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HUMAN DIGNITY AND ANTIGYPSYISM: RACIAL PROFILING IN A PREVENTIVE CRIMINAL LAW PERSPECTIVE

by Roze Surlovska Ristevska*

Summary: 1. Introduction. – 2. Conceptualising Antigypsyism and Racial Profiling. – 2.1 Antigypsyism as Structural Discrimination. – 2.2 Defining Racial Profiling in Preventive Policing. – 3. Preventive Criminal Law and Preventive Policing. – 3.1 From Reactive to Preventive Criminal Justice. – 3.2 Preventive Police Powers and Discretionary Enforcement. – 3.3 Rule of Law Concerns and Limits on Preventive State Power. – 4. Human Dignity and European Human Rights Protection. – 4.1 Human Dignity as a Foundational Principle. – 4.2 Non-Discrimination and Equality before the Law. – 4.3 Positive Obligations of States. – 5. ECtHR Jurisprudence on Roma Discrimination and Police Powers. – 5.1 Roma Communities and Structural Discrimination. – 5.2 Racial Profiling and Police Discretion. – 5.3 Surveillance, Preventive Powers, and Rule-of-Law Safeguards. – 6. Structural Discrimination and Preventive Criminal Justice. – 6.1. Preventive Antigypsyism: Towards a New Understanding of Roma Profiling. – 7. Conclusion.

1. Introduction

The relationship between criminal justice, preventive policing, and the protection of fundamental rights has become increasingly contested within contemporary European legal systems¹. In recent decades, preventive approaches to criminal law enforcement have expanded significantly, granting law enforcement authorities broader discretionary powers aimed at risk management, public security, and crime prevention². While such measures are frequently justified on grounds of security and efficiency, they also raise serious concerns regarding proportionality, legality, and equality before the law, particularly when their implementation disproportionately affects racialised and marginalised communities³.

Among the groups most affected by discriminatory policing practices in Europe are Roma communities, who have historically been subjected to systemic exclusion, stigmatisation, and structural discrimination⁴. Contemporary manifestations of antigypsyism continue to permeate institutional practices across several European states, including within criminal justice systems and policing structures⁵. Reports issued by international and European human rights bodies have repeatedly documented patterns of disproportionate identity checks, stop-and-search practices, surveillance, and police interventions targeting Roma individuals because of ethnic stereotypes rather than individualised suspicion⁶.

* Faculty of Law – University “Goce Delčev” of Štip (North Macedonia). Orcid: <https://orcid.org/0009-0004-4378-3778>.

E-mail: roze.3074@student.ugd.edu.mk.

¹ A. ASHWORTH, L. ZEDNER, *Preventive Justice*, Oxford, 2014, pp. 1-15.

² L. ZEDNER, *Pre-Crime and Post-Criminology?*, in *Theoretical Criminology*, 2007, pp. 261-281.

³ B. HARCOURT, *Against Prediction: Profiling, Policing, and Punishing in an Actuarial Age*, Chicago, 2007, pp. 1-20.

⁴ N. SIGONA, N. TREHAN (eds.), *Romani Politics in Contemporary Europe*, London, 2009, pp. 1-18.

⁵ Council of Europe, *Strategic Action Plan for Roma and Traveller Inclusion (2020-2025)*, Strasbourg, 2020.

⁶ European Union Agency for Fundamental Rights, *Being Roma in the EU: A Longitudinal Analysis*, Luxembourg, 2020, pp. 45-52; European Commission against Racism and Intolerance, *General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing*, Strasbourg, 2007.

Within this context, racial profiling emerges as one of the most problematic manifestations of preventive policing. Although preventive criminal law seeks to avert risks before the commission of criminal offences, the expansion of preventive powers may also facilitate discriminatory forms of state intervention when broad discretionary authority is exercised without sufficient safeguards⁷. The use of ethnic or racial indicators in police decision-making challenges core rule-of-law principles and risks transforming preventive policing into a mechanism of structural exclusion⁸. Consequently, the disproportionate targeting of Roma communities raises fundamental questions concerning the compatibility of preventive criminal justice practices with the principles of human dignity, equality, and non-discrimination protected under European human rights law⁹.

This paper examines the relationship between racial profiling of Roma individuals and the protection of human dignity within preventive criminal law frameworks. It argues that racial profiling should not be understood solely as isolated misconduct by individual police officers, but rather as a structural phenomenon linked to broader institutional practices and security-oriented models of governance¹⁰. The analysis situates antigypsyism within the broader framework of structural discrimination and explores how preventive policing practices may reproduce patterns of social marginalisation historically experienced by Roma communities throughout Europe¹¹.

The paper further investigates whether existing legal safeguards under the European Convention on Human Rights, European Union law, and anti-discrimination frameworks are adequate to address discriminatory preventive policing practices. Particular attention is devoted to the jurisprudence of the European Court of Human Rights concerning racial discrimination, police discretion, surveillance measures, and the limits of preventive state intervention¹². The study also engages with contemporary scholarship on preventive justice, securitisation, and institutional racism in order to assess the extent to which preventive criminal law may contribute to the normalisation of discriminatory policing practices¹³.

Methodologically, the paper combines normative legal analysis with a qualitative examination of European Court of Human Rights jurisprudence, reports issued by international monitoring bodies, and relevant academic literature. By integrating doctrinal analysis with insights from criminology and critical discrimination studies, the paper evaluates both the legal implications and the structural dimensions of racial profiling affecting Roma communities within contemporary preventive criminal justice systems.

The central hypothesis advanced is that racial profiling of Roma communities constitutes a structural feature of certain preventive policing practices and that such practices undermine the effective protection of human dignity and equality before the law. By critically examining the interaction between preventive criminal law and

⁷ A. ASHWORTH, L. ZEDNER, *op. cit.*, pp. 72-89.

⁸ D. COLE, *No Equal Justice: Race and Class in the American Criminal Justice System*, New York, 1999, pp. 35-52.

⁹ European Court of Human Rights, Judgment of 13 December 2005, Applications nos. 55762/00 and 55974/00, *Timishev v. Russia*, paras. 55-58.

¹⁰ M. GOLDSTON, *Roma Rights, Roma Wrongs*, in *Foreign Affairs*, 2002, pp. 146-162.

¹¹ European Court of Human Rights, Judgment of 22 April 2021, Application no. 48474/14, *Lingurar v. Romania*, paras. 70-86.

¹² European Court of Human Rights, Judgment of 12 January 2010, Application no. 4158/05, *Gillan and Quinton v. United Kingdom*, paras. 76-87; European Court of Human Rights, Judgment of 4 December 2008, Applications nos. 30562/04 and 30566/04, *S. and Marper v. United Kingdom*, paras. 95-103.

¹³ J. SIMON, *Governing Through Crime*, Oxford, 2007, pp. 3-25; M. VAN DER WOUDE, T. VAN DER LEUN, J. DE BOER, *Racial Profiling in Europe*, in *Ethnic and Racial Studies*, 2020, pp. 1-19.

antigypsyism, this paper aims to contribute to broader debates concerning the limits of preventive state power in democratic societies and the role of human dignity as a substantive constraint on discriminatory criminal justice practices.

2. Conceptualising Antigypsyism and Racial Profiling

2.1 Antigypsyism as Structural Discrimination

Antigypsyism constitutes one of the most persistent and deeply rooted forms of racism within Europe. Although Roma communities represent the largest ethnic minority in Europe, they continue to experience systemic exclusion, social marginalisation, and institutional discrimination across multiple areas of public life, including education, housing, employment, healthcare, and criminal justice¹⁴. The historical construction of Roma as a “deviant”, “dangerous”, or “criminally inclined” social group has significantly contributed to the normalisation of discriminatory practices within state institutions and law enforcement structures¹⁵.

In recent years, European institutions have increasingly recognised antigypsyism as a specific form of racism requiring distinct legal and policy responses. The Council of Europe has defined antigypsyism as a historically constructed system of discrimination directed against Roma communities, characterised by dehumanisation, stigmatisation, institutional racism, and social exclusion¹⁶. Similarly, the European Commission against Racism and Intolerance has emphasised that antigypsyism operates not merely through individual prejudice but through structural and institutional mechanisms that systematically disadvantage Roma populations¹⁷.

