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FOCUS
Migration and Religion in International law: Research-based Proposals for Inclusive, Resilient, and Multicultural Societies

This focus is the final output of the research project of national interest Migration and Religion in International Law (MiReIL). Research-based Proposals for Inclusive, Resilient, and Multicultural Societies*, funded by the Italian Ministry of University and Research and by the European Union – NextGenerationEU in the framework of the "Piano nazionale di ripresa e resilienza (PNRR)"*

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THE PROBLEM OF (RACIALIZED) RELIGIOUS PROFILING IN LAW ENFORCEMENT OPERATIONS ON THE GROUND AND WITH AI: WHAT OBLIGATIONS FOR EUROPEAN STATES?

Carmelo Danisi*

1. Introduction

The 2024 Report on Italy of the European Commission against Racism and Intolerance (hereinafter, ECRI or the Commission),[1] set up in the framework of the Council of Europe (CoE), attracted an unusual level of attention in the Italian public opinion as well as a firm reaction by the Italian Government.[2] While praising the efforts

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[1] ECRI, *Report on Italy*, adopted on 2 July 2024 and published on 22 October 2024 on the following link: rm.coe.int/sixth-ecri-report-on-italy/1680b205f5. The content of the Report was reiterated in the ECRI Annual Report, published on 27 May 2025.

[2] See, among others, the latest reaction of the Italian Prime Minister as reported by the press (La Repubblica, *Consiglio d'Europa "Polizia razzista". Meloni "Accuse false e vergognose"*, www.repubblica.it/politica/2025/05/28/news/razzismo_polizia_consiglio_europa_governo_meloni-

made by Italy in the promotion of equality policies and contrast to hate crimes during the last years, ECRI highlighted an increase of xenophobic public discourse, which is often led by high-level politicians and usually targets refugees, asylum seekers and migrants, as well as Italian citizens with migratory backgrounds.[3] Following a visit in Italy and in light of other primary data,[4] ECRI pointed out the existence of specific pattern of "racial profiling" in law enforcement officials' everyday practice, especially as far as police stop and search operations are concerned. According to ECRI, profiling is a specific form of discrimination, which may amount to a form of institutional racism.[5] Italy is not an isolated case in Europe. Similar allegations are recurrent with regard to other European States, including Germany,[6] Switzerland,[7] and France.[8]

Given the strict relationship linking ethnic origin and religion, forms of profiling may also be based on the real or presumed religion of minority groups that, especially in mostly white and Christian European societies, are often composed of people with a migratory background.[9] If due account is paid to the experience of one of the most discussed countries in this field, namely the United States, religion indeed played – alone or in combination with migratory background and/or national or ethnic origin – a central role in profiling individuals for purposes of public order as well as broader national security strategies. The counter-terrorism measures, especially those launched after the 9/11 attacks, are a case in point.[10] The so-called "Muslim Ban", which was ordered by

424634112/), as well as the discussion held at the Chamber of Deputies on 11 June 2025 (www.camera.it/leg19/410?idSeduta=0490&tipo=stenografico#sed0490.stenografico.tit00120).

[3] ECRI, *Report on Italy*, cit., pp. 5-6.

[4] E.g. ASGI, Centro Studi MEDI, *When Institutions Discriminate: Equality, Social Rights, Immigration*, 2022, www.asgi.it/wp-content/uploads/2023/04/Report_LAW_EN.pdf.

[5] ECRI, *Report on Italy*, cit., pp. 29-30.

[6] Patterns of racial profiling have already been confirmed by domestic Courts: see Oberverwaltungsgericht of Rheinland-Pfalz, 21 April 2016, judgment no. 7 A 11108/14.OVG; Higher Administrative Court of Nordrhein-Westfalen, 7 August 2018, judgment no. 5 A 294/16, paras. 74-75.

[7] CERD Committee, *Concluding Observations on the Combined Tenth to Twelfth Periodic Reports of Switzerland*, 27 December 2021, UN Doc. CERD/C/CHE/CO/10-12, paras. 19-20.

[8] ECRI, *Conclusions on the Implementation of the Recommendations in Respect of France*, adopted on 20 November 2024 and published on 19 February 2025, pp. 5-6. Interestingly, in France also the *Conseil d'Etat* found that patterns of discriminatory profiling in the identity checks carried out by the police exist, although it deemed that such a profiling did not amount to a "systemic" practice: see *Conseil d'Etat*, 11 October 2023, *Amnesty International France and Others*, no. 454836, esp. para. 24. Significantly, according to the data provided by the French *Défenseur de droits* before the *Conseil d'Etat*, "black or Arab" people have so far been disproportionately impacted by identity checks. It can be presumed that "Arab" also works as a proxy for targeting a specific religious group (see below, section 2).

[9] On profiling, although mainly "racial" profiling, see D.A. RAMIREZ, J. HOOPES, T.L. QUINLAN, *Defining Racial Profiling in a Post-September 11 World*, in *American Criminal Law Review*, 2003, pp. 1195-1234; S.J. ELLMANN, *Racial Profiling and Terrorism*, in *New York Law School Journal of International and Comparative Law*, 2003, pp. 305-360; S.H. LEGOMSKY, *The Ethnic and Religious Profiling of Non-citizens: National Security and International Human Rights*, in *Boston College Third World Law Journal*, 2005, pp. 161-220; O. DE SCHUTTER, J. RINGELHEIM, *Ethnic Profiling: A Rising Challenge for European Human Rights Law*, in *Modern Law Review*, 2008, pp. 358-384; D.A. HARRIS, *Racial Profiling: Past, Present, and Future*, in *Criminal Justice*, 2020, pp. 10-17; A. CESERANI, *Profiliazione religiosa e sicurezza: alcune riflessioni su un quadro normativo in divenire*, in *Il diritto ecclesiastico*, 2023, pp. 867-881.

[10] Among others, M.V. MORRIS, *Racial Profiling and International Human Rights Law: Illegal Discrimination in the United States*, in *Emory International Law Review*, 2001, pp. 207-266; K.

the United States' President Trump in 2017 despite the unproven existence of specific threats to national security coming from nationals of seven Muslim countries,[11] offers a good example of broad profiling based on a very specific religious belonging that was adopted because of a controversial equation between being a terrorist and professing Islam.[12]

While the discriminatory impact of counter-terrorism measures on Muslim communities and those perceived to be Muslim, on account of their ethnic origin, is still reported in Europe,[13] profiling on the account of religion, alone or in combination with other personal characteristics, may also play a role in other areas. For example, in migration control policies, it cannot be excluded that religion is used for the remote selection in the admission of refugees and migrants. At the same time, in law enforcement operations, religion can be a factor to guide stop and search operations on the ground leading to potentially unlawful patterns of profiling. Even more, thanks to technological developments, religious profiling can also originate from Artificial Intelligence (AI) systems,[14] such as mechanisms of mass surveillance,[15] facial recognition,[16] or other algorithm-based tools, which are increasingly employed in law enforcement operations. In this respect, an infamous example is the treatment of Uyghurs in China, where the government uses facial recognition and a new AI emotion-detection software to track the biggest Muslim minority in the country.[17] In this respect, it may be argued that it is not the AI itself to raise problems of compliance with China's human rights obligations. It is instead how AI is used in that specific context to be raise serious human rights concerns. Yet, it is nonetheless true that AI systems, which are based on big amount of data, may not be exempt from unlawful forms of biases, including on religion, migratory or ethnic origin grounds, when are employed for public order or national security

RINGROSE, *Religious Profiling: When Government Surveillance Violates the First and Fourth Amendments*, in *University of Illinois Law Review Online*, 2019, pp. 1-8.

[11] US Government, *Executive Order: Protecting the Nation for Foreign Terrorist Entry into the United States*, 27 January 2017. See also the latest 2025 ban that, despite not including only predominately Muslim countries, still raises problems from an international law perspective: US Government, *Restricting the Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and other National Security and Public Safety Threats*, 4 June 2025.

[12] On the ban, A. LIGUORI, *Il "Muslim Ban" di Trump alla luce del diritto internazionale*, in *Diritti umani e diritto internazionale*, 2017, pp. 173-188; J.C. HATHAWAY, *Executive (Dis)order and Refugees – The Trump Policy's Blindness to International Law*, in *Just Security*, 1 February 2017, www.justsecurity.org.

[13] AMNESTY INTERNATIONAL, OPEN SOCIETY FOUNDATIONS, *A Human Rights Guide for Researching Racial and Religious Discrimination in Counter-Terrorism in Europe*, 2021, www.amnesty.org/en/documents/eur01/3606/2021/en/.

[14] For a definition, see Section 4, below.

[15] M. KWET, *The Golden Age of Racial Surveillance*, in M. KWET (ed.), *The Cambridge Handbook of Race and Surveillance*, Cambridge, 2023, pp. 1-18.

[16] A. LIMANTĖ, *Bias in Facial Recognition Technologies Used by Law Enforcement: Understanding the Causes and Searching for a Way Out*, in *Nordic Journal of Human Rights*, 2023, pp. 115-134.

[17] HUMAN RIGHTS WATCH, STANFORD LAW SCHOOL, *"Break Their Lineage, Break Their Roots". China's Crimes against Humanity Targeting Uyghur and other Turkic Muslims*, 2021, p. 22 ff., www.hrw.org/report/2021/04/19/break-their-lineage-break-their-roots/chinas-crimes-against-humanity-targeting.

reasons.[18] The new legal challenges emerged so far are even more complex owing to the role played by private actors, like the big tech companies, in the development and the implementation of relevant AI-based systems or in the provision of data for police's investigatory activities, among other things. For example, a basic research of the term "terrorism" in one of the most famous search engines – still – results in a disproportionate number of images of Muslim people, despite the many international calls on the risk of perpetuating bias and discrimination through data and technologies.[19]

A key question therefore arises: what are, under international law, the obligations of States concerning the eradication and the prevention of religious profiling, *per se* or in combination with other personal characteristics, like ethnic origin or migratory background, in the specific area of law enforcement?

In order to answer this question, this contribution analyses the seemingly distinct legal challenges posed by religious profiling in two different contexts: law enforcement operations on the ground, on the one hand, and law enforcement activities involving AI systems, on the other. Given the limited availability of horizontal investigations of this kind, this paper aims to contribute to filling this gap by examining the different legal frameworks that may play a role in addressing the pervasive and systemic nature of religious profiling in law enforcement. It overall shows that religious profiling as such is not properly addressed in international law, unless it is associated with other personal characteristics like "race",[20] ethnic origin or skin colour. Owing to the lack of an international treaty specifically dedicated to the protection of (freedom of) religion, profiling of this kind in police's everyday practice can only be addressed through broad provisions, whose application may depend on the wider approach of the international monitoring body at play towards religion and religious discrimination. The absence of specific rules at international level protecting potential victims against religious profiling is also evident when AI systems and algorithmic profiling are involved. In both areas investigated by this contribution, security-based grounds risk being an easy justification, unless a strict proportionality test is applied.

This state of affairs prompts us to explore the relationship with racial profiling and the notion of "racialized" religious profiling, which may lead to the identification of relevant and more specific international obligations for European States also in terms of evidentiary standards to the benefit of the victims, and the new European rules on AI,

[18] For a general overview of the specific problems concerning national security in the US context, L.N. HOBART, *AI, Bias, and National Security Profiling*, in *Berkeley Technology Law Journal*, 2025, pp. 165-231.

[19] The United Nations General Assembly itself also warned against the risk of perpetuating bias: see UNGA, *Seizing the Opportunities of Safe, Secure and Trustworthy Artificial Intelligence Systems for Sustainable Development*, 11 March 2024, UN Doc. A/78/L.49, para. 6(h). Among others, see M. BALCERZAK, J. KAPELAŃSKA-PRĘGOWSKA (eds.), *Artificial Intelligence and International Human Rights Law. Developing Standards for a Changing World*, Cheltenham, 2024; A. PAJNO, F. DONATI, A. PERRUCCI (eds.), *Intelligenza artificiale e diritto: una rivoluzione?*, Bologna, 2022.

[20] The usual disclaimer on the term "race" applies here. Although theories based on the existence of different "races" are rejected, race is used in this paper in line with the use made by the human rights bodies involved in our analysis.

i.e. within the CoE framework as well as under EU law, thus verifying their potential impact in preventing (racialized) religious profiling in law enforcement.

