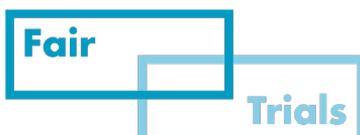


JUSTICE DENIED: Roma in the criminal justice system



CHALLENGING DISCRIMINATION PROMOTING EQUALITY





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Introduction: systemic injustice, unchecked racism, and skewed outcomes

Institutional racism is embedded in the criminal justice system and Roma pay the price. Romani defendants face discrimination from police, judges, prosecutors, and often their own lawyers. These four country reports, covering the Czech Republic, Slovakia, Serbia, and North Macedonia, reveal the extent to which pervasive and routine antigypsyism¹ in state and society leads to racially-biased decisions and outcomes for Roma in the criminal justice system.

These reports complement the 2020 research by Fair Trials covering the plight of Roma in the justice systems of Romania, Bulgaria, Hungary, and Spain. Fair Trials found that at every stage of criminal proceedings, from arrest until sentencing, Romani defendants are faced with discriminatory attitudes and biases that skew outcomes against them, so that “the very system that is meant to impart fair and equal justice is, in fact, doing the opposite.”²

The European Roma Rights Centre (ERRC) in partnership with Fair Trials produced this new set of forthcoming reports to break the silence over the mistreatment of Roma, and to challenge governments’ continued denial of the racism that underpins disparities in criminal justice systems across Europe. Researchers carried out a series of semi-structured interviews conducted with people of Romani origin and professionals working in the criminal justice system in each of the four countries; defence lawyers, prosecutors, judges and police officers. The interviews were based on questionnaires prepared by the ERRC separately for each group of respondents. Interviews were conducted between May and September 2020.

Since 2020, the short wave of Black Lives Matter solidarity protests across Europe, and the subsequent launch of the EU Anti-Racist Action Plan, prompted fresh calls and fleeting official responses for deeper scrutiny of structural racism in the criminal justice system. All the while, the COVID-19 pandemic laid bare the existing vulnerabilities facing the most marginalised communities. The extreme deprivation and exclusion that left Romani people so exposed was a direct consequence of structural racism; and it was predictable that when emergency measures were adopted across EU Member States, anti-Roma racism became a feature of the policy responses to COVID-19.

- 1 The European Commission against Racism and Intolerance (ECRI) in its 2011 General Policy Recommendation No. 13 on combatting discrimination against Roma stressed that antigypsyism is “an especially persistent, violent, recurrent and commonplace form of racism”, a phenomenon that needs to be combatted ‘at every level and by every means’. ECRI defined antigypsyism as “a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination”. See ECRI General Policy Recommendation No. 13, 24 June 2011. Available at: <https://rm.coe.int/ecri-general-policy-recommendation-no-13-on-combating-anti-gypsyism-an/16808b5ace>. The ERRC in its work refers to anti-Roma racism and also uses the term antigypsyism, as defined by ECRI, in its policy advocacy, litigation, and third-party interventions at international courts, to reflect the widening institutional recognition and understanding of antigypsyism as a specific form of racism.
- 2 Fair Trials, *Uncovering anti-Roma discrimination in criminal justice systems in Europe*, p.6. London, December 2020. Available at: https://www.fairtrials.org/sites/default/files/publication_pdf/FT-Roma_report-final.pdf.

In addition to hate speech blaming Roma as a source of the virus, there was a surge in reports of police brutality and discriminatory lockdowns of Romani neighbourhoods during the first two waves of the Covid-19 pandemic. Incidents in countries such as Bulgaria and Romania provoked international expressions of concern and condemnation from UN, Council of Europe, and European Union representatives.

In a statement, issued on the 13th May 2020, two [UN Special Rapporteurs on racism and minority issues](#) expressed deep concern “at the discriminatory limitations imposed on Roma on an ethnic basis that are overtly supported by Bulgarian State officials as part of the broader measures to prevent the spread of COVID-19.”³ The over-securitised and ethnic-specific approach was harshest in Yambol, which was fully quarantined and blockaded for 14 days. One day after the statement from the UN Special Rapporteurs, on the morning of the 14th May, a police helicopter sprayed nearly 3,000 litres of detergent to ‘disinfect’ the Romani neighbourhood.

The ERRC report *Roma Rights in the Time of Covid*, which covered 12 countries from February to June 2020, found that a significant number of actions taken by law enforcement in ‘policing the pandemic’ clearly violated the principles of non-discrimination and equality, and constituted cruel and inhumane behaviour.⁴

But perhaps the defining moment occurred in June 2021 in the [Czech town of Teplice](#), where a Romani man, Stanislav Tomáš, died while being restrained by police. Shocking video footage of the incident, which showed one police officer kneeling on the victim’s neck for several minutes, went viral across social media. Czech police immediately rejected the notion that their actions in restraining Tomáš had anything to do with his death, and were quick to tweet that this incident is no ‘Czech George Floyd’. [Czech Prime Minister Andrej Babiš](#) thanked the police officers for their work and commented, “This is sad, but a normal, respectable person would have a hard time getting into such a situation.”⁵ This disparagement of the victim, the subsequent official obfuscation and political inaction, compounded by wider public indifference, caused many Romani activists to loudly wonder if ‘Roma lives matter’ at all, and suggested that Europe’s reckoning with racial justice is a long way off.

The issues around access to justice and anti-Roma racism run deeper than incidents of police brutality. It is rather the case that law enforcement agencies are institutionally racist, anti-gypsyism is clearly evident in the ways Romani communities are policed, and there is official tolerance of a culture of impunity within law enforcement when it comes to mistreatment of Roma. This latest research further confirms the observation in the 2020 Fair Trials report, that “Roma communities are not only heavily targeted, but even harassed and provoked by the police.” The sheer volume of complaints, cases, and evidence of police misconduct collected by the ERRC over recent years leaves little doubt that in many states across Europe anti-Roma racism and discrimination is systemic within law enforcement agencies.

3 United Nations Human Rights Office of the High Commission, ‘COVID-19: States should not abuse emergency measures to suppress human rights – UN experts’. Geneva, 16 March 2020.

4 Bernard Rorke and Jonathan Lee, *Roma Rights in the time of Covid*, September 2020. ERRC Brussels. Available at: http://www.errc.org/uploads/upload_en/file/5265_file1_roma-rights-in-the-time-of-covid..pdf.

5 ERRC News, ‘Outrage grows following the death of ‘The Romani George Floyd’ inn the Czech Republic: #Sayhisname Stanislav Tomáš’, 24 June 2021. Available at: <http://www.errc.org/news/outrage-grows-following-the-death-of-the-romani-george-floyd-in-the-czech-republic>.

For instance, in Slovakia the ERRC initiated legal action in 2018 against the [Slovak Ministry of Interior](#) over discriminatory policing, including ethnic profiling and Roma-targeted police raids. Evidence gathered by the ERRC found Code-Action 100 police raids targeted socially excluded Romani neighbourhoods, and involved excessive violence against Roma.⁶ A month previously, the [UN Committee on the Elimination of Racial Discrimination](#) called on Slovakia to take effective measures to cease biased policing, based on allegations of excessive force and ill-treatment of Romani citizens by law enforcement officers.⁷

While much of the blame for racial disparities has focused on police actions, the [Fair Trials 2020 report](#) and this latest series of research in four countries, provide further evidence that the entire criminal justice system is infected with discriminatory attitudes. The result is that Roma experience racial bias at every stage of criminal proceedings, which leads to skewed decisions and unjust outcomes. This abject failure of the criminal justice system is rooted in antigypsyism, defined by the [European Commission against Racism and Intolerance \(ECRI\)](#) as

“an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination.”⁸

6 ERRC Press release, ‘ERRC sues Slovak Ministry of Interior over discriminatory policing’, Budapest, Bratislava 17 January 2018. Available at: <http://www.errc.org/press-releases/errc-sues-slovak-ministry-of-interior-over-discriminatory-policing>.

7 Poradna Press release, ‘The UN Committee criticises Slovakia for discrimination against Roma minority’, Bratislava, 14 December, 2017. Available at: <https://poradna-prava.sk/en/press-releases/the-un-committee-criticises-slovakia-for-discrimination-against-roma-minority/>.

8 European Commission against Racism and Intolerance (ECRI) General Policy Recommendation Nos. 3 & 13: Key Topics. Council of Europe. Available at: <https://rm.coe.int/ecri-general-policy-recommendation-nos-3-13-key-topics-fighting-racism/16808b763c>.

Antigypsyism, harassment, racial profiling, and Europe's 'persistent failing' on Roma inclusion

At the launch of its EU Framework for Roma integration in 2011, the European Commission stated “a significant part of the 10-12 million Roma in Europe lives in extreme marginalisation in both rural and urban areas and in very poor socio-economic conditions. The discrimination, social exclusion and segregation which Roma face are mutually reinforcing. They face limited access to high quality education, difficulties in integration into the labour market, correspondingly low income levels, and poor health which in turn results in higher mortality rates and lower life expectancy compared with non-Roma.”⁹

In its 2018 survey, the European Union Agency for Fundamental Rights (FRA) revealed that, despite years of inclusion efforts, on average one out of three Romani people surveyed had experienced some form of racially motivated harassment; and that 80% of Roma in the nine Member States surveyed in 2016 still live at risk of poverty. Such was the evidence of widespread anti-Roma discrimination that FRA was of the opinion that the Racial Equality Directive “is not effective” when it comes to Europe’s Roma. The report concluded that “the scourge of antigypsyism has proven to be a formidable barrier to efforts to improve the life chances and living standards for Roma, with many facing discrimination, harassment and hate crime because of their ethnic origin.”¹⁰

As regards access to justice, a recurring point common to many of the 2018 Roma Civil Monitor (RCM) country reports was that full transposition of the Race Equality Directive (RED) into domestic law has not translated into effective action against anti-Roma discrimination. The opinion of the RCM researchers is that, despite EU legislation, “there are no effective mechanisms to protect victims of police violence, little reliable information or data to give a precise account of the scale of the problem, and a low success rate in cases investigated”.¹¹

