



FLASH REPORT

Update of flash report nr:	Update of 851_BE_40_Belgium “The Flemish Community prohibits any religious signs at school” and 961_BE_49_Belgium “The Council of State suspended the Flemish Education Council decision to prohibit religious and philosophical symbols at school”
Date:	15 June 2011
Expert:	Emmanuelle Bribosia
Title:	The Flemish Education Council deemed competent by the Constitutional Court to regulate the wearing of religious and philosophical symbols at school
Country:	Belgium
<u>Context</u>	
Issue at stake:	On 15 March 2011, the Constitutional Court held that the Flemish Education Council is competent to regulate, and thus generally prohibit, the wearing of religious and philosophical symbols within the schools organised by the Flemish Community
Ground of discrimination:	Religion/belief
Source:	Constitutional Court decision no. 2011-040 of 15 March 2011
Field:	Education
Legislative provisions:	Special Decree of 14 July 1998 regarding Community Education (<i>Decreet betreffende het onderwijs</i>)

Content

Case:

The Flemish Education Council (an administrative authority heading 700 public primary and secondary schools) decided, on 11 September 2009, to prohibit the wearing of any religious or philosophical symbols at school. The prohibition targeted staff members, professors and students and concerned

primary as well as secondary schools. An exception was admissible during the classes of religious or philosophical courses. For the schools which had not already prohibited the wearing of religious symbols within their premises, the prohibition entered into force in September 2010 (see FR no. 851).

A Muslim student challenged this particular decision of the Flemish Education Council before the Council of State, which, on 18 March 2010, ordered its suspension (ruling no. 202.039).

In addition, the Council of State referred a preliminary ruling to the Constitutional Court over the constitutionality of the Flemish Special Decree of 14 July 1998 as interpreted to allow the Flemish Education Council to adopt a general ban for students to wear religious symbols at school. The central issue was whether the Flemish Education Council is competent to take such a decision without any specific legislative Act (regional decree) regulating the question and if a general prohibition to wear conspicuous religious and philosophical symbols at school was not contrary to the principle of neutrality enshrined in Article 24 of the Constitution (see FR no. 961).

Decision of the Constitutional Court:

First, the Constitutional Court considered that a general ban of religious and philosophical symbols at school gave a new interpretation to the concept of neutrality, which is, however, not incompatible with Article 24 of the Constitution. On the one hand, the Special Decree of 14 July 1998 regarding Community Education was aimed at entirely transferring to the Flemish Education Council the competence to give content to the ‘fuzzy’ notion of neutrality enshrined in the Constitution and, on the other hand, the Constitution did not exclude such a transfer as far as the substance of the notion of neutrality was respected. Moreover, even though the Flemish Education Council did not benefit from a “normative power”, the Constitutional Court considered that the adoption of a general prohibition of religious and philosophical symbols, only applicable to Community Education schools, could not be considered to be the exercise of a “normative power” but rather as an “internal regulation”. For these reasons, the Court held that the Special Decree of 14 July 1998 allows the Flemish Education Council to decide a general prohibition for students to wear conspicuous religious and philosophical symbols within Community Education schools.



Internet link source and additional information: www.const-court.be