

# Disparities and Discrimination in the European Union's Criminal Legal Systems



# About Fair Trials

Fair Trials is a global criminal justice watchdog with offices in London, Brussels and Washington, D.C., focused on improving the right to a fair trial in accordance with international standards. Fair Trials' work is premised on the belief that fair trials are one of the cornerstones of a just society: they prevent lives from being ruined by miscarriages of justice and make societies safer by contributing to transparent and reliable justice systems that maintain public trust. Although universally recognised in principle, in practice the basic human right to a fair trial is being routinely abused. Its work combines: (a) helping suspects to understand and exercise their rights; (b) building an engaged and informed network of fair trial defenders (including NGOs, lawyers and academics); and (c) fighting the underlying causes of unfair trials through research, litigation, political advocacy and campaigns.



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# Introduction

Europe's criminal justice institutions and policies have a problem with systemic racism. People from certain racialised and ethnic groups face discrimination at all levels of Europe's criminal legal systems,<sup>1</sup> from racial profiling by police to structural bias in judicial and prosecutorial decision-making. Such discrimination results in worse outcomes for people of colour, including overrepresentation in pre-trial detention and receiving harsher sentences. Countries across Europe also punish and criminalise rather than offer support and services for those in need. These policies have disproportionate impacts on people of colour, which in Europe, include people of African descent, Roma, Muslims, Jewish people, migrants and asylum seekers.<sup>2</sup>

**Europe's criminal justice institutions and policies have a problem with systemic racism.**

These are our realities despite the European Union (EU) being founded on principles of non-discrimination and equality before the law, as set out by the EU Charter of Fundamental Rights of the European Union<sup>3</sup> Articles 2, 3, 4, 5, 20 and 21,<sup>4</sup> as well as in the Treaty on European Union (TEU),<sup>5</sup> Article 2.<sup>6</sup>

Fair Trials welcomed the European Parliament Resolution on the anti-racism protests following the death of George Floyd,<sup>7</sup> as well as the European Commission's recent action plan on racism, A Union of Equality: EU anti-racism action plan 2020–2025<sup>8</sup> (Action Plan) as starting points. As the Action Plan rightfully identifies, racial profiling and racism embedded in new artificial intelligence technologies are key issues that Europe must tackle.<sup>9</sup>

**In this briefing, we show how discrimination in our systems of justice manifests beyond policing, and at all levels of criminal legal systems. We hope to engage with EU stakeholders about the role they can play in addressing these issues.**

We provide background about the extent and nature of disparities, from the start of the criminal legal process through sentencing. Lapses in procedural protections for people of colour start at the very beginning—when it is so important that people's procedural rights are protected. People of colour are often denied early access to a lawyer, a fundamental guarantee under European law; states also inadequately protect people's other EU-granted rights, including the right to legal aid, the right to translation and interpretation, and the presumption of innocence. As a result of these procedural rights gaps and inadequate state law, people of colour across Europe are held in pre-trial detention far too often and for far too long. Rather than a measure of last resort, pre-trial detention is the default, undermining the presumption of innocence. This and other practices mean that people of colour have worse outcomes in the system: They face longer sentences, do not receive non-custodial sentences as often, and more. In at least one case, *Lingurar v. Romania*, the European Court of Human Rights found pervasive institutional racism within the state's prosecution office.<sup>10</sup> As a result, prosecutors approved unjustified police raids in a Roma community.<sup>11</sup>

### **Why address these issues now?**

At Fair Trials, we believe European authorities must do more to ensure the realisation of European principles of non-discrimination and equality before the law. This work is critical now because of the important groundwork and opening at the EU level in the aftermath of the Black Lives Matter protests last summer, which mobilised citizens across the continent to take a stand against systemic racism in policing and punishment. These movements are asking European governments to shine a light on their own institutions, and are demanding change. These movements have also brought to the fore how inequities in punishment in Europe are connected to the EU's criminalisation of migration: both are reflections of exclusionary attitudes and racial injustice.<sup>12</sup> These problems are also connected to many European countries' colonial legacies.<sup>13</sup> These connections and historical legacies make clear that we must act now to right past wrongs, and to ensure a Europe of equality and justice.

