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### FLASH REPORT

<b>Country:</b>	Czech Republic
<b>Title:</b>	The Supreme Court cancelled the decision of lower courts in the case of discrimination on grounds of religion in education
<b>Date:</b>	9 December 2019
<b>Expert:</b>	Jakub Tomšej
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Use of religious symbols in schools
<b>Grounds of discrimination:</b>	Religion or belief
<b>Field of application:</b>	Education
<b>Source:</b>	National court decision
<b>Applicable law:</b>	Sections 2; 3 (1); 4; 15 (1), 16 (1) Act No. 2/1993 Coll., Charter of Fundamental Rights and Freedoms; Sections 1 (1) i); 2 (1), 3 (1); 7 (1) Act No. 198/2009 Coll., Sections 2 (1) a); 30 (1) c) Act No. 561/2004 Coll., the School Act

### Content

**Case law development:** In 2013, a Somali girl, who had an asylum in the Czech Republic, intended to begin her studies in a high school in Prague. However, the school's director prohibited her from wearing hijab during classes with reference to the internal rules of the school which prohibit students from wearing any coverage of the head. Eventually, the girl did not start attending the school and filed a lawsuit demanding an apology for discriminatory treatment and compensation of 60,000 CZK (approx. EUR 2 400). The District Court for Prague 10 rejected her claim with the argument that the girl was not a student of the school at the moment of the incident, therefore the Anti-Discrimination Act would not apply to her. The Municipal Court in Prague as a court of second-instance upheld the decision of the previous court.

**Decision of the Supreme Court:** On 27 November 2019, the Supreme Court cancelled the decisions of both lower courts and returned it for further proceedings to the first-instance court. This decision is now legally binding for the first-instance court.

The Supreme Court examined whether the applicant could have faced indirect discrimination in the sense of the Anti-Discrimination Act. It concluded that the school's internal policies contain a neutral rule which, however, affects a religious group, such as Muslims, less favourably than others. As a result, it would need to be deemed indirect discrimination.

As such, the court dealt with the question whether there was any reasonable justification for this measure. No such justification was found by the Supreme Court. It stated that the freedom of expression of one's religion may be limited only by a law and in pursue of a legitimate aim, such as protection of public security, health, morals, or rights and freedoms of others. The Supreme Court claimed that this freedom may not be limited by a mere

internal rule of a school, as it was argued in this case, and did not find any legitimate aim of such a prohibition.

The Supreme Court asserted that *"the Czech Republic must accept and tolerate religious pluralism; above all, it must not discriminate or, on the contrary, prefer without reason any of the religious movements."* Moreover, it noted: *"Although Islam and its expression, symbolized e.g. by women wearing hijab, is an unusual religion in Czech conditions and it gives rise to some generalized concerns of some citizens, any personal and non-threatening manifestations of religious beliefs should be tolerated. This should be so especially in the field of education, whose task is, among other things, to encourage students to respect the rights and opinions of others. People without religion or people with different religious beliefs should respect external manifestations of beliefs of others. There is no justifiable reason why these manifestations of a different, albeit unusual, religion in our country, should be restricted."*

The Supreme Court further ruled that the prohibition of discrimination on the grounds of education also applies to the claimant in a situation where she was in discussions with the school representatives about her application, even though she was not a student yet.

Thus, the Supreme Court concluded that the applicant was indirectly discriminated in access to education within the scope of Section 3 of the Anti-Discrimination Act and cancelled the decisions of lower courts. The lower courts will now decide about the claim in accordance with the views of the Supreme Court.

**Key points of analysis:** The Supreme Court decided that schools may not prohibit Islamic students from wearing hijabs on the basis of a general prohibition of head coverages at the school. Although the education system in the Czech Republic is secular, such a prohibition of manifestation of one's religion is deemed indirect discrimination.

**Source:** Supreme Court Decision of 27 November 2019, no. 25 Cdo 348/2019 (publicly available since 6 December 2019).