

Profiling Practices in the Context of Anti-Terrorism Prevention Strategies: Acceptable or Controversial Anticipatory Measures?

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Received: 01/2024

Published: 06/2024

Abstract:

In the face of the constant threat and severity of terrorist acts that continue to claim an increasing number of victims, the international community is incessantly exposed to such dangers. Anticipating certain early interventions conducted by security and law enforcement services in the European Union member states, such as profiling practices, has become essential for identifying individuals on the path to radicalization or violent extremism. This article explores the question of these profiling measures and the issues surrounding their application in accordance with human rights principles. We aim to shed light on the repercussions of these measures on specific segments of the population.

Keywords: Anti-terrorism Strategies; Extremism; Profiling; Prevention; Radicalization; Human Rights.

Introduction:

Confronted with the persistent wave of terrorist threats and violence that continues to claim an escalating number of victims on the global stage, the anticipation of certain early interventions by the security and law enforcement authorities in the European Union member states has become imperative. This anticipation aims at identifying individuals on the path to radicalization or violent extremism. Consequently, the establishment of specific profiles for individuals susceptible to engaging in terrorist acts is now an integral part of prevention strategies implemented in the fight against terrorism.

However, the utilization of profiling practices can sometimes veer into discriminatory territory, raising numerous ethical and moral questions regarding the effectiveness and utility of this tool in maintaining the national security of any given country. It is evident that in this context, preventing terrorist acts and subsequently prosecuting and judging them must fundamentally consider the pivotal role of human rights.

Today, more than ever, it is crucial to acknowledge the increased surveillance and control of people's movement as a strategy in the fight against international terrorism, permeating political and social spaces. These activities have proliferated and diversified over the years, all while adhering to the same logic of prevention and foresight.

Of particular concern here are sometimes unwarranted control methods applied in the identification of individuals potentially involved in radicalization networks. Additionally, the preventive policies often exhibit discrimination by security services towards specific segments of the population. Thus, the focus is on the nature of these operations, the logic of surveillance and movement control, and the classification of individuals.¹ This prompts us to pose the following questions:

-Is the establishment of an intensive traceability system for individuals suspected of radicalization and extremism justified?

-Should profiling methods in the context of counter-terrorism be anticipatory and systematically implemented without any distinction?

The primary goal of this article is to analyze the mechanisms and rationales behind the control of people's mobility in the context of the fight against terrorism, utilizing examples drawn from the European Union (EU).

1- Profiling in the Literal Sense

It is evident that profiling has nothing to do with the existence of the individual but rather with their actions or what they intend to do. The purpose of this intentional action and characterization is not to provide experts with recipes or tricks but to limit the risks of error and misjudgment of the situation and the individual. It is a decision support technology that can be used by experts to facilitate their tasks of analysis and investigation.²

1-1 Profiling - What Impact?

In this sense, the use of profiles based on unconfirmed generalizations could constitute an excessive abuse of human rights and a violation of the concept of non-discrimination if it is systematically based on ethnicity, national origin, or religion. It can also become problematic if it exclusively or significantly targets a specific segment of the community, or if it is based on a person's country of origin under the guise of racial or religious profiling. For instance, if the police rely on the ethnic or religious appearance of a person during arrests, document checks, or routine searches, or if checks are conducted on immigrant men not accused of criminal activities solely because of their age and foreign origins.³

1-2 Profiling, Various Definitions

The definitions of the concept of profiling can vary given the multiplicity of its forms, whether it is criminal, racial, ethnic, religious, behavioral, psychological, or sociodemographic. Despite these variations, profiling has faced several divergences in its definition. However, in the context of law enforcement and according to a United Nations guide⁴ for the protection of human rights in the context of counter-terrorism, profiling has been defined as the "systematic association of a set of physical, behavioral, physiological characteristics with a type of offense, and the use of these characteristics to justify decisions made by police services." The "FRA," on the other hand, defines profiling as the "classification of individuals based on their characteristics, whether irreversible (such as gender, ethnic origin, height) or variable (such as habits, preferences, and other aspects of behavior)." Thus, profiling techniques aim to collect personal data, categorize them into files, and make predictions about these individuals.