**The European Parliament could be a key player in breaking the silence on these issues; promoting real accountability and change in EU states; and importantly, in shifting power structures so that impacted communities may lead.**

### **What is the role of EU institutions?**

We believe the EU should lead changes to Europe's punitive and structurally discriminatory policies. In the past, the EP has been at the forefront of challenging Europe's criminalisation of migration, in responding to accounts of racist policing, and more. Fair Trials invites the EU to continue a conversation on the intersection of punishment and discrimination. We believe these issues go to the heart of Europe's systemic problem with racism and discrimination in their criminal legal systems, and that European institutions could be key players in breaking the silence on these issues; promoting real accountability and change in EU states; and importantly, in shifting power structures so that impacted communities may lead. We look forward to opening a dialogue and hope the discussion below of key issues and case examples of discrimination and disparities in criminalisation, pre-trial detention, procedural rights, and sentencing is a useful starting point. We conclude this briefing with some ideas for next steps.

# The criminal justice process and discrimination in Europe

Systemic discrimination is found throughout Europe's criminal legal systems, from what governments choose to punish through sentencing. Below we provide a snapshot of the nature of the discrimination and disparities.

## Criminalisation

As noted in the EP's resolution, structural racism is "mirrored in socio-economic inequality and poverty, and these factors interact and reinforce each other."<sup>14</sup> Throughout Europe, inequality, poverty, and racial differences are often met with punishment rather than services, support, and other responses, entrenching deep societal inequalities. What we choose to criminalise and how behaviours are sanctioned are societal and political choices.

For example, we recently conducted a study of day fines, or the sentencing of low-level cases with proportionate fines in Germany and found that an astonishing 7% of all cases fined in Germany are for fare evasion (the failure to buy a public transportation ticket).<sup>15</sup> Research in Germany also shows that people who are sentenced for fare evasion simply cannot pay their fares.<sup>16</sup> In 2016, 7,600 people ultimately went to prison for being unable to pay their fines.<sup>17</sup> Such prosecutions of crimes of poverty are likely to disproportionately impact people of colour: as the EP recognises in their resolution, people of colour across Europe face inequality and other economic barriers. In the case of fare evasions prosecutions, the German government could have instead provided people with free fare cards so that they could access public transportation.

**Member States decide, via social policy, what to criminalise and whether to expend resources on punishment or, instead on more productive social policies such as resources, education, and support.**

As the EP's statement says, any EU approach will have to consider race and ethnicity alongside gender, sexual orientation, poverty, and more. This is absolutely the case as we consider how decisions about criminalisation in Europe are the result of structural racism and/or have a disparate impact on people of colour.

## Procedural rights and discrimination

Procedural rights are essential to prevent miscarriages of justice: every person accused of an offence should have their guilt or innocence determined by a fair and effective legal process. Fair Trials has worked with the EU to ensure common procedural standards across the continent. In 2009, EU Member States established a common framework for procedural rights through the Roadmap for Strengthening Procedural Rights of Suspected or Accused Persons in Criminal Proceedings (Roadmap).<sup>18</sup> The Roadmap includes the right to effective legal representation,<sup>19</sup> right to information and access the case file,<sup>20</sup> the right to interpretation and translation,<sup>21</sup> the right to legal aid, and the right to be presumed innocent and present at trial.<sup>22</sup>

The Roadmap provides a framework for strong defence rights in Europe, but evidence shows disparities in who fully realises these EU-granted procedural rights. Far too often, people of colour are denied their EU rights because of structural racism.

