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Ethnic profiling in Europe: a matter of great concern

Report[1]
Committee on Equality and Non-Discrimination
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Summary

Identity checks are performed by law-enforcement officers on a daily basis. However, some individuals are being singled out for such checks solely on the grounds of race, colour, national or ethnic origin, or perceived religion. Stopping a person on these grounds only constitutes discrimination.

Ethnic profiling promotes a distorted vision of society, in which stereotyping, prejudice and racial discrimination are not only tolerated but even encouraged. It has a negative impact on its victims and affects trust between police and the population. Ethnic profiling can lower the effectiveness of police actions by increasing their predictability. It is necessary to focus on raising awareness of the negative impact of ethnic profiling, keep records of identity checks carried out, collect data on the incidence of ethnic profiling, set up independent police complaints mechanisms, invest in police training, provide the police with the resources needed to carry out its mission and encourage more dialogue.

Public authorities and political leaders should lead by example and take steps to address systemic racism. Legislation prohibiting discrimination, condemning ethnic profiling in public debate, reacting to racist speeches and not justifying racism by any representatives of State authorities are concrete political means of action.

1. Reference to Committee: Doc. 14545, Reference 4387 of 25 June 2018.

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A. Draft resolution[2]

1. Worldwide mass protests following the killing of George Floyd on 25 May 2020 in Minneapolis have again increased public awareness of the urgent need to strengthen the fight against racism. Institutional racism, racist violence and abuse have been reported for years throughout Europe. The Parliamentary Assembly is concerned about the persistence of racist behaviour in European societies and stresses that there can be no impunity for manifestations of racism.

2. Police forces play an important role for the cohesion of society, by protecting the population from security threats and contributing to ensuring peaceful living together. Besides other important functions, they play a key role in guiding victims of domestic violence seeking protection and justice. Since the beginning of the Covid-19 pandemic they have also ensured the respect of lockdown and other restrictive measures taken to tackle it. The attitude of police officers towards the population and methods used to carry out their tasks are of utmost importance to ensure trust and overall support. They should be exemplary and held accountable for actions.

3. Activities of surveillance, investigation, controls and identity checks are routinely performed by police forces, border guards and law enforcement officers throughout Europe on a daily basis. However, some of the methods employed are in contradiction with international human rights standards. Ethnic or racial profiling occurs where people are stopped, checked or investigated without any reasonable and objective grounds, because of their colour, appearance or perceived nationality, ethnicity, origin or religion. Artificial intelligence also demonstrates and amplifies this type of partiality and bias. Ethnic profiling is discriminatory in its nature and, therefore, illegal, but despite this is a widespread and evidenced phenomenon across Europe.

4. Ethnic profiling can have a negative impact on both the persons being checked and society at large. It contributes to promoting a distorted view and to stigmatising parts of the population. It can also reflect deeply-rooted racism. Ethnic profiling is counterproductive as it reduces the efficiency of investigative work, making the work of the police more predictable and subject to prejudice.

5. The Assembly recalls its Resolution 1968 (2014) “Tackling racism in the police”, in which it already stressed that racist behaviour and practices within the police against visible minorities have a negative impact on public opinion and can increase prejudice. It also recalls its Resolution 2275 (2019) “The role and responsibilities of political leaders in combating hate speech and intolerance”, in which it stressed that politicians have both a political obligation and a moral responsibility to refrain from using hate speech and stigmatising language, and to condemn promptly and unequivocally its use by others, as silence may be interpreted as approval or support.

6. The Assembly commends the work of the Council of Europe’s European Commission against Racism and Intolerance (ECRI), which has consistently condemned the use of ethnic profiling and called on member States to prevent its use. The Assembly, which participates in the ECRI’s work through its representatives, reiterates its full support for the commission in this context.

7. In the light of these considerations, the Assembly calls on the Council of Europe member States to take determined action to tackle ethnic profiling and to:

7.1. clearly condemn and prohibit ethnic profiling in national legislation, if it is not yet the case;

7.2. strengthen the fight against racial discrimination, particularly during crises such as the Covid-19 pandemic;

7.3. follow up the relevant ECRI recommendations and take measures to ensure their full implementation, notably General Policy Recommendation No. 11 on combating racism and racial discrimination in policing;

7.4. promote awareness-raising activities on preventing and combating ethnic profiling, encourage dialogue between law-enforcement bodies and minority communities at all levels, as well as pertinent NGOs, and create frameworks for this dialogue if needed;

7.5. call for the adoption of codes of conduct by police forces with content aiming at preventing racist behaviours and ethnic profiling, when it is not yet the case, and ensure their implementation;

7.6. provide adequate resources to the police to carry out its tasks, including with regard to the recruitment of staff, and ensure diversity in the recruitment of police forces so as to reflect the diversity of the population;

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2. Draft resolution adopted unanimously by the committee on 27 November 2020.

7.7. organise regularly training on preventing and combating racism for all police officers, including specific training on preventing and combating ethnic profiling, applying an intersectional lens;

7.8. set up independent police complaints mechanisms, where it is not yet the case, and ensure that they are sufficiently staffed and have the means to follow up on sanctions delivered;

7.9. support victims of racial discrimination and victims of police abuse and misconduct, including in their process to seek justice;

7.10. systematise, where this is not yet the case, the delivery of receipts following stop and search operations and ensure that police officers can be clearly identified when performing this type of task;

7.11. launch studies on the policing practices at national level to gain an overview of the use of ethnic profiling, collect disaggregated data, publish the results of these studies and take relevant follow-up measures;

7.12. support national human rights institutions and equality bodies which play an essential role in the fight against racism and discrimination, including ethnic profiling, on any grounds.

