

# REGIONAL OVERVIEW OF ISLAMOPHOBIA IN EUROPE

PREPARED BY AMNESTY INTERNATIONAL FOR THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE  
COMMITTEE ON EQUALITY AND NON-DISCRIMINATION REPORT “RAISING AWARENESS OF AND COMBATTING  
ISLAMOPHOBIA IN EUROPE”

## OVERVIEW

Muslim communities in Europe are estimated to account for approximately 25.8 million people or roughly 4.9% of the region’s total population.<sup>1</sup> Amnesty International has long been concerned about racial and religious discrimination and its specific impact on Muslim people’s human rights across Europe. This submission to the Council of Europe Committee on Equality and Non-Discrimination contains both longstanding and new research on discrimination against Muslims, including in Austria, Belgium, Denmark, France, Germany, The Netherlands, Switzerland and United Kingdom. It is not an exhaustive overview, but documents the alarming manner in which a number of states have “racialized” the Muslim religious minority and subjected people within that minority to a range of discriminatory and racist laws, policies and practices.

In 2012, a regional Amnesty International study documented how Muslim people and communities across Europe experienced discrimination in employment and education, and included details of laws and policies that infringed on their freedom of religion or belief.<sup>2</sup> Regrettably, a decade later, the United Nations Special Rapporteur on freedom of religion or belief report submitted to the Human Rights Council concluded that “widespread negative representations of Islam, fear of Muslims generally and security and counterterrorism policies have served to perpetuate, validate and normalize discrimination, hostility and violence towards Muslim individuals and communities” and warned that “institutional suspicion of Muslims and those perceived to be Muslim has escalated to epidemic proportions”.<sup>3</sup>

Historic “orientalist” stereotypes imagining Muslims as fundamentally hostile to “the West” have been reactivated and mainstreamed, especially since the 11 September 2001 attacks in the USA and the subsequent global “war on terror”. Muslims have been differentiated on ethnic, not just religious, grounds, and have become increasingly homogenized under one racialized category (for example, Pakistanis in the United Kingdom or Turkish people in Germany, more frequently presented in media and policy as “Muslims in Europe”).<sup>4</sup>

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<sup>1</sup> Pew Research Centre, *Europe’s Growing Muslim Population*, 29 November 2017, <https://www.pewresearch.org/religion/2017/11/29/europes-growing-muslim-population/>

<sup>2</sup> Amnesty International, *Choice and prejudice: Discrimination against Muslims in Europe* (Index: EUR 01/001/2012), 24 April 2021 <https://www.amnesty.org/en/documents/eur01/001/2012/en/>

<sup>3</sup> OHCHR, *UN expert says anti-Muslim hatred rises to epidemic proportions, urges States to act*, 4 March 2021 <https://www.ohchr.org/en/press-releases/2021/03/un-expert-says-anti-muslim-hatred-rises-epidemic-proportions-urges-states>

<sup>4</sup> Amnesty International and Open Societies Foundation, *A human rights guide for researching racial and religious discrimination in counter-terrorism in Europe*, (Index: EUR 01/3606/2021), February 2021, <https://www.amnesty.org/en/documents/eur01/3606/2021/en/>

This process of racialization reflects perceived “Muslim appearances, behaviour and assumed practices being taken as a sign of inferiority”.<sup>5</sup> The French Defender of Rights has noted a “trend that the term ‘Muslims’ is used to refer, de facto, to Arab immigrants or individuals perceived as such...the religious marker tends to exacerbate the racial marker”.<sup>6</sup> It is within this context that discrimination against Muslims can amount to racial discrimination. Islamophobia is increasingly recognized as a form of racism. In the United Kingdom, the All-Party Parliamentary Group on British Muslims defined Islamophobia as “rooted in racism and is a type of racism that targets expressions of Muslimness or perceived Muslimness”.<sup>7</sup> The United Nations Special Rapporteur on freedom of religion or belief refers to “Islamophobia” as a term “characteriz[ing] the complex and diverse set of processes [...] that accommodate exclusionary paradigms, which are anchored in the use of essentializations and misperceptions of Islam to stigmatize Muslim individuals and communities”.<sup>8</sup> In a briefing prepared for the 46th Session of Human Rights Council, the following working definition of Islamophobia for proposed for adoption: “A fear, prejudice and hatred of Muslims or non-Muslim individuals that leads to provocation, hostility and intolerance by means of threatening, harassment, abuse, incitement and intimidation of Muslims and non-Muslims, both in the online and offline world. Motivated by institutional, ideological, political and religious hostility that transcends into structural and cultural racism which targets the symbols and markers of a being a Muslim.”<sup>9</sup>

State authorities have repeatedly targeted Muslim individuals and communities under a range of overly broad and vague counterterrorism and national security laws.<sup>10</sup> Such deliberate and sustained targeting, including by both overt and covert monitoring and surveillance measures, has cultivated a generalized suspicion of Muslims in Europe that has provided fertile ground for the ongoing erosion of their human rights, including in access to education, employment, housing, sport and with respect to their freedom of expression, religion, association and right to non-discrimination. In some countries, Muslim women have become a specific targets, with racist and gendered stereotypes employed to strip them of their personal autonomy, their agency and in doing so violating their human rights both through the policies themselves and their subsequent enforcement.<sup>11</sup>

<sup>5</sup> All Party Parliamentary Group on British Muslims, ‘Report on the inquiry into a working definition of Islamophobia / anti-Muslim hatred’, <https://static1.squarespace.com/static/599c3d2febbd1a90cfffdd8a9/t/5bfd1ea3352f531a6170ceee/1543315109493/Islamophobia+Defined.pdf>, p. 39.

<sup>6</sup> French Defender of Rights, *Discrimination and Origins: The Urgent Need for Action*, 2020, p.29.

<sup>7</sup> All-Party Parliamentary Group on British Muslims, ‘Report on the inquiry into a working definition of Islamophobia/anti-Muslim hatred’ (2019).

<sup>8</sup> United Nations Human Rights Council, *Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief Report of the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed*, 13 April 2021 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/086/49/PDF/G2108649.pdf?OpenElement> pg. 3

<sup>9</sup> Professor Imran Awan and Dr Irene Zempi, *A Working Definition of Islamophobia: A Briefing Paper prepared For the Special Rapporteur on freedom of religion or belief Preparation for the report to the 46th Session of Human Rights Council*, November 2020, <https://www.ohchr.org/sites/default/files/Documents/Issues/Religion/Islamophobia-AntiMuslim/Civil%20Society%20or%20Individuals/ProfAwan-2.pdf>

<sup>10</sup> Amnesty International, *Dangerously Disproportionate: The ever-expanding national security state in Europe* (Index: EUR 01/5342/2017), <https://www.amnesty.org/en/documents/eur01/5342/2017/en/>, p.7

<sup>11</sup> See, for example, European Network Against Racism, *Forgotten Women: The impact of Islamophobia on Muslim women*, May 2016, [https://www.enar-eu.org/wp-content/uploads/forgottenwomenpublication\\_lr\\_final\\_with\\_latest\\_corrections.pdf](https://www.enar-eu.org/wp-content/uploads/forgottenwomenpublication_lr_final_with_latest_corrections.pdf); Special Rapporteur on Freedom of Religion and Belief, *Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief*, February 2021, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/086/49/PDF/G2108649.pdf?OpenElement>, paras 13, 18, 19

Persistent racist and discriminatory rhetoric by politicians in many European states, including many examples of speeches by politicians that link Islam and terrorism, has contributed to and exacerbated a hostile or degrading environment for Muslims and those perceived to be Muslim.<sup>12</sup> This has amounted to outright harassment in some cases.<sup>13</sup> This routine demonization of Muslims has created a context in a number of countries where those defending and protecting Muslims' human rights are also being targeted if they speak out:<sup>14</sup> there are cases of human rights defenders themselves being accused of being terrorists or supporting terrorism simply for advocating for the protection of Muslim people's human rights.<sup>15</sup>

The spread of anti-Muslim attitudes across the region has been accompanied by an increase of anti-Muslim attacks in many European countries including verbal harassment, hate speech, violent attacks and religious profiling.

For example, in **Austria**, 812 hate crimes against Muslims were reported in 2021,<sup>16</sup> with a notable spike after the digital map identifying the locations of more than 600 mosques and associations around Austria was unveiled in May 2021, including signs near mosques depicting an "angry Muslim" and with slogans about "political Islam". During the Covid-19 pandemic, some countries saw a decrease in physical attacks against Muslims reported but a simultaneous increase in hate speech online.<sup>17</sup>

Research published by the European Network Against Racism in 2016 concluded that Muslim women are more likely to be victims of hate crime and speech than Muslim men. Muslim women are targeted by online and offline threats and hate speech, violence and assault. Racist violence against Muslim women mainly happens in public places such as public transport, streets, markets and shops, or in the workplace. The most common crimes include insults, spitting at women who wear the hijab or pulling their clothing off.<sup>18</sup>

However, anti-Muslim hate crime is not officially recorded as a separate category of hate crime in the majority of European countries, and some states do not record it at all.<sup>19</sup> It

<sup>12</sup> Amnesty International and Open Societies Foundation, *Europe: A Human Rights Guide for researching racial and religious discrimination in counter-terrorism* (Index: EUR 01/3606/2021), February 2021, [https://www.amnesty.org/en/documents/eur01/3606/2021/en/\\_p.10](https://www.amnesty.org/en/documents/eur01/3606/2021/en/_p.10)

<sup>13</sup> Special Rapporteur on Freedom of Religion and Belief, Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief, February 2021, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/086/49/PDF/G2108649.pdf?OpenElement>, para 19; Enes Bayrakli, Farid Hafez, European Islamophobia Report 2020, <https://islamophobiareport.com/islamophobiareport.pdf>, pp 21-23.

<sup>14</sup> See, for example, Enes Bayrakli, Farid Hafez, European Islamophobia Report 2020, <https://islamophobiareport.com/islamophobiareport.pdf>, p.9

<sup>15</sup> See, for example, Amnesty International, France: shutting down anti-racist organisation risks freedoms, <https://www.amnesty.org/en/latest/news/2020/11/france-shutting-down-antiracist-organisation-risks-freedoms/>; UNGA, Human Rights Council Fortieth Session 25 February – 22 March 2019 'Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism' (1 March 2019) UN Doc A/HRC/40/52, para 8.

<sup>16</sup> ZARA, Civil Courage & Anti-Racism-Work, Racism Report, 2018, [https://assets.zara.or.at/download/pdf/ZARA-Rassismus\\_Report\\_2018\\_EN.pdf](https://assets.zara.or.at/download/pdf/ZARA-Rassismus_Report_2018_EN.pdf), pp12-13; ZARA, Civil Courage & Anti-Racism-Work, Racism Report, 2019, [https://assets.zara.or.at/download/pdf/ZARARassismus\\_Report\\_2019.pdf](https://assets.zara.or.at/download/pdf/ZARARassismus_Report_2019.pdf)

<sup>17</sup> Enes Bayrakli, Farid Hafez, *European Islamophobia report 2020*, 2021 <https://islamophobiareport.com/islamophobiareport.pdf>, p.20

<sup>18</sup> ENAR, *Forgotten Women: The impact of Islamophobia on Muslim women*, 2016 [https://www.enar-eu.org/wp-content/uploads/forgottenwomenpublication\\_lr\\_final\\_with\\_latest\\_corrections.pdf](https://www.enar-eu.org/wp-content/uploads/forgottenwomenpublication_lr_final_with_latest_corrections.pdf) pg. 4

<sup>19</sup> OSCE, *Understanding Anti-Muslim Hate Crimes - Addressing the Security Needs of Muslim Communities, A Practical Guide*, 2020, <https://www.osce.org/files/f/documents/9/0/448696.pdf>

can be estimated that real numbers are much higher given the low levels of reporting.<sup>20</sup> Such monitoring and recording would be essential in order to assess the real extent of Islamophobia and develop strategies to address it effectively. Consequently, at present, attacks against Muslims and those perceived to be Muslim are often not investigated as discriminatory attacks, meaning authorities fail to address the broader structural causes, harmful narratives and negative stereotypes as underlying causes for such crimes.

Many Muslims and those perceived to be Muslim also experience persistent discrimination based on their first or last names, and their skin colour or physical appearance in all areas of life, but especially when they look for work or housing.<sup>21</sup>

This briefing paper includes Amnesty International’s research and analysis in relation to anti-Muslim racism and discrimination against Muslims and those perceived to be Muslim in the areas of counter-terrorism; freedom of expression, association, thought, conscience and religion; gender-based Islamophobia; and the rights of refugees and migrants. While the research contains discriminatory laws, policies and practices in a number of countries in the Council of Europe region, the United Kingdom and France feature prominently in nearly every section of this briefing as they have often introduced policies and practices which later were replicated across Europe with respect to anti-Muslim animus.

## COUNTER-TERRORISM

Discrimination against Muslims in the counterterrorism context in Europe is a longstanding human rights concern. In the last two decades in particular, Muslims’ lawful religious, cultural, and political activities and affiliations have been construed as “dangerous” and thus as justification for significant restrictions on individual rights.<sup>22</sup> It is within this post-9/11 context that notions of race, religion and ethnicity have been conflated with so-called “political Islam”, such that Muslims are widely perceived as “radicalized” and a danger to Western national security interests.<sup>23</sup> Counterterrorism laws have also perpetuated gender stereotypes and have had a differential impact on women and girls. In some countries, Muslim women “disproportionately bear the brunt of increased anti-Muslim racism and discrimination that flows from such policies”.<sup>24</sup>

<sup>20</sup> See, for example, Fundamental Rights Agency, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2017-eu-minorities-survey-muslims-selected-findings\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-minorities-survey-muslims-selected-findings_en.pdf).

