



NEWS REPORT

Date: 21 March 2010
Expert: Emmanuelle Bribosia
Title: Maths teacher allowed by Court to wear headscarf
Country: Belgium

Context

Issue at stake: The Court of Appeals of Mons lifts the ban on headscarf imposed on a maths teacher

Ground of discrimination: Religion/belief

Source: Court of Appeals (*Cour d'appel*) of Mons, 10 Mars 2010 (expedited proceedings)

Field: Education

Legislative provisions: Decree of the French-speaking Community of 17 December 2003 organising the neutrality inhering in subsidised public schools (*Décret de la Communauté française du 17 décembre 2003 organisant la neutralité inhérente à l'enseignement officiel subventionné*).

Content

Case: Ms T., a teacher of mathematics, works in three subsidised public secondary schools of the City of Charleroi. The former headmaster of the school “La Garenne”, where Ms T. had taught for three consecutive years until 2009 with her headscarf on, wrote a glowing report about her, emphasising her open-mindedness, her discretion and her teaching method in line with the City of Charleroi's educational scheme. The latter does not explicitly forbid the wearing use of visible religious symbols, and neither do the regulations enacted by the schools where Ms T. works. However, in September 2009, the new headmaster of the school “La Garenne” as well as the headmasters of the other schools asked her to take off her headscarf when entering the schools premises, arguing she would otherwise not comply with the principle of neutrality comprised in the 17 December 2003 Decree on the neutrality inhering in subsidised public schools. The Court of Appeals decision shows that the City of Charleroi endorsed this opinion on the same basis. Returning back from a first sick leave caused by the prohibition of wearing her headscarf, Ms T. was denied entry to one of the schools for refusing to take off her headscarf. She has been on sick leave again since then. Ms T. filed a suit against the City of Charleroi before the Court of First Instance (*Tribunal de première instance*) and asked, in expedited proceedings, to be authorised in the meantime to teach with her headscarf. She cumulatively launched an action before the Council of State to suspend and subsequently overrule the above-mentioned decisions. The

President of the Court of First Instance of Charleroi dismissed Ms T.'s claim, while the action before the Council of State is still pending.

Decision of the Court: In appeal, the Court acknowledged the emergency allowing temporary measures before the definitive ruling. It is thus for the Court to decide whether the defendant's decision is manifestly illegal (*prima facie*) and needs to be provisionally put aside. The Court's ruling may be summarised as follows:

- the ban on the headscarf is to be considered as a restriction to the freedom of religion in the meaning of Article 9.2 ECHR, which must in principle be incorporated into a legislative act;
- the neutrality to which the Decree of 17 December 2003 refers is aimed at guaranteeing the pupils' and their parents' freedom of thought (Art. 18.4 ICCPR; Art. 2 of the First Protocol to the ECHR; ECtHR, *Lautsi*, 3 November 2009);
- the scope of the Decree of 17 December 2003 must be assessed by taking into account the Belgian constitutional system, in which the notion of neutrality is not comparable to the principle of *laïcité* that underpins the French and Turkish policies;
- the Decree of 17 December 2003, which deals with subsidised public schools (*réseau officiel subventionné*; i.e. organised by provinces or municipalities and subsidised by the Community) is different from the Decree of 31 March 1994 concerning Community-owned schools (*réseau de la Communauté française*; i.e. organised and subsidised by the Community), where the latter does provide for an obligation to refrain from showing sympathy to a religion (except during religion lessons);
- neither the Decree, nor the Constitution, currently prevent teachers of subsidised public schools from demonstrating their religious belief, notably by way of symbols, as long as it is done in a reserved way that does not amount to proselytism;
- the headscarf, depending on its type and the way it is worn, may not automatically be considered as a form of proselytism, so that it could only exceptionally be forbidden by headmasters when justified by a person's problematic behaviour, while a general limitation should be provided for by a Decree;
- the ban on Ms T.'s headscarf is illegal, as it does not appear to be justified by the plaintiff's behaviour. As a consequence, she must be allowed to teach with her headscarf.

Political development: The Court's decision triggered an intense debate on the wearing of religious symbols at school and in the public sphere in general. As a consequence, the existing Decree on neutrality at school (above referred to) might be amended or replaced in order to clarify the notion of neutrality. Furthermore, on 31 March 2010, the Commission of the Interior of the House of Representatives will



discuss four bills aiming at banning the burka from public places. There seems to exist a political agreement among the parties of the majority (at the federal level) to adopt one of these texts.