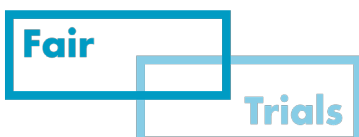




JUSTICE DENIED: ROMA IN THE CRIMINAL JUSTICE SYSTEM OF NORTH MACEDONIA

CHALLENGING DISCRIMINATION PROMOTING EQUALITY





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Table of Contents

Introduction	4
Methodology	6
Roma in North Macedonia	7
Public perceptions of Roma	11
Public portrayals of Roma	13
Government initiatives to tackle anti-Roma discrimination	16
National and international criticisms of Macedonian anti-Roma discrimination	18
Representation of Roma in the criminal justice system	22
Discrimination in the criminal justice system	27
Police	32
Prosecutors	39
Defence lawyers and access to legal representation	41
Judges	43
Criminal justice outcomes	44
Pre-trial detention	44
Plea deals and waiving the right to trial	46
Sentencing	47
Possible solutions and promising practices	49
Training	50
Roma representation in the criminal justice system	50
Prison reform	51
Increased controls on police powers and greater investigation into complaints of abuse	52
Ethnic data	52
Conclusion	55

Introduction

This report examines the impact of anti-Roma racism within the criminal justice system in North Macedonia. The European Roma Rights Centre (ERRC), in partnership with Fair Trials, has produced a set of four country reports to break the silence over the mistreatment of Romani people, and to challenge governments' continued denial of the racism that underpins disparities in criminal justice systems across Europe.

Researchers in the Czech Republic, North Macedonia, Slovakia, and Serbia carried out a series of semi-structured interviews conducted with people of Romani origin and professionals working in the criminal justice system in each of the four countries, including defence lawyers, prosecutors, judges, and police officers. The interviews were based on questionnaires prepared by the ERRC separately for each group of respondents. Interviews were conducted between May and September 2020.

The findings are disturbing and reveal the extent to which institutional discrimination is embedded in the criminal justice systems of these countries. The evidence confirms that at every stage of criminal proceedings, from arrest until sentencing, Romani defendants are faced with discriminatory attitudes and biases which leads to skewed decisions and unjust outcomes.

Across all four countries, Romani interviewees expressed their lack of trust and perception of the system as plainly unjust. Factors that contribute to the lack of trust include ethnic profiling, over-policing, the use of petty offence fining as a method of control and intimidation, and racially abusive behaviour in encounters with Roma.

Romani police officers from North Macedonia who were interviewed took it as a given that there was widespread mistrust in the criminal justice system among Roma, who, by virtue of profound marginalisation, lack the capability to navigate the workings of the system, or to be fully aware of their rights, or, if they did, to be in a position to assert those rights. The officers reported regularly hearing their colleagues make insulting and derogatory remarks about Roma.

Police brutality against Roma is not about isolated incidents. It is the case in each of the four countries that law enforcement agencies are institutionally racist, antigypsyism is clearly manifest in the ways Romani communities are policed, and there exists a culture of impunity within law enforcement when it comes to violence, torture, and degrading treatment of Roma.

The UN Committee Against Torture, expressed 'worry' regarding the excessive use of force by police officials against Roma in North Macedonia, and called on the state to combat and prevent discriminatory police misconduct, to ensure that all alleged cases are promptly and effectively recorded and investigated, and, as appropriate, prosecuted and punished.¹

¹ UN Committee Against Torture: Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia. 5 June 2015. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/114/89/PDF/G1511489.pdf?OpenElement>.

Most of the Romani interviewees from North Macedonia had experienced verbal racist abuse and physical intimidation by police officers. One described how he was taken into custody in a neighbourhood round-up of Roma after reports of a crime, and told: *“If you refuse to plead guilty during the interrogation process, then a police officer will force you to do so by slapping you in the face and beating you, and you will end up in pre-trial detention.”* In the past two years, the ERRC has won two strategic litigation cases against North Macedonia at the European Court of Human Rights on account of the state’s failure to conduct effective investigations into allegations of police brutality against Roma.²

Concerning the workings of the system, prosecutors and judges were emphatic that the presumption of innocence applies to Roma as it does to others, and that prosecutors draw their conclusions from the established facts and relevant evidence. Any distrust on the part of Roma towards the justice system the prosecutors simply attributed to the notion that Roma are not generally informed about the system. Across the four countries, Romani interviewees and defense lawyers were less sanguine about the functioning of the criminal justice system. While some interviewees recounted positive experiences in front of judges they perceived to be fair-minded, diligent, and professional; others recalled rushed hearings, harsh judges, and hostile environments where they felt nothing they said was believed, and the guilty outcome was a foregone conclusion. More than the attitudes of individual judges, Roma and defence lawyers pointed to systemic features that skewed outcomes, such as difficulties accessing legal assistance, plea deals, and practices concerning pre-trial detention.

On the issue of ethnic profiling, following a testing exercise organised by the ERRC and its partners on the North Macedonian border, the court in Skopje ruled in favour of the Romani litigants who were denied the right to exit the country, ruling that they were discriminated against by border police on account of their ethnicity.

*Ethnic profiling of Roma is ubiquitous across Europe, and all EU Member States and Candidate Countries need to be reminded of ECRI’s General Policy Recommendation No. 11 on combating racism in policing, that racial profiling constitutes a specific form of racial discrimination and must be expressly prohibited by law.*³

This research offers further evidence that Roma are more likely to be ethnically profiled and drawn into the criminal justice system than non-Roma. Once drawn in, Roma are less likely to receive adequate legal representation, and more likely to be held in pre-trial detention and to receive custodial sentences than their non-Roma counterparts.

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

3 European Commission against Racism and Intolerance (ECRI), *ECRI General Policy Recommendation N° 11 on Combating Racism and Racial Discrimination in Policing*, adopted 29 June 2007. Available at: <https://rm.coe.int/ecri-general-policy-recommendation-no-11-on-combating-racism-and-racia/16808b5adf>.

Methodology

In order to compile this report, researchers in the Republic of North Macedonia conducted a series of semi-structured interviews with people of Romani origin and professionals working in the criminal justice system. Interviews were based on questionnaires prepared by the European Roma Rights Centre (ERRC) separately for each group of respondents. The interviews were conducted between February and May 2020.

In total, 40 people were interviewed: nine were members of the Romani community with either direct personal experience of the criminal justice system or relatives with such experience; five were police officers with between 19 and 25 years' experience of the police force; five were public prosecutors from various regions of North Macedonia with between four and 23 years' experience; nine were defence lawyers with between three and 25 years' experience representing Romani people in national courts; and 12 were judges or candidates for the academy of judges and public prosecutors with between seven and 24 years' experience working in the courts (except for the candidate who had not yet been elected). Three of the five police officers interviewed were themselves of Romani origin.

The interviews were conducted either in person or over the telephone, and often followed up with email correspondence. The interviews aim to shed light on the attitudes of criminal justice professionals and those with first-hand experience within the criminal justice system, so that action can be taken to redress anti-Roma discrimination in Macedonian society.

The research was guided by the following standard ethical principles: (1) *informed consent*: all persons interviewed were informed of the content of the project and gave their prior written or oral consent for the usage of information obtained via interviews; (2) *data protection*: the data obtained in the course of the research was processed confidentially, stored securely, and the anonymity of the participants was guaranteed; (3) *proper use of data*: the data obtained during the interviews will only be used in the context of this project.

Roma in North Macedonia

According to the 2002 census data on the population in North Macedonia, Roma accounted for 2.66 % (53,879) of the country's population which totalled 2,022,547 citizens. Located in the urban areas, most Romani citizens live in Skopje, Prilep, Kumanovo, Bitola, Tetovo, Gostivar, Stip, and Kocani, and according to the government, *“members of this nationality are identified in more than 50 municipalities”*.⁴

The official results of the latest census published on 30 March 2022, show that while the country's population has shrunk by 9.2% over two decades, and now stands at 1,836,713, the ethnic composition of the population has not shifted much since 2002. The new results show that, of the resident population, 58.44% are ethnic Macedonians and 24.3% are ethnic Albanians. Among the rest, Roma account for 2.53% (46,433).⁵

This is important to note as state institutions in North Macedonia use the census population and ethnicity data to create and adjust various policies and state strategies, particularly those which address social matters and budgetary distribution on them.

Unofficial estimates vary widely, and the average estimate used by the Council of Europe puts the Romani population of North Macedonia at 197,000 or 9.56% of the total.⁶ The Roma civic movement, Avaja, conducted a mapping of Romani community settlements in 2021 and came to an estimate of 4% (85,000).⁷ The Ministry of Labour and Social Policy attributed the discrepancy between official and unofficial estimates to the *“large number of Roma citizens without identity documents, the economic migration of Roma to another city and abroad, and the lack of awareness on the part of the Roma community for the importance of the census and other reasons.”*⁸

Despite more than a decade of Roma inclusion strategies, pre-accession funding from the EU, and regularly updated national action plans, there has been little tangible improvement in the living conditions of an estimated one million Roma across the Western Balkans. The 2017 Regional

4 Ministry of Labour and Social Policy, *Strategy for the Roma in the Republic of Macedonia 2014-2020*, June 2014, p.28. Available at: <https://www.rcc.int/romaintegration2020/files/admin/docs/a4b7a7abd52eaa6a5b369f18f180cc12.pdf>.

5 Sinisa Jakov Marusic, “North Macedonia Census Reveals Big Drop in Population”, *Balkan Investigative Reporting Network*, 30 March 2022. Available at: <https://balkaninsight.com/2022/03/30/north-macedonia-census-reveals-big-drop-in-population/>.


6 Council of Europe, Publications: *Estimates on Roma populations in European countries*, updated 2 July 2021. Available at: <https://www.coe.int/en/web/roma-and-travellers/publications>.

7 Avaja, *Avaja во пресрет на ponosno започнува со кампањата – “Торбу Рому”* [In the run-up to the census, Avaja launches the “Proud Roma” campaign], 12 February 2021, Available at: https://avaja.org/pochetok_kampanja/; Sloboden Pecat, “Avaja”: *We expect the census to show that 4 percent of Roma live in Macedonia*, 20 September 2021, Available at: <https://www.slobodenpecat.mk/en/video-avaja-ochekuvame-popisot-da-pokazhe-deka-vo-makedonija-zhiveat-4procenti-romi/>.



8 Ministry of Labour and Social Policy, *Strategy for the Roma in the Republic of Macedonia 2014-2020*, June 2014. Available at: <https://www.rcc.int/romaintegration2020/files/admin/docs/a4b7a7abd52eaa6a5b369f18f180cc12.pdf>.

Roma Survey revealed that across a number of indicators, the situation of marginalised Roma has actually worsened since 2011, with a widening gap between Roma and non-Roma in health, employment, and housing. The survey found that marginalised Romani communities were still the most excluded in the Western Balkans. One stark indicator across the Western Balkans was the NEET (Not in Employment, Education, or Training) rates for young Roma, aged between 18 and 24, which ranged from 73% in Serbia to 86% in Bosnia and Herzegovina. Among young women, it varied between 81% in North Macedonia and 93% in Montenegro.⁹

In its most recent 2016 report on North Macedonia, ECRI noted that, despite efforts made by the authorities, various shortcomings and gaps meant that Roma remain socially marginalised, with the poverty rate among Roma approximately 2.5 times higher than the national level.



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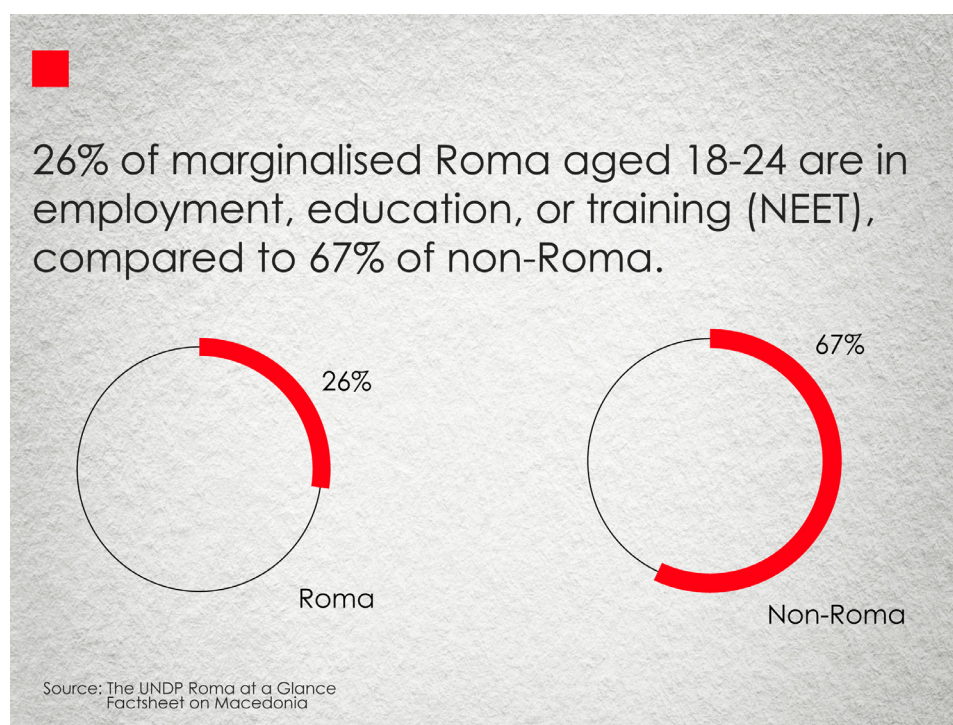
Among ECRI's recommendations to the authorities was to ensure equal access to health care for members of the Romani community, in particular gynaecological and pre-natal services; to provide sufficient and adequate social housing to vulnerable members of the Romani community; to fully and finally settle the problem of access to personal documents; and to ensure that the country's

