

Record Card

File number	173/2013/DIS
Area of law	Discrimination – education
Subject	termination of studies
Type of finding	Report of discrimination found – Section 21b
Result of inquiry	Discrimination found
Relevant Czech legislation	120/1976 Coll., Article 18 209/1992 Coll., Article 9 2/1993 Coll., Art. 2 (1), Art. 15 (1), Art. 16 (1), Art. 16 (4) 500/2004 Coll., Section 175 (1), Section 175 (7) 561/2004 Coll., Section 2 (1)(a), Section 2 (2), Section 20 (2), Section 68 (1) 198/2009 Coll., Section 1 (1)(i), Section 3 (1), Section 7 306/2012 Coll.
Relevant EU legislation	
Date of issue	02 July 2014
Date of filing	26 November 2013

Headnote

(I) Czech legislation does not contain any statutory limitation of religious symbols in education and in the public sphere in general. This matter is generally regulated by the Anti-Discrimination Act which in Section 7 permits different treatment on the grounds of religious belief and faith provided that it is justified by a legitimate aim and the means of achieving it are appropriate and necessary. Where the condition of a legitimate objective is not satisfied, the headteacher of a school cannot put limits on the use of religious symbols in the school regulations and nor can the headteacher decide whether or not a religious symbol can be permitted as the headteacher lacks any statutory authorisation to do so.

(II) The provision of the school regulations which bans the wearing of any headdress including the Muslim headscarf (hijab) during theoretical education at a secondary medical school constitutes indirect discrimination on grounds of religion (Section 3 (1) of the Anti-Discrimination Act). Such a measure cannot be justified by the need to maintain good manners because observance of social norms is not a legitimate objective in the sense of Art. 9 (2) of the Convention and Art. 16 (4) of the Charter.

(III) A general ban on headdress is also not adequate and necessary in case of physical education and training in vocational skills, where the protection of the students' safety and health is a legitimate goal, because an alternative solution can be adopted, e.g. in the form of Muslim headscarves intended for sports.

(IV) If personal protective equipment must be used in a specific task in compliance with Decree of the Ministry of Health No. 306/2012 Coll., usually in connection with infectious diseases found in in-patient wards, it is necessary for the employees to cover their heads with a cap. Therefore, the wearing of a Muslim headscarf may be limited in those cases as personal protective equipment is an adequate and necessary means of protection of health in those cases.

Note: The headnote is not necessarily included in the Defender's opinion.

Document:

Brno, 2 July 2014

File No.: 173/2013/DIS/EN

Report on inquiry concerning ban on wearing headdress at a secondary medical school

Ms A. A. J. (hereinafter the “Complainant”) is an asylum seeker originally from Somalia, who commenced studies at the Secondary Medical School with its seat in xxxx (hereinafter the “School” or “Secondary Medical School”) to become a nurse. However, the school regulations prohibited students from wearing any kind of headdress. The Complainant withdrew from the studies because she is a Muslim and wears the so-called hijab.

A – Subject of inquiry

The Complainant approached the Defender on 26 November 2013 through her legal counsel, Ms. M. C., herself a member of a civic association. In her complaint, she stated that on 2 September 2013, the school headteacher, Ms I. K., Ph.D., forced her to sign a letter of withdrawal from studies pursuant to Section 68 (1) of the Schools Act[1] because she was wearing hijab, i.e. Muslim headscarf covering the hair, neck and breasts. The Complainant believes the aforementioned conduct constituted a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights and Freedoms[2] (hereinafter the “Charter”), the Anti-Discrimination Act[3] and the Schools Act. The Complainant also claimed a violation of domestic and international law with respect to the generally worded provision of the school regulations that served as the basis for the headteacher’s actions. At the time of the alleged discriminatory conduct, the exact wording of the relevant provision of the school regulations was as follows: “By voluntarily signing up for studies at this school, the student assumes the responsibility (...) to observe the rules of social conduct and good manners; the student shall not wear any headdress while at school except when a medical condition requires so, subject to a special permission by the school management”. The Complainant stated that this general wording of the rule was indirectly discriminatory; it placed her at a disadvantage in comparison with the other students because the wearing of the Muslim headscarf was a manifestation of her religious belief in relation to other people.

The Complainant subsequently lodged a complaint with the Prague branch of the Czech Schools Inspectorate (hereinafter the “Inspectorate”), which found her complaint unjustified in terms of violation of the principle of equal treatment.

The final report represents a comprehensive evaluation of the case, i.e. assessment of potential discrimination in the access to education on the grounds of the Complainant’s religion as well as the procedure of the Czech Schools Inspectorate.

B – Findings of fact

B.1 Information provided by the Complainant

B.1.1 Contents of the complaint

The Complainant, originally from Somalia, together with another foreign national, a citizen of Afghanistan, both Muslims wearing hijabs, sought to study at the aforementioned school in July 2013. Both future students were being assisted by M., a civic association whose employee, Ms B. S., participated in arranging the conditions for studying at the school. The Complainant attended all the meetings wearing the Muslim headscarf, thus demonstrating her religious beliefs. The headteacher knew the fact that the Complainant was wearing hijab and discussed wearing this headdress during practical lessons in hospital; however, she made no mention about wearing it at school during ordinary lessons. The Complainant agreed with the conditions as they were presented.

Both students went to school on 2 September 2013. Subsequently, the headteacher summoned them to the headteacher's office and asked them to remove the Muslim headscarves. The Complainant offered an alternative solution, where she would only cover her hair, but not the neck. The headteacher refused this solution, however, and gave the Complainant a form letter of withdrawal from studies to be filled in by the Complainant; the Complainant stated the wearing of the headdress as the reason for withdrawal. The other student withdrew from studies two months later, because she felt very uncomfortable without her headscarf.

