Austria bans Muslim headscarf in primary schools

DW (16.05.2019) – https://p.dw.com/p/3IZg1 – Austria's parliament has passed a law intended to ban Muslim girls from wearing the headscarf in primary schools, a measure that is likely to be challenged as discriminatory in the constitutional court.

The bill passed with the support of the governing center-right People's Party (ÖVP) and the far-right Freedom Party (FPÖ). Almost all of the opposition voted against it.

To avoid the impression that it targets Muslims, the text refers to any "ideologically or religiously influenced clothing which is associated with the covering of the head."

The government said late Wednesday that the patka head covering worn by Sikh boys or the Jewish yarmulke would not be affected because the law refers to head garments that "cover all of the hair or large parts of it." Exceptions are made for head coverings for medical reasons or protection against rain or snow.

Signal 'against political Islam'

Practicing Muslim girls usually begin wearing a headscarf at puberty, and the governing parties have admitted the law is intended for Muslim girls.

ÖVP lawmaker Rudolf Taschner said the law was meant to "free girls from submission," while FPÖ education spokesman Wendelin Mölzer said it was about sending a signal "against political Islam" and promoting integration.

Former Social Democrat Party education minister, Sonja Hammerschmid, accused the government of trying to make

headlines instead of resolving integration or education issues.

Austria's official Muslim community organization, IGGÖ, has said it would legally challenge the "destructive" law that "discriminates exclusively against Muslims."

The ÖVP and FPÖ formed a coalition in 2017 on a strong anti-immigration platform.

The law was passed as Muslims celebrate the holy month of Ramadan.

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EUROPEAN COURT/BELGIUM: Exclusion from a courtroom of

a woman wearing the Islamic headscarf (hijab)

Lachiri v. Belgium: Case 3413/09

Judgment in French – https://bit.ly/2Q7zOlu

Lachiri v. Belgium (no. 3413/09) [Judgment in French only] – Second Section Chamber Judgment 18 September 2018. The applicant complained before the Court that the decision of a magistrate of a court of appeals to exclude her from the courtroom when she refused to remove her hijab to testify at the trial of the man who had killed her brother infringed her rights under ECHR Article 9 to freedom of thought, conscience, and religion. In its judgment of 18 September 2018, the Court found by six votes a violation of Article 9. [From the Court's press release:} "The Court found that the exclusion of Mrs Lachiri – an ordinary citizen, not representing the State – from the courtroom had amounted to a restriction" on the exercise of her right to manifest her religion. It also held that the restriction had pursued the legitimate aim of "protecting public order", with a view to preventing conduct that was disrespectful towards the judiciary and/or disruptive of the proper conduct of a hearing. The Court found, however, that Mrs Lachiri's conduct on entering the courtroom had not been disrespectful and had not constituted – or been liable to constitute – a threat to the proper conduct of the hearing. The Court therefore held that the need for the restriction in question had not been established and that the infringement of Mrs Lachiri's right to freedom to manifest her religion was not justified in a democratic society."

Registrar of the court (18.09.2018) – https://bit.ly/2zv4M1A –

In today’s Chamber judgment in the case of Lachiri v. Belgium (application no. 3413/09) the European Court of Human Rights held, by a majority (six votes to one), that there had been: a violation of Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights.

The case concerned Mrs Lachiri’s exclusion from a courtroom on account of her refusal to remove her *hijab*. The Court found that the exclusion of Mrs Lachiri – an ordinary citizen, not representing the State – from the courtroom had amounted to a “restriction” on the exercise of her right to manifest her religion. It also held that the restriction had pursued the legitimate aim of “protecting public order”, with a view to preventing conduct that was disrespectful towards the judiciary and/or disruptive of the proper conduct of a hearing. The Court found, however, that Mrs Lachiri’s conduct on entering the courtroom had not been disrespectful and had not constituted – or been liable to constitute – a threat to the proper conduct of the hearing. The Court therefore held that the need for the restriction in question had not been established and that the infringement of Mrs Lachiri’s right to freedom to manifest her religion was not justified in a democratic society.

