



Federal Administrative Court
Supreme Court
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Important information

Due to the risk of infection with the coronavirus, the Federal Administrative Court remains closed for visitors until further notice.

It is still possible to attend oral hearings when wearing a medical face or FFP2 mask. The courtrooms are fit to keep sufficient distance.

Judgment of 4 July 2019 - BVerwG 3 C 24.17

ECLI:DE:BVerwG:2019:040719U3C24.17.0

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When citing this ruling it is recommended to indicate the court, the date of the ruling, the case number and the paragraph: BVerwG, judgment of 4 July 2019 - 3 C 24.17 - para. 16.

Motorcycle helmet obligation for turban wearers

Headnote

There is no right to be granted an exception from the obligation to wear a suitable protective helmet when motorcycling merely because the person affected is prevented from wearing a protective helmet. Reducing the discretion of the authorities to only one lawful decision is

only possible if, on specific individual grounds, it is unreasonable for the person affected to forego motorcycling. This also applies to people who wear a turban on religious grounds.

Sources of law

Basic Law	GG, <i>Grundgesetz</i>	articles 2 (2) first sentence, 4 (1) and (2)
European Convention on Human Rights (ECHR)		article 9 (2)
Road Traffic Ordinance	StVO, <i>Straßenverkehrs-Ordnung</i>	sections 21a (2), 46 (1) first sentence no. 5b

Summary of the facts

The claimant is a practising Sikh who wears a turban on religious grounds. In July 2013, he applied to the defendant for the granting of an exceptional approval from the obligation to wear a protective helmet when motorcycling.

The defendant rejected the application on the ground that the requested exception could only be approved on health grounds. The objection (*Widerspruch*) and action before the Administrative Court (VG, *Verwaltungsgericht*) have remained unsuccessful.

Following the claimant's appeal on points of fact and law, the Court of Appeal obliged the defendant to decide anew on the claimant's application taking into consideration the Court's legal opinion. The defendant had failed to recognise that it was also possible to grant an exceptional approval on religious grounds. However, the defendant had no immediate obligation to grant the exceptional approval for which the application had been made. The freedom of faith invoked did not lead to the claimant's interests generally overriding third parties' physical and psychological integrity, also guaranteed by the Basic Law, which the obligation to wear a helmet was also intended to protect. Reducing the

discretion of the authorities to only one lawful decision (*Ermessensreduzierung auf Null*) was only possible if the claimant was absolutely dependent on using the motorcycle. That was not the case with the claimant.

The appeal on points of law, which he was granted leave to bring by the Court of Appeal due to the fundamental importance of the case, by means of which the claimant continues to pursue his request to oblige the defendant not only to decide anew on his application, but also to grant the exceptional approval applied for, was unsuccessful.

Reasons (abridged)

- 7 (...) Through his appeal on points of law, the claimant requested to oblige the defendant to grant him an exceptional approval from the obligation to wear a suitable protective helmet when motorcycling; the claimant has no such right (1.). The required reduction of discretion to only one lawful decision, for which every decision other than the granting of the exceptional approval applied for would have to be excluded on legal grounds (see section 113 (5) first sentence of the Code of Administrative Court Procedure (VwGO, *Verwaltungsgerichtsordnung*)), does not exist, even when invoking religious impediments (2.). No other conclusion may be drawn from EU law (3.).
- 8 1. The legal basis for the claimant's request for the issuance of an administrative act (*Verpflichtungsbegehren*) is section 46 (1) first sentence no. 5b of the Road Traffic Ordinance (StVO, *Straßenverkehrs-Ordnung*) of 6 March 2013 (Federal Law Gazette (BGBl., *Bundesgesetzblatt*) I p. 367) in the relevant current version of the Ordinance of 6 October 2017 (BGBl. I p. 3549). According to this, in individual cases or generally, the road traffic authority may grant, to certain applicants, exceptions from the provisions governing the use of seat belts and the wearing of protective helmets contained in section 21a StVO. Under section 21a (2) first sentence StVO, persons operating or travelling as a passenger on or in motorcycles or open three or more-wheeled vehicles with a maximum design speed greater than 20 km/h must wear a suitable protective helmet while the vehicle is in motion.
- 9 a) The rule on the obligation to wear a protective helmet does not require direct enactment by the parliamentary legislature, even taking into account a possible impairment of the practice of religion. The obligation to wear a suitable protective helmet when motorcycling does not lead to a restriction targeted at or directly affecting the scope of protection of the freedom of religion. Rather, it is a general order that only in rare cases may conflict with the freedom of religion. Even in possible cases of conflict, the intensity of interference is generally slight since the obligation to wear a helmet only concerns the operation of a motorcycle, and practice of religion can thus only be restricted in a narrowly limited situation typically insignificant for freedom of re-

ligion (see Federal Constitutional Court (BVerfG, *Bundesverfassungsgericht*), chamber decision of 8 November 2016 - 1 BvR 3237/13 [ECLI:DE:BVerfG:2016:rk20161108.1bvr323713] - (...) para. 33).

