



Minor Offenses Major Punishment

A campaign to expand EU procedural rights to minor offenses

Initiated by **Justice Collective** and **(RE)Claim**

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The widespread and discriminatory enforcement of minor offenses has major consequences for poor, racialized, and migrantized communities across Europe.

Across Europe people are increasingly criminalized and punished for minor offenses, often without basic procedural rights such as access to a lawyer or translation. Minor offenses include low-level theft, begging, migration status, loitering, drug offenses, public order offenses and more. The enforcement of minor offenses disparately targets people from racialized communities, people experiencing poverty, and others who are marginalized. These practices are widespread, and punishment for minor offenses is “major”, meaning they have significant impacts on people’s lives, including insurmountable fines, jail, and negative immigration consequences. We call for an end to these injustices, starting with demanding that EU-guaranteed procedural rights—including rights to information, an attorney and legal aid, interpretation and translation, and the presumption of innocence, as well as protections for minors—also apply to minor offenses.

Practices of criminalization and punishment are expanding, reflecting a Europe-wide trend towards ever-faster and simplified legal procedures that do not guarantee basic procedural rights. In the name of efficiency, fast-track procedures facilitate criminalization at a large scale, without due consideration of the underlying facts or inequities. In some places, widespread and discriminatory punishment persists in part because governments have extended police powers so that police are relatively unconstrained by due process or the rule of law.

Profiling by the police also means people are disproportionately controlled because of their poverty, migration or social status, presumed racial, ethnic, national, or social origins and identities, gender or sexuality, housing status, and/or the intersection of these and other factors. Some enforcement is aimed at removing people perceived as “undesirable” from public places, often with fines for public order offenses. In other cases, people are sanctioned for so-called poverty-offenses such as riding the train without a ticket or petty theft. People are routinely punished in cases related to drugs, counter to evidence-based practices such as drug regulation and harm reduction. Minor offense punishment falls disproportionately on people from marginalized groups.

As a result of minor offenses, low-income people are charged financial penalties they cannot pay, at times leading to jail. Their fine debts impede access to basic necessities, including food, electricity, housing, education, and employment, and

harm their overall health and well-being. People may also be sentenced to severe sanctions such as probation or prison. Regardless of the sentence, criminal convictions are a barrier to a more secure migration status. Taken together, these practices and policies mean that people remain trapped in their circumstances, exacerbating inequities in entire families and communities, as people (often women) band together to support their loved ones.

Criminalization often serves as an easy out for those responsible: Governments can show they are “tough on crime”, “tough on migration”, or that social and economic problems are the fault of people who don’t have enough. Many of these policies and practices were recently called into question by the United Nations Special Rapporteur on the right to adequate housing and the Special Rapporteur on extreme poverty and human rights, who in October 2023 requested submissions because of widespread practices criminalizing poverty and homelessness.

Local examples attest to large-scale criminalization that violates basic procedural protections

In **France**, individuals are repeatedly and discriminatorily fined for alleged public order violations, a practice which has increased dramatically over the last years. Police can also issue fines “on the spot” (in French, “amendes forfaitaires délictuelles”) for a growing list of low-level crimes resulting in a criminal record, including drug offenses or for “illegal halting” (which is usually used to punish Travellers who allegedly reside temporarily outside of designated areas). On-the-spot fines bypass procedural protections: judges, attorneys, and other protections are nowhere to be seen. Even the burden of proof is reversed: to successfully appeal a fine individuals need to prove that they did not commit the offense. Multiple fines quickly add up, creating insurmountable debts for low-income people.

In 2021, **Germany** punished over a half million low-level criminal offenses. In approximately 90% of these cases, people were sentenced to fines by mail (a so-called “Strafbefehl”) without seeing a judge. They would not have had an attorney or even necessarily been able to understand the language in which the materials were sent. Perhaps unsurprisingly, that same year, an estimated 50,000 people were jailed when they were unable to fulfill the sentence they agreed to under these circumstances. Common offenses people are punished for include low-level theft, riding public transportation without a ticket, drug-related offenses, and migration status offenses.

