**Ethnic Profiling: Towards EU Guidelines for fair and efficient profiling ?**

**Research Notes from Roundtable – 6th December 2016-1730- 1945, Room AE1**

Co hosted by MEPs Judith Sargentini (Greens/EFA, Netherlands), Cecile Kyenge (S & D, Italy)

Afzal Khan ( S& D, UK), Sajjad Karim (ECR, UK -absent)

**Judith Sargentini , MEP**

As a previous Leader of the Green Faction and Member of Amsterdam City Council she became aware of

* *Preventive frisking* in hotspots targeted by criminls; in certain streets at certain times which was meant to be *aselective* not just targeting BME individuals.
* This was found to be ineffective and lead to *flexible but selective frisking* which often targeted North African youth. As a result of *selective frisking* it was found that specific men and women were being repeatedly singled out at weekends.
* Another example is a well known young black artist in Amsterdam who is singled out on the basis of the expensive car which he drives; this has led to extensive debates including internally within law enforcement; as well as a wider national debate trying to get the topic of ethnic profiling back on the agenda
* the impact this has on wider society.

**Afzal Khan, MEP**

The European Parliament is ready to give guidelines for fair and effective policeman; he has previous experience at a personal level as a former policeman.

* Counter terrorism measures should not lead to increased ethnic profiling.
* Antagonising entire communities is far from being the right strategy; this approach undermines the goal of policing.
* The problem at the judicial level also affects (…) the black community in Britain, and currently the country’s moslem population.
* Promote fair representation of different communities with Police forces e.g. 2020 Vision
* Aim to be about fairness; a fair society is also a secure society.

**Cecile Khan, MEP**

Narrative: she was recently questioned by border controls in a European state whilst not using her diplomatic passport, on suspicion of “travelling too much”, and told her passport picture was not clear enough. She could have been stopped without being able to produce her diplomatic passport. In addition her daughter has been negatively affected by media reports of the treatment of black people in some countries which have been portrayed in an inappropriate way. We have to guarantee *EU Race Equality Directive*, Guidelines e.g. in the *Schengen Handbook* and *EU Framework Decision on Racism* is adhered to[ and push the matter of ethnic profiling in order to have a specific strategy to deal with it.

**Rebecca Delsol,** Programme Manager, Fair & Effective Policing Project, Open Society Justice Initiative

*How do Police Officers experience ethnic profiling? What is good practice ?*

**Omer Mas Capitolin, Chair of Maison Communautaire, France**

* Actively works in France on ethnic profiling; we are French whatever the colour of our skin. The impact of ethnic profiling may be described as “ceremonies of degradation” where minorities are considered as second class citizens; we are not allowing ourselves to complete educational studies.
* In France there have been a number of actions taken to address this, as elected officials had problems accepting the way that checks were being made. Art. 78.2 of the Criminal Code states a check is only allowed if you are committing or likely to commit a criminal. 50 social scientists were selected by the French government to investigate this, and found: people of Arab heritage were 50 times more likely to be stopped; and Black people were eight times more likely to be stopped than whites.
* One French Minister thought it was absolutely normal to check Black people more than whites; this leads to a number of questions about the way French society works. All forms of discrimination are being fought against in France.

**Jacques Toubon, Defender of Rights, France**

* Guadeloupe was French before Brittany; 13 French youth took action against the French state which was held to account for five cases of discrimination. The High Court condemned the French State, and now ngos which generally tend to go to criminal courts with such cases have legal precedent to show ethnic profiling is a criminal offence.
* It is really important that French citizens have the opportunity of achieving constitutional reform at the national level, and this will be brought to European level institutions.

Powerpoint Presentation on Ethnic Profiling, Blackface and Institutional Racism in the Netherlands: Stop and Search pose a risk to Human Rights *Programme Manager, University of Netherlands*

Ethnic profiling became a part of our knowledge and culture through our history. We must understand ethnic profiling results from the history of racism in the way we think as a result of stereotypical images produced over 300+ years. In a European context it is important to reflect on **colonialism** – most of us are here because European powers colonised other parts of the world with certain goals. History affects the way we behave and think. E.g. **philosophical racism** asserted Africans are probably descended from monkeys or vice versa (Voltaire, 1694- 1778); Blacks are naturally inferior to whites (David Hume).

