

**POLICE STOPS
AND ETHNIC PROFILING
IN BULGARIA**

CENTER FOR THE STUDY OF DEMOCRACY

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INTRODUCTION BY THE OPEN SOCIETY JUSTICE INITIATIVE

The Open Society Justice Initiative, an operational program of the Open Society Institute (OSI), pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies worldwide. The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in the following priority areas: national criminal justice, international justice, freedom of information and expression, and equality and citizenship. Its offices are in Abuja, Budapest, and New York.

In 2005, the Justice Initiative launched an effort to address ethnic profiling by police in Europe. "Ethnic profiling" is the use of racial, ethnic or religious stereotypes in making law enforcement decisions about who may be involved in criminal or terrorist activity. Ethnic profiling is widespread, yet the practice remains little documented and is not clearly prohibited under European law. Profiling is counter-productive insofar as it misdirects law enforcement resources and alienates some of the very persons whose cooperation is necessary for effective crime detection. To date, however, no European countries other than the United Kingdom collect information on ethnicity and police stop and search practices.

The Europe-wide research 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 highlights the perceptions of ethnicity, crime and policing that inform police practices, including the use of stops 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 reinforces other regional work that strongly suggests that profiling is a prevalent practice by police across Europe. It is complemented by quantitative survey data in Bulgaria and Hungary that indicates disproportionate treatment of Roma by police in those countries. In addition to the national reports being published in each research country, the Justice Initiative will publish a comparative report encompassing the findings from all three countries in mid-2006.

As the Justice Initiative continues to implement its Ethnic Profiling in Europe project, it will launch new activities. A new initiative in 2006 is the development of cooperative pilot projects with police, NGOs and local communities to monitor stops and develop a constructive dialogue about police powers and policies in minority communities in Bulgaria, Hungary and Spain. Titled "Strategies for Effective Police Stop and Search" (STEPSS), this new initiative builds directly on the discussions and collaboration of the police with this research. Justice Initiative wishes to thank our research partners for their scholarship and dedication, and also thank the police for their willingness to engage with this important but difficult issue.

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ACRONYMS AND ABBREVIATIONS

ACLU	American Civil Liberties Union
APD	Area Police Department
CPS	Crown Prosecution Service
ECRI	European Commission against Racism and Intolerance
EU	European Union
FBI	Federal Bureau of Investigation
GDP	Gross Domestic Product
Instruction I-23	Instruction Regarding the Patrolling and Guarding Activity Carried Out by the Ministry of Interior
Instruction I-41	Instruction Regarding the Activity of Area Inspectors and Junior Area Inspectors at the National Police Service
IMIR	International Center for Minority Studies and Intercultural Relations
LBSD	Law on Bulgarian Self-Identification Documents
LMOI	Law on the Ministry of Interior
LPAD	Law on Protection against Discrimination
LPCAHAF	Law on the Population Census, Available Housing and Agricultural Farms
LPDP	Law on Personal Data Protection
LS	Law on Statistics
Mol	Ministry of Interior
NSI	National Statistical Institute
PGA unit	Patrolling and guarding activity unit
UN	United Nations
UNDP	United Nations Development Program

EXECUTIVE SUMMARY

Police stops are the main point of contact between officers and citizens. Police officers view stops as essential for detecting and preventing crime. Therefore, the appropriate use of this tool is crucial to police efficiency, whereas when used in the wrong way, it could seriously deteriorate the relations between citizens and the police.

The present report focuses on use of police stops in Bulgaria, particularly on the differences in their application towards the various ethnic groups in the country. Over-policing of immigrant communities or racial/ethnic minorities is widespread in the United States and Europe. The practice has been most extensively studied in the United States and the UK, where it also finds the greatest number of critics. The present study is part of a Europe-wide initiative aimed to map discriminatory police practices across Europe. In addition to Bulgaria, research was carried out in Spain, Hungary and Russia indicating that there is discriminatory treatment of minorities by the police in all these countries.

The present study presents evidence in support of the following conclusions: First, **police stops are not used efficiently by the Bulgarian police** as a tool to detect or prevent crime:

- Although police officers are well instructed in the tactics of carrying out stops, they lack appropriate **training and methodological guidance** on how to make a decision about who should be stopped. Officers rely on their instinct or stereotypical assumptions when deciding on carrying out a stop.
- Although data on police stops is currently collected across police departments, the police do not analyze it with the purpose of raising the **efficiency** of stops, or preventing the disproportionate or unjustified stopping of certain groups of citizens.

Second, the lack of a clear set of criteria and rules on how to conduct police stops allows several **negative effects**:

- **A disproportionate number of stops target members of the Roma community** as such stops are motivated primarily by the individuals' ethnicity, i.e. the Roma become subject to police **ethnic profiling** practices. The use of ethnic profiles by law-enforcement officials, whether as an institutional policy or an individual decision, is considered discriminatory and is prohibited by the Bulgarian Constitution, the Law on Protection against Discrimination, as well as international human rights commitments by the Bulgarian state.
- In some cases the police act unprofessionally during stops **using insults, threats and physical abuse, disregarding citizens' rights and demanding bribes**. Data from the National Crime Survey 2005 have shown that during the six months preceding the survey nearly 46,000 Bulgarians and 7,400 Roma were threatened during police stops. In addition, almost 15,000 people

were physically abused by the police (of which 12,000 Bulgarians and 3,000 Roma).

- Such attitude during police stops undermines the public confidence in the police.

POLICE ETHNIC PROFILING

The household survey conducted for the purpose of the present report showed that during the 6 months between June and November 2005, 1.1 million individuals or 18% of the adult population had been stopped by the police, translating into between 5.4 and 6.8 million police stops annually, the majority of which (75%) are vehicle stops.

The data showed that on the whole Roma were not more likely to be stopped by the police. The Roma were much more likely to be targeted as pedestrians, particularly outside the neighborhoods where they live, as well as in neighborhoods and villages mainly populated by ethnic Bulgarians.

Police stops (June–November 2005)			
Vehicles stops		Pedestrian stops	
Bulgarian	Roma	Bulgarian	Roma
14%	5%	5%	13%

Source: Vitosha Research

There are several factors leading to this specific situation in Bulgaria. First, the ethnicity of drivers is harder to discern and therefore vehicle stops are less likely to be driven by ethnic profiling. In addition, while 51% of Bulgarians own a car, only 19% of Roma do so. Other lifestyle factors, such as going-out at night or long-distance driving, make ethnic Bulgarians much likelier targets of vehicle stops and prevent definite conclusions about ethnic profiling practices during vehicle stops.

The analysis indicated that the disproportionality of stops across ethnicities **was not the result of an official policy** either at central police level, or at the area police departments. No evidence was found for any unofficial policy of consistent ethnic profiling in police stops, either. At the same time, in their daily stopping practices police officers **intuitively apply ethnic profiling** based on a number of discernible characteristics of the Roma community, such as the type of neighborhood, their skin color, attire, etc.

CRIME AND THE ROMA

Most police officers and local government representatives interviewed articulated a belief that Roma are disproportionately involved in crime, hence explaining

disproportional police stops of Roma citizens. However, the Bulgarian police do not consistently collect statistical data on crime in the Roma community; neither do they analyze the underlying problems leading to deviant behavior, therefore leaving police officers' understanding of crime in Roma communities to be shaped by prejudice and stereotypes.

Police officers who work in Roma neighborhoods have a much more realistic idea about the level of involvement of Roma in criminal activities. Officers in districts with less Roma population, however, largely share the perceptions of Roma typical of the general population. Among these are the participation of Roma households in the gray economy, their involvement in violent clashes, the high detention and imprisonment rates, the role of the family in certain crime types, and the participation of some groups of Roma in organized criminal activities, such as pick-pocketing, prostitution rings, and drug dealing.

The criminal justice data analysis made it clear that crime in the Roma community could not be adequately assessed due to the fact that the ethnicity data of crime suspects:

- do not account for repeat offender rates;
- are not collected consistently and many area police departments fail to register suspect ethnicity at all;
- most crime categories in which Roma are typically involved (petty crimes and pick-pocketing incidents) have the highest rates of non-reporting to the police.

RECOMMENDATIONS

Increasing police accountability

- **Reporting stops to the public.** The stopping powers of the police should be made publicly available and data on police stops should be made public.
- **Documenting all stops.** Police officers are now obligated to complete statements only about cases of personal search, search of personal belongings and vehicle search. No such statements are required for ID checks. If citizens are to be protected from misuse of search powers, however, **ID stops should be documented.** The data that such documents contain can become a method of controlling the performance of individual officers.
- **Development or strengthening of a complaints procedure** in the case of illegal or abusive stops. A clear mechanism, involving institutions, such as local ombudsman offices, should be introduced to facilitate the delivery of complaints.
- **Development of community consultation forums.** Local communities should have a greater input into how policing priorities are set in their local areas and what tactics are appropriate and fair in light of those priorities. Dialogue between the local community and the police should focus on police stops,

among other things, and put them on the agenda of the local Commissions for Public Order and Security.

Increasing efficiency of stops

- **Developing a system for monitoring the efficiency of stops.** Although period reporting on police stops indicates that the police have the capacity to gather information on police stops, **a detailed stops analysis tool needs to be developed.** Such monitoring system could monitor: (1) the number of daily stops that each officer carries out; (2) the demographics of the individuals that (s)he stops—age, sex, ethnicity; (3) the areas of the stops; (4) the efficiency rate—in what share of the stops the officer’s suspicions were well founded and resulted in further action; (5) reasons for the stop. Such information should be used in analyzing the performance of officers.
- **Ethnic data collection.** Law-enforcement bodies are currently not required to collect information on the ethnicity of stopped or detained individuals. However, regarding the issue of equal treatment this is a useful method of keeping in check police officers. The EU Race Directive permits the use of statistical data as proof for indirect discrimination. The European Commission against Racism and Intolerance (ECRI) also emphasizes the need for gathering data to better assess the situation of ethnic minorities
- **Introducing clear guidelines** on stops by developing a manual or amending the Instruction on Patrolling and Guarding Activity of the Ministry of Interior. The police practice of stops should be further formalized by making mandatory that the police officers conducting the stop always: (1) introduce themselves, (2) explain the reason for the stop, and (3) treat the person politely. Further, information could be provided about: (1) the rights of citizens and (2) contact details for filing complaints.
- **Training on how to make a decision to undertake a stop.** Such training should focus on the decision making process for a stop, particularly underlying the importance of the crime-detection mechanism built on reasonable suspicion, rather than social control, and avoiding the use of ethnicity as an element that raises suspicion.

Further research agenda

Studies of police conduct with regard to ethnic minorities reinforce prevention because they provide valuable information on the specific risks encountered by enforcement officers which can help design appropriate measures to eliminate those risks. This type of studies uses a variety of data from their own surveys of police work and from interviews with citizens. Thus, different aspects of police work can be incorporated and then analyzed. Such methods allow finding out the number of members of the various ethnic groups that have been targeted by the police as well as the types of stops they have been exposed to.

INTRODUCTION: MINORITIES AND THE POLICE

The present study is part of a Europe-wide initiative of the Open Society Justice Initiative, aimed to map police ethnic profiling practices across Europe. In the United States and the UK, police ethnic profiling has been renounced as an inefficient practice that is discriminatory in its nature, violates human rights, and erodes minorities' confidence in the police. Bulgaria participates in this study, as it has one of the largest Roma populations in Europe in proportion to the country's total population. For many years the Roma have been subject to social exclusion, allegedly disproportionately involved in criminal activities, and therefore considered particularly vulnerable to ethnic profiling practices by the police.

Although ethnic profiling has not been extensively studied so far in Europe, an Open Society Justice Initiative overview research has shown that occurrence of police ethnic profiling is probably widespread.¹ The European Commission against Racism and Intolerance (ECRI) has expressed concern over racial profiling practices in several countries across Europe: Austria, the UK, Spain, Romania, Russia, the Ukraine and Switzerland.² Bulgaria has also been criticized on issues of unequal treatment of ethnic minorities: in its third report on Bulgaria ECRI denounced the excessive use of force by the police against members of the Roma community.³

Definition of ethnic profiling

Ethnic profiling describes the police use of ethnic or racial stereotypes as a basis for suspicion directing law-enforcement actions. Ethnic profiling occurs regardless of whether such stereotypes displace or are used in addition to legitimate factors directing police suspicion, such as individual behavior, specific suspect descriptions, or accumulated and specific operational intelligence. Conversely, where legitimate factors alone (e.g. behavior, suspect descriptions, or intelligence) direct police attention to specific individuals from a particular ethnic group, this is not ethnic profiling.

¹ Racial Discrimination in the Administration of Justice, Submission of the Open Society Justice Initiative to the UN Committee on the Elimination of Racial Discrimination.

² ECRI, Second Report on Austria (2000) par. 39; ECRI, Second Report on the United Kingdom (2000) par. 45; ECRI, Second Report on Spain (2002) par. 38; ECRI, Second Report on Romania (2001) par. 46; ECRI, Second Report on the Russian Federation (2001) par. 62; ECRI, Second Report on Ukraine (2003) par. 42; ECRI, Third Report on Switzerland (2003) par. 29. ECRI Country Reports are available at www.coe.int.

³ The report was adopted on 27 June 2003. It is available at www.coe.int.

Purpose of the report

The purpose of the present study was to find out whether the Bulgarian police apply ethnic profiling practices in its daily work with members of the Roma community, particularly in relation to police stops. Although Bulgaria's largest minority are the Turks, it was decided that the Roma community would be a more appropriate focus of the research as preliminary analysis had indicated that ethnic profiling was not applied towards the Turkish minority.⁴

Other key questions that the research team sought to answer were:

- How widespread are ethnic profiling practices?
- Is ethnic profiling an official policy?
- What are the underlying causes and factors of ethnic profiling practices?
- What is the impact of ethnic profiling in terms of police–community relations and police efficiency?

The methodology that was used to carry out this research consisted of several instruments (a detailed description is provided in Appendices B and C). The team conducted focus groups with members of the Roma minority in three cities. Based on these initial findings, 55 interviews with police officers at 10 police departments around the country were conducted in July 2005.⁵ Finally, a nationally representative sample of 1,202 households and a booster-sample of 534 Roma households were surveyed in December 2005. In addition, the research team undertook a legal review of existing laws and regulations related to police stops and to discrimination. A criminological analysis, based on interviews, media analysis, statistical data and internal police reports was also carried out.

Throughout the writing of the report the researchers profited from the advice of a **Consultative Committee**, which was headed by the Open Society Institute in Sofia and involved representatives of the Open Society Justice Initiative, the Roma Foundation in Plovdiv, the Roma–Youth Foundation in Sliven, the UNDP, and the Sofia City Directorate of Interior. The committee members drew on their experience working with the Roma community in helping the team focus the research, formulate the survey and focus group questionnaires, and discuss the policy implications of the issue of ethnic profiling.

Scope and limitations

The present report faced two broad challenges: the law-enforcement and the human-rights contexts in Bulgaria. It is important that the report findings and implications are understood in the context of the Bulgarian law-enforcement agencies, which is quite different from the one in the US and UK where the issue first gained prominence. Understanding of this context would provide a better insight into ethnic profiling practices in Bulgaria and the limitations and possible obstacles to countering it.

⁴ Most Turks are not physically different from ethnic Bulgarians.

⁵ Throughout the text these interviews are referred to as “interviews with police officers, July 2005”, without specifying the name of the area police department (APD) and the name or rank of the officers, as it was agreed with the Ministry of Interior (MoI) that these interviews will be anonymous.

First, the issue of *policing* is positioned very differently in the public, academic or policy debates in Bulgaria than it is in the US or the UK. The issues that have captured the policy arena are the ones of police corruption, police efficiency in fighting organized crime, and the purging of former secret service officers from the police. The issues of police discrimination or human rights violations have remained confined to the agenda of human rights advocates, as the government and the police have acted mostly as a result of external pressure. In addition, the police do not have a policy on stops and ethnic profiling.

Adding to the above is the fact that the police work is subject to little public scrutiny and transparency compared to the US or the UK. The number of police officers and the police budget are classified. The public is only informed of crime rates and clear-up rates as the only measures of police efficiency.

The police is a centralized institution and largely unaccountable at the local level. In fact, the present report is the first occasion on which the regulations related to police stops are made public. More importantly, the police and the Ministry of Interior (MoI) lack any extensive policy-making and analytical capability which makes policy formulation, programs or program evaluations largely abstract terms understood only by a few people in the police headquarters. Furthermore, the issue of ethnic profiling inevitably evokes the debate on Roma and crime, which is one of the most controversial and politicized issues presently in Bulgaria—similar to the issue of “immigrant crime” in Western Europe.

In Bulgaria, the topics of ethnic minorities and crime were not openly discussed until 1990. Politicians and policy makers to this day avoid the topic, fearing an escalation of ethnic tensions. As a result, the issue of crime and the Roma is never publicly discussed by the Ministry of Interior, civil society organizations and criminologists. There have been no public studies on this topic at all. This politically correct behavior has not helped the issue to disappear but has simply left it to the incompetent and prejudiced reporting of the media.

Main findings and report structure

The main finding of the report is that although there is no a particular law-enforcement policy supporting ethnic profiling practices, **there is compelling evidence that on many occasions the Roma are being stopped by the police solely on the grounds of their ethnicity.** Furthermore, the data clearly demonstrates that Roma are treated worse than Bulgarians during police stops.⁶ The household survey data, however, indicated that a large number of Bulgarians are also abused and threatened during stops. Thus, officers’ attitude during stops strongly undermines the public’s confidence in the police. The legal analysis suggested that regional and national legal standards on non-discrimination are not adequately reflected in Ministry of Interior and police regulations, although some secondary legislation and the *MoI Code of Police Ethics* contain discrimination-related provisions.

⁶ Throughout this text “Bulgarians” refers to *ethnic* Bulgarians, not to Bulgarian citizens, which encompasses all ethnic groups in the country.

A second set of findings focuses on the factors contributing to disproportionate stops of Roma by the police. One of the key conclusions was that police officers' perceptions of high crime levels in the Roma community translate into greater scrutiny by the police. Two important qualifications should be made. First, the police data on ethnicity of criminals is extremely limited and does not provide a clear picture of the scale of Roma involvement in crime nationally and across regions. Second, the research found that the dynamics and magnitude of crime differs greatly among regions, but stereotyping is based on the most striking examples.

The **first part** of the report presents some socio-demographic data on the Roma minority. The research findings showed that a significant part of the disproportionality in police stops is due to socio-demographic factors, such as age or education.

The **second part** presents the main findings of the ethnic profiling research explaining the way police stops are organized, conducted, and reported, and the rules and legislation that regulate police stops. It examines the evidence found for the existence of ethnic profiling in Bulgaria. Finally, the report presents a comprehensive literature review of the topic of police racial profiling from the UK and the US. It is aimed to help police officials, academics, and activists, and to improve the quality of policy dialogue or activities pointed to counter ethnic profiling practices.

1. SOCIAL AND DEMOGRAPHIC PROFILE OF THE ROMA

The social and demographic profile of the Roma is so radically different from that of the ethnic Bulgarian majority that it should be kept in mind in any kind of research, particularly social or criminological research regarding ethnic profiling.

1.1. DEMOGRAPHIC PROFILE OF THE ROMA

The size of the Roma population is an issue contested by minority rights NGOs. The difficulty resides primarily in the fact that the Roma are a very diverse ethnic group, some of whose subgroups have different identities and during censuses or household surveys self-identify as ethnic Turks or as ethnic Bulgarians.⁷ According to the 2001 census the Roma are 370,908 or 4.68% out of a total population of 7,928,901. The Turks are 746,664 and Bulgarians are 6,655,210. Different estimates, though, put the size of the Roma minority between 600,000 and 750,000 (UNDP 2002). Unofficial estimates by the Ministry of Interior put it at 552,000 in 1992 and close to 700,000 in 2002. Household surveys, such as the one conducted for the purpose of the present report, usually put the Roma at around 5% of the adult population (according to the interviewee assessment of the respondent's ethnic identity). This translates into a total Roma population of around 430,000–490,000.⁸

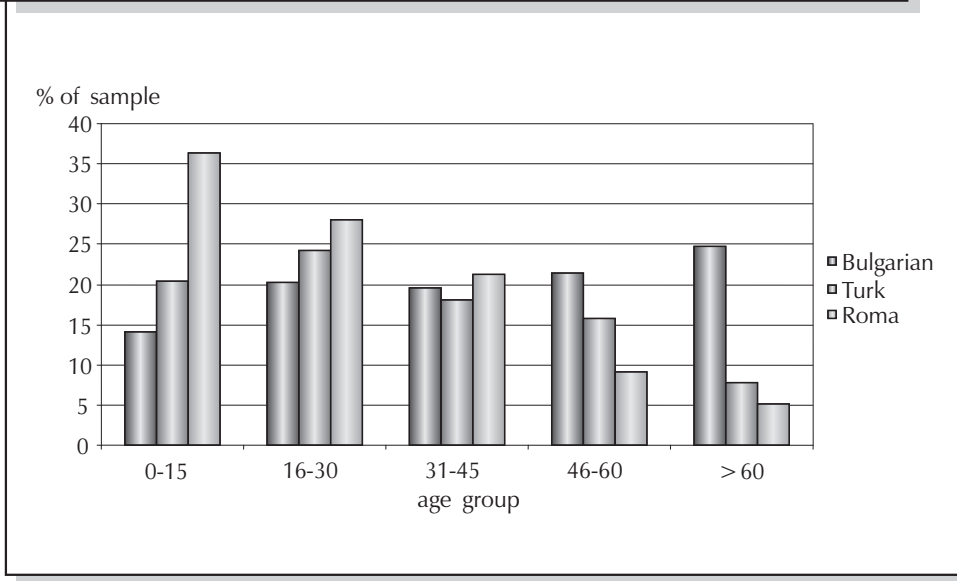
1.2. AGE DISTRIBUTION

Age distribution is also an important factor when analyzing police stops or crime trends because the male population aged 15 through 30 is the age group which commits the most crimes and is therefore most often stopped. The Roma population is much younger than the ethnic Bulgarian majority. The largest share (36%) of the Roma belongs to the age group 15 years or less. Only 5% is older than 60, compared to 25% of the Bulgarian population who are in the same age group (Figure 1).

⁷ Some Roma speak Turkish and confess Islam. They often have a Turkish ethnic identity. Others speak Bulgarian and are Christians and might self-identify as Bulgarians. The great majority of them also speak different dialects of Romani. Regardless of their self-identity, the society usually perceives them as Roma.

⁸ The demographic structure of the Roma minority in the sample is consistent with the 2001 National Census and the nationally representative study conducted by the Agency of Social Analysis,

Figure 1. Population age structure



Source: Bulgarian Integrated Household Survey (World Bank, 2001)

1.3. EDUCATION

Education is also found to be a significant factor in police stops as the less educated are found to be more likely to be stopped. Eighteen percent of the Roma have no education, compared to 3.6% for the Bulgarians. About 42% of the Roma complete middle school, 8% – secondary school and 0.17% have a university degree, compared to 24%, 45%, and 13% respectively of ethnic Bulgarians.⁹ The Roma illiteracy rate is 15 times higher than the rate for the non-Roma population.¹⁰ A recent study of Roma literacy found that 64% of Roma over the age of 15 functionally were illiterate, compared with 25% of the Turkish and 9% of ethnic Bulgarians.¹¹

1.4. SEGREGATION, POVERTY AND UNEMPLOYMENT

According to the 2001 census, about 46% of Roma live in villages and 54% in cities. Most of the Roma, living in cities, dwell in inner-city neighborhoods either in the capital Sofia, or in regional centers, such as the cities of Plovdiv, Burgas, or Sliven. The living conditions, even in community housing, are usually abhorrent. Often, these settlements are walled to prevent the public from seeing them.¹² In addition, adequate nutrition is often out of reach to many Roma. 91.8%

⁹ World Bank. Bulgarian 2001 Integrated Household Survey, Washington DC, World Bank, 2001.
¹⁰ Ringold, D., Orensten, M., and E. Wilkens. Roma in an Expanding Europe: Breaking the Poverty Cycle, World Bank, conference edition, Washington DC, World Bank, 2003.
¹¹ Study by ASSA-M, December 2005, shared with the authors.
¹² Unlike many West European Roma, the Bulgarian Roma are not travelers. The communist government issued special decrees in 1957 and 1958 making nomadic lifestyle illegal (Council of Ministers of the People’s Republic of Bulgaria Decree No. 258 of 17 December 1958).

of them say they have sometimes (20.4%) or often (71.4%) experienced food deprivation.¹³ The unemployment rate varies significantly according to location and age. The present household survey found that the unemployment rate amongst Roma was 59.9% of the population over 15.

After 1990, the massive unemployment and dependency on social benefits forced many Roma to move to large cities, where such benefits were paid more regularly. Many of these newcomers were drawn into existing Roma neighborhoods, where often utility bills did not have to be paid and building of illegal housing was relatively easy. As a result particularly of the illegal building the municipalities and the state abandoned such neighborhoods and they gradually transformed into shanty towns and city ghettos with decrepit basic infrastructure. With the privatization of utility companies these neighborhoods declined further as water and electricity became available for only a few hours per day, as companies were trying to minimize losses. The enforcement of these limitations is regularly carried out with the assistance of the police, which is called on to protect utility workers from the protests of the residents. This has led to further deterioration of the relationship between the police and the Roma minority, as they increasingly find themselves in situations of conflict.

