



Discrimination of Roma Communities Spain National Report

Workstream 1 Report NET KARD Project

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Foreword

This report has been produced within the framework of the **NET-KARD project**, that is financed in the framework of the Fundamental Rights and Citizenship Programme of the European Union (DG Justice). In an integrated approach, the main aim of NET-KARD is to provide resources to key professionals in preventing discrimination against the Roma as well as to foster networking mechanisms and working methodologies among these key agents in the fight against discrimination and support for victims, namely: lawyers and jurists, police services, Roma associations and media professionals.

The aim of this national report is to provide an overview about the situation of Roma in Spain, the legislative framework to combat discrimination, the reports and data available on this issue, and the public and private organizations working in the field of the equality of treatment, and more specifically, the combat against the discrimination of Roma.

The Spanish partner of this project is Fundación Secretariado Gitano, a non-profit intercultural social organisation which provides services for the development of the Roma community throughout Spain and at the European level as well. It commenced its activities in the 1960s, although it was not until 1982 that it was legally constituted.

The mission of the Fundación Secretariado Gitano is the integral advancement of the Roma community based on respect and support for their cultural identity. The purpose of this mission is to support access of Roma persons to rights, services, goods and social resources on an equal footing with all other citizens. To that end, the FSG implements a broad range of activities which contribute to achieving full citizenship for Roma, improving living standards, promoting equal treatment and preventing all forms of discrimination, while promoting the recognition of the cultural identity of the Roma community. Our society's diversity makes interculturality increasingly relevant, which is why we must successfully project the intercultural nature of our organization as a sign of our identity and as an example for society as a whole. Our long-standing track-record and acquired knowledge, the growing diversity of our society and the increasing presence of Roma in areas of co-existence between different cultures all contribute to the importance of extending and achieving the culmination of our mission in the promotion of intercultural co-existence in contexts of diversity, thus opening the door to work with other minorities and disadvantaged people.

With more than 60 offices across Spain and more than 500 workers, the FSG is able to provide services and support to Roma communities and to improve their social inclusion in all fields.

Regarding **equality of treatment and non-discrimination**, since 2004 the FSG's Area of Equality develops a large number of activities, playing an active role in the fight against discrimination affecting Roma in Spain:

- **Assistance action for victims of discrimination**, an activity which has been strengthened since our 2010 joining of the Network of assistance centres for victims of discrimination, part of the National Council for the Promotion of equal treatment and non-discrimination of persons on the basis of their racial or ethnic origin.
- Technical assistance and **training of key players in the fight against discrimination**: mostly technical personnel and the heads of administrations and social organisations, jurists, police and the media.
- **Promotion of policies** supporting the promotion of equal treatment by monitoring anti-discrimination legislation and its everyday enforcement.
- **Social awareness-raising actions** through the dissemination of information relating to the fight against ethnic discrimination and the promotion of equal treatment and through aware raising campaigns given the difficult situation facing the Roma ethnic minority in Europe.

- **Annual Report on Discrimination to Roma.** This report is devoted to shedding light on the everyday discrimination still faced today by the Roma community in Spain (148 cases featuring unequivocal evidence of discrimination in 2011 are described in the last report, which was published last week). The cases registered are presented by areas with disaggregated data so as to provide the greatest degree of information, including a description of some of the work strategies developed. Also, we have drafted the conclusions reached from our work assisting victims of discrimination and have made proposals to achieve greater effectiveness in the defence of people who are victims of discrimination. Link to download:

http://gitanos.org/centro_documentacion/publicaciones/fichas/97196.html.es

Many of these actions are cofinanced by the Ministry of Health, Social Affairs and Equality.

1. The situation of Roma in Spain.

Roma people have been present in Spain since the 15th century, and, as in the rest of Europe, their history has been marked by persecution, attempts at adaptation, and phases of social exclusion. Currently, the Spanish Roma population stands at around 725,000-750,000, figures that have been used by European institutions in their estimates on the Roma populations for the whole of Europe. However, certain caution must be observed with respect to these figures as the real size of the population is not accurately known, with estimates of overall figures having been made using a variety of methods (projections from previous studies, in addition to local data being calculated in a number of ways, studies on housing conditions that did not consider Roma people who do not live in densely Roma populated areas, etc.).

Therefore, estimates may range from 500,000 up to 1,000,000 people. In spite of the limitations in determining the total scale of the Roma population in Spain, it is accurately known that the Roma people are distributed across the national territory, with a most concentrated presence in Andalusia, where around 40% of Spanish Roma men and women reside, as well as in Catalonia, Valencia and Madrid. Although their history has been associated to rural life and geographic mobility, the current trend is for prolonged, stable settlement in urban areas, which consolidated in the 1950s, 60s and 70s to coincide with the general wave of domestic migration between rural areas and cities.

All social demographic studies carried out show that it is a young population, wherein around a third are aged below 16 years, and with birth rates substantially higher than the population average, although in the last decade this disparate rate has begun to reduce. In terms of the social situation, the Roma profile is heterogeneous and diverse; it is a common error to associate a given ethnic group to situations of material deprivation, social exclusion or self-exclusion. Many Roma people enjoy medium socio-economic levels and are fully integrated into society. Moreover, a substantial amount of Roma have seen progress in the last decade, although they still manifest, to varying degrees, social shortcomings and inequalities with respect to the rest of the population.

A third, minority sector exists, comprising the severely excluded who have seen little progress in terms of their social inclusion. It must be taken into consideration that the current negative economic climate and deterioration of employment in Spain is taking hold throughout the general population, but particularly so for socially vulnerable population groups, as is the case for many Roma people; it is essential that social inclusion processes for these people receive continued support in order to avoid stalling or even regression.

Lastly, it must be stressed that the quantity of Roma people in Spain has increased with the arrival of Roma principally from Romania and Bulgaria who, above all since 2002 (when visa requirements for the two countries were lifted) and once again since 2007 (when they joined the EU) have chosen Spain as their country of destination. The number of Roma people of Romanian and Bulgarian nationalities who, as EU citizens, exercise their right to free circulation and residence in Spain is difficult to quantify given that they are included in the large contingents of Romanian and Bulgarian citizens temporarily or permanently residing in Spain, and due to the lack of registries that record the ethnic origin of foreign nationals in Spain.

In general terms, Roma people in Spain have seen significant social progress in the last 40 years; such progress is the result of the arrival of democracy in Spanish society, economic growth on a national scale, the establishment of a Social state, generalised access to social welfare systems (particularly housing, education, healthcare and social services and benefits) and specific measures and programmes aimed at correcting disadvantages. However, there is still a long way to go for there to be equality in the four fundamental areas for social inclusion.

In terms of education, existing data shows clear progress in terms of Roma children's pre-school and primary school completion. Pre-school completion rates are low for the population as a whole, yet they have risen considerably in recent years. In the case of primary education, completion by Roma children is practically at normal levels, although absenteeism and early school leaving continue to be cause for concern; these phenomena are more common in secondary school stage 1 (12-14 years), wherein the problem become more acute for Roma girls. The presence of Roma youngsters in post-obligatory education is still uncommon and the gap with respect to the rest of the population group wide, although a slight upward trend has been noted. Therefore, the Roma adult tends to have a lower level of studies, including illiteracy levels higher than the population as a whole.

In terms of employment and economic activity, the situation of Roma people in Spain is broadly characterised by a high activity rate which shows, to contradict a well-established stereotype, their strong labour potential. Roma people have always worked and have done so from very young until well into their old age yet, due to their relatively low contracted employment rate, this situation is often considerably under-represented. However, the still minimal levels of formal education and professional qualifications of many Roma people of working age have led to large scale employment in poorly paid, temporary activities and with precarious working conditions.

In accordance with recent studies that have compared the Roma labour situation to that of the Spanish population as a whole, the most significant difference can be found in relation to salaried workers compared to the self-employed, as well as in the high proportion of persons working in a family setting against the relatively inexistent rate in the rest of the population. Furthermore, aspects such as unemployment and seasonal and part-time working affect Roma women more than non-Roma women and even Roma men. The differences in terms of type of occupation and sector of activity are noteworthy, with a very high percentage of Roma being employed in the mobile trading sector (39% in 2005). In addition to all the foregoing, it must be highlighted that, in the midst of the current economic crisis that is so severely affecting the Spanish labour market, most recent data points to a significant increase in the unemployment rate of Roma (40% for Roma, and 27% for average population, data of 2012).

In terms of health, the results of a study comparing results of the Spanish National Health Survey (SNHS) with regard to Roma and the general population in Spain highlights that Roma show poorer results in a variety of indicators compared to both those of social groups in a better socioeconomic situation and those in a poorer situation, with differences in terms of health condition, lifestyle and access to certain services. Some of the most pronounced are: perception of own health, the greater prevalence of certain chronic illnesses, and the greater frequency of dental, visual, hearing problems and accidents. Likewise, a higher frequency of unhealthy lifestyles was also detected.¹⁵ In terms of the access and use of the healthcare system, the low use of preventative gynaecological services by Roma women is worthy of note.¹⁶ In terms of housing, recent studies compared with older ones have shown a significant improvement in residential conditions of the Roma in recent decades. Many Roma families have had access to apartments in city neighbourhoods populated by the general population; access to housing has occurred both by means of public and private means, normally in standardised neighbourhoods with a low socio-economic profile. In accordance with the most recent study carried out which, in 2007, analysed housing conditions of more than 90,000 Roma homes, 88.1% of Roma people resided in normalised housing, and only 3.9% in slums, although a further 7.8% live in deteriorated or sub-standard housing.¹⁷ These results represent clear progress with respect to those obtained in the previous study, in 1991, when 10% of Roma housing was in slums, and 21.4% was substandard housing. Likewise, housing basic services have also improved considerably. However, in addition to the need to definitively eradicate slums, other problems persist such as the high occupancy of housing, precariousness of services and deterioration, both in terms of the housing itself and urban surroundings.

Roma women are bringing a new meaning to Roma identity through dialogue, reflection, effort and the increasing role they play in society. They are generating positive changes and becoming the yardstick not only in the Roma community itself but in society in general. Certain aspects of the progress of Roma women and their access to a diverse society on a normal footing are obvious: their increasing motivation

towards training and education, employment and leisure; the increase in the number of female Roma entrepreneurs; their increasing involvement in coexistence in open intercultural areas etc., which is giving rise to changes not only in their own community, but also in society in general.

However, it is necessary to point out the barriers Roma women continue to face even today, given that the variables of “gender” and “ethnic origin” give rise to a specific type of discrimination. The specific features of Roma women are not just a mere sum of two cultural identities, which trigger a situation of multiple discrimination. As such, Roma women are simultaneously affected by three aspects: they are women within a patriarchal society, they belong to a minority group with very low social acceptance and they belong to a culture in which their gender values are associated with the role of wife and mother, thereby diminishing their chances of progress.

Roma culture is highly reconciled with the cultures of the rest of Spanish society, at the same time as maintaining certain traditional characteristics and traits that are above all transmitted in the family setting. The majority of Roma people lives and interact on a daily basis with non-Roma people in the social arena, and this interaction is probably stronger than in any other European country.¹⁸ However, there are still real obstacles to intercultural exchange, such as the existence of certain neighbourhoods or education centres with a high concentration of Roma people, or the still limited and insufficient presence of Roma in political representation or social participation bodies.

In turn, the persistent prejudice directed at the Roma by the Spanish population means that this group continues to be one of the groups that most suffers social ostracism. In recent years, a number of awareness campaigns have been rolled out, with positive effects, but discriminatory conduct and practices in society still persist and have become a principle factor impeding full social inclusion. Effectively, the subjective perception of discrimination of Spanish Roma is marked, particularly in the search for employment, access to facilities and services and housing. The greater presence and interaction of Roma in the public arena, the increase in awareness of their rights, the development of detection and reporting mechanisms and services by civil society organisation and the effects of the economic crisis, may all contribute to making the discrimination suffered by Roma due to their ethnic origins more abundant and visible.

The Spanish administrative framework is characterised by a high level of decentralisation that has occurred in the last 30 years. Autonomous governments are well equipped in key areas for social inclusion of the most disadvantaged groups, such as in education, healthcare and social services. Local entities are also well prepared in terms of citizens' safety, housing, social services management and cultural activities, with some being shared by all three administrative levels. In the last 30 years, public authorities of all levels of government have put the social inclusion of disadvantaged Roma on their agenda. This dynamic has contributed to the achievement of some significant milestones, although, as has been highlighted in the previous section, there are still great challenges ahead. The focus has been forming from the balance and complementary nature of inclusive social policies and specific programmes for the Roma people (in line with the Common Basic Principles on Roma Inclusion no. 2: “Explicit but not exclusive targeting” and no. 4 “Aiming for the mainstream”). The development of the welfare state by making education, healthcare and non-contributory pensions universal, as well as the strengthening of unemployment protection systems, the consolidation of public social service systems (including income support or minimum wage), social housing policies, etc., have had a positive impact on living conditions for many Roma who have benefitted from said measures not due to being Roma, but due to being at a greater social disadvantage. Government plans in terms of employment, social inclusion, etc., in the last ten years have included explicit reference to Roma, which has allowed efforts, best practice and greater cooperation to all fall in line. Likewise, in relation to the use of EU resources, the 1990s saw a surge in innovative initiatives specifically geared to Roma, under the framework of the Horizon and Integra Community Initiatives of the European Social Fund (ESF), which culminated in the inclusion of specific targets and measures in terms of the Roma in the Anti-Discrimination Operational Programme (ADOP) for 2000-2006, which continued in the period 2007-2013.

