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# The Struggle to Uphold Religious Autonomy within EU Anti-Discrimination Law

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'Religious autonomy' captures the idea that religious communities should be free to manage their own affairs in accordance with their beliefs and without interference by the State. Repeatedly, the European Court of Human Rights (ECtHR) has recognised that 'the autonomous existence of religious communities is indispensable for pluralism in a democratic society' and that religious autonomy is one dimension of the freedom of religion protected by Article 9 of the European Convention of Human Rights (eg *Metropolitan Church of Bessarabia*, para. 118; *Fernández Martínez*, para. 127). It is, however, clear that religious autonomy is not unlimited; it may come into conflict with other fundamental rights, such as the right to non-discrimination. This was at the centre of two earlier decisions of the European Union's Court of Justice (ECJ): *Egenberger* and *IR v JQ*. These decisions generated a lively debate: the Court was criticised by some for the restrictions that it placed on religious autonomy, as well as its willingness to alter established national law on this topic (eg Unruh). Nevertheless, on 17 March 2026, the Grand Chamber of the ECJ reaffirmed its approach through its decision in Case C-258/24 *Katholische Schwangerschaftsberatung v JB* EU:2026:211.

**Summary of the Factual and Legal Dispute**

Katholische Schwangerschaftsberatung is 'a specialised association within the German Catholic Church, which is dedicated to helping children, young people, women and their families who find themselves in particular circumstances' (ECJ, para. 22). The applicant worked in a team that provided counselling to pregnant women. The regulations of the Catholic Church specified that the objective of such counselling was to encourage women to continue with their pregnancy. At the time of her dismissal, there were six persons in the team: four were members of the Catholic Church and two were members of the (Protestant) Evangelical Church (Opinion of AG Medina, para. 7).

The regulations of the Catholic Church in Germany established a duty of loyalty that applied to all employees, irrespective of religion. For Catholic employees, there were specific obligations: leaving the membership of the Church was expressly identified as constituting a serious breach of that duty (ECJ, para, 21). JB was a member of the Catholic Church when she was hired, but, in 2013, she took steps to leave the Church. She did so to avoid a diocesan levy that applied to her because she was in 'an interfaith marriage with a high-earning spouse' (para. 24). Her employer later tried to persuade her to re-join the Church, but she refused to do so. As a result, her employment was terminated in 2019.

The Federal Labour Court found that JB's dismissal constituted direct discrimination on grounds of religion or belief, contrary to the German legislation implementing Directive 2000/78. However, the Directive contains exceptions for genuine occupational requirements (Article 4(1)) and occupational requirements of religious ethos organisations (Article 4(2)). The Federal Labour Court sought an interpretation by the ECJ of whether this employer's requirement to remain a member of a particular church was compatible with either of these

exceptions. As Mulder explains, the decision to refer this question to the ECJ reflects a long-running legal debate between German courts.

**The judgment of the Court of Justice**

The Court begins by accepting the premiss that this was a case of direct discrimination on grounds of religion or belief because the requirement applied exclusively to Catholic employees (para. 41). It focuses on whether the Article 4(2) exception for religious ethos organisations was applicable. Its first paragraph permits differences of treatment based on a person's religion or belief that constitute a 'genuine, legitimate and justified occupational requirement'. The second paragraph permits such organisations 'to require individuals working for them to act in good faith and with loyalty to the organisation's ethos'.

The Court recognises that, while the Directive 'aims to protect the fundamental right of workers not to be discriminated against on grounds of their religion or belief', Article 4(2) demonstrates that the Directive 'aims to take into account the right of autonomy of churches and other public or private organisations whose ethos is based on religion or belief' (para. 43). The objective of Article 4(2) is to find a 'fair balance' between these fundamental rights where they clash with each other (para. 47). Drawing upon its earlier decisions in *Egenberger* and *IR v JQ*, the Court holds that Article 4(2) requires the following:

(i) a 'direct and objectively verifiable link' between the activities that the employee was performing and the requirement that she remain a member of the Catholic Church, and

(ii) that this requirement is 'genuine, legitimate and justified having regard to the organisation's ethos' (para. 58).

It is also necessary that the requirement complies with the principle of proportionality (para. 56).

In relation to point (i), the Court accepts that, in the light of the organisation's ethos, there is a direct link between the provision of pregnancy counselling and the requirement to act in good faith and with loyalty to that ethos (para. 64). It is, however, sceptical that this extends to a requirement to remain a member of the Catholic Church. It acknowledges that a 'heightened duty of loyalty' can be warranted for certain posts because of their 'specific mission' (para. 67). It rejects, however, the proposition that this can extend to all roles within all organisations attached to the Catholic Church (para. 68).

In relation to point (ii), the Court holds that the requirement of remaining a member of the Catholic Church 'does not appear' to satisfy the first criterion of being a 'genuine' requirement (para. 69). The Court had previously interpreted 'genuine' as meaning that 'professing the religion or belief on which the ethos of the church or organisation is founded must appear necessary because of the importance of the occupational activity in question for the manifestation of that ethos or the exercise by the church or organisation of its right of

autonomy' (*Egenberger*, para. 65). In the present case, the Court points out that the presence of pregnancy counsellors who were not members of the Catholic Church indicates that membership was not necessary to perform this role (para. 70). The Court accepts that it was necessary for employees to act in accordance with the Church's regulations, eg on the objectives of pregnancy counselling. It disagrees, though, with the proposition that 'mere departure from that church' constituted sufficient evidence that the employee was no longer suitable to perform her role (para. 71). The Court also questions whether this requirement was justified and proportionate. In its view, refusing to rejoin the Catholic Church was not sufficient to show that the applicant had committed 'an act antagonistic to that church' (para. 76), because her reasons for leaving the Church were not intended to distance herself from the Church's 'precepts and fundamental values' (para. 72).