**Scientific racism** is a body of knowledge which influences the way we think; e.g. the book Wit over Zwart; caricatures of black people in Tin Tin by H. Arnoldus.

**Police** are supposed to foster trust between different groups of people; that Police and MoD think Blackface normal illustrates institutional racism. Research done by Amnesty International show that it is not an isolated incident . A lot of youth feel distrust towards police as a result of ethnic profiling; the speaker urges everyone especially government to work towards stopping ethnic profiling.

**Saad Amrani, Head of Public Order for the Brussels Police; Policy Adviser, Belgian Federal Police.**

* Holds the highest rank in Belgian Police Force and is the highest ranking Police Officer with a foreign background in Belgium. Before joining the Force he experienced ethnic profiling by police and military police over 15 years ago.
* Still a victim of ethnic profiling by police and intelligence officials ; e.g. was profiled by border controls at an airport in Germany recently who stopped him to make sure the picture matches the person.
* Since riots in Brussels in 1992, efforts to make a difference in SAS carried out by law enforcement; includes recruitment more people with foreign backgrounds. Ethnic profiling is quite complex; it is not just about police officers profiling people but a mixture of serious scenarios that have to be taken into account; nor is it just about race.

1. **Recruitment** is key but some police officers become more biased over time – Why?
2. Since we don’t like to have prototypes and stereotypes, on both sides of the aisle **we must create conditions to improve the situation,** which take into account that police forces have evolved over the years. We have to ensure that we have police forces on board if we wish to change the situation; this includes changing the way we approach these institutions (playing the blame game).
3. **What are the critical success factors ?** one is the top down approach involving leadership. If leadership of the Police are not convinced, then it will not work; those on the beat must also be involved.

Recent events in Europe do not make the situation easier , but there is room for manoeuvre.

**Jose Francisco Cano, Police Chief; and Spokesperson for la Platforma por la Gestion Policial de la Diversidad, Fuenlabrada, Spain.**

In 2006 a group from the **OSJI** decided to take part in a project named STEPS; ie law enforcement policy for SAS in Spain. Spanish law enforcement had no statistics available to establish ethnicity of people subjected to SAS; LGBT people were also targeted. Were these practices discriminatory or not?

* **STEPS** led to local Police in Fuenlabrada establishing a questionnaire on people who were stopped; there had been 8000 SAS per year previously which was reduced by a half. The result was also very positive because there were 40% positive IDs. Fuenlabrada is the only police force in Spain adopting this mechanism to address ethnic profiling; SAS has been reduced and police efficiency increased.
* **La Platforma por la Gestion Policial de la Diversidad** created a permanent platform for ngos, police and others to meet; e.g. disabled organisations, ethnic diversity, lgbt,organisations working to defend human rights and defend migrants, the Union of Police Chiefs and the organisation that gathers LGBT police officers. Very diverse and sometimes very different views emerge but the ngo is united by the need for all authorities to work on police management in diversity.

**AIMS**

1. Increase the quality of training of police officers in Spain – e.g. acknowledgment of diversity.
2. Having social diversity in the Police forces; need to establish quotas and offer training. We need to promote good practice e.g. a prize for good officers.
3. To guarantee that hate crimes be taken sufficiently into account; prepare protocols that focus on victims of crime and increase diversity.
4. Before 2000 the Spanish were emigrating to other countries; the increase in immigration has not had appropriate reception of immigrants. E.g. Ramadan is key to public life for some minorities; it is therefore necessary to prevent discriminatory measures.

**Question from Anonymous**

Works for a municipality of Brussels; in order to make progress it is important for people to know their own rights, identify officers and diversify recruitment. What is the impact of the briefing given to police authorities ? We have to test the ticketing.

What about the terrorist situation? It is not only the opinion of the police in the field. Can we find situations in a micro level or a macro level.

**Jose Francisco Cano, Spanish Police Chief**

It has a lot to do with how the system works; there is a national as well as local level for decisionmaking.

