

# qualitalk

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Does Islam really belong to Germany, as former President Wulff said at one time and Chancellor Merkel repeated not too long ago? With its head- or full-body covering, it will not be easy for Islam to be part of the community, even though Germany's Federal Constitutional Court in Karlsruhe just has approved that female Muslim teachers may don a headscarf [while at school].

Friedhelm Hufen, a professor for constitutional law, formerly a judge at the Constitutional Court in the State of Rhineland-Palatinate, considers the decision devastating.

What will be the next *Edict of Toleration* out of Karlsruhe, wonders your

*Chris Schuster*

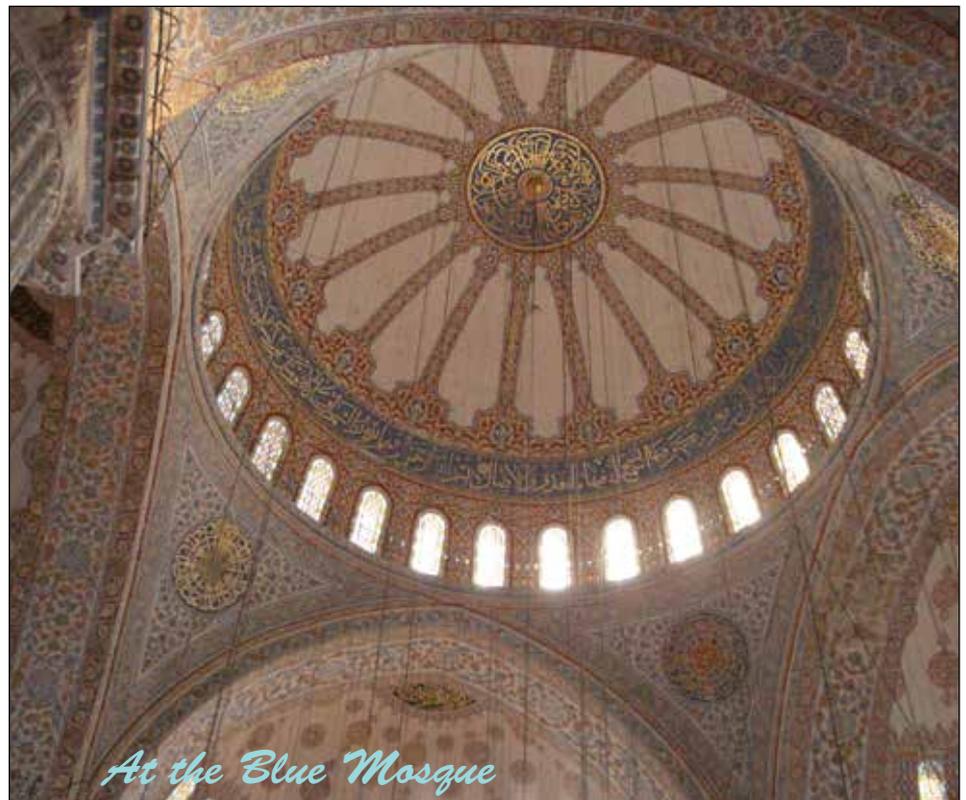
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**Headscarf Prohibition  
lifted**

Muslim women may now  
teach with their headscarf on,  
if ...

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**Prohibition of images** – only ornaments and writings/calligraphy are permitted in Islam. Inside view of the dome of Sultan Ahmet Camii Mosque (built 1609 – 1616) in Istanbul; a verily uplifting impression.

## Headscarf Prohibition is lifted

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Muslim women may now teach with their headscarf on, if...



*Headscarves– yes or no? At Taksim Square, Istanbul*

**O**n Friday, 13 March 2015, Germany's Federal Constitutional Court announced that the general prohibition of headscarves for Muslim women teachers [in State schools] is unconstitutional. Friday, the 13th, a black Friday for integration. The judges added that in individual cases, a prohibition of headscarves can be implemented if due to considerable conflict situations regarding adequate religious conduct the threshold of sufficiently specific danger to the peace at school or to state neutrality has been reached in a substantial amount of cases.

That means that those eight States banishing since 2003 Muslim women's headscarves (hijab) from classrooms will now have to review each case individually!

One has reason to doubt that this judgment from high above will help and further pupils in »Brennpunkt-Schulen« [Focus Schools; i.e., schools

with problems because of their high percentage of pupils with immigrant background].

It may help to study the related press release dated 15 March 2015 issued by the Federal Constitutional Court. Reading it is a demanding task for a layman because of its size alone which tends to obscure the core arguments. From a legal viewpoint, verbatim quotes of the complaint brought forward by the two female teachers – both residents of the State of Nord Rhine-Westphalia – because of their dismissal due to their insistence on continuing to wear headscarves, are certainly necessary; but the resulting volume of the document does not make for easy comprehension.

