



**Submission to the
United Nations Human Rights Council
on the Universal Periodic Review,
Third Cycle – BELGIUM**

Religious dress restrictions in Belgium

Human Rights Centre
Ghent University
Universiteitstraat 4,
9000 Ghent, Belgium
<https://hrc.ugent.be/>

Introduction

1. The Human Rights Centre (HRC) of Ghent University, Belgium, is an academic centre specialized in European and international human rights law. The HRC engages with pressing human rights issues through teaching, research and by advocating through public advocacy and clinical work.
2. This submission is a product of the HRC. This submission may not reflect the view of all members of the HRC or Ghent University. We invite any comments on this report or inquiries about our work at info.hrc@ugent.be.

Background and context

3. This submission addresses Belgium's compliance with its obligation under international human rights law to protect the right of individuals to manifest their religion and to avoid discrimination on grounds of religion, ¹, with particular regard to several restrictions on the wearing of religious dress.²
4. In the last UPR cycle, Belgium endorsed several recommendations that urged it to adopt measures aimed at tackling, racism and discrimination directed at ethnic minorities and religious groups, many of which addressed the particular problem of Islamophobia.³
5. Belgium also refused to support several recommendations amongst which recommendations that called upon Belgium to address bans on religious dress:
 - *141.28 Eliminate religious discrimination, including prohibitions on wearing religious symbols or clothing (United Arab Emirates);*
 - *141.29 Rescind the decision to prohibit the peaceful expression of religious beliefs, including the wearing of religious symbols in schools, in line with the freedom of religion or belief guaranteed by the Universal Declaration of Human Rights, the Convention on the Rights of the Child, and the European Union Guidelines on the promotion and protection of freedom of religion or belief (Malaysia);*
 - *141.32 Put an end to all forms of discrimination by employers against workers from religious minorities in the public and private sectors, including the adoption of internal regulations banning the wearing of clothes representing a religion or a culture (Libya);*
6. This submission addresses measures which were adopted since the last UPR cycle, as well as measures which were adopted before 2016 and continue to be in force, insofar as such measures have since been the subject of evolving jurisprudence.

National ban on face coverings

7. Since 2011, Belgium has a general ban on the wearing of face coverings, also known as 'burqa ban'.⁴ The ban was challenged before the Constitutional Court under Article 19 of the Constitution, read in conjunction with Article 9 of the ECHR, Article 18 of the ICCPR, and Article 10 of the Charter. The Court held that such ban served the legitimate aims of public safety, the pressing need to protect the societal value of "living together" and the protection of gender equality. It found that a penal sanction was not disproportionate.⁵
8. In addition to the national ban, municipalities maintain their own bans on face covering clothing, punishable with administrative fines. Such bans have been upheld by local courts. Three such bans were challenged before the ECtHR, which upheld the bans in 2017. The Court noted that the ban served the aims of protecting the rights of others and was justified insofar as it protected the value of "living together". The Court assumed that the circumstances in France applied equally in Belgium, finding that this value reflects a societal choice, warranting a wide margin of appreciation and restrained judicial scrutiny.⁶
9. However, in 2018, the Human Rights Committee heard, in *Sonia Yaker v. France*, a French woman who was fined under a law penalizing the public wearing of face coverings and ruled that it does not accord with Article 18 of the ICCPR. It held that the ban could not be justified on the ground of public safety if it is not tailored to situations that threaten public safety. Also, the Committee found the objective of "living together" too vague. France had failed to show that concrete rights of other citizens would otherwise be affected.⁷

