Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Complex Intrareligious Diversities and Enrolment in Religious Minority Schools

Question(s) at stake:

Whether an Orthodox Jewish school may refuse to enrol children whose Orthodox Jewish parents agree with the school's pedagogical project and regulations but hold political views regarding Israel that are unacceptable to the majority in the school's Orthodox community.

Outcome of the ruling:

Children cannot be victims of their parents' political views. The parents have a fundamental right to enrol their children in the school. It cannot be inferred from the political views of the father of the family that the religious observance of the family is incompatible with the religious ethos presented in the pedagogical project of the school.

Topic(s):

- Education

Keywords:

- Admission policies and selection
- Best interests of the child
- Faith-based schools
- Freedom of education
- Parents
- Political or any other opinion
- Pupils
- Right to education
- Types and actors

- Actors
- Rights and freedoms
- Children's rights
- Right of parents to ensure the religious and moral education of their children
- Freedom of thought, conscience and religion

Tag(s):

- Jewish faith schools
- Jewish antizionism
- Haredi
- Torah
- Talmud
- Right to self-identification

Author(s):

- Overbeeke, Adriaan (Faculty of Law, VU University Amsterdam - Faculty of Law, Universiteit Antwerpen, Belgium)

Country:

Belgium

Official citation:

Court of Appeal Antwerp, Judgment of 18 June 2013, no. 2012/AR/2910 (Hof van Beroep Antwerpen, 18 juni 2013, nr. 2012/AR/2910)

Link to the decision:

https://www.unia.be/nl/rechtspraak-alternatieven/rechtspraak/hof-van-beroep-antwerpen-18-juni-2013

ECLI:

No ECLI number / ECLI number unknown

Date:

18 June 2013

Jurisdiction / Court / Chamber:

Appeal Courts

Remedy / Procedural stage:

Appeal

Previous stages:

- Rechtbank van eerste aanleg Antwerpen, 2 October 2012
- Commissie inzake Leerlingenrechten, decision no. 2012/124, 6 July 2012

Subsequent stages:

None

Branches / Areas of law:

Constitutional law; Education law

Facts:

A religious Jewish family with six children in Antwerp sought an education that, in the parents' view, matched their religious views. There are several Jewish schools in Antwerp. The parents wished to enrol their children in the Orthodox Jewish schools of the *Jesode Hatora Beth Jacob* (J-H-B-J), educational institutions closely linked to the Orthodox Jewish congregation *Machsike Hadass*. The school authorities refused the enrolment.

As grounds for this refusal, the school cited the fact that the father, F., should be considered an ultra-Orthodox Jew and that he held anti-Zionist views. In 2006, for instance, he allegedly participated in a congress in Tehran at which he took positions against the State of Israel and met, among others, the President of Iran. However, both parents endorsed the school's "pedagogical project", which included essential principles of Orthodox Jewish education.

The parents first submitted the enrolment refusal to the Commission on Pupils' Rights (*Commissie inzake Leerlingenrechten*), a non-judicial body responsible for enrolment issues), which ruled on 6 July 2012 that the refusal was unlawful and advised the Education Minister to reduce the school's funding. The school maintained its refusal to enrol the children.

On 9 August 2012, the parents submitted the matter to the civil court.

The writs sought the enrolment of their three youngest children in the primary school and of their three oldest children (all minors) in the secondary school of the J-H-B-J. Both cases sought both a decision on the merits and an interim settlement of the parties' situation. By judgment of the Antwerp First Instance Court dated 2 October 2012, the two cases were merged and the claim for provisional settlement of the parties' situation was dismissed. The family appealed against this judgment.

The children were not enrolled at the school in the 2012–2013 school year.

Ruling:

The court examines whether parents can claim enrolment for their children under Article 37bis of the Primary Education Decree and Article 110/1 § 1 of the Secondary Education Codex, which establishes the right of enrolment on condition that parents agree to the school's pedagogical project and school regulations.

A school board cannot question the parents' agreement to the *school rules* before the student has committed even one act in violation of these rules. If that type of behaviour occurs, the school must take legal action through disciplinary proceedings or dissolution for breach of contract, i.e. only *after* such facts have occurred.

