

Fair

Trials



Uncovering **anti-Roma discrimination** in criminal justice systems in Europe



In partnership with:



About Fair Trials

Fair Trials is a global criminal justice watchdog with offices in London, Brussels and Washington, D.C., focused on improving the right to a fair trial in accordance with international standards.

Fair Trials' work is premised on the belief that fair trials are one of the cornerstones of a just society: they prevent lives from being ruined by miscarriages of justice and make societies safer by contributing to transparent and reliable justice systems that maintain public trust. Although universally recognised in principle, in practice the basic human right to a fair trial is being routinely abused.

Its work combines: (a) helping suspects to understand and exercise their rights; (b) building an engaged and informed network of fair trial defenders (including NGOs, lawyers and academics); and (c) fighting the underlying causes of unfair trials through research, litigation, political advocacy and campaigns.

In Europe, we coordinate the Legal Experts Advisory Panel – the leading criminal justice network in Europe consisting of over 200 criminal defence law firms, academic institutions and civil society organizations. More information about this network and its work on the right to a fair trial in Europe can be found at: <https://www.fairtrials.org/legal-experts-advisory-panel>

Contacts

Bruno Min

Legal Director (UK & International), Fair Trials
bruno.min@fairtrials.net

Griff Ferris

Legal and Policy Officer, Fair Trials
griff.ferris@fairtrials.net

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Illustrations by film director and animator, Dann Parry



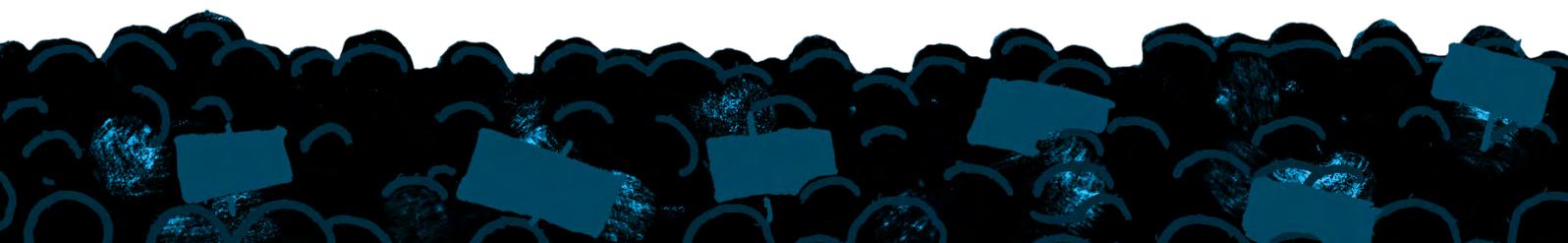
About this report

We would like to thank our partners and the many criminal justice professionals and directly impacted people whose experiences and perspectives informed this report. In the absence of official data, and in the face of the pervasive official denial of racism, it was always going to be challenging to examine the causes of Roma over-representation in criminal justice systems. This was made even harder by the global pandemic, escalating rule of law crisis, and shrinking space for civil society, all of which have had a disproportionately negative impact on Roma communities.

Fair Trials has learned a great deal from this work. In particular, we recognise that Roma organisations should have had a lead role in the design and delivery of the project and that an intersectional approach that took into account factors such as gender and age should have been used. We are also conscious that this report, by highlighting common trends, does not recognise the different contexts in the countries examined (more detail can be found in the national reports). We are committed to applying this learning to strengthen our future work to fight for justice, fairness and equality in criminal legal systems and are grateful for the feedback we have received.

We decided not to repeat the most offensive racial slurs used by some of the criminal justice professionals interviewed by our partners and have not included the most disturbing accounts reported by directly impacted Roma. The report is, though, still hard to read.

We hope that this report will help challenge governments' continued denial of the racism that underpins disparities in criminal justice systems in Europe, and serve the collective movements that are needed to address and eradicate the discrimination faced by Roma and other racialised and ethnic groups in Europe. We look forward to continuing to support this work, including through a new project, led by European Roma Rights Centre, which will build on this research.



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Executive summary

Discriminatory and prejudicial views of Roma are making the criminal justice system unfair for Roma defendants. Roma face structural discrimination throughout the criminal justice system from multiple actors – the police, judges, prosecutors, and even their own lawyers.

The criminal justice system involves a series of human decisions, with varying degrees of discretion for each decision-maker. This means that, at each step of the process, there is the potential for human bias to taint decisions and outcomes, even if there are objective rules and laws to be applied and followed. Where racism and anti-gypsyist attitudes are not only pervasive in society, but also normalised and engrained in the criminal justice system, they inevitably result in racially-biased decisions and outcomes.

This is precisely what is happening with Roma defendants. At every stage of criminal proceedings, from arrest until sentencing, they are vulnerable to discriminatory attitudes and biases that skew outcomes against them. The very system that is meant to impart fair and equal justice is, in fact, doing the opposite.

Policing

Discriminatory and abusive police practices against Roma are widespread, often fuelled by negative stereotypes, and sometimes by outright hatred towards Roma. These practices not only violate the rights and dignity of Roma, but they are also significantly responsible for the disproportionate representation of Roma in criminal justice systems.

There is very clear evidence of anti-gypsyism in the police. These range from disrespectful conduct when policing Roma communities and the open use of racist slurs, to racially-motivated raids and indiscriminate police brutality in Roma-majority areas. The police in certain countries have also been known to show indifference towards hate crimes against Roma, and there is even some evidence of extremist right-wing groups infiltrating police forces. Roma are also

targeted through the selective enforcement of petty offences by the police. There have been incidences where individuals have been heavily fined for offences committed as a result of economic hardship, then imprisoned because they are unable to pay. Interviews carried out with police officers as part of this research also highlighted the nature and extent of anti-gypsyism amongst their ranks. This was evidenced by various police officers admitting their belief in negative Roma stereotypes, such as the widespread and harmful association of Roma with criminality and voluntary underemployment.

Certain police officers openly admitted to ethnic profiling, without recognising this practice as unjustified, harmful, and unlawful. This admission was consistent both with existing evidence of the racially-motivated and arbitrary use of stop and search powers, and with experiences of Roma interviewees, many of whom confirmed that police stops were a routine occurrence that they were simply too 'tired' to challenge. Sometimes, the racial motivation behind the use of stop and search powers was blatant.

Judges and prosecutors

Due to policing, a disproportionate number of Roma people will enter criminal justice systems. Once they do, they continue to face structural and individual bias from judges and prosecutors that result in disparate outcomes.

When interviewed, several judges and prosecutors appeared to believe that as a group, they are 'immune' to deeply entrenched societal biases against Roma, insisting that their decisions are impartial and solely based on evidence. There was only limited acknowledgement that Roma face racial discrimination, with many believing that the overrepresentation of Roma in criminal justice systems is entirely a self-induced problem, with criminal behaviour as a lifestyle choice endemic within Roma communities.

However, anti-gypsyist attitudes undoubtedly exist in both professions. Judges in certain

countries have even made overtly racist statements in their decisions regarding pre-trial detention, sentencing, and even the factual merits of criminal cases.

Interviews with defence lawyers, as well as with judges and prosecutors, exposed worrying levels of racism and negative stereotyping that seriously question the impartiality of judges and prosecutors. There were examples of offensive remarks by judges and prosecutors, bullying of their Roma colleagues, and a tendency to perceive Roma as being ignorant of, and detached from the criminal justice system. These cannot be dismissed as isolated examples of anti-gypsyist attitudes. The very fact that judges and prosecutors feel able to express their discriminatory views so openly indicates that these attitudes are not only tolerated, but also normalised in criminal justice systems.

Defence lawyers and access to legal assistance

The prevalence of anti-gypsyist attitudes amongst judges and prosecutors means that there is a heightened need for effective legal assistance for Roma defendants to challenge discriminatory and abusive practices.

However, defence lawyers themselves are not exempt from anti-Roma bias, with the research uncovering deeply and even violently prejudicial attitudes. Defence lawyers openly admitted their reluctance to represent Roma defendants on account of perceptions of 'unreasonable' behaviour or expectations, their alleged tendency to change their stories, and their low levels of education and literacy. It was also clear that some lawyers felt embarrassed about representing Roma defendants and worried that it would damage their reputation. Some lawyers gave shocking examples of openly hateful comments made by other lawyers.

It is apparent that the standard of legal assistance is also impacted by greater reliance on legal aid by Roma defendants. There was widespread

perception amongst interviewees that the economic hardships faced by many Roma also contributed to unacceptably poor standards of legal assistance.

This lack of access to effective, impartial legal assistance means that many Roma defendants face a system where the odds are stacked against them but they can count on no-one but themselves to fight injustice.

Solutions

Despite the limited recognition of racial bias in their criminal justice systems, there have been some attempts to improve relationships between the police and Roma communities, including through training, and recruitment programmes to promote diversification.

While there are some examples of promising practice, these efforts have often produced mixed results. There is scepticism that occasional training can change the endemic culture of anti-gypsyism in the police. Roma inclusion and recruitment programmes by the police have also been viewed as having limited success, given incidences of workplace bullying towards Roma police officers, and sometimes Roma police officers becoming part of the culture of anti-Roma discrimination.

Given the multifaceted causes of racial disparities in criminal justice outcomes, the solutions to these challenges require a combination of measures designed to tackle multiple sources of bias and discrimination. This report attempts to identify and set out best practice and methods to combat and eradicate this discrimination, including through law and institutional reform, strengthening of oversight and accountability mechanisms, and improving access to justice. We acknowledge however, that the impact of such measures is likely to be limited, unless they are accompanied and supported by wider societal changes, greater political will to eliminate all forms of discrimination and racism, and crucially, greater empowerment of affected communities.

Background

Across the world, the movement to fight racial disparities in criminal justice systems has been gaining momentum, and there is increasing awareness that structural racism leads to discriminatory criminal justice outcomes for various racial and ethnic groups. In spring 2020, widespread protests against racial profiling and violence by the police in the United States led to similar protests in parts of Europe, with hundreds of thousands of people demanding immediate action to recognise and eliminate structural racism in criminal justice systems.

In response, in June 2020, the European Parliament passed a motion condemning racism, hate and violence, and calling on EU institutions, bodies, and Member States to “*strongly and publicly denounce the disproportionate use of force and racist tendencies in law enforcement*”.¹ The EU Commission subsequently adopted its 2020-2025 Plan Against Racism,² in which it recognised for the first time the need to tackle structural racism and to prevent discriminatory attitudes in law enforcement. This long overdue recognition of racialised policing is encouraging, but the EU has so far failed to acknowledge and condemn the prevalence of racism throughout criminal justice systems - in courts, prosecutors’ offices, and prisons.

There is little evidence that EU Member States are recognising the seriousness of racial disparities in their criminal justice systems.³ This denial is not helped by the lack of comprehensive and Europe-wide data. There is no comprehensive official data on racism and discrimination in criminal justice in Europe because most countries do not collect criminal justice data or statistics disaggregated by race or ethnicity. Most EU Member States

do not collect criminal justice data or statistics disaggregated by race or ethnicity either because it is not standard practice or because it is forbidden by law. This makes it difficult to measure the degree of racial disparities in criminal justice systems. However, the data that does exist is damning.

The Fundamental Rights Agency’s (‘FRA’) two Europe-wide studies in 2010⁴ and 2017⁵ found widespread levels of discrimination against ethnic minorities by police, with the high levels of ethnic profiling and disrespectful behaviour against Roma by police unchanged between the two studies. Data collected by the FRA in 2017, for example, showed that during a 5-year period, 66% of respondents of Sub-Saharan African origin in Austria, and over half of respondents of South Asian origin in Greece were stopped and searched.⁶ Over the same 5-year period, huge numbers of Roma reported being stopped by the police because of their ethnicity: in Portugal (84%), Greece (63%), Czech Republic (57%), Romania (52%) and Spain (46%).⁷ The same study carried out by the FRA in 2010 found that in six out of ten Member States surveyed, ethnic minority respondents were stopped by police more often than majority (white) groups in the previous 12 months.⁸

A 2018 study by the JUSTICIA European Rights Network on racial, ethnic, and national disparities in criminal justice systems across the European Union (EU) found that in all twelve EU Member States that took part in the research, disparities existed for people of various ethnic, racial, and national origins in their respective criminal justice systems.⁹ Statistics showed a significant over-

1 European Parliament resolution of 19 June 2020 on the anti-racism protests following the death of George Floyd (2020/2685(RSP))

2 European Commission, *A Union of equality: EU anti-racism action plan 2020-2025*, 18 September 2020

3 Some countries, like Germany, have now begun to take initial steps to investigate racism by the police. Deutsche Welle, ‘[Germany commissions study to address racism in police force](#)’ (8 December 2020)

4 European Union Agency for Fundamental Rights (‘FRA’), *European Union Minorities and Discrimination Survey – Data in Focus Report – Police Stops and Minorities (2010)*.

5 FRA *Second European Union Minorities and Discrimination Survey: Main results, (2017)*

6 Fundamental Rights Agency, ‘[EU-MIDIS II Second European Union Minorities and Discrimination Survey](#)’ (2018),

7 Ibid.

8 European Union Agency for Fundamental Rights, *Data in Focus Report – Police Stops and Minorities*, (2010), .

9 Justicia European Rights Network, *Disparities in Criminal Justice Systems for Individuals of Different Ethnic, Racial, and National Background in the European Union*, (November 2018).

representation of various groups of 'foreigners' in crime rate statistics, pre-trial detention, and prison populations. In states where ethnicity data was available, it was found that black people are more likely to be arrested as a result of stop and search than white people, but less likely to be given out-of-court disposal, leading to higher prosecution rates for black people.¹⁰

While much of the blame for racial disparities has focused on the police, studies also show that discriminatory attitudes infiltrate deeper into the criminal justice system, impacting key decision-makers in the system, such as judges. In a 2013 study carried out in France,¹¹ researchers found that judges' decisions were likely to be influenced by racial bias. Defendants born outside the country were more likely to be held in pre-trial detention and more likely to receive custodial sentences.

Equality and non-discrimination are principles central to the EU and the Charter on Fundamental Rights, and they are enshrined in Member States' domestic laws. However, Member States' criminal justice systems are failing racialised groups, subjecting them to unequal treatment, over-incarceration, and greater social marginalisation. Racial discrimination impedes any efforts to improve the fairness of criminal justice systems in the EU. Criminal justice systems cannot be regarded as fair if certain groups are criminalised disproportionately, the same legal rules are applied in different ways depending on a person's race or ethnicity, and if we fail to take the necessary steps to level the playing field to address the socio-economic impact of historical discrimination.



While much of the blame for racial disparities has focused on the police, studies also show that discriminatory attitudes infiltrate deeper into the criminal justice system, impacting key decision-makers in the system, such as judges.

¹⁰ Ibid.