8. The Assembly invites national parliaments to:

8.1. hold debates on the need to prevent and combat ethnic profiling and racism in law-enforcement agencies;

8.2. hold debates on ECRI's general policy recommendations and country specific recommendations, their implementation and launch parliamentary initiatives to implement them.

9. The Assembly calls on political leaders, as well as leaders of law-enforcement and police forces, to firmly condemn the use of ethnic profiling and call for an end to this practice.

10. The Assembly welcomes the adoption of the general recommendation on preventing and combating racial profiling by law Enforcement officials by the United Nations Committee on the Elimination of Racial Discrimination and reaffirms its support to the work of the committee and of the UN Office of the High Commissioner for Human Rights.

B. Explanatory memorandum, by Mr Boriss Cilevičs, Rapporteur

1. Introduction

1. Throughout Europe, identity checks are routinely performed by the police in various instances. However, some individuals are being singled out by the police for such checks on grounds such as race, colour,[3] national or ethnic origin. Stopping a person on these grounds constitutes discrimination.

2. According to Mutuma Ruteere, former Special Rapporteur of the United Nations (UN) on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, "racial and ethnic profiling has persisted and continues to pose a serious challenge to the realisation of the rights of some racial, ethnic and religious groups across the world, and particularly in the light of contemporary anti-terrorism measures".[4] He defined racial and ethnic [5] profiling as "a reliance by law enforcement, security and border control personnel on race, colour, descent or national or ethnic origin as a basis for subjecting persons to detailed searches, identity checks and investigations, or for determining whether an individual is engaged in criminal activity".[6]

3. Ethnic profiling can have a very negative impact on its victims and on society at large and contributes to promoting a distorted vision of society, in which stereotyping, prejudice and racial discrimination are not only tolerated but even encouraged. It also reinforces discrimination and affects the daily life of both the victims and society at large. Ethnic profiling may occur in different public places, such as at police stations, in the street, at an airport, at borders, in a train or bus station, outside religious buildings or in education facilities, to mention but a few examples. The persons engaging the most in ethnic profiling are police officers and immigration officials, but it has been reported in other sectors as well, including within judicial systems.

4. With the adoption of its Resolution 1968 (2014) "Tackling racism in the police", the Parliamentary Assembly has already expressed concern with regard to racial profiling in Europe, which it defined as "the use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin for control, surveillance or investigation activities".

5. While I consider the content of Assembly Resolution 1968 (2014) still valid, the overall European context has changed. Radicalisation has been on the rise and the risk of terrorist attacks which have caused hundreds of casualties in Europe in the past few years remains high. The pressure on the police is enormous and under such circumstances, it is no surprise that stop-and-search operations, with a view to preventing further attacks, have increased and that profiling is widely used. However, the use of unlawful profiling is discriminatory, irrespective of the context.

6. In addition, the Covid-19 pandemic has led governments throughout the world to impose various emergency measures on the populations to prevent further spreading of the virus in Spring and Autumn 2020, thereby restricting freedom of movement. Identity checks have been performed to ensure respect of lockdown measures. It has been reported that often, persons of colour, persons with an immigration background or Roma people were subjected to such controls in a higher proportion than the rest of the population. The Covid-19 pandemic has exacerbated inequalities at all levels and shed further light on existing discriminatory practices.

7. The killing of George Floyd on 25 May 2020 in Minneapolis in the United States has led to worldwide movements of protests against police violence and institutional racism in general. Demonstrations have been organised in major European cities in support of the Black Lives Matter movement, denouncing racism, ethnic profiling, discrimination and police brutality. These mass movements have contributed to raising the level of awareness of ethnic profiling and of the need to strengthen the fight against institutional racism. In reaction to these demonstrations, several police forces acknowledged and denounced the existence of racism within their structures. Investigations were launched in Germany, Wales and Scotland to name a few. It is crucial to act to change the system from within, while also recognising that systemic racism requires a systemic response which engages all aspects of the problem.

8. This work within the police is of utmost importance as is the examination of the policies set by political authorities which guide police actions. Police forces are at the forefront of law enforcement and can play an important role in building trust and confidence among communities. Too often, they are not considered as

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3. "Being Black in the EU", report by the European Union Fundamental Rights Agency, 2018.
4. Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the 29th session of the Human Rights Council, Agenda item 9, 20 April 2015.
5. When "ethnic profiling" is used throughout the report, it will also refer to racial profiling.
6. Idem.

defenders of human rights, while in my view, this is one of their first functions, alongside ensuring the respect of public order. The police can be an essential actor in the fight against systemic racism. The use of ethnic profiling by police officers and its silent acceptance by others undermines this and perpetrates racial discrimination in society in general. Its effects go beyond the person checked: they show that singling out persons on the basis of colour or ethnicity is acceptable.

9. Ethnic profiling can also lower the effectiveness of police actions by increasing their predictability and leading police to focus on criteria irrelevant to identifying crimes, while taking their attention away from more relevant factors, such as suspicious behaviour. It may leave in the margin potential unnoticed criminals because they do not fit certain stereotypes. It reduces trust towards the police. It can also reduce cooperation during investigations and public likelihood to report crime and threats to security. It may also lead to tensions and violence between population and police. Ethnic profiling has an impact on the legal accountability of police authorities.

2. Scope of the report and working methods

10. The motion at the origin of this report recalls that the Assembly has already stressed the negative impact and illegality of ethnic profiling in its Resolution 1968 (2014). It argues that ethnic profiling can have a negative impact on its victims and society at large. It shows that several States have in past years adopted legislation and practices that further enable ethnic profiling and refers to reports which indicate an increase in abuses associated with discriminatory checks. The motion stresses that the Assembly should take stock of the failure of member States to bring ethnic profiling to an end and propose measures, including good practices, to address it.

