



Contextualizing the Wearing of the Islamic Headscarf in Schools in Spanish and European Case Law

Question(s) at stake:

Whether the transfer of a student wearing the hijab to another school is in the best interests of the child or infringed on the student's freedom of religion.

Outcome of the ruling:

The Court held that the administrative decision to transfer the child to another school was proportionate, taking into account the best interests of the child, her right to education, and her determination to continue wearing the hijab.

Topic(s):

- [Education](#)

Keywords:

- [Freedom of thought, conscience and religion](#)
- [Hijab](#)
- [Education](#)
- [Religious and cultural symbols](#)
- [Right to education](#)

Tag(s):

- [Islamic veiling](#)
- [Indirect discrimination](#)
- [Direct discrimination](#)
- [Best interest of the child](#)

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Country:

[Spain](#)

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Contentious-Administrative Court No. 1 Guadalajara, Judgement of 31 March 2023, No. 54/2023 (Juzgado de lo Contencioso-Administrativo Nº 1 Guadalajara, Sentencia de 31 de marzo de 2023, Sentencia núm. 54/2023)

Link to the decision:

<https://diariolaley.laleynext.es/content/Documento.aspx?params=H4sIAAAAAAAEAMtMSbH1CjUwMDC3MDEzNTdRK0stKs7Mz7Mty0xPzStJBfEz0ypd8pNDKgtSbdMSc4pT1RKtIvNzSktSQ4sybUOKSIMBdx4HU0UAAAA=WKE>

ECLI:

No ECLI number / ECLI number unknown

Date:

31 March 2023

Jurisdiction / Court / Chamber:

Contentious-Administrative Court

Remedy / Procedural stage:

Ordinary Procedure

Previous stages:

No information found.

Subsequent stages:

No information found.

Branches / Areas of law:

Administrative law

Facts:

In this case, the father of a student named Silvia filed an administrative complaint against the resolution of 19 April 2022, which ordered her transfer from the IES (Secondary School) “Liceo Caracense” in Guadalajara to the IES “Buero Vallejo” in the same city following the student’s repeated refusal to remove the Islamic veil to comply with the school’s coexistence rules (*Normas de Orientación y Convivencia del Centro*).

Ruling:

The Court’s core argument was based on the best interests of the child. Article 14 of the Convention on the Rights of the Child recognizes the right of minors to freedom of thought, conscience, and religion, while Article 2 states that there shall be no discrimination of any kind. Under the Spanish legal framework, this is implemented through Organic Law 1/1996 on the Legal Protection of Minors, which imposes on parents the duty to cooperate with a view to enabling minors to exercise this freedom in a way that contributes to their overall development. In addition, Article 2 states that schools have the autonomy to draw up, approve, and implement an educational and management project, as well as the rules governing the organization and operation of the school. The Court noted that, before the student’s enrolment, point 20 of section E-6 of the school’s rules of organization and coexistence stated that pupils could not cover their heads during educational activities. The Court considered that the administrative decision to transfer her to another school to respect her determination to continue wearing the hijab was proportionate, since the appellant’s refusal to comply with the rule could not take priority over the orderly observance of the school’s rules by other pupils, particularly when there were other schools without this prohibition, such as the one to which she was transferred.

Main quotations on cultural or religious diversity:

“La demanda, luego de tener por cercenadora a la Administración demandada de los derechos fundamentales a la libertad religiosa, a la de expresión, del derecho

a la dignidad e igualdad, al honor y a la propia imagen, formula un quíntuple interrogante al que autorresponde negativamente en tanto, carente España de una ley orgánica que impida explícitamente el uso del “yija” (hiyab) en los centros escolares, hace a la resolución administrativa impugnada jurisdiccionalmente atropelladora de los derechos fundamentales-constitucionales del recurrente.”

