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“[...] good policing in multi-ethnic societies is dependent on the establishment of a relationship of trust and confidence, built on regular communication and practical co-operation, between the police and the minorities. All parties benefit from such a relationship. The minorities benefit from policing which is more sensitive to their concerns and more responsive to their requirements for personal protection and access to justice. The police benefit from greater effectiveness, since good communication and co-operation are keys to effective policing in any community. The state benefits both from the integration of minorities and from the greater effectiveness of its policing.”

OSCE Office of the High Commissioner on National Minorities, Recommendations on Policing in Multi-Ethnic Societies (2006), p. 3.

“[...] it is trust in the police by all segments of society that enhances overall security. It is not possible for the police to work effectively, including against specific security challenges, without the co-operation of all components of society, majority and minority.”

ECRI, General Policy Recommendation No 11 on combating racism and racial discrimination in policing (29 June 2007), para. 25.

Introduction

“Imagine that almost every day police officers stop you in the street and ask for your documents, get angry with you, insult you, belittle you and disrespect you. They do it when you don’t have documents, but also when you do have them, because of the colour of your skin.”¹

“We were not shouting or anything, we were just chatting. We said that we were friends and that everything was fine. One officer replied saying: ‘I don’t think you are friends, I think you are faggots’. My partner told him this was not how a public official should have addressed us. The officer reiterated: ‘a faggot is not going to tell me how to address people’.”²

“Roma people are really scared of the police; I usually take kids to the hospital for medical treatments and they are afraid whenever they see the police on our way.”³

“They won’t investigate the attack against me because I am a foreigner. It’s not only me, there are other cases; they were treated the same.”⁴

These statements illustrate just some of the aspects of the problematic relationship between law enforcement officials⁵ and minority groups, which can manifest itself in numerous different ways of discriminatory police behaviour.

For the purpose of this paper “minority groups” is understood as any non-dominant group within a region or country, even though they may not necessarily be numerical minorities, and may include for instance ethnic, religious or linguistic communities, migrants, refugees and asylum seekers. The paper also includes other discriminated groups, notably lesbian, gay, bisexual, transgender and intersex (LGBTI) people, whom Amnesty International would not describe as “minorities”. The term “minority groups” is thus not understood as a legal term - the paper deals with the de-facto situation of certain groups within a society where they may be exposed to any form of discrimination, be it from private individuals or law enforcement officials. It thus covers a broader range of groups than the concept of “minorities” which is defined in international standards to include ethnic, religious, linguistic and national minorities.⁶

Police have a duty to protect people against crime, and this includes protection against crime motivated by discrimination. They are furthermore obliged not to commit any acts of discrimination themselves in carrying out their law enforcement duties. However, in many instances law enforcement officials fail in both regards: Law enforcement officials can sometimes have the role of the perpetrator, actively discriminating for example by means of ethnic profiling,⁷ harassment, or through the excessive use of force against certain groups, or they fail to effectively protect people from crimes motivated by discrimination (“hate crimes”)⁸ or to investigate such crimes.

1 See Amnesty International, Stop Racism, Not People: Racial Profiling and Immigration Control in Spain (2011), EUR 41/011/2011, p. 10.

2 See Amnesty International, Targeted by hate, forgotten by law: Lack of a coherent response to hate crimes in Poland (2015), EUR 37/2147/2015, p. 36.

3 See Amnesty International, “We ask for Justice”: Europe’s failure to protect Roma from Racist Violence (2014), EUR 01/007/2014, p. 18.

4 See Amnesty International, Missing the Point: Lack of adequate investigation of hate crimes in Bulgaria (2015), EUR 15/001/2015, p. 5.

5 The term law enforcement official includes any security forces, including military forces, who exercise police powers, especially the power of arrest and detention (cf. Art. 1, commentary a) and b) of the Code of Conduct for Law Enforcement Officials). For reasons of readability, the term ‘police’ is sometimes used, however still in the broader sense to include other law enforcement personnel exercising police powers.

6 See for example UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by General Assembly resolution 47/135 (1992).

7 See Section 5.1. for the definition of ethnic profiling.

8 See Section 4.1. for the definition of hate crimes.

Amnesty International regularly reports on these problems and failures in various countries. In the case of Spain, for instance, it has reported on people belonging to ethnic minority groups being frequently stopped by police under the assumption that they are irregular migrants, in some cases amounting to several stops a day.⁹ Police in France have been reported to frequently harass Roma living in informal settlements, by means of arbitrary detention, seizure of personal belongings or destruction of their property.¹⁰ The inadequate response to hate crimes has been pointed out with regard to for example Bulgaria, where police often process incidents as hooliganism without considering the discriminatory motivation, or fail to launch an investigation altogether.¹¹

Any such conduct has damaging consequences. In a specific situation, it leads to a violation of the human rights of the person(s) concerned. On a wider scale, it leads to the loss of confidence in police by minority groups, fostering a climate of mutual mistrust or even hostility that can be self-reinforcing. There are, however, solutions and ways to address these issues, and good practices can be found in numerous countries and contexts to improve the relationship between police and minority groups.

This short paper will look at a variety of European countries, to outline and analyse some of the most common issues as well as to introduce possible solutions and examples of good practice on how to counter the problem. To that end, Section 2 of the paper briefly outlines the framework set by international human rights law on non-discrimination. Section 3 addresses some general considerations about the relationship between police and minority groups with regard to identifying any problems in this relationship, establishing contacts and communication with minority groups as well as the need to have a police agency that is representative of the society it is supposed to serve. Section 4 to 6 focus in more detail on specific issues that are common concerns in the interaction between police and minority groups, namely hate crimes, ethnic profiling and preventing and addressing discriminatory police misconduct. Section 7 puts forward some final remarks on the topic.

The issues looked at serve as examples of ways in which a problematic relationship between police and minority groups can manifest itself, and are not meant to provide an exhaustive list of possible problems and scenarios that can occur. Furthermore, the country examples used, whether in a positive or negative way, serve to illustrate specific aspects and practices, and are not to be understood as a judgement on the general relationship between police and minority groups in the country at hand.

9 Amnesty International, *Stop Racism, Not People: Racial Profiling and Immigration Control in Spain* (2011), EUR 41/011/2011.

10 Amnesty International, *"We ask for Justice": Europe's failure to protect Roma from Racist Violence* (2014), EUR 01/007/2014.

11 Amnesty International, *Missing the Point: Lack of adequate investigation of hate crimes in Bulgaria* (2015), EUR 15/001/2015.

International Standards

Every person has the right to be free from discrimination. This principle is enshrined in various human rights instruments, not only obliging the state to abstain from discriminatory actions, but also to protect people against discrimination and ensure effective and thorough investigations into allegations of discrimination as well as an effective remedy for victims.

The **International Covenant on Civil and Political Rights (ICCPR)**, for instance, obliges states to ensure equal recognition of the rights granted in the Covenant to all individuals, and sets out that

“[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹²

Discrimination, for the purpose of the Covenant, was defined by the Human Rights Committee as “[...] any distinction, exclusion, restriction or preference [...]”, based on any of the grounds listed, “[...] which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”¹³

The police, as representatives of the state, are thus obliged to operate in a non-discriminatory manner. Further, the right not to be discriminated against is closely connected to other human rights which are commonly at stake in the context of policing, such as the right to life, the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment,¹⁴ the right to liberty and security of person and the right to freedom of peaceful assembly. States have the positive obligation to protect individuals from violations of Covenant rights, not only with regard to acts committed by state agents, but also with regard to acts committed by private persons.¹⁵ Furthermore, the Covenant grants any person whose rights have been violated the right to effective remedy, which includes the duty of states to investigate allegations of violations.¹⁶

The **International Convention on the Elimination of All Forms of Racial Discrimination** urges state parties to “[...] engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation [...]”.¹⁷ It further obliges states to guarantee to everyone “[...] the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution”.¹⁸ The Convention further prompts state

12 Ibid., Art. 26. The Human Rights Committee noted in several communications that sexual orientation is included in the discrimination grounds listed in the ICCPR. See for instance *Toonen v. Australia*, where the Committee found that sexual orientation is included in the reference to “sex” (Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992 (1994)).

13 Human Rights Committee, General Comment 18, UN Doc. HRI/GEN/1/Rev.1 at 26 (1994), para. 7.

14 According to the European Commission of Human Rights, discrimination based on race can in certain circumstances of itself amount to degrading treatment (*East African Asians v. the United Kingdom*, Report adopted by the Commission on 14 December 1973, para. 207), <https://lovdata.no/static/EMDN/emd-1970-004403.pdf>.

15 Human Rights Committee, General Comment 31, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 8.

16 Ibid., para. 15.

17 International Convention on the Elimination of All Forms of Racial Discrimination, Art. 2a.

18 Ibid., Art. 5b.

parties to guarantee effective remedies and just and adequate reparation for any damage suffered as a result of racial discrimination.¹⁹ This right to effective remedy in turn also imposes a duty on public authorities to thoroughly investigate a possible racist nature of attacks.²⁰

In the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

discrimination is one of the constituting elements of the definition of torture and the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture. The Convention expressly obliges state parties to start a prompt and impartial investigation if there is reasonable ground to believe that an act of torture has taken place, or if an individual alleges that they have been subjected to torture.²¹ Specific to minority groups, the Committee against Torture has expressly stated that “[...]the protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment [...]”.²²

At the European level, Article 14 of the **European Convention on Human Rights** sets out that the rights contained therein “[...] shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”²³ Protocol 12 of the Convention establishes a general prohibition of discrimination, which goes beyond the rights of the Convention and applies to any right granted by (national) law.²⁴ The Protocol further establishes that no one shall be discriminated against by any public authority based on any of the listed grounds.²⁵ Similarly, The **Charter of Fundamental Rights of the European Union** prohibits discrimination “[...] on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation”.²⁶

The prohibition of discrimination also imposes a positive obligation on the state to protect people against criminal acts committed with discriminatory motives by non-state actors. In *Identoba and Others v. Georgia*, for example, the European Court found that “[...] the law-enforcement authorities were under a compelling positive obligation to protect the demonstrators [...]” of an LGBTI march, due to known negative attitudes in some parts of society, and prior warnings from the organizers on likely abuse.²⁷ In *Nachova and Others v. Bulgaria*, the Court further defined that states have an additional duty to investigate possible racist motives behind acts of violence, particularly in cases of death at the hands of state

19 Ibid., Art. 6.

20 Committee on the Elimination of Racial Discrimination, Communication No. 46/2009, UN Doc. CERD/C/80/D/46/2009 (2012), para. 7.4, 7.5.

21 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 12, 13.

22 Committee Against Torture, General Comment 2, Implementation of article 2 by States Parties, UN Doc. CAT/C/GC/2/CRP. 1/Rev.4 (2007), para. 21.

23 In its case law, the European Court of Human Rights confirmed that sexual orientation and gender identity fall within the list of grounds. See for example *Case of Salgueiro Da Silva Mouta v. Portugal*, Application no. 33290/96, Judgment, 21 December 1999 (Final 21 March 2000); *P.V. v. Spain*, Application no. 35159/09, Judgement, 30 November 2010 (Final 11 April 2011).

24 European Convention on Human Rights, Art. 1(1).

25 Ibid., Art. 2(1).

26 Charter of Fundamental Rights of the European Union, 2012/C 326/02 (2012), Art. 21.

27 European Court of Human Rights, *Case of Identoba and Others v. Georgia*, Application no. 73235/12, Judgment, 12 May 2015 (Final 12/08/2015)

agents.²⁸ Failure to do so constitutes a violation of the non-discrimination provision of the Convention. In subsequent case law, the Court confirmed that this duty to investigate possible racist motivations equally applies to acts of violence committed by private individuals.²⁹

In short, apart from being under the obligation to refrain from any discriminatory action, police have a positive duty to protect individuals from crime motivated by discrimination, combat such crimes and where crimes take place to investigate possible discriminatory motives for them. These duties should govern all police actions and be taken into due consideration when dealing with members of groups experiencing discrimination.

28 European Court of Human Rights, Case of Nachova and Others v. Bulgaria, Applications nos. 43577/98 and 43579/98, Judgment, 6 July 2005, para. 160 (Chamber judgment).

29 European Court of Human Rights, Case of Šečić v. Croatia, Application no. 40116/02, Judgment, 31 May 2007 (Final 31/08/2007).

General Questions regarding Relationships between Police and Minority Groups

3.1. Introduction

Discriminatory behaviour by law enforcement officials can be caused by a variety of factors. In some cases, a lack of adequate legislation or procedures certainly plays a role in how the police interact with members of minority groups. However, such legal or procedural gaps cannot justify discriminatory conduct. And often they are not the (sole) reason for police acting in a certain way. In many cases, discriminatory actions can be traced back to a stereotyped attitude or a lack of knowledge of how to interact with certain groups, in particular relating to cultural or linguistic differences, and/or unfamiliarity with their needs or behaviour. It might also be caused by a wrong perception, based on personal experience or prejudice, of certain groups as a threat which leads to a response which has not been consciously thought out. Such biased attitudes are often not unique to individual officers, but are seemingly shared by a large number or sometimes even the majority of officers.



Deportation of Roma from France, 2010. © Philippe Huguier/AFP/Getty Images

Society might accept certain discriminatory police behaviour or even expect it, as it coincides with prevailing views and attitudes in society. As police are themselves part of the society they serve, the attitudes and stereotypes they hold are likely a reflection of the opinions of society at large. At the same time, there is a risk that discriminatory practices by police legitimise racism and discrimination in the eyes of the wider public.

For instance, if terrorist attacks are carried out by perpetrators who claim to be acting in the name of Islam, it can (and does sometimes) lead to an increasing Islamophobia in society on the one hand and police increasingly targeting Muslim people in surveillance, stop and search and other activities as a measure of counter-terrorism on the other - with both these tendencies possibly reinforcing each other.

Depending on the country and society, the extent of different forms of discrimination, practices and groups affected might differ, or at least the perception and visibility of the problem does. In any case though, discrimination can have a damaging effect on the relationship between police and minority groups. Consequences might be increased tensions during meetings between the police and the public, which can lead to unnecessary escalations of situations, making it more difficult for police to do their work, or even causing officers to engage in misconduct. Furthermore, members of minority groups who become victims of crimes, perpetrated by either law enforcement officials or others, might not report it to police. This not only encourages impunity but will hamper the agency in fulfilling their duty of combating crime, for which they rely on the cooperation of all sections of society, including minority groups. Police also run the risk of losing the support and cooperation of members of minority groups, or even the group as such, which will affect their ability to carry out their job effectively. It is thus of crucial importance that police identify and address existing problems and actively work on improving their relationship with minority groups.

