

ETHNICITY AND NATIONALISM

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Police Ethnic Profiling in Hungary – Lessons from an International Research*

In Europe, there are long-standing allegations against the police about the harassment of Roma and other visible minorities in ordinary crime prevention, and according to new reports, law enforcement officials are targeting Muslims in name of the fight against terrorism. In Hungary, anti-Romany prejudices are particularly strong. According to a 2006 survey, almost two-thirds (62 per cent) of the adult Hungarian population agreed fully or to some degree with the claim: “the tendency to commit crime is in the nature of the Romany.”¹ A 1997 survey by the Ministry of Interior showed that 54 per cent of police perceived criminality as a central element of Roma identity,² and from 2002 to 2003, the Hungarian Helsinki Committee carried out research on discrimination against Roma in the criminal justice system. By scrutinizing court files to discover how authorities initially detect perpetrators, this study found that police heavily employ racial profiling when working in Roma communities. The researchers found that Roma offenders and suspects were significantly more likely to have been identified via random police stops and searches while other investigatory methods – particularly being caught in the act – were the dominant causes for the capture of non-minority

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¹ See <http://www.tarki.hu/kozvelemeny/kitekint/20060201.html> (02.10.2006)

² Gy. Csepeli, A. Örkény, M. Székelyi: Szeretelen módszerek [Insubstantial methods]. In Csányi (ed.): *Szöveggyűjtemény a kisebbségi ügyek rendőrségi kezelésének tanulmányozásához*. Budapest: OSI-COLPI, 1997. 130–173.

suspects.³ The findings of the survey appeared to be fully in accordance with similar Anglo-American studies that analyze discrimination against visible minorities in criminal justice procedures.

In its 2005 report, Amnesty International emphasized that discrimination against the Romany continue to exist in all spheres of everyday life and criticized the police for not exploring the everyday discrimination that are behind criminal acts.⁴ Since the mid 1990's, ill-treatment of the Romany in Hungary has been widely documented by human rights NGOs such as the Legal Defense Bureau for National and Ethnic Minorities (NEKI),⁵ the Hungarian Helsinki Committee (HHC),⁶ the Romani Civil Rights Foundation (RPA)⁷ as well as the Parliamentary Commissioner for National and Ethnic Minorities.⁸ Even the European Commission against Racism and Intolerance (ECRI) has expressed concern "at evidence that severe problems in the administration of justice exist as regards discrimination against members of the Roma/Gypsy community [...]"⁹

Circumstantial evidence from other stages of the criminal justice system also indicates the likeliness of racial profiling. According to the 2001 EUMAP report,¹⁰ "research indicates that Roma are more likely than non-Roma to be remanded in pre-trial detention or ill-treated by the police¹¹, and tend not to have legal representation during investigation.¹²" ECRI has expressed concern "at evidence that severe problems

³ See Lilla Farkas, Gábor Kézdi, Sándor Loss and Zsolt Zádori: A rendőrség etnikai profilalkotásának mai gyakorlata [The Current Police Practice of Ethnic Profiling]. *Bellügyi Szemle* [Interior Affairs Review] Nr. 2–3, 2004.

⁴ Amnesty International (2006): *Magyarország 2005-ben*, available at <http://www.amnesty.hu/content.php?oldal1=8&oldal2=150> (27.09.2006)

⁵ See www.neki.hu

⁶ See www.helsinki.hu

⁷ See www.romapage.hu

⁸ See www.obh.hu

⁹ ECRI (2000)5, para.14

¹⁰ EUMAP *Monitoring the EU Accession Process: Minority Protection*. OSI EU Accession Monitoring Program 2001. 241.

¹¹ Hungarian Helsinki Committee and OSI-COLPI: *Punished Before Sentenced*, Budapest, 1997. See also UN Committee Against Torture, *Conclusions and recommendations concerning Hungary's third periodic report*. November 1998: "The Committee is also concerned about the persistent reports that [...] a disproportionate number of detainees and/or prisoners serving their sentences are Roma."

¹² A kirendelt védővel rendelkező fogvatartott személyek védelemhez való jogának érvényesülése a büntetőeljárás nyomozási szakaszában ["Realizing the right to

in the administration of justice exist as regards discrimination against members of the Roma/Gypsy community [...]. There are authoritative reports that Roma/Gypsies are kept in pre-trial detention for longer periods and more frequently than non-Roma, although the prohibition of . . . recording . . . ethnic origin of suspects makes it difficult to evaluate the extent of such discrimination.”¹³ According to the 2001 EUMAP report,¹⁴ “NGOs estimate that only five percent of Roma complaints of police abuse lead to convictions.¹⁵ The conclusion that a disproportionate number of cases brought by Roma are either ‘terminated’ after investigation or do not lead to convictions is supported in data from the town of Hajdúhadház, where fifteen cases brought by Roma in recent years against police officers remain either unresolved or ended in acquittal.”¹⁶

Even though racial profiling alone cannot explain it,¹⁷ the high proportion of Roma in prisons can also be understood as an indicator of racial profiling. In the mid-1990’s, research was published that estimated the percentage of Roma inmates.¹⁸ It revealed that, according to inmates’ definitions of self, 40 percent of the prison population is Roma; prison directors had much higher estimates (on average, 60 percent).¹⁹ Crime structure in the case of the Roma is very different from the majority population. Most often the motive behind Roma crimes is subsistence, which can be directly linked to their precarious social condition. This means that Roma primarily commit crimes against property (such as theft and burglary) and very rarely violent crimes (such as rape or homicide).²⁰

defense of detained persons with appointed defense counsels in the investigative phase of the criminal procedure”], Office of the Ombudsmen, 1996.

¹³ ECRI (2000)5, para.14.

¹⁴ EUMAP 2001. 245.

¹⁵ Legal Defense Bureau for National and Ethnic Minorities (NEKI) *White Booklet 1999*.

