



DISCRIMINATION

AND THE ROMA COMMUNITY

**In-depth:
Study of 9 cases
of discrimination**



Introduction

In the discharge of its consultative function and accompaniment of victims of discrimination in proceedings to defend their rights, the FSG has a number of different tools at its disposal for the identification and collection of cases and also has its own intervention strategy based on dialogue, communication, mediation, conciliation and, in some cases, legal action.

In this connection, despite initial reluctance to file complaints for discriminatory practices, since the creation of its area of equal treatment the FSG has observed heightened awareness and knowledge on the part of the Foundation's habitual users and this has meant that, thanks to the help received from different organisations and legal professionals, an increasing number of the complaints received are making their way to the courts with varying degrees of success.

This was true of 8 of the 9 cases selected in this section, some of which had a favourable ending for the victims while others did not and others are still pending final judgement from the court. These cases correspond to the areas of employment, social rights, racist violence, entertainment goods and services, public authorities and anonymous publications with racist or discriminatory content.

The complaints were filed by the victims themselves with the support of the FSG or by the Foundation itself especially in cases where the discrimination or racism did not affect an individual person but rather the community as a whole.

As mentioned above, not all of the judgements delivered in these cases were in favour of the victims but were nonetheless included in this study because we feel that an in-depth analysis of this sort will help us to discover the shortcomings and main problems faced in enforcing anti-discrimination regulations and will give us insight into the alternatives at our disposal to make them more effective.



Social rights: the same for everyone?

Today, the overwhelming majority of Spanish Roma register their marriages as provided by law but in this section we will look into a case of a marriage by the Roma rite shortly after the approval of the 1978 Constitution which recognised for the first time the equality of all Spaniards under the Law and abolished discriminatory regulations which existed under the former political regime.

This case is very similar to the well-known La Nena case which the FSG supported and concerning which an unfavourable judgement was just recently delivered by the Constitutional Court. We will analyse that judgement in some depth given its possible repercussions on the this case and others like it.

Both cases raise a key question: Is it lawful to require certain formal responsibilities at a time in recent history when rights of citizenship and individual freedoms were just beginning to be fully recognised for the first time in the case of Roma, the latter not yet fully conscious of this fact?

Case description

Following the death of her spouse, a Roma woman applied for widow and orphan benefits on 26 July 2006. While her four children were awarded orphan benefits, her application for a widow's pension was denied because she *was not and had not been the legal spouse of the deceased because the couple had not contracted marriage prior to the date of his death.*

This woman had been living with her husband since 20 June 1980 until his death on 6 July 2006 along with their four children, fruit of their relationship. Furthermore, the couple had made arrangements for a civil marriage in Murcia scheduled for 7 July 2006. The marriage file had been formally submitted at the Civil Registry and once authorised by the Court, the two parties expressed their desire to formalise their marriage before a Justice of the Peace. Hence, the only reason that the marriage did not take place was the death of one of the spouses the day before the marriage. The woman also argued that they were unable to initiate the marriage process sooner due to her spouse's illness for which he was awarded full disability in 2005.

In any case, on 20 June 1980 the spouses were married in the Roma ethnic tradition and as from then consensually lived as a couple and formed a family according to the customs of this minority at that particular time in history.

When she was denied her widow's pension she turned to the FSG for help and was instructed to file a preliminary claim which she did on 2 October 2006 and then a formal legal complaint at the social court on 14 November 2006. Today the case is still pending judgement from the court.



Analysis

As mentioned in the foregoing, this case is very similar to another known as the La Nena case where a Roma woman (L.M.) got married in November 1971 in accordance with the traditional Roma rite. L.M. was married until her husband's death on 25 December 2000. The couple had six children according to the data registered in the family record book and Social Security filiation entries.

Following her husband's death, L.M. applied for her widow's pension at the National Social Security Institute but was denied such pension prompting her to file a legal complaint. On 30 May 2002 Social Court No 12 of Madrid delivered a judgement in favour of her demands (Judgement 217/2002) but the National Social Security Institute (Spanish acronym INSS) lodged an appeal for reversal to the Social Affairs Division of the High Court of Justice of Madrid. On 7 November 2002 this Court delivered a new judgement revoking the previous one.

With the support of the Fundación Secretariado Gitano, L.M. lodged an appeal for legal protection at the Constitutional Court on 12.12.02. The appeal was admitted by this Court on 06.05.03 but four years later it ruled against her. One of the magistrates who voted against the ruling denying the appeal for legal protection argued that this was tantamount to discriminatory treatment as we will analyse further on.