Principal facts

Mrs Lachiri, and other members of her family, applied to join the proceedings as civil parties seeking damages in a crime case in which her brother had been killed. In 2007 the accused was committed to stand trial before the Criminal Court on charges of premeditated assault and wounding resulting in unintentional death. Mrs Lachiri and the other civil parties appealed against that decision, submitting that the offence should be classified as murder and that the accused should be tried by an Assize Court. On the day of the hearing before the

Indictments Division, in accordance with a decision of the presiding judge the court usher informed Mrs Lachiri that she could not enter the hearing room unless she removed her headscarf. Mrs Lachiri refused to comply and did not attend the hearing. Subsequently Mrs Lachiri unsuccessfully challenged that decision in an appeal on points of law.

Complaints, procedure and composition of the Court

Relying on Article 9 (right to freedom of thought, conscience and religion), Mrs Lachiri complained that her exclusion from the hearing room had infringed her freedom to express her religion. The application was lodged with the European Court of Human Rights on 24 December 2008. On 22 March 2016 the Government submitted a unilateral declaration, which the Court decided not to accept.

Judgment was given by a Chamber of seven judges, composed as follows:

Robert **Spano** (Iceland), *President*,
Paul **Lemmens** (Belgium),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Valeriu **Griţco** (the Republic of Moldova),
Jon Fridrik **Kjølbro** (Denmark),
Stéphanie **Mourou-Vikström** (Monaco),
and also Stanley **Naismith**, *Section Registrar.*

Decision of the Court

Article 9 (freedom of thought, conscience and religion)

Observing that, according to its case-law, wearing

the *hijab* (headscarf covering the hair and neck while leaving the face uncovered) could be regarded as an act "motivated or inspired by a religion or religious belief", the Court considered that excluding Mrs Lachiri from the courtroom on the grounds that she had refused to remove her headscarf had amounted to a "restriction" on the exercise of her right to manifest her religion. The purpose of that restriction, which had been based on Article 759 of the Judicial Code requiring persons entering a courtroom to do so without wearing headgear, had in the present case been to prevent conduct that was disrespectful towards the judiciary and/or disruptive of the proper conduct of a hearing. The Court concluded that the legitimate aim pursued had been the "protection of public order".

With regard to the necessity of the restriction in a democratic society, the Court specified first of all that the Islamic headscarf was headgear and not, as in the case of *S.A.S. v. France3*, a garment which entirely concealed the face with the possible exception of the eyes. It then noted that Mrs Lachiri was a mere citizen: she was not a representative of the State engaged in public service and could not therefore be bound, on account of any official status, by a duty of discretion in the public expression of her religious beliefs. Moreover, the Court indicated that whilst a court could be part of the "public arena", as opposed to the workplace for example, it was not a public place comparable to a public street or square. A court was indeed a "public" institution in which respect for neutrality towards beliefs could prevail over the free exercise of the right to manifest one's religion, like public educational establishments. In the present case, however, the aim pursued in excluding the applicant from the courtroom had not been to maintain the neutrality of the public arena. The Court therefore limited its examination to determining whether that

measure had been justified by the aim of maintaining order. In that connection it noted that Mrs Lachiri's conduct when entering the courtroom had not been disrespectful and had not constituted – or been liable to constitute – a threat to the proper conduct of the hearing. Consequently, the Court held that the need for the restriction in issue had not been established and that the infringement of Mrs Lachiri's right to freedom to manifest her religion was not justified in a democratic society.

There had therefore been a violation of Article 9 of the Convention.

Article 41 (just satisfaction)

The Court held (by six votes to one) that Belgium was to pay Mrs Lachiri 1,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinions

Judges Vučinić and Gritco expressed a joint concurring opinion. Judge Mourou-Vikström expressed a dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in French.