⁹ UNDP and the World Bank, *The Regional Roma Survey*. Available at: <https://bit.ly/2P29tEG>.

border police force receives adequate training to be able to carry out its duties under the visa-liberalisation regime with the European Union without applying racial profiling against Roma.¹⁰

Roma inclusion is one component of the wider strategic priority of the North Macedonian government to fully implement the Ohrid Framework Agreement, build a civil state, and foster ethnic cohesion: *“The goal is to create a multicultural society with greater intercultural communication and build a spirit of respect and cultural pluralism. Measures are being taken to reduce ethnic, social and economic differences between the communities under projects with integration goals.”*¹¹ At the EU-Western Balkans Summit in Sofia on 17 May 2018, the Prime Minister of North Macedonia initiated a process of regional commitment to Roma integration as part of the EU enlargement process, and the Western Balkans Prime Ministers signed a regional declaration, setting *“ambitious yet realistic targets on Roma integration, to be achieved before joining the EU.”*¹²

The UNDP *Roma at a Glance Factsheet on Macedonia* revealed that 26% of marginalised Roma aged 18-24 are in employment, education, or training (NEET), compared to 67% of non-Roma;



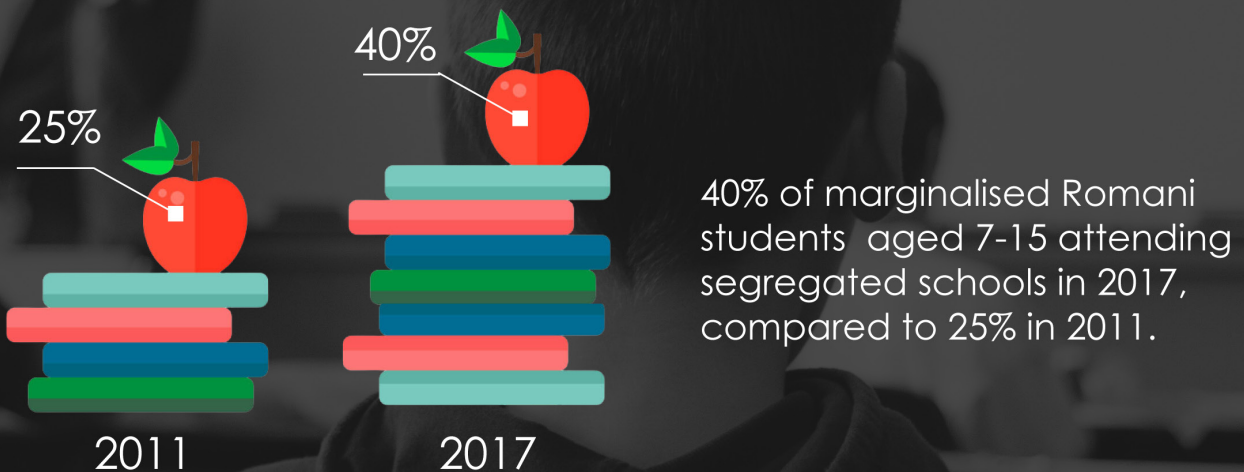
10 European Commission against Racism and Intolerance, ECRI Report on “The Former Yugoslav Republic of Macedonia” (fifth monitoring cycle), adopted on 18 March 2016. Available at: <https://rm.coe.int/fifth-report-on-the-former-yugoslav-republic-of-macedonia-/16808b590b>.

11 UN General Assembly Human Rights Council, *Working Group on the Universal Periodic Review Thirty-second session*, 21 January–1 February 2019. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/343/58/PDF/G1834358.pdf?OpenElement>.

12 Ministry of Foreign Affairs Republic of Poland, *Western Balkans Partners Declaration on Roma and EU Enlargement*, 17 May 2018. Available at: <https://www.gov.pl/web/diplomacy/western-balkans-partners-declaration-on-roma-and-eu-enlargement>.

87% of marginalised Roma face severe material deprivation, and rates of early marriage remain persistently high: 33% of marginalised Romani women aged 20-49 years were married before they were 18 years old. The survey found that enrolment rates in pre-primary education remained low compared to other countries in the Western Balkans: in 2017 the rate for ages 3-6 was just 14%. However, primary and lower secondary enrolment rates have improved, and significant progress made in lower secondary completion rates. In 2017, 31% of marginalised Roma aged 22-25 had completed upper secondary education compared to 16% in 2011. School segregation in North Macedonia was the highest in the Western Balkans with 40% of marginalised Romani students aged 7-15 attending segregated schools in 2017, compared to 25% in 2011. Previous studies indicated a high correlation between ethnic segregation and low quality of education, mostly due to the segregated schools' poor infrastructure and learning resources, and teachers' lower qualifications and high turnover.¹³

School segregation in North Macedonia was the highest in the Western Balkans.



¹³ United Nations Development Programme, *Roma at a Glance Factsheet on Macedonia*, April 2018. Available at: <https://bit.ly/2ycrYAq>.

Public perceptions of Roma

Back in 2011, a research study on interethnic relations in North Macedonia revealed that Roma were the second ethnic group in the country most likely to be faced with prejudice and mistrust towards them. This study surveyed the perceptions and opinions of 2,087 people and 24 public figures on interethnic trust.¹⁴ The survey results show that the highest prejudice amongst the survey sample is towards ethnic Albanians, with 41.6%, and Roma, with 24.2%, as compared to just 14.3% against Macedonians. Overall, the highest level of mistrust is towards Albanians, 33%, and Roma, 22%. The majority of Macedonians surveyed in the sample, 45.5% do not trust Albanians, and 25.1% do not trust Romani people. In the southeast and eastern regions of the country, mistrust towards Roma is at its highest (32.4% and 25.1% respectively).¹⁵

An online survey conducted between 24 November and 10 December 2020 by the Institute for Research and Policy Analysis *Romalitico* examined the opinions of 635 respondents on the issue of interethnic trust in North Macedonia.¹⁶ Even though the survey sample size is not representative, it provides a glimpse of the public perception of Roma in several social contexts. When asked “Would you like to have a neighbour from the following ethnic communities?”, 93% of respondents said that the most desirable neighbours are ethnic Macedonians, and 40% said that they would not like to have Roma as neighbours. On the respondents’ opinions in respect to which ethnic group is most discriminated against in the country, 45% said Roma, 32% said Macedonians, and 5% said Albanians.¹⁷

The Balkan Barometer, which produces annual surveys of the opinions, attitudes, and sentiments of citizens from six Western Balkan countries, also examines attitudes towards the social inclusion of vulnerable groups.¹⁸ The 2020 Barometer, which surveyed 6,020 citizens, revealed a clear pattern of prejudice in how the Romani community is perceived across the region. From the surveyed population, just 46% would consider renting housing to a Romani person, and a quarter of all respondents would not work with a Romani colleague. A total of 26% of the survey population would not like their children to share a classroom with students from the Romani community. As regards marrying a Romani person, 70% of the surveyed population would not feel comfortable doing so, and a total of 78% of the respondents from North Macedonia stated they would most likely reject marrying a Romani person.¹⁹

¹⁴ Saso Klekovski, *Меѓуетничките односи во Република Македонија* [Interethnic relations in the Republic of Macedonia], 2011. Available in Macedonian at: <https://mcms.mk/images/docs/2011/megjuetnickite-odnosi-vo-makedonija.pdf>.

¹⁵ *Ibid.*

¹⁶ Institute for Research and Policy Analysis Romalitico, *Извештај за степенот на доверба помеѓу етничките заедници кои живеат во Република Северна Македонија* [Report on interethnic trust of the ethnic communities in Republic of North Macedonia], 2021. Available at: <https://www.romalitico.org/images/2021/pdf/Doverba-vo-zaednicite.pdf>.

¹⁷ *Ibid.*

¹⁸ For more information on the Balkan Barometer see: <https://www.rcc.int/balkanbarometer/home>.

¹⁹ Regional Cooperation Council, *Balkan Barometer 2020: Public Opinion Survey*, 24 June 2020, p.10. Available at: <https://www.rcc.int/pubs/95/balkan-barometer-2020-public-opinion-survey>.



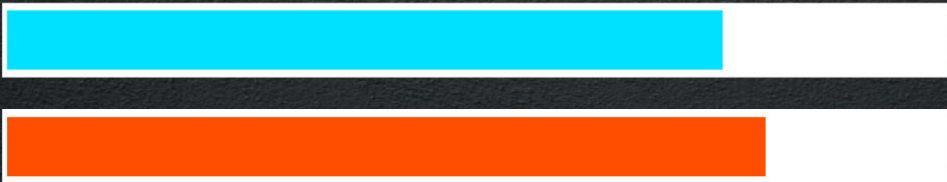
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Source: The 2020 Barometer

Public portrayals of Roma

According to the Fundamental Rights Agency (FRA), existing research and reports show that the situation of Roma across Europe is severely affected by hate speech, and that media reporting (both online and offline) is often misleading and offensive, and sometimes completely fabricated. Biased media reporting typically perpetuates stereotypes by reporting on Roma in the context of social problems, crime, and the absurd, depicting Roma as deviant and beyond the law, and blaming them for their own exclusion as if it were a lifestyle choice. Such depictions take a toll in everyday life, and FRA found that on average, one out of three Roma surveyed had experienced some form of harassment, including offensive or threatening comments in person, threats of violence in person, offensive or threatening e-mails or text messages, or offensive comments about them online.²⁰

Research carried out by the European Policy Institute Skopje examined how media outlets reported about the issue of Roma being turned back from Macedonian border crossing points, as a specific consequence of visa liberalisation. Articles from selected media outlets equated Roma with “false asylum seekers”, and singled out Roma as a posing a threat to the entire visa-free regime. The most blatant example appeared on the Republika web portal - Albanian Language Desk which ran a headline that stated “Roma are reintroducing borders, borders are our enemy, thus Roma are our enemy”.²¹

In April 2017, for example, the widely circulated Vecer newspaper published an article entitled “They waited for the Easter: The Chergars [offensive word for nomadic Roma] moved back to the Kale Fortress”. The article contained stereotypical and misleading information about a homeless Romani community, represented by the ERRC before the European Court of Human Rights (ECtHR), including statements such as the following:

*“Hungry horses with open wounds, dangerous dogs lurking and attacking people, plastic and waste on green areas... The problem is not how these people “choose to live”, but how they behave in the places where they temporarily and illegally stayed. As a rule, they leave behind piles of garbage and rubbish, and after they leave, parts of their makeshift houses remain and turn into a new illegal dump. Skopje residents are protesting against such reckless behaviour at every new location they choose for their temporary settlement without anyone’s permission”.*²²

In a study which reviewed the manner and extent to which certain media outlets in North Macedonia reported on Roma, it was shown that whilst the majority of articles were objectively presented, there were also incidences of hate speech. For instance, when a person of Romani origin was reported to have committed a crime, reporters would often reveal their

20 EU Agency for Fundamental Rights, *A persisting concern: anti-Gypsyism as a barrier to Roma inclusion*, 2018. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-anti-gypsyism-barrier-roma-inclusion_en.pdf.

21 European Policy Institute Skopje, *Life to the Border: Reporting by Macedonian Media Outlets about Roma and the Visa Liberalization*, September 2016. Available at: https://epi.org.mk/docs/Life_to_the_Border_-_Reporting_by_Macedonian_Media_Outlets_about_Roma_and_the_Visa_Liberalization.pdf.

22 Available at: <https://vecer.mk/kategorija/makedonija/>.



1% of the 2,918 media employees in North Macedonia are of Romani origin.



identity (either through their initials or their full name) and their ethnicity.²³ In addition, media outlets often make broad generalisations about the entire Romani community, often presenting individual problems as societal issues.²⁴

When it comes to Roma working in the media, the research found that less than 1% of the 2,918 media employees in North Macedonia are of Romani origin. One important step in addressing the issue of how Roma are portrayed in the media would be to remedy the lack of Romani representation inside the media industry. Also, 76% of the respondents indicated that the internet is the medium through which most hate speech against Roma and antigypsyism is spread.²⁵

In March 2015, a government wire-tap was leaked to the press on which the ex-Minister for internal affairs, Gordana Jankulovska, was recorded giving instructions to another member of parliament to exploit the vote of Romani people during the elections, saying: “*we will pull them by ears, one gypsy (cigan) after another... and bring them to vote*”²⁶.

²³ Educational Media Centre 24Vakti, *Context about Roma in Macedonian Media: Anti-gypsyism, Discrimination, Hate Speech* [Контексти за Ромите во македонските медиуми. Антициганизам, дискриминација, говор на омраза], 2019. Available in Macedonian at: <https://urlshortner.org/PRazi>.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ a1On, *SDSM: Jankulovska says: “On their ears, gypsy by gypsy we will take them out”* [САМС: Јанкуловска вели - За уши, циган по циган ќе вадиме], 18 March 2015. Available in Macedonian at: <https://a1on.mk/macedonia/sdsm-jankulosaka-veli-za-ushi-cigan-po-cigan-kje-vadime/>.

Government initiatives to tackle anti-Roma discrimination

Non-discrimination and equal treatment is one of the fundamental principles set forth in international law and is enshrined in the Constitution of the Republic of North Macedonia, according to which; “*Citizens of the Republic of [North] Macedonia are equal in their freedoms and rights, regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property, and social status.*”²⁷

In an attempt to address the issue of anti-Roma discrimination in North Macedonia, and improve the status of Romani citizens in society more generally, the government has enacted a number of policies and laws.

