



*Hate Crimes and Discrimination  
Based on Religion or Belief  
in Belgium*

*2007-2009*

**HUMAN RIGHTS WITHOUT FRONTIERS INTERNATIONAL**

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# Hate crimes and discrimination based on religion or belief

## Introduction

The Belgian system of relationships between state and religions is historically rooted in the principle of state-recognition of religions and worldviews. After Belgium gained independence in 1830, Catholicism, Protestantism and Judaism enjoyed de facto state recognition on the basis of the official status they had been granted under French rule at the beginning of the 19<sup>th</sup> century. Anglicanism was recognized in 1835, Islam in 1974, and Orthodoxy in 1985. Secular humanism was recognized as a state-sponsored belief system in 1993 (article 181(2)). Buddhism is in the process of receiving state recognition as a worldview as secular humanism.

No constitutional provision, law or decree defines any recognition criteria. Despite this, the following criteria are applied in deciding whether or not to grant state recognition to a religious denomination: it must have a structure, have a ‘sufficient’ number of members, have existed in the country for a long period of time, be able to appoint a unique interlocutor with public authorities, offer a social value to the public, abide by the laws of the state and respect public order. However, the terms ‘sufficient’, a ‘long period of time’ or ‘social value’ have never been defined anywhere.

A religious denomination seeking state recognition applies to the Ministry of Justice, which then conducts a thorough review before recommending approval or rejection. Final approval is the sole responsibility of the Parliament. A negative decision can be appealed at the Council of State.

All religious and spiritual groups - old or recently established – which are not eligible to state recognition are registered as non-profit associations without any further distinction.

Articles 19 to 21 of the constitution guarantee freedom of worship, freedom of assembly and freedom of expression to state-recognized and non-recognized religions or world views as well as the non-interference of the state in their internal affairs.

All the components of freedom of religion – freedoms of worship, assembly, expression, association – are guaranteed and respected in Belgium. However, there exists a certain degree of intolerance towards a number of belief, spiritual and (ethno-)religious groups that is fostered by non-state and even state actors. The constitution and the laws prohibit discrimination against individuals on the basis of religion or belief. However, the system of state recognition of religions and worldviews put in place in 1830 with the creation of Belgium has been unable to adapt itself to the increasing religious diversity and with time has generated a situation of discrimination and inequalities between communities of faith or belief<sup>1</sup>. The religious attire and symbols (headscarf, burqa, burqini, kirpan) are dealt with in a specific section. These are the topics that this report will address.

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<sup>1</sup> The term « communities of faith or belief » has been used by all the U.N. Special Rapporteurs for Freedom of Religion or Belief and does not establish any form of hierarchy. This is the terminology that will be used in this report.

## Hate Crimes

Hate crimes always comprise two elements: a *criminal offence* committed with a *bias motive*. In such cases, the perpetrator intentionally chooses the *target* of the crime because of some *protected characteristic*.<sup>2</sup>

- The *target* may be one or more people, or it may be property associated with a group that shares a particular characteristic.
- A *protected characteristic* is a characteristic shared by a group, such as “race”, language, religion, ethnicity, nationality, or any other similar common factor.

The identification of religious hate crimes is an arduous task as the motivation of their authors is not always clear and the whole issue suffers from serious underreporting by the victims themselves, the law enforcement authorities and the appropriate state institutions.

Intolerance by various non-state actors towards specific ethno-religious groups and communities of faith or belief and towards individuals on the grounds of their religious beliefs and their communal affiliation can take various forms:

- **Violence against persons:** verbal insults, physical threats or attacks, murders;
- **Hate speech against groups:** derogatory statements and defamation;
- **Violence against buildings:** vandalism and attacks against places of worship, community property, houses of members of (ethno-)religious groups.

A number of cases mainly reported in the media will illustrate such intolerant behaviors and hate crimes as well as the complexity of the issue:

- intolerance towards Muslims by individuals from various backgrounds
- intolerance towards Jews by Muslims and extreme-right groups/individuals
- intolerance towards Sikhs
- intolerance towards non state-recognized communities of faith or belief

The examples given have been carefully selected to ensure - to the extent possible - that intolerance based on religion was the major underlying motivation of the perpetrator. It must also be noted that the examined time period (2008-2009) coincided with an escalation of the conflict between Israel and the Occupied Palestinian Territories. It appears as though this factor has had an impact on the number and gravity of anti-Semitic cases in Belgium. For instance, the Belgian Centre for Equal Opportunities and Opposition to Racism (CEOOR) received as many complaints about Anti-Semitism in the first four months of 2009 as the annual average in the time period 2004-2008 (60-65 complaints).<sup>3</sup> The Centre attributes this phenomenon to the influence of the conflict in the Middle East.<sup>4</sup> Both remarks need to be borne in mind when assessing the findings of this report.

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<sup>2</sup> See Hate Crime Laws. A Practical Guide. Published by the OSCE/ODIHR in 2009.

<sup>3</sup> De Standaard, “Aantal meldingen van antisemitisme spectaculair gestegen”, 8 May 2009.

<sup>4</sup> Ibid.

## **Violence against persons**

### *Verbal insults*

Muslims and Jews are the main targets of verbal insults.<sup>5</sup>

In Antwerp, a **Jewish woman** was threatened by her neighbor with verbal insults, beating and death threats, while exiting a store. She was assisted by bystanders who accompanied the woman to her home.

In another incident, a **Jewish man** was surrounded and threatened by four teenagers at a gas station in Brussels. The youngsters became aggressive, but were scared away by bystanders before they could resort to physical violence.<sup>6</sup>

### *Physical threats and attacks*

In general, it appears as though in Belgium not many people become the victim of physical violence on the basis of their religious convictions or affiliation to a specific religious community. At least, few of such acts are being reported. However, throughout 2008 and the first half of 2009, a few cases occurred that are worth mentioning.

In February 2008, several **Jewish people** became the victims of anti-Semitic violence and threats of violence. In one instance, Jewish children were playing in a schoolyard in the city of Antwerp when unknown youngsters threw bottles and detonators at them.

In March 2008, approximately 20 **Jewish children** were physically threatened by a man and his two dogs in the city of Antwerp, while also suffering from verbal abuse. The police intervened to put an end to the incident.<sup>7</sup>

In April 2008, the Court of First Instance of the city of Antwerp delivered its decision in the case of a **Moroccan Muslim girl** who claimed to have been harassed and even beaten at a bus stop for not wearing a headscarf. Due to contradicting statements of the victim and her witness, the Court acquitted the suspects. Despite the fact that in this particular case doubts concerning the evidence favored the defendants, it is clear that hate crimes perpetrated against individuals on the basis on how they express their beliefs are utterly unacceptable.<sup>8</sup>

In March 2009, **four Jewish individuals** became victims of physical aggression in Antwerp. The perpetrator, armed with a stick and an iron bar, attacked four people who were clearly recognizable as Jewish due to the religious signs they were wearing on their person. The attacks took place on four different individuals in four different locations. It is therefore clear that the perpetrator - who was described as Arab by one of the four victims and believed to be Polish by the other three - purposely

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<sup>5</sup> In the years following the publication of a report of a parliamentary investigation commission on sect in 1998, the Raelians, a community of belief created in the 1970s, collected testimonies of about 20 of their members who were victims of insults, physical threats and attacks. See “Belgique: La discrimination religieuse est bien présente”, 22 pages, 1998. With the passing years, the number of acts of violence against them has almost disappeared.

<sup>6</sup> United States Department of State, “International Religious Freedom Report 2008. Belgium”, available at <http://www.state.gov/g/drl/rls/irf/2008/108437.htm> (accessed 28 May 2009).

<sup>7</sup> Ibid.

