

# Equality data in criminal justice

## Report

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Fairness, equality, justice

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# Introduction

The collection of data to [describe and analyse the state of equality](#) – commonly known as equality data – is one of the tools European civil society and policy-makers are making a push for, in the hope that highlighting systemic discrimination and racism in our societies will enhance social justice.<sup>1</sup>

This seems important in response to the denial faced by impacted communities and anti-racism groups when denouncing injustice, but also as a means of reclaiming something that has been historically weaponised against marginalised groups. Indeed, data continues to be used in support of populist and security-driven agendas that push entire communities further into the margins through overcriminalisation, overpolicing, and overincarceration, as is the case with data used in [‘predictive’ policing models](#)<sup>2</sup> or to [forcibly disband and displace](#) racialised communities.<sup>3</sup>

In support of reflections around the best ways to go about collecting equality data in an ethical and useful way, this report is intended to provide an analysis of the methodology and findings of a pilot study implemented in Belgium, Bulgaria, Greece, and Romania.<sup>4</sup> The EU is actively encouraging and supporting Member States to collect equality data across different policies including in the area of criminal justice (Section One - Equality data in EU policies). Partners<sup>5</sup> piloted a methodology intended to support NGOs to collect equality data in relation to pre-trial criminal proceedings – namely, to evidence how unequal access to EU-protected procedural rights<sup>6</sup> from arrest to sentencing results in people being disparately impacted by criminal justice outcomes based on their ethnicity, race, or other ‘foreign’ perceived status.

The results confirm that justice does not apply neutrally and equally, and that criminal justice systems carry the biases of the wider society (Section Two - Key findings), exacerbated by the weight and authority of policing and criminal law in enforcing social control. The study also brings to light some of the many challenges in relation to equality data collection in criminal justice, which this report seeks to identify and analyse (Section Three - Reflections). It ultimately opens up the conversation to the importance of amplifying the voices of people impacted by injustice and reimagining our systems in ways that respond to the need of all people to be free from injustice (Section Four - Recommendations).

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<sup>1</sup> European Commission, [Equality data collection](#).

<sup>2</sup> Fair Trials, [Automating injustice](#), 2021.

<sup>3</sup> The Guardian, [Denmark plans to limit ‘non-western’ residents in disadvantaged areas](#), 2021.

<sup>4</sup> The “EQUALITY DATA” project was co-funded by the European Commission Justice Programme.

<sup>5</sup> Bulgarian Helsinki Committee (BHC, coordinator), Association for the Defense of Human Rights in Romania-Helsinki Committee (APADOR-CH), Centre for European Constitutional Law (Greece), Belgian League of Human Rights (LDH) and Fair Trials Europe (Belgium).

<sup>6</sup> See for example: Fair Trials, [Unlawful evidence in Europe’s Courts: Principles, practice and remedies](#), 2021.



## Section One - Equality data in EU policies

There has been a marked increase in focus on equality data over the last years, most recently in the [EU Anti-Racism Action Plan 2020-25](#), which calls for the “collection of data disaggregated on the basis of racial or ethnic origin, in order to capture both subjective experiences of discrimination and victimisation and structural aspects of racism and discrimination”.<sup>7</sup>

Most recently, the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs (LIBE) prepared a draft [report](#) on racism, anti-discrimination and anti-racism in the EU in which it “stresse[d] the importance of collecting comparable and robust disaggregated equality data to document discrimination and to tackle inequality holistically, based on voluntary participation, self-identification and informed consent, while protecting anonymity and confidentiality, respecting the key principles of EU data protection legislation and fundamental rights and complying with national legislation.”<sup>8</sup> The report also called on the European Commission to continue developing a common methodology on this with Member States in order to ensure the comparability, accuracy, and reliability of the data collected.

The LIBE committee also commissioned a [report](#) on police oversight published in June 2022, as a result of widespread reports of acts of police violence across Europe in the media.<sup>9</sup> In its recommendations, the report calls for comparable data and research across EU Member States on police violence, even though there is already extensive and recent collection of police violence by civil society.<sup>10</sup>

<sup>7</sup> European Commission, [EU Anti-racism Action Plan 2020-2025](#), 2020.

<sup>8</sup> European Parliament Committee on Civil Liberties, Justice and Home Affairs, [Draft report on racial justice, non-discrimination and anti-racism in the EU](#), 2022.

<sup>9</sup> European Parliament Policy Department for Citizens’ Rights and Constitutional Affairs, [Democratic oversight of the police](#), 2022.

<sup>10</sup> European Network Against Racism, [The sharp edge of violence: Police brutality and community resistance of racialised groups](#), 2021 and Equinox, [Who protects us from the police](#).

The EU's policies on equality data focus on the collection of data organised by Member States. The European Commission's first [European handbook on equality data](#) was published in 2007 and provided the first overview of how best to collect and analyse data.<sup>11</sup> The handbook was [revised in 2016](#).<sup>12</sup> The European handbook on equality data, and the Guidelines on improving the collection and use of equality data define 'equality data' as any piece of information that is useful for the purposes of describing, analysing, reasoning about and decision-making on the state of equality. The information may be quantitative or qualitative in nature. It could include aggregate data that reflect inequalities or their causes or effects in societies.

The EU is also funding the EU's Fundamental Rights Agency (FRA) to create a [compendium](#) of "promising" practices for equality data collection "to support Member States in their efforts to improve the collection and use of equality data."<sup>13</sup>

Despite EU efforts, there is no systematic collection of data by EU Member States, in particular in relation to criminal justice, where Member States' data collection has primarily looked at stop and search practices rather than tracing the full criminal justice chain. Governments have frequently mis-cited the GDPR, as well as [Directive 2016/680](#) on processing data by criminal justice authorities, as reasons for not collecting equality data.<sup>14 15</sup>

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[Structural Racism in Law Enforcement in the European Union](#), 2021. See also Ligue des Droits Humains, [Police watch: Abus policiers et confinement](#), 2020, which includes direct testimonies from people affected by police violence in Belgium.

<sup>11</sup> European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Makkonen, T., [European handbook on equality data : why and how to build to a national knowledge base on equality and discrimination on the grounds of racial and ethnic origin, religion and belief, disability, age and sexual orientation](#), 2007.

<sup>12</sup> European Commission, Directorate-General for Justice and Consumers, Makkonen, T., [European handbook on equality data : 2016 revision](#), 2017.

<sup>13</sup> European Union agency for Fundamental Rights, [Compendium of practices for equality data collection](#).

<sup>14</sup> [Directive \(EU\) 2016/680](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA .

<sup>15</sup> Article 9 of the [GDPR](#) states that: "[p]rocessing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited." However, the same article further elaborates that the prohibition does not apply when: "[t]he data subject has given explicit consent to the processing of those personal data for one or more specified purposes; when processing is necessary for reasons of substantial public interest, statistical purposes, scientific or historical research purposes, or archiving purposes in the public interest." The EU's data protection framework allows the collection and processing of equality data under certain circumstances and with strict safeguards in place. Article 5 sets out the overarching principles of: lawfulness, fairness, transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity, confidentiality and accountability and recital 26 confirms that the GDPR does not concern the processing of such anonymous information, including for statistical or research purposes.

## Why collect equality data?

There has long been plenty of publicly available evidence of discrimination in the criminal justice systems across the EU.<sup>16</sup> While Member States may not have actively gathered equality data in this area, affected people have widely and consistently directly reported discrimination and racism by criminal justice authorities through civil society reports, mainstream media and social media.<sup>17</sup>

However, governments, authorities and courts have continued to ask for more or another type of evidence when claims of discrimination are made on both an individual and a systemic level.