¹³ Alpha Research. *State of Society*, a nationally representative survey, Sofia, Alpha Research, 2002.

2. ATTITUDES TOWARDS THE ROMA

2.1. PUBLIC ATTITUDES

The analysis of police ethnic profiling of the Roma should not be done outside the context of attitudes of the Bulgarian majority towards the Roma—for two reasons. First, this is necessary because the criminal justice and law-enforcement system is run exclusively by ethnic Bulgarians whose attitudes towards the Roma are shaped by their social environment. Second, public opinion often creates political and social pressure on law enforcement and the judiciary for discriminatory treatment of the Roma.¹⁴ Since 1990 such pressures have taken different forms, ranging from public and political debates to community protests and civil disobedience. Sociological studies conducted throughout the 1990s show that the ethnic prejudices and negative stereotypes of the Bulgarian majority, have remained quite constant (Table 1).

Table 1. Attitudes of Bulgarians towards Roma (% that agree with the statement)

Year	1992	1994	1997	1999	2005
The Roma are irresponsible and lazy.	85%	84%	84%	86%	86%
The Roma are inclined to criminal acts.	90%	91%	89%	92%	87%
One cannot trust the Roma.	**	86%	84%	**	85%
The Roma should live separately from us.	72%	65%	67%	**	63%
All Roma are alike.	90%	85%	80%	83%	82%

Source: IMIR/Alpha Research¹⁵

¹⁴ Since 1990 numerous cases could illustrate this. In May 2005, at a public meeting in the village of Preselka the entire community demanded from the local government and police authorities harsher treatment of Roma criminals. (The People of Preselka: The Police Should Beat Them! It Should Beat them Bad! *24 Chasa*, 25 May 2005). In the capital Sofia, after a massive fight between around 80 Roma and 15 Bulgarians that left one person dead and dozens injured, the inhabitants of the Zaharna Fabrika neighborhood staged public protests and signed petitions to the government and the police explaining that they have been victims to “Roma crime terror” and demanded more police presence and harsher treatment of Roma criminals. The case was widely discussed by politicians and all media reported extensively on it (Gypsy Pogrom in Zaharna Fabrika. *Monitor*, 25 May 2005).

¹⁵ International Center for Minority Studies and Intercultural Relations (IMIR): The Ethno-Cultural Situation in Bulgaria. Sofia, IMIR, 1992; Relations of Compatibility and Incompatibility between Christians and Muslims, Sofia, IMIR, 1994; Relations between Christians and Muslims. Sofia, IMIR, 1997; Bulgarian Youth Facing Europe, Ed. Mitev, P.E., Sofia, IMIR, 1999; Bulgarian Helsinki Committee. Five Years Later: The Non-Governmental Projects for Desegregation of Roma Education in Bulgaria. Sofia, BHC, January 2006.

Inevitably, some politicians have tried to capitalize on these attitudes and to gain political support on an anti-Roma ticket, making the issue of “Roma crime” key to their election campaigns. With close to 10% of the voters supporting such parties (e.g. Ataka, VMRO), the data in Table 1 testified to the negative attitudes and prejudices dominating the Bulgarian society. It should come then as no surprise that prejudice is widespread also among law-enforcement officers or members of the judiciary.

2.2. POLICE ATTITUDES

During the interviews with police officers it was evident that the officers who worked in Roma neighborhoods had a much more realistic idea about the level of involvement of Roma in criminal activities than did the general population. Most police officers interviewed were likely to disagree with a statement such as “the Roma are inclined to commit criminal acts” (Table 1). The typical comments about Roma crime were “There are a few trouble-makers in my district/in the village” or “There are certain families involved in criminal activities”. Even in some urban ghettos where a large part of the inhabitants had criminal records the police officers seem to have an understanding and explanation of who was involved in criminal activities and the reasons for this involvement. Police officers whose area did not include Roma neighborhoods and were therefore not familiar with particular offenders were more likely to be suspicious of the Roma.

On the other hand, negative attitudes similar to the ones expressed by the general population were heard in almost every police department. Comments about the laziness and irresponsibility, or generalizing statements about the Roma were quite prevalent and just like the general population, the majority of police officers were likely to agree with statements, such as the ones in Table 1 (except on issues related to crime).

Police attitudes towards the Roma are shaped by several forces. On the one hand, there are societal pressures deriving from the above described cultural environment. The reality is that police officers are no exception from the general bias in Bulgarian society. The second source of influence is the pressure from international organizations and foreign governments, particularly in light of the EU accession process. In most cases, though, this has changed the police practices, but not necessarily attitudes. The third formative force shaping police attitudes is the police subculture, which is conservative and changes much more slowly than the culture surrounding it. Another important factor is the tensions and the negative attitudes, often escalating into violence and open hostility, that some Roma have towards the police.

Following the start of EU accession negotiations in 1997 which demand that prospective EU Member States follow EU policy and human rights practice, the police felt the need to change its public profile with respect to the policing of the Roma. Some police officers indicated they felt pressure particularly from NGOs not to sanction certain misdemeanors. Therefore, riding public transportation without a valid ticket, selling products in the street without a permit, or petty thefts are often left unpunished. In the words of one officer, he would be “fining

and arresting Roma all the time” if he paid attention to all misdemeanors. Another way to avoid unnecessary contact with Roma was to reduce police presence inside some Roma neighborhoods and respond only to emergency calls. According to some interviewees, individual police officers sometimes assume their own strategies to avoid working on Roma crime cases, which are considered rather problematic, as they could lead to complications or affect adversely one’s career if the officer’s actions are perceived as discriminatory or racist.

3. POLICE STOPS AND ETHNIC PROFILING

The above sections outlined some of the most important contextual issues that should be kept in mind when analyzing police stops of Roma:¹⁶

- the different social and demographic profile of Roma;
- inter-ethnic relations, particularly, the widespread prejudice in Bulgarian society towards the Roma.

The present chapter examines the organization and conduct of police stops and then analyzes the existing evidence of police ethnic profiling practices. It also offers an overview of the factors that influence police officers' decisions to conduct stops.

3.1. POLICE STOPS

The Ministry of Interior agency that carries out police stops is the National Police Service. On a daily basis the largest amount of stops are carried out by officers of its General Directorate for Combating Crime, Safeguarding Public Order and Crime Prevention. Some other Mol agencies can also conduct stops, but only under specific conditions and occasions (e.g. the Gendarmerie). The area police department units that conduct stops are:

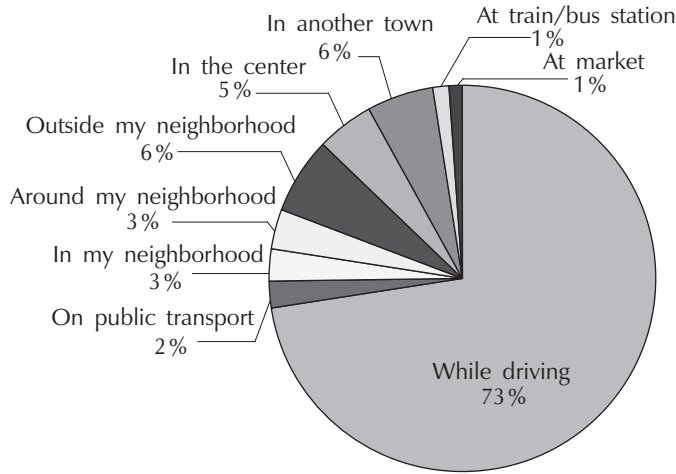
- vehicle transport control—carries out most vehicle stops;
- patrolling and guarding activity units (PGA units);
- area inspectors—community police officers that carry out, although rarely, pedestrian stops.

During the 6 months prior to the survey, 1.1 million individuals or 18% of the adult population had been stopped by the police, which translates into between 5.4 and 6.8 million police stops annually.¹⁷ On the average, if one assumes that there are 20,000 police officers, it follows that each officer conducted 2 to 3 stops per day. The survey also showed that the majority of police stops, at least 73% of them, took place while the respondent was driving. The majority of pedestrian stops take place while the individual is away from their neighborhood.

¹⁶ The Bulgarian police uses the term "*proverka*" which translates better in English as police "check" or "inspection". To be consistent with other ethnic profiling studies, this report will stick to the term "police stop".

¹⁷ The fact that some people are stopped in multiple cases is taken into account as well.

Figure 2. Police stops (June–November 2005)



Source: Vitosha Research

Overall, the survey confirmed the anecdotal evidence from the interviews and the focus groups that young men are the primary targets of police stops. The main explanations certainly are the disproportionate involvement of young men in crime as well as their lifestyle. Over 90% of crimes are committed by men and over 60% of them are committed by men under the age of 30.¹⁸ Men go out at night much more often and drive more frequently than women and, therefore, are more likely to be targets of police stops. For instance, 42% of the male respondents stated that they rarely or never go out at night, while for the women the share was 58.4%.

Table 2. Police vehicle stops (June–November 2005)

	Never	Once	2-3 times	4-5 times	6-10 times	More than 10 times	Don't know/No answer
15 - 19	74.5%	10.6%	8.5%	4.3%	–	2.1%	–
20 - 29	70.9%	7.8%	11.2%	3.9%	2.9%	2.9%	0.5%
30 - 39	73.8%	8.4%	14.1%	2.1%	0.5%	1.0%	–
40 - 49	79.2%	7.1%	7.6%	4.6%	–	1.5%	–
50 - 59	80.5%	8.2%	6.7%	1.5%	0.5%	–	2.6%
60 + (average)	97.0%	1.1%	1.6%	0.2%	–	–	0.2%
male	70.9%	8.3%	12.6%	4.1%	1.2%	2.1%	–
female ¹⁹	91.3%	4.7%	2.7%	0.8%	0.2%	–	–

Source: Vitosha Research

¹⁸ National Statistical Institute. Crimes and Persons Convicted in 2005, Sofia, NSI, 2006.

¹⁹ Interviews with the police indicated that female Roma are often stopped on suspicion of pick-pocketing. Professional pick-pockets, though, are usually very well dressed, which sets them apart from the average poor Roma woman, therefore making stops of average Roma women less likely. One could therefore conclude that police ethnic profiling practices are pointed towards male, rather than female Roma.

3.2. EVIDENCE OF ETHNIC PROFILING

Overall, the data from the household survey showed that there is no statistically significant difference between the share of the Roma and the Bulgarian population that is being stopped by the police. The data indicates that generally the Roma are stopped less often than Bulgarians, as the mean for Bulgarians is 1.40, while for the Roma it is 1.36. Bulgarians are stopped more often than Roma, as the share of Bulgarians that were stopped more than once is greater than the share of Roma that were stopped more than once.

Table 3. Police vehicle and pedestrian stops (June–November 2005)²⁰

	Bulgarian	Roma
Not at all	82%	81%
Once	6%	9%
2-3 times	8%	6%
4-5 times	2%	2%
6-10 times	1%	0%
More than 10 times	1%	1%
Don't know/no answer	0%	1%

Source: Vitosha Research

The interpretation of these results should be careful in light of the fact that the great majority of stops are vehicle, not pedestrian stops. While 51% of Bulgarian households own vehicles, only 19% of Roma households do so. As a result, while 76% of all stops of Bulgarians were vehicle stops for the six-month period preceding the survey, only 25% of the stops of Roma were vehicle stops. The remaining majority—75% were pedestrian stops of Roma.

Table 4. Police stops (June–November 2005)

	Vehicles stops		Pedestrian stops	
	Bulgarian	Roma	Bulgarian	Roma
Overall	14%	5%	5%	13%
Not at all	14%	37.1%	–	–
Once	21.5%	6.7%	–	–
Twice or more	54.6%	18.7%	–	–
Don't know/no answer	10%	37.5%	–	–

Source: Vitosha Research

²⁰ The question, literally translated from Bulgarian, was: “How often have you been stopped by the police for a police check?”

Another consideration that should be kept in mind is that in the weeks and months preceding the household survey (October–November 2005), the police carried out mass stop and search operations throughout the country—primarily—vehicle stops and ID checks in night clubs. These actions were provoked by several public contract killings that caused much political turmoil. As a result of domestic and international political pressure the government adopted a set of measures against organized crime. The highly publicized and visible measures (such as masked policemen pulling over expensive vehicles in midday central Sofia) may have affected the perceptions of respondents, as a much higher share of Bulgarians than Roma think that recently there have been more stops²¹ (Table 5). The fact that 22% of Roma think that recently there have been less stops probably also reflects this change of focus of the police towards serious crime. These results indicate that possibly before the shift of focus of police stops in the fall of 2005, there was significant disproportionality of police stops.

The analysis of vehicle stops, however, does not provide unequivocal evidence of the use of ethnic profiling in such cases. As the survey findings show, the police stop Roma drivers in a smaller number of cases (Table 5).

Table 5. Police vehicle stops of vehicle owners (June–November 2005)

	Not at all	Once	Twice or more
Bulgarian	9%	22%	60%
Roma	25%	22%	47%

Source: Vitosha Research

The fact that a smaller number of Roma drivers go out at night in their own vehicles can safely account for the fewer police stops among this group (Table 6). Besides, most vehicle stops are carried out outside towns or villages.

Table 6. Going out at evenings (vehicle-owning households)

	Almost daily	At least once a week	At least once a month	Rarely	Not at all
Bulgarian	17%	27%	13%	28%	13%
Roma	12%	26%	14%	22%	26%

Source: Vitosha Research

No questions were asked about the frequency of driving out of town, but it could be supposed that the Roma make such trips less often than ethnic Bulgarians because of high gas prices. Since data about the driving habits of Roma and

²¹ The police operation called *Respect* commenced after the murder on October 26, 2005 of banker Emil Kuylev, one of the richest individuals in Bulgaria, who was suspected of having relations to organized crime.

Bulgarians were insufficient, it is difficult to decide whether the police apply ethnic profiling towards Roma drivers.

The typology that the research team had originally built around the interviews with the police and the focus groups did not seem to hold true. The interviews had originally indicated that in large cities like Sofia, Plovdiv and Varna and medium towns like Kyustendil and Sliven with compact and fairly large Roma neighborhoods ethnic profiling practices were much more prevalent. On the other hand, the interviews in smaller towns like Botevgrad, Levski and Kazanlak with relatively large Roma population suggested that ethnic profiling was not an issue because the police have better knowledge of the Roma communal life and the individuals they perceive to be the “trouble-makers”. Police officers, particularly in the rural areas around these towns, expressed familiarity with the Roma communities that they serve and did not appear to conduct stops based on ethnicity alone.

The statistical analysis showed that the size of the city was not a good predictor for the likelihood of someone being stopped. What proved to be much more important was the ethnic makeup of the neighborhood where the respondent lived (Table 7). The Roma are much more often stopped, particularly inside and around the neighborhoods where they live.

**Table 7. Places of conducting police stops
(June–November 2005)**

	Bulgarians	Roma
In the neighborhood where I live	4.2%	25.2%
Around the neighborhood where I live	5.0%	20.5%
Outside the neighborhood where I live	9.2%	13.9%
In the center/downtown area	6.7%	13.8%
In another town	7.4%	13.2%
While in public transport	2.1%	4.5%
At train/bus station	2.2%	3.6%
At the market	1.8%	2.7%

Source: Vitosha Research

The above data, though, should be interpreted while taking into account the types of neighborhoods where Roma live.²² Without such analysis one could conclude that Roma neighborhoods are tightly controlled by the police and therefore Roma are disproportionately stopped there. The survey showed that the police stops of

²² The interviewees were asked to differentiate between 7 different types of neighborhoods: (1) neighborhood/village populated by ethnic Bulgarians and bordering on similar neighborhoods/villages; (2) neighborhood/village populated by ethnic Bulgarians and bordering on Roma neighborhoods/villages; (3) neighborhood/village with some presence of ethnic minorities; (4) neighborhood/village with a significant presence of Roma; (5) small Roma neighborhood; (6) large Roma-populated city “ghetto”; (7) neighborhood with non-Roma ethnic minority.

Roma were most frequent where the Roma respondents lived in neighborhoods that were mostly or entirely populated by Bulgarians. **Forty percent of Roma respondents who lived in neighborhoods “mostly populated by Bulgarians”, had been stopped by the police in the past six months.** Similarly, 20% of Roma respondents who lived in Bulgarian-only neighborhoods (only 1.6% of Roma live in such neighborhoods) were also stopped.

Table 8. Stops according to ethnic make-up of residential neighborhood

	Roma respondents residence by type of neighborhood	Share of Roma respondents stopped
neighborhood/village populated by ethnic Bulgarians and bordering on Roma neighborhoods/villages;	1.5%	0%
small Roma neighborhood	19.9%	11%
neighborhood/village with a significant presence of Roma	21.8%	12%
large Roma-populated city “ghetto”	42.2%	15%
neighborhood/village populated by ethnic Bulgarians and bordering on similar neighborhoods/villages	1.6%	20%
neighborhood/village with some presence of ethnic minorities;	12.1%	41%
Total	100%	(does not equal 100%)

Source: Vitosha Research

The analysis found that physical features (such as darker complexion) and attire of the Roma also play a role in the likelihood that someone would be stopped. The interviewers were asked to identify if the respondent was a Roma, and to provide the reasoning for such an assessment: neighborhood where the respondent lives, language, complexion, dress, and living conditions. In 20% of the cases there were no features that could have led the interviewers to identify the respondents as Roma, but the respondents self-identified as Roma. This is important because it provides some evidence that probably around 20% of the Roma are not recognized by the police as such, and therefore are unlikely to be subjected to ethnic profiling practices—the survey results supported this hypothesis (Table 9). The Roma whose complexion was darker and who wore poorer clothes (there is no “traditional” Roma attire) were stopped much more often. This observation was confirmed by the focus group discussions. In the Sofia focus group, 4 out of 12 participants had a fair complexion and were well dressed—they did not have any experience with police stops, whereas another two participants, who were a couple, and were much darker and poorly dressed, stated that they were “stopped all the time”.

Table 9. Police stops and respondent’s appearance

Physical features of respondent	Stopped in own neighborhood		Stopped around own neighborhood		
	Does not look like Roma (%)	Looks like Roma (%)	Does not look like Roma (%)	Looks like Roma (%)	
Complexion	13.4	33.4	7.9	28.2	
Attire	15.8	39.1	12.7	32.6	
		Stopped outside own neighborhood		Stopped on public transport	
Complexion	0.0	7.0	7.9	17.0	
Attire	1.6	8.7	8.0	21.7	

Source: Vitosha Research

“My wife and I were stopped by the police a couple of days ago when we were at the market. They asked us for IDs but my wife did not have hers. The officer said: “You wait here, and your wife is coming with us to the police station.” I said “Wait, wait, she just forgot her ID.” “If you talk too much you’re coming with us.” ...I just noticed that another darker guy passed and he [the police officer] stopped him. And another one passed and he stopped him. That really ticked me off so I said: “Sir, why don’t you stop someone whiter, I see you’re stopping only the darker ones.” [the officer replied:] “Don’t tell me who to stop!” So, I shut up, so that I don’t get into bigger trouble.” (Sofia focus group participant²³)

Further evidence of ethnic profiling is provided through statistical analysis (a logistic regression) of factors that could increase the likelihood of someone to be stopped by the police (full details of the statistical analysis are shown in Appendix C). This analysis takes into account the following characteristics: sex, age, education, ethnicity, employment, size of town and type of neighborhood, and lifestyle.

The first model analyzed together **vehicle and pedestrian stops**, based on those who answered positively to the question: **“Have you been stopped by the police in the past 6 months?”** At this level of analysis ethnicity was not a factor increasing the likelihood of being stopped. The factors that were significant were (1) **age**—younger individuals were more likely to be stopped than older ones, (2) **sex**—men were more likely to be stopped, and (3) **going out at night**—those that went out at night were 3.5 times more likely to be stopped.

The analysis of **pedestrian stops**, though, showed that ethnic profiling did take place. In addition to sex and age, **the ethnicity** of the respondent (being Roma) and the **type of neighborhood** (living in a Roma neighborhood) **increased the likelihood that the respondent had been stopped**. Going out at night was not anymore a significant factor. This makes sense, as the policy of stops late at night is much more systematically applied on vehicles than on pedestrians.

²³ This individual also had much darker complexion than the other participants in the focus group.

3.3. POLICE ATTITUDES DURING STOPS

An outcome of the household survey supporting the conclusion that ethnic profiling is carried out by some police officers are the findings related to police officers' attitudes towards Roma in the course of police stops. The following three points summarize the findings:

- In the majority of cases the police acted professionally and respectfully, safeguarding the rights of both Roma and Bulgarian citizens.
- Around one out of four individuals was not treated professionally and respectfully—a relatively high proportion.
- The Roma were consistently treated worse than Bulgarians. They were more often approached unprofessionally and disrespectfully and some were consistently insulted, threatened or physically abused.

Table 10. Police treatment of citizens stopped in the last 6 months (%)

		Roma	Bulgarian
Did the police act professionally?	Sometimes	17.1	17.6
	Never	8.5	6.2
Did the police treat you with respect?	Sometimes	20.5	17.6
	Never	16.6	7.2
Did the police use insults?	Always	7.6	0
	Sometimes	8	3.1
Did the police threaten you?	Always	6.25	0
	Sometimes	5.3	4.9
Did the police physically abuse you?	Always	2.7	0
	Sometimes	1.8	1.3
Did the police disregard your rights?	Always	13.9	2.5
	Sometimes	4.4	7.1
Did the police explain why they stopped you?	Sometimes	11.1	23.2
	Never	28.9	10.1

The issue that seems to be equally problematic across ethnic groups is accountability. Only in a slight majority of cases the police explained to the stopped individuals the reason for which they were being stopped; as for the Roma, almost a third of the respondents were never given the reason for the stop. There are no specific regulations requiring the police to provide an explanation, but the disparity here indicates more polite treatment of ethnic Bulgarians.

The above data raise particular concerns, since they show that nearly 46,000 Bulgarians and 7,400 Roma were intimidated during police stops between June and November 2005. In addition, almost 15,000 people were physically

abused (of which 12,000 Bulgarians and 3,000 Roma). These figures suggest that such incidents represent a trend, rather than isolated cases.

*"I was once stopped by the police for drugs. "Give us your ID and lift up your sleeves." I was like: "Wait a minute, why don't you go and catch someone with drugs [drug dealer], why do you check me?" I was almost about to cry. "Lift up your sleeves and don't talk too much, **you dirty gypsy ("mangal")**, [otherwise] I'll put you in the trunk [of the police car]." (Sofia focus group participant)*

(Participant 1) "They [the police] do not let us dig [scrap metal from military firing range]. They take our tools, they start to kick and beat us and we run away." (Participant 2) "Yes, they chase us and we run." (Participant 3) "If they arrest you, you'll have to explain what you were doing there and there will be more [beating]. If you go and complain [about the beating], he'll catch you later and beat you more. If they don't take you to the police station, they beat you on the spot." (Three focus group respondents in Sliven discussing the usual police actions towards them)²⁴

The police officers do not deny that attitudes captured by the survey exist, but they claim that they are provoked by the individuals that they try to stop.

3.4. EXPLANATION OF POLICE STOPS

The analysis of police stops should be seen in light of the structural reform that took place in the law-enforcement and judiciary institutions as a result of changes related to the upcoming accession of Bulgaria to the EU. This text, though, will not discuss at any length these larger structural issues.

A key issue in understanding the factors that drive police stops is the lack of mechanism for measuring the efficiency of police stops. This is part of a larger issue within the public administration, including the Ministry of Interior, where efficiency is rarely, if at all, adequately measured. As there is little publicly available data on efficiency of the law-enforcement system, there has never been a public debate on that topic. Issues related to resource management and financing of police operations are completely avoided and considered "classified".

Unlike police forces in the UK and the US, the Bulgarian police have a very limited system to report and control police stops, which is largely a matter of formality. There is no centralized system of collecting data on police stops and detentions. Although such capacity exists, it has been so far applied only during specialized police operations (see 3.7). Even the information collected during these operations is largely used to impress the media and the public, rather than to analyze it. There is no control mechanism that pressures patrol officers to go beyond any minimal effort that they themselves might find appropriate to put, and to conduct more rigorous stops. The "minimal effort" approach has taken firm hold within police subculture and is a result of years of underpayment

²⁴ In the past several years there have been about 20 cases of Roma dying and being injured from unexploded ordnance that they try to collect from active or abandoned military training sites.

and low morale within the police.²⁵ Although the local supervisors and the area police department (APD) heads need to adjust patrolling work in accordance with the crime rate (as mandated by Instruction I-23, explained in 3.6) or criminal incidents, there was no evidence of significant differences in the patrolling and stopping policies in the 10 APDs where the interviews were conducted. Neither did supervisors control the number and efficiency of police stops and arrests. The information that is gathered during police stops did not seem to feed back into police stops practice in a systematic way. The patrol officer's career is not affected in any way by the number and efficiency of stops.

