DISCRIMINATION AGAINST ROMA IN THE CRIMINAL JUSTICE SYSTEM IN BULGARIA
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DISCRIMINATION AGAINST ROMA IN THE CRIMINAL JUSTICE SYSTEM IN BULGARIA

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The current publication was created within the framework of the project “Fighting unconscious bias and discrimination of Roma people in the criminal justice system (ROMA)”. The project is co-financed by the “Equality, rights and citizenship” Programme of the European Union (2014-2020) and is being implemented by a consortium of organisations led by Fair Trials International with partners: Bulgarian Helsinki Committee (Bulgaria), Hungarian Helsinki Committee (Hungary), APADOR (Romania), Rights International Spain (Spain). The authors of this publication hold full responsibility for its content, which may not necessarily reflect the official positions by the European Commission.
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List of abbreviations

BHC     Bulgarian Helsinki Committee
CPC     Criminal Procedure Code
CPD     Commission for Protection against Discrimination
ECtHR   European Court of Human Rights
EU      European Union
MIA     Ministry of Interior Act
NBLA    National Bureau for Legal Aid
NCCEII  National Council for Cooperation on Ethnic and Integration Issues
Nowadays there is prevalent evidence that Roma people are more likely to be drawn into the criminal justice system in the EU Member States, than any other ethnic group. Arrest, custodial detention and conviction undoubtedly prevent the integration of prisoners and research continues to show that Roma people remain one of the most marginalised groups within the European Union at large. The overrepresentation of Roma in the criminal justice system within the EU not only reinforces the damaging stereotypes of that group, but is also detrimental to their opportunities for normal life. The professionals within the criminal justice system (lawyers, police officers, prosecutors and judges) are not immune to the widespread damaging stereotypes and deep-seated social attitudes towards Roma. Increasing evidence from countries outside of Europe (especially from the United States) suggest that the unconscious bias towards the objects of criminal justice influence the outcomes of the criminal justice trials.

The awareness of these challenges initiated the project „Fighting unconscious bias and discrimination of Roma people in the criminal justice system (ROMA)” co-financed by the „Equality, rights and citizenship” Programme of the European Union, led by the organisation Fair Trial International. The project’s goals are: a) to raise awareness of how negative stereotyping and social attitudes contribute to the overrepresentation of Roma
cases in the criminal justice system; b) to engage experts from the criminal justice system in identifying key risks of discrimination against the Roma and designing strategies for promoting fairness in decision-making; c) identifying and exchanging best practices for combatting discrimination. The project focuses on the participation of Roma in the criminal justice system as suspects, accused and convicted persons. It does not deal with their involvement as victims of crime.

The present report is created as part of the project implementation. On one hand it compiles the available data on the situation of the Roma in Bulgaria, the social attitudes towards them and their situation as participants in the criminal justice process. We use as basis previous reports, observations and recommendations of international bodies, national governments’ statistics and courts’ case-law. On the other hand, the report presents the viewpoint and personal experience of professionals and participants in the criminal justice on the topic of discrimination and prejudices towards Roma. To that end, 23 interviews were conducted in the period June-December 2019, involving judges, prosecutors, police officers, lawyers, representatives of Roma organisations and Roma individuals serving prison sentences. The report concludes with recommendations for remedying the existing discrimination and prejudices towards Roma and pursuing a fairer criminal justice procedure. A draft version of the report was consulted with national legal experts and institutions. Their feedback and comments were taken into consideration for the preparation of the final version of the list of recommendations. The Bulgarian Helsinki Committee would like to thank to all stakeholders who contributed to the report.
RACISM

Racism includes racist ideologies, prejudiced attitudes, discriminatory behavior, structural arrangements and institutionalized practices resulting in racial inequality as well as the fallacious notion that discriminatory relations between groups are morally and scientifically justifiable; it is reflected in discriminatory provisions in legislation or regulations and discriminatory practices as well as in anti-social beliefs and acts.

Declaration on Race and Racial Prejudice, UNESCO, 1978

RACIAL DISCRIMINATION

“Racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

International Convention on the Elimination of All Forms of Racial Discrimination, 1969
RACIAL / ETHNIC PROFILING

Racial profiling is the use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities.

European Commission against Racism and Intolerance
General Policy Recommendation n° 11 on Combating Racism and Racial Discrimination in Policing

ANTI-GYPSYISM

Anti-Gypsyism is a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination.

European Commission against Racism and Intolerance
General Policy Recommendation n° 13 on Combating Anti-Gypsyism and Discrimination Against Roma
I. National laws and policies for prevention of discrimination against Roma and facilitating Roma integration. Current situation of the Roma people in the country
1

NATIONAL ANTI-DISCRIMINATION LEGISLATION

The Bulgarian anti-discrimination legislation is generally harmonised with the EU Charter of Fundamental Human Rights, Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, the International Convention on the Elimination of All Forms of Racial Discrimination and the Framework Convention for the Protection of National Minorities. The main challenge is the implementation and the interpretation of this legislation and the resulting concrete policies by state institutions and law-enforcement authorities.

The Bulgarian Constitution does not allow any restrictions on rights or any privileges based on race, nationality, ethnicity, sex, origins, religion, education, opinion, political affiliation, personal or social status or property status,¹ as well as subjection to forceful assimilation.² Citizens for whom Bulgarian language is not their mother tongue have the right to simultaneously learn and use their mother tongue alongside the mandatory learning

The ethnic minorities have the right to pursue their culture. Article 37 proclaims the freedom of conscience. Article 44 forbids organisations which incite racial ethnic or religious hatred.

**The Bulgarian Criminal Code** imposes criminal liability on those who preach fascist or other anti-democratic ideology. Article 162 of the Criminal Code addresses crimes against the ethnic and racial equality, as well as related violence and tolerance to it. Article 163 concerns the participants of massive attacks motivated by hatred; articles 164 to 166 tackle crimes caused by religious hatred.

**The Criminal Procedure Code** proclaims the principle of equality before the law of all persons participating in criminal proceedings, by precluding discrimination or privileged treatment based on race, nationality, ethnicity, personal or social status or property status. It also requires that the court, the prosecutors and the investigative authorities apply the law fairly and equally. The Criminal Procedure Code also prohibits the participation in the criminal proceedings of investigative bodies, prosecutors, judges or jurors that may be considered prejudiced.

According to Art. 4 of the **Judiciary Act**, the judiciary bodies perform their functions impartially. Upon initial assumption of office, judges, prosecutors and investigators shall take an oath to accurately apply the Constitution and laws of the Republic of Bulgaria, to perform their duties of conscience and internal conviction, to be impartial, objective and fair. At the beginning of 2020, amendments to the Judiciary Act were adopted, and by virtue of the new provision of Art. 214 judges, prosecutors and investigators during or in relation to performing their duties cannot act as defendants in administrative proceedings, unless otherwise stipulated by law. The amendment was proposed precisely on the grounds of not allowing

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discrimination cases against magistrates before the Commission for Protection against Discrimination, as such cases were considered to be a “gross interference with the independence of the judiciary”\textsuperscript{10}

\textbf{The Protection against Discrimination Act} (transposing Directive 2000/43/EC for equal treatment in the national justice system) guarantees for everyone the right of equality before the law, equal treatment and equal opportunities for participation in public life, as well as effective protection against discrimination. This law precludes the direct or indirect discrimination based on race or ethnicity.\textsuperscript{11} It also prohibits violence, sexual harassment, incitement of discrimination, persecution and racial segregation. However, the correct understanding and application of anti-discrimination legislation remains a challenge for the judiciary.\textsuperscript{12} According to lawyers and researchers, the practice under the Protection against Discrimination Act on the grounds of „race” and „ethnic origin” is scarce and there are no well-established good examples.\textsuperscript{13}

\textsuperscript{13} Ibid., p. 108.
The political documents in force in Bulgaria set out and maintain key priorities aimed at overcoming racial and ethnic discrimination. However, in recent years, we have witnessed a serious regression in terms of national policies regarding Roma in Bulgaria. This is due to the entry into government of blatantly anti-democratic political formations that preach ethnic hatred and intolerance. The policies, aimed to improve the situation of Roma and to combat discrimination against them planned for the period 2012-2020 not only remain largely unimplemented, but government officials are now openly discussing measures and policies for persecution and state repression against Roma.
Strategy is carried out by the National Council for Cooperation on Ethnic and Integration Issues (NCCEII) - a structure within the Council of Ministers.¹⁴

Operational objective No. 5 of the Strategy is aimed at guaranteeing citizens’ rights, maintaining public order, prevention and counteracting against various demonstrations of intolerance and hate speech. Some of the activities provisioned within the quoted objective are: strengthening the guarantees for effective protection of the rights of the socially disadvantaged Bulgarian citizens, belonging to various ethnic groups; effective implementation of the policies for integration of Roma people aimed at guaranteeing equality, life of dignity and meaningful participation in public life; encourage institutional and public sensitivity and intolerance towards discrimination and hate speech; adoption of priority measures for prevention of ethnically motivated radicalisation; strengthening the capacity of the law-enforcement agencies in their fight with crime, discrimination, violence and hate speech based on ethnicity.¹⁵

According to experts on the subject, similarly to previous years, the period 2016-2018 does not mark a tangible progress in the implementation of the Strategy.¹⁶ They point out that one of the main obstacles for the implementation of the Strategy is the rise of anti-Gypsyism, which is reflected in significant increase in anti-Roma rhetoric (including from high-ranking politicians), racist publications and conflicts.¹⁷

The ongoing regression in the field of Roma rights and national integration policies culminated in February 2019, when the Minister of Defence and Deputy Prime Minister, Krassimir Karakachanov (leader of the nationalistic party VMRO) introduced a new Concept for revising the policies for integration of the gypsy (Roma) ethnicity in the Republic of Bulgaria and

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¹⁷ Ibid., p. 9.
measures for its implementation. In a blatant contradiction with the acting National Roma Integration Strategy (2012-2020), the new document incites ethnic tensions; it abounds with false claims, stereotyping and insinuations regarding the Roma, and moreover openly names the Roma community as criminals and threat for society.

The Concept argues that “the continuous practice of more tolerance, even towards unlawful actions by individuals from the gypsy (Roma) population, combined with inaction by the state and local authorities, creates a sense of impunity within a significant part of the gypsy (Roma) population. This factual situation is in essence a violation of the fundamental constitutional principle for equality of the citizens before the law, as in these circumstances there is a violation of the rights of the majority of the population, since they abide by the law and respect the institutions… The process of Bulgaria’s accession to the European Union and our full-right membership objectively highlighted the subject for protection of human rights, including the rights of ethnic and other groups. It is a fact that as part of this subject, the emphasis falls on the recognition, protection and guarantee of the rights of the gypsies (Roma), without particular explanation what particular rights of this ethnicity are not recognised, protected or guaranteed. Motivated by this topic, via various projects, significant funds are being channelled towards the population of the gypsy ethnicity with the purpose of their „integration” with the majority of the population in Bulgaria…We can say without a doubt that despite the secured funding within the framework of the Decade of the Roma Inclusion, all the activities aimed at the integration of the gypsy (Roma) population did not produce any tangible results.” According to the Concept, “in recent years there are other concerning trends emerging, like increase in the number of Islamicised gypsies (Roma). as well as those who commit crimes related to drugs, vandalism and other unlawful activities. Evidence of these trends are the incidents in Pazardjik, Stolipinovo, Voyvodinovo, Pleven and others. This state of affairs creates real danger for radicalisation, including one on religious grounds, of increasing number of individuals from the marginalised groups. In turn, it can result in clear risks for the national security.”

Furthermore, the Concept declares as goals: decrease in the number of crimes committed by representatives of the Roma community, in particular the violent crimes in a re-offence regime. Several measures are proposed to combat and prevent crime:

- increase control over the deposit-refund schemes for metals and other materials of unclear origin;
- monitoring the processes of radicalisation, including religious one, and other foreign influences, which threaten national security, focusing on the ghettos, in particular;
- measures aimed at preventing physical altercations and taking the law into one’s own hands, including preventive campaigns teaching good habits amongst the gypsy (Roma) population, like contacting the law-enforcement authorities (police) during physical brawls;
- dismantling the clan hierarchies and diminishing the influence of the ring-leaders over the processes in the ghettos - economic, social, criminal, political, etc.
- strict implementation of the available sanction mechanisms regarding child trade, phone scams, pickpocket thefts, begging and other crimes, as well as mechanisms to establish the origins of the means for acquiring considerable properties and belongings by individuals with undeclared incomes;
- attracting honest and educated individuals from the gypsy (Roma) community and involving them in the activities for maintaining public order.

The specific measures in the Concept requiring legislative changes are:

- tackle the sense of impunity amongst the representatives of the marginalised communities through the introduction of administrative penalties like „unpaid community work“ and “custodial detention at police premises“ for committed administrative offences;
- broadening the definition of self-defence in life-threatening or property-threatening situations for the citizens;
• creating special procedures for immediate imposition of punishments for committed illegal actions and prompt execution of the imposed punishments;

• legal provisions for the set-up of volunteering brigades under the supervision of the Ministry of Interior with the mission to protect public order and particularly the lives and properties of citizens residing in remote or small towns or villages;

• introducing legal obligations for the non-governmental organisations to declare the sources and methods of their funding;

• proposition for administrative penalty „confiscation of driving licence” for instances where in the process of obtaining a permit, a false or forged diploma for completed secondary education is submitted.

Currently, the Concept for revising the policies for integration of the Gypsy (Roma) ethnicity in the Republic of Bulgaria and measures for its implementation has not been adopted as an official document of the Bulgarian state. In July 2019, it was considered by the National Council for Cooperation on Ethnic and Integration Issues and was sharply criticized by representatives of minority organizations.
There is little reliable data from national sources on the situation of the Roma population in Bulgaria. However, over the last 10 years there is a considerable rise in the anti-Roma sentiments and public actions, which, in many instances, have been initiated by politicians in power and have not been met with appropriate response by the civil society. International and national organisations and institutions periodically establish in multiple research and monitoring reports the particularly high share of poverty, unemployment, exclusion from quality education and health care, institutionalisation and overrepresentation of Roma cases in the criminal justice and discrimination against the Roma. These findings do not prompt a vocal reaction in Bulgaria.

3.1. ROMA POPULATION IN BULGARIA

According to the last national census in 2011, the total number of Roma people in Bulgaria is 325 433, which makes up 4,9% of the total population. In the conclusive report for the census, sent to Eurostat, the authors of the census (the National Statistics Institute of Bulgaria) described the census results regarding ethnic origins as a “gross manipulation”.19 According to EU

data in 2014 the Roma population in Bulgaria stood at 750,000, making up 10.33% of the total population.\footnote{European Commission, \textit{The European Union and Roma – Factsheet Bulgaria}, available at: \url{https://ec.europa.eu/info/sites/info/files/factsheet_0.pdf}.}

### 3.2. SOCIAL AND ECONOMIC STATUS OF ROMA PEOPLE

The highest share of poverty-stricken individuals and people exposed to risks of poverty and social exclusion in Bulgaria, belongs to the Roma ethnic group. According to a national survey from 2019 on the social inclusion and living conditions, carried out by the National Statistics Institute, the share of the Roma ethnic group surviving below the monthly poverty threshold (348 leva or 180 euros) is 64.8%, compared to 16.7% of the Bulgarian ethnic population.\footnote{National Statistics Institute of the Republic of Bulgaria, \textit{Poverty and Social Inclusion Indicators in 2019}, available at: \url{https://www.nsi.bg/sites/default/files/files/pressreleases/SILC2019_en_ARTRFBK.pdf}.} Amongst the poverty stricken people, belonging to the Bulgarian ethnic group, prevail the pensioners (55.2%), while amongst the Roma the highest is the share of the unemployed individuals (36.6%). Amongst people of employment, the share of the „working poor” is the highest amongst the Roma - 27.5%, compared to 24% working poor individuals from the Turkish ethnic group and 22% from the Bulgarian ethnic group. It is worth noting that 83.9% of the Roma population is exposed to risk of poverty and social exclusion, which is substantially above the average share for the country - 32.5%. According to a research from 2019, 66.7% of the Roma population lives in extreme material deprivation, which is almost three times more than the share of ethnic Bulgarians existing in such circumstances.

### 3.3. PUBLIC ATTITUDES TOWARDS THE ROMA

Public attitudes towards Roma are clearly negative. Since 2013 the Open Society Institute-Sofia has been conducting regular national surveys on the public attitudes regarding hate speech in Bulgaria. According to their latest survey, carried out in 2018, one out of four respondents admits that they associate Roma people in their minds with the words „criminal” and „threat”.\footnote{Institute Open Society-Sofia, \textit{Public Attitudes to hate speech in Bulgaria in 2018}, p. 18, available in Bulgarian at: \url{https://osis.bg/wp-content/uploads/2018/12/2018-Hate-speech-BG-final.pdf}.} Roma people continue to be considered a primary target of hate
speech: 81% of the respondents, who have witnessed hate speech in public, claim that their addressees were the Roma people. Regarding the levels of approval on the part of the public towards the use of hate speech against the Roma, the survey established a high share of the respondents who approve of expressions like “thievish gypsies” - 40%, compared to 27% in 2014. In 2018, 16% of the surveyed individuals, who self-identified as Roma, have felt personally threatened by particular statements coming from journalists or politicians, compared to 10% of the other ethnic groups.
Significant increase in the percentage of complaints related to hate speech in electronic media, public speaking and publications related to named ethnicity - this is noted by the Commission for Protection against Discrimination (CPD) in its report for 2019. A good example of the CPD's practice for counteracting and sanctioning the reinforcement of negative stereotypes against Roma in electronic media by unjustifiably mentioning the ethnic group of crime perpetrators is Decision № 50 of 23.01.2019. The proceedings were instituted on a complaint related to an article published on the Internet entitled „New Roma violence. The victim - a Bulgarian living in England. The perpetrators were perfectly organized by K. T”.

„The applicant considered that naming the ethnicity of a suspect / perpetrator of a specific crime was irrelevant to the information, as it was denouncing all members of the Roma community as aggressive, aggressive criminals who posed a threat to society as a whole. It was stated that the applicant perceived the article as harassment and considered that it discriminated against the Roma ethnic group and incited hatred and discrimination against the whole community, of which the complainant herself was a representative, as she also publishes the victim’s call: „I urge everyone to be extremely be careful… to these human-like creatures “/ quote “. The complainant shared that she personally found the published text a threat to the Roma community because she admitted that being on the street alone could be perceived as dangerous. […]

The CPD panel found that the very title of the article gave the Roma a very negative image of criminals who were well organized, emphasizing that the crimes were systemic: „a new day, a new Roma violence“.

The panel considered that the article in question suggested that the Roma were rapists and thieves. On numerous occasions the article mentions that the people who attacked, stole H.’s phones and credit cards were Roma. Alleged crimes committed by individuals were ethnicized, emphasizing the ethnicity of the perpetrators.

Emphasizing the ethnicity of the alleged perpetrators, it was suggested that their Roma identity conditioned the commission of the alleged crimes, i.e. that they committed the crimes because they were Roma. It was thus instilled that the Roma are by nature criminal, that therefore all Roma were criminals and every Roma, including the applicant, should be presumed as such. It was also found that the defendants’ statements created a hostile and threatening environment for the applicant, as a representative of the Roma community, because by presenting the Roma in an extremely negative light, they set the majority of the society - the non-Roma against the Roma. Taking advantage of the rapid spread of news through the Internet, the defendants built a threatening image of Roma in people’s minds and thus set them up to treat them as enemies. By their insulting allegations contained in the impugned article, the defendants created public attitudes of contempt and disgust towards the Roma, thus creating a degrading, humiliating and insulting environment for the applicant.

In the present case, the panel considered that there was a direct promotion of discriminatory perceptions, as the defendants directly, with insulting expressions contained in the article, demonized the Roma community and thus encouraged their public rejection and discrimination against the Roma. From the very nature of the published material, it is clear that they could not have another effect and have a different idea, but were made for this very purpose - to encourage the audience to see Roma as their enemies. By publishing this article, the defendants were aware that it would become widely available to the public due to the high traffic to the website d.bg. Through the mass dissemination of the article, the defendants encourage other people to treat Roma according to these negative stereotypes, that is, to treat them not as they treat others, but worse, as extremely undesirable, dangerous, and harmful. All these negative images, attributed to the ethnic group as such, were created and exploited by the defendants and thus legitimized in the socio-political space. When inciting discrimination, it was not necessary that the addressees of the incitement have adopted the attitude or behavior to which the person incites.

[...]
For the panel it is indisputably established that with the procedural statements the defendants perform cumulative and direct promotion of discrimination, which constitutes “incitement to discrimination” within the meaning of § 1, item 5 of the Additional Provisions of Protection against Discrimination Act.

The panel found that there was discrimination in the form of “harassment” and “incitement to discrimination” and in this case the protection of the right to freedom of expression is inapplicable within the meaning of Art. 5 and Art. 4 of the Protection against Discrimination Act. In connection with § 1, item 1 and item 5 of the Additional Provisions of Protection against Discrimination Act on the grounds of “ethnicity” against the applicant L.T.M., as part of the Roma community.

For the established violation of the law […] a fine in the amount of BGN 250 (two hundred and fifty) is imposed.

In order to prevent future similar violations, the panel has imposed a coercive administrative measure […] [ on the applicant] to refrain from publishing (including on the d.bg website) any articles similar in content to the proceedings, constituting hostile anti-Roma speech which creates a stereotypical negative image of the Roma, thereby harms the honor and dignity of each individual Roma, and encourages other citizens to discriminate against the Roma, including the applicant as such.

The panel recommended to the defendant company to develop and introduce […] control mechanisms in order to prevent discrimination in the publications on the site.”

24 Ibid., pp.19-22.
3.4. THE SITUATION OF ROMA IN BULGARIA
ACCORDING TO THE OBSERVATIONS
OF INTERNATIONAL HUMAN RIGHTS

The disproportionately high levels of poverty and social exclusion of Roma and discrimination against them in Bulgaria have become a matter of constant concern to a number of international and regional organizations with a mandate in the field of human rights. Traditionally, the observations of external experts do not provoke public and institutional response and their recommendations remain unfulfilled. The last study on minorities and discrimination by the European Union Agency for Fundamental Rights (FRA) of 2016\(^{25}\), points out that the majority of Roma people in Bulgaria are far from being able to practice their fundamental rights. Poverty, exclusion from quality education and discrimination in the labour market, and in other areas, are just a few of the problems to be mentioned.\(^{26}\) According to the survey, 22% of the interviewed Bulgarian Roma people claim they had been discriminated against over the last 5 years, while 14% of them claim that happened during the last 12 months.\(^{27}\) The areas of life where discrimination most commonly occurs, are employment, education and other public or private services. 30% of the surveyed Roma consider discrimination, based on ethnicity very common in Bulgaria, while 24% believe that discrimination based on skin colour is equally common. 47% of the general population believes that ethnicity-based discrimination is a wide-spread phenomenon in Bulgaria. Just 14% of the surveyed Roma individuals admit that they have reported or filed a complaint about their last experience of discrimination based on their Roma origin. Only 16% of the Roma surveyed knew of organisations offering support or advice for victims of discrimination. 28% of the respondents were aware of laws prohibiting discrimination based on skin colour, ethnic origin or religion.

In its concluding observations and recommendations, published on 31\(^{st}\) May, 2018, the UN Committee on the Elimination of Racial Discrimination (CERD) noted that it „is deeply concerned at the reported increase

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\(^{26}\) Ibid., p.14.

\(^{27}\) Ibid., p. 39.
in incidents of hate speech and hate crime during the period under review, specifically of incidents targeting minority groups such as Turks, Roma, Muslims, Jews, people of African descent, migrants, refugees and asylum seekers.” It also stresses the “continued marginalisation of Roma in all walks of life” and in particular the forced evictions from their homes, the educational segregation and limited access to employment and quality health care. The Committee recommends adopting a number of legislative and administrative measures aimed at a more effective fight with the racial discrimination, as well as strengthening the capacity of existing mechanisms and bodies.

Regarding the discrimination against Roma, the Committee recommends that the state stops the forced evictions without offering alternative housing, legalise the existing settlements, increase efforts against the educational segregation of Roma children, expand health insurance coverage among the Roma; intensify efforts to eliminate prejudices and stereotypes towards Roma and thus achieving a better representation for them in political and public life.28 It is also important to note that the Committee “regrets the lack of updated statistical data regarding the de facto enjoyment by members of ethnic minorities and non-citizens of the rights protected under the Convention”, and “is also concerned about the lack of data on the ethnic composition of the prison population.”29

In November 2018 the UN Human Rights Committee published its Concluding observations on the fourth periodic report of Bulgaria on its compliance with the International Covenant on Civil and Political Rights.30 While pointing out that Roma continue to endure marginalisation and discrimination in various walks of life, the Committee recommends that the State party should “intensify its efforts to address stereotypes, prejudice, intolerance and widespread discrimination against Roma population, ensuring that complaints are investigated, perpetrators are held accountable and

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29 Ibid., paragraphs 7 and 8.

victims have access to full reparation”31 The Committee also expresses con-
cern about reports of increased acts of hate speech and hate crimes towards
various groups in society, but particularly against the Roma community.32

In March 2019 the UN Committee on Economic, Social and Cultural
Rights published its Concluding observations on the sixth periodic report of
Bulgaria. 33 The situation of the Roma in Bulgaria once again is a cause of con-
cern for the Committee. It points out that „Roma continue to face discrimi-
nation in the fields of employment, housing, health care and education, and
that such discrimination is being exacerbated by a rise in anti-Roma senti-
ment”34; that „members of the Roma community are disproportionately af-
fected by poverty”35; that „members of the Roma population are particularly
at risk of being subjected to forced evictions without being provided with
suitable alternatives and, as a consequence, are at higher risk of becoming
homeless”36; that „the number of Roma children and young people who drop
out of school, in particular Roma girls, is disproportionately high” and that
„a large proportion of Roma children attend de facto segregated schools,
which constitutes a barrier to their integration”.37 Among other things the
Committee recommends that Bulgaria:

„(a) Undertake additional efforts to promote a participatory approach and
ensure greater inclusion of the Roma community and civil society in the
implementation of the strategy;

(b) Raise the awareness of the public about existing anti-discrimination
legislation;

(c) Ensure that Roma have access to legal aid and to adequate remedies;

(d) Ensure that acts of discrimination and violence are investigated and
prosecuted and that those responsible are sanctioned;
On 13th May 2020, two Special Rapporteurs of UN - on contemporary forms of racism and on minority issues, respectively, called on the Bulgarian Government to „stop hate speech and racial discrimination against the Roma minority in its response to COVID-19, and halt police operations targeting Roma neighbourhoods during the pandemic“.

The report stressed that the placement of checkpoints, as of mid-March, at the entrances of the already segregated Roma quarters in Nova Zagora, Kazanlak, Sliven, Yambol, and Sofia – allegedly set up as part of the efforts to curb the pandemic – is a violation of Roma’s right to equality and freedom of movement. The Rapporteurs focus on the police operation, codenamed ‘Respect’, which specifically targeted Roma by giving prerogatives to the police to patrol inside Roma neighbourhoods in order to monitor whether Roma people observed the COVID-19 restrictions. The experts expressed concern over instances of high-level Government officials, representatives of the Judiciary and a member of a political party have spoken in favour of a government response to COVID-19 that singled out the Roma. They were concerned that such remarks contribute to exacerbating anti-Roma sentiments among the general population and foster the social exclusion of Roma people, their segregation and marginalisation. The UN Rapporteurs called on the Bulgarian authorities to not exploit the pandemic to further exclude Roma and portray them as criminals and contagious, but instead to condemn hate speech, racist and nationalist populism while at the same time take action to combat this threat at all levels, including national, regional and local.

38 Ibid., paragraph 13.
II  The situation of Roma in the criminal justice system
a) The number and percentage of persons belonging to ethnic or racial minority groups who are victims of aggression or other offences, especially when they are committed by police officers or other State officials;

(b) The absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination in the country. Such a statistic should not be viewed as necessarily positive, contrary to the belief of some States. It may also reveal either that victims have inadequate information concerning their rights, or that they fear social censure or reprisals, or that victims with limited resources fear the cost and complexity of the judicial process, or that there is a lack of trust in the police and judicial authorities, or that the authorities are insufficiently alert to or aware of offences involving racism;

(c) Insufficient or no information on the behaviour of law enforcement personnel vis-à-vis persons belonging to ethnic or racial minority groups;

(d) The proportionately higher crime rates attributed to persons belonging to those groups, particularly as regards petty street crime and offences related to drugs and prostitution, as indicators of the exclusion or the non-integration of such persons into society;
(e) The number and percentage of persons belonging to those groups who are held in prison or preventive detention, including internment centres, penal establishments, psychiatric establishments or holding areas in airports;

(f) The handing down by the courts of harsher or inappropriate sentences against persons belonging to those groups;

(g) The insufficient representation of persons belonging to those groups among the ranks of the police, in the system of justice, including judges and jurors, and in other law enforcement departments.
Collecting ethnically disaggregated data is of key importance for the assessment of racial and ethnic inequalities and for the development of effective policies aimed at combatting and eliminating racism and ethnic discrimination, especially in the area of criminal justice. By 2020 in Bulgaria, there is no official statistical data available on the ethnic profile of the apprehended, charged, tried, sentenced or imprisoned persons. The lack of such data hampers research into the representation of Roma in the criminal justice process and the discriminative attitudes towards them. Furthermore, it allows the authorities to deny the existence of problems regarding ethnic profiling, due to the lack of substantial evidence that proves it.

Existing national legal provisions allow the processing of personal data, revealing the racial and ethnic profiles of the objects of that processing, when this is absolutely necessary. There are appropriate guarantees in place for the rights and freedoms of the objects of data processing within EU legislation or legislation of the Republic of Bulgaria. In certain instances personal data processing is allowed without a special provision in a legal act.

Collecting data on ethnic profiles in Bulgaria is not uncommon. Such data is being collected on different legal grounds and for different purpose-
es such as for instance the national population census. In the sphere of criminal justice, the authorities share information on the ethnic backgrounds or nationalities of offenders at the time of arrest for suspected crimes. Until 2012, statistics from the Ministry of Interior contained data on the ethnic origins of the identified criminal offenders, which mentioned the following ethnic categories: “Bulgarian”, “Turkish”, “Gypsies” and “others”. Between 2012 and 2016 the statistical data on criminal offenders only mentioned two categories - “Bulgarian” and “others”. Over the following years up to present, data related to ethnic indicators was completely dropped out of the statistics bulletin of the Ministry of Interior. In 2019 the Ministry declared that they had terminated collecting ethnicity related data. This could be so, however the statistical form for identified criminal offenders, which police authorities have had to fill in since 2010 and continuing at present, includes a column for the ethnic group of the individuals, according to their self-determination.

Data on the nationality of defendants in criminal trials is being collected by courts during the procedure of personal identification of the individuals participating in court hearings. On-duty lawyers, who provide legal aid to detainees in remand facilities, are obliged to state the ethnic background of their clients in the report on their legal assistance. The Prisoner’s Booklet, a paper based document, filled out by the penitentiary staff for each prisoner, also contains a box entitled “ethnic background”. Despite this, the prison administration does not keep disaggregated statistics on the ethnic origins of prisoners.

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43 Ministry of Interior (2010), Methodical instructions for collecting data and automated processing of police statistics regarding the registration of applicant requests for committed common criminal offences (approved by Ministerial Order No 2845/29.11.2010, Reporting on establishing a crime offender, p. 24.
44 Ministry of Interior (2010), Methodical instructions for collecting data and automated processing of police statistics regarding the registration of applicant requests for committed common criminal offences (approved by Ministerial Order No 2845/29.11.2010, Reporting on establishing a crime offender, p. 24.
Although officially no institution compiles or publishes statistical data on the ethnic profile of the people in detention facilities or prisons, there is compelling evidence that the Roma are over-represented in remand and prison facilities in Bulgaria. Conclusions of empirical research by BHC observe the same trend. Between November 2016 and February 2017 the Bulgarian Helsinki Committee carried out a comprehensive survey among 1357 sentenced and imprisoned individuals from all maximum and medium security prisons in Bulgaria, whose criminal processes had commenced after January 2015. This study poses two main issues - access to legal aid during the criminal proceedings (in the broad sense) and physical mistreatment of detainees at the hands of the police. The study also had as an objective to establish the correlation between the use of force by police, access to legal aid, ethnic origins, age and severity of crime.

The study came out with the following findings:

- 50.8% of the newly imprisoned persons identified themselves as Roma. This is in contrast with the official police statistics of that period on the share of minorities among the identified crime offenders. According to that data the share for 2014 is 18.4%, while for 2015 the figure is 17.5%. The methodology for establishing ethnicity is self-determination. According to the 2011 census, which employed the same methodology to determine ethnicity, the Bulgarian ethnic group constituted 85% of the total population. This leads us to conclude that the share of minorities amongst the criminal offenders is slightly higher than their share of the total population. By contrast, among those serving effective prison sentences, the share of Roma alone was over 50%;

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48 Ministry of Interior, *Annual Statistical Bulletins of the Police for 2014 and 2015*, available at: http://www.mvr.bg/Planirane.otchetnost/Policeiska.statistika/Policieska_statistika.htm. These shares include all ethnic groups apart from the Bulgarian.


50 Ibid.
71.9% or over two thirds of the persons interviewed stated they had not used the services of a lawyer (personal or public) from the very outset of the criminal proceedings or that they had not used a lawyer at all during the criminal proceedings;

79% of the respondents, charged with crimes indictable with prison sentences of 10 years, stated they had not used legal aid from the very outset of the criminal proceedings;

56% of those interviewed declared that they had been in custody throughout the entire duration of the criminal process, while this figure is even higher among the interviewed Roma people - around 60%.

Regarding the use of physical force by police against detained persons at the time of their apprehension and during their detention, findings from the survey show that one third of the respondents (34%) reported physical mistreatment, either during apprehension or during detention at police stations. Those who claimed they had been subjects of physical force during their detention at police stations were more (24%) than those who reported violence at the time of arrest (19.4%). The share of Roma people (28.3%) who reported being victims of physical force at the hands of the police in 2016, is double the reported share of ethnic Bulgarians (14.5%). Findings from the survey also show that minors are particularly affected by police mistreatment - 66.6% of all minors interviewed reported physical violence during their apprehension.\(^51\) The share of Roma people reporting that in 2015 they had been victims of physical force is by 10% higher than that of ethnic Bulgarians and by 11% than that of ethnic Turks.\(^52\)

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The police authorities in Bulgaria wield a wide range of powers like surveillance, stops, identification checks, and identification procedures, searches of premises, personal searches, “informal” interrogation and apprehension. A large part of these procedures are often not in any way connected with ongoing criminal proceedings and hence could become to a large extent subject of arbitrary decisions at the discretion of a particular police officer. As far as there are criminal proceedings in place, the role of the police authorities is to collect evidence for the committed crime or offence, as well as for the respective offender. Ethnic profiling is not regulated in the national legislation and is not recognized as legal practice by the law enforcement authorities. Notwithstanding, it is being widely practiced, which often leads to shorter and more effective criminal investigations, which tend to be rife with serious breaches of the right to fair trial.

2.1. ROLE AND DISCRETIONARY POWERS OF THE POLICE AUTHORITIES

A significant part of the powers of the police in Bulgaria is related to the interception, suspension and detection of crimes. These powers, regulated in the Ministry of Interior Act, are related to the criminal proceedings, but
are not formally part of it. In the course of their work, the police authorities may issue orders and warnings, carry out identity checks, detain for up to 24 hours, conduct interviews, carry out identification and searches, check personal belongings and premises, seize property and others. These activities are categorized as administrative and are implemented at the wide discretion of the police authorities, in terms of operational independence. There are some guarantees in Ministry of the Interior Act for protection against arbitrary exercise of police powers and illegal interference with the rights of citizens, but since the police investigation of crimes is treated as administrative rather than criminal procedure, these guarantees are significantly weaker than the guarantees provided in criminal proceedings for activities identical in nature.

For example, persons detained on the basis of a crime have the right to a lawyer, but involvement of a lawyer is not mandatory, unlike the situation under the Criminal Procedure Code (CPC), where legal assistance by a lawyer is absolutely mandatory from the moment the accused is detained. Unlike the CPC, in the case of searches, the Ministry of Interior Act does not require a permission or post factum approval by a judge for performing the act nor envisages a requirement for the presence of a special category of witnesses (поеемни лица) while the search is being performed. Regarding the police interrogation of witnesses or suspects of crime, the Ministry of the Interior Act lacks any regulation on the activity or on the rights of the persons subjected to interrogation.

The police authorities may also carry out actions to investigate crimes under the Criminal Procedure Code in the cases provided for by law. For example, under Art. 212, Subart. 2 of the CCP, police authorities should initiate pre-trial proceedings with the first action of investigation, where inspection, including examination of persons, search, seizure and interrogation of witnesses has been carried out, if their immediate execution is the only opportunity to collect and preserve evidence. A prosecutor, investigator or investigating police officer may also assign investigative actions to police authorities. In this sense, by virtue of Art. 215 of the CCP, when the perpetrator of the crime is unknown, along with the actions of investigation, the prosecutor assigns to the bodies of the Ministry of Interior or other bodies provided by law the identification and detection of the perpetrator. When the
respective bodies of the Ministry of Interior assess that data incriminating a certain person have been gathered, they shall deliver the gathered materials to respective body of investigation and shall notify the prosecutor immediately. The activity of the police in detection and identifying a person as an accused of committing a crime is guided by the provisions of the Ministry of Interior Act.

In principle, the protocols of the actions for investigation of crimes performed by the police under the Ministry of Interior Act cannot be presented and used as evidence in criminal proceedings, as they have not been not drawn up in accordance with the rules specified in the CCP. However, this rule is circumvented by using police officers, who have produced the inadmissible evidence, as witnesses before the court.

For example, police authorities may question (interrogate) persons detained as suspects of crime. In practice, the questioning is taking place in the context of criminal investigation, but is not considered a formal interrogation, as formal interrogations, as envisaged by the CCP, can only take place after the detainee has been officially notified as being an accused person. Unlike the investigating police officers, there is no legal ban on the regular police authorities to testify as witnesses in the subsequent criminal proceedings, including before the competent court, as in the case of Dimitar Mitev v. Bulgaria.\(^{53}\)

2.2. PROHIBITION OF ETHNIC PROFILING

The national body of laws does not provide definition or explicit ban on ethnic profiling. As a form of unequal treatment, ethnic profiling should be considered prohibited by the general anti-discrimination legislation. Moreover, the Ethics code for the Ministry of Interior personnel forbids discrimination on various grounds, including ethnicity and race.\(^{54}\)

2.3. EVIDENCE OF POLICE BIAS AGAINST ROMA

The lack of ethnically disaggregated data is a serious difficulty for the study and analysis of police bias against Roma. One of the few available stud-


The research established higher frequency of police checks of Roma people, as pedestrians, compared to similar checks of ethnic Bulgarians, especially when Roma were encountered outside their usual residential areas, as well as whenever they were spotted around areas or villages, known to be inhabited predominantly by ethnic Bulgarians. Another finding from the study was that in some instances police officers act unprofessionally during stops: they used verbal offences, threats and physical force, violate citizens’ rights and even asked for bribes. The report cited data from a National Crime Survey, conducted 2005, showing that during the six months preceding the survey nearly 46,000 Bulgarians and 7,400 Roma were threatened during police stops and that almost 15,000 people were physically abused by the police (of which 12,000 Bulgarians and 3,000 Roma).

The authors of the study give the following reasons for the disproportionate number of police checks on Roma people:

*Although there is no formal policy that supports ethnic profiling, Roma are subject to disproportionate number of pedestrian police stops. The main reason for the high level of stops of Roma is their suspected involvement in criminal activities. The analysis shows that although there is some ground for higher level of stops due to the high level of criminalization of some Roma communities, the police data on the ethnicity of crime suspects is unsystematic and incomplete. Therefore, the disproportionate number of pedestrian police stops of Roma is often provoked not by specific investigations or crime data analysis, but rather by ethnic prejudice.*

The numerous publically reported cases of police violence against Roma, including in the form of mass beatings of Roma in an attempt of the police to deal with criminal incidents, are another evidence of the existence of ethnic profiling and racist practices in the Bulgarian police. As a rule, the

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56 Ibid., p. 44.
authorities deny the existence of police violence and it goes unpunished. The Bulgarian Helsinki Committee’s annual reports on human rights in Bulgaria describe a number of such racist incidents.

“On February 6 [2018], a race and clash between Roma and police officers escalated into a police operation in the Roma neighborhood of Ihtiman, in which people were beaten. An elderly man died during the operation. Police said there was “no physical contact” between him and the police. However, the case was not fully investigated to establish the cause of death of the deceased. This was not done in connection to the use of force during the police operation either. The mainstream media mostly broadcast the police version. On October 14, the police indiscriminately used force in a conflict with Roma in the Roma neighborhood of Galabovo.

The conflict arose in connection with complaints of loud music. Residents of the Roma neighborhood complained that the police was beating everyone, including the children. The case was not fully investigated for the lawfulness of the use of force. On October 28, massive police forces entered the Roma neighborhood of the town of Maglizh in an attempt to arrest a young man who was hiding after an attack on a police officer on the road between two villages in Kazanla region. According to independent journalists, the police used massive force and restraint measures against residents of the neighborhood. Regarding that matter, the author of one of the publications has written the following: “The Roma gathered around me and began to tell me their nightmarish memories of the evening of the attack and the disturbing sleepless night that followed. They claim that the gendarmerie and the police, as soon as they got out of the cars, started hitting anyone they met on the streets, even the children. They knocked people to the ground, handcuffed them. A young woman claims that her uncle was beaten in front of her for no reason.”

The prosecutor’s office was approached by the BHC with regard to this case, but it refused to initiate pre-trial proceedings. During the preliminary check, information was collected only from the police officers involved in the incident.”


On April 28 [2019], after an argument with a Bulgarian family, a large group of Roma were detained in the village of Kuklen and subsequently brutally beaten at a police station in Plovdiv. According to testimonies of victims and witnesses, they were threatened with being executing by shooting and were beaten with fists and bats during the detention and on the way to the police station. Immediately after being taken into the detention facility, they were tied with their hands to their knees, beaten with batons and insulted with racist insults. Some were forced to drink water spilled on the floor with their hands tied. By the end of the year, no charges had been filed against the violent police officers.

2.4. FINDINGS INTERNATIONAL BODIES AND ECTHR DECISIONS REGARDING POLICE BIAS AGAINST ROMA

In 2018 the UN Committee against Torture reviewed the Sixth periodic report of Bulgaria. On the subject of the excessive use of force and impunity for acts of torture and ill-treatment, the Committee stated that it was still concerned at reports that “every third person is subjected to physical abuse in police stations, which may be of such severity to amount to torture and may include beating, handcuffing to immovable objects, and the use of truncheons and electrical discharge weapons, and that the rate of physical abuse against persons belonging to the Roma community is allegedly double the rate used against Bulgarians”.

On the subject of torture and inhuman and degrading treatment, in 2018 the UN Human Rights Committee also expressed concern regarding...
the acts of police violence against persons of Roma origin through “punitive raids” and recommended to the Bulgarian state that it strengthened its efforts to prevent acts of police violence against the Roma community.\footnote{The UN Human Rights Committee, Concluding observations on the fourth periodic report of Bulgaria, 2018, paras 25, 26.}

The share of Roma victims in the case law of the European Court of Human Rights (ECtHR) against Bulgaria for police violence (for the period 1998–2010) is disproportionately high - over one third of all victims in such cases. In the case of Nachova and others v. Bulgaria\footnote{ECtHR, Nachova and others v. Bulgaria, nos. 43577/98 and 43579/98, judgement of 26 February 2004, available at: http://hudoc.echr.coe.int/eng?i=001-61648.} (murder of two young Roma boys), the ECtHR found that the police violence and the lack of investigation were based on racial discrimination. In two other murder cases, Velikova v. Bulgaria\footnote{ECtHR, Velikova v. Bulgaria, no. 41488/98, judgement of 18 May 2000, available at: http://hudoc.echr.coe.int/eng?i=001-58831.} and Angelova and Iliev v. Bulgaria\footnote{ECtHR, Angelova and Iliev v. Bulgaria, no. 55523/00, judgement of 26 July 2007, available at: http://hudoc.echr.coe.int/eng?i=001-81906.} - the ECtHR found that allegations of racial discrimination were serious; in two other cases, in which the victims were young Roma - Sashov and others v. Bulgaria\footnote{CEDH, Sashov et autres c. Bulgarie, no.14383/03, arret 7 janvier 2010, available at: http://hudoc.echr.coe.int/eng?i=001-96601.} and Ognyanova and Choban v. Bulgaria\footnote{ECtHR, Ognyanova and Choban v. Bulgaria, no. 46317/99, judgement of 23 November 2006, available at: http://hudoc.echr.coe.int/eng?i=001-72549.}, the Court mentioned the „special vulnerability” of Roma when they enter the police.

2.5. FINDINGS FROM INTERVIEWS

The prevalent number of police officers, interviewed on the subject, demonstrated a passive-aggressive attitude when speaking with the BHC representatives; they made suggestions that the BHC should carry out a similar research into the treatment of ethnic Bulgarians; many of them qualified our questions as manipulative, too broad, too suggestive or tendentious. They denied the use of ethnic profiling towards the Roma in their practice and declared that they do not collect any data about ethnicity during their work. Interviewed police officers disagreed with the claim that Roma people are stopped, checked and arrested more often than the other ethnic groups in Bulgaria. They explained what circumstance motivate them to stop a per-
son on the street – their appearance, bulky luggage or unusual objects that they may carry, or the unusual comportment of a person.

The interviewed police officers insisted that there was no discrimination or differential treatment towards the Roma in the criminal justice system. Difficulties in communication with Roma were a common occurrence, so if the apprehended persons did not understand the proceedings during a questioning or a „conversation“, a public defender was allegedly appointed. The fact that Roma people were overrepresented in criminal justice system was explained by police officers with poverty and low level of education, but also by the reluctance of Roma people to work low-paying jobs, which determined their choice to turn to petty crimes, like theft. One police officer commented that „[e]ven if and when Roma people have jobs, they keep stealing.“ It was not more likely for Roma people to sign settlements with the prosecution office or sign them under more unfavourable circumstances, the police claimed. All police officers interviewed stated that they have at least one colleague of Roma origin.

Interviewed judges expressed two general opinions regarding the police’s attitudes towards Roma people. One was that bias towards Roma people is widespread in the Bulgarian society as a whole and therefore prejudice among the police are not an exception. The second opinion was that police stop and arrest more Roma people, because they were real or potential offenders of petty crimes, which made them a „risk group“ regarding criminality, and not because of their ethnic origin. One of the judges explained the more frequent police stops and checks of Roma in the following way: „Police are aware that the Roma cannot afford good legal defense, that they don’t know their rights and they cannot even read documents. This means a quicker criminal process for the police. “

Interviewed lawyers reported that police are being abusive towards Roma people: they often hit Roma on their necks while getting them into police cars; they were often verbally offensive calling them “dirty gypsies”; they stopped them more often than other people to check identity documents and told them things like: „Sign here, or your situation will get even worse. We’ll arrest you and you won’t see your family for a very long time. “

Roma people interviewed confirmed that they were frequently stopped by police for identity checks. One respondent stated that due to his previous
criminal convictions for theft and robbery, the police regularly summoned him for questioning for complicity in other similar crimes. This forced him to constantly stand in front of the camera at his workplace – a car wash, so that there would be evidence that he was not involved in the crimes he was suspected of. The interviewed Roma activist explained that often there were police patrols cars at the entrance of the Roma neighbourhoods, the purpose of which was to instill fear into the Roma population; the police was stopping and making identification checks to anyone, including elderly people who were going to the shop. Nonetheless, none of the interviewees had heard about the police practice of ethnic profiling, or had heard the term at all. Mainly convicted Roma males shared experiences of police violence, offensive attitudes, threats and illegal practices like: „invitations” to come to a police station for a „conversation” where consequently they had been abused and then detained. On the first instance, all of the so called „conversations” had been conducted without a lawyer present and even if the apprehended person requested such services, they had been denied.

2.6. ANTI-DISCRIMINATION TRAININGS

Only one of the interviewed police officers, from 1st District police station in Sofia, reported participating in a course related to „Roma traditions and culture” which aimed at encouraging tolerance towards the minority group. Only two of the respondents expressed the view that more anti-discrimination trainings were needed for police officers. Research into publicly available sources reveal that in 2016 police staff have been trained to work in a multi-ethnic environment as part of a project financed through the Norwegian Financial Mechanism.69 In 2020 the Ministry of Interior continues its work on three other projects financed by the Norwegian Financial Mechanism. One of them, implemented by the Academy of the Ministry of Interior in partnership with the Organization for Security and Cooperation in Europe, is aimed at „preventing and reducing human rights violations by the police in their actions in a multiethnic environment, with special emphasis on Roma population, enhancing the skills

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69 Center Amalipe for multi-ethnic dialogue and tolerance, Association „World without Borders”, Foundation IndiRoma, Roma academy for culture and education and foundation „Gender Alternatives”, Report on monitoring civil society regarding the implementation of the Bulgarian National Roma integration strategy, March 2018, p. 32.
of police officers to work with Roma, including in addressing issues related to their safety and security and in full compliance with human rights standards, prevention of domestic violence, trafficking in human beings in the Roma community and prevention of ill-treatment by the police.\textsuperscript{70} The project envisages, among other things, the development of a training program and the realisation of training sessions for 1,620 police officers to reduce and prevent human rights violations against Roma. In itself, the initiative is one of the few institutional recognitions for the existence of problems and the occurrence of human rights violations in the course of police activity in Roma communities.

Another project launched by the Ministry of Interior in 2020 aims at the improvement of the situation for the Roma population and improvement of coordination and dialogue between police and Roma society.\textsuperscript{71} Considerable part of the project activities and funding will be dedicated to training of police officers and specific police actions to prevent and detect radicalization, violent extremism and hate speech, especially in the Roma community. The project unreasonably profiles Roma as potential extremists and perpetrators of violent extremism, and as a result could reinforce misconceptions about Roma as criminals, as well as could lead to Roma overrepresentation in the criminal justice system.

\textsuperscript{70} Information about the project „Increasing the capacity of police officers working in a multiethnic environment, including in Roma communities and preventing abuse of power of police officers” is available in Bulgarian at: http://2020.eufunds.bg/bg/8010608/1/Project/Activities?ContractId=8TaCjbH4NV4%3D & isHistoric = False.

\textsuperscript{71} Information about the project „Improving coordination and dialogue between the police and Roma society” can be found at: http://2020.eufunds.bg/bg/8010608/0/Project/Activities?contractId=Bxbww%2BsI04M%3D&isHistoric= False.
The involvement of a lawyer from the initial stage of the criminal proceedings is essential for the fairness of the criminal proceedings. It is also one of the key safeguards against the illegal use of force by law enforcement authorities, used to extract incriminating information, to punish, to intimidate or for purely discriminatory purposes. In Bulgaria, however, the legislation and the practical implementation of access to a lawyer during the initial 24-hour police arrest remain highly problematic and inconsistent with EU law standards. The reason is that police detention on suspicion of committing crimes is not considered part of criminal proceedings. Roma are more likely to need legal aid, but the quality and volume of legal aid provided by public defenders is insufficient in practice and, according to lawyers, it is often provided formally.

3.1. NATIONAL LEGAL FRAMEWORK REGARDING ACCESS TO A LAWYER AND LEGAL AID AND THE KEY ROLE OF THE LAWYER AS GUARANTOR OF THE RIGHT TO A FAIR TRIAL

In Bulgaria Article 56 of the Constitution guarantees the right to legal assistance before any state body as a fundamental right to all individuals. It also proclaims the right to legal representation of detainees and accused persons from the outset of the detention or the criminal proceedings, as well as the right to legal protection in all stages of judicial proceedings. Un-
der the Legal Aid Act, detainees have also the right to legal aid. However, national legislation does not attach a common level of protection to the constitutional right of access to a lawyer and to the right to access to legal aid to all persons, subject to criminal charges. Over the last five years, the BHC has been actively involved in the monitoring of the process of transposition and implementation in Bulgaria of EU legislation aimed at strengthening procedural rights of suspects and accused persons in criminal proceedings.

**Access to a lawyer for suspects under the Ministry of Interior Act**

Regulation of the access to a lawyer for suspects during police detention is envisaged in several pieces of legislation.

Pursuant to Art. 72, Subart. 5 of the Ministry of Interior Act (MIA), detainees are entitled to access to a lawyer from the moment their being apprehended. The provision is too general and does not take into account the concrete requirements of the EU legislation regarding access to a lawyer „without undue delay after deprivation of liberty” and before questioning by the police,72 the right of a lawyer to be present and participate effectively during informal questioning, as well as in other proceedings which could be conducted as part of police detention, like „identity parades” and „reconstructions of the scene of a crime”, when conducted with the participation of the detained individuals.

The law does not presume the need of defence for some vulnerable groups of suspects to whom mandatory legal aid should be provided. It also does not regulate the remedies against the violations of the right to access to a lawyer, as stipulated in the EU standards.

Police detainees have no right to mandatory defence by a lawyer, unlike the accused persons detained as part of the criminal proceedings under the Criminal Procedural Code (CCP)73. This is a significant difference between detention under the Ministry of Interior Act and detention under the Criminal Procedural Code. Detainees have the right to access a lawyer, but

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detention under the Code of Criminal Procedure is only possible when the charges have been formally pressed. In other words, under Bulgarian criminal law, detention under the CCP can never be the first event taken against a person suspected of having committed a crime. Whenever the detention of suspects is deemed necessary, the measure is imposed by the police or another law enforcement agency, but outside the criminal proceedings.

During police detention, the rights of access to a lawyer and legal aid are the two most essential rights of the detainees. The BHC empirical study Inside Police Custody 2\textsuperscript{74} on detention under the Ministry of Interior Act, shows that these are however the rights least exercised by the detained persons. The general conditions for providing access to a lawyer and providing legal aid upon police detention are described in Instruction No. 81213-78 of 24\textsuperscript{th} January 2015 by the Ministry of Interior.\textsuperscript{75}

Access to legal aid by detained persons is regulated in the Instruction by the Prosecutor General of 11\textsuperscript{th} April 2011 regarding activities that pre-trial organs can carry out in relation with lawyers.\textsuperscript{76} The defined time limit, speci-


\textsuperscript{75} Instruction No. 81213-78 of 24th January 2015 by the Ministry of Interior, available in Bulgarian at: http://dv.parliament.bg/DVWeb/showMaterialDV.jsp;jsessionid=C90D4AE4E1A53C0CD2D603FE F8CF166D?idMat=91688. Art. 15 (5) The detained person is provided with the opportunity to use legal defence from the moment of their apprehension. When there is an explicit request on their part, the defence is effectuated by: 1. A lawyer appointed by the detained person whereas expenses are covered by the detained; 2. A defender regulated by the Law for Legal Defence, outside of the cases under Parag. 1. (6) At a visible spot inside the detention facilities an up-to-date list of the on-duty lawyers is displayed, which is compiled and maintained by the Bar Association, together with the telephone contacts of the National Bureau for Legal Aid and representatives of the local Bar Association, which is in charge of appointing a lawyer under the Law for Legal Aid. (7) At a declared explicit request on the part of the detained person to appoint a defender under the Law for Legal Aid, the officer on duty in the Operational on Duty Center or the Operational on Duty Unit or the police authority in charge of the detention, has to immediately inform through a phone call the chosen defender or representative of the Bar Association about the request for legal aid, as well as provide information about the detained person, grounds for their detention and their current condition. (8) The exact time of notifying a defender (an on-duty lawyer or a lawyer hired by the detained), requested by the person or the representative of the Bar Association under the Law for Legal Aid, is recorded in the declaration under Subart. 2. In the journal for detained persons the exact time the defender appears in the respective police facility is recorded. The following addition is made to the instruction:

Art. 29 (1) Each detained person at any time, has the right of meeting with a lawyer or a representative of the diplomatic mission from the respective country whose citizen the person is.

\textsuperscript{76} Prosecutor General, Instruction 134/11.04.2011 regarding activities that pre-trial organs can carry out in relation with solicitation of lawyers, Art. 7, Art. 8 and Art. 14, available in Bulgarian at: http://svak.lex.bg/news.html&pn=15&id=964.
fied in that document, for obtaining access to a lawyer by the detained person is two hours from the moment of apprehension; when lawyers arrive at the place of detention, they are to be given access to the detained person within 30 minutes. This instruction, however, is only intended for the authorities involved in the pre-trial proceedings, only after the criminal case has been initiated and the detained person has been constituted as an accused. Therefore, it is inapplicable for detained persons under the Ministry of Interior Act. In this regard the interviewed lawyers reported that when they were visiting their clients in police stations, they were refused access with the argument that the detained person had signed a declaration that waived their right to legal aid, or that there were ongoing operational activities involving that person and the lawyer had to wait until they were completed.

Nonetheless, even in cases when a detained person requests access to a lawyer, police authorities are not obliged to provide such access or to stop conducting an „investigative conversation“ with the detained person. This transpired through an ECtHR ruling on the case Dimitar Mitev v. Bulgaria\(^77\), in which the applicant, who was detained on suspicion of committing a crime, requested a lawyer, but was denied access. He was questioned by the police and confessed to committing a serious crime. He was consequently convicted based on witness statements from police officers who conducted the informal questioning. The court established a breach of Art. 6.3c of the European Convention on Human Rights, on grounds that the applicant had been denied access to a lawyer, at the time of his confession, despite having requested it.\(^78\)

According to Art. 74, Subart. 1 of the Ministry of Interior Act, a written order for detention is issued to detained persons. In the form, which is part of the order, the text regarding the right of a lawyer is the following:

„I have been informed that pursuant to Art. 72, Subart. 5 of the Ministry of Interior Act, I have the right of lawyer’s defence and the police authority is obliged to provide me with the opportunity to contact a lawyer.”

The quoted text from the detention order differs from the text in Art. 72, Subart. 5 of the Ministry of Interior Act, according to which from the


\(^78\) Ibid., paragraphe 72.
moment of apprehension, a person has the right to a lawyer – this piece of information is not let out to the detained individuals. It is believed that this is not due to an oversight on the part of police staff who were drafting the form, but is probably because securing this right for detained persons from the very beginning would burden police with substantial workload related to contacting lawyers and guaranteeing secure conditions for contact between the detained person and the lawyer. Interviews with detainees showed that in spite of signing their detention orders, half of them were not aware that they had the right to a defender and only found out about this at a later stage – when they filled out a declaration about their rights.

After being presented with a detention order, pursuant to Art. 74, Subart. 3 of the Ministry of Interior Act, the detained persons are handed a declaration about the rights of the detainee, by which they declare, among other things, whether they require lawyer’s services or not. Just like the text of the detention order, the text in the declaration about the rights, does not make a mention of the fact that a person has the right to a lawyer’s defence from the moment of apprehension. Unlike the detention order, the declaration about the rights points out to two possibilities for choosing a lawyer: a lawyer appointed by the detained person and an *ex officio* lawyer, pursuant to the Legal Aid Act. Moreover, pursuant to Art. 21, Subpara. 4 of the Legal Aid Act free legal aid is provided in cases of detention under Art. 72, Subart. 1 of the Ministry of Interior Act, as well as in the cases of apprehension under the Customs’ Act and the State Agency “National Security” Act.

During interviews with detained individuals conducted for the *Inside Police Custody 2* study, some respondents reported that the police staff did not allow them to declare that they requested a lawyer chosen by them. When they wanted to write down their request for a personally appointed lawyer, a police officer would ask if they could afford it and told them they had to pay; to those who requested an on-duty lawyer, the police would say that such lawyer is not necessary during police detention and would be provided at a later stage. Several of the interviewees reported that they were shown where to put their signatures in the form, but they did not understand what exactly they were signing.79

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The study *Inside Police Custody 2* reached the conclusion that the low number of involvements of lawyers during police detention showed that the mechanism of providing on-duty lawyers in police custody could not guarantee their presence.\(^80\)

According to data from the National Bureau for Legal Aid (NBLA) the share of persons, detained by police in Bulgaria, who were provided with legal aid, is negligible, despite the fact that in 2006 the Legal Aid Act was amended with a text stipulating that such aid could be provided for free during detention under the MIA. According to data from NBLA, the number of cases of legal aid, provided to detained persons under the MIA and the Customs’ Act, is 25 for 2016 from a total number of 48 588 registered detentions (meaning that legal aid for one year covered just 0,05\% of the total number of detained persons), while in 2017 the cases of provided legal aid were 47 (there is no data available in police statistics on the number of detained persons that year).\(^81\)

In any case, the share of persons who were provided with legal aid in 2017 is not above 0,1\% of the total number of detained individuals – these figures lead us to conclude that the MIA does not secure conditions for access to and mechanisms for securing legal aid during police detention. It is worth emphasising that the negligible number of legal aid cases covers all instances of police detention under Art. 72, Subart. 1 of the MIA, not just detained persons who are crime suspects.

A study from 2017-2018\(^82\) shows that since police detention is not considered part of the criminal process, neither in legislation, nor in practice, persons detained by police as crime suspects, are in fact denied access to a lawyer. With few exceptions, they do not use effective legal aid while they are in held police custody. As a rule, they are questioned about suspected crimes by police staff during „investigative conversations” without the presence of a lawyer. So what they tell the police officers, could end up straight

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80 Ibid, p.73.
into their dossiers via the witness statements made by the same police officers at a later stage. These testimonies could be used as sufficient evidence for eventual conviction. In practice, the right of access to a lawyer during police detention is not effective since the law does not preclude the „investigative conversations“ in cases where the detainee has requested legal aid and also due to the lack of mandatory legal aid for the vulnerable groups. There is no system in place for summoning lawyers, in case their services are requested. The pressure from police on detained persons to waive their right to legal aid also plays a pivotal role in the deprivation of these individuals from lawyer’s services while in custody.83

Persons who in effect are detained by police – without a formal order, but they are summoned to a police station and are asked to stay for a „conversation“ with police staff – these persons are not informed about their rights, neither orally, nor in a written form; they do not have the right to legal aid.

In Bulgaria every citizen could be summoned for questioning, outside of formal criminal proceedings, by police or other law-enforcement authority, including military police or the National Agency „State Security“. Detained persons as crime suspects could also be questioned orally and/or could be instructed to give a written deposition. In both cases, the authorities could pose questions suggesting involvement in a crime. However, the authorities are not obliged by law to inform detainees about their rights during the criminal proceedings, since formally detention is considered an administrative measure. Crucially, during police detention of crime suspects, providing access to a lawyer is not mandatory, regardless of the severity of the crime or the vulnerability of the detained individual (young age, mental impediments, lacking command of the language). On the other hand, individuals questioned as witnesses in criminal proceedings have the prerogative to refuse answering incriminating questions, as well as the right to consult with a lawyer. According to the national case-law, if a person, who was questioned as a witness, later became an accused, their witness testimonies could not be used as evidence in the judicial proceedings against him/her.84 Nevertheless, the law-enforcement authorities are not obliged to terminate the

83 Ibid.
84 Criminal Procedure Code (2006), Art, 115-117.
questioning of witnesses, who in the course of an interrogation turn into suspects or accused, in order to allow them to exercise their full rights under their new qualification in the criminal process.

In the experience of people interviewed in 2017, as part of the project „Access to a Lawyer“85, information about the right of access to a lawyer for the detained is presented either after the questioning/„conversation“, or is completely withheld. These reports correspond with the findings of the research into criminal cases, where it was established that out of 67 cases of accused persons, initially detained by the police as crime suspects, only one person has exercised his/her right to access to legal aid while in police custody. Moreover, the lawyers who participated in focus groups complained that whenever they had been contacted by relatives of suspects in police detention, they had been denied immediate access to their clients, because of lack of valid power of attorney. Typically, lawyers were allowed in the police station only after the first questioning of a suspect was finished. Another point of concern was that in 66% of the cases, suspects or accused persons did not have access to a lawyer during their first questioning. In 64% of the cases, suspects and accused made initial confessions without consultation or participation of a lawyer.

Access to a lawyer for accused persons under the Criminal Procedure Code

Unlike the Ministry of Interior Act, the Criminal Procedure Code, which applies to access to a lawyer in after the criminal charges are being pressed, regulates a number of instances where the defence by a lawyer is mandatory. The defence could be absolutely mandatory (which the accused person cannot waive) and conditionally mandatory (which the accused could waive under certain conditions). In Art. 94, Subrsrt.1 of CPC, the following hypothetical situations are provisioned for absolutely mandatory defence: The interests of the accused parties are contradictory and one of the parties has his/her own defence counsel; when the accused party is underage; when the accused party suffers from physical or mental deficiencies, which

85 BHC, „Strengthening the procedural rights in the criminal process: effective access to legal aid/lawyer, in accordance with the Stockholm programme“, co-funded by the „Justice“ programme of the European Union and implemented by BHC in the period 2016-2018.
prevent him/her when the accused is physically or mentally impaired, which prevents them from defending themselves; when the case is concerned with a criminal offence punishable by deprivation of liberty of no less than ten years or another heavier punishment when the criminal accusation is for a serious crime which envisages a punishments of not less than 10 years of imprisonment or harsher sentences; when the accused is detained; when the case is tried in the absence of the accused party. In addition, defence is absolutely mandatory when the case is resolved through plea bargain and in case of summary proceedings.

According to Art. 94, Subart. 1 and 2, the legal defence is conditionally mandatory when the accused does not have the command of Bulgarian language and when the interests of more than one of the accused are conflicting and one of the parties has their own defence counsel.86

Article 99, Subart. 1 of the CPC regulates the rights of the lawyer in the following way: to meet with the accused in private; to study the written records and to receive copies when requested; to present evidence; to participate in the criminal process; to make requests, comments and to raise objections, as well as file complaints against court acts or authorities involved in the pre-trial process which breach the rights and the legal interests of the accused party. The defence counsel has the right to take part in all investigative actions involving the accused party, but his/her failure to appear not impede their progress.

**Legal Aid**

In Bulgaria the system for legal aid is organised and coordinated by the National bureau for Legal Aid and the 27 regional bar associations. Legal aid is provided by qualified lawyers who are registered in the Bureau for Legal Aid. As of 31 December 2016, the number of registered lawyers was 5,588. In cases of police detention or apprehension by the customs’ authorities, the suspects have the right to legal aid in the form of representation by a public defender. The legal aid expenses, which Bulgarian police present to detainees, are covered by the budget of the Bureau for Legal Aid and are not

87 In the Bulgarian system (Art. 91, Subart. 2 of CPC), the legal defender could be a spouse or a relative of the accused.
subject of refund, however the detained persons are not usually informed about this circumstance. As stipulated in CPC, legal aid for defendants is available both during the pre-trial and the trial phase of the process. It is provided when the involvement of a lawyer is mandatory, unless the defendant’s side has hired a lawyer of their own choice. A defendant meets the requirements for legal aid when cumulatively the following conditions are present: the candidate does not have the financial capacity to meet lawyer’s expenses; legal representation is necessary in the interest of justice and the candidate requires to be legally represented. If convicted, the users of legal aid are obliged to reimburse all the expenses for the service, regardless of their financial situation. The principle of continuity of representation by the same lawyer is applied during the official phase of the criminal process, but not during the stage of the police investigation.

According to Art. 97, Subart. 2 of the CPC, the investigative authorities have to inform the defendant about their right of access to a lawyer before carrying out any investigative activities concerning the defendant, by allowing them to contact a lawyer, although they are not under the obligation to provide a list of lawyers from which the defendants could choose. The CPC does not provide for a universal document which could serve as a “declaration on the rights” of the defendants in detention, like it is required by Directive 2012/13/EU. A decision on providing public legal aid for socially disadvantaged defendants is taken only upon their explicit request to the investigative authority or the court, depending on the phase of the criminal process.

In Bulgaria, according to Art. 28, Subart. 2 of the Legal Aid Act, legal aid is provided to detainees under the MIA and the Customs’ Act when they „cannot hire a lawyer by choice“. However, the legislation does not contain further guidance regarding the determination of the ability of the detainees to retain a lawyer. In criminal cases, outside the scope of mandatory representation by a lawyer, to qualify for legal aid, a person is required by law to satisfy two conditions cumulatively – to lack sufficient financial resources to cover the cost of representation by a lawyer and the interests of justice in the case to require such representation. Regarding the means test, the legislation does not introduce a financial eligibility threshold on applications for legal aid, but each case is examined individually on the basis of the fol-
lowing legally-set criteria: capital of the accused; income of the accused and his/her family; family, health and employment status; age and other relevant circumstances. Regarding the merits test, the decision-making authority has very wide discretion to decide whether the “interests of justice” require free legal assistance, as there are no prescribed criteria for exercising the discretion. According to some commenters, the merits test encompasses assessment of the legal and factual complexity of the case, as well as the personal situation of the accused person. Importantly, however, the Criminal Procedure Code does not presume that granting of legal aid is in the interests of justice in all cases where a person is accused of an offense that carries a custodial sentence as a possible penalty, as prescribed by Section 2, Subpara. 12 of the Directive on the Right to Access to a Lawyer.88

The participation of a lawyer in a settlement procedure between a defendant and the prosecution is mandatory. Lawyers are involved in negotiating the conditions of settlements, as well as in the legal qualification of the crime, the nature and the degree of sanction.89

3.2. FINDINGS FROM INTERVIEWS

Lawyers who have experience with Roma clients admitted that some of them are inclined to manipulate facts and circumstances that are crucial for the case which hampers building a defence thesis. They also report that the police, the prosecution and some judges are dismissive of the Roma and behave insolently; they often ask them questions which have to be “translated” into simpler terms. Most lawyers share the opinion that the Roma are more likely to need legal aid as they do not know their rights. The quality and the amount of public legal aid are in practice insufficient and often such aid is provided only formally, according to the lawyers interviewed. Commonly, Roma people tend to be avoided as clients by lawyers, because often they are not sincere and sometimes when they choose to hire lawyers, they do not remunerate them. Interviewed lawyers explain that Roma people are overrepresented in the criminal justice system as they tend to reof-


89 Criminal Procedure Code (2006), Art. 381, Subart. 5.
fend, commit property crimes and are susceptible to criminal activities due to lack of or low income and the general environment they inhabit.

A lawyer from the Sofia Bar Association stated that, in his opinion, the prosecutor’s office did not target Roma because of their ethnicity, but what they were doing was looking to increase the number of completed cases by investigating non-complex crimes. Roma, he says, are charged with conventional crimes, property crimes that are easier and faster to investigate, and thus boost crime statistics. The more complex criminal activity, usually carried out by ethnic Bulgarians, is more difficult and time-consuming to investigate, and the police and the prosecutors do not have sufficient capacity and motivation to investigate them. As Roma are also provided less qualified legal representation, their cases are looked at and completed faster. The respondent emphasized that over-representation of Roma in the criminal justice system is a socially acceptable phenomenon, uncriticized, which makes it easier for the police to start investigation against Roma. Also, Roma who file in the criminal justice system are less literate and have a harder time understanding their rights and often cannot read written documents if presented to them.

Lawyers believe that Roma are more likely to be detained during the criminal investigation due to their lower education, lack of awareness of their rights, lack of access to quality legal aid, lack of permanent address or because there are many people registered on the declared address, lack of legal marriage, and because Roma are generally perceived by the investigative authorities as people of higher risk for criminal activities. When it comes to guilt, one of the lawyers stated that it is presumed when Roma is involved in a case. Another lawyer put it this way: „let’s say that it is very difficult to prove that a Roma is not guilty.” Regarding sentences, the interviewed lawyers did not share the view that Roma are likely to receive harsher sentences. Settlements are normally welcome equally by Roma, the prosecution and the judges in a court case, as for the Roma they usually mean shorter sentences, while for the prosecutors and the judges they entail less work. The conditions under the settlements are not less favourable. The Roma activist interviewed explained that lawyers are often biased and pressure their clients to sign settlements with the prosecution.
The interviewed convicted Roma reported that they all had lawyers, mostly – public defenders, and as a whole they were happy with their services, apart from the ones who were sentenced to pay large amounts in compensations (70-80 000 leva). They reported to having 1-2 to several meetings with their assigned public defenders, while the Roma who hired their own lawyers, had had higher number of meetings.

A Roma man, interviewed in prison, shared that in 2014 he was detained by the police for 24 hours as being suspected in committing a robbery accompanied by murder, without a formal accusation and without being granted access to a lawyer. He was identified by a witness as the perpetrator of the crime and on the same day he was charged with the crime and detained for 72 hours by order of the prosecutor. Although he wanted to be represented by his own lawyer, the investigating body appointed him a public defender because they could not get in touch with his lawyer. The interviewee suspected that the public defender was working with the police because he had not said anything as the investigating body was bringing the criminal charges. He wanted to change his lawyer prior to the court hearing for the imposition of remand measures, but while in arrest he was not allowed to speak on the phone, and the public defender did not call his wife.
On the last day of serving my prison sentence in 2016, I was taken from Sofia prison by police officers and brought to a police station. There they took me to the top floor and beat me with slaps and punches. They then made me participate in an identification parade, along with other people, and interrogated me without charging me and without providing me with a lawyer. Then they sent me back to prison, from where I was released the same day. It turned out that the identification parade was carried out as part of pre-trial investigation of a robbery, and the victim had identified me as the perpetrator of the crime. A few weeks later, I was charged with the robbery, and a week later I was served the investigation in the presence of a public defender. However, this was a „police lawyer“, he was only following the orders of the police. I was offered a plea bargain- 3 years of imprisonment, but I refused because I was innocent, and I wanted to prove that in court. I hired a lawyer for the court proceedings; my family took a large loan to pay him. The judge of the Sofia District Court behaved very badly with my lawyer, who was also a Roma, and did not allow any of his evidentiary requests. We objected in court that my defence rights had been violated in the pre-trial proceedings because of the way in which the identity parade had been carried out, without access to a lawyer, which I should have been given access to according to European Union law. However, the Court rejected this objection, stating that I did not have the capacity of an accused person at the time of the identity parade, which meant that the provisions of Directive 2013/48 / EU were not relevant to my case. The sentence of the Sofia District Court, according to which I was sentenced to six years of imprisonment, also stated that “at the time being the Bulgarian criminal procedure law did not mention the term „suspect“, ie. this term was not a legal term and at this point there was no other legal term with the same meaning in order to assume that [the defendant] had such status and hence to assume that these norms are relevant to the case of the defendant”.

This is the story of a young man of Roma origin, interviewed in Sofia prison
4. PROSECUTORS

The Bulgarian Prosecutor’s Office has wide discretionary powers, both in the field of criminal proceedings and beyond. In tune with the political anti-Roma sentiments, the prosecutor’s office constantly organizes noisy public actions to counteract “conventional crime”, which are usually held in Roma communities. Specialists in the field of criminal justice say that prosecutors are mostly interested in the detection rate of crimes and therefore work on cases that are allegedly committed by Roma, as they are easier and faster to investigate. Thus, the Roma become overrepresented in the criminal system.

4.1. ROLE AND DISCRETIONARY DECISIONS OF THE PROSECUTORS

The prosecutor’s office in Bulgaria has centralized and strictly hierarchical structure. A prosecutor from the higher prosecutor’s office may repeal or amend any act of a prosecutor from the lower prosecutor’s office, unless the act has been reviewed in court; the Prosecutor General supervises the legality and provides methodological guidance to all prosecutors. The Prosecutor General issues instructions and mandatory orders regarding the activity of the prosecution service, which often are not made public.

The prosecution has the exclusive power to press charges and maintain the indictment for publicly actionable criminal offences. Among others, the powers of the prosecutor in criminal cases include: to initiate or re-
fuse to initiate criminal proceedings, to give legal qualification of the act committed, to direct the investigation and exercise constant supervision for its lawful and timely conduct; to exercise supervision for legality in the enforcement of coercive measures. The role of the prosecutor in formulating and pressing a specific accusation against a specific person is crucial. This process is based on the evidence gathered by the investigative authorities. The prosecutor has a number of powers related to the exercise of coercion - the imposition of measures of restraint, the imposition of other measures of procedural coercion (forcible bringing of the accused, imposition of a ban on leaving the country, forced placement in a psychiatric institution, etc.), using coercive techniques for establishing evidence (search and seizure, search, interrogation of a witness, etc.). In the pre-trial proceedings, the prosecutor may order the detention of an accused for a period of up to 72 hours with a view to bringing him/her before the court competent to remand persons in custody. The Criminal Procedure Code provides for judicial control over most acts and actions of the prosecutor in the criminal proceedings. Exceptions to this general rule are the decrees of the prosecutor to initiate or refuse to initiate criminal proceedings, which are subject to institutional but not judicial review.

Constituting a person as an accused party is a formal act. As a rule, charges are being pressed after the criminal proceedings have already started and the investigative body has gathered sufficient evidence regarding the guilt of the offender. It involves issuing a decree for the constitution of a person as an accused. The document has to include particular points stipulated in the law: 1) the date and location of issuance; 2) the issuing body; 3) the full name of the individual constituted as accused party, the offence on account of which he/she is constituted and its legal qualification; 4) evidence on which such constitution is based, provided this will not obstruct the investigation; 5) the remand measure, if one is imposed; 6) the rights of the accused party.

This formalistic approach of the Bulgarian legislation regarding the occurrence of the criminal accusation does not correspond to the standards established in the practice of the ECtHR. According to the Court’s interpretation, a “criminal charge” exists from the moment the person is officially notified by the competent authorities of the suspicion that he/ she has commit-
ted a crime or from the moment his/her situation is substantially affected by the actions taken by the authorities as a result of the suspicion that he/she has committed a crime.90 Such actions may be detention of a suspect of a crime, questioning of a suspect for his/her complicity in a committed crime and others.

Upon completion of the investigation, the prosecutor shall terminate or suspend the criminal proceedings, file a motion for release from criminal liability with the imposition of an administrative penalty or a motion for a settlement agreement, or file an indictment if there are grounds for doing so.91 When deemed necessary, the prosecutor may perform additional actions on the investigation, as well as other procedural actions, after which he/she shall present the investigation to the parties of the case.92

The prosecutor and the lawyer of the accused person negotiate the terms of the plea bargain agreement, including the legal qualification of the crime, the nature and the degree of punishment. In 2019, more than a third of the acts submitted by the prosecution to the court were proposals for resolving the case with an agreement in the pre-trial proceedings; 98% of them were approved by the court.93

The Judiciary Act provides additional powers to the prosecutors, outside the scope of criminal proceedings – to carry out personally or to assign other bodies to carry out inspections when there is evidence of crimes or other illegal acts; summoning citizens and ordering for them to be brought if they fail to appear without a good reasons; to request documents, information, explanations, expert opinions and other materials.94 These powers are exercised outside the formal criminal process, without clear rules for their exercise and without procedural guarantees against arbitrary interference with citizens’ rights.

92 Ibid.
4.2. EVIDENCE OF PREJUDICE AGAINST ROMA

In Bulgaria, there is a lack of research on the problems of ethnic profiling and other forms of racial or ethnic discrimination in the work of the prosecutors’ office in criminal cases. Prosecutorial acts (decrees for bringing charges, indictments, etc.) are not publicly available, which blocks the possibility for their review for evidence of prejudice against Roma. Nevertheless, there are some examples of differential treatment of Roma by the Bulgarian prosecutor’s office. The indication of the ethnicity of the perpetrators of crimes in press releases of the prosecutor’s office only when the perpetrators are considered to be of Roma ethnic origin is one such example.

The specialized prosecutor’s office prosecuted four people for participating in an organized criminal group for body organs trafficking. [...] The evidence gathered so far shows that the members of the criminal association, all of Roma origin [...]  

A RECIDIVIST DETAINED FOR ANOTHER ATTACK ON ELDERLY PEOPLE

On December 29-30, 2016, a person of Roma origin broke into the home of an elderly woman (P.S.), located in the village of Litakovo, municipality. Botevgrad.

This vicious practice has a stigmatizing effect on the entire Roma community and gives the impression that the specific ethnicity of the perpetrators is as important as the tameness of their behavior. In the cases cited above, ethnicity is not legally relevant to crime prosecuted. At the same time, in the press releases of the prosecutor’s office no examples can be found in which the ethnicity of the perpetrators is indicated, when they are of Bulgarian ethnic origin, for example.

An emblematic case of openly expressed negative attitudes towards the Roma by a high-ranking representative of the prosecution was a state-

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ment by the current Chief Prosecutor Ivan Geshev. On 17th April 2019, Ivan Geshev, then a deputy Prosecutor General of Bulgaria, now a current Prosecutor General, was interviewed for the Bulgarian National Television where he took the opportunity to comment on an on-going high-profile criminal case. Referring to the act of withdrawal of testimonies by one of the witnesses on the case, who also happened to be accused on a different case, Mr. Geshev commented that this withdrawal was to be expected as „this is what all defendants do, this is what gypsies do”. At the end of April 2019, a Roma activist filed a complaint against Mr. Geshev for discrimination, but later the same year the Commission for Protection against Discrimination rejected the complaint. At the appeal case, the first-instance court similarly did not establish discrimination and stated that the use of the term „gypsy” cannot be considered an indicator for unequal treatment. The Supreme Administrative Court confirmed the first ruling by adding that seeking responsibility from a magistrate for breaching the prohibition on unequal treatment would be anti-constitutional. This conclusion was made in reference to the immunity against criminal prosecution, which magistrates have, pursuant to Art. 132 of the Constitution; however this likens the responsibility under the Protection against Discrimination Act with criminal responsibility.

In 2020, the Prosecutor General identified the fight against „conventional crime” as his top priority. In the same year, the prosecutor’s office, 

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97 Ivan Geshev: We are not afraid and we know the truth, www.bnt.bg. The interview in Bulgarian is available at: https://www.bnt.bg/bg/a/ivan-geshev-ne-se-strakhuvame-i-znaem-istinata.
100 Administrative Court-City of Sofia, Decision No. 1195, 11th October, 2019 on administrative case No. 976/2019.
101 Supreme Administrative Court, Ruling No. 5610 on administrative case No. 14696/2019, 15th May 2020, available at: http://www.sac.government.bg/court22.nsf/d038edcf49190344c2256b760036760/146791a5e1ca3993c2258561003dc795?OpenDocument&fbclid=IwAR1c8XQp5BQsFNXH6Lh1GyjN eT-GsH4LVCTVftoN96kJMi-kW7Zz88S7x.
GUILTY BY DEFAULT: Discrimination against roma in the criminal justice system in Bulgaria

On the basis of the media publications it could be concluded that the operations were not related to specific criminal cases or data on committed crimes, but were aimed at checks of the „known criminals” and „persons with two or more pre-trial proceedings”; numerous arrests were made. Although declared ethnically neutral, these actions are carried out in a targeted manner in Roma communities only. The more intensive contact Roma have with the police and the prosecutor office, the greater representation of they would have in the criminal justice system.

Following the declaration of the state of emergency in Bulgaria on 13 March 2020, Roma communities were prosecuted as violators of anti-epidemic measures. On March 20, 2020, the Sofia District Prosecutor’s Office issued a statement authorizing the local authorities and the police in Sofia to introduce a control regime through checkpoints in the city to restrict the movement of citizens and identify violators of anti-epidemiological measures. The press release of the prosecutor’s office says that the instructions were issued on the basis of „information disseminated in the media, about the gathering and movement of groups of people (more than two adults) in neighborhoods of Sofia, populated by people from different ethnicity, clearly demonstrating their unwillingness to comply with the imposed restrictions, in violation of item 9 of Order of RD-01-131/17.03.2020 of the Minister of Health for the introduction of anti-epidemic measures on the territory of the Republic of Bulgaria. Checkpoints were built only at the entrances of Roma neighborhoods.


4.2. FINDINGS OF INTERNATIONAL BODIES AND ECTHR DECISIONS REGARDING BULGARIA

In several consecutive opinions concerning the judiciary in Bulgaria, the European Commission for Democracy through Law (Venice Commission) addresses the issues of the unaccountability and the considerable powers of the prosecution service and especially of the Prosecutor General. The Commission is also concerned about the broad powers of the Bulgarian prosecutor’s office outside the field of criminal justice in the exercise of its constitutional powers of “supervision of legality.” According to the Venice Commission, these powers are very vaguely defined in both the Constitution and the law and do not set clear limits on the coercion that the prosecution can exercise. Its recommendations are that the powers of the prosecution outside the field of criminal justice, according to the Venice Commission, should be “severely limited, if not completely abolished”.

As mentioned earlier, in the case of Nachova and others v. Bulgaria, concerning the murder of two young Roma boys, the ECTHR found that police violence and lack of investigation were based on racial discrimination. In the case, the Court emphasized that when investigating violence or death caused by public officials, “the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.”

In the case Abdu v. Bulgaria, ECTHR established a violation of Article 3 (which prohibits torture or inhuman or degrading treatment) and Article 14 (which prohibits discrimination); in addition the Court established failure on the part of the national authorities to take all reasonable measures to investigate plausible evidence suggesting possible racist motivation for

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109 Ibid, paragraph 158.
the violence inflicted on the applicant. A further claim by the applicant is that the failure of national authorities to undertake the necessary steps to properly investigate the evidence on the attack against him is motivated by racism on the part of the prosecution. The Court ruled that the application is inadmissible due to lack of sufficient evidence supporting the applicant’s claim that the prosecution’s actions were racially motivated. Furthermore the Court stated that there were no indications of „prejudiced comments or racist insults”. However, after reviewing the aspect of exhaustion of domestic remedies, the Court dismissed the Government’s claims that the Law on the responsibility of the state and the municipalities could be successfully applied as a compensation instrument against discrimination from judicial authorities during an ongoing criminal process.

4.3. FINDINGS FROM INTERVIEWS

All the interviewed judges shared the opinion that low or lacking education of the Roma made them prone to committing „simple” crimes like stealing property, which are easier to investigate. Marginalisation and prejudices lead to manipulation of evidence on the part of police in the following way: „he/she has most certainly done that, so if we don’t manage to collect evidence, we’ll fabricate such.” One of the judges commented that poverty naturally results in inadequate legal aid. A lawyer interviewed stated that prosecutors are mostly interested in the crimes’ detectability rate and hence would prefer to take on cases which are assumed to be perpetrated by Roma as they tend to be easier and faster to solve. Thus Roma people end up being overrepresented in the criminal system. According to lawyers, prosecutors treat Roma in a patronising and condescending manner.

When it comes to factors influencing the permanent detention measure, which tends to affect Roma more often than non-Roma people, judges commented that the risk of absconding in their community is higher due to lack of permanent address registration and financial capacity to pay bail.

The majority of the interviewed judges believe that it is more likely for Roma to sign settlements with the prosecution, since the conviction rate among them is higher; in addition, they are promised by the prosecutor and the lawyer that this way their sentence will be reduced: “You agree, we make a commutation and you go home”. One judge explained that prosecutors
are more inclined to offer settlements to accused Roma, because most of their indictments would either not stand in court, if a court reviewed them in a standard process, or because their cases are for petty crimes. Roma people do not use adequate legal aid due to poverty or low education, hence they are often persuaded by prosecutors that for a first-time offence, under a settlement, they will be handed either a conditional sentence or a probation. For a second-time offence, if they agreed to a settlement, their case would be resolved faster. This way of proceeding leads to multiple convictions for Roma people and they turn into recidivists. According to another judge, in her local region, prosecution settlements were not a popular practice, as they imposed the obligation for compensation for damage, which is unlikely to be fulfilled by the usually poor Roma. As far as the conditions for prosecution settlements are concerned, judges deem that punishments imposed on Roma are not more severe than those on ethnic Bulgarians. However, in the cases of repeat offenders, the law provides for harsher sentences as the risk for society increases.

The only prosecutor interviewed was on the opinion that the distrust of Roma people in the criminal justice system is a derivative of their distrust in the state authorities as a whole – in the court system, in the prosecutor’s office, in the social services. He admitted that there are prosecutors prejudiced against Roma. He was not aware of any Roma prosecutors, but he mentioned that he had worked with an investigating police officer of Roma ethnic origin. As for the plea bargains, he said that if the case was clear, the prosecutors preferred to complete it faster and with less effort. Often, he said, the court was also calling for a plea bargain because it was easier for the judges and was saving them time from writing motives to the decision. Also facilitates judges and saves them from writing reasons.
The judge in the criminal case must ensure fair trial and equality before the law for all. This means that the judge should manage the proceedings and decide all matters in the case impartially, without prejudice or discriminatory behaviour. Thus, the PPC does not allow participation in the court panel a judge or juror, who might be considered biased. Nevertheless, there are examples in the Bulgarian case law, although not in abundance, of the existence of negative stereotypes against Roma among judges. These stereotypes harm the situation of Roma defendants, especially when it comes to the assessment of the danger of absconding in pre-trial proceedings, to the evaluation of evidence, when discussing the mitigating and aggravating circumstances and others.

5. JUDGES

5.1. ROLE AND DISCRETIONARY POWERS OF JUDGES

The Criminal Code codifies all crimes and the punishments for each crime. Some crimes are punished with a single punishment (for instance deprivation of liberty) or a combination of two or more punishments (for instance deprivation of liberty, plus a fine and a confiscation). In these cases the court’s discretion is used to determine an appropriate degree of the punishments, within the provisions of the law regarding each separate crime, so
that in their sum total they reflect the purpose of the punishment.\textsuperscript{111} For other crimes the Criminal Code provisions two or three punishments as an alternative – for instance deprivation of liberty, fine or probation, while leaving it to the discretion of the competent court to determine a suitable form and degree of the punishment.\textsuperscript{112} Furthermore, for certain crimes the Criminal Code provides for the possibility that the court imposes additional penalties, like confiscation of property or deprivation of certain rights or one of them. Bulgarian legislation provisions for mandatory minimal sentencing for most crimes punishable by deprivation of liberty or a fine.

During a criminal trial, a court has to collect evidence, not only regarding the crime, but also such related to the personality of the defendants, by using information about their financial or family situation, about their living conditions, their behaviour before and after the perpetration of the crime, their background, social status and criminal record.

The court, as part of their ruling, has to present detailed and comprehensive argumentation on the individualisation of the punishment. According to Art. 54, Subart. 1 of the Criminal Code, the court decides on a punishment within the boundaries of the law regarding the specific crime, by taking into consideration:

- the degree of public danger of the act and the perpetrator,
- the motives for perpetrating the act and other mitigating or aggravating circumstances.

Mitigating circumstances are those, which the competent court considers meriting a milder punishment; aggravating circumstances are those, which could potentially lead to harsher punishment.

As mitigating factors, the court would consider: committing a crime under a threat or duress, in a state of a strong emotions or agitation; a first-time offence; remorse on the part of the defendant or confession for the crime; positive social characteristic of the defendant; permanent employment and restoration of damages.

As aggravating factors, the court would consider: the crime is commit-

\textsuperscript{111} Criminal Code (1968), Art. 57 (2).
\textsuperscript{112} Criminal Code (1968), Art. 57 (1).
ted by a person who is not a first-time offender; a crime committed against minors; a crime resulting in heavy injuries; coercing minors into committing a crime. Regarding the personality of the perpetrator, aggravating factors could be anti-social habits; perseverance in achieving criminal goals; committing other crimes, etc.

In instances of exceptional or multiple mitigating factors, when the punishment provisioned by the law is disproportionately severe, the court could either reduce the sentence under the minimum threshold, or commute the punishment with a lighter one.\textsuperscript{113} Sanctions are commutated in the following manner: a) life imprisonment – into 15 to 20-year sentence; b) imprisonment without a minimum threshold – into probation; for minors it is probation and public reprimand; c) probation – into a penalty of between 100 and 500 leva.\textsuperscript{114}

A plea bargain agreement that has been negotiated in the pre-trial phase of the criminal proceedings, has to be approved by the court in a hearing with following parties being present – the defendant, the lawyer and the prosecutor.\textsuperscript{115} During the hearing the court has to ascertain that the defendant understands the indictment, confesses his/ her guilt, understands the consequences of the settlement, agrees and voluntarily signs the settlement.\textsuperscript{116} If these conditions are met, the court proceeds with the next step – ensuring the concordance of the agreement with the law and public morality.\textsuperscript{117} The court could refuse approval of the settlement if it does not conform to the law and public morality. The court could also suggest changes in the settlement, subject to discussion with the lawyer, the prosecutor and the defendant.\textsuperscript{118} The decision of the court is final.\textsuperscript{119} When the court refuses to approve the agreement, the case is returned to the prosecutor.\textsuperscript{120}

An agreement with the prosecution, made during the trial phase of the proceedings, has to also be approved also by the victims of the crime, if they

\textsuperscript{113} Criminal Code (1968), Art. 55 (1).
\textsuperscript{114} Ibid.
\textsuperscript{115} Criminal Procedure Code (2006), Art.382 (3).
\textsuperscript{116} Criminal Procedure Code (2006), Art.382 (4).
\textsuperscript{117} Criminal Procedure Code (2006), Art.382 (7).
\textsuperscript{118} Criminal Procedure Code (2006), Art.382 (5).
\textsuperscript{119} Criminal Procedure Code (2006), Art.382 (9).
\textsuperscript{120} Criminal Procedure Code (2006), Art.382 (8).
are constituted as a party to the proceedings.\textsuperscript{121}

5.2. FINDINGS OF INTERNATIONAL BODIES AND ECTHR DECISIONS REGARDING BULGARIA

The case \textit{Paraskeva Todorova v Bulgariya}\textsuperscript{122} before ECtHR concerns a sentence that was influenced by ethnic profiling. The applicant was a woman of Roma origin, whom the Bulgarian court had refused a suspended sentence with the motive that such ruling would encourage a sense of impunity, especially among members of minority groups, for whom „a conditional sentence is not a sentence”. In its judgment, the Court noted that “this allegation, taken into account in conjunction with the applicant’s ethnocultural background, was capable of instilling in the public, as well as in the applicant, the feeling that the court intended to impose in this case a sentence instructive for the Roma community by imposing an effective sentence on a person belonging to that minority group in this case.”\textsuperscript{123} Therefore ECtHR established a violation of the freedom from discrimination, which breaches the right to a fair trial. As an individual measure for the implementation of the ECtHR ruling, the criminal case against the applicant was reopened on a national level which resulted in her sentence being commutated to a conditional one. The applicant demanded compensation for discrimination from the courts and consequently she was awarded 5000 leva for the two years she spent in prison.

5.3. EVIDENCE OF PREJUDICE AGAINST ROMA

The impartiality of the court in criminal cases is a mandatory condition for the legality of the acts issued. Referring to the case-law of the ECtHR, the Supreme Court of Cassation derives the following criteria for impartiality: “In order to be impartial, the court is required not to be prejudiced as to the decisions it is to take, not to allow itself to be influenced by information existing outside the courtroom, by public attitudes or by any pressure and to base its judicial act on the facts established during the trial”.\textsuperscript{124}

\textsuperscript{121} Criminal Procedure Code (2006), Art.384 (3).
\textsuperscript{122} CEDH, \textit{Affaire Paraskeva Todorova c. Bulgarie}, no. 37193/07, arret 20 mars 2010, available at: http://hudoc.echr.coe.int/eng?i=001-97954
\textsuperscript{123} Ibid, Subart. 40.
\textsuperscript{124} Supreme Court of Cassation, Decision №158 of 19.06.2015 in cassation case №402 / 2015.
However, examples of explicitly expressed negative prejudices against Roma and their manifestation in resolving various issues within the discretion of the court can be found in judicial decisions in criminal cases – where the court is assessing the danger of absconding in pre-trial proceedings, assessing the quality of an evidence, commenting on the mitigating and the aggravating circumstances, etc.

Sometimes a court explicitly points out to the ethnic origin of the defendant as a justification for their preliminary detention. For example, in Decision No. 506/2017, the Plovdiv Appellate Court argues that „concern about the existing real danger of re-offending is justified”, because the defendant, who is a Roma, „originates from a specific ethnic background, which tolerates physical aggression as a means to resolve such problems.”

In 2010, A.I., a man of Roma origin, was pronounced guilty for theft of a wallet and inflicting an injury upon an old woman. The first-instance court sentenced A.I. to 3 years conditional prison sentence. The appellate court, however, revoked the initial verdict and handed A.I. a three-year effective prison sentence with the argument that the defendant “originates from the gypsy minority with its typical mentality”. The Supreme Court of Cassation confirmed the second ruling.

In a criminal case against a Roma man accused of a sexual assault of a minor, the Dobrich District Court stated that the motivation for the crime was „culturally and ethnically defined attitude [of the perpetrator] towards children, women and sexual urges.”

Decision No. 369/2012 of the Sofia Appellate Court is a glaring example of ethnically biased court assessment of the credibility of witness testimonies. In its decision the court openly doubts the credibility of the testimonies from a group of witnesses, entirely motivated by their Roma ethnic origin, while employing various discriminatory stereotypes.

„Despite all this /deliberations by Sofia City Court/ - Sofia Appellate Court deems it necessary to take into consideration the fact of a brawl, followed

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125 Sliven Regional Court, Verdict No. 9 from 20.04.2011 on criminal case No. 157/2010
126 Bourgas Appellate Court, Decision No. 107 from 29.06.2011 on criminal case No. 119/2011
127 Supreme Court of Cassation, Decision No. 474 from 29.11.2011 on criminal case No. 2319/2011
128 Dobritch Regional court, Verdict No. 18 in criminal case No.380/213.
129 Sofia Appellate Court, Decision No. 369 from 20.22.2012 on criminal case No. 965/2012
by an altercation, which occurred in the gypsy quarters of (name of residential area) with participants exclusively members of the said ethnic group – with all its characteristic, well-known peculiarities (specific social and living conditions, family and inter-personal relations), in their majority being especially problematic in terms of adaptability to the commonly-adopted society norms for interaction and morality / of clearly demonstrated reluctance to adapt – instead demonstrating a preference towards a parasitic, often criminal, way of life/, exclusively following and abiding by their own interior rules, customs and traditions, of their closed (“capsulated”) community, thus making them prone to short temper, defiance and aggression in their interaction, uncritical and hence inclined to use lies, deception, perfidy and exaggeration of perceptions. They are callous and always ready to initiate scandals, even on minor pretexts, using mob law as the only instrument for solving conflicts or disagreements that have arisen /in the words of witness V. R. „We are all carrying knives around the quarters“/, without considering the negative consequences, not only for the victims, but also for themselves /significant problems, not just within the community, but also coming from the state authorities, responsible for establishing and sanctioning such behaviour. All of the above is an illustration of the different /and hard to understand for an outsider/ value system and therefore the rather low legal awareness of the representatives of this ethnicity, which consequently should be a motivation for extreme caution when assessing the credibility of statements given by these witnesses, who, taking into account the above considerations, would doubtful be daunted by the stipulations of Art. 290 of the Criminal Code.”

The Supreme Court of Cassation revoked the decision while calling it „a completely unacceptable precedent in the Bulgarian court practices”.

„In a blatant and unprecedented manner the court has declared different treatment of the testimonies by the witnesses, based on their Roma ethnicity. It has afforded the liberty to define by presumption the witnesses as „prone to short temper, defiant and aggressive”, „inclined to use lies, deception and perfidy” and in general calling for “extreme caution” when assessing the credibility of their testimonies because of their ethnic origin, and not based on their personal qualities. This attitude is a gross violation of the constitutional democratic fundaments of society and is in breach with the

130 Supreme Court of Cassation, Decision 149 from 10.04.2013 on criminal case No. 373/2013.
basic principle of the criminal process for equality before the law of all citizens, participants in criminal proceedings, stipulated in Art. 14 of CPC. The Sofia Appellate Court decision is a completely unacceptable precedent in the Bulgarian court practices.”

In another case, a person on trial from Roma origin was refused a translator from and to Roma language, despite his insistence that he did not possess any command of written and little command of spoken Bulgarian, which led to impossibility of exercising his right to personal defence during the trial.131 During the appeal case for the refusal to assign a translator, along with other motives, the court expressed a principle disagreement with providing translation for a Bulgarian citizen, regardless of the possibility that they may not possess sufficiently good command of Bulgarian, in order to guarantee their right to a fair trial.

“For the sake of thoroughness, the Appellate court deems it necessary to point out that the Constitution of the Republic of Bulgaria guarantees each Bulgarian citizen the right of free secondary education, while the Bulgarian state offers various possibilities for acquiring a minimum educational level, which the defendant has managed to acquire. Therefore, to tolerate further low level of literacy and insufficient command of Bulgarian of persons who have chosen to isolate themselves in communities where communication in Bulgarian is not practiced, is wrong and inappropriate on one hand, while on another is in contradiction with the criminal procedure code.”132

Indications of judges’ prejudice against Roma could also be found out in the courts’ justification of what constitutes mitigating circumstances in cases where the defendant is a Roma person. For example, as a positive characteristic of a Roma accused of robbery, the court pointed out that „despite his Roma origin” he ensured regular attendance at school for his children.133 The appellate court in this case found that „it is absolutely inadmissible in a judicial act […] a distinction between the intensity and quality of the parental care to be made on the basis of the ethnic origin of the parent.”134

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131 Sliven Regional Court, Order from 11 July 2017 on criminal case № 330/2017.
132 Bourgas Appellate Court, Order No. 61 from 2 August 2017 on private criminal case No 193/2017.
133 Asenovgard District Court, Verdict No. 34 from 12 September 2013 on criminal case No. 544/2013.
134 Plovdiv Regional Court, Decision No. 318 from 25 November 2013 on second instance criminal case №1405/2013.
another case, as an argument for mitigating the defendant’s responsibility for robbery, the court resorted to the use of highly humiliating and dehumanizing ethnic stereotypes concerning Roma, stating that the defendant “came from a Roma minority group and was therefore characterized by very primitive thinking and moral restraints.”

5.4. FINDINGS FROM INTERVIEWS

The interviewed judges reported that they had encountered difficulties in their communication with Roma people due to their sometimes poor command of Bulgarian, low education and cultural peculiarities: “The Roma often do not understand the court proceedings or the court decisions. They sometimes cannot understand the problem with their crime or offence, because they are used to dealing with their relations within the community in this way, and not according to the law.” Although language barrier is a frequent occurrence, the interviewed judges could not remember a single case from their practice where a translator from Roma language was appointed in court.

A judge, working in a small district court, explained that because of the complex court language and procedure, the criminal proceedings might happen to be incomprehensible and poorly understood by the defendants, including Roma people. Her approach to the situation was to try to use plain language where possible, to explain the procedure in more details and to make sure that the defendants have fully understood the proceedings.

Judges view the police stops and checks as ethnic profiling which lead to easier investigations of potentially Roma-committed crimes. Prosecutors tend to share a similar opinion. They cannot remember meeting other prosecutors of Roma origin and have heard insults addressed at the Roma community from their colleagues, albeit rarely. They explain Roma people’s distrust in the criminal justice system with the lack of Roma representatives in it, the fact that they are normally “on the other side” and that they have more respect for their own legal system, called “meshere”. Judges put down the more frequent arrests in the pre-trial stage among the Roma to the lack of permanent address registration, lack of official marriage and lack of steady...
employment, which factors heighten the risk of absconding and repeat offences.

According to the interviewed lawyers, judges tend to be more unbiased and tolerant towards the Roma, than police and prosecutors. Sometimes judges are even lenient when it comes to convicting Roma individuals.

The majority of the interviewed Roma feel that they are under higher risk of being arrested and consequently convicted with harsher sentences because of the lack of adequate legal aid, their low education and low income. Judges, prosecutors and lawyers do not agree that Roma people are more harshly treated, prosecuted and convicted due to their ethnic origin. They tend to explain the sometimes more severe sentences with repeat offences, poverty, low education and low income. A considerable number of the interviewed judges reported very little or no experience in anti-discrimination training courses.
Conclusion
CONCLUSION

Discrimination and bias against Roma people in Bulgaria exists on every level of the administration and functioning of the criminal justice system. The formal equality of all citizens which Bulgarian laws guarantee in reality is not reflected in equal and unbiased treatment of the Roma. Racism and structural discrimination against the Roma in the criminal justice system remain invisible for the state institutions and therefore they do not take adequate measures to combat these phenomena. Quite the opposite occurs – high-ranking government officials and representatives of the prosecution office make openly racist statements and thus normalise the use of stereotypical associations between criminality and ethnic origin. The lack official collection of personal data on ethnicity, hinders the study of the share of Roma representation among suspects, accused and convicted persons in the criminal justice system and additionally contributes to the negation of these problems.

Police authorities utilise a wide-ranging ethnic profiling. Roma are more likely to be stopped and checked by police, they are more frequently arrested and are in commonly overrepresented in the criminal processes. The average profile of a suspected or accused Roma is a person of poor command of Bulgarian, ill-educated, of low income, without permanent address registration and a perpetrator of a crime related to property deprivation.

The legal regulation of the right of access to a lawyer of suspected persons, has serious deficiencies, since police investigation is not part of the criminal process and is perceived as an administrative procedure. These deficiencies have a significantly more negative impact on the Roma who are detained and subjected to preliminary actions in police custody, as they tend to be more frequent objects of such actions. The earliest Roma persons gain access to legal defence is after their first questioning in a police station, they
meet with their lawyers infrequently, and there is a greater likelihood that they remain in custody throughout the pre-trial stage of the process. Roma people are generally not informed about their rights during arrest or detention and know little about discrimination and means for protection against it. The lack of adequate legal aid leads to failure to guarantee fair trials and this affects primarily Roma people because of their vulnerability, rooted in their lower social and educational status, poor command of Bulgarian and lack of adaptability of the criminal justice system to their needs in the process.

Roma are more likely to sign settlements with the prosecutors, although there is no conclusive evidence that the settlements’ conditions are more unfavourable for the Roma. In the words of judges, prosecutors and lawyers, Roma are overrepresented in criminal cases because their crimes are easier to investigate, takes shorter time to collect evidence and hence the overall process does not last long. The Bulgarian prosecution not only is failing to take measures to address discrimination against the Roma in the criminal justice system, but through statements and actions by some of its representatives, actively practices discrimination. This is confirmed by reports from other participants in the criminal process. The attitudes of a significant number of the interviewed prosecutors and judges, regarding anti-Roma discrimination, is one of denial or indifference. Among some of the judges there is awareness about the effects of discrimination against the Roma, however among another considerable part of them, such awareness is lacking and hence this is reflected criminal cases and court rulings. The language of the proceedings and the technical legal jargon used in the court rooms might serve as a barrier to the full understanding of the proceedings.

Training courses for overcoming discrimination are not a regular occurrence for the representatives of the justice system. A small number of professional have participated in such events, which in truth are quite sporadic. They have not been integrated into the system for carrier growth of magistrates. The Roma community is not professionally represented in the justice system, except for a few lawyers of Roma origin who work in the area of criminal justice.
Recommendations
The discrimination against the Roma in the criminal justice system violates three of the fundamental principles of human rights: non-discrimination based on race, skin colour or ethnic origin; equality before the law and the guarantees for fair trial. The current report is making the following recommendations for reforming the national legislation and policies, work organisation and professional training for those involved in the justice system, with the purpose of overcoming the existing discrimination and bias against the Roma and achieving a fairer criminal process:

- Develop a regulatory and institutional framework for collecting, processing and protecting ethically disaggregated data, for the purpose of identifying discriminatory practices in the areas of access to justice, administration of criminal justice and law enforcement. Personal data about ethnicity should be collected following the principle of self-determination of the respondents. Individuals should be given the opportunity to reveal or withhold information about their personal characteristics. The data-collecting institutions should present clear and easily-accessible information about their activities, including the research design and the methodology of collecting of data. Data collected by state authorities should be made available to the public.
• Introduce a legal definition for “ethnic profiling” and declare it unlawful. A ban on racial and ethnic profiling must also be introduced in the ethics codes of police, prosecution and judges.

• Implement measures to combat prejudices and their effect on the behaviour of police through organising initial and follow-up training courses for all police staff where a clear message is conveyed that profiling and other forms discriminatory actions during police work will be strictly forbidden. It is highly recommended to involve members of the Roma community.

• Analyse differential treatment, based on race or ethnicity, during police stops and checks, questioning, searches and detention, with the aim to establish whether these differences could be overcome.

• Facilitate equal access to legal aid or other free legal services for Roma people by: collecting data on the use of legal aid by Roma; impact assessment of the criteria for access to legal aid and how it is being applied in practice for the Roma; guarantees for easy access to information about legal aid; guarantees for easy access to free or reasonably-priced legal consultations; undertake steps to guarantee the appointment of Roma language translators during court trials, when such necessity occurs. It is also important to support the work of NGOs which offer legal consultations and aid.

• Introduce legal mechanisms for tracing and responding to cases of discrimination of ethnic minorities in the criminal justice system in Bulgaria through effective instruments for submission of complaints and legal aid for the victims.

• Strengthen the commitment of the Ombudsman and the Commission for Protection against Discrimination to combat discrimination against Roma in the criminal justice system.

• Take measures to avoid the disclosure of information about the ethnic origin of suspects, accused and defendants in official announcements and statements to the media by the police, the prosecution and the court, when this information is not directly relevant to the crime.
• Analyze the extent to which discriminatory practices are widespread in the application of detention measures and the extent to which comparable measures are taken with regard to accused and defendants of Roma origin and other origin with a comparable gravity of the committed crime, and to take measures to limit the imposition of more severe measures on defendants and defendants from vulnerable groups, including persons of Roma origin.

• Develop and implement a program for recruitment, selection and training of Roma to work in the police, judiciary and penitentiary system.

• To provide intensive training in anti-discrimination law to students in Law school.

• Provide training on anti-discrimination law for lawyers registered in the National Register of Legal Aid, in which, among other things, attention should be paid to the possibility of requesting the removal of a judge or juror due to strong anti-Roma attitudes.

• Introduce anti-discrimination training as a mandatory part of the initial and introductory training for judges and prosecutors.

• Develop information programs (including crime prevention programs) and training for all social actors to ensure that discrimination cases are properly identified and addressed. Special training should be developed for police officers and other law enforcement staff.

• Develop information campaigns (including programmes for prevention of crime) and training courses for all social participants in order to guarantee accurate identification and resolving of discrimination cases. A special training programme needs to be developed aimed at police staff and other law enforcement staff.