At an individual level, people affected by racism are expected to make complaints and build their own case (to complaint bodies, Ombudspersons, monitoring groups) by documenting their personal experience and often “backing” it up with information showing generalised racism. In a gender-based violence case brought against Italy, the European Court of Human Rights dismissed the applicant’s claim of discriminatory treatment, in light of the applicant’s alleged failure to put forward statistical data and observations from non-governmental organisations proving that the Italian criminal justice system would carry systemic bias against women.<sup>18</sup>

At a systemic level, policy-makers require evidence of racism in criminal justice systems in Europe to make the case for legal reform. Evidence may be required to inform policy by indicating where discrimination occurs and how. Evidence is also sought to monitor the impact of policy and reform. At the September 2021 European Commission Roundtable on Equality Data, Commissioner Dalli stressed that, “without evidence it is impossible to track progress.”<sup>19</sup>

There are, however, a number of reasons for which this push for equality data collection may be met with reluctance. Significant concerns have been raised about state collection of equality data – particularly for the benefit of police and border authorities – based on decades of negative experiences where data has been mis-used to target, stigmatise, and further discriminate against minority communities. The Subgroup on Equality Data Guidelines on improving collection has underscored the importance of collecting qualitative data, not just quantitative data.<sup>20</sup> Although quantitative data tends to be upheld as objective and factual, there are inherent limitations. Numbers on their own, interpreted without context, can allow for misrepresentations of situations. Further, focusing just on quantitative data creates a hierarchy of knowledge in which the voices and experiences of impacted people can be downplayed as subjective.

<sup>16</sup> For an overview of Fair Trials’ work on this, see Fair Trials, [Disparities and discrimination in the European Union’s criminal legal systems](#), 2021 and Fair Trials, [Justice denied: Roma in the criminal justice system](#), 2022 and Fair Trials, [Racism in Europe’s law enforcement and criminal justice systems](#), 2022.

<sup>17</sup> See for example the work of the European Network Against Racism, Equinox, Systemic Justice, CAGE, Rosa Luxembourg Foundation, La verite pour Adama collective, and others, compiled in Fair Trials, [Racism in Europe’s law enforcement and criminal justice systems: A non-exhaustive compilation of evidence and resources for policymakers](#), 2022.

<sup>18</sup> European Court of Human Rights, [Landi v Italy](#), No. 10929/19, judgement of 7 April 2022.

<sup>19</sup> Brussels Times, [Anti-racism: How to collect equality data to fight discrimination in the EU](#), 2021.

<sup>20</sup> European Commission High Level Group on Non-discrimination, Equality and Diversity, Subgroup on Equality Data, [Guidelines on improving the collection and use of equality data](#), 2018.

Finally, as argued by [Nani Jansen Reventlow](#), analysing the state of equality is not the same as working towards ending racism, and data alone will not replace political will in this sense.<sup>21</sup> As such, questions around prioritisation of resources arise in this time-sensitive fight for equality.



## Section Two – Key findings based on the pilot of a quantitative data collection methodology in prisons

The project builds on previous initiatives employing a similar methodology<sup>22</sup> to identify discrimination in accessing the full range of procedural defence rights in criminal proceedings, from arrest through to sentencing.

The partners produced a common questionnaire of circa 30 closed questions adapted to each country's national and legislative context (see the original English language version in the Annex) aimed at identifying the interviewee's experience of their interaction with the criminal justice system at each of the key stages of pre-trial criminal proceedings including: detention in police custody, use of force during arrest, access to a lawyer, access to a relative during detention, access to medical assistance, access to information about procedural rights, access to interpretation and translation services (where the arrested person does not speak the language of the proceedings), whether the person made any complaints against authorities, the maximum prison sentence that the person was charged for and the outcome of the criminal proceedings. The questionnaire also included questioning relating to the conditions of pre-trial detention.

<sup>21</sup> Jansen Reventlow, N., *Data collection is not the solution for Europe's racism problem*, 2020.

<sup>22</sup> Kanev K., *Access to Legal Aid in Criminal Proceedings in Bulgaria in Comparative Perspective, Access to Justice*, Open Society Institute–Sofia, 2005 (in Bulgarian).

Researchers collected personal information (age, gender and ethnic belonging, citizenship or nationality) and gave interviewees space to talk to researchers and give information beyond the questions.

The partners sought access from the relevant prison administrations to enter prisons, meet with people in detention, and ask the survey questions directly and individually. The partners asked the relevant administrations to pre-select - amongst those in detention - newly sentenced people, whose criminal proceedings had started from 1 July 2019. The sample selection criteria were determined by the researchers in view of identifying interviewees who were more likely to fully recollect the entire proceedings. Partners asked people to sign consent forms before beginning the interview (except for APADOR-CH who conducted the interviews online).<sup>23</sup>

There were notable differences in the implementation of the methodology.

- **Online/in-person interview:** In Romania, the interviews were exclusively conducted online, in contrast to the other partner countries where interviews were conducted in person within the prisons. The meetings were one-to-one (between an APADOR-CH representative and one detainee), under conditions which ensured privacy (in so far as researchers ensured that the interviewee was alone in a room during the interview), with the voluntary participation of the detainees who met the necessary criteria (they were arrested by the police or placed in pre-trial detention from 1 January 2019). All interviews were anonymous. APADOR-CH did not ask for or collect any personal data leading to the identification of detainees.
- **Qualitative/quantitative data:** The Romanian and Belgian reports include quotes from interviewed people, which reflect the respondents' perceptions and experiences. As discussed below, this adds context and nuance to the quantitative data collected. In contrast, the Bulgarian and Greek reports focus exclusively on quantitative data.
- **Number of prisons:** APADOR-CH conducted interviews in 28 different penitentiary institutions (out of a total of 42 detention centres in Romania). In Bulgaria, surveys were distributed amongst 12 prisons, six closed-type prison hostels (CPH), 12 open-type prison hostels (OPH), as well as one juvenile correctional facility (JCF) (31 institutions in total). In Belgium, researchers obtained responses from people in ten prisons and one detainee rehabilitation support service. However, in Greece, the partner focused on one prison in the south of Athens, where a large and highly diversified population of foreign detainees held in the Greek prisons reside.<sup>24</sup> The selection of the Korydallos Prison Departments (I and II) was made on the basis of two statistical facts. Korydallos features the largest prison department among the 32 prison departments of Greece, in terms of capacity and inmates' population (constitutes approximately 20 percent of the total prison

<sup>23</sup> The Greek researchers reported that some people who had originally agreed to participate in the interview refused to sign the consent form and refused to participate in the study.

<sup>24</sup> A total of 1,807 detainees reside in the prison department of Korydallos I and II, which includes 1,650 male and 157 female detainees. A total of 1,137 foreign male detainees reside in the department of Korydallos, and 55 foreign detainees reside in the women's prison department.

area capacity and total number of detainees) and the percentage of foreign detainees constitutes 65 percent of the total inmate population. Additionally, Korydallos features an organised Sociologists' Department that facilitated the research procedure with the foreign detainees' wings, provided introductory statistical information, and communicated with other prison units to support the mission of the field study.

- **Number of people interviewed:** In Bulgaria, BHC researchers met with 1,010 respondents in person; similarly in Romania, researchers interviewed 1,000 detained persons remotely in 28 prisons across the country. In Belgium, LDH met with 241 interviewees across ten prisons in total. In Greece, researchers collected 500 fully completed questionnaires.
- **Collection of responses:** Certain partners chose to exclude some responses. For instance, the Romanian researchers decided to exclude data collected through questions open to subjective answers, making them irrelevant in context. For example, the answers to the question: 'What was the size of the room in which the detainees spent their pre-trial detention?' These answers were difficult to quantify because many respondents could not estimate the size of the cell.
- **Categorisation by ethnicity or race:** Another notable difference in the implementation of the methodology is that partners adopted different approaches to the categorisation by ethnicity or race, adopting either the conflation or the strict separation between nationality and ethnic and racial origin. In Greece, researchers focused on nationality and conflated self-identification as Roma.
- **Further disaggregation of data:** As the Bulgarian partners had access to a facility for minors, they further disaggregate most of the data in the report by age and produce interesting observations regarding power dynamics between authorities and children/young people. Data is also disaggregated by gender in the Greek<sup>25</sup>, Romanian, and Bulgarian reports, with women making up 8.5%, 4.5% and 4.06% of the respondent population respectively, and transgender people making up 0.2% of the population interviewed in Bulgaria.