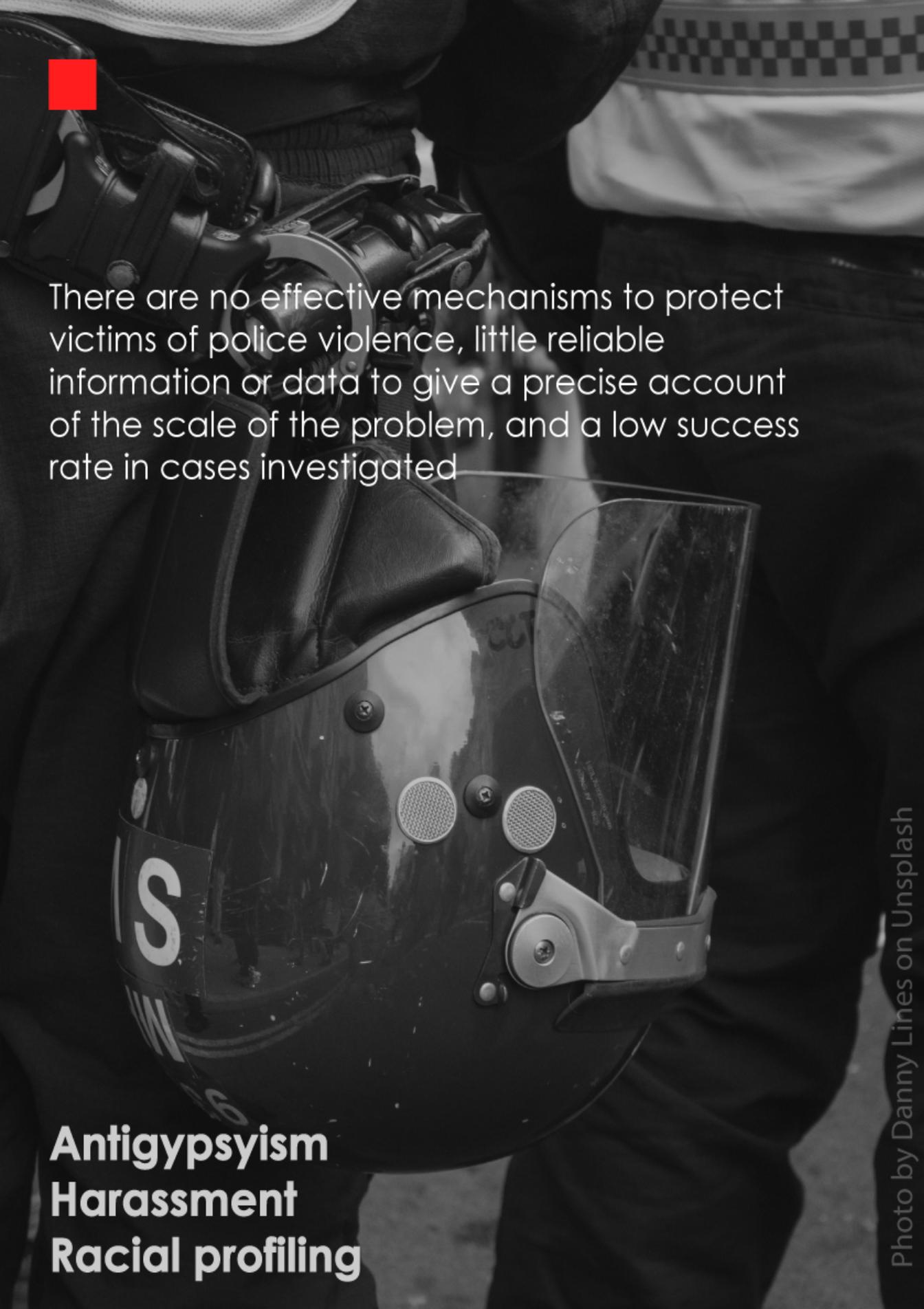
In five Central and Eastern Europe (CEE) Member States with significant Romani populations, the RCM research found that Roma experience ethnic profiling, stop-and-search, and encounters with police officers that completely erode trust in law enforcement: “A lack of accountability verging on impunity in some countries means that police officers often resort to the deployment of excessive force, and remain cavalier about the human rights and dignity of Roma detainees”.

Many Romani respondents to the RCM research did not pursue justice for fear that things might turn out even worse for them, and their lack of trust was grounded in a perception that judges lacked sensitivity and harboured the same anti-Roma prejudices as the majority population. In addition to wariness concerning the quality and outcome of judicial processes,

9 See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1444909812175&uri=CELEX:52010DC0133>.

10 FRA, *A persisting concern: anti-Gypsyism as a barrier to Roma inclusion*. See: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-anti-gypsyism-barrier-roma-inclusion_en.pdf.

11 Roma Civil Monitor: *A synthesis of report on the implementation of national Roma integration strategies in Bulgaria, Czech Republic, Hungary, Romania and Slovakia*. Center for Policy Studies Central European University, 2018. Available at: <https://cps.ceu.edu/sites/cps.ceu.edu/files/attachment/basicpage/3034/rcm-civil-society-monitoring-report-1-synthesis-cluster-1-2017-eprint-fin.pdf>.



There are no effective mechanisms to protect victims of police violence, little reliable information or data to give a precise account of the scale of the problem, and a low success rate in cases investigated

Antigypsyism
Harassment
Racial profiling

many Romani respondents were daunted by the length and complexity of legal proceedings, and the time lapse between the initial filing of a complaint and a tangible judicial outcome.¹²

In 2019, the European Parliament passed a resolution calling for a “strengthened post-2020 Strategic EU Framework for National Roma Inclusion Strategies and stepping up the fight against anti-Gypsyism”, and urged the Commission to commit to a specific anti-discrimination goal and to ensure that “multiple and intersectional discrimination, gender mainstreaming and a child-sensitive approach are properly addressed.”¹³

In 2020, the new strategic Roma framework aimed to step up action to address the ‘persistent failing’ on Roma inclusion, and the Commission called for Member States to show a “strengthened commitment to tackle persistent discrimination”. The horizontal objectives included (i) a renewed resolve to fight against direct and indirect discrimination, harassment, stereotyping, anti-Roma rhetoric, hate speech, hate crime, and violence against Roma; (ii) plans to develop and promote a comprehensive system of support for victims, and deliver targeted assistance to Roma victims of hate crimes and discrimination; (iii) as well as public initiatives to acknowledge and raise awareness of antigypsyism and its harmful consequences, and foster positive narratives about Roma.¹⁴

While the European Commission made mention of the importance of the UN Sustainable Development Goals (SDGs), it is a matter of regret that SDG Goal 16 – “to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels” – did not make the cut as a horizontal priority. In a written submission to the European Commission, the ERRC stated:

“the evidence amassed by the ERRC makes one thing clear: unless justice can prevail without prejudice for Romani citizens of the European Union; without access to justice, all efforts to promote inclusive education, greater labour market opportunities, improved access to services will founder, and there is a real danger that the new improved framework will fail ‘to put an end to the exclusion of Roma’ by 2030.”¹⁵

12 Roma Civil Monitor, pp. 27, 28.

13 See: http://www.europarl.europa.eu/doceo/document/B-8-2019-0098_EN.html.

14 European Commission, *Proposal for a Council Recommendation on Roma equality, inclusion and participation* Brussels, 7.10.2020 COM(2020) 621 final. Available at: https://ec.europa.eu/info/sites/default/files/commission_proposal_for_a_draft_council_recommendation_for_roma_equality_inclusion_and_participation_en.pdf.

15 ERRC, *Written Comments to the European Commission concerning the Post-2020 Roadmap for Roma Inclusion*, 18 March 2020. Available at: http://www.errc.org/uploads/upload_en/file/5217_file1_european-commission-submission-march-2020.pdf.

Overrepresentation in the justice system, disputes, and debates about ethnic data

Despite the absence of ethnically disaggregated data, credible research evidence and an abundance of victim and witness testimonies suggest that Roma are among the worst affected by discrimination in the criminal justice systems across Europe. According to research cited in the 2020 Fair Trials report, Roma in Bulgaria were twice as likely to be the victims of physical police violence than non-Roma, and those who self-identified as Roma accounted for more than 50% of new prisoners, as well as more than 50% of those serving prison sentences, despite making up only 10% of the population. 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.¹⁶

In Hungary, according to the Hungarian Helsinki Committee, Romani people are more likely to be ethnically profiled and drawn into the criminal justice system than non-Roma. Furthermore, once drawn in Roma are more likely to be held in pre-trial detention, receive longer sentences, and endure harsher treatment in prison than their non-Roma counterparts.¹⁷

The Irish Penal Reform Trust reported that in the Republic of Ireland, Traveller men are between 5 and 11 times more likely than other men to be imprisoned. Traveller women face a risk of imprisonment as much as 18 to 22 times higher than that of the general population. While Travellers comprise only 0.6% of the population in the Republic of Ireland, Traveller women comprise nearly 25% of the female prison population.¹⁸

In each of the four countries in this latest research there was a lack of reliable ethnically disaggregated data concerning Roma in the criminal justice system, but most of those interviewed agreed that Roma were overrepresented. In the Czech Republic, lawyers' estimates of the proportion of Romani defendants in the criminal justice system ranged between 20% to 50%, whereas prosecutors' estimates ranged between 5% and 50%.

In Slovakia, police officers interviewed estimated that Roma accounted for between 30% and 80% of those arrested within their precincts. While prosecutors, judges, and defence lawyers were more reticent to provide estimates, most conceded that there was some degree of over-representation. Lawyers estimated that Roma accounted for between 20% and 50% of criminal cases in their respective practices.

Similarly, in Serbia, where Roma are estimated to account for 8.2% of the total population, there are no official statistics or estimates on the representation (or overrepresentation) of Roma in the criminal justice system, and no legal basis for the collection of ethnic data amongst defendants. Interviewees provided mixed responses to the question of Roma overrepresentation in the

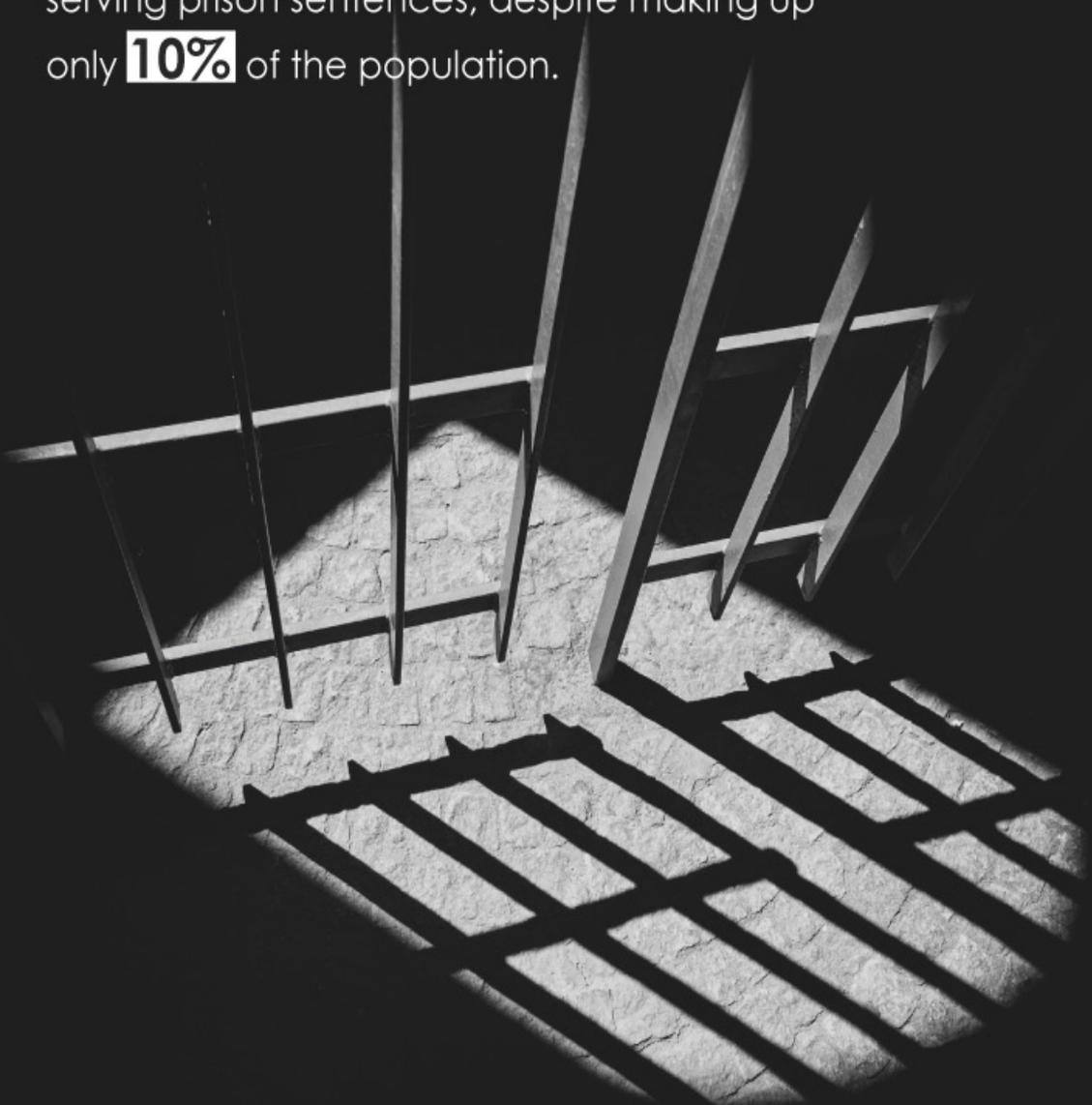
¹⁶ Fair Trials 2020, p. 10.