The concept of structural discrimination is particularly relevant in the context of criminal justice and policing practices. Unlike isolated discriminatory acts attributable to individual misconduct, structural discrimination refers to institutional arrangements and practices that generate unequal outcomes for particular social groups, even where discriminatory intent may not be explicitly demonstrated¹⁸. In the context of Roma communities, discriminatory policing often results from entrenched stereotypes linking Roma ethnicity with criminality, social disorder, or public insecurity¹⁹. Consequently, law enforcement practices may disproportionately target Roma individuals through increased surveillance, identity checks, stop-and-search procedures, and police interventions conducted on the basis of ethnic appearance or presumed group affiliation rather than individualised suspicion²⁰.

The persistence of antigypsyism within European societies cannot be understood separately from broader historical patterns of exclusion. Roma communities have long been subjected to forced assimilation policies, segregation, expulsion, and criminalisation

¹⁴ N. SIGONA, N. TREHAN (eds.), *op. cit.*

¹⁵ *Ibidem*, pp. 45-61.

¹⁶ Council of Europe, *Strategic Action Plan for Roma and Traveller Inclusion (2020-2025)*, Strasbourg, 2020, p. 5.

¹⁷ European Commission against Racism and Intolerance, *General Policy Recommendation No. 13 on Combating Anti-Gypsyism and Discrimination against Roma*, Strasbourg, 2011.

¹⁸ F. FREDMAN, *Discrimination Law*, Oxford, 2011, pp. 173-190.

¹⁹ M. GOLDSTON, *op. cit.*

²⁰ European Union Agency for Fundamental Rights, *Second European Union Minorities and Discrimination Survey – Roma Selected Findings*, Luxembourg, 2016, pp. 7-15.

across European states²¹. During the twentieth century, such discrimination culminated in the persecution and extermination of Roma populations during the Second World War, commonly referred to as the Porajmos²². Contemporary forms of antigypsyism continue to reproduce aspects of this historical marginalisation by constructing Roma communities as permanent “outsiders” within European societies and associating them with heightened security risks²³.

Within criminal justice systems, these historical prejudices frequently intersect with preventive policing practices. Preventive policing frameworks rely extensively upon risk assessment, suspicion, and discretionary intervention prior to the commission of criminal offences²⁴. While such mechanisms are formally designed to enhance public security, they may simultaneously facilitate discriminatory forms of intervention where social stereotypes influence police perceptions of “risk” and “dangerousness”²⁵. In this regard, antigypsyism becomes embedded within preventive criminal justice structures through routine institutional practices that disproportionately expose Roma communities to police control and surveillance²⁶.

These developments reflect a gradual shift within European human rights jurisprudence from viewing discrimination exclusively as an issue of individual intent toward recognising the structural dimensions of exclusion and institutional racism²⁷. Nevertheless, significant limitations remain regarding the capacity of existing legal frameworks to adequately address systemic forms of discriminatory policing. In practice, racial profiling frequently operates through informal police practices that are difficult to document, challenge, or litigate effectively²⁸. As a result, discriminatory preventive policing measures may persist despite formal commitments to equality and non-discrimination under European human rights law.

2.2 Defining Racial Profiling in Preventive Policing

Racial profiling generally refers to the use of race, ethnicity, national origin, or related characteristics by law enforcement authorities as grounds for suspicion, surveillance, or intervention in the absence of objective and individualised justification²⁹. Within European legal discourse, racial profiling is commonly understood as incompatible with the principles of equality before the law and non-discrimination protected under the European Convention on Human Rights and European Union law³⁰.

The European Commission against Racism and Intolerance defines racial profiling as the use by police, without objective and reasonable justification, of grounds such as race, colour, language, religion, nationality, or ethnic origin in control, surveillance, or

²¹ I. HANCOCK, *The Pariah Syndrome: An Account of Gypsy Slavery and Persecution*, Ann Arbor, 1987, pp. 34-58.

²² D. KENRICK, G. PUXON, *The Destiny of Europe's Gypsies*, London, 1972, pp. 184-210.

²³ N. SIGONA, *The Politics of Romani Identity in Contemporary Europe*, in *Social Identities*, 2005, pp. 741-758.

²⁴ A. ASHWORTH, L. ZEDNER, *op. cit.*, pp. 1-20.

²⁵ B. HARCOURT, *Against Prediction: Profiling, Policing, and Punishing in an Actuarial Age*, Chicago, 2007, pp. 31-55.

²⁶ J. SIMON, *op. cit.*, pp. 17-35.

²⁷ S. FREDMAN, *Human Rights Transformed: Positive Rights and Positive Duties*, Oxford, 2008, pp. 201-218.

²⁸ European Union Agency for Fundamental Rights, *Towards More Effective Policing: Understanding and Preventing Discriminatory Ethnic Profiling*, Luxembourg, 2010, pp. 15-22.

²⁹ Open Society Justice Initiative, *Ethnic Profiling in the European Union: Pervasive, Ineffective and Discriminatory*, New York, 2009, pp. 9-14.

³⁰ European Union Agency for Fundamental Rights, *Towards More Effective Policing*, *cit.*, pp. 25-31.

investigative activities³¹. This definition is particularly significant because it emphasises the absence of objective justification rather than requiring proof of explicit racist intent. Consequently, racial profiling may occur even where law enforcement authorities formally pursue legitimate preventive or security objectives³².

Preventive policing environments create particularly fertile conditions for racial profiling because they frequently rely upon broad discretionary powers and predictive assessments of risk³³. Measures such as stop-and-search procedures, preventive identity checks, surveillance operations, and intelligence gathering often involve substantial police discretion regarding whom to target for intervention³⁴. In the absence of clear safeguards and accountability mechanisms, such discretion may be influenced by implicit biases, stereotypes, and institutional assumptions associating particular ethnic groups with criminality or disorder³⁵.

The relationship between racial profiling and preventive criminal law is closely linked to broader transformations in contemporary governance. Modern criminal justice systems increasingly prioritise prevention over reactive punishment, shifting attention toward the management of future risks rather than solely responding to completed offences³⁶. As scholars have observed, preventive criminal justice frequently operates through actuarial logic, relying on categorisation, prediction, and probabilistic assessments of dangerousness³⁷. Within such frameworks, marginalised communities may become disproportionately represented as “risk categories”, thereby intensifying patterns of surveillance and police intervention directed against them³⁸.

Roma communities are particularly vulnerable to such practices due to longstanding social stereotypes portraying them as associated with criminality, disorder, or social deviance³⁹. Empirical studies conducted by the European Union Agency for Fundamental Rights have consistently demonstrated that Roma individuals are disproportionately subjected to police stops, identity checks, and discriminatory treatment across several European states⁴⁰.

3. Preventive Criminal Law and Preventive Policing

3.1 From Reactive to Preventive Criminal Justice

Traditional criminal law has historically been grounded in the principle that state punishment should follow the commission of a criminal offence. Classical liberal criminal justice systems were primarily reactive in nature, focusing upon the attribution of individual responsibility for conduct already committed and limiting state intervention

³¹ European Commission against Racism and Intolerance, *General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing*, Strasbourg, 2007, para. 1.

³² *Ibidem*, paras. 20-27.

³³ A. ASHWORTH, L. ZEDNER, *op. cit.*, pp. 89-103.

³⁴ European Court of Human Rights, Judgment of 12 January 2010, Application no. 4158/05, *Gillan and Quinton v. United Kingdom*, paras. 61-87.

³⁵ B. HARCOURT, *op. cit.*, pp. 113-140.

³⁶ L. ZEDNER, *op. cit.*, pp. 261-281.

³⁷ B. HARCOURT, *op. cit.*, pp. 1-20.

³⁸ J. SIMON, *op. cit.*, pp. 35-52.

³⁹ M. GOLDSTON, *op. cit.*, pp. 150-154.

⁴⁰ European Union Agency for Fundamental Rights, *Being Roma in the EU: A Longitudinal Analysis*, Luxembourg, 2020, pp. 45-52.

through principles such as legality, culpability, and proportionality⁴¹. Within this framework, criminal sanctions were justified only after the occurrence of a legally defined offence and following procedural safeguards designed to protect individual liberty against arbitrary state power⁴².

In recent decades, however, contemporary criminal justice systems have undergone a significant transformation characterised by the expansion of preventive rationales within criminal law and policing⁴³. Increasing emphasis has been placed upon risk management, security governance, and the anticipation of future threats rather than solely reacting to completed criminal acts⁴⁴. This development has contributed to the emergence of what several scholars describe as “preventive justice” or “pre-emptive criminal law”, whereby state authorities increasingly intervene prior to the occurrence of harm in order to neutralise perceived risks⁴⁵.

