

## ETHNIC PROFILING

MAIN RESULTS FROM THREE STUDIES

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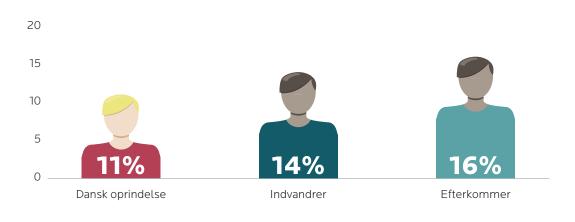
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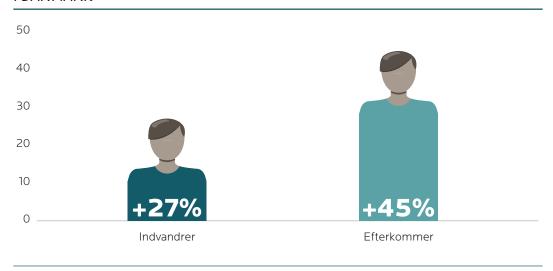
#### **SUMMARY**

This report examines ethnic profiling by the police in a Danish context. We will focus on the scope and nature of ethnic profiling as well as the consequences of ethnic profiling as experienced by minority ethnic men in Denmark. Our analysis shows that minority ethnic individuals are much more likely to be arrested for and charged with a crime that they are later cleared of compared with individuals of Danish descent. Among minority ethnic men, this leads to distrust in and hostility towards the police as well as a feeling of being discriminated against. Even though both international and Danish legislation clearly prohibit discrimination on the grounds of, for example, racial or ethnic origin and religion, currently no clear and unambiguous prohibition exists in the regulation of police activities.

#### SANDSYNLIGHED FOR SIGTELSE UDEN FÆLDENDE AFGØRELSE



#### FORSKELLE I SANDSYNLIGHED FOR SIGTELSE UDEN FÆLDENDE AFGØRELSE SAMMENLIGNET MED PERSONER MED OPRINDELSE I DANMARK



On this basis, the Danish Institute for Human Rights recommends:

- The Danish Ministry of Justice take the initiative to introduce a specific prohibition against discrimination, including ethnic profiling, in the Police Act. This prohibition can be inserted as a fundamental principle in a new section 3(2) on the general principles for police interventions.
- The Danish Police increase the level of training in ethnic profiling conducted at the police academy and that police continue to receive training in the prevention of ethnic profiling after graduation from the police academy.
- The Danish Police prepare national guidelines, the purpose of which is to prevent ethnic profiling and to promote an inclusive culture internally in the police.
   Such guidelines should contain guidance on how to observe objective criteria in connection with a police intervention, and how the police can prevent ethnic profiling.
- The Danish Police make it mandatory for police districts to systematically register individuals who are in contact with the police with a view to providing statistical data on police actions taken against individuals that includes the ethnic origin of these individuals. Such data can be used to identify disproportionate patterns and to measure the effectiveness of police interventions. The register should be developed in collaboration with the Danish Data Protection Agency to ensure compliance with the Act on Processing of Personal Data.

### INTRODUCTION

The Danish Institute for Human Rights is Denmark's national body for equality. We work to protect and promote ethnic equality in Denmark through preparing surveys and recommendations. This report collates the main results from a more exhaustive survey of ethnic profiling by the police conducted by the Danish Institute for Human Rights in 2021.

We define ethnic profiling in accordance with the definition by the European Commission against Racism and Intolerance (ECRI): "The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities".

As can be seen from this definition, in some situations, the police may lawfully place emphasis on ethnicity and skin colour, etc., in connection with police work. This means that using ethnic profiling is not always unlawful. The decisive factor for whether ethnic profiling has taken place is whether the profiling of a suspect or similar is based on subjective grounds that may lead to discrimination based on ethnicity and race.

The UN Committee on the Elimination of Racial Discrimination (CERD) and ECRI have stressed that ethnic profiling may constitute a violation of the fundamental human rights principle of equality and non-discrimination. Ethnic profiling contends with fundamental human rights norms that all people should be treated as individuals rather than as members of a group.