¹⁶ HRW *World Report 2000*, Human Rights Watch New York, 2000. 272. Half of the town’s police force was under investigation for abusive conduct at the time.

¹⁷ Along with other determinants, such as precarious social status or inadequate legal defense. See Huszár, László: Roma fogvatartottak a büntetés-végrehajtásban. *Belügyi Szemle*, Nr. 7–8, 1999. 124–133.

¹⁸ Huszár László: Romák, börtönök, statisztikák. *Amaro Drom*, 1997, August, 9–11.

¹⁹ Women Integration and Prison Project (MIP). Hungarian report “Data on Crime, Judicial and Prison data” 2004. <http://mip.surt.org/> (Unpublished)

²⁰ Huszár L., op.cit.; Póczik Szilveszter: Életviszonyok, közbiztonság, bűnelkövetők és sértettek roma kisebbségiek körében. Roma bűnelkövetők a börtönökben.”

This article highlights the discoveries of international research that seeks to document the existence of ethnic profiling in Hungary, Bulgaria and Spain. According to a standard definition: “Racial or ethnic profiling, as the term has evolved in the United States, encompasses the use by police of racial or ethnic characteristics as one set of clues among others to decide whom to stop, question, search, or otherwise investigate for as-yet unknown criminal offences. In this definition, profiling involves the use of racial or ethnic characteristics to *predict* which persons among some group might be involved in criminal behavior, even where there is no evidence yet of any particular crime, and no unique suspect.”²¹

Based on our respondents’ reports, ethnic profiling – a well-documented phenomenon in international (mostly English-language) literature – exists in Hungary as well as in the other surveyed countries. Ethnic profiling – a procedure that is discriminatory in its content – is characterized by an important feature: not only is it based on the racist prejudices of the officer conducting stops, but it is also based upon seemingly rational presuppositions (each of which has been refuted by empirical studies in the Anglo-American context) that posit a link between ethnicity and the likelihood of criminal behavior. Our study shows that such presuppositions are widespread among the police as well as within the general population – and to a significant degree, even among the Roma. There is strong societal support for ethnic profiling inasmuch as the majority of people, being fully aware of the arbitrariness of stop-and-search procedures, would not consider police presence – with the police enjoying an essentially unlimited range of competences – as harassment and are in favor of the current and a possible increase in the control of “suspicious” individuals and groups (including the Roma and migrants).

Part I of this essay delineates ethnic profiling’s general practices as well as describes the Hungarian legal framework pertaining to the relevant police operations. Part II then discusses the results of a study sponsored by the Open Society Justice Initiative as part of a comparative research program. This study explores experiences of police stops

Office for National Development. Hungary. 2004. <http://www.nfh.hu/index2.htm?p=2&t=2&i=2967#Biztonsag>

²¹ Harris, D.A.: *Confronting ethnic profiling in the United States*. New York: Open Society Justice Initiative, 2005. 67.

and ID checks in Bulgaria, Hungary and Spain and relates these experiences to ethnicity.

*I. Ethnic Data Processing and Ethnic Profiling
– General Observations and the Hungarian Legal Framework*

*1. Ethnicity and Policing*²²

Before we examine constitutional standards regarding police use of ethnic profiling, two preliminary issues must be addressed. One concerns racial and ethnic classifications by law enforcement authorities; the other centers on constitutional standards pertaining to law enforcement's justifications (standards of suspicion or probable cause) for initiating action. I will discuss these in turn.

Because dozens of circuit and Supreme Court decisions address the issue, American case law and jurisprudence provide a good illustration of the legal framework used by police to process ethnic data. A crucial difference between the continental conception and the Anglo-American one should be noted at the outset: unlike the continental tradition, the U.S. and the UK have a generally accepted the practice of processing ethno-racial data.²³ Thus, in the latter countries, ethno-racial data processing does not constitute a sensitive issue from the perspective of data protection. As spelled out in a set of detailed court decisions, the law distinguishes four ways in which police action may rely upon ethnicity or race and applies different constitutional measures for each of these measures.

The first and unproblematic scenario is when a victim or witness to a crime provides a description of a specific suspect which includes ethno-racial characteristics. In these situations, courts have invariably found that it was legal to use such information – in search warrants, for example.

²² For a more detailed elaboration of the first four sections, see *Ethnic discrimination and the war against terrorism – The case of Hungary*. In Gábor Halmai (ed.): *Hungary: Human Rights in the Face of Terrorism*. Special English Edition of *Fundamentum, Human Rights Quarterly*, Vandeplass Publishing: Human Rights Series 1, USA, 2006. 31–46.

²³ A note about terminology: besides obvious differences, I will treat racial, ethnic and nationality-based terminology as synonymous.

A second, somewhat different scenario is one in which the description provided by the victim or witness contains very little concrete detail about the suspect beyond her race or ethnicity. In several such cases, the court's stance was that race and ethnicity can be operative in negative descriptions only; for example, if the informant identified the perpetrator as black, then that information can serve as basis for the police not to stop whites and Asians, but it would be discriminatory for them to start stopping blacks without any further reason for doing so beside their skin color.²⁴

The third case is racial profiling, which will be discussed at length below. This practice relies on the tenet that ethnicity in itself makes criminal involvement more likely, and this assumption is not based on any specific or general information about a given, concrete individual.

The fourth and final case, which is a prominent feature of the war against terror, involves preventive measures that rely on official, written directives about certain racial, ethnic, national or citizenship-based considerations. In these cases, the application of ethno-racial profiles is no longer left to the discretion of the police, border guards and airport security personnel. Instead, ethnic profiling becomes an officially formulated prescription.