The rise of preventive criminal law is closely connected to broader social and political transformations associated with globalisation, technological development, transnational crime, terrorism, and public insecurity⁴⁶. In this context, security has progressively become a central objective of governance, leading states to expand surveillance capacities, intelligence gathering, and discretionary policing powers⁴⁷. Criminal law thereby evolves from a system primarily concerned with adjudicating past conduct into an instrument for managing future uncertainty and perceived dangerousness⁴⁸.

3.2 Preventive Police Powers and Discretionary Enforcement

Preventive policing operates through a wide range of legal and operational mechanisms designed to identify and neutralise potential threats before criminal conduct occurs. Among the most significant preventive police powers are stop-and-search procedures, identity checks, surveillance measures, intelligence gathering, predictive policing techniques, and data retention systems⁴⁹. Although these instruments are frequently presented as necessary tools for maintaining public security, they simultaneously expand the discretionary authority of law enforcement institutions and increase the risk of discriminatory intervention⁵⁰.

Stop-and-search powers represent one of the clearest examples of preventive police intervention. Such measures permit law enforcement authorities to stop individuals, conduct searches, or request identification in circumstances where criminal suspicion may be minimal or broadly defined⁵¹. Preventive stop powers are often justified on grounds of counterterrorism, crime prevention, or public order maintenance; however, they also create opportunities for arbitrary or discriminatory enforcement where police discretion is insufficiently constrained⁵².

⁴¹ A. ASHWORTH, *Principles of Criminal Law*, Oxford, 2009, pp. 67-89.

⁴² H.L.A. HART, *Punishment and Responsibility*, Oxford, 1968, pp. 1-27.

⁴³ A. ASHWORTH, L. ZEDNER, *op. cit.*, pp. 1-15.

⁴⁴ L. ZEDNER, *op. cit.*, pp. 261-281.

⁴⁵ A. ASHWORTH, L. ZEDNER, *op. cit.*, pp. 72-103.

⁴⁶ D. GARLAND, *The Culture of Control*, Oxford, 2001, pp. 167-193.

⁴⁷ J. SIMON, *op. cit.*, pp. 3-25.

⁴⁸ B. HARCOURT, *op. cit.*, pp. 1-20.

⁴⁹ European Union Agency for Fundamental Rights, *Towards More Effective Policing: Understanding and Preventing Discriminatory Ethnic Profiling*, Luxembourg, 2010, pp. 15-22.

⁵⁰ B. HARCOURT, *op. cit.*, pp. 145-168.

⁵¹ European Court of Human Rights, Judgment of 12 January 2010, Application no. 4158/05, *Gillan and Quinton v. United Kingdom*, paras. 61-65.

⁵² Open Society Justice Initiative, *Ethnic Profiling in the European Union: Pervasive, Ineffective and Discriminatory*, New York, 2009, pp. 21-33.

Surveillance measures and intelligence gathering further illustrate the preventive orientation of contemporary criminal justice systems. Technological developments have significantly expanded state capacities to collect, store, and analyse personal data for preventive purposes⁵³. Surveillance practices may include video monitoring, telecommunications interception, biometric databases, geolocation technologies, and intelligence-led data collection⁵⁴.

The expansion of preventive police powers therefore raises fundamental concerns regarding the relationship between discretion and discrimination. Broad discretionary authority permits law enforcement officials to determine whom to stop, monitor, search, or surveil on the basis of subjective assessments of risk and suspiciousness⁵⁵. In the absence of effective safeguards, such discretion may facilitate racial profiling and institutionalised forms of discriminatory policing⁵⁶. Consequently, preventive policing measures risk undermining equality before the law and disproportionately exposing marginalised communities to state intervention⁵⁷.

3.3 Rule of Law Concerns and Limits on Preventive State Power

The expansion of preventive criminal law has generated substantial concerns regarding compatibility with core rule-of-law principles. Liberal democratic criminal justice systems traditionally seek to limit state power through principles such as legality, proportionality, necessity, and foreseeability⁵⁸. Preventive policing measures, however, frequently challenge these safeguards by authorising intervention on the basis of uncertain risks, generalised suspicion, or predictive assessments rather than concrete criminal conduct⁵⁹.

The principle of legality requires that state interference with individual rights be clearly prescribed by law and subject to accessible and foreseeable legal standards⁶⁰. Preventive police powers characterised by vague legal formulations or excessively broad discretion risk undermining legal certainty and enabling arbitrary enforcement⁶¹. This concern is particularly significant where police authorities possess wide latitude to determine who may be subjected to stops, surveillance, or preventive intervention without objective criteria⁶².

The principles of proportionality and necessity likewise constitute essential safeguards against excessive preventive state intervention⁶³. Under European human rights law, restrictions upon fundamental rights must pursue legitimate objectives and remain necessary within a democratic society⁶⁴. Preventive policing measures must

⁵³ D. LYON, *Surveillance Studies: An Overview*, Cambridge, 2007, pp. 13-31.

⁵⁴ European Court of Human Rights, Judgment of 4 December 2008, Applications nos. 30562/04 and 30566/04, *S. and Marper v. United Kingdom*, paras. 95-103.

⁵⁵ European Court of Human Rights, *Gillan and Quinton v. United Kingdom*, cit., paras. 80-85.

⁵⁶ European Commission against Racism and Intolerance, *General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing*, Strasbourg, 2007, paras. 20-27.

⁵⁷ Open Society Justice Initiative, op. cit., pp. 49-61.

⁵⁸ A. ASHWORTH, op. cit., pp. 74-89.

⁵⁹ A. ASHWORTH, L. ZEDNER, op. cit., pp. 120-144.

⁶⁰ European Court of Human Rights, Judgment of 26 April 1979, Application no. 6538/74, *Sunday Times v. United Kingdom*, para. 49.

⁶¹ European Court of Human Rights, *Gillan and Quinton v. United Kingdom*, cit., paras. 76-87.

⁶² *Ibidem*, para. 85.

⁶³ European Court of Human Rights, Judgment of 7 December 1976, Application no. 5493/72, *Handyside v. United Kingdom*, para. 48.

⁶⁴ European Court of Human Rights, *Handyside v. United Kingdom*, cit., para. 49.

therefore demonstrate not only effectiveness but also proportionality in relation to the rights limitations imposed⁶⁵.

Nevertheless, preventive criminal justice often operates through generalised assumptions concerning risk and dangerousness that may justify intrusive interventions absent individualised suspicion⁶⁶. As a result, preventive policing may normalise disproportionate interference with the rights of specific communities considered socially “risky”⁶⁷. Roma communities frequently experience such disproportionate intervention due to entrenched stereotypes linking Roma ethnicity with criminality and public disorder⁶⁸.

The expansion of preventive police powers therefore raises fundamental concerns regarding the relationship between discretion and the rule of law. Because preventive intervention frequently relies upon broad discretionary powers, effective legal safeguards are essential to ensure legality, proportionality, necessity, and judicial oversight. These principles have been progressively developed within the jurisprudence of the ECtHR, which provides the framework for the analysis that follows.

4. Human Dignity and European Human Rights Protection

4.1 Human Dignity as a Foundational Principle

Human dignity constitutes one of the central normative foundations of contemporary European human rights law and democratic constitutionalism⁶⁹. Within criminal law, the principle of human dignity operates as a substantive limit on state power by requiring that every individual be treated as possessing equal moral worth and autonomy regardless of social status, ethnicity, or perceived dangerousness⁷⁰. The protection of dignity is particularly significant in the context of preventive criminal justice because preventive policing practices frequently involve intrusive forms of state intervention directed at individuals who have not committed criminal offences⁷¹.

At the European Union level, Article 1 of the Charter of Fundamental Rights of the European Union explicitly recognises that “human dignity is inviolable” and “must be respected and protected”⁷². This formulation reflects broader constitutional traditions within Europe, particularly the influence of German constitutional jurisprudence, where human dignity occupies a foundational position within the constitutional order⁷³. The German Federal Constitutional Court has consistently emphasised that state authorities may never reduce individuals to mere objects of governmental action or security policy⁷⁴. Such reasoning is especially relevant within preventive policing contexts where

⁶⁵ European Court of Human Rights, *S. and Marper v. United Kingdom*, cit., paras. 101-103.