<sup>21</sup> Fundamental Rights Agency, Second European Union Minorities and Discrimination Survey, Muslims – Selected findings, 2017, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2017-eu-minorities-survey-muslims-selected-findings\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-minorities-survey-muslims-selected-findings_en.pdf); for example, in France, the French Defender of Rights said, “When job-hunting for example, individuals with Arabic-sounding surnames have to send out around three CVs to secure an interview, compared with just two for applicants with French-sounding surnames. When applying for a private rental property, individuals with Arabic or African-sounding surnames are, respectively, 27% and 31% less likely to secure a first appointment with the owner. The results of the statistical studies are indisputable: people of foreign origin, or perceived as such, are more exposed to unemployment, social insecurity, poor housing conditions and health problems”, see [https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd\\_13e-barometre-discriminations-emploi\\_2020.pdf](https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd_13e-barometre-discriminations-emploi_2020.pdf). An academic study commissioned by the French government in 2020, confirmed that are submitted controlled applications to 103 major businesses in France, there remains a “significant and robust” discrimination against candidates presumed to be of maghrébin or Middle-Eastern origins.<sup>21</sup>

<sup>22</sup> Amnesty International and Open Societies Foundation, *Europe: A Human Rights Guide for researching racial and religious discrimination in counter-terrorism* (Index: EUR 01/3606/2021), February 2021, <https://www.amnesty.org/en/documents/eur01/3606/2021/en/>, p.44

<sup>23</sup> Amnesty International and Open Societies Foundation, *Europe: A Human Rights Guide for researching racial and religious discrimination in counter-terrorism* (Index: EUR 01/3606/2021), February 2021, <https://www.amnesty.org/en/documents/eur01/3606/2021/en/>

<sup>24</sup> Center for Human Rights and Global Justice, Women and Preventing Violent Extremism: *The U.S. and U.K. Experiences* (New York: NYU School of Law, 2012), p.9.

Over the last two decades, a slow but steady paradigm shift has occurred in Europe: a move away from the view that it is government's role to provide security so that people can enjoy their rights, toward the view that governments must restrict people's rights in order to provide security. The result has been an insidious redrawing of the boundaries between the powers of the state and the rights of individuals. European states and regional bodies have responded to violent attacks between 2004 and 2020 (in Belgium, Denmark, France, Germany, Spain and UK, among others) by proposing, adopting and implementing wave after wave of counterterrorism measures that have eroded the rule of law, enhanced executive powers, peeled away judicial controls, restricted freedom of expression and exposed populations to government surveillance.<sup>25</sup>

### ***Administrative control orders***

A key development has been the parallel and inherently unfair justice system characterized by the use of administrative control orders. A state's power to restrict a person's liberty, movements, associations, ability to work, and private life is usually exercised when an individual is reasonably suspected of having committed a crime and the criminal justice system – with all its attendant safeguards – is engaged. In the criminal justice system there is a presumption against pre-trial detention, and a person will only receive a criminal sanction once the state has proven to the criminal standard that they are guilty. Across Europe however, governments are increasingly relying on administrative orders in the context of counterterrorism. Administrative control orders commonly require a person to live only in a specific area (assigned residence), obey a night-time curfew, and/or report to the police daily, among other measures. There is no intention on the state's part to investigate or criminally prosecute people affected by such orders. If law enforcement officers or other state actors simply believe that a person might, in the future, pose a threat to national security, administrative control measures can be applied. But few – if any – of the procedural safeguards that exist in the criminal justice system apply in the administrative context. In fact, most people have no access to the information the state allegedly has on them because it is often classified and kept secret, so individuals may have no idea why exactly they are on the government's radar.<sup>26</sup> People subject to these measures are thus punished in violation of their right to a fair trial and without any effective means to challenge such punishment, permitting the government to penalize individuals without having to prove their guilt.<sup>27</sup>

The manner in which some governments apply administrative control orders and other counterterrorism measures also breaches one of the foundational principles of the EU, that of non-discrimination. Often, the measures have proved to be discriminatory on paper and in practice, and have had a disproportionate and profoundly negative impact, particularly on Muslims, foreign nationals or people perceived to be Muslim or foreign.<sup>28</sup> For example,

<sup>25</sup> Amnesty International, *Europe: Dangerously disproportionate: The ever-expanding national security state in Europe* (Index: EUR 01/5342/2017), <https://www.amnesty.org/en/documents/eur01/5342/2017/en/> p.6

<sup>26</sup> Amnesty International, *France: Punished without trial – the use of administrative control measures in the context of counterterrorism in France* (Index: EUR 21/9349/2018), November 2018, <https://www.amnesty.org/en/documents/eur21/9349/2018/en/> pp.5-6

<sup>27</sup> Amnesty International, *Liberté, Egalité, Absurdité*, 22 November 2018, <https://www.amnesty.org/en/latest/news/2018/11/liberty-egalite-absurdite/>

<sup>28</sup> Amnesty International, *Europe: Dangerously disproportionate: The ever-expanding national security state in Europe* (Index: EUR 01/5342/2017), <https://www.amnesty.org/en/documents/eur01/5342/2017/en/> p. 7

the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism observed the discriminatory impacts of counterterrorism measures in France in 2018: “One complex challenge in assessing the effects of counterterrorism laws on specific communities including racial profiling and disparate effects is the constraint on gathering national data concerning minorities or specified religious groups. Despite the formal barriers to data disaggregation, it is clear that the French Arab and/or Muslim communities have been primarily subject to exceptional measures both during the state of emergency and presently from the SILT law, in tandem with other counterterrorism measures.”<sup>29</sup>

## FRANCE

Administrative control measures have long been used against foreign nationals, but such measures have only recently become a regular practice by **France**. At first available only as an exceptional measure under the 2015 state of emergency, counterterrorism control orders were brought into the ordinary legal system in October 2017.<sup>30</sup> The Minister of Interior may impose such orders “for the sole purpose of preventing the commission of terrorist acts”.<sup>31</sup> The measures themselves confine a person to a specific town, require them to report daily to the police and, in some cases, prevent them from contacting certain individuals or visiting certain locations. Should they violate any of these conditions, they risk prison. By concentrating power in the hands of the government, completely outside of the normal criminal justice system, administrative control measures are open to abuse and discriminatory application, including toward Muslims.

All of the individuals interviewed for Amnesty International’s 2018 *Punished Without Trial* report expressed the view that they were targeted for the application of administrative control orders because of their religious practice and identity. In each case, control orders were applied using *notes blanches* [secret evidence provided by intelligence services, see below]. Justifications for imposing an administrative control order – among others – included those individuals’ religious practices or behaviours perceived by the authorities as linked to “radical Islam” or “jihadism”. Those practices included the fact that a person began growing a beard; “having religious documents” (undefined in the *note blanche*); possessing CDs of Quranic chants or recitals; a person’s style of dress; the expressed desire to live in a Muslim country; alleged links with individuals who have a “rigorous” practice of Islam and more generally, the “manifestation” of religious practice (that is Islam).<sup>32</sup>

## UNITED KINGDOM

In the **UK**, control orders, initially introduced under emergency legislation in 2004, ceased to be a temporary, renewable emergency measure and were made permanent as Terrorism Prevention and Investigation Measures (TPIMs) in 2011. The then Independent

<sup>29</sup> UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *France: UN expert says new terrorism laws may undermine fundamental rights and freedoms*, May 2018, [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23130&LangID=E](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23130&LangID=E) p.7

<sup>30</sup> Amnesty International, *France: Punished without trial – the use of administrative control measures in the context of counterterrorism in France* (Index: EUR 21/9349/2018), November 2018, <https://www.amnesty.org/en/documents/eur21/9349/2018/en/>

<sup>31</sup> Articles L228-1 à 7 of the Code on internal security created by the article 2 of the Law n° 2017-1510 of October 30th [https://www.legifrance.gouv.fr/eli/loi/2017/10/30/INTX1716370L/jo/article\\_3](https://www.legifrance.gouv.fr/eli/loi/2017/10/30/INTX1716370L/jo/article_3)

<sup>32</sup> Amnesty International, *France: Punished without trial – the use of administrative control measures in the context of counterterrorism in France* (Index: EUR 21/9349/2018), November 2018, <https://www.amnesty.org/en/documents/eur21/9349/2018/en/> p.29



Reviewer of Terrorism Legislation, Lord Anderson, reviewed the TPIM regime and recommended the measures be made less intrusive, time limited and only imposed where the Secretary of State could satisfy a court that on the balance of probabilities the individual was or had been involved in terrorism related activity ('TRA'). The government accepted that advice and raised the threshold in 2015 in the Counter-Terrorism and Security Act.

The UK government's Counter-Terrorism and Sentencing Act 2021 again amended the TPIM regime, effectively recreating the previous stricter control order system.<sup>33</sup> These regressions included lowering the standard of proof to the bare minimum capable of being considered a threshold condition; removing entirely the limit on the number of times an order can be re-imposed on the basis of the same (increasingly old) evidence; and removing the restriction on the maximum number of hours of curfew (house arrest) the individual can be placed under. TPIMs can amount to deprivation of liberty and involve restrictions on the rights to privacy, expression, association and movement, and will lead to violations.<sup>34</sup>

## SWITZERLAND

In April 2021, the **Swiss** parliament adopted new legislation that empowers police to impose restrictions on "potentially dangerous persons" without having to charge them with any crime, among other measures.<sup>35</sup> The federal police can order the control measures at the request of the intelligence service and cantonal or communal authorities; they can include obligations to report to and attend interviews with the authorities aimed at assessing the person's "potential dangerousness",<sup>36</sup> bans on contact with certain individuals, bans on visiting certain neighbourhoods, locations or regions, bans on leaving the country, electronic surveillance and surveillance via mobile phones in real time<sup>37</sup> as well as forced or assigned residency. Numerous expert authorities have severely criticized the Swiss government for enshrining the use of administrative control orders into its national legislation.<sup>38</sup>

<sup>33</sup> Amnesty International UK, Counter-terrorism and Sentencing Bill 2019-21, Submission to the Public Bill Committee, June 2020, <https://publications.parliament.uk/pa/cm5801/cmpublic/CounterTerrorism/memo/CTSB07.pdf> paras. 4 - 7

<sup>34</sup> Amnesty International, Submission To The 41st Session Of The UPR Working Group, November 2022, "United Kingdom: Dismantling The Human Rights Framework", EUR 45/5421/2022, March 2022, <https://www.amnesty.org/ar/wp-content/uploads/2022/04/EUR4554212022ENGLISH.pdf>, para. 12

<sup>35</sup> Bundesgesetz über polizeiliche Massnahmen zur Bekämpfung von Terrorismus (PMT), <https://www.admin.ch/gov/de/start/dokumentation/abstimmungen/20210613/bundesgesetz-uber-polizeiliche-massnahmen-zur-bekampfung-von-terrorismus.html>. A referendum against the law was unsuccessful as 56,6 % voted for the law on 13 June 2021. See Amnesty International's overview here <https://www.amnesty.ch/de/laender/europa-zentralasien/schweiz/polizeigesetz> and detailed analysis here: <https://www.amnesty.ch/de/laender/europa-zentralasien/schweiz/polizeigesetz/dok/2021/verordnung-zum-pmt-es-droht-eine-noch-invasivere-ueberwachung>; <https://www.amnesty.ch/de/laender/europa-zentralasien/schweiz/polizeigesetz/dok/2021/vage-begriffe-mit-gefaehrlichen-folgen>;

<sup>36</sup> The cantonal or communal authorities will inform the federal police about any violations of these obligations, and the outcome of the interview, see PMT Article 23k(5).

<sup>37</sup> Amnesty International Switzerland, Verordnung zum PMT – es droht eine noch invasivere Ueberwachung, 15 October 2021 <https://www.amnesty.ch/de/laender/europa-zentralasien/schweiz/polizeigesetz/dok/2021/verordnung-zum-pmt-es-droht-eine-noch-invasivere-ueberwachung>

<sup>38</sup> See Amnesty International, Grundrechte als Kollateralschaden, 25 September 2020, <https://www.amnesty.ch/de/laender/europa-zentralasien/schweiz/dok/2020/antiterror-gesetze-grundrechte-als-kollateralschaden>; Council of Europe Commissioner for Human Rights, Swiss lawmakers should review draft legislation on police counterterrorism measures to ensure respect for human rights, 13 May 2020, <https://www.coe.int/en/web/commissioner/-/swiss-lawmakers-should-review-draft-legislation-on-police-counterterrorism-measures-to-ensure-respect-for-human-rights>; Five UN special rapporteurs also noted that the measures could affect a range of human rights, see <https://www.amnesty.ch/de/laender/europa-zentralasien/schweiz/polizeigesetz/dok/2021/kritik-von-fachpersonen-findet-kein-gehoer/mandats-de-la-rapporteuse-special-sur-la-promotion-et-la-protection-des-droits-de-l2019homme-et-des-libertes-fundamentales-dans-la-lutte-antiterroriste.pdf>, and issued a

## GERMANY

The Swiss law mirrors a similar expansion of powers for police in several of the federal states in **Germany** in 2018 and 2019.<sup>39</sup> A key concern across federal states has been the shift of police powers which would allow police to intervene in case of vague criteria of “threatening danger” (*drohende Gefahr*), instead of a “concrete danger” which opens the floodgates to subjective analysis by police and does not comply with the principle of legality. While some federal states have amended their initial proposals to address criticism, human rights concerns remain, such as for example in North Rhine Westphalia where the federal government held on to the disproportionate regulation that a person can be detained for up to seven days just to establish their identity without any suspicion of criminal offence or a “concrete danger”.<sup>40</sup> A report on Bavaria’s new police law concluded that the new law’s similar preventative detention lasting several weeks affected almost exclusively people without a German passport.<sup>41</sup> More recently, the federal state of Bremen did not follow this trend of expanding police powers but included in its new police law several changes which minimize the risk of police actions that violate human rights.<sup>42</sup>

## THE NETHERLANDS

In 2017, the parliament of **The Netherlands** passed a law allowing the government to impose control orders for national security reasons on any person they claim “can be associated with ‘terrorist’ activities or the support thereof”.<sup>43</sup> The law, initially set to expire after five years, has been extended until March 2027.<sup>44</sup>

### **Secret Evidence**

## UNITED KINGDOM

Over the course of the past two decades, the **UK** government also has increasingly relied on secret evidence in court for national security issues, including national security deportations.<sup>45</sup> “Closed material procedures” (CMPs) allow the government to rely on secret evidence presented to the court behind closed doors in a range of non-criminal

further statement noting that Switzerland had “not given a satisfactory response” to their concerns about the incompatibility of the draft law with human rights, see <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26224&LangID=E>

