

DISCRIMINATION AGAINST ROMA PEOPLE IN THE HUNGARIAN CRIMINAL JUSTICE SYSTEM

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"Gypsies do such things because they know –
whether they do or don't do 'it' –
they will be caught anyways."

"A defendant with Roma ethnicity
may count as evidence him - or herself"¹

1. Introduction

The present report was prepared in the framework of the project titled *Fighting unconscious bias and discrimination of Roma people in the criminal justice system*. This international project was coordinated by the Fair Trials and consists of secondary analysis of existing research findings and interviews of experts, and Roma people subjected to criminal procedures, in order to reveal discrimination against Roma in the criminal justice system. Additional aims were to examine whether negative stereotypes, prejudices and attitudes appear in the criminal justice system, and if they do, whether they are in anyway the causes of overrepresentation of Roma people in the system. The research was carried out in four EU countries (Bulgaria, Hungary, Romania and Spain) with the contribution of the APADOR-CH, the Bulgarian Helsinki Committee and the Rights International Spain (in addition to the above-mentioned organizations). The Hungarian Helsinki Committee (HHC) contributed to the project as a partner and was responsible for research and project activities in Hungary.

The project partners carried out domestic research by applying common research methodologies. The relevant context was mapped through the synthesis of research findings published by representatives from academia and civil society. The HHC approached the interviewees with the assistance of civil society organisations representing Roma people. In addition, clients of the HHC and legal professionals were also involved in the research. Criminal justice professionals could not be involved because the invitation to contribute was rejected by the relevant central authorities. This research obstacle is presented in more specific terms in Chapter 1.2. In the Hungarian research, a total of 30 people were interviewed, of whom 14 are of Roma origin. A judge, a prosecutor, a former penitentiary staff member, seven lawyers regularly providing legal representation to Roma defendants, six representatives or civil society organisations dealing with Roma issues and local activists were interviewed. The interviews shed light on practices in Baranya, Borsod-Abaúj-Zemplén, Fejér, Heves, Nógrád, Pest, Szabolcs-Szatmár-Bereg and Veszprém counties. A draft of the present study was shared electronically with 26 experts for feedback within the framework of national consultations. The research findings are not representative but enlighten the problem of discrimination within the criminal justice system through personal stories in an anecdotal style.

¹ Citations from interviews conducted in the framework of the present research.

The officially recognised nationalities in Hungary are Bulgarian, Roma, Greek, Croatian, Polish, German, Armenian, Romanian, Rusyn, Serbian, Slovak, Slovenian, and Ukrainian. According to the Hungarian census in 2011, ethnic Hungarians account for the largest ethnicity at 84% of the population, followed by Roma (3%), Germans (1%), Slovaks (0.3%), Romanians (0.3%), and Croats (0.2%).² It must be noted, however, that according to sociological research, the actual numbers are different from those of the last 2011 census. In 2008, researchers estimated the number of the Roma population of Hungary to be around 620,000,³ whereas a 2017 study came to the conclusion that in 2013, approximately 876,000 Roma people lived in Hungary.⁴

The marginalized status of the Roma population in Hungary has been a systematic problem for decades. It has raised numerous issues related to education and employment or biased attitude within the entire population which require systematic solutions. However, since initiatives aimed towards supporting the Roma minority are far from popular amongst the non-Roma inhabitants, democratically elected governing parties have not tended to place Roma amongst their priorities within their political agenda. The UN Human Rights Committee summarized its views on Roma exclusion in its latest, 2018 Concluding observations on Hungary, as follows: *"While noting the adoption of various strategies and programmes to improve the situation of the Roma community and the progress made in certain areas, such as school attendance by Roma children, the Committee is concerned about reports that the Roma community continues to suffer from widespread discrimination and exclusion, unemployment and housing and educational segregation."*⁵

Proactive, genuine governmental action aimed at the social inclusion of the Roma people is lacking. Various domestic civil society organisations have pointed out that, even though Hungary's national Roma integration strategy⁶ was updated in 2014, actual implementation of the strategy has been

² National Census 2011. 9., Data on Nationalities, Hungarian Central Statistical Office, Budapest, 2014. p 16. http://www.ksh.hu/docs/hun/xftp/idoszaki/nepsz2011/nepsz_09_2011.pdf. The problem of the lack of current data was raised by the Committee on the Elimination of Racial Discrimination in its latest report on Hungary, as follows:

"[t]he Committee recommends that the State party gather updated statistics on the ethnic composition of its population, disaggregated by ethnicity, national origin and languages spoken, and develop socioeconomic indicators on the enjoyment of rights by various ethnic groups, disaggregated by sex, gender and ethnicity, including through dialogue with ethnic minorities and by diversifying its data-collection activities, using various indicators of ethnic diversity and allowing respondents to report anonymously and to choose self-identification in order to provide an adequate empirical basis for monitoring the enjoyment of all the rights enshrined in the Convention".

Committee on the Elimination of Racial Discrimination, Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary, UN Doc. CERD/C/HUN/CO/18-25, 6 June 2019, 7.

³ Habcsek, L., Gyenei, M. and Kemény, I., Kísérleti számítások a roma lakosság területi jellemzőinek alakulására és 2021-ig történő előrebecslésére, 2007. p. 63.

⁴ Péntes, J., Tátrai, P. and Pásztor, I. Z., Changes in the Spatial Distribution of the Roma Population in Hungary During the Last Decades, Területi Statisztika. 58. p. 1., available at

https://www.researchgate.net/publication/323415615_Changes_in_the_spatial_distribution_of_the_roma_population_in_Hungary_during_the_last_decades

⁵ Human Rights Committee, Concluding observations on the sixth periodic report of Hungary, CCPR/C/HUN/CO/6, 9 May 2018, 15.

⁶ Hungarian National Social Inclusion Strategy II, Budapest, September 2014 Ministry of Human Capacities, State Secretariat for Social Affairs and Social Inclusion, See: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-and-eu/roma-integration-eu-country/roma-integration-hungary_en#nationalstrategyforromaintegration

missing.⁷ In 2018, with close to a delay of 15 years, the Hungarian government submitted the eighteenth to twenty-fifth periodic reports to the UN Committee on the Elimination of Racial Discrimination (CERD). In the 2019 concluding observations, the CERD took note of the measures aimed to improve the situation of Roma, including in the fields of health and education. However, it remained highly concerned at the “persistence of structural discrimination against Roma and the segregation and extreme poverty that they face”. The Committee condemned segregation in education faced by Roma children, and expressed concern about Roma children entering the workforce at the age of 16 instead of pursuing higher education. Many Roma citizens face extreme poverty and live in segregated neighbourhoods which lack proper infrastructure and services.⁸ The CERD placed emphasis on the high level of unemployment among Roma,⁹ and discriminative practices of law enforcement agencies, including ethnic profiling. In a separate point, the Committee expressed concern about the persistence of hate speech against Roma, among others by public officials.¹⁰ Anti-Roma rhetoric has appeared in speeches by the highest level representatives of state, including the Prime Minister, who spoke in a biased tone in the recent past related to the segregation case of Gyöngyöspata at a press conference on 9 June 2020. He distinguished the local inhabitants of Gyöngyöspata (who “are right” and “deserve justice”) from the “members of a community identifiable by their ethnic origin” who gain money “without work”.¹¹

As for professionals of the justice system, the CERD paid particular attention to the lack of detailed information on training programmes for judges, prosecutors, lawyers and public officials on the prevention of racial discrimination and on the rights enshrined in the Convention; the lack of information on human rights training and education in the curriculum taught in secondary schools and at university level, and the impact of such trainings. In general, the Committee was concerned about the absence

⁷ 2019 CERD Report of the Working Group Against Hate Crimes in Hungary, see: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/HUN/INT_CERD_ICJ_HUN_34523_E.pdf
The Hungarian Helsinki Committee's 2019 CERD report, in contribution with the Hungarian Civil Liberties Union, Regina Foundation Miskolc and Rosa Parks Foundation, See: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/HUN/INT_CERD_NGO_HUN_34524_E.pdf
Another report addressed to the European Commission was prepared by 11 Hungarian NGO's, titled "Civil society monitoring report on implementation of the national Roma integration strategies in Hungary", in March 2018. This note summarizes particular areas where discrimination occurs nationwide and even touches upon *discriminatory behaviour by police, and misconduct by prosecutors or courts*. See: <https://op.europa.eu/en/publication-detail/-/publication/b5fa7f29-b1aa-11e9-9d01-01aa75ed71a1/language-en/format-PDF/source-106566210>

⁸ Since 2011, significant resources have been allocated to human and infrastructural interventions with the aim of improving the conditions of Roma citizens living in segregated areas. Nevertheless, according to the Civil society monitoring report on the implementation of the national Roma integration strategies published in 2018, these programmes have only reached a small section of the population of all segregated areas.
Civil society monitoring report on implementation of the national Roma integration strategies, (Budapest: Roma Civil Monitor, 2018)

⁹ As far as unemployment of Roma people, during the interviews conducted in the framework of the present research, whenever Roma interviewees (living both in segregated areas and in larger cities) were asked about discrimination they face in everyday life, the first and foremost answer was in almost all instances the lack of job opportunities offered to them, as well as discrimination within the job market.

¹⁰ Committee on the Elimination of Racial Discrimination, Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary, UN Doc. CERD/C/HUN/CO/18-25, 6 June 2019, 20.

¹¹ https://index.hu/belfold/2020/01/09/orban_viktor_sajtotajekoztato_orbaninfo_kormanyinfo/

of information on specific measures aimed at fostering and promoting understanding and tolerance among different ethnic groups, refugees, migrants and asylum seekers in Hungary.¹²

Public discourse and events frequently appear prejudiced in targeting Roma people. At the same time, political statements promoting reconciliation and equality are less typical. A Roma right defender interviewee referred to the case of the murder in Kiskunlacháza in 2009. After a 14 years old girl had been murdered, public officials with the leadership of the mayor publicly discussed "Roma violence", suspecting a local Roma family of the crime.¹³ This Roma family offered a monetary award from their own personal sources to anyone providing information about the perpetrator. Later on, the police investigation revealed that the victim was murdered by a non-Roma perpetrator who happened to have regularly attended anti-Roma assemblies. Nevertheless, none of the public officials apologised for any of the anti-Roma demonstrations or statements. No official local or national apologies were expressed, even despite in the relevant case, which was brought up to the Curia (the highest domestic judicial body), the Equal Treatment Authority qualified the mayor's statements as harassment due to the fact that they created a hostile and threatening environment targeting the local Roma population.¹⁴

With regards to the general approach to the Roma population by the domestic authorities, an interviewee shared the following personal opinion. According to the civil rights activist and teacher from Baranya County (Southern Hungary), there are two main types of racism related to the Roma community which also prevails in the criminal justice system, separating the western and eastern regions of Hungary. In Borsod, Szabolcs and other North-Eastern counties of Hungary, so-called "exclusionist racism" prevails. According to this approach, which is lacking any consideration of social inclusion, Roma people should be separated from the majority, so they do not cause any harm. This exclusion particularly occurs in the classrooms, meaning segregation in education. In the Western, South-Western and Budapest regions, a rather paternalistic approach to racism can be found. Roma are treated as inferior citizens and representatives of law enforcement and education see themselves as martyrs, who "understand how much problem Roma people cause", but their job remains to deal with them and "civilize them by any possible means" within the next 100-200 years.