- 10 The provision is also in keeping with the Basic Law in all other respects because the possibility of granting an exceptional approval allows concerns protected by basic rights to be taken into account as necessary (see BVerfG, judgment of 15 January 2002 - 1 BvR 1783/99 [ECLI:DE:BVerfG:2002:rs20020115.1bvr178399] - Rulings of the Federal Constitutional Court (BVerfGE, *Entscheidungen des Bundesverfassungsgerichts*) 104, 337 <355>).
- 11 b) The possibility of granting an exceptional approval, admitted by the road traffic authorities, is intended to allow for specific exceptional situations which, upon strict application of the provisions, could not be sufficiently taken into account and which would result in undue hardship for the person concerned (see BVerfG, decision of 10 December 1975 - 1 BvR 118/71 - BVerfGE 40, 371 <377>; on the exceptional approval under section 46 (2) StVO, also Federal Administrative Court (BVerwG, *Bundesverwaltungsgericht*) judgments of 16 March 1994 - 11 C 48.92 - (...) para. 26 and of 13 March 1997 - 3 C 2.97 - Rulings of the Federal Administrative Court (BVerwGE, *Entscheidungen des Bundesverwaltungsgerichts*) 104, 154 <157>).
- 12 It is recognised in the jurisprudence that an exceptional situation exists, enabling a discretionary decision to be taken by the road traffic authority, if the person concerned is prevented on health grounds from wearing a motorcycle helmet (see BVerfG, decision of 26 January 1982 - 1 BvR 1295/80 et al. - BVerfGE 59, 275 <278>). The impossibility of wearing a protective helmet is also linked with health grounds in the General Administrative Regulation regarding the Road Traffic Ordinance (VwV-StVO, *Allgemeine Verwaltungsvorschrift zur Straßenverkehrs-Ordnung*) of 26 January 2001 (Federal Gazette (BAnz, *Bundesanzeiger*) p. 1419, corrected p. 5206), last amended by the Administrative Regulation of 22 May 2017 (Official section of the Federal Gazette (BAnz AT, *Amtlicher Teil des Bundesanzeigers*) of 29 May 2017 B8).
- 13 As the Court of Appeal correctly decided, an exceptional situation enabling discretion to be taken also exists if the impediment to wearing a motorcycle helmet is based on religious grounds (...). The obligation imposed in section 21a (2) first sentence StVO to wear a suitable protective helmet when motorcycling does not impede anyone in practising their faith. However, in following the dress code he considers to be binding, the claimant has to forego motorcycling. Thus, the provision can indirectly impair him in the practice of his religion (see BVerfG, judgment of 24 September 2003 - 2 BvR 1436/02 [ECLI:DE:BVerfG:2003:rs20030924.2bvr143602] - BVerfGE 108, 282 <297> and decision of 27 January 2015 - 1 BvR 471/10 et al. [ECLI:DE:BVerfG:2015:rs20150127.1bvr047110] - BVerfGE 138, 296 para. 83 on the wearing of headscarves by Muslim women).
- 14 c) The existence of an impediment to wearing a motorcycle helmet does not result in a direct right to the granting of an exceptional approval; rather, in accordance with section 46 (1) first sentence no. 5b

StVO, this is a discretionary decision to be taken by the road traffic authority (see BVerwG, decision of 8 February 2017 - 3 B 12.16 [ECLI:DE:BVerwG:2017:080217B3B12.16.0] - (...) para. 3). In principle, a person who cannot wear a protective helmet should also not ride a motorcycle.

- 15 A right to an exception from the obligation to wear a helmet may exist if it is unreasonable for the person concerned to forego motorcycling for specific individual reasons (see Federal Court of Justice (BGH, *Bundesgerichtshof*), judgment of 25 January 1983 - VI ZR 92/81 - (...) para. 18 and Swiss Federal Court, judgment of 27 May 1993 - 6 S 699/1992 - (...)). The possibility of an exception provided for in section 46 (1) first sentence no. 5b StVO relates primarily to the seatbelt obligation. It serves to guarantee the person concerned sufficient mobility as far as possible. The same applies to the possibility of exception from the obligation to wear a protective helmet allowed by section 46 (1) first sentence no. 5b StVO. While it is impossible for the person concerned to wear a helmet, but he or she is not dependent on using a motorcycle, then his or her individual interest in motorcycling does not necessarily outweigh the public interest in compliance with the obligation to wear a protective helmet contained in section 21a (2) first sentence StVO (see Berlin-Brandenburg Higher Administrative Court (OVG, *Oberverwaltungsgericht*), decision of 15 December 2015 - 1 B 14.13 [ECLI:DE:OVGBEBB:2015:1215.OVG1B14.13.0A] - (...) para. 31; VG Augsburg, judgment of 27 June 2000 - 3 K 00.466 [ECLI:DE:VGAUGSB:2000:0627.AU3K00.466.0A] - (...) para. 21).
- 16 The Court of Appeal did not find any indications that the claimant could be dependent specifically on using a motorcycle (section 137 (2) VwGO). The claimant, who has a licence for driving passenger cars and owns a van, did not provide any such indications.
- 17 2. This restriction is also justified with regard to the freedom of religion protected by article 4 (1) and (2) of the Basic Law (GG, *Grundgesetz*) and must be accepted by the claimant.
- 18 Limitations to freedom of faith and freedom to profess a belief must arise from the constitution itself because there is no constitutional reservation in article 4 (1) and (2) GG to restrict a basic right by a statute (*Gesetzesvorbehalt*). Such constitutional limitations inherent in the Basic Law include the basic rights of third parties as well as community values of constitutional status (BVerfG, decision of 27 January 2015 - 1 BvR 471/10 et al. - BVerfGE 138, 298 para. 98).
- 19 a) The obligation to wear a protective helmet when motorcycling ordered in section 21a (2) first sentence StVO is intended to help to reduce the impact of motorcycle accidents and to increase traffic safety on public roads (explanatory memorandum, Federal Ministry of Transport Gazette (VkB1., *Verkehrsblatt*) 1975, 667 <676>). The provision serves primarily to protect motorcyclists and their passengers from serious head injuries. It also has the protection of the general public in mind and is intended to prevent danger to other parties involved in an accident or third parties.
- 20 It has already been established by the Federal Constitutional Court that a motorcyclist who rides a motorcycle without a suitable protec-

