



## Cases of discrimination in employment

- 1. February. Granada. Employment.** A participant in the Acceder employment programme was working at a hair salon in Atarfe, a town in Granada. Everything was going well until she mentioned that she was going to marry a young man from a town by the name of Pinos Puente. The owner of the hair salon said that if she went through with her plan she would have to let her go. The worker told her not to worry because she had means of transport to get to work with no problem (the young woman thought that that was the owner's concern). The owner told her that actually that was not the issue but rather the fact that she was going to marry a Roma boy from Pinos Puente. The victim left her job when she saw the reaction of her boss. This is a case of direct discrimination by association, meaning that the difference in treatment in the labour relationship is caused not by the attitude of the worker but rather by the personal relationship the latter has with a person from the Roma community. In this case, a significant role was played by negative prejudices and stereotypes towards the Roma community. The owner had never even met the person she is rejecting but assumes that the majority of negative events taking place in that disadvantaged neighbourhood are caused by the presence of members of the Roma community.
- 2. February. Malaga. Employment.** A young Roma man had been working at a local metal carpentry shop for several years but with no labour contract. The worker had a traffic accident with the company van and accidentally left his mobile phone in the vehicle when it was taken away by the tow truck. At the end of the day the worker's boss reproached the worker for having been out of contact for the whole day and berated him using expressions such as *"if the gypsy doesn't let you down at the beginning, it's only a matter of time until he will"*. As from that incident, the victim perceived a change of attitude towards him and the situation grew worse over time ultimately causing him to quit his job. This is a case of harassment at the workplace due to the ethnic background of the worker prohibited by Directive 2000/43.
- 3. February. Malaga. Employment.** A Roma man was working as a stocker at a citrus company for six months with no labour contract. Despite the verbal agreement he had with the head of human resources, he was never given a proper contract even though other workers who were hired after him were given contracts. Given that the company failed to keep its promise and the fact that he was subject to discriminatory comments, the worker left his job. The fact that he was the only person who was not given a contract and the only person of Roma heritage, considered jointly with the discriminatory comments, means that this is a case of harassment at the workplace based on ethnic background and prohibited by Directive 2000/43/EC.
- 4. February. Zaragoza. Discrimination at the hands of the police.** A young Roma man applied for a post with the national police force after a period of training. He passed the written and physical tests as well as the psycho-pedagogical assessment. Everything was going smoothly at the medical check-up (he had had one a few days prior to make sure that everything was in order) until the physician commented on his heritage in light of the darker colour of his skin. The young man said he was Spanish. The physician continued to ask him if he had family in Latin America and the young man answered that he did not and that the colour of his skin might be due to the fact that he was Roma. At that point the tone of the conversation changed completely and became distant. The doctor began to address him using formal language. The results of the check-up determined that the candidate was "not acceptable". According to the medical report, the candidate had flat feet (not true judging from the previous examination) and was 10 kg overweight (not true either judging from the other report). The area of Equal Treatment of the FSG filed an administrative appeal against the decision and the case is currently before the courts. This is a case of covert direct discrimination in gaining access to public employment.

