



FLASH REPORT

Update of flash report nr: DE-4-Flash Report Labour Court HH

Date: 10.4.2009

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Title: Questions of religious discrimination

Country: Germany

Context: Discrimination on the ground of religion

Issue at stake: Employment

Ground of discrimination: of religion/belief

Source: national court decision

Field: employment

Legislative provisions: Sec. 7 Allgemeines Gleichbehandlungsgesetz

Content

Case/law/political development: The plaintiff applied for a job as social worker offered by a sub-organisation (Diakonie) of the Protestant Church of Germany (Evangelische Kirche Deutschlands). The plaintiff is of Muslim faith, the employment concerned work with immigrants, being part of the EQUAL programme of the EU. The plaintiff received a phone call upon her application by the defendant. The defendant expressed interest in the application but asked about the religious affiliation of the plaintiff. After being informed that the plaintiff regarded herself as a non-practising Muslim, the defendant asked whether the plaintiff could imagine changing her religion. The plaintiff expressed her view that this was not necessary for the kind of employment she sought. She then received a letter which turned down her application.

Decision of the Court: After a first instance decision in favour of the plaintiff (cf. Flash Report 27.5.2008) the appeal (*Landesarbeitsgericht Hamburg*, 29. 10. 2008, 3 Sa 15/08) reversed the decision arguing that the plaintiff was objectively not qualified to hold the job. The objective qualification was determined on the basis of the job advertisement that required a university degree which the plaintiff does not have. Given the objective lack of qualification the question of a possible discrimination does – in the view of the court – not arise. The telephone call was

not regarded as an indicator that the employer wanted to waive the condition of the mentioned formal qualifications. The court did not grant the right to an appeal; the plaintiff filed an appeal against this decision which has not been decided yet.

Short analysis: The decision raises the question to which degree an objective qualification might be regarded as a precondition of discrimination. In addition, as a matter of interpretation of the facts of the case, the question of the interpretation of the telephone call by the defendant demands for further reflection. One has to ask why the reversal of proof was mentioned by the court but not substantially considered. Finally, it is of interest whether the job advertisement as such – referring to a membership in a Christian church – is reconcilable with the prohibition of discrimination.

Internet link source and additional information:

<http://www.hamburg.de/landesarbeitsgericht/774996/pressemeldung-2008-1.html>