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EU: European court rules employers can ban women from wearing Islamic headscarves and religious symbols

Judges find workplace rules governing all political and religious clothing is not discriminatory

By Lizzie Dearden

The Independent (14.03.2017) – http://ind.pn/2nog3IH – The European Court of Justice has ruled that companies can ban employees from wearing the Islamic headscarf, but only as part of prohibitions including other religious and political symbols.

It is the first case of its kind amid a series of legal disputes over the right for Muslim women to wear the hijab at

work.

“An internal rule of an undertaking which prohibits the visible wearing of any political, philosophical or religious sign does not constitute direct discrimination,” the court said in a statement.

“However, in the absence of such a rule, the willingness of an employer to take account of the wishes of a customer no longer to have the employer’s services provided by a worker wearing an Islamic headscarf cannot be considered an occupational requirement that could rule out discrimination.”

The Luxembourg-based court found that a headscarf ban may also constitute “indirect discrimination” if people adhering to a particular religion or belief, such as Muslims, are put at a particular disadvantage.

But indirect discrimination is permissible if it is “objectively justified by a legitimate aim”, such as a company’s policy of neutrality, provided that the means of achieving it are appropriate and necessary.

François Fillon, the conservative candidate in the French presidential election, hailed the ruling as “an immense relief” that would contribute to “social peace”.

But a campaign group backing the women said it could shut many Muslim women out of the workforce and European rabbis said the court had worsened rising hate crime by sending a message that “faith communities are no longer welcome”.

The president of the Conference of European Rabbis, Chief Rabbi Pinchas Goldschmidt, said: “This decision sends a signal to all religious groups in Europe.”

The United Sikhs advocacy group said the “disturbing” ruling allowed employers to override fundamental human rights.

Mejindarpal Kaur, the group’s international legal director,

said that although the ECJ only allowed for rules with "legitimate aims", "we fear that employers will treat it as a licence to discriminate at the point of hire".

Amnesty International welcomed the ruling on the French case that "employers are not at liberty to pander to the prejudices of their clients" but said bans on religious symbols opened "a backdoor to precisely such prejudice".

Two employees in Belgium and France had brought the case to the ECJ after being dismissed for refusing to remove their headscarves, which did not cover the face.

The Belgian woman had been working as a receptionist for G4S Secure Solutions, which has a general ban on wearing visible religious or political symbols, while the French claimant is an IT consultant who was told to remove her headscarf after a client complained.

The G4S dispute, which started in 2006, was originally based on an "unwritten rule" banning employees wearing signs of their political, philosophical or religious beliefs, and the company's workplace regulations were not updated until a day after the woman started wearing a hijab.

Although they apply to all beliefs, the ECJ said it was "not inconceivable" that such rules could be deemed indirect discrimination for targeting Islam over other religions and referred the issue back to the Belgian Court of Cassation.

The French claimant, a design engineer for Micropole, was asked to stop wearing her headscarf to maintain neutrality after a client's complaint but refused and was dismissed.

The ECJ referred the case back to the French Court of Cassation to establish whether the move was a "genuine and determining occupational requirement" and whether there were any formal rules in place that meet non-discrimination requirements.

The court’s advocate general recommended that companies should be allowed to prohibit headscarves as long as a general ban on other symbols was in place, theoretically applying to Sikh turbans, Jewish kippas and Christian crucifixes.

Their advice in the French case was that a rule banning employees from wearing religious symbols when in contact with customers was discrimination, particularly when it only applied to Islamic headscarves.

Jonathan Chamberlain, an employment lawyer at Gowling WLG, said the decision brings the EU into line with what has been the UK’s approach for several years.

“For example, it’s fine for employers to have a dress code but it needs to be applied with some sensitivity and flexibility to take account of religious beliefs,” he added.

“What is almost certainly never OK is for an employer to tell an employee to stop wearing a religious symbol because a particular customer has asked for it.”

The Open Society Justice Initiative, a group backed by the philanthropist George Soros which had supported the women, said it was disappointed by the ruling.

A spokesperson said it ”weakens the guarantee of equality that is at the heart of the EU’s anti-discrimination directive”.

