

Principle of Religious Neutrality in Public Schools: From the “Kopftuch-Urteil” Decision of the Federal Constitutional Court of Germany

Yue-Dian Hsu / Jing-Fan Chou

Abstract

In its “Kopftuch-Urteil” decision, the Federal Constitutional Court of Germany confronted the issue of whether the principle of religion neutral will be violated when a Muslim teacher of a public school wears a head scarf (or any other religious clothes). As entities exercising governmental authorities, public schools and their teachers are subject to the principle of religion neutral. However, there is a distinction to be drawn between public schools and their teachers in fulfilling their duties. The formers are required to maintain a diversified learning environment which in principle is open and tolerable to all kinds of religious messages. The latter are not allowed to discriminate against or in favor of any religion in class. Besides, a teacher in a public school is a public functionary, though nevertheless a national as well. On one hand, he or she as a national is under the constitutional guarantees of fundamental rights. On the other hand, he or she as a public functionary is subject to limitations of his or her fundamental rights, including the principle of religion neutral. However, such limitations shall be imposed upon public

* Professor in the Department of Law and in the Institute of Law in Science and Technology, National Cheng-Kung University, Tainan, Taiwan; Ph. Dr. jur Tübingen University, Germany.

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school teachers in accordance with the nature of their public functionary roles and be subject to the principle of proportionality. Take the above mentioned case for example. When different religious and non-religious clothes are all allowed at the same time in a school, this school will be deemed as an open, diversified and religion neutral environment and there is no issue of violation of the principle of religion neutral. Moreover, as long as a public school teacher provides students neutral religious information and neutrally handles religious problems among students, there is no need to prohibit him or her from wearing religious clothes as it may be in contravention to his or her fundamental rights and the principle of proportionality. The constitutional court decision of "Kopftuch-Urteil" illustrated a conflict of fundamental rights when considering the principle of religion neutral and the passive religious freedom of the students and their parents. This conflict can only be solved by means of considering all the conflicting fundamental rights of everyone in this situation and under the principle of proportionality. An optimal solution here will never be reached when the fundamental rights of an interested party are limited arbitrarily in order to protect other parties' fundamental rights. This will lead to the violation of the principle of proportionality and the constitution.

Keywords: freedom of religion, principle of religious neutrality, principle of religious charity, "Kopftuch-Urteil", public schools, religious messages, separate of church and state, limitations of fundamental rights, conflicts of fundamental rights, principle of proportionality