

# How criminal justice systems across Europe are failing women: Sarah's case

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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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**In January 2022, the Cypriot Supreme Court overturned the conviction of Sarah\*, a young British woman who was prosecuted, detained before her trial and sentenced for public mischief (false allegations) after she went to the police to report her rape. Her acquittal comes two and a half years too late. Like many women, Sarah was failed by the system that she turned to for justice. What does her case tell us about how criminal justice systems must be reformed?**

## About Sarah's case

In July 2019, Sarah went to the Cypriot Police to report that she had been raped by several men in her hotel room. She was just 18 and on holiday in the country. Despite the serious nature of her report, she was treated with scepticism. At no point during the initial investigative stage did she receive appropriate and sufficient medical treatment of psychological support. She was interrogated by investigators twice while already distressed and exhausted.

Ten days later, she voluntarily went back to the station to provide clarifications to her previous testimony. She was then questioned into the night, and coerced into retracting her original statement. The police were no longer treating her as a victim of rape but had decided that she had made false accusations. After six hours of questioning, she retracted her statement.

### From victim to suspect

During the six-hour interrogation, Sarah's status within the system changed from victim to suspect. She was charged with 'acts of public mischief' and without any justification was imprisoned for almost a month before she was released on bail. She could not leave Cyprus for another six months.

At the trial, the judge refused to admit any evidence that related to Sarah's report of rape to the police or hear any reference to it. For the purposes of this trial, she was an alleged perpetrator of false accusations and there was no consideration of why she had been in contact with the system in the first place. She was eventually found guilty and convicted to a four-month suspended sentence by the Court of first instance.

▫ \*Name has been changed to protect privacy.

## Right to a lawyer during interrogation

The six-hour interrogation that led Sarah to retract her original statement was conducted without a lawyer being present.

This was a breach of EU law, specifically recital 21 and Article 2(3) of the Directive 2013/48/EU on access to a lawyer in criminal proceedings. When in the course of questioning, a person other than a suspect or accused person becomes a suspect or accused person, this person has the right to be assisted by a lawyer.

Pursuant to CJEU case law, EU Directives can be directly invoked before national courts and national law that does not comply with them must be set aside. This was argued by Nicoletta Charalambidou, defence lawyer and member of Fair Trials' Legal Experts Advisory Panel (LEAP), who represented Sarah before the Supreme Court.

In Cypriot law, the right of access to a lawyer is currently limited to people who have been arrested as suspects and does not encompass the situation of people who, like Sarah, become suspects after being interrogated under another status, for examples, as a victim.

Such an implementation gap is not uncommon in the EU. In 2021, the European Commission launched infringement proceedings against 16 Member States for not adequately transposing the Directive on access to a lawyer, and in particular with regard to the conditions under which this right could be waived.

This case shows EU law can be a powerful tool before national courts. Because she was questioned and retracted her statements without a lawyer present, the Supreme Court recognised that Sarah's rights under the Directive had been breached by the prosecuting authorities. The Court also found that her alleged waiver was, "not made with the required clarity and not substantiated by the defendant", and therefore did not comply with article 9 of the Directive, which provides that any waiver must be given knowingly, voluntarily, and unequivocally.

The Supreme Court also found that:

- Sarah agreed to retract her allegations under pressure. While she was originally called to the police station to 'clarify' her initial testimony, she was kept there for six hours, at night and without a lawyer, until exhausted, she retracted her statement.
- The Court of first instance unjustifiably failed to take into account a statement by the first doctor to see Sarah. He stated that Sarah was in such a vulnerable state that she refused to let him approach her for examination purposes. This led him to call the police.

- The Court of first instance unjustifiably failed to take into account other failures of the authorities when they investigated the rape allegations, which could cast doubt about whether the rape claims were false.
- Sarah was treated unfairly, and with hostility and rudeness by the Court of the first instance. The judge repeatedly stated that her allegations of rape had nothing to do with the case, when in fact it was the central issue. That made it practically impossible for the defence to raise doubts about the alleged falsity of her rape complaint.

On that basis, the Court considered that Sarah's conviction was 'unjust and precarious' and acquitted her.

## How criminal justice systems are failing women

While EU law helped to secure Sarah's acquittal, this was not a victory for justice. Judicial oversight over law enforcement and investigative authorities should guarantee that they don't use their power in a way that infringes people's fundamental rights and further victimizes those they are supposed to protect. In this case, it took two and a half years and a referral to the Supreme Court for her fundamental rights to be protected.