¹¹ Virginie Gautron, Jean-Noël Retière, 'La justice pénale est-elle discriminatoire? Une étude empirique des pratiques décisionnelles dans cinq tribunaux correctionnels', Alliance de Recherche sur les Discriminations, Université Paris Est Marne-la-Vallée, (December 2013)

Anti-gypsyism

Racial prejudice is widespread in societies across Europe and it affects many ethnic groups. However, given their long history of persecution and the continuing prevalence of socio-economic challenges, Roma are especially vulnerable to harmful stereotyping and negative societal attitudes that influence perceptions of criminal justice decision-makers and impact criminal justice outcomes.

Anti-Roma discrimination, or 'anti-gypsyism',¹² is endemic across Europe and it has been described as an '*especially persistent, violent, recurrent and commonplace form of racism*'.¹³ The prevalence of anti-gypsyism in the EU is potently evidenced by the portrayal of Roma in the media, numerous incidents of anti-gypsyist violence, and statements by those with political power.

In some countries, prejudicial or discriminatory views of Roma are by no means unusual. In Romania, a recent survey found that 72% of the public said they mistrusted Roma - a higher level than almost any other social group.¹⁴ Similar studies carried out in Spain have shown that Roma are more 'rejected' than any other ethnic group in the country.¹⁵ Public expressions of anti-

gypsyism are not restricted to fringe, right-wing extremist hate groups. High-ranking politicians that have made anti-gypsyist remarks have included the prime minister of Hungary¹⁶ and a Socialist interior minister from France.¹⁷

Where statistics do exist, they show that Roma are amongst the worst affected by discrimination in the criminal justice system. In Bulgaria, Roma were twice as likely to be the victims of physical police violence than non-Roma Bulgarians,¹⁸ and more than 50% of new prisoners, as well as more than 50% of those serving prison sentences, self-identified as Roma,¹⁹ despite making up only 10% of the population.²⁰ In Spain, studies have estimated that around a quarter of non-foreign, female prisoners are Roma. This amounts to a twenty-fold over-representation of Roma in prisons compared with their representation in the general population.²¹

Despite this, to date there has been relatively little action in Europe to tackle Roma over-representation in criminal justice systems. The Commission's 2020-2030 action plan to support Roma in the EU, for example, did not explicitly include criminal justice as part of its broader strategy to promote equality and inclusion.²²

12 We use the term 'anti-gypsyism' because it covers racism and discrimination against Roma, Sinti and travellers and is favoured by the European Commission and many Roma rights activists. We are aware that there are differences of opinion about this term. The terms 'anti-gypsyism', 'anti-Roma racism' and 'anti-Roma discrimination' are used interchangeably in this report.

13 European Commission against Racism and Intolerance, '*ECRI General Policy Recommendation No 13 on Combating Anti-Gypsyism and Discrimination against Roma*', (24 June 2011)

14 Institutul Român pentru Evaluare și Strategie, '*Sondaj de opinie la nivel național privind nivelul discriminării în România și percepțiile actuale asupra infracțiunilor motivate de ură - Sondaj de opinie 2018*' (2018) p. 2, 10, 33

15 Centro de Investigaciones Sociológicas, '*La Percepción de la Discriminación en España II*' (2016)

16 Index, '*Orbán egyszerre volt szokatlanul mérsékelt és durván radikális*' (1 September 2020)

17 BBC, '*French minister Valls defends call for Roma expulsions*', (25 September 2013)

18 Bulgarian Helsinki Committee ('BHC'), '*Human Rights in Bulgaria*', (2016), p.15-16

19 Ibid.

20 European Commission, '*Roma Inclusion in Bulgaria*'

21 Equipo Barañi, '*Mujeres gitanas y sistema penal*', (Madrid: Meytel 2001)

22 European Commission, '*Press Release – Commission launches new 10-year plan to support Roma in the EU*', (Brussels 7 October 2020); European Commission, '*Proposal for a Council Recommendation on Roma equality, inclusion and participation*', (Brussels 7 October 2020), COM (2020) 621 final

About this research

This report presents a summary of the findings of research conducted by Fair Trials, in partnership with APADOR-CH, the Bulgarian Helsinki Committee, the Hungarian Helsinki Committee, and Rights International Spain to provide further insight into the causes of Roma over-representation in the respective criminal justice systems of Romania, Bulgaria, Hungary, and Spain.

In the absence of comprehensive, official ethnic data in these four countries, the degree of Roma over-representation in the criminal justice system cannot be measured with any reasonable degree of precision. This lack of data also makes it impossible to pinpoint the exact stages of the criminal justice process that are most likely to produce discriminatory outcomes. This research is not an attempt to produce alternative statistical

data, but it seeks to add to the existing evidence of the structural and institutional racism and discrimination in policing and criminal justice, by highlighting the experiences and perceptions of criminal justice professionals and affected communities.

This report illustrates the views of those within the criminal justice system and explores the prevalence of unconscious and even conscious bias within those entrusted with ensuring fair and equal justice. Often, debates or considerations of racism in policing and criminal justice focus on (or blame) individual actors, rather than focusing on the reality of racism within entire institutions or, indeed, wider societal and structural attitudes. We aim, through this research, to evidence this reality through the lens of individual experiences of those closest to these institutions.

In Romania, a recent survey found that

72%

of the public said they mistrusted Roma



Methodology

This report provides evidence from in-depth interviews with Roma impacted by policing and criminal justice, as well as with criminal justice system actors (including police, judges, prosecutors, and defence lawyers) to demonstrate how people of a specific group long disadvantaged in Europe, Roma, face structural racism in Europe’s criminal justice systems. It also analyses the legal framework around law enforcement and in criminal proceedings, detailing the level of discretion afforded to police and judges, and how this allows for discriminatory attitudes to influence criminal justice.

This research was carried out in four participating countries: Bulgaria (Bulgarian Helsinki Committee), Hungary (Hungarian Helsinki Committee), Romania (Association for the Defence of Human Rights in Romania – the Helsinki Committee) and Spain (Rights International Spain), with partner organisations all using a common research framework developed by Fair Trials.

Researchers undertook extensive analysis of existing secondary sources, including national statistics, studies and media reports that highlight Roma disproportionality in local criminal justice systems, as well as possible causes of discrimination. They also reviewed national legislation on criminal procedure, discrimination, and policing, as well as case-law in relation to racial discrimination at national and European Court of Human Rights (‘ECtHR’) level.

In total, researchers carried out

97

interviews, 41 of which were with members of the Roma community.

Partners also undertook a series of semi-structured interviews with members of Roma communities and (mostly non-Roma) professionals working in the criminal justice system, using standard questions included in the research framework. Interview questions with Roma interviewees were designed to get a better insight into their experiences and perceptions of the criminal justice system. Criminal justice professionals were asked to comment on how they and their peers perceived Roma and Roma defendants, and to explain their mindset when carrying out their duties.

In total, researchers carried out 97 interviews, 41 of which were with members of the Roma community. These included individuals who had first-hand experience of the criminal justice system, and they were selected taking into account a range of factors including geography, gender, age and experience. The rest of the 56 interviews were conducted with police officers, judges, prosecutors, and defence lawyers. However, given the political climate in Hungary and Bulgaria, the Hungarian Helsinki Committee and the Bulgarian Helsinki Committee only had limited access to the police, judges, and prosecutors. As a result, the researchers in those countries relied more heavily on interview responses provided by other criminal justice professionals.

The initial findings of the research and recommendations were shared with criminal justice experts, activists, and members of the Roma community in each country in 2020. Feedback from this consultation informed the final findings of the research, which were summarised in four ‘national’ reports.²³

23 APADOR-CH (‘APADOR’), *Unconscious Bias and Discrimination of Roma People in the Criminal Justice System*, (2020) ; Bulgarian Helsinki Committee (‘BHC’), *Guilty by Default - Discrimination against Roma in the Bulgarian Criminal Justice System*, (2020); Hungarian Helsinki Committee (‘HHC’), *Fighting Unconscious Bias and Discrimination of Roma People in the Criminal Justice System – National Report (Hungary)* (2020); Rights International Spain (‘RIS’), *ROMA Project – Fight against unconscious bias towards Roma people in the criminal justice system*, (2020)

Policing

The police are the gatekeepers of the criminal justice system. While they do not control the outcomes of criminal cases, they do control the flow of people into the system. Their actions on where to police, whom to police, what to police, and how to police, play a significant role in determining which people enter the criminal justice system, and how they are treated at the crucial early stages of the process.



that biases policing practices in the first place. Discriminatory policing is also likely to have a significant impact on the views and perceptions of criminal justice decision-makers at later stages of the process. Judges, prosecutors, and even lawyers, might come to associate Roma with negative stereotypes if they are regularly, and disproportionately exposed to Roma defendants.



The exercise of these powers is heavily tainted by anti-gypsyist attitudes in policing. Racism is not simply a view held by a minority of police officers. It is an institutionalised phenomenon that is often normalised as part of workplace culture. This inevitably has an impact on policing practices, with Romani people and Roma communities being targets of discrimination and abuse.

Anti-Roma racism results in the over-policing of Roma communities. Roma are singled out, and picked on for law enforcement, as evidenced by the discriminatory and disproportionate use of police stop and search powers and the enforcement of petty crimes. In some countries, incidences of racially-motivated police violence and ill-treatment in custody are also common.

These, mostly unlawful, practices contribute to the over-representation of Roma in criminal justice systems, which in turn inform public attitudes and political responses towards Roma, which further embed the harmful and unfair association of Roma with criminality

Anti-gypsyism in the police

Researchers in all four countries found worrying evidence of endemic, institutionalised anti-gypsyism in the police. Anti-gypsyist views and attitudes are not always internalised. Often, they are openly expressed through the words and actions of police officers both when they are policing Roma communities, and when they are called upon to protect them.

It was evident from interviews with the police, defence lawyers, and members of the Roma community that it was not a case of a few 'bad apples' in the police force having discriminatory views. Their testimonies suggested that anti-gypsyism is a normalised attitude that is engrained in police culture.

This is in no way an accusation that as individuals, most, if not all, police officers are racist. However, evidence suggests that many do work in a system where racial biases are deeply engrained, where they can be unknowingly or unconsciously affected by such biases.

Perceptions of the police

Interviews with police officers highlighted the nature and the extent of anti-gypsyism in the police. This was evidenced, in particular, by various police officers admitting their belief in negative Roma stereotypes, such as the widespread and harmful association of Roma with criminality.

Police officers in Spain generally recognised the existence of anti-Roma attitudes within their profession, and interviewees acknowledged that their colleagues often stereotype Roma, associating them with crime and delinquency.²⁴ While three of the police officers interviewed agreed that such anti-gypsyist sentiments are common, another dismissed this issue as merely a reflection of “*police and society today*”.²⁵ However, these attitudes are not merely a symptom of wider societal biases against Roma. They are also a direct result of training practices and a culture that actively foster and encourage ethnic stereotyping. Interviewees described training in police academies that associated certain offences to specific groups, such as Roma. This not only entrenches societal biases in the police force, but also legitimises harmful and discriminatory policing practices.²⁶

Police officers in Bulgaria, however, flatly denied the existence of discriminatory attitudes, and refused to believe the assertion that Roma are treated unfairly by the police, in the absence of any data to confirm this.²⁷ Despite this, the interviews with the same police officers disclosed their tendency to associate Roma with very harmful stereotypes, such as being predisposed to commit theft.²⁸

There were similar attitudes amongst Romanian police officers, who downplayed the impact of police prejudices on criminal justice outcomes

for Roma. They instead blamed the Roma themselves for their overrepresentation in the criminal justice system.

“It’s not the police who put them [in the criminal justice system] because they don’t like them ... he got there because his place was there - he does not have a job, he does not like to work. It is true that they are discriminated against... [but] Police practices have nothing to do with it.”²⁹

Experiences of Roma and defence lawyers

Claims that anti-Roma racism has little influence on police attitudes contrast sharply with experiences of Roma and the defence lawyers that represent them. Interviewees in all four countries provided numerous examples of police officers using ethnic slurs, and in some cases, ridiculing and humiliating them openly.

Many Roma interviewees in Spain reported that they had been subject to racial slurs and derogatory remarks from the police, who often likened them to criminals and delinquents.³⁰ Some also complained that police officers imitated Roma accents and how they speak when addressing them.³¹

Hungarian defence lawyers noted that during criminal investigations, police officers often talked to Roma and non-Roma differently, and that they witnessed the open expression of racist views from the police on a daily basis.³² A lawyer of the Hungarian Civil Liberties Union described how even in police stations, and in the presence of a lawyer, police officers often make derogatory comments towards Roma defendants, and that this practice had become normalised.³³

24 RIS (n 23), p. 31

25 RIS, Interview 19

26 RIS (n 23), p. 35

27 BHC (n 23), p. 27

28 Ibid.

29 APADOR, Interview with police officer no. 2

30 RIS (n 23), p. 30

31 RIS, Interviews 22 and 24

32 HHC, (n 23), p. 13

33 Ibid.

Police attitudes towards right-wing extremism

The prevalence of anti-Roma attitudes in the police is further evidenced by their indifference towards policing right-wing extremism and hate crimes, as well as open endorsement of extremist views.

The police in Hungary have repeatedly sided with extremist right-wing groups over the Roma community. In *Király and Dömötör v. Hungary*,³⁴ the ECtHR found a violation of Article 8 of the European Convention of Human Rights for police failures to prevent violence during a demonstration in 2012. Speakers expressed racist ideology, with 400 to 500 participants marching to a Roma neighbourhood, chanting racist slurs and throwing objects. The police remained passive, did not disperse the demonstration and took no steps to identify which demonstrators had engaged in violence. The ECtHR found the subsequent police investigation was limited and had not constituted a sufficient response; the openly racist demonstration and acts of violence were carried out with virtually no legal consequences. Police passivity towards extreme anti-Roma demonstration has not changed as a result of this ECtHR judgment. In May 2020, the police took no action to dissolve an illegal demonstration against Roma held in Budapest, where speeches were made that included racist slurs.³⁵

One Hungarian lawyer interviewed for this study stated that he even saw a police officer leaving a penitentiary institution wearing plain clothes and a face mask decorated with the symbol of 'Outlaws' Army', a well-known militant far-right group.³⁶ Even if this were an isolated incident and there is no other hard evidence of widespread support for extremist groups, the fact that a police officer clearly felt under no obligation to conceal his affiliation with extremist ideology hints that such views are, at the very least, tolerated in the police.

Roma communities are not only heavily targeted, but even harassed and provoked by the police.

Impact of anti-gypsyism

Discriminatory views and attitudes result in discriminatory police actions. Police officers are clearly affected by societal prejudices against Roma, and it is implausible, especially given evidence of overt racism, that such prejudices do not impact policing. The causal link between racial biases and racialised policing is not merely a plausible, theoretical one. There is overwhelming evidence both from existing research and from interviews with police officers and Roma, that in many cases, there is a very noticeable link.

Racialised policing can be evidenced by policing strategies that target Roma communities, and also by how police treat Roma and single them out for law enforcement action. In extreme cases, Roma have been subject to targeted violence, and ill-treatment by the police.