¹⁷ Hungarian Helsinki Committee, *Last Among Equals: the equality before the law of vulnerable groups in the criminal justice system*. Budapest 2014. Available at: https://www.helsinki.hu/wp-content/uploads/HHC_Last_Among_Equals_2014.pdf.

¹⁸ Irish Penal Reform Trust, *Travellers in the Irish Prison System: a qualitative study*. Dublin 2014. Available at: https://www.iprt.ie/site/assets/files/6339/iprt_travellers_report_web.pdf.



Roma in Bulgaria were twice as likely to be the victims of physical police violence than non-Roma and those who self-identified as Roma accounted for more than **50%** of new prisoners, as well as more than **50%** of those serving prison sentences, despite making up only **10%** of the population.



Overrepresentation in the justice system

justice system. While the majority of Romani respondents felt that Roma were more likely to be arrested than non-Roma, the assessments of defence lawyers varied from interviewees who said that they rarely encountered Roma, and others who encountered Romani defendants almost daily; three lawyers said that Roma made up 30% of the defendants they had represented in the past year, while for the other three the figure was only 3-5%.

Prosecutors in Serbia estimated that Roma account for between 10% and 20% of the total defendants they encountered in court; but with one exception, all were resolute in their belief that the law applies equally to everyone regardless of ethnicity. Most judges said that they encountered Romani defendants often or very often, and estimated the proportion of Romani defendants to be between 10% and 35%. However, only one agreed with the statement that Roma are in fact overrepresented in the criminal justice system.

In North Macedonia, official data suggests that Roma accounted for approximately 9.4% of adults convicted in 2017, and 29.2% of juvenile offenders. However, the challenge in estimating disproportionality or otherwise is complicated by two factors. Firstly, there is the commonplace standard discrepancy between official and independent assessments of the size of the Romani population. In North Macedonia, according to the official 2002 Census, the total was 53,879 Roma, which represents 2.66% of the total population, whereas average estimates suggest the Romani population is 197,000 or 9.74%.¹⁹ Secondly, the problem is compounded by more fundamental national disputes concerning the size of the total population.²⁰ The scale of the discrepancies is such that, aside from the case of juveniles, where the scale of overrepresentation is stark and startling, it remains difficult to make any definitive data-based conclusions concerning the extent to which Roma are overrepresented in the criminal justice system of North Macedonia.

Data debates

The absence of ethnically disaggregated data obscures the scale of discrimination and the potential causes of racial disparities in the criminal justice system; it inhibits attempts to measure the impact of systemic injustices on racialised minorities; and hinders efforts to identify those laws, policies, and practices that lead to racially-biased decisions and skewed sentencing. While there is wide consensus concerning the need for more equality data, experts such as Nani Jansen Reventlow, director of the Digital Freedom Fund (DFF), caution against the simple assertion that Europe's ability to meaningfully address racial inequality is contingent upon collecting more data, as one which "lends itself to a data-solutionist approach to justice that must be supplemented by some important points of caution"; that while data can be a useful tool for exposing the symptoms of racism, 'proving' that racism exists is not the same as dismantling it. Like any tool, data

19 Roma Integration 2020, *Roma in the region: size of the Roma communities in the region*. Available at: <https://www.rcc.int/romaintegration2020/pages/3/roma-in-the-region>.

20 While according to the State Statistical Office, the population of North Macedonia is almost 2.08 million as of 31 December 2018, the director of the State Statistical Office estimates that the real figure is 'no more than 1.5 million', which would represent a decline of 24.6% since independence in 1991. Some economists speculate that North Macedonia's population is actually between 1.6 million and 1.8 million, which would still mean the country had lost between 19.6 per cent and 9.5 per cent of its population since 1991. Tim Judah, 'Wildly Wrong: North Macedonia's Population Mystery' *Balkan Insight*, 14 May 2020. Available at: <https://balkaninsight.com/2020/05/14/wildly-wrong-north-macedonias-population-mystery/>.



In times of social and economic crisis, the risk that data become a tool for the powerful to scapegoat marginalised groups runs especially high.



Data debates

has its limitations, and does not exist independently of the biases and stigmas that drive leaders and governments to take measures targeting specific communities such as Roma. She warned that, “the same data that are at one point collected with the best of intentions can later be misused or ‘spun’. In times of social and economic crisis, the risk that data become a tool for the powerful to scapegoat marginalised groups runs especially high.”²¹

A similar ambivalence surfaced among interviewees, especially those hailing from states where democratic backsliding has heightened public mistrust in government. Roma rights defenders from Hungary expressed misgivings about the collection of ethnic data, and the significant risks of misuse. If Romani defendants were overrepresented in certain criminal categories according to the statistics, it is possible that anti-Roma rhetoric from racist organisations and public officials would increase.²²

One judge from Slovakia shared similar concerns that such data might be used to reinforce anti-Roma stereotypes rather than tackling discrimination: “It would not be beneficial, as it would further marginalise the groups about which data like these are collected, and could be manipulated afterwards to point out the crime rate of these communities.”²³ As if to prove that such caution is well-warranted, former Slovak Interior Minister, Robert Kaliňák, in a blatant call for ethnic profiling, explicitly stated that it was necessary ‘to record what criminal acts the Roma committed’:

*“It is not possible for us to constantly hide under some European politically correct views. It is important for us to start making specific statistics on Roma crimes, to be able to separate them from the rest and to be able to target measures directly. So that we know what the real security situation in the village is and who commits crime there.”*²⁴

As Kaliňák’s statement makes abundantly clear, in a country such as Slovakia where, since independence in 1993, Prime Ministers such as Vladimír Mečiar and Robert Fico frequently resorted to racist anti-Roma rhetoric²⁵, and where the justice system perpetually lurches from one scandal to the next²⁶, the risk is not just that data collected with the best of intentions could later be misused or ‘spun’, but rather that from the outset politicians such as Kaliňák would wilfully gather data with malign intent, to further vilify and coerce Romani citizens.²⁷

21 Nani Jansen Reventlow, ‘Data collection is not the solution for Europe’s racism problem’, *Al Jazeera Opinion*, 29 July 2020. Available at: <https://www.aljazeera.com/opinions/2020/7/29/data-collection-is-not-the-solution-for-europes-racism-problem>.

22 Annie Kazarján and Eszter Kirs, *Discrimination Against Roma People In The Hungarian Criminal Justice System*. Hungarian Helsinki Committee, Budapest, 2020. Available at: https://helsinki.hu/wp-content/uploads/Discrimination_against_Roma_people_in_the_Hungarian_criminal_justice_system.pdf.

23 Interview with judge from Slovakia (Report forthcoming).

24 Katarína Filová, Kaliňák avizuje štatistiku “rómskej kriminality”. *Pravda*, 25 October 2017. Available at: <https://spravy.pravda.sk/domace/clanok/446097-kalinak-avizuje-statistiku-romskej-kriminality/>.

25 ERRC News, *This Time, It’s Really Time to go Robert Fico!* 13. Available at: <http://www.errc.org/news/this-time-its-really-time-to-go-robot-fico>.

26 Slovak Spectator, *Head of police inspection service detained*, 3 June 2021. Available at: <https://spectator.sme.sk/c/22674044/former-head-of-police-inspection-service-detained.html>.

27 ERRC Press Release, *ERRC sues Slovak Ministry of Interior over discriminatory policing*, 17 January 2018. Available at: <http://www.errc.org/press-releases/errc-sues-slovak-ministry-of-interior-over-discriminatory-policing>.

OVERREPRESENTATION IN THE JUSTICE SYSTEM, DISPUTES, AND DEBATES ABOUT ETHNIC DATA

While the lack of ethnically disaggregated data may mean that discrimination cannot be measured with any degree of certainty, the positive impact of having more data needs to be assessed with caution. The United States has been collecting this sort of data for decades but, as **Nani Jansen Reventlow** put it: “evidence of racism has failed to bring about the structural change that recent protests have been calling for. The US has not suffered from a lack of data on **police murdering Black people** and people of colour – it has suffered a lack of political will to do something about it.” While the availability of disaggregated data on Roma in the criminal justice system would prove useful, it would only confirm what the research shows; that institutional discrimination and anti-Roma racism is a reality in the criminal justice system and, as in the US, what is needed is political will to dismantle all that is racist within the structures so that justice can be done for Roma in Europe.

However, in the gap between what is and what ought to be, and in the absence of the requisite political will to eradicate anti-Roma racism, we do need ethnically disaggregated data. We need such data as a means to identify the scale and specificities of racial discrimination, and to better identify the potential causes of racial disparities in the criminal justice system. As the Fair Trials report put it, without such data, “the discriminatory impact of criminal justice laws, policies, and measures could be difficult to measure.”

In addressing the concerns raised by the Digital Freedom Fund, engagement of Romani communities in data collection must go beyond consultations as a formality with minority groups on appropriate methodologies. In addition to ensuring that communities give fully informed consent, there is the wider imperative that data systems be regulated to serve the needs of marginalised groups. Also, more support is needed to create platforms for Romani communities to document the discriminatory impact of policing and criminal justice on their lives, and to give voice to their perceptions and experiences. While remaining mindful of the important points of caution concerning the limits and pitfalls of data collection, based on 25 years of the ERRC’s experience in strategic litigation and advocacy there is no doubt that data remains a powerful tool for unmasking systemic racism, and a vital resource for winning arguments in all manner of courts to hold duty-bearers to account, and to publicly indict state authorities for perpetuating what Romani activists have described, with bitter irony, as “Europe’s last acceptable form of racism”.²⁸

²⁸ Brigitta Balogh and Colin Clark, *Anti-Gypsyism: The Last Acceptable Form Of Racism In Europe?*, *Travellers Times*, 13 December 2018. Available at: <https://www.travellerstimes.org.uk/features/anti-gypsyism-last-acceptable-form-racism-europe>.