### Procedural rights and discrimination: The data

- **Access to a lawyer**

People of racialised and ethnic groups are denied access to a lawyer, or receive poor quality representation. For example, in Bulgaria, researchers found evidence that Roma taken into custody were not able to contact a lawyer while in police custody,<sup>23</sup> despite their right to counsel under EU law.<sup>24</sup> In Hungary, a study found that Roma are more likely to rely on defence counsel appointed by the investigating authorities. The research showed how appointed lawyers are usually underpaid and therefore provide a low quality of counsel.<sup>25</sup> Both studies suggest that people's EU-granted rights are not fully being realised as people either have no access or poor-quality access to counsel.

- **Translation/Interpretation**

People of colour are not always provided translation or interpretation necessary for them to participate meaningfully in their criminal case. The European Commission against Racism and Intolerance (ECRI) noted that it had received reports that in Lithuania, courts were not providing interpretation or translation for Roma participants.<sup>26</sup> In a study coordinated by Fair Trials, researchers found in a review of pre-trial detention case files in Greece that none of the files showed evidence that they had been translated. This is despite the fact that 43% of people in pre-trial detention in Greece at the time were non-nationals.<sup>27</sup> The report also found that over a quarter of interpretations (27%) were judged to be of insufficient quality.<sup>28</sup>

## Pre-trial detention and disparities

Pre-trial detention is a “measure of restraint by which a person accused of committing a crime is kept in custody, ordered by a judicial authority at pre-trial or trial stage of proceedings.”<sup>29</sup> Pre-trial detention is when people are held in prison before being found guilty of an offence. To uphold the presumption of innocence, pre-trial detention should be used only as a measure of last resort.<sup>30</sup> In practice, across Europe pre-trial detention is far too often a measure of first resort: One in six people held in prison in Europe are there pre-trial.

Pre-trial detention is disproportionately used to detain people of colour and non-nationals. This is often because judges and prosecutors apply the standards for assessing whether someone should be held pre-trial in ways that disparately impact people of colour. Sometimes this is because the person is not from the prosecuting jurisdiction and therefore the court assumes they will return to their home jurisdiction.<sup>31</sup>

In other cases, decision-makers apply stereotypes—or otherwise misunderstand people’s lives—in making their decisions. For example, judges often presume people are flight risks—and therefore that they should be held pre-trial—if they do not have a permanent address or come from a lower-income area. As one recent report noted, judges often use as a ground for detention that people are experiencing poverty or other challenges, even for minor offences.<sup>32</sup> These factors (lack of an address, being from a low-income place, poverty) are used to assume people are unstable and therefore will not come to court—assumptions for which there is no evidence.

The UN Committee on the Elimination of Racial Discrimination (CERD) has raised concerns about disparities in who is held pre-trial. It warns that “persons held awaiting trial include an excessively high number of non-nationals” and “persons belonging to racial or ethnic groups, in particular non-citizens—including immigrants, refugees, asylum-seekers, and stateless persons—Roma, indigenous peoples, displaced populations, persons discriminated against because of their descent, as well as other vulnerable groups which are particularly exposed to exclusion, marginalisation, and non-integration in society.”<sup>33</sup> The CERD notes a worldwide concern—its statement very much applies to Europe. Arbitrary imposition of pre-trial detention in discriminatory and unequal ways is also in contravention of the Charter of Fundamental Rights of the European Union and the Treaty on European Union, Article 2.