As has been indicated above, the inclusive focus of universal social policies has been complemented by specific measures that address Roma with difficulties of access to universal services due to disadvantage or social exclusion. At state level, the most relevant and pioneering ones are the 1985 approval by the Lower Chamber of Parliament of the early day motion (*proposición no de ley*) on the creation of a National Roma Development Plan, following that rolled out in 1989 for the Roma Development Programme (RDP). A highlight of the specific measure is financial and technical cooperation with NGOs working towards Roma development and/or Roma associative movement. Cooperation is established on two fronts: (a) technical support to these organisations, and (b) economic support to the social interest programmes that carry them out. Simultaneously to the development of the third sector in Spain that has been progressively growing in size, becoming more professional, gaining organisation and management capabilities and political implication, an associative Roma movement has been consolidating, formed by a variety of organisations that span the nation and the majority of the local sphere, although of which a large part is integrated into regional federations that have a consolidated role in liaison with public authorities. At regional level, certain autonomous governments have rolled out specific action plans for Roma, such as the Basque Country, Catalonia, Extremadura, and Navarre. In 2010, the Spanish Government, in turn, approved the Roma Action Plan 2010-2012³² that is currently in force. Important milestones in this process have been the steps towards greater institutional recognition of Roma. The Lower House passed, in 1999, the creation of a *Sub-committee for the study of Roma issues*; in 2005, it passed a motion to insist upon Government the promotion of Roma culture, history, identity and language, which led to the creation, in 2007, of the Institute for Roma Culture, attached to the then Ministry of Culture. Likewise, legislative assemblies of a number of autonomous communities have included, in their re-worked Statutes, express mentions to Roma communities historically present in each community; specifically Andalusia, Aragon, Catalonia and Castile-Leon. In recent years, consultation and representation bodies have been established for the Roma associative movement attached to the General State Administration, as well as many autonomous communities. Examples of this are the creation of a State Council of the Roma People in 2005, as well as the coordination of similar bodies in Catalonia, Basque Country, Extremadura, and in Castile-La Mancha.

In the anti-discrimination field, the tools and mechanisms to protect potential victims have been strengthened with the translation of Directive 43/2000 to the Spanish legal system, and in recent years dedicated public prosecutors have been specialised in dealing with discrimination and hate crimes in the provinces of Barcelona, Madrid and Malaga. Recently, the Attorney General appointed a Deputy Attorney General of the Supreme Court for the safeguarding of equality and anti-discrimination. Also worthy of note is the creation of the Council for the Promotion of Equal Treatment and Non- Discrimination due to Race or Ethnicity, in which two Roma associative movements participate, as well as the Victims' Support Network driven by this body.

All these initiatives have been developed in conjunction with the active involvement of civil society organisations and Roma associations to complement Common Basic Principles on Roma Inclusion no. 9: "Participation of civil society" and no. 10: "Active participation of the Roma". A result of the described process is the now greater knowledge of the situation and problems faced by the Roma people in Spain, thanks to various studies carried out in recent years, as well as a greater number of professionals with greater capabilities and experience.

Plans and bodies that specifically address Roma:

State Council of the Roma People (*Consejo Estatal del Pueblo Gitano*)
<http://www.msps.es/politicaSocial/inclusionSocial/poblacionGitana/consejoEstGitano.htm>

Action Plan to the Development of Roma 2010-2012
<http://www.msps.es/politicaSocial/inclusionSocial/poblacionGitana/planAccionGitano.htm>

Roma Development Programme (*Programa de Desarrollo Gitano*)
<http://www.msps.es/politicaSocial/inclusionSocial/poblacionGitana/programaDesarrolloGitano/home.htm>

Institute of Roma Culture (*Instituto de Cultura Gitana*)

<http://www.institutoculturagitana.es/>

Regional Council for the Roma Community of Extremadura - Plan for the Promotion and Social Participation of Roma

(*Consejo Regional para la Comunidad Gitana de Extremadura Plan Extremeño para la Promoción y Participación Social del Pueblo Gitano*)

<http://ie.juntaex.es/?mod=gitanos>

Council for the Comprehensive Promotion and Social Participation of Roma in the Basque Country
II Basque Plan for Comprehensive Integration and Social Participation of Roma

(*Consejo para la Promoción Integral y Participación Social del Pueblo Gitano en el País Vasco
II Plan Vasco para la Promoción Integral y la Participación Social del Pueblo Gitano*)

<http://www.gizartelan.ejgv.euskadi.net/r45->

contss/es/contenidos/informacion/planes_ss/es_planes/adjuntos/plan_web.pdf

Andalusia Roma Secretariat. Andalusia Roma Integral Plan. Andalusia Roma Socio-Cultural Centre
(*Secretaría para la Comunidad Gitana de Andalucía- Plan Integral para la Comunidad Gitana de Andalucía. Centro Socio-Cultural Gitano Andaluz*)

http://www.juntadeandalucia.es/igualdadybienestarsocialigualdadybienestarsocial/export/Comunidad_Gitana/HTML/index.html

Catalonia Roma Advisory Council (2009-2013). Catalonia Roma Integral Plan. Consejo Asesor del Pueblo Gitano de Catalonia (2009-2013). Plan Integral del Pueblo Gitano de Catalonia)

http://www20.gencat.cat/portal/site/bsf/menuitem.318327c7107bbec91285ea75b0c0e1a0/?vgnextoid=6d87dffa590e210VgnVCM2000009b0c1e0aRCRD&vgnnextchannel=6d87dffa590e210VgnVCM2000009b0c1e0aRCRD&vgnnextfmt=default&newLang=ca_ES

Navarre Roma Integral Plan 2011-2014. (*Plan Integral de Atención a la Roma de Navarra 2011-2014*)

http://www.navarra.es/home_es/Gobierno+de+Navarra/Organigrama/Los+departamentos/Asuntos+Social+es+Familia+Juventud+y+Deporte/Acciones/Planes+especificos/Servicios+ Sociales/Planes+de+Actuacion/Planes+Sectoriales/Exclusi%C3%B3n+Social/Default.htm#header1

2. Spanish legislation to combat discrimination.

- Constitution of Spain, 1978, articles 1 and 14.
Article 14:
Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.
- **Organic Law 10/1995 of 23 November 1995 on the Criminal Code.**
- Organic Law 4/2000 of 11 January on the rights and freedoms of aliens in Spain and their social integration.
- Legislative Royal Decree 5/2000 of 4 August 2000 establishing the consolidated text of the Law on social order infractions and penalties.
- **Law 62/2003 of 30 December 2003 on fiscal, administrative and social order measures. Chapter III. "Measures for the enforcement of the equal treatment principle" (transposition of Directive 43/2000).**
- Law 19/2007 of 11 July 2007 against violence, racism, xenophobia and intolerance in sports.
- Organic Law 3/2007 of 22 March safeguarding effective equality between women and men.

Instruments of ratification:

- Instrument of ratification of the Framework Convention for the Protection of National Minorities (number 157 of the Council of Europe) done at Strasbourg on 1 February 1995. Official State Gazette (BOE) No 20 of 23 January 1998.
- Instrument of ratification of the Convention on the Rights of persons with disabilities done at New York on 13 December 2006, ratified by Spain on 23 November 2007. Official State Gazette (BOE) No 96 of 21 April 2008.
- Instrument of ratification of Protocol No 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (No 177 of the Council of Europe) done at Rome on 4 November 2000. Official State Gazette (BOE) No 64 of 14 March 2008.

- **Criminal code. Articles related to discrimination:**

Article 22.4 (aggravating circumstances): Perpetrating a crime motivated by racism, anti-Semitism or other kind of discrimination related to the ideology, religion, belief of the victim, his/her **ethnicity, race**, nationality, sex, sexual orientation, gender identity, illness or disability.

Article 314: Those acts producing serious discrimination in employment, public or private, against any person because of his/her ideology, religion or beliefs, **their ethnicity, race** or nationality, sex, sexual orientation, family status, disease or disability, for the position of legal or union representation of workers, by kinship with other employees of the company or by the use of any of the official languages within the Spanish state, and restore the situation of equality before the law by injunction

or administrative penalty, repairing the economic damage have arisen, shall be punished with imprisonment from six months to two years or a fine of 12-24 months.

Article 510. Those inciting discrimination hatred or violence against groups or associations on the grounds of race, anti-Semitism or other ideologies, religion or belief, family status, **ethnicity or race**, national origin, gender, sexual preference, disease or disability shall be punished with a prison term of between one and three years and a fine to be paid over a period of between six and twelve months. The same sentence shall apply to those who, aware of the falsehood or reckless disdain for the truth, disseminate damaging information regarding groups or associations based on their ideology, religion or belief, **ethnic group or race**, national origin, sex, sexual orientation, disease or disability.

In order to implement the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, this article 510 of the criminal code of Spain will be modify in the near future, to allow a real enforcement of its contents. The modification will consider that certain forms of conduct as outlined below, which are committed for a racist or xenophobic purpose, are punishable as criminal offences:

- public incitement to violence or hatred directed against a group of persons or a member of such a group defined on the basis of race, colour, descent, religion or belief, or national or ethnic origin;
- public dissemination or distribution of tracts, pictures or other material containing expressions of racism and xenophobia;
- public condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in the Statute of the International Criminal Court (Articles 6, 7 and 8) and crimes defined in Article 6 of the Charter of the International Military Tribunal, when the conduct is carried out in a manner likely to incite violence or hatred against such a group or a member of such a group.

Instigating, aiding or abetting in the commission of the above offences will be also punishable.

• Article 511:

1. penalty of imprisonment of six months to two years and a fine of twelve to twenty four months and disqualification from public office for between one to three years for any civil servant of any public service denying a person an entitled benefit because of his/her ideology, religion or beliefs, **ethnicity or race**, national origin, sex, sexual orientation, family situation, illness or disability.
2. The same penalties apply where the offense is committed against an association, foundation, partnership or corporation or its members because of their ideology, religion or beliefs, membership of its members or any of them to **an ethnicity or race**, national origin, sex, sexual orientation, family situation, illness or disability.
3. Public officials who commit any of the acts described in this article, shall incur the same penalties in the upper half and the special disqualification from public office for between two to four years.

Article 512: Those who in the exercise of their professional or business activities would deny a person a benefit to which he/she is entitled by reason of his/her ideology, religion or beliefs, **their ethnicity, race** or nationality, sex, sexual orientation, family situation, illness or disability, incur the penalty of disqualification for the exercise of profession, trade, industry or business, for a period of one to four years.

Other laws on Employment, Migration, Health:

Article 4.2.c) of the Workers' Statute (ET): The right of workers to non-discrimination.

Art.17.1 ET: Nullity of **discriminatory provisions** in regulatory provisions, clauses in collective

agreements, individual agreements and unilateral decisions by employers.

Section 8.12 Violations and Sanctions Act in the Social Order: the unilateral decision by the employer involving adverse discrimination, positive or negative with respect to remuneration, working hours, training, promotion and other conditions of employment based on sex, **ethnicity** (...) is considered a serious offense.

Aliens Law 4/2000: Prohibits discrimination based on **race, foreign status, national or ethnic origin**, that is intended to limit the exercise of human rights and fundamental freedoms in the political, economic, social and cultural.

Health: Law 14/1986: Users have the right to non-discrimination **on grounds of race**, social, sex, etc.

Legislation related to Roma:

- Royal Decree 891/2005, 22 July, creation and regulation of National Council of Roma.
- Decree 102/2005, 31 May, creation of Inter-department Commission of Integral Plan of Roma, and Adviser Council of Roma.

Regarding this legislative framework in Spain, we can draw the following **conclusions**:

- I. There is still a great degree of permissiveness, indolence and impunity when it comes to racism and discrimination towards the Roma community.
- II. Victims of discrimination are in a position of defencelessness regarding their basic social rights such as access to employment and housing which are crucial in these times of economic crisis.
- III. The media continue to frequently transmit negative stereotypes about the Roma community which has a perverse effect on the community's image and is a breach of the equality principle.
- IV. The growth of anti-Roma sentiment on the Internet and social networks is of growing concern as is the difficulty in combating it.
- V. Security forces play a fundamental role in guaranteeing the right to equality; however we continue to record police actions which violate those rights rather than protect them.
- VI. Spain has yet to comply with its obligations under Directive 2000/43/EC to create an independent body to promote equal treatment and non-discrimination.
- VII. We have observed discriminatory speeches from some political leaders prevention of which calls for forceful measures.
- VIII. Spanish laws promoting equal treatment and non-discrimination are still practically unknown and are not applied in the courts.
- IX. Through the legislative, executive and judicial branches, Spain should establish the measures needed to guarantee the right to equality.

Recommendations regarding enforcement/barriers of the laws on discrimination against Roma in Spain:

- I. An independent body needs to be created to promote comprehensive assistance, counsel and accompaniment for victims of discrimination given that the infringement of their right to equality qualifies them for protection and Spain is still lacking in that area. Victims of discrimination must not be left defenceless.
- II. In these times of economic crisis, public measures adopted must safeguard the principle of equality and not contribute to widening the social inequality gap.
- III. It goes without saying that public authorities should comply with the equal treatment principle.
- IV. Effective social awareness-raising initiatives must be implemented so that discrimination is considered a socially unacceptable behaviour.
- V. The media, as key players in social awareness-raising and public opinion, must contribute to strengthening the value of equality and not contribute to any type of prejudices or stereotypes.
- VI. Anti-discrimination training is vital for all key professionals, i.e. jurists, the media, law enforcement officials, politicians, etc.
- VII. Case law is needed in this connection so that victims are able to receive compensation and to show society that there is no place for discrimination in this country.
- VIII. The government needs to foster the execution of the National Strategy against racism, racial discrimination, xenophobia and other related forms of intolerance as well as the National Strategy for the Social Inclusion of the Roma Population.

It is vital that the Spanish government show the entire society its firm stance in support of equal treatment and non-discrimination.

Jurisprudence. Case law and judgements

1. *Strategic litigation on the part of the Fundaci3n Secretariado Gitano. Private prosecution in defence of a Romanian Roma woman.*

The Fundaci3n Secretariado General Gitano (FSG) continues to promote the defence of equal treatment and non-discrimination of Roma through strategic litigation in discrimination cases. In this connection, a complaint was filed before local criminal court No. 1 of Barcelona in February 2011 and declared admissible. The FSG acted as private prosecution in the case which is connected with another one lodged through the Hate and Discrimination Crime Service of the Barcelona Provincial Public Prosecutor.

The case was led by the lawyer Sara Gim3nez, head of the FSG's Area of Equality to defend the rights of a Roma woman, a Romanian national who, according to the complaint, was mistreated by the Mossos d'Esquadra (regional police force of Catalonia) in an event occurring in Barcelona.

This woman sought help from the FSG after her daughter was taken from her as a precautionary measure. She is claimed to have suffered discrimination and unfair treatment at the hands of the Mossos d'Esquadra for being a Romanian Roma woman. Since the FSG promotes equal treatment of the Roma community it wanted to be party to the case as the private prosecution. The investigation stage of the procedure has come to a close. Evidence was collected in the form of depositions and documents which have provided sufficient reason to believe that the police action could constitute a criminal offence.