tive helmet and suffers a serious head injury in an accident as a result not only injures himself or herself; such conduct may also have far-reaching effects on the general public (BVerfG, decision of 26 January 1982 - 1 BvR 1295/80 et al. - BVerfGE 59, 275 <279>). In this decision, the Federal Constitutional Court specifically mentioned operations of the emergency services and medical care.

- 21 The Court of Appeal and the Representative of the Interests of the Federation at the Federal Administrative Court (*Vertreter des Bundesinteresses beim Bundesverwaltungsgericht*) rightly referred in particular to the rights of other parties involved in an accident deriving from article 2 (2) first sentence GG. As a result of the obligation to wear a suitable protective helmet when motorcycling, concerned motorcyclists are more likely to be in a position to protect others against the threats of loss of life or physical integrity after an accident. This is directly applicable in that they can provide first aid themselves or call an emergency doctor. However, they can also contribute indirectly to preventing further injury by taking measures to secure the accident site, for example, putting up warning triangles or drawing attention to the accident site in some other way and removing obstructions from the road.
- 22 Also, contrary to the opinion represented by the appeal on points of law, the possibility of suffering traumatisation from seeing serious head injuries cannot be dismissed as being purely hypothetical or "far-fetched". Such impairments are familiar, for example from train drivers. In fulfilling its obligation to protect, the legislature is not denied the right to act to prevent the occurrence of dangerous situations and to minimise risk. Article 2 (2) first sentence GG not only allows a subjective defensive right against the state to avert state interference with life or physical integrity; at the same time, this basic right constitutes an objective value decision of the constitution that establishes duties of protection on the part of the state. Accordingly, the state is obliged to protect and support these legal interests (BVerfG, decisions of 9 March 1994 - 2 BvL 43/92 et al. - BVerfGE 90, 145 <195> and of 26 July 2016 - 1 BvL 8/15 [ECLI:DE:BVerfG:2016:ls20160726.1bv1000815] - BVerfGE 142, 313 para. 69). Abstract, general threat prevention provisions are not justified only in cases where there would otherwise be a risk that a threatening event would immediately occur.
- 23 b) The freedom of religion asserted by the claimant thus opposes other constitutional interests which are not fundamentally of inferior value. The discretion allowed the competent road traffic authorities in section 46 (1) first sentence no. 5b StVO serves to balance these interests in individual cases.
- 24 It should be noted that it is not possible to give general priority to freedom of religion here, if only on account of the minor importance of the restriction concerned and its limited temporal and local effect (see BVerfG, chamber decision of 27 June 2017 - 2 BvR 1333/17 [ECLI:DE:BVerfG:2017:rk20170627.2bvr133317] - (...) para. 41).
- 25 3. Nor does a right to an exception derive from EU law.
- 26 a) European Union law does not contain any provision on the obligation to wear a protective helmet when motorcycling. Part I no. 4 of the

Council resolution of 26 June 2000 on the improvement of road safety (OJ C 218 p. 1) called for the adoption of a directive on the requirement that users of motorcycles and mopeds wear helmets. This did not happen, however, following the introduction of an obligation in all Member States for users of motorcycles and mopeds to wear protective helmets.

- 27 b) The obligation to wear a suitable protective helmet when motorcycling provided for in section 21a (2) first sentence StVO also corresponds to article 9 (2) of the European Convention on Human Rights. The case-law of the European Court of Human Rights (ECtHR) clarifies that the compulsory wearing of helmets is a necessary safety measure for motorcyclists and any restriction on the freedom of religion is justified for the protection of health (see already, European Commission of Human Rights, decision of 12 July 1978 - Application no. 7992/77, X/United Kingdom - and confirming this judgment, ECtHR, decision of 4 December 2008 - Application no. 27058/05, Dogru/France - para. 64; on this subject, see also decision of 13 November 2008 - Application no. 24479/07, Mann Singh/France).