SUBMISSION FORM OF INDIVIDUAL COMMUNICATIONS TO TREATY BODIES

Please provide answers to **all areas of the form**. Submissions in languages other than **English, French, Russian or Spanish** will not be processed. The completed form should enable treaty bodies to determine the nature and scope of your complaint for the purposes of registration. If needed, please include as an attachment any additional, chronologically-ordered factual information. (Maximum word limit of this attachment: 10,000). Please check the **Guidelines for submission of individual communications to treaty bodies** for further assistance on how to complete this form.

1. Name of Committee to which the communication is submitted:

   Human Rights Committee

2. State party or States parties concerned:

   Belgium

3. Complainant:

First name	Samira
Family name	Achbita
Date of birth	Click or tap to enter a date.
Nationality	Belgian

4. Contact details of complainant:

Email	Click or tap here to enter text.
Phone number	Click or tap here to enter text.
Address	Click or tap here to enter text.

5. Victim (if different from complainant):

First name	Click or tap here to enter text.
Family name	Click or tap here to enter text.
Date of birth	Click or tap to enter a date.

Nationality	Click or tap here to enter text.

6. Counsel or other representative (if the complainant is represented):

First name	Co-counsel: Open Society Justice Initiative and the Human Rights and Migration Law Clinic of the Human Rights Centre at Ghent University
Family name	Click or tap here to enter text.
Email	Click or tap here to enter text.
Phone number	Click or tap here to enter text.
Address	

7. Would you like for the complainant / victim's name to be anonymized in an eventual decision by the Committee?

☐ Yes ☒ No

8. Have you submitted the **same matter under another procedure of regional / international investigation or settlement**?

☐ Yes ☒ No

If the answer is yes, please indicate the procedure or body, the date of submission, the authors and the claims invoked, and the decision adopted

Click or tap here to enter text.

9. Are you requesting **interim measures** (to avoid irreparable harm to the complainant/victim) or **measures of protection** (to avoid harm or reprisals against the complainant/victim and/or family members or representatives)?

☐ Yes ☒ No

If yes, indicate what kind of specific measures and justify the request. [word limit: 400]

Click or tap here to enter text.

10. **Facts.** Please provide a summary of the main facts of the case, in chronological order, including the dates, and information on administrative/judicial remedies. Please focus on the facts of the individual case. Information referring to a general context should be included only if relevant, and as brief as possible. **Do not include allegations of violations (these should be included in para. 11 below) Include information on domestic remedies:** Please describe, in chronological order, each step taken by the victim(s) to raise their claims before courts and/or administrative authorities. Please describe the date and content of each submission, the authority to which it was submitted, the date of the decision, and the reason(s) for the decision. If domestic remedies have not been exhausted, please state why [word limit 2,500]

1. Ms. Samira Achbita is a Belgian citizen who was dismissed from her job for wearing an Islamic headscarf.

2. This form sets out a brief summary of Ms. Achbita's communication and Annex I provides further details of facts relevant to the violation of Ms. Achbita's rights.[1]

EMPLOYMENT AND DISMISSAL

3. From 12 February 2003 until 12 June 2006, Ms. Achbita was employed under a permanent contract as a receptionist by G4S Secure Solutions NV ("G4S"), a private company specialising in providing surveillance, security and reception services in the private and public sectors.

4. In February 2006, Ms. Achbita started wearing a headscarf for religious reasons, initially refraining from doing so at work. This caused her great emotional distress and undermined her identity.

5. In April 2006, Ms. Achbita informed her employer that she wished to wear her headscarf at work. On 18 April 2006, two managers informed Ms. Achbita that wearing a headscarf at work could not be tolerated because wearing visibly political, philosophical or religious symbols would violate the company's aspiration of "neutrality," both internally and externally. There was no written neutrality policy in place at G4S at the time.

6. On 12 May 2006, following a period of sickness, Ms. Achbita wrote to her employer to advise that she would return to work on 15 May 2006 wearing a headscarf. The same day, Ms. Achbita received a telephone message from her supervisor, indicating that she should not attend work until further notice.

7. On 15 May 2006, Ms. Achbita received a letter while at her workplace confirming the conversation of 15 May 2006, "during which strict compliance with the dress code within" G4S "was once again emphasised" and stating that non-compliance would exempt G4S from any obligation of remuneration. The letter asked Ms. Achbita to confirm her intentions.

8. In a letter dated the same day, Ms. Achbita disputed the decision of G4S and asked if she could resume work in her contracted position or another position.

9. By letter of 31 May 2006, G4S maintained its position and confirmed an appointment to discuss the matter on 12 June 2006, referring to a "general principle of neutrality."

10. On 12 June 2006, G4S dismissed Ms. Achbita from her employment, on the basis that she had not complied with G4S's principle of neutrality.

11. The following day, on 13 June 2006, a "general principle of neutrality" came into effect in G4S's written internal regulations, prohibiting employees from wearing visible signs of their political, philosophical or religious beliefs and/or manifesting any ritual in the workplace.[2] This had been

[1] This complaint form and the attached annexes have benefitted from the research and input of Joana Clemens, Imane El Morabet, James Goldston, Maryam H'madoun, Heleen Lauwers, Bauke Leire, Susheela Math, Cleïs Meys, Saïla Ouald-Chaib and Julia Wang.
[2] "Visible" is undefined in the policy.

approved by G4S's "Works Council" (a body made up of G4S and employee representatives) on 29 May 2006.

ADMINISTRATIVE AND LEGAL PROCEEDINGS

12. In 2006, Ms. Achbita filed a complaint with the Belgian Equality Body ("Unia").[3] Unia entered into dialogue with the parties, however G4S did not accept any proposed compromises offered by Ms. Achbita.

Antwerp Labour Tribunal

13. On 26 April 2007, Ms. Achbita brought an action against G4S in the Antwerp Labour Tribunal (Arbeidsrechtbank te Antwerpen) ("Tribunal"), principally claiming compensation for violation of employment termination law, and in the alternative, compensation under Article 21 of Belgium's Anti-discrimination Act of 2003 ("2003 Act").[4]

14. Ms. Achbita argued that the prohibition on expressing religious beliefs in the workplace constituted discrimination, with the effect that the dismissal for her refusal to comply with this prohibition constituted discriminatory dismissal in violation of employment termination law. In particular, she claimed that dismissal for wishing to express her religious conviction by wearing a headscarf during working hours constituted direct discrimination as compared with employees who do not express religious conviction.[5]

15. On 3 August 2009, Unia voluntarily intervened in the proceedings and supported Ms. Achbita's claim that an absolute prohibition imposed by a private employer on employees on expressing their religious beliefs in the workplace constitutes a direct distinction made on the basis of faith which cannot be justified.[6]

16. On 27 April 2010, the Tribunal dismissed Ms. Achbita's claim, holding, *inter alia*, that:

    a) there was no direct discrimination, as Ms. Achbita had not demonstrated a difference in treatment of persons in a comparable situation. Specifically, she was not dismissed because she was a follower of the Islamic faith, and all employees were obliged to adhere in the same way to the prohibition on wearing outward signs of their faith and political or philosophical convictions.[7]

    b) a difference in treatment based on the expression of one's faith is not necessarily also a difference in treatment based on one's faith (the latter of which is a protected ground).[8]

    c) there was no indirect discrimination as the prohibition was motivated by the legitimate objective of safeguarding a peaceful and tolerant community internally and externally by adopting a neutral appearance: a "neutral attitude can only be achieved through a neutral appearance."[9]

[3] Unia was known at the time as Centre for Equal Opportunities and Opposition to Racism. More information about Unia is available at https://www.unia.be/en

[4] Antwerp Labour Tribunal, Judgment of the Second Chamber of 27 April 2010, Document 1. All references to domestic decisions relate to English translations contained within the List of Documents. See pages 3 and 4 of Document 1, Antwerp Labour Tribunal, Judgment of the Second Chamber of 27 April 2010. See also page 14, noting that the EU Framework Directive (Directive 2000/78/EC of November 27, 2000) and domestic implementing legislation expressly prohibit an "unauthorized difference in treatment on the basis of religious conviction."

[5] Antwerp Labour Tribunal, Judgment of the Second Chamber of 27 April 2010, p. 13.

[6] Antwerp Labour Tribunal, Judgment of the Second Chamber of 27 April 2010, p. 13.

[7] Antwerp Labour Tribunal, Judgment of the Second Chamber of 27 April 2010, p. 15.

[8] Antwerp Labour Tribunal, Judgment of the Second Chamber of 27 April 2010, p. 18.

[9] Antwerp Labour Tribunal, Judgment of the Second Chamber of 27 April 2010, p. 24.

d) there was no wrongful dismissal because there was no violation of anti-discrimination law.[10]

Antwerp Labour Court

17. On 27 July 2010, Ms. Achbita, joined by Unia, appealed to the Antwerp Labour Court (Arbeidshof te Antwerpen) ("ALC") claiming:

a) G4S had violated employment termination law because the dismissal and/or the prohibition constituted direct or at least indirect discrimination, in violation of the 2003 Act and the European Union's Directive 2000/78/EC ("Framework Directive"), referring to "belief," "religion" and "creed" as a protected ground;[11] and

b) the prohibition and subsequent dismissal were contrary to the freedom of religion, as guaranteed by Article 9(1) of the European Convention on Human Rights, Article 18 of the International Covenant on Civil and Political Rights, Article 18 of the Universal Declaration of Human Rights and Article 21 of the Charter of Fundamental Rights of the European Union.[12]

18. On 23 December 2011, ALC ruled the appeal admissible but unfounded on the basis that it was not manifestly unreasonable for G4S to pursue a policy of neutrality within its company nor to dismiss Ms. Achbita, following several warnings, with severance pay.[13] ALC noted that jurisprudence of Belgian labour tribunals had explicitly ruled in favour of the legality of such a prohibition and the regularity of such dismissals.[14]

19. In reaching its conclusion, ALC found that there was no direct discrimination, on the basis that Ms. Achbita was dismissed not because of her Islamic belief but because of her wish to visibly express this belief during working hours.[15] It held that the general prohibition included all visible manifestations of religion or philosophy and targeted all employees in the same way.[16]

20. ALC also found that indirect discrimination was "open to serious dispute." In particular, it ruled that even if other employees with a different religious or philosophical conviction would not attach the same importance or value to the visible expression of their convictions in the workplace, "the concrete interpretation and application of what can be regarded as an objective and reasonable justification of indirect discrimination is no mean feat, and can give rise to differing points of view."[17]

21. With regard to freedom of religion, ALC held that the prohibition restricted Ms. Achbita's individual freedom and her free religious practice but that this finding was not sufficient to conclude that the prohibition was unlawful. Instead, it pointed to "two currents" within Western society (one sanctioning religious dress restrictions and the other condoning them), both seeking a harmonious working environment but in completely different ways.[18]

Court of Cassation

22. On 15 May 2012, Ms. Achbita and Unia appealed against ALC's decision of 23 December 2011 to the Court of Cassation (Hof van Cassatie) on three grounds. In summary:

a) *violation of employment termination law*

[10] Antwerp Labour Tribunal, Judgment of the Second Chamber of 27 April 2010, p. 25. The Tribunal also found that Ms. Achbita did not fall into one of four categories of employees entitled to a lump sum of compensation under Article 21(1) of the 2003 Act. See pages 26 and 27 the aforementioned judgment.
[11] See Antwerp Labour Court, Judgment of 23 December 2011, page 7, Document 2.
[12] Antwerp Labour Court, Judgment of 23 December 2011, page 7.
[13] Antwerp Labour Court, Judgment of 23 December 2011, pages 18 and 19.
[14] Antwerp Labour Court, Judgment of 23 December 2011, page 9.
[15] Antwerp Labour Court, Judgment of 23 December 2011, page 12.
[16] Antwerp Labour Court, Judgment of 23 December 2011, page 14.
[17] Antwerp Labour Court, Judgment of 23 December 2011, page 15.
[18] Antwerp Labour Court, Judgment of 23 December 2011, page 17.

