

## 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                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| Germany      | 2021 | <a href="#">Germany / Rhineland-Palatinate Higher Labour Court / Landesarbeitsgericht Rheinland-Pfalz (2. Kammer), Urteil vom 19.11.2021 – 2 Sa 40/21, ECLI:DE:LAGRLP-2021-1119-2SA40-21-00</a> | <a href="https://www.landesrecht.rlp.de/bsrp/document/NJRE001496496">https://www.landesrecht.rlp.de/bsrp/document/NJRE001496496</a> | Nationality          | Rhineland-Palatinate Higher Labour Court (Landesarbeitsgericht Rheinland-Pfalz) | The parties dispute the validity of an extraordinary termination for reasons of conduct. The plaintiff is employed by the defendant and claims the invalidity of the extraordinary termination without notice issued to him. The defendant employer claims that the termination was justified because the plaintiff had secretly recorded a staff meeting with his supervisor (witness in these proceedings). The plaintiff is of the opinion that he was entitled to do so for evidentiary reasons because he had been discriminated against by his supervisor for years. | As a result, the termination proves to be invalid both as an extraordinary termination and as an alternative ordinary termination for behavioral reasons. | The termination proves to be legally invalid because, based on the evidence taken, it must be assumed that the plaintiff was racially insulted by his immediate supervisor over several years. The defendant must accept responsibility for this misconduct, since the witness is to be regarded as a vicarious agent in the contractual relationship between the parties. In addition, the defendant did not counteract the continued discrimination. Taking into account the un rebutted submissions of the plaintiff to his exoneration, the extraordinary termination is not justified after the comprehensive weighing of the mutual interests to be undertaken. | In proceedings for protection against dismissal, the terminating employer has the full burden of proof and presentation for the existence of a reason for termination. The secret recording of the conversation is an "in itself" suitable breach of duty by the employee, which can constitute good cause within the meaning of § 626 para. 1 of the German Civil Code. However, the defendant had knowledge of the discrimination due to complaints by the plaintiff and nevertheless remained inactive. It is therefore partly to blame for this breach of duty. | "Ihr Moslems lügt doch alle. Das steht doch bei euch im Koran. Ihr belügt doch auch eure Frauen. Das dürfen die Moslems [...]" S. 12, Ziffer 36. „Selbst wenn man davon ausgeht, dass auch in der vom Kläger geschilderten Situation keine heimliche Gesprächsaufzeichnung gerechtfertigt war, hat sich der Kläger nach seiner unwiderlegten Einlassung zumindest über die Pflichtwidrigkeit seines Tuns geirrt. Ein darin liegender Verbotsirrtum ist jedenfalls bei der Gewichtung der Pflichtverletzung (als Voraussetzung für eine Kündigung) zu berücksichtigen.“ Seite 15, Ziffer 47.<br><br>"You Muslims are all liars. It is written in the Koran. You lie to your wives. Muslims are allowed to do that [...]" P. 12, para. 36. "Even if one assumes that no secret recording of the conversation was justified in the situation described by the plaintiff, the plaintiff was at least mistaken about the breach of duty of his actions according to his un rebutted admission. An error of prohibition in this respect must in any case be taken into account in the weighing of the breach of duty (as a requirement for termination)." P. 15, para. 47. |

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