These practices are humiliating and frightening, and they damage trust between the police and the communities they are supposed protect. They are directly subjecting Roma to unacceptable human rights abuses, and they are disproportionately and unfairly funnelling them into the criminal justice system.

It is concerning that many of these discriminatory practices go unchallenged, either because they have become so normalised, or because processes for complaining about police actions are ineffective and burdensome. There are insufficient checks on police powers that are further fostering a culture of attitudes and practices through impunity.

Policing of Roma communities

Anti-gypsyism is clearly evident in the ways Roma communities are policed. Evidence from the four countries indicates that Roma communities are not only heavily targeted, but even harassed and provoked by the police.

34 European Court of Human Rights ('ECtHR'), *Király and Dömötör v. Hungary*, (App No. 10851/13), January 2017

35 Magyar Narancs, '*Önbíráskodásra buzdítottak a Deák téri gyilkosság miatt szervezett rasszista demonstráción*' (2020)

36 HHC (n 23), p. 13

There have been examples of practices in other countries that designate all Roma as ‘persons of interest’, simply on account of their ethnic background. In Sweden, for example, a police authority in the south of the country was found in 2013 to have a register of Roma in the local area, which even included two and three-year-old children.³⁷ While there is no evidence that such practices exist in the four countries studied for this research, it is clear that similar attitudes are driving police harassment of Roma communities. One Roma activist from Bulgaria, for example, explained that police vehicles are regularly parked near entrances to Roma-majority neighbourhoods, as a deliberate way of intimidating local residents.³⁸

Interviewees in Spain spoke about the clearly disrespectful ways in which Roma communities were policed. These included police vehicles blaring out music by a well-known Roma singer in neighbourhoods with large Roma populations, and police officers removing lapels with personal

identification numbers when carrying out arrests of Roma suspects.³⁹

In Hungary, the police have been criticised for carrying out raid-like inspections of Roma settlements. Roma inhabitants described authorities marching into communities in large groups and entering homes, and that local residents found the experience highly threatening and humiliating.⁴⁰ Data revealed that inspections were carried out exclusively in segregated Roma areas, with the Ombudsman (the Commissioner for Fundamental Rights) carrying out an investigation and finding the authorities violated laws on equal treatment and other procedural rules.⁴¹

Similar practices have been taking place in Romania. In the recent case of *Lingurar v. Romania*⁴² in April 2019 the ECtHR criticised police raids of Roma communities as a form of institutionalised anti-Roma racism.⁴³ This case was particularly concerning due to the



Roma inhabitants described authorities marching into communities in large groups and entering homes, and that local residents found the experience highly threatening and humiliating.

37 Civil Rights Defenders, *Randomly Selected – Racial/Ethnic Profiling in Sweden* (2017)

38 BHC, (n 23), pp. 28

39 RIS, Interviews 22 and 24

40 HHC, (n 23) pp. 21-22

41 Housing Rights Watch, *‘Evictions and harassment of Miskolc residents declared unlawful and anti-constitutional by Ombudsman’*, (8 December 2016)

42 ECtHR, *Lingurar v Romania* (App No. 48474/14), April 2019

43 European Roma Rights Centre, *‘Roma win first-ever judgement of “institutional racism” in Europe’* (2019)

disproportionate nature of the raid, where 85 armed law enforcement officers surprised the unarmed applicants in their home. The authorities had attempted to argue that the criminal nature of the Roma neighbourhood somehow justified this treatment. However, the court ruled the raid was based solely on the applicants' ethnicity, concluding that *"Roma communities are often confronted with institutionalised racism and are prone to excessive use of force by the law-enforcement authorities"*. The court ruled *"the applicants were targeted because they were Roma and because the authorities perceived the Roma community as anti-social and criminal... [T]he decisions to organise the police raid and to use force against the applicants were made on considerations based on the applicants' ethnic origin. The authorities automatically connected ethnicity to criminal behaviour, thus their ethnic profiling of the applicants was discriminatory."*⁴⁴

Police brutality

The impact of anti-gypsyism on policing is most strongly evidenced by the prevalence of police mistreatment of Roma. Police brutality against Roma is well-documented, and there have been numerous incidents of excessive police violence against Roma communities in Bulgaria, Hungary, and Romania.

According to research by the Bulgarian Helsinki Committee in 2016, Roma are twice as likely as ethnic Bulgarians be victimised by police violence, and over two-thirds of juvenile defendants who claimed to have been subject to police brutality that year were Roma.⁴⁵ The UN Committee Against Torture noted these findings in 2018, and expressed concerns that the mistreatment of suspects in police custody could *'be of such severity to amount to torture and*

*may include beating, handcuffing to immovable objects, and the use of truncheons and electrical discharge weapons.'*⁴⁶

Romania has also been subject to international criticism over the physical mistreatment of Roma by the police. In its concluding observations to the fifth periodic report for Romania, the UN Human Rights Committee expressed concern over allegations of police brutality, and requested the state to strengthen measures to prevent excessive violence, and to ensure victims have access to effective remedies.⁴⁷ Following a 2014 visit to Romania, the Commissioner for Human Rights of the Council of Europe recognised that *"Roma are confronted at present mainly with institutionalised racism combined with excessive use of force by law-enforcement authorities"*.⁴⁸

Several interviewees gave first-hand accounts of racially-aggravated police abuse that were consistent with these findings. One Hungarian Roma interviewee recalled that he was beaten, taken away, and handcuffed by the police following an altercation with five other men who had made racist remarks. The police, however, took no action against the five men.⁴⁹ Another interviewee described how police had used racial slurs against his son, ordered him *"shut your mouth!"*, and slapped him when he answered back. In Bulgaria, one lawyer explained that he had witnessed police behaving in an offensive and even violent manner, using racial insults and physically slapping Roma suspects on the neck when forcing them into police cars.⁵⁰

It was also clear that excessive use of force or threats were not confined to the policing of serious or violent crimes. In Hungary, one Roma man recalled that he was arrested at gunpoint in front of his children.⁵¹ He was accused of stealing timber.

44 *Lingurar v Romania* (n 45)

45 BHC, (n 18)

46 United Nations, Committee Against Torture, *Concluding observations on the sixth periodic report of Bulgaria*, (15 December 2017), para. 11(b)

47 United Nations, CCPR, *Concluding observations on the fifth periodic report of Romania*, (11 December 2017), para. 27-28

48 Council of Europe, *Report of the Commissioner for Human Rights of the Council of Europe following his visit to Romania from 31 March to 4 April 2014*, p. 32-33

49 HHC, (n 23). p 22

50 Ibid.

51 Ibid., p. 21

There were also first-hand accounts of violence in police custody, as one Roma interviewee explained:

“they [the police] use spray, they curse us. They use tear gas. The investigators also beat me, and if I touch them I am accused of assault.”⁵²

There have even been cases where the police have carried out violent attacks against entire Roma-majority settlements. In Bulgaria, there have been numerous incidents in recent years where Roma have been subject to indiscriminate police violence. These include an incident in 2018, where the police entered a Roma neighbourhood to look for a potential suspect, and according to witnesses, started beating anyone they found in the streets as soon as they arrived, even the children.⁵³ The local prosecutor’s office was approached to investigate the incident, but it refused to take any action, having only considered information provided by the police.

The methods of violence employed by the police can be extreme, and in some cases, the police have even been reported as threatening lethal force against Roma. In 2019, the police responded to an argument between a Romani and an ethnic-Bulgarian family by rounding up a large number of local Roma residents and beating them at a police station.⁵⁴ According to witnesses, the police beat detainees with fists and bats, who were also subject to racial slurs and threatened with execution by shooting.

In 2015, APADOR-CH investigated a pattern of police beatings in a small Roma community in the central region of Romania.⁵⁵ According to testimonies of local residents, police had been carrying out regular unprovoked attacks on members of the community over several years, and they noted that Roma were exclusively targeted for the beatings, while nearby non-Roma communities were unaffected. All criminal

complaints against the police officers were dismissed, and a student activist who tried to help the Roma community was also assaulted.

The prevalence of police brutality is all the more concerning given that, in many cases, the police are not being held accountable for their actions. This is a particularly serious challenge in Romania, where the successful prosecution rate for complaints about police violence is 0.13%.⁵⁶ The UN Special Rapporteur on extreme poverty and human rights described the complaints process for police violence as ‘*deliberately complex and intimidating*’, and noted that victims of violence were likely to view the process as *burdensome and ineffective, especially given the requirement to obtain a medical report from just a handful of medical centres nationwide to file a complaint*.⁵⁷

Police stops and ethnic profiling

Ethnic profiling of Roma by the police is common practice. There is already ample existing data to support this, and it is further confirmed by this research. Aided by overly broad laws, and insufficient safeguards against discriminatory practices, implicit and explicit biases are leading to the disproportionate use of police stop powers against Roma.

Existing research and data

The use of ethnic profiling in police stop and search practices in Europe has long been reported by various governmental and civil society organisations.

The European Union Agency for Fundamental Rights (‘FRA’) conducted its second EU-wide survey in 2017 investigating experiences of ethnic minorities, including their interactions with the police. Almost half of Roma surveyed for FRA’s study in Hungary, Greece, and Spain reported that they had been stopped by the police in the past five years. Those of Roma origin were also more likely to perceive police

⁵² APADOR, Roma Interviewee No. 1

⁵³ BHC, [Human Rights in Bulgaria in 2018](#) (2018)

⁵⁴ BHC, [Human Rights in Bulgaria in 2019](#) (2019)

⁵⁵ APADOR-CH, [APADOR-CH Report on Police Abuse against Roma Citizens in Racos, Brasov County](#) (2015)

⁵⁶ United Nations General Assembly, Human Rights Council, [Report of the Special Rapporteur on extreme poverty and human rights on his mission to Romania](#), (8 April 2016), para. 28

⁵⁷ *Ibid.*

stops as being the result of ethnic profiling, with an average of 42% of times across all countries (compared to 33% for all surveyed respondents), and as high as 63% of those stopped in Greece and 84% in Portugal. Roma respondents also indicated they experienced disrespectful behaviour by police at the highest rates (25%). The high rate of police stops was similar across age groups, with Roma men and women equally perceiving, at similar rates, that police stops were a result of ethnic profiling.⁵⁸

Studies focusing on stop and search practices have also been conducted on a national level:

- The University of Valencia conducted a national survey in Spain where participants were asked whether they had been stopped by the police at any time in the last two years. The report concluded the groups that suffered the highest rate of police stops on public streets were Roma (60%), followed by North Africans (45%) and Afro-Latin-Americans (39%), compared to a rate of 6% for White Europeans (the lowest rate).⁵⁹
- In 2005, the Hungarian Social Research Institute (TÁRKI) carried out qualitative research, confirming that Roma are subject to discriminatory police ID checks.⁶⁰ Discrimination was especially conspicuous in the practice of stopping pedestrians, with Roma pedestrians disproportionately stopped and, once stopped, more likely to experience disrespectful treatment. The research also concluded that police officers often justified their practices based on their assumption that there is a correlation between ethnicity and criminality.

A report in Spain concluded the groups that suffered the highest rate of police stops on public streets were Roma

- In Bulgaria, a 2005 study found that Roma were disproportionately subject to police stops, and that they are subject to ethnic profiling. It found, in particular, that Roma are far more likely than ethnic Bulgarians to be subject to pedestrian stops, especially in non-Roma majority areas.⁶¹

Research in Hungary confirms ethnic profiling as a flawed and unjustified practice. The 2008 Strategies for Effective Police Stop and Search project in Hungary, carried out in collaboration between the Hungarian Helsinki Committee, National Police Headquarters and Hungarian Police College, collected ethnic data based on the perceptions of police officers. Results showed that 22% of checks on Roma and 21% of checks targeting non-Roma pedestrians were followed by subsequent measures. This strongly refuted claims that there was any reasonable justification for specifically targeting Roma in stop and search practices.⁶²

Regulation of stop and search powers

Researchers in all four countries recognised that police could easily exercise their powers to stop people in discriminatory ways. This was quite often made possible due to inadequate regulation of such powers, and ineffective safeguards against ethnic profiling.

Hungary's laws on ID checks are especially broad, giving police officers powers to carry out ID checks for loosely defined reasons, such as 'crime prevention' or 'crime detection'. Further, under the Hungarian Police Act, the head of a police unit can order "intensive control" over a defined territory, in which anyone can be stopped by the police without reasonable justification to

58 European Union Agency for Fundamental Rights [Second European Union Minorities and Discrimination Survey: Main results](#), (2017)

59 José García Añón, Ben Bradford, José Antonio García Saez, Andrés Gascón Cuenca, and Antoni Llorente Ferreres, [Identificación policial por perfil étnico en España: Informe sobre experiencias y actitudes en relación con las actuaciones policiales. Valencia: Tirant lo Blanch](#) (University of Valencia 2013)

60 Joel Miller, Philip Gounev, András L Pap, Dani Wagman, Anna Balogi, Tihomir Bezlov, Bori Simonovits, Lili Vargha, 'Racism and Police Stops – Adapting US and British Debates to Continental Europe', (2008) *European Journal of Criminology* 161; and András L Pap 'Police Ethnic Profiling in Hungary – Lessons from an International Research' (2007) *Regio* 117

61 Center for Study of Democracy, [Police Stops and Ethnic Profiling in Bulgaria](#), (2006), p. 8

62 András Kádár, Júlia Körner, Zsófia Moldova, and Balázs Tóth [Final Report on the Strategies for Effective Police Stop and Search](#) (2007), p. 42

have their IDs checked.⁶³ Intensive control was intended to be an exceptional measure, applied only to specific areas for a limited time. However, there have been instances of this measure being in force in certain areas for two and a half years,⁶⁴ which is clearly disproportionate and excessive.

In Spain, the law requires police officers to exercise their powers to stop and identify individuals in a non-discriminatory way.⁶⁵ However, because there is no legal requirement to stop individuals only where there are reasonable grounds to believe that they have been, or about to be involved in a crime, there is a real risk that subjective biases will be a significant factor in determining who gets stopped.⁶⁶

Police perceptions of Stop and Search

There was some open acknowledgement and admission of the deliberate and systemic targeting of Roma through stop and search amongst some police officers, but not all recognised ethnic profiling as an unfair, unlawful practice. There were several police officers that seemed to deny that anti-Roma prejudices had any impact on their actions.