Therefore, the examining court has ruled that the procedure continue as a Summary Proceeding and this decision was confirmed by the Provincial Court of Barcelona following the appeal lodged by the legal representation of the accused.

The following facts prompted the Fundació Secretariado Gitano to become involved in the case:

On 19 April 2010, a Romanian Roma woman with her baby was in the vicinity of a supermarket in Barcelona. Two Catalan police officers approached her and in the police report falsely accused her of mistreating her baby.

The accusation made by the Catalan police in their report had very serious consequences for this Roma family. Specifically, local criminal court No 14 of Barcelona initiated an urgent procedure against this woman which culminated in an Order of 20 April 2010 to issue a precautionary restraining order prohibiting the mother from going near her daughter. The child was therefore put under the care of the Care Service for Children and Adolescents for three months.

Later in the proceedings the investigating authority took into account the sworn statement made by several witnesses who said that *"the Romanian woman did not kick or hit the child"*. *"They never saw the woman hit the baby; just the opposite, this Romanian woman was very affectionate with her child..."*. Moreover, the forensic medical report showed no indication of any sort of injury. It was proven in court that the accused did not cause her baby any harm and an Order was issued on 21 July 2010 reversing the restraining measure ordered on 20/04/2010.

The Fundació Secretariado Gitano believes that the action taken by the Mossos d'Esquadra was illegal in so much as the police report contained a false accusation against this Romanian Roma woman which we believe was related to her ethnic and social status. Would they have taken the same action if a non Roma Spanish woman was scolding her baby and gave her a slap? This false accusation caused irreparable damage to the family that was forced to live for several months in a difficult situation: the baby remained in foster care at the Service for Children and Adolescents and her mother could not so much as visit her and was accused in a proceeding that was ultimately dismissed for lack of evidence.

This case is part of a new line of action performed by the Fundació Secretariado Gitano's Area of Equality, i.e. legal defence of individual cases in order to fight discrimination against Roma in the courts and thus support the discrimination victim assistance work that the FSG has been carrying out as reflected in the Discrimination and the Roma Community reports published since 2005.

2. *García Albiol Case Judgement of the Provincial Court of Barcelona of 24 May 2011.*

During the municipal election campaign of Badalona the current mayor, Xavier García Albiol, the candidate for the People's Party, distributed party leaflets directly associating Romanian Roma with delinquency and later confirmed his stance by declaring that this group had settled in Spain with the sole aim of committing crime.

The group SOS Racisme of Catalonia, together with the Federació D'Associacions Gitanes also of Catalonia, filed a complaint against Mr. Albiol. However, chamber 2 of the local criminal court of Badalona dismissed the charge arguing that the facts did not support a criminal offence.

The complainants appealed the dismissal and on 24 May 2011 received a positive ruling from the Provincial Court which ordered the local criminal court to reopen the case. The judge called on the recently elected mayor of Badalona to testify on 7 September of this year (2011).

Although the judicial proceeding is still under way, it does have some encouraging elements.

First of all, it is encouraging to observe that the precept on which an eventual conviction would be based is Article 510(2) of the Criminal Code¹, so frequently invoked by victims of discrimination and so frequently ignored by the courts.

Lastly, the decision does not mention that these leaflets contained slander and were an affront to the honour of the Romanian Roma people which also constitutes a violation of Article 18 of the Spanish Constitution².

The decision also contains a mandate limiting the Badalona court to only rule on the capacity of the freedom of expression to limit the right to honour.

Furthermore, it notes that this capacity to limit has already been established by the Constitutional Court in judgements 2/2001 and 89/2010, this latter judgement requiring that the actions protected under the freedom of expression not be gratuitous or clearly humiliating but rather must have a legitimate purpose.

In this case, apparently the Court has already assessed and admitted the humiliating nature of the actions and the gratuitousness of the accusations is self-evident. The purpose of the expressions can be none other than the aim of getting votes at the expense of weakening social cohesion and injuring an ethnic group.

The past electoral campaign served as a loud speaker to disseminate racist and xenophobic declarations like the one under analysis and this goes to show that parties with a clear racist ideology have a constituency in some municipal corporations³.

The discourse of these political groups has been instrumental in disseminating a false and damaging image for migration. However, the immigration-delinquency binomial is not borne out by the statistics. Antonio Camacho, Secretary of State for Security, spoke to this with an example: *"In 2002, with only half of the immigrant population, the criminality rate was 1.5% higher than in 2006. Therefore, there is no correlation between immigration and delinquency despite the insistence on the part of some irresponsible people on making this connection."* Experts share this theory. José Luis Díez Ripollés, Criminal Law Professor at the University of Malaga, asserts that *"it cannot be said that the presence of immigrant population is a determining factor in accounting for crime levels"*. The police confirmed that 63.5% of criminal groups are mixed (comprised of Spanish nationals and aliens)⁴.

On many occasions, use of this sort of discourse is intended to divert attention from the real problems affecting local corporations which has little or nothing to do with migration. The main issue is that the services requiring the largest budgets are health-care and education, both of which have been devolved to the regions. Integration policy is likewise the responsibility of municipal governments but its priority in

¹ Criminal Code Article 510.

1. "Those inciting discrimination hatred or violence against groups or associations on the grounds of race, anti-Semitism or other ideologies, religion or belief, family status, ethnicity or race, national origin, gender, sexual preference, disease or disability shall be punished with a prison term of between one and three years and a fine to be paid over a period of between six and twelve months."
2. The same sentence shall apply to those who, aware of the falsehood or reckless disdain for the truth, disseminate damaging information regarding groups or associations based on their ideology, religion or belief, ethnic group or race, national origin, sex, sexual orientation, disease or disability.

² Article 18. Spanish Constitution of 1978

1. The right to honour, to personal and family Privacy and to personal reputation is guaranteed.
2. The home is inviolable. No entry or search may be made without the consent of the occupant or under a legal warrant, except in cases of flagrante delicto.
3. Secrecy of communications is guaranteed, particularly of postal, telegraphic and telephonic communications, except in the event of a court order to the contrary.
4. The law shall limit the use of data processing in order to guarantee the honour and personal and family privacy of citizens and the full exercise of their rights

³ Amnesty International News Spain 21-6-2011

<http://www.es.amnesty.org/noticias/noticias/articulo/ai-pide-medidas-para-abordar-el-racismo-la-discriminacion-los-desalojos-forzosos-y-la-proteccion-d/>

⁴ Público Digital on 08-02-2008 <http://www.publico.es/46444/diez-falsosmitos-sobre-los-inmigrantes>

municipal budgets is relative. According to Alfonso Utrilla, Professor of the Finance and Tax System Department of the Universidad Complutense de Madrid, *“of the €3 billion annual budget of the Local Corporation of Madrid, €240 million are earmarked for social policies and of that sum, only 12 are used for integration policies. The relative weight of immigrants in local corporation budgets is not very large. While the recession does affect the finances of local corporations, this has little to do with aliens”*⁵.

The repetition of these prejudices against the immigrant population is in detriment of the intercultural model needed for the development of our society. Moreover, the European Commission has estimated that between now and the year 2030, Spain will need seven million more people to balance its economy and guarantee the Welfare State. It is the responsibility of all State authorities to forge a social model able to provide a viable future for all.

3. *The Telecinco (channel 5) case. Judgement delivered by the Supreme Court on 30 December 2010.*

In December the Supreme Court delivered its judgement on an appeal and procedural infraction filed against a judgement by the Provincial Court of Seville which indicated an error in the assessment of evidence.

On 26 December 2006 the court of Seville admitted a charge of unlawful interference on the part of the entity Gestevisión Telecinco, S.A. in the right to honour, image and privacy of a few of the guests who gathered together to baptise a child on 22 December 2005. Apparently, the defendant recorded images of the baptism and broadcast them on the programme called “Aquí hay tomate” (Juicy news) on 18 April 2006 (two short videos at 16:22) and on 10 May 2006 (another two videos at 15:50 and 16:29).

In his decision, the judge stated that there was no doubt that the overwhelming majority of the dialogue from the programme about the celebration of the baptism is mocking, sarcastic and hurtful comments. The images used invite or predispose the spectator to a grotesque or abnormal spectacle, ridiculing the celebration and emphasising the fact that this is a “gypsy baptism”. Throughout the broadcast, individuals and the group in general are ridiculed.

The defendant appealed this initial judgement to the Provincial Court of Seville which issued its judgement on 19 February 2008 dismissing the appeal filed by the legal team of the company Gestevisión Telecinco. In other words, the Provincial Court confirmed the conviction of the initial judgement.

This latter judgement again dismissed the claims made by the appellant confirming the original judgement and hence the order to compensate the aggrieved parties. It made the following arguments:

“This is a flagrant violation of the claimants’ right to honour, personal and family privacy and personal reputation which, in no case, can be superseded by the defendant’s right to exercise the right to freedom of expression and information.

The requirements needed to classify these images as “of public interest” or “informative relevance” are not met. The comments made cannot be justified under the guise of freedom of expression; far from being ironic or neutral, they are unwarranted, hurtful and offensive. Neither can they be classified as innocent comments or gossip of the sort characterising the conversation of a group of neighbours given that they were broadcast on national television before a huge audience.

These images were broadcast without the consent of the interested parties and even minors were filmed not only without paternal or maternal permission but they were shown without any attempt to prevent recognition of the individuals.

⁵ Digital version of the newspaper Expansión 02-02 2010.
<http://www.expansion.com/2010/02/02/economia-politica/1265134453.html>

In weighing freedom of expression and information and the right to honour and personal privacy, the Court ruled that in this case freedom of information or freedom of expression cannot prevail and the act therefore constitutes a violation of the right to honour, personal privacy and personal reputation. This judgement is considered to be especially relevant in the fight against discrimination of the Roma community because of the following extract transcribed literally:

"[...] the images ridicule the celebration of a baptism where the overwhelming majority of the participants are Roma and the latter are humiliated and specific comments are made about their physical characteristics, conduct and dress. The context of humour, irony or satire in which the programme was broadcast cannot justify the damage done.

In this regard, STC 214/1991 of 11 November 1991 admitted the existence of violation of the constitutionally recognised right to honour in those cases where, while the alleged attacks were against a more or less large group of people, they transcended the members or components of that group insofar as the latter were identifiable, as individuals, within the group, which is exactly what happened in the case under scrutiny where the attacks were levied against specific and identifiable individuals and generally against the Roma ethnic group.

From this point of view, the degree to which freedom of expression is affected is small in comparison with the protection of the right to honour.

It is immensely satisfying to find court decision which consider how comments such as these, erroneously interpreted as harmless jokes, gratuitously damage Roma values and culture and, by association, the entire community.

4. *Discrimination Against a Romani Woman Before the European Court of Human Rights*

Sara Giménez Giménez and Fernando Rey Martínez¹

This article examines the case of "la Nena", a Spanish Romani woman who was denied the right to receive a widow's pension by the highest court in Spain, the Spanish Constitutional Court, in a decision dated 24 May 2007. The woman, María Luisa Muñoz, took her case to the European Court of Human Rights (ECtHR) in Strasbourg, with the help of the Fundación Secretariado Gitano. Europe's highest court recognised her right to receive a widow's pension in its ruling of 8 December 2009, which concluded that the refusal of the Spanish government to grant a pension because she had been married in accordance with Romani rites was discriminatory and ordered the Spanish government to pay compensation in the sum of 70,000 EUR in damages caused to the plaintiff.

María Luisa Muñoz married her husband in 1971 in the only way she felt was right: based on the customs of her people.² Since 1425, marriage in the Romani community has been a free and voluntary decision of the parties involved to unite in matrimony before the elder representatives of their families, at which time a large wedding ceremony is celebrated with the whole community. In 1971, the Romani community in Spain lived in a pre-constitutional era, in which Romani men and women did not enjoy full citizenship, and in which there were still regulations targeting their cultural identifiers.³ At that time, Roma were mostly unaware of the legal formalities of marriage, but married according to their customs. Today, the Romani community has more information about the relevant administrative procedures and marriages conducted according to Romani rites are entered into the Civil Register.

María Luisa Muñoz has always considered herself properly married. She lived as a married Romani woman: caring for her family, depending financially on her husband, not working outside the home and raising their six children.

The marriage had legal validity because the government itself recognised it: since 1983 the couple had a Family Record Book.⁴ They were designated a "large family" and all of the family members were

recognised on the husband's social security card. Furthermore, in 1971, civil ceremonies were not possible.

Her husband worked hard throughout his life, making a tremendous effort to integrate himself into majority society. He abandoned traditional Romani work and earned his living doing "regular" jobs, such as bricklaying. He paid his social security taxes like any other worker for more than 19 years.

Ms Muñoz's husband died in December 2000. She had six dependent children and tried to exercise her right to receive a widow's pension. The response of the Spanish government was to refuse her request because it considered that she had never been married. According to the government, although the marriage had been conducted according to her traditions and had thus far appeared to be legally recognised, it was not valid.

When Ms Muñoz became aware that the Spanish government did not consider that she had been married, she found it impossible to comprehend. She had married in good faith according to the customs of her people and had lived as a married Romani woman according to the customs of her community. However, now that she needed to exercise her right to a widow's pension she was told that she had never been legally married because of a mere procedural error.

From the standpoint of anti-discrimination law, there are several forms of discrimination suffered by the plaintiff as a result of the resolution passed by the Spanish courts in this case.

Discrimination Through Failure to Provide Differential Treatment. A comparison of the treatment of Ms Muñoz to that of other women who have been denied a widow's pension because they had not married in accordance with applicable civil law demonstrates that this is an obvious case of discrimination resulting from failure to provide differential treatment. In such cases, the constitutional principle of equal treatment has been violated not because of the different treatment of substantially similar cases, but rather because of the identical treatment of substantially different cases. This is discrimination by equalisation. Indeed, some important factors distinguish the case of "la Nena" from others that might arise, in which the ethnic/racial factor was not present. Because no distinction is made between these two possible types of cases, the result is discrimination, brought about by not giving different legal treatments to two factually dissimilar situations.