The Law on Prevention and Protection against Discrimination²⁸ from 2010 established a Commission for Protection against Discrimination,²⁹ an autonomous legal entity whose primary role is to respond to and assist in complaints of discrimination. It also has the power to give opinions and recommendations on specific cases of discrimination, to support applicants and provide information on their rights to bring legal proceedings, to submit an annual report to the Parliament of the Republic of North Macedonia, and to push for legal reform on anti-discrimination legislation. However, one of this Commission’s biggest weaknesses was that it only had the authority to deliver opinions and recommendations rather than legally-binding decisions or judgments. It also lacks the funds required to conduct campaigns to promote its work, activities, and competencies targeting the general public.³⁰

There also seems to have been a significant lack of knowledge among the public about the work of the Commission for Protection against Discrimination and, given that its members were primarily employed by various state institutions, concerns were raised about its independence, impartiality, and effectiveness. The public generally viewed the Commission as politicised and linked to the former ruling party, which fostered a sense of distrust. In 2016, ECRI recommended that the authorities change the status of the Commission with a view to making it fully independent. Furthermore, it recommended that the authorities bring the mandate and powers of the Commission and the Ombudsman in general in line with ECRI’s GPR No. 7 which would, in particular, grant both institutions the right to initiate court cases even when a specific victim is not mentioned.³¹

27 Constitution of the Republic of [North] Macedonia. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/36714/70972/F511737559/MKD36714%20Eng.pdf>.

28 Law on Prevention of and Protection Against Discrimination, *Official Gazette of the Republic of Macedonia no. 50/2010*, 2010. Available at: <https://www.refworld.org/pd/fid/5aa12ad47.pdf>.

29 For more information about this Commission see: https://equineteurope.org/author/macedonia_cpd/.

30 Commission for Prevention and Protection against Discrimination, *Annual Report for the Commission for Prevention and Protection against Discrimination for 2017*, March 2018. Available in Macedonian at: <https://www.scribd.com/document/375746986/Годишен-извештај-2017>.

31 European Commission against Racism and Intolerance, *ECRI Report on the Former Yugoslav Republic of Macedonia (fifth monitoring cycle)*, 7 June 2016. Available at: <https://rm.coe.int/fifth-report-on-the-former-yugoslav-republic-of-macedonia-/16808b590b>.

In its 2021 report on North Macedonia, the European Commission found the legal framework on the protection of fundamental rights to be largely in line with European standards, but stressed the importance of enhancing the implementation of the legislation on hate speech and of the national action plan for the implementation of the Istanbul Convention's provisions.

Another concern was that *“the civilian external oversight mechanism over the police is not fully functional, and the absence of genuinely independent investigators impedes efforts to address police impunity and effective prosecution.”* Noting the absence of the systematic collection of data on hate speech, the Commission called for *“a proactive and holistic approach in addressing hate speech and hate crime”*.³²

Regarding non-discrimination, in January 2021 the new equality body – the Commission for the Prevention and Protection against Discrimination – was elected. The Commission has wide-ranging powers, including the right to initiate proceedings for the protection against discrimination upon its own initiative, but there remain *“numerous logistical and financial challenges that need to be addressed in order to become fully operational.”*³³ The Law on the Prevention and Protection against Discrimination is in place, and it includes definitions of direct and indirect discrimination, harassment, incitement, encouragement and instruction to discriminate, victimisation, and segregation. The Commission called for an increase in the budget of the Ombudsman's Office to allow for recruitment of specialised staff, in order to better accomplish its role, and stressed that *“the functional independence of these bodies must be guaranteed at all times, including through the appropriate financial resources.”*

Despite the positive developments noted above, the European Commission found only limited progress on Roma inclusion: *“The Roma inclusion strategy (2014-2020) has expired, and the new one is not yet ready, although the preparatory work has started. There is no more Minister without portfolio – instead an advisor to the Prime Minister responsible for Roma, lowering the possibility for Roma issues to be discussed by the government. The implementation of the strategy and the corresponding action plans for education, employment, housing, gender and health was incomplete.”*³⁴ Problems noted in earlier Commission reports persist, such as the lack of expenditure monitoring, combined with the poor absorption of existing pre-accession funds targeting Roma inclusion.

³² European Commission, *Commission Staff Working Document, North Macedonia 2021 Report*, 19 October 2021. Available at: https://ec.europa.eu/neighbourhood-enlargement/north-macedonia-report-2021_en.

³³ *Ibid*, p.32.

³⁴ *Ibid*, p. 35.

National and international criticisms of Macedonian anti-Roma discrimination

There have been a number of high-profile cases in which North Macedonia has been subject to international criticism regarding the situation of Roma in the country.

Some of the highest profile cases concern the state's investigations into alleged police brutality. Of the 11 applications motioned against North Macedonia for breach of Article 3 of the European Convention on Human Rights, the European Court of Human Rights has handed down judgments in eight cases establishing that the national authorities, i.e. competent prosecution offices, have failed to conduct effective investigations into allegations made by the applicants that they had been exposed to police brutality constituting inhuman and degrading treatment. The applicants in four of the eight judgments were of Romani nationality: *Jasar v FYR Macedonia*; *Dželadinov and others v FYR Macedonia*; *Sulejmanov v FYR Macedonia*; and *Aslani v FYR Macedonia*.³⁵ Given the proportion of Romani people relative to the general population, these figures demonstrate that Roma are disproportionately victims of police brutality. Other high-profile cases brought against the state of North Macedonia include three concerning suspicious prison deaths³⁶, and three cases about forced evictions.³⁷

Additionally, around 120 cases have been brought before the European Court of Human Rights in which the Court found that the state of North Macedonia had violated Article 6 of the European Convention on Human Rights, which concerns an individual's right to a fair trial. None of those cases specifically mention that the applicant was of Romani origin. However, on the basis of their surnames, it can be assumed that some do concern Romani applicants. By way of example, three such cases are briefly described below;


- In the case of *Sali v The Former Yugoslav Republic of Macedonia* (Application no. 14349/03)³⁸ dated 17 April 2003, the applicant argued that his right to a fair trial had been breached on the basis that the length of proceedings had been unduly long; that the Supreme

35 European Court of Human Rights Case; *Jasar v. the Former Yugoslav Republic of Macedonia Judgment Final* 15/05/2007, available at: <http://hudoc.echr.coe.int/eng?i=001-79411>; *Dželadinov and others v. The Former Yugoslav Republic of Macedonia Judgment Final* 10/07/2008, available at: <http://hudoc.echr.coe.int/eng?i=001-85828>; *Sulejmanov v. the Former Yugoslav Republic of Macedonia Judgment Final*, 24/07/2008, available at: <http://hudoc.echr.coe.int/eng?i=001-86022>; *Aslani v. the Former Yugoslav Republic of Macedonia Judgment Final*, 10/03/2016, available at: <http://hudoc.echr.coe.int/eng?i=001-159060>.

36 European Court of Human Rights Case; *Eminov v FYR Macedonia*, 10 January 2018, available at: <http://hudoc.echr.coe.int/eng?i=001-180334>; *Redjepovi v North Macedonia*, 21 January 2021, available at: <http://hudoc.echr.coe.int/eng?i=001-208155>; *Jusinova v North Macedonia*, 21 January 2021, available at: <http://hudoc.echr.coe.int/eng?i=001-208156>.

37 European Court of Human Rights Case; *Erdjan Bekir and Others against the Former Yugoslav Republic of Macedonia*, lodged on 11 August 2016, available at: <http://hudoc.echr.coe.int/eng?i=001-167970>; *Case L.A.*; Committee on the Elimination of Discrimination against Women Case, *D.S. R.A. and L.B v. North Macedonia CEDAW/C/75/D/110/2016*, 24 February 2020, available at: <https://juris.ohchr.org/Search/Details/2705>; *S.N. and E.R v. North Macedonia CEDAW/C/75/D/107/2016*, 24 February 2020, available at: <https://juris.ohchr.org/Search/Details/2703>.

38 European Court of Human Rights Case; *Case of Sali v. the Former Yugoslav Republic of Macedonia Judgment Final*, 5 October 2007. Available at: <http://hudoc.echr.coe.int/eng?i=001-81417>.



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Court had re-established the facts of the case *ultra vires*; and that his trial had not been impartial and independent as it had decided under the Government's influence. The Court declared the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible. It held that there has been a violation of Article 6 § 1 of the Convention and that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, €1, 400 in respect of non-pecuniary damage and costs and expenses, plus any tax that may be chargeable.

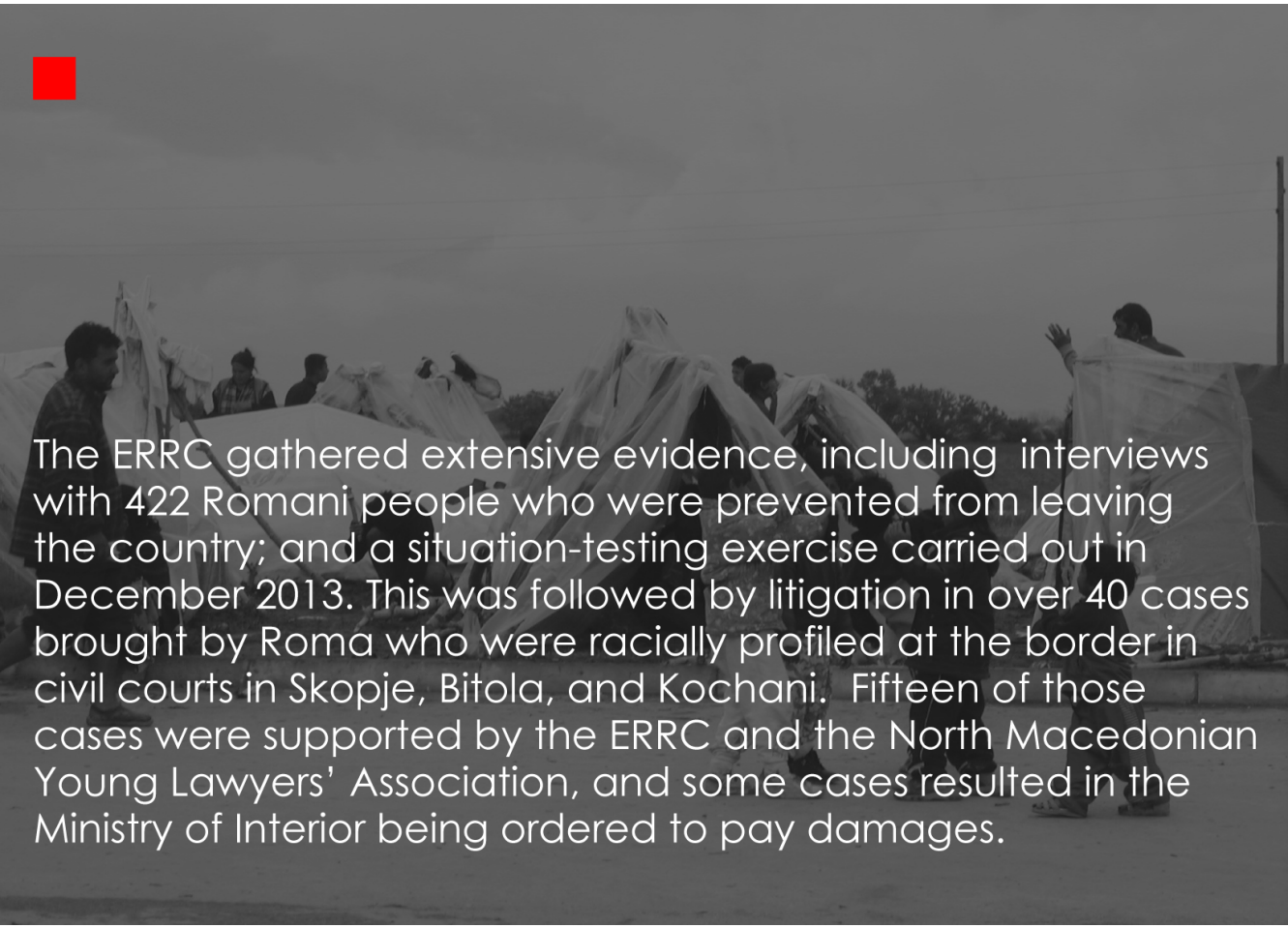
- In the case of *Kamberi v The Former Yugoslav Republic of Macedonia* (Application no. 39151/04)³⁹ dated 22 October 2004, the applicant argued that that his right to a fair trial had been breached on the basis that the length of the proceedings had been incompatible with the “reasonable time” requirement laid down in Article 6§1 of the European Convention on Human Rights. The court declared the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible. The ECtHR held that there had been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings and ordered the State to pay the applicant €3,200 plus tax in respect of non-pecuniary damage.
- In the case of *Adilovska v North Macedonia* (Application no. 42895/14)⁴⁰ dated 3 June 2014, the applicant argued that her case in the civil courts had been dismissed without examination on the merits, for lack of standing in the proceedings, which was contrary

39 European Court of Human Rights Case; *Case of Kamberi v. The Former Yugoslav Republic of Macedonia Judgment Final*, 22 January 2010. Available at: <http://hudoc.echr.coe.int/eng?i=001-95353>.

40 European Court of Human Rights Case; *Case of Adilovska v. North Macedonia Judgment Final*, 22 June 2020. Available at: <http://hudoc.echr.coe.int/eng?i=001-200432>.

to the relevant domestic law and practice. The Court declared the application admissible, and held that there has been a violation of Article 6 § 1 of the Convention in respect of the applicant's right of access to a court.

