



NEWS REPORT

Update of flash report nr: BE-33, BE-39 & BE-40
Date: 20 October 2009
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Title: The Council of State continues to elude the issue of the legality of the ban of religious symbols in public schools
Country: Belgium

Context

Issue at stake: Ban of headscarf at school before the Council of State
Ground of discrimination: of Religion
Source: Council of State, 22 September 2009, no. 196.261 and no. 196.260 and Council of State, 7 October 2009
Field: Education
Legislative provisions: Not specified in the decision

Content

Case: In 2005, two secondary public schools located in the French Community (South of Belgium) changed their internal regulations in order to forbid students to wear any kind of head covering in the school premises. The NGO *Movement against Racism, Anti-Semitism and Xenophobia* (MRAX) and several parents of the schoolgirls wearing the Islamic headscarf brought applications before the Council of State, the highest administrative Court in Belgium, in order to make void these new regulations. They also asked for their suspension during the procedure.

On 2 September 2005, the Council of State issued two decisions in emergency proceedings, one with respect to each school. It refused to suspend these new internal regulations on the ground that the legal requirement of a “serious harm which is likely to be hard to compensate” (*préjudice grave et difficilement réparable*) was not met.

On 17 March 2009, the Council of State issued two similar decisions turning down the applications in annulment as inadmissible. These decisions only concern the applications brought by the MRAX (see Flash-Report BE-33).

Finally, in the same case, the Council of State issued, on 22 September 2009, two decisions no. 196.261 and no. 196.260 concerning the action launched by the parents of the girls wearing a headscarf. It, again, ruled that the actions were inadmissible on a purely procedural basis. Indeed, the actions were signed only by the fathers of the girls and not by the mothers as well, while the Civil Code

requires, according to the Council of State, that children be represented by both parents.

Moreover, the Council of State issued, on 7 October 2009, its decision concerning the school exclusion of three primary schoolgirls who did not comply with the new prohibition of the wearing of conspicuous religious signs at school in a small Walloon town named Dison (update Flash-Report BE-40). It refused to suspend that exclusion, on the ground that the legal requirement of a “serious harm” (*préjudice grave*) was not met because the parents knew the school’s internal regulation and had nevertheless decided to register their daughter in this school.

Internet link source and additional information: Council of State, 22 September 2009, no. 196.261 and no. 196.260 available in French at <http://www.raadvst-consetat.be/>

Council of State, 7 October 2009, not published on the website of the Council of State (only press release available at this stage)