Reasons for overrepresentation of Roma: over-policed, racially profiled, and presumed guilty

The research corroborated earlier findings that Roma are overrepresented in the criminal justice system for a combination of reasons which include persistent racial profiling and over-policing of Romani communities, social marginalisation and higher rates of poverty²⁹, lack of eligibility for alternatives to sentencing, and a presumption of guilt rooted in wider racist narratives around so-called ‘Gypsy crime’.³⁰

In the Czech Republic, lawyers who work closely with Roma spoke of strong anti-Roma bias within the criminal justice system, and spoke directly of ‘institutional racism’, where the odds are stacked against Roma due to deeply rooted prejudice and stereotypes in a system *“that is extremely resistant to change and at its core, systematically racist.”*³¹

While judges and prosecutors in Slovakia downplayed or denied outright the existence of discrimination in the criminal justice system, most defence lawyers described patterns of discrimination against Roma. One interviewee stated that: *“Roma cases are often not properly investigated; evidence seems to be unreliable and the criminal responsibility of the defendants is doubtful.”*³²

Discriminatory views and negative stereotypes of Roma in Serbian society were deemed to be the main causes of Roma being more likely to be accused of a crime by most interviewees, with defence lawyers attributing overrepresentation to the attitudes of the police and the prosecution service. Defence lawyers in North Macedonia spoke of how the lack of knowledge of the law and unequal access to justice has led to wide distrust of the criminal justice system: *“Roma do not believe in the criminal justice system because for them, there is no thorough investigation into their cases, not all evidence is taken into consideration and, in most cases, they end up with adverse convictions.”*³³

29 The poverty that is a consequence of decades of structural discrimination, segregation, racist exclusion, and deliberate state policies of malign neglect is particularly acute. ECRI’s 2020 report on Slovakia provided the following snapshot: “25% of Roma were living in housing without running water, 43% were living in homes without toilets, showers or bathrooms inside them (as compared with 0.6% of the population as a whole) and 27% were living in housing with leaks or infiltration of water from the roof, with walls, windows, floors or foundations suffering from damp. The life expectancy of Roma is 6 years less than the national average, child mortality is three times higher, and 5% have no health insurance. 54% of the persons questioned said that they had suffered discrimination over the last five years. Although 51% knew that discrimination was against the law, only 16% knew of an organisation that could help them.” The scale and persistence of poverty and exclusion prompted ERCI to recommend that the authorities “should change their overall approach to Roma inclusion”. See ECRI 6th Report on the Slovak Republic, October 2020. Available at: <https://rm.coe.int/ecri-6th-report-on-the-slovak-republic/1680a0a088>.

30 See Vidra and Fox for context on the rise and spread of racist language in public debate, and how radical right discourses relegitimated the previously discredited and deeply racist idea of ‘Gypsy crime’; how these racist discourses not only went unchallenged by mainstream politicians, but were condoned by them; and consequently, how racism has become more mainstreamed, with radical right propositions spun into ‘digestible’ rhetoric by mainstream political forces. Zsuzsanna Vidra and Jon Fox, ‘Mainstreaming of Racist Anti-Roma Discourses in the Media in Hungary’, *Journal of Immigrant & Refugee Studies*, 12:437–455, 2014. Available at: <http://scholar.ccu.edu/sites/default/files/publications/vidra-fox-mainstreaming-of-racist-anti-roma-discourses-in-the-media-in-hungary-2014.pdf>.

31 Interviews with Czech lawyers (Report forthcoming).

32 Interviews with judges and prosecutors in Slovakia (Report forthcoming).

33 Interviews with defense lawyers in North Macedonia (Report forthcoming).



“Roma do not believe in the criminal justice system because for them, there is no thorough investigation into their cases, not all evidence is taken into consideration and, in most cases, they end up with adverse convictions.”

Photo by Ye Jinghan on Unsplash

Reasons for overrepresentation of Roma

Across all four countries, Romani interviewees expressed their lack of trust and perception of the system as plainly unjust. One interviewee from Slovakia stated that: *“The police and investigators, prosecutors, it is all just one gang. You cannot trust anyone here. Whatever you claim, the police investigator will refute it as if she was present, standing there with us. They want to turn everything against us.”*³⁴

Romani interviewees from Serbia similarly expressed distrust in a criminal justice system that reflected the biases and racism that prevail in the wider society, where the majority population viewed Roma as *“less valuable, uneducated, unemployed and subsidised solely by social welfare and theft ... They just don't like us, they look at us like we are the worst.”*³⁵

Two Romani police officers from North Macedonia who were interviewed took it as a given that there was widespread mistrust in the criminal justice system among Roma, who, by virtue of profound marginalisation, lack the capability to navigate the workings of the system, or to be fully aware of their rights, or if they did, to be in a position to assert those rights. As one interviewee explained;

*“Roma in general do not trust the criminal justice system because they are not adequately protected by state institutions and they are not well informed on how to access to state- or NGO-provided legal aid. For example, when they are interrogated by the police, they sign whatever the police give them simply because they are not aware of their rights and therefore do not know how to exercise them.”*³⁶

Factors that contribute to the lack of trust include ethnic profiling, over-policing, the use of petty offence fining as a method of control and intimidation, and racially abusive behaviour in encounters with Roma. As the Hungarian Helsinki Committee reported, it is not uncommon for police to appear in streets or segregated areas inhabited by Roma multiple times per day, and impose fines for petty offences related to bicycle or pedestrian traffic.³⁷

Both defence lawyers and Romani interviewees echoed the perception of those surveyed in the Fair Trials 2020 report that Romani defendants are more likely to be convicted, and that in many cases they are presumed guilty from the outset. Centuries-old racist perceptions about ‘Gypsy crime’, revived and politically weaponised by far-rights extremists and duly amplified in online, print, and broadcast media, have increasingly seeped into more mainstream political discourse in recent decades.

This racist presumption that Roma are ‘inherently criminal’ has become so embedded in popular prejudice that it not only taints verdicts, but can influence decisions over pre-trial detention and sentencing. Lawyers interviewed in the Czech Republic pointed out that prejudices and stereotypes against Roma are present at all levels of the criminal justice system. As one lawyer put it:

*“There is a perception within the criminal justice system that only Roma people commit crimes, that it is getting worse, that they commit serious criminal offences, which is not true. There is a perception that if Roma are present in the locality, there will be a lot of work for the authorities to do.”*³⁸

34 Interviews with Roma in Slovakia (Report forthcoming).

35 Interviews with Roma in Serbia (Report forthcoming).

36 Interviews with Romani police officers in North Macedonia (Report forthcoming).

37 Annie Kazarján and Eszter Kirs, *Discrimination Against Roma People in The Hungarian Criminal Justice System*. Hungarian Helsinki Committee, Budapest, 2020. Available at: https://helsinki.hu/wp-content/uploads/Discrimination_against_Roma_people_in_the_Hungarian_criminal_justice_system.pdf.

38 Interview with lawyer in the Czech Republic (Report forthcoming).

REASONS FOR OVERREPRESENTATION OF ROMA: OVER-POLICED, RACIALLY PROFILED, AND PRESUMED GUILTY

Lawyers in the Czech Republic suggested that beyond prejudice, over-incarceration of Romani defendants was also due to harsh sentencing laws for repeated thefts, which can land a person in prison for up to three years for having stolen a loaf of bread from a grocery store.³⁹ Almost all defence lawyers and judges perceived this legislation as unnecessarily strict and unfair because it effectively criminalises poverty, and one described the provision in the criminal code as a response to “a populist demand to criminalise Roma, and to criminalise the poor.”⁴⁰

Concerns were also expressed in the Czech Republic about the ‘chaining’ of criminal orders (court decisions issued in a simplified procedure without a public hearing where a range of penalties including suspended/conditional prison sentences of up to one year can be imposed). These sentences can be activated if a person reoffends, and in cases where a defendant is subject to several conditional sentences this can result in them spending several years in prison for repeated but minor offences.

Evidence suggests that in Serbia also, certain types of offences disproportionately criminalise Roma. Living in informal settlements deprived of basic amenities could increase the likelihood of persons making improvised connections to the electricity grid.⁴¹ Failure to carry an identity document constitutes a criminal misdemeanour, which is punishable by a fine or a prison sentence.⁴² Roma are disproportionately affected by a lack of personal documentation due to a combination of factors, including the legacy of conflict and family histories of displacement of Roma across the Western Balkans, and barriers to accessing documentation, such as birth registration, identification, and permanent residence. This inability to access documentation has an intergenerational impact, perpetuating the risk of statelessness. As a consequence, Roma are far more likely to be lacking necessary documentation and vulnerable to criminalisation.⁴³

Similarly in Slovakia, police officers, prosecutors, judges, and defence lawyers stated that the majority of those Roma who came into conflict with the criminal justice system were charged with minor crimes, such as petty theft, or offences relating to ‘endangering the moral upbringing of a child’, which is how failing to ensure compulsory school attendance is defined. While judges and prosecutors downplayed or emphatically denied that anti-Roma prejudice played any role in decisions made in the system, they would only acknowledge that Roma were disadvantaged by a “lack of understanding of the criminal justice system.”

While some police and prosecutors spoke of ‘communication challenges’ and ‘failures to understand societal norms’, with the obvious inference that the blame lay with Roma, only one prosecutor, who also pointed out that communication was a key challenge, laid the onus of responsibility for overrepresentation of Roma in the criminal justice system on the state’s failure to make appropriate procedural accommodations. The prosecutor pointed to

39 See for example a report published by the police: <https://www.policie.cz/clanek/ukradl-cervene-papricky-a-dva-rohliky.aspx>.

40 Interview with defense lawyer in the Czech Republic (Report forthcoming).

41 Article 219b of the Criminal Code.

42 Articles 29 and 30 of the Law on Identity Card (“Official Gazette of the Rep. of Serbia“ No. 62/2006, 36/2011).

43 ERRC, *Roma Belong! Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine*, October 2017. Available at: http://www.errc.org/uploads/upload_en/file/roma-belong.pdf.

the “lack of accommodations aimed to inform Roma properly about the content and purpose of the criminal proceedings ... Information about their procedural rights is formalistic, too long, improperly worded, provided only in writing and not explained ... Working with Roma communities properly would require appropriate methods of communication.”⁴⁴

The ready resort to racist prejudice by many judges, prosecutors and police, combined with their often fervent denials that prejudice plays any part in their deliberations or decisions, and assertions that all are equal before the law, reflects the extent to which anti-Roma racism is normalised in the processes, attitudes, and behaviour of these institutions. There seems to be no capacity to question the laws and fining policies of a system that criminalises the most marginalised for the committing of petty offences, that disproportionately targets and incarcerates Roma, and only serves to exacerbate socio-economic exclusion and reinforce discrimination.

When prosecutors glibly talk of ‘communication challenges’ with those who fail ‘to understand societal norms’, or, as in the case of the Czech Republic, senior officials and the president openly refer to Roma as the ‘inadaptables’⁴⁵, it is clear that a racist ‘common sense’ prevails within the system that blames the victims for their predicament, absolves the state for its transgressions, and stigmatises and effectively criminalises entire Romani communities. It is also clear that fundamental transformations of the criminal justice system must be reinforced and bolstered by wider action to eliminate every aspect of anti-Roma racism in society.

