



Ban on visible symbols of belief in the official education system of the Flemish Community not incompatible with Article 9 of the Convention

In its decision in the case of [Mikyas and Others v. Belgium](#) (application no. 50681/20) the European Court of Human Rights has, by a majority, declared the application inadmissible. The decision is final.

The case concerned three young women who identify as Muslims. They complained that they were unable to wear the Islamic headscarf in their secondary schools (except during religious education classes), following the prohibition on wearing any visible symbols of one's beliefs in the official education system of the Flemish Community.

The Court stated that the concept of neutrality in the Community's education system, understood as prohibiting, in a general manner, the wearing by pupil of visible symbols of one's beliefs, did not in itself run counter to Article 9 of the Convention and the values underlying it. The Court noted in the present case that the contested ban did not concern solely the Islamic veil, but applied without distinction to all visible symbols of belief. It considered that the national authorities had been entitled, having regard to the discretion ("margin of appreciation") enjoyed by them, to envisage that the Flemish Community's education system would provide a school environment in which pupils did not wear religious symbols. The contested restriction could therefore be said to be proportionate to the aims pursued, namely the protection of the rights and freedoms of others and of public order, and thus was "necessary" "in a democratic society". It followed that the applicants' complaint under Article 9 of the Convention was manifestly ill-founded. Their other complaints were rejected for failure to exhaust the domestic remedies.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

Belgium is a federal State, in which education comes within the competence of the Communities (Article 127 of the Constitution).

The three applicants are Belgian nationals who were born between 2001 and 2004 and live in Maasmechelen (Belgium). They stated that they identified as Muslims and that they wore the Islamic veil in accordance with their religious beliefs.

At the relevant time they were pupils in schools which belonged to the 14 Maasland school group and were part of the official education system organised by the Flemish Community (according to the Flemish education system's statistical yearbook for the 2022-23 academic year, this category concerned approximately 17% of the Flemish school population for the primary level and about 22% for the secondary level).

In 2009 the Education Council of the Flemish Community (*GO! Onderwijs van de Vlaamse Gemeenschap* ("the GO!")) decided to extend the ban on wearing visible symbols of one's beliefs throughout its network. The measure was intended to apply to all school activities, with the exception of religious education and non-denominational ethics classes. The schools attended by the applicants implemented this ban.

When the applicants were enrolled in their respective secondary schools, their parents signed school regulations containing the prohibition in question.

In 2017 the applicants' parents, in their capacity as legal representatives, brought proceedings against the GO!, relying on the applicants' right to freedom of religion. The following year, the

Tongeren Court of First Instance found that the prohibition in question was incompatible with Article 9 of the Convention. In 2019, however, the Antwerp Court of Appeal quashed that decision and held that the applicants' claims were unfounded. In 2020 a lawyer at the Court of Cassation indicated to the applicants that there was little prospect of lodging a successful appeal on points of law. The applicants decided not to lodge an appeal on points of law.

Complaints

Before the Court, the applicants alleged that the prohibition in question infringed their rights and freedoms as guaranteed by Articles 8 (right to respect for private and family life), 9 (freedom of thought, conscience and religion), 10 (freedom of expression) of the Convention and Article 2 of Protocol No. 1 (right to education) to the Convention, taken alone and in conjunction with Article 14 (prohibition of discrimination). They also submitted that they had been discriminated against in the enjoyment of those rights.

Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 12 November 2020.

The decision was given by a Chamber of seven judges, composed as follows:

Arnfinn **Bårdsen** (Norway), *President*,
Jovan **Ilievski** (North Macedonia),
Pauliine **Koskelo** (Finland),
Saadet **Yüksel** (Türkiye),
Frédéric **Krenc** (Belgium),
Diana **Sârcu** (the Republic of Moldova),
Davor **Derenčinović** (Croatia),

and also Hasan **Bakırcı**, *Section Registrar*.

Decision of the Court

The Court held that the part of the application which concerned Articles 8, 10 and 14 of the Convention and Article 2 of the Protocol No. 1 to the Convention were inadmissible for failure to exhaust the domestic remedies, since the applicants had failed to submit to the national authorities (either expressly or in substance) any legal arguments concerning the rights guaranteed by those Articles.

With regard to Article 9 of the Convention, the Court noted that the present case concerned a type of public education, namely the official education system in the Flemish Community. In accordance with Article 24 § 1 (3) of the Constitution, this education had to be neutral. Under this constitutional provision, neutrality implied, in particular, respect for the philosophical, ideological or religious convictions of parents and pupils.

In order to comply with this constitutional requirement, the GO! Council had decided to introduce a general prohibition on wearing visible symbols of belief within its establishments, and the Constitutional Court had held that this concept of neutrality was compatible with Article 24 § 1 (e) of the Constitution. Detailed reasons were given for the GO! Council's decision, taking into account both the context of the education system put in place by the Flemish Community and the various interests at stake under Article 9 of the Convention.

Referring to its previous case-law and reiterating that the national authorities enjoyed a certain discretion ("margin of appreciation") in regulating the wearing of symbols of belief in State

educational establishments, the Court considered that the concept of neutrality in the Community's education system, understood as prohibiting, in general, the wearing by pupils of visible symbols of belief, did not in itself run counter to Article 9 of the Convention and its underlying values.

In this connection, it noted that the contested ban was not confined to the Islamic veil but applied without distinction to any visible symbols of one's beliefs.

Moreover, the applicants had freely chosen to attend schools within the Community education system, and could not have been unaware that the relevant governing bodies were required by the Constitution to ensure compliance with the principle of neutrality in such schools. The applicants had also been informed in advance of the rules applicable in the schools concerned and had agreed to abide by them.

In so far as the contested ban had been intended to protect pupils from any form of social pressure and proselytization, the Court reiterated that it was important to ensure that, in keeping with the principle of respect for pluralism and the freedom of others, the manifestation by pupils of their religious beliefs on school premises did not take on the nature of an ostentatious act that would constitute a source of pressure and exclusion. In this connection, it saw no reason to call into question the findings of the GO! Council with regard to problematic acts, nor those of the Antwerp Court of Appeal, according to which incidents had occurred in certain schools coming under the remit of the Community education system.

Lastly, the Court was not unaware of the different situation in which teachers and pupils found themselves. While the former were symbols of authority *vis-à-vis* the latter and could accordingly be subject to restrictions on the expression of their beliefs, underage pupils were, for their part, more vulnerable. The Court had already held in this connection that a prohibition on pupils wearing religious symbols could correspond to a specific concern to prevent any form of exclusion or pressure, while respecting pluralism and the freedom of others.

In the present case, the national authorities had been entitled, having regard to the discretion available to them, to envisage that the Flemish Community's education system would provide a school environment in which pupils did not wear religious symbols. The Court had emphasised on several occasions that pluralism and democracy were to be based on dialogue and a spirit of compromise, necessarily entailing various concessions on the part of individuals that were justified in order to maintain and promote the ideals and values of a democratic society. The contested restriction could therefore be regarded as proportionate to the aims pursued, namely the protection of the rights and freedoms of others and of public order, and thus "necessary" "in a democratic society". It followed that the complaints under Article 9 of the Convention were manifestly ill-founded.

The decision is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.