Despite the overall lack of guidance in the daily police stops, based upon the interviews of both patrol officers and persons being stopped a number of characteristics of police stops could be drawn out. Some of these proved to be rather perceptions and not supported by the survey findings, although overall the survey findings were inline with what the officers claimed.

The police rarely stop locals who are well-known to them, families, or elderly. Instead, stops are carried out when:

- Individuals correspond to the profile of crime suspects under investigation.
- Someone is an outsider to the neighborhood, town, or village. This criterion seemed to be applied more in villages and small towns, where the police were likely to easily recognize outsiders. In some cities, though, this is also applied, but in conjunction with additional criteria. Roma are particularly vulnerable to this criterion as they are easily recognized or suspected to be outsiders to non-Roma neighborhoods.²⁶
- **Someone has a suspicious look**—this was described by most policemen not as a precise criterion, but as some sort of **an instinct or feeling**. In fact, this was what most interviews focused on, as it was presumed that this lack of clarity and guidance on what constitutes suspicion, results in ethnic profiling practices. Upon further examination, officers described that suspicious characteristics might include features like someone's gait, look, or posture. For instance, when someone walks hurriedly, looks concerned about something, looks around, and carries a large package—this could trigger a police stop. This feature, though, is often combined with other ones, such as carrying large objects, being an outsider, dress, etc.
- Someone walks, but especially drives very late at night.
- Someone carries a large bag or a package.
- Someone rides in full horse carriage—this criterion was particularly used for Roma who collect scrap metal or wood; such stops seemed to be conducted preventively, regardless of whether there is intelligence information or a reported crime. In regions like the vacation home areas with particularly high level of thefts, full carriages are checked routinely.
- Someone has the features of an apparent, especially intravenous, drug-user.
- When someone could be a potential information source for a crime or a crime suspect.

²⁵ This conclusion is made based on observations from hundreds of interviews that the authors have conducted during their work as criminologists over the past 5 years.

²⁶ The interviewees in 6th Plovdiv APD claimed that the same logic works against Bulgarians, who are frequently stopped when visiting Roma neighborhoods, like Stolipinovo in Plovdiv—the main heroin distribution point for Southern Bulgaria. Bulgarian outsiders, particularly young males, are therefore suspected of involvement with drug trade or use. The survey provides little evidence to support or dismiss this claim.

A different kind of motivation for a stop is asking for a bribe. Practically, though, such practices concern almost always traffic stops. In around 10% of vehicle stops, according to the household survey, patrol officers had demanded some sort of bribe. The level of bribes demanded in pedestrian stops is well under 1% of the cases, so a statistically significant conclusion could not be drawn from the survey.

3.5. FACTORS INFLUENCING POLICE STOPS OF ROMA

One issue that sets apart the police attitudes towards ethnic minorities in Bulgaria, compared to the US or countries in Western Europe, is that before 1990 ethnic minorities were unofficially considered by government and security forces as a potential threat to national security. Therefore, Turkish and Roma neighborhoods were subjected to more active police control. With the democratic changes in the 1990s and the overall reduction of the police force the close monitoring of minorities was reduced. During the interviews, many police chiefs shared that in the 1990s non-vehicle patrols were abandoned due to understaffing. Nevertheless, the Roma continued to be subject to special police attention. In recent years, police departments have been established or restored in a number of Roma-populated neighborhoods, such as Fakulteta in Sofia or the Roma neighborhoods in Samokov, Vidin, Sliven, Yambol, Krichim, etc.

Some police officers described that during the 1990s within the police culture the Roma neighborhoods were perceived in a special way:

- Police officers consider police departments serving Roma neighborhoods not to be prestigious. Therefore, often “problematic” officers are sent to such departments.
- Roma neighborhoods are difficult to serve, with crime rates that are difficult to reduce and therefore risky for one’s career.
- Police chiefs find it risky to their career to speak publicly on crime incidents involving Roma, even if the public demands answers.
- Police departments around Roma communities need to deal with Roma human rights organizations.

The patterns in using ethnic profiles depend on the perceived crime problems that a specific APD serves. There is no official policy (at the local or national level) of using ethnic profiles. Decisions of police stops are rather chaotic and intuitive practices that are applied to a different degree depending on the crime situation of the local Roma community and the capacity of the police department.

Based on the survey and the interviews one could summarize the following features of police stops:

- Stops are considered to be an “extra effort” that could lead to unwanted problems with the Roma and are therefore largely avoided.
- Stops are mostly carried if there is pressure from the local police chiefs to demonstrate police presence or as part of specialized operations.
- The rules for conducting stops are set as oral instructions by senior officers, while the choice of who should be targeted usually varies with the particular officer, who is most often led by his/her intuition.

- Stops are carried out only of Roma that do not seem to be able to cause problems, e.g. call a human rights NGO or file a complaint. These are usually the least educated individuals.

Depending on the size of the town and its ethnic makeup ethnic profiling follows a different logic:

- In towns or neighborhoods where the majority of population is Roma, the Roma ethnicity tends to be less of a factor.
- In rural regions, even if there are frequent crime incidents involving Roma (thefts of agricultural products or petty thefts), the police presence is not strong and stops are less frequent.
- In neighborhoods and towns with predominantly Bulgarian population, Roma are stopped more often as a “crime prevention measure”.
- Stops of Roma around large Roma city ghettos are more intensive than in other parts of the town, such as the city center.
- In some towns, the police unofficially want to “limit the presence of Roma” (for instance tourist centers, shopping centers, public gardens, night clubs, or beaches) to reduce the risk of pick-pocketing and thefts and therefore stops of Roma are more intensives.
- If there have been recent clashes between Bulgarians and Roma, certain neighborhood border areas could become subject to stricter surveillance.
- On the other hand, certain areas and public events where Roma participate and where problems are expected (such as fights that could break out during weddings or parties) are usually free of police presence. Some police chiefs adopt the tactics of waiting until the fight is fought out to intervene.

In some communities, often there are additional factors influencing the number of stops. The main approach to dealing with crime in Roma communities is to talk to perceived “community leaders”. These are usually local power brokers, often involved in illegal activities themselves, but considered to be able to control the community.²⁷ The efficiency of this strategy is undermined by the fact that local leaders are often the least trusted institution in Roma communities.²⁸ Such leaders could help free detained Roma as they have direct access to the area police department chief. The relationship with such leaders could also affect the frequency of stops, particularly in the smaller Roma communities.

3.5.1. Crime and the Roma

The most important factor for conducting stops of Roma citizens that police officers mentioned during the interviews was the high level of crime among the Roma community to which they referred as “Roma criminality”.²⁹ Regardless of

²⁷ A good example of the level of influence and control that such individuals could have over the community is their ability to deliver votes during parliamentary elections. During the 2005 parliamentary elections, the son of a local Roma leader in the town of Vidin ran for an MP on the ticket of the Movement for Rights and Freedoms (MRF), a party of the ethnic Turks that had previously had no support in Vidin. The entire Roma neighborhood (close to 6,000 voters) cast their votes for the MRF.

²⁸ Avoiding the Dependency Trap, Ed. A. Ivanov, UNDP, 2002, p. 73, <http://roma.undp.sk/>.

²⁹ The term “Roma criminality” seems an inappropriate way to describe the involvement of Roma individuals in criminal activities and it is not used in the present report. The majority of crimes that Roma individuals commit do not differ in motivation or methods from crimes committed by Bulgarians.

whether such views are objective or well justified they are important because they provide the rationale for the disproportionate level of stops. The perceptions of high crime rates among Roma seemed to be formed primarily from personal observations and media reports. The patrol police officers interviewed were not familiar with internal MoI statistics on ethnicity of crime, which were mainly used by APD chiefs. In some APDs periodically there were trainings on the “specifics of Roma criminality” but it was not clear what these were based on, as generally there are no known research and analyses on this topic.

Police officers mentioned a number of socio-economic factors that contribute to high crime rates in some Roma communities: substandard housing conditions, unemployment, high illiteracy rates, participation in the gray economy, the impact of significant ex-prisoners, or the influence of certain Roma subgroups, such as the *Kardarashi*, whose culture has been influenced by criminal activities. The main feature of crime (which leads to more police stops in certain Roma communities) that police officers pointed to was the extensive involvement of some communities in petty crime. One of the main explanations provided by officers is that petty crimes are often on the borderline between misdemeanor and criminal offense. They claimed that for many Roma the difference is not clear and they do not perceive a misdemeanor as a criminal offense, therefore justifying such offenses as survival tactics. The focus groups illustrated some of these claims.

“My husband went to collect scrap metal. On the road to Katunitza he saw a metal fence on the side of the road where someone seems to have had an accident some time ago. So he thought the fence was not municipal property and decided to sell it for scrap. At that moment the private security car passed and noticed him...But he did not steal, he did not realize that this is a theft, it's on the side of the road. ...The security guards then called the police.” (Focus group participant in Plovdiv)

“We dig, we don't steal.” (Focus group participant in Sliven commenting on digging for scrap metal on the military firing range)

The factor most often described by police officers as a reason for the mass involvement of some Roma in petty crime is their dire **socio-economic situation**. A number of police officers noted that the problem was virtually non-existent prior to 1990 when there was no unemployment. In several communities, the police stated that some unemployed Roma see petty crime as a sustainable source of income. In some neighborhoods the police described the monthly budget cycle of the Roma as linked to the life on credit. They explained that a large share of a monthly social payment goes for repayment of debt to local food stores and usurers. The rest is enough to survive for the first ten days of the month. During the second ten days of the month, such families start borrowing again. In the last ten days of the month, though, after their credit limit is reached the main income becomes the petty thefts. In the words of one officer, “Ten days before the welfare benefits are paid the thefts by Roma sharply increase. After they receive the social assistance payments, thefts virtually cease.”³⁰

³⁰ Interviews with police officers, July 2005. The life on credit was also observed by UNDP. See Avoiding the Dependency Trap, Ed. A. Ivanov, UNDP, 2002, p. 50, <http://roma.undp.sk/>.

Both the police interviewees and focus groups participants underlined **usury** as an important factor stimulating petty criminal activities of Roma, as many poor and uneducated Roma were easily tricked into signing under promissory notes for loans with interests between 50% and 100% per month. The collateral to such loans were usually the welfare payments, and in case they proved insufficient, violence was readily applied against debtors.³¹ Therefore, in some cases criminal activities remain the only alternative income source for repayment of a debt. Several major cases illustrating this point were recounted in the focus groups and by police officers in Sliven and Plovdiv.³² Some focus group participants claimed that usurers often either bribe the police into inaction,³³ or ensure that the debts are legally protected through official contract or leasing schemes, therefore making it very difficult for the police to prosecute them.³⁴

3.5.1.1. The Gray Economy

During the interviews, police officers in all police departments pointed to another reason for frequent stops of Roma—their involvement in the gray economy,³⁵ mostly in scrap metal collection and timber production, but also illegal fruit-picking and illegal retail distribution of low-cost Turkish and Chinese consumer goods.³⁶ The functioning of these gray markets is highly dependent on cheap labor and illegal activities.

Scrap metal collection was described as a network of big companies trading in scrap metal. Such companies enjoy political protection in the legislative and executive branches. The scrap metal supplied to these companies relies on local scrap yards, many of which are located in or around Roma neighborhoods. Allegedly, often it is local Roma leaders that control the supply of scrap metal collected or stolen by poor Roma. There is practically no oversight of this industry as no single government institution is in charge with regulation.³⁷ Scrap yards are rarely sanctioned or avoid sanction through bribes of controlling officials or police, or through political protection. For this reason, the police and the gendarmerie often end up focusing on the lowest level of illegal scrap industry, the majority of which are Roma.

Timber production is similar. Reportedly, there are around 15 large companies that run the illegal logging industry and enjoy high-level political protection.³⁸ They rely on impoverished Roma for illegal timber logging. The companies try to ensure through bribes that the Roma are left unsanctioned to proceed with the illegal logging. Practically, all liabilities are carried by the Roma who occasionally

³¹ Focus groups in Plovdiv and Sliven; interviews with police officers, July 2005.

³² Interviews with police officers in Sliven, July 2005; The Roma from Nadezhda Neighborhood: “They Saved us from the Slavery of the Sliven’s Zrankovi”, *Trud*, 24 July 2004; Vidin’s Roma: “A Sigh of Relief after the Zrankovi are Gone”, *Standard*, 7 August 2002.

³³ Focus group in Sliven.

³⁴ Interviews with police officers in Sliven, July 2005.

³⁵ The 2004 UNDP survey showed that while 91% of non-Roma paid social security (an indicator for formal employment) on their income, only 62% of the Roma paid such contributions. (<http://vulnerability.undp.sk/>).

³⁶ Interviews with police officers in Kazanlak and Plovdiv, July 2005.

³⁷ Mihailova, P., and A. Bonev, The Iron Pharaohs, *Capital*, 26 May 2006.

³⁸ Nikolov, I., The Doom of the Axe, *Banker*, 22 August 2005.

get arrested or fined, while large companies evade responsibility. Such perceptions are fed by several cases that regularly attract media attention.³⁹

Organized crime groups have a wide impact on criminalizing some Roma communities. First, many VAT tax fraud schemes use poor Roma to register fictitious companies or nominal company directors, which mount millions of leva in debt. Fictitious invoicing is another scheme where companies are registered only so that they could issue fictitious invoices.⁴⁰ Trans-border smuggling schemes of cigarettes, Chinese goods, or heroin trafficking also rely on “mules” from Roma neighborhoods.⁴¹ Domestically, heroin distribution in Plovdiv has transformed the Roma neighborhood of Stolipinovo in the main heroin distribution center for Southern Bulgaria.⁴² Prostitution rings and trafficking of children also heavily rely on poor Roma families. In some regions where interviews with the police were carried out, the interviewees stated that all commercial sex workers in the region are Roma.⁴³

3.5.1.2. The Family

One feature that fuels the perception among police officers of disproportionate involvement of Roma in crime and results in high number of stops is the belief that in some Roma communities it is the (extended) family that plays a key role in the organization of criminal activities. In most neighborhoods the police spoke of criminal families and clans, rather than individual offenders. The police claimed that pressures for deviant behavior from the immediate or the extended family often start at an early age. The family/clan was described as the one that often stimulates, mediates or directly organizes the participation in the gray economy, criminal activities or even serious organized crime ranging from cattle theft, to pick-pocketing rings, illegal logging, scrap-metal collection, usury, and prostitution rings, to smuggling of consumer goods, cigarettes, or drug dealing.⁴⁴ The interviews made it clear that the crime where family plays the greatest role is organized pick-pocketing, carried out by some families and clans mostly from the *Kardarashi* and *Serbian Roma* subgroups, where crime is a significant part of the culture.⁴⁵

3.5.1.3. Ethnic Conflicts

Another reason for increased stops of Roma are the violent clashes involving large groups of Roma and ethnic Bulgarians or between Roma and law-enforcement

³⁹ See: 7000 Roma Votes against the Gendarmerie, *24 Chasa*, 5 May 2005; The Forrest: Guarded by the Illegal Loggers, *Capital*, 21 May 2005; Roma are Cutting Trees Illegally, *BNT*, 19 July 2005; Roma Are Hitting the Woods in Samokov with 80 Carts, *news.bg*, 20 April 2005; See also: Kostov, G., Paligorov, I., Petrov, S., and Z. Bogdanov, *Illegal Logging in Bulgaria*, World Wildlife Fund, 2005, p.23.

⁴⁰ An Unemployed Roma Man from Ihtiman Is the Record Holder for Due VAT, *Capital*, 19 February 2005.

⁴¹ Interviews with police officers, July 2005.

⁴² Focus group in Plovdiv; interviews with police officers, July 2005.

⁴³ Interviews with police officers, July 2005.

⁴⁴ Focus groups in Sliven and Plovdiv; interviews with police officers, July 2005. The case of the Zrankovi clan from Vidin is a case in point (Zrankovi Beat Up with Clubs Again, *Trud*, 15 July 2005; Two Clans in a Fight of Life and Death, *Trud*, 4 April 2005).

⁴⁵ For instance, according to local police and Roma activists, the price of the bride in marriage rituals in Kardarash communities depends on her pick-pocketing skills and could reach as much as €80,000.

officials. Such incidents seemed to have peaked in 2005, during the 6 months preceding the household survey. Typical examples are cases of Roma protest or even violence in cases of illegal logging where law-enforcement officers try to interfere,⁴⁶ as well as incidents when Roma retaliate en masse against the perceived police injustice.⁴⁷ The media attention in 2005, though, was attracted by incidents of clashes between large groups of Roma and ethnic Bulgarians.⁴⁸ As a result, the police took measures, including increased number of stops, to find the perpetrators that incited violence and to prevent further violence or crimes.⁴⁹ Public protests demanding harsh measures against the Roma resulted in increased police presence around Roma communities that were involved in such conflicts.

3.5.1.4. Mass Imprisonment

One significant factor that brings about disproportionate police stops of Roma is the sizeable share of repeat offenders and former prisoners in Roma communities. Often, police stop and search operations target what the police call “active criminals”—individuals with criminal records or with whom the police have had previous contact. Some police officers testified to the establishment of an “underclass” disproportionately involved in criminal activity in some Roma communities. This belief that Roma are disproportionately involved in crime becomes a self-fulfilling prophesy. If the police look for crime amongst the Roma, they will find crime disproportionately amongst Roma. This will mean more Roma arrested, prosecuted, convicted and jailed, thus reinforcing the idea that Roma are disproportionately involved in crime, and becoming a continued motive and justification for police stops of Roma. This fact has harsh implications for the social and economic development of the Roma at large. In some of the urban Roma neighborhoods visited, up to 20% of the population, or more than half of the adult males, had police records.

Prison conditions rarely have a positive effect on inmates, most of whom adopt a prison subculture that is easily diffused once they return to their communities. In the words of one police officer, “When they return they teach their children and cousins the newly learned tricks”.⁵⁰ Thus, a circle that generates further criminal behavior is being created. It could be estimated that at least half of the Roma males between the ages of 15 and 30 had passed through the criminal justice system during the period 1993–2003.⁵¹

⁴⁶ 300 Roma Attacked Police Cars, *Trud*, 10 September 2005.

⁴⁷ Interviews with police officers, July 2005.

⁴⁸ Drunken Roma Attack Bulgarians in Tervel, *Trud*, 11 October 2005; 30 Roma Beat Up Bulgarians for 10 Leva, *24 Chasa*, 3 August 2005.

⁴⁹ The Taming of the Roma, *Banker*, 17 September 2005.

⁵⁰ Interviews with police officers in Sliven, July 2005.

⁵¹ Ninety percent of crimes are perpetrated by males (NSI, Statistical Yearbook, Sofia, 2005). The Roma males between 15 and 30 years of age are between 80,000 and 100,000. Seventy percent of crimes are committed by individuals between 15 and 30 years of age. Roma constitute between 38% and 40% of all prisoners according to the self-identification of the inmates (Bulgarian Helsinki Committee. Bulgaria's Prisons, Sofia, BHS, 2002) and as high as 60% to 80%, according some prison-staff estimates. Therefore 3,000 to 5,000 Roma are imprisoned each year.

3.5.2. Police Statistics

The above described perceptions and attitudes about patterns of Roma offending are not the reflection of consistently collected objective data. The lack of such data impairs the police capacity to monitor disproportionalities of stops

Table 11. Crime Rate and Suspects

Year	Crime Rate (per 100,000 population) ⁵²	Roma suspects (% of total)
1990	763	21.4 %
1992	2,507	34.1 %
1994	2,510	30.4 %
1996	2,200	26.5 %
1998	1,817	20.2 %
2000	1,673	19.7 %
2002	1,757	18.9 %
2004	1,640	18.9 %

Source: Mol

of Roma citizens. Presently, the ethnicity data collected by the police do not provide a realistic view of the crime situation related to the Roma.⁵³ No serious studies have been carried out by the police either. The largest problem of the present law-enforcement ethnicity data is that it **is not collected consistently**. The suspects are asked to self-identify their ethnicity on a voluntary basis. In case the suspects do not state their ethnicity, they are recorded as Bulgarian. An analysis of the ethnicity data of the 10 police departments where the present study was carried out found dramatic variation across years in the number of Roma suspects that seem most probably to reflect changes in the local, regional or even national policy in the recording of suspects' ethnicity.⁵⁴

Another more technical issue is the fact that the existing data on crime suspects (Table 11) does not account for repeat offenders. This means that a suspect who has committed 50 crimes is entered 50 times—once for each crime for which he/she is being investigated. The police data might be overstating some aspects of the involvement of the Roma in crime by not accounting for repeat offender rates.

⁵² Excluding administrative fraud, financial, tax and intellectual property crimes, and the like.

⁵³ The 2002 Law on Personal Data Protection (LPDP) allows for the collection of ethnic data for the purposes of the work of public bodies that are investigating crimes (art. 21.2.5) and for statistical purposes (art. 20.2.2).

⁵⁴ For instance, nationally the number of Roma suspects between 1997 and 1998 fell from 39,367 to 22,923, while the number of Bulgarian suspects changed only from around 69,000 to 63,000. Also, in the 3rd APD in Sofia the number of Roma suspects between 1997 and 1998 went down from 829 to 552, while the Bulgarian suspects increased from 857 to 1,195. Similarly, the 9th Sofia APD recorded a fall from 485 to 281 Roma suspects between 2001 and 2002, while the number of Bulgarian suspects in that period increased from 1,777 to 1,904.

An important consideration of Table 11 is the difference in age structure of Bulgarians and Roma. Given that around 70% of all crimes (both in Bulgaria and worldwide) are committed by offenders between 15–30 years of age,⁵⁵ and that Roma constitute close to 15% of this age group,⁵⁶ it could be expected that the Roma commit at least 15% of all crimes.

3.6. POLICE STOPS RELATED LEGISLATION

Police powers to perform stops are set forth in the *Law on the Ministry of Interior (LMOI)*.⁵⁷ The police⁵⁸ can conduct stops for establishing the identity of individuals: 1) when they possess data that an individual has committed a crime or disturbed the public order; 2) when the stop is crucial to the disclosure or investigation of a crime and when an administrative penal procedure has been initiated; 3) when carrying out control of the validity of IDs and documents for stay in the country; 4) at specially set up police checkpoints; 5) upon request by another authority to assist them under terms and conditions specified in the law.

There are no specific guidelines on the conduct of stops, particularly pedestrian stops. In 1998, a short four-page document with *Guidelines on Vehicles Stops* provided instructions on the tactics of carrying out vehicle stops, but this instruction does not mention profiles or ethnicity issues.

The duties of the patrolling and guarding activity units (PGA units) are formally regulated by the *Instruction Regarding the Patrolling and Guarding Activity Carried Out by the Ministry of Interior*, known as Instruction I-23, last amended in 2004, and by *Instruction I-41 Regarding the Activity of Area Inspectors and Junior Area Inspectors at the National Police Service*, issued on 25 March 2003. As police racial profiling evidence is sought in pedestrian stops, the instructions regulating the activities of the traffic police are not analyzed in this report.

Since PGA units carry out mostly pedestrian stops, the following paragraphs describe Instruction I-23 and the observations on its implementation made during the research team's visits to the 10 APDs.

Instruction I-23 prescribes the organization of the street patrols' work in great detail, including: routes, duties, rights, limitations, and reporting. The interviewed police officers confirmed that the street patrols follow closely the methods and organization prescribed in the instruction. The interviewed officers were familiar with the provisions and content of I-23, and make an effort to act accordingly. In a few police departments, officers had to pass exams on the instruction after I-23 was introduced in 2004. In other police departments, they had been given lectures on I-23.

⁵⁵ The judiciary report that during the past 10 years the 15 to 30-year-olds have been committing annually 62–63% of all crimes.

⁵⁶ These are the 2001 National Census results. If one adds the Roma population that self-identified as Turks or Bulgarians, the likely share of this age group is even higher.

⁵⁷ LMOI, promulgated SG 17/24.02.2006, art. 68.

⁵⁸ LMOI stipulates that the police consist of officers, sergeants and external staff; this text uses the same definition.

As stipulated in I-23, the patrols might be several types: mobile or fixed, driving a vehicle or walking. The most important characteristics of the duties carried out by the patrol officers are the *patrol route* and the *borders* of the patrolled area. Each police precinct has precise patrol routes for both walking and vehicle patrols. In one district (Plovdiv), patrol cars were equipped with GPS devices to assure that the police adhere to their route. In most police districts there were not enough officers for walking patrols and patrolling was practically done only by vehicle, with 2–3 officers per vehicle. Due to fuel limitations of about 4 liters per day patrolling vehicles spent most of their time at eight fixed locations along the route and moved only from one stand to another, or if they were responding to an emergency. The vehicle patrolling was usually performed by at least two officers (often three), one of which acts as a supervisor. In some departments, walking patrols were occasionally used, when one officer stayed in the car while the other(s) walked the route.

The patrol routes are designed according to the crime situation. The density of patrol routes through Roma neighborhoods has not been analyzed. All 10 Roma neighborhoods that were visited had patrol routes passing through or around them. Further analysis is needed to establish if the density of patrol routes through Roma neighborhoods contributes to the disproportionality of stops.

