

[6.3.2] Combating ethnic profiling: the role of personal data protection

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[MatthiasMS](#) about a month ago

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1. Community TA

[59 votes \(click to vote\)](#) [NathanTulkens](#)

24 days ago

1) From the point of view of the search for solutions to combat ethnic profiling, does it matter whether these different forms of ethnic profiling are either formalized or informal? Whether they proceed by automated means or not?

In light of the four cases referred to above, I do not think that the type or the form of ethnic profiling really matters. There can be a violation of the non-discrimination requirements in various cases: if the racial profiling is the result of a rather unformalized operation mounted by a State (the *Prague Airport* case), of the personal individual conduct of a State official (the *Williams* case), of a formal and official order directly given by a State (the *Timishev* case), or of a secret anti-terrorist operation taking place through automated means (the *Rasterfahndung* case). Only the result is important (is there a discrimination on an unjustified basis?), not the ways in which it happens.

2) In order to avoid ethnic profiling, should the prohibition of processing personal data related to race or ethnicity be strengthened, or would this instead make it even more difficult to identify instances of profiling?

I believe that data protection legislation should be very strong when it comes to "sensitive" personal data, related to race, ethnicity, religion, etc. A very difficult access to this kind of information, even for State officials, indeed ensures a better protection against ethnic profiling. Nevertheless, I believe that at the same time, those data should be accessed more easily by representatives of Human Rights bodies or by law enforcement officers whose job is to research and combat discrimination in the form of ethnic profiling. Access to this documentation can help them fight Human Rights violations more effectively, especially when it happens through informal means.

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- The state authority should not keep any personal data with reference to race , ethnicity or religion on the state's citizens. Those data will always be hold with the individual and may be shared with others. The race, ethnic and religion are attached to the human personality, the majority don't show them publicly, but always there beneath the surface, they carry great sentimental feelings and values to the individuals, for that reason, they are so easy to agitate. Unfortunately, many internal and external players, agitate these feelings among a community to serve their interests. A typical example is what happening in central Africa where this cruel racial cleansing is done undercover by religious motivation. Of course the external player is known

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-posted 16 days ago by [Nabil43](#)

- It looks like the best solution even though it seems difficult to achieve since all those data are a part of our identity. It's a shame that it could ever be used against one or another but a dissociated access to those data sounds promising.

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-posted 10 days ago by [houartaurelien](#)

- Regarding the first question, I agree with your argument that it is the concrete existence of profiling on a unjustified basis leading to cases of discrimination that is what truly matters. Moreover, I would like to add that it is easier for governmental or non governmental authorities to assess whether unjustified discrimination has taken place when ethnic profiling is formalized and automated. In a certain sense, although not justifying ethnic profiling, this would be more transparent and accountability would be more straightforward.

Regarding the second question, I agree in principle with the fact that human rights bodies should have access to the relevant personal information in order to combat ethnic profiling. However, I have difficulties reconciling the fact that public authorities should have very limited access to sensitive information with regards to immigration policy or national security (for ex, counter terrorism) policy. A possible compromise might be to allow for personal data to be accessed by the relevant public authorities provided this is strictly regulated and adequately monitored by an independent 'human rights' body that ensures, among others, the respect for the requirement of non discrimination.

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-posted 9 days ago by [TomJu](#)

- We are a compound of information and a subject of classification and evaluation for whatever meaning it is not important , in all aspects of our life . Technology brings this type of classification as can easily be seen by participating in social networks or by simply enquiring through internet on any subject . Immediately the system registers such enquiry and gives us a specific classification on preferences . Mail and offers will follow . It is inevitable that the same principle in more wide terms will apply in all aspects of life . We will be classified , categorized and registered more and more as a consequence of globalization . To resist in my view is absolutely impossible .

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-posted 8 days ago by [Alepalms](#)

- I share Nabil43 sentiments.

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-posted 8 days ago by [TorJorgensen](#)

- I agree with the NathanTukens assessment that regardless of the form of discrimination, discrimination in all its forms should not be tolerated. Regarding the access to that information via records, I agree that monitoring human rights bodies should have access to that information but that governments should not. The question of how to create such a system I'll leave for a computer programmer to answer...

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-posted 8 days ago by [Kasiayar](#)

- This is such a good statement.

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-posted 8 days ago by [Elisi82](#)

- Discrimination is illegal, no one can be treated differently from others. Human rights bodies shall have access to all types of information that they need in order to protect human rights.

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-posted 8 days ago by [PollyTolstaya](#)

- How difficult to place police or any public official into the situation where they are told by superiors that have to stop and check individuals of a particular type that would clearly be discriminatory. From this point it is irrelevant how they are formalised, they are contrary to the ICCPR and those people that decide to discriminate are doing so out of misguided race hatred.

