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

Religious Education Teachers Wearing Religious Symbols in State Schools: Is "a Completely Neutral Educational Space" Possible?

Question(s) at stake:

1) Whether a public-authority school can expand a ban on wearing religious signs based on its neutrality policy to apply to religious education teachers (when they are outside their classrooms), or whether the school must provide an exception for this particular category. 2) Whether the constitution places limits on the neutrality principle as it applies to state schools, given that the constitution also requires these schools to offer a wide range of religious courses taught by a special category of teachers who must be able to credibly represent their religion in their position at these public-authority schools.

Outcome of the ruling:

1. If it has not been shown that a religious education teacher, in the performance of her assignments, adopts an attitude that demonstrates indoctrinatory or proselytory zeal or wears a religious symbol, in this case a headscarf, as an act of aggression to exert pressure or provoke a reaction, a ban on wearing such a symbol violates the teacher's religious freedom. The school treats categories of persons who are in substantially different situations identically with regard to the prohibition in question outside the classroom, without reasonable justification.
2. The constitutional principle of neutrality that applies to state education is circumscribed by the duty, also enshrined by the constitution as a fundamental right, to provide religious courses in state schools. A ban on wearing religious symbols in a state school therefore cannot be applied to

religious education teachers.

Topic(s):

- Education
- Employment

Keywords:

- Hijab
- Non-discrimination
- Public authorities' schools
- RE teachers (Teachers of Religion Education)
- State neutrality
- Teachers
- Employment requirements
- Religious and cultural symbols
- Attire
- Rights and freedoms
- Freedom of thought, conscience and religion
- Limitations and justifications
- Legitimate (state) aims
- Protection of the rights and freedoms of others
- State approaches and constitutional framework
- Civil servants

Tag(s):

Author(s):

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

Country:

Belgium

Official citation:

Council of State, Judgment of 01 February 2016, No. 233.672 (Conseil d'Etat, arrêt du 1 février 2016, n° 233.672)

Link to the decision:

http://www.raadvst-consetat.be/Arresten/233000/600/233672Dep.pdf#xml=http://www.raadvst-consetat.be/apps/dtsearch/getpdf.asp?DocId=34987&Index=c%3a%5csoftware%5cdtsearch%5cindex%5carrets_nl%5c&HitCount=2&hits=13+14+&0234432023417

ECLI:

no ECLI

Date:

01 February 2016

Jurisdiction / Court / Chamber:

Council of State

Remedy / Procedural stage:

-

Previous stages:

Council of State, no. 226.346, 5 February 2014

Subsequent stages:

None

Branches / Areas of law:

Constitutional law; Education law

Facts:

A female Muslim religious education (RE) teacher has been nominated by the competent Islamic authority to teach Islamic religious education in a school of the Flemish Community Education system (a government school) during the 2013–2014 schoolyear.

The school principal requires her to agree to a neutrality declaration that implies that she is not allowed to wear her headscarf on the school premises, except for in the classroom where she teaches her classes. On the school grounds, her headscarf is considered a prohibited outward symbol of her religion, incompatible with school neutrality. She refuses to agree to this obligation. The school principal decides to deny her access to the school on 2 September 2013, refuses to waive the implementation of Circular 2013/1 (issued by the Community Education Council) on 5 September 2013, which includes the prohibition of wearing religious symbols, and finally, on 6 September 2013, decides to not appoint her, a decision based on her refusal to refrain from wearing a headscarf.

The RE teacher then appeals to the Council of State, in particular against the refusal of the Community Education elementary school to appoint her as an Islamic RE teacher for the 2013–2014 school year. Among other things, she claims that her religious freedom and the principle of equality have been violated. She challenges the way in which Community Education fulfils the neutrality obligation in its state schools, by subjecting religious teachers to the ban on wearing religious symbols as soon as they are outside their classrooms.

The applicant points out that the contested decision allows RE teachers to wear visible symbols of their religion only in their own classroom, during RE classes. The applicant considers this restriction to violate her freedom of religion (Article 9 European Convention on Human Rights, ECHR). She argues that nowhere is it demonstrated that the prohibition on RE teachers wearing religious symbols outside their RE classroom is necessary in the interest of public order, health, or morality or the protection of the rights and freedoms of others.