<sup>39</sup> An overview of the changes in each federal state can be found here: [https://www.amnesty.de/sites/default/files/2019-04/Uebersicht-ueber-die-Aenderungen-der-Polizeigesetze-in-den-einzelnen-Bundeslaendern-Maerz2019\\_0.pdf](https://www.amnesty.de/sites/default/files/2019-04/Uebersicht-ueber-die-Aenderungen-der-Polizeigesetze-in-den-einzelnen-Bundeslaendern-Maerz2019_0.pdf). Amnesty International’s analysis of the different new laws can be found here: <https://www.amnesty.de/tag/polizeigesetz>

<sup>40</sup> Amnesty International Germany, Neuer Entwurf zum Politzeigesetz, Gute Ansätze, noch mehr Versäumnisse, 10 October 2018, <https://www.amnesty.de/informieren/aktuell/deutschland-neuer-entwurf-zum-polizeigesetz-nrw-gute-ansaezte-noch-mehr>

<sup>41</sup> PAG Kommission, Abschlussbericht, 30 August 2019, [https://www.polizeiaufgabengesetz.bayern.de/assets/stmi/direktzu/190830\\_abschlussbericht\\_pag-kommission.pdf](https://www.polizeiaufgabengesetz.bayern.de/assets/stmi/direktzu/190830_abschlussbericht_pag-kommission.pdf)

<sup>42</sup> These include, for example, an individual identification requirement being now legally enshrined and a limitation of police custody to 96 hours, with an appointment of a lawyer before detention of more than 24 hours. See Amnesty International, Stellungnahme zum Gesetz zur Änderung des Bremischen Polizeigesetzes und weiterer Gesetze, <https://www.amnesty.de/informieren/positionspapiere/deutschland-stellungnahme-zum-gesetz-zur-aenderung-des-bremischen>, 25 August 2020

<sup>43</sup> Amnesty International, Netherlands: Counter-terrorism bills would violate human Rights and undermine rule of law (Index: EUR35/5432/2017), 17 January 2017, <https://www.amnesty.org/en/documents/eur35/5432/2017/en/>

<sup>44</sup> <https://wetten.overheid.nl/BWBR0039210/2017-03-01> and [https://www.eerstekamer.nl/wetsvoorstel/35917\\_verlengen\\_werkingsduur#:~:text=De%20Tijdelijke%20wet%20bestuurlijke%20maatregelen%20terrorisbestrijding%20bevat%20tijdelijke%20regels%20voor,te%20sluiten%20bij%20terroristische%20strijdgroepen.](https://www.eerstekamer.nl/wetsvoorstel/35917_verlengen_werkingsduur#:~:text=De%20Tijdelijke%20wet%20bestuurlijke%20maatregelen%20terrorisbestrijding%20bevat%20tijdelijke%20regels%20voor,te%20sluiten%20bij%20terroristische%20strijdgroepen.)

<sup>45</sup> Amnesty International, Submission To The 41st Session Of The UPR Working Group, November 2022, “United Kingdom: Dismantling The Human Rights Framework”, EUR 45/5421/2022, March 2022, <https://www.amnesty.org/ar/wp-content/uploads/2022/04/EUR4554212022ENGLISH.pdf, para. 12>





judicial proceedings in the UK, and are typically invoked in cases involving persons suspected of terrorism-related activity.

CMPs allow a court or tribunal to sit in a closed (that is, secret) hearing in order to consider material presented by UK authorities which the government claims would be damaging to national security or otherwise harmful to the public interest if it were to be disclosed. This material is withheld for the entire case (and indeed perhaps forever) from the individual(s) whose interests are at stake in the case, her/his lawyer of choice, and the public, none of whom has access to the closed hearing. Instead, a government appointed lawyer must represent them in the closed hearing, without communicating the evidence to them. As a result of their exclusion from the closed hearing, they do not know the content of that material, even though the court can rely on it to determine the facts and outcome of the case. The use of CMPs lays bare the illusory nature of equality of arms in such procedures: the person excluded from access to the evidence is obviously at a distinct disadvantage. CMPs undermine basic standards of fairness and open justice, and can result in violations of the right to a fair trial, the prohibition against *refoulement*, and the right to effective remedy for victims of human rights violations.<sup>46</sup>

#### FRANCE

In **France**, *notes blanches* or “white notes” are documents provided by the intelligence services to the Ministry of Interior that allegedly contain information to justify the need for the application of an administrative control measure. These notes are typically unsigned, undated and include information about the targeted individual or their environment (for example, their mosque or religious school). They are often based on classified or secret information to which an affected person does not have access. Thus, there is no way to verify the accuracy of the alleged information – or to challenge it – as it is top secret. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has expressed concerns that white notes create “undue burdens on the presumption of innocence” and “lessen defence rights in court”.<sup>47</sup>

#### ***Terrorism Detention***

In addition to structural, sweeping counterterrorism laws, many European states also have substantially reviewed their approach to how and where people suspected or convicted of terrorism-related offences are detained.

#### THE NETHERLANDS

In a joint report, Amnesty International and the Open Society Justice Initiative documented a number of serious breaches of human rights within **The Netherlands’** special detention units (Terroristenafdeling, TA) introduced in 2006,<sup>48</sup> governed by harsh

<sup>46</sup> Amnesty International, “Left in the Dark: The use of secret evidence in the United Kingdom, EUR 45/014/2012, 15 October 2012 <https://www.amnesty.org/en/documents/eur45/014/2012/en/> pp 4 - 6

<sup>47</sup> UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *France: UN expert says new terrorism laws may undermine fundamental rights and freedoms*, May 2018, [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23130&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23130&LangID=E)

<sup>48</sup> Amnesty International and Open Society Foundations, *Inhuman and unnecessary: human rights violations in Dutch high-*

security measures and separating people suspected of or convicted of these offences from the general prison population. The units made it possible that someone suspected, not convicted, of an entirely non-violent crime, such as posting something online, could end up being detained alone for up to 22 hours a day for the duration of their stay without any meaningful human contact with the outside world. Although authorities declined to provide Amnesty International and the Open Society Justice Initiative with disaggregated data on the TA population, citing privacy reasons, our interviews with prison authorities, Public Prosecutors, lawyers, and others made it clear that the vast majority of the TA's detainees were male Muslims suspected or convicted of what the government referred to as "jihadism-related terrorism".<sup>49</sup> Former detainees and civil society groups have heavily criticized the TA for being discriminatory against Muslims and at times have taken public action to protest the TA for being a "Muslim detention centre".<sup>50</sup> Their time in detention left some former detainees with a deep sense of injustice resulting from the fact that it was primarily Muslims who were subjected to the TA's restrictive measures, including persons who had never been individually assessed as posing a security risk, had not been tried or convicted, and in some cases people who were subsequently, after a trial, acquitted.<sup>51</sup>

## RECOMMENDATIONS

Amnesty International calls on all states, including all Council of Europe member states to:

- Refrain from adopting or maintaining vague and overly broad definitions of "terrorism" and ensure that each constituent element of terrorism-related offences under national law is precisely and sufficiently circumscribed to uphold the principle of legality.
- Refrain from bypassing the ordinary criminal justice system, including by seeking the enactment of secretive administrative procedures for imposing restrictions on individuals' rights of liberty, freedom of movement, association and privacy. States should rely on the ordinary criminal justice system and avoid creating parallel administrative executive powers.
- Ensure that no person is subjected to arbitrary detention in the context of counterterrorism operations. States must ensure that deprivation of liberty is in accordance with law, is necessary and proportionate and includes procedural safeguards including the rights to be promptly informed of any charges; be brought promptly before a judge; access counsel of choice from the outset of detention; challenge effectively the legality of the detention before a court; and be afforded an effective remedy in a case of unlawful deprivation of liberty.

security prisons in the context of counterterrorism (Index: EUR35/7351/2017), October 2017, <https://www.amnesty.org/en/documents/eur35/7351/2017/en/> p.6

<sup>49</sup> Amnesty International and Open Society Foundations, Inhuman and unnecessary: human rights violations in Dutch high-security prisons in the context of counterterrorism (Index: EUR35/7351/2017), October 2017, <https://www.amnesty.org/en/documents/eur35/7351/2017/en/> p.17

<sup>50</sup> 'Discriminatie en lichamelijke vernedering': moslims willen humaner beleid ('Discrimination and physical humiliation': Muslims want more humane policy), Brabants Dagblad, 17 May 2016.

<sup>51</sup> Although the report did not assess whether TAs or terrorism legislation has been used and applied in a discriminatory manner, it is important to recognize that many former detainees interviewed shared the strong belief that the TA was a detention facility that specifically targeted Muslims. For more detail, see Amnesty International and Open Society Foundations, Inhuman and unnecessary: human rights violations in Dutch high-security prisons in the context of counterterrorism (Index: EUR35/7351/2017), October 2017, <https://www.amnesty.org/en/documents/eur35/7351/2017/en/> pp 17-18

- Avoid to the greatest extent possible the use of secret evidence. While imminent national security concerns may enable states to restrict publication of sensitive materials, investigations and prosecutions must have the necessary safeguards to ensure a defendant and their chosen legal team can rely on the rule of law and the right to a fair trial.
- Under no circumstances subject foreign nationals to refoulement. No one should be deported on grounds of secret evidence which they cannot effectively challenge in court.
- Regularly review counterterrorism and other national security legislation and policies to test for their necessity, proportionality and apply the principle of equality and non-discrimination.

## **FREEDOM OF EXPRESSION, FREEDOM OF ASSOCIATION, FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION**

A derivative effect of undermining the human rights of Muslim people, and those perceived as Muslims, within the context of national security and counter-terrorism has been an extension of generic suspicion of Muslim peoples' participation in civil society. This has resulted in arbitrary and discriminatory interference with Muslim people's right to practice their faith, and to organize collectively to combat discrimination and illegitimate restrictions on freedom of speech.

Muslim people, and those perceived as Muslim exercising their human rights to freedom of expression, association, thought, conscience and belief, are too frequently conflated with evidence of radicalization, with even the activities and expression of children being treated as suspect.

### **UNITED KINGDOM**

In 2021, the UK Government launched a review of the duty in the Counter-Terrorism and Security Act 2015 which imposes a duty on a vast array of professionals, including teachers and healthcare professionals, to vet their service users in case they are at risk of being “drawn into terrorism”. The Prevent duty – which seeks to identify persons, including children, allegedly at risk of “radicalization” – has long been criticized by human rights organizations, including Amnesty International;<sup>52</sup> Muslim community groups;<sup>53</sup> numerous other civil society actors;<sup>54</sup> UK parliamentary committees<sup>55</sup> and several UN Special Rapporteurs.<sup>56</sup>

<sup>52</sup> See, for example, Amnesty International, UK: David Cameron's defence of the Prevent programme is 'shockingly misplaced', <https://www.amnesty.org.uk/press-releases/uk-david-camerons-defence-prevent-programme-shockingly-misplaced>

<sup>53</sup> Muslim Council of Britain, Concerns on Prevent, 28 July 2015, <https://www.mcb.org.uk/wp-content/uploads/2015/10/20150803-Case-studies-about-Prevent.pdf>

<sup>54</sup> See, for example, Liberty, *Rights groups boycott prevent review*, 16 February 2021, <https://www.libertyhumanrights.org.uk/fundamental/prevent/>

<sup>55</sup> See for example, Joint Select Committee on Human Rights, 3The Prevent Strategy and Duty, <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/105/10506.htm>

<sup>56</sup> Special Rapporteur on counter-terrorism and human rights, Human rights impact of policies and practices aimed at preventing and countering violent extremism (UN Doc. A/HRC/43/46), 2020, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/045/67/PDF/G2004567.pdf?OpenElement>; Statement by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association at the Conclusion of his Visit to the United Kingdom, 21 April 2016, [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A\\_HRC\\_35\\_28\\_Add.1\\_AEV.docx](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_28_Add.1_AEV.docx)

Critics have specifically highlighted Prevent's discriminatory targeting of Muslims and its chilling effect on freedom of expression and democratic participation as people refrain from engaging in various forms of legitimate political and social activity because they fear appearing on the state's radar; and how the duties associated with the programme infringe on the rights of children.<sup>57</sup> Data from 2014 to 2016 showed that 39% of children referred under Prevent were recorded as Muslim and 38% were Asian. This is vastly disproportionate to these groups' representation in the UK population. Several cases of children referred to Prevent confirms the significant stereotypes on their racial and religious background.<sup>58</sup>

Amnesty International UK joined a coalition of 17 human rights and community groups in a boycott of the review of Prevent being led by William Shawcross, citing serious concerns about bias and a pattern of behaviour which demonstrated the Government's unwillingness to meaningfully engage with affected communities and to seriously interrogate the Prevent Duty, including its disproportionate reporting of British Muslim children and its chilling effect on British Muslims' freedom of expression and ability to access essential services.<sup>59</sup>

## FRANCE

Since 2020, the French government has investigated thousands, and temporarily or permanently closed scores of Muslim institutions including places of worship, civil society groups, schools and businesses. Senior government officials routinely refer their "legislative arsenal",<sup>60</sup> typically relying on a combination of Article 212-1 of the Law on National Security which provides for the dissolution of groups by decree, the 2017 SILT law which codified exceptional administrative powers from the state of emergency, and a new law on "reinforcing respect for republican values" introduced in August 2021 and anecdotally referred to as the "séparatisme" law.<sup>61</sup>

<sup>57</sup> See, among others, Rights and Security International, *RWUK takes legal action over prevent review*, 6 February 2020, <https://www.rightsandsecurity.org/impact/entry/rights-watch-uk-takes-legal-action-over-prevent-review>; Leigh Day, Government concedes position in Prevent legal challenge <https://www.leighday.co.uk/latest-updates/news/2019-news/government-concedes-position-in-prevent-legal-challenge/>; Amnesty International and Open Societies Foundation, *Europe: A Human Rights Guide for researching racial and religious discrimination in counter-terrorism* (Index: EUR 01/3606/2021), February 2021, <https://www.amnesty.org/en/documents/eur01/3606/2021/en/>, p. 65-66

<sup>58</sup> Amnesty International UK, UK: David Cameron's defence of the Prevent programme is 'shockingly misplaced', 26 April 2022, <https://www.amnesty.org.uk/press-releases/uk-david-camerons-defence-prevent-programme-shockingly-misplaced>

<sup>59</sup> Amnesty International, United Kingdom: Dismantling the Human Rights Framework, March 2022, <https://www.amnesty.org/ar/wp-content/uploads/2022/04/EUR4554212022ENGLISH.pdf> para. 13

<sup>60</sup> "Cela veut dire que nous intégrons la lutte contre l'islamisme et le communautarisme au cœur de vos missions. Les atteintes à la République doivent être identifiées et sanctionnées. Je vous demande la plus grande vigilance et la plus grande fermeté. Notre arsenal législatif et réglementaire est prêt. Il est à votre disposition et je vous demande d'en utiliser tous les ressorts.

