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Parliamentary report on Islamic radicalism: The Grand Mosque of Brussels in the dock

By Willy Fautre, Human Rights Without Frontiers

HRWF (31.10.2017) – In 1968 Belgium recognized the Islamic and Cultural Centre (ICC) as the representative platform of the Muslims and Islam of Belgium. One year later, the Belgian government signed a convention granting the ICC, then represented by the ambassadors of Saudi Arabia and Morocco, the use of a building (that the Grand Mosque of Belgium [GMB] now occupies) for 99 years. In 1978, the new Islamic and Cultural Center of Belgium (CICB) was inaugurated, taking over the role of the ICC. The building complex now accommodates not only the Grand mosque but also a school, and a research and training centre on Islam and the Arabic language. For years the Grand Mosque of Brussels has been accused of propagating Wahhabism and Salafism in Belgium.

In its fourth intermediary report published on 23 October 2017, the Parliamentary Commission of Enquiry on Radicalism and Terrorism (*) says that it first heard from Galaye N'Diaye, the GMB imam, and Jamel Saleh Momenah, director of the Cultural Islamic Centre of Brussels when beginning this report. As they did not know any of the Belgian national languages, they expressed themselves in English. Both of them denied being Wahhabis or Salafists. The GMB imam noted that he was teaching Salaf Islam, the doctrine of the first three generations of Islam, but not Salafism, another current which led to the movements in Saudi Arabia… He claimed that he was preaching a moderate Islam.

Other actors and experts heard by the commission shared a different view about the activities of the GMB. There was a consensus among them to say that the Islam promoted by the GMB and the CICB is from the Wahhabi-Salafist current with a strong influence of the worldview of the Muslim Brotherhood. The doctrine of the Wahhabi-Salafists is literalist in its interpretation of the sacred texts, extremely normative culturally and exclusivist concerning other visions of Islam. Their conception of Islam refuses any compromise and claims total engagement of their adherents. It rejects "the others" who do not share it and creates a ghetto mentality. It rejects Sufism, the saints' worship, esoteric currents, the juridical schools and doctrines that have their own particularities in the interpretation of the Quran. The Wahhabi-Salafist project has

political objectives at the national and international level. In Belgium it aims to unify the various Sunni communities around their interpretation of Islam.

Concerning the respect of human rights, the representatives of the GMB and the CICB answered "Obviously, we will always respect Belgian laws. This has always been one of our priorities." However, when asked about the compatibility between the Cairo Declaration (asserting the supremacy of the sharia) and the European Convention on human rights, they said they did not know the European Convention but they would examine it without any delay… However, according to experts heard by the commission, the rejection of certain universal values is consubstantial with the Islam taught by that mosque as, by definition, they rely on the divine laws from which sharia proceeds.

According to the GMB/CICB representatives, their teachers come from Egypt, Saudi Arabia, Morocco, Senegal, and Gambia, amongst other places. They train future theologians, not imams, and for those who want to study Islam in Saudi Arabia, the ambassador, who is the president of the CICB, is instrumental in providing them with a visa. It is not difficult to imagine what sort of Islam and sharia they want to learn and will learn in Saudi Arabia before coming back to Belgium.

In the past, the CICB was in charge of designating teachers for the Muslim classes in public schools in Belgium and also organized the massive distribution of writings on Islam with a radical connotation. This has resulted in a significant impact on Islam in Belgium and on many Muslims. Since the 1990s, the Executive of the Muslims of Belgium (EMB) has been in charge of the Muslim religion classes in public schools.

The GMB and the CICB continue to play a key role in the life of many Muslims in Belgium. The permits issued to those who slaughter animals for religious purposes, the registration of conversions to Islam, and the distribution of grants are still among the privileged competences that the GMB and CICB hold.

The average annual budget of the CICB/GMB for the last four years was approximately 1,433,000 EUR (which does not include donations in nature): 65% to 75% of their budget comes from the controversial World Islamic League (WIL) which has its seat in Saudi Arabia and whose Secretary General is the former Minister of Justice of Saudi Arabia…

Last but not least, the GMB has never asked to be officially recognized by the Belgian State. This unwillingness raises a number of concerns among the members of the Belgian Parliament as many areas in its activities remain opaque and outside the control of the authorities.

(*) Full report in French/ Dutch at

http://www.dekamer.be/FLWB/PDF/54/1752/54K1752009.pdf

Parliamentary report on Islamic radicalism: Findings about the Muslim Brotherhood and Wahhabism

By Willy Fautre, Human Rights Without Frontiers

HRWF (30.10.2017) – On 23 October 2017, Belgium's House of Representatives published the fourth intermediary report of its Parliamentary Commission of Inquiry on radicalism and terrorism (*). The 205-page report comprises of an introduction, six chapters, and annexes:

Chapter I: Radical Islam and Islamic radicalism in Belgium

Chapter II: The case of the Grand Mosque of Brussels

Chapter III: Radicalism/ violent radicalism, prisons and imprisonment

Chapter IV: Radicalism/ violent radicalism and new technologies

Chapter V: Reception, integration, employment and radicalism/ violent radicalism

Chapter VI: Radicalism/ violent radicalism, local approach, prevention, school, recommendations

Here is a summary of the findings that emerged from the hearing of experts, witnesses and various other actors about the Muslim Brotherhood and Wahhabism.

