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LUIGI PELLEGRINI EDITORE

Working without believing? Leaving a religious denomination does not automatically lead to dismissal by an institution affiliated with that denomination.

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The work of religious organizations[1], under German law[2], is characterized by the specific 'loyalty clause' included in the employment contract, developed since 1985 by the case law of the Bundesverfassungsgericht[3], on the basis of Articles 4 of the Basic Law (GG) and 137 of the Weimar Constitution (WRV), in conjunction with Article 140 of the Basic Law (GG).

In light of this case law, the German Bishops' Conference (DBK) issued new Regulations in November 2022, within the general framework of the *Synodaler Weg,* acknowledging that the previous legislation had by then often been superseded by the rulings of state courts[4].

Under these new Regulations, strikes and the negotiation of collective agreements remain prohibited, as does discrimination on the grounds of origin, gender, religion, disability, age, lifestyle

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[1] V. MARIA D'ARIENZO, *Il divieto di discriminazione religiosa del lavoratore nelle organizzazioni di tendenza tra diritto interno e diritto dell'Unione Europea*, in *DFP*, 2021, pp. 805 ss.; EUGENIO ERARIO BOCCAFURNI, *Il licenziamento nelle organizzazioni di tendenza religiose*, in *Riv. Giur. Lav. Prev. Soc.*, 2020, pp. 305 ss.; ALBERTO LEPORE, *Organizzazioni di tendenza e non discriminazione dei lavoratori per motivi religiosi nella giurisprudenza della Corte di giustizia, ivi,* 2019, pp. 558 ss.; JLIA PASQUALI CERIOLI, *Parità di trattamento e organizzazioni di tendenza religiose nel "nuovo" diritto ecclesiastico europeo,* in *qdpe,* 2013, pp. 71 ss.; NICOLA COLAIANNI, *Voci in dialogo: organizzazioni, istituzioni di tendenza religiose e diritti delle parti, ibidem,* pp. 215 ss.; ANGELO LICASTRO, *Il regime giuridico delle organizzazioni confessionali di tendenza, tra garanzie costituzionali "forti" e interpretazioni "omologanti" (o "abroganti"?) della Corte di giustizia UE, ivi*, 2018, pp. 863 ss.; ID., *La "storia infinita" dell'autonomia delle organizzazioni confessionali di tendenza tedesche: tensioni e convergenze tra diritto costituzionale nazionale e diritto dell'Unione europea*, in *Consultaonline,* 2026, pp. 328 ss.; GIUSEPPE D'ANGELO, *Il lavoro negli enti religiosi*, in *DE*, 2021, pp. 397 ss.; BERNARD CALLEBAT – VALÉRIE PARISOT – HÉLÈNE DE COURRÈGES (a cura di), *Les religions et le droit du travail. Regards croisés, d'ici et d'ailleurs*, Bruylant, Brüssel, 2017; MARIA GABRIELLA BELGIORNO DE STEFANO, *Il licenziamento determinato da ragioni di credo politico o fede religiosa nelle c.d. organizzazioni di tendenza,* in *Temi rom.,* 1980, pp. 310 ss.

[2] V. RENATE OXENKNECHT-WITSCH, *Kirchliches Arbeitsrecht und Europarecht*, Ketteler, Köln, 2009; CHRISTIAN WALTER, *Kirchliches Arbeitsrecht vor den Europäischen Gerichten*, in *ZevKR*, 2012, pp. 233 ss.; REINHARD RICHARDI – KARIN SPELGE, *Arbeitsrecht in der Kirche*, Beck, München, 2024; ULRICH RHODE, *Als es noch keine kirchlichen Arbeitsgerichte gab. Der Rechtsschutz, bei Streitigkeiten aus dem Bereich des kollektiven kirchlichen A rbeitsrechts in der Zeit von 1971 bis 2005*, in ELMAR GÜTHOFF – STEPHEN HAERING (a cura di), *Ius quia iustum. Festschrift für Helmuth Pree zum 65. Geburtstag*, Berlin, 2015, pp. 799 ss.; WILHELM REES, *Sexualisierte Gewalt in Dienst- und Arbeitsverhältnissen der römisch-katholischen Kirche*, in MARTINA EGGER - ANDREAS RAFFEINER – HERWIG VAN STAA (a cura di), *Arbeitsrecht, Gesellschaftspolitik und Europa: Liber amicorum für Johann Egger zum 70. Geburtstag,* Kovac, Hamburg, 2022, pp. 195 ss.; BENJAMIN WELLER, *Kirchliches Arbeitsrecht,* Nomos, Baden Baden, 2021, pp. 53 ss.; JOACHIM EDER, *Die "Rolle" des Diözesanbischofs im kirchlichen Arbeitsrecht*, in ULRICH KAISER – RONNY RAITH – PETER STOCKMANN (a cura di), *Salus Animarum Suprema Lex. FS für Max Hopfner zum 70. Geburtstag,* Lang, Frankfurt a.M., 2006, pp. 129 ss.