### A BETTER KNOWLEDGE BASE FOR DISCUSSING ETHNIC PROFILING IN DENMARK

Today, ethnic profiling is a well-documented global problem, which in several Western countries has spurred the police to implement internal measures aimed at preventing ethnic profiling. A few studies have examined the issue in a Danish context, for example, the Danish documentary "Mørk og Mistænkt" (Dark-skinned and Dangerous) from 2018 (Danmarks Radio 2018). Moreover, a number of recent Danish and Nordic interview studies have shown that in marginalised residential areas minority ethnic men are subject to police stops due to the colour of their skin. However, the police have so far dismissed that unfair ethnic profiling is an issue in their work (Danmarks Radio 2018, Politiken 2021).

Knowledge about the nature, scope and consequences of ethnic profiling in Denmark is still limited. The purpose of our surveys is to build a better knowledge base about ethnic profiling by Danish police, and based on this, to make recommendations for how ethnic profiling by the police can be counteracted in a Danish context.

This main report draws in the results from three studies:

- Etniske forskelle i mødet med politiet en registeranalyse af sigtelser og anholdelser uden fældende afgørelse (Ethnic differences in encounters with the police: A register-based analysis of charges and arrests with no conviction; only available in Danish). This analysis is based on data from Statistics Denmark on 2.5 million preliminary charges and 270,000 arrests and their rulings in the period 2009-2019. The analysis uses this data to examine whether ethnic minorities in Denmark are more likely to be presented with preliminary charges or be arrested but not convicted.
- Etnisk profilering Oplevelser og konsekvenser af minoritetsetniske mænds møder med politiet (Ethnic profiling: How minority ethnic men experience encounters with the police and the consequences of these encounters; only available in Danish). On the basis of 15 qualitative interviews, the analysis examines how men with an ethnic minority background in Denmark experience being profiled by the police and the consequences of such profiling.
- Etnisk profilering i et menneskeretligperspektiv (Ethnic profiling seen from a human rights perspective; only available in Danish). The term ethnic profiling is defined within a legal framework, including the individual's rights in the encounter with the police as well as the police's power to stop and take action against the individual.

## MINORITY ETHNIC INDIVIDUALS MUCH MORE LIKELY TO BE CHARGED BUT NOT CONVICTED

One way to examine whether there are indications of ethnic profiling by the police is to examine **who** the police press charges against and what the outcome of the charges are. Members of the public rightly expect the police will only press charges against an individual for offences for which they can be convicted. That is, an individual's ethnic background should be of no relevance for whether the charges pressed against them will lead to a conviction or not. If the police more often systematically press charges against minority ethnic individuals for offences that they are not found guilty of, this may indicate that the police rely on a lower standard when pressing charges against minority ethnic individuals compared with individuals of Danish descent. In the most comprehensive analysis to date in a Danish context, we have examined whether there is a correlation between the ethnic background of an individual charged and whether the charges result in a conviction.

The analysis shows that ethnic minorities in Denmark are much more likely to be charged of an offence that does not result in a conviction than individuals of Danish descent. This is seen for the entire period analysed – from 2009 to 2019 – across virtually all categories of criminal offences. A total of 11 percent of cases involving individuals of Danish descent do not result in a conviction, while the figure is 16 percent for immigrants and 18 percent for descendants of immigrants. This mean that the likelihood of being charged for an offence without the charges resulting in a conviction is 45 percent higher for immigrants and 64 percent higher for descendants of immigrants.

This difference decreases but is still significant and critical when other relevant factors concerning the case and the accused are included in the statistical model, for example, type of criminal offence, and the age, gender, family situation, employment, income and educational level of the accused. All of these factors may play a role with regard to the differences we have identified. When these factors are included, we see that for individuals of Danish descent the probability of being charged of offence where the charges do not result in a conviction is 11 percent, whereas the corresponding figure is 14 percent for immigrants and 16 percent for descendants of immigrants. That is, the likelihood of being charged of an offence without the charges resulting in a conviction is 27 percent higher for immigrants and 45 percent higher for descendants of immigrants.