Muslim Brotherhood

The Muslim Brotherhood is not a homogeneous and monolithic entity as there is no official structure of this movement. It is characterized by heterogeneous political undercurrents and ideologies in its midst but they are united around a common doctrinal corpus composed of a number of founding texts. Moreover, the Muslim Brotherhood is also linked to a network of religious and cultural associations, such as the controversial League of the Muslims of Belgium, which plays a key role in the functioning of the Muslim community in the country. The worldview promoted by the Muslim Brotherhood aims at subjecting all the aspects of human life to religion: at the individual level (food, clothing, marriage, etc.), the societal level (human relations) and the political level (functioning of the State). Noteworthy is the fact that they do not accept questioning or criticism of their founding texts.

The philosophy of the Muslim Brotherhood, which can be labeled "conservative", may cause some problems if there is any attempt to impose it on a society that is not historically Muslim and not homogeneous, as is the case in Belgium. At this stage, the parliamentary commission of enquiry is not able to assess the magnitude of the propagation of their worldviews in Belgium. However, it seems, according to the commission that many Muslims are open to their messages and find them sensible without being aware that they are linked to this movement. What is an undisputable fact is that a number of mosques in Belgium clearly adhere to the Muslim Brotherhood's worldview and their ideology.

The question of possible closeness between the ideology of the Muslim Brotherhood and the use of violence is delicate and could not be settled by the parliamentary commission of inquiry after hearing several experts.

Some contend that they do not directly and openly incite violence. Others point at their logo: a Qu'ran, two swords and the first words of a surah saying "Prepare yourself" as a sign of violence. The full text of this surah is "And prepare against them whatever you are able of power and of steeds of war by which you may terrify the enemy of Allah and your enemy and others besides them whom you do not know [but] whom Allah knows. And whatever you spend in the cause of Allah will be fully repaid to you, and you will not be wronged**"** (Surah Al Anfal-8-60, Al Qu'ran al-Kareem). The Muslim Brotherhood is also accused of regularly using a double-discourse: What they say publicly, in sermons and in conferences is sometimes far away from what they say internally.

Several witnesses heard by the parliamentary commission stressed that the promotion of the principles and values of the Muslim Brotherhood lead to individual and collective self-isolation, marginalization and ghettoization. By systematically criticizing the surrounding society, the Muslim Brotherhood contributes to the polarization of society instead of contributing to social inclusion and cohesion. This sort of polarization, which is now identified as a key component of the process leading to violent radicalization, is not new

in the movement of the Muslim Brotherhood. The concepts of "takfirs" (mécréants) and "crusaders" were already used in their narratives in the late 1980s and early 1990s.

Wahhabism

The Wahhabi doctrine is well-established in Belgium. From a historical point of view, the public powers and the Muslim community and their leaders are responsible for this situation. Its rise is to be attributed to their failure to promote an Islam that is different from the Islamist radicalism.

Wahhabism proposes a radical view of Islam concerning the outside world and "the others" who do not share Wahhabi ideas and conceptions. Its radical nature is characterized by the refusal of any negotiations concerning the achievement of its objectives (everything or nothing) and by its perception of different attitudes as illegitimate. This vision of Islam, and the ensuing religious practice, can lead to self-exclusion from and negative perception of society.

The doctrinal corpus comprises of the use of "victimhood" discourse, the exploitation of a perceived humiliation and Manichean representations of society. A potential consequence of such rhetoric is that through repetition the adherents interiorize a different identity. The permanent confrontation between Wahhabism and the worldviews of "the others", which are sometimes very divergent and sometimes fundamentally conflicting, is said to aggravate social divisions.

A number of issues which are presented as almost timeless by Wahhabism fail to pass the test of rigorous scholarly studies. There are often errors and/or deceptions about the historicity of some behaviors on sensitive issues such as the wearing of the veil. For example, some try nowadays to mislead people into thinking that the wearing of the veil has always been widespread and constant on "Muslim lands." This teaching cannot withstand serious analysis as this practice has historically been fluctuating and presenting it as a return to a practice that was abandoned, or even corrupted, is fallacious. Additionally, some ideas spread by Wahhabism can be compared to viruses introduced in a software that can be reactivated at any time in the future. For example, in the "Voix du Musulman" (The Muslim's Voice) which was distributed for free in the 1980s and 1990s, it said that homosexuals should be thrown down from the top of buildings, which Daesh did.

The experts heard by the parliamentary commission on the fight against radicalism and the terrorist threat in Belgium are unanimous in saying that Wahhabism has acquired a huge outreach power thanks to the almost unlimited financial means put at its disposal by political regimes promoting this doctrine, such as Saudi Arabia, Qatar and Kuwait, as well as by private philanthropists close to these states. This financial power has led to the control of religious practices in other countries. In Belgium, the Grand Mosque of Brussels is spreading Wahhabi teachings and is a case study in itself. Wahhabism has hereby become the vector of a dominant worldview that is omnipresent in communication supports, teaching and training materials. The collateral consequence of this quasi-monopoly is that the teachings of alternative, reformist and progressive voices cannot be heard and cannot reach the minds and the souls of the Muslim audience. Concretely, a Muslim in Belgium who questions Islam and his relation to this religion only finds Wahhabi-Salafist answers on the market of Muslim worldviews.

