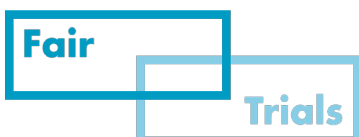


JUSTICE DENIED: ROMA IN THE CRIMINAL JUSTICE SYSTEM OF SERBIA

CHALLENGING DISCRIMINATION PROMOTING EQUALITY





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Introduction

This report on Roma in the criminal justice system of Serbia is one part of an ongoing series of country reports produced by the European Roma Rights Centre (ERRC) in partnership with Fair Trials, which examines the impact of anti-Roma racism on the workings of the criminal justice systems. Between May and September 2020, researchers in the Czech Republic, Slovakia, Serbia, and North Macedonia conducted interviews with people of Romani origin and criminal justice professionals, including defence lawyers, prosecutors, judges, and police officers.

This research corroborated earlier findings that overrepresentation of Romani people in the criminal justice system is due to a combination of reasons which include persistent racial profiling and over-policing of Romani communities, social marginalisation and higher rates of poverty, lack of eligibility for alternatives to sentencing, and a presumption of guilt rooted in wider racist narratives around so-called ‘Gypsy crime’.¹

In Serbia, discriminatory views and negative stereotypes of Roma were deemed to be the main reasons for the greater likelihood of Roma being accused of a crime by most interviewees, with defence lawyers attributing overrepresentation to the attitudes of the police and the prosecution service. For their part, Romani interviewees expressed distrust in a criminal justice system that reflected the biases and racism that prevails in the wider Serbian society where, as one interviewee put it, the majority population viewed Roma as “less valuable, uneducated, unemployed and subsidised solely by social welfare and theft ... They just don’t like us; they look at us like we are the worst.”

When it came to policing in particular, the Romani respondents had little trust in law enforcement and felt officers were prejudiced against Roma. All ten Romani interviewees from Serbia recounted being routinely stopped by police; most recalled incidents of harassment and verbal abuse, and five had direct experience of being physically assaulted by police.

There is nothing new about such mistreatment: in 2015 the UN Committee Against Torture (UNCAT), recommended that the Serbian State adopt measures “to change the culture of impunity of torture”. In 2021, the ERRC, in its submission to the UNCAT, expressed concern that the authorities had not taken sufficient steps to prevent the use of excessive force, torture, degrading and inhumane treatment of Roma by police officers.

The submission detailed six cases taken by the ERRC as well as a number of other documented cases of police brutality against Roma. These included acts of violence such as beating Romani detainees, putting bags over their heads and threatening them with guns, forced confessions, denial of access to lawyers, violent police raids, and serious assaults on minors.²

1 Fair Trials, *Uncovering anti-Roma discrimination in criminal justice systems in Europe*, London, December 2020, p.6. Available at: https://www.fairtrials.org/sites/default/files/publication_pdf/FT-Roma_report-final.pdf.

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

In a recent civil case that attracted public attention, the Higher Court in Belgrade in December 2020 issued a final judgment against the police, which established that their mistreatment of a Romani couple was ethnically motivated. However, it should be noted that culpability of individual police officers was never established because prosecuting authorities and internal police mechanisms failed to conduct a proper investigation, but managed to charge the victims with ‘false reporting’, a groundless charge that was subsequently dropped.

The couple complained of being abused by Belgrade police³ after reporting their car as stolen. They were held in custody for 13 hours, threatened with imprisonment and the removal of their children. The officers pointed a gun at the Romani man and put a bag over his head; would not allow the couple to call their lawyer; and coerced them into signing documents that they had not read and could not take away with them.

Such brutal incidents are not one-off, bad apple aberrations: the evidence from this report on Serbia, and the three companion reports, combined with the ERRRC’s caseload over twenty years, strongly suggests that law enforcement agencies are institutionally racist and there is official tolerance of a culture of impunity within law enforcement when it comes to mistreatment of Roma.

Beyond policing, the reports in each of the four countries confirm that at every stage of criminal proceedings, Romani defendants face discrimination from judges, prosecutors, and often their own lawyers. Prosecutors in Serbia emphatically denied that there was any discrimination in the prosecution service, insisted that the presumption of innocence applies to Roma as it does to others, and that prosecutors draw their conclusions from the established facts and relevant evidence. They attributed Romani people’s distrust in the justice system to Roma being generally uninformed and unaware of how justice works. At no point did they question the workings of the system, or why Roma should be expected to be better informed than other citizens about the arcane workings of the criminal justice system.

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

Prosecutors and judges alike denied that ethnicity was ever a factor in pre-trial detention decisions. Judges in all four countries tended to share this view, stressing that they were guided by strict criteria written into the legislation as to when pre-trial detention may be authorised, and most insisted that pre-trial detention is considered very strictly and cautiously and on an individual basis. Prosecutors in Serbia, like the judges, insisted they rely on the Criminal Procedure Code to decide whether to ask a judge to order the detention of a suspect in custody, stressing once more that the law applies to all individuals equally.

3 ERRRC Press Release, *Roma Tortured by Police in Belgrade after reporting stolen car*, 2017. Available at: <http://www.errrc.org/press-releases/roma-tortured-by-police-in-belgrade-after-reporting-stolen-car>.

Some judges conceded that they were more likely to presume that Romani defendants were a flight risk, but insisted this was due to their social and economic circumstances; such as having no fixed address. They also said that pre-trial detention was sometimes the only option, particularly if the Romani defendant was unemployed or did not have the financial resources to pay for bail. Even where alternatives to pre-trial detention are possible, the judges said that technical issues meant that monitoring with an electronic tagging bracelet was often not an option. This is a clear case where purportedly neutral sets of rules and guidelines have disproportionate and discriminatory impacts upon Romani defendants.

The research further corroborates the findings of the 2020 Fair Trials reports on Bulgaria, Hungary, Romania, and Spain, that where anti-Roma racism is not only pervasive in society but engrained and routinised in the criminal justice system, there is precious little justice to be had for Roma.⁴ This round of research provides further evidence of one unassailable fact: that Roma face structural racism at every stage of criminal proceedings, which leads to skewed decisions and unjust outcomes. Such abject failures to ensure access to justice are rooted in antigypsyism, defined by the European Commission against Racism and Intolerance (ECRI) as *“an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination.”*⁵

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

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

Methodology

In addition to extensive desk research, the team of researchers conducted a series of interviews in the Republic of Serbia between March and April 2020. In total, 24 people were interviewed: ten were members of the Romani community who were serving prison sentences or who were in detention; three were deputy public prosecutors from the territory of the city of Novi Sad with an average of 20 months' experience; six were defence lawyers from around Serbia (with an average of five and a half years' experience representing Romani defendants); and five were judges with between 5 and 17 years' experience working in the courts. Researchers also sent an official request for a permit to interview ten police officers from units around Serbia to the Ministry of Internal Affairs of the Republic of Serbia, but unfortunately the Ministry did not grant the permit, saying that they did not trust how the research was to be carried out. They said that they were concerned that the survey questions were suggestive and open, that the sample size was not large enough to draw any conclusions, that the findings might be manipulated, and that, in any event, the officers would not be able to comment on statistical indicators relating to the number of Romani arrests. As a result, no police officers were interviewed for this research.

The data resulting from this research provides a fuller insight and indicates the attitudes and actions that need to be influenced in order to enhance activities to effectively combat discrimination and abuse directed towards Roma.

Roma in Serbia

According to the 2011 census, there were officially 147,604 Roma in Serbia, which represents 2.1% of the population. However, actual numbers are likely to be much higher, ranging from around 240,000 to 600,000.⁶ The average age of Romani people is 27.8 years old, compared with 42.2 years in the general population, and 41.5% are under 19 years old. Most Romani people live in South-East Serbia (about 39%), with a still significant population living in Vojvodina (29%) and a smaller proportion living in the Belgrade area (19%).⁷ Approximately 70% of Romani people in Serbia live in Romani majority neighbourhoods.⁸ 583 of these Romani majority neighbourhoods are in some level of disrepair.⁹

In December 2020, the results of a mapping exercise conducted by the Social Inclusion and Poverty Reduction Unit of the Government of the Republic of Serbia and the United Nations Human Rights Team were published. The report covered 702 substandard Romani majority neighbourhoods in 92 local self-governments (LSGs) with a population of about 168,000. The mapping findings show that there are 51 LSGs in the Republic of Serbia in which 159 substandard Romani majority neighbourhoods, with a total population of 32,843, have no or irregular access to clean water. Access to sewer networks is irregular or missing in 457 substandard Romani majority neighbourhoods located in 82 LSGs, which are home to 93,050 Romani people. Further, 24,104 Romani people living in 64 settlements located in 35 LSGs have no access to electricity.¹⁰

Studies show that Roma are significantly more likely to be uneducated and experience poverty than the rest of the population. According to the 2011 census, 34.2% of the Romani population did not complete their primary school education, compared to around 11% of the general population. Similarly, for every 100 economically active citizens in the Romani population, there were 257 economically inactive citizens, compared to 140 economically inactive citizens in the general population.¹¹ The risk of poverty affects 24.3% of people in Serbia.¹² People from vulnerable groups, including Roma, are at an even higher risk of poverty.¹³

6 Protector of Citizens Ombudsman, *Special Report of the Protector of Citizens on the Implementation of the Strategy for Social Inclusion of Roma with Recommendations*, November 2019, p.11.

7 Statistical Office of the Republic of Serbia, *Census of population, households and dwellings in 2011 in the Republic of Serbia – Roma in Serbia*, Belgrade, 2014.

8 Protector of Citizens, *ibid.*, p.29.

9 Government of the Republic of Serbia, *The Strategy for Social Inclusion of Roma for the Period from 2016 to 2025*, p.37.

10 Government of the Republic of Serbia - Social Inclusion and Poverty Reduction Unit, *Mapping Of Substandard Roma Settlements According To Risks And Access To Rights In The Republic Of Serbia With Particular Attention To The Covid-19 Epidemic*, 4 December 2020. Available at: <https://socijalnoukljucivanje.gov.rs/en/mapping-of-substandard-roma-settlements-according-to-risks-and-access-to-rights-in-the-republic-of-serbia-with-particular-attention-to-the-covid-19-epidemic-published/>.

