

Discussion Guide | February 2023

# Roma and non-custodial sanctions

This discussion guide sets out findings from an exploratory study on Roma persons' access to and experience of non-custodial sanctions and measures ("alternatives to imprisonment") in Europe. It is published as part of an ongoing, project '*PRI Alt Eur: Promoting non-discriminatory alternatives to imprisonment in Europe*', funded by the European Union and led by Penal Reform International (PRI).<sup>1</sup> It lays out information found from desk-based research, including a survey among probation experts in Europe, and highlights issues requiring further attention, whether through in-depth research, policy action or practice consideration from stakeholders working on Roma rights and/or criminal justice. Questions are posed in conclusion to facilitate discussion(s), including at a multi-stakeholder roundtable that will be convened by PRI on 7 March 2023 in Brussels.

## Introduction

When using the term Roma it is important to reiterate that, as explained by the European Commission, "The reference to 'Roma', as an umbrella term, encompasses a wide range of different people of Romani origin such as: Roma, Sinti, Kale, Romanichels and

Boyash/Rudari. It also encompasses groups such as Ashkali, Egyptians, Yenish, Dom, Lom, Rom and Abdal, as well as traveller populations, including ethnic Travellers or those designated under the administrative term 'gens du voyage' and people who identify as Gypsies, Tsiganes or Tziganes, without denying their specificities."<sup>2</sup>

<sup>1</sup> For more on the project see: [www.penalreform.org/where-we-work/europe/projects/](http://www.penalreform.org/where-we-work/europe/projects/).

<sup>2</sup> European Commission, 2020, *EU Roma strategic framework for equality, inclusion and participation for 2020 – 2030*, available at: [www.commission.europa.eu/system/files/2021-](http://www.commission.europa.eu/system/files/2021-)



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European Roma, as the largest ethnic minority in the region, is the most visible Roma population worldwide. The severe discrimination and marginalisation its members continue to experience has been widely reported.<sup>3</sup> The European Court of Human Rights has ruled that as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority and their human rights require special protection.<sup>4</sup> There has been growing recognition that Roma are victims of high levels of antigypsyism<sup>5</sup> and discrimination in many European states and that this extends to policing and law enforcement.<sup>6</sup> The European Parliament, the European Commission the Council of Ministers and the Council of Europe have recognised antigypsyism as a barrier to inclusion, underscoring the importance of tackling it.<sup>7</sup>

In 2015 the UN Special Rapporteur on minority issues published a comprehensive study of the on the human rights situation of Roma worldwide, reporting that “empirical studies indicate that Roma are overrepresented in the criminal justice systems across Europe, with research indicating that they are often detained arbitrarily on account of their Roma identity. The lack of a visible Roma presence in police forces and judiciaries compounds that problem.”<sup>8</sup> Some more recent studies have begun further detailing the intersecting discrimination Roma often face in the context of criminal justice.<sup>9</sup>

There has thus far been little exploration of the specific question of whether and how Roma persons may face discrimination in relation to alternatives to prison. This study seeks to facilitate a discussion on the question among criminal justice

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[01/eu\\_roma\\_strategic\\_framework\\_for\\_equality\\_inclusion\\_and\\_participation\\_for\\_2020\\_-\\_2030\\_0.pdf](#), footnote 2.

<sup>3</sup> UN, 2015, Special Rapporteur on minority issues Global Study on the human rights situation of Roma worldwide, available at:

[www.ohchr.org/en/special-procedures/sr-minority-issues/special-rapporteurs-study-protection-roma/global-study-human-rights-situation-roma-worldwide](http://www.ohchr.org/en/special-procedures/sr-minority-issues/special-rapporteurs-study-protection-roma/global-study-human-rights-situation-roma-worldwide).

<sup>4</sup> European Court of Human Rights, D.H. and Others v. the Czech Republic, application n° 57325/00, 13 November 2007, para 182. Quoted in ECtHR Factsheet available at:

[www.echr.coe.int/documents/fs\\_roma\\_eng.pdf](http://www.echr.coe.int/documents/fs_roma_eng.pdf).

<sup>5</sup> The European Commission uses the spelling proposed by the Alliance against Antigypsyism, while accepting that different terms might be appropriate in different national contexts.

<sup>6</sup> Antigypsyism (a form of racism against Roma) is a historically rooted structural phenomenon that appears at institutional, social and interpersonal levels. It has its origins in how the majority views and treats those considered ‘gypsies’. While there is consensus about the understanding of antigypsyism among proponents of the need to reinforce the fight against it, there has been a debate about the term.

<sup>7</sup> European Commission, 2020, EU Roma strategic framework for equality, inclusion and participation for 2020 – 2030, available at: [commission.europa.eu/system/files/2021-](http://commission.europa.eu/system/files/2021-01/eu_roma_strategic_framework_for_equality_inclusion_and_participation_for_2020_-_2030_0.pdf)

[01/eu\\_roma\\_strategic\\_framework\\_for\\_equality\\_inclusion\\_and\\_participation\\_for\\_2020\\_-\\_2030\\_0.pdf](#).