Allow me therefore to just quote the relevant parts of the Order entitled: **Ein pauschales Kopftuchverbot für Lehrkräfte in öffentlichen Schulen ist mit der Verfassung nicht vereinbar** (A General Ban on Headscarves for Teachers At State

Schools Is Not Compatible With the Constitution), dated 27 January 2015:

*(...) the First Senate of the Federal Constitutional Court has decided that a general prohibition, incumbent on teachers in state schools, of expressing religious beliefs by outer appearance, is not compatible with their freedom of faith and their freedom to profess a belief (Art. 4 secs. 1 and 2 of the Basic Law, Grundgesetz – GG). Therefore, § 57 sec. 4 sentences 1 and 2 of the North Rhine-Westphalia Education Act (Schulgesetz Nordrhein-Westfalen - SchulG NW) have to be interpreted restrictively, in a way that is in conformity with the Constitution: to justify the prohibition, it is not sufficient that the expression of religious beliefs by outer appearance or conduct constitutes an abstract danger, it has to constitute a sufficiently specific danger of impairing the peace at school or the state's duty of neutrality. § 57 sec. 4 sentence 3 of the Education Act, which is designed as a privilege of Christian-occidental educational and cultural values or traditions, violates the prohibition of discrimination on religious grounds (Art. 3 sec. 3 sentence 1 and Art. 33 sec. 3 GG) and thus is void. The decisions of the labour courts in the initial proceedings do not meet constitutional requirements; the Senate has reversed them and has remanded the cases to the Higher Labour Courts (Landesarbeitsgerichte)*

*(...) Wearing clothes with a religious connotation does not per se constitute an interference with the pupils' negative freedom of faith and freedom to profess a belief (Art. 4 secs. 1 and 2 GG). As long as members of the teaching and educational staff do not verbally promote their position or their faith and do not try to influence the pupils apart from their outer appearance, pupils are only confronted with the positive freedom of*

*faith as exercised by educational staff, which, in addition, is relativised and compensated by the conduct of other members of staff with adherence to different faiths or ideologies. In this*



**Hijab out of satin,** offered by an on-line store for Muslims. Ears and neck are covered.

*respect, the religious-pluralist society is mirrored in interdenominational schools.*

The Senate's decision was reached by a majority of 6 votes to 2: four male judges and two female judges assented. Judge Wilhelm Schluckebier as well as Judge Monika Hermanns dissented. Judge Hermanns was drafted per lot out of the Second Chamber since the Vice President of the First Chamber, Ferdinand Kirchhof had recused himself. The recusal was at the request of the plaintiffs. Reason was that in 2003, Judge Kirchhof drafted a law for the State of Baden-Württemberg in the matter of headscarves wherein Christian-Occidental values were privileged. His considerations also influenced the School Law of the State of North Rhine-Westphalia, the application of which led to the dismissal of the two educators. Considering that aspect, one can be

thankful that Judge Hermanns who replaced Judge Kirchhof was against admitting the headscarf for religious reasons. The two dissenting judges reasoned thusly, among other things:



**Neva Style Multicolor Hijab**  
Just the headscarf won't do:  
to be assured that all hair on  
the head is covered, a tight  
fitting shawl is added.

*(...) Furthermore, at school, the members of educational staff interacting with the pupils serve as a role model to them. The educational staff members' conduct, including their adherence to certain religious rules of clothing, is perceived by persons who, due to their youth, have not yet fully established their beliefs. A truly open discussion on adhering to a religious dress code in cases where members of educational staff are individually concerned in the specific context of the relationship of dependency established at schools is only possible to a limited extent, if at all. Eventually, clothing with a religious connotation worn by members of the educational staff may trigger or further conflicts among the pupils or the parents.*

*(...) Basing one's decision on the fact that the state only tolerates the individual exercise of the educational*

*staff's fundamental rights not directly attributable to the state and that pupils merely have to look at certain clothing of educational staff that is obviously based on their individual decision, falls short of the constitutionally necessary standard. Such a simplified differentiation between symbols attributable to the state, on the one hand, and clothing with a religious connotation worn by educational staff, on the other hand, negates the influence that educational staff exercising their fundamental rights might exert on pupils.*

Less than five percent of Germany's population are Muslims; a total of two million (split about evenly between men and women) have German citizenship and can therefore legally apply at one of the State schools for an educator's position, either as a civil servant or as an employee. But in reality, one can safely assume that only a fraction of Muslim women will become educators, and of those, again only a fraction will want to wear a headscarf while teaching.

One could argue that the German majority can put up with a number of women wearing headscarves. However, one wonders if the word HEADSCARF<sup>\*)</sup> might not be misleading: first, it is a prison for one's hair, neck and ears. Second, it could be interpreted as a sign of »holier-than-thou« attitude in class as well as while being among colleagues it could be an expression of: »It is I who is the strictly observant believer, I am halal, and you, are the sinners, the infidels, you are haram.« □

\*) Have you ever thought how easily school girls may hide headphone under the scarf e.g. to listen to something more exciting or during exams and get the solution?