The Complainant further noted that the Muslim headscarf is a part of the manifestation of her religious beliefs. She saw wearing the headscarf as an Islamic religious rule. She did not regard the headscarf as a symbol of unequal status of women in comparison to men, nor was she facing any compulsion to wear it.

The school justified the request to remove the headscarf by the aforementioned provision of the school regulations prohibiting wearing any kind of headdress inside the school's premises. The Complainant objects that such provision was indirectly discriminatory and could significantly infringe on the freedom of religion of certain groups of people, e.g. Muslim women wearing headscarf, Jews wearing yarmulke or Sikhs wearing turban.

In connection with these events, the Complainant approached a civic association. On 3 September 2013, a lawyer from this association, Ms K. H., sent a letter to the headteacher. In the letter, she informed the headteacher that the provision of the school regulations prohibiting all kinds of headdress was discriminatory *vis-à-vis* the Complainant, as she was not behaving indecently, but was required to wear a headscarf due to her religion. Ms K. H. expressed understanding for the fact that the whole incident might have been a misunderstanding and invited the headteacher to remedy the situation.

The headteacher responded through her letter of 13 September 2013 stating: "The former student of the Secondary Medical School xxxx, Ms A. J. A. (from Somalia), did not have to sign the letter of withdrawal from studies in connection with her refusal to

remove headdress. Her decision was completely free.” In the letter, the headteacher further states that she informed both potential students of the school regulations’ requirements concerning headdress during their meeting in early July 2013. According to the headteacher, both potential students agreed with the requirements and told her they were prepared not to be wearing headscarf. She indicated the school’s secretary, Ms Z. K., as a witness to the meeting. Another meeting took place on 4 July 2013 when both students accepted the decision on their admission for studies. The headteacher stressed in the letter that they came to the meeting not wearing headdress; they had their headscarves on their shoulders and asked if it was allowed to wear them in that fashion. The headteacher alongside the deputy headteacher, Ms Z. P., told them that this was alright. Concerning the claimed discriminatory effect of the school regulations, the headteacher stated the following: “It is correct that the Czech laws do not prohibit wearing headscarf. However, wearing the headscarf at school is contradictory to good manners, which informed our decisions in the matter. We are not preventing anyone from professing their faith. We respect Islam as a religion. However, it is necessary for all students of our school, whether coming from the Czech Republic, EU countries or third countries, to respect Czech legal regulations, customs, ethical and moral standards as well as other religions.”

In her letter, the headteacher described the events of 2 September 2013 transpiring after the Complainant and the other student visited her in her office, both wearing headscarf, as follows: “I asked why they were not adhering to our mutual agreement. Ms A. J. A. responded that she would not study at the school and that she wished to terminate the studies on her own request. She filled in the application for withdrawal from studies. I acknowledged her decision. I was surprised by her immediate reaction to my single question.” In the conclusion of her letter, the headteacher noted that she considered the Complainant’s conduct very unfair and saw it as a coercive and purpose-driven step to make herself the centre of attention or to secure further benefits.

The Complainant sent the written correspondence between the headteacher and the civic association’s lawyer to the Defender attached to her complaint. The above-quoted statement by the headteacher is available on the school’s website in similar wording.

B.1.2 Meeting at the registered office of the civic association

In order to clarify the discrepancies between the statements of the Complainant and the school’s representatives, the head of the legal department Mgr. Petra Zdražilová, the head of the equal treatment department Mgr. Petr Polák and I met on 11 March 2014 with the Complainant and her legal counsel. The meeting was held in English.

I found out that the Complainant was granted asylum in the Czech Republic by the Ministry of the Interior as of 13 December 2011. The Complainant faced difficult situation in her native Somalia. She has no parents and her relatives in Somalia wanted to marry her off to a man she rejected. She run away because she was at risk of being sentenced to death. In the Czech Republic, she uses the residence permit pursuant to Section 12 (1)(b) of Act No. 325/1999 Coll., on asylum, as amended, the so-called “asylum card” that she always carries.

The Complainant told me she found out about the restriction concerning headdress on 4 July 2013. She asked about the reasons as before she had had no problems with the headscarf, e.g. at the elementary school M. where she attended the basic education course. The meeting in question was not attended by an interpreter, therefore some degree of misunderstanding between the Complainant and the school is certainly possible.

The M. elementary school's headteacher confirmed the Complainant attended the school wearing her headscarf and added she was not participating in physical education classes. The school provided her with alternative solutions in the form of preparing a presentation on the Olympic movement history, observation of the girls' exercise, etc. The M. elementary school was basing its approach on the idea that its mission was to educate and properly form children, not only based on multicultural tolerance but also the Czech cultural traditions, principles of good social manners, personal hygiene, healthy lifestyle and personal security of children. For this reason, the school differentiated between children in hoodies or baseball caps (who would not be allowed to wear such headdress in class) and the Complainant, who was not asked to remove the headscarf.

According to the Complainant, it was not true that she and the other student came to the meeting with the Secondary Medical School's headteacher held in July 2013 not wearing a headscarf. Both had their headscarves and the headteacher as well as her deputy allegedly wished to see how headscarf is tied and worn. As the Complainant was in the company of women, she removed the headscarf and showed them various options of how to wear it. During their conversation, they did not resolve the matter of whether or not the wearing of headscarf was permitted during standard and practical classes. The Complainant stated that had she known it was not allowed, she would not have enrolled. However, the meeting with the school representatives was friendly so she assumed there would be no problem. Concerning the practice in health facilities, she was prepared to accept compromise solutions as there are various options of how to wear the headscarf.