1-3 Profiling Forms and Measures

In the literature, the concept of profiling is more associated with the law enforcement context, primarily divided into three distinct facets: social profiling, racial profiling, and political profiling. Social profiling involves increased surveillance and repression of marginalized populations due to their social and economic status. As for racial profiling, the same notion applies, but this time based on skin color or ethnicity. Finally, political profiling, the most recent in documentation on profiling, would apply to individuals based on their ideological affiliations.⁵ Ethnic profiling refers to measures taken by law enforcement authorities based on criteria such as ethnicity, race, religion, or national origin, rather than individual behavior or objective indicators.⁶

2- Profiling Practices in the Context of Anti-Terrorism Prevention Strategies

There is limited literature on the use and effectiveness of profiling as a tool in the fight against terrorism. Among the obstacles to studying terrorists, Hudson (1999) and Schbley (2006) list the lack of biographical databases (existing databases often document events rather than their authors) and limited access to terrorists, including incarceration (they typically refuse to disclose sensitive information). In Lum et al.'s (2006) literature review, the authors found precisely 20,000 articles and books on anti-terrorism measures. However, only seven empirically validated articles could be analyzed. Moreover, several articles provided primarily subjective evaluations without any empirical support.⁷

2-1 Intensification of Profiling Measures: A Necessity

Although the use of profiling and its techniques in police investigations, as a tool for identifying potentially dangerous individuals, particularly in the fight against drug trafficking, as well as in predicting traits and characteristics of criminals and offenders, has long been the subject of police investigations, its effectiveness in the criminal sphere has been proven and not contested. However, in response to the rapid rise of terrorism and presumably in the face of the severity of attacks, along with the pressures and tensions generated by the horror of these terrorist acts, this practice has significantly intensified in the fight against terrorism. It has garnered immense interest and concern from security forces, as its use has proven necessary to understand and predict the phenomenon, counter it, and potentially establish anti-terrorism prevention strategies.

2-2 Profiling - What Indicators?

Crime analysis initially involves proposing a presumed description of a fleeing criminal, including personality traits, behavior, and indicators related to age categories, ethnic origin, or situation. Initially

focused on excessively violent and ritualized crimes, especially serial murders and rapes, crime analysis has expanded to include cases of robbery, arson, and terrorism, as noted by Kantor (2004) in an editorial in the first issue of the *Journal of Investigative Psychology and Criminal Portraits*, published in 2004. ⁸This method is highly acceptable in this context.

3- Profiling: Admissible or Controversial Anticipatory Measures?

Since the application of profiling techniques as preventive measures to address the violence of terrorist attacks perpetrated in various countries, they have been the subject of numerous dissonances and divergences within the international community due to the excesses committed in this context. The relevant analysis regarding the use of profiling in the fight against terrorism inevitably leads us to the controversy surrounding the effectiveness and limits of this practice in the field of terrorism prevention.

3-1 Multitude of Implemented Software

Many also believe that profiling terrorists is a necessity to predict potential attacks, often referring to the origins of the perpetrators of these attacks (Arab, Muslim, etc.). The multitude of implemented software serves as evidence of this conviction. An example is the NEPAR software (Network Pattern Recognition), which "collects all the data that has been recorded during various attacks, analyzes and cross-references them. The goal is to weave a network of similar behaviors observed in previous attacks, regardless of the circumstances of these attacks. This new tool uses more than 150,000 data collected during terrorist attacks between 1970 and 2015."⁹

3-2 Police Services Share the Same Opinion

Similarly, police services seem to share this opinion because targeting a specific category within an immigrant population, Muslim community, or Black community provides law enforcement with valuable assistance and a well-founded and justified starting point to conduct their investigations. It provides them with indicators and specific information regarding various profiles of these subjects and their motivations. For example, among the measures taken by France is the establishment of a unit tasked with conducting a qualitative analysis of the authors of terrorist attacks and identifying the factors that led to the act.

This interdisciplinary team will conduct research on the common characteristics of the perpetrators of attacks or attempted attacks to determine objective criteria for the dangerousness of radicalized individuals and elucidate the process by which one or more individuals transform into European terrorism.¹⁰

Discussion

To analyze our issue regarding profiling techniques of individuals suspected of radicalization leading to violent extremism in the context of counter-terrorism, our two initial questions were, first, is the establishment of an intensive traceability system for individuals suspected of radicalization and extremism justified? Second, should profiling methods in the context of counter-terrorism be anticipatory and systematically implemented without any distinction?