<sup>8</sup> UN, 2015, *Comprehensive study of the Special Rapporteur on minority issues on the human rights situation of Roma worldwide, with a particular focus on the phenomenon of anti-Gypsyism*, A/HRC/29/24. Available at:

[www.ohchr.org/en/special-procedures/sr-minority-issues/special-rapporteurs-study-protection-roma/global-study-human-rights-situation-roma-worldwide](http://www.ohchr.org/en/special-procedures/sr-minority-issues/special-rapporteurs-study-protection-roma/global-study-human-rights-situation-roma-worldwide).

<sup>9</sup> See for example: European Roma Rights Centre and Fair Trials, 2021, *Justice denied: Roma in the criminal justice system*, available at: [www.errc.org/reports--submissions/justice-denied-roma-in-the-criminal-justice-system](http://www.errc.org/reports--submissions/justice-denied-roma-in-the-criminal-justice-system);

Fair Trials, 2020, *Uncovering anti-Roma discrimination in criminal justice systems in Europe*, available at: [www.fairtrials.org/articles/publications/uncovering-anti-roma-discrimination-in-criminal-justice-systems-in-](http://www.fairtrials.org/articles/publications/uncovering-anti-roma-discrimination-in-criminal-justice-systems-in-europe/)

[europe/](http://www.fairtrials.org/articles/publications/uncovering-anti-roma-discrimination-in-criminal-justice-systems-in-europe/); Justicia European Rights Network, 2018, *Disparities in Criminal Justice Systems for Individuals of Different Ethnic, Racial, and National Background in the European Union*, see:

[www.statewatch.org/projects/justicia-european-rights-network/](http://www.statewatch.org/projects/justicia-european-rights-network/).

professionals, representative groups and others interested in the issue(s).

International bodies have put in place a range of policies and strategies aimed at tackling discrimination and promoting inclusion of Roma. In 2020, the EU published the *Roma strategic framework for equality, inclusion and participation for 2020 – 2030* (see footnote 5 above). This sets seven objectives at the EU level: three horizontal objectives in the areas of equality, inclusion and participation and four sectoral objectives in the areas of education, employment, housing and health.<sup>10</sup> For the first time targets are proposed for meeting the objectives, for example to reduce the existing gap in housing deprivation by at least one third so that by 2030 the majority of Roma do not face housing deprivation.

The Council of Europe has also produced a *Strategic Action Plan for Roma and Traveller Inclusion (2020-2025)*.<sup>11</sup> Priority areas include supporting access to justice and improving implementation of national and local level Roma inclusion strategies in the areas of inclusive education and local policies (including effective public services). The CoE has also produced a Recommendation to member states on improving access to Justice for Roma and Travellers in Europe.<sup>12</sup>

## Methodology

Following consultations with the Hungarian Helsinki Committee (HHC), - one of the consortium partners in the project *PRI Alt Eur* - and the European Roma Rights Centre, PRI prepared a short questionnaire (Appendix 1), which was sent to probation experts in 20 jurisdictions in 15 countries. Eight written and one oral response were received. Partial responses and additional information was received from a further three countries.

In cooperation with EuroPris,<sup>13</sup> two questions were submitted to European national prison and correction services through its Knowledge Management System (KMS),<sup>14</sup> eliciting responses from eleven countries, four of which also responded to PRI's survey.

Country research reports prepared on 20 European Union member states' use of non-custodial sanctions and measures as part of the *PRI Alt Eur* project were also consulted, alongside a range of open-source information.

This study is not intended as a comprehensive review of the topic and is limited by the extent and nature of responses made to the questionnaire(s). The data is mostly presented anonymously, other than where responses have included references to material which is publicly available or otherwise attributable to a particular

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<sup>10</sup> European Commission, 2020, *EU Roma strategic framework for equality, inclusion and participation for 2020 – 2030*. Available at: [www.commission.europa.eu/system/files/2021-01/eu\\_roma\\_strategic\\_framework\\_for\\_equality\\_inclusion\\_and\\_participation\\_for\\_2020\\_-\\_2030\\_0.pdf](http://www.commission.europa.eu/system/files/2021-01/eu_roma_strategic_framework_for_equality_inclusion_and_participation_for_2020_-_2030_0.pdf).

<sup>11</sup> Council of Europe, 2019, *Strategic Action Plan for Roma and Traveller Inclusion (2020-2025)*. Available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680998933](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680998933).

<sup>12</sup> CoE, 2017, *Recommendation CM/Rec(2017)10 of the Committee of Ministers to member States on improving access to justice for Roma and Travellers in Europe*, available at: <https://rm.coe.int/168075f2aa>.

<sup>13</sup> EuroPris is the European organisation of prison and correctional services, a non-political, non-governmental network organisation, whose membership is open to European national Prison and Correctional Administrations that are able and willing to support its agreed aims and objectives, alongside public institutions or organisations in the Council of Europe region, which provide prison or correctional services on a legal or statutory basis. For more, see [www.europris.org](http://www.europris.org).

<sup>14</sup> The two questions are: 1. Is there data on the number of Roma people in the prison system? 2. What steps, if any, are taken by the service to address the needs of Roma people in the criminal justice system and to reduce the possible overrepresentation of Roma people in the prison system?

jurisdiction; and where the responses to the EuroPris questions are available for public viewing online.