There were some police officers in Romania who admitted their belief in, and reliance upon negative stereotypes to justify their policing practices. One police officer estimated that 80% of those deprived of liberty within his police station were Roma and, based on these experiences, he stated that it felt 'natural' for him to be suspicious of Roma.⁶⁷ He described how perceptions of physical appearance and ethnicity was an important factor in guiding their stop and search decisions:

“Yes, it is possible for sure that some police officers decide to stop a person because he/she appears to be a Roma regardless of his/her behaviour. [F]or these situations [stopping, intercepting and identifying procedures] it is a certainty that the Roma are more likely to be stopped by the police... Speaking about the administrative measures of leading a person to the police station, it can surely be done based on his colour or ethnicity.”⁶⁸

Several Romanian police officers, and all of the Bulgarian police officers interviewed for this study denied there was any prejudice against the Roma when carrying out stop and search activities.⁶⁹

In Spain, however, there was more willingness to recognise that stop and search practices were influenced by racial bias. All police officers stated they had no difficulty in identifying a person as Roma using general stereotypes regarding physical appearance.⁷⁰ Each interviewee also admitted to identifying individuals because they looked Roma, and to basing decisions on unconscious bias (a term which two interviewees specifically referred to) or existing prejudices based on their experiences and history of policing the Roma community.⁷¹

Experiences of Roma

Testimonies from Roma interviewees strongly confirmed the prevalence of discriminatory stop and search practices, with several Roma interviewees stating that they are stopped regularly by the police. Despite this, it was evident that there was a reluctance or unwillingness to challenge such practices because of a lack of confidence in complaints processes, and because for many, discriminatory policing had become far too common.

63 Ibid., pp 59-60

64 HHC, [A Helsinki Bizottság Kétharmados Győzelmet Aratott](#). (2018)

65 Organic Law 4/2015 of 30 March, Article 16.1

66 RIS, (n 23), p. 21

67 APADOR, Interview with police officer No. 2

68 Ibid.

69 BHC (n 23), p. 27, APADOR (n 23), p. 30

70 RIS, (n 23), p. 27

71 Ibid., p. 28

The majority of Spanish Roma interviewed for this research confirmed that they had been stopped by the police at some point in their lives, with some having been stopped several times in one day. There was a strongly held belief that stops were strongly motivated by racial bias, and that interviewees' physical appearances and their dress were factors that influenced police decisions to stop them.⁷² Interviewees explained that police stops were interfering with their daily lives, for example, when going to work, or taking children to school. Police officers usually do not provide specific, or even valid reasons for stopping them, explaining (for example) that they were stopped because of 'routine checks' or simply because they 'look suspicious'.⁷³ One interviewee stated he no longer asks for the reason for being stopped by police because the practice has become so normalised.

“for me it's normal, because they're always stopping you”⁷⁴

One Spanish Roma interviewee described how when they decided to report a discriminatory interaction with the police, they faced numerous obstacles and that Roma are often pressured by the police to not report issues or withdraw their complaints. The interviewee concluded that complaints would be of no use if they are made to the same institution (the police) which committed the discriminatory act and perpetuates anti-gypsyism.⁷⁵

In Hungary, one Roma student living in Budapest explained that he had been stopped by the police at least 50 times in his life. It was clear from his experiences that the police usually had no reasonable justification for stopping and questioning him:

“I regularly experience police officers not identifying themselves. They do not tell me their official number or which police station they are affiliated with. They do not inform me about the real reasons of their measures, they do not tell what is the purpose of the ID check, and afterwards they do not inform me about the right to complain, and where and within what time I am entitled to file a complaint.”⁷⁶

The same interviewee complained that on one occasion he was asked by a police officer to produce his ID because of his 'suspicious way of looking at them', and that he has been threatened with arrest when questioning the reasons for the stop.⁷⁷

There were also accounts from Hungarian interviewees that clearly indicated that ID checks were racially-motivated. One Roma human rights defender said that his wife, who has a lighter skin tone, had never been stopped by the police when she is alone, but that she had been subject to ID checks on numerous occasions when she was with him, because she could be identified as Roma by association.⁷⁸

The majority of interviewees expressed resignation when questioned about the possibility of reporting discrimination. Many were convinced that they would not receive assistance or redress if a complaint was raised.⁷⁹ A Roma rights advocate from Hungary stated that other discouraging factors included the length of the complaint and judicial procedures, and the general lack of trust in authorities.⁸⁰ One practising lawyer shared his view that Roma clients tend not to complain about ethnic profiling because they have become accustomed to harassment and discrimination.⁸¹

72 Ibid., p. 27

73 Ibid., p. 28

74 RIS, Interview 9

75 RIS, Interview 22

76 HHC, (n 23), p. 21

77 Ibid.

78 By contrast, interviewees from Bulgaria were less certain that police stops were motivated by anti-Roma biases. Less than a half thought that these practices were discriminatory, but still reported other police practices as being racially biased.

79 HHC (n 23), pp. 23-24

80 Ibid., p. 20

81 Ibid.

It was frequently reported by interviewees in Spain that the most common form of harassment and discrimination did not come directly from police officers, but from private security guards at retail stores. Roma women, in particular, are regularly searched, and sometimes even required to lift their blouses, in full view of the public, or else the police are called.⁸²

Petty crimes and fining practices

Discriminatory practices are evident in the policing of petty crimes, especially in Hungary, where Roma have been deliberately targeted and over-policed for minor, harmless offences.

These practices are drawing Roma disproportionately into the criminal justice system, and exposing them to the risk of imprisonment, sometimes for no reason other than poverty.

There have been numerous high-profile cases of disproportionate and discriminatory fining of Roma for petty crimes. In July 2011, the Hungarian Equal Treatment Authority Office found in its investigation 150 petty offence cases in Rimóc (north-eastern Hungary) that Roma were being targeted with excessive fines for minor offences. Out of the 36 fines issued by the local police for failure to carry compulsory bicycle accessories, 35 were issued against Roma. The fines, ranging from HUF 3,000 (EUR 10) to HUF 20,000 (EUR 66), were clearly excessive for people on a low income. The case ended in a friendly settlement, with the local Police Headquarters acknowledging that their practices disproportionately affected the Roma community.⁸³

Interviews conducted in Hungary found numerous other cases of disproportionate fines being issued against Roma for petty crimes - some clearly too minor to warrant any law enforcement action:

35

out of 36 fines for failing to carry compulsory bicycle accessories were issued against Roma (Rimóc, north-eastern Hungary)

- An elderly Roma interviewee from Miskolc, north-eastern Hungary, was fined HUF 50,000 (EUR 140) for walking with his bicycle without a rear reflector. He was imprisoned because he was unable to pay the fine.⁸⁴
- A Roma man from Miskolc was caught by a police officer for smoking at a tram station. The police officer asked the man if he should give him a fine of HUF 20 (5 Euro Cents) or HUF 50,000 (EUR 140), and ultimately gave him the HUF 50,000 fine. The man was unable to pay the fine and was imprisoned.⁸⁵
- One Roma interviewee from Vécs, northern Hungary, described being fined HUF 10,000 (EUR 27) for crossing the road away from a pedestrian crossing. The interviewee asked the police for a warning instead of a fine, due to his low income and four dependent children, but the officer responded with racial slurs. While this took place, a non-Roma couple crossed the road at the same spot without being stopped.⁸⁶
- A Roma mother was stopped by the police whilst driving home with a large quantity of second-hand goods that had been given to her. She was fined HUF 30,000 (EUR 82) under the 2012 Violation of Waste Management Regulations.⁸⁷

In many of these cases, fines were issued for crimes 'committed' as a direct result of financial hardship. In Hungary, as in many other countries in Europe, Roma are much more likely to be at risk of poverty,⁸⁸ and as such, far more likely to find themselves in breach of laws which criminalise poverty. It is extremely concerning that in some cases the failure to pay the fines has resulted in a prison sentence, effectively imprisoning individuals for being poor.

82 RIS, (n 23), pp. 21-22

83 HHC, [Practice of racial profiling against the Roma community is acknowledged by the police](#) (2012)

84 HHC, (n 23), p. 23

85 Ibid.

86 Ibid., p. 21

87 Ibid., p. 12; Act C (2012), Hungarian Penal Code, Article 248.

88 FRA, [Second European Union Minorities and Discrimination Survey – Roma – Selected Findings](#) (2016)

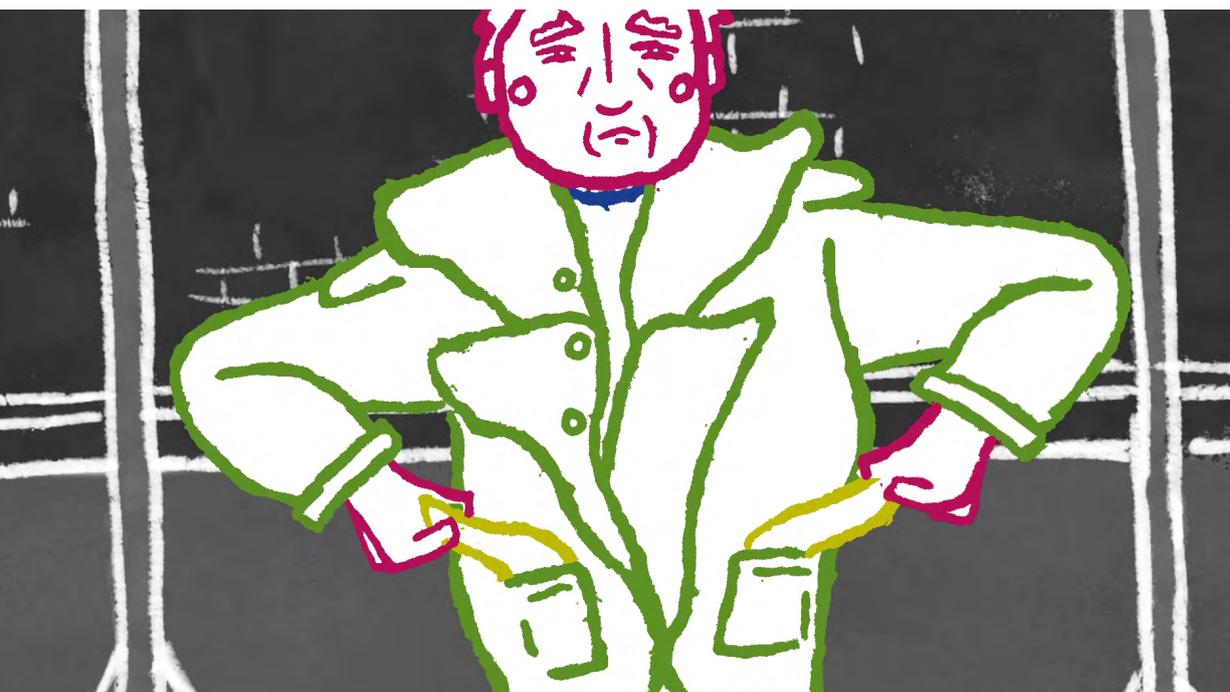
These crimes are, by their very nature, discriminatory because they criminalise poverty. Given that they cause no noticeable harm to society, they are likely to be enforced only to the extent that police officers actively choose to enforce them. Some of the cases listed above show clear evidence of selective enforcement influenced by anti-Roma bias, as made clear by the use of racial slurs. This was confirmed by a Roma police officer, who told the Hungarian Helsinki Committee that police officers based in smaller communities tended to impose fines for minor offences as a way of demonstrating their competence and ability to maintain public order to their superiors. In poorer communities with higher concentrations of Roma inhabitants, police are reported to use petty offence fining as a method of social control.⁸⁹

Impact on Roma community relations with the police

Anti-gypsyism has a major impact on the perception that Roma have of the police and contributes to a wider distrust of authorities. Given the prevalence of physical and verbal abuse by the police and the disproportionate

targeting of Roma for law enforcement action, members of Roma communities have every reason to distrust and be fearful of the police. This distrust inevitably leads to the worsening of tensions between the community and the police, which further fuels prejudices.

Poor relations between the police also make Roma more susceptible to crime. Due to the prevalence of anti-gypsyism and numerous high-profile cases of police discrimination, Roma are reluctant to report crimes or rely on the police. A representative of a Hungarian human rights organisation described how local Roma inhabitants tend not to turn to the police, fearing that the police would neglect to act on reports and would fail to protect the community from revenge-attacks. Roma mistrust in the police is not unjustified. The interviewee also described incidents where the police failed to act on reports unless the organisation threatened to report their negligence to the media. He was convinced that the police would act differently if the incidents involved non-Roma families. In another example, the interviewee described the police failing to respond or act in an incident of physical assault and sexual abuse against a Roma minor.



An elderly Roma interviewee from Miskolc, north-eastern Hungary, was fined HUF 50,000 (EUR 140) for walking with his bicycle without a rear reflector. He was imprisoned because he was unable to pay the fine.

⁸⁹ Hungarian Working Group on Petty Offences

Judges and prosecutors

There is growing consensus across Europe that various minority ethnic groups, including Roma, are disproportionately targeted by the police. This is potently evidenced by the EU Commission's Anti-Racism Action Plan, which has urged Member States to "step efforts to prevent discriminatory attitudes among law enforcement authorities."⁹⁰

By comparison, there is little recognition that suspects and defendants continue to face discriminatory attitudes and practices once they enter the legal system. Criminal justice does not always begin and end with interactions with the police. For most, this is just the first step of a much lengthier, more complicated process where judges and prosecutors make decisions about whether a person is detained, the offences they are charged with, conviction/acquittal and sentencing.

Judges and prosecutors are no doubt highly-trained professionals, who fully understand the importance of impartial, evidence-based decision-making. However, it cannot be ignored that as human beings, they too are vulnerable to the impact of societal prejudices and biases. To assume that professional training totally eliminates the risk of bias is naïve and misguided, and it ignores the potential for unconscious bias to impact on decision-making processes.

Our research shows that despite their high levels of training and education, judges and prosecutors are far from immune to anti-gypsyist biases. In some countries, it is undeniable that anti-gypsyist attitudes exist - they have been openly expressed in judgments and statements - but interviews with judges and prosecutors hint that many more are unconsciously prone to the harmful stereotyping of Roma.

The impact of such biases can be extremely serious, and there were widespread perceptions that anti-gypsyism, whether implicit or explicit, often influenced how key criminal justice decisions, including on pre-trial detention, sentencing, or even the verdict.

Anti-gypsyism by judges and prosecutors

There is very clear evidence from published judicial decisions and public statements that some judges and prosecutors are openly, and consciously biased against Roma, and that their prejudices have a direct impact on how they make their decisions. This section of the report cites published decisions from courts in Europe which include racial slurs.

Openly disparaging remarks have appeared in judgments, especially in Hungary and Bulgaria. In a 2013 decision, a judge in Hungary made particularly harmful, racially-stereotyped remarks when examining the lawfulness of a Hungarian militant organisation involved in intimidating Roma communities.⁹¹ She argued Roma should not be "*primarily understood on a racial basis*", and stated that they possess "*a morality that disrespects private property and norms of coexistence*,"⁹² not only denying the very existence of Roma as an ethnic group, but also suggesting that they are predisposed to commit theft and to be social outcasts. Although the National Judicial Ethics Council declared these statements to be "unethical", the judge kept her post. This decision was criticised for reinforcing the view that judges can make even the most hateful anti-gypsyist remarks with impunity.⁹³

There have also been numerous cases of explicitly anti-gypsyist statements made by

⁹⁰ European Commission (n 23), p. 13

⁹¹ Judgment No. 2.P.20.045/2013/47 (25 March 2013)

⁹² Bernard Rorke, *Monitoring report on Hungary pours cold water on MEP Jaroka's extravagant claims about Roma inclusion* (2018), European Roma Rights Centre.

