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In case no. 4266-21, **Skurup Municipality** (Appellant) v. **AA et al.** (Respondents), the Supreme Administrative Court delivered the following judgment on 8 December 2022.

RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court rejects the appeal.

BACKGROUND

1. The municipal council in Skurup Municipality decided in 2019, in granting a motion, that headscarves, burkas, niqabs and other articles of clothing the purpose of which is to conceal pupils and personnel shall not be allowed in the municipality's pre-schools and compulsory schools and that this will be implemented in the municipality's integration plan. In the motivation for the motion it is stated – under the heading, “Headscarf prohibition in Skurup Municipality's schools and pre-schools” – that the purpose is that girls and women need not cover themselves for religious reasons.
2. A number of members of the municipality appealed the decision to the Administrative Court in Malmö and asserted that the decision constituted an unlawful interference with, *inter alia*, freedom of religion, freedom of expression and the right to private and family life. In addition, it was stated that the decision contravened anti-discrimination and school legislation.
3. In its submission regarding the appeal, the municipality asserted, *inter alia*, the following.
4. The decision taken constitutes a response to a motion. The decision has not yet been given its final formulation. Only when the integration plan has been established will that to which the decision specifically pertains and the manner it is to be applied be apparent.
5. The decision is not contrary to law or other statute. The Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) is superordinate to the Swedish

legislation referred to by the appellants. The Convention supports the implementation of a prohibition against religious manifestations by both personnel and pupils, and the European Court of Human Rights has accepted in several rulings the prohibition against Muslim shawls (hijab) in public educational activities.

6. In addition, the decision is intended to protect all pupils from religious pressures in their school setting. According to Swedish school legislation, education in public schools and pre-schools is to be non-confessional. Wearing a headscarf or similar is not compatible with this requirement.
7. The administrative court overturned the decision with reference to the fact that it is formulated as a general prohibition which – without support in national law – interferes with the freedom of religion as it is expressed in the Instrument of Government and the ECHR. Skurup Municipality appealed the judgment of the administrative court to the Administrative Court of Appeal in Gothenburg which rejected the appeal on the same grounds.

CLAIMS, ETC.

8. *Skurup Municipality* claims that the Supreme Administrative Court, by way of amendment of the rulings of the lower courts, shall reject the appeals of the decision of the municipal council.
9. AA is of the opinion that the appeal is to be rejected.
10. *BB* and *CC* have not expressed an opinion.

REASONS FOR THE RULING

The question in the case

11. The question in the case is whether the decision of the municipality, that it will not be permissible in the municipality's pre-schools and compulsory schools to wear headscarves, burkas, niqabs and other articles of clothing the purpose of which is to conceal pupils and personnel, is contrary to law or other statute.

Legislation, etc.

12. Pursuant to Chapter 13, section 8, first paragraph (4) of the Local Government Act (2017:725), an appealed decision may be overturned if the decision is contrary to law or other statute.
13. Chapter 2, Article 1 of the Instrument of Government regulates the protection of so-called positive freedoms of opinion. The freedom of worship is regulated by paragraph 1, point 6 and entails the freedom to practice one's religion alone or in the company of others. It follows from Articles 20 and 25 that the freedom of worship may not be restricted for Swedish citizens.
14. Pursuant to Article 1, first paragraph, point 1, everyone is guaranteed the freedom of expression in his or her relations with public institutions, i.e. the freedom to communicate information and express thought, opinions and sentiments, whether orally, pictorially, in writing, or in any other way. The freedom of opinion may, according to the provisions of Articles 20, 21 and 23 be restricted by law under certain circumstances.
15. Article 25 provides that, for foreign nationals within the country, special restrictions may be introduced by law regarding certain freedoms and rights, including the freedom of expression and freedom of worship. At the same time, as regards the freedom of worship, such restrictions may not exceed that permitted in accordance with Article 9 (2) of the ECHR.

16. According to Article 9 (1) of the ECHR, everyone has the right to freedom of thought, conscience and religion. This right includes the freedom to change 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. Article 9 (2) states that 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 purpose of protection of public order, health or morals, or for the protection of the rights and freedoms of others.
17. According to Article 2 of the First Protocol of the ECHR, no person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.
18. According to Chapter 1, section 6 of the Education Act (2010:800), education at a school unit or pre-school unit with a public principal shall be non-confessional.

