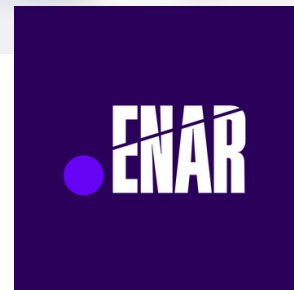




Response to public consultation, Rule of law review cycle 2023

# HOW CAN RULE OF LAW COMMIT TO TACKLE RACISM ACROSS EUROPE?



## Accessibility of justice systems

Access to justice remains a major challenge for racialised individuals and communities confronted with discrimination (1). Historically they have been subjected to various forms of structural racism and discrimination, including ethnic segregation, ghettoisation and criminalisation. Racialised groups, such as ethnic and religious minorities, migrants and people with a migrant background, disabled persons, experience systemic barriers within justice systems such as the lack of adequate infrastructure, poor knowledge about their rights, lower accessibility of information (language and terminology; availability of interpretation/translation, sign languages, documents accessible in Braille alphabet), good understanding of legal and administrative requirements and procedures. Although EU Member States offer some services such as interpretation/translation, legal aid to guarantee access to justice, the issues described above remain under-addressed due to multiple factors, including insufficient public investment in justice systems.

Article 47 of the European Union Charter of Fundamental Rights enshrines the right to legal aid enabling individuals with lower income to access justice and this is valid for all EU Member States. However, applicants must fulfil certain administrative and financial conditions, which might be impacted by factors such as language barriers and lower understanding of related administrative procedures. Individuals who are not eligible to legal aid cover themselves lawyer fees in the private

sector, which creates financial hardship for people from racialised groups, greatly exposed to socio-economic disadvantages (2). Thus, multiple cases of discrimination, hate speech and crimes, and racially motivated incidents are neither reported nor addressed by domestic courts (3).

Furthermore, access to justice is impacted by racial stereotypes and biases persisting in society, which in return affect the quality of justice services provided to racialised individuals and communities. This long-standing issue creates notable barriers for the realisation of multiple fundamental rights guaranteed by International and European frameworks. Also, it reduces the efficiency of justice systems, which play a major role in protecting equality and non-discrimination principles across the European union.

National justice systems rarely offer comprehensive solutions to support racialised individuals highly exposed to socio-economic disadvantages, but also stigma and discrimination. Often, people of colour, ethnic minorities, migrants are denied timely legal consultations/advice which has direct effects on the proceedings and sentences pronounced by judges (4). As a result, those communities are over-represented in detention facilities and face significant inequalities in terms of sentences compared with non-racialised groups.

Torture and ill-treatment in detention facilities are prohibited by European and national legislative



frameworks, however violence against people with a minority background persists in prison and detention centres. Although such cases raise questions related to human rights protection, democracy and rule of law, they rarely receive any significant political attention (5).

Improving the accessibility of national justice systems is an essential step towards effective implementation of rule of law, and a commitment to the protection of equality and non-discrimination principles. This process requires timely public investment in adequacy with the needs of both justice systems and people, in particular racialised groups.

Existing gaps in access to justice deserve specific attention in the design and implementation of policy measures aiming to strengthen justice systems in EU Member States. Policy actions must ensure protection against discrimination, stigma and hostility that racialised groups experience within national justice systems. This process must include a comprehensive assessment of needs and barriers within national justice systems as well as the allocation of adequate human and financial resources aiming to support racialised victims in line with the European victims' rights directive.

The creation of specific services specialised in anti-racism and discrimination within national justice systems must be given paramount importance to safeguard that racialised victims receive adequate support before, during and after any legal proceedings. Such assistance must include quality and timely legal advice/consultations, psychological support, translation/interpretation of the information into a language fluently spoken by the victim; accessibility of infrastructure and justice services (physical buildings, digital technology and tools).

Lower accessibility of justice systems reveals the existence of issues related to fairness, especially when it refers to racialised groups. To be adequately addressed, equal access to justice

needs to be prioritised within the European Semester whilst monitoring progress within the Justice Scoreboard (6); national policy frameworks such as National Action Plans Against Racism and National Recovery and Resilience Plans; programmes and projects, including EU funded initiatives.

## Training for justice professionals

Justice professionals must be provided with quality training, but also guidelines and methodologies to increase their knowledge about structural racism and its consequences on individuals and communities. Educational materials, training courses and other learning opportunities must be developed in partnership with organisations representing racialised groups following the principle of mutual learning and knowledge exchange. Additionally, civil society advocating for racial equality, non-discrimination and fairness can provide significant support to public authorities in the implementation and evaluation of training and learning initiatives, as well as advance solutions to tackle the manifestation of any forms of racism within national justice systems.