<sup>8</sup> Centre for Equal Opportunities and Opposition to Racism, “Religieuze voorschriften mogen geen vrijgeleide zijn voor discriminatie”, 22 April 2008, available at [http://www.diversiteit.be/index.php?action=artikel\\_detail&artikel=36](http://www.diversiteit.be/index.php?action=artikel_detail&artikel=36) (accessed 28 May 2009).

searched for Jewish males to attack. As a result of the attack, three of the victims were wounded, one of which suffered a broken arm, while the fourth victim managed to escape unharmed.<sup>9</sup>

#### *Murders*

In August 2008, an **Indian Sikh** was beaten to death in the city of Sint-Truiden, a city with a Sikh community of approximately 1,000 individuals. The victim was rushed to the hospital where he entered a coma and eventually died. Before his death, he was able to communicate that he had been attacked by three male adults. A police investigation against unknown suspects was initiated, but had not been concluded at the time of writing of this report. Although the identity and motivation of the perpetrators remain unclear, religious intolerance cannot be excluded as a factor in the attack.<sup>10</sup>

#### **Hate speech against groups**

##### *Anti-Muslim attitudes and hate crimes*

- A January 2009 report by the Institute of Social and Political Opinion Research of the Catholic University of Leuven contained findings concerning growing anti-Muslim attitudes in Flanders. The report offers conclusions drawn from 1084 interviews with eligible voters during the time period of September 2007 to January 2008. Although the interviewees were primarily asked about their voting intentions, they were also asked to give their opinion about statements relating to Islam and Muslims.

From the answers to the questionnaires, it becomes apparent that nearly one in two Flemish holds a negative opinion about Islam and Muslims. 42% accept the statement “the Islamic history and culture are more violent than other cultures”, while only 21% do not accept this statement. 46% are of the opinion that Islam does not contribute in any manner to the European culture. 47% believe that the values of Islam are a threat to Europe and 37% believe that the majority of Muslims in Belgium do not respect the European culture and way of life. 81% of the interviewees also expressed the opinion that Muslim males dominate their wives too strongly.<sup>11</sup>

- Members of extreme-right political parties and their media, as well as some non-political magazines, have created a general climate of panic towards Muslims and Islam. The Ministry of Justice in charge of the Department for Religious Affairs has also contributed to intolerance towards Muslims by wrongly criticizing the financial management of two successive leaders of the Executive of the Muslims of Belgium (EMB), the official interlocutor of the state. Under Minister of Justice Laurette Onkelinx, both were wrongly accused of swindling public money. One of them even spent several days in prison but was declared innocent of all charges in June 2009.

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<sup>9</sup> *De Standaard*, “Vier Joden aangevallen in Antwerpen”, 5 March 2009.

<sup>10</sup> *De Morgen*, “Sikh uit Sint-Truiden stierf gewelddadige dood”, 1 August 2008; *Het Belang van Limburg*, “Filmpje raadt sikhs illegale immigratie af”, 9 May 2009

<sup>11</sup> J. Billiet, M. Swyngedouw, « Etnische minderheden en de Vlaamse kiezers. Een analyse van de postelectorale verkiezingsonderzoeken. 1991-1995-1999-2003-2007 », Institute of Social and Political Opinion Research, 2009, pp. 5; 13-15, available at

[http://soc.kuleuven.be/ceso/onderzoek/9/pdf/Etnische%20minderheden%20en%20Vlaamse%20kiezer\\_\(def\).pdf](http://soc.kuleuven.be/ceso/onderzoek/9/pdf/Etnische%20minderheden%20en%20Vlaamse%20kiezer_(def).pdf)  
(accessed 27 May 2009).

- In recent years, Belgium has witnessed an exponential increase in the amount of chain letters containing hate speech, sent via e-mail.<sup>12</sup> During the time period examined in this report, several chain letters were reported to contain statements supporting religious intolerance. It is worth noting that six of the letters included hate speech directed towards Islam and **Muslims**.<sup>13</sup> Two examples are given below.

The first is a letter that originated in France and later spread in Belgium, also in a Dutch version, circulates the internet under the title “Science fiction horror or reality? How certain Muslims think about us”. The chain letter contains clear ‘us versus them’ language and uses false information presented in a *prima facie* objective and trustworthy fashion to instill fear for Muslims in the hearts and minds of the letter’s readers. For instance, it mentions a quote claimed to be uttered by a 25 year old French student from Algerian origin, stating that “your laws are not in accordance with the Qur'an. You impose laws on us, while Muslims can only be ruled by the Sharia. We will thus attempt to seize the power.” However, there are no records of this person present at the university where the letter claims he was enlisted. Moreover, there exists no proof whatsoever that the person mentioned in the letter ever existed. The letter is thus clearly a fabrication which sole purpose is to spread fear for and hatred against Muslims.<sup>14</sup>

The second letter, entitled “Are we letting ourselves be converted?”, uses a collection of newspaper and weekly headlines and quotations that are apparently designed to ‘demonstrate’ that Muslims are putting forward extreme demands in Western countries. Every quotation is accompanied by a citation, giving the letter a false aura of objectivity. The letter attempts to instill a sense of fear in the reader that the situation is getting ‘worse’. This is done by offering increasingly serious examples, beginning with “Muslims are demanding separate gym classes in school” and ending with stories about Muslims attacking white people. By doing so, the author or translator of the letter equates Islam to extremism and clearly pursues the purpose of increasing intolerance and hatred towards Muslims in Belgian society.<sup>15</sup>

- In September 2008, the Court of First Instance of Charleroi acquitted Father Samuel, a priest of Turkish origin who preaches at a church in Charleroi, of charges of incitement to racial hatred brought against him by the CEOOR. The charges were based on certain statements Father Samuel had made, including those in which he refers to Muslims as “wild, destructive, plunderers, spiteful, unnecessarily violent, rude, inflexible, greedy and not to be trusted”. He also claimed that “[a]ll Muslims who are born in the West are time bombs, directed against European youth” and “[i]n 2033 all our grandchildren will be exterminated by the Muslims, they will be tortured and killed”.

Father Samuel’s acquittal was issued on technical and procedural grounds. Specific reasons for the acquittal include: the prescriptive period of several accounts against him had passed - including those based on religious hatred preached in Father Samuel’s work “Les versets Angéliques”; the court did not find certain acts to be punishable under the Anti-Discrimination

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<sup>12</sup> In 2007 for instance, the CEOOR received 330 reports of racial hatred being spread via the internet, as compared to 140 reports in 2006. Centre for Equal Opportunities and Opposition to Racism, “Overzicht kettingmails”, available at <http://www.diversiteit.be/?action=onderdeel&onderdeel=112&titel=Overzicht+kettingmails> (accessed 27 May 2009); *De Standaard*, “Drie keer meer meldingen van racisme op internet”, 26 June 2008.

<sup>13</sup> Besides those that strictly contained religious intolerant hate speech, many more were inspired by racism.

<sup>14</sup> Centre for Equal Opportunities and Opposition to Racism, “Overzicht kettingmails”, available at <http://www.diversiteit.be/?action=onderdeel&onderdeel=112&titel=Overzicht+kettingmails> (accessed 27 May 2009).

<sup>15</sup> Ibid.