## Findings

### Overrepresentation of Roma in prisons

While research studies in various countries have identified that Roma are overrepresented in prison compared to the general population, few countries collect routine data to measure this. In some countries, it is unlawful to collect race or ethnicity-based data. Where it is collected, a range of categories encompassing both nationalities and racial or ethnic groups may be used. For example, some countries seem to include all Romanian people when looking at Roma as a cohort; other countries make a distinction between Roma, Gypsies and Travellers, while most include the latter in the definition of Roma. The lack of a consistent approach makes it difficult to draw conclusions about the true extent and nature of overrepresentation of Roma in prison.

There is a body of evidence from a range of countries suggesting that a higher proportion of Roma are in prison than in the general population and that this may in part result from discriminatory police, prosecutorial, and court practices. Research by Fair Trials in 2021 has outlined that “more than 50% of new prisoners, as well as more than 50% of those serving prison sentences, self-identified as Roma, despite making up only 10% of the population.”<sup>15</sup>

In Spain, an earlier study estimated that around a quarter of non-foreign, female prisoners are Roma: “This amounts to a

twenty-fold over-representation of Roma women in prisons compared to their representation in the general population.”<sup>16</sup>

In Hungary, according to research conducted by the HHC, Roma persons are more likely to be ethnically profiled and in contact with the criminal justice system than non-Roma. Furthermore, once drawn into the system, Roma are more likely to be held in pre-trial detention, receive longer sentences, and endure harsher treatment in prison than their non-Roma counterparts.<sup>17</sup>

Research in Ireland has found that: “Travellers are simultaneously overpoliced as suspects and under policed as victims, and the overrepresentation of Travellers in prison is long acknowledged.”<sup>18</sup>

Despite these research findings, respondents from only two jurisdictions represented in this study stated that Roma were overrepresented in prison. Respondents from four jurisdictions said Roma were not overrepresented in prisons, and a further nine indicated that they do not know. The large majority reporting that they do not know whether Roma are disproportionately imprisoned reflects the fact that in many countries the law does not allow public services to collect or publish personal data identifying someone as part of an ethnic group.

For example, in one of the responding countries, the personal data protection law prohibits the processing of special categories of personal data including those revealing ethnic origin. Although the law provides exceptions to this principle (such as public

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<sup>15</sup> Fair Trials, 2020, *Uncovering anti-Roma discrimination in criminal justice systems in Europe*, p.10. Available at: [www.fairtrials.org/sites/default/files/publication\\_pdf/FT-Roma\\_report-final.pdf](http://www.fairtrials.org/sites/default/files/publication_pdf/FT-Roma_report-final.pdf).

<sup>16</sup> Equipo Barañi, *Mujeres gitanas y sistema penal*, (Madrid: Meytel 2001) quoted in Fair Trials, 2020, *Uncovering anti-Roma discrimination in criminal justice systems in Europe*, p.6. See footnote 15 above.

<sup>17</sup> HHC, 2014, *Last Among Equals: the equality before the law of vulnerable groups in the criminal justice system*. Available at: [www.helsinki.hu/wp-content/uploads/HHC\\_Last\\_Among\\_Equals\\_2014.pdf](http://www.helsinki.hu/wp-content/uploads/HHC_Last_Among_Equals_2014.pdf).

<sup>18</sup> Joyce et al, 2022, *Irish Travellers’ Access to Justice*, University of Limerick, p.8. Available at: [www.researchrepository.ul.ie/articles/report/Irish\\_Travellers\\_Access\\_to\\_Justice/20179889](http://www.researchrepository.ul.ie/articles/report/Irish_Travellers_Access_to_Justice/20179889).

interest as defined in a special regulation), the current legislation regulating the conditions of pre-trial detention and prison sentences does not include this exception for monitoring the structure of the prison population.<sup>19</sup> Another country also suggested that compliance with the General Data Protection Regulation regarding the protection and processing of personal data prevents the collection of data. In Spain, the law does not allow that public services collect personal data identifying someone as part of an ethnic group (neither as part of a religious group or specific sexual orientation). It is also forbidden that government databases collect such information.<sup>20</sup> Statistics on ethnicity are also illegal in Finland, so the exact number of Roma is therefore unknown. It is estimated that there are around 200 Roma in the country's prison population on a given day.<sup>21</sup>

For one country, the respondent said that statistics provide a record of official nationalities, but not of ethnic groups. This seems to be the case in several jurisdictions.

One respondent to PRI's survey explained that the prison system in their country does not centralise statistical data related to ethnicity. Information about nationality is recorded, but this is exclusively based on the declaration of the prisoners themselves. The prison data in this country include a category of "Roma nationality," which represents a smaller proportion of the custodial population, than the estimated proportion of Roma in the general population. The respondent acknowledged, however, that "there are no objective indicators regarding the over[- or under] representation of Roma people in the penitentiary system."

The same is true in another country, where the respondent noted that as "Roma" is not a well-defined group and consists of different

nationalities, the Prison Service does not have data on the number of Roma. Furthermore, the national prison database does not register individuals based on ethnicity. Consequently, no data could be provided.

In one of the responding countries, the Prison Administration does not collect data even on the nationality of prisoners.

Of the countries that responded that they did not know whether Roma are disproportionately imprisoned, one reported an "impression" that there was no overrepresentation. By contrast, the respondent from Ireland reported that while not knowing for sure, they suspected that Roma are over-represented in prisons, based on the known overrepresentation of Travellers – a group which is in fact included in the wider definition of Roma.