On the other hand, Instruction I-23 mandates officers to “respect the dignity and rights of all citizens, without discriminating according to age, gender, sexual orientation, race, ethnicity, political views and nationality.” (I-23, p. 24, Chapter 4, Part 1, art. 57(1)). There is no such specific requirement, however, in Instruction I-41. The only particular guideline for the conduct of stops is that the officer “must introduce her/himself with rank, family name and name of the structural unit within the police force and that (s)he must show her/his police card and badge upon request” (ibid., art. 57(2)). The survey showed that this is done mostly during vehicle stops (in around 75% of all cases) and less during pedestrian stops (around 50% of cases).

Instruction I-23 stresses the importance of knowing the local crime situation, the crime contingent, as well as the geographical and demographic specificities in the area under surveillance. It mentions that individual and institutional analyses are regularly carried out bearing in mind the “demographic characteristics of the population: i.e. its number and concentration, ethnic and minority groups, migratory patterns and so on.” (I-23, p. 14, Chapter 1, Part II, art. 35 (2)). The police departments in Bulgaria start their workday with a staff meeting where the criminal situation in the area is reviewed. This analysis is used to focus police stops on particular suspects that should be monitored or apprehended. At this level “ethnic profiles” are certainly used—as the suspects could be Roma. None of the interviewed police officers admitted to have been given a daily task that could be characterized as “ethnic profiling”.

Another feature of the patrol police activity is the weekly and monthly periodic instructions. Instructions are flexible and attempt to sensitize the patrol officers to the emerging risks in the area under surveillance and give them an opportunity to adjust to the changing criminal situation. Occasionally, more specific instructions for stops and searches are distributed from the central police directorate to

police departments around the country. These often include general instructions, such as to “pay particular attention to people carrying large packages on public transport”.

Legal limitations to ethnic profiling practices

Bulgarian police officers have broad powers to stop individuals to establish whether a person is in possession of a valid personal ID card or driver’s license. According to Art. 80.5 of the Law on Bulgarian Self-Identification Documents (LBSD), citizens could be fined from €25 up to €150 if not in possession of their personal ID card. The Ministry of Interior is in charge of implementing this law (LBSD, art. 25).⁵⁹ In practice, since every police stop starts with an ID check, every police stop is legal.

Bulgaria is party to a number of international initiatives aimed at preventing discrimination in the criminal justice system. The 2002 UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa, pointed out to racial or ethnic profiling, defining it as “the widespread law-enforcement practice of placing suspicions of criminality on the basis of individuals’ race or ethnicity”. At the conference, the UN urged all states to design and implement effective measures to prevent such practices and protect citizens from becoming their target.⁶⁰

On 17 August 2005, the UN Committee on the Elimination of Racial Discrimination adopted a Recommendation on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System.⁶¹ The Recommendation stipulates that “States parties [to the Convention on the Elimination of All Forms of Racial Discrimination]⁶² should take the necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person’s color or features or membership of a racial or ethnic group, or any *profiling* [italics in quotation ours], which exposes him or her to greater suspicion”.

Currently, the two documents containing provisions that prohibit discrimination in police work are Instruction I-23 and the Mol Code of Police Ethics. Neither the LMOI, nor its Implementation Regulation contains provisions to restrict discrimination. Ethnic profiling, though, may be considered unlawful not merely because police officers are not in the capacity to perform a certain action, follow less strictly the legal procedure, or exceed their powers. More than that, it is illegal because given the same conditions they treat some ethnic groups more unfavorably than others. Such actions could be described as discriminatory. Therefore, ethnic profiling is a contravention, as discrimination in Bulgaria is

⁵⁹ This practice has no practical meaning except “social control”. It has remained as a practice from the communist period, when all citizens were mandated to have a “national passport”. Since not having an ID is in breach of the law, citizens could get arrested for not being in possession of one.

⁶⁰ Durban Declaration against Racism, Racial Discrimination, Xenophobia and Related Intolerance, § 72, <http://www.unhchr.ch/pdf/Durban.pdf>.

⁶¹ Recommendation on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, CERD/C/GC/31/Rev.4 (Future).

⁶² Bulgaria became party to this Convention in 1969.

prohibited by law. Police officers using the ethnic profiling approach may have complied with all provisions of the Law on the Ministry of Interior, but **they are violating the Constitution and the Law on Protection against Discrimination (LPAD).**

The proposition of equality is rooted in the Bulgarian Constitution⁶³ and the legislation on equal treatment of citizens of various races or ethnicities. Even if there are statistics showing different levels of criminality across races and ethnic minorities, the use of ethnic and racial generalizations in routine or ad hoc police operations could amount to discrimination. All police actions motivated solely by individuals' ethnic origin can be classified as ethnic profiling, and therefore discriminatory.

3.7. CONTROL AND EFFICIENCY OF POLICE STOPS

Both Instruction I-23 and Instruction I-41 require police patrols and area inspectors to radio in all stops of pedestrians and vehicles, all registered offenses or public order disturbances, as well as all official actions taken in relation to stops, crimes and offenses.⁶⁴ In practice, though, this cannot always be done. One reason that was pointed out by some officers was the fact that they were put on hold for a long time before getting through to the on-duty operator. The interviews indicated that only stops that raise further suspicions or those when the person stopped cannot be identified due to lack of an ID card result in a call to the APD center to establish the identity or criminal record of the person stopped.

In accordance with I-23 all activities, stops, searches or incidents are recorded in a police officer's *pocket book* and/or are reported in a written form to a superior officer. Reporting forms, although specified in I-23, somewhat varied, as some police departments had introduced additional forms, where all stops were recorded. In one of the departments, the recording categories listed included: (1) individuals with a crime record, (2) crime suspects, (3) vehicles. None of the forms, though, had reference to the ethnicity/race of the suspect. The general feel from the interviews was that there was too much paperwork, that filling it out was time-consuming, and that the shortage or absence of computers and printers was making reporting a really slow process. Instruction I-41 also mandates that area inspectors report all stops, and sets the number of stops as a performance criterion for the work of area inspectors and junior area inspectors (Annex 4 to art. 55).

Patrol commanders collect and summarize all reports of the work done by all on-duty officers. The information sheets are standard and contain tables for data on over 20 different activity categories—number of persons stopped, number of people brought to the APD, number of offenders caught, number of police warnings, number of offenses detected, etc. However, no data about the ethnicity of citizens are collected or reported in the information sheets.

⁶³ Article 6 of the Constitution stipulates: "(1) All persons are born free and equal in dignity and rights. (2) All citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status or property status."

⁶⁴ Instruction I-23, art. 72, par. 3.

According to Instruction I-23, APDs' overall patrol work and the officers are assessed on the basis of the following criteria: 1) the state of public order in the serviced area; 2) the causes and conditions for crime; 3) number of arrests; 4) submitted reports for open surveillance of "individuals of concern to the police", i.e. criminally active individuals; 5) participation in crime investigations and cleared-up crimes; 6) participation in administrative penal procedures; 7) initiative and ability to decide and act quickly in difficult circumstances; 8) treatment of citizens in accordance to legal and ethical requirements. During the interviews, though, officers could not point to a clear set of criteria according to which they were assessed and the most often mentioned one was "cleared-up" crimes as the only indicator that their superiors were particularly concerned with. The clear-up rate is indirectly related to the arrest or hit rate, but neither the officers, nor their supervisors thought of "hit rate" as any kind of efficiency criterion. Analysis of stops/arrests ratios was not used in any APD.

There are no publicly available data for a detailed analysis of police stops and detentions. The household survey indicated that the share of the stops of Roma people that led to an arrest (i.e. hit rate) was much higher than that of Bulgarians, but the sample is too small to make definite conclusions—not least because detention could also reflect prejudice, rather than efficiency, and the fact that a great number of Roma have to be brought to the local police departments for establishing their identity.

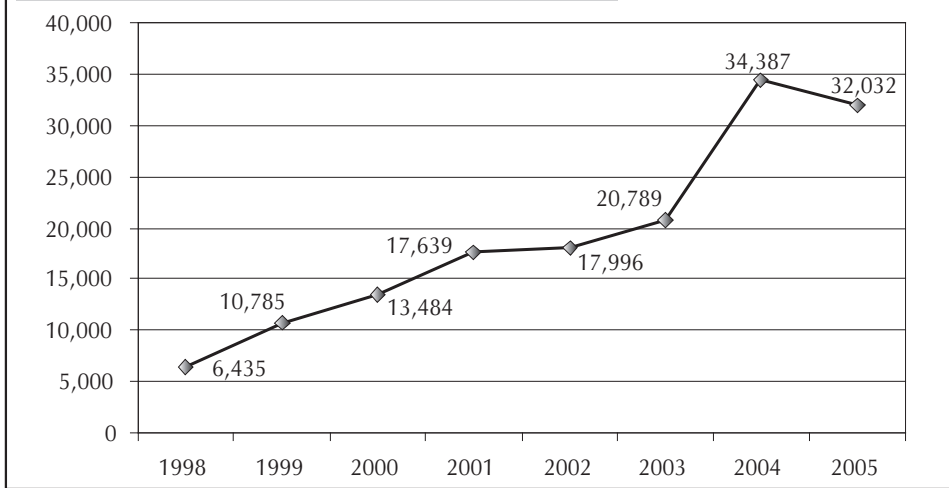
"My little brother practices marshal arts in the nearby sports hall. [Recently] on the way back from practice he was stopped by the police. They asked him for an ID but he answered that he was under 16 and therefore had no ID, but only his school ID. They did not trust him and they took him to the police station to check in the computer. ...They held him until my father went to pick him up and the kid waited with his school bag... They detained him for two or three hours."
(Participant in the focus group discussion in Sliven)

The scarcity of public data does not allow a more extensive analysis of police detentions, either. The provided data is not detailed enough to explain what caused the sharp 65% increase of detentions between 2003 and 2004 (Figure 3), nor why in 2005 there were 25,000 more detentions than in 1998—one explanation given by the police was that this increase is in part explained by better statistics. Some general information about the police **special operations**,⁶⁵ though, shed some light on the inefficiencies of police stops. For instance, between 26 October 2005 and 9 March 2006, 52,833 individuals were stopped during such operations. Of them, 37,908 were individuals with criminal records, 14,358 were "individuals of interest to the police"⁶⁶ and 567 were "leaders and members of organized crime groups". During these stops, 9,531 individuals were detained for up to 24 hours, but only 327 of them were detained for up to 72 hours, for which a prosecutor's official order was required. Only 130 remained in custody beyond the 72-hour period.⁶⁷

⁶⁵ These are 2 to 3-day sustained police actions with mass stop and search operations, usually aimed at detaining wanted criminals or simply at respecting those known to be "criminally active individuals".

⁶⁶ These are individuals without criminal records, but whom the police suspect of being criminally active, or who are known to be close to individuals with crime records.

Figure 3. Number of detentions



Source: Mol

It is not clear which one of these indicators could be considered a “hit rate” and therefore be an efficiency indicator. The short-term detentions of up to 24 hours could be largely arbitrary, as they are often carried out to establish the identity of the person stopped (if they do not have an ID on them) or simply as a display of authority to the arrested individuals. It is the detention for up to 72 hours and beyond that requires the police to present evidence that the arrested individuals are crime suspects, and therefore the prosecutor should issue a 72-hour detention order. Thus, one could conclude that the police “hit rate” even for targeted stops was 0.6% (for 72-hour detentions) and 0.3% for longer-term detentions. In comparison, hit rates for police stops in New York City or London average 11%.⁶⁸

⁶⁷ Ministry of Interior data provided to CSD.

⁶⁸ NYPD and London Metropolitan Police data quoted by Deborah Ramirez in Racial Profiling Data Collection: Promising Practices and Lessons Learned, presentation at the seminar *Addressing Ethnic Profiling and Discrimination in Policing in Europe*, 27-28 January 2006 in Budapest, Hungary.

4. CONCLUSIONS AND RECOMMENDATIONS

This report presented evidence that the Bulgarian police have so far not systematically used or analyzed police stops as a crime fighting tool. The police officers are not trained in and have little guidance on carrying out police stops, particularly of pedestrians. As a result, some police officers seem to be carrying out a disproportionately high number of pedestrian stops of Roma. It could be argued that such practices amount to ethnic profiling of Roma. In addition, during police stops the Roma are treated significantly worse than other citizens.

Although there is no formal policy that supports ethnic profiling, the Roma are subject to disproportionate number of pedestrian police stops. The main reason for the high level of stops of Roma is their suspected involvement in criminal activities. The analysis shows that although there is some ground for higher level of stops due to the high level of criminalization of some Roma communities, the police data on the ethnicity of crime suspects is unsystematic and incomplete. Therefore, the disproportionate number of pedestrian police stops of Roma is often provoked not by specific investigations or crime data analysis, but rather by ethnic prejudice.

The present police stopping practices have several consequences. On the one hand, they are inefficient. The police devote significant time and resources on carrying out pedestrian stops of innocent citizens without clear grounds for doing so. Further, the disproportionate number of stops of innocent Roma solely because of their ethnicity redirects police efforts away from stopping and apprehending criminals. As a result, ethnic profiling leads to violation of the human rights of Roma citizens according to international and Bulgarian equal treatment standards.

4.1. UNDERMINING CONFIDENCE IN THE POLICE

Studies in the UK and US have shown that ethnic profiling undermines the confidence of minorities in the police (Appendix A). The present study did not find convincing evidence to support such an argument for Bulgaria. Only 12% of Roma (10% of Bulgarians) believe that the police are conducting “too many stops”. Logistic regression analysis also did not show any significance of police stops as a factor that influences the level of confidence in the police. In the past decade the Bulgarian police have increasingly lost the confidence of the public.

Table 12. Share of respondents who do NOT trust the police

Year	Bulgarians	Roma	Turks
1997	35.1%	36.3%	26.5%
1998	39.2%	40.8%	26.5%
1999	38.3%	42.3%	29.4%
2000	47.9%	46.7%	34.6%
2001	47.6%	50.9%	33.3%
2002	40.3%	52.8%	29.1%
2005 ⁶⁹	54.0%	57.0%	32.0%

Source: Gallup monthly polls 1997–2002; Vitosha Research 2005

What does appear to undermine the trust in the police, though, is the police **attitude and conduct during stops**. Individuals that are mistreated (physically or verbally abused, treated unprofessionally, etc.) do not trust the police.

The issue of confidence in the law-enforcement institutions should be seen as an important aspect of the broader issue of confidence in the new democratic institutions in Bulgaria. During the period of transition to democracy, the government and the parliament were quite unpopular with approval ratings usually under 50%. The presidency, whose role is ceremonial, usually preserves high approval ratings of over 50%.

Compared to other institutions such as courts, prosecution and parliament, the police has generally enjoyed high approval ratings. Nevertheless, the level of trust has been steadily decreasing since 1997 among all ethnic groups, but particularly among Bulgarians and Roma.

The reasons underlying this deficit in trust cannot be attributed to a single factor, such as discrimination. One explanation that police officers gave during interviews was the collection of mounting debt for electricity and heating bills, reaching millions of euros in some city neighborhoods. Since 2001 and with the increasing privatization of utility companies the police was increasingly used to protect electricity company workers while cutting off electricity supply. Many Roma perceived these police actions as in effect the police being the reason for power cuts, and created numerous opportunities for conflict.

On the one hand, during the focus groups, participants told different stories about police stops, generally expressing indignation with police actions. A closer analysis, though, would show that most of their comments were focused not as much on the frequency of stops as on the attitude during the stops. The household survey clearly shows that some Roma are mistreated during stops and

⁶⁹ The 2004 figures are based on the answers of “little trust” and “no trust” in the police, while those in previous years are simply based on “yes” and “no” answers to the question “Do you trust the police?”

this is more likely an explanation for the level of confidence in the police than the stops themselves. Unfortunately, the sample was too small to compare the levels of trust among those Roma that had been mistreated and others that had not.

Focus group participants explained that the image of the policeman among the Roma minority is loaded with prejudice and fear. The neighborhood policeman or its pre-1990 version the “militzioner”, continues to be the scarecrow to Roma children. Another indication of the low level of Roma confidence in the police is the low crime reporting rate. While close to 50% of Bulgarian victims report crimes to the police, only 25% of Roma victims do so. The focus group discussions painted the picture in which the Roma generally perceive police work to be inefficient and failing to detect and prevent crime. The Roma interviewed also believe that officers discriminate against them and are likely to be on the pay roll of local Roma organized crime figures.

4.2. RECOMMENDATIONS

Legal measures

Citizens can be protected from the effects of ethnic profiling through legal prevention measures and institutional protection.

- Prevention measures should comprise both appropriate legislation and relevant hands-on initiatives. The **legal provisions** against ethnic profiling should prohibit discrimination and police ethnic profiling, should set a mandatory requirement for reporting all stops of citizens authorized by law, should demand the collection of data on stopped citizens’ ethnicity and restrict some of the powers that police officers currently possess.
- Discrimination is prohibited by the Constitution and the Law on Protection against Discrimination (LPAD), but it is of key importance to **include such a provision in the LMOI** as well. This will make law-enforcement agencies comply with it, but also the citizens will be informed and able of recognizing whether it is followed or not. Besides banning discrimination, it is viable to also outlaw ethnic profiling by law-enforcement bodies.

Increasing police accountability

- **Reporting stops to the public.** At present, patrol officers are required to report on stops they have accomplished. This helps to control their actions and prevent abuse of power. However, the requirement is set in Instruction I-23, which is not accessible to citizens, and they are not in a position to identify police misconduct. Protection from unauthorized stops would be possible if citizens were informed about police officers’ duty to report all stops. This is why this obligation should be expressly specified in the LMOI.
- **Documenting all stops.** Police officers are now obligated to complete statements only about cases of personal search, search of personal belongings

and vehicle search. No such statements are required for ID checks. The ID check in itself legalizes any stop of citizens. If citizens are to be protected from misuse of search powers, however, **ID stops should be documented**. With no document confirming a stop, an officer could deny (s)he ever performed it. Therefore, the police have to be officially required by law to document checks of ID papers and driving licenses. A copy of such document statement should be given to each stopped citizen. The data that such documents contain can become a method of controlling the performance of individual officers.

- **Development of a complaints procedure or improving the current procedure** in the case of illegal or abusive stops. During the focus groups some participants expressed fears that if such complaints are dealt through the police, they would be abused even more if the same police officer meets them again. These fears are well founded for small towns and villages. Therefore, alternative institutions, such as the local or national ombudsman offices and the National Commission against Discrimination, should become familiar with the discriminatory practices and attitudes surrounding police stops and deal with complaints regarding abuses during stops.
- **Development of community consultation forums.** Local communities should have a greater input into how policing priorities are set in their local areas and what tactics are appropriate and fair in light of those priorities. Dialogue between the local community and the police should focus on police stops, among other things, and put them on the agenda of the local Commissions for Public Order and Security.

Increasing efficiency of stops

- **Developing a system for monitoring the efficiency of stops.** Although period reporting on police stops indicates that the police have the capacity to gather information on police stops, a detailed stops analysis tool needs to be developed. At the least, such system should monitor: (1) the number of daily stops that each officer carries out; (2) the demographics of the individuals that (s)he stops—age, sex, ethnicity; (3) the areas of the stops; (4) the efficiency rate—in what share of the stops the officer's suspicions were well founded and resulted in further action; (5) reasons for the stop. Such information should be used in analyzing the performance of officers.
- **Ethnic data collection.** Law-enforcement bodies are currently not required to collect information on the ethnicity of stopped or detained individuals. However, regarding the issue of equal treatment this is a useful method of keeping in check police officers. The collection of ethnic data is legitimate as long as it serves the purpose of protection against discrimination. Its legitimacy finds its roots in a number of international and local legal instruments. The EU Race Directive permits the use of statistical data as proof for indirect discrimination. ECRI also emphasizes the need for gathering data to better assess the situation of ethnic minorities.⁷⁰ Ethnic data collection is regulated

⁷⁰ ECRI General Policy Recommendation No.1.

and permitted by a number of Bulgarian laws as well, e.g. the Law on Personal Data Protection (LPDP), the Law on Statistics (LS), the Law on the Population Census, Available Housing and Agricultural Farms (LPCAFAF).

- **Developing training modules for conducting police stops.** The present research indicated that the police have no training in identifying suspicious individuals. Although practice is certainly the best way to learn, formal training would streamline police stop practices and would bring about an increased efficiency of stops. There has been an increasing awareness of the police force about human rights as well as improving their ability to work with ethnic minorities through numerous trainings and seminars, the implementation of the *Community Policing* model, the establishment of two training centers for police officers (in Plovdiv and Pleven), and the setting up of a Human Rights Commission within the National Police Directorate. Further on, police officers' trainings and the Commission should specifically focus on the issue of ethnic profiling.
- **Introducing clear guidelines** on stops by developing a manual or amending Instruction 1-23 on Patrolling and Guarding Activity. The police practice of stops should be further formalized by making it mandatory that the police officers conducting the stop always: (1) introduce themselves, (2) explain the reason for the stop, and (3) treat the person politely. Further information could be provided on: (1) the rights of citizens and (2) contact details for filing complaints. In other countries such information is provided on the back of a form that the police hands out to the individual that is stopped.
- **Changing practices on ID checks.** The results of the present report and the studies conducted in other countries question the usefulness of mass ID checks. The arrest rates of such police operations are extremely low and prove to be largely inefficient. The responsibility of ID checks in entertainment establishments should be transferred to the proprietors of such establishments and any sanctions against underage drinking in such establishment should be pointed towards the proprietors. Occasional random checks should be allowed, but only with the purpose of establishing the proprietor's liability.
- **Increasing the recruitment of people from diverse ethnic origins in the police.** Increasing the number of Roma police officers would affect favorably the way Roma people are treated during stops. Although all area departments visited by the research team openly supported such a step, there are currently very few Roma officers and the MoI has no proactive recruitment policy or scheme towards the Roma minority. Besides, a Roma recruitment scheme will work only in case the MoI invests in a large-scale campaign including pre-employment courses and promotion activities targeting the Roma school-age population in order to counterbalance the generally low level of education of the Roma.

Further research agenda

Studies of police conduct with regard to ethnic minorities reinforce prevention because they provide valuable information on the specific risks encountered by

enforcement officers which can help design appropriate measures to eliminate those risks. This type of studies uses a variety of data from their own surveys of police work and from interviews with citizens. Thus, different aspects of police work can be incorporated and then analyzed.⁷¹ Such methods allow finding out the number of members of the various ethnic groups that have been targeted by the police as well as the types of stops they have been exposed to.⁷²

⁷¹ Lundman, R. J., Driver Race, Ethnicity, and Gender and Citizen Reports of Vehicle Searches by Police and Vehicle Searches Hits: Toward a Triangulated Scholarly Understanding, *The Journal of Criminal Law & Criminology*, vol. 94, no. 2, p. 342.

⁷² The New York City Police Department's "Stop & Frisk" Practices, Office of New York State Attorney General Eliot Spitzer, Civil Rights Bureau (December 1, 1999). The report is available at: www.oag.state.ny.us/press/reports/stop_frisk/stop_frisk.html.

APPENDICES: RESOURCE TOOLKIT FOR ACTIVISTS, POLICYMAKERS, AND ACADEMICS

The following appendices are aimed at serving several audiences:

Appendix A provides a literature review of racial profiling literature in the United States and the United Kingdom. It is meant to be used by a wider audience: policymakers, police officials, and human rights activists interested in broadening their views on ethnic profiling issues could read about the various studies, methodological issues, or practical approaches to addressing the issue of ethnic profiling.

Appendices B and **C** are aimed at academics and public analysts that have an in-depth interest in critically examining the present report. They detail the methodology of the research that was undertaken (Appendix B) and provide a detailed description of the statistical analysis regarding the stops data from the household survey (Appendix C).

APPENDIX A: POLICE RACIAL PROFILING PRACTICES IN THE US AND THE UK

I. INTRODUCTION

The research on ethnic profiling in Bulgaria draws conceptually on the various studies on racial profiling in the US and the UK. The present literature review looks at some studies that allow for a better understanding of the concept of racial/ethnic profiling. The main goal, though, is to provide an opportunity to juxtapose Bulgaria's case with racial profiling practices in the US/UK. These two countries have been chosen as reference cases because of the numerous studies they have undertaken to establish the existence of police racial profiling, to analyze its implications, and to propose suitable approaches to counteracting it.

In the following section, first the historical connection between race, or ethnicity, and crime will be discussed. For a long time, there have been claims that members of certain racial and ethnic minorities are naturally prone to having a generally offensive behavior. Second, different definitions of police racial profiling as well as some evidence of its existence will be provided. The practice seems to have strong implications on the overall criminal justice process. Third, the ongoing debate on the existence and impact of police racial profiling will be briefly outlined, presenting the views of both those denying or justifying the practice, and those condemning it. Furthermore, the review will present the consequences of racial profiling for the police efficiency and the community at large as well as the programs undertaken to counteract it in the UK and the US. In this section the implications of the 9/11 terrorist attacks in the US will also be discussed because of their huge impact on the attitude towards racial profiling. Finally, in connection to the current research project on ethnic profiling in Bulgaria, this literature review will briefly present some of the problems and approaches to studying the practice, which have been encountered so far.