(*) Full report in French/ Dutch at

http://www.dekamer.be/FLWB/PDF/54/1752/54K1752009.pdf

Ban on wearing face covering in public in three Belgian municipalities was not in breach of the Convention

Registrar of the European Court (11.07.2017) - In today's **Chamber** judgment (1) in the case of Dakir v. Belgium (application no. 4619/12) the European Court of Human Rights held, unanimously, that there had been: **no violation of Articles 8 (right to respect for private and family life) and 9 (right to freedom of thought, conscience and religion)** of the European Convention on Human Rights**, no violation of Article 14 (prohibition of discrimination), taken together with Articles 8 and 9 of the Convention, and a violation of Article 6 § 1 (right of access to a court).**

The case concerned a by-law adopted in June 2008 by three Belgian municipalities (Pepinster, Dison and Verviers) concerning a ban on the wearing in public places of clothing that conceals the face, and the subsequent proceedings before the *Conseil d'État*.

The Court found in particular that the ban imposed by the joint by-law of municipalities in the Vesdre police area could be regarded as proportionate to the aim pursued, namely the preservation of the conditions of "living together" as an element of the "protection of the rights and freedoms of others. It therefore held that the contested restriction could be regarded as "necessary" "in a democratic society", and that – similarly to the situation which had previously arisen in France (*S.A.S. v. France2*) – the question whether or not it should be permitted to wear the full-face veil in public places in Belgium constituted a choice of society.

The Court also held that the decision by the *Conseil d'État* to declare Ms Dakir's application inadmissible on the ground that it was based only on Article 113*bis* of the by-law, without reference to Article 113, had been excessively formalistic, and that Ms Dakir's access to the *Conseil d'État* had been limited to such an extent that it had upset the fair balance that ought to be struck between, on the one hand, the legitimate concern to ensure that the formal procedure for appealing to courts was complied with and, on the other, the right of access to the courts. The Court noted that Ms Dakir's arguments on the merits had been set out in a substantiated and structured manner and were of particular significance.

Principal facts

The applicant, Fouzia Dakir, is a Belgian national who was born in 1977 and lives in Dison (Belgium). In June 2008 the municipalities of Pepinster, Dison and Verviers adopted a municipal by-law providing in Article 113*bis* thereof for a ban on the wearing of clothing concealing the face, at all times and in all public places.

In August 2008 Ms Dakir, presenting herself as a Muslim who had decided on her own initiative to wear the niqab – a veil covering the face except for the eyes – applied to the *Conseil d'État* for the annulment of the ban. She claimed, among other things, that the provision expressly concerned the Islamic veil that she wore and that the resulting ban constituted an interference with the rights secured by Articles 8, 9, 10 and 14 of the European Convention on Human Rights. She also contended that the interference had no legitimate aim as secularism was not a constitutional principle and the wearing of the veil could not be subject to a blanket ban. In June 2011 the *Conseil d'État* dismissed the case for failure to comply with an admissibility condition that it raised of its own motion.

Complaints, procedure and composition of the Court

Relying on Articles 8 (right to respect for private and family life), 9 (freedom of thought, conscience and religion), and 10 (freedom of expression), taken separately and together

with Article 14 (prohibition of discrimination) of the Convention, Ms Dakir complained about the ban on wearing of the full veil in public spaces in the three municipalities.

Ms Dakir also relied on Article 6 § 1 (right of access to a court) and Article 13 (right to an effective remedy); she submitted that the *Conseil d'État* did not examine the merits of her arguments on the grounds that she had not lodged her application against Article 113 of the by-law but instead against Article 113*bis* which, according to the *Conseil d'État*, was its duplication.

The application was lodged with the European Court of Human Rights on 22 December 2011.

The non-governmental organisation Liberty and the Human Rights Centre of Ghent University were granted leave to intervene in the written procedure as third parties.

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

Robert **Spano** (Iceland), *President*,
Julia **Laffranque** (Estonia),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Paul **Lemmens** (Belgium),
Valeriu **Griţco** (the Republic of Moldova),
Stéphanie **Mourou-Vikström** (Monaco),
and also Hasan **Bakırcı**, *Deputy Section Registrar.*

Decision of the Court

Articles 8 (right to respect for private and family life) and 9 (right to freedom of thought, conscience and religion)

The Court noted, firstly, that the contested ban had a legal basis – the joint by-law of the municipalities included in the Vesdre police area – and thus met the criteria set out in its case-law concerning Articles 8 and 9 of the Convention.

Secondly, as in the case of *S.A.S. v. France2*, the Court considered that the aim of ensuring the observance of the minimum requirements of life in society could be considered as part of the protection of the rights and freedoms of others, and that the contested ban could be regarded as justified in its principle solely in so far as it sought to guarantee the conditions of "living together".

Thirdly, the Court indicated that, by reason of their direct and continuous contact with the vital forces of their countries, the State authorities were in principle better placed than an international court to evaluate local needs and conditions. In matters of general policy, on which opinions within a democratic society could reasonably differ widely, the role of the domestic policy-maker was to be given special weight. With regard to Article 9 of the Convention, the State should thus, in principle, be afforded a wide margin of appreciation in deciding whether and to what extent a limitation of the right to manifest one's religion or beliefs was "necessary".

