

The starting point for reform of policing in the EU

Briefing

March 2022

Fairness, equality, justice

Fair Trials is an international NGO that campaigns for fair and equal criminal justice systems. Our team of independent experts expose threats to justice through original research and identify practical changes to fix them. We campaign to change laws, support strategic litigation, reform policy and develop international standards and best practice. We do this by supporting local movements for reform and building partnerships with lawyers, activists, academics and other NGOs. We are the only international NGO that campaigns exclusively on the right to a fair trial, giving us a comparative perspective on how to tackle failings within criminal justice systems globally.

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LEAP is funded by the European Union's Justice Programme (2014-2020). The content of this document represents the views of the authors only and is their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

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Introduction

EU policy and lawmakers have committed to reforming the police and addressing racism within law enforcement across the EU. However, policy discussions that do not involve those most affected by police violence are flawed from the outset. In addition, many proposals are based on a number of inaccurate assumptions – including that bias in law enforcement is just about individuals; that policing is disconnected from the wider criminal legal system; and that our societies need more policing in response to societal racism.

This briefing addresses these assumptions and outlines how we can take a more constructive approach to policy reform.

Bias in law enforcement is structural

Too often, the conversation about reform centres around individual police officers ‘abusing’ or ‘overreaching’ their powers. How can we identify them, take them out of the force, train them better, or punish them? This approach fails to address the structural bias in law enforcement.

The problem is much larger than individual bias and behaviour, and it cannot be solved through more diversity, training, or guidelines. Police officers do not act in their personal capacity under the uniform but as *the police* – one of the most powerful institutions exercising the State’s legitimate monopoly over the means of violence.

While subject to different histories throughout the continent, Europe’s punishment policies and practices were built on hierarchies of power and oppression. As a result, they have been used as a mechanism of control over marginalised groups and communities.

This marginalisation continues today with the expansion of policing powers overtly targeting the Muslim community, racialised migrants, and Roma. It is exposed by the choice of data that feed into [‘predictive’ policing models](#) – data that determines risk categories based on factors such as where you live, how much you earn, your ethnic and religious background, and how well you fit the heteronormative nuclear family model.

It is not an accident that marginalised communities bear the brunt of policing, nor is it the isolated work of a few police officers. It is a direct consequence of structural inequality and bias.

Routine acts of [police brutality](#) against racialised and other marginalised groups are part of a wider story of discrimination that is normalised and hardwired within [Europe’s criminal justice systems](#), making those systems [unfit to deal with harm](#) without (re)producing it.

Law enforcement is just part of the problem

Law enforcement authorities do not operate in a vacuum but as part of an entire apparatus that should – but fails to – deliver justice to racialised communities and other marginalised groups.

In many cases, racism and bias in criminal justice systems start with the law itself. We like to believe the law is a neutrally charged entity rooted in objective fairness. This is fiction. Crime is a social construct. What is considered a crime in one country or at one time may not be considered a crime in another country, or in a different era. And what is a crime is determined by those in power. Across Europe, 'populist' agendas that reinforce a climate of racialised suspicion are driven by politicians and some parts of the media. Laws that are created within this context, from ['anti-terrorism' laws](#) to [border codes](#), are not neutral but based on racialised assumptions of criminality.

Criminalisation is a policy choice with far-reaching consequences. It determines who gets policed and how. It 'predicts' criminality in certain areas to justify surveillance and disproportionate [raids](#). It influences who is detained pre trial, who is sentenced, and for how long. It eventually creates self-confirming loops that never question the underlying presumptions on which they are built.

Bias comes into play at every step of the criminal justice process, making criminal justice systems unsafe for marginalised groups, regardless of how they come into contact with them. Anti-trafficking laws are actually harming racialised migrant women. Anti-smuggling and organised crime laws are used to double down on migration and solidarity. Drug laws lead to racial and ethnic profiling on no basis at all. Many minor offences criminalise poverty. Policing and detention powers are used to shrink civil society space. And the victim/perpetrator dichotomy doesn't always hold in practice. For example, we have seen women report gender-based violence being treated as suspects and imprisoned for allegedly making false accusations against those who harmed them. How can such a system claim to respond to marginalised groups' needs?

The EU needs to distance itself from 'tough on crime' populism, and this starts with recognising that criminalisation does not serve justice to victims.

More law enforcement is not the appropriate response to rising hatred.

We all want to be safe.

But this will not be achieved through more criminalisation, policing, and incarceration. It was suggested at the European Commission's Anti-Racism Summit that police forces are expanded to protect places of worship. But the police are also deployed to [raid and close down mosques](#). State power is supposed to keep safe the very people that the State discriminates against, through legislation, public discourse, media, lack of access to capital, education and healthcare, systematic inequality and injustice? How do Europe's prisons – dehumanising black holes where [violence](#), racism and hatred thrive – fit within these reforms?

The lack of credibility of law enforcement's work against hate crime is because there is a historic track record of undue suspicion, violence, and discrimination by law enforcement and the wider criminal justice apparatus against the very communities they're called upon to protect. Reversing this reality will take much more than policies built on the widely shared but deeply misconstrued representation that the systems will seek to protect those same people that the system is built to police; and that hatred can be tackled one individual prosecution at a time.

We need to ensure that policies are informed by marginalised communities to ensure that they are effective in addressing racism not merely symbolic gestures. Work to tackle hate crime will not be credible unless there is an end to policies and policing that disproportionately harm marginalised communities.

Recommendations

There are many people and groups with direct experience of injustice as a result of structural bias in law enforcement and criminal justice systems, who have long engaged in critical resistance at all levels – from grassroots support and transformative justice initiatives to documentation and monitoring, advocacy, and policymaking. They are the starting point for genuine reform; they are best placed to advise on ways forward and should be meaningfully engaged in all attempts at criminal justice reform.

We also acknowledge our responsibility as a civil society organisation with relevant expertise to advance these discussions. Below, we share a number of ways in which we believe our societies could begin divesting from systems that harm marginalised communities and investing in systems that protect them instead – recognising that there are no shortcuts to this process, no easy fixes, or comfortable conversations.

We recommend that policymakers:

- Divest from systems that (re)produce harm towards marginalised communities.
- Challenge the expansion of policing and military powers, and the security agenda.
- Challenge systems that are focused on punishment, including by opposing recourse to incarceration and so-called ‘alternatives to detention’ that extend the carceral logic outside of prison (e.g., electronic monitoring), etc.
- Reduce the harmful scope of criminal justice, including by decriminalising drugs, sex work, morality-related offences, migration and poverty-related offences etc.
- Challenge the automatic resort to criminalisation, policing, prosecution, and incarceration in response to structural harms, including hatred and GBV.
- Ban technologies that hardwire bias, such as predictive and profiling AI in policing and criminal justice.
- Oppose mainstream narratives that refuse to acknowledge systemic racism and discrimination.

Invest in systems that protect marginalised communities.

- Invest in community-led support over punishment, including via social and economic welfare, healthcare, education, community spaces and survivor response mechanisms.
- Fund inter-movement community-led reflections and work on alternative ways to achieve justice and deal with harm, that do not centre punishment or reliance on systems that exacerbate harm and violence.
- Change power structures so that the people most impacted by structural racism may lead these efforts not just act as consultants.
- Ensure that legislation and policies are intersectional and do not focus on one aspect of discrimination and ensure that laws and other instruments complement this work.

We believe that these conversations need to be had as widely as possible, and by as many as possible. We are always looking for coalition partners to help advance this work. Please get in touch by contacting Ioana Barbulescu: ioana.barbulescu@fairtrials.net.

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