The situation is different with the parents' approval of the *pedagogical project*. In certain concrete circumstances, the formal endorsement of the pedagogical project does not automatically lead to enrolment, especially if these circumstances undeniably show that the endorsement of the pedagogical project

can be regarded as completely implausible.

It cannot be inferred from the political views of the father of the family that their religious practice is different from that presented in the pedagogical project of the school. Besides, the children cannot be made victims of their father's political views. The political views of the father therefore do not constitute proof that the agreement to the pedagogical project is implausible, since in that pedagogical project a number of requirements have been written down in connection with religious experience, but not with regard to political positions.

Consequently, there is no conclusive reason for refusing the enrolment of the children in primary or secondary school.

Main quotations on cultural or religious diversity:

"In principle, it cannot be ruled out that what is called 'a pro forma consent' must, according to the circumstances, be regarded as a feigned and therefore invalid consent. It cannot be ruled out from a purely legal point of view that in a specific case the school board is right to make that assessment. The law of obligations – the pleading confirms the contractual nature of the relationship in free education – nevertheless leaves it to the party concerned, subject to judicial review afterwards, to judge whether the pretended consent of the other party is a real consent. The concrete data will be decisive. For example, it cannot be ruled out in principle that the 'consent' of parents who publicly and militantly oppose the principles of a school should not be accepted as a real consent according to the circumstances. The requirements that are set for the prospective students can be very different in terms of intrusiveness into their privacy. The vast majority of Catholic schools have opted for an open admissions policy. Children of non-believing parents are also accepted, and parents are not expected to show full adherence, but only asked to *respect* the [school's] religious principles.

Some Jewish schools, however, focus exclusively on a particular religious community. The membership of the parents in a specific community is decisive for whether or not they are accepted into the school. According to the statement of a member of parliament in the preparation of the [Flemish] Primary Education

Decree, a school could not refuse a child of an atheist parent who wants to enrol his child in a Jewish school because he believes that the child should receive a confessional Jewish education.

Such a one-sided consumer-oriented approach cannot be reconciled with the constitutional freedom of education. Put in this way, the active freedom of education, which implies the school's freedom to identify [a specific pupil population matching the school's religious identity], is not weighed against but sacrificed to the passive freedom to see any demand for education unconditionally respected. Another example: if a group of Catholic believers organizes a school and sets baptism as a condition for admission and applies this condition consistently, in that circumstance is there a decisive argument to argue that unbaptized children should also be accepted? An alleged 'consent' cannot ignore facts or prevent the school from establishing that the conditions are not actually met and from acting accordingly. A refusal of admission that is based on objective data that can be clearly established at the time of registration and that are related to the core of the educational project is, among other things, indisputably in accordance with the text of the Equal Opportunities Decree. The lack of power to assess future behaviour emphasized by the government during the parliamentary preparations may also be reconciled with this finding". (para. 15)

"The Court therefore assumes that, in certain specific circumstances, formal endorsement of the pedagogical project does not automatically lead to a registration, in particular if it is indisputable from those circumstances that endorsing the pedagogical project may be regarded as wholly implausible". (para. 16)

"First of all, it must be stated that the facts relied on relate essentially to the political views of Mr. F. and do not relate to his religious opinion or experience". (para. 19)

"From the political positions of father F., it cannot be deduced that the religious practice of the F. family would be different from that which is presented in the

pedagogical project of the school. By the way, the children cannot be victims of their father’s political views.

"There is nothing to indicate that the F. family, and the children in particular, would not know and practice the Jewish religion or would not have ‘more than sufficient knowledge of the Torah and the Talmud’, as the pedagogical project requires.” (para. 20)

“Moreover, it must be noted that membership of the [Orthodox Jewish] M. H. community is not mentioned [as a condition of admission] in the pedagogical project document, which can be the only guideline in this respect”. (para. 21)

“The exclusion of parents with certain political views or because they are not members of a certain community through a pedagogical project strictly drawn up per hypothesis, would probably not be able to pass the test of the Flemish education decrees”. (para. 22)

“It cannot therefore be inferred from the reasons given by the school for refusing the enrolment of the F. children that their agreement to the pedagogical project must be rejected as implausible or feigned.