2. Suspicion, Probable Cause and Authorization to Act

Under what conditions might the police (or other law enforcement agencies) initiate action? Of course, the standards change according to how concretely specified the perpetrator is, what the degree of suspicion is, and in what capacity the law enforcement agent is acting. The procedure can have various legal foundations: random, voluntary encounter; consensual questioning that does not involve coercion – where, in theory, the citizen may disregard the question; stopping and questioning during an investigation; vehicle control; border control, etc. We may well ask: is it justifiable to institute a road block obstructing everyone's

²⁴ In this manner, if we know only that the perpetrator is black, then the law enforcement syllogism assumes the following meaning: the perpetrator is black and the suspect is white. From these it follows that the perpetrator cannot be identical with the suspect, but it does not follow from the pair of claims that the perpetrator is black as is the suspect (or the pedestrian or driver) so that the suspect is the perpetrator. See Sharon Davies: Reflections on the Criminal Justice System after September 11, 2001. *Ohio State Journal of Criminal Law*, Fall, 2003. 66.

– and not just a specific ethnic group’s – way? What kind of suspicion, if any, is necessary for such a measure? Are random checks acceptable?²⁵

The world over, courts have attempted to clarify the issue, but the task has not been an easy one because of the notorious difficulty in classifying scenarios in which a member of a minority group is stopped. Is it a case of crime prevention based on ethnic-profiling? Or is it an investigation with a specific suspect? A stop in which a minor violation is a pretext for stopping an individual? Or outright racist harassment?

The situation is complicated because proof of unwarranted ethnic-motivation would require that the court (or legislator) state that police action can be initiated exclusively on the basis of *individual* behavior or suspect description. But none has ever done so. The US Supreme Court has even upheld many other types of *general* control, albeit ones that were not tainted by ethnic classification. Examples include but are not limited to alcohol tests ordered for railroad workers involved in an accident,²⁶ sobriety tests around nightclubs,²⁷ and alcohol tests prior to after-hours extra-curricular school events.²⁸

3. Policing, Discrimination, and Ethnic Profiling

American studies on (mostly) highway patrols have shown that blacks, comprising 12.3 percent of the American population, are significantly

²⁵ For example, in the 1979 *Delaware v. Prouse* case (440 US 648, (1979)) the Supreme Court found random stops and checks to be unconstitutional. (See for example Anthony Thompson: *Stopping the Usual Suspects: Race and the Fourth Amendment*. *New York University Law Review*, October, 1999. 973–974.) In the 2000 *City of Indianapolis v. Edmund* case (531 US 32 (2000)), the Court still found it unacceptable to have a road check following a roadblock, with the involvement of drug-searching dogs. But the Court upheld a roadblock in the context of a 2004 investigation concerning a hit-and-run accident, when during the time when the crime was committed, the road was blocked, and without using further coercive measures the, police politely asked motorists about the case and showing them photographs. (*Illinois v. Lidster*, (000 U.S. 02–1060 (2004)), see also Thompson, *op. cit.* p. 920. The question is, of course, whether the Court’s position would be similar if the roadblock were put in front of a mosque or a Middle-Eastern grocery store...

²⁶ *Skinner v. Railway Labour Executives Assn*, 489 US 602, (1989)

²⁷ *Police v. Sitz*, 496 US 444, (1990)

²⁸ For example, *Veronia Sch. Dist. 47J v. Acton*, 515 US 646 (1995), *Bd. of Educ. v. Earls* 536 US 822 (2002)

overrepresented among those stopped and checked by the police.²⁹ In New Jersey, between 1994 and 1999, 53 percent of those stopped by the police were black; 24.1 percent were Hispanic, and only 21 percent were white.³⁰

This phenomenon sheds light on the fact that direct or indirect discrimination against members of a minority group need not be the result of intentional and/or flagrantly illegal behavior; instead, discrimination may be due to the questionable application of apparently legal measures.

The institution known as ethnic profiling was first developed in the U.S. for detecting drug couriers. It was later implemented in traffic control and, more recently, in anti-terror procedures. At the heart of these procedures is the idea that the perpetrator's race or ethnicity serves as a useful tool for criminal detection; thus, stops are not induced by suspicious or illegal behavior or by a piece of information that would specifically concern the defendant. Instead, a prediction provides grounds for police action: based on the high rate of criminality within a particular ethnic group or its dominant (exclusive) involvement in committing acts of terror, it seems like a rational assumption to stop someone on ethnic grounds. Measures are, therefore, not applied so much on the basis of an individual's (suspicious) behavior but are rather based on aggregate reasoning. The goal is to make an efficient allocation (based on rational interconnections) of a limited amount of police and security resources. After all, the majority of the prison population is Roma (black, etc.), and almost all of the terrorists are Islamic fundamentalists (mostly from Arab countries). Accordingly, appropriate restriction of the circle of suspects seems easily justifiable.

Originally, the procedure attempted to create a descriptive suspect-profile in order to facilitate the authorities filter out potential perpetrators through certain (legal) behavior and circumstances. In the case of drug couriers, such a characterization might include short stops between significant drug sources and distribution locations, cash-paid airline tickets, and – based on criminal statistics – ethnicity, sex and age. The ethnic-profiling's case is further strengthened by the fact that gangs that play key roles in organized crime tend to be almost exclusively ethnically homogenous.

²⁹ <http://quickfacts.census.gov/qfd/states/00000.html>

³⁰ See Michael Buerger – Amy Farrell: The evidence of racial profiling: interpreting documented and unofficial sources. *Police Quarterly*, Vol. 5. Nr. 3, September, 2002. 290; David A. Harris: The Stories, the Statistics, and the Law: Why “Driving While Black” Matters. *Minnesota Law Review*, December 1999. 267.