As concerns the withdrawal from studies at the Secondary Medical School, the Complainant alleged that it was the headteacher who gave her the form. After coming to the headteacher's office on 2 September 2013, the headteacher asked the two students why they were wearing headscarves and asked them to remove the headdress. The Complainant refused and signed the form. At the Labour Office, the Complainant was told that she had to indicate the reason why she had withdrawn from studies. The Complainant thus had to go back to the school and fill in the reason.

The meeting with the Complainant further revealed that after terminating her studies at the Secondary Medical School, she successfully completed a re-training course to become a social services worker at a Catholic secondary school. The Complainant also underwent vocational training in two retirement homes. In both the theoretical classes at the Catholic secondary school and the practice in the aforementioned retirement homes, the Complainant was allowed to wear the Muslim headscarf.

I confirmed the Complainant's statement directly at the aforementioned institutions. She had no problems wearing the headscarf also during her vocational training, both in terms of the attitudes of the employees of the retirement homes and their clients.

B.2 The headteacher's statement

B.2.1 The headteacher's response to the Defender's request

As part of the inquiry, the head of the equal treatment department asked the headteacher to provide a statement on the case. The headteacher clarified the events transpiring on the first school day (2 September 2013); she instructed the school's secretary to use the school's public address system to call only the Complainant to come to the headteacher's office, who was to submit a proof of residence by 7:45 a.m. Even though the headteacher only summoned the Complainant, both Muslim students came to the office wearing headscarves. The headteacher allegedly expressed her surprise at the fact the students were wearing headaddress, while she was not asking about their religion as she considered this to be a personal matter. She only informed them that the school regulations required them to remove the headaddress while staying in the school's premises. She did not seek a compromise solution as the events transpired so quickly that she was unable to find any, even though there was no lack of good will. The headteacher rejected the Complainant's claim that she offered her an alternative in the form of covering only her hair, and added that the school regulations only permitted exemptions on health grounds.

In her response, the headteacher further noted that the goal of the prohibition of wearing headaddress was to "maintain safety and health protection in teaching general (e.g. physical education) as well as specialised subjects; wearing headaddress prevents vocational training and compliance with public-health regulations in health and social facilities. Observe social norms and control non-verbal communication with the patients." The headteacher considered a general ban on headaddress as a measure appropriate and necessary to achieve these objectives. She was not asked to grant an exemption from the rule on the grounds of freedom to manifest religious belief. The headteacher also attached, aside from two minutes of meeting as part of an investigation by the Czech Schools Inspectorate, a students' petition expressing support for the headteacher in the matter of withdrawal of the two foreign students from studies and the related letters from the Deputy Head of the Office of the President, RNDr. Petr Mužák, and the Mayor of Prague, RNDr. Tomáš Hudeček, Ph.D., who both supported the headteacher's procedure.

B.2.2 Meeting at the Secondary Medical School

As it is my principle to always hear the other side, I met the school's representatives on the same day when I met the Complainant and her legal counsel. Persons attending the meeting on behalf of the school included the headteacher Ms I. K., Ph.D., the deputy headteacher Ms Z. P., and further I. Š., D. K. and K. H.

The headteacher told me that both girls first came to the school by the end of June 2013 accompanied by a woman helping with interpreting. The school's

representatives were not aware that the woman was an employee of the M. civic association. Both girls were wearing the Muslim headscarves.

They visited the school for the second time on 4 July 2013, this time unaccompanied. They discussed the conditions of studies, while they did not mention any areas where their cultural preferences could come into conflict with the subject of the studies. According to the headteacher, the girls were not wearing headscarves, which she supported by saying she saw the Complainant's hair. Both girls said that they do not have to wear the headscarf and that having it with them, e.g. in a handbag, was enough. The headteacher further noted that they agreed with the Complainant that on the first school day, she would come to the headteacher's office to submit the necessary proofs of residence.

On the first school day, the school's secretary summoned the Complainant via the school's PA system. The headteacher stated that she wanted the Complainant to submit the necessary documents. Both girls came to the headteacher's office, wearing hijabs. The headteacher asked the Complainant why she had broken her promise and failed to submit the necessary documents. The Complainant allegedly sharply retorted that she would not attend the school and left the office. The headteacher said she had no time to ask about the reasons behind her decisions. According to the headteacher, it was the Complainant who brought the form letter of withdrawal from studies to the office and asked the headteacher about the reason for withdrawal from studies she was supposed to fill in. The headteacher told her that it was her decision and she could fill in whatever she wanted. The headteacher stated she did not know where the Complainant got the form from. She believed she might have downloaded it from the Internet.

To my question concerning the reason why the school regulations prohibited the wearing of headdress, I. Š. replied that it served to prevent boys from wearing hoodies and baseball caps in classes. The headteacher noted that they had never dealt with the matter of whether or not headscarves would be allowed. Even though there were students of many backgrounds attending the school, this matter had never come up. The headteacher further noted that it was necessary to observe the principles of safety and protection of health of the students at school and during practical lessons; e.g. students in the field of Orthotic-Prosthetic Technician could not wear long-sleeved shirts.

The headteacher did not exclude future amendment to the school regulations, but said this would have to be approved by the school's board. She noted that this would require resolving questions associated e.g. with wearing headdress during physical education and during practical lessons where students handle instruments and patients; public health and hygiene concerns would have to be taken into consideration as well.

B.3 Investigation by the Czech Schools Inspectorate

Given the fact that the Complainant also approached the Inspectorate, the head of the equal treatment department contacted its director and asked for his opinion on the case. The Inspectorate first responded on 24 January 2014 through the school inspector Ms D. V. who sent me a copy of the file with the explanation that the

Inspectorate's investigation was still ongoing and the file only contained the statements and documents provided by the school. She stated that the Complainant's statements would be important for the overall assessment of the complaint as they could both confirm or refute the headteacher's assertions.

