

Western Europe
YASHA LANGE

A Handshake May Be Refused

When may a headscarf be forbidden or not? Case law determines where the boundaries of an individual culture are drawn. The alderwoman of education in Almere, a town in the vicinity of Amsterdam, the Netherlands, extends her hand in a friendly way towards the director of the Islamic school. He keeps his arms stiff at his sides. The alderwoman's extended hand dangles uncomfortably in the air. A discussion takes place. The council of the Al-Iman school says that Muslims are not permitted to have physical contact with the opposite sex. The alderwoman eventually decides to respect this. What else can she do?

In a reaction in the Dutch daily *Trouw*, Mayor of the conservative Christian municipality of Staphorst, W. Plomp asked rhetorically, 'How far should the tolerance [of the majority] go if this gives minorities the room to exercise a form of intolerance that serves what we, in our culture, consider as rudeness and discrimination against the opposite sex? Shouldn't you expect some give and take from both sides?' Of course, but the council of the Islamic school is still within its rights – that is, if the findings of the Commission of Equal Treatment are any indication.

► **Role-play at the Fatima School in Amsterdam, the Netherlands. Mothers learn to listen to adolescents.**

At the end of 1998, an Muslim couple goes to the dentist. The wife refuses to shake hands with the male dentist. The dentist is so angry that he, in turn, refuses to examine the husband's teeth. He also submits a complaint to the Commission of Equal Treatment: discrimination on the basis of gender. However, the Commission rules that there is no discrimination. The Muslim woman is within her 'rights'. Religion wins over social norms.

Around ten years ago, the concept of 'integration with the preservation of culture' was introduced. A stroke of genius, a 'win-win' situation, everyone happy. Sometimes, however, integration and the preservation of culture seem to clash. And now and then, that sort of collision is fought out in court. Then, case law also gives a reasonable amount of insight into the question of where the boundaries are drawn between the two sometimes conflicting ideas.

An example: a Moroccan father does not want his daughter to participate in the required mixed swimming lessons at school. He points out a verse in the Koran to the judge. The judge finds that the text in the Koran has been interpreted quite freely and



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that it is not explicitly stated that mixed swimming is forbidden. The case goes to the Supreme Court. The judgement is ambiguous. The school is right because the father had never submitted a formal request for exemption. But the father is right in that the Dutch judge should not have pretended to be an authority on the Koran.

Another example: a woman has already worked as a hairdresser for six years. One day, she decides to wear a headscarf. The owner of the hair salon believes that this cannot be permitted; his clientele will drop off and he wants to fire the woman. She fights her dismissal in court, which decides in her favour. According to the judge, the owner has 'not sufficiently demonstrated' that a hairdresser wearing a headscarf would be detrimental to his business. In the discussion over integration and the preservation of culture, the term 'making space' regularly surfaces.

Representatives of minority organizations believe that the Netherlands should not only profess integration in theory, but should also make room for different cultures in practice. Therefore, they want days off on Islamic holidays, Eid al Adha (Festival of Sac-

rifice) to be a national holiday, a place for prayer in the workplace and single-sex gym classes in school. They believe that integration will go more smoothly if the Netherlands makes space for the cultivation of individual identity.

Minister Van Boxtel (Minority Policy) is indeed in agreement. His position: everything is fine, as long as the borders of the Dutch legal system are not crossed. 'I think praying in a public school is fine. But the boundary is the Dutch constitution. That should not be touched.'

According to Susan Rutten, teacher of private law at the University of Maastricht, that also does not happen in practice. Years ago, she wrote an overview on *Muslims in de Nederlandse Rechtspraak* (Muslims in the Dutch Justice System), for the Ministry of the Interior. Since then, she has kept up with all case law. 'In decisions regarding compulsory education or in criminal cases, the fundamentals of Dutch law are not touched.'

However, it is not always so clear. Recognizing a child from a polygamous marriage? An employee who wants to pray during working hours? Who gets custody of a child? Mostly the mother in the Nether-

lands, always the father in Morocco. In these sorts of cases, judges seldom give an across-the-board verdict, says Rutten. 'A weighing of interests occurs.'

As an example, she takes the case of an Muslim woman who receives unemployment benefits. The woman refuses a job because only men work in the company. Her benefit payments are threatened, legal proceedings follow and the woman is judged to be within her rights. It would cause problems with her faith, her husband and her environment if she went to work for that company. Thus, 'within reason' it can not be required that she accept the job.

However, that is true for just this case. A Moroccan woman requests benefit payments and says at the same time that she is not suitable for the work market because she already does housework. The benefits are denied, the woman initiates legal proceedings, but does not win the case and receives no benefits.

Different factors influence the judges' weighing of interests. 'The call of religion is a strong argument', says Rutten. 'To counteract that, you need something very important.' An example is the verdict of the Supreme Court on the wearing of headscarves by students at a public school in the town of Alphen aan den Rijn. Since then, almost all cases concerning the headscarf have been won by the wearers – except in gym class. Rutten: 'The Commission of Equal Treatment then asked the girls to do a somersault, to see if the headscarves presented a danger. Good, huh? Finally, the Commission found that for safety reasons, it was not discriminatory to forbid headscarves during gym class. In another case, however, the Commission found that long sleeves may indeed be worn in gym class.'

Other influential factors are the fairly broad equality principle and the degree to which an individual is integrated in the Netherlands. The better integrated, the less the claim to a 'cultural background'. A good example of the weighing of interests is the groundbreaking decision of the Supreme Court in 1984 regarding a woman who was fired on the spot because she refused to work on an Islamic holiday. Verdict: if someone asks well in advance for an extra day off for an important holiday, that cannot be grounds for firing the person. But the Supreme Court also had a proviso: if the interests of the employer would be seriously impaired, then no day off.

It appears from case law that judges take into account the cultural background, faith and sometimes the inequalities between the sexes in other cultures. Is that also true for incidences of crimes of honour, such as the recent shooting at a school in Veghel? Rutten: 'The judge will never say: someone is not punishable because "honour" crimes are seen differently in Turkey. But the circumstances of each individual are considered. It is not unthinkable that in such cases, cultural background could fall under the category of overpowering psychological factors.' ♦

This article is a translated version of Lange's 'Een handdruk mag worden geweigerd', NRC Handelsblad, *The Netherlands*, 23 March 2000.

Yasha Lange is an editor of the NRC Handelsblad, *the Netherlands*.