Autonomy of religious institutions under threat?
New lessons from the CJEU

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Drawing boundaries of institutional autonomy of religious organisations remains a highly delicate task for the European courts. On 5 March 2026, the European Court of Human Rights (the 'ECtHR') delivered an advisory opinion on the status of monastic premises and the jurisdiction of the civil courts to examine disputes concerning religious congregations.[1] Nearly two weeks later, on 17 March 2026, the Court of Justice of the European Union (the 'CJEU'/'Court') rendered judgment in *Katholische Schwangerschaftsberatung*, the case concerning the lawfulness of dismissal of a pregnancy counsellor employed by a Catholic organisation.[2] Responding to the request for a preliminary ruling addressed by the German Bundesarbeitsgericht (the 'Federal Labour Court') in the framework of the preliminary reference procedure,[3] the CJEU, sitting in the Grand Chamber, held, in essence, that European Union law (the 'EU law') shall be interpreted as precluding domestic legislation which allows an entity the ethos of which is based on religion to dismiss its employee for the sole reason that the person concerned left the church practising that religion.

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[1] *Advisory Opinion on the status of monastic premises and the jurisdiction of the courts to examine a dispute concerning them* Request no P16-2025-001 (ECtHR [GC], 5 March 2026). For the comment on the factual and legal background of the case, see Nicolas Bauer, 'ECHR: Can The Courts Force Monasteries To Reinstate A Former Nun?' (*European Centre for Law and Justice*, 14 November 2025) <https://eclj.org/religious-autonomy/echr/cedh--la-justice-peut-elle-obliger-un-monastere-a-reintegrer-une-ancienne-religieuse-?lng=en> accessed 5 May 2026.

[2] Case C-258/24 *Katholische Schwangerschaftsberatung* EU:C:2026:211.

[3] Art 267 TFEU.

The Grand Chamber judgment merits particular interest for several reasons. Firstly, contrary to the ECtHR, which has developed over the years an abundant case law on the autonomy of religious organisations,[4] the CJEU has not had many occasions to date to pronounce itself on this issue. Unsurprisingly, the decision reveals, therefore, primarily a cautious approach of the Luxembourg judges in striking the proper balance between the individual right to non-discrimination and religious autonomy (I). Secondly, the ruling raises a set of interrogations on the actual role of national jurisdictions in determining the limits of religious autonomy (II). Finally, seen from a wider perspective, it unveils the frailty of the principle of church autonomy, the respect of which must be constantly monitored (III).

I. Treading a fine line between the right to non-discrimination and religious freedom

Within the EU legal order, the right to equal treatment is guaranteed, *inter alia*, by Article 21 of the EU Charter of Fundamental Rights (the 'Charter'), which prohibits discrimination on various grounds, including 'religion or belief'. In the specific context of employment and occupation, Directive 2000/78 (the 'directive') provides for 'a general framework for combating discrimination on the grounds of *religion or belief*, disability, age or sexual orientation'.[5]

Regarding religious freedom, at the EU level, the fundamental right to freedom of thought, conscience and religion is safeguarded by Article 10 of the Charter, the content of which 'corresponds' to the right guaranteed in Article 9 of the European Convention on Human Rights.[6] Importantly, Article 17 of the Treaty on the Functioning of the European Union (the 'TFEU') indicates that the 'Union respects and does not prejudice the status under national law of churches

[4] See, e.g., *Lombardi Vallauri v Italy* App no 39128/05 (ECtHR, 20 october 2009); *Fernández Martínez v Spain* App no 56030/07 (ECtHR [GC], 12 June 2014); *Károly Nagy v Hungary* App no 56665/09 (ECtHR, 14 September 2017); *Ţîmpău v Romania* App no 70267/17 (ECtHR, 5 December 2023); *Popa v Romania* App no 18424/18 (ECtHR, 17 March 2026); *Advisory Opinion on the status of monastic premises* (n 1).