11 Statistical Office, *ibid.*, p.74, 78.

12 See: <https://publikacije.stat.gov.rs/G2019/Pdf/G20191281.pdf>.

13 Government of the Republic of Serbia – Social Inclusion and Poverty Reduction Unit, *People at Risk of Poverty or Social Exclusion (ARPE)*. Available at: <https://socijalnoukljucivanje.gov.rs/en/social-inclusion-in-rs/poverty-statistics/people-at-risk-of-poverty-or-social-exclusion-arope/>.

Public perceptions of Roma

The European Commission against Racism and Intolerance's (ECRI) 2017 report on Serbia notes that while official statistics indicate a decrease in the number of racist attacks overall, violence against Roma is recurrent¹⁴ and that Roma remain one of the most frequently targeted groups.¹⁵ Moreover, it notes under-reporting in relation to anti-Roma hate crime remains a considerable issue.¹⁶

In 2019, the Council of Europe's Advisory Committee (the Advisory Committee) observed a slight decrease in the number of incidents reported in relation to nationality, race, or religion in recent years. Those incidents included 77 physical attacks, 60% of which were directed against Roma, and 80 cases of criminal damage to Romani homes.¹⁷

In 2019, the Commissioner for the Protection of Equality (the Commissioner) conducted a second survey on citizens' attitudes towards discrimination (identical to the one completed in 2016). Over 50% of respondents said that they saw Roma as the most discriminated group, representing an increase of 12% from the 2016 survey.¹⁸ However, only about two thirds of respondents saw racist or stereotypical statements about Roma as a form of hate speech.¹⁹ 40% of respondents agreed (fully or mostly) with the opinion that it is easy to support Roma when they are not in your neighbourhood and 36% approved of the belief that Roma like to steal.²⁰ According to the survey, the "social distance index" (which broadly measures citizens' willingness to make connections with individuals from other social groups) with regards to different ethnic groups, the highest social distance was noted towards Albanian and Romani minorities, while Serbian citizens overall did not perceive discrimination as a major social issue.²¹

With regards to hate speech, the ECRI 2017 report notes that there is no comprehensive data on the subject but, according to statistics from prosecuting authorities between 2011 and 2016, criminal charges for hate speech were brought against 216 people. In 207 of those cases (96%), the case concerned hate speech on the basis of the victim's national or ethnic origin. Most of these were directed against Romani and LGBTQ people.²²

14 *Ibid.*, p. 9.

15 *Ibid.*, p. 25 §58.

16 *Ibid.*, p. 26 §60.

17 The Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Serbia (ACFC/OP/IV(2019)001)*, 26 June 2019, p.21 §60. Available at: <https://rm.coe.int/4th-op-serbia-en/16809943b6>.

18 The Commissioner for the Protection of Equality, *Report on public opinion survey "Citizens' perception of discrimination in Serbia"*, November 2019, p. 17. Available (in Serbian) at: <http://ravnopravnost.gov.rs/wp-content/uploads/2019/11/izvestaj-o-istrazivanju-javnog-mnjenja.pdf>.

19 66% of respondents think that statement "Gypsies stink" represents hate speech, while 80-94% of respondents qualify derogatory statements about some other social groups as hate speech. *Ibid.*, p. 29.

20 *Ibid.*, p. 43.

21 60% of respondents think that discrimination is an important issue, but there are much bigger problems. *Ibid.*, p.35.

22 ECRI 2017, p. 17 §19.

Over 50% of respondents said that they saw Roma as the most discriminated group.



<50%

This is an increase of 12% from the 2016 survey.

In order to assess the attitudes of public authorities towards discrimination, the Commissioner conducted a survey in 2018 among representatives of the judiciary, the executive, and the legislature. In contrast to the views of most citizens, public authorities had mixed opinions on which group experienced the most discrimination in Serbia. Most thought that people with disabilities faced the greatest discrimination (the physically disabled followed by the intellectually disabled), and then the poor, the elderly, Romani people, and finally other social groups. Members of parliament and ministries were least aware of the law which made hate speech illegal. Just over a third of the respondents believed that hate speech existed in Serbia, but almost as many said that they did not believe it existed. They also stated that incitement of discrimination came mainly from the media, followed by political parties and state institutions.²³

Similar research was conducted in 2013 by the Commissioner's office and UNDP.²⁴ The report was based on a survey of 1,324 officials, which included judges and prosecutors. The general population of Serbia scored 64% on a "discriminatory behaviour identification index", based on the number of answers provided to questions about discrimination. Members of the court system (i.e. judges, judicial assistants, and judicial associates) scored only slightly higher, at 68%, compared to prosecutors, who scored 71%.²⁵ Likewise, almost 25% of judicial personnel surveyed did not think that statements such as "*Roma should be moved from the town centre to the*

23 The Commissioner for the Protection of Equality, *Abridged Version of the 2018 Regular Annual Report*, March 2019, p. 9. Available at: <http://ravnopravnost.gov.rs/wp-content/uploads/2019/05/Eng-Skraceni-izvestaj-sa-CIPom.pdf>.

24 UNDP, The Commissioner for the Protection of Equality and IPSOS, *Attitude of Public Administration Representatives Towards Discrimination in Serbia*, 2013. Available at: https://www.rs.undp.org/content/serbia/en/home/library/democratic_governance/citizens--attitudes-on-discrimination-in-serbia.html.

25 UNDP, The Commissioner for the Protection of Equality and IPSOS, *Attitude of Public Administration Representatives Towards Discrimination in Serbia*, (PowerPoint), 2013, slide 16. Available at: https://www.undp.org/content/dam/serbia/Publications%20and%20reports/English/UNDP_SRB_Diskriminacija_v2%20ENG.pdf.

Almost 50% of police officers interviewed did not know what discrimination was.



50%

periphery” and “Roma should not be given social apartments because due to cultural differences they cannot adjust to living in apartment buildings” amounted to hate speech, and this was about the same or even worse than how members of the executive and legislature performed when answering the same questions.²⁶ The judiciary found it particularly difficult to identify covert discrimination. 57.5% of judges correctly identified instances of covert discrimination in the survey, which was fewer than members of the executive branch (61.5%), members of the legislative branch (58.7%) and the general public (72.4%).²⁷ Over 12% of members of the judiciary surveyed could not identify a clear cut case of discrimination, consisting of a baker refusing to employ a Romani person because he is afraid he would lose customers.²⁸ Even more alarmingly, 35% of public officials thought their colleagues would agree with the statement “*I have nothing against the Roma, but they do like to steal*”.²⁹ Likewise, 26% of officials agreed with the statement that “*The Roma are so different that they cannot fit into the lifestyle of other citizens of Serbia*”.³⁰ Of particular interest was the finding that 29% of public officials believed that the courts did not treat all citizens equally irrespective of protected characteristics such as ethnicity, and 30% thought the same of prosecutors’ offices. The courts and prosecutors’ offices were the public institutions that scored least highly on these measures (compared with Parliament, national government, and local government structures).³¹

26 UNDP, 2013, p.40.

27 *Ibid.*, p.31.

28 *Ibid.*

29 UNDP (PowerPoint), 2013, slide 24.

30 *Ibid.*

31 UNDP 2013, p. 49. These figures rise when only the responses of members of the legislative and executive branches are taken into account; 36% of members of the other two branches of government believe that the courts do not treat people fairly regardless of protected characteristics, and 31% think this is the case for prosecutors’ offices. See page 50 of the main report.

A staggering **48%** of police officers did not know which institutions were responsible for combating discrimination.



48%

The police generally did not believe that they had any responsibility or influence over decreasing the level of discrimination in society.

In a similar vein, according to research carried out in 2014 in five regions among Serbian police units responsible for investigating crime (kriminalistička policija)³², the police have a significantly lower understanding of discrimination and of the vulnerability of certain social groups than the general public in Serbia. Almost 50% of police officers interviewed did not know what discrimination was. Additionally, in comparison to the general public as a whole, police officers experienced a higher degree of “social distance” with all social and ethnic minority groups. This distance was most evident between the police and LGBTQ people on the one hand, and between police and Roma on the other.

Although the police recognised Romani people’s unfavourable social status in Serbia, it was still one of the groups towards which the police showed the highest level of discrimination (alongside Albanians, LGBTQ people, and HIV-positive people). For example, only 41% of respondents in the survey of police officers recognised the phrase “*Roma stinke*” as a form of hate speech. Criminal-investigation police in Subotica (Vojvodina) showed higher levels of discrimination towards Roma than police from other regions. A staggering 48% of police officers did not know which institutions were responsible for combating discrimination, and the police generally did not believe that they had any responsibility or influence over decreasing the level of discrimination in society. Subsequent research targeting public-order police and traffic police from seven regions in Serbia was carried out in 2015.³³ This research corroborated the findings of the research into the views of criminal-investigation police in 2014, meaning that the three police services in most frequent contact with citizens show worrying levels of discrimination towards Roma. Almost half the police officers interviewed for that research did not understand what discrimination is, many believed that it is acceptable to break the law to resolve an issue, and, according to the 2014 and 2015 surveys, 29% to 41% appear to believe that Roma “*usually steal*”.

32 Zekavica, R., *Odnos policije prema diskriminaciji u Srbiji (Perception of Police on Discrimination in Serbia)*, TEMIDA – Časopis o viktimizaciji, ljudskim pravima i rodu, June 2014, Vol. 17, Issue 2, pages 65-93. Available at <http://vds.rs/File/Temida1402.pdf>.

33 Zekavica, R., *Odnos policije prema diskriminaciji u Srbiji – rezultati istraživanja stavova pripadnika policije opšte nadležnosti i saobraćajne policije RS (Perception of Police on Discrimination in Serbia – Results of the Survey on the Attitudes of Public Order and Traffic Police Officers)*, TEMIDA – Časopis o viktimizaciji, ljudskim pravima i rodu, March 2016, Vol. 19, Issue 1, pages 135-160. Available at: <http://vds.rs/File/Temida1601.pdf>.

