



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Belgium
<b>Title:</b>	Burkini ban in swimming pools
<b>Date:</b>	18 July 2018
<b>Expert:</b>	Bribosia, Emmanuelle
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Burkini ban in swimming pools is unlawful according to two first instance judgments of the Tribunal of Gent
<b>Ground of discrimination:</b>	Religious beliefs
<b>Source:</b>	Unpublished judicial rulings (5 July 2018)
<b>Field:</b>	Access to good and services
<b>Applicable law:</b>	Gelijkekansendecreet of 10 July 2008 (Flemish ET decree)

### Content

**Case development:** On the 5<sup>th</sup> of July 2018, the Tribunal of Gent ruled in two first instance judgments that the ban of burkini (body-covering swimwear) in two municipal swimming pools is unlawful. Relying on the ECHR case law, the judge stressed that it is not the role of the court to discuss whether the Muslim religion imposes or not the wearing of such clothing. The legitimacy of such a practice is neither an issue that the court should consider. As to the discrimination issue, the tribunal of Gent ruled that the burkini ban does not amount to a direct discrimination since it stems from the general internal rules of the swimming pool which require the wearing of a swimming suit to access the pool. However, there is an indirect discrimination against Muslim women willing to wear a burkini for religious reasons. According to the Tribunal of Gent, justifications on grounds of security or hygiene do not stand up to scrutiny, especially when considering the opinion of a regional health agency. The ban is therefore unlawful and the claimants are entitled to receive compensation for moral damages.

**Key points of analysis:** According to the Tribunal of Gent, burkini ban in swimming pools amounts to indirect discrimination on the ground of religious beliefs. It rightly points out that if a requirement of neutrality may be imposed upon the providers of public services, the same may not be required from the users of these services. These are the first rulings on the burkini ban issue in Belgium. They arose in the context of the Human Rights Legal Clinic of Ghent University led by professor Eva Brems.

The National Secretary of State for Equal Opportunities, Zuhair Demir, negatively reacted to these judgments. She stated that legal avenue to ban burkinis in swimming pools should be explored. As she put it, the burkini is "a symbol of oppression rather than a symbol of emancipation". On the contrary, UNIA sees no justification for such bans that discriminate against people based on their religious beliefs or a disability.