For this reason, this paper first explores the notion of religious profiling through an intersectional approach in order to identify which international law frameworks can be of real relevance for preventing and protecting against religious profiling in Europe (section 2). Two sections follow, each one addressing (racialized) religious profiling from a specific aspect of law enforcement. Section 3 places its focus on law enforcement activities on the ground, like stop and search or identity checks operations, and investigates the possible impact of a new promising approach emerging in the case law of the European Court of Human Rights (ECtHR) in the area of racial profiling. Section 4 addresses law enforcement in connection with the use of AI systems, by examining the potential developments originating from the new CoE's Framework Convention related to AI and the European Union's AI Act. The paper ends with some concluding remarks.

2. A Necessary Premise: The Intersection of Religion and "Race"/Ethnic Origin in Religious Profiling

As the introduction already suggests, in broad terms "profiling" can be defined as the practice of law enforcement authorities, as well as other actors that may cooperate with them, who rely on specific personal characteristics, such as religion, national or ethnic origin or migratory status, to subject specific people or groups to investigatory or other police activities for combatting crime or controlling immigration.[21] Religious as well as "racial" profiling can be an issue, for example, in police stop and search operations, identity checks, border control management or in investigations connected to the fight against terrorism in the (unproven) belief that members of a certain religion or ethnic origin can be more easily involved in crime.

The need to elaborate such a broad, yet workable, definition for the purpose of this paper is motivated by the lack of a clear definition of religious profiling in international law. The reason is strictly connected with the absence, in international law, of a specific binding instrument aimed to protect freedom of religion as well as to prohibit religious-based discrimination. Despite the historical attempt to adopt, at the UN, a specific convention in this area along with a convention on the elimination of all forms of racial discrimination,[22] a binding treaty on the protection against religious intolerance is still

[21] Specific definitions – if any – and the problems connected to them will be discussed with reference to the relevant applicable frameworks in the next sections. See A. VON UNGERN-STERNBERG, *Religious Profiling, Statistical Discrimination and the Fight against Terrorism in Public International Law*, in R. UERPMANN-WITTZACK, E. LAGRANGE, S. OETER (eds.), *Religion and International Law. Living Together*, Leiden, 2018, p. 194 ff.

[22] For all details, among many others, see M.I. PAPA, *La tutela della libertà religiosa nel sistema delle Nazioni Unite: quadro normative e meccanismi di controllo*, in M.I. PAPA, G. PASCALE, M. GERVASI (eds.), *La tutela internazionale della libertà religiosa: problemi e prospettive*, Naples, 2019, pp. 17-25.

missing. The division between States, which emerged already at the UN during that initial process, made possible only the adoption of a non-binding text, i.e. the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.[23] Irrespective of its legal nature and although it does not include any reference to profiling as such, it is worth noting that the Declaration defines "intolerance and discrimination based on religion or belief" as "any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis" (point 2). It also calls States to take effective measures, including legislation, to prevent and eliminate this kind of discrimination "in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life" (point 4). It follows that, if the effect of profiling is to impair the enjoyment of human rights, religious profiling may accordingly be referred to as a form of intolerance and discrimination based on religion or belief.

The lack of a specific binding framework, joint to the interpretation of profiling as a potential discrimination, leads us to resort to general human rights treaties, especially their non-discrimination provisions, to identify relevant obligations for the prevention and the contrast of religious profiling. For the purpose of this paper and given its focus on European States, at least two human rights treaties come into play: the International Covenant on Civil and Political Rights (ICCPR), whose monitoring body – the Human Rights Committee – has heard the first ever case involving unlawful profiling via Art. 26 ICCPR on the prohibition of discrimination on any ground;[24] and the European Convention on Human Rights (ECHR), whose Art. 14 was also interpreted, in combination with the right to respect for private life (Art. 8),[25] to cover instances of unlawful profiling by law enforcement operations. However, the cases assessed so far by both these human rights bodies do not involve – at least explicitly – religion. They nonetheless provide insightful elements to verify how such non-discrimination provisions may be of use to address religious profiling. In fact, they shed light on some key – procedural – standards that have a clear impact on all victims of unlawful profiling when they claim to have been discriminated against by law enforcement authorities in the context of their everyday operations on the street.

Before delving into this endeavour in Section 3, an additional premise is necessary. The application of an additional – specific – human rights treaty can be justified in the area of religious profiling. In fact, under some circumstances, it may be argued that religious profiling can fall also within the scope of the Convention on the Elimination

[23] UN General Assembly, Resolution 36/55, 25 November 1981, UN Doc. A/RES/36/55.
[24] Human Rights Committee, view of 27 July 2009, communication no. 1493/2006, *Lecraft v. Spain*, UN Doc. CCPR/C/96/D/1493/2006.
[25] European Court of Human Rights, judgment of 26 June 2025, application no. 35844/17, *Seydi and Others v. France*; judgment of 20 February 2024, application nos. 43868/18 and 25883/21, *Wa Baile v. Switzerland*; judgment of 18 October 2022, application no. 215/19, *Basu v. Germany*; judgment of 18 October 2022, application no. 34085/17, *Muhammad v. Spain*.

of All forms of Racial Discrimination (CERD),[26] which is based on the rejection of any doctrine of superiority based on racial differentiation and on the condemnation of colonialism and all practices of segregation and discrimination associated therewith (see Preamble). To this end, it aims to prevent and combat racist doctrines and practices by obliging States parties not to engage in "act or practice of racial discrimination against persons, groups of persons or institutions" (Art. 2(1)). Crucially, for our purpose, the CERD itself provides that distinctions based on race, colour, or national or ethnic origin hamper – among other rights – the enjoyment of freedom of religion (Art. 5), thus calling upon States parties to prohibit and eliminate them accordingly. Moreover, the nexus race/colour/ethnic origin-religion-migration is consistently emphasized in the work of the related Committee on the Elimination of Racial Discrimination (CERD Committee).[27]

In this respect, leaving aside general references included elsewhere, we can mainly refer to the CERD Committee's General Recommendation no. 36, which is specifically dedicated to the problem of racial profiling.[28] In defining this practice, the CERD Committee acknowledged that racial profiling is based "on grounds of face, colour, descent, national or ethnic origin *or their intersection with other relevant grounds, such as religion [and] migration status*".[29] Two points seem to follow for our purposes. On the one hand, profiling practices that are *only* based on religion are excluded from the application of relevant obligations under the CERD, being therefore to be contrasted only via general human rights treaties. The CERD Committee itself often reiterates the impossibility of applying the Convention in situations that do not have a connection with racial discrimination.[30] On the other hand, religious groups or people with a specific migratory status, or even groups with a combination of both characteristics, having a common ethnic or national origin, who are subject to profiling can fall within the scope

[26] UN General Assembly, Resolution 2106 (XX), 21 December 1965.
[27] For instance, CERD Committee, *General Recommendation no. 32 on the Meaning and Scope of Special Measures in the CERD*, 6 October 2009, UN Doc. CERD/C/GC/32, para. 7. It is reminded that the Committee is composed of 18 independent experts, and it has the task to monitor the implementation of the CERD. All Committee's activities can be found at www.ohchr.org/en/treaty-bodies/cerd.
[28] CERD Committee, *General Recommendation no. 36 on Preventing and Combating Racial Profiling by Law Enforcement Officials*, 17 December 2020, UN Doc. CERD/C/GC/36, para. 2, commented by D. MOECKLI in *International Legal Materials*, 2022, p. 351 ff.
[29] CERD Committee, *General Recommendation no. 36*, cit., para. 13.
[30] For instance, CERD Committee, view of 8 August 2007, communication no. 37/2006, *A.W.R.A.P. v. Denmark*, UN Doc. CERD/C/71/D/37/2006, paras. 6.2-6.3: "The Committee observes, however, that the impugned statements specifically refer to the Koran, to Islam and to Muslims in general, without any reference whatsoever to any race, colour, descent, or national or ethnic origin. While the elements of the case file do not allow the Committee to analyse and ascertain the intention of the impugned statements, it remains that no specific national or ethnic groups were directly targeted as such. […] The Committee recognises the importance of the interface between race and religion and considers that it would be competent to consider a claim of 'double' discrimination on the basis of religion and another ground specifically provided for in Art. 1 of the Convention, including national or ethnic origin" (the emphasis has been added to highlight the difference with the latest approach of the Committee – see above in the text – which involves also the intersection between these grounds, not only their overlap in terms of double or multiple discrimination).

of the CERD.[31] At the UN, for instance, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has repeatedly highlighted this nexus.[32] The same is true within the Inter-American human rights system,[33] as well as at the European level. In this respect, ECRI has so far promoted a definition of racial profiling that can be also based on religion, among the other usual factors.[34] Even more importantly, the Ad Hoc Committee on the Elaboration of Complementary Standards to the CERD, which is tasked with the drafting of a protocol for the criminalization of acts of a racist and xenophobic nature, insists on the intersectionality approach for the inclusion of religion and belief within the Convention's scope.[35]

In this respect, at least two strong reasons can be raised to expand the application of the CERD to "racialized" religious profiling, one being strictly legal and the other being based on the contemporary socio-demographic reality of most European countries. Firstly, although the CERD does not explicitly mention the prohibition of indirect discrimination, it pays nonetheless attention to the effect of measures that may perpetuate racial discrimination (see Arts 1 and 2). Similarly to what was argued elsewhere,[36] in light of the purpose of the Convention, any measure that is based on religion or a migratory status may have a disproportionate effect on specific ethnic groups. As such, it can indeed fall within the CERD's scope. Secondly, profiling is often operated by host societies of migrants who, by professing a religion that is different from the majority's one, may see their religion as a distinguishing factor from the local communities and, in turn, as the primary element of their ethnic origin and identity.

[31] For instance, in addition to the General Recommendation no. 36 and General Recommendation no. 32, cit., see also CERD Committee, *General Recommendation no. 35 on Combating Racist Hate Speech*, 26 September 2023, UN Doc. CERD/C/GC/35, para. 6, where the focus is placed on certain ethnic groups who profess or practice a religion different from the majority, including expression of Islamophobia, anti-Semitism and other similar manifestations of hatred against ethno-religious groups. This intersectional approach is also visible in the attention paid to the nexus race-migration in relation to profiling itself: see *General Recommendation no. 30 on Discrimination against Non-citizens*, or *General Recommendation no. 34 on Racial Discrimination against People of African Descent*.

[32] Human Rights Council, 20 April 2015, UN Doc. A/HRC/29/46, paras. 12, 18, 63.

[33] Religion is, in fact, part of the definition of racial profiling issued by the Inter-American Commission of Human Rights, being it a factor that, alone or in combination with other personal characteristics like race/ethnic origin, can be used to single out individuals who are presumed to engage in criminal activities: see Inter-American Commission on Human Rights, *The Situation of People of African Descent in the Americas*, 5 September 2011, OEA Ser.L/V/II. Doc. 62, para. 143. On the Inter-American human rights system, see A. DI STASI, *Il sistema americano dei diritti umani: circolazione e mutamento di una* international legal tradition, Turin, 2004.

[34] ECRI, *General Policy Recommendation no. 11 on Combating Racism and Racial Discrimination in Policing*, 29 June 2007, CoE Doc. CRI(2007)39, Recommendation I(1). At EU level, see also the work of the EU Fundamental Rights Agency (FRA), *Preventing Unlawful Profiling Today and in the Future: A Guide*, 2018, pp. 28, 71.

[35] E.g. Ad Hoc Committee, *Report of the Fourteenth Session*, 11 December 2024, UN Doc. A/HRC/57/69, para. 129(d). The Ad Hoc Committee was established by the UN Human Rights Council in 2007, with Resolution no. 6/21.

[36] S. BERRY, *Bringing Muslim Minorities within the International Convention on the Elimination of All Forms of Racial Discrimination – Square Peg in a Round Hole?*, in *Human Rights Law Review*, 2011, p. 430 ff.

Similarly, in such a scenario, authorities may use religion as a proxy of ethnic or immigrant groups, thus leading to an overlap between the different personal characteristics which the affected people possess.[37] This is true, for instance, for Islam or for Judaism. In the case of Islam, reference can be made to the still common equation between Muslims, perceived as a homogenous group, and terrorism after the wave of terrorist attacks in early 2000s, or to anti-Islam movements in Europe which often have anti-immigrant connotations, thus causing – at least – a disproportionate effect on specific ethnic minorities living in predominant white Christian societies.[38] In the context of law enforcement, it can be presumed that even the expression of one's religious affiliation can be used to identify members of migrant communities as possible suspects of committing crime, something that places police's radar only on people with specific ethnic origins. In other words, the social demographic reality of most European countries and the increasing level of intolerance towards Muslim migrant communities may lead to patterns of "racialized" religious profiling, where the real grounds for submitting people to disproportionate police controls or other investigatory activities is not so neatly recognizable. The reason can, in fact, be found at the intersection of the relevant person's or the group's religion *and* ethnic origin/migratory background.

