Germany: The Supreme Court headscarf ruling and the myth of religious “neutrality”

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The education department in Baden-Wuerttemberg refused to hire Fereshta Ludin as a teacher because she refused to take off the headscarf she wears as part of her Islamic faith. Ludin took legal action to uphold her right to wear the scarf while teaching. While the Supreme Court found in her favour, it only struck down the employment ban because it was not grounded in law. At the same time, however, it empowered the states to supply such a legal basis. Several state governments, including Bavaria, Hesse, Lower Saxony and Berlin, have already announced their intention to enact laws banning teachers in state schools from wearing a scarf.

Ludin, born in 1972 in Afghanistan, has been a German citizen since 1995 and passed her state examinations with flying colours. Wearing a headscarf caused no conflicts or problems during her teaching probation. Ludin insisted that she has no intention of proselytising in school. Nevertheless, the school authorities in Baden-Wuerttemberg refused to employ her because she wore a headscarf.

Legally, it would appear to be an open-and-shut case. Article 4 of the German constitution states: “Freedom of belief, of conscience and the freedom of faith and world outlook are inviolable.” And article 33 states: “All German citizens have access to every public office according to their own aptitudes, qualifications and professional abilities. The exercise of civil and civic rights, the admission to public office, as well as the rights acquired in the public service, apply irrespective of religious confession. No disadvantage may arise from affiliation or non-affiliation to a particular confession or world view.”

In fact, Ludin had lost her case in all the lower courts before it finally came before the Supreme Court. The arguments were always the same: A teacher is a civil servant of the state; he or she represents an “authority figure” for the pupils. The state must uphold neutrality, in order to protect the freedom of religion of pupils following different faiths. Since Ludin conducts her lessons wearing an article of clothing demonstrating her religion, and which her young and impressionable pupils cannot avoid seeing, she is unsuitable to carry out her job with the required neutrality.

These arguments are as reactionary as they are false. They demonstrate a conception of the status of civil servants that dates back to the time of the authoritarian Kaiser Wilhelm at the end of the 19th century; a conception largely been abandoned in legal doctrine since the 1970s. The state official, and the teacher, is no longer regarded as a mere agent of the state, who uncritically implements all instructions from above and whom the citizen must obediently follow. This has become particularly clear in schools just recently. Hundreds of thousands of young pupils demonstrated against the Iraq war, sometimes with and sometimes without the support of their teachers, and despite threats from school authorities and state governments. When Bremen school senator Lemke recently spoke out, in a thoroughly narrow-minded manner, against pupils wearing crop tops, he earned only mockery and derision.

There is, moreover, no state neutrality in religious matters in Germany. While in countries such as France, and to a limited degree Turkey, the state was established through the mobilization and combination of broad social classes against feudal and clerical reaction, and secularism was declared a basic principle of state, Germany’s development proceeded differently. There was no real national unification. Rather, the German state resulted from the union of a collection of principalities and kingdoms under the domination of the strongest, Prussia. The overthrow of the princes failed in 1848, and capitalist development in Germany proceeded not against but under the influence of feudal reaction. After the princes and their state had subordinated the church, sometimes in violent conflicts, it was allowed to keep its privileged and parasitic existence. Little has changed since then.

There is barely any other country that has a generally deductible “church tax” like Germany. This brings in 8 to 9 billion euros for the two main Christian denominations each year. Up to three quarters of this is spent on church personnel and bureaucracy. In addition, general taxation funds religious education at state schools, the training of priests and theologists at university, “pastoral care” (e.g., in

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the military and in prisons), church broadcasts on public television and radio, and more. The church operates its own kindergartens, schools, hospitals and homes for the elderly, which are, however, largely financed by the state.

In the state constitution of Baden-Wuerttemberg, where Ludin was banned from teaching, articles 15 and 16 declare, "The public elementary schools (primary and secondary schools) have the educational form of the Christian denominational school. In Christian denominational schools, children are taught on the basis of Christian and Western educational and cultural values."

There are similar provisions in the Bavarian constitution. In 1995, the Bavarian state government called for "resistance" to the Supreme Court, after it had ruled that hanging crucifixes over school doors was permissible, but that they would have to be removed if they disadvantaged pupils of other faiths. In practice, hardly a single crucifix has been removed since then. In its current ruling, the Supreme Court declared such medieval practices to be "school traditions" and determined that such divergent "traditions" permitted the states to establish divergent regulations, including the ban on teachers wearing headscarves.

The real content of the campaign against the wearing of headscarves does not represent the long overdue separation of state and religion, or concern for equal rights for women, as some liberals and feminists have claimed. It is barely disguised anti-Islamic racism.

The Christian Democrats' religious affairs spokesperson, Hermann Kues, rejected the wearing of headscarves in schools and demanded their legal prohibition. "It concerns the toleration of the practices of non-Christian religions. This toleration cannot go as far as permitting symbols such as the headscarf into the civil service and thus challenging prevailing values."

The first demand for such a law came in the Baden-Wuerttemberg state legislature—when Ludin began her legal case five years ago—from the parliamentary faction of the extreme right-wing *Republikaner*. Following the judgement of the Supreme Court, the Hesse state government of Roland Koch has also announced it will introduce such a law. This is the same state administration that took office after conducting a xenophobic campaign against granting dual nationality to immigrants living in Germany.

Bavaria's minister of culture Hohlmeier made the point most clearly. She demanded a legal prohibition that regards all those wearing the headscarf as potential "enemies of the constitution".

"We must not open a door for fundamentalism and extremism," said the minister. However, it was completely different for nuns to wear their habits while teaching and to hang crucifixes in classrooms. The churches had declared "their allegiance to basic social values," Hohlmeier said.

The minority in the Supreme Court, whose decision was reached by five votes against three, expressed a similar view. The minority stated that hanging a crucifix over the school door did not disadvantage pupils' freedom of religion, since it was a "cultural symbol of openness and tolerance," while the headscarf, in part, represented the subservient role of the woman and therefore stands in conflict with the constitution. In reality, equal legal rights for women in Germany were won by the workers' movement against the bitter resistance of the church and politicians. In the 1970s, the wide-ranging decriminalisation of sexual behaviour such as homosexuality among adults, pre-marital sex and sex outside marriage met with fierce rejection in clerical circles.

Without a doubt, the Islamic fundamentalist tendencies are reactionary, anti-democratic and misogynist. On the one hand, the fact that they have gained influence in the last years and decades is bound up with the increasingly aggressive policy of the Western countries, which has resulted in military aggression, dictatorship and increasing poverty for the countries of the Middle East and Turkey. On the other hand, these tendencies have won increasing support under conditions where democratic and social rights are being dismantled and state-sponsored racism is growing in Germany itself.

As long as this policy is not stopped by an offensive of the working class, Islamic fundamentalism will continue to gain support, strengthened rather than weakened by state bans, discrimination and repression. This became patently clear in the case of Ludin: After being banned from teaching in Baden-Wuerttemberg, she now teaches at a private Islamic school in Berlin. The Berlin state legislature has announced it also intends to prohibit teachers from wearing headscarves in state schools.

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