## Pre-trial detention and discrimination: The data

- In 2017, on average, some **25%** of all prisoners in Council of Europe states were being held pre-trial according to the Council of Europe Penal Statistics. In comparison, **40%** of “foreign nationals” in prison (the term used by the study for people not from the prosecuting country) were awaiting their day in court, rather than being held post-sentencing.<sup>34</sup>
- After reviewing 7,500 cases spanning ten years and in six jurisdictions, researchers in France found that judges were not neutral to the personal characteristics of the person they are sentencing. They found that people born outside of the sentencing jurisdiction were more likely to face pre-trial detention: 5.2% of people born outside of France are held in pre-trial detention, compared with 1.8% of people born in France.<sup>35</sup> This means people from outside of France are about **three times as likely to be held in pre-trial**.
- In Italy, civil society organisation Antigone has found that **35%** of people in pre-trial detention in Italy are non-Italian nationals.<sup>36</sup>
- In Ireland, young Travellers are overrepresented in pre-trial detention. In an empirical study in Ireland from 2016, researchers interviewed 62 young people at three prisons in Dublin about their experiences in pre-trial detention. Young people from Traveller communities were in pre-trial detention at a rate **four times** their representation in the population.<sup>37</sup> As another study notes, however, these dramatic numbers are likely a gross underestimate of the disparities because people do not always provide information about their race or ethnicity to authorities.<sup>38</sup> This study explained that while their data show Travellers made up on average 5% of the adult prison population in 2015 (at which time Travellers were 0.6% of the population), the Irish Prison Service estimates that they in fact represent 22% of female prisoners and 15% of male prisoners. The understanding is that people may not self identify as Traveller for “fear of discrimination, and a lack of trust.”<sup>39</sup>
- In Belgium, **45.8%** of people in pre-trial detention are not Belgian nationals.<sup>40</sup> Another study summarises research in Belgium over the last decades, stating “[d]efendants born outside Belgium run a greater risk than those born in Belgium” of being detained pre-trial. The study goes on: “In particular, the probability of being detailed rises sharply for those born outside Europe, regardless of whether or not the person has a residence in Belgium.”<sup>41</sup>

## Sentencing and discrimination

Data from across Europe show that people of colour are disproportionately represented in prison, relative to the percentage of the population they represent. Further research shows that these disparities cannot be attributed to increased criminality or other factors: the disparities are because of structural racism.

Research shows that people of colour face worse outcomes in their cases: they face longer prison sentences and are not granted non-custodial sanctions such as fines. In some cases, people of colour face disparate outcomes because of intersecting societal reasons: People with more limited resources or social capital may have a harder time accessing community service alternatives to prison, for example, or judges may assume someone who is a migrant is unable to pay a fine and will sentence them to prison instead.<sup>42</sup> In other cases, system actors are biased, either implicitly or explicitly. Additional research shows that people held pre-trial—who are disproportionately of colour—are more likely to be sentenced to prison than similarly situated people released pre-trial,<sup>43</sup> in part because they cannot participate as fully in their defence while in custody. The consequences of these biases are that at every stage of the criminal legal process people of colour are likely to face harsher consequences.

### Sentencing and discrimination: The data

- **Disparities in prison populations**

In Bulgaria, a report found that “minorities” (the term used for people who self-identified as an ethnic group other than Bulgarian), including Roma, were 17.5% of the total number of people identified as suspects in Bulgaria in 2015, but minorities were likely sentenced at a much higher rate: Data for the same year shows that people who self-identified as Roma accounted for more than **50%** of new arrivals in prison.<sup>44</sup>

In Hungary, a report by the Council of Europe highlights that approximately **45%** of the prison population self-identified as Roma though Roma are only around 6% of the population of Hungary.<sup>45</sup>

- **Disparities in receiving non-custodial sentences**

In the French study referenced above, researchers found one in six people from France faced prison sentences, compared to *one in four* people born outside of France.<sup>46</sup> The study also noted that people from outside of France were *twice as likely* to have their cases handled by fast-track proceedings, which provide fewer procedural rights.<sup>47</sup>

- **Disparities in sentence lengths**

A Netherlands study which looked at cases sentenced in 2007 found that first-generation Antilleans and first-generation Turkish people received sentences *8 and 11% longer*, respectively, than other people sentenced that year.<sup>48</sup> Researchers found evidence that “ethnic minority groups may thus receive different punishment because of their ethnicity.”<sup>49</sup> These findings are dramatic: a person from these groups would lose their liberty for significantly longer for similar offences.