FIGURE 1: PROBABILITY OF BEING CHARGED BUT NOT CONVICTED BY COUNTRY OF ORIGIN, 2009-2019

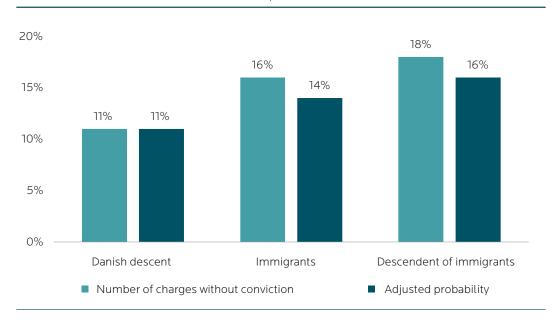
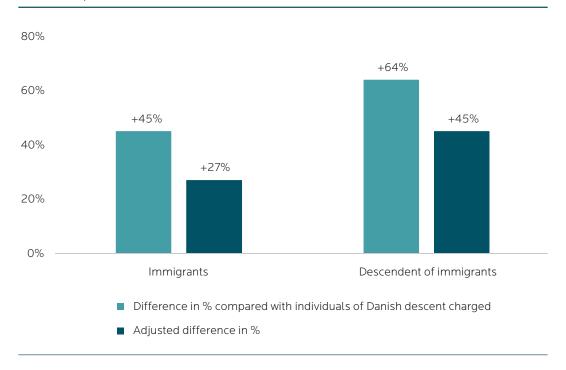


FIGURE 2: DIFFERENCES IN PROBABILITY OF BEING CHARGED BUT NOT CONVICTED COMPARED WITH INDIVIDUALS OF DANISH DESCENT, 2009-2019



<sup>\*</sup>The adjusted probabilities are calculated using a statistical regression model that adjusts for the following: type of criminal offence, number of persons charged in the case, police district, year of charge, and the age, gender, education, employment, income and family type of the accused.

## 1.1 ESPECIALLY ETHNIC MINORITIES OF MIDDLE EASTERN AND EAST AFRICAN DESCENT ARE CHARGED IN CASES THAT DO NOT LEAD TO CONVICTION

Our analysis also shows that especially immigrants and descendants of immigrants of Middle Eastern and East African descent are charged in cases that do not lead to a conviction. For example, for individuals of Syrian, Lebanese, Kuwaiti or Somalian descent who are charged with a criminal offence, more than one in five cases do not lead to a conviction.

When taking relevant factors (such as type of criminal offence as well as the age, gender, family situation, employment, income and educational background of the accused, etc.) into account, the study shows that the probability of an individual of Lebanese descent being charged but not convicted is 19 percent, whereas the probability of an individual of Somali descent being charged but not convicted is 16 percent. That is, the probability of being charged but not convicted was 73 percent higher for individuals of Lebanese descent and 45 percent higher for individuals of Somali descent compared with individuals of Danish descent.

## FIGURE 3 PROBABILITY OF BEING CHARGED BUT NOT CONVICTED FOR INDIVIDUALS OF DANISH, LEBANESE AND SOMALI DESCENT, 2009-2019

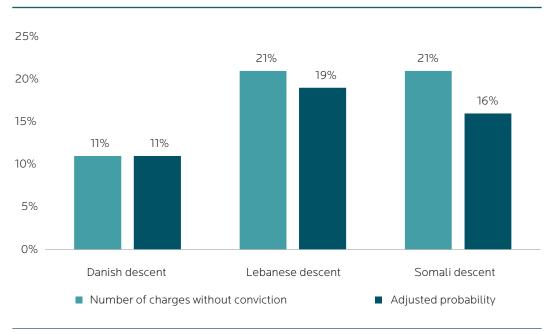
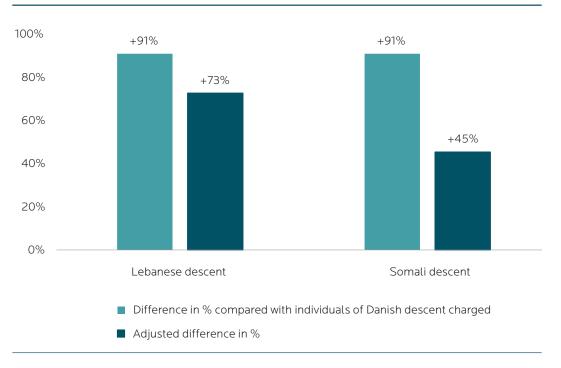


FIGURE 4: DIFFERENCES IN PROBABILITY OF BEING CHARGED BUT NOT CONVICTED FOR INDIVIUDALS OF LEBANESE OR SOMALI DESCENT COMPARED WITH INDIVIDUALS OF DANISH DESCENT, 2009-2019



<sup>\*</sup>The adjusted probabilities are calculated using a statistical regression model that adjusts for: type of criminal offence, number of persons charged in the case, police district, year of charge, and the age, gender, education, employment, income and family type of the accused.