The irony of the situation is that it was right around the time of the World Trade Center attacks that racial profiling was decisively rejected within professional as well as political circles. In the fall of 1999, 81 percent of those asked opposed stops and vehicle control based on ethnic profiling. By contrast, in a poll conducted a few weeks after September 11, 2001, 58 percent approved of the idea that Arabs (including American citizens) be subject to stricter security checks before a flight.³¹

In connection with anti-terror measures, there was a renewed debate over security measures based on ethno-racial profiling. Some commentators emphasize that ethnic profiling is unacceptable in principle. According to these critics, the result is the harassment of the innocent minority middle class, which is subjected to a kind of “racial tax” that affects all aspects of their lives. A further, undesirable result is the strengthening of racial/ethnic essentialism, reductionism to black and white (Roma and Hungarian; Arab and non-Arab, etc.).

Another, pragmatic criticism calls attention to the practical ineffectiveness of racial profiling: inherent in the *prima facie*, statistically-based plausible-reasoning is a profound (and verifiable) error. Studies conducted in New Jersey and elsewhere have targeted stops based on racial profiling that involve vehicle checks and body searches. The aim was to discern how effective these measures are in detecting drug possession and illegal possession of weapons. The studies have clearly demonstrated that there was no significant, tangible difference between the proportional hit rate within the white population and the non-white population. Not only did the study find that the authorities habitually stopped a disproportionate number of non-white drivers, it also confirmed that the hit rate does not justify ethnic profiling. Racial profiling relies on the assumption that ethnicity and a high rate of criminality are connected. This assumption, therefore, implies that the hit rate must be higher among, say, African Americans. For a long time, no one asked for verification of the effectiveness of this seemingly sensible connection; after all, a sufficient number of criminals were found among the disproportionately high number of minority members stopped. But, researchers have argued that this is not a cost effective method because the number of

³¹ Samuel R Gross – Debra Livingston: Racial Profiling Under Attack. *Columbia Law Review*, June 2002. 1413.

false negatives and false positives is bound to be extraordinarily large.³² In other words, the measures have a disproportionately negative impact on the law-abiding black (Roma, Arab) population while concurrently reducing the possibility of finding perpetrators from the majority population.³³ We might sum up the results thus: the retrospectively judged effectiveness (which was always assumed, rather than checked and confirmed) turns out to be illusory and does not provide an appropriate policing, prevention and security policy.

A third argument indicates the risks for law enforcement (policing and prevention) in alienating crucial minority communities. Apart from the problem of false positives and negatives, ethnic-profiling raises further, severe misgivings. The danger in alienating crucial populations is already familiar in the model of community policing. This model maintains that local policing is most effectively done with the community's active participation. Thus, law enforcement should not be an antagonistic, unjust, oppressive power but should rather help protect the peaceful, law-abiding people from the criminals whom it has pitted as the enemy. With respect to terrorism, we should not overlook the importance of community cooperation. It is no coincidence that the Bush government identifies truck drivers, cab drivers and parking meter attendants as high-priority potential informants (i.e. helpful in identifying bombers or suicide bombers) and, above all, the Muslim community, which can detect suspicious behavior.³⁴ Indeed, most of the American terrorists

³² See for example Mariano-Florentino Cuéllar: Choosing Anti-Terror Targets by National Origin and Race. *Harvard Latino Law Review*, Spring 2003; Leonard Baynes: Racial Profiling, September 11th and the Media. A Critical Race Theory Analysis. *Virginia Sports and Entertainment Law Journal*, Winter 2002. 12–13, and Deborah Ramirez – Jennifer Hoopes – Tara Lai Quinlan: Defining Racial Profiling in a Post-September 11 World. *American Criminal Law Review*, Summer, 2003. 1213.

³³ Consider the fact that the name of Yigal Amir, Yizchak Rabin's assassin would not have appeared in any kind of assassin profile; nor would the person who first blew up a commercial aircraft – she was a woman who wanted her husband dead in 1949. Gregory Nojeim: Aviation Security Profiling and Passengers' Civil Liberties. *Air and Space Lawyer*, Summer, 1998. 5.

³⁴ See for example Steven Brandl: Back to the future: The implications of September 11, 2001 on law enforcement practice and policy. *Ohio State Journal of Criminal Law*, Fall, 2003; Mark Osler: Capone and Bin Laden: The failure of government at the cusp of war and crime. *Baylor Law Review*, Spring 2003.

identified up until recently were caught based on information provided by community reports.

Having briefly highlighted some general questions relating to the ethnically discriminatory elements of “ordinary” and anti-terrorist policing and law enforcement practices, let us turn our attention to the case of Hungary.

4. The Hungarian legal framework

According to the Hungarian legal framework, the police have an extremely wide – almost indefinite – breadth for high-discretion stops; they have full discretion to perform routine control-checks on motorists and pedestrians. The police may stop anyone at any time and ask the questions it deems necessary.³⁵ The vacuous language of Article 29 of the Act on Police³⁶ gives full authorization to the police to stop and ask for the identification “anyone, whose identity needs to be established.” If the need arises – for example, because the individual is not willing to cooperate or her identity cannot be sufficiently established – she may be searched³⁷ and can be arrested³⁸ and held for eight hours; if the process has not been successful, the chief of the local police unit can prolong this period for an additional four hours. Should this (maximum 12 hour) arrest not be sufficient, another type of detention³⁹ (“public order detention”) may be ordered. Including the time spent under arrest, this may take as long as twenty-four hours. For these stop-and-search procedures, no suspicion is needed; no probable cause standards are set forth, and as demonstrated above, unsuccessful identification itself may result in a maximum of 24 hours in detention. Apart from arrests or detentions, the police are under no obligation to provide an explanation – the only exception being when the individual herself requests such information.⁴⁰ The Constitutional Court ruled on several challenges to these provisions⁴¹ and has consistently dismissed petitioners’ claims, despite

³⁵ Article 32. of the Police Act

³⁶ Act 34 of 1994.

³⁷ Article 29.

³⁸ Article 33.

³⁹ Article 38.

⁴⁰ Articles 29 and 33.

⁴¹ Decisions No. 9/2004. and 65/2003

dissent that emphasizes the disproportionate length of the detention and the lack of motivation for speedy police procedures when detainees who are being held without having committed illegal offences are involved.

