
RACIAL PROFILING IN THE CZECH REPUBLIC

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Abstract. *Racial profiling is currently in the Czech Republic relatively an unknown term or a term connected with negative connotations. Profiling is a standard method of policing, however, it is also necessary to draw attention to the facts when this method may lead to racial or ethnic profiling. Unless relevant reasons are given for racial and ethnic profiling, this may be a discriminatory practice by the police authorities. In the Czech Republic, the issue of racial profiling is given rather negligible attention. There are only a few professional articles that do not address the issue of racial profiling as a complex phenomenon. Profiling itself can be seen as a legitimate and useful tool in identifying people who may be committing crimes, for example by concealing prohibited articles or likely to commit crimes in the future. This way of profiling must be based on professional assumptions resulting from behavioral training, not on racial, ethnic, or religious characteristics. Members of specific security forces can thus work with profiles that allow them to search for people who repeatedly visit specific places or, for example, make large purchases exclusively for cash. In the case of purely profiling, the profiles are less likely to be assessed as discriminatory based on race, ethnic origin, or religion.*

Keywords. *racial profiling, ethnic profiling, discrimination, public security*

Introduction

In 2018, the European Union Agency for Fundamental Rights (FRA) published a handbook in which it explicitly emphasized the degree of discrimination against people of minority ethnic origin in police checks. Profiling activity is a consequence of technological developments and is used in many areas of human activities, such as marketing, employment, law enforcement, and border controls. Profiling tools are used in law enforcement and border management. Profiling is a common and legal tool used by police authorities to investigate and prosecute crime, as well as to detect illegal immigration. However, illegal profiling can weaken trust in the relevant authorities, especially the police, and can stigmatize certain communities. This tension can in turn escalate relations between communities and relevant government agencies. (FRA, Guide, 2018, pp 15-40).

The **aim** of this article is to identify the main characters of racial profiling and its effects on police work. The colleration of racial profiling and negative effect on the society will be mentioned as well. In this paper, we want to briefly explain what racial profiling is and outline possible problems that arise in practice. The **research** objective and it's aim is to provide the reader with brief overview of the question what is racial profiling and what negative consequences this practice may have. As stated above, racial profiling is no research question in the Czech Republic. The information introduced are affected by the lack of any proffessional literature, police statistics or any relevant collection of the data relating to racial profiling. Thus the author must rely on descriptive methods and review of foreign sources and experience. The

question of why there are no statistics of racial profiling in the Czech police practice may remain open for further discussion.

Profiling

In general, we encounter the concept of profiling in terms of categorizing individuals according to pre-defined characteristics, which can be either fixed (gender, age, ethnic origin, etc.) or variable (shopping habits and preferences and other elements of behavior). An example of profiling can be the procedure of the insurance company in assessing the amount of premiums according to risks or the procedure of marketing companies, which, based on the results of profiling, target the sale of specific products to certain groups of end customers. The following text will address the profiling activities carried out by the police in the context of crime prevention activities. Police authorities can resort to profiling at virtually any time in the context of identity checks, pedestrian and vehicle searches, arrests and detentions, tracing operations, and automated data collection. The profiling of potential criminals is thus based on the use of various physical characteristics of the individual or appearance and behavior (or, for example, ethnic origin, method of dress, etc.). Profiling itself can be seen as a legitimate and useful tool in identifying people who may be committing crimes, for example by concealing prohibited articles or likely to commit crimes in the future. This way of profiling must be based on professional assumptions resulting from behavioral training, not on racial, ethnic, or religious characteristics. Members of specific security forces can thus work with profiles that allow them to search for people who repeatedly visit specific places or, for example, make large purchases exclusively for cash. In the case of purely profiling, the profiles are less likely to be assessed as discriminatory based on race, ethnic origin, or religion. And it is profiling that can easily become problematic, or even discriminatory at a time when there is no specific operational information to identify the suspect and where the profiles are based not on behavior but general characteristics such as race, ethnicity, or religion. Using profiling in a way that can be racially discriminatory is not only illegal but also not an effective means of combating crime. Discriminatory profiling can occur at both the organizational and operational levels, with the latter being less pronounced as individual police officers use stereotypes or generalize based on race, ethnic origin, or religion. Such behavior may be consciously motivated by personal prejudices or unconscious stereotypes. An example of discriminatory searches and profiling is the German police's computer search that aimed not to find so-called "sleeping terrorists" in 2001-2003 who had been trained in preparation for a future attack but had so far been integrated into society and engaged in no suspicious activity. Profiling consisted of determining the age range and Muslim origin (family or country of birth). During this process, data from 200,000 to 300,000 people were stored in a database. However, profiling did not lead to a single arrest. In 2006, the German Federal Constitutional Court ruled that this search based on a given profile was illegal and violated the individual's right to decide on his or her own personal data (FRA, 20210). Ethnic profiling can generally be defined as an activity that consists in institutionalized racism and consists in the discriminatory use of characteristic attributes (race, color, origin, language) as the only basis for police control (e.g., identification) (Dossier, 2016). The use of targeted ethnic attributes in profiling necessarily leads to disproportionate sanctions against minorities. This is contrary to the principle of equal treatment and may lead to illegal stereotyping and the generalization of criminal activity by members of this group. This in turn affects affected individuals, as they feel stigmatized as criminals and may feel excluded in their own country. Discriminatory profiling takes place not so much based on scientific procedures