Based on the interviews conducted in the present research with criminal justice and civil society practitioners and interviewees of Roma origin (both from the Western and Eastern part of Hungary), the phenomenon of a geographical division was a recurring thought (despite an ideological analysis not being the goal of this project and the difficulty in confirming the above theory). The interviews gave the impression that those Roma, who live in the Western part of Hungary, perceive less discrimination by police and criminal justice professionals than those who are situated in the Northern and Eastern

¹² Committee on the Elimination of Racial Discrimination, Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary, UN Doc. CERD/C/HUN/CO/18-25, 6 June 2019, 26.

¹³ https://index.hu/bulvar/2009/06/26/elfogtak_a_kiskunlachazi_kislany_gyilkosat/

¹⁴ <https://www.helsinki.hu/nem-maganemberkent-ciganyozott-a-polgarmester/>

regions. At the same time, the interviews suggested that racist ideas are present in the population as a whole which are reflected in the biased views of the police, prosecutors and judges working in the criminal justice system. Another opinion was expressed by an interviewee that the main basis of discriminative attitudes are not necessarily ethnicity but the marginalised social status of the defendant. However, as a Roma rights defender interviewee argued, "if someone is a Roma and has a brown skin, or their name is a typical Roma name, it is a double disadvantage". The pressures of public opinion or expectations of political leaders should not influence the operation of an independent justice system, but there have been examples of this,¹⁵ hence why social attitudes cannot be ignored while exploring the roots of discriminative procedure. An overall assessment of the underlying reasons for these attitudes were not the objectives of this present research. The report attempts to provide a snapshot of anti-Roma discriminative practices within the criminal justice system through the experiences shared by the interviewees.

1.1. Fundamental normative and institutional framework

The Fundamental Law of Hungary enshrines the prohibition of discrimination, as follows: 'Hungary shall guarantee the fundamental rights to everyone without discrimination and in particular without discrimination on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status'.¹⁶ According to the Hungarian Civil Code, 'discrimination (...) shall be construed as a violation of personal rights'.¹⁷ The Nationalities Act also provides that 'it is forbidden to violate the requirement of equal treatment in any way on account of affiliation with a national minority'.¹⁸

The Act on Equal Treatment and the Promotion of Equal Opportunities (hereinafter: Equal Treatment Act) transposed the Council Directive 2000/43/EC, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. The Equal Treatment Act contains the general prohibition of discrimination by providing that 'pursuant to the principle of equal treatment, all natural persons abiding in the area of Hungary and any groups thereof, as well as legal entities and organisations without legal entity, shall be treated with the same respect and deliberation and their special considerations shall be equally respected'.¹⁹ The Equal Treatment Act lists the types of

¹⁵ In the case of the murder of Marian Cozma in 2009, the second instance court itself (the Győr Appeal Court) reasoned its mitigating sentence by the argument that the first instance court reflected on the expectations of the local and national public. The final decision also referred to expressions demonstrating a biased attitude in the first instance judgment. The defendants were called "Roma group" and the victims "sportmates". After the final judgment was delivered, both the Justice and the Prime Minister expressed their dissatisfaction.

https://index.hu/belfold/2012/05/14/navracsics_a_fobirohoz_fordul_a_cozma-itelet_miatt/

¹⁶ Fundamental Law, Article XV (2)

¹⁷ Act V of 2013 on the Civil Code, Article 2:43

¹⁸ Act CLXXIX of 2011 on the Rights of Nationalities, Article 7

¹⁹ Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, Article 1

discrimination falling under the scope of the law: direct discrimination, indirect discrimination, harassment, segregation, victimisation, and any instructions thereto.²⁰

The Equal Treatment Act defines both direct and indirect discrimination. Direct discrimination shall be constituted by any 'action [including any conduct, omission, requirement, order or practice] as a result of which a person or group based on their real or assumed (...) b) racial origin, c) colour of skin, d) nationality [in the sense of belonging to a national minority], e) national or ethnic origin, f) mother tongue, (...) t) any other situation, characteristics or feature, is treated less favourably than another person or group is, has been or would be treated in a comparable situation'.²¹ Indirect discrimination is defined by the Equal Treatment Act as follows: 'A provision not deemed as direct discrimination and ostensibly meeting the requirement of equal treatment is deemed as indirect discrimination if it puts individual persons or groups with characteristics specified in Article 8 in a situation that is significantly disproportionately disadvantageous compared to the situation in which a person or group in a comparable position is, has been or would be'.²²

The Equal Treatment Authority was set up in 2005 as a consequence of the Equal Treatment Act. While the Equal Treatment Authority's mandate is sufficiently wide and the Authority has delivered some very important and progressive decisions (e.g. in the case of the 'Numbered Streets' in Miskolc²³), there are some critical remarks that must be made. The most severe sanction the Authority can impose is a fine ranging between HUF 50,000 (approx. EUR 155) and HUF 6 million (approx. EUR 18,750). However, the fines the Authority actually imposes in most cases are at the lower end of the scale. In 2017 for instance, the Authority imposed fines in 15 cases, with an aggregate amount was HUF 7.9 million (EUR 24,685), meaning an average of HUF 526,700 (EUR 1,645).²⁴ In 2018, the Authority imposed fines in 18 cases, with an aggregate amount of HUF 6.1 million (and average of HUF 338,900 or EUR 1,058 per case).²⁵ In 2019, the total amount was HUF 10.95 million (an average of HUF 438,000 per case).²⁶ While there have been positive tendencies (such as that the Authority seems more willing to impose fines on state authorities and not only on private actors), the sanctioning practice can still be described as rather lenient. Another issue regarding the Equal Treatment Authority is its relatively limited outreach to the public, even in important cases.

²⁰ Ibid., Article 7 (1)

²¹ Ibid., Article 8

²² Ibid., Article 9.

²³ The Equal Treatment Authority held that the Miskolc municipality should not have considered only the owner's right and duties while eliminating a segregated area with 900 inhabitants. The municipality commenced and carried out the elimination process without any diligent preparation or the assessment of the impact on the inhabitants. It failed to adequately inform or to assist them in housing issues disregarding their social status. The Authority held that the municipality acted discriminatively to the inhabitants.
EBH/67/2015

²⁴ European network of legal experts in gender equality and non-discrimination: Country report, non-discrimination, Hungary (Reporting period 1 January 2017 – 31 December 2017), p. 116. Available at: <https://www.equalitylaw.eu/downloads/4749-hungary-country-report-non-discrimination-2018-pdf-2-60-mb>

²⁵ https://www.egyenlobanasmod.hu/sites/default/files/tajekoztatok/infograf%202018_hun.pdf

²⁶ https://www.egyenlobanasmod.hu/sites/default/files/tajekoztatok/EBH_tajekoztato%202019_HU_w.pdf, 6. o.

In its 2019 concluding observations, the CERD considered that both the Equal Treatment Authority and the Commissioner for Fundamental Rights deal with complaints on racial discrimination. However, it outlined concerns about the lack of independence of the Deputy Commissioner responsible for the rights of national minorities and the lack of clarity regarding:

"which entity holds the jurisdiction for complaints in criminal cases and, particularly in the area of criminal prosecution, the lack of comprehensive information on the criteria for indictment, conviction and the imposition of penalties, disaggregated by the national or ethnic origin of the perpetrators and the victims. The Committee remind[ed] the State party that a low number of complaints does not necessarily signify the absence of racial discrimination in the State party; it may signify the existence of barriers to the invocation of the rights in the Convention domestically, such as a lack of trust among victims in the State party's justice institutions and authorities."²⁷

There is no specific law on ethnic data collection in the criminal justice system under the Hungarian data protection law, therefore the default principles of sensitive data enshrined in the GDPR²⁸ and the Hungarian Info Act must be met.²⁹ This means that ethnic data is not allowed to be processed either during police measures or at any stages of the criminal procedure. Additionally, the Police Act includes that certain sensitive data (e.g. ethnic origin, sexual behaviour, or political opinion) can only be processed when it is part of the constituent elements of the relevant criminal act (such as a hate crime against a member of an ethnic group), or when the individual subjected to the authorities' action gives his or her written consent for the sensitive data to be processed.³⁰ Although the regulation on the collection of sensitive data aims to protect the potentially affected social groups, the lack of an ethnic data collection system can have the opposite effect by hindering the evidentiary process related to identifying the discrimination.

1.2. Brief introduction of the context of the criminal justice system and the difficulties of research

A researcher faces significant challenges when examining discrimination against Roma defendants in the criminal justice system. One of the interviews was illustrative in this regard. The interviewee, who has been a practicing attorney for 33 years, seemed to be rather sceptical about the present research.

²⁷ Committee on the Elimination of Racial Discrimination, Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary, UN Doc. CERD/C/HUN/CO/18-25, 6 June 2019, 8, 12.

²⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016.

²⁹ Act CXII of 2011 - on the Right of Informational Self-Determination and on Freedom of Information

³⁰ Act XXXIV of 1994, Article 90 (3)

He stated that since he did not differentiate between Roma and non-Roma clients, he neither could tell whether there is any difference in their treatment in court. However, he added that he was aware of the fact that discrimination and racism were present in Hungary, which also appeared in certain ways in the criminal justice system (although when asked, he did not want to elaborate further on his experiences). With regards to police behaviour, he asserted that the Roma problem should be viewed in a bigger picture, including all marginalised groups and with an emphasis on non-criminal matters, such as education or extreme poverty. Furthermore, in his view, without official ethnic data collection, one can only build research based upon assumptions. Therefore, the first step should be to collect enough ethnic data which would let experts to reveal facts on the matter, which could then facilitate the identification of possible solutions to address the socioeconomic problems.

The protective function of data protection norms and the resulting difficulties with measuring discrimination were discussed with the interviewees. Roma rights defenders agreed that ethnic data collection would result in significant risks of misuse, and no one can be obliged to declare ethnic origin. For instance, if Roma defendants were overrepresented in certain criminal categories according to the statistics, anti-Roma rhetoric from racist organisations and public officials would increase. A lawyer interviewee with wide-ranging experiences in antidiscrimination litigation shared her opinion that successes can be achieved in litigation even without an ethnic data collection system, because ethnic data officially collected by state authorities is unnecessary. In academic discourse, another opinion appeared. According to this view, in the light of the opinion issued by the ombudsman for minorities in 2009,³¹ ID checking police officers should have registered the ethnicity of the ID-checked individuals based on own perception into separate records. The registered data should be available for analysis and focused on individual police officers and their organisational units.³²

Lack of data was not the only one difficulty during the present research. The research has been significantly impacted and limited by the lack of openness from state authorities to provide data or participate in interviews. The HHC has not been granted access to the police, judges or prosecutors by the respective central state authorities, the National Police Headquarters, the National Judicial Office or the Chief Prosecutor's Office.³³ One judge and prosecutor agreed to answer our questions anonymously. The HHC strived for filling the gaps by conducting interviews with Roma rights advocates (e.g.

³¹ <http://www.kisebbségiombudsman.hu/data/files/158627216.pdf>

³² Pap András László, *Rendészet és sokszínűség* (Dialóg Campus, 2019.) p. 86.