## Digitalisation of justice systems: challenges in the context of racism

Digitalisation has multiple benefits for the modernisation of justice systems reducing significantly waiting times for appointments and administrative procedures; however, it generates additional inequalities in access to justice due to existing socio-economic gaps between and within countries having different capacities to invest in digital technologies and literacy. Moreover, digitalisation raises further challenges in access to justice services when it refers for the most vulnerable. Evidence has shown racialised population groups are more likely to experience poverty, lessening their ability to access internet and afford digital devices; also, they are more affected by lower digital literacy and language barriers. Although the EC assessed some progress in digitalisation of justice systems through national recovery and resilience plans (7), there is still a long path towards comprehensive and inclusive digital services that can make it possible to address language barriers but also prevent stigma and discrimination that might occur due to stereotypical perception of the users.

Therefore, to be impactful digitalisation of justice systems must:

- be comprehensive and inclusive
  - use accessible language and terminology available in national and foreign languages (for ex. English, Russian, Arabic)
  - be equipped with software and programmes enabling people with disabilities (sign languages, Braille alphabet) to access digital services
  - ensure effective protection of personal and sensitive data by creating mechanisms for prevention and protection against any racial profiling that may occur within justice systems
- provide mobile facilities where individuals from racialised groups (for ex. undocumented migrants, people experiencing poverty, people with lower digital literacy, homeless persons, persons with disabilities) can access digital justice services and enjoy support from qualified staff, including legal advice and interpretation/translation
  - prevent any human rights abuse that might be caused by AI algorithms by ensuring specific training on equality and non-discrimination for IT experts, legal officers, lawyers and employees within national justice systems
  - provide easy follow-up of users' submissions made through digital services and ensure different possibilities to monitor submitted requests (information provided on a regular basis through mailing address, e-mails, sms, personal accounts of the users).





## Advancing disaggregated data collection within the rule of law report cycle

Since 2019 the European Commission has implemented policy actions aiming to strengthen democracy and rule of law across the Union, including the rule of law review cycle. This preventive tool aims to advance cooperation and coordination between EU Member States to uphold rule of law.

The rule of law review cycle enables monitoring and reporting, nevertheless it presents certain limitations in terms of contents and possible follow-up actions. It does not include disaggregated data by ethnicity, age, gender, disability, social and administrative status (for instance migrants, refugees, asylum seekers) which constitutes an obstacle for analysing the impact of structural racism on rule of law. Although national data and statistics exist demonstrating the number of registered cases; judgements etc; they do not make it possible to quantify racial discrimination due to obstacles in reporting and collecting disaggregated data. This remains a significant barrier for conducting a comprehensive assessment of existing and emerging rule of law issues and their effects on population groups, including racialised communities.

Accordingly, the rule of law review cycle must consider data and evidence collected by a larger variety of stakeholders, including European, national and local civil society organisations investing in human rights monitoring and reporting. Cooperation with organisations representing racialised population groups having lower access to policy and decision making, must be strengthened to assess and address the impact of racism on democracy and rule of law.

Many factors must be taken into consideration when analysing the results of the review cycle such as existing challenges that racialised groups, civil society, activists and human rights defenders, journalists and media staff addressing racism, face in EU Member States.

Official data collected by national authorities must be complemented by surveys and testing produced by Equality Bodies, National Human Rights Institutions and civil society in the field of racial inequalities and discrimination. Surveys aiming to assess access to justice must deserve stronger attention; they must be designed and implemented in partnership with civil society representing racialised population groups to increase understanding about existing gaps and obstacles within national justice systems and provide solutions in line with the needs of the beneficiaries.

Ensuring the meaningful participation of racialised groups such as ethnic minorities, migrants and people with a migrant background, disabled persons, LGBTQI+, homeless persons, people experiencing poverty, in consultations aiming to facilitate the design of research and assessment methodologies increase the positive effects on the process of improving national justice systems, whilst advancing democratic principles, including equality and non-discrimination.



## Safety and protection of journalists and media staff

According to the recent World Press Freedom Index (8) media freedom, issues related to the safety and protection of journalists and human rights defenders were exacerbated in many European countries. Multiple cases of hostility, stigma, intimidation against investigation journalists, cameramen, photographers covering human rights and corruption cases, were reported. According to the 2022 World Press Freedom Index in some countries such as France, Italy, Germany, and the Netherlands, journalists experienced physical and verbal violence whilst covering demonstrations against Corona measures-actions which are of public interest. It is not an exception that such violence is committed by law enforcement officers (Greece, Bulgaria (9, 10)). Furthermore, a collective investigation conducted by the consortium Forbidden stories revealed that journalists and human rights defenders have been spied by national intelligence services using Pegasus software which jeopardises media freedom as well as journalists' safety and security (11).

