in the service of the Church as set out in State law. In **Slovenia**, it is apparent from the case-law that an employment relationship entered into between an entity affiliated with the Church and a person who is not a priest is subject to ordinary employment law, thus falling within the scope of a normal review. The same approach seems to have been adopted in **Croatia**.
35. Lastly, in **Latvia**, it is apparent from the case-law that churches do not have absolute freedom to derogate from national employment law. Accordingly, the dismissal of a secretary employed by a church on the basis of a change of faith was found to be unjustified on the grounds of failing to respect the notice periods for dismissal set out

in employment law. In the light of the applicable legislation, it seems likely that in the event that those notice periods were respected, judicial review would still focus on the justification of a duty of loyalty as an objective and justified condition for carrying out the work in question.

36. It will be observed that in **Sweden**, although the separation of state and the Lutheran Church dates back only to 2000 and a certain number of disputes relating to the requirement to belong to that church would have been expected, no case-law has been identified in that regard.

b. CONSIDERATION OF THE CRITERION RELATING TO HOW CLOSE
THE ACTIVITY OF THE PERSON CONCERNED IS TO THE CHURCH'S
PROCLAMATORY MISSION

37. Particular attention may be given to the consideration by national courts of the criterion relating to how close the activity of the person concerned is to the Church's proclamatory mission. That criterion is not dealt with in the same way in the case-law of the Member States in question, even though it is apparent from the case-law of the **ECtHR** that it is an essential element when examining whether an employer is entitled to demand compliance with an increased duty of loyalty.

38. In five Member States examined, the type of activity in question is taken into consideration. Accordingly, in **Hungary**, it is necessary, for the purposes of applying the principle of equal treatment, to distinguish between activities that are directly or indirectly related to the activities of religious communities. In addition, it is apparent from an opinion issued by the Hungarian Equal Treatment Authority that, with regard to the religious requirements to be met by job applicants, it is necessary to make a distinction according to the proximity of that role to core ecclesial activity, in so far as religious affiliation may be required for a teacher of religion, but not for purely secular activities such as those carried out by a caretaker or housekeeper.

39. Likewise, in **Latvia** and **Croatia**, the standard of judicial review depends, inter alia, on whether the person concerned is directly involved in the religious activities of the employer, in so far as a difference in treatment on grounds of religious faith is permitted only if it constitutes an objective and justified condition for carrying out the work in question. The same is true in **Sweden** where legislation provides for derogation from the principle of equal treatment only where the person concerned is

responsible for practising religion or holds a post involving contact with third parties.

40. Lastly, in **Italy**, when striking a balance between the freedom of expression of the employee and the right of the religious body to promote its ideology, it is necessary to draw a distinction according to the nature of the employer's activities and the duties performed by the employee within the organisation. It is apparent from case-law dating from 1994 that the purpose of a hospital managed by a religious community is to assist and care for sick people and that the conversion of doctor or nurse to another religion does not constitute a legitimate reason for dismissal. In addition, with regard to denominational schools, a distinction must be drawn between activities necessary to realise religious objectives and those of a purely executive or technical nature. Consequently, the dismissal of a gymnastics teacher from a Catholic school for contracting a civil, not religious, marriage was found to be unjustified.
41. However, that approach was not adopted in **Germany** where the scope of review is independent of whether the employment relationship in question involves activities promoting the message of churches. It is apparent from the constitutional case-law in that regard that it is for churches alone to determine what falls within the scope of their mission and whether an activity or position relates thereto.

3. EMPLOYMENT RELATIONSHIPS WITH THE STATE, SUBJECT TO THE EXISTENCE OF RELIGIOUS APPROVAL

42. In several Member States, disputes have been brought before the national courts concerning employment relationships entered into with the State but subject to the existence of religious approval,¹⁸ in particular in situations relating to religious education in state schools. The requirement of such approval is generally provided for in an agreement between the State and the church in question, a concordat or similar, with the withdrawal of approval leading to the dismissal or non-renewal of the person concerned.
43. In **Croatia**, provisions relating to employment relationships involving churches amount to derogations from ordinary employment law, judicial review not being permitted with regard to, inter alia, factors relating to agreements entered into between the State and the different churches. Recruitment and dismissal decisions

¹⁸ By way of example, as far as Catholicism is concerned, the *missio canonica*.

taken in accordance with those agreements fall, in principle, under the exclusive competence of the churches in question. In a dispute concerning such a dismissal, the Croatian Constitutional Court refused to examine the decision withdrawing religious approval but, on the other hand, reviewed the dismissal decision by striking a balance between the interests at issue and upholding the dismissal on the ground that it did not cause any particularly serious harm to the person concerned.¹⁹

