



NEWS REPORT

Update of flash report nr:	945-BE-45; 962-BE-50, 983-BE-51
Date:	12 January 2011
Expert:	Emmanuelle Bribosia
Title:	Council of State rejects an action for annulment against a regulation preventing teachers from wearing the headscarf at school.
Country:	Belgium
Context	
Issue at stake:	The Council of State rejected an action for annulment against an internal regulation of the City Council of Charleroi concerning Municipal Secondary Schools which prohibit the wearing of any conspicuous sign of a religious, political or philosophical character in the schools' premises.
Ground of discrimination:	Religion/belief
Source:	Council of State decision n° 210.000 of 21 December 2010
Field:	Education
Legislative provisions:	Decree of the French-speaking Community of 31 March 1994 defining the neutrality of education within the Community (<i>Décret de la Communauté française du 31 mars 1994 définissant la neutralité de l'enseignement de la Communauté</i>). Decree of the French-speaking Community of 17 December 2003 organising the neutrality inhering in subsidised public schools (<i>Décret de la Communauté française du 17 décembre 2003 organisant la neutralité inhérente à l'enseignement officiel subventionné</i>). Decree of the French-speaking Community of 12 December 2008 on the Fight against certain forms of discrimination (<i>Décret relative à la lute contre certaines formes de discrimination</i>).

Content

Case: Following the ruling of the Court of Appeal of Mons of 10 March 2010 (see FR nr BE-45 "Maths teacher allowed by Court to wear headscarf"), the City Council of Charleroi adopted, on 30 March 2010, an internal regulation concerning Municipal Secondary Schools which prohibit teachers from wearing any conspicuous sign of a religious, political or philosophical character while in the schools' premises.

The mathematics teacher who had been in the midst of the controversy initiated expedited proceedings asking for the regulation to be suspended before the Council of State which was rejected on 7 April 2010 (see FR nr BE-50 “Maths teacher prohibited by the municipal council to wear the headscarf”). On 9 April 2010, the mathematics teacher asked for the suspension and the annulment of the internal regulation of the City Council of Charleroi before the Council of State which issued a ruling on 21 December 2010. In the meantime, the City of Charleroi dismissed the mathematics teacher on 8 June 2010 (see FR nr BE-51 “Maths teacher dismissed by the city of Charleroi”).

Decision of the Court:

The mathematics teacher raised two main sets of arguments in her appeal to the Council of State.

Firstly, the applicant claimed that the contested regulation was adopted *ultra vires* by the City Council of Charleroi, because only the legislator would be competent to adopt such a measure, and that this litigious regulation infringed the principle of proportionality. The Council of State stressed that the Belgian Communities are entitled by the Constitution to organise education – which the French-speaking Community did by adopting the Decree of 31 March 1994 defining the neutrality of education. Therefore, the Council of State considered that a local authority is entitled to clarify, in a general way, what are the teachers’ neutrality duties according to that Decree, notably by prohibiting the wearing of any conspicuous sign of a religious, political or philosophical character. Furthermore, according to the European Court of Human Rights’ jurisprudence, the term “law” used by Article 9 § 2 of the European Convention on Human Rights includes measures of infra-legislative level, such as internal regulations adopted by city councils. Finally, the Council of State held that the contested measure pursues the legitimate purpose of establishing the principle of neutrality in Municipal Secondary Schools in order to respect students’ freedom of conscience. This measure only provides for limited restrictions to teachers’ religious freedom, and was thus held proportionate to the legitimate aim pursued.

Secondly, the applicant considered that the principle of equality and non-discrimination was violated as she alleged being victim of direct discrimination on the basis of her religion. The Council of State stated that Article 11 of the Decree of the French-speaking Community of 12 December 2008 on the Fight against certain forms of discrimination allows public or private ethos-based organisations to provide for differences in treatment on grounds of religion which are not considered as discrimination. Such organisations can also require the persons working for them to act in good faith and with loyalty to the organisation’s ethic. The Council of State considered that this provision was applicable in the present case precisely because the applicant worked in schools subject to the principle of neutrality. For all these reasons the Council of



State found that none of the grounds for annulment were established and, therefore, rejected the claim.

Internet link source and additional information: for a press release see : <http://www.raadvst-consetat.be/?page=news&lang=fr> and for the ruling, see : <http://www.raadvst-consetat.be/arr.php?nr=210000&l=fr>