II. HISTORY OF RACE OR ETHNICITY AND CRIME

Considering the historical context is crucial to making sense of contemporary outcomes because it allows for establishing the relationship between ethnicity, racism, crime and criminal justice.¹ Prejudice against people of certain skin color and other bodily differences has existed for centuries, and so has the stereotyping about the criminal nature of some racial and/or ethnic minorities like aggressive behavior, willingness to kill, etc. This stereotyping has been reinforced in the works of such famous philosophers and physical scientists as Hume, Kant, De Gobineau,

¹ Bowling, B., and C. Phillips, *Racism, Ethnicity, Crime, and Criminal Justice*, *The Oxford Handbook of Criminology*, Ed. M. Maguire, R. Morgan, and R. Reiner, Oxford, Oxford University Press, 2002, pp. 579-619.

Linne, and Blumenbach.² The work of the most influential criminologist Cesare Lombroso, *Criminal Man*, also makes a direct link between race and crime.³

The criteria and definition of race and ethnicity differ significantly among countries. Discrimination may be oriented towards foreigners, former colonial citizens, African Americans, etc. Certain social and historical processes of nations have given rise to particular ideas of race and ethnicity. In turn, these general perceptions are used to justify the methods of social control of some subgroups in the society. This leads to disproportionate outcomes in the criminal justice system.⁴

To exemplify the difference among nations it is useful to consider several examples. While in France there are only two classes—citizen and foreigner, in the United States the number of racial and ethnic categories interpreted in differences such as color, language, economics, and nationality, constantly expands. Views and constructions of race in the United Kingdom lie somewhere in between France and the US, where national identity serves as the main criterion for division, combining racial and ethnic considerations, citizenship and nationality. Thus, both biological and cultural factors play a role.⁵

Considering socioeconomic conditions is essential for understanding the position of some ethnic minorities. Studies in Britain have shown that Black and Asian people are subject to high unemployment rates, working low-paid jobs and often living below the poverty threshold.⁶ Furthermore, discrimination in schools leads to lower academic attainment among ethnic minorities, particularly those of African, Caribbean, Pakistani, and Bangladeshi origin.⁷ While generalizations about the socioeconomic position of ethnic minorities are not always possible, still patterns of disadvantage like the ones just described enhance the respective disproportional outcomes in the criminal justice system.

Additionally, media reporting largely contributes to the social construction of crime and criminality, which are portrayed as inherent to various ethnic groups.⁸ Racist behavior may be unconscious and unintentional if due to a lack of understanding, ignorance, or mistaken beliefs.⁹ The formed perception of higher rates of offending by some ethnic groups further inspires the practices of the criminal justice system.¹⁰

² Eze, E., *Race and the Enlightenment: A Reader*, Oxford, Blackwell, 1997.

³ Lombroso, C., *L'Uomo Delinquente*, Turin, Fratelli Bocca, 1876; Bowling, B., and C. Phillips, *Racism, Ethnicity, Crime, and Criminal Justice*, 2002

⁴ Bosworth, M., *Theorizing Race and Imprisonment: Towards a New Penalty*, *Critical Criminology* 12 (2004), pp. 221-242.

⁵ *Ibid*, pp. 221-242.

⁶ Home Office. *Race Equality and Public Services*, London, Home Office, 2000; Bowling, B., and C. Phillips, *Racism, Ethnicity, Crime, and Criminal Justice*, 2002.

⁷ Gillborn, D., *Race and Ethnicity in Compulsory Schooling, Race and Higher Education, Experiences, Challenges and Policy Implications*, Ed. T. Modood, and T. Acland, London, Policy Studies Institute, 1998.

⁸ Hall, S., C. Critcher, T. Jefferson, J. Clarke, and B. Roberts, *Policing the Crisis: Mugging, the State and Law and Order*, London, Macmillan, 1978.

⁹ Adjoian, A., G. Gordon, and C. Guilford, *Data Collection to Combat Racial Profiling in the United States, United Kingdom, and Canada*, Harvard Law Student Advocates for Human Rights, 2004.

¹⁰ Bowling, B., and C. Phillips, *Racism, Ethnicity, Crime, and Criminal Justice*, 2002.

The United Kingdom

In the UK, problems have been arising mainly because of high immigration rates from the colonies, which have been of major concern since the 1960s.¹¹ Fears were provoked by the stereotypes against mixing different races combined with the high tension between the police and Black communities. Unrest has been a severe problem in the UK in the 1970s and early 1980s, when oppressive means such as mass stop and search operations, excessive surveillance, armed raids, use of abusive language by the police, etc., prevailed in the African, Caribbean, and Asian communities.¹² The Conservative Prime Minister, Margaret Thatcher, who was publicly supporting stricter laws to prevent “the rising tide of crime”, was elected at the time.¹³ The high tension between the police and the African-Caribbean communities, provoked to a large extent by perceptions of oppressive overpolicing, gradually escalated into public disorder in the early 1980s in Brixton, London, and Liverpool. In 1981, the Scarman Report on the disturbances in Brixton criticized the policing practice in the area, and in particular, the 4 days long Swamp 81 operation in which 120 officers engaged in massive stops (933 in total) and arrests (118 in total) predominantly of Black people. Scarman explained the disturbances with the “outburst of anger and resentment by young Black people against the police”, perhaps a result of the lack of legitimacy for policing in the public.¹⁴ A subsequent riot in Tottenham, London, provoked by the death of an African-Caribbean woman in a premises search, resulted in the murder of a police officer.¹⁵ These events stimulated negative perceptions of the African-Caribbean youth among the public, which resulted in long lasting views about “Black criminality”.¹⁶

The United States

Initially, racial profiling as a term has evolved in the US. The long history of adverse relations between the police and certain racial and ethnic groups has led to the perception of racial profiling, or disproportionate targeting, and victimization of minorities by the law-enforcement agencies. Some of the incidents of conflict include the police participation in the suppression of the efforts to register Black voters in the South, the police enforcement of Jim Crow segregation, the “Zoot Suit” riot between police and navy personnel against Hispanics in Los Angeles in 1943, and other riots in the 1960s. Well-known recent events of police victimization of minorities’ members are the videotaped beating of Rodney King by officers of the Los Angeles Police Department, the abuse of Abner Louima, the death of Amadou Diallo, etc.¹⁷ Excessive press coverage of the

¹¹ Ibid, p. 581.

¹² Bowling, B., and C. Phillips, *Racism, Ethnicity, Crime, and Criminal Justice*, 2002, pp. 128-129.

¹³ Solomons, J., *Black Youth, Racism, and the State*, Cambridge, Cambridge University Press, 1988.

¹⁴ Bowling, B., and C. Phillips, *Racism, Ethnicity, Crime, and Criminal Justice*, 2002, pp. 139-140; Scarman, L., *The Brixton Disorders, 10-12 April 1981, Report of an Inquiry*, London, Home Office, p. 45.

¹⁵ Keenan, R., *Stop and Search: The Leicestershire Experience*, Justice Initiatives: A Publication of the Open Society Justice Initiative, 2005.

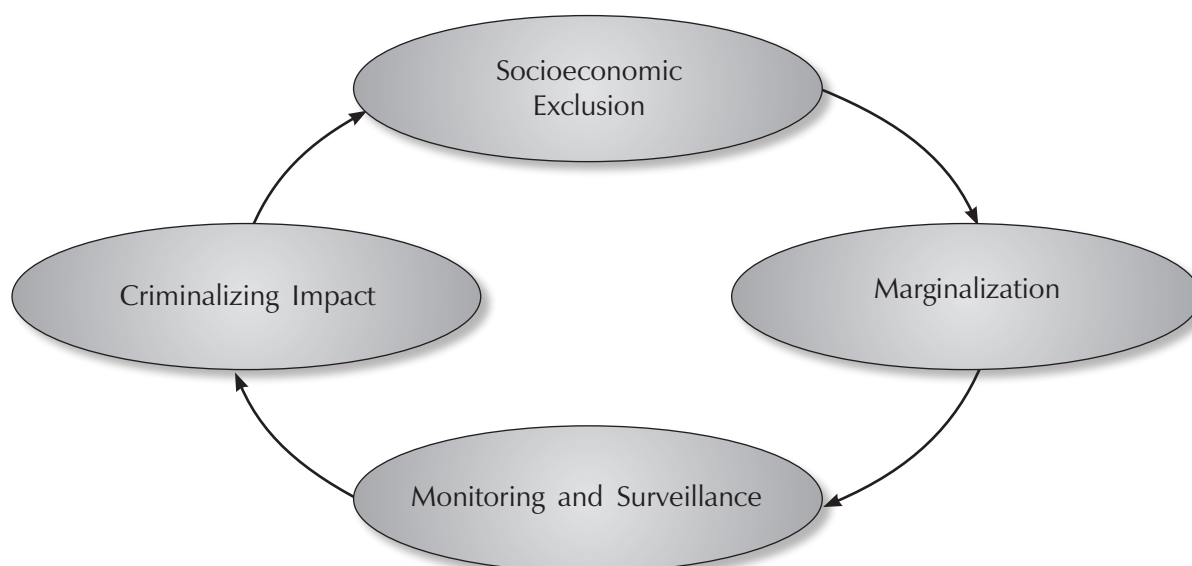
¹⁶ Bowling, B., and C. Phillips, *Racism, Ethnicity, Crime, and Criminal Justice*, 2002.

¹⁷ Buerger, M. E., A. Farrell, and J. McDevitt, *Moving Police and Community Dialogues Forward Through Data Collection Task Forces*, *Police Quarterly* 5.3 (2002), pp. 359-379.

racial profiling practices in the 1990s stimulated a nationwide debate on bias in policing, which continues today.¹⁸

To recapitulate, the historically built-in cultural stereotyping is consistent with selective enforcement and harsher criminal justice outcomes for some ethnic minorities. Their exclusion from many areas of social and economic life creates certain social and economic conditions for their marginalization. This leads to over-monitoring and surveillance of ethnic communities, which results in drawing proportionately more of their members in the criminal justice net. Consequently, the general perception of ethnic minorities as being prone to committing more crimes is reinforced and exacerbated because of their previous criminal histories and that has a further criminalizing impact within the criminal justice system. The cyclical pattern of exclusion and criminalization is then closed (see Figure 1).¹⁹

Figure 1: Circular pattern of the criminalization process



III. DISCRIMINATION IN THE CRIMINAL JUSTICE SYSTEM

The purpose of this section is to give a definition of racial or ethnic profiling as well as some evidence of its existence. The extent to which race and ethnicity affect the criminal justice process will be discussed. For this purpose, the present section will present a short description of the treatment of minorities along the entire criminal justice process continuum, starting with police stops (particularly racial profiling practices), treatment by judicial bodies and within penitentiary institutions. In the following lines, the overall law-enforcement process will be discussed systematically.

¹⁸ Harris, D., *Confronting Ethnic Profiling in the United States*, Justice Initiatives: A Publication of the Open Society Justice Initiative, 2005.

¹⁹ Bowling, B., and C. Phillips, *Racism, Ethnicity, Crime, and Criminal Justice*, 2002.

1. *Definition and characteristics of police racial or ethnic profiling*

Initially, racial or ethnic profiling emerged in the mid-1980s in the US as a term describing any drug interdiction efforts on the highway directed at members of ethnic minorities.²⁰ Gradually, the meaning of the term broadened to include all sorts of contacts between minority communities and the police. It now applies to stops and searches of people in relation to their ethnic belonging in public places, immigration stops, highways, etc. by any law-enforcement officer.²¹

Although there is no generally agreed upon definition of racial profiling, it is usually defined either in broad or in narrow terms. In the former case, race or ethnicity is “the only factor in determining criminal conduct”.²² Such a definition is given by the US Department of Justice, where racial profiling is “any police-initiated action that relies on the race, ethnicity, or national origin rather than the behavior of an individual or information that leads the police to a particular individual, who has been identified as being, or having been, engaged in criminal activity”.²³ Following this definition, virtually all police departments can state that they do not use racial profiling in their policies. Perhaps there are some individual police officers who would stop a young Black person just because he is young and Black and “driving or walking in a White community” but few would concede that race was the only motive of their actions.²⁴ Thus, the narrow definition would apply only in a very small number of cases and therefore it has a limited value.

In the latter case, race or ethnicity is “one factor among others in assessing the propensity for criminal behavior”.²⁵ An example is the following definition: “Race or ethnic profiling [...] encompasses the use by the 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”.²⁶ In this case, race is just one factor of suspicion among many others such as gender, age, general appearance, and behavior. The use of race may be just “the unconscious product of racial stereotyping”.²⁷ The police officers need not be acting purposefully in a racist manner or consciously aim at oppressing any person or particular group. They may be acting out of good faith and truly believe

²⁰ For the purpose of this literature review ‘police racial profiling’ and ‘police ethnic profiling’ will be used interchangeably. Initially the term has emerged as ‘racial profiling’ in the US, while the same practice in the UK is generally referred to as ‘ethnic profiling’.

²¹ Delsol, R., *Comparative Study of Effectiveness and Racial Disparity in Police Stop and Search Policies and Practices at a Local Level the UK and USA*, unpublished PhD thesis, 2005.

²² Leach, R., *Racial Profiling: A Police Manager’s Perspective*, Risk Management Issues in Law Enforcement A Public Entity Risk Institute Symposium, 2005.

²³ Farrell, A., J. McDevitt, and D. Ramirez, *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned*, Washington D.C., Department of Justice, 2000, p. 3.

²⁴ Ramirez, D. A., J. Hoopes, and T. L. Quinlan, *Defining Racial Profiling in a Post-September 11 World*, *American Criminal Law Review* 40 (2003), p. 1197.

²⁵ Leach, R., *Racial Profiling: A Police Manager’s Perspective*, Risk Management Issues in Law Enforcement A Public Entity Risk Institute Symposium, 2005.

²⁶ Harris, D., *The Fallacy of Racial Profiling*, SAGE Race Relations Abstracts, *Institute of Race Relations* 27, 4 (2002), p. 67.

²⁷ Ramirez, D., J. Hoopes, and T. L. Quinlan, *Defining Racial Profiling in a Post-September 11 World*, *American Criminal Law Review* 40 (2003), p. 1197.

that they are not using race as a factor when they are in fact “unconsciously making inferences as to criminal behavior that rely on little more than generalized racial stereotypes”.²⁸ Thus, the problem with ethnic profiling is not about the views of individual law-enforcement agents in police departments, but it rather lies at an institutional level.²⁹

The problems associated with racial profiling may occur whenever a police officer decides to stop and search a vehicle or a person unjustifiably. “Stop and search” is defined as “the police practice of stopping and searching members of the public who they suspect may have committed or be about to commit an offence”.³⁰ The police consider it an effective tool in crime prevention. A disproportionate use of the practice brings wrongdoing among certain ethnic groups more often to the attention of the police. Various studies in the UK and the US have shown that the number of stops and searches of people belonging to some racial or ethnic groups is higher than that for White people. Moreover, not only are people belonging to minorities more likely to be stopped repeatedly, but also the stops are more likely to result in a search and to be more intrusive.³¹

It is useful also to look at exceptions from police racial profiling. Profiling is not taking place in cases when the police have a description of a concrete offender, which includes his ethnic appearance. It is standard practice for the police to search for an individual matching a description where race or ethnicity is one of the components. “Applying descriptions which include a physical characteristic that is visible and (unlike clothing and hairstyle) unchangeable, is not ethnic profiling”.³² Profiling is rather the use of race or ethnic appearance “as a proxy for individual propensity to commit crime”, where a suspect description or a crime report is absent.³³ It is considering the appearance rather than the behavior of an individual in judging upon his criminal proclivity.

Research in the UK has shown that an important reason for higher rates of stops and searches among some ethnic minorities may be their high availability in the streets. This availability might itself be a result of discriminatory practices like exclusion from school, high unemployment rates due to racism, etc. In addition, lifestyle plays an important role. For instance, going out more in the evening, wearing certain style of clothing, driving a particular type of car, etc., can be negatively associated with a particular ethnic group and can influence the criminalization process.³⁴ Age, sex, and class also have been important indicators in analyzing the criminalization process. Thus, for instance, more stops are being conducted of younger people since the older people are less likely to be involved

²⁸ Ibid.

²⁹ Harris, D., *Confronting Ethnic Profiling in the United States*, Justice Initiatives: A Publication of the Open Society Justice Initiative, 2005.

³⁰ Delsol, R., *Comparative Study of Effectiveness and Racial Disparity in Police Stop and Search Policies and Practices at a Local Level the UK and USA*, unpublished PhD thesis, 2005, p. 2.

³¹ Newburn, T., and S. Hayman, *Policing, Surveillance and Social Control: CCTV and Police Monitoring of Suspects*, Collumpton, Devon, Willan Publishing, 2001.

³² Harris, D., *The Fallacy of Racial Profiling*, SAGE Race Relations Abstracts, Institute of Race Relations 27, 4 (2002), p. 69.

³³ Ibid, p. 70.

³⁴ Modood, T., and R. Berthoud, *Ethnic Minorities in Britain: Diversity and Disadvantage*, London, Policy Studies Institute, 1997.

in offending. At the same time, when the age structure of ethnic minorities in Britain, for example, is examined, it turns out they are significantly younger than Whites are.³⁵

2. Evidence of police racial profiling

Although the problem of racial profiling may have existed for a long time, it became prominent only recently. A sequence of events in both the US and the UK drew the attention of government officials, academics, and the public at large. Increased complaints of victims of racial profiling provoked a series of data collection initiatives aimed at finding whether the practice exists at all, and if so, how to counteract it.

The United Kingdom

In the UK, the incident that prompted the public debate on racial profiling was the murder of the Black teenager Stephen Lawrence in a unprovoked, racially motivated attack by White youths in London in 1993. None of the offenders was ever convicted.³⁷ Upon a complaint against the police initial investigation by his parents, the racist crime was followed by a thorough inquiry. A subsequent trial ended in an acquittal of all the indicted. Further analysis of the incident resulted into the famous MacPherson Report (1999), which studied not only this particular incident but also the prosecution of racially motivated crimes in general. The Report concluded that the investigation of the murder was flawed because of deeply ingrained institutional racism and lack of accountability by the police force.³⁸ Furthermore, MacPherson identified distrust in the police among ethnic minorities provoked by the inadequate response to racist violence, concerns about the use of stop and search, high death rates in custody, and other forms of racial discrimination by the police.³⁹ The report concluded:

"[w]hile we acknowledge and recognize the complexity of the issue, and in particular the other factors which can be prayed in aid to explain the disparities, such as demographic mix, school exclusions, unemployment, and recording procedures, there remains, in our judgment, a clear core conclusion of racist stereotyping."⁴⁰

When it comes to figures, in 2001–2002 the UK police searched Black people five times more frequently than White people and in 2002–2003 six times more frequently.⁴¹ Figures differed by policing area. In 2002–2003, the police stopped

³⁵ FitzGerald, M., *Ethnic Minorities in the Criminal Justice System*, Research Study No. 20, Royal Commission for Criminal Justice, London, Home Office, 1993.

³⁶ Bowling, B., and C. Phillips, *Racism, Ethnicity, Crime, and Criminal Justice*, 2002.

³⁷ MacPherson, W., *The Stephen Lawrence Inquiry*, London, England, The Stationary Office, 1999, p. 1.

³⁸ Institutional racism is defined as "the collective failure of an organization to provide an appropriate and professional service to people because of their color, culture, or ethnic origin." In: MacPherson, W., *The Stephen Lawrence Inquiry*, London, England, The Stationary Office, 1999, 6.34.

³⁹ MacPherson, W., *The Stephen Lawrence Inquiry*, London, England, The Stationary Office, 1999, p. 1.

⁴⁰ *Ibid*, 45.8-10

⁴¹ Miller, J., *Profiling Populations Available for Stops and Searches*, Police Research Series Paper 131, London, Home Office, 2000, available at: <http://www.homeoffice.gov.uk/rds/prgpdfs/prs131.pdf>.

29 White, 114 Black, and 39 Asian people per thousand of the relevant ethnic groups in the area of London. Similar measures in the whole of England and Wales showed numbers of 16 Whites, 92 Blacks, and 27 Asians stopped per thousand with the respective origin. A trend of increasing disproportionality may be seen after looking at recent statistics for 2003/4 released by the Home Office, which show that Black people were 6.4 times more likely to be stopped and searched than White people were, and Asians were 1.9 times more likely to be stopped and searched.⁴² The arrest rates in Britain in 1999/2000 show that the number of Black people arrested was four times as many as Whites, and Asians were more than Whites were, too.⁴³ Over-representation of Blacks, inconsistent with their numbers in the general population, was present in all crime categories, especially in fraud, forgery, and drug arrests.⁴⁴ From these data, conclusions that Black people are offending more than Whites cannot be drawn. Since not all crimes are reported or detected, the arrest figures are not reliable estimators of who actually commits crimes.⁴⁵

The United States

Throughout the United States, numerous complaints of racial profiling have been recorded, for instance, in California, North Carolina, Maryland, New Jersey, etc. There are a number of striking cases that initiated a debate on racial profiling. The Wilkins case (1992) versus the Maryland State Police was a prominent example of civil rights violation of Black people in a stop and search on the highway. Robert Wilkins' family was ordered out of their car and forced to stay on the highway for an extended period of time in the night until a drug-sniffing dog was brought to the place. No drugs were found. Wilkins, a Harvard Law School graduate and a public defender in Washington, D.C., sued the State Police and the case was settled in court.⁴⁶ Since the Wilkins case, most of the empirical research on police racial profiling has been used as testimony in lawsuits. Even more striking was the 1998 New Jersey turnpike shooting case. In a stop and search of a vehicle, three unarmed passengers were shot because of suspicion of drugs contraband. Again, no drugs were found in the end. The case remained unresolved.⁴⁷ Although these are just single cases, they provoked a concern about racial profiling in the US and stimulated a debate.

Concrete figures pointing at police racial profiling may be seen by looking, for instance, at the study of the Attorney General of the State of New York (1999). It found that, relative to their respective representation in the population of New York City, minorities were stopped at a higher rate than Whites in stops conducted by the New York City Police Department. While Blacks comprised 25.6% of the city's population, they accounted for 50.6% of all people stopped.

⁴² Home Office. *Race and the Criminal Justice System: An Overview to the Complete Statistics 2003–2004*, London, Home Office, 2005, p. 9.

⁴³ Home Office. *Statistics on Race and Criminal Justice System 2000: A Home Office Publication under Section 95 of the Criminal Justice Act 1991*, London, Home Office, 2000.

⁴⁴ *Ibid.*

⁴⁵ Home Office. *Statistics on Race and the Criminal Justice System 2003 11 (2003)*, available at: <http://www.irr.org.uk/pdf/s95race2003.pdf>, p. 31.

⁴⁶ Buerger, M. E., and A. Farrell, *The Evidence of Racial Profiling: Interpreting Documented and Unofficial Sources*, *Police Quarterly* 5.3 (2002), pp. 272-305. SAGE Publications, pp. 273-304.

⁴⁷ *Ibid.*

Similarly, Hispanics represented 23.7% of the city's population and 33% of all stops. On the contrary, while Whites comprised 43.4% of the population of New York City, they accounted for only 12.9% of all stops. Thus, Blacks were six times more likely to be stopped than Whites, and Hispanics four times more likely.⁴⁸

Some evidence pointing out that police racial profiling does not exist is present as well. For example, as a response to concerns about the practice, the UK Home Office conducted in 2000 research targeting populations available to stops and searches. While previous studies have relied on census data of resident population, it turned out that ethnic minorities are presented much more in the available than in the resident population. Upon using a sample of the available population, the study of the Home Office found no racial or ethnic bias toward ethnic groups. White people were over-represented in stops and searches, Asians were under-represented, and the statistics for Black people were varied.⁴⁹

3. POLICE RACIAL PROFILING AND THE CRIMINAL JUSTICE PROCESS

The police racial profiling practices are also important to monitor because they lead to over-representation of minorities within the criminal justice process, creating a rippling effect and leading to further disproportionate outcomes. When examining the later stages of the criminal justice system, the pre-trial processing, sentencing, and imprisonment, further supporting evidence of racial profiling and its consequences could be found.

a. Pre-trial processing

The pre-trial process further leads to discriminatory practices. In studies, higher education and income were shown to lead to lower likelihood of being detained and less restrictive bails.⁵⁰ High bails and longer pre-trial detention terms lead to higher probability of conviction and incarceration.⁵¹ Moreover, it was shown that the pre-trial detention length is positively related to the sentence length and severity of the final charge.⁵² Past empirical research has illustrated the implications of the above findings for ethnic minorities, and particularly for African Americans in the United States.

In Britain, all those charged by the police fall under the jurisdiction of the Crown Prosecution Service (CPS), which decides whether to terminate the case

⁴⁸ Office of the Attorney General of the State of New York. The New York City Police Department's "Stop and Frisk" Practices: A Report to the People of the State of New York from the Office of the Attorney General, New York, The Office of the Attorney General, 1999, pp. 94-95.

⁴⁹ Home Office. Police Stops and Searches: Lessons from a Programme of Research, London, Home Office, 2000.