[3] Bundesverfassungsgericht, n. 2/BvR/1703, del 4 giugno 1985, in *BVerfGE* 70, 138 ss.

[4] REGINA MATHY, *Arbeit an der "katholischen Identität" - was heißt das für die Beschäftigten und die MAV?*, in HERMANN REICHOLD (a cura di), *Die Grundordnung 2022 – ein neues Narrativ im kirchlichen Arbeitsrecht*, LIT, Münster, 2022, pp. 27 ss.; BRUNO SCHRAGE, *Reif für das 21. Jahrhundert? Kritische Anfragen an die aktuelle Reform der Grundordnung, ivi,* pp. 79 ss.

and sexual identity, with the exception of activities carried out in the pastoral and catechetical spheres, where membership of the Catholic Church is still required[5].

However, dismissals of divorced and remarried employees are now also prohibited[6].

Finally, in the event of disputes, the Regulations stipulate that jurisdiction lies with the Diocesan Court of the diocese concerned, with the possibility of appealing to Bonn[7].

It is precisely the issue of the loyalty clause, provided for in the employment contracts of religious organizations, that was the subject of a ruling by the Court of Justice of the European Union, which established, in judgment C-258/24, of 17 March 2026, that a Catholic institution may not dismiss an employee solely as a result of their formal act of leaving the Church[8], but that it is necessary to verify in concrete terms whether membership of the Church, required for the performance of the work, is 'essential, legitimate and justified' in the light of the nature of the work.

The case arose from an appeal against dismissal by an employee of the Caritas pregnancy counselling service. The social worker, who had worked for the Catholic organization for over six years, formally left the (*Kirchenaustritt)* [9] the Catholic Church, not because she had lost her faith *stricto sensu*, but because she was unable to pay the special church tax imposed by the Diocese of Limburg, a tax levied only on members of the Church married to a spouse with a high income who was either an atheist or belonged to another religion.

The claimant pointed out that, moreover, non-Catholic colleagues also worked in the same organisation, thus highlighting that the requirement of membership of the Catholic Church was not, in the final analysis, so essential.

At first instance, the dismissal was overturned by the Wiesbaden Labour Court (judgment 2/CA/288/19, of 10 June 2020), a ruling upheld on appeal by the Frankfurt Regional Labour Court (judgment 8/SA/1092/20, of 1 March 2022). In the final instance, however, the Federal Labour Court (BAG) held that the dismissal constituted religious discrimination, and therefore referred the

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[5] V. FAUSTINO DE GREGORIO, *L'homo viator tra dovere etico e precettistica divina*, in *RIFD*, 2016, pp. 637 ss.

[6] V. EDOARDO BAURA, *Il diritto all'intimità nella Chiesa: bene giuridico e disponibilità del diritto*, in *Eph*., 2021, pp. 719 ss.

[7] V. STEPHAN MÜCKL, *La contratación del personal al servicio de las Iglesias y el sistema de tribunales para la resolución de conflictos laborales en Alemania*, in *IC,* 2019, pp. 159 ss.; NICHOLAS SCHÖCH, *La giurisdizione dei tribunali del lavoro della Chiesa in Germania*, in *Jus,* 2019, pp. 29 ss.; ALFRED HIEROLD, *Die Arbeitsgerichtsbarkeit der Katholischen Kirche in der Bundesrepublik Deutschland*, in STEPHAN HAERING – JOHANN HIRNSPERGER – GERLINDE KATZINGER – WILHELM REES (a cura di), *In mandatis meditari. FS für Hans Paarhammer zum 65. Geburtstag,* Duncker & Humblot, Berlin, 2012, pp. 671 ss.