Nonetheless, the High Court pointed out that "until which time legislators enact a legal regulation laying down the material and formal conditions whereby unions celebrated in accordance with Roma rites and uses are recognised as civil marriage, one cannot conclude that the refusal to award a widow's pension in these types of cases is tantamount to discriminatory treatment for social, ethnic or racial motives".

The FSG holds that both in the La Nena case as well as in the one described in this report, there are a number of elements which the court should take into consideration and which should lead to the recognition of the widows' appeals in these cases:

- The widows' marriages were publicly recognised in their social circles meaning that the formal act by which they were united was witnessed and recognised by the Roma community as a form of matrimonial union and, in fact, joined the spouses in their everyday conjugal activity, the latter taking on the same responsibilities characterising other forms of marital contracts which are recognised by civil society.
- Moreover, in the La Nena case, in addition to this social recognition there was also implicit acknowledgement of their union by the Administration via the family record book and the family's Social Security card. In other words, the rights bestowed on the family while the husband was living were denied once the latter died.



- Refusal to grant the widow's pension was based on the doctrine of equal legal responsibility required of all citizens. It should be stressed, however, that in one of these cases the union took place prior to (1971) and the other immediately subsequent to (1980) the passing of the Spanish Constitution which for the first time acknowledged the Roma people as full-fledged citizens rendering null and void the discriminatory provisions in force under the Franco regime (former dictatorial regime). As alluded to in the introduction, it would not appear fair to require the same formal responsibilities across the board for all citizens at an historic period in our country when citizens' rights and individual freedoms were not or had only recently been fully guaranteed for the members of this minority.
- Without prejudice to headway made during the last 25 years, Spanish Roma today continue to be left out, a situation which perpetuates the historic discrimination they have traditionally suffered. Considering the fact that a large proportion of the members of this minority continue to live in socially precarious situations, refusal to award economic benefits of this sort inevitably fosters the perpetuation of exclusion circumstances preventing full social incorporation. In this connection, it is essential for judicial bodies to pay special attention to rulings against these appellants which could contribute even more to their social marginalisation.

Although the appeal in the La Nena case was dismissed, the individual vote by Magistrate J.R.Z. was particularly significant. In the view of this Judge, this was indeed a case of discriminatory treatment and he therefore underscored the need for legislative intervention not only to resolve the situation of this woman (mother of six children) but also to guarantee "protection and respect for cultural identity" in cases such as these exhibiting full compliance with constitutional law. In other words, the couple's union did indeed fulfil all of the prerequisites of a marriage, i.e. a formal ceremony, duty of fidelity, required conjugal behaviour, living in community and others.

The Fundación Secretariado Gitano (FSG) has been providing legal counsel to L.M. in this case and is contemplating submission of her case to the European Court of Human Rights in Strasbourg once the appeal route has been exhausted in Spain in light of the possible negative repercussions that the judgement could have on other similar cases such as the one analysed in this report and whose judicial proceedings are being supported by the FSG.

Supplementary documentation:

www.gitanos.org/publicaciones/discriminacion07/anexderechos_sociales.pdf



Discrimination in Employment: reversal of the burden of proof?

The 2007 report includes 19 cases of discrimination within the sphere of employment, a large proportion of which focus on the barriers faced in gaining access to the labour market given the reluctance on the part of the business community to engage Roma persons. Once these initial barriers are overcome, we find that the ethnic origin of workers can give rise to harassment or other common (albeit illicit) practices which often result in the dismissal of the worker. Although generally speaking, as can be seen in the cases described in this report, victims are still reluctant to take their cases to court either out of fear of reprisals or mistrust of the legal system, it is important to stress the importance of those cases in which some sort of action was taken, be that mediation or the lodging of a formal complaint with the courts, because this opens new possibilities in the fight against discrimination and promotes social change.

Specifically, we are going to analyse in some depth one of those cases which is still pending final judgement from the courts: that of two Roma workers who may have been dismissed for reason of ethnic background.

Case description

Two Roma men, having satisfactorily passed all of the selection process access tests, were selected along with 36 others out of over 100 applicants, to engage in bus cleaning and provisioning work at the bus depot of a Madrid transport company. They commenced work on 27 June but on 30 October 2006 the company notified them that they would be let go on 31 October 2006 for failing to pass the six-month trial period stipulated in the labour contract.

According to the workers' statements, while on the job some of their superiors had directed comments and criticisms at them referring exclusively to their ethnic origin, frequently referring to them with expressions such as "you, the gypsies". Moreover, they were assigned to clean graffiti from both the inside and exterior of the buses with greater frequency than the rest of their co-workers with the same status and job description, a task implying the use of chemical solvents which can have adverse effects on the respiratory system and were not provided the necessary safety equipment. To make matters worse, when these two workers requested rain gear so as to be able to work outside in inclement weather, gear that their co-workers were provided with, they were told to "use an umbrella".

