

Racial or Ethnic Profiling Defined and in Law



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Defining ethnic profiling



“Ethnic profiling” is the use by police, security, immigration or customs officials of generalizations based on race, ethnicity, religion or national origin - rather than individual behavior or objective evidence - as the basis for suspicion in directing discretionary law enforcement actions.

When you are targeted because of who you are and not what you have done.

European Network of Independent Experts on Fundamental Rights



- Clearly prohibit ethnic profiling
- Facilitate proof through the use of anonymous ethnic statistics
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- Define with greatest clarity the conditions for law enforcement to exercise their powers
- Sanction ethnic profiling not only through criminal penalties, but also through civil, administrative or disciplinary actions, in as much as evidentiary rules in criminal proceedings may constitute an obstacle to accountability

International Law and Key Standards



- **International Covenant on Civil and Political Rights (ICCPR)** – *The Human Rights Committee (UNHRC)*
 - ✓ UNCHR: *Rosalind Williams v. Spain* (2009) states that ethnic profiling constitutes unlawful discrimination
- **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)** – *The Committee on the Elimination of Racial Discrimination (UNCERD)*
 - ✓ Concluding observations by **UNHRC, UNCERD**, and recommendations by **special procedures**

European Law and Key Standards

Council of Europe



- **European Convention on Human Rights (ECHR)** Article 14 (non-discrimination) must be joined to another right, e.g. Article 5 (liberty), Article 8 (private life), Article 2 of Protocol No. 4 (freedom of movement). **Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms**
 - **European Court of Human Rights (ECtHR)**
 - ✓ *Timishev v. Russia* (2005)
 - ✓ *Gillan and Quinton v. the UK* (2010)
- **European Commission on Racism and Intolerance (ECRI)**
 - General Policy Recommendation No. 11
 - Country reports
- **CoE Human Rights Commissioner**

European Law and Key Standards

European Union



- **European Race Directive** prohibits *direct* and *indirect* discrimination in the delivery of goods” and “services.
- **Direct and explicit ethnic profiling** = purposefully racist behaviour of individual officers or explicit orders to target groups based on profiles including race, ethnicity or other prohibited factors.
- **Indirect profiling** = differential policing of specific areas with disparate impacts on ethnic groups and/or the cumulative effects of unconscious use of racial stereotypes (implicit bias).
- Evidentiary standards:
 - Reversal of the burden of proof
 - Positive obligation on states
 - Use of statistics

Cases before the ECtHR



- **Zershan Muhamed v Spain (communicated)**
 - Protocol 12 Discrimination
 - Right to private life
 - Right to a fair hearing

- **Seydi v France (submitted)**
 - Article 14 non-discrimination
 - With Article 8 and Article 2, Protocol 4

Standards and Remedies Sought



- Consolidate legal standard prohibiting ethnic profiling
- Requirement of reasonable suspicion for police stops
- Clarify prima facie evidence of discrimination in profiling that triggers reversal of the burden of proof
- Establish weight of statistics in evidence
- Civilian oversight of police

Thank You



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