In the present case, the Belgian State had intended in adopting the contested provisions to respond to a practice that the State deemed incompatible, in Belgian society, with the ground rules of social communication and, more broadly, with the creation of the human relationships that were essential to life in society. The State was seeking to protect a principle of interaction between individuals that was, in its view, essential to the functioning of a democratic society. From this perspective, and similarly to the situation which had previously arisen in France (*S.A.S. v. France*), it seemed that the question

whether or not it should be permitted to wear the full-face veil in public places constituted a choice of society. Furthermore, while it was true that the scope of the ban was broad, because all places accessible to the public were concerned, the contested provisions did not affect the freedom to wear in public any garment or item of clothing – with or without a religious connotation – which did not have the effect of concealing the face. Lastly, there was no consensus within the member States of the Council of Europe as to whether or not there should be a blanket ban on the wearing of the full-face veil in public places, which justified, in the Court's opinion, leaving the respondent State significant room for manoeuvre ("a very large margin of appreciation").

In consequence, the Court considered that the ban imposed by the joint by-law of the municipalities in the Vesdre police area could be regarded as proportionate to the aim pursued, namely the preservation of the conditions of "living together" as an element of the "protection of the rights and freedoms of others. It therefore held that the contested restriction could be regarded as "necessary" "in a democratic society" and concluded that **there had been no violation of Articles 8 and 9 of the Convention**.

Article 14 (prohibition of discrimination), taken together with Article 8 or with Article 9

The Court having found that the contested measure had an objective and reasonable justification for the reasons set out above, it held that there had been no violation of Article 14 of the Convention taken together with Articles 8 and 9.

Article 6 § 1 (right of access to a court) and Article 13 (right to an effective remedy)

The *Conseil d'État* had rejected Ms Dakir's application on the grounds that it had been based solely on Article 113*bis* of the by-law, without referring to Article 113.

The Court noted that Article 113 could be considered as a general provision and that Article 113*bis* represented a particular application of it; the municipalities in question had used Article 113*bis* in the by-law because they considered that Article 113 was insufficient to prohibit the wearing of the burqa. It also noted that the submissions on the merits made by Ms Dakir had been set out in a substantiated and structured manner and were of particular significance, and that they had been discussed in the context of the adversarial written proceedings before the *Conseil d'État*. In consequence, the Court considered that the decision by the *Conseil d'État* to declare the application inadmissible had been excessively formalistic and that Ms Dakir's access to the *Conseil d'État* had been limited to such an extent that it had upset the fair balance that ought to be struck between, on the one hand, the legitimate concern to ensure that the formal procedure for appealing to courts was complied with and, on the other, the right of access to the courts. In consequence, it held that **there had been a violation of Article 6 § 1 of the Convention**.

Article 41 (just satisfaction)

The Court held that Belgium was to pay Ms Dakir 800 euros (EUR) in respect of costs and expenses.

Separate opinion

Judge Spano expressed a concurring opinion, joined by judge Karakaş which is annexed to the judgment.

The judgment is available only in French at
http://hudoc.echr.coe.int/eng/#{"itemid":["001-175139"]}.

(1) Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution.

Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

(2) *S.A.S. v. France* [GC], no. 43835/11, ECHR 2014 (extracts).

Ban on wearing face covering in public in Belgium did not violate Convention rights

Registrar of the European Court (11.07.2017) - In today's **Chamber** judgment (1) in the case of Belcacemi and Oussar v. Belgium (application no. 37798/13) the European Court of Human Rights held, unanimously, that there had been: **no violation of Articles 8 (right to respect for private and family life) and 9 (freedom of thought, conscience and religion)** of the European Convention on Human Rights**, and no violation of Article 14 (prohibition of discrimination)** taken together with Articles 8 and 9.

The case concerned the ban on the wearing in public of clothing that partly or totally covers the face under the Belgian law of 1 June 2011.

The Court found in particular that the restriction sought to guarantee the conditions of "living together" and the "protection of the rights and freedoms of others" and that it was "necessary in a democratic society".

Firstly, as in the case of *S.A.S v. France2*, the Court found that the concern to ensure respect for the minimum guarantees of life in society could be regarded as an element of the "protection of the rights and freedoms of others" and that the ban was justifiable in principle, solely to the extent that it sought to guarantee the conditions of "living together". In that connection, the Court explained that, through their direct and constant contact with the stakeholders in their country, the State authorities were in principle better placed than an international court to assess the local needs and context. Therefore, in adopting the provisions in question, the Belgian State had sought to respond to a practice that it considered to be incompatible, in Belgian society, with social communication and more generally the establishment of human relations, which were indispensable for life in society. It was a matter of protecting a condition of interaction between individuals which, for the State, was essential to ensure the functioning of a democratic society. The question whether the full-face veil was to be accepted in the Belgian public sphere was thus a choice of society.

Secondly, as regards the proportionality of the restriction, the Court noted that the sanction for noncompliance with the ban under Belgian law could range from a fine to a prison sentence. Imprisonment was reserved, however, for repeat offenders and was not applied automatically. In addition, the offence was classified as "hybrid" in Belgian law, partly under the criminal law and partly administrative. Thus, in the context of administrative action, alternative measures were possible and taken in practice at municipal level.

Principal facts

The applicants, Samia Belcacemi (a Belgian national) and Yamina Oussar (a Moroccan national), were born in 1981 and 1973 respectively and live in Schaerbeek and Liège (Belgium). The case concerns the Belgian law of 1 June 2011 banning the wearing in public places of clothing which partially or totally covers the face.

Ms Belcacemi and Ms Oussar present themselves as Muslims who have decided on their own initiative to wear the niqab – a veil covering the face except for the eyes – on account of their religious convictions.