but rather based on prejudice associated with the ethnic element of the profiled group of people. For ethnic profiling to be justified, the ethnic element must be only one of several characteristics of the profile (Sůva, 2011, pp 1-4). Profiling is a legitimate means of prevention and is part of the police's investigative work. Profiling must follow the principles of the presumption of innocence and impartiality. The indicators leading to the creation of a profile must therefore be based on evidence relating to a specific case. If there is no evidence and the profile is created only based on constant properties in the form of skin color or presumed migration background, that is a form of discrimination. Then there is talk of either 'ethnic profiling' or 'racial' profiling' (Dossier, 2016). Racial profiling is one of the most visible forms of structural racist violence, as inspections are carried out in public places. Racial profiling is also visible because people of a different color are "clearly" affected by it, and this police practice is not recognized as racism by much of society. Those who point to ethnic profiling argue that the discriminatory power of a state institution that has a monopoly on the use of force remains unquestioned. In general, racial profiling is based on physical, religious, or cultural differences in identifying dangers. Dealing with racial profiling also makes it possible to monitor how racial practices are changing. The fact that different people are affected by racial profiling can also be seen in the opposition to these police practices. Recently, new resistance movements such as the Black Lives Matter have formed not only in the United States and Canada but also in Western Europe. As the authors of the study "Racial Profiling and Anti-Racist Justice" (Wa Baile et al, 2019, pp 9-38) rightly point out, it is important that we are able not only to answer the questions of who is to blame, who is responsible, and who must answer, but also the public and the right to ask them. It is also necessary to ask why racist practices are recognized and encouraged.

Ethnic profiling became a phenomenon in the United States in the 1990s when the number of traffic checks for "non-white" drivers increased disproportionately. In September 2001, ethnic profiling moved to the area of religious categorization. The assignment to the religious category began to be used after the attacks in Madrid and London and Europe (Dossier, 2016). The European Code of Police Ethics contains guidelines for police conduct in the areas of police actions and interventions, police accountability, and police supervision. He emphasized the general principle that: "The police shall carry out their tasks in a fair manner, in particular by the principles of impartiality and non-discrimination". Separating individuals through the use of a single or determining factor in their race, ethnic origin, gender, sexual orientation, religion, or disability violates fundamental rights. Discriminatory profiling can reflect both individual and institutional prejudices. In addition to personal prejudices, stereotypes and discriminatory behavior towards individuals may stem from specific policing practices. Transparency of institutional procedures and practices can help address discrimination. When checking individuals, police officers often associate the reason for choosing one particular person with a "sense of intuition." This may be based on a combination of expertise and previous experience, but it may also reflect the conscious or subconscious bias of the police officer. To prevent illegal profiling, the competent authorities and individual police officers must consider whether their decision is justified by objective information (FRA, Guide, 2018, pp 15-40).