Maryam Hmadoun, the initiative’s policy officer, said: “In many member states, national laws will still recognise that banning religious headscarves at work is discrimination.

“But in places where national law is weak, this ruling will exclude many Muslim women from the workplace.”

The Open Society Justice Initiative said all future cases on religious discrimination in workplaces inside the EU will be government by the ruling, which it feared would strengthen wider attempts at headscarf bans.

“When an employer singles out religious clothing this is direct discrimination, and such an aim is not neutral,” a statement said.

“The supposed ‘neutrality’ is really discrimination, making the false claim that employers who allow staff to wear the headscarf are in some way not neutral.”

The ruling, which sets an EU-wide precedent, came a day before the Netherlands’ parliamentary elections, which have been dominated by issues of integration and identity.

Dutch MPs voted in support of a partial ban on full-face Islamic veils last year, but no law has yet been implemented, while prohibitions have been implemented in countries including France, Belgium and Bulgaria, and are being considered in Germany.

Attempts by local authorities in the French Riviera to ban so-called “burkinis” worn by Muslim women and impose fines generated fresh debate last year and have since been repealed by courts.

Press release of the European Court of Justice
http://curia.europa.eu/jcms/upload/docs/application/pdf/2017-03/cp170030en.pdf

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st/

EU: European Court of Justice rules against the wearing of the headscarf in the private sector

European Parliament Anti-Racism and Diversity Intergroup (ARDI) (14.03.2017) – http://bit.ly/2lZsRIR – The European Court of Justice (ECJ) issued a ruling against two women employees who were dismissed because they wore the headscarf. "*An internal rule of an undertaking which prohibits the visible wearing of any political, philosophical or religious sign does not constitute direct discrimination,*" the court said in a statement. "*However, in the absence of such a rule, the willingness of an employer to take account of the wishes of a customer no longer to have the employer's services provided by a worker wearing an Islamic headscarf cannot be considered an occupational requirement that could rule out discrimination.*"

The Court also ruled that a ban may also constitute "*indirect discrimination*" if people adhering to a particular religion or belief were specifically targeted. The Court added that indirect discrimination is permissible if it is "*objectively justified by a legitimate aim*," such as a company's policy of neutrality, as long as the means of achieving it are

appropriate and necessary.

The two cases concern two female Muslim employees in Belgium and France who had been dismissed for refusing to remove their headscarves, which did not cover the face.

The Belgian woman had been working as a receptionist for G4S Secure Solutions, which has a general ban on wearing visible religious or political symbols, while the French claimant is an IT consultant who was told to remove her headscarf after a client complained.

The case of the Belgian women stems from an "unwritten rule" where G4S banned employees from wearing signs of their political, philosophical or religious beliefs, although the company only updated its workplace regulations the day after the woman started wearing a hijab.

Although they rules apply to all beliefs, the ECJ said it was possible that such rules could be deemed indirect discrimination for targeting Muslims or other religious groups with visible manifestations of their faith and referred the issue back to the Belgian Court of Cassation.

Soraya Post, Co-President of ARDI, said: "*I welcome the decision that employers are not now allowed to pander to the prejudices of their clients. However at a time of increasing hate crimes against Muslims, this ruling sends the wrong signal and will lead to only further direct and indirect discrimination against Muslims both in the labour market and*

in society at large. Muslim women already face high levels of discrimination and difficulties in accessing the labour market according to the European Network Against Racism's Forgotten Women project and this decision will prevent more Muslim women from being able to access the labour market. Moreover in countries where national law doesn't provide appropriate safeguards, this ruling opens a Pandora's Box and will result in many Muslim women and those who wear visible manifestations of their faith being fired under the guise of neutrality. This is anything but neutrality."

Sajjad Karim, Vice-President of ARDI, said: "*Today's ruling in effect makes Muslim women and people from other religious groups have to choose between their fundamental right to religious expression and access to the labour market. This is unacceptable and will only isolate people with religious convictions who wish to express their belief.*"

More reading: Court of Justice of the European Union PRESS RELEASE No 30/17

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