Despite these situations, the claimants did their work in a diligent fashion and had not received any sort of sanction from the company during the more than four months preceding their dismissal. Faced with this situation, one of the wor-



kers approached the FSG for advice and was told that the case presented sufficient evidence of labour discrimination and merited the lodging of a legal complaint. The FSG analysed the case and then forwarded it to the Legal Assistance Service (Spanish acronym SAJ) against Racism and Xenophobia of the Madrid Bar Association with whom it collaborates on a regular basis which likewise advised the workers to challenge the dismissal.

On 12 December 2006 an attempt was made at conciliation through the Mediation, Arbitration and Conciliation Service (Spanish acronym SMAC) but to no avail because the company was not willing to reinstate the workers or to pay them compensation. Hence, a claim was lodged for discriminatory wrongful or alternatively unjustified dismissal. The hearing was held on 5 February 2007, the claimants being represented by the SAJ Racism lawyers of the Madrid Bar Association. The FSG took part as an expert witness ratifying a report compiled concluding that this is a case of labour discrimination. A member of the Comisiones Obreras trade union also took part as a witness supporting the claimants.

The court delivered its judgement on 21.03.07 ruling against the pretensions of the claimants. On 29 March 2007 the claimants filed an appeal to a higher authority which is still pending judgement.

Analysis

This case exemplifies the difficulties faced in implementing one of the main novelties introduced by Directive 2000/43 promoting equal treatment and the fight against discrimination between persons for reasons of racial or ethnic origin: reversal of the burden of proof.

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

Generally speaking, as can be deduced from the judgement in the case at hand, the courts require those who claim to have suffered discrimination a minimum amount of at least prima facie evidence. Simple presumption does not suffice in invoking the reversal of the burden of proof despite being so established in the Directive. It is necessary to at least prove unfair treatment and that the latter could be motivated by discrimination. In this case the defendant would only have to prove that his action was objectively and reasonably justified.

However, it must also be made clear that the facts referred to in Directive 2000/43 are not, in practice, conclusive evidence so as to lead to convictions in their own right because if this were the case, an additional element of protection such as



reversal of the burden of proof would not be necessary and would not make any sense.

For example in the case at hand, our view is that the facts indeed do allow us to presume discrimination in the terms described in the Directive and constitute unequal treatment vis-à-vis other workers bearing in mind that:

- of the over 100 applicants, these workers were two of the 38 who made it through the entire selection process;
- they were the only two Roma people employed there;
- they worked for over four months without any sort of sanction although the company claims they were reprimanded on three occasions;
- the trade union issued a statement testifying that the workers' dismissal was discriminatory;
- at the hearing, the witnesses for the company failed to show solid proof of failure to uphold their contract;
- the claimants assured the court that they were the object of disparaging remarks referring to their ethnic background and had received unequal treatment in a few very specific situations vis-à-vis their co-workers.

Despite all of this, the court ruled that reversal of the burden of proof was not possible in this case due to a lack of legally required evidence established in case law. Therefore, the burden fell exclusively on the shoulders of the claimants who, in the view of the court, did not prove with witness testimony or documentary evidence that discrimination played a part in the dismissal. The question should be posed whether the judgement would have been different had the burden of proof been reversed and rested on the shoulders of the defendant (i.e. the company).

Given that the advances introduced by anti-discrimination rules and their legal implications are still only scantily known and are applied by only a small minority of the legal community, cases such as this one offer a golden opportunity to foster their dissemination and to raise the awareness of legal professionals as to the existence of discrimination.

In this connection, the appeal to a higher court lodged by the claimants gives the system yet another chance to correctly enforce and interpret the rules endorsing equal treatment and giving adequate protection to victims who, in the absence of favourable precedents, will be even more reluctant to file complaints in cases such as these.

And lastly, we must draw attention to the additional difficulty encountered in proving discriminatory practices in the ambit of employment when these occur during the trial period established by the companies because in these cases the-



re is no legal obligation to provide a detailed explanation for the dismissal thus making it easier to conceal numerous violations of the right to equal treatment which often go unreported. And if, as in this case, reversal of the burden of proof is not applied, reports of discrimination stand little chance of a favourable ruling from the courts the result being the defencelessness of victims.

Supplementary documentation:

www.gitanos.org/publicaciones/discriminacion07/anexempleo.pdf



Racist violence: a phenomenon on the rise?

Over the last several years we have observed the worrisome rise in the number of cases where, in the aftermath of an incident involving Roma individuals, a violent reaction is observed against the entire Roma community which has nothing whatsoever to do with the incident in question.