⁹³ European Commission, *Civil society monitoring report on implementation of the national Roma integration strategies in Hungary* (March 2018), pp. 35-36

judges in Bulgaria, which have made it clear that openly racist and discriminatory attitudes exist in all levels of the judiciary, and not just in the lower courts. In a 2012 decision of the Sofia appellate court, a judge doubted the credibility of Roma witnesses, solely on account of their ethnicity and their imputed, stereotyped characteristics, stating:

“...[the] Sofia Appellate Court deems it necessary to take into consideration the fact of a brawl, followed by an altercation, which occurred in the gypsy quarters of ... with participants exclusively members of the said ethnic group – with all its characteristics, well-known peculiarities (specific social and living conditions, family and interpersonal relations), in their majority being especially problematic in terms of adaptability to the commonly-adopted society norms for interaction and morality, of clearly demonstrated reluctance to adapt – instead demonstrating a preference towards a parasitic, often criminal, way of life, exclusively following and abiding by their own interior rules, customs and traditions, of their closed (“capsulated”) community, thus making them prone to short temper, defiance and aggression in their interactions, uncritical and hence inclined to use lies, deception, perfidy and exaggeration of perceptions. They are callous and always ready to initiate scandals, even on minor pretexts, using mob law as the only instrument for solving conflicts or disagreements that have arisen.”⁹⁴

This judgment was rightly overturned by the Court of Cassation, which criticised these remarks as amounting to gross violations of the Constitution as well as the basic principle of equality in criminal proceedings.⁹⁵ However, the fact that a judge at the Appellate Court clearly felt able to not only make such openly prejudiced remarks, but to also give legal effect to hateful attitudes could be a worrying indication of the

degree of normalisation and of the prevalence anti-gypsyism in the senior judiciary.

Prosecutors in Bulgaria have also been publicly recorded making discriminatory remarks against Roma. In 2019, the then deputy Prosecutor General of Bulgaria was recorded on national television complaining that Roma witnesses had withdrawn their statements in a high-profile case. He stated that he was unsurprised by their actions because “*this is what all defendants do, this is what gypsies do*”.⁹⁶ Complaints made against the prosecutor for these discriminatory remarks were rejected by Commission for Protection against Discrimination,⁹⁷ and this decision was subsequently upheld by the first instance court, because the use of the word ‘gypsy’ did not amount to unequal treatment.⁹⁸

It is deeply worrying that despite this strong evidence of anti-gypsyist attitudes amongst the judiciary and prosecutors in Bulgaria, recently proposed laws could make it much more difficult to make complaints about discrimination. At the beginning of 2020, the Bulgarian National Assembly adopted legislative amendments which severely limit the possibility of lodging complaints against judges and prosecutors. These amendments were tabled with the specific aim of preventing discrimination lawsuits against magistrates.⁹⁹

In Romania, prosecutors and judges have been criticised by the ECtHR for racially prejudiced decisions and discriminatory remarks. In *Lingurar v. Romania*,¹⁰⁰ Romanian prosecutors were found to have taken part in ethnic profiling, associating an entire Roma community with criminal behaviour as a basis for approving police raids. This case was significant for being the first time the ECtHR established the existence of institutionalised racism, with prosecutors failing to investigate whether the use of police force was racially-motivated. In

94 Sofia Appellate Court, Decision No. 369 from 20.22.2012 on criminal case No. 965/2012

95 Supreme Court of Cassation, Decision 149 from 10.04.2013 on criminal case No. 373/2013.

96 Bulgarian National Television, [Иван Гешев: Не се страхуваме и знаем истината](#) (17 April 2019)

97 Commission for Protection against Discrimination, No. 401, 25th June, 2019, administrative case No. 113/2019.

98 Administrative Court-City of Sofia, Decision No. 1195, 11th October, 2019 on administrative case No. 976/2019.

99 Judicial System Act (2007), Art. 214

100 *Lingurar v Romania* (n 45)

Cobzaru v. Romania,¹⁰¹ which concerned the failure of authorities to investigate racial motives behind the applicant's ill-treatment by police, the court noted the prosecutors' discriminatory remarks on the applicant's Roma origin. The court concluded this "disclosed a general discriminatory attitude" from prosecutors. The ECtHR also noted that discriminatory sentencing remarks had been made by a judge with regard to a Roma community in the case of *Moldovan v. Romania* (No. 2).¹⁰²

Perceptions of judges and prosecutors

According to interviews conducted with judges and prosecutors in all four countries, there were varying degrees of acknowledgment of anti-gypsyist attitudes within their professions, and varying levels of acceptance that these attitudes could result in discriminatory criminal justice decisions and outcomes for Roma.

Overall, judges in Romania and Bulgaria and prosecutors in Romania and Spain tended to dismiss the suggestion that there might be

discriminatory attitudes amongst their peers and/or that societal biases against Roma had any impact on how they make their decisions.¹⁰³ Although they did not seem to question that Roma are overrepresented in the criminal justice systems of their respective countries, they refused to acknowledge that racism could be a possible reason for this phenomenon.

When questioned about the potential impact of the media's portrayal of Roma and its role in perpetuating negative stereotypes, such as delinquency, Spanish prosecutors maintained that they themselves act with professionalism and remain unaffected by any unconscious biases these portrayals may trigger.¹⁰⁴ Prosecutors in Romania were also adamant that their actions were uninfluenced by societal biases and that their decisions were instead motivated by evidence. Similar views were also held by judges (although one interviewee accepted that there was a risk of unconscious bias affecting certain types of decisions).¹⁰⁵



While judges and prosecutors mostly denied the possibility that they made discriminatory decisions, they acknowledged that police actions could be motivated by societal biases.

101 ECtHR, *Cobzaru v Romania*, App. No. 48254/99, (26 July 2007)

102 ECtHR, *Moldovan and Ors v. Romania* (No. 2), App. No. 41138/98, (12 July 2005)

103 APADOR (n 23) p.47, BHC (n 23) p. 45, RIS (n 23), pp. 48-49, 54

104 RIS (n 23), p. 51

105 APADOR, Interview with Judge No. 1

However, it was noteworthy that while judges and prosecutors mostly denied the possibility that they made discriminatory decisions, they acknowledged that police actions could be motivated by societal biases. Judges in Bulgaria also recognised discriminatory policing as a potential cause of Roma overrepresentation in the criminal justice system, but there was little to no recognition that the judiciary's attitudes towards Roma were part of the same problem. By contrast, some judges in Spain were more accepting of the idea that societal prejudices could unconsciously impact certain types of judicial decisions.¹⁰⁶

The denial, or the failure to acknowledge the potential impact of societal biases on prosecutorial and judicial decision-making is difficult (if not impossible) to reconcile with the very strong evidence of racially-motivated decision-making outlined above (for example, in court decisions and public statements). This is also inconsistent with research related to 'priming', the phenomena that exposure to stereotyped groups or symbolic representations of those groups activates a wide range of stereotypical beliefs or biases. In studies in the United States, for example, priming has been found to activate stereotypes of the 'dangerous black man', which consequently causes unconscious biases in relation to prosecutorial requests for pre-trial detention.¹⁰⁷ It has also been found that judges are susceptible to implicit biases and that these can influence their judgement.¹⁰⁸

Judges are susceptible to **implicit biases** and that can influence their judgement.

Some interviewees attributed disparate criminal justice outcomes to socio-economic factors such as poverty and low education. For example, the general conclusion from the interviews conducted with Romanian judges and prosecutors (as well as defence lawyers) was that they believed that a lack of education and employment opportunities make Roma more prone to illegal acts, with some judges describing their criminal behaviour as a lifestyle choice learnt by growing up in a socially disadvantaged environment. These answers given by judges and prosecutors in Bulgaria and Romania suggested they are prone to stereotyping Roma because of their marginalised status, which somehow justified differential treatment compared to other ethnic groups.¹⁰⁹ Some judges in Romania not only seemed to typify Roma as more inclined to commit crimes due to a lack of education or employment, but also as ignorant and unable to 'understand' the justice system.¹¹⁰ One judge even suggested that Roma youth should be 'helped' through a mandatory military programme to assist with social integration after they have been released from prison.¹¹¹ Similar views were expressed by some judges in Bulgaria, who appeared to categorise Roma as being ignorant of crime and justice, and of being culturally disassociated from the justice system:

"Roma often do not understand the court proceedings or the court decisions. They sometimes cannot understand the problem with their crime or offence, because they are used to dealing with their relations within the community in this way, and not according to the law."¹¹²

106 RIS (n 23), p. 56

107 Robert J Smith and Justin D Levinson, 'The implicit of Implicit bias on the exercise of prosecutorial Discretion', 35 Seattle U. L. Rev. 795 (2012)

108 Jeffrey Rachlinski and Sheri Lynn Johnson, 'Does Unconscious Racial Bias Affect Trial Judges?' 84 Notre Dame L. Rev. 1195 (2009)

109 APADOR, (n 23) pp. 47-48, BHC (n 23), p. 45

110 APADOR, Interviews with Judges No. 2 and No. 3

111 APADOR, Interview with Judge No. 3

112 BHC (n 23), p. 49

There was also some suggestion that some Roma prefer to use intra-community dispute resolution systems, which they view as a friendlier alternative, and that this could make the community more hostile to formal criminal justice procedures.¹¹³

Most judges and prosecutors did not report any open anti-gypsyism amongst their colleagues, with a few notable exceptions. One prosecutor in Bulgaria, for example, mentioned that he was aware of prejudicial attitudes amongst his colleagues.¹¹⁴

In Hungary, one judge described his experiences of outright anti-gypsyism amongst his colleagues. He recalled that one colleague of his, who was of Roma origin, was the target of frequent gossip amongst his fellow judges regarding his ethnicity. He also heard judges using racial slurs against Roma outside of the courtroom.¹¹⁵ This interviewee only agreed to answer questions on the condition of anonymity, suggesting a wider cultural reluctance to openly discuss the problem of anti-gypsyism.

Although unable to obtain perspectives of prosecutors, researchers in Hungary were able to find evidence of discriminatory attitudes amongst prosecutors through accounts given by defence lawyers. One practicing defence lawyer heard a prosecutor making insulting remarks about his client's pregnant wife, questioning their motives for raising a family on the basis that in his opinion, they were likely to end up in prison.¹¹⁶

In a separate case, a prosecutor humiliated a Roma defendant, 'advising' him not to have any more children.¹¹⁷ The interviewee explained that mocking of Roma defendants even takes place inside the courtroom, describing an example where horses and chariots were referenced as valuable property of a Roma defendant. The lawyer explained that when he challenged wider

Roma stereotypes, he was labelled as "taking the side of Roma" by prosecutors, implying that it was somehow unacceptable to do so.¹¹⁸

Impact of anti-gypsyism

The interviews conducted for this study indicate that Roma defendants face worse outcomes on account of discriminatory decision-making at various points in criminal justice proceedings. Although discriminatory outcomes are not driven exclusively by societal biases and prejudicial attitudes, our research demonstrates Roma defendants are often presumed to be guilty during criminal proceedings meaning they are and more likely to face custodial sentences or pre-trial detention.

Presumption of guilt

There were perceptions among defence lawyers and Roma interviewees across different countries that Roma defendants are more likely to be convicted, and that in many cases, they are not being presumed innocent.

Lawyers in Spain agreed that judges and prosecutors tended to associate Roma with guilt. Even judges appeared to partially share this view, with four out of the six judges interviewed stating they believed this attitude is most clearly reflected in the police and prosecutors.

Defence lawyers in Romania and Bulgaria also agreed that Roma tend not to benefit from the presumption of innocence in criminal proceedings. They stated:

"I did not hear anybody doubt that a Roma person was not guilty... If you have a Roma client the chances of winning are lower, and people are surprised that you make an effort to defend him. The judge doesn't even look at the file."¹¹⁹

113 Ibid.

114 Ibid., p. 36

115 HHC (n 23), p. 9

116 Ibid., p. 25

117 Ibid.

118 Ibid., p. 30

119 APADOR, Interview with Defence Lawyer No. 4

“let’s say that it is very hard to prove that [a] Roma [defendant] is not guilty.”¹²⁰

This view seemed to be shared by several Roma interviewees, who shared their experience of feeling as though there was little point in taking part in the criminal justice process, because there was so little hope of getting acquitted:

“I felt like I am better off with keeping silent since my words were not heard by anyone anyway. I felt that I am not considered as a person. They already convicted me in the very beginning, they just focused on the fact that I had been convicted before, so it did not matter what I said.”¹²¹

There was recognition amongst some Roma interviewees that societal discrimination impacts not just policing practices but prejudices the entire criminal justice system against Roma, biasing outcomes at every stage. One interviewee stated:

“I suspect that those working in the justice system have prejudices just like any Romanian citizen. Prejudice means that they look at Roma with ethnic superiority, that Roma are guilty from the start”¹²²

These are not unsubstantiated opinions. There have been several instances in Bulgaria where judges have explicitly assumed Roma to be inherently delinquent, or ‘inclined’ to commit crimes on account of their ethnic and cultural origins. In one criminal case against a Roma man accused of assaulting a minor, a judge stated in his decision that the crime was motivated by:

“a culturally and ethnically defined attitude towards children, women and sexual urges.”¹²³

The presumption of Roma guilt can be fuelled by the narrative that Roma are associated with criminality and that they are a danger to society. Spanish lawyers and judges described widespread stereotypes which define Roma as dangerous persons and career criminals with extensive convictions, with little hope of being reinserted into normal society. They explained that these stereotypes are extended to all Roma who come into contact with the criminal justice system, regardless of the severity of their offence.¹²⁴

This presumption that Roma are inherently ‘criminal’ might taint verdicts of criminal cases, but it could also influence how decision-makers assess their likelihood of reoffending, and the potential for rehabilitation, which are central to pre-trial detention and sentencing decisions.

Pre-trial detention

Pre-trial detention removes the right to liberty from a legally innocent person who has not yet been convicted of a crime. It is a measure of last resort that should only be ordered to prevent the serious risk of harm to others, to protect criminal investigations from unlawful interference, or when absolutely necessary to ensure the suspect’s attendance in court.¹²⁵ Although pre-trial detention amounts to a serious interference with individuals’ rights, research in the EU has shown that in practice, pre-trial decision-making processes are all too often made without due consideration for individual circumstances.¹²⁶

There is unequal treatment of non-nationals and ethnic minorities in a number of EU jurisdictions.¹²⁷ For example, in Italy, national data shows that foreign nationals comprise 40% of pre-trial detainees, despite making up only 8.9% of the total population, and similar patterns are seen in Greece, where more than half of the prison population consists of foreign nationals.