“The application, after considering that the defendant administration had curtailed the fundamental rights to freedom of religion, freedom of expression, the right to dignity and equality, the right to honour, and the right to one’s own image, formulates a five-fold question which it answers in the negative in so far as, in the absence of an organic law in Spain which explicitly prevents the wearing of the “yija” (hijab) in schools, it makes the contested administrative decision a judicial infringement of the appellant’s fundamental constitutional rights.” (legal reasoning 2, para. 8)

“La cuestión del uso del velo islámico -hiyab- en los centros docentes ha llegado al Tribunal Europeo de Derechos Humanos, que dictó el 4 de diciembre de 2008 las sentencias *Kervaneï* contra Francia y *Dogru* contra Francia, en que las demandantes eran dos adolescentes expulsadas de su centro escolar por llevar el pañuelo islámico a clase, estimando legítima el TEDH la restricción de la libertad religiosa de las menores, que es tenida, en consecuencia, por conforme a Derecho, reconociendo la necesaria protección de los derechos y libertades fundamentales del resto del alumnado atendida la laicidad de la República Francesa aconfesionalidad del Reino de España- que debe ser protegida de forma preferente, lo que unido al principio del pluralismo constituyen motivos legítimos para justificar la prohibición del acceso a las aulas de alumnas con velo que han rechazado quitárselo.”

“The issue of the wearing of the Islamic headscarf -hijab- in schools has reached the European Court of Human Rights, which on 4 December 2008 handed down the judgments *Kervaneï v. France* and *Dogru v. France*, in which the plaintiffs were two teenagers expelled from their school for wearing the Islamic headscarf to class. The ECtHR considered the restriction of the religious freedom of the

minors to be legitimate and consequently to be in accordance with the law, recognizing the necessary protection of the fundamental rights and freedoms of the rest of the pupils in view of the secular nature of the French Republic and the non-confessional nature of the Kingdom of Spain, which must be protected in a preferential manner and which, together with the principle of pluralism, constitute legitimate reasons to justify the prohibition of access to the classrooms of students wearing headscarves who have refused to remove them.” (legal reasoning 2, para. 13)

Main legal texts quoted in the decision:

Domestic law:

- Articles 9, 14, 16, 27, 53 of the Spanish Constitution
- Article 2.1 of the Organic Law 7/1980 of 5 July 1980, on Religious Freedom
- Articles 2, 5, 8 of the Organic Law 2/2006 of 3 May 2006, on Education
- Articles 4, 6, 12 of the Organic Law 3/2020 of 29 December 2020, amending Organic Law 2/2006 of 3 May 2006, on Education
- Article 2 of the Organic Law 1/1996 of 15 January 1996, on the Legal Protection of Minors, partially amending the Civil Code and the Civil Procedure Act.

International law:

- Articles 2 and 9 of Protocol No. 1 to the European Convention on Human Rights
- Articles 8, 12, 14 of the Convention on the Rights of the Child

Cases cited in the decision:

Relevant Spanish case law:

- Contentious-Administrative Court No. 32 Madrid, Judgment of 25 January 2012, No. 35/2012 (Sentencia num. 35/2012 de 25 de enero. Juzgado de lo Contencioso-Administrativo núm. 32 de Madrid) ECLI:ES:JCA:2012:2

- High Court of Justice Castilla y León, Judgment of 28 November 2014, No. 277/2014 (Sentencia num. 277/2014 de 28 noviembre. Tribunal Superior de Justicia de Castilla y León) ECLI:ECLI:ES:TSJCL:2014:6050

Relevant European Court of Human Rights case law:

- *Doğru v. France*, App. no. 27058/05, 4 December 2008 ECLI:CE:ECHR:2008:1204JUD002705805
- *Kervanci v. France*, App. no. 31645/04, 4 December 2008 ECLI:CE:ECHR:2008:1204JUD003164504
- *Hoffman v. Austria*, App. no. 12875/87, 23 June 1993 ECLI:CE:ECHR:1993:0623JUD001287587

Commentary

Contextualizing the Wearing of the Islamic Headscarf in Schools in Spanish and European Case Law

CJEU and ECHR's perspectives on the topic

For Muslim communities in Europe who wish to adhere to their religious beliefs, wearing the Islamic headscarf remains an ongoing issue. However, the headscarf is not only a symbol of religious belief or obligation; it can also express faith, morality, and a worldview. What was once unfamiliar to many Europeans has become a recurring legal controversy before European and national courts over the last two decades, prompting experts to examine this issue through the lenses of multiculturalism, gender equality, and religious freedom. The European Court of Human Rights (ECtHR) has ruled on several cases concerning the headscarf, including *Dahlab v. Switzerland* (App. no. 42393/98, 15 February 2001 ECLI:CE:ECHR:2001:0215DEC0042393982001), *Şahin v. Turkey* (App. no. 44774/98, 10 November 2005 ECLI:CE:ECHR:2005:1110JUD004477498 2005), *Kurtulmuş v. Turkey* (App. no. 65500/01, 24 January 2006 ECLI:CE:ECHR:2006:0124DEC006550001) *S.A.S. v. France* (App. no. 43835/11, 01 July 2014 ECLI:CE:ECHR:2014:0701JUD004383511), *Ebrahimian v. France* (App.