3.2. Identifying Discriminatory Police Practices

In order to address discriminatory police behaviour effectively and develop targeted measures to counter the problem, it is first necessary to identify what are the issues at hand. In many cases, however, comprehensive data on discriminatory police practices is absent. There are a variety of reasons for this and probably involves a combination of different factors, such as a lack of recording procedures, refusal by police to admit certain practices and the absence of statistical data collection systems. Further, as will be discussed in more detail in the following sections, incidents are commonly underreported as members of minority groups are often reluctant to approach the police or complain about police behaviour. Available data can thus only be considered to be the tip of the iceberg. This can make it difficult to capture and comprehend the full extent of the issues at hand, and might be used by police as an argument that discrimination is not an issue, or is limited to isolated incidents.



Police and member of the Roma community in France, 2010. © Philippe Huguen/AFP/Getty Images

While efforts should be made to collect comprehensive data, it should, however, not be considered necessary to rely on statistics alone when assessing the problems between police and minority groups. A widespread perception among certain groups of being discriminated against by police should be sufficient to realize that action needs to be taken. The police need to understand that such perceptions, whether quantitatively proven or not, are extremely damaging to their relationship with minority groups and will only increase the mistrust that might already be present. This, in turn, will have a negative effect on their ability to do their daily work, making their jobs more difficult and less effective. For this reason, police need to realize that countering such perceptions is in their best interest.

Civil society organizations can play an important role in making police aware of discriminatory patterns of police behaviour or crimes motivated by discrimination, by gathering complaints and reports from their end. This will also bring reports to the attention of police that were filed by people reluctant to approach the police directly. Even if reports of discrimination are not brought to the police for further investigation, gathering the reports is still useful to gain an overview of and insight into issues at hand. The Portuguese section of Amnesty International, for example, collects reports of violations of human rights by state agents and abuses of human rights by private individuals, which can be submitted through an online form on their website.³⁰ The reports gathered have been used for example to provide the Portuguese police with information on numbers and types of hate crimes committed, for the purpose of adopting preventive measures.

Civil society can also play an important role in creating awareness among the public and police of ongoing problems and can thus add to bringing issues on the agenda of the police and of public debate.

The Dutch section of Amnesty International, for example, organized two regional events within the Netherlands and one national event in 2014 under the Control Alt Delete³¹ umbrella on the topic of ethnic profiling, which were attended by a total of approximately 500 people including police representatives, professionals and members of the public.

Besides identifying specific discriminatory patterns and problems experienced by minority groups when interacting with individual officers, it is important to look also at the potential existence of institutional racism within the police agency as a whole. Institutional racism has been described as:

“[t]he collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantages minority ethnic people.”³²

30 See: http://www.amnistia-internacional.pt/index.php?option=com_content&view=article&id=16&Itemid=21.

31 Control Alt Delete is an initiative by two organizations, Blikopeners and IZI Solutions, to stop ethnic profiling and excessive use of force by police; <http://www.contrealtdelete.nl/>.

32 The Stephen Lawrence Inquiry, Cm 4262-I (1999), para. 6.34. The Stephen Lawrence Inquiry was a public inquiry ordered by the Home Secretary that examined the investigation of the Metropolitan Police Service into the racist murder of a black British man, Stephen Lawrence, on 22 April 1993. The inquiry found that the investigation was flawed due to a combination of professional incompetence, institutional racism and a failure of leadership.

Institutional racism thus goes beyond stereotypes held by individuals but points to a police culture that tolerates or even contributes to racism. This can take various forms, such as jokes, the toleration of racist behaviour or language towards colleagues from minority groups and managers turning a blind eye to officers' discriminatory behaviour whether towards colleagues or the general public. Managers might also encourage such behaviour tacitly or explicitly or display racist behaviour themselves and therefore passing on the message that it is acceptable. As was pointed out by an Amnesty International report on Austria in 2009, for example, one of the most prominent indicators of institutional racism within the Austrian law enforcement system was the repeated failure to respond appropriately to proven instances of racist police behaviour, even when members of ethnic minorities were victims of serious offences, including torture, committed by officers.³³

If there are indications of institutional racism, any approach to counter discriminatory police practices must go beyond focussing on countering stereotypes held by individual officers and address the much larger problems in the institutional culture and structure.

3.3. Reaching Out

3.3.1. Initiating Dialogue

The police should actively and on a regular basis engage with representatives of minority groups. In the absence of comprehensive data on discrimination issues and in the light of underreporting, establishing channels of communication with the various groups within society can provide police with a good understanding of any existing issues and allows them to gain insight into people's experiences with police that might otherwise not be taken into consideration. Further, representatives of minority groups can deliver valuable input in how to approach possible issues of conflict. Police, on the other hand, also have the opportunity to explain their perspective and the rationale behind certain measures and practices that might be perceived as discriminatory. Constructive dialogue can thus add to fostering better understanding between the parties involved and contribute to a better relationship.

In various cities in Switzerland, police participate in regular round tables with civil society organizations and representatives of minority communities to discuss policing issues from various perspectives, for police to understand how individuals feel during interactions with the police as well as for members of minority groups to be informed about why certain police actions, such as stops and searches, are taken.

In Fuenlabrada (Spain), the police established the "Comisión Intercultural de Seguridad Ciudadana" (Intercultural Commission on Citizen Security) in 2009 as a permanent channel of communication between the local police and representatives of Muslim, Chinese and Guinean communities. While the need for the Commission arose from a project on discrimination in stop and search operations, it is now utilized as a platform to discuss all types of issues arising between police and minority groups. For example, it was identified that conflicts with traffic police were one of the main issues faced by migrants, which led to an education campaign on road safety for different migrant groups to familiarise them with Spanish driving standards.³⁴

33 Amnesty International, *Victim or Suspect – A Question of Colour: Racial Discrimination in the Austrian Justice System* (2009), EUR 13/002/2009.

34 Ayuntamiento de Fuenlabrada, *La gestión de la sociedad diversa por la Policía de Fuenlabrada* (n.d.), available at <http://www.fepsu.es/file/FUENLABRADA.pdf>.

In the Dutch city of Gouda in 2011, a project called “Second Wave Project” was implemented after the methodology had previously proven successful in London. The project consisted of a series of 10 workshops held once a month which were attended by police officers and young men of Dutch-Moroccan origin, a group that comes into regular contact with law enforcement. Through games, discussions and drama-based activities, such as enacting meetings with switched roles, the workshop aimed at fostering dialogue and mutual understanding to improve perceptions and interactions between police and youth. As feedback from the participants from both sites was positive, the project was repeated in 2013.³⁵

3.3.2. Designated Points of Contact

Another way to build sustainable relationships and trust with minority groups is the appointment of specialized staff who serve as a contact point for members of the group for any issues that arise. Officers assigned to specific communities should be trained to develop an understanding of the culture and customs of those they serve and acquire the skills to communicate to and engage with the people in those communities. Further, having dedicated personnel for specific communities instead of constantly changing the officers responsible will add to building a relationship of mutual trust. Several countries have adopted such an approach to engage with Roma communities.

Slovakian police engage “Police Specialists” to work in often segregated and marginalised Roma communities. Police Specialists were first appointed in a pilot project in 2006, after a survey conducted amongst Roma confirmed the demand for such a function. The then 18 Police Specialists were specifically trained to gain an understanding of Roma and acquire special communication and problem-solving skills. Among other things, their responsibilities included participation in criminal investigations of offences that occurred in their designated community, participation in questioning of Roma suspects, solving problems that occur within the community, and providing legal advice and assistance in problem areas of Roma life. Due to positive feedback, the number of Police Specialists was increased to 230 in subsequent years.³⁶

Suffolk Constabulary (United Kingdom) appoints a “Safer Neighbourhood Team Key Officer” to every authorized Roma and Traveller site, as stipulated in their “Gypsy³⁷ and Traveller Engagement Procedure”. The responsibilities of the Key Officer are among other things:

- “Ensure that Gypsies and Travellers are treated, both when they are victims and suspects, as members of the local community, and in ways that strengthen their trust and confidence in the Constabulary.
- Encourage dialogue and positive interaction between Gypsies and Travellers through effective engagement with leaders and members of all communities. [...]
- Actively promote better public understanding of Gypsies and Travellers and take steps to counter stereotypes in the media and in public perceptions to promote good race relations. [...]
- Make a difference by using positive interactions to encourage the reporting of crime particularly Hate Crime [...].”³⁸

35 My City Real World, “Second Wave” Youth Police Workshops, Gouda: The Strength Lies in the Meeting (2012), Report available at <http://mycityrealworld.org/wp-content/uploads/2013/02/Gouda-Report-ENGLISH.pdf>.

36 Ministry of Interior of the Slovak Republic, Presidium of the Police Force, Public Order Department, The Project of the Police Specialists for the Work with Communities (2009), available at www.minv.sk/?praca-s-komunitami&subor=27977

37 Internationally, many Roma consider the term ‘Gypsy’ to be pejorative but, particularly in the United Kingdom, many use the term to describe themselves, which may explain the use of this term in the cited UK documents.

38 Suffolk Constabulary Policies & Procedures, “Gypsy and Traveller Engagement Procedure” (2009), Art. 3.2.



Roma and police during a forced eviction in Belgrade (Serbia), 2011. © Sanja Knezevic

The Procedure further includes a “Guide to Gypsy and Traveller Customs” consisting of a list of considerations that police officers should keep in mind during interactions with members of these communities. It should be stressed that all such guidance should be drafted with full and effective participation of community representatives.

3.4. Training and Guidance

Every officer who might come into contact with minority groups should have a basic understanding of the groups’ customs and needs, to avoid any issues or unnecessary escalations of the situation arising from misunderstandings.

Finland, for example, has produced guidance on the interaction between police and Roma which is addressed to both officers and members of the Roma communities, raising awareness about customs and culture to provide practical guidance to police, as well as explaining the role of the police and rights and duties to Roma.³⁹ In the United Kingdom, the National Policing Improvement Agency published the “Working with faith communities” guide for neighbourhood police. The guide aims at helping police to identify the specific needs of faith communities, including religious minority communities, and to help in working more closely with the communities at a local level.⁴⁰

Ideally, officers should receive training in a way that prompts them to reflect on their own prejudices and stereotypes, including both conscious and unconscious bias that might affect their behaviour.

39 OSCE, *Police and Roma and Sinti: Good Practices in Building Trust and Understanding* (2010); *Romanin ja poliisin kohdatessa*, available at http://www.oph.fi/download/46738_romaninjapoliisinkohdatessa.pdf.

40 National Policing Improvement Agency, *Working with faith communities: A guide for neighbourhood policing teams and partners* (2015), available at <http://www.bedfordshire.police.uk/pdf/Annex%20B%202010-01123.pdf>.

Attention should, however, be paid to not giving officers the feeling that they are being accused of being racist or discriminatory, as this might lead to a defensive and thus counter-productive response. Rather, emphasis should be put on how their daily work can benefit from improving their relationship with groups experiencing discrimination.

In Basel (Switzerland), the police in cooperation with Basel University initiated a project on “Police and Migration from West Africa” to educate police about the situation in West African countries and about the experiences that people had faced. Attendance was mandatory for all police staff, including administrative staff, and had an important impact on the attitudes of police.⁴¹

Further, members of minority groups who are recognized by the community should be involved in both, the design and the delivery of trainings. This will foster mutual understanding and learning about existing concerns or problematic issues first hand. Engaging members of minority groups in training will allow officers to understand the specific needs and expectations of certain groups and to become familiar with the problems they experience. Furthermore, it can point out what type of behaviour might be perceived as discriminatory by members of minority groups even though the officer may not perceive it as such.

Since 2003, the Slovenian police have implemented a 2 day training programme on policing in a multi-ethnic community. On the first day of the training, police reflect on Roma stereotypes and receive a review lecture on international and national standards pertaining to minorities. They are also taught some (non-violent) conflict resolution skills. On the second day, Roma leaders participate in the training. The Roma participants teach police some basic conversational Romani language and discuss Roma customs, while police explain their legal powers, what people should expect from an interaction with the police, and how to get assistance if needed. An evaluation conducted in 2013 found that, beyond the specific skills acquired during the training, the programme added to relationship-building between police and Roma communities, increasing trust and Roma feeling more comfortable with police, perceiving interactions as fair and respectful. Some of the Roma leaders who participated in the programme further engaged in mediation activity with the police in order to respond to a variety of community tensions, from disputes over housing to intra-ethnic rivalry.⁴²

Police Associations representing minority groups can add to the efforts of delivering training to police.

In Ireland, for instance, G-Force, a police “Gay Lesbian, Bisexual and Transgender employee resource group”,⁴³ has trained officers and sergeants in numerous police districts with the “Supporting LGBT Communities: Police ToolKit” which applies a practical scenario-based approach by introducing different cases together with applicable legislation and questions to reflect on. The toolkit covers various issues including hate crimes, gender identification, domestic violence, policing public sex environments and being LGBTI within the police agency.⁴⁴

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- 41 Kanton Basel-Stadt, 172. Verwaltungsbericht des Regierungsrates an den Grossen Rat des Kantons Basel-Stadt (2006), p. 256, 266.
- 42 Lobnikar, B., Policing the Roma Communities in Slovenia - Elements for a European Model? CEPOL - European Police College (2013), <https://www.cepol.europa.eu/sites/default/files/14-roma-slovenia.pdf>; Strobl, S., Police-Roma Cooperation in Slovenia: Effects of a Multi-Cultural Training Program (2013), <https://www.irex.org/sites/default/files/Strobl%202012-2013%20STG%20Scholar%20Research%20Brief-Final.pdf>.
- 43 Website of G-Force, <http://www.g-force.ie>.
- 44 Vasquez del Aguila, Ernesto and Franey, Paul, Supporting LGBT Communities: Police ToolKit, published by UCD School of Social Justice, G-Force, and The European Gay Police Association (2013), <http://www.glen.ie/stop-lgbt-hate-crime.aspx?contentid=27547>

3.5. Diversity of the Police Agency

A police agency should be constituted in a way that reflects the diversity of the society it serves. On a wider scale, employing people from minority backgrounds will promote integration and offer equal job opportunities and active participation in public life. Engaging officers from a minority background further brings various advantages for the day-to-day work of the police, such as internal knowledge of how to best interact with the different communities. It furthermore adds important skills such as language and communication skills as well as cultural understanding. This should help police build and improve relationships with the various communities.

The Czech Republic, for example, uses Roma police assistants in many areas to help resolve local issues. While the assistants have few powers, they are seen to contribute to improved communication on the streets and function as a link between Roma and police.⁴⁵

In order for such an approach to be effective and sustainable, the police culture should be welcoming and it should be ensured that minority groups are represented in all positions of the police agency, not just in the lowest ranks, and with equal opportunities to any other officer. Otherwise, officers might lose motivation and leave the agency. Further, having representative officers also in the higher ranks will ensure that community specific knowledge can be integrated in the stages of planning and the development of policies and procedures.