Cortegana, Martos, Mancha Real and Almoradí are only a few of the places on this black list to which we must add the events that occurred in El Saucejo (Seville) and Pozo Alcón (Jaen) in 2006 analysed below.

More than cases of discrimination, what we see here are incitements to hatred and racial violence which are expressly prohibited in our legal system and which generate enormous social tension and confrontation between communities which, at the end of the day, must co-exist and whose consequences can be both tragic and irreparable.

Case 1

On 6 May a fight broke out during the Romería de San José Obrero celebration in the town of El Saucejo, Seville, following an argument between a group of non-Roma and Roma young people. As a result of that conflict, a group of people flocked to the Majadahonda neighbourhood where a large percentage of Roma families reside and did serious damage to 35 homes in a social housing project under construction which they erroneously assumed were earmarked for Roma owners.

The next day a large group of local residents took part in a march from the Town Hall to the neighbourhood in question demanding a Civil Guard post in the town and the expulsion of the Roma families. Material damage was done to the property of some Roma families during the course of the demonstration. They tried to violate these people's home amidst threats and clearly racist insults. In the end the demonstrators were dispersed by the Civil Guard police.

The FSG published a press communiqué and submitted a request to the Head Prosecutor of the High Court of Justice of Andalusia calling for the adoption of all necessary means to shed light on the facts of this incident and initiate the corresponding police and, where appropriate, judicial actions. This complaint filed by the FSG led to the initiation of a judicial proceeding (preliminary investigative proceeding No 958/06 by local criminal court No 2 of Osuna) still pending resolution.



Case 2

In the wee morning hours of 3 December a fight broke out in a discotheque in the town of Pozo Alcón in Jaen following an argument between groups of Roma and non-Roma youth. Between 15 and 20 people were injured, one of whom was taken to hospital in Baza given the seriousness of his injuries.

In response to that incident, a series of unauthorised protests were organised via SMS text messaging and hundreds of local residents gathered in front of the town hall and the Mayor's home calling for her resignation, for explanations concerning what had happened and for more police protection and justice while at the same time identifying several Roma families as being responsible for the violence.

The mayor's home was damaged during this protest and the mayor herself had to be protected by the Civil Guard police amidst a sea of threats and insults with a clear racist tone. The protesters then marched down the streets where most of the local Roma families lived but extra Civil Guard officers reporting to the scene managed to persuade them to go elsewhere.

Tensions and bad feeling towards the entire Roma community continued to prevail in the form of a number of messages appearing in some Internet pages using clearly racist language and even going so far as to call for their expulsion from the town.

The FSG released a note to the press and sent a letter to the town's municipal government but received no reply. Then on 13 December the FSG filed an official complaint with the Chief Prosecutor of the High Court of Justice of Andalusia and on 8 January 2007 a criminal investigation was initiated the findings of which were forwarded to the Provincial Court of Jaen. Today the case is still under investigation by the Courts.

Analysis

These two cases are very similar: both began with fights between young people and ended up with indiscriminate attacks with clear racist motivation against the Roma community as a whole whose members had to be protected by the Civil Guard police.

While the public authorities have exclusive authority to pursue criminal acts, the two cases described above show how, on occasion and putting collective safety at great risk, some groups of people try to take justice into their own hands and in so doing violate the most basic democratic principles such as presumption of innocence and individual responsibility for acts according to which individuals must be judged exclusively for their acts and not for belonging to a social or ethnic group.

Blaming an entire community for acts committed by a specific few leads to harmful generalisations which tend to translate into discriminatory practices clearly visible in most everyday social spheres: housing, education, employment, etc.,



keeping a particular group from gaining access to these on an equal footing with the rest of society.

Now, when this attitude takes the form of collective public protest and includes insults with racist undertones with the intention of damaging property, the provisions of Article 510 of the Spanish criminal code should be applied: *...those inciting discrimination hatred or violence against groups or associations for reasons 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.*

However, cases similar to those described in the foregoing have occurred in other places throughout Spain but are usually not reported by the groups affected because in most cases they fear possible reprisals and are only all too aware of the difficulty in identifying and taking legal action against those individually responsible for these acts.

The Cortegan case which occurred on 16 January 2005 turned this tendency around. In the aftermath of the arrest of four Roma men as suspects in a murder case, the Mayor of the town called for a supposedly pacific demonstration which turned violent when a number of the 2000 demonstrators approached the neighbourhood where 250 Roma lived causing considerable damage to their property and terrorising the families who had to take refuge in their homes to avoid physical aggression.