4Dès qu'il existe des doutes sur un lieu ou sur une association, je vous demande de ne pas hésiter à réaliser des inspections, des contrôles. Et si des manquements sont établis, je vous demande de décider des fermetures administratives sans hésiter. Je pense aux débits de boissons qui deviennent des lieux de rassemblement islamiste. Je pense à certains lieux de culte, à certaines écoles et certains centres culturels et sportifs qui se transforment en incubateur de haine."

Ministère de l'Intérieur, "Discours d'ouverture de M. Christophe Castaner lors du séminaire des préfets consacré à la lutte contre l'islamisme et le repli communautaire", 28 novembre 2019, <https://www.interieur.gouv.fr/Archives/Archives-ministres-de-l-Interieur/Archives-Christophe-Castaner/Interventions/Discours-d-ouverture-de-M.-Christophe-Castaner-lors-du-seminaire-des-prefets-consacre-a-la-lutte-contre-l-islamisme-et-le-repli-communautaire>

<sup>61</sup> Décret n° 2021-1947 du 31 décembre 2021 pris pour l'application de l'article 10-1 de la loi n° 2000-321 du 12 avril 2000 et approuvant le contrat d'engagement républicain des associations et fondations bénéficiant de subventions publiques ou d'un agrément de l'Etat <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044806609#:~:text=Dans%20les%20r%C3%A9sum%C3%A9s-,D%C3%A9cret%20n%C2%B0%202021%2D1947%20du%2031%20d%C3%A9cembre%202021%20pris,un%20agr%C3%A9ment%20de%20l'Etat>

The text of these laws do not explicitly refer to Muslim people or the religion of Islam, however the political context within which they were proposed, debated by legislators, and the government's reporting on their implementation betrays an overt focus on combatting undefined, vague concepts such as "political Islam", "radical Islam" and "Islamist separatism" often referred to interchangeably. Such broad and vague targets risk significant overreach and indirect discriminatory effects for Muslims and people perceived to be Muslims in France. Statements from senior government officials have demonstrated a pretext for targeting Muslim communities despite the SILT and "séparatisme" laws being prima facie neutral.<sup>62</sup>

A failure to clearly distinguish between efforts to prevent and punish criminal acts and a wider campaign using the force of national security and counterterrorism legislation to combat vague ideological, religious, cultural and political concepts casts an excessively wide net of suspicion. This ideological campaign has been codified within the new crime of "separatism" carrying a prison sentence of up five years despite not being clearly defined beyond "protecting elected officials and public servants from threats and violence."<sup>63</sup> From its inception, Amnesty International warned that many provisions in the "séparatisme" law were ill-defined, overly-broad and risked discriminatory application.<sup>64</sup>

In an October 2021 press conference, Interior Minister Darmanin stated that 92 mosques had been investigated under suspicion of *séparatisme*, 21 of which were then closed.<sup>65</sup> The closure of these places of worship is often based on secret evidence meaning that the sources and content of allegations gathered by intelligence services are unknown and cannot be meaningfully challenged, undermining the rule of law and right to a fair trial.<sup>66</sup> In January 2022, the President's office shared new statistics regarding the "fight against Islamism and communitarianism", revealing that across the country, 24,877 investigations had been carried out resulting in the closure 718 establishments accused of *séparatisme* accompanied by the seizure of 46 million euros of assets. As well as mosques, other institutions targeted as part of this campaign have included Muslim schools and butchers on grounds of building safety, security and hygiene measures,

<sup>62</sup> In an interview published on 31 October 2020, Interior Minister Darmanin responded to a question about the speed of violent, deadly attacks saying: "In general, I insist on the vigilance of all French people, who could overhear a conversation, identify terrorist sympathising on social media platforms. Everybody can be a custodian of society. It is a cultural war we are waging. The fight against radical Islam plays out in the Republic's schools, in the public services to reject communitarian behaviour, on the internet, in the forums of hatred, in civil society groups and in places of worship." Dans l'attaque de Nice, les policiers municipaux sont arrivés en seulement quelques minutes. Le tueur a eu le temps d'assassiner trois personnes. Le quadrillage du pays par les forces de l'ordre peut-il constituer la seule réponse ? « Évidemment, on ne peut mettre un policier dans chaque rue. Même si, lors des trois dernières attaques, la police a pu soit interrompre la tuerie soit arrêter le terroriste. De manière générale, j'insiste sur le devoir de vigilance de tous les Français, qui peuvent entendre une conversation, repérer des apologues du terrorisme sur les réseaux sociaux. Chacun peut être une vigie de la société. C'est une guerre culturelle que nous menons. La lutte contre l'islam radical se joue à l'école de la République, dans les services publics pour refuser les comportements communitaristes, sur Internet, laboratoire de la haine, dans les associations et les lieux de culte. »

<sup>63</sup> "protéger les élus et agents publics contre les menaces ou violences pour obtenir une exemption ou une application différenciée des règles du service public"

Loi du 24 août 2021 confortant le respect des principes de la République, <https://www.vie-publique.fr/loi/277621-loi-separatisme-respect-des-principes-de-la-republique-24-aout-2021>

<sup>64</sup> Amnesty International, France: Republican values laws risk discrimination, March 2021,

<https://www.amnesty.org/en/latest/news/2021/03/france-republican-values-law-risks-discrimination/>

<sup>65</sup> Le Point, Islam radical : sept structures seront dissoutes « à la fin de l'année », 26 Octobre 2021, [https://www.lepoint.fr/politique/gerald-darmanin-se-felicite-de-la-fermeture-de-la-mosquee-d-allonnes-26-10-2021-2449321\\_20.php](https://www.lepoint.fr/politique/gerald-darmanin-se-felicite-de-la-fermeture-de-la-mosquee-d-allonnes-26-10-2021-2449321_20.php)

<sup>66</sup> Juliette Jabkhiro, Reuters, *Special Report: French mosque closures based on 'secretive evidence,' critics say*, 5 April 2022, <https://www.reuters.com/world/europe/france-closes-mosques-with-powers-that-some-critics-say-use-secretive-evidence-2022-04-05/>

raising concerns about the conflation between counterterrorism initiatives and generic surveillance and harassment of Muslim communities.<sup>67</sup>

Amnesty International is concerned that France's efforts to prevent and prosecute those responsible from violent attacks has been progressively conflated with restricting the freedom of expression and association for Muslim people and human rights defenders mobilizing against discrimination in France. We are also concerned that such a stance is being replicated at a regional level in light of France and the European Union registering dissent against the UN General Assembly's adoption of an International Day to Combat Islamophobia.<sup>68</sup>

An emblematic case of overreach resulting in attacks on Muslim communities' freedom of expression and association, was the shuttering of the Comité Contre Islamophobie en France (CCIF), an NGO which fought against anti-Muslim discrimination in France. The dissolution of an organization by decree is an extreme measure that can be justified only in very limited circumstances, such as if it poses a clear and imminent danger to national security or public order. The French authorities failed to provide any evidence of such a threat when justifying the dissolution of CCIF raising concerns about a subsequent chilling effect for activists and NGOs fighting against discrimination in France.<sup>69</sup>

#### AUSTRIA

The fight against "political Islam" has also been invoked by politicians, including government representatives, shaping political and public narratives and discourse in **Austria**. In its most recent report on the country, the European Commission against Racism and Intolerance (ECRI) stated that "there are high levels of Islamophobia and the public discourse has become increasingly xenophobic. Political speech has taken on highly divisive and antagonistic overtones particularly targeting Muslims and refugees."<sup>70</sup>

Following a terrorist attack in Vienna in November 2020, the authorities dissolved a number of Muslim associations using problematic procedures, and introduced a new package of counterterrorism measures. Among others, it included a new offence criminalizing "religiously motivated extremist connections", an unnecessary and disproportionate interference with the rights to freedom of religion, expression and association. Other problematic provisions in the legislative package included an extension of the law of forbidden symbols without a direct connection to terrorist groups or acts, nationality stripping provisions, as well as the possibility to cancel the legal personality of religious communities, mosques and religious professional associations; and a duty of religious communities to compile a list of religious officials, entitled "Imam list", exposing

<sup>67</sup> " Sous l'autorité des préfets, les CLIR sont pleinement opérationnelles dans chaque département, avec un bilan cumulé de 24 877 opérations de contrôle qui ont conduit à fermer 718 établissements ou structures séparatistes et permis la saisie ou le redressement de 46 millions euros d'avoirs." <https://www.elysee.fr/front/pdf/elysee-module-19130-fr.pdf>

<sup>68</sup> Middle East Eye, France, EU and India opposed creation of UN day to combat Islamophobia, 17 March 2022 <https://www.middleeasteye.net/news/un-islamophobia-combat-day-india-france-eu-opposed>

<sup>69</sup> Amnesty International, France: shutting down anti-racist organisation risks freedoms, 20 November 2020, <https://www.amnesty.org/en/latest/news/2020/11/france-shutting-down-antiracist-organisation-risks-freedoms/>

<sup>70</sup> ECRI report on Austria, Sixth Monitoring Cycle, 7 April 2020, <https://rm.coe.int/report-on-austria-6th-monitoring-cycle-16809e826f>



the highly discriminatory and stigmatizing motives behind the legislation which could also have a chilling effect on exercising the right to freedom of religion.<sup>71</sup>

In November 2020, to “fight political Islam”, the Interior Ministry conducted raids against alleged members of the Muslim Brotherhood and Hamas which targeted scholars and aid organizations,<sup>72</sup> most of which were later declared unlawful by the courts.<sup>73</sup> Two days after the raids, at the press conference on the adoption of the new anti-terror package, the then chancellor Sebastian Kurz stated that “We have to fight two challenges: First, the corona pandemic and second the even stronger fight against terrorism and radicalization in Austria and Europe.”<sup>74</sup> The establishment of a new Documentation Center for Political Islam (*Dokumentationsstelle Politischer Islam*) by the Austrian government is part of the strategy of this “fight”, equipped with an annual budget of 500,000 euros.<sup>75</sup> One of the first major endeavours of the centre was the creation of an “Islam map”<sup>76</sup> which aims to record and describe all Muslim associations, religious communities and Muslim umbrella organizations active in Austria, setting a further dangerous example of how Muslim civil society is put under general suspicion and all Muslims living in Austria are seen as a potential threat to society and the country's traditional model of governance.<sup>77</sup>

While the Minister for Integration rejected such concerns, stating that the project did not target a specific religion or Muslims but those who “want to undermine Austria's foundation of values”, and that the map “created transparency and shed light on structures”,<sup>78</sup> the way the map has been created, published and framed is highly stigmatizing, further embedding anti-Muslim racism in public discourse and society, as noted by the Council of Europe Special Representative of the Secretary General on antisemitic, anti-Muslim and other forms of religious intolerance and hate crimes, urging the Austrian authorities to withdraw the map;<sup>79</sup> the representative also noted that through the publication of (private) addresses and other details, people perceived the map as a

<sup>71</sup> Amnesty International, Austria: Stellungnahme Bundesgesetze Anti-terror-Paket, January 2021, [https://www.amnesty.at/media/8087/amnesty\\_oesterreich\\_stellungnahme\\_bundesgesetze\\_anti-terrorismus-massnahmen\\_jan-2021.pdf](https://www.amnesty.at/media/8087/amnesty_oesterreich_stellungnahme_bundesgesetze_anti-terrorismus-massnahmen_jan-2021.pdf)

<sup>72</sup> Rahma Austria, “Operation Luxor blockiert humanitäre Hilfe,” 22 December 2020, [https://www.ots.at/presseaussendung/OTS\\_20201222\\_OTS0130/operation-luxor-blockiert-humanitaere-hilfe-bild-15](https://www.ots.at/presseaussendung/OTS_20201222_OTS0130/operation-luxor-blockiert-humanitaere-hilfe-bild-15). Bernhard Ichner, “Operation Luxor: Uni-Professoren stellen sich hinter Farid Hafez”, Kurier, 22 January 2021, <https://kurier.at/chronik/oesterreich/operation-luxor-uni-professoren-stellen-sich-hinter-farid-hafez/401165178>

<sup>73</sup> BVZ, Razzien bei Operation “Luxor” zum Teil rechtswidrig, 3 August 2021, <https://m.bvz.at/in-ausland/oesterreich-razzien-bei-operation-luxor-zum-teil-rechtswidrig-ermittlung-extremismus-gericht-steiermark-284208487> July 2021

<sup>74</sup> Bundeskanzleramt, Bundeskanzler Kurz: Terrorismus und politischen Islam mit allen Mitteln bekämpfen. Ministerrat verabschiedet umfassendes Anti-terror-Paket, 11 November 2020, <https://www.bundeskanzleramt.gv.at/bundeskanzleramt/nachrichten-der-bundesregierung/2020/bundeskanzler-kurz-terrorismus-und-politischen-islam-mit-allen-mitteln-bekaempfen.html>

<sup>75</sup> Bundeskanzleramt, Integrationsministerin Raab: Dokumentationsstelle Politischer Islam nimmt Arbeit auf, 15 July 2020, <https://www.bundeskanzleramt.gv.at/bundeskanzleramt/nachrichten-der-bundesregierung/2020/integrationsministerin-raab-dokumentationsstelle-politischer-islam-nimmt-arbeit-auf.html>

<sup>76</sup> Islam Map available at: [www.islam-landkarte.at](http://www.islam-landkarte.at)

<sup>77</sup> Amnesty International Austria, Twitter @amnestyaustria, 28 May 2021, <https://twitter.com/amnestyaustria/status/1398203960499097600>

<sup>78</sup> Bundeskanzleramt, Integrationsministerin Raab: Spaltende und integrationsfeindliche Ideologie darf sich in Österreich nicht verbreiten, 27 May 2021, <https://www.bundeskanzleramt.gv.at/bundeskanzleramt/nachrichten-der-bundesregierung/2021/05/integrationsministerin-raab-spaltende-und-integrationsfeindliche-ideologie-darf-sich-in-oesterreich-nicht-verbreiten.html>

<sup>79</sup> Council of Europe, Special Representative of the Secretary General on anti-semitic, anti-Muslim, and other forms of religious intolerance and hate crimes, *Publication of Austria's “Islam map” is hostile to Muslims and potentially counterproductive*, 31 May 2021, <https://www.coe.int/en/web/antisemitic-anti-muslim-hatred-hate-crimes/-/publication-of-austria-s-islam-map-is-hostile-to-muslims-and-potentially-counterproductive>



threat to their security, and rightly so as shown by the increase of attacks in the days after publication (see overview).