11. With this report, I have endeavoured to take stock of the current situation with regard to the practice of ethnic profiling and present most recent developments. I have analysed the work of the police during stop and search operations and identity checks and reviewed accountability mechanisms. I have also looked into lawful profiling, the impact of ethnic profiling on both the victims and those witnessing it and carried out research on the effectiveness of ethnic profiling in policing.

12. In the framework of the preparation of this report, I met Mr Jacques Toubon, former French Defender of Rights, on 21 January 2019 in Strasbourg. He presented to me his work on combating discriminatory identity checks in France and his main recommendations on how to prevent them. The Committee also held a hearing on 10 April 2019 with the participation of Ms Lanna Hollo, Legal Officer, Open Society Justice Initiative (Paris) and Mr Michael Whine, Member of the European Commission against Racism and Intolerance (ECRI) for the United Kingdom. On 12 September 2019, the Committee held a second hearing with the participation of Ms Aydan Iyigüngör, Project Manager, Technical Assistance and Capacity Building, at the European Union Agency for Fundamental Rights (FRA) in Vienna and of Mr Tamás Kádár, Deputy Director of the European Network of Equality Bodies (Equinet) based in Brussels.

13. I participated in the conference “The struggle against ethnic profiling in Europe: Lessons learned, good practices and future developments”, held from 28 to 30 June 2019 in Valencia (Spain), which was organised by the Open Society Justice Initiative. There, I had the opportunity to meet with representatives of non-governmental organisations from Austria, Germany, the Netherlands, Spain and Sweden and to exchange with representatives of the police.

14. I was invited to participate in a conference on “Relations of the police and the population: challenges and practices”[7] organised by the office of the French Defender of Rights, FRA and the Independent Police Complaints Authorities Network (IPCAN) on 17 and 18 October 2019 in Paris. I was unfortunately unable to participate but Mr Momodou Malcolm Jallow (Sweden, UEL), General Rapporteur on combating racism and intolerance, took part in it and reported to the Committee on his participation. I would like to take this opportunity to thank him for his commitment as General Rapporteur, and to thank all the experts with whom I met during bilateral meetings or who participated in hearings for their contributions.

15. I followed the webinar organised by the Committee on Equality and Non-Discrimination on taking a stand against systemic discrimination and institutional racism in Europe: parliamentary response on 1 July 2020[8] and carried out desk research on ethnic profiling during the pandemic. I started working on this report before the recent movements of protest against racism and ethnic profiling and have witnessed a rising interest in this question over the past year.

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7. Report on the 5th IPCAN Network seminar, “Police/population relations: challenges and practices”, 17-18 October 2019.

16. I would also like to thank Mr Ahmet Yildiz, Chairperson of the Turkish delegation to the Assembly, for his written contribution received on 20 September 2020. He highlighted the discriminatory treatment of Turkish people in Europe and increasing violence of the police against Turkish citizens, as well as other immigrant groups. He stressed that "ethnic profiling as a reflection of institutionalised racism causes a backslide from the rule of law and respect for human rights day by day", with which I can only agree.

3. International instruments tackling ethnic profiling

17. Both the Council of Europe and the United Nations have worked on providing recommendations and guidance to their member States on preventing and combating ethnic profiling. The European Convention on Human Rights (ETS No. 5) does not specifically mention ethnic profiling. However, several articles can be considered as relevant, notably Article 5 on the right to liberty and security, Article 14 on the prohibition of discrimination and Article 13 on the right to an effective remedy.

18. Recommendation Rec(2001)10 of the Committee of Ministers to member States on the European Code of Police Ethics stresses that "the police shall be organised in a way that promotes good police/public relations and, where appropriate, effective co-operation with other agencies, local communities, non-governmental organisations and other representatives of the public, including ethnic minority groups (…). Police training shall take full account of the need to challenge and combat racism and xenophobia".[9]

19. In its judgment of 13 December 2005 in the case of *Timishev v. Russia*,[10] the European Court of Human Rights stated that "differential treatment of persons in relevantly similar situations, without an objective and reasonable justification, constitutes discrimination. Discrimination on account of one's actual or perceived ethnicity is a form of racial discrimination. Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment". The Court's statement not only sends a strong message to public authorities to promote a society free of racism, it also requires action to put an end to racial discrimination. In its view, different treatment on the basis on ethnic origin cannot be justified under any circumstances and, therefore, always represents discrimination.[11]

20. Another relevant judgment is *Lingurar v Romania* of 16 April 2019.[12] For the first time, the Court held that the applicants had been targeted because of their perceived ethnicity by the authorities and the prejudice connected to that perception. The authorities associated the Roma community with crime and therefore particularly targeted them. The Court found that this amounted to ethnic profiling and constituted discrimination.

21. Ground-breaking work has been carried out by the ECRI on this topic. ECRI has adopted the General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, which sets out right from the start (paragraph 1) that "States should clearly define and prohibit racial profiling by law". It also recommends, *inter alia*, that States should "introduce a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective criteria." The explanatory memorandum explains why this practice is harmful and counterproductive. ECRI considers that racial profiling constitutes a specific form of racial discrimination as it involves "the use by the police, with no objective and reasonable justification, of grounds such as race, colour, languages, religion, nationality or national or ethnic origin in control, surveillance or investigation activities". I consider this General Policy Recommendation as a strong instrument to tackle ethnic profiling which should be further promoted.