Following concerns about the role of race in police misconduct in investigating Stephen Lawrence's (Stephen Lawrence was a British black teenager who was assassinated on April 22, 1993 in a racially motivated assault) racist murder in the UK, the UK government has launched a large-scale investigation to identify "lessons to be learned about investigating and prosecuting racially motivated crimes." The investigation report, published in 1999, highlighted the problem of "institutional racism" in the metropolitan police, including differences in the number of stops and searches. The survey's recommendations, from racism awareness training to incident

reporting and recording, have been embedded in the overall demand for greater openness, accountability, and restoring confidence in the police service. Reviews published in 2009, ten years after the investigation, highlighted improvements in the way police interact with ethnic minority communities and investigate racially motivated crimes. However, they warn that blacks are much more likely to be stopped and searched than whites (FRA, Guide, 2018, pp 15-40). For example, the search form („stop nad search“ form) used by the West Midlands Police in the United Kingdom shows that the detainee is asked to identify himself or her as belonging to one of these ethnic categories, including 'other' options. The police officer performing the stop can add his findings if he does not agree with the identification of the stopped person. The Code of Exercise Powers states that police officers should explain to detainees that ethnicity information “is required to obtain a true picture of detention and inspection activities and to improve ethnic monitoring and address discriminatory practices (FRA, Guide, 2018, pp 15-40).

According to Professor del Carmen, who has dedicated his more than 20 years of training to police officers, there is very little research into how to identify racial profiling. There is some disagreement about how the relevant institutions can identify racist police officers. In addition to the glaring and obvious manifestations of racism, there is often a misconception that racial profiling can be easily identified in the law enforcement profession by simply checking video or audio records. However, according to Professor del Carmen, nothing could be further from the truth. In fact, it is very difficult to identify racism in law enforcement. The problem may be the fact that attention is paid to the so-called macro-level of the law enforcement, because they show patterns across the whole spectrum of given powers and, at the same time, it can hide shortcomings at the individual level. The most effective way to identify racism among police officers is to analyze the data at an individual level. The problem, for example, is that most laws that require law enforcement authorities to report traffic or motor vehicle data rarely or almost never require data at the level of individual police officers. In cases where an individual police officer appears to make more traffic stops (without legitimate legal justification) for blacks than for whites, and in addition, the police officer is found to have posted racist or insensitive comments on social media and is known in the department to be less tolerant of minorities, then there may clearly be strong indicators that this policeman should be the focus of the police itself (del Carmen and Brown, 2021, pp. 105-106).

Current issues of racial profiling in the Czech Republic

In practice, the results of police profiling are reflected in particular in the police officer's decisions "to stop, to ask to prove their identity, to whom to ask questions, to whom to carry out a personal search and sometimes to detain". Based on the FRA survey, that was conducted in all 27 EU countries and its base of respondents was 23,500 immigrants and ethnic minorities, the following results were derived for the Czech Republic concerning the Roma ethnic group: 66% of respondents stated that they were not checked by the police at all, 16% of respondents were checked, but they do not believe that the reason for this should be their ethnicity and 18% of respondents were checked and at the same time believed that this was done based on ethnic profiling. As mentioned above, the profiling and follow-up of selected persons are also reflected in the level of trust of these persons in the police, or in the willingness of these persons and members of minorities to cooperate with the police. The result can also be the inability of the police to perform their tasks effectively in a given social community. As an important moment,

it is necessary to mention the effective training¹ of police officers, that should also include anti-discrimination legislation, the issue of stereotypes and should also draw attention to the possible consequences of discriminatory behavior (Sůva, 2011, pp 1-4).

In the Czech Republic, the topic of ethnic and racial profiling in police practice is rather a marginal topic. The professional literature rather deals with the general phenomenon of discrimination, except for the article "The role of security forces in the protection of fundamental rights on the example of the so-called ethnic profiling" from 2017 (Tomoszek, 2017, pp 155-164). The issue of ethnic profiling was also dealt with by the representative of the Office of the Public Defender of Rights, Mgr. Eva Nehudková, who, however, focuses on foreign rather than domestic practice.² According to foreign literature (Stone, 2005) the most important moment of interaction between the police and the affected communities is building trust. One of the most important lessons learned from the first attempts to confront racial profiling was that success depends on how the police tried to correct the problems rather than whether they eliminated statistical differences. At the same time, it is crucial to involve members of the community in shaping the various strategies dealing with this phenomenon. The function of the so-called "police assistant" is also marginally related to the issue of profiling. On 22 January 2003, by Resolution No. 85, the Government of the Czech Republic adopted a draft National Strategy for the Work of the Police of the Czech Republic in Relation to Ethnic and National Minorities.³