## RECOMMENDATIONS

Amnesty International calls on all states, including all Council of Europe Member States to:

- Promote and protect the right to freedom of expression and only restrict forms of expression if absolutely necessary and proportionate to the achievement of a legitimate objective, and on the basis of a clear and precise legal provision.
- Only subject forms of expression to criminal prosecution where it genuinely amounts to incitement, that is encouraging others to commit recognizable criminal acts with the intent to incite them to commit such acts and with a reasonable likelihood that they would commit such acts, with a clear and direct causative link between the statement/expression and the criminal act; vague offences such as “glorification” or “apology” of terrorism should be repealed.
- Refrain from the dissolution of any institution, including Muslim civil society organizations, unless demonstrably necessary and proportionate in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others, and the result of a court-led process. Dissolution of civil society or religious organizations by decree is inconsistent with international law and should not be pursued.
- Prioritize the rights of the child and refrain from subjecting children’s expression to disproportionate scrutiny and as a matter of national security.
- Abandon discriminatory presumptions singularly targeting Muslim communities for anti-radicalization programmes, in particular to the detrimental consideration of other threats to people’s security such as extremism targeting racial, ethnic and religious minorities or LGBTI people; and gender-based violence.

## GENDER-BASED DISCRIMINATION: IMPACT ON MUSLIM WOMEN

The UN Special Rapporteur on freedom of religion or belief’s May 2021 report on Countering Islamophobia/Anti-Muslim Hatred highlighted the intersectional nature of discrimination and hostility experienced by Muslim women who “may face a ‘triple penalty’ as women, minority ethnic and Muslim”.<sup>80</sup> The Rapporteur also warned that “harmful stereotypes and tropes about Muslims and Islam are chronically reinforced by mainstream media, powerful politicians, influencers of popular culture and in academic discourse”. Under international human rights law, states have specific obligations to counter gender-based stereotypes, including by taking steps to end negative gender

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<sup>80</sup> UN Special Rapporteur on freedom of religion or belief, Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief (UN Doc. A/HRC/46/30), 13 April 2021; OHCHR, UN expert says anti-Muslim hatred rises to epidemic proportions, urges States to act, 4 March 2021, <https://www.ohchr.org/en/press-releases/2021/03/un-expert-says-anti-muslim-hatred-rises-epidemic-proportions-urges-states>

stereotypes relating to women and men, or to specific groups of women,<sup>81</sup> and promote the values of gender equality and non-discrimination.<sup>82</sup>

***Discriminatory restrictions on Muslim women's choice of clothing in public including in the workplace, schools and sports venues***

Since 2011, policy makers have passed laws that prohibit covering one's face in many European countries including Austria, Belgium, Bulgaria, Denmark, France, the Netherlands, and Switzerland. Their target: Muslim women wearing the niqab (a full-face veil), which many have also incorrectly called a burqa.<sup>83</sup> Prohibitions on the wearing of face coverings in public places violate Muslim women's rights under international human rights laws and standards, including the International Covenant on Civil and Political Rights, and should be repealed.<sup>84</sup>

The European Court of Human Rights has issued problematic rulings regarding blanket bans prohibiting women from choosing to wear full-face veils. A 2014 ruling on full-face veils effectively punished women for expressing their beliefs based on incoherent reasoning which perpetuated negative and harmful gender-based stereotypes.<sup>85</sup> Framing full-face veils as a security threat or singling them out as a symbol of women's oppression is imbued with negative and discriminatory stereotypes that are endemic to the "othering" of Muslim women because of their religion. The prohibition of wearing full-face veils is also a disproportionate restriction of Muslim women's human rights, including to freedom of expression and to freedom of religion or belief, a minority whose position in society is too often defined by discrimination and racism.<sup>86</sup>

**FRANCE**

French legislation which entered into force on 11 April 2011 (Law 2010-1192) prohibits "any form of dress aimed at concealing the face in public", meaning full-face veils can only be worn at home, in private cars or in places of worship.<sup>87</sup> Whoever contravenes the legislation can be punished with a fine and/or citizenship training; courts are responsible for deciding on the punishment, on a case by case basis. While some restrictions of

<sup>81</sup> Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, Article 5: CEDAW Committee, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, UN. Doc. CEDAW/C/CG/35, 2017, para 30(d)(i).

<sup>82</sup> CEDAW Committee, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, UN. Doc. CEDAW/C/CG/35, 2017, para 30(b)(i).

<sup>83</sup> Amnesty International, *Is a face mask used to fight COVID-19 really that different from a niqab?*, 26 May 2020, <https://www.amnesty.org/en/latest/news/2020/05/face-masks-and-niqabs/>

<sup>84</sup> States are bound by Article 27 of the ICCPR stipulating that persons belonging to ethnic, religious or linguistic minorities "shall not be denied the right, in community with the other members of their group to enjoy their own culture, to profess and practice their own religion, or to use their own language".

In two cases of July 2018 on the ban of wearing of the niqab in the public space, the Human Rights Committee decided that France had violated the individuals' rights under Articles 18 and 26 of ICCPR

<sup>85</sup> In the case of *S.A.S. v France*, while the court recognised that arguments based on public safety and gender equality were specious, it accepted that wearing full-face veils runs counter to established social norms that are necessary for 'living together', which runs contrary to previous ECtHR judgments in which the Court repeatedly insisted that discomfort and shock are the price democratic societies must pay precisely to enable "living together". The ruling effectively forced a small minority to live apart, obliging women to choose between the expressing their religious beliefs and being in public. See Amnesty International, *European Court ruling on full-face veils punishes women for expressing their beliefs*, 1 July 2014, <https://www.amnesty.org/en/latest/news/2014/07/european-court-ruling-full-face-veils-punishes-women-expressing-their-beliefs/>

<sup>86</sup> Amnesty International, *Is a face mask used to fight COVID-19 really that different from a niqab?*, 26 May 2020, <https://www.amnesty.org/en/latest/news/2020/05/face-masks-and-niqabs/>

<sup>87</sup> Some other exceptions to the general ban include situations where the face is covered on the basis of existing safety and health regulations or for public festivities.

freedom of expression and religion can be justified in specific contexts, Amnesty International believes that the general restrictions imposed by the French legislation are discriminatory in intent and effect and neither proportionate nor necessary to achieve any of the permissible aims under international and European human rights law, and also are specifically gendered and racist in the harm they inflict on the Muslim women and girls affected.

In 2018, the UN Human Rights Committee found that the country had violated the human rights of two Muslim women by imposing fines on them for wearing the niqab, as the ban disproportionately affected the women concerned and violated their rights to freedom of thought, conscious, religion or belief and to be free from discrimination as France failed to demonstrate that such a general ban was necessary and proportionate. The Human Rights Committee also pointed out other discriminatory effects that laws such as the French ban may have on Muslim women. It warned that they may result in “confining them to their homes, impeding their access to public services and exposing them to abuse and marginalization”.<sup>88</sup>

In 2016, the Conseil D’État, France’s highest administrative court overturned a discriminatory ban on full-body swimsuits, often described as “burkinis” and worn by Muslim women who choose to wear head scarves.<sup>89</sup> The decision recognized the local bans as “an illegal attack on fundamental freedoms”.<sup>90</sup> On 17 May 2022, the Grenoble council adopted a decree proposed by the Mayor Eric Piolle, authorizing the wearing of full-body swimsuits in municipal swimming pools as well as removing restrictions on other women’s swimwear. The decision prompted angry responses from the president of the Auvergne-Rhône-Alpes region, Laurent Wauquiez, who suspended regional funding from the region to the city as a result of the decision which represented “a total rupture with the values of the Republic”.<sup>91</sup> Subsequently, an administrative tribunal suspended the authorization of full-body swimsuits on the grounds that permitting women to wear such swimsuits constituted a breach of the “séparatisme” law. This decision was welcomed by the Interior Minister as “a victory for the République and laïcité”. An appeal is pending before the Conseil d’État.<sup>92</sup>

A discriminatory policy currently operated by the Fédération de Football prohibits women who wear headscarves from participating in football matches despite the global governing body FIFA having overturned its own ban on headwear in football since 2014. A group of Senators have repeatedly tried to expand this policy into a national law applicable to all sports.<sup>93</sup> Parliamentary sessions debating these proposals have been stained with

<sup>88</sup> UN Special Rapporteur on freedom of religion or belief, Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief (UN Doc. A/HRC/46/30), 13 April 2021

<sup>89</sup> Amnesty International, *France: Reaction to court decision to overturn burkini ban*, 26 August 2016,

<https://www.amnesty.org/en/latest/news/2016/08/france-reaction-to-court-decision-to-overturn-burkini-ban/>

<sup>90</sup> Amnesty International, FRANCE : Le Conseil d’etat suspend l’arrêté « anti-burkini » , 26 August

2016, <https://www.amnesty.fr/liberte-d-expression/actualites/france-le-conseil-detat-suspend-larrete--anti-burkini>

<sup>91</sup> Maire Info, *Burkini à Grenoble : l’État attaque la décision du conseil municipal, l’AMF demande des « clarifications »* 22 May 2022, <https://www.maire-info.com/la%C3%AFcite/burkini-%C3%A0-grenoble-l-%C3%89tat-attaque-la-decision-du-conseil-municipal-l-amf-demande-des-clarifications--article-26442>

<sup>92</sup> Le Parisien, *Burkini dans les piscines de Grenoble : pour Darmanin, «Éric Piolle a joué au pyromane»*, 26 May 2022, <https://www.leparisien.fr/politique/burkini-a-grenoble-pour-gerald-darmanin-eric-piolle-a-joue-au-pyromane-26-05-2022-QYGYZR75EBBPCCFCU4UD474LI.php>

<sup>93</sup>“Le port de signes religieux ostensibles est interdit pour la participation aux événements sportifs et aux compétitions sportives organisés par les fédérations sportives et les associations affiliées.”

inflammatory rhetoric and offensive stereotyping that stigmatized Muslim women by conditioning such participation in community sports on unnecessary and disproportionate limitations on their rights to freedom of expression and right to freedom of thought, conscience and religion.<sup>94</sup> A collective of women footballers campaigning against the FFF ban, *Les Hijabeuses*, was prevented from protesting<sup>95</sup> by a Paris Préfecture of Police decision which unfairly characterized the women's campaign as being part of a dispute between proponents of "political Islam" and religious patriarchy versus those who respect the values of France's republic. An Administrative Tribunal determined the protest ban to be illegal and issued a fine of €1,000 to the Préfecture, however by that stage the Préfecture's unlawful ban had effectively frustrated the women's right to peaceful assembly and freedom of expression.<sup>96</sup>

This is only one of the more recent examples of French authorities enforcing their negative stereotypical assumptions and tropes about Muslim communities and gender roles. In November 2021, several prominent French government officials criticized an awareness raising campaign developed jointly by the Council of Europe and the European Union. The social media campaign was intended to contribute to tackling anti-Muslim discrimination and to "raise awareness for the need to respect diversity and inclusion, and to combat hate speech of all kinds" and included a video with split images of two women, one wearing a headscarf and one not wearing it, with a slogan on one advert reading "Beauty is in diversity as freedom is in hijab".<sup>97</sup> Concerningly, the social media posts were promptly removed following the public criticism by the French authorities.<sup>98</sup> The Council of Europe did not confirm if there was any link between the pressure from France and its decision, stating that "we have taken down these tweet messages while we reflect on a better presentation of this project".<sup>99</sup>

## SWITZERLAND

In **Switzerland**, the framing of the referendum "Yes to the ban on veiling (burqa initiative)" which prohibits the wearing of the burqa, niqab and other forms of face coverings, demonstrates similar stereotypes and attitudes. The referendum was passed by a narrow majority of 51.2% in March 2021<sup>100</sup> despite serious concerns by policy makers<sup>101</sup> and

<sup>94</sup> Amnesty International, *France: New Law Compels Reform of Football Policy that Discriminates against Muslim Women*, EUR 21/5267/2022, 24 February 2022 <https://www.amnesty.org/en/documents/eur21/5267/2022/en/>

<sup>95</sup> On 2 February 2022, representatives from the campaign group '*Les Hijabeuses*' had notified the police authorities of the protest due to take place near the *Assemblée Nationale* a week later on 9 February.

<sup>96</sup> Amnesty International, *France: New law compels reform of football policy that discriminates against Muslim women* <https://www.amnesty.org/en/wp-content/uploads/2022/02/EUR2152672022ENGLISH.pdf>

<sup>97</sup> Euronews, *Council of Europe removes hijab diversity campaign tweets amid backlash*, 3 November 2021, <https://www.euronews.com/my-europe/2021/11/03/council-of-europe-removes-hijab-diversity-campaign-tweets-amid-backlash>.