Countries may have security issues with certain other ethnic groups, such as in the case of Russia against Chechen citizens, but this can only lead to even greater discrimination between the cultures involved and less chance of reconciliation between societies.

In relation to point 2, strengthening legislation might be counterproductive, as recently we have witnessed how agencies go beyond morally accepted limits to snoop on all members of society without cause.

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-posted 8 days ago by [TonyBerr](#)

- I totally agree with Nathan Tulken's argument on the matter.

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-posted 8 days ago by [Buyajammeh](#)

- I completely agree with Nathan Tulken! the best solution would be dissociated access to those data.

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-posted 8 days ago by [lidathanas](#)

- Access to the data should be disjointed. I agree with Nathan

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-posted 7 days ago by [ElphabaThropp](#)

- I don't understand you ElphabaThropp.

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-posted 7 days ago by [Adamlex](#)

- I agree with the point that legislation should be in a strong protection of people's private

and confidential information. However, from my own experience I have seen many cases where no previous information on the ethnic origin of a person communicate well in offices and branches. After finding this information, everything was different. However, a clear example of discrimination.

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-posted 7 days ago by [mishulka91](#)

- I think that non-discrimination is a must and certain measures must be taken so we can shape profiling policies in such way that do not violate human rights.

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-posted 7 days ago by [ZoranIsrael](#)

- I agree with some of the posts above. Discrimination should not be tolerated and generalizations through stereotypes and profiling should be only for statistical purposes. No responsibility or right can derive just from one's ethnicity, race or the like.

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-posted 7 days ago by [Anestis24](#)

- I agreed very much with nabil 43

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-posted 7 days ago by [workeye](#)

- I think processing personal data related to race or ethnicity is a matter of justification. Think about a severe crime, may be a homicide, and the murder is described as a white/black/Asian.

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-posted 7 days ago by [Walter Knorz](#)

- discrimination should be avoided by all means.

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-posted 7 days ago by [RemHab](#)

- I completely agree with Nathan Tulkens and Kasiayar. Discrimination in all its forms should be avoided.

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-posted 6 days ago by [JulieThonus](#)

- I like ur sharing am really struggling to understand the course but am getting there

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-posted 6 days ago by [josebalix](#)

- I mostly agree with Nathan Tulkens

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-posted 6 days ago by [fredrikheldal](#)

- Strengthening the prohibition of personal data relating to race or ethnicity would should be a positive effect. I do not think it would make it more difficult to identify instances of discrimination. the facts should speak for itself in every case.

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-posted 6 days ago by [dearaunt](#)

- Even me I suffered some cases os discrimination in Europe, to be brazilian, to be considered black. Once, in German airport they doesn't want me to come back to Brazil 'cause they say "I cannot prove what I was doing there". So I imagine how is really difficulty for person with kind of profile they consider dangerous. Also, once the country signed the Convetion to help refugees how they can avoid people who is looking for asylum?

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-posted 6 days ago by [Maiariadine](#)

- I think prohibiting collection of personal data would be futile. People/Governments are very creative at finding work-around solutions. I would even suggest that it is the unspoken or unwritten stereotypes that are most difficult to combat. How would you make a distinction between acceptable and unacceptable descriptions? What about eye color or hair color? You could probably make some generalizations with only those two characteristics.

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-posted 6 days ago by [jco4edx](#)

- So UN should look in it.

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-posted 6 days ago by [thomasefovbure](#)

- I think to collect peronal data is very dangerous, and in some cases is against the human rights

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-posted 6 days ago by [johalf](#)

- I agree with Nathan. In order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or supress conditions that perpetuate discrimination. Such measures are legitimate as long as they represent reasonable, objective and proportional means to redress de facto discrimination and are discontinued when substantive equality has been sustainably achieved. Some such measures to achieve non-discrimination may, however, need to be of a permanent nature, such as interpretation services for linguistic minorities and persons with sensory impairments in health care facilities.

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-posted 5 days ago by [enocothin](#)

- I agree with Nathan Tulken

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-posted 5 days ago by [Graphinya](#)

- I agree

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-posted 5 days ago by [Pompeii](#)

- I agree that in matters of discrimination, it is the effect that matters, motive and format are immaterial. Therefore, it does not matter whether the illegal act is formalized or informal when it produces an unlawful discriminatory effect. Naturally, the more formal the format of the act, the more direct the state's responsibility for its violation of human rights. Informal ethnic profiling may be harder to detect. Automated process may be an attempt to insulate the profiling from human prejudice, but if the criteria were set up incorrectly, it does not matter whether the process was done manually or by automation, the effect is discriminatory.