⁴⁴ Interview with prosecutor in Slovakia (Report forthcoming).

⁴⁵ ERRC Press Release, *Open Letter to Czech President on Racist Comments about Roma*, 1 October 2018. Available at: <http://www.errc.org/press-releases/open-letter-to-czech-president-on-racist-comments-about-roma>.

Policing: a culture of racist prejudice and seeming impunity

When it comes to policing Roma, the well-worn adage would seem to apply: that it is not a matter of a few racist bad apples, it seems more like the entire barrel is rotten. As stated in the introduction, rather than there being discrete incidents of police brutality against Roma, law enforcement agencies are institutionally racist, antigypsyism is clearly manifest in the ways Romani communities are policed, and there exists a culture of impunity within law enforcement when it comes to violence, torture, and degrading treatment of Roma.

Slovak police officers who were interviewed claimed that they had never witnessed any conduct that they would regard as discriminatory or racially biased. They denied that racial profiling played a role in arrests, and stated that although civilians living near Romani communities would have negative views of Roma, the police were not motivated by such biases or prejudices. On the issue of the use of force, the officers stated that they used force only when necessary, and always in a proportionate manner. Police officers also questioned the validity of allegations of police discrimination and brutality, and one commented that as far as he was aware, all complaints of misconduct were found to be unsubstantiated.

The accounts given by Romani interviewees and defence lawyers in Slovakia were completely at odds with the police officers' perceptions. One Romani interviewee recalled a police raid on a Romani neighbourhood, where he and many others were indiscriminately beaten by the police. Another described over-policing as commonplace, how police came to their neighbourhood 'ten times each day, even when no incidents were reported'. She knew of many Romani people who had been beaten and verbally abused, including a family member who, at the time of the interview, was still recovering from a baton blow to the head. She also claimed that police officers would sometimes taunt and provoke Romani people, challenging them to 'face-off' against them.

Defence lawyers tended to agree that Roma and Romani communities are subject to over-policing and discriminatory treatment, with one describing how "police are often at odds with Roma communities" and that such petty conflicts frequently escalate into violent clashes. They also noted having heard police officers openly use pejorative language and hate speech when referring to Roma. Opinions differed as to whether discriminatory practices such as profiling were part of a wider pattern of systemic discrimination, or whether they were the result of individual prejudices of individual officers.

The concerns expressed by international bodies concur with the ERRC's assertions that racist policing of Roma is systemic. In its **December 2017 concluding observations**, UNCERD expressed particular concern at the numerous reports of excessive use of force and ill-treatment, including verbal and physical abuse by law enforcement officers against Roma, and that "raids in Roma settlements are often carried out without arrest or search warrants and in many cases members of the Roma minority, including children and elderly persons have been injured."⁴⁶

46 UNCERD, *Concluding observations on the combined eleventh and twelfth periodic reports of Slovakia*. 8 December 2017. Available at: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/SVK/CERD_C_SVK_CO_11-12_29703_E.pdf.



Incidents of police harassment, brutality, torture and deaths in custody.

Source: Police Misconduct Against Roma, Sinti and Travellers (collaborative mapping project)

In its 2020 report on Slovakia, ECRI shared the concerns expressed by other national and international bodies, concerning the reports of large-scale police violence against Roma and listed six major incidents. With regard to one such incident in June 2013 in Moldava nad Bodvou, ECRI expressed deep concern that the investigation was opened only seven months after the police intervention in order to clarify whether it was in itself a retaliatory act, whether a disproportionate number of police had been deployed, and whether they had abused their powers. The Committee noted that failings in the investigation procedures made it “obviously difficult for courts to determine whether and to what extent there was police brutality”, and expressed its concern that despite “the substantial number of complaints relating to serious acts of violence committed by members of the police services against Roma”, none of the subsequent investigations of police interventions between 2013 and 2020 resulted in a conviction or disciplinary sanction against officers involved.⁴⁷

In a 2017 poll conducted at the request of the Czech police, some 45% of the Romani residents of ‘socially excluded localities’⁴⁸ stated that they did not trust the police, and two-thirds of those surveyed believed that police officers were prejudiced against Romani people.⁴⁹ Romani interviewees spoke of frequent stop and searches, and described incidents of almost routine verbal abuse, intimidation, and violence against Roma: “Boys usually get a few slaps”. Such was the level of intimidation that one respondent ended up admitting guilt despite not having committed any crime: *“The police officer told me that he is not interested in my testimony and that he needs only to close the case. I was afraid, I didn’t want any trouble, so I told him ok, I did it.”*⁵⁰

Accounts given by Roma regarding interactions with the police were largely consistent with experiences of lawyers, several of whom recalled incidences of disrespectful, discriminatory, and sometimes abusive treatment of Romani defendants and victims. Lawyers described the discernible difference in the attitudes of police officers to Roma and non-Roma victims, noting that officers were empathetic towards non-Roma but often failed to treat Romani victims with basic decency.

Interviews with the Romani respondents in Serbia revealed a deep mistrust of the police, and the perception that they were prejudiced against Roma. All ten Romani interviewees had been routinely stopped by police, most recalled incidents of harassment and verbal abuse, and five of them had direct experience of being physically assaulted by police, with one stating:

*“I was beaten many times [by the police], cursing my gypsy mother. They intercepted my family, harassed my parents at night for an interview. When I went to court, the police stopped me and searched the whole car without a search warrant. Once they brought me to the station, I asked for a lawyer, they didn’t allow it, but they beat me up and then they let me go as if nothing had happened.”*⁵¹

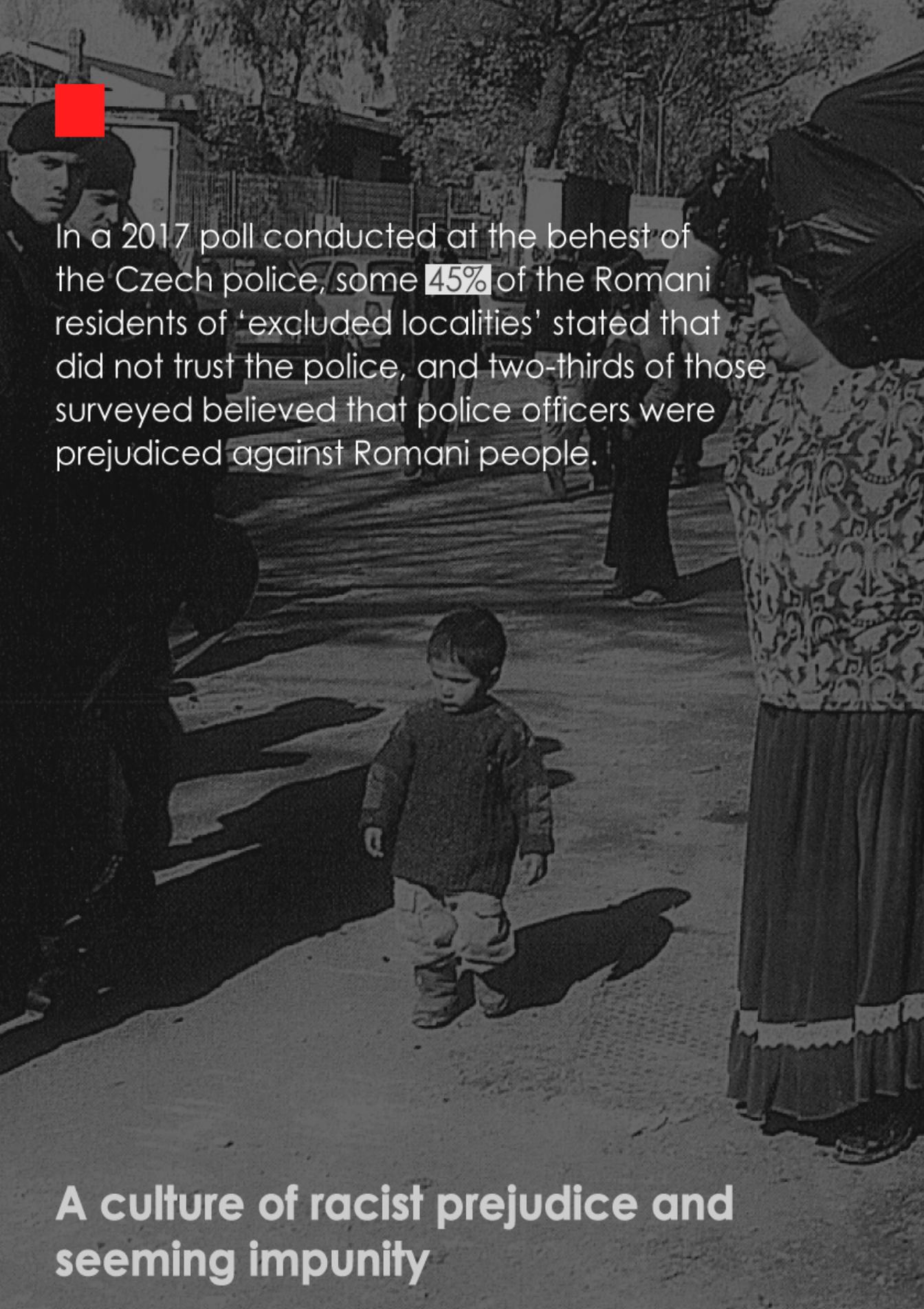
47 ECRI, Report on the Slovak Republic (sixth monitoring cycle) 8 December 2020. Available at: <https://rm.coe.int/ecri-6th-report-on-the-slovak-republic/1680a0a088>.

48 For more information see: Mgr. Karel Čada et al. *Analysis of socially excluded localities in the Czech Republic*, May 2015. Available at: https://www.ohchr.org/Documents/Issues/Housing/InformalSettlements/PublicDefenderCzechRepublic_2.pdf.

49 Czech survey finds 45 % of Romani ghetto residents don’t trust police, 42 % do, 26 April 2017, available at: <http://www.romea.cz/en/news/czech/czech-survey-finds-45-of-romani-ghetto-residents-don-t-trust-police-42-do>.

50 Interviews with Roma in the Czech Republic (Report forthcoming).

51 Interviews with Roma in Serbia (Report forthcoming).



In a 2017 poll conducted at the behest of the Czech police, some **45%** of the Romani residents of 'excluded localities' stated that did not trust the police, and two-thirds of those surveyed believed that police officers were prejudiced against Romani people.

A culture of racist prejudice and seeming impunity

The ERRC, in its 2021 submission to the UN Committee Against Torture (UNCAT), noted the Committee's 2015 recommendations to the State to adopt measures "to change the culture of impunity of torture", and expressed concern that the authorities had not taken sufficient steps to prevent the use of excessive force, torture, degrading and inhumane treatment of Roma by police officers. The submission detailed six cases taken by the ERRC and a number of other documented cases of police brutality against Roma. These included acts of violence such as beating Romani detainees, putting bags over their heads and threatening them with guns, forced confessions, denial of access to lawyers, violent police raids, and serious assaults on minors.⁵²

The concerns about police violence were similar in North Macedonia. UNCAT, in its 2015 concluding observations, expressed 'worry' regarding the excessive use of force by police officials against Roma, including those committed by members of the Alfa special police unit, and called on the state to combat and prevent discriminatory police misconduct, to ensure that all alleged cases are promptly and effectively recorded and investigated, and, as appropriate, prosecuted and punished.