Bans of religious dress in education

10. The Belgian educational system consists of a network of public schools and a network of publicly subsidized private schools. Catholic schools make up the majority of private schools.
11. In Flanders, the Dutch speaking part of Belgium, the public school network (*GO!*) is still banning the wearing of religious signs in primary and secondary schools for all pupils and teachers (except teachers of religious education classes). The board of (private) Catholic schools publically opposes bans on religious dress, but leaves the decision up to individual schools. In practice most schools ban it.
12. In Wallonia, the French speaking part of Belgium, both public and private school networks leave the decision to prohibit religious signs in schools to the individual school authorities. De facto, the majority of schools in Wallonia also prohibit the wearing of

religious signs for both pupils and personnel.⁸

13. The school bans on religious dress are the subject of litigation. Pupils of three public secondary schools in Flanders successfully challenged a ban on religious dress in their schools before the Council of State—the supreme administrative court of Belgium. The Council of State held in 2014 that schools cannot restrict pupils’ freedom of religion if there is no evidence of any behavior or situation that justifies limiting such a fundamental freedom.⁹
14. However, because the *GO!* ban is contained in a directive addressed to the schools and not directly to the pupils, the Council of State cannot annul the directive outright. As a result, school regulations banning displays of religious dress must be challenged individually, making it difficult for pupils to assert their rights. Since the last cycle, several local courts ruled in favor of the pupils, following the reasoning of the Belgian Conseil d’Etat.¹⁰ However, in a recent judgment of 2020, a civil Appellate Court overturned a lower court that followed the Council of State’s reasoning, leading to a situation of legal uncertainty.¹¹
15. **School teachers** are also still affected by bans on religious dress.¹² A distinction is however made between regular teachers and teachers of religious classes.¹³
16. A new development is also that several **higher education institutions** also ban religious symbols. Recently, students of a university college (*haute école*) governed by the city of Brussels challenged a decree of the French community on which the city government based its ban on religious dress. The applicants were adult Muslim women who were denied access to an institution of higher education because they wear a headscarf. The local judge referred the question to the Constitutional Court, which held that an institution of higher education is allowed to interpret and apply the principle of neutrality in an exclusive way, meaning that all signs referring to a.o. religion can be prohibited. The Constitutional Court thus opened the door for institutions of higher education to apply a ban on manifestations of religion for their adult students.¹⁴
17. These measures prohibiting pupils and adult students does not seem to be reconcilable with art. 18 of the ICCPR. Indeed, in *Singh v. France*,¹⁵ the Human Rights Committee heard a Sikh boy who was expelled from his secondary school because he wore a turban. The Committee found the law disproportionate due to a lack of evidence that the rights and freedoms of other pupils was threatened.

Bans on religious dress in the workplace

18. Limitations on the wearing of religious signs in the workplace occur both in the public and in the private sector. This is particularly the case for Muslim women who wear a headscarf.

19. In the **public sector**, there is no general ban on the wearing of religious dress, though several bills proposing such ban have been submitted in the Flemish parliament. Each public authority decides whether to allow its employees to wear religious signs. Based on the principle of neutrality of public service, several authorities prohibit the wearing of religious signs by employees. As such, municipalities, including the cities of Antwerp and Brussels, have imposed bans on the wearing of religious signs in front office positions.
20. Some of these bans apply to all employees in public institutions and are not limited to front-office workers. In 2015, for example, the Brussels Labor Court found an internal regulation of the Brussels Regional public employment office that prohibited all employees from wearing religious signs, illegal. The court pointed out that the agency did not assess if the wearing of a headscarf would impact the neutrality of the service, nor seriously explored any alternatives.¹⁶
21. Some authorities, amongst others, in the city of Mechelen and at the Brussels Regional Public Transport Agency, choose to support an inclusive interpretation of neutrality based on the behavior and not the appearance of public servants.
22. In the **private sector**, bans on religious dress also occur. In 2017, the Court of Justice of the European Union (CJEU) issued a judgment in the case of Achbita v. G4S which has important consequences for the access to employment for individuals who visibly manifest their religion.¹⁷ On referral by the Belgian Court of Cassation, the CJEU held that a ban instilled by an employer is not discriminatory if applied generally to all employees and religious signs and is “appropriate for the purpose of ensuring that a policy of neutrality is properly applied, provided that that policy is genuinely pursued in a consistent and systematic manner”.¹⁸
23. As such, the CJEU holds that a generally applicable ban does not indirectly discriminate against headscarf wearers if it serves a policy of neutrality. In principle, this means that an employer is free to ban the wearing of religious dress as long as it chooses to maintain a policy of neutrality. The CJEU’s extension of the neutrality reasoning to private workplaces, risks extremely limiting the employment opportunities of individuals who manifest their religion through religious dress.
24. Since 2017, UNIA received many complaints with regard to discrimination based on the wearing of religious dress. Between 2017 and April 2020, 72% of the complaints with regard to religious dress concern the workplace. 94% of these complaints came from Muslim women who wear a headscarf.¹⁹
25. Restrictions on the wearing of religious dress affect liberal professions as well, such as attorneys. In 2007, a lawyer intended to practice as an attorney but was not admitted at the Brussels Bar because she wore a headscarf. The Council of the Order of Attorneys, an executive committee of the bar association, noted that the wearing of a headscarf