[5] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, pp. 16–22 ('Directive 2000/78'), art 1 (emphasis added).

[6] Explanations relating to the Charter of Fundamental Rights, OJ C 303, 14.12.2007, pp. 17–35; Explanation on Article 10 — Freedom of thought, conscience and religion.

and religious associations or communities in the Member States.'[7] It further specifies that the Union 'respects the status under national law of philosophical and non-confessional organisations'.[8]

Article 17 TFEU may be globally seen as a concretisation of the internationally recognised principle of autonomy of religious institutions, which stems from religious freedom and freedom of association.[9] The latter encompasses, in particular, the right of associations to draw up their own rules and to administer their own affairs.[10] Read in the light of associative freedom, the right of believers to freedom of religion includes the expectation that they will be authorised to associate freely, without arbitrary State intervention.[11] The principle of autonomy of religious institutions allows churches and entities the ethos of which is based on religion to decide upon their structure and organisation. In other words, it guarantees 'the self-governance of religious institutions with regard to their own internal affairs.'[12] It covers especially the selection and control of employees performing functions closely related to the ethos of the organisation.

Directive 2000/78 acknowledges that, by virtue of the principle of autonomy of religious institutions, not every difference in treatment *vis-à-vis* the employees of a religious organisation shall amount to unlawful discrimination. In particular, Article 4(2) of the directive provides that 'difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of [occupational] activities or of the context in which they are carried out, a person's religion or belief constitute a *genuine*, *legitimate* and *justified* occupational requirement, having regard to the organisation's ethos.'[13] It is precisely the interpretation of this provision that constituted the main subject matter of the preliminary reference in *Katholische Schwangerschaftsberatung.*

In the case at hand, JB worked for several years as a counsellor in a Catholic association counselling on pregnancy. In 2013, JB declared before the competent local authority that she was leaving the Catholic Church on the grounds that the Diocese of Limburg levied a special levy on Catholics

[7] Art 17(1) TFEU.
[8] Art 17(2) TFEU.
[9] Freedom of association is protected, in particular, by art 11 of the European Convention of Human Rights and by art 12 of the Charter.
[10] *Cheall v United Kingdom* App no 10550/83 (EComHR, 13 May 1985).
[11] *Fernández Martínez v. Spain* (n 4) para 127.
[12] Diana Verm Thomson and Kayla A Toney, 'Sacred Spheres: Religious Autonomy As An International Human Right' (2023) 72 Cath. UL Rev. 151, 154.
[13] Emphasis added.

who, like her, were in an interfaith marriage with a high-earning spouse.[14] After unsuccessful efforts to convince the employee to rejoin the church, the association dismissed her on the basis of Article 5 of the Canon law (Basic regulations on service in the Church in employment relationships), pursuant to which the act of leaving the Church constitutes a serious breach of the duty of loyalty and thus, a valid reason for dismissing the person concerned.[15]

Considering dismissal to be unfair and discriminatory, JB introduced an action against the association before the German courts. Nourishing doubts about the interpretation of Article 4 of Directive 2000/78, the Federal Labour Court decided to stay the proceedings. It asked the CJEU whether this provision, read in the light of Articles 10 and 21 of the Charter, should be construed as precluding national law that allows a private organisation—whose ethos is based on a religion—to dismiss an employee solely for leaving the church practising that religion, even though the person does not openly act in a manner antagonistic to that church.[16]

Katholische Schwangerschaftsberatung was not the first instance in which the CJEU was called to clarify the interpretation of Article 4 of Directive 2000/78. A few years earlier, in *Egenberger*[17] and *IR*[18] (both preliminary references also originated from the Federal Labour Court)[19], the Court elaborated upon the meaning of the '*genuine*', '*legitimate*' and '*justified*' character of the occupational requirement referred to in this provision.[20] Reaffirming the red lines of the reasoning drawn in *Egenberger* and *IR, Katholische Schwangerschaftsberatung* brings several important clarifications on the boundaries of autonomy of religious entities under EU law.