Public portrayals of Roma

Given the negative public perceptions of Roma it is no surprise that hate speech against Roma is widespread on online media.³⁴ Several media sites³⁵ were sanctioned for violating the Journalists' Code of Ethics for texts published on their website, each time reporting on the Romani ethnicity of the alleged criminal offenders. These reports often provoked racist comments from readers, furthering hate speech towards Roma even more.³⁶

As of December 2017, the Press Council had reviewed 86 complaints of discrimination and hate speech in the media.³⁷ In 51 of those cases, the Press Council established that there had been a violation of the Journalist's Code of Ethics. The largest amount of discriminatory content was directed towards the LGBTQ community and Romani communities.³⁸

In 2018, the Commissioner conducted a survey on discrimination in the media in Serbia. The survey revealed that there were significant differences between editors and journalists in how they perceived discrimination. While journalists saw hate speech as “*very much present*”, editors considered it to be “*mostly present*” and, consistent with other surveys, the social groups identified as most discriminated against included Roma.³⁹

In 2015 and 2016, the Commissioner considered four complaints of anti-Roma discrimination in the media. In three instances,⁴⁰ the Commissioner found that the media violated the anti-discrimination law and discriminated on the grounds of Romani ethnicity.

Perhaps even more concerningly, state actors in public authorities have also been known to make explicitly discriminatory remarks about Roma. In September 2019, a criminal case, brought against a 22-year-old Romani man who had had sexual relations with a thirteen-year old Romani girl who had then become pregnant, caused great controversy and raised debate in the public and professional spheres. While the first instance court sentenced the man to five years in prison, the second instance court overturned the ruling and acquitted the man.

34 Nikolić M. Predrag, *Internet Hate Speech in Serbia – doctoral dissertation*, University of Belgrade Faculty of Political Sciences, Belgrade 2018, p. 192. Available at: http://www.fpn.bg.ac.rs/wp-content/uploads/2018/07/Nikolic_Predrag_Disertacija_FPN.pdf.

35 News media: Vecernje novosti, Alo, Telegraf; info portal www.srbijadanas.net.

36 Nikolić 2018, p. 192.

37 The Press Council is an independent, self-regulatory body that brings together publishers, owners of print and online media, news agencies and media professionals. It has been established for monitoring the observance of the Journalist's Code of Ethics, solving complaints made by individuals and institutions related to media content. More information available at: <https://savetzastampu.rs/en/>.

38 Stojković M., Pokuševski D., *Anonimna mržnja – Mehanizmi zaštite od govora mržnje na internetu (Anonymous Hate – Protection Mechanisms against Hate Speech on Internet)*, Beogradski centar za ljudska prava, 2018, p. 74. Available (in Serbian) at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2018/12/Anonimna-mrznja-FINAL-S.pdf>.

39 The Commissioner 2019, p. 8-9.

40 The Commissioner for Protection of Equality, case numbers: 07-00-337/2016-02 from 19 Oct 2016; 07-00-702/2015-02 from 15 Jan 2016; 07-00-361/2015-07 from 7 Sept 2015.

The second instance court relied on the principle *mistake of law* i.e. that the offender was not aware that the act he had committed was illegal because, *inter alia*, he acted in accordance with socio-cultural norms of Romani society, in which patterns of marital and family relations implied early sexual activity and marriages. The court expert witness argued that the accused had behaved as most members of his community would behave.⁴¹

In a case concerning the killing of 28 Romani civilians in Bosnia by a Serbian paramilitary group in 1992, the Belgrade second instance court made overtly racist observations in its 2014 judgment. One of the accused was found guilty by the court at first instance for stealing the belongings of the Romani victims, including some gold jewellery. However, at the second instance the court was sent for retrial because, *inter alia*, it was not clear how the victims had acquired this jewellery, “*particularly given that a nearby Serbian village had previously been massacred/ransacked*”. It is worth noting that this case was tried as a war crimes case, and it was the first time that the court had not only questioned the origins of the victims’ personal belongings but implicitly suggested that the civilian victims might have been involved in criminal activity prior to the massacre.

In July 2014, the president of the municipality of Sirča made derogatory statements about Roma.⁴² Both the Commissioner and Belgrade Higher Court found that these statements constituted a serious form of discrimination. The local official was ordered to refrain from making similar statements again and publish, at his own expense, the verdict and an apology in a daily newspaper with nationwide distribution.⁴³

41 Autonomni ženski centar, *Saopštenje za javnost povodom presude Apelacionog suda u Beogradu kojom se krše prava deteta*, 12.09.2019., available at: <https://www.womenngo.org.rs/vesti/1494-saopstenje-za-javnost-povodom-presude-apelacionog-suda-u-beogradu-kojom-se-krse-prava-deteta>; See more at: N1, *Oslobodjen za obljubu devojčice – javnost uznemirena, stručnjaci podeljeni*, available at: <http://rs.n1info.com/Vesti/a531580/Vanja-Macanovic-i-Veljko-Milic-o-oslobadjajucoj-presudi-za-obljubu-devojci.html>.

42 “*Sirča is going through an extremely hard period. No earthquake or flood degraded Sirča as much as immigration of Roma people from Kosovo did. We are not racists but we cannot live with them because it ruins our peace. The inhabitants of Sirča used to run to the hills in the times of Turkish invasion, to Trgovište, and it seems that we will have to do the same now. We cannot mix with them.*” The Commissioner for Protection of Equality, *Regular Annual Report for 2014*, June 2015, p. 73-74. Available at: http://ravnopravnost.gov.rs/wp-content/download/regular_annual_report_of_the_cpe_2014_spojeno.pdf.

43 ECRI 2017, p.19.

Government initiatives to tackle anti-Roma discrimination

The Serbian Government adopted the Strategy for Social Inclusion of Roma for the period 2016-2025 (the Strategy)⁴⁴ and a two-year action plan for its implementation for the years 2017 and 2018.⁴⁵ However, following the expiry of this period, the Government did not adopt a subsequent action plan to begin from 2019. A new 2022-2030 Strategy was adopted on 3 February 2022; it contains no mention of either policing or the criminal justice system, and the Action Plan is currently under preparation.⁴⁶

The European Commission's Serbia 2019 Report remarked that a great deal of work remained to be done to tackle discrimination against Romani people and their integration into society, noting that the “*institutional structure dealing with Roma integration remains ineffective and complicated, without a clear distribution of tasks. Coordination between the national and local authorities and budgeting at local level still need to be reinforced.*”⁴⁷ The report goes on to state that Serbia needs to “*ensure consistent implementation of legislation regarding national minorities, including Roma, leading to a tangible improvement in the effective exercise of their rights across the country*”.⁴⁸ Similarly, the Ombudsman's 2019 report further notes that the Strategy's implementation at local level was difficult and, although progress was made in certain areas, the results have been limited.⁴⁹

Despite the fact that Roma remain one of the most discriminated against groups, the effectiveness of the equality body specialising in anti-Roma discrimination has been underwhelming. Although the Commissioner documented a consistent increase in the overall number of complaints received in recent years, complaints concerning discrimination based on an individual's ethnicity have decreased, and in 2019 comprised only 6.8% (50 complaints) of the Commissioner's case load. Around two thirds of these complaints (32) related to discrimination of Roma. Most of these complaints were rejected on formal grounds or the procedure was halted for different reasons.⁵⁰ Equally, however, the Commissioner brought more civil cases on the grounds of anti-Roma discrimination than any other grounds. As of 2020 the Commissioner had brought 18 civil cases, eight of which concerned Roma.⁵¹

44 Official Gazette of the RS No. 26/2016 from 26 March 2016.

45 Available at: https://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/akcioni_plan_za_primenu_strategije_za_socijalno_ukljufivanje_roma_i_romkinja_u_rs_2016-2025_za_period_od_2017_do_2018_godine.pdf.

46 *Strategy For Social Inclusion Of Roma In The Republic Of Serbia 2022–2030*. Available at: <https://www.minljudskoprava.gov.rs/doc/Strategy-for-Social-Inclusion-of-Roma-in-the-Republic-of-Serbia2022-2030-eng.pdf>.

47 European Commission, COMMISSION STAFF WORKING DOCUMENT Serbia 2019 Report (SWD(2019) 219 final), 29.05.2019., p. 29. Available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>.

48 *Ibid.*, p.23.

49 Protector of Citizens, *ibid.*, p.75.

50 The Commissioner for the Protection of Equality, *2019 Regular Annual Report*, March 2020, p.221-222. Available (in Serbian) at: <http://ravnopravnost.gov.rs/wp-content/uploads/2020/03/FINAL-RGI-2019-ZA-NARODNU-SKUPSTINU.pdf>.

51 *Ibid.*, p.260.

National and international criticisms of Serbian anti-Roma discrimination

Almost all of the United Nations and Council of Europe's human rights bodies are unanimous in their condemnation of the persistent anti-Roma discrimination seen in Serbia. Some of the most recent criticisms were made in 2019 by the Advisory Committee, which concluded that Roma experience discrimination in relation to most of aspects of their daily life,⁵² and by the UN CEDAW Committee, which observed that Romani women continue to experience multiple and intersecting forms of discrimination.⁵³ In 2017 the UN Human Rights Committee expressed its concerns that members of the Romani community continue to suffer from widespread discrimination and exclusion.⁵⁴ Similar observations were made by the Council of Europe Commissioner for Human Rights during his visit to Serbia in 2015.⁵⁵

The most well-known domestic court case which established anti-Roma discrimination was "Krsmanovača", in which Roma were prevented from entering a public swimming pool in the town of Šabac in 2000. For the first time, situation testing was accepted as a legitimate method of collecting evidence of discrimination. In 2004, the Serbian Supreme Court upheld the lower court's judgment of racial discrimination and confirmed the direct applicability of international human rights law into Serbian law.⁵⁶

A more recent case of police abuse against Roma has also received significant public attention. In July 2020, the Higher Court in Belgrade handed down a judgment in the first instance which established that the police had discriminated against a Romani couple due to their ethnicity. The couple complained of being abused by Belgrade police⁵⁷ after reporting their car as stolen. The couple was in police custody for almost thirteen hours on 21 April 2017 while police officers threatened to imprison them and take their children to an orphanage. The officers pointed a gun at the Romani man and put a bag over his head. They did not allow the couple to call their lawyer and, after subjecting them to a polygraph test, the officers coerced them into signing documents that they had not read and could not take away with them. The Romani couple brought a civil discrimination claim against the Ministry of Interior before Belgrade Higher Court in August 2017. The court reasoned that the ill-treatment the couple had suffered at the hands of the Belgrade police was unlawful and unjustifiable and amounted to harassment as a specific form of discrimination.