Moreover, according to the applicant, RE teachers should be considered a special category, distinct from pupils and from teachers teaching other subjects. They are

appointed precisely to teach students about their religion and to explain the precepts of that religion.

The applicant also claims a violation of the principle of equality. She points out that under Article 24, § 4 Constitution, all staff members are equal before the (federal) law or (state) decree, but that this legislation must take into account objective differences. She points to the difference in treatment she receives depending on whether she is inside the classroom where she teaches religious education or outside it. The decisions she is challenging do not contain any reasonable justification as to why RE teachers are only partially exempt from the headscarf ban, namely only in the classroom where the RE courses are provided.

She challenges the way in which the Community Education network interprets its neutrality obligation – that is, by also subjecting RE teachers to this ban outside their classrooms.

Ruling:

The Community Education school network's line of reasoning – that wearing the headscarf is not a religious precept, and that the dispute is purely about a choice of clothing – is unconvincing, as the applicant was not refused the appointment purely because of her choice of clothing, but precisely because her headscarf was considered to be a prohibited outward symbol of her religion. An applicant who claims that wearing a headscarf is a manifestation of her religion is not required to show that she is not performing that act voluntary but only to comply with an obligation mandated by the said religion. The applicant's statement that it is part of her religious practice is sufficient, since it is established beyond all doubt that for Muslim women wearing a headscarf is a form of practising their religion.

The position of a RE teacher should be distinguished from that of a teacher of general subjects. The post of a RE teacher by its very nature entails the personal commitment of the teacher concerned to the religion in question. For certain RE teachers, this personal commitment involves wearing the symbols characteristic of their religion. Moreover, a teacher's duties and tasks are not strictly limited to what takes place during religious instruction in the classroom. Even outside the

context of the teaching assignment, there may be educational or teaching situations in which they are prompted to make their personal commitment known in a thoughtful manner.

Community Education (state education of the Flemish Community), which has to comply with a constitutional obligation to offer religious instruction in the recognized religions, interprets its obligation of neutrality in a manner contrary to Article 24 Constitution when it refuses the appointment of a RE teacher for the sole reason that that she wears a religious symbol, in this case a headscarf, and would refuse to remove it outside the classroom where she gives her religious instruction.

The Council of State annuls the refusal by the headmaster of the primary school of 6 September 2013 to temporarily appoint the applicant as a RE teacher for the 2013–2014 school year.

Main quotations on cultural or religious diversity:

“The defendant questions that wearing the headscarf is a religious precept, from which it infers that the stakes in the dispute would be purely a ‘choice of clothing’.

This defence does not convince the Council of State. In the first place, the applicant was not refused the appointment purely because of her choice of clothing, but precisely because her headscarf was considered to be a prohibited external characteristic of her belief […].

An applicant who […] claims that a well-defined act – such as wearing a headscarf – is part of her religious freedom is not required to show that she is not voluntarily performing that act but only complying with an obligation mandated by the said religion. The applicant’s statement that she experiences it as a symbol of her religious practice is sufficient, since it is established beyond all doubt that for Muslim women wearing a headscarf is a form of practising their religion. That this may not be the case for all Muslim women is without consequence for this qualification (see European Court of Human Rights, *S.A.S. v. France*, 1 July 2014, §§ 55–56 and references therein)”. (para. 25)

“These elements show that the function of [RE teachers] differs from the function of teachers of general subjects. Outside the classroom, [RE teachers] are nevertheless subject to the same prohibition as other teaching staff. The means discussed require the Council of State to include in its examination the question of whether this equal treatment of unequal cases is justified in law”. (para. 29)

“It should be reiterated that the […] Council of State, in judgment no. 223.042 of 27 March 2013, expressly signalled that the prohibition discussed there did not apply to [RE teachers] ‘in the performance of their duties’.

