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 COURT OF JUSTICE OF THE EUROPEAN UNION
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 CÚIRT BHREITHIÚNAIS AN AONTAIS EORPAIGH
 SUD EUROPSKE UNIE
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 SÚDNY DVOR EURÓPSKEJ ÚNIE
 SODIŠČE EVROPSKE UNIJE
 EUROOPAN UNIONIN TUOMIOISTUIN
 EUROPEISKA UNIONENS DOMSTOL

JUDGMENT OF THE COURT (Grand Chamber)

17 March 2026 *

(Reference for a preliminary ruling – Social policy – Directive 2000/78/EC – Equal treatment in employment and occupation – Occupational activities within churches and other organisations the ethos of which is based on religion or belief – Associating providing counselling on pregnancy to pregnant women – Occupational requirements – Acting in good faith and with loyalty to the ethos of the church or organisation – Difference of treatment on grounds of religion or belief – Dismissal of a worker on the ground of her leaving the Catholic church)

In Case C-258/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesarbeitsgericht (Federal Labour Court, Germany), made by decision of 1 February 2024, received at the Court on 12 April 2024, in the proceedings

Katholische Schwangerschaftsberatung

v

JB,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, T von Danwitz, Vice-President, F. Biltgen (Rapporteur), K. Jürimäe, C. Lycourgos and F. Schalin, Presidents of Chambers, S. Rodin, E. Regan, D. Gratsias, M. Gavalec, S. Gervasoni, N. Fenger and R. Frendo, Judges,

Advocate General: L. Medina,

Registrar: D. Dittert, Head of Unit,

* Language of the case: German.

having regard to the written procedure and further to the hearing on 17 March 2025,

after considering the observations submitted on behalf of:

- the Katholische Schwangerschaftsberatung, by K. Schmitt, Rechtsanwalt, and G. Thüsing, Professor of law,
- JB, by K. Windisch, Rechtsanwältin,
- the Greek Government, by V. Baroutas and M. Tassopoulou, acting as Agents,
- the European Commission, by B.-R. Killmann and E. Schmidt, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 July 2025,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16), read in the light of Articles 10(1) and 21(1) of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in proceedings between the Katholische Schwangerschaftsberatung (a Catholic association counselling on pregnancy, Germany) ('the Association') and JB concerning the legality of the dismissal of the latter on the grounds of an alleged infringement of the duty to act in good faith and with loyalty to the Association's ethos.

Legal context

Directive 2000/78

- 3 Recitals 4, 11, 12, 23, 24 and 29 of Directive 2000/78 state:

'(4) The right of all persons to equality before the law and protection against discrimination constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are

signatories. Convention No 111 of the International Labour Organisation (ILO) prohibits discrimination in the field of employment and occupation.

...

(11) Discrimination based on religion or belief ... may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.

(12) To this end, any direct or indirect discrimination based on religion or belief ... as regards the areas covered by this Directive should be prohibited throughout the Community. ...

...

(23) In very limited circumstances, a difference of treatment may be justified where a characteristic related to religion or belief, disability, age or sexual orientation constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate. Such circumstances should be included in the information provided by the Member States to the [European] Commission.

(24) The European Union in its Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. With this in view, Member States may maintain or lay down specific provisions on genuine, legitimate and justified occupational requirements which might be required for carrying out an occupational activity.

...

(29) Persons who have been subject to discrimination based on religion or belief, disability, age or sexual orientation should have adequate means of legal protection. ...'

4 Article 1 of that directive provides:

'The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.'

5 Article 2(1) and (2) of that directive provides:

‘1. For the purposes of this Directive, the “principle of equal treatment” shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

...’

6 Article 3(1)(c) of that directive provides:

‘Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

...

(c) employment and working conditions, including dismissals and pay’.

7 Article 4 of Directive 2000/78 is worded as follows:

‘1. Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

2. Member States may maintain national legislation in force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person’s religion or belief shall not constitute discrimination where, by reason of the nature of these 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. This difference of treatment shall be implemented taking account of Member States’ constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground.

Provided that its provisions are otherwise complied with, this Directive shall thus 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.'

German law

The GG

- 8 Article 4(1) and (2) of the Grundgesetz für die Bundesrepublik Deutschland (Basic Law of the Federal Republic of Germany) of 23 May 1949 (BGBl. 1949 I, p. 1; 'the GG') states:

'(1) Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.

(2) The undisturbed practice of religion shall be guaranteed.'

- 9 In accordance with Article 140 of the GG, the provisions of Articles 136 to 139 and 141 of the Weimarer Reichsverfassung (Weimar Constitution) of 11 August 1919 are an integral part of the GG.

- 10 Article 137(3) and (7) of the Weimar Constitution provides:

'(3) Each religious society shall arrange and administer its affairs independently within the limits of the law that applies to everyone. It shall appoint its officers without any interference on the part of the State or the civil municipal authorities.

...

(7) Associations which devote themselves to the communal nurture of a philosophical belief shall have the same status as religious societies.'

The AGG

- 11 The Allgemeines Gleichbehandlungsgesetz (General Law on Equal Treatment) of 14 August 2006 (BGBl. 2006 I, p. 1897), in the version thereof applicable to the dispute in the main proceedings ('the AGG'), seeks to transpose Directive 2000/78 into German law.