- 5. February. Malaga. Employment.** A young Roma woman went to an interview for a job as a restaurant helper. The interview was with the owner of the restaurant. At the end of the interview the owner, who the applicant recognised because the restaurant was located in her neighbourhood, assured her that the job was hers and that she could begin her trial period the very next day. That afternoon the applicant received a call from the manager telling her that the offer was off and tried to justify this change of heart by telling her that they were planning to close the restaurant. A few days later, the woman discovered that a neighbour of hers had started working at the restaurant. The applicant later found out through conversations with other neighbours who know the owner's family that the owner's wife does not like Roma at all. Despite advice to the contrary, the woman decided not to lodge a complaint for discrimination in the labour market. This is a case of direct discrimination prohibited by Directive 2000/43/EC.
- 6. March. Cordoba. Employment.** A Roma woman from a disadvantaged neighbourhood was hired as a cleaning woman at a hotel to fill in for someone on sick leave. She fulfilled all expectations and, when the person on sick leave returned, she was offered another opening in a different section. The head housekeeper of this new section was constantly watching over her and required her to do more than the other workers. The situation became so tense and intolerable that the victim decided to quit. Some time later she was informed by a Roma co-worker, whose physical traits did not necessarily identify her as a member of the Roma community, that the head housekeeper openly stated at a hotel meeting that she did not want any Roma on her team and that the victim stole everything she could get her hands on, especially hotel towels, which was simply not true. This case, where the boss demanded more of the victim than the rest of the workers, is a clear example of harassment at the workplace based on ethnic origin which caused the victim to quit her job.
- 7. March. Cordoba. Employment.** A young Roma girl participating in the Acceder programme went for a job interview at a clothing store at a shopping centre. No sooner had she arrived, the interviewer told her that her physical appearance did not fit the shop's requirements and that she did not like how the applicant was dressed (meaning that she looked "typically Roma"). The victim told the interviewer that she was willing to dress appropriately for the job but, after some beating around the bush, the interviewer admitted that the boss did not want Roma workers in his shop. This is not only a case of direct discrimination in the labour market but instructions to discriminate had also been given by the boss, both prohibited by Directive 2000/43/EC.
- 8. May. Navarre. Employment.** A participant in the Acceder Programme was doing on-the-job training at a supermarket chain. Her supervisor questioned her cash register skills in reference to her being Roma and asked her questions like *"Did 50 euros manage to find their way into your pocket?"* The participant ended up quitting that training due to the pressure she was under from her supervisor. The FSG contacted the supermarket chain and discovered that this was an isolated incident for which the head cashier was responsible. This sort of behaviour had not been authorised by the company which apologised for what had happened. The company spoke with the head cashier who recognised that he was in the wrong and asked that his apology be forwarded to the victim and, following a meeting which the FSG had with him, he invited her to resume her on-the-job training. The participant decided against going back due to the presence of this person. In the end, there was no compensation for the damage caused by this discriminatory act. This is a case of harassment at the workplace due to the ethnic background of the victim prohibited by Directive 2000/43/EC.
- 9. June. Lugo. Employment.** The FSG contacted a company providing cleaning and domestic services to try to set up a training experience. This contact was made by an enterprise mediator who spoke with a worker at the company and managed to set up a meeting. The enterprise mediator and the FSG coordinator went to the company where they met with the worker who had scheduled the meeting, the manager and the trainer. During the meeting, a negative attitude was perceived from the manager and trainer and the worker was especially surprised because they typically collaborated openly with her. As the meeting progressed and they learned of the type of people the FSG works with, their reluctance to collaborate grew and they openly told us that they did not think it would be possible to work out a training programme with the FSG. The meeting ended with a



promise to send us a work proposal for next year but that never happened. This is a case of direct discrimination prohibited by Directive 2000/43/EC.

