



NEWS REPORT

Date:	20 June 2010
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Title:	Opinion of the Council of State regarding the proposal for a decree prohibiting the wearing of religious symbols by the personnel in public schools in the French Community
Country:	Belgium
<u>Context</u>	
Issue at stake:	Positive opinion of the Council of State regarding the “conformity with the ECHR and the Constitution of a proposal for a French Community Decree prohibiting the wearing of religious, philosophical and ideological symbols (<i>signes convictionnels</i>) by the personnel working in public schools organized by the French Community and in schools financed by the French Community
Ground of discrimination:	Religion and belief, political opinion
Source:	Decree proposal : Doc. n° 84 (2009-2010) – N° 1 and Council of State Advice n° 48.022 of 20 April 2010 : Doc. n° 84 (2009-2010) – N° 2
Field:	Education, employment
Legislative provisions:	European Convention on Human Rights, Article 24 Constitution

Content

Case: Wide consultations regarding the opportunity to legislate as regards a prohibition of religious symbols (at school and within the public service) had taken place in March 2010 within a joint commission established by the Parliaments of the French Community, the Walloon Region and the French-speaking part of the Brussels Region (*Cocof*). Different legislative proposals have been presented following the consultations and for some, the Council of State (legislation section) has already given an opinion on their conformity with the law and their constitutionality.

On 15 March 2010, a proposal for a decree in the French Community has been presented by some members of the MR (right wing party) (84 (2009-2010) – n° 1) in order to prohibit the wearing of religious, philosophical and ideological symbols (*signes convictionnels*) by the personnel working in schools organised and financed by the French Community. The proposal aims at reaffirming the principle of neutrality as far as the education staff is concerned after the Court of Appeal of Mons' judgment of 10 March 2010 lifting the ban on headscarf imposed to a maths teacher (for further information, see Flash-Report on « Maths teacher allowed by Court to wear headscarf » - March 2010).

More precisely, the proposal contains two articles; one regarding public schools and one regarding schools financed by the French Community. The two provisions stipulate that, "*the school's personnel refrains from wearing any "belief symbols" (signes convictionnels), at school, as well as at training places and during extracurricular and external activities arranged by the school (e.g. excursions or school trips). By "belief symbols", it is to be understood any clothes or accessories showing a conviction or a political, philosophical or religious identity*". Those articles are to be included in the French Community Decree of 31 March 1994 defining the principle of neutrality in education, and in the French Community Decree of 17 December 2003 organising the principle of neutrality inherent in public and financed education.

Motives of the proposal are spelled in very general terms (there are exactly the same terms used, beside other arguments, to justify the federal proposal aiming at prohibiting the *burqa* in the public area, see Flash report "Towards a prohibition of the *burqa* and the *niqab* in the public sphere in Belgium – 15 April 2010). The justification put forward is the need for a clear political position in the debate regarding social cohesion, "living together" ("*vivre ensemble*") and integration in a diverse society (cultural and religious diversity). In the opinion of the authors of the proposal, two models of society can be implemented, namely the multiculturalism model and the interculturalism model. The multiculturalism model, where the individual with his or her particular cultural or religious membership predominates, unavoidably leads, to *communitarism* but also to "cultural relativism" which allows for a negation of the principles of equality and free choice. The second model is *interculturalism*, where all individuals of the society share common basic values (such as the right to life, the freedom of opinion, equality between men and women and the separation of church and state). In this model, cultural diversity is valuable only as far as it is

compatible with those common basic values of the society. In the opinion of the authors, the proposal is a step towards the *interculturalism* model. The proposal mentions that other legislative proposals have been made in order to support the *interculturalisme* model: a proposal aiming at introducing a common course on cultural and religious diversity for pupils of different religion or beliefs (Doc. 24 (2009-2010) – see separate Flash Report on it), a proposal introducing a course of philosophy and cultural history of religions (Doc. 25 (2009-2010)), a proposal aiming at reinforcing the “good living together” at school (Doc. 37 (2009-2010)), and a proposal aiming at teaching citizenship at school (Doc. 36 (2009-2010)). The opinion of the Council of State has not been requested for the three last proposals.

The Council of State analysed the proposal with regards to the European Court on Human Rights (ECHR) case law and the Belgian Constitution.

Turning to the ECHR, the Council first referred itself to its own opinion given on 20 May 2008 (n° 44.521/AG), relating to a legislative proposal aiming at applying the principle of separation between the State and religious and philosophical organisations (Doc. Parl. Sénat, S.O. 2007-2008, 4-351/2).

In that case, it concluded that the case-law of the ECtHR requires case-by-case assessments to be done in order to judge whether, on the one hand, there is a pressing social need, and on the other hand, whether the restriction to the freedom of religion is proportionate with the legitimate objective pursued. The Council of State also referred to the new case-law of the ECtHR, which leaves a huge margin of appreciation to member states to rule on the issue of religious symbols and the protection of the secularism. Therefore, the Council of State examined the proposal mainly under the Belgian Constitution.

The Council of State observed that the principle of neutrality in education is written in the Constitution (Article 24, § 1, 3°) and that the proposal supports that principle as it requires teachers to be neutral, or in other terms, to be respectful of any other religion. And, if a teacher expresses her (or his) religion in a proselyte way, this is not respectful of the other religions or beliefs (point 13). Moreover, according to the Council of State, the authors referred themselves to the *in concreto* Belgian social situation (mentioning the need for a clear political choice between the *multiculturalisme* or the *interculturalisme* models) explaining the need for

the Decree proposal, which can therefore be deemed as in conformity with the Constitution and with the European Convention on Human Rights (point 14).

However, the Council of State mentioned that the justification for the proposal is formulated in very general terms, and that the legislator should stick more to the specificity of education and to the reasons why the proposal serves the principle of neutrality. It also mentioned that, if the proposal was in conformity with the neutrality principle, opposite initiatives could also contribute to its implementation (e.g. stressing more the diversity of conceptions). Moreover, the Council of State put forward a constitutional limit to the proposal: it cannot be applied to teachers of religious classes, due to the constitutional independence between the State and religions. Finally, it mentioned that the legislator should specify in the core text of the Decree, and not only in the comments by articles, that the staff is prohibited to wear belief symbols during school trips or excursions, such as study trips, exhibitions, etc, but not on the way to and from the school, that would be disproportionate in the opinion of the Council of state.

Comment: In the opinion of the expert, such a general justification, which is the same as the one advanced for prohibiting the *burqa* in the public area, as well as for prohibiting the wearing of religious symbols by the civil servants in the public administration of the Regions, cannot be considered as justifying an exception to the freedom of religion. The Council of State does not proceed to a real legal control of conformity with the ECHR and of constitutionality of the proposal (which aim is targeted by the proposal, with regards to education and why the proposal will be necessary, appropriate and proportionate to that aim, putting it in balance with the freedom of religion and the non-discrimination principle). Indeed, no attention has been paid to the non-discrimination principle. Opinions of the Council of State are not binding.

Internet link source and additional information:

<http://www.pcf.be/req/info/dossier?section=&id=001305801>