22. At its 82nd plenary meeting (30 June-2 July 2020), ECRI adopted a statement on racist police abuse, including racial profiling, and systemic racism.[13] Recalling its previous work as well as what the European Court of Human Rights has already stated, ECRI stresses that "it is essential to create a police culture where

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8. A recording of the webinar held on 1 July 2020 is available here.
9. Recommendation Rec(2001)10 of the Committee of Ministers to member States on the European Code of Police Ethics (Adopted by the Committee of Ministers on 19 September 2001 at the 765th meeting of the Ministers' Deputies), paragraphs 18 and 30.
10. Application Nos. 55762/00 and 55974/00.
11. "In any event, the Court considers that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures".
12. Application No 48474/14.

racist abuse is regarded as having no place within law enforcement agencies and racism is actively prevented and combated under all circumstances. In addition, when communicating with the media and the public at large the police should always be careful to do so in a way that does not perpetuate hostility or prejudice towards minority groups".

23. The UN International Convention on the Elimination of All Forms of Racial Discrimination clearly prohibits the use of racial profiling (Articles 2, 4, 5 and 7).[14] The Committee on the Elimination of All Forms of Racial Discrimination (CERD) has also adopted General Recommendation No. 13 on the training of law enforcement officials in the protection of human rights and General Recommendation No. 36 on preventing and combating racial profiling by law enforcement officials.[15] The general recommendation includes a description of consequences of racial profiling; information on algorithmic profiling, racial bias and discrimination; and recommendations with regard to legislative and policy measures, human rights education and training, recruitment, community policing, accountability, disaggregated data and artificial intelligence.

24. In addition, the United Nations Human Rights Committee made clear in a decision adopted in 2009 that "identity checks carried out for public security or crime prevention purposes in general, or to control illegal migration, serve a legitimate purpose. However, when the authorities carry out such checks, the physical or ethnic characteristics of the people subjected thereto should not by themselves be deemed indicative of their possible illegal presence in the country".[16]

25. On 19 June 2020, the European Parliament adopted a resolution on the anti-racism protests following the death of George Floyd. The European Parliament "condemns racial and ethnic profiling used by police and law enforcement authorities, and considers that police and law enforcement forces must have an exemplary record on anti-racism and anti-discrimination; calls for the European Union and the Member States to develop policies and measures to tackle discrimination and to end racial or ethnic profiling in all forms in criminal law enforcement, counter-terrorism measures and immigration controls; stresses, in particular, that the new technologies to be used by law enforcement authorities must be designed and used in such a way that they do not create risks of discrimination for racial and ethnic minorities; proposes action to strengthen the training of members of police and law enforcement forces on strategies to fight against racism and discrimination, and to prevent, identify and respond to racial profiling; calls on the Member States not to leave cases of police brutality and abuses unpunished, and to properly investigate, prosecute and sanction them".[17]

26. On 18 September 2020 the European Commission published its plan to step up action against racism in the European Union "A Union of equality: EU anti-racism action plan 2020-2025".[18] It stresses that "Profiling is commonly, and legitimately, used by law enforcement officers to prevent, investigate and prosecute criminal offences. However, profiling that results in discrimination on the basis of special categories of personal data, such as data revealing racial or ethnic origin, is illegal". It also indicates that the "FRA will be invited to collect and disseminate good practices promoting fair policing, building on their existing training manual and guide on preventing unlawful profiling". [19]

4. Collecting data on ethnic profiling

27. While there is a wealth of definitions and international instruments condemning the use of ethnic profiling, this practice continues to be used routinely by law enforcement officers in several Council of Europe member States. In her comment on "Ethnic profiling: a persisting practice in Europe", published on 9 May 2019, the Council of Europe Commissioner for Human Rights Dunja Mijatović explains that "this phenomenon is still widespread across the Council of Europe area, despite the growing awareness of the need to confront it".

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13. Statement of the ECRI on racist police abuse, including racial profiling, and systemic racism, adopted at its 82nd plenary meeting (30 June – 2 July 2020).
14. Article 1 of the Convention: "In this Convention, the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". Article 5 of CERD recognises equality before the law, without distinction as to race, colour or national or ethnic origin.
15. The recommendation as adopted is available online at this link: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/CERD_C_GC_36_9291_E.pdf
16. Communication N. 1493/2006, Rosalind Williams Lecraft v. Spain, views adopted on 27 July 2009.
17. European Parliament resolution of 19 June 2020 on the anti-racism protests following the death of George Floyd .
18. A Union of Equality: EU anti-racism action plan 2020–2025.
19. Idem.

28. Collecting data on ethnic profiling can prove to be very challenging. In most Council of Europe member States, ethnic data are in fact not yet collected, and there can be reluctance to report ethnic profiling or to record it. Data protection is often invoked as a pretext for refusal to collect relevant data, however it can be collected and processed without breaching the personal data protection rules. I would here like to refer to ECRI's General Policy Recommendation No. 4[20] as it stresses that any collection of personal data should fully conform with the principles of confidentiality, informed consent and voluntary self-identification of persons.

29. ECRI's work and reports[21] constitute an important source of information on this topic. In the course of its monitoring work, ECRI has found that, in a number of countries, persons belonging to ethnic and religious minority groups as well as migrants were more prone to be stopped and searched by the police than individuals belonging to the general population.

30. In the report on Sweden[22] adopted on 5 December 2017, ECRI draws attention to the decision of the first instance of the Stockholm District Court which found that the constitution of a database with 4 700 names of members of the Roma community constituted an act of ethnic profiling. It explains that "police officers monitored strategic locations like metro stations during a campaign about the deportation of rejected asylum seekers in 2013 but they requested to see the passports/residence permits of selected persons, allegedly solely based on their foreign looking appearance".

31. According to studies presented in ECRI's latest report on the Netherlands,[23] of the total respondents to the 2017 FRA survey,[24] 61% with a North African and 43% of those with a Turkish background perceived recent police stops as ethnic profiling. The Dutch police set up a new operational framework for carrying out proactive controls in 2017, to ensure that controls are carried out in a more conscious way and on objectifiable grounds. They also commissioned a detailed study on racial profiling, which concluded that persons belonging to minorities were disproportionally subject to proactive investigatory stops.