52 The Council of Europe Advisory Committee 2019, p. 5.

53 UN CEDAW Committee, *Concluding observations on the fourth periodic report of Serbia CEDAW/C/SRB/CO/4*, 14 March 2019, §43. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskcAJS%2fU4wb%2bdIVievG05RzmOxDQgRWlCReo5z%2bXdHjw%2bBI%2fSJ3As%2b9r%2fYzgxabDfdxyUUu6LFdF5PJ23xmbCU5Wb%2f2Vpf4ghjB4xq%2f6l%2bCn>.

54 UN Human Rights Committee, *Concluding observations on the third periodic report of Serbia CCPR/C/SRB/CO/3*, 10 April 2017, §14. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsm0BTKouDPNIMXWAuPwondHjTzsOQV02EwZeEShWLiz69PrKjtF2bDIMsRD6rBTmerbTKRH1D%2bXh8kzoQHZkFRsh2LbkknpdlMLo7VPSDjw>.

55 Report is available at: <https://rm.coe.int/16806db7fa>.

56 Humanitarian Law Center, *Vrhovni sud Srbije potvrdio presudu protiv rasne diskriminacije*, 16.09.2004. Available (in Serbian) at: <http://www.hlc-rdc.org/?p=13418>.

57 ERRC Press Release, *Roma Tortured by Police in Belgrade after reporting stolen car*, 2017. Available at: <http://www.errc.org/press-releases/roma-tortured-by-police-in-belgrade-after-reporting-stolen-car>.

Representation of Roma in the criminal justice system

Given that there is no coherent policy or legal basis on the collection of ethnic data amongst defendants, there are no official statistics or estimates on the representation (or overrepresentation) of Roma in the criminal justice system. Government policies on the judiciary,⁵⁸ penal reform,⁵⁹ minority rights,⁶⁰ and anti-discrimination⁶¹ do not contain provisions on data collection segregated by ethnicity. However, each year the Government approves an annual plan of statistics,⁶² which includes the collection of data on the ethnicity of criminal offenders.

There are laws that allow certain public authorities to collect nationality and/or ethnic data, such as the law on data processing by the police,⁶³ which regulates and permits processing data on the nationality of individuals who have been subject to police interaction.⁶⁴ The Law on Execution of Criminal Sanctions allows for the collection of prisoners' ethnic data on the basis of voluntary self-declaration.⁶⁵ However, the extent to which such ethnic data is collected in practice is largely unknown. The only publicly available information on criminal offenders is the annual report published by the national Statistical Office, but this only contains very limited disaggregated data, which does not allow for a thorough analysis of the position of ethnic minorities in the criminal justice system.

Although there is no comprehensive data on the number of Romani people in prisons, there is some (albeit limited and slightly conflicting) evidence that suggests Romani people are overrepresented in penitentiary facilities.

Some data suggests that Roma are only slightly overrepresented, if at all, in prisons. In 2018, the overall conviction rate in Serbia was 22%. Although data showing the conviction rate by ethnicity is not available, the proportion of convicted persons that are of Romani ethnicity ranges from between 1.5% and 3.6% for those who declared Roma as their ethnicity. In juvenile facilities, Romani minors comprise 11.3% of those convicted and who declared Roma as their ethnicity.⁶⁶

⁵⁸ Strategy for Judicial Development for Period 2020-2025 ("Official Gazette of RS" no. 101/2020).

⁵⁹ Strategy for Development of System of Execution of Criminal Sanctions in the Republic of Serbia until 2020 ("Official Gazette of RS" no. 114/2013); Strategy for Reducing Overcrowding in Institutions for Enforcement of Criminal Sanctions in the Republic of Serbia until 2020 ("Official Gazette of RS" no. 43/2017).

⁶⁰ Action Plan for exercising of the rights of national minorities, see *Analysis of reports on the implementation of the Action plan for exercising of the rights of national minorities*. Available at: https://ljudskaprava.gov.rs/sites/default/files/dokument_file/analysis_of_reports_ap.pdf.

⁶¹ Strategy for Prevention and Protection from Discrimination ("Official Gazette of RS", no. 60/2013).


⁶² Decree on Determining Plan of Official Statistics for 2020 (Uredba o utvrđivanju Plana zvanične statistike za 2020. godinu, „Sl. glasnik RS“ br. 89/2019 from 18.12.2019.).

⁶³ Law on Databases and Processing of Data in the Area of Internal Affairs (Zakon o evidencijama i obradi podataka u oblasti unutrašnjih poslova („Sl. glasnik RS“ br. 24/2018 from 26.3.2018.).

⁶⁴ Article 20, Article 35, Articles 41-46, Articles 56-57 of the Law on Databases and Processing of Data in the Area of Internal Affairs.

⁶⁵ Article 9 Law on Execution of Criminal Sanctions (Zakon o izvršenju krivičnih sankcija „Sl. glasnik RS“ br. 55/2014 i 35/2019).

⁶⁶ Adult perpetrators of criminal offences in the Republic of Serbia, 2018. Available at: <https://publikacije.stat.gov.rs/G2019/PdfE/G20195653.pdf>.



The report estimated that Roma made up a third of the population of one youth offender institution, grossly disproportionate to their representation in the population as a whole.

By 2011, the situation had deteriorated further. Roma made up 40% of the inmates in the same institution.



This figure is significantly lower than estimates of the Helsinki Committee for Human Rights in Serbia in its 2005 report “*Prisons in Serbia*”.⁶⁷ The report estimated that Roma made up a third of the population of one youth offender institution, grossly disproportionate to their representation in the population as a whole.⁶⁸ By 2011, it seemed the situation had deteriorated further, with a study undertaken by the Belgrade Centre for Human Rights reporting that Roma now made up 40% of the inmates in the same institution.⁶⁹ In April 2010, the Centre for Human Rights – Niš published a report noting that on a visit to the penitentiary in Niš in October 2009, 11% of prisoners were Romani, still a disproportionate figure in comparison to the proportion of Romani people in Serbian society.⁷⁰

Interviews conducted for this study provided mixed responses to the question of Roma overrepresentation in the justice system, with the Romani respondents corroborating the studies, the prosecutors suggesting otherwise, and the defence lawyers and judges providing a range of opinions across the spectrum.

67 The report is available at: <http://www.helsinki.org.rs/doc/ReportTortures-II.pdf>.

68 *Ibid.*, page 132.

69 The report is available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/12/Prohibitioin-of-ill-treatment-and-rights-of-persons-deprived-of-their-liberty-in-Serbia.pdf>; see page 86.

70 The report is available at: <http://www.chr-nis.org.rs/wp-content/uploads/2011/05/s-of-minority-groups-in-wider-senescin-which-it-can-potentially-come-to-their-discrimination-on-example-of-pen.-Nis.pdf>; see page 11.

All Roma interviewed for this report had been convicted of felonies at some point in their lives and similarly they all knew someone who had been convicted of a criminal offence. Two of the ten respondents had been convicted of one felony, while eight had been convicted of two or more during their lifetime. Furthermore, six respondents seemed to think that Roma were more likely than the general population to be arrested; half of those attributed this to the police generalisations that all Roma are criminals. Other Romani interviewees suggested that this is because Roma do not know their rights.

Defence lawyers provided differing perspectives regarding the overrepresentation of Roma. They all said that they could easily identify defendants as Roma from their skin colour as well as their dialects. On that basis, four of those interviewed said that they rarely encountered Roma as defendants, whereas the other two said that they came across Romani defendants almost daily. Three said that Roma made up around 30% of the defendants they had represented in the past year, while the other three said they made up around 3-5%.

Prosecutors all said that they frequently encountered Romani defendants (who they knew to be Roma through their skin colour and/or surname) and estimated that Romani defendants made up between 10% and 20% of the total defendants they saw in court, figures well above the percentage of Roma in the general population. However, when questioned directly, only one felt that Roma were in fact overrepresented in the system and they were all resolute in their belief that the law applies equally to everyone regardless of ethnicity, with all surveyed prosecutors agreeing that Roma are no more likely to be charged with a crime than their non-Roma counterparts and that prosecutors had no role in whether Roma (or any other group) were overrepresented in the criminal justice system.

Two of the judges interviewed for this study said that they could often identify a Romani individual by their skin colour, characteristic vocabulary, address (by its location in a Romani neighbourhood) and/or job, but two others said that they found it difficult to identify a Romani individual on these bases. Most judges said that they met Romani defendants in the criminal justice system often or very often, and they estimated the proportion of Romani defendants they encountered as between 10% to about 35%. However, only one agreed with the statement that Roma are in fact overrepresented in the criminal justice system.