⁶⁶ B. HARCOURT, *op. cit.*, pp. 113-140.

⁶⁷ J. SIMON, *op. cit.*, pp. 52-69.

⁶⁸ European Union Agency for Fundamental Rights, *Being Roma in the EU*, cit., pp. 45-52.

⁶⁹ C. MCCRUDDEN, *Human Dignity and Judicial Interpretation of Human Rights*, in *European Journal of International Law*, 2008, pp. 655-724.

⁷⁰ A. BARAK, *Human Dignity: The Constitutional Value and the Constitutional Right*, Cambridge, 2015, pp. 1-18.

⁷¹ A. ASHWORTH, L. ZEDNER, *op. cit.*, pp. 120-144.

⁷² Art. 1, Charter of Fundamental Rights of the European Union, in OJ C 326, of 26 October 2012.

⁷³ D. KOMMERS, R. MILLER, *The Constitutional Jurisprudence of the Federal Republic of Germany*, Durham, 2012, pp. 359-382.

⁷⁴ German Federal Constitutional Court, Judgment of 15 February 2006, 1 BvR 357/05, paras. 115-121.

individuals may be subjected to intervention primarily on the basis of generalised suspicion or group identity.

Although the European Convention on Human Rights does not expressly codify a general right to human dignity, the European Court of Human Rights has repeatedly recognised dignity as an underlying value informing the interpretation of Convention rights⁷⁵. The Court has connected dignity to protections against degrading treatment, arbitrary interference, discrimination, and disproportionate state intervention⁷⁶. In cases involving racial discrimination and police conduct, the Court has emphasised that discriminatory treatment based exclusively or decisively upon ethnicity is incompatible with the fundamental values of democratic societies⁷⁷.

The relationship between human dignity and racial profiling is therefore particularly significant. Where individuals are targeted primarily because of ethnic origin rather than individualised conduct, they risk being treated as collective security threats rather than autonomous rights-bearing persons⁷⁸. Such practices undermine equal moral worth and reinforce social stigmatisation directed against marginalised communities, including Roma populations⁷⁹.

4.2 Non-Discrimination and Equality Before the Law

The prohibition of discrimination constitutes another core principle within European human rights protection. Article 14 of the European Convention on Human Rights prohibits discrimination in the enjoyment of Convention rights on grounds including race, ethnic origin, and association with national minorities⁸⁰. In addition, Protocol No. 12 to the Convention establishes a broader autonomous prohibition of discrimination applicable to “any right set forth by law”⁸¹.

The European Court of Human Rights has consistently emphasised that racial discrimination represents a particularly serious violation of Convention values⁸². In *Timishev v. Russia*, the Court stated that differential treatment based exclusively or decisively upon ethnicity cannot be objectively justified in a contemporary democratic society⁸³. Similarly, the Court has increasingly recognised the vulnerability of Roma communities to systemic discrimination and the need for heightened scrutiny where state action disproportionately affects Roma individuals⁸⁴.

Equality before the law requires not merely formal neutrality but effective protection against discriminatory state practices⁸⁵. Consequently, policing measures that disproportionately target Roma communities may violate human rights guarantees even

⁷⁵ European Court of Human Rights, Judgment of 22 November 1995, Application no. 20166/92, *S.W. v. United Kingdom*, para. 44.

⁷⁶ European Court of Human Rights, Judgment of 28 July 1999, Application no. 25803/94, *Selmouni v. France*, para. 95.

⁷⁷ European Court of Human Rights, Judgment of 13 December 2005, Applications nos. 55762/00 and 55974/00, *Timishev v. Russia*, paras. 55-58.

⁷⁸ B. HARCOURT, *op. cit.*, pp. 189-203.

⁷⁹ European Union Agency for Fundamental Rights, *Being Roma in the EU: A Longitudinal Analysis*, Luxembourg, 2020, pp. 45-52.

⁸⁰ Art. 14, European Convention on Human Rights.

⁸¹ Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 2000.

⁸² European Court of Human Rights, *Timishev v. Russia*, *cit.*, para. 56.

⁸³ *Ibidem*, para. 58.

⁸⁴ European Court of Human Rights, Judgment of 22 April 2021, Application no. 48474/14, *Lingurar v. Romania*, paras. 70-86.

⁸⁵ S. FREDMAN, *Discrimination Law*, *cit.*, pp. 173-190.

where discriminatory intent is not explicitly demonstrated⁸⁶. This understanding is particularly important in preventive policing contexts where broad discretionary powers may facilitate indirect or structural discrimination.

4.3 Positive Obligations of States

European human rights law increasingly recognises that states possess positive obligations to protect individuals against discrimination and abuse by public authorities⁸⁷. In the context of policing, this means that states must not only refrain from discriminatory conduct but must also adopt effective safeguards capable of preventing racial profiling and discriminatory law enforcement practices⁸⁸.

These obligations are particularly significant within preventive criminal justice systems because preventive policing inherently expands opportunities for discretionary intervention⁸⁹. Passive neutrality is therefore insufficient where institutional practices systematically produce discriminatory outcomes affecting marginalised communities⁹⁰. Effective protection of human dignity and equality before the law requires active measures aimed at preventing discriminatory policing practices and addressing structural forms of antigypsyism within criminal justice institutions.

5. ECtHR Jurisprudence on Roma Discrimination and Police Powers

5.1 Roma Communities and Structural Discrimination

The jurisprudence of the European Court of Human Rights has progressively recognised that Roma communities experience particular vulnerability to systemic discrimination across European societies⁹¹. Although the Court initially approached discrimination primarily through an individual-rights perspective, more recent case law demonstrates increasing acknowledgement of structural inequalities affecting Roma populations and the institutional dimensions of antigypsyism⁹². Nevertheless, the Court's ability to address structural discrimination within criminal justice and policing contexts remains both significant and limited.

One of the Court's most important judgments concerning systemic discrimination against Roma communities is *D.H. and Others v. Czech Republic*⁹³. The case concerned the disproportionate placement of Roma children into "special schools" designed for pupils with intellectual disabilities. Statistical evidence demonstrated that Roma children were vastly overrepresented within segregated educational institutions despite formal legal neutrality⁹⁴. The principal legal issue before the Court concerned whether indirect

⁸⁶ European Court of Human Rights, Judgment of 13 November 2007, Application no. 57325/00, *D.H. and Others v. Czech Republic*, paras. 175-184.

⁸⁷ S. FREDMAN, *Human Rights Transformed*, cit., pp. 201-218.

⁸⁸ European Commission against Racism and Intolerance, *General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing*, Strasbourg, 2007, paras. 20-27.

⁸⁹ A. ASHWORTH, L. ZEDNER, *op. cit.*, pp. 144-169.

⁹⁰ S. FREDMAN, *Discrimination Law*, cit., pp. 181-190.

⁹¹ European Court of Human Rights, Judgment of 13 November 2007, Application no. 57325/00, *D.H. and Others v. Czech Republic*, para. 182.

⁹² S. FREDMAN, *Discrimination Law*, cit., pp. 173-190.

⁹³ European Court of Human Rights, *D.H. and Others v. Czech Republic*.

⁹⁴ *Ibidem*, paras. 18-29.

discrimination could arise where apparently neutral administrative practices produced disproportionately harmful effects on a specific ethnic group⁹⁵.

The Grand Chamber concluded that the educational system violated Article 14 in conjunction with Article 2 of Protocol No. 1 because the disproportionate placement of Roma children could not be objectively justified⁹⁶. Particularly significant was the Court's acceptance of statistical evidence and its recognition that discriminatory practices may operate through institutional structures rather than explicit racist intent⁹⁷. The judgment marked an important doctrinal shift because it acknowledged that discrimination against Roma communities frequently results from systemic patterns embedded within public institutions⁹⁸. The judgment established that formally neutral institutional mechanisms may nonetheless reproduce structural discrimination against Roma populations⁹⁹. This reasoning is directly applicable to preventive policing practices, where discretionary powers and risk-based interventions may disproportionately affect Roma individuals even absent openly discriminatory legislation¹⁰⁰. The Court's acceptance of indirect discrimination analysis therefore provides an important doctrinal basis for challenging racial profiling practices operating through institutional routines and discretionary policing structures.

These judicial findings are further supported by empirical evidence collected by the European Union Agency for Fundamental Rights. According to the FRA, almost one half of Roma respondents reported experiencing discrimination during the preceding twelve months, while many also reported police stops which they perceived to have been motivated by their ethnic origin. Such findings reinforce the conclusion that the discriminatory practices identified in ECtHR jurisprudence are not isolated incidents but reflect broader structural patterns affecting Roma communities across Europe¹⁰¹.