[14] *Katholische Schwangerschaftsberatung* (n 2) para 24.
[15] ibid para 21.
[16] ibid para 38.
[17] Case C-414/16 *Egenberger* EU:C:2018:257.
[18] Case C-68/17 *IR* EU:C:2018:696.
[19] On the sidenote, the preliminary references in *Egenberger*, *IR* and *Katholische Schwangerschaftsberatung* epitomise a long-standing disagreement between the Federal Labour Court and the German Constitutional Court on the scope of autonomy of religious institutions (the latter upholding a broader interpretation of the religious autonomy than the former). For comments on this 'dispute' and on the domestic context of the preliminary references, see in particular Jule Mulder, 'The Dialogue Between the Courts Revisited: An Analysis of National Preliminary References and Their Impact on Advancing CJEU Case Law on Religious Discrimination' (2025) 85 Ljubljana Law Review 183; Editor, 'Die Egenberger-Entscheidung' (*Verfassungsblog*) <https://verfassungsblog.de/die-egenberger-entscheidung/> accessed 6 May 2026.
[20] For the insightful analysis of these rulings see eg Xavier Delgrange, 'L'entreprise de Tendance, c'est Tendance!:(Obs. Sous CJUE, Gde Ch., Arrêt Egenberger, 17 Avril 2018, C-414/16 et Gde Ch., Arrêt IR, 11 Septembre 2018, C-68/17)' (2019) 119 Revue trimestrielle des droits de l'Homme 655; Luísa Lourenço, 'Religion, Discrimination and the EU General Principles' Gospel: *Egenberger*' (2019) 56 Common Market Law Review 193.

In the ruling, the Grand Chamber emphasised in particular the fact that the Catholic association in question employed for counselling services both persons who were members of the Catholic Church, and persons who were not members of that church.[21] Consequently, the occupational requirement that the employees of the association who are members of the Catholic Church may not leave that church during the employment relationship did not seem to be '*genuine*' in terms of Article 4 of the directive.[22] Furthermore, the CJEU recognised that the departure from the Catholic Church, when accompanied by a distancing from the Catholic precepts and fundamental values, may render an employee concerned unsuitable for performing some occupational activities within the entity the ethos of which is based on the precepts of that church.[23] Nevertheless, in the eyes of the Court, the mere departure from the Church was not a sufficient basis on which to assume such a distancing, since that departure might have been motivated by different considerations.[24] There was thus a clear doubt in the present case as to the '*legitimate*' character of the occupational requirement.[25]

Noteworthily, while assessing the possibility of relying on Article 4(2) of the directive, the CJEU crafted a sophisticated distinction between the duty of loyalty to the church and the duty of loyalty to the employer. It held that 'even if JB's termination of her membership of the Catholic Church could be regarded as disloyal conduct towards that church, it does not necessarily follow that that termination of membership also constitutes disloyal conduct towards the organisation that employs her, provided that JB continues to respect that organisation's ethos in her work.'[26]

In light of all these considerations, the Court interpreted Article 4 of Directive 2000/78 as precluding national legislation which allows the entity the ethos of which is based on a religion to require its employee not to leave the church practicing that religion on pain of dismissal, 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, such occupational requirement is not genuine, legitimate and justified.[27] In conformity with the preliminary reference procedure, it will be now for the Federal Labour Court to rule upon the case taking due account of the guidelines provided by the Grand

[21] *Katholische Schwangerschaftsberatung* (n 2) para 70.
[22] ibid paras 69-70.
[23] ibid para 71.
[24] ibid paras 71-74.
[25] ibid para 74.
[26] ibid para 78.
[27] ibid para 86.

Chamber. Regardless of its outcome, the final judgment will have serious repercussions for the evolution of work relationships in Germany, given that Christian churches are among the largest private employers in that country.[28] In light of an increasing wave of German nationals officially quitting the Church,[29] more and more employers will be directly concerned by the new guidelines on the adequacy of occupational requirements that might be imposed on their workers.