Subsequently, the inspector sent me the final investigation report of 17 February 2014. The investigation report Ref. No. ČŠIA-84/14-A was based on the facts as described by the school's representatives. The Inspectorate assessed the complaint to be unfounded in the sense of violation of the principle of equal treatment, but found evidence of a breach of Section 21 (1)(f) of the Schools Act[4]. It stated as follows: "The investigation demonstrated that, due to the timeline of events when the Complainant terminated her studies on the same date the studies commenced, there was no room for the headteacher to address any potential application for an exemption. The headteacher was thus completely unable to apply the principle of equal treatment as there was no time to find a solution." The Inspectorate came to the conclusion that the relevant provision of the school regulations did not clearly indicate that the Complainant could apply for an exemption from the rule, and the headteacher erred in that she provided insufficient information, i.e. did not mention there was the option to apply for the exemption.

It came to my attention that on 15 May 2014, the Complainant filed a complaint against the Inspectorate's procedure pursuant to Section 175 of Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended. The director of the Inspectorate sent to the Complainant's legal counsel the resolution of the complaint of 13 June 2014, where he supported the conclusions of the inspection team and assessed the complaint as unfounded. The Complainant did not agree with the assessment and filed a complaint with the Head Office of the Czech Schools Inspectorate pursuant to Section 175 (7) of the Code of Administrative Procedure.

B.4 Amendment to the school regulations

I found on the official website of the school that on 8 April 2014, the headteacher received instruction from the department of education, youth and sports of the Prague City Hall adopted on the basis of the Czech Schools Inspectorate's investigation of the complaint. The founding authority ordered the headteacher to adopt measures preventing the re-occurrence of the found error.

On 12 May 2014, the headteacher convened the school board to discuss amendment to the school regulations. The amended wording of the relevant provision of the school regulations available on the school's website is as follows: "By voluntarily signing up for studies at this school, the student assumes the responsibility (...) to observe the rules of social conduct and good manners and adjust his or her clothes to said rules. Not wear any headdress at school. Students are required to change shoes if the outside weather is bad. Exemptions from these rules, especially in case of an illness, are granted by the headteacher on the student's request. In resolving the request for an exemption, attention shall be paid especially to the safety and protection of the students' health and their protection against socially-pathological phenomena and manifestations of discrimination, hostility or violence in accordance with Section 30 (1)(c) of the Schools Act and the Methodological Guideline of the Ministry of Education, Ref. No.: 37 014/2005-25 of 22 December 2005, on ensuring

safety and protection of children, pupils and students in schools and educational facilities.”

B.5 Interview with the social worker of M., o. s. (civic association)

The first meeting between the potential students and the school in June 2013 was attended by a social worker of M., civic association, Ms B. S. On 2 May 2014, I met with Ms S. to obtain details on the facts of the case.

According to her testimony, it was the deputy headteacher who conducted the first meeting with the Complainant and the other potential student. Ms S. said that the school regulations were not discussed at all during the first meeting. Headdress was mentioned only in relation to practical lessons. Ms S. regarded the manner in which the deputy headteacher discussed this topic with the girls as unpleasant. For example, she asked them whether they could imagine that when they are attending practical lessons, they would have to be wearing different clothes and remove the headscarf. The girls said that they understood they would have to remove their headscarves during practical lessons at a hospital. In the two years she had been irregularly working with the Complainant, there were no problems with wearing the headscarf.

When asked by me, she stated she did not remember any request on the part of the school's administration for the Complainant to submit any particular documents concerning the legality of her stay in the Czech Republic.

B.6 Inconsistencies in the facts of the case

The representatives of the school and the Complainant each describe the facts of the case differently in certain aspects. The inconsistencies include particularly the second meeting of 4 July 2013 and the events of the first school day, i.e. 2 September 2013. The provided documents and testimonies are sufficient, however, for me to consider certain facts proven.

Concerning the first meeting in June 2013, I learned from Ms S. that both girls attended it in their Muslim headscarves, which the school representatives confirmed. I further learned that the issue of wearing headdress was mentioned in connection with practical lessons, not theoretical classes at school. Ms S. did not remember any request on the part of the deputy headteacher to submit residence documents.

Ms S. was not present during the second meeting of 4 July 2013. The headteacher first stated that the girls attended the meeting without their headscarves tied and only wore them loosely on their shoulders. During the inquiry, she further added that the girls said that it would be enough to have the headscarves with them, e.g. in a handbag, and that she saw the Complainant's hair, described as shot, black and curly. The Complainant, on the other hand, stated that she had the headscarf tied, but did not dispute that the headteacher saw her hair, because she was showing her how to tie it, because she was solely in the company of women. Although the differences concerning the events of this meeting remain, I do not consider them important in terms of the overall assessment of the case.

Concerning the events transpiring on the first school day, I base my conclusions primarily on the first letter by the headteacher to the lawyer of the civic association dated 13 September 2013, which contains her immediate reaction to the incident. Here, the headteacher wrote that the Complainant “did not have to sign the letter of withdrawal from studies in connection with her refusal to remove headdress”. Given the fact that both girls wore headscarves, she asked “why they were not observing their mutual agreement”. It is clear from the aforementioned headteacher’s letter that she did request that the Complainant remove the headdress. The existence of this request is further supported by the headteacher’s response to the letter by the head of the equal treatment department.[5] Even though later, the headteacher claimed the request concerned providing the Complainant’s residence documents, she did not provide any evidence. Given the fact that the Complainant uses the “asylum card” as her ID card, I am not sure what kind of documents the headteacher could have requested. In this regard, the Complainant noted she was not aware of any request to submit documents; she said this might have been connected to her classmate who, at that time, had the status of an applicant for international protection (asylum-seeker). Therefore, I have no doubts that the headteacher indeed asked the Complainant to remove her headscarf and, in this connection, the Complainant signed the form letter of withdrawal from studies.