23. the unlawfulness of Ms. Achbita's dismissal is not dependent on the knowledge that G4S had or should have had of the possible illegality of the prohibition; the mere illegality of that prohibition is sufficient for Ms. Achbita to rely on the protection of employment termination law;[19]

b) *direct discrimination*

24. the question is not to what extent G4S's religious dress prohibition imposes itself on all employees but to what extent the prohibition itself makes a distinction between those employees: while employees who wear a headscarf because of their religious belief are not allowed in the workplace or are fired, employees who hold a different faith or no faith are admitted to the workplace and are not fired. The circumstance that every employee has some philosophical or religious conviction (or the circumstance that not one specific faith but every faith is included) does not make the ground of faith a neutral ground, whereby the unequal treatment could at most constitute indirect discrimination.[20]

a) *indirect discrimination*

25. ALC did not examine whether there was an actual need within G4S to take measures to safeguard a tranquil working environment and whether the measure taken was proportional to the goal pursued. Nor did it state that the tranquillity of the working environment would be threatened if female Muslim employees kept their headscarf on in the workplace.[21]

26. On 9 March 2015, the Court of Cassation stayed the proceedings and referred the following question to the Court of Justice of the European Union ("CJEU") for a preliminary ruling under the Framework Directive:

> "Should Article 2(2)(a) of Council Directive 2000/78/EC of 27 November 2000 [establishing a general framework for equal treatment in employment and occupation] be interpreted as meaning that the prohibition on wearing, as a female Muslim, a headscarf at the workplace does not constitute direct discrimination where the employer's rule prohibits all employees from wearing outward signs of political, philosophical and religious beliefs at the workplace?"[22]

<u>CJEU</u>

27. On 14 March 2017, the CJEU found that the Framework Directive must be interpreted as meaning that the prohibition does not constitute direct discrimination based on religion or belief.[23] Whilst it confirmed that the concept of "religion" should be interpreted as covering both having a belief and the manifestation of religious faith in public, it found that the rule in question covered any manifestation of such beliefs without distinction.[24]

28. However, the CJEU found that such an internal rule may constitute indirect discrimination if it results in persons adhering to a particular religion or belief being put at a particular disadvantage, unless:

a) it is objectively justified by a legitimate aim, such as the pursuit by the employer, in its relations with its customers, of a policy of political, philosophical and religious neutrality, and

[19] Court of Cassation, Judgment of 9 March 2015, pages 8 and 9, Document 3. See Annex IV: Belgian judicial system for more information about the Court of Cassation.
[20] Court of Cassation, Judgment of 9 March 2015, pages 18 and 19.
[21] Court of Cassation, Judgment of 9 March 2015, p. 27.
[22] Court of Cassation, Judgment of 9 March 2015, pages 29 and 30.
[23] CJEU, Case C-157/15, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV* [2017] ECLI:EU:C:2017:203, Judgment of 14 March 2017 ("*Achbita*"), paras. 32 to 44, Document 4.
[24] *Achbita*, paras. 28 to 31.

b) the means of achieving that aim are appropriate and necessary, which is for the referring court to ascertain.[25]

29. In particular, it found that "an employer's wish to project an image of neutrality towards customers relates to the freedom to conduct a business…[and] is, in principle, legitimate, notably where the employer involves in its pursuit of that aim only those workers who are required to come into contact with the employer's customers."[26] The CJEU ruled that the national court's assessment of appropriateness and necessity in this case included determining whether:

a) G4S, prior to Ms Achbita's dismissal, had established a general and undifferentiated policy of prohibiting the visible wearing of signs of political, philosophical or religious beliefs in respect (only) of members of its staff who come into contact with its customers, and

b) whether it would have been possible for G4S to offer Ms Achbita a post not involving any visual contact with customers, without G4S being required to take on an additional burden.[27]

Court of Cassation

30. On 9 October 2017, the Court of Cassation annulled ALC's judgment of 23 December 2011 except for the ruling that the prohibition did not constitute direct discrimination. It held that an employer's liability under the principle of equal treatment did not depend on whether it knew that its measure was unlawful. The Court of Cassation subsequently referred the case to the Ghent Labour Court ("GLC") for retrial.

GLC

31. Ms. Achbita and Unia argued before GLC that she had suffered from indirect discrimination arising from the neutrality policy. There was no justification for the distinction imposed by her employer. Since there was no legitimate objective, the neutrality policy was not appropriate for achieving the objective, nor was it necessary to achieve said objective.[28]

32. On 12 October 2020, GLC found that the general principle of neutrality as applied by G4S did not constitute indirect discrimination, on the basis that, *inter alia*:

a) persons of all denominations were subject to the same prohibition;[29]

b) in light of the separation of church and state, it could not determine what may be considered obligatory or important religious dress in a certain religion and whether persons who adhere to religions which "impose" specific visible requirements are particularly disadvantaged;[30]

c) the prohibition was justified by a legitimate aim: a "company may (and must, if it is to survive on the market) meet the legitimate demands of its clients" and a "neutrality policy simply (is) necessary, not only because of the diversity of the clients served by G[4S], but also because of the special nature of the activities performed by G[4S]'s staff, which involve constant personal contact with outsiders and determine the image of G[4S] itself, as well as the public image of its clients in particular;"[31]

d) the policy was genuinely pursued in a coherent and systematic way;[32] and

e) under no circumstances could G4S be expected to create a new position for Ms. Achbita or even make "a particularly great organizational effort."[33]

[25] *Achbita*, paras. 34 to 44.
[26] *Achbita*, para. 38.
[27] *Achbita*, paras. 40-43.
[28] GLC, Judgment of 12 October 2020, 2019/AG/55 ("GLC Judgment"), section 6, Document 6.
[29] GLC Judgment, section 7.3.5.5.
[30] See GLC Judgment, sections 7.3.5.3 and 7.3.5.5.
[31] GLC Judgment, section 7.3.6.2.
[32] GLC Judgment, sections 7.3.4 and 7.3.6.3.
[33] GLC Judgment, section 7.3.6.4

ADMISSIBILITY

33. The communication is admissible:

a) All available and effective remedies in Belgium have been exhausted.

i) As this Committee has confirmed, the obligation under Article 5(2)(b) of the Covenant to exhaust all available domestic remedies:

(a) is restricted to "all judicial or administrative avenues that offer …a reasonable prospect of redress;"[34] and

(b) "does not require resort to appeals that objectively have no prospect of success."[35]

ii) Following the Court of Cassation's judgment of 9 October 2017, there was no further available domestic route of appeal for Ms. Achbita's claim of direct discrimination.

iii) With regard to the remainder of Ms. Achbita's claim, as explained in full in Documents 7 and 8, there was no reasonable chance of successfully appealing GLC's final judgment of 12 October 2020 to the Court of Cassation.[36] For example, the factual nature of the assessment of suitable alternative employment "precluded a review of legality" by the Court of Cassation.[37]

b) This Committee has temporal (*ratione temporis*) and substantive (*ratione materiae*) jurisdiction over Ms. Achbita's claims, which arise under several articles of the Covenant.

c) This matter has not been submitted to any other mechanism of international investigation or settlement.

11. Claim. Please explain how and why you consider that the facts and circumstances described violate your rights/ the victim(s)' rights. Please specify which rights you consider to have been violated (if possible, identify the articles under the relevant treaty) **[word limit 600]**

1. As further outlined in Annex I, the facts and circumstances described above violate the International Covenant on Civil and Political Rights ("Covenant") as follows.

FREEDOM OF RELIGION (ARTICLE 18)

The right to freedom of religion prohibits dismissal from employment for wearing an Islamic headscarf

[34] *Patiño v. Panama*, UNHRC, Views of 21 October 1994, CCPR/C/52/D/437/1990, para. 5.2; *Potter v. NZ*, UNHRC, Views of 28 July 1997, CCPR/C/60/D/632/95, para. 6.3. See also *Torres Ramirez v. Uruguay*, UNHRC, Views of 8 April 1980, CCPR/C/10/D/4/1977, para. 5 (requiring evidence from the State party that there would be "a reasonable prospect that such remedies would be effective").

[35] See *Earl Pratt and Ivan Morgan v. Jamaica*, UNHRC, Views of 6 April 1989, UN Doc. CCPR/C/35/D/210/1986 and CCPR/C/35/D/225/1987, para. 12.3 and *Edward Young v Australia*, UNHRC, Views of 6 August 2003, UN Doc. CCPR/C/78/D/941/2000, para. 9.4 (referring to circumstances where under applicable domestic laws the claim would inevitably be dismissed, or where established jurisprudence of the highest domestic tribunals would preclude a positive result).

[36] See English Translation of Legal Opinion of Caroline de Baets, Attorney at the Cassation Court Confirming Exhaustion of Remedies – 20 January, 2021, Document 7; Letter from Unia Confirming Exhaustion of Domestic Remedies – 27 September, 2021, Document 8.

[37] See Section on "Necessity and Proportionality" in Legal Opinion of Caroline de Baets, Document 7.

2. The State Party failed to comply with its positive obligations to protect Ms. Achbita's right to freely manifest religion.

3. G4S's actions prohibited Ms. Achbita from wearing a headscarf at work as a manifestation of her religious belief, thereby infringing her right to freedom of religion.

4. This infringement was not justified under Article 18(3) of the Covenant, as it:

   a) was not prescribed by Belgian law;

   b) pursued illegitimate aims including preventing expressions of any one conviction in order to avoid being offensive to those with different opinions;

   c) was disproportionate, as it was absolute, permanent and gave rise to Ms. Achbita's dismissal solely based on her refusal to remove her headscarf; and

   d) was discriminatory, as set out below.

INTERSECTIONAL DISCRIMINATION (ARTICLES 3 AND 26)

The right to non-discrimination prohibits intersectional discrimination based on gender, race and religion

5. The State Party failed to protect the vulnerable, racialised group of which Ms. Achbita is a member.

6. The purpose and effect of G4S's actions was to target those who are visibly religious and Muslim women in particular. This differential treatment was not objectively justified, as:

   a) "Neutrality" is not a legitimate aim [of itself], as it is undefined and arbitrary;

   b) G4S's actions were based on subjective factors such as stereotypes and assumptions that Muslim women wearing the headscarf are not neutral and/or pose a risk to the peaceful coexistence of different views; and

   c) it was not reasonable nor objective for the proportionality assessment to be restricted to considering whether Ms. Achbita could be placed in a back office. There was no consideration of alternative measures, such as requiring employees to treat each other's beliefs with respect.

EFFECTIVE REMEDY (ARTICLE 2(3))

7. The State party failed in its obligations to provide an effective remedy and to take necessary steps to prevent similar violations. To date, Ms. Achbita has not obtained any declaration of the violation of her rights under the Covenant nor any reparations.