As for data protection legislation, I agree that it needs to be strengthened even if it would make it harder to detect instances of racial profiling. I disagree that exceptions should be made for human rights organizations. No organs or bodies or individuals should have a special exception. Even human rights organization can and may violate human rights.

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-posted 5 days ago by [DominicK65](#)

- I agree with Tomju that with an automated, formalized operation it may be easier to determine whether it is an unallowed case of ethnic profiling or not compared to individual, rather random approaches. I also agree that information on race, migration status etc may be useful for national security, but that access should be strictly regulated. As to ethnic profiling in general: it constitutes discrimination and should be banned. However, this may sometimes be contrainuitive in practice: when looking for illegal immigrants in Sweden, would you request identification from the blonde blue-eyed individual or the person with the Mediterranean looks?

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-posted 4 days ago by [Almagro](#)

- I agree with the first post.

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-posted 4 days ago by [Lyck](#)

- Profiling by computers is still profiling, it just may be indirect, using indicators that indirectly allude to a person's race, colour, creed. This should not be allowed if one seeks to combat stereo-typing.

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-posted 4 days ago by [carrphilippe](#)

- Totally agree.

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-posted 4 days ago by [rake132](#)

- I think that nothing would be wrong with "common characteristics" and even nothing would matter if those characteristics were written down BUT it is clear that writing down peoples' names together with their "special" characteristics that not at all "special" they are since they are essentially grouped in that way, it is clear that this implies discrimination, otherwise what for to be in such a catalogue?

I have been very surprized to realise that discrimination has to do with being part of a specific group with specific characteristics and for one to be not discriminated he or she should rather be treated merely as an individual! I confess I've never thought it this way but it makes perfect sense. So regardless any outer characteristics or spiritual opinions nobody should be listed and therefore discriminated.

As for terrorism and related claims on that I see that so called "terrorists" are made and not born like black, white or yellow people so these are so distinct issues. So if states worry about terrorists why don't they protect the societies from themselves first? For terrorism is rather a consequence of the corrupted states.

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-posted 4 days ago by [elenfou](#)

- Discrimination remains discrimination. We can call it differential treatment with a justification that makes it acceptable, but that does not change the fact that it is discrimination.

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-posted 3 days ago by [Frutilong](#)

- Religion is not the same as race and ethnicity. Some individuals change religions during their lives. Religion it seems to me is therefore a private affair and should not be documented unless there is some logical reason that is not harmful. However, I feel that gathering personal information is in itself not only not harmful but as said above is inevitable in this new world. It is the way it is used we need to monitor. Someday maybe it will be realized that our differences are what make us human and are to be enjoyed rather than feared. Guess I am a hopeless dreamer.

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-posted 3 days ago by [GlennaSue](#)

- discrimination is not allowable. I agree with most of post above, but I also think that the States MUST take all possible measures to avoid any form of discrimination and it have not any excuse to marginalize him actions.

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-posted 3 days ago by [UgoDG](#)

- I really doubt that the means through which ethnic profiling is carried out matters neither should it justify the act. Also, I find it unnerving to think that countries use ethnic profiling to carry out some things.

I do believe that there should be tighter control to access of personal data however this could cause conflict when it is needed for the safety of a country.

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-posted 3 days ago by [Alufa](#)

- I agree with this opinion on the need for greater communication and availability of qualified personnel to observe that it complies with the law.

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-posted 3 days ago by [ipevega](#)

- formal or informal, automatized or not, it does not matter to me and it should not be allowed. When such things start to develop, you create groups in society that are opposite of each other.

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-posted 3 days ago by [sarah1988nijh](#)

- I agree with you, NathanTulkens.

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-posted 3 days ago by [Fredrika](#)

- I agree with GlennaSue, religion is fluid and can change many times throughout a person's life. It IS private.

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-posted 3 days ago by [mkross2k](#)

- I am agree with these expositions

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-posted 3 days ago by [aposligua](#)

- I think profiling should be formalized for the following reasons:
 1. It forces the authorities to make a conscious decision to profile. This in turn pre-empt the authorities from denying such profiling should it be challenged.
 2. If the profiling should be challenged, evidence put before the Court is clear and reliable. Cf the evidence in the Prague airport case, i.e. first hand witness accounts, who manually counted the number of Romas turned away etc.

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-posted 2 days ago by [JamesLow](#)

- On point 2 I agree with Nathan in sentiment, but I do not see how it would be possible to effectively and meaningfully restrict government access to the special types of information that are predicted the most likely to be the basis for racial profiling. After all it is, in all likelihood, government departments that would have to collect and process the information that the Human Rights organisations would have access to under Nathan's proposal. I do not think that it is practical to have it both ways.