The following main findings, that will be explored in detail below, emerged from the pilot study:

- Police violence and abuse, disproportionately targeting racialised communities
- A failure to enforce procedural rights
- Lengthy pre-trial detention and bad detention conditions
- Excessive use of plea agreements

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<sup>25</sup> Originally, more than 12 percent of the answers collected came from female detainees, due to their increased willingness to participate in the survey. However, the sample was balanced out by reducing female detainees' responses to correspond to the gender-balance of the Korydallos departments' population.



## Police violence and abuse

### Physical violence

Perhaps the main common finding across the researched jurisdictions was the pervasiveness of police violence, disparately targeting people racialised as 'other' – who either self-identified for the purposes of this study as Roma, another ethnic minority of the researched state (e.g., Turkish, Albanian) or a non-national of the arrest jurisdiction. This is of course consistent with long-standing reports by organisations advocating for racial justice,<sup>26</sup> as well as evidence emerging all over Europe in the form of resistance stories of people and communities directly impacted by the violence of policing.<sup>27</sup> That Europe has a racist policing problem has also been recognised by the European Parliament,<sup>28</sup> echoing the racial justice movement organised in the United States after the murder of George Floyd by the police.

In Greece, more than 50 percent of people interviewed reported having been subject to violence or having witnessed others being subject to violence by the police during arrest or while in police custody. Out of those reporting violence, 82 percent identified as other than Greek. In Belgium, 29.5 percent of those interviewed were subject to physical violence during arrest. A racial breakdown also showed that people of African descent were twice as likely to experience violence than people of Western European origin. Similarly, in Bulgaria the share of Roma interviewed who reported violence was double that of people who didn't self-identify as such. All in all, 32 percent of people interviewed in the country reported violence by the police, including being subject to racial slurs and other derogatory remarks. In Romania, 18 percent of people interviewed reported violence – this share is higher among those who self-identified as Roma (27 percent) than among those who did not (15 percent).

<sup>26</sup> European Network Against Racism, [The sharp edge of violence: Police brutality and community resistance of racialised groups](#), 2021 and Equinox, [Who protects us from the police: Structural Racism in Law Enforcement in the European Union](#), 2021.

<sup>27</sup> Fair Trials, [Racism in Europe's law enforcement and criminal justice systems: A non-exhaustive compilation of evidence and resources for policymakers](#), 2022.

<sup>28</sup> [European Parliament resolution](#) of 19 June 2020 on the anti-racism protests following the death of George Floyd.

For instance, in the Romanian report, what some people describe goes well beyond the one-off 'excessively' violent interactions that are ordinarily referenced in discussions around police brutality. One person describes how the presence of police in their community was intended as taunting, with the police chief constantly provoking them, with the promise they will eventually be put in jail. Here are examples of the violence that were reported to the Romanian researchers.

Some of the people interviewed describe outright torture happening within the system and condoned by those upholding the system. The violence doesn't happen on the down low, but in the presence of different actors – with the direct participation of the prosecutor who is upset to have been called outside working hours, under the cover-up of a doctor gaslighting people as to how they became injured, among the myriad of system actors that keep dissuading them from responding to injustice in order to not face repercussions either in court, in prison or back in the streets.

“

*The police station chief beat me and had threatened me for a long time that he would put me in jail. He was giving people fines and calling me to sign these fines, and when I refused to do so, he told me he would put me in jail. He wrongfully arrested me for a crime I didn't commit. ”*

[Romanian report]<sup>29</sup>

“

**They took me to the Central Police Station in S., they put me in a room, they turned off the lights and beat me - the Prosecutor beat me. He was upset that he had to come over at 10 PM to investigate me. ”**

[Romanian report]

“

**They hit me in the ribs, in the liver. I didn't press charges, but I showed it to the doctor (of the pre-trial detention centre) and the doctor said I hit myself when I fell drunk. ”**

[Romanian report]

“

**When I received the envelope with the reply from the Public Prosecutor's Office that my complaint had been registered, the envelope was opened by the same policemen I had filed a complained against, and they beat me up afterwards. ”**

[Romanian report]

<sup>29</sup> APADOR-CH, [Study concerning the respect for procedural rights of suspects and defendants from their perspective](#), 2022 (in English). Also available [in Romanian](#). Henceforth referred to as 'Romanian Report'.

“

**The lawyer advised me not to press charges; when some investigators came to Rahova, they asked me if the police had beaten me, because the pictures showed blows to my body, and I said it's not true; that's what my roommates advised me, not to make it worse for me, especially since I'm not very educated. ”**

[Romanian report]

Equally in Belgium, people reported extensive violence in the interactions that people had with police officers: “Several types of violence were reported by the respondents during arrest or police custody: being pinned to the floor, being struck, the individual or their family being unjustifiably threatened with a weapon during a search, violence against family members during a search, violent driving in the police van with the aim of injuring the arrested individual, etc.”<sup>30</sup>

“

The police insults you and hits you. But, if you do the same thing, it's an offence. ”

[Belgian report]

“

*Police violence, that's been the norm for years. Blows when you're handcuffed, arrests where they pin you to the ground and the police officer puts his foot on your throat to immobilise you even if you're calm (...) violence is commonplace now, and more than that, it's never punishable for those guys. ”*

[Belgian report]

In the Greek research, people also reported extensive physical violence: “Examples of violence include slapping, kicking, beating and swearing. One detainee reported they suffered a vertebral fracture from the beating of four policemen, another one a rupture of their ear drum and broken shoulder. Two detainees complained about suffering from injuries and being denied to be taken to the hospital.”<sup>31</sup>

It is notable that the majority of the interviewees stated that they have experienced violence inside the police station. The report concludes that this is a “constant” problem: “when it comes to police detention conditions, the use

<sup>30</sup> Ligue des Droits Humains, *Disparate impact: Discrimination of foreign nationals in criminal proceedings*, 2022. Henceforth referred to as ‘Belgian report’.

<sup>31</sup> Centre for European Constitutional Law, *National data collection of disparate impacts in the criminal justice systems*, 2022 (in English). Also available *in Greek*. Henceforth referred to as ‘Greek report’.

of violence remains a constant problem reported by detainees. The majority of detainees interviewed reported to have either experienced or evidenced the use of violence during their arrest or arrival at the police station. The use of violence and derogatory language towards the detained is a common practice".<sup>32</sup>

The violence described in the partners' reports, where and how it takes place (e.g. in police stations), echoes the findings of other reports referenced above and in Fair Trials' compendium of evidence of racialised police violence.<sup>33</sup> In Fair Trials' view, such violence can be described as systematised and needs to be addressed as such by policy-makers. In other words, we need a reflection on policy responses that take us beyond the solutions put forward to date such as police training and individual accountability mechanisms.<sup>34</sup>

### Racialised verbal abuse

Violence also extends beyond just physical.

*The people who stated that they experienced the use of physical force (during arrest, police custody or as a witness) were more likely to be insulted. 55 percent of those who experienced violence during arrest stated they were insulted, compared to 36 percent for those who did not experience violence. This is even more significant in the case of violence at the police station as 64 percent of those who experienced violence said they were insulted, compared to 36 percent for those who did not experience violence.*

[Belgian report]

The research revealed the extent of people experiencing insulting comments based on their ethnic belonging by police authorities, reinforcing the unsafe climate of criminal proceedings for people belonging to marginalised groups.