- 12 Paragraph 1 of the AGG provides:

'The objective of this law is to prevent or eliminate discrimination on grounds of race, ethnic origin, sex, religion or belief, disability, age or sexual identity.'

- 13 Paragraph 2 of the AGG provides:

'(1) For the purposes of this Law, any discrimination within the meaning of Paragraph 1 shall be inadmissible in relation to:

...

2. employment conditions and working conditions, including pay and reasons for dismissal, in particular in contracts between individuals, collective bargaining agreements and measures to implement and terminate an employment relationship, as well as for promotion,

...'

- 14 Paragraph 3(1) of the AGG provides:

'Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to under Paragraph 1. ...'

- 15 Paragraph 7 of the AGG provides:

'(1) Workers shall not be discriminated against on any of the grounds mentioned in Paragraph 1; this also applies where the person responsible for the discrimination merely assumes in the course of the discriminatory conduct that one of the grounds mentioned in Paragraph 1 exists.

(2) Any provisions of an agreement which infringe the prohibition of discrimination under subparagraph 1 shall be ineffective.

(3) Discrimination within the meaning of subparagraph 1 by an employer or another worker shall be deemed an infringement of their contractual obligations.'

- 16 Under Paragraph 8(1) of the AGG:

'A difference of treatment on one of the grounds referred to in Paragraph 1 shall be permitted where, by reason of the nature of the activity to be carried out or of the context in which it is carried out, that ground constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.'

- 17 Paragraph 9 of the AGG provides:

'(1) Without prejudice to Paragraph 8 [of the present law], a difference of treatment on grounds of religion or belief in connection with employment by religious communities, by institutions affiliated to them, regardless of their legal form, or by associations that devote themselves to the communal nurture of a religion or belief shall also be permitted if a particular religion or belief constitutes a justified occupational requirement, having regard to the self-perception of the religious community or association concerned, in view of its right of self-determination, or the nature of the activities engaged in.

(2) The prohibition of a difference of treatment on grounds of religion or belief shall not affect the right of the religious communities mentioned in

subparagraph 1, institutions affiliated to them, regardless of their legal form, or associations that devote themselves to the communal nurture of a religion or belief, to require their employees to act in good faith and with loyalty in accordance with their self-perception.’

Canon law

- 18 Article 1 of the Grundordnung des kirchlichen Dienstes im Rahmen kirchlicher Arbeitsverhältnisse (Basic regulations on service in the Church in employment relationships) of 22 September 1993 (*Amtsblatt des Erzbistums Köln*, 1993, p. 222), in the version applicable to the dispute in the main proceedings (‘the GrO’), entitled ‘Basic principles of service in the Church’, provides:

‘All persons working in an institution of the Catholic Church shall work together, irrespective of their employment status, to ensure that the institution can play its part in the mission of the Church (community of service). ...’

- 19 Article 3(4) of the GrO provides:

‘Any person acting in a manner that is antagonistic to the Church or who has left the Catholic Church is not suitable for employment in the service of the Church.’

- 20 Article 4 of the GrO, headed ‘Duty of loyalty’, reads as follows:

‘(1) Catholic employees are expected to recognise and observe the principles of Catholic doctrinal and moral teaching. ...

(2) Non-Catholic Christian employees shall be expected to respect the truths and values of the Gospel and to contribute to giving them effect within the institution.

(3) Non-Christian employees must be willing to perform the tasks assigned to them in an ecclesiastical institution in accordance with the precepts of the Church.

(4) All employees shall refrain from acting in a manner that is antagonistic to the Church. ...’

- 21 Article 5 of the GrO, headed ‘Breaches of the duty of loyalty’, states:

‘(1) If an employee no longer complies with the requirements for employment, the employer shall attempt to counsel the employee to remedy this shortcoming on a lasting basis. In the individual case, it shall be examined whether such a discussion to clarify the matter or a warning, a formal reprimand or another measure (for example, transfer, notice of amendment) is appropriate to counter the breach of duty. Dismissal shall be considered as a last resort.

(2) For dismissal on grounds relating specifically to the Church, the following breaches of the duty of loyalty within the meaning of Article 4 in particular shall be regarded by the Church as serious:

1. For all employees:

(a) publicly opposing the fundamental principles of the Catholic Church (for example promoting abortion or xenophobia),

...

2. In the case of Catholic employees:

(a) leaving the Catholic Church,

...

(3) If there is a serious breach of the duty of loyalty within the meaning of paragraph 2, the possibility of continued employment shall depend on the circumstances of the individual case. The self-conception of the church must be accorded special weight, without the interests of the church outweighing those of the employee in principle. Due account shall be given, *inter alia*, to the employee's awareness of the breach of duty of loyalty committed, the interest in retaining the job, age, length of employment and prospects of re-employment. In the case of employees who are employed in a pastoral or catechetical capacity, on the basis of a *missio canonica* or other written episcopal commission, the existence of a serious breach of duty of loyalty within the meaning of paragraph 2 shall generally rule out the possibility of continued employment. In those cases, dismissal may, in exceptional circumstances, be avoided if there are serious reasons in the individual case indicating that such dismissal would be excessive. The same shall apply in the case of an employee who leaves the Catholic Church.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 22 The Association 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. Its tasks include counselling pregnant women. In pregnancy consultations which are given under the provisions of national law, the Association applies the regulations of the Catholic Church that all employees working in Catholic consultation centres undertake in writing to observe, and the non-observance of which leads to consequences under employment law. Those regulations provide, in essence, that any counselling on pregnancy has the objective of protecting the life of the unborn child and thus must be delivered on the basis of encouraging the pregnant woman to continue her pregnancy and to accept her child.
- 23 In that regard, it is apparent from the order for reference that, in Germany, abortion is not punishable, under the conditions set out in Paragraphs 218 and 219 of the Strafgesetzbuch (Criminal Code), after the pregnant woman in a situation of need or conflict has received counselling from a counselling centre. However, on

the basis of a papal brief addressed to the Bishop of Limburg (Germany) in 2002, the Association does not issue counselling certificates, which are a requirement for abortion not to be punishable by a criminal penalty.