Even though the European Parliament has set up an inquiry committee (12) to investigate the use of such technologies for surveillance purposes, effective mechanisms to ensure the protection of journalists, civil society and human rights defenders have not been developed yet. This has negative consequences on media freedom and pluralism which are one of the basic principles of democracy and rule of law within the European Union.

ENAR reiterates its calls (13) for better protection of civil society activists, human rights defenders, journalists, and media staff, especially

those from/working with racialised groups. Continued endeavors are required to prevent any forms of violence aimed at limiting media and civil society staff's commitment to ensure freedom of assembly, media freedom, pluralisms, and access to information of public interest.

Adequate protection of media staff must include in-deep investigation of verbal, physical, racial and gender-based violence, including online and offline hate speech, attacks against journalists and media staff, human rights defenders and activists. Moreover, protection measures must facilitate equal access to justice and effective remedies at national level, especially when it comes to racialised groups experiencing multiple vulnerabilities in terms of fundamental rights protection. Finally, adequate and comprehensive health support, both physical and mental, must be offered through national public health systems paying special attention to factors such as ethnicity, gender, sexual orientation, disability and other components increasing the vulnerability of journalists, human rights defenders and activists from/working with racialised groups.





## The importance of rule of law for tackling racism

The European Convention on Human Rights guarantees the right to “a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law” to ensure equal treatment and fairness within justice systems. Additionally, art.47 of the European Charter of Fundamental Rights guarantees the right to effective remedies and a fair trial in EU Member States.

In spite of the actual legal guarantees and frameworks many issues such as racial profiling, abuse of power, police brutality against ethnic and religious minorities, migrants and refugees, isolated minors, persist within justice and law enforcement systems. According to a survey produced by FRA (14) people with African descent, Roma, young people from ethnic minorities are more likely to face police stops compared with non-racialised groups. Significant difference has been noted in the context of such stops demonstrating the correlation between ethnicity and state violence. Non-racialised people are stopped while driving, whilst ethnic minorities experience police stops while “moving on foot” which reduces the possibility to be selected randomly. The survey has demonstrated significant differences in the actions taken by police during such stops: ethnic minorities are subjected to police search and checks of ID documents which is less observed among the general population.

Additionally, multiple cases of police brutality were noticed in EU Member States (ex. France: death of Adama Traoré, 2016, Aboubakar F. 2021; Czech Republic: death of Stanislav Tomáš, 2021; death of a Roma boy in Greece in 2022 (15))

Despite civil society and citizens’ calls for justice, most of the reported incidents were not investigated and addressed adequately; racial profiling is systematically denied.

The existence of institutional racism within justice and law enforcement systems is not acknowledged by public authorities which decreases the opportunity to provide an effective policy response to this long-standing issue. Accordingly, it breaks the trust between racialised groups and public authorities; the victims rarely report racial and state violence which remains under-documented (16). In parallel, the lower reporting rate and lack of data disaggregated by ethnicity, age, gender, administrative status (for ex. refugees/asylum seekers) creates additional obstacles to tackle institutional racism.

Migration remains another area where racial profiling has been noted affecting non-EU migrants and refugees (17). These communities are more likely to experience verbal and physical violence, but also policy brutality and misconduct in detention facilities (18).



## Empowering Human Rights Institutions and bodies to advance democracy and rule of law across the European Union

Independence, capacities, effectiveness, and resources are interrelated pertaining to National Human Rights Institutions (NHRIs) and Equality bodies. ENAR welcomes the EC proposal for a Council Directive (19) aiming to set up minimum standards for Equality bodies across EU. This is an essential measure advancing the empowerment of Equality bodies in the field of racial justice. However, ENAR has identified many gaps (20) in this proposal such as the allocation of resources and the lower cooperation with civil society representing racialised groups, which may reduce the effectiveness of process of tackling racism and discrimination.

National governments must ensure sufficient public investment in line with the needs of NHRIs and Equality bodies to reinforce their capacity to monitor and report rule of law issues. In parallel, National Human Rights Institutions and Equality bodies must invest in increasing the skills and knowledge of their staff about emerging challenges affecting the European civic space, including the safety and protection of staff, activists and human rights defenders. Awareness-raising, as well as sustained efforts to build knowledge about the struggles that racialised civil society members and staff experience is indispensable for creating an inclusive, resilient and vibrant civic space across the Union.

Finally, the cooperation with civil society, journalists and media staff, activists and human rights defenders from racialised groups must be strengthened to improve rule of law monitoring and reporting. This increases the effectiveness of the process of documenting, reporting and mitigating the disproportionate effects of shrinking on organisations and staff addressing racial justice, gender equality, climate justice.