In **Hungary**, almost 93% of the sanctions for low-level offenses were fines in 2023, issued either by mail or on-the-spot. People are often asked to accept

responsibility for the offense on-the-spot, and if they agree, they also often unknowingly—because of complex language in the so-called “letter or rights”—waive their right to appeal (with some exceptions). If people cannot pay their fine they are jailed – which was the case for more than 136,000 people in 2023. Fines can be converted to jail without people ever seeing a judge or having an attorney, leaving people on their own with their freedom at stake. The absence of procedural safeguards paves a direct route to prison for offenses such as begging, “habitual residence in public spaces”, and squatting.

In **Italy**, the enforcement of minor offenses disproportionately targets marginalized groups, in particular migrants. In many cases, sanctions over petty offenses—such as petty theft, possession of small quantities of drugs, or selling counterfeit products—often start with fines. However, such penalties trigger significant additional consequences, including barring people from renewing their residence permit, possible expulsion, and other administrative issues. If a person is subsequently expelled from the country and cannot afford the costs, they may face additional fines of 10,000 to 20,000 euros for the offense of “failure to comply with a police order to leave the territory after expulsion”. Thus limited due process in the case of “minor offenses” punished by a fine can trigger life-changing consequences in Italy.

In **Spain**, people from marginalized groups are disproportionately targeted by the criminal justice system. In 2023, 40% of people jailed were imprisoned for economic offenses, primarily theft, and another 16% were incarcerated for drug-related offenses, mainly small-scale trafficking. Though these minor offenses are sentenced with fines, those unable to pay are jailed. Legal representation is not mandatory in these proceedings, and those who request a public defender are systematically denied one by the court. Additionally, the enforcement of certain administrative regulations disproportionately targets marginalized groups, including people experiencing homelessness, drug-related issues, mental health diagnoses, migration experience, and communities subject to racial discrimination. This contributes to the stigma faced by these groups.

European law needs to close gaps in procedural protections

Enforcement of minor offenses across Europe routinely violate people’s fundamental rights under the Charter of Fundamental Rights of the European Union, including the rights to an effective remedy and fair trial (Article 47), the presumption of innocence and right of defence (Article 48), the principles of legality and proportionality (Article 49), the right to equality before the law (Article 20), the prohibition of discrimination (Article 21), and the freedoms of movement and residence (Article 45) .

European Union law allows for these realities in part because it exempts minor offenses from directives¹ guaranteeing fundamental procedural protections for individuals in minor cases.

The current exclusion of minor offenses from the protections of the procedural rights directives were justified by inaccurate assumptions that minor offenses involve indisputable, straightforward facts that need not be evaluated by a court and because of the assumed minor consequences for people sentenced to minor offenses.² Today, each state defines “minor” for themselves, but everywhere a long list of sanctioned behaviours are considered “minor”, many of which require interpretation of disputable or complex facts. Complex or not, we also now have growing knowledge about the significant impacts of so-called minor sanctions, which contradicts assumptions about their limited severity for people.

Major punishment for minor offenses must end across Europe.

In advance of the European elections we call for the EU to expand the procedural rights directives to include minor cases.³ We call on all candidates in the European Parliamentary elections to join our call and take a stand on this issue. Extending procedural rights directives to minor offenses is a necessary step for ending the Europe-wide trend of



Bündnis zur Abschaffung
der Ersatzfreiheitsstrafe

¹ The right to **interpretation and translation** (Directive 2010/64); the right of **access to a lawyer** (Directive 2013/48); the **right to information** (Directive 2012/13); the **right to be presumed innocent** and to be present at trial (Directive 2016/343); the **right to legal aid** for suspects and accused persons (Directive 2016/1919); procedural **safeguards for children** who are suspects or accused persons (Directive 2016/800).

² For example, traffic offenses are exempted by the EU Directives because they are “committed on a large scale” and may be “established following a traffic control.”

³ Any exceptions, such as speeding offenses, should be narrowly and specifically defined rather than applying a blanket exclusion for “minor offenses”.

FINE
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criminalizing and severely punishing poor, racialized, migrantized and otherwise marginalized communities.