Discrimination in the criminal justice system

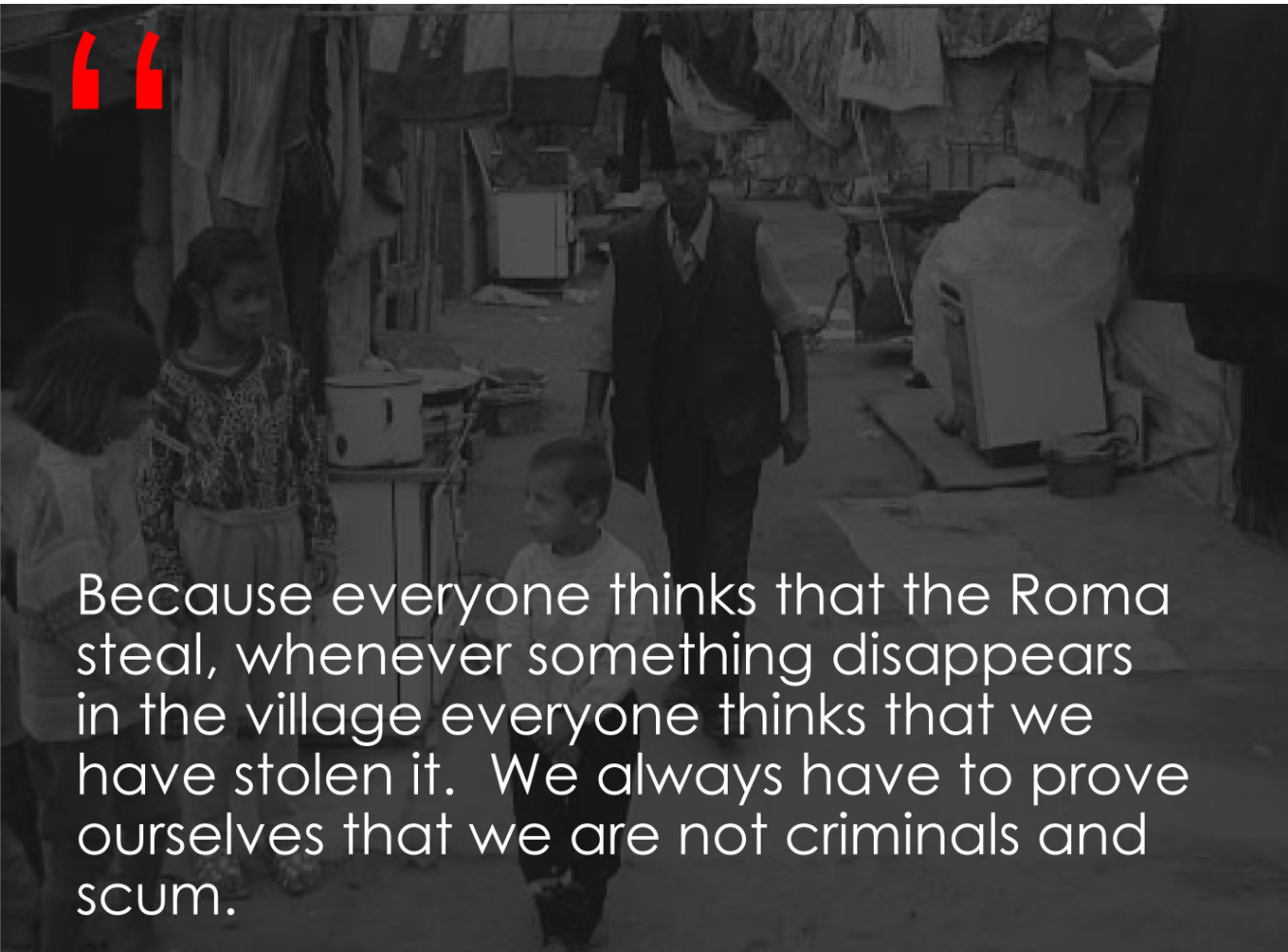
A common view amongst interviewees was that the overrepresentation of Roma in the Serbian criminal justice system was caused by discriminatory views and negative stereotypes of Roma. Most lawyers, in particular, attributed overrepresentation to the attitudes of the police and the prosecution service, and two judges agreed that Roma are more likely to be accused of a crime in Serbia, attributing that to prejudices and stereotypes about Roma that pervade through society.

Interviews with the Romani respondents showed that inside and outside the criminal justice system Roma are vulnerable to prejudice and discrimination from Serbian society. Almost all the Romani respondents thought that people in Serbia are generally prejudiced against Roma, while one respondent was undecided because he had had no personal experience of discrimination himself.

The respondents thought that was the case because the majority of people view Romani people as less valuable, uneducated, unemployed and financed solely by the social welfare system and theft.

“They just don’t like us, they look at us like we are the worst”.

Some also thought anti-Roma discrimination existed because Roma are typically viewed as criminals.

A black and white photograph of a Roma settlement, showing several people, including children, in a makeshift living space with hanging clothes and simple furniture. The image is dark and serves as a background for the text.

Because everyone thinks that the Roma steal, whenever something disappears in the village everyone thinks that we have stolen it. We always have to prove ourselves that we are not criminals and scum.

There were two Romani respondents who also mentioned they thought it was due to resentment; a belief that the state devotes a large amount of money to the promotion of the community, while the general population is neglected.

“[The rest of the population is prejudiced] because they believe that Roma have more rights than others and that is why a gap is created. We are “white bears” to them. We have been given a label we will never be able to shake”.

Eight of the Romani respondents interviewed stated that they had personally experienced discrimination, with seven saying that they had experienced it at school, five saying that they had experienced it on the part of the police, two saying that they had experienced it in the workplace and one saying that they had experienced it in daily life, when prohibited from entering a nightclub by security.

“I used to hang out with a boy of Serbian ethnicity at school. We were very good friends, but when we quarrelled, he cursed my gypsy mother and said “you gypsies are the worst people”.”

“[The police] cursed my gypsy mother and said that we gypsies steal all the time. They forced me with beatings, curses and blackmail until I confessed.”

This sort of casual racism seems to operate at every level of society. Even one of the judges, who was of Romani origin, cited an example where he was personally stopped because of his darker skin and hair colour:

“I went into a supermarket near the court. That day, I had been working from 8.15 in the morning. I had a briefcase with me which had a court case inside it and [had taken] a shopping basket which I had put a sandwich and bottle of mineral water in. I paid for everything properly, and then security stopped me suspecting that I had stolen something. They asked me to open my purse. I refused and asked them to call the police. Everyone was patient and nobody raised their voice. The police arrived, recognised me and asked me in front of everyone: “Judge, what is this about? Why did they stop you?” Shock! Was it because of the colour of my hair and skin? Of course, that’s why they stopped me. I accepted the manager’s and security’s apology but I know it will happen again tomorrow on the bus or at the doctor’s ...”

Inside the criminal justice system, the picture was much the same. 70% of the Romani interviewees felt that the criminal justice system was stacked against them because they had personally experienced injustice, while 40% said that they thought it was corrupt. 80% said that they had had a poor experience with the criminal justice system and that the system was prejudiced against Romani defendants, while 50% said that they had personally heard criminal justice professionals make anti-Roma remarks (all on the part of the police).



Some guys attacked me on the street. They beat me up, I don't know why. I reported it to the police and somehow I ended up guilty. I had to compensate them, pay the court costs, and I spent a month in custody. They did not believe me because I was Roma.

They are not righteous, they are corrupt. It all depends on how much money you have, who your lawyer is, and whether you are in a ruling political party.

Most of those working within the criminal justice system agreed that there was some level of discrimination at play towards Roma: 50% of the defence lawyers suggested that players within the justice system were likely to presume guilt on the part of a Romani defendant while three of the five judges agreed.

In prison, two of the Romani respondents reported that they experienced discrimination, violence, or intimidation on account of their ethnicity, while another four said that they experienced the same but could not say with certainty why.

Case study:

On 7 January 2019, three Romani men were accused of writing “UČK” (Kosovo Liberation Army) in the snow on the windows of a car parked in a residential neighbourhood in Belgrade. Accused of not having their identification cards with them, the police took them to the station where they were beaten and forced to confess to the alleged offence. While in police custody for several hours, the three men were hit and kicked in the face and ribs, one with a bag over his head, thrown against the wall and furniture, and threatened with bats and electrocution devices.

From the police station, they were taken before the misdemeanour court where they were immediately sentenced to 50 days in prison for the offences of “disturbing the public order” and “begging”, despite the fact that the law allows less severe sanctions for these offences.

As well as this, they were given a 45 euro fine for not carrying an identification card, which, as they were not able to pay the fine immediately, was converted into five-day prison sentence.⁷¹

From the court, the men were transferred to prison. On 15 January 2019, following the decision of the Belgrade Misdemeanour Appeal Court which cancelled the first instance court decision and sent the case for retrial, they were released.

There were also interviewees that doubted the impact of anti-Roma discrimination and prejudicial attitudes, and instead pointed to social and economic factors that they believed resulted in higher incidences of crime in the Romani community. This was the view of three judges, who questioned whether Roma were overrepresented at all. If such data did suggest that Roma were overrepresented in courts, they suggested that the reason might be found not

⁷¹ The Law on Misdemeanour Offences only stipulates a maximum deadline (15 days) by which to pay fines. As it does not stipulate a minimum time frame within which to pay, the court rarely gives defendants a reasonable time to pay any fines imposed. Article 40 Law on Misdemeanour Offences (“Official Gazette of RS” nos. 65/2013, 13/2016, 98/2016, 91/2019).

in the ethnicity of the alleged perpetrators or the discriminatory attitudes of the system, but rather on the reasons for committing the offence.

One respondent suggested that certain aspects of the Roma 'lifestyle' (which he had gleaned from the statements of Roma themselves that he had heard during his practice) indicate more modest economic living conditions, lower levels of education, higher unemployment, and the existence of certain "intra-ethnic" rules, all of which might predicate an increased likelihood of committing property crimes or certain violent crimes, especially in the fields of family relations or certain crimes against sexual freedom. He reiterated, however, that this does not mean that non-Romani people in similar socio-economic circumstances might also commit crimes for these reasons.

While some of these views could themselves be influenced by stereotypical perceptions of Roma, there is notable evidence to suggest that certain offences disproportionately criminalise Roma. For example, all adults are required to carry an identity document with them and failure to do so constitutes a misdemeanour offence⁷² which is punishable by a fine or even a prison sentence. Given that Romani people are disproportionately affected by a lack of personal documentation, they are more likely to be in breach of the law and vulnerable to criminalisation. Furthermore, even though there is no data on whether Roma are overrepresented in the criminal justice system, extreme poverty and living in informal neighbourhoods without basic amenities could make certain Roma more exposed to offences such as begging⁷³ and unauthorised connection to electricity grid.⁷⁴

⁷² Articles 29 and 30 of the Law on Identity Card ("Official Gazette of the Rep. of Serbia" No. 62/2006, 36/2011).