³³ The reluctance to cooperate is especially sad in light of the past positive experiences in successful professional cooperation with authorities. In the subject matter of equal treatment, the HHC carried out research and professional training projects with the contribution of state authorities, such as:

<https://www.helsinki.hu/kapacitasfejlesztes-nyulolet-buncselekmények-uldözesere-erdekeben-2015-2016/>

<https://www.helsinki.hu/a-romak-törvény-elotti-egyenlősége-a-birosági-eljárásokban-es-a-büntetés-végrehajtásban-2010-2014/>

<https://www.helsinki.hu/antidiszkriminációs-treningek-rendörök-es-a-rendőrszti-foiskola-hallgatói-számara/>

The rejection responses contained the following arguments. Neither the prosecution nor the judiciary record the ethnic origin of the accused or any of the participants in the criminal justice proceedings. Therefore, criminal justice professionals are in the absence of "relevant experience and knowledge" that otherwise would be necessary to take part in the requested research.

The National Police Headquarters' arguments were even more blurred, namely, that the police itself constantly strives to meet antidiscrimination requirements, hence the institution does not wish to take part in the research.

representatives of civil society organisations and local human rights activists) in addition to defence lawyers and members of the Roma community.

The prosecutor from the central part of Hungary shared his opinion concerning the perception of “gypsy criminality” in the public discourse. According to him, there are two views that should be separated. The view endorsed by the far-right ideology that an ethical trait can determine inclination to criminality, and that Roma people are prone to commit crimes, is extremely harmful and must be rejected. On the other hand, the relationship between criminality and the marginalised status of the Roma community should be discussed in criminal sociological terms. This kind research should be conducted based on objective data.³⁴

According to his narrative, there are three types of crimes that are emblematic among those who suffer from poverty that frequently corresponds with the situation of Roma perpetrators. The most common types are pickpocketing (e.g. when guests put their coat on the backrest of their chair in a restaurant, and later they do not notice that someone takes the valuables away from the pocket of the coat). The second type that frequently occurs is the so-called “necklace-ripping”, when someone rips off a remarkable valuable necklace from its owner’s neck, while passing him or her, and then runs away, and the third one is stealing from clothing stores, while trying to pass security gates. However, since these crimes are mostly committed by people living in extreme poverty in general, it is almost impossible to differentiate between Roma and non-Roma perpetrators. Extreme poverty, lack of education, aggression induced by alcoholism and designer drug use are the factors that play a major role in becoming perpetrators of such crimes. In addition, it is very unlikely that someone from society’s periphery would commit a white-collar crime, which of course has a much higher rate of social dangerousness than any of the three types of crimes listed above. Still, there is a much greater chance to be caught and convicted in cases of the above three crimes. Consequently, criminal justice professionals tend “to be fed up” by the continuously reappearing defendants responsible for these crimes. At the same time, according to the prosecutor, white collar criminals with their celebrity lawyers – even if it reaches the prosecution phase, which might take years – many times get away with their act. Needless to say, both a crime rooted in poverty and a white-collar crime count as one item in criminal statistics, regardless the input and energy invested in a case.

The judge, who accepted HHC’s request for an interview on the condition of anonymity, shared interesting experiences which demonstrate the presence of bias amongst representatives within criminal justice. He had one colleague of Roma origin. Their fellow colleagues frequently whispered behind the Roma judge’s back about his ethnic background (especially during his initial period as a judge), and the interviewee had to speak out for the defence of the Roma judge in these occasions. In his view, there is a need for specific trainings on discrimination in the criminal justice system. He

³⁴ Important research findings has been published in the subject matter: Kerezszi, Klára – Gosztonyi, Márton – Polák, Attila: A roma és nem roma együttélés konfliktusai, kriminális vonatkozásai, 62/7-8 Belügyi Szemle (2014), pp 5-52

underpinned this statement also by the fact that he heard, too many times, judges calling Roma people, “filthy gypsies” outside of the courtrooms.

None of the interviewed criminal justice professionals could recall any official trainings with a specific focus on racial discrimination, in which they had taken part. The lack of such training raises special concerns in the current general atmosphere of racism and xenophobia.³⁵ Roma rights defenders and civil activists agreed that occasional, one-day training is not impactful to make long-term and substantial changes. The subject matter of treatment of marginalised people should be presented and discussed from the very beginning of the official curriculum. The skills needed for ensuring fully equal treatment should be developed by interactive situation and communication exercises in training programs created in contribution with representatives and members of the affected social groups, sociologists and criminology experts. As for Roma people, a Roma student interviewee mentioned: “I don’t know how efficient can be an occasional, annual sensitisation training if a participant is told all the other 364 days of the year that we are criminals and unrepentant”.

While prejudices present in the society as a whole appear among the representatives of the criminal justice system, and can thereby impact the process and outcome of criminal procedures, the above-presented research obstacles prevented us from drawing an overall picture of the depth and frequency of discriminative actions. Consequently, we undertook to enrich the relevant discourse based on the information at our disposal from the interviews.

2. Police action and members of the Roma community

2.1. Legal framework

The police may only carry out ID checks for the protection of public order and public safety, crime prevention and detection, establishing the lawful stay of the concerned person, during traffic control, or for the protection of the rights of the ID checked individual or of other natural or legal persons.³⁶ Reference to the rather abstract possible reasons listed in Article 29 of the Police Act (e.g. crime

³⁵ A rather bizarre tendency has been present in Hungary since 2015 when Roma people do not only have to be cautious with regards to their ethnic background, but now – as a result of the incitement of the state-owned media – Roma are often mistaken for foreigners and migrants due to their darker skin that can result in further discrimination. The last case that got large publicity occurred in August 2019, when a roma journalist was attacked by two skinheads in front of a mall in Budapest by daylight while he was there with his pregnant wife. According to the journalist the attackers yelled, “you are nasty Arabic immigrant, go away with your pregnant wife, all you can do is reproduce yourselves”. See: <https://dailynewshungary.com/people-attack-man-because-they-thought-he-was-arabic-immigrant/>

The story of a 33 years old Roma interviewee from Budapest is another example for this phenomenon. He was eating some scone close to the entrance of the subway at the Szent Gellért square. While he was randomly looking up and down, he glanced at two riot policemen. After a couple of seconds, they already stood in front of him and asked to identify himself. When he asked them about the reason of ID check, they referred to intense control. However, later they explained that they approached him since they supposed he was a migrant. He then asked in this case why would they talk to him in Hungarian and why did they think that he was a migrant. The policemen responded that because his skin was dark. They apologized saying that they had acted upon „an instruction coming from the top”, they had to ID check each and every individual with dark skin.

³⁶ Act XXXIV of 1994 on police (Police Act), Article 29 (1) a)

prevention) does not adequately explain why it was necessary to establish an individual's identity, which may also facilitate the spread of racial profiling.³⁷

For assessing police measures, the Police Act enshrines the usual requirement of proportionality: a police measure shall not cause a detriment which is manifestly disproportionate to the lawful objective of the measure. If several possible options are given for police action or the means of coercion, the chosen measure should be both effective and which causes the least restriction, injury or damage to the affected person.³⁸ ID checks are the least derogative police measure, therefore the rule of proportionality does not exclude the usage of ID checks on any grounds, if it is justified by law.

According to the Police Act, the head of a police unit may order intensive control in order to arrest a criminal suspect, or prevent an incident posing a threat to public safety. In such cases, within the territory defined in the decision ordering the intensive control, everyone can have their IDs lawfully checked. Thus, in such cases, the police officer is not required to assess individual circumstances, and within the area and time defined in the order he/she will be authorised to check every single person without further justification.³⁹ Although intensive control is an exceptional measure, that should be applied in a particular location due to its nature, there have been instances when it was enacted for two and a half years throughout the whole country.⁴⁰ This specific discretion by law gives the police unlimited freedom to ID check anyone, entrusting the police to stop anyone based on their own beliefs without any limitation.

The police can restrict the captured person's freedom only for the required time, but not for more than eight hours (from the application of the police measure). If the purpose of the capture or arrest had not been completed, the head of the police body can extend the period of arrest on one occasion for an extra four hours. Arrested individuals have to be notified on the reasons of capture and arrest, and has to get a note on the term of arrest.⁴¹ The acting police shall prepare a note on the arrest. A superior police person shall immediately (or until the deadline for reporting) check the legal ground, professionalism, and proportionality of the measures taken by the officer.⁴²

When it comes to the legal framework related to police action, criminal justice professionals mentioned during their interviews that not only the procedural but also the substantive criminal legal framework should be taken into account. The Hungarian Penal Code has turned towards the criminalisation of indigent people including the Roma. For instance, many Roma people deal with business of garbage collection, which includes collecting thrown out furniture or old electronic devices. This kind of act has

³⁷ *Ethnic Profiling in Crime Prevention and Criminal Investigation* (Abstract of PhD thesis), Balázs Tóth, Miskolc 2011, p 21. See: http://www.uni-miskolc.hu/~wwwdeak/tothb_tezis.pdf

³⁸ Police Act, Article 15

³⁹ Police Act, Article 30

⁴⁰ See: <https://www.helsinki.hu/a-helsinki-bizottsag-ketharmados-gyozelmet-aratott/>

⁴¹ Police Act, Article 33 (3)-(4)

⁴² Ibid. Article 28 (7)-(8)

become a crime in 2012 (the “violation of waste management policy”) punishable by up to three years imprisonment.⁴³ This kind of substantive legal provisions (such as the provision on a petty offence applicable also for cases of indigent individuals collecting sticks in the woods⁴⁴) provide the police wide discretion, even in cases where the requirement of social dangerousness is entirely missing. One of the lawyer interviewees shared the story of a relevant case of his. A Roma couple was arrested because they had in their car 38 leaden accumulators, which they had collected (with the intention to sell them) in places like the edge of the woods where others got rid of them. The judge interviewee told a similar story. He has known a Roma family living in a small village for decades. He regularly gave them clothes and household items that his family did not use anymore. In return, the family provided them with brooms, crates, which they produced. Once around 2013, he gave them a large package of used items. The Roma mother called him afterwards sadly telling him that they were stopped by the police on the way home, they had to unload their car and pay a fine of HUF 30,000. Instead of supposing dangerousness to the society behind these actions, the authorities should realise that they are rather useful activities, since it is either about collecting dangerous garbage or reusing used items with the agreement of the former owner.

2.2. Trust and the relationship between members of the police and the Roma community

In 2011, the ombudsman for minorities articulated his opinion about institutional discrimination, as follows: “[t]he institutional discrimination is not necessarily rooted in consciously discriminative procedures or attitudes, but in an institutional operation or institutional culture, which disregard the situation and perspective of the members of marginalised groups. The failure to specifically address the special needs [...] can enhance institutional discrimination.”⁴⁵ A Roma rights defender interviewee mentioned, related to the regime change of 1989, that the police was the first state authority about which it could and had to be declared that it was poisoned by institutional racism. It did not mean that each and every member of the police was racist. It meant that the system was maintaining a biased culture and mechanisms that impacted its staff members.

Biased communication and action (or the failure to act) from the police undermine the trust of members of the affected social group towards the authorities. Although an in-depth analysis of the relevant complicated social-scientific issues was not the aim of the present research,⁴⁶ the lack of trust in authorities were reflected by the project interviews. For instance, in Tiszavasvári (a village which includes segregated areas in Eastern Hungary, with about 30,000 inhabitants) interviewees shared their

⁴³ Act C of 2012, Penal Code, Article 248.