- 24 JB, who is the mother of five children, entered the service of the Association in 2006. Until her parental leave, which began on 11 June 2013 and which ended on 31 May 2019, she was entrusted with pregnancy counselling. In October 2013, JB, under the procedure provided for by the national provisions, declared before the competent local authority that she was leaving the Catholic Church. The grounds she stated for leaving the Catholic Church were that the Diocese of Limburg levied, in addition to the State church tax, an additional church levy on Catholic persons who, like JB, are in an interfaith marriage with a high-earning spouse.
- 25 After unsuccessfully attempting to persuade JB to rejoin the Catholic Church, the Association, on 1 June 2019, dismissed JB on the grounds that she had left that church, pursuant to Article 5(2)(2)(a) and Article 3(4) of the GrO. It is apparent from the order for reference that, at the date of that dismissal, in the pregnancy counselling service in which JB was working the Association employed four employees who were members of the Catholic Church and two employees who were not members of that church.
- 26 JB's action seeking to have her dismissal declared unfair was upheld by the Arbeitsgericht (Labour Court, Germany). The Association brought an appeal against the judgment of that court before the Landesarbeitsgericht (Higher Labour Court, Germany), which confirmed that judgment. The Association then brought an appeal on a point of law against the judgment of the latter court before the Bundesarbeitsgericht (Federal Labour Court, Germany), which is the referring court.
- 27 The referring court takes the view that JB's dismissal constitutes direct discrimination on the grounds of religion, for the purpose of Paragraph 1 and Paragraph 3(1), first sentence, of the AGG and Article 1 and Article 2(2)(a) of Directive 2000/78. The discrimination is directly linked to JB's exercising her negative freedom of religion, which is reflected in her leaving the Catholic Church. In that regard, that court states that, unlike JB, an employee who has never been a member of the Catholic Church cannot be dismissed on the grounds set out in Article 5(2)(2)(a) and Article 3(4) of the GrO. JB has thus been subject to difference of treatment directly based on religion in comparison with persons who have left other religious communities or who have never been a member of such communities.
- 28 The referring court is of the opinion that, in those circumstances, it is necessary, in order to settle the dispute in the main proceedings, to determine whether that difference of treatment can be justified under Paragraphs 8 and 9 of the AGG. It states in that regard that, according to the case-law of the Bundesverfassungsgericht (Federal Constitutional Court, Germany), leaving the Catholic Church, from the point of view of the latter, undermines that church's

credibility and is not compatible with the requirement that the parties to the employment contract must act in good faith and with loyalty. However, since Paragraph 9 of the AGG transposes Article 4(2) of Directive 2000/78 and since Paragraph 8 of the AGG transposes, *inter alia*, Article 4(1) of that directive, those two national provisions must, as far as possible, be interpreted in accordance with those provisions of that directive.

- 29 As regards, first of all, Article 4(2) of Directive 2000/78, the referring court takes the view that that provision, read in the light of Articles 10 and 21 of the Charter, precludes an interpretation of Paragraph 9 of the AGG under which an employee of a Catholic association is required, during the employment relationship, to act with loyalty, within the meaning of that directive, by not leaving the Catholic Church or by rejoining that church after leaving, unlike employees of that association who are not members of the Catholic Church.
- 30 In that regard, it observes that the first subparagraph of Article 4(2) of Directive 2000/78 does not enable justification of the difference of treatment on grounds of religion which results from the dismissal of an employee for the sole reason that that employee has left the Catholic Church. Leaving the Catholic Church is not a sufficient basis on which to conclude that that employee will no longer satisfy the occupational requirements applicable to him or her. In order to ensure effective judicial review, the employer must show, on the basis of specific and verifiable facts, that there are doubts as to whether that employee, on account of a change in beliefs or ethical principles, is still willing or able to fulfil those requirements. That is especially the case in a situation such as that at issue in the main proceedings, in which all members of staff working in the Association's counselling centre have to undertake to comply with the regulations of the Catholic Church in their employment contract.
- 31 Moreover, it argues, nor can the second subparagraph of Article 4(2) of Directive 2000/78 justify such a difference of treatment in the absence of special circumstances besides the mere fact that an employee has left the Catholic Church. That fact of leaving does not constitute in itself disloyal conduct of the employee towards its employer. It is only in situations where the obligation to remain a member of that church is justified by specific occupational requirements that the situation would be otherwise. That is certainly not the case where the employer also employs persons who do not belong to that church. Furthermore, the notice of termination of membership of the Catholic Church is made before a public authority, which informs solely that Church and the employer of it in order that the latter may take account of it in the calculation of the employee's pay. In those circumstances, it is only where the employee disseminates the information of his or her departure from the Catholic Church openly and in an inappropriate manner that that departure could be regarded as action antagonistic to the Church and therefore disloyal conduct.
- 32 Moreover, the wording of the second subparagraph of Article 4(2) of Directive 2000/78, in so far as it refers to acting in good faith and with loyalty 'to the

organisation's ethos', could allow a distinction to be made between the way in which the employer acts towards the Church, on one hand, and the way in which he or she acts towards that organisation as an employer, on the other hand. Thus, even if an employee's departure from the Catholic church could be characterised as disloyal conduct towards that church, it cannot automatically be inferred that that employee's conduct towards his or her employer is disloyal, provided that he or she continues to respect that employer's ethos in his or her work.