The Strategy is an elementary conceptual material that touches on the issue of the relationship between minorities and the police in the Czech Republic and promotes the principles of modern policing in a multicultural society. The concept of the Strategy is based on the prioritization of preventive mechanisms of police work. The Strategy emphasizes that members of the Police of the Czech Republic have sufficient skills for policing in a multicultural society and proposes ways to involve members of national minorities in policing. The result of the Strategy was a project entitled "Assistant Police of the Czech Republic for Combating Usury in Socially Excluded Roma Communities". As part of this project, the function of the so-called "police assistant" was introduced into the institutional reality of the Czech Police, whose main task is to act in the community as a representative of the Czech Police and inform community members about the opportunities offered by cooperation with the police. The project is implemented in several regions of the Czech Republic. However, it must be stated that this Strategy is aimed at preventing specific criminal activity that members of the minority may commit in selected localities. This is not purely a question of profiling, but rather of cooperation between the Police of the Czech Republic and the given community, of establishing trust and providing assistance.

Conclusion

¹ E.g. in 2012, 684 police officers were trained in minority issues in the South Bohemian Region. See Zpráva o činnosti styčných důstojníků pro menšiny a jejich pracovních skupin za 2. pololetí roku 2012. Ministerstvo vnitra ČR, Odbor bezpečnostní politiky. Praha. 2013. Available at: <https://www.google.cz/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjs0Nz0p5j3AhXJNOwKHX2jDjQQFnoECAUQAQ&url=https%3A%2F%2Fwww.mvcr.cz%2Fsoubor%2Fzprava-o-cinnosti-stychnych-dustojniku-pro-mensiny-pdf.aspx&usg=AOvVaw2ptuKg4ZK1ho3oJRoxJB5H> (Accessed: 28. 5. 2022).

² Czech Television report from 13. 3. 2017. Available at: <https://ct24.ceskatelivize.cz/nazory/2056-144-je-v-poradku-kdyz-policie-cilene-kontroluje-romy-nebo-afroamericany-jen-vyjimecne> (Accessed: 28. 5. 2022).

³ Available at: <https://www.vlada.cz/cz/ppov/zalezitosti-romske-komunity/asistent-policie---cheb-5740/> (Accessed: 28. 5. 2022)

Profiling is a usual tool used by police authorities to prevent and investigate crime. However, it is crucial that profiling is designed on the basis of objective and relevant criteria that will not be discriminatory. Members of the police are under the scrutiny of the public, and any mistake will sooner or later become known to the public. In the Czech environment, relatively little space is devoted to this issue. When ethnic profiling is mentioned by the media, it is more of a presentation of foreign experience and practice. Even in the professional literature, this phenomenon is not paid attention to, with a few exceptions. It is a question of what is the cause. Several isolated cases dealing with discriminatory profiling can be found in case law. That is the case, for example, when the police demanded proof of the identity of the passengers on the train without a legal reason.⁴ But in the area of profiling, there are no available data in the Czech Republic that could be further analyzed and possibly verify the thesis that profiling occurs or not (Tomoszek, 2017, pp 155-164). The author assumes that if ethnic (discriminatory) profiling took place on a regular basis, the matter would resonate in society as well. That is the case, for example, in Austria, wherein the last few months, there have been growing voices following the establishment of an independent body to investigate the violence perpetrated by police officers, especially in the form of the use of coercive forces. The impetus for these efforts was several incidents from 2021. Some of these cases have already been heard in court, although others are still under investigation. What they have in common is the fact that, in the future, they could end up in front of a new office that would investigate police officers' mistakes and their allegations of ill-treatment. In such cases, the police are, in fact, investigating themselves, and critics often point to the fact that only a minor number of relevant allegations lead to prosecution or even conviction. Pertinent international requirements for effective investigations should be taken into account when proposing the establishment of an independent control body, in order to ensure a rapid, thorough, competent, impartial, and independent investigation and, if necessary, to prosecute allegations of abuse by the police officer.

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