



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Germany
<b>Title:</b>	Headscarf in court
<b>Date:</b>	7 July 2017
<b>Expert:</b>	Mahlmann, Matthias
<b>Context</b>	
<b>Issue at stake:</b>	Admissibility of headscarf in the courtroom by legal trainee
<b>Ground of discrimination:</b>	Religion/belief
<b>Source:</b>	Order, German Federal Constitutional Court (Bundesverfassungsgericht), 27 June, 2017, 2 BvR 1333/17
<b>Field:</b>	Employment
<b>Applicable law:</b>	Art. 2 in conjunction with Art. 1; Art. 4, Art. 12 Basic Law (Grundgesetz)

### Content

**Case/law/policy development:** The case concerns a woman who pursues the second part of legal education in Germany after her university degree in law. During this time, the trainee (*Referendar/Referendarin*) is employed as a public employee and serves in various legal functions including courts, prosecution and administration. In this function, she takes on certain official functions, including for instance the questioning of parties to court proceedings under the supervision of a judge. The complainant wears a headscarf due to her Muslim belief. The administration ordered that she cannot fulfil any functions in which she visibly displays her religious belief to parties of the proceedings like fulfilling judicial duties in court proceedings. The exclusion shall not have negative consequences for the evaluation of her performance but shall be compensated in this respect by other achievements. The complainant asked for a temporary injunction to allow her to fully participate in the trainee program. The exclusion from parts of it would, she argued, violate her rights to personal identity, freedom of religion, freedom of profession and discriminate her.

**Decision of the Court:** The Federal German Constitutional court did not grant a temporary injunction. Such a temporary injunction, if granted is not based on the constitutional merits of the case but on the possible negative consequences of granting or not granting the injunction. It argued that the possible violations of the fundamental rights of the complainant were limited. Granting her the possibility to fulfil judicial functions wearing a headscarf would, in contrast, endanger state neutrality and the freedom of religion of the parties to the court proceedings.

**Key points of analysis:** The case concerns an important question of the admissibility of religious symbols worn by members of the legal professions in legal proceedings widely discussed in the media. The case concerns a temporary injunction. A final decision about the constitutionality of the ban of headscarves will follow later. The court emphasised, however, the importance of the religious neutrality of the state, especially of the judiciary and the freedom of parties not to be confronted with religious manifestations of members

of the judiciary. This raises the question whether the Court will follow a stricter line of argument than in its recent case law on the permissibility of head scarfs of teachers.

**Internet link source:**

[http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2017/06/rk20170627\\_2bvr133317.html](http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2017/06/rk20170627_2bvr133317.html).