8. The context of structural discrimination in which the harm suffered by Ms. Achbita took place requires both individual and general reparations, including:

   a) A declaration of violation of Articles 3, 18 and 26, standing alone and combined (Articles 3 and 26) and in conjunction with Articles 2(2) and 2(3) of the Covenant; and

   b) A recommendation that Belgium pursues individual and general reparations to end violations of this type, including:

      i) Compensation for loss of earnings and for any non-pecuniary losses incurred by Ms. Achbita owing to the facts of the case, as well as reimbursement of any legal costs;

      ii) Publication and awareness of the Committee's decision;

      iii) All appropriate measures to prevent, punish, investigate and redress the harm caused by such acts, by private persons or entities;[38] and

[38] See UNHRC, *General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 29 March 2004, para. 8.

iv) Repeal of any legislation which allows such harm by State Party entities.

12. Date, place and signature

Date 06/10/2022

Place Birmingham, New York City, London, Ghent

Signature of the complainant(s) and victim(s) (if different and able to sign):

Signature of the Counsel (if the complainant is represented):

Note: You will need to send two files:

- **The word document file (does not need signature) AND**
- **The signed document scanned or photographed**

13. List of documents

Please make sure all documents are ordered by date, are numbered consecutively, and are clearly labeled (Example: Annex 1 (Complaint to District Court-4 Jun 2020); Annex 2 – (Decision of District Court-8 Jul 2020)).

☒ Decisions of domestic courts (and administrative authorities) on your claim as well as executive summaries of such decisions if they are not in one of the four working languages indicated above

☐ Complaints to and decisions by any other procedure of international investigation or settlement

☒ Any documentation or other corroborating evidence you possess that substantiates your communication, including medical or psychological reports, if relevant.

☐ Relevant national legislation, if applicable.

14. How to submit individual communications

Please send the completed application form and attached documentation by email to: **petitions@ohchr.org**

If it is impossible to submit the case electronically, please explain why and send in paper (not exceeding 20 single-sided pages) to:

Petitions and Urgent Actions Section

OHCHR

Palais des Nations

Avenue de la Paix 8-14

1211 Geneva

Switzerland.

No paper complaints will be processed unless a justification is provided. Please do not include originals, but only copies. No documents will be returned.

ANNEX I: FURTHER DETAILS OF RELEVANT FACTS AND CIRCUMSTANCES AND HOW THEY VIOLATE MS. ACHBITA'S RIGHTS

EMPLOYMENT AND DISMISSAL

1. In May 2004, G4S placed Ms. Achbita as a receptionist at one of its clients, a private company named Atlas Copco NV ("Atlas Copco"), where she remained until she was dismissed. There is no dispute that Ms. Achbita performed her duties very well.

2. Following her complaint to Unia, Ms. Achbita sought to reach a compromise by engaging in dialogue with G4S, along with Unia and her trade union. In particular, on 12 June 2006 (prior to her dismissal on the same day) she offered to take up another position within the company, or to wear a discreet, small headscarf to fit with Atlas Copco's uniform. These proposals were not accepted by G4S, which did not provide reasons for its decision.

IMPACT

3. For over 15 years, the dismissal and ongoing litigation have significantly impacted Ms. Achbita's professional and personal life, including her wellbeing.

4. Following her dismissal, Ms. Achbita was eager to find a new job and, although she was regularly invited for interviews, potential employers rejected her because of her headscarf.[1] Being judged by her personal appearance and assumptions relating to her headscarf caused her anguish as well as a loss of earnings. Having been unable to find employment in Belgium, Ms. Achbita was compelled to relocate to the United Kingdom with her family.

5. In addition, persistent media attention and Ms. Achbita's determination to seek an effective remedy has complicated her personal relationships including with her family, leading to several friends and former colleagues severing their relationships with her. This has caused Ms. Achbita to suffer emotional and physical distress.

6. Nonetheless, Ms. Achbita continues to value the freedom to express one's identity, for herself and other Muslim women in Belgium and beyond, and believes it is worth fighting for. She asks that the Committee lifts the veil of discrimination masquerading as "neutrality" in this case and many others.

7. Ms. Achbita's experience and its impact is far from unique. She is one of many Muslim women across Europe who are prevented from studying for, entering and pursuing their careers because of laws, policies and practices prohibiting the wearing of religious dress

[1] One potential employer stated that its target group could take some offence at the headscarf and that it did not "belong" in the company. On other occasions, Ms. Achbita was enthusiastically invited to interviews however once she presented herself (wearing a headscarf), interviews were quickly terminated. The public employment service of Flanders, the VDAB, advised Ms. Achbita that she risked being suspended for refusing to take off her headscarf.

under the purported justification of "neutrality." More generally, Muslim women across Belgium (and wider Europe) face many obstacles in accessing employment, education, goods and services and bear the brunt of Islamophobic attacks and hate crimes. These issues form part of a broader context of the racialisation and problematisation of Muslims as a threat, with the headscarf as its ultimate symbol.

Barriers to employment (including alternative employment for Ms. Achbita)

8. For Muslim women across Belgium (and wider Europe), the road to employment is paved with many obstacles, including religious dress restrictions as well as prejudice and discrimination.[2] Limitations on the wearing of religious signs/dress in the workplace occur both in the public and private sectors. Those affected by such bans in Belgium include the following:

   a) Antwerp City Council's front office employees;

   b) Lokeren City Council staff (who are subject to a general ban on all visible religious symbols after a regulation explicitly targeting headscarves was struck down);

   c) Lier's civil servants;

   d) Destelbergen Council's employees;

   e) Public employees in Brussels;

   f) All employees of the Walloon government, public interest organisations and institutions that fall under the public authority of the Walloon region (with the resolution also inviting other public interest organisations and entities to adopt internal regulations with the same prohibition);[3]

   g) Teachers in many parts of Belgium;[4]

   h) Private sector employees in various spheres, with complaints/cases concerning a bookstore, department store, property management company, temporary employment agencies, call-centres, medical laboratories and cleaning companies.[5]

[2] See Open Society Justice Initiative, "Restrictions on Muslim Women's Dress in the 27 EU Member States and the United Kingdom: Current Law, Recent Legal Developments, and the State of Play," March 2022 ("Religious Dress Restrictions Report"), available at https://www.justiceinitiative.org/uploads/0b300685-1b89-46e2-bcf6-7ae5a77cb62c/policy-brief-restrictions-on-muslim-women's-dress-03252022.pdf for details of religious dress restrictions in Europe, including pages 34 to 50 for comprehensive information on the various bans in Belgium in particular.

[3] See Religious Dress Restrictions Report, pages 40 and 41, on the bans listed in a) to f) of this paragraph.

[4] Religious Dress Restrictions Report, pages 45 and 46.

[5] Religious Dress Restrictions Report, pages 43 and 44, and Amnesty International, "Choice and prejudice – Discrimination against Muslims in Europe," 24 April 2012, pages 33 and 34, available at https://www.amnesty.org/en/wp-content/uploads/2021/06/eur010012012en.pdf See also *Mikyas and others v. Belgium* (2020): Third Party Intervention by the Human Right Centre at Ghent and the Equality Legal Clinic at the Université Libre de Bruxelles, 4.

9. Further proposals include a neutrality code affecting Flemish public employees in customer-facing positions.[6] Only a few local councils, such as Mechelen, Leuven, Ghent and Molenbeek, have rejected or rescinded headscarf bans under public pressure.[7]

10. The impact of such religious dress restrictions is exacerbated by public employment agencies, such as Actiris in Brussels, that often "offer Muslim women job positions where according to their knowledge the headscarf will not cause any problems for employers."[8]

11. In addition to bans, Muslim women in Belgium face other prejudice in recruitment as well as on the job. For example:

    a) 44% of employers agree that wearing a headscarf can negatively influence the selection of candidates;[9]

    b) candidates with names associated with Turkish origin have 50% less chance of getting a positive response to their profile than those with names associated with Flemish origin;[10] and

    c) some employers seek to assess female Muslim job candidates' level of "Muslimness," thereby reducing them to painful, racialised stereotypes by asking personal and disparaging job interview questions like "Do you pray five times a day?" or "Does your husband beat you?".[11]

Exclusion from labour market and psychological impact

12. The many barriers to employment faced by Muslim women in a number of European countries lead to their exclusion from various sectors of the labour market, resulting in them opting instead for jobs that do not involve contact with customers, becoming self-employed or no longer working at all.[12] Some women resort to removing their headscarves in order to work. All these obstacles and their impacts contribute to depression, self-denigration and low self-esteem.[13]

13. Although official data on labour participation of Muslim women in Belgium is yet to be collected, this situation is reflected in statistics showing that:

    a) the unemployment rate is the highest amongst people of Maghreb origin;[14]

---

[6] Flemish Government, *Vlaamse Regering 2019-2024: Regeerakkoord*, available at: https://publicaties.vlaanderen.be/view-file/31742, p. 10. The proposals also target schools controlled by the government.

[7] Religious Dress Restrictions Report, pages 40, 41 and 42.

[8] European Network Against Racism, "Forgotten Women: The Impact of Islamophobia on Muslim Women", 2016, p. 18.

[9] European Network Against Racism, "Forgotten Women: The impact of Islamophobia on Muslim women," 2016, p. 19.

[10] European Network Against Racism, "Forgotten Women: The impact of Islamophobia on Muslim women," 2016, p. 18.

[11] European Network Against Racism, "Forgotten Women: The impact of Islamophobia on Muslim women," 2016, p. 19.

[12] European Network Against Racism, "Forgotten Women: The impact of Islamophobia on Muslim women," 2016, p. 19.

[13] European Network Against Racism, "Forgotten Women: The impact of Islamophobia on Muslim women," 2016, p. 20.

[14] (19.4% among 18-64-year-olds.) Unia, "Socio-Economic Monitoring," 2019 ("Unia 2019 Report"), page 46.

b) the gender gap is markedly high in this group;[15] and

c) the gender gap is also markedly high in the "EU Candidate" group, which includes Turkey.[16]

14. The majority of Muslims in Belgium are of Turkish or Moroccan origin/descent.[17]

THE RACIALISATION OF MUSLIMS

15. The barriers that Muslim women face cannot be detached from the broader context of Islamophobia whereby Muslims are racialised and constructed as a threat, with the headscarf as the most visible marker.

Racialisation and anti-Muslim racism or Islamophobia

16. The European Commission against Racism and Intolerance ("ECRI") understands racialisation as "the process of ascribing characteristics and attributes that are presented as innate to a group of concern to it and of constructing false social hierarchies in racial terms and associated exclusion and hostility."[18]

17. ECRI notes that "European history is replete with examples of racialisation of persons belonging to certain communities, including… some religious groups such as… Muslims." Muslims in Belgium, like elsewhere in Europe, constitute a racialised group that is subjected to a specific form of racism or Islamophobia in all spheres of life.[19] This is based not only on their largely ethnic or racial minority background but in particular their perceived "Muslimness."[20]

18. The problematisation of Islam in Belgium started well before "9/11" but has grown drastically since, as the discrimination and social problems Muslims faced were attributed to their religion, and stigmatising headscarf debates proliferated.[21] European counter-terrorism

---

[15] (21.2%.) Unia 2019 Report, page 47.

[16] (22.8%). Unia 2019 Report, page 47. "EU candidates" are defined on page 6 as Turkey, the former Yugoslav Republic of Macedonia, Albania, Montenegro and Serbia.

[17] Eva Brems, "Discrimination against Muslims in Belgium," in Melek Saral and Seif Onur Bahcecik (eds.), *State, Religion, and Muslims* (Brill, March 2, 2020), 65-108, 66.

[18] ECRI, *Opinion on the concept of "racialisation,"* 8 December 2021, para. 5.