Law of 1981; and the fact that incitement to hatred, violence and discrimination based on non-racial motives including religious conviction are only punishable under Belgian law since the introduction of the new anti-discrimination legislation in 2003, while the complaints against Father Samuel concerned facts committed prior to 2003. Nonetheless, it is clear that Father Samuel's statements incite hatred towards Muslims and, were they spoken after 2003, would certainly be punishable under the modified anti-discrimination law.<sup>16</sup>

#### *Anti-Jewish hate crimes and holocaust denial*

In 2009, in a case of cyber-hate in Belgium, two members of the *Centre Islamique Belge* (CIB; Belgian Islamic Centre) who maintained the website [www.assabyle.com](http://www.assabyle.com) were convicted for incitement to hatred and violence against **Jewish** people. They were sentenced to fines of €2,000 and a probationary sentence of one month imprisonment. The conviction was *inter alia* based on a text published on the website which started out by referring to Jewish people as “a deviating people”, “cowards and weaklings”, “unworthy people who do not obey commands and continuously cross boundaries”, “monkeys, pigs”, that “will receive the fury and wrath of Allah”, and need to be fought with “battle horses”; and ended with “the Jewish people will witness their demise”.<sup>17</sup>

In a case of revisionism/genocide denial dating back to 2001, the Court of First Instance of Brussels found two persons guilty of denying the Holocaust for racist motives. In June 2008, both persons were sentenced to one year imprisonment and a fine of €25,000 - heavy sentences under Belgian law - for the spreading of pamphlets, brochures and stickers minimizing and even denying the Holocaust, glorifying Hitler's regime and restoring its ‘honour’. The documents were spread through an organisation called *Vrij Historisch Onderzoek* (Free Historical Investigation) set up by one of the two convicted. The Court ruled that the negationist and revisionist statements were not based on historical investigation but instead revealed racist motives.<sup>18</sup>

In November 2008, a video appeared on *YouTube* in which Michel Delacroix, President of the Walloon extreme rightwing party *Front National* and member of the Belgian Senate, was seen on vacation, singing an anti-Jewish song along with a member of the Flemish extreme rightwing party *Vlaams Belang*. The song, based on the melody of a song by a French singer-songwriter of Jewish origin, had lyrics such as “[m]y little Jewish girl is in Dachau. She lies in the quick lime. She left her ghetto to be burnt alive”. Following the public release of the video, the *Front National* immediately removed Michel Delacroix from his position as President of the party and from the party bureau, but strangely did not take any steps to persuade him to relinquish his seat in the Belgian Senate.<sup>19</sup> The member of *Vlaams Belang* was dismissed from his party after the video appeared.<sup>20</sup>

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<sup>16</sup> Centre for Equal Opportunities and Opposition to Racism, “Pater Samuel moet zijn woorden beter wegen”, 10 October 2008, available at [http://www.diversiteit.be/index.php?action=artikel\\_detail&artikel=73&select\\_page=23](http://www.diversiteit.be/index.php?action=artikel_detail&artikel=73&select_page=23) (accessed 15 October 2008); *De Standaard*, “Père Samuel is geen racist”, 27 September 2008; Centre for Equal Opportunities and Opposition to Racism, “Vrijspraak Père Samuel”, available at

[http://www.diversiteit.be/index.php?action=artikel\\_detail&artikel=69&select\\_page=23](http://www.diversiteit.be/index.php?action=artikel_detail&artikel=69&select_page=23) (accessed 15 October 2008).

<sup>17</sup> Centre for Equal Opportunities and Opposition to Racism, “Belangrijke veroordeling in de strijd tegen cyberhate”, 23 January 2009, available at [http://www.diversiteit.be/index.php?action=artikel\\_detail&artikel=102](http://www.diversiteit.be/index.php?action=artikel_detail&artikel=102) (accessed 27 May 2009).

<sup>18</sup> *De Morgen*, “Negationist Siegfried Verbeke krijgt één jaar cel”, 19 June 2008.

<sup>19</sup> Under the Belgian electoral system, a seat in the Senate belongs to the individual elected and not to his/her party. However, it is common practice for political parties to - behind doors - persuade a convicted Senator to voluntarily relinquish his seat.

<sup>20</sup> *De Standaard*, “FN voorzitter neemt ontslag na zingen nazi-lied”, 7 November 2008.

In another case of negationism, dating back to 2001, former senator and vice-president of the *Vlaams Blok* party (now *Vlaams Belang*) Roeland Raes, openly questioned and minimized the extent and systematic nature of the Holocaust in a television interview. He was convicted in December 2008 and sentenced to a probationary sentence of four months imprisonment as well as financial compensation of 1,000 Euro for damages to be paid out to the CEOOR/CECLR and the *Forum of Jewish Organisations*.<sup>21</sup>

In March 2009, the Belgian NGO Mouvement contre le Racisme, l’Antisémitisme et la Xénophobie (MRAX/ Movement against Racism, Antisemitism and Xenophobia) requested that the Minister of Education of the French Community initiate an investigation of negationism against an Islamic religion teacher of a school in Brussels, for negationism. During a meeting between students of the school and a Holocaust survivor, the teacher reportedly negated the survivor’s story, calling it “gravely exaggerated”. He also referred to negationist statements by Roger Garaudy, a French author and politician convicted for negationism in 1998.<sup>22</sup>

#### *Defamation and misrepresentation of non state-recognized religions*

The misrepresentation of a number of non-recognized communities of faith or belief has been mainly fuelled by a number of state actors and actions in the last twelve years, including a parliamentary investigation commission on “sects”, the publication of a report and of a list of 189 suspected groups, the creation of a state Advisory and Information Center on Harmful Sectarian Organization (CIAOSN/IACSSO), also called “sect observatory”,<sup>23</sup> the creation of a working group on the sect issue, discussion about several draft laws on the abuse of weakness, etc.

The moral panic generated by these state initiatives was amplified by the media and anti-sect movements<sup>24</sup> which utilized the testimonies of former members of such communities. Victims of such campaigns were mainly the Church of Scientology, the Raelians, Hare Krishna, Jehovah’s Witnesses, Sahaja Yoga, Spiritual Human Yoga, Pentecostal African Churches, the Anthroposophic Society, the Tibetan Buddhist group Ogyen Kunzang Chöling (OKC), the Satanist group Abrasax, etc.

The suggestive headlines for such stories included

- *Hare Krishna*: “Parliamentarians against Gurus” and “The invaders: Villagers are alarmed by the building projects of the Hare Krishna sect”

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<sup>21</sup> *De Standaard*, “Roeland Raes. Als negationist veroordeeld”, 13 December 2008.

<sup>22</sup> Mouvement contre le Racisme, l’Antisémitisme et la Xénophobie, “Un enseignant nie le génocide des Juifs dans une école Bruxelloise ? Le MRAX requiert l’Inspection !”, 18 March 2009, available at [http://www.mrax.be/article.php3?id\\_article=757](http://www.mrax.be/article.php3?id_article=757) (accessed 28 May 2009); *De Morgen*, “MRAX eist onderzoek naar negationisme in Brusselse school”, 18 March 2009.

<sup>23</sup> Although the sect observatory claims to work independently from the Ministry of Justice, it does not have an independent juridical status and its staff and logistics are under the authority of the federal Ministry of Justice. Source: page 2 of the judgment under the heading “Facts” (Feiten).

<sup>24</sup> Antisect movements contributing to moral panic are ADIF and VVPG (Association for the Defence of the Individual and Family, francophone and Flemish branches), CIGS (Contact and Information on Sectarian Groups). Some of them are represented in the board of the sect observatory. Court cases have shown that the heads of such groups had on several occasions called and written to public and private owners of meeting rooms to persuade them not to make their premises available for conferences of such groups because they were allegedly on the parliamentary list of sects. The antisect groups were often successful in preventing freedom of assembly of Sahaja Yoga, Hare Krishna, the Raelians and others.

- *African Pentecostal churches*: “AIDS virus is Satan, only praying helps” – “Physicians sound the alarm about African patients” – “The faith of the Pentecostal Churches prohibits medical treatments”
- *Raelians*: “The big trickery: Rael and his Elohim. Should we laugh or cry about it?” – “Sex, swindling and UFOs”<sup>25</sup> – “Raelians are not welcome in Waterloo” – “Those people are dangerous”

The media lynching has substantially decreased in the last few years, apart from the extensive coverage of the “sect observatory” report of activities (published once every two years) and the attention given to new developments in the never-ending judicial saga against the Church of Scientology. Scientology cases began in 1997 but by 1 July 2009 no trial had been started and none of the other 189 suspected movements had ever been sentenced.