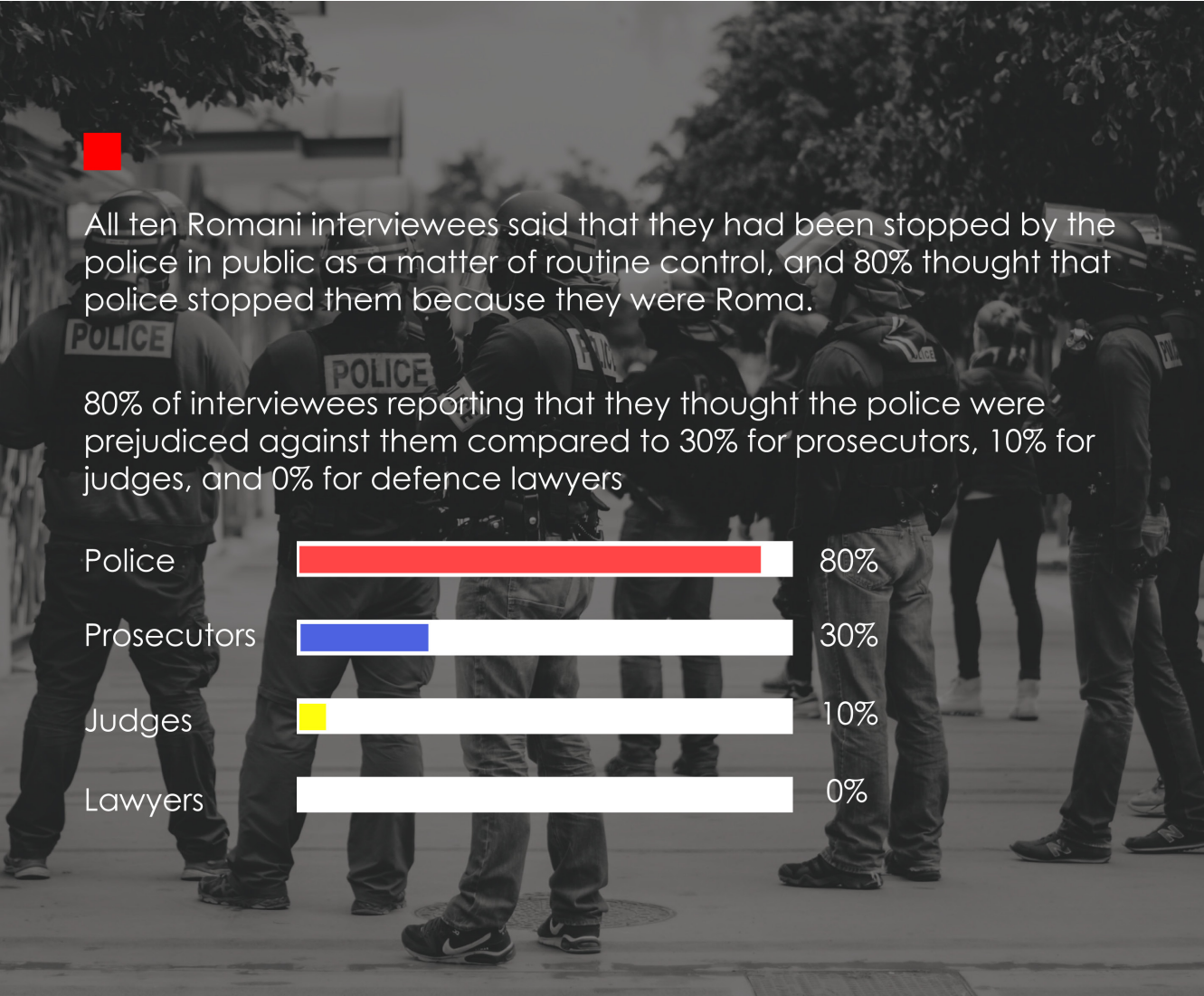
⁷³ Article 12 Law on Public Order and Peace ("Official Gazette of Rep. of Serbia" No. 6/2016, 24/2018).

⁷⁴ Article 219b of the Criminal Code.

Police

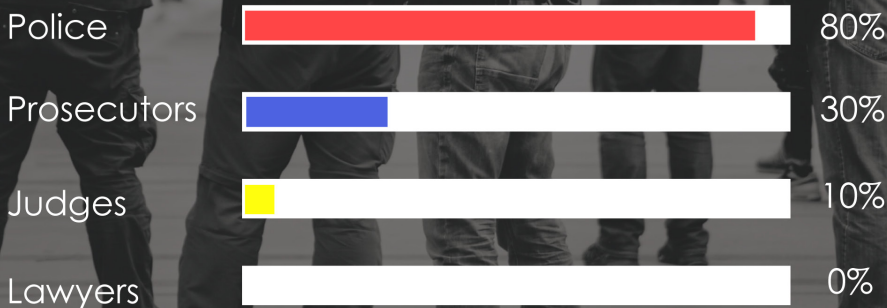
Interviews with the Romani respondents suggested that there was a worrying lack of trust in the police in Romani communities. All ten Romani interviewees said that they had been stopped by the police in public as a matter of routine control, and 80% thought that police stopped them because they were Roma. Unsurprisingly, the police force was the public authority from which Roma felt the highest level of discrimination, with 80% of interviewees reporting that they thought the police were prejudiced against them compared to 30% for prosecutors, 10% for judges, and 0% for defence lawyers.

Defence lawyers and judges agreed with the Romani interviewees' sentiments, with four of the defence lawyers and three of the judges saying that stereotypes portraying Roma as criminals might play a role in the police's decisions to stop or arrest an individual. The prosecutors interviewed, however, disagreed, with all three saying that stereotypes and prejudices play no role in whether the police will stop or arrest someone.



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Stories of police abuse, harassment, and violence were recurrent amongst the Romani interviewees. Most said that they had heard the police making discriminatory remarks about Roma, while a shocking 50% said that they had personally experienced a physical assault on the part of the police.

“The police officers harassed me and cursed my gypsy mother.”

“I was beaten by police officers to confess an act for which I was not guilty and they insulted me on a national basis.”

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

“Police officers often harass [us]. They told me that we gypsies are always stealing and causing problems, that we don’t know how to do anything the fair way.”

Interviews with defence lawyers corroborated Romani interviewees’ anecdotal evidence. Two thirds of respondents said that they had noticed the police treating Romani suspects more harshly than other suspects, stating that the police often presume Romani suspects to be guilty and not consider their statements as credible. Five of the six defence lawyers said that they thought the police were quicker to arrest Romani suspects, largely because they thought Roma are often looked upon as criminals (by the police and broader society) and because, on account of their poorer social status, they are more likely to turn to crime. Another thought Romani communities’ lack of knowledge of the law and adequate legal assistance played a role in the increased incidence of arrest.



In Serbia, there is no permissible legal basis for “ethnic profiling” on the grounds of race, ethnicity, religion, or national origin, and public authorities are required to use specific behaviour or objective evidence as the basis for suspicion in law enforcement actions such as identity checks, stop and searches, and raids. However, 80% of the Romani respondents believed that the police carried out ethnic profiling (once the meaning of the term was clarified to them), particularly when something is reported stolen.

“Whenever something goes missing in our city, the police always come to me to question me. It bothers me a lot, it’s like I’m a criminal.”

The opinions of the defence lawyers were less conclusive. Most of them remained undecided on the issue of ethnic profiling, but two said that they thought the police did ethnically profile Romani individuals. However one defence lawyer resolutely denied it, suggesting that the police in fact showed a greater level of tolerance towards members of the Romani minority.

Prosecutors

After the police, the prosecutors were the public authority that Romani interviewees suggested were the most discriminatory, with three saying they believed prosecutors harboured prejudices against them. However, none of the respondents said that they had ever personally experienced discrimination on the part of those prosecutors.

“The prosecutor was very bad to me, he charged me with everything, and he had no evidence to do so.”

“Prosecutors are in consultation with the police. Unlike the police, they never mention nationality, but they propose excessive penalties.”

The prosecutors, however, denied that there was any discrimination in the prosecution service, whether against Roma or against any other social or ethnic group. They said that they had never heard any of their colleagues making discriminatory or prejudiced remarks against Romani people. They also unanimously said that the presumption of innocence applies to Roma as it does to the rest of society, and that prosecutors draw their conclusions from the established facts and relevant evidence. Any distrust on the part of Romani people towards the justice system they attributed to the idea that Romani people are not generally informed about the system.

Judges

The judges interviewed had mixed views on the presence of anti-Roma discrimination in the criminal justice system. Most said that they had never heard any of their colleagues making discriminatory remarks about Romani people, though one judge [who was of Romani origin himself] said that he had, and when he mentioned he was Roma himself they were ashamed and surprised.

Most of the judges recognised the idea that Roma do not seem to trust the criminal justice system but provided various reasons for that. For example, one judge thought that Roma do not understand the essence of the criminal procedure; another thought that Roma (like almost all other citizens) tend to criticise the criminal justice system when things are resolved entirely in their favour but was adamant that any failure to provide adequate judicial protection in some cases is not related to ethnicity; and another attributed it to prejudices and the actions of the competent authorities towards them. Another suggested that education and increased representation would help but said that most people do not trust the judiciary either.



Defence lawyers and access to legal representation

In Serbia, the defendant generally has a right to a lawyer from their first interrogation in their capacity as a suspect,⁷⁵ or, where they have been deprived of their liberty, from the point of their arrest.⁷⁶ In some circumstances (e.g. where the offence is punishable by imprisonment for at least eight years), a legal defence is mandatory, so if the accused does not select their own defence lawyer the public prosecutor or president of the court will appoint one *ex officio*.⁷⁷ Where a legal defence is not mandatory, indigent defendants can request to be assigned an *ex officio* lawyer if the offence is punishable by imprisonment for at least three years or if it is in the interests of fairness.⁷⁸

Given that Roma are mostly prosecuted for criminal offences against property,⁷⁹ which in the majority of cases do not require a mandatory *ex officio* defence, and given poverty rates among Romani communities which suggest that a significant proportion cannot afford legal representation, it can be assumed that Roma are in greater need of legal aid lawyers.