II. National courts: the main guardians of religious freedom?

By consolidating the findings from *Egenberger* and *IR*, the present judgment reaffirms that the balance between the right to equal treatment and the principle of autonomy of religious entities should be sought on a case-by-case basis with due consideration of competing interests and employment context. This could suggest that the CJEU intends indeed to assume a cautious and nuanced approach towards questions relating to religious freedom, considering that potential tensions are best solved at the national level. Yet the fact remains that by formulating detailed guidelines on the characteristics of the occupational requirement foreseen in Article 4 of Directive 2000/78, the Grand Chamber considerably restrained the margin of manoeuvre for national jurisdictions which will be called to adjudicate on similar instances in the future.

In *Katholische Schwangerschaftsberatung*, the Court highlighted on several occasions that it is for the national jurisdictions to verify whether the criteria for the application of Article 4(2) of Directive 2000/78 were satisfied in the case at hand.[30] Already in *Egenberger* and *IR*, the CJEU put strong emphasis on the key role of domestic courts in determining the boundaries of religious autonomy in concrete circumstances of the particular case.[31] Nonetheless, as adequately observed by one scholar, in *Katholische Schwangerschaftsberatung*, the leeway left to national jurisdictions

[28] In 2014, the Catholic Church was the largest private employer in Germany. See 'Catholic Church Has Become the Largest Private Employer in Germany - Technology Org' (*Technology.org*, 16 September 2014) <https://www.technology.org/2014/09/16/catholic-church-become-largest-private-employer-germany/> accessed 11 May 2026.

[29] See, e.g., 'Germany's Catholic Exodus Continues under Synodal Way Leadership' <https://thecatholicherald.com/article/germanys-catholic-exodus-continues-under-synodal-way-leadership> accessed 11 May 2026; '[Germany] Thousands Quitting Church to Avoid Additional Taxes' (*GPA*) <https://gpa.net/blogs/emea-1/germany-thousands-quitting-church-to-avoid-additional-taxes> accessed 11 May 2026.

[30] *Katholische Schwangerschaftsberatung* (n 2) paras 52, 59, 61-62, 74.

[31] See, in particular, *Egenberger* (n 17) para 71; *IR* (n 18) paras 56 and 63.

has been effectively limited in practice given the high degree of detail of the instructions formulated by the CJEU on the interpretation of Article 4(2) of the directive.[32]

Along similar lines, these detailed guidelines indicate that in the context of determining the limitations of autonomy of religious institutions, the CJEU intends to confer a relatively narrow margin of discretion to the Member States.[33] Such an approach stands in a certain contrast with the position adopted by the CJEU in the cases on the presence of religious symbols in the workplace.[34] Whereas in the latter group of rulings, [35] the CJEU showed an important level of deference towards the Member States' choices regarding the implementation of a neutrality policy, it seems to assume a much stricter approach in the instances concerning the institutional autonomy of churches and religious entities.

Tellingly, in *Katholische Schwangerschaftsberatung*, the Grand Chamber deliberately abstained from giving more visibility to the provisions underscoring the value of the national (including constitutional) legislation, most prominently, Article 17 TFEU.[36] Neither did the Court explicitly elaborate upon the significance of sub-paragraph 2 of Article 4(2) of Directive 2000/78, which emphasizes that the directive shall 'not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, *acting in conformity with national constitutions and laws*, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.'[37] In that regard, the present case contributes to sidelining the essential role of national jurisdictions and domestic legislation in striking the correct balance between religious autonomy and the right to equal treatment.

[32] Martijn van den Brink, 'Op-Ed: "On a Collision Course with the German Constitutional Court? Katholische Schwangerschaftsberatung (C-258/24)"' (*EU Law Live*, 26 March 2026) < https://eulawlive.com/op-ed-on-a-collision-course-with-the-german-constitutional-court-katholische-schwangerschaftsberatung-c-258-24//> accessed 21 April 2026.