As a result, in the identification of States' international obligations in the area of religious profiling, in the next sections it is appropriate to consider also the role of the CERD and the interpretive guidance of the related Committee, which has played a key role in the development of human rights standards against unlawful profiling in law enforcement activities, in addition to the above-mentioned general human rights treaties.

3. (Racialized) Religious Profiling in Law Enforcement Activities on the Ground

The analysis carried out so far highlights that, despite the lack of a dedicated instrument for the protection against religious discrimination and intolerance, international obligations that may prevent – if not eradicate – patterns of (racialized) religious profiling occurring on the ground, can be drawn from the CERD, according to the interpretative guidance of its monitoring body, as well as from general human rights treaties, especially from the ICCPR and the ECHR.[39]

[37] See the many examples and judicial references provided in AMNESTY INTERNATIONAL, OPEN SOCIETY FOUNDATIONS, *A Human Rights Guide*, cit., p. 41 ff.
[38] S. BERRY, *Bringing Muslim Minorities*, cit., p. 450.
[39] Although it is not possible to discuss in detail also the EU relevant framework as far as law enforcement is concerned, see the related discussion and the references in Section 4, especially with regard the more specific aspect of personal data in Directive (EU) 2016/680, of the European Parliament and of the Council, on the Protection of Natural Persons with Regard to the Processing of Personal Data by Competent Authorities for the Purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties, and on the Free Movement of Such Data, and Repealing Council Framework Decision 2008/977/JHA, of 27 April 2016. In fact, in the context of police's activities, the Directive prohibits the processing of data revealing a person's religious belief unless it is strictly necessary and provided the certain conditions are met (see Art. 10 of the Directive).

As far as the CERD is concerned, after a thematic discussion held in Geneva in 2017, the CERD Committee decided to elaborate a general recommendation on racial profiling. This non-binding guidance was eventually adopted in 2020 in order to "assist States parties in discharging their obligations" under the CERD.[40] Despite its primary focus is racial profiling, for the reasons mentioned above its content is certainly relevant for those profiling practices that lay at the intersection of race, colour, ethnic and national origin, *and* religion.

As for the ICCPR and the ECHR, the main issue turns on whether and how these human rights treaties have been or can be applied in cases of religious profiling. It can be already anticipated that religion was not involved as such in cases of profiling before their respective monitoring bodies. Yet, it can nonetheless be explored here how the interpretation of these treaties in cases involving other forms of unlawful profiling can be also relevant for religious profiling as such or in combination with other protected characteristics.

In light of the different problems arising when (racialized) religious profiling occurs in police's everyday activities on the ground, in the following subsections it is useful to look first at the substantial obligations under the mentioned treaties and, afterwards, to focus our attention on possible justifications and on evidentiary issues, which risk jeopardizing the capacity of alleged victims to submit their claims before relevant human rights bodies and to have them successfully evaluated.

3.1. Relevant Obligations under the Convention on the Elimination of All forms of Racial Discrimination

With the aim of expanding the scope of the CERD and ensuring protection against racial and, presumably, other forms of racialized profiling, in General Recommendation no. 36 the CERD Committee explores the relationship between this practice and the Convention's provisions. Whereas a full discussion of this interpretative guidance goes beyond the scope of this paper, some key points connected with the well-known threefold duty to respect, promote and fulfil human rights deserve our attention for the role they can play in addressing racialized forms of religious profiling.

In the interpretation advanced by the CERD Committee, under Arts 2 and 5(a) States parties have the obligation not to engage in racial(ized) profiling and to take active steps to eliminate such discriminatory practice through laws, policies and institutions.[41] In this respect, the CERD Committee recommends the introduction of specific laws and policies that define and prohibit racial(ised) profiling in law enforcement operations. Additionally, codes of conduct as well as detailed guidelines for stop and search activities should be developed. Under Art. 6, States parties must grant access to effective remedies against racial(ised) profiling to everyone within their jurisdiction as well as the

[40] CERD Committee, *General Recommendation no. 36*, cit., para. 13.
[41] Ibid., paras. 23, 38-39.

right to seek adequate reparation for the damage resulting from the same practice.[42] Other than investigating alleged cases of racial(ised) profiling and taking action against responsible officials,[43] States parties should set up independent reporting mechanisms open to all citizens and affected groups and oversight bodies that monitor law enforcement's operations on the ground. Finally, under Art. 7, States parties must ensure that law enforcement officials are trained for not engaging in racial(ised) profiling and being aware of their obligations in this respect.[44] Interestingly, to this end the CERD Committee recommends to involve affected groups in the trainings, to adopt recruitment policies about law enforcement officials which reflect the composition of the population and to make sure that information used and shared by the relevant authorities are based on objective data and do not perpetuate (past) bias or stereotypes against specific groups.

Three aspects need to be stressed for our purposes. First, the CERD Committee mostly reiterates standards that were already recommended by ECRI many years before, in 2007. Interestingly, ECRI's recommendations cover also profiling based on religion as such. In fact, those recommendations have been developed on the basis of the non-discrimination provisions enshrined in the ECHR and Protocol no. 12 to the ECHR as well as of the related case law, which cover ethnic origin and religions equally.[45] Secondly, and most importantly, the CERD Committee seems to adopt a definition of racial(ised) profiling that avoids, in absolute terms, the use of the grounds protected by the Convention for law enforcement activities. While in the General Recommendations it is acknowledged that various human rights bodies refer to the possibility to advance a "reasonable justification", the CERD Committee then defines racial(ised) profiling in a way that excludes any possible objective justification for resorting to such a practice.[46] In fact, there is no discussion whatsoever on any proportionality test in its General Recommendation, something that distinguishes this interpretative guidance from the ECRI's previous standards in the same field. ECRI indeed admits that, in limited cases, personal characteristics, like "race" and religion, can be used for profiling in law enforcement operations under a *strict* proportionality test. In this respect, according to ECRI, authorities should always consider the effectiveness of the measure to be taken in light of the specific aim to be achieved, the possibility to use other – less invasive – measures and the harm that the measure at stake may cause on the enjoyment of human rights by the individuals or groups concerned. Put this way, such a test can be satisfied (only) when law enforcement authorities act "on the basis of a specific suspect description within the relevant time-limits", in which race, ethnic origin and/or religion

[42] Ibid., paras. 24, 52-57.
[43] In relation to a violation of Art. 6 CERD, due to the lack of investigations despite allegations of other discriminatory practices, see CERD Committee, decision of 24 November 2014, communication no. 57/2015, *Salifou Belemvire v. Moldova*, UN Doc. CERD/C/94/D/57/2015, para. 7.3.
[44] CERD Committee, *General Recommendation no. 36*, cit., paras. 25, 42, 46, 48.
[45] ECRI, *General Policy Recommendation no. 11*, cit., Recommendation I(1). For a discussion of these provisions see below.
[46] CERD Committee, *General Recommendation no. 36*, cit.: compare para. 13 with para. 18.

are key components.[47] Third, through the mentioned General Recommendation, the CERD Committee emphasizes the counterproductive effect of racial(ised) profiling. Taking the example of the fight against terrorism in light of the measures adopted by States after 9/11, which were often based on alleged suspects' real or presumed national origin, ethnicity or religion, it emerged that racial profiling can lead to the ineffective identification of real terrorists. Moreover, as the CERD Committee itself pointed out, groups that are affected by racial(ised) profiling can lose trust in law enforcement officials with the negative effects of avoiding reporting crimes.[48]

These specific points can be further appreciated by exploring how general human rights treaties have been already interpreted in this field with positive implications on the prevention and eradication of (racialized) religious profiling.

3.2. Key Obligations under the International Covenant on Civil and Political Rights and the European Convention on Human Rights

Starting with the ICCPR, when profiling is an issue, the general prohibition of discrimination on any grounds (Art. 26) comes into play. The interpretation emerged in this field can be appreciated by examining the activity of its monitoring body – the Human Rights Committee (HRC).[49] In fact, the HRC was the first human rights body to condemn profiling by law enforcement authorities as a discriminatory practice already in 2009, following the examination of a communication presented by Rosalind Williams Lecraft against Spain.

In that case a woman, who was born in the United States and became Spanish citizen afterwards, claimed that she was the only person to be submitted to an identity check at the Valladolid railway station in 1992. According to the case file, when the Spanish police agent was asked the reason for the identity check, he pointed out that he was under an obligation "to check the identity of people *like her*", because many of them – meant as "coloured people" – were illegal immigrants.[50] Domestic authorities overall denied the existence of a pattern of racial discrimination in the police's activity, whose actions were only aimed to contrast illegal immigration. In their view, Lecraft's "appearance" justified the decision of the relevant agent to stop her, something that was not considered having humiliating effect in contrast to her claims. After declaring admissible only the complaint under Art. 26 ICCPR, the HRC found that identity checks serve a legitimate purpose if aimed at controlling migration, but they should not be carried out in a way that targets only people with "specific physical or ethnic characteristics". In fact, these grounds are not "by themselves indicative of their possible illegal presence in the

[47] ECRI, *General Policy Recommendation no. 11*, cit., Recommendation I.(3) and the related explanatory memorandum, paras. 29-34.
[48] CERD Committee, *General Recommendation no. 36*, cit., paras. 26-30.
[49] It is reminded that the Committee is composed of 18 independent experts, and it has the task to monitor the implementation of the ICCPR. All Committee's activities can be found at www.ohchr.org/en/treaty-bodies/ccpr.
[50] Human Rights Committee, *Lecraft v. Spain*, cit., para. 2.1.

country".[51] Being the only person to be stopped at her arrival at the train station and there were no other grounds explaining the police's operation except for the applicant's "race", the HRC found that the treatment she suffered was not reasonable or based on objective criteria. As such, it amounted to discrimination in contrast with Art. 26 ICCPR.

Provided that Art. 26 ICCPR prohibits race discrimination and religion discrimination in equal terms, the reasoning of the Human Rights Committee can be also applied to scenarios where religion is *by itself* the only reason for submitting a person to an identity check or other policing activities or, more broadly, the decisive factor for suspecting that a person is engaged in unlawful conduct – be it illegal entry in the country, ordinary crimes or engagement in terrorist activities.[52]

As for the ECHR, the main relevant provision is again the prohibition of discrimination (Art. 14), whose peculiar scope of application requires it to be read in combination with one of the other rights and freedoms protected by the Convention.[53] Only recently, for the first time, the ECtHR has applied this provision to the area of profiling in law enforcement activities in four cases *mainly* related to "race" or ethnic origin.[54] In these cases, Art. 14 applied because the ECtHR found that the identity checks, which the alleged victims were subjected to, fell within the scope of the right to respect for private life (Art. 8),[55] thus triggering the application of the prohibition of discrimination. Although it is true that the ECtHR emphasized that not every identity check falls within the ambit of Art. 8 ECHR, some "special" circumstances can lead to a positive conclusion in this respect. In fact, when people belonging to an ethnic minority have an arguable claim that they were the only ones to have their identity checked, there were no other explanations for being stopped in public apart from their personal characteristics, and they have suffered humiliating effects or have their reputation jeopardised, the necessary threshold of severity triggering the right to respect for private life is attained.[56]

It may be argued that the same reasoning can be applied to allegations of (racialized) religious profiling. In addition to the possible intersection of ethnic origin and religion when Art. 8 is at stake, as explained above, religion like ethnic origin can be equally