Most of the Romani interviewees spoke of the experience of verbal racist abuse and physical intimidation by police officers. One described the process of neighbourhood round-ups of Roma after reports of a crime, being taken into custody for questioning, and told: *"If you refuse to plead guilty during the interrogation process, then a police officer will force you to do so by slapping you in the face and beating you, and you will end up in pre-trial detention."*⁵³

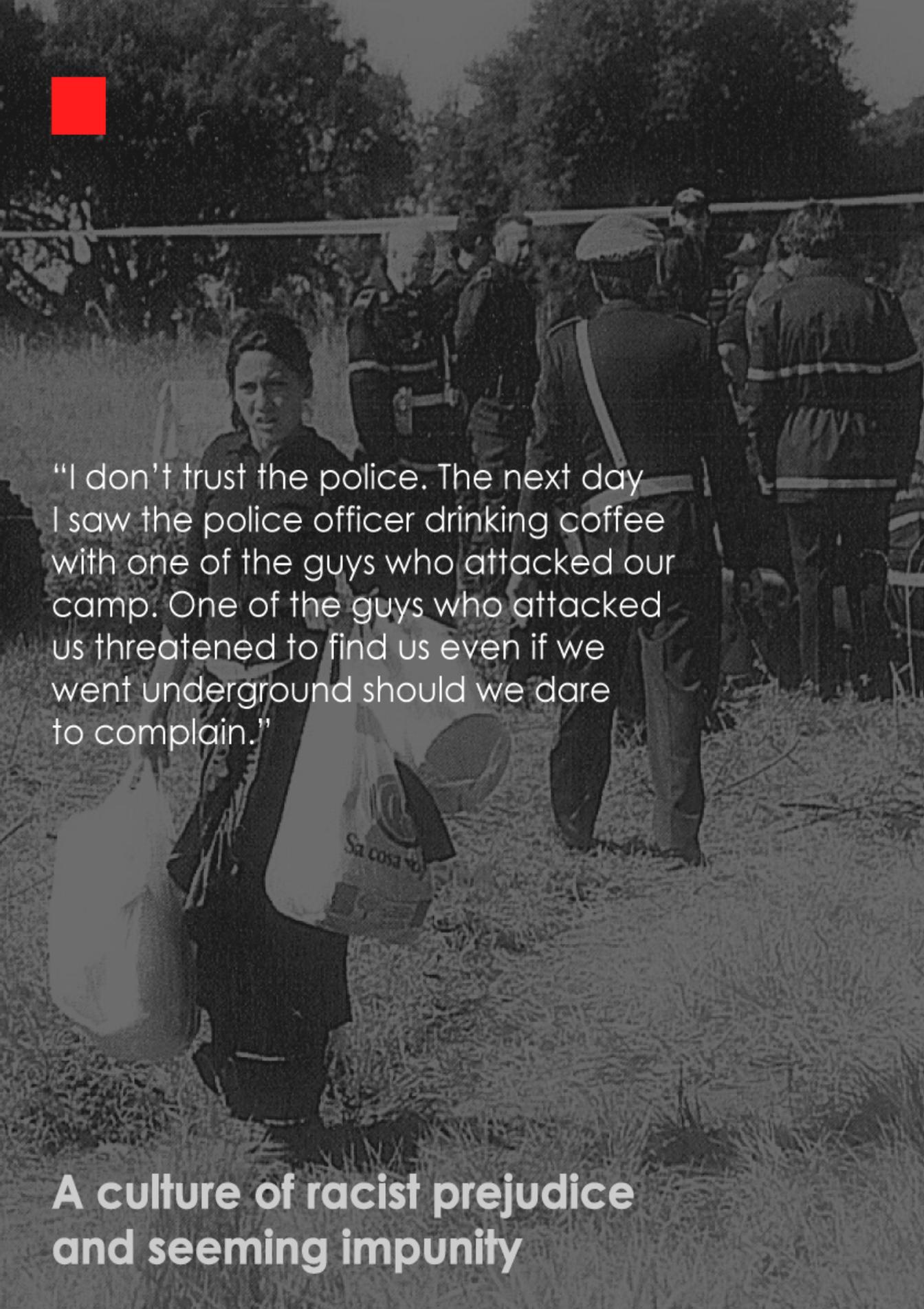
While most police officers denied hearing racist remarks or discriminatory treatment of Roma, all three Romani police officers interviewed agreed that anti-Roma prejudice was a factor in law enforcement, which impacted on policing decisions, including arrests, stop and searches, and ethnic profiling. The Romani officers reported regularly hearing their colleagues make insulting and derogatory remarks about Roma. One also suggested that many Romani victims of police violence were unable or unwilling to make a formal complaint, either because they don't know how to or because they expect no action to be taken.

In response to many accounts of racial profiling at the North Macedonian border, where Roma were denied the right to leave the country, the ERRC and its partners organised testing with Roma and non-Roma volunteers, and followed up with legal action. Officials were instructed to prevent Roma leaving, and demanded proof of finances and letters of guarantee which are not required of North Macedonian citizens under national law. Even in cases where Roma produced documentation illegally demanded of them, they were still denied the right to exit. The testing exercise resulted in every single Romani traveller being stopped, questioned, and denied exit, whilst the non-Romani testers passed unhindered. In 2018, the Skopje Basic Court II and the Court of Appeal ruled in favour of the Romani litigants, acknowledging that they were discriminated against by border police on account of their ethnicity.⁵⁴

52 ERRC, Written Comments of the European Roma Rights Centre concerning Serbia for consideration by the United Nations Committee Against Torture, at the 72nd Session (8 November to 3 December 2021). Available at: http://www.errc.org/uploads/upload_en/file/5328_file1_serbia-uncat-submission-17-september-2021.pdf.

53 Interviews with Roma in North Macedonia (Report forthcoming).

54 ERRC News, Roma Resistance: End Ethnic Profiling & Travel Bans In Macedonia. 16 May 2018. Available at: <http://www.errc.org/news/roma-resistance-end-ethnic-profiling--travel-bans-in-macedonia>.

A black and white photograph of a woman in the foreground, looking distressed and carrying several large white shopping bags. One bag has the text 'Sa cosa voi' visible. In the background, several police officers in uniform are standing and talking. The scene appears to be outdoors, possibly at a market or a public gathering.

“I don’t trust the police. The next day I saw the police officer drinking coffee with one of the guys who attacked our camp. One of the guys who attacked us threatened to find us even if we went underground should we dare to complain.”

**A culture of racist prejudice
and seeming impunity**

In the past year, the ERRC has won two cases against North Macedonia at the European Court of Human Rights on account of the state's failure to conduct effective investigations into allegations of police brutality against Roma.⁵⁵

This research adds to the growing volume of evidence concerning the resilience of anti-Roma racism within police forces right across Europe. The failure to 'serve and protect' without prejudice would seem to be the rule rather than the exception in countries ranging from Ireland to Ukraine. Mistrust from Romani communities is not a 'cultural particularity' but rather a rational response to lived experience. As one Romani woman told an ERRC activist in the aftermath of a neo-fascist attack on her camp in Ukraine: *"I don't trust the police. The next day I saw the police officer drinking coffee with one of the guys who attacked our camp. One of the guys who attacked us threatened to find us even if we went underground should we dare to complain."*⁵⁶

55 European Court of Human Rights, *Case of Memedov v North Macedonia*. Strasbourg 24 June 2021. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-210683%22%5D%7D>; ERRC Press Release 9 November 2020. Available at: <http://www.errc.org/press-releases/european-court-orders-north-macedonia-to-pay-compensation-to-roma-brutalised-by-police-as-teenagers>.

56 ERRC News, Antigypsyism: We need to talk about policing. 18 September 2018. Available at: <http://www.errc.org/news/antigypsyism-we-need-to-talk-about-policing-5>.

Judges, prosecutors, defence counsel, and system failures

In recent years it is perhaps Slovakia that has provided one of the most absurd illustrations of how anti-Roma racism perverts the course of justice. Romani victims, who were beaten and injured, testified as witnesses to the extreme police violence following a notorious mass raid in Moldava nad Bodvou, and ended up charged with perjury. The prosecutor scandalously attributed alleged irregularities in their testimonies to their “Roma mentality (*mentalita romica*)” which, according to an ‘expert’ opinion, is characterised by “low trustworthiness, a propensity to lie and emotional instability”, as well as being *asocial* and unable to comply with social norms.⁵⁷ ERRC lawyer Michal Zalesak, who has represented some of the victims, described it as ‘scarcely credible’ that any that any member of the legal profession could sign off on such a document, or make a decision to terminate an investigation citing a so-called expert opinion containing “such stereotypical and xenophobic expressions”.⁵⁸

Judges from Slovakia who were interviewed questioned whether discrimination is a serious issue among their peers, claiming they had only very rarely observed Roma making allegations that the courts were biased, racist, or discriminatory towards Roma. While most acknowledged the high level of public mistrust in the judiciary, they suggested there was no difference between Roma and ‘other types of defendant’.

Slovak prosecutors responded in a similar fashion, and denied any bias as they were bound by rules set out in the legislation. However, when questioned about Roma distrust in the system they exposed their own anti-Roma prejudice when they responded that Roma were often ignorant or entitled; one suggested that the state could do more to teach Roma “values and fundamental principles of co-habitation”, another deplored the ‘Roma mindset’ to “remain unpunished for their actions and expect positive discrimination.”

Despite denials from Czech prosecutors that ethnic bias had any bearing on the workings of the justice system, it was clear from the interviews that some harboured negative stereotypes of Roma. Prosecutors who claimed to be without bias then proceeded to describe Romani defendants in prejudicial terms as being overly emotional, fairy-tale tellers, whose typical defence strategy is to accuse police of anti-Roma bias and of having forced them to sign statements of guilt.

In both Serbia and North Macedonia prosecutors denied that there was any discrimination in the prosecution service whatsoever, and all but one claimed that they had never heard colleagues make

57 Andrej Bán, The case of Moldava: Raid and “mentalita romica“, *týždenník*, 19 June 2017. Available at: <https://www.tyzden.sk/reportaze/40301/razia-a-mentalita-romica/>.

58 Michal Zalesak, Moldava nad Bodvou: Five Years on and Still no Justice for Roma Victims of Police Brutality, *ERRC News*, 22 June 2018. Available at: <http://www.errc.org/news/moldava-nad-bodvou-five-years-on-and-still-no-justice-for-roma-victims-of-police-brutality>. An application was lodged with the European Court of Human Rights concerning this incident, on 25 April 2018, R.R. and R.D. v. Slovakia, no. 20649/18. In its judgment of 1 September 2020, the court found violations of Article 3 and Article 14 in conjunction with Article 3. For more detail see: Romea.cz, *European Court of Human Rights rules against Slovakia in case of police brutality against Roma*, 2 September 2020. Available at: <http://www.romea.cz/en/news/world/european-court-of-human-rights-rules-against-slovakia-in-case-of-police-brutality-against-roma>.

discriminatory remarks about Roma. The exception was a prosecutor from North Macedonia who attributed the remark to the mindset of an older generation, and that such attitudes have no place among younger prosecutors. All those interviewed said that the presumption of innocence applies to Roma as it does to others, and that prosecutors draw their conclusions from the established facts and relevant evidence. Any distrust on the part of Roma towards the justice system the prosecutors simply attributed to the notion that Roma are not generally informed about the system. At no point did they question the workings of the system, or why Roma should be expected to be better informed than other citizens about the unclear workings of the criminal justice system.