[…] [I]t therefore falls to the free will of the [RE teacher] to subject herself also to additional rules […] by teaching subjects other than [religious education]. What the applicant contests in the present case is precisely this involuntary assimilation with teachers of general subjects and the disregard for the specific nature of her office”. (para. 30)

“Already earlier, in judgment no. 195.044 of 2 July 2009, […] the Council noted that in places outside the strict context of their teaching assignment for religious teachers, there can equally exist an educational or teaching situation that can give rise to the – thoughtful – expression of their personal commitment. That some symbols – in this case a headscarf – are a strong

signal of this commitment and are permanently visible does not deprive the wearing of this symbol of the character of thoughtfulness”. (para. 32)

“However, pupils may not be required to participate in any act of worship or be exposed to any form of religious indoctrination […]. The mere fact of providing an exception to the prohibition for [RE teachers] and thus tolerating their [religious] symbols does not have the unwanted consequences referred to in the First Additional Protocol to the ECHR. *A fortiori*, the First Additional Protocol does not give parents the right to protest against it. Consequently, in exercising the undisputed power conferred on the Community Education system to define and give concrete shape, within the limits of the law, to the concept of ‘neutrality’ in education, the defendant may not use the right of parents to neutral education, as referred to in the First Additional Protocol, to consider itself obliged, pursuant

to the First Additional Protocol, to introduce the impugned prohibition". (para. 33)

"There is no allegation that the applicant, in the exercise of her official school duties – for example, in supervisory duties or in discussions with parents, or more generally in her presence at the school as requested by the defendant – adopted an attitude that demonstrates indoctrinatory or proselytory zeal or even indicates an unthoughtful manner of dealing with pupils in the expression of her personal commitment, let alone that she would ostentatiously wear the symbol in question as an act of aggression, to exert pressure or to provoke a reaction". (para. 34)

"As the Council of State considered in judgment no. 223.042 of 27 March 2013, a person who constantly wears a [religious] sign clearly indicates that he adheres to a particular religion. He constantly confronts pupils with that religious belief. This is no less so for a [RE] teacher than for any other member of the teaching staff.

It must be assumed, however, that the office of [RE] teacher, by its very nature, entails the personal commitment of the teacher concerned and that, for certain RE teachers, this personal commitment is accompanied by the display of the outward symbols of their [religion].

The defendant, which is under a constitutional obligation to offer religious education in the recognized religions, interprets its obligation of neutrality, contrary to the above-mentioned constitutional provision, by refusing to appoint a religious education teacher on the sole ground that that teacher bears a religious symbol and refuses to take it off outside the classroom where she teaches religious education. […]

[T]he preceding shows that the defendant thus treats categories of persons who are in substantially different situations identically with regard to the prohibition in question outside the classroom, without reasonable justification". (para. 36)

Main legal texts quoted in the decision:

Domestic Law

- Articles 10, 11, and 24 of the Belgian Constitution

- Articles 33, § 1, 1°, and 34, 1° of the Special Decree of the Flemish Parliament of 14 July 1998 concerning Community Education
- Articles 4, § 1, f, 17, § 5, 31, § 2, 37, § 1, 41, § 2, 61, §1, second alinea, 73ter, § 8, 73quinquies, and 86, 9° of the Decree of the Flemish Parliament of 27 March 1999 on the legal status of certain staff members of the Community Education system
- Article 6, § 1, of the Decree of the Flemish Parliament of 1 December 1993 concerning the inspection and guidance of philosophical courses
- Article 2 of the Decree of the Flemish Government of 25 June 2004 establishing and classifying functions in ordinary primary education schools
- Article 2 of the Decree of the Flemish Government of 5 June 1989 establishing and classifying the posts of members of the administrative and teaching staff of secondary education schools with full curricula
- Article 13, § 4, of the Decree of the Flemish Government of 22 May 1991 concerning evaluation, measures of order, and discipline in Community Education
- Circular of the Community Education Council no. 1013/1/omz on the prohibition of wearing of religion or belief symbols

International Law

- Article 9 of the European Convention of Human Rights
- Article 2 of Protocol No. 1 to the European Convention of Human Rights

Cases cited in the decision:

Domestic case law:

- Constitutional Court, no. 90/1999, 15 July 1999
- Constitutional Court, no. 40/2011, 15 March 2011
- Constitutional Court, no. 34/2015, 12 March 2015
- Council of State, no. 175.886, 18 October 2007
- Council of State, no. 195.044, 2 July 2009
- Council of State, no. 223.042, 27 March 2013