Following the enactment on 1 June 2011 of the law in question, Ms Belcacemi initially decided to continue wearing the veil in the street. However, under pressure, she subsequently decided to remove her veil temporarily, being afraid that she might be stopped in the street and then heavily fined or even sent to prison. Ms Oussar, for her part, states that she has decided to stay at home, with the resulting restriction on her private and social life.

On 26 July 2011 Ms Belcacemi and Ms Oussar brought actions for the suspension and annulment of the law before the Constitutional Court. Their cases were dismissed by that court in October 2011 (application for suspension) and in December 2012 (application for annulment).

Complaints, procedure and composition of the Court

Relying on Articles 8 (right to respect for private and family life), 9 (freedom of thought, conscience and religion), and 10 (freedom of expression), taken separately and together with Article 14 (prohibition of discrimination) of the European Convention on Human Rights, Ms Belcacemi and Ms Oussar complained about the ban on wearing the full-face veil.

Ms Belcacemi and Ms Oussar also relied on Articles 3 (prohibition of inhuman or degrading treatment), 5 § 1 (right to liberty and security), 11 (freedom of assembly and association) and Article 2 of Protocol No. 4 (freedom of movement) to the Convention, taken separately or together with

Article 14 (prohibition of discrimination).

The application was lodged with the European Court of Human Rights on 31 May 2013.

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

Robert **Spano** (Iceland), *President*,
Julia **Laffranque** (Estonia),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Paul **Lemmens** (Belgium),
Valeriu **Griţco** (the Republic of Moldova),
Stéphanie **Mourou-Vikström** (Monaco),
and also Hasan **Bakırcı**, *Deputy Section Registrar.*

Decision of the Court

Article 8 (right to respect for private and family life) and Article 9 (freedom of thought, conscience and religion)

The Court took the view that this part of the application had to be examined in the light of the liberty secured by Article 9 of the Convention, as in the *S.A.S. v. France2* case.

Firstly, the Court observed that the Law of 1 June 2011 – whose wording was very similar to that ofthe French Law of 11 October 2010 (2) – could be regarded as worded with sufficient precision to satisfy the requirement of foreseeability required by Articles 8 and 9 of the Convention.

Secondly, the Court found that the drafting history of the Belgian Law used three aims to justify the ban in Belgium: public safety, gender equality, and a certain conception of "living together" in society. It noted that, as it had found in *S.A.S. v. France(2)*, the concern to ensure respect for the minimum guarantees of life in society could be regarded as an element of the "protection of the rights and freedoms of others" and that the ban was justifiable in principle solely to the extent that it sought to guarantee the conditions of "living together".

Thirdly, the Court explained that, through their direct and constant contact with the stakeholders in their country, the State authorities were in principle better placed than an international court to assess the local needs and context. Where questions of general policy were at stake, concerning which there might be profound disagreements in a democratic society, particular importance had to be given to the national decision-maker. In addition, under Article 9 of the Convention the State had a broad margin of appreciation to decide whether and to what extent a restriction on the right to manifest one religion or convictions was "necessary". In adopting the provisions in question, the Belgian State had sought to respond to a practice that it considered to be incompatible, in Belgian society, with social communication and more generally the establishment of human relations, which were indispensable for life in society. It was a matter of protecting a condition of interaction between individuals which for the State was essential to ensure the functioning of a democratic society. The question whether the full-face veil was accepted in the Belgian public sphere was thus a choice of society. As it had emphasised in *S.A.S. v. France*, the Court explained that in such cases it had to show reserve in its scrutiny of Convention compliance, in this case in assessing a decision taken democratically within Belgian society. It noted that the decision-making process leading to the ban in question had taken several years and had been marked by comprehensive debate in the lower house of Parliament and by a detailed examination of the various interests by the Constitutional Council. In addition, there was currently no consensus in such matters among the member States of the Council of Europe, whether for or against a blanket ban of the full-face veil, thus justifying a broad margin of appreciation for the Belgian State.

Fourthly, as regards the proportionality of the restriction, the Court noted that that the sanction for non-compliance with the ban under Belgian law could range from a fine to a prison sentence. The main sanction was the fine, being the lightest penalty. Imprisonment was reserved for repeat offenders and was not applied automatically. In addition, the offence was classified as "hybrid" in Belgian law, partly under the criminal law and partly administrative. Thus, in the context of administrative action, and contrary to what the applicants had contended, alternative measures were possible and taken in practice at municipal level. Moreover, the present application did not concern a specific sanction imposed on the applicants themselves. Consequently, having regard to the broad margin of appreciation afforded to the Belgian authorities, the Court found that the ban under the Law of 1 June 2011, even though it was controversial and undeniably carried risks in terms of the promotion of tolerance in society (see *S.A.S. v. France*), could be regarded as proportionate to the aim pursued, namely the preservation of the conditions of "living together" as an element of the "protection of the rights and freedoms of others".