In Ireland, current categorisations for ethnicity include Gypsy or Irish Traveller but there is not a separate category for Roma. The respondent reported that there is evidence to suggest that Gypsy, Roma and Traveller communities as a whole are overrepresented in the Prison System, but the specific situation of Roma as more narrowly defined "*is less clear*".

Of the countries where respondents stated that there might be overrepresentation, one reported that Roma are over-represented compared to the Roma community's size in general in the society. However, no exact percentage in prisons could be provided, since the Prison and Probation Service is not allowed to keep statistics by cultural groups. The estimation was made based on the Probation Service's knowledge about rehabilitation work with clients, with "*issues and needs related to Roma culture [...]*"

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<sup>19</sup> See: [www.europris.org/epis/kms/?detail=480](http://www.europris.org/epis/kms/?detail=480)

<sup>20</sup> See, for example: *Llei orgànica 7/2021, de 26 de maig de 2021, de protecció de dades personals tractades per a fins de prevenció detecció, investigació i enjudiciament d'infraccions penals i d'execució de sancions penals.*

<sup>21</sup> See: [www.europris.org/epis/kms/?detail=480](http://www.europris.org/epis/kms/?detail=480).

*common in the client work.” In its KMS response, this country confirmed that “Statistics on ethnicity are illegal so the exact number of Roma is therefore unknown.”*

The other response from the two countries which agreed that there was Roma overrepresentation in prison implied that that this reflects greater involvement on the part of Roma in criminality. It referred to a lack of respect for the authorities, rules and regulations in what are closed communities where crime is downplayed and considered part of the way of life. The response noted that a history of criminal involvement within families is not exceptional. The response also mentioned low levels of education and related social and economic disadvantage as contributing factors to disproportionate representation of Roma in criminal justice systems.

Among the responses that said there was no overrepresentation of Roma among their national prison populations, one reported that the proportion of Roma in the prison population has been decreasing significantly since 2015. However, the response noted that the numbers were associated with “nationals of Romania,” so there may have been a misunderstanding as to the population being studied.<sup>22</sup> Moreover, a response submitted to Europris’ KMS questions from the same country noted that the number of Roma is not known, although data is beginning to be collected.

Another of the responses that noted no overrepresentation provided data indicating that “Roman” people make up 1.5% of those in prison but 0.1% of the general population. Again, it is not clear what particular groups are being counted.

It should be noted that the UN Committee for the Elimination of Racial Discrimination has proposed steps to be taken in order to better gauge the existence and extent of racial discrimination in the administration and functioning of the criminal justice system.<sup>23</sup> Among the recommended indicators for attesting to such discrimination are the number and percentage of persons from minority groups who are held in prison the handing down by the courts of harsher or inappropriate sentences against persons belonging to those groups; the insufficient representation of persons belonging to those groups among the ranks of law enforcement departments. Furthermore, since 1998, the European Commission on Racism and Intolerance (ECRI) has advocated for the collection of ethnic data in a coherent and comprehensive manner.

### **Specific offence types Roma are often charged with and/or convicted for**

Little or no disaggregated data is collected that would allow for reliable conclusions to be drawn about the types of offences which Roma persons are charged with or convicted for. From available information, it appears that petty property offences, including theft, are common offences.

Respondents to PRI’s survey from five countries stated that Roma are more likely to be involved in theft offences than other crimes and a further response while unable to comment on Roma specifically noted that in general foreign nationals, tend to come from the poorest backgrounds, so offences are most often related to theft and criminal damage. Two further respondents reported that common offences committed by Roma were for criminal damage and violence.

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<sup>22</sup> The researchers followed up on the received survey response for clarification, and the respondent confirmed that the indicated numbers refer to Romanian nationals. Nevertheless, the respondent also noted that all the answers regarding specific needs of Roma are correct. Such specific needs are considered just as with other communities or national groups.

<sup>23</sup> See its General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system

Four respondents were unable to answer, citing reasons such as the complexity of the matter and the lack of any survey or records correlating specific types of offences and a particular ethnicity.

It is important to recognise that the information presented above seems largely based on perceptions of respondents rather than objective information or comprehensive data.

### **Non-custodial sentences: Challenges faced by Roma**

Many challenges faced by Roma are considered by probation services or the courts to make them unsuitable or even ineligible to serve non-custodial sentences. These relate to their accommodation in informal housing that can be perceived as unstable or impermanent, wider issues of poverty and marginalisation and issues such as language and culture. These factors can make it difficult for Roma to comply with the requirements of non-custodial sentences when they are imposed.

PRI's survey included two questions about obstacles that Roma face in being able first to receive and then successfully serve a non-custodial sentence. The first question was whether courts are sometimes unwilling to impose non-custodial sentences on people from the Roma community who are convicted; the second whether there are particular challenges for Roma serving such sentences when they are imposed. The findings are discussed together because of the overlap between the responses.

The respondent from only one country agreed directly that courts are sometimes unwilling to impose non-custodial sentences on Roma, but it is clear from responses to the question about challenges that several

others considered that these can act as barriers to the perceived eligibility or suitability of Roma for community-based sentences.

The challenges that were described by respondents fall into three categories:

- Those related to the housing situation(s) of Roma;
- Those related to marginalisation;
- Those related to language and culture.