44. In two other Member States, the standard of review appears to be a little more extensive, in so far as the courts in question go beyond striking a balance between the interests at issue. Accordingly, in **Spain**, failure to renew an employment contract following the withdrawal of religious approval was subject to a review of compliance with constitutional requirements and the balancing of fundamental rights at issue. To that end, the relationship in question was described as being an objectively special working relationship, with the right to religious freedom and the principle of the religious neutrality of the State implying that responsibility for religious education is assumed by the State and carried out by persons considered to be qualified to do so by the church which selects the dogmatic content.
45. The standard and subject of review appear to be even more evident in **Belgium** where the Constitutional Court was asked to give a preliminary ruling on the constitutionality of national legislation providing that the withdrawal of the religious approval of a religious supervisor, by the head of the church in question, led, in principle, to the termination of his appointment. The Belgian court held that the autonomy of the church in question does not preclude the court adjudicating on the substance from verifying whether such a decision has been duly substantiated, that it is not arbitrary, and that it was not taken for a purpose unrelated to the exercise of that autonomy. In that regard, it was held that compliance with Article 6 ECHR requires that, prior to the dismissal of the religious supervisor, the principle that both parties must be heard should have been respected. Where the reasons for the loss of confidence are unrelated to a breach of the duty of loyalty, the Belgian Constitutional Court took the view that those reasons fall outside the scope of the judicial review of the State employer and, depending on the circumstances, the jurisdiction of the courts adjudicating on the substance.

¹⁹ That approach has been validated by the ECtHR in the judgment of 4 October 2016 in *Travaš v. Croatia*, ECLI:CE:ECHR:2016:1004JUD007558113, in particular in view of the fact that the person concerned had been dismissed only after an unsuccessful attempt to find him another suitable post.

III. INFLUENCE OF THE CONSTITUTIONAL DIMENSION OF THE STATUS ACCORDED TO CHURCHES ON RELATIONS BETWEEN MEMBER STATES AND THE UNION

46. So far as this point is relevant, it should be noted that the status accorded to churches under the constitutional law of certain Member States is of special significance in that the importance given to the autonomy of churches is so fundamental that it may, in accordance with respective constitutional provisions, preclude the application of rules of EU law in the national legal system, where those rules affect certain aspects of employment law involving ecclesial employers.

47. Thus, in **Germany**, the Federal Constitutional Court held that the special status of churches, based on the right to ecclesial self-determination, relates to German constitutional identity, the essential elements of which are considered to be exceptions to the principle of the primacy of Union law. According to that court, German constitutional law may therefore preclude, to a certain extent, the harmonisation of employment law in the context of employment relationships involving ecclesial employers, in so far as it infringes the right to ecclesial self-determination.

48. In the same vein, in the **Czech Republic**, the Constitutional Court held that Czech Constitutional law precludes any interference by the EU, in particular with regard to the activities of churches.

CONCLUSION

49. While the status that each Member State accords to churches has a clear impact on standard of review exercised by national courts with regard to recruitment and dismissal by churches and religious undertakings, the limits imposed on national courts depend, in essence, on the nature of the relationships in question.

50. As regards, on the one hand, judicial review of relationships involving the exercise of ecclesiastical duties, the general rule — with the exception of **Greece**, which is characterised by the existence of a State Church — is that national courts are not

competent to rule on questions relating, in essence, to ecclesial law. However, in several Member States, national courts can rule on matters relating to State law which may arise with regard to such relationships, in particular so far as concerns civil liability, salaries and pecuniary rights, social security or the enforceability of a decision handed down by an ecclesial body (**Germany, Croatia, Italy, Czech Republic, Slovenia**) and also with regard to compliance with the procedural rights of the person concerned (**Ireland**).

51. So far as concerns, on the other hand, employment relationships, there is established case-law concerning dismissal by an ecclesial employer and dismissal or non-renewal of an employment contract by the State following the withdrawal of mandatory religious approval. Such situations fall, in principle, within the scope of national legislation transposing Directive 2000/78/EC.
52. It is apparent from the case-law set out above that there is a **consensus among the Member States examined**, in so far as the national courts strike a balance between the interests at issue in the application of ecclesial rules providing for a duty of loyalty on the part of the employee or the requirement of religious approval in order to be able to exercise a professional activity, in particular in public education. That requirement is also apparent from the case-law of the **ECtHR**.
53. By contrast, with regard to judicial review of the ecclesial rule itself, while it is not entirely excluded from the scope of judicial review (a definitive position on the subject has not yet been taken in **Croatia**), two trends emerge: one restricted, in essence, to compliance with fundamental constitutional requirements in the sense of a prohibition on acting arbitrarily (**Germany, Belgium, Spain, the Netherlands**), and the other amounting to a normal standard of review (**Hungary, Ireland, Latvia, Slovenia**).
54. In that regard, it should be observed that, while in several Member States the question of direct or indirect involvement of the person concerned in the religious activities of the employer has an impact on the standard of judicial review exercised in cases of a difference in treatment (**Croatia, Hungary, Italy, Latvia, Sweden**), that is not the case in **Germany** where the possible connection of an activity or post to an ecclesial mission is considered to fall under the exclusive competence of churches.

55. Lastly, in **Germany** and the **Czech Republic**, the status accorded to churches is of special significance, in so far as it is likely, in accordance with the constitutional provisions of those Member States, to preclude the harmonisation of certain aspects of employment law involving ecclesial employers. In that regard, it is apparent from German constitutional case-law that that status relates to German constitutional identity.

[...]