Jehovah’s Witnesses have never been prosecuted or sentenced for refusing blood transfusion to a minor. Master Dang, the leader of Spiritual Human Yoga (SHY) was sentenced to a prison term in absentia for failing to pay income taxes on his revenues in Belgium and on the grounds of financial embezzlement. Dang, an American citizen of Vietnamese origin, died in Australia a few years later. However, his teachings are still practiced and taught openly by SHY legal entities in Belgium.

Sahaja Yoga<sup>26</sup> is one of the organizations that have been misrepresented by the state sect observatory<sup>27</sup>. On 7 March 2005, the CIAOSN, the federal sect observatory, gave a negative opinion on the movement to the City of Ghent. The city had requested the observatory’s expertise before deciding to let or not a public hall to the movement<sup>28</sup>.

In its 5-page opinion, published on its website in August 2005, the observatory stated, among other things, that “Sahaja Yoga was presenting itself to the public and potential candidates in a deceitful way” and that its recruitment campaigns were also deceitful. The CIAOSN was also presenting the movement as dangerous for children.

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<sup>25</sup> This title was used by the francophone television RTBF on 15 May 2009 to announce its investigation program about the Raelians. This case was mentioned on the list of the six complaints about acts of intolerance and discrimination that the Belgian Raelian Movement handed over to UN Special Rapporteur on Freedom of Religion or Belief in Geneva In July 2009..

Source: Résumé des 6 plaintes contre la Belgique et ses institutions adressé à Me Asma Jahangir, Rapporteur Spécial de l’ONU (Summary of the six complaints against Belgium and its institutions addressed to UN Special Rapporteur Asma Jahangir).

<sup>26</sup> Sahaja Yoga means spontaneous or effortless yoga.

<sup>27</sup> In 2006, the Anthroposophic Society won a case against the French Community of Belgium had been wrongly accused of the death of a young girl, a statement made by the spokesperson (27) of a Belgian private anti-sect group during the hearing by the parliamentary commission and reproduced without any control in the parliamentary report. The French Community was sentenced to a symbolic Euro for publishing this false information in a brochure called “Guru, beware of you” (27) widely publicized on television and radio, in newspapers, schools, police stations, and so on. The judgment also provided that the distribution of the brochure had to be stopped but the damage caused to the reputation of the *Anthroposophic Society* was then irreparable.

<sup>28</sup> This opinion was also used to turn down an application for Belgian citizenship by a lady from India practicing Sahaja Yoga who was married to a Belgian citizen and living in Belgium. However, the Court of Appeal of Ghent finally granted her the Belgian citizenship.

On 17 October 2005, Sahaja Yoga initiated an emergency procedure against the Belgian State. On 7 December 2005, the judge in charge of the emergency procedure declared the request of Sahaja Yoga admissible but groundless. On 23 December 2005, Sahaja Yoga appealed the decision. On 12 June 2006, the Court of Appeal of Brussels declared its request admissible and well-founded. According to the Court's judgment, dated 29 February 2008<sup>29</sup>, the Belgian State was sentenced for 'mistakes' made in drafting the observatory's opinion on Sahaja Yoga. The Court stated that the opinion was not established with the necessary accurateness and fairness, and was insufficiently motivated.

The Court found that the sect observatory had informed the public in a one-sided and inaccurate manner about Sahaja Yoga: "as a result of the advice, the non-profit organisation Sahaja Yoga's honor and good name is being harmed, and the perception arises that the organization is involved with harmful and punishable practices". The case was still pending at the time of reporting.<sup>30</sup>

The news was published by the Flemish daily newspapers *De Standaard* and *De Morgen*, sometimes on their front page, and reported by the Flemish radio of VRT. On the francophone side, the event was then reported by *Le Soir*.

In the legal battles against the Belgian State, non state-recognized communities of faith or belief are always in an unfavorable position as they have to bear all the costs of lengthy proceedings while the Belgian state has unlimited financial and human resources, as well as the power to financially wear out the victims of its discriminatory policy.

The misrepresentation of non state-recognized faith or belief groups (so-called cults or sects) by Belgian politicians, the media and the anti-sect groups has significantly decreased year after year but has not disappeared. It has left an indelible mark in the collective mindset of society which is also influenced by similar anti-sect discourse of the media, politicians and state-financed anti-sect movements in France. This continues to generate negative stereotypes towards the said movements.

## **Violence against buildings**

### *Destruction of property*

In January 2009, the private residence of a **Jewish** family was set on fire in Antwerp. The building was clearly recognizable as a house in which Jews live, due to the traditional mezuzah attached to the door and a picture of a rebbe accompanied by a Hebrew text hanging over it. During the night, unknown perpetrators inserted pieces of cloth, drenched in gasoline, through the door mailbox and set them on fire. The fire caused substantial smoke hazard, but fortunately burned out on its own without causing further damage. While the police could not immediately confirm that the attack was inspired by anti-Semitism, they considered the timing of the attack on a distinctive Jewish residence, right after three eventful anti-Israel manifestations in Antwerp, to be "too much of a coincidence to not see a link".<sup>31</sup>

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<sup>29</sup> Court decision Nr 49 (A.R. Nr. 2005/13740/A), 24th Chamber of the Court of First Instance of Brussels. The judgment was in Dutch. Full text of the judgment and press release in Dutch:

<http://www.sahajayoga.be/article163.html>

In French, the same press release and a translation of the conclusions of the judgment :

<http://www.sahajayoga.be/article164.html>

<sup>30</sup> Knack, "Sahaja Yoga is geen sekte", 25 April 2008, available at <http://www.knack.be/nieuws/belgie/72-24-16172/sahaja-yoga-is-geen-sekte-.html> (accessed 27 May 2009).

<sup>31</sup> *De Standaard*, "Brandstichting bij Joods gezin in Antwerpen", 5 January 2009.

In March 2009, unknown assailants attacked a **Sikh** temple in the town of Hoepertingen with a molotov cocktail. The cocktail was thrown through the open door of the temple. The resulting fire caused serious damage, but fortunately no one was harmed in the attack.<sup>32</sup>

## **Discrimination**

### *Hierarchy of religions and institutionalized discrimination*

The Belgian system of hierarchy of religions and belief systems generates various forms of institutional discrimination.

The state only finances recognized religious communities, while state subsidies are provided by all taxpayers, including those who profess a non-recognized religion or who do not adhere to any religion or belief system.

Non-recognized faiths are not eligible to receive state subsidies for wages and pensions of their clergy; they are not entitled to have officially accredited chaplains in prisons<sup>33</sup>, detention centers for asylum seekers, hospitals, the armed forces, homes for elderly or handicapped; they are not permitted to teach their religion in public schools; they are denied access to public media and equality of treatment by the tax administration. They are obligated to obtain work permits for foreign missionaries/preachers to enter the country for voluntary religious work.

### *The 2 June 1998 Law on ‘harmful sectarian organizations’ and its controversial implementation<sup>34</sup>*

On June 2, 1998 was promulgated the “Law creating an Information and Advisory Center on Harmful Sectarian Organizations.”

By “harmful sectarian organization,” the Center means, according to its website, “every movement with a philosophical or religious purpose, or claiming to be so, which through its organization or practice, commits harmful illegal activities, harms the individual, society or human dignity. The harmful character of a sectarian movement will be investigated on the basis of principles which are embodied in the Constitution, laws, decrees, ordinances and in international treaties regarding the protection of human rights, which have been ratified by Belgium.”

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<sup>32</sup> De Morgen, “Molotovcocktail gegooid naar sikhtempel in Hoepertingen”, 27 March 2009.