The ECtHR has recognised the possible validity of discrimination through failure to provide differential treatment in the matter of *Thlimmenos v Greece*⁵ and this doctrine could be extended to the present case. It is important to recall the brilliant statement from the ECtHR in *Nachova and Others v Bulgaria*, regarding the vision of "democracy as a society in which diversity is not perceived as a threat, but rather as a source of wealth",⁶ as well as the rulings in the cases of *Beard*,⁷ *Coster*,⁸ *Chapman*,⁹ *Smith*¹⁰ and *Lee v. United Kingdom*¹¹ which also stated that "the vulnerability of the Roma entails giving special attention to their needs and their particular lifestyle". This idea was to be repeated once again in *D.H. and Others v. Czech Republic*: "The vulnerable position of Roma/Gypsies means that special consideration should be given to their needs and their different lifestyles both in the relevant regulatory frameworks and in reaching decisions in particular cases." They added that the "cultural diversity [of the Roma is] of value to the whole community."¹² How can this interpretation be reconciled with that of the Spanish Constitutional Court? The ECtHR has stated that the Romani community needs special protection (as seen in the *D.H. and Others* ruling) and that cultural diversity (e.g. the secular Romani marriage rite) is a valuable resource for a democratic society. How can the manner in which the Romani applicant in this case is treated be compatible with the treatment given to any other (non-Romani) couple who did not enter a civil marriage in the absence of any racial or ethnic motivation or tradition? In short, we are witnessing a clear case of (racial/ethnic) discrimination by failure to provide differential treatment.

Furthermore, if one analyses the treatment received by Ms Muñoz in comparison with other legally constituted marriages (the former was not granted access to pensions for widows, whereas the latter would be), Ms Muñoz must be considered to have been subject to two types of discrimination.

There was racial/ethnic discrimination that is indirect or has a disparate impact. The ECtHR recently included in its jurisprudence the concept of indirect discrimination in its ruling on *D.H. and Others v. Czech Republic*.¹³ This concept is well known in the European Union legal system and in those of most European countries. In this case, different treatment was applied to the applicant (the denial of a widow's pension) based on a trait, factor or criterion that is non-suspicious or neutral from a racial, sexual, etc., perspective (the requirement for a legal form of marriage in order to access a widow's pension) and which has had an adverse impact on people belonging to a disadvantaged group (widows married according to Romani customs) without there being sufficient justification (i.e. differential treatment is not an objective or essential requirement for obtaining a legitimate public aim or, at least, the government has not justified it). In principle, the governmental legislative body may link the provision of widows' benefits to some forms of cohabitation and not to others for reasons of legal certainty. However, to entirely exclude a form of cohabitation based on Romani customs at a point in history when the plaintiff could not (except in a very limited way) enter into a civil marriage ceremony would de facto exclude a whole group of women from accessing a widow's pension based on ethnic/racial grounds.

This is a case of multiple discrimination (combining ethnic/racial and gender criteria). The concept of multiple discrimination, although referred to in different sections of EU legislation, has not been judicially recognised to date. This case asked the ECtHR to recognise it for the first time. The applicant was treated differently and in a worse fashion than widows who had married legally because she is – at one and the same time – both Romani and a woman (i.e. because she is a Romani woman). It is true that a Romani man would also have suffered discrimination had he been denied a widower's pension for the same reasons, but the concept of "widow's" pension – although not only available to women – connotes a specific meaning (in quantity and quality) with regard to women. In the case at hand, a Romani woman has been discriminated against due to a situation that can only create victims who are Romani women. The applicant lived in accordance with the traditional role of the Romani women of her time. She married based on the customs of the Romani people and she devoted herself to caring for her children and home. Not employed outside the home, she remained economically dependent on her husband's income. She cared for her husband until he died and fulfilled all of her obligations as a wife, but when the time came, the law denied her a widow's pension due to a situation highly unlikely to be applicable to a non-Romani woman or Romani man. This is a specific form of discrimination. It is multiple discrimination because the victim can be no one other than a Romani woman.

After outlining the approach from the standpoint of combating discrimination, we now analyse the resolution provided on this case by the ECtHR in its ruling of 8 December 2009.¹⁴

The ruling was in favour of Ms Muñoz. Specifically, the ECtHR ruled that there had been a violation of the prohibition of racial discrimination (Article 14, European Convention on Human Rights (ECHR)) in combination with a violation of the right to respect property (Article 1 of the First Additional Protocol).

The case is of interest, firstly because it involves a reversal of the Constitutional Court's ruling 69/2007 of 16 April, which dismissed the appellant's appeal, refusing to consider both the particular elements of the case or its obvious ethnicity-related aspects. The ruling of the Spanish Court is a shining example of a "race blind" approach that is indifferent to the ethnic factor.

Once again, it has been demonstrated that the Spanish Constitutional Court lacks a serious interpretation of racial discrimination. It is no coincidence that only two cases of racial discrimination have been decided (compared to dozens of conflicts related to gender discrimination, for example); that the rulings resulting from the two cases have been directly contrary to those requested by the member of the minority suffering racial discrimination; and that both cases have been overturned by international human rights institutions.

One of those institutions is the ECtHR, discussed here, and the other is the UN Human Rights Committee. The latter handled the "Williams case", decided by the Constitutional Court ruling of 29 January 2001, which dismissed an appeal against police action in which a woman was requested to identify herself just because she was black, finding that this police action was not the result of either clear or underlying

discrimination (despite the fact that only the black woman, among all the passengers disembarking from a train, was required to show identification). The Human Rights Committee declared this ruling a violation of Article 26 (right to equal protection of the law) in conjunction with Article 2.3 (right to an effective remedy) of the United Nations International Covenant on Civil and Political Rights.¹⁵ It is therefore possible to assume that the ECtHR's ruling in the case of "la Nena" can be understood as a warning that the Spanish court's "race blind" line of interpretation is too acquiescent to the authorities and lacks sensitivity to the ethnic factor present.

What is the ECtHR's reasoning in this case? The first thing to note is that the ECtHR refused to consider that the failure to recognise the traditional Romani marriage as a marriage for civil purposes implies a violation of civil rights. Furthermore, the ECtHR did not consider it to violate the right to marry enshrined in Article 12 of the ECHR or for this to be a form of racial discrimination forbidden by Article 14, because a civil marriage ceremony is as equally available to Roma and non-Roma in Spain. The ruling cannot be seen, therefore, as a legal recognition of Romani marriage, an issue that comes under the competence of each country's internal legislation.

The ruling does not have, therefore, a general effect or objective that could possibly be applied to many other subsequent cases. Rather, it is a decision that provides a fairer solution in one particular case. The ECtHR first admitted that the proprietary interest of the plaintiff, derived from the denial of her widow's pension, falls within the scope of Article 1 of the First Additional Protocol of the ECHR.

The ECtHR did find a violation of Article 14 in conjunction with Article 1 of Protocol No. 1, since the government failed to recognise a marriage which was not a civil union despite the applicant's good faith belief that she was married (supported by official government-issued documents) and failed to take into account the possible impact of membership in a minority community on the application of law.

The ECtHR found that the refusal of the applicant's widow's pension was a discriminatory difference of treatment because the treatment differed from situations that should be considered equivalent with respect to the effects of a marriage in good faith, such as the existence of good faith in annulled marriages.¹⁶ Additionally, in the Constitutional Court's ruling 199/2004, the Court did understand that there was a right to a widow's pension in the case of marriages celebrated in accordance with legal requirements (via the Roman Catholic rite) but which had not been recorded on the Civil Register due to reasons of conscience. This is the essential issue. The Spanish authorities treated María Luisa Muñoz in a manner which differed from other, comparable instances of marriage in good faith. According to the ECtHR, the plaintiff's good faith understanding of the validity of her marriage, celebrated according to Romani tradition, was reinforced via the Spanish State's recognition of its validity, or at least the appearance thereof, in official documents including the Family Record Book and the social security card (with the designation of a "large family").¹⁷ One of the judges is quoted in the judgment as having stated: "It is disproportionate that the Spanish State, which took into consideration the applicant and her Roma family [through all these official documents] now [...] refuse[s] to recognise the Roma marriage when it comes to the survivor's pension."¹⁸ The ECtHR also took into account that, in 1971 when the two joined together, there was only one valid rite, that of the Catholic Church. In order to be exempt, one had to renounce it in advance.¹⁹

To all this, the ECtHR added another argument, the argument of ethnicity. The ruling emphasised, firstly, that the applicant's belief that her marriage was valid was also demonstrated by her membership in the Romani community, "which has its own values that are well established and deeply rooted within Spanish society".²⁰ The ECtHR recalled the "international consensus" within the Council of Europe:

recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle [...] not only for the purpose of safeguarding the interests of the minorities themselves, but to preserve a cultural diversity that is of value to the whole community.²¹

Thus, though belonging to a minority does not exempt one from respecting marriage laws, it may influence the way these laws are enforced. The ECtHR recalled its earlier statement that "the vulnerable position of

Roma means that some special consideration should be given to their needs and different lifestyle, both in the relevant regulatory framework and in reaching decisions in particular cases.”²² This statement was questioned by the only dissenting judge, Judge Myjer. According to him, the Spanish state was not in any way responsible for Ms Muñoz’s ignorance (it was more likely a mistake), and the case concerned recognising the validity of Romani marriages (as had been reported by some of the press).²³

It is a ruling to be celebrated; a ruling that brings justice to a woman belonging to a minority which has traditionally been a victim of discrimination. Similar cases had previously been resolved insufficiently by Spanish judicial authorities as a matter of routine. The argument of these authorities is limited, inconsistent, lacking in rigour and even more lacking in creativity. However, this ruling also has a “political” reading as it entails a serious warning for national authorities to take the prohibition of racial discrimination seriously. It is a reference resolution to encourage the practical application of the principle of equality. This is good news which we want to celebrate with society as a whole and especially with the Romani community.

Endnotes:

1. Sara Giménez Giménez is a practicing Romani attorney working on equal treatment issues at the Fundación Secretariado Gitano (FSG). She represents FSG in the Spanish Council for the Promotion of Equal Treatment and has published several articles on the Spanish Romani community. Fernando Rey Martínez is a professor of Constitutional Law at the University of Valladolid and a specialist on fundamental rights, particularly on anti-discrimination law.
2. Roma have been celebrating marriages in Spain in accordance with their uses and customs since 1425, the year in which King Alfonso V issued a safe-conduct pass to Juan de Egipto el Menor, allowing him to freely travel throughout the Kingdom of Aragon.
3. It must be borne in mind that even in Articles 4 and 5 of the 1943 Civil Guard regulations, it is stated that “the Gypsies shall be closely watched, and great care shall be taken to examine all of their documentation and to investigate their way of life [...]”
4. The Family Record Book (libro di familia) is received upon civil registration of the marriage.
5. ECtHR, *Thlimmenos v. Greece*, Application no. 34369/97, 6 April 2000, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=696438&portal=hbkm&source=externalbydocnumber&table=?F69A27FD8FB86142BF01C1166DEA398649>.
6. ECtHR, *Nachova and Others v. Bulgaria*, Application nos. 43577/98 and 437579/98, July 6, 2005, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=778855&portal=hbkm&source=externalbydocnumber&table=?F69A27FD8FB86142BF01C1166DEA398649>.
7. ECtHR, *Beard v. United Kingdom*, Application no. 24882/94, 18 January 2001, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=697032&portal=hbkm&source=externalbydocnumber&table=?F69A27FD8FB86142BF01C1166DEA398649>.
8. ECtHR, *Coster v. United Kingdom*, Application no. 24876/94, 18 January 2001, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=697033&portal=hbkm&source=externalbydocnumber&table=?F69A27FD8FB86142BF01C1166DEA398649>.
9. ECtHR, *Chapman v. United Kingdom*, Application no. 27238/95, 18 January 2001, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=697031&portal=hbkm&source=externalbydocnumber&table=?F69A27FD8FB86142BF01C1166DEA398649>.
10. ECtHR, *Jane Smith v. United Kingdom*, Application no. 25154, 18 January 2001, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=697035&portal=hbkm&source=externalbydocnumber&table=?F69A27FD8FB86142BF01C1166DEA398649>.
11. ECtHR, *Lee v. United Kingdom*, Application no. 25289/94, 18 January 2001, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=697034&portal=hbkm&source=externalbydocnumber&table=?F69A27FD8FB86142BF01C1166DEA398649>.
12. ECtHR, *D.H. and Others v. Czech Republic*, Application no. 57325/00, 13 November 2007, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=825443&portal=hbkm&source=externalbydocnumber&table=?F69A27FD8FB86142BF01C1166DEA398649>, Paragraph 181.

13. ECtHR, *D.H. and Others v. Czech Republic*, Application no. 57325/00, 13 November 2007, available at:
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=825443&portal=hbkmsource=externalbydocnumber&table=?F69A27FD8FB86142BF01C1166DEA398649>.
14. Case of *Muñoz Díaz v. Spain*, Application no. 49151/07, 8 December 2009, available at:
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=859369&portal=hbkmsource=externalbydocnumber&table=?F69A27FD8FB86142BF01C1166DEA398649>.
15. United Nations Human Rights Committee, Communication No. 1493/2006, 27 July 2009, available at: <http://www2.ohchr.org/tbru/ccpr/CCPR-C-96-D-1493-2006.pdf>.
16. *Muñoz Díaz v. Spain*, Paragraph 65.
17. *Ibid.*, Paragraph 62.
18. *Ibid.*, Paragraph 20.
19. *Ibid.*, Paragraph 57.
20. *Ibid.*, Paragraph 56.
21. *Ibid.*, Paragraph 60.
22. *Ibid.*, Paragraph 61.
23. *Ibid.*, Dissenting Opinion of Judge Myjer.