**Advantages** – regarding efficiency but advance social legitimacy which is priceless.

**Claire Fernandes, ENAR**

We need to address the issue from an institutional perspective, bringing it back to the EU level from the national level.

**Chiara Adamo, Head of Unit, Fundamental Rights and Rights of the Child, DG Justice, European Commission**

FRA has been doing a lot of work on ethnic profiling. **EU MIDAS** was the first case of a survey done on victimisation on migrants and minorities. **EU MIDAS 2** has wider coverageand improved sampling methodologies; this includes a bigger sample and is more in depth.

* It presents from the rightsholder and hidden figures of crime ( people do not report crime to the police because nothing will happen).
* **Level of mistrust** lead to similar results for reporting of criminal incidents to the Police which has to be addressed.
* FRA produced a guide: **Understanding and Preventing Ethnic Profiling.** The need exists to see the uses of profiling as well as the negative aspects. It is used as a manual training because unconscious bias affects behaviour; training must show how profiling damages.
* We need to look at the numbers (we are looking at real numbers). E.g in Gemany there are 270 000 police officers, France has 22 000, Netherlands 55 000 and Sweden 20 000; additional recruitment and training to address ethnic profiling will therefore require significant resources and political will. In 2017 we need to step up the cause; the European Commission is to establish a High Level Group to this end.

The Dutch Presidency’s efforts to put ethnic profiling on the EU Agenda

**Bastiaan T. Winkel, Coordinating Policy Advisor, Ministry of Security and Justice, the Netherlands**

Re-iterated the example of the young, 25 year old person of colour driving the brand new BMW X5 – M worth 177 309 Euros, who was stopped on average three times per week by law enforcement. Another example was a person of colour asked to represent an anti-discrimination campaign in the Netherlands who was also stopped on average three times per week who was also stopped regularly because the car they were driving was viewed to be too expensive. Profiling and in particular“in current policing, ethnic profiling has been a self fulfilling prophesy that finds its origins in general police targets in combination with limited resources.” Law enforcement must establish:

* Adequate proactive interventions
* Objectifiable actions
* Legitimacy and societal trust
* EU approach through sharing experiences e.g. stop forms, intelligence led police work and training.

Four lines of intervention:

* reflect on policing
* establish a policy based monitoring mechanism
* improve the legal status of citizens
* improve the effectiveness of operations e.g. through additional resources, a code of conduct for law enforcement officers (and border controls), and use of techniques.

**Jacques Toubon, Defender of Rights, France tbc**

* Is an independent constitutional entity which deals with the defense and promotion of human rights in France.
* The Defender of Rights can launch complaints and enquiry as well as improve reforms; this led to their involvement in the claim made by 13 people in the High Court in Paris were subjected to identity checks as a result of discriminatory profiling.
* Arguments made by the claimants stated inefficiency on issues of principle in Articles of the French Judicial Code; the Defender of Rights approach turned the argument to highlight mistakes of the state e.g. no traceablility of documents handed to controlled persons, which leads to problems of evidence as proof of discrimination cannot be shown.
* The High Court Judge in Paris was presented with case law of European Human Rights, and told to question if the appeal was not appropriate, text should be adopted to show it was inappropriate. This was then drafted showing the burden of proof has been amended, and validated by the Supreme Court. The real victory is that now if a French citizen wishes to counter an identity check, there is case law which sets a precedent to show it is inappropriate and discriminatory. However the Defender of Rights expressed concern that this might be limited to a number of arguments and a few areas only.

We should focus on profiling in the context of fundamental rights and a change in culture. The European Union has limited competence on national security but has responsibility to introduce specific safeguards, that disproportionate and discriminatory practice is avoided. Many EU states are bound by the Charter of Fundamental Rights, and the Defender of Rights aims to assist dialogue between the Police and communities.

The European Union Directive on Terrorism is to be adopted very shortly. There is 3.8 bn euros available for developing training and ethics for police forces. EU agencies can play a role in the training of police officers and border controls; e.g. empower national gatekeepers, targeted measures to encourage member states to address unconscious bias, and specific priority countering discrimination.

An **EU High Level Group on Racism** met the following day after the Roundtable as a platform: to update the Handbook; to allow police forces to share experiences; allow the European Commission to focus on discriminatory profiling; and discuss related issues.