It was apparent from interviews with Romani respondents and defence lawyers that a large number of Romani defendants require state assistance for their legal defence, and that this might play a role in the standard of legal representation received. Half of the Roma interviewed said that they were represented by an *ex officio* lawyer. Some of these interviewees appeared to believe that the fact that their lawyers were appointed *ex officio* affected the quality of legal assistance, and they also suspected that their lawyers assumed them to be guilty.

“I have experience with ex officio lawyers. They only want money from the state and that’s it. They don’t even bother to defend the party.”

These concerns were echoed by defence lawyers themselves. They made a clear distinction between defence lawyers who the defendant had selected themselves, who they thought provided better legal assistance, and *ex officio* lawyers, who they said often provided advice without adequately addressing the problems. Lawyers were reluctant to say any disparities in the quality of legal assistance could be attributed to the nationality or ethnicity of the client, but given that Romani clients are more likely to have their lawyers appointed *ex officio*, it would be reasonable to conclude that Romani clients are more likely to receive inadequate legal assistance.

⁷⁵ Article 289 CPC.

⁷⁶ Article 291 CPC.

⁷⁷ Article 76 CPC.

⁷⁸ Article 77 CPC.

⁷⁹ In 2018, in 60% of cases Roma (263) were convicted for offences against property. Numbers refer only to convicted persons who declared their ethnicity. Statistical Office of the Republic of Serbia, Bulletin Adult Perpetrators of Criminal Offences 2018, Belgrade 2019, p. 82. Available (in Serbian) at: <https://publikacije.stat.gov.rs/G2019/Pdf/G20195653.pdf>.



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Even more concerning, the interviews revealed that some defence lawyers, who can be seen to be Romani defendants' only allies in the system, may share discriminatory attitudes.

Five of the six interviewed said that they thought some lawyers would prefer not to have Romani clients, and four of those suggested that some lawyers would even go as far as refusing to represent Romani defendants. Most suggested that they did so because that they felt that Romani clients would typically be unable to pay for their fees, but one felt that it was because defence lawyers harboured discriminatory views towards Roma, in particular generalising that they do not provide a full account of events and try to avoid responsibility for their actions. Worse still, two defence lawyers stated that they had often heard another defence lawyer or a criminal law expert make casual discriminatory anti-Roma remarks such as “*all Roma lie*”, “*they learn to steal from a young age*”, “*[there is] no honesty with Roma*” and “*all of them (Roma) are thieves and crooks*”.

Criminal justice outcomes

The absence of ethnically disaggregated criminal justice in Serbia means that there is very little reliable data that shows whether Roma face disparate criminal justice outcomes. While most individuals interviewed for this study were unable to estimate the degree of such disparities, many agreed that Roma faced worse outcomes, including with regard to pre-trial detention and sentences.

Pre-trial detention

By way of background, the Serbian Criminal Procedure Code stipulates four reasons as to when pre-trial detention may be ordered: (i) flight risk or failure to establish a person's identity; (ii) risk of influencing evidence or a witness; (iii) risk of further offending; (iv) serious criminal offences which disturb the public. Apart from in exceptional circumstances, the court will always hear the defendant before the judge orders pre-trial detention.

Statistical research shows that the prevalence rate of pre-trial detention in 2018 was 14.2% of the total number of defendants facing criminal charges. Approximately 91.5% of those



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91.5% of those placed in pre-trial detention were found guilty of the relevant offence(s)



Of those charged with criminal offences against property (which account for 60% of convictions of Romani people), 14.1% were placed in pre-trial detention.



placed in pre-trial detention were found guilty of the relevant offence(s).⁸⁰ Of those charged with criminal offences against property (which account for 60% of convictions of Romani people)^{81, 82} 14.1% were placed in pre-trial detention. Overall in 2018, pre-trial detention lasted up to 30 days in 50% of cases and between 30 days and 3 months in 23.7% of cases.

Nine of the ten Romani respondents interviewed said they were detained in pre-trial detention on a range of grounds. Three said it was due to their apparent flight risk or their lack of registered address, and five said it was so that they would not influence the witness or so that they would not repeat the crime, or both. In four of those cases, the Romani interviewees said their lawyers appealed the detention order, and in two of those cases their challenge was successful.

Equally, two thirds of defence lawyers said that they thought Roma were more likely to be given pre-trial detention than their non-Romani counterparts. They attributed this to the fact that many Roma either do not have a registered address or their registered address is at the Centre for Social Work, so they are remanded in custody on the grounds that their lack of fixed abode makes them more likely not to respond to the summonses of the court while proceedings are under way against them.

The judges interviewed were divided on the issue: two of the five said they thought that Roma were more likely to be given pre-trial detention; two said they thought they were no more likely to be given pre-trial detention than non-Roma; and one remained undecided. Of those who replied in the affirmative, one suggested that where a Romani person is unemployed or has no registered address (which is often the case) there is no other option but to order pre-trial detention. The other suggested that it might be due to the quality of the defence they often receive, and even said that some Romani defendants might ask for pre-trial detention because they have nowhere to stay in the winter.

“They cannot control them, because they often change their place of residence without informing the police.”

They said that they are guided exclusively by the criteria prescribed by the Criminal Procedure Code, for example: whether the person has a registered address, the motive and severity of the crime, whether the person has valid travel documents, or whether anything suggests the person is a flight risk.

The prosecutors wholly disagreed with the suggestion that Romani suspects were more likely to be held in pre-trial detention than non-Roma in Serbia. Like the judges, they said that they rely on the Criminal Procedure Code to decide whether to ask a judge to order the detention of a suspect in custody, stressing once more that the law applies to all individuals equally.

⁸⁰ Statistical Office, Bulletin Adult Perpetrators, 2019.

⁸¹ In 2018, 263 out of 444 Roma were convicted for offences against property. Numbers refer only to convicted persons who declared their ethnicity. Statistical Office of the Republic of Serbia, Bulletin Adult Perpetrators of Criminal Offences 2018, Belgrade 2019. Available (in Serbian) at: <https://publikacije.stat.gov.rs/G2019/Pdf/G20195653.pdf>.

⁸² See reference note no. 95.

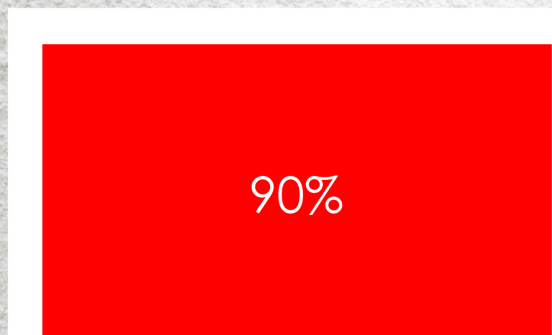
Plea deals and waiving the right to trial

In 2018, public prosecutors concluded a total of 6,481 plea agreements, 90% of which were accepted by the court. Within the overall conviction rate in 2018, this amounted to approximately 20% of the total number of cases.

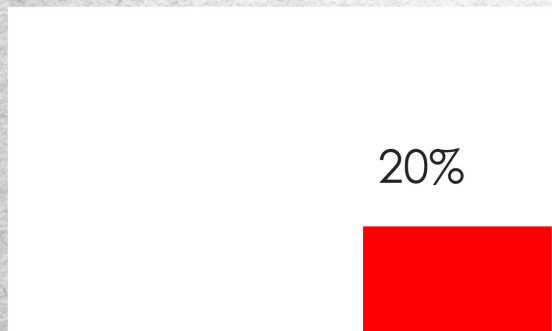
When it comes to making plea deals, prosecutors stated that they take into account certain pre-established criteria such as the mitigating and aggravating circumstances of the crime, the likely punishment, and any previous convictions when assessing whether to offer a plea deal to defendants. The nationality of the defendant, they stressed, is not a relevant factor. They denied that they ever “stack” charges against a defendant to incentivise them to admit guilt and give up their right to trial.



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Plea agreements accepted by the court in 2018



Share of the overall conviction rate in 2018

Most of the defence lawyers made similar points, suggesting that clients have considerable input on any plea deals put forward, and their terms are made on the basis of objective criteria rather than the nationality of the defendant.

Three judges appeared to be of the view that Romani defendants are more likely to make plea deals. One suggested that because Roma do not generally trust the judicial system, and so they are more inclined to seek resolutions to their issues and to accept plea deals. All five judges refused to say that Romani defendants are offered plea deals which are in any way harsher than non-Romani defendants. They all reiterated that the criteria for concluding a plea deal are prescribed in law and the terms of the deal must fall within these criteria.

Sentencing

Half of the Roma interviewed thought that Romani defendants received harsher sentences than non-Romani defendants. By way of example, the ten Romani respondents interviewed received sentences ranging from between six months for instances of theft or engaging in a fight, to three years for attempted murder, three instances of aggravated theft or human trafficking, and up to a five year combined sentence for aggravated theft, robbery, and engaging in a fight. 70% of those interviewed said they knew of non-Roma who had been convicted of similar offences but received shorter sentences.



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“More of us were involved in theft. Hungarians and Serbs were given probation and we Roma were imprisoned.”

The prosecutors, however, all unanimously disagreed. According to them, the sentence handed down to a particular defendant depends on the crime and the circumstances of the case; no attention is paid to the ethnicity or nationality of the individual.

Four out of the five judges denied that Roma receive harsher punishments than non-Roma. One judge reiterated that the sentence handed down to a defendant is established on the basis of objective criteria prescribed in law, but that on occasions, the courts have made exceptions for members of particular ethnicities.

“Each person’s sentence is worked out on a case by case basis according to their previous circumstances [...] [It is established] on the basis of legal criteria that do not include the perpetrator’s ethnicity and it should not be raised or lowered just because of that. However, there are examples in recent cases (Court of Appeals in Belgrade) where the fact that the accused was a member of the Roma ethnic community was crucial [...] for the court to acquit the defendant completely. Namely, it was precisely because he was Roma that the court assessed that he did not know that the Criminal Code of the Republic of Serbia prohibits sexual intercourse with a child under 14 years of age. Personally, I do not agree with that decision. Considering that the victim in that particular case was also a member of the Roma ethnic community, and as such was a minor, a girl, by applying the institute of legal delusion, and acknowledging the customs of an ethnic group, the offence committed against her went unpunished. I think that this sends an unacceptable message that it is not punishable to kiss a Roma girl. The Criminal Code protects all its citizens and everyone must abide by it precisely for the reason that everyone can be protected. Any kind of discrimination leads to a violation of rights, and this is a (bad) example of how the application of discriminatory attitudes on the basis of ethnicity, brings benefits to some (in this case, the defendant who was acquitted) and harm to others (in this case, the girl under the age of 14 with whom the defendant had sexual intercourse with impunity).”

