

Ethnic Profiling: A Rising Challenge for European Human Rights Law

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Ethnic profiling, defined as the use of racial, ethnic or religious background as a determining criterion for the adoption of law enforcement decisions, has been rising significantly in Europe, in particular in the wake of the terrorist attacks of 11 September 2001. This article examines whether European human rights law is well equipped to deal with this challenge, and if not, how it should be reformed. Against the widely held assumption that personal data protection legislation is insufficiently protective of 'sensitive' data relating to race or ethnicity, it explains instead why combating ethnic profiling has been made more difficult, rather than less, by an overly protective reading of the requirements of data protection laws. It then discusses the additional measures that European states could take to address more effectively the human rights concerns prompted by the development of ethnic profiling.

In 1999, Mr Timishev, a Chechen lawyer living in Nalchik, in the Kabardino-Balkaria Republic of the Russian Federation, travelled by car from the Ingushetia Republic to Nalchik. When reaching the administrative border of the Kabardino-Balkaria Republic, his car was stopped at a checkpoint and entry was refused to him: traffic police officers had received an oral instruction from the Ministry of the Interior of Kabardino-Balkaria Republic not to admit persons of Chechen ethnic origin. The Nalchik Town Court dismissed Mr Timishev's complaint that this was discriminatory: in its view, the order was aimed at preventing the penetration into towns and villages of persons having terrorist or antisocial aspirations. International litigation followed. Five years after Mr. Timishev filed an application against Russia, the European Court of Human Rights found that Russian officers had violated the non discrimination provision of Article 14 ECHR in combination with the freedom of movement guaranteed in Article 2 of Protocol n°4. The order, which barred passage to any person of Chechen ethnicity or perceived as such, 'represented a clear inequality of treatment in the enjoyment of the right to liberty of movement on account of one's ethnic origin'.¹

In July 2001, in response to an influx of asylum seekers of Czech nationality, the vast majority of whom were of Roma ethnic background, the United Kingdom organised an operation at Prague Airport. Following an agreement with the Czech Republic, British immigration officers were authorised to give or refuse leave to enter the country to passengers before they boarded flights to the UK.

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1 *Timishev v Russia* Eur Ct HR (2nd section), App Nos 55762/00 and 55974/00, judgment of 13 December 2005 (final on 13 March 2006) § 54.