⁴⁴ Act II of 2012 on petty offences, petty offence procedure and petty offence registration system, Article 243

⁴⁵ The opinion of the Ombudsman for national and ethnic minorities’ rights about the National Roma Strategy is available in Hungarian at: <http://www.kisebbségiombudsman.hu/hir-702-nemzeti-es-etnikai-kisebbségi-joqok.html>

⁴⁶ Relevant research findings are available in Hungarian at: Boda Zsolt – Medve-Bálint Gergő How perceptions and personal contact matter: ‘The individual-level determinants of trust in police in Hungary’ *Policing and Society* 27/7 (2015) pp 732-749

impression that the police fails to act when they find out that the victim has a Roma ethnic background. According to the Roma interviewees, it has occurred that police replied in cases of reporting of stolen bikes, as follows: “steal it back”, or in case of a severe fight “take care of it by yourselves”, or “one Roma less [...it does not matter]”.

The negligent and ignorant attitude of the police leads to the distrust towards authorities. The same issue was mentioned by a legal officer of the human rights organisation, Bagázs, operating in Bag (about 40 km from Budapest). Roma inhabitants are afraid that if they reported someone due to violent behaviour, not only the police would neglect the report, but the violent person would also take revenge and the police would still not defend them. Local Roma inhabitants do not tend to turn to the police without the assistance of Bagázs, since they say they would be rejected by the police instead of taking the necessary measures. The representative from Bagázs shared a story related to the failure of the police to act. A report on physical assault and sexual abuse against a minor was filed at the police in 2018. The 14 year-old girl was taken to the police station together with her abusive mother (who was also included as a perpetrator in the report filed at the police). The police questioned the victim and then simply let her go. Her alcoholic father was already waiting for her and assaulted her throughout the way back home. The police failed to prevent that. In another similar case, involving child abuse, the police failed to act upon the report and only acted once Bagázs “threatened” them with calling the media. The victim was temporarily removed from the family. Bagázs had also asked for a child friendly hearing in the presence of a psychologist. Instead of complying with the request, the police - while hearing the statement of the child – was laughing at her and warned her that she should be careful about what she said, since her father can be imprisoned for years as a result. The interviewee who shared all these stories mentioned that she was convinced if these incidents had happened to a non-Roma family, the police would have acted absolutely differently.

A lawyer of the Hungarian Civil Liberties Union (HCLU) mentioned a trial in a case of extreme right-wing organisations patrolling in Gyöngyöspata that multiple witnesses from the police made biased, anti-Roma statements in the courtroom. A defence lawyer practicing in Budapest, who used to work for the police and gave an interview on the condition of anonymity, noted that even during an on-the-spot investigation of a crime, when the police face a Roma, they immediately tend to talk to them differently than to non-Roma people. Another defence lawyer interviewee mentioned in the online consultation regarding the draft of this report that he faces open expression of racist ideas on a daily basis. He shared one of his current experiences gained in a penitentiary institution. He saw a police officer in civil clothing stepping out of the facility in a face mask “decorated” by a symbol of the Outlaws’ Army, a well-known extreme right-wing organisation. Biased attitudes are more typical in small townships and villages, where the authorities know each and every Roma inhabitants. Even in the police station, it is a daily routine that police officers make derogatory comments on Roma defendants (even when the lawyer is present), without any realisation, since it has become the norm.

Failures and mistakes in the investigation of the series of killings against Roma people obviously had a dramatic impact on the trust invested in the police. In 2008 and 2009, armed attacks were carried out targeting homes of Roma people in nine different locations. As a result of the crimes, six people, including one child, died and five victims were seriously wounded. According to the staff member of the HCLU, both the intelligence agency and the police were unprepared for such highly organised and grave crimes. It took a long while even to realise that the attacks were connected. The intelligence agency possessed plenty of important information, which it failed to pass to the police. After the Tatárszentgyörgy incident of 2009, the police failed in all possible steps: they failed to secure the scene of the crime, they assumed that the murder committed by a gun was an incident of arson, and they destroyed the evidence of negligent behaviour.

The case of the Devecser demonstration in 2012 is an illustrative example of the failure of the police to act during extreme right-wing, anti-Roma assemblies. The political party Jobbik and extremist organisations announced the demonstration under the title "Live and let live!". The speakers at the event expressed racist ideology, for instance that Roma people are genetically determined to become criminals. Incited by them, the audience shouted slurs about "Roma criminality" and the killing of Romas. After the anti-Roma speeches, 400 to 500 participants of the event marched to the streets inhabited by Roma people and continued to shout racist slurs. In addition, they were throwing stones and other objects towards the Romas in their yards. One of them was physically injured. Despite the speeches inciting violence, the threatening behaviour of the participants of the event and the physical violence, the police failed to dissolve the assembly. No one was charged for the hate speeches and only one person was accused related to the physical attacks. Two clients of the HHC filed a complaint about the inaction of the police. However, the Hungarian courts found the action of the police accurate hence why the complainants turned to the European Court of Human Rights (ECtHR).

The ECtHR held that the Hungarian authorities violated the private and family life of the applicants. Further, the investigation was not sufficiently broad or efficient. The negligence of the investigative authorities resulted in the lack of necessary legal consequences in a case of an openly racist demonstration where criminal offences were committed. The Hungarian authorities incorrectly qualified the inciting speeches at the event as statements protected by the freedom of expression.

According to the Court, the public could perceive the superficial action of the police as if the state deems the threatening of Roma people a lawful and acceptable action. The Court pointed out that speeches inciting to an ethnic war made at a racist event cannot be left without consequences in a period when paramilitary organisations are regularly marching to systematically threaten local inhabitants. Due to the failures in the investigation, the applicants were not provided efficient protection

by the law. They could not trust the authorities to diligently investigate the cases where criminal offences were suspected to be committed.⁴⁷

The applicants of this case were interviewed in this present research and shared their experiences gained in the procedure. They talked about an attitude of victim-blaming. The policeman investigating the police failures repeatedly mentioned that they should have hidden away, they should not have video recorded the event. The police communication before the demonstration reflected a similar approach. The regional and local police requested them to retreat to their houses on the day of the assembly, not to show up on the yards or the streets and even to travel elsewhere if possible. The local Roma people together with applicants found these warnings outrageous, they did not want to hide, while they were the victims targeted by the extreme right-wing demonstrators.

The passive attitude of the police at extreme right-wing demonstrations have not changed as a result of the ECtHR judgement and is still a significant problem with regards to the trust of the Roma community to the authorities. After the outbreak of the COVID-19 pandemic, the Our Homeland Movement, together with other extreme right-wing organisations, held a demonstration in Budapest on 28 May 2020. This was in response to a murder committed in the centre of Budapest (in which the perpetrator was assumed to be Roma). The event was held despite the prior prohibitions based on restrictions due to the pandemic. The participants marched from the headquarters of the National Roma Self-government to the central Deák Square, the location of the murder. Hundreds of people attended the event and they used pyrotechnical tools and racist speeches were made. The speakers spoke, among others things, about their belief that Roma people were born to be criminals, they are degenerates, and that it is high time for extreme right-wing organisations to take the lead in these affairs. The police ID-checked a few participants based on the restrictions under the pandemic, but they failed to dissolve the assembly despite its unlawfulness in multiple respects.⁴⁸

The awareness of individual rights and the efficient enforcement of those rights are essential in a criminal procedure. One of the Roma interviewees, while sitting at a police interrogation as a defendant, heard the police making discriminative remarks about Roma people, but their superior failed to prepare a verbatim record of those remarks. He insisted that they record all the remarks, otherwise he would not sign the minutes. In the end, the superior took verbatim records. The question remains whether other, less knowledgeable Roma defendants, can similarly stand up for their rights.

A lawyer described a situation he faced in the courtroom, when minutes of his first interrogation (made by the police) were read out loud in the courtroom in a case of a Roma defendant. The lawyer noticed that such words presented could not have been the defendant's own words, since he had a lack of vocabulary included in the document. In fact, the defendant did not understand his own alleged

⁴⁷ Király and Dömötör v Hungary, Judgment, 10851/13, 17 January 2017

⁴⁸ <https://magyarnarancs.hu/belpol/onbiraskodasra-buzditottak-a-deak-teri-gyilkossag-miatt-szervezett-rasszista-demonstracion-130239>

statements when the judge asked about it, but even then, the judge asked solely about his signature on the minutes to prove that they were indeed the defendant's own expressions, and then the trial continued.

In addition to the above mentioned negative experiences related to the police, the interviewees also shared positive ones. The staff member of Bagázs also had good experiences related to the sensitive, fair action and communication of the police, especially at the level of investigators. In her view, problems tend to appear with the actions of patrol officers. A Roma interviewee drew the attention to the geographical specificities. He finds that conflicts between the police and Roma inhabitants are typical to smaller townships and less apparent in Budapest, since police in the capital are better trained and more progressive in their world view. We also heard about positive experiences about the police in Pécs. The human rights defender living and operating in Baranya county mentioned a non-Roma lieutenant-colonel who regularly visits local schools, communities, and strives to convince the Roma youth to join the police and she also discusses with them any relevant issues. Throughout the interviews, it was a common opinion that the police's higher-level management significantly impacts the attitude of their subordinates.

The interviewees made interesting remarks related to the recruitment and assimilation of Roma youth in the police. Multiple interviewees think that Roma police officers tend to be stricter than their non-Roma colleagues. Integration in the police community is difficult for them, hence their wish to meet the expectations and to separate themselves from other members of the Roma community, which might result in their stricter attitude. According to one of the Roma interviewees, they must demonstrate more diligent work than their non-Roma counterparts for acceptance. Another Roma interviewee recalled a case that occurred at a pedestrian crossing, when the Roma policeman imposing a fine on him, made the following remarks: "You think, because I am a Roma, too, you will be allowed to do anything? You are the bottom of the community, deny your Roma origin." In the view of a human rights defender, this is a complicated issue of social psychology. The Roma police officers "climbed out" of the marginalised status, and it is possible that although they come from poverty or a segregated area, they do not consider the personal background of the individual subjected to the police measure. They might think that "if I was able to make it, you must be able to make it, too".

Another Roma rights defender mentioned that police officers of Roma origin have to face racism within the police, just like in the larger society. Certain non-Roma police officers remain racists towards their Roma colleagues, too. This is reflected in their communication. They make racist remarks and tell racist jokes, even in the presence of Roma colleagues. Multiple cases have been revealed in the last decades that racist dialogues were done within the internal mailing system of the police. At the same time, the dominant opinion of interviewees was that instead of all this, the number of Roma police officers should be increased.

According to a Roma interviewee, if a “normal thinker” Roma police officer handled a minor incident of rowdiness by Roma perpetrators, the opening of an official investigation would be made unnecessary by a few words of mediation by the Roma officer.⁴⁹ An important precondition of a successful recruitment initiative would be the maintenance of a satisfactory scholarship and salary system. An interviewee, who facilitated the integration of two young Roma men into the police, mentioned as a significant problem that their salaries were very low, and even if they were in service in other townships than their own, they were not provided housing, and were exhausted following a commute after the long hours of service. In addition, their situation would be significantly ameliorated by having more Roma youth in service in the same locations so that they feel more confident and safer whilst facing biased behaviour within the police.