[51] Ibid., para. 7.2.
[52] Ibid., para. 7.4.
[53] On Art. 14, see M. BALBONI (ed.), *The European Convention on Human Rights and the Principle of Non-discrimination*, Naples, 2017.
[54] Interestingly, available cases were decided in a relatively recent and short time frame, i.e. between 2022 and 2025. See fn. 25 above, for all references. Yet, the potential application of Art. 14 to cases of profiling was already discussed in literature: see A. BAKER, *Controlling Racial and Religious Profiling: Art. 14 ECHR Protection v. U.S. Equal Protection Clause Prosecution*, in *Texas Wesleyan Law Review*, 2007, p. 285 ff.
[55] ECtHR, *Wa Baile v. Switzerland*, cit., paras. 67-72 and 102-103; *Basu v. Germany*, cit., paras. 21-27; *Muhammad v. Spain*, cit., paras. 49-52. On the evolution of the interpretation of the notion of private life, see C. DANISI, *La tutela della vita privata e familiare nella Dichiarazione universale: standard attuali o ancora potenziali?*, in S. TONOLO, G. PASCALE (eds.), *La Dichiarazione universale dei diritti umani nel diritto internazionale contemporaneo*, Turin, 2020, p. 287 ff.
[56] ECtHR, *Seydi and Others v. France*, cit., paras. 65-68.

framed as a core element of one's identity[57], with potential negative effects on reputation and self-respect if only people professing and manifesting a specific (minority) religion are publicly stopped, identified and/or searched by police. Under this perspective, it may be equally argued that Art. 9 on freedom of thought, conscience and religion can also be potentially engaged when religion profiling is alleged for triggering the application of the prohibition of discrimination under 14 ECHR. In fact, it cannot be excluded that, where religion is the only reason for subjecting a person to a policing activity, an interference in the enjoyment of the right to manifest one's religion might also occur.[58]

Having shown the applicability of Art. 14 ECHR to cases of racial and, arguably, (racialized) religious profiling, two sets of obligations follow for States parties. Firstly, this provision entails a duty to investigate. The ECtHR already affirmed such a duty in the context of violent acts, namely in cases in which there was an arguable claim that ethnic hatred and prejudice played a role in public authorities' actions against members of ethnic minorities and the prohibition of discrimination was read in combination with Art. 3 ECHR on the prohibition of torture and inhuman or degrading treatment.[59] In the new racial profiling case law, the ECtHR found out that the same duty applies also in the context of non-violent actions.[60] This means that States parties have to adopt all reasonable measures that can clarify the circumstances around the alleged unlawful profiling, for instance by collecting the relevant evidence and hearing witnesses, and to ensure that an independent body can adopt "fully reasoned, impartial and objective decisions".[61] For example, in *Basu v. Germany*, involving a German national of Indian origin with a clear ethnic (and religious) profile who was stopped in a train for a border control while he was with his daughter, the ECtHR highlighted that the investigations were led by a superior of the alleged responsible agent and the evidence was not collected. Not surprisingly, these findings resulted in a procedural violation of Art. 14, read in combination with Art. 8 ECHR.[62] On the contrary, in *Muhammad v. Spain*, concerning the identity check of a Pakistani national who claimed to have been stopped and arrested in Barcelona because of his race and skin colour, the ECtHR did not find that the State party was responsible for the same violation. In fact, investigations were carried out in an (assumed) effective manner and the applicant had his allegations

[57] Although the case law relates to Art. 9, see e.g. ECtHR, judgment of 3 June 2010, applications nos. 42837/06, 3237/07, 3269/07, *Dimitras and Others v. Greece*, para. 76.
[58] See ECtHR, judgment of 13 November 2008, application no. 24479/07, *Mann Singh v. France*, pp. 5-7. Yet, in terms of justification under Art. 9(2), this situation would be different from interferences originated by measures of general application being carried out in order to ensure public safety, such as the obligation to remove religious symbols to carry out identity checks in airports or to get an identity card: see also ECtHR, decision of 11 January 2005, application no. 35753/03, *Phull v. France*, pp. 2-3.
[59] See, among others, ECtHR, judgment of 24 July 2012, application no. 47159/08, *B.S. v. Spain*, para. 58, and judgment of 16 April 2019, application no. 48474/14, *Lingurar v. Romania*, para. 76.
[60] E.g., ECtHR, *Basu v. Germany*, cit., paras. 32-35.
[61] E.g. ECtHR, *Muhammad v. Spain*, cit., para. 66.
[62] ECtHR, *Basu v. Germany*, cit., paras. 36-39. When a claim about an alleged violation of the prohibition of discrimination during an identity check is not assessed by domestic authorities, it can additionally lead to a violation of the right to an effective remedy, as protected by Art. 13 ECHR: see ECtHR, *Wa Baile v. Switzerland*, cit., paras. 145-148.

examined by domestic courts, which delivered motivated and reasonable decisions for denying the existence of racial motives in the agents' behaviour.[63] Significantly, in applying these procedural standards to racial profiling, the Court referred to the need of ensuring "protection from stigmatisation of the persons concerned" and of preventing "the spread of xenophobic attitudes".[64] Given that (racialized) religious profiling has the same effect towards alleged victims and risks spreading religious hatred, such procedural standards cannot but be equally fundamental for preventing and eradicating also religious profiling.

Secondly, from a substantial viewpoint, under Art. 14 ECHR States parties have the duty to protect against discrimination in the enjoyment of the rights and freedoms enshrined in the Convention. In the area concerned, other than preventing that police resorts to non-objective criteria for law enforcement operations, this duty entails the introduction of an appropriate legislative framework, that law enforcement authorities are duly trained to identify and prevent unlawful patterns of profiling and that alleged victims have access to effective remedies. It is true that finding a substantial violation of the prohibition of discrimination has always been difficult for the ECtHR when racist, religious or other hatred motives were alleged as the reasons for the authorities' behaviour.[65] As the Court usually affirms, States parties cannot be required to "prove the absence of a particular subjective attitude" on the part of the agent concerned.[66] Yet, in the new racial profiling case law, the Court seems to adopt a fairer approach to the alleged victims notwithstanding the recognition of police's difficulties in operating on the ground to prevent crime. In fact, it admits that a substantial violation of Art. 14, taken in combination with Art. 8 (and, possibly, Art. 9 when religion is involved as such), can be ascertained also when the defendant State is not able to refute a "presumption" of discrimination – i.e. the *potential* existence of a difference in treatment – which emerges from a combination of factual elements. In other words, in connection with racial (and possibly religious) profiling, the ECtHR can be more easily convinced to reverse the burden of proof in favour of the alleged victim, thus facilitating a positive finding under Art. 14 once such a presumption of discrimination has been substantiated.

The same case law on profiling shows this key evolution. Whereas in the initial – and overall similar – *Basu* and *Muhammad* cases the Court did not find that the identity checks were based on racial grounds because it adopted a traditional approach,[67] i.e. one based on agents' own intent, in *Wa Baile* the Court concluded for the first time that the

[63] ECtHR, *Muhammad v. Spain*, cit., paras. 69-76.
[64] ECtHR, *Basu v. Germany*, cit., para. 35.
[65] K. HERARD, *The European Court of Human Rights and the 'Special' Distribution of the Burden of Proof in Racial Discrimination Cases: The Search for Fairness Continues*, in *European Convention on Human Rights Law Review*, 2023, p. 436 ff. This traditional approach was applied in the initial racial profiling case law: see ECtHR, *Muhammad v. Spain*, cit., paras. 94-95.
[66] ECtHR, Grand Chamber, judgment of 6 July 2005, applications nos. 43577/98 and 43579/98, *Nachova and Others v. Bulgaria*. For a detailed analysis of the relevant ECtHR's case law, see C. DANISI, *Tutela dei diritti umani, non discriminazione e orientamento sessuale*, Naples, 2015.
[67] B. STREICHER, *Tackling Racial Profiling: Reflections on Recent Case Law of the European Court of Human Rights*, in *Strasbourg Observers*, 16 December 2022, strasbourgobservers.com.

alleged violation occurred. In a nutshell, in light of the deficiencies of the Swiss legislative framework, combined with the findings of one of the domestic courts involved in the case about the non-existence of *objective* reasons for subjecting Wa Baile to an identity check in the Zurich train station, the ECtHR found that a presumption of discrimination existed and reversed the burden of proof to the defendant State.[68] In this case, given the absence of arguments put forward by the Swiss Government, the police actions were *presumably* racially-motivated and condemned as such.

It is worth mentioning that, in reaching the latter decision, the ECtHR made explicit references to the standards set out by the CERD Committee. This is important for, at least, two reasons. First, any risk of fragmentation within the entire international human rights law system was avoided because the ECtHR's reasoning has confirmed that similar obligations bind relevant European States under both treaties. Second, the CERD Committee's activity, as well as the ECRI's reports, were of use also to prove the existence of structural problems in some of the defendant States.[69] This is a positive development because the ECtHR seems now able to consider the allegations of the presumed victims – be they members of racial, religious or other minorities – within the broader social and political internal context. Although it is true that the same quantity of reports and data risks being unavailable in the case of religious profiling as such, owing to the lack of specific institutions and monitoring bodies equally dedicated to preventing and eradicating religious intolerance and discrimination, this aspect raises the problem of proof to which we turn on in the next section before addressing the different problems raised by profiling in law enforcement involving AI.

3.3. The Problem of Proof and Justification: Insights from the European Court of Human Rights

A key aspect for alleged victims to have their case of (racialized) religious profiling being identified as a discriminatory practice in violation of the above human rights obligations relates to evidentiary standards. In fact, it may be very difficult to prove the existence of a pattern of unlawful profiling, irrespective of the specific factor on which it is based, especially when only the authorities have access to relevant data. As the previous analysis has shown, only when a presumption of discrimination is satisfied can the burden of proof be reversed to the benefit of the alleged victim. It is therefore essential for our analysis to verify in detail what standard of proof has been required in the evaluation of relevant cases by the Human Rights Committee or the ECtHR in order to verify its application to (racialized) religious profiling.

[68] ECtHR, *Wa Baile v. Switzerland*, cit., paras. 134-136, commented by C. NARDOCCI, *La presunzione di discriminazione e la violazione sostanziale dell'art. 14 CEDU in Corte EDU* Wa Baile c. Svizzera, in *Osservatorio costituzionale*, 2024, p. 404 ff.

[69] ECtHR, *Wa Baile v. Switzerland*, cit., paras. 127-129. The importance of the case on this point was already highlighted elsewhere: see N. DUBE, *Wa Baile v Switzerland: An Implicit Acknowledgement of Racial Profiling as Structural Discrimination*, in *Strasbourg Observers*, 26 March 2024, strasbourgobservers.com.

On this point, the HRC offered a limited input in *Lecraft v. Spain*.[70] Owing to its usual style, it only briefly referred to the fact that domestic courts accepted the use of skin colour as criterion for carrying out identity checks and the allegations of the claimant were not refuted by the State party concerned.

The ECtHR's approach emerging in its new case law on racial profiling is more promising and touches on specific aspects, like the use of statistical data.

A preliminary consideration is needed. It is known that, in the case law related to Art. 14 ECHR, the ECtHR is used to differentiate between direct discrimination, which is "treating differently, without an objective and reasonable justification, persons in relevantly similar situations", and indirect discrimination that originates from a difference in treatment, not necessarily adopted with a discriminatory intent and based on neutral criteria, which has "disproportionately prejudicial effects" against a particular group.[71] Applicants have always been asked to prove the existence of a difference in treatment, be it either direct or indirect. To this end, statistical data as well as reports by national or international institutions are usually accepted, although they cannot prove by themselves alone the existence of discrimination. Finally, even if a distinction in treatment is sufficiently proved, it may be nonetheless justified by objective reasons.[72]

Interestingly, in *Wa Baile*, i.e. the first case of profiling in which a substantial violation of Art. 14 ECHR was found, the ECtHR did not specify if the treatment suffered by the applicant was to be framed in terms of direct or indirect discrimination. Nor did the applicant establish the existence of a comparable situation or of a disproportionate effect on a specific group of people. He only alleged that he was the only person to have been stopped for an identity check by police because of his "skin colour" in a train station that was predominately occupied by white (presumably Christian) people. The Court had not even verified the existence of a reasonable justification for the treatment suffered by the applicant. As anticipated, the ECtHR relied instead on international reports, on third parties' interventions and on the findings of the domestic administrative authority, which actually never confirmed the existence of racial profiling in police operations, to accept that a presumption of discrimination existed and it had to be rebutted by the defendant State.[73] To this end, the ECtHR seemed to require reliable data demonstrating that, on that same day, other people were stopped at the train station on the basis of other – objective – grounds,[74] something that the defendant State was unable to prove.

