



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

FLASH REPORT

Country:	Austria
Title:	Austria introduces ban on headscarves in education for girls up to 10 years of age
Date:	27 May 2019
Expert:	Dieter Schindlauer
<u>Context</u>	
Issue at stake:	Parliament adopts ban on headscarves in primary schools
Grounds of discrimination:	Religion or belief, Gender
Field of application:	Education
Source:	Legislation
Applicable law:	School Education Act (Schulunterrichtsgesetz) new § 43a

Content

Law development: On 15 May 2019, the Parliament (Nationalrat) adopted an amendment to the School Education Act, prohibiting pupils “*until the end of the school-year in which they reach ten years of age*” to “*wear clothing that is influenced by belief or religion and which encompasses a covering of the head* (eine Verhüllung des Hauptes)” in an new § 43a.

A violation of that proscription is followed up by an obligatory discussion with the legal guardians of the child in question while a refusal to attend the discussion or a further violation (child wears religious headgear in school) is punishable with an administrative fine of up to 440 Euros. This was adopted with the votes of the two governing parties ÖVP and FPÖ against all other parties represented in Parliament.

The Parliamentary Sub-committee on Education further issued an explanatory statement in which it states that only such headgear that covers the hair fully or large parts of it shall be prohibited – which – in their interpretation – shall not include the Jewish kippa or the Sikh patka.

The law states that this measure shall: “*(...) serve the social integration of children according to the local traditions and customs, safeguard the constitutional basic values and the objectives of education in the federal constitution as well as the equal status of men and women.*”

Key points of analysis: The legislation is obviously targeting Muslim girls, only, and prohibits the wearing of religious headscarves in primary schools. The exemption of religious headgear potentially worn by male pupils makes that explicitly clear. The wording of the law tries to create an impression of neutrality that is, nevertheless, not consistent. Additionally, the whole public and parliamentary discussion was focussing on Muslim headscarves, only.

The impact in practice is very limited regarding numbers of affected persons as not many pupils are actually wearing headscarves in primary schools in Austria.

It is very likely that it will not stand the test against the constitutional right to equal treatment as it will qualify as direct discrimination on the basis of religion or at least as indirect discrimination on the basis of religion and gender. The Islamic Faith Community has immediately announced that it will seek legal review by the Constitutional Court.

Internet link source: Report of the sub-committee on education (Ger):
https://www.parlament.gv.at/PAKT/VHG/XXVI/I/I_00612/fname_751626.pdf.