- 10. September. Granada. Employment.** A young Roma man participating in the Acceder Programme started work as a security controller thanks to the intervention of his non-Roma brother-in-law. At the beginning, the employer did not realise that the worker was Roma, first of all because he did not look the part and the person who had recommended him was not Roma. When he found out, the employer said that he should have been told from the beginning and that he was going to ask for character references. After a year working at the company, the young man was sacked supposedly because he did not pass the trial period. It was later discovered that the employer had only registered the worker in the social security system the last 15 days of his employment rather than during the whole year that he was working. Unfortunately, the victim did not want to file any claim because his brother-in-law had recommended him for the job. This is a case of direct discrimination prohibited by Directive 2000/43/EC.
- 11. September. Granada. Discrimination in employment.** A young man participating in the Acceder Programme began work as a gas installer. One day he was sent to a customer's home to provide a service. He rang the doorbell several times but no one answered the door. He then called his boss to explain the situation and to inform him that he was going to the next stop on his list. His boss insisted that he ring the doorbell again which he did several times but to no avail. He called his boss again to tell him that he was leaving and his boss answered: "You must be at the bar, you gypsy. There has to be someone there." The worker insisted that there was not and invited his boss to come himself to see if he could get someone to open the door because if someone was home they did not want to answer (he said this because this was not the first time this had happened). The boss came and rang the doorbell but this time the worker moved off to the side so that only the boss was visible through the peephole. The door opened. The woman who opened the door claimed that she had not heard the doorbell until now. This is a case of double discrimination: the boss disrespected the worker due to his ethnic background and the person in the flat did not want to open the door.
- 12. October. Granada. Employment.** Two Roma men approach an office in search of work as security guards. One of them, who does not look typically Roma, asked about the possibility of a job and was told that it was difficult but not impossible. However when the second man, who had specific training in this field and who was easily identifiable as being Roma, approached the person in charge he was told that there was no possibility because "things are very tight right now". This is a clear example of how people are treated differently based only on their physical appearance which conjures up prejudices and stereotypes. This is a case of direct discrimination in the labour market prohibited by Directive 2000/43/EC.
- 13. October. Malaga. Employment.** A young Roma woman found a job at a local hotel as a chamber maid through a company where her mother was working. From the outset she is subject to continuous discriminatory treatment by the head housekeeper at the hotel. This person never used the victim's name when addressing her but rather used expressions like "gypsy". She put the worker under continuous pressure in a clear example of harassment at the workplace which is prohibited by Directive 2000/43/EC. As a result of all of this, the young woman even needed psychological support.
- 14. November. Malaga. Employment.** One of the FSG enterprise mediators learned that a company devoted to personnel selection is against interviewing Roma for jobs. He decided to speak with the person in charge at the company. During that conversation he was told that the problem lies with the firms which hire his personnel selection services because they do not want to engage Roma. However, one of the companies he referred to is the very one which informed the FSG<sup>1</sup> that the problem actually lied with the selection firm. This personnel selection company exhibits a discriminatory attitude which prevents qualified Roma from accessing employment and attempts to justify its actions claiming that it is following the orders of the companies it works for. This, however, is untrue and is therefore a case of direct covert discrimination.

<sup>1</sup> Fundación Secretariado Gitano.

### Classification of the cases

These **14 cases** account for **10.68% of the total 131 cases of discrimination** collected by the FSG in 2009. Of the 14 cases, six victims are Roma women, six are Roma men and two cases affect a group of both Roma men and women. In 100% of the cases the victims are young Roma between 16 and 45 and 71% of the cases affect Roma between the ages of 16 and 30.

It is important to note that the discrimination cases recorded concern access to employment and on-the-job discrimination. There are companies which are willing to hire a worker not knowing s/he is Roma but once they find out their attitude becomes discriminatory.

Of the 14 cases, 7 involve discrimination in gaining access to a job. Of particular concern is that in the cases of on-the-job discrimination (5 of the cases in our report), victims have suffered harassment at the workplace due to their ethnic background<sup>2</sup> have been humiliated for being Roma leading them to quit their jobs, have suffered psychological problems and have refused to seek compensation for damages suffered.

100% of the cases are direct discrimination in the area of employment and the discriminator is from the private sector. Only one of the cases of discrimination was in trying to gain access to public employment and an appeal is currently pending in the courts.

It is very important to note that Roma begin seeking employment at a young age to meet family responsibilities, in many cases between the ages of 16 and 18. Employment is a basic social right to which all are entitled and in the case of the Roma community, a group in risk of social exclusion, it is the vehicle by which it can advance in society. Unfortunately we encounter a high degree of social rejection of this group which prevents them from enhancing their standard of living, from mainstreaming and from maintaining the sort of intercultural relationship with their co-workers which favours the elimination of prejudices against this minority.