[8] JUAN IGNACIO ARRIETA, *La lettera del 13 marzo 2006 del Pontificio Consiglio per i Testi Legislativi circa la defezione con atto formale: contesto, testo, applicazioni*, in *Euntes docete*, 2012, pp. 59 ss.

[9] STEFANO TESTA BAPPENHEIM, *Brevi cenni introduttivi alla fattispecie del Kirchenaustritt in Germania*, in *Diritto e Religioni*, 2011, pp. 327 ss.; ID., *Brevi osservazioni su due recenti documenti della Conferenza Episcopale austriaca relativi al 'Kirchenaustritt'*, in *IE*, 2011, pp. 255 ss.

matter to the Court of Justice of the European Union for an interpretation of the EU provisions on equal treatment in employment and occupation (Directive 2000/78/EC).

The Luxembourg judges, in judgment C-258/24, ruled that the formal act of leaving the church (*Kirchenaustritt*) did not constitute an apostasy, given that his departure was due to economic reasons, and that therefore his dismissal constituted a breach of the principle of equal treatment under Article 4(1) and (2) of the Directive, and discrimination on religious grounds under Article 10(1) and Article 21(1) of the Charter of Fundamental Rights.

German legislation on church employment had already given rise to differences of interpretation between the Court of Justice of the European Union and the Federal Labour Court (BAG) on the one hand, *the St. Vinzenz-Krankenhaus case*, and the Federal Constitutional Court (BVerfG) on the other, *the Egenberger case*. In the first case, the Caritas organisation had dismissed a consultant following his divorce and remarriage. The BAG had ruled the dismissal unlawful (judgment No 2/azr/543/10 of 8 September 2011), but the BVerfG had overturned that decision (judgment No 2/bvr/661/12 of 22 October 2014) and referred the case back to the BAG. The Federal Constitutional Court (BVerfG) had referred the matter to the Court of Justice of the European Union (judgment of 28 July 2016) – which had upheld the judgment of the Federal Labour Court (judgment No. c/68/17, of 11 September 2018).

In the second case[10], Vera Egenberger, a social worker with no religious affiliation, had applied for a post at the Diakonie (a Protestant social welfare organisation) but her application had been rejected. The Court of Justice of the European Union had established the three criteria – also applied in this case – of 'essentiality, legitimacy and justification' for the judicial review of ecclesiastical decisions (judgment No. c/414/16, of 17 April 2018). After the Federal Labour Court (BAG) had awarded the applicant compensation for discrimination (judgment No. 8/azr/501/14, of 25 October 2018)

, the Federal Constitutional Court (BVerfG) upheld Diakonie's constitutional appeal and overturned the BAG's decision (judgment no. 2/bvr/934/19, of 29 September 2025).

With its 2026 ruling, the Court of Justice of the European Union has now somewhat restricted the scope of action of churches within denominational organizations compared to what was established by the German Federal Constitutional Court in the Egenberger judgment, since the Luxembourg ruling regarding church membership as a prerequisite for employment has

[10] FLORIAN BAUCKHAGE-HOFFER, *Die Egenberger-Entscheidung des EuGH – auf den EuGH folgt das BAG*, in *Zeitschrift für Arbeitsrecht und Tarifpolitik in kirchlichen Unternehmen*, 2019, pp. 33 ss.

concrete implications: if denominational organizations also hire people who are not members of their church for a specific job, then church membership is clearly not essential for that job, and in such a case, 'mere' *Kirchenaustritt* cannot result in sanctions nor constitute grounds for dismissal.