Moreover, the report's analyses show significant ethnic differences in the outcome of cases concerning violent crimes, crimes against property, as well as cases that fall under the Act on Controlled Substances and the Firearms Act, while differences are small or absent with regard to as cases that fall under, for example, the Road Traffic Act and income tax and fiscal acts.

### 1.2 ETHNIC MINORITIES ALSO MORE OFTEN ARRESTED BUT NOT CONVICTED

We have also examined whether ethnic differences exist in arrests that do not lead to conviction. The numbers in this area paint a similar picture. For individuals of Danish descent, 12 percent of arrests do not lead to conviction, whereas the corresponding figure for immigrants is 21 percent and 27 percent for descendants of immigrants. That is, the likelihood of an arrest not resulting in a conviction is 75 percent higher for immigrants and 125 percent higher for descendants of immigrants than for individuals of Danish descent. The differences decrease, but are still pronounced and statistically significant, when variables other than the ethnicity of the arrested individual are taken into account.

FIGURE 5: PROBABILITY OF BEING ARRESTED BUT NOT CONVICTED BY COUNTRY OF ORIGIN. 2009-2019

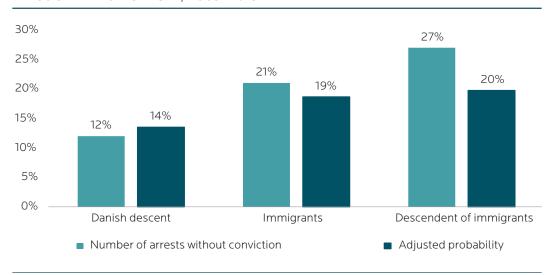
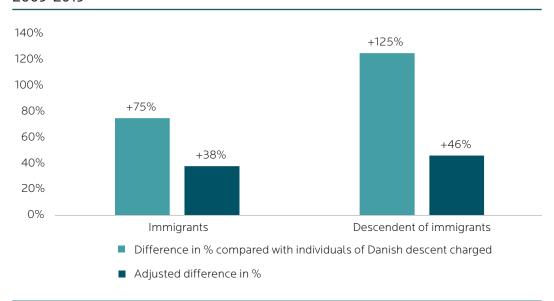


FIGURE 6: DIFFERENCES IN PROBABILITY OF BEING ARRESTED BUT NOT CONVICTED COMPARED WITH INDIVIDUALS OF DANISH DESCENT, 2009-2019



<sup>\*</sup>The adjusted probabilities are calculated using a statistical regression model that adjusts for: type of criminal offence, number of persons charged in the case, year of charge, and the age, gender, education, employment, income and family type of the accused.

Again, we see that especially for individuals of Middle Eastern and African descent who are arrested, the arrest does not lead to conviction. For example, 30 percent of individuals who are arrested were of Syrian or Lebanese descent. That is, ethnic minorities are not only charged more often, they are also detained more often in cases that do not lead to conviction than individuals of Danish descent.

## POSSIBLE EXPLANATIONS AND LIMITATIONS WHEN USING REGISTER DATA

There are several reservations and uncertainties associated with the statistical analysis as it is statistically impossible to account for all other factors that may affect the probability of charges resulting in conviction.

Firstly, there may be systematic conditions associated with potential discrimination that lie beyond to the control of the police. For example, this could be if ethnic minorities are more likely to be reported to the police by citizens, and thus are more often subject to police stops. The prosecution service and the courts also play a role in whether charges or an arrest lead to conviction; thus, these authorities may also potentially have an effect.

Other factors may also result in charges and arrest not leading to conviction. When ethnic minorities have a lower level of trust in the police, this may affect willingness to testify. And, even though they know that there is little chance of their arrest leading to conviction, the police may arrest an individual for a number of other reasons related to their investigations. The advantage of using charges and arrests without conviction as an indicator of ethnic profiling, however, is that, in principle, this indicator does not systematically hinge on the ethnicity of the individual who is being charged or arrested. Systematic, ethnic differences that cannot be explained by other significant factors indicate that the police use different standards in their stop interventions and investigations that are based on ethnicity. However, this cannot be definitively concluded based on register data. Further qualitative studies are needed to elucidate this, and there is reason to believe that several factors play a role. Even though the register-based analyses we have conducted for this report indicate there is a problem, our analyses are inadequate with regard to explaining the reasons for the difference in outcomes.