The defence lawyers were also divided on the issue, with two suggesting Roma did receive harsher sentences (often to make an example of the defendant), another two suggesting they did not and the final two remaining undecided. They did however concede that Romani defendants’ inability to afford effective legal assistance may play a role in harsher sentences being handed down for Romani defendants.

All of the Romani respondents expressed how difficult serving a prison sentence had been on them and their family.

“It was not easy, everyone was astonished that they had me imprisoned. It was the hardest thing for the family, and I still feel anger over the injustice, it still affects my mental health.”

“It was the hardest thing my family endured. The kids were small, so my wife couldn’t work. They couldn’t wait for me to come home.”

“[It has been] very hard. [It’s a] shame, my wife just gave birth and I’m in jail. I admit that I stole 100kg of iron, [but] I did it to feed my family. Now that’s why everyone looks at me like I’m a criminal.”

Possible solutions and promising practices

- Training
- Ethnic data
- Recommendations of Romani interviewees



There was very little evidence from the interviews that, aside from certain trainings for defence lawyers and prosecutors, there were any notable initiatives to tackle anti-Roma discrimination in the criminal justice system.

Training

Two of the three interviewed prosecutors said that they had had training on anti-discrimination and had participated in seminars organised by the Judicial Academy. The third respondent said that he had not had the opportunity to attend any such training, but pointed out that it would have been very useful if he did. All respondents agreed that it was important for all prosecutors to receive anti-discrimination training because a large number of prosecutors had not yet undertaken this type of training.

Only two of the six defence lawyers interviewed said that they had been trained on discrimination but all of them agreed that such training would be very useful and should be mandatory.

By contrast, none of the judges interviewed had attended any training or lectures on discrimination. Three of them thought it would be useful to become better acquainted with the specifics of certain types of discrimination, to better understand risky situations, and to learn how to remedy discriminatory situations in practice. However, the other two disagreed, with one saying that criminal law experts were already well acquainted with the provisions of criminal law that sanction discrimination and the other saying that tolerance and a respect for human rights is acquired during childhood.

Ethnic data

As mentioned above, there is no coherent government policy in place on ethnic data collection in the Serbian criminal justice system. In 2019, the Advisory Committee concluded that there is a significant discrepancy between the legal framework adopted and the continuously low level of data collected on ethnic and national minorities.⁸³ However, no major changes were brought into law concerning the collection and processing of sensitive personal data relating, in particular, to individuals' nationalities.⁸⁴ In 2019, the government planned a long-term programme aimed at establishing a stronger data collection system within the judiciary and remedy the current situation where there is no disaggregated data, but as yet nothing has been done.⁸⁵

When questioned as to whether ethnic data should be collected in the future, most of the interviewees had no issues with the collection of such data.

Half of the Roma interviewed indicated that they would have some concerns about collecting data on the ethnicity of people coming into contact with the justice system because they thought that it could negatively impact how the system would treat those identified as Roma.

⁸³ The Council of Europe Advisory Committee 2019, p. 4.

⁸⁴ *Ibid.*, p.12.

⁸⁵ *Ibid.*, p.13.

The other half, however, countered this view, saying that it is fairly normal to be asked this question, either because judicial employees can tell that they are Roma through their physical characteristics or so that they can assess whether they will need an interpreter or translator.

Three of the five judges surveyed said they would not be concerned if data were collected on the ethnicity of people who come into contact with the criminal justice system. The other two said that they do not see why it would be necessary, pointing out that other democratically governed countries are not allowed to do so unless the citizens give their consent. None of the prosecutors expressed any concerns over the prospect of collecting data on the ethnicity of people who come into contact with the criminal justice system.

None of the defence lawyers interviewed expressed any concerns over such data collection either. They said that analysis of such data would be very significant and could expose flaws in the system which would ultimately help to make the system fairer and more inclusive.

Recommendations of Romani interviewees

The Romani interviewees had various suggestions for tackling discrimination. Half of the Romani respondents said that they thought the police, judges, and public prosecutors should undertake more training to combat anti-Roma discrimination, with one suggesting that actors in the criminal justice system need to engage in more frequent dialogues with Romani communities.

There were some that supported more structural changes. 40% of the Romani respondents said that more Roma need to be employed in the criminal justice system to overcome discrimination in the long run. One of the judges agreed, suggesting that this would be the way to reduce prejudice in the system overall.

However, most Romani interviewees tended to support a more punitive approach. 80% of the respondents interviewed said that they thought a more severe punishment regime should apply to those found guilty of discrimination.

Conclusion

This research report offers further evidence that Roma in Serbia, just like Roma in North Macedonia, the Czech Republic, and Slovakia, are more likely to be ethnically profiled and drawn into the criminal justice system than non-Roma. Research conducted by the ERRC and its partners in these four countries shows that, once drawn in, Roma are less likely to receive adequate legal representation and more likely to be held in pre-trial detention and to receive custodial sentences than their non-Roma counterparts.⁸⁶

This latest report provides stark confirmation that, despite all the claims by judges and prosecutors that justice is blind and discriminates against nobody but the guilty, racial bias skews outcomes for Romani people in the Serbian criminal justice system. Most of the defence lawyers interviewed in the course of this research asserted that discriminatory views and negative stereotypes of Roma by the police and the prosecution service meant that Roma had more chance of being accused of a crime, and less chance of getting justice. Romani interviewees for their part were distrustful of a criminal justice system that they thought reflected the biases and racism that prevails in wider Serbian society.

Research cited in the report suggests that this mistrust was well-founded. Almost half the police officers interviewed did not understand what discrimination is; many believed that it was acceptable to break the law to resolve an issue; and of those police officers canvassed in two surveys, 29% and 41% appeared to believe that Roma “usually steal”.⁸⁷

Decades of recommendations on how to eradicate racial bias in justice and policing in each of the four countries have gone largely unheeded and thus made little difference to date. Official denials of racism from national authorities and a culture of impunity among law enforcement has stymied any serious attempts to root out systemic discrimination against Roma within the criminal justice systems of many European countries.

The report of the UNCAT Special Rapporteur on his 2019 visit to Serbia is particularly alarming.⁸⁸ It provides an account of unchecked brutality, impunity of law enforcement, and a scant regard for the rights of those (which includes a disproportionate number of Roma) who find themselves inside the criminal justice system as suspects or detainees. He received numerous and consistent allegations of torture and ill-treatment at the hands of the police, most notably as a means of coercing confessions out of individuals during interrogation

⁸⁶ Bernard Rorke, *Justice Denied: Roma in the Criminal Justice System*, European Roma Rights Centre. Brussels, December 2021. Available at: <http://www.errc.org/reports-submissions/justice-denied-roma-in-the-criminal-justice-system>.

⁸⁷ Zekavica, R., *Odnos policije prema diskriminaciji u Srbiji – rezultati istraživanja stavova pripadnika policije opšte nadležnosti i saobraćajne policije RS (Perception of Police on Discrimination in Serbia – Results of the Survey on the Attitudes of Public Order and Traffic Police Officers)*, TEMIDA – Časopis o viktimizaciji, ljudskim pravima i rodu. March 2016, Vol. 19, Issue 1, pages 135-160. Available at: <http://vds.rs/File/Temida1601.pdf>.

⁸⁸ UNCAT, *Visit to Serbia and Kosovo Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*. 25 January 2019. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/019/18/PDF/G1901918.pdf?OpenElement>.

CONCLUSION

in police custody. Detainees reported being slapped and beaten with fists and truncheons, and kicked and threatened with firearms. The UNCAT team received several allegations of detainees having been forced to sign confessions which they had been unable to read, sometimes not only for the crime they had been arrested for but for several additional offences that had remained unresolved, but to which they reportedly had no connection whatsoever.

The forensic expert accompanying the UNCAT mission confirmed that the medical doctors performing examinations at the outset of custody had neither the training nor the expertise to properly investigate, interpret, and document physical and psychological signs of torture and other ill-treatment.

Despite the formal right to have access to a lawyer, there were persistent allegations that individuals were tried and sentenced without any assistance from a lawyer. Several other individuals claimed that the *ex officio* counsel provided to them had insufficient expertise and motivation to ensure an effective legal representation.

The Special Rapporteur also received many complaints about the excessive length of pretrial detention and the prolonged absence of any meaningful investigative or judicial action taken on the part of the prosecuting or adjudicating authorities for “periods ranging from several months to several years, even in cases where the detainee claimed to have confessed and shown full cooperation.”⁸⁹

To remedy this alarming situation, UNCAT recommendations included the following:

- To prevent impunity for any and all forms of ill-treatment on the part of the police, the Serbian authorities should ensure that there are fully independent, expedient, and effective complaints, oversight and investigative mechanisms, and that systematic medical examinations by independent medical personnel trained in the effective investigation, interpretation, and documentation of the signs of torture and ill-treatment are assured.
- The responsible authorities should take urgent action: (a) to amend the Criminal Code so as to penalise the full spectrum of acts covered by articles 1 and 16 of the Convention against Torture, (b) to significantly increase the maximum penalties for such offences and (c) to remove all statutes of limitations for such offences.
- Systematic training programmes on the Istanbul Protocol should be implemented for all health professionals who may be called to examine persons deprived of their liberty, as well as lawyers, prosecutors and judges who may be involved in relevant judicial cases, so as to strengthen their understanding of the potential and limitations of medical examinations in the identification and documentation of torture and other forms of ill-treatment.
- Prosecuting and judicial authorities of Serbia should take all necessary and appropriate measures to reform their practices, with a view to avoiding any unnecessary, excessive or otherwise arbitrary deprivation of liberty.

⁸⁹ *Ibid.*, p.7.



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