

Racial and religious profiling must not be used in the combat against terrorism

Category: Article

Profiling has been increasingly used in the fight against terrorism since nine eleven: from the German data-mining initiatives to identify so-called terrorist "sleepers", to the United Kingdom's stop and searches under the Terrorism Act 2000, and beyond to EU policy. The fear of further terrorist attacks is creating a new form of "terrorist" profiling, where Muslims or people who appear to be of Middle-Eastern decent are being discriminated against in the name of national security. This approach is not acceptable. Before going any further, a distinction must be made between various kinds of profiling. In criminal investigation it is necessary to define physical, psychological or behavioural indicators which might help linking a particular type of person to a particular crime. Their use in law enforcement decisions is undeniable, as they can narrow the focus of an investigation. In principle, profiling must therefore be seen as a permissible means of law enforcement activity. However, this technique has been applied in a deeply problematic manner in the struggle against terrorism. The indicators used have included general and broad characteristics such as a person's race, ethnicity, national origin or religion. The risk of discrimination in carrying out such profiling exercises is certainly high. Taking law enforcement decisions based on grounds such as race or colour may violate the principle of non-discrimination as enshrined in Article 14 of the European Convention on Human Rights.

The European Commission against Racism and Intolerance (ECRI) has in a Recommendation expressed its concern about the consequences of the methods used in the combat against terrorism. Certain groups of persons, including visible minorities, have become particularly vulnerable to racism and/or to racial discrimination across many fields of public, including when subjected to checks carried out by law enforcement officials.

This tendency was confirmed by the Open Society Justice Initiative, who has been monitoring ethnic profiling in Europe for the last three years and concluded in a recent publication that such profiling is now widespread. It may consist of stop-and-searches by the police, data mining exercises, or mass identity checks at places of work, businesses or homes.

This issue will be addressed in the next Recommendation (No. 11) from ECRI, which focuses on the theme of combating racism and racial discrimination in

policing. In particular, it recommends that racial profiling be banned.

The underlying assumption of the current terrorist profiling is dangerous, namely that young men of Muslim faith or Middle-Eastern appearance are particularly likely to be involved in terrorist activity. The result of this approach has been that a large number of totally innocent persons have been harassed and treated as suspects for no good reason.

The complexity of the terrorism situation worldwide and the constant development of terrorist aims and methods make it difficult to develop accurate profiles. Terrorist groups themselves are no doubt aware of such profiles and are targeting recruits who do not fit into the preconceived stereotypes.

Moreover, there is no good evidence to say that profiling so far has been effective in the fight against terrorism. Overly broad profiles have the effect of casting the net too wide, and therefore wasting valuable police time and resources.

Terrorist profiling may also be counter-productive. It tends to alienate and humiliate large sections of society. At the same time it "legitimizes" discrimination in the eyes of the general public in a most unfortunate manner. The result is that it divides society and pits the stigmatized group against the law enforcement agencies.

This in itself is dangerous since the police need the trust of the community for effective intelligence gathering. The OSCE's High Commissioner on National Minorities underlined the importance of community policing in his 2006 Recommendations on Policing in Multi-Ethnic Societies. How should the law enforcement agents act in order to be effective without at the same time harming those innocent?

Surveillance, searches or other similar law enforcement activities should be strictly based on individual behaviour and/or accumulated intelligence, rather than sweeping generalizations. By way of example, stop-and-searches may be legitimate when the profile used is based on a specific and time-bound description of a particular suspect.

It would be naïve to underestimate the level of the terrorist threat which we face as citizens of Europe today. It is clear that Council of Europe Member States must take appropriate measures to counter terrorist threats and safeguard the lives of those within their jurisdiction. Effective police methods, including in the area of intelligence gathering, should be developed to replace the current profiling.

The struggle against terrorism implies also long-term measures with a view

to preventing the causes of terrorism, and not just short-term responses. This requires, for example, further efforts to promote cohesion in our societies and a multicultural and inter-religious dialogue.

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Notes

- The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, addressed the issue of terrorist profiling in his report of 29 January 2007. - The Open Society Justice Initiative released a new book on 27 April 2007 examining ethnic profiling by police in Europe. "I Can Stop and Search Whoever I Want"—Police Stops of Ethnic Minorities in Bulgaria, Hungary and Spain.

Also available at the Commissioner's website at www.commissioner.coe.int