In Bulgaria for instance, 32 percent of respondents reported that law enforcement authorities made insulting or derogatory remarks against them, in particular at the time of arrest.

*A large number of respondents in the survey are victims of direct discrimination and severe violations of human rights. Such is the case with Roma detainees subjected to police violence, which is accompanied by insults and derogatory remarks regarding their ethnicity.*

[Bulgarian report]<sup>35</sup>

<sup>32</sup> Greek report.

<sup>33</sup> Fair Trials, [Racism in Europe's law enforcement and criminal justice systems: A non-exhaustive compilation of evidence and resources for policymakers](#), 2022.

<sup>34</sup> As, for instance, suggested in the recent report commissioned by the European Parliament: European Parliament Policy Department for Citizens' Rights and Constitutional Affairs, [Democratic oversight of the police](#), 2022.

<sup>35</sup> Bulgarian Helsinki Committee, [Problems with the equal treatment of accused persons in pre-trial proceedings in Bulgaria](#), 2022. Henceforth referred to as 'Bulgarian report'.

*Indeed, at every stage of the proceedings, allegations of insults and inappropriate remarks made to some individuals are present and primarily concern nationality and ethnicity, as well as addictions, family ties, etc. Once again, those who stated they had experienced violence during arrest or police custody were more likely to be insulted by a State representative. The result is that detainees feel dehumanised by the police and legal system.*

[Belgian report]

*Most of these insults or offensive comments were made against the Roma minority – 33 percent of the interviewees with Roma ethnicity stated this. At the same time, 11 percent of people of an ethnicity other than Romanian or Roma say that offensive statements have been made against them in connection to their ethnicity. (...) There is, however, a significant proportion of state representatives who use insults, slurs or make threats against suspects/defendants without them being linked to socio-demographic characteristics such as ethnicity, sexual orientation or religious beliefs.*

[Romanian report]

## Severe underreporting

The findings clearly show the low reporting of violence through formal complaint mechanisms. For instance, in Greece, “only half of the detainees that reported the use of violence in the beginning of the research, declared to have submitted a complaint about it”.<sup>36</sup> The Belgian report also notes that complaints are more often filed by Belgian nationals than those who identified as other than Belgian.

As the quotes below show, the reasons for underreporting point to mistrust of the system (either fear of retaliation or lack of faith that reporting would solve the issue and protect them from harm), direct dissuasion, and power inequality making it from impossible to against self-interest to report.

*Several reasons prompt detainees not to report these acts of violence. Some stated a feeling of shame that they do not wish to share (example: sexual abuse), others mentioned the prison officers knowing their name (implying fear of victimisation). Likewise, some prison officers are too afraid to report offences committed by their colleagues or have difficulties confiding with prison management. Other reasons for not filing a complaint include the inefficiency of the system, poor knowledge of the law and its provisions, as well as the cost or slow speed of the procedures, etc.*

[Belgian report]

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<sup>36</sup> Greek report

*The terms of the settlement, however, are set by the prosecution, and the conduct of the accused person here is of the essence. Any complaints, appeals, objections, or other motions may irritate the prosecution and reflect on the settlement. In-depth interviews with a large number of respondents demonstrate a pronounced inverse relationship between their desire to enter into a settlement and willingness to complain about any violations, including torture. Lawyers, in their turn, advise their clients to stay silent so as not to “ruin their deals”.*

[Bulgarian report]

*Many of the respondents who were abused in police custody reported that they did mention their injuries during the exam, however medical staff refused to register that and even tried to dissuade them from reporting. A significant number of victimised respondents did not report their injuries at all. In many cases, the medical exam was a formality and it consisted of questions about whether the detainee had any health problems. In other cases, respondents described being taken to the medical staff by the perpetrators of police violence themselves, and that medical staff certified no violence had been committed.*

[Bulgarian report]

*During the interviews, the detainees reported that lodging a complaint was “pointless” because often it would not lead to anything or would be to their disadvantage. Some respondents were dissuaded from filing a complaint by the police, or even by their lawyer. Others feared victimisation. The most common complaints concerned insults and inappropriate remarks by a public official, refusal to contact a family member or friend after being detained, as well as the use of force during arrest or custody.*

[Belgian report]

*When asked why they did not report the police abuses to their lawyers, the detainees replied either that they feared they would not be believed, that the legal aid lawyers were not interested, or that the lawyers would tell them that for such situations, they had to sue the police in civil court, and they did not have the money for lawsuits. Others said they didn't want to press charges, fearing it might harm their trial. Some detainees reported that they filed a complaint with the Public Prosecutor's Office, but nothing came out of it, and others learned from the project team that it would have been possible to file a complaint against the aggressive police officers or report them:*

[Romanian report]

## A failure to enforce procedural rights

Procedural rights are intended to promote fairness in criminal procedure, by acting as safeguards against abuse and inequality for all suspected and accused people. However, in practice, they are only as strong of a defence as the system they operate in. Perhaps unsurprisingly considering the ever-growing appetite of the system for criminal responses, punishment, and detention, the results of this study show major failures in the safeguards provided to people who are caught in its realm.

Being arrested and placed in police custody is an inherently vulnerability-inducing experience.<sup>37</sup> The person going through this is facing the entire force of the state, and is as a result subject to enormous pressure, and heightened risk for coercion and violence. The statements a person makes during the initial hours of the arrest often determine the outcome of judicial proceedings, adding to the importance of this moment in the criminal trajectory.

An interesting observation coming from the Belgian report is that a large number of people could not necessarily remember details related to their procedural rights during arrest and police custody. This may indeed indicate the difficulty for someone who has not been through the criminal process to understand the magnitude of the stress, pressure, and vulnerability experienced by people faced with criminal proceedings of any kind. It may also indicate that people experience the criminal justice system as a unit and find very little in it that strikes them as a reassurance or promise of fairness and justice.

## The right to information

In Romania, the study found that less than half of people interviewed were informed about their right to silence, and 62 percent were not informed that they could challenge the provisional detention decision. More than 80 percent were not informed about their right to access their case file, and 30 percent were not informed of the offence in connection to which they were detained. Only around 20 percent of people who were assessed as not understanding Romanian were informed of their rights to interpretation and translation.

In Greece, less than half of detainees were informed about their rights, and when they were, they received limited information, mostly in oral form and in language that they do not understand.

*46 percent of Greek detainees were informed in oral form only and 11 percent were informed in oral and in written form but did not have access to the document they were given to read and sign. Albanian detainees were informed by 31 percent in oral form and by 9 percent informed in oral and in written form but did not have access to the document they were given to read and sign. The great majority did not remember if they were informed about their rights. Irani detainees were informed by majority in written form but could not read what the document said although they signed it.*

[Greek report]

<sup>37</sup> Contrôleure générale des lieux de privation de liberté, *L'arrivée dans les lieux de privation de liberté*, 2022.

In Belgium, one in five people interviewed reported not having been informed of their right to legal assistance. The data showed that people of European origin were more rapidly informed of their right to a lawyer. Interestingly, the likelihood of being informed of the right to a lawyer was found to decrease had the person already been subjected to violence during arrest. Accounts of police putting pressure on people to speed up the process by *renouncing* their right to a lawyer are also mentioned.