This case, denounced by a number of different organisations and still pending final resolution in the courts, set an important precedent in the legal treatment of discrimination with the prosecution (along with other alleged perpetrators) of the town's mayor himself. Regardless of the final court ruling (which we certainly hope is favourable to the victims), the Cortegana case has served as a stimulus encouraging victims, their representative organisations and NGOs in general to denounce similar cases of racist violence which, as a first step, are being admitted and investigated by the courts.

Therefore, when faced with events such as those occurring in El Saucejo and Pozo Alcón, the Fundación Secretariado Gitano decided to report them to the Head Prosecutor of the High Court of Justice of Andalusia. In both cases the complaints presented were admitted by the court and criminal investigations have been initiated by them and are still under way.

Attached documents:

www.gitanos.org/publicaciones/discriminacion07/anexviolencia_racista.pdf



Goods and services: open or covert discrimination?

Roma's access to a large proportion of goods and services linked to entertainment and leisure time is still limited by a number of different barriers. Sometimes apparently objective and reasonable justification is provided for these barriers but is actually simply covering up direct ethnic discrimination in the terms described in Directive 2000/43.

The fact is that rejection of the Roma community is so socially widespread that it is still common to find openly acknowledged discriminatory practices which constitute an infringement of the right to equal treatment and an affront to the honour and dignity of the victims. As has been pointed out in other reports, victims are now tending to react more actively in these cases but we are also finding that the courts significantly attenuate the responsibility of the infractors and the rule protecting the right to equal treatment is not being properly enforced.

The first case we are going to analyse in this section is one of direct discrimination in gaining access to goods a services which is openly acknowledged as such by the perpetrator. In the second case, while discrimination is acknowledged initially, the perpetrator later tries to cover it up with other arguments. Both cases were reported but, as we will see in the description below, neither is given proper legal treatment.

Description of the cases

Case 1

A Roma man residing in a town in Castile-La Mancha went into a café and ordered a cup of coffee. The owner of the café who was sitting at the counter asked the man if he was Roma. When the man acknowledged that he indeed was Roma, the owner told him that he would not be served and asked him to vacate the premises. The victim agreed but stated that he was going to report this to the police to which the café owner responded by encouraging him in a provocative way and providing him with the details of the café to facilitate filing of the complaint.

The victim did report the incident, an investigation was conducted and a misdemeanour hearing was held on 30 March 2006 at which the public prosecutor convicted the defendant of a misdemeanour for mild unjustified harassment. At the hearing the defendant openly acknowledged that everything that the victim stated was true which resulted in his being convicted. The judge declared that the defendant's words were an affront to the dignity of the complainant and therefore an infringement of Article 14 of the Spanish Constitution. The accused was issued a 15-day fine in the amount of 6 euro per day and was ordered to pay court costs.



Case 2

A group of six Roma women, one of whom works for the FSG, went into a bar in the city of Valladolid and ordered a round of drinks. The waitress was preparing their order but the manager told her to stop. One of the women overheard the conversation and addressed the manager who told her that his boss had prohibited his serving people like her. When the women asked if he was referring to their being Roma the manager said yes and that was when the group of friends left the bar.

Upon leaving they ran into a local policeman and decided to report the case. The policeman immediately went into the bar to speak with the manager and then advised the women to file a complaint at the police station and at the consumer affairs office. Despite the complaint filed by one of the women, administrative proceedings were dismissed and it was processed as a misdemeanour and a hearing date was set for 21 March 2007. The FSG compiled a legal dossier on the case which was not admitted as evidence at the hearing.

A ruling was delivered on 21 March 2007 dismissing the case for failing to sufficiently accredit that the group of friends was not served for reason of their ethnicity despite the fact that the manager initially admitted this fact. At the hearing he testified that he had not served the group of friends because the bar was full. The women decided not to appeal to a higher court and the FSG therefore dropped the case as well.

Analysis

Article 512 of the Criminal Code provides that *"...those who, in the discharge of their professional or business activities, refuse to provide a service to an eligible person for reason of their ideology, religion or belief system, their belonging to a certain **ethnic group**, race or nation, their gender, sexual preference, family status, disease or disability, will be disqualified from the exercise of their profession, trade, industry or business for a period of between one and four years"*.

That Article has rarely been used in Spanish case law in racial discrimination cases possibly due to the implicit understanding that the sentence imposed could be excessive for some situations such as the one described which in fact constitutes an infringement of Article 14 of the Spanish Constitution.