Another form of stop and search competences arises in the context of vehicle control. According to Article 44 of the Police Act, the police may at any time check the legality of vehicle operation and possession. The police may, therefore, randomly stop and check vehicle ownership documents, certificates for appropriate carbon-dioxide emission, motorway passes, etc. They may check the first-aid kit (a required accessory for all vehicles), the insurance contract leaflet of the vehicle, or the condition of the windshield wiper. Critics⁴² have argued that these stops raise constitutional concerns because a significant part of this type of control is administrative and should not be performed by police forces. For instance, in the case of a company car, checking the authorization from the manager is not a matter of policing per se but rather serves social security, tax, and administrative purposes.

Police competence raises another problematic point: the issue of reasonable suspicion and standards of probable cause. According to the Act on Criminal Procedure,⁴³ probable cause is needed for the initiation of a criminal procedure; an arrest or the above mentioned “public order detention” does not qualify as such. As a result – apart from failure to possess proper identification – a “simple” suspicion (the probability of criminal offence not exceeding 50 percent) also suffices for these coercive measures.⁴⁴ Although legislators have never cared to explain the intended meaning of these standards, the Constitutional Court upheld the law⁴⁵ precisely because these measures do not amount to a criminal procedure and the detained, whose cooperation is crucial in these procedures, does not qualify as a defendant under criminal procedure regulations.

Another law enforcement agency worth considering is border control. In enumerating competences and coercive measures, the Act on Border Control Forces⁴⁶ gives almost identical authorization as that

⁴² See for example, András L. Pap: “Street Police Corruption – A Post-communist State of the Art”, Kokkalis Program on Southeastern and East-Central Europe, Kennedy School of Government, Harvard University, http://www.ksg.harvard.edu/kokkalis/GSW3/Andras_Laszo.pdf

⁴³ Act 19 of 1998.

⁴⁴ Article 33.

⁴⁵ Decision no. 65/2003

⁴⁶ Act 32 of 1997

given to the police forces. What makes this peculiar is that besides classical border guard competences, Articles 22 and 61 of the Act give a wide authorization to both the police and border control to supervise regulations set forth in the Act on Immigration and Alien Control.⁴⁷ Among other things, the latter law obliges aliens to carry at all times and upon request present their immigration and identification documents. Should an alien be unable to provide these, she can be arrested and held for 12 hours.⁴⁸ In order to check this and other provisions of alien law, police and border guard officers are authorized to enter private premises.⁴⁹

Thus, these provisions establish a legal environment that enables, even requires law enforcement agents to stop and control persons with alien accents, appearance, etc.

II. – The Open Society Justice Initiative Racial Profiling Project in Bulgaria, Hungary and Spain

This section discusses the results of an Open Society Justice Initiative study that, as part of a comparative research programme, explores the difference between minorities' and the majority's experiences with police stops and ID checks in Bulgaria, Hungary and Spain.⁵⁰ The research focused on the experiences of Roma minorities in all three countries, comparing their experiences with those of the majority populations. It asked the following questions: What social, demographic and

⁴⁷ Act 39 of 2001

⁴⁸ Article 61 of the Act on Border Control and Border Guards.

⁴⁹ *Id.*

⁵⁰ All three of the countries participating in the study have transitioned from totalitarian governments to democracies in recent decades. The Roma population is probably greatest, proportionally, in Bulgaria where it amounts to between five and 10% of the population, followed by Hungary (6%) and Spain (about 1.5%). Available evidence indicates that Roma are among the most disadvantaged minority group across a wide variety of sectors within all three countries. For example, in Bulgaria 60–80% aged are permanently unemployed. In Hungary, unemployment rates at around 50–55%, with 22% dependent on social assistance. Of the three countries, Spain has had the greatest influx of new immigrants in recent years. In December, 2005 there were approximately 2.7 million foreign migrants with residency papers in Spain. See, "I Can Stop and Search Whoever I Want" – Police Stops of Ethnic Minorities in Bulgaria, Hungary and Spain, April 2007, OSI, 63.

policing characteristics underpin the practice of police stops in these countries? Are there differences in the experiences of stops across ethnic groups within studied countries? How can we explain differences in stop experience between ethnic groups? Is there evidence of ethnic profiling? Are police stop tactics effective? Is there evidence of ethnic/racial profiling in police stops? Is there evidence of disproportionality in police stops? Does this indicate patterns of institutional police racism? Is there evidence for other types of institutional racism in police stops? Overall, how helpful are British and US concepts to describe racialized patterns of police stops within the studied countries?

The study used a primarily qualitative approach including in-depth interviews with officers and focus groups with minority and majority communities. It was carried out in Bulgaria, Hungary and Spain during the second semester of 2005 and highlighted the perceptions of ethnicity, crime and policing that inform police practices, including the use of stops⁵¹ and ID checks, legal standards, how police define “suspicion” and their perceptions of minorities and crime. While this approach did not generate quantitative evidence of profiling, it did provide crucial information on the perceptions and practices that underlie and permit police discrimination in street encounters, and it reinforces other regional work that strongly suggests that profiling is a prevalent practice by police across Europe. The aforementioned research tools were complemented by quantitative survey data in Bulgaria and Hungary that indicates disproportionate treatment of Roma by police in those countries.

The research involved local national research partners in each of the countries and focused on the experiences of Roma minorities in all three countries and new immigrant populations in Spain. The national partner in Bulgaria was the Center for the Study of Democracy, an interdisciplinary public policy institute; in Spain, the principle partner was Dani Wagman, a researcher and analyst with the Gea21 group; whereas in Hungary, the empirical data collection was done by TÁRKI and the research was led by Bori Simonovits and myself.⁵²

⁵¹ Police stops were taken to include any police-initiated encounter in a public place. At its most basic, this involves being called to account by the police, but it may also involve requests to see personal identification or a search of the person stopped or their vehicle.

