



Human Rights Watch  
UPR Submission

**Germany**  
September 2008

## **Summary**

This submission outlines Human Rights Watch's concerns with the laws enacted by eight German states (*Länder*) restricting teachers and other civil servants from wearing visible religious symbols or clothing. The preliminary findings of our ongoing research in this area indicate that these laws and policies contravene Germany's international obligations to guarantee individuals the right to freedom of religion and equality before the law. Human Rights Watch is particularly concerned that these laws and their implementation discriminate against Muslims, in particular Muslim women, excluding them from teaching and other public sector employment on the basis of their faith.

Human Rights Watch maintains that while there may be legitimate grounds for some regulation of religious symbols and dress in employment for civil servants and teachers, we are concerned that the current general restrictions adopted in German states are not proportionate to their stated aim and therefore amount to unlawful discrimination under international human rights law.

## **Background**

In recent years, there has been a growing debate in Germany, as in many other European countries, about how best to respond to the social challenges arising from its diverse migrant communities (many of whom are citizens by birth or naturalization), which include a growing Muslim population. Across Europe, including in Germany, there is political and

social debate around the need to better integrate migrants into society, which has led in some cases to the introduction of policies with that aim.

In that context, eight states (*Länder*) in Germany—Baden-Württemberg, Bavaria, Berlin, Bremen, Hesse, Lower Saxony, North Rhine-Westphalia, and Saarland—have enacted legislation to prohibit teachers in public schools from wearing certain visible items of religious clothing and symbols. In Hessen and Berlin this ban extends to cover other civil servants. The restrictions were introduced following a 2003 landmark ruling by the German Federal Constitutional Court in a case involving the denial of employment to a teacher on the grounds that she wore a headscarf. The Court decided in the case of *Ludin v. the state of Baden-Württemberg* that state authorities may not implement headscarf bans *in the absence of a sufficient clear legal basis* (i.e. laws) explicitly providing the foundation for such a ban and related denial of employment to a teacher.

There are different types of laws banning religious symbols and dress in Germany, none of which explicitly target the headscarf. The large majority of the “headscarf laws,” however, carve out exceptions for the Christian faith and western cultural traditions and values either in the language of the laws or explanatory documents. In some states, for example, nuns’ habits are allowed. By contrast, the law in force in Berlin state categorically bars all public school teachers (including kindergarten teachers) and civil servants in the field of justice and law enforcement from wearing virtually any religious clothing and symbols (the only exception being non-noticeable garments). There have been no court cases yet in Berlin under the law, adopted in 2005. Jurisprudence upholding or interpreting these laws and regulations by courts at various levels, however, exists in several states.

Proponents of this legislation claim that it is designed to ensure the essential neutrality of the teaching environment and public services as well as the “political and religious peace” of the school and of the state, and is targeted at all teachers and civil servants, covering also other symbols. These policies are further said to seek to protect fundamental principles and values in Germany, as well other rights. These include the (negative) freedom of religion of the pupils, the right of parents to have a say in their children’s education, the neutrality of the state, and equality between men and women — which are deemed to weigh more heavily in the balancing of rights to the detriment of the teacher in a given context.

State governments in Baden-Württemberg, Bavaria and North Rhine-Westphalia have argued that taking into account Christian western tradition exempting Christian clothing and symbols (notably nun's habits) from their bans does not privilege Christianity, because such clothing and symbols are in line with values expressed in their state constitutions (themselves influenced by Christianity). They claim that Christian clothing and symbols do not therefore risk compromising the neutrality or peace of the school accordingly.

In justifying bans on religious dress and symbols, lawmakers in Hessen and Bavaria have argued that a teacher wearing a headscarf is not in a position to provide and convey education according to the Constitution, in particular as regards the principle of equality between men and women. In the debate around the laws and court cases, the headscarf is often discussed as a symbol of political Islam and of the oppression of women. The interpretation by some in Germany is that the headscarf contravenes fundamental values and principles of the Constitution because it represents a step back from gender equality. According to this line of argument in favor of such regulations, the headscarf ban should therefore be seen as a positive element in favor of women's rights. It is also argued that the ban offers a form of protection against possible compulsion of women and girls by their communities to wear the headscarf. A further related argument refers to the special role played by teachers in society, necessitating special standards and requirements.

The arguments in favor of the restrictions generally portray Muslim women wishing to wear the headscarf either as oppressed and dependent, or as political activists from the Islamist sphere. Muslim women who wear the headscarf in Germany indicate that this portrayal, which has arguably been legitimized by the introduction of legislation restricting the headscarf, has had negative consequences on their employment situation in the private sector, including in relation to recruitment.

### **Human rights implications of the restrictions**

Many of the laws are neutral on their face, prohibiting the wearing of any political and religious clothing and symbols of belief endangering the neutrality of the state or the peace in school. Human Rights Watch is unaware of any cases in which the restrictions have been applied other than to women who wear the headscarf. In addition, in most cases their introduction was motivated by concern about the Islamic headscarf. Muslim women have been denied positions as training teachers (and civil servants), and Muslim trainee teachers have been denied subsequent

employment as teachers after successful completion of their education if they do not abide by the restriction. Teachers, some with many years of employment, have been threatened with disciplinary action if they continue to wear the headscarf, and some have been subject to disciplinary action. In at least one case a teacher was dismissed from her position.

As stated above, while Human Rights Watch's research on these issues is still ongoing, our preliminary findings give rise to a number of concerns regarding the possible human rights implications of these measures. Notably, the measures violate the right to freedom of religion and equal treatment of the persons concerned. More specifically, our concerns include potential impediments to the right to religious practice and expression, the right to private life, discrimination in employment, as well as minority rights.

Human Rights Watch is particularly concerned that these laws and their implementation discriminate against Muslims, in particular Muslim women, excluding Muslim minorities from teaching and other public sector employment on the basis of their faith.

While there may be legitimate grounds for some regulation of religious symbols and dress in employment for civil servants and teachers, Human Rights Watch is concerned that the current restrictions adopted in German states are not proportionate to their stated aim and therefore amount to unlawful discrimination under international human rights law.

## **Recommendations**

We believe the upcoming Universal Periodic Review of Germany provides a welcome opportunity for the Human Rights Council to examine the human rights implications of the restrictions on religious dress and symbols in force in various parts of the country. In particular, the Human Rights Council, in its review of Germany's human rights record, should assess this legislation and, where appropriate, recommend legal and policy measures to bring Germany into compliance with international human rights standards.

We hope that our contribution will help inform the review and contribute to the resulting recommendations. Such recommendations could include urging the German government to review the practical effects of the existing state-level restrictions on religious dress and symbols with a view to assessing their compatibility with Germany's international human rights obligations, in particular in the sphere of non-discrimination and equality.

