



NEWS REPORT

Date:	16 February 2011
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Title:	Reasons for rejection of discrimination on grounds of disability delivered by the Federal Labour Court in the <i>Diakonie</i> case
Country:	Germany
<u>Context</u>	
Issue at stake:	Religious discrimination in employment (employment conditions – recruitment)
Ground of discrimination:	Religion
Source:	Federal Labour Court (<i>Bundesarbeitsgericht</i>), 19 August 2010, 8 AZR 466/09
Field:	Employment
Legislative provisions:	§ 3 Allgemeines Gleichbehandlungsgesetz (General Law on Equal Treatment, AGG)

Content

Case: The decision concerns a Muslim woman who applied for a position as “migration pilot” offered by the Diakonie, a charitable organisation of the Protestant church in Germany. The vacant position demanded as a precondition of employment a university degree and Christian church membership, among others. The applicant was called by an employee who announced that her application was “very interesting” and asked about her religious affiliation and whether she would be prepared to change her affiliation and join a Christian church, which the applicant rejected. Later, the employer hired a different person for employment. The first instance court decided that discrimination had occurred and awarded damages. The Land Labour Court (*Landesarbeitsgericht* Hamburg, 29 October 2008, 3 Sa 15/08) set the decision of the first instance court aside.

Decision of the Court: Upon appeal, the Federal Labour Court confirmed the decision of the Land Labour Court. It argued that no discrimination has taken place as the applicant was not in a comparable situation to other applicants because she was objectively not qualified for the position as she had no university degree. The oral statement of the employee was regarded as irrelevant as the person was not the one responsible to take any final



decision about employment. The decision of the Land Labour Court was in this regard in addition not open for consideration by the court of appeal.

Internet link source and additional information:

[www. Juris.bundesarbeitsgerichts.de](http://www.Juris.bundesarbeitsgerichts.de)