<sup>33</sup> On 9 October 2006, the U.N. Special Rapporteur on Freedom of Religion or Belief sent a communication to the Belgian Government about the denial of access to pastoral assistance to members of non-recognized faiths. Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled “Human Rights Council”, Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Addendum. Summary of cases transmitted to Governments and replies received. Ref. A/HRC/4/21/Add1, 8 March 2007. Human Rights Council. Fourth session. Item 2 of the provisional agenda. See <http://daccessdds.un.org/doc/UNDOC/GEN/G07/117/05/PDF/G0711705.pdf?OpenElement>.

<sup>34</sup> See the blog of the Belgian attorney Inès Wouters <http://ines-wouters-avocat.skynetblogs.be/post/6737455/le-centre-d-information-et-davis-sur-les-organ>

By law, the Center is charged with several missions :

- to study the phenomenon of harmful sectarian organizations in Belgium as well as their international ties;
- to organize a documentation center accessible to the public;
- to receive and inform the public, to answer anyone's enquiry about his/her rights, his/her obligations and on the means of enforcing his/her rights;
- to formulate either under its own initiative or at the request of any public authority advice and recommendations on the phenomenon of harmful sectarian organizations, and in particular on the policy of fight against these organizations.

Its mandate is therefore limited to "harmful sectarian organizations" and cannot deal with "sects" or "religious minorities".

A sectarian organization can only be harmful if it violates the constitution, the laws or the decrees of the Belgian state. According to the principle of separation of powers, the proof of "illegal" activities can therefore only emanate from a judicial decision, the Center not being a jurisdiction of the judicial system. The Center can therefore not determine that a group is a "harmful sectarian organization" if it has never committed any illegal act.

Although the Center recognizes that the "list of 189 movements" annexed to the 1997 parliamentary report on sects does not have any juridical value, it considers this list as its main working tool. Last but not least, it has completed the said list with many more other groups. In its report of activities, the Center declares "Since its creation, the center has opened 189 files concerning the movements mentioned in the parliamentary report and 561 new files on request of the public or authorities. Apart from these 750 files, 135 files did not concern a specific group and 55 were considered by the center outside its competence."

Hereby, the Center presents itself as the organ in charge of the study of "religious minorities" (all religious groups that are not state-sanctioned) and competent to issue an opinion on each of them while its mandate is by law strictly limited to harmful sectarian organizations.

A special brochure entitled "Is it a sect?" and issued by the Center increases the confusion about its competences as it – wrongly - gives the impression that it is entitled to deal with minority religious groups. Moreover, in its publications, the Center lumps together the concepts of sect, dangerous sect, sectarian deviations and draws a complicated and vague list of criteria meant to identify harmful sectarian organizations which does not contain any civil or criminal offence.

This confusion and deviation from its legal mandate has created an atmosphere of insecurity and suspicion towards hundreds of religious and belief communities, and their members. The collateral damage of the general work of the Center is the creation, without any legal basis, of a category of non state-recognized religious organizations that are wrongly portrayed as potentially dangerous and harmful. Such discrimination is contrary to the 7 May 2007 law against certain forms of discrimination, including discrimination on the basis of "religious or belief convictions." Article 22 of this law provides a sentence of one month to one year in prison and a fine of 50 to 1000 EUR and Article 23 provides a double sentence if the discrimination is carried out by a public servant and a

law enforcement agent. Moreover, Article 444 of the criminal code lists the discriminatory behaviors which are punishable.

The Center has blindly followed the initially security-oriented approach of the parliamentary commission on sects while ignoring its cautiousness advices and extending its mandate beyond its legal framework. The result has been several condemnations of the Belgian state and the French Community of Belgium by domestic courts in cases initiated by defamed and discriminated against religious and belief groups.

The human damage caused by the 2 June 1998 Law and the activities of the Center among the members of hundreds of religious groups is much more serious: libel and slander; victimization in the neighborhood, at the workplace and at school; damage to individuals' reputation; loss of jobs, contracts or promotions; dismissals; loss of visitation rights or child custody in divorce settlements; inability to rent private or public facilities for religious ceremonies or for meetings<sup>35</sup>; unilateral and unfounded closure of bank accounts of such groups or of individuals affiliated with them; police and intelligence surveillance, and so on.<sup>36</sup>

#### *The Advisory and Information Center keeps silent in a case of religious torture*

Strange though it may be, the Advisory and Information Center kept silent in a case of “religious torture” by a radical Muslim group against a young Muslim woman of Moroccan origin.

Latifa Hachmi was 22 years old when she came in contact with the non-profit association “La Plume” run by radical Salafist Islamists. She was married and could not get children. “Sisters” in the association and her husband advised her to try the *roquia*, a form of exorcism in Islam. The “treatment” against her alleged infertility started in June and lasted until 5 August when she died in a Brussels hospital. According to Dr. Bonbled, the autopsy revealed a hundred haematomas resulting from the use of a blunt instrument and marks of strangulation: she had a fracture of the larynx.

In fact, for many days, the victim had to drink liters of water “to expel the devil from her body,” to listen to recorded Koranic verses 24 hours on 24 hours, to purify herself in a bath in which she was totally immersed. In its judgment, the Court of Appeal of Brussels says that the woman was tied up when she was struggling and according to experts, she was in a fetal or protection position when she was getting blows. This means that this treatment was forcibly applied to her without her consent.

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<sup>35</sup> From 25 February to 28 July 2008 and from 17 February to 30 March 2009, the European Raelian Movement contacted 74 municipalities to rent a public hall for their meetings and conferences while the same request was sent on the name of a fictitious organization called GIESEF. A wide discrepancy in the answers highlighted the prejudices of the municipal councils towards the movement. The Raelian movement did not get any reply in most of the cases and when it did, it was negative, while the other – unknown – organization did not get any negative answer. The municipal council of Hasselt answered that the Raelian movement was “dangerous and undesirable in the city of Hasselt.” Source: See footnote 25.

<sup>36</sup> On 28 May 2008, the non-profit organization "Centre Régional d'Intégration du Brabant Wallon" sent a letter to the Raelian movement to cancel their participation in the "Night of African Music" that was to be held on 27 June on the alleged ground that the Federal Sect Observatory considers it a sectarian movement.

On 26 January 2006, the Correctional Court of Brussels condemned the exorcist, Abdelkrim Aznagi, to a suspended sentence of 5 years in prison; the husband, Mourad M. (27 y.), got a suspended sentence of 4 years and three other persons participating in the exorcism treatment received light sentences. The Court of Appeal qualified these facts as torture, a crime which can be punished with a sentence of 20 to 30 years in jail and for which the Court of Assizes is the only competent jurisdiction. On 27 May 2008, the Court of Appeal of Brussels transferred the case to the Court of Assizes by on 27 May.

That Muslim group fulfills the conditions to be listed as a harmful sectarian organization and their activities can certainly be considered sectarian deviations. However, the Advisory and Information Center on Harmful Sectarian Organizations (CIAOSN/ IACSSO) kept silent on this issue. One can wonder how it would have reacted if such a behavior had been detected in a so-called “new religious movement.”

#### ***Draft laws on the abuse of weakness before the Council of State***

The discriminatory treatment of spiritual, religious and belief communities by the Belgian State is also reflected in a number of draft laws on the so-called abuse of weakness by such groups while the state-sanctioned religions and worldviews would remain out of their scope.

On 1 April 2009 an opinion of the Council of State concerning a bill on the Abuse of Weakness/Mental Manipulation was published. Andre Frederic, a co-author of the bill, claims that although certain actions which are penalized under the proposed bill are already prohibited by existing legislation, the judiciary lacks “adequate means” for combating the activity of religious sects which are “recruiting thousands of people, adults and children, who are exploited through slavery or prostitution, which abuse them financially or persecute them physically.”

In response to Frederic’s statements, the Council of State made mention of its previously published opinion (10 May 2006) on the same piece of proposed legislation, in which it criticized the bill for its lack of clearly defined terms (such as, “mental manipulation”) regarding exactly which acts or omissions would be punishable under the law. The Council further challenged the bills legitimacy, by pointing out that, in its present form, the proposed law remains incompatible with the jurisprudence of the European Court of Human Rights, and leaves the door open for arbitrary judicial implementation.