Although the reasoning adopted in *Wa Baile* is welcome, it is at odds with the two previous profiling cases. In *Basu v. Germany*, whereas the claim of the applicant – a Sikh – was considered being arguable and international reports were available to confirm

[70] Human Rights Committee, *Lecraft v. Spain*, cit., paras. 7.3-7.4.
[71] Among the most famous cases, see ECtHR, Grand Chamber, judgment of 13 November 2007, application no. 57325/00, *D.H. and Others v. Czech Republic*, paras. 175 ff.
[72] For a detailed discussion of these points, see C. DANISI, *Tutela dei diritti umani*, cit., Chapter 3.
[73] ECtHR, *Wa Baile v. Switzerland*, cit., paras. 134-135.
[74] Ibid., para. 134.

practices of racial profiling in police operations, the ECtHR did not accept the existence of a "presumption" of discrimination.[75] Accordingly, the burden of proof was not reversed to the benefit of the applicant, with negative implications for the conclusion of the case. In fact, no substantial violation of the prohibition of discrimination was found. In *Muhammad v. Spain*, the ECtHR even stated that the applicant – a Pakistani (presumably Muslim) migrant – did not substantiate his claim. In its view, the fact that no one belonging to the majority – white and Christian – population was stopped at the same time or after his identity check could not be taken "as an indication *per se* of any racial motivation" in police's own practice.[76] Unless factors like the migratory status, religion or the social class of these two applicants, in comparison to the case of Wa Bale, had played a role in the Court's own findings, in these initial judgments the ECtHR emphasized the agents' own personal attitudes to reach its negative conclusions. This focus brought the reasoning back to the agents' intent, which is clearly difficult to demonstrate in every case of police's profiling. The potential existence of a general – even unconscious – bias towards specific minority groups because of their appearance, migratory status or religion was consequently ignored. Only in *Wa Baile*, for the first time, the Court seemed more prone to put the police operation in the broader socio-legal context of the defendant State and to look at the humiliating effects of the identity checks as perceived by the victim. In doing so, the ECtHR ultimately accepted that only States parties have the necessary data to prove the inexistence of unlawful profiling once an allegation, which is supported – at least – by international reports and was not properly investigated by domestic authorities, is raised.

These apparent inconsistencies highlight the importance of the latest ECtHR's case on profiling – *Seyedi and Others v. France*, because the Court thereby confirmed the emergence of a fairer approach on evidentiary standards when victims of racial (and possibly religious) profiling are involved. The case was raised by six "black" or "Arab" people who were stopped for identity checks in different French cities and time, often in areas with problems of crime and/or in the context of law enforcement operations authorized by the competent authorities under specific provisions of French law. Whereas most applicants were identified only once, the applicant called Touil was stopped for identity checks three times in ten days. Domestic judges denied that the applicants suffered any discrimination. After finding that Art. 14 was applicable because the identity checks fell within the ambit of Art. 8 for the reasons already analysed above,[77] the ECtHR found that no violation of the prohibition of discrimination under the procedural standpoint occurred because the applicants had at their disposal effective remedies against the alleged discriminatory treatment.[78] In fact, the Paris Court of

[75] This aspect was criticized by Judge Pavli in his partially dissent opinion: see ECtHR, *Basu v. Germany*, cit., p. 14 ff.
[76] ECtHR, *Muhammad v. Spain*, cit., para. 99.
[77] ECtHR, *Seydi and Others v. France*, cit., paras. 66-68.
[78] Similarly, the Court did not find any violation of Art. 13, read in combination with Art. 14: see paras. 137-140.

Appeal and the Supreme Court carried out a detailed – "*équilibrée, objective et globale*"[79] – examination of each case. They were also ready to reverse the burden of proof if a presumption of discrimination had been established and provided motivated decisions for concluding that no discrimination occurred, especially due to the lack of witnesses confirming the existence of a difference in treatment behind the identity checks. In the assessment of the alleged violation of Art. 14 from a substantial perspective, the Court accepted that French law provides an adequate framework to prevent discretionary identity checks and law enforcement officials are sufficiently informed and trained to avoid stop and search operations that are not motivated by objective reasons. However, owing to the existence of a pattern of racial(ised) profiling in the defendant State, the ECtHR decided to verify whether, in each of the cases at stake, the identity check was motivated by the skin colour or the claimant's belonging to any "visible minority".[80] On this point, it specified that it rests on the alleged victims of profiling to raise individualized elements from which it can be presumed that they have been subjected to a differentiated treatment *in comparison* to a person similarly situated. Perhaps in the attempt to clarify the above analysed case law, the ECtHR pointed also out that this presumption cannot be drawn from a personal perception about being a victim of racial profiling, one that is supported by statistical data. On these grounds, the ECtHR agreed with domestic courts that most applicants' identity checks were justified by objective reasons: a) they were stopped for specific crime-related purposes in the context of operations having a clear legal basis and within the timeframe established by competent authorities, and b) no witnesses presented comparable elements from which a presumption of discrimination could be established. It followed that, in their cases, the burden of proof could not be reversed to the Government and no substantial violation of the prohibition of discrimination, read jointly to Art. 8 ECHR, occurred. A different conclusion was instead reached in the case of the applicant Touil. Interestingly, although *no comparable elements* were raised and no witnesses could prove that a difference in treatment had really occurred, the ECtHR found a substantial violation of the prohibition of discrimination because two out of the three identity checks Touil was subjected to did not rely on a clear legal basis. If this element is considered, as the Court did, in light of the wider context described by international reports on France and confirmed by available statistics, it raises a presumption of discrimination to the benefit of the alleged victim. As a result, the burden of proof was reversed, but the Government had not offered a reasonable justification for the treatment suffered by that applicant.

To sum up, this growing case law on profiling demonstrates that the ECtHR is ready to address the problem of law enforcement's profiling based on protected based characteristics similarly to the approach already adopted in non-violent discrimination

[79] Ibid., para. 97. The Supreme Court also found that profiling is a current practice within French police, yet not to the point to be defined a "systematic" one.
[80] Ibid., para. 113.

cases. It has left aside an individual-oriented assessment, which is typical of cases of violence motivated by racist or other hatred reasons, to embrace an approach connected to forms of institutionalised discrimination. The benefit for the victim is clear: there is no need to advance proof about the intent of the specific agents involved in their profiling. In light of their specific personal circumstances, the alleged victims do not need to prove agents' discriminatory intent. They can more easily rely on a general – even unconscious – pattern of unlawful profiling in law enforcement activities in order to raise the suspicion that a "systemic" discriminatory practice exists, thus placing the onus on the defendant State to prove the contrary. Useful elements for this purpose include the lack of a legislative framework regulating police's activity on the ground, deficiencies in investigations, the lack of a clear legal basis for the law enforcement operation in which they have been involved, international reports and data on unlawful profiling practices in the State party at stake. Although the ECtHR brought the comparative test back in *Seyedi*, *Wa Baile* and the other relevant case law, especially on indirect discrimination, show that the Court is also ready to find a presumption of discrimination even without the identification of a comparable situation if the combination of other – general and specific – elements raises doubts on the existence of profiling in police against *a visible minority* as the basis for the specific law enforcement operation on the ground. The same case law shows that a contextual analysis is key in the area of – racial – or racialized religious – profiling because of its structural implications and the harm potentially inflicted on specific groups, beyond each individual case.

Through this – promising – approach, the ECtHR has therefore set evidentiary standards that can be applied also when "visible" religious minorities are targeted. Yet, given the usual emphasis put by the ECtHR on racial discrimination as a "particularly egregious kind of discrimination [that], in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction",[81] it remains to be seen whether these more favourable evidentiary standards will be replicated when other protected characteristics, like religion, are the only reasons for profiling. Moreover, in order to benefit from these fairer evidentiary standards, access to reports, data and statistics is essential but, when only religion is at stake, this kind of proof may be a challenge. Finally, given that, in this new case law, the ECtHR would not exclude the possibility to justify racial(ised) profiling in contrast with the CERD Committee's above-mentioned approach, it is not entirely clear what kind of justification the Court is ready to accept by a State Party when the burden of proof is reversed in a case involving (racialized) religious profiling. On the on hand, the reasoning adopted in *Seyedi* echoed the above ECRI's recommendations on the need to apply a strict scrutiny test. On the other hand, to be coherent with its previous case law on particular egregious kinds of discrimination, only "very weighty reasons" can justify a difference in treatment if this is exclusively based on some protected personal grounds, like race and gender, in respect

[81] ECtHR, *Seydi and Others v. France*, cit., paras. 94-98.

to which the margin of appreciation of State Parties is significantly reduced.[82] Although it is true that religion has not usually benefitted from this strict scrutiny test, it cannot be excluded that the degrading and the negative social effect of religious profiling may prompt the ECtHR to adopt the same approach.

On this point, some useful insights may be drawn from an Advisory Opinion which the ECtHR released on the question of preventive measures to be adopted against an individual because of his belonging to a religious movement considered to be a threat to the State.[83] Owing to the fact that the question asked by the national judge involved an interference with the enjoyment of freedom of thought, conscience and religion, the ECtHR did not refer to the justification test under Art. 14 ECHR. It focused, instead, the attention on the criteria for examining the necessity in a democratic society of the interference at issue under Art. 9, being it clear that the same interference should also be prescribed by law and should pursue at least one of the legitimate aims included in Art. 9(2) ECHR. In a nutshell, the Court adopted an approach based on an individualised assessment of the risk posed by the concerned person to national security, a risk that must be proved in light of the person's specific conduct through a strict proportionality test. In fact, without a specific suspect description, the mere belonging to a (Salafist) religious movement was found to be an insufficient reason to justify the adoption of preventive measures.

Such a conclusion definitely runs against profiling as a general practice in law enforcement operations, one that targets people only on the basis of their real or presumed religion. Equally, it sets doubts on the possibility that the ECtHR can easily accept justifications based on a general inference that an individual adhering to a "visible" (extremist) religious group is more likely to engage in crime than others and, only for this reason, can be subjected to law enforcement operations. Similarly, even when such an inference is based on statistical discrimination, i.e. a differential treatment that relies on statistical probabilities based on religion as a proxy to identify people with a higher risk of committing a crime (or a specific ethnic origin as an indirect proxy for religion), it can be difficult to be reconciled with the individualized-based approach required by the ECtHR.[84] The same risk that these statistics are based on stereotypes is

[82] In relation to ethnic origin, see ECtHR, Grand Chamber, *D.H. and Others v. Czech Republic*, cit., para. 176. O.M. ARNARDÓTTIR, *The Differences that Make a Difference: Recent Developments on the Discrimination Grounds and the Margin of Appreciation under Article 14 of the European Convention on Human Rights*, *Human Rights Law Review*, 2014, p. 647 ff.

[83] ECtHR, Advisory Opinion of 14 December 2023, request no. P16-2023-001, especially para. 66 ff. It is worth noting that, after reminding the different aspects protected by Art. 9 ECHR and the relevant consequences in terms of restrictions, the Court answered the question by focusing solely on the right to manifest one's beliefs and religion (*forum externum*) in line with the approach adopted by the national judge, without therefore considering also the impact on the *forum internum* of the freedom of religion.

[84] Yet, the solution may not be clear cut when the statistics rely on a multitude of criteria, although they may have the same final serious consequences on certain religious groups in terms of enjoyment of applicable human rights: A. VON UNGERN-STERNBERG, *Religious Profiling*, cit., p. 208 ff.

relatively high, as it was already denounced in the context of the fight against terrorism.[85]

In sum, although the ECtHR has not had the chance to assess instances of religious profiling as such yet and some doubts remain on the application of Art. 14 to religion-based cases, several elements in its case law signal that victims of religious profiling may increasingly rely on the ECHR to get a remedy and have this unlawful practice condemned. While it is true that the obligations identified in this section apply irrespective of the methods employed in law enforcement, an additional set of specific problems seems to arise when AI systems are used. The next section explores this final aspect of (racialized) religious profiling.

4. (Racialized) Religious Profiling in Law Enforcement with AI

In order to verify the impact of AI on (racialized) religious profiling in law enforcement for the limited purpose of our analysis, some preliminary clarifications are necessary.

According to the Organisation for Economic Cooperation and Development (OECD), whose work has been central for the notions of AI included in the legal frameworks explored below, an artificial intelligence system is a "machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such us predictions, content, recommendations or decisions that may influence physical or virtual environments".[86] As the same definition implies, different AI systems exist, especially in terms of autonomy and adaptiveness. These systems are usually built by using, *inter alia*, algorithms based on machine and/or human inputs.[87] Algorithmic profiling, in turn, refers to any "step-by-step computerized technique used for analysing data to identify trends, patterns or correlations".[88] Although this sort of profiling can be useful for law enforcement authorities to improve their activities in investigating, detecting and preventing crime when properly designed, implemented and monitored, it risks singling out individuals because of these correlations and inferences, thus ignoring their actual behaviour. It is now well known that AI systems risk interfering with the enjoyment of human rights, calling upon States, international

[85] For instance, UNSC, Resolution 2178(2014), 24 September 2014, UN Doc. S/RES/2178 (2014), para. 2.

