



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

FLASH REPORT

Country:	Germany
Title:	Religious symbols at work
Date:	8 February 2019
Expert:	Matthias Mahlmann
<u>Context</u>	
Issue at stake:	Headscarf and employment
Grounds of discrimination:	Religion or belief
Field of application:	Employment
Source:	National court decision
Applicable law:	Art. 2.2 b Directive 2000/78/EC

Content

Case development: The case concerns a woman who after returning to work from maternal leave chose to wear a headscarf due to religious reasons. She works as a shop assistant. The employer asked her not to wear the headscarf while working. He relied on an internal rule prohibiting “large” religious, political or other symbols that display a certain kind of religion or belief while working. The employer argued that this is a permissible general neutrality policy.

Decision of the court: The employee sued the employer arguing that the order to remove the headscarf is discriminatory and invalid. The lower Labour Courts found for the complainant as claimed. The Federal Labour Court (*Bundesarbeitsgericht*) formulated a preliminary reference to the CJEU.¹ It asked whether such a rule like the one formulated by the employer is justified because of Article 16 of the Charter of Fundamental Rights of the European Union that guarantees freedom of enterprise of the employer. It inquired as well whether freedom of religion of the employee has to be considered in this context and which legal effects this consideration would have. It underlined that this right is guaranteed in the European Charter of Fundamental Rights, the European Convention on Human Rights and the German Basic Law and seeks clarification which importance these guarantees have in the context of EU law.

Key points of analysis: The case is important because it will lead to further clarifications about the possibility to wear visible religious symbols at the workplace. It has the potential to clarify various questions that the recent case law of the CJEU in the cases of *Egenberger*² and *IR v. JQ*³ has left open.

¹ Decision of the Federal Labour Court (*Bundesarbeitsgericht*), 30 January 2019, 10 AZR 299/18 (A).

² CJEU, case C-414/16, *Vera Egenberger v. Evangelisches Werk für Diakonie und Entwicklung eV*, judgment of 17 April 2018.

³ CJEU, case C-68/17, *IR v. JQ*, judgment of 11 September 2018. Cf. in this context also CJEU, Case C-157/15, *Achbita*, judgment of 14 March 2017 and CJEU, Case C-188/15, *Bougnaoui*, 14 March 2017.

Internet link source:

https://juris.bundesarbeitsgericht.de/cgi-bin/rechtsprechung/document.py?Gericht=bag&Art=pm&Datum=2019-1&nr=21885&pos=1&anz=5&titel=Wirksamkeit_eines_Kopftuchverbots?