

IN THE EUROPEAN COURT OF HUMAN RIGHTS

F.D. and I.M. v France and 3 other applications

(Application nos. 38506/23, 38578/26, 38650/23, 38651/23)

Written Submissions

on behalf of

AMNESTY INTERNATIONAL

Pursuant to the notification dated 16 September 2024 that the Vice-President of the Section had granted permission under Rule 44 § 3 of the Rules of the European Court of Human Rights

11 October 2024

INTRODUCTION

1. This written submission is provided by Amnesty International pursuant to the leave to intervene as third party in the European Court of Human Rights' (Hereinafter, this Court's) proceedings granted by the Vice-President of the Section under Rule 44 § 3 of the Rules of Court.
2. Amnesty International submits that this case raises important questions regarding the enjoyment of the right to freedom of religion and to manifest religion or belief by women, girls, and racialised persons and prompts key considerations on the state's obligation to protect rights under the European Convention on Human Rights without discrimination. To assist the court in addressing these legal issues, this submission is structured as follows: **Part A** briefly details Amnesty International's qualitative research conducted from February to May 2024 on hijab bans in sports in France which informs this brief and builds on Amnesty International's previous findings and analyses concerning restrictions on the wearing of religious dress in France¹. **Part B** provides an analysis of relevant international and regional human rights law, standards and jurisprudence on the right to freedom of religion and to manifest religion or belief and states' corresponding obligations; **Part C** advances submissions on states' obligation to ensure the rights to equality and non-discrimination and to foster pluralism within the context of ensuring religious, cultural, and ethnic diversity, and how blanket bans on religious dress undermine pluralistic societies and can directly and indirectly cause intersectional discrimination on the basis of gender, religion and race. Finally, **Part D** presents the ways in which unduly restrictive legislative and sporting regulatory measures curtail religious and racial equality in sports in France.

A. AMNESTY INTERNATIONAL'S QUALITATIVE RESEARCH ON THE EXPERIENCES OF MUSLIM WOMEN AND GIRLS IN THE CONTEXT OF HIJAB BANS IN SPORTS IN FRANCE

3. Between February and May 2024, Amnesty International gathered and analysed clothing and equipment rules and regulations of the national federations of football, basketball and volleyball in 38 countries in Europe.² While barriers to participation in sports motivated by gendered Islamophobia³ exist in different countries in the region⁴ even when they do not ban sports hijabs, according to the information gathered by Amnesty International, France is the only country in Europe with bans on religious headwear in sports, including women's football, basketball and volleyball. No other country in the region, at the level of national laws or individual sports regulations, has enshrined bans on religious headwear such as those worn by some Muslim sportswomen and girls.⁵ Amnesty International has found it impossible to assess the numbers of Muslim women and girls impacted by the bans as French authorities do not collect statistical population data disaggregated by religion or ethnicity.⁶

¹ Amnesty International, Choice and prejudice: Discrimination against Muslims in Europe EUR 01/001/2012, 24 April 2012, www.amnesty.org/en/documents/eur01/001/2012/en/; Amnesty International and Open Societies Foundation, A human rights guide for researching racial and religious discrimination in counter-terrorism in Europe, EUR 01/3606/2021, February 2021, www.amnesty.org/en/documents/eur01/3606/2021/en/; Amnesty International, 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", EUR 01/5659/2022, June 2022, www.amnesty.eu/wp-content/uploads/2022/09/PACE-submission-Islamophobia-1-June-2022.pdf; Amnesty International, Public statement, France: Authorities Must Repeal Discriminatory Ban on the Wearing of Abaya, 3 October 2023, www.amnesty.org/en/documents/eur21/7280/2023/en/; Amnesty International, Annual Report 2016/17, www.amnesty.org/en/documents/pol10/4800/2017/en/#:~:text=The%20Amnesty%20International%20Report%202016,in%20a%20multitude%20of%20ways; Amnesty International, France: New Law Compels Reform of Football Policy that Discriminates against Muslim Women, EUR 21/5267/2022, 24 February 2022, www.amnesty.org/en/documents/eur21/5267/2022/en/; Amnesty International, France: Préfecture of Police Tries to Suppress Women Footballers' Protest Against Lawmakers' Latest Attempt to Undermine Muslim Women in Sport, EUR 21/5226/2022, 10 February 2022, www.amnesty.org/en/wp-content/uploads/2022/02/EUR2152262022ENGLISH.pdf; Amnesty International, "France: Court maintains discriminatory rule excluding Muslim women footballers who wear headscarves from competitions," 29 June 2023, www.amnesty.org/en/latest/press-release/2023/06/france-court-maintains-discriminatory-rule-excluding-muslim-women-footballers-who-wear-headscarves-from-competitions/; Amnesty International, France: Rules exclude Muslim women basketball players from competitions, 12 October 2023, www.amnesty.org/en/documents/eur21/7282/2023/en/; Amnesty International, France: Ensure Muslim women and girls can play sports, 8 March 2024, www.amnesty.org/en/latest/news/2024/03/france-ensure-muslim-women-and-girls-can-play-sports/.

² Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Kosovo, Latvia, Lithuania, Luxembourg, Malta, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

³ Islamophobia has been recognised by the United Nations Special Rapporteur on Freedom of Religion or belief 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." It is a form of racism towards Muslims and people perceived to be Muslim.

⁴ Muslimah Sports Association, Muslim Women in Sport, Report, 2023, muslimahsports.org.uk/wpcontent/uploads/2023/11/MSA_Reserach_Report-1.pdf

⁵ Amnesty International, *Violations of Muslim women's and girls' human rights through hijab bans in sports in France* (Index: EUR 21/8195/2024), July 16 2024, amnesty.org/en/documents/eur21/8195/2024/en/, p10.

⁶ Amnesty International, *Violations of Muslim women's and girls' human rights through hijab bans in sports in France* (Index: EUR 21/8195/2024), July 16 2024, amnesty.org/en/documents/eur21/8195/2024/en/, p 8.