- 33 So far as concerns, next, Article 4(1) of Directive 2000/78, the referring court doubts that that provision, read in the light of Articles 10 and 21 of the Charter, allows an interpretation of Paragraph 8 of the AGG which authorises a difference of treatment such as that at issue in the main proceedings. In that context, it observes, *inter alia*, that the requirement not to have left the Catholic Church is not objectively necessary to exercise the activity of pregnancy counselling.
- 34 Lastly, if the Court should nevertheless find that Article 4(1) and (2) of Directive 2000/78 allows such a difference of treatment to be justified, the referring court raises the issue of what requirements would then apply to such a justification.
- 35 In those circumstances, the Bundesarbeitsgericht (Federal Labour Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- '(1) Is it compatible with EU law, in particular [Directive 2000/78] in [the] light of [Article] 10(1) and [Article] 21(1) of the [Charter], if a national provision provides that a private organisation whose ethos is based on religious principles ... may require of its staff ... not to leave a particular church during the employment relationship, or [that that organisation] may make it a condition of the continuation of the employment relationship that a member of staff who has left a particular church during the employment relationship rejoin [that] church, if it does not also require its staff to belong to that church and the member of staff does not openly act in a manner that is [antagonistic] to the church?
- (2) If the first question is answered in the affirmative: What, if any, further requirements apply under [Directive 2000/78] in [the] light of [Article] 10(1) and [Article] 21(1) of the Charter in order to justify such a difference of treatment on grounds of religion?'

Consideration of the questions referred

The first question

- 36 Under the cooperation procedure provided for in Article 267 TFEU, the Court may be called upon to provide the referring court with all the elements of interpretation of EU law which may be of assistance in adjudicating in the case pending before it, whether or not the referring court has referred to them in the

wording of its questions. It is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision to make the reference, the points of EU law which require interpretation in view of the subject matter of the dispute in the main proceedings (judgments of 20 March 1986, *Tissier*, 35/85, EU:C:1986:143, paragraph 9, and of 1 August 2022, *TL (Absence of an interpreter and of translation)*, C-242/22 PPU, EU:C:2022:611, paragraph 37).

- 37 In the present case, although, in the wording of its first question, the national court makes a general reference to Directive 2000/78, it is nevertheless apparent from its request for a preliminary ruling that that court's question concerns specifically Article 4(1) and (2) of that directive.
- 38 In those circumstances, it must be held that, by that question, the referring court asks, in essence, whether Article 4(1) and (2) of Directive 2000/78, read in the light of Article 10(1) and of Article 21(1) of the Charter, must be interpreted as precluding national legislation under which a private organisation the ethos of which is based on a religion may require of an employee who is a member of a certain church practising that religion not to leave that church during the employment relationship, on pain of dismissal or, in order to continue the employment relationship, to rejoin that church after having left it, even though
 - that organisation employs other persons to carry out the same duties as those of the employee in question, without requiring that those persons be members of that church, and
 - that employee does not openly act in a manner that is antagonistic to the church concerned.
- 39 As a preliminary point, it should be observed that that question is based on the premiss, adopted by the referring court and reiterated in paragraph 27 of the present judgment, that the difference of treatment to which JB is subject is directly based on her religion.
- 40 It must be recalled in that regard that Article 2(2)(a) of Directive 2000/78 provides that, for the purposes of applying Article 2(1) thereof, direct discrimination is to be taken to occur where one person is treated less favourably than another person in a comparable situation, on any of the grounds referred to in Article 1 of that directive, which include religion or belief.
- 41 In the present case, it is not disputed that JB was dismissed on the basis of a rule which applies exclusively to Catholic employees, so that it must be held, as it was by the referring court, that that rule constitutes a difference of treatment directly based on religion. Furthermore, it is common ground that the Association falls within the category of religious organisations, for the purposes of Article 4(2) of Directive 2000/78.