It is therefore noteworthy that the two cases analysed, which apparently fall within the scope of this legal precept, are processed as misdemeanours ignoring the legislation specifically prohibiting racial discrimination and defining the latter as a crime. This has two basic consequences. First of all, victims are not usually accompanied by legal counsel at misdemeanour hearings thus putting them at a clear disadvantage vis-à-vis the defendants who typically do have legal counsel helping them to make their arguments. Secondly, the seriousness of the acts is significantly lessened and anti-discrimination law envisaged for cases such as these is not applicable and the sentences given to those found guilty are not stiff enough to deter them from acting in the same way the next time.



This is especially significant in the first of the two cases described where the discriminatory act is openly acknowledged by both the perpetrator and the judge who points out in her judgement that the accused's conduct is an infringement of the constitutionally protected right to equal treatment. If the complainant had been represented by counsel, the latter could have requested the reclassification of the deeds but since that was not the case an infringement of a fundamental right in our legal system was not classified as a crime but rather as a mild case of harassment with a token sentence of a 15-day fine.

In the second case, the main stumbling block was the difficulty encountered in proving the existence of discrimination, especially important because the reversal of the burden of proof would not apply in the event of a criminal proceeding. However, despite the fact that burden-sharing did not apply in this case, we hold the view that there were some key elements which could have proven the existence of discrimination which were not sufficiently assessed at the hearing: the complainants were the only ones who were not served their drinks and were also the only Roma persons in the bar which, according to the testimony of the complainants, was not full.

Even though no one aside from the complainants heard the manager say that they were refused service due to their ethnic group, what must be analysed at a court proceeding are not only words but also actions and their consequences. In other words, even if the manager had told that group of friends that he could not serve them because the bar was full, this could also constitute covert discrimination which the courts should have examined in greater depth based, of course, on the objective data presented.

This case could have been successful if the injured parties had procured a statement from a witness who was privy to the conversation that day or who could at least vouch for the number of people who were in the bar at that time. For example, the police officers who entered the bar immediately after the group of women had left would have been able to vouch for the number of people there but the defence lawyer only asked them if they were in the bar at the time the incident took place. The officers could not provide any further details because the complainant did not have legal counsel authorised to ask questions of this sort. Moreover, as mentioned in the description of the case, the report compiled by the FSG was not admitted as supporting evidence.

In conclusion, with a view to solving these problems over the short and middle term, it would help if human rights organisations and representatives of ethnic minorities organised internships and did some testing to prove the existence of discrimination and to explain to their users what they need to do to collect sufficient evidence in cases such as these.

Supplementary documentation:

www.gitanos.org/publicaciones/discriminacion07/anexbienes_y_servicios.pdf



Public authorities: transmitters of prejudice and stereotypes?

Some media continue to stigmatise the Roma population as a whole by over-emphasising isolated or extraordinary cases which are not at all representative of the situation of the majority of Roma (the few remaining shanty towns, drugs trafficking, stealing, violence, etc.) and has an enormously negative effect on their social image which can be the direct cause of discriminatory practices in the exercise of their rights as citizens.

The problem is even further compounded when it is the public authorities themselves who use the media to make, intentionally or inadvertently, clearly discriminatory statements. Owing to their institutional and civic responsibility and the huge impact their words can have on public opinion, this type of behaviour on the part of public officials must be strictly controlled and sanctioned in accordance with applicable legislation while always bearing in mind that public institutions represent all citizens including members of the Roma community.

Description of the cases

Case 1

On 31 October E.S., councillor of the Denia (Alicante) City Council representing the People's Party (conservative party in the Spanish political spectrum) made a series of statements to the press directly identifying the Roma community and immigrant groups as being responsible for a rise in local delinquency rates. This councillor also called on the City Council to take the necessary steps to expel from the city all Roma persons illegally residing in buildings of flats in the city's centre and adjacent areas.

Although the People's Party did apologise for these statements, the councillor was not sanctioned in any way. Despite this, the FSG held that these statements, widely disseminated in the media, were an open invitation to discriminate against the Roma people and therefore lodged a complaint with the High Court of Justice of Valencia and the Sindic de Greuges (Ombudsman) calling for an investigation to determine whether this was a criminal act. The FSG also wrote a letter to several of the leaders of the People's Party at local and regional level calling for the suspension of the councillor but to no avail.

On 8 January 2007 the public prosecutor's office informed the FSG of the dismissal of the case taking the view that no crime had been committed. On 31 January 2007 the Sindic de Greuges informed the FSG that it was continuing forward with its investigation of the case and had again requested a report from the government office involved given that the latter had not responded to the first request.

On 26 March the Sindic de Greuges informed the FSG of the lack of collaboration from the City Council which had yet to furnish the requested information and



that this failure to collaborate would be included in the annual report made to the Regional Parliament of Valencia.