Answering the first question, the classification of individuals based on their characteristics is increasingly harmful to various groups of people in the EU and constitutes direct discrimination based solely or primarily on one or more characteristics. Violating the rights and freedoms of individuals is therefore illegal. However, law enforcement and security forces, faced with the aftermath of a violent terrorist attack, can only resort to this method to cope with this dramatic situation.

Nevertheless, the argument in favor of using this method remains dangerously misleading¹¹. This is why other voices have risen against these practices, labeling them as repressive, having a more discriminatory than preventive connotation, and taking on an oppressive character. These measures often pose serious threats to human rights and undermine the dignity of every individual. Certain categories of people experience unacceptable treatment, being subjected to arrests and suspicions by law enforcement, violating laws and rules established by jurisdiction and international organizations in favor of human rights.

Profiling becomes not only harmful and ineffective but also counterproductive in the fight against terrorism. The Council of Europe, as well as the European Court of Human Rights, has warned governments against potential abuses of excessive profiling and "extreme profiling." It is essential to emphasize that profiling in all its forms follows an undetermined process with vague limits and contours, relying on

generalizations and stigmatizations based on race, color, ethnicity, national origin, and religious belief rather than being linked to individual behavior.¹²

In its General Recommendation No. 30 (2004), the Committee against Racial Discrimination called on states "to ensure that measures taken in the fight against terrorism are not discriminatory in purpose or effect based on race, color, descent, or national or ethnic origin, and that non-nationals are not subject to racial or ethnic profiling or stereotypes."¹³ Decision-making or the choice of arrests or detentions often falls to police officers during suspicions, searches, arbitrary arrests, identity checks, and detentions. These are not based on tangible evidence and can inevitably incriminate a suspect, categorizing them later, and tend to stigmatize one population compared to another. Therefore, in many cases, profiling becomes incompatible with the principles of freedom, equality, and non-discrimination.

According to Brynen (2004), considering ethnic groups from unstable regions of the world as high-risk is detrimental because it leads these groups to turn away from law enforcement, making them more vulnerable to recruitment efforts by extremist groups. Community leaders should be consulted, and minorities should be allowed to denounce misunderstandings and biases within the police. Furthermore, it is essential that the ethnic diversity of the nation is reflected in the staffing of security and law enforcement agencies. They must develop the linguistic and cultural skills necessary for a more nuanced understanding of community politics.¹⁴ These are the most adequate and appropriate means to facilitate communication with these vulnerable populations, already impacted by their living conditions and further complicated by oppressive procedures by the authorities.

In its interim report, the Special Senate Committee on Anti-Terrorism, "Fundamental Justice in Exceptional Times," noted that many witnesses feared that police and intelligence services engage in "racial profiling" in the context of the fight against terrorism, targeting a person or choosing to investigate them solely based on their race, national or ethnic origin, color, or religion. In its 2007 study, the Committee questioned the "motive provision" in the definition of the term "terrorist activity" in section 83.01 of the Criminal Code, which refers to an act or omission committed in Canada or abroad "in the name - exclusively or not - of a political, religious, or ideological purpose, goal, or cause." The Committee suggested that this "motive provision" be removed because it risked violating existing legislation.¹⁵

The Security Council, for its part, affirmed that peace, security, and respect for human rights are complementary and synergistic objectives in responding to terrorism. In its resolution 1904 (2009), it reaffirmed the need to combat terrorism "in accordance with the Charter of the United Nations and international law, including international human rights law, refugee law, and international humanitarian law."¹⁶

The literature is rich in a variety of approaches and studies on the subject that have not yet been empirically demonstrated. According to Hicks & Sales (2006), these typologies lack theoretical foundations and validations. According to Bourque & Al (2009), most studies on the effectiveness of profiling are often in the form of surveys, and as a result, there are several limitations in profiling research.¹⁷ Therefore, profiling measures must be in strict accordance with international law and respect the dignity and privacy of individuals.

Regarding our second question, which focused on profiling methods in the context of counter-terrorism, whether they should be anticipatory and systematically implemented without any distinction, it is clear that it is acceptable for these methods to be applied. However, prior to their application, they must be thoroughly studied and comply with existing laws. Without this, they could lead to confusion, concern, and potential abuses, especially in their implementation by law enforcement and security forces.