Other cases and sentences:

<http://www.igualdadynodiscriminacion.org/novedades/novedades/2011/sentenciasPenalesEspanolas.htm>

3. Reports, publications, etc., on the situation of discrimination against the Roma community.

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- Discrimination and the Roma Community. Annual report 2011. Fundación Secretariado Gitano (in English):
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- [Report 2011](#) on results of the Network of assistance of victims of discrimination on the ground of ethnic or racial origin. Author: Council to Promote the Equality of Treatment and non-discrimination of people on the basis of ethnic or racial origin. 2012. (Spanish).
- [Annual Report](#) on discrimination on the basis of ethnic or racial origin: perception of potential victims 2011. Author: Council to Promote the Equality of Treatment and non-discrimination of people on the basis of ethnic or racial origin. 2012. (Spanish)

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- Gitanos y discriminación. Un estudio transnacional. Author: FSGG. Fernando Villarreal (Coordinador) y Daniel Wagman. Editorial: Fundación Secretariado General Gitano. 2001.
http://www.gitanos.org/centro_documentacion/publicaciones/fichas/24747.html.es
- ¿Periodistas contra el racismo? La prensa española ante el pueblo gitano. 2011. CPEDA, Barcelona, 2012. 352 pages. Unión Romani. (Spanish)

GUIDES:

- Guía para la gestión Policial de la Diversidad. Author: Plataforma por la gestión Policial de la Diversidad. 2013. (Spanish, from July 2013)
<http://www.gestionpolicialdiversidad.org/documentos.html>
- A practical guide for journalists. Equal Treatment, The media and Roma community. 2010. Fundación Secretariado Gitano. In English:
http://www.gitanos.org/centro_documentacion/publicaciones/fichas/79018.html

- Handbook for training security forces in identifying and recording racist or xenophobic incidents. Oberaxe, 2013. English. <http://www.oberaxe.es/documentacion/>
- Didactics materials to combat discrimination and hate crimes. Movimiento contra la Intolerancia 2005-2013. (Spanish): <http://www.movimientocontralaintolerancia.com/html/entrevistas/entrevistas.asp>

SOCIAL RESEARCH:

- Laparra, M. (coord.) (2007): Informe sobre la situación social y tendencias de cambio en la población gitana. Una primera aproximación. Madrid, Ministerio de Trabajo y Asuntos Sociales.
- Social Diagnosis on Spanish Roma. CIS and Ministry of Equality, 2011 (including statistics). (Spanish) http://www.msc.es/ssi/familiasInfancia/inclusionSocial/poblacionGitana/docs/diagnosticosocial_autores.pdf
- School Segregation of Roma children in Spain. Federación Kamira, 2012. (Spanish): http://federacionkamira.org.es/Que_hacemos_-_proyectos_files/Informe%20S...pdf
- Research on Racism and Discrimination against Roma in Spain. FAGIC, 2013. (Spanish) <http://www.fagic.org/>

NATIONAL STRATEGIES:

- National Strategy against Racism. OBERAXE. 2011. Spanish: <http://oberaxe.es/files/datos/4fd71e56109be/ESTRATEGIA-LINEA%20INTERACTIVO%208-12-2011.pdf>
- National Roma Integration Strategy in Spain, 2012-2020 (English) http://ec.europa.eu/justice/discrimination/files/roma_spain_strategy_en.pdf

Given the importance of the National Roma Integration Strategy in Spain, 2012-2020, we provide here some information regarding its policies against discrimination.

The Strategy includes as a transversal working line on *Non-discrimination and promotion of equal treatment of Roma*:

- Promotion of the effective application of European and Spanish legislation against discrimination, the fight against racism and hate crime, applying recommendations of the Council of Europe in terms of antidiscrimination and anti-Roma attitudes to Spain.
- Strengthening of cooperation with the State Council for the Promotion of Equal Treatment and active participation of Roma organisations.
- Elaboration of information and awareness materials that address reducing and eradicating the discrimination suffered by Roma.
- Development of training for civil servants and other key players, particularly legal professionals, the police service, public service and resources professionals and media professionals.
- Fostering of information, training actions and programmes for Roma, for awareness and knowledge of rights and duties.

- The establishment of extraordinary measures for Roma women victim of multiple discrimination.
- The performance of studies and reports that reveal the situation of discrimination of the Roma community (Panel on discrimination of the State Council for the Promotion of Equal Treatment).
- Support for programmes and services that provide guidance, accompaniment and legal advice to victims of discrimination (Victim support network).
- Special assistance for discrimination of Roma people originating from other countries and the guarantee of their rights.

An overwhelming majority feels that discrimination is the main barrier to inclusion and participation in society as equals in the eyes of the law.

The negative perceptions of the majority population regarding the Roma population, often related to xenophobia and racism, are a major obstacle to their integration in the labour market, their access to housing and public services.

The case of Roma population in Spain is a clear example of the predominance of the concepts of ethnicity and race in the definition of the patterns of discrimination. Indeed, although there were improvements of this situation over the last years, the Roma population, estimated at about 700,000 persons and who is settled in Spain since the 15th century, continues to be the minority suffering the highest degree of discrimination and rejection by the majority population.

In this sense, a high percentage (66 %) of the persons whose skin colour, physical appearance or clothing style differ from those of the majority is considered and considers itself the object of strong discrimination, regardless of their legal status.

Ethnicity and other aspects like cultural distance, gender and social class could be considered as the main variables generating discrimination against Roma. These variables can define - deepening or lessening- the discrimination on the grounds of ethnic origin or race: Roma persons with a higher social, economic and education level are less affected than other groups by the discriminatory practices

4. Public and private organizations that address discrimination against the Roma community. Type of services offered, offering action protocols, results (damages). Statistics and data on discrimination.

4.1. Public and private organizations.

4.1.1. Public organizations:

These are the main public bodies related to equality of treatment and non-discrimination (this information is not exhaustive; regional bodies are not included in the list).

- Council for the advancement of equal treatment and non-discrimination of persons for reasons of racial or ethnic origin (see point 4.1.3.)

<http://www.igualdadynodiscriminacion.org/home.do>

- Oberaxe National Observatory on Racism and Xenophobia

<http://www.oberaxe.es/>

- Special Attorney on Hate Crimes, Barcelona (see point 4.1.3.)

http://www.ub.edu/dpenal/Fiscalia_BCN_memoria%202010.pdf

- Defensor del pueblo (Ombudsman):

The Defensor del Pueblo is the High Commissioner of the Parliament responsible for defending the fundamental rights and civil liberties of citizens by monitoring the activity of the Administration and public authorities.

The Defensor del Pueblo is elected by Congress and the Senate by a three-fifths majority. The term of office is five years and the Defensor del Pueblo does not take orders or receive instructions from any authority. The Defensor del Pueblo must perform his or her functions independently and impartially, autonomously and in his or her own good judgment and enjoys inviolability and immunity in the exercise of his or her office.

Any citizen may request the intervention of the Defensor del Pueblo, which is free of charge, to investigate any alleged misconduct by public authorities and/or the agents thereof. The office of the Defensor del Pueblo can also intervene ex officio in cases that come to their attention without any complaint having been filed.

The Defensor del Pueblo prepares an annual report for the Parliament and may submit case reports on matters which are considered particularly serious or urgent or requiring special attention.

Following ratification by the Spanish State of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly in New York on 18 December 2002, the Spanish Parliament attributed the functions of the

National Preventive Mechanism against Torture (NPM) in Spain to the Defensor del Pueblo in November 2009.

The Defensor del Pueblo, in his or her capacity as the NPM, performs preventive visits to all detention centers to detect problems that might favor the impunity of torture or ill-treatment. The conclusions of these visits are reflected in an annual report presented to the Spanish Parliament and the United Nations Subcommittee on Prevention of Torture in Geneva.

The Defensor del Pueblo is assisted by two deputies, to whom he or she may delegate his or her functions. <http://www.defensordelpueblo.es/en/Quienes/Que/index.html>

Other bodies and institutions:

- Appointment in 2011 of a **Public Prosecutor on Equality and Non Discrimination** by the Supreme Court (Mr. Antolín Herrero)
-
- **Office for Non-Discrimination of the City of Barcelona.** The Office for Non-Discrimination is a service offered by Barcelona City Council's Department of Civil Rights to promote human rights, ensure equality among citizens and to combat all forms of discrimination. The Office offers the following personalised and confidential services:
 - Information and guidance on basic human rights.
 - Conflict resolution when discrimination has occurred, through mediation or conciliation.
 - Specialised legal advice.
 - Training on equal rights and combating discrimination.

The Office works in coordination with other government bodies that also work for the defence of human rights.

- **National Council of Roma.** This Council is a collegiate interministerial organ with consultative and advisory powers, under the responsibility of the Ministry of Health and Social Policy. It provides an institutional channel for collaboration and cooperation between the General State Administration with the Roma NGOs in the development of social policies. These policies should foster a holistic approach to the needs of the Roma population, both by ensuring equal opportunities as regards general policies and through policies directed specifically at the Roma population.

Although collaboration between the General State Administration and Roma NGOs has been common as regards the Social Affairs Ministry, the creation of the Council has meant a formalisation in a more permanent structure. The Council will be consulted on all initiatives, legislative proposals and measures that are deemed to have an impact on the Roma population of Spain. Another important aspect is the fact that almost all of the ministries within the Spanish Administration are represented, so the contacts of the Roma NGO movement are not limited to the ministry responsible for social policy (in this case Ministry of Health, Social Affairs and Equality). Interaction with the rest of the ministries is guaranteed, and specific issues are debated and consulted upon through the different working groups.

The Council is composed by 20 Roma NGOs and different bodies of the Public Administrations of the State.

4.1.2. Private organizations:

There are many organizations in Spain related to human rights and combating discrimination based on race or ethnic origin. In this chapter we provide a list not exhaustive.

Roma associations:

- Unión Romani <http://www.unionromani.org/>
- FAGIC <http://www.fagic.org/es/quehacemos/servicios/229-servicio-de-asesoramiento-juridico>
- FAKALI <http://www.fakali.org/>
- Federación KAMIRA <http://federacionkamira.org.es/wordpress/>
- Fundación Secretariado Gitano www.gitanos.org

Non Roma associations:

- ACCEM <http://www.accem.es/refugiados/inmigrantes/>
- Spanish Red Cross <http://www.cruzroja.es/portada/>
- CEPAIM Foundation <http://cepaim.org/>
- Movement against Intolerance <http://www.movimientocontralaintolerancia.com/>
- Movement for Peace, Disarmament and Freedom <http://www.mpd.org/content/view/210/1294/lang,english/>
- Acoge Network <http://www.redacoge.org/>
- SOS Racismo <http://www.sosracismo.es/>
- Amnistía Internacional <http://www.es.amnesty.org/index.php>
- CEAR <http://cear.es/>
- Ruminahui <http://www.ruminahui.org/>
- CEAPA www.ceapa.es

4.1.3. Two examples of Public Institutions:

A. Creation of the Council for the Advancement of Equal Treatment and non-discrimination of persons for reasons of racial or ethnic origin

In June and November of the year 2000 the European Union, pursuant to Article 13 of the Treaty of Amsterdam, adopted two Directives to combat discrimination: the so-called “Racial Equality Directive” (2000/43/EC) prohibiting discrimination based on racial or ethnic origin in any context (employment,

education, social security, health-care, access to goods and services, etc.) and the “Employment Equality Directive” (2000/78/EC) laying down a framework to prevent discrimination in the workplace for reason of religion or belief, disability, age or sexual orientation.

Article 13 of Directive 2000/43 requires every Member State to designate “one or more bodies to take responsibility for the promotion of equal treatment of all persons irrespective of racial or ethnic origin.” In accordance with European law, since its approval each of the 27 EU Member Countries has been incorporating these regulations into its own national legislation.

In Spain, the Directives were transposed into the legal system at the end of 2003 through the Fiscal, Administrative and Social Order Act, Law 62/2003 of 30 December 2003 whose Article 33 provides for the creation of a Council for the advancement of equal treatment and non-discrimination of persons for reasons of racial or ethnic origin.

This body was finally constituted in September 2009 following its creation by Royal Decree in September 2007. It is currently attached to the Directorate-General for Employment Equality and Anti-Discrimination of the Ministry of Equality. As a collegiate body of the General State Administration, it has a multi-stakeholder composition, i.e. its members come from different national, regional and local public administrations as well as representatives of workers and employers and of the associative movement engaged in the promotion of equal treatment and non-discrimination of persons based on their racial or ethnic origin.

As stipulated in European law, its mission is to promote the principle of equal treatment and non-discrimination of persons irrespective of their racial or ethnic origin in all different walks of life (education, health-care, social benefits and services, housing, access to employment and training and, in general, in the offer and access to all goods and services).

The following are among the duties attributed to this Council:

1. To lend independent assistance to victims of discrimination in processing their claims.
2. To conduct analyses and studies of the situation of discrimination and the application of the principle of equal treatment in an autonomous and independent fashion, and to publish independent reports on draft legislation, plans, programmes and other initiatives related to the aim and purpose of the Council.
3. To promote measures which contribute to equal treatment and the elimination of discrimination and to formulate appropriate recommendations and proposals.
4. To draft and approve the Council's annual activity report and forward it to the Minister of Equality.

The creation of this Council is the final step in the transposition of Directive 2000/43 and took place at a key economic and social moment. Over the last several years and especially since the beginning of the current economic crisis, the rise in xenophobia and racism throughout society has become worrisome, especially in the context of sports, music concerts and Internet-based social networks. In fact, according to the December 2008 Barometer, study No 2 781, 17.3% of those polled claimed to have felt discriminated against in the last 12 months and 54% felt that discrimination based on ethnic or racial origin is very or quite frequent. Despite that, 58% of the Spanish population are unaware of the rights of victims of discrimination.

Furthermore, the “Special 2010 Raxen Report” conducted by the NGO *Movimiento contra la Intolerancia* revealed that there is an increasing number of “ultra right-wing groups, platforms and marginal political parties which seek conflict, organise demonstrations and systematically disseminate propaganda against immigration and diversity thus endangering cohesion and co-existence in a democratic society”. This report also points out that “Internet has become the forum of choice to disseminate hate, discrimination and violence based on racism and intolerance”.

It comes as no surprise that the economic crisis and its dire consequences for employment has left a large proportion of the immigrant population more vulnerable and in greater risk of suffering discrimination, especially in gaining access to the labour market. The events of 2010 arising in different municipalities having to do with residence registration of immigrants or the prohibition of the integral Islamic veil (burka or nikab) in public places are examples of how issues relating to identity, culture and integration find their way into the political arena as elections draw near.

The conflicts arising in different European countries revolving around Roma from Romania, Bulgaria or the ex-Yugoslavia and which give rise to violent behaviour, and the actions of governments which not only fail to comply with Community Directives but also with the Charter of Fundamental Rights, are contributing to exacerbate these prejudices and stereotypes of the Roma population in all of Europe and run the risk of becoming the norm.