- 42 As regards the issue of whether such a difference of treatment may be justified under the conditions provided for in Article 4(1) and (2) of Directive 2000/78, it should be recalled that that directive's objective, as stated in Article 1 thereof, is to lay down a general framework for combating discrimination on the grounds *inter alia* of religion or belief as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment. The directive is thus a specific expression, in the field covered by it, of the general prohibition of discrimination laid down in Article 21 of the Charter (judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 47).
- 43 According to the Court's case-law, while Directive 2000/78 aims to protect the fundamental right of workers not to be discriminated against on grounds of their religion or belief, the fact remains that, by means of Article 4(2) thereof, that directive also 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, as recognised by Article 17 TFEU and Article 10 of the Charter, which corresponds to Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) signed at Rome on 4 November 1950 (judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 50).
- 44 In that regard, it is apparent from the case-law of the European Court of Human Rights (ECtHR) that the freedom of thought, conscience and religion enshrined in Article 9 ECHR also protects negative rights, for example freedom not to hold religious beliefs and not to practise a religion (ECtHR, 25 June 2020, *Stavropoulos and Others v. Greece*, CE:ECHR:2020:0625JUD005248418, §§ 43 and 44).
- 45 In the event of any doctrinal or organisational disagreement between a religious community and one of its members, the individual's freedom of religion is exercised by the option of freely leaving the community. Respect for the autonomy of religious communities recognised by the State implies, in particular, that the State should accept the right of such communities to react, in accordance with their own rules and interests, to any dissident movements emerging within them that might pose a threat to their cohesion, image, or unity. It is therefore not the task of the national authorities to act as the arbiter between religious communities and the various dissident factions that exist or may emerge within them (ECtHR, 12 June 2014, *Fernández Martínez v. Spain*, CE:ECHR:2014:0612JUD005603007, § 128).
- 46 However, the right to freedom of thought, conscience and religion guaranteed by Article 10 of the Charter has as its corollary the prohibition of any discrimination based on religion enshrined in Article 21(1) thereof (see, to that effect, judgment of 28 November 2023, *Commune d'Ans*, C-148/22, EU:C:2023:924, paragraph 40). Thus, the mere allegation by a religious community that there is an actual or potential threat to its autonomy is not sufficient to justify any difference of treatment on the grounds of religion or belief. That community must also show, in the light of the circumstances of the individual case, that the alleged risk of

interference in its autonomy is probable and substantial, that the difference of treatment at issue does not affect the substance of the right to equal treatment, does not go beyond what is necessary to eliminate that risk and does not serve any other purpose unrelated to the exercise of the religious community's autonomy. The national courts must ensure that those conditions are satisfied, by conducting an in-depth examination of the circumstances of the case and a thorough balancing exercise between the competing interests at stake (see, by analogy, ECtHR, 12 June 2014, *Fernández Martínez v. Spain*, CE:ECHR:2014:0612JUD005603007, § 132).

- 47 As regards Article 4(2) of Directive 2000/78 specifically, it must be borne in mind that the objective of that provision is to ensure a fair balance between the right of autonomy of churches and other organisations whose ethos is based on religion or belief, on the one hand, and, on the other hand, the right of workers, inter alia so far as concerns employment and working conditions, including dismissal and remuneration conditions, not to be discriminated against on grounds of religion or belief, in situations where those rights may clash (see, to that effect, judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 51).
- 48 To that end, that provision sets out the criteria to be taken into account in the balancing exercise which must be performed in order to ensure a fair balance between those potentially competing rights (judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 52), but without specifically and definitively allocating weight to the interests at stake.
- 49 Under the first subparagraph of Article 4(2) of Directive 2000/78, Member States may maintain national legislation in force at the date of adoption of that directive or provide for future legislation incorporating national practices existing at the date of adoption of that directive pursuant to which, in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief is not to constitute discrimination where, by reason of the nature of these 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. That difference of treatment is to be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of EU law, and should not justify discrimination on another ground.
- 50 The second subparagraph of Article 4(2) of Directive 2000/78 states that provided that its provisions are otherwise complied with, that directive is not to 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.

- 51 As regards, first, the criteria set out in the first subparagraph of Article 4(2) of Directive 2000/78, the Court held that it follows expressly from that provision that it is by reference to the ‘nature’ of the activities concerned or the ‘context’ in which they are carried out that religion or belief may constitute a genuine, legitimate and justified occupational requirement, having regard to the ethos of the church or of the organisation at issue within the meaning of that provision. Thus, the lawfulness, in the light of that provision, of a difference of treatment on grounds of religion or belief depends on the objectively verifiable existence of a direct link between the occupational requirement imposed by the employer on account of its ethos and the activity concerned. Such a link may follow either from the nature of the activity, for example where it involves taking part in the determination of the ethos of the church or organisation in question or contributing to its evangelising mission, or else from the circumstances in which the activity is to be carried out, for instance, where it is necessary to ensure that the church or organisation is presented in a credible fashion to the outside world (judgments of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraphs 62 and 63, and of 11 September 2018, *IR*, C-68/17, EU:C:2018:696, paragraph 50).
- 52 That occupational requirement must, as required by the first subparagraph of Article 4(2) of Directive 2000/78, be ‘genuine, legitimate and justified’ having regard to the ethos of the church or organisation, it being understood that, as the Advocate General observed in point 29 of her Opinion, those three criteria are cumulative. Although in principle it is not for the national courts to rule on the ethos as such on which the purported occupational requirement is founded, they are nevertheless called on to decide on a case-by-case basis whether those three criteria are satisfied from the point of view of that ethos (judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 64).
- 53 With respect, in the first place, to the ‘genuine’ nature of that occupational requirement, the Court has stated that the use of that adjective means 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, as recognised by Article 17 TFEU and Article 10 of the Charter (judgments of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 65, and of 11 September 2018, *IR*, C-68/17, EU:C:2018:696, paragraph 51).
- 54 In the second place, as regards the ‘legitimate’ nature of that occupational requirement, the Court has stated that the EU legislature’s use of that term shows that it wished to ensure that the requirement of professing the religion or belief on which the ethos of the church or organisation at issue is founded is not used to pursue an aim that has no connection with that ethos or with the exercise by that church or organisation of its right of autonomy (judgments of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 66, and of 11 September 2018, *IR*, C-68/17, EU:C:2018:696, paragraph 52).

