

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	2021	Germany / Hessian Higher Labour Court / Hessisches Landesarbeitsgericht, Urteil vom 15. November 2021 – 7 Sa 1341/19 – juris, ECLI:DE:LAGHE:2021:1115.7SA1341.19.00	https://openjur.de/u/2390991.html	Religion	Hessian Higher Labour Court (Hessisches Landesarbeitsgericht)	The plaintiff claims damages from a daycare center according to § 15 para. 2 General Equal Treatment Act (AGG), since her application as a kindergarten teacher was not considered because she was not willing to take off her headscarf during working hours when asked by the potential employer. The court considers this to be indirect discrimination pursuant to § 3 para. 2 AGG on the grounds of religious affiliation, at least if the position is not filled as a result.	In this case, the prospective employer has not presented any circumstances that could justify this indirect unequal treatment on the grounds of religion, § 3 para. 2 AGG. The action for damages was therefore to be upheld.	Not only the right to have religious convictions is protected, but also the right to express them, including the right to wear appropriate clothing or other signs. This clarifies that discrimination on the grounds of religion does not only occur when religious adherents are treated worse than non-religious people, but already when someone suffers a disadvantage in connection with religion.	However, the employer's neutrality order, which is formulated as a prohibition of any manifestation of any religion or ideology, does not generally preclude unequal treatment. In contrast to discrimination based directly on religion, which can only be permissible if special exceptions exist, indirect discrimination (relevant here) is impermissible if it cannot be justified. The justification of indirect discrimination presupposes a lawful objective of the measure, which is pursued by appropriate and necessary means.	„Wenn eine Bewerberin für eine Stelle als Erzieherin vom zukünftigen AG danach gefragt wird, ob sie bereit sei, während der Dienstzeit ein religiöses Symbol abzulegen und nicht zu tragen und dies damit begründet wird, dass beim zukünftigen AG eine Neutralitätsanordnung im Hinblick auf das Zeigen und Tragen von Kleidungsstücken mit religiöser Symbolik besteht, so liegt darin zumindest eine mittelbare Diskriminierung gemäß § 3 Abs. 2 AGG wegen der Religion, wenn danach eine Stellenbesetzung unterbleibt.“ Seite 1, Leitsatz Nr. 1. “If an applicant for a position as an educator is asked by the future employer whether she is willing to remove a religious symbol during working hours and not to wear it, and this is justified by the fact that the future employer has a neutrality order with regard to the display and wearing of clothing with religious symbolism, this constitutes at least indirect discrimination pursuant to § 3 para. 2 of the General Equal Treatment Act (AGG) on the grounds of religion if a position is not filled as a result.” Page 1, Guiding Principle Nr. 1

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