during the public exercise of their functions, threatens the equal treatment and independence of attorneys when representing clients.²⁰ The Flemish bar did not introduce a general ban on the wearing of religious signs for attorneys, however, recent research of the Human Rights Centre shows that practice trainee attorneys are confronted with rejections as well.²¹

26. In 2018, the Human Rights Committee ruled that prohibitions on the wearing of religious dress in the workplace are not unproblematic. In *F.A. v. France*, the HRC assessed a workplace regulation of a private daycare center that prohibited employees from wearing a veil on the ground of neutrality. The Committee held that the regulation did not serve a legitimate aim because it was not shown that rights of others, including the children and their parents, could be infringed by the mere fact that an employee is allowed to wear a headscarf.²²

Bans of religious dress in public spaces and businesses

27. Individuals who wear religious dress, in particular Muslim Women who wear a headscarf, are denied access to many more public spaces. A recent case concerns a decision of a Belgian judge to deny access to the courtroom to a woman wearing a headscarf who was a civil party in a criminal case concerning the violent death of her brother. This denial was based on Article 759 of the Belgian Code of Civil Procedure, which provides that “[a] person who assists to a hearing stands uncovered (*découvert*), respectful and quiet: all that the judge orders to maintain order is enforced punctually and instantly.”
28. The order was challenged before the ECtHR. In *Lachiri v. Belgium*²³, the Court noted in 2018 that Article 759 was solely aimed at maintaining public order and not at preserving secular and democratic values. It held that the order was disproportionate, violating Article 9(2) of the ECHR because Ms. Lachiri did not threaten the smooth conduct of proceedings. The Court hinted, *orbiter*, that the reasoning might have been different if the plaintiff were an official “bound by a duty of discretion in the public expression of her religious beliefs”.
29. Despite the fact that Belgium was convicted in this case for a violation of art. 9 ECHR, art. 759 of the Belgian Code of Civil procedure remained unchanged. Meanwhile, Unia received other complaints of women who were denied access to a courtroom.²⁴
30. Another issue in Belgium are bans of **body-covering bathing suits** (so-called *burkinis*) worn by some Muslim women in public swimming pools. Several pools prohibit such attire.²⁵ In 2018, a Ghent Court ruled that a burkini-ban imposed by the city of Ghent applicable in two local swimming pools was not justified on grounds of public safety or hygiene, noting that the design of the bathing suit in question did not pose a hygiene risk and that the city could not identify a safety issue.²⁶ In December of the same year, a judge in Antwerp ruled, referring to the aims of safety and hygiene, that the burkini ban in the local public swimming pools is not discriminatory.²⁷

31. Despite the 2018 twin judgments of the Ghent courts concerning municipal swimming pools, other local governments did not withdraw similar measures. The city of Antwerp has explicitly vowed not to retire its burkini ban in its swimming pools, with a local counsellor commenting that “the burkini constitutes a symbol of repression” and a Federal Secretary of State noting that the burkini “is an intentional provocation against the [gender] equality principle”.²⁸
32. Also in other contexts, individuals who wear religious dress, primarily Muslim women, have been confronted with limitations and prohibitions. For example, a bar refused to serve a woman wearing a headscarf,²⁹ Muslim women were denied access to an ice cream parlour,³⁰ a bowling alley refused a woman wearing a headscarf³¹ and in another case Muslim women were refused entry to fitness clubs that maintained a general prohibition of the wearing of headgear for safety reasons.^{32 33}