Similarly, on 15 June 2009 the Council published its opinion on a bill to fight psychological violence (bill on “mobbing”). The bill’s aim is to combat the “psychological violence” imposed on individuals in situations such as at work, at school, in the family, and in religious sects. The Council listed the same criticisms found in its opinion regarding the bill on mental manipulation, such as the vagueness of terms included in the proposed legislation. It further emphasized that imprecise incrimination would lead to a broad field of application of the law, including against activities and behaviors which are fundamental human rights recognized by the constitution and the European Convention of Human Rights.

Concerning both of these bills, the Council of State was clear: serious revision is necessary.

#### ***The discriminatory treatment of Islam by the Belgian State***

The Belgian State is treating the Muslim community in a discriminatory way with regard to the other religious state-recognized religions.

The State recognized Islam in 1974 but it was not until May 1999 that it recognized a Muslim representative organ (EMB) as its official interlocutor. The EMB has 17 members elected by a general assembly of 68 elected members.

The general assembly of the EMB is the only one that must be elected by their community of believers. It is the only one which had to accept “ethnic election lists”, gender and linguistic quotas and election procedures imposed by the State. The EMB is the only representative organ of a religious community whose elected members are submitted to a screening procedure by the intelligence services and on several occasions in the past, some elected were not granted security clearance without any explanation and possibility to appeal the decision.

The Moroccan community boycotted the last elections because they had been imposed by the State several years before the end of the mandate of the members of the EMB. This state policy further distorted the representation of the diversity of the Muslim community and led to inter-ethnic tensions between the Moroccan and the Turkish communities. Because of the Moroccan boycott, the Turkish community took full control of the general assembly of the EMB with 40 elected members out of 68.

In early February 2008, the Minister of Justice in charge of religious affairs, Jo Vandeurzen, deprived the EMB of any state subsidies for 2008 because of its alleged chaotic financial and administrative management as well as its lack of representativeness (!). A provisional administrator, attorney Jean-Louis Jaspar, was put in place by the state.

Most of the members of the EMB then left or were dismissed. In June 2008 and in February 2009, the General Assembly of the EMB voted for the re-installation of a new executive meant to replace the former one<sup>37</sup>. The appointment of the new members was confirmed by a royal decree dated 30 March 2009 and a provisional budget of 426,000 EUR was allocated to the new EMB so that it can go on functioning and fulfill the most urgent tasks.

#### *A case of ethno-religious profiling*

Following a pro-Palestinian manifestation in Brussels in January 2009, MRAX accused the Belgian police of ethnic and religious profiling. On the occasion of a visit to the European institutions in Brussels by Ms. Tzipi Livni, the Minister of Foreign Affairs of Israel, a peaceful, but unauthorised manifestation was foreseen to take place in the European quarter of the city. MRAX claims - and supports these claims with declarations made by victims and witnesses - that the police used techniques of ethnic and religious profiling to determine who would be allowed access to the European quarter on the scheduled day of the demonstration. The police was given orders to distinguish the ‘potential protesters’ from others, to prevent disorder from arising during the unauthorised manifestation. However, the manner in which the police performed its duty was by resorting to unacceptable ethnic and religious profiling. People with an Arab or Muslim appearance (skin colour, religious symbols, headscarf, etc.) were questioned, searched and sometimes arrested, and were in any case refused entrance to the area, even when they had no

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<sup>37</sup> The new EMB comprises eight members of Turkish origin, six of Moroccan origin, one Lebanese, one Pakistani and one Belgian convert.

intention of participating in the manifestation, while other people without such an appearance were granted access without being asked about their intentions.<sup>38</sup>

### **Headscarf, burqa, burqini, kirpan...: accommodation or not?**

The headscarf issue - above all focused on the question whether or not to allow Muslim women and girls to wear a headscarf in public functions and in schools - is a topic that continues to be the subject of heated debates in Belgium, as it is the case in many European countries. The arguments against the wearing of religious symbols in such situations are primarily based on a strict interpretation of the principle of secularism. In theory, the question does therefore not only concern the wearing of a headscarf in public functions or schools, but the wearing of any noticeable religious symbol in such situations. However, in practice the debate is mostly narrowed down to the headscarf. This is presumably related to several different reasons. First and foremost, because the headscarf is a particularly obvious expression of religious convictions, in the sense of being easier recognisable than for instance the wearing of a necklace with a cross by Christians. A secondary reason appears to be related to the fact that the headscarf invokes negative feelings within a large proportion of the Belgian population, since it is often linked – rightly or wrongly – to a perception of oppression of women. Negative sentiments towards Islam and Muslims certainly also have an impact on the debate.

The Belgian central and regional governments have not taken a definitive stance on the headscarf issue and have failed to adopt one clear approach on the matter, valid for the entire country. Instead, the issue has been left to the local authorities, which are - according to the Belgian political parties - better placed to take the best decision. As a result, city councils and schools decide for themselves whether or not to allow female Muslim employees and pupils to wear a headscarf. Policies and decisions on the matter vary throughout the country. Certain cities and schools allow the wearing of a headscarf while others decidedly ban it.

#### ***Headscarf ban for public servants***

In recent years, several major Belgian cities have introduced headscarf bans for their employees, while others have deliberately chosen not to do so. In January 2007, the city of Antwerp became the first Belgian city to introduce the ban for civil servants who are in contact with the public.<sup>39</sup> The ban has since been the topic of much debate and contestation.<sup>40</sup> A few examples in 2008 and 2009 will illustrate the wide disparities in opinions and practices on the matter.

In August 2008, the city of Ghent also introduced a - much contested - headscarf ban applicable to the city's civil servants. The ban was the topic of much debate, because the majority in favor of the ban was achieved by certain political parties (Open VLD, CD&V and N-VA) cooperating with the extreme right wing and notorious anti-Islam party Vlaams Belang, against the largest political party (sp.a) in the city council, which opposed the ban. However, it must be stressed that - as is usually the case - the ban, while

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<sup>38</sup> Mouvement contre le Racisme, l'Antisémitisme et la Xénophobie, "Profilage ethnique et religieux ; le MRAX s'insurge et porte plainte", 2 February 2009, available at [http://www.mrax.be/article.php3?id\\_article=741](http://www.mrax.be/article.php3?id_article=741) (accessed 27 May 2009).

<sup>39</sup> *De Standaard*, "Scheldestad bant hoofddoek", 16 January 2007.

<sup>40</sup> *De Standaard*, "Verbod hoofddoeken polariseert Antwerpen", 31 May 2009.

having the largest impact in practice on Muslim wearing a headscarf, is also in theory applicable to other symbols of religious, ideological, philosophical or political convictions (e.g. Jewish kippah, Christian cross or political party symbols). In Ghent, the ban is imposed on three categories of city employees: those wearing a compulsory city uniform or working outfit; those coming in direct contact with the public; and those representing the city externally, at for instance meetings, lectures or press conferences.<sup>41</sup>

In February 2008, the city council of Leuven voted against a Vlaams Belang proposal to introduce a headscarf ban for city employees with an overwhelming majority of 42 votes against 3. Statements made afterwards clarified that the majority of the political parties in the city council of Leuven believe that a headscarf ban is not necessary because “[the necessary neutrality] should appear from the civil servants’ behaviour [...] and not their clothing”. Moreover, the majority of the political parties clearly stated that they believe that a headscarf ban would be “counter-productive for the emancipation of these women”.<sup>42</sup>

In April 2008, it became apparent that also in the city of Mechelen, Muslim civil servants will continue to be allowed to wear a headscarf, even when performing functions involving direct contact with the public. When introducing the city’s new action plan to employ 10% people of a foreign origin in the civil servant corps, the mayor of the city clearly stated that these “employees will be allowed to wear a headscarf when performing functions [that bring them into contact with the public]”.<sup>43</sup>