In addition, using register data regarding charges pressed by the police poses several other limitations. In Denmark, the police are obligated to register all charges pressed against individuals. For example, if the police want to stop and search or in any other way check an individual, they are in principle obligated to press charges for violation of the law. Such incidents must be registered in the police record filing system. However, if the police do not press charges, the exchange between the police and the individual might not be recorded. For example, the police are entitled to stop a person in their car or on the street at any time and to ask for their name, address and date of birth without having to register such incidents in their

record filing system. This means that there is a grey area of encounters between the public and the police that could potentially vary systematically based on the individual's ethnicity but that are not included in this analysis because they have not been recorded in the system.

Thus our analyses only provide a picture of whether there are ethnic disparities in the outcomes of recorded charges against individuals in Denmark. With regard to whether ethnic minorities in Denmark are more likely to be stopped by the police without this leading to the charges being recorded, the analyses in this report underestimate the actual ethnic disparities in encounters with the police that do not lead to conviction.

#### MINORITY ETHNIC MEN AND ETHNIC PROFILING

We have interviewed 15 minority ethnic men about their experiences of being ethnically profiled in encounters with the police and how this has affected them. The men who participated in our survey are either enrolled in a study programme or they have completed their education and have a job. They have all had negative experiences from encounters with the police, and many of them have had several encounters.

The interviewees were selected from our private networks. Selection criteria included having had an encounter with the police. Thus, the interviewees are not representative for all minority ethnic men; instead, they should be seen as examples of how an individual may experience an encounter with the police. The interviews only deal with how the interviewees themselves perceived the situation; it has not been possible to verify their experiences. We wanted to interview the police as well so as to be able to include their perspective in the survey, but this was not possible.

### 3.1 DISPARITIES IN DAILY LIVING AND PHYSICAL AND SYMBOLIC VIOLENCE

Several of the interviewees mention that they have experienced physical violence in encounters with the police. For example, being yanked out of a car, being forced to lie on the ground with their hands cuffed behind their back or being shoved up against a wall face first. And some of them tell about encounters in which the violence was more symbolic in that the police's behaviour was experienced as being degrading or humiliating. Examples of such behaviour are when the police use racist language or other degrading language, or when the police order an individual to remove clothing when it is cold outside, to expose intimate body parts, or when the police stop and search an individual in public view.

The verbal abuse, that's nasty. As I said, I almost think that's worse than being shoved up against a wall or placed on the ground and cuffed... They [ed. the police] talk to you like you're nothing... When they talk to you, they talk to you like you're worthless. That's bullying, and it's violence." (Wahid, Interview 4)

Far from all encounters with the police are violent in nature. The men also describe frequent albeit discreet encounters with the police as part of their everyday lives. These encounters are perceived as harassment and result in the men feeling that they treated differently than their friends or colleagues who are of Danish descent. For example, the men describe how they are often pulled over when driving. Some of the men describe the perceived disparities of everyday life as being linked to their childhood and youth. Being one of the kids the police "spoke to" created a feeling of being treated differently than their friends of Danish descent. Many of the men felt that such encounters with the police were an unavoidable part of everyday life.

#### 3.2 PROFILED AS A 'SUSPICIOUS IMMIGRANT'

The men explain how the way they look draws the attention of the police. They feel that the police use a stereotypical 'immigrant profile' that defines who is suspicious and who is not. According to the men, the colour of their skin is one of the main reasons for why they are stopped. However, in addition to skin colour, the police often also draw on other social and spatial factors when determining who is suspicious, the men explain. For example, the clothes you wear, your hairstyle and your beard, who and how many others you are with, the car you are driving, and not least, where you are. A 'suspicious immigrant' is often described as a man wearing sweats and sneakers, with a beard and short hair with a fade cut. He either drives a car that is too expensive or a run-down, battered car. He lives in a marginalised housing area, hangs out with a group, and looks out of place in a residential area. This 'ethnic profile' makes the men feel that they are already stigmatised and deemed suspicious just because of how they look.