In the letter of 13 September 2013, the headteacher also stated that the Complainant filled in the form letter of withdrawal from studies, which she denied during personal meeting with me. She expressly said she did not know where she got the form from and indicated the school’s website as a possible source. On 11 June 2014, I ascertained there was no such form document available on the official school website. The file contains a copy of the filled-in form, which is an internal document of the school and is dated to 2 September 2013 and signed by the headteacher. I therefore consider it proven that the headteacher did submit the form to the Complainant on the first school day.

C – The Defender’s assessment of the case

C.1 Religious freedom

The use of the religious symbol in the form of a hijab, the Muslim headscarf, is primarily related to religious freedom, which must be seen as one of the fundamental human rights. Religious freedom was guaranteed on the international level especially by the Universal Declaration of Human Rights[6] in Article 18, and further by the International Covenant on Civil and Political Rights[7] in Article 18 and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief[8] (hereinafter the “Declaration”) in Article 6.

In Europe, freedom of religion is guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms[9] (hereinafter the “Convention”) in Article 9:

“Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in

community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The Charter regulated religious freedom and manifestations of religion in Articles 15 (1) and 16, where the text's contents are similar to that of the Convention which is binding on the Czech Republic as one of the parties.

The European Court of Human Rights (hereinafter the "ECtHR") expressed the importance of religious freedom as "one of the most vital elements that go to make up the identity of believers and their conception of life, but [...] is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it." [10]

The Convention guarantees two kinds of religious freedom, internal and external. The internal aspect includes the internal belief of an individual that is absolute and immutable. Each person may freely decide whether and what religion or belief he or she will profess and may change the conviction at any time. On the other hand, the external aspect of religious freedom is an outward manifestation of religion and faith and may be restricted for legitimate objectives; for this reason, religious freedom does not encompass all kinds of actions and acts motivated by religious belief or faith. In other words, Article 9 of the Convention protects the private sphere of an individual's conviction, but not all kinds of public actions inspired by this conviction. [11]

The Declaration includes among the manners of outward manifestation of religion also the freedom to "make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief," i.e. there is no doubt that the wearing of the Muslim headscarf, hijab, qualifies as an external aspect of religious freedom. In its case law, the ECtHR [12] automatically classifies the headscarf as covered under religious freedom.

According to the Convention and the Charter, outward manifestations of religious conviction in the above sense can only be restricted under certain conditions. Primarily, such a restriction must be stipulated by law, must follow a legitimate objective and be necessary in a democratic society. All these conditions must be met by a measure restricting religious freedom. Both legal documents cited above stipulate that these objectives may include security, protection of public order, health or morals and protection of rights and freedoms of others, where this list of objectives is exhaustive and may not be expanded.

The ECtHR supervises the compliance with the Convention, but gives the individual member states a certain margin of appreciation as the countries differ in cultural aspects that could justify the necessity of measures restricting religious freedom. To a certain degree, it is thus up to the authorities in the individual member states to

determine the necessity of measures restricting outward manifestations of religion.[13]

The Czech legal regulation is based on the principle of an ideologically and religiously neutral country, as specifically stated in Article 2 (1) of the Charter: “The State is founded on democratic values and must not be bound either by an exclusive ideology or by a particular religion.” Following from the case law of the Constitutional Court[14], religious tolerance and pluralism is, within the Czech constitutional model, implemented through the so-called co-operative model of the relationship between the State and various churches and religious societies and their mutual independence.[15]

Czech legislation does not contain any explicit statutory limitation of religious symbols in education and in the public sphere in general. No similar case involving a ban on wearing the Muslim headscarf at school has ever been decided by Czech courts.

C.2 Right to equal treatment and prohibition of discrimination

Given the fact that the Complainant alleges discrimination, I should say a few words about the issue. Direct discrimination under Section 2 (3) of Act No. 198/2009 Coll., on equal treatment and legal remedies for protection against discrimination and on amendment to certain laws (the Anti-Discrimination Act), as amended, means an act or failure to take action, where one person is treated less favourably than another is in a comparable situation. Such less favourable treatment must be motivated by grounds explicitly listed by the Anti-Discrimination Act. These “prohibited grounds of discrimination” also include religion and faith.

For hallmarks of discrimination to be present within the meaning of the Anti-Discrimination Act, such unfavourable treatment must involve an area substantively covered by the Anti-Discrimination Act. In the present case, this means the access to education and its provision.[16]

In addition to direct discrimination, the Act also defines indirect discrimination, which pursuant to Section 3 (1) of the Anti-Discrimination Act means an action or conduct that relies on certain provisions, criteria or practices that may appear neutral on the surface, but ultimately put the person identified by the relevant grounds of discrimination at a disadvantage compared to other persons. A seemingly neutral provision, criterion or practice is not considered indirectly discriminatory if it can be justified by a legitimate aim and the means of achieving it are reasonable and necessary.

The prohibition of discrimination is also contained in the Schools Act in Section 2 (1)(a) as one of the main principles of education:

“Education is based on the principles of
(a) equal access of every national of the Czech Republic or another Member State of the European Union to education without any discrimination on the grounds of race, skin colour, gender, language, faith and religion, nationality, ethnic or social origin, property, birth, health, or other status of the citizen.”

The objectives of education pursuant to Section 2 (2) of the Schools Act include, *inter alia*, the understanding and implementation of the principles of democracy and the rule of law, fundamental human rights and freedoms as well as responsibility, the sense of social cohesion, formation of awareness of national identity and citizenship, and respect for ethnic, national, cultural, language or religious identity of individuals.

