



NEWS REPORT

Update of flash report nr: Update 386-BE-42 “Maths teacher allowed by Court to wear headscarf”

Date: 7 May 2010

Expert: Emmanuelle Bribosia

Title: Maths teacher prohibited by the municipal council to wear the headscarf

Country: Belgium

Context

Issue at stake: The maths teacher allowed by the Court of Appeals of Mons to wear the headscarf was prohibited to enter the school wearing the headscarf, following a decision of the Municipality Council. The Council of State rejected her action in suspension against that decision.

Ground of discrimination: Religion/belief

Source: Press release. Council of State decision n° 202.852, 7 April 2010

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: Following the *Mons's* Court of Appeals decision of 10 March 2010 (see FR n° 36 “Maths teacher allowed by Court to wear headscarf”), the Municipality Council of Charleroi adopted, on 30 March 2010, a regulation prohibiting teachers to wear any visible religious, political or philosophical symbol while in the premises of the schools in the city of Charleroi.

The Maths teacher allowed by the *Mons's* Court of Appeals to teach wearing the headscarf launched an emergency action in suspension against that regulation before the Council of State. She justified the emergency of the

situation by invoking the huge risk to be dismissed. Having used all her legal unjustified sick leave days, and not being covered by a medical certificate, her absence, caused by the 30 March 2010 Charleroi Municipal Council regulation, could not be considered as justified, and she could therefore be dismissed after 10 days of unjustified absence. In its decision n° 202.852 of 7 April 2010, the Council of State considered that the requirement of the existence of a risk of serious harm was not met and it rejected the appeal.

Indeed, in the opinion of the Council of State, the applicant cannot be prevented from teaching with the headscarf on the basis of the 30 March 2010 Charleroi Municipal Council regulation because this regulation has a general scope, and not an individual one. Therefore, the sanctions feared by the applicant could not be taken on the basis of that regulation, but on the basis of an individual decision against her. If she does not comply with the regulation, the Municipal Council, or the school, could take an individual decision against her, individual decision that could be criticised before the courts. Therefore, the risk of a serious harm does not exist on the basis of that regulation, and the Council of State rejected this action.

The applicant's lawyer announced that he would indeed launch an action against any individual decision targeting the applicant. Until now, this has, to our knowledge, not happened and the press did not mention any series in this case.

Following the *Mons's* Court of Appeals decision of 10 March 2010, the Council of State also rejected (decision n° 202.768 from 2 April 2010) the Maths teacher action in suspension launched against the decision of the Charleroi Municipal 'Government' (*Le collège*) of November 2009 prohibiting her to wear the headscarf. Indeed, following the *Mons's* Court of Appeals decision, there was not anymore, in the opinion of the Council of State, a "serious harm which is likely to be hard to compensate" (*préjudice grave et difficilement réparable*), a legal requirement needed for the emergency proceeding to be launched.

Internet link source and additional information:

<http://www.raadvst-consetat.be/Arrets/202000/700/202768.pdf#xml=http://www.raadvst-consetat.be/apps/dtsearch/getpdf.asp?DocId=16555&Index=c%3a%5csoftware%5cdtsearch%5cindex%5carrets%5ffr%5c&HitCount=2&hits=13+14+&04562120103017>



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