Sarah's case is yet another reminder that without deeper structural reform, criminal justice systems will continue to fail women.

### Reporting sexual violence

Across Europe, women who report sexual violence are not taken seriously or face undue skepticism. A [2020 survey on sexual violence](#) in Belgium revealed that 90% of respondents considered the fear of not being believed as an obstacle to reporting, while 85% thought victims are often made to feel guilty and led to believe that they're at fault for having been harmed. Racialised women were further shown to be at disproportionate risk of being victimized by the system: 63% of respondents thought the fear of being subjected to racism, including Islamophobia, can be an obstacle to reporting sexual violence.

Women who do eventually turn to the system to report acts of sexual violence run the risk of being countersued for false accusations, by those who caused them harm or the State itself. Deep-rooted sexist bias makes these investigations and prosecutions more likely to succeed.

Yet, EU proposals to address these failings centre around giving criminal justice systems more power. On 8 March 2022, the Commission adopted [a proposal for a Directive](#) on combating violence against women and domestic violence, which further criminalises certain forms of gender-based violence such as rape, female genital mutilation and cyber violence at the EU level, with the objective to 'ensure such offences are effectively prosecuted'. But further criminalisation and [giving more resources to law enforcement authorities](#) is not the solution. States should not be bringing more cases into criminal justice systems that are incapable of effectively addressing gender-based violence. In Cyprus, harassment, stalking, sexism, and online sexism were recently criminalised, and a draft law provides for life sentences for femicide.

There is evidence that laws designed to protect women often harm them. For example Mexico's femicide laws led to women being convicted at a disproportionate rate to men. US domestic violence laws have led women to be arrested ["for crimes related to their own abuse and vulnerability"](#). Studies have documented the failure of the state to combat sexual and domestic violence through criminal justice. On the contrary, criminalisation tends to make women less safe and [exacerbate social inequalities](#).

Following public outcry in relation to Sarah's case, Cyprus adopted a [new policy](#) under which only police officers who are women will be taking testimonies from victims of rape. While victims should be offered the choice to report to a woman if they want to, implementing such reform in isolation is not enough. Policy makers need to recognise the deep structural nature of the problem, that lies with the institution of policing rather than individual police officers. Increasing diversity in the police forces does not erase underlying institutional gender and racial bias as demonstrated by the [recent case of Child Q](#) in the UK – a 15-year-old girl was strip searched by female police officers after reported her for allegedly 'smelling of cannabis'. It didn't matter that the officers called to conduct the strip search were women, it mattered that a school and the police thought that this was an appropriate response and had the powers to carry it out.

Policy makers need to recognise that deeper structural reform is needed. It is high time we questioned 'easy fix' punitive solutions to historic and societal harms, that give more power to biased systems to perpetuate cycles of violence and injustice, and obscure the ways in which they fail to prevent and address harm, or provide support to victims. Fair Trials has joined 133 other civil society organisations to call for an [inclusive and comprehensive EU gender-based violence policy](#). Instead of resorting to more criminalisation, policing and incarceration, the policy must prioritise a social, community and survivor-centred approach and ensure safety and protection, including from victimisation by law enforcement and criminal justice systems.

## Pre-trial detention

Like Sarah, [Valerie Bacot](#) was held in pre-trial detention. Bacot spent a year in pre-trial detention for a year when accused of killing the man who subjected her to decades of emotional, physical, and sexual abuse. Like Sarah, Bacot was a victim of systemic violence perpetrated by the police, investigative authorities, and courts. Both cases show that criminal justice systems that are rooted in patriarchy and empowered by policymakers will invariably fail the very women they are meant to protect.

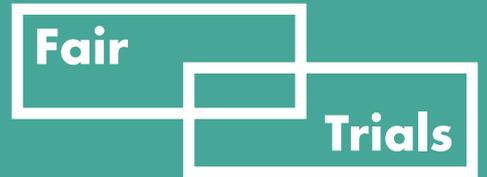
Pre-trial detention should be a measure of last resort but in the EU it is being used in an almost automated way, and as Fair Trials [recently reported](#), rates are detention rising.

EU criminal justice policy must be coherent. Procedural rights cannot be meaningful if on the other hand, the EU participates and encourages further expansion of criminal powers and allows Member States to overincarcerate people by failing to tackle pre-trial detention.

## Recommendation

The EU should encourage Member States to increasingly divest from harmful systems while engaging in their structural reform, and invest instead in [alternative](#) community-led and survivor-centric solutions to tackle gender based-violence.

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