⁵² The Open Society Justice Initiative has already sponsored racial profiling studies. One examined 15 randomly-selected metro stations in Moscow. The research

a) Research Methodology

Across the countries a number of methodological strategies were used, though not all countries used all strategies, and there were methodological differences between sites in the implementation of the same core strategies.

aa) Qualitative interviews with police officers

In all three of the study countries, interviews were carried out with police officers selected from a range of police settings, and probing questions were asked about operational practices and decision-making in relation to police stops.

In Bulgaria, these included 55 interviews spread across police patrol officers, heads of departments, criminal investigation officers, and “district” or neighbourhood police officers. In turn, they were drawn from eight different police districts spanning different types of geographic areas. In Hungary, 80 officers were interviewed, with deliberate effort made to vary characteristics including: age, length of service, educational level, and geographic area (across three different sites). The interviews encompassed various positions including both sergeants and patrol officers. In Spain, 61 interviews were conducted in a variety of police agencies: 18 National Police officers, 19 Civil Guards, 10 Catalan Police and 14 municipal police. Officers were selected according to different operational roles and included patrol officers, traffic police, customs officers, judicial police, detectives, sergeants and police chiefs.

ab) Focus groups with members of the public

Focus groups were also carried out in all study countries with members of the public in which questions were asked about perceptions of and experiences with police. In Bulgaria, three focus groups were conducted that focused exclusively on the Roma population – one in each

used a variation of the standard benchmark methodology for such studies. They created a benchmark of minority (non-Slavic) individuals passing through each of the stations and compared it to the ethnic breakdown of actual police stops carried out at the same 15 stations at similar times of day. The results showed that ethnic minorities were on average 22 times more likely to be stopped than Slavs – a clear indication of ethnic profiling, and apparently, the most extreme measure of ethnic profiling ever recorded. See *Ethnic Profiling in the Moscow Metro*, OSI, 2006, http://www.justiceinitiative.org/db/resource2?res_id=103244

of three geographic settings. In Hungary, six focus groups were carried out, with a Roma and non-Roma group in each of three geographic areas. In Spain, ten groups were conducted and were designed to capture significant variation according to ethnicity, age, gender, status (undocumented vs. resident permit) and location. There were two non-Roma Spanish groups, three Roma groups, one sub-Saharan African, one Latin-American, two Moroccan, and one mixed group of immigrants.

ac) Qualitative interviews with people who have experienced stops

To gain insight into the experiences and perceptions of people who have experienced police stops, in Hungary and Spain (though not Bulgaria) a series of interviews were carried out with samples of people who had had direct experiences. In Hungary, these included 10 Roma and 10 non-Roma and were spread across three research sites. In Spain, there were 13 interviews across the country, two of which were with Roma and nine of which were distributed across a range of immigrant groups.

ad) National surveys

In Bulgaria and Hungary (though not Spain), national door-to-door public surveys were carried out in which members of the public were asked about any experiences with police stops they may have had; they also were asked other attitude questions and important socioeconomic and lifestyle characteristics.

b) Findings of the Project

The research led to the following conclusions:

- There is evidence of ethnic profiling in each of the three study countries, though we cannot measure its extent.
- Evidence for institutional racism is most evident in the poorer treatment of migrant and ethnic minority populations during stops.
- Across all countries, reasons for suspicion described by police officers relied to some extent on instinctive and under-articulated notions of what makes a person suspicious. This further raises the possibility that ethnic stereotypes might come into play in the formation of suspicion.

- In each of the three countries, many Roma community members had little doubt that the police were carrying out ethnic-profiling. This was also true for new immigrants in Spain.
- Irrespective of other factors, Roma are substantially more likely to be stopped than non-Roma.
- Bulgarian and Hungarian data indicates that ethnic profiling is more a feature of pedestrian stops rather than in the far more numerous vehicle stops.
- Police stops, notably of vehicles, are often focused on routine identity checks rather than current crime problems.
- The number of police stops of drivers are higher in Bulgaria and Hungary than, for example, in England & Wales and the U.S. In fact, traffic stops are twice more common than in the US and notably higher than in England & Wales.⁵³
- Another type of racialized policing we have identified is the concept of “underpolicing.” In Bulgaria, the only country where data is available, there is clear evidence of “under-stopping” in Roma-only neighborhoods
- Immigrants in Spain are probably subject to the most systematic form of ethnic-profiling.
- Roma, and new immigrants in Spain, are treated less respectfully during stops than majority populations.

Due to spatial constraints, I will limit my assessment to the findings of the Hungarian case-study.

c) Findings of the Hungarian research

The Hungarian field research was conducted between September and November 2005. The study was comprised of four parts:

- A Questionnaire-based public opinion poll that targeted a representative group within the Hungarian population. The questions inquired about people’s experiences of stop-and-search methods and their attitudes towards the police.

⁵³ See, “I Can Stop and Search Whoever I Want” – Police Stops of Ethnic Minorities in Bulgaria, Hungary and Spain, April 2007, OSI, 53.

- Six focus group discussions in Budapest, Miskolc and Pécs, with Roma and non-Roma regarding their perceptions and experiences of stop-and-search.
- 20 in-depth interviews in Budapest, Miskolc and Pécs, with Roma and non-Roma, who have experienced stop-and-search.
- 80 in-depth interviews in Budapest, Miskolc and Pécs, with police officers who have conducted stop-and-search.

