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Does refusal to wear a face mask constitute a belief system?

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In a recent decision,⁽¹⁾ the Supreme Court ruled that an employee could not claim discrimination on the grounds of belief after she was dismissed for refusing to wear a mandatory covid-19 face mask.

Facts

The plaintiff worked for a large Austrian youth and family care organisation. Part of her duties required her to make regular visits to families and young people; however, she refused to wear the mandated covid-19 face mask, despite her employer requesting her to do so on several occasions.

On social media, she repeatedly expressed scepticism about the measure that the government had taken in light of the pandemic.

Despite threats of dismissal, she persisted in her behaviour. When she finally was dismissed, she claimed in court that she had been discriminated against as a result of her beliefs, which constituted an infringement of the Equal Treatment Act.

She also claimed, among other things, that "the coronavirus is about as dangerous as the influenza virus" and that the Constitutional Court had already annulled 22 laws or regulations in connection with covid-19. She believed, therefore, that constitutional laws should be upheld and that she should not be dismissed, as she claimed that it was her physical health that prevented her from wearing a face mask.

Decision

The Supreme Court agreed with plaintiff that constitutional laws should be complied with and also recognised her concern for her own health. However, this claim was unrelated to a "belief" within the meaning of Austrian and EU legislation on anti-discrimination in the workplace, which the defendant employer had rightly pointed out during the proceedings. The plaintiff failed to respond with additional facts that would have bolstered her claim. According to the Supreme Court, the plaintiff's arguments did not constitute a "belief" and only qualified as factual arguments against mask-wearing requirements. A recognisably critical attitude towards covid-19 measures, however, cannot be considered as a belief under applicable legislation.

Referring to its own previous case law, the Supreme Court also explained what is meant by a "belief" under the discrimination provisions of the Equal Treatment Act (which is based on the EU Equal Treatment Directive):

The term "belief" is closely related to the term "religion". It serves as a collective term for all ideological, political and similar views of life and the world as a whole of meaning, as well as the interpretation of the personal and communal location for the individual understanding of life. This includes, for example, one's views of man and the world, but also views of values, life and morality, as is also stated in the legislative materials on the transposition of the Equal Treatment Directive into Austrian law.

For example, in previous decisions, the Supreme Court had already clarified that an employee's merely critical views, such as those regarding asylum legislation and personnel-related grievances in a company, were unlikely to be qualified as a "belief". In another decision, the Court ruled that a student fraternity could not claim to hold a "world view", as the ideologies of each fraternity do not align.

The two lower courts had already recognised that the dismissal was not discriminatory, and the Supreme Court upheld that view.

Comment

The decision is the first of its kind that has come before the Supreme Court. It leaves no doubt that a critical stance towards covid-19-related measures does not amount to a belief system, regardless of whether such criticism is justified.

For employers, this decision means that covid-19-related measures can also be enforced in the workplace without fear of discrimination claims.

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Endnotes

(1) OGH 25 November 2021, 9 ObA 130/21i.