They [the police] say that they've got reasonable grounds for these searches. But they don't. It's just because they think: he's dark-skinned. He's probably a criminal. And that's how they do the math... I can't tell you how many times I've been late for work, I've had to take my socks off in the street, I've been cuffed in the street and they've called for back-up, I've had to do an alcohol test, so many times... And it's just something I have to accept." (Fahrid, Interview 14)

For many of the men, these negative experiences with the police generate feelings of insecurity, injustice and dislike toward the police. Several of them describe it as a feeling of being over-monitored while at the same time being under-protected by the police. And many of them feel that any encounter they have with the police will quickly escalate to a conflict, especially if they question the police's conduct. This rapid conflict escalation gives the men the impression that the police do not think of them as individuals to whom they need to explain or justify their actions. Consequently, all the men express varying levels of dislike and distrust in the police.

You become a little bit hostile towards authorities. You have this feeling that some of them are willing to use their power in ways that are not okay. It's happened several times, you know, if I think back to all the things that have happened to me personally." (Ahmad, Interview 15)

#### 3.3 WAYS OF DEALING WITH ETHNIC PROFILING

The men resort to various ways of dealing with the profiling and discrimination they experience from the police. Many of them have given up on filing a complaint, because they feel that it does not make any difference. Instead they try to accept that "that's just how it is", and to forget any unpleasant experiences and just get on with their lives.

Others describe how they try to maintain their integrity by 'fighting back', either by filming the police, by asking the police questions about their powers or by filing a complaint about police conduct. And finally, some of them moderate their behaviour so as to be as different from the 'suspicious immigrant' stereotype as possible by, for example, refraining from wearing certain clothing labels and styles, having no beard, letting their hair grow, staying away from certain neighbourhoods, or refraining from driving a certain type of car.

On the one hand, these different approaches enable the men to live with the discrimination they experience. On the other hand, it reveals the overarching challenge facing equal treatment of ethnic minorities. Because many minority ethnic individuals refrain from filing a complaint about the police, there are many more cases of ethnic profiling than we know about, and thus the police and the Independent Police Complaints Authority have no records or knowledge of the actual number of cases of ethnic profiling.

Yes, I've definitely gotten used to it, and it's not something you should have to be used to, but I feel that maybe I've had get used to it in order to just live, you know, it's a bit crazy to just say this... I can feel that the stuff I'm telling you about is actually pretty intense, but it's actually just kind of (...) become less intense when I talk about it because I've gotten so used to this is how it is." (Bajram, Interview 1)

## ETHNIC PROFILING SEEN FROM A HUMAN RIGHTS PERSPECTIVE

The legal analysis shows that, despite the fact that the police's right to take action is described in detail in, for example, the Administration of Justice Act and the Police Act, it is unclear whether – and where – Danish legislation contains a clear and unambiguous prohibition against the use of ethnic profiling in connection with police activities. This is despite the fact that Danish legislation in several places contains a prohibition of discrimination on the grounds of, among other things, ethnicity, skin colour and country of origin. As is seen in our analysis, the use of profiling is in itself not unlawful and neither is drawing on factors related to ethnicity. What is most important in this context is that ethnicity, skin colour or country of origin is not allowed to be considered an objective ground for police interventions unless such factors are deemed relevant based on knowledge about a suspect's skin colour.

The European Union Agency for Fundamental Rights (FRA) guide on the prevention of ethnically discriminatory profiling provides a specific example of valid and invalid use of suspect descriptions:

After a number of brutal robberies in Vienna, the capital of Austria, which were allegedly committed by two dark-skinned male offenders, the police were ordered to detain all black men in groups so they could conduct identity checks. Following public protest, the order was rephrased to the more specific wording »black Africans, around 25 years old and 170 cm tall, slender, wearing [...] light-brown jackets«. In the course of a single day, the police detained and searched 136 black men but none of them were affiliated with the robberies" (Bajram, Interview 1)

Detaining dark-skinned individuals on the basis of the first description is very likely to fulfil the conditions for discriminatory ethnic profiling, whereas detaining individuals on the basis of the more detailed description is very likely be legitimate. In relation to the informants in this report, in many cases the examples they give are situations where they have been stopped by the police in the street or in their car in connection with, for example, an identity check. In such situations, the police may base their stop and search activities or their investigations on an individual's ethnicity without having a specific reason for doing so. That is, taking an individual's ethnicity into account must be based on a specific suspicion in order to prevent that ethnic minorities are unfairly and hence unlawfully discriminated against in connection with ethnic profiling.