- 55 So far as concerns, in the third place, the term ‘justified’, the Court has held that use of that term implies not only that a national court can review whether the criteria laid down in the first subparagraph of Article 4(2) of Directive 2000/78 are being complied with, but also that the church or organisation imposing the occupational requirement is obliged to show, in the light of the factual circumstances of the individual case, that the alleged risk of undermining its ethos or its right of autonomy is probable and substantial, so that the imposition of such a requirement is necessary (judgments of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 67, and of 11 September 2018, *IR*, C-68/17, EU:C:2018:696, paragraph 53).
- 56 In that regard, the occupational requirement in the first subparagraph of Article 4(2) of Directive 2000/78 must be consistent with the principle of proportionality, which means that the national courts must ascertain whether the requirement in question is appropriate and does not go beyond what is necessary for attaining the objective pursued (judgments of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 68, and of 11 September 2018, *IR*, C-68/17, EU:C:2018:696, paragraph 54).
- 57 As regards, secondly, the second subparagraph of Article 4(2) of Directive 2000/78, it must be recalled that that provision stipulates that one of the occupational requirements that a church or other public or private organisation whose ethos is based on religion or belief can impose on its employees is the requirement that those individuals ‘act in good faith and with loyalty’ to the ethos of that church or organisation. However, as is apparent from, inter alia, the clause ‘provided that [the] provisions [of Directive 2000/78] are otherwise complied with’, contained in that subparagraph, the power to impose such a requirement that employees act in good faith and with loyalty must be exercised in a manner consistent with the other provisions of that directive and, in particular, the criteria set out in the first subparagraph of Article 4(2) of the directive, which must, where appropriate, be amenable to effective judicial review (judgment of 11 September 2018, *IR*, C-68/17, EU:C:2018:696, paragraph 46).
- 58 It follows that, in a situation such as that at issue in the main proceedings, a private organisation whose ethos is based on the precepts of the Catholic Church cannot treat differently, by virtue of the requirement that they must act in good faith and with loyalty to that ethos, its employees providing pregnancy counselling depending on whether or not they are members of that church, unless (i) in the light of the nature of the occupational activities concerned or the context in which they are exercised, there is a direct and objectively verifiable link between those activities and the requirement not to leave that church during the employment relationship, on pain of dismissal, or to rejoin that church after having left it, and (ii) that occupational requirement is genuine, legitimate and justified having regard to that ethos.
- 59 In that regard, it must be noted that, although it is ultimately for the national court, which has sole jurisdiction to assess the facts, to determine whether that is the

case, the Court of Justice may provide guidance, based on the file in the main proceedings and on the written and oral observations which have been submitted to it, in order to enable that national court to give judgment in the case before it.

- 60 In that context, it must be recalled that national courts must, except in very exceptional cases, refrain from assessing whether the actual ethos of the church or organisation concerned is legitimate (judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 61). It is thus in principle for the churches and other public or private organisations the ethos of which is based on religion or belief to determine what they regard as an occupational requirement having regard to the ethos of that church or that organisation.
- 61 As observed in paragraph 48 of the present judgment, 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 (see, by analogy, judgments of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, paragraphs 87 and 88, and of 28 November 2023, *Commune d'Ans*, C-148/22, EU:C:2023:924, paragraphs 34 and 35).
- 62 Nevertheless, national courts must ensure that there is no infringement of the right of workers not to be discriminated against on grounds, inter alia, of religion or belief. Thus, under Article 4(2) of Directive 2000/78, it is, if need be, for an independent authority and ultimately for a national court, and not for the church or organisation concerned, to assess whether the occupational requirement laid down by the church or organisation at issue is, on account of the nature of the activities concerned or the context in which they are exercised, genuine, legitimate and justified having regard to that ethos (judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraphs 46, 53 and 61).
- 63 In the same vein, it is apparent from the case-law of the European Court of Human Rights that, although an employer the ethos of which is based on religion or a philosophical belief may impose on its employees specific duties of loyalty, a dismissal decision on the grounds of a failure to comply with such duty, in particular if it is the result of facts connected with the exercise of rights protected under the ECHR, must always be subject to judicial review involving properly balancing the right of the religious community to respect for its autonomy with the fundamental rights of the individual concerned in accordance with the principle of proportionality (see, to that effect, ECtHR, 23 September 2010, *Schüth v. Germany*, CE:ECHR:2010:0923JUD000162003, §§ 57 and 69; ECtHR, 23 September 2010, *Obst v. Germany*, CE:ECHR:2010:0923JUD000042503, § 43; and ECtHR, 3 February 2011, *Siebenhaar v. Germany*, CE:ECHR:2011:0203JUD001813602, § 40).
- 64 As regards, specifically, a private organisation such as the Association, the ethos of which is founded on the precepts of the Catholic Church and the regulations

and ethos of which promote, as is apparent from paragraph 22 above, the protection of the life of the unborn child and thus pregnant women continuing their pregnancy and accepting their child, there is, a priori, an objectively verifiable direct link between the occupational activity consisting in providing pregnancy counselling and the requirement to act in good faith and with loyalty to those regulations and that ethos. Furthermore, such an occupational requirement appears, in principle, to be genuine, legitimate and justified having regard to that ethos.