In 2009, the North Macedonian government introduced a set of repressive measures which included passport confiscation, enhanced border controls, and ethnic profiling, which almost exclusively targeted Roma. The ERRC gathered extensive evidence, including interviews with 422 Romani people who were prevented from leaving the country; and a situation-testing exercise carried out in December 2013. This was followed by litigation in over 40 cases brought by Roma who were racially profiled at the border in civil courts in Skopje, Bitola, and Kochani.⁴¹ Fifteen of those cases were supported by the ERRC and the North Macedonian Young Lawyers' Association, and some cases resulted in the Ministry of Interior being ordered to pay damages.⁴²



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⁴¹ ERRC Press Release, *Roma denied exit from Macedonia win discrimination case*, 10 October 2017. Available at: <http://www.errc.org/press-releases/roma-denied-exit-from-macedonia-win-discrimination-case>.

⁴² ERRC, *Dželadin v. North Macedonia and Two Other Cases (Third-Party Intervention)*, 13 December 2019. For more information see: <http://www.errc.org/cikk.php?cikk=4950>.

In its third-party intervention in the case of Dželadin v. Macedonia, the ERRC noted that racial profiling of Roma at the borders in Macedonia had been acknowledged and condemned by the Council of Europe Commissioner on Human Rights, the UN Human Rights Committee, the European Commission on Racism and Intolerance, and the Macedonian Ombudsman's Office. The EU's position was more ambiguous. Its 2015 progress report noted that "Complaints have been registered by Roma prevented from leaving the country and of mistreatment of Roma who have returned after unsuccessfully seeking asylum abroad". However, one year later the Commission stated that "The country should also maintain its efforts to decrease the number of unfounded asylum applications lodged by its nationals in EU Member States". Given the context of such a recommendation – during an assessment of Macedonia's prospects for EU accession – the ERRC stated that "It was hard to imagine that the Macedonian authorities took this as anything other than encouragement to continue profiling Roma at the border."⁴³

⁴³ European Court of Human Rights, *DŽELADIN v. MACEDONIA*, *Third-Party Intervention of the European Roma Rights Centre*, 2019. Available at: http://www.errc.org/uploads/upload_en/file/dzeladin-v-macedonia-and-two-other-cases-third-party-intervention-5-february-2018.pdf.

Representation of Roma in the criminal justice system

Unlike many other countries in Europe, North Macedonia does collect data on the ethnicity of suspects, defendants, and convicted people in the criminal justice system. Such data is published by the State Office for Statistics,⁴⁴ as well as the Ministry of Interior and the Ministry of Justice.

According to a report published by the State Office for Statistics in 2017, 10,603 adults were reported to have committed a crime. Of those, 739 were of Romani origin (mostly men). These figures suggest that Roma accounted for approximately 7% of the crimes reported in 2017. More often than not, they were reported to have committed property offences. According to the same statistics, Roma were responsible for 512 of the 3,595 reported property offences (14.2%), 60 of the 774 reported offences against the person (7.8%), 37 of the 556 reported public order offences (6.7%), and 33 of the 2,505 reported traffic offences (1.5%).

In the same year, the **convicted** adult population stood at 6,273, of this total 587 were of Romani origin (again mostly men). These figures suggest that Roma made up around 9.4% of those convicted in 2017, suggesting they are slightly more likely to be convicted of a crime that they are accused of having committed one. Roma made up 421 of the 2,427 individuals convicted for a property offence (17.3%), 39 of the 664 convicted for an offence against the person (5.9%), 36 of the 401 convicted for a public order offence (9%), and 21 of the 1,165 convicted for a traffic offence (1.8%).

Comparing that to the official number of Roma in North Macedonia from the 2022 census, where Roma account for 2.53% (46,433)⁴⁵, this would suggest that Roma are overrepresented in the justice system. However, given that Roma more realistically comprise around 6.77% of the population, these statistics suggest that Roma are reported for no more crimes than other ethnicities in North Macedonia, although in reality they are more likely to be convicted of those crimes in courts.

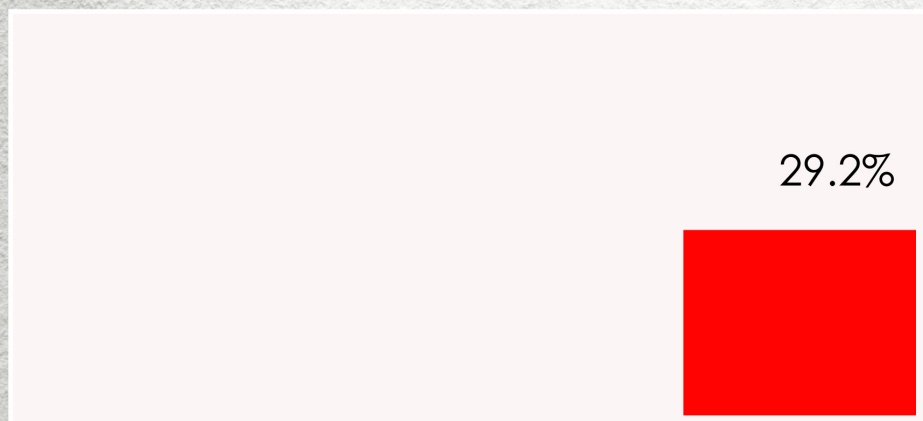
Amongst the juvenile population, the statistics tell a different story. In 2017, 169 of the 578 young offenders were of Romani origin, comprising around 29.2%. Given that Romani children reportedly only represent around 3% of the children in North Macedonia, this amounts to a significant overrepresentation. As with the adult Romani population, Romani juveniles are typically reported to have committed property offences, with Romani juveniles being responsible for 146 of the 374 property offences committed by juveniles in 2017 (39%).

Of those convicted, Roma made up 65 of the 368 juveniles convicted in 2017 (17.7%), and again they were typically convicted of property offences. Of the 251 juvenile convictions for property offences in 2017, Romani juveniles were convicted of 59 (23.5%). Contrary to the statistics on the adult population, this suggests that Romani juveniles are somewhat less likely to be convicted of a crime that they are reported to have committed.

⁴⁴ State Statistical Office, *Perpetrators of Criminal Offences in 2017*, June 2018. Available at: www.stat.gov.mk/Publikacii/2.4.18.07.pdf.

⁴⁵ Sinisa Jakov Marusic, “North Macedonia Census Reveals Big Drop in Population”, *BIRN*, 30 March 2022. Available at: <https://balkaninsight.com/2022/03/30/north-macedonia-census-reveals-big-drop-in-population/>.

In 2017, 169 of the 578 young offenders were of Romani origin.



According to data published by the State Office for Statistics in May 2019, the number of reported perpetrators amongst the adult population increased by 9.5% from 2017 to 2018. However, the number of those accused decreased by 8.1% and the number of those convicted decreased by 6.6%. Meanwhile, the number of reported perpetrators amongst the juvenile population decreased by 4.2% from 2017 to 2018, and the number of convicted juveniles decreased by 10.3%.

Other state institutions also collect ethnic data on parties within the criminal justice system. The Administration for Execution of Sanctions produced an annual report in 2015 which included data on the numbers of detained and imprisoned individuals as of 31 December 2015.⁴⁶ This showed that, as at the end of 2015, 5.6% of all detainees were of Romani origin while 15.2% of prisoners were of Romani origin. They accounted this discrepancy to the fact that Romani offenders typically committed property offences, which are less likely to result in detention.

In 2018, the ERRC sent a freedom of information request to the Ministry of Justice asking for definitive data on the number of Romani prisoners in North Macedonia in 2016 and 2017. The response showed that in 2016 there were 2,968 prisoners in the country, of whom 484 were of Romani origin (462 men and 22 women). In 2017 the figures decreased slightly, with 2,759 prisoners overall, of whom 436 were Roma (418 men and 18 women).

Regarding children in conflict with the law, the State Council for the Prevention of Juvenile Delinquency conducted a study which showed that there was a higher likelihood of reoffending among children of Romani origin. Based on this study, researchers also suggested that children of Macedonian ethnicity accounted for 38% of juvenile offenders and those of Romani ethnicity accounted for 33%.⁴⁷

⁴⁶ Centre for Legal Research and Analysis and Roma Lawyers Association, *Analysis of the status of Roma as defendants in criminal proceedings in the Republic of Macedonia*, 2017. Available at: <https://cpia.mk/wp-content/uploads/2021/10/analysis-of-the-status-of-Roma-as-defendants.pdf>.

⁴⁷ Centre for Legal Research and Analysis and Roma Lawyers Association, *Do Roma Enjoy The Guaranteed Rights? Need to Establish Equality Proceedings of Law Enforcement Authorities*, 2018. Available at: <https://cpia.mk/wp-content/uploads/2021/10/Do-Roma-Enjoy-the-Guaranteed-Rights.pdf>.

Interviews conducted by researchers suggested that Roma are perceived to be overrepresented in the criminal justice system. All Romani respondents agreed that Roma were more likely to face arrest in North Macedonia. Most defence lawyers, who said that they were typically able to identify someone as Roma as they self-identified as such or on the basis of their appearance or language, suggested that they encountered Romani defendants frequently. Five of the nine interviewed said that Romani defendants comprise between 70% and 100% of their clients. Most attributed this apparent overrepresentation to the socio-economic disadvantages faced by Roma and their lack of legal knowledge, but there were also suggestions that actors within the system played a role in arresting, charging, and convicting Romani individuals more readily on account of their own prejudices, whether unconscious or conscious.



Five of the nine interviewed defence lawyers said that Romani defendants comprise between 70% and 100% of their clients.



In most cases, Roma are put in prison without evidence.”
(Defence Lawyer 1)

Roma suspects are prematurely treated as defendants and justice authorities take advantage of their fear and ignorance.
(Defence Lawyer 7)

Where a Roma person is accused, [the police] do not conduct an appropriate investigation; no defence is made, or if a defence is made, it is not an appropriate one.
(Defence Lawyer 8)

Other explanations for the overrepresentation included the inadequacy of legal assistance, and the lack of support and rehabilitation measures to reduce the risk of reoffending.

Most public prosecutors and judges also reported frequent encounters with Romani defendants (whom they were able to identify through their physical attributes, names, address, language, and how they self-identify). Most prosecutors were reluctant to suggest that Roma were overrepresented in the criminal justice system except for certain crimes, such as property offences. Of the 12 judges interviewed, almost all agreed that Roma seemed to appear disproportionately in courts for charges such as theft and aggravated theft, estimating that they comprise between around 10% and 60% of the total cases they decide. Even where they did not expressly agree that Roma were in fact overrepresented in the criminal justice system overall, the estimates they provided on the number of Roma that appeared in their courts were all above the proportion of Roma in North Macedonia. The four who did agree that Roma were overrepresented attributed this overrepresentation to socio-economic conditions such as access to wealth, education levels, and employment rates.

“Roma frequently appear as defendants in property offences. I believe this is due to their property and wealth conditions which are often very bad.”
(Judge 3)

“I agree with the conclusion that Roma are overrepresented in the criminal justice system in North Macedonia. The reason for this is insufficient and unequal access to education, employment and material possessions in general, and the low position in the social distribution of goods.” (Judge 4)

The interviewed police officers provided more varying accounts on the extent of overrepresentation. One (one of the officers of Romani origin) encountered Roma less frequently suggesting that Roma only make up around 1% of the people arrested in his locality. The other police officers suggested that they encountered Roma on a more regular basis, ranging from between once a week to three times a week and accounting for between 20% and 80% of those that they arrested. Two of the officers (both of Romani origin) recognised that Roma are likely to be overrepresented, suggesting that the reason lies in societal prejudices.

The two non-Romani police officers either disagreed that Roma were overrepresented, or attributed any such overrepresentation to the number of Romani offenders, rather than discrimination.

“I would not say that Roma are overrepresented in the criminal justice system. I would say that Albanians are overrepresented. Most defendants both of Roma and Albanian origin are in prison for theft, which I would say reflects their economic status in [North] Macedonia.” (Police Officer 3)

Discrimination in the criminal justice system

There have been a number of reports of anti-Roma discrimination by the police, involving excessive use of force, intimidation techniques, inhuman treatment, and an apparent distrust in statements made Roma alleging violations of their rights. Discrimination is more common in pre-trial proceedings than in trial proceedings.

Researchers reported three instances of such discrimination in the criminal justice system. For instance, in response to the complaint of a Romani man alleging that he was attacked by security guards in a bank in Kumanovo, the defence lawyer suggested that the only reason the complainant had brought his case was to obtain material benefits. On another occasion, a prosecutor working for the Basic Public Prosecutor Office in Shtip tried to convince a Romani man that he stole water from his neighbour without even giving him opportunity to make a statement. When he complained of this, and of being called a thief, the public prosecutor got angry and asked him to leave the office without conducting the hearing. An ERRC lawyer was present at a public hearing by the Constitutional Court, when in response to the explanation that the Romani clients could not attend the hearing as they are young single mothers of newborn babies, one of the judges sarcastically stated: “*maybe your clients requested asylum in Western Europe again and that is why they are not present today at the hearing*”.

In a study conducted by a local NGO regarding Romani individuals’ access to rights, a lawyer with experience representing Romani clients stated:

*“I represented a Romani defendant in court proceedings and was utterly shocked by discriminatory and humiliating behaviour of the judge against the defendant only because he was Roma.”*⁴⁸

Interviews with the Romani respondents and Romani police officers corroborated the evidence of anti-Roma bias and ethnic profiling. All eight of the Romani interviewees agreed that society generally harbours prejudicial attitudes towards Roma, citing reasons based on their personal experiences of discrimination and, more broadly, the general public’s perception that Roma are criminals and that the Romani community has inferior social status relative to the non-Roma community.