4. Muslim people in Europe are discriminated against on racial and ethnic grounds in intersection with religious grounds and the hijab bans in France, such as those in sports, exist within what the UN Committee on the Elimination of Racial Discrimination terms “political discourse” in France⁷ where “*systemic racial discrimination, as well as stigmatization and the use of negative stereotypes against certain minorities...remain strongly rooted in French society.*”⁸ Such racism, the Committee observed, is in turn reflected in social exclusion and limitations on the enjoyment of rights.⁹
5. Amnesty International found in its research that at the international level, football, basketball and volleyball federations all allow for the wearing of religious headgear such as sports hijabs during competitions; that FIFA, the global football governing body, ended its ban on players wearing head coverings during matches, and that the International Basketball Federation (FIBA) repealed a similar ban following a campaign led by hijab-wearing basketball players.¹⁰ Federations in some European countries follow these international regulations on women athletes’ clothing and equipment¹¹. Some countries do not mention religious head coverings in their regulations¹², while others¹³ have specific rules that explicitly identify religious headgear as permissible headwear and elaborate on the criteria it must meet to be worn. Amnesty International found that federations in some countries have made specific efforts to enable Muslim hijab-wearing women’s and girls’ participation in their sports.¹⁴
6. The French Basketball Federation’s (FFBB’s) regulations¹⁵ exclude women and girl players who wear hijabs from participating in competitions even at amateur level, and include rules that penalise players, coaches and clubs for refusing to discriminate against players. Amnesty International interviewed Muslim women and girl players affected by these rules. One interviewee H  l  ne B  , a basketball player since the age of five who has not been able to compete since October 2023, told Amnesty International:

“I’ve been to [basketball] games, sometimes I’ve decided not to go because it was too painful to go and I didn’t have the energy to cheer on my teammates....it changes the way that I could practice because I go to practice now to have fun, but also to progress individually and it’s hard to progress individually when you don’t have the games, it’s hard to keep motivated when you don’t have the games. I’m a competitive player, I’m not going to lie, since I was five. And so it’s a huge part of the passion that you have that’s taken away from you.”
7. For the athletes, coaches and their supporters interviewed by Amnesty International, a central concern was the violent nature and impact of the prohibitions on the wearing of religious headwear in sports, especially in the context of broader systemic gender-based and racist anti-Muslim violence in France. Basketball player H  l  ne pointed to the disproportionate prevalence and specific nature of violence that visibly Muslim women and girls face and experience:

“Studies show that Muslim women who wear the hijab and who are more visible are more likely to suffer from violence, whether it’s verbal abuse, physical abuse, than men because we are visible. Because I think you’re perceived as inferior also by this society. And so they think that they can say and do things that they wouldn’t say to others...it’s gender-based violence because the referees are, the majority of them are men, and so it’s men asking me to take off my clothes, whether it’s covering the head, whether it’s your t-shirt, whether it’s your dress, this is violence...it’s a mix of a lot of discrimination and a lot of violence.”
8. Restrictions on religious headwear have far reaching implications beyond the right to practice sport: they can adversely affect individuals’ right to private and family life, as demonstrated by the interviewees who spoke about

⁷ UN Committee on the Elimination of Racial Discrimination (CERD), Concluding observations on the combined twenty-second and twenty-third periodic reports of France, 14 December 2022, UN Doc. CERD/C/FRA/CO/22-23, para. 11 [in translation].

⁸ UN Committee on the Elimination of Racial Discrimination (CERD), Concluding observations on the combined twenty-second and twenty-third periodic reports of France, 14 December 2022, UN Doc. CERD/C/FRA/CO/22-23, para. 9 [in translation].

⁹ CERD, “Concluding observations on the combined twenty-second and twenty-third periodic reports of France”, 14 December 2022 (previously cited) para. 9 [in translation].

¹⁰ Amnesty International, *Violations of Muslim women’s and girls’ human rights through hijab bans in sports in France* (Index: EUR 21/8195/2024), July 16 2024, [amnesty.org/en/documents/eur21/8195/2024/en/](https://www.amnesty.org/en/documents/eur21/8195/2024/en/), p 8.

¹¹ For example, the football federations of Ireland, Spain and Switzerland, basketball federations of Belgium, Croatia or Slovakia, volleyball federations of Czechia, Norway or Spain.

¹² For example, the football federations of Austria, Estonia or Greece, basketball federations of Cyprus, Poland or Scotland, volleyball federations of Denmark, Germany or Finland.

¹³ Dutch Football Federation, the Danish, Italian and Norwegian Basketball Federations and the Dutch and Maltese Volleyball Federations.

¹⁴ In 2021, the Finnish Football Association offered free sports hijabs to any player interested, and in the UK, there have been particular efforts aimed at increasing Muslim women’s participation in sports at the national, regional and local levels.

¹⁵ FFBB’s Official Rules outline what can and cannot be worn by players at Rule 4.4.2, with an additional “Note” that specifies: “Regarding accessories covering the head, these are considered by the Federation as ‘inappropriate for the game’, are therefore prohibited and the player must not be allowed to participate in the meeting in the same way (...)”. In December 2022, the FFBB introduced a new Article 9.3 to the General Sports Regulations which expressly bans “the wearing of any equipment with a religious or political connotation in competitions”. Non-compliance with article 9.3 could result in disciplinary proceedings for the player and those who allow the progress of the competition.

ffbb.com/sites/default/files/otm_reglement_jeu/1a_reglement_officiel_du_basketball_2022_-_version_francaise_-_bvr_-2024-03-12-.pdf

the community that sport can often enable them to build. “B” (anonymised) said: “*it’s a shared time.*” In addition, a basketball coach who wished to remain anonymous told Amnesty International:

“On Monday evenings, I run a session for mums and there are mums of all cultures, from all walks of life, Moroccan, African, French, West Indian. The pleasure they have coming to this training session is to get together, to laugh for a while. There are some who say that even after a tiring day, they feel the need to meet the others. And when they get together and play together, there’s the one with a headscarf and there’s the one with mini shorts, and the one with her arms completely bare. And no one is judging...we are just sharing a common passion and today the reality is that basketball is full of people who share the same passion, whatever their confession may be...we come to play basketball, this allows us to meet, to exchange, to surpass yourself for some, for others it can even be an outlet out of the family environment, perhaps of everyday problems.”

9. French sports federations and the Minister of Sport have not been consulting those directly affected by the rules on the wearing of religious headgear in sports. Comparably, the UN Special Rapporteur in the field of cultural rights has stressed the importance of respecting women’s and girls’ bodily autonomy and agency, as well as their free, informed choices in relation to states’ justifications for hijab bans.¹⁶ Members of Basket Pour Toutes, a collective committed to inclusion and the fight against discrimination in basketball, shared with Amnesty International that they have consistently faced obstacles in regional assemblies they attended when trying to raise the human rights impacts of FFBB’s harmful practices and policies. A basketball coach said:

“What we want is to be able to exchange and have a dialogue. ... that they allow us to give our opinion, an opinion which would be based on arguments, and the arguments are our reality on the ground....Listen to the young sportspeople who will perhaps be the future athletes of tomorrow, who were born in France, who grew up in France, who would like to represent their country tomorrow in whatever competition, but we do not give them the opportunity. That’s what’s needed...The Minister, she needs to come, really, to let us speak.”