The Council for the advancement of equal treatment and non-discrimination of persons for reasons of racial or ethnic origin was created late in Spain and was born with weaknesses such as its limited mission, independence and executive capacity. Nevertheless, it is an important step forward not only because it complies with a Community Directive but also because it means that Spain now has a public body whose mission is to combat discrimination and promote equal treatment irrespective of ethnicity and race. The variety of different groups represented on the Council makes agile and effective management difficult but has the advantage of involving the key players.

Taking account of the main problems related with discrimination and the Council's limited budget, a modest work plan was proposed for the first year which focused on four pillars of action with specific objectives:

- 1. Assistance for victims of discrimination based on racial or ethnic origin. To that end the aim was to create a network of aid offices for victims of discrimination and to cooperate in identifying and helping those suffering from racial or ethnic discrimination and to implement a network of experts specialised in cases of racial or ethnic discrimination.**
- 2. Analysis and investigation in order to compile an annual study on discrimination and equal treatment focused on the perceptions, experiences and situations of people suffering racial or ethnic discrimination and an annual report on the status of discrimination in Spain and two further theme-based reports on racial or ethnic discrimination.**
- 3. Communication and awareness-raising through the Council's web page and the drafting of awareness-raising and informative materials on racial and ethnic discrimination.**
- 4. Training through courses and seminars on racial and ethnic discrimination targeting professionals working in the field of equal treatment.**

The major step forward made by the Council since the approval of this Work Plan has undoubtedly been the creation of the network of Aid Offices for victims of racial and ethnic discrimination with the collaboration of ten organisations which were considered to play a major role in carrying out this task: The Red Cross, the CEPAIM Foundation, Acción Integral con Migrantes, Fundación Secretariado Gitano, Movimiento Contra la Intolerancia, Movimiento por la Paz, el Desarme y la Libertad, Red Acoge, Unión General de Trabajadores and Unión Romani (this organization is no longer member of the network, since 2013).

Through this Network, the Council mostly hopes to detect cases of discrimination and counsel victims about how to cope with these situations both from a legal and psychological point of view. This Network will also provide for the undertaking of actions designed to prevent possible situations of discrimination and to inform those liable to suffer discrimination about their rights and the resources at their disposal to defend themselves.. Thanks to this Network, Spain now has specialised professionals working in favour of equality.

During the Network's first six months of operation the Council expects to deal with at least 160 cases of discrimination following a single protocol so that comparative information can be gathered on the usefulness and effectiveness of the service and the counselling provided. During the years to come we hope to broaden these services and improve the action protocol by learning from successful experiences and correcting weaknesses as they arise. In this way we hope to be able to adapt to the needs of (potential) victims.

We should also draw attention to the efforts being made by the Council to obtain reliable data on discrimination in Spain so that we can identify the origin of the main problems and provide the Council with the information it needs to prioritise its actions.

Lastly, aware of the importance of publicising the Council and the relevance of digital communication today especially among young people, a Web page is under development whereby (potential) victims and equal treatment professionals have access to the latest information on how to deal with situations of discrimination, what to do, where to go, etc.

Despite these initial advances, the Council must progressively consolidate its system and be provided with greater resources and means so as to be able to carry out its mission, develop the lines of activity it has established and implement new actions to meet future needs.

The fight against discrimination and the promotion of equal treatment in Spain has a long way to go and progress must be made towards a new regulatory framework, i.e. a comprehensive equal treatment law which at least covers all of the areas established in the Treaty of the Union and reinforces policies in this connection.

Aside from assistance to victims, another of the areas where the Council has advanced is publication of studies and reports on the status of discrimination in Spain. The work undertaken by the different working groups and the Council plenum has resulted in the following publications:

- 2011 report from the Network of Assistance Centres for Victims of Discrimination based on Racial or Ethnic Origin (December 2012).
- Report on the Comprehensive Bill for Equal Treatment and Anti-Discrimination (February 2011).
- Research on discrimination based on racial or ethnic origin: the perception of potential victims (December 2012).
- Proposal: "Avoid the use of discriminatory, racist and xenophobic discourse in electoral campaigns" (May 2011).
- Recommendation: "Guarantee equal treatment and the fundamental rights of the Eastern European Roma population in Spain" (May 2011).
- 2011 Annual Report on the status of discrimination and the application of the principle of equal treatment irrespective of racial or ethnic origin in Spain (December 2012).

All the documents can be downloaded here:

<http://www.igualdadynodiscriminacion.org/recursos/publicaciones.do>

Lastly, we would note that through the activity of the Council during this period, information and counsel has been provided to victims whose right to equality has been violated and proper working tools have

been created for the professionals involved in this work. These actions need to continue developing in order to combat discrimination on the grounds of racial or ethnic origin.

B. Special Public Prosecutor on Hate and Discrimination Crime Service

Miguel Ángel Aguilar García is the Public Prosecutor and Coordinator of the Hate and Discrimination Crime Service. Public Prosecutor's Office of Barcelona.

The experience gained at the Catalonia Public Prosecutor's Office, especially the Barcelona branch, has shed light on a series of common problems affecting all victims of discrimination, i.e. the irrational aversion and hatred of people simply because they are different in terms of their place of birth, racial or ethnic origin, sex, religion, beliefs or opinions, socio-economic status, age, disability or illness.

These criminal acts, an expression of racism, xenophobia, religious intolerance, etc., feature particularities which call for specialised attention and response from Public Prosecution Offices, particularly during times of economic crisis where the social and economic conditions can spark greater social dissemination of the doctrine of hatred and rejection of those who are different.

It was within this context that in the month of October 2009 the Special Hate and Discrimination Crime Service was created within Barcelona's Provincial Public Prosecution Office with the aim of coordinating the efforts of all public prosecutors composing that Prosecution Office when dealing with criminal acts related to discrimination, with a view to ensuring the necessary unity of action when interpreting and enforcing the law.

This specific and specialised action of the Public Prosecution Service, solicited by different associations and organisations working in the area of prevention and combating discrimination in all of its forms, was fruit of the need to address these shared problems affecting all victims of discrimination in a professional manner and to contribute to unification of criteria in the enforcement of the provisions of the criminal code and overcoming the technical difficulties arising from the deficient and out-of-date wording of such provisions as well as the lack of systematic coordination in the list of causes of discrimination envisaged in the different precepts of the Code and to address the dysfunctions which may occur due to the lack of unified action by law enforcement officials and the Public Prosecution Service when investigating these types of crimes, providing care for victims and determining criminal liability.

Another circumstance calling for a specialised response from the Public Prosecutor through the creation of specialised services throughout all of Spain is the growing complexity of the investigation of so-called hate crimes resulting from the proliferation of Internet pages, personal blogs and social network groups devoted to instigating hate crimes, violence and discrimination, without losing sight of the fact that an important breeding ground for racism, xenophobia and homophobia is the activity of truly violent groups or urban tribes which tend to rally around a particular type music, appearance, sport, etc. such as the "skinhead" movement, a violent and racist subculture whose aggressiveness has been denounced by the Commission on Racism and Xenophobia of the European Parliament and numerous prestigious organisations devoted to the battle against discrimination such as "The European Network of Legal Experts in the Non-Discrimination Field"^[2], "Migration Policy Group", "el Movimiento contra la Intolerancia"^[3], "SOS Racismo"^[4] etc.

Following are the most prevalent problems which we have observed and which affect victims of discriminatory crimes in a similar way:

Ignorance as to the number of crimes.

One of the important problems identified is the complete lack of data on criminal acts involving discrimination committed within the territorial limits of Catalonia. This same problem affects the rest of Spain with the sole exception of criminal acts involving discrimination based on sexual orientation or identity which are reported at regional police stations (Mossos d'Esquadra). These data have been made available since the approval of a specific protocol followed by the regional police force regarding this type of act. Very recently, at the beginning of April 2010, the Mossos d'Esquadra regional police force passed a new protocol allowing for the classification and quantification of complaints filed relating to crimes or misdemeanours related to any form of discrimination envisaged in the criminal code.

The problem has two components:

1. Acts not reported: There is good reason to believe that many of the crimes committed are never reported meaning that there is an unknown number of criminal acts which victims, for any number of reasons, decide not to report or are not even aware that they can report.

The reasons are varied and range from victims of discrimination who are unaware of their rights (for example, some people do not know that it is a crime for someone to refuse to serve them in an establishment because of the colour of their skin), to those who do not trust the police or the justice system because they do not think they will be listened to or believed, and those who are afraid to report the crime because of possible personal repercussions.

Aliens are the most vulnerable victims, especially those living illegally in Spain. They often are not aware of their rights and fear that by filing a complaint they could be deported. In some cases they fail to report a crime because they feel that their testimony will carry less weight than that of their aggressor if the latter is a Spanish national. Some even refuse to file complaints because they do not trust law enforcement officials due to the traumatic experiences some have suffered at the hands of the police in their countries of origin.

In the case of victims of discrimination based on sexual orientation or identity, failure to report a crime often has to do with a founded fear that filing a complaint would reveal their sexual orientation to their family, their employer or their social circle, especially in small or rural towns. Sometimes, a crime committed in very intimate circumstances is a factor keeping victims from reporting and often times perpetrators take advantage of this sense of impunity.

The Roma population often has the feeling that it is useless to report crimes. Roma victims are often quoted as saying "nothing good ever comes of this; this won't change anything" and this is reflected in the Fundación Secretariado Gitano's 2009 Annual Report.

In this connection, the prestigious Fundamental Rights Agency (FRA) of the European Union conducted a survey involving 23 500 European Union citizens belonging to ethnic or racial minorities and immigrants which was presented to the public in Stockholm in December 2009 [\[5\]](#), and revealed the following:

- 12% of those surveyed claim to have been victims of a crime of discrimination in the last twelve months and 37% of being involved in a discriminatory situation.
- Of these, nearly half (46%) were unaware that there were laws prohibiting all forms of discrimination against persons for reason of race or ethnic background in restaurants, bars or clubs.
- 82% of those who had been victims of discrimination in the last twelve months had not reported the crime and the main reason (given by 64%) was that it "would not have done any good".
- 80% did not know of any organisation which could help or counsel victims of discrimination. This shows that there is an urgent need to provide better information.

The most blatant discrimination is against the Roma population where one out of every two people interviewed claimed to have suffered discrimination during the last 12 months. Discrimination figures were also high among North Africans (36%) and Sub-Saharan Africans (41%).

Morten Kjaerum: "The study shows that the overwhelming majority of those surveyed do not report cases of discrimination or racist crimes to any official body. Thousands of cases of racist crime and discrimination are never made public. This means that the perpetrators of these crimes go unpunished, victims receive no justice and policy-makers are unable to take the appropriate steps to prevent these infractions from happening over and over again. It is our hope that the data from this new survey raise awareness with regard to the need to develop political responses with more concrete objectives to deal with this social menace."

Morten Kjaerum further affirmed that "the situation raises important issues such as how to raise awareness of people's rights and reinforce trust in existing protection mechanisms." "It is important to encourage victims of discrimination or harassment to report these experiences and assure them that they will be taken seriously".

2. Incomplete IT systems: The second component has to do with the organisation of the statistical systems of law enforcement officials of the justice administration itself. Police IT systems at the Public Prosecutor's Office and Courts of Justice do not have specific labels to first of all classify and secondly to quantify criminal infractions which could be motivated by discrimination.

This means that the public authorities have no idea as to the real number of hate crimes or crimes which have some discriminatory component and this implies an added difficulty when it comes to designing suitable policies to combat these crimes.

The exception is crimes committed against individuals on the basis of their sexual orientation or identity which have been registered and quantified as from July 2008 in accordance with the approval of the Protocol of the Mossos d'Esquadra Regional Police Force on police intervention in crimes against persons motivated by their sexual orientation or gender identity by the Regional Ministry of the Interior of the Generalitat de Catalunya at the initiative of the Prosecution Service. This was the first time in all of Spain that specific information was gathered and saved in computer systems regarding crimes of discrimination based on a person's sexual orientation or gender identity. As already mentioned, this protocol was replaced by the April 2010 protocol which covers all discrimination crimes envisaged in the criminal code and at the beginning of 2011 will provide the first set of statistics on criminal discrimination reported.

In order to gain insight into the real breadth of discrimination crimes, all national, regional and local police and security forces would have to make arrangements for the registration of every complaint according to the type of discrimination (racism, xenophobia, disability, age, sex, beliefs, religion, etc.).

Taking as reference this experience of Public Prosecutor in Barcelona, in the last years other services of Public Prosecutor against Hate Crime have been opened in Málaga, Madrid and Sevilla. It is foreseen to open similar offices in all provinces of Spain in the near future.

4.2. Good practices to combat discrimination against Roma.

- 4.2.1. Creation of the Network of Assistance Centres for Victims of Discrimination and activities undertaken by the Council for the Promotion of equal treatment and non-discrimination based on racial or ethnic origin.**

The mission of the Council for the Promotion of equal treatment and non-discrimination based on racial or ethnic origin is to promote the principle of equal treatment and non-discrimination in different walks of life such as education, health-care, housing, employment and access to all types of good or service.⁶

One of the Council's most important lines of work is **to provide independent assistance to victims of direct or indirect discrimination based on racial or ethnic origin in processing their complaints**. In June 2010 the Network of Assistance Centres for Victims of Discrimination based on Racial or Ethnic Origin was created. This network is formed by different organisations all of which are working to achieve equal treatment for different vulnerable groups of the population. The Fundación Secretariado Gitano forms part of three of its working groups and is leader of one of them.

The Network of Assistance Centres for Victims of Discrimination based on Racial or Ethnic Origin was devised to allow Network members to put together a common action protocol based on a service handbook.

Following is a summary of the points listed in the service handbook and subsequently used to draft the action protocol:

- **Take action to prevent possible situations of discrimination.**
- **Inform people in risk to be a victim to discrimination of their rights and available resources.**
- **Detect cases of discrimination as they occur.**
- **Support and advice victims of discrimination.**
- **Develop social awareness-raising actions.**

This Network had points of information distributed around Spain and included the following member organisations:

- ACCEM
- Spanish Red Cross
- CEPAIM Foundation
- Fundación Secretariado Gitano
- Movement against Intolerance
- Movement for Peace, Disarmament and Freedom
- Acoge Network
- Unión Romani

In 2010, these organisations responded to a total of 235 notifications of discrimination (188 individual and 47 group cases) and were able to verify clear evidence of discrimination in 212 of them (167 individual and 45 group cases).

