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NEWS REPORT

Country:	Germany
Title:	Headscarf of teachers in schools
Date:	25 March 2015
Expert:	Mahlmann, Matthias
Context	
Issue at stake:	Admissibility of visible religious symbols in schools
Ground of discrimination:	Religion
Source:	German Federal Constitutional Court – 1 BvR 471/10, 27 January 2015
Field:	Employment
Applicable law:	Art. 3, 4, 33 German Basic Law

Content

Case development: The case concerns two constitutional complaints decided together:

In the first case, the complainant, a Muslim woman, worked as social worker in schools for several years wearing a headscarf without any conflicts. After a change of the law of the Land North Rhine-Westphalia regulating the professional duties of teachers as to a religiously neutral behaviour, extended to social workers in schools, the school authorities prohibited the wearing of the headscarf. It was interpreted as violating the said duty of religiously neutral behaviour. The complainant substituted the headscarf with a cap and a polo neck. The school authorities did not accept this, either. They held that even this kind of garment violated the duty to neutral behaviour because an observer would interpret it – in the concrete case – as a manifestation of Islamic faith. The decision of the school authority was upheld by the labour courts.

In the second case, the complainant had been teaching for several years with a headscarf without complaints. Already in her application for the position she had worn the headscarf. The school authorities held in this case, too, that the wearing of the headscarf violated the legal duty of neutral behaviour of a teacher and prohibited it on the basis of the same law of North Rhine-Westphalia. As the complainant was not prepared to teach without the headscarf, she was dismissed. The labour courts upheld the dismissal.

Decision of the Court: The German Federal Constitutional Court decided that the prohibition to wear a headscarf as a teacher or a social worker in a public school violated the constitutional rights of the complainants. It interfered unjustifiably with their freedom of religion, Art. 4 German Basic Law. The law aimed at protecting a peaceful operation of the public schools without religious conflict, the religious neutrality of the state, to secure the educational duties of the state and to balance competing fundamental rights of pupils and their parents. These aims are in the view of the court legitimate. The means to achieve them are, however, disproportionate. A general ban on visible religious symbols

or clothing like headscarf, kippas, nuns' or monks' habits, is in the view of the Court not appropriate given the importance of the right to freedom of religion concerned. The right of pupils not to be indoctrinated on religious grounds is not interfered with by such symbols if they are not accompanied with proselytizing action. The same holds for the right of parents to determine the education of their children: they are not violated, either. The neutrality of the state is not violated because the symbol is attributed to the person wearing it, not the state. There is no reason, the court argued, to identify an Islamic headscarf with a message of non-acceptance of human rights and democracy.

A prohibition to wear visible religious symbols like headscarves is only proportionate if there are particular circumstances that create a concrete danger of substantial conflict because of the wearing of such symbols in schools. In these exceptional cases, prohibitions limited to these concrete cases are constitutional and not violating constitutional rights, rights under the ECHR or federal law like the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*). In this context, the court noted that predominantly women are in fact affected by the prohibition.

As a result, the court interpreted the law restrictively: A prohibition is only admissible if in fact there is such a concrete danger. The court argued that the law was open to such a narrow interpretation and had, therefore, not to be declared unconstitutional.

In addition, the court struck down a provision that exempted Christian and Jewish symbols from the prohibition of behaviour that is not religiously neutral as violating Art. 3.3 and 33.3 German Basic Law that prohibit discrimination on the ground of religion. It did so despite prior case law of other courts on this regulation that interpreted this rule *contra legem* as applying to all religions alike. The court regarded this case law as overstepping the possible limits of legal interpretation.

Key points of analysis: This decision overturns a prior decision of the German Federal Constitutional Court on the headscarf worn in schools. It follows widely held opinions in legal commentary that demanded for years an approach as now outlined by the court. The decision will have general implications for the admissibility of religious symbols in employment.

Internet link source:

http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2015/01/rs20150127_1bvr047110.html