Breakout session: Racialised Communities and Law enforcement

Background Paper
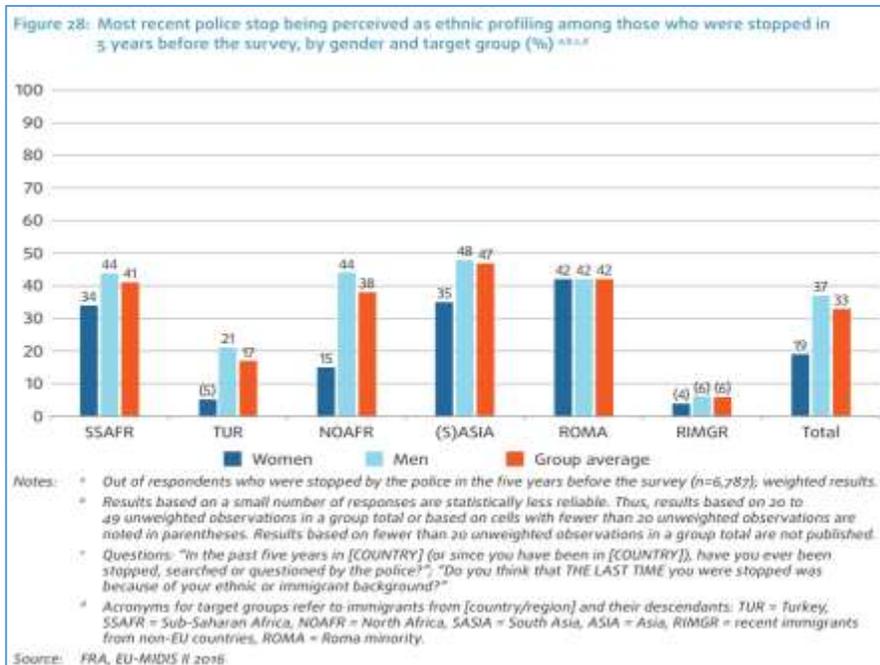
Recognising diversity and ensuring fair law enforcement is essential to fighting racism. As stated in the EU Anti-racism Action Plan 2020-2025, efficient policing and respect for fundamental rights are complementary. Law enforcement authorities are key actors in ensuring that laws are obeyed, and that security is ensured. As duty bearers they have an obligation to treat everyone respectfully, in accordance with the principles of non-discrimination, and in a way that addresses the needs and rights of all victims.

Crimes and/or experiences of discrimination should be reported to enable effective law enforcement and policymaking. But it is well known that people from disadvantaged or vulnerable communities, or racialised minorities, may have lower trust in public authorities, preventing them from reporting crimes. Experience of discrimination can contribute to lowering the level of trust, and cause resistance to public authority.

Experiences of discrimination in the area of law enforcement
The results of 2017 FRA's Second European Union Minorities and Discrimination Survey show that overall, 14 % of respondents were stopped by the police in the 12 months preceding the survey (including stops in a private vehicle, stop-and-search incidents on the street, or in public transport). Of those stopped, 40 % believe that the most recent stop was because of their immigrant or ethnic minority background.

Respondents with Asian, South Asian, North African, Sub-Saharan African backgrounds, as well as Roma, more frequently say that they were stopped by the police because of their immigrant or ethnic minority background. On average across most target groups surveyed, the police stopped young people with immigrant backgrounds more often than older people, and men more often than women. Among Roma, the rates of police stops are quite similar across different age groups. Roma women and men also believe to the same extent that the most recent police stop was because of their minority background.

Figure 28: Most recent police stop being perceived as ethnic profiling among those who were stopped in 5 years before the survey, by gender and target group (%)

Notes:
* Out of respondents who were stopped by the police in the five years before the survey (n=6,787); weighted results.
* Results based on a small number of responses are statistically less reliable. Thus, results based on 20 to 49 unweighted observations in a group total or based on cells with fewer than 20 unweighted observations are noted in parentheses. Results based on fewer than 20 unweighted observations in a group total are not published.
* Questions: "In the past five years in [COUNTRY] (or since you have been in [COUNTRY]), have you ever been stopped, searched or questioned by the police?", "Do you think that THE LAST TIME you were stopped was because of your ethnic or immigrant background?"
* Acronyms for target groups refer to immigrants from [country/region] and their descendants: TUR = Turkey, SSAFR = Sub-Saharan Africa, NOAFR = North Africa, SASIA = South Asia, ASIA = Asia, RIMGR = recent immigrants from non-EU countries, ROMA = Roma minority.

Source: FRA, EU-MIDIS II 2016

Based on these experiences, it seems that discriminatory police practices affect certain racialised groups more than others. Law enforcement authorities have a duty to treat everyone respectfully and to address the needs and rights of all victims.