120 BHC, (n 23), p. 37

121 HHC, (n 23), p. 25

122 APADOR, Roma Interviewee No. 3

123 Dobritch Regional court, Verdict No. 18 in criminal case No.380/213.

124 RIS, (n 23), pp. 48-49

125 Fair Trials, [A Measure of Last Resort? The practice of pre-trial detention decision-making in the EU](#) (2016)

126 Ibid.

127 Ibid.

There was significant consensus amongst interviewees across all four countries that Roma defendants are more likely to face pre-trial detention. A common view was that the disproportionate imposition of pre-trial detention amounted to indirect discrimination, rather than conscious or direct discrimination. Many interviewees, including judges, prosecutors, and defence lawyers stated that higher rates of pre-trial detention rates had little to do with a Roma defendant's ethnicity, but were instead due to their socio-economic circumstances, such as their access to housing and employment. In particular, Romanian judges emphasised that pre-trial detention is only imposed after following clearly stipulated legal criteria and cannot be ordered without evidence or based on a person's ethnicity.¹²⁸

The primary reasons given for discriminatory outcomes of pre-trial detention decisions were that i) Roma defendants are viewed as more likely to reoffend, because they are more likely to have previous convictions; ii) many Roma lack a permanent address to which they can be released; and iii) Roma are more likely to lack stable employment (thus are more likely to abscond).

There are undoubtedly serious socio-economic challenges that lead to disparate outcomes regarding pre-trial detention. However, given the undoubtable existence of discriminatory views of Roma amongst judges and prosecutors, anti-Roma biases must also play a significant role, and racial prejudices are likely to influence the way judges and prosecutors consider objective evidence when assessing the risks that justify pre-trial detention. It also cannot be ignored that many of these socio-economic challenges are themselves symptoms of widespread anti-gypsyism and societal and economic marginalisation. It is especially notable that the existence of previous convictions was identified

as a primary reason for harsher pre-trial measures for Roma. The very fact that Roma are more likely to have previous convictions is a likely outcome of criminal justice system that is biased against them.

Anti-Roma bias in pre-trial detention decision-making can be overt. In a 2017 Appellate Court decision in Bulgaria, a judge ordered the pre-trial detention of a Roma defendant on the basis that he was likely to reoffend because:

"[he] originates from a specific ethnic background, which tolerates physical aggression"¹²⁹

*This is a clear example of a broader pattern of Roma being denied liberty on account of stereotypes that they are more 'risky' or 'dangerous'. For example, one lawyer in Romania explained that prosecutors tended to justify their request for the pre-trial detention of Roma defendants on the basis that they are a danger to public order. He argued that other non-Roma clients suspected of more serious offences would often not be arrested.*¹³⁰

In Spain, one judge theorised that 'defensive justice' could influence how judges make pre-trial detention decisions. In his view, the prevalence of anti-gypsyism in society, as well as widespread perceptions that Roma are a 'danger' to society, could pressure judges into detaining Roma defendants. Judges are likely to be mindful of a potential public backlash if a defendant on release re-offends, so they would impose more stringent measures against Roma defendants to protect themselves from public criticism.¹³¹

There was also some suggestion that stereotypes of Roma influenced how judges assess flight-risk.¹³² According to one Spanish judge, the existence of family ties was not generally viewed as a factor that reduces the flight-risk for Roma

128 APADOR, (n 23), p. 47

129 Decision No. 506/2017, the Plovdiv Appellate Court

130 APADOR, Interview with Defence Lawyer No. 4

131 RIS (n 23), p. 56

132 Ibid.

defendants because it was often assumed that Roma families lack stable housing and geographic ties.¹³³

Sentencing

There were similar observations regarding the fairness of sentencing decisions. There were perceptions that Roma were likely to be subject to harsher sentences and imprisonment due to anti-Roma biases among judges.

There was agreement amongst prosecutors from Romania and Spain that anti-Roma biases are more likely to be evidenced in aspects of the criminal justice process where judges exercise a wider margin of discretion, including during sentencing. Judges enjoy a significant degree of discretion when *inter alia* assessing the risk of reoffending, and in the application of aggravating and mitigating factors to determine the appropriate sentence.

Studies in other countries suggest that unconscious biases do contribute to harsher

sentences, particularly where a defendant's physical characteristics enables them to be assumed to be a member of a certain race or ethnicity. In 2017, the Lammy Review found a strong effect of biases on drug offence sentences, with prison sentences being 240% higher for Black, Asian and Minority Ethnic (BAME) offenders in England and Wales.¹³⁴ In 2020, the Sentencing Council in England and Wales found the likelihood of Black offenders receiving an immediate custodial sentence was 40% higher than for white offenders at the English and Welsh Crown Courts, with Asian offenders receiving custodial sentences 50% more often than white offenders for drug offences.¹³⁵

In most EU countries, criminal justice statistics are broken down by nationality, making it difficult to monitor the extent of racial discrimination in sentencing decisions.¹³⁶ Despite these barriers, a scoping study produced by *Justicia* identified that experts believe institutional biases to be present in Cyprus, Bulgaria, Estonia, Greece, Italy, Romania, Slovenia, Spain and Sweden,



There were perceptions that Roma were likely to be subject to harsher sentences and imprisonment due to anti-Roma biases among judges.

133 RIS, Interview 18

134 [The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System](#) (2017), p. 33.

135 Sentencing Council, '[Investigating the association between an offender's sex and ethnicity and the sentence imposed at the Crown Court for drug offences](#)' (2020), p. 3.

136 Zaza Namoradze and Irmina Pachó '[When It Comes to Race, European Justice Is Not Blind](#)' (2018) Open Society Justice Initiative.

leading to ethnic minorities being more likely to be detained and to receive harsher sentences.¹³⁷ These discriminatory outcomes are explained, in part, by the discretion which judges have when interpreting and applying the range of aggravating or mitigating factors to offences, which unconscious biases may influence.¹³⁸

There was strong belief amongst Roma interviewees that they were subject to discriminatory sentencing decisions. One Hungarian Roma interviewee asserted he was sentenced to two years and four months' imprisonment for theft (of the value of EUR 600) but his acquaintance, who is non-Roma and white, received a similar sentence for committing a similar theft, despite already being convicted with four suspended custodial sentences, and having served a prison sentence for theft.¹³⁹

A Hungarian defence lawyer described a case in which a thirteen-year-old Roma boy, who committed a robbery alongside three older juveniles, was singled out by prosecutors who sought a prison sentence against him. The Roma boy received probation, while the adult perpetrators received suspended sentences, but the prosecutor filed an appeal to get a prison sentence for all defendants in the case.¹⁴⁰ This was despite the fact that the Roma defendant was a child, had no criminal record, and was otherwise a model student in school. The lawyer expressed concern that if sent to a correctional institution, the defendant would be exposed to adult offenders, and that it would severely deter his development and access to socio-economic opportunities.

Defence lawyers from Spain agreed that Roma are sentenced more harshly, particularly for offences stereotypically associated with Roma, such as drug possession, theft and robbery.¹⁴¹

As considered above, the prevalence of anti-gypsyism in society and stereotypes that Roma are delinquents or a danger to society can create additional pressures upon judges to place Roma suspects in custody. These stereotypes often tip the scale against granting Roma defendants suspended sentences or alternative non-custodial sentences because doubts are cast over whether they can be 'trusted' not to reoffend. One Romanian judge described how these stereotypes might carry significant weight in his decisions to deny non-custodial alternatives:

“in the case of the Roma, I think that criminal records are a criterion, if the lack of a job is added, it means that he will commit such acts again... A non-Roma, if he promises to get a job, I would be tempted to favour him. If a person without education commits an offence - what is the chance of rehabilitation?”¹⁴²

This is open admission from one judge that a Roma defendant who lacks formal education or employment opportunities is seen as a greater risk compared to a non-Roma defendant in similar socio-economic circumstances.

Furthermore, a legal representative from the Hungarian Legal Defence Bureau for National and Ethnic Minorities described the frequency of cases where judges imposed suspended prison sentences, as opposed to financial penalties, because of their assumption that underprivileged Roma defendants would be simply unable to pay the fine. Such suspended sentences mean imprisonment if a further crime (regardless of its severity) is committed. In the interviewees' view, this is another factor that contributes towards the high rates of incarceration of Roma.¹⁴³

137 Justicia (n 9)

138 The Lammy Review (n 138), p. 5.

139 HHC (n 23), pp. 31-32

140 Ibid.

141 RIS (n 23), p. 58

142 APADOR, Interview with Judge No. 2

143 HHC (n 23), p. 33

Defence lawyers and access to legal assistance

The racism and discrimination that Roma defendants face at almost every stage of the criminal justice process make them extremely vulnerable to injustice. Given this, the role of defence lawyers, as defenders of their rights and advocates against discrimination, is especially crucial.

The right of access to impartial and effective legal assistance is a fundamental human right for anyone accused of a crime. However, for many Roma defendants, who face serious challenges in obtaining adequate and effective legal representation, this is far from reality. As a result, they are far too often left to fend for themselves against a system that is deeply prejudiced against them.

The right of access to impartial and effective legal assistance is a fundamental human right for anyone accused of a crime.

Barriers to quality legal assistance are multifaceted, and economic factors, in particular, appear to play a significant role in depriving Roma defendants of their right to an effective defence. However, defence lawyers themselves are also partly to blame. Defence lawyers have been reported as making the same derogatory remarks about Roma as police, prosecutors and judges, even going so far as to show violent prejudice. Their stereotyped and prejudicial opinions about Roma are significantly affecting Roma defendants' access to legal representation, the quality of legal advice and representation they receive and, inevitably, their criminal justice outcomes.

Not only do Roma have to overcome barriers to the right of access to legal assistance, once obtained it is also apparent that they may then have to overcome discrimination from their own legal representatives.

Legal aid and quality of legal assistance

There is a widely shared belief that Roma defendants are often getting legal assistance that fell far short of acceptable standards. Poor standards of legal assistance are most commonly attributed to a disproportionate reliance on legal aid, given that Roma defendants are often at greater risk of poverty.

The low level and poor quality of legal representation of Roma defendants inevitably contributes to negative outcomes for Roma in criminal justice systems including: a generally poor understanding of their rights within the system, increased subjection to coercive measures such as pre-trial detention, and potentially accepting guilt for crimes that they may not have committed or for acts they may not have carried out through plea deals. These negative outcomes all contribute to a deep mistrust of the system as a whole.

Generally, Roma interviewed for this research blamed the inadequate provision of legal aid as the primary reason for ineffective legal assistance and reported feeling as though they were not worth their lawyers' time because they were unable to pay for their services.¹⁴⁴ As a Spanish Roma woman interviewed said:

“Justice is for those who have money. It's not the same for everyone.”¹⁴⁵

Many Roma interviewees viewed the presence of their legal aid lawyers as little more than a formality,¹⁴⁶ given that they rarely showed any interest in defending them:

144 HHC, (n 23), p. 26

145 RIS, Interview 2

146 APADOR, (n 23), p. 39; HHC (n 23), p. 26

“[if] anything popped up, if a remark was needed, it was me who raised a hand, it was me who notified the judge that I have a comment to make, [...] at least, I expected the lawyer to stand up and join me when I was making these comments, but it ... never happened.”¹⁴⁷

This mistrust of legal aid provision and representation was also seen in the acceptance by Roma interviewees of the importance of paying for legal representation in order to protect themselves against the inequities and prejudice within the system:

“It is not easy to pay a lawyer. I practically go to work just for that, because I know how important it is to have a lawyer, otherwise you are in a lion’s cage.”¹⁴⁸

The poor quality of legal assistance provided by legal aid lawyers was also cited by some judges and prosecutors. One Hungarian judge commented that legal aid lawyers often do not turn up to first hearings, and that they tended to arrive just minutes before trials, without any documents. He also remarked that there have been occasions where legal aid lawyers ask for the records of interrogations right before, or even during a trial.¹⁴⁹

The economic hardships faced by many Roma defendants could also mean that even if they do hire a private lawyer, they are unable to retain them for long. A Hungarian defence lawyer stated that frequently, a private lawyer is contracted on a case, but if at a later stage, the defendant could not pay, they would have to switch to a legal aid lawyer who would start preparing for the case from the beginning.¹⁵⁰

There was a shared view amongst many Roma interviewees that they trusted private lawyers more than legal aid lawyers. However, one respondent believed that some defence lawyers would take their money without providing them with effective representation.

Impartiality and independence

Roma interviewees also spoke of a view that legal aid lawyers were often not seen as independent, with some seen as close to the police who might even ask for harsher outcomes:

“(...) the lawyer is one of the police, he was there [at the trial hearing] only to get the money (...)”¹⁵¹

“It depends for whom the lawyer works. If he plays with the police, he can even ask for imprisonment. Even if it would not be necessary, still he asks for it.”¹⁵²

There were several Roma interviewees in Bulgaria who also suspected that some legal aid lawyers work for the police.¹⁵³ A Bulgarian Roma activist also stated that defence lawyers put pressure on their Roma clients to sign plea deals, rather than trying to provide effective defence for them.¹⁵⁴

Prejudicial stereotypes and racist attitudes

It is deeply concerning that discriminatory attitudes amongst defence lawyers may interfere with access to a lawyer and contribute to poor levels of legal assistance, alongside exacerbating social inequalities. Researchers found that lawyers were often affected by negative stereotypes of Roma and that in some cases, they even held overtly racist views that seriously damaged their impartiality and trustworthiness.

147 HHC (n 23), pp. 26-27
 148 APADOR, Roma interviewee No. 4
 149 HHC, (n 23) p. 30
 150 HHC, (n 23), p. 26
 151 Ibid.
 152 Ibid.
 153 BHC (n 23), pp. 37-38
 154 Ibid., p. 32

Some lawyers interviewed for this research were sympathetic to the view that Roma are treated unfairly by the criminal justice system. As considered above, there was recognition that Roma defendants are often denied the presumption of innocence, and some lawyers identified examples of prejudice and discrimination by police, judges, and prosecutors. However, there was also a common reluctance to represent Roma defendants and some lawyers seemed to disregard the prejudicial reality that Roma face in the justice system.