To address these concerns, the European Union Agency for Fundamental Rights (FRA) published a guideline in 2010 titled "Effective Policing: A guide to understanding and preventing discriminatory racial profiling." This guide specifically addresses the use of profiling by the police, focusing on the exercise of powers such as interrogation and search.¹⁸ These two methods are the most contentious, causing discomfort to individuals and limiting their freedom of movement within the European Union.

In terms of collecting and processing personal data, law enforcement and border control authorities should ensure that data collection and processing have a legal basis and a valid, lawful, necessary, and proportionate purpose. Protected characteristics such as race, national origin, gender, or religion may be factors considered by law enforcement and border guards in the exercise of their powers, but they should not be the sole or primary reasons for distinguishing individuals¹⁹ and making judgments without tangible evidence or misinterpreted actions.

According to Phelippot.E (2018), predictive analysis as a profiling method is moderately effective. It allows for swift action upon recognizing typical elements such as gestures of the arms, hands, and legs, micro-expressions, and automatic contacts. Detecting these markers in advance enables trained individuals to ask the right questions. Based on studies in psychology (emotion studies), behavior (animal behavior science), and neurology (study of key responses from the reptilian and limbic brain), these gestures are often performed without human control. Emotions show early signs during a conflict or when criminal behavior is established, contributing significantly to identifying potentially dangerous individuals who may pose a threat to the safety of people and communities²⁰.

Therefore, it is crucial to train police officers to be attentive to subtle gestures and learn to detect non-verbal behavior in individuals. Some involuntary gestures, also known as markers, are specifically linked to aggression, violence, and stress and can be perceived before an act is committed.

Conclusion:

Acts of terrorism "aim to destroy human rights, fundamental freedoms, and democracy, undermine a pluralistic civil society, and have harmful consequences for the economic and social development of nations" (Resolution 48/122 of the General Assembly in 1993). Because they "endanger people's lives, dignity, and security of innocents and human beings worldwide, threatening the social and economic development of all countries, jeopardizing global stability and prosperity" (Security Council Resolution 1377 (2001)), acts of terrorism have a direct and detrimental impact on the enjoyment of human rights.²¹

Therefore, it is imperative that the prevention of terrorist acts must primarily focus on the legitimacy and acceptability of the methods used. It is undeniable that terrorism primarily targets the destruction of democracy, and law enforcement and security agencies need tools to ensure national security²². However, this is not a justification or reason to violate laws because the use of profiling in this context clearly has a discriminatory component, undermining the sense of security and, furthermore, compromising the legitimacy of law enforcement officers. It increasingly fosters hostility within communities, exacerbating tensions between law enforcement and these communities.

Understanding that predicting to truly prevent terrorism and prevent others from embracing Islamic radicalism or violent extremism requires implementing alternative prevention strategies based on dialogue and communication is crucial. Improving living conditions, reducing the marginalization of young people, providing more opportunities in life, fostering trust in disadvantaged neighborhoods, and maintaining citizens' trust in the police while promoting a better understanding of their role are essential.

Most importantly, providing operational tools for police officers to assist them in their decision-making processes during interventions would be effective. Profiling could be a useful tool if limited to security centers as a database, becoming a fundamental component for intelligence services as reference files, rather than subjecting it to systematic and hasty searches and information collection.

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² Guidère, M. Profiling solitary terrorists. *Borders*, p. 25-46. (2010)

³ CTITF Reference Guide on Fundamental Human Rights in Security Infrastructure. (2014)

⁴ United Nations, Prevention and Combating Racial Profiling of People of African Descent, Good Practices, Difficulties, P.p.1-2, (2019)

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⁶ Open Society Foundations (2020). What is ethnic profiling?

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- ⁸ Dupuis-Déri, F. Emergence of the concept of "political profiling": police repression and social movements in Quebec. *Politics and Societies*, 33(3), 31-56. P40. (2014).
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- ¹⁸ Bourque, & Al. Effectiveness of profiling in the context of national security Canadian Human Rights Commission
- ¹⁹ FRA. European Union Agency P.11
- ²⁰ Phelippot, E. Potential contributions of predictive profiling techniques in the fight against terrorism. (2018)
- ²¹ United Nations New York. Human Rights and Criminal Justice Responses to Terrorism Legal Training Program (2014). p5
- ²² Strategic Plan to Support SPVM Personnel in Racial and Social Profiling Prevention 2018-2021 "Listen, Understand, Act. P.p11.16

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