I am also not convinced that even if the access to sensitive information was restricted to the fewest government officials as possible this would protect against racial profiling. Instead it might hide it. We saw in several case examples in this section that the instructions to officials to engage in racial profiling often came from senior officials - who might be the among the select number of people in the government that would need

to be given access to the information that might form a basis for ethnic profiling. Also, in several of these cases the complainant/victim found out about profiling because the official told them in some way because the officials had some idea of the purpose behind his/her orders and actions.

Also, I am concerned that singling out and privileging information about race is insufficient to address the discrimination that arises by other forms of profiling. A person may be profiled and discriminated against, in breach of their human rights, for a plethora of characteristics (e.g. beliefs).

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-posted 2 days ago by [SusiH](#)

- I agree with Nathan.

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-posted 2 days ago by [HiromiY](#)

- i do agree that the prohibition of processing personal data related to race or ethnicity should be strengthened

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-posted 2 days ago by [dennismsechu](#)

- I agree

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-posted 2 days ago by [ismailk](#)

- I think that discrimination should not be allowed and the personal data should be private and only with the authorization of the owner other person or entity should have access to it.

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-posted 2 days ago by [041086d](#)

- I agree too, but I have a doubt; in 2004 the Czech Republic got into the E.U., so I think they could move freely.

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-posted 2 days ago by [HelenaComabella](#)

- NathanTulkens, nice explanation!

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-posted a day ago by [David911](#)

- I agree with houartaurelien, it is a shame that those data can be used against the people who are claiming human rights.

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-posted a day ago by [Ryousif](#)

- I completely agree with Nathan Tulkens. I was living in Prague at the time of the *Prague*

Airport Case and remember the furore it caused. Sadly, many Czechs regarded this as perfectly acceptable as they said it was understandable that no one would want Roma living in their country. Given the often virulent and aggressive expression of discrimination, for a state to condone such behaviour is utterly reprehensible.

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-posted a day ago by [cleamc](#)

- agree with 1st post.

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-posted a day ago by [mashoo2](#)

- I agree with Nathan's opinion, but also appreciate the points made by SusieH.

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-posted a day ago by [MarieHx](#)

- I think that the collection of standardised data is important, for the reasons given in the judgement, and above by James Low. What most people reasonably object to is the exploitative use of that data for stereotyping, commercial purposes or other unwelcome targeting. Without the data, how would you be able to prove that racial profiling was being used against you? I have seen how difficult it was for one ethnic group to claim clear discrimination because there no collection of data about ethnicity allowed (on the entirely justifiable grounds of preventing a recurrence of horrific ethnic conflict). But this just pushed the problem under the carpet, at a time when it would have been more effective to openly discuss and challenge the negative stereotypes that were commonly held. A most important statement in the case is that 'If all or almost all asylum seekers are Roma, it does not follow that all Roma are asylum seekers'. I think it would be a huge moral victory for any society to be able to use their data collection to demonstrate that they do not discriminate against members of groups that are usually discriminated against.

A point in the case about the Roma that seemed to have been side-stepped- should the immigration officers not have been charged with preventing asylum seekers to exercise their right to seek asylum? What is the point of permitting people to seek asylum if they will be stopped before they can apply for it?

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-posted a day ago by [FCRR](#)

- I agree with most of you. Discrimination have disappear in all ways. From my point of view, discrimination is connected allways with cultural conceptions.

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-posted about 23 hours ago by [Gisela1989](#)

- I am agree with Nathan Tulkens that 'way of profiling' does not matter to combat ethnic profiling.

In addition, I would like to say prohibition of processing personal data on ethnic base is necessary and it will not be a obstackle in search.

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-posted about 20 hours ago by [SATYAEDX](#)

- Legislation should protect private life of people no matter what and there should be some level of presumption of innocence, otherwise we would be walking around and falling into confirmation bias in our legislation system; which is not going to be good.

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-posted about 19 hours ago by [muradovtkm](#)

- It is very interesting

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-posted about 18 hours ago by [ValentinaK](#)

- I agree with the majority. Discrimination can never be encouraged or held by any government, or third party within the duty to protect.

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-posted about 16 hours ago by [AymeJara](#)

- I agree with most of you, but i'm still worried about what should be the right way to control or ban the profiling mining data from the citizens, i can't understand yet who is the owner of the personal information, and i'm kinda worried and scared of the precision taht some algotyhms can reveal about is, i recommend to see this video of the TED, i know it isn't directly related, but if you combine that with the main topic we have a major issue <https://www.youtube.com/watch?v=hgWie9dnssU>

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-posted about 13 hours ago by [Snidel](#)

- I think the manner in which Nathan Tulkens expressed himself above is accurate and I could not formulate anything further to add to it.

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-posted less than a minute ago by [KarenWest](#)

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