The protection afforded by the Court of Justice against dismissal infringes upon the churches' right to self-determination (Article 137(3)(1) of the WRV in conjunction with Article 140 of the GG) and their right to religious freedom, which, although granted unconditional guarantees by the GG (Art. 4(1) and (2) GG) [11], in favour of the protection of workers' fundamental rights, which, in addition to negative freedom of religion, also and above all include protection against discrimination on religious grounds, pursuant to Art. 3(3)(1) GG.

This approach is also reflected in the case law on dismissals for *Kirchenaustritt*: the Bundesarbeitsgericht, in fact, had ruled unlawful, in its judgment of 23 March 1984, the dismissal of an accountant at a youth hostel run by a Catholic religious institute, thereby refuting the doctrinal view that leaving the Church, regardless of the specific role, always constituted an *actus formalis defectionis* that rendered the continuation of the employment relationship unreasonable.

In its first ruling on the constitutional foundations of ecclesiastical labour law, in 1985, as we have seen, the Federal Constitutional Court instead regarded the Federal Labour Court's decision as a violation of the religious institution's right to self-determination: the judges in Karlsruhe, in fact, ruled that the assessment should be based on canon law (under which this constituted apostasy, can. 751 CIC[12], with the associated excommunication *latae sententiae,* can. 1364 CIC[13]), and on the Church's autonomous and unquestionable assessment[14].

The strong emphasis still placed in 2014 on the right of the Churches to self-determination, according to the Federal Constitutional Court, meant that the labour courts had to "base their assessment also on the ecclesiastical standards prescribed for the assessment of contractual loyalty obligations" [15].

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[11] V. Stephan Mückl, *Das kirchliche Selbstbestimmungsrecht in der jüngeren Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte*, in WILHELM REES – MARÍA ROCA – BALÁSZ SCHANDA (a cura di), *Neuere Entwicklungen im Religionsrecht europäischer Staaten,* Duncker & Humblot, Berlin, 2013, pp. 449 ss.

[12] MONTSERRAT GAS I AIXENDRI, *Apostasía y libertad religiosa. Conceptualización jurídica del abandono confesional*, Comares, Granada, 2012, pp. 102 ss.; ELMAR GÜTHOFF, *Kanonistische Erwägungen zur eigenständigen Bedeutung der Apostasie*, in STEPHAN HAERING – WINFRIED AYMANS – HERIBERT SCHMITZ (a cura di), *Festschrift für Karl-Theodor Geringer zum 65. Geburtstag,* Eos, St. Ottilien, 2002, pp. 109 ss.; MARIO FERRANTE, *Il delitto di apostasia alla luce del Motu proprio "Omnium in mentem"*, in AA.VV., *Questioni attuali di diritto penale canonico*, LEV, Città del Vaticano, 2012, pp. 227 ss.

[13] DAVIDE CITO, *Certezza del diritto e applicazione delle pene "latae sententiae*, in JUAN IGNACIO ARRIETA – GIANPIERO MILANO (a cura di), *Metodo, fonti e soggetti del Diritto canonico*, LEV, Città del Vaticano, 1999, pp. 597 ss.; CARLOS ERRAZURIZ, *La protezione giuridico-penale dell'autenticità della fede. Alcune riflessioni sui delitti contro la fede,* in *ME*, 1989, pp. 113 ss.

[14] BVerfG, 4 giugno 1985, in BVerfGE 70, 138.

[15] BVerfG 22 ottobre 2014, in BVerfGE 137, 273.

The compatibility of these precedents, consisting of the positions of ecclesiastical employers, with EU law has been the subject of heated debate, centering essentially on Article 4 of Directive 2000/78 (the Framework Directive on equal treatment)[16].

In the case concerning the head of department (the*St. Vinzenz-Krankenhaus* case), the Court of Justice of the EU had not addressed the general question of the lawfulness of dismissals on the grounds of remarriage. Rather, it had emphasized the general need for judicial review and, in this specific case, held that the requirements of the Framework Directive on equal treatment had not been met (Court of Justice of the EU, C-68/17, paras. 56 et seq.). The *Egenberger case*, on the other hand, concerned the possibility for an employer affiliated with a church to require church membership as a condition of employment. In this case, the Court of Justice of the European Union emphasized two points: judicial review cannot be circumvented even under German ecclesiastical labour law, and conflicting legal positions must be balanced in a reasonable manner. Furthermore, it clarified the requirements of the Framework Directive on equal treatment, but did not engage in a specific resolution of the balancing of interests in this particular case (paras. 45 et seq.)[17].

