

Cases and rulings

Country Code	Year	Reference details title	Reference details URL	Hate Bias motivation	Court / Body	Key facts of the case	Results (sanctions, outcome) and key consequences or implications of the case	Main reasoning / argumentation	Key issues (concepts, interpretations) clarified by the case	Key quotation in original language and translated into English with reference details
Germany	2015	Germany / Federal Constitutional Court Karlsruhe / 1 BvR 471/10, 80/15, 11181/10	https://www.bverf.de/Arbeitsrecht_Urteile_Kopfbedeckungsverbot_Schulen_Karlsruhe_Kopfbedeckungsverbot_an_Schulen_BVerfG_1BvR471-10_1BvR80-15_1BvR11181-10.html	Religion	Federal Constitutional Court (Bundesverfassungsgericht)	(I) A Northrhine-Westphalia (NW) social education worker for conflict mediation (German born in a Turkish family) has been wearing a headscarf at work since 1997. A 2006 amendment to NW school law lead to the school prohibiting headscarves at work: she objected and received written warnings. She filed a court case to void the written warnings; courts at two instances rejected her claim. (II) A teacher in NW wore a headscarf during class. In 2006, the school demanded her to stop wearing it, she refused, received written warnings and was fired. She appealed the decision in court but lost twice.	Cancellation of all previous rulings in both cases. Annulment of § 57 Abs. 4 Satz 3 SchulG NW (amended NW school law) due to its incompatibility with Art. 3 Abs. 3 (no discrimination) and Art. 33 Abs. 3 (access to public functions irrespective of religious confession, no disadvantage due to religion) German Basic Law.	The amended NW school law refers to Christian and occidental cultural values; this constitutes an unequal treatment on grounds of religion. The previous court decisions did not evaluate a potential concrete risk for the school situation caused by the scarf, as a general rule without consideration of the specific circumstances, the law and the court rulings impaired constitutional rights of both petitioners.	Negative freedom of religion versus constitutional right for practicing religion. Risk for conflicts in the school situation: infringement of constitutional rights by a general assumption instead of consideration of the concrete circumstances in each case.	"The constitutional right of freedom of religion guarantees as well the freedom of teachers in public non-confessional schools to comply with dressing requirements on religious grounds like wearing an Islamic scarf. A general ban of religious demonstration (as in § 57 (4) NW school law) is disproportionate. A appropriate balance between the freedom of religious expression by teachers versus the neutrality of the school and the negative freedom of religion requires at least a concrete risk for the school situation in the individual case." "Der Schutz des Grundrechts auf Glaubens- und Bekenntnisfreiheit (Art. 4 Abs. 1 und 2 GG) gewährleistet auch Lehrkräften in der öffentlichen Bekenntnisoffenen Gemeinschaftsschule die Freiheit, einem aus religiösen Gründen als verpflichtend verstandenes Bedeckungsgebot zu genügen, wie dies etwa durch das Tragen eines islamischen Kopftuchs der Fall sein kann. Ein landesweites gesetzliches Verbot religiöser Bekleidungen (hier: nach § 57 Abs. 4 SchulG NW) durch das äußere Erscheinungsbild schon wegen der bloß abstrakten Eignung zur Begründung einer Gefahr für den Schulfrieden oder die staatliche Neutralität in einer öffentlichen Bekenntnisoffenen Gemeinschaftsschule ist unverhältnismäßig, wenn dieses Verhalten nachvollziehbar auf ein als verpflichtend verstandenes religiöses Gebot zurückzuführen ist. Ein angemessener Ausgleich der verfassungsrechtlich verankerten Positionen der Glaubensfreiheit der Lehrkräfte, der negativen Glaubens- und Bekenntnisfreiheit der Schülerinnen und Schüler sowie der Eltern, des Elterngrundrechts und des staatlichen Erziehungsauftrags erfordert eine einschränkende Auslegung der Verbotsnorm, nach der zumindest eine hinreichend konkrete Gefahr für die Schutzgüter vorliegen muss."

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