Conclusion and recommendations for Belgium

33. This report shows that religious dress, and the Muslim headscarf in particular, remain subject to many limitations and prohibitions. The prevalence of measures directed at this garment, and the debates surrounding it, unveil an undeniable hostility of a part of Belgian society towards Muslim women. As such, these measures hamper the equal participation of individuals who wish to express their faith through religious dress and threaten their fundamental rights. In practice, Muslim women are confronted with a situation where limitations are the rule and freedom rather an exception.
34. The HRC respectfully urges UN Members to call on Belgium to publicly affirm its commitment to the right to manifest a religion the prohibition of discrimination and related human rights by:
 - a. Evaluating the legality of the national ban on face coverings in the light of the views adopted by the Human Rights Committee under Article 18 ICCPR. In particular, the validity of public order and gender equality as justifications for the ban should be evaluated, as well as the proportionality of imposing a penal fine.
 - b. Clarifying the legal status of bans on the wearing of religious dress in educational settings. In particular, the HRC calls on Belgium to lift the general ban on the wearing of religious dress in public schools. In addition, the HRC is concerned about similar bans in higher education institutions, which affect adult women.
 - c. Audit and evaluate the policies of public employers with regard to the wearing of religious dress and lift the existing bans. In addition, the HRC encourages Belgium to protect the rights of private sector employees to manifest religion in the workplace.
 - d. Ensuring that citizens who choose to manifest their religion through religious dress in public have equal access to public places. In particular, the HRC encourages

Belgian local governments to lift general bans on body-covering swimsuits in public swimming pools.

- e. Identifying and lifting any rules which may result in discriminatory access to public services.
- f. Adopting a national action plan against racism and discrimination in which discrimination on the basis of religion is incorporated.

¹ Belgium is bound by several international human rights instruments, including: Article 18, 26 and 27 ICCPR, Article 2(2), 7 and 13 ICESCR, Article 9 and 14 ECHR, Article 2(d) CEDAW, Article 14 CRC and Article 10(1) Charter of Fundamental Rights of the European Union.

² This submission reports new information and builds on existing work covering this topic. We note in particular the 2018 [Report](#) of the Open Society Justice Initiative covering restrictions on Muslim women’s dress in the 28 EU Member States, as well as the jurisprudence information database of [Unia](#), the Belgian intergovernmental center for combatting discrimination and promoting equal opportunities and research conducted at the Human Rights Centre of Ghent University.

³ See, *inter alia*, recommendations 138.57 (United States), 138.58 (Cuba), 138.59 (Kyrgyzstan), 138.60 (Tunisia), 138.61 (Singapore), 138.32 (Malaysia), 138.63 (Azerbaijan), 138.64 (Bangladesh), 138.65 (Singapore), 138.66 (Belarus), 138.67 (United Arab Emirates), 138.68 (Algeria) 138.69 (Argentina), and 138.70 (Canada).

⁴ In 2011, the Federal Parliament passed Article 563bis of the Penal Code, which punishes the partial or total covering of the face, in publicly accessible places, with monetary fines of up to 200 EUR and a prison sentence of one to seven days. The ban exempts face coverings that are allowed pursuant labor regulations, police regulations and festivities. See for an extensive analysis of the ban: Vrieling, J., Ouald Chaib, S. & Brems, E., “The Belgian ‘Burqa Ban’ - Legal aspects of local and general prohibitions on covering and concealing one’s face in Belgium” in A. Ferrari & S. Pastorelli (Eds.), *The burqa affair across Europe - between public and private space* (2013) pp. 143–170.

