The Federal Constitutional Court's "Headscarf Verdict" (September 24, 2003)

Abstract

The plaintiff in this case, Fereshta Ludin (born 1972 in Kabul), is a German teacher of Afghan descent. According to this so-called "headscarf verdict," the state of Baden-Württemberg regulated its school law as follows: "Teachers at public schools according to § 2 paragraph 1 may not make any political, religious, ideological or similar external statements at school which are likely to endanger or disturb the neutrality of the state towards pupils and parents or the political, religious or ideological school peace." Since the failure of her attempt to work in public schools, Ludin has been teaching at the state-recognized Islamic Primary School in Berlin.

Source

Federal Constitutional Court Decision Regarding the Wearing of Headscarves among Schoolteachers

The plaintiff desires a teaching position in the province of Baden- Wurttemberg. In her constitutional grievance, she appeals the decision handed down by the Administrative Court of the Greater School District of Stuttgart, which reviewed and rejected her employment status in elementary and middle schools on the basis of her declared intention to wear a headscarf. [...]

The plaintiff, born in Kabul, Afghanistan, in 1972, has lived continuously in the Federal Republic of Germany since 1987 and obtained German citizenship in 1995. She is of the Muslim faith. After passing her first state examination and completing her internship, she completed her second state examination for teaching positions in elementary and secondary schools with a concentration on middle-school German, English, civics, and economics.

The greater Stuttgart school district rejected the plaintiff's application for a teaching position in elementary and middle schools in the province of Baden-Wurttemberg on the basis of insufficient personal appropriateness. The reason provided for the rejection was that the plaintiff was not prepared to abstain from wearing a headscarf. It was further alleged that the headscarf is an expression of cultural segregation and thus not only a religious but also a political symbol. It is further alleged that the objective effect inherent in the headscarf, cultural disintegration, could not be reconciled with the imperative of state neutrality. In her appeal, the plaintiff claims that wearing a headscarf is not only an aspect of her personality but also an expression of her religious convictions. According to the prescriptions of Islam, wearing a headscarf is part and parcel of her Islamic identity. The decision barring her employment appears to conflict with the basic right of religious freedom according to article 4, clauses 1 and 2 of the Basic Law. Despite the responsibility of the state to remain neutral in questions of belief, it may not, according to the fulfillment of the education contract of article 7, clause 1, of the Basic Law, fail to consider religious worldview, and it must facilitate a balance between these conflicting interests. It has been suggested that the headscarf is not a religious symbol in the sense that a crucifix is religious. Moreover, as the plaintiff is a beneficiary of basic rights, her entitlement to an individually and religiously motivated action is at issue.

[According to the greater Stuttgart school district,] even if the plaintiff is not doing missionary work for her religious convictions, by wearing a headscarf while teaching, she effectively expresses her affiliation to Islam, and her students are not able to excuse themselves voluntarily. Therefore, she appears to be forcing students to

negotiate with this profession of faith. Young people, whose personalities are not yet completely formed, are apparently open to influences of all kinds. From this perspective, only the objective effect of the headscarf ought to be considered. Particularly for female students of the Muslim faith, a severe normative pressure may ensue that would obstruct the school's pedagogical duty to achieve the integration of Muslim pupils. […]

[According to the Federal Ministry of the Interior,] the case of the crucifix is similar to the Muslim headscarf in that, in the context of universal compulsory schooling, as opposed to fleeting encounters in daily life, one cannot escape constant confrontation with this religious symbol either. That the plaintiff is a beneficiary of basic rights does not alter the fact that the symbol she wears will inevitably be attributed to the state. However, it is important to consider that in wearing this religious symbol, she is exercising basic rights. […]

In judging whether a particular article of clothing or other external sign deploys religious content or expressions of worldview, the effect of the medium of expression is to be considered equally alongside its possible meanings. The headscarf, as opposed to the Christian cross, is not in itself a religious symbol. […] Head scarves worn by Muslim women are understood as a code for vastly different statements and values. […]

[Research shows] that in consideration of this diversity of motivations, the meaning of the headscarf may not be reduced to a sign of the societal repression of women. Rather, the headscarf can be a voluntary means for young Muslim women to lead a self-determined life without breaking with their culture of origin. In this regard, it has not sufficiently been proven that the plaintiff, simply by wearing a headscarf, would hinder the fostering of an image of women among her Muslim students that is consonant with the worldviews of the Basic Law or its manifestation in their own lives. […]

As long as no legal circumstance exists in which it can be clearly demonstrated that it is the professional duty of elementary- and middle-school teachers to abstain from displaying items that affirm their religious membership in the school or in class, the assumption of the plaintiff's insufficient appropriateness is not commensurable with article 33, clause 2 in conjunction with article 4, clauses 1 and 2, and article 33, clause 3, of the Basic Law. The decisions that led to this constitutional grievance thereby offend against the legal rights of the plaintiff, as they have been represented in these proceedings. The judgment of the Federal Administrative Court is hereby annulled, and the matter will be sent back to said court. […]

This decision was reached with five yeas and three nays.

Assenting Justices: Hassemer, Sommer, Boss, Osterloh, Lubbe-Wolff
Dissenting Justices: Mellinghoff, Jentsch, Di Fabio

Source of the German original text: BVerfG, Urteil des Zweiten Senats vom 24. September 2003 - 2 BvR 1436/02 - Rn. (1-138), http://www.bverfg.de/e/rs20030924_2bvr143602.html

Source of English translation: Deniz Göktürk, David Gramling, and Anton Kaes, eds., *Germany in Transit. Nation and Migration 1955-2005.* Berkeley: University of California Press, 2007, pp. 231-233.

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