⁵⁰ Chiricos, T., and W. Bales, Unemployment and Punishment: An Empirical Assessment, *Criminology* 29 (1991), pp. 701-724.

⁵¹ Patterson, E., and M. Lynch, Bias in Formalized Bail Procedures, Race and Criminal Justice, Ed. M. Lynch and E. Patterson, Albany, NY, Harrow and Heston, 1992, pp. 36-53; Spohn, C., and D. Holleran, The Imprisonment Penalty Paid by Young, Unemployed Black and Hispanic Male Offenders, *Criminology* 38 (2000), pp. 281-306.

⁵² Bishop, D., and C. Frazier, The Effects of Gender on Charge Reduction, *The Sociological Quarterly* 25 (1984), pp. 385-396.

or to forward it to court based on the strength of evidence. The main factors considered are the seriousness of the offence, the extent of participation of the defendant in it, and his or her willingness to cooperate with the prosecution process.⁵³ Studies have shown higher termination rates for ethnic minorities than for Whites.⁵⁴ These findings point to a likely discrimination and negative stereotyping applied by the police officers towards certain groups of the society, which leads to the disproportionate outcomes at the charging and the pre-trial level. Possible explanations of the high termination rates by the CPS may be that prosecutors strictly follow the Code of Crown Prosecutors (1994) and that they are obliged to record the reasons for decisions. Furthermore, in most cases the ethnicity of the defendant is not known. Another factor may be the variety of ethnic backgrounds of CPS employees.⁵⁵

Whenever no case termination follows, the question whether to remand the defendant in custody or to bail him or her comes. Studies have shown that remaining in custody is positively related to higher likelihood of receiving a subsequent custodial sentence, as the defendants cannot be presented in positive light as having a stable employment or good physical appearance.⁵⁶ This is a clear example of indirect discrimination against ethnic minorities, who are less likely to receive a bail because of higher probability of having “no fixed abode”.⁵⁷

Recent data in the UK has demonstrated higher acquittal rates by magistrates or juries for Black and Asian people than for Whites, which is consistent with the high rates of case termination for ethnic minorities by the CPS. This reconfirms the bias of police charging decisions and introduces the CPS as a next point of discrimination allowing for weak cases against ethnic minorities to go to trial.⁵⁸ The reports that probation officers have to write for magistrates before the final sentence are another opportunity for introducing racial bias which has been revealed by an inspection in 2000. Sixteen percent of pre-sentence reports written on Blacks and 11% on Asians were identified as reinforcing stereotypical attitude about race and ethnicity.⁵⁹ Statistics also show higher committal of ethnic minorities to the Crown Court rather than the magistrates’ court which is associated with greater possibilities of receiving a severe sentence.⁶⁰

b. Sentencing

Most studies of the magistrates’ courts point to no discrimination in sentencing of White people and ethnic minorities in the United Kingdom. However, a more

⁵³ Bowling, B., and C. Phillips, *Racism, Ethnicity, Crime, and Criminal Justice*, 2002.

⁵⁴ Mhlanga, B., *Race and Crown Prosecution Service Decisions*, London, The Stationery Office, 1999; Phillips, C., and D. Brown, *Entry into the Criminal Justice System: a Survey of Police Arrests and Their Outcomes*, Home Office Research Study No. 185, London, Home Office, 1998.

⁵⁵ *Ibid*; Home Office. *Statistics on Race and Criminal Justice System 2000: A Home Office Publication under Section 95 of the Criminal Justice Act 1991*, London, Home Office, 2000.

⁵⁶ Hood, R., *Race and Sentencing*, Oxford, Clarendon Press, 1992.

⁵⁷ *Ibid*; Brown, I., and R. Hullen, *A Study of Sentencing in the Leeds Magistrates’ Courts*, *British Journal of Criminology* 32, 1 (1992), pp. 41-53.

⁵⁸ Denman, S., *The Denman Report Race Discrimination in the Crown Prosecution Service*, London, Crown Prosecution Service, 2001.

⁵⁹ Her Majesty’s Inspectorate of Probation. *Towards Race Equality, thematic inspection*, London, Home Office, 2000.

⁶⁰ Bowling, B., and C. Phillips, *Racism, Ethnicity, Crime, and Criminal Justice*, 2002.

sophisticated research conducted in 1992 at five Crown Courts showed a 5% greater probability of Black people being sentenced to custody compared to Whites. Furthermore, on average, Asians received nine months longer sentences than Whites, and Blacks—three months longer sentences than Whites. This study exemplified a clear direct discrimination against people of African-Caribbean origin, which explained their high proportion in British prisons.⁶¹

Empirical evidence has shown that African Americans in the US are charged with more severe sentences for less serious offences than Whites are for more serious offences.⁶² Moreover, the perpetrators of homicides with African American and Latino victims are more likely to be dismissed than in cases involving White victims.⁶³

c. Imprisonment

There is a consistent pattern of overrepresentation of African-Caribbean people in British prisons and it is questionable whether this results from high offending rates or from discriminatory treatment by the criminal justice system.⁶⁴ Early statistics of British prison population since 1985 reveal over-representation of West Indians, Guyanese, and Africans among both males and females. Between 1985 and 1999 the White male prison population increased by 31%, whereas the Black population grew by 101% and the Asian by 80%. The figures for females were most dramatic with an increase of 217% for the Black and 188% for the Asian female prison population.⁶⁵ By the end of 2000, 19% of the men and 25% of the women in the British prisons were of ethnic minorities, where the total non-white population is about 7.9%. These figures have remained relatively stable over several years. Minorities were generally having longer sentences.⁶⁶ The high number of ethnic minorities in prisons may probably be partly explained with their younger age structure, placing them in the group at risk of offending, and with the effect of discrimination in the criminal justice system.

The attitude towards ethnic minorities in prisons is another important issue in the UK. A study of five prisons in 1989 demonstrated the direct discrimination against African-Caribbean prisoners, who were stereotyped as arrogant, lazy, and hostile, and therefore disadvantaged in the work allocation and often disciplined for misbehavior.⁶⁷ Victimization of ethnic minorities by the use of inappropriate language, harassment, and abuse was shown as normal occurrence and awareness about deaths in prison custody was raised too.⁶⁸

⁶¹ Hood, R., *Race and Sentencing*, Oxford, Clarendon Press, 1992.

⁶² Adams, K., and C. Cutshall, *Refusing to Prosecute Minor Offenses: The Relative Influence of Legal and Extralegal Factors*, *Justice Quarterly* 4 (1987), pp. 595-609.

⁶³ Rohrlach, T., and F. Tulsky, *Not All L.A. Murder Cases are Equal*, *Los Angeles Times*, 3 Dec. 1996: A1, A14, and A15.

⁶⁴ Bowling, B., and C. Phillips, *Racism, Ethnicity, Crime, and Criminal Justice*, 2002.

⁶⁵ *Ibid.*

⁶⁶ Bosworth, M., *Theorizing Race and Imprisonment: Towards a New Penalty*, *Critical Criminology* 12 (2004), pp. 221-242, at 224.

⁶⁷ Gender, E., and E. Player, *Race Relations in Prisons*, Oxford, Clarendon Press, 1989.

⁶⁸ Burnett, R., and G. Farrell, *Reported and Unreported Racial Incidents in Prison*, Occasional Paper No. 14, Oxford, University of Oxford Centre for Criminological Research, 1994.

The United States also has a significant number of minority members in the prisons. Since 1989, the Black prisoners have been more than the White ones. By 1990, a quarter of all young Black males were in prison, on probation or parole.⁶⁹ Data provided by the US Department of Justice shows that in 2000 Black non-Hispanics made 46% and of the total prison population, Hispanics—16%, and White non-Hispanics—only 36.0%.⁷⁰ These statistics have to be viewed in sight of the fact that 75,1% of the US population classify themselves as White, and only 12.3% as Black, and 12.5% as Hispanic or Latino.⁷¹ Similar were the statistics in 2002 when, according to official Justice Department data, more than 60% of the prisoners in the US were from minority groups while they constituted only about 25% of the total population.⁷² By 2003, Blacks were seven times as likely as Whites were to be in prison.⁷³

Although differing between the two countries, the high presentation of racial or ethnic minorities in the UK and the US prisons present a similar trend.

IV. THE POLICE RACIAL PROFILING DEBATE

As a whole, there are different opinions on the impact of racial or ethnic policing on the criminal justice process. Some are denying its existence, others are justifying it, and still others are condemning it.

On the one hand, in justifying racial profiling some revert to the notion of suspicion that is deeply rooted in police practice. Officers believe that it can be gained through experience on the streets and it is an essential tool in dealing with crime. Therefore, reasonable suspicion can be based not only on objective and individualized suspicion, but also on information from the police observations and crime statistics.⁷⁴ According to this logic, whenever such type of information points to higher crime rates among a certain ethnic, racial, or other type of group, then targeting the members of this group would increase the efficiency of the police. As arrest and imprisonment rates show overrepresentation of people from certain ethnic groups, that may be taken as an “indication of greater criminality among

⁶⁹ Tonry, M., *Malign Neglect: Race, Crime and Punishment in America*, New York, Oxford University Press, 1995, vii.

⁷⁰ Beck, A., *Prisoners in 1999*, Bureau of Justice Statistics Bulletin, U.S. Department of Justice, NCJ 183476; Bosworth, M., *Theorizing Race and Imprisonment: Towards a New Penalty*, *Critical Criminology* 12 (2004), p. 225.

⁷¹ Bosworth, M., *Theorizing Race and Imprisonment: Towards a New Penalty*, *Critical Criminology* 12 (2004), p. 225.

⁷² Humphreys, S., *The Case for Monitoring Ethnic Profiling in Europe*, Justice Initiative: A Publication of the Open Society Justice Initiative, June 2005, at 45; *State of New Jersey v. Pedro Soto*, et al., 324 N.J. Super. 66, 734 A 2d 350, 1996.

⁷³ Harrison, P. M., and A. J. Beck, *Prisoners in 2003*, Bureau of Justice Statistics Bulletin, U.S. Department of Justice, Office of Justice Programs (November 2004) 9, available at: <http://www.ojp.usdoj.gov/bjs/pub/pdf/p03.pdf>, p. 2.

⁷⁴ Young, J., *Policing the Streets: Stops and Searches in North London*, Centre for Criminology, Middlesex University, 1994, at 80; Delsol, R., *Comparative Study of Effectiveness and Racial Disparity in Police Stop and Search Policies and Practices at a Local Level: the UK and USA*, unpublished PhD thesis, 2005, p. 8.

these populations”⁷⁵. Thus the practice could also serve as a deterrent to criminals by stopping those who are about to commit a crime.⁷⁶

On the other hand, those condemning racial profiling claim that the practice is impermissible and cannot be grounded in crime statistics. They maintain that these statistics are actually the product of the criminal justice system itself and therefore cannot be used as an independent, credible source of information. There has been no data demonstrating either a direct, or an indirect correlation between race and crime. Although there are many statistics on arrest and conviction rates of minority members, they do not necessarily show actual incidence of criminal conduct. Therefore, these statistics cannot account for law-enforcement and prosecutorial discretion.⁷⁷ Police observations are even more subjective factors to be used as sufficient criteria in justifying stop and search practices.

Another justification of racial profiling brought forward by those lobbying in favor of the practice is that members of a certain ethnic group may be targeted because some types of offences are generally associated with this particular group because of some social factors. For instance, there is increasing evidence from victim reports that Black people are overrepresented in robbery and theft from person. Thus, targeting them on the suspicion of such crimes would follow logically. However, resorting to racial profiling in dealing with a certain type of offences has proven to be unjustified. Firstly, the reliability of data coming from victim descriptions is questionable. Secondly, if Black offenders were indeed overrepresented in robbery and theft from person then one would expect overrepresentation of Black people in stops and searches based on a suspicion of theft or robbery. However, quite to the opposite Whites constituted 31%, Blacks 25%, and Asians 19% of the stops conducted for stolen property in the UK during 2002/2003.⁷⁸ Following the same logic, while self-report surveys in the UK suggest similar numbers of drug use for Black and for White people, and lower for Asians, drug searches account unevenly for 40% of the White stops and searches, 49% of the Black stops and searches, and 45% of the Asian stops and searches.⁷⁹ Thus, it is erroneous to explain racial profiling practices with such statistical figures, as they do not even correspond to the actual stop and search numbers.

Those denying racial profiling claim that the concerns of disproportionality in stops and searches may actually have been raised by a flawed method used in previous studies. In most of them resident population was used as a benchmark, while the accuracy of that estimate has been questioned. It does not represent all the people who are actually present in the streets and could be potentially targeted in stops and searches. As the Home Office study on the available

⁷⁵ Smith, D. J., *Ethnic Origins, Crime and Criminal Justice in England and Wales*, in M. Tonry (ed.), *Ethnicity, Crime and Immigration: Comparative and Cross-National Perspectives*. Crime and Justice: A Review of Research, Vol XX1. Chicago, CO, University of Chicago Press, 1997.

⁷⁶ FitzGerald, M., *Searches in London, Under s1 of the Police and Criminal Evidence Act 1984*, London, Metropolitan Police Service (MPS), 1999.

⁷⁷ Ramirez, D., J. Hoopes, and T. L. Quinlan, *Defining Racial Profiling in a Post-September 11 World*, *American Criminal Law Review* 40 (2003), p. 1202.

⁷⁸ Home Office. *Statistics on Race and the Criminal Justice System 2004*, London, Home Office, 2005, pp. 23-26.

⁷⁹ *Ibid*, p. 30.

population in 2000 showed (see above), when available population was used instead, the patterns of stop and search practices looked quite different and no high rates for the different ethnic groups appeared, as young men and people from ethnic minority backgrounds tended to be overrepresented in the available population.⁸⁰ The high availability of minority members on the streets can be explained with social factors beyond the police control and thus their frequent targeting cannot be limited simply by a change in police practices. However, such explanations fail to note that available populations are once again the product of police practices as the police determine the areas of high stop and search. Thus, population availability is not a neutral criterion but it is institutionally determined. Besides, using it as a benchmark is difficult and expensive and may lead to imprecise conclusions.⁸¹

Finally, although it has been considered that eradicating racial profiling practices may have a multiplier effect on the criminal justice system, these fears have not materialized. Successful campaigns in the US have made the interactions between the police and the people less aggressive and the use of police resources more effective.⁸² On the other hand, tackling racial profiling has done little to address the underlying factors that bring about discrimination in the criminal justice system, leaving many to believe that it was not the best vehicle for tackling existing bias.

V. THE CONSEQUENCES OF POLICE RACIAL PROFILING

A better understanding of the ongoing debate on racial profiling can be acquired upon considering the concrete implications of such a practice for the police performance, the communities targeted, and society at large. These implications have stimulated numerous initiatives on both local and national level in the UK and the US aimed at preventing the occurrence of racial profiling or at counteracting it if its existence has already been established. However, any such programs have been recently severely undermined as a result of the 9/11 terrorist attacks in the US.

1. *Impact on police efficiency*

There are claims that racial profiling is neither an efficient, nor an effective tool in both crime detection and prevention.⁸³ It is problematic because it unnecessarily taxes innocents by wasting police resources at the same time.⁸⁴ In response to such allegations, numerous studies have been conducted to evaluate police

⁸⁰ MVA and J. Miller, *Profiling Populations Available for Stops and Searches*, London, Home Office, 2000, p. 53.

⁸¹ Delsol, R., *Comparative Study of Effectiveness and Racial Disparity in Police Stop and Search Policies and Practices at a Local Level the UK and USA*, unpublished PhD thesis, 2005.

⁸² Humphreys, S., *The Case for Monitoring Ethnic Profiling in Europe*, Justice Initiative: A Publication of the Open Society Justice Initiative, June 2005.

⁸³ Harris, D., *The Fallacy of Racial Profiling*, SAGE Race Relations Abstracts, Institute of Race Relations 27, 4 (2002), pp. 5-19; Miller, J., N. Bland, et al., *The Impact of Stops and Searches on Crime and the Criminology*, London, Home Office, 2000.

⁸⁴ Humphreys, S., *The Case for Monitoring Ethnic Profiling in Europe*, Justice Initiative: A Publication of the Open Society Justice Initiative, June 2005.

efficiency using as a measure hit rates, i.e. “the proportion of stops that yield contraband, such as drugs, weapons, or something else that results in an arrest”.⁸⁵ The logic is that if officers use race and ethnicity in profiling, they will get higher hit rates as they are targeting the right group.

The United Kingdom

Hit rates in the UK are considerably low. Since the introduction of the 1984 PACE Act, they dropped from national figures of 17% in 1986, to 12% in 1994⁸⁶ and to 9% in 2000⁸⁷ with a slight increase in 2002/2003 to 13%.⁸⁸ Out of a total number of 106 crimes, which can be detected using a stop and search, for every 26 such offences recorded by the police there is only one search arrest. Furthermore, only about 0.2% of the stops and searches in 1997 had a disruptive effect on those going out to commit a crime according to the British Crime Survey.⁸⁹ These figures show how minor the contribution of stops and searches is for crime detection.

Generally, in the UK suspicion of drug possession is disproportionately oriented towards Blacks and Asians, although self-report studies have shown that they are perhaps no more likely to use drugs than White people.⁹⁰ Specifically in London, no difference in the probability of finding contraband has been found among races. Although there have been no thorough empirical studies on the issue, the available evidence suggests that Blacks are no more likely to be in possession of drugs than Whites.⁹¹ A study of the Home Office in Britain showed that in stops and searches of Black people for drug possession, only one in seven targeted was actually caught with drugs. This exemplifies the ineffectiveness of this practice. Furthermore, while 95% of the drug users in England and Wales were White, they constituted only 78% of the imprisoned for drugs offenses in 1999/2000. The situation is quite different for Black people, who amount to only 2% of the drug users nationally translating to 16% of the offenders with custodial sentences for this type of drug crimes.⁹²

While there is almost no research on the outcome of arrests after stops and searches, Young (1994) found that in Islington Borough, London, only about 40% of all such arrests resulted in sentencing.⁹³ In another study conducted in seven

⁸⁵ Harris, D., *Confronting Ethnic Profiling in the United States*, Justice Initiatives: A Publication of the Open Society Justice Initiative, 2005, p. 68.

⁸⁶ Brown, D., *PACE Ten Years on: A Review of the Research*, London, Home Office, 1997, at 12.

⁸⁷ Miller, J., N. Bland, et al., *The Impact of Stops and Searches on Crime and the Criminology*, London, Home Office, 2000, p. 10.

⁸⁸ Home Office. *Race and the Criminal Justice System: An Overview to the Complete Statistics 2002–2003*, London, Home Office, 2004.

⁸⁹ Miller, J., N. Bland, et al., *The Impact of Stops and Searches on Crime and the Criminology*, London, Home Office, 2000, v-vi.

⁹⁰ Ramsay, M., P. Baker, C. Goulden, C. Sharp, and A. Sondhi, *Drug Misuse Declared in 2000: Results from the British Crime Survey*, Home Office Research Study No. 224, London, Home Office, 2001.

⁹¹ Farrell, A., J. McDevitt, and D. Ramirez, *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned*, Washington D.C., Department of Justice, 2000.

⁹² Home Office. *Statistics on Race and Criminal Justice System 2000: A Home Office Publication under Section 95 of the Criminal Justice Act 1991*, London, Home Office, 2000.

⁹³ Young, J., *Policing the Streets: Stops and Searches in North London*, Centre for Criminology, Middlesex University, 1994.

police forces including the Metropolitan Police of London, Phillips and Brown (1998) found that just 67% of all those arrested as a result of a stop and search were charged or cautioned. Interestingly, Black suspects were more likely to be released without sentencing than White suspects were. Phillips and Brown concluded that the reason was the high arrest rate of Blacks without reasonable enough suspicion.⁹⁴

The United States

Because of the numerous complaints of Black drivers in the US, there was a rolling survey at the New Jersey Turnpike in 1993. It aimed at determining the proportion of highway users by race and comparing it with the proportion of White and minority people stopped in the state police records for the period. The results showed that while of all those stopped by the police 46% were Blacks, they made up for only 15% of all violators of the traffic law. Still, Black people were 4.85 times as likely as White people to be targeted.⁹⁵

In 1995/1996, Dr. John Lamberth initiated a study on the stops on the highways in Maryland. He compared the population of those searched and arrested with those actually violating the traffic law. Lamberth's research showed that the State Police disproportionately targeted African Americans. While the Blacks made for only 17.5% of all drivers, they constituted 71.3% of those searched. However, the rate of finding drugs, weapons or other evidence of crime was almost the same for both Whites (28.8%) and African Americans (28.4%).⁹⁶

Similar hit rates were recorded for the traffic in New Jersey in data from 2000. While 78% of the stops and searches were Blacks and Latinos, evidence was found in 25% of Whites' stops and searches, in 13% of Blacks' stops and searches, and in 5% of Latinos' stops and searches.⁹⁷

In 1988, another study in North Carolina showed that African American male drivers were 68% more likely than Whites to be searched by the North Carolina Highway Patrol. Hit rates did not justify this disproportionate targeting. Contraband was found for Blacks in 26% and for Whites in 33% of the searches.⁹⁸

Hit rates on the streets of New York in a study in 1999 amounted to 12.6% for the stopped Whites, 10.5% for Blacks, and 11.3% for Latinos.⁹⁹ Statistics of a study spanning over 15 months and comprising 175,000 incidents, show that Blacks were stopped six times more often than Whites, and Latinos—four times

⁹⁴ Phillips, C., and D. Brown, *Entry into the Criminal Justice System: a Survey of Police Arrests and Their Outcomes*, Home Office Research Study No. 185, London, Home Office, 1998.

⁹⁵ *State of New Jersey v. Pedro Soto, et al.*, 324 N. J. Super. 66, 734 A 2d 350, 1996; Buerger, M. E., and A. Farrell, *The Evidence of Racial Profiling: Interpreting Documented and Unofficial Sources*, *Police Quarterly* 5.3 (2002).

⁹⁶ Harris, D., *The Fallacy of Racial Profiling*, *SAGE Race Relations Abstracts*, *Institute of Race Relations* 27, 4 (2002); Lamberth, J., *Driving While Black: A Statistician Proves That Prejudice Still Rules the Road*, *Washington Post*, August 16, 1999, p. 3.

⁹⁷ Harris, D., *The Fallacy of Racial Profiling*, *SAGE Race Relations Abstracts*, *Institute of Race Relations* 27, 4 (2002), p. 11.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*; New York Attorney General, *Stop and Frisk*, 1999, p. 111.

more often. The Blacks made up 25% of the New York population and 50% of the people stopped.¹⁰⁰

In an US Customs Survey, findings showed that while 43% of all those searched were either Black or Latino, the hit rates for Blacks and Latinos were actually lower than for Whites. Contraband was found in 6.7% of Whites, 6.3% of Blacks, and 2.8% of Hispanics. These statistics are particularly interesting because they are based on nationwide data. They question the perception that drug couriers are more likely to be Black people.¹⁰¹ Table 1 below shows the results of the studies of Customs Searches conducted in 1998 and 2000 in the US.

Table 1. Lessons Learned: "Hit" Rate for Customs Searches (1998 and 2000)

	1998			2000		
	# Searches	# "Hits"	% "Hits"	# Searches	# "Hits"	% "Hits"
White	11,765	677	6.7	2,931	462	15.8
Black	6,141	365	6.3	2,437	384	15.8
Latino	14,951	209	2.8	2,731	358	13.1

Source: Ramirez, D., *Racial Profiling Data collection: Promising Practices and Lessons Learned, Presentation in Budapest, Hungary (revised 1/27/2005), Boston, Northeastern University, 2005, p. 11.*

In 1999, the US Customs Service decided to remove race from the list of factors considered when stop decisions were made. Instead, suspects are to be selected based on observational techniques and specific behaviors such as signs of nervousness, inconsistencies in passport accounts, intelligence information, etc. The use of such factors helped to decrease the total number of searches conducted by approximately 70%, thus limiting the number of innocent people targeted. At the same time, after race was eliminated as a factor, hit rates improved dramatically from about 5% to 15% (see Table 1).¹⁰²

Evidently, the higher expectation of criminality among some racial and ethnic groups was not met in the conducted studies. Table 2 below summarizes the findings of several of the above-mentioned studies as well as some others, in which findings cast a doubt on the usefulness of police racial profiling in the US and the UK.

¹⁰⁰ Ibid, p. 95.

¹⁰¹ U.S. Customs Service. *Personal Searches of Air Passengers Results: Positive and Negative*, Washington D.C., 1998, 1; Farrell, A., J. McDevitt, and D. Ramirez, *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned*, Washington D.C., Department of Justice, 2000.

¹⁰² Lamberth, J., *Racial Profiling: Assessment and Evaluation*, Invited address at the Racial Statistics and Public Policy Seminar, University of Pennsylvania (Mar. 2002) (unpublished paper on file with authors), supra note 52.

