NEWS REPORT

Date:	17 December 2009
Expert:	Mahlmann, Matthias
Title:	Prohibition for Teacher to Wear Cap in School
Country:	Germany
Context	
Issue at stake:	Female teacher challenges instruction against (religiously motivated) wearing of headgear in school
Ground of discrimination:	Religion
Source:	Federal Administrative Court, 16 December 2008, 2 B 46/08 (already reported in Country Report 2008)
Field:	Employment
Legislative provisions:	Sec. 38.2 School Act Baden-Württemberg, Art. 4.1 GG

Content

Case/law/political development: A female elementary school (*Grundschule*) and general-education secondary school (*Hauptschule*) teacher, who converted to Islam after entering the civil service, was instructed by the education authority (*Schulaufsichtsbehörde*) not to wear a hair-covering headgear (cap) during service. On enquiry, she declared that she was wearing the garment because of religious reasons. Her complaint was dismissed by the court of first instance, referring to Sec. 38.2 of the School Act (*SchulG*) Baden-Württemberg, which prohibits visible religious statements by teachers in public schools.

Decision of the Court: The Federal Administrative Court (*Bundesverwaltungsgericht*) held that the said instruction did not constitute a (unjustified) discrimination. According to the Court, Sec. 38.2 *SchulG* does not require that the visible religious statement follows directly from the type of the worn garment. A piece of clothing such as a cap in school - as it is obviously out of the ordinary clothing in the school - creates the need for explanations. Once the teacher points out his or her religious or philosophical (*weltanschaulich*) motivation for wearing the garment, the effects do not differ from those of wearing garments of obvious religious or philosophical character.