See also LCI twitter account @LCI "Vidéo polémique du Conseil européen : "La France a fait part de sa désapprobation extrêmement vive, d'où le retrait de cette campagne dès aujourd'hui", annonce @sarahelhairi, Secrétaire d'État chargée de la Jeunesse et de l'Engagement, dans #RuthElkrief2022 | @ruthelkrief, <https://twitter.com/LCI/status/1455621245781819393>

<sup>98</sup> <https://twitter.com/PaulLarrourou/status/1455628824826241024>

<sup>99</sup> [https://twitter.com/MehreenKhn/status/1455871922500210690?ref\\_src=twsrc%5Etfw](https://twitter.com/MehreenKhn/status/1455871922500210690?ref_src=twsrc%5Etfw)

<sup>100</sup> Amnesty International, *Stop discrimination against Muslims*, 7 March 2021, <https://www.amnesty.org/en/latest/news/2021/03/stop-discrimination-against-muslims/>; Amnesty International, *Une initiative inutile et discriminatoire envers les femmes musulmanes*, 8 February 2021, <https://www.amnesty.ch/fr/pays/europe-asie-centrale/suisse/docs/2021/une-initiative-inutile-et-discriminatoire-envers-les-femmes-musulmanes>

<sup>101</sup> The Swiss federal council had noted in its statement ahead of the referendum that a ban was missing its intended aims of strengthening public order, preventing discrimination against women, and violated the "liberal order of society" in Switzerland, and noted that the fact that the initiative only affected a very small amount of women who wear the burqa in the country, rather aimed at polarizing society.

civil society<sup>102</sup>, including Amnesty International<sup>103</sup> that the ban directly discriminates against Muslim women.<sup>104</sup> The initiative was started by the Egerkingen Committee, an interest group which according to its own website “provides and organizes resistance to political Islam's claims to power in Switzerland”, and had already launched the referendum “against the construction of minarets” accepted with a 57.7% majority in 2009.<sup>105</sup>

## AUSTRIA

The **Austrian** anti-face-covering law has been in place since 2017, with the stated goal to “promote integration by strengthening the participation in society and ‘living together’” by ensuring that in public places or public buildings facial features are not concealed through clothing or other objects in such a way that they are no longer recognizable, covered or hidden.<sup>106</sup> Like in Switzerland, the public debate around the law stresses the need for it to support oppressed women and promote gender equality, bypassing the fact that the state already has adequate and sufficient means available to intervene to protect these women.<sup>107</sup>

However, an amendment to the country's School Education Law that prohibited children under ten years of age<sup>108</sup> from wearing religiously or ideologically influenced clothing that fully covers the head in schools<sup>109</sup> was declared unconstitutional and suspended immediately by the Constitutional Court in December 2020. In the view of the court, the amendment singled out a specific religion, Islam, without detailed reasoning, against the precept of religious and ideological neutrality of the state<sup>110</sup> - interestingly the reasoning often invoked by legislators themselves when deliberating laws prohibiting bans of religious clothing.

## DENMARK

In **Denmark**, a new criminal offence in force since August 2018 bans the wearing of face coverings in public,<sup>111</sup> which includes the niqab and burka as well as false beards, masks and other ways of obscuring the face in public. Key arguments from proponents of the new

<sup>102</sup> Bundesamt für Justiz, Vorentwurf zum Bundesgesetz über das Gesichtsverhüllungsverbot (indirekter Gegenvorschlag zur Volksinitiative «Ja zum Verhüllungsverbot»), 4 February 2019, <https://www.bj.admin.ch/dam/bj/de/data/gesellschaft/gesetzgebung/verhuellungsverbot/ve-ber-d.pdf.download.pdf/ve-ber-d.pdf>

<sup>103</sup> Amnesty International, *Une initiative inutile et discriminatoire envers les femmes musulmanes*, 8 February 2021, <https://www.amnesty.ch/fr/pays/europe-asie-centrale/suisse/docs/2021/une-initiative-inutile-et-discriminatoire-envers-les-femmes-musulmanes>

<sup>104</sup> Amnesty International, *Une initiative inutile et discriminatoire envers les femmes musulmanes*, 8 February 2021, <https://www.amnesty.ch/fr/pays/europe-asie-centrale/suisse/docs/2021/une-initiative-inutile-et-discriminatoire-envers-les-femmes-musulmanes>

<sup>105</sup> Egerkingen Komitee, Official Website, <https://egerkingerkomitee.ch/>

<sup>106</sup> Gesamte Rechtsvorschrift für Anti-Gesichtsverhüllungsgesetz, October 2017, [https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009892#:~:text=\(1\)%20Wer%20a,n%20%C3%B6ffentlichen%20Orten,zu%20150%20Euro%20zu%20bestrafen](https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009892#:~:text=(1)%20Wer%20a,n%20%C3%B6ffentlichen%20Orten,zu%20150%20Euro%20zu%20bestrafen)

<sup>107</sup> Amnesty International, *Stellungnahme zum Anti-Gesichtsverhüllungsgesetz*, 7 March 2017, <https://www.amnesty.at/media/2058/stellungnahme-zum-anti-gesichtsverhuellungs-gesetz.pdf>

<sup>108</sup> The government's programme of work 2020-2024 had foreseen to extend the provision to girls under the age of 14: Government's programme of work 2020 – 2024 entitled 'Aus Verantwortung für Österreich', <https://www.bmoeds.gv.at/dam/jcr:dde225f7-4a3b-4ca4-8c24-5e8683221d50/Regierungs%C3%BCbereinkommen.pdf>, p.207.

<sup>109</sup> Section 43a Federal Law on the School Education, BGBl No. 472/1986, amended according to BGBl.

<sup>110</sup> No 54/2019, Prohibition to wear religious or ideological symbols in schools  
<sup>110</sup> Verfassungsgerichtshof, *Verhüllungsverbot an Volksschulen ist verfassungswidrig*, [https://www.vfgh.gv.at/medien/Verhuellungsverbot\\_an\\_Volksschulen\\_ist\\_verfassungswidrig.de.php](https://www.vfgh.gv.at/medien/Verhuellungsverbot_an_Volksschulen_ist_verfassungswidrig.de.php)

<sup>111</sup> Law 219 amending the Criminal Code.





law again centred on an alleged need to ensure that no Muslim women or girls are being forced to wear full-faced clothing, maintaining that this ban would help ensure better integration of asylum-seekers and migrants into Danish society.<sup>112</sup> While the actual law mentions such face coverings only twice,<sup>113</sup> the explicit targeting of Muslim women wearing the niqab or the burka was made clear during the parliamentary debate preceding its adoption, where MPs from different political parties clarified that the law did not intend to prevent people from dressing up for carnivals, etc.<sup>114</sup> The Danish authorities do not record the ethnicity, or religion of those persons who violated the prohibition, which would be crucial to allow appropriate monitoring of the ban's impact on women of different ethnicities, including Muslim women.

Following his visit to **Denmark** in 2016, the UN Special Rapporteur on Freedom of Religion observed that members of minority religions face challenges in the country, which he attributed to “a lack of trustful communication within the society.” He noted that “this exacerbates negative stereotypes and hostility that members of religious minorities — in particular Muslims, who are often associated to terrorism and discrimination against women — suffer on a daily basis, with the result that they may feel increasingly alienated from the rest of society”.<sup>115</sup> In this context, Denmark's adoption of the ban on face coverings is especially concerning and has the potential to aggravate racial and ethnic stereotyping and discrimination that Muslims in Denmark, particularly women, already face.

#### THE NETHERLANDS

During a recent mission to **The Netherlands**, where a similar, though partial ban on face coverings was adopted, the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance stated that “The law at issue bans face coverings in a number of public places, and while its text may be read as facially neutral, the political discourse surrounding it has made clear that Muslim women are its intended targets. Interlocutors also highlighted the perverse irony of this measure given that Muslim women are among the most vulnerable to physical harassment and attacks in public, and even to workplace discrimination, especially if they wear a headscarf. This law has no place in a society that prides itself in promoting gender equality.”<sup>116</sup>

#### ***Muslim women's right to work, non-discrimination and gender equality***

The UN Working Group on Discrimination in law and in practice stated that: “Women's access to decent work and an independent income lifts them and their families out of poverty, improves their decision-making power in the household and society and ensures their economic independence, including in the event of a violent and abusive

<sup>112</sup> Amnesty International, Denmark: Face veil ban a discriminatory violation of women's rights, 31 May 2018,

<https://www.amnesty.org/en/latest/news/2018/05/denmark-face-veil-ban-a-discriminatory-violation-of-womens-rights/>

<sup>113</sup> Law 219 amending the Criminal Code.

<sup>114</sup> Transcript of parliamentary debate on Law 219 of 14 April 2018, [www.ft.dk/samling/20171/lovforslag/L219/BEH-85/forhandling.htm](http://www.ft.dk/samling/20171/lovforslag/L219/BEH-85/forhandling.htm)

<sup>115</sup> Report of the Special Rapporteur on freedom of religion and belief on his mission to Denmark, A/HRC/34/50/Add.1 (2017), para 11.

<sup>116</sup> End of Mission Statement of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance at the Conclusion of Her Mission to the Kingdom of the Netherlands, October 2019, para 15.

relationship.”<sup>117</sup> Further, the UN Working Group noted that: “The global gender pay gap stands at an unwavering 20 per cent and is wider for women who experience multiple and intersecting forms of discrimination.”<sup>118</sup> Muslim women are particularly discriminated against when looking for work, as well as when at work.<sup>119</sup> General Comment No. 23 (2016) of the Committee on Economic, Social and Cultural Rights requires states to guarantee in law the right to just and favorable conditions of work without discrimination of any kind, including gender identity, sex, race or religion, and to put in a place a comprehensive system to combat gender discrimination at work.<sup>120</sup> In this context, laws and policies that seek to stigmatize, curtail and coerce Muslim women’s choice of clothing and that discriminate against them have particularly harmful implications for their equal participation in economic life. The UN Working Group on Discrimination in law and in practice has recommended that states review and eliminate all discriminatory laws that create barriers to women’s formal or informal employment.<sup>121</sup>

### ***The principle of neutrality***

Public employers restricting religious dress at work frequently justify a difference of treatment in employment on the ground of religion or belief with the principle of neutrality. This principle, sometimes enshrined in constitutions, has been interpreted differently in different countries, according to the specific national and historical context, with varying consequences: in some contexts the principle imposes a duty of absolute impartiality.

Under international law, state neutrality and secularism are not legitimate reasons for imposing restrictions on the exercise of the rights to freedom of religion or belief and to freedom of expression, such as through general bans on religious and cultural symbols and dress in public employment. It should further be noted that any restrictions can only be justified by reference to demonstrable facts, not presumptions, speculation or prejudice.<sup>122</sup>

The imposition of restrictions on the basis of “neutrality” that also effectively deny Muslim women their right to work could amount to retrogressive measures under international law. States parties to the International Covenant on Economic, Social and Cultural Rights must guarantee that the right to work will be exercised “without discrimination of any kind” (art. 2, para. 2) and are further obligated “to take steps” (art. 2, para. 1) towards the full realization of the right.<sup>123</sup>

<sup>117</sup> Report of the United Nations Working Group on discrimination against women and girls, “Women’s human rights in the changing world of work,” A/HRC/44/51, 16 April, 2020, at para 11

<sup>118</sup> Report of the United Nations Working Group on discrimination against women and girls, “Women’s human rights in the changing world of work,” A/HRC/44/51, 16 April, 2020, at para 14

<sup>119</sup> Fundamental Rights Agency, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2017-eu-minorities-survey-muslims-selected-findings\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-minorities-survey-muslims-selected-findings_en.pdf).

<sup>120</sup> UN Committee on Economic, Social and Cultural Rights, *General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/23,, Geneva : UN, 27 Apr. 2016

<sup>121</sup> Report of the United Nations Working Group on discrimination against women and girls, “Women’s human rights in the changing world of work,” A/HRC/44/51, 16 April, 2020, at para 63

<sup>122</sup> See, for example the case of Leyla Şahin v. Turkey before the ECtHR where Judge Tulkens in her dissenting opinion argued that “only indisputable facts and reasons whose legitimacy is beyond doubt — not mere worries or fears — are capable of ... justifying interference with a right guaranteed by the [European] Convention.” (Leyla Şahin v. Turkey, Application no. 44774/98)

<sup>123</sup> See Article 2, para 1 and 2 of the UN International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3

General Comment 18 of CESCR on the right to work also notes “As for all other rights in the Covenant, there is a strong presumption that retrogressive measures taken in relation to the right to work are not permissible. Such retrogressive measures include, inter alia, denial of access to employment to particular individuals or groups, **whether such discrimination is based on legislation or practice** [emphasis added], abrogation or suspension of the legislation necessary for the exercise of the right to work or the adoption of laws or policies that are manifestly incompatible with international legal obligations relating to the right to work.”<sup>124</sup>

## GERMANY

In **Germany**, the Federal Constitutional Court decided in 2015 that a general headscarf ban is not compatible with Article 4 (freedom of religion) and Article 3 (equality before the law) of the Constitution.<sup>125</sup> However, some governments of the federal states have laws in place which prohibit teachers in public schools from wearing religious symbols and clothing, mostly based on the reasoning that religious clothing could constitute a “threat to the neutrality of the state as perceived by students and parents, and risk school peace”; some federal states also have enshrined a “privilege for Christian Western values”.<sup>126</sup> This, taken together with the parliamentary debates on the draft laws and the corresponding commentaries, make it clear that the main objective of the prohibition is the Muslim headscarf.<sup>127</sup> In Hesse, this prohibition applies to all the employees of the state service.<sup>128</sup> In Berlin, the Berlin State Education Act/Neutrality Act which prohibits the wearing of all religious clothing and symbols in the education sector of public employment but also prevents judges and public prosecutors, police officers and judicial staff from wearing religious symbols while doing their jobs,<sup>129</sup> is still in place. A ruling of the Federal Labour Court in August 2020 awarded a Muslim woman who was not accepted into the school service because of her headscarf a compensation of around 5,159 euros ruling that the

<sup>124</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Art. 6 of the Covenant), 6 February 2006, E/C.12/GC/18, at para 34.