The police should actively reach out to promote applications from members of minority groups. This can include initiatives to increase information in minority communities about employment opportunities in the police.

Members of disadvantaged communities, however, might not always be able to meet the required standards due to a lack of access to education. As was pointed out by the OSCE High Commissioner on National Minorities, recruitment criteria should however not be lowered for that purpose. Rather, police should introduce special measures to make up for a potential lack of sufficient educational qualifications and assist in achieving the required standards.⁴⁶

In the Czech Republic, for example, the Ministry of Interior launched “The police for all” project in 2008/2009 to enable people with minority backgrounds to acquire a secondary police school diploma which will later enable them to apply to join the police.⁴⁷

In other countries, entry tests have been adjusted to accommodate minority applicants. In Romania, for example, Roma applicants have been given the opportunity to take a Romani language test instead of an International one. In Serbia, entry tests and selection procedures are conducted in 9 different languages including minority languages.⁴⁸

45 OSCE, Police and Roma and Sinti: Good Practices in Building Trust and Understanding (2010).

46 OSCE Office of the High Commissioner on National Minorities, Recommendations on Policing in Multi-Ethnic Societies (2006), Recommendation No. 6 and Explanatory text, p. 12.

47 Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to the Czech Republic from 17 to 19 November 2010 (2011), CommDH(2011)3.

48 OSCE, Police and Roma and Sinti: Good Practices in Building Trust and Understanding (2010).

Police Associations representing minority groups can also take an active role in promoting police as an employment option to their communities.

The Fraternal Association of European Roma Law Enforcement Officers in Hungary, for instance, promotes Roma in law enforcement by means of video campaigns, posters, and visiting schools and career fairs.⁴⁹

3.6. Conclusion and Recommendations

Police need to understand the importance of creating a relationship of trust with all sections of society, including minority groups. Any issues or patterns of discriminatory police behaviour that emerge should thus be taken seriously with police actively engaging in developing measures to improve their behaviour towards minority groups and the way that they are perceived.

- As was shown in this section, concrete measures can include reaching out to minority groups by means of initiating constructive and meaningful dialogue and establishing points of contact. This can help police to gain a better understanding of any issues at hand and the needs and expectations of communities they serve. Such direct contact on a regular basis, if done genuinely and constructively, further has the potential to reduce bias and build trust, both on the side of police and on the side of minority groups.
- Further, targeted training efforts can improve police officers' ability to positively engage with members of minority groups. Such trainings should be aimed at making police officers realize how their behaviour might be shaped by personal bias, and at achieving a better understanding of the groups' background, culture and customs.
- Finally, police should actively encourage diversity within the force. This will not only provide for valuable community specific knowledge and skills but will add to the (perceived) legitimacy of the institution as such.

Such general measures can provide an important basis for the development of a positive relationship between police and minority groups. However, they need to be accompanied by specific measures to address concrete issues of concern, as will be discussed in the following sections of this paper.

49 Fraternal Association of European Roma Law Enforcement Officials, Campaign for Roma Law Enforcement (n.d.), <http://www.faelo.com/gypsy-origins-and-police-career>; see also campaign website: <http://www.sokszinurendvedelem.hu/>

Specific Issue: Hate Crimes

4.1. Introduction

There is no universally accepted definition of a “hate crime”. Amnesty International generally understands the term to apply to acts against people or property, which are crimes under domestic law (and whose criminalization is consistent with international human rights law and standards), where the victim or target of the offence is selected because of their real or perceived connection to or membership in a group defined by a protected ground, including, but not limited to: race, ethnicity, language, national or social origin, sex/gender, indigenous status, descent, religion or belief, immigration status, disability, sexual orientation or gender identity.⁵⁰



Board member of the Al Muhsinin mosque in Haarlem (The Netherlands) moves a corrugated sheet which has “Fuck Allah” written onto it, 2007.
© Joost van den Broek/Hollandse Hoogte.

Such crimes tend to have a stronger impact on the victim than crimes without that discriminatory motive, as they imply a rejection and denigration of the victim’s identity, which has associated negative emotional and psychological consequences, including a feeling of isolation from society and an increased fear of future attacks. These can extend to family and friends of the victim as well as to other members of the same group. Thus, police need to take such crimes particularly seriously and an appropriate response by law enforcement is indispensable. As was highlighted by the European Court of Human Rights in the case of *Abdu v. Bulgaria*,

“[w]hen investigating violent incidents triggered by suspected racist attitudes, the State authorities are required to take all reasonable action to ascertain whether there were racist motives and to establish whether feelings of hatred or prejudices based on a person’s ethnic origin played a role in the events. Treating racially motivated violence and brutality on an equal footing with cases lacking any racist overtones would be tantamount to turning a blind eye to the specific nature of acts which

⁵⁰ For a slightly differently worded definition, see also Amnesty International, *Targeted by hate, forgotten by law: Lack of a coherent response to hate crimes in Poland* (2015), EUR 37/2147/2015, p. 9.

are particularly destructive of fundamental human rights. A failure to make a distinction in the way in which situations which are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the [European] Convention.”⁵¹

Nevertheless, police often fail to fulfil their duties when it comes to hate crime, by insufficiently protecting groups at risk, failing to identify and investigate the underlying motivation of incidents, or not treating victims appropriately. This not only violates the rights of the victim, but also sends a message to perpetrators and society at large that such incidents are acceptable, which may encourage perpetrators to continue or others to commit similar crimes. Furthermore, it leads victims and communities to lose confidence in the law enforcement agency regarding its ability and willingness to protect them.

4.2. The Legal Framework

As was outlined in Section 2, states have a duty to protect people against discrimination and ensure effective and thorough investigations into allegations of discrimination as well as effective remedy for victims. This obligation is specifically referred to in international treaties and instruments. For example:

- The International Covenant on Civil and Political Rights (ICCPR) requires states to respect and protect human rights without discrimination and must exercise due diligence to prevent, investigate, punish, and redress the harm of human rights abuses by non-state actors (that is, private individuals or groups).⁵²
- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) requires states parties to guarantee, without discrimination, “[t]he right to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution”, including by criminalising acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin.⁵³
- The European Court of Human Rights has in several judgments examined the obligations of states regarding the investigation of hate crimes, underlining the additional duty of states to take all reasonable measures to uncover a discriminatory motive.⁵⁴

States should give due consideration to any form of hate crime in their criminal codes, either by way of defining a hate crime as a distinct crime, or by considering discriminatory motivation as an aggravating circumstance.⁵⁵ While it would go beyond the scope of this paper to discuss which form hate crime legislation should take, two aspects have to be pointed out at this stage: first, the respective provisions should contain a comprehensive list of grounds, covering at a minimum the characteristics afforded special protection by international standards. Secondly, the provision should apply to all forms of criminal offences.

51 European Court of Human Rights, *Abdu v. Bulgaria*, Application no. 26827/08, Judgment, 11 March 2014, para. 44; see also *Identoba and Others v. Georgia*, Application no. 73235/12, Judgment, 12 May 2015, para 67.

52 Human Rights Committee, General Comment 18, UN Doc. HRI/GEN/1/Rev.1 at 26 (1994), para. 7.

53 International Convention on the Elimination of All Forms of Racial Discrimination, Art. 5b, 4a.

54 See for example *Nachova and others v. Bulgaria*, Application Nos. 43577/98 and 43579/98, Judgment, 6 July 2005, in particular para 160; *Stoica v. Romania*, Application no. 42722/02, Judgment 4 March 2008; *Secic v. Croatia*, Application no. 40116/02, Judgment, 31 May 2007); *Abdu v. Bulgaria*, Application no. 26827/08, Judgment, 11 March 2014.

55 For more information on hate crime legislation see for example OSCE, *Hate Crime Laws: A Practical Guide* (2009).

Romania, Criminal Code – Law No. 289/2009 (entry into force 1 February 2014); Art. 77 – Aggravating Circumstances “[...] h) the offense was committed for reasons related to race, nationality ethnicity, language, religion, gender, sexual orientation, political opinion or allegiance, wealth, social origin, age, disability, chronic non-contagious disease or HIV/AIDS infection, or for other reasons of the same type, considered by the offender to cause the inferiority of an individual from other individuals.”

Hungary, Act IV of 1978 on the Criminal Code (as amended 2013); Section 216: Violence Against a Member of the Community

“[...] (2) Any person who assaults another person for being a member or a presumed member of a national, ethnic, racial or religious group or a certain group of population – especially due to a disability, sexual identity or sexual orientation – or compels him or her by applying violence or threats to do, to not do or to endure something shall be punishable by one to five years of imprisonment.”

Regrettably, a number of countries still have considerable gaps in their hate crime legislation, either due to a limited number of protected grounds,⁵⁶ or by limiting the applicability of the provision to certain types of offences.⁵⁷ Gaps in the legal framework should however, not be used as an excuse by police to not consider certain discriminatory incidents as hate crimes. Aside from national legal obligations, police should realize the importance of recognizing all forms of hate crimes as part of their general duty to combat and investigate crime and assist victims. As this cannot be done effectively without considering and understanding the circumstances of any incident, police should realize that it is in their own interest to identify any type of hate crime and act accordingly in order to ensure good policing.

4.3. Protection and Prevention



Police agencies have a duty to protect members of minority groups against hate crimes. In order to offer effective protection, it is important that police take any threats or indications of violence seriously. As was pointed out by Amnesty International research on Poland, for instance, police in some cases only acted effectively once violence escalated, instead of taking measures after the initial attacks and threats.⁵⁸

Police in the Czech Republic push back participants of a hate march after they attacked to enter an area where many Roma families live, n.d. © Gustav Pursche

- 56 For example: Bulgaria (grounds limited to racism and xenophobia), Poland (grounds limited to nationality, ethnicity, political affiliation, religious affiliation and lack of religious belief).
- 57 In Portugal, for example, the legal basis for the investigation and prosecution of an incident with discriminatory motivation is limited to cases of murder and assault. In Croatia, only physical attacks that result in an injury are classified as a criminal offence, while attacks resulting in no physical injury are classified as minor offences. The legislation on minor offences does not take into account that offence can be perpetrated with a hate motive.
- 58 Amnesty International, Targeted by hate, forgotten by law: Lack of coherent response to hate crimes in Poland (2015), EUR 37/2147/2015.

Pride marches are examples of occasions when police are under the obligation to protect, not only during the march itself, but as well before and after the event. Failure to effectively protect Pride events can sometimes be a result of negative attitudes of police and police management. When a bus with Pride participants was attacked in Moldova in 2008, for example, the police did not interfere, according to the Ministry of Interior to avoid being seen as “gay friendly”.⁵⁹ In 2014 and 2015, however, Moldovan police were very efficient in protecting the participants from counter protestors with heavy presence, efficient equipment and actions.⁶⁰



Rainbow Pride Parade Bratislava (Slovakia), 2011. © Peter Hudec

It however requires not only police presence, but careful planning and coordination with the organizers. At Kyiv Pride 2015, for example, the police acted professionally during the event, with a sufficient number of officers surrounding the participants and protecting them from attacks. The preparation prior to the Pride, however, was poor, with police management trying to persuade organizers to cancel the event due to the risks involved, instead of focusing on how to mitigate those risks. It was only the day before that the police eventually agreed to protect the event, and police did not engage in discussing the details of the event in advance, as for example evacuation plans, with the organizers. In the absence of a proper security plan, Pride participants were attacked after the event right outside the venue.⁶¹ Similar issues have been pointed out with regard to Zagreb Pride in the past, where police – while improving the security during the event - failed to protect participants from attacks afterwards.⁶²

Apart from physically protecting members of minority groups against attacks, police should furthermore adopt measures to proactively prevent hate crimes. Statistical data on hate crimes can be very useful to detect trends and patterns of discrimination within society and identify groups at risk and in need of protection. If utilized as a basis to identify and develop required protective measures, collecting data can greatly add to the efforts of preventing hate crimes.

59 “We were only there to keep people apart. We were unable to enter into a more active protection role because we were afraid of offending the majority of the Moldovan people (...) the police must foresee the situation like recently in Bishkek, where people came out of control and turned against the authorities... we were trying to avoid the same situation, when people turn against the police, because we were protecting LGBT demonstration (...) But nobody was hurt anyway, because we were there.” Interview with the Ministry of Interior, Chişinău, 20 May 2010, quoted in The Danish Institute for Human Rights, Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity: Sociological Report: Moldova (2010), para. 38, 39, http://www.coe.int/t/Commissioner/Source/LGBT/MoldovaSociological_E.pdf.

60 Civil Rights Defenders, Moldova Pride: “Marching for Equality – Because I Live Here” (19 May 2015), <http://www.civilrightsdefenders.org/news/moldova-pride-marching-for-equality-because-i-live-here/>; Radio Free Europe/Radio Liberty, Gay Rights March Held In Chisinau (17 March 2015), <http://www.rferl.org/content/moldova-lgbt-rally-chisinau/27021319.html>.

61 Amnesty International, Ukraine: Homophobic violence mars gay pride rally in Kyiv (6 June 2015), <https://www.amnesty.org/en/latest/news/2015/06/homophobic-violence-mars-gay-pride-rally-in-kyiv/>.

62 Amnesty International, Inadequate Protection: Homophobic and Transphobic Hate Crimes in Croatia (2012), EUR 64/001/2012.

Collecting comprehensive data on hate crimes can however be difficult due to various reasons, such as underreporting and failure by police to correctly identify and record incidents. For this reason, statistics of crimes reported to the police alone cannot provide a complete picture of the extent of the problem, and low numbers or the absence thereof should by no means be understood as there not being any issue or need for improvement. On the contrary, low numbers might point to a problem in the reporting and recording of hate crimes and should thus lead to measures to improve these processes.

In Oslo (Norway), for example, a special hate crimes unit was set up in 2014 after a police report revealed low numbers of reported incidents, leading to the assumption that hate crimes are a major unknown issue.⁶³

Further, some countries only collect information on hate crimes generally without more specifically recording the individual discriminatory motivation of incidents. According to an Amnesty International report in 2010, for example, the data collected by authorities in Hungary did not reveal to which group or community a hate crime victim belonged.⁶⁴ Such data can only give limited insight into where the problems lie.

In order to develop specific measures to prevent and detect hate crimes, it is thus important to collect disaggregated data. For one, states should include in their statistics on which ground a crime was committed.

In Spain, the Protocol for Security and Police Forces on Hate Crimes and other Discriminatory Conduct, for example, classifies hate crime incidents in certain categories, namely racism/xenophobia, sexual orientation, religion, antisemitism, disability, and fear/rejection of the poor.⁶⁵

Furthermore, states should collect information on intersectionality, such as for instance gender or disability. This is especially important in identifying specific trends which might be hate-motivated.