All but one of the judges in Serbia claimed never to have heard any colleagues make discriminatory remarks about Roma. The exception was one judge who was of Romani origin who had heard racist remarks by judges; when he called them out and mentioned that he himself was Roma, he remembers them being both surprised and ashamed. There was some acknowledgment among judges that Roma in Serbia did not trust the criminal justice system, but they were adamant that failures were not related to ethnicity, but rather that, as one judge put it, “Roma do not understand the essence of the criminal procedure”.

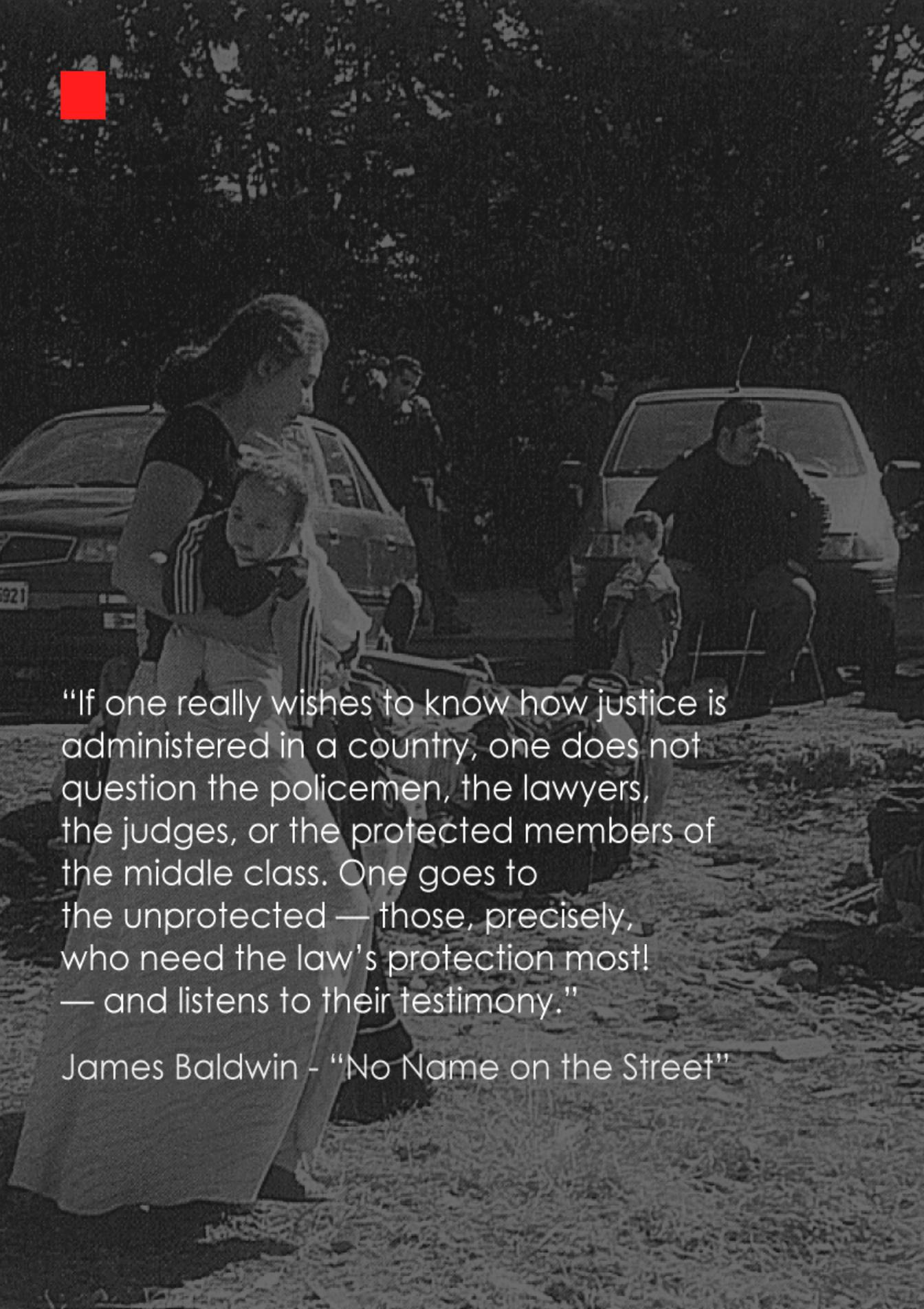
Romani interviewees and defence lawyers were somewhat less optimistic about the workings of the system. Some Romani interviewees with direct experience of the criminal justice system recounted positive experiences in front of judges they perceived to be fair-minded, diligent, and professional; others recalled rushed hearings, harsh judges, and hostile environments where they felt nothing they said was believed, and the guilty outcome was a foregone conclusion. More than the attitudes of individual judges, Roma and defence lawyers pointed to systemic features that skewed outcomes, such as difficulties accessing legal assistance, plea deals, and practices concerning pre-trial detention.

In the Czech Republic, a significant proportion of Romani defendants had difficulties accessing legal assistance. Most Roma stated that they had no defence lawyer in their criminal proceedings, either because they did not know how to obtain legal assistance or could not afford it. One lawyer revealed that criminal courts often found ‘excuses’ to refuse requests for free legal defence to Romani defendants; for example, where the defendant is young and healthy, they are ‘expected’ to earn enough money to pay privately for legal defence. Others complained about the ineffectiveness of lawyers appointed on legal aid. One defence lawyer recalled cases where state-appointed lawyers betray their prejudices by providing sub-standard legal assistance.

While most lawyers denied that state appointed that Romani defendants’ reliance on *ex officio* lawyers had any substantial impact on the quality of legal assistance, one third of those interviewed in North Macedonia conceded that legal assistance provided through the legal aid system is of a lower quality, with a couple suggesting that lawyers appointed this way are less committed to their client, and less likely to exhaust all remedies available to ensure a fair and proper legal outcome.

One of the most alarming findings from the Fair Trials report was the prejudicial attitudes of defence lawyers in Bulgaria, Romania, and Hungary, who openly admitted their reluctance to represent Romani defendants in case it damaged their personal reputation, and on account of perceptions of ‘unreasonable’ behaviour or expectations, the alleged tendency of Roma to change their stories, and perceptions about low levels of education and literacy.⁵⁹ Similar concerns emerged in

⁵⁹ Fair Trials 2020, p. 8.



"If one really wishes to know how justice is administered in a country, one does not question the policemen, the lawyers, the judges, or the protected members of the middle class. One goes to the unprotected — those, precisely, who need the law's protection most! — and listens to their testimony."

James Baldwin - "No Name on the Street"

the Czech Republic, where some lawyers taking part in the research expressed stereotypically racist notions that Roma – who they perceive as generally impulsive, irresponsible, and unintegrated and uncooperative – have a ‘different perception of truth’ and a tendency to lie; and that they possess culturally-conditioned perceptions of ownership and obligation that are at odds with the majority society, and are thus likely to re-offend.

As for system failures, one area of concern in Slovakia is trial waivers in the form of plea deals as a way of processing criminal cases. From all interviews it seems that, despite official denials that ethnicity has any impact, a majority of cases involving Romani defendants were dealt with through criminal orders. Without a trial or direct defendant participation, criminal orders are issued and if left unchallenged for eight days they become binding and have the legal effects of a criminal conviction, with a maximum sentence of three years imprisonment.

Pre-trial detention removes the right to liberty from a legally innocent person who has not yet been convicted of a crime, and should be a measure of last resort to prevent the serious risk of harm to others, to protect criminal investigations from unlawful interference, or when the suspect is a definite flight risk. When it comes to Roma, it appears too often to be a measure of first resort in systems saturated with anti-Roma prejudice.

There was strong denial from prosecutors that ethnicity was ever a factor in pre-trial detention decisions. Judges in all four countries tended to share this view, stressing that they were guided by strict criteria written into the legislation as to when pre-trial detention may be authorised, and most insisted that pre-trial detention is considered very strictly and cautiously and on an individual basis. This is a clear case where purportedly neutral sets of rules and guidelines have disproportionate and discriminatory impacts upon Romani defendants.

Some judges conceded that they were more likely to presume that Romani defendants were a flight risk, but insisted this was due to their social and economic circumstances, such as having no fixed address. They also said that pre-trial detention was sometimes the only option, particularly if the Romani defendant was unemployed or did not have the financial resources to pay for bail. Even where alternatives to pre-trial detention are possible, the judges said that technical issues meant that monitoring with an electronic tagging bracelet was often not viable for Romani defendants because their living conditions (such as irregular sources of electricity) made it impossible to install the requisite equipment. It cannot be ignored that these circumstances and challenges, which result in people being deprived of their liberty before trial, are themselves symptoms of antigypsyism.

Prosecutors in Serbia, like the judges, insisted they rely on the Criminal Procedure Code to decide whether to ask a judge to order the detention of a suspect in custody, stressing once more that the law applies to all individuals equally. This assertion rings hollow in countries where, due to discrimination and social exclusion, some 80% of the Roma population is at risk of extreme poverty, and pre-trial detention of Romani suspects is too often the preferred and routine option. Moreover, where antigypsyism is embedded in the very structures of state and society, it is clear that the coercive brunt of the law is borne unequally by Roma who are poor.

Conclusions

The evidence from these four country reports shows that Roma face discrimination in criminal justice systems, and despite all the protestations by prosecutors and denials by judges, racial bias skews outcomes for Roma in the Czech Republic, Slovakia, Serbia, and North Macedonia. Assertions that all individuals are equal before the law amount to little more than pious cant, when professionals working within the criminal justice system openly give voice to anti-Roma prejudices and regularly regurgitate the standard lexicon of racist stereotypes. They provide a stark illustration of how institutional discrimination, which resides in the policies, procedures, operations, and culture of the criminal justice system, reinforces individual prejudices and is reinforced by them in turn.

The research further corroborates the findings of the 2020 Fair Trials reports on Bulgaria, Hungary, Romania, and Spain, that where anti-Roma racism is not only pervasive in society, but engrained and routinised in the criminal justice system, there is precious little justice to be had for Roma.⁶⁰ The conclusions from this round of research differ little from the previous one, and provide further evidence of one unassailable fact: that Roma face structural racism at all stages of the criminal justice system.

Over the years the sheer volume of complaints, cases, and evidence of police misconduct collected by the ERRC leaves little doubt that anti-Roma racism is systemic within law enforcement agencies, and that policies and practices disproportionately target Romani communities. A culture of impunity within police forces emboldens officers to give full reign to their racist prejudices and engage in arbitrary, and sometimes lethal violence against Roma.