<sup>125</sup> Federal Constitutional Court, *A general ban on headscarves for teachers at state schools is not compatible with the Constitution*, 13 March 2015, <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2015/bvg15-014.html>. The Court, deciding on a case in North Rhine Westphalia held that only in case of a “concrete danger” (“concrete disturbance of school peace”), a prohibition of religious clothing during office hours was justified but not already when there was an assumption of an “abstract danger” (due to a general assessment of the situation in schools).

<sup>126</sup> Federal Anti-discrimination Agency, *Kopftuch am Arbeitsplatz*, 2021, <https://www.antidiskriminierungsstelle.de/DE/ueber-diskriminierung/lebensbereiche/arbeitsleben/kopftuch-am-arbeitsplatz/kopftuch-am-arbeitsplatz-node.html>: In Berlin, Bremen and Hesse the respective neutrality laws continue to apply. Further in Bavaria, Baden-Württemberg, Hesse and Saarland the privilege for Christian Western values continues as well.

<sup>127</sup> Federal Anti-discrimination Agency, *Kopftuch am Arbeitsplatz*, 2021, <https://www.antidiskriminierungsstelle.de/DE/ueber-diskriminierung/lebensbereiche/arbeitsleben/kopftuch-am-arbeitsplatz/kopftuch-am-arbeitsplatz-node.html>:

<sup>128</sup> Hesse Civil Servants Law, Hessisches Beamtengesetz (HBG), <https://www.rv.hessenrecht.hessen.de/bshe/document/jlr-BGHE2013pP45> para 45. In a case in Hesse, the Administrative Court of Kassel rejected the complaint of a Muslim trainee after she was forbidden from wearing a headscarf in certain activities during the traineeship (decision of May 23, 2017, reference number: 1 B 1056/17). The prohibition was considered justified if the trainee took on judicial or public prosecutor's duties and was perceived as a representative of the judiciary. The court ruled here that the trainee's freedom of religion was proportional in consideration of the neutrality of the state, in particular because the underlying regulation in the Hessian civil service code constituted a sufficient legal basis. In addition, the court assessed the effects on the training of the trainee teacher as reasonable because the ban only applied to a small part of the training. The Federal Constitutional Court rejected a constitutional complaint by the trainee lawyer against the court's decision and emphasized the state's requirement of neutrality (decision of January 14, 2020, file number: 2 BvR 1333/17).

<sup>129</sup> Law on Article 29 of the constitution of Berlin, 27 January 2005 <https://gesetze.berlin.de/bsbe/document/jlr-VerfArt29GBE2005pP2>

Neutrality Act had to be interpreted in line with the 2015 Constitutional Court judgment.<sup>130</sup>

A new law regulating the appearance of civil servants, passed on 7 May 2021, also refers to religious symbols giving specific examples of restrictions on religious clothing, which “concern, for example, the Muslim headscarf, the Jewish kippa or a Christian cross (...)”, stipulating that “the right to wear such features may be restricted or prohibited entirely if they are objectively likely to impair confidence in the neutral conduct of the official's office.”<sup>131</sup> The law which was prompted by the case of a Berlin police officer who was fired because of an anti-constitutional tattoo, raises questions why on this basis it was considered necessary to include that “the wearing of ‘characteristics of appearance with religious or ideological connotations, such as the Muslim headscarf, the Jewish kippah or a Christian cross, can be restricted or prohibited’ ... if they are objectively suitable for trust in the neutral conduct of the office to impair the official.”<sup>132</sup>, suggesting that religious dress, such as a headscarf, is always apt to undermine confidence in neutral government.<sup>133</sup> The government tried to dispel concerns and criticism that the law encouraged racism and discrimination, stating that it will not bring about any changes in the legal situation on the subject of a “general headscarf ban”.<sup>134</sup>

## RECOMMENDATIONS

Amnesty International calls on all states, including all Council of Europe Member States to:

- Respect the rights to freedom of expression and freedom of religion or belief, which include the wearing of religious and cultural symbols and dress and ensure all women are free to decide if they want to wear specific symbols and dress on the basis of personal religious convictions, cultural customs or for any other reason.
- Refrain from introducing retrogressive and discriminatory general restrictions on religious and cultural symbols and dress in public employment which target Muslim women and violate their human rights including their rights to non-discrimination, equality, work, education, freedom of expression and religion.
- Review and eliminate all discriminatory laws that create barriers to women's formal or informal employment, including existing retrogressive and discriminatory laws and policies that coerce and stigmatize Muslim women and impose general rules regulating the clothes they wear in public, including specific symbols and dress on the basis of personal religious convictions, cultural customs or for any other reason.

<sup>130</sup> Bundesarbeitsgericht, Benachteiligung wegen der Religion – Kopftuchverbot, 8 AZR 62/19, Judgment of 27 August 2020, <https://www.bundesarbeitsgericht.de/entscheidung/8-azr-62-19/>

<sup>131</sup> *Entwurf eines Gesetzes zur Regelung des Erscheinungsbilds von Beamtinnen und Beamten sowie zur Änderung weiterer dienstrechtlicher Vorschriften*, 6 July 2021, [https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&start=%2F%2F%2A%5B%40attr\\_id=%27bgbl121s2250.pdf%27%5D#\\_bgbl\\_%2F%2F%5B%40attr\\_id%3D%27bgbl121s2250.pdf%27%5D\\_1648735347281](https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=%2F%2F%2A%5B%40attr_id=%27bgbl121s2250.pdf%27%5D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl121s2250.pdf%27%5D_1648735347281)

<sup>132</sup> Bundesrat, *Entwurf eines Gesetzes zur Regelung des Erscheinungsbilds von Beamtinnen und Beamten, sowie zur Änderung weiterer dienstrechtlicher Vorschriften*, 1 January 2021, [https://www.bundesrat.de/SharedDocs/drucksachen/2021/0001-0100/15-21.pdf?\\_\\_blob=publicationFile&v=1](https://www.bundesrat.de/SharedDocs/drucksachen/2021/0001-0100/15-21.pdf?__blob=publicationFile&v=1) p.40.

<sup>133</sup> Dr. Kirsten Wiese, *Ermächtigung für ein bundesweites Kopftuchverbot*, in Legal Tribune Online, 26 April 2021, <https://www.lto.de/recht/hintergruende/h/gesetz-erscheinungsbild-beamte-entwurf-bundestag-kopftuch-tattoos-kopftuchverbot/>

<sup>134</sup> Welt, *Kopftuchverbot durch die Hintertür?*, 7 May 2021, <https://www.welt.de/politik/deutschland/article230971383/Bundesrat-Kopftuchverbot-durch-die-Hintertuer.html>

- Repeal discriminatory and coercive restrictions based on the principle of neutrality to correct any misinterpretation of this concept, and recall its positive significance as a normative principle deriving from the obligation of a non-discriminatory implementation of freedom of religion or belief, obliging states to refrain from targeting Muslims and those perceived to be Muslim with such restrictions.
- Raise awareness of private employers on anti-discrimination legislation that restricting religious and cultural symbols and dress in the workplace is permissible only if there is an objective and reasonable justification, and that enforcing a concept neutrality, promoting a specific corporate image or pleasing clients are not objective and reasonable justification under international human rights law.
- Ensure domestic legislation protects Muslim women against discrimination on the ground of religion or belief in the area of employment and establish effective mechanisms to identify and ensure redress for instances of discrimination on the ground of gender, religion or belief in the area of employment, whether by public authorities or private employers.
- Refrain from weaponizing public discourse for political gain with harmful rhetoric and statements that stigmatize and dehumanize Muslims and those perceived to be Muslim, and instead promote the values of non-discrimination and gender equality by taking measures, including by adopting legislation, to counter and end negative gender-based stereotypes, including prejudicial perceptions of headscarves which negatively impact women who choose to wear symbols or forms of dress perceived as Muslim.

## CRIMINAL JUSTICE

The widespread discrimination against racialized groups in Europe, as documented by Amnesty International, also includes the failure to protect people from discriminatory violence.<sup>135</sup> In addition to hate crimes and discrimination by non-state actors, significant concern exists around police practice, raising questions about institutional racism in Europe. This police practice can influence its service delivery “not solely through the deliberate actions of a small number of bigoted individuals, but through a more systematic tendency that could unconsciously influence police performance generally”.<sup>136</sup> Examples include discriminatory profiling; targeted policing; and failure to adequately investigate the cases of those who suffered discriminatory violence by the police, and to provide remedy.<sup>137</sup>

### FRANCE

In **France**, experiences of identity checks are more frequently reported by people perceived as Arab/North African and/or black people, according to a survey by the Defender of Rights, an independent administrative authority responsible for ensuring respect for the

<sup>135</sup> Amnesty International, Austria: Victim or suspect - A question of colour: Racial discrimination in the Austrian justice system (London, 2009). Amnesty International, Hungary: Violent attacks against Roma in Hungary: Time to investigate racial motivation (London, 2010); Amnesty International, Missing the Point: Lack of Adequate Investigation of Hate Crimes in Bulgaria (London, 2015); Amnesty International, Living in insecurity: How Germany is failing victims of racist violence (London, 2016)

<sup>136</sup> 3 Robin Oakley quoted in Macpherson Report (1999), section 6.5.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/277111/4262.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf)

<sup>137</sup> For example, on 11 December 2018, the ECtHR held that the Slovak authorities failed to investigate a possible racist motive in a shooting spree by an off-duty police officer at a Roma family's home, breaching the State's procedural obligation to carry out an effective investigation under Article 2 in conjunction with Article 14 of the European Convention. *Lakatošová and Lakatoš v. Slovakia* (No. 655/15), 18 December 2018. <http://hudoc.echr.coe.int/eng?i=001-188265>

freedoms and rights of citizens by public administrations and bodies. 17.4% of the men surveyed testified that they had been the subject of an identity check by the police forces in the last five years, rising to over 50% (i.e. more than twice as likely) for men perceived as Arab/North African or black, claiming to have been subjected to such a check at least once. They also reported being six to eleven times more concerned by frequent checks (more than five times) than the rest of the male population.<sup>138</sup>

Ethnic profiling by law enforcement in France may be considered a form of harassment. As part of a civil case against the French state lodged by persons affected by this police harassment, the Defender of Rights concluded, in an amicus brief filed in May 2020, that the pattern of repeated and abusive identity checks and police violence created an “intimidating, hostile, degrading, humiliating or offensive environment”, thereby constituting “discriminatory harassment”, and “systemic discrimination”, noting that the police practices were not isolated events and took place in a context of well-documented discriminatory identity checks by police.<sup>139</sup>

#### THE NETHERLANDS

In **The Netherlands**, the practice of racial profiling continues despite the government denouncing the practice in principle. In a decision in September 2021, The Hague district court ruled that (perceived) ethnicity could be used for stop-and-search practices during border controls, even if ethnicity was the decisive criterion for the stop, thereby legitimizing the stigmatization of non-white (Dutch) citizens.<sup>140</sup>

#### GERMANY

In **Germany**, murders of nine men with an immigrant background<sup>141</sup> by the National Socialist Underground (NSU) between 2000 – 2007, uncovered in 2011<sup>142</sup>, exposed systemic failures in the German authorities’ response to the murders. Several police forces failed to take into account and effectively investigate aspects of the murders pointing to a discriminatory motive and instead focussed on victims’ relatives and members of minority communities, despite the absence of any reasonable grounds for believing that they were involved in the crimes. As highlighted by a number of human rights bodies, the authorities’ repeated failure to identify and investigate leads pointing to the racist motivation behind the attacks is indicative of a broader problem of institutional racism within German police authorities.<sup>143</sup>

<sup>138</sup> Enquête sur l'accès aux droits Volume 1, Relations police / population : le cas des contrôles d'identité <https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/enquete-relations-police-population-final2-11012017.pdf>

<sup>139</sup> Amnesty International and Open Societies Foundation, *Europe: A Human Rights Guide for researching racial and religious discrimination in counter-terrorism* (Index: EUR 01/3606/2021), February 2021, <https://www.amnesty.org/en/documents/eur01/3606/2021/en/> p.36

<sup>140</sup> Amnesty International, *Dutch Court allows racial profiling*, 22 September 2021 [https://www.amnesty.nl/content/uploads/2021/09/Dutch-Court-allows-racial-profiling\\_September-22\\_2021\\_final.pdf?x49325](https://www.amnesty.nl/content/uploads/2021/09/Dutch-Court-allows-racial-profiling_September-22_2021_final.pdf?x49325)

<sup>141</sup> Eight men of Turkish descent and one man of Greek descent. The group also murdered a White police officer.

<sup>142</sup> The murders were uncovered in 2011 after two members of the NSU (allegedly) committed suicide and a third surrendered to police.