10. Muslim women players and their supporters, like everyone else, have the right to participate in public life under several international human rights law instruments and standards that France is bound by. French sports federations and other relevant French authorities have failed to ensure consultation with and meaningful participation of Muslim women players and athletes, particularly those who wear religious headgear, in any discussions about rules, policies, and any other laws or regulatory frameworks that concern them, including Muslim women facing intersecting discrimination based on for example, disability, race, ethnicity, socio-economic circumstances or migrant status. Ending discrimination requires states to adopt an approach to concerns about women’s equality in minority religions and cultures that is based on the views and preferences of the women themselves and their experience of discrimination.
11. Amnesty International’s research indicates that the bans on sports hijabs in France exclude many Muslim women and girls from playing and hence prevent them from experiencing the community-building, educational, health-related and economic opportunities that sport can provide. The bans also put Muslim sportswomen and girls at risk of unacceptable and inappropriate sanctions and humiliating treatment by some referees and other officials. They not only contradict international human rights obligations that France has under several treaties to which it is a party¹⁷ but also go against international sports values and the fundamental principles of Olympism. In particular, Principle 4 of the Olympic Charter states that “*every individual must have access to the practice of sport, without discrimination of any kind in respect of internationally recognised human rights within the remit of the Olympic Movement. The Olympic spirit requires mutual understanding with a spirit of friendship, solidarity and fair play.*”

B. THE RIGHT TO FREEDOM OF RELIGION AND TO MANIFEST RELIGION UNDER INTERNATIONAL AND REGIONAL LAW

12. The right to freedom of religion is enshrined in international human rights law¹⁸ and has been recognised by this Court as one of the most vital elements that makes up the identity of believers and their conception of life,¹⁹ and a precious asset for atheists, agnostics, sceptics and the unconcerned.²⁰ The guarantee of freedom of religion or belief includes both the right to hold beliefs and the right to manifest them individually or in community with others and in private or public through worship, observance, practice and teaching.²¹ The right to freedom of religion or belief has both a positive component i.e. the freedom to express and manifest one’s own religion or belief, and a

¹⁶ Special Rapporteur in the field of cultural rights, Alexandra Xanthaki, The right to participate in sports, 7 August 2024, UN Doc. A/79/299, para 81.

¹⁷ i.e. International Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Elimination of All Forms of Racial Discrimination.

¹⁸ The right to freedom of religion is enshrined in international human rights treaties including Article 9 of the European Convention on Human Rights (ECHR) and Article 18 of the International Covenant on Civil and Political Rights (ICCPR).

¹⁹ European Court of Human Rights (ECtHR), *Bayatyan v Armenia*, Application [23459/03](#), Grand Chamber, judgment, 7 July 2011, para. 118.

²⁰ ECtHR, *Leyla Şahin v Turkey*, Application 4774/98, 10 November 2005, para 104.

²¹ Article 9(1) ECHR, Article 18 (1) ICCPR.

negative component, i.e. the freedom not to be exposed to any pressure, especially from the state or in state institutions, to perform or not perform religious or belief activities against one's own will.²²

13. The UN Human Rights Committee (UNHRC), the body of independent experts established to monitor states' implementation of their obligations under the International Covenant on Civil and Political Rights (ICCPR), has explained that the right to freedom of religion or belief applies to theistic, non-theistic and atheistic beliefs. The UNHRC has explained that the right not to profess any religion or belief, and that the terms "belief" and "religion" are to be broadly construed.²³ In practice, this means that a range of actions, attire worn, habits, and lifestyle choices can fall under the scope of what makes up "religion" or "belief". This is consistent with the jurisprudence of this Court which confirms that "in the Convention²⁴ system, rights must be broadly construed and exceptions or limitations interpreted narrowly".²⁵
14. Wearing religious symbols and dress is a key element of the right to manifest religion or belief.²⁶ The wearing of religious clothing is protected both as a manner of self-expression under article 19 of the ICCPR,²⁷ and as a part of the right to practice one's religion under article 18 of the ICCPR. In many instances, restrictions on religious or cultural dress are rooted in stereotyping²⁸ and amount to discrimination against minority groups, including women, in violation of the principle of equality. This is the case despite the fact that women can consider wearing a head covering as integral to their faith or identity.²⁹
15. The right to manifest belief guarantees individuals freedom to decide whether or not they want to wear specific symbols and dress on the basis of personal religious convictions, cultural customs or for any other reason. Under these circumstances, attempts to distinguish whether a particular piece of clothing is worn for religious as opposed to cultural reasons and vice versa is of limited use because the permeability of both concepts makes it difficult to pinpoint exactly *why* an article of clothing is worn in each societal context. The critical point is that the right to freedom of religion or belief protects manifestations of the right for both underlying reasons. The UNHRC has underscored that "*the concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group*"³⁰ (own emphasis).

Restrictions of the right to freedom of religion and to manifest religion

16. Under international human rights law, the right to hold (or not to hold) religious or other beliefs, or opinions generally is absolute. The right to manifest one's religion or belief may, however, be subject to restrictions but only where such restrictions are demonstrably necessary and proportionate for the purpose of achieving a specified legitimate aim such as the protection of public safety, public order, health, or morals or the protection of the rights and freedoms of others as set out in the exhaustive lists of permissible objectives in article 9(2) of the European Convention of Human Rights (ECHR) and 18(3) of the ICCPR. The UNHRC has pointed out that this principle should be strictly interpreted, and that the right to freedom to manifest religion or belief cannot be restricted for reasons other than those stated in article 18(3) of the ICCPR. International law does not recognise the pursuit of neutrality and secularism by a state as legitimate aims for imposing restrictions on the rights to freedom of

²² UN Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, Report, 15 December 2010, UN Doc A/HRC/16/53, para. 39.

²³ UN Human Rights Committee (UNHRC), General Comment No. 22: Article 18, the Right to Freedom of Thought, Conscience and Religion, 30 July 1993, UN Doc. CCPR/C/21/Rev.1/Add.4, para. 2.

²⁴ Referring to the Convention for the Protection of Human Rights and Fundamental Freedoms.

²⁵ ECtHR, *Friend and Others v the United Kingdom*, Applications 16072/06 and 27809/08, Decision on Admissibility, 24 November 2009, para 41.

²⁶ See, for example, ECtHR, *Edweida and Others v the United Kingdom*, Applications [48420/10](#), [59842/10](#), [51671/10](#) and [36516/10](#), judgment, 15 January 2013, para. 94; ECtHR, *Hamidović v Bosnia and Herzegovina*, Application [57792/15](#), judgment, 5 December 2017, para. 30.

²⁷ Human Rights Committee, General Comment 28: Article 3, the equality of rights between men and women, 29 March 2000, UN Doc. CCPR/C/21/Add.10, para 13.

²⁸ See generally, Amnesty International, Choice and Prejudice: Discrimination Against Muslims in Europe, (Index: EUR 01/001/2012), 24 April 2012, [amnesty.org/en/wp-content/uploads/2021/06/eur010012012en.pdf](#) and p 5-6.