[86] For all details, see OECD, *Explanatory Memorandum on the Updated OECD Definition of an AI System*, 2024, OECD Doc. DSTI/CDEP/AIGO(2023)8/FINAL. The OECD definition (more specifically, the version that was originally adopted in 2019 in the OECD Recommendation on AI (OECD Doc. OECD/LEGAL/0449) as amended in 2023) has been used for setting up a common definition in the new CoE's Convention on AI (see below, Section 4.2) and shares essential aspects also with the EU AI Act's own notion (see below, Section 4.3).

[87] OECD, *Explanatory Memorandum*, cit., p. 8.

[88] FRA, *Preventing Unlawful Profiling Today and in the Future: A Guide*, 2018, p. 97. This definition is also used by the CERD Committee in its *General Recommendations no. 36*, cit.

organisations and/or the interpreters to set new standards for addressing the challenges they pose.[89]

The relationship between AI and (freedom of) religion is still understudied.[90] Religious rights, including freedom of religion as well as non-discrimination, are not exempted from these developments and potential interferences. A few examples may be provided here. First, AI can be used for analysing religious sources, for proselytism or communication campaigns via social media, for carrying out religious services via religious apps, chat boxes or even robot priests.[91] Second, as already noted above, AI has allowed the development of surveillance technologies that can be used to monitor specific religious groups, with an evident interference with the freedom of religion (arguably even its *forum internum*), as well as profiling techniques that impinge on the right not to be discriminated on religious grounds. In this respect, it is worth highlighting that, even in cases where the processing of personal data revealing religious beliefs is prohibited unless the data subject has given explicit consent to this end,[92] AI tools and algorithms may nonetheless be able to infer religious beliefs from other apparently neutral data.[93] For instance, if data whose processing does not require explicit consent is used as a proxy for religion, the abstract association of a specific (criminal) behaviour to a specific religious group would still be possible and might even rely on stereotypes or involuntary bias. Furthermore, AI systems have reached such a level of autonomy and self-learning that do not require any human input and the potential risk of discriminatory treatment based on religion, originating from the functioning of the relevant models behind them, can totally escape human control. As noted elsewhere, AI

[89] In addition to the contributions already cited, A. ADINOLFI, *L'intelligenza artificiale tra rischi di violazione dei diritti fondamentali e sostegno alla loro promozione: considerazioni sulla (difficile) costruzione di un quadro normativo dell'Unione*, in A. PAJNO, F. DONATI, A. PERRUCCI (eds.), *Intelligenza artificiale e diritto: una rivoluzione?*, Bologna, p. 127 ss.; G. SARTOR, *Artificial Intelligence and Human Rights: Between Law and Ethics*, in *Maastricht Journal of European and Comparative Law*, 2020, pp. 705-719.

[90] Interest in this specific topic is nonetheless growing: J. TEMPERMAN, *Artificial Intelligence and Religious Freedom*, in A. QUINTAVALLA, J. TEMPERMAN (eds.), *Artificial Intelligence and Human Rights*, Oxford, 2023, pp. 61-75; I. VALENZI, *Libertà religiosa e intelligenza artificiale: prime considerazioni*, in *Quaderni di diritto e politica ecclesiastica*, 2020, pp. 353-365; G. MOBILIO, *La profilazione algoritmica e le nuove insidie alla libertà di religione*, in *Il diritto ecclesiastico*, 2023, pp. 147-165.

[91] J. TEMPERMAN, *Artificial Intelligence*, cit., p. 68 ff.

[92] See under EU Law, Art. 9(1) and (2)(a) of the Regulation (EU) 2016/679 of the European Parliament and of the Council on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC, of 27 April 2016. For the other possible exceptions, see Art. 9(2). On data GDPR and AI, A. ADINOLFI, A. SIMONCINI (eds.), *Protezione dei dati personali e nuove tecnologie. Ricerca interdisciplinare sulle tecniche di profiliazione e sulle loro conseguenze giuridiche*, Napoli, 2022; G. SARTOR, F. LAGIOIA, *The impact of the General Data Protection Regulation (GDPR) on artificial intelligence*, European Parliament Study, Bruxelles, 2020; F. UFERT, *AI Regulation Through the Lens of Fundamental Rights: How Well Does the GDPR Address the Challenges Posed by AI?*, in *European Papers*, 2020, p. 1087 ss.; T. FROSINI, *La privacy nell'era dell'intelligenza artificiale*, in *DPCE online*, 2022, p. 273 ss.; G. CONTALDI, *Intelligenza artificiale e dati personali*, in *Ordine internazionale e diritti umani*, 2021, pp. 1193-1213.

[93] G. MOBILIO, *La profilazione algoritmica*, cit., p. 154.

developers have tried to address these risks, but some sort of bias is inherent in AI as it is inherent in human beings.[94]

In law enforcement activities, the problem arises when police and other relevant authorities employ AI systems to inform or to reach their decisions. Of course, the use of these systems is not an issue *per se*.[95] Human rights concerns originate instead from the lifecycle of AI systems, including the development process of algorithms and the training of datasets, the way AI is used to reach police's own decisions as well as the AI-generated decision-making. For instance, if the data used to develop and/or train the AI systems reflect past police's discriminatory practices based, *inter alia*, on religion, their decisions may create or reiterate inequalities and discrimination. Apart from the problem of developers' own religious biases, this outcome may occur when people belonging to a specific religion, or an ethnic or national origin sharing a specific religion, are signalled by algorithms as subjects to be investigated and/or arrested because, owing to past discriminatory law enforcement operations, the groups they are associated with are overrepresented in police records. In this respect, if Muslims were disproportionally targeted in investigation activities or arrested in the past, relevant AI models using this historical data may reproduce bias against them. The same is true when, in interpreting real world data, AI systems replicate discriminatory contents against a specific religion or a group belonging to it. Further, even the choice of specific AI systems by law enforcement officials may be problematic if that choice is meant to confirm decisions adopted in a context of institutionalised racism or systematic religious bias. In all these cases, the ensuing AI-based outcome may amount to (racialized) religious profiling, which is hardly justified according to the analysis carried out in Section 3.

Provided that religious profiling in law enforcement operations with AI systems is not addressed as such in any international instrument, some useful inputs can be drawn from the CERD Committee and the new European instruments regulating AI. These can be explored here to verify whether they can be (also) of use to eradicate and prevent (racialized) religious profiling in law enforcement. Without being aimed at providing a full analysis of these new instruments, the following discussion highlights some key aspects that may play a positive role in the specific field investigated in this paper.

4.1. The Pioneering Role of the CERD

In light of the potential application of the CERD to practices of racialized religious profiling (see Section 2), the CERD Committee's pioneering role on algorithmic profiling is worth being discussed here. For the first time, in General Recommendation

[94] L.N. HOBART, *AI, Bias, and National Security Profiling*, cit., p. 168.

[95] On the related issues concerning justice, among others, A. FERRARA, *The Error in Predictive Justice Systems. Challenges for Justice, Freedom, and Human-Centrism under EU Law*, in this *Journal*, 2025, p. 131 ff.; A. CORRERA, *Il ruolo dell'intelligenza artificiale nel paradigma europeo dell'e-Justice: prime riflessioni alla luce dell'AI Act*, in F. FERRI (a cura di), *L'Unione Europea*, cit., p. 209 ff.

no. 36 on preventing and combating racial profiling, the Committee addressed the potential implications of AI in law enforcement.

In this respect, the Committee emphasized the existence of a general obligation of States parties to adopt all appropriate measures to determine the purposes of the use of algorithmic profiling systems for law enforcement operations and to regulate them in order to prevent any breach of international human rights law, including the prohibition of discrimination, the right to liberty and security, the right to the presumption of innocence and the right to an effective remedy.[96] More specifically, the CERD Committee insisted on the need to ensure continuous human rights impact assessments, which can be effectively carried out if States parties adopt measures to guarantee transparency in the design and in the implementation of algorithmic profiling systems used for law enforcement purposes.[97] In a nutshell, this means that the codes, the processes and the data sets on which these systems are based should be publicly accessible and regularly monitored in order to intervene in case of risks of discriminatory effects based on the usual CERD grounds *in intersection with* other personal characteristics, like religion.[98] According to the CERD Committee, if an independent monitoring activity indicates a high risk of discrimination or other human rights violations, States parties should avoid the use of such algorithms.

Regulations should also be adopted to make sure that the private sector, including the companies that develop and sell this technology, carries out human rights due diligence processes, in line with the Guiding Principles on Business and Human Rights.[99] In this context, States parties should make sure that private companies select data and design models in a way that avoids discriminatory outcomes on the basis of ethnic origin, alone or in intersection with grounds like religion, in addition to providing formal reports on their human rights impact assessments. Interestingly, the Committee looks at private companies both as duty bearers and a sort of supervising bodies. In fact, according to its recommendation, the private sector should not sell or deploy algorithmic profiling systems when the risk of discrimination or other human rights violations is impossible to mitigate, "including because of the nature of a planned or foreseeable use by a State".[100] The development of facial recognition technology by European companies and the use made by the Chinese Government against the Uighur Muslim minority provide good examples here.[101]

Again, for the purpose of eradicating and preventing racialized religious profiling in law enforcement, the limitation of the interpretation of the CERD provided by General Recommendation no. 36 resides in its soft law nature. Yet, it sets some key horizontal standards emerging from an evolutive interpretation of CERD and which may influence

[96] CERD Committee, *General Recommendation no. 36*, cit., para. 58.
[97] Ibid., para. 61.
[98] Ibid., para. 60.
[99] Ibid., paras. 63-65.
[100] Ibid., para. 67.
[101] J. TEMPERMAN, *Artificial Intelligence*, cit., p. 70 ff.

other international actors and institutions that play a role in regulating AI. It is, perhaps, no surprise that most of the principles contained therein are core provisions of the new hard law European instruments in this field, to which we finally turn on.

4.2. The Potential Contribution of the 2024 Council of Europe's Framework Convention on Artificial Intelligence

At the level of Council of Europe, positive developments in the fight against religious profiling can emerge from the new Framework Convention on AI, which was opened to signature in 2024. It is the very first treaty aimed at identifying some horizontal principles – i.e. to be applied irrespective of the type of technology used and during the entire life cycle of AI systems – for the protection and promotion of human rights, as well as democracy and the rule of law, in the area of AI.[102] Interestingly, it recognizes both the positive impact of AI, which offers "unprecedented opportunities" for human rights, and the risks it poses to "human dignity and individual autonomy" as well as the possible negative effect in "creating or aggravating inequalities" (see Preamble). Provided that the ratification process is successful, the treaty has the potential to set global standards in this field. Firstly, the treaty can be signed by the member States and the non-member States of the CoE that have participated in its elaboration. In light of the role played in the drafting process, the EU can also ratify the Convention, thus strengthening its international commitment in a field in which it has already adopted an advanced legal framework.[103] Secondly, once the new Convention enters into force, any other non-member State of the CoE will be able to join the treaty. Therefore, if relevant for AI-based (racialized) religious profiling in law enforcement, it can become the first international instrument setting out binding obligations with a possible global reach in this specific field.

To this end, a preliminary consideration of the scope of the new Convention is necessary. According to Art. 3, the new Convention shall apply to activities within the lifecycle of AI systems carried out by public authorities or private actors acting on their behalf. States parties are additionally asked to address risks and impacts of private

[102] Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, adopted on 17 May 2024 and opened to signature on 5 September 2024 in Vilnius. It will enter into force when five ratifications are reached, including at least three ratifications by CoE's member States. In July 2025, 16 States already signed the treaty, but no State has ratified it yet: data available at www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=225. Here only the provisions strictly related to human rights are analysed. For a broader analysis, A. IERMANO, *Consiglio d'Europa e intelligenza artificiale: un primo tentativo di regolamentazione a tutela di diritti umani democrazia e stato di diritto*, in this *Journal*, 2025, p. 245 ff., and M. CASTELLANETA, *Al via il primo trattato globale sull'intelligenza artificiale*, in *Affari internazionali*, 7 giugno 2024, www.affarinternazionali.it.