In 2013 the Direction of Equality of Treatment and Equality of the Ministry of Health, Social Affairs and Equality, responsible of Equality of Treatment Policies, decided to renew the services for attention of victims and published a call of public procurement . Fundación Secretariado Gitano won the contract and now is implementing the service with 6 organizations (the same of the previous Network, without Union Romani). The new service will open offices in the 17 Regions of Spain and in Melilla, a website, an email and a call center to receive cases of discrimination. The Service will train key agents (police, lawyers, ONGs, etc.) and implement aware rising campaigns to prevent discrimination based on race of ethnic

⁶ Royal Decree 1262/2007 of 21 September 2007.

origin. The Service set up a **common protocol to collect the cases and proceed** (see Annex at the end of this document).

4.2.2. Platform “Management of Diversity and Police Services”.

In 2010 the National Union of Directors of Local Polices (UNIJEPOL) and 9 NGOs (Fundación Secretariado Gitano among them), with the support of Open Justice Initiatives, set up a Platform on Management of Diversity and Police Services.

The Platform has established the following priority objectives of work:

- Sensitize authorities regarding Public Security and the police about the need of policies promoting management of diversity.
- Promote the improvement of police training on diversity management (including anti-racism).
- Get specific statistical recording of hate crimes and establish discriminatory policing protocols on this matter by the competent institutions.
- Foster approach between the Police and minority communities and their participation in Police forces and public security.
- To foster better police attention to people belonging to minority communities (Roma, LGBT, people with disability, migrants, etc.).
- Define criteria on policing identification in the street, to establish prevention and avoiding "ethnic profiling".
- Promote positive action to facilitate entry into the Police and auxiliary services of persons belonging to minority communities.
- Disseminate and recognize good practice and positive action developed by Policies on diversity.
- Publication of a Guide on Management of Diversity addressed to directors of Police forces (May 2013).

<http://www.gestionpolicialdiversidad.org/contacto.html>

4.2.3. Awareness rising campaigns against discrimination of Roma.

Combating stereotypes and prejudices against Roma is also an important policy to promote equality of treatment.

In the last years some Roma organizations are implementing aware rising campaigns to promote a better understanding of the diversity and richness of Roma, and to analyse stereotypes that hamper their social inclusion.

Publications to know better Roma culture and history, by Union Romani:

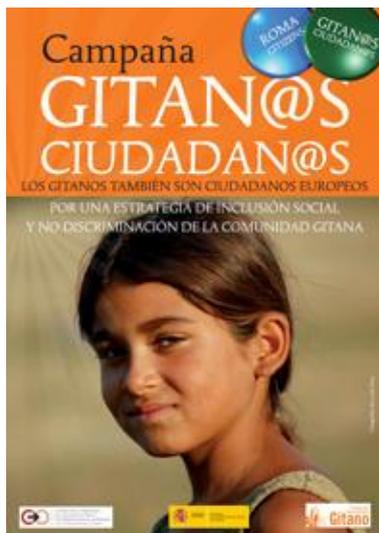
http://www.unionromani.org/publicaciones_in.htm

Knowing Roma Woman of Today, by Fakali Association:

<http://www.mirastudio.es/FakaliAmuradi/MaraCD/home.swf>

Campaign “Roma are also European Citizens”, by FSG and ERPC:

<http://www.gitanos.org/citizens/>



Spain joined Council of Europe's *Dosta! Campaign* against stereotypes of Roma in April 2013:
www.dosta.org



Campaign "Get to know the Roma before judging them", by Fundación Secretariado Gitano:
<http://www.gitanos.org/conocelos/web/>

Campaign "Roma with Studies, Roma with Future":
http://www.gitanos.org/campañas/roma_with_studies_roma_with_a_future.html.en

The FSG decided in 2009 to focus its main awareness-raising actions on education in the coming years and thus launched the campaign "[When I grow up I Want To Be...](#)" in 2010/2011, with a view to raising the awareness of Roma families of the importance for their children of completing their secondary education, a campaign that received the recognition of the European Commission as "Good Practice" on two occasions.

In the academic year 2012/2013, FSG took a step forward by launching a new campaign aimed this time at teenagers (12 to 16 years old), with the same objective: to encourage them to complete secondary education and to pursue their post-compulsory studies.

Financed by the Spanish Ministry of Health, Social Services and Equality through the Spanish income tax programme "Other social purposes" and by the "Fight against Discrimination" programme of the European Social Fund, this campaign was launched in the Autumn of 2012.

4.2.4. Data on discrimination against Roma, 2011-2012 (extracted from the FSG Annual Report Discrimination and Roma Community 2012):

We are now immersed in a complicated socio-economic situation which is widening the inequality gap in our country. Spain has been a benchmark at European level for its social inclusion policy targeting the Roma community, a group which over the last 30 years has made important strides in several areas such as employment, housing, education, etc. thanks to public policies in the sphere of equal opportunity. However, despite these efforts, the Roma Community is still not at the level of mainstream society.

The ease with which this vulnerable group has arrived to the brink of taking a huge step backwards in the social inclusion process is particularly worrisome and we must therefore bolster the public policies guaranteeing equal opportunity in vital areas such as education, housing, employment, health and non-discrimination as a cross-cutting factor affecting all of these. It is therefore essential to execute a National Strategy for the Social inclusion of the Roma population (2012-2020) and the national strategy against racism, racial discrimination, xenophobia and other related forms of intolerance.

In the sphere of equal treatment and non-discrimination of the Roma community, deep-seated prejudices against this ethnic minority continue to engender serious social rejection which is plain to see in the cases registered, in the different Eurobarometers and the surveys conducted by the Sociological Research Centre. To make matters worse, today we are faced with discriminatory and racist incidents and expressions of hatred, especially on the Internet. The racist discourse of some Spanish political leaders is also cause for concern.

According to the cases detected, the main issues of concern are the following:

1. Discrimination in the Media—cause for concern

Fifty-two per cent of the cases registered in 2011 were in the sphere of the media. Following are the reasons for the high number of discriminatory incidents in this area:

The FSG has a press alert service run by the documentation centre and we also monitor publications through the area of communication and at each of our territorial offices.

It is important to realise that in these cases no specific victim needs to file a complaint for discrimination thus making them easier to detect and record.

Following are the conclusions of the work performed in this area:

Over 90% of the cases are related to items in the written or digital press where the ethnic origin of those involved in the stories is specifically mentioned.

We would stress that in these cases knowing the ethnic group of those involved does not contribute to the comprehension of the news story and only serves to reinforce the negative image of an entire community already seriously affected by prejudice resulting in social rejection. Also, the use of stereotyped terms such as *reyerta* (brawl) or clan create an association in people's minds between this minority group and some negative behaviour.

Another aspect we must not lose sight of is the fact that the right "to freely express and disseminate thoughts, ideas and opinions by word, in writing or by any other means of communication" granted by the Spanish Constitution is not without limits nor is it absolute. The Constitution itself lays down limits in referring to "*respect for the rights recognised in this Title, by the legal provisions implementing it, and especially by the right to honour, to privacy, to personal reputation and to the protection of youth and childhood*". In addressing the problem of the conflict between the fundamental right to honour and the right to freedom of expression, Supreme Court doctrine has established that "*freedom of expression cannot be invoked to legitimise an alleged right to insult others given that this would enter into conflict with the dignity of persons proclaimed under Article 10(1) of the Constitution*".

Action taken by the Area of Equality

When confronted with a discriminatory news item, the area of equality follows a pre-established protocol. First we analyse it and then contact the media in question sending them a letter of complaint along with a copy of the FSG's "*Practical guide for journalists; equal treatment, discrimination and the Roma community*" and always avail ourselves to help find a solution. This year we have received few conciliatory responses but have noted a slight improvement vis-à-vis previous years in terms of apologies from the directors of some newspapers.

We therefore believe that we must continue to work on the training and awareness-raising of this professional sector which is vital in building the social image of the Roma community.

The remaining 10% of the cases in this area have to do with discriminatory comments, sometimes expressing hatred towards the Roma community, in Internet fora, web pages and television programmes disseminating images and discourse encouraging the rejection of the Roma Community.

We are particularly concerned about the repercussions of Roma-phobia on the Internet where a discriminatory incident can expand exponentially and the anonymity of the perpetrators makes it all the easier.

Work performed by the Area of Equality.

Today there are few tools to effectively combat discrimination on the Internet, the complaint mechanism provided by some servers proving ineffective. However, when people join forces and react by sending multiple complaints against these intolerable comments, the discriminatory content is often removed. We therefore consider this a good strategy to achieve a short-term positive result.

However, there are certain types of racist, discriminatory and hate content which could even constitute a criminal act and in this case the channels are different. A formal complaint must be filed through the hate and discrimination crime service set up at some prosecution offices such as in Barcelona, Madrid, Seville, Malaga, etc. In this sense we applaud the Organic Law bill submitted on 11 October 2012 calling for the amendment of the 1995 criminal code, specifically Article 510, which will adapt our law to Framework Decision 2008/913/JAJ and classifies the crimes of incitement to hatred or racist violence and the production or distribution of materials designed to incite hatred or violence against minorities. It also includes measures to deal with the destruction of documents, files or materials used to commit these crimes.

2. The most vulnerable have greater difficulty in accessing employment due to the barrier of discrimination

Of the 16 cases in the field of employment, 87.5% occurred at the access stage, i.e. victims were denied employment without considering their qualifications for the opening. They were either not given an interview or were rejected during the selection process when the employer found out that they were Roma by their surnames or certain physical traits.

Social rejection in this area is very worrying given the current economic crisis where unemployment of the Roma community stands at 36.4%⁷ and considering that employment is a requisite for social inclusion.

It should also be noted that, according to the study “Roma, Employment and Social Inclusion” published in 2012 by the FSG, discrimination in employment affects mostly people between the ages of 25 and 44 who are unemployed, have family responsibilities and little education. Those who are illiterate are hit particularly hard.

According to that same study, the Roma population feels the greatest degree of discrimination precisely in the context of job seeking. Almost half of all Spanish Roma have experienced these feelings in the past twelve months when looking for work. This percentage is quite similar to the figure recorded in the previous study conducted in 2005 (53.4%), indicating that the discriminatory situation has not substantially improved in the interim.

In addition, we have found that refusing access to employment on discriminatory grounds (naturally there is no labour contract) is particularly hard to combat. Moreover, as in previous years, the victims of this sort of discrimination are reluctant to file a complaint for fear of the repercussions this could have on their job search.

For all the above we advocate:

Awareness-raising and involvement of the business sector in this area, appealing to their obligation to refrain from discriminatory hiring practices and introducing them to businesses that are exemplary in terms of inclusion and diversity

Action on the part of the Labour Inspectorate to ensure compliance with the principle of non-discrimination when it comes to hiring practices, something that has not been done to date.

Continued development of programmes in this time of crisis to help the most vulnerable gain access to employment because they are the ones facing greatest rejection and the least likely to escape from social exclusion.

Bringing ethnic discrimination cases in the sphere of employment to the courts and applying the appropriate regulations, particularly Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

3. Problems defending non-discrimination in the area of housing

We recorded 13 cases of discrimination in the area of housing and all related to access, either buying or renting.

In this context, and given that we are dealing with the rights of individuals, victims find themselves in a serious state of defencelessness with regard to the right to equality.

⁷ Data taken from the study entitled “Roma, Employment and Social Inclusion” FSG, 2012.
http://www.gitanos.org/upload/60/99/empleo_e_inclusion_social.pdf

In most of the cases reported, estate agencies discriminate on behalf of homeowners who make it clear that they “do not want their home purchased or rented by a Roma individual or family”.

Housing is a basic social right, vital to the residential inclusion of the Roma community, and therefore we need a mechanism to defend victims of discrimination in this sector such as the one envisaged in the Comprehensive Equality bill which, in the end, was not approved. Unfortunately, homeowners are not bound to uphold the right to equality in this context.

4. An independent body must be created to defend victims of discrimination

The independent body called for under Article 13 of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, transposed into Spanish law, has still not been created. This has a negative effect on the approach taken to fight discrimination. Victims must be informed, advised and accompanied throughout the process of defending their rights and therefore need such a body. The prevailing sense of futility people feel when it comes to defending their rights and the lack of comprehensive defence mechanisms, are some of the main reasons that people suffering this type of injustice do not report it.

In this regard we would highlight the words of the former Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, who denounced this situation in 2011 through his “Report on the human rights situation of Roma in Europe” (*Human rights of Roma and Travellers in Europe*), “*These problems are compounded by the failure of the justice system to respond adequately to complaints from Roma on racial discrimination and other abuses. Efforts to improve the efficiency of the justice system’s response to discrimination should include the establishment of effective measures against discrimination, as well as specialised agencies and mechanisms to deal with complaints and assist in the implementation of the legislation.*”

5. Law enforcement officials as key players in combating discrimination

Although the role of law enforcement officials is to ensure compliance with the law and safeguard citizens, all our discrimination reports have recorded cases of discriminatory practices by the police such as ethnic profiling, racist insults during police actions and even occasionally disproportionate physical aggression.

In some other cases we have recorded discriminatory behaviour on the part of private security agents that monitor and control Roma in shops because they suspect they are liable to commit an offence.

It is essential to continue offering training activities and joint work with all professional groups entrusted with guaranteeing equality and therefore one of the cornerstones of our intervention focuses on educating and raising the awareness of this group of professionals.

Moreover, in the area of public security, we need a state-wide register of racist incidents detected by Spanish law enforcement officials and a police protocol to assist victims of discrimination. We hope that immediate action is taken in this regard to provide effective defence against racist and discriminatory incidents, many of which are hate-related. This register would also serve as an objective database which we currently do not have, a disturbing reality that really must be addressed.

6. Racist and discriminatory rhetoric by political leaders

Unfortunately, in 2011 and 2012 some Spanish political leaders made racist and discriminatory statements in public. Public authorities are entrusted with the task of ensuring fundamental rights for all citizens while adhering to the principle of equal treatment and promoting the values necessary for appropriate social coexistence. There is no place in a democratic state for discriminatory rhetoric from political leaders.

