

NEWS REPORT

Date: 15 April 2010
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Title: Towards a prohibition of the *burqa* and the *niqab* in the public sphere in Belgium
Country: Belgium

Context

Issue at stake: Unanimous agreement in the Parliament's Interior Commission on a legislative proposal prohibiting, at the criminal level, to wear any clothes covering totally or partially the face of a person and making he or she non-identifiable

Ground of discrimination: of Religion and belief

Source: Legislative proposal (*Documents parlementaires, Proposition de loi visant à interdire le port de tout vêtement cachant totalement ou de manière principale le visage*, DOC 52-2289/001-004)

Field: Areas accessible to the public

Legislative provisions: *Documents parlementaires*, DOC 52-2289/001-004

Content

Case: On 31 March 2010, the Commission of the Interior of the Parliament adopted unanimously (majority and opposition) a legislative proposal modifying the Criminal Code. The proposal prohibits anyone to walk around in areas accessible to the public with the face, totally or partially, masked or hidden, in such a way that he or she is no longer identifiable. The text thus does not target the *burqa* and the *niqab* as such, but the authors referred to them in the explanations of the need for such a new criminal offence. The proposal defines the areas accessible to the public as following: streets, parks, public gardens, playgrounds, cultural places, and places where a service is available to the public (such as shops or hotels). Exceptions to the prohibition will have to be legally allowed (for example for determined occupations such as fireman, or for motorcyclists). Municipalities will also be allowed to provide for exceptions to the prohibition but in very precise cases, for occasional or festal activities (for example, carnival). The proposal allows for criminal punishment (fine from 82,5 up to 137,5 EUR and/or imprisonment from 1 up to 7 days), as well as for administrative sanction (fine up to 250 EUR).

Presented by some French right wing party representatives (MR), the text was amended to include other proposals going in the same sense presented in the last

two months by the Flemish (CD&V) and French (CDh) centre-catholic parties (Doc 52-2495/001 and 52-2442/001). Since 2004, other proposals pursuing the same aim had already been presented at the initiative of the MR (Doc 51-1625/001, 52-0330/001) and of the VB (Flemish extreme right wing party) (Doc 51-0880/001, 52-0433/001). Some municipalities in Belgium (including 8 municipalities in the Region of Brussels Capital) had already taken such a prohibition on their territory, through administrative regulation.

These legislative proposals are motivated by various arguments. The necessity to quickly identify people in public areas, for public security purposes, is always put forward.

The necessity of 'legal certainty' (*sécurité juridique*) is also each time invoked, in the sense that there should be a single rule for the entire Belgian territory without the disparity now in force between the different municipalities of the country. The VB proposals, expressly targeting the *burqa* and the *niqab*, advanced also the argument that communication between people is made impossible by wearing such clothes, and that they violate women's rights. The CDh proposal (Doc 52-2442/001) also mentioned discrimination against women.

The proposal adopted at the end of March was motivated by the needs for public and legal security, but above all, by the need for social cohesion. Indeed, the most important part of the proposal justification is the need for a clear political position in the debate regarding social cohesion, "living together" ("*vivre ensemble*") and integration in a diverse society (cultural and religious diversity). In the opinion of the authors of the proposal, two models of society can be implemented. The multiculturalism model, where the individual with his or her particular cultural or religious membership predominates, unavoidably leads, to *communitarism* but also to "cultural relativism" which allows for a negation of the principles of equality and free choice. The second model is *interculturalism*, where all individuals of the society share common basic values (such as the right to life, the freedom of opinion, equality between men and women and the separation of church and state). In this model, cultural diversity is valuable only as far as it is compatible with those common basic values of the society. In the opinion of the authors, the prohibition in public areas of clothes hiding totally or partially one person's face, is a step towards the *interculturalism* model. The proposal was speedily adopted and even if the decision was unanimous, the green party (ECOLO) deplored the haste of the process. Indeed, they would have preferred to have the preliminary opinion of the Council of State, fearing that a general prohibition such as the one voted would be considered non-constitutional by the Constitutional Court or in violation of the European Convention on Human Rights in Strasbourg.

The official representative body of the Muslims in Belgium (*Exécutif des Musulmans*) reacted negatively to the legislative proposal. In its opinion, the debate of the *burqa* has gone too far as the *burqa* concerns only dozens of persons

in a Muslim community of hundred thousands of people in Belgium. It fears that the entire Muslim community will be stigmatised by such a proposal. It affirmed that it is a violation of the constitutional women rights to chose for religious or traditional reasons to wear the *burqa* or the *niqab*. As for women being obliged, by family pressure, to wear them, it deplored that such a regulation will isolate them even more.

In the opinion of the expert, to rise the wearing of the *burqa* or the *niqab* as a criminal offence is not a suitable way of addressing the issue. The danger of isolating the persons wearing them is huge, as well as risks of stigmatisation. Moreover, as it was recently stressed by the European Commissioner for Human rights, Thomas Hammerberg, there are serious doubts about the conformity of such a general prohibition with the European Convention of Human Rights.

Internet link source and additional information:

[http://www.lachambre.be/kvvcr/showpage.cfm?
section=/flwb&language=fr&rightmenu=right&cfm=/site/wwwcfm/flwb/flwbn.cfm?
lang=F&legislat=52&dossierID=2289](http://www.lachambre.be/kvvcr/showpage.cfm?section=/flwb&language=fr&rightmenu=right&cfm=/site/wwwcfm/flwb/flwbn.cfm?lang=F&legislat=52&dossierID=2289)