²⁹ UN Special Rapporteur on freedom of religion Ahmed Shaheed, Report, Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief, 13 April 2021, UN Doc A/HRC/46/30, para 26.

³⁰ UN Human Rights Committee (UNHRC), General Comment No. 22: Article 18, the Right to Freedom of Thought, Conscience and Religion, 30 July 1993, UN Doc. CCPR/C/21/Rev.1/Add.4, para. 4.

expression and religion or belief, including through general bans on religious and cultural symbols.³¹ Additionally, any limitations must be prescribed by law and be non-discriminatory in both purpose and effect.³²

17. As regards restrictions imposed for the purpose of public safety or order, states must demonstrate the existence of a specific and significant threat to public safety and order as well as justify that prohibitions which have a considerable impact on affected individuals are necessary and proportionate to the achievement of public safety; it must also demonstrate that the restriction is the least restrictive measure necessary to ensure the protection of freedom of religion or belief.³³
18. Prohibitions on the public wearing of particular forms of religious or cultural symbols or dress may violate multiple human rights including the right to private and family life and the right to manifest religion or belief if such restrictions are not based on a legitimate aim and if they are not proportionate and necessary to the achievement of that aim. A restriction fails the test of necessity if the protection could be achieved in other ways that do not limit the right to manifest one's belief or religion.³⁴ To meet the test of proportionality, restrictions must not be overly broad: "they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected."³⁵
19. As the former Special Rapporteur on freedom of religion or belief has stated: "*the burden of justifying a limitation upon the freedom to manifest one's religion or belief lies with the state.*"³⁶ Consequently, "*a prohibition on wearing religious symbols which is based on mere speculation or presumption rather than on demonstrable facts is regarded as a violation of the individual's religious freedom.*"³⁷ When imposing a restriction, the state has an obligation to demonstrate that it meets the test for permissible limitations under international law. While in specific circumstances restrictions on the wearing of religious and cultural symbols or dress could meet that test, it is likely that general bans could not satisfy the test of justification and the case-by-case approach.

C. THE STATE OBLIGATION TO ENSURE NON-DISCRIMINATION AND RELIGIOUS, CULTURAL, ETHNIC, AND RACIAL PLURALISM

The rights to non-discrimination and equality

20. The right to freedom of religion or belief is interconnected to other human rights, including the right to be free from discrimination.³⁸ The right to non-discrimination is enshrined in all international and regional human rights treaties. In addition, several treaties include specific provisions to protect equality under the law³⁹ and the right to equal enjoyment of rights by men and women.⁴⁰ The ECHR prohibits discrimination in the enjoyment of the rights it guarantees on the grounds of "*sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*"⁴¹ The ECHR should be interpreted in a way that is consistent with the non-discrimination provisions of other human rights treaties in force in any country under examination.
21. Under international law, discrimination is any difference of treatment based on a prohibited ground that does not have an objective and reasonable justification.⁴² Discrimination impairs the exercise of other human rights on an equal basis including the right to work, the rights to freedom of expression and religion or belief, the right to

³¹ Human Rights Committee, General Comment No. 22, Article 18, the Right to Freedom of Thought, Conscience and Religion, 30 July 1993, UN Doc. CCPR/C/21/Rev.1/Add.4, para 8.

³² Human Rights Committee, General Comment No. 22, Article 18, the Right to Freedom of Thought, Conscience and Religion, 30 July 1993, UN Doc. CCPR/C/21/Rev.1/Add.4, para. 5, and United Nations High Commissioner for Human Rights, Report, Negative effects of terrorism on the enjoyment of all human rights and fundamental freedoms. 30 December 2016, UN Doc A/HRC/34/30, para. 41.

³³ Human Rights Committee, *Sonia Yaker v France*, 7 December 2018. UN Doc. CCPR/C/123/D/2747/2016, para 8.8.

³⁴ See Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, 29 July 2011, UN Doc CCPR/C/GC/34 para. 33.

³⁵ Human Rights Committee, General Comment No. 27: Freedom of Movement, U.N. Doc. CCPR/C/21/Rev.1/Add.9 (1999), para 14, quoted in Human Rights Committee, General Comment No. 34, para 34.

³⁶ Special Rapporteur on freedom of religion or belief, Asma Jahangir, Report, Civil and political rights, including the question of religious intolerance, 9 January 2006, E/CN.4/2006/5 para 53.

³⁷ Special Rapporteur on freedom of religion or belief, Asma Jahangir, Report, Civil and political rights, including the question of religious intolerance, 9 January 2006, E/CN.4/2006/5 para 53.

³⁸ UN Special Rapporteur on freedom of religion Ahmed Shaheed, Report, Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief, 13 April 2021, UN Doc A/HRC/46/30, para 51.

³⁹ International Covenant on Civil and Political Rights, articles 14, 26.

⁴⁰ International Covenant on Civil and Political Rights, article 3; International Covenant on Economic, Social and Cultural Rights, article 3.

⁴¹ European Convention on Human Rights, article 14.

⁴² Human Rights Committee, General Comment No. 18, Non-Discrimination, 10 November 1989, UN Doc. HRI/GEN/1/Rev.9 (Vol. I)

education and the right to the highest attainable standard of health. International⁴³ and European⁴⁴ anti-discrimination law prohibits both direct and indirect discrimination. Indirect discrimination occurs when an apparently neutral rule, procedure, or practice is the same for everyone but results in a disproportionate disadvantage or has a disparate impact on a particular person or group of people similarly placed often because of their intersecting identity factors such as their religion, ethnicity, or race. A difference of treatment may be considered as having an objective or reasonable justification if it is for a legitimate purpose that is compatible with the human rights obligations of the state.

22. Ensuring freedom from discrimination calls for states to take an intersectional approach to account of and address compounded forms of discrimination.⁴⁵ The Council of Europe has noted that intersectional discrimination “*happens when two or multiple grounds operate simultaneously and interact in an inseparable manner, producing distinct and specific forms of discrimination.*”⁴⁶ In explaining the obligation of non-discrimination in economic, social and cultural rights, in its General Comment No. 20, the Committee on Economic, Social and Cultural Rights stated that “*some individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example, women belonging to an ethnic or religious minority. Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying.*”⁴⁷ Intersecting discrimination may present itself in the form of discriminatory stereotyping of groups of women. In the context of this case, an analysis of intersecting discrimination acknowledges that women may experience discrimination due to the intersection of gender with other factors such as their race, ethnicity and religion. For example, the stereotypes that Amnesty International has identified in its research that Muslim women, in particular Muslim women who wear veils, are “oppressed”, yet “dangerous troublemakers” who “do not want to integrate in society” are racial, gendered, and religion-based.⁴⁸ These stereotypes targeting Muslim women are also found in political, public, and media discourse,⁴⁹ which have been used to justify the adoption of restrictive policies such as the ban on the hijab in sports.
23. States parties to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) are obliged to “*pursue by all appropriate means and without delay a policy of eliminating discrimination against women,*”⁵⁰ including by undertaking “*all appropriate measures...to modify or abolish...customs or practices which constitute discrimination against women.*”⁵¹ In this connection, the UNHRC has clarified that “*certain measures...imposing special restrictions on the practice of other faiths [than the faith of the majority of a population], are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection.*”⁵² Restrictions that prohibit clothing exclusively or predominantly worn by persons of a minority faith such as for example headscarves and face veils constitute a prima facie violation of this principle.
24. Muslims in France are racialised and categorised according to their perceived race, ethnicity and/or nationality, irrespective of their actual religious practice and religion.⁵³ France, as a state party to the International Convention on the Elimination of All Forms of Racial Discrimination, is obliged to “*engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation*”⁵⁴, “*not to sponsor, defend or support*

