

NEWS REPORT

Date:	20 December 2014
Expert:	Bribosia Emmanuelle
Title:	The Council of State cancels regulations of schools prohibiting the wearing of any conspicuous philosophical signs
Country:	Belgium
<u>Context</u>	
Issue at stake:	The Council of States cancelled internal regulations of schools prohibiting the wearing of any conspicuous philosophical signs because this prohibition was not necessary in a democratic society
Ground of discrimination:	Religion/belief
Source:	Council of State (administrative section), rulings of 14 October 2014 n°228.751, 228.752, 228.748
Field:	Education
Legislative provisions:	Mainly Article 24 of the Belgian Constitution and Article 9 of the European Convention of Human Rights

Content

Case development: On 1st February 2013, the Flemish Education Council (a public authority at the head of 700 public primary and secondary schools in the Flemish Region) approved an Administrative Circular of the Board of the Flemish Community schools, prohibiting the wearing of any conspicuous philosophical signs at school (except for classes of religion) and enjoined the Boards of Flemish Community schools to include this prohibition in their internal regulations. On this basis, several school Boards adopted internal regulations prohibiting the wearing of any conspicuous philosophical signs in the school premises.

Decision of the Court: Students wearing the Islamic headscarf and their parents filed an action for annulment of the Flemish Education Council decision of 1st February 2013 (as well as the Administrative Circular) and of the internal implementation regulation of their school before the Council of State. At the same time, two Sikh students also introduced distinct actions for suspension and annulment before the Council of State against the above-mentioned Circular and the internal implementation regulation of their respective schools. In the three procedures, the applicants argued that such regulations breach their freedom of religion. On 19 September 2013, the Council of State refused to suspend the effect of the challenged Circular and the internal regulation while examining the request for annulment (rulings no. 224.733 and 224.732).

On 14 October 2014, the Council of State gave its rulings on the requests of annulment in the three cases. Firstly, following its established case law, the Council of State refused to cancel the challenged Circular of the Flemish Education Council stating that it has no competence to do so.¹

¹ Council of State, rulings no. 228.753, 228.754, 224.755, 14 October 2014 (see FR no. BE-105).

Secondly, the Council of State decided, in the three cases, to cancel the internal school regulations. The Council of State stated that such a prohibition of any conspicuous philosophical signs at school constitutes an interference with the right to freedom of religion and has to comply with the well known conditions of Article 9 of the European Convention of Human Right: namely the prohibition should be enshrined in the Law, it has to aim at reaching specific purposes and should be necessary in a democratic society. While the two first conditions were met, the Council of State ruled that all three schools failed to prove that this prohibition was necessary in a democratic society. According to the Council of State, the disputed Circular was adopted by the Flemish Education Council because of serious problems in some schools in the Antwerp Region. However, the schools of the applicants were not in such a situation that could justify such a prohibition in their internal regulations.

Internet link source and additional information: <http://www.raadvst-consetat.be/?page=news&lang=fr&newsitem=237> (the ruling can be downloaded in Dutch).