

Summary and conclusions

The questions underlying this research, conducted by Pro Facto, are:

To what extent is it apparent on the basis of the literature and documentation that so called 'stopforms' help to prevent and combat ethnic profiling? Can any results that might emerge from the use of stopforms be applied to the Dutch police organisation? What elements will need adjusting for this?

These questions are answered based on the following subquestions:

1. Where and how are stopforms used?
2. What do we know about the effect of stopforms?
3. To what extent does the use of stopforms contribute to preventing ethnic profiling when the police is stopping people for questioning or searching?
4. What conditions influence the effect?
5. To what extent can the effect observed elsewhere be expected to materialise under Dutch conditions?

Where and how are stopforms used?

Police forces in England and Wales have worked with various ways of registering ethnicity when stopping people in the street since 1986. Since 2005 all forty-three police forces are required to complete stopforms during one form of stop actions, stop and search, and to hand a copy of this form to the person being apprehended.

In Spain five police forces have experimented with the use of stopforms when stopping people in the street. Between 2007 and 2009 three forces participated in the so called *Strategies for Effective Police Stop and Search* project. This programme was initiated and run by the Open Society Justice Initiative. In 2013 two forces participated in an experiment of the *Programa para la Identificación Policial Eficaz* (Efficient Police Identification Programme). This programme was organised by several Spanish non-governmental organisations. Since the completion of the experiment only one of the forces (the Fuenlabrada municipal police) has continued to use stopforms.

Practices in other countries (such as Canada) and experiments in other jurisdictions (for instance Bulgaria and Hungary) had to be left out of this quick scan due to limited time. The United States' practice of stop and frisk, comparable to the English stop and search, is however, included to a limited extent.

In both England and Spain the stopform was and still is part of a package of measures. In both countries the objective was mainly oriented towards professionalising and improving the efficiency of the use of these powers. In addition, the package of measures was intended to prevent ethnic profiling and above all to increase the confidence of (minority) groups in the police.

In England and Spain the powers of police officers to stop, identify and search are different from those of Dutch police officers. In England there is currently only a statutory requirement to use the stopform during stop and search actions. The same requirement applies in the Spanish municipality Fuenlabrada and the power can be exercised under similar conditions: there must be a real suspicion and there must be an objective basis to support the suspicion. Police in the Netherlands have the power to stop and search within the scope of special legislation such as the Weapons and Ammunition Act and the Opium Act and can stop anyone in a risk area designated as such by the mayor, provided there is reasonable suspicion.

In the Spanish municipality of Fuenlabrada police are also required to use the stopform during stop and identify actions. This power is comparable to that of Dutch police; a person can only be required to identify him or herself when there is a suspicion or an indication that the person has participated in an offence or infringement of a legal regulation. This power is set out in the Netherlands in Article 52 of the Code of Criminal Procedure (Strafvordering).

The English police have no legal power to request identification. They have a variant of this: stop and account, during which the person who has been stopped is asked a few brief questions but is under no obligation to answer these or to identify him or herself. When the stopform was introduced, registration of stop and account was also mandatory but this was abolished in 2009, mainly because of the administrative burden in combination with a relatively short encounter between police and citizen.

Both England and Spain have an explicit legal ban on the disproportionate apprehension of minorities.

What do we know about the effect of stopforms?

The assumed effect of stopforms is to reduce ethnic profiling during apprehensions or, quantitatively formulated, to reduce disproportionality in the apprehension of different ethnic groups of the population. Many different lines of argument can be found in the literature on which this effect is based. We classify these lines of argument into four assumed functions of stopforms:

- a) *reflection*: the police officer on duty is made more aware of the reasons justifying the stop and search action and proceeds with the work more judiciously;
- b) *monitoring*: stopforms facilitate the registration and analysis of the nature and scope of the stop action. It is argued that the resulting database will raise awareness amongst police officers and police organisations about the extent of ethnic profiling;
- c) *policy and management*: the database referred to in b enables superior officers in the police organisation to assess how stop actions proceed in practice and where necessary to intervene both at individual and organisation level;
- d) *citizens' legal position*: the stopform is a reason for dialogue between the citizen being apprehended and the officer and the apprehended citizen's legal position is clarified and strengthened.

Reflection

In both countries it has been observed that police officers' general attitude towards the package of measures plays a major role in the success of the reflective function. In both countries the introduction of the stopform was viewed by some officers as an attack on the integrity and professionalism of officers. In England it was even felt to be a personal attack, partly because of the label 'institutional racism' used to refer to the working methods of officers in the Macpherson report. When officers

experienced the introduction of the stopform in this way there was huge resistance to the form with the result that it was not used. When officers viewed the registration of proactive action in a positive light it appeared that the stopform can indeed improve reflective decision-taking. In both countries these officers started to think more about the use of their power and why they were making use of it. This also enabled them to better explain the reason for the stop and search to the citizen being apprehended.