[103] On the relationship between the obligations of EU member States originating by these "internal rules" and the Convention itself, see Art. 27. The EU Commission was authorized to be involved in the negotiations via the Council Decision (EU) 2022/2349 of 21 November 2022. On the EU own framework, see Section 4.3.

actors' activities in this field, also by applying the main key principles and obligations set out in the Convention to their activities. It is worth also mentioning that, while matters relating to national defence are excluded from its scope in line with the ambit of activities of the CoE itself (Art. 1 of the CoE Statute), States parties shall not be required to apply the Convention when the protection of "national security interests" is at stake (Art. 3(2)). In this respect, it is a positive fact that the Explanatory Report refers to policing, as well as to immigration and border controls, among the range of sectors to which the new Convention applies.[104] Even more importantly, according to the same Report, "insofar as national security interests of the Parties are not at stake", all "regular" law enforcement activities fall within the scope of the Convention.[105] These include operations for the prevention, detection, investigation, and prosecution of crimes, i.e. areas in which (racialized) religious profiling can be indeed an issue. Yet, it remains unclear, for instance, if AI-based activities for combating international terrorism would fall within the scope of the new Convention and whether the "national security interests" would play a role to this end.

With regard to substantial obligations, which often refer to "applicable international and domestic law", for the purpose of preventing and eradicating (racialized) religious profiling non-discrimination is again central. In fact, Art. 10 of the new Convention establishes that States parties shall adopt or maintain measures aimed at ensuring that AI-based activities respect equality and the prohibition of discrimination as well as at overcoming inequalities so that "fair, just and equitable outcomes" can be achieved. In this respect, the Explanatory Report refers to discrimination based on race/ethnic origin as an example, while pointing out the drafters' wish to address discrimination on the grounds of "bias or other systemic harm" that may also include systemic forms of religious profiling.[106] In fact, the new Convention takes the prohibition of discrimination into account as provided under existing – specific and general – human rights treaties, which usually cover religion as one of the prohibited grounds for any unjustified difference in treatment. Consequently, it requires States parties to take action for avoiding conscious or unconscious bias being incorporated into AI systems.

Interestingly, if compared with the problems emerged above in the area of (racialized) religious profiling, the Explanatory Report highlights the issues that the new Convention aims to challenge. These include the potential impact of: human-derived biases, such as the bias of algorithms' developers or "confirmation bias" relating to situations where people/police select information/data to support their views; of biases inherent in the data used or generated by the aggregation of different sets of data; and of "technical bias" that may be generated even when AI systems are designed and trained through a principled – human-rights-based – approach or when algorithms are applied

[104] CoE, *Explanatory Report to the Framework Convention on Artificial Intelligence and Human Rights, Democracy and Rule of Law*, 5 September 2024, para. 18.
[105] Ibid., para. 32.
[106] Ibid., para. 10.

to the real world.[107] It is worth noting that the non-discriminatory rationale embedded in the new Convention involves also its implementation, which shall be secured without discrimination *on any ground* (Art. 17) – i.e. religion included.

For the reasons already mentioned above, in addition to privacy and personal data protection (Art. 11), the following general principles are equally important for the purpose of combating any form of religious profiling. First, the new Convention commits States parties to ensure transparency, especially with regard to the identification of content generated by AI systems (Art. 8). This includes a duty of information, for instance, on algorithms and data being used, on the methodologies employed to train the AI systems, on the strategies elaborated to mitigate any risk to human rights, and on the purpose of using these systems and on their actual impact on authorities' decisions.[108] Second, the new Convention calls upon States parties to ensure accountability and responsibility for adverse impacts on human rights (Art. 9). Consequently, the actors involved in AI systems and their specific role in relation to the outcomes should clearly identified. Finally, an important set of obligations is included to guarantee that, in case of human rights violations resulting from AI-based activities like unlawful profiling, accessible and effective remedies are available (Art. 14). Other than ensuring alleged victims an effective possibility to lodge a complaint to competent authorities (Art. 14(2)(c)), the new Convention requires that information regarding AI-based activities is documented and, where "appropriate and applicable", this documentation is made available in accessible terms to affected persons. For people affected by (racialized) religious profiling, among many other affected individuals, these general principles are key for being able to contest law enforcement authorities' decisions "made or substantially informed" by the use of AI and the use of AI itself (see Art. 14(2)(b)).

Although these commitments are very broad, for the first time a treaty set minimum standards in an overall unregulated field. Among these binding standards, in line with the CERD Committee's recommendations, the new Convention commits each State party to "adopt or maintain measures for the identification, assessment, prevention and mitigation" of actual or potential risks posed by AI systems to human rights (Art. 16). As clarified by the Explanatory Report, this duty is intended as to impose a continuous human rights impact assessment, which cannot be limited to the designing or training stages. It also implies that cases of negative impact assessment should be appropriately addressed. Where the use of such systems is deemed incompatible with human rights, even a ban on their use shall be considered. This may be the case for religious as well as racial profiling and their interaction, in light of the awareness and the knowledge that States and other relevant actors already possess in this field, following the example of the EU (see below).

[107] Ibid., paras. 75-76.
[108] Ibid., paras. 57-58.

In sum, it can be presumed that with reference to (racialized) religious profiling, at the time of entry into force of the new Convention, States parties should at least: revising AI systems currently in use by law enforcement authorities to ensure that its standards are implemented; carrying out human rights impact assessments on the AI systems used for investigations, included those developed and managed by private actors, in order to avoid that personal characteristics – like religion – are used as a predictive tool without objective justification and, possibly, avoid that the same result is achieved through the use of other data, serving as a proxy for protected personal characteristics, in contrast with the prohibition of *indirect* discrimination; ensuring that information about these processes are collected and provided in a clear and accessible way to affected people, including members of disadvantaged religious or ethnic groups; guaranteeing that the alleged victims of (racialized) religious profiling, also on the basis of the information provided, can submit a claim when they deem that their human rights have been violated – directly or indirectly – because of the use of AI systems.

It is, however, unclear what kind of standard and burden of proof would apply when people affected by religious, or other intersectional kinds of, profiling would seek an effective remedy for violations of human rights resulting from AI systems. It can be argued that the same principles already analysed in case of non-AI-based violations would apply (Section 3.3, above). This solution reflects indeed the overall rationale behind the adoption of the new Convention. In fact, it does not intend to create new human rights obligations but, instead, aims to facilitate the implementation of actual international obligations in the specific context of AI.[109] In this respect, even when law enforcement activities using AI-based systems are excluded from the scope of application of the new Convention *because* they aim at protecting "national security interests", the Convention itself establishes a fundamental requirement: such activities must nonetheless be carried out in accordance with States parties' international human rights obligations. It follows that the obligations explored in the first part of this paper should be observed in any case, with or without the involvement of AI systems in law enforcement, especially in light of the fact that only States and their law enforcement officials have access to information and data proving that no profiling on the basis of religion, alone or in combination with ethnic origin, takes place. A "presumption" of discrimination, in the terms already explored, would be therefore enough to reverse the burden of proof to the relevant States, which should then demonstrate that their law enforcement authorities have not carried out their activities on the basis of religious profiling generated via AI systems.

4.3. The Impact of the European Union Artificial Intelligence Act

Moving to the EU and the increasingly integrated security systems of its member States, it can be said that most principles included in the new Convention and relevant

[109] Ibid., para. 13.

for combating unlawful profiling are already part of EU law, with evident legal implications on religious profiling via AI systems for CoE member States that are also EU member States. The reason resides in the (global) role played by the EU in the regulation of AI[110] and the consequent adoption of a new and complex EU Regulation, referred to as the AI Act, in 2024.[111]

In order to assess the possible impact of the AI Act on all forms of religious profiling in the specific area of law enforcement, some preliminary observations are necessary. First, although also the EU AI Act tries to find a fair balance in the complex relationship between the opportunities originated by AI systems and the protection of fundamental rights as enshrined in the EU Charter for Fundamental Freedoms, the new Regulation's aim is deeply attached to the functioning of the EU internal market and its improvement (see Preamble, whereas (1), and Art. 1). Some aspects may nonetheless be relevant for our discussion given that, in the attempt to promote a "human centric and trustworthy" AI, the new Regulation includes some key rules that impact on AI systems-based profiling for law enforcement purposes in EU member States. Second, according to Art. 2(3), the Regulation does not affect the competences of member States concerning "national security", in line with Art. 4(2) on the Treaty of the European Union. Although criticism was raised on the potential abuse of this exception by member States[112], especially as terrorist activities are concerned[113], it follows that the EU AI Act does not apply to a) AI systems that are placed in the market, put in service or used exclusively for military, defence or national security purposes and b) AI systems which, despite not being placed on the market or put into service, generate outputs used in the EU for the same purposes. Yet, AI systems to be used in the context of law enforcement fall within

[110] See, for example, EU Commission, *White Paper on Artificial Intelligence: A European Approach to Excellence and Trust*, 19 February 2020, Doc. COM(2020) 65 final, pp. 11-12, in which the danger of bias and discrimination based, among other grounds, on religion and the adverse impact of AI on human rights was already stated and initial solutions were proposed.

[111] Regulation (EU) 2024/1689 of the European Parliament and of the Council on Laying Down Harmonised Rules on Artificial Intelligence and Amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), of 13 June 2024. On the Regulation, in addition to the literature already mentioned in previous footnotes, see F. FERRI (ed.), *L'Unione Europea e la nuova disciplina sull'intelligenza artificiale: questioni e prospettive*, in *Rivista Quaderni AISDUE*, 2024; P. VOIGT, N. HULLEN, *The EU AI Act*, Berlin, 2024, especially p. 42 and 63 ff.; M. CARTA, *Il regolamento UE sull'intelligenza artificiale: alcune questioni aperte*, in *Eurojus*, 2024, p. 188 ff.; C. CASONATO, B. MARCHETTI, *Prime osservazioni sulla proposta di regolamento dell'Unione Europea in materia di intelligenza artificiale*, in *BioLaw Journal*, 2022, p. 422 ff.

[112] C. THÖNNES, *The EU AI Act's Impact on Security Law: A Debate Series*, in *VerfBlog*, 12 September 2024, https://verfassungsblog.de/the-eu-ai-acts-impact-on-security-law; P. VOGIATZOGLOU, *The AI Act National Security Exception: Room for Manoeuvres?*, in *VerfBlog*, 12 September 2024, https://verfassungsblog.de/the-ai-act-national-security-exception, which highlights "how national security authorities increasingly collaborate with law enforcement and other public and private bodies, blurring the lines between national and public security", thus potentially granting a wider margin of action to law enforcement officials when they act on national security grounds with more serious interference in the enjoyment of human rights.