### ***Headscarf ban in schools***

Due to the fact that each school is free to decide for itself whether or not to allow the wearing of a headscarf by Muslim pupils, it is difficult to obtain complete information on the amount of schools banning it.<sup>44</sup> However, partial studies combined with exemplary evidence point towards a serious increase of schools introducing such a ban in recent years. A 2007 survey for instance confirmed that more than 90% of the 129 secondary schools composing the public school’s network of the French community have banned the headscarf.<sup>45</sup>

In May 2008, one of the few remaining schools in Brussels that had not yet imposed a headscarf ban announced that as of 2009, they would also introduce such a ban. The director of the school, the students of which are for 85% of a North-African origin, invoked the fact that the school was attracting ever more students because it was one of the few left still allowing the headscarf, as the primary reason for the introduction of the ban. Many pupils already declared they will be leaving the school as a result of the ban.<sup>46</sup>

In September 2008, the city council of Merchtem decided to ban the wearing of a headscarf in the four communal schools located on the territory of the city. The measure was the direct result of a complaint

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<sup>41</sup> *De Morgen*, “Hoofddoekenverbod stad Gent maandag van kracht”, 25 August 2008.

<sup>42</sup> *De Morgen*, “Leuvense gemeenteraad verwerpt hoofddoekenverbod”, 25 February 2008.

<sup>43</sup> *De Morgen*, “Mechelen gaat voor 10% allochtone ambtenaren”, 22 April 2008.

<sup>44</sup> It must be noted that while this report will for purposes of clarity directly refer to a ban on the headscarf, in practice schools generally introduce a ban on the wearing of any religious symbol. The headscarf is just the primary - and often also the intended - symbol affected.

<sup>45</sup> V. De Meyer, *La question du voile dans les écoles de la communauté française : règlements d'ordre intérieur, quelle légitimité ?*. Brussels: CIRAP. 2007.

<sup>46</sup> *De Morgen*, “Brusselse school verbiedt hoofddoek”, 21 May 2008.

lodged by parents when a Syrian pupil had suddenly started wearing a headscarf, after reportedly having been chosen for marriage during her holidays in her home country. “The primary reason why we want to introduce this ban on the wearing of a headscarf, is because our population does not appreciate it”, stated the mayor of the city in defense of the ban.<sup>47</sup>

In November 2008, a remarkable and peculiar news story illustrated the absurd consequences to which a strict ban on the wearing of religious symbols in schools could lead. The events took place in the city of Antwerp, Belgium’s second largest city with probably one of the most stringent regulations against the wearing of headscarves and other religious symbols in Belgium. Commotion arose in the city around the time period in which it is customary for schools to organise events in which Saint-Nicholas ‘visits’ the schools. At that time it became apparent that city council regulations prohibiting the wearing of religious symbols in schools, barred Saint-Nicholas from exhibiting the traditional cross on his miter. It was only after a wave of protest that the Director-General of the school network of Antwerp declared that an exception to the regulation would be made for Saint-Nicholas.<sup>48</sup>

In March 2009, the Francophone Chamber of the Belgian Council of State delivered its decisions in two cases in which MRAX had submitted a complaint against school regulations introducing a headscarf ban in the schools in question.<sup>49</sup> Despite what was generally expected, the Council of State did not decide on the merits of the case, instead declaring the complaint inadmissible in five lines on the grounds that MRAX did not have any interest in submitting the complaint.<sup>50</sup> These decisions have been received with disbelief, disappointment and lack of understanding by the Belgian media, specialised academics and organisations such as the CEOOR, because the Council of State assumed that the introduction of headscarf bans in schools contribute to a peaceful society, marked by equality, without offering further reasoning and justification to support that claim.<sup>51</sup>

On 2 July 2009, the Council of State annulled<sup>52</sup> the decision taken by a group of public schools of the French Community by which a female teacher of Islamic religious classes was dismissed for refusing to remove her headscarf outside her classroom hereby violating the principle of neutrality as enshrined in their internal regulations. The decision of the Council of State specified that neutrality principle could only be fixed by the Central Council of the French Community and not by its schools, which means that the schools were not the competent authority in this matter.

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<sup>47</sup> *De Morgen*, “Hoofddoek verboden in Merchtemse scholen”, 18 September 2008.

<sup>48</sup> *Le Soir*, “Saint-Nicolas pourra porter sa croix à Anvers”, 30 November 2008, available at <http://www.lesoir.be/actualite/belgique/st-nicolas-pourra-porter-sa-2008-11-30-668248.shtml> (accessed 30 May 2009).

<sup>49</sup> Conseil d’État, *Mouvement contre le Racisme, l’Antisémitisme et la Xénophobie c. la Communauté française et l’Athénée Royal Vauban*, judgment n° 191.532 of 17 March 2009 ; Conseil d’État, *Mouvement contre le Racisme, l’Antisémitisme et la Xénophobie c. la Communauté française et l’Athénée Royal de Gilly*, judgment n° 191.533 of 17 March 2009.

<sup>50</sup> Ibid.

<sup>51</sup> *De Standaard*, “Franstalig arrest over hoofddoeken verbaast”, 8 April 2009; Centre for Equal Opportunities and Opposition to Racism, “Hoofddoek: Raad van State spreekt zich niet ten gronde uit”, 8 April 2009, available at [http://www.diversiteit.be/index.php?action=artikel\\_detail&artikel=184](http://www.diversiteit.be/index.php?action=artikel_detail&artikel=184) (accessed 28 May 2009).

<sup>52</sup> See Decision nr 195.044 of 2 July 2009.

### **The headscarf, an issue in other contexts**

In June 2008, the Labour Court of Brussels ruled in favour of the bookstore chain Club, in a case concerning the dismissal by said chain of a Muslim employee for wearing a headscarf at work. The personnel guidelines of Club clearly stated that employees who are in contact with customers are not allowed to wear clothing, signs or symbols that could damage the “open, available, sober and neutral” image of the company. The Labour Court did not find these guidelines to constitute a form of discrimination. According to the Court, the freedom of religion of the employee who was fired for wearing a headscarf, had not been infringed. The Court ruled in favour of the Club since the company clearly indicated that it did not consider the religious conviction of the employee itself problematic. They justified her dismissal by the fact that she wore an obvious religious sign (*i.e.* a headscarf) when performing her duties, contrary to the personnel guidelines.<sup>53</sup>

Also in June 2008, the Belgian Court of Cassation allowed a woman wearing a headscarf to enter the courtroom during a trial concerning her brother’s death, without requesting her to remove it. The woman’s lawyer called the decision by the Court of Cassation a “gigantic step”, because the woman had previously been barred from entering the courtroom while wearing her headscarf by the *Kamer van Inbeschuldigingstelling* (a judicial body in charge of referring suspects and cases to courts to be tried), despite the fact that she was a relative of the deceased and a civil party to the case.<sup>54</sup>

In June 2009, the personnel service of the Ministry of Justice suggested to the minister to allow the 24,000 Justice staff to wear a religious or worldview symbol (cross, kippa, headscarf, turban, torch...).

In the context of the regional elections of 7 June 2009, controversy broke out surrounding a pamphlet produced by the Christian Democrat political party CDH because one of the candidates appearing on the pamphlet, a Muslim named Mahinur Özdemir, was wearing a headscarf. However, the picture was resized, cut and pasted onto the pamphlet so as to make it appear as though she was not wearing a headscarf.<sup>55</sup> Ms. Joëlle Milquet, the President of CDH, declared that the resizing of the picture had taken place beyond the knowledge and will of the political party and had been a personal initiative of the publisher.<sup>56</sup> However, a similar incident, also concerning a clearly resized picture of Ms. Özdemir, had already taken place in the context of the 2006 communal elections, making this explanation implausible.<sup>57</sup> Eventually Ms. Özdemir, who was still the only candidate at the regional elections of 7 June 2009 to wear a headscarf on electoral posters, became the first woman wearing a headscarf to be elected to a Belgian parliament (*in casu* the Regional Parliament of Brussels).<sup>58</sup> Mahinur Özdemir was the first woman to swear oath with her headscarf in Belgium, and probably in Europe, and she exercises her political mandate with it.