In addition to having statistics of crimes recorded by police, it is important to conduct perception surveys (where respondents self-report their perceptions of having been victims of a hate crime). In light of underreporting and the tendency identified above of police failing to record hate crimes, such surveys can provide valuable information about the level and nature of crimes.⁶⁶

63 European Commission against Racism and Intolerance, ECRI Report on Norway (2015).

64 Amnesty International, Violent Attacks against Roma in Hungary: Time to investigate Racial Motivation (2010), EUR 27/001/2010.

65 Boletín Oficial de la Guardia Civil, Protocolo de Actuación para las Fuerzas y Cuerpos de Seguridad para los Delitos de Odio y Conductas que Vulneran las Normas Legales sobre Discriminación (2015), Chapter 8.

66 See for example Crime Survey for England and Wales, <http://www.crimesurvey.co.uk/>.

4.4. Reporting Hate Crimes

As mentioned in Section 4.3, a frequent concern with hate crimes is underreporting. There are various reasons that can lead to the reluctance of victims to report incidents to the police.⁶⁷ Victims might lack confidence in the law enforcement agency, assuming that nothing will happen in response to their report, or fearing the reaction of the officers. In Bulgaria, for example, homophobic hate crimes often go unreported due to victims' fear of homophobic reactions from police. Similarly, Roma often do not trust the police, due to their perception, which appears to have some justification, of biased attitudes of police.⁶⁸

Victims with irregular migration status often avoid addressing the police for fear of being detained and/or deported.⁶⁹

This was the case, for example, in Greece, where legislation previously did not foresee any protection of irregular migrants who became victims or witnesses of hate crimes from detention or deportation during the criminal investigation.⁷⁰ A Joint Ministerial Decision adopted in 2014 improved that situation by providing for the suspension on humanitarian grounds, though at ministerial discretion, of administrative detention and deportation orders issued against victims and witnesses of racist crimes. It also grants special residence permits for victims to cover the time required for the prosecution and conviction of perpetrators in order to allow them to participate in the proceedings.⁷¹



The Amsterdam police (The Netherlands) has operated a “free in – free out” policy since 2007, making use of their discretionary power not to apprehend undocumented migrants for irregular residence when they report any crime. The policy was formalized in 2011. In 2013, as part of another project in one of Amsterdam’s districts, police distributed cards to irregular migrants which state that they are guaranteed the right to leave the police station whenever they want without being arrested if they wish to file a report as a victim or witness of crime.⁷²

Card distributed to undocumented migrants by Amsterdam police, 2015. Screenshot taken in February 2016 from Het Parool, Amsterdamse proef krijgt nationaal vervolg: illegaal mag aangifte doen, 2 April 2015, <http://www.parool.nl/parool/nl/4048/AMSTERDAM-ZUIDOOST/article/detail/3940604/2015/04/02/Amsterdamse-proef-krijgt-nationaal-vervolg-illegaal-mag-aangifte-doen.dhtml>

- 67 See for example the LGBT Survey 2012, carried out by the European Union Agency for Fundamental Rights, for the most common reasons for not reporting incidents of discrimination, <http://fra.europa.eu/DVS/DVT/lgbt.php>; and European Union Minorities and Discrimination Survey, Data in Focus Report: The Roma, 2009, Reasons for not reporting in-person victimisation (p. 9), http://fra.europa.eu/sites/default/files/fra_uploads/413-EU-MIDIS_ROMA_EN.pdf.
- 68 Amnesty International, Missing the Point: Lack of adequate investigation of hate crimes in Bulgaria (2015), EUR 15/001/2015.
- 69 This problem is not limited to hate crimes: An irregular status can become an issue when reporting any type of crime. It should be guaranteed that victims of any crime have the possibility to safely report incidents to the police, regardless of their migration status. Police who receive reports and investigate incidents should thus not be tasked with enforcing migration regulations but focus on the case at hand and on the status of the person as a victim of crime instead.
- 70 Amnesty International, A Law Unto Themselves: A culture of abuse and impunity in the Greek police (2014), EUR 25/005/2014.
- 71 Amnesty International Report 2014/2015, The State of the World’s Human Rights (2015), POL 10/001/2015, p. 164.
- 72 Platform for International Cooperation on Undocumented Migrants, Protecting undocumented children: Promising policies and practices from governments (2015), p. 22; Het Parool, Amsterdamse proef krijgt nationaal vervolg: illegaal mag aangifte doen (2 April 2015).

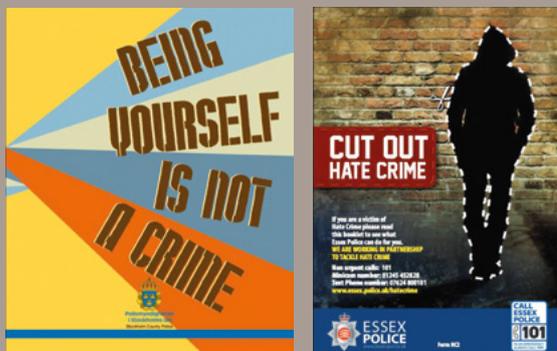
Another reason for not reporting an incident can be the lack of knowledge of hate crime laws and available support. In Hungary, for example, Roma are often not aware that they are entitled to (free) legal aid, which deters them from reporting incidents. Also, victims might fear retaliation by the perpetrator(s). These points underline the importance of providing comprehensive information and adequate protection to the victim, as will be discussed in more detail in Section 4.6.

One way to encourage victims who are reluctant to address the police directly is by means of enabling reporting through third party organizations.

The Scottish police, for example, cooperate with hundreds of Third Party Reporting Centres, which are community based organizations with staff trained to help with reporting an incident, or which can report on someone's behalf, also anonymously, and provide further support and information to victims.⁷³

Other police agencies have established special points of contacts to which hate crimes can be reported. In Greece, for instance, there is a dedicated hotline to make complaints to police about racist violence.⁷⁴ In Amsterdam (The Netherlands), victims of homophobic or transphobic incidents can report directly to the Pink in Blue Network, an anti-discrimination group within the police agency “for the Lesbian, Gay, Bi and Transgender community”.⁷⁵

A number of law enforcement agencies have reached out to victims, by means of leaflets, to encourage reporting.⁷⁶



“Cut Out Hate Crime” leaflet of the Essex Police (United Kingdom), Form HC2, 2012, and the “Being yourself is not a Crime” leaflet of Stockholm County Police (Sweden), n.d. Screenshots taken in February 2016.

For example, the leaflet from the Stockholm County Police (Sweden) entitled “Being yourself is not a Crime” explains what constitutes a hate crime and how it can be reported, as well as providing advice on how people can protect themselves in situations of risk. Furthermore, it repeatedly emphasizes that all reports are taken seriously by police.⁷⁷ In the United Kingdom, a similar leaflet is provided by Essex police, and is handed out to every victim as stipulated by the Hate Crime procedure.⁷⁸ In addition to defining a hate crime and explaining how to report it, the “Cut out Hate Crime” leaflet details what a victim can expect from the police after a report, and where to find further support.⁷⁹

73 Police Scotland, Hate Crime & Third Party Reporting (2015), <http://www.scotland.police.uk/contact-us/hate-crime-and-third-party-reporting/>.

74 The hotline has however, been criticized for not having any interpreters available, as well as for not providing any information and merely asking the victim to report to a police station. European Commission against Racism and Intolerance, ECRI Report on Greece (2015), p. 27.

75 Politie, Roze in Blauw (n.d.), <http://www.amsterdo.com/pink-police-network-amsterdam-politienetwerk-roze-in-blauw-amsterdam/>.

76 See also leaflet published by Spanish Police; <http://www.interior.gob.es/documents/10180/2905215/triptico.pdf/5a59e363-a128-451e-9cc1-ba9b36451314>.

77 Stockholm County Police, Being yourself is not a crime (n.d.), available at https://www.polisen.se/Global/www%20och%20Intrapolis/Informationsmaterial/01%20Polisen%20nationellt/Engelskt%20informationsmaterial/being_yourself_hatbrott_09.pdf.

78 Essex Police, Procedure – Hate Crime, Number B 1402 (26 February 2013).

79 Essex Police, Cut Out Hate Crime, Form HC2 (2012), available at <https://www.essex.police.uk/pdf/HC%20leaflet%202.pdf>.

4.5. Identifying and Investigating Hate Crimes

Once an incident comes to the attention of the police, it is important that officers are aware of indicators that point to a potential hate crime. They should be trained to spot such indications and obliged to record any potential discriminatory motivation and launch an investigation accordingly. Hate crime procedures should clearly detail what might be a hate crime, and which factors are to be taken into account in the first stages of the investigation.⁸⁰

The perception of the victim alone should be sufficient to oblige the authorities to treat an incident as a potential hate crime:

[...] the perception of the victim, or any other person [...], is the defining factor in determining whether an incident is a hate incident, or in recognising the hostility element of a hate crime. The victim does not have to justify or provide evidence of their belief, and police officers or staff should not directly challenge this perception. Evidence of the hostility is not required for an incident or crime to be recorded as a hate crime or hate incident.⁸¹

However, the perception of the victim should not be taken as the only indicator, as victims do not necessarily always mention such a suspicion, or might not even be aware themselves that the act was potentially motivated by discrimination. As for instance acknowledged by the hate crime procedure of the Essex Police (United Kingdom), “[...] not all hate crimes will be reported by the complainant as a hate crime. Personnel taking the complaint may identify the incident as a hate crime, having evaluated the circumstances and answers to their questions.”⁸² Thus, there is a need to establish a comprehensive list of indicators that officers should be aware of and consider when evaluating an incident.

The Spanish Police Protocol for Security and Police Forces on Hate Crimes and other Discriminatory Conduct includes a detailed list of possible hate crime indicators, with one or more indicators present being sufficient to investigate a possible hate motive. The listed indicators are, among others:

- the perception of the victim;
- the fact that the victim belongs to a minority group;
- association with a person belonging to a minority group;
- racist, xenophobic or homophobic gestures or comments made by the suspect;
- the appearance of the suspect (e.g. tattoos, clothing etc.) as possible symbolism;
- suspect carrying propaganda or having such materials at home (e.g. leaflets, flags etc.);
- criminal record of the suspect;
- location of the incident (close to a place of worship, venue belonging to a minority group etc.);
- connection to extremist football associations;
- connection to an organization known for hostility against certain groups;
- crimes committed for no apparent reason (apparent absence of motive);
- historical animosity between the victim’s group and the suspect’s group;
- incident happening on a day with symbolic date, time or place (e.g. Hitler’s birthday).⁸³

80 See also OSCE, Preventing and Responding to Hate Crimes (2009) for a detailed elaboration on hate crime indicators.

81 United Kingdom, College of Policing, Hate Crime Operational Guidance (2014), Art. 1.2.3. Perception-based recording of hate crime.

82 Essex Police, Procedure – Hate Crime, Number B 1402 (26 February 2013), Art. 4.2.

83 Boletín Oficial de la Guardia Civil, Protocolo de Actuación para las Fuerzas y Cuerpos de Seguridad para los Delitos de Odio y Conductas que Vulneran las Normas Legales sobre Discriminación (2015), pp. 72 – 74.



Racist slurs on the walls of a mosque in the Netherlands, 1992. © Edwin Janssen

Any incident with a potential discriminatory motivation should prompt a thorough and effective investigation with a focus on uncovering the underlying motive. In practice, however, hate crimes are often not appropriately recorded and investigated by police. As pointed out by Amnesty International research, for instance on Bulgaria, hate crimes are often not registered and the authorities regularly fail to launch an investigation. When an incident is investigated, the discriminatory motive is often not taken into account, and the incident is processed as the offence of hooliganism instead. Reasons for this might be that the evidence required to establish hooliganism is easier to obtain, and that hate crime laws are relatively new with officials lacking experience and training in the matter.⁸⁴ Similarly in Ukraine, police are reluctant to investigate homophobic or transphobic hate crimes as such, and incidents are often processed either as ordinary crimes or as hooliganism without considering the underlying motive.⁸⁵ The investigation opened after the 2015 Kyiv Pride, for example, qualified the violence that occurred during the event as hooliganism.⁸⁶

In order to comply with the state's obligations outlined in Section 4.2., any possible hate motivation must be duly investigated.

In Greece, for instance, the Police Circular (7100/4/3) of 25 May 2006 requires that the police investigate the motivation of any criminal offence, collect relevant information, and record and report incidents perpetrated on grounds of national or ethnic origin, colour, religion, disability, sexual orientation and gender identity.⁸⁷

84 Amnesty International, Missing the Point: Lack of adequate investigation of hate crimes in Bulgaria (2015), EUR 15/001/2015.

85 Amnesty International, Nothing to be proud of: Discrimination against LGBTI people in Ukraine (2013), EUR 50/005/2013.

86 <http://www.nbcnews.com/news/world/kyiv-gay-pride-march-attacked-hooligans-arrested-ukraine-officials-n370941> (accessed on 23 December 2015).

87 Listed indicators for hate crimes are for instance a confession by the perpetrator(s), or if a potential hate motivation is reported by victim(s) or witness(s). A further indicator is when perpetrator(s) and victim(s) belong to different racial, ethnic, religious or social groups.

A number of countries have introduced specialized units or officers within the police or special prosecutors to themselves investigate, or to oversee investigations, of hate crimes.

Police in Hungary, for example, have a specialized unit on hate crime, and one officer in every county is specialized in hate crimes.⁸⁸ In Berlin (Germany), the prosecution established a contact person for homophobic and transphobic hate crimes in 2012. Victims can contact the specialized prosecutor directly to report incidents, and that division of the prosecution also cooperates with the police on investigations of homophobic incidents.⁸⁹

In 2009, Barcelona (Spain) appointed a prosecutor specialized in hate crimes, and set up a Hate Crime and Discrimination Service as part of the prosecution. The Service can receive complaints by individuals and NGOs, coordinates police investigations of hate crimes, but also carries out its own investigations.⁹⁰ Further, every incident that potentially presents a hate crime has to be reported to the Service by police, as specified in the Hate Crimes Procedure of the Catalanian police.⁹¹ Due to the success of the structure, Special Prosecutors on hate crimes were established in further Spanish provinces in the following years. In 2013, a national network of delegated prosecutors for equality and against discrimination was created, appointing 50 specialized prosecutors throughout Spain.⁹²

While having such special units is certainly positive, one of the problems that might arise is that they are only involved in the investigation if a case is referred to them. It thus requires the officers first at the scene, or taking the victim's report at the station, to be able to identify that the incident potentially amounts to a hate crime.