Finally, on 4 April, having regard to the complaint lodged by the FSG, the Mayor of Denia informed the Sindic that the only information which the City Council had was from the councillor's statements to the press and assured that there was no past record of racist behaviour. The Mayor defended her office by stressing that the Public Prosecutor had dismissed the case since no commission of a crime was detected and that this was a personal issue involving the councillor but not the City Council and hence suggested contacting the interested party directly.

On 11 May the Sindic de Greuges furnished the FSG with a copy of the report it has requested from the City Council and announced a deadline by which all representations could be made. Subsequent to that date it would process the dossier with the available data. Settlement of the case remains pending.

Case 2

On 24 December 2006 a statement made by a Leon councilwoman appeared on the front page of the Leon edition of the El Mundo newspaper where she was quoted as saying: "I don't know what else PP (People's Party) can do to me short of sending a Gypsy to put four bullets in me".

The FSG wrote her a letter of protest informing her that statements of this nature, especially unacceptable when spoken by a representative of the people, perpetuate an unrealistic and stereotyped image of the Roma community. She was likewise informed that her statements could be interpreted as infringing the provisions of Article 510 of the Criminal Code and could therefore constitute incitement, albeit indirect, to discriminate and promotion of racist hatred.

The councilwoman apologised for her unfortunate statement which she agreed was unacceptable and attributable to a moment of great tension. She asked that here words not be taken at face value and stated that she has an excellent relationship with local members of the Roma community with whom she hopes to continue to collaborate.

Analysis

The first case shows that the public administration has no action protocol for dealing with discrimination cases. Given that there is nothing similar to a code of conduct or equality programmes prohibiting and internally sanctioning infringements of this right, formal complaints must be processed through the ordinary channels envisaged under our legal system which oftentimes precludes the setting of precedents within the administration involved which could serve as a deterrent factor in the future. In this connection, we feel that public office is an area in which discriminatory behaviour can be particularly damaging and therefore surveillance must be stringent and when it does occur it cannot go unpunished. Awareness-raising efforts targeting civil servants and political representatives of



public institutions must likewise be ongoing. Protection afforded must therefore extend over and above that provided by Ombudsmen which themselves do not have punitive authority although in the first case analysed the role of the *Sindic de Greuges* was particularly relevant in the investigation.

Contrary to the brief decision delivered by the Public Prosecutor which fails to detail the reasons for dismissal, the FSG holds that encouraging a public institution to use force to expel Roma families, even if the latter have illegally occupied dwellings, under the pretence of putting an end to petty crime, and also brandishing a report with the exact location of the said dwellings, constitutes blatant incitement to discriminate and fosters racial hatred, tacitly prohibited under Article 510 of the Criminal Code referred to in the foregoing sections.

It is also important to point out that the councillor's assertion regarding the rise in criminal activity throughout the municipality due to the presence of Roma and immigrants does not coincide with the official data made available by the Security Committee of the Deputy Government Delegation of Alicante to the Denia City Council.

The second case is not such a clear and open incitement to discriminate since it did not include statements made specifically about Roma but was rather an indirect reference to the Roma community in the context of comments about something else which had nothing to do with the members of this community.

Nonetheless, the councilwoman did, through the media, define the Roma people as hired assassins and criminals perpetuating a stereotype of violence and marginalisation which also often tends to encourage the persistence of discriminatory practices in other social ambits.

It is important to point out that expressions of this nature characterising Roma as violent, dirty or as thieves are very much ingrained in mainstream society and even in the everyday vocabulary of many people whose behaviour and views are not apparently racist and who, as in this case, claim to not take those words literally.

We must not forget that even the Royal Academy's Dictionary of the Spanish Language still stands by the colloquial meaning of the Spanish term "gitano": *adj. que estafa u obra con engaño* (one who swindles or cheats).

We therefore stress the importance of including racism as expressed through language, especially in certain areas such as politics and the public administration, in anti-discrimination campaigns and initiatives.

Supplementary documentation:

www.gitanos.org/publicaciones/discriminacion07/anexpoderes_publicos.pdf



Anonymous crimes: blatant impunity?

Internet is the preferred media for the anonymous dissemination of racist messages fostering discrimination, hatred and violence against certain social groups including Roma. In its Discrimination and the Roma Community reports the FSG has gathered many examples of such cases which have been reported to the competent authorities but which are rarely satisfactorily resolved owing to the difficulty in identifying the authors of the crime especially in certain forums and chats.

In addition to the Internet, cases of the distribution of street flyers promoting racist ideas and encouraging hatred and violence have been detected (especially in small towns). However, the same difficulties are encountered in pursuing these acts, i.e. the person(s) responsible.

