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Advocate General's Opinion in Case C-258/24 | Katholische Schwangerschaftsberatung

Advocate General Medina: The dismissal of an employee by a Catholic organisation for leaving the Catholic Church may amount to discrimination on grounds of religion

That is the case where the organisation has not made the occupational activity dependant on being a member of the Catholic Church and the employee does not openly act in a manner that is contrary to that church's ethos

Katholische Schwangerschaftsberatung is a women's professional association within the Catholic Church in Germany. It provides, among others, counselling to pregnant women, in particular as regards abortion.

Its employees do not have to be Catholic, but are subject to specific employment conditions of the Catholic Church.¹ Insofar as Catholic employees are concerned, leaving the Catholic Church is considered as a serious breach of their duty of loyalty towards their employer and may result in dismissal. Under canon law, it is one of the most serious offences against the faith and the unity of the Catholic Church.

In 2019, Katholische Schwangerschaftsberatung dismissed one of its counsellors in pregnancy-related projects because she had left² the Catholic Church and refused to rejoin it. At that time, the counselling team on abortion comprised six persons, two of whom were members of the Evangelical Church.

The counsellor concerned successfully challenged the dismissal before the lower labour courts in Germany. The Federal Labour Court, seized by Katholische Schwangerschaftsberatung, wonders whether the dismissal constitutes an admissible difference of treatment. It therefore has asked the Court of Justice to give further³ guidance on the interpretation of the Employment Equality Directive⁴ and, in particular, of the derogations laid down in that directive⁵ as regards occupational requirements.

In today's Opinion, Advocate General Laila Medina takes the view that **the dismissal of an employee by a religious organisation, on account of his or her decision to leave a particular church, cannot**, in a case as the present one, **be justified** under the provision of the Employment Equality Directive which allows, under certain conditions, differences of treatment based on religion as regards occupational activities within churches and religious organisations.⁶ Indeed, to her mind, the conditions of this provision are not satisfied **where the performance of the occupational activity does not require being a member of that particular church and the employee concerned does not openly act in a manner that is contrary to that church's ethos.**

An occupational requirement can be considered genuine, within the meaning of that provision where, by reason of the nature of and the context in which an occupational activity is carried out, the fact of not professing a religion renders the employee concerned unsuitable to perform that activity, having regard to the organisation's ethos.

Yet, an occupational requirement consisting in continuous membership of a church cannot be held to be genuine where a religious organisation, acting as employer, does not make performance of an occupational activity

conditional on that membership, nor where, furthermore, that organisation employs persons of a different religion to carry out that activity. Leaving that church is not in itself a sufficient basis for assuming that the employee concerned does not intend to continue complying with the fundamental principles and values of the church and that he or she will automatically cease to fulfil the obligations which apply to him or her by virtue of the employment relationship.

The Advocate General emphasises, first, that the Employment Equality Directive ensures a **fair balance between the right of autonomy of churches and the right of workers not to be discriminated** against on grounds of religion or belief.

She further considers that an interpretation of the right of autonomy of churches which allows a religious organisation to dismiss an employee in such a specific context would amount to recognising that the right of autonomy withdraws compliance with the criteria set out in the Employment Equality Directive from the scope of judicial review.

Last, in the Advocate General's view, such an interpretation would also run counter to the individual freedom to religion, which is expressly enshrined in the Charter of Fundamental Rights of the European Union ⁷ and which corresponds to the freedom of religion guaranteed under the European Convention of Human Rights. ⁸

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ In the present case: Basic Regulation on employment relationships in the service of the Church of 22 September 1993 in the version of the resolution of the General Assembly of the Association of Dioceses in Germany of 27 April 2015.

² Her primary aim was to be exempted from the payment of the additional church levy to which she was subject as a Catholic person married to a high-earning spouse in an interfaith marriage.

³ The present case follows directly on from the judgments in *Egenberger* (judgment of 17 April 2018, [C-414/16](#); see also press release [No 46/18](#)) and *IR* (judgment of 11 September 2018, [C-68/17](#); see also press release [No 127/18](#)).

⁴ [Council Directive 2000/78/EC](#) of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

⁵ Article 4(1) and (2).

⁶ Article 4(2).

⁷ Article 10(1).

⁸ Article 9.