⁴³ France is also bound by the Convention on the Elimination of All Forms of Discrimination Against Women, to counter gender-based stereotypes, which obliges it to take steps to end negative gender stereotypes relating to women and men, or to specific groups of women, and promote the values of gender equality and non-discrimination.

⁴⁴ The Revised European Social Charter also enshrines the principle of non-discrimination on the ground of religion or belief in the enjoyment of the rights it protects, including the right to work, the right to education and the right to protection of health. The Charter on Fundamental Rights of the European Union also prohibits any form of discrimination on the ground of religion or belief.

⁴⁵ See, for example Committee on the Elimination of Racial Discrimination, General Recommendation No. 25, Gender related dimensions of racial discrimination, 20 March 2000, U.N. Doc. A/55/18.

⁴⁶ www.coe.int/en/web/gender-matters/intersectionality-and-multiple-discrimination

⁴⁷ Committee on Economic, Social and Cultural Rights, General Comment 20 on Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, UN Doc. E/C.12/GC/20.

⁴⁸ Amnesty International, Regional Overview of Islamophobia in Europe, (Index EUR 01/5659/2022), 1 June 2022, [amnesty.eu/wp-content/uploads/2022/09/PACE-submission-Islamophobia-1-June-2022.pdf](https://www.amnesty.eu/wp-content/uploads/2022/09/PACE-submission-Islamophobia-1-June-2022.pdf) p. 4, 17, 29.

⁴⁹ 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, [ohchr.org/en/pressreleases/2021/03/un-expert-says-anti-muslim-hatred-rises-epidemic-proportions-urges-states](https://www.ohchr.org/en/pressreleases/2021/03/un-expert-says-anti-muslim-hatred-rises-epidemic-proportions-urges-states).

⁵⁰ Convention on the Elimination of All Forms of Discrimination against Women, article 2.

⁵¹ Convention on the Elimination of All Forms of Discrimination against Women, article 2(f).

⁵² UN Human Rights Committee (UNHRC), General Comment No. 22: Article 18, the Right to Freedom of Thought, Conscience and Religion, 30 July 1993, UN Doc. CCPR/C/21/Rev.1/Add.4, para. 9.

⁵³ In France specifically, the French Ombudsperson 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.” French Defender of Rights, *Discrimination and Origins: The Urgent Need for Action*, 2020, p.29., [defenseurdesdroits.fr/sites/default/files/2023-07/ddd_rapport_discriminations-origine_2020_EN_20200922.pdf](https://www.defenseurdesdroits.fr/sites/default/files/2023-07/ddd_rapport_discriminations-origine_2020_EN_20200922.pdf).

⁵⁴ International Convention on the Elimination of All Forms of Racial Discrimination, article 2 (1).

racial discrimination by any persons or organizations”⁵⁵ and “take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists”.⁵⁶

25. The UNHRC has observed that specific regulation of clothing to be worn by women in public...may involve a violation⁵⁷ of a number of rights guaranteed by the Covenant, such as: article 26, on non-discrimination...article 17, which guarantees all persons the right to privacy without arbitrary or unlawful interference; articles 18 and 19, when women are subjected to clothing requirements that are not in keeping with their religion or their right of self-expression; and article 27, when the clothing requirements conflict with the culture to which the woman can lay a claim.⁵⁸ This analysis applies whether the regulation requires women to wear or prohibits them from wearing specific clothing.

The issue of “neutrality”

26. In exercising its regulatory power in the context of guaranteeing the freedom of religion, to manifest religion, and in its relations with the various religions, denominations and beliefs, the state has a duty to remain neutral and impartial.⁵⁹ The UN Special Rapporteur on freedom of religion or belief has recognised: “neutrality has sometimes been portrayed as indicating a lack of State commitment in this field. Against such a misinterpretation of the concept of neutrality, however, the Special Rapporteur would point to the positive significance of that concept, which lies in the State’s obligation to be fair to the members of different religions or beliefs, on the basis of equality, and to refrain from any discriminatory treatment. State neutrality in this sense can be understood as a normative principle deriving from the obligation of a non-discriminatory implementation of freedom of religion or belief.”⁶⁰
27. Amnesty International has recurrently observed states restricting religious dress in contexts such as sports or in employment under the principle of “neutrality”.⁶¹ In France⁶² and other European states⁶³, because this has transposed into regulating how public sector employees and even private sports players present themselves, the concept of “neutrality”, that is “laïcité”, has been co-opted as a principle to convey neutrality of the individual and not of the state.⁶⁴ In this way, neutrality has been co-opted to be about who looks “neutral” and who does not⁶⁵ which, in the European context, frequently has the effect of policing what is worn by racialised groups. In France, this policing of dress particularly targets Arab and Black communities who are historically racially discriminated against, and notably impacts Muslim women and girls from these communities. In this context, neutrality is no longer synonymous to equal treatment, but rather refers to the appearance of those who are deemed to belong and those who do not.⁶⁶
28. Such use of “neutrality” can be linked to Islamophobic discourse that regards Islamic practices, symbols and dress as suspicious, dangerous or ‘representation of an illiberal, “unwestern” ideology.’⁶⁷ What the religious clothing themselves mean and represent is problematised because of the association with negative and dangerous perception

⁵⁵ International Convention on the Elimination of All Forms of Racial Discrimination, article 2 (1)(b).

⁵⁶ International Convention on the Elimination of All Forms of Racial Discrimination, article 2 (1)(c).

⁵⁷ In two cases of July 2018 on the ban of wearing of the niqab in the public space, the United Nations Human Rights Committee found that France had violated the individuals’ rights under Articles 18 and 26 of ICCPR (*Yaker v France*, UNHRC Communication No. 2747/2016, UN Doc. CCPR/C/123/D/2807/2016 (2018), *Hebbadj v France*, UNHRC Communication No. CCPR/C/123/D/2807/2016 (2018)). In March 2022, the UNHRC found that France violated the rights of a Muslim woman wearing a headscarf by preventing her from accessing a vocational training course (*Mezhoud v France*, UN Human Rights Committee Communication No. CCPR/C/123/D/2807/2016 (2022)).