A similar approach emerged in *Oršuš and Others v. Croatia*, which concerned the segregation of Roma pupils into separate educational classes allegedly justified by linguistic deficiencies¹⁰². The Court again recognised that Roma communities occupy a particularly vulnerable social position requiring special consideration under the Convention¹⁰³. Importantly, the Court emphasised that historical exclusion and social marginalisation must be considered when assessing the discriminatory effects of state practices¹⁰⁴.

The significance of *Oršuš* lies in its broader recognition that equal treatment cannot be reduced to formal neutrality alone¹⁰⁵. Institutional arrangements that perpetuate social exclusion may violate Convention principles even where authorities invoke administrative efficiency or ostensibly neutral criteria¹⁰⁶. This reasoning is particularly relevant in preventive policing contexts where security-oriented justifications are

⁹⁵ *Ibidem*, paras. 175-184.

⁹⁶ *Ibidem*, para. 210.

⁹⁷ *Ibidem*, paras. 177-188.

⁹⁸ S. FREDMAN, *Discrimination Law*, cit., pp. 181-190.

⁹⁹ European Court of Human Rights, *D.H. and Others v. Czech Republic*, cit., paras. 184-188.

¹⁰⁰ European Union Agency for Fundamental Rights, *Towards More Effective Policing: Understanding and Preventing Discriminatory Ethnic Profiling*, Luxembourg, 2010, pp. 25-31.

¹⁰¹ European Union Agency for Fundamental Rights, *Being Roma in the EU: A Longitudinal Analysis*, Luxembourg, 2020, pp. 45-52.

¹⁰² European Court of Human Rights, Judgment of 16 March 2010, Application no. 15766/03, *Oršuš and Others v. Croatia*, paras. 141-148.

¹⁰³ *Ibidem*, para. 147.

¹⁰⁴ *Ibidem*, paras. 177-184.

¹⁰⁵ S. FREDMAN, *Discrimination Law*, cit., pp. 190-198.

¹⁰⁶ European Court of Human Rights, *Oršuš and Others v. Croatia*, cit., paras. 149-151.

frequently invoked to legitimise disproportionate intervention against marginalised communities¹⁰⁷.

The Court's evolving recognition of structural antigypsyism became more explicit in *Lingurar v. Romania*, a case directly involving discriminatory police conduct against Roma individuals¹⁰⁸. The applicants alleged that Romanian police officers had conducted a violent raid against Roma residents accompanied by racist language and excessive force¹⁰⁹. The legal issue concerned whether the authorities had violated Articles 3 and 14 of the Convention by failing to prevent and adequately investigate discriminatory police violence¹¹⁰.

The Court concluded that the police operation was influenced by anti-Roma prejudice and that the authorities failed to fulfil their obligation to investigate possible racist motives underlying police conduct¹¹¹. Particularly important was the Court's acknowledgement that Roma communities are especially vulnerable to discriminatory treatment by law enforcement institutions¹¹². The judgment therefore linked police violence and discriminatory policing to broader structural patterns of antigypsyism within society¹¹³.

Nevertheless, despite these important developments, the Court still faces difficulties in fully addressing the structural dimensions of discriminatory policing. ECtHR jurisprudence continues to rely heavily upon individualised violations and specific evidentiary thresholds, which may limit its capacity to confront systemic patterns of racial profiling embedded within preventive criminal justice structures¹¹⁴. While the Court increasingly recognises institutional discrimination affecting Roma communities, it often avoids broader findings concerning structural racism within policing systems themselves¹¹⁵.

5.2 Racial Profiling and Police Discretion

The issue of racial profiling occupies a central position within the Court's jurisprudence concerning police discretion and equality before the law. Although the European Convention on Human Rights does not explicitly prohibit racial profiling, the Court has progressively developed principles limiting discriminatory police practices based upon ethnicity or race¹¹⁶.

A landmark judgment in this regard is *Timishev v. Russia*¹¹⁷. The applicant, a Chechen lawyer, was prevented from crossing a regional checkpoint solely because of instructions prohibiting the movement of persons of Chechen ethnic origin¹¹⁸. The legal

¹⁰⁷ A. ASHWORTH, L. ZEDNER, *op. cit.*, pp. 120–144.

¹⁰⁸ European Court of Human Rights, Judgment of 22 April 2021, Application no. 48474/14, *Lingurar v. Romania*.

¹⁰⁹ *Ibidem*, paras. 8–18.

¹¹⁰ *Ibidem*, paras. 70–82.

¹¹¹ *Ibidem*, paras. 76–82.

¹¹² *Ibidem*, para. 79.

¹¹³ M. GOLDSTON, *op. cit.*, pp. 146–162.

¹¹⁴ S. FREDMAN, *Human Rights Transformed, cit.*, pp. 201–218.

¹¹⁵ European Union Agency for Fundamental Rights, *Being Roma in the EU: A Longitudinal Analysis*, Luxembourg, 2020, pp. 45–52.

¹¹⁶ European Commission against Racism and Intolerance, *General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing*, Strasbourg, 2007.

¹¹⁷ European Court of Human Rights, Judgment of 13 December 2005, Applications nos. 55762/00 and 55974/00, *Timishev v. Russia*.

¹¹⁸ *Ibidem*, paras. 10–18.

issue concerned whether differential treatment based exclusively on ethnicity could be justified under the Convention¹¹⁹.

The Court unequivocally held that differential treatment based exclusively or decisively upon ethnic origin constitutes racial discrimination incompatible with the fundamental values of democratic societies¹²⁰. The judgment is particularly important because it established a strong normative principle rejecting ethnic categorisation by state authorities¹²¹. The Court emphasised that no difference in treatment based solely on ethnicity can be objectively justified within contemporary human rights systems¹²².

The significance of *Timishev* extends beyond its immediate facts. The judgment provides a foundational doctrinal basis for challenging racial profiling practices within preventive policing because it rejects the use of ethnicity as an autonomous criterion for state intervention¹²³. In preventive criminal justice contexts, where law enforcement authorities frequently operate through generalised suspicion and discretionary assessments of dangerousness, the principles articulated in *Timishev* directly challenge practices targeting Roma communities on the basis of ethnic stereotypes¹²⁴.

However, the Court has been less explicit when addressing indirect or systemic forms of racial profiling operating through discretionary police powers. This tension is visible in *Gillan and Quinton v. United Kingdom*, which concerned stop-and-search powers exercised under the Terrorism Act 2000¹²⁵. The legislation authorised police officers to stop and search individuals without reasonable suspicion within designated areas¹²⁶.

Although the case did not directly concern racial discrimination, the Court emphasised that excessively broad discretionary powers lacking sufficient safeguards create substantial risks of arbitrary and discriminatory enforcement¹²⁷. The Court held that the absence of objective limitations and judicial oversight violated Article 8 of the Convention because individuals were insufficiently protected against abuse of power¹²⁸.

The importance of *Gillan and Quinton* lies in the Court's recognition that unconstrained police discretion inherently increases the possibility of discriminatory intervention¹²⁹. Preventive police powers exercised without individualised suspicion create fertile conditions for racial profiling because officers may rely upon stereotypes and subjective assumptions concerning suspiciousness or dangerousness¹³⁰. Although the Court did not explicitly address antigypsyism, its reasoning has direct implications for Roma communities disproportionately exposed to preventive policing measures such as identity checks, stop-and-search procedures, and surveillance operations¹³¹.

Nevertheless, the Court's approach remains somewhat cautious. Rather than directly confronting racial profiling as a structural policing practice, the Court often frames such issues through broader concerns regarding arbitrariness, privacy, or procedural

¹¹⁹ *Ibidem*, paras. 55-58.

¹²⁰ *Ibidem*, para. 58.

¹²¹ S. FREDMAN, *Discrimination Law*, cit., pp. 181-186.

¹²² European Court of Human Rights, *Timishev v. Russia*, cit., para. 58.

¹²³ Open Society Justice Initiative, *Ethnic Profiling in the European Union: Pervasive, Ineffective and Discriminatory*, New York, 2009, pp. 21-33.

¹²⁴ European Union Agency for Fundamental Rights, *Being Roma in the EU*, cit., pp. 45-52.

¹²⁵ European Court of Human Rights, Judgment of 12 January 2010, Application no. 4158/05, *Gillan and Quinton v. United Kingdom*.

¹²⁶ *Ibidem*, paras. 11-20.

¹²⁷ *Ibidem*, paras. 76-85.

¹²⁸ *Ibidem*, para. 87.

¹²⁹ A. ASHWORTH, L. ZEDNER, *op. cit.*, pp. 144-169.

¹³⁰ B. Harcourt, *op. cit.*, pp. 113-140.

¹³¹ European Union Agency for Fundamental Rights, *Towards More Effective Policing*, cit., pp. 40-48.

safeguards¹³². This may limit the capacity of ECtHR jurisprudence to fully articulate the systemic relationship between preventive policing and discriminatory targeting of marginalized ethnic communities.

5.3 Surveillance, Preventive Powers, and Rule-of-Law Safeguards

The expansion of preventive criminal justice has increasingly involved surveillance technologies and data retention systems designed to identify and monitor potential risks before criminal conduct occurs¹³³. ECtHR jurisprudence concerning surveillance powers therefore plays a crucial role in defining the limits of preventive state intervention under European human rights law.

In *S. and Marper v. United Kingdom*, the Court examined the indefinite retention of fingerprints and DNA profiles belonging to individuals who had not been convicted of criminal offences¹³⁴. The applicants argued that the retention of biometric data violated their right to privacy under Article 8 of the Convention¹³⁵.

The Court concluded that the blanket and indiscriminate retention of personal data constituted a disproportionate interference with private life¹³⁶. Particularly significant was the Court's emphasis that surveillance and data retention systems must contain adequate safeguards preventing arbitrary state power and unjustified stigmatisation¹³⁷. The judgment recognised that retaining personal data of innocent individual risks treating them as perpetual subjects of suspicion¹³⁸.

This reasoning is highly relevant to preventive policing and racial profiling affecting Roma communities. Data-driven policing and predictive surveillance mechanisms frequently rely upon historical patterns of police intervention that may already reflect discriminatory targeting of marginalised groups¹³⁹.

The Court further developed these principles in *Roman Zakharov v. Russia*, concerning secret surveillance and telecommunications interception¹⁴⁰. The Grand Chamber emphasised that surveillance powers must be accompanied by clear legal limits, effective oversight mechanisms, and safeguards against abuse¹⁴¹. The Court stressed that broad and opaque surveillance systems are incompatible with democratic rule-of-law principles because they permit arbitrary interference with fundamental rights¹⁴².

The significance of *Roman Zakharov* for preventive criminal justice lies in its insistence that preventive security measures cannot operate outside strict legal constraints¹⁴³. Surveillance systems characterized by excessive discretion or inadequate accountability create substantial risks of discriminatory targeting and abuse of power¹⁴⁴. Such concerns are particularly acute for historically marginalized communities, including

¹³² S. FREDMAN, *Human Rights Transformed*, cit., pp. 210-218.

¹³³ D. LYON, *op. cit.*, pp. 13-31.

¹³⁴ European Court of Human Rights, Judgment of 4 December 2008, Applications nos. 30562/04 and 30566/04, *S. and Marper v. United Kingdom*.

¹³⁵ *Ibidem*, paras. 67-76.

¹³⁶ *Ibidem*, paras. 119-126.

¹³⁷ *Ibidem*, paras. 99-103.

¹³⁸ *Ibidem*, para. 122.

¹³⁹ A. FERGUSON, *The Rise of Big Data Policing*, New York, 2017, pp. 145-167.

¹⁴⁰ European Court of Human Rights, Judgment of 4 December 2015, Application no. 47143/06, *Roman Zakharov v. Russia*.

¹⁴¹ *Ibidem*, paras. 229-234.

¹⁴² *Ibidem*, paras. 247-260.

¹⁴³ European Court of Human Rights, *Roman Zakharov v. Russia*, cit., paras. 232-234.

¹⁴⁴ D. LYON, *op. cit.*, pp. 32-49.

Roma populations, who may already be disproportionately represented within police databases and surveillance practices¹⁴⁵.

Overall, ECtHR jurisprudence demonstrates increasing awareness of the dangers posed by discriminatory preventive policing and expansive surveillance powers. The Court has developed important principles concerning equality, legality, proportionality, and safeguards against arbitrary intervention¹⁴⁶. Nevertheless, significant limitations remain regarding the Court's capacity to fully confront structural antigypsyism within preventive criminal justice systems. While the Court increasingly recognises the vulnerability of Roma communities and condemns overt discrimination, it remains more hesitant in explicitly identifying racial profiling and discriminatory preventive policing as systemic institutional phenomena¹⁴⁷. Consequently, the effectiveness of existing human rights protections against structural antigypsyism within preventive policing frameworks remains only partially realised.

6. Structural Discrimination and Preventive Criminal Justice

The expansion of preventive criminal justice has profoundly transformed the relationship between state power, policing, and fundamental rights protection within contemporary European legal systems¹⁴⁸. Preventive criminal law no longer focuses exclusively upon punishing completed criminal offences; instead, it increasingly operates through anticipation, risk management, and early intervention aimed at preventing potential future harms¹⁴⁹. While these developments are commonly justified through references to public security and crime prevention, they also create significant risks of structural discrimination, particularly against historically marginalised communities such as the Roma¹⁵⁰.

Within this framework, Roma communities frequently become constructed as “risk subjects” within preventive policing strategies¹⁵¹. Longstanding antigypsyist stereotypes portraying Roma individuals as associated with criminality, disorder, or social deviance contribute to disproportionate police attention directed toward Roma communities¹⁵². Empirical studies conducted by the European Union Agency for Fundamental Rights consistently demonstrate that Roma individuals are subjected to higher levels of identity checks, stop-and-search procedures, surveillance, and police intervention compared to majority populations¹⁵³. These patterns indicate that discriminatory policing is not merely the result of isolated instances of misconduct but may instead reflect broader institutional dynamics embedded within preventive criminal justice systems¹⁵⁴. The Roma Survey for 2021 found that 25% of Roma respondents felt discriminated against in the previous 12 months, only 5% reported their last incident of discrimination, and just 39% said they

¹⁴⁵ European Union Agency for Fundamental Rights, *Towards More Effective Policing*, cit., pp. 40-48.

¹⁴⁶ European Court of Human Rights, *Gillan and Quinton v. United Kingdom*, cit., paras. 76-87.

¹⁴⁷ S. FREDMAN, *Discrimination Law*, cit., pp. 198-205.

¹⁴⁸ A. ASHWORTH, L. ZEDNER, *op. cit.*, pp. 1-15.

¹⁴⁹ L. ZEDNER, *op. cit.*, pp. 261-281.

¹⁵⁰ European Union Agency for Fundamental Rights, *Being Roma in the EU: A Longitudinal Analysis*, Luxembourg, 2020, pp. 45-52.

¹⁵¹ J. SIMON, *op. cit.*, pp. 35-52.

¹⁵² M. GOLDSTON, *op. cit.*, pp. 146-162.

¹⁵³ European Union Agency for Fundamental Rights, *Being Roma in the EU*, cit., pp. 45-52.

¹⁵⁴ S. FREDMAN, *Discrimination Law*, cit., pp. 181-190.

tend to trust the police, compared with 71% in the general population¹⁵⁵. These findings illustrate the cumulative consequences of structural discrimination, reinforcing the perception among many Roma that law enforcement institutions function not only as providers of security but also as sources of unequal treatment and exclusion.

The concept of institutional racism is particularly useful for understanding these dynamics. Institutional racism refers to discriminatory outcomes generated through organisational practices, administrative routines, and structural arrangements rather than solely through explicit racist intent by individual actors¹⁵⁶. In preventive policing contexts, institutional racism may emerge through operational priorities, intelligence practices, discretionary decision-making, and data collection systems that disproportionately target marginalised ethnic communities¹⁵⁷.

From a normative perspective, these dynamics challenge core principles of human dignity, equality before the law, and non-discrimination protected under European human rights law¹⁵⁸. Preventive criminal justice systems that disproportionately expose Roma communities to suspicion and surveillance risk undermining the equal moral worth of individuals by treating them primarily as carriers of collective risk¹⁵⁹. Human dignity requires that individuals be assessed according to personal conduct and individual responsibility rather than ethnic stereotypes or probabilistic assumptions linked to group identity¹⁶⁰.

6.1 Preventive Antigypsyism: Towards a New Understanding of Roma Profiling

The preceding analysis has demonstrated that preventive criminal justice systems may create conditions conducive to discriminatory policing practices affecting Roma communities. However, existing legal and policy discussions often conceptualise such discrimination primarily through the framework of racial profiling or unequal treatment. While these concepts remain essential, they may not fully capture the structural relationship between antigypsyism and contemporary preventive governance. This paper therefore proposes the concept of preventive antigypsyism as a framework for understanding how preventive criminal law may institutionalise and reproduce anti-Roma discrimination through mechanisms of risk management, surveillance, and anticipatory intervention¹⁶¹.

Preventive criminal justice provides a particularly important context in which such processes emerge. Unlike traditional criminal law, preventive systems focus upon identifying and managing future risks rather than adjudicating past conduct¹⁶². State intervention therefore becomes increasingly justified by reference to suspicion, prediction, and anticipated dangerousness¹⁶³. Within this framework, police authorities rely upon indicators of risk that may incorporate existing social assumptions regarding

¹⁵⁵ European Union Agency for Fundamental Rights, *Roma in 10 European countries. Main results - Roma Survey 2021*, Vienna, 2022.

¹⁵⁶ M. PHILLIPS, *Institutional Racism and Ethnic Inequalities*, Bristol, 2011, pp. 13-27.

¹⁵⁷ Open Society Justice Initiative, *Ethnic Profiling in the European Union: Pervasive, Ineffective and Discriminatory*, New York, 2009, pp. 35-47.

¹⁵⁸ Art. 1, Charter of Fundamental Rights of the European Union, in OJ C 326, of 26 October 2012.

¹⁵⁹ European Court of Human Rights, Judgment of 13 December 2005, Applications nos. 55762/00 and 55974/00, *Timishev v. Russia*, para. 58.

¹⁶⁰ A. BARAK, *op. cit.*, pp. 1-18.

¹⁶¹ *Ibidem*.

¹⁶² A. ASHWORTH, L. ZEDNER, *op. cit.*, pp. 72-103.

¹⁶³ L. ZEDNER, *op. cit.*, pp. 261-281.

criminality and disorder¹⁶⁴. As a result, historically marginalised groups may become subject to enhanced surveillance and intervention not because of proven unlawful conduct but because they are perceived as presenting elevated future risks¹⁶⁵.

The concept of preventive antigypsyism captures this transformation of ethnic stereotypes into security categories. Rather than targeting Roma individuals exclusively because of overt racial prejudice, preventive criminal justice may classify Roma communities as objects of security governance through processes of risk assessment and preventive intervention¹⁶⁶. Roma individuals thereby become what may be described as “risk subjects” - populations disproportionately exposed to police scrutiny, monitoring, and control because institutional practices associate their ethnic identity with potential future criminality¹⁶⁷.

This phenomenon is particularly visible within discretionary policing practices such as stop-and-search procedures, identity checks, intelligence gathering, and surveillance operations¹⁶⁸. Empirical studies conducted by the European Union Agency for Fundamental Rights demonstrate that Roma individuals experience significantly higher levels of police intervention across several European jurisdictions¹⁶⁹. While such disparities are frequently justified through crime-prevention objectives, they often reflect broader institutional assumptions regarding suspiciousness and risk rather than individualised evidence of criminal behaviour¹⁷⁰. Consequently, preventive policing may transform historically rooted antigypsyist stereotypes into operational policing criteria.

The emergence of predictive policing technologies further intensifies these concerns. Contemporary law enforcement increasingly employs algorithmic systems and data-driven methods designed to predict future criminal activity and allocate policing resources accordingly¹⁷¹. Such technologies are frequently portrayed as objective and neutral because they rely upon statistical analysis rather than individual discretion¹⁷². However, predictive systems depend upon historical policing data that may already reflect discriminatory practices and patterns of over-policing affecting marginalised communities¹⁷³.

Where Roma communities have historically been subjected to disproportionate police intervention, predictive algorithms may identify those same communities as presenting heightened future risks¹⁷⁴. Police resources are consequently concentrated within already over-surveilled areas, generating additional police contacts and reinforcing existing statistical patterns¹⁷⁵. This process creates a self-reinforcing cycle in which historical discrimination becomes embedded within technological systems and reproduced through apparently neutral forms of governance¹⁷⁶. In this sense, predictive policing risks

¹⁶⁴ B. HARCOURT, *op. cit.*, pp. 113-140.

¹⁶⁵ J. SIMON, *op. cit.*, pp. 35-52.

¹⁶⁶ N. SIGONA, *op. cit.*, pp. 741-758.

¹⁶⁷ B. HARCOURT, *op. cit.*, pp. 189-203.

¹⁶⁸ European Union Agency for Fundamental Rights, *Towards More Effective Policing*, Luxembourg, 2010, pp. 25-31.

¹⁶⁹ European Union Agency for Fundamental Rights, *Being Roma in the EU*, Luxembourg, 2020, pp. 45-52.

¹⁷⁰ Open Society Justice Initiative, *Ethnic Profiling in the European Union*, New York, 2009, pp. 35-47.

¹⁷¹ A. FERGUSON, *op. cit.*, pp. 65-91.

¹⁷² *Ibidem*, pp. 103-127.

¹⁷³ *Ibidem*, pp. 145-167.

¹⁷⁴ B. HARCOURT, *Against Prediction*, *cit.*, pp. 189-203.

¹⁷⁵ A. FERGUSON, *op. cit.*, pp. 145-167.

¹⁷⁶ D. LYON, *op. cit.*, pp. 32-49.

transforming traditional forms of antigypsyism into technologically mediated systems of exclusion and surveillance.

The concept of preventive antigypsyism also highlights an important limitation within current human rights jurisprudence. The European Court of Human Rights has increasingly recognised the vulnerability of Roma communities and condemned explicit forms of discrimination¹⁷⁷. Nevertheless, the Court often approaches discrimination through an individualised framework requiring identifiable victims, specific incidents, and demonstrable differential treatment¹⁷⁸. Structural forms of discrimination embedded within preventive policing systems are considerably more difficult to address through this model because they emerge from cumulative institutional practices rather than isolated discriminatory acts¹⁷⁹.

As a result, existing legal protections may fail to capture the broader relationship between preventive governance and antigypsyism. A focus exclusively upon individual instances of discrimination risks overlooking the manner in which risk-oriented criminal justice systems systematically produce unequal outcomes for Roma communities¹⁸⁰. Preventive antigypsyism therefore represents not simply a collection of isolated discriminatory practices but a broader governance dynamic through which security policies, police discretion, and risk management frameworks contribute to the reproduction of ethnic marginalisation¹⁸¹.

Recognising preventive antigypsyism as a distinct phenomenon has important implications for criminal law and human rights protection. It suggests that effective responses to racial profiling cannot be limited to prohibiting overt discrimination or sanctioning individual misconduct¹⁸². Instead, legal frameworks must also address the structural conditions through which preventive policing generates unequal treatment. This requires greater scrutiny of risk-based interventions, stronger safeguards governing predictive technologies, enhanced transparency in police decision-making, and more robust accountability mechanisms capable of identifying systemic discrimination¹⁸³.

Ultimately, the concept of preventive antigypsyism demonstrates that the relationship between criminal justice and discrimination extends beyond traditional questions of equality before the law. It reveals how preventive state power may transform historically marginalised communities into permanent objects of suspicion and surveillance. If human dignity requires recognition of individuals as autonomous rights-bearing persons rather than members of collectively suspect categories, then preventive criminal justice must be evaluated not only according to its effectiveness in reducing crime but also according to its capacity to avoid reproducing structural forms of exclusion and antigypsyism¹⁸⁴.

7. Conclusion

This paper examined whether preventive criminal law and preventive policing practices contribute to the reproduction of discriminatory patterns affecting Roma communities and whether such practices undermine the protection of human dignity and equality

¹⁷⁷ European Court of Human Rights, *Lingurar v. Romania*, cit., paras. 76-82.

¹⁷⁸ European Court of Human Rights, *D.H. and Others v. Czech Republic*, cit., paras. 175-184.

¹⁷⁹ S. FREDMAN, *Human Rights Transformed*, cit., pp. 210-218.

¹⁸⁰ S. FREDMAN, *Discrimination Law*, cit., pp. 198-205.

¹⁸¹ J. SIMON, *op. cit.*, pp. 52-69.

