



Comments of the European Network against Racism (ENAR)

European Commission against Racism and Intolerance (ECRI) Working group on combating racism and racial discrimination in policing

Draft ECRI General Policy Recommendation No. 11 on combating racism and racial discrimination in policing

May 2007

The European Network against Racism (ENAR) is a network of some 600 European NGOs working to combat racism in all EU Member States. Its establishment was a major outcome of the 1997 European Year against Racism. ENAR is determined to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national initiatives with European initiatives. Further information is available at: www.enar-eu.org

1. Introduction

Policing is an extremely complex area, and when it comes to policing diverse communities there are many challenges as well as opportunities, to enhance the capacity of our societies to promote respect for diversity. According to the 2005 ENAR European Shadow Report:

The main problem areas in terms of policing relate to: institutional racism; the use of racial profiling, over-policing; a lack of trust in the police force; lack of available data; lack of recording of racist violence and crime as such; lack of independent complaints mechanisms for complaints against the police themselves; poor relations between the police and ethnic and religious minority groups (especially youth); policing issues with regard to asylum seekers, including in places of detention; and stereotypes held by police that associate ethnic and religious and minority groups with terrorism, drug dealing and irregular immigration.¹

Experiences of criminal justice (including policing), whether as employees, victims, perpetrators or witnesses, are key to the broader inclusion and integration of ethnic and religious minorities. ENAR supports the call for legal clarity regarding racial profiling, and noted with concern the finding of the EU Network of Independent Experts on Fundamental Rights that there are deficiencies in national legislation in Europe “resulting in an insufficient protection against ethnic profiling”.²

Consequently ENAR identifies the ECRI initiative to draft a general policy recommendation on racial discrimination in policing as an extremely important contribution to the debate in Europe. ENAR welcomes the opportunity to contribute to the development of the recommendation.

The following comments reflect the outcomes of a series of discussions within the ENAR membership,³ and highlight priority issues for anti-racist NGOs across Europe. This response will provide a specific focus on racial profiling, as one of the most serious manifestations of racism in policing. Racial profiling has emerged as a key concern of the Network in recent years, not least in the context of the heightened debate on terrorism and security. This analysis is supplemented by the specific data on policing and profiling collected by ENAR members across Europe in ENAR 2005 Report on Racism in Europe.

Consequently this paper is divided into three main sections. The first outlines ENAR’s position that racial profiling is increasingly undermining experiences of policing and social inclusion in Europe today. The second section highlights the impact of these practices on minorities and broader society, while the third and final section offers some specific comments on the draft recommendation.

¹ ENAR, (2006) ENAR Shadow Report 2005, p. 22, available at: http://www.enar-eu.org/en/publication/shadow_reports/index.shtml

² EU Network of Independent Experts on Fundamental Rights (2006) Ethnic Profiling, p. 50.

³ This comment draws specifically on four recent discussions: (1) a seminar on counter-terrorism at the fourth ENAR General Assembly in November 2005; (2) a thematic discussion on racial profiling during the fifth ENAR General Assembly in November 2006; (3) the ENAR ad hoc group on social and economic inclusion held during March 2007; and (4) a workshop on racial profiling during the ENAR Strategic Congress in April 2007, which specifically considered the draft ECRI recommendation.

2. Racial profiling in Europe – a 21st century problem

According to the analysis of ENAR members racial profiling is evident in the work of the police in nearly all countries in Europe and is based on police stereotypes which might be described as associating ethnic and religious minority groups with terrorism, drug dealing and irregular migration. Groups that appear to be the main targets of racial profiling include Muslims, Roma, youths from ethnic and religious minority groups, and asylum seekers. Experiences of racial profiling can be informed by multiple forms of discrimination, and in particular the intersections between race and age and gender can prove particularly problematic. Individual ENAR members from all over Europe consistently describe experiences of profiling.

The involvement of police in immigration matters and increased powers (and discretion) in this regard are of particular concern, as racial profiling has been identified as a clear outcome of this situation. The 2005 Shadow Report concluded that:

“There is clear evidence that anti-terror measures have been put in place in a number of countries that are resulting in racial profiling, targeting Muslims and immigrant communities specifically.”⁴

“Measures adopted by governments to counter terrorism are causing serious concerns for the protection of human rights and the racialisation of the security agenda.”⁵

What is clear from ENAR’s analysis is that no society escapes the phenomenon of racial profiling, however very often this problem remains unacknowledged in official circles, and its impact underestimated. Racial profiling has long been acknowledged in some countries such as the US and the UK, however many European countries, have yet to seriously address this phenomenon. Specific examples which have emerged from ENAR’s 2005 analysis include:

- In Italy police were found to be the second largest group of offenders with regard to racist crime. Police violence was also highlighted in Italian temporary stay centres where asylum seekers whose applications for asylum have failed as well as irregular migrants are detained.
- A survey carried out by the National Commission on Security Deontology in France revealed that persons of ‘foreign origin’ are more likely to be victims of police violence and abuse than the general population.

Racial profiling can be both intentional and inadvertent, however increasingly there is concern amongst ENAR member regarding official sanctioning of racial profiling practices, particularly in the context of the heightened security environment. A key illustration of this is the introduction of legislation which facilitates profiling practices. Examples include:

- In Germany the Residential Restriction Obligation Pass Law (Residenzpflichtgesetz) restricts freedom of movement of asylum seekers. It is

⁴ ENAR, (2006) ENAR Shadow Report 2005, p. 13, available at: http://www.enar-eu.org/en/publication/shadow_reports/index.shtml

⁵ ENAR, (2006) ENAR Shadow Report 2005, p. 29, available at: http://www.enar-eu.org/en/publication/shadow_reports/index.shtml

described in the ENAR report as the legal base for controlling mainly black people in public places such as trains or stations.

