



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Legal summary

May 2024

Mikyas and Others v. Belgium (dec.) - 50681/20

Decision 9.4.2024 [Section II]

Article 9

Article 9-1

Freedom of religion

Pupils prohibited from wearing the Islamic veil by the regulations of their State schools, applying the ban on wearing visible symbols of belief in the official education system of the Flemish Community: *inadmissible*

Facts – The applicants are three Muslim girls. They were prohibited from wearing the Islamic veil in their schools, with the exception of non-denominational religious and ethics classes, by the 2016-2017 school regulations. These regulations implemented a circular prohibiting the wearing of visible symbols of belief, adopted by the Council for Official Education in the Flemish Community (the Council) in September 2009.

The applicants' parents, in their capacity as legal representatives, brought proceedings before the national courts seeking to have the prohibition on religious symbols introduced by the school regulations, a measure which they considered contrary to freedom of religion, declared illegal. Those proceedings were unsuccessful.

Law – Article 9:

(a) *Whether there was an interference*– Reiterating that the wearing of the Islamic headscarf could be considered to be “motivated or inspired by a religion or religious belief”, the Court considered that the measure prohibiting the applicants from wearing it amounted to an “interference” with their right to freedom of religion.

(b) *Whether the interference was justified* –

i. *Whether the interference was lawful* – In the two schools concerned, the impugned measure was provided for by the 2016-2017 school regulations, which implemented the Council's decision.

ii. *Whether there existed a legitimate aim* – The Court had already found that measures prohibiting pupils or students from wearing the headscarf in a school or university environment could pursue the legitimate aims of protection of the rights and freedoms of others and protection of public order. It could therefore accept that the interference in the present case pursued these same aims.

iii. *Whether the interference was “necessary in a democratic society”* – The Court had already held that, in a democratic society, the Court could limit or even prohibit the wearing of religious symbols by pupils or students in the school or university



environment, without this entailing a violation of the right, guaranteed to everyone by Article 9, to manifest one's religious beliefs.

The present case concerned a form of public instruction, namely the official education system in the Flemish Community. In accordance with the Constitution, this instruction had to be neutral. According to the relevant provision, neutrality implied, in particular, respect for the philosophical, ideological or religious convictions of parents and pupils. With a view to satisfying this constitutional requirement, the Conseil had decided to introduce a general prohibition on wearing visible symbols of belief in the establishments under its control, and the Constitutional Court had held that this understanding of neutrality was compatible with the Constitution.

Detailed reasons had been given for the 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. Reiterating the margin of appreciation enjoyed by the national authorities in regulating the wearing of symbols of belief in the State education system, the Court considered that the concept of neutrality in the Flemish 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. The fact that the national decision-maker could have chosen to implement a different interpretation of neutrality did not imply that the option selected in the present case, and accepted both by the Constitutional Court and by the court of appeal, was contrary to Article 9.

In this connection, the impugned 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 impugned 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 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. Moreover, it was the Court's constant case-law that a prior finding of disorder in a given establishment was not decisive for the impugned ban to be considered necessary in a democratic society.

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 a situation where the Flemish Community's education system could 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. These concessions were justified in order to maintain and promote the ideals and values of a democratic society. The impugned 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.

Conclusion: inadmissible (manifestly ill-founded).

(See also *Dahlab v. Switzerland* (dec.), 42393/98, 15 February 2001, [Legal Summary](#); *Leyla Şahin v. Turkey* [GC], 44774/98, 10 November 2005, [Legal Summary](#); *Köse and Others v. Turkey* (dec.), 26625/02, 24 January 2006, [Legal Summary](#); *Dogru v. France*, 27058/05, 4 December 2008, [Legal Summary](#) (and the judgment concerned); *Aktas v. France* (dec.), 43563/08, 30 June 2009, [Legal Summary](#) (and the decisions concerned))

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