¹⁸² European Commission against Racism and Intolerance, *General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing*, Strasbourg, 2007, paras. 20-27.

¹⁸³ European Union Agency for Fundamental Rights, *Towards More Effective Policing*, cit., pp. 40-48.

¹⁸⁴ Art. 1, Charter of Fundamental Rights of the European Union.

before the law within European human rights systems. More specifically, it explored whether contemporary preventive criminal justice frameworks transform historically rooted antigypsyist stereotypes into mechanisms of risk management, surveillance, and anticipatory intervention.

The analysis confirms the paper's central hypothesis that preventive criminal law may facilitate structural forms of antigypsyism by normalizing disproportionate police intervention directed toward Roma communities. The paper further argues that these dynamics may be understood through the concept of preventive antigypsyism, whereby anti-Roma stereotypes are translated into practices of risk assessment, surveillance, and preventive governance that disproportionately expose Roma individuals to suspicion and intervention¹⁸⁵. Preventive policing operates through mechanisms of prediction, surveillance, and anticipatory risk assessment that frequently rely upon generalised assumptions concerning suspiciousness and dangerousness¹⁸⁶. Within such frameworks, historically marginalised groups become particularly vulnerable to intensified police scrutiny because social stereotypes and institutional biases influence the construction of "risk subjects"¹⁸⁷. Roma communities, long associated within European societies with narratives of criminality, disorder, and social deviance, are therefore disproportionately exposed to stop-and-search procedures, identity checks, surveillance practices, and other forms of preventive intervention¹⁸⁸.

The ECtHR has increasingly recognised the vulnerability of Roma communities while remaining cautious in addressing structural forms of antigypsyism. Nevertheless, the analysis also demonstrates important limitations within existing human rights protection mechanisms. Although the ECtHR increasingly acknowledges the vulnerability of Roma communities, it remains comparatively cautious in explicitly addressing institutional racism and systemic racial profiling within preventive criminal justice systems¹⁸⁹. The Court frequently focuses upon individual violations and procedural deficiencies rather than fully confronting the structural relationship between preventive policing and antigypsyism¹⁹⁰. Consequently, formally neutral preventive practices may continue to reproduce discriminatory outcomes while remaining difficult to challenge through conventional anti-discrimination frameworks.

The findings of this paper therefore suggest that passive legal neutrality is insufficient to ensure effective equality before the law. Preventive criminal justice systems require robust safeguards capable of limiting discretionary intervention and preventing discriminatory policing practices¹⁹¹. Such safeguards should include stricter legal limitations on stop-and-search powers, clearer requirements of individualised suspicion, stronger judicial oversight of surveillance measures, and effective accountability mechanisms for discriminatory police conduct¹⁹². States should also implement comprehensive anti-discrimination training for law enforcement authorities and ensure

¹⁸⁵ A. ASHWORTH, L. ZEDNER, *op. cit.*, pp. 144-169.

¹⁸⁶ B. HARCOURT, *op. cit.*, pp. 113-140.

¹⁸⁷ J. SIMON, *op. cit.*, pp. 35-52.

¹⁸⁸ European Union Agency for Fundamental Rights, *Being Roma in the EU: A Longitudinal Analysis*, Luxembourg, 2020, pp. 45-52.

¹⁸⁹ S. FREDMAN, *Human Rights Transformed*, *cit.*, pp. 210-218.

¹⁹⁰ European Union Agency for Fundamental Rights, *Towards More Effective Policing: Understanding and Preventing Discriminatory Ethnic Profiling*, Luxembourg, 2010, pp. 40-48.

¹⁹¹ European Commission against Racism and Intolerance, *General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing*, Strasbourg, 2007, paras. 20-27.

¹⁹² European Court of Human Rights, *Gillan and Quinton v. United Kingdom*, *cit.*, paras. 76-87.

systematic collection of disaggregated data capable of identifying discriminatory policing patterns¹⁹³.

Particular attention must additionally be directed toward emerging forms of predictive and data-driven policing. Algorithmic policing technologies risk reproducing existing racial biases concealed beneath claims of technological neutrality and efficiency¹⁹⁴. Without adequate transparency and oversight, predictive policing systems may intensify the over-policing of marginalised communities, including the Roma population¹⁹⁵. Future legal frameworks governing preventive technologies must therefore incorporate explicit human rights safeguards addressing algorithmic discrimination, accountability, and proportionality.

Ultimately, protecting human dignity within preventive criminal justice requires more than the formal prohibition of discrimination. It demands substantive limitations on preventive state power and recognition that security governance cannot be detached from broader social structures of exclusion and inequality¹⁹⁶. Democratic criminal justice systems committed to the rule of law must ensure that crime prevention does not transform marginalised ethnic communities into permanent objects of suspicion and surveillance. As this paper has argued, the concept of preventive antigypsyism helps explain how discrimination may become embedded within preventive governance even in the absence of explicit racist intent. The challenge for contemporary European human rights law is therefore not only to condemn overt discrimination, but also to identify and dismantle the institutional and technological mechanisms through which preventive criminal justice may reproduce structural forms of antigypsyism.

ABSTRACT

Racial profiling of Roma communities has been widely documented across European policing practices and remains a significant concern within criminal justice systems. Within preventive policing frameworks, practices such as identity checks, stops, and surveillance may disproportionately affect Roma individuals, raising important questions about equality before the law and the protection of human dignity in criminal law enforcement. This paper examines the relationship between racial profiling of Roma and the protection of human dignity within preventive criminal law practices. Drawing on qualitative case studies, it explores how institutional practices and discretionary policing measures may contribute to differential treatment of Roma individuals in law enforcement contexts. The paper tests the hypothesis that racial profiling of Roma may operate as a structural feature within preventive policing practices that challenges the effective protection of human dignity and equality before the law. The analysis situates the empirical material within a human rights and criminal law framework, focusing on principles such as non-discrimination, proportionality, and limits on preventive state intervention. By combining empirical evidence with normative legal analysis, the study aims to assess whether and how preventive criminal law practices may reproduce discriminatory patterns affecting Roma communities.

KEYWORDS

Antigypsyism, Discrimination, Human Dignity, Racial Profiling, Roma.

¹⁹³ European Union Agency for Fundamental Rights, *Towards More Effective Policing*, cit., pp. 40-48.

¹⁹⁴ A. FERGUSON, *op. cit.*, pp. 145-167.

¹⁹⁵ B. HARCOURT, *op. cit.*, pp. 189-203.

¹⁹⁶ Art. 1, Charter of Fundamental Rights of the European Union, in OJ C 326, of 26 October 2012.

DIGNITÀ UMANA E ANTIZIGANISMO:
LA PROFILAZIONE RAZZIALE NELLA PROSPETTIVA
DEL DIRITTO PENALE PREDITTIVO

ABSTRACT

La profilazione razziale delle comunità rom è stata ampiamente documentata nella prassi delle polizie europee e rimane una preoccupazione significativa nei sistemi di giustizia penale. All'interno dei quadri di attività preventiva di polizia, pratiche come i controlli d'identità, i fermi e la sorveglianza possono colpire in modo sproporzionato gli individui rom, sollevando importanti questioni sull'uguaglianza dinanzi alla legge e sulla tutela della dignità umana nell'applicazione del diritto penale. Il presente articolo esamina la relazione tra la profilazione razziale dei Rom e la tutela della dignità umana nelle pratiche del diritto penale preventivo. Ispirandosi a validi case studies, il contributo dimostra come pratiche istituzionali e misure discrezionali di polizia possano contribuire a un trattamento differenziato degli individui rom nei contesti in cui operano le forze dell'ordine. L'articolo mette alla prova l'ipotesi che la profilazione razziale dei Rom possa operare come una caratteristica strutturale all'interno delle pratiche di polizia preventiva che mettono in discussione la protezione efficace della dignità umana e dell'uguaglianza davanti alla legge. L'analisi colloca il materiale empirico all'interno di un quadro di diritti umani e di diritto penale, concentrandosi su principi quali la non discriminazione, la proporzionalità e i limiti all'intervento preventivo statale. Combinando prove empiriche con analisi normative e giuridiche, lo studio mira, in conclusione, a valutare se e in che modo le pratiche penali preventive possano riprodurre modelli discriminatori che colpiscono le comunità rom.

KEYWORDS

Antiziganismo, Dignità umana, Discriminazione, Profilazione razziale, Rom.