

NEWS REPORT

Date: 11 September 2009
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Title: The ruling of the administrative section of the Council of State (*Conseil d'Etat, section du contentieux administratif*)
Country: Belgium

Context

Issue at stake: The Council of State overrules the dismissal of a teacher of Islamic religion because she refused to take off her headscarf when leaving her classroom and while still being in the school's premises

Ground of discrimination: of Religion

Source: Council of State (administrative section), decision no. 195.044 of 2 July 2009, *X v. Vlaamse Gemeenschap en het Gemeenschapsonderwijs* (x. v. the Flemish Community and the Educational board of the Flemish Community)

Field: Employment, Education

Legislative provisions: Flemish Special Decree of 14 July 1998 on Education, Declaration of neutrality in the Education of the Flemish Community

Content

Case: A teacher of Islamic religion in two primary public schools in Brussels was dismissed for "heavy infringement" (*motif grave*) because she refused to take off her headscarf when leaving her classroom and while still being in the school's premises. In application of the principle of neutrality of public education as enshrined in the Declaration of neutrality in Education of the Flemish Community, the school regulation forbids the wearing of religious symbols at school except for the teachers of religion in their classrooms. The teacher launched an action in emergency proceedings before the Council of State to suspend and subsequently overrule her dismissal. On 18 October 2007, the Council of State admitted the action in suspension because the piece of legislation proclaiming the principle of neutrality in the Flemish part of Belgium was not precise enough to infer a general prohibition of religious symbols in any school.

Decision of the Court: On 2 July 2009, the Council of State (Flemish Chamber of the administrative section) confirmed the preliminary decision adopted on 18

October 2007. It overruled the dismissal of the Islamic teacher in a well argued decision. First of all, the Council states that the schools were not competent to forbid the wearing of religious symbols in their school regulation because the Flemish Decree on Education of 1998 expressly entrusts the Flemish Central Council of Education with the task of drafting the Declaration of neutrality in Education. Contrary to what was argued by the schools, it was not possible to infer directly a prohibition of wearing religious symbols at school from the Declaration of neutrality in Education. Moreover, as far as no proselytism was proved by the school, the Islamic teacher could have rightly interpreted the Declaration of neutrality as not prohibiting *per se* the wearing of her headscarf.

Internet link source and additional information: ruling available (in Dutch only) on the website of the Council of State (www.raadvst-consetat.be)