UNCONSCIOUS BIAS AND DISCRIMINATION OF ROMA PEOPLE IN THE CRIMINAL JUSTICE SYSTEM

NATIONAL REPORT

ROMANIA

APADOR-CH

December 2020

Funded by the European Union’s Justice Programme (2014-2020)
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1. Introduction

Evidence at the European level suggests that Roma people are more likely to be drawn into the criminal justice systems of EU Member States than other ethnic groups\(^1\). The EU Framework for National Roma Integration Strategies up to 2020 emphasizes that “Many of the estimated 10-12 million Roma in Europe face prejudice, intolerance, discrimination and social exclusion in their daily lives”\(^2\).

Arrest, detention and conviction are the antithesis of integration into mainstream society. Involvement with the criminal justice system can have negative impacts on people’s health and well being. The existence of criminal records and contact with criminal justice systems reduces access to employment, because those with a criminal record are not able to hold certain jobs and many jobs require background checks, contributing to extreme levels of endemic unemployment on Roma communities. For example, in the EU-MIDIS II study, 77% of Roma aged 16-24 in Spain were not in any form of work, education or training, compared to the national average of 17%\(^3\). Furthermore, when a breadwinner is arrested and detained, the implications for dependents can be enormous – loss of housing, disrupted education and other risks associated with poverty.

The subject of prejudices of criminal justice professionals has not yet been studied in Europe despite the fact that there is growing evidence (particularly from the United States) that unconscious bias in criminal justice actors does have an impact on criminal justice outcomes. For example, a study of the decisions made by the District Attorney of New York’s office, involving an analysis of more than 200,000 cases, demonstrated that where prosecutors exercise discretion, unconscious bias causes differential outcomes based on race and ethnicity\(^4\). The greater the discretion a professional exerts, the greater the risk that unconscious bias will result in unfair outcomes. In every criminal justice system, professionals exercise enormous discretion: they determine whether a person is arrested, detained pre-trial, prosecuted and how a person is sentenced.

Although it is not hard to imagine that social attitudes to Roma people would have an impact on these decisions, to date it has been very hard to encourage criminal justice professionals to recognize this. One reason is the lack of complete data but mostly it is because criminal justice systems are expected to operate (and to appear to operate) in a fair and impartial way. This makes it difficult to encourage criminal justice professionals to accept that unconscious bias may play some part in their decisions as a result and as a consequence, a cause of harmful discrimination against Roma people is being ignored.

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Bias is formed when there is lack of knowledge. Unconscious bias describes “the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner”.

We can be biased and aware of it, therefore control or even fight our biases but we can also be biased and not be aware, which makes fighting bias harder. The present project aims at emphasizing the latter category of bias, which acts at the subconscious level among justice professionals, influencing their decisions without realizing it.

Moreover, even during the interviews with professionals, some explained that they do not consider that their way of operating in a certain situation is discrimination although it falls as such into the definition of discrimination, thus demonstrating that those specialists are not aware of the prejudices with which they operate in connection with the Roma.

Although it may seem a redundant expression, unconscious bias is a dangerous phenomenon because sometimes it can be insinuated, precisely because of its lack of awareness, even in public policies made with the best of intentions.

1.1. About the project: aim and methodology of the research

The general aim of this project was to find out if stereotypes, prejudices and negative attitudes exist in the criminal justice system and, insofar as they exist, if they negatively influence Roma people who come into contact with this system. This analysis aimed to raise awareness among professionals in the field about the risk of prejudice influencing key decisions during criminal proceedings.

This research project was carried out simultaneously in four European countries in cooperation with three other partner non-governmental organizations: Rights International Spain, the Bulgarian Helsinki Committee and the Hungarian Helsinki Committee, under the coordination of Fair Trials International. The common methodology aimed at involving legal professionals (a) in providing information on the risk of discrimination in the criminal justice system, and at the same time (b) by raising their awareness of these risks and involving them in risk mitigation initiatives. The methodology also had in view interviews with Roma people who have had contact with the criminal justice system in various contexts, in order to acquire information on practical problems from their perspective.

The activities conducted during the project consisted of: an internal desk-based research, qualitative interviews with criminal justice professionals and Roma persons and drafting the present country report.

In order to assess the anti-discrimination legal framework, the degree of discrimination faced by the Roma community in general and Roma people who come into contact with the criminal justice system in particular, APADOR-CH carried out an internal theoretical research which implied an analysis of national anti-discrimination legislation and reports, domestic and international studies as well as ECHR case law.

Qualitative interviews were conducted with i) Roma people ii) defense lawyers iii) police iv) prosecutors and v) judges. Interviews aimed to identify the key decisions of the legal professionals that pose the greatest risk of discriminatory outcomes, to gather insights into the risk of discrimination in the criminal justice system and to

http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/
identify possible techniques to prevent discrimination. The questions addressed to them concerned (among others) the interactions between legal professionals and the Roma community, the knowledge of professionals on the phenomenon of discrimination in the criminal justice system, the experiences of Roma people, the collection of data on ethnicity.

As part of the project activities, APADOR-CH contacted professionals in the field of criminal justice, Roma people and people close to the Roma community and invited them to participate to interviews. Thus, the organization conducted interviews with 6 Roma people and with 24 professionals in the field of criminal justice (6 lawyers, 6 judges, 6 prosecutors, 6 police officers) from Bucharest, Cluj, Dâmbovița.

Some of the data included in the report was obtained by means of public information requests made based on Law 544/2001. 7 such FOI requests were made to the following institutions: The National Institute of Magistracy, the Romanian Police, The Ministry of Internal Affairs, the National Administration of Penitentiaries, the National Council for Combating Discrimination, the Superior Council of Magistracy, the Prosecutors’ Office attached to the High Court of Cassation and Justice. Subsequent to carrying out the interviews and before publication, the report was sent to institutions such as The National Institute of Magistracy, The Ministry of Internal Affairs, the National Union of Bar Associations, the National Institute for the Training of Lawyers, to professionals in the criminal justice system and experts, being reviewed and supplemented with the contributions submitted by them.

This national report was drafted based on the statements of the interviewees, the results of the internal desk research and the subsequent contributions of professionals and provides an image on the risk of unconscious prejudice during the criminal proceedings. It also provides practical guidance on how to reduce risks and includes recommendations for the long-term work in this field. This report represents a premiere for Romania and despite its methodological limitations it represents an important point for starting discussions on the discrimination phenomenon against Roma people in the criminal justice system.

The experience of racism is still vehemently denied by the Romanian society, both by the general public and specialized groups alike, as it is the case of professionals in the field of criminal justice. There is still a lack of understanding of the roots, symptoms and impact of latent racism in society as well as a lack of understanding of implicit racism, prejudices and stereotypes that, although natural on a personal level, have no place in the public space when their manifestation during the exercise of public office leads to marginalization, exclusion and violation of rights. There is also a lack of understanding of the experience that the Roma face as a racialized social group. This research sought to capture the way in which prejudices, opinions or hostile feelings towards the Roma ethnic group generate structural, institutional and individual racism in the criminal justice system.

Based on the interviews with Roma activists and lawyers who represented Roma victims as well as from the analysis of societal reactions in cases of racist incidents, APADOR-CH noticed that the attitudes to criticism of latent racism or crass racism take many forms: denial of facts and their impact, challenging criticism as fictitious sensibilities, projecting socially constructed phobias and possibly invoking alleged responsibilities of victims of racism, lack of empathy. In order to prevent possible rejection reactions of the research conclusions as "isolated incidents", "unfortunate formulations", "malicious or activist agreements" and also because the report identifies a complex challenge regarding the generalization of racist attitudes presented as acceptable, APADOR-CH considers that it is important to provide a clear image of the attitudes of the interviewees as they are, in all their gravity, by including in the report some quotes from the interviews.

The use of quotes, including those that include racist and offensive attitudes, can be perceived as a reconfirmation of latent racism in the criminal justice system. However, the aim of this project, and of the whole research
approach, is one of mapping racist prejudices, establishing their causes and highlighting the impact of implicit racism on the Roma who interact with the criminal justice system. By presenting the truth, without paraphrasing, with quotes as they emerge from interviews, APADOR-CH hopes to prevent denial or cosmetic reactions and to generate the necessary dialogue in order to identify measures and policies that should be adopted to prevent discrimination against Roma people whenever they interact with the various relevant actors in criminal justice.

Given the lack of ethnically segregated data, the quotes from the interviews are the main way to provide an authentic picture of the attitudes that Roma face in their interaction with the justice system.

Similar to the entire society, the justice system fails to understand the Roma racialization process in Romania: the experience of slavery and the lack of compensatory measures, the Holocaust- Porajmos and the limited measures to recognize the Roma genocide, the policies of forced assimilation during communism, the instrumentalization of interethnic conflicts, the arson and murders that went unpunished in the early 1990s, the present-day cases of ethnic profiling, the abuses of police or gendarmes against Roma, government policies and decisions that result in Roma segregation in education and housing as well as the forced evictions that target Roma in particular.

The presentation and discussion of stereotypical cultural representations, of the hostile prejudices revealed in the quotes extracted from the interviews, are essential precisely in order to highlight the attitudes based on prejudice, which in turn have the potential to turn into actions based on prejudice, discrimination, offences based on prejudice, genocide.

APADOR-CH would like to emphasize that the conclusions in this report are based on a limited number of interviews, so no general conclusions can be drawn about the current situation at the level of the entire criminal justice system in Romania. The project also implies the analysis of a subtle and intimate phenomenon of human psychology, namely unconscious bias which involves a complex mechanism and procedures to identify it. Nevertheless, the statements made by the legal professionals during the interviews, the information in the reports and the case studies analyzed offer favourable indications for the existence of prejudices in the criminal justice system.

APADOR-CH would like to thank all the Roma persons and the criminal justice professionals (police officers, lawyers, prosecutors and judges) for their contribution in carrying out this research and especially for sharing their insights during the interviews and public consultations.

In the future APADOR-CH plans to involve more ROMA led NGOs in the design and implementation of possible similar projects concerning structural racism. Any endeavour which has consequences for the lives of the Roma people should do the same.

1.2. Brief description of the national laws and policies regarding preventing discrimination and increasing integration of Roma people

Anti-discrimination legislation

Currently, Romania has an anti-discrimination legislative system but no specific legislation on discrimination of Roma people. The Romanian anti-discrimination legislation looks at discrimination more generally, treating its grounds (race, nationality, ethnic origin, language, religion, sex etc.).
The legislative framework for combating discrimination consists of the provisions of the Constitution, the Government Ordinance no. 137/2000 regarding the prevention and sanction of all forms of discrimination (hereinafter the Anti-Discrimination Law), the Criminal Code as well as other domestic laws in diverse fields (outlined below).

The Constitution stipulates that Romania is a democratic and social state and explicitly mentions the principle of equality between its citizens regardless of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin. The Constitution mentions that Romania “recognizes and guarantees the right of persons belonging to national minorities to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity.” Moreover, it directly prohibits any form of discrimination and hate instigation.

The 2014 Criminal Code (CC) prohibits public incitement, by any means, of hatred and discrimination against “a category of individuals”. Motivation related to race, nationality, ethnicity, language, wealth or social origin, where these are considered by the perpetrator as “causing a person’s inferiority as compared to others”, is an aggravating circumstance for all offences provided under the code.

Moreover, the Code stipulates the abuse in office of “the public servant who, while exercising their professional responsibilities, [...] causes damage or violates the legitimate rights or interests of a natural or a legal entity [...] or limits the exercise of a right of a person or creates for the latter a situation of inferiority.”

This is an assimilated version of the abuse of office offence which the legislator felt the need to regulate separately to protect vulnerable groups from non-compliant attitudes of civil servants, thus providing special protection to this category of persons.

The Government Ordinance no. 137/2000 (The Anti-Discrimination Law) transposes into Romanian legislation two European Directives: Directives 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. It defines discrimination as “any difference, exclusion, restriction or preference based on race, nationality, ethnic origin, language, religion, social status, beliefs, gender, sexual orientation, age, disability, chronic disease, HIV positive status, belonging to a disadvantaged group or any other criterion, aiming to or resulting in a restriction or prevention of the equal recognition, use or exercise of human rights and fundamental freedoms in the political, economic, social and cultural field or in any other fields of public life.” By the expression ‘any other criterion’ the law leaves the list open in this matter.

Emergency Ordinance no. 31/2002 provides for the prohibition of fascist, legionary, racist or xenophobic organizations, symbols and deeds and for the promotion of the cult of persons guilty of committing crimes of genocide against humanity and war crimes.

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7 Ibid. art. 6 para. 1
8 Ibid. art. 16 para. 1, art. 30 para. 7
10 CC art. 77 h)
11 CC art. 297
12 Government Ordinance no. 137/2000 regarding the prevention and sanction of all forms of discrimination, art. 2 para. 1
13 Government emergency ordinance no. 31/2002
Besides these, there are several other relevant laws repeating the provisions of the Anti-discrimination Law, prohibiting discrimination in different fields: education system\textsuperscript{14}, labor and unemployment\textsuperscript{15}, audio-visual media\textsuperscript{16}, access to public information\textsuperscript{17}, advertising\textsuperscript{18}, sport events\textsuperscript{19} etc.

\textit{Public policies aimed at preventing discrimination and increasing Roma integration}

\textbf{National strategy for preventing and combating discrimination "Equality, inclusion, diversity" for the period 2018-2022}\textsuperscript{20}

The strategy is still in the draft stage, an issue also identified by the European Commission against Racism and Intolerance (hereinafter “ECRI”) in the 2019 Romania report.\textsuperscript{21} Its objective is to reduce the number of discrimination cases in Romanian society, to promote equal rights and opportunities for all through coherent, integrated and inter-institutional measures and to contribute to the development of an inclusive society in which diversity is appreciated.

\textbf{The national strategy of the Romanian Government for the inclusion of the Romanian citizens belonging to the Roma minority, for the period 2015-2020 (adopted by Government Decision no. 18/2015)}\textsuperscript{22}

The aim of the strategy is the socio-economic inclusion of the Romanian citizens belonging to the Roma minority at a level similar to the rest of the population and ensuring equal opportunities by initiating and implementing public policies and programs in areas such as education, training and employment, housing and small infrastructure, culture and social services. Another goal is to prevent and combat discrimination through integrated projects and programs that address community issues as a whole. At the same time, the strategy aims to involve central and local public authorities, the Roma themselves and civil society in activities aimed at increasing socio-economic inclusion.

However, the efficiency of the strategy is challenged internationally. ECRI highlights its "little impact" in its 2019 report\textsuperscript{23} and the Special Rapporteur’s 2016 report mentions the Government’s ineffectiveness in implementing the strategy: "at the suggestion of the European Union and other international bodies, the Government adopted the Roma Inclusion Strategy in 2015, but showed absolutely no political will to implement it. The strategy is floating in space, disconnected from relevant government policies; there is no clear budget for it, apart from external funds and no ministry or politician wants to take a lead on the issue."\textsuperscript{24}

\textsuperscript{14} Law no. 1/2011 (The National Education Law), art. 2 (4), art 3 i), art. 3 jj), art 50 (3), art. 118 (2)
\textsuperscript{15} Law no. 53/2003 (Labor Code), art. 5, art. 6 (3), 159 (3)
\textsuperscript{16} The Law no. 504/2002 on audio-visual media, art. 29 c), 40; Decision no. 220/2011 of the National Council of the Audio-visual, art. 11, art. 47, art. 48
\textsuperscript{17} Law no. 544 of 12 October 2001 on free access to information of public interest, art. 18 (1)
\textsuperscript{18} Law no.148 / 2000 on advertising, art. 6, art. 23
\textsuperscript{19} Law no. 4/2008 on the prevention and combating of violence during competitions and sports games, art. 36
\textsuperscript{20} Can be accessed at: https://main.components.ro/uploads/1d3a0bf8b95391b825aa56853282d5da/2017/09/Proiect_HG_Strategie_EID_cu_observatii.pdf
\textsuperscript{21} ECRI, Report on Romania, 2019, p. 9, can be accessed at: https://rm.coe.int/fifth-report-on-romania/168094c9e5
\textsuperscript{23} ECRI, Report on Romania, 2019, p. 9, can be accessed at: https://rm.coe.int/fifth-report-on-romania/168094c9e5
\textsuperscript{24} Report of the Special Rapporteur on extreme poverty and human rights on his mission in Romania, UN Human Rights Council, 2016, p. 7, can be accessed at: https://www.refworld.org/docid/576b98224.html

The national institution responsible for implementing the anti-discrimination law is the National Council for Combating Discrimination (hereinafter “CNCD”).\(^\text{26}\) The role of the Council is to implement the principle of equality between citizens provided by the Romanian Constitution, the domestic legislation in force and in the international documents to which Romania is a party.\(^\text{27}\)

The National Agency for Roma (hereinafter “ANR”) is responsible for coordinating public policies for Roma and serves as the secretariat of an inter-ministerial committee for the implementation of the Roma inclusion strategy.\(^\text{28}\)

1.3. Background on the actual situation of Roma people in the country – the size of the Roma community, international reports, ECHR jurisprudence

The size of the Roma community

The only statistical research in Romania which presents information concerning ethnicity is the population and housing census. Registering ethnicity during the 2011 census was done based on the self-identification of persons who participated.\(^\text{29}\) Out of the total of 20.121.641 people at that time, 3.2% declared themselves as Roma.

Police officers and lawyers interviewed during different studies related to Roma people conducted by APADOR-CH claim that the percentage of Roma people as it comes out of the 2011 Census does not reflect the reality. They assume that the number is significantly higher, but Roma people prefer to identify themselves as Romanians or Hungarians.

This is also because in Romania the general rule governing the processing of personal data is the express, unequivocal consent of the person. According to the legislation on personal data protection, processing personal data regarding ethnic or racial origin is prohibited.\(^\text{30}\)

Therefore, there is no official data or statistics on ethnicity collected by authorities, so it is almost impossible to gather quantitative data on the size of the Roma community in Romania.

Reports on Romania issued by international bodies on the topic of marginalization, integration and discrimination

Regarding the situation of the Roma community in Romania, it is well documented that Roma deal with

\(^{25}\) Romania’s fourth national report on the implementation of the Convention, 2016, can be accessed at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680595fbf

\(^{26}\) https://cnnd.ro/

\(^{27}\) The Council was established by Government Decision no. 1194 of November 27, 2001

\(^{28}\) http://www.anr.gov.ro/

\(^{29}\) National Statistical Institute, http://www.recensamantromania.ro/rezultate-2/

\(^{30}\) Regulation no. 679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC (General Data Protection Regulation), can be accessed at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=EN
marginalization and discrimination. At the international level there were several analyses and reports on these
issues.

A very compelling report on discrimination and hate speech in Romania was published by ECRI on the fifth
monitoring cycle (June 2019).31 ECRI points that there are still great issues to be addressed by the Government
regarding the Roma community: “accounts of alleged cases of racial discrimination and misconduct by the police
and racial profiling against Roma in particular continue to be reported. There is still no independent body
entrusted with the investigation of such cases.”32

On the same issues, the European Commission, in the Country Report on Romania of March 2018, highlighted that:
“the Roma face many disadvantages. Compared to the rest of the population, they face a very high inequality of
chances and rates of poverty with a low employment rate, with a low level of training, with a low level of health
insurance coverage and poor living conditions. There is segregation in neighbourhoods, forced evictions and
discrimination at work. Although the specific bodies dealing with the Roma situation demonstrate greater
involvement, their impact depends on the work of the other institutions. Measures targeting Roma inclusion are
mainly supported by projects with external funding. Much of this is just at the beginning.”33

Moreover, the Commissioner for Human Rights of the Council of Europe, in the Report following the visit to
Romania (November 2018), mentioned the violence that Roma women face because of their ethnicity: “(...)..acts of
violence committed against Roma women are routinely ascribed to ‘cultural practices’ specific to their communities
and ignored on that ground.”34

The Fourth Opinion of the Advisory Committee of the CoE Framework Convention for the Protection of National
Minorities published on February 2018 states that: “the existing legislation regulating different aspects of the
protection of national minorities is disjointed, fragmented, full of grey areas and open to contradictory
interpretations. [...] there is a visible perception of the persistence of xenophobia and intolerance especially directed
against the Roma and antagonism towards the Hungarian minority.”35

Nationally, a 2019 research study puts into perspective the level of intolerance (associated with hate speech and
hate crimes) in Romania.36 Although it is not only about Roma people but rather discrimination on general
grounds, the study highlighted “a latent state extremely favourable to discriminatory manifestations”.37 The
citizens and the NGOs interviewed for this study agreed that in the last year the hate speech has intensified and
both categories of interviewees confessed to being witnesses or even victims of discrimination due to intolerance
to alter, regardless of the concrete criterion according to which that discrimination was made.38

Despite these conclusions, the authorities’ passivity regarding this problem is consistent: “from all the information
received from the police, prosecutor’s offices and courts, it appears that in Romania in 2016, 2017 and 2018 there

31 https://rm.coe.int/fifth-report-on-romania/168094c9e5
32 P. 9, https://rm.coe.int/fifth-report-on-romania/168094c9e5
34 P. 21, https://rm.coe.int/report-on-the-visit-to-romania-from-12-to-16-november-2018-by-dunja-mi/1680925d71
35 https://rm.coe.int/fourth-opinion-on-romania-adopted-on-22-june-2017/168078af76
certain forms and expressions of racism and xenophobia by means of criminal law”, can be accessed at:
http://main.components.ro/uploads/1d3a0bf8b95391b835baa56853282d5da/2019/04/_TIPAR_Interior_IPP_Studiu_CNCD.pdf
37 Idem 35, p. 27
38 Idem 35, p. 36
have been dozens of notifications of the repressive authorities of the state regarding the possible committing of hate crimes of which less than half were investigated and just one or two per year resulted in judgments.\textsuperscript{39}

In 2018 The National Council for Combating Discrimination together with the Romanian Institute for Evaluation and Strategy conducted a national survey on the level of discrimination in Romania and actual perceptions on hate crimes. The survey revealed that the fear of difference is manifested in a high level of mistrust especially in homosexuals (74%), Roma (72%), immigrants (69%), Muslims (68%), HIV (58%), persons of other religions (58%), Hungarians (53%) and Jews (46%). 72% of the respondents declared they don't have much trust in the Roma people. Hate crimes against other people motivated by one of the ethnic, race, religion, sexual or political criteria are also present in respondents' perceptions, the most common being verbal aggression (76%), physical aggression (62%), (53%) and infringement or property destruction (52%).\textsuperscript{40}

The phenomenon of discrimination against Roma is still present in Romania. The fear and the intolerance to differences are undeniable realities.

**ECHR jurisprudence concerning the abuses of the Romanian criminal justice authorities against the Roma community**

The entire Romanian society faces stereotypes and prejudices regarding Roma people. Given that these are often learned during early education, it is unlikely that professionals in the criminal justice system will be exempt from them. Of course, there is a long way to go from prejudice to discrimination or racism. However, unconscious prejudice can impact important decisions taken during the criminal proceedings.

A series of ECHR judgments against Romania represent solid indications for the discriminatory attitude within the national criminal justice system. The cases presented below concern Roma people who have been victims of physical abuse by the police, either while they were suspects/defendants during the criminal proceedings or outside an initial criminal context. In the latter case, most often, the abusive attitude of the police occurs as a result of a prejudice they have regarding the perceived criminality of the Roma community. Moreover, this prejudice is often perpetuated in the following phases of the criminal process through the passivity of the judicial bodies in investigating these abuses.

For these reasons, the report will emphasize both cases in which Roma people were involved as suspects/defendants, but also people who did not initially have this quality. In both instances, these people are primarily victims of abuse, and their cases must be pointed out in order to highlight a systemic problem within the system.

The most recent case is Lingurar v. Romania from April 2019 (application no. 48474/14)\textsuperscript{41}. This judgement is extremely important because for the first time in the history of the ECHR the Court establishes that national authorities targeted Roma because of their ethnicity.

The case involved a raid carried out by the police in 2011 on the Roma community in Vâlcele; 85 police officers and

\textsuperscript{39} Idem 35, p. 27

\textsuperscript{40} P. 2, 10, 33, \url{http://www.ires.com.ro/uploads/articole/ires_cncd_discriminarea-in-romania_2018.pdf}

\textsuperscript{41} Lingurar v. Romania, 48474/14, 16 April 2019, can be accessed at: \url{https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-192466%22]}}
gendarmes participated in it. According to the statements of the victims, the police forcibly entered their home in the early hours of 15 December 2011, dragged them out of bed and beat them. The two male family members were further abused in the yard, then taken to the local police station for questioning. They were released the same day with a fine for illegally cutting timber.

In 2012, the family lodged a criminal complaint accusing the law-enforcement authorities of violence. A preliminary investigation concluded that there was insufficient evidence to prosecute the police officers involved. The results of the investigation specify that the male applicants were most likely injured while the police officers used force to immobilize them and the injuries of the female applicants could have been self-inflicted. The prosecutor also noted that most of the inhabitants of Vâlcele were known for breaking the law and for being aggressive towards the police. Both the prosecutor’s office and the courts rejected the applicants’ allegations of systematic police abuse of the Roma community in the area.

The ECHR held that there was a violation of Article 3 (Prohibition of Torture) and 14 (Prohibition of Discrimination). The Court appreciated that the applicants had been targeted because they were Roma and because the authorities had perceived the Roma community in general as prone to committing crimes. Moreover, there wasn’t an efficient investigation of the case. The domestic authorities and courts had dismissed the applicants’ allegations of discrimination without any in-depth analysis.

These violations had been found by the Court in previous judgements against Romania. However, this time the Court’s conclusion was vehemently related to the ethnic profiling.  

Another recent case is Boaca and others v. Romania (2016) in which the Court assessed the police intervention in a dispute between two Roma families as disproportionate. The Court stated that the authorities were under the obligation to investigate a possible causal link between the alleged racist attitudes exhibited by the police officers and the abuse suffered by one of the applicants. The Court concluded that the lack of any apparent investigation into the complaint of discrimination amounted to a violation of Article 14 (Prohibition of Discrimination) read in conjunction with Article 3 (Prohibition of Torture) of the Convention, in its procedural limb.

In the case of Ciorcan and others v. Romania (2015) the Court held that there were violations of Article 2 (Right to Life), Article 3 (Prohibition of Torture) and Article 14 (Prohibition of Discrimination) of the Convention, in its procedural limb (authorities did not sufficiently investigate allegations of discrimination). More than 20 Roma people were injured during a police mission. They were shot, beaten and insulted. A person was almost killed by the police’s abusive actions.

During 2005-2010, the ECHR issued a series of judgments in cases of racially motivated violence against Romanina Roma citizens. Some of them ended in amicable settlements, while in others Romania was condemned for the

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42 Ethnic profiling has been defined as “the use by the police, without objective and reasonable justification, of reasons such as race, color, language, religion, nationality or ethnic origin in control, surveillance or investigation activities.”; ECRI, Recommendation no. 11 on combating racism and discrimination in policing, 2007, can be accessed at: https://rm.coe.int/ecri-general-policy-recommendation-no-11-on-combating-racism-and-racia/16808b5ad
43 Lingurar v. Romania, 48474/14, 16 April 2019, can be accessed at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%222001-159914%22]}
44 Idem
violation of several Convention rights. 46

Among these, a reference case is Cobzaru v. Romania. 47 On July 1997, Mr. Cobzaru was beaten in the police station by police officers and forced to declare that he had been beaten by other people. The prosecutor refused to initiate criminal proceedings in this situation. The Court found a violation of art. 3 of the ECHR (prohibition of torture): the Government could not prove that the injuries suffered by the applicant had not been caused by the police and that the authorities carried out an adequate investigation. The Court also found that the applicant had been denied an effective remedy, therefore the State had violated art. 13 of the Convention. Moreover, the Court noted the discriminatory attitude of the authorities and their passivity in investigating complaints of discrimination, which thus led to the violation of art. 14 (prohibition of discrimination) in conjunction with art. 3. 48

Another case of major importance is Carabulea v. Romania. The applicant made a complaint before the Court following the death of his brother, Gabriel Carabulea, who had been arrested by the police on April 1996 for the alleged crime of robbery. Mr. Gabriel Carabulea was visited by the family on the first day of his arrest and according to the statements he seemed healthy. Later, after being transferred to another police station, his health gradually began to deteriorate. He was hospitalized and he died two weeks later. The Court found that the Government had failed to explain the injuries on his body. Moreover, the Court highlighted the lack of medical care for the suspect who was in a visibly critical condition and also highlighted a number of irregularities during the criminal investigation into his death, concluding that no effective investigation had been carried out in his case. The Court retained the serious and cruel ill-treatment to which Mr. Carabulea was subjected in order to determine him to admit the crime of which he was accused, finding the violation of art. 2 (right to life) and art. 3 (prohibition of torture) and the violation of art. 13 due to the lack of effective domestic remedies regarding the death of the applicant's brother in police custody. In this case, however, the Court did not consider it necessary to rule on art. 14 (prohibition of discrimination). However, there were separate dissenting opinions of the judges on this decision. 49

With regard to cases settled through amicable settlements, the Romanian authorities undertook to adopt a series of general measures aimed at eliminating various forms of discrimination and preventing possible similar conflicts. 50 However, the memorandum of the European Center for Roma Rights on the implementation of the Romanian Government's measures refers to serious delays in these measures, specifying "the inability to act within the set time limits." 51
In 2020, based on its experience with the implementation of ECHR judgments in Romania and taking into consideration the subsequent similar ECHR judgements against Romania, APADOR-CH appreciates that the situation has remained unchanged. The system neither provides for effective protection of Roma people against abuses nor for mechanisms of independent and effective investigations against the police abuses.

2. Legal framework

This chapter represents a short description of the criminal procedure in Romania and aims to outline the general framework for the conduct of the criminal process, with an emphasis on its main moments.

Police activity

The first contact of the suspect/defendant with the criminal justice system is through the police. The policeman’s rights and obligations are stipulated in the Law no. 218/2002 on the organization and functioning of the Romanian Police. The procedures are detailed by Order no. 643/2005 of the General Inspector of the Romanian Police (IGPR) which approves the Handbook of Good Practice for Intervention for the Public Order Police Officer.52

According to the aforementioned law, the police officer is entitled to the following actions: to establish the identity of persons who violate legal provisions or where there are clues that they are preparing or they committed an illegal act53, to carry out checks on persons and luggage as well as on vehicles in circulation when there are good clues that indicate offences or possible terrorist acts and to carry out controls and raids when there are strong clues of committed offences, hidden offenders or hidden goods resulting from offences or possible terrorist acts.

According to the Constitution54 and the Criminal Procedure Code (CPC), police have the right to deprive a person of liberty for a maximum of 24 hours. This implies the existence of a criminal file. The police officer must issue a detention order on the person’s name.55 In the case of arrest warrants, they can only be issued by the judge for up to 30 days, and the police officer has the obligation to enforce them (to seek, to pick up and hand over the person to the pre-trial detention center).56

A measure similar to police arrest is the administrative measure of leading someone to the police station. For this administrative measure is not needed a detention order or an arrest warrant.57 The measure can be ordered by

52 This handbook was made public following the lawsuit won by APADOR-CH against IGPR, available in Romanian at: https://www.apador.org/wp-content/uploads/2017/12/manual-practici-politie.pdf
53 The law provides that there has to be clues. In the handbook (footnote 66) they specify that there has to be data and clues e.g. more than just suspicions.
54 The Constitution of Romania, art. 23
56 CPC art. 230
57 Prior to January 2020, this measure was criticized by APADOR-CH due to the arbitrary manner in which it was implemented by the police, as the measure did not have clear and detailed rules, including on the rights of the person being deprived of liberty. The most illustrative example of such an abuse is the case of Gabriel-Daniel Dumitrache who died in March 2014 in a police station in Bucharest after having been “administratively led” in order to be legitimized and beaten up so severely until he died. For more details see APADOR-CH, Report on the case of Gabriel-Daniel Dumitrache, who died in the garage building of Police Section 10, at 15 Stelea Spătaru Street, available at: https://apador.org/en/raport-asupra-cazului-gabriel-daniel-dumitrache-decedat-in-incinta-garajelor-sectiei-10-politie/. For many years, APADOR-CH has made recommendations and advocated for the change of the Police law so that the measure of “administrative leading to the police station” contains all the procedural safeguards of the EU Directives. All recommendations except one were adopted by the Ministry of Internal Affairs. On 26 January 2020 the most recent amendments of Law no. 218/2002 regarding the organization and functioning of the Romanian Police came into force. The new changes provide a detailed regulation of the legal regime of the administrative measure of leading someone to the police station. These new regulations substantially reduce the abuse risk and explicitly regulate the rights of the person but unfortunately they no longer provide a maximum duration of the administrative measure. APADOR-CH has started to advocate for reintroducing a maximum time limit for this measure by asking the Ombudsman to
the police officer for a person that committed a misdemeanor or for a suspect before the start of any criminal proceedings. Thus it can be applied with or without an existing criminal case.

In investigating and deciding to prosecute a case there is a relationship and division of responsibilities between the police and prosecutor’s office.

According to the law, the decision to initiate the criminal investigation, in rem or in personam, is taken by a police officer (usually) or a prosecutor (when it is an offence required to be carried out by a prosecutor).58

The commencement of the criminal prosecution and the continuation of the criminal prosecution in personam are set, each by an ordinance. If issued by the police, the ordinance must be confirmed by the prosecutor, within 3 days from the issue. The Criminal Investigation Ordinance is the moment when the criminal investigation begins in a case (criminal file). Initially, the investigation is carried out on the facts regarding which the criminal investigation begins in a case (criminal file). Initially, the investigation is carried out on the facts regarding which the police/prosecutor’s office has been notified (the notification is made through a complaint/denunciation or, for some more serious offences, on the prosecutor’s initiative).

The investigation is carried out at first in relation to the facts (in rem) even if the author is known or indicated in the notification document. If the in rem (about the facts) investigation leads to a reasonable suspicion that a person has committed an offence, that person becomes a suspect and the investigation will continue (in personam).

Once the investigation advances and gathers more evidence, the suspect becomes the defendant. The person against whom the criminal action was initiated becomes part of the criminal trial and is called the defendant.59 After the criminal investigation has begun, the criminal investigation bodies have the obligation to collect and administer the evidence, both in favour of and against the suspect or defendant.60

The criminal action is set into motion by the prosecutor, through an Ordinance, during the criminal investigation, when he finds evidence that there is a person who has committed an offence and there are no reasons for the closure of the case (the act does not exist, the act is not provided by the criminal law, the act is not proven, the liability is prescribed, there is a justifiable or non-punishable cause, amnesty/pardon intervened, lack of a legal condition, the complaint was withdrawn or the parties reconciled, there is a cause of impunity or there was a transfer of proceedings with another state.61

It is possible for a person to become a suspect but not acquire the status of a defendant if the case has been closed due to one of the reasons mentioned above.

Decisions to stop the investigation (closure of the case) or to continue the investigation (set into motion the criminal action) or to refer the case to the court are taken only by the prosecutor at the police’s proposal. So, as a rule, the police proposes and the prosecutor is the one who orders. But, in practice, the prosecutor may order a measure without waiting for a police proposal (the prosecutor is the one who conducts the criminal prosecution, raise an issue of constitutionality before the Constitutional Court in relation to this aspect. In April 2020, after analyzing the unconstitutionality critiques formulated by the organization, the Ombudsman notified the Constitutional Court.

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58 CPC art. 305 para. 2 and 3
59 CPC art. 82
60 CPC art. 306 (3)
61 CPC art. 16
he can assist in carrying out any criminal investigation or perform it personally). 62

A person has the right to a lawyer as soon as he/she becomes a suspect. 63

In practice, the qualification of a suspect or defendant is communicated to the person by the criminal prosecution body (police/prosecutor) through a written report that also sets out the rights stipulated in the CPC, including the right to be assisted by a lawyer. From this moment on the person can exercise his right to be assisted by a lawyer during any criminal proceedings.

The person can hire a private lawyer, in which case he will pay the lawyers’ fee. When legal assistance is mandatory (for example where the person is: a minor person, detained, arrested, vulnerable etc.) and the person has not chosen a lawyer, the judicial body (police, prosecutor or, as the case may be, judge) will appoint a legal aid lawyer, whose fee is paid by the state to assist that person. 64 The legal aid lawyer is appointed by legal aid service of the bar association (not chosen by the party or by the police, prosecutor or judge), based on the criteria established by the bar. His payment is made by order of the judge, from a special fund of the Ministry of Justice.

The presence of the defendant’s lawyer is mandatory during the pre-trial detention procedure. 65

The lawyer has a very important role in plea bargains: legal assistance is mandatory upon the conclusion of the agreement. 66

During the criminal investigation, the preliminary chamber proceedings 67 and during the trial, the lawyer has the right to consult the documents of the file, to assist the defendant, to exercise his procedural rights, to make complaints, requests, memos, exceptions and objections. 68 The lawyer for the defendant is entitled to have the time and facilities necessary to prepare and achieve an effective defence. He can challenge any element of the opposition and invoke any element favourable to the defendant.

The judge’s role 69

The judge will decide on the existence of the offence, the guilt of the defendant, the punishment, the establishment of the educational or security measure (if necessary), the deduction of the duration of the liberty depriving preventive measures and of the medical hospitalization.

The judge shall also rule on the compensation for the damage caused by the offence, on preventive and pre-trial measures, on evidence, on judicial expenses and on any other issues concerning the fairness of the case so that any guilty person is liable according to his guilt and no innocent person is held criminally liable. 70

Also, the judge, based on the intimate conviction he/she forms following the assessment of the evidence, has the

62 CPC art. 300 (3)
63 CPC art. 10
64 CPC art. 90
65 CPC art. 225
66 CPC art. 480 (2)
67 The preliminary chamber procedure is a stage in the criminal trial in which the judge verifies the legality of notifying the court, as well as the legality of the administration of evidence or of the acts performed by the criminal investigation authorities.
68 CPC art. 92 para. 7 and 8
69 CPC art. 393
70 CPC art 393
possibility to give a solution of conviction, waiver or postponement of the sentence application, acquittal or termination of the trial.\textsuperscript{71}

**Pretrial detention procedure**\textsuperscript{72}

The pre-trial detention may be ordered only against the defendant and the cases are expressly provided by law.\textsuperscript{73} For example it can be ordered when a defendant escapes or absconds with the aim to escape criminal investigations or trial. Pre-trial detention may also be ordered for offences of a higher gravity when on the basis of the assessment of the gravity of the deed, the manner and circumstances of committing the offence, the entourage and environment of the defendant, the criminal history and other circumstances related to the person, or it is found that his deprivation of liberty is necessary to remove danger posed to public order.

During the criminal investigation, the prosecutor, if he believes that the requirements set by law are met, will prepare a justified request for the taking of a pre-trial detention measure against a defendant, by indicating the legal basis for it. The request, together with the case file, shall be submitted to the judge for rights and liberties of the court that would have the competence to rule on the case in first instance or of the court of the same level within the territorial jurisdiction of the venue where the defendant is held in custody, the venue where the committed offence was ascertained or the premises of the prosecutors’ office to which the prosecutor having prepared the proposal is located.

Pre-trial arrest order may be issued by the judge for rights and liberties, during the criminal investigation, by the preliminary chamber judge, in preliminary chamber procedure, or by the court where the case is pending, during the trial, only if the evidence generates a reasonable suspicion that the defendant committed an offence and only under the conditions provided by the CPC.\textsuperscript{74}

The rights and liberties judge sets a date for the hearing of the defendant. The legal assistance of the defendant is mandatory\textsuperscript{75}. After informing the defendant of the offence and his rights, the judge hears the attending defendant on the act of which he is accused of and on the grounds on which the pre-trial detention proposal filed by the prosecutor is based. If the judge considers that the conditions provided by the law are met, admits the prosecutor’s proposal and orders the defendant’s pre-trial detention, through a reasoned statement.

A defendant’s pretrial detention may be ordered for a maximum of 30 days initially. It can be extended depending on the investigation stage. If the judge decides that the requirements set by law for the pre-trial detention of a defendant are not met, he/she will deny the prosecutor’s request, through a reasoned court resolution, and order either the release of the defendant held in custody or a milder measure such as house arrest or judicial control.

It should be noted that the measure of pre-trial detention is a last resort measure. The criminal law also provides for other preventive measures that are less harsh, for example: judicial control, judicial control on bail and house arrest.\textsuperscript{76} There is also the possibility that the preventive measure to be changed or revoked along the proceedings, as part of the periodic reassessment carried out by the court.

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\textsuperscript{71} CPC art. 396
\textsuperscript{72} CPC art. 223-240
\textsuperscript{73} CPC art. 223
\textsuperscript{74} CPC art. 223
\textsuperscript{75} CPC art. 225
\textsuperscript{76} CPC art. 202 (4).
3. Policing decisions

This chapter considers a brief overview of the background on how institutionalized racism and unconscious or conscious bias can play into policing decisions and summarizes relevant findings of domestic and international bodies and ECtHR judgments regarding Romania. It also presents conclusions of interviews with police officers, and conclusions of interviews with Roma on how the latter perceive the police.

The police are the closest authority to the society in situations of crisis as it have the competence to ensure public order and are the first to intervene in an offence. The police are the first authority a suspect comes into contact with at the beginning of an investigation.

The activity of the police is regulated by national law and internal procedures as was detailed in the previous chapter. However, law and people are not perfect. Law can be subject to interpretation and people to unconscious stereotypes. Moreover, sometimes the law has gaps leaving room for biased interpretation.

The practical situations that are most likely to generate police abuse are those involving stop and search activities, identification, body/home search, raids and administrative measures of leading someone to the police station as police officers benefit from a greater margin of appreciation and the applicable rules are not expressly provided in public regulations. Rather, these are police practices and tactics that are sometimes regulated by secret orders. These activities have the highest risk of ethnic profiling.

During the criminal proceedings, the police as a criminal investigation body have the capacity to decide to initiate criminal proceedings and to conduct criminal investigations.

While conducting police hearing monitoring for the Inside Police Custody project, the APADOR-CH representatives observed some of the problems that Roma people deal with during the criminal investigations.

For example, in one of the cases that involved a Roma suspect, APADOR-CH representatives observed how the “consultation” with the lawyer consisted of just a short exchange of remarks. The suspect asked if he would be detained for 24 hours and the legal representative replied “if the police officer says so, you should trust him.” The police officer leading the hearing emphasised that “indeed, your offence is not so serious, but we must take a preventive measure; moreover, you have a criminal record and the objective of your arrest is to prevent future offences”. It should be added that the conditions of the hearing were totally inappropriate; the suspect was drunk and very agitated. Moreover, he was not informed about his right to remain silent; rather he was just handed a paper containing his rights.

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77 APADOR-CH, “Inside Police Custody”, available at: https://www.apador.org/wp-content/uploads/2017/03/IPC-eng.pdf. The project’s objective was to measure the practical operation of suspects’ rights at the investigative stage and to use this evidence to conduct national advocacy directed at improving respect for those rights in practice. The project consisted of four major elements: desk reviews; empirical research; analysis and report writing; and national advocacy. The novelty of the project were the direct observations of the researchers in the police stations that were conducted in order to understand the implementation of suspects’ rights from multiple perspectives and to gain a deeper insight into practical influences and constraints upon working practices.
Another problem arises when the law does not automatically require the presence of a lawyer. In the criminal investigation phase, legal aid is mandatory in certain situations expressly provided by law: when the suspect or defendant is a minor, detained in a detention center or in an educational center, when he/she is deprived of liberty or arrested (even in another case), when the safety measure of medical hospitalization has been ordered for him/her (even in another case), or in case the judicial body considers that the suspect or the defendant cannot defend himself.

In practice, this situation in which a person cannot defend herself is interpreted in a non-unitary and unpredictable manner. This is very problematic for suspects or defendants who, for various reasons, cannot defend themselves without the assistance a lawyer.

This practice was encountered by APADOR-CH representatives during the police hearings they attended as part of the Inside Police Custody project. In one case, the suspect was an illiterate Roma person who did not have a lawyer. The judicial body assessed that the suspect, although illiterate, can defend himself, so there was no case of mandatory legal assistance. It is true that the law gives the judicial body the right to assess whether or not the suspect or the defendant can defend himself/herself but this right must be exercised reasonably, in the sense that when there are clear indications that a person cannot defend himself/herself, measures for the appointment of a legal aid lawyer must be immediately taken. In this case, the suspect’s rights were listed orally, but it was not clear whether he understood them. He was asked if he wanted to give a statement, with the police officer adding that he could benefit from a more lenient sentence if he recognized his guilt. Although the suspect was in a visibly vulnerable position (declared HIV positive, very tired, and incoherent), he gave a statement of recognition which he signed with great difficulty. Although the police officer could have appointed a legal aid lawyer he failed to do so.

At the international level, the discrimination of Roma in the criminal justice system was condemned by the international bodies on various occasions.

In the Report following his visit to Romania, The Commissioner for Human Rights of the Council of Europe noted that “Roma are confronted at present mainly with institutionalized racism combined with excessive use of force by law-enforcement authorities”. He recommended an appropriate and constant training system for legal professionals in order to develop their abilities to recognise, investigate and sanction the offences based on racist grounds.

In the Second survey regarding minorities in the European Union and discrimination against Roma (EU-MIDIS II) from December 2017, the EU Agency for Fundamental Rights analysed the perception of ethnic minorities towards the police and the conclusion was that most of the respondents that were stopped by the police in the five years prior to the survey had the perception that this happened due to their immigrant or ethnic minority background.

According to the EU Agency for Fundamental Rights, “although Romania collects all offences in a designated database where police officers must highlight the aggravating circumstance, there are no designated procedures for recording hate crimes. Therefore, the offences committed, motivated by prejudice, cannot be identified through
the system. Moreover, the police department responsible for producing offence statistics does not separate hate crimes.\textsuperscript{81}

In the concluding observations to the fifth periodic report of Romania in December 2017, the UN Human Rights Committee discussed the racially motivated incidents against the Roma population and the allegations of police abuse amounting to ill-treatment, especially targeted against Roma and requested the state to strengthen its measures to prevent such incidents and to offer the victims effective remedies.\textsuperscript{82}

The gravity of the situation is indisputable considering also the high number of ECHR judgments against Romania on grounds of ethnic discrimination of the Roma community, but also on the physical abuse of the authorities on ethnic grounds.\textsuperscript{83}

A notorious case that was previously mentioned and that needs to be detailed is that of Gabriel-Daniel Dumitrache who died after having been beaten up severely at Police Station no. 10.\textsuperscript{84} On 4 March 2014, Gabriel-Daniel Dumitrache, aka “Dinte” (Tooth), aged 26, living in district 3 in Bucharest without an official address, left the house he shared with his mother and many other family members around 7 p.m., on his way to work, in Unirii neighbourhood. Daniel was Roma and he earned his living parking cars. On the same night, several policemen showed up at his mother’s house and asked for Daniels’s ID card. About 20 minutes after the policemen left with Daniel’s birth certificate, the police announced to his family that he was dead. According to the Romanian Police, following this tragic case, disciplinary and administrative measures of an organisational measure were taken in order to prevent such incidents in the future.\textsuperscript{85} Exceptionally, in 2016, the Bucharest Court of Appeal sentenced the policeman who caused his death to seven years in prison.\textsuperscript{86}

This case was also mentioned in the Report of the Special Rapporteur on extreme poverty and human rights on his mission to Romania,\textsuperscript{87} in which the Rapporteur emphasises his deep concern about the allegations of police abuse, especially against Roma. The report mentions that many of the parking men that were interviewed complained about being victims of police harassment and physical abuses. They declared that police officers have the task to “clean” the city of informal workers, turning a social issue requiring economic and social solutions into a police matter.

The Special Rapporteur insisted that one of the solutions would be setting up an effective and responsive complaints mechanism adding that “many Roma victims of violence to whom the Special Rapporteur spoke said that filing a complaint would be both burdensome and futile. A victim complainant is first required to obtain a medical report from the National Forensic Institute. But there are few laboratories of the Institute in Romania and only one in Bucharest. Even if complaints are filed, they are unlikely to lead to the sanctioning of perpetrators. Non-

\textsuperscript{83} For the ECHR jurisprudence, please refer to subchapter 1.3 of the report
\textsuperscript{85} Romanian Police reply from 22.06.2020 to the request for public information addressed by APADOR-CH
\textsuperscript{86} https://spynews.ro/actualitate/deci-judetul-din-alest-cei-mai-mediatis-cesare-are-abuz-al-politiei-101097.html
\textsuperscript{87} P. 8-9, https://www.refworld.org/docid/576b98224.html
governmental organizations have reported that, between 2012 and 2014, 3,034 complaints were submitted to the Office of the Prosecutor alleging abusive behaviour by the police. Only 14 of those complaints led to prosecution and in only 4 cases were police officers convicted for abusive behaviour. It may well be, as a senior police officer informed the Special Rapporteur, that the allegations of abuse are exaggerated, but the extent of the problem is clearly much more dramatic than officials were prepared to acknowledge.\(^{88}\)

This recommendation is also found in the ECRI report “the authorities should define and prohibit racial profiling in the law and provide for a body that is independent of the police and the judiciary, entrusted with the investigation of alleged cases of racial discrimination and misconduct by the police.”\(^{89}\)

Finally, the Special Rapporteur concludes rather pessimistically: "a system made deliberately complex and intimidating that yields a successful prosecution rate of 0.13 per cent of all complaints clearly needs to be fixed. The combination of persistent and credible allegations, a lack of the most basic procedures to deter abuse and an ineffectual complaints system underscores the urgent need to introduce stricter rules, provide vastly more transparent figures, undertake regular reporting and establish a meaningful complaints procedure. There is nothing peculiar about police violence, which is a universal problem. What is peculiar about the Romanian situation is that the rules that currently apply could be seen as a charter for harassment. The system includes characteristics that make abuse easy and ensure that accountability will be the rare exception rather than the norm.”

A relatively recent event has caused outrage among the community during the Covid19 crisis, showing that police abuses continues to be a reality. In April 2020, the commander of the Bolintin Vale police station was caught in a video recording assaulting a Roma citizen.\(^{90}\) Although the authorities initially announced measures and investigations into the offence of abusive behaviour, further media reports show that nothing has actually changed and the Bolintin Vale police chief has never been dismissed.\(^{91}\) In this case too, one can notice the effect of an inefficient mechanism for holding abusive police officers responsible for their acts.

Similarly, in 2015, APADOR-CH reported on the situation of the Roma people from the Racos village which had been repeatedly assaulted and beaten by police officers for several years prior to the visit. As a consequence of the police abuse, the community experienced continued fear and terror.\(^{92}\) APADOR-CH’s report was mentioned by the U.S. Department of State in the 2018 Human Rights Report\(^{93}\) and due to subsequent media pressure there was a criminal investigation initiated against the local police officers. Some of them have been convicted by a court of law.

In this context, in the presence of serious and repeated cases of physical abuse on the Roma community\(^{94}\), a reasonable suspicion is raised against the police, of unconscious prejudice that goes as far as discrimination. In

\(^{88}\) Idem 16.
\(^{94}\) For more detailed jurisprudence see Subchapter 1.2
criminal proceedings, these prejudices can result in impartial results for the suspect/defendant or at least in proceedings that are difficult for him/her.

Interviews with police officers

Police officers are not immune to stereotypes. The ECHR judgments previously discussed serve as evidence of this widespread issue. The majority of the police officers that were interviewed admitted they have stereotypes and unfortunately, sometimes, it is very hard not to give in to these prejudices when they make decisions.

One police officer declared that this happens because 80% of persons that are deprived of liberty in the police station he works in are Roma. Based on this experience it comes very naturally for him to suspect a Roma person at first glance. Most of the police officers estimated the presence of Roma people that are detained or in pre-trial detention somewhere between 30-50%.

However, this information is not to be taken at face value. There is no reliable data available concerning the number of the Roma population in Romania and the ethnic Roma detained in prisons and police lockups more specifically. As already mentioned, data collection on ethnicity is prohibited by the law.

Police officers admitted that in their activities of stop and search or when asking a person to show them an ID card on the street that physical appearance is important in their decision: “behaviour, aesthetic aspect, suspicion of committing a criminal act (here we are guided by operational data, sources, and signals), aggression, and disturbance of public order. If he avoids eye contact or he is agitated. There are specifications in internal procedures in this regard but we also guide ourselves based on our intuition, professional experience. After a while you start to know people. Also, the appearance of the eyes is important for drug users, if they have dilated pills.”

Stopping and searching Roma on the street is not considered discrimination by some police officers: “yes, it is possible for sure that some police officers decide to stop a person because he/she appears to be a Roma regardless of her/his behaviour. I’m telling you this because we precisely do this for polls and in these unwritten polls of the Police I can tell you that 80% of the people prone to offences are Roma. However, this is available only for the stopping, intercepting and identifying procedure. It doesn’t matter if it’s day or late in the night... for these situations it is a certainty that the Roma are more likely to be stopped by the police. [...] Speaking about the administrative measure of leading a person to the police station, it can surely be done based on his colour or ethnicity. First it begins with a stop and ID check, but the administrative measure also needs more other conditions to be met (e.g. he refuses to give his ID, he has an illegal object etc.). Usually the police officers have some districts under supervision and they know the persons. If there is a new person in the area they can ask him for an ID card and what does he do over there.”

Besides physical appearance other aspects also weigh in the decision to stop a Roma. For example one police officer declared that he would stop a Roma young person that drives an expensive car.

95 According to interview with police officer no. 2, Bucharest, 06.08.2019
96 “I worked for a while in a department that gave me the opportunity to go through all the stations in Bucharest and there are Roma everywhere. I think 30-40%.” - According to interview with police officer no. 5, Bucharest, 14.02.2020
97 According to interview with police officer no. 3, Bucharest, 08.01.2020
98 According to interview with police officer no. 2, Bucharest, 06.08.2019
99 According to interview with police officer no. 3, Bucharest, 08.01.2020
In unanimity, police officers have declared that Roma people are most of the time committing petty offences like theft (cars, bicycles) and robbery (phones, gold accessories). They also engage in conflict between members of the same group, emphasizing that the tendency is to repeat these types of offences. Without any existing data on this subject, these generalisations can also be a sign of the prejudices of the professionals that can only perpetuate the stereotypes and therefore influencing their decisions.

Concerning the fact that Roma people are more likely to be deprived of their liberty, police officers didn’t agree: “I do not agree that Roma people are more likely to be deprived of their liberty. They are more prone to offences. If a Roma walks quietly on the street, nobody will tell him anything. And if a Romanian breaks something do you think I do nothing? NO. I really don’t like that anyone can think so far. [...] We are not during Ghe. Ghe. Dej’s time anymore for you to do this. They have so many rights now and it is good to be this way. There is a lot of evidence to be taken into consideration before arresting him.” One police officer stated that deprivation of liberty has nothing to do with ethnicity but rather it is a consequence of them not being integrated into society and that they survive by committing offences.

Asked to what extent it is possible that police practice is responsible for the perceived overrepresentation of Roma people in the criminal justice system, one police officer answered that this is due exclusively to Roma persons “here we get into a more social aspect. I do not know if it has to do with the police. It’s not the police who put them there because they don’t like them. They get there based on evidence. Not because the policeman wanted, he got there because there was his place, that he does not have a job, he does not like to work. It is true that they are discriminated against and they are not employed, but there is also a lack of responsibility from them, they are waiting for something from the state. Police practices have nothing to do with it.”

While there is no statistics available to give us a truthful account of the reality, this police officer’s view seems to reflect many problematic policies and attitudes pointed about by international bodies, including stereotyping. When they occur, arbitrary policing decisions about who and what to prosecute and punish reflect structural racism. Policing should not be used in order to solve social problems, rather, the government should find solutions to solve underlying social inequities.

In relation to the failure of the Roma people to understand how the system works, the police officers think that they don’t trust the criminal justice system because they don’t understand it and because they don’t understand the gravity of their act and they are victimising themselves: “maybe because they don’t know the justice system and because there are many taken to the section ‘for nothing’, as they say, even if it is a theft or another offence. We often hear the phrase ‘But what did I do, did I kill someone? I stole a couple of products, I wanted to pay them’; ’immediately after committing the crime and when they are caught, they want to reach an agreement with the victim, who most often does not want it and says that they were taken by the police in vain.’

None of the police officers were aware of the phenomenon of “ethnic profiling” and measures to combat it although in reality they all practice it. Conversely, one police officer declared that there is a pressure in the system to have as many people as possible on the daily report: “there is this demand for quantity and not for quality. It’s
not good to have only a few people on the report. We also feel bad when we see that others have more than us. **"**

While this practice is certainly applicable to non-Roma people as well, given that informal police statistics highlight a high number of Roma in the police stations, **"**it is safe to assume that the number of Roma people present in these reports is higher compared to the number of non-Roma or other ethnicities. **"**

**Interviews with Roma about police officers**

All the roma persons that were interviewed confessed that many times they felt discriminated against by the society in general: “when you see someone addressing you as if you were a nobody, it hurts. Generally, when it comes from friends, closer persons. Especially people with money, boastful, when they see a Roma person they call him crow, gypsy. I also had these kind[s] of persons in school. I have been called this way many times and maybe I still am, but I try not to give importance to them." **"**

These attitudes have become the norm, there is nothing extraordinary about being discriminated against. **"**

In relation to the police, the physical and verbal aggression is not new to them. Some Roma persons declared that they were picked up from the street, put down on the ground and beaten with the cane. At the police station, police officers tried to bribe them with cigars in order to make them admit the offences. **"**One Roma person stated “they use spray, they curse us. They use tear gas. The investigators also beat me and if I touch them I am accused of assault. Yet they don’t get punished." **"**

While they agreed that many of the abuses of police officers come from stereotypes on ground of ethnicity, they also emphasized those abuses are also a consequence of not knowing their rights: “this is how police treats people without education, people who do not know their rights, and allow them to have this attitude. The police are clearly biased. When I was with a cousin who was being investigated and we were waiting in the yard, a policeman came and told us to get out of the yard (although there were others in the yard), that if we did not go out he gives my cousin a higher punishment. He believed we were so stupid." **"**

All those interviewed declared that they don’t trust the criminal justice system in Romania, perceiving it as an instrument which further enhances their marginalization: “I suspect that those working in the justice system have prejudices just like any Romanian citizen. Prejudice means that they look at Roma with ethnic superiority, that Roma are guilty from the start. For example, if you talk to Roma from underprivileged communities they will tell you that if they stole a chicken they were convicted, while the Romanians were not convicted. There are dramatic cases, for example in a small town in Valcea; Roma women were arrested for taking electricity from the pillars, having children at home. Yes, it is theft, but they took electricity from the pillars because the town hall who owns those buildings, did not offer electricity in the buildings. There is this isolation that pushes them to commit these offences, because of the social marginalization and thus the prejudices that the Roma people steal are strengthened. This is why it is believed that any Gypsy is a thief.” **"**

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**106 According to interview with police officer no. 6, Bucharest, 03.03.2020**

**107 According to interviews with police officers**

**108 According to interview with Roma person no. 4, Cluj, 14.08.2019**

**109 According to interview with Roma person no. 3, Bucharest, 06.09.2019**

**110 According to interview with Roma person no. 1, Cluj, 27.09.2019**

**111 According to interview with Roma person no. 1, Cluj, 27.09.2019**

**112 According to interview with Roma person no. 5, Bucharest, 03.09.2019**

**113 According to interview with Roma person no. 3, Bucharest, 06.09.2019**
National initiatives to tackle discrimination in police practice and their results

According to the answers of the General Police Inspectorate of Romania (IGPR) to APADOR-CH’s requests for public information, both within the Police Schools and later, within the continuous professional training, there are modules, courses and projects dedicated to the phenomenon of discrimination.

Thus, starting in 2017, the students of the Schools of police officers as well as the newly recruited police officers who followed initial training programs in the Training Centers of the Ministry of Internal Affairs and the Romanian Police took classes related to hate speech offences.

In 2019, a training course on “Police and Roma - Effective and Human Rights-Compliant Policing” was organized in collaboration with the OSCE Office for Democratic Institution and Human Rights, with the participation of 14 police officers.114

A series of projects were carried out in partnerships with national and international bodies: a) trainings for 80 police officers regarding hate crimes, b) Romani language and culture courses for 320 police officers, and c) sessions training for police school students and police officers in the field of human rights law, ECHR case law, interethnic relations and conflict management.115

According to the Romanian Police, within the Center for Training and Development of Police Officers, 25 seminars dedicated to introductory courses in the field of Romani Language and Culture have been organized since 2013 and 540 police officers from the security and public order structures participated in these training activities.116

Moreover, annually, a number of places are distributed for Romanian citizens of Roma ethnicity at the schools of police officers and officers from the Ministry of Internal Affairs structures. In the last four years 170 places have been provided and established for this purpose.117 At the admission session of January 2020 at the police schools in Câmpina and Cluj-Napoca, a total of 25 places were made available for Roma, which were fully occupied. In some international projects carried out by the Ministry of Interior, training seminars were held for young Roma who expressed their interest in participating in the entrance exam to the police school (20 Roma). These projects also aimed to raise the awareness of the Roma about the rights they have.118

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114 Romanian Police reply to APADOR-CH’s request of information from 29.05.2020
115 Romanian Police reply to APADOR-CH’s request of information from 22.06.2020
116 Romanian Police reply to APADOR-CH’s request of information from 29.05.2020
117 Romanian Police reply to APADOR-CH’s request of information from 29.05.2020
118 Romanian Police reply to APADOR-CH’s request of information from 22.06.2020
4. Defence Lawyers

This chapter deals with the national and EU legal framework on access to legal representation and legal aid and the essential role of a lawyer in protecting the right to a fair trial. It also addresses the subject of legal aid and presents the results of interviews with lawyers and Roma on issues of providing and receiving legal aid.

Access to a lawyer is one of the key procedural rights in a fair trial. In its jurisprudence, the ECHR has also emphasized the importance of access to legal representation in facilitating other procedural rights.\(^{119}\)

At the international level access to a lawyer is stipulated in Article 6 para. 3 ECHR among the five procedural rights of the suspect/defendant in criminal proceedings and in Article 48 para. 2 of the Charter of Fundamental Rights. Directive 2013/48/EU that was adopted on 22 October 2013 also establishes the minimum rules on the rights of suspected or accused persons in criminal proceedings to: (i) access a lawyer; (ii) to have a third party informed upon deprivation of liberty; and (iii) to communicate with the consular authorities while deprived of liberty.

The right to legal aid assistance is also regulated by the Directive (EU) 2016/1919 which establishes the minimum rules on the right to legal aid for suspects and accused persons in criminal proceedings and for persons subject to an European arrest warrant.

In Romania, as it was previously detailed in Chapter 2 of this report, a person has the right to a lawyer as soon as he becomes a suspect.\(^ {120}\)

Legal assistance in criminal proceedings is mandatory in the following cases: a) the suspect or accused person is a minor; b) the suspect or accused person is admitted to a detention or educational center; c) the suspect or accused person is under police arrest or in pre-trial detention (deprived of liberty); d) the suspect or accused person is placed under medical hospitalization; d) if the judicial body (police officer, prosecutor, judge) considers that the suspect or defendant cannot defend himself (it should be emphasized that from the moment the judicial body considers that the suspect or defendant cannot defend himself, legal assistance becomes mandatory, not optional); e) the suspect or accused person is undertaking the preliminary chamber procedure or the trial, in cases for which the law provides a sentence which is bigger than five years for that offence\(^ {121}\); and f) any other cases provided by the law.

The national legal aid system is organised and managed by the local bar associations. Each bar association in the country has a list of legal aid lawyers, appoints legal aid lawyers and oversees the quality of services provided. When a request is made to the bar association for legal aid, the bar will appoint a lawyer based on their availability. Bar associations have a list of lawyers who have signed up for providing legal aid. If the suspect or accused person needs a legal aid lawyer during the criminal proceedings, the police or the prosecutor makes a request to the local bar association. In court, when legal assistance is mandatory the judge will take all necessary

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\(^{119}\) Salduz v. Turkey, 36391/02, 27 November 2008, para. 54, [https://hudoc.echr.coe.int/eng#{%22itemid%22:[%222001-89893%22]] ; Jalloh v. Germany, 54810/00, 11 July 2006, para. 100, [https://hudoc.echr.coe.int/eng#{%22itemid%22:[%222001-76307%22]]

\(^{120}\) CPC art. 10, [https://www.legislationline.org/download/id/5896/file/Romania_CPC_am2014_EN.pdf]

\(^{121}\) CPC Art. 90
measure to appoint a legal aid lawyer.  

In relation to implementation of the right in practice, APADOR-CH conducted various studies regarding the legal assistance in the criminal justice system, mainly in relation to the European Directives on the procedural rights of the suspects/defendants. The findings of these reports show that the quality of the legal aid assistance is very much affected by external factors but also due to the lack of professional expertise of the lawyers.

One of the judges interviewed in this project confirmed the existence of a practice reported by APADOR-CH in the past, namely the non-observance by some police officers of the random system of appointing a legal aid lawyer. The judge stated that “sometimes the defendant’s statement is already written when the lawyer arrives. That’s because the police have a list of lawyers on duty at night or on weekends. And they choose a lawyer from there who is younger and in need of money. The police do the job in the absence of the lawyer, he comes and, knowing that he will be called to such hearings, is silent and signs what is already written.”

The quality of legal aid is directly linked to the low level of fees. In 2019 the fee was increased though a protocol signed between the Ministry of Justice and the National Union of the Romanian Bars. Whilst the legal aid fee has been increased it is too soon to assess how this has impacted the quality of representation in the everyday practice. In addition, significant problems remain: judges have the tendency to disregard the protocol and to censor the fee.

Other problems regarding access to effective legal assistance include the short time for lawyers to prepare the case (especially in view of police arrest and pre-trial detention) and the lack of training or specialization for legal aid lawyers. As previously underlined in other APADOR-CH reports, most of the time the legal assistance in the police hearings are just a formality.

**Interviews with defence lawyers**

Most of them declared that almost 70% of their clients are Roma persons. Nonetheless, some of the lawyers declared that lately, themselves and other colleagues have refused to have Roma clients stating some “inappropriate behaviour” or the assumption of an impossibility to pay the fee. Some lawyers simply do not want to take cases for low-level offenses because they aren’t profitable and suggest Roma are often charged with such offences: “there are lawyers who prefer litigation that is more profitable than this category of petty offences committed by Roma, where the fees are also small.” In other cases, lawyers seem to have their own unfounded biases and stereotypes about Roma: they mix their concerns over profit with vague references to assumptions about Roma: “Others avoid them because they do not trust that Roma families will pay the fee; others are really
afraid of the Roma. It is intimidating to see yourself surrounded by ten people in the office ... Some make you understand that if they are not acquitted they will chase you afterwards. I had a colleague who had such a situation. It is unknown if this claim is based in fact; generally the statement suggests general bias.

Moreover, some lawyers refuse to assist Roma people because they said it was time consuming to explain complex legal information. Yet, attorneys have a duty to their clients, including to explain the proceedings as for many people charged in the criminal legal system, proceedings can be confusing, especially without guidance. “yes, I was one of those lawyers and I think I still am, because no matter what the judgement is, they do not understand much of what is happening in the trial. I had clients in criminal and civil cases, I won their cases and they continued to call me to ask me, because they did not understand what they had won. [...] The possibility of communicating with them is restricted. [...] They do not understand the procedural part. It’s harder with them than with a regular client.”

Regarding the attitude of the police towards Roma clients, the lawyers confirmed that police officers tend to behave in a more negative way compared to other suspects/defendants mostly because of their familiarity with repeated offenders. Lawyers say that this attitude tends to be present at the very early stages of the police intervention, as the police officers tend to overuse administrative measures (stops, controls, searches, fetters) when it comes to Roma persons. They also stated that police attitude is also influenced by the criminal record of the person, Roma or not.

Most of the lawyers considered that the Roma persons are more likely to be placed in pre-trial detention because most of the time they are caught in the act and they already have a criminal record.

Most of the lawyers also do not believe that the overrepresentation of Roma in the criminal justice system is related to discriminatory decisions of the justice professionals but rather because of their lack of integration. Same with the other interviewed professionals, they also state that Roma commit more petty offenses which suggests that generalisation and stereotyping is also present at this level.

On the other hand, one lawyer emphasised that that overrepresentation is also a consequence of prejudices: “the reason for putting them in pre-trial detention is that they have no guarantees, they have no home, nowhere to stay in order to be checked by the police. In the motivation, the prosecutor will not write this, instead he will write that he is a danger to the public order. I have clients [of other ethnicities] who have committed more serious offences and they have not been arrested.” Obviously, the fact that a person doesn’t have a home should not be a sufficient reason to assume they will not show up in court as this would lead to discriminatory outcomes.

**Roma people tend not to benefit from the presumption of innocence from the criminal justice system:** “I did not hear anybody doubt that a Roma person was not guilty. It’s hard to say whether or not they are guilty. If you have a
Roma client the chances of winning are lower, and people are surprised that you make an effort to defend him. The judge doesn't even look at the file.\textsuperscript{137}

Several of the interviewed lawyers confessed that they heard negative expressions from their colleagues regarding Roma and one of them even witnessed hate speech.\textsuperscript{138}

One of the lawyers said that the discrimination of Roma persons is not an issue anymore in Romania, there are only isolated cases and the training would be more useful for the Roma persons: “I think there are too many discussions about this issue, this is why Romania has so many ECHR’ judgements. Maybe there are still some cases, but it cannot be generalized. In this regard Romania really goes on the right path.”\textsuperscript{139}

Relating to the legal aid assistance, the lawyers that were interviewed appreciated its quality as satisfactory, with the amendment that there is room for improvement.

However, most of the Roma persons interviewed declared they were unhappy with their legal aid lawyer. They claimed that the legal aid lawyer was just a formality, in most cases he didn’t say much and he didn’t explain them the procedure. They emphasized that legal aid lawyers don’t put the same efforts as the paid ones. None of them felt that this attitude was due to the fact they were Roma, rather, it was more about their general lack of interest: “there are some lawyers who have mercy and they help you, but there are some who don’t care. […] Some show interest, the ones that have a conscience, but there are others who are interested only to get your money. It is not easy to pay a lawyer. I practically go to work just for that, because I know how important it is to have a lawyer, otherwise you are in the lion’s cage. There is no presumption of innocence, here you are automatically guilty.”\textsuperscript{140}

\textsuperscript{137} According to interview with lawyer no. 4, Cluj, 14.08.2019  
\textsuperscript{138} According to interview with lawyer no. 4, Cluj, 14.08.2019  
\textsuperscript{139} According to interview with lawyer no. 1, Cluj, 27.09.2019  
\textsuperscript{140} According to interview with Roma person no. 4, Cluj, 14.08.2019
5. Prosecutors

This chapter identifies moments during the criminal proceedings when the prosecutors' prejudices could influence their decisions, presents ECHR judgments on the matter and the results of interviews with prosecutors and with Roma people.

The prosecutor's role is stipulated in the CPC. The criminal action is set into motion by the prosecutor, through an Ordinance, during the criminal prosecution, when he finds evidence that there is a person who has committed an offence and there are no reasons for the closure of the case.

The prosecutor has the obligation to take all the measures in order to appoint a legal aid lawyer if he appreciates that the suspect/defendant can't defend himself. This subjective margin of appreciation may be a vulnerable moment when the prosecutor can manifest potential prejudice in his decision making.

Moreover, the prosecutor has the right to propose pre-trial detention if he concludes that the requirements established by law are met.

After the criminal prosecution has begun, the criminal investigation bodies have the obligation to collect and administer the evidence, both in favour and against the suspect or defendant. Therefore, according to the system of the national CPC, during the criminal trial the prosecutor has the obligation to find evidence for defending the suspect/defendant, not just for his accusation. However, not all judicial bodies interpret the law in the same way: "I remember telling a judicial police officer that he was obliged to administer evidence both for and against the accused person and he told me that if there was such an article in the criminal procedure code he would eat it. After I indicated the provision he said that in fact it is interpreted in the sense that if the defendant requests the administration of evidence in his favour, then the criminal investigation body might admit them."

Another decision that can affect in a negative or positive way a suspect/defendant is the decision to sign a plea bargain. In the case of plea bargain, the prosecutor may negotiate with the defendant the amount of the punishment and the manner of execution. The limits of the negotiation that may be made by the prosecutor in the case are determined by the hierarchical prosecutor (the prosecutor's chief) by the prior and written opinion he gives. The plea bargain is a useful and still unknown tool for defendants. However, in practice it is not very frequently used. Prosecutors interviewed in this project admitted that it is not so useful for them and it implies a much more complicated procedure than charging someone and taking them before a Court.

Moreover, the prosecutor has the power to decide to waive the prosecution. This has the effect of extinguishing the criminal action (the criminal investigation stops). It is ordered through the ordinance by a prosecutor. The

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141 CPC art. 3 (4), art. 7 (1-3), art. 55 (1-3), art. 56 (1-2)
142 CPC art. 309
143 CPC art. 90
144 CPC art. 306 (3)
145 Interview with lawyer (consultation phase), 06.06.2020
146 CPC art. 478 (4) provides that the limits of signing the plea bargain are established by the prior and written notice of the hierarchically superior prosecutor
147 CPC art. 314, art. 318
prosecutor's ordinance is subject to two control filters: a verification of the hierarchically superior prosecutor (the head of the prosecutor's case) who may refuse the ordinance if it considers that it is not legal or solid. Following this, the ordinance is mandatory subject to the confirmation of a judge (preliminary chamber judge).

In the case of Cobzaru v. Romania, the prosecutor's discriminatory attitude is emphasized by the ECHR: "The Court notes that the prosecutors' biased remarks on the applicant's Roma origin reveals a generally discriminatory attitude on the part of the authorities, which strengthened the applicant's belief that any remedy in his case was purely illusory." 148

Also in the Lingurar v. Romania judgement149 the Court concluded that the prosecutor was in fact taking part in ethnic profiling, emphasizing that the authorities extended to the whole community the criminal behaviour of a few of its members on the sole ground of their common ethnic origin. 150

Despite the clear proof of violence and abuse, the prosecutor decided there was not enough evidence to institute proceedings against the police officers. The first domestic court decided that a new investigation is needed. This "new" investigation was done under the supervision of the same prosecutor who decided there is no need to prosecute as all the indications of the Court had been covered. Similar to other ECHR cases against Romania, the Court noted again the failure of the Romanian state to effectively investigate the abuses and allegations of discrimination. 151

Interviews with prosecutors

The interviewed prosecutors estimated that 20-50% of the cases involve Roma suspects/defendants. It mostly depends on the court they belong to. The prosecutors that are ascribed to courts of first instance have more Roma than the other higher ranking courts because these courts have the competence to rule over petty offences.

Most of the prosecutors interviewed pointed out that the offences that Roma people are accused of are usually minor and non-violent and that they are prone to illegal acts "because of their social environment." Some of the prosecutors mentioned that for the Roma people committing offences represents a "lifestyle"152 and also stated that they heard colleagues speak in a discriminatory manner against Roma people. 153 These statements obviously reflect bias at the prosecutorial level as well.

Regarding the police practices, most of the prosecutors agreed that police officers can discriminate against the Roma “because the police have a predominantly operative activity. If the policeman met with many Roma offenders, the preconception is born. There are some psychological mechanisms that are not necessarily related to the bad faith of the policeman." 154

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148 Para. 100, https://hudoc.echr.coe.int/eng/#%22itemid%22:[%222001-81904%22]
149 https://hudoc.echr.coe.int/eng/#%22itemid%22:[%222001-192466%22]
150 Para. 75, https://hudoc.echr.coe.int/eng/#%22itemid%22:[%222001-192466%22]
151 For more details see Section 1.3
152 According to interview with prosecutor no. 1, Bucharest, 04.10.2019; according to interview with prosecutor no. 3, Ghergani, 07.10.2019
153 According to interview with prosecutor no. 1, Bucharest, 04.10.2019, according to interview with prosecutor no. 2, Cluj, 26.09.2019
154 According to interview with prosecutor no. 2, Cluj, 26.09.2019
When asked about their practices related to Roma persons, all interviewed prosecutors disagreed with the fact that there might be acting in a discriminating manner arguing that every decision has to be motivated by evidence: “even if at an intimate level you may have a certain prejudice and you tend to see a Roma guilty of an offence, this cannot be translated into a legal decision if you do not have evidence.”\(^{155}\)

The interviewed prosecutors also disagreed with the fact that the measure of pre-trial detention is ordered predominantly for the Roma people although they do agree that the presence of informal housing can be a criterion when taking this decision: “yes, it is possible that the lack of a formal housing can be taken into account, both by the prosecutor and by the judge, because this instability can make him move to another city and you can’t continue the investigation. Or, for example, if he is not employed with legal forms, the judge when evaluating all the criteria can think for example that he does not remove him from the labor field and he will not be affected on this plan by the measure. So it really matters, yes.”\(^{156}\)

Regarding the fact that they receive greater sentences, one prosecutor explained that it is true because most of the time they repeat the offences so the punishment gets more serious with each new offence: “It also depends on the current sanctioning system. They initially perpetrate theft, when they perpetrate more they become multi-offenders and the penalties grow. Even if the offences are petty, through recidivism you can reach higher levels than serious offences. It is a problem of the system; it is not related to ethnicity. You can say that because they steal a lot they get into jail most of the time, but it is not a matter of ethnicity. I had an attempted murder with a punishment of 3 and a half years with all the circumstances and a qualified theft of a Roma with a sentence of 6 years, because it had been the fourth time. They accumulate petty offences and it is normal at first impression to say that there are more [Roma] in prisons.”\(^{157}\)

Similar to the lawyers’ opinion, the prosecutors that were interviewed believe that Roma persons don’t trust the Romanian criminal justice system because they don’t understand it and because there would be a conflict of values between communities.

**Interviews with Roma about prosecutors**

The interviewed Roma people emphasized their reluctance towards prosecutors. They unanimously complained that most of the prosecutors are preoccupied in chasing after accusatory evidence instead of finding the truth. Most of them believe that they receive greater sentences than the other persons that are not Roma: “the prosecutors are some kind of a God. When a gypsy appears before God, he goes to prison.”\(^{158}\)

\(^{155}\) According to interview with prosecutor no. 6, Cluj, 26.09.2019

\(^{156}\) According to interview with prosecutor no. 3, Ghergani, 07.10.2019

\(^{157}\) According to interview with prosecutor no. 4, Cluj, 27.09.2019

\(^{158}\) According to interview with Roma person no. 3, Bucharest, 06.09.2019
6. Judges

This chapter identifies key moments during the criminal proceedings when judges’ prejudices could influence their decisions, presents ECHR judgments on the matter and the results of interviews with judges and Roma people as well as anti-discrimination initiatives of relevant authorities in the field.

The intimate, personal belief of the judge is the objective opinion formed as a result of a complex process of legislative and evidentiary analysis and interpretation. In his assessment process, the judge considers objective criteria provided by law, but also subjective criteria. The age and experience of the judge play a role as well as court customs and the judge’s position towards the conduct of the perpetrator. All these factors may influence the formation of his/her belief.

As in the case of other judicial bodies, the judge has the right, but also the obligation, to appoint a legal aid lawyer if he considers that the suspect/defendant cannot defend himself\textsuperscript{159}, an assessment that may leave room for possible prejudices.

Regarding the decision of pre-trial detention, according to the law, this measure is taken under certain conditions, and for some crimes the degree of social danger of the offender, his environment, his entourage are taken into account, among other criteria. It is true that the law imposes a number of conditions to be met, however, the judge also has a margin of appreciation that can be influenced by possible prejudices\textsuperscript{160}.

Establishing a sentence is also a moment when any prejudice could cause the judge to tend towards the maximum sentence. However, according to consultations with some judges, the criminal law is currently much more restrictive, it strictly settles the manner of applying the sentence, so that the judge’s margin of appreciation is much restricted and the decisions are in any case subject to control by the possibility of their appeal\textsuperscript{161}.

From a research carried out by APADOR-CH in 2016 on the use of pre-trial detention resulted another problematic aspect emerged from the practice, namely that when deciding to order pre-trial detention, judges rely more on the prosecution’s arguments and less on the arguments of the lawyers. In the course of the national research, 19 hearings were observed, 67 case-files analysed, 23 defence lawyers surveyed, and 6 judges and 2 prosecutors interviewed. 65.2% of the lawyers who participated in the survey believe that the defence’s and the prosecution’s submissions are not treated equally during pre-trial decisions, the latter being favoured by the courts. This is confirmed by the case-file analysis: in 98.5 % of the cases the judges’ reasoning relied mainly on the arguments of the prosecution. In regard to court hearings monitoring at the Bucharest Tribunal, the lawyer’s arguments did not influence the outcome of the decision (which was detention) in 79.9% of the cases.\textsuperscript{162} However, the judges that were consulted disagreed and mentioned that they decide the arrest depending on what is in the criminal file at that time.\textsuperscript{163}

\textsuperscript{159} CPC art. 90
\textsuperscript{160} CPC art. 223(2)
\textsuperscript{161} Online consultation with judges, 16 June 2020
\textsuperscript{163} Online consultation with judges, 16 June 2020
Regarding the ECHR jurisprudence, in Lingurar v. Romania the domestic Court of Appeal dismissed the applicants’ complaint as unfounded because “the explanations offered by the prosecutor as to the cause of injuries were plausible and the police officers had not used excessive force”. Moreover, the court also considered that the applicants had an obligation to identify the alleged perpetrators. Lastly, the court noted that the investigations had not been influenced by the fact that the applicants were Roma.

For this reasons, ECHR stated that domestic courts failed in proving the proportionality of police officers’ intervention and to ask for further investigations considering the obvious evidence of ethnic profiling: “in this context, the mere fact that in the present case stereotypes about “Roma behaviour” feature in the authorities’ assessment of the situation, may give rise to suspicions of discrimination based on ethnic grounds. Such suspicions, coupled with the modalities of the intervention of 15 December 2011, should have prompted the authorities to take all possible steps to investigate whether or not discrimination may have played a role in the events. However, the applicants’ allegations of discrimination against and criminalization of the Roma community have been dismissed by the domestic authorities and courts without any in-depth analysis of all the relevant circumstances of the case.”

Moreover, in the case of Moldovan v. Romania (no. 2), the Court upheld the court’s discriminatory remarks in the reasoning of the criminal sentence, which repeatedly referred to the criminal conduct of the Roma community from Hădăreni.

Last but not least, all ECHR cases in which Romania was condemned for violating art. 14 (prohibition of discrimination) in conjunction with art. 3 (prohibition of torture) concerning Roma applicants were due to the fact that the authorities failed to conduct an effective investigation into the racist abuses suffered by the applicants. The Court considered that this passivity represents a violation of art. 14 under the procedural limb.

Interviews with judges

Asked if they can estimate the number of Roma people who come in for trial, judges stated that they have Roma persons at every hearing (which takes place every two or three weeks). One judge said that 1 of 4-5 suspects/defendants is Roma.

Asked about the police practices based on the stereotypes on Roma persons, most of the judges refused to give a clear response in lack of data, mentioning that: “they cannot be very elegant, this is their work in the end, in the streets, and sometimes you cannot claim a policeman to behave like a magistrate. For him the time is limited and when he gets a thread if he goes with politeness and diplomacy he cannot collect the evidence. Sometimes getting angry or threatening helps him get evidence. I don’t encourage that, but it’s a reality.”

Regarding the overrepresentation of Roma persons in the criminal justice system, most of the judges also argued that this is a consequence of “the poor environment”. Moreover, some judges see “this criminal behaviour” as a

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164 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%222001-192466%22]}
165 Para. 80, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%222001-192466%22]}
166 Para. 107 d), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%222001-69670%22]}
167 For more details see Subchapter 1.3
168 According to interview with judge no. 2, Cluj, 27.09.2019
169 According to interview with judge no. 2, Cluj, 27.09.2019
“lifestyle that they learn growing up in a harmful environment”.  

Most of the judges agreed that pre-trial detention measure has clearly stipulated criteria and it cannot be ordered without evidence just based on the ethnicity of the person. Some judges confirmed that the lack of formal housing can be an important aspect, it is an analyzed criterion, but it is not a condition. The lack of formal housing is taken into account regardless of whether the person is Roma or not. Some interviewed judges believe that Roma are more likely to repeat crimes and, as a result, more likely to be deprived of their liberty. They say that this has nothing to do with their ethnicity, but rather with the environment that puts them in these situations: “in the case of the Roma, I think that criminal records are a criterion, if the lack of a job is added, it means that he will commit such acts again - so I arrest him. A non-Roma, if he promises to get a job, I would be tempted to favour him. If a person without education commits an offence - what is the chance of rehabilitation? If he has no job, if he also has a criminal history, you tend to think that if you leave him free he will surely return. The environment predisposes him, not necessarily the ethnicity.” Giving the benefit of the doubt to people who are not Roma suggests Roma have worse outcomes solely because of their identity.

However, one of the judges appreciated that the good faith of the judge is important in applying and interpreting the law and that they do have a range of appreciation that can be subject to bias: “each judge rules the case by referring to each specific and individual case. Yes, this means that a beautiful motivation can cover an existing prejudice, so we have to rely on the good faith of the judge.”

When asked about why they think that Roma don’t trust the criminal justice system they said that they are not very well informed and they also have the tendency to consider themselves victims of the system: “they don’t trust us because they don’t know much about justice. They are not informed, they understand that justice means only police, that they are arrested, beaten or whatever. They perceive justice as something repressive, not protective. But this is difficult even for the non-Roma person to understand.” On the other hand one judge declared that compared with the police and prosecutor’s office the situation is better in Courts because of the transparent procedure.

The generalisation is also present among judges. They also concluded that the lack of education makes Roma more prone to illegal acts. One judge shockingly recommended military program for Roma persons after prison: ‘Roma are poorer people or at least what I have met and the prisons’ facilities are better than their homes’. It is very important that once they are released from prison they will be socialized, eventually the boys would follow a mandatory military program for a period, a kind of disciplinary battalion with the possibility of remaining in the army. Because it’s hard to get a job after prison.”

However, one of the judges needed to add that things are nevertheless getting better: “things started to change in 2004-2005 and then after 2007, when many Roma left Romania and their cases were stifled. Then the non-

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170 According to interview with judge no. 1, Bucharest, 25.10.2019, judge no. 3, Bucharest, 24.09.2019, judge no. 4, Bucharest, 25.10.2019, no. 5, Bucharest, 01.10.2019, judge no. 6, Bucharest , 01.10.2019
171 According to interview with judge no. 2, Cluj, 27.09.2019
172 According to interview with judge no. 1, Bucharest, 25.10.2019
173 According to interview with judge no. 2, Cluj, 27.10.2019
174 According to interview with judge no. 1, Bucharest, 25.10.2019
175 According to interview with judge no. 3, Bucharest, 24.09.2019
discrimination debates also helped. [...] Yes, we also have this prejudice as magistrates, it is natural. Probably due to our majority of white culture: when you see a Roma you think this one has definitely done something wrong. It is important how resistant we are to prejudice. 15-20 years ago the Roma were taking greater punishments, the trials were shorter, the judges were angry with them. [...] Today I had a cause with a fight between Romanians and Roma, nobody used the word ‘Gypsy’. So even the language has changed. A witness said they spoke in their own language, a foreign language.”

Interviews with Roma about judges

The interviewed Roma persons tend to prefer judges to prosecutors and police officers, considering that they are more balanced and understanding of their situation.

National initiatives for tackling discrimination in the criminal justice system and their results

According to the response of the National Institute of Magistracy (INM) to APADOR-CH’s request, the initial professional training must include courses on ethnic issues such as "the role of magistrates in cultural diversity" and "combating discrimination". These include practical cases and ECHR case law. Within the ECHR course, a seminar is dedicated exclusively to art. 14 (right to non-discrimination).

Within the continuous professional training for magistrates, the national Institute for Magistracy concluded a collaboration with Anti-Discrimination body in Romania starting with 2016 for the annual organization of conferences and seminars in the field of discrimination: 1 seminar in 2017 (15 years of non-discrimination in Romania, Jurisprudence and evolutions), 3 seminars in 2018 Combating discrimination, 5 seminars in 2019 and 3 in 2020 within the EU-funded project '10 years since the implementation of the EU Framework Decision on racism and xenophobia in Romania. A total of 73 judges and 94 prosecutors attended.

At the present moment INM implements the project “Capacity building and strengthening of the judiciary” funded by the Norwegian Financial Mechanism (2019-2022) which will include a series of training activities for magistrates, with a component focusing on the situation of Roma people in the judiciary criminal justice.

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176 According to interview with judge no. 2, Cluj, 27.09.2019
177 According to interview with Roma person no. 2, Cluj, 27.09.2019
178 Response of the National Institute of Magistracy to APADOR-CH’s FOI request, 12.06.2020
7. Conclusions

This chapter covers the conclusions drawn from the research as well as the APADOR-CH’s concrete recommendations both in terms of the legal framework and the practice.

The majority of the criminal justice professionals admitted that negative stereotypes and prejudice about Roma people are present in the criminal justice system and they justified their presence through early education which informally teaches discrimination. However, they highlighted there is a big difference between having stereotypes and acting based on that stereotypes (discrimination). Most of them concluded that the law (criminal codes) provides guarantees for these situations and it was designed to prevent any manifestation of those stereotypes in their decisions.

One of the obvious conclusions emerging from the interviews, the research and the ECHR cases mentioned is that the greatest risk of discrimination lies at the police level. This risk diminishes as the procedure advances at the prosecutorial level and finally the judge, whose decision must be motivated on the basis of the provisions of the criminal codes.

Police

The cases of police abuse generated by ethnic discrimination have been emphasized by the ECHR in the numerous cases against Romania showing the gravity of the situation.

In the most recent case, Lingurar v. Romania, for the first time, the Court elaborates on the concept of ethnic profiling. It remains to be seen to what extent this judgment will determine change at the level of police practice and tactics.

The field of police activity most likely to generate discrimination against Roma is related to administrative measures (control, identification, administrative leading to the police station).

As detailed in Chapter 3, the procedure for appointing a legal aid lawyer is sometimes disregarded, which can negatively influence the process. Oftentimes, police officers inform suspects/defendants of their rights and obligations in a formal manner which prevents a clear understanding of how to exercise them in a concrete manner.

Last but not least, the mechanism for solving complaints against possible police abuses is not effective, which discourages victims from lodging them in the first place.

Nevertheless, the interviewed police officers unanimously stated that they are not familiar with the phenomenon of ethnic profiling and that they have not participated extensively in courses on discrimination against Roma although they heard about such courses that organized by the Ministry of Internal Affairs and consider them useful.
According to the Ministry of Internal Affairs students of Police Schools and Ministry of internal Affairs staff receive training in the field. This raises the issue of their efficiency, insofar as Romania continues to receive unfavourable decisions at the ECHR due to police abuses on grounds of ethnic discrimination.

**Lawyers**

Regarding lawyers, previous interviews and research show that Roma people often need a legal aid lawyer because they cannot afford to pay for one. The legal aid assistance is not of the highest quality according to interviews with Roma people but it is difficult to assess whether this is due to a possible discriminatory attitude of the lawyer or a more general problem regarding the poor quality of legal assistance. As mentioned in Chapter 4, lawyers have long been dissatisfied with the legal aid fee and certain procedural activities that restrict their activity (access to the case file, etc.). Some interviewed lawyers admitted that they do not want to have Roma clients.

A relevant aspect which emerged from the interviews is that lawyers tend to refuse to represent Roma people in court, accusing them of being more difficult to work with and/or not seeing enough profit in legal aid cases. APADOR-CH would like to draw the attention to this paradoxical situation created by the representatives of a legal profession who is supposed to ensure the defense of all suspects and defendants. By adopting this attitude, lawyers hinder access to justice and jeopardize the exercise of all other procedural rights.

Lawyers were unfamiliar with the concept of ethnic profiling and largely stated that they had no training on discrimination

**Judges and prosecutors**

Judges and prosecutors unanimously claimed that the criminal law is very clear and limiting - any potential stereotype is censored by it. However, the application of the law implies first of all a mechanism of interpretation, a filtering through the subjective consciousness of the one who interprets it. As we have identified in Chapters 5 and 6, there are areas subject to their appreciation such as the "impossibility of defending oneself" in order to appoint a lawyer, the degree of danger to public order, etc. In the absence of concrete rules, these interpretations depend to some extent on subjective criteria and customs. It should be emphasized that as far as the part of the court proceedings is concerned, the possibility of ethnic discrimination is in theory less possible, as the criminal codes provide guarantees for the control of such sideslips.

The interviews show that judges and prosecutors continue to link committing a crime to the Roma community, under the pretext of economic and socio-cultural factors. APADOR-CH thus finds that they are subject to dangerous prejudice which may have an impact on their decisions.

Besides, in the case of Lingurar v. Romania, the Court held that the authorities involved have manifested a discriminatory attitude when they automatically connected the ethnicity of the Roma community to criminal behaviour. Moreover, the Romanian authorities have also failed in carrying out an efficient investigation of the case and of the systemic violence invoked by the applicants. The prosecution had accepted the police’s justification for the use of force based on a perception that all Roma were criminals and the domestic Courts closed the case without other investigation.

The interviewed judges and prosecutors were not familiar with the phenomenon of ethnic profiling and unanimously stated that they did not participate in courses on this subject. Some mentioned that there are
continuous education courses organized by the National Institute of Magistracy on discrimination. However, they stated that these courses are treated as general knowledge because discrimination against Roma in the criminal justice system does not exist.

Another aspect worth mentioning among the conclusions is related to the current system of sanctions that may be the cause of higher sentences for Roma. Interviews with prosecutors revealed that they believe that Roma persons tend to repeat some offences, which makes them more likely to get a higher sentence, sometimes even higher than the ones more serious crimes.

At the same time, most of the interviewed professionals agreed that most of the problems come from lack of social reintegration. For example, many would say the issue is that sentenced Roma are unemployed after getting out of prison. On the other hand, the Roma people interviewed stated that they would like to work, but due to the criminal record they cannot get a job.

One of the questions asked during the interviews was whether or not criminal justice professionals had any concerns about collecting data on the ethnicity of people who come into contact with the criminal justice system. The aim of the question was to get information about what Roma persons and legal professionals think about data collection on ethnicity and whether it would help get a more accurate representation of the existence of discrimination in the criminal justice system.

The police officers did not see any utility and they did not seem concerned about it. The other categories of legal professionals that were interviewed declared mainly that the collection of data would be appropriate for sociological studies. They were reserved though that Roma persons would be willing to declare their ethnicity and they pointed out to the fact that people asking about their ethnicity would be accused of discrimination. Most of the Roma persons presented concerns on how this data will be used and who will have access to it.

In the past, APADOR-CH has advocated for not collecting data regarding ethnicity because of discriminatory reasons. During this project however, the team was confronted with the difficult task of researching the subject of ethnic discrimination in lack of any data regarding the Roma community and its contact with the criminal justice system which made it even harder to propose a policy improvement or any other measure. The question thus arises as to whether, for the purpose of formulating public policies, the collection of data on ethnicity would be justified.

The collection and processing of personal data is regulated by Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data.179 Even though there is a prohibition of “processing personal data revealing racial or ethnic origin” there are exceptions under some conditions: 1) the data subject has given their explicit consent; 2) there are adequate safeguards; and 3) there are reasons of public interest which are the basis for deciding to collect sensitive data.180

179 Which repealed the Council Directive 95/46
181 According to the interpretation of the EU Commission on the on the application of directive 95/46 (replaced by the Regulation (EU) 2016/679), available at: https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX%3A31995L0046%3Aen%3AHTML [This interpretation is in line with other international human rights bodies’ interpretation of sensitive data collection] See, United Nations General Assembly,
ECRI advocated for ethnic data collection in order to elaborate policies for vulnerable groups and to evaluate their effectiveness.\textsuperscript{182} The UN Special Rapporteur on Extreme Poverty and Human Rights had a severe reaction against Romania regarding the interpretation of the former data collection Directive 96/46 suggesting that “the European Commission should start an infringement procedure against Romania if it continues to misinterpret the EU Directive.”\textsuperscript{183} The Special Rapporteur highlighted that in lack of disaggregate data on ethnicity no measure can be taken in order to assist the Roma community.\textsuperscript{184}

Data collection on ethnicity is indeed a sensitive subject and it can cut both ways, but as long as it is subject to safeguards it is a tool to be considered in order to improve policy-making and in the end to help vulnerable communities.\textsuperscript{185} Most of the Roma interviewees stated their concerns on how their data will be used, but there were also Roma that want to declare their ethnicity and who affirmed that hiding it is also a form of discrimination.\textsuperscript{186}

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\textsuperscript{182} ECRI, General Policy Recommendation No 4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims, adopted on 6 March 1998, available at: https://rm.coe.int/ecri-general-policy-recommendation-no-4-on-national-surveys-on-the-exp/16808b5a59
\textsuperscript{184} Idem 174
\textsuperscript{186} According to interview with Roma person no. 1 and no. 2, Cluj, 27.09.2019
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8. Recommendations

Some studies identified measures to reduce this risk of unconscious bias in the criminal proceedings. It appears that the development of effective training programs accompanied by a comprehensive testing and monitoring strategy could help to raise awareness of unconscious prejudices and consequently to reduce the risk of discrimination.\(^{187}\)

The need for systematic training of professionals was also emphasized by the Commissioner for Human Rights of the Council of Europe, in the Report issued following his visit to Romania.\(^{188}\)

THE ROMANIAN POLICE

- Rethinking and updating the training courses on discrimination with an emphasis on the phenomenon of ethnic profiling, taking into account the jurisprudence of the ECHR (especially Lingurar v. Romania case). The recent judgments of the European Court underline the existence of institutional discrimination against the Roma people which means that in the past these courses have not been sufficiently effective and targeted

- Adopting internal procedures for identifying, preventing and sanctioning the phenomenon of ethnic profiling among police officers. There is also a need for more specialized training for crisis situations and a constant psychological assessment of police officers

- Equipping all police officers (judicial, public order) with bodycams and equipping the police stations with video audio equipment for carrying out hearings

- Intensifying and promoting Romani culture and language courses among police officers especially given the low number of Romani interpreters. These will increase awareness of cultural differences and will determine more efficient communication with Roma suspects/defendants

THE GOVERNMENT AND THE PARLIAMENT

- Financing and organizing educational programs for the Roma community on fundamental rights within the criminal justice system

- Involving Roma NGOs and representatives of the Roma community in all the legislative reforms and programs that concern Roma people

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\(^{187}\) Jeffrey J. Rachlinski, "Can Unconscious Prejudice Affect Judges’ Reasoning?", 2009. In this study, the author recommends the testing of judges through the use of “the Implicit Association Test (IAT) or other instruments in order to assess whether they have implicit bias. The author estimates that using the IAT testing score would contribute to two aspects: “first, it could help newly elected or appointed judges to be aware of whether or not they have implicit prejudices and possibly raise an alarm to correct them. Second, it could enable the system to organize specific training courses on implicit bias for novice judges”; available at: https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1691&context=facpub

\(^{188}\) The Report of the Commissioner for Human Rights of the Council of Europe following a visit to Romania, 2014, p. 32-33, can be accessed at: https://rm.coe.int/16806db83b
NATIONAL UNION OF BAR ASSOCIATIONS AND THE NATIONAL INSTITUTE FOR THE LAWYERS’ TRAINING

- Redesigning and updating the training courses on discrimination with an emphasis on the phenomenon of ethnic profiling taking into account the recent jurisprudence of the ECHR (especially Lingurar v. Romania case). In addition to the theoretical part, the role of these interdisciplinary courses would be to familiarize lawyers with the specifics and needs of the Roma people who come into contact with the criminal justice system and to improve interaction and communication with them in the criminal process.

NATIONAL INSTITUTE OF MAGISTRACY

- Updating the content of anti-discrimination courses for judges and prosecutors (to include the phenomenon of ethnic profiling) but also introducing a training on Roma culture and language.\(^{189}\)

NATIONAL COUNCIL FOR COMBATING DISCRIMINATION AND THE OMBUDSMAN

- Human rights institutions such as the National Council for Combating Discrimination and the Ombudsman should extend the scope of their activity to also cover the issue of discrimination of the Roma people in the criminal justice system. They should carry out national raising awareness campaigns in order to bring this issue on the public debate agenda.

\(^{189}\) According to the INM’s response to APADOR-CH’s FOIA request of June 2020, courses on discrimination are already available to judges and prosecutors. However, APADOR-CH recommends a further specialization of these courses on the phenomenon of ethnic profiling in order to avoid gross violations of human rights such as those identified by the ECHR in Lingurar v. Romania. Introducing training on Roma culture and language would facilitate a better, more humane interaction in court and would reduce the possibility of prejudice as well as the perception and attitude of suspects/defendants towards the act of justice.