## The role of civil society in rule of law monitoring

In its recent report (21) addressing the implementation of the European Charter of Fundamental Rights, the European Commission highlights the role of civil society in the safeguard and enjoyment of fundamental rights of European populations. As a major stakeholder investing in human rights protection, monitoring, reporting and investigation; education; awareness-raising and capacity building; civil society organisations commit to advancing effective policies and solutions, to protect European democracies and rule of law. Therefore, it deserves better protection, including policy and legislative measures to ensure the enabling conditions for its development and optimal functioning. In this regard, a slight improvement has been noticed in 2022 by the Fundamental Rights Agency (22) compared with previous years affected by the pandemic.

Nevertheless, issues related to access to funding, including restrictions; meaningful participation in policy and decision making at national and local levels; safety and security prevail among organisations advocating for racial equality, climate justice, anti-discrimination. Different forms of hostility, cyber security, lawsuits against public participation but also the adoption of legislative measures which de facto limit the work of certain organisations, have been reported affecting organisations, activists, human rights defenders (23). Staff working within the NGO sector, in particular those addressing human rights, democracy, rule of law, racial and gender equality, experience deterioration of their working conditions following the adoption of such legislative measures (for ex. abortion ban in Poland (24), criminalisation of activists and human rights defenders helping undocumented migrants (25)).

As a result, civil society in many European countries experience multiple social, economic, political and human rights challenges, which have negative consequences on civic space within the European Union.



This situation raises the need for a relevant policy framework setting up comprehensive measures in line with the realities on the ground and national political contexts to guarantee the protection of EU civic space. Mechanisms offering holistic and comprehensive support (legal and administrative advice, financial support, mental health protection and prevention) to civil society staff, activists and human rights defenders must be created to ensure effective protection and personal safety.

In addition, such a policy framework shall provide effective tools and mechanisms for monitoring and reporting any actions jeopardising the good functioning of civil society at national and local levels.

## Safety of human rights defenders

Although some positive examples have been observed in the past year aiming to guarantee good governance and cooperation with civil society; negative narratives, verbal and physical attacks against civil society and human rights defenders persist in many EU Member States. Organisations striving to achieve racial justice, intersectional and gender equality, climate justice and human rights protection, become the target of political discourse increasing stigma and hostility. Hate speech (online and offline), racial and gender-based violence and threats are exacerbated having negative mental health effects on civil society staff, activists and human rights defenders.

Such cases are rarely reported and addressed by public authorities, especially when they occur on social media. Moreover, they have disproportionate effects on activists and human rights defenders from racialised groups, which are greatly exposed to multiple challenges due to racism they experience in different forms. Stigma, discrimination and intimidation spread in society and increasingly present in political discourse, deserve a serious political attention due to the consequences it provokes on civic space - a pillar of democracy and rule of law.

Accordingly, European and national policy makers must allocate adequate resources to investigate, condemn and prevent such practices to guarantee the effective protection of democratic principles and rule of law at all levels.

## Financial support for civil society organisations and human rights defenders

Access to funding is one of the major issues affecting civil society organisations at national and local levels which decreases the sustainability of the implemented actions and achieved outcomes. Civil society organisations, including those addressing rule of law, human rights but also racial justice, equality and non-discrimination, must enjoy greater support to ensure their access to European and national funds. Specific attention must be paid to the respect of equality and non-discrimination principles, which need to be mainstreamed in European programmes providing financial support to civil society. When EU funds are managed by national authorities, Member States must provide a transparent, inclusive and comprehensive application and selection process to ensure that those principles are respected but also prevent corruption and misuse of European funds. Measurable indicators and national targets should be set up to monitor the accessibility of EU funds. Also, this process requires additional monitoring from an independent European body, involving multiple stakeholders, including civil society.





## Participation of civil society organisations and human rights defenders to the decision-making process

Lower participation of organisations representing racialised population groups, and racialised communities themselves, is frequently observed in the public debate at national and local levels. People of colour, disabled persons, ethnic and religious minorities, people with a migrant background and other racialised groups are constantly under-represented in civic space. Consequently, they have lower opportunities to commit to policy and decision making at all levels. This situation correlates with racism existing in society leading to various forms of exclusion, including lower political representation and participation.

Such a gap can be addressed through nurtured policy commitment providing enabling conditions and guarantees to promote the meaningful participation of racialised groups. This process must include public consultations at all stages of policy and decision making, written submission (reports, policy briefs, analyses, recommendations), exchange of views, workshops and other participatory methods which should be adapted to the targeted audience (both digital and on-site formats). Calls for public consultations must be advertised enough time in advance in order to reach a large variety of civil society stakeholders, including those advocating for racial justice, equality and non-discrimination at regional and local levels. Finally, some basic principles such as comprehensiveness and inclusiveness have to be respected to advance the participation of different groups and organisations.

The civil society sector itself needs to increase its investment in diversity and inclusion by promoting equal access to employment and career development for people from racialised groups, including actions to address glass-ceiling.



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