In addition it has emerged that training in the use of the stopform and in contacts with citizens increases the chance that officers will act with proper consideration. How supervision within the force is organised also affects the reflective decision-taking of officers. When these conditions were met the police action was more efficient: the number of stops and search fell and the number of effective stops and search (hits) rose. In other words, the number of unfounded stops and search dropped. The use of stopforms was certainly not the only reason for this but it is likely that it is, however, an effective and perhaps even necessary condition.

Monitoring

Generally speaking stop and search registration (including ethnicity) is considered to be the best way to acquire insight into the proportionality and effectiveness of proactive police action. However, the use of stopforms does not automatically provide a reliable picture of (proactive) police action. Both the registration and the processing should meet several weighty conditions before valid conclusions can be drawn. One necessary condition for the monitoring function is that the forms are indeed completed correctly and uniformly. Even when the forms are completed correctly and uniformly it is still tricky to establish disproportionality because it is not clear what the ethnic distribution in the collection of stops and search studied should be compared with: the national distribution, the distribution in the area under surveillance, the distribution at a specific time of day on the street or some other distribution (the baseline issue).

Policy and management

Managers who want to improve the efficiency and effectiveness of the proactive actions of their police units on the basis of information can put the information provided by stopforms to good use. They can discuss choice behaviour with reference to these data both at individual and group level and make adjustments where needed. The Code of Practice applying in England requires managers to use the data collected in this way. And yet at many forces this function has been neglected. The Home Office and the police forces therefore recently decided that this is reason to draw attention to this requirement again. At forces that used the stopform data to provide feedback the aim was to improve the effectiveness of stop and search actions. For instance, one measure that was introduced was to send officers with divergent stop and search profiles out on patrol together.

The English experience also shows that policy decisions have a significant effect on how police officers use their power. Policy regarding, for instance, where the patrols will take place seem to have a huge impact on the ethnicity of the people being stopped and searched. This also explains differences in the disproportionality in stop and search between different regional forces. The disproportionality in stop and search actions can therefore not be traced solely to the individual choice behaviour of the officer. The policy and managerial context within which the officer operates is at least as important.

The best practice in Spain, the Fuenlabrada municipal police force, shows that feedback based on properly collected and processed data can be effective and that supervisors can use this to improve the proactive actions of their units with reference to information.

Legal position of citizens

A fourth assumed function of the stopforms is that the legal position of the citizen being stopped is clarified and strengthened, partly because the citizen is provided with more information about why he

or she is being stopped and because they are given a form containing information about how they can lodge a complaint. There is relatively little known about the extent to which citizens experience this in this way. During the implementation period in England research showed that there are major differences between citizens' experiences. In first instance these experiences depend on colour and in general '*black people*'¹ tend to be less positive about their encounter with the police than other ethnic groups. In the second instance the assessment is linked to the action of the officer making the apprehension; one officer can explain clearly why he or she is using the power to stop and search while another cannot. When citizens are happy with the attitude and conduct of the officer and when they feel they have been handled with respect, the experiences are more positive. In 2013 one quarter of the English citizens asked found that officers use their stop and search powers in a discriminatory way. Half of the '*black people*' drew this conclusion.

In addition, the stopform creates a reason for dialogue between the apprehended citizen and the officer. From the Spanish experience it emerges that an organised dialogue between police and ethnic minorities is an effective way to improve stop and search in practice. In England as well, the dialogue with citizens is felt to be important and police forces are required to engage with local residents. The forces also have to actively inform local communities about the exercising of their power to stop and search.

Comparatively little use is made of the possibility to lodge a complaint that is referred to in the form.

To what extent does the use of stopforms contribute to preventing ethnic profiling during stop actions?

Despite all the available research it is difficult to trace the effect of the introduction of stopforms on ethnic profiling. In the first place, the quality of the available figures is not sufficient to be able to draw hard conclusions. More important even than the quality of the available figures is the observation that in not one of the jurisdictions studied is the stopform introduced as a single measure. The stopform is always introduced as part of a larger interrelated package of measures. This makes it impossible to make statements about the effects of the stopform as such on ethnic profiling, minorities' confidence in the police or about the effectiveness and efficiency of proactive police actions. It is always about a combination of a large number of measures and conditions. For instance, English research emphasises that police officers' attitude and the quality of their actions during apprehensions is at least as important as filling in the stopform. A report about the Spanish Fuenlabrada force concludes that systematic consultation with minority groups has played a significant role in the general improvement in police actions observed there.

