



NEWS REPORT

Date:	20 June 2010
Expert:	Emmanuelle Bribosia
Title:	Opinion of the Council of State on the proposal for a Decree in the French Community creating a common philosophical and religious course
Country:	Belgium
<u>Context</u>	
Issue at stake:	Opinion of the Council of State regarding the constitutionality and the conformity with the ECHR of the proposal for a French Community Decree creating a common philosophical and religious course, in the last four years of secondary school, in public schools and in schools financed by the French Community
Ground of discrimination:	Religion and belief, political opinion
Source:	Decree proposal : Doc. n° 24 (2009-2010) – N° 1 and Council of State Advice n° 48.023 of 20 April 2010 : Doc. n° 24 (2009-2010) – N° 2
Field:	Education
Legislative provisions:	European Convention on Human Rights, Article 24 Constitution

Content

Case: On 28 September 2009, a proposal for a French Community Decree (24 (2009-2010) – n° 1) was presented by some members of the MR (right wing party), in order to organise a course on philosophy and religion that must be followed by all students from different religious or philosophical conceptions in the last four years of secondary school. An opinion has been requested to the Council of State (legislation section) at the end of March.

Motives of the proposal are dictated by the need for all students to acquire a basic knowledge regarding religious diversity so as to better understand it. The proposal leaves it for the Government to further specify how this will technically be implemented.

The Council of State observed that, on the basis of the principle of neutrality enshrined in the Belgian Constitution (Art. 24, §1, 3°) and in the European

Convention on Human Rights (Art. 2 of the First Protocol), the Community has to assure an objective, critical and pluralist religious or philosophical education. According to the Council of State, the proposal is in line with that obligation as the objective is to inform the pupils and to stimulate debates. The Council of State then underlined that if teachers teaching the common compulsory course are also in charge of the optional religious or philosophical course chosen by some students, they are subject to the neutrality principle when giving the common course.

They are not subject to that principle for the religious course followed by some students only as the constitutional principle of non-interference of the State applies.

As a second point of concern, the Council of State stressed that the common compulsory course will be organised by reducing the timetable arranged for optional religious or philosophical courses. This must nevertheless be done without reducing too much the timetable for such optional courses because the choice between a course on one of the recognised religion or a philosophical course is a fundamental right constitutionally guaranteed by Art. 24 §1 4°.

In its last observation, the Council of State mentioned that Art. 24, §5 of the Constitution stipulates that education is organised by decrees taken by the Communities. If the provision does not preclude some organisation points to be delegated to the Government, the principles, the guidelines and the core elements of that organisation shall be organised by the law. According to the Council of State, the Decree proposal does not respect Article 24, §5 of the Constitution, as too much power is left to the Government. The Decree proposal must itself determines the schedule of the new course created (how many hours a week?), the major elements of its organisation (will it be a part of an optional course or a distinct one with a different mark?), and their proportion with regards to the existing optional courses (particularly, how this new course will be integrated in the schedule without increasing it?).

Internet link source and additional information:

<http://www.pcf.be/req/info/document?section=&id=001293105>