⁵⁸ Human Rights Committee, General Comment 28: Article 3, the equality of rights between men and women, 29 March 2000, UN Doc. CCPR/C/21/Add.10, para 13.

⁵⁹ ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, Application 45701/99, 13 December 2001, para 116.

⁶⁰ Interim Report of the Special Rapporteur on Freedom of Religion or Belief to the General Assembly, 18 July 2011, UN Doc. A/66/156, para 50.

⁶¹ Amnesty International, Regional Overview of Islamophobia in Europe, (Index EUR 01/5659/2022), 1 June 2022, [amnesty.eu/wp-content/uploads/2022/09/PACE-submission-Islamophobia-1-June-2022.pdf](https://www.amnesty.eu/wp-content/uploads/2022/09/PACE-submission-Islamophobia-1-June-2022.pdf)

⁶² “Neutrality” in the French context derives from the principle of secularism of (laïcité), which was coined in the *Loi du 9 décembre 1905 concernant la séparation des Églises et de l’État* (The Separation of Churches and State Act 1905 (1905 Act)). The French Republic is defined as secular (laïque) by Article 1 of the 1958 Constitution. The principle of secularism (laïcité) has been interpreted by the Council of State as implying strict neutrality for employees in public services. See, for instance, Council of State, advise no. 217017 of 3 May 2000 (Mlle Marteaux), <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000400740&dateTexte=>, accessed 27 January 2012.

⁶³ Amnesty International, Regional Overview of Islamophobia in Europe, (Index EUR 01/5659/2022), 1 June 2022, [amnesty.eu/wp-content/uploads/2022/09/PACE-submission-Islamophobia-1-June-2022.pdf](https://www.amnesty.eu/wp-content/uploads/2022/09/PACE-submission-Islamophobia-1-June-2022.pdf) p.21.

⁶⁴ The concept of laïcité has been exploited to demand a strict invisibility of religious symbols, whereas the original law (The Separation of Churches and State Act 1905 (1905 Act) was enacted to guarantee religious freedom.

⁶⁵ Open Society Justice Initiative, *Contesting Neutrality Dress Codes in Europe*, Willem Hutten an Nawal Mustafa, March 2022, [justiceinitiative.org/uploads/eb6f3b65-6a5d-4b3b-9635-d4b92c4058ba/briefing-paper-contesting-neutrality-03182022.pdf](https://www.justiceinitiative.org/uploads/eb6f3b65-6a5d-4b3b-9635-d4b92c4058ba/briefing-paper-contesting-neutrality-03182022.pdf), p.23.

⁶⁶ Open Society Justice Initiative, *Contesting Neutrality Dress Codes in Europe*, Willem Hutten an Nawal Mustafa, March 2022, [justiceinitiative.org/uploads/eb6f3b65-6a5d-4b3b-9635-d4b92c4058ba/briefing-paper-contesting-neutrality-03182022.pdf](https://www.justiceinitiative.org/uploads/eb6f3b65-6a5d-4b3b-9635-d4b92c4058ba/briefing-paper-contesting-neutrality-03182022.pdf)

⁶⁷ Open Society Justice Initiative, *Contesting Neutrality Dress Codes in Europe*, Willem Hutten an Nawal Mustafa, March 2022, [justiceinitiative.org/uploads/eb6f3b65-6a5d-4b3b-9635-d4b92c4058ba/briefing-paper-contesting-neutrality-03182022.pdf](https://www.justiceinitiative.org/uploads/eb6f3b65-6a5d-4b3b-9635-d4b92c4058ba/briefing-paper-contesting-neutrality-03182022.pdf), p.24

about those who wear it.⁶⁸ Amnesty International has found that the wearing of hijabs by Muslim women has long been instrumentalized and negatively stereotyped to demonize Muslim women and girls and homogenize the diverse significance they may represent to those who wear them or would wish to wear them but fear to do so or are legally prevented from doing so in public.⁶⁹ Further, that harmful and entrenched stereotypical perceptions of hijabs and the position of women in Muslim families impact negatively on women who choose to wear symbols or forms of dress perceived as Muslim.⁷⁰

29. The current context in France supports the conclusion that the principle of neutrality is indirectly informed by prejudice, fear and suspicion of other religions and cultures and seeks to legalise prejudice through the adoption of laws, policies and regulations that explicitly excludes certain dress or practices in the name of neutrality.⁷¹ Accordingly, Amnesty International submits that if neutrality constituted a reasonable and objective justification for restricting religious and cultural dress under international law, which it does not, it would have the effect of normalising a derogation from the principle of non-discrimination as states could rely on “neutrality” to impose unjustified differences of treatment on grounds of religion or belief and political opinion.

The importance of promoting pluralistic societies

30. Restrictions on freedom of religion that do not meet international law standards adversely affect states’ ability to have pluralistic societies. Pluralism can be defined as diversity of values, opinions, and social groups and the absence of predominance of specific values, opinions or groups over others.⁷² Promoting pluralism leads to increased cultural diversity which has been recognised by the Committee on Economic, Social and Cultural Rights, as “*an ethical imperative, inseparable from human dignity. It implies a commitment to human rights and freedoms, and requires the full implementation of cultural rights, including the right to take part in cultural life.*”⁷³ Pluralism is fostered when minority groups are free to express themselves in society, including by manifesting their religion including through dress without unwarranted direct or indirect state interference.

31. Regrettably, the jurisprudence of this Court is conflicting in its interpretation of the character of particular demonstrations of the right to freedom of religion and to manifest religion which is at odds with the principle of pluralism. For example, this Court characterised a measure permitting school children to wear a full-body swimsuit (a so-called “burkini”) in swimming lessons as a “*concession*” rather than an initiative to accommodate religious inclusion in school.⁷⁴ Further, in the 2001 case of *Dahlab v Switzerland*,⁷⁵ which concerned the banning of the wearing of a headscarf by a female Muslim teacher in a primary school, the wearing of the headscarf was described by this Court as a “*powerful external symbol*” that “*might have some kind of proselytising effect*” that appears “*difficult to reconcile with the message of tolerance, respect for others, and above all, equality and non-discrimination*”.⁷⁶ By contrast, in the 2011 case of *Lautsi and Others v Italy*⁷⁷ a case that concerned the mandatory display of Christian crucifixes in state school classrooms, the crucifix was described as “*an essentially passive symbol*”⁷⁸ whose presence the Court did not consider was associated with the compulsory teaching of Christianity.⁷⁹ This is a stark contrast in the Court’s decisions when applicants have asserted their rights when they belong to a minority religion as opposed to a majority religion in Europe. Prohibitions on religious head coverings based on perceptions that are removed from the lived realities of affected communities are detrimental to the inclusion of Muslim women and girls in society, and as the UNHRC has noted, “*such prohibitions can violate Muslim women’s rights to freedom of religion or belief and non-discrimination and exacerbate their social marginalization*”.⁸⁰

⁶⁸ Open Society Justice Initiative, *Contesting Neutrality Dress Codes in Europe*, Willem Hutten an Nawal Mustafa, March 2022, justiceinitiative.org/uploads/eb6f3b65-6a5d-4b3b-9635-d4b92c4058ba/briefing-paper-contesting-neutrality-03182022.pdf, p.24.

