



Universiteit  
Leiden

The Netherlands

## The Headscarf and the “Neutral” Welfare State

Coskun, D.

### Citation

Coskun, D. (2004). The Headscarf and the “Neutral” Welfare State. *Isim Newsletter*, 14(1), 45-45. Retrieved from <https://hdl.handle.net/1887/16952>

Version: Not Applicable (or Unknown)

License: [Leiden University Non-exclusive license](#)

Downloaded from: <https://hdl.handle.net/1887/16952>

**Note:** To cite this publication please use the final published version (if applicable).

# The Headscarf and the “Neutral” Welfare State

DENIZ COSKUN

The German welfare state is characterized by a system of state supervised compulsory education. Teachers are regarded as civil servants, and, according to the constitution, “Every German is equally eligible for any public office according to his aptitude, qualifications and professional achievements.” Moreover, “rights acquired in the public service are independent of religious denomination. No one may suffer disadvantage by reason of his adherence or non-adherence to a denomination or ideology.” Do these constitutional provisions apply to a state that is confronted with a growing plurality of its citizenry with differentiated claims or does the state have to adopt another approach?

The question of plurality of citizenship came to the fore in the above-mentioned case. The plaintiff, a Muslim woman born in Afghanistan in 1972, had lived in Germany from 1987 and acquired German nationality in 1995. In 1998, she had completed her education to become a teacher in an elementary school, but was refused commission because she was not willing to remove her headscarf before class. As a justification for their refusal, the executive board of the elementary school argued that the headscarf was an expression of a cultural demarcation and was not only a religious, but also a political symbol. Furthermore, they referred to the changing nature of the neutrality of the German state that required a more strict separation of church and state. The plaintiff responded that the headscarf, as distinguishable from the crucifix, was not a religious symbol but was actually an expression of her religious faith. She maintained that her wearing of the headscarf, represented individual and religiously motivated conduct that was protected by the constitution.

The Supreme Court ruled that the headscarf is not a religious symbol pure and simple.<sup>1</sup> It ruled that only by taking into consideration the impact of the applied medium of expression, as well as the totality of potential meanings that are eligible for it, could a certain religious garment or sign be attributed symbolic meaning that directly or indirectly is tantamount to the endorsement of religion by the state, and hence a violation of the principle of the separation of church and state. Whether a headscarf has such symbolic meaning cannot be judged, therefore, independent of the person wearing it or unaccompanied by concrete conduct. In other words, if a teacher, by wearing the headscarf, attempts to religiously influence the children under her care, this would represent a breach of official duties, among which could be guaranteeing the neutrality of the state. Accordingly, it ruled that, since the headscarf as such does not constitute a religious symbol (pure and simple), the wearing thereof by a civil servant in front of a class of students is constitutionally protected by the principle of freedom of religion.

The obligation of the state to maintain religious neutrality is not to be understood as a disassociation in the sense of a strict separation of church and state, but rather as an attitude of transparency and generality, that obliges equal protection of the freedom of religion of any creed. The right to freedom of religion, in the positive sense of the word, obliges the state to guarantee a space for the active endorsement of faith and the realization of the autonomous personality on the ideological-religious field. This right also applies to the duties of civil servants of the state.<sup>2</sup>

The nature of state supervised compulsory education factored significantly in the Supreme Court decision, since, as stated in the ruling, “in its nature, religious and ideological perceptions were relevant from the

**The Western welfare state is usually presumed to be “neutral” and not involved in “personal” matters such as religion. The principle of neutrality which is based on the separation of church and State is often put to the test as a society becomes more religiously plural. Questions regarding the legal neutrality of the State came to the fore in a recent German Supreme Court case dealing with whether a teacher should be allowed to wear a headscarf in the classroom (Teacher with Headscarf case of 24 September 2003). This case poses questions about the nature of the contemporary German welfare state and whether it can maintain its neutrality when confronted with growing socio-religious pluralism.**

beginning. ... Subsequently, Christian elements in the formation of public schooling are not simply prohibited; education, however, has to be open also for other ideological and religious substances and values.<sup>3</sup> In this openness, the constitutional state maintains its religious and ideological neutrality. As to the tensions that are unavoidable in the common education of children from diverse backgrounds, a solution must be found by taking into consideration the duty of tolerance as an expression of human dignity. The right to freedom of religion authorizes the individual to decide for oneself which religious symbols one recognizes and honours, and which one abhors. How-

ever, in a community, that harbours numerous articles of faith individuals or groups do not have the right to remain “untouched” by, or protected from, alien expressions of faith, cultic acts, and/or religious symbols. Finally, the Supreme Court found it, in line with Article 9 of the European Convention for Human Rights, unconstitutional for the executive powers and the judiciary, to restrict the exercise of the right to freedom of religion, absent any proper legislative enactment from the democratically elected parliament.

The Supreme Court rightly avoided questions and interpretations of what a religion “exactly” prescribes for its participants, an activity that is reserved for the individual by the constitutional and human right to freedom of religion. Furthermore, it refrained from answering the question of what is the fair balance of (potential) interests to be struck; that is a task exclusively attributable to the democratically elected legislative power. In effect, the Supreme Court made understandable the rationale and legitimacy of the principle of neutrality within the welfare state. It requires “respecting, and anticipatory neutrality,” that obliges the state “to secure for the individual, but also for religious and ideological groups, a free space of action.”<sup>3</sup>

## Notes

I would like to thank Edith Brugmans, Janske Hermens, Louis Logister, Thomas Mertens, and Derk Venema (Nijmegen) for comments on the original paper.

1. Cf. 1 BvR 647/70 and 7/74 of 16<sup>th</sup> October 1979 (Prayer in the Classroom-case [Schulgebet-Entscheidung]): “The crucifix ... is pure and simple its [Christianity’s] plain religious symbol. ... It symbolizes the essential core of Christian creed ....”
2. See: BverfG, VBvR 1436/02 vom 3.6.2003, Absatz-Nr. 44.
3. See: BverfG, VBvR 1436/02 vom 3.6.2003, Absatz-Nr. 10.

Deniz Coskun is a Ph.D. candidate at Nijmegen University in the Department of Jurisprudence.

E-mail: D.Coskun@jur.kun.nl