The Federal Constitutional Court was therefore able to overturn the subsequent judgment of the Federal Labour Court without thereby contradicting the preliminary ruling of the Court of Justice of the European Union[18].

In this context, in the judgment concerning the present case, the EU Court does not address the general question of the compatibility, under EU law, of dismissals due to leaving the Church.

Like the Federal Labour Court (BAG), the EU Court of Justice considers the dismissal to be direct discrimination on religious grounds and questions its justification under Article 4 of Directive 2000/78.

In this decision, however, the Court emphasizes more strongly than in previous judgments the absence of a 'precise and definitive balancing of the interests at stake' (para. 48), and provides 'guidance' for such a balancing.

In the case in question, therefore, the Court of Justice of the European Union doubts that membership of the Church is "essential" for the job in question, given that non-Catholic staff also

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[16] BVerfG, 2 BvR 934/19 – Egenberger, nn. 237 ss.

[17] HERMANN REICHOLD – PETER BEER, *Eine "Abmahnung" des EuGH mit Folgen: neue Anforderungen an die kirchliche Personalpolitik nach dem Urteil in der Rechtssache Egenberger aus juristischer und theologischer Sicht*, in *Neue Zeitschrift für Arbeitsrecht*, 2018, pp. 681 ss.

[18] JULIA SUTTORP BRAUN, *Europäisierung des kirchlichen Arbeitsrechts?: Anmerkung zu den EuGH-Entscheidungen Egenberger und Chefarzt*, in *Kirche & Recht*, 2018, pp. 270 ss.

work for the same organization (paras. 69 et seq.). It further emphasizes that, in this specific case, formal administrative withdrawal from the Catholic Church, through the *Kirchenaustritt,* does not necessarily allow conclusions to be drawn regarding a departure from its religious dogmas *stricto sensu*, so that the Federal Labour Court will have to examine whether the employee continues to identify with these fundamental values (paras. 71 et seq.).

It is noted that the judgment contains greater references to the 'autonomy' of the Churches (paras. 43 and 45), thereby addressing the aspect of the Church's self-understanding, an essential element for the German Federal Constitutional Court, establishing that the State may assess it only in exceptional cases.

Whilst interpreting the Directive essentially as before, the Court emphasizes more strongly that the final balancing of the interests at stake falls within the competence of the national courts (para. 48).

The Court, in fact, avoids any wording that might give the impression that dismissals due to leaving the Church are generally contrary to EU law. On the other hand, judicial review remains rather strict: the Churches must demonstrate that 'the risk of an infringement of their autonomy is likely and significant' and that the difference in treatment inherent in a dismissal due to formal withdrawal from the Church does not exceed what is necessary (para. 46).

Under Article 4 of Directive 2000/78, in fact, a generalized admissibility under EU law of dismissals for leaving the Church is not possible, unless the pre-existing balancing of interests is rejected in itself, in the name of fundamental rights, on the basis of the assumption that the Churches' right to self-determination must generally be given greater weight. However, the Federal Constitutional Court departed from this position, dating from 1985 and reiterated in 2014, with the Egenberger judgment, which transformed the balancing of interests – in which those of the Church 'did not in principle prevail' over those of the employees – into a balancing in which the right to religious self-determination 'does not automatically prevail over conflicting legal interests, but only on the basis of a case-by-case assessment [...] within the framework of a proportionality assessment' (para. 221).

The approach of the Court of Justice of the European Union aims to avoid conflicts by providing criteria for balancing fundamental rights, but without predetermining the outcomes in individual cases; the German Federal Constitutional Court also emphasized this point very clearly in the Egenberger judgment (paras. 166 and 212), in which it states that, even after incorporating

the requirements of EU law into constitutional review, it remains permissible to attach particular importance to the self-understanding of the Churches (para. 225).

This remains unchanged even in the light of this new judgment.

STEFANO TESTA BAPPENHEIM