In several states in Germany, for example, special police units are tasked with the investigation of politically motivated crimes (including hate crimes).⁹³ In order for the special units to be consulted, however, police officers first handling the incident need to classify a crime as politically motivated. While police operating in local or regional "hot spots" of right wing extremism are trained and sensitised on the characteristics of right wing extremist crime, this does not apply nationwide, and not to other forms of hate crimes. There have thus been concerns that police officials are insufficiently equipped to identify hate crimes beyond right wing extremism or not at all in certain regions of the country.⁹⁴

This stresses the importance of all police officers who might come into contact with victims being sensitised on the issue of hate crimes, to be able to identify possible indicators, and carry out the first phases of the investigation accordingly.

88 European Commission against Racism and Intolerance, ECRI Report on Hungary (2015).

89 Senatsverwaltung für Justiz und Verbraucherschutz, Ansprechpartnerin für gleichgeschlechtliche Lebensweisen bei der Staatsanwaltschaft (n.d.), <https://www.berlin.de/sen/justiz/ansprechpartnerin-homophobe-hasskriminalitaet/startseite.php>.

90 European Commission against Racism and Intolerance, ECRI Report on Spain (2010), para. 14.

91 Direccion General de la Policia, Procedimiento de hechos delictivos motivados por el odio o la discriminacion (2010), Art.8.

92 OSCE, Prosecuting Hate Crimes: A practical Guide (2014).

93 The definition of politically motivated crime is broader than the definition of hate crime, with hate crime being one out of four categories of crime that are classified as politically motivated. For a definition of politically motivated crime, see for instance Bundesministerium des Inneren, Politisch motivierte Kriminalität (2015), http://www.bmi.bund.de/DE/Themen/Sicherheit/Kriminalitaetsbekämpfung/Politisch-motivierte-Kriminalitaet/politisch-motivierte-kriminalitaet_node.html.

94 Antidiskriminierungsstelle des Bundes, Möglichkeiten effektiver Strafverfolgung bei Hasskriminalität, Rechtsgutachten (2015).

The police assessment of whether an incident presents a hate crime should further not be final, and the prosecution should not exclusively rely on the assessment.

The Belgian Circular relating to the investigation and prosecution policy regarding discrimination and hate crimes, for example, requires police to draw up a detailed statement, with emphasis on what could be evidence of the motivation behind the crime, in any case where there is a sign or observed act of discrimination or hate crime. This statement must be sent to the prosecution. It is the task of the prosecution to determine whether the act in question constitutes or not a hate crime.⁹⁵

In the United Kingdom, the Crown Prosecution Service has issued guidance to prosecutors with regards to racist and religious crime, which is understood as “[...] crime where the offender is motivated by hostility or hatred towards the victim’s race or religious beliefs (actual or perceived)”.⁹⁶ The guidance draws the attention to the fact that “[a]lthough police identification has improved significantly, the police still do not identify all cases that we ultimately prosecute as racist or religious crime. Prosecutors need to be vigilant to make sure that at every review they consider the possibility of a case being a racist or religious case.”⁹⁷

4.6. Treatment of Victims

The way in which police officials interact with the victim is of utmost importance, as it can negatively affect the recovery of the victim, the effectiveness of the investigation, and the perception of the public if the gravity of the incident is not sufficiently taken into account.

The Directive of the European Union establishing minimum standards on the rights, support and protection of victims of crime lists hate crime victims among those who should be given particular attention, and particular care should be taken when assessing the risk of secondary or repeat victimisation, intimidation and retaliation.⁹⁸ The Directive further sets out basic standards that should, as a minimum, be applied to victims of crimes, including hate crimes. Among other things, the victims have a right to receive information, including on available support, possible protection measures, legal advice and legal aid. Further, victims are entitled to receive information about their case, and have a right to interpretation and translation during the criminal proceedings, including during police questioning. They further have the right to access victim support services.

It should thus, as a starting point, be ensured that the police takes any report of a potential hate crime seriously.

The Procedure of the Catalanian Police (Spain) with regard to crimes motivated by hatred or discrimination points to the importance of noting that the criminal objective was focused against a basic characteristic of the victim’s identity, and that this makes the victim feel degraded, threatened and very vulnerable.⁹⁹

95 Joint Circular No. COL 13/2013 of the Minister of Justice, the Minister of the Interior and the College of Public Prosecutors to the Court of Appeal, Circular relating to the investigation and prosecution policy regarding discrimination and hate crimes (including gender-based discrimination), 17 June 2013, Art. 8a.

96 United Kingdom, Racist and Religious Crime - CPS Guidance (n.d.), http://www.cps.gov.uk/legal/p_to_r/racist_and_religious_crime/#a01, section “Racist and religious crime - the legislation”.

97 Ibid., section “Identification of relevant information”.

98 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, Art. 22(3) and Preamble para. 57.

99 Direccion General de la Policia, Procedimiento de hechos delictivos motivados por el odio o la discriminacion (2010), Art. 6.2.



*Board member of the Al Muhsinin mosque in Haarlem (The Netherlands) in front of a smashed window at the mosque, 2007.
© Joost van den Broek/Hollandse Hoogte*

Once a potential hate crime is reported, the victim should be afforded all necessary information about available support services, as well as regular updates on the status of the investigation and adequate protection if necessary.

In Belgium, the above mentioned Circular establishes rules for police officers who take reports filed at a police station or who arrive at the scene of an incident. One of the rules is to “[...] give every complaint the required attention and not treat it as something commonplace [...]” Further, police officers “[...] will ensure that people who ask for help or assistance are put in contact with the specialised services. They will inform the victim of their rights, the existence of victim support services at the public prosecutor’s office and the courts, and the possibility of receiving legal aid from the CECLR or IEFH.”¹⁰⁰

4.7. Training

A reoccurring concern in many countries is the lack of sufficient training for the police on dealing with hate crimes. This often adds to the failure of responding to hate crimes adequately, especially when combined with the absence of procedures and/or a general lack of willingness to engage in the topic.

At a minimum, basic training on hate crimes should be provided to all officers who could potentially come into contact with victims. Officers should be familiar with the definition of hate crime, how to identify indicators that point to a potential hate crime, and the rights of the victim. However, training should not be limited only to the applicable legislation and procedure, but should also focus on developing the practical skills in preventing and handling incidents in their daily work. It should contribute to an understanding of the concept of hate crime and the effect such incidents have on the victim, to sensitize officers of the needs of the victims and make them aware of their responsibilities towards the victim.

¹⁰⁰ CECLR = Centre pour l’égalité des chances et la lutte contre le racisme (Centre for Equal Opportunities and Fight against Racism); IEFH = L’Institut pour l’égalité des femmes et des hommes (Institute for Equality of Women and Men). Joint Circular No. COL 13/2013 of the Minister of Justice, the Minister of the Interior and the College of Public Prosecutors to the Court of Appeal, Circular relating to the investigation and prosecution policy regarding discrimination and hate crimes (including gender-based discrimination) (2013), Art. 8a.

4.8. Conclusion and Recommendations

Hate crimes are crimes targeted at the identity and personal characteristics of the victim and thus indicate rejection of certain members of society. It is crucial for police to recognize that such crimes in many cases have a more harmful effect than ordinary crimes, not only on the individual victim but as well on other members belonging to the group. Police thus need to understand the importance of treating and handling hate crimes as particularly serious crimes, to provide justice to the victims and send a clear message to society that such incidents are not acceptable.

- Police have to realize their duty to protect minority groups. This includes on the one hand the physical protection against attacks in particular situations. On the other hand, it requires the identification of patterns and groups at risk, for example by means of data collection. In order to be able to develop specific preventive measures, it is important to collect disaggregated data to identify groups particularly at risk. As hate crimes are not always reported and police not always identify them correctly, statistics on hate crimes recorded by the police should be complemented by data from other sources, such as crime surveys, to receive a clearer picture on where the problems lie.
- In order to be able to effectively recognize, investigate and combat hate crimes, police need to be aware of the incidents that occur. It is thus essential to adopt measures and reach out to (potential) victims to encourage reporting.
- Police need to be able to identify what potentially constitutes a hate crime, and should thus be familiar with the definition and be aware of the range of indicators that might point to a discriminatory motivation. If an incident is found to potentially constitute a hate crime, it should be investigated as such with a focus on uncovering the underlying discriminatory motivation.
- The special nature of hate crimes should be taken into consideration when dealing with the victims. Every report of a potential hate crime should be taken seriously, and all efforts should be made to afford victims the necessary support and protection.
- Training on hate crimes should familiarize officers with the definition and indicators of hate crime, their duties to prevent and investigate such crimes and their responsibilities towards the victim, as well as it should convey an understanding of the effects such crimes have on the victim, the community and society as a whole.

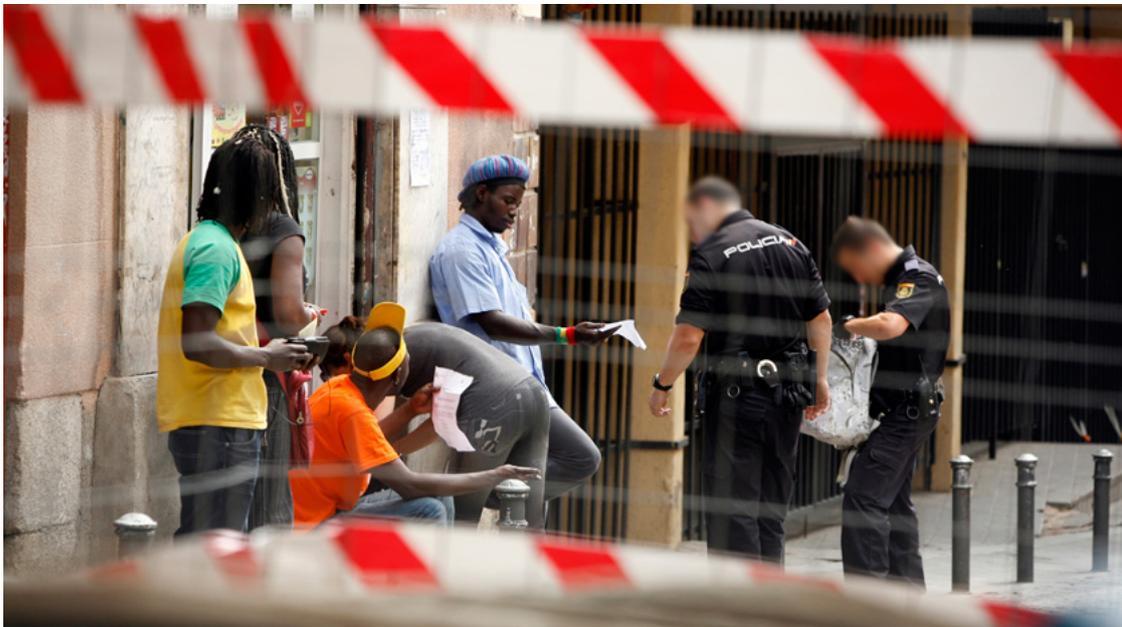
Specific issue: Ethnic Profiling

5.1. Introduction

The European Commission against Racism and Intolerance defines ethnic profiling as “[t]he use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities.”¹⁰¹

Unlike criminal profiling, where personal characteristics might be used in accordance with victims or witness statements or other objective evidence to help police identify a suspect of a specific crime already committed, ethnic profiling thus refers to the practice of targeting specific individuals or groups based on their characteristics for no objectively justified reason but a generalized assumption of their involvement in criminal activity, often with no specific crime yet to be investigated. Ethnic profiling can occur both at the organizational level with procedures or instructions disproportionality targeting specific groups, or at the level of the individual officer whose decision making is influenced by personal bias. While this practice is rarely officially adopted and seldom admitted by police agencies and individual officers, it seems that certain personal characteristics expose people to greater suspicion by police, in for example stop and search operations, traffic checks, immigration controls or counter-terrorism efforts. Ethnic profiling practices are not only a matter of perception by the affected individuals or groups, but also become more and more documented as a phenomenon of police work:

- In Spain, police were reported to regularly stop, sometimes multiple times a day, people from ethnic minorities for the purpose of immigration checks as they suspected them to be undocumented migrants.¹⁰²
- Amnesty International has also raised concerns about ethnic profiling in relation to the police in The Netherlands and Germany.¹⁰³



*Police officers check documents of men belonging to ethnic minorities in the neighbourhood of Lavapiés, Madrid (Spain), 2010.
© Edu León/Fronteras Invisibles*

101 ECRI, General Policy Recommendation No 11 on combating racism and racial discrimination in policing (29 June 2007), para.1.

102 Amnesty International, Stop Racism, Not People: Racial Profiling and Immigration Control in Spain (2011), EUR 41/011/2011.

103 Amnesty International, The Netherlands, Proactief Politieoptreden vormt Risico voor Mensenrechten: Etnisch profileren onderkennen en aanpakken (2013) (English Summary: Stop and Search Powers Pose a Risk to Human Rights: Acknowledging and tackling ethnic profiling in the Netherlands (2014)); Amnesty International, Germany, Racial/Ethnic Profiling: Positionspapier zu Menschenrechtswidrigen Personenkontrollen (2014).

For one thing, the increased attention given to particular groups of society can lead to ineffective law enforcement, as police are misguided to stop people due to biased assumptions instead of objective indications of suspicion. Various studies have shown that the success rates (also referred to as “hit rates”¹⁰⁴) of stops and search endeavours utilizing ethnic profiling practices are low.¹⁰⁵ By focusing on ethnic appearance instead of for example behaviour or similar, objectively verifiable indicators, the police are thus likely to spend their time and resources on stops without an outcome, while missing out on suspects who do not fit into the profiled group.¹⁰⁶

For another thing, ethnic profiling has damaging effects on the minority groups targeted, as it leads to a stigmatization of members of the group as criminals and thus reinforces negative stereotypes within the population. Furthermore, people who are the targets of such profiling practices, or perceive to be targeted for no justified reason, are likely to lose confidence in the law enforcement agency, leading to a relationship of mistrust rather than cooperation.

In many cases, ethnic profiling is difficult to prove and counter as the officer’s decision to stop a certain individual might not even be a conscious one, but merely a hunch that some people look more suspicious than others. Such opinions might originate from previous experience or underlying biased views, and are even more likely to influence personal decision making in the absence of guidelines or skills to objectively determine a reasonable suspicion.

Ethnic profiling thus needs to be addressed on both the institutional and individual officer level, with the legal and procedural framework clearly defining what can and cannot be used to justify suspicion, as well as officers being able to apply it in practice in overcoming, or changing, their personal views.

