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NEWS REPORT

Country:	Germany
Title:	Headscarf of applicant teacher
Date:	17 December 2018
Expert:	Mahlmann, Matthias
Update of news report nr:	<u>39-DE-ND (2015)</u>
Context	
Issue at stake:	Rejection of applicant wearing a headscarf
Ground of discrimination:	Religion/belief
Source:	Berlin-Brandenburg Land Labour Court (Landesarbeitsgericht Berlin-Brandenburg), 27 November 2018, Az. 7 Sa 963/18
Field:	Employment
Applicable law:	Art. 7 AGG (General Equal Treatment Act)

Content

Case: An applicant for a teaching position at a public school claimed that her application had been unsuccessful because she wears a Muslim headscarf and that therefore she was unlawfully discriminated on religious grounds. In the view of the court, the wearing of the headscarf was the main reason for the rejection of her application. A first instance decision (Berlin Labour Court (LAG Berlin, 24 May 2018, Az. 58 Ca 7193/17)) had previously dismissed her claim.

Decision of the Court: The appeal court ruled that she had been discriminated in the sense of Art. 7 AGG (General Equal Treatment Act) and awarded the plaintiff compensation of 1,5 months' salary (5 159,88 Euro). The so-called Berlin Neutrality Act (Act on Art. 29 of the Constitution of Berlin of 27 January 2005, GVBl. 2005, 92) according to which no religious or ideological symbols should be worn at schools by teachers which the defendant (the Land Berlin) invoked offered no justification for her treatment. The court argued that this act has to be interpreted in accordance with the jurisprudence of the Federal German Constitutional Court (BVerfG, 27 January 2015, 1 BvR 471/10, 1 BvR 1181/10) which held that an abstract, general ban on religious symbols worn by teachers is unconstitutional. An exception is a situation of concrete dangers to the peace of the school or state neutrality. There was no reason to assume in the view of the court that such a danger existed.

Key points of analysis: The decision reverses the ruling of Berlin Labour Court (LAG Berlin, 24 May 2018, Az. 58 Ca 7193/17). The court clearly differentiates between the fact of wearing a religious symbol and the actual precondition of establishing a concrete danger to the peace of the school or state neutrality. It underlines that it is bound by the jurisprudence of the Federal Constitutional Court. The case highlights the ongoing debate about the Islamic headscarf even after the latest decision of the Federal German Constitutional Court on the issue, referred to above.

Internet link source:

<https://www.berlin.de/gerichte/arbeitsgericht/presse/pressemitteilungen/2018/pressemitteilung.761600.php>.