The Court thus found that the impugned restriction could be regarded as "necessary in a democratic society", explaining that this conclusion applied both under Article 8 of the Convention and under Article 9. **Consequently, there had been no violation either of Article 8 or of Article 9 of the Convention.**

Article 14 (prohibition of discrimination), taken together with Articles 8 and 9

The Court reiterated that a general policy or measure which had disproportionate prejudicial effects on a group of individuals could be regarded as discriminatory – even if it did not specifically target the group and there was no discriminatory intent – if that policy or measure lacked "objective and reasonable" justification, if it did not pursue a "legitimate aim" or if there was no "reasonable relationship of proportionality" between the means used and the aim pursued. In the present case, the measure had an objective and reasonable justification for the same reasons as those developed above. **Consequently, there had been no violation of Article 14 of the Convention taken together with Articles 8 and 9 of the Convention.**

Other Articles

The Court took the view that no separate question arose under Article 10 (freedom of expression), taken separately and in conjunction with Article 14 of the Convention, and it dismissed the other complaints raised by Ms Belcacemi and Ms Oussar, pursuant to Article 35 §§ 3 and 4 (conditions of admissibility) of the Convention.

Separate opinion

Judge Spano expressed a concurring opinion, joined by judge Karakaş, which is appended to the judgment.

The judgment is available only in French at
http://hudoc.echr.coe.int/eng#{"itemid":["001-175141"]}

(1) Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution.

Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

(2) *S.A.S. v. France* [GC], no. 43835/11, ECHR 2014 (extracts).

Wallonia, Flanders want to ban ritual slaughter, including on religious grounds

By Dan Alexe

NewEurope (26.04.2017) - http://bit.ly/2pN8jUs - Next week, the Walloon Parliament in Belgium will vote on the proposal to ban the ritual slaughter of animals, to the dismay of

the representatives of the Jewish and Muslim faiths who still hope for a compromise consistent with the freedom of worship.

Lawmakers in both Flanders and Wallonia have agreed to ban kosher and halal slaughter by 2019, a move that triggered the protest of the World Jewish Congress, who gave today a tribune to Philippe Markiewicz, the president of Belgium's Central Jewish Consistory.

Markiewicz called the discussions between the Flemish and Walloon regions aimed at reaching a total ban on ritual slaughter by 2019 "a crisis without precedent, if not the biggest crisis since World War II."

Markiewicz also called it an affront that Geert Bourgeois, head of the Flemish regional government, had suggested during a recent debate on the issue that the question of ritual slaughter was related to integration of immigrants into Belgian society.

In 2016, Belgium's Council of State issued a ruling that a complete ban on ritual slaughter would violate the country's constitution and recommended a compromise to be sought, in consultation with Jewish and Muslim religious communities. However, at present, a majority of lawmakers in both Flanders and Wallonia seem determined to ban slaughter without prior stunning completely. The parliament of Brussels-Capital region has not yet formulated a postion on the matter.

Muslim and Jewish communities in Flanders have criticised the proposal by the Belgian region to ban the unstunned slaughter of small animals, which they say would contravene their rules for ritual killing.

Under the draft law, animals like sheep and poultry will have to be stunned electrically before being killed, which most animal rights campaigners say is more humane than the Islamic halal and Jewish kosher rituals. Both require that butchers swiftly slaughter the animal by slitting its throat and draining the blood.

The bill has broad support in the predominantly Catholic region, and the opposition from Flanders' religious minorities illustrates the difficulties facing some European countries as they struggle to integrate immigrant populations.

The issue could play with a wider audience, including right wing politicians and animal rights campaigners, who generally support the legislation.

As stunning larger animals is not possible without also fatally wounding them, the proposed law requires animals such as cattle be stunned immediately after their throats are cut if slaughtered in a ritual manner.

Belgium's Muslim community said its religious council has previously expressed its opposition to stunned slaughter and there had been no change in its stance since then.

"Muslims are worried about whether they can eat halal food … in conformity with their religious rites and beliefs," the Belgian Muslim Executive said.

The Flemish Jewish community said it was studying the proposal and that stunned slaughter was not in line with Jewish religious laws.

While the proposed law would only apply to the Dutch-speaking region of Flanders in the north of Belgium, other Belgian regions are planning similar moves.

Countries including Denmark, Switzerland and New Zealand already prohibit unstunned slaughter.

The Belgian 'burqa ban': Legal state of play

HRWF (06.02.2017) - The so-called 'burqa ban' is a reality in Belgium. The legislative proposal was discussed – and approved with an overwhelming majority – only by the Chamber of Representatives. The Senate opted against discussing the bill. The 'Act of 1 June 2011 to institute a prohibition on wearing clothing that covers the face, or a large part of it', was published in the *Belgian Official Journal* on July 13 and entered into force 10 days later.

We present you hereafter the conclusions of this research and afterwards an analysis of the constitutionality of the burqa ban in Belgium.

The Belgian 'burqa ban': Legal aspects of local and general prohibitions on covering and concealing one's face in Belgium (1)

By Jogchum Vrielink, Saïla Ouald Chaib and Eva Brems

"A ban on face-veils in public places in Belgium affects few women, but raises fundamental legal questions. This chapter has served to clarify two issues. In the first place, publicly wearing a face-veil was already prohibited in many places in Belgium prior to the Act of 1 June 2011 being voted. There are indeed many local police ordinances that are interpreted and applied as (including) a 'burqa ban'. The number of women wearing face-veils, and who are living in a Belgian municipality in which there is no ban, can be regarded as being either minimal or even non-existent.