This research offers further evidence that Roma are more likely to be ethnically profiled and drawn into the criminal justice system than non-Roma. Once drawn in, Roma are less likely to receive adequate legal representation, and more likely to be held in pre-trial detention and to receive custodial sentences than their non-Roma counterparts. The denial of access to justice for Roma undermines the prospect of institutions earning the trust of communities; the arbitrariness of a criminal justice system that is so blatantly weighted against Roma and other racialised minorities stands as a betrayal of democratic principles and constitutes a fundamental breach of Article 7 of the Universal Declaration of Human Rights.⁶¹

The fact that Roma and other racialised minorities face harassment, arbitrary detention, and abusive treatment by the law enforcement apparatus, and disparate treatment by prosecutors and the courts is hardly news. Back in 2001, at the UN World Conference against Racism in Durban, South Africa, Human Rights Watch (HRW) made a compelling case concerning the ‘extraordinary harm’

⁶⁰ Fair Trials, 2020. Available at: https://www.fairtrials.org/sites/default/files/publication_pdf/FT-Roma_report-final.pdf.

⁶¹ Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

caused to individuals and society alike by racial discrimination in administration of justice, whether in policing, criminal prosecutions, trials, sentencing, or imprisonment.⁶²

HRW pointed to the stark contrast between the humiliating and degrading abuses meted out to marginalised groups – including disproportionate targeting for arrest, and excessive, sometimes lethal, force – and the treatment accorded to others by law enforcement, and how members of excluded minorities who have been abused often have little recourse to legal remedies. HRW also highlighted the disparate impact that ostensibly race-neutral laws can have on minorities as a consequence of prosecutorial discretion or sentencing policies, or the nature of the law itself. Such discrimination in law enforcement and the justice system can be a primary factor in perpetuating the social, economic, and political exclusion of racialised minorities in a vicious cycle where such marginalisation generates discrimination in the action of the police and the judicial system, deepening social divisions and increasing that marginalisation:

“When the police and the courts are the face of the state most constantly engaged with members of groups subjected to broader social discrimination, their abusive treatment compounds and confirms their subordinate status.”⁶³

It is a matter of concern that HRW’s observations back in 2001 remain pertinent to this day, and it is a matter of fact that official denial from national authorities and constant deflection by EU institutions has stymied any serious attempts to root out systemic racism within the criminal justice systems of Europe. The belated recognition by the European Commission that anti-Roma racism is systemic, and rooted in public institutions rather than a mere aggregate of the cumulative prejudices of flawed individuals is welcome. However, apart from mention of “enhancing the training strategies of law enforcement”, and the enduring insistence on the need for more data, there is nothing in the new Framework strategy that even begins to deal with the impact on Romani communities of such profound injustice.

The standard recourse to racial awareness, unconscious bias and diversity training as a cure-all should be avoided. More than 30 years ago, Ambalavaner Sivanandan criticised the burgeoning industry around racial awareness training for propagating “the sort of psychospiritual mumbo-jumbo” which reduces social problems to individual solutions.⁶⁴ Today, despite negligible results and zero impact, it remains the first response in public and private sectors to the ‘challenges of diversity’.

As Kenan Malik wrote, this marked a shift to viewing racism as a problem of “interpersonal behaviour in need of therapeutic intervention”. The problem with this shift from social change to personal therapy is that it downgrades the significance of laws and social structures in favour of unconscious bias. As Malik pointed out, “It was not, however, unconscious bias that made a police officer place his knee on George Floyd’s neck.”⁶⁵ Neither

⁶² Human Rights Watch, World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, South Africa 2001. Available at: https://www.hrw.org/legacy/campaigns/race/criminal_justice.htm.

⁶³ Human Rights Watch, 2001.

⁶⁴ Gary Younge, Ambalavaner Sivanandan obituary, *The Guardian*, 7 February 2018. Available at: <https://www.theguardian.com/world/2018/feb/07/ambalavaner-sivanandan>.

⁶⁵ Kenan Malik, ‘Enough of the psychobabble. Racism is not something to fix with therapy’. *The Guardian*, 12 July 2020. Available at: <https://www.theguardian.com/commentisfree/2020/jul/12/enough-of-the-psychobabble-racism-is-not-something-to-fix-with-therapy>.



These are not recommendations.
These are basic demands for
states to do what they promised.

was it unconscious bias at play when Stanislav Tomáš was killed beneath a policeman's knee in Teplice. The brutality and discrimination that Roma face in the criminal justice system is the product of very conscious policies.

It is customary to conclude reports with a set of recommendations. This custom carries an implicit assumption that state institutions engage in constructive and transparent dialogue with civil society, to put right intended or unintended wrongs, address inequities and provide redress for injustices done. This is an erroneous assumption; when it comes to racism in the criminal justice system, the official and institutional response is one of outright denial and stonewalling across Europe.

It is no secret that action is needed to purge our criminal justice systems of racial bias and to render law enforcement publicly accountable, and over the past two decades scores of recommendations have been compiled by UN and Council of Europe committees, by special rapporteurs and civil society organisations, and duly ignored by state authorities. What remains lacking is a semblance of political will to do the right thing. There is a need to break the silence and pump up the volume to demand action, for Europe's reckoning with racial justice is long overdue. There is a pressing need also to ensure that the voices of Roma and other racialised minorities are heard, for as James Baldwin famously observed:

“If one really wishes to know how justice is administered in a country, one does not question the policemen, the lawyers, the judges, or the protected members of the middle class. One goes to the unprotected — those, precisely, who need the law's protection most! — and listens to their testimony.”
(James Baldwin, *No Name on the Street*)⁶⁶

⁶⁶ Indira Birnie, 13 James Baldwin quotes that are still painfully true today. *Penguin Features*. 2 August 2021. Available at: <https://www.penguin.co.uk/articles/2021/august/best-james-baldwin-quotes-still-true-relevant-today.html>.

What is to be done?

The discrimination that Roma encounter in criminal justice systems is rooted in the wider routinised phenomenon of antigypsyism, and criminal justice reform alone will not eliminate anti-Roma racism. Much more is needed to eradicate Institutional discrimination which “covertly or overtly, resides in the policies, procedures, operations and culture of public or private institutions – reinforcing individual prejudices and being reinforced by them in turn” (Ambalavaner Sivanandan).⁶⁷ But criminal justice reform would make for a good start, because without access to justice all talk of social inclusion and equal opportunities is nonsense on stilts.

What follows is not a set of recommendations, but rather basic demands that state authorities abide by their declared commitments to the principles of justice and equal protection before the law.

- Beyond the routine recommendations concerning disaggregated data there is the question of to what end and useful purpose, for the gathering of data cannot be an end in itself. Information on the ethnicity of those involved in the criminal justice system must be collected in accordance with human rights principles and protected against abuse through data protection and privacy guarantees. Such information must not be abused to further stigmatise minorities, but rather used to identify and eliminate stereotyping or racial profiling by law enforcement officials. Data showing the discriminatory effect of criminal justice policies and practices should trigger remedial action.

In addition to ensuring that communities give fully informed consent, data systems should be regulated to serve the needs of Romani communities, and support be provided to create platforms for Roma to generate relevant data to document the discriminatory impact of policing and criminal justice on their lives, and to give voice to their perceptions and experiences.

- Governments must provide prompt and effective remedies for victims of discrimination in law and in practice. Procedures for the initiation of complaints should be simple and flexible and expeditiously handled. Dissemination of information concerning the availability of remedies, including recourse procedures, should be widespread, and victims should be provided with legal assistance to pursue remedies.
- Decriminalise acts that cause no social harm, provide alternatives to custodial sentences, ensure fining practices are sensitive to individual circumstances, and 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.

The targeted over-policing of Romani communities – which amounts to racial harassment and includes practices of imposing fines for petty offences, such as possession of kindling, jaywalking, or failing to have a bicycle light – must cease. Criminal law responses to the committing of petty offences that are often a symptom of poverty, serve no purpose beyond further aggravating social exclusion. Where possible, laws

67 Gary Younge, Ambalavaner Sivanandan obituary, *The Guardian*, 7 February 2018. Available at: <https://www.theguardian.com/world/2018/feb/07/ambalavaner-sivanandan>.

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.

- Resources dedicated to ‘enhancing the training strategies of law enforcement’ could be better diverted to support Romani communities to advocate for the elimination of racialised policing, to hold the police and other criminal justice institutions to account, and to educate and empower members of the community to exercise their rights, and to protect themselves from discriminatory treatment.

Training for all those involved in the administration of justice, including law enforcement officers, the judiciary, and prosecutors, should focus not on ‘unconscious bias’, but rather on officials’ obligations under national and international law to discharge their responsibilities in a non-racist and human rights compliant fashion, and to ensure such officials become fully aware of the consequences and penalties for failure to do so. It is necessary that training should be reinforced by the incorporation of international human rights standards into the working rules, regulations, and procedures of the criminal justice system.

Racism and prejudicial attitudes among legal professionals should be a source of embarrassment and shame for legal professional bodies. More than training and education to enable lawyers to provide more effective, impartial assistance to Romani clients, professional bodies must give priority to ensuring 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.

- 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. States should place the police under a statutory obligation to promote equality and prevent racial discrimination in carrying out their functions; and victims who register complaints must be protected from intimidation and reprisal actions by police officers.
- With regards to ethnic profiling, the language contained in the EU Action Plan Against Racism concerning ‘the common and legitimate use of profiling’ is such that the recommendation to Member States is quite ambiguous, and open to being interpreted as ‘just carry on with business as usual’. A more forthright message should be sent to governments that is more than ‘warning against racial profiling’, and draws on ECRI’s General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, that *racial profiling constitutes a specific form of racial discrimination and must be expressly prohibited by law*.⁶⁸

⁶⁸ ECRI General Policy Recommendation N° 11 on Combating Racism and Racial Discrimination in Policing. Adopted 29 June 2007. Available at: <https://rm.coe.int/ecri-general-policy-recommendation-no-11-on-combating-racism-and-racia/16808b5adf>.

- The EU should produce a binding Charter for Common Basic Standards that enshrines rights-compliant, non-discriminatory and non-racist policing across the Union, and the Race Equality Directive should be extended to protect citizens from racist misconduct by law enforcement. The Commission, as Guardian of the Treaties, should not retreat behind the most restrictive interpretation of its competences, but rather step up to defend Article 2 when it comes to the rule of law and the rights of persons belonging to minorities.⁶⁹ Article 87 of the Treaty on the Functioning of the European Union (TFEU) gives the Union the power to establish cooperation amongst the police and authorities competent for prevention, detection and investigation of criminal offences in all member states, including police, customs and other specialised law enforcement services. While the EU continues to expand the exercise of cross-border policing powers⁷⁰, there are no complementary requirements to ensure non-racist policing, and no basic standards to safeguard the rights of ethnic minority citizens across the Union. This deficit must be remedied.

⁶⁹ Article 2 of the Treaty of the European Union states that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Available at: https://lexparency.org/eu/TEU/ART_2/.

⁷⁰ Fair Trials, *MEPs fail to hold Europol to account*, FT Admin, 21 October 2021, Available at: <https://www.fairtrials.org/news/meps-fail-hold-europol-account>.



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