Outside the criminal justice system, many gave examples of the discrimination that they suffered because of their Romani ethnicity, with one Romani interviewee reporting that he had been refused permission to visit his brother in Europe at the North Macedonian border on the basis that he did not have a “letter of guarantee”,⁴⁹ when non-Roma were not asked for such documentation. Others reported explicit discrimination whilst serving their prison sentences,

⁴⁸ Centre for Legal Research and Analysis and Roma Lawyers Association, *Do Roma Enjoy The Guaranteed Rights? Need to Establish Equality Proceedings of Law Enforcement Authorities*, 2018. Available at: <https://cpia.mk/wp-content/uploads/2021/10/Do-Roma-Enjoy-the-Guaranteed-Rights.pdf>.

⁴⁹ A letter of guarantee is usually referred to as an invitation document prepared by the host and signed by a notary, which states that the traveller will be accommodated in their address of residence, and that costs associated throughout the duration of the stay will be borne by the host.

with non-Romani prisoners being allowed certain privileges, such as use of a mobile phone, whilst Romani prisoners were not, and recounted incidents of Romani prisoners being physically beaten or forced to sell drugs by the prison guards.

All but one of the Romani respondents said that they thought the criminal justice system in North Macedonia was unfair, largely on the basis of their personal experiences of injustice. As one explained:

“[The two of us] have been jailed here for five months and seven months because we allegedly stole wood from a forest under the criminal offence of theft. One of us received an extra two months because they said we stole electricity as well (all Roma are illegally connected in my neighbourhood). These allegations were confirmed without any evidence. The court made its decision on the sole basis of the forest police’s testimony.” (Romani Interviewee 6)

All but two interviewees said that they thought the actors within the system were expressly biased against Roma, particularly those in the police force, and all eight thought criminal justice professionals were more likely to think of Romani defendants as guilty of whatever offence they were charged with:

“Police and judges see us as criminals here in Shtip. On one occasion, the police came to our house to take my brother to the police station. They forcibly took us there. I told them to wait for us to get dressed because it was morning and they replied that we Roma were liars.” (Romani Interviewee 7)

“Regarding the justice system in [North] Macedonia, I do not trust it at all. It is not fair at all.” (Romani Interviewee 2)

The Romani police officers also took it for granted that Roma did not generally trust the criminal justice system in North Macedonia and suggested that certain police officers take advantage of this fact.

“Roma in general do not trust the criminal justice system because they are not adequately protection by state institutions and they are not well informed on how to access to state- or NGO-provided legal aid. For example, when they are interrogated by the police, they sign whatever the police give them simply because they are not aware of their rights and therefore do not know how to exercise them.” (Police Officer 1)

“During interrogations, Roma are forced into signing documents in which they admit to committing some criminal offence and they do not even know what they are signing.” (Police Officer 2)



(Police Officer 1)

Most of the defence lawyers supported this view as well. Two thirds of those interviewed agreed that Roma do not trust the criminal justice system. They mostly explained that this was natural because of their lack of knowledge of the law and unequal, discriminatory access to justice. A further two explained that this distrust was not particular to Roma and that everyone distrusted the criminal justice system.

“Roma do not believe in the criminal justice system because for them, there is no thorough investigation into their cases, not all evidence is taken into consideration and, in most cases, they end up with adverse convictions.” (Defence Lawyer 8)

Whilst only two of the nine lawyers interviewed said that they had ever witnessed a police officer, prosecutor, lawyer, or judge making discriminatory remarks about Roma, four suggested such people were more likely to perceive a Romani defendant as guilty, although they largely did not explain why. One stressed that actors within the system mostly tried their best to make their decisions on the basis of the evidence before them. Four others were either unable to comment, provided no response, or did not provide a strong opinion either way.

“In practice, if the judge sees someone who is badly dressed and poor, they will automatically consider that the person is criminal.” (Defence Lawyer 1)

Concerningly, as many as seven of the nine lawyers also said that they had been involved in or knew of cases where they felt that the outcome had been discriminatory against a Romani defendant.

“There have been cases when I felt that a judgment was discriminatory. For example, I represented a (Roma) client who was given a three-and-a-half-year prison sentence without evidence being presented at court.” (Defence Lawyer 1)

The prosecutors and judges, however, downplayed this idea. Two of the five prosecutors interviewed said that it is not just Roma who lack faith in the criminal justice system arguing that no one in North Macedonia trusts it. One suggested that the treatment of the police is to blame for Romani people’s distrust, noting that “*their tendency to see Roma as scapegoats, in particular when it comes to property offences*” has fostered this attitude (Prosecutor 3). Two others were unable to comment.

Four of the judges did not think that Romani people’s mistrust of the criminal justice system was any different from that of the general population. Three others disagreed that Roma tended to distrust the system at all, while only three agreed that they did, attributing this to various factors such as prejudices within the justice system, marginalisation in society as a whole, and a general ignorance of judicial matters.

“The mistrust in the criminal justice system is a general attitude, which does not only exist amongst Roma. It comes from media campaigns run by political parties and the executive in order to undermine the independence and autonomy of the judiciary and to maintain or garner influence.” (Judge 12)

Furthermore, although one of the interviewed judges suggested that a small number of criminal justice professionals might harbour prejudices towards Romani individuals resulting in them assuming they were guilty for an alleged offence, they did not believe that they could act on those prejudices. Three other judges partially agreed or said that they thought certain individuals might presume a Romani defendant guilty, while eight disagreed outright. None of the Romani people interviewed were able to respond to how they thought anti-Roma discrimination within the criminal justice system might be resolved.

Police

Complaints lodged against ill-treatment by the police continue to raise concerns and give rise to the need to establish an independent oversight mechanism for the Ministry of Interior.

There have been worrying reports of extreme and arbitrary violent attacks on members of the Romani community by police officers which not only imply that discriminatory attitudes are deeply ingrained within the police force, but also that certain officers are willing to act on those attitudes and assault Romani individuals. In turn, there is a serious problem with police impunity and inadequate investigations into police abuse. Concerns have also been raised in relation to inhuman conditions in police stations, social care and psychiatric facilities, and prisons (especially in Idrizovo and Skopje)⁵⁰ and in relation to prison mortality rates, in particular because the majority of those who die in prison are of Romani origin.

Several studies have revealed the disparity in the police treatment of Roma compared to non-Roma, raising issues ranging from reports of officers attempting to coerce suspects into admitting guilt during interrogation, to flagrant abuses of police power through use of excessive force, to attempting to persuade Romani suspects to sign blank statements.⁵¹ Interviews with professionals working with Roma corroborated this, suggesting that Roma face unequal and discriminatory treatment within the criminal justice system and particularly during police and investigation proceedings.⁵²

Half of the judgments handed down by the European Court of Human Rights against North Macedonia in relation to violation of Article 3 of the European Convention on Human Rights established inadequate investigation into Roma complaints of police abuse of power.⁵³

Other cases into human rights abuses tell a similar story. A number of media reports recount instances of police abuse directed towards Romani suspects, particularly on the part of the special police force unit, “Alpha”:

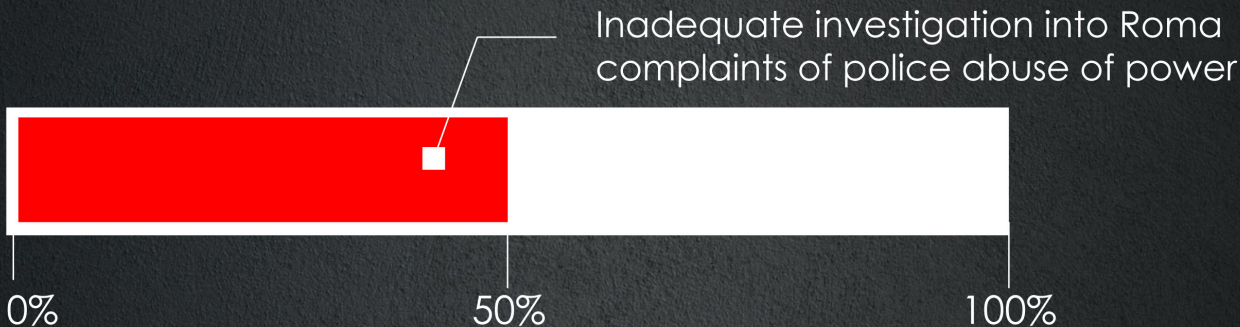
- In May 2004, a Romani man reported that his 17-year-old son and his 12-year-old cousin had been abused by four police officers, who were all also members of “Alpha”. The police officers suspected that one of the boys had stolen a handbag and, after intercepting them, they were beaten. Afterwards, the 17-year-old Romani boy was taken to the police station for interrogation. During the interrogation, the police

⁵⁰ European Commission, *European Commission Working paper, Report for the Republic of Macedonia*, 2016. Available at: <https://goo.gl/Qmy9pK>.

⁵¹ Centre for Legal Research and Analysis and Roma Lawyers Association, *Do Roma Enjoy The Guaranteed Rights? Need to Establish Equality Proceedings of Law Enforcement Authorities*, 2018. Available at: <https://cpia.mk/wp-content/uploads/2021/10/Do-Roma-Enjoy-the-Guaranteed-Rights.pdf>.

⁵² Centre for Legal Research and Analysis and Roma Lawyers Association, *Analysis of the status of Roma as defendants in criminal proceedings in the Republic of Macedonia*, 2017. Available at: <https://cpia.mk/wp-content/uploads/2021/10/analysis-of-the-status-of-Roma-as-defendants.pdf>.

⁵³ *Ibid.*



ECHR cases against North Macedonia involving violations of Article 3 (inhuman or degrading treatment)

allegedly attempted to force the boy into admitting the crime by using physical force and slapping him in the face. They later concluded that no crime had been committed, and he was released from police custody.

- In February 2013, an 18-year-old Romani man reported that he had been abused by two police officers who again were members of “Alpha”. He had been selling perfume in downtown Skopje when two plain clothed officers approached him, asked for his identification card, and told him to follow them to the police station. At the station, they interrogated him under suspicion of theft because of his Romani ethnicity. Later, three other police officers joined the interrogation, one of whom attempted to coerce him into admitting to breaking a car window. When he refused to admit guilt, the police officer hit him and yelled “*You Gypsies! Admit that you are thieves*”. The Romani victim did not report the police officers out of fear of reprisal.
- In May 2013, two police officers, later joined by 50-60 other officers including members of the special police unit “Alpha”, arrived at Topaana, a Romani neighbourhood in Skopje. The police had gone there on the basis that one member of the community, who had been released from prison for a family visit, had reportedly stabbed someone. The police then raided the neighbourhood, using excessive and arbitrary force against its residents and forcibly entering their homes without providing any explanation as to why. Ten Romani men and three Romani women were physically attacked during the raid. A press release later issued by the police, however, made out that the local community had resisted the police officers attempts to apprehend the perpetrator and had attacked them.⁵⁴
- In April 2014, a 15-year-old Romani boy was physically attacked by a police officer in Kumanovo. He had been with his sister when the police officer, without any explanation, started beating him until he lost consciousness. The boy was taken to the police station, where the physical and psychological abuse continued. When his parent arrived at the police station, the boy was released.⁵⁵

⁵⁴ European Roma Rights Centre, *Macedonian Police targets Roma with excessive force*, 13 May 2013. Available at: <http://www.errc.org/press-releases/macedonian-police-target-roma-with-excessive-force>.

⁵⁵ European Roma Rights Centre, *Police abuse Romani youth in Macedonia*, 29 July 2004. Available at: <http://www.errc.org/cikk.php?cikk=1969>.

The interviews with the Romani respondents tell a similar tale. Six of the nine interviewed reported witnessing the police making discriminatory anti-Roma remarks, such as calling Roma ‘cigani’ (a racial slur for an individual of Romani origin). Reports of police brutality were also alarmingly common, with a number recalling instances of excessive and arbitrary force on Romani communities and one interviewee describing how her son was reportedly fatally beaten by prison police while serving a prison sentence.

“[A witness to the incident] told me that in the morning, an inspector had called my son and told him to go to the office to receive a package that we had sent him. He saw police officers beating my son and, on one occasion, throwing him down the stairs. The beating happened in the morning on a Saturday. When he was returned in his room, he had already lost consciousness.” (Romani Interviewee 2)

“Four years ago, I was beaten up for no reason by a few police officers on a street in Shtip. Afterwards, I went to see a doctor and he refused to issue me a medical certificate. You can see from this example how Roma are treated in Shtip. On many occasions, I have heard police officers making racist comments such as “Roma are criminals” and “Roma are thieves.” (Romani Interviewee 5)

“I remember when a number of police officers raided a Romani community in Shtip to try to catch a Romani boy who had allegedly committed a crime and they attacked many Romani people for no reason.” (Romani Interviewees, Interview 3)

One interviewee reported that when crimes were reported, the police would often assume that Roma were responsible and would attempt to coerce them into admitting guilt.

“When there is a theft in my neighbourhood, the police will come to the Roma community and order Romani residents to go to the police station to be interrogated, assuming that a Romani person has committed the crime. In the worst case scenario, if you refuse to plead guilty during the interrogation process, then a police officer will force you to do so by slapping you in the face and beating you and you will end in a pre-trial detention.” (Romani Interviewee 1)

Relatively few of the Romani respondents reported being stopped by the police in public, but they said that they knew of many others who had been. One of the interviewees, who was regularly stopped, said that he was never given a reason why, and three others suggested the police tend to target Roma for ID checks.



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(Romani Interviewee 1)

“[As Roma], we have to have our IDs with us otherwise we will be fined 50 Euros by the police if they stop us in the street. The police only stop Romani people to ask for their ID but [they do not stop] non-Roma. Young police officers in particular are biased against Roma.” (Romani Interviewees, Interview 3)

“I am often stopped in the street by police officers and asked for my ID. The police only stop Roma.” (Romani Interviewee 6)

The defence lawyers interviewed also described instances in which they had noticed the police treating Romani suspects differently from the general population, mostly due to prejudicial attitudes and stereotypes. For example, one lawyer also suggested that the police tend to assume that Roma complain to the police about crimes when they are seeking compensation. One lawyer, however, said that she had witnessed ill-treatment on the part of police towards members of other ethnicities as well, suggesting that discrimination was not necessarily anti-Roma but representative of a wider problem of abuse of power.

“[At a Security Council meeting alongside police officers from Shtip], I noticed that, for instance, if a police officer arrests a suspect of Romani origin, they will attribute all criminal offences committed by others to that suspect.” (Defence Lawyer 1)

“In general, Roma are not given the same rights as others. In some cases, there are instances of humiliation and inhuman and degrading treatment.” (Defence Lawyer 4)

“Where a Romani person is the injured party, the police discriminate them against automatically.” (Defence Lawyer 2)

“I have heard police officers making remarks such as ‘all Roma are criminals’ many times.” (Defence Lawyer 7)

Six of the nine defence lawyers also believed that the police (and other state administration institutions) used ethnic profiling against Roma, particularly at border crossings, without providing justification for such actions.



Six of the nine defence lawyers also believed that the police (and other state administration institutions) used ethnic profiling against Roma, particularly at border crossings, without providing justification for such actions.

Similar concerns about the impartiality of the police were also expressed by judges. Eight said that it was possible that stereotypes about Roma being criminals may play a role in some police officers' decisions to stop or arrest an individual, and most also suggested that Roma were more likely to be accused of a crime than non-Roma on the basis of such stereotypes and prejudices. Concerningly, eight judges also said that, in their opinion, some police officers may be biased against Roma, although that things had improved over the last few years.

“It is possible that the police might have been biased in the past to some extent, but I do not believe that is the case anymore. The education of all officials on human rights issues played a role, as did the cases of police brutality against suspects of Romani origin brought in the European Court of Human Rights. I think it’s much better now.” (Judge 2)

Among police officers, there were notable differences in opinion between Romani and non-Romani police officers. While Romani police officers generally corroborated accounts of discriminatory attitudes and policing practices, non-Romani police officers tended to deny the existence of discrimination.

All three of the Romani officers agreed that police in North Macedonia exhibited anti-Roma prejudices which influenced policing decisions, including arrests and stop and searches. In particular, two of the three officers suggested that they perceived non-Romani officers to take an individual's physical appearance into account when deciding to use police powers, and that ethnic profiling played a role in decisions to arrest Roma.

“Roma are identifiable by their dark skin colour and clothes, therefore according to non-Romani police officers, they must be perpetrators of criminal offences.” (Police Officer 2)

“A non-Romani police officer will most likely take into account certain physical attributes and will arrest a Romani person. The issue we have here is individual perception.” (Police Officer 2)

“A non-Romani police officer might stop a Romani person because of the perception that Roma are thieves and drug users.” (Police Officer 5)

By contrast, the two non-Romani officers denied outright that Roma were disproportionately targeted by the police. However, it was noteworthy that one non-Romani officer admitted to using physical attributes such as an individual's clothing as a reason for stopping an individual. This officer also said clothing was one of the ways he was able to identify an individual as Roma.

“It is easy to recognise a thief by their clothes (usually poor people steal so they are poorly dressed [...]) and from where they are walking.” (Police Officer 3)

With regard to the policing of Covid-19 offences, one police officer generalised that Roma did not comply with the rules, and suggested that Roma accuse the police of discrimination whenever they were caught.

“In the municipality of Shuto Orizari, Roma do not comply with the curfew rules. When a police officer tries to warn them, they say that the police are rigged against them because they are Roma.” (Police Officer 3)

There were similar discrepancies when it came to which officers had heard colleagues making discriminatory anti-Roma remarks. All three Romani police officers reported that they regularly heard their colleagues making discriminatory or insulting remarks, with one interviewee suggesting that he encountered anti-Roma discourse as much as once a month.

“I frequently hear discriminatory remarks by my non-Romani colleagues including ‘I am sure, the crime has been committed by a Gypsy (Цузан)’ and ‘Roma are illiterate’ (Цузан – a derogatory term to humiliate a person). I hear the term ‘цузан’ from my non-Romani colleagues every day.” (Police Officer 2)

Meanwhile, neither of the non-Romani officers reported hearing anti-Romani remarks in the workplace.

“I would say [anti-Roma discrimination in the police force] was an issue ten years ago, but now that is not possible because we have Romani officers in the police station.” (Police Officer 3)

All of the police officers were aware of cases where Roma had complained of the treatment at the hands of the police, although three questioned the validity of such complaints or said that they were relatively few.

“Many Romani individuals have approached me and complained of discriminatory behaviour from police officers. I would say they were victims of terror.” (Police Officer 2)

“So far, two Romani people have complained that they were harassed by a police officer, but these two people seemed drunk.” (Police Officer 3)

One of the Romani officers, however, also suggested that some Roma were unable or unwilling to make a formal complaint because they had little faith it would make any difference.

“Roma tend to be illiterate. They either do not know how to report police ill-treatment or do not want to report it; not out of fear (of repercussions), but because they have little confidence in any action being taken.” (Police Officer 2)

Prosecutors

The prosecutors interviewed were reluctant to accept that criminal justice professionals, and public prosecutors in particular, played a role in the number of Romani individuals who had been through the criminal justice system, or the discrimination they faced within it. All five of those interviewed denied that prosecutors in North Macedonia might exhibit anti-Roma biases or were more likely to consider a Romani defendant guilty, with one even suggesting that the opposite might be the case.

“Public prosecutors are not biased against Roma. On the contrary, we are tolerant towards them because we know that Roma are in an unfavourable position. [...] We try not to make them pay financial damages.” (Prosecutor 1)

“In my opinion, there is a perception among colleagues that criminal charges brought against Romani individuals, particularly in relation to property related offences, are frequently ungrounded. This is reflected in the number of criminal charges against Romani individuals that are dropped.” (Prosecutor 3)

All five also denied that prosecutors engaged in any ethnic profiling within the prosecutors’ office, noting that an individual’s ethnicity only plays a role in proceedings to the extent in which they may require an interpreter.

“The most important measure that should be taken without exception is the determination of evidence against an individual and not the determination of their ethnicity.” (Prosecutor 5)

“There is no ethnic profiling. When it comes to Romani defendants, I would say that I am more tolerant towards them than non-Roma. For example, I try not to order Romani individuals to pay fines because I take into account their socio-economic position in society.” (Prosecutor 1)

Similarly, they were reluctant to accept that discrimination or prejudicial attitudes meant that Roma were any more likely to be accused of a crime than their non-Roma counterparts, but that if they were, it was because they are the most common perpetrators of certain offences such as theft and aggravated theft.

“Our job is to carry out an investigation and, based on that investigation and the evidence relied on, an individual is prosecuted accordingly without any regard to their ethnicity.” (Prosecutor 2)

“I can only speak for myself, but I would categorically say that I have no prejudices towards Romani people. In other words, I am not at all influenced by a certain community or individual’s affiliations and am only influenced by evidence that the individual has committed a crime.”
(Prosecutor 5)

Equally, only one of the prosecutors reported ever having heard a colleague making a discriminatory remark about Roma. However, even then she suggested that this sort of attitude is reflective of the older generation’s mindset and younger generations have not adopted the same views.



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I happened to hear senior colleagues making discriminatory remarks about Roma several times – for example that ‘from a young age, all Roma are taught to steal and lie’. However, I think that this mentality is slowly being abandoned by new generations of prosecutors and so I hear such remarks less frequently.

(Prosecutor 3)

By contrast, the experience of one of the Romani respondents was very different. He reported suffering discrimination by the public prosecutor in Shtëp and recounted the prosecutor becoming angry and yelling at him during the trial, accusing him of lying about stealing water from his neighbour, and perpetuating anti-Roma tropes about all Romani individuals being thieves. With the support of the ERRC, he has filed a formal complaint against the prosecutor for discriminatory behaviour.

Defence lawyers and access to legal representation

The right of access to a lawyer in criminal proceedings is set out in Article 71 of the Law on Criminal Procedure, which states that any person suspected or accused of a criminal offence has the right to a defence counsel throughout the criminal proceedings against them. The right of access to a lawyer is also provided for in Article 34 of the Law on Police, which states that a defendant's right to defence counsel and representation also extends to police proceedings.

Article 206 of the Law on Criminal Procedure provides that, if a defendant does not have or is unable to contact their own lawyer, they will be able to choose one from a list of lawyers on duty as prepared by the Bar Association. According to interviewed lawyers,⁵⁶ the system by which *ex officio* defence lawyers are appointed does not provide defendants with quality legal assistance because it does not give lawyers sufficient financial incentives to provide a best possible defence.

Whilst studies are less clear on whether discrimination exists in the course of court proceedings, there is evidence to suggest that Romani defendants are disproportionately unable to access effective legal assistance and make use of procedural remedies stipulated in the law. Analysis of North Macedonian court rulings showed that, of the 175 offenders who were of Romani origin, 95 did not have any legal representation at all, 50 had a defence lawyer appointed *ex officio*, and 19 chose their own defence lawyer.⁵⁷ Concerns have been raised over Romani defendants' access to justice due to an increased reliance on legal aid due to a lack of funds to source legal representation independently and an increased need for interpreters and translators in court proceedings. Of the 131 court rulings that provided information on the defendant's social status, the rulings showed that 120 were unemployed while only 11 were employed. None of the court rulings analysed in a report on the status of Romani defendants referred to a Romani language interpreter being secured, which raises questions as to whether the defendants were able to understand the indictments raised against them.⁵⁸

While the Romani respondents interviewed for this research seemed to be somewhat anomalous with these studies, the interviews with the defence lawyers tended to corroborate them.

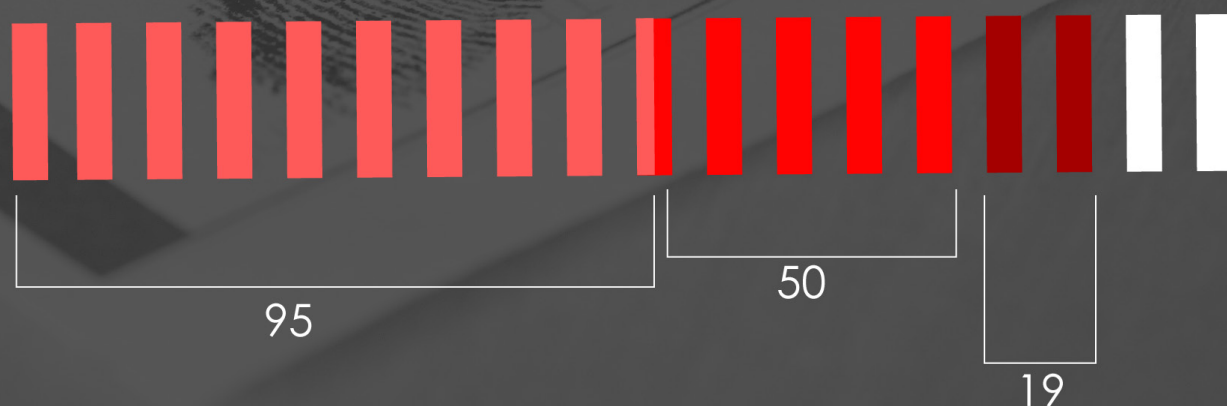
Two thirds of the Romani respondents said that they appointed their own private lawyer for their or their relative's case, with only one saying that they asked for and were given a legal aid lawyer. One other said that they had both a private and a legal aid lawyer whilst another was unrepresented at trial. A number reported receiving a poor or inadequate service from their legal aid lawyers.

⁵⁶ Centre for Legal Research and Analysis and Roma Lawyers Association, *Do Roma Enjoy The Guaranteed Rights? Need to Establish Equality Proceedings of Law Enforcement Authorities*, 2018. Available at: <https://cpia.mk/wp-content/uploads/2021/10/Do-Roma-Enjoy-the-Guaranteed-Rights.pdf>.

⁵⁷ *Ibid*, page 40.

⁵⁸ Centre for Legal Research and Analysis and Roma Lawyers Association, *Analysis of the status of Roma as defendants in criminal proceedings in the Republic of Macedonia*, 2017. Available at: <https://cpia.mk/wp-content/uploads/2021/10/analysis-of-the-status-of-Roma-as-defendants.pdf>.

Analysis of North Macedonian court rulings showed that, of the 175 offenders who were of Romani origin, 95 did not have any legal representation at all, 50 had a defence lawyer appointed ex officio, and 19 chose their own defence lawyer.



“I had both a private lawyer and legal aid lawyer. The private lawyer was good at certain points, but the legal aid lawyer was not good at all. He never tried to help me and was never willing to cooperate with me. We only met each other once. In fact, the prison lawyer was very helpful. He helped me draft and submit complaints.” (Romani Interviewee 5)

Meanwhile, all nine of the defence lawyers said that they thought Roma were generally more likely to require legal aid (and be given a legal aid lawyer), with several suggesting that this was due to poorer education, high levels of illiteracy, socio-economic hardship, and a lack of legal knowledge amongst them. A third also agreed that legal assistance provided through the legal aid system is of a lower quality, with one suggesting that lawyers appointed in this way are less committed to their case than those appointed by their client. Another interviewee suggested that these lawyers do not exhaust all remedies available to ensure a fair and proper legal outcome.

Concerningly, six of the nine lawyers interviewed suggested that some lawyers would prefer not to have Romani clients due to stereotypes and prejudices and the suggestion that they would not pay for the service provided. However, none of them reported ever hearing a colleague making discriminatory remarks about Roma, and while some of the Romani interviewees said that they thought criminal justice professionals were biased against Roma in general, none specifically singled out defence lawyers and none reported experiencing any prejudicial or discriminatory treatment on the part of their lawyers.

Judges

There were some suggestions from Romani respondents that, in their view, judges held anti-Roma prejudices, with two suggesting that judges played a role in their unfair convictions.

One reported that he was convicted for a crime that he did not commit because the court



took into consideration testimonies which were false in spite of the fact that that was the only evidence presented against him. Another reported similarly, stating that he was sentenced on the basis of a statement from an alleged witness and without any other evidence. As such, both came away with feelings that the criminal justice system, and in particular the police and judges, was biased against Romani individuals.

As may be expected, the judges denied that any discrimination existed within the judicial process. None of the 12 judges interviewed said that they had ever heard a colleague make discriminatory anti-Roma remarks, although one mentioned that

earlier in his career, more senior judges had on occasions made discriminatory comments.

“Any prejudices that exist amongst younger judges and prosecutors are either minimal or even non-existent, and it does not affect the decision making at all. [...] At the very beginning of my career, I witnessed senior colleagues making discriminatory remarks very rarely.” (Judge 3)

Criminal justice outcomes

Pre-trial detention

Research has indicated that the number of Roma in pre-trial detention is lower than the number of Roma serving their imprisonment sentences. According to data from 31 December 2015, Roma accounted for 5.6% of all pre-trial detainees, while their share in the prison population was three times higher and accounted for 15.2% of all convicted persons. It has been speculated that the lower share of Roma among detained persons was due to the fact that, in most cases, they tend to commit property offences, which are rarely subject to pre-trial detention.⁵⁹

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5.6%

Roma accounted
of all pre-trial detainees

15.2%

Roma accounted of
all convicted persons

Opinions from the interviews on whether Romani defendants were more likely to be held in pre-trial detention were mixed. Of the nine Romani respondents interviewed, five said that they (or their relatives) had been kept in pre-trial detention before being sentenced. One respondent suggested that the police would threaten Romani suspects with pre-trial detention if they refused to plead guilty to a crime.

“If you refuse to admit guilt, you will end in a pre-trial detention.”
(Romani interviewee 1)

⁵⁹ Centre for Legal Research and Analysis and Roma Lawyers Association, *Analysis of the status of Roma as defendants in criminal proceedings in the Republic of Macedonia*, 2017, p.34. Available at: <https://cpia.mk/wp-content/uploads/2021/10/analysis-of-the-status-of-Roma-as-defendants.pdf>.

Four of the nine defence lawyers interviewed suggested that Roma were more likely to be held in pre-trial detention than their non-Romani counterparts, attributing this to their relative lack of legal knowledge, their inability to hire a defence lawyer, or possibly their inability to secure guarantees. Two attributed it to concerns that the defendant would offend again, demonstrating the court's anti-Roma prejudices in the justice system. Others suggested that Romani defendants were either no more likely to be held in pre-trial detention, or that it depended on the case in question, including whether the defendant was represented by a private defence lawyer or a public legal aid defence lawyer.

The public prosecutors and the judges disagreed that Roma were disproportionately subject to pre-trial detention. All of the five prosecutors suggested that the grounds for authorising pre-trial detention are clearly prescribed and that an individual's ethnicity does not play a role. These include submitting a written motion to a judge, supported by appropriate material evidence, to conduct an investigation into whether pre-trial detention should be ordered. One, however, suggested that Roma may have been disproportionately held in pre-trial detention in the past, but that this has decreased over the last few years as a result of the harmonisation of the North Macedonian judicial system with that of the European courts.

“The grounds for detention are more than clear and they do not differ on the basis of an individual's nationality.” (Prosecutor 4)

Most also disagreed that itinerant lifestyles adopted by certain Roma meant they are more likely to be viewed as a flight risk, although one did suggest that certain aspects of their lifestyle mean that members of Romani communities are brought before judicial authorities more regularly.

“It is not the whole way of life, but the lack of a permanent means of subsistence that means suspects from the Romani community are brought before judicial authorities.” (Prosecutor 5)

“I think that the ghettoisation of Romani communities means that young Roma are more easily influenced, resulting in their more frequent appearance as perpetrators of criminal acts.” (Prosecutor 3)

Nine of the 12 judges interviewed denied that Roma are more likely to be held in pre-trial detention. One of the three that suggested otherwise said that this may be due to their difficulties in securing a legal defence in proceedings. However, they all suggested that they took into account other, more objective criteria as prescribed in the Criminal Code such as the established facts of the case (including the severity of the crime), any supporting evidence, the extent to which the defendant can be considered a flight risk, the defendant's prior convictions, and the defendant's current behaviour and the likelihood that the defendant might repeat offend or obstruct justice.

“[Whether pre-trial detention is ordered] depends on the case in question [...]. The nationality of the defendant does not play a role or it should not play a role.” (Judge 3)

Many of the judges did not give a definitive answer as to whether Roma presented more of a flight risk than their non-Roma counterparts. Nine suggested that they might but they did not provide any reasons why, while three others suggested that they did not.

Plea deals and waiving the right to trial

As was the case for pre-trial detention, opinions on whether Romani defendants were more likely to be offered plea deals and whether such plea deals were affected by the defendant's ethnicity were mixed.

Several of the defence lawyers interviewed thought that Romani defendants were more likely to make a plea deal, citing various reasons such as the lack of supporting evidence apparently brought in trials of Romani people and the fact that plea deals are guaranteed by the law. However, only two thought that plea deals offered to Romani defendants were harsher or stricter than those offered to other defendants. Six lawyers suggested that in most cases, the client has considerable input, noting that their defence lawyer would typically consult them to explain the consequences of a trial or plea deal and negotiate any terms.

“The client has vital input [in the terms of the plea deal] of course. On the other hand, Romani defendants are scared and you need to make a huge effort to convince them of the legitimacy of the plea deal.” (Defence Lawyer 7)

The views of the prosecutors were mixed. Of the five interviewed, two suggested that Romani defendants were more likely to make a plea deal but seemed reluctant to suggest that this was in any way related to ethnicity. One suggested that her aim was always to make a plea deal rather than waste the court's time with a trial. Two others, however, suggested that Roma were more likely to plead guilty at trial rather than make a plea deal because making a plea deal meant hiring a defence lawyer, which not all defendants are able to afford.

“In order to make a plea deal, the defendant will have to hire a defence lawyer, who must take part in the entire process. Since in most cases, a defence lawyer is not mandatory, it will have to be secured by the defendant independently. Often, defendants cannot afford to pay for a defence lawyer themselves, so they are unable to make a plea deal.” (Prosecutor 5)

The underlying theme, however, remained that plea deals were made on the basis of the evidence and facts of the case, taking into account provisions of the Criminal Code which refer to the determination of penalties, rather than the ethnicity of the defendant. All five prosecutors stressed that the plea deal or trial waiver was a standard procedural tool and ethnicity has no bearing on how often they are offered to defendants or how harsh the terms contained are. One, however, suggested that they factor in some of the defendant's circumstances such as their socio-economic status, their families and their health when proposing terms.

“In principle, prosecutors in North Macedonia do not insist on making plea deals as a way to complete proceedings. Such initiatives always come from the defendants.” (Prosecutor 3)

“The [plea] agreement is a procedural too that may be offered to the defendant after all the evidence gathered during the investigation has been presented. [The defendant] knows what they are being accused of, they understand the evidence against them and it is their decision to simplify the criminal proceedings or not.” (Prosecutor 4)

Similarly, of the 12 judges interviewed, only one suggested that Romani defendants are more likely to make a plea deal. A number of others responded that all parties are on equal footing when it comes to making a plea deal. Nine of them thought that the terms of the deals offered to Romani defendants were no different to those offered to non-Romani defendants, while two were unable to provide an answer. Only one thought that the deals offered to Roma were harsher, but unfortunately did not mention any cases to support this understanding. Furthermore, only two judges mentioned the existence of any guidelines when making plea deals, suggesting that the remainder are conducted on a case by case basis.

Sentencing

In 2014, North Macedonia adopted the Law in Determining the Type and Measuring the Severity of Sentences, which aimed to limit judicial discretion and reduce inconsistencies in judicial sentences handed down in the past. At present, the law requires judges to consider, amongst other things, an objective categorisation of the criminal offence committed and the prior criminal history and behaviour of the offender.⁶⁰ Once the court establishes that the defendant has committed the crime beyond reasonable doubt, it calculates a sentence according to the guidelines assessed against all mitigating and aggravating circumstances.

An analysis of court rulings suggest that sentencing is affected by the defendant's ethnicity. This is based on comparisons of sanctions imposed for criminal offences theft and aggravated theft at state level with data provided in the analysed court rulings related to Romani offenders. In some cases, harsher sanctions were the result of the Law on Setting Type and Amount of Criminal Sanctions and Fines against persons who had been previously convicted, irrespective of the gravity of the criminal offence reviewed at trial. However, given their weaker socio-economic position, Roma could be more at risk of prison sentences as a replacement for a financial sanction where they cannot afford to pay and where the law allows.⁶¹

Anecdotal evidence from interviews with the public prosecutors and judges supported this. All five of the interviewed prosecutors denied that ethnicity played a role in the length of sentence an individual was given. They instead take into account criteria such as the individual's status, whether they have any prior convictions, and whether other criminal proceedings are pending against them. As such, one suggested that Roma may receive harsher sentences if they are repeat

⁶⁰ Lazetic Buzarovska, G., Tupanceski, N., & Mujoska, E., “Mandatory Sentencing Guidelines: The Case Of Macedonia”, *European Scientific Journal, ESJ*, 12(22), 87., 2016. Available at: <https://eujournal.org/index.php/esj/article/view/7941>.

⁶¹ Centre for Legal Research and Analysis and Roma Lawyers Association, *Analysis of the status of Roma as defendants in criminal proceedings in the Republic of Macedonia*, 2017. Available at: <https://cpia.mk/wp-content/uploads/2021/10/analysis-of-the-status-of-Roma-as-defendants.pdf>.

offenders. Moreover, of the 12 judges interviewed, nine said that there was no difference in the sentences handed down to Romani defendants compared to defendants of other ethnicities.

“The judge explains every decision in an appealable, written judgment. A sentencing decision is strictly based on law so if a decision deviates from that, it should be subject to appeal.” (Judge 2)

The interviews with the Romani respondents suggested otherwise, but responses were fairly limited and most did not provide specific examples. Seven said that they were aware of cases where non-Romani offenders were given less harsh or shorter sentences for similar crimes or similar sentences for much more serious crimes, suggesting that this was directly related to their Romani ethnicity.

“I know of many non-Romani individuals who received shorter sentences in comparison to the sentence given to our two sons. It is because they are of Romani ethnicity.” (Romani Interviewee 2)

“I am aware of cases where non-Roma who committed harsher crimes got less harsh sentences. For example, an Albanian who killed a man got three years of imprisonment while a Roma who stole wood got two years of imprisonment.” (Romani Interviewee 1)

“I am aware of 30 cases that are similar to mine, all involving non-Roma who were jailed for the same criminal offence (theft) but who only got three years (compared to the respondent’s 11 years). It is only Roma who get harsher or longer sentences.” (Romani Interviewee 5)

Defence lawyers differed on this issue. Out of the nine interviewed, four thought that Roma received harsher sentences than non-Roma, four disagreed, and one other was unable to provide a response. Those that responded in the affirmative attributed this harsher sentencing to inadequate legal representation and prevailing stereotypes about ‘Roma criminality’.

Possible solutions and promising practices

- Training
- Roma representation in the criminal justice system
- Prison reform
- Increased controls on police powers and greater investigation into complaints of abuse
- Ethnic data

Training

Given the number of Article 3 of the European Convention of Human Rights violations levelled at the Republic of North Macedonia, studies have suggested that further training be provided to the police and other institutions where shortfalls have been identified, including mandatory training on human rights and on lawful use of force.⁶²

For the most part, the defence lawyers, public prosecutors, and judges agreed. All nine of the defence lawyers interviewed said that they had received training on discrimination and on anti-discrimination laws in relation to breaches of particular rights, such as the right of free movement and the right to access clean water. Almost all of them recognised the benefits of such training and supported its wider rollout to other criminal justice professionals in the country.

Of the prosecutors interviewed, only two expressly said that they had received training on discrimination, but they both recognised the benefits for raising awareness and trying to curb abuse. Two others said that they would welcome more training sessions in this area, particularly on cyber abuse and the additional protocol for protection against xenophobia and online racism. One, however, said that such training was not required, arguing that the responsibility lay with Romani individuals to adapt to the mainstream society.

“People should be responsible for their own futures and should fight and adapt to society as the rest of us did. No one can help you if you do not help yourself.” (Prosecutor 1)

Finally, of the 12 judges interviewed, eight said that they had attended training courses on discrimination and a number of those suggested that they found the training very useful as a way of raising awareness and acquiring new skills. Four others did not expressly mention attending any training themselves but said that such training would always be well-received.

“Training on discrimination is always welcomed and useful for the development of democratic, unbiased institutions.” (Judge 3)

However, the police themselves suggested otherwise. Only three of the five officers had ever attended training on discrimination, and only two of those thought that such training was necessary. The other argued that such training was obsolete and instead what was required was economic development aimed at educating and supporting the homeless because *“people who are poor and illiterate tend to be the thieves”* (Police Officer 3). The other two officers had not attended any such training but would be happy to attend.

Roma representation in the criminal justice system

A number of studies have identified increased Roma representation in courts and public prosecution offices as a way to level the playing field and reduce anti-Roma discrimination

⁶² Centre for Legal Research and Analysis and Roma Lawyers Association, *Do Roma Enjoy The Guaranteed Rights? Need to Establish Equality Proceedings of Law Enforcement Authorities*, 2018. Available at: <https://cpia.mk/wp-content/uploads/2021/10/Do-Roma-Enjoy-the-Guaranteed-Rights.pdf>.

within the justice system. Analysis by the Centre for Legal Research and Analysis has suggested that scholarships should be awarded to successful students from the Romani community so that they can be educated to become judges, public prosecutors, and legal practitioners employed in managerial positions.⁶³

Prison reform

Studies have shown that prison conditions in North Macedonia are below the minimum required standards. Overcrowding, poor hygiene conditions, lack of medical staff, mixing juvenile prisoners with adult prisoners, and abuse of power by prison guards are just some of the many issues reported at these facilities. As detailed above, an alarming number of Romani respondents for this research by the Centre for Legal Research and Analysis and Roma Lawyers Association reported abuse on the part of prison police and inadequate access to healthcare services. Only one of the respondents reported having any access to educational or training services and none reported having access to rehabilitation services or support during their time in prison. Notably, all of the Romani respondents described the devastating impact that their time in detention had on them and their families.⁶⁴

“Since my son died [in prison], we all got sick. I just do not feel well. Both [my sons] were married [before they went to prison] and their family life has collapsed.” (Romani Interviewee 2)

“Being in prison has destroyed our life. We have families and small children. There is no one out there to help our families.” (Romani Interviewees, Interview 3)

“As a result of my prison sentence, I have developed mental issues. I get nervous very easily.” (Romani Interviewee 5)

“As a result [of my time in prison], I lost my job. I had been employed from 2003-2017, but when I [was released from prison in 2019] and wanted to go back to work, they did not want me because they saw me as a criminal. My wife and child also left me.” (Romani Interviewee 6)

“After my brother died [in prison], my mother was so devastated that she died the following year.” (Romani Interviewee 7)

One study suggests better training for prison guards on applying proportionate and necessary police force at the point that they are recruited and throughout their public service. Additionally, they suggest that prisoners be given more information about how to lodge motions,

⁶³ Centre for Legal Research and Analysis and Roma Lawyers Association, *Do Roma Enjoy The Guaranteed Rights? Need to Establish Equality Proceedings of Law Enforcement Authorities*, 2018. Available at: <https://cpia.mk/wp-content/uploads/2021/10/Do-Roma-Enjoy-the-Guaranteed-Rights.pdf>.

⁶⁴ *Ibid.*

appeals, and complaints against abuse. In order to reduce cases of abuse, adequate protocols should be established and maintained. Written guidelines should be produced on how to deal with prisoners from vulnerable groups, including clear policies on how to accommodate individuals who are at greater risk of violence among prison populations. Additionally, it suggests, further research should be conducted, ideally on a nationwide level, on all cases of excessive use of force or abuse in order to establish whether the sentences issued in these cases were proportionate to the gravity of the alleged offences.

One of the defence lawyers agreed that penal reform was overdue, blaming Roma overrepresentation in the justice system on the lack of measures to rehabilitate and support offenders within the Law of Criminal Procedure.

“The crucial question is ‘where are the key preventative measures?’. This is the biggest problem. Greater efforts are needed to work with these people. Not on a short-term basis or on a case-by-case basis, but rather on a systematic basis to provide of quality support to these people and their families.” (Defence Lawyer 3)

Increased controls on police powers and greater investigation into complaints of abuse

Given the number of complaints of police brutality and abuse of police powers, the system of internal control concerning excessive use of police powers should be strengthened, especially in cases of excessive use of force against Roma by police officers and members of special police units.

One study has questioned the principle of impartial assessment of evidence because prosecution offices and the police were not obliged to follow certain procedures on evidence collection. Instead, their evidence (including their testimonies) was accepted as valid, whereas the complainant’s evidence was rejected on a *a priori* basis. It suggests that the Law on the Police be amended to establish the same protocols for all parties, especially in terms of the standard of review of allegations of torture and other restrictions on human rights.⁶⁵

Ethnic data

Unlike many other countries in Europe, North Macedonia does allow the collection of ethnic data that sheds some light on the degree of ethnic disparities in its criminal justice system. However, there are certain legal restrictions on the collection of ethnic data, including on the police. According to Article 67 of the Law on Police, personal data relating exclusively to certain categories of special data such as racial origin, religious persuasion, sexual behaviour, and political opinion cannot be collected by the police.⁶⁶

⁶⁵ *Ibid.*

⁶⁶ Republic of [North] Macedonia, Ministry of Internal Affairs, *Law on Police* [Република [Северна] Македонија, Министерство за Внатрешни работи, Закон за Полиција], March 2015, Article 67. Available at: <https://www.mvr.gov.mk/Upload/Documents/Zakon%20za%20policija,%20precisten%20tekst%2015.04.2015%20.pdf>.

On the other hand, the police are required to collect and submit other personal data, from which the racial origin or ethnicity of an individual may be determined. Article 125 of the Rules on the Manners of Performing Police Work provides that a criminal complaint submitted by the police to the public prosecutor shall be accompanied by materials such as sketches, photographs, and reports that may be useful for the criminal procedure.⁶⁷ Additionally, Article 127 provides that, where a criminal complaint is filed against a known perpetrator, it should contain a number of categories of personal data relating to the perpetrator, including their name, nationality (meaning ethnicity), and citizenship.⁶⁸ In practice, therefore, the researchers for this study have confirmed that, in practice, case files almost always contain ethnic data and photographs, especially in cases of prison deaths and police brutality.

Six of the nine Romani respondents expressed concerns over the possibility of abuse of ethnic data by police and authorities:

“I am concerned about data collection. They might use it when they look for someone alleged to have committed a criminal offence, as they do in my town.” (Romani Interviewee 1)

“You will be the first on the list for interrogation if there is an alleged robbery.” (Romani Interviewees, Interview 3)

“The police abuse that data. They have a database of Romani people who committed criminal offences and those people are taken to police stations for interrogations whenever there is a report of theft.” (Romani Interviewee 4)

The responses from police officers over concerns about the collection of ethnic data differed according to the ethnicity of the officer asked. The three Romani officers expressed their worry that such data would be misused by law enforcement, while the two non-Romani officers had no such concerns and shared the view that “*such data can help criminal justice professionals*”.

Five of the nine defence lawyers expressed concerns with the collection of ethnic data within the criminal justice system, with one suggesting that this might lead to increased ethnic profiling of Romani individuals and another expressing concerns about political influence in the judiciary more generally. One of the defence lawyers downplayed these concerns on the basis that it could be useful in knowing when a defendant required a translator because they did not have sufficient knowledge of the Macedonian language.

⁶⁷ *A Manual for Conducting Police Work*, [Правилник за Начинот на Вршење на Полициските Работи], 2007, Article 125. Available at: <https://mvr.gov.mk/Upload/Documents/1.Pravilnik%20za%20vršenje%20na%20PS%20149-07.pdf>.

⁶⁸ *Ibid.*, Article 127.

“I am definitely concerned about the collection of data on ethnicity. If there was a robbery of computers, for instance, then the police would have a list of people who had previously committed similar acts and/or were in prison and could take them to the police station for interrogation. In addition, if the police were alerted to the presence of drug dealers, the police could raid individuals who are on their list because there are also Roma who are registered as drug users or drug dealers.” (Defence Lawyer 1)

“I do not see justice professionals having the courage to defend attacks by politicians. I am concerned about the consequences of unreasonable legal solutions, unreasonable acts and the reluctance of justice professionals to make changes.” (Defence Lawyer 3)

Two of the public prosecutors expressed concerns with the collection of ethnic data within the criminal justice system on the basis that it is not necessary to take into account and highlight the ethnicity of a suspect accused of a crime.

“The collection of data on ethnicity is reminiscent of the past when identifying groups in society was crucial. In a society that aspires to be liberal, democratic and civil, I therefore think that the ethnic background of a suspect should not be taken into account.” (Prosecutor 3)

Three others, however, disagreed and suggested that such data may be useful to analyse the number and types of crimes committed by particular groups.

“There would be no reason for concern if ethnic data was collected and analysed to evidence the commission and number of a particular type of crime.” (Prosecutor 5)

Finally, one of the 12 judges expressed concerns that the collection of ethnic data might be misused or result in politically drawn (rather than unscientific) conclusions. One other suggested that the legal and judicial system can already get sufficient data for their purposes from the citizenship. The remaining nine judges did not express any concerns, instead extolling the benefits that such data collection would bring provided it were collected and analysed appropriately.

“In general, I don’t think that there is any cause for concern in collecting data and statistics on the ethnicity of defendants. I think that this could be very useful for research purposes so that things could be improved. I believe that the data must be well organised and put in context, and all aspects of the data being researched should be analysed. One-sided conclusions must be avoided.” (Judge 2)

Conclusion

Romani interviewees in North Macedonia, as in all countries covered by Fair Trials and the ERRRC, expressed their lack of trust in the criminal justice system. Despite denials by judges and prosecutors that ethnic bias had any bearing on the workings of the justice system, Romani interviewees overwhelmingly perceived the system to be unjust. Factors that contribute to the erosion of trust include blatant and widespread ethnic profiling, as well as routine intimidatory, violent and racially abusive behaviour by officers in encounters with Roma. Despite years of recommendations from international bodies, alarming levels of police violence against Roma persist in North Macedonia. As one interviewee put it, Roma are presumed guilty, and described how if there is a theft in the neighbourhood, the police order Romani residents to report to the police station for questioning:

“In the worst-case scenario, if you refuse to plead guilty during the interrogation process, then a police officer will force you to do so by slapping you in the face and beating you and you will end up in pre-trial detention.” (Romani Interviewee 1)

In addition to police violence, another particular concern in North Macedonia is prison conditions. In 2015, UNCAT expressed deep concerns about overcrowding and inhumane treatment of prisoners, and called for an immediate end to the illegitimate use of force against prisoners.⁶⁹ Romani interviewees provided vivid testament to the mistreatment endured by imprisoned family members who had either been sentenced or were being held in remand. Their concerns were shared by the Council of Europe in 2021, following the ad hoc visit by its Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to North Macedonia. The CPT noted that the cramped, unhygienic and decrepit conditions in prisons persisted, and called for concerted action by the relevant authorities to “eliminate various shortcomings which may amount to inhuman and degrading treatment of prisoners.” The CPT found that the situation was further exacerbated by the lack of purposeful activities for remand prisoners who were locked up in their cells for 23 hours per day at Skopje Prisons and who continued to be denied visits by their children.⁷⁰

In 2015 UNCAT ‘remained concerned’ at information regarding the excessive use of force by police officials against Roma. In 2021, the CPT reported that in the course of their visit, as regards police violence, it received once again “numerous allegations of physical ill-treatment of criminal suspects by police officers (such as of slaps, punches, kicks and blows with truncheons or other objects), in the context of apprehension after the person concerned had been

⁶⁹ UN Committee Against Torture, *Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia*, 5 June 2015. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/114/89/PDF/G1511489.pdf?OpenElement>.

⁷⁰ Council of Europe News 2021, *Council of Europe anti-torture Committee publishes report on its 2020 visit to North Macedonia*, 20 July 2021. Available at: <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-its-2020-visit-to-north-macedonia>.

brought under control or inside a police establishment for the purpose of extracting a confession.”⁷¹ The lack of progress on prison conditions and police violence would suggest that mistrust in the justice system is not misplaced. Regrettably, the UNCAT recommendations from 2015 remain just as pertinent today, and if justice is to be dispensed without prejudice or discrimination, the state party, at a minimum, needs to do the following:

- a. Take measures to ensure prompt, thorough and impartial investigations into allegations of torture and ill-treatment by law enforcement officials leading to the prosecution and punishment of those responsible with penalties that are consistent with the gravity of the act committed.
- b. Combat and prevent discriminatory police misconduct by ensuring that all alleged cases of excessive use of force by law enforcement officials against members of the Romani community are promptly and effectively recorded and investigated and, as appropriate, prosecuted and punished, ensuring that the victims are provided with an opportunity to seek redress, including as full a rehabilitation as possible.
- c. Improve the training on human rights of law enforcement officials, particularly police officers, regarding the rights of all citizens and minorities, including Roma, to be free from arbitrary force and ill-treatment;
- d. Provide training programmes for all officials involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment that focus on the State party’s obligations under the Convention. Ensure that all the relevant personnel, including medical personnel, receive specific training on how to identify signs of torture and ill-treatment.⁷² The State party should regularly evaluate the training provided to its law enforcement officials regarding the prevention of torture and ill-treatment, as well as ensure regular and independent monitoring of their conduct.

⁷¹ *Ibid.*

⁷² UN Committee Against Torture, *Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia*, 5 June 2015. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/114/89/PDF/G1511489.pdf?OpenElement>.