The results of our research indicate that in Hungary the Roma are discriminated against in the context of stops and searches by the police, especially in the practice of stopping pedestrians.

ca) The National Survey

Based on a series of surveys conducted during September, 2005 in which 1000 participants were selected to represent the adult population in terms of age, sex, place of residence and level of education, the research results show that over the past year 23% of the Hungarian adult population was stopped by the police. Men are almost three times as likely as women to be stopped by officers. The overwhelming majority of those who have experienced stop-and-search over the past year were stopped as drivers during a vehicle check, 11 percent as pedestrians, only 2 percent at an entertainment venue, 1 percent at a sporting event, and 8 percent elsewhere. Those surveyed had a decidedly positive opinion about the stop-and-search practices of the police. 86 percent of those who experienced stop-and-search thought that the officers behaved politely; 90 percent thought that the officers' conduct was proper and professional.

Looking at the subgroups among those who were stopped, we see that ethnicity explains a great deal. Among those Roma respondents who were stopped over the past year, 57 percent were stopped in the street as pedestrians, at entertainment venues or some sort of event (a concert, for example). By contrast, among non-Roma respondents stopped over the past year, only 22 percent were stopped at such locations.

Our research shows that a decisive majority of the Hungarian adult population agrees that there should be more stops-and-searches at public places and would even support an increase in police control at such locations. 85–90 percent of those asked agree (somewhat or strongly) that there should be more frequent stops-and-searches by the police in public

places. These high proportions suggest that, for the most part, Hungarians do not consider police stop-and-search to be burdensome and that they are hoping that increases in stops would lead to improved public safety.

Almost half of those asked would support more stops-and-searches among the general population (45%). A somewhat higher proportion of participants agree that “suspicious” groups should be stopped and searched more frequently: 60 percent agree that those who look Roma should be stopped and searched more, 57 percent that those who look Arab should be stopped more, and 55 percent that young people be stopped and searched more often. Because the data are not significantly different for the two selected ethnic groups (Roma and Arab) and the neutral group (youth), we may infer that the Hungarian public does not support ethnic discrimination in stop-and-search practices, but it generally favours increased police control for various “suspicious” groups.

Six percent of respondents were Roma, and a vast majority of them disagreed with Roma individuals being stopped and searched more often. Among Roma respondents, 70 percent rejected the proposal to stop Roma more often while only 33 percent of the demographic majority did.

cb) Focus group discussions

Personal experiences reported by participants at the focus group discussions confirmed the finding that the majority of Roma are stopped as pedestrians in the street while non-Roma are characteristically stopped during vehicle checks. In all three Roma focus group discussions, there was unanimous agreement that officers select whom to stop and search based on ethnicity and that officers stop men more than women. Roma participants complained about the officers’ impolite behavior during these stops and objected to the indiscreet nature of them. They thought that excesses in officers’ behavior, even acts of physical violence, were not uncommon; however, they also saw little point in filing reports about the officers because their veracity would be doubted in the absence of evidence.

The results from Roma participants concur with our findings from the community survey: much like non-Roma participants, Roma respondents are generally dissatisfied with police presence and consider corruption a great problem. Even among the Roma, some voiced the

opinion that the Roma are partially responsible for the present situation because there are so many criminals among them.

Non-Roma participants – with a less personal involvement in stop-and-search – would address these issues much more calmly: they did not even mention the issue of police discrimination or excesses. Instead, they dealt more with the issue of corruption, the slow and ineffective administrative processes, the officers' lack of intelligence (which among Hungarians is a popular theme in police-jokes) and their unprofessional physical appearance. Among the three group sessions of non-Roma participants, there was unanimous agreement that stops by the police are mostly arbitrary and the main goal is “making money” to supplement the officers' incomes.

The Roma openly stated that the police liked to stop and search the Roma. By contrast, in non-Roma groups, the same tendency was worded much more cautiously and with a broader perspective. According to some of the non-Roma participants, the Roma are stopped more often while others thought that it was not expressly the Roma that were targeted for stops but rather people of lower socio-economic levels. They would express these points as follows: “those who drive worse, Eastern-manufactured, beat-up cars”; “suspicious/shady characters.”

The opinions and experiences of the Roma gave a clear indication that police stop-and-search practices are ethnically discriminative. In many respects, the non-Roma participants' opinions concurred. Apart from differences in perception and wording, the emotional charge detectable in the responses also showed differences among the Roma and non-Roma discussion groups.

In Roma participants' personal experiences with ID checks, the majority were involved in ID checks targeting pedestrians. By contrast, non-Roma were rarely stopped as pedestrians; “general traffic control checks” were much more prevalent. Despite the fact that those who were stopped while driving a car often reported excesses and being entangled in corruption, participants considered routine vehicle checks to be justifiable as a means of screening bad cars and drunk drivers.

cc) Qualitative interviews with police officers

Interviews with police officers indicated that 83 percent of respondents thought that stop-and-search helped them in their work; the overwhelming majority approved stop-and-search (80 percent), thought it

was effective (63 percent) and justified (89 percent). Those who disagree somewhat or entirely with the existing regulations on stop-and-search procedures would like to widen the competences of the officer conducting the stop.

We included several questions in order to measure whether officers stopped some groups more than others. The first question inquired about respondents' assessment of their colleagues. According to the replies, 47 percent of the 80 respondents thought that some colleagues have a tendency to stop people belonging to certain groups more than others. Far fewer respondents had this opinion about themselves: 23 percent admitted to having such a tendency. In addition, only half of those who provided an answer to the previous question replied to this question.

Close to half of the respondents identified the groups specifically targeted by their colleagues. Out of the 37 participants who provided an answer, 26 mentioned the Roma; most of them cited reasons they considered to be objective (for example criminal lifestyle) and provided rational reasoning in favor of the practice.

When asked if the police stopped a disproportionate number of Roma, 92 percent gave a negative answer. When the same question was posed with respect to other ethnic groups that make up a smaller percentage of the Hungarian population (Arab, Chinese or black/African) as well as immigrants, the answers were even more extreme: in some cases, 100 percent of respondents thought that the number of stops involving individuals belonging to non-Roma minority groups was not at all disproportionate.