- **Disparities in conviction rates**

A study in Belgium analysed whether people with a name perceived as Muslim were more likely to get convicted than people with a name perceived as white Belgian. Drawing on detailed data, they found that “all else equal, defendants with a perceived Islamic name face on average *three to five percentage points greater prospects of conviction* than defendants with a Belgian name.”<sup>50</sup>

- **Evidence of bias**

The European Commission's Country Report on Non-Discrimination highlighted that judges in Slovakia were influenced by racial bias in their decision making.<sup>51</sup>

# Conclusion

It is essential for the EU to reflect on these injustices, and act now to address them.

Across Europe, rising racism and xenophobia are accepted in mainstream political discourse.<sup>52</sup> We must move political and media<sup>53</sup> discourse past the criminalisation of migration and stigmatisation of people of colour. So far, stigmatising has only mobilised the far right and other political forces determined to build power by entrenching and protecting systemic discrimination against people of colour.

It's vital that the EU acts against discrimination and disparities in criminal legal systems: No government power is more serious than taking away someone's liberty. We hope that we can engage with EU institutions on these issues. Below are some initial ideas about how we can work to end discrimination and disparities within criminal legal systems.

## Elevate the issue

Stakeholders should push for consensus at all levels on the urgent need for racial justice in criminal legal systems.

## Convene

The EU should not only engage impacted people and their communities as consultants about these issues, but change current power structures so that the people most impacted by structural racism may lead these efforts. We suggest that the EU facilitate dialogue in a meaningful way that engages diverse people and organisations.

## Shift narratives

The EU must be unequivocal in its commitment to recognising and ending structural racism in criminal legal systems. The EU should lead in shifting narratives about criminality, migration, race and ethnicity, and related topics so that Europe may realise the promises made in the Charter.

## Monitor

Our research also suggests that people in the EU are not fully benefiting from their EU-granted procedural rights and other guarantees of equality under the Charter. The European institutions have many tools available to them, including requiring states meaningfully collect and report data and information. The EU should engage in monitoring and urging and coordinating action to end the disparities.

## Create accountability with Member States

The EU should play a key role in getting Member States to recognise the problem, and in driving active steps. EU institutions should work jointly to set an agenda for strong policy in this area, and ensure accountability. Where required, this may include bringing infringement proceedings when Member States are not upholding EU rights.

## Legislate

Our evidence points to clear areas for EU-action within the EU's competencies. For example, the EU could focus on legislation on the overuse and disparities in pre-trial detention.

# Endnotes

- 1- Criminal legal system is another term for criminal justice system. Europe has many criminal legal systems because each Member State has its own, and some also have local variation within the country.
- 2- Christine Sudbrock, [Roma part of #BlackLivesMatter](#), ERGO NETWORK, (describing the groups impacted by racism in Europe. Our list borrows from this helpful definition.).
- 3- Charter of Fundamental Rights of the European Union: 2010 O.J. (C83) 389. Proclaimed by the Commission, 7 December 2000. Proclamation and text at 2000 O.J. (C364) 1.
- 4- The articles are as follows: Article 2: Right to life; Article 3: Right to the integrity of the person; Article 4: Prohibition of torture and inhuman or degrading treatment or punishment; Article 5: Prohibition of slavery and forced labour; Article 20: Equality before the law; Article 21: Non-discrimination.
- 5- Consolidated version of the Treaty on European Union: 2012 O.J. (C326) 01.
- 6- Article 2 says, “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”
- 7- European Parliament Resolution of 19 June 2020 on the Anti-racism Protests Following the Death of George Floyd, 2020 O.J. C 2020/2685.
- 8- Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions: A Union of equality: EU anti-racism action plan 2020-2025, COM(2020) 565 final, O.J. 2020.
- 9- Id.
- 10- *Lingurar v Romania*, 48474/14 Eur. Ct. H.R 1 (2019).
- 11- Id.
- 12- See e.g., Red Cross EU, *Reducing the use of immigration detention in the EU (2020)* (“In recent years, the European Union (EU) and Member States have prioritised reducing migrants’ irregular entry and stay by reinforcing external border controls and intensifying administrative detention as a form of migration management.”). See also, e.g., Vanessa Barker, *Global Mobility and Penal Order: Criminalizing Migration, a View from Europe*, *Sociology Compass* 6.2 (2012), 113-121 (discussing and citing extensive literature on how understandings in Europe of migration and criminalisation policies are interrelated).
- 13- For example, offences committed by people under colonial rule against Europeans were historically the most severely punished. Xavier Rousseaux, *A history of crime and criminal justice in Europe*, § 3, *The Routledge Handbook of European Criminology* (2013).
- 14- European Parliament Resolution of 19 June 2020 on the Anti-racism Protests Following the Death of George Floyd, 2020 O.J. C 2020/2685
- 15- Mitali Nagrecha, *The Limits of Fairer Fines: Lessons from Germany*, Harvard Law School Criminal Justice Policy Program (2020).
- 16- Id.
- 17- Id.