The figures we do have available indicate that the number of stops and search in England has halved in a period of seven years. As a result, in absolute terms, the number of stops and search involving ethnic minorities has also fallen. However, despite all the measures that have been taken England is still faced with a high degree of disproportionality in stop and search actions. The most recent figures in England (2015) show that ethnic minorities can expect to be stopped twice as often as '*white people*'. This figure is even higher for '*black people*' who can expect to be stopped four times as often as '*white people*'. In the Fuenlabrada force in Spain significant changes took place during the pilot: the total number of stop and search actions fell by 75%, there were four times as many hits and the disproportionality in the number of apprehensions of people from minority groups fell, even though this disproportionality continued to be significant. Later research showed the result of the pilot to be lasting.

In the jurisdictions studied ethnic registration using stopforms was always a (central) part of a package of measures. For this reason the experience in these jurisdictions does not form solid grounds for

¹ "Black people" is how the reports refer to this ethnic minority.

arguing that the introduction of stopforms reduces disproportionality during stop and search actions and ethnic profiling during proactive police actions. It can, however, be concluded that a package of measures in which the stopform plays an important role can reduce ethnic profiling and improve the effectiveness of police actions. In such a context the registration of ethnicity during stop and search actions can raise awareness amongst police officers about the problem of disproportional apprehensions, about the need to talk about this in the police unit and about the substantiation of interventions by superior police officers targeted at reducing disproportionality.

What conditions influence the effect?

As mentioned: the use of stopforms is introduced in all the jurisdictions studied as part of a package of combined measures. The documents we studied provide clear indications about what this package of measures should contain if the use of stopforms is going to be in any way effective.

An essential condition for an effective use of the stopform is a professional attitude aimed at a continuous improvement of individual competences, also when interpreting the margins of discretion during proactive actions. A second condition is the training of officers; even when there is a positive professional attitude, an adequate performance during stop and search actions requires permanent education and training in proactive actions. The third condition is systematic policy-making focusing on ensuring that the entire police unit is aware of the grounds, considerations and competences that are important during proactive actions. Monitoring and policy responses based on this are a significant factor in making stop and search actions more effective and more efficient. The same applies for condition number four: supervision by superiors in interpreting the margin of discretion. Condition number five is about good dialogue between police and ethnic minorities; from our literature study it emerges that there is a link between good dialogue and the successful reduction of disproportional stop and search actions. Finally a sound imbedding of the registration of stop and search actions in existing work processes and information flows is an important sixth condition.

To what extent can the effect observed elsewhere be expected to materialise under Dutch conditions?

An important conclusion from this exploratory research is that the use of stopforms, or more generally, the registration of ethnicity during stop and search actions can, as a central part of a package of measures, help to prevent ethnic profiling. According to the *Handbook of Good Practices* of the Open Society Justice Initiative, based on pilot research in several countries, an adequate package contains seven groups of measures divided between three categories:

CATEGORY	TYPE OF MEASURE
Political-legal	Benchmarks in legislation, operational guidelines, strategic action plans
	Complaints procedure and supervisory provisions
Policy and management	Registration and monitoring of proactive actions
	Reducing ethnic disproportionality and strengthening the effectiveness of proactive actions.
	Education and training
	Evaluation and feedback
Society	Intensifying and improving the relationship between police and society, in particular ethnic minorities

The question now is to what extent this kind of good practices could be applied in the Netherlands. In the literature an often repeated central theme is *'the professionalism of the police'* during proactive actions. It's ultimately about the police officer on the beat who has to decide whether to act or not. The question is how can we ensure that this is done in the best way. A second central theme is *leadership* in the police force: superiors decide about the deployment of people and resources. The

question is how this deployment can be optimum, in other words, effective, efficient and with minimum ethnic profiling.

International research going back many years shows that the considerations on grounds of which a police officer decides to stop and search a person are often faulty. There is currently no reason to assume that in the Netherlands this is any different than in other countries. Recent research amongst the Dutch police shows that here too stop and search actions are regularly based on improper and even unlawful motifs. There is therefore every reason to improve and strengthen the professionalism of the police during proactive actions.

When aiming to improve and strengthen the professionalism of the police it is useful to introduce some form of registration. This assists both the monitoring function (insight into nature and scope) and the policy-forming function. After all, research shows that whether or not to stop and search a person is not only the decision of the individual officer on the beat but that policy decisions make an important contribution to how officers use their powers.