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<sup>53</sup> *De Morgen*, “Boekhandel Club wint rechtszaak rond hoofddoek”, 25 June 2008.

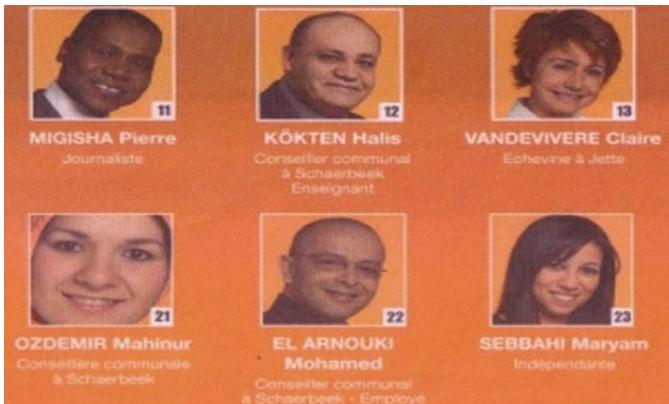
<sup>54</sup> *De Morgen*, “Cassatie laat vrouw met hoofddoek toe in rechtszaal”, 25 June 2008.

<sup>55</sup> RTBF, “cdH: foulard qui derange?”, 26 May 2009, available at <http://www.rtbf.be/info/elections/cdh-un-foulard-qui-derange-111264> (accessed 27 May 2009).

<sup>56</sup> <sup>56</sup> *Le Soir*, “Aucune instruction du cdH pour cacher mon foulard”, 26 May 2009, available at [http://lesoir.be/dossiers/elections\\_2009/article\\_708676.shtml](http://lesoir.be/dossiers/elections_2009/article_708676.shtml) (accessed 27 May 2009).

<sup>57</sup> Ibid.

<sup>58</sup> *De Standaard*, ““Mensen liggen niet wakker van mijn hoofddoek””, 10 June 2009.



### ***Burqa and burqini ban***

Another issue is now debated in municipal councils: the burqa ban.

In March 2008, the city of Verviers decided to introduce a city-wide ban on the wearing of a burqa and any other form of headscarf covering the face. These bans are relatively common in Belgian cities and are usually introduced for security reasons, being justified by the need for police and other authorities to at all times be able to recognise a person's face. Based on this justification, burqa bans are generally accepted in Belgium. However, in the case of Verviers, another justification was put forward: that of the equality between men and women. Both the CEOOR and MRAX have seriously questioned the reasoning behind this justification. CEOOR stated that “[i]f the ban is introduced in the name of gender equality, then why not ban other forms of headscarfs, or even the headscarf in general?”, continuing by declaring that “there we enter a dangerous debate. In fact, just how far will people interfere in different domains of society, such as clothing, in the name of equality between men and women?”. MRAX from its part commented by stating that “[t]his introduction of a ban creates the impression that there is a big problem of burqas in Verviers, while in reality the burqa is a rare practice in the Muslim community in Belgium.”<sup>59</sup>

In December 2008, the city of Londerzeel announced that - as of 2009 - it will ban the burkini from the city's swimming pool. The burkini - a two-part bathing suit with long sleeves, long pipes and a headscarf, which name is a composition of the words burqa and bikini - is worn by many Muslim girls in public swimming pools. The city declared that it decided to introduce the ban for hygienic reasons.<sup>60</sup>

### ***Kirpan***

In March 2009, in the city of Hasselt, a Belgian judge sentenced three Sikhs to a fine and a probation sentence for wearing a kirpan (dagger). In their defense, the Sikhs called upon their religious freedom, pointing out the fact that according to their religious traditions, the dagger is a religious symbol that they

<sup>59</sup> Mouvement contre le Racisme, l'Antisémitisme et la Xénophobie, “Burka : l'interdiction de Verviers suscite des critiques”, 15 March 2008, available at

[http://www.mrax.be/article.php3?id\\_article=593&var\\_recherche=x%E9nophobie](http://www.mrax.be/article.php3?id_article=593&var_recherche=x%E9nophobie) (accessed 28 May 2009).

<sup>60</sup> *De Morgen*, Londerzeel verbiedt burkini in zwembad”, 16 December 2008.

are required to carry on their person at all times.<sup>61</sup> However, the Court did not accept their reasoning. The Court decision is rather unusual and unexpected, since Belgian courts had in previous occasions always ruled in favor of Sikhs invoking their religious freedom to carry a dagger on their person, even if they did not possess the required arms license.<sup>62</sup>

## **Human Rights Without Frontiers recommends to the Belgian state**

To eliminate all forms of discrimination and equalities

- by extending to all religious and belief communities the possibilities of access to rights exclusively reserved to the category of state-recognized/financed religions and belief groups: access to fiscal advantages; availability of chaplaincy services in prisons, in hospitals, in the army on request; more appropriate management of the religious diversity in the framework of the religious classes in public schools (particularly those of the French-speaking community); access to public media, and so on;
- by revising the system of financing state-recognized religion or belief communities so that only the taxpayers professing them contribute to it, and not all the taxpayers;

To put an end to its interference in the organizational structures and functioning of the Executive of the Muslims of Belgium and its General Assembly, and to respect their autonomy as it is the case for the other state-recognized religions and belief groups;

To evaluate the damage caused by the 2 June 1998 Law on “harmful sectarian organizations” and its implementation, and to take the necessary corrective measures;

To prevent the “Information and Advisory Center on Harmful Sectarian Organizations” (CIAOSN/IACSSO) from dealing with religious and belief communities which have not been identified as “harmful sectarian organizations”;

To remind the public administrations, the municipalities, the law enforcement and other agencies that

- there is no state list of “sects” or “harmful sectarian organizations”;
- the enjoyment of fundamental human rights (such as the freedoms of assembly and expression) cannot be denied to religious and belief groups and their members on the basis of such a list, as it is non-existent;
- they have to remain neutral in religious matters and cannot stigmatize any faith or belief community;
- discrimination based on religion or belief is punishable;

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<sup>61</sup> *Het Belang van Limburg*, “Hasseltse rechter veroordeelt drie sikhs voor dragen dolk”, 5 March 2009.

<sup>62</sup> See e.g. *De Standaard*, “Rechter staat aan Sikh-gelovigen religieuze wapendracht toe”, 14 March 2008.

To engage in a dialogue with civil society and religious organizations about the wearing of religious and belief symbols by students, teachers, lawyers, public servants...

To mandate the *Centre for Equal Opportunities* to collect data about hate crimes committed against persons and their property on the grounds of their affiliation to a specific (ethno-)religious community, faith or belief group, and against their places of worship or community buildings;

To mandate the *Centre for Equal Opportunities* to extend its investigations to all (ethno-)religious community, faith or belief groups, and their members that are victims of intolerance and discrimination in the enjoyment of their rights and not to limit them to Jews and Muslims;

***To the media***

To refrain from clichés, stereotypes and offensive terminology concerning peaceful and law-abiding communities of faith or belief.

**Human Rights Without Frontiers International** (HRWF Int'l) is a non-governmental organization with an objective to promote democracy, the rule of law and human rights in a global perspective. HRWF Int'l has branches in Belgium, China, Nepal, Bhutan and the US. and cooperates with associate member organizations in Armenia, Bulgaria, Georgia, Iraq, Japan, Kenya, Russia, etc.

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