no. 64846/11, 26 November 2015 ECLI:CE:ECHR:2015:1126JUD0064846112016), *Dakir v. Belgium* (App. no. 4619/12, 11 July 2017 ECLI:CE:ECHR:2017:0711JUD0004619122017), *Belcacemi and Oussar v. Belgium* (App. no. 37798/13, 11 July 2017) and *Lachiri v. Belgium* (App. no. 3413/09, 18 September 2018 ECLI:CE:ECHR:2018:0918JUD000341309).

A striking feature of these decisions concerns the headscarf's religious connotations, its effects on third parties, and the principles of secularism, which are strictly applied in countries such as France and Turkey. In cases such as *Dahlab*, *Şahin*, *Kurtulmuş*, and *Ebrahimian*, a clear distinction can be seen in how the Court interprets religious connotations and their implications in a democratic society, in particular in contexts where the state places a strong emphasis on secularism. In most of these cases, the Court relied on Article 9.2 of the Convention, which grants states a wide margin of appreciation. Rather than providing evidence of the incompatibility of the headscarf with the secular or neutral nature of the state, both the ECtHR and the CJEU have offered abstract rather than concrete definitions of the religious significance of Islamic veiling (Ünlü 2023: 382). One of the most significant cases in the field of education concerning Muslim students and their veiling was *Osmanoğlu and Kocabaş v. Switzerland* (App. no. 29086/12, 10 January 2017 ECLI:CE:ECHR:2017:0110JUD002908612). The case concerned a school's imposition of a curricular obligation requiring students to participate in mixed swimming lessons. The two applicants, who were the parents of three students and devout, practising Muslims, refused to send their daughters to these lessons because their beliefs prohibited them from allowing their children to participate in mixed swimming lessons. According to the parents, although the Qur'an does not instruct women to cover their bodies until puberty, they stated that their beliefs required them to prepare their daughters for the precepts that would apply to them from that point onwards (*Osmanoğlu and Kocabaş v. Switzerland*, para. 9).

In this case, the ECtHR held that the applicants' daughters' right to a full education should take precedence, as this would help them to integrate successfully into local customs. This view was favoured over the parents' wish for

their daughters to be exempt from mixed swimming classes (Trotter 2018: 164). The idea of “living together”, or rather of living in the same way, was introduced in this case but was not explicitly mentioned. It was later mentioned in *Belcacemi and Oussar v. Belgium* and *Dakir v. Belgium*.

The Court of Justice of the European Union (CJEU) has also addressed the use of the headscarf, particularly in the workplace. The first important CJEU cases concerning the wearing of the Islamic veil were *Achbita* (Case C-157/15, 14 March 2017 ECLI:EU:C:2017:203) and *Bougnaoui* (Case C-188/15, 14 March 2017 ECLI:EU:C:2017:204). In the former case, the applicant expressed her wish to wear an Islamic headscarf at work but was told that she could not do so, as this would contravene the company’s strict neutrality policy (Howard 2022: 246). According to Article 2(2)(a) of Directive 2000/78/EC, this constituted direct discrimination based on religion. In the latter case, the CJEU ruled that a customer’s preference not to be served by someone wearing a headscarf did not constitute a legitimate occupational requirement under Article 4(1) of Directive 2000/78/EC (Howard 2022: 248). Subsequently, in the *Wabe and Müller* case (Joined Cases C-804/18 and C-341/19, 15 July 2021 ECLI:EU:C:2021:594) the CJEU ruled that prohibiting the Islamic headscarf was permissible, but only if the company could demonstrate that such a policy was necessary to maintain neutrality (Howard 2022: 262).

Contextualizing the wearing of the Islamic headscarf in schools in Spain

To date, most Muslim students can attend public and state subsidized schools wearing the Islamic headscarf, for which there is generally no explicit prohibition. In addition, the legal framework does not explicitly prohibit the wearing of the Islamic headscarf in schools. However, some schools do have a prohibitions on wearing head coverings of any kind in their internal regulations (RRI – *Régimen de Regulación Interno*), including headscarves, caps, or sometimes even the hijab specifically.