Table 2. Hit/Arrest Rates for Persons Searched across Racial Groups

Selected Studies	White	Black	Latino	Asian	Total Survey N
1998 US Customs	6.7%	6.3%	2.8%	N/A	31,000
1995-1996 (arrest or seizure) Maryland	28.8%	28.4%	N/A	N/A	1,148
1997-1998 (arrest or seizure) New Jersey	10.5%	13.5%	N/A	N/A	78
1998-1999 (arrests) New York	12.6%	10.5%	11.3%	N/A	175,000
1998 (searches) North Carolina	33.0%	26.3%	N/A	N/A	826
1998 (arrests) London	11.1%	11.7%	N/A	9.4%	85,000
2000 (searches) Oakland	23.0%	24.0%	29.0%	26.00%	2,146
2001 (seizures) Sacramento	22.2%	23.3%	20.5%	19.10%	36,854

Source: Ramirez, D., *Racial Profiling Data collection: Promising Practices and Lessons Learned, Presentation in Budapest, Hungary (revised 1/27/2005), Boston, Northeastern University, 2005, p. 10.*

2. Impact on the Community

In sight of the low efficiency of the stops and searches, their impact on the relations between the police and the public, as well as on individuals' rights has to be considered. The use of racial policing has a humiliating impact and violates the civil rights of ethnic minorities, "who develop hostile attitudes towards the police".¹⁰³ The practice "undermines trust and confidence in the police service particularly amongst ethnic minorities groups, is intrusive and potentially frightening experience for all", and harms cooperation.¹⁰⁴

The United Kingdom

In 2000 the UK Home Office Research Development Statistics Directorate (RDS) carried out a research addressing the experiences of ethnic minorities with the stop and search practice. Upon interviews with those targeted and discussions with ethnic groups, it was found that those regularly stopped and searched felt victimized by the police and experiences tended to be negative. Officers'

¹⁰³ Grant, B. in NARCO. Policing Local Communities The Tottenham Experiment, London, 1997.

¹⁰⁴ Delsol, R., Comparative Study of Effectiveness and Racial Disparity in Police Stop and Search Policies and Practices at a Local Level the UK and USA, unpublished PhD thesis, 2005, p. 27; Stone, V., and N. Pettingrew, The Views of the Public on Stops and Searches, London, Home Office, 2000.

attitude was arrogant and intimidating, and often no genuine reasons for stops were given. Although there was some public support for stops and searches, it was outweighed by the resentment and distrust in the police.¹⁰⁵ While the practice may be procedurally correct, the potentially authoritative and uncivil manner in which it is conducted may be the main reason for complaints and dissatisfaction.¹⁰⁶

Only during the period 2002–2003 in the United Kingdom 16,092 complaints against the police were made, of which 63% were from White people, 8% from Black people, 5% from Asians, and 2% from people with “other” ethnicity. For the remaining 22%, the investigating officer could not provide the ethnicity. The proportion of complaints of unknown ethnicity was very high in many of the counties.¹⁰⁷ Racial discrimination was the reason for filing a complaint in 662 of the completed forms.¹⁰⁸

Often, the stop and search powers are used merely for gaining intelligence and not for catching the targeted people. This practice results in harassment and dissatisfaction of certain groups.¹⁰⁹ For instance, the majority of drug searches are for the possession of cannabis. They are initiated by the police and are not based on any previous information or intelligence. There is increasing concern that young men from minority groups are being disproportionately criminalized under cannabis arrests.¹¹⁰

There is a common concern and series of complaints about stops and searches of minority members in areas of predominantly White population. This practice is due to the police belief that they do not belong to certain neighborhoods and they are likely to engage in criminal activities.¹¹¹ This type of racial profiling is denying some racial and ethnic groups the basic civil right of walking freely in the streets.

The United States

In the US, the negative impact of police racial profiling on the community at large can be best seen by looking at some general statistics. In 1999, Gallup conducted a survey in the US investigating how favorably the police were viewed. It showed that 85% of White respondents had a favorable attitude toward local police and 87% had a favorable response to state police. However, the opinions of Black respondents were quite different with only 58% supporting the local police and 64% supporting the state police. Among those surveyed, 53% of Black

¹⁰⁵ Home Office, *Police Stops and Searches*, 2000.

¹⁰⁶ Farrell, A., J. McDevitt, and D. Ramirez, *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned*, Washington D.C., Department of Justice, 2000.

¹⁰⁷ Home Office, *Statistics on Race and the Criminal Justice System* 2003 11 (2003), pp. 89-91.

¹⁰⁸ *Ibid.*, p. 89.

¹⁰⁹ FitzGerald, M., *Searches in London, Under s1 of the Police and Criminal Evidence Act 1984*, London, Metropolitan Police Service (MPS), 1999.

¹¹⁰ *Ibid.*

¹¹¹ Farrell, A., J. McDevitt, and D. Ramirez, *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned*, Washington D.C., Department of Justice, 2000.

men aged between 18 and 34 believed that they had been treated unfairly by the local police.¹¹² Another Gallup Poll in 2004 showed that 53% of the respondents in the US considered racial profiling widespread on the roads and highways, and 49% saw it as common in stores. Sixty-seven percent of respondent perceived stops on roads and highways to be unjustified, with 72% holding the same opinion for stops in stores.¹¹³

Racial profiling in the US is generally considered a “frightening, humiliating or even traumatic” practice.¹¹⁴ People belonging to the targeted ethnic groups “individually and as a community are psychologically harmed”.¹¹⁵ The costs for the society are huge, including the perpetuation of stereotypes, which lead to “exaggerated levels of fear and more pronounced levels of scapegoating”.¹¹⁶ While in the least targeted people would be inconvenienced, the use of racial profiling may even lead to deadly episodes.¹¹⁷

3. *Countering police racial profiling*

Various approaches have been adopted in the UK and the US to counter police racial profiling. Some of them are the introduction of adequate legislation, data collections initiatives, awareness programs for citizens, special training of police officers, etc.

The United Kingdom

In the United Kingdom, the national government organizes the main initiatives in facing racial profiling. There is an official acknowledgment in Britain that stop and search powers have to be regulated to preserve the right to privacy of the individual and limit the unnecessary intrusion by the state.¹¹⁸ The government has enacted a number of legislative acts to counter police racial profiling. Additionally, there have been also a number of individual initiatives throughout the country.

Up to 1984, the Vagrancy Act allowed for arrests just for suspicion of intent to commit an arrestable offense. The 1984 PACE Act introduced an important change. The police had no longer the power to stop in order to find grounds for a search. According to Section 1, stop and search could be carried out only if there was a “reasonable suspicion” that a person has committed an offence or is

¹¹² Racial Profiling, in Gallup, G. Jr., *The Gallup Poll: Public Opinion 1999*, pp. 238-240. (Scholarly Resources Inc. 1999), p. 18.

¹¹³ Carlson, D. K., *Racial Profiling seen as Pervasive, Unjust*, The Gallup Organization, <http://www.gallup.com/poll/content/?ci=12406&pg=1>, July 20, 2004.

¹¹⁴ Shuford, R. T., *Civil Rights in the Next Millennium: Any way you slice it: Why Racial Profiling is Wrong*, *St. Louis University Public Law Review* 18 (1999), pp. 371-385, at 373.

¹¹⁵ Russell, *The Impact of Police Harassment is Cumulative. Each Negative Experience Creates Another Building Block in the Black Folklore about Police*, *supra* note 2, at 44, in: Shuford, R. T., 1999, p. 374.

¹¹⁶ *Ibid*, *supra* note 2, at 45.

¹¹⁷ Shuford, R. T., *Civil Rights in the Next Millennium: Any way you slice it: Why Racial Profiling is Wrong*, *St. Louis University Public Law Review* 18 (1999).

¹¹⁸ Home Office. *Police and Criminal Evidence Act 1984 (s. 66) Code of Practice (A) on Stop and Search*, London, Home Office, 2003.

about to commit an offence, or that stolen property or prohibited articles were being carried. The notion of “reasonable suspicion” was quite vague and could be interpreted in too many ways to be effectively enforced.¹¹⁹ Still, it had to be based on objective grounds, rather than disproportionately targeting a particular ethnic group:

“Reasonable suspicion can never be supported on the basis of personal factors alone without the supporting intelligence or information. For example, a person’s age, hairstyle or manner of dress, or the fact that he is known to have a previous conviction for possession of an unlawful article, cannot be used alone or in combination with each other as the sole basis on which to search that person. Reasonable suspicion cannot be based on generalizations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity.”¹²⁰

The PACE act further instituted a data collection program, requiring police officers to record information on all searches but not on stops that did not result in searches. Officers were to present the stopped person with a record, including the reasons for the search, the objects sought, the outcome, the name and station of the officer himself, and personal information of the searched, among which ethnic origin. This provision was meant to increase the accountability and transparency of police actions and to balance crime prevention with the rights of the suspects by instituting tighter control on police powers. The police supervisors were responsible for monitoring written reports on stop and search encounters and addressing arising problems.

The PACE Act further introduced the Code of Practice, which was a recapitulation in simpler language of the PACE Act, intended to convey its regulations and be easily available to the police officers and the public.

The findings as well as the 70 recommendations of MacPherson’s Report (1999) (see *Evidence of police racial profiling*) provoked a series of studies by the Home Office and changes in the national legislation. The government responded by issuing the 2000 Race Relations (Amendment) Act. It imposes a positive duty on public authorities to provide equal opportunities to people of all races and to work actively to eliminate racism throughout government agencies. The Act requires all public bodies to produce a Race Equality Scheme. It also extended the prohibition of both direct and indirect discrimination and victimization to police functions not included in the 1976 Race Relations Act. In 2003, drafters amended Section 1.1 of PACE Practice Code A to reflect the Amendment’s prohibition on discriminatory stop and search practices.¹²¹ According to Sections 1.1 and 2.2 of the updated Code A of the Practice Codes, stop and search powers should be exercised “with respect for people being searched and without unlawful discrimination” and must be grounded on reasonable and objective suspicion.¹²²

¹¹⁹ Bowling, B., and C. Phillips, *Racism, Ethnicity, Crime, and Criminal Justice*, 2002.

¹²⁰ Home Office. *Police and Criminal Evidence Act 1984 (s. 66) Code of Practice A on Stop and Search*, London, Home Office, 2003, paragraph 2.2.

¹²¹ Adjoian, A., G. Gordon, and C. Guilford, *Data Collection to Combat Racial Profiling in the United States, United Kingdom, and Canada*, Harvard Law Student Advocates for Human Rights, 2004.

¹²² Home Office. *Police and Criminal Evidence Act 1984 Code A: Code of Practice for the exercise by Police Officers of Statutory Powers of Stop and Search (2004)* at 2, available at: <http://www.homeoffice.gov.uk/docs/pacencodea.pdf>.

Since April 2005, police officers in the UK have to take record not only of all searches but of all stops as well. They are to provide a copy of the Information for Persons Searched form to all searched individuals at the time of the search or upon demand within 12 months. The information collected contains the reasons for the search, personal data of the targeted person, a description of the person or vehicle searched, the location, date, and time of the stop, and the object and grounds for the search. The analysis of these data could be used to monitor, supervise, and discipline individual officers.¹²³

In addition to legislation, a number of other approaches have been used to counter police racial profiling. For instance, the National Association for the Care and Resettlement of Offenders (NACRO) conducted an experiment with the purpose of increasing awareness of stop and search powers of police and the local community in Tottenham in 1995. For a year, police officers distributed leaflets to stopped and searched people, informing them of their rights and the powers being used. Consequently, a 52% decrease in the practice was recorded. Before the experiment, 44% of all those stopped and searched were of African-Caribbean origin, where they represented only 22% of the total population in Tottenham. This over-representation of ethnic minorities was afterwards eliminated. The overall outcome of the experiment could be explained with the more considerate actions of police officers.¹²⁴

A study of the Home Office conducted in 2000 illustrates some initiatives undertaken by several law-enforcement agencies in dealing with the practice of ethnic profiling. In addressing managerial effectiveness, or the ability of police managers to effectively monitor and regulate the use of searches by operational officer, the Avon and Somerset Police Department has established a structure for local level monitoring, creating two new posts to deal with the analysis and scrutiny of officer performance. They have been given the authority to approach officers who are not completing records of stops and searches accurately and to sanction them generally with re-training. In order to increase their operational effectiveness, or maximize the use of searches against criminals and minimize it against law-abiding people, the Avon and Somerset and Bedfordshire Police Departments have concentrated on intelligence-led approaches and specific intelligence-led patrol tasks. Public awareness and partnership, or the address of community concerns through openness and active participation, has been addressed in Bedfordshire Police in allowing public scrutiny of its search records. At Avon and Somerset Police, a member of the public could work alongside the police, thus providing a means for raising public concerns. At Hertfordshire Constabulary a research group with community participation has been established to study the causes for disproportionality in searches. Community partnership has also been developed in Thames Valley Police to help in the cultural awareness training of police officers. At Avon and Somerset, and Northamptonshire an initiative of distributing leaflets to target community groups has been implemented.¹²⁵

¹²³ Farrell, A., J. McDevitt, and D. Ramirez, *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned*, Washington D.C., Department of Justice, 2000.

¹²⁴ Grant, B. in NARCO. *Policing Local Communities: The Tottenham Experiment*, London, 1997; Delsol, R., *Comparative Study of Effectiveness and Racial Disparity in Police Stop and Search Policies and Practices at a Local Level: the UK and USA*, unpublished PhD thesis, 2005, p. 7.

¹²⁵ Bland, N., J. Miller, et al., *Managing the Use and Impact of Searches: A Review of Force Interventions*, London, Home Office, 2000.

A mixture of officers in the criminal justice system proportionally representing the ethnic distribution of the overall population is essential for assuring social justice and increasing trust in the system by the ethnic minorities. In 1998, an initiative was started by the Home Secretary of the UK to increase the recruitment of people from diverse ethnic origins in the police and other law enforcement authorities. Ten-year employment targets were set.¹²⁶ Despite the positive results, problems with hostile working environment, retained promotion rates, and alienation persisted.¹²⁷

The United States

During the *Strengthening Police–Community Relationships* conference in Washington D.C. in 1999, President Clinton condemned racial profiling as “morally indefensible, deeply corrosive practice [...] the opposite of good police work, where actions are based on facts, not stereotypes. It is wrong, it is destructive and it must stop.”¹²⁸ The President instructed federal agencies to begin gathering data for analyzing the potentially existent racial profiling.¹²⁹

Later on during his election campaign, President Bush condemned racial profiling and pledged to end the practice during his term. In June 2003, the Bush administration issued a policy guideline to end racial profiling. However, it has had limited or no impact so far. Perhaps the main reason for its ineffectiveness lies in the fact that the guideline is neither a law, nor an executive order, but just a recommendation. Federal agencies are expected to follow it but there is no enforcement mechanism or a tracking system to ensure compliance. Furthermore, the guideline also applies just to federal agencies and not at state or local level where most of the racial profiling practices occur. Additionally, there is a number of exceptions where profiling is admissible, namely when national security or immigration issues may be involved.

Some previous legislative restrictions that indirectly concern racial profiling include Title VI of the Civil Rights Act of 1964, which prohibits intentional discrimination. The Equal Protection Clause of the Fourteenth Amendment forbids unequal treatment based on race. By targeting people of color because of their race and by subjecting them to differential treatment, racial profiling violates the Fourteenth Amendment. The practice does not comply also with the Fourth Amendment, whose purpose is to protect individuals from unreasonable searches and seizures.¹³⁰ Currently, Section 1414 of the Violent Crime Control and Law Enforcement Act (1994) gives the US Department of Justice the power to bring to suit any police department that engages in a “pattern or practice” of violating the rights of citizens.¹³¹ The idea behind this provision is to allow the federal

¹²⁶ Home Office, Race Equality the Home Secretary’s Employment Targets: Staff Targets for the Home Office, the Prison, the Police, the Fire and the Probation Services, A Home Office Publication under Section 95 of the Criminal Justice Act 1991, London, Home Office, 1999.

¹²⁷ Her Majesty’s Inspectorate of Probation. Towards Race Equality, thematic inspection, London, Home Office, 2000.

¹²⁸ Attorney General’s Conference on Strengthening Police-Community Relationships, Report on the Proceedings, Washington, D.C., U.S. Department of Justice, June 9-10, 1999, at 22-23.

¹²⁹ Buerger, M. E., A. Farrell, and J. McDevitt, Moving Police and Community Dialogues Forward Through Data Collection Task Forces, *Police Quarterly* 5.3 (2002).

¹³⁰ Shuford, R. T., *Civil Rights in the Next Millennium: Any way you slice it: Why Racial Profiling is Wrong*, *St. Louis University Public Law Review* 18 (1999), p. 373.

¹³¹ Harris, D., *Confronting Ethnic Profiling in the United States*, Justice Initiatives: A Publication of the Open Society Justice Initiative, 2005, p. 71.

government to interfere whenever there are violations of constitutional and legal rules at police departments. Interventions have been prompted by complaints of citizens or advocacy organizations against improper police practices. By 2001, five jurisdictions had accepted external review according to agreements with the US Department of Justice. Upon a thorough investigation, the Department then brought its findings and proposals for addressing the problems to the respective police departments and the city governments. The recommendations generally resulted in various training programs for the officers, tracking of pedestrian stops, tracking of officer misconduct with early warning systems, etc.¹³²

By 2001, 13 States in the US had already passed legislation concerning racial profiling, with 3 more requiring policies. Thirty-seven jurisdictions had voluntarily adopted policies regarding stops and searches. Still, most of the laws provided only for mandatory data collections with the purpose of determining whether racial profiling actually exists.¹³³

Perhaps these data collections are the most important US initiative in countering racial profiling. In 1999, the San Diego Police Department became the first big city police department to voluntarily record statistics on racial and ethnic background of its traffic stops to determine whether minority drivers are targeted more often by the police than White drivers. By the end of the year, North Carolina was the first US State to introduce a mandatory report of all stops and searches on a larger scale. Eventually, sixteen states introduced a requirement that police officers record and make public reports on racial and ethnic patterns of traffic stops. As of January 2005, all but four of the States (namely Vermont, North Dakota, Mississippi, and Hawaii) have made such a practice obligatory. Data collections, tracking the race, ethnicity, and gender of all those stopped and/or searches by the police officers, are conducted by numerous law-enforcement agencies. They have a decentralized management and are accountable only to their local governments.¹³⁴

Community–police task forces have been created to oversee the data collection process on racial profiling. Subsequently they also developed the role of facilitating discussions of racial profiling data and enhancing the community–police communication about adequate police operations.¹³⁵ Addressing the racial profiling in a concrete way through the introduction of the data collections was a step toward mending the trust between the police and the public.¹³⁶

In an effort to compile a list of recommendations to police leaders in responding to the problem of racial profiling, the Police Executive Research Forum (PERF)

¹³² Harris, D., *Confronting Ethnic Profiling in the United States*, Justice Initiatives: A Publication of the Open Society Justice Initiative, 2005, p. 71.

¹³³ Buerger, M. E., and A. Farrell, *The Evidence of Racial Profiling: Interpreting Documented and Unofficial Sources*, *Police Quarterly* 5.3 (2002).

¹³⁴ Adjoian, A., G. Gordon, and C. Guilford, *Data Collection to Combat Racial Profiling in the United States, United Kingdom, and Canada*, Harvard Law Student Advocates for Human Rights, 2004.

¹³⁵ Buerger, M. E., A. Farrell, and J. McDevitt, *Moving Police and Community Dialogues Forward Through Data Collection Task Forces*, *Police Quarterly* 5.3 (2002).

¹³⁶ Harris, D., *Confronting Ethnic Profiling in the United States*, Justice Initiatives: A Publication of the Open Society Justice Initiative, 2005.

has been appointed by the Office of Community Oriented Policing Services to develop an extensive report. Upon the collaboration of police leaders, academics, civil rights activists and others, the final report identified six key aspects that have to be addressed by police agencies in countering racially biased practices. These areas include accountability and supervision, policies prohibiting biased policing, recruitment and hiring, education and training, minority community outreach, and data collection and analysis. The report thoroughly discusses all these six areas. It is supposed to serve as a source of guidelines and recommendations for police leaders.¹³⁷

4. *Impact of 9/11*

Immediately after the September 11, 2001 terrorist attacks on the World Trade Center and the Pentagon, there was an apparent shift in the debate on racial profiling. Despite the long tradition of condemning the practice that had existed before the incident, racial profiling started to be accepted as a necessary tool in fighting terrorism. People of Arab origin or appearance became increasingly targeted in security stops based on their color, clothing, name, or religious beliefs. Sacrifice of civil liberties was considered the price for achieving greater security.¹³⁸

The United Kingdom

The UK legislation generally aims at regulating the stop and search practice so that no particular group but rather individuals are targeted. According to Section 2.25 of the Police and Criminal Evidence Act (PACE), officers have to beware not to discriminate against members of minority groups. Still, under certain circumstances, they could consider ethnic origin in relation to a threat because, for instance, some terrorist groups are associated with a particular ethnicity.¹³⁹ Firstly, an amendment in 1997 of the 1984 PACE Act allowed for such group targeting upon “reliable information or intelligence which indicates that members of a particular group or gang, or their associates, habitually carry knives unlawfully, or weapons, or controlled drugs”.¹⁴⁰ Secondly, Section 44 of the Terrorism Act 2000 in the UK permits the police officers to use stop and search powers without reasonable suspicion in authorized areas of high risk of terrorism, where the whole of London has been designated such an area. Since 9/11 the number of Asians stopped has increased by 285% and people belonging to this group have become four times more likely to be stopped than Whites.¹⁴¹ Finally, section 60 of the Criminal Justice and Public Order Act 1994 gives higher rank officers the right to authorize uniformed officers to stop and search any person

¹³⁷ Fridell, L., R. Lunney, et al., *Racially Biased Policing: A Principled Response*, Washington, D.C., Police Executive Research Forum, 2001.

¹³⁸ Ramirez, D., J. Hoopes, and T. L. Quinlan, *Defining Racial Profiling in a Post-September 11 World*, *American Criminal Law Review* 40 (2003).

¹³⁹ Home Office. *Police and Criminal Evidence Act 1984 Code A: Code of Practice for the exercise by Police Officers of Statutory Powers of Stop and Search* (2004) at 2, available at: <http://www.homeoffice.gov.uk/docs/pacodea.pdf>.

¹⁴⁰ Delsol, R., *Comparative Study of Effectiveness and Racial Disparity in Police Stop and Search Policies and Practices at a Local Level the UK and USA*, unpublished PhD thesis, 2005, p. 5.

¹⁴¹ *Ibid*, p. 7.

or vehicle in a particular locality for a period of 24 hours upon a reasonable suspicion of serious violence.

Between 2001/2002 and 2002/2003, there was a significant rise in the number of stops and searches under Section 44 of the Terrorism Act and Section 60 of the Criminal Justice and Public Order Act. For a year, the number of targeted people rose from 8,550 to 21,577 throughout the UK, where the City of London and Metropolitan Police Services conducted four-fifths of them.¹⁴² These powers target disproportionately Blacks and Asians, who are about four to five times more likely to be stopped under Section 44 than White people are. Despite the high rates of stops and searches under the Terrorism Act, those arrested under these powers in 2002/2003 amounted to only 1.18% of those stopped, compared to 13% under the PACE stops and searches.¹⁴³ This low arrest rate shows the inefficiency of the usage of these stops and searches. Furthermore, the majority of those arrests had no connection with terrorism.¹⁴⁴

Anti-terrorism legislation has had an adverse influence on initiatives to address racial profiling. Eventually, excessive usage of stop and search powers under the UK Terrorism Act could lead to “a deterioration of police community relations within the Muslim community and a decline in key intelligence”.¹⁴⁵ Furthermore, “indiscriminate searches may encourage more young men to become involved in their cause”.¹⁴⁶

The United States

The general public opinion on racial profiling changed drastically after the terrorist attacks in US in 2001. While by early 2000 about 80% of the Americans knew something about the practice and were of the opinion that it has to be stopped, a month after the attacks the statistics reversed with a similar majority accepting the practice as well as the introduction of special identification cards for Arab Americans.¹⁴⁷ A survey in 2002 indicated that 66% of Whites and 71% of African Americans supported the ethnic profiling of people with Middle Eastern appearance.¹⁴⁸

In the days following 9/11 the US Congress passed The USA Patriot Act. Section 412 of the Act allows the attorney general of the US on reasonable grounds to detain foreigners that are suspected of threatening the national security without bringing them to charges.¹⁴⁹

¹⁴² Home Office. *Race and the Criminal Justice System: An Overview to the Complete Statistics 2002–2003*, London, Home Office, 2004.

¹⁴³ UK: Anti-terrorist stop and searches double official figures, *Statewatch* 13.6 (2003), pp. 16-17.

¹⁴⁴ Delsol, R., *Comparative Study of Effectiveness and Racial Disparity in Police Stop and Search Policies and Practices at a Local Level – the UK and USA*, unpublished PhD thesis, 2005, p. 27.

¹⁴⁵ UK: Anti-terrorist stop and searches double official figures, *Statewatch* 13.6 (2003), p. 16.

¹⁴⁶ *Ibid*, p. 16.

¹⁴⁷ Coke, T. E., *Racial Profiling Post-9/11: Old Story, New Debate*, in: *Lost Liberties: Ashcroft and the Assault on Personal Freedom*, Ed. C. Brown, New York, The New Press, 2003, p. 91.