32. In its latest report on the Russian Federation, adopted on 4 December 2018,[25] ECRI states that racial profiling by the Russian police continues to be widespread and is manifested in arbitrary identity checks and unnecessary arrests, targeting in particular migrants from Central Asia and the Caucasus, as well as Roma.

33. In its report on Romania, adopted on 3 April 2019, ECRI refers to data collected by FRA, according to which 52% of Roma who were stopped by police perceived this practice as ethnic profiling in Romania.[26]

34. The latest report of ECRI on Germany[27] has a section dedicated to racial profiling. ECRI expresses concern with regard to the use of paragraph 23 of the Federal Police Act, which provides police officers with the power to stop people without any suspicion of having committed a criminal offence. It is also possible to carry out random identity checks in areas called "criminal hotpots". ECRI considers that racial profiling should be addressed at federal and regional levels in a systematic way and that a study should be conducted. Biplab Basu, founder of the campaign for victims of racist police violence (KOP) has denounced ethnic profiling for years: "First the police look for a criminal and then they look for a crime."[28] Following anti-racism demonstrations, there have been debates at political level on a possible study on racism in the police. The German Migration, Refugees and Integration Commissioner Annette Widmann-Mauz has called for such a study to be conducted[29]. Its conduct has been confirmed by the federal government and I look forward to its publication.

35. In its report on Austria adopted on 7 April 2020, ECRI indicated that "accounts of alleged practices of ethnic profiling by the police, against persons belonging to Black and Muslim communities in particular, continue to be reported".[30] ECRI also "expresses its concerns about reports that cases of racial profiling have become more widespread, particularly in the context of measures to combat irregular immigration in Belgium".[31] In its latest report on Switzerland[32], ECRI stresses that "institutional and structural racism

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20. ECRI's General Policy Recommendation No.4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims
21. The Advisory Committee monitoring the implementation of the Framework Convention for the Protection of National Minorities has also denounced practices of ethnic profiling in some of its reports.
22. ECRI report on Sweden adopted on 5 December 2017.
23. ECRI report on the Netherlands adopted on 2 April 2019.
24. EU FRA (2017a) Second European Union Minorities and Discrimination Survey – Main Results.
25. ECRI report on the Russian Federation, adopted on 4 December 2018.
26. FRA-EU- MIDIS II (2017b): 72.
27. ECRI report on Germany, adopted on 10 December 2019.
28. "Racial profiling could lead to institutional racism", *Deutsche Welle*, 8 July 2020.
29. "Calls for police racism investigation in Germany despite Seehofer's disapproval", *Deutsche Welle*, 10 July 2020.
30. ECRI report on Austria adopted on 7 April 2020.

continues to be a problem in the police, manifested in racial profiling and identity checks targeting notably persons with itinerant ways of life and Black persons". It recommended the organisation of training for the police on preventing ethnic profiling.

36. The CERD has also addressed ethnic/racial profiling in some of its concluding observations. The Committee expressed concern about the reportedly high incidence of racial profiling by the Irish police targeting people of African descent, Travellers and Roma.[33] It recommended the introduction of legislation prohibiting racial profiling; the setting up of an independent complaints mechanism to handle racial profiling; reviewing practices and training of the police, in collaboration with the communities most affected by racial profiling; incorporating racial profiling issues into the training curriculum of police officers and collecting and publishing disaggregated data on racial profiling.

37. With regard to Sweden, the CERD recommended ensuring that "fundamental legal safeguards are effectively applied in order to prevent and combat racial profiling by police of all vulnerable groups, particularly Afro-Swedes, persons of African descent, Muslims and Roma".[34]

38. The CERD also stated that racial profiling by the police persisted in the Russian Federation, "targeting in particular migrants, people from Central Asia and the Caucasus and persons of Roma origin, and manifests itself inter alia by arbitrary identity checks by the police and unnecessary arrests".[35] It recommended the State party to "undertake prompt, thorough and impartial investigations into all allegations of racial profiling, holding those responsible accountable and providing effective remedies, including compensation and guarantees of non-repetition".

39. The CERD made a link between counter terrorism measures and increased profiling in its concluding observations on the United Kingdom.[36]

40. Ethnic profiling has also been denounced in France. Mr Toubon, former French Defender of Rights, stressed at the IPCAN conference that "compared to the general population and all other things being equal, young men in France, who are perceived as Arab/Maghrebin or Black, are 20 times more likely to be subjected to identity checks than others".[37] He also referred to the ruling of the Cour de Cassation, which on 9 November 2016 recognised the responsibility of the State with regard to five persons who had been subjected to discriminatory identity checks. Human Rights Watch has also been reporting for years on abusive police stops in France.[38]

41. In the past few years, the FRA has carried out several surveys[39] with results showing clearly that ethnic profiling has been widely used as a police tool. In its study "Being Black in the EU/Second European Union Minorities and Discrimination Survey",[40] FRA reported that Europeans of African descent remain largely discriminated against in Europe.[41] It found that, overall, 24% of the persons interviewed (out of a total of 6 000 persons of African descent interviewed in 12 member States) had been checked in the past five years. In Italy and Austria, 70% and 63% respectively of migrants of African origin have denounced institutional racism from law enforcement officers.

42. An increase in the number of stop and search operations has been reported since the beginning of the Covid-19 pandemic. The London Metropolitan Police recorded an increase of 22% in these operations between March and April 2020.[42] It reports that the number of Black persons stopped and searched has significantly increased: 7.2 Black persons out of 1 000 were stopped and searched in March and 9.3 in April.

