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DISCRIMINATION ON GROUNDS OF RELIGION AND BELIEF

SECTION 1 – DIRECT AND INDIRECT DISCRIMINATION

Participants are assumed to be aware of the concepts of direct and indirect discrimination provided by Directives 43/2000 and 78/2000 (art. 2) and of their respective scope of application (art. 3). Against this backdrop, and the legal and cultural context of their own countries, the participants will be invited to discuss the following cases:

A) A big company exporting textiles in the whole world advertises a job as sales agent willing to travel in Africa and - says the advertisement - “primarily in the Middle East, including Saudi Arabia, at least until the local daughter companies become fully operational”. One of the candidates - a man - is clearly superior to any other with regard to the competences required. At the very end of the interview, the candidate mentions that he comes from a Jewish family, although he claims never having practiced the belief of his parents. The director of the company becomes suddenly very embarrassed, and mentions the fact that the “person selected will have to travel frequently in countries with strong tensions with the state of Israel” and that during commercial contacts in the area “all the representatives of the commercial counterparts expressed a deeply rooted and aggressive anti-Semitism”. The director asks then the candidate whether under such conditions he would be concerned for his personal safety. He, however, does not show himself negative against the recruitment of the candidate, and continues to praise his merits and qualifications. This notwithstanding, after a week the candidate receives a letter where he is informed that another person (indirectly he knows that is a woman) was preferred.

B) A municipality needs to recruit a number of unqualified workers to be employed in roadwork. To proceed with the recruitment, the municipality has two alternatives, either asking for the transfer of individual workers already employed in other municipalities, or recruiting from the list of the local job placement office. For different legal and factual reasons, it is clear that if recruiting from the unemployed’s list, the municipality will not have a word about who to actually recruit, but will have to respect the ranking made on formal grounds (age, family charge) by the office. Notwithstanding the bad state of the local roads, the municipality hesitates in the recruitment, mentioning budget constraints. At a dinner with party colleagues, the major says that they have difficulties in recruiting by transfer (nobody willing to move) but he does not want to proceed through the job placement office since in the area their lists include mainly immigrants from Northern Africa, and he “does not want Muslims” working for his municipality. The phrase is reported to a local resident who is originally from Tunisia. He feels outraged, and asks a lawyer about viable legal actions. What can be the answer ?

SECTION 2 – THE PROBLEM OF ORGANISATIONS WITH A SPECIFIC ETHOS

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, art. 4.2

“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 private or public 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”.

Against the backdrop of this provision and of the legal and cultural context of their own countries, the participants will be invited to discuss the following cases:

A).

1. In a private Catholic school one of the teachers of history, teaching to classes of students of an age between 15 and 18 and whose behaviour and professional skills were always appreciated by students and colleagues, decides to convert to Islam. He speaks freely during classes and teachers meetings about his conversion, and since that in his lessons he starts giving much more space than the other teachers to the role of Islam in the growth of European civilisation, although in a very balanced and objective way. After a few months, the direction of the school decides to dismiss him. Is such a dismissal legal ?
2. Would the solution change if the teacher did not make his conversion public (while in any case manifesting as above mentioned a deep interest for Islam in his teaching) but this became known by the colleagues when a private letter addressed to him and coming from a local Islamic association was opened by mistake by the secretary of the school’s director?
3. Would the solution change if the teacher making public his conversion was not one of history but one of English, making no reference whatsoever during his teaching to his new religious beliefs?
4. Would the solution change if the teacher making public his conversion was not one of history but one of gymnastics? What if the conversion of the teacher of gymnastics became public under the circumstances above described at 2?
5. Would the solution change if the employee making public his conversion was not a teacher but an assistant in the nursery section of the same school, never speaking about religious matters beyond mentioning the simple fact of his recent conversion ?

B)

1. In another Catholic school, a female teacher teaching to students between the age of 16 and 18, otherwise considered a strict follower of Catholic doctrines and one of the best teachers of mathematics, unexpectedly declares that she will take a maternity leave. She is not

- married, and this raises scandal among colleagues. A few weeks after the birth of the child, the direction decides to dismiss her. Is such a dismissal lawful ?
2. Would the solution change if the dismissal was not due to the above facts, but followed after the teacher made public, in informal chats with students, that she started a cohabitation with a male colleague who she met while accompanying a group of handicapped children to Lourdes ?
 3. Would the solution change if the dismissal was not due to the above facts, but came after the direction was informed by an anonymous letter that the teacher 25 years before practiced an abortion after having been raped ?

C)

1. In another Catholic school one of the teachers of religion, a lay person of immaculate personal behaviour (from a Catholic standpoint), starts to take part in the meetings of a Buddhist association, and gossips say that she has “converted to Buddhism”. Her teaching does not change in the slightest way, and she never mentions her new experience. The fact is reported to the director of the school who asks her - more out of curiosity - about the foundations of the gossips. She replies that she is in a period of transformation of her views on life and religion, and that she found in Buddhism many answers to her questions. She also says that she does not see any opposition between a practice of Buddhism and Christianity. The director, a Catholic of conservative views, asks her to avoid too much publicity to her private doubts, but does not take any immediate action.

After a few months, while the school is on newspapers’ headlines for completely different reasons (a student is arrested for selling narcotics), a journalist is informed about the participation of the teacher in the activities of the Buddhist association. In an interview she says again that Buddhism and Christianity can well integrate each other. Asked on her views on drugs, she says that she is strongly against their use, but personally in favour of legalisation. The interview raises indignation among some parents, and a few students are moved to other schools. The director decides to dismiss her. Is the dismissal legal?

2. Would the solution change if the facts are the same as above, but instead of “Buddhism”, you read “Scientology” ?