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PUBLIC STATEMENT

Germany: blanket prohibition for teachers to wear religious and cultural symbols or dress is unconstitutional

The German Constitutional Court ruling striking down a blanket prohibition for teachers to wear religious and cultural symbols or dress in North-Rhine Westphalia, the most populous German state, is an important step towards combating discrimation based on religion or belief.

Two German Muslim women of Turkish origin brought their cases before the Constitutional Court. Both were employed in state schools in North-Rhine Westphalia and used to wear a headscarf in the workplace.

In 2006, a prohibition for teachers to express any political or religious views was introduced in the School Act of North-Rhine Westphalia. The ban was aimed at preserving state neutrality and peace in schools. However, the School Act made an explicit exception for symbols expressing Christian and Western cultural values or tradition, which teachers could continue to display without contradicting their duties.

In the aftermath of these legislative changes, school authorities informed the two complainants that they had to remove their headscarves in the workplace. The first complainant suggested wearing a hat covering her hair and ears instead of the headscarf. School authorities refused to accommodate her request and served her a written warning. The second complaint received a written warning in August 2006 and, due to her refusal to comply with it, was subsequently dismissed in February 2007.

The Court found that the prohibition set out in the School Act is contrary to Articles 3.3 (equality before the law) and 33.3 (equality in access to public service) of the German Constitution. The Court in particular highlighted that the prohibition to express political, religious or philosophical views, including by wearing religious symbols or dress, can be introduced in specific instances when expressing such views would constitute a concrete threat to state neutrality or the peace in one or more schools. However, a blanket ban on expressing political or religious views is a difference of treatment that cannot be objectively justified. Moreover, the Court found that the exception made for the exhibition of Christian and Western values and tradition was directly discriminatory.

Similar laws exist in many other German states including Baden-Württemberg, Bavaria, Lower Saxony and Berlin. In some cases, including in Baden-Württemberg and Bavaria, discriminatory exceptions are made for symbols expressing Christian views or traditions.

In its research, Amnesty International has highlighted that the existing restrictions in Europe on wearing religious symbols or dress in employment and education are discriminatory and have a disproportionate impact on Muslims.

According to EU anti-discrimination laws (Directive 2000/78/EC, Article 4.1), a difference of treatment in employment can be objectively justified only if it corresponds to a "genuine occupational requirement". Regrettably, in countries such as Belgium, France, Germany and the Netherlands employers have dismissed or denied employment to Muslims women wearing headscarves on grounds that this is was against "corporate image" or would not have "pleased clients".

Regarding public employment, and more specifically teachers employed in state schools, Amnesty International stresses that the requirement on teachers to carry out their professional duties impartially does not automatically mean that it is legitimate to prohibit them from wearing religious and cultural symbols and dress in all circumstances. Any restriction should be assessed on a case-by-case basis and are permissible only if they are demonstrably necessary and proportionate to achieve a legitimate aim under international human rights law. The judgment of the German Constitutional Court is in line with this approach.

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International Secretariat, Amnesty International, 1 Easton St., London WC1X ODW, UK

www.amnesty.org