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31. ECRI report on Belgium adopted on 12 December 2019.
32. ECRI report on Switzerland adopted on 10 December 2019.
33. Concluding observations on the combined fifth to ninth reports of Ireland, adopted on 10 December 2019.
34. Concluding observations on the combined twenty-second and twenty-third periodic reports of Sweden adopted on 10 May 2018.
35. Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation adopted on 17 August 2017.
36. Concluding observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland adopted on 18 August 2016.
37. Opening speech by the former Defender of Rights, Jacques Toubon, at the 5th IPCAN Seminar in Paris, 22 October 2019. See as well "Enquête sur l'accès aux droits, Relations police/population: le cas des contrôles d'identité", 2017.
38. "They talk to us like we're dogs, Abusive police stops in France", Human Rights Watch, 18 June 2020.
39. European Union Minorities and Discrimination Survey (EU-MIDIS II) – Country data. Survey carried out in 2017.
40. "Being Black in the EU/Second European Union Minorities and Discrimination Survey", FRA, 2018.
41. "Les Européens d'ascendance africaine toujours très largement discriminés", *Le Monde*, 28 novembre 2018.
42. Data from the London Metropolitan Police, Search Volumes for Reporting Period: July 2018 to end July 2020, presented in the Amnesty International report "Policing the pandemic".

According to Amnesty International, the police has exercised its control of the lockdown measures disproportionately in the poorest regions, where the number of persons belonging to ethnic minorities is often higher.[43]

5. Lawful profiling and stop and search operations

43. Specific forms of criminal profiling can be justified under certain circumstances and can be lawful in specific circumstances. Individual "suspect profiles", or suspect descriptions, are generally based on a witness description of a specific person connected with a particular crime committed at a specific time and place. Such descriptions focus on individual characteristics such as height and clothing and may include gender and skin colour. The use of such criteria must be part of a detailed suspect description and clearly circumscribed in time and place for it to be legal. Other forms of criminal profiling use police intelligence and behavioural science data to develop profiles of organised crime practices (such a drug couriers) or offender profiles for specific offences (serial killers and sex offenders). The validity of such profiling depends on the accuracy and validity of the source data and underlying science; if that data and theorizing are themselves imbued with racial bias, the subsequent profiles perpetuate and reinforce those stereotypes. According to the FRA, "to be lawful, stop and search actions and referrals to second line border checks must be based on reasonable and objective grounds for suspicion. 'Gut feeling' is not a reasonable or objective ground."[44]

44. Police officers use different methods for identity checks and stop and search operations. Receipts or 'stop forms' including information about the context of the stop, legal basis, specific reasons for the stop and its outcome, are key to verifying the stop is lawful, relying on objective and particularised grounds for suspicion, rather than prohibited criteria, such as ethnic origin, skin colour or religion. Importantly, such data also informs pattern of practice analysis which can identify patterns of bias, even where individual stops may appear lawful. In the United Kingdom, law requires that police record their stops and make the data available to the persons who have been checked, providing proof of being checked but also making sure the officers conducting checks are accountable for their acts. A number of local police services in Spain have adopted stop forms as well. In France, the idea of handing out receipts following checks was discussed but has yet to be implemented or imposed on the police. Debates on this issue focused on the impact of such receipts on the working time of police officers and their efficiency and revealed strong opposition to their introduction.[45] Numerous institutions however, including the French Human Rights Defender and the National Consultative Commission on Human Rights, have stressed their relevance to increasing effectiveness and reducing discrimination. These receipts also allow to track the operation and collect data and information on the ethnic origin of the persons being checked and on the object of the operation.[46] Such data and information make it possible to compare the number of stop and search operations carried out according to ethnicity and age group. They also ensure that police are accountable for their actions which in turn contributes to build and strengthen trust in the police force. In some instances, the paper receipts are being replaced by digital instruments (specific technological applications to record the operations).[47] The issuing of receipts has been widely recognised as good practice and should be promoted as such.

45. Specific laws may limit or extend the scale of stop and search operations. In Austria, a law of 1999 allows stop and search operations at places where migrants might gather.

46. According to FRA, lawful profiling supports and reinforces effective policing, whereas unlawful profiling negatively impacts trust in the police force and good community relations.[48] Profiling based solely on ethnicity is unlawful. Stop and search forms could help officers to reflect on their operations. In law enforcement, algorithmic profiling is used for predictive policing, but its effectiveness has not yet been proved.

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43. "Policing the pandemic: Human Rights violations in the enforcement of Covid-19 measures in Europe", Amnesty International, 23 June 2020.
44. "Preventing unlawful profiling today and in the future: a guide", European Union Agency for Fundamental Rights, 2018, Chapter 2.2. Reasonable and objective grounds, page 59.
45. A new code of deontology for the police entered into force in 2014, imposing for an identification number or name to be visible on the uniform of police officers.
46. "The recording of police stops: methods and issues", Open Society Justice initiative, 2020.
47. "The Recording of Police Stops and Toolkit for the Analysis of Police Identifications", Open Society Justice Initiative, 2020.
48. Hearing held on 12 September 2019.

6. Efficiency of ethnic profiling?

47. In recent years, questions have been raised about the efficiency of using ethnic profiling to counter terrorist threats or combat crime in general. At our hearing in April 2019, Lanna Hollo from the Open Society Justice Initiative, stressed that ethnic profiling was both ineffective and counterproductive. In her report on "Preventing and countering racial profiling of people of African descent – good practices and challenges", the UN High Commissioner for Human Rights indicated that "research has suggested that people targeted by law enforcement authorities tend to have less trust in those authorities and, as a result, be less willing to cooperate with police, thereby potentially limiting the effectiveness of the latter".[49]

48. The Council of Europe Commissioner for Human Rights has also stated that ethnic profiling is counterproductive and illegal: "It is immoral for the police to discriminate against people on grounds related to their physical characteristics. It is also counterproductive because ethnic profiling deeply damages the relationship between the police and the population, which is a fundamental element of a peaceful and prosperous society".[50]

49. As ECRI stressed in its statement released on 6 July 2020, "trust in the police by all segments of society enhances safety for all". Misconduct and abuse affect the work of the police as a whole. Ethnic profiling is not a policing tool as any other. It can either reflect institutionalised racism or be perceived as allowing such a culture to develop. Persons being stopped and searched might be considered as potential criminals by the rest of the population.