[33] See also in this sense, Mark Bell, 'The Struggle to Uphold Religious Autonomy within EU Anti-Discrimination Law' (*European Law Blog*, 26 March 2026) <https://www.europeanlawblog.eu/pub/gv58ocdl/release/1> accessed 21 April 2026.

[34] See in this sense Ronan McCrea, 'Justifiable Caution' (*Verfassungsblog*, 17 December 2025) <https://verfassungsblog.de/justifiable-caution/> accessed 28 April 2026; van den Brink (n 32).

[35] Case C-157/15 *Achbita* EU:C:2017:203; Case C-188/15 *Bougnaoui* EU:C:2017:204; Joined Cases C-804/18 and C-341/19 *WABE eV* EU:C:2021:594; Case C-148/22 *Commune d'Ans* EU:C:2023:924.

[36] Art 17 TFEU is only briefly referred to in paras 43 and 53 of the ruling.

[37] Emphasis added. This subparagraph 2 of art 4(2) of the directive is only briefly mentioned in paras 50, 57 and 78 of the judgment – the question of the meaning of the reference to national and constitutional law is not discussed.

III. Church autonomy under strain? – A growing body of disconcerting case law

As seen above, *Katholische Schwangerschaftsberatung,* reiterates the key findings from *Egenberger* and *IR*. Nonetheless, the substantial differences of factual background between *Egenberger* and *IR* on one hand, and *Katholische Schwangerschaftsberatung* on the other, shall not be overlooked.[38] Whereas *Egenberger* and *IR* concerned, in essence, exercise of the profession of expert on racial discrimination and of a medical doctor, respectively (activities in question were only loosely related to the practice of religious ethos), the mission entrusted to a pregnancy counsellor in *Katholische Schwangerschaftsberatung* was intrinsically linked with the rules and values of the Catholic Church. It could have been expected that when confronted with a similar factual backdrop, the Court would show more deference to the choices of the employers, the ethos of which is based on religion. Yet, quite to the contrary, the CJEU opted for endorsing the tight limits of religious autonomy under EU law. Such endorsement was possible, *inter alia,* through drawing a highly disputable distinction between the loyalty to the church and the loyalty to the entity the ethos of which is based on the values or precepts of that church.[39]

Differentiating between these two types of loyalty constitutes a novelty in the CJEU's case law. Although constructing such a distinction might be justifiable under certain circumstances, its excessive and incautious use risks voiding the principle of religious autonomy of its essence. In practical terms, the CJEU's findings indicate that a person may not be dismissed by a Catholic employer on the sole ground that he or she quit the Catholic Church. The employer is obliged to present additional, individualised reasons substantiating how the departure from the Church affects the exercise of professional activity in question. It must be established that the imposition of such a requirement is 'necessary and proportionate'.[40] All in all, whereas in *Katholische Schwangerschaftsberatung*, the autonomy of religious entities is upheld as a matter of principle, the ruling considerably undermines the probative value of formal membership in the religious

[38] van den Brink (n 32).
[39] See *Katholische Schwangerschaftsberatung* (n 2) para 78. For a criticism of the distinction between the loyalty to the Church and the loyalty to the religious entity, see van den Brink (n 32).
[40] *Katholische Schwangerschaftsberatung* (n 2) para 75.

institution. This could potentially provide ground for future 'erosion' of church independence within the EU legal order.[41]