2.3. Ethnic profiling, fines

Profiling is a legitimate tool in the retribution of crimes. It facilitates the identification of the perpetrator of a crime through the creation of a profile based on personality and physical characteristics. Ethnic profiling results in the selection of potential suspects based on the ethnic characteristics and in their ID checks, arrest and other police measures. The methodology is based on the assumption that a connection exists between certain characteristics and the commission of certain kinds of crimes. Thereby the concept is rooted in the presumption that members of certain social groups are prone to commit certain categories of crimes.⁵⁰

The practice of ethnic profiling and the recurring, discriminatory imposition of fines on Roma people and the derogatory manifestations of biased police attitudes can become additional factors contributing to the lack of trust. According to the experiences of the Working Group on Petty Offences,⁵¹ it is not a unique phenomenon in poor townships inhabited by Roma people in high numbers that the police uses petty offence fining as a tool of maintaining public order and threatening. They appear in streets or segregated areas inhabited by Roma multiple times per day, and impose fines for petty offences related to bicycle or pedestrian traffic. In Hungary, the following relevant research and action have been accomplished in the last ten years:

1) It was concluded in the 2007 STEPSS Project (The Control(led) Group - Final Report on the Strategies for Effective Police Stop and Search, which was six months research aimed at the collection of perception based ethnic data) that, “based on the respondents’ reports, ethnic profiling exists in Hungary, and established that ostensibly rational considerations are often raised to justify the discriminatory practices, namely the assumption that correlations exists between ethnic identity and

⁴⁹ The judge interviewee recalled a story from before the change of regime that happened in a village of North East Hungary. The authorities regularly tended to contact a Roma member of the local community if a crime was committed in the proximity of the village. *„He knew everything about everyone, and brought in the perpetrator pulling him by his ear.”*

⁵⁰ Tóth Balázs, *Az etnikai profilalkotás a bűnmegelőzésben és a bűnüldözésben* (Doktori értekezés), Miskolc 2011, pp 10-12.

⁵¹ https://www.uni-miskolc.hu/~wwwdeak/tothb_ert.pdf

⁵¹ <https://szabalyertes.hu>

potential criminal behaviour. The research also highlighted strong prejudices regarding minorities and presumed patterns of offending in both the police and the general population".⁵² Even though the Roma proportion of the general population is only between 6 and 8%, the persons perceived to be of Roma origin by the acting officers constituted 22% of those who were ID checked. The research also refuted the ostensibly rational argument that is frequently presented to justify disproportionality: namely that the Roma are overrepresented among offenders, so the practice of checking them more often is objectively reasonable. The research results showed that there is no difference in the efficiency of checks targeting Roma and non-Roma: nationally, 22% of checks on Roma and 21% of checks targeting non-Roma are followed by some measure. In cases where ID checks were initiated due to the suspicion of a criminal offence, checks performed on non-Roma are, in fact, significantly more efficient: checks based on the suspicion of a crime were followed up by some measure (arrest, short-term arrest or a petty offence procedure) in 76% of those cases where non-Roma were involved, as opposed to 63% of the cases that involved Roma persons. It can therefore be concluded that the efficiency of disproportionately checking Roma people is a myth.⁵³

2) In the Rimóc case, the Equal Treatment Authority Office investigated 150 registered petty offense cases.⁵⁴ In July 2011, the town clerk of Rimóc (a small town in the North-East of Hungary with a population of less than 2000, where the majority of the population is Non-Roma) noticed that 18 out of 19 on the spot police fines had been imposed on Roma people for not having certain compulsory bicycle accessories (such as a front or rear light or bell). The fines were ranging from HUF 3,000 to HUF 20,000 (EUR 10 to EUR 66), which are too high for people with low income. The town clerk suspected that the police were targeting Roma people, therefore he notified the Equal Treatment Authority. As a result, the Authority launched an *ex officio* investigation against the Nógrád County Police Headquarters to decide whether the fining practice of the police constituted direct discrimination on the grounds of skin colour or ethnicity. Later on, the HHC stepped into the procedure as an organisation vested with the right to carry out *actio popularis* litigation.⁵⁵ During its hearings, the Authority interviewed the town clerk, the superior of the police officers who actually handed out the fines, the local chief of police and the county chief of police. The members of the police force denied any ethnic motivation concerning their fining practice.

The Equal Treatment Authority requested data from the police that indicated that in the first nine months of 2011, spot fines for the lack of mandatory bicycle accessories had been levied in 36 cases in the village of Rimóc. Using family names (common Roma Hungarian names in the region) and place of residence based on the segregated Roma settlement in Rimóc as proxies for ethnicity, the HHC was able to determine that whereas the Roma amount to approximately 25% of the village's population,

⁵² *The Control(led) Group - Final Report on the Strategies for Effective Police Stop and Search (STEPSS) Project*, carried out through a close cooperation between the Hungarian Helsinki Committee, the National Police Headquarters and the Hungarian Police College in 2007. p 4. See: https://www.helsinki.hu/wp-content/uploads/MHB_STEPSS_US.pdf

⁵³ Kádár András Kristóf – Körner Júlia – Moldova Zsófia – Tóth Balázs: *Szigorúan ellenőrzött iratok. A magyar igazoltatási gyakorlat hatékonyságáról és etnikai aspektusairól*. Magyar Helsinki Bizottság, Budapest, 2007. p. 42. https://helsinki.hu/wp-content/uploads/MHB_STEPSS_HU.pdf

⁵⁴ http://www.equineteurope.org/IMG/pdf/equal_treatment_authority_hungary_-_rimoc_case_presentation_08.11.2018.pdf

⁵⁵ <https://www.helsinki.hu/en/practice-of-racial-profiling-against-the-roma-community-is-acknowledged-by-the-police/>

out of the 36 fines imposed for lack of accessories, 35 were imposed on persons who (based on their name, mother's name, or address), are likely to be of Roma origin. By going on a field trip and through other means (such as by going through internet advertisements of second-hand bicycles), it could be demonstrated that most bicycles in the area do not meet the mandatory bicycle accessories requirements, hence it is unlikely that only Roma cyclists commit transgressions in this regard.

On 26 April 2012, the case ended in a friendly settlement. The Nógrád County Police Chief acknowledged that the practice may have disproportionately affected the Roma community, but emphasised that the police had no means to control the overall practice of a certain unit, because they were not allowed to process data on the ethnic affiliation of the individuals fined. The police undertook to delegate twenty officers to a three-day anti-discrimination training, offered to provide the local community with necessary accessories free of charge, and they also undertook to provide in the following two years all the data necessary for controlling whether the disproportionate practice has continued.⁵⁶

3) According to the investigations of the Independent Law Enforcement Complaints Board in the same area, certain fines were almost exclusively imposed against Roma residents.⁵⁷

4) The Roma Press Center (Roma Sajtóközpont) – concluded in a 2014 study based on the analysis of 140 petty offence procedures involving Roma people in 50 villages that on the spot fines are high even for absurd infringements, such as spitting, riding a bike with only one hand, crossing the road without pedestrian crossing, jaywalking and prohibited bathing.⁵⁸ The Roma Press Center and Index prepared a short video report in 2014 where a non-Roma woman was not fined for the same petty offence (biking with the same bike without ring and lamp) for which a (perceptually) Roma was fined for.⁵⁹

5) In addition, academic monographs and papers have been published about the subject matter of ethnic profiling.⁶⁰

In response to the findings of the above research and complaints regularly submitted to them, six NGOs initiated the establishment of an NGO-police working group against ethnic profiling in 2014.⁶¹ The National Police Chief at that time, however, rejected the proposal, stating that ethnic profiling is not practiced by the police.⁶²

⁵⁶ Ibid.

⁵⁷ Resolutions where ethnic profiling was targeted as an issue are available on the website of the Independent Law Enforcement Complaints Board. e.g.: 107/2011 (IV. 13); 278/2009 (IX. 16.); 308/2012 (IX. 13); 351/2013 (XI: 26.), See: https://www.repate.hu/index.php?option=com_content&view=panasztestulet&layout=blog&id=41&Itemid=216&lang=en

⁵⁸ <http://romasajtokozpont.hu/nincs-rajuk-kalap/>
<https://index.hu/belfold/2014/07/04/raszallt-a-ciganyokra-a-rendorseg/>

⁵⁹ <http://index.hu/video/2014/07/10/mezoszemerei-birsagolasok/>

⁶⁰ M. Tóth Balázs – Pap András László: A hatékonyság mítosza. Az etnikai profilalkotás alkotmányos és rendészeti kérdőjelei. L'Harmattan, 2012; Uszkiewitz Erik: Rendőri segítséggel? Fundamentum, 2013/3; Ivány Borbála – Pap András László: Rendőri etnikai profilalkotás az Egyenlő Bánásmód Hatóság előtt. Fundamentum, 2012, 3. Boda Zsolt – Medve-Bálint Gergő How perceptions and personal contact matter: 'The individual-level determinants of trust in police in Hungary' Policing and Society 27/7 (2015) pp. 732-749. Pap András László, *Rendészet és sokszínűség* (Dialóg Campus, 2019.)

⁶¹ For the letter in Hungarian, see: <https://tasz.hu/files/tasz/imce/orfkszabsertmunkacsop0715.pdf>

⁶² For the reply letter, see in Hungarian: <http://www.police.hu/sites/default/files/document.pdf>

In fact, since 2014, there are less and less reported individual cases on ethnic profiling that some of the major human rights organisations have knowledge of. According to a staff member of the HCLU, there are almost no discriminative police measure cases nowadays, partially due to years-long advocacy efforts from domestic human rights organisations and experts. These efforts included turning to the Equal Treatment Authority, filing lawsuits, revealing such practices to the public, and conducting trainings on the topic for the police. A human right defender interviewee from Nógrád County stated that, in his opinion, the police "harassment" targeting Roma people have been significantly decreased compared to the practices around 2010.

However, one of the interviewees, a Roma rights advocate, stated that one of the reasons why discriminative police measures are no longer seen by larger domestic NGOs may be that there are no sufficient local human rights organisations or liaisons who would reveal and deal with incoming complaints. Other discouraging factors may be the length of the complaint and judicial procedures, and the lack of trust in authorities. In his view, it is of particular importance to make Roma people understand that, despite all the difficulties, it matters to report each individual discriminatory practice committed by the authorities. Similarly, one of the practicing lawyer interviewees shared his view that his Roma clients tend not to complain about ethnic profiling because they have gotten used to such discriminative practices and they find it natural since they are "harassed" on an everyday basis, which has become part of their regular life.

One of the interviewees (a 33-year old Roma university student, living in Budapest) said that he had been stopped by the police throughout his life at least 50 times, within and outside of Budapest. He stated: "I regularly experience that police officers do not introduce themselves, they do not tell their official number or which police station they are affiliated with. They do not inform me about the real reasons of their measures, they do not tell what is the purpose of the ID check, and afterwards they do not inform me about the right to complain, and where and within what time I am entitled to file a complaint." He has made four official complaints about the stop and searches he was subjected to in the past two years (to the Independent Complaint board and the Equal Treatment Authority). In one incident, he was sitting at the Liszt Ferenc Airport (where he works), eating a sandwich while waiting for his shift to start. When he looked up, he suddenly noticed two police officers coming up to him, asking for his ID based on his "suspicious way of looking at them". In another incident, he and one of his classmates were walking in an area close to their dorms, where two policemen stopped them to show their IDs. When they asked the police to specify the reason for stopping them, the police asked him to give them his phone and unlock it, so they could check whether he had stolen it from someone. After he refused to give his phone, demanding a judicial order for the legitimisation of the police action, they threatened to arrest and detain him for eight hours, and suddenly four other policemen arrived. After the police made sure that the phone had not been stolen, they let him go. Meanwhile, multiple pedestrians walked by and they were not similarly ID checked because of the 'intense control' referred to by the police. He did not succeed with his complaint filed at the Independent Police Complaints Board

since the legal basis of 'intense control' provides the police with a practically unlimited discretionary power. A minor violation of fundamental rights was found by the Board due to the police action related to the mobile phone. The case is pending at the public administration court, where he is represented by the HCLU.