5.2 The Legal Framework

The practice of targeting specific groups due to their personal characteristics falls under the prohibition of discrimination as outlined in Section 2. Further, a number of soft law instruments and court cases have addressed the issue more specifically.¹⁰⁷

- The Committee on the Elimination of Racial Discrimination, for example, calls on states to “[...] take the necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person’s colour or features or membership of a racial or ethnic group, or any profiling which exposes him or her to greater suspicion”.¹⁰⁸

104 Hit-rate is the proportion of stops and searches that find evidence of law breaking.

105 See for example Open Society Justice Initiative, *Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory* (2009), Section III G; European Union Agency for Fundamental Rights, *Towards More Effective Policing, Understanding and Preventing Discriminatory Ethnic Profiling: A Guide* (2010), Section 3.2.

106 For example, the Special Rapporteur on countering terrorism, Martin Scheinin, pointed out that “[...] profiles based on ethnicity, national origin and religion are [...] under-inclusive in that they will lead law-enforcement agents to miss a range of potential terrorists who do not fit the respective profile. [...] profiles based on ethnicity, national origin or religion are easy to evade. Terrorist groups have regularly proved their ability to adapt their strategies, with the use of female and child suicide bombers, to avoid the stereotype of the male terrorist as just one example. Thus, as law-enforcement specialists acknowledge, any kind of terrorist profile based on physical characteristics can easily become self-defeating.” Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, UN Doc. A/HRC/4/26 (2007), para. 52.

107 For more details on the legal framework, see: Open Society Foundation, *Case Digest, International Standards on Ethnic Profiling: Standards and Decisions from European Systems*, November 2013, <https://www.opensocietyfoundations.org/briefing-papers/case-digests-international-standards-ethnic-profiling-standards-and-decisions>.

108 CERD, General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, para. 20.

- With regard to identity checks for the purpose of immigration controls, the UN Human Rights Committee stated that “[...] the physical or ethnic characteristics of the persons subjected thereto should not by themselves be deemed indicative of their possible illegal presence in the country. Nor should they be carried out in such a way as to target only persons with specific physical or ethnic characteristics. To act otherwise would not only negatively affect the dignity of the persons concerned, but would also contribute to the spread of xenophobic attitudes in the public at large and would run counter to an effective policy aimed at combating racial discrimination”.¹⁰⁹
- In *Timishev v. Russia*, the European Court of Human Rights outlined 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”.¹¹⁰
- The European Commission against Racism and Intolerance (ECRI) has called on states to clearly define and prohibit racial profiling by law, and 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”.¹¹¹

The national framework should thus outline which criteria can and which cannot be taken into consideration when determining suspicion.

The Swedish Aliens Act, for example, provides that a person cannot be stopped or checked solely on account of his or her skin colour, name, language or other similar characteristic.¹¹²



*Police arrest a migrant in the square of Tirso de Molina in Madrid (Spain), 2010.
© Olmo Calvo*

109 *Williams v Spain*, 17 August 2009, CCPR/C/96/D/1493/2006, para. 7.2.

110 *Case of Timishev v. Russia* (Applications nos. 55762/00 and 55974/00), Judgement, 13 March 2006, para. 58.

111 ECRI, General Policy Recommendation No 11 on combating racism and racial discrimination in policing (29 June 2007), para. 3.

112 Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, A/HRC/29/46, 20 April 2015, para. 48, referring to *Utlänningslag* (2005:716).

5.3. Establishing Clear Criteria for Stops and Searches

The risk for ethnic profiling to take place is especially high in the absence of proper instructions and monitoring, when the police officer has full discretion to carry out random stops without any stated cause. It should thus be ensured that police are provided with procedures which clarify what does and what does not constitute a legitimate ground for suspicion.

Having a list of legitimate grounds laid out in procedure will establish a framework of decision making for the individual officer and will prompt him/her to focus on certain behaviour and factors to be taken into account. In addition, it also ensures that officers can be held accountable for their judgements and any potential deviation from the procedure. Introducing the concept of reasonable suspicion always needs to be accompanied by developing the skills to overcome personal bias and apply the standards in practice.

In the United Kingdom, the Police and Criminal Evidence Act (PACE) contains detailed instructions on what is reasonable suspicion, with a “legal test” consisting of two elements¹¹³:

“(i) Firstly, the officer must have formed a genuine suspicion in their own mind that they will find the object for which the search power being exercised allows them to search [...]; and

(ii) Secondly, the suspicion that the object will be found must be reasonable. This means that there must be an objective basis for that suspicion based on facts, information and/or intelligence which are relevant to the likelihood that the object in question will be found, so that a reasonable person would be entitled to reach the same conclusion based on the same facts and information and/or intelligence. Officers must therefore be able to explain the basis for their suspicion by reference to intelligence or information about, or some specific behaviour by, the person concerned [...].]

It further clearly states that personal factors cannot be taken into account:

“Reasonable suspicion can never be supported on the basis of personal factors. This means that unless the police have information or intelligence which provides a description of a person suspected of carrying an article for which there is a power to stop and search, the following cannot be used, alone or in combination with each other, or in combination with any other factor, as the reason for stopping and searching any individual [...]:

(a) A person’s physical appearance with regard, for example, to any of the ‘relevant protected characteristics’ [...] which are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation [...], or the fact that the person is known to have a previous conviction; and

(b) Generalisations or stereotypical images that certain groups or categories of people are more likely to be involved in criminal activity.”¹¹⁴

113 See also more guidance on fair stop and search encounters: United Kingdom, Police College, Authorized Professional Practice: Stop and Search, <https://www.app.college.police.uk/app-content/stop-and-search/?s> (accessed 23 December 2015).

114 Home Office, Revised code of practice for statutory powers of stop and search and requirements to record public encounters by police officers and staff, Police and Criminal Evidence Act 1984 (PACE) – Code A (December 2014), Art. 2.2; 2.2B.

5.4. Monitoring Police Stops

The requirement to complete stop forms, whether in paper format or electronically, is often recommended as a way to track and counter ethnic profiling. Stop forms require the police to record certain information every time they stop someone, information which can be utilized to collect data and can give insights into any bias or disproportionality in regard to police stops of people in particular groups.

To provide an effective monitoring tool, stop forms should include at least the following information:

- **Time, date and place of the stop**
- **The identity (by name or ID number) of the officer**

It needs to be possible to allocate stop forms to individual officers. This will allow to draw conclusions about the stop and search behaviour of that particular individual, as well as ensuring that the officer can be held accountable for his/her decisions, in case a discriminatory pattern emerges or a complaint is received.
- **The reason for the stop**

If the officer has to specify the reason for a stop on a form, he/she might be less likely to act on a hunch of someone looking suspicious and instead more carefully considers whom to stop and why, only taking the decision to act if the suspicion can be justified objectively. Some of the stop forms in use contain a list of grounds on which a stop is justified, which can further act as a reminder to the officer of what is legitimate.¹¹⁵
- **The ethnicity of the stopped individual**

Ethnicity should be the self-defined ethnicity of the stopped individual and, if differing, the ethnicity as perceived by the officer. Nationality, which is sometimes used, provides an insufficient picture of ethnic profiling practices, as members of ethnic minority groups might well be nationals of the country where the stop is carried out.¹¹⁶
- **Whether the suspicion has manifested**

It should be captured if the suspicion of the officer was confirmed during the stop and whether the stop was followed up by other measures such as an arrest or a prosecution. This will provide an insight into the effectiveness of police stops, and will allow conclusions about the success rates of stops of certain groups.



The person stopped should receive a receipt or copy of the form. This will add another layer of transparency to the stop and will allow the stopped individual to verify that the officer filled in the details correctly and in accordance with what the officer told the individual. The receipt/copy should further specify how one can complain about the stop as such or about the conduct of the officer during the stop.

Receipt handed out by Essex police (United Kingdom) after a search, n.d. Screenshot taken in February 2016 from Essex Police Website, Stop and Search, https://www.essex.police.uk/about/stop_and_search.aspx.

115 For sample stop forms see Open Society Foundations, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practice* (2012), Appendix A.

116 See for example the stop form of Fuenlabrada, included in Appendix A of Open Society Foundations, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practice* (2012).

In the United Kingdom, the Police and Criminal Evidence Act (PACE) requires police officers to make a record of every search they conduct, either on paper or electronically, and to give the person searched a copy. At a minimum, the record needs to include the identity of the officer, date, time and place of the search, self-defined and observed ethnicity of the person searched, the objective of the control as well as the legal power or authority used.¹¹⁷

In 2007/2008, the Strategies for Effective Stop and Search (STEPPS) project by the Open Society Justice Initiative took place in selected police agencies in Spain, Hungary and Bulgaria in an attempt to reduce ethnic profiling in stop and searches by introducing a number of reforms, such as training police on defined stop and search criteria, using stop forms and a system for data analysis, and initiating dialogue with the community about stop and search practices. The number of stops in general as well as stops of ethnic minorities for most pilot locations went down during the 6 month period that was monitored by the project.¹¹⁸ Beyond the initial project, the principles developed by STEPPS contributed to further efforts of reducing ethnic profiling in Spanish police agencies. Fuenlabrada, one of the Spanish police agencies that took part in STEPPS, continued the approach beyond the 6 months period up to the present time. According to their stop data, they saw continued declines in stop rates, lowered rates of disproportionality and improvement in success rates in recent years.¹¹⁹ Further, the Plataforma por la Gestión Policial de la Diversidad (Platform on Police Diversity Management), a Spanish association of police and civil society, replicated the STEPPS principles in the Programa para la Identificación Policial Eficaz (Programme for effective police identity checks, PIPE) project, which was introduced in two locations during 2012/2013, and will be implemented in further locations in 2016.¹²⁰

While the obligation to fill in a form might in itself have the potential to reduce ethnic profiling, such a requirement can only be fully effective if it is accompanied by a supervisory structure and a system to evaluate the data. Any disproportionality or discriminatory pattern that becomes apparent in the evaluation of the forms should be followed by actions to counter such practices. This can entail addressing the individual officer in question and/or by adopting measures and policies on a wider scale if it is apparent that there is a practice of ethnic profiling beyond individual occurrences.

It is unlikely, however, that stop forms alone will eliminate ethnic profiling. They cannot completely exclude the possibility that officers are influenced by their personal bias when selecting individuals for stops, while justifying the stop in terms of one of the legitimate grounds on the form. A system of stop forms thus needs to be accompanied by other measures to mitigate the effects of personal bias and prejudices.

117 Home Office, Revised code of practice for statutory powers of stop and search and requirements to record public encounters by police officers and staff, Police and Criminal Evidence Act 1984 (PACE) – Code A (December 2014), Art. 4.3.

118 Open Society Justice Initiative, Addressing Ethnic Profiling by Police: A Report on the Strategies for Effective Police Stop and Search Project (2009).

119 After 5 years of implementation, the success rate has risen from 6% to 30%. Rights International Spain, Controles policiales por perfil étnico: persistentes, discriminatorios, ineficaces, humillantes y evitables (11 February 2014), <http://www.rightsinternationalspain.org/en/blog/40/controles-policiales-por-perfil-etnico:-persistentes-discriminatorios-ineficaces-humillantes-y-evitables>.

120 Plataforma por la Gestión Policial de la Diversidad, Programa para la Identificación Policial Eficaz: Segunda Fase, P.I.P.E. (2016), http://www.accem.es/ficheros/documentos/pdf_noticias/2016_pdf/Igualdad%20y%20No%20Discriminaci%C3%B3n%202016/Difusi%C3%B3n%20PIPE%202.pdf.

The “Best Use of Stop and Search Scheme”, to which every police agency in England and Wales has committed itself, introduces various measures to increase transparency and community involvement in stops and searches. Besides detailed recording of stops, the scheme also introduces ‘lay observation’, which provides members of the public with the possibility to accompany police officers to observe stops and searches and provide feedback to the officers. It further requires forces to adopt a complaint policy that requires police to explain to local community scrutiny groups how they use their powers, in case of a large number of complaints and/or of particularly serious complaints.¹²¹



Police stop and search individuals belonging to ethnic minorities in Amsterdam (The Netherlands), 2008. © John Schaffer/Hollandse Hoogte

Studies by independent statutory bodies can play an important role in identifying ethnic profiling practices and urging police to take corrective action.

The Equality and Human Rights Commission (Great Britain), for example, published “Stop and think – A critical review of the use of stop and search powers in England and Wales” in 2010, pointing out discriminatory stop and search patterns in numerous police agencies.¹²² Based on the findings, the Commission identified five forces to follow up with by agreeing on programmes defining different actions specific to the agency in question. Such actions included for example a revised policy, training for all officers, detailed statistical ethnic monitoring, scrutiny by senior management group meetings and the creation of a local scrutiny panel. The Commission concluded in 2013 that overall, where firm action was taken to reduce disproportionality and/or the overall use of stop and search powers, it was successful.¹²³

121 England and Wales, Home Office and College of Policing, Best Use of Stop and Search Scheme (2014). https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/346922/Best_Use_of_Stop_and_Search_Scheme_v3.0_v2.pdf.

122 Great Britain, Equality and Human Rights Commission, Stop and think: A critical review of the use of stop and search powers in England and Wales (2010), https://www.equalityhumanrights.com/sites/default/files/ehrc_stop_and_search_report.pdf.

123 Great Britain, Equality and Human Rights Commission, Stop and think again (2013), https://www.equalityhumanrights.com/sites/default/files/stop_and_think_again.pdf.

5.5. Intelligence-Based Profiling

Intelligence-based profiling limits the discretion of the individual officer in identifying suspicious individuals and instead bases suspicion on (apparently objective) data.

Profiling approaches of this kind have been introduced in some locations, such as the “Information-based behavioural profiling” at Brussels Airport, to identify individuals involved in organized crime. Judicial police first identify flights from countries or regions of higher risks for organized crime, and then screen passengers on the flight based on airline data.¹²⁴ -If they conclude that a person should be checked upon arrival, they have to seek authorization for the check from the prosecution. Border control officials are then provided with a list of people to check.¹²⁵

In the United Kingdom, officers of the Border Agency follow intelligence about a flight or a specific person, or on the basis of intelligence and trend analysis select flights that are considered to be at a high risk of carrying passenger involved in criminal activities. Once a flight is identified, officers screen the disembarking passenger and visually profile them based on a cluster of indicators that may be the basis for a suspicion of criminal behaviour. This cluster of indicators is detailed in the Customs Guidelines on Selection and Searches of Persons, which outline eight suspicion areas, including origin, destination and route, baggage, and behaviour etc., with a set of questions to ask yourself such as ‘does the baggage look big and bulky’ or ‘is the person acting nervous’.¹²⁶

In The Netherlands, the police use data and algorithms to predict potential crimes as well as times and areas of risk, which are then specifically focused on by police.¹²⁷

While limiting officers' discretionary powers in identifying individuals that they regard as suspicious might reduce the risk of ethnic profiling, intelligence-based profiling can only be objective if the data that is utilized is objective. However, if the data that is gathered and fed into the systems is biased, so will be the outcome. If ethnic profiling practices are used to collect the information, the groups targeted by this practice will inevitably be exposed to greater suspicion and be subject to disproportionate police attention, leading to a falsified picture of the extent of their involvement in criminal activity as compared to other groups in society for which no data is available.