Nationals of third countries, such as the Complainant, are covered by Section 20 (2) of the Schools Act, which stipulates that persons who are neither citizens of the European Union nor members of their families shall have equal access to secondary education under the Act, provided they are legal residents of the Czech Republic.

I would like to stress that equal treatment does not mean the same treatment; on the contrary, in certain situations it may entail an obligation to treat persons differently. While individuals with no religion or persons adhering to religions with less strict rules for religious symbols may generally not consider the ban on wearing headdress important, for Muslim women the wearing of the headscarf is of fundamental importance.

The conduct of the headteacher who prohibited the Complainant from wearing headdress at school based on a neutral provision of the school regulations clearly infringed on the Complainant's religious freedom. The Czech Republic did not avail itself of discretionary measures, therefore the relevant area is only regulated by the general provisions included on the constitutional level in the Charter and, on the level of general laws, in the Anti-Discrimination Act and the Schools Act. The lawmaker did not specify stricter rules for the use of religious symbols in the public space than those stipulated by international law.

The Muslim headscarf is to the Complainant an outward manifestation of her religious belief; however, a neutral provision of the school regulations prevented her from wearing it at school. This created a suspicion of indirect discrimination on the grounds of the Complainant's religion in access to education. It is not important if the Complainant terminated her studies on her own volition and the headteacher did not directly expel her. The suspicion of indirect discrimination arises if evidence is provided that the Complainant did so as a result of being deprived of her right to manifest her religious belief outwardly. Moreover, in the case at hand everything suggests that the form letter on withdrawal from studies was given to the Complainant by the headteacher after the Complainant refused to remove her headscarf.

The relevant provision of the school regulations and its application by the headteacher seem to meet the hallmarks of indirect discrimination on the first sight. I will further address the question if the measure was appropriate and necessary to achieve a legitimate objective.

Pursuant to Section 7 of the Anti-Discrimination Act, different treatment on the grounds of religious belief and faith, provided it is justified by a legitimate aim and the means of achieving it are appropriate and necessary, shall not be considered discriminatory. In the context of the Charter and the Convention, different treatment may only be justified by one of the objectives listed herein, i.e. public safety,

protection of public order, health or morals, or for the protection of the rights and freedoms of others.

C.3 Wearing of hijab in general classes and PE classes

The prohibition to wear headdress was systematically classified in the school regulations as a requirement to observe good manners. The headteacher confirmed that the objective of the relevant measure in relation to the Complainant was to maintain social norms in the school's premises and this informed her approach to this matter.

I wish to express my understanding for the original intention of the relevant provision of the school regulations, since I learned during personal contact with the school representatives that it was aimed especially against students who wore hoodies or baseball caps during classes. In such cases, it is legitimate to request that students observe the prohibition of wearing a headdress. However, a completely different approach must be applied to the case of the Complainant who did not violate any social norms, but only dressed in accordance with her religious beliefs.

I considered whether the need to maintain good manners could be subsumed under the legitimate objective of protection of good morals in the sense of the Convention and the Charter. In case of religious freedom, however, the legitimate goal of protection of good morals must be interpreted narrowly.[17] Actions that are contrary to good morals must reach certain intensity as the interpretation of this term is not constant and may change in time.

For this reason, I conclude that maintaining of good manners is not an objective that could legitimately justify a ban on wearing hijab at school. The actions of the headteacher were thus at variance with the Anti-Discrimination Act and the Schools Act.

In my opinion, there is undoubtedly no valid reason to prevent students from wearing a headdress during non-practical lessons at the Secondary Medical School provided the headdress is an expression of their religious belief.

Aside from good manners, the headteacher also cited safety and protection of health as a legitimate objective of said restriction in terms of physical education and vocational training. Safety and protection of health indeed are a legitimate objective, nevertheless, I concluded that a general prohibition of wearing a headdress is not an appropriate and necessary measure to achieve this objective. It is possible to adopt other, less strict measures such as wearing the "sports version" of Muslim headscarves.

C.4 Wearing hijab while performing nursing practice

The situation may be more complicated while performing nursing and medical practice. The law does not stipulate any particular form of clothes to be worn by medical personnel. The only statutory restriction consists in personal protective equipment falling under Decree of the Ministry of Health No. 306/2012 Coll., on requirements for prevention of the development and spread of infectious diseases

and hygienic requirements for operation of health-care and social care facilities (hereinafter the “Decree”).

Wearing headdress is affected by Annex 3 to the Decree, paragraph (d), stipulating that: “in surgery, medical staff are required to wear sterile protective gown and gloves, face mask, cap (protective face mask and cap must be worn so as to cover the hair, chin, nose and mouth), and footwear intended exclusively for the specific workplace”.

If personal protective equipment must be used in a specific task, usually in connection with infectious diseases found in in-patient wards, it is necessary for the employees to cover their heads with a cap. Based on the applicable law, it is possible to restrict the wearing of hijab in these contexts. However, the Complainant’s statement shows that she was prepared to remove the headscarf during practical lessons in the hospital. Given the fact that such restriction was associated with covering her hair with a cap, it is reasonable to assume the Complainant would see no issues with conforming to the given conditions and public-health requirements.

C.5 Procedure of the Czech Schools Inspectorate

The Inspectorate based its findings mainly on the information provided by the Secondary Medical School. However, the inspection file contains the already mentioned headteacher’s letter of 13 September 2013, which proves that the Complainant withdrew from her studies as a result of failing to remove her Muslim headscarf, not as a result of failing to provide proof of residence. The inspectorate did not address the differences in the headteacher’s assertions and acceded to her oral testimony.