A Roma interviewee from Sátoraljaújhely discussed the methods of arrest. In his case of wood theft, while the police were taking measures, he felt as if he was being made responsible for murder. The police were pointing a gun at him in front of his minor children. He requested the police not to point a gun at him, but in vain.

Another Roma interviewee from Vécsh told the story when he was fined by the police. They were crossing the road not at the designated point, and he admitted that they were responsible in violating the rules on pedestrian crossings. However, while the police took action against them, a non-Roma couple was crossing the road at the same spot, and they were not stopped and ID checked by the police. He asked them whether it was possible to officially warn him instead of a fine, because he had four minor children and had very low income. The police imposed a fine of HUF 10,000 and added "you, dumb gypsy".

A Roma rights defender mentioned his 40 year-old, Roma but light-skinned wife that she has never been ID checked while walking in the streets alone. She is stopped by the police only when she is with him and her Roma origin becomes apparent based on the colour of his skin.

Multiple authorities, including the police, were involved in raid-like inspections conducted in the segregated slums of Miskolc.⁶³ The lawyer from HCLU mentioned that the inspections were carried out by the security service of the municipality, together with other authorities, such as the police, the guardianship authority and the public health authority. The inspections targeted only areas, which were populated by Roma people and they had an openly declared main purpose, namely to chase the affected people out of Miskolc. The HCLU and the Legal Defense Bureau for National and Ethnic Minorities turned to the ombudsman after collecting data from the security service of the municipality. The data revealed that such raid-like inspections were carried out only in segregated areas mostly populated by Roma. The ombudsman carried out a diligent investigation having found the authorities responsible in violating, among others, the rules on equal treatment.⁶⁴ In addition to violating the fundamental rights of the affected people, this discriminative practice also went against a number of procedural rules. The mayor was called to terminate the practice. He publicly declared that the inspections would not be given up. Therefore, the two civil society organisations turned to the court. While the trial was ongoing, the police raids were terminated instead of the statements of the mayor. Similar raid-like inspections have not

⁶³ <https://tasz.hu/cikkek/egyertert-velunk-az-ombudsman-a-miskolci-onkormanyzat-roma-lakossag-elleni-jogsertesei-kapcsan>

⁶⁴ <http://www.ajbh.hu/documents/10180/2395518/Miskolci-jelentes-osszefoglaló.pdf/839a3f84-376a-4c25-89e0-aafb8d898202>

been carried out from 2015. The first instance judgment was delivered in December 2018, and the appeal judgment of May 2019 confirmed that the raid-like inspections were unlawful.

Roma representatives living in Miskolc stated that they have seen cases during the inspections where the security service of the municipality entered homes and acted in highly humiliating ways, and that one of the affected Roma men almost burst into tears due to the degrading treatment. The practice was frequently threatening, especially for children, since the authorities were marching in the affected areas in a large group of thirty to forty people. These actions were seen also by non-Roma inhabitants of nearby areas. As a consequence of the raid-like inspections, Roma people could also be seen as criminals by the wider inhabitants. As for the "common" fining practices, an interviewee from Miskolc stated that in the Roma self-government hearings, it has been a recurring complaint from locals that they were stopped and ID checked without any reason or for a petty offence (such as missing certain accessories from the bicycle), for which a non-Roma inhabitant would never be stopped by the police. They added that the number of such complaints decreased after 2016-17. They also shared a story from 2018 where a Roma youngster was walking on the street and a police car stopped next to him. The police got out immediately and instructed the boy to put his hands on the police car in front of all the people passing by, like he had committed a crime, although they allegedly just searched for someone in the area with "dark skin". One of these interviewees shared a childhood memory regarding the emotional impact of discriminative police action: "I remember, when I was walking from the segregated area of the town to the centre, the police stopped me five times. Just because I am Roma. I felt always very bad they made me empty my pockets in public in a degrading way. After a while, I did not feel like walking into the centre anymore."

Another case in Borsod county happened to a Roma young adult, in a bar where he was the only Roma at the time, when five men started to make negative remarks regarding his ethnicity. He asked them why they were saying such things. Later he found himself beaten up, and taken away, handcuffed by the police, while the other guys stayed inside, partying. (The young adult also explained he was beaten at the police station because apparently one of the men inside the bar was a friend of the police officer.)

An interviewee shared the story of one of his sons, which happened around 2014 in Ajka, West Hungary. His son was on his way home from a dance club at night, and while talking to his friend, a police officer came up to him and ordered "gypsy boy, shut your mouth!" The son answered to the officer, that he should be called at least Roma, and as a reaction, the police officer slapped him in the face and asked for his and his friends' IDs.

An interesting view was expressed by an ex-defendant of Roma origin from Fejér county, Central Hungary. According to him, when a police officer stops a Roma person driving a car, the police already has a suspicion that the Roma has done something wrong, thus the police does not look for potential

errors, but searches for evidence to prove their inherent assumptions. Moreover, the police searches include asking for documentation (which would never be asked from non-Roma drivers).

The Roma interviewee who has lived in Tiszavasvári for 22 years, summarised his experiences and explained he has not heard of any non-Roma pedestrians complaining about being unjustly fined, while amongst Roma inhabitants it has been a recurring complaint.

A young Roma adult who exceeded the speed limit by bike was fined HUF 50,000 (EUR 150) in Recsk, Heves county. This same Roma interviewee from Recsk was fined for timber theft in 2016. He could not pay it hence he spent four months in petty offence confinement.

An old Roma man was walking with his bike on his side in Miskolc and was fined (HUF 50,000) for the first time in his life, only because the bike had a missing back-reflector. As he could not pay the fine, he had to go to prison.

Another Roma man from Miskolc was smoking a cigarette in the tram station and the municipal police officer went up to him, and without any first-time warning, asked the smoker whether he should draw up the fine-ticket with the amount of HUF 20 or HUF 50,000. At the end, the officer placed the HUF 50,000 ticket in the man's hand. Since the Roma man could not pay the fine, he was imprisoned.

A Roma woman's son had no ID on him in Borsod county and the police did not permit him to get it, even though he lived two blocks away. He was fined HUF 50,000.

The attitudes and actions of the police differ township by township. One of the Roma interviewees, who lives currently in the town of Ajka (in West Hungary, with about 30,000 inhabitants) shared that he has not experienced ethnic profiling in any way since the racist demonstrations had taken place in 2012. At the same time, 11 km from Ajka, in Devecser (with roughly 4,200 inhabitants), discussions with local inhabitants revealed that the police still act in discriminatory ways towards Roma locals. An inhabitant of Devecser noted that discriminatory stop and searches, and fining, is a daily practice and he and his son are continuously exposed to police stops and fines (mostly when driving their car).

The view of a Roma member of the police was that the reason for regularly imposing fines, which might especially be the case in smaller townships, is that the police imposing the fine intends to prove that he or she diligently carries out their service, and is successfully maintaining public order in affected areas. Their superiors' orders might be another reason. As for the impact of these measures, it can easily be devastating on Roma people who live in deep poverty. They might not be able to pay even a low amount of fines, and if it is not paid and cannot be transformed into labour, they will be imprisoned and might get into "bad company", becoming hostile towards the police.

Most of the interviewees expressed a bitter resignation when asked about reporting such discriminatory police measures. Even though they feel that their Roma ethnic background and appearance explained

the imposed fines and stop and searches, they would rather not start an argument because they are convinced that they would never receive any assistance. As one of the Roma interviewees expressed, when facing the police, “he feels like he was not home, [i.e. not in his home country]”.

3. The criminal procedure and Roma defendants

The response of a Roma interviewee from Fejér county (in the Central-Western part of Hungary) was very telling when he was asked about trust in the criminal justice system. He does not trust it, because “even if there is only some level of suspicion against a Roma person – without hard-core evidence – he will get convicted, unlike any non-Roma.” In the following chapter, the attitude and practices of wider criminal justice professionals (and not the police) will be discussed in light of the experiences of the interviewees.

3.1. Trust and the relationship between participants of the criminal procedure and members of the Roma community

A judge practicing in the Eastern part of Hungary stated that he knows that, most of the time, trials are proceeded in an arrogant manner when the defendant has a Roma ethnic background. The judge emphasised that it is of utmost importance to learn how judges should make themselves understood by those defendants (and other participants of a trial) who have almost no schooling: “a judge can never forget where he or she had come from” and, most importantly, “we have to give each and every defendant the same respect and formal addressing, and we have to keep ‘the two steps distance’ with everyone regardless of their ethnic, financial or educational background.”⁶⁵

A lawyer interviewee expressed his concern with regards to judges who in general, live lives that are too secluded, and as though they are in an ivory tower. In his view, there is no daily communication between legal professionals that would provide insight into different perspectives. Furthermore, many judges tend to lack real-life experience based on which they can make wise decisions. For example, the attorney brought up a case when the judge did not know the average amount a pensioner gets from the state, hence the judge imposed such financial penalty that, from the perspective of an old defendant, equated to a “death sentence”. Along the same logic, the legal professional asked the

⁶⁵ When it came to the question of ideal way of communication, a lawyer practicing in Budapest recalled a trial scene, where a Roma defendant was handled by his lawyer in a “humorously condescending way” arguing before the judge and prosecutor that his defendant was “an uneducated, primitive human being, situated at the very bottom of the Maslow Pyramid”, which – as stated by the legal officer – actually made the defendant pride and confident and did not offend him at all. According to the legal officer, “The lawyer didn’t do it out of the purpose to insult the defendant – he was “a totally cool person” [trying to impress criminal justice professionals at the trial].

Another attorney stated that he had never seen any Roma persons in court offended because the judge addressed them by their nickname (e.g. Dallas, Jackson, Pufi), in fact, they looked at it as a way of caring that the judge knew who they were. At the same time, these kinds of nicknames sometimes appear even in official documents, such as in the indictment. This is an interesting phenomenon considering the fact that nicknames do not tend to appear in trial documents related to the cases of non-Roma defendants.

question: "without sufficient information and experience, how could judges decide on Roma juveniles whether there is only a warning 'kick in the butt' that is needed, or a more serious sentence...?"

Judge Erika Mucsi, in her reasoning for judgement No 12.P.20.045/2013/47 of 25 March 2013 (which examined the lawfulness of the operation of the Association for a Better Future (Szebb Jövőért Egyesület), that was later dissolved), formed a reasoning that was not part of the subject of the lawsuit, stating, "*gypsies, as a category, should not be primarily understood on a racial basis, but as a segregated group of society that follow the lifestyle labelled in this way, irrespective of racial background, [who] disregard the traditional values of the majority society which are also protected by the laws referred to earlier, and follow a certain work-shy lifestyle and a morality that disrespects private property and norms of coexistence.*"⁶⁶ Following this statement, an ethical procedure was initiated against Judge Mucsi, which procedure declared the statement "unethical". However, the judge was permitted to stay in office without any practical consequences.⁶⁷

A practicing lawyer from Székesfehérvár has been defending mostly Roma clients (for 70 to 80% of the time) in criminal cases (not as a legal aid lawyer, but as a contracted lawyer) for 19 years. According to his account, it is difficult to gain the confidence of Roma people towards criminal justice professionals because most people with Roma ethnic origin, as participants in the criminal process, see them, including their lawyers, as state apparatus. As for trial hearings, he could not recall any occasion when he sensed that the judge or the prosecutor made a biased decision. Nonetheless, moderate mocking does take place, for example, in one case, horses and chariots were referenced as valuable properties of the Roma defendant. He recalled the remarks of a prosecutor made outside the courtroom in the corridor. The prosecutor was asking, whilst glancing at the pregnant wife of a Roma defendant, "when do they make kids, if they are constantly sitting in prison?". In another case, the prosecutor said "for me it is all the same, let him go home, I have only one thing to ask for, please, do not make more kids, ok? We do not need them." A Roma client of the lawyer interviewee shared his experiences related to his criminal case: "frequently, I felt like I am better off with keeping silent since my words were not heard by anyone anyway. I felt that I am not considered as a person. They already convicted me in the very beginning, they just focused on the fact that I had been convicted before, so it did not matter what I said."

The Roma complainants mentioned in the Devecser case discussed above that they felt in the trial hearings that the judge did not deem their remarks important. They did not feel that the authority aimed to protect them. At the same time, the court automatically accepted all the arguments of the police about why they remained passive in the face of an extreme right-wing demonstration.

⁶⁶ https://index.hu/belfold/2014/04/24/mindenki_cigany_aki_bunozo/

⁶⁷ https://index.hu/belfold/2014/08/26/mucsi_erika/

With regards to the relationship between the lawyer and their client, two lawyers practicing in Budapest for more than 12 years shared their views that in many cases Roma clients perceived the trial as a "Greek epic", in which they are the tragic heroes. Therefore, when the lawyer suggested not to give testimony or not to make remarks on an expert report, Roma defendants tended to get disappointed because it did not fit their expectations of what a lawyer should do in a trial. They also tend to believe that the more money a lawyer asks for to defend them, the better job they would do, also the more they can ask for in return.

Another lawyer interviewee added that frequently a contracted lawyer begins the representation of a defendant but later on, the defendant cannot afford to pay the attorney anymore, hence the defendant would get a legal aid lawyer, who would then start the preparation for the trial from the beginning. This can impact the quality of service provided by the new lawyer. At the same time, he welcomed the change in the legal aid system, whereby the regional bar associations and not the police appoint the legal aid lawyers.

According to another lawyer, there are attorneys who distinguish between well-off Roma clients and those who can barely pay for their legal representation. In the former cases, Roma clients' money is frequently "taken away" without the provision of sufficiently high-quality service. Others do not undertake any case of Roma defendants in order to prevent any potential negative effect on their clients, or if the law firm is operating in a block of multiple apartments, the lawyers may be afraid that visits of Roma clients would result in a "bad" reputation amongst the neighbours. Based on these experiences, it is not a surprise that most of the Roma interviewees expressed their disappointment and distrust towards lawyers. With regards to legal aid lawyers, they stated that they are frequently seen as representatives of the state authorities, who accept the appointment only to gain money without diligent work.

A Roma rights defender mentioned that Roma people turning to them frequently complained about the service of the *ex officio* appointed lawyers (or legal aid lawyers). He assumed that the low-quality service might be related to the low amount of fees they receive from the legal aid system. According to two Roma interviewees from Fejér county, "the lawyer is one of the police, he was there [at the trial hearing] only to get the money". Another Roma interviewee from Székesfehérvár mentioned that the *ex officio* appointed lawyer of the co-defendant was "drawing" in the trial hearing, did not do anything and "got the money and said goodbye". The remarks of a Roma interviewee from Tiszavasvári also reflected the lack of trust in the *ex officio* appointed lawyers: "it depends for whom the lawyer works. If he plays with the police, he can even ask for imprisonment. Even if it would not be necessary, still he asks for it." The Roma interviewee from Vécs was a defendant in seven criminal cases. He was represented by *ex officio* appointed lawyers in all cases. He felt in one out of the seven cases that the lawyer took any step towards his defence. In all other cases, he remarked that "anything popped up, if a remark was needed, it was me who raised a hand, it was me who notified the judge that I have a

comment to make, [...] at least, I expected the lawyer to stand up and join me when I was making these comments, but it has never happened”.

3.2. Procedural guarantees and access to a lawyer

The ‘Last Among Equals’ research project was carried out by the HHC in 2014.⁶⁸ In the first phase of the project, at a time when the HHC still had access to inmates within the penitentiaries, the HHC interviewed about 400 inmates, and analysed the criminal case files of 70 of them in the second phase of the project.

According to one of the research findings, collected data indicated the presence of biased attitudes in the investigative stages of criminal procedure. The following indicators were mentioned: (i) the Roma origin of the defendants was frequently mentioned in the investigation files, even if it was irrelevant; (ii) non-Roma defendants were caught in the criminal act in much higher numbers than Roma defendants (meaning that non-Roma perpetrator is more likely to avoid criminal justice when not caught in action); and (iii) Roma defendants were much more likely detected by the police through ID checks (indicating there is more intense attention from authorities towards Roma people).⁶⁹

Due to the above, one of the core questions is whether and how the judicial phase corrects possible failures in the investigatory phase of criminal procedure. In this regard, the evaluation of cases seemed to confirm the concerns raised mostly by defence lawyers that the investigation is a determining factor regarding the final outcome of the criminal procedures. If the case “goes astray” in this phase, it is likely the failure cannot be corrected later on. If the statement made during the investigation differs from the testimony given in the courtroom, the courts tend to take the former into consideration, even if the statement was given in the investigatory phase under circumstances that lacked due process guarantees.⁷⁰ Therefore, the assistance provided by the lawyers in the investigatory phase of the procedure is of crucial importance. The research found that the right of access to a defence lawyer is restricted in many respects in the investigatory phase. Due to failures of notification, the defence lawyer is frequently not present at the first interrogation. At the same time, the *ex officio* appointed defence lawyers, whose service is essential in cases of Roma defendants living in poverty, do not appear in many cases, even if they are properly notified.

The research found a systematic problem that the minutes taken during interrogations frequently did not comply with the actual statements given by the defendant (especially if the interrogation was

⁶⁸ András Kristóf Kádár, Anna Bárdits, Nóra Novoszádek, Bori Simonovits, Dániel Vince, and Dóra Szegő, *Last Among Equals – The equality before the law of vulnerable groups in the criminal justice system* (Hungarian Helsinki Committee, Budapest, 2014)

https://www.helsinki.hu/wp-content/uploads/HHC_Last_Among_Equals_2014.pdf

⁶⁹ Ibid, pp 109-110.

⁷⁰ Ibid, p 130.

conducted during the night or early in the morning, without the presence of a defence lawyer). Since many of the Roma defendants are living in poverty, with *ex officio* appointed defence lawyers, they disproportionately suffer from the consequences of the gaps in the system. In the cases included in the HHC's sample, Roma defendants confessed to crimes during the investigatory phase in higher proportions, typically as early as during the first interrogation. According to research findings, the socio-demographic characteristics of the defendants in the research sample was of low education (82% of defendants accomplished vocational technical school at the most) and low income (the average income of 69% of defendants was not more than HUF 61,000, approximately EUR 200). These were determining factors related to their ability to enforce their right to a fair trial, due to their lack of necessary funding.

Only one of the 67 defendants were represented by a retained attorney from the very beginning of the procedure, and only fifteen other defendants (or 22%) could replace his/her legal aid lawyer with retained counsel, or retain his/her legal aid lawyer later on. The operation of the legal aid system and the quality of the work of *ex officio* appointed lawyers were widely criticised. One of the most significant problems is exactly the fact that *ex officio* appointed lawyers tended to appear at the first interrogation less frequently than their retained colleagues (who are occasionally also not able to participate in this essential procedural act due to the police's failure to notify them in a timely manner).⁷¹

The research presented further important findings. Defence lawyers were present at the first interrogation of the suspect in 16 out of the 59 cases where the researchers found data of the counsel's participation in the file, just above one quarter of cases. In cases of Roma suspects, lawyers are absent in a higher proportion of cases (77% as opposed to the 69% of cases of non-Roma suspects), which can be attributable to the authorities' failure to properly notify the defence lawyer.⁷² Furthermore, in cases of 65% of Roma and 40% of non-Roma defendants, the defence lawyer was notified less than one hour before the beginning of the interrogation, which (especially if notification is not done by phone but, for example, by fax) will likely not make it possible for the defence lawyer to be present and/or properly prepared. Both with regards to notifications made more than one hour but less than five hours and more than five hours before the interrogation, non-Roma defendants were in a better situation.⁷³

These research findings shed light on the necessity of the reform of the legal aid system that has been carried out. The relevant regulations have gone through a major improvement. The aim of the legislative amendments was to improve the defence provided to the defendants in the criminal procedure. The legislator aimed to entitle the regional bar associations to appoint legal aid lawyers by

⁷¹ Ibid, p 112.

⁷² Ibid.

⁷³ Ibid, p. 114.

an automated system instead of through the proceeding authorities.⁷⁴ In the new system, the appointed lawyers are rotating, hence the earlier practice is prevented, when certain authorities tended to appoint the same lawyers, indicating collaboration between them which would undermine the provision of effective defence.⁷⁵

According to the reasoning behind the new legislation, it was aimed to ensure that the procedural measure following the identification of the need for obligatory legal aid took place, while meeting the necessary conditions of communication between the defendant and the *ex officio* appointed lawyer. Consequently, as soon as the reason for the compulsory appointment of a lawyer is identified, and the defendant is subpoenaed or arrested, the lawyer is to be appointed. If the reason for appointing a lawyer is identified while the interrogation is ongoing, the lawyer has to be appointed immediately, and the interrogation has to be suspended. According to the reasoning of the legislation, by this norm, a transitional period is prevented when the defendant should be assisted by a lawyer, when in actuality, no lawyer is present.⁷⁶

As for the legal aid system, in the present research, most of the lawyers expressed their disappointment. Although the attorneys expressed a positive opinion about the normative changes, they shared that it remains in many instances (ie. when a substitute lawyer is appointed), the practice has not changed, meaning that the police appoints those legal aid lawyers who are familiar to them and who "do not cause any additional job to them". However, it was also emphasised by most lawyers that the legal aid system is insufficient in general, regardless of the defendant's ethnic background. If a defendant cannot pay for his or her representation in a criminal case, he or she will not receive sufficient representation which should be a minimum requirement.

Other negative comments included that legal aid lawyers do not speak up when they have the right, they send their inexperienced trainees on their behalf, and they treat defendants as objects. Thus, there was a view that *ex officio* appointed lawyers in general do not represent the interest of Roma defendants efficiently. One of the interviewees mentioned that to many Roma defendants, who have no education or awareness about procedural rights, it does not even occur to them that the authorities should be notified if their lawyer fails to get into contact with them or failed to provide the necessary information.

When asked about the legal aid system, the prosecutor interviewee showed an excessively pessimist attitude, stating that he could count with one of his hand how many lawyers he had met, who actually took his or her legal aid work as seriously, as if the work was to be performed as a contracted attorney. The legal aid lawyers' closing arguments regularly consist of only two-three sentences (although, the

⁷⁴ Act XC of 2017 on the Criminal Procedure, Article 46 (1)

⁷⁵ 2017. évi XC. törvény a Büntetőeljárásról, 46. § (1) bekezdés

⁷⁶ Magyar Helsinki Bizottság, *A védőkijelölés és -kirendelés gyakorlata az új Be.-ben – Háttéranyag* (2018.) https://www.helsinki.hu/wp-content/uploads/MHB_vedokijeloles_kirendeles.pdf

prosecutor added, when the defendant is caught in the act, it is obviously difficult to make arguments above asking for a reasonable punishment).

The judge interviewee expressed his concern that even though, most of the time in criminal cases, a legal aid lawyer is present, frequently they are not aware of their responsibilities and the cases of the defendants they represent. It is also common that the notified lawyers do not show up at first hearings. Furthermore, legal aid lawyers tend to appear five minutes prior to trials, or even late, without any documents on the discussed case – they actually ask for the minutes of the interrogation of the defendant right before or at the trial.

A defence lawyer diligently representing Roma defendants can easily expect get into ‘interesting’ conversations with other criminal justice professionals. One of the lawyer interviewees mentioned that he frequently found himself in a situation where the police or the prosecutor, and sometimes one of his lawyer colleagues, made remarks that “he or she understands that I represent a Roma but only because it is my job” or comments like “but we can agree that humans are white, right?”. When he emphasised that he did not agree, he was labelled as someone “taking the side of Romas”. This was despite the reason why he diligently represented his Roma clients being because a lawyer should not care for the ethnicity of their clients and should strive for diligent work in all cases.

3.3. Coercive measures and pre-trial detention

The lack of adequate representation from the defence lawyer and the failure to appear in interrogations impacts not only the final outcome of the criminal procedure but also issues of coercive measures. The interviewees shared interesting stories about the practice of coercive measures, pre-trial detention and sentencing. The following two sections will be based on these stories.

A Roma interviewee, who lives in Heves county, described two cases where he was held in pre-trial detention. Once he ate a túrórudi (cottage cheese sweet) in a grocery store without payment for which he was held in pre-trial detention for 30 days. One of the reasons for pre-trial detention was that he had a criminal record. Another decision, which he felt being unfair, was based on an accusation against him for stealing a wallet, while according to his statements, he simply found it on the street. In the end of the procedure, he was sentenced to 6 months imprisonment, even though no clear evidence was found, only his prior criminal record. As he concluded, “if you are Roma and you have committed a crime before, you can get arrested and convicted very easily just on the ground of suspicion of being a criminal.”

An incident of a nineteen-year-old Roma man was reported by the media. He was accused of burglary and was taken into custody in 2014. The accusation was based on the testimony of an alleged eyewitness. The parents pointed out immediately that their son could not have committed the alleged

burglary since they were grocery shopping together. Even though the police were in possession of surveillance camera footage which proved the innocence of the young man, he was still kept in custody. Only after the release of media footage, which led to the assistance of the Legal Defense Bureau for National and Ethnic Minorities,⁷⁷ did the police department finally check his alibi and took the decision to release him. All charges were dropped. By then he had been in custody for 30 days.⁷⁸

According to the judge interviewee, imposing pre-trial detention is more common in cases of Roma defendants compared to non-Roma defendants. As an investigative judge, a colleague of his had imposed pre-trial detention on a Roma defendant because he had committed burglary out of hunger. Nonetheless, the interviewee did not prolong the measure because the required elements for imposing pre-trial detention – ie. the defendant having no criminal record, having a wife and children, and there being no risk of absconding, etc. – were missing.

Another case was mentioned by a human rights activist interviewee from Baranya county. Four high school students threatened and forcibly took their classmate's cell phone away. Out of the defendants, three had darker skin (and they were of Roma origin), while the fourth one had blonde hair and blue eyes, and did not have a Roma name. Even though all the students were equally involved in perpetrating the crime, only the Roma students were held in pre-trial detention, and were later convicted, whilst the blonde juvenile got away without any practical consequences. The human rights defender had asked for the case files which demonstrated the significant differences between attributing criminal conduct to the four young defendants.

A lawyer interviewee brought up an illustrative example. This was a case where his Roma client was arrested for burglary. He had no criminal record and had a family who lived in deep poverty. They were in fact starving, which motivated his crime. As a defence lawyer, the interviewee argued that pre-trial detention was not needed since his client had no income, but his family had some, and there were no witnesses involved in the case whom he could have threatened, thereby endangering the outcome of the criminal procedure. Nevertheless, his pre-trial detention was ordered and prolonged based on abstract reasoning focused upon the gravity of the crime.

3.4. Indictment and sentencing

A Roma interviewee asserted that he was sentenced for two years and four months imprisonment on the grounds of theft (of the value of EUR 600). He had a "white Hungarian" acquaintance, who had committed similar crimes, and even though this acquaintance already had four suspended custodial sentences before, with the fifth sentence resulting with the same decision, the Roma interviewee on

⁷⁷ The human rights organisation does not exist anymore.

⁷⁸ <https://24.hu/kozelet/2014/04/26/az-artatlan-roma-fiu-a-medianak-koszonheti-a-szabadsagat/>

the other hand, with one suspended offense (that was imposed on him 30 years prior to this case), received two and a half years in a penitentiary.

Another interviewee described a case, which happened to his Roma friend in Komárom-Esztergom county. The friend was admittedly a multiple recidivist, who went to a supermarket with his son, where the father took out a salami rod from its case, which was also equipped with a theft-protective alarm. This act resulted in nine months pre-trial detention and one and a half year's imprisonment in total, even though the salami was not even taken out of the shop.

In addition, a legal professional interviewee provided information on a case in which more than one young Roma suspects were involved. In the first case, a 13 year-old Roma boy was involved in a gun robbery committed with three other juveniles. Even though the 13 year-old boy had dark skin – just like the three older juveniles – there were many things, the lawyer argued, that distinguished the youngest from the older ones. The 13-year-old was a hardworking student with good grades, contributing to the work of the student council in his school, not to mention that, as opposed to the others, it was the first time of the 13-year old to face the criminal justice system. All these personal circumstances were irrelevant under the understanding of the prosecution. The decision – even after 3 years – is still not final. As of the last ruling, the 13-year-old received probation and the others a suspended sentence, but the prosecutor still appealed with the aim of reaching an actual prison sentence for all. This case is also relevant regarding the issue of decreasing the age of criminal liability to 12 years. In the view of the lawyer working on the case, this rule significantly impacts the life of marginalised Roma youth due to their bad financial and social status. The young Roma defendant in the above case could have easily be sent to a correctional facility, where he would have made contact with other young adult perpetrators, negatively impacting his personal development and his opportunity of reforming from his difficult personal circumstances.

On the other hand, another lawyer interviewee shared his view that the Roma origin of defendants does not influence the indictments given: "just because the defendant is a Roma the prosecution services would not press charges, thank God - indictments are still not drafted according to racial laws". Another lawyer interviewee from Budapest shared this view about the lack of discriminative decision-making in sentencing.

A separate attorney and writer interviewee, who had worked for the Legal Defense Bureau for National and Ethnic Minorities for a significant time, highlighted another factor that might contribute to the high ratio of Roma people in prison. Based on his experience, there have been cases when the judges imposed a suspended imprisonment sentence to an indigent defendant, instead of a financial penalty, because the judges knew that underprivileged defendants with many children would not be able to pay the high amount of financial punishment. As a consequence, the suspended sentence easily becomes imprisonment if any further crime is committed by the defendant.

As for imprisonment, the penitentiary system could be the next subject of research. However, research tools are limited due to the lack of access to penitentiaries. One of the lawyer interviewees discussed, to a limited extent, discriminatory attitude and racist speech made in prisons. He heard from members of the prison staff remarks related to the 2008-2009 series of murders against Roma victims, such as "what a shame that the perpetrators killed good Romas", why did not they kill Romas like the ones in Enying responsible for the murder of Marian Cozma. If they had done so, "we would have brought even virgin girls to them in the prison, or alcohol".

A former staff member of the penitentiary service who used to work in this capacity for ten years mentioned the biased attitudes even towards his colleagues who were of Roma origin. His colleagues who communicated with Roma detainees in a biased and degrading way, having the same attitude towards Roma colleagues. They tended to talk about them behind their back. When it came to Roma detainees, they made even extremely racist remarks like "Hitler did not select the main target group well". These kinds of extreme statements about detainees were made away from detainees. He found that open verbal racism was less frequent (and did not typically appear in the written form or in criminal case files). Indirect references are more likely, such as "how do you behave, you do the same again, you cannot behave like normal people". According to a defence lawyer interviewee who has provided legal representation to a high number of Roma clients in the last 19 years, expressions such as "you, dirty gypsy" is the minimum regular verbal abuse which Roma detainees can expect.

A Roma interviewee from Fejér county was detained in a low-security prison in Szombathely. He was employed at an external workplace and frequently gained benefits for good behaviour. However, when he asked the prison staff about a potential early release based on his behaviour, he received a response from a staff member of "while I am here, no gypsy will get early release".

In the 10 years of his service, the former penitentiary staff member interviewee had not heard about any professional training focused on verbal communication with Roma detainees and the relevant expectations. He had only heard of trainings aimed at facilitating the integration of Roma staff members.

Recommendations

- The government should take proactive measures in order to fight discrimination against Roma people in the criminal justice system, and should refrain from official anti-Roma statements which enhance prejudices within Hungarian society.
- In light of the research obstacles and limited research findings, we recommend that the Commissioner for Fundamental Rights as a National Human Rights Institution triggers a thematically focused investigation into the subject matter of discrimination towards Roma people in the criminal justice system, with the involvement of civil society organisations and local communities.

- In order to facilitate the monitoring and research of discrimination, the possibility of introducing data collection system based on ethnicity (and based on perception, and after thorough professional preparation) should be considered. The system should exclude any chance of potential misuse and no one should be obliged to declare their ethnic origin.
- An in-depth research on discrimination in the criminal justice system requires the analysis of criminal case files. Therefore, the central authorities of the justice system should grant researchers access to those files.
- Anti-discrimination, plain language and sensitisation education and training modules should be integrated in the relevant education and training programs from the very beginning (at law schools, secondary and higher law enforcement education). Regular and adapted trainings aimed at skill development should be ensured within professional training programs. The relevant authorities and education institutions should involve Roma rights and other competent civil society organisations both in the development of curriculum and the delivery of training.
- From the perspective of social dangerousness, legislators should review and amend the provisions of the Criminal Code and the Law on Petty Offences, which result in the criminalisation of those of marginalised status.
- The National Police Headquarters should systematically oppose ethnic profiling and the unjust imposition of fines on marginalised people, introducing a regular review mechanism with the involvement of external experts (e.g. by regularly providing data to the Equal Treatment Authority regarding the rationale for and the amount of fines. This should be based on bilateral agreement or after facilitating cooperation between independent experts and competent civil society organisations).
- The National Police Headquarters should ensure that all reports filed at the police are handled diligently and with the highest possible level of professionalism in all cases, including the reports reported by individuals with an apparent affiliation with the Roma minority.
- The Headquarters should review the practice of passivity at extreme right-wing demonstrations where hate speech and hate crimes occur.
- The central authorities of the justice and the penitentiary system (the National Police Headquarters, the Chief Prosecutor's Office, the National Judicial Office, the Hungarian Judicial Academy and the National Penitentiary Headquarters) should develop a monitoring and training system, with the involvement of independent experts and competent organisations, in order to terminate any practice of discrimination or biased communication within the justice system.
- The National Police Headquarters should ensure more intense recruitment of Roma youth into the police, using tools of encouragement.
- The Hungarian Bar Association, in cooperation with the regional bar associations and independent experts, should develop an efficient quality assurance system, with particular attention towards the legal aid system.