While the Court acknowledges that it is for the referring court to verify the circumstances of the case, it concludes that the criteria laid down in Article 4(2) were not satisfied in relation to the employer's requirement not to leave the membership of the Catholic Church. In addition, the Court swiftly discards the alternative possibility that the difference of treatment could be justified as a 'genuine and determining occupational requirement' under Article 4(1) of Directive 2000/78. This exception applies where the requirement is 'objectively dictated' by the occupational activities to be performed (para. 82). Given that the occupational activities at stake in this case are also performed by persons who are not members of the Catholic Church, then Article 4(1) is not applicable.

**An erosion of religious autonomy?**

This case, like its predecessors, pits two fundamental rights against each other: the right to religious autonomy and the right to non-discrimination. It is difficult to escape the conclusion that the ECJ places greater weight on the individual right to non-discrimination than the collective right to religious autonomy. This is primarily because of the way in which the Court has chosen to interpret Article 4(2). The Court concedes that, while the Directive identifies the criteria for balancing these fundamental rights, this is 'without specifically and definitively allocating weight to the interests at stake' (para. 48). Therefore, the case-law has been decisive in shaping how Article 4(2) is applied in practice.

In each of the three cases concerning religious ethos employers, the Court has adopted a strict standard of scrutiny. It has laid down a rigorous set of cumulative criteria that substantially constrain the circumstances under which religious ethos organisations can apply loyalty requirements. Notably, the straitjacket of this approach appears to be qualitatively different to that found the case-law of the ECtHR. The latter identifies a wide range of factors that should be taken in account and weighed in the balance (eg *Fernández Martínez*, paras 133-151). The ECtHR acknowledges that one factor to be considered is whether the applicant 'knowingly and voluntarily accepted a heightened duty of loyalty towards the Catholic Church' (eg *Fernández Martínez*, para. 135). This factor is given little weight in the ECJ's analysis. Moreover, the ECJ shows limited

concern for the perception of the religious community as to the seriousness of an employee making a conscious choice to rupture her membership of the church. The Court asserts that this is not 'an act antagonistic to that church' (para. 76). For any religious community, the decision of a person to take formal steps to end her membership thereof is profoundly significant and likely signals some degree of antagonism in the relationship between the two.

The overall tenor of the judgment is, therefore, one that leans towards upholding the right to non-discrimination over the right to religious autonomy. That said, the present case offers some novelty insofar as the Court accepts that the tasks of a pregnancy counsellor were linked to the religious ethos of the organisation, ie protecting the life of the unborn child (para. 22). Notably, the Court recognises that requiring employees to deliver counselling in compliance with the Church's regulations on this manner constituted a genuine, legitimate and justified occupational requirement (para. 64). This part of the judgment might be viewed as akin to an olive branch, whereby the Court endeavours to reassure religious communities that it is prepared to uphold loyalty requirements, but only if they meet the Court's standards.

**The relationship of the ECJ with national courts**

One of the striking features of the judgment is that the Court leaves almost no latitude for the referring court in how to apply Article 4(2) to the situation of the applicant. Through a close engagement with the factual situation of the case, the Court applies a heavy hand in seeking to determine the outcome of proceedings when this case returns to the national jurisdiction. This is surprising because earlier in the judgment the Court states:

Directive 2000/78 leaves a margin of discretion to the Member States, allowing them to take account of their own specific context, and affords each Member State discretion in achieving the necessary reconciliation between the various rights and interests at issue, in order to ensure a fair balance between them' (para. 61).

This is drawn from the Court's case-law on restrictions on wearing visible symbols of religious, political or philosophical belief in the workplace. The hallmark of that case-law has been the Court's willingness to confer significant latitude for Member States as to how they regulate the manifestation of religious beliefs in the workplace (eg Vickers). In contrast, each of the three cases concerning religious ethos employers have been characterised by the Court's constriction of national discretion.

The choice of the Court to regulate tightly the circumstances under which religious ethos employers can exercise their right to religious autonomy is questionable. First, it negates the significance of Article 17(1) TFEU. This states that 'the Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States'. Although, this is part of the Union's primary law, it has not substantially influenced how the ECJ interprets Article 4(2) of Directive 2000/78. Second, Van den Brink has pointed out that the case-law on religious ethos employers places little emphasis on the express

words in the first paragraph of Article 4(2) to the effect that it should be implemented ‘taking account of Member States’ constitutional provisions and principles’. Each of the three cases have concerned Germany’s constitutional framework for respecting the right to self-determination of religious associations. Article 4(2) indicates that the legislature intended that one factor to be considered in striking a balance between the competing rights is respecting national constitutional arrangements.

The salience of this aspect of the case is underscored by the recent judgment of the German Federal Constitutional Court (FCC) in *Egenberger*. Following the 2018 ECJ decision in *Egenberger*, the applicant was successful before the German Federal Labour Court. In 2025, however, the FCC set aside that decision. It accepted that, because of the primacy of EU law, the interpretation of Article 4(2) given by the ECJ in *Egenberger* had to be applied in German law. Yet it also drew attention to the latitude that remained for national courts in the balancing of fundamental rights claims, and the scope for German law to continue to attach weight to the right of churches to self-determination (FCC, para. 225). This suggests an approach that is not directly in conflict with the ECJ, but which remains distinct (see, inter alia, Mahlmann and Vickers). It is reasonable to assume that the ECJ would have been aware of the FCC decision in *Egenberger*. Nevertheless, the position adopted in *Katholische Schwangerschaftsberatung* indicates that ECJ is not minded to provide more leeway for national courts to find their own balance between religious autonomy and non-discrimination. As this case will now return to the German courts, this is a legal saga that may yet have a long way to travel.

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