In its first response to the request of the head of the equal treatment department of the Office of the Public Defender of Rights dated 24 January 2014, the Inspectorate noted that further assessment of the complaint would require the Complainant’s testimony, which might confirm the headteacher’s assertions or conflict with them. For this reason, it is curious that its inspection results of 17 February 2014 accepted the facts of the case as described by the school representatives and did not confirm their information with the Complainant or her legal counsel.

Although the file shows an intention on the part of the Inspectorate’s employees to meet with the Complainant, the meeting did not take place due to problems on the part of the Inspectorate as well as on the part of the Complainant’s legal counsel. I believe that obtaining information from the Complainant is important in order to clear out inconsistencies between the two parties’ assertions. If a meeting could not have been arranged, the Inspectorate should confront the Complainant with the school management’s allegations in writing.

The Inspectorate recognised that the school regulations did not offer the possibility to apply for an exemption from the general provision in the school regulations. However, it is unclear why the headteacher did not inform the Complainant of the possibility of an exemption, had there been one, already during the meetings in early July 2013. At the latest, she could have done so while asking the Complainant to remove her headscarf on the first school day. Given the fact that the headteacher

insisted on the prohibition of headdress in relation to the Complainant and the other Muslim girl, which is also confirmed by the inspection results, it is not clear why the Inspectorate concluded that the school management did permit such an exemption.

As I noted above, the use of religious symbols may only be restricted by law. The Czech legislation does not contain a regulation that would explicitly stipulate rules for the use of religious symbols in education. Therefore, there is no legal basis supporting the headteacher's actions. This case is tied to the general legal regulation included in the Anti-Discrimination Act, which permits different treatment on the grounds of religious belief or faith if justified by a legitimate objective. Given the fact that the need to maintain good manners is not a legitimate objective, the headteacher was not only not allowed to restrict the use of religious symbols through school regulations, but also lacked the authority to give the Complainant a permission to wear the headscarf.

The director of the Inspectorate subsequently supported the conclusions of the inspection team and, pursuant to section 175 of the Code of Administrative Procedure, assessed the Complainant's complaint as unfounded; for this reason, the Complainant approached the Head Office of the Czech Schools Inspectorate to review the Inspectorate's procedure as the superior authority within the meaning of Section 175 (7) of the Code of Administrative Procedure. The proceedings in the Complainant's case are thus still pending.

Due to the above reasons, I do not agree with the Inspectorate's conclusion that the complaint was unfounded in the sense of a violation of the principle of equal access. To understand the facts of the case in detail, it was necessary for the Inspectorate to obtain the Complainant's response to the information provided by the school.

C.6 Evaluation of the new wording of the school regulations

The board of the school approved a new wording of the school regulations in response to the inspectorate's investigation. The relevant provision in its amended wording still contains the duty not to wear any headdress in the school's premises, but it expands the possibilities to obtain an exemption from this rule.

I welcome that the school adopted this amendment. Nevertheless, it must be noted that even the amended wording of the school regulations is at variance with the law. The problem lies in the conditionality of the exemption from the general rule not to wear headdress on the headteacher's decision. The headteacher is not authorised by law to decide in the matter of granting exemptions to students, allowing them to wear clothes according to their religious beliefs. An exemption from such a rule in cases where the headdress is an outward expression of religious belief must be granted automatically. For this reason, it would be better to explicitly indicate in the school regulations that the rule against wearing headdress does not apply to religious symbols.

D – Conclusions

(I) Czech legislation does not contain any statutory limitation of religious symbols in education and in the public sphere in general. This matter is generally regulated by the Anti-Discrimination Act which in Section 7 permits different treatment on the grounds of religious belief and faith provided that it is justified by a legitimate aim and the means of achieving it are appropriate and necessary. Where the condition of a legitimate objective is not satisfied, the headteacher of a school cannot restrict the use of religious symbols in the school regulations, nor can the headteacher decide whether or not a religious symbol can be permitted as the headteacher lacks any statutory authorisation to do so.

(II) The provision of the school regulations which bans the wearing of any headdress including the Muslim headscarf (hijab) during theoretical education at the Secondary Medical School constitutes indirect discrimination on grounds of religion within the meaning of Section 3 (1) of the Anti-Discrimination Act. Such a measure cannot be justified by the need to maintain good manners because observance of social norms is not a legitimate objective in the sense of Art. 9 (2) of the Convention and Art. 16 (4) of the Charter.

(III) A general ban on headdress is also not appropriate and necessary in case of physical education and training in vocational skills, where the protection of the students' safety and health is a legitimate goal, because an alternative solution can be adopted, e.g. in the form of Muslim headscarves intended for sports.

(IV) If personal protective equipment must be used in a specific task in compliance with Decree of the Ministry of Health No. 306/2012 Coll., usually in connection with infectious diseases found in in-patient wards, it is necessary for the employees to cover their heads with a cap. Therefore, the wearing of a Muslim headscarf may be limited in those cases as personal protective equipment is an adequate and necessary means of protection of health in those cases.

Based on the above findings and deliberations, I concluded that the school regulations in the original as well as amended wording may lead to indirect discrimination on the grounds of religion and faith. I would thus suggest that the Secondary Medical School amend the school regulations to make them compliant with legal regulations. In relation to this recommendation, I propose new wording that would not unfavourable affect outward manifestations of religious belief, but simultaneously prohibit the wearing of, e.g., hoodies, baseball caps or beanies:

“The student must observe good manners and etiquette. While at school, students are not allowed to wear headdress, except in cases where said headdress is a manifestation of the student's religious belief or faith or where wearing headdress is required due to the student's medical condition.”

The Secondary Medical School had indirectly discriminated against the Complainant when it prohibited her, on the basis of a neutrally formulated provision of the school regulations, from wearing a Muslim headscarf (hijab), which was an outward manifestation of her religious belief. The school management justified its steps by the

need to observe good manners, which, however, does not constitute a legitimate objective within the meaning of the Convention and the Charter.

