



NEWS REPORT

Date:	1 April 2011
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Title:	Headgear prohibition in a Belgian restaurant before the Court of Appeals of Liège
Country:	Belgium
<u>Context</u>	
Issue at stake:	The Court of Appeals of Liège ruled that the prohibition of the wearing of any headgear in a restaurant amounted to discrimination on the basis of the state of health
Ground of discrimination:	State of health
Source:	Court of Appeals of Liege, 22 February 2011, no. 2011/1438 (unpublished)
Field:	Access to goods and services
Legislative provisions:	Act of 13 February 1993 creating the Centre for Equal Opportunity and Opposition to Racism; General Anti-discrimination Federal Act of 10 May 2007

Content

Case: A restaurant in the small Walloon city of Huy posted a notice at the entrance of the restaurant annex bowling alley stating that the wearing of any headgear was prohibited within the premises. On 4 January 2009, a woman wearing a headscarf because she was a recovering cancer patient who had lost all her hair due to chemotherapy was asked to remove it without any consideration of her state of health. The woman decided to file a complaint with the Centre for Equal Opportunity and Opposition to Racism on the basis of the General Anti-discrimination Federal Act of 10 May 2007 which forbids discrimination based on the “current or future state of health” notably regarding the provision of goods and services. On 26 May 2010, the Court of First Instance of Huy held that the restaurant notice amounted to indirect discrimination on the basis of the state of health against people wearing a headgear because of an illness but also against other persons, such as Muslim women wearing a headscarf for religious reasons. The Court finally ordered the removal of the notice – and therefore the cessation of the general ban on headgear within the restaurant – under the threat of a daily



fine. The owner of the restaurant brought the case before the Court of Appeals of Liege.

Decision of the Court: On 22 February 2011, the Court of Appeals of Liege overruled the judgment delivered by the Court of First Instance of Huy. The Court of Appeals exclusively based its reasoning on Article 2 of the Act of 13 February 1993 creating the Centre for Equal Opportunity and Opposition to Racism which specifies the grounds of discrimination for which the Centre is competent.

According to this Article, the Centre is competent to bring an action in instances of distinction, exclusion or preference based on an exhaustive list of discrimination criteria, including ethnic origin, religious belief and actual or future state of health. On this basis, the Court of Appeals held that because the original petition was not based on a ground of discrimination provided for by the Act, but on a dress code (no headgear allowed), it was inadmissible.

Even though the reasoning of the Court of Appeals is particularly laconic, it seems that the Court considered that the Centre is only competent to bring a case of direct discrimination. As a matter of fact, the Court of Appeals held that the Centre was not competent whereas there was clearly indirect discrimination based on a ground of discrimination for which it is competent (state of health). The Centre for Equal Opportunity and Opposition to Racism has brought the case before the Court of Cassation (*Cour de Cassation*), which is competent to quash the decision if it rules that it is in breach with the Anti-discrimination legislation.

Internet link source and additional information: unpublished decision, no newspaper links.