⁶⁹ Amnesty International, Regional Overview of Islamophobia in Europe, (Index EUR 01/5659/2022), 1 June 2022, amnesty.eu/wp-content/uploads/2022/09/PACE-submission-Islamophobia-1-June-2022.pdf

⁷⁰ Amnesty International, Choice and Prejudice: Discrimination Against Muslims in Europe, (Index: EUR 01/001/2012), 24 April 2012, amnesty.org/en/wp-content/uploads/2021/06/eur010012012en.pdf p.13.

⁷¹ Open Society Justice Initiative, *Contesting Neutrality Dress Codes in Europe*, Willem Hutten an Nawal Mustafa, March 2022, justiceinitiative.org/uploads/eb6f3b65-6a5d-4b3b-9635-d4b92c4058ba/briefing-paper-contesting-neutrality-03182022.pdf, p.24.

⁷² Aernout Nieuwenhuis, *The Concept of Pluralism in the Case-Law of the European Court of Human Rights*, EUConst 3, 2007.

⁷³ Committee on Economic, Social and Cultural Rights, General Comment No.21, Right of everyone to take part in cultural life (art. 15, para. 1 (a) of the International Covenant on Economic, Social and Cultural Rights, 21 December 2009, UN Doc. E/C.12/GC/21, para 40.

⁷⁴ ECtHR, *Osmanoğlu and Kocabaş v Switzerland*, Application [29086/12](https://www.echr.coe.int/ViewDoc.aspx?id=29086/12), 10 January 2017, para 101.

⁷⁵ ECtHR, *Dahlab v Switzerland*, Application [42393/98](https://www.echr.coe.int/ViewDoc.aspx?id=42393/98), 15 February 2001.

⁷⁶ ECtHR, *Dahlab v Switzerland*, Application [42393/98](https://www.echr.coe.int/ViewDoc.aspx?id=42393/98), 15 February 2001.

⁷⁷ ECtHR, Grand Chamber, *Lautsi and Others v Italy*, Application [30814/06](https://www.echr.coe.int/ViewDoc.aspx?id=30814/06), 18 March 2011.

⁷⁸ ECtHR, Grand Chamber, *Lautsi and Others v Italy*, Application [30814/06](https://www.echr.coe.int/ViewDoc.aspx?id=30814/06), 18 March 2011, para 72.

⁷⁹ ECtHR, Grand Chamber, *Lautsi and Others v Italy*, Application [30814/06](https://www.echr.coe.int/ViewDoc.aspx?id=30814/06), 18 March 2011, para 74.

⁸⁰ UN Special Rapporteur on freedom of religion Ahmed Shaheed, Report, Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief, 13 April 2021, UN Doc A/HRC/46/30, para 26, citing UN Doc [CCPR/C/123/D/2807/2016](https://www.unhcr.org/refugees/cpr/cpr-c/123/d/2807/2016), UN Doc. [CCPR/C/BEL/CO/6](https://www.unhcr.org/refugees/cpr/cpr-c/bel/co/6) and UN Doc. [CCPR/C/NLD/CO/5](https://www.unhcr.org/refugees/cpr/cpr-c/nld/co/5).

32. What is at stake here is the preservation of pluralism, which was later recognised by this Court in *S.A.S v France*.⁸¹ Accordingly, the role of the authorities in such circumstances is not to remove the “cause” of tension by eliminating pluralism.⁸² The onus is on the state to facilitate and promote religious, cultural, ethnic, and racial harmony - hence pluralism - which it bears the “ultimate” responsibility of guaranteeing.⁸³ This Court has consistently underscored the importance of states upholding pluralism in society and the value for groups to seek an ethnic identity or assert a minority consciousness: “*in particular, pluralism is built on, for example, the genuine recognition of, and respect for, diversity and the dynamics of traditions and of ethnic and cultural identities. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion.*”⁸⁴ It follows that specifically with regard to the treatment of racialised people or religious minorities, “*no difference in treatment which is based exclusively or to a decisive extent on a person’s ethnic origin is capable of being objectively justified in a contemporary...society built on the principles of pluralism and respect for different cultures.*”⁸⁵

D. UNDULY RESTRICTIVE LEGISLATIVE AND SPORTING MEASURES CURTAIL GENDER, RELIGIOUS AND RACIAL EQUALITY AND INCLUSIVITY IN SPORTS IN FRANCE

33. International and regional⁸⁶ law recognises that discriminatory policies and practices that restrict civil, political, economic, social and cultural rights on the basis of religious identity can significantly infringe upon the right to freedom of religion or belief of targeted populations.⁸⁷ In their October 2023 letter to the French authorities, five United Nations Special Rapporteurs and the Working Group on Discrimination against Women and Girls stressed that France is breaching the human rights of Muslim women and girls who wear the hijab, including “*their right to participate in cultural life, which includes the right to express their cultural identity and the right to participate in sports.*”⁸⁸

34. The human right to participate in sport can be derived from international human rights law⁸⁹ and standards on a full spectrum of human rights, for example the right to take part in cultural life,⁹⁰ the right to health⁹¹ including mental health, the right to participation public life,⁹² and take decisions about one’s own body and private life,⁹³ - all without being discriminated against.⁹⁴ For example, everyone has the right to rest and leisure, as set out in article 24 of the Universal Declaration of Human Rights. Everyone also has the right to participate in cultural life, of which sport is a part, as specified by the International Committee on Economic, Social and Cultural Rights.⁹⁵ The Committee on Economic, Social and Cultural Rights has made it clear that there is no justification for the lack of protection of vulnerable members of society from health-related discrimination, be it in law or in fact.⁹⁶

35. In 2020, the UN High Commissioner for Human Rights recognised that “*Globally...the level of participation of women and girls in sport remains lower than that of men and boys. Numerous studies point to the factors linked to the lower participation rates of women and girls in both amateur and professional sport. Those factors can be both*

⁸¹ See ECtHR, *S.A.S., v France*, Application [43835/11](#), para 120.

⁸² ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, Application [45701/99](#), 13 December 2001, paras 115-116.

