



Key Issues: Social Policy – equal treatment - religion

Case: Vera Egenberger v Evangelisches Werk für Diakonie und Entwicklung eV

Reference: Case C-414/16, CJEU (Grand Chamber), 17 April 2018

Legislation: Directive 2000/78/EC

In November 2012 Evangelisches Werk published an offer of fixed-term employment for a project for producing a parallel report on the United Nations International Convention on the Elimination of All Forms of Racial Discrimination. According to the offer of employment, the work to be done extended to accompanying the process for drawing up the country reports on that convention for 2012 to 2014; drawing up the parallel report to the country report on Germany, and observations and specialist contributions; project-related representation of the diaconate of Germany vis-à-vis the political world, the general public and human rights organisations, and collaboration in certain bodies; providing information and coordinating the opinion-forming process in relation to the association; and organisation, administration and reporting in relation to the work.

The offer of employment also specified the conditions to be satisfied by candidates. One of these read as follows:

'We presuppose membership of a Protestant church or a church belonging to the [Working Group of Christian Churches in Germany] and identification with the diaconal mission. Please state your church membership in your curriculum vitae.'

Ms Egenberger, of no denomination, applied for the post offered. Although her application was shortlisted after a preliminary selection by Evangelisches Werk, she was not invited to an interview. The candidate who was eventually successful had stated with respect to his church membership that he was a 'Protestant Christian active in the Berlin regional church'.

Since she considered that her application had been rejected because she did not belong to any denomination, Ms Egenberger brought an action before the Arbeitsgericht Berlin (Labour Court, Berlin, Germany), seeking for Evangelisches Werk to be ordered to pay her €9788.65 in accordance with German law. She argued that the taking of religion into account in the recruitment procedure, as was apparent from the advertisement of the post in question, was not compatible with the prohibition of discrimination in German law, if interpreted in accordance with EU law, and that the German law could not justify the discrimination of which she had been the victim.

Evangelisches Werk submitted that in the present case a difference of treatment on grounds of religion was justified under German law. The right to require membership of a Christian church was, in the view of Evangelisches Werk, covered by the churches' right of self-determination. Such a right was consistent with EU law, by reason in particular of the provisions of Article 17 TFEU. Moreover, because of the nature of the activity to which the offer of employment at issue in the main proceedings related, membership of a church constituted a justified occupational requirement, having regard to the ecclesial self-perception of Evangelisches Werk.

The Arbeitsgericht Berlin (Labour Court, Berlin) allowed Ms Egenberger's action in part. It held that she had been the victim of discrimination, but limited the compensation to €1957.73. After her appeal against that decision was dismissed by the Landesarbeitsgericht Berlin-Brandenburg (Higher Labour Court for Berlin and Brandenburg, Germany), Ms Egenberger brought an appeal on a point of law before the referring court, seeking payment of appropriate compensation. In those circumstances, the Bundesarbeitsgericht (Federal Labour Court) decided to stay the proceedings and to refer a number of questions to the Court of Justice EU (CJEU) for a preliminary ruling.

Consideration by CJEU

The CJEU noted that it is not disputed between the parties to the main proceedings that the rejection of Ms Egenberger's application on the ground that she was of no denomination constitutes a difference of treatment on grounds of religion within the meaning of Article 4(2) of Directive 2000/78.

That said, in accordance with the settled case-law of the CJEU, in interpreting a provision of EU law it is necessary to consider not only its wording but also its context and the objectives of the legislation of which it forms part, and in particular the origin of that legislation.

The CJEU held that:

- (1) Article 4(2) of Council Directive 2000/78/EC, read in conjunction with Articles 9 and 10 of the directive and Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that, where a church or other organisation whose ethos is based on religion or belief asserts, in support of an act or decision such as the rejection of an application for employment with it, that by reason of the nature of the activities concerned or the context in which the activities are to be carried out, religion constitutes a genuine, legitimate and justified occupational requirement, having regard to the ethos of the church or organisation, it must be possible for such an assertion to be the subject, if need be, of effective judicial review by which it can be ensured that the criteria set out in Article 4(2) of that directive are satisfied in the particular case.

- (2) Article 4(2) of Directive 2000/78 must be interpreted as meaning that the genuine, legitimate and justified occupational requirement it refers to is a requirement that is necessary and objectively dictated, having regard to the ethos of the church or organisation concerned, by the nature of the occupational activity concerned or the circumstances in which it is carried out, and cannot cover considerations which have no connection with that ethos or with the right of autonomy of the church or organisation. That requirement must comply with the principle of proportionality.
- (3) A national court hearing a dispute between two individuals is obliged, where it is not possible for it to interpret the applicable national law in conformity with Article 4(2) of Directive 2000/78, to ensure within its jurisdiction the judicial protection deriving for individuals from Articles 21 and 47 of the Charter of Fundamental Rights of the European Union and to guarantee the full effectiveness of those articles by disapplying if need be any contrary provision of national law.

Why is this decision important?

A religious organisation must be careful when requiring potential employees to be members of a particular religion. Although the organisation may have reasonable grounds for such a requirement, these can be challenged to ensure that the requirement is not discriminatory.

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