



Disciplining teacher for remarks incompatible with his duty of discretion, in particular concerning the 2015 terrorist attacks in Paris, was not disproportionate

In its decision in the case of [Mahi v. Belgium](#) (application no. 57462/19) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerns the disciplinary transfer of a teacher of Islamic religion (Mr Mahi) on account of remarks which he made in an open letter to the press concerning, among other topics, the January 2015 attacks in Paris on the newspaper *Charlie Hebdo*.

The Court examined the complaints by Mr Mahi under Article 10 (freedom of expression).

The Court noted, in this connection, that the remarks in question were incompatible with the duty of discretion incumbent upon Mr Mahi as a teacher, particularly in view of the tense atmosphere prevailing in his school in the wake of the attacks in Paris.

Having regard to the potential impact of the remarks on his students, the Court considered that Mr Mahi's disciplinary transfer to another school approximately 50 kilometres away from the other school, where he had a full teaching timetable, was not disproportionate.

The application was therefore manifestly ill-founded.

Principal facts

The applicant, Yacob Mahi, is a Belgian national who was born in 1965 and lives in Brussels. He has taught Islamic religion since 1987 in schools run by the French-speaking Community of Belgium.

On 4 February 2015 Mr Mahi sent an open letter to the press commenting on reports in certain sections of the media about his alleged role in disturbances occurring at the school in which he was teaching in Brussels. The disturbances had taken place in the aftermath of the terrorist attacks of January 2015 in Paris targeting the newspaper *Charlie Hebdo* in particular. They had taken the form of attacks by pupils on another teacher in the same school who had defended *Charlie Hebdo*, and violence against a pupil who had refused to sign a petition against that teacher.

In his open letter Mr Mahi commented on the *Charlie Hebdo* attacks. He also expressed views on homosexuality, the media, political leaders and the judiciary, and mentioned an author who had been convicted in France of Holocaust denial, describing him as his "mentor".

In an opinion published on 13 March 2015, the Federal Centre for Equal Opportunities and Action against Racism and Discrimination found that Mr Mahi's remarks did not contravene anti-discrimination legislation as such, but voiced concern that such remarks had been made by a teacher.

On 31 October 2017 the Government of the French-speaking Community, finding that Mr Mahi's remarks had been in breach of his duty of discretion, ordered his transfer to a school in La Louvière as a disciplinary measure. In a judgment of 16 May 2019 the *Conseil d'État* dismissed an application by Mr Mahi to have that order set aside.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 29 October 2019.

Relying on Article 8 (right to respect for private and family life) and Article 10 (freedom of expression), Mr Mahi complained about the disciplinary sanction imposed on him for the remarks made in his open letter. The Court decided to examine his complaint under Article 10 only.

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

Georgios A. **Serghides** (Cyprus), *President*,
Paul **Lemmens** (Belgium),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
María **Elósegui** (Spain),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),

and also Olga **Chernishova**, *Deputy Section Registrar*.

Decision of the Court

Article 10 (freedom of expression)

The Court noted that the disciplinary sanction imposed on Mr Mahi had constituted an interference with his right to freedom of expression. That interference was provided for in Articles 5 and 7 of the Royal Decree of 22 March 1969 imposing a duty of discretion on teachers. The interference had, furthermore, pursued a legitimate aim, that of preventing disorder in the school in question and protecting the reputation and rights of others (the school itself, and more broadly the whole French-speaking Community of Belgium).

As regards the necessity of the interference in a democratic society, the Court pointed out that whenever the right to freedom of expression of public servants was at issue, the “duties and responsibilities” referred to in Article 10 § 2 assumed a special significance, which justified leaving to the respondent State a certain margin of appreciation in determining whether the impugned interference was proportionate to the aim as stated.

With more specific regard to teachers, who symbolised authority for their students in the educational field, their special duties and responsibilities also applied, to some extent, to their out-of-school activities.

In the present case the *Conseil d’État*, having noted that the statements made by Mr Mahi in his letter could not be considered as unconnected with his position as a teacher, had deemed them incompatible with the “duties and responsibilities” incumbent on him as a teacher, and ruled that he had breached his duty of discretion.

The Court accepted that the opinion issued by the Centre for Equal Opportunities had shown that Mr Mahi’s comments should not necessarily have been considered punishable under criminal law, in the absence of incitement to hatred, xenophobia or discrimination. It was nonetheless true that, as the *Conseil d’État* had ruled, those remarks could legitimately be regarded as incompatible with his duty of discretion, particularly in view of the tense atmosphere prevailing in his school in the wake of the January 2015 attacks in Paris.

The Court took note of Mr Mahi’s plea that he had felt the need to react to certain accusations levelled against him. It nevertheless held that that consideration alone was insufficient to override his duty of discretion and the requirement that he show moderation in exercising his freedom of expression, given the specific context in which his remarks had been made. That was particularly true as the comments and statements had not been a spontaneous reaction during an oral exchange but had taken the form of written assertions which had been widely publicised and had therefore been accessible to his students, which could have aggravated the tensions in the school in question.

Consequently, the Court considered that in view of the potential impact of Mr Mahi's remarks on his students, his disciplinary transfer to another school located approximately 50 kilometres from the other school, where he had a full teaching timetable, was not disproportionate. The competent authorities had therefore given relevant and sufficient reasons in support of the interference, which had not been disproportionate.

The application was therefore 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.