Barely three days old, this judgment, the prohibition of prohibiting headscarves, gave ammunition to a round table conference entitled **»Open Visor In A Open Society«**. It came at the behest of the Konrad Adenauer Foundation, within a series of discussions entitled »How Can Integration Succeed in Germany?« As a draw, the Foundation was able to enlist as one of its panel members Ms Alice Schwarzer, a prominent German feminist and publisher of the feminist magazine EMMA. Due to the many requests for registration, the conference's venue had to be rescheduled to larger facilities at the congress center »Frankfurter Hof« in Mayence. And even close to the beginning of the conference, there was still a long line of people wanting to get in.

As expected, Ms Schwarzer supported the opinion of Ms Julia Klöckner, Chairwoman of the CDU in Rhineland-Palatinate who vehemently opposes full-body covering; at the CDU Convention in Cologne, in December 2014, she had already supported the proposal of the CDU Frankfurt District Chapter to forbid face veils; women with full-body covering such as burqa or niqab thereby segregate themselves from the rest of the population and do not show any desire to integrate themselves. Such attitude limits women's freedom and consequently their equal rights.

At that Convention, Mr Volker Bouffier (CDU), Prime Minister of the State of Hesse, objected to conduct a vote on prohibition of burqas. It had seemed likely that a majority of delegates to the Convention in Cologne might have voted for it. But Mr he didn't think a such a vote

useful. As a result, the matter was deferred to a committee of experts. Mr Thomas de Maizière, Federal Minister of the Interior, agreed to rather take this step, and remarked: »We cannot prohibit everything we believe is wrong.« Ms Schwarzer and Ms Klöckner, however, want to continue their fight against gender apartheid. Today's acceptance of the headscarf will lead to burqa and niqab tomorrow, and worldwide suppression of women thereafter.

Ms Lamy Kaddor, a scholar of Islam, doesn't want to carry the idea to that extreme. She said that only 30 percent of muslim women don the



hijab-type headscarf and because of that they shouldn't experience any discrimination. The hijab served in the past as a sign of a woman not being a slave; female slaves were prohibited to cover their head. Ms Kaddor did however object to full-body covering; it is not based on Islam but on ethnic customs. As an example she remarked that while on pilgrimage in Mecca, women cannot cover their face with a veil or scarf, and they pray not separated from but alongside with men. Another point: the few women who use full-body covering in Germany number maybe 80 to 100,

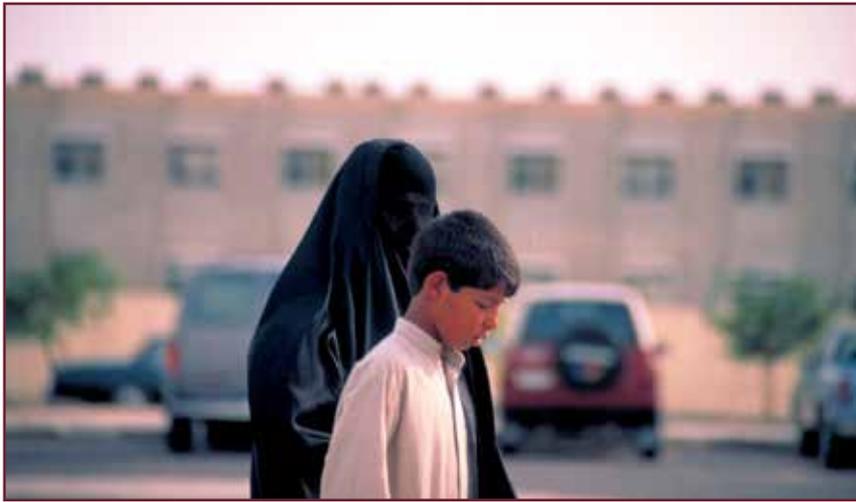
## Open Visor in a Closed Societyt

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### Full-Body Covering-Freedom Behind Bars

#### **Class Photo**

»... and that one, that's me!«



**Young man** with his mother  
– or maybe his aunt or ...?

and are for the most part German women who converted to Islam.

So, it may not come as a surprise that the only woman with a hijab at the round table, indeed in the whole hall, was Frankfurt native Khola Maryam Hübsch, the daughter of a German convert, Paul-Gerhard Hübsch, born in Chemnitz in 1946 who at conversion adopted the name Hadayatullah. He was active in the Ahmadiyya Reformed Islamic Congregation and had started inter-religious dialogues

already in the 1970s. He also was a poet and a well-regarded journalist, and president of German Authors' Association for seven years. In 2011 he died in Frankfurt. Ms Hübsch is also a member of the same Congregation; her mother hails from Punjab Province, India. Ms Hübsch said she is not for burqa or hijab but against their prohibition; prohibitions implemented in France or Belgium showed little success: at attempts by peace officers to remove the veil from women's faces, it often came to riots, and police officers had to withdraw. Prohibition of burqa in Germany are »not compatible with personal rights and religious freedom guaranteed under Germany's constitution«, said Ms Hübsch. But she suggested that a discussion about burqa may be useful for political reason: »Look here, we are doing something about terrorism.« From the audience a voice: »Also, we don't want to scare away the rich niqab wearing women from the Middle East who come here to spend their money, right?« □

## Impressum



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Photo by Maurice de Chlourigon

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