Admittedly, the CJEU's reasoning and the outcome of the judgment should not appear as a surprise, given that the right to equal treatment constitutes one of the fundamental cornerstones of EU law.[42] However, it might raise legitimate concerns, especially when seen as another piece in the chain of decisions circumscribing the scope of religious autonomy in a wider context. Despite assuming an overall protective stance with regard to the principle of autonomy of religious entities,[43] in 2019, the European Court for Human Rights delivered two judgments in which it clearly made individual freedom prevail over the right of the churches to self-determination.[44] Disconcerting decisions are also being rendered at the national level: suffice it to recall here the ongoing legal saga before the highest jurisdictions in Spain concerning the request of Mrs Laborda Sanz to be admitted as a member of the male religious congregation.[45] Looking beyond the developments in Europe, in 2022, the Interamerican Court of Human Rights considerably restricted the autonomy of religious institutions to assess and select their religious education teachers.[46]

Even when taken cumulatively, these judgments constitute rather exceptions in the important body of case law upholding the principle of religious autonomy. Nevertheless, the message that they convey is clear and overlaps, in essence, with probably the most important lesson we should draw from the ruling in *Katholische Schwangerschaftsberatung*: despite its wide international

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[41] See in this sense eg Bell (n 33).

[42] For an in-depth analysis of the paramount importance of the principle of non-discrimination for the development of the EU legal order, see eg Elise Muir, *EU Equality Law: The First Fundamental Rights Policy of the EU* (Oxford University Press 2018).

[43] See in particular *Fernández Martínez v. Spain* (n 4); *Advisory Opinion on the status of monastic premises* (n 1).

[44] *Tothpal and Szabo v Romania* App no 28617/13 et 50919/13 (ECtHR, 19 February 2019). For the analysis of these rulings, see Nicolas Bauer, 'Neutralité de l'État et dissensions ecclésiales : réflexions à partir d'un arrêt récent de la Cour européenne' [2020] Revue du droit des religions 109.

[45] See in particular the judgment by the Spanish Constitutional Court, Tribunal Constitucional, STC 132/2024, de 4 de noviembre (RTC 2024 132). For the analysis of the case, see Nicolas Sanchez, 'Spain's Constitutional Court Imposes Women on a Male Religious Brotherhood' (*European Centre for Law and Justice*, 19 December 2024) <https://eclj.org/religious-autonomy/eu/le-tribunal-constitutionnel-espagnol-impose-la-mixite-a-une-confrerie-religieuse-masculine?lng=en> accessed 5 May 2026; Xavier Cecchini Rosell, 'Sentencia Comentada. Discriminación y libertad de asociación en la doctrina del Tribunal Constitucional y del Tribunal Supremo : (Comentario a la STC 132/2024, de 4 de noviembre)' (2026) 78 Anuario de Derecho Civil <https://doi.org/10.53054/adc.v78i4.12554> accessed 5 May 2026.

[46] *Pavez Pavez v. Chile*, Inter-American Court of Human Rights, 4 February 2022. For a comment, see Ligia Castaldi, 'Inter-American Court Issues First Religious Freedom Decision, Breaking with the ECHR on Questions of Religious Autonomy' (*European Centre for Law and Justice*, 4 July 2022) <https://eclj.org/religious-autonomy/un/inter-american-court-issues-first-religious-freedom-decision-breaking-with-the-echr-on-questions-of-religious-autonomy?lng=en> accessed 5 May 2026.

recognition,[47] the principle of religious autonomy remains a fragile concept which may easily enter into conflict with other freedoms and individual interests. Its effective protection necessitates, therefore, constant vigilance from individuals and civil societies. As long as the two European courts agree on the fact that 'the right of a religious community to an autonomous existence' is 'indispensable to pluralism in a democratic society',[48] the defenders of church autonomy have a strong leverage to preserve it from being entirely sacrificed on the altar of the individual right to equal treatment.

[47] See in this sense eg Thomson and Toney (n 12).
[48] *Fernández Martínez v. Spain* (n 4) para 127; *İzzettin Doğan and Others v Turkey* App no 62649/10 (ECtHR [GC], 26 April 2016) paras 93, 110 and 121. See also AG Tanchev, Opinion in Case C-414/16 *Egenberger* EU:C:2017:851 para 106.