**Momodu Jallow, Malmo City Councillor & Pan African Congress**

In 2013, Swedish Police in Malmo were tried and found guilty of the discriminatory practice of ethnic profiling Roma. Police have the power, the people do not; you cannot compare the two they are incomparable.

**Saad Amrani, Head of Public Order for the Brussels Police**

* To make progress we must be able to sit around the table constructively; e.g. in Brussels tremendous progress has been made over the last twenty years. It is important to create constructive common ground on which we can make progress.
* There are examples of good practice in Belgian policing such as Ghent based on growth of diversity: a) stimulatory actions/ approach

b) positive actions/approach

**France**

* Without open society we could not work on these issues; how do we protect politically sensitive ngos ?
* We need to look at the importance of data and language (e.g. discriminatory ethnic profiling vs ethnic profiling)
* Discussion and recommendations must be placed within the law.
* Focus more on operational guidelines given to the Police; e.g. in 2014 a report was issued on the effectiveness of mechanisms to address racism in Greece and Hungary. In Greece 120 567 people were stopped in that year primarily to identify illegal aliens. This alienated the legal population as many were detained by law enforcement.
* In providing intelligence it is important not to have the opposite result than the one intended.
* Rebuilding trust with communities is very important; doing unofficial sweeps do not help.

*The researcher stated to the forum that he had recently attended a similar event in Bristol where a member of the audience had alleged that some members of the judiciary and even legal representation can be discriminatory. Monitoring is therefore necessary not only of law enforcement and border controls, but the entire legal system needs to be more accountable for discriminatory practices.*

*(given the geopolitical uncertainty with recent elections of right wing governments in the USA and some European states as well as BREXIT)*

**Background notes to the ARDI and Civil Society Roundtable on Ethnic Profiling**

*See OSJI Handbook on Good Practices: Reducing Ethnic Profiling in the EU*

Ethnic profiling has increased in the last decade as a result of

* Rising concern about illegal immigration and the movement of undocumented migrants within the EU
* The threat posed by terrorism in the aftermath of 9/11and subsequent terrorist attacks.

Steps to address (discriminatory) ethnic profiling

1. Admit its existence and recognise its discriminatory nature
2. Dividing what to do about it
3. Implementing new policies and practices to reduce it.

Ethnic profiling is criminal profiling. There are various definitions:

See *USA Department of Justice 2003, UK Police and Criminal Evidence Act 1984, ECRI Policy Recommendation No.11, EU Network of Independent Experts on FRA* in OSJI Handbook on Good Practice.

See also *data mining* defined by Art.14 ECRI, ECRI General Policy Recommendation Nos. 8 & 11, and Art.1 ICERD 1965 (OSJI Handbook pages 23 – 24).

The *test for discrimination* is twofold under governing case law of the European Court of Human Rights (ECtHR):

1. Whether the difference in treatment has an objective and reasonable justification when “assessed in relation to the aim and effects”. In *Rosalind Williams Lecraft v Spain,* the UNHRC held there was a violation of ICCPR as a result of a discriminatory identity check on the plaintiff by Spanish border controls.
2. In *Gillian and Quinton v UK 2000* the ECtHR stated “police powers of stop and search must be clear, used accountably, and respect privacy rights”.

Sections 44 & 45 of the **UK Prevention of Terrorism Act 2000** states ethnic profiling is “not sufficiently circumscribed nor subject to adequate legal safeguards against abuse”, p.23.

The **European Commission’s Practical Handbook for Border Guards (the Schengen Handbook**) “enshrines non-discrimination principles”.

The impact of ethnic profiling on individuals

* Linked to post traumatic stress
* Perception of race related threats
* Failure to use available community resources
* Feelings of persecution
* Involves widespread violations of important fundamental rights (p.24)
* Negative stereotyping and stigmatising of communities
* “the ratchet effect” and “black criminality”
* Sentencing disparities and over-representation of ethnic minorities in prison populations.
* Contributes to civil unrest and social conflict as well as hostility towards law enforcement.

The impact on law enforcement

See “hit rate”, “disproportionality” and “odds ratio” (p.26).