Obviously, it will also not be possible to gather intelligence on each and every individual prior to a stop, and an officer should be able to make a quick decision and rely on his/her own judgement when identifying someone as suspicious. What needs to be ensured here is that that judgment is based on objectively verifiable facts and indicators rather than largely subjective factors.

5.6 Perception during Police Stops

Besides efforts to reduce the numbers of unjustified stops and reduce disproportionality, any approach to address ethnic profiling should equally consider how individuals perceive interactions with the police. The

124 Passenger Name Record data include: a) known travel agency; b) short visits to risk country; c) unusual routing; d) cash paid ticket; e) recent passport (less than a month before departure); f) voyage out (alone), voyage home (not alone); g) less than 10 day return ticket; h) voyage out and home with different tickets; i) judicial information in Belgium or abroad. Interview with officials of Brussels airport police, October 2008, cited in Open Society Foundations, Reducing Ethnic Profiling in the European Union: A Handbook of Good Practice (2012), p. 46 and Endnote 100.

125 Open Society Foundations, Reducing Ethnic Profiling in the European Union: A Handbook of Good Practice (2012), p. 46.

126 Ibid., p. 47.

127 Amnesty International, The Netherlands, Proactief Politieoptreden vormt Risico voor Mensenrechten: Etnisch profileren onderkennen en aanpakken (2013).

extent to which the police factually practice ethnic profiling does not necessarily correspond to the perception of such practices taking place, and members of minority groups might feel that they are victims of ethnic profiling even if they are being stopped for objectively justified reasons. This might be a result of previous negative experiences or a general lack of trust in the police agency which is only reinforced by the perception of being targeted.¹²⁸ As such opinions damage the relationship between police and minority groups, it should be in the interest of police to counter these perceptions as much as countering ethnic profiling itself.

With any stop, police officers should first of all explain, and make sure that the person understands, the reason why the particular individual was stopped. As contained in the Police and Criminal Evidence Act (United Kingdom) mentioned previously, officers should be able to articulate the reason for stopping a certain individual, and should also explain that reason to the person they are stopping.

“[...]it is important that before any stop and search power is exercised the officer is prepared to answer the question “Why did you stop me?”

Stop and Search Procedure of the Essex Police (United Kingdom)¹²⁹

As mentioned before, stop forms that include a receipt that specifies the grounds for a stop add to transparency in that regard. Though even in the absence of stop forms or receipt, officers should explain to the individual the reasons for a stop.

In order to be able to judge whether an officer’s conduct is appropriate, the person stopped needs to have at least a basic understanding of police powers and their own rights and obligations in such situations.



Keep calm.
Name of the officer must be given.
Officer's station will also be given.
Warrant card (badge) will be shown by officers who are not in uniform.
Your parent or carer does not need to be with you.
Officers can use force if you do not co-operate.
Upper layers of clothing may be removed (outer clothing and gloves).
Records are made of each search and you may have a copy.
Remain with the officer – it is the law that you stay.
Information will be given about why you are being searched.
Grounds for the search will be given by the officer (what power in law).
Help the search go smoothly – treat the officer with respect and expect to be respected.
The fact that you have been searched is not a criminal record.
Still unhappy with the search? Call **101** or visit www.hampshire.police.uk

Some police agencies have started education campaigns in that regard, as for example the “Keep Calm and Know Your Rights” campaign by Hampshire Constabulary (United Kingdom). It includes a leaflet explaining when and how police are allowed to stop and search someone, and a wallet card explaining the person’s rights and obligations and how to complain.¹³⁰

“Keep Calm and Know your Rights” wallet card from Hampshire Constabulary, 2013. Screenshots taken in February 2016.

128 The EU-MIDIS survey conducted in a number of EU member states, for example, showed that minority groups who perceive to have been stopped by police on the basis of their ethnic or migration background have a lower level of trust in the police than minority groups who did not consider stops as being related to their background. EU-MIDIS, Data in Focus Report; Police Stops and Minorities, 2010.

129 Essex Police, Procedure – Stop and Search, Number A0801 (9 September 2015), Art. 3.3.2.

130 Hampshire Constabulary, Keep Calm and Know Your Rights (2013), <http://www.hampshire.police.uk/internet/news-and-appeals/campaigns/keep-calm-and-know-your-rights/>.

5.7 Training

Training on ethnic profiling should focus on making officers aware of their own (not always conscious) bias. In this context, it is important that the training fosters a constructive atmosphere that raises the awareness of officers for their own personal biases and how these may negatively affect their work. It should thus avoid to give officers the feeling of being accused of being generally racist, as it might lead officers to reject the training, but rather invite them to be self-critical for the purpose of becoming better police officers (though, any evident racist attitude of an individual portrayed during the training should of course be addressed). As was pointed out with regard to ethnic profiling training delivered as part of the STEPPS project in Girona (Spain), discussions about discrimination and disproportionality provoked a defensive response and resentment among officers. Among the project locations, Fuenlabrada (Spain) placed emphasis on the benefits of police reform for police effectiveness, which was considered the more successful approach to training.¹³¹

The Belgian Federal Judicial Police, for example, has two experts trained in Islamic and Arabic studies who provide advice and training to police with counter-terrorism responsibilities including an obligatory one-day training course for investigators. The course, in addition to providing information about Islam, it seeks to challenge participants' stereotypes, encouraging them not to rely on such stereotypes when assessing whether individuals or organizations might pose a threat. If police are in doubt about whether a certain situation is suspicious, they are encouraged to consult these experts.¹³²

Any training should also focus on developing skills to do the job without having to resort to ethnic profiling, by practising determining suspicion based on objective factors such as behaviour of individuals. Finally, efforts should be made to reduce personal bias to eliminate the root causes of ethnic profiling.

131 Open Society Justice Initiative, *Addressing Ethnic Profiling by Police: A Report on the Strategies for Effective Police Stop and Search Project* (2009).

132 Open Society Foundations, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practice* (2012), p. 133.

5.8 Conclusion and Recommendations

Ethnic profiling damages the relationship between police and minority groups. By disproportionately targeting members of minority groups in stop and searches it adds to the mistrust of certain communities towards the law enforcement agency. It also exacerbates division in society by producing a generalized picture in the eyes of the public of people in certain groups being criminals. Moreover it is an ineffective tool of law enforcement.

- It is thus crucial that the police take steps to identify ethnic profiling and that they adopt measures to counter such practices. As a starting point, police procedures should establish clear criteria to define legitimate and illegitimate grounds to determine suspicion.
- Monitoring police stops, for example by using stop forms, can be used to collect data to reveal ethnic profiling practices as well as it having the potential to reduce such practices by providing the means of holding police officers accountable for their decisions. If intelligence-based profiling approaches are adopted, it should be ensured that, to the greatest extent possible, the data fed into the system is objective.
- Besides efforts to reduce the factual use of ethnic profiling practices, police equally need to pay attention to the way in which members of minority groups perceive stops and searches, as mistrust in the police agency might lead to the assumption of being a victim of ethnic profiling, even if the stop is justified.
- Training efforts to counter ethnic profiling should focus on making police officers aware of how their personal bias influences their decision making, and achieving an understanding of how utilizing objective criteria will help them to conduct stops and searches more effectively, as well as it should build the skills to apply legitimate criteria in practice.

Specific issue: Preventing and Addressing Discriminatory Police Misconduct

6.1 Introduction

It is unfortunately a widespread problem that members of minority groups become victims of harassment, ill-treatment or the excessive use of force at the hand of law enforcement officials. The following two examples serve as an illustration of this:

In France, police have been reported to harass Roma living in informal settlements, by means of arbitrary detentions, seizure of personal belongings or the destruction of property.¹³³ In Portugal, there are reports of police using excessive force and ill-treating people of African descent, as for example in a case that occurred in the police station in the Cova da Moura neighbourhood of Lisbon, with five black youth stating that they have been subjected to torture and xenophobic discourse by police.¹³⁴

Besides violating the rights of the individuals at hand in the specific situation, the effect that incidents of heavy handed policing and excessive or unnecessary use of force have on members of minority groups and their communities can be more extensively damaging, by deepening the mistrust in and enmity towards the law enforcement agency that the affected communities may already have as a result of negative experiences in the past.¹³⁵



Migrant talking to Slovenian police officers at the exit of a makeshift camp near the Austrian border, 2015. © Leonhard Foeger/Reuters

If there are indications that police are more likely to resort to excessive or unnecessary force in the case of certain groups, police authorities should consider what might be the reasons and take measures accordingly. For example, when such police conduct arises from personal bias or stereotypes, or a lack

133 Amnesty International, “We ask for Justice”: Europe’s failure to protect Roma from Racist Violence (2014), EUR 01/007/2014.

134 Amnesty International, Amnistia Internacional Portugal expressa ao Provedor de Justiça preocupações sobre o caso do bairro da Cova da Moura (19 February 2015), http://www.amnistia-internacional.pt/index.php?option=com_content&view=article&id=2014:2015-02-19-10-16-13&catid=35:noticias&Itemid=23.

135 Mistrust in police among minority groups was shown e.g. by the EU-MIDIS Surveys previously referred to (see footnotes 67, 128).

of knowledge or experience in how to handle particular types of situation, it will be necessary to improve selection, training and supervision, in addition to the accountability mechanisms which should be in place to address discriminatory misconduct and ensure there is no impunity for the perpetrators.

6.2 The Legal Framework

Police are bound by international law and standards on the use of force and the prohibition of torture and other ill-treatment without discrimination, whether the individuals they are dealing with are members of minority groups or anyone else.¹³⁶

- The UN Committee on the Elimination of Racial Discrimination further calls on states to “[...] prevent and most severely punish violence, acts of torture, cruel, inhuman or degrading treatment and all violations of human rights [...]” affecting persons belonging to certain groups “[...] which are committed by State officials, particularly police and army personnel, customs authorities, and persons working in airports, penal institutions and social, medical and psychiatric services”.¹³⁷ (The groups listed are: persons belonging to racial or ethnic groups, in particular non-citizens – including immigrants, refugees, asylum-seekers and stateless persons ; Roma/”Gypsies”; indigenous peoples; displaced populations; persons discriminated against because of their descent; as well as other vulnerable groups which are particularly exposed to exclusion, marginalization and non-integration in society)
- States are under the obligation to investigate allegations of human rights violations.¹³⁸ And when doing so, states have an additional duty to uncover possible racist motives in acts of violence committed by state officials.¹³⁹ Misconduct against members of minority groups should thus be looked at with additional scrutiny to expose any possible discriminatory motivation.
- Members of minority groups, like anyone else, have the right to complain and the right to seek redress and compensation when their rights have been violated.¹⁴⁰ To that end, it should be ensured that accountability mechanisms are in place which are mandated to investigate allegations of police discrimination, and can be easily accessed by minority groups.

6.3 Preventing Excessive Use of Force

Police behaviour and attitude during an interaction can play an important role in avoiding the (perceived) need to resort to forceful measures. For this reason, it is important that officers have an understanding of who and what they are dealing with in any situation. They need to be aware, for example, that migrants from certain countries might have had negative or traumatizing experiences with police in the past, which will affect their attitudes and behaviour during interactions with the police. Such understanding can help police officials to remain professional and polite, even if the situation might be difficult.

As outlined in Section 3, a general understanding of the cultures and customs of certain groups can further help to avoid misunderstandings and inadvertent provocation which might otherwise lead to an unnecessary escalation of a situation.

136 See UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

137 CERD, General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, from A/60/18 (2005), para. 21.

138 See for instance Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 15.

139 European Court of Human Rights, Case of Nachova and Others v. Bulgaria, Applications nos. 43577/98 and 43579/98, Judgment, 6 July 2005, para. 160 (Chamber judgment).

140 See for instance UN International Covenant on Civil and Political Rights (Art. 2.3), UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

The regional police of Catalonia (Spain) adopted a mechanism in which specific Roma individuals are appointed as contact persons for the police, in case of conflicts that arise in Roma neighbourhoods or involving Roma, from domestic disputes to neighbourhood fights. Before proceeding to the conflict site, the police officer consults the Roma individual and seeks advice on how to best intervene in the situation. This mechanism seeks to prevent over-reactions from police by a more focused and discreet response to certain situations, and to contribute to a better understanding of the context and possible solutions including mediation efforts.¹⁴¹

One group that is especially at risk of suffering from police misconduct, including excessive use of force, are refugees and asylum seekers, including while crossing the border or during push back operations. Amnesty International research has outlined issues of use of force against migrants and refugees for example for the case of Hungary, where border police used water cannons, pepper spray and tear gas against the crowd. A further concern raised was that the military, which were deployed to assist police in securing the borders, was authorized by a parliamentary resolution to use “[...] *all available measures to defend Hungarian borders*”.¹⁴² Reports of police abuses against migrants have also emerged from a number of other countries, including Serbia and Macedonia.¹⁴³

Border police, should have clearly established criteria on how and when force can legitimately be used, including during return operations.



Slovenian police and migrants at the Slovenia-Croatia border in Rigonce (Slovenia), 2015. © Srdjan Zivulovic/Reuters

141 Net-Kard Project, Practical Guide for Police services to prevent discrimination against the Roma communities (2014), p. 34/35.

142 Amnesty International, Fenced Out: Hungary's Violations of the Rights of Refugees and Migrants (2015), EUR 27/2614/2015.

143 Amnesty International, Europe's Borderlands: Violations against Refugees and Migrants in Macedonia, Serbia and Hungary (2015), EUR 70/1579/2015; Human Rights Watch, "As Though We Are Not Human Beings": Police Brutality against Migrants and Asylum Seekers in Macedonia (2015).

Specific to the use of force during expulsion procedures, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has pointed out that:

“[I]aw enforcement officials may on occasion have to use force in order to effect such a removal. However, the force used should be no more than is reasonably necessary. It would, in particular, be entirely unacceptable for persons subject to an expulsion order to be physically assaulted as a form of persuasion to board a means of transport or as punishment for not having done so. Further, the Committee must emphasise that to gag a person is a highly dangerous measure”.¹⁴⁴

The obligation to clearly define criteria on the use of force also applies to Frontex, a European Union agency tasked with managing the cooperation between national border control agencies to secure the EU’s external borders. The Code of Conduct for Joint Return Operations (JROs) coordinated by Frontex however falls short in this regard. For instance, the Code states to “[...] seek cooperation with each returnee at all stages of the JRO in order to avoid, or limit to the minimum extent necessary, the use of force”, without setting any further standard as to the use of such force.¹⁴⁵ This is insufficient; considering that Frontex is bound by European and national provisions on the use of force by law enforcement officials,¹⁴⁶ and should also observe the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Their regulations and procedures should thus reflect these standards.