[113] See the definition of national security and its consequences as provided by the CJEU in Joined Cases C-511/18, C-512/18 and C-520/18, judgment of 6 October 2020, ECLI:EU:C:2020:791, para. 135 ff.

the scope of the EU AI Act and are clearly defined therein.[114] Third, the new Regulation adopts a classification of AI systems that depends on the risks they pose to health, safety or fundamental rights as well as to the outcome of decision making. It therefore prohibits some AI systems and introduces specific rules for the use of other AI systems in light of the *a priori* identified category of risks, i.e. unacceptable risks, high risks, limited risks and minimal risks. In this respect, the new Regulation adopts a stricter approach in comparison to the CoE's Framework Convention, whose provisions apply to all AI systems regardless of the risks they pose *inter alia* to human rights. While the Framework Convention grants States parties the discretion to adopt restrictions or even bans of AI systems where appropriate, the EU AI Act identifies itself the AI systems that should be prohibited because of the implied unacceptable risks, with some significant consequences for AI systems-based profiling in law enforcement. Fourth, the Regulation has to be read in light of other specific EU rules adopted in areas strictly connected to AI and of relevance for law enforcement operations, other than in compliance with the Charter of Fundamental Rights, with specific regard to Art. 21, and relevant general principles of EU law. These rules include: the General Data Protection Regulation (GDPR), which the EU AI Act refers to for the definition of "profiling" itself[115] and which prohibits the processing of special categories of data, such as those revealing religious beliefs and ethnic origin;[116] and the EU Directive 2016/680 which prohibits profiling in law enforcement resulting in discrimination against natural persons on the basis of the same data.[117]

With regard to the specific aspect of profiling in law enforcement activities, the Regulation recognizes that no one should be judged on the basis of AI-predicted behaviour whose outcome is determined only by their profiling, personality traits or characteristics, without an individualised assessment of the case (Preamble, whereas 42). This would require a reasonable suspicion about the involvement of that person in a criminal activity, i.e. one that is based on objective and verifiable facts and entails a human assessment, as later established in Art. 5(1)(d). At the same time, while pointing out the risks generated by AI systems that are not properly designed, duly trained or tested, the Preamble also states that the use of AI tool by law enforcement authorities

[114] The EU AI Act provides a definition of both "law enforcement authorities" and "law enforcement activities" in Art. 3(45) and (46). The latter is meant as activities for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including safeguarding against and preventing threats to public security.
[115] See EU AI Act, cit., Art. 3(52) and Regulation 216/679, cit., Art. 4(4): profiling is meant as "any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements".
[116] Unless exceptions apply: see GDPR, cit., Art. 9(2). See the literature referred to in fn. 92 and also S. BUCHHEISTER, *The Regulation of Artificial Intelligence in the European Union through GDPR and AI Act: Bias and Discrimination in AI-Based Decisions and Fundamental Rights*, in *Stanford-Vienna European Union Law Working Paper Series*, No. 115, http://ttlf.stanford.edu.
[117] Directive (EU) 2016/680, cit., Art. 11(3) (see also Art. 10).

should not become a "factor of inequality or exclusion" (whereas 59). That is why the Regulation includes relevant AI systems for law enforcement within two specific categories connected with unacceptable risks and high risks.[118]

On the one hand, Art. 5(1)(d) prohibits the placing on the market, the putting into service, or the use of an AI system for making risk assessments of natural persons in order to predict the risk of a natural person committing a criminal offence, based solely on the profiling of a natural person or on assessing their personality traits and characteristics, like religion or ethnic origin. Accordingly, automated decision-making systems in law enforcement operations cannot be used but, owing to the lack of clear definitions, it remains unclear whether a limited human involvement in the decision-making process can potentially circumvent the established total ban.[119]

On the other hand, Art. 6(3) identifies as high-risk all AI systems "performing profiling of natural persons" in the area of law enforcement that are permitted under EU or national law,[120] like those covered by EU Directive 2016/680. Very briefly, for this category, the AI Act establishes a set of requirements which providers have the obligation to satisfy (Art. 16)[121] and which are fundamental when other data, or their combination, is used as a proxy for religion or ethnic origin in profiling. These include: the establishment of a continuous and documented risk management system, i.e. one that is able to identify actual or potential risks in light of the presumable context in which the concerned AI system will be used and which should lead to the adoption of appropriate measures (Art. 9); the respect of specific quality standards when AI systems are trained with data, which should be, *inter alia*, examined in order to detect and correct potential biases having a negative impacts on fundamental rights or leading to discrimination on the grounds of religion, among others (Art. 10); the provision of technical documentation to prove that the Regulations' requirements are satisfied (Art. 11); the guarantee of traceability of the functioning of the concerned AI systems over its lifetime (Art. 12); the provision of information to deployers in a way that they can

[118] It cannot be excluded, however, that also general-purpose AI systems, which are based on general-purpose AI models and have the capability to serve a variety of purposes, may come at play in connection with law enforcement activities (see definition in Art. 3(63) and (66)). When these models have high-impact capabilities, they may pose systemic risks, among which the Regulation includes actual or reasonably foreseeable negative effects on fundamental rights and the dissemination of discriminatory content (see whereas 110-111 and Art. 3(65)). The Regulation provides specific rules in this case, including the obligation of providers to identify and mitigate these risks, although their real effectiveness needs to be verified. For a full account of these obligations, see EU AI Act, Chapter 4.

[119] See also the implications for the principle of the presumption of innocence, in addition to non-discrimination: J. LEVANO, *Predictive Policing in the AI Act: Meaningful Ban or Paper Tiger?*, in *European Law Blog*, 5 July 2024, https://doi.org/10.21428/9885764c.6d0aa28c.

[120] The list of these high-risk AI systems is provided in Annex III, point 6. See also the AI systems included at point 7, which are related to Migration, Asylum and Border Control Management. It refers to AI systems intended to be used in the context of border control management, for "the purpose of detecting, recognising or identifying natural persons". The risk of religion being used as a proxy to detect irregular migrants cannot be ignored, something that may also lead to unlawful forms of profiling.

[121] The EU AI Act establishes obligations also for importers, distributors and deployers in the subsequent provisions, which cannot be examined in detail here given the limited scope of this paper. For all details, see Section III of the EU AI Act.

understand the systems' functioning and output (Art. 13); the duty to assess the impact on fundamental rights that the use of these AI systems may produce, which should include, among other things, a description of the implementation of human oversight measures as well as actions to be taken when risks materialize (Art. 27).

Whether this complex framework, here only considered in its essential distinctive traits for law enforcement operations, and the prohibition it entails will be successful in preventing and eradicating (racialized) religious profiling is to be seen, especially given the potential limitations that affected people and groups may find in seeking remedies in case of human rights violations. However, an additional positive aspect of the EU AI Act is worth being highlighted. The new Regulation allows providers of high-risk AI systems to exceptionally process special categories of personal data, including religion, to the extent that it is strictly necessary for the purpose of ensuring detection and correction of biases leading to discrimination prohibited under EU law, provided that appropriate safeguards are respected (see Art. 10(5)). In other words, the EU acknowledges that, despite all provisions aimed at avoiding unlawful profiling, including all forms of religious profiling, AI systems may nonetheless generate or reproduce it. Such acknowledgement adds doubts on how victims of (racialized) religious profiling in law enforcement operations, among others concerned people, can effectively prove such a practice themselves in order to contest AI-based decisions and measures. This is a call for further socio-legal exploration of the real-life impact of AI-systems in law enforcement operations during the first years of implementation of the EU AI Act, especially as far as personal characteristics protected under EU law are concerned.

5. Concluding Remarks

Profiling, including religious profiling, in law enforcement is not a new issue. Yet, as recent findings of international and European actors and institutions show, it remains a persistent practice in Europe and beyond. When religious profiling as such is specifically considered, international law still provides mixed answers: on the one hand, specific and clear obligations to the challenges it poses are often absent; on the other, the real effectiveness of existing general frameworks in protecting minority religious groups against profiling in law enforcement is doubtful. Nevertheless, an evolution in this field is under way in relation to both kinds of "traditional" and "modern" profiling considered in this paper with the potential definition of increasingly detailed obligations for European (CoE and EU) States. Some concluding remarks can be offered here.

First, if a contextual social analysis of European societies is adopted along an intersectional approach, patterns of racialization of religion can be acknowledged, triggering the standards developed in the framework of the CERD against racial profiling. By the same token, given that difference in treatment based only on race and ethnic origin or skin colour is prohibited in equal terms as distinctions based on religion

under general non-discrimination provisions in human rights treaties, it is expected that the profiling of individuals based on their religion for law enforcement purposes may benefit from the current interpretation and application of the same non-discriminatory provisions when racial profiling is involved, including in terms of evidentiary standards and justification based on a strict proportionality test.

Second, new challenges are ahead due to the increasing development and use of AI systems and models also in law enforcement activities. The complexity of this technological advancement risks depriving current standards based on non-discrimination of their effectiveness and requires additional regulatory efforts. From this viewpoint, despite its broad principles and wide scope, the adoption of the CoE Framework Convention on AI is a welcome development. In turn, although it is primarily aimed at the functioning of the EU internal market, the EU AI Act strengthens the protection against AI-based profiling thanks to the detailed rules it imposes on EU member States, including by prohibiting certain AI systems to be used in law enforcement activities. More importantly, despite some exemptions, only EU law specifically acknowledges religion when dealing with profiling. The focus that both these different European instruments place on human right impact assessments and human oversight, to be meant as a right to obtain human intervention, is essential to restrict as much as possible the use of direct or indirect profiling based on religion or a combination of religion and ethnic origin. Moreover, the attention on AI literacy is instrumental to raise awareness in law enforcement authorities. In fact, as a preliminary step, officials need to be aware of the impact of AI systems on fundamental rights and on profiling based on (racialized) religion more specifically. They also should know if and to what extent it is possible to rely on such systems to adopt decisions and measures and to follow procedures that are human rights complaint. In this respect, the risk of technological dependence in the belief that AI-systems are foolproof must be stressed. In fact, the uncritical acceptance of algorithmic (biased) suggestions leading to religious profiling, even when an individualised assessment of the circumstances of a person leads to an opposite conclusion in terms of involvement in crime, should be avoided.

Whatever form religious profiling takes, either in real world or reiterated/generated by AI tools, three fundamental issues need more attention.

First, it is very difficult for alleged victims and affected groups to prove (racialized) religious profiling. The new ECtHR's case law on racial profiling is particularly instructive of these difficulties, but the approach adopted by the Court, which does not rely necessarily on comparative elements, is promising. The fact that it accepts treating profiling-based violations by applying the standards developed for non-violent discriminatory acts ensures that alleged victims do not need to prove the discriminatory intent of the concerned official(s) and that the complex and wider social-legal context, in which such practice lives, is duly considered. In this respect, it is also promising that the Court recognised the disparate impact of these law enforcement practices on certain groups and that the presumption of unlawful profiling can only be rebutted by information and data possessed by States parties.

Second, the impact of (racialized) religious profiling does not seem to be fully acknowledged in its entirety. The effect on freedom of religion as such remains unaddressed and, in any case, is not considered from an intersectional perspective. Religious profiling can have indeed disproportionate effects on groups with specific migratory status or ethnic or national origin when a specific religion is attributed to them by the host society. The same is true when religion works as a proxy for singling out individuals belonging to minority groups sharing a specific "race", ethnic or national origin or skin colour. From this perspective, some religious signs or clothes may generate a racialization process in law enforcement officials with the consequence that people wearing them may be more easily subject to racial profiling. The resulting impact on the freedom to manifest one's religion in real world or online may amount to unjustified interferences also in the enjoyment of freedom of religion. It would be thus interesting to see whether and how such a right can by itself be used against (racialized) religious profiling before human rights bodies, especially as far as the mentioned proportionality test is concerned.

Third, justification still raises doubts. The CERD Committee's activity suggests that forms of intersectional racial profiling can never be justified, whereas other human rights bodies and actors seem ready to accept that personal characteristics, like religion or ethnic origin, can also be used if policing activities are based on individualized objective criteria and pursue legitimate aims. As ECRI suggests, only the adoption of a reasonable suspicion standard can prevent groups sharing the same religion from being subjected to unlawful forms of profiling. Given the role of religion and ethnic origin in shaping personal identity, such standard aligns with a strict proportionality test under both the principle of non-discrimination and freedom of religion. Indeed, it would make sure that a profiling, which directly or indirectly takes into account religion, is not only proportional to the legitimate aim to be pursued, but it is also the only alternative available to law enforcement authorities to carry out their duties in name of collective interests. While the achievement of such standards does not raise insurmountable difficulties for profiling on the ground, it is unclear how the same standards can be concretely applied when AI systems (i.e. those permissible under EU law as far as EU member States are concerned) are involved, unless human rights impact assessments and transparency duties are taken seriously by both European States and private actors.

ABSTRACT: The paper explores religious profiling in law enforcement in two different contexts: traditional policing activities on the ground, like identity and security checks, and operations involving the use of AI systems. It shows overall that religious profiling as such is still not properly addressed in international (human rights) law. Protection is often limited to broad non-discrimination provisions, whose application and effectiveness may depend on the specific approach of the human rights body at stake towards religion and discrimination based on religious

grounds, on the evidentiary standards imposed and on the proportionality test actually applied. Considering also the social context prevailing in European countries, the paper argues that an intersectional approach should be adopted in this field, especially when religion – in law enforcement operations – is associated to other personal characteristics like "race" or ethnic origin, thus triggering the application of more detailed frameworks like the CERD. In the attempt to identify relevant obligations for European States, the paper also analyses some positive developments recently emerged within the ECHR system, with regard to the application and the interpretation of the prohibition of discrimination in case of unlawful profiling in law enforcement operations on the ground, as well as the new European instruments on AI when law enforcement activities involve AI systems, thus shedding light on the gaps and the issues that need to be addressed in the future.

KEYWORDS: religious profiling – racial profiling – law enforcement – CERD – ICCPR – ECHR – artificial intelligence.