### The right to a lawyer

The right to a lawyer in police custody is often presented as key to preventing injustice. In Romania, legal assistance is even mandatory. Nevertheless, 14 percent of respondents indicated that they did not receive legal assistance from a lawyer while they were deprived of liberty at the police station (some of them said that they had access to a lawyer later, when sent to the Prosecutor's office, while others said that they only had a lawyer in court). However, reading this result as indicating that 86 percent of respondents did have a lawyer present as required by law would be deeply misleading. Amongst those respondents who did say they had a lawyer present, many said that "the lawyer only arrived at the end of the hearing, signed the statement and left without talking to the person under criminal investigation."

To further put these numbers in perspective, more than half of people who eventually could access legal assistance in Romania qualified it as more of a formality. People speak of lawyers who interrogated them in harsher terms than the police had, who were rude, made it clear they weren't on their side, and more often than not simply signed the statement given by the person to the police in their absence, without ever addressing them directly. This procedural rights box ticking exercise then allows a deeply flawed criminal process to look fair on paper.

*The most surprising finding was that many detainees asserted not to have benefited from the right to access to a lawyer during the initial arrest. This seems to have happened despite the fact that in Romania legal assistance is mandatory when a person is deprived of liberty and, in its absence, the law provides for the absolute nullity of the criminal investigation act fulfilled.*

[Romanian report]

In Bulgaria, 83.8 percent of respondents said they were only able to consult a lawyer close to 24 hours into detention or – for most of them – after having spent 24 hours in detention, during which time they were subject to questioning. In Greece, of the people who reported the absence of a lawyer during the first 24 hours of detention, 82 percent identified as other than Greek.

### The rights to interpretation and translation

In Bulgaria, more than half of respondents were not satisfied with the quality of oral and written interpretation. Although the numbers are a little lower for translation, the report documents accounts of people who did not receive translation at all when in need of it, and further notes that “the lack or poor quality of these services single handedly make proceedings unfair”.

In Greece, amongst those who needed translation, 35.2 percent were very dissatisfied with its quality, while 26.7 percent were only partly satisfied.

“

**I called a lawyer because I was shocked by the turn of events, I also asked for a translator, but they didn't bring me one - they were translating for me with Google on my phone - I trusted the lawyer, he told me to sign what the police had written, and I signed in good faith - if I had read it I would have understood three-quarters of it, the legal stuff I wouldn't have understood. One word here puts you in jail. And that's exactly what happened. The trial lasted almost a year, and all my lawyers told me it was a stupid, fabricated trial, and yet they sentenced me to 3.2 years in jail.”**

[Romanian report]



## Pre-trial detention and detention conditions

Time spent in pre-trial detention also demonstrates that the system is not concerned with protection of procedural rights. Of the people interviewed who were held in pre-trial detention in Bulgaria (almost 70 percent of interviewees), 39.8 percent spent between two and six months in prison, with 21.8 percent spending more than six months in a cell awaiting trial. A striking observation in the Bulgarian case also concerns minors - 62.5 percent of those interviewed say they were detained for six to twelve months, which is in clear breach of international standards, with the UN Committee on the Rights of the Child recommending that children be brought before a court no later than 30 days following their detention.<sup>38</sup>

Regarding detention conditions, the Bulgarian report highlights the disparate treatment of Roma detainees, as well as foreign nationals and minors, who reported lesser personal living space in pre-trial facilities than those who self-declared as Bulgarian nationals.

The Belgian report further notes the impact of the COVID-19 pandemic on detention conditions and the morale of people in detention more broadly: "Concerning remand during the first wave of Covid, it was a nightmare, no visits, tons of restrictions. 24 hours a day in your cell, no laundry changes, tensions, the impression that there was nothing for us outside anymore and no psychological support. How can you expect us not to be marked by this imprisonment?"

In Romania, 69 percent of respondents who were detained pretrial reported spending 23 hours a day or more in their cell.

In Greece, qualitative data unearthed very bad detention conditions. Examples included eight detainees sharing a four square metre cell without any ventilation or sanitary provisions, complaints concerning lack of hot water, etc.

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<sup>38</sup> United Nations Committee on the Rights of the Child, [General comment No. 24 \(2019\) on children's rights in the child justice system](#).



## Plea agreements – a questionable policy choice

The Romanian and Bulgarian reports also note that 77 percent and 60 percent of criminal proceedings respectively ended in plea agreements (settlements).

This is consistent with a worldwide trend<sup>39</sup> to ‘unburden’ criminal justice systems through expedited procedures that put suspected and accused people at great risk of coercion and abuse.

Considering the extent of police violence and violation of procedural rights highlighted by these same studies, it is clear that people will have experienced incredible pressure to enter an agreement that would, at least in theory, spare them further violence within a system that gives them no reason to believe it will ever achieve justice or fairness on their behalf. Of course, racialised people and people belonging to marginalised communities will generally be at a heightened risk for this type of coercion, and made more vulnerable in the process, therefore inducing acceptance of a plea deal and waiving their right to a trial, and all other procedural rights in the process<sup>40</sup>. Particularly, how attractive can procedural rights and a trial sound to someone who has experienced nothing but abuse leading up to the point of decision?

The data demonstrates that efficiency over justice<sup>41</sup> is yet another way that systems self-preserve with scant regard for actual human lives and the impact criminal proceedings have on them. Remembering this is nothing more than a policy choice and, considering that most criminal cases in the EU concern minor offences, the data suggest that decriminalisation would be the right approach from a human rights perspective.

<sup>39</sup> Fair Trials, *The disappearing trial*, 2017.

<sup>40</sup> See findings of Fair Trials, *Efficiency over justice: Insights into trial waiver systems in Europe*, 2021. The Bulgarian report in this study has similarly noted how certain groups are more likely to be taken advantage of. It is clear that police investigators take advantage of the vulnerability of minors and their lack of capacity to file complaints, and they regularly mistreat them in order to extract information or to punish them. This is combined with the lack of effective access to quality legal defence for juveniles (see below), which should serve as a deterrent to abuse. The minors interviewed told disturbing stories of beatings and other forms of physical and psychological coercion in police custody, as well as of verbal abuse by police investigators.

<sup>41</sup> Fair Trials, *Efficiency over justice: Insights into trial waiver systems in Europe*, 2021.



## Section Three – Reflections for equality data collection in criminal justice

In this next part, we'll take a deeper look at the challenges this study presented and the larger structural issues they point to in terms of equality data collection in criminal justice and beyond.

Below, we provide a glimpse into the questions and conversations this study opened on our end, with the hope that they will inform continued reflections around equality data and social justice more broadly.

### Barriers to participation in the study

#### Difficult access to detainees

Prisons are a very closed environment, making access to detainees very challenging. This is one of the reasons why seeking to amplify the voices of people in detention is so important. Detention, including pretrial, is both symbolically and effectively violent, with those incarcerated having very limited scope to resist injustice and abuse.<sup>42</sup>

To conduct their interviews in prisons, researchers had to rely upon the cooperation of prison administrations. In some instances, this posed a number of obstacles. First, as the Belgian report notes, this meant depending on the capacity and willingness of prison staff to agree to the study being deployed and arrange the logistics for the interviews, as well as for allowing researchers to enter prison. The Greek report also reports a very lengthy procedure to gain authorisation from the authorities to deploy the project.

<sup>42</sup> Fair Trials, *Rights behind bars*, 2019.

## Suspicion towards the research team

Second, this meant that in some cases detainees expressed suspicion in relation to their participation in the project. This may be correlated to the fact that respondents have a history of contact with different professionals in the system that either harmed them, that they experienced as attempted coercion or trickery, etc., potentially weakening their trust in the system actors altogether.

Another important aspect to note is certain detainees expressing a dissonance between their immediate needs and what the study was seeking to build. This could give rise to further reflections on how to combine equality data collection with direct remedial action, perhaps as part of a multi-faceted approach to address violence experienced by racialised people throughout their journey in the criminal justice system.

*Talking to the detainees was sometimes difficult. Some were suspicious and asked if the project would help them personally in any way. When they found out that the interview did not aid them in any concrete and immediate way, some decided against taking part in the research. Others asked for legal advice on addressing various injustices they had experienced during their criminal proceedings and others complained about detention conditions in the penitentiaries or pre-trial detention centres.*

[Romanian report]

*It should be noted that some detainees only enrolled to inform the interviewer that the study was “pointless” or that the prison officers were dissuading detainees from participating.*

[Belgian report]

## Fear of repercussions

The study sought to document violence happening prior to sentencing among people incarcerated post-sentence. This was purposefully done in order to minimise the risk of harm for detainees as a result of their participation in the study, as in principle their answers would not incriminate prison staff they were still in contact with.

Nevertheless, detainees did report fear of victimisation, and some even withdrew from the study as a result.

*Furthermore, though extra guarantees were given to anonymity, the interviewees were hesitant to disclose detailed information of their detention in cases where mistreatment was declared.*

[Greek report]

*Several detainees that originally signed up to the survey, receded in later stages as soon as they read the Consent Forms which required a signature. This percentage corresponds to an equal to 23 percent of the initially willing to participate detainees.*

[Greek report]

*Additionally, some refused to participate through fear of victimisation by the prison management, prison officers or police.*

[Belgian report]

As noted above, this could be explained by their sense of the system functioning as a unit to their detriment.

### Difficulties in ‘boxing in’ racialisation processes

*We have to note that the survey included a number of people who declared their ethnicity as Turkish, but whom others regarded as Roma.*

[Bulgarian report]

*Though there is a clear unwritten perception of the Roma community within the prison system, this is not officially declared, registered or identified in the administration procedures.*

[Greek report]

One of the main difficulties encountered, including in terms of comparability of the different reports as indicated above, related to the categorisation by ethnicity or race. This issue was further complexified by either the conflation or the strict separation between nationality and ethnic and racial origin in some of the reports.

This can be explained by the fact that racialisation – the political process of assigning ethnic or racial attributes to people and groups in order to support a certain division of power that centres some and marginalises others<sup>43</sup> – is highly contextual and ultimately the result of historic power distribution. Racialisation must be read through an intersectional lens, looking at how systemic bias makes supposedly inequality-neutralising systems impact certain groups disparately.

Disaggregating data by nationality can create a false perspective on discrimination – as having the nationality of a certain state does not shield racialised people from being relegated to a second-tier citizenship status (see the example of Roma across Europe, first generation migrants whose discrimination remains even when they disappear from a statistical perspective, etc.).

<sup>43</sup> For more on racialisation and racialised groups, see Equinox, [Towards racial justice: How the EU can create lasting change for racialised people](#), 2021.

Aligning definitions on ethnic and racial origin, as recommended in the EU Guidance Note, presents similar challenges.<sup>44</sup> The way people are treated in the criminal justice systems will likely depend on certain markers leading to them being perceived as racialised, such as skin colour, but not independently of socioeconomic status, available documentation, migration status, gender, sexual orientation, assimilation of dominant codes (language, dress), etc. Often, people are brought into contact with the system long after and specifically because a certain set of presumptions have been made about them.

This study chose self-identification as the least harmful option of categorisation (compared to officer-perceived identity or use of proxy information, which raise further ethical concerns). Still, this carries implications in terms of personal responsibility – the burden placed on individuals belonging to marginalised groups to self-identify as such, even though there are many reasons they may be inclined not to – and presents challenges in relation to the narrowness of available categorisation options.

## Ethical considerations when conducting data collection in criminal justice

### Compensation

When funding these exercises, Fair Trials recommends that appropriate consideration should be given to the issue of compensation of people who participate in this type of study, whether in monetary or other meaningful and adequate forms. It is important to approach equality data collection in a way that centres the needs of marginalised communities and is guided by them. To do so, it must be recognised that people's lived experience with the criminal justice system is part of the work undertaken towards policy change, whether via data collection, storytelling, etc.

An example of how this could be integrated into a more holistic approach comes from a Fair Trials and Prison Reform Trust joint [project](#) seeking to understand the experiences of young people in relation to plea bargaining.<sup>45</sup> The young people who chose to participate in the study were financially compensated for their time. This is part of a wider undertaking aiming to involve people with lived experience of the criminal justice system in policy-making, through the [Prisoner Policy Network](#) – itself partially coordinated by people with direct experience in the system.<sup>46</sup>

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<sup>44</sup> European Commission High Level Group on Non-discrimination, Equality and Diversity, Subgroup on Equality Data, [Guidance note on the collection and use of equality data based on racial and ethnic origin](#), 2021.

<sup>45</sup> Fair Trials, [Fair Trials in the United Kingdom](#).

<sup>46</sup> Prison Reform Trust. [Prisoner Policy Network](#).

## Duty of care

Data collection should not open the door to further victimisation, and ways to prevent and address this must be clearly provided for in the conception of the study. This is incredibly important particularly for people who are incarcerated or otherwise exposed to state violence via policing and criminal law.

Moreover, data collection should be attached to certain responsibilities towards the people who are potentially made vulnerable in the process – to protect, to help in providing trauma care – as the impact of telling one’s story of violence cannot be minimised, especially when the person remains in a violent closed environment after the interview. The person or collective in charge of this process would carry a duty to follow up on the needs expressed by the person interviewed – whether by ensuring the person is meaningfully connected with legal counsel or a supervisory body to help assist them in accessing remedies or to denounce the violence they are bringing up and processing as part of the interview, or by getting medical treatment or access to different resources that would improve their situation. A more holistic, people-centred, and sustainable approach should be considered.

*Detainees who answered yes to the question concerning violence during police arrest were asked to give an account of what happened. Some named the police stations where they claimed the abuse took place and even gave the names of police officers. As the information could not be verified, the project team decided to include only the description of the alleged assaults and not the names of the places or persons involved in the allegations. The assaults usually involved: punches and kicks, blows applied either at the time of the arrest or during handcuffing or in the van transporting them to the police station. Most often, the members of the Intervention and Special Actions Service (Romanian special police forces) were referred to as being aggressive.*

[Romanian report]

## Legitimising impacted people’s stories of injustice

*The questions were seeking facts and were phrased in ways which tried, if not to encourage, at least not to set barriers to sincere responses. (...). Nevertheless, such surveys are not always well-received in the professional circles of other participants in the criminal process. The most common critique is that they are “one-sided”. When it is not based on a stereotype of the criminal as a person so morally degraded that nothing they say can be trusted, such criticism is in fact a demand for seeking additional sources – documents from specific proceedings, statistics, interviews with the police, prosecutors, judges, lawyers and victims. In reality this is a basic requirement of the scientific method – corroborating facts and conclusions with data from all available sources (known as triangulation).*

[Bulgarian report]

The work to enhance the pool of available evidence to denounce system injustice towards racialised and marginalised groups should also aim to increase the credence accorded to the accounts of people directly impacted by injustice. In this respect, qualitative data is as important as quantitative data – maybe more so.

We must question whether concepts of “objective” and “reliable” data do not in fact uphold hierarchies of knowledge that discard the experiences of those who are in fact impacted by injustice. This would undermine efforts to describe and analyse the state of inequality and ultimately, not serve social justice.

*Before starting this chapter, it is important to take into account the subjective aspect of violence. Indeed, respondents perceived the use of physical force as legitimate or otherwise based on their perception of their arrest or police custody. The interviews conducted for this study highlighted that an individual may perceive this physical force as “unjustified” (abuse of power) or “justified” (if their own behaviour was aggressive or violent). In most cases, the respondent accepts that the State can exercise “justifiable” or “legitimate” violence because it suggests intent in such acts. Yet, violence is often perceived as an abuse of power by the authorities.*

## Creating the conditions for meaningful equality data collection

*As the EU continues its push for equality data collection, policy-makers must consider ways to shield this endeavour from government interference. For example, depending on good partnerships with state authorities in order to be allowed access to prisons to deploy such studies, or having authorities dismissing people’s accounts of injustice, carries the risk of researchers self-censoring in their work.*

Moreover, in order not to replicate bias that exists at all levels of our societies, it seems of utmost importance to be intentional in creating the conditions for marginalised groups to lead and own the data collection and data analysis process. This would help to ensure that data is interpreted within its context and that it is not instrumentalised against impacted people.



## Section Four – Recommendations

In the area of criminal justice, there is plenty of existing evidence of discrimination in academic works, personal collective accounts, and reports from impacted communities and NGOs.<sup>47</sup> This existing data already makes the case that racism does exist in European criminal justice systems and should be relied upon as a starting point, before embarking on the expenditure of further data collection and the delay in adopting the necessary reform policies.

### Engage in action to end systemic racism in criminal justice

While continuing to collect both quantitative and qualitative data may be important, so is taking action to redress what we already know to be flawed and harmful. Action for racial justice should not be delayed but deployed in parallel with other efforts to unearth and address inequality. The collection of data is not an end result. Data will not directly point to the right policy option to end systemic racism. Data collection cannot be the only action in which states engage nor can it be used as a reason to delay the adoption of policies aimed to end systemic racism in criminal justice.

### Denouncing the misuse of equality data

We should be wary of the risk of equality data being co-opted to further fuel false and hateful narratives towards marginalised people. The fact that a certain ethnic group is overrepresented in the criminal justice system can be read as what it is – a consequence of racial bias in criminal justice – or weaponised to suggest increased ‘criminality’ within that ethnic group. For instance, data showing an overrepresentation of people with Attention deficit hyperactivity disorder (ADHD) in the criminal justice system was used during

<sup>47</sup> See Fair Trials, *Disparities and discrimination in the European Union’s criminal legal systems*, 2021.

the recent Swedish elections by one of the parties to platform the idea of ADHD testing of children from immigrant areas as a way to fight crime.<sup>48</sup>

In Denmark, data showing an increased number of 'non-western' citizens living in the same neighbourhood was compiled with data on education level, frequency of offences etc. and used to punish immigrant communities through displacements and increased penalties for minor offences in the area.<sup>49</sup>

Equality data collection should follow a real commitment to enhance the state of equality, beyond exposing it, in order to prevent deviations from human rights.

## Ethical guidelines for collecting equality data

Where we entrust external people to collect equality data, for instance institutions, NGOs or researchers, we must ensure that ethical guidelines are established in advance to ensure the care of the people met as part of the data collection process.

## Impacted people must be at the centre of equality data collection

Equality data collection can be part of a broader reflection on racism in criminal justice systems and help contribute towards reform. However, for this to happen, we must reimagine why we collect data, for what purpose, what counts as "evidence", and, most importantly, whose voices are privileged in answering those questions.

The first step is to legitimise the evidence produced by people impacted by injustice in the criminal justice system and beyond. We must acknowledge the evidence that is already there, throughout the criminal justice chain, from what states decide to punish through to sentencing.<sup>50</sup> There is a continuing need for quantitative and qualitative data to document abuses and perhaps even document where corrective action is required.

Where it is established that further data is required, people impacted by injustice (and who the policy initiative seeks to repair and protect) should be at the centre of the process, including in decision-making on: what data is needed; how people self-identify; what categories should be used; the questions that need to be asked and their framing; what the data should be used for and how, including how the process can directly support the communities engaged in the process; and who should collect the data.

This would help overcome the challenges met by researchers in the pilot, as discussed above, in particular on racialisation categories.

<sup>48</sup> The Local, [Swedish opposition proposes 'rapid tests for ADHD' to cut gang crime](#), 2022.

<sup>49</sup> Versi, J., [Denmark's 'ghetto plan' and the communities it targets](#), Al Jazeera, 2020 and Burnett, S., [Why Denmark is clamping down on 'non-Western' residents](#), Deutsche Welle, 2021.

<sup>50</sup> In this report, we provide a snapshot of the available evidence of discrimination and disparities at each key stage of the criminal justice process: Fair Trials, [Disparities and discrimination in the European Union's criminal legal systems](#), 2021.

At EU level, there is currently great opportunity to lead on equality data collection. Building on the extensive work already carried out regionally, the EU could explore new models that centre data collection on impacted people and communities. There is specific opportunity for such an initiative in the context of the EU Anti-Racism Action Plan, which calls on EU member states to: “move towards the collection of data disaggregated on the basis of racial or ethnic origin, in order to capture both subjective experiences of discrimination and victimisation and structural aspects of racism and discrimination. This data should be comprehensive, reliable, regular and timely; mainstreamed into EU and national surveys; and both representative and comparable.”<sup>51</sup>

The EU should support, including through financial support provided directly to impacted communities, the development of initiatives in EU member states.

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<sup>51</sup> European Commission, [EU Anti-racism Action Plan 2020-2025](#).

## Annex

### Questionnaire: example from the Bulgarian report

#### QUESTIONNAIRE

**For sentenced prisoners whose criminal proceedings began after 1 July 2019**

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*Dear Respondent,*

*The Bulgarian Helsinki Committee is conducting a representative survey among convicted prisoners on the conditions of their police detention and pre-trial proceedings.*

*You fall within the sample that we have done. We would like to ask you several questions, which we trust you will answer truthfully.*

*The survey is funded by the European Union and it is conducted among convicted prisoners in several EU member states. Data collection is for research purposes only. Your name and your responses will not be revealed to anybody. Nobody at the national or international level will be informed about your identity or about your participation in the survey.*

*Thank you for agreeing to take part in this survey!*

---

1. Were you detained by the police on the charges on which you were convicted?

- a) Yes, I was detained by the police on the charge I was convicted
- b) No, I was not detained by the police on the charge I was convicted
- c) I was detained by the police, but not on the charge I was convicted
- d) Don't know/Don't remember/No response

2. What was the gender of the police officer who arrested you before you were brought to the police station?

- a) Male
- b) Female
- c) Several police officers of both sexes
- d) Several police officers of the same sex
- e) I was not arrested
- f) Don't know/Don't remember/No response

3. Did the police use physical force during arrest?

- a) Yes (please provide details at the end of the questionnaire)
- b) No
- c) I was not arrested by the police
- d) I don't know/don't remember/no answer

4. During police detention did you witness physical violence against other detainees (inside the police station)?

- a) Yes (please provide details at the end of the questionnaire)
- b) No
- c) I was not detained by the police
- d) I don't know/don't remember/no answer

5. Was physical force used against you after you were taken inside the police station?

- a) Yes (please provide details at the end of the questionnaire)
- b) No
- c) I was not detained by the police
- d) I don't know/don't remember/no answer

**6. When was the first time you met with a lawyer in police custody?**

- a) Within 3 hours of my arrest
- b) Within 8 hours of my arrest
- c) Within 24 hours of my arrest
- d) I did not meet with a lawyer, but we talked on the phone
- e) I did not have a lawyer during the 24-hour police detention
- f) I was not detained by the police
- g) Don't know/Don't remember/No response

**7. Was physical force used against you in the investigation detention facility?**

- a) Yes (please provide details at the end of the questionnaire)
- b) No
- c) I was not detained in an investigation detention facility
- d) Don't know/Don't remember/No response

**8. Did you have a lawyer after you were charged?**

- a) I had a lawyer from the very start and throughout the entire pre-trial phase
- b) I had a lawyer, but not during the entire pre-trial phase
- c) I did not have a lawyer during the pre-trial phase
- d) Don't know/Don't remember/No response