#### Housing situation(s) of Roma

The one respondent who agreed that courts are sometimes unwilling to impose non-custodial sentences explained that the unstable housing situation and frequent changes of accommodation experienced by many Roma create a problem for judges who may be considering a non-custodial option. As the respondent put it:

*"The system expects to be able to get in touch with you. Constant movement is an issue, and there is a connection with them being less likely to get non-custodial measures. There is a gap between the way they are living and what is expected of any citizen in the criminal justice process."*

Another respondent similarly reported that Roma often lack a fixed address and are therefore difficult to keep in contact with.

The country report on Belgium, prepared in the context of the *PRI Alt Eur* project also mentions research findings indicating that *"electronic monitoring is less likely to be imposed on Roma because judges assume that they will not comply with the conditions."*<sup>24</sup> These conditions generally require the person serving a non-custodial sanction to stay at a fixed address for the period of the sentence.

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<sup>24</sup> Wendy De Bondt, Nele Audenaert and Manon Maes, *Non-custodial sanctions and measures in the Member States of the European Union: Belgium*, Institute of Legal Research at the Faculty of Law of the University of Coimbra, November 2021. p. 14. Available at: [www.prialteur.pt/application/files/4716/5210/0362/Belgium.pdf](http://www.prialteur.pt/application/files/4716/5210/0362/Belgium.pdf).

Greek probation officers interviewed for the country research report prepared as part of the *PRI Alt EUR* project said that “criminal justice authorities are hesitant to order community service when the offender is a migrant, due to the perceived difficulty to locate them or communicate with them”.<sup>25</sup> While Roma are not necessarily foreign nationals as such, their perceived status and way of life – as well as the above noted confusion between populations such as Roma and Romanian by some criminal justice professionals – may contribute to similar hesitation in applying community-based sanctions.

#### Marginalisation

Marginalisation can play a role in Roma accessing alternatives to imprisonment in the first place. For example, one respondent reported that in their country courts can sometimes choose a custodial sentence as opposed to a community-based sentence because of the “negative effects of the environment towards the probationer if they stay in the community.”

An issue that was reported from one country was the fact that many Roma are not registered with relevant authorities, which means they do not have an ID card, without which the execution of the sanction cannot commence as applying for this postpones the starting date of sentence execution. They reported that while courts are willing to impose house arrest on any suitable offender, but also made it clear that this option is often inappropriate for Roma persons. The noted reason for this had to do with people being required to stay at home during curfew

periods and therefore being unable to go out to earn money. For those living in poverty and relying on daily earnings, which includes many Roma, the option is therefore not viable. In addition, house arrest is most frequently applied without any rehabilitation or treatment condition, so no rehabilitation plan can be implemented, which could have helped the person serving the sentence in improving their situation.

Respondents from one further country mentioned that for some non-custodial measures, regular employment is a requirement, something which some Roma persons are often unable to demonstrate. Lack of education and work discipline, alongside the need to maintain an income, were further noted by a survey respondent as factors that could pose a challenge to meeting the legal requirements of non-custodial sanctions.

In Greece it was also reported that during the COVID-19 pandemic persons belonging to the Roma population faced difficulties in meeting the ordered obligations and complying with the terms of their community-based sentences. The noted reason for these challenges was that “many of them are unvaccinated and cannot afford the cost of rapid tests that would allow them to proceed and complete the order of the court.”<sup>26</sup>

Responses from two countries recognised that many of the problems facing Roma, such as poverty, lack of education, stigma and discrimination, were also faced by other marginalised groups in the country.

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<sup>25</sup> Nikolaos Koulouris, Sophia Spyrea and Dimitris Koros, *Non-custodial sanctions and measures in the Member States of the European Union: Greece*, Institute of Legal Research at the Faculty of Law of the University of Coimbra, January 2022, p.14. Available at: [www.prialteur.pt/application/files/6316/4676/0398/greece.pdf](http://www.prialteur.pt/application/files/6316/4676/0398/greece.pdf).

<sup>26</sup> Page 21, see footnote 25 above.

## Language and culture

The respondent from one country noted the very practical problems which arise when Roma individuals do not speak the country's official language. This can lead to a failure to understand the requirements of a non-custodial sentence.

In the same country, probation officers sometimes report cultural differences as being an issue. For example, perceptions among Roma communities that it is not appropriate for women to work outside the family home can be a barrier to participating in probation programmes.

In addition, it was reported that in two countries work by probation staff with Roma can be difficult due to misunderstandings and a low level of trust on the part of Roma in criminal justice institutions. As a result they may avoid contact with the authorities which challenges probation work and the successful completion of sentences in the community.

Other responses recognised a need to understand Roma cultural traditions and take them into consideration as much as possible within the parameters of the law. This might take very practical form, such as making sure that clients from different Roma families that have unsolved disputes do not meet each other in the waiting area in probation offices. It could also involve efforts such as ensuring that in the implementation of community sentences, younger people should not be put in a position where they could be seen to dishonour elderly people or be seen in culturally inappropriate clothing.

