



Likestillings- og
diskrimineringsombudet

Cases on religious headscarves in Norway

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Overview

- History: selected Ombud cases 1999 - 2011
- The approach by the Norwegian Ombud
- Compared to the approach by the ECHR
- Consequences of the Ombud's approach

The anti-discrimination legislation

- 1978: The Gender Equality Act
- 2004: The Labour Environment Act – religion included (Directive 2000/78/EF)
- 2006: The Anti-discrimination Act – all areas of society

The complaints

- 1999: 14 complaint cases to the Ombud regarding muslim women and their right to wear a headscarf at work or school
- 2000: the first case brought forward to The Anti-discrimination Tribunal
- In total about 20 complaints, in addition to numerous cases of guidance

2000: The Radisson hotel

- Prohibition against the wearing of any headdress for employees at the hotel
- A question of indirect discrimination on the grounds of gender, as women were primarily affected
- Arguments: uniform policy, hotel profile, safety, job performance
- Reasoning: the arguments could be met by creating headscarves to suit the hotel profile and other considerations
- Ombud conclusion: breach of law – The Gender Equality Act
- The Equality Tribunal upheld the decision

2003: Furniture store

- Prohibition against the wearing of any headdress for employees at a large furniture store; female asked to remove her headscarf while at work
- A question of indirect discrimination on the grounds of gender
- Arguments: value neutrality, equal treatment
- Reasoning: the need for value neutrality in certain situations recognised, related to the nature of work. However; not in this line of work.
- Conclusion: breach of law – The Gender Equality Act

2007: Department store

- Female shop assistant asked to remove her headscarf while at work.
- A question of direct discrimination on the grounds of religion as well as of indirect discrimination on the grounds of gender
- Arguments: store policy
- Reasoning: store policy rarely a relevant argument, no attempt of dialogue or adjustment of uniform policy to enable the wearing of a headscarf
- Conclusion: breach of law on two accounts

2008: Police uniform

- A question of whether the police would allow headscarf with the police uniform
- A question of discrimination on the grounds of gender and religion
- Arguments: police should reflect neutral values
- Ombud conclusion: value neutrality a legitimate aim but a prohibition not proven to be necessary; focus also upon the need for the police to reflect society
- Tribunal conclusion: upheld the Ombud ruling

The approach by The European Court of Human Rights

- Prohibition of the wearing of headscarves not discriminatory
- The headscarf as a symbol of suppression of women – used as an argument
- The conflict: freedom of religion v the right not to be discriminated against/the principle of equality

The reasoning behind the Equality Ombud's approach

- Secure access to work for groups of women – regardless of whether the practice of wearing headscarves is suppressing
- Alternatively: no legal protection for these women - pragmatic
- Intersectional approach – the multiple dimension of these cases

The headscarf and the principle of gender equality

- Is this practice suppression of women?
Empirical data lacking.
- The minority reasoning in the ECHR
Leyla Sahin case

Consequences

- Denying groups of women access to areas of society such as education and work?
- A patronising view of women?
- Allowing for restrictions of the freedom of religion by allowing prohibitions on the wearing of religious headscarves

The issue of the motivation of the women wearing headscarves

- The headscarf as a political symbol, cultural symbol etc.
- But regardless of the motivation: A prohibition to wear the headscarf will frequently be considered indirect discrimination of women
- In comparison: the discrimination of part time employees considered indirect discrimination of women by the Ombud - although an unwanted practice

The road ahead in Norway

- Work on a superior level to abolish all suppression of women
- Protect and empower all groups of women
- Handle cases of religious headscarves as an intersectional complex



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