



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

### FLASH REPORT

<b>Country:</b>	Germany
<b>Title:</b>	Islamic headscarf in Court proceedings
<b>Date:</b>	27 March 2019
<b>Expert:</b>	Mahlmann, Matthias
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Permissibility of wearing Islamic headscarf in courtroom
<b>Grounds of discrimination:</b>	Religion or belief
<b>Field of application:</b>	Employment
<b>Source:</b>	National court decision
<b>Applicable law:</b>	Art. 107.1; 107.2; 118 Constitution of Bavaria ( <i>Verfassung von Bayern</i> )

### **Content**

**Case:** The case concerns the complaint of an Islamic religious community against a statutory provision in the *Land* Bavaria prohibiting that judges and prosecutors wear any visible clothes or other items with religious or ideological meaning. Given a particular procedural possibility in Bavaria, a religious community enjoys legal standing to file such a complaint.

**Decision of the court:** The Constitutional Court of Bavaria, 14 March 2019, Vf. 3-VII-18 (*Bayerischer Verfassungsgerichtshof*) ruled that such a prohibition does not violate the freedom of religion (Art. 107.1 and 107.2) or the guarantee of equality (Art. 118) as provided for by the Bavarian constitution. It argued that the prohibition protects the neutrality of the state that is essential for the public order. In Bavaria crucifixes are still displayed in courtrooms. The Court argued that this forms no unequal treatment in comparison to the prohibition to wear religious or ideological symbols. It argued that the crucifixes in the courtroom are a measure by the administration and therefore do not put the neutrality of the judges into question. The wearing of religious symbols in contrast raises doubts as to the independence of judges and prosecutors, the court argued.

**Key points of analysis:** The decision concerns the on-going debate about the presence of Islamic headscarves and other religious or ideological symbols in German courtrooms. The Court upheld the prohibition of such religious or ideological symbols on the ground of the protection of state neutrality. It distinguishes the presence of the crucifixes in the courtroom and the wearing of such symbols. This distinction is open to criticisms. Contrary to what the Court asserts, crucifixes in the courtroom are a measure of the state and put the neutrality of the state into question. Religious symbols worn by judges or prosecutors do not necessarily have that effect, given their personal character. There may be an argument to prohibit the wearing of such symbols and, at the same time, the display of crucifixes in the courtrooms, but it seems hard to argue that the latter is possible but not the former without violating the constitutional guarantee of equality.

**Internet link source:**

<https://www.bayern.verfassungsgerichtshof.de/bayverfgh/>.