



NEWS REPORT

Date:	10 February 2011
Expert:	Rikki Holtmaat
Title:	Prohibition to wear a headscarf in religiously denominated schools
Country:	The Netherlands
<u>Context</u>	
Issue at stake:	Opinion of ETC declaring prohibition of Islamic headscarf in Christian schools unlawful
Ground of discrimination:	Religion
Source:	Equal Treatment Commission Opinion 2011-2 of 7 January 2011/ Questions and answers in Parliamentary papers
Field:	Education
Legislative provisions:	General Equal Treatment Act (GETA), Article 1 and Article 7(1) sub c and 7(2)

Content

Case Law / political developments: On 7 January 2011 the ETC published an Opinion in a dispute brought by a Muslim pupil against the board of her Catholic secondary school. At the beginning of the academic year, the school issued a new rule, prohibiting pupils to wear the Islamic headscarf. The school had already prohibited various types of head covering (e.g. caps and hats) before it added Islamic headscarves to the list. The ETC concluded that the main motive for the new dress code was to prohibit the Islamic headscarf as such, which constituted direct discrimination on the ground of religion.

Access to education falls under Article 7 of the GETA (goods and services). On the ground of Article 1 GETA, discrimination in this area is prohibited, unless an explicit exception is applicable. Therefore, it had to be examined whether the law allowed for a justification to this policy.

The school stated that the code was based on the school's Catholic denomination and that the prohibition was allowed under Article 7(2) of the GETA, which allows schools to make a distinction on the ground of religion when this is necessary to maintain the 'ethos' of the organisation. (Compare the exception of Art, 4(2) of Directive 2000/78 in the area of employment and

professional education.) The school, however, was not able to make clear to the ETC that for maintaining its Catholic character, it was necessary to prohibit the headscarf. It seemed that the prohibition was just part of a broader policy covering any kind of head covering. The ETC therefore came to the conclusion that the school unlawfully discriminated on the ground of religion.

The case had raised some debate in the media and also had led to questions at the Parliament by some members of the Freedom Party (PVV, the party lead by M. Wilders). The MP's asked the Ministers of Education and Internal Affairs whether they agreed with them that schools that are based on a religious denomination¹, should in all circumstances enjoy the freedom to prohibit the Islamic headscarf. The response of the Ministers was clear and unambiguous: religious schools are only free to prohibit such headscarves when this is necessary to maintain their specific religious ethos and when this is part of a consistent policy. The Ministers also answered in the negative to the question whether they agreed with the MP's of the PVV that the Islamic headscarf is a symbol of the inequality of men and women in the Islamic religion and for that reason should not be allowed in an institution where the minds of young people are being formed. According to the Ministers of Education and Internal Affairs, young people express their different gender identities in a manifold of ways for a whole range of different motives.

A last question raised by the MP's of the PVV was whether or not the Ministers shared their opinion that the ETC was a completely superfluous institution and needed to be abolished as soon as possible. To this question the Ministers again answered that they did not agree. The ETC delivers a valuable contribution to the implementation of norms and criteria concerning equal treatment, even if one does not always agree with all opinion that it issues.

Internet link source and additional information:

Reference number: ETC Opinion 2011-02 and Questions and Answers Parliamentary Papers, Code 2011Z00252

Address of the webpage:

¹ In fact, they talked about 'bijzondere scholen'; which means: all schools that are not secular and neutral 'public schools'. In the Netherlands, both types of schools are publicly funded on the basis of Article 23 of the Constitution, which means that they get exactly the same amount of money from the government.

ETC Opinion: www.cgb.nl (Search term: 2011-02 - Last accessed 10 February 2011)

Parliamentary papers: To find PDF files of the Questions and Answers:

Search the internet with search term: 2011Z00252 or use

<http://ikregeer.nl/document/kv-tk-2011Z00252>