* Reduce security
* Misdirects limited resources
* Can be “over inclusive” and “under inclusive”. E.g. in the Netherlands disproportionate searches on ethnic minorities had a hit rate of 2.5% i.e. 2.5 per 1000 people stopped had weapons. 54 operations took 12000 hours of police time in Amsterdam; and led to resource cuts in Rotterdam with equally limited results (p.27).
* It is ineffective, inefficient and alienating , e.g. reinforcing negative stereotypes with less security.

A Holistic Approach to Reducing Ethnic Profiling

* Recognition of (discriminatory( ethnic profiling can emerge in the aftermath of civil unrest and deteriorating relations between law enforcement and minority populations.
* Implementation of new anti-discrimination law and national equality policies.

Important elements of a holistic approach

* Reviewing legal standards, operational and institutional policies.
* Instituting systems
* Building policing skills ( …) without profiling
* Initiating recruitment drives (e.g. 2020 Vision)
* Engaging communities

Mechanisms to address ethnic profiling

1. Law enforcement agencies are accountable to legal standards; national and local political authorities for legal powers, policy direction and budgets.
2. Law enforcement have institutional mechanisms for managerial and administrative accountability that law enforcement officers encounters with civilians.
3. Law enforcement authorities are accountable to the communities that they serve.

See p.32 for **community participation**; also *CERD Concluding Observations to UK 2016* Arts.26-29 (p.7); Art.38-39 (p.9).

Legal Standards and Institutional Policies to address Ethnic Profiling (p.53)

* Clear legal standards rejecting ethnic profiling represents good practice.
* Laws governing law enforcement institutions do not always illustrate this clearly.
* Constitutional non discrimination protections should be further codified to establish limits on police powers and remedies in the above cases. E.g. Germany’s **General Equal Treatment Act 2006** does not apply to law enforcement (but only to civil matters).
* Criminal sanctions in anti-discrimination law should apply to law enforcement agencies and officers.
* Civil and administrative law provide a more effective legal framework for addressing ethnic profiling.
* Legislation should provide **positive obligations** (…) to address discriminatory practices (p.38).

Case Study

United Kingdom Border Agency (UKBA) has a statutory duty under the **Equality Act 2010** but also limited exemptions on certain immigration decisions including a list of nationalities subject to scrutiny (p.37).

See Operational Guidelines (p.41-42) & Case Study – PACE 1984 (p.43-45)

Ethnic Profiling on Immigration Enforcement

* + ECtHR underscore “aliens” do not fall within the remit of the ECHR
  + **Art. 3.2, Race Equality Directive** derogates the principle of non discrimination in immigration control matters, allowing for differential treatment on grounds of nationality, but not of national origin.

See also the Schengen Handbook & Schengen Convention; case studies on behavioural profiling (Belgium), visually profiling (UKBA), non discriminatory treatment in border controls ( Netherlands), Police Stop Powers for immigration control purposes (France); & the Aliens Decree 2000.

**Strategic Action Plans (p.51-53)**

**Oversight bodies and Complaints mechanisms (p.55-73)**

* Internal complaints mechanisms and requirement to investigate racist intent (p.56)
* Recommendations for policy change to enable improved monitoring and address ethnic profiling can be made.
* Independent Complaints Mechanisms and Civil Review Bodies. E.g.

1. Independent Police Complaints Commission (IPCC) in the UK. See p.58-59 for case study. Howevcer the exercise of SAS by UK law enforcement and border controls still does not inspire public confidence in these authorities.
2. Belgian Standing Intelligence Agencies Review Committee (Committee I) which also has jurisdiction in the realm of counter terrorism.
3. Special Officers attached to the Prosecutor General in Sweden, Denmark and Norway to receive and investigate complaints on ethnic profiling; however these are unlikely to go beyond internal complaints (p.57).
4. Netherlands has hybrid internal – external model of complaints commissions.
5. Good practice on civilian oversight is exemplified by Comite P in Belgium (p.60); National Commission on Police Ethics in France (p.61), the Office of the Police Ombudsman in Northern Ireland ( p.63), and the EHRC in the UK (p.69).