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SPAIN: Supreme Court overturns ban on full-face veils; AI concerns remain about restrictions on headscarves in schools

Two recent judgments from the Spanish Supreme Court and the High Court of Justice of Madrid have revived the debate on religious and cultural symbols and dress in the country.

On 28 February 2013 the Spanish Supreme Court found that the ban on full face veils in municipal buildings and facilities passed by the municipality of Lleida in 2010 to protect public order and women's rights violated the right to freedom of religion.

Amnesty International welcomes the judgment of the Supreme Court as the ban on full face veils in Lleida violates the rights to freedom of expression and to freedom of religion or belief as outlined in the report 'Choice and Prejudice: discrimination against Muslims in Europe' published by the organization last year.

The Supreme Court highlighted that restrictions on human rights, including the right to freedom of religion can only be lawful if they serve a legitimate aim and are necessary in a democratic society. They should also be prescribed by law and should be in line with the Spanish Constitution and Spain's international human rights obligations. Although public order is a legitimate aim to restrict a fundamental right, the municipal authorities have not succeeded in proving that a ban on full face veils was necessary to protect it. Moreover the Court rejected the argument according to which full women wearing full face veils posed a threat to social peace. According to the Court, the disturbance of peace is, in this instance, simply a sociological consideration that cannot in itself justify the restriction of the right to freedom of religion.

Moreover, the Court argued that the most crucial aspect to be taken into account is whether a woman freely chooses to wear a full face veil. In this respect, authorities have failed to demonstrate that a ban is effective for protecting the right of women to be free from all forms of discrimination and violence. On the contrary, the ban may have the effect of confining women wearing such a dress to the home.

The mayor of Lleida, Angel Ros, publicly opposed this judgment and announced the intention to appeal to the Constitutional Court against it. On 4 April 2013 Amnesty International wrote to Angel Ros to reiterate its concerns on the ban.

Three weeks before the Supreme Court's decision, on 8 February 2013, in a decision made public last week the High Court of Justice of Madrid ruled inadmissible on procedural grounds an appeal filed by the family of Najwa, who was forbidden to wear a headscarf in the Institute José Cela, a public secondary school in Pozuelo de Alarcon (Madrid), and had to enrol in another school. In January 2012, a Court of First Instance in Madrid had upheld the decision of the Institute to exclude Najwa from classes on the basis of its rule prohibiting the wearing of headcoverings or any form of dress covering the head. The court noted that the school's rule was applicable to everyone, and was aimed at introducing common dress code rules to ensure social harmony within the school and to avoid distractions to pupils, and as such was a measure necessary to protect public order and the rights of others.

Amnesty International expressed its disappointment with that ruling, reiterating that wearing religious and cultural symbols and dress is a component of the right to freedom of expression and the right to manifest religion or belief. Under international law, restrictions on this right are permissible only where three conditions are fulfilled: the restriction must be provided by law; it must be for one of the aims recognized as legitimate under international law -- that is, to protect public safety, order, health, or morals or the rights and freedoms of others; and it must be demonstrably necessary and proportionate to the achievement of that aim.

Amnesty International reiterates its calls on the Spanish Ministry of Education and the Minister of Employment and Education of the Madrid Community to ensure that dress restrictions which impact on the exercise of on the rights to freedom of expression and religion or belief imposed by the authorities of individual schools authorities are consistent with international human rights law. Notwithstanding the principle of autonomy of each educational institute, both the State and the Madrid Community have the responsibility to ensure that the principle of non-discrimination in education is respected.

Background

General bans on full face veils have been introduced in France and Belgium at the national level and in Spain and other European countries including Italy at the local level.

According to the information available to Amnesty International in April 2012, 18 municipalities in Spain (15 Catalonia and 3 in other region and autonomous communities) had initiated a process aimed at prohibiting the wearing of full face veil in municipal buildings and venues.

On 8 October 2010, the municipality of Lleida approved an amendment to the Municipal Regulation on Civic Responsibility and Living Together prohibiting the wearing of all forms of dress that could hamper identification when accessing public buildings and facilities. Instructions clarifying the implementation of the prohibition, and approved the same day, include a list of spaces where the prohibition could be applied. The amendment entered into force on 9 December 2010. Contravening the prohibition could lead to a fine of up to 600 euros

The Watani Association for Freedom and Justice, a local Muslim group, challenged the ban before the Supreme Tribunal of Justice of Catalonia. In January 2011, the Tribunal temporarily suspended the prohibition as an interim measure; it acknowledged that the suspension of the ban would not be a challenge to security or public order. On 7 June 2011 the Tribunal found that the municipality was competent to regulate the issue and that the restriction was justified. The judgment stated: "In our Western culture covering the face in daily activities disturbs peace because of the hiding of a significant identification element which is the face.

In Spain there are no general bans on religious and cultural symbols and dress in education. However, in recent years several cases of girls who have been denied the possibility to wear the headscarf in schools have been reported. Some of them were resolved through mediation between school authorities and the families of the pupils concerned. Others have finished in disputes eventually resulting in pupils be enrolled in other schools where the wearing of religious and cultural symbols and dress was not restricted.

In the context of schools there are a number of complex elements to be taken into account in order to assess whether a restriction on the wearing of religious and cultural symbols and dress is permissible. The starting point should be a general presumption of the students' right to wear religious symbols at school. While in some contexts, restrictions may be justifiable to protect students from pressure exercised by schoolmates or their community, the goal must always be to equally protect the positive and negative aspects of freedom of religion or belief – that is, the freedom to manifest one's belief and the freedom not to be exposed to pressure to perform religious activities. Moreover, any such restriction should be based on demonstrable facts and not on mere speculation or presumption, and the requirement of necessity and proportionality requires also consideration of other measures which could achieve the aim sought.

In the case of the rule of the Institute José Cela, the court's statement that the regulation was generally applicable failed to take account of its differential impact on students who actively choose to wear a headcovering as an expression of their religious or cultural identity, in particular Muslim girls, who are likely to be disproportionately impacted by this restriction. As such, its effect was to discriminate against Muslim girls in the exercise of their right to freedom of expression [and religion or belief].

Moreover, as stipulated in the Convention on the Rights of the Child, the best interest of the child must be a primary consideration in all actions concerning children. AI remains concerned whether the best interest of Najwa were respected in this case, given that, because of her exercise of her rights to freedom of expression [and religion or belief] she was initially isolated from her fellow students for several weeks until she was enrolled in another school, and as a result suffered a considerable psychological distress, requiring counselling.

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