**A Draft General Recommendation no. 36 on preventing and combating racial profiling**

**Comments by the Government of Finland**

**27 June 2019**

The Government of Finland welcomes the invitation to provide comments on the Draft General Recommendation no. 36 on preventing and combating racial profiling and finds the recommendations made in the draft good. The Government considers the prevention of ethnic profiling particularly important in the work of law enforcement authorities.

The Government notes that in Finland, the Act on the Processing of Personal Data in Criminal Matters and in Connection with Maintaining National Security (1054/2018) prohibits profiling that results in discrimination (section 11, subsection 3). The idea of the prohibition is close to the prevention of profiling within the meaning of the draft General Recommendation.

The Government notes that in principle, the national regulation already partly meets the objective pursued by the draft General Recommendation. The General Recommendation touches on the activities of the law enforcement authorities from a slightly different perspective. It sees profiling purely from the viewpoint of the prohibition of discrimination laid down in human rights treaties, encompassing situations beyond the processing of personal data.

In Finland, all law enforcement authorities, *i.e*., the police, customs and the Border Guard, carry out profiling. The Finnish police have already taken or started to take measures concerning a significant number of issues presented in the recommendations. It is to be noted, however, that implementing the measures will take time. For example, the implementation of legislation will require training and other supportive measures. Recruiting members of ethnic minorities to the police service will require cooperation with the minorities.

Finland’s Strategy on Preventive Police Work, prepared under the Police Department of the Ministry of the Interior, contains a large number of measures to prevent ethnic profiling, to raise awareness of it and to promote cooperation with minority groups. One objective set in the programme of the Government that started its term in 2019 is to strengthen the resources of the police for preventive work, which would also support the prevention of ethnic profiling.

The Government notes that the purpose of the EU Law Enforcement Directive (2016/680) is not to prevent lawful profiling of potential perpetrators of crime that law enforcement authorities may carry out in relation to trafficking in drugs, trafficking in human beings or other similar crime. In such contexts, it may be necessary to track trafficking routes for drugs or human beings also on the basis of people’s countries of origin. However, the profiling must not lead to discrimination based on ethnic origin. Sometimes also the ethnic origin of victims may be essential information in criminal investigation (genocide, human trafficking, ethnic agitation). In such cases, the police must necessarily process the personal data in question.

The aforementioned provision of the Act on the Processing of Personal Data in Criminal Matters and in Connection with Maintaining National Security implements the corresponding prohibition in the EU Law Enforcement Directive, applying to discrimination against natural persons on the basis of all special categories of personal data, not only on the basis of ethnic origin.

Furthermore, the EU Directive (2016/681) on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime and the Finnish Act to implement it goes slightly further than the provisions of the Law Enforcement Directive. The PNR Directive prohibits all processing of special categories of personal data in a passenger information unit created by a law enforcement authority. Thus, a passenger information unit should not profile even potential perpetrators of crime on the basis of, *e.g.,* ethnic origin. The profiling is left to the criminal investigation authorities.

In principle, the prohibition of discrimination would have been suited to apply as such also to the processing of personal data, but the Law Enforcement Directive and the PNR Directive intentionally strengthen the prohibition as a fundamental right. According to the draft General Recommendation, the collection of data by law enforcement authorities, *e.g*. for border control, should comply with data protection legislation, among other norms.

The Government points out that it is not clear from the draft General Recommendation whether it deals with ethnic profiling only in respect of the activities of law enforcement authorities. The draft General Recommendation, and especially the definition of ethnic profiling in its paragraph 16, may give the impression that prohibited ethnic profiling is a problem found only in law enforcement activities. If the intention is to deal with the activities of law enforcement authorities only, this should also be visible in the heading of the General Recommendation.

Furthermore, the General Recommendation should emphasise that profiling must never be based solely on race, skin colour, ethnic origin or other similar criteria. In some situations, these factors combined with other information about the matter in question may be justifiable grounds for taking measures concerning a person.

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