- Council of State, no. 223.201, 17 April 2013
- Council of State, no. 226.346, 5 February 2014
- Council of State, no. 228.756, 14 October 2014

European Court of Human Rights case law:

- *S.A.S. v. France [GC]*, App. no. 43835/11, 1 July 2014 (ECLI:CE:ECHR:2014:0701JUD004383511)
- *Hasan en Eylem Zengin v. Turkey*, App. no. 1448/04, 9 October 2007 (ECLI:CE:ECHR:2007:1009JUD000144804)
- *Mansur Yalçin a.o. v. Turkey*, App. no. 21163/11, 16 September 2014 (ECLI:CE:ECHR:2014:0916JUD002116311)

Commentary

Religious Education Teachers Wearing Religious Symbols in State Schools: Is "a Completely Neutral Educational Space" Possible?

The European Convention on Human Rights (ECHR) protects the manifestation of religion "in public" and "in private", in that order. However, where "public" coincides with the public space in which government services are provided, the concept of state neutrality comes into play, the content of which is determined by the national (historical) context: it makes a difference whether a state has a system of *laicité*, as in France, or for example has a *state church*, as in Greece or in Denmark.

It becomes more complicated when public schools, while constitutionally bound to a strict neutrality principle, simultaneously provide for the structural presence of a wide range of religions in the curriculum by offering religious education. This formula organically incorporates (a degree of) *institutionalized* religious diversity into the neutral public school. The implications are far-reaching. After all, the public school as a religiously neutral employer is not in a position to make substantive judgments about the religious qualities and suitability of who provides religious education and thus needs contact with a religious authority that can assume this responsibility.

The parallel presence of two types of teaching staff also becomes difficult to manage when the school government, based on its neutrality concept, wants to determine what characteristics of religious dress are or are not acceptable for RE teachers.

This situation arises in the case discussed here. Belgian public schools organized by the Community (in federal Belgium, the relevant federal states are the Communities) must provide *neutral education*, which includes “respect for the philosophical, ideological or religious views of parents and students”. At the same time, these schools offer their students “the choice between *the teaching of one of the recognized religions and non-denominational ethics*”. Both obligations follow directly from Article 24, para. 1.3 and Article 24, para. 1.4 Constitution.

In Belgium, the further determination of the neutrality principle that must characterize state schools is left to the Communities’ education networks – for the Flemish part of the country, the Flemish Community Education network (*Onderwijs van de Vlaamse Gemeenschap, GO!*).

The conflict to be assessed by the Belgian Council of State stems from a tension between these two constitutional obligations, because of how the Community Education network wishes to ensure neutrality in its schools.

Both obligations can be traced back to a core task of the Government of the Flemish Community in providing education: Flemish Community Education network educational institutions must be open to pupils of all possible (religious) backgrounds. Both ambitions are compatible with the educational duty imposed on the state by Art. 2 First Protocol ECHR: “In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”. It should be kept in mind, however, that this treaty provision leaves room to the states in its choice of neutrality regime, but also in the manner in which religion or religious education is given a place in the curriculum.

The judgment of the Council of State in this case and in an immediately following judgment in an identical matter (Council of State, no. 234.914, 2 June 2016) led to a change in the position of RE teachers. Religious diversity can remain visible in the public school, despite the rigid neutrality that must be respected by all other school stakeholders. In this regard, the Flemish Community Education network subsequently adopted an approach in which the religious teachers involved were expected to explicitly point out their own right to wear religious symbols. The approach is thus to insist that religious teachers "voluntarily" accept the ban. The text of the 2013 Circular which prohibited religious education teachers from wearing religious symbols outside their classrooms was not amended. However, school leaders were alerted via a supplemental letter on 29 August 2016 that it should be understood from State Council case law that RE teachers should still be allowed to wear religious signs outside the classroom. A RE teacher's desire to wear these symbols would be "difficult to sanction" anyway.