The Court's assessment

Starting points for the examination

19. Initially, it may be noted that the fact that the decision appealed is intended to be implemented in an integration plan which states the detailed purport thereof limits neither the conditions for appealing the decision nor the legality examination of it by the courts.
20. The municipality asserts that Article 9 of the ECHR does not constitute an impediment to, and that Article 2 of the First Protocol of the Convention and case law from the European Court of Human Rights provide support for, the implementation of a prohibition against articles of clothing worn for religious reasons at pre-schools and compulsory schools.
21. It is to be emphasised that the Convention constitutes a protection for individuals against encroachments by public institutions. The Supreme Administrative Court accordingly

finds that, prior to the examination, there is cause to make it clear that the rules of the Convention and the case law from the European Court of Human Rights developed in the area at issue cannot per se constitute a legal basis for interfering with individual rights by means of a prohibition against articles of clothing worn for religious reasons. The interference with individual rights namely presupposes that there is support in national legislation.

22. The Supreme Administrative Court shall examine whether the municipality's decision contravenes law or other statute. The examination entails that only the legality of the decision, and not its suitability, may be examined. The examination may only result in the decision either being affirmed or overturned; thus, the Court lacks the possibility to amend the decision.

Does the decision by the municipality contravene law or other statute?

23. In light of the content of the municipality's decision, it is natural to first adopt a position on whether it constitutes an unlawful interference with the freedom of worship or any other freedom of opinion. This examination should primarily be conducted relative to the Instrument of Government (*cf.* case NJA 2012, p. 400, para. 13).
24. The freedom of worship, which is guaranteed to everyone, is defined in Chapter 2, Article 1, first paragraph, point 6 of the Instrument of Government as the freedom to practice one's religion alone or in the company of others. This constitutes a protection against interference by public institutions, i.e. by the State, the municipalities and the regions.
25. Chapter 2, Article 20 of the Instrument of Government provides, by contrast, that the freedom of worship may not be restricted. This is justified by the narrow definition of this freedom. Such religious expressions as fall within any of the other freedoms of opinion, e.g. freedom of expression, however, are to be examined in light of that freedom of opinion and not the freedom of worship. A restriction may then be permitted according to the regime applicable to restricting the respective freedom (Government Bill

1975/76:209, p. 114 f.), i.e. in accordance with the rules of Chapter 2, Articles 20–24 of the Instrument of Government.

26. As regards foreign nationals, the freedom of worship may be restricted by law (Chapter 2, Article 25 of the Instrument of Government). Such restrictions, however, may only be implemented for certain purposes and taking into account the principle of proportionality (Article 9 of the ECHR).
27. The freedom of expression entails that everyone is guaranteed in his or her relations with public institutions the freedom to communicate information and express thoughts, opinions and sentiments, whether orally, pictorially, in writing or in any other way (Chapter 2, Article 1, first paragraph, point 1 of the Instrument of Government). The freedom of expression is not deemed restricted to only certain forms of expression. Wearing certain types of articles of clothing may also be regarded as expressions of a cultural or religious custom or form of expression and is covered by the freedom of opinion (*cf.* case NJA 1996, p. 577).
28. Headscarves, burkas, niqabs and similar articles of clothing may be worn as expressions of a cultural custom. In many cases, however, the wearing thereof may be justified by religious reasons, e.g. in accordance with a custom within Islam. Bearing such articles of clothing may thus be an expression of religious affiliation and be covered by the protection of the freedom of expression. Bearing such clothing may thereby be limited in accordance with what is applicable to interference with the freedom of expression.
29. A basic condition for restricting the freedom of expression is that it is implemented according to law (Chapter 2, Articles 20 and 25 of the Instrument of Government).
30. In order for a position against the wearing of an article of clothing which expresses religious affiliation to constitute a restriction on the freedom of expression, it is necessary that it actually affects an individual's freedom to express thoughts, opinions or sentiments.

31. The municipality's decision is formulated as a general prohibition on wearing certain articles of clothing directed at pupils and pre-schools and compulsory schools in the municipality and their guardians as well as personnel there. The decision expresses what the municipality deems is to be applied within the pre-school and compulsory school area and how these activities shall regard articles of clothing which are worn for religious reasons.
32. Against this background, the municipality's decision may be deemed to have such actual effects on individuals that they constitute a restriction on the freedom of expression. The restriction, in order to be permissible, must be supported by law.
33. The provision in Chapter 1, section 6 of the Education Act according to which education at schools and pre-schools with a public principal shall be non-confessional is directed at the principal and the manner in which it conducts the activity. This does not constitute legal support for implementing restrictions regarding articles of clothing worn for religious purposes.
34. Nor is there any other legal support for restricting the freedom of expression in the manner as has occurred. Accordingly, the appeal is rejected.

Justices Jäderblom, Bull, Classon, von Essen and Medin have participated in the ruling.

Judge Referee: Emma Millberg.