50. The use of ethnic profiling makes the work of the police predictable, hence reducing efficiency of investigations. It can be in fact counter-productive, decreasing the level of trust from the population while co-operation is essential for effective policing. "Ethnic profiling undermines the efficacity of law enforcement by misdirecting scarce resources and alienating individuals and communities whose co-operation would be an asset in effective crime detection and prevention".[51]

51. According to Mr Kádár, ethnic profiling meant targeting people for who they are and not for what they have done. It is unfair and ineffective, since it stigmatises some groups and undermines trust in law-enforcement, perpetuates negative stereotypes and legitimises racism.

52. Ethnic profiling goes against the principle of the presumption of innocence. As Mr Jallow – who has himself been stopped and searched on many occasions without any objective reason – stressed during our hearing held on 12 September 2019, "if one Black person had committed a crime, it should not mean that the police should harass all Black persons". Profiling means associating one characteristic with one group. It is too simplistic to be effective. Ethnic profiling also puts the investigative focus in the wrong place.

53. At the IPCAN conference, Michael O'Flaherty, Director of the FRA, presented the vicious circle of unlawful profiling, which can stigmatise and traumatise, lead to underreporting of crimes and contribute to creating a hostile environment and to violence.

7. Recommendations to prevent and combat ethnic profiling

7.1. Prohibition in national legislation

54. States may implement a wide range of measures which contribute to preventing and combating ethnic profiling. First and foremost, they should ensure that ethnic profiling by the police is clearly defined and prohibited by law at national level. Discriminatory identity checks should be clearly prohibited.

55. States should also introduce a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective and particularised criteria.

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49. "Preventing and countering racial profiling of people of African descent good practices and challenge", UN Office of the High Commissioner for Human Rights (OHCHR), 2018,
50. "Ethnic profiling is illegal", Dunja Mijatović, Open Democracy, 29 June 2020.
51. "Equality bodies countering ethnic profiling: focus on law enforcement authorities in Europe", *Equinet* factsheet, 2019.

7.2. Codes of conduct and operational guidance

56. Police codes of conduct can help officers in preventing ethnic profiling. The Dutch police uses a Policy Framework (Handelingskader pro-actief controleren) to combat racial profiling. It explains in detail what 'decision making in a non-discriminatory manner' by police officers entails, among other things: "It is not allowed to select a person for a check because he or she belongs (or seems to belong) to a group that is overrepresented in crime statistics."

57. For example, the Ethical Code of the Slovak Police does not mention explicitly ethnic profiling, however it does stipulate that "the members of the Police Corps are obliged to respect human rights and carry out their duties regardless the religious, racial, national, social, political, class or other external factors".[52]

7.3. Strong leadership denouncing ethnic profiling

58. While lawful profiling might be necessary, ethnic profiling is contrary to the principle of non-discrimination and a form of racial discrimination. The practice will not end if there are no orders to the law-enforcement officers to put an end to it and no strong leadership, both within law-enforcement and at political level, to denounce it and bring it to an end.

7.4. Training

59. Clear guidelines should be provided to the officers in charge of stop and search operations to ensure that they are not guided by conscious or unconscious bias when deciding to carry out such an operation. Explaining the reason for stopping an individual before checking identity papers and therefore the name and origin of the person, should be mandatory. Human right training should be provided throughout the policing career and not only at the beginning, and codes of ethics and conduct should be adopted, where this is not yet the case, and implemented. More widespread use of FRA training courses on human rights and diversity for the police should be further promoted.

60. According to David Martin,[53] Spanish police officer since 1996, basic police training should be based on human rights and conflict resolution skills as well as problem solving. This training would contribute to building bridges to promote knowledge-sharing.

7.5. Dialogue

61. The police play an important role in society as guardians of law enforcement and human rights. They are important stakeholders in our societies' efforts to combat racial discrimination. Ethnic profiling is not only unlawful, it is also harmful and negatively affects the public's perception of and trust in the police as well as the reporting of acts of ethnic profiling. Tackling racism and ethnic profiling also means re-establishing trust and confidence between the police and the population it serves. In order to address the mistrust between the police and the population, including minority groups, it would be important to encourage dialogue and regular exchanges. The police should be close to communities to ensure a more efficient policing.

7.6. Promoting diversity in recruitment of police forces

62. Research and reporting by monitoring bodies indicate that the promotion of diversity in police recruitment is an efficient measure. Recruitment procedures should take this component into consideration.

7.7. Delivery of receipts following stop and search operations

63. As already mentioned, monitoring of stop and search operations and handing out receipts during such operations need to be further promoted. While they may add on the work of the police, they are also a guarantee of its accountability, an essential data collection source and a means of reinstating trust between the police and the population. Police officers carrying out these tasks should also be made easily identifiable, by identification numbers on their uniforms, for instance.

52. Reply sent by the Slovak National Centre For Human Rights to the questionnaire.
53. Webinar on Ending systemic racism in Europe organised by the Council of Europe on 7 July 2020.

7.8. Independent police complaints mechanisms

64. The setting up of independent complaints mechanisms has been recommended for years. In the United Kingdom, the independent police complaints mechanism has contributed to improving relations and trust between the population and the police.