- 65 In the present case, it is common ground that JB undertook in her employment contract to comply with those regulations and to observe that ethos and it is not apparent from the file that she is no longer willing or able to honour that undertaking. It is thus apparent that she was dismissed on the sole ground that she has left the Catholic Church and that she has refused to rejoin that church.
- 66 In that regard, first, subject to verification by the referring court, it is not apparent from the file submitted to the Court that the Association has objectively established that, in the light of the nature of the occupational activity exercised by JB and the conditions under which that activity is exercised, there is a direct link between such an activity and the requirement imposed on JB, as a member of the Catholic Church, not to leave that church during the employment relationship on pain of dismissal, or to rejoin that church after leaving it in order to continue that employment relationship.
- 67 Admittedly, it cannot be ruled out that, in principle, a church or organisation the ethos of which is based on religion or belief may be able to explain the existence of a direct link between the occupational requirement of good faith and loyalty consisting, for an employee of that church or that organisation, in not leaving that church, on pain of dismissal, or in rejoining that church after having left it, in order to continue the employment relationship and the occupational activity at issue. The specific mission assigned to an employee in a church or other religious organisation is a relevant consideration in determining whether that person should be subject to a heightened duty of loyalty (see, to that effect, ECtHR, 12 June 2014, *Fernández Martínez v. Spain*, CE:ECHR:2014:0612JUD005603007, § 131).
- 68 However, it is in the light of the specific occupational activity that such a direct link must be objectively established. Thus, the general reference to the concept of ‘community of service’ in Article 1 of the GrO, which implies membership of and not leaving the Church in respect of all the activities within the Catholic Church and the institutions and organisations attached to it, cannot suffice for the purposes of objectively establishing such a direct link.
- 69 Secondly, 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 on pain of dismissal or must, if they have left that church, rejoin it in order to continue the employment relationship, does not appear to be, in the light of the material in the file submitted to the Court, ‘genuine’ for

the purposes of the exercise of the occupational activity at issue in the main proceedings, within the meaning of the case-law referred to in paragraph 53 above.

- 70 As observed by the referring court, and recalled by the Advocate General in point 37 of her Opinion, positions as pregnancy counsellors, like that filled by JB, have been allocated to employees of the Association who are not members of the Catholic Church, which is inclined to demonstrate that the Association itself regards membership of that church as not necessary because of the importance of that occupational activity for the manifestation of the ethos of its organisation and that church's evangelising mission, but that it is sufficient in that regard that its pregnancy counsellors undertake to comply with the regulations of that church, referred to in paragraphs 22 and 64 of the present judgment. Accordingly, the occupational requirement referred to in the preceding paragraph of the present judgment does not seem to be genuine, within the meaning of that case-law.
- 71 Thirdly, although, as the Advocate General observed in paragraph 41 of her Opinion, it cannot be ruled out that the departure from the Catholic Church of an employee of an organisation the ethos of which is based on the precepts of the Catholic Church may be accompanied by a distancing from or refusal of the precepts and fundamental values of that church which may render that employee unsuitable for performing certain occupational activities within that organisation, it must nevertheless be stated that the mere departure from that church is not a sufficient basis on which to assume that that is in fact the case, since that departure may be motivated by considerations which in no way cast doubt on that employee's adherence to those precepts and those fundamental values.
- 72 It is apparent in that regard from the file before the Court that, as noted in paragraph 24 of the present judgment, the grounds stated by JB for leaving the Catholic Church were that the Diocese of Limburg levied, in addition to the church tax, an additional church levy on Catholic persons who, like JB, are in an interfaith marriage with a high-earning spouse. In particular, JB by that departure neither distanced herself from nor rejected the precepts and fundamental values of that church.
- 73 Furthermore, it is apparent from the order for reference that JB's dismissal occurred directly and exclusively because of the fact that she left the Catholic Church under the national rules and that she subsequently refused to rejoin it. There seems to have been no examination of whether JB, after leaving, was willing, in accordance with Article 4(2) of the GrO, to continue to 'respect the truths and values of the Gospel and to contribute to giving them effect' within the Association, or whether, in accordance with Article 4(3) of the GrO, she was willing to perform, in the same way as the employees who were not members of the Catholic Church, the tasks assigned to her in accordance with the precepts of that church.

- 74 In those circumstances, it is for the national court to ascertain whether, having regard to the way in which it is actually applied by the Association, the requirement at issue in the main proceedings is intended to ensure that employees act in good faith and with loyalty to the ethos of the Catholic Church and is not used for any purpose external to that ethos or to the exercise by the Association of its right of autonomy, which would cast doubt on the legitimacy of that requirement for the purposes of the first subparagraph of Article 4(2) of Directive 2000/78.
- 75 Fourthly and lastly, in a situation such as that at issue in the main proceedings, it is for the Association to establish whether the alleged risk of undermining its ethos or its right of autonomy is probable and substantial, so that the imposition of such a requirement is necessary and proportionate (judgments of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraphs 67 and 68, and of 11 September 2018, *IR*, C-68/17, EU:C:2018:696, paragraphs 53 and 54).
- 76 As the Advocate General observed in point 45 of her Opinion, in a situation such as that concerned by the first question referred, it does not appear that the mere fact that JB has left the Catholic Church or that she has refused to rejoin it is sufficient to establish that the risk alleged by the Association that its ethos or its right of autonomy will be undermined is so probable and substantial as to warrant JB's dismissal. JB's departure from the Catholic Church, which was made pursuant to the procedure laid down by the national provisions in order to avoid the additional church levy, and her refusal to rejoin that church for the same reason, do not suffice to show that there has been an act by JB publicly distancing herself from that church and which must be examined as an act antagonistic to that church.
- 77 In that regard, it should be noted, in particular, that, as is apparent from the file before the Court, to be valid under German law, the notice of termination of membership of the Catholic Church must be made before the competent State authority, namely a local authority official, who informs only that church and the employer of that termination, so that the latter may take it into account in the calculation of the employee's remuneration. As the referring court has pointed out, such a notice of termination, the purportedly public nature of which stems from a national legal obligation, cannot be regarded as conduct antagonistic to that church in the absence of any other action on JB's part seeking to disseminate openly and in an inappropriate manner the information about her departure from that church.
- 78 As the referring court observed, it follows from the wording of the second subparagraph of Article 4(2) of Directive 2000/78 that, under that provision, where the provisions of that directive are otherwise complied with, a public or private organisation the ethos of which is based on religion or belief, is allowed to require of its employees simply that they act in good faith and with loyalty to the ethos of that organisation. Accordingly, 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.

- 79 First, as observed in paragraphs 22, 64 and 65 of the present judgment, JB has undertaken in her employment contract to comply with the regulations and to respect the ethos of the Catholic Church relevant to the exercise of her occupational activity, which do not require, as it was pointed out in paragraph 70 of the present judgment, that persons filling positions similar to that of JB are necessarily members of that church, provided that those persons promote the protection of the life of the unborn child and thus pregnant women continuing their pregnancy and accepting their child. Secondly, it is not apparent from the file before the Court that JB is no longer willing or able to honour that undertaking.
- 80 In the light of the foregoing, it must be held that, in circumstances such as those which the first question referred concerns and subject to verification by the referring court, the requirement that a worker, such as JB, must not leave the Catholic Church during the employment relationship on pain of dismissal or must rejoin that church after having left it in order to continue the employment relationship does not seem to be an occupational requirement which satisfies the conditions provided for in Article 4(2) of Directive 2000/78.
- 81 However, inasmuch as, as is apparent from paragraph 33 of the present judgment, the order for reference also concerns Article 4(1) of Directive 2000/78, it must be borne in mind that, in accordance with the wording of that provision, Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 of that directive is not to constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and that requirement is proportionate.
- 82 According to the Court's case-law, the concept of a 'genuine and determining occupational requirement', within the meaning of that provision, refers to a requirement that is objectively dictated by the nature of the occupational activities concerned or by the context in which they are carried out and it cannot cover subjective considerations (judgment of 14 March 2017, *Boungaoui and ADDH*, C-188/15, EU:C:2017:204, paragraph 40).
- 83 Moreover, the Court has repeatedly held that, in so far as it allows a derogation from the principle of non-discrimination, Article 4(1) of Directive 2000/78 must be interpreted strictly (judgments of 13 September 2011, *Prigge and Others*, C-447/09, EU:C:2011:573, paragraph 72, and of 7 November 2019, *Cafaro*, C-396/18, EU:C:2019:929, paragraph 67).

- 84 In the present case, as the referring court observed and as the Advocate General noted in point 50 of her Opinion, the requirement consisting in prohibiting employees of an organisation the ethos of which is based on the precepts of the Catholic Church, who are members of that church, from leaving that church during the employment relationship on pain of dismissal, or in obliging those employees to rejoin that Church after they have left it, does not appear to be objectively dictated by the nature of the activities of a pregnancy counsellor or the conditions under which those activities are exercised in circumstances such as those at issue in the case in the main proceedings.
- 85 It follows that Article 4(1) of Directive 2000/78 must be interpreted as meaning that a difference of treatment such as that at issue in the main proceedings cannot be justified on the basis of that provision.
- 86 Having regard to the foregoing considerations, the answer to the first question is that Article 4(1) and (2) of Directive 2000/78, read in the light of Article 10(1) and of Article 21(1) of the Charter, must be interpreted as precluding national legislation under which a private organisation the ethos of which is based on a religion may require of an employee who is a member of a certain church practising that religion not to leave that church during the employment relationship, on pain of dismissal or, in order to continue the employment relationship, to rejoin that church after leaving it, even though
- that organisation employs other persons to carry out the same duties as those of the employee in question, without requiring that those persons be members of that church, and
 - that employee does not openly act in a manner that is antagonistic to the church concerned,

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, those occupational requirements are not genuine, legitimate and justified having regard to that organisation's ethos.

The second question

- 87 Having regard to the answer given to the first question, there is no need to answer the second question.

Costs

- 88 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 4(1) and (2) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, in the light of Article 10(1) and Article 21(1) of the Charter of Fundamental Rights of the European Union,

must be interpreted as precluding national legislation under which a private organisation the ethos of which is based on a religion may require of an employee who is a member of a certain church practising that religion not to leave that church during the employment relationship, on pain of dismissal or, in order to continue the employment relationship, to rejoin that church after leaving it, even though

- **that organisation employs other persons to carry out the same duties as those of the employee in question, without requiring that those persons be members of that church, and**
- **that employee does not openly act in a manner that is antagonistic to the church concerned,**

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, those occupational requirements are not genuine, legitimate and justified having regard to that organisation's ethos.

[Signatures]