The Complainant may initiate an anti-discrimination action concerning indirect discrimination on the grounds of religion and faith in access to education pursuant to Section 10 of the Anti-Discrimination Act, or try and resolve her dispute with the Secondary Medical School through mediation pursuant to Act No. 202/2012 Coll., on mediation and on amendment to certain laws (the Mediation Act). Using these legal remedies, the Complainant may seek to cure the consequences of the discriminatory steps and receive appropriate satisfaction. The Complainant may also seek a pecuniary compensation for intangible damage.

I have further concluded, in the sense of Section 18 (1) of the Public Defender of Rights Act, that the Prague branch of the Czech Schools Inspectorate made an error consisting in insufficient findings of facts and incorrect assessment of the generally-worded prohibition of headaddress, which had constituted an indirect discrimination of the Complainant. The Inspectorate's file shows that the headmistress of the school invited the Complainant to remove the Muslim headscarf and the Complainant signed the letter of withdrawal from her studies in connection to this. The Inspectorate incorrectly concluded its investigation of the case with the verdict that the headteacher's conduct had not violated the principle of equal access to education. In this regard, I recommend that the Head Office of the Czech Schools Inspectorate takes my assessment of the case into account when dealing with the Complainant's complaint.

I am sending this inquiry report to the headteacher of the Secondary Medical School, Ms I. K., Ph.D., and the Director of the Prague branch of the Czech Schools Inspectorate and request that they respond to the found errors within 30 days of its delivery and inform me of the remedial measures they adopted. The report summarises my current findings, which may be reflected in my final statement.

I am also informing the Complainant of my findings and conclusion through her legal counsel, Ms M. C. of the civic association.

Mgr. Anna Šabatová, Ph.D., signed
Public Defender of Rights

[1] Act No. 561/2004 Coll., on preschool, elementary, secondary, higher vocational and other education (the Schools Act), as amended.

[2] Resolution of the Presidium of the Czech National Council No. 2/1993 Coll., promulgating the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic.

[3] Act No. 198/2009 Coll., on equal treatment and legal remedies for protection against discrimination and on amendment to certain laws (the Anti-Discrimination Act).

[4] *“Pupils and students have a right to . . . (f) information and advice from the school or school counselling facility in matters concerning education pursuant to this Act.”*

[5] *In her response of 10 February 2013, the headteacher stated inter alia the following: “I was surprised that they wore headdress. I was not ascertaining the religion to which, based on your information, the Complainant adheres, nor do I do so in case of other students. I consider religion a personal matter. I have only said that, based on the school regulation, students must not wear any headdress while staying in the school’s premises. I did not seek a compromise solution as the events transpired so quickly that I was unable to find any, even though there was no lack of good will.*

[6] *The Universal Declaration of Human Rights promulgated on 10 December 1948 by the UN General Assembly.*

[7] *The International Covenant on Civil and Political Rights, promulgated under No. 120/1976 Coll.*

[8] *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, promulgated on 25 November 1981 by the UN General Assembly.*

[9] *Memorandum of the Federal Ministry of Foreign Affairs No. 209/1992 Coll., on the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by subsequent Protocols.*

[10] *Judgement of the European Court of Human Rights in case Kokkinakis v. Greece of 25 May 1993, No. 14307/88.*

[11] *Research division. Overview of the Court’s case-law on the freedom of religion. Council of Europe/European Court of Human Rights, 2013, p. 8*

[12] *E.g. Judgement of the European Court of Human Rights in case Dogru v. France of 4 December 2008, No. 27058/05.*

[13] *As an example of the application of margin of appreciation, I can mention the Judgement of the European Court of Human Rights in case Sahin v. Turkey of 10 November 2005, No. 44774/98, concerning the ban on wearing Muslim headscarves at universities. This measure was based on legislation from the 1980 and 1990; the specific circumstances in Turkey, where the country espoused secularism (separation between the church and the state in public sphere), despite its population being 99.8% Muslim (source: <https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html>). The Muslim headscarf in the country is not merely a religious symbol, but a manifestation of political ideology and radical views. In the given case, the university banned Ms Leyle Sahin from wearing headscarf on its grounds, in accordance to Turkish laws. The ECtHR took into account the political context “in a country in which the majority of the population, while professing a strong attachment to the rights of women and a secular way of life, adhere to the Islamic faith.” In the Czech legal environment, restrictions on wearing religious symbols by pupils and*

students in schools or universities must be evaluated differently. In its decision, the ECtHR explicitly noted that “[in] a number of . . . countries (. . . Czech Republic . . .), the issue of the Islamic headscarf does not yet appear to have given rise to any detailed legal debate”.

[14] *Judgement of the Constitutional Court of 1 July 2010, File No. Pl. ÚS 9/07 (N 132/58 SbNU 3), available at: <http://nalus.usoud.cz>.*

[15] *Kmec, J., Kosař, D., Kratochvíl, J., Bobek, M. Evropská úmluva o lidských právech (European Convention on Human Rights). 1st edition. Prague: C.H. Beck, 2012. ISBN 978-80-7400-365-3, p. 968*

[16] *Section 1 (1)(i) of the Anti-Discrimination Act.*

[17] *“Protection of good morals excludes e.g. those religious practices that require polygamy (as in case of certain Mormon denomination or Islam). However, the definition of morals in the sense of Article 18 (3) of the International Covenant on Civil and Political Rights cannot be based solely on the values of one tradition. Wagnerová, E., Šimíček, V., Langášek, T., Pospíšil, I. et al. Listina základních práv a svobod (Charter of Fundamental Rights and Freedoms). Commentary. Prague: Wolters Kluwer ČR, a.s. 2012. ISBN 978-80-7357-750-6, p. 413*