Secondly, the enormous political support incorrectly seems to suggest that a 'burqa ban' would be desirable or even allowed in a democratic state governed by the rule of law. An analysis of the parliamentary debates on the matter shows that these were unilaterally aimed at a prohibition. There was hardly any discussion on potential conflicts with fundamental rights, and to the extent that such conflicts were discussed, they were dismissed very quickly. Moreover, it was improperly presumed that face-veils are worn exclusively under duress. When the arguments supporting the prohibition proposal are examined closely, it appears that they are unable to justify a general prohibition, because the measure is either not relevant to achieving the objective in question or because it is not proportionate to the objective.

At the time when the Belgian Parliament discussed the legislative proposals on face-covering for the first time, in 2010, most international human rights actors had not yet expressed themselves on such a prohibition. Only Amnesty International had issued a statement, which held that a general prohibition on face-veils is contrary to the freedom of speech and of religion(2). Human Rights Watch,(3) and Thomas Hammarberg,(4) the High Commissioner for Human Rights of the Council of Europe, later also spoke out against a ban, and a unanimous resolution against a general prohibition was passed in the Parliamentary Assembly of the Council of Europe.(5) Nonetheless, these developments failed to influence the Parliamentary debates in 2011 in any significant way.

In conclusion, it seems conceivable that the Belgian 'burqa ban' may not pass constitutional challenges (6) or scrutiny by the ECtHR. In that case, an alternative approach to this issue will have to be decided upon. In this respect, we feel that legislative action on this subject would remain advisable, but mainly in order to put an end to the tensions and conflicts with fundamental rights brought about by the (application of the) local prohibitions. To this end, the legislator ought to clearly and exhaustively define the circumstances in which a prohibition on face-veils or face-covering is applicable or can be introduced, (implicitly) granting the freedom to wear such garments in (most) other contexts. The latter would *de facto* invalidate the local

ordinances, to the extent that these exceed the circumstances prescribed by the law. These circumstances must themselves be strictly delineated for actual safety risks and therefore be limited to certain places and times. In addition, it is also possible to adopt a prohibition that does not concern wearing face-covering garments, but rather the act of compelling or forcing a person to wear such clothing.(7) In that way, the Belgian law could provide optimal protection for both the freedom of religion and women's rights."

(1) Jogchum Vrielink, Saïla Ouald Chaib and Eva Brems (University of Ghent). The paper of the authors was published in the framework of the RELIGARE project, which received funding under the European Commission's Seventh Framework Programme (Socio-economic Sciences and Humanities) and with funding from the European Research Council for the project 'Strengthening the European Court of Human Rights: More Accountability through Better Legal Reasoning'. See full text at hrlnwf.org.
(2) Amnesty International, 'Bans on Full Face Veils Would Violate International Human Rights Law', 21 April 2010.
(3) L. Gerntholtz and G. van Gulik, 'Beyond the Burqa', www.hrw.org
(4) T. Hammarberg, 'Rulings anywhere that women must wear the burqa should be condemned - but banning such dresses here would be wrong', says Commissioner Hammarberg', *Viewpoint*, 8 March 2010, www.coe.int
(5) Resolution 1743 of the Parliamentary Assembly of the Council of Europe (23 June 2010), §16-17. See also Recommendation 1927 of the Council of Europe Parliamentary Assembly, 'Islam, Islamism and Islamophobia in Europe'. 37
(6) Several constitutional challenges were filed against the ban with the Belgian Constitutional Court (see cases 5191, 5204, 5244, 5289 and 5290 at http://www.const-court.be). At the time at which this chapter was concluded, the Court was yet to issue its final ruling(s) in these cases.
(7) Naturally, with the exception of circumstances in which such obligation can be legitimate, such as when imposing safety clothing and the like.

The constitutionality of the Belgian burqa ban

By Jelle Flo and Jogchum Vrielink

Open Democracy (14.01.2013) - On 6 December 2012, the Belgian Constitutional Court held that the 2011 so-called "burqa ban" does not violate the Belgian Constitution. A boundary is crossed when rights of individuals are simply sacrificed to majority sentiments; a boundary which should be protected by institutions such as the Court.

Following France, Belgium was the second European country to introduce a general prohibition on covering one's face in public, or "burqa ban". The Act of 1 June 2011 renders it an offence to publicly "cover or conceal one's face in whole or in part, so that one is unrecognisable". Exceptions are limited to "legal provisions", "labour regulations", and "local ordinances regarding festivities", which impose or allow for face covering.

The Act was intended to guarantee public safety. Other stated purposes include considerations of a societal nature, including "promoting 'living together'", with an emphasis on communication and recognisability, and protecting women's rights.

Several appeals were filed with the Belgian Constitutional Court. Applicants argued that the prohibition violated several rights and principles, including the principle of legality, the freedom of religion, and the right to non-discrimination. Save for one minor proviso, the Court rejected all these arguments.

Principle of legality

Applicants argued that the scope of application of the law is unpredictable and potentially boundless, while there are only limited exceptions. This would render it impossible for citizens to ascertain whether their behaviour is in compliance with the law. This is all the more problematic, since intent is not required: mere negligence is sufficient to be punishable. All of this was claimed to violate the principle of legality, which requires laws to be clear, ascertainable and sufficiently precise.

The Court finds that this principle has not been breached. Concepts such as "recognisability", "covered in part" and "places accessible to the public" are all deemed

sufficiently clear to allow a citizen to determine their scope. Any remaining margin of appreciation for the judge does not pose problems of legality.