It was clear that the reasons why defence lawyers were reluctant to have Roma clients were often based on harmful, unfair stereotypes:

- Attitudes of Roma defendants and their families were often cited as the reason for lawyers' reluctance to assist them. Some said they found it difficult to work with Roma because of what they perceived as unreasonable expectations or inappropriate behaviour.¹⁵⁵ Two lawyers interviewed by researchers in Hungary likened Roma defendants to tragic heroes in Greek epics, who were prone to disappointment if their lawyers did not meet their expectations.¹⁵⁶
- There were some lawyers in Bulgaria who even seemed to imply that Roma defendants were more likely to be dishonest. Roma clients were thought of as having a tendency to change their stories or manipulate the facts.¹⁵⁷
- Some defence lawyers also referenced financial concerns, not only that representing Roma defendants was seen as less profitable, but also that there was also a perception that Roma could not be trusted to pay their fees.¹⁵⁸
- There was some suggestion that in Hungary, some defence lawyers were refusing to take Roma clients because they viewed Roma defendants as bad for their reputation

amongst other clients or even the neighbours of their professional offices.¹⁵⁹

There was a common view that Roma had poor or low levels of education generally, as well as specifically about their legal rights. Incredibly, this was also cited by some defence lawyers as a reason for not wanting to represent them.¹⁶⁰ Some defence lawyers evidenced a belief that it is hard to work with Roma defendants, because of communication difficulties, possibly on account of lower levels of education or literacy:

"(...) no matter what the judgment is, they do not understand much of what is happening in the trial. I had clients in criminal and civil cases, to whom I won the trials and they continued to call me to ask me, because they did not understand what they had won. (...) The possibility of communicating with them is restricted. (...) They do not understand the procedural part. It's harder with them than with a regular client."¹⁶¹

The same lawyer went even further, seeming to blame Roma and what he perceived to be their 'ignorance' and attitudes for the challenges they faced in the criminal justice system.

"I think there are too many discussions about this issue, this is why Romania has so many ECtHR judgments. Maybe there are still some cases, but it cannot be generalised... What is sanctioned is the attitude of the defendant and his perseverance in criminal activity, not ethnicity. It would be useful to educate them, the Roma, because lawyers are educated people, they know how to talk to anyone, but they (Roma) do not understand. They are a very incisive ethnic group, if you are calmer they come strong on you. I observed that they generally look for lawyers more like them, who raise the tone in the courtroom, those are the 'good' lawyers."¹⁶²

It is unreasonable for defence lawyers to 'expect' criminal defendants to be educated about their

155 APADOR (n 23), 37; BHC (n 23), p. 36

156 HHC (n 23), p. 25

157 BHC (n 23), p. 36

158 Ibid.

159 HHC (n 23), p. 26

160 BHC (n 23), p. 36

161 APADOR, Interview with Defence Lawyer No. 1

162 Ibid.

rights, and to criticise them for their failure to understand the legal system. The fact that lawyers can help individuals to understand and navigate complex and unfamiliar laws and procedures is part of the very reason why their role is so crucial for defendants. It is well-documented that in general, Roma suffer from poorer levels of education in many European countries.¹⁶³ While this could impact Roma defendants' ability to participate effectively in their legal proceedings, it is concerning that this disadvantage is not necessarily being viewed as a vulnerability, but as something that makes a client 'difficult'.

Shockingly, there were reports in interviews with defence lawyers about racist views and comments amongst or by defence lawyers, especially in Romania. Several lawyers noted discriminatory perceptions or remarks about the

hygiene of Roma defendants by defence lawyers themselves.¹⁶⁴ One Romanian lawyer that was interviewed reported regularly hearing egregious and violently racist comments about Roma by other defence lawyers, going as far as advocating for forced sterilisation and genocide.¹⁶⁵

It cannot, of course, be assumed that these extremist, hateful views are shared by the majority, or even a large proportion of lawyers. However, it is extremely concerning that such attitudes exist at all in the legal profession and it cannot be ruled out that the poor standards of legal assistance received by Roma defendants could sometimes be motivated by racial hatred. Further, the fact that these views are sometimes expressed openly could be an indication of a certain degree of tolerance for, or normalisation of racism in the legal profession.



It is unreasonable for defence lawyers to 'expect' criminal defendants to be educated about their rights, and to criticise them for their failure to understand the legal system.

163 FRA, *Education: the situation of Roma in 11 EU Member States* (2016)

164 APADOR, (n 23), p. 37; Interview with Defence Lawyer No. 4

165 APADOR, Interview with Defence Lawyer No. 4

Solutions

Various solutions have been proposed to address the prejudice of criminal justice actors and institutions, some of which were highlighted by researchers in this study. Although overall, there was only limited acknowledgement that racial biases impact fairness or policing practices and criminal justice decisions, there were some promising examples of attempts to combat racial discrimination, and to improve community relations.

These efforts should be welcomed as initial, albeit limited, attempts to challenge existing practices and cultures. However, their effectiveness must also be scrutinised in light of feedback from members of the Roma community, as well as existing studies on the impact of more 'popular' measures to tackle racism, such as training and more inclusionary recruiting practices. These measures cannot be categorically dismissed as ineffective, but they should not be assumed as the preferred ways of tackling racial discrimination. As explained in the 'Recommendations' section of this report, criminal justice systems can only be made fairer through more comprehensive, broader efforts designed to change institutions and to redress the power imbalance between the criminal justice system and affected communities.

Anti-discrimination and cultural awareness training

Our research confirmed that actors within the criminal justice system were often unaware of their clearly discriminatory and prejudicial attitudes. For example, several criminal justice professionals interviewed for this study often attributed the overrepresentation of

Roma in detention to their socio-economic marginalisation, ignoring or downplaying how their own professions contribute to discriminatory outcomes.

Anti-discrimination or anti-racism 'training' is often proposed as a solution to discriminatory attitudes within institutions and the lack of such training on racial discrimination has been raised as a possible reason for the prevalence

of racist attitudes in the criminal justice system. In 2019, for example, the UN

Criminal justice systems can only be made fairer through more comprehensive, broader efforts designed to change institutions and to redress the power imbalance between the criminal justice system and affected communities.

Committee on the Elimination of Racial Discrimination recommended training for judges, prosecutors, lawyers to prevent racial discrimination in Hungary, in light of concerns that anti-discrimination laws were being poorly enforced.¹⁶⁶

Researchers highlighted several examples of training for police officers that were designed to improve relations with Roma communities and respect for human rights. In Romania, there have been several initiatives to improve police awareness of Romani culture and language, to tackle hate speech and hate crimes, and to promote human rights-compliant policing.¹⁶⁷ There have also been a number of initiatives in Spain to tackle discrimination by the police, such as mandatory non-discrimination training in the Basque Country,¹⁶⁸ and the development of educational and training programmes on hate crimes and discrimination by the regional police force in Catalonia.¹⁶⁹

It is promising that police forces are taking initiatives to address anti-Roma discrimination, but there does not yet appear to be clear evidence of impact. Some of these training

¹⁶⁶ United Nations, Committee on the Elimination of Racial Discrimination 'Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary' (2019) UN Doc. CERD/C/HUN/CO/18-25.

¹⁶⁷ Information obtained by APADOR-CH from the Romanian police on May and June 2020

¹⁶⁸ RIS, Interview 16

¹⁶⁹ RIS, Interviews 16 and 19

programmes have been delivered only to a limited number of participants, and for others, it is too early to assess their long-term impact.

Very few of the judges and prosecutors who were interviewed for this research had received any anti-discrimination training in any of the countries. This is unsurprising, given the general lack of acknowledgement that racism, structural of otherwise, influences criminal justice decisions by judges and prosecutors. In particular, some judges in Romania commented that although anti-discrimination training is available, it was not taken seriously, because most judges did not view discrimination as a serious issue for their profession.¹⁷⁰

The views of interviewees on the potential benefits of training, however, were mixed. Some Roma rights defenders and Roma interviewees were pessimistic about the impact of occasional training, given how deep-rooted anti-Roma biases are. One Roma interviewee from Hungary expressed scepticism that occasional training would help to improve respect for Roma because police officers are told:

“the other 364 days of the year that [Roma] are criminals and unrepentant”.¹⁷¹

This pessimistic view of trainings is supported by studies on the impact of anti-discrimination training of the police in other countries. In particular, findings of research from the United States are inconclusive as to whether implicit bias training has a lasting effect on its participants.¹⁷² Some studies have even suggested that any positive impact of such trainings lasts no more than a day or two,¹⁷³ and that it does not lead to behavioural change in those more senior

in an organisation.¹⁷⁴ Furthermore, there have been some claims that where such training is mandatory, it can have the effect of activating bias or causing a negative backlash.¹⁷⁵

Nevertheless, there is some evidence that implicit bias training can have lasting positive effects, particularly when combined with other reform measures. For example, a “prejudice habit-breaking” study found “compelling evidence” that a “combination of awareness of implicit bias, concern about the effect of that bias and the application of strategies to reduce bias” can “promote enduring reductions in implicit bias”.¹⁷⁶ Other studies have concluded similarly, and follow-up studies found lasting change in attitudes which had translated into action.¹⁷⁷ Furthermore, even if the training itself does not significantly reduce implicit bias, it can still be a useful entry point for discussion of bias and the need for reform.¹⁷⁸

Training may seem to be an attractive solution to racial discrimination, but its impact can easily be overstated. There is a real risk that training becomes a superficial and inadequate solution to a complex challenge. It does not promise adequate or permanent results, nor does it necessarily have a meaningful impact on external behaviour. Training, as with other individual measures to detect and change implicit bias within members of institutions such as police, judges and lawyers, can only ever be considered as part of a broader policy strategy to tackle and address structural racism.¹⁷⁹ It should not be regarded as the preferred measure to tackle structural racism, but as a small part of a wider combination of measures designed to change engrained practices and cultures of criminal justice institutions.

170 APADOR (n 23), p. 52

171 HHC, (n 23), p. 10

172 Robert J Smith, ‘Reducing Racially Disparate Policing Outcomes: Is Implicit Bias Training the Right Answer?’, 37 U. Haw. L. Rev. 295 (2015),

173 Frank Dobbin & Alexandra Kalev, ‘Why Diversity Programs Fail – And what works better’ (2016), Harvard Business Review (2016)

174 Edward H Chang et al, ‘Does Diversity Training Work the Way It’s Supposed To?’ (2019), Harvard Business Review

175 Dobbin & Kalev (n 174)

176 Sarah E. Redfield, ‘Implicit Bias is Real, Implicit Bias Training Matters: Responding to the Negative Press’ (2020)

177 Ibid.

178 Smith (n 173)

179 To read the conclusions please refer to: Patrick S Forscher et al., ‘A Meta-Analysis of Procedures to Change Implicit Measures’, PsyArXiv (15 August 2016)

Roma representation in the police and other criminal justice institutions

The racial diversification of the police and the criminal justice system has been recognised as a way of addressing structural racism.

Research conducted for this report found several examples of initiatives to include more Roma in the police force. In Romania, for example, police academies in various parts of the country reserve spaces for Roma recruits, and there have been training programmes to encourage young Roma to join the police force. These training programmes appear to have been popular, as evidenced by the large take-up of spaces.¹⁸⁰

There have also been attempts to include more Roma youth in the police in Hungary, and local interviewees were mostly in favour of increased representation and visibility of Roma in the police. It was believed that Roma police officers would be able to handle and mediate minor incidents involving the Roma community more effectively, and that greater numbers of Roma in the police could help increase trust.¹⁸¹

However, there was also considerable scepticism amongst interviewees regarding the benefits of greater Roma inclusion in police forces. Interviewees reported the view that, far from helping to address anti-gypsyism, Roma police officers tended to be harsher than their non-Roma colleagues in policing Roma communities. This was possibly driven by a desire to distinguish themselves from other members of their community, and to be 'accepted' by their peers. According to one interviewee, Roma police officers felt the need overcompensate, by working harder, and by showing greater diligence

to be accepted by their non-Roma colleagues.¹⁸² One human rights defender opined that Roma police officers differentiate themselves from other Roma and view themselves as superior, because they believe that they have escaped poverty and achieved 'success'.¹⁸³ This attitude was potently evidenced by the experience of one Roma interviewee, who encountered a Roma police officer who told him:

"You think, because I am a Roma, too, you will be allowed to do anything? You are the bottom of the community, deny your Roma origin."¹⁸⁴

In Romania, for example, police academies in various parts of the country reserve spaces for Roma recruits.

Despite any such attempts to conform to institutional prejudices, it seems that police officers of Roma origin often face anti-gypsyism from within the police force, and that they are subject to racist remarks and jokes from their non-Roma colleagues. One Roma rights defender described multiple cases, in the last decade, where racist messages were sent through the police's internal mailing systems.¹⁸⁵ Such a hostile, institutionally racist environment completely undermines any efforts to diversify the police force.

Similar attitudes towards Roma members of their profession were also found amongst judges, prosecutors, and defence lawyers.

Research in other countries has also highlighted mixed results of efforts to diversify the police and criminal justice professionals. In the UK, for example, the Parliament adopted the Lammy Review in 2017, which made 35 recommendations to tackle disproportionate policing, arrest rates and sentencing amongst the BAME population in England and Wales. These recommendations included targets to move BAME staff into

180 Information obtained by APADOR-CH from the Romanian Police on May and June 2020

181 HHC (n 23), p. 17

182 Ibid., p. 16

183 Ibid.

184 Ibid.

185 Ibid.

leadership positions in various criminal justice professions, including the police.¹⁸⁶

However, evidence shows that such measures have so far had no effect on the discriminatory and racist actions of police. In March 2019, 93.1% of police officers were white, with 6.9% from other ethnic groups, up from 3.9% in 2007. In senior roles, 4% of senior officers were from the Asian, Black, Mixed and Other ethnic groups combined, up from 2.8% in 2007.¹⁸⁷ Using stop and search – the police power that gives significant discretion to individual officers, as this report has noted – as a metric, in 2007/8 Black people were 7.5 times more likely and Asian people 2.3 times more likely to be stopped and searched than white people.¹⁸⁸ Despite the increasing (relative) diversity of the police force, in 2019, this figure has only increased, with Black people now stopped and searched 9.5 times more than white people, and Asian people 2.75 times, although the overall rate has decreased.¹⁸⁹

In the United States, studies have shown that increased representation of African-Americans in the police force can promote greater understanding of and greater credibility in minority communities,¹⁹⁰ and that they foster changes in attitudes towards minority ethnic groups. Research conducted between 1992 and 2007, for example, found that the increased presence of black and Latinx police officers correlated with improved views of minority ethnic

groups among white non-Hispanic police officers, and that during the period of the study, Black and Latinx police officers maintained positive views of their own communities. As a result, it was concluded that the infusion of Latinx and African-American officers into the traditional policing culture served to change many of the pre-existing (or less community-orientated) attitudes held by non-minority officers.¹⁹¹

However, as in the UK, there is more mixed evidence on the substantive impact of racial diversity on affected communities. There is evidence that Black officers shoot just as often as white officers, and that they are just as likely to elicit citizen complaints.¹⁹²

There is no doubt that a more diverse workforce in the police and other criminal justice institutions, particularly in positions of leadership, should be celebrated and encouraged. It is important that barriers to Roma representation in these professions are removed. However greater Roma representation – or ethnic minority representation more generally – should not be seen as an end in itself. Increased diversity in criminal justice institutions is likely to be an identifiable symptom of a more tolerant and welcoming environment, rather than something that can simply be forced on institutions that are hostile to change. Changes can only be secured with a much broader strategy to address structural racism and discrimination.