Protection by legislation

A comprehensive system of protection against discrimination requires first and foremost the effective enforcement of its legal framework, to ensure that individual rights and obligations are respected in practice. The Racial Equality Directive has shaped legal protection against discrimination on the grounds of racial or ethnic origin for over two decades.[1] It applies to both the private and public sectors. It prohibits direct and indirect discrimination on the grounds of racial or ethnic origin in the areas of employment and occupation, education, social protection including healthcare, social advantage, and access to and supply of goods and services available to the public, including housing.

The report on the application of the Racial (and Employment) Equality Directive, published by the Commission in March 2021, concluded that closer monitoring by Member States of the implementation of the Directive(s) was needed, in particular in relation to protection against victimisation and the application of effective, proportionate and dissuasive sanctions. It pointed at the need to raise awareness among those particularly at risk of discrimination about their rights and existing support mechanisms. The report also stressed the need to increase trust in the authorities and to facilitate access to justice.

Unlawful profiling

Profiling is commonly used by law enforcement officers to prevent, investigate and prosecute criminal

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[1] The use of the term 'racial origin' in the Treaty of the Functioning of the EU and Council Directive 2000/43/EC does not imply any acceptance by the European Union of theories that attempt to determine the existence of separate human races.

offences. However, profiling which results in discrimination on the basis of special categories of personal data, such as data revealing racial or ethnic origin, is illegal.

According to the Handbook on Preventing Unlawful Profiling by the European Union Agency for Fundamental Rights' (FRA), unlawful profiling is defined in two ways:
• when profiling is based solely on so-called 'protected grounds', which include 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, and sexual orientation
• when data collection by law enforcement authorities does not have sufficient legal grounds

Discriminatory ethnic profiling damages community relations and undermines trust in, and public cooperation with law enforcement authorities, which can make policing more difficult. Preventing unlawful profiling will not only keep law enforcement officers within the law, but it will also ensure that legitimate policing is understood and accepted by the general public. Boosting trust and confidence in law enforcement improves the effectiveness of policing and therefore contributes to increasing safety and security levels in society as a whole.

The European Commission against Racism and Intolerance (ECRI) General Policy Recommendation N°11 on combating racism and racial discrimination in policing proposes that Member States clearly define and prohibit racial profiling by law. In addition, Member States are encouraged to carry out research on racial profiling and monitor police activities to identify racial profiling practices, including by collecting data in respect of relevant police activities which is disaggregated by grounds such as national or ethnic origin, language, religion and nationality.

Recent ECRI reports reveal the extent to which racial profiling and racist police abuse continue to affect certain groups and how this has been exacerbated during the Covid-19 pandemic.

Risks in new technologies
The digital transition and development of new technologies can be used to strengthen the fight against discrimination and racism. But it can also bring new challenges to equality and non-discrimination, and equality of opportunities more generally if not sufficiently and adequately framed. The use of Artificial Intelligence (AI) systems can lead to biased results and have discriminatory effects. For example, studies have shown that AI-based facial recognition algorithms can exhibit high misclassification rates when used on some demographic groups, such as women and people from racialised minorities.

The European Commission in its 2021 proposed regulatory framework on AI highlighted the need for a regulatory and investment-oriented approach, specifically addressing the risks of bias and discrimination built in AI systems, including in the area of law enforcement. The EU data protection regulation also contains a number of safeguards regarding the processing of biometric data for the purpose of identifying a natural person.

Human rights-based approach in policing

A human rights-based approach in policing puts the rights of individuals and protected groups at the

centre of every decision and action. Every policy or training exercise and every operational application of powers and duties begins with a consideration of the rights at hand. Policies and practices should respect, protect and fulfil fundamental/human rights. Such an approach has been tried and tested and proved to be democratic, enabling people to know their rights and to claim and defend them. This approach also ensures a balance between rights and responsibilities.

A human rights-based approach has resulted in police becoming more professional, efficient, effective and ultimately endorsed by the public. Policing within a human rights-based approach is not subject to the whim of politics, to money or to power but beholden to and protective of the rule of law.[2]

Guiding questions:

- What are the challenges, including those brought by new technologies, to preventing and tackling racism and racial discrimination by and within the work of law enforcement authorities?
- How should these challenges, brought by new technologies, be tackled?
- Are there any good examples of law enforcement authorities adopting a human rights-based approach, in particular in a context of fighting racism and racial discrimination?
- Are there specific good practices of law enforcement authorities using new technologies to prevent and tackle racism or racial discrimination?
- What is the role of civil society organisations in relation to preventing and tackling racial or ethnic discrimination by and within the work of law enforcement authorities? What other organisations may play a useful role?

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[2] Human-Rights-Based-Policing-in-Ireland.pdf (iccl.ie)