These general statements by the Court however in no way clarify the reach of the burqa ban, and they certainly do not limit the prohibition in any way. As such, it will have to be assumed that all types of partial concealment of one's face, which impede "recognisability", regardless of intent, are forbidden in Belgium. It follows that somebody who wears a scarf and a winter hat to protect himself from the cold is punishable. The same goes for cyclists wearing dust masks, human mascots at sports events, veiled brides, and Boy Scout leaders who disguise themselves during a game.

Safety

The Court devotes most of its attention to the alleged violation of applicants' freedom of religion. The Court finds that the stated purposes of the law are all legitimate, and that the ban also meets the proportionality standard.

The Court accepts, for instance, that the legislator has good reason to fear that facial covering may indeed harm public safety. In doing so, the Court acknowledges that in Belgium, thus far, the Islamic full-veil has not in fact given rise to any actual safety issues yet. However, the Court reasons that it does not follow from the fact that there are no problems (yet), that the legislator should not be allowed to act. The latter is allowed to 'anticipate'.

The American author Philip K. Dick described in his dystopian short story "*The Minority Report*" (written in 1956 and adapted into a feature film in 2002) how, in a future totalitarian society, clairvoyants ('precogs') were able to predict crimes. Potential criminals were pre-emptively apprehended, until it turned out that not all potential criminals would in reality commit crimes. The difference between the 1956 fiction and present-day Belgian reality is that the antidemocratic measures in the fictional short story were at least effective in improving public safety.

Prior to the introduction of the burqa ban, Belgian legislation already allowed for identity checks to be performed by the police. It is hard to see why this would be deemed insufficient from a public safety perspective. Moreover, most types of face covering pose no security risk whatsoever. And it seems rather unrealistic to assume that those who intend to rob a bank would refrain from doing so out of fear of committing the additional infraction of wearing a mask in public.

'Living together'

The Court also considers the promotion of 'living together' ('*le vivre ensemble*') to constitute a legitimate aim. In this context, the Belgian legislator referenced the French philosopher Emmanuel Levinas who according to the legislator has stated that "our humanity is expressed through our face". The legislator moreover declared that a person of whom only the eyes are visible would be "unable to participate in democratic dynamics".

It is remarkable, to say the least, that the Belgian Constitutional Court would accept that a violation of the freedom of religion would *de facto* be justified by a violation of the right to privacy. Freedom of religion is, after all, restricted in order to pursue an invasion of people's privacy, as the State wishes to force people to communicate with each other when in public, with the State deciding how such communication should take place in order to be valuable or 'democratic'. Would it not be more respectful of democratic values to leave it up to individual citizens to determine whether and when they want contact with their fellow citizens in the streets? Even if one were to consider it a

legitimate purpose to promote such contacts, criminal punishment does not seem a fitting means to do so.

Women's rights

The Constitutional Court also finds in favour of the legislator's concerns about gender equality in justifying the burqa ban. Following the legislator, the Court makes a distinction between women who are forced to wear a face-veil and women who do this of their own free will.

The Court indicates that, in the hypothesis that women are *forced* to wear the full-veil, the legislator may assume that the "fundamental values of a democratic society" oppose such coercion, and justify a ban. In doing so, the Constitutional Court disregards the fact that the law punishes not those who are *exerting* the coercion, but those who are the *victims* of such coercion. The Court responds to this objection with a mere reference to article 71 of the Belgian Criminal Code, which excludes criminal liability in cases of *force majeure* or coercion. Not only does this contradict the Court's preceding statement that punishing the wearer is legitimate even if coercion is involved, but the Court also fails to take into consideration that a woman who is repressed to such an extent that she may be coerced into wearing a full-veil, is highly unlikely to invoke this defence, in view of the social sanctions this would entail.

The Constitutional Court accepts that gender equality also justifies a ban if wearing the full-veil is instead a "well-considered choice by the woman". The reasons why the Court allows for this are twofold. To begin with, the Court points out that the requirement to wear such clothing is limited to *women*, and additionally the full-veil serves to deprive its wearers "of a fundamental element of their individuality". The Court thus accepts that the legislator can or even should 'emancipate' women against their own well-considered and informed opinion. This despite the fact that all available empirical research (carried out in Denmark, France, the Netherlands and also in Belgium) shows that the women who are affected by the ban experience the full-veil not as something that *deprives* them of their individuality, but instead as a means to *express* their individuality.

This may seem counterintuitive to many of us, but – as pointed out by the German philosopher Andrea Roedig – by the same token that the full-veil can be interpreted (and prohibited) as a symbol of oppression, the crucifix could, viewed by an uninformed outsider, be taken as a sign of veneration of torture and inhumane treatment.

Rule of law

The only restriction the Constitutional Court imposed is that the 'burqa ban' may not apply in "places of worship", as this would unduly restrict the freedom of religion. A similar reservation was made by the French Constitutional Council (*Conseil Constitutionnel*) in respect of the French ban. Government interference in religious matters has gone far indeed when it has become necessary to point out that there should still be a right to cover one's face in a place of worship.

All in all, the decision of the Belgian Constitutional Court seems regrettable. Fundamental rights ultimately exist to protect minorities, unpopular minorities in particular, against the tyranny of the majority. A boundary is crossed when rights of individuals are simply sacrificed to majority sentiments; a boundary which should be protected by institutions such as the Court. In other matters, the Constitutional Court has not hesitated to fulfil this role. In the case of the burqa ban, however, these boundaries seem to have evaporated, making for the constitutional equivalent of a Schengen area.

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