In 2005 we had the case of the Santa Fe flyers which was given a great deal of coverage in the local media and in 2006 the Cogollos Vega case, very similar to Santa Fe, which is described below.

Description

13 November 2004 was the date set for the City Council plenum where a motion of censure called by the opposing party against the mayor of Cogollos de Vega was on the agenda for discussion. That same day a group of 300 protesters (many of them Roma) gathered at the doors of the Town Hall in support of the Mayor and expressed their disagreement with the opposing party.

The opposing party councilmen claimed that they felt coerced and failed to go to the Town Hall and the plenum was therefore held in their absence and the motion of censure was outvoted. As a result, from 10 to 14 April 2006, anonymous flyers were circulated around the streets of Cogollos Vega criticising the popular support shown to the Mayor and referring to him as the *Gypsy King*, opening accusing members of the Roma community of theft, drug sales and failing to live peaceably with their neighbours.

The local Roma associations contacted the FSG to express their concern about this case which they believed could engender a dangerously hostile reaction against the local Roma community. The FSG therefore decided to lodge a complaint to the Head Prosecutor of the High Court of Justice of Andalusia on 14 June 2006 given that deeds such as these are prohibited under the Spanish legal system.

On 21 November 2006 the case was dismissed by the Prosecutor's office which, while admitting that the acts in question did constitute a crime, held that it would be impossible to determine who was responsible for them.



Analysis

The communication received from the Prosecutor's Office acknowledges that the acts described in the complaint very well may be an infringement of Article 510(1) of the Criminal Code which, as mentioned above, states that: *...those inciting discrimination hatred or violence against groups or associations for reasons 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 Public Prosecutor agreed that the assumed purpose of the text of the flyer was incitement to discrimination by attributing antisocial behaviour to a group for no other reason than for belonging to that group and that the said flyer disseminated damaging information which could also be an infringement of Article 510(2) which states that: *...those who disseminate damaging information against groups or associations having regard to their ideology, religions or beliefs, ethnic group or race, national origin, gender, sexual preference, disease or disability of their members, cognoscente of their falsehood or reckless disregard for the truth, shall be punishable by the same sentence.*

It should also be mentioned that the Public Prosecutor dismissed the case despite its seriousness and the fact that on 21 July it was provided with a report compiled by the Civil Guard police regarding the alleged parties responsible for the drafting of the flyers assuring that it was indeed possible to determine such authorship.

This same conclusion was reached in the Santa Fe case where the Public Prosecutor ordered the closing of an investigation which commenced following distribution of hundreds of flyers throughout the town calling for a public uprising to "expel" and "lynch" their neighbours of Roma background. In that case it was the mayor himself who submitted one of the flyers to the Public Prosecutor of the High Court of Justice of Andalusia calling for a judicial investigation, an action supported by the FSG which in the end was unfruitful.

In both cases we observe how, despite the involvement of public authorities, local governments and the Public Prosecutor himself, two serious crimes of incitement to racism went unpunished.

This trend is very difficult to change because public authorities in general and law and order forces in particular do not have specialised units with which to deal with racism and discrimination cases as they do in other European countries which are better equipped to conduct investigations of this sort.

Moreover, these cases do not transcend the towns where they occur because there is no specialised equal treatment or anti-discrimination body entrusted with gathering information, making it publicly known and arriving at conclusions and making recommendations which could be useful in handling other similar situations.



For all of these reasons it is vital that local authorities, in addition to providing suitable legal means for the reporting and investigation of incidents, do everything in their power to lower the tension level and normalise relations between different communities by fostering awareness-raising activities which improve the image of Roma at local level, fostering intercultural forums whereby to break down prejudices and by disseminating knowledge of the basic principles of our legal system such as the right to equal treatment and the prohibition of discrimination.

Only then will co-existence be re-established preventing similar incidents from re-occurring over the short and middle term.

Supplementary documentation:

www.gitanos.org/publicaciones/discriminacion07/anexdelitos_anonimos.pdf



Summary of conclusions

The study of these 9 cases has allowed us to reach a series of conclusions giving rise to general recommendations, some already mentioned in other year's reports, regarding ethnic discrimination reporting processes:

- Non-enforcement of those articles of the Criminal Code prohibiting ethnic discrimination: before judicial proceedings even get under way, serious infringements of the right to equal treatment are classified as simple misdemeanours. This not only effects the sentences received by those found guilty but also the procedural possibilities of the victims who are not typically accompanied by legal counsel at the hearing.
- Serious difficulties encountered in implementing the reversal of the burden of proof: courts appear to be requiring, over and above verifiable facts pointing to the presumption