In this connection, we would point out that often victims of discrimination, both in gaining access

<sup>2</sup> See cases 2, 3, 6, 8, 13. Harassment at the workplace is prohibited under Article 2(3) of Directive 2000/43/EC.

to employment and on the job, are very reluctant to report the situation because they believe that this will have negative repercussions on their subsequent job search, they do not trust the system to protect their right to non-discrimination, they feel in a situation of inferiority vis-à-vis the employer and lastly because they have accepted rejection for their ethnic condition as the norm.

### Law

In this section we will list the most relevant laws prohibiting labour-related discrimination:

1. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Article 2<sup>3</sup> regulates a number of vitally important concepts: equal treatment, direct discrimination, indirect discrimination, harassment and the issuance of instructions to discriminate.

Article 3 of that same Directive defines its scope:

*"1. Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:*

<sup>3</sup> Article 2. Concept of discrimination

1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.
2. For the purposes of paragraph 1:
  - a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;
  - b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.
4. An instruction to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination within the meaning of paragraph 1.



a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

c) employment and working conditions, including dismissals and pay;

d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;

e) social protection, including social security and healthcare;

f) social advantages; ..."

Article 8 regulates the reversal of the burden of proof which can be used in labour proceedings.

"States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment".

Community Directive transposed to the Spanish legal system through the Fiscal, Administrative and Social Order Act, Law 62/2003 of 30 December 2003. Specifically, in Section II, Chapter III, Title II on measures regarding equal treatment and non-discrimination based on racial or ethnic origin and Section III on measures regarding equal treatment and non-discrimination at the workplace.

### **Workers' Statute**

The most important articles of the Workers' Statute regarding discrimination are worded as follows after the amendments introduced by [Law 62/2003](#):

Article 4(2)(c) Workers are entitled to the following rights in the labour relationship:

"c) To not be subjected to direct or indirect discrimination in applying for work or once engaged, for reasons of gender, marital status, age within the limits laid down in this Law, racial or ethnic origin, religion or conviction, political ideas, sexual orientation, trade union membership or lack thereof or for reason of language in Spain. Discrimination for reason of disability is also prohibited, providing that the person has the conditions and aptitude to do the work required."

Article 4(2)(e) Workers are entitled to the following rights in the labour relationship:

"e) Respect for privacy and due consideration of their dignity, including protection from sexual verbal and physical abuse and from harassment for reason of racial or ethnic origin, religion or conviction, disability, age or sexual orientation."

Article 17(1) "Regulatory precepts, collective bargaining clauses, individual agreements and unilateral decisions taken by the employer which purport unfavourable direct or indirect discrimination based on age or disability, or favourable or adverse discrimination in employment and remuneration, working hours and any other labour conditions for reason of sex, origin, including racial or ethnic, marital status, social condition, religion or conviction, political ideas, sexual orientation, memberships or lack thereof in trade unions and their agreements, family ties to other workers in the company and language in Spain, shall be considered null and void."

Decisions taken by an employer resulting in unfavourable treatment of workers in response to a complaint lodged at the company or in response to legal action taken to demand compliance with the principle of equal treatment and non-discrimination, shall likewise be considered null and void.

Article 54(2)(g) The following shall be considered breach of contract:

"g) Harassment for reason of racial or ethnic origin, religion or conviction, disability, age or sexual orientation of the employer or of company workers."

While we have the legal tools to implement these regulations prohibiting discrimination at the workplace, in practice there is very little case



law to speak of. Victims of discrimination need to come forward and file legal suits when out-of-court procedures fail to provide compensation, and it is extremely important for legal professionals to use legislative tools to defend the victims of discrimination in employment.

Article 14(i) of the Basic Public Employee Statute, Law 7/2007 of 12 April 2007, provides as follows concerning individual rights:

*“public employees have the following individual rights in accordance with the legal nature of their service relationship:*

*i) The right to non-discrimination for reason of birth, racial or ethnic origin, gender, sex or sexual orientation, religion or belief, opinion, disability, age or any other personal or social condition or circumstance.”*

### Strategy

The area of equal treatment of the Fundación Secretariado Gitano has developed the following action strategy to deal with cases of discrimination: investigation, dialogue, mediation and other out-of-court responses.