- 18- Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings; 2009 OJ (C 295) 1.
- 19- Council Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty; 2013 OJ (L 294) 1.
- 20- Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings; 2012 OJ (L 142) 1.
- 21- Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings; OJ (L 280) 1.
- 22- Directive 2016/343/EU of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings; 2016 OJ (L 65) 1.
- 23- Council of Europe: European Commission Against Racism and Intolerance, ECRI Report on Bulgaria (Fourth Monitoring Cycle), Adopted on 20 June 2008, 26 CRI (2009)2.
- 24- Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294, 6.11.2013, p. 1–12
- 25- Council of Europe: European Commission Against Racism and Intolerance, ECRI Report on Hungary (Fourth Monitoring Cycle), Adopted on 20 June 2008, 46, CRI (2009) 3.
- 26- Council of Europe: European Commission Against Racism and Intolerance, ECRI Report on Lithuania (Fourth Monitoring Cycle), Adopted on 24 June 2005, 10, CRI (2006) 2.
- 27- Fair Trials, *A Measure of Last Resort? The practice of pre-trial detention decision making in the EU* (2016),
- 28- Id.
- 29- Council of Europe & European Union, *Pre-Trial Detention Monitoring Tool*, O.J 5 (no date) (defining pre-trial detention as follows: “Pre-trial detention (PTD): A measure of restraint by which a person accused of committing a crime is kept in custody, ordered by a judicial authority at pre-trial or trial stage of proceedings to ensure his/her appearance before a court, prevent his/her further criminal activity, and/or prevent unlawful interference with the investigation of the case.”).
- 30- Council of Europe & European Union, *Pre-Trial Detention Monitoring Tool*, O.J 33 (no date) (noting that remand detention (another term for pre-trial detention) should only be used in limited circumstances and for limited periods. “According to the research of the Council of Europe, ‘remand detention (PTD) should only be used as a measure of last resort, imposed for the shortest time possible and based on a case-by-case evaluation’”).

- 31- European Union Agency for Fundamental Rights, Criminal detention and alternatives: fundamental rights aspects in EU cross-border transfers (2016) (noting this phenomenon in cross-border cases within the European Union). Judges engage in the same assumptions about flight risk when reviewing pre-trial detention orders for people from outside of Europe (and within) in cases that aren't about cross-border transfers.
- 32- Walter Hammerschick, Christine Morgernstern, Skirmantas Bikelis & Miranda Boone, DETOUR - Towards Pre-trial Detention as Ultima Ratio. Comparative Report (2017)
- 33- Committee on the Elimination of Racial Discrimination, General Comment 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System preamble and paragraph 1.III.2, quoted in The Justice Initiative, A Global Campaign for Pre-trial Justice Report: The Socioeconomic Impact of Pre-trial Detention (2011).
- 34- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 26th GENERAL REPORT OF THE CPT, Remand Detention, 31 (2016).
- 35- Virginie Gautron & Jean-Noël Retière, La décision judiciaire : jugements pénaux ou jugements sociaux?, 88 Mouvements 11, 11-18 (2016).
- 36- Patrizio Gonnella, Detenuti Stranieri in Italia, Antigone (2015).
- 37- David Perry & Mary Rogan, DETOUR – Towards Pre-trial Detention as Ultima Ratio, 1st National Report of Ireland, § 4, (2016). 5.6% of respondents self-identified as Traveller. At the time of the study, Traveller youth were 1.15% of the population. Department of Children and Youth Affairs, Young Travellers in Ireland, Population Overview, (2020).
- 38- Tanya Lalor, Ethnic Identifiers in Irish Prisons: Context and recommended practice for improving data collection on Travellers and minority ethnic groups in Irish Prisons, Travellers in Prison Initiative (March 2017).
- 39- Id.
- 40- Dieter Burssens, Carrol Tange, and Eric Maes (2015) A la recherche de déterminants du recours à la détention préventive et de sa durée, Institut National de Criminalistique et de Criminologie (2015).
- 41- Carrol Tange, Dieter Burssens, and Eric Maes, Pre-trial Detention in Belgium. An Empirical Study of Explanatory Factors in the Use of the Arrest Warrant and its Duration, Champ Pénal (2019).
- 42- Fair Trials, The need to end structural racism in criminal legal systems, Aug 17 2020.
- 43- Philippe Robert, A lawmaker's headache: Pretrial detention. Paris: CESDIP (1994). See also Fair Trials, A Measure of Last Resort? The practice of pre-trial detention decision making in the EU (2016) (summarising research in this area).
- 44- Bulgarian Helsinki Committee, Of the Bulgarian Helsinki Committee Concerning Bulgaria for Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 92nd Session (March 2017).



45- Council of Europe: European Commission Against Racism and Intolerance, ECRI Report on Hungary (Fourth Monitoring Cycle), Adopted on 20 June 2008, 46, CRI (2009) 3. See also Jessica Jacobson, Catherine Heard, and Helen Fair, *Prison: Evidence of its use and over-use from around the world*, Institute for Criminal Policy Research and Fair Trials (2017) (noting similar data and explaining, “Increasingly punitive political discourse, marked by racial stereotyping of Hungary’s Roma... communities in the media and in political rhetoric, may also be stoking anxiety about crime.”).

46- Virginie Gautron & Jean-Noël Retière, *La décision judiciaire : jugements pénaux ou jugements sociaux ?*, 88 *Mouvements* 11-18 (2016).

47- Id.

48- Hilde Wermink, Sigrid van Wingerden, Johan van Wilsem & Paul Nieuwbeerta, *Studying Ethnic Disparities in Sentencing: The Importance of Refining Ethnic Minority Measures*, in *Handbook on Punishment Decisions* 239-264 (L Ulmer & M Bradley 1ed 2019).

49- Id. at 17 (“Because ethnic disparities in sentencing cannot fully be explained by differences in characteristics of the crime, nor by differences in characteristics or social circumstances of the offender, we also found support for our second hypothesis: ethnicity may directly influence sentencing decisions. Ethnic minority groups may thus receive different punishment because of their ethnicity.”).

50- Samantha Bielen, Peter Grajzl and Wim Marneffe, *Blame Based on One’s Name? Extralegal Disparities in Criminal Conviction and Sentencing*, *SSRN Electronic Journal*, (2008).

51- Slovakia: Country report on non-discrimination, European network of legal experts in gender equality and non-discrimination, European Commission, 2019 ).

52- European Parliament Resolution of 19 June 2020 on the Anti-racism Protests Following the Death of George Floyd, 2020 O.J. C 2020/2685.

53- See generally, Fair Trials, *Innocent Until Proven Guilty: The Presentation of Suspects in Criminal Proceedings* (2019).