Thus, the ambition of the Community Education network still remains to achieve neutrality through the *complete absence* of religious symbols: "To guarantee learners a completely neutral educational space, free from visible religious symbols, *except during the religious subjects*" (website GO!: https://g-o.be/neutraliteit/). This ambition continues to conflict with the space for visible religiosity carefully outlined by the Council of State. After all, from the reasoning of the Council of State (see para. 33) it can be deduced that pushing for the complete invisibility of religious symbols, in this case as a duty to be respected by RE teachers, finds no ground in the duty of the state to offer state education that is religiously neutral (Article 2 First Protocol ECHR).

The judgment resulted in the annulment of the decision to refuse to appoint the headscarf-wearing Islamic religion teacher. The employment issue was thus clarified. The judgment should also have resulted in the disputed 2013 Circular being amended so that the ban was dropped for religious teachers. However, the Community Education network decided to make the wearing of religious signs by RE teachers in Community Education schools depend on the persistence of the teacher who does not "voluntarily accept" the ban. It thus becomes clear that this

educational network itself does not consider the principles underlying the State Council's ruling, which amount to accepting visible religious diversity among RE teachers, weighty enough in light of its own concept of neutrality. Diversity is grudgingly accepted.

In its judgment, the Council of State outlines the scope to prohibit RE teachers from wearing a religious symbol in certain cases, namely if it "demonstrates indoctrinatory or proselytory zeal or even indicates an unthoughtful manner of dealing with pupils in the expression of her personal commitment", or if a RE teacher "would ostentatiously wear the symbol in question as an act of aggression, to exert pressure or to provoke a reaction" (para. 34). Indeed, here, if the state does not counter such acts, it could be in violation of the duty to ensure that pupils are not exposed to any form of religious indoctrination, an obligation that also follows from Art. 2 First Additional Protocol ECHR (see para. 33).

In assessing the admissibility of the claim, the Council of State also responds to the government's contention that it is doubtful whether the wearing of the headscarf is a religious precept, and its view that the stakes of the dispute amount to a mere "choice of clothing" (para. 25). In its reasoning, the Council of State responds to this position by invoking the duty of a (neutral) government to exercise restraint and caution in this area. It also makes the government made aware that intra-religious diversity may entail different personal positions on compliance with religious precepts, all of which are to be respected. The fact that there are indeed Muslimas who do not believe they should wear a headscarf does not, when it comes to the protectability of the manifestation of religion, diminish the position of a Muslima who believes she should.

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

Specific legal publications addressing the case :

(On the case in the first stage: Council of State, no. 226.346, 5 February 2014):

- Overbeeke, Adriaan. 2014. "Cours de religion et pluralisme cohérent. Le port de signes convictionnels par les enseignants des cours de religion. A propos

de deux arrêts du Conseil d'Etat du 5 février 2014 [blog]". *UCL – Chaire de droit des religions*, available at <http://belgianlawreligion.unblog.fr/2014/02/24/cours-de-religion-et-pluralisme-coherent/> accessed 17 December 2025.

General literature on the topic:

- De Hert, Paul and Karen Meersschaut. 2010. "Statelijke neutraliteit, neutraliteit van het Gemeenschapsonderwijs en de Raad van State. Is de eerste uitspraak ten gronde over het hoofddoekverbod voor godsdienstleerkrachten ook richtinggevend voor toekomstige rechtspraak over een hoofddoekverbod voor leerlingen?". *Rechtskundig Weekblad* 2009 (10): 999–1005.
- Delgrange, Xavier and Luc Detroux. 2017. "Le statut des professeurs de religion et de morale dans l'enseignement officiel". In Xavier Delgrange, Luc Detroux, and Mathias El Berhoumi (eds), *Les grands arrêts du droit de l'enseignement*, 570–589. Bruxelles: Larcier.
- Smet, Stijn. 2021. "Grondwettelijke interpretatie van het neutraliteitsbeginsel in de onderwijscontext: een schild of een zwaard?". *Tijdschrift voor Onderwijsrecht en Onderwijsbeleid* 2020–2021 (4): 293–319.

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): Religious Education Teachers Wearing Religious Symbols in State Schools: Is “a Completely Neutral Educational Space” Possible?, Department of Law and Anthropology, Max Planck Institute for Social Anthropology, Halle (Saale), Germany, CUREDI043BE006, https://www.doi.org/10.48509/CUREDI043BE006.