⁵ Judgment No. 145/2012 of 6 December 2012. www.const-court.be/public/n/2012/2012-145n.pdf

⁶ *Dakir v. Belgium*, Judgment of 11 July 2017, <http://hudoc.echr.coe.int/eng/?i=001-175660>; *Belcacemi and Oussar v. Belgium*, Judgment of 11 July 2017. <http://hudoc.echr.coe.int/eng/?i=001-175141>

⁷ *Sonia Yaker v. France* (17 July 2018) CCPR 2747/2016. <https://juris.ohchr.org/Search/Details/2547>

⁸ www.sudinfo.be/art/1366596/article/2015-09-01/port-du-voile-pas-plus-de-10-des-ecoles-ne-l-autoriser

⁹ Judgment No. 228/752 of 14 October 2014. www.raadvst-consetat.be/arr.php?nr=228752dep; See for an analysis in English of this case: Benfquih, Y. & Ouald Chaib, S., “Religious signs in public schools: Belgian Council of State shows judicial bravery” (2014, Strasbourg Observers) available at <http://strasbourgobservers.com/2014/11/04/religious-signs-in-public-schools-belgian-council-of-state-shows-judicial-bravery>.

¹⁰ Judgment of the Court of First Instance of Leuven of 27 August 2019, www.unia.be/nl/rechtspraak-alternatieven/rechtspraak/rechtbank-eerste-aanleg-leuven-27-augustus-2019; Judgment of the Court of First Instance of Tongeren, 23 February 2018, www.unia.be/nl/rechtspraak-alternatieven/rechtspraak/rechtbank-eerste-aanleg-tongeren-23-februari-2018

¹¹ Judgment No. 2018/AR/789 of 23 December 2019. www.unia.be/files/Documenten/Hof_van_beroep_Antwerpen_23_december_2019.pdf

¹² This measure is backed by the Belgian Council of State: Judgment No. 223.042 of 27 March 2013. www.raadvst-consetat.be/arr.php?nr=223042&l=nl

¹³ Judgment No. 233.672 of 1 February 2016. www.raadvst-consetat.be/arr.php?nr=233672

¹⁴ Judgment No. 81/2020 of 4 June 2020. www.const-court.be/public/n/2020/2020-081n.pdf

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Judgment No. 13/7282 of 16 November 2015.

www.unia.be/files/Documenten/Rechtspraak/2015_11_16_trib._trav._bruxelles.pdf

See for an analysis of this case: Ouald Chaib, S. & David, V. (2017, 27 March). European Court of Justice keeps the door to religious discrimination in the private workplace opened: The European Court of Human Rights could close it (2017, Strasbourg Observers)

<https://strasbourgobservers.com/2017/03/27/european-court-of-justice-keeps-the-door-to-religiousdiscrimination-in-the-private-workplace-opened-the-european-court-of-humanrights-could-close-it/>

Abchita v. G4S Solutions, Case C-157/15, Judgment of 14 March 2017, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62015CJ0157>; *Bagnaoui v. Micropole*, Case C-166/15, Judgment of 14 March 2017. <http://curia.europa.eu/juris/celex.jsf?celex=62015CJ0188&lang1=en&type=TXT&ancre=>

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F.A. v. France (16 July 2018) CCPR/C123/D/2662/2015. <https://juris.ohchr.org/Search/Details/2548>

Lachiri v. Belgium (18 September 2018)

<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-186245%22%5D%7D>. See also the third-party intervention submitted in this case by the Human Rights Centre of Ghent University:

<https://hrc.ugent.be/wp-content/uploads/2019/10/Amicus-Brief-Lachiri-HRC.pdf> and research conducted by the HRC on this subject: Brems, E., Heri, C., Ouald Chaib, S. & Verdonck, L. (2017). Head-covering bans in Belgian courtrooms and beyond: Headscarf persecution and the complicity of supranational courts. *Human Rights Quarterly*, 39(4), 882. DOI: 10.1353/hrq.2017.0053

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For elaborate research results on this topic see: Brems, E., Ouald Chaib, S. & Vanhees, K. (2018). “Burkini” Bans in Belgian municipal swimming pools: Banning as a default option. *Netherlands Quarterly of Human Rights* 36(4), 270–289. DOI: 10.1177/0924051918801613.

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See also the third-party intervention submitted in this case by the Human Rights Centre of Ghent University at <https://hrc.ugent.be/wp-content/uploads/2019/10/Amicus-Brief-Lachiri-HRC.pdf>