⁸³ ECtHR, *Informationsverein Lentia and Others v Austria*, 24 November 1993, Applications [13914/88](#); [15041/89](#); [15717/89](#); [15779/89](#); [17207/90](#), para 38.

⁸⁴ ECtHR, *Ouranio Toxo v. Greece*, Application [74989/01](#), 20 October 2005, para 35. See also ECtHR, *Gorzelik and Others v. Poland*, Application [44158/98](#), 17 February 2004, para 92; ECtHR, *United Macedonian Organization Ilinden and others v. Bulgaria*, Application [59491/00](#), 19 January 2006, para 58; ECtHR, *Moscow Branch of the Salvation Army v. Russia*, Application [72881/01](#), 5 October 2006, para 61.

⁸⁵ ECtHR, *Timishev v Russia*, Applications [55762/00](#) and [55974/00](#), 13 March 2006, para 58.

⁸⁶ The Charter on Fundamental Rights of the European Union; The Revised European Social Charter.

⁸⁷ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, art. 2; UN Special Rapporteur on freedom of religion Ahmed Shaheed, Report, Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief, 13 April 2021, UN Doc A/HRC/46/30, para 51.

⁸⁸ Mandates of the Special Rapporteur on cultural rights; the Special Rapporteur on the right to education; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on violence against women and girls, its causes and consequences; and the Working Group on Discrimination against Women and Girls, 27 October 2023, Ref: AL FRA 13/2023, spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28534.

⁸⁹ See Special Rapporteur in the field of cultural rights, Alexandra Xanthaki, The right to participate in sports, 7 August 2024, UN Doc. A/79/299, paras 15-19.

⁹⁰ International Covenant on Economic, Social, and Cultural Rights, article 15.

⁹¹ The Committee on Economic, Social and Cultural Rights, General Comment No. 14, Article 12: The Right to the Highest Attainable Standard of Health, 11 August 2000, UN Doc. E/C.12/2000/4

⁹² ICCPR, article 25.

⁹³ ICCPR, article 17; ECHR, article 8.

⁹⁴ The Special Rapporteur in the field of cultural rights has specifically recognised that “States have legal obligations to respect, protect and fulfil human rights in sport.” Special Rapporteur in the field of cultural rights, Alexandra Xanthaki, The right to participate in sports, 7 August 2024, UN Doc. A/79/299, para 3.

⁹⁵ International Committee on Economic, Social and Cultural Rights, General Comment No. 21, Right of everyone to take part in cultural life (art. 15, para.1(a), of the International Covenant on Economic, Social and Cultural Rights), 21 December 2009, UN Doc. E/C.12/GC/21, para 13.

⁹⁶ International Committee on Economic, Social and Cultural Rights, General Comment No. 21, Right of everyone to take part in cultural life (art. 15, para.1(a), of the International Covenant on Economic, Social and Cultural Rights), 21 December 2009, UN Doc. E/C.12/GC/21.

*external to sport, such as discriminatory social norms or obstacles to reconciling the burdens of care, work and sport, and internal to sport, including the lack of programmes to create a gender-sensitive and safe sporting environment or to address harassment and other forms of gender-based violence in sport, including sexual exploitation and abuse.”*⁹⁷ It was also stressed that the impact of gender-related barriers on their access to sport is greater for racialised women and girls: “*the intersection between discrimination based on race and on gender lead to even greater obstacles for specific groups of women and girls, including racial and ethnic minorities.*”⁹⁸

36. Restrictions on religious headwear adversely affect individuals’ right to private and family life which this Court has recognised as encompassing the right to establish and develop relationships with other human beings and the right to identity and personal development.⁹⁹ This Court’s jurisprudence also suggests that where individuals engage in an activity that is not far removed from their personal autonomy and there are close and determinate relations affected by bans related to that activity (see para 8 above), that these bans would amount to an interference with their rights under article 8.¹⁰⁰

CONCLUSION

37. States have a clear obligation to guarantee the right to freedom of religion and to manifest religion without discrimination. These obligations exist against the backdrop of international Treaty Bodies such as the UNHRC expressing concern about France and “*the resurgence of racist and xenophobic discourse in both the public and political spheres, and fears that this may lead to the rise of intolerance and a feeling of rejection in some communities*”, calling on France to “*step up its efforts against racist, antisemitic and anti-Muslim violence.*”¹⁰¹ The Special Rapporteur in the field of cultural rights reported in 2024 that they raised with the government of France the issue of banning women and girls wearing the hijab from participating in sports, and described the Government’s response as “*not address[ing] the issue from a human rights perspective, misinterpret[ing] secularism as a justification for banning expressions of religion or belief and discriminat[ing] indirectly against women wearing the hijab.*”¹⁰² Given that religious head coverings are clothing articles that are particularly worn by Muslim women and girls who are already at increased risk of stigmatization in French society, states have a heightened obligation to ensure that any laws, policies and practices are neither indirectly or directly discriminatory and do not lead to increased marginalisation of these people.
38. Measures that restrict the right to freedom of religion and the freedom to manifest religion can only ever be justified under international law if they meet the strict requirements of necessity, proportionality, and pursue a legitimate aim. Even in the context of ensuring public safety, the onus is on the state to use the least restrictive method in its interferences of freedom of religion and particular attention should be paid to the positionality and intersectionality of the group of people whose human rights are principally adversely affected by a given religious clothing ban.
39. As discussed above, the state duty to uphold the principle of pluralism involves creating an environment where people belonging to religious, racial, ethnic, and gendered minorities can fully participate in society and exercise their human rights including those which are engaged by the right to sport. States should take an approach informed by the experiences of Muslim women and girls and not one rooted in racist or xenophobic stereotypes to eliminate the discrimination and violations of other human rights that sporting rules banning head coverings or other types of religious dress can cause.

⁹⁷ United Nations High Commissioner for Human Rights, Report, Intersection of race and gender discrimination in Sport, 15 June 2020, UN Doc A/HRC/44/26, para 6.

⁹⁸ United Nations High Commissioner for Human Rights, Report, Intersection of race and gender discrimination in Sport, 15 June 2020, UN Doc A/HRC/44/26, para 10.

⁹⁹ ECtHR, *Friend and Others v the United Kingdom*, Applications [16072/06](#) and [27809/08](#), Decision on Admissibility, 24 November 2009, para 41.

¹⁰⁰ ECtHR, *Friend and Others v the United Kingdom*, Applications [16072/06](#) and [27809/08](#), Decision on Admissibility, 24 November 2009, para 43.

¹⁰¹ UN Human Rights Committee, *Concluding Observations on the fifth periodic report of France*, 17 August 2015, UN Doc. CCPR/C/FRA/CO/5, para. 23.

¹⁰² Special Rapporteur in the field of cultural rights, Alexandra Xanthaki, The right to participate in sports, 7 August 2024, UN Doc. A/79/299, para 81.