7.9. Impact of artificial intelligence on policing

65. The use of algorithmic/artificial intelligence profiling is also a source of concern since it may rely on biased, incomplete, or incorrect information and thus enhance further ethnic or other racial profiling and discrimination. There can be a disproportionate representation and stereotypes which further perpetuate discrimination. The absence of assessments of computer-based methods complicates the measurement of its impact on both individuals and police effectiveness. I addressed the role of artificial intelligence in policing in my report on "Justice by algorithm – the role of artificial intelligence in policing and criminal justice systems", debated at the October 2020 Standing Committee during a joint debate on artificial intelligence.[54] I would also like to refer in this context to the work of Mr Christophe Lacroix (Belgium, SOC), who prepared a report on "Preventing discrimination caused by the use of artificial intelligence".[55]

7.10. Awareness-raising

66. Raising awareness among police forces, potential/and or victims of ethnic profiling and the public at large of the negative impact of ethnic profiling is also a good practice.

7.11. Intersectional dimension of profiling

67. Ethnic profiling also has an intersectional dimension. Women might be stopped and searched because of an apparent foreign origin or for wearing a headscarf, for example. Training for the police should apply an intersectional lens and measures taken to tackle ethnic profiling need to take this dimension into account.

7.12. Accountability of the police

68. Ensuring accountability of the police for its actions is a condition for regaining trust. As an example, following the receipt of a complaint from a police officer for discriminatory practices within the police, the former French Defender of Rights asked for an official investigation to be launched by the Ministry of the Interior to look into the practices of ethnic and social profiling by the police in Paris.[56] On 14 July 2020, French President Emmanuel Macron announced that police officers would be equipped with body cameras, which is a welcome development.[57] Several organisations have called for police stops and searches to be duly documented, in order to ensure accountability.

69. Support to victims of police misconduct should also be ensured and sanctions taken for misconduct.

7.13. Profound reform and changes

70. David Martín has been working for many years on preventing and combat ethnic profiling. He stresses that police democratic governance should be improved and that an external body should be dealing with complaints procedure and the resolution of complaints should be made mandatory.

7.14. Co-operation with equality bodies and national human rights institutions

71. The role of national equality bodies and of national human rights institutions should also be highlighted. At our hearing, Mr Kádár underlined that equality bodies have engaged with law enforcement for the promotion of diversity, intercultural sensitivity and overall training programmes in countries such as Belgium, Portugal and United Kingdom. Awareness-raising, with the organisation of debates, discussions or conferences with the police, elected officials and civil society was also a promising practice to be developed.

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54. Resolution 2342 (2020) "Justice by algorithm – the role of artificial intelligence in policing and criminal justice systems".
55. Resolution 2343 (2020) "Preventing discrimination caused by the use of artificial intelligence".
56. "Le Défenseur des droits dénonce 'un profilage racial et social' lors des contrôles d'identité à Paris",*France TV Info*, 14 April 2019.
57. "Les contrôles d'identité, totem controversé de l'institution policière", *Le Monde*, 16 July 2020.

They could also issue public statements against ethnic profiling. Collection of disaggregated data on the extent of ethnic profiling is important in efforts to prevent and combat ethnic profiling. Equality bodies can be mobilised for data collection and research on ethnic profiling.

8. Conclusions

72. It is my hope that 2021, with the heightened attention given to racial discrimination globally, will be a turning point. We need to take stock of the historic mobilisation against racism and ethnic profiling worldwide and call for a general reflection on what constitutes discrimination and racism or could be considered as unfair treatment. This will be an essential movement towards profound change.

73. Public authorities and political leaders should lead by example in that direction and take clear steps to address systemic racism. Adoption of legislation prohibiting discrimination, condemnation of ethnic profiling in public debates, reacting to racist speeches, not allowing a climate of hate develop and not justifying racism by any representatives of State authorities are political means of action at our disposal. Ethnic profiling should be prevented and combated, since it is a manifestation of discrimination and affects trust in authorities, which can have a larger impact on the cohesion of society.

74. Police forces are essential for our societies and should be respected and trusted. Their behaviour must be exemplary and exempted from bias for them to complete their mission. A person experiencing discrimination by the police is less likely to trust it and therefore to report to it or cooperate. Engaging in a review of its practices could be a welcome step and could contribute to re-building trust between the general public and the police. This would in return enhance the efficiency of the work of the police.

75. I agree with Mr Kádár that tackling ethnic profiling involves several challenges, including institutional constraints, lack of data, the difficulty in shifting the burden of proof and underreporting. These challenges should not prevent taking action to put an end to this form of discrimination. Being aware of existing challenges helps progress to be made

76. We should not forget that in several Council of Europe member States, the police faces enormous difficulties in its work, with rising levels of tensions, public dissatisfaction and protest, terrorist and security threats, other new difficulties and greater mistrust. The Covid-19 pandemic has also added to the workload of the police in charge of ensuring the respect of lockdown and other protection measures. However, being overburdened cannot justify the use of ethnic profiling as a policing tool. Discrimination and discriminatory treatment do not stop during pandemics or during security emergencies. On the contrary, they are more frequent and increase in intensity, and thus deserve greater attention.

77. In my view, there is no need for more tools at international level to prevent and combat ethnic profiling, but the existing ones should be better known and implemented. It is however necessary to focus on raising awareness of the negative impact and consequences of ethnic profiling, keep records of identity checks carried out, collect data on the incidence of ethnic profiling, set up independent police complaints mechanisms, invest in life-long human rights training for the police, provide the police with the resources needed to carry out its mission and encourage more dialogue and co-operation between the police and the population to prevent and combat effectively ethnic profiling. We have the tools in our hands to raise awareness of the risks and consequences of ethnic profiling and we need to make sure they are widely known.