<sup>143</sup> Amnesty International, *Germany: Living in insecurity: Germany is failing victims of racist violence* (Index: EUR 23/4112/2016), <https://www.amnesty.org/en/documents/EUR23/4112/2016/en/>



Despite further attacks, such as the racist attack in Hanau<sup>144</sup>, threatening letters from the NSU 2.0<sup>145</sup> and the reports on right-wing extremist networks and chat groups within various police authorities, the federal government still does not recognize racism, including anti-Muslim racism, as a structural problem nor that it exists within the authorities including the police.<sup>146</sup> A package of 89 measures adopted in May 2021 which intends to promote democracy, research racism and islamophobia as well as strengthen protection of victims provides more support for civil society but falls short of addressing institutional racism and of setting out an overall strategy against racist violence.<sup>147</sup>

## RECOMMENDATIONS

Amnesty International calls on all states, including all Council of Europe Member States to:

- Systematically collect and regularly publish data on hate crimes, disaggregated by motive, criminal offence, perpetrators (state actor/non-state actor), and offline/online hate crime. These data should clearly distinguish hate crimes from other politically motivated crimes and include anti-Muslim hate crimes as a separate category.
- Develop specific guidelines for all police and prosecuting authorities and judges on the classification and investigation of hate crimes, including simplified criteria and definitions for the classification of hate crimes at the outset of an investigation; a duty to detect, and take into account, any element pointing to a discriminatory motive; and to define any criminal offence perceived to have a discriminatory motive by the victim or any other person as a hate crime for the purposes of police reports and statistical records.
- Design and regularly carry out a broad-based victimization survey with a view to, inter alia, assessing the extent to which hate crimes may be underreported to the police, and why.
- End racial profiling and make the police and prosecuting authorities more accountable, by:
  - prohibiting racial profiling and instead using a standard of “reasonable suspicion”;
  - Ensuring accountability for acts of racism by police officers and take steps to guarantee the right to access to justice for victims, including by monitoring incidents of racial profiling by the police; investigating alleged cases of racial discrimination by the police through an independent body and ensuring

<sup>144</sup> In Hanau, in a racist attack, nine people with an immigrant background were shot and killed, after which the attacker also killed his mother and himself. He specifically sought out venues frequented predominantly by people with an immigrant background. Many questions in relation to the police investigation before and after the attack remain unclear including how the attacker could legally own weapons despite being mentally ill and known to the authorities as well as the police; and why there was no reaction to a letter the attacker had sent to the federal advocate-general, which in large parts was identical to his letter of confession found after the attack. For more information, please see Amnesty International, *Deutschland: Niemals muede in Hanau*, 26 August 2020, <https://www.amnesty.de/informieren/amnesty-journal/deutschland-niemals-muede-hanau>

<sup>145</sup> People with an immigrant background who were well-known, as well as politicians, received threatening letters with the signature “NSU 2.0”. Their personal data was retrieved from computers in Wiesbaden’s 3rd and 4th police precincts, and Frankfurt’s 1st precinct.

<sup>146</sup> Amnesty International, *Polizei - Einsatzbereit gegen Rassismus?*, 6 June 2020, <https://www.amnesty.de/informieren/aktuell/deutschland-sechs-forderungen-antirassismus-in-polizeiarbeit>

<sup>147</sup> Amnesty International, *Massnahmenpaket gegen Rassismus nicht ausreichend*, 2 December 2020, <https://www.amnesty.de/allgemein/pressemitteilung/deutschland-massnahmenpaket-gegen-rassismus-nicht-ausreichend>; and Amnesty International, *Konkrete Massnahmen gegen polizeiliche Diskriminierung sind überfällig*, 11 November 2020, <https://www.amnesty.de/allgemein/pressemitteilung/deutschland-konkrete-massnahmen-gegen-polizeiliche-diskriminierung-sind>



- perpetrators face justice; and providing support for victims of racial discrimination by the police;
- Conducting mandatory in-service training for police, prosecutors and judges on the nature of hate crime, on the specific needs of the victims and their role in combating and protecting people against racism and discrimination;
- Gather and monitor arrest and stop and search data so as to establish whether discriminatory patterns are emerging.
- Take measures aimed at reaching out to groups that are likely to be targeted with hate crimes in cooperation with NGOs, to encourage the reporting of hate crimes and build trust in police authorities.
- Develop strategies to ensure public security in the context of attacks on mosques and Muslim community centres to protect them against attacks, including by undertaking a thorough risk assessment strategy.

## **EUROPE'S DIFFERENTIAL TREATMENT OF REFUGEES FLEEING CRISES IN AFGHANISTAN, SYRIA, YEMEN, AND THOSE FLEEING UKRAINE**

Since July 2021, tens of thousands of refugees and migrants, mainly from Syria, Iraq and Afghanistan, have attempted to cross the border from Belarus into Poland, Lithuania and Latvia.<sup>148</sup> Throughout 2021, Polish authorities arbitrarily detained nearly two thousand asylum-seekers who crossed into the country from Belarus, and subjected many of them to abuse, including strip searches in unsanitary, overcrowded facilities, and in some cases even to forcible sedation and tasering.<sup>149</sup>

Europe's response to the refugee displacement triggered by the Russian invasion of Ukraine has exposed for all to see the long existing differential treatment afforded to refugees fleeing wars in Muslim-majority countries<sup>150</sup> and has seen some politicians resorting to inflammatory, dehumanizing rhetoric to justify their refusal to apply the same standard of protection and treatment to all refugees regardless of their origins [see examples below].

People seeking safety from wars in Muslim-majority countries faced razor wire fences and repeated pushbacks by the Polish Border Guard, who deliberately broke their mobile phones, fired weapons in the air, pointed guns directly at them, tracked them with drones and physically pushed them back to Belarus by forcing them to walk through freezing marshlands or transporting hundreds on buses with only 30 – 40 seats, so cramped that people could not sit, turn or move for hours, and refusing toilet breaks. A doctor working in provincial hospitals in Grajewo and Białystok described how refugees and migrants who are typically admitted to the emergency ward suffered from all stages of hypothermia, some requiring leg amputations; others came with severe dehydration and serious poisoning caused by drinking water from swamps. Serious concerns were also raised about how their treatment in detention and official custody by the Polish Border Guard affected

<sup>148</sup> Ministry of Interior, News: Deputy Minister of Interior and Administration in the Sejm on the situation on the Polish-Belarusian border, 16 September 2021. See also regular news published by Polish Border Guard at [podlaski.strazgraniczna.pl](http://podlaski.strazgraniczna.pl)

<sup>149</sup> Amnesty International, Poland/Belarus: New evidence of abuses highlights 'hypocrisy' of unequal treatment of asylum-seekers, <https://www.amnesty.org/en/latest/news/2022/04/poland-belarus-new-evidence-of-abuses-highlights-hypocrisy-of-unequal-treatment-of-asylum-seekers/>

<sup>150</sup> Amnesty International, *EU: Temporary protection is needed for everyone fleeing Ukraine*, 3 March 2022, <https://www.amnesty.org/en/latest/news/2022/03/eu-temporary-protection-is-needed-for-everyone-fleeing-ukraine/>

their physical and psychological well-being. Nearly all those interviewed reported consistently disrespectful and verbally abusive behaviour, racist remarks and other practices that indicate psychological ill-treatment.<sup>151</sup> On 20 March 2022, the Belarusian authorities reportedly evicted close to 700 refugees and migrants, including many families with young children and people suffering from severe illnesses and disabilities, from a warehouse in the Belarusian village of Bruzgi which had accommodated several thousand people in 2021. This mass eviction carried out by the Belarusian authorities' left people stranded in the forest, trying to survive in sub-zero temperatures without shelter, food, water or access to medical care. Many remain stranded and experience daily abuse at the hands of Belarusian border guards who use dogs and violence to force people across the border into Poland.<sup>152</sup>

The UN Special Rapporteur on freedom of religion or belief has highlighted four European States whose representatives have publicly rejected Muslim refugees or migrants in their societies, amid accusations of preferential treatment for Christian refugees. Hungary and Slovakia have challenged the EU policy of mandatory relocation of refugees and migrants before the European Court of Justice.<sup>153</sup> The relocation, in practice, involved asylum seekers of Middle Eastern and African origin, and in this context some politicians in several countries have publicly claimed that Muslims were “criminals” “who are impossible to integrate” and that the migrants were not refugees but rather “Muslim invaders”.<sup>154</sup>

There are numerous alarming words and actions by state officials across Europe, including for example in **Spain**, where congressman and leader of the Vox party Santiago Abascal said that his country should welcome Ukrainian refugees, but not Muslims, telling Parliament that “Anyone can tell the difference between them [Ukrainian refugees] and the invasion of young military-aged men of Muslim origin who have launched themselves against European borders in an attempt to destabilise and colonize it”.<sup>155</sup>

In **France**, in a televised address, President Macron warned of a wave of “illegal migration” following the return of the Taliban to power in August 2021.<sup>156</sup> Marine Le Pen and other leaders of the Rassemblement Nationale party have repeatedly stated that Afghan and Syrian refugees should be regarded as economic migrants, distinct from European refugees who are deserving of shelter. In November 2021, party spokesperson Julien Odoul warned against allowing asylum seekers and refugees to cross the Belarusian border claiming that there were dangerous men in the group, and when questioned Mr

<sup>151</sup> Amnesty International, Poland: Cruelty Not Compassion, at Europe's Other Borders (Index: EUR 37/5460/2022), 11 April 2022, <https://www.amnesty.org/en/documents/eur37/5460/2022/en/>

<sup>152</sup> Amnesty International, Poland: Cruelty Not Compassion, at Europe's Other Borders, EUR 37/5460/2022, 11 April 2022, <https://www.amnesty.org/en/documents/eur37/5460/2022/en/>

<sup>153</sup> UN Special Rapporteur on freedom of religion or belief, Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief (UN Doc. A/HRC/46/30), 13 April 2021, p. 12 - 13

<sup>154</sup> UN Special Rapporteur on freedom of religion or belief, Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief (UN Doc. A/HRC/46/30), 13 April 2021, p. 12 - 13

<sup>155</sup> Middle East Eye, Russia-Ukraine war: These European politicians welcome Ukrainian refugees - but not Muslim ones, 7 March 2022 <https://www.middleeasteye.net/news/russia-ukraine-war-right-wing-welcome-refugees-not-muslims>

<sup>156</sup> Infomigrants, Emmanuel Macron sur l'Afghanistan : des évacuations et une volonté de lutter "contre des flux migratoires irréguliers importants", 17 August 2021, <https://www.infomigrants.net/fr/post/34358/emmanuel-macron-sur-lafghanistan-des-evacuations-et-une-volonte-de-lutter-contre-des-flux-migratoires-irreguliers-importants>

Odoul affirmed that asylum-seeking and refugees should be “left to die” amidst harsh winter conditions in November 2021.<sup>157</sup>

In the **UK**, the government has recently announced a new process of deporting asylum seekers to Rwanda in clear violation of the Refugee Convention.<sup>158</sup> On 18 May 2022 British Home Secretary Priti Patel stated that “the first tranche of illegal migrants with no right to be in the UK have now been notified of the government’s intention to relocate them to Rwanda”.<sup>159</sup> This rhetoric raises concerns that process, as well as undermining international refugee law, will also compound differential treatment of asylum seekers and be targeted at claimants from specific countries.

Finally, Amnesty International’s research in **Switzerland** showed how private security companies working in Swiss Federal Asylum Centres have displayed xenophobic and racist attitudes toward asylum seekers generally, and three social care workers who regularly worked in the centres and one legal representative expressed specific concern that particular hostility was shown to people of North African descent housed in the centres. One social care worker stressed that xenophobic attitudes were very common among security guards, having observed discriminatory behaviour against North Africans, and everyday racism, whilst another social care worker stated: “I was once told by a superior that these asylum seekers from North Africa must not be treated like normal people.” A legal representative interviewed by Amnesty International expressed her specific concern about the particularly violent treatment of minors from North Africa. A young asylum seeker reported that he and others were subjected to insults including about them being of North African descent. He told Amnesty International that after several incidents of abuse, he asked why people from the Maghreb like him were treated so badly. A guard replied, “because you are all troublemakers”. Human rights defender and activist Brahim Daouadji, described being treated with hostility and disrespect when trying to pray in the morning during the holy month of Ramadan. In one incident a security guard aggressively and deliberately interrupted his morning prayer.<sup>160</sup>

## RECOMMENDATIONS:

Amnesty International calls on all EU Member States to:

- Use their discretion to apply the Temporary Protection Directive also to non-Ukrainian nationals similarly displaced by the conflict. Member states should give prompt access to asylum or to other temporary status to those who will not be covered by temporary protection status.

Amnesty International calls on all states, including all Council of Europe Member States to:

<sup>157</sup> BFMTV, “Bien sûr” qu’il faut laisser les migrants “mourir de froid”: la sortie polémique de Julien Odoul sur BFMTV, 11 November 2021, [https://www.bfmtv.com/politique/bien-sur-qu-il-faut-laisser-les-migrants-mourir-de-froid-le-derapage-de-julien-odoul\\_VN-20211110392.html](https://www.bfmtv.com/politique/bien-sur-qu-il-faut-laisser-les-migrants-mourir-de-froid-le-derapage-de-julien-odoul_VN-20211110392.html)

<sup>158</sup> PM speech on action to tackle illegal migration, 14 April 2022, <https://www.gov.uk/government/speeches/pm-speech-on-action-to-tackle-illegal-migration-14-april-2022>

<sup>159</sup> UK Government, *Home Secretary meeting with Rwandan Minister Dr Vincent Biruta*, 18 May 2022 <https://www.gov.uk/government/news/home-secretary-meeting-with-rwandan-minister-dr-vincent-biruta>

<sup>160</sup> Amnesty International Switzerland: Submission to the UN Committee on the Elimination of Racial Discrimination 105th session, 15 November – 3 December 2021, 28 October 2021 <https://www.amnesty.org/en/documents/eur43/4913/2021/en/> p.3

- End differential treatment of people seeking asylum and ensure that all people fleeing conflict and persecution have equal access to international protection, support and services, and in particular ensure that asylum seekers who belong to racialized groups, including people who are Muslim, Roma, of African and Asian origin are not subject to discriminatory treatment in access to protection, support and services.
- Respect the absolute prohibition of torture and other ill-treatment by putting in place essential safeguards for their prevention, including in states of war or other public emergencies.
- Establish thorough and systematic screening for psychological trauma to allow for early identification of possible victims of torture and ensure that they receive appropriate accommodation and adequate treatment throughout. Provide adequate medical and psychological care to asylum seekers and refugees.
- Ensure people fleeing conflict and persecution who belong to racialized groups are not subject to disrespectful and verbally abusive behavior, racist remarks and other discriminatory practices which can amount to psychological ill-treatment.
- Ensure consistency in the timelines and levels of support experienced by all refugees and asylum-seekers, regardless of their country of origin, or of their manner of arrival.
- Take measures to tackle and eradicate racist attitudes and negative and harmful stereotypes about racialized asylum seekers and dismantle the specific prejudices towards Muslim people and those perceived as Muslims. This will require reformed recruitment processes, training or other pertinent programmes for asylum processing and reception, but also the development of systems of accountability of anyone breaching rules being disciplined and, if a crime is suspected of occurring, referred to the criminal justice system for investigation.