

Cases and rulings

Country Code	Year	Reference details title	Reference details URL	Hate Bias motivation	Court / Body	Key facts of the case	Results (sanctions, outcome) and key consequences or implications of the case	Main reasoning / argumentation	Key issues (concepts, interpretations) clarified by the case	Key quotation in original language and translated into English with reference details
Spain	2017	Spain / The National Criminal and Administrative Court, Criminal Section 1ª (Audiencia Nacional, Sala de lo Penal, Sección 1ª / Auto 530/2017, Rec. 195/2017, ES:AN:2017:793A	http://www.poderjudicial.es/search/openDocument/203ca7a7d7b6fd0/20170905	Religion	The National Criminal and Administrative Court (Audiencia Nacional)	National court considers lawful the prohibition of the use of the "hijab" by a woman in detention and not a breach of her right to religious freedom. The women in prison, named as Della was in precautionary release (transitory) deprived of her liberty (imprisonment) in the Prison Centre of Valencia by a judicial order after a trial sentence which accuses her of a terrorist offence because of his alleged association with an international jihadist organization. It was argued that the hijab hide part of the face and makes it difficult for a person to be identified. The use of the hijab by the woman imprisoned was perceived as a jihadist claim in line with other radicalization actions towards other persons imprisoned.	The prohibition of the use of the hijab by the women in prison during her stay at the Prison Centre is lawful. The National Criminal and Administrative Court appreciates the appeal against the Order of the Central Prison Supervision Court that addressed a woman's complaint regarding the use of the "hijab" in the prison, stating that in the specific case the right to religious freedom of the complainant is not breach by the prohibition of the use of such a garment issued by the prison authority.	The appeal is based on the possible violation of the fundamental right to the religious freedom of the claimant and to what extent it could be limited for the maintenance of public order. There were references to the European Courts with jurisdiction over human rights and supranational regulations that did have ruled on the use of hijab in public, where there was no reference to its use in prison as in this case (TEDH No. 43835/11 SAS vs. France or STEDJ (Great Chamber) G4S Secure Solutions case 2017. It did also refer to the Spanish Constitutional Court as regards what it calls special restraint relations between the person in prison and the Prison Administration, STC 140/ 2002 The dissenting vote stated that the use of the hijab is a religious sign. The administrative decision to prohibit it is null and void.	The right to religious freedom. Prohibition of the use of the "hijab" to an imprisoned woman because of its relationship with the Islamic terrorism. It was considered as no breach of her right to religious freedom. It was considered as a legitimate limitation imposed by the prison authority of a religious symbol for security reasons and good order. It was concluded that the garment hides part of the face and makes it difficult for a person to be identified. It was argued that the use of the hijab by the woman imprisoned as a jihadist claim in line with other radicalization actions towards other persons imprisoned, which also acts to the detriment of the rehabilitation and reinsertion purpose of the penalty. There was a dissenting vote though.	" la limitación de su uso ..., derivadas de encontrarse ingresada en Centro Penitenciario por decisión judicial Y por razones de seguridad ... dada su dificultad de identificación y de ocultación de objetos prohibidos, y además dada la utilización que se realiza por parte de la misma de tal prenda como una reivindicación yihadista en labor de radicalización hacia otras internas de su misma religión" "the limitation of its use ... arising from being imprisoned by a judicial decision and by security ... given its difficulty for her identification and concealing prohibited objects, and also given the use made by it of such a garment as a jihadist claim as part of a radicalization activities towards other imprisoned women who did share their same religion"

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