

**The decision of the German Constitutional Court regarding Muslim teachers wearing a headscarf in public schools –  
A landmark decision for preserving true state neutrality and fact-orientation against widespread prejudice**

The German Constitutional Court has published today a comprehensive press release regarding its decision of 27 January, 2015 (1 BvR 471/10 and 1 BvR 1181/109) dealing with the interdiction of wearing a headscarf for teachers in public schools<sup>1</sup> in two cases.<sup>2</sup> In sum, the 6:2 decision makes clear that:

- According to the religiously open secular German legal order, public schools are not a religion-free zone
- State officers have to preserve neutrality, but still maintain individual rights which have to be weighted up against the state's interest to demonstrate its neutrality concretely
- The limitation of freedom of religion and belief (art. 4 of the Constitution), of personality (art. 2 of the Constitution) and of free choice of profession (art. 12 of the Constitution) is possible, but has to be based on *concrete* facts rather than on generalised abstract opinions or prejudice. Thus, religious signs and symbols can only be banned if there is *sufficient concrete evidence* that either the outer appearance of teachers would lead to a concrete infringement of or danger for preserving a peaceful atmosphere in the school, or that it would substantially contribute to that. In addition, there might be the need for more general restrictions in some schools or school districts where substantial conflicts over the correct religious behaviour have emerged<sup>3</sup>, but again only on a sufficiently concrete factual basis.

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<sup>1</sup> For pupils there are no such restrictions under German law, despite a few initiatives in some single schools, e.g. in North Rhine-Westphalia, which were instantly counteracted by the relevant authorities.

<sup>2</sup> The German text is available at <http://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2015/bvg15-014.html>

<sup>3</sup> There are reports indicating such conflicts, e.g. in some schools in the state of Berlin, where e.g. Muslim female pupils were grossly insulted by others for not wearing a headscarf, refraining from fasting in the month of Ramadan, etc.

- The mere abstract evaluation underlying the challenged provision in the law of North Rhine-Westphalia (para. 57 sect. 4 (1) and (2) School Law) of the headscarf representing values opposed to those of the Constitution, such as gender equality, human dignity, the basic freedoms or the liberal-democratic order granted by the Constitution, does not meet reality. Wearing a headscarf can be the individual choice on the basis of tradition or identity, or of a Muslim who strictly wants to live in compliance with religious norms she takes to be binding for her.

In addition, the Court held that it is not legitimate to suppose that those groups within Islam who demand, but also consider it sufficient to wear a headscarf, would expect or desire from the believers to act against human dignity, gender equality, the basic freedom rights or the liberal-democratic basic order in Germany. Furthermore, there is no real danger that the individual garment of a teacher would be attributed to the State itself, thus there is no conflicting interest of preserving State neutrality by restrictions. The court held that while the majority of Muslim women in Germany do not wear a headscarf, it is quite common now. Its mere visibility has to be accepted as a consequence of exercising constitutionally granted freedoms, as there is no right in general not to be exposed to the realisation of other phenomena of religion or belief.

- Since only female Muslim teachers were restricted in their freedom of religion and profession, the constitutional provision on gender equality (art. 3 sect. 2 of the Constitution) is also affected.

**In sum, para. 57 sect. 4 (1) of the School Law of North Rhine-Westphalia has to be interpreted in a restrictive way according to the constitutional freedoms of teachers according to the principles mentioned above.**

**In addition, the Court declared unconstitutional and thus invalid<sup>4</sup> the provision in para. 57 sect. 4 (3) of the same law.** The Court held that it violates art. 3 sect. 3 (1) of the Constitution, which grants protection against discrimination on religious grounds inter alia, and art. 33 sect. 3 of the Constitution granting equal access to public offices irrespective of the religious affiliation.

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<sup>4</sup> Due to historical experience, the Constitutional Court is entitled to declare laws invalid, if they contradict the Constitution and cannot be interpreted in conforming ways. This far reaching right is a reaction to the Nazi-regime, when the state itself degenerated to an instrument of grossest possible violations of human rights.

According to this provision, which resembles the regulations in other German states (eight out of 16 banned the headscarf so far, while not mentioning it directly, and most of them privileged traditional Christian-Occidental cultural signs and symbols, including Judaism by the latter), Christian and occidental values of education and culture or traditions are qualified to be in accordance with the Constitution and the general aims of school education and organisation. The Court repeated that it would be wrong to suggest that wearing a headscarf alone indicates objectively the support for a general unequal treatment of sexes and would thus disqualify the teacher. Moreover, the generalised distinction between Christian and Occidental cultural values and traditions cannot serve as a valid criterion regarding all other non-Christian-Occidental cultural values and traditions.

#### **Comment:**

In recent hours, the competent state ministries were already asked to review the existing laws and practices in the light of this decision.

This new jurisprudence will considerably encourage female Muslim students to study educational sciences and Islamic theology, which has been offered by a number of German universities including the FAU Erlangen-Nürnberg.

The clear statements of the Court against fact-free abstract assumptions regarding the meaning of the headscarf worn by German citizens and inhabitants are meaningful far beyond the cases at stake. The same is true for generalised suspicions against organisations, which support wearing a headscarf (alone) without presenting concrete facts.

The Court has demonstrated that the German judiciary preserves the core values of secular state neutrality and real equal treatment of minorities, irrespective of many opposing voices in politics and the population as a whole. We learn from that that Constitutional values are not inherited, but have to be taught and implemented regarding the population as a whole.

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