186 The Lammy Review (n 135)

187 UK Government, *'Ethnicity Facts and Figures – Police Workforce'* (August 2020)

188 In 2008/9 the black population of England and Wales had the highest rate of stop and search at 129 per 1,000. The rate for Asian people was 40 per 1,000, and it was 17 per 1,000 for white people. Equality and Human Rights Commission, *Stop and Think – A critical review of the use of stop and search powers in England and Wales*, (2010)

189 UK Government (n 190)

190 David A Sklansky, *'Not Your Father's Police Department: Making Sense of the New Demographics of Law Enforcement'*, 96 J. Crim. L. & Criminology 1209 (2006); see also the results of the "Shooter Bias" study discussed in Andre D P Cummings *"Lord Forgive Me, But He Tried to Kill Me": Proposing Solutions to the United States' Most Vexing Racial Challenges*, 23 Wash. & Lee J. Civ. Rts. & Soc. Just. 3 (2016), p. 37 for evidence that black participants showed similar amounts of 'shooter bias' as white participants. See also Joscha Legewie and Jeffrey Fagan, *'Group Threat, Police Officer Diversity and the Deadly Use of Police Force'*, Columbia Public Law Research Paper No. 14-512, pp. 8-9 for discussion of several studies which have considered the relation between the racial composition of the police force and police use of force. Consistent with the above, the findings of these have been mixed; one study indicated that officer diversity is unrelated to the number of police killings while another found that minority representation in the police force is unrelated to complaints about police use of force and the number of assaults on police officers as a measure of perceived police legitimacy. However, other studies have found that proportional representation of African-American police officers is related to a lower number of complaints about excessive use of police force.

191 James R. Lasley, James Larson, Chandrika Kelso & Gregory Chris Brown, *'Assessing the long-term effects of officer race on police attitudes towards the community: a case for representative bureaucracy theory'*, (2001) *Police Practice and Research*, 12:6, 474

192 Sklansky (n 193)

Conclusion

Racial discrimination in criminal justice systems cannot be dismissed as an unsubstantiated theory and the lack of statistical data is no excuse for failing to act. The evidence from this research is clear. Discriminatory attitudes are undoubtedly present in the criminal justice system and they can, and often do, impact criminal justice outcomes for Roma and most probably for other racialised groups as well.

This research corroborates and contextualises existing quantitative data on the disproportionate representation of Roma in criminal justice systems. The accounts of Roma affected directly and indirectly by the criminal justice system and the views and experiences of those working in the system tell us that societal prejudice and racism against Roma are skewing outcomes against them.

The initial aim of this research was to uncover the extent of *unconscious bias against Roma and the way that its manifestation in criminal justice leads to discriminatory criminal justice action and outcomes. However, the racist and discriminatory attitudes of police, prosecutors, judges and even defence lawyers were, in many cases, entirely conscious, with researchers noting countless examples of open manifestations of racism and prejudice. The openness with which discriminatory attitudes are expressed is not just evidence of the existence of racist views among the many individuals that work for the criminal justice system. It is also a reflection of the degree to which these attitudes are normalised and embedded in the cultures of these institutions. These examples of conscious bias are just the 'tip of the iceberg' of what is no doubt a much wider institutional culture that embodies, or even fosters, discrimination.*

The criminal justice system is a series of human decisions, with varying degrees of discretion given to each decision-maker at each step of the

process. This means that at each stage, there is potential for human bias to taint decisions, even if there are objective rules and laws to be applied and followed. Where racism and anti-gypsyist attitudes are not only pervasive in society, but also normalised and engrained in the criminal justice system, they inevitably result in racially biased decisions and outcomes. This research provides evidence of this fact – that Roma face structural racism at all stages of the criminal justice process. The police are taking excessive and violent action against Roma and judges and prosecutors presuming criminality and guilt, leading to harsher sentences and the increased use of pre-trial detention.

However, it is not only judges and prosecutors that demonstrated bias against Roma defendants during the interviews we conducted. There is also a real risk that defence lawyers – the very people that defendants are supposed to trust to fight for their rights – share the same anti-gypsyist attitudes. Overt racism amongst defence lawyers is inevitably leading to poorer levels of legal representation for Roma defendants, allowing discrimination and injustice to go unchallenged. This means that many Roma defendants face a system where the odds are stacked against them, but they can count on no-one but themselves to fight injustice.

The precise extent of the discrimination cannot be measured with any degree of certainty, especially in the absence of statistical data. This lack of data also prevents qualitative analysis of the criminal justice system that could help to identify key decisions points that produce racial disparities. However, the availability of such data, while useful, would only confirm what this research has shown – that anti-Roma discrimination is a real, unquestionable, and serious challenge in criminal justice systems, and urgent action is needed.

Roma face
structural racism at all stages of the criminal justice process.

*Roma over-representation in criminal justice systems is also a serious socio-economic challenge. Intersectional discrimination pervades criminal justice systems, with Roma being vulnerable to a damaging combination of anti-gypsyism and social inequalities.*¹⁹³ Discriminatory criminal justice outcomes perpetuate the vicious cycle of marginalisation, placing barriers on the inclusion of Roma communities. There is a harmful cycle, or self-fulfilling prophecy, of prejudicial societal attitudes towards Roma; the institutional discrimination and practices within policing leads to Roma being disproportionately targeted, which then results in a general stigma and assumption by police themselves that Roma are associated with criminality. This reinforces discrimination, creating an unbreakable cycle of criminalisation.

Socio-economic challenges faced by Roma are a direct product of prejudices within the wider society that are deeply rooted and historical. The long-standing marginalisation of Roma, caused by structural and institutional prejudice, has resulted in Roma being systematically deprived of equal access to social and economic activities, and denied fair and equal treatment by wider society. There is little hope of eliminating anti-gypsyism in the criminal justice system unless this is done alongside meaningful work to tackle historical patterns of racism in society.

However, rather than properly addressing the root causes of this historic marginalisation and societal prejudice, governments and criminal justice authorities have repeatedly and continuously chosen to criminalise and punish those on the receiving end, through measures ranging from the aggressive and disproportionate enforcement of financial penalties and petty crimes, to the penalisation of perceived nonconforming lifestyles. Inequality, poverty, and racial differences are often met with punishment rather than services, support, and other responses, compounding the systematic oppression that Roma face. It is time to change this, and it must be recognised that a shift in thinking around the objectives and societal function of the criminal justice system is an essential component of achieving racial justice.

This report has been produced to challenge indifference to racial disparities in the criminal justice system by shedding light on their causes. However, the mere acknowledgement of structural discrimination does not itself solve it. The recognition of this challenge is the basic starting point upon which to build a movement to address it - a movement which needs both support from wider society and political will from those in positions of power and authority. The discrimination that Roma and other racialised minorities face in the criminal justice system is widespread and tangible. The only question that should be considered now is how to address and eradicate this systematic issue.

¹⁹³ As argued by the European Network Against Racism and the Center for Intersectional Justice, intersectional discrimination takes place when: "a group of individuals are discriminated against on grounds that are intertwined in such a way that they produce a unique and new type of discrimination. In such cases, one would not make several claims of separate cases of discrimination, but rather one case of intersectional discrimination", Centre for Intersectional Justice, [Intersectional discrimination in Europe: relevance, challenges and ways forward](#), (2020) p. 20.

Recommendations

Racial disparities in criminal justice systems are not the sole product of the criminal justice system itself. They are rooted in deeply engrained, historic, societal prejudices and marginalisation that have infiltrated various aspects of the criminal justice system. There is little hope of eliminating anti-Roma discrimination through criminal justice reform alone. Changes to the criminal justice system have to be supported and accompanied by a wider movement towards the elimination of anti-gypsyism in all aspects of society. We acknowledge that this is a very significant challenge, that is far beyond the scope of this study.

We also recognise that a challenge as great and complex as racial injustice cannot be solved through minor tweaks to the criminal justice system. There are fundamental questions regarding the criminal justice system and its institutions that need to be addressed. These include crucial questions about the aim, role, and scope of criminal justice, and about the need for fundamental shifts in institutional structures and cultures, especially in the police. These recommendations do not directly address

and detail what specific changes are needed, but they represent practical steps that can be taken towards those goals through for example, redressing the imbalance of powers between Roma communities and the police, and through greater oversight and accountability.

These recommendations should not be viewed in isolation. It would be unrealistic to hope that any one of these recommendations will, on its own, lead to meaningful, long-term changes. Together, they form a framework, or a combination of complementary measures, that should be implemented collectively.

1. Support and Engage Roma Communities

- **Support and finance Roma communities to lead the fight against anti-Roma discrimination in criminal justice systems.**

Roma communities, led by grassroots activists and Roma-led organisations, should lead the fight against discrimination in criminal justice systems. They should be given the financial, political, and practical support to mobilise communities to advocate for the elimination of racialised policing



Roma communities should be supported to educate and empower members of the community to exercise their rights, and to protect themselves from discriminatory treatment.

and injustice. They should also be supported to hold the police and other criminal justice institutions directly accountable to communities, and to educate and empower members of the community to exercise their rights, and to protect themselves from discriminatory treatment.

- **Engage Roma communities to explore appropriate ways of gathering data on discrimination**

Data is a powerful tool for making systemic racism more visible. The collection of disaggregated data, in particular, is a means of identifying the scale of discrimination and the potential causes of racial disparities in the criminal justice system. Without it, the discriminatory impact of criminal justice laws, policies, and measures could be difficult to measure.

EU institutions and Member States should engage Roma communities to explore how such data can be collected consensually, while respecting the anonymity and dignity of members of communities. Roma communities should also be given support to document and evidence the discriminatory impact of policing and criminal justice, for example, through personal accounts and qualitative data so they can hold Member

States accountable for their failings on non-discrimination.

2. Decriminalise and decarcerate

- **Member States should minimise criminal law responses to socio-economic challenges through decriminalisation and increased socio-economic support for marginalised and disadvantaged communities**

The commission of petty offences is often a symptom of poverty and other socio-economic challenges, that are aggravated, rather than addressed through criminal law responses. Where possible, laws and policies that criminalise acts that cause little to no social harm should be abolished, especially if they are usually committed on account of economic hardship or social marginalisation. These should be abandoned in favour of measures that provide support and other appropriate responses that address underlying socio-economic challenges.

Where criminal sanctions are appropriate or necessary, fining policies and practices should be sensitive to individual circumstances, and there should be alternative, non-custodial sanctions for those who cannot afford to pay.



Roma communities should also be supported to hold the police and other criminal justice institutions directly accountable to communities

- **Reduce pre-trial detention through objective, individualised assessment of risks, free from socio-economic and racial bias, and through greater promotion of non-custodial alternatives.**

Socio-economic factors, alongside subjective and prejudicial views on Roma employment, living circumstances and family relationships allow anti-gypsyism to influence pre-trial detention decisions, resulting in excessive and disproportionate levels of pre-trial detention. These should never be the ultimate deciding factors in decisions on pre-trial detention, especially given that socio-economic inequalities are often the driving factors behind them. Judicial authorities must ensure through guidelines, policy or legal obligations that socio-economic factors do not unduly influence and are not unfairly used to justify pre-trial detention. A threshold of possible future punishment could be introduced to exempt minor offenders from the possibility of pre-trial detention, for example, where any future punishment would not involve a custodial sentence.

Pre-trial detention should ultimately be a measure of last resort, and judicial guidelines and policy should reflect this. Identification of risks such as risk of reoffending or risk of absconding should not be based on stereotypes, and judges should be required to make reference to the specific facts of the case and state publicly in their decisions why such risks exist and why non-custodial alternatives are not sufficient to avert them.¹⁹⁴

3. Improve access to justice for all

- **Member States must ensure effective implementation of EU legal standards on the right of access to a lawyer and legal aid, so that all criminal defendants have equal and effective access to legal assistance at all stages of the process.**

The lack of access to effective legal assistance is a major reason for disparate criminal justice outcomes for Roma defendants. Member States must take measures to ensure that all suspects and accused persons have access to a lawyer throughout the criminal justice process. These include systems for the impartial appointment of lawyers at every stage of the process, especially during police custody, when suspects are most vulnerable to abuse, and guaranteed provision of legal aid that covers the entirety of criminal proceedings.

In compliance with the Directive on legal aid for suspects and accused persons,¹⁹⁵ Member States must take necessary measures to ensure legal aid services that are adequate to safeguard the fairness of criminal proceedings,¹⁹⁶ including through increased funding for legal aid, and better quality controls for legal aid lawyers.

- **Legal professional bodies must take proactive action to stamp out racism and discrimination in their professions and support lawyers in their work to tackle discrimination.**

The existence of racist and hateful attitudes among lawyers is a shameful embarrassment to the legal professions, and they have a ruinous effect on the right to a fair trial for Roma defendants. Legal professional bodies must prioritise this challenge, ensuring *inter alia* that there are strict, enforceable professional standards on non-discrimination, and an effective, accessible mechanism for complaints. These mechanisms must be independent and have the power to issue appropriately sanctions for racist, or discriminatory conduct.

Professional bodies should also provide support to lawyers, through training and educational programmes, to identify and challenge discriminatory actions and decisions by the police and criminal justice decision-makers, and to provide more effective, impartial assistance to Roma clients.

¹⁹⁴ Fair Trials (n 126)

¹⁹⁵ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings

¹⁹⁶ *Ibid.*, Article 7

4. Strengthen oversight and accountability

- **Adopt effective independent procedures for investigating, sanctioning and preventing discrimination by the police, judges, and prosecutors**

It is clear that current processes to receive complaints, investigate, and sanction discriminatory and abusive practices, especially by the police, are not fit for purpose. The lack of independent and effective redress is a significant barrier to addressing and eradicating police violence and racism, and towards developing trust in the police and criminal justice systems more broadly.

Complaints should be handled by independent mechanisms, with sufficient powers and resources to investigate allegations comprehensively and effectively, and to sanction offenders. Such mechanisms must be easily accessible to all complainants, irrespective of their financial means, and they should not have prohibitively high evidentiary thresholds for initiating investigations. Sanctions against offenders must match the severity of their actions and be designed to prevent similar incidences by the individual in the future.

- **Ensure effective judicial remedies and compensation for victims of discrimination**

Victims of discrimination and abuse by the police and other criminal justice decision-makers should be entitled to adequate remedies. These might include meaningful compensation, financial, or otherwise, for the victims, and in the context of criminal proceedings, exclusion of evidence or automatic quashing of decisions influenced by racial bias.

- **Establish systems and processes for systemic oversight of criminal justice institutions**

In addition to oversight over individual incidences of discrimination and abuse, there should be systemic monitoring of the police and the criminal justice system. Such bodies should be able to investigate *inter alia* the infiltration of far-right extremism in the police, judiciary and the prosecution service, as well as structures, workplace culture, decision-making processes, and training that contribute to discriminatory practices.

- **Support mechanisms for community oversight of criminal justice institutions**

The police and other criminal justice institutions must also be directly accountable to communities that are affected by racial discrimination. Community-led accountability mechanisms should have the ability to review both individual incidences of discrimination or abuse, and hold the police, judges and prosecutors accountable for systemic barriers to equal justice. Such mechanisms should be set up and managed on the communities' own terms, rather than by the police.

Fair

Trials