[19] Steve Garner and Saher Selod, "The Racialization of Muslims: Empirical Studies of Islamophobia", *Critical Sociology* (2014) 41(1) 1-11, at p. 9, available at https://www.academia.edu/36031827/The_Racialization_of_Muslims_Empirical_Studies_of_Islamophobia See also Anya Topolski, "The Race-Religion Constellation: A European Contribution to the Critical Philosophy of Race", *Critical Philosophy of Race* (2018) 6(1), 58-81, at pp. 72-75. The article further discusses how, throughout European history race and religion have been greatly intertwined, especially in the construction of Jews and Muslims as a threat and in their subsequent exclusion, and how racism has its roots in the category of 'religion.'

[20] ECRI, *ECRI General Policy Recommendation No. 5 (revised) on preventing and combating anti-Muslim racism and discrimination,* 8 December 2021, para. 7. See also Hamna Tariq, "The Racialization of Muslim-Americans Post 9/11: Causes, Themes, and Effects," *The Trinity Papers* (2020), 1-12, available at https://digitalrepository.trincoll.edu/cgi/viewcontent.cgi?article=1089&context=trinitypapers.

[21] See Sami Zemni, "The shaping of Islam and Islamophobia in Belgium", *Race & Class* (2011) 53(1) 28-44 ("The shaping of Islam"), at pp. 36-41, available at https://www.researchgate.net/publication/258182619_The_shaping_of_Islam_and_Islamophobia_in_Belgium and Religious Dress Restrictions Report, Chapter on Belgium. More generally (not just in relation to Belgium), see Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, *Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief,*

policies reinforce the implicit construction of the "Muslim other" as a potential terrorist threat by, for example, suggesting that "Muslim communities" must be engaged if terrorism is to be prevented.[22] Political discourse and media became rife with anti-Muslim rhetoric,[23] and the government and institutions introduced various policies and legislative measures that target or disproportionately impact Muslims (e.g. a national "face veil ban" and "headscarf bans" in education and public employment,[24] deradicalization programmes,[25] halal slaughter ban, mosque closures), and private companies followed suit.[26]

Racialisation of Muslim women

19. Muslim women are often more easily identifiable as Muslim than Muslim men because some of them wear a headscarf. It has been noted that:

> While physical appearance normally correlates to race in the USA, in many cases, the visible markers which distinguished the victims of post-9/11 hate crimes were not solely or even primarily racial, but actually religious signifiers, such as the…hijab. In this context, these religious symbols became racialized indicators in the eyes of the vigilante racists who carried out these barbaric assaults.[27]

20. The headscarf has further served as an instrumental tool in the racialisation process, as the diverse meanings it holds for the women themselves were flattened and homogenized,

---

UN Doc. A/HRC/46/30, 13 April 2021, ("Countering Islamophobia"), para. 1, referring to institutional suspicion of Muslims and those perceived to be Muslim escalating to "epidemic proportions" following the terrorist attacks of 11 September 2011.

[22] Tufyal Choudhury, "Suspicion, Discrimination and Surveillance: The impact of counter-terrorism law and policy on racialised groups at risk of racism in Europe", European Network Against Racism, 2021, p. 21, available at https://www.enar-eu.org/wp-content/uploads/suspicion_discrimination_surveillance_report_2021.pdf

[23] See The Shaping of Islam, pp. 36-41. See also Countering Islamophobia, para. 15, for a general discussion of anti-Muslim rhetoric in European media.

[24] Even if formally such bans prohibit all religious, political and philosophical signs, reference is made to garments associated with Muslim women in common discourse, and accompanying debates and public statements clearly target Muslim women and their coverings. See Open Society Foundations, "Contesting Neutrality Dress Codes in Europe," March 2022, pp. 21-23 and, for example, page 37 of the Religious Dress Restrictions Report noting that although Islamic headwear is not explicitly targeted in the wording of the law of the 'face veil ban,' it is widely known as the "burqa ban," and political debates focused on the burqa and niqab worn by a small number of Muslim women have intensified since its adoption, and that the law has not been enforced against people wearing masks during the COVID-19 pandemic.

[25] Nadia Fadil, Francesco Ragazzi, Martijn de Koning, *Radicalization in Belgium and the Netherlands: Critical Perspectives on Violence and Security* (Bloomsbury Publishing, 2019).

[26] See for general overviews of significant incidents and developments including policies and other measures targeting or disproportionately affecting Muslims: SETA, "European Islamophobia Report 2015", Enes Bayrakli and Farid Hafez (Eds.), 2016, 53-62; SETA, "European Islamophobia Report 2017", Enes Bayrakli and Farid Hafez (Eds.), 2018, 91-108; SETA, "European Islamophobia Report 2018", Enes Bayrakli and Farid Hafez (Eds.), 2019, 147-148; SETA, "European Islamophobia Report 2019", Enes Bayrakli and Farid Hafez (Eds.), 2020, 128-129.

[27] J. Singh, "Racialized, Religious Minorities in the Post-9/11 era." Sikh Formations (2013), 9 (2): 115-44, at p. 123.

reduced to representing gender oppression that is projected onto Islam and contrasted to an allegedly egalitarian Europe or "West."[28]

21. As such, while in general Muslims have been racialised to represent an uncivilised and even dangerous group, there are differences in the way Muslim men and Muslim women are characterised: "While both Muslim men and women may be presented as associated with violent activities, Muslim women are often depicted as oppressed, passive and devoid of intellect and agency."[29]

22. In its most recent survey from 2017, the EU Fundamental Rights Agency reported that Muslim respondents experienced unequal treatment in employment for various reasons (e.g. not being allowed leave for a religious holiday), but that Muslim women largely faced discrimination because of their clothing: "35 % of Muslim women who looked for work, compared with 4 % of Muslim men, mention clothing as a reason for discrimination; 22 % of Muslim women, compared with 7 % of Muslim men, mention it when at work."[30]

23. The exclusion of Muslim women from employment, education and other spaces perpetuates this status quo and reinforces the racialising logic. This is evident from national debates that regularly arise in Belgium about Muslim women with headscarves who acquire positions they are not expected to attain, and who consequently face attacks and/or excessive scrutiny.[31]

Religious dress restrictions as manifestations of the racialisation of Muslim women

24. ECRI emphasises that "the process of racialisation has contributed to spread prejudices, deepen inequalities and legitimise exclusion and hostility against specific groups in the most egregious forms."[32]

25. Beyond employment, religious dress restrictions abound in all other key spheres of life in Belgium and certain other European countries, disadvantaging and excluding Muslim women in myriad ways – including by impeding their access to public services, exposing them to

[28] Alia Al-Saji, "The racialization of Muslim veils: A philosophical analysis", *Philosophy & Social Criticism* (2010) 36(8) 875-902, available at https://web.mit.edu/~sgrp/2013/no1/Al-Saji2010.pdf See, for example, p. 878.

[29] ECRI, *ECRI General Policy Recommendation No. 5 (revised) on preventing and combating anti-Muslim racism and discrimination*, 8 December 2021, para. 7. See also Saher Selod and David Embrick, "Racialization and Muslims: Situating the Muslim Experience in Race Scholarship", Sociology Compass 7(8) (2013) 644 – 655, at p. 650, available at https://www.researchgate.net/publication/264607630_Racialization_and_Muslims_Situating_the_Muslim_Experience_in_Race_Scholarship.

[30] European Union Agency for Fundamental Rights, *Second European Union Minorities and Discrimination Survey Muslims – Selected findings*, 2017, p. 11.

[31] See, for example, Maïthé Chini, "'Either a referee or a player': liberals oppose Equality Commissioner with headscarf", *The Brussels Time*, 2 June 2021, available at: https://www.brusselstimes.com/171992/walloon-liberals-oppose-appointment-of-government-commissioner-with-headscarf-ihsane-haouach-georges-louis-bouchez-mr-stib-neutrality-of-the-state; Kattalin Landaburu, "Hijab-wearing Beligian lawmaker courts controversy", *France 24*, 11 March 2010, available at: https://www.france24.com/en/20100311-hijab-wearing-belgian-lawmaker-courts-controversy

[32] European Commission against Racism and Intolerance, *ECRI's opinion on the concept of "racialisation"*, 8 December 2021, para. 5.

abuse and marginalisation and even effectively confining them to their homes in some cases.[33]

26. In 2014, the Committee on the Elimination of Discrimination against Women expressed concern "about the lack of information on the impact of the ban on wearing headscarves on women and girls, as stipulated in the rules, regulations and by-laws of several local administrations, public hospitals, schools and private companies in the State party" and recommended that Belgium monitor and assess the impact on women and girls, "in particular in relation to their access to education and employment."[34]

27. The numerous legal challenges Muslim women in Belgium have brought against religious dress restrictions in the last thirty years demonstrate the significant role these restrictions have played in their exclusion.[35]

Access to education, goods and services

28. In educational settings, restrictions on religious dress are a widespread practice applied to students, teachers, and parents.[36] Recent efforts to establish schools in Flanders where Muslim children can freely practise their religion, supported by experts to bridge the structural gap in educational attainment faced by children of migrant and Muslim background, have been met with Islamophobic responses.[37] Policy officials have alleged that this would constitute a danger to democracy and that pre-schoolers would be forced to wear a veil.[38] A few institutions of higher education have also banned headscarves, approved by the Belgian Constitutional Court.[39] Although the most notable Belgian universities have publicly rejected such bans, the norm in primary and secondary education is still to ban religious dress.[40] This leads to the development of a general disadvantage long before Muslim students enter the labour market.

[33] All of which was acknowledged by this Committee in *Yaker v. France*, UNHRC, Views of 17 July 2018, UN Doc. CCPR/C/123/D/2747/2016 ("*Yaker*"), at para. 8.15.
[34] CEDAW, *Concluding observations on the seventh periodic report of Belgium*, UN Doc. CEDAW/C/BEL/CO/7, 14 November 2014, paras. 18 and 19.
[35] Religious Dress Restrictions Report, pp. 38 to 49.
[36] Religious Dress Restrictions Report, p. 45.
[37] Orhan Ağırdağ, "Vijf redenen waarom Vlaanderen islamitische scholen nodig heeft", *VRT NWS*, 20 September 2018, available at: https://www.vrt.be/vrtnws/nl/2018/09/20/opinie-orhan-agirdag-vijf-redenen-waarom-vlaanderen-islamitisch
[38] Tobias Santens, "Burgemeester van Genk over islamitische school: "Demir vernauwt debat tot hoofddoeken en halal", *VRT NWS*, 18 September 2018, available at: https://www.vrt.be/vrtnws/nl/2018/09/18/wim-dries-in-terzake/
[39] Open Society Justice Initiative, "Restrictions on Muslim Women's Dress in the 27 EU Member States and the United Kingdom: Current Law, Recent Legal Developments, and the State of Play," March 2022, p. 47.
[40] Open Society Justice Initiative, "Restrictions on Muslim Women's Dress in the 27 EU Member States and the United Kingdom: Current Law, Recent Legal Developments, and the State of Play," March 2022, pp. 45 to 49.