As was pointed out by the European Ombudsman, the provisions on the use of coercive measures should further include a requirement that the use of coercive measures should take appropriate account of the individual circumstances of each person such as their vulnerable condition.¹⁴⁷



Migrants are escorted by police as they make their way on foot on the outskirts of Brezice, Slovenia, 2015. © Srdjan Zivulovic/Reuters

144 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT Standards (2002), CPT/Inf/E (2002) 1 - Rev. 2015, E.36.

145 Frontex, Code of Conduct for Joint Return Operations coordinated by Frontex (2013), Art.5(1).

146 The term law enforcement officials includes border police and border agencies with police powers.

147 European Ombudsman, Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2014/MHZ concerning the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) (4 May 2015), Case: OI/9/2014/MHZ., para. 57(H).

6.4 Other Forms of Discriminatory Misconduct

Discriminatory police misconduct is not limited to the excessive use of force but can take various shapes and forms, ranging from insults, harassment and threats to arbitrary arrests, to name but a few.

As was pointed out in Amnesty International research on Moldova, for example, gay men are prone to blackmail and extortion by the police at known gay meeting points. In one case, two men were detained in the toilets of a park, and police officers insulted them and threatened to expose them to their families. One of the men committed suicide that night.¹⁴⁸

Amnesty International research on France has pointed to police harassment during forced evictions of Roma in Marseille, including in some instances the seizure of personal belongings or the destruction of tents. Similarly in Paris, homeless Roma are harassed by police who want them to move out of the area. One Roma migrant who sleeps on a public square with this family reported that a police officer comes by weekly to throw away their belongings such as clothing, blankets and mattresses.¹⁴⁹

The United Nations Working Group on Arbitrary Detention, commenting on numerous round-up operations where the police had detained members of the Roma community in Greece, releasing them soon after without any charge, underlined that “[...] any detention on discriminatory grounds constitutes arbitrary detention [...]”.¹⁵⁰

Any such behaviour is unlawful and thus needs to be followed by corrective measures. Police leadership should send a clear message to officers that such conduct will not be tolerated and will have consequences for the officers concerned. Further, the police culture should encourage officers to denounce colleagues if they become a witness of any discriminatory conduct.

Most importantly, it must be ensured that there is no impunity for discriminatory police misconduct, and that officials are held accountable for their actions, as will be discussed in the next section.

6.5 Handling of Misconduct and Discrimination Complaints

If a person believes they have been a victim of discriminatory police behaviour, it should be ensured that there are channels available to complain and that the complaint is taken seriously and is thoroughly investigated. This will not only ensure that the individual’s right to redress is realized, but will also help to prevent impunity for the perpetrators who, in the absence of consequences, are in effect permitted to continue. Furthermore, taking allegations of discrimination seriously will send a sign to police and society at large that such conduct is not tolerated. In order for complaints mechanisms to be accessible to all members of minority groups, information on how and where to complain should be made available in minority languages.

While it would go beyond the scope of this paper to elaborate on how the complaints structure should look in detail, it is to point out that any accountability mechanism should allow for both administrative and criminal procedures, depending on the gravity of the misconduct committed by the police agent. The consequences for discriminatory misconduct should be in proportion to the gravity of the misconduct, and in case of serious violations criminal proceeding should be started.

148 Amnesty International, *Towards Equality: Discrimination in Moldova* (2012), EUR 59/006/2012.

149 Amnesty International, *“We ask for Justice”: Europe’s failure to protect Roma from Racist Violence* (2014), EUR 01/007/2014.

150 United Nations Working Group on Arbitrary Detention statement upon the conclusion of its mission to Greece (21 - 31 January 2013) (31 January 2013).

Further, especially complaints of a serious nature, such as allegations of excessive use of force, should be handled by a mechanism independent from the police.¹⁵¹ This has also been voiced by the European Commission against Racism and Intolerance, who calls on states to “[...] provide for a body, independent of the police and prosecution authorities, entrusted with the investigation of alleged cases of racial discrimination and racially-motivated misconduct by the police”.¹⁵²

If complaints are handled within the police agency, there is a risk of bias in the investigation of incidents, a problem that was pointed out for example for Greece: Complaints about racist violence by police generally resulted in an acquittal, and were often not investigated at all, which likely reinforced the reluctance of victims to report such crimes. While a law was passed to establish the “Office responsible for handling alleged instances of abuses” as a mechanism for the investigation of complaints against law enforcement personnel, the office was not operational yet at the time of writing. Furthermore, while establishing such an office is certainly an improvement, it is to note that it is still part of the Greek police and not an external mechanism which would be preferable.¹⁵³

Regardless of who is investigating the complaint, it is important to give due consideration to the specificity of each case. The allegation of discrimination in police conduct will likely be about perception and the discriminatory nature of police actions is not obvious in all cases and cannot always be supported by objective evidence. It is thus crucial that the person investigating the complaint has the knowledge and skills to engage with the complainant and look at the surrounding circumstances of the incident, as poor handling of such complaints will likely reinforce mistrust in the system.

For example, when the Independent Police Complaints Commission (IPCC, England and Wales) reviewed the Metropolitan Police handling of complaints alleging racial discrimination by police officers in 2011/2012, it found that racism was only tackled when it was both obvious and supported by independent evidence, while complaints in which only the victim’s account stood against the officer’s account were generally not upheld, with investigations not looking beyond the officer’s denial of the allegations.¹⁵⁴ The IPCC afterwards examined the complaints process of three further British police agencies (West Midlands, Greater Manchester and West Yorkshire) which, besides a case review, also included focus groups consisting among others of representatives of communities with protected characteristics.¹⁵⁵ The review found equally poor handling of discrimination complaints with just over half of the complaints being investigated at all, and none of the allegations being upheld. The IPCC attributed this, among other factors, to a lack of training in and understanding of diversity issues. For instance, none of the forces received training involving communities, with one force’s diversity training being merely a computer exercise. Furthermore, the communities generally felt disconnected from the police. This lack of understanding between the police and the communities was identified by the IPCC as one of the underlying causes of complaints as well as a factor in why they are poorly handled. Many complaints based on perception were reinforced due to a lack of understanding during the investigation.¹⁵⁶

151 For general considerations about police oversight, see Amnesty International, The Netherlands, Police Oversight, Police and Human Rights Programme – Short Paper Series No. 2 (2015).

152 ECRI, General Policy Recommendation No 11 on combating racism and racial discrimination in policing (29 June 2007), para. 10.

153 European Commission against Racism and Intolerance, ECRI Report on Greece (2015); Human Rights Committee, List of issues in relation to the second periodic report of Greece, Addendum, Replies of Greece to the list of issues (2015), CCPR/C/GRC/Q/2/Add.1.

154 Independent Police Complaints Commission, Report on Metropolitan Police Service handling of complaints alleging race discrimination (2013).

155 The UK Equality Act 2010 makes it unlawful to discriminate against persons with a protected characteristic. The following characteristics are protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation, UK Equality Act 2010, Chapter 1, Section 4.

156 Independent Police Complaints Commission, Police handling of allegations of discrimination (2014).

As pointed out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,

“[t]he diligent examination by judicial and other relevant authorities of all complaints of ill-treatment by law enforcement officials and, where appropriate, the imposition of a suitable penalty will have a strong deterrent effect. Conversely, if those authorities do not take effective action upon complaints referred to them, law enforcement officials minded to ill-treat persons in their custody will quickly come to believe that they can do so with impunity.”¹⁶⁰

6.6 Training

As was already outlined in the previous sections, any training efforts should include making officers aware of their own personal biases and how they influence their reactions and behaviour (see Sections 3.4., 4.7. and 5.7.). Addressing and taking effective steps to overcome such biases will ensure that officers can act professionally, regardless of whom they are dealing with. Cultural awareness and an understanding of the minority group at hand, including an understanding of how they might view police, will add to the officers’ ability to address situations calmly and appropriately, thus avoiding inadvertent provocations and/or unnecessary escalations.

De-escalation training can further add to officers’ ability to stay calm and reduce the need to resort to force in situations where misunderstandings might arise.

Police in Neuchâtel (Switzerland) received 100 hours of de-escalation training with actors from a theatre group, which had a positive impact on police staying calm in any type of intervention.

In addition, police officers should receive training in communication and non-violent conflict resolution skills which are relevant to specific groups.

¹⁶⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT Standards (2002), CPT/Inf/E (2002) 1 - Rev. 2015, 45.

6.7 Conclusion and Recommendations

Police misconduct motivated by discriminatory attitudes has the potential to create an atmosphere of fear and hostility between police and minority groups. It is thus of crucial importance that the police adopt measures to prevent such misconduct.

- Having an understanding of the minority group at hand might help to prevent unnecessary escalations of situations and thus reduces the likelihood of police officers to resort to force.
- Furthermore, there must be clear criteria set out in the law and in police regulations to establish what constitutes legitimate use of force.¹⁶¹
- Besides excessive use of force, police misconduct can take various other forms such as threats or harassment, which are equally unlawful and need to be addressed.
- As a culture of impunity will only add to the likelihood of future violations, it is thus essential that police officials are held accountable for their actions. An effective complaints system needs to be in place and accessible to members of minority groups.
- Finally, training should focus on gaining an understanding of the minority groups as well as non-violent conflict resolution skills to enable officers to react calmly and professionally in any given situation.

¹⁶¹ See also Amnesty International, The Netherlands, Police and Human Rights Programme: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (2015), <https://www.amnesty.nl/nieuwsportal/rapport/use-force-guidelines-implementation-un-basic-principles-use-force-and-firearms>.

Final Remarks and Recommendations

There are many different measures and approaches that police can adopt in order to improve their relationship with minority groups. What exactly is required to make a difference will depend on the specific situation in the country, however some basic considerations should shape any approach by police or civil society organizations to work on the issue:

- Police officers need to realize how their own personal bias or stereotypical attitudes affect their behaviour and should aim to overcome them or at least attempt to minimize the influence those attitudes have on their engagement with minority groups.
- Efforts to reduce discriminatory police misconduct should always focus on both the institutional and the personal level, addressing inadequate and ineffective procedures as much as officers' insufficient knowledge and understanding of diversity.
- Police should recognize that building a relationship of trust is mutually beneficial, as it will allow police officers to conduct their daily work more effectively, as well as allowing minority groups to enjoy the right to access to and protection by law enforcement on an equal basis with anyone else in society.
- It is important for police to actively reach out to minority groups and engage in constructive dialogue with the various sections of society. This will provide them with valuable insight into any issues affecting the different groups as well as ensuring that members of minority groups can deliver valuable input into how problems can be solved. Furthermore, direct engagement between police and minority groups can contribute to reducing bias and stereotypical attitudes on both sides and foster mutual understanding.
- Civil society organizations can play a significant role in improving the relationship between police and minority groups by identifying discriminatory patterns and problems affecting minority groups and bringing these issues on the police agenda and to the attention of the public.
- It is important that any approach to the problem of discriminatory police behaviour also considers the potential existence of institutional racism. Civil society organizations should thus look at the institutional culture for indicators of institutional racism, such as for instance the content and language of procedures and instructions, the lack of internal mechanisms for challenging discriminatory behaviour, or the inadequate response of the law enforcement agency to cases of police misconduct. Civil society organizations may also consider to act as a bridge between police and minority groups by representing minority groups, for example by organizing and attending round tables or workshops, or by representing the interests of minority groups towards the police.

Selected References for Further Reading

Association for the Prevention of Torture, Addressing situations of vulnerability of LGBT persons in detention - Jean-Jacques Gautier NPM Symposium 2015 Outcome Report (2015): <http://www.apr.ch/en/resources/addressing-situations-of-vulnerability-of-lgbt-persons-in-detention-jean-jacques-gautier-npm-symposium-2015-outcome-report/?cat=61>

OSCE Office of the High Commissioner on National Minorities, Recommendations on Policing in Multi-Ethnic Societies (2006): <http://www.osce.org/hcnm/32227?download=true>

OSCE, Police and Roma and Sinti: Good Practices in Building Trust and Understanding (2010): <http://www.osce.org/odihr/67843?download=true>

OSCE, Preventing and responding to hate crimes: A resource guide for NGOs in the OSCE region (2009): <http://www.osce.org/odihr/39821?download=true>

Open Society Foundations, Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices (2012): https://www.opensocietyfoundations.org/sites/default/files/reducing-ep-in-EU-12172012_0.pdf

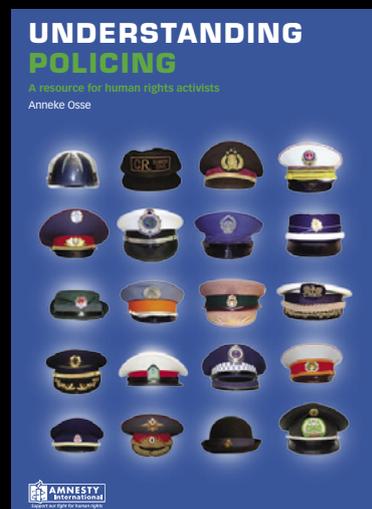
The Police and Human Rights Programme of the Dutch section of Amnesty International

The area of policing and human rights presents a dynamic and constantly evolving field of study. The human rights discourse has in recent years broadened its attention to include not only the negative functions of the State and its agents as human rights violators but also the positive obligations of the State. This presents an opportunity for the police to be seen as human rights protectors. At the same time, the notion has developed that human rights are not only abused by State officials, including the police, but by non-State actors as well. Both police and human rights advocates are (should be) striving for societies characterized by security and safety. This insight has opened up the possibility of police and NGOs working together rather than opposing each other.

However, the idea of police and NGOs working together is fraught with difficulties. Police officers tend to have a different perspective from that of most human rights advocates. They sometimes use different language when speaking of the same issue and will reach different conclusions about cause and effect. Sometimes this is the obvious result of the different roles they have in society; sometimes they may be the result of stereotypic assumptions.

The Police and Human Rights Programme aims to enhance knowledge and understanding of the police & policing within the Amnesty International movement – and the wider human rights community - in order to become more effective when targeting the police or police related issues. We also offer training to human rights advocates on Police and Human Rights and facilitate strategy workshops.

For more information, please consult the website of the Police and Human Rights Programme: www.amnesty.nl/policeandhumanrights.



Amnesty International is a **global movement of more than 7 million people** who campaign for a world where **human rights are enjoyed by all**. We reach **almost every country in the world** and have:

- more than **2 million members and supporters** who drive forward our fight for rights
- more than **5 million activists** who strengthen our calls for justice

