

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	2023	Germany / higher administrative court of Berlin-Brandenburg / OVG 4 S 11/23 / ECLI:DE:OVGBE88:2023:0727.OVG4S11.23.00	https://www.landesrecht-bw.de/bsbw/document/NJRE001558911	Racial or ethnic origin	Higher administrative court of Berlin-Brandenburg	The applicant was a police officer. He was dismissed because he clicked "like" on right-wing posts on social media platforms. These posts contradicted the free democratic basic order of the Federal Republic of Germany, which is why it had to be doubted that the applicant was loyal to the constitution. The applicant (police officer) was dismissed from service. His objection to this had no suspensive effect. The applicant appealed against the dismissal before the Berlin Administrative Court. The applicant liked the following posts: "I drink Coca-Cola and not Uludag/ At Christmas I have Santa Claus and not Mohammed/ I watch Germany's Next Top Model and not girls in headscarves/ I eat McBacon and not falafel" "We are not right-wing!!!!!!!" "We are peaceful, critical, democratic constitutional patriots (sic)!!!!!! Just because we don't want millions of transphobic and anti-Semitic Islamists to immigrate in violation of the constitution does not make us right-wing!!!!!!!"	The application for interim legal protection was rejected. The applicant (police officer) was dismissed from service. His objection to this had no suspensive effect. The applicant appealed against the dismissal before the Berlin Administrative Court. The Court found that it was not sufficiently certain that the posts liked by the applicant raised doubts about his loyalty to the constitution. Given the uncertain outcome of the non-preliminary decision, the interest in the applicant to continue his training outweighed the interest in immediate dismissal. However, the Berlin Higher Administrative Court overturned the decision. Cumulatively, the posts liked by the applicant indicated lacking commitment to the constitution and justified immediate dismissal.	Sec. 33 (1) of the Civil Servant Status Act stipulates that civil servants must be committed to the liberal democratic order. The Berlin Administrative Court initially ruled in favor of the applicant in the expedited legal proceedings. The Court found that it was not sufficiently certain that the posts liked by the applicant raised doubts about his loyalty to the constitution. Given the uncertain outcome of the non-preliminary decision, the interest in the applicant to continue his training outweighed the interest in immediate dismissal. However, the Berlin Higher Administrative Court overturned the decision. Cumulatively, the posts liked by the applicant indicated lacking commitment to the constitution and justified immediate dismissal.	The posts liked by the applicant contain, amongst other things, insults and slurs against Muslims. The public employer was entitled to dismissing the applicant with immediate effect, as the assessment of the posts in sum indicated lacking commitment to the constitution. While the applicant's statements may be covered by freedom of expression (Art. 5 Basic Law), this is irrelevant for the issues at stake. It does not take away from the obligation of civil servants to uphold the liberal democratic constitutional order.	"Der Dienstherr darf einen Polizisten im Beamtenverhältnis auf Widerruf wegen Zweifeln an der Verfassungstreue entlassen, wenn er zahlreiche Internetbeiträge der "Neuen Rechten" verfolgt und mehrere von ihnen gelikt hat, darunter solche, mit denen Moslems geschmäht und Pandemieschutzmaßnahmen mit der Verfolgung von Juden im Nationalsozialismus gleichgesetzt werden." "The employer may dismiss a police officer on probation due to doubts about his loyalty to the constitution if he has followed numerous internet posts by the "New Right" and liked several of them, including those that vilify Muslims and equate pandemic protection measures with the persecution of Jews under National Socialism."

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<http://fra.europa.eu/en/databases/anti-muslim-hatred/>

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