One of the country reports also mentioned selective and negative discriminatory practices against Roma individuals by

agencies where community service is offered or, in other cases, difficulties in "matching community service activities with their interests and cultural particularities."<sup>27</sup> Another country report cited research suggesting that the actuarial nature of risk assessments carried out by the Probation Service may implicitly disadvantage minority ethnic communities and the Irish Travelling community. It notes as an example that "*elements of culture, including traditional nomadism, may be erroneously labelled as criminogenic.*"<sup>28</sup> It also described some probation officers as "*hesitant to identify service users as Irish Travellers in the preparation of reports for court, for fear of discriminatory sentencing.*"

## Roma and non-custodial sanctions: addressing the challenges

The probation experts consulted as part of PRI's exploratory study proposed a range of measures which might address challenges facing Roma including more training, cultural sensitivity and collaboration with Roma organisations. A number of specific projects have been established including mentoring programmes and culturally relevant community service placements, but it is not clear whether these have continued beyond a pilot project phase.

Respondents from seven countries answered a question about what might be done to address the challenges facing Roma in serving non-custodial sanctions and five mentioned specific efforts to encourage the use of alternatives to prison for Roma by probation services.

Although one respondent proposed that "the leitmotiv should be equal treatment," others mentioned a range of specific, targeted measures that could be used to support

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<sup>27</sup> Page 14, see footnote 25 above.

<sup>28</sup> Avril Brandon and Louise Kennefick *Non-custodial sanctions and measures in the Member States of the European Union: Ireland*, Institute of Legal Research at the Faculty of Law of the University of Coimbra, January 2022, p.22. Available at: [www.prialteur.pt/application/files/4116/4676/0023/ireland.pdf](http://www.prialteur.pt/application/files/4116/4676/0023/ireland.pdf).

Roma in accessing and serving community-based sanctions, including:

- a) enhanced training for probation and other staff in cultural diversity and sensitivity;
- b) culturally sensitive assessment and supervision programmes;
- c) comprehensible information on sentence requirements;
- d) support in reaching other services needed by Roma;
- e) collaboration with Roma organisations;
- f) dialogue with stakeholders, and;
- g) motivational work.

The respondent from one country considered that it is up to the probation officer or other person working with a case to understand the specific situation and need of a Roma person and to be able to explain to the judge how they can meet the eligibility criteria for a non-custodial sentence. For example, even without a permanent address, a Roma person might be persuaded to stay within the same city and provide some means of being contacted.

Two more respondents identified more deep-seated issues. For one given the complexity of the situation faced by most Roma persons, many factors have to be addressed prior to tackling issues within the criminal justice system. The biggest problems that were noted in this regard include basic living conditions, often in irregular housing settlements; low education levels; and lack of trust in state institutions. This is seen to require a *“systematic state approach”* to Roma inclusion. In adopting such an approach, state institutions *“have to include civil sector [solutions] that work and/or implement programs and projects related to supporting inclusion of Roma people.”*

For another country, the respondent reported a need for ensuring sufficient primary education in Roma families and, if this is not possible, in a substitute family or in institutions that educate Roma children in the field of behaviour and responsibility.

As for specific efforts to encourage the use of alternatives to prison for Roma, one respondent simply said that they *“encourage the use alternatives to prisons equally for Roma clients as [for] other client/ cultural groups”* without further explanation as to how this is done.

Another survey respondent explained that the Probation Service operates from a social work value and practice base and takes a person-centred approach. Where possible, those from different national or ethnic groups are facilitated.

A community service project focusing on the needs of Roma was cited as part of one survey response.<sup>29</sup> This project was implemented in southwest Dublin following a District Court judge requesting the help of the Probation Service to address the repetitive offending behaviour and difficulties experienced by Roma women in particular. The result was the development of a community service project to engage these women in a non-threatening and productive manner. It was built on the known skills of Roma women (sewing) and their manifest need for English language classes. It proved popular and there was a high rate of attendance: of three projects completed, not one participant has been returned to court for non-attendance. The presentation of toys made in the project to a children’s hospital received positive media coverage. It is not clear whether the project is still underway fifteen years after it started in 2007.

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<sup>29</sup> Horgan B, 2007, *The Roma Project: A Case Study of Community Service*, Irish Probation Journal Volume 4, Number 1, September 2007.

A respondent from another country described how pre-sentencing reports for the court help individualise sentences in a way which benefits Roma. The assessment underlying the report takes account of a variety of factors, both personal and social. Ethnicity and the community to which the individual belongs is one of the relevant factors. *“In certain cases, the strengths of the Roma community, one the most powerful communities in those places in the country where it continues to exist in its more authentic, original form, are being used as arguments to propose non-custodial measures.”*

One example of using the strengths of the Roma community is a Roma mentoring programme identified in an evaluation of work supported by the Norway Grants programme from 2019. This reported that 20 Roma were trained to act as mentors or advisers to young Roma persons under probation supervision. Mentoring activities initially included the development of vocational skills or artistic activities with the young people, but have expanded to include help with housing problems, obtaining official documents, drafting CVs and writing letters to employers.<sup>30</sup>

This is similar to a programme developed in another country where respected Roma community leaders are trained by a civil society organisation to build good rapport with people serving a non-custodial sanction, provide positive role models and broker positive relationships between the offender and their family on the one hand and the probation service on the other. This can involve visiting probation clients, including connecting with families to explain

the processes and requirements of supervision and encourage compliance.

