
PRESS RELEASE

"Headscarf reloaded" – German Federal Labour Court to rule on ban on religious symbols at workplaces in private companies

Munich, 28 January 2019 – On Wednesday, 30 January 2019, the German Federal Labour Court (BAG) will decide on the question whether the instruction to appear at work without a headscarf given to a sales consultant and cashier by an employer (drugstore company) is lawful. There is a dress code according to which, among other things, religious symbols and headgear of any kind must not be worn during customer contact.

In a similar case (another private company) in 2002 the BAG decided in favour of an employee. However, now there is recent case law of the Court of Justice of the European Union (ECJ) from 2017 on the matter. "At the core the employees' right to religious freedom and the employers' entrepreneurial freedom to organise their business in a religiously neutral way oppose each other," says *Wolfgang Lipinski*, a Licensed Labour Law Specialist and a Partner at the international commercial law firm BEITEN BURKHARDT. "It will be interesting to see how the BAG positions itself, in particular, because the case has a socio-political dimension," the expert adds.

During the proceedings the employer stated that, because of concrete experiences, the instruction was intended to prevent discord between employees of different religious denominations. The company also wanted to present itself neutrally to the customers. Pursuant to an ECJ decision from 2017 (C-157/15) such a neutrality policy can be lawful. However, the previous instance regarded the ECJ case as not comparable because it had occurred in the service sector, where the customers' (non) acceptance of religious symbols had a much higher weight than in retail. Furthermore, there were no concrete indications that the employer had suffered economic disadvantages. It was ruled that the instruction violated the employee's fundamental right to religious freedom, which had priority in the specific case.

"It can be expected that the decision of the BAG will have a signal effect, but each individual case must be examined separately." *Lipinski* points out: "Two decisions of the ECJ delivered on the same day in 2017 show this: The Court has ruled differently in two different headscarf cases. The means for achieving the legitimate objective of neutrality must always be 'appropriate' and 'necessary' in the individual case. Whether that is the case, must be decided by the competent national courts," *Lipinski* emphasizes. In the other ECJ ruling mentioned (C-188/15) the Court had rejected the employer's wish to comply with a customer's request not to have services performed by an employee wearing a headscarf.

Please contact Dr Wolfgang Lipinski should you need more information, further statements or guest commentaries on this issue.

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