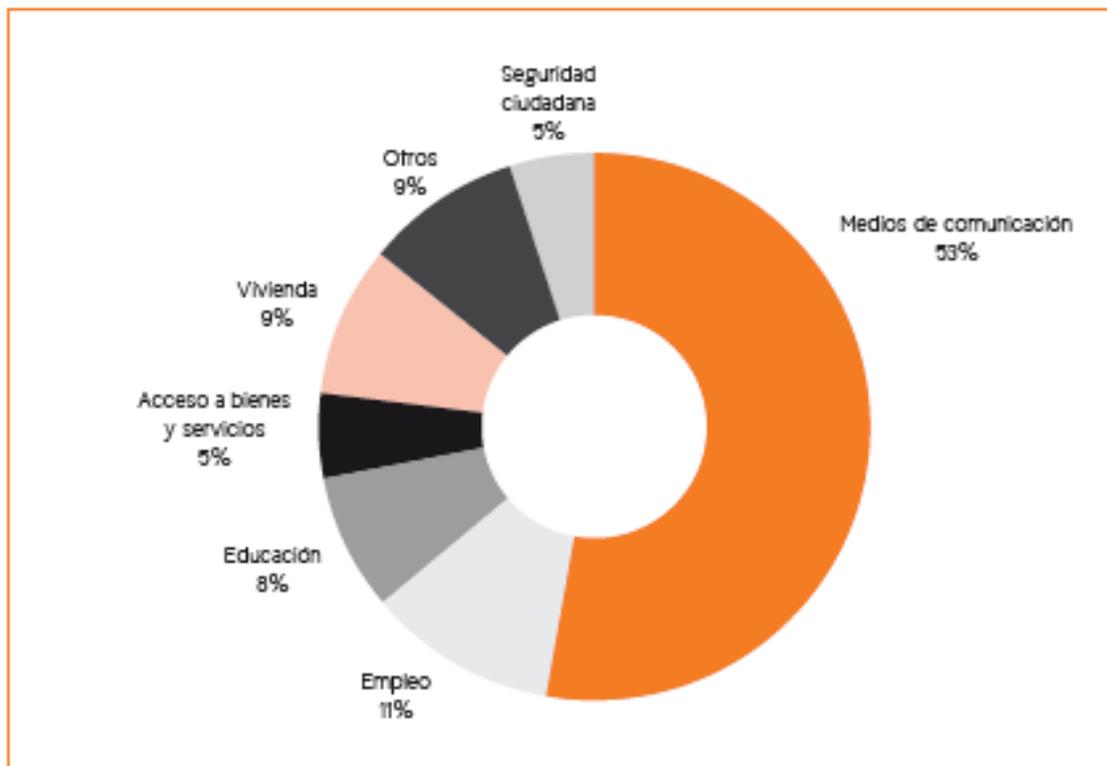
Former Human Rights Commissioner of the Council of Europe Thomas Hammarberg, denounced this situation in his 2011 report on the human rights situation of Roma in Europe: “The consequences of xenophobic statements by political leaders should not be trivialised. We have seen cases of violence against Roma in the Czech Republic and Hungary. Anti-Roma sentiment still prevails across Europe. In times of economic problems there appears to be an increased tendency to focus frustration on scapegoats—and Roma seem to be one of the easy targets. Instead of fishing in troubled waters, local and national politicians must uphold the principles of non-discrimination and respect for people of different ethnic backgrounds. At the very least, politicians should avoid this anti-Roma rhetoric.”

Presentation of disaggregated data

In this section we present the disaggregated data from the 148 cases of discrimination collected by the FSG in 2011.

Areas of discrimination:

- The media: 78
- Employment: 16
- Education: 11
- Access to goods and services: 8
- Housing: 13
- Other: 13
- Citizen Security: 8
- Health-care: 1



Media 53%

Employment 11%

Education 8%

Access to goods and services 5%

Housing 9%

Other 9%

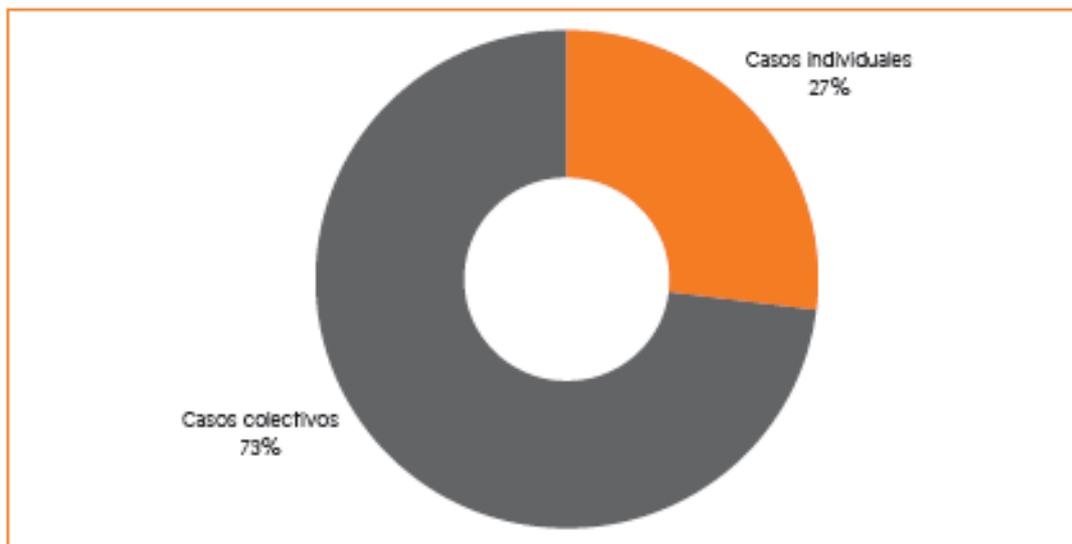
Public safety 5%

Cases:

- Individual: 41
- Collective: 107 of which:
 - affect the entire Roma community: 85
 - affect a group of Roma people: 22

Individual cases 27%

Group cases 73%



Note that there are 41 cases involving an individual victim and 22 cases in which discrimination mainly affects a group of ethnic Roma in the field of housing, access to public places and access to training and labour internships.

Victims:

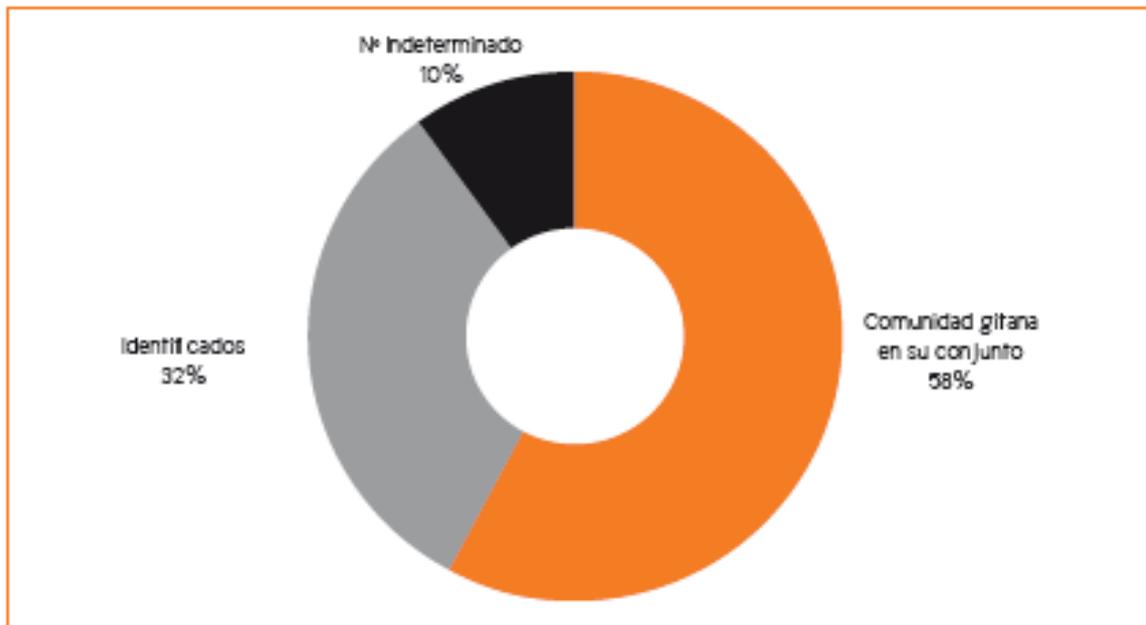
In 48 of the 148 cases we were able to individualise the number of people affected, the total coming to 56 victims.

Of the remaining 100 cases, in 85 the victim is the Roma community in general while the other 15 cases involved an undetermined group of Roma.

Roma community as a whole 58%

Undetermined number 10%

Identified 32%



Breakdown of victims by gender.

Of the 56 individual victims, 31 were women and 25 were men.

Men 45%

Women 55%

Age of the victims

Between 0 and 15: 4

Between 16 and 30: 25

Between 31 and 45: 24

Between 46 and 65: 3

Between 0 and 15, 7%

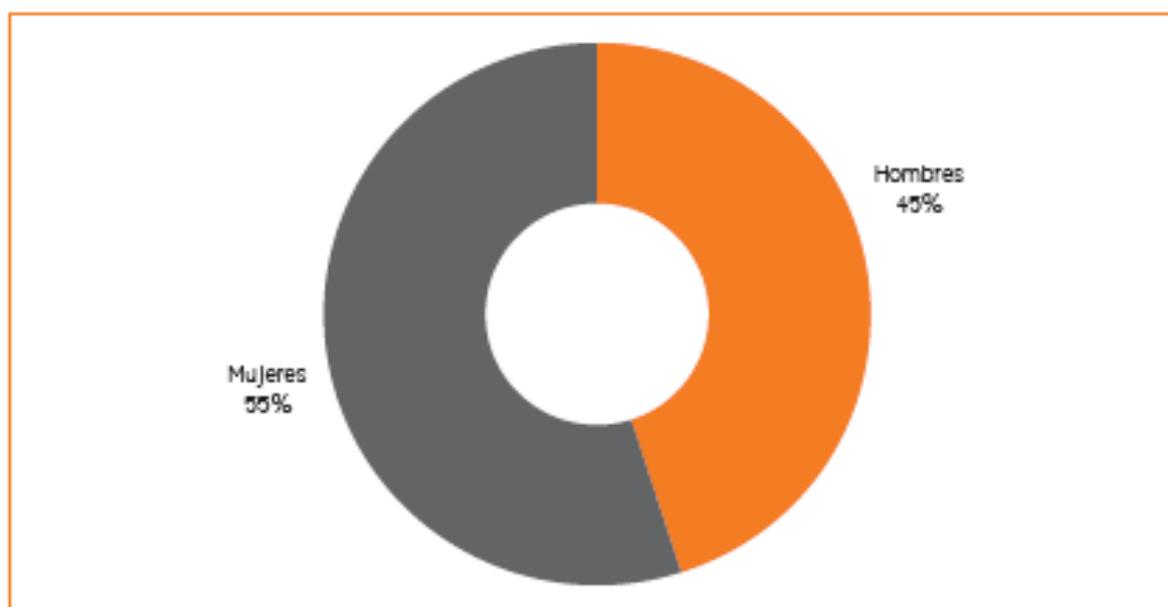
Between 16 and 30, 45%

Between 31 and 45, 43%

Between 46 and 65, 5%

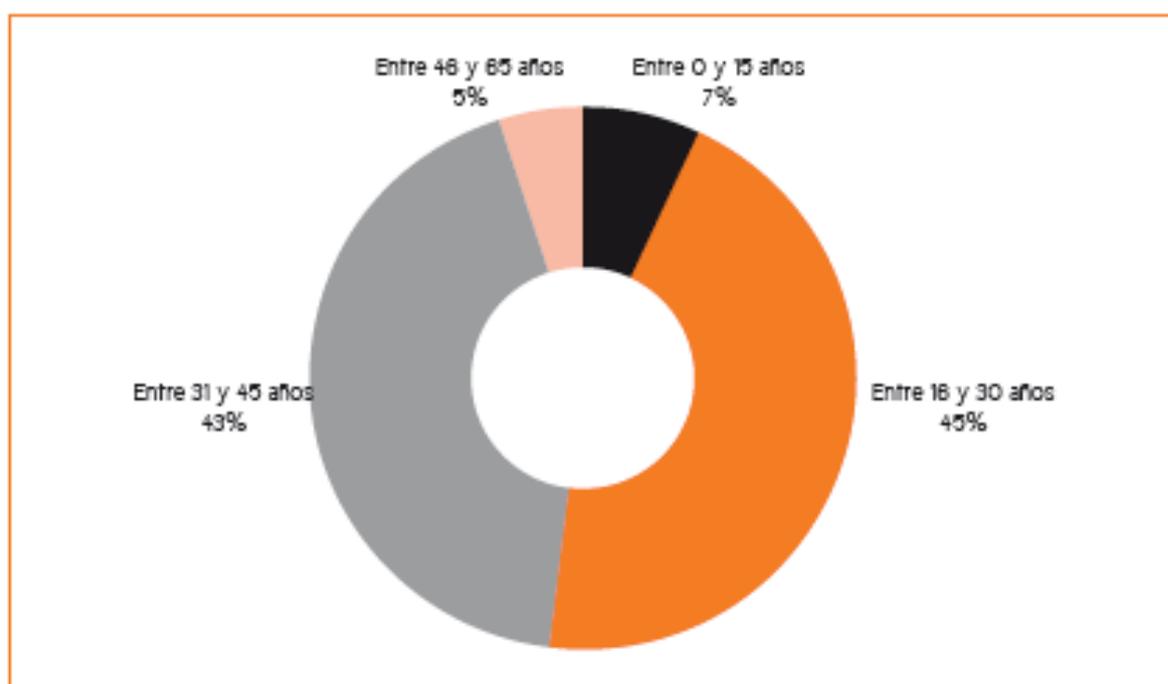
Distribución de las víctimas según sexo.

De las 56 víctimas individualizadas, 31 son mujeres y 25 hombres.



Edad de las víctimas

- Entre 0 y 15 años: 4
- Entre 16 y 30 años: 25
- Entre 31 y 45 años: 24
- Entre 46 y 65 años: 3



ANNEX:

Protocol of the Network of Assistance Centres for Victims of Discrimination based on Racial or Ethnic Origin:

