German constitutional court increases the power of the church

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The German Federal Constitutional Court (FCC—*Bundesverfassungsgericht*, or *BVerfG*) has declared lawful the dismissal of a leading physician at a Catholic hospital on the grounds that the church has the "right of self-determination." The doctor had remarried after divorce and three labor courts had already ruled the dismissal illegal.

The decision is highly significant because it consolidates the dictatorship of Christian religious denominations over a substantial portion of the social infrastructure in Germany. It asserts that in institutions controlled by the Catholic Church, the democratic rights of employees have at most a subordinate significance. It gives the church the right to impose its moral code upon those employed by the institutions under its control. The decision is a blatant violation of the democratic principle of the separation of church and state.

The Catholic hospital in Düsseldorf had employed the plaintiff since January 1, 2000 as head physician in the department of internal medicine. He was at that point still married to his first wife.

At the end of 2005 the couple separated and between 2006 and 2008, the plaintiff lived with his new partner. The managing director of the hospital had been aware of the divorce and new relationship since at least 2006. The divorce was finalized in 2008. Subsequently, several discussions took place between the plaintiff and the hospital about the repercussions of his second marriage for the continuation of his employment contract. In March 2009, the hospital dismissed him.

The physician then brought unlawful dismissal charges against the hospital. The labor court ruled in his favor on July 30, 2009 and told the hospital it was obliged to continue employing him. Previous efforts by the hospital to appeal the decision were unsuccessful, but the Federal Constitutional Court in Karlsruhe has now overturned the 2009 ruling of the Federal Labor Court (BAG), subjecting its judgment to severe criticism in the process.

The highest German labor court has traditionally judged such cases on the basis of the relationship of an individual employee to the church. A priest, whose central responsibility is propagating the teachings of the church, is judged according to different standards than other employees. The court has also differentiated between employees of the church itself and those who merely work in one of the institutions it sponsors.

In addition the Catholic Church has employed divorced chief physicians in other instances, but in this case the FCC judges rejected these considerations. Instead, the church alone is to decide what considerations are relevant. This can also apply to purely social institutions. The Federal Constitutional Court entirely dismissed the idea that there might be other institutions that could carry out the same tasks.

The court makes it clear in multiple places that it is fully conscious of the social backdrop of its decision.

Thus it says at the very beginning: "Since the 1950s, the number of church employees has grown by leaps and bounds. On the one hand, this development is caused by the socially conditioned expansion of activities carried out by the church—above all in the area of social welfare work—which demands the increasing professionalization of employees. On the other hand, it is caused by the continually decreasing number of members of holy orders and similar social institutions, which used to run numerous social and education institutions. Because of this development, the churches have unavoidably also hired many non-Christian employees or people who belong to other denominations, in order to meet the growing demand

for qualified workers."

Actually, the church is—after the state—the second largest employer in the social sector. According to estimates, 1.3 million people are employed by Catholic-run social and welfare organization. In some regions of Germany, the churches actually have a monopoly in the social sector. The hospitals, nurseries and homes for the elderly are not funded by the churches, but largely (and sometimes completely) by taxes. Nevertheless, according to the Federal Constitutional Court, a caretaker is supposed to be just as subordinate to Christian dogma as the pastor or priest in the pulpit.

The decision does not mention that the institutions of the church are indeed permitted to determine themselves, but receive financing not only from their members, but also from those who have nothing to do with church or religion. Although it takes into consideration the fact that the authority of the Christian churches has declined, they are still allowed to dictate the term of employment.

The judges are of the opinion that the churches also have the right to interfere deeply in the private lives of "their" employees and dismiss them if they do not subordinate themselves to religious dogmas: "Service in the Christian community is the mission and task of the church and ideally includes people in all their relations of family, free time, work and society. This understanding is the foundation of the mission of the church that it shape both service and personal lifestyle, which find its expression in the obligation of loyalty."

On reading such passages, one asks oneself whether a secular court is deciding questions of a secular constitution or the Holy Inquisition is judging the transgressions of poor sinners, who are to be burnt at the stake after hearing a sermon on their transgressions—all in the name of belief, love and hope.

"People in all their relations," includes behavior outside of work, even in the most personal matters of private life and also represent permissible grounds for dismissal by religious institutions.

The court decision scarcely imposes any limits on churches. They are only required to present a plausible case that "according to common convictions, dogmas, traditions and teachings, the loyalty obligations associated with the church institution are an object, part or goal of its rules of faith." Then the state "has to" take this case "as the basis its evaluations and decisions, so long as these do not contradict fundamental constitutional guarantees." The freedom to choose an occupation (which is protected by the constitution as well), the negative religious freedom (that is, the protection against religion), or the protection against arbitrary dismissal are—as this recent decision shows—violated in any case.

In Germany, the privileges of religious despotism granted to the church with regard to their employees have been anchored in statutes for some time.

The minimal protections granted by the Code of Industrial Relations since 1952 are expressly "not to be applied to religious communities and their charitable and educational institutions regardless of their legal form." Even the Universal Equal Treatment Act, that was introduced with the demand that discrimination and arbitrary firings be prevented, excludes religious communities and their associated institutions from its protections and allows them the freedom "to demand from their employees loyal and honest behavior corresponding with their own principles."

The alliance of church and state is hundreds of years old in Germany. At the end of the peasants' revolt in the sixteenth century, the power struggle between the state and the church was decided in favor of the latter. There was never a successful democratic revolution in Germany. The churches have done their part since then to subordinate the working and poor population in the country to their wealthy exploiters and—in the case of war—have given their blessing to the military. In return, the state granted them wealth and a wide range of privileges.

The constitutional court decision represents the continuity of a tradition that extends back to the dark ages.