**9. What kind of lawyer did you have in the pre-trial phase?**

- a) Hired by myself/by my relatives
- b) Ex officio lawyer
- c) I did not have a lawyer in the pre-trial phase
- d) Don't know/Don't remember/No response

**10. In which proceedings did your lawyer take part in the pre-trial phase?**

- |   |
|---|
| a) In all the proceedings that I took part in                             |
| b) In some, but not all of the proceedings I took part in                 |
| c) He/she did not take part in any of the proceedings that I took part in |
| d) I did not have a lawyer during the pre-trial phase                     |
| e) Don't know/Don't remember/No response                                  |

11. Did your lawyer take part in the following acts every time?	YES	NO	There was no such activity	DK/NA
a) Interrogation				
b) Identification				
c) Confrontation				
d) Crime scene reconstruction				
e) When you were brought before a judge				
f) I did not have a lawyer in the pre-trial phase				
g) Don't know/Don't remember/No response				

**12. Could you meet with your lawyer in private in the pre-trial phase?**

- |   |
|---|
| a) Always   |
| b) Sometimes, but not always                                    |
| c) Never  |
| d) I did not meet with a lawyer, but talked to one on the phone |
| e) I did not have a lawyer during the pre-trial phase           |
| f) Don't know/Don't remember/No response                        |

**13. On the whole, were you satisfied with your lawyer during the pre-trial phase?**

- a) Very satisfied
- b) Moderately satisfied
- c) Moderately dissatisfied
- d) Very dissatisfied
- e) Don't know/Don't remember/No response
- f) I did not have a lawyer

**14. What was the gender of your lawyer in the pre-trial proceedings?**

- a) Male
- b) Female
- c) I had several lawyers of both sexes
- d) I had no lawyer during the pre-trial phase
- e) Don't know/Don't remember/No response

**15. When did you first meet with a relative after being detained in the police/in the pre-trial proceedings?**

- a) I met with a relative within 8 hours of being detained
- b) I met with a relative after 8 hours, but within 24 hours of my detention
- c) I met with a relative after 24 hours, but within two days of my detention
- d) I met with a relative after two days of my detention
- e) I did not meet with a relative after my detention
- f) I was not detained in the pre-trial phase
- g) Don't know/Don't remember/No response

16. When were you first examined by a doctor/another medical professional after being detained in a pre-trial facility/prison after charges were brought against you?

- a) Within 3 hours of my detention
- b) Within 8 hours of my detention
- c) Within 24 hours of my detention
- d) One or a few days after my detention
- e) I was not examined by a doctor/medical professional after my detention
- f) I was not detained in a pre-trial detention facility/prison before being sentenced
- g) Don't know/Don't remember/No response

17. When you were first detained in the pre-trial/police proceedings, were you informed about:	YES	NO	DK/NA
a) Your right to contact a lawyer of your choice			
b) Your right to free legal aid			
c) The crime in connection with which you are being detained			
d) Your right to access the case file			
e) The expected duration of your detention by law			
f) Your right to interpretation			
g) Your right to translation			
h) Your right to remain silent			
i) Your right to appeal the detention			
j) Your right to access to a medical examination			
k) Your right to inform a person of your choice about your detention			
l) Your right to inform a consular service			
m) I was not detained in the pre-trial phase			
n) I do not recall being informed about any of my rights			

18. In what form was the information about your rights provided after you were detained?

- |   |
|---|
| a) In oral form only  |
| b) In written form, but I did not have access to the document that I was given to sign                |
| c) In written form and I did have access to the document listing my rights                            |
| d) In written form, but I could not read what the document said although I signed it                  |
| e) Orally and in written form, but I did not have access to the document I was given to read and sign |
| f) Orally and in written form and I did have access to the document that listed my rights             |
| g) Don't know/Don't remember/No response  |
| h) I was not provided with information in any form  |

19. Were you provided with interpretation during the pre-trial phase:	YES	NO	DK/NA
a) During your interview in police detention			
b) During your contacts with your lawyer			
c) During all investigative acts you took part in			
d) During some of the investigative acts you took part in			
e) Every time you were brought before a judge			
f) I did not need interpreting, I understood the language of the proceedings			

20. Were you satisfied with the quality of the interpretation?

- |  |
|--|
| a) Very satisfied  |
| b) Overall satisfied, although in some cases it was not good                   |
| c) Overall dissatisfied, although in some cases it was good                    |
| d) Very dissatisfied   |
| e) I did not need interpretation, I understood the language of the proceedings |
| f) Don't know/Don't remember/No response                                       |
| g) I was not provided with interpretation although I needed it                 |

21. Were you provided with translation in the pre-trial phase of:	YES	NO	DK/NA
a) The charge			
b) The indictment			
c) The decision together with the motives			
d) The other court judgements on the case			
e) I did not need translation, I understood the language of the proceedings			

22. Were you satisfied with the quality of the translation?
a) Very satisfied
b) Overall satisfied, although in some cases it was not good
c) Overall dissatisfied, although in some cases it was good
d) Very dissatisfied
e) I did not need translation, I understood the language of the proceedings
f) Don't know/Don't remember/No response
g) I was not provided with translation although I needed it

23. During the pre-trial phase did representatives of the state, no matter in what capacity, use insults or make derogatory statements connected with your:	YES	NO	DK/NA
a) Ethnic belonging			
b) Citizenship/nationality			
c) Gender			
d) Sexual orientation/gender identity			
e) Religion/belief			
f) Age			
g) Other grounds (please provide details)			

24. During the pre-trial phase did you submit any complaint in connection with any of the following violations:	YES	NO	DK/NA
a) Use of force against you during arrest			
b) Use of force against you inside the police station			
c) Lack or bad quality of the interpreting/translation			
d) Refusal to allow you to contact relatives after detention			
e) Refusal to allow you to contact a lawyer after detention			
f) Bad quality of work of your lawyer			
g) Insults or derogatory statements addressed to you by a public official			
h) Other violations (please provide details)			

25. What was the duration of you detention in the pre-trial phase?
a) Under 2 months
b) Between 2 and 6 months
c) Between 6 months and 1 year
d) I was not detained
e) Don't know/Don't remember/No response
f) Over 1 year

26. How did the criminal proceedings against you end?
a) With a settlement
b) With a first-instance judgment that was not appealed
c) With a second-instance judgment after appeal/protest
d) With a court judgment on cassation after appeal/protest
e) Don't know/Don't remember/No response
f) Summary procedure

27. What was the area of your cell in pre-trial detention (excluding the area of the lavatory)?

- a) Under 3 sq. m.
- b) Between 3 sq. m. and 4 sq. m.
- c) Over 4 sq. m.
- d) I was not detained during the pre-trial phase
- e) Don't know/Don't remember/No response

28. How much time did you spend on average per day in your cell during your pre-trial detention?

- a) 23 hours or more
- b) Between 20 and 23 hours
- c) Between 17 and 20 hours
- d) Between 14 and 17 hours
- e) Under 14 hours
- f) I was not detained during the pre-trial phase
- g) Don't know/Don't remember/No response

29. What is the maximum prison sentence that you charges provide for?

- a) Up to 3 years imprisonment
- b) Up to 5 years imprisonment
- c) Up to 10 years imprisonment
- d) More than 10 years imprisonment
- e) Don't know/Don't remember/No response

30. Age (in completed years):

- a) 14-17 years
- b) 18-30 years
- c) 31-40 years
- d) 41-50 years
- e) Over 50

31. What is your ethnic belonging/citizenship/nationality?  
[Restructure according to ethnic structure in country situation]

a) Bulgarian

b) Turkish

c) Roma/Gypsy

d) Other (please state which)

e) Foreigner

f) I don't know/No response

32. What is your gender (please state):

### Comments

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