



European network of legal experts in gender equality and non-discrimination

FLASH REPORT

Country:	Belgium
Title:	Constitutional Court ruling on headscarf ban in schools of higher education
Date:	20 July 2020
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<u>Context</u>	
Issue at stake:	Constitutionality of the ban of political, philosophical or religious symbols in a school of higher education in order to create a neutral environment
Grounds of discrimination:	Religion or belief
Field of application:	Education
Source:	National court decision
Applicable law:	Decree of the French Community adopted on 12 December 2008 on the fight against certain forms of discrimination (Décret de la Communauté française du 12 décembre 2008 relatif à la lutte contre certaines formes de discrimination) (Belgian OJ: 13 January 2009)

Content

Case: According to the internal regulation of a school of higher education approved by the Brussels city council, students are banned from wearing signs, jewellery or clothing that reflect a political, philosophical or religious opinion or affiliation, and they are also banned from wearing any headgear. This Regulation is based on Article 3 of the Decree of the French Community adopted on 31 March 1994 'defining the neutrality of the education in the French Community'.

Muslim female students who are more than 18 years old (like the very large majority of students in this kind of school of higher education) and are wearing a headscarf filed a lawsuit in emergency proceedings before the President of the first instance court of Brussels on the basis of Article 50 of the Decree of the French Community adopted on 12 December 2008 on the fight against certain forms of discrimination (FRED). They alleged that the ban was discriminatory, and they asked the court to put an end to this discriminatory practice. According to the claimants, the ban was in breach of freedom of religion (Article 19 of the Constitution, Article 9 of the European Convention on Human Rights), the right to education (Article 2 of the First Additional Protocol to the European Convention on Human Rights), neutrality of public education (Article 24 of the Constitution) and the right to human dignity (Article 23 of the Constitution). The first instance court of Brussels referred a preliminary ruling to the Constitutional Court to decide whether such a ban, aimed at ensuring a totally neutral educational environment, was constitutional when adult students wearing headscarves were concerned.

Decision of the court: On 4 June 2020, the Constitutional Court ruled that the ban is not contrary to the obligation to respect neutrality in public education and does not violate the

freedom of religion guaranteed by the Constitution and by the European Convention on Human Rights. The Court did not find it necessary to examine the matter further under Article 23 of the Constitution (right to human dignity). The Court found legitimate the objective to ensure a totally neutral educational environment in order to protect students who do not wish to make their beliefs visible from the social pressure that might be exerted on them by those who wish to make their beliefs visible.

According to the Constitutional Court, Article 3 of the Decree of the French Community adopted on 31 March 1994 'defining the neutrality of education in the French Community' is not unconstitutional.

Key points of analysis: The Court decided that neutrality is a variable concept and may justify a total ban of the wearing of political, philosophical or religious symbols, if it is explicitly provided for in the internal regulation of a school of higher education. The Court also found that such a ban is not discriminatory.

In addition, the Court ruled that a general ban is not mandatory to ensure neutrality. Higher education institutions may therefore also allow the wearing of signs of conviction and opt for a policy of inclusive neutrality.

Unia, the equality body, took part in the case in support of the claimants. Unia regrets that the Constitutional Court did not take into account the fact that the students concerned are aged over 18. Unia also regrets that the Court did not take into account the case law of the European Court of Human Rights according to which there is no right not to be exposed to the beliefs of others.

Internet link source: Full judgment (in French):
<https://www.const-court.be/public/f/2020/2020-081f.pdf>.