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Judgment of the Court in Case C-258/24 | Katholische Schwangerschaftsberatung

A Catholic association cannot dismiss an employee on the sole ground that the employee concerned has left the Catholic Church

Such a dismissal presupposes, inter alia, that in the light of the nature of the activities carried out, the requirement not to leave that church is genuine, legitimate and justified having regard to that association's ethos

In today's judgment, the Court of Justice states how a fair balance should be ensured between, on the one hand, the interests of an employer whose ethos is based on religion in not having its ethos and right of autonomy called into question and, on the other hand, the interests of employees in not being discriminated against depending on their religion. EU law affords each Member State discretion in ensuring that balance. Although the national courts must, in principle, refrain from assessing whether the actual ethos of the church or organisation concerned is legitimate, it is nevertheless for those courts, and not for the church or organisation concerned, to assess whether an occupational requirement is, on account of the nature of the activities concerned or the context in which they are carried out, genuine, legitimate and justified having regard to that ethos. In the present case, the Court takes the view that a Catholic association such as the German association Katholische Schwangerschaftsberatung (a Catholic association counselling on pregnancy) cannot, in principle, dismiss a Catholic employee on the sole ground that she has left the Catholic church while, in particular, that association employs non-Catholics for the purpose of the same activity. In such a situation, the departure from the Catholic Church in itself does not seem to call in question the ethos or the right of autonomy of that association. It is however, ultimately, for the German Federal Labour Court to assess that in the present case.

Katholische Schwangerschaftsberatung is an association within the German Catholic Church which provides counselling to pregnant women. It requires all its employees to comply with the regulations of the Catholic Church according to which any counselling on pregnancy has the objective of protecting the life of the unborn child and thus must be delivered on the basis of encouraging the pregnant woman to continue her pregnancy and to accept her child.

When one of its counsellors, a member of the Catholic Church, left ¹ that church, ² Katholische Schwangerschaftsberatung dismissed her for that reason. Under the applicable Canon law, leaving the Catholic Church is considered to be a serious breach of the duty of loyalty.

The counsellor concerned explained her departure by the fact that the Diocese of Limburg levied, in addition to the church tax, an additional church levy on Catholic persons who, like her, are in an interfaith marriage with a high-earning spouse. Furthermore, that association also employed, in the same counselling service, employees who were not members of the Catholic Church, who were not subject to the same loyalty requirement and thus were not at risk of being dismissed on the same ground. The counsellor therefore challenged her dismissal before the German courts.

The Federal Labour Court, considering the employee's dismissal to constitute a difference of treatment directly based on religion, expresses doubts as to the possibility of justifying that difference of treatment. It therefore asked the Court of Justice to interpret the EU rules on equal treatment in employment and occupation, ³ read in the light of the Charter of Fundamental Rights of the European Union. ⁴

The Court answers that **EU law precludes** national legislation under which a private organisation the ethos of which is based on a religion may **require of an employee** who is a member of a certain church practising that religion **not to leave that church** during the employment relationship, **on pain of dismissal**,⁵ **even though**

- that organisation employs other persons to carry out the same duties as those of the employee in question, without requiring that those persons be members of that church, and
- that employee does not openly act in a manner that is antagonistic to the church concerned,

where, in the light of the nature of the occupational activities of that employee or of the context in which those activities are carried out, those occupational requirements are not genuine, legitimate and justified having regard to that organisation's ethos.

Although that assessment is, in the present case, for the Federal Labour Court, the Court of Justice gives that court some guidelines.

According to the Court of Justice, **the requirement at issue does not appear to be 'genuine'** for the purposes of the activity of pregnancy counselling. Katholische Schwangerschaftsberatung has allocated such positions to employees who are not members of the Catholic Church. That is inclined to demonstrate that that association itself regards membership of that church as not necessary, but that it is sufficient that its counsellors undertake to comply with the regulations of the Catholic Church on that matter.

In addition, **the counsellor** explained her departure by the collection of an additional church levy to which she is subject on account of the fact that her husband is not Catholic and is high-earning. By that departure, she **neither distanced herself from nor rejected the precepts and fundamental values of the Catholic church**. Moreover, it is not apparent that she would no longer be willing to observe those regulations, which she undertook to comply with in her employment contract.

In any event, it is for Katholische Schwangerschaftsberatung to establish that the alleged risk that its ethos or right of autonomy would be undermined is probable and substantial, so that the requirement at issue is actually necessary and proportionate.

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 EU law or the validity of an EU 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 and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ By a declaration before the competent local authority. That authority informs only the Catholic Church and the employer of this, so that the latter may take it into account in the calculation of the employee's remuneration.

² And having refused to rejoin it.

³ Council [Directive 2000/78/EC](#) of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

⁴ Specifically, the fundamental right to the freedom of thought, conscience and religion and the prohibition of any discrimination on the ground of religion.

⁵ Or, in order to continue the employment relationship, to rejoin that church after having left it.