29. Another concerning trend is the increasing refusal of access to services and facilities to women wearing headscarves, including to an ice-cream bar,[41] a restaurant terrace,[42] a gym[43] and even a courtroom[44] (although most of these prohibitions were found to be unlawful).[45]

Hate crimes

30. The Collective Against Islamophobia in Belgium found that 63.6% of Islamophobic hate crimes between January 2012 and September 2015 were targeted towards women.[46]

Manifestations of racialisation

31. Far from being "neutral," as manifestations of Islamophobia and the racialisation of Muslims, "neutrality" dress codes and other religious dress restrictions target and/or disproportionately impact Muslim women. From 2017 to 2020, Unia received 743 complaints relating to prohibitions on wearing religious symbols and headgear in employment, education and goods and services. Analysis of these complaints showed that:

    a) 90% of complainants were Muslim;

    b) 76% of complainants were female; and

    c) 29% of complaints included the use of stereotypes and prejudices, 90% of which related to Islam.[47]

32. Neutrality is commonly invoked as a principle to organise the separation of church and state, guaranteeing equal treatment to all citizens irrespective of their beliefs or backgrounds:

> In a democratic state governed by the rule of law, the state must be neutral, because it is the government of and for all citizens and because it must treat them equally in principle, without discriminating on the basis of their religion, philosophical convictions or their preference for a community or party. For this reason, public servants can also be expected to adhere strictly to the principles of neutrality and equality of use in the performance of their duties towards citizens.[48]

33. However, as acknowledged by the Brussels Labour Tribunal, the constitutional principle of neutrality has never been interpreted as prohibiting all workers in the public sector from any manifestation of a religious, philosophical or political conviction. If this were the case, such a prohibition would be generalised in all federal, regional, community, provincial regional,

[41] Court of Appeal of Ghent, 8 October 2015, nr. 2014/RK/173.
[42] Rb. Brussel, 22.12.2009, unpublished and Court of First Instance of Huy, 26 May 2010, nr. 09/928/B.
[43] Court of First Instance of Brussels, 4 February 2020; Court of First Instance Liège, 1 September 2020.
[44] *Lachiri v Belgium*, ECtHR, Judgment of 18 September 2018.
[45] See pp. 45 and 49 of the Religious Dress Restrictions Report.
[46] European Network Against Racism, "Forgotten Women: The impact of Islamophobia on Muslim women," 2016, p. 26. The Collective Against Islamophobia in Belgium (Collectif Contre l'Islamophobie en Belgique) is a Muslim-led grassroots organization that raises awareness and monitors Islamophobia, including hate crimes, hate speech, political discourse and institutional and legislative measures that discriminate against Muslims. It used data from Unia in reaching this conclusion.
[47] See Annex II.
[48] Belgian Council of State 21 December 2010, no. 210.000, § 6.7.2 and advice Council of State n° 44.521/AG of 20 May 2008 on the law of 6 November 2007 implementing the separation of the State and religious or non-confessional philosophical organisations or communities, Parl.St. Senate 2007-2008, n°4-351/2, 8.

community, provincial and local administrations, which does not appear to be the case.[49] As acknowledged by members of Leuven City Council, who in February 2008 voted overwhelmingly against a proposal to ban headscarves for municipal employees, only the behaviour of public officials (in this case municipal employees) has to be neutral, not their appearance.[50]

34. Neutrality dress codes, however, determine which types of clothing are considered to give employees a "neutral appearance" and are built on the assumption that employees who express their religious convictions at work are likely to be biased in favour of or against certain groups. Neutrality policies that are justified on the basis of the "preservation of social peace" are equally problematic, as this starts from another unfounded assumption: that the outward expression of Islam, or any other religion, disrupts public peace or will give rise to conflicts and tensions. This suggests that it is the mere visible presence of religious minorities in a public space that causes conflicts and tensions, rather than the intolerant and racist responses they provoke in others that give rise to hostility. It is not the clothing itself that is problematised, but the meanings assigned to those who wear it. In other words, neutrality codes are grounded in prejudice, fear, and a culture of suspicion.[51]

VIOLATIONS

Right to freedom of religion (Article 18)

35. G4S's actions infringed upon Ms. Achbita's freedom to manifest religion through the wearing of a headscarf, in violation of Article 18 of the Covenant.

Freedom to manifest religion

36. Article 18 provides for far-reaching and profound protection of freedom of religion, including the freedom to manifest religion or belief in observance and practice, such as the wearing of distinctive clothing or head coverings.[52] This Committee has recognised that regulations on clothing (including the headscarf) to be worn by women in public may be in violation of Article 18 where such requirements are not in keeping with their religion.[53]

37. Article 18(3) states that the freedom to manifest one's religion may be subject only to limitations prescribed by law and necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others. The Committee has emphasised that Article 18(3) must be strictly interpreted: restrictions are not allowed on grounds not specified in Article 18(3), must be applied only for those purposes for which they were prescribed, may not be imposed for discriminatory purposes or applied in a discriminatory manner, and must be directly related and proportionate to the specific need on which they are predicated.[54] In its analysis of proportionality, the Committee has been guided by the criteria set out by the

[49] *M.T., UNIA and L.D.H. v STIB*, Brussels Labour Court, Judgment of 3 May 2021, pp. 25-26.
[50] Religious Dress Restrictions Report, pages 40.
[51] Open Society Foundations, "Contesting Neutrality Dress Codes in Europe," March 2022, p. 24.
[52] UNHRC, *General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, UN Doc. CCPR/C/21/Rev.1/Add.4, paras. 1 and 4.
[53] See UNHRC, *General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)*, 29 March 2000, para. 13. See *Naïma Mezhoud v. France*, UNHRC, Views of 14 March 2022, CCPR/C/134/D/2921/2016 ("Mezhoud") for a recent example concerning the headscarf.
[54] UNHRC, *General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion*, 30 July 1993, UN Doc. CCPR/C/21/Rev.1/Add.4, para. 8.

Special Rapporteur on freedom of religion or belief.[55] None of these requirements are met in the present case.

"Prescribed by law"

38. There is no statute or regulation in Belgium which prescribes the imposition of religious dress restrictions by private employers. Rather, employers must allow employees the necessary time to fulfil their religious obligations, in line with the right to manifest one's religion.[56]

39. Belgium's caselaw on the issue of religious dress restrictions is inconsistent and does not give rise to any norm formulated with sufficient precision to enable an individual to regulate his or her conduct and to constitute a "law."[57]

40. Moreover, G4S's policy was not even in written form until after Ms. Achbita was dismissed.[58]

Permitted aims

41. G4S indicated in domestic legal proceedings that its neutrality policy was implemented to "safeguard a peaceful and tolerant community, internally and externally, by adopting a neutral appearance towards everyone," "to [respect] everyone's individuality and convictions," and "to prevent expressions of any one conviction from being offensive to those with different opinions."[59]

42. These aims do not provide a permissible basis for the restrictions of Article 18(3) and, as such, Ms. Achbita's right to manifest her religion freely has been violated:

    a) The above aims are not specified in Article 18(3).[60]

---

[55] In order to determine whether the principle of proportionality has been respected where the freedom to manifest one's religion or belief with regard to wearing religious symbols is interfered with, the Special Rapporteur has specified that the following questions should be answered in the affirmative: "Was the interference, which must be capable of protecting the legitimate interest that has been put at risk, appropriate?; Is the chosen measure the least restrictive of the right or freedom concerned?; Was the measure proportionate, i.e. balancing of the competing interests?; Would the chosen measure be likely to promote religious tolerance?; Does the outcome of the measure avoid stigmatizing any particular religious community?" See Special Rapporteur on freedom of religion or belief – Asma Jahangir, *Civil and Political Rights, Including the Question of Religious Intolerance*, UN Doc. E/CN.4/2006/5, 9 January 2006, para. 58.

[56] Employment Contracts Act (*Arbeidsovereenkomstenwet*), 3 July 1978, Article 20, 5°.

[57] See Religious Dress Restrictions Report, pp. 38 to 49 for details of Belgian caselaw and, for example, UNHRC, *General Comment No. 34: Article 19 (Freedoms of Opinion and Expression*, 12 September 2011, UN Doc. CCPR/C/GC/34, para. 25 on the meaning of "law."

[58] *Supra*, facts of the case. In *Actiris*, the Brussels Labour Tribunal found that the company's rules did not amount to law. Trib. trav. Brux., Karima R c. Actiris, Office régional bruxellois de l'emploi, 16 November 2015, n°13/7828/A, available at https://www.unia.be/files/Documenten/Rechtspraak/2015_11_16_trib._trav._bruxelles.pdf See also No. 19-24079, Court of Cassation of France, Judgment of 14 April 2021, upholding the Court of Appeal's judgment in which it cited the CJEU's decision in the CJEU, Case C-188/15, *Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA* [2017] ECLI:EU:C:2017:204, Judgment of 14 March 2017 and *Achbita* case to state that to justify restrictions to religious freedom forbidding the Islamic veil, the employer must either provide for a general neutrality clause in its in house regulations in accordance 1 CJEU, 10 July 2008, C-54/07.

[59] Ghent Labour Court, Judgment of the Second Chamber of 12 October 2020, p. 7.

[60] UNHRC, *General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion*, 30 July 1993, UN Doc. CCPR/C/21/Rev.1/Add.4, para. 8.

b) This Committee has made it clear that the Covenant does not include a right not to be disturbed by other people wearing the full-face veil and that this, therefore, cannot provide the basis for a permissible restriction within the meaning of Article 18(3).[61] The same principle must apply to the headscarf. Similarly, the European Court of Human Rights has ruled that the European Convention on Human Rights does not contain a right not to be exposed to convictions contrary to one's own.[62]

c) The aims set out in Article 18(3) are not relevant. As in *F.A. v. France* (which was decided by this Committee), neither the State party nor G4S has explained in proceedings to date in what way the wearing of a headscarf is incompatible with, for example, social stability nor provided sufficient justification that it would violate the fundamental rights and freedoms of colleagues or clients.[63] It is also worth noting that the Supreme Court of the Czech Republic has found that wearing a headscarf does not constitute a breach of social norms or morality, increase any security risk, cause any problems in communication or movement, or represent any health risks.[64]

Necessity and proportionality

43. Even if G4S had permitted aims (which is denied), the treatment which Ms. Achbita suffered was neither necessary nor proportionate.

44. Since its decision in this case, the CJEU has clarified that employers must show that there is a genuine need for a neutrality policy, including that there is a "sufficiently specific risk" that they would otherwise suffer adverse consequences.[65] Similarly, the German Courts have found that freedom of religion cannot be restricted due to "abstract danger" and that a blanket ban on religious symbols for teachers at state schools could not be justified without proving that the headscarf posed a concrete threat to school peace or state neutrality.[66]

45. In this case, like in *F.A. v. France* and the *Mezhoud* case, there is no information or evidence that G4S's prohibition on wearing a headscarf was necessary for or could contribute to the

[61] *Yaker*, para. 8.10.
[62] *Appel-Irrgang and others v. Germany*, ECtHR, Judgment of 6 October 2010. This was also followed by the Brussels Labour Court in *M.T., UNIA and L.D.H. v STIB*, Judgment of 3 May 2021 (see para. 73). This approach can be contrasted with the ECtHR's decision in *S.A.S. v France*, Judgment of 1 July 2014, where the ECtHR considered a face veil ban and held that it falls within the powers of the State to secure the conditions whereby individuals can live together in their diversity. The same concept of "living together" was examined by this Committee in *Yaker*, with the Committee finding that the concept is very vague and abstract and concluding that "[t]he right to interact with any individual in public and the right not to be disturbed by other people wearing the full-face veil are not protected by the Covenant and therefore cannot provide the basis for permissible restrictions within the meaning of article 18 (3)." (para. 8.10)
[63] *F.A. v. France*, UNHRC, Views of 16 July 2018, UN Doc. CCPR/C/123/D/2662/2015 (*"F.A. v France"*) concerned a headscarf ban leading to the dismissal of a Muslim early childhood educator. See para. 8.8.
[64] 2019/11/27 – 25 Cdo 348/2019, Supreme Court of the Czech Republic, Judgment of 27 November 2019.
[65] CJEU, Cases C-804/18 and C-341/19 *IX v Wabe eV* and *MH Müller Handels GmbH v MJ* ECLI:EU:C:2021:594, Judgment of 15 July 2021 ("*Wabe and Müller*"), holding that "particular relevance should be attached to the fact that the employer has adduced evidence" that without a policy of neutrality its freedom to conduct a business would be undermined and that it would suffer adverse consequences, (para. 67). The Court further held that employers must show a "sufficiently specific risk" to justify a neutrality policy, such as the "risk of specific disturbances" or the "specific risk of a loss of income" (para. 85).
[66] 8 AZR 62/19, German Federal Labour Court, Judgment of 27 August 2020 and 1 BvR 471/10, German Federal Constitutional Court, Judgment of 27 January 2015.

purported objectives of G4S (or indeed the aims set out in Article 18(3) of the Covenant).[67] Nor is there any information about any negative consequences that G4S would have suffered had it not acted as it did. To the contrary, the feelings of exclusion and marginalisation of Muslim women that such restrictions give rise to run counter to any of the purported aims.[68]

46. In any event, as in *F.A. v. France*, the restriction imposed was not proportionate as it gave rise to Ms. Achbita's dismissal solely based on her refusal to remove her headscarf. It was absolute and permanent, and the wearing of a headscarf cannot be regarded as an act of proselytism.[69] Proportionality is further explored in the next section, however, it is pertinent to note here that other questions to be considered in the context of proportionality under Article 18 include:

"Would the chosen measure be likely to promote religious tolerance? Does the outcome of the measure avoid stigmatizing any particular religious community?"[70]

47. As set out in the sections on impact and the racialisation of Muslim women (paras. 19 to 34) as well as discrimination (paras. 3 to 14 and 49 to 75), these questions must be answered in the negative.[71]

Non-discriminatory

48. As set out below (paras. 49 to 75), the restrictions on Ms. Achbita's right to freely manifest her religion are not permitted under Article 18(3) because they were also discriminatory.

Intersectional discrimination (Articles 3 and 26)

49. Belgium has failed to comply with its positive obligations under Articles 3 and 26 of the Covenant to identify, prohibit and end the intersectional discrimination (on grounds of race, gender and religion) to which Ms. Achbita has been subjected.

Legal standards

50. Article 3 provides for equal rights for men and women to the enjoyment of all civil and political rights set forth in the Covenant.[72]

51. Article 26 states that all persons are equal before the law and are entitled without any discrimination to the guarantee of equal and effective protection of the law.[73] Discrimination

[67] In finding in favour of the author in *F.A. v France*, the Committee found that the State party had not explained in what way the wearing of a headscarf was incompatible with, for example, social stability nor provided sufficient justification that would allow the Committee to conclude that it would violate the fundamental rights and freedoms of children and parents attending the childcare centre (para. 8.8). Similarly, in *Mezhoud*, taking into account that no example of disturbance of public or obstruction of the proper functioning of the educational establishment had been provided, this Committee found that it was not demonstrated that a restriction prohibiting the author from wearing a headscarf at vocational training was necessary for these purported aims (see para. 8.9). (*Naïma Mezhoud v. France*, UNHRC, Views of 14 March 2022, CCPR/C/134/D/2921/2016).

[68] This Committee recalled in *Mezhoud* that it had already expressed concern that these effects arising from legislation prohibiting the wearing of conspicuous religious symbols could run counter to the pursued aim (para. 8.13).

[69] *F.A. v France*, para. 8.9 (although in that case the author had no entitlement to severance pay).

[70] Asma Jahangir, *Civil and Political Rights, Including the Question of Religious Intolerance*, UN Doc. E/CN.4/2006/5, 9 January 2006, para. 58.

[71] See also *F.A. v France*, para. 8.9.

[72] ICCPR, Article 3.

[73] ICCPR, Article 26.

is defined as "any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion,…national or social origin…or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms."[74] The prohibition of discrimination applies to both the public and the private sphere, and a violation of Article 26 may result from a rule or measure that is apparently neutral or lacking any intention to discriminate but has a discriminatory effect.[75] A differentiation may be justified only if it is based on reasonable and objective criteria in pursuit of an aim that is legitimate under the Covenant.[76]

52. Articles 2 and 3 require that State Parties take all necessary protective and positive measures, to put an end to discriminatory actions (including on the ground of sex) impairing the equal enjoyment of rights in both the public and private sector.[77] Article 26 of the Covenant not only requires positive measures by the State in relation to the right to manifest religion free of discrimination, but also to identify and prevent discrimination based on racial, ethnic and/or national origin at work.[78] It is also relevant that the Committee on the Elimination of Discrimination against Women has made it clear that State parties must legally recognize and prohibit intersecting forms of discrimination and their compounded negative impact on the women concerned, including by taking special measures as appropriate.[79]

Intersectional discrimination of Muslim women

53. Muslim women are members of a vulnerable group that is especially prone to intersectional discrimination.[80] In particular, Muslim women have been shown to face penalties in the labour market for being women, of ethnic/racial minority background (inferred from their name or skin colour), for being Muslim, and specifically for wearing a headscarf.[81] As set

[74] UNHRC, *General Comment No. 18 : Non-discrimination*, UN Doc. CCPR/C/21/Rev.1/Add.1, 10 November 1989, para. 7.
[75] See *Althammer et al. v. Austria*, UNHRC, Views of 8 August 2003, UN Doc. CCPR/C/78/D/998/2001, para. 10.2 and *F.A. v France*, para. 8.11.
[76] UNHRC, *General Comment No. 18 : Non-discrimination*, UN Doc. CCPR/C/21/Rev.1/Add.1, 10 November 1989, para. 13.
[77] UNHRC, *General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)*, UN Doc. CCPR/C/21/Rev.1/Add.10, paras. 3-4.
[78] On the latter see UNHRC, *General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 29 March 2004, para. 8.
[79] CEDAW, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28, 16 December 2010, para. 18. See also *S.N. and E.R. v North Macedonia*, CEDAW, Views of 24 February 2020, UN Doc. CEDAW/C/75/D/107/2016, para. 9.3.
[80] See, for example, *F.A. v France*, para. 8.13, concluding that author's dismissal from employment at a childcare centre under a neutrality policy for wearing a headscarf constituted intersectional discrimination based on gender and religion, in violation of Article 26 of the Covenant. The Committee has also recognised intersectional discrimination in at least four other cases concerning headscarves: *Seyma Türkan v. Turkey*, UNHRC, Views of 17 July 2018, UN Doc. CCPR/C/123/D/2274/2013, para. 7.8; *Yaker v. France*, UNHRC, Views of 17 July 2018, UN Doc. CCPR/C/123/D/2747/2016, para. 8.17; *Hebbadj v. France*, UNHRC, Views of 17 July 2018, CCPR/C/123/D/2807/2016, para. 7.17.
[81] See Sofia Ahmed and Kevin Gorey, "Employment discrimination faced by Muslim women wearing the hijab: exploratory meta-analysis", *Journal of Ethnic & Cultural Diversity in Social Work* (2021), 1-7, at p. 2, available at https://www.researchgate.net/publication/348931953_Employment_discrimination_faced_by_Muslim_women_wearing_the_hijab_exploratory_meta-_analysis; Doris Weichselbaumer, "Multiple Discrimination

out earlier, this adverse treatment is both intersectional on traditional grounds of discrimination (such as colour, gender and religion) as well as a manifestation of racialisation (resulting in racial discrimination).

54. In 2019, in its periodic consideration of Belgium's compliance with Covenant obligations, this Committee expressed concerns "about the prohibition against the wearing of religious symbols at work, in certain public bodies and by teachers and students at public schools, which could result in discrimination and the marginalization of certain persons belonging to religious minorities (arts. 2, 3, 18 and 26)."[82]

Purpose or effect

55. Religious dress restrictions are not "neutral" but instead deliberately target those who are visibly religious, including racialised religious minorities such as Muslim women who wear the headscarf. They differentiate between those for whom wearing religious dress is a religious requirement as compared with those whose faith does not contain such a requirement or those of no faith. As this Committee has noted, the wearing of a headscarf covering all or part of the hair is normal practice for many Muslim women, who see it as an integral part of the expression of their religious beliefs.[83]

56. The position of Muslim women can be compared with, for example:

a) another worker who adheres to no religion, has no philosophical beliefs and no political allegiance and who, therefore, harbours no need to wear any political, philosophical or religious sign;

b) another worker who holds any philosophical or political beliefs but whose need to display them publicly by wearing a sign (with connotations) is less, or non-existent;

c) another worker who adheres to another or the same religion, but whose need to display it publicly by wearing a sign (with connotations), is less, or non-existent;

d) a female worker who intends to exercise her freedom of religion by wearing a headscarf which is not in itself an unambiguous symbol of that religion, since another woman might choose to wear it for aesthetic, cultural or even health reasons; and

e) another worker with the same beliefs who chooses to manifest them by wearing a beard (which is not specifically prohibited by the terms of employment, unlike manifestation through clothing).[84]

---

against Female Immigrants Wearing Headscarves", *ILR Review* (2019) 73(3) 600-627, at p. 622, available at https://journals.sagepub.com/doi/pdf/10.1177/0019793919875707 (study showing women wearing Muslim headscarf particularly discriminated in job interviews in Germany); Timothy Bartkoski et al., "A Meta-Analysis of Hiring Discrimination Against Muslims and Arabs" *Personnel Assessment and Decisions* (2018) 4(2) 1-16, at p. 11, available at https://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1047&context=pad; Phillip Connor and Matthias Koenig, "Explaining the Muslim employment gap in Western Europe: individual-level effects and ethno-religious penalties", *Social Science Research* (2015) 49, 191-201; Frédérique Ast and Riem Spielhaus, "Tacking double victimization of Muslim women in Europe: The intersectional response", *Mediterranean Journal of Human Rights* (2012) 16 357-382, para. 25.

[82] UNHRC, *Concluding observations on the sixth periodic review of Belgium*, 6 December 2019, UN Doc. CCPR/C/BEL/CO/6, para. 17.

[83] *F.A. v France*, para. 8.3.

[84] CJEU, Case C-344/20, *L.F. v S.C.R.L*, Request for a preliminary ruling from the Tribunal du travail francophone de Bruxelles (Belgium) lodged on 27 July 2020.

57. Public debates about "neutrality" in Belgium demonstrate that Muslim women are the primary target for such prohibitions, presuming their inability to treat people "neutrally" or even "be neutral" because their dress stands for gender oppression.[85]

58. That the purpose and effect of G4S's principle of neutrality is to target and restrict Muslim women's religious dress in particular is further illustrated in a finding by the Dutch Institute for Human Rights that G4S directly discriminated against a female Muslim job applicant in the Netherlands, by requesting its hiring recruitment agency to require that applicants provide a signed declaration that they would not wear a "*headscarf* or other faith expressions" (emphasis added).[86]

59. Even if the purpose of such restrictions is not to nullify or impair the recognition, enjoyment or exercise by Muslim women, on an equal footing, of all rights and freedoms, that is the effect.[87] In the present case, the CJEU acknowledged that the referring court might conclude that G4S's rule introduces a difference of treatment that results, in fact, in persons adhering to a certain religion or belief being put at a particular disadvantage.[88] In practice, religious dress restrictions have consistently been found to disproportionately impact women from religious minorities, including by this Committee which has ruled that such restrictions constitute differential treatment of those women who choose to wear a headscarf.[89]

60. The disproportionate impact on Muslim women is borne out in the complaints received by Unia between 2017 and 2020, the breakdown of which also shows the link with racial and ethnic origin as well as the process of racialisation including through stereotyping. Of 743 complaints received relating to prohibitions on the wearing of religious symbols and headgear (in any context):

    a) 50% of complainants were of "non-Belgian origin;"

    b) 90% of complainants were Muslim;

    c) 76% of complainants were women;

---

[85] See Open Society Foundations, "Contesting Neutrality Dress Codes in Europe," March 2022, pp. 21-23 and Religious Dress Restrictions Report, Chapter on Belgium including pp. 36 and 37. See also Special Rapporteur on freedom of religion or belief – Heiner Bielefeldt, *Elimination of all forms of religious intolerance*, UN Doc. A/68/290, 7 August 2013, para. 49, noting that "laws prohibiting the Islamic headscarf in public institutions are frequently based on conjectures that women do not wear such head garments of their own free will."

[86] Dutch Institute for Human Rights, Judgment of 28 July 2013, 2013-101 (emphasis added).

[87] See also Shadow Opinion of former Advocate-General Sharpston: headscarves at work (Cases C-804/18 and C-341/19), 23 March 2021 ("Shadow Opinion"), para. 209, explaining that "[w]hilst the application of a neutral criterion may sometimes, indeed, result in inadvertent indirect discrimination, it is also perfectly possible to conceive of circumstances in which the employer does in fact intend to discriminate on a prohibited ground, but is sufficiently intelligent or well advised to arrange matters so that the measures that he takes fall to be classified as indirect, rather than direct, discrimination."

[88] *Achbita*, para. 34.

[89] See *F.A. v France*, para. 8.12 and *Mezhoud* para. 8.13 regarding differential treatment of women who choose to wear headscarves. See Special Rapporteur on freedom of religion or belief – Heiner Bielefeldt, *Elimination of all forms of religious intolerance*, UN Doc. A/68/290, 7 August 2013, para. 49 and Special Rapporteur on freedom of religion or belief – Ahmed Shaheed, *Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief*, UN Doc. A/HRC/46/30, 13 April 2021, para. 26 noting disproportionate impact.

d) 29% of complainants reported that the disadvantage/exclusion they were claiming was accompanied by stereotypes and prejudices, 90% of which related to Islam;

e) 13% of complainants were in a vulnerable position;[90]

f) overall, 39% of the complaints related to Muslim women of non-Belgian origin; and

g) 94% of complaints relating to workplace prohibitions were made by Muslim women.[91]

61. While there is no official data about the percentage of Muslims within the Belgian population, it is estimated at around 6%.[92]

62. Where there is a risk of double or triple discrimination (such as on the basis of religion, race and sex), former EU Advocate-General Sharpston has suggested that the courts "apply an enhanced level of scrutiny to the sequential aspects of the justification being advanced by the employer." This should involve a "very rigorous examination of that justification" and "insistence that the employer make good his case" in order to provide "adequate safeguards to these very vulnerable categories of potential employees."[93]

Legitimate aim

63. G4S's objectives including its purported aim of "neutrality" do not constitute legitimate aims.

64. "Neutrality" is an undefined and arbitrary concept. The employer's precise aim within that concept must be identified, as well as whether the employer has a specific and legitimate reason for its stated aim.[94] This Committee has acknowledged that general assertions without explanations as to how the wearing of a headscarf would prevent the performing of an employee's duties are insufficient for a State party to establish how a dismissal for wearing a headscarf served a legitimate aim.[95]

65. Failure to identify a specific legitimate aim, encompassed within the concept of a "neutral" image (or if the aim is neutrality per se, to interrogate why that is legitimate), risks permitting justifications grounded in bias, assumptions and social stigma attached to particular religious garments within the context of rising Islamophobia in Europe and elsewhere.[96] For example, the Dutch Institute for Human Rights has made it clear that it is discriminatory for an employer to accept that the wearing of a headscarf would be "threatening or problematic for

[90] "Vulnerable position" is defined by socioeconomic position and ability, such as whether the person is in a precarious situation such as long-term unemployment.
[91] Annex II.
[92] Religious Dress Restrictions Report, p.35.
[93] Shadow Opinion, para. 270.
[94] See Shadow Opinion, paras. 219 to 225, with para. 225 setting out a series of sequential questions to be answered, with the burden of proof on the employer: (i) What precisely is the aim pursued by the employer (if the aim is neutrality per se, why is that legitimate)? (ii) Is that aim consistent with other statements this employer has made as to his primary aims and objectives (if neutrality is being pursued to further some (other) primary aim, how or why does that make neutrality itself a legitimate aim)? (iii) Does pursuit of that aim potentially create a disparate adverse impact upon an identifiable group of employees leading to potential indirect discrimination on one of the prohibited grounds? See also paras. 41, 201-221.
[95] *F.A. v France*, para. 8.13.
[96] See Shadow Opinion, paras. 219 to 225. See also paras. 41, 201-221 and Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, *Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief*, UN Doc. A/HRC/46/30, 13 April 2021, para. 1 referring to institutional suspicion of Muslims and those perceived to be Muslim escalating to "epidemic proportions."

cooperation with employees" and introducing a restriction on this basis. The Institute found that in taking employee bias as a given, rather than combatting discrimination, the employer had adopted a discriminatory attitude.[97] In 2006, the Institute found that an international security company operating at Schiphol Airport had engaged in discrimination by putting in place a headscarf ban as "the guarantee of neutrality, which is the defendant's main objective, is in itself discriminatory, because the defendant anticipates prejudice on the part of clients and passengers."[98] The lower court of Brabant-Wallon has in one case found that the principle of neutrality is not in fact neutral and that the choice of pursuing a policy of neutrality is a highly political act in itself.[99]

66. More generally, the Dutch Institute for Human Rights has systematically rejected as discriminatory private employers' neutrality policies or wish to present themselves as "neutral" towards customers, where they bar Muslim women applicants or employees from wearing a headscarf, if being neutral does not constitute a genuine occupational requirement or when there are alternative ways to present a certain business image. The French Court of Cassation has further found that an employer cannot invoke commercial image or client satisfaction as a genuine occupational requirement.[100]

67. Finally, while "neutrality" is often used to justify religious dress restrictions, to the contrary, it can be the basis for finding such restrictions unlawful, as recently demonstrated by the Supreme Court of the Czech Republic. The Supreme Court rejected the Court of Appeal's reasoning justifying a prohibition on wearing the headscarf on the basis that a school should be a "neutral environment." Instead, it found that State neutrality means that the State does not interfere with the fundamental freedom of religion and that it cannot be inferred that the right to be without religion has a higher power than a right to religion and its outward expression in the form of external manifestations.[101]

Reasonable and objective criteria

68. Even if G4S had legitimate aims, it did not employ reasonable or objective criteria to pursue these. Instead, its actions were based on subjective, biased assumptions or stereotypes and were disproportionate. No evidence has been adduced as to the need for Ms. Achbita's dismissal for the purported aims of G4S nor of any adverse consequences that would have been suffered had the dismissal not taken place.

69. Religious dress prohibitions for "neutrality" are based upon an assumption that persons whose faith requires them to wear visible religious dress or symbols—as opposed to those whose faith or life philosophy does not include such a requirement—are not "neutral." As set out above (for example in paragraph 60), such rules predominantly impact Muslim women from non-White, minority communities. The dominant population group is equated with the "neutral" norm, reinforcing Whiteness to the detriment of racialised religious groups

[97] Dutch Institute for Human Rights, Judgment of 31 December 1996, 1997-14.
[98] Dutch Institute for Human Rights, Judgment of 30 October 2006, 2006-217. See also similar findings in Dutch Institute for Human Rights, Judgment of 28 June 2010, 2010-94, which concerned a nursing home and care centre, with the Institute noting that the very purpose of equal treatment legislation is to combat and eliminate such biases and assumptions.
[99] Tribunal De Premiere Instance De Brabant Wallon, 4 May 2020. This decision was contrary to a previous decision by the same Tribunal: Tribunal De Premiere Instance De Brabant Wallon, 11 February 2020.
[100] French Court of Cassation, No. 19-24079, Judgment of 14 April 2021.
[101] 2019/11/27 – 25 Cdo 348/2019, Supreme Court of the Czech Republic, Judgment of 27 November 2019.

such as Muslim women.[102] While avoiding "possible conflicts or difficulties" and the "peaceful coexistence of different views" may be legitimate aims, dismissing a woman for wearing a headscarf on these grounds is based on and/or perpetuates the racialisation and stereotyping of Muslim women and unreasonably favours those who have no religion or visible manifestations of faith.

70. For example, as recently found by the Labour Court in Brussels, Belgium, assuming that someone who wears religious symbols would not be able to provide a neutral service is based on prejudice and stereotypes.[103] The Court also applied similar reasoning in rejecting religious dress restrictions impacting Muslim women as a means of keeping social peace within an organisation.[104] As observed by former EU Advocate General Sharpston, "[w]here the customer's attitude may itself be indicative of prejudice based on one of the "prohibited factors", such as religion, it … [is] particularly dangerous to excuse the employer from compliance with an equal treatment requirement in order to pander to that prejudice. Directive 2000/78 is intended to confer protection in employment against adverse treatment (that is, discrimination) on the basis of one of the prohibited factors. It is not about losing one's job in order to help the employer's profit line'."[105]

71. The CJEU has held that a policy of neutrality is not sufficient to justify objectively a difference of treatment indirectly based on religion or belief, since such a justification can be regarded as being objective only where the employer can show that there is a genuine need for such a policy (which it is for the employer to demonstrate), including that the employer would otherwise suffer adverse consequences.[106] Employers must show a "sufficiently specific risk" to justify a neutrality policy, such as the "risk of specific disturbances" or the "specific risk of a loss of income."[107] The CJEU has further made clear that a policy must be genuinely pursued in a consistent and systematic manner and that the prohibition must be limited to what is strictly necessary.[108] A "genuine and determining occupational requirement' cannot cover subjective considerations, such as the willingness of the employer to take account of the particular wishes of the customer" and, more generally, there can be no objective justification where the treatment in question arises from discriminatory requirements on the part of customers.[109] The CJEU has also recognised discrimination arising from ethnic stereotypes or prejudices.[110] This is in line with the European Court of

[102] *Alekseyev v. Russia*, ECtHR, Judgment of 21 October 2010, para. 81: the Court reiterated that it would be incompatible with the underlying values of the European Convention on Human Rights if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority.
[103] *M.T., UNIA and L.D.H. v STIB*, Brussels Labour Court, Judgment of 3 May 2021, paras. 74-75.
[104] *M.T., UNIA and L.D.H. v STIB*, Brussels Labour Court, Judgment of 3 May 2021, para.75.
[105] See Shadow Opinion, para. 310.
[106] *Wabe and Müller*, paras. 64 and 67.
[107] *Wabe and Müller*, para. 85.
[108] *Wabe and Müller*, paras. 66 and 68, referring to paras. 40 and 42 of *Achbita*. See also Dutch Institute for Human Rights, Judgment of 20 November 2017, 2017 -135, where the Dutch Institute for Human Rights found that there was no need for to prohibit a police officer from wearing a headscarf for the purpose of achieving a neutral, uniform image of the police force when the officer in question was not visible to the public but rather was answering the public phone service.
[109] CJEU, Case C-188/15, *Asma Bougnaoui, Association de défense des droits de l'homme (ADDH) v Micropole SA, formerly Micropole Univers SA*, para. 40; *Wabe and Müller*, para. 66 also quoting CJEU, Case C-54/07, *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV*, EU:C:2008:397, Judgment of 10 July 2008.
[110] CJEU, C-83/14 *CHEZ Razpredelenie Bulgaria" AD v Komisia za zashtita ot diskriminatsia*, ECLI:EU:C:2015:480, Judgment of 16 July 2015, paras. 81-82.

Human Rights' approach that negative attitudes, even if sincerely felt by those who express them (ranging from stereotypical expressions of hostility to vague expressions of unease about presence) cannot of themselves amount to sufficient justification to the extent that they represent a predisposed bias on the part of a majority against a minority.[111]

72. In *Eweida and others v The United Kingdom*, the European Court of Human Rights found that the wearing of a religious symbol by the applicant did not have any negative impact on the brand or image of her employer, British Airways, and that in the absence of evidence of any real encroachment on the interests of others the domestic authorities failed sufficiently to protect her right to manifest her religion, in breach of its positive obligation.[112]

73. Moreover, this Committee has found that a failure to assess and demonstrate the proportionality of dismissal for wearing a headscarf will lead to a conclusion that the dismissal was not based on reasonable and objective criteria.[113]

74. In the present case, as set out above in relation to Article 18, G4S's actions were not necessary and indeed they were counterproductive. Further, it was not reasonable or objective for the proportionality assessment to be restricted to considering whether Ms. Achbita could be "dismissed into a back office, safely locked away from any contact with customers (and probably also, given most corporate promotion structures, thereby placed at a significant and continuing disadvantage in terms of career path)," rather than considering alternatives such as rules that enjoin employees to treat each other's beliefs with respect and not to engage in inflammatory discussions.[114] The Dutch Institute for Human Rights has made clear that rather than introducing discriminatory measures such as the prohibition of the headscarf to prevent tensions amongst employees, employers should introduce training for staff and management.[115]

75. In conclusion, as in the *Mezhoud* case, the differential treatment to which Ms. Achbita was subjected did not have a legitimate aim and did not meet the requirement of reasonableness and objectivity, constituting intersectional discrimination.[116]

Effective remedy (Article 2(3))

76. The remedies requested by Ms. Achbita take into account the principles and findings promulgated by this Committee, including that:

    a) effective remedies under Article 2(3)(a) require full reparation to individuals whose Covenant rights have been violated, including adequate compensation and appropriate measures of satisfaction (including compensation for loss of employment as appropriate), as well as "all steps necessary to prevent similar violations from occurring in the future";[117] and

[111] *Smith and Grady v the United Kingdom*, ECtHR, Judgment of 27 September 1999, para. 97.
[112] *Eweida and others v the United Kingdom*, ECtHR, Judgment of 15 January 2013, paras. 94 and 95.
[113] *F.A. v France*, para 8.13.
[114] Shadow Opinion, para. 243.
[115] Dutch Institute for Human Rights, Judgment of 31 December 2002, 2003-163
[116] *Mezhoud*, para. 8.14.
[117] See, *F.A. v France*, para. 10 although the loss of employment in that case was without severance pay. See also UNHRC, *General Comment No. 31 on the Nature of the General Legal Obligation on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, 29 March 2004, para. 17, noting a frequent practice of the Committee to include measures to avoid recurrence of the type of violation in questions and that such measures may require changes in the State Party's laws or practices.

b) Belgium "should reconsider its legislation on the wearing of religious symbols and clothing in public, at work and in schools, in accordance with its obligations under the Covenant, in particular in respect of the right to freedom of thought, conscience and religion and the right to equality before the law."[118]

77. In addition, as recently noted by a Commission of experts appointed by the Belgian government, the States federal anti-discrimination laws envisages discrimination based on one single characteristic, rather than multiple or intersectional ones, such as gender together with religion. The Commission notes that the lack of explicit provisions on such discrimination gives rise to uncertainty.[119]

78. Steps necessary to prevent similar violations from occurring in the future include:

a) Adopting and pursuing concrete and effective policies, programmes and targeted measures (encompassing temporary special measures), to combat intersecting forms of discrimination against Muslim women and girls, foster inclusive workplaces and end the dismissal of Muslim women from their employment for wearing a headscarf;

b) Securing effective access to employment for Muslim women and girls;

c) Engaging actively with human rights and women's organizations representing Muslim women and girls, including the provision of financial support, in order to strengthen advocacy against intersectional forms of discrimination based on religion, gender and race/ethnicity, and promote tolerance and the equal participation of Muslim women in all areas of life;

d) Ensuring that Muslim women and girls, individually and as a group, have access to information about their rights under the Covenant and are able to effectively claim those rights;

e) Guaranteeing Muslim women and girls have recourse and access to effective, affordable, and timely remedies, with legal aid and assistance as necessary, to be settled in a fair hearing by a competent and independent court or tribunal, where appropriate, or by other public institutions; and

f) Effectively implementing the Commission of experts' recommendations on legislation combating intersectional discrimination.

[118] UNHRC, *Concluding observations on the sixth periodic review of Belgium*, 6 December 2019, UN Doc. CCPR/C/BEL/CO/6, para. 18.
[119] Commission d'évaluation des lois fédérales tendant à lutter contre la discrimination, *Combattre la discrimination, les discours de haine et les crimes de haine : une responsabilité partagée*, February 2022, p. 83.

ANNEX II: UNPUBLISHED STATISTICS ON DISCRIMINATION FROM UNIA

Analyse chiffrée des dossiers relatifs à l'interdiction du port de couvre-chef et de signes religieux traités de 2017-2019

Dans le cadre de trois actions en justice initiées par Unia dans lesquelles le concept d'intersectionnalité a été développé (deux actions fitness-foulard et une action refus d'embauche-foulard), il a été utile de faire ressortir les chiffres concernant les interdictions du port de signes et couvre-chef afin de vérifier s'il y avait bien une dimension intersectionnelle qui ressortait (genre et islam).

Le groupe de travail a donc analysé les dossiers 'conviction' et ceux relatifs à l'interdiction générale du port du couvre-chef sur une période allant de **2017 aux trois premiers mois de 2020**. L'objectif de l'analyse est triple:

- Une analyse qualitative et quantitative des dossiers relatifs à l'interdiction du port de couvrechef;
- Dans le cadre des affaires judiciaires en cours concernant les interdictions générales de porter un couvre-chef dans les salles de fitness, nous voulons montrer qu'elles concernent principalement le foulard et donc les femmes qui le portent ;
- Rendre plus concret le concept d'intersectionnalité en l'illustrant par un exemple pratique, en l'occurrence le critère de la conviction religieuse et l'interdiction générale de porter des couvre-chefs. L'analyse nous permettra, grâce à une combinaison de critères protégés (sexe, origine nationale, fortune, ...) de soutenir la dimension intersectionnelle de ce type de cas.

La conclusion de cet exercice a été en retenant les paramètre "couvre-chef" et port de "signes religieux" comme point de départ de l'analyse (cf. mots-clés utilisés) que:

- 50 % des dossiers concernent des requérant·e·s/victimes **d'origine non belge** ;
- 90% des requérant·e·s/victimes sont **musulman·ne·s**;
- 76% des requérant·e·s/victimes sont **des femmes**;
- 13% des requérant·e·s/victimes sont dans **une situation précaire**;
- Dans 29% des dossiers, le désavantage, l'exclusion, ... sont accompagnés de **stéréotypes et de préjugés**. 90 % de ces stéréotypes et préjugés concernent **l'Islam**.
- 39% des dossiers concernent des femmes musulmanes d'origine non belge. Sur ces 39 %, 14 % des victimes sont **en situation de vulnérabilité** et, dans 29 % de ces cas, la mesure (discrimination, crime haineux, etc.) s'est accompagnée de **stéréotypes et de préjugés concernant l'Islam.**

Si nous effectuons une répartition par domaine, les éléments suivants sont intéressants:

Emploi

72 % des dossiers concernent l'interdiction de porter un couvre-chef/des symboles religieux (pendant les différentes étapes de la relation de travail). Parmi ceux-ci :

- 98% sont liés à l'Islam
- 94% de ces dossiers concernaient de facto une ou plusieurs femmes portant le foulard islamique
- 3% sont liés au port de la barbe

Sur les 16 demandes d'avis, 15 concernaient le foulard.

Biens et services/activités diverses*

* Nous avons combiné ces deux domaines car les collègues n'enregistrent pas les signalements de la même manière : cela concerne les sports, le fitness, le travail social, les assesseurs de bureaux de vote, etc.)

22% des dossiers font référence à l'interdiction de porter un couvre-chef ou des symboles religieux. Parmi ceux-ci :

- 97% sont liés à l'Islam
- 53 % concernent le foulard
- 47% sont liés au burkini

Les 8 demandes d'avis reçues concernaient l'Islam, mais étaient relatives à différents types de mesures (heures de baignade séparées, burkini, foulard, code vestimentaire, abattage sans étourdissement, campagne actuelle).

<u>Enseignement</u>

82% des dossiers concernent l'interdiction de porter des couvre-chefs ou des symboles religieux. Parmi ceux-ci:

- 99% sont liés à l'Islam
- 98% sont liés au port du foulard
- 1% sont liés à de longs vêtements Ventilation par type d'enseignement :

70%: enseignement secondaire

18%: enseignement supérieur

13% : formation socioprofessionnelle/ enseignement pour adultes

8 demandes d'avis : 7 concernant l'Islam (incident Melle, général, neutralité, foulard et burkini)

ANNEX III: THE BELGIAN JUDICIAL SYSTEM

The territory of Belgium is divided into five judicial areas: Antwerp, Brussels, Ghent, Liège and Mons. These areas are currently divided into twelve judicial districts and 187 judicial cantons. Each judicial canton has a civil magistrate's court. Generally, the civil magistrate courts have jurisdiction over civil disputes that do not exceed a certain amount.

Each judicial district has a court of first instance with general jurisdiction. They handle a wide range of cases, including civil cases, criminal cases and cases regarding juvenile law and family law. In addition, the judicial districts have one to three police tribunals per district, nine commercial courts and nine labour tribunals. The police tribunals serve as the traffic courts and lowest criminal courts in the Belgian judicial system. Commercial disputes are brought before the commercial court and the labour courts deal with issues of labour law and social security.

Furthermore, each of the provinces has an assize court. It is the highest criminal court and the only Belgian court that holds jury trials. It is not a permanent court but is convened whenever an accused person is committed for trial before it. Finally, each judicial area has a court of appeal and a labour court. The courts of appeal are the main appellate courts, while the labour courts hear appeals against judgements of the labour tribunals.

The Court of Cassation is the supreme court of the Belgian judicial system. It is the highest body in the Belgian judiciary and deals with judgements in the last instance on the grounds of a violation of the law. The Court of Cassation does not examine the facts of the case referred to it, but rather whether the prior judgement complies with the law. The jurisdiction of the Court is limited to either upholding or annulling a contested decision. The latter is referred to as "cassation". In case of cassation, the Court will generally refer the case to a different court of the same rank. The case will then be retried. This way, the Court of Cassation ensures the nationwide uniform interpretation and application of the law.

In addition to the courts mentioned above, there are two courts with special jurisdiction. First, there is the Constitutional Court which rules on conflicts of jurisdiction and conflicts on fundamental rights. Finally, there is the Council of State, which is a superior administrative court and monitors the administration.