According to officers' estimates, 177 out of 1000 ID checks results in an arrest and charge. If the person checked is Roma, then – according to the officers' estimates – the likelihood of an arrest is 1.5 times higher: on average, 260 cases out of 1000. These numbers are even more astounding if we break them down by police division: in the public order division, every third Roma person checked is arrested and/or charged, and the chances of an arrest is still 1.5 times higher than in the case of someone with non-Roma origin. With respect to the traffic control division, someone of Roma origin stands an equal chance of being arrested and/or charged compared to others. With respect to other minority groups, officers estimated the ratio of arrests and ID checks to be strikingly lower; the majority of officers did not think that people from these groups committed more crime than Hungarians did.

Linking criminal behavior and ethnicity is more prevalent in the Roma case than in the case of any other ethnic group: 79 percent of officers asked thought that Roma commit more crime than non-Roma Hungarians do. According to 73 percent, the ratio of offenders within the Roma population is significantly higher than among others from the same socio-economic level.

The questionnaire included only a handful of the assessment methods to measure prejudice that are commonly implemented and frequently referenced in the literature. For example, we asked what the police in present-day Hungary believed the ratio of the Roma and various immigrant ethnic groups within the population to be. Estimates about the Roma population proffered stunning results: on average, officers estimate Roma, the largest ethnic group within Hungary, to comprise 21 percent of the Hungarian population; Roma actually comprise a mere 6%. Most respondents marked 10, 15 or 20 percent, but 30 percent of them guessed the Roma population to be 30 percent or higher.

The ratio of immigrants in Hungary was likewise overestimated: half of the officers asked thought that the Arab population was over one percent, and they believed the same about the black/African population. On average, officers estimated the Chinese population at five percent and with two-thirds of respondents marked their estimates at five percent or higher. In fact, immigrants are only about 1.5 percent of the Hungarian population, and approximately two-thirds are ethnic Hungarians coming from neighboring states. One-fifth of respondents were of the opinion that Roma have a negative attitude towards the police because they are more frequent targets of police procedures.

cd) Qualitative interviews with people who have experienced stops

Interviews conducted with twenty participants who have personally experienced stop-and-search (seven Roma, seventeen non-Roma) confirmed that, in general, the population is in favor of “law and order” and police presence. Moreover, this opinion remains intact even if the ethnic origin (or some other characteristic) of the individual makes him/her a likely subject of discrimination. The dominant opinion about the motive behind stop-and-search is that stops are mostly based on random, arbitrary principles of selection. Some respondents suspect an expressly ethnic motivation or the potential for a successful bribe behind the

selection. Based on participants' responses about the aim of stop-and-search, we found that respondents did not perceive a difference among procedures related to general control, prevention or criminal investigation. When respondents were asked if they thought there was a difference between vehicle checks and stopping and searching pedestrians in the street, the majority thought that "suspicious" individuals are mostly stopped in the latter case. Several respondents thought that officers are more polite during vehicle checks.

With respect to the question "Are some people stopped more often than others?" all but one of the Roma respondents maintained that the Roma are stopped more often. In general, the majority of respondents – regardless of their ethnicity – were of the opinion that the Roma are a highly affected group when it comes to stop-and-search. The vast majority of respondents thought that selection is based on some characteristic or personality trait (which could be Roma origin or some other, ethnically neutral circumstance) that the police presuppose to be linked with the likelihood of criminal involvement. Twenty percent of these respondents considered this presumed link between Roma origin and criminal behavior to be prejudicial, but a significant proportion of respondents expressly approved this procedure for selecting whom to stop (based primarily on ethnicity). This is because they perceived a rational link between the basis for selection and the actual likelihood of criminal behavior. Among non-Roma respondents who were on the whole satisfied with how the police perform their duties (and would even broaden police presence), they believed that loss of time for stops is the greatest problem. By contrast, several Roma respondents objected to the discriminatory motivation – be it ethnic or other – behind stop-and-search practices.

In the light of the above, it is not at all surprising that when asked about how respondents would alter the present practice for conducting stops and searches, the majority did not reply or expressly approved of the present practice. The overwhelming majority of respondents considers the current legislation (or what they believe to be the current legislation) satisfactory, and only among Roma participants did we find some that rejected the present practice because of its discrimination against them.

Based on the replies to our question pertaining to the legal conditions for an officer to perform a stop, we found that only about one-fifth of the respondents had substantive knowledge about the applicable law.

Closing remarks

When talking about ethnic bias and discrimination in the criminal justice system, our scrutiny should ideally address all of the following: stops and searches, detainment, arrest, criminal procedure, charging, sentencing, disparity in police brutality, access to counsel, law enforcement, public employment, ineffective legal remedies, expulsion and immigrant treatment, and the designation of terrorist organizations. In Hungary, even discussions of ethnic-profiling are a rare and novel phenomena. Without a doubt, there is need for both a constitutional scrutiny of the legal framework as well as an empirical analysis of law enforcement practices. Even on the basis of our rather limited research, we can identify a range of improvements that could have a number of benefits that affect all sections of the population and the police. For example, police stop-and-search powers should be reviewed in order to limit the high-discretion stops and clarify the threshold of suspicion. Also, guidelines that explicitly prohibit the use of ethnicity as a factor in deciding who to stop should be adopted. Furthermore, police supervisors should be required (and provided training to) routinely review officers' use of stops, and as a prerequisite, mechanisms need to be developed to monitor stops. In addition, it would be advisable to develop a system to address complaints arising from stop-and-search and other police activities. This should involve representatives who are external to police and government. Also, an information campaign should be undertaken to develop public awareness of legal regulations and citizen's rights related to stop-and-search procedures. During stops people could also be given (either orally or in written form) information about their rights and how to address a complaint if they feel that those rights have been violated. But most of all, information should be disseminated on the fact that, despite its superficial appeal, ethnic-profiling is not an efficient policy. Discrimination is not a recipe for safety and security.