Consequently, there is no sufficient reason to refuse the enrolment of these children in the primary or secondary school of which the association J-H-B-J is the organizing body”. (para. 23)

“In accordance with Art. 22bis Constitution and the Convention on the Rights of the Child the best interests of the child should be the primary consideration in any decision affecting the child. The judge will therefore, whenever he has to make a decision in connection with minors, also base his decision on the best interests of the children”. (para. 24)

“From the documents now filed, it appears that in the Antwerp Jewish world a smear campaign has started against the F. family and that as a result the children are apparently not welcome in any Jewish school. Consequently, the fundamental right to education for these children is compromised. After all, they are entitled to education in a school that offers the kind of education of their choice, in this case

an education that is also inspired by the Jewish religion". (para. 25)

"In weighing up the expected commotion in the event of the enrolment of those children and the resulting unfavourable study climate, on the one hand, and the fundamental right to education of their own choice, on the other, the Court concludes that, in the present case, it is in the interests of those children to be able to follow the education of their choice and, consequently, that they should be able to attend classes in this school". (para. 26)

Main legal texts quoted in the decision:

Domestic law:

- Article 22bis of the Belgian Constitution
- Article 111.1 (and following) of the Equal Educational Opportunities Decree 28 June 2002 (*Vlaams Decreet Gelijke Onderwijskansen 28 juni 2002*)
- Article 115/1 of the Codex Secondary Education (*Codex Secundair Onderwijs*) (a Decree)
- Article 37bis of the Primary Education Decree (*Vlaams Decreet Basisonderwijs*)

International law:

- The Convention on the Rights of the Child
- Article 18, § 4 of the International Covenant on Civil and Political Rights

Cases cited in the decision:

None

Commentary

Complex Intrareligious Diversities and Enrolment in Religious Minority Schools

Jewish communities historically constitute the oldest non-Christian religious minority in Western Europe. Nowadays, these communities themselves form a palette of very diverse currents and traditions, whose different religious views regarding both precepts and political choices are deeply rooted in their religious

identity. From the perspective of the communities concerned and their adherents, these views sometimes involve positions that cannot be reconciled. This intra-religious diversity extends to the level of school education: “The Jewish school system as it exists in many European countries is a reflection of denominational tensions present within the communities” (Dimentstein 2012: 139).

At its deepest level, the issue before the court in this case is how to deal with claims in which, on a core issue related to religious identity, there is reason to doubt, prior to enrolment, whether a sufficient match exists between religious education consumers (parents) and a religious education provider (the school board).

Case law relating to school admission in Jewish minority schools has hitherto centred on whether Jewish denominational schools could deny admission to non-Jewish children, particularly where the father was Jewish but the mother (by Jewish halachic rules) was not Jewish (for the UK, see *R (E) v Governing Body of JFS* [2009] UKSC 15; Netherlands: Supreme Court, 22 January 1988, no. 13465, *Maimonides Lyceum*).

Another religiously/theologically sensitive matter of internal division, especially among the *haredi* (a Jewish movement that is labelled “ultra-Orthodox” in public media and in the judgment under discussion), concerns the acceptability of the ideas of Zionism and, by extension, the attitude adopted towards the State of Israel. These are positions which, by their very nature, must be qualified as political, but they are at the same time closely linked to religious views considered essential for the groups concerned: “in extremist Haredi eyes, opposition to Zionism is deep-rooted, since it is seen as ‘rebellion against the Lord and his Torah’. The decision of some Jews to take their fate into their own hands is regarded as strictly forbidden in the religious sphere” (Shilhav 1989: 58).

In the judgment under appeal, the Court seeks to address a specific legal issue arising in this context, forcing it to weigh up the fundamental rights at issue – those of a Jewish family and those of a Jewish school. On the face of it, the case is a simple one: a Jewish school refuses to enrol children because the school

authorities established the parents' lack of conformity with the school's basic principles, which are contained in its educational project.

The father of the Jewish family involved is known by his actions as a principled anti-Zionist. He allegedly propagated his views in Tehran, on the occasion of a conference co-sponsored by the Iranian government. This caused a stir in Jewish circles. During this period, he lived with his family in Vienna, where he came into conflict with the Jewish community *Israelitische Kultusgemeinde Wien*, and its affiliated Jewish school *Talmud Thora-Schule Machsike Hadass*, which refused admission to his children.

After the family moved to Belgium, a similar conflict arose there, this time with the Jewish school affiliated with the Orthodox *Machsike Hadas* congregation in Antwerp. Again, the parent couple demanded that the children be admitted to the Orthodox Jewish school.

Although the Court in this case upheld the parents' claim and ordered the Jewish school to enrol the children, the judicial reasoning is one that does not rely purely on the principle that parental wishes in terms of school choice for their children necessarily override religious school objections. This in itself is significant, as the Belgian education system places great importance on the right of parents to choose the education of their preference for their children. Historically, this choice has primarily involved the parents' religious affiliation.

The Court's approach takes into account and leaves room for both the individual self-identification that is essential for parents when choosing education, and the right to self-identification of (in this case religious) groups. Here, the Court explicitly invokes the scholarly analysis of Verstegen (Verstegen 2003–2004), which – based on the active freedom of education enshrined in the Belgian Constitution – allows room for the education provider to shape an orthodox, religiously oriented educational project in such a way that the school authorities should be able to check, at least marginally, whether prospective pupils might not fit into that project.

To this end, the court (in para. 15) makes, based on Verstegen, a hypothetical comparison with Roman Catholicism: it is conceivable that Catholic education could be targeted at children of one specific Christian church, using baptism, a church sacrament, as a condition for admission. If this criterion is used consistently, Verstegen wonders (and with him the court, which adopts his reasoning), “is there a decisive argument to argue that unbaptized children should also be accepted?” The court concludes: “An alleged ‘consent’ cannot ignore facts or prevent the school from establishing that the conditions are not actually met and from acting accordingly”.

The school’s wish to bind parents to compliance (even prior to enrolment) with *specific religious precepts* is thus accepted in principle. This implicitly means that there is latitude for providing education to adherents of specific religious streams, where intrareligious differences may result in religiously different school projects. This phenomenon is particularly visible in Europe in cities with larger Jewish communities, such as Antwerp (Vanden Daelen 2010).

What about setting a *membership requirement* (membership in a specific Jewish congregation) as a condition for admission? Such a requirement amounts to a test similar to the one above for determining whether a specific religious precept can only be implemented within one specific denomination. The Court shows awareness that belonging to a specific community can be an important reason for maintaining a denominational school (para. 15), but does signal that requiring membership in a specific denomination may create tension with the requirements of Belgian (Flemish) education legislation (para. 22).

Another element that deserves attention is the way the balancing of interests – a fundamental rights conflict – is implemented in this particular case.

The Court’s approach is one that calls for intrusion into the religious beliefs of the parties involved, especially since the objection of the school refusing enrolment concerns a religious issue. This carries the risk of errors of judgment. In this case, the Court plainly qualifies the alleged anti-Zionist view of the father of the Jewish family as “political” and entirely distinct from religious views (para. 19). In doing

so, the Court seems to escape a theological assessment.

However, given the fundamentally different theological views within Orthodox Jewish communities on Jewish statehood, qualifying a view of Zionism as merely "political" is incomplete. In a commentary on this ruling, it was noted that the judge's sharp distinction between religion and politics "contradicts the close connection between the two" and that, in a situation such as this, the judge should be expected to take a restrained approach "whereby the court recognizes as religious or religiously inspired what the persons concerned themselves consider to be so. […] [T]he alternative is for civil courts to rule on theological issues. With regard to religiously based political doctrinal systems, it is no different, even if at first sight they sound rather exuberant to the ears of contemporary Europeans" (Judo 2013).

Interestingly, the enrolment ordered by the court in these sensitive circumstances, in which the best interests of the children were taken into account (para. 24), does not seem to have turned out badly for both parties in the end. The chairman of the J-H-B-J school board stated in an interview in the Jewish magazine *Joods Actueel* six months after the ordered enrolment: "so far […] the situation has not caused any problems. The children are also well motivated and all in all, the transition and outcome have been better than we expected" (Joods Actueel 2014). The Court is aware that here, with a view to realizing the children's right to education, it arrives at a *potentially* unfortunate end result, as it deliberately takes into account "commotion in the event of the enrolment of those children and the resulting unfavourable study climate" (para. 26) in its consideration.

In this judgment, the diversity issue is not generically resolved by an absolute primacy of *the best interests of the child* or by the primacy of *parental choice*. As a matter of principle, according to the Court (which is guided here by the literature (Verstegen 2003–2004)), active educational freedom includes the freedom to "identify the recipients of the supply from the project". Thus, in the Court's view, there are limits to individual self-identification when it comes to belonging to a specific group.

In this case, the problem is particularly complex. The size and diverse composition of Antwerp's Jewish community also makes it possible for Orthodox Jewish children to be educated in an Orthodox school that is closer to the ideas of the parents concerned, since there are also free anti-Zionist Orthodox primary schools in Antwerp, a girls' school and a boys' school. These schools could have been an alternative for the three children for whom enrolment was sought in the (non-anti-Zionist) J-H-B-J primary school. In a system of free school choice, it is not for the courts to offer this way out as a solution. This alternative, closer to the parents' identity, was therefore not involved in the balancing exercise that the court was confronted with. The court limited its assessment to balancing the parents' express choice against identity concerns of the J-H-B-J school.

Literature related to the main issue(s) at stake:

Specific legal publications/comments:

Judo, Frank. 2013. "De grens tussen politiek en religie". *Juristenkrant* 274: 3.

General legal literature:

Verstegen, Raf. 2004. "Gelijke onderwijskansen in de Vlaamse Gemeenschap. Verkenning van enkele principiële vragen". *Tijdschrift voor Onderwijsrecht en Onderwijsbeleid* 4–5: 284–302.

Other literature:

Dimentstein, Marcelo. 2012. "Jewish Schools in a Changing Europe: Old and New Challenges". *European Judaism: A Journal for the New Europe* 45 (1): 136–142.

Friesel, Evyatar. 2020. "Jews against Zionism/Israel: On the Ambivalences of Contemporary Jewish Identity". In Armin Lange (eds), *Comprehending and Confronting Antisemitism. A Multi-Faceted Approach*, 427–439. Berlin: De Gruyter.
Joods Actueel. 2014. "Interview met de voorzitter van de inrichtende macht van de Jesode-Hatoraschool, Isi Morsel". *Joods Actueel* (3 February 2014).

Keren-Kratz, Menachem. 2017. "Rabbi Yoel Teitelbaum – the Satmar Rebbe – and the Rise of Anti-Zionism in American Orthodoxy". *Contemporary Jewry* 37 (3):

457–479.

Vanden Daelen, Veerle. 2010. “Over dagscholen, bijscholen, cheiders en jesjivot – een historiek van Joods onderwijs in België”. *Tijdschrift voor Onderwijsrecht en Onderwijsbeleid* 2010–2011 (1-2): 99–107.

Rabkin, Yacov. 2018. “Judaic Challenges to the Legitimacy of Israel”. *Global Jurist* 18 (3): 1–12.

Shilhav, Yosseph. 1989. “The Haredi Ghetto. The Theology behind the Geography”. *Contemporary Jewry* 10 (2): 51–64.

Materials relevant to the case:

Ministry of Education and Training. 2025. *Organization of the education system in the Flemish Community of Belgium*, available at <https://eurydice.eacea.ec.europa.eu/eurypedia/belgium-flemish-community/organisation-education-system-and-its-structure> accessed 25 January 2026.

CC BY ND

This case-law comment is licensed under a Creative Commons Attribution-NoDerivatives 4.0 International License (CC BY-ND 4.0) .

You may share this material, provided that appropriate credit is given. No derivatives or adaptations of this material are permitted.

Suggested citation of this case-law comment:

Overbeeke, Adriaan (2026): Complex Intrareligious Diversities and Enrolment in Religious Minority Schools, Department of Law and Anthropology, Max Planck Institute for Social Anthropology, Halle (Saale), Germany, CUREDI043BE004, https://www.doi.org/10.48509/CUREDI043BE004.