#### 4.1 NEED FOR BETTER LEGISLATION AND GUIDELINES

The lack of clarity in the legislation contributes to actual situations in which it can be difficult for the police in their daily activities to distinguish between what constitutes suspicious behaviour based their own experiences and prior assumptions about who is suspicious. As seen in the legal analysis, neither the Police Act nor the Administration of Justice Act, both of which regulate police activities, explicitly contains a prohibition against discrimination – including a prohibition against ethnic profiling. Moreover, it is unclear whether the Ethnic Equality Act covers the police's day-to-day activities. In light of this, there is need to include a prohibition against discrimination in the Police Act, so it is more clear that discrimination – and hence also ethnic profiling – is unlawful.

To ensure clarity regarding when, and in what situations, ethnic origin and colour may be an objective parameter in the police's work, there is a need for national guides that include specific instructions for the police on what constitutes objective criteria to be used in an intervention. Such a guide should be followed up by training in ethnic profiling and how to prevent it. This should be included in the official police academy training programme and in follow-up training courses.

#### 4.1 A COMPLEX COMPLAINTS SYSTEM

Our analysis also shows that the complaints system is complex to navigate for individuals who have been profiled on the basis of their ethnicity. In the current system, an individual can file two types of complaints against the police: complaints about police powers and complaints about police conduct. Complaints about police powers include complaints about the powers of a police force or local policing body, for example, the decision to make an arrest, pull a car over or the use of force. The first stage of complaints handling is the Police Commissioner, who deals with complaints about police powers. Whether a complaint is dealt with in the second stage of complaints handling depends on whether it concerns police powers that fall within or outside of the criminal justice system. Complaints about conduct include complaints about a specific police officer in connection with police activities. For example, if an individual believes that a police officer has used inappropriate language or has used more force than necessary in connection with an arrest or a body search. This type of complaint is submitted to the Independent Police Complaints Authority, which is the only body of complaint.

In practice, the complex structure of the police complaints system gives rise to confusion as to how, where and to whom complaints should be directed. This in itself may constitute a barrier for individuals who have experienced ethnic profiling, which in turn may amplify the impression that it is futile to file a complaint. And this may in part explain why there are relatively few complaints.

#### RECOMMENDATIONS

Overall, the analyses show that there are considerable ethnic disparities in encounters with the police. Minority ethnic individuals are much more likely to be arrested and charged for a crime that they are later cleared of compared with individuals of Danish descent. When individuals feel that they have been subjected to ethnic profiling, this may have significant negative effects in the form of distrust in and hostility towards the police among minority ethnic men. Similarly, it also makes them feel as second-class citizens who do not enjoy the same rights as all other citizens in Denmark.

Based on the results of our analysis and with a view to countering ethnic profiling, the Danish Institute for Human Rights recommends that:

- The Danish Ministry of Justice take the initiative to introduce a specific prohibition against discrimination, including ethnic profiling, in the police act. This prohibition can be inserted as a fundamental principle in a new section 3(2) on the general principles for police interventions.
- The Danish Police increase the level of training in ethnic profiling conducted at the police academy and that police continue to receive training in the prevention of ethnic profiling after graduation from the police academy.
- The Danish Police prepare national guidelines, the purpose of which is to prevent ethnic profiling and to promote an inclusive culture internally in the police.
   Such guidelines should contain guidance on how to observe objective criteria in connection with a police intervention, and how the police can prevent ethnic profiling.
- The Danish Police make it mandatory for police districts to systematically register individuals who are in contact with the police with a view to providing statistical data on police actions taken against individuals that include the ethnic origin of these individuals. Such data can be used to identify disproportionate patterns and measure the effectiveness of police interventions. The register should be developed in collaboration with the Danish Data Protection Agency in order to ensure compliance with the Act on Processing of Personal Data.

### NOTES

1 ECRI. 2007. General Policy Recommendation N 11: On Combatting Racism and Racial Discrimination in Policing.

# THE DANISH INSTITUTE FOR HUMAN RIGHTS