



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Germany
<b>Title:</b>	Headscarf of a nurse
<b>Date:</b>	12 March 2015
<b>Expert:</b>	Mahlmann Matthias
<b>Update of flash report nr:</b>	1823-DE-57-Headscarf Hospital
<b>Context</b>	
<b>Issue at stake:</b>	Wearing of head scarf in hospital of an organisation of a religious community
<b>Ground of discrimination:</b>	Religion and belief
<b>Source:</b>	Federal Labour Court (Bundesarbeitsgericht), 24 September 2014 – 5 AZR 611/12
<b>Field:</b>	Employment
<b>Applicable law:</b>	Federal Collective Agreement for the Employees of the Protestant Church of Westfalia ( <i>Bundesangestelltentarifvertrag in der für die Angestellten im Bereich der Evangelischen Kirche von Westfalen geltenden Fassung – BAT- KF</i> )

### Content

**Case/law/policy development:** The case concerns a nurse who wished to continue her work in a hospital after maternity leave wearing an Islamic headscarf. She argued that she changed her beliefs in this respect during her leave.

**Decision of the Court:** The Federal Labour Court (*Bundesarbeitsgericht*), on 24 September 2014 (case n°– 5 AZR 611/12), decided that it is in principle permissible for an employer who is part of a religious community – here the Protestant Church – to ask for neutral behaviour during working times. This duty of neutrality can justify the prohibition to wear an Islamic headscarf. The Court argued that the employee concerned signed a contract which included special provisions to the effect that employees had to act in a manner reconcilable with the religious mission of the Protestant church. Given this, the employee could not argue that the prohibition of wearing the headscarf was unreasonable. To demand a neutral behaviour of the employee was, the Court argued, within the constitutionally protected autonomy of the Protestant Church limited only by fundamental rights and the *ordre public* which it regarded under these circumstances not as violated. The Court argued that no issue under discrimination law arises as any unequal treatment would be justified by the norm on the justification of unequal treatment due to special duties of loyalty as provided by Art. 9. 2 General Equal Treatment Law (*Allgemeines Gleichbehandlungsgesetz*) transposing Art. 4(2) Directive 2000/78/EC. As it was unclear whether the hospital in fact was part of the charitable organisations of the Protestant Church and could thus legitimately impose such a duty of neutrality and whether the plaintiff was in fact – due to health reasons – capable of working it remanded the case to the lower instance for reconsideration.

**Key points of analysis:** The Judgement of the Court confirms the consistent case law of German courts on the autonomy of religious communities to define the duties of loyalty themselves within the limits of fundamental rights and the *ordre public*. To ask an employee to refrain from wearing a visible religious symbol was taken not to transgress these limits given that she had signed a contract including rules on these duties of loyalty.

**Internet link source:**

<http://juris.bundesarbeitsgericht.de/cgi-bin/rechtsprechung/document.py?Gericht=bag&Art=pm&Datum=2014&anz=47&pos=0&nr=17769&linked=urt>