First of all, the area of equal treatment of the Fundación Secretariado Gitano, in coordination with proven experts in the field, checks whether there are sufficient signs proving that the case in question can indeed be considered discrimination. This is always done with the victim's consent.

In some access to employment cases, one of our workers calls the company to verify whether the job which was refused to the victim is still open; in other cases we discover by speaking with employers that they simply do not want to hire someone because of their ethnic origin. In the case of on-the-job discrimination, we speak with the discriminator to check the facts and to screen for expressions indicating rejection of the Roma community.

Once the enquiry has concluded, we inform victims of the different options stressing that each case is different and that the action taken in an apparently similar situation may be different. Once again, it is the victims who decide whether they want us to go forward with the defence of their right to not be discriminated against in the labour market.

As has been shown, in 9 of the cases of discrimination in gaining access to employment or at the workplace,<sup>4</sup> the victims chose not to have us continue with the legal process for a number of different reasons: fear of not being able to find a job later, a sense of weakness vis-à-vis the employer or they felt that they were not going to receive compensation. In these cases, the victims have felt discrimination on other occasions and have accepted it as something commonplace in their lives.

In cases where victims give us the go-ahead to initiate intervention, we always speak to and try to mediate with the discriminator focusing on the prejudices and stereotypes which have arisen by giving graphic examples of the heterogeneity of the Roma people and the progress they have made in terms of job training. We also inform them about anti-discrimination laws in force and the serious consequences that discrimination has on victims who are rejected based on their ethnic background.

Mediation carried out by the Fundación Secretariado Gitano generally consists of meetings with different company managers and a letter addressed to the human resources department.

Following mediation, the next step is to take out-of-court action consisting of the lodging of a complaint before the Ombudsman (within the sphere of public employment), inform labour inspection officials and initiate administrative procedures.

If the case has not been resolved through any of the foregoing initiatives, the Foundation provides the victim with legal counsel regarding the court procedure to be followed. We explain how to get a court-appointed lawyer, the requirements for access to free legal services and we coordinate efforts with the lawyer assigned to the case. Of the cases recorded in 2009, only one actually went to court<sup>5</sup> and this was an administrative procedure which is still pending the court's decision.

The response from employers to our actions is weak<sup>6</sup> insofar as victims do not receive compen-

<sup>4</sup> See cases 1, 2, 3, 5, 6, 10, 11, 12 and 13.

<sup>5</sup> See case 4.

<sup>6</sup> See case 9.



sation in the majority of the cases. Employers try to justify their position and sometimes tell us that they will keep our labour exchange service in mind in the future. In this case, the Fundación Secretariado Gitano then follows upon the employer's track record in terms of hiring Roma workers.

Regarding the case of access to vocational training recorded in this analysis<sup>7</sup>, we did get a positive response after speaking and mediating with company administrators. The company acknowledged that the supervisor in question was in the wrong and gave the victim another chance to participate. We pointed out how discrimination leaves psychological scars which affect victims later on. In the case at hand the young woman decided not to resume her internship after the rejection she suffered and this has negatively affected her willingness to take part in other vocational training initiatives.

### *Recommendations*

Victims must be informed of their labour rights and be motivated to defend them.

Victims must not be allowed to feel that they are alone in defending their right to not have to face discrimination in the workplace. They must be protected so that they no longer fear the negative repercussions that defending their right to non-discrimination in employment could have.

We must inform and raise the awareness of the business sector in this connection and make sure that they are familiar with laws prohibiting discrimination in employment. The business sector must be made aware of the heterogeneity of the Roma community with a view to breaking down prejudices which weigh on this ethnic minority.

Anti-discrimination law in the area of employment must be enforced and public services such as labour inspection should include the prohibition of discrimination in their protocols.

We would encourage companies to foster training and capacity-building and to engage members of underprivileged groups such as the Roma community as one of their Corporate Social Responsibility initiatives.

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<sup>7</sup> See case 8.