The most well-known legal case on this issue in Spain occurred in 2012 and involved a school in Pozuelo de Alarcón. A girl named Najwa was banned from

attending classes at IES Camilo José Cela in Pozuelo de Alarcón while wearing an Islamic headscarf. The school's internal regulations prohibited students from wearing caps or headscarves inside the school. Consequently, she was transferred to another school, IES San Juan de la Cruz. However, this school subsequently revised its internal rules on headscarves in a manner that prevented her from enrolling. Najwa finally attended a third school, the IES Gerardo Diego, which did not ban headscarves.

In the absence of state regulations on the use of religious symbols in schools, schools have the autonomy to regulate their policies on this issue at their discretion, potentially creating tensions with the freedom of religion of Muslim pupils who wish to observe the requirements of their religion. Another relevant case involved a student who was prevented from attending school for nine days due to the prohibition of wearing the hijab. This happened in Burgos in 2014, when the administration of the IES Félix Rodríguez de la Fuente public school informed the girl's father that pupils were required to come to school with their heads uncovered. The school's response in this case was to prevent her from entering the classroom and keep her in the library during school hours.

In contrast to previous case law, a recent case in Logroño in 2026 represents a potential change in the approach of Spanish courts regarding the wearing of the Islamic headscarf in schools. In this case, the court ruled that equating the wearing of the hijab with hats, caps, visors, hoods, and berets was "overly simplistic and frivolous", as this would unjustifiably restrict the fundamental right to religious freedom of minor students. The court defined the wearing of the hijab as an expression of this right and stated that there were no reasons of public order that could justify such a restriction.

The principle of the state's ideological neutrality in the Spanish Constitution stems from the recognition of a framework known as "positive secularity" (*laicidad positiva*). This means that, despite the principle of non-confessionalism and the separation of religious and state affairs, an external dimension of religious freedom can be recognized. This allows for the free exercise of activities that constitute manifestations or expressions of the religious phenomenon, free

from coercion by public authorities (Souto Galván 2014: 122). This interpretation does not imply that the state's neutrality can be questioned, but rather that all public institutions, especially educational institutions, must be ideologically neutral, particularly in the field of education.

Literature related to the main issue(s) at stake:

General legal literature on the topic that may not be directly connected with the case:

- Brems, Eva. 2006a. "Above Children's Heads. The Headscarf Controversy in European Schools from the Perspective of Children's Rights". *The International Journal of Children's Rights* 14: 119-136.
- Brems, Eva. 2006b. "Diversity in the Classroom: The Headscarf Controversy in European Schools". *Peace & Change* 31(1): 117-131.
- Briones Martínez, Irene M. 2009. "El uso del velo islámico en Europa. Un conflicto de libertad religiosa y de conciencia. Especial referencia a Francia, Alemania, Reino Unido, España e Italia". *Anuario de Derechos Humanos* 10: 17-82.
- Gallala, Imen. 2006. "The Islamic Headscarf: An Example of Surmountable Conflict between Sharī'a and the Fundamental Principles of Europe". *European Law Journal* 12(5): 593-612.
- Gutiérrez del Moral, María Jesús. 2020. "El velo islámico ¿una causa de discriminación? Especial referencia a su uso en la escuela, en la documentación de identificación y en el ámbito judicial". *Anuario de derecho eclesiástico del Estado* 36: 63-92.
- Howard, Erica. 2022. "Headscarves and the CJEU: Protecting Fundamental Rights and Pandering to Prejudice, the CJEU Does Both". *Maastricht Journal of European and Comparative Law* 29(2). 246-262.
- Souto Galván, Beatriz. 2014. "El debate sobre simbología en la escuela pública". *Laicidad y libertades: escritos jurídicos* 14: 117-149.
- Trotter, Sarah. 2018. "'Living Together', 'Learning Together', and 'Swimming Together': Osmanoglu and Kocabaş v Switzerland (2017) and the

Construction of Collective Life”. *Human Rights Law Review* 18(1): 157–169.

- Ünlü, Nesrin. 2023. “Islamic Headscarves: The Other-Religion Effect and Religious Literacy at the European Court of Human Rights”. *Islam and Christian-Muslim Relations* 34(4): 381–401.

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