¹⁴⁸ Siggins, P., *Racial Profiling in an Age of Terrorism*, Markkula Center for Applied Ethics, 2002, available at: <http://www.scu.edu/ethics/publications/ethicalperspectives/profiling.html>.

¹⁴⁹ *Ibid*.

Eventually, Arabs, Muslims, and others perceived as Arabs or Muslims complained that they have been disproportionately targeted in searches at airports and in traffic stops in the aftermath of 9/11. More than 1,700 incidents of harassment, discrimination, and violence against them have been reported to various organizations including the FBI, ACLU, the Council on American-Arab Relations, and the American Arab Anti-Discrimination Committee.¹⁵⁰

The perception of police bias among some minority communities has led to inability of the police to obtain valuable information about potential criminal actions.¹⁵¹ In such a way, racial profiling has undermined the national security and the ability of the law enforcement agencies to develop the needed intelligence.¹⁵² The International Helsinki Federation (IHF) stated that “since September 11, thousands of Muslims have been subjected to screening, of their personal data, house searches, interrogations, and arrests solely because their profiles have matched certain base criteria, foremost of which is an affiliation with Islam.”¹⁵³

As a response to the 9/11 events, the EU Justice and Home Affairs Council focused on developing strategies to counter terrorism and fight illegal immigration. Its original recommendation was all member states to collaborate in the collection of information needed for creating “terrorist profiles”, where “nationality”, “place of birth”, and “physical distinguishing features” would be considered.¹⁵⁴ On November 28-29, 2002, the Council approved the recommendation.¹⁵⁵ The national governments are advised to apply the use of the profiles in the work of their immigration authorities and the police in identifying “potential” terrorists.¹⁵⁶

The developments after the 9/11 terrorist attacks have had a negative impact on any previous initiatives to counteract racial profiling. Police profiling has an intrusive impact on individual Muslims and it could alienate whole communities. The practice is counterproductive for the police intelligence as it induces fear and thus discourages the inflow of investigatory information, which could be acquired only through cooperation with members of the Middle Eastern population. Profiling leads to inefficient results as targeting people solely because they are or appear to be of Arabic origin leads to a very large pool of potential offenders to be investigated. Conversely, the stop and search based on suspicious behavior could narrow down the list of suspects and thus allow for a better distribution of the

¹⁵⁰ Ramirez, D., J. Hoopes, and T. L. Quinlan, *Defining Racial Profiling in a Post-September 11 World*, *American Criminal Law Review* 40 (2003).

¹⁵¹ Parry, W., *FBI looking for help from NJ mosques, Arab Groups*, Associated Press, September 23, 2001.

¹⁵² Buerger, M. E., A. Farrell, and J. McDevitt, *Moving Police and Community Dialogues Forward Through Data Collection Task Forces*, *Police Quarterly* 5.3 (2002).

¹⁵³ IHF, OSCE, *Human Dimension Implementation Meeting, Warsaw 9-19 September, 2002: Statements by the International Helsinki Federation for Human Rights*, p. 12.

¹⁵⁴ Council of the European Union, *Council Declaration on the Development of Terrorist Profiles*, 11858/1/02 REV 1, October 14, 2002, p. 2.

¹⁵⁵ Justice and Home Affairs Council of 28th and 29th November 2002, Doc. 14817/02 (press 875), cited in E.U. Network of Independent Experts.

¹⁵⁶ Council of the European Union, *Council Declaration on the Development of Terrorist Profiles*, 11858/1/02 REV 1, October 14, 2002, p. 4; Delsol, R., *Comparative Study of Effectiveness and Racial Disparity in Police Stop and Search Policies and Practices at a Local Level the UK and USA*, unpublished PhD thesis, 2005, pp. 2-3.

police resources and focused anti-terrorist efforts. In the end, if “racial profiling doesn’t stop common criminals. It won’t stop terrorists, either.”¹⁵⁷

VI. PROBLEMS AND APPROACHES TO STUDYING POLICE RACIAL PROFILING

Analysis of racial profiling is a complex process that requires comprehensive self-report and criminal process data for a variety of comparable offences and caution in determining to what extent discrimination against ethnic minorities explains their over-representation in the criminalization process. Some of the difficulties in studying it are listed below.

The first step in any study of racial profiling is establishing a definition of the practice that shall be used. Allowing for a diversified input in its formulation by many actors may increase the legitimacy of the initiative in the eyes of the community. As there is no agreed upon definition of racial profiling, there is also no operational definition of what data should be collected, how they should be collected, and what results would definitively prove the existence of racial profiling. In the very beginning of the data collection process, an early planning should establish its goals, structure and methods of analysis, and benchmarking. This allows meeting the concerns of both the law enforcement and the community, addressing the conflicting views, and collecting the data most appropriate to the selected benchmarks.¹⁵⁸

A problem may arise in choosing the population to be examined in the study. A fundamental difficulty is determining what benchmark to use in assessing whether the police target members of a certain ethnic group disproportionately often. One has to compare the ethnic distribution of the stopped and searched people in a particular area with a certain estimate of what would constitute proportionate stops and searches. This estimate may be the resident population of an area, or the available population—the people present in the area day-to-day, people driving in the region, etc. These numbers may differ significantly, as a Home Office study in the UK found when comparing the census population figures to the actually available population in an area.¹⁵⁹ To identify a good benchmark, one has to control for all the variables affecting the ethnic distribution of the targets of the police. It has to be chosen so that it reflects the same time and area from which stop data will be collected.¹⁶⁰ The choice of the benchmark affects the conclusions to be drawn.¹⁶¹

Moreover, pulling together data on groups with different ethnic belonging for non-discrimination purposes could lead to a loss of meaningful information. That

¹⁵⁷ Harris, D., Let’s Look at What Counts: Racial profiling doesn’t stop common criminals. It won’t stop terrorists, either, *Legal Times*, September 22, 2003, p 60.

¹⁵⁸ Adjoian, A., G. Gordon, and C. Guilford, *Data Collection to Combat Racial Profiling in the United States, United Kingdom, and Canada*, Harvard Law Student Advocates for Human Rights, 2004.

¹⁵⁹ Miller, J., *Profiling Populations Available for Stops and Searches*, Police Research Series Paper 131, London, Home Office, 2000.

¹⁶⁰ Adjoian, A., G. Gordon, and C. Guilford, *Data Collection to Combat Racial Profiling in the United States, United Kingdom, and Canada*, Harvard Law Student Advocates for Human Rights, 2004.

¹⁶¹ *Ibid.*

can take the form of assigning minorities to a common group of “non-White” or counting some members of a separate ethnic group in the “White” category.

A loss of valuable data is also likely whenever different types of crimes are aggregated together. It makes a difference whether a misdemeanor or a felony is being analyzed. Another important aspect to be taken into account is the geographical distribution of racial profiling. National data may conceal regional differences.

In non-discrimination studies often a mistake is committed of examining a certain stage of the criminal justice process at the expense of the others. This may lead to erroneous conclusions since a low number of charged people of an ethnic group at some phase of the conviction process may be a result of compensating for an earlier phase of overcharging. To account for the contingent nature of the criminal justice system, the multiple stages of processing have to be considered and examined simultaneously.¹⁶² Even questions like how the high criminalization of ethnic minorities affects their social life (e.g. employment, health, family, etc.) should not be neglected as they can fill important knowledge gaps about the cyclical pattern of criminal justice processing.

To make it even more complicated, measuring the actual offending rate of a certain ethnic group cannot be done by simply considering arrest or imprisonment rates. This is because of the numerous points in the criminal justice process where suspects are being filtered out as a result of decisions of victims, witnesses, magistrates, juries, and judges. Thus, official figures reflect decisions of criminal justice agencies, rather than actual crime statistics.¹⁶³ Different measures would give different outcomes. For instance, where reports of victims of interpersonal crime in Britain display greater involvement of African-Caribbeans in offences, self-report data presents a more even distribution of offending between Whites and ethnic minorities.¹⁶⁴

As a whole, error and bias in the investigation process make it difficult to conclude with certainty from data collection and analysis whether racial profiling occurs in a law-enforcement agency. Keeping in mind the difficulty of drawing definite conclusion, analysis has to be rather used to signal seriousness of racial discrimination by the police in alienating communities and to identify specific operational problems to address.

¹⁶⁸ Free, M. D. Jr., Racial Bias and the American Criminal Justice System: Race and Pre-sentencing Revisited, *Critical Criminology* 10 (2001), pp. 195-223.

¹⁶⁹ Bottomley, A.K., and K. Pease, *Crime and Punishment: Interpreting the Data*, Milton Keynes, Open University Press, 1986.

¹⁷⁰ Bowling, B., and C. Phillips, *Racism, Ethnicity, Crime, and Criminal Justice*, 2002.

APPENDIX B: RESEARCH METHODOLOGY

In order to present an objective study the Center for the Study of Democracy has used a number of analytical tools, drawing on new and existing research. The police ethnic profiling study started in June 2005. It had the following components:

- focus groups;
- interviews with police officers;
- analysis of existing legislation regarding police stops;
- literature review of racial profiling;
- nationally representative household survey;
- analysis of police data related to involvement of Roma in criminal activities.

Focus groups

The initial phase was the holding of **3 focus group discussions** in Sofia, Plovdiv and the smaller town of Sliven. The groups were instrumental in providing guidelines to forming the questionnaire for the household survey and police interviews. The focus groups helped ensure that:

- the questionnaire encompasses the full range of issues, i.e. that certain patterns of discrimination are not missed;
- rural, town, and city specificity are taken into account;
- some of the questions are tested.

Each group consisted of 10–12 individuals that self-identified as Roma, of age between 15 and 40. Men constituted around 70% of focus group participants. The participants were recruited by local Roma NGOs and were paid a small fee to participate. They were not explicitly told the purpose of the study, but rather talked in general terms about their experiences with police and crime.

Interviews with police officers

In the second phase 55 interviews with police officers were conducted with the cooperation of the Ministry of Interior and the National Police Service.

In view of the project objectives the following categories of police officers were interviewed:

- 23 police patrols, including 3 Roma officers;
- 9 heads of patrol units;
- 7 heads of police departments;
- 6 criminal investigation officers;
- 10 area inspectors (These police officers have a small office in the neighborhoods.

They do not patrol the streets in vehicles. They are usually familiar with the neighborhood and respond to complaints from the community.)

The police districts were in the following types of locations:

- metropolitan areas (Sofia, Plovdiv and Varna)
- regional districts (Sliven, Kyustendil).
- small towns that have a significant Roma population (Botevgrad, Kazanlak, Levski)

In each case, though, the town police departments were usually responsible not only for the immediate location, but also for a number of surrounding villages.

The research team designated the police departments and the level of officers that were to be interviewed. In some cases, such as interviewing the police department heads, criminal investigation officers, patrol unit heads, and minority officers, as there was only one such individual per department, the interviewees were practically selected by the department. With regard to patrolling officers, these were almost always officers that were off-duty.

The interviews lasted between 1 and 2 hours each and were conducted in privacy either in the police department, in coffee shops, or while driving in the patrol vehicle.

Household survey

The household survey with face-to-face interviews was carried out by the sociological agency *Vitoshka Research* at the end of November 2005. The time of the year was specifically chosen due to the fact that many Roma are seasonal workers in Bulgaria, or they spend summers living in villages and move to urban ghettos during the winter months.

The size of the main sample is $N=1,202$. Additionally, a booster sample has been generated ($N=534$ Roma). The targeted general population is Bulgarians aged 15 and over.

Sampling procedure

The first stage of the sampling procedure is based on the list of electoral sections from the last presidential elections. Selection of electoral sections included in the sample is based on systematic random selection. The main purpose of that procedure is to ensure a random selection of starting points which are used in the actual selection of respondents at the next stage. The number of clusters (electoral sections) for the sample is 134.

In the second stage, starting from the selected random starting point the actual selection of respondents was based on random route sampling.

The booster sample was developed in two steps. In the first step, a set of 100 localities in all 28 administrative regions of the country were randomly selected. In each of these localities, the research team used sociological, census, and police information to determine whether there is concentrated Roma population.

Afterwards, the team allocated a certain number of interviews to each of the three types of localities that had Roma population: city, town, and village. All booster sample interviews were conducted in Roma neighborhoods. Apparently, such approach excludes Roma migration.

Sampling plan

The persons interviewed were:

- at least 15 years of age;
- citizens of Bulgaria;
- permanent residents of the household contacted (s/he only has to live there, no matter if s/he is administratively registered as living elsewhere);
- the only household member interviewed;
- interviewed individually without disturbances or suggestions from anyone else;
- the member of the household who most recently had a birthday.

The suggested approach enables statistically relevant analysis and conclusions for each type of settlement.

Law-enforcement data

Lastly, the team requested and analyzed police and court statistical data. Presently, the police do not regularly maintain data on stops. Although such data is collected, it does not include information about the ethnicity of the individuals that were stopped.

Additional crime-related information was obtained from victimization interviews and internal police reports and analyses, as well as semi-structured or informal interviews with criminal investigators, representatives of Roma NGOs, focus groups data, and analysis of mass media items.

Legal analysis

The legal analysis examined all relevant laws and internal police instructions in order to establish which of them contained provisions relevant to police stops. The analysis focused mainly on the Ministry of Interior's *Instruction on Patrolling and Guarding Activity*. It also examined the relevant anti-discrimination and civil rights legislation.

APPENDIX C: LOGISTIC REGRESSION MODELS

In order to measure “weight” of the ethnic identification in comparison to other factors that lead to higher probability of a police stop, the research team used a **Logistic Regression** (LOGIT models) analysis.

Logistic regression (LR) allows one to predict a discrete outcome such as group membership from a set of variables that could be continuous, discrete, binomial or a mix. It covers the main advantages of multiple regressions techniques modeling how any independent variable (e.g. ethnic identification, age, place of living, etc.) thought to be related to a dependent variable (e.g. risk of being stopped by police on the street) is statistically significant, once possible associations with other variables have been taken into account. Logistic regression is more flexible as compared to other techniques, such as discriminant function analysis and multiway frequency analysis with discrete dependant variable since it has no assumptions about the distribution of predictors, i.e. the predicting variables do not have to be asymptotically normally distributed, linearly related or of equal variance between them. LR also cannot produce negative predicted probabilities.

The general linear equation is the natural log of the probability of being in one group divided by the probability of being in the other. The procedure for estimating coefficients is maximum likelihood and the main goal is to find the best linear combination of predictors to optimize the likelihood of obtaining the observed outcome frequencies.

Logistic regression can be used to fit and compare models. The simplest (the worst) model includes only the constant and none of the predictors, whereas the model that best explains the interaction between predictors and dependable variable taken into complexity must include all predictors and occasionally the interaction between them. Another application of the model can be applied when determining which variable or set of variables best explains the relation. However, not all predictors are relevant to the model. The researcher uses goodness-to-fit tests to determine the most effective model in determining the prediction with fewest predictors.¹⁶⁵

The values from the regression models have the following characteristics:

Regression Coefficients: displays the level of interaction between the certain predictor and the dependable variable. These values could be interpreted as approximate measures of each predictor in explaining the variance in dependable variable, i.e. which predictor has bigger effect as compared with the others.

¹⁶⁵ Tabachnik, F., and L. Fidell, Using Multivariate Statistics Third Edition, California State University, Harper Collins College Publishers, Northridge, 1996.

Marginal Coefficients (odds - Exp(B)) of individual effects measure the alteration of possibility for changes in the dependent variable given a one unit change in the respective factor. As the odds ratio increases, the relative risk of the event also increases. However, the change in odds should not be interpreted as the change in the relative risk (e.g. an odds ratio of 2 does not mean that the relative risk of an event is doubled). For example, two groups, having respective risks of 75% and 60% for a particular outcome, have an odds ratio equal to 2 (i.e. the respective odds are 3:1 and 6:4 and the odds ratio is $(3/1)/(6/4)=2$). Similarly, two groups with respective risks of 33% and 20% also have an odds ratio equal to 2 (i.e. $(1/2)/(1/4)=2$; the respective odds are 1:2 and 1:4).

Coefficients for estimation of the model significance: -2 Log likelihood; Cox & Snell R²; Nagelkerke R² have χ^2 (chi-square) distribution, but do not have stochastic characteristics and estimation cannot be made for them, i.e. their significance level cannot be calculated.

Dependent variables :

- *Stopped by police*—whether respondents had been stopped either on foot, or in a car during the previous 6 months.
- *Stopped by police (vehicle excl.)*—whether respondents had been stopped on foot only during the previous 6 months.
- *Stopped by police in the local place of living*—whether respondents had been stopped either on foot, or in a car during the previous 6 months in the resident place of living.
- *Stopped by police outside the place of living*—whether respondents had been stopped either on foot, or in a car during the previous 6 months outside the resident place of living.
- *Stopped by police while in vehicle*—whether respondents had been stopped in a car only during the previous 6 months.
- *Polite*—in case of being stopped by the police the respondent was treated in a polite way.

Independent variables:

Gender: Male, female

Age groups: 15-24, 25-50, 50+

Education: basic and lower, secondary, above secondary

Employment status: working, not working

Place of living: Sofia, big city, other city, rural area

Going out at evenings: do not go out, go out

Type of residential district: Roma district, non-Roma district

Duration of living in the district: less than one year, 2-5 years, 5-10 years, 10 years and more

Marital status: married, other

Ethnic groups: Bulgarians, Roma, other

Table 1. Logistic regression model for Stopped by police (main sample)

	B		Exp(B)
<i>Gender</i>	-1.354	**	0.258
<i>Age groups</i>	-0.554	**	0.575
<i>Education</i>	0.251		1.286
<i>Ethnic groups</i>	-0.042		0.959
<i>Employment status</i>	-0.388	*	0.678
<i>Place of living</i>	0.143		1.153
<i>Going out at evenings</i>	1.255	**	3.508
<i>Type of residential district</i>	0.257		1.293
Constant	-0.666		0.514
-2 Log likelihood	956.98		
Cox & Snell R Square	0.13		
Nagelkerke R Square	0.21		

N = 1,202

Notes:

1. Variables are ordered according to the order in which they have been included in the model.
2. B regression coefficients.
3. Exp (B) rounded to three decimal points.
4. Exp (B) greater than one indicates risks are higher relative to the base category; Exp (B) less than one indicates risks are lower relative to the base category.
5. ** indicates statistical significance at the 1% level, * indicates significance at the 5% level.
6. Source: Vitosha Research, 2005.

Table 2. Logistic regression model for Stopped by police—ethnic contrasts (main sample)

	B		Exp(B)
<i>Gender</i>	-1.354	**	0.258
<i>Age groups</i>	-0.557	**	0.573
<i>Education</i>	0.256		1.292
<i>Ethnic groups</i>			
<i>Roma</i>	0.069		1.072
<i>Bulgarians</i>	-0.143		0.867
<i>Place of living</i>	-0.387	*	0.679
<i>Going out at evenings</i>	0.147		1.158
<i>Type of residential district</i>	1.256	**	3.512
Constant	-0.277		0.758
-2 Log likelihood	957.13		
Cox & Snell R Square	0.13		
Nagelkerke R Square	0.21		

N = 1,202

Notes:

1. Variables are ordered according to the order in which they have been included in the model.
2. B regression coefficients.
3. Exp (B) rounded to three decimal points.
4. Exp (B) greater than one indicates risks are higher relative to the base category; Exp (B) less than one indicates risks are lower relative to the base category.
5. ** indicates statistical significance at the 1% level, * indicates significance at the 5% level.
6. Source: Vitosha Research, 2005.

Table 3. Logistic regression model for Stopped by police (Roma population only)

	B		Exp(B)
Gender	-1.250	**	0.286
Age groups	-0.166		0.847
Education	-0.098		0.906
Place of living	-0.356	**	0.700
Going out at evenings	0.587		1.798
Type of residential district	0.885	**	2.423
Duration of living in the district	0.007		1.007
Marital status	0.020		1.020
Constant	-0.032		0.969
-2 Log likelihood	474.94		
Cox & Snell R Square	0.10		
Nagelkerke R Square	0.17		

N = 476

Notes:

1. Variables are ordered according to the order in which they have been included in the model.
2. B regression coefficients.
3. Exp (B) rounded to three decimal points.
4. Exp (B) greater than one indicates risks are higher relative to the base category; Exp (B) less than one indicates risks are lower relative to the base category.
5. ** indicates statistical significance at the 1% level, * indicates significance at the 5% level.
6. Source: Vitosha Research, 2005.

Table 4. Logistic regression model for Stopped by police in the local place of living (main sample)

Gender	0.277		1.320
Age living (main sample) groups	-0.476		0.621
Education	-0.823	*	0.439
Ethnic groups	-0.638		0.528
<i>Employment status</i>	0.503		1.653
<i>Place of living</i>	-0.263		0.768
Constant	2.217		9.181
-2 Log likelihood	134.52		
Cox & Snell R Square	0.09		
Nagelkerke R Square	0.14		
Nagelkerke R Square	0.14		

N = 1,202

Notes:

1. Variables are ordered according to the order in which they have been included in the model.
2. B regression coefficients.
3. Exp (B) rounded to three decimal points.
4. Exp (B) greater than one indicates risks are higher relative to the base category; Exp (B) less than one indicates risks are lower relative to the base category.
5. ** indicates statistical significance at the 1% level, * indicates significance at the 5% level.
6. Source: Vitosha Research, 2005.

Table 5. Logistic regression model for Stopped by police in the local place of living (Roma population only)

	B		Exp(B)
Gender	-0.120		0.886
Age groups	0.632		1.881
Education	-1.684	**	0.186
Place of living	-1.270	**	0.281
Going out at evenings	0.013		1.013
Type of residential district	-0.243		0.784
Duration of living in the district	0.462		1.588
Marital status	-0.436		0.647
Constant	3.857		47.323
-2 Log likelihood	84.60		
Cox & Snell R Square	0.22		
Nagelkerke R Square	0.31		

N = 476

Notes:

1. Variables are ordered according to the order in which they have been included in the model.
2. B regression coefficients.
3. Exp (B) rounded to three decimal points.
4. Exp (B) greater than one indicates risks are higher relative to the base category; Exp (B) less than one indicates risks are lower relative to the base category.
5. ** indicates statistical significance at the 1% level, * indicates significance at the 5% level.
6. Source: Vitosha Research, 2005.

Table 6. Logistic regression model for Stopped by police—vehicle excl. (main sample)

	B		Exp(B)
Gender	-0.763		0.466
Age groups	-1.163	**	0.312
Ethnic groups	-1.625	*	0.197
Education	-0.212		0.809
Place of living	0.248		1.282
Going out at evenings	1.337		3.806
Type of residential district	-3.047	*	0.048
Duration of living in the district	-0.040		0.961
Marital status	-0.398		0.672
Constant	6.982	*	1076.824
-2 Log likelihood	224.81		
Cox & Snell R Square	0.04		
Nagelkerke R Square	0.19		

N = 1,202

Notes:

1. Variables are ordered according to the order in which they have been included in the model.
2. B regression coefficients.
3. Exp (B) rounded to three decimal points.
4. Exp (B) greater than one indicates risks are higher relative to the base category; Exp (B) less than one indicates risks are lower relative to the base category.
5. ** indicates statistical significance at the 1% level, * indicates significance at the 5% level.
6. Source: Vitosha Research, 2005.

Table 7. Logistic regression model for Stopped by police—vehicle excl. (Roma population only)

	B		Exp(B)
Gender	-1.072	**	0.342
Age groups	-0.095		0.909
Education	-0.409		0.665
Place of living	-0.362	*	0.696
Going out at evenings	0.651		1.917
Type of residential district	0.752	**	2.121
Duration of living in the district	-0.043		0.958
Marital status	-0.130		0.878
Constant	0.118		1.125
-2 Log likelihood	405.05		
Cox & Snell R Square	0.07		
Nagelkerke R Square	0.13		

Notes:

1. Variables are ordered according to the order in which they have been included in the model.
2. B regression coefficients.
3. Exp (B) rounded to three decimal points.
4. Exp (B) greater than one indicates risks are higher relative to the base category; Exp (B) less than one indicates risks are lower relative to the base category.
5. ** indicates statistical significance at the 1% level, * indicates significance at the 5% level.
6. Source: Vitosha Research, 2005.

N = 476

Table 8. Logistic regression model for Polite

	B		Exp(B)
Gender	1.10		2.99
Age groups	-0.02		0.98
Ethnic groups	18.12		74297453.56
Education	1.06		2.90
Place of living	0.81	*	2.26
Going out at evenings	0.25		1.28
Type of residential district	38.60		58166035293715100.00
Duration of living in the district	0.70	*	2.01
Marital status	-0.02		0.98
Constant	-100.96		0.00

N = 1,202

Notes:

1. Variables are ordered according to the order they in which have been included in the model.
2. B regression coefficients.
3. Exp (B) rounded to three decimal points.
4. Exp (B) greater than one indicates risks are higher relative to the base category; Exp (B) less than one indicates risks are lower relative to the base category.
5. ** indicates statistical significance at the 1% level, * indicates significance at the 5% level.
6. Source: Vitosha Research, 2005.