- Since January 2005 police in the Netherlands can ask for proof of identity.
- Muslim women were disproportionately affected by an ordinance proposed by the Mayor of Treviso (Italy) in 2004 that forbade the covering of one's face on the municipal territory. The development has been described as the Treviso ordinance 'against the Burqah'. In August 2005, the Court of Justice of Treviso dismissed the case of a woman of Bengali origin who had been denounced by traffic police in Treviso as a consequence of the ordinance. The ordinance has since been cancelled.
- The ENAR report on Austria argues that the extension of powers of the police in the Aliens Police Act 2005 is based on the assumption that in principle 'aliens' constitute a danger to public security"
- In Ireland, recent legislation gives police greater powers to stop people and request identification and discussions around future immigration and residency policy are underpinned by a restrictive notion arising from a security agenda.

An increasingly tolerance, and identification of a need, for such practises is informing police action across Europe.

- The ENAR report on the Netherlands also provides evidence of active targeting of Muslims, including measures which are aimed at mosques and Islamic organisations. It is reported that the Dutch government has made reference to what it has termed 'Islamic terrorism'.

ENAR members have expressed particular concern regarding the use of new technologies. For example recent proposals in Germany suggest the use of computer viruses to monitor computer use of suspicious individuals. There are also indications that increasingly technological advances in areas outside of policing are being used for security purposes, which could lead to increased practices of racial profiling. For example practices whereby visual motorway footage is used to identify suspicious behaviour.

The use of language such as 'Islamic terrorism' by official and media sources, lends itself to a broader perception within society that such practices are legitimate, and underpins existing stereotypes and fears.

3. Impact of racial profiling on diverse societies

The changing security environment has dramatically impacted policing practices in Europe, which in turn undermine the development of diverse societies from the perspective of both individuals and communities. Racial profiling and other police practices, not only undermine the experiences of individuals from ethnic minority communities, but also create broader negative perceptions within those communities, and have the potential to damage broader community relations.

Individuals

Frequently ENAR members describe individual experiences of profiling. Such experiences are degrading and undermine human dignity violating a variety of human rights, including the right to privacy, freedom from racial discrimination, and access to justice. Despite a lack of research and data in this area, anecdotal evidence clearly suggests that this can have the impact of forcing individuals to change their

behaviour, in order to try to avoid such incidents or, more seriously, lead to alienation and broader exclusion. In some cases there may also be a clear economic impact on the individual, such as for instance in cases where a local business is repeatedly targeted on the basis of the ethnic profiling of the owner.

Communities

Regardless of whether profiling is extensively used, intentionally or unintentionally, the perceptions amongst minority communities that its use is widespread is extremely damaging to the broader inclusion of those communities. The realities and perception of profiling across Europe undermine relations between the police and ethnic and religious minorities, which is damaging not only for police effectiveness but also for the broader social inclusion agenda.

Societies

Racial profiling as a policing practice and political rhetoric reinforces existing stereotypes and can lead to a heightened sense of fear amongst majority communities. Consequently undermining community relations and contributing to increasing prejudice. This prejudice can inform interaction with minorities at all levels of society including education, employment and service provision.

ENAR members are particularly concerned about the negative role of the media in this regard, for example:

“The effect of terrorism and counter terrorism measures have trickled out into the general public as is demonstrated by a Danish poll in the Copenhagen Post, which revealed that more than one in four Danes said they had become more suspicious of Muslims.”

4. Specific comments on the draft recommendation

The draft general policy recommendation represents a comprehensive analysis of the problems of policing in diverse societies, and in particular of the concerns relating to ethnic profiling. The draft presents detailed suggestions for moving forward, and in ENAR’s view will make a substantial contribution to highlighting this issue. ENAR looks forward to drawing on the recommendation, following its adoption, at both the national and European levels.

The draft responds to the wide variety of concerns which have been raised by ENAR members, and the following specific comments are intended to augment the existing framework.

Preamble	In the context of the recent political agreement on an EU Framework Decision on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law, ENAR believes a reference to this text would provide further impetus to the implementation of effective legal measures in EU member states.
	In stressing the positive role of the police in combating discrimination and promoting human rights, ENAR believes a reference to community policing and the need to enhance direct participation of local communities is an important pre-requisite to fulfilling these objectives.

Definition	It is important to note that racial profiling impacts practices beyond policing. In the explanatory memorandum a number of important clarifications are made, ENAR would recommend incorporating these into the definition of racial profiling, including that the term police refers to all law enforcement practices. In particular recommendations should be made concerning the monitoring of profiling practise by related bodies, including border control mechanisms.
Reasonable suspicion	ENAR strongly supports the call for introduction of a reasonable suspicion standard, and would welcome additional details on this subject in the substantive text of the recommendation, including the reference to objective criteria included in the explanatory memorandum.
Complaints	Sub section II.8 regarding supports to victims should include the provision that such support are independent of the policy. Emphasis should also be placed on the need to proactively encourage reporting.
Sanctions	It is crucial that appropriate and dissuasive sanctions are in place for racial profiling activities. In particular efforts should be made to make the general public and minority communities aware of these sanctions and when they have been applied in order to counter-act the perception that racial profiling is an acceptable practice. Appropriate sanctions include the use of audits and investigations of a general service where a suspicion of profiling exists.
Monitoring	Subsection III.13, should include a provision that the results of monitoring of racists incidents, including the tracking of these incidents through the criminal justice system, is made publicly available in a regular and timely manner.
Promote equality	Specific reference should be included in section IV regarding the need for policies to actively make minority communities aware of the duty of law enforcement officials to promote equality. This information should be made available in a variety of languages. Similarly frameworks for dialogue with minority communities should be widely advertised to encourage maximum participation.