This mentoring and support to Roma serving non-custodial sentences was offered from 2004-2019 and was estimated to have a positive impact in about 60% of cases. The project resulted in some negative feedback from people who felt that the involved Roma were obtaining an unfair advantage compared to other offenders. This perception was countered by arguing that it is members of disadvantaged communities, such as Roma, who need additional support to reach the same starting line as others. This is in line with the explicit but not exclusive approach to Roma inclusion favoured by the EU and Council of Europe,<sup>31</sup> but despite its achievements, this project was paused in 2019 due to lack of funding.

Other examples of proactive, promising practices mentioned by respondents include matching the education and skills of a probationer with a suitable employer and communicating with a social worker in the Roma community.

Respondents from some countries reported that the ability of the probation services to influence the use of non-custodial sentences for Roma is limited. In one country, the Probation Service does not provide reports for courts and is not involved in the sentencing decision making process, so it is not in a position to make any efforts to encourage the use of alternatives to imprisonment for any individuals. Along the same lines, another respondent reported that that judges seldom ask for assessment before taking a decision, *“so, our influence is very narrow in all cases.”*

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<sup>30</sup> INBAS, 2019, *Rapid Assessment of correctional Services Programmes under the Norway Grants 2009-14*, Annex A Country Reports. Available at: [https://eeagrants.org/sites/default/files/resources/Rapid%20Assessment\\_Correctional%20Services%202009-2014\\_Annex%20A\\_Country%20Reports.pdf](https://eeagrants.org/sites/default/files/resources/Rapid%20Assessment_Correctional%20Services%202009-2014_Annex%20A_Country%20Reports.pdf).

<sup>31</sup> See for example European Social Fund (ESF) Learning Network, “How to mainstream Roma inclusion in general programmes, projects and interventions” Reinforcing Policy Learning for Roma Inclusion. Available at: [www.euromanet.eu/upload/94/24/ESF\\_Roma\\_Inclusion\\_LN\\_Handbook\\_Mainstreaming.pdf](http://www.euromanet.eu/upload/94/24/ESF_Roma_Inclusion_LN_Handbook_Mainstreaming.pdf).

Seven respondents said that their probation services work with civil society or community organisations that are led by or supporting Roma. In one country, various civil society organisations support people serving community sanctions by providing drug treatment, reintegration support after a prison sentence, and legal protection. These organisations do not provide national coverage and are not exclusively led by Roma, “*but support Roma people in different aspects.*”

By contrast, a respondent from one country reported that the probation system wants equal treatment for everybody, so it is not really looking to work with organisations based on nationality, ethnicity, or race.

### **Probation staff from the Roma community**

While systematic data is lacking, there appears to be underrepresentation of Roma among staff in the probation services in most countries.

Of eight countries that responded to a question about whether the probation service includes staff from the Roma community, only two said that the probation service does so. A respondent from one further country specified that when the Probation Service was set up, there were approximately 10 (out of approximately 500) staff who were Roma but was uncertain of the current ratio.

Three other respondents did not know for certain, although two thought there were unlikely to be Roma probation staff. One respondent said that probation officers must have citizenship of the country so if Roma individuals are citizens, they are eligible “*in theory.*” Another respondent

explained that relatively low numbers of Roma have university degrees which is a requirement to become a probation officer.

### **Meeting the needs of Roma in criminal justice systems**

Respondents were asked in the survey what steps could be taken to better meet the needs of Roma in the criminal justice system, to ensure equality and reduce discrimination; and whether problems faced by Roma are recognised by the government and criminal justice agencies.

The respondent from one country expressed a need to make sure that all partners in the criminal justice chain have relevant information about the Roma culture and the individual circumstances of the suspected or convicted person. A pre-sentence report and a proper assessment with a conclusion can provide information about how to meet their needs and ensure equality in the criminal justice system.

Another respondent argued that cultural diversity and sensitivity training is needed together with more research specifically focussing on the needs and experiences of Roma. The respondent from Romania explained that a national strategy has been published which aims to reduce the amount of discrimination directed at Romani persons, including in the criminal justice system.<sup>32</sup>

A further response stated that state institutions must take actions that will enable and ensure economic, social and educational growth of the Roma community, which will lead to ensuring greater equality and reduction of discrimination within society more generally.

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<sup>32</sup> National strategy for the inclusion of Roma population for 2022-2027, [www.anr.gov.ro/index.php/anr/proiecte-programe/strategie-de-incluziune-2022-2027](http://www.anr.gov.ro/index.php/anr/proiecte-programe/strategie-de-incluziune-2022-2027).

Two respondents did not accept that there is discrimination against Roma. One argued that *“in terms of criminal justice, but also in other areas of social and political life, discrimination of the Roma community is not only inadmissible, but we could say it does not even exist.”* They pointed to the fact that it is almost 20 years since the country adopted the so-called anti-discrimination law, which is based on EU directives. The second recognised that *“just like any minority group they are facing the same topics, challenges or barriers (e.g. no local ties, employment challenges). The only thing is the gap with their way of living, which would need to be addressed.”*

Respondents from two countries reported that problems facing Roma are recognised to an extent, but the responses could be improved. Respondents from two further countries also pointed to Roma Inclusion Strategies, including the Romanian one (see footnote 33) described as addressing living conditions, infrastructure, education, employment, and health care as well as mentioning criminal justice. The other reportedly aims to improve the quality of life of Roma by respecting human and minority rights; eliminating discrimination and antigypsyism, as a form of racism, and achieving greater social inclusion across all sectors of the society.

One respondent noted that Roma *“face more problems generally in running everyday life within society than serving custodial / non – custodial sanctions. The majority of Roma are faced with social exclusion and poverty and are the target of overt or, more commonly, covert discrimination.”*

## Where to now?

There is common, but not universal, recognition of the specific problems facing Roma in criminal justice in Europe and a widespread view that addressing them requires action across public services. At least two countries have renewed Roma inclusion strategies, and calls for further, comprehensive action have been made by both the European Union and Council of Europe.

The conducted exploratory study has initially identified three overarching issues that merit further discussion and investigation in efforts to support equal access to justice and effective non-custodial sentencing measures for Roma:

1. The assessment of the **extent and nature of the problems faced by Roma persons in criminal justice and the collection of data** about them;
2. **Specific ways that criminal justice agencies including courts, prison and probation services might address the challenges** facing Roma within probation systems, as well as the wider criminal justice system, and;
3. The need to **develop broader strategies for social inclusion, with Roma communities**, which can help prevent crime, increase compliance with community sentences and assist in reintegration after release from prison.

## Questions

The following questions are non-exhaustive but seek to provide a framework for further discussion and action bearing in mind the three overarching issues identified in PRI’s exploratory study.

## Data

1. How should countries collect better data about the problems faced by Roma in accessing alternatives to prison while avoiding contributing to negative stereotyping and further discrimination?
2. What are the key benefits in collecting data about Roma involvement in crime and criminal justice?
3. How can Roma themselves be involved in data collection exercises and decisions about the necessary measures to be taken as a result? (Restrictions on the collection of data about Roma and other ethnic minorities have their origins in a desire to prevent the development of racist ideologies. But lack of data makes it difficult to assess the nature and extent of discrimination and develop evidence-based policy to combat it.)
5. What measures can be taken by prosecutors, defence lawyers, and courts to improve outcomes for Roma through greater use of community based sentences?
6. What measures can be taken by prison and probation services and by civil society organisations to support better outcomes for Roma serving non-custodial sanctions and measures?
7. How can the positive and effective initiatives to address some of the challenges faced by Roma in criminal justice systems be scaled up, or mainstreamed into the work of agencies (rather than being small scale and time limited)?

## Identifying and addressing specific challenges vis-à-vis alternatives to imprisonment

4. What specific adjustments to law, policy and practice could be made in order to ensure alternatives to prison are imposed and implemented in a way that reduces the likelihood of discrimination against Roma?
8. What are the most important areas of social inclusion which will assist greater access to alternatives to prison?
9. What strategies, mechanisms and actions are needed at national level to promote these?
10. What EU wide or cross-national efforts should be made to promote alternatives to prison for Roma in a way which shares learning and good practices?

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# Appendix 1: Study questionnaire



FAIR AND EFFECTIVE CRIMINAL JUSTICE



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## Roma people and non-custodial sanctions<sup>1</sup>

This research into the current situation and issues related to Roma people’s access and experience of non-custodial sanctions and measures (“alternatives to imprisonment”) in Europe is part of an ongoing, EU-funded project *Promoting non-discriminatory alternatives to imprisonment in Europe*. To find out more about the work Penal Reform International is doing in Europe, please visit our [regional site](#) or the dedicated [project page](#).

Thank you for supporting our work toward better understanding and addressing the research question(s) and supporting the fair and effective criminal justice by responding to the below questions based on your experience and expertise.

If you have any questions or would prefer to respond by phone or videocall, please contact Rob Allen [robballen@hotmail.com](mailto:robballen@hotmail.com), consultant at Penal Reform International, who will be happy to help.

Your name:

Your professional role / title:

Your country:

1. Are people from the Roma community overrepresented in the prison population in your country?

Yes		No		Don't Know	
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If Yes, what are the reasons?

2. Are there specific types of offences Roma people are typically charged with / sentenced for?

Theft		Criminal Damage		Violence		Sexual Offences		Other (for example?)	
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<sup>1</sup> The term ‘Roma’, deriving from the Romani word for a man/person, is the traditional appellation for some, mainly Romani speaking groups. In common with the EU institutions, we use the term ‘Roma’ as an umbrella term including groups of people who share more or less similar cultural characteristics, such as the Roma, Sinti, Travellers, Ashkali, Manush, Jenische, Kaldaresh and Kalé.

3. Are there any particular challenges for Roma people in serving non-custodial sentences?

Yes		No		Don't Know	
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If Yes, what are they?

4. In your opinion, what might help to address these challenges?

5. Do you think courts are sometimes unwilling to impose non-custodial sentences on people offenders from the Roma community who are convicted?

Yes		No		Don't Know	
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If yes, why do you think so?

6. Does the probation service make any specific efforts to encourage the use of alternatives to prison for Roma people?

Yes		No		Don't Know	
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If yes, can you give examples?

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7. Does the probation system work with any civil society or community organisations which are led by or supporting Roma people?

Yes		No		Don't Know	
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8. Does the probation service include staff from the Roma community?

Yes		No		Don't Know	
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9. What steps could be taken to better meet the needs of and ensure equality for reduce discrimination against Roma persons in the criminal justice system?

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10. Are the problems faced by Roma persons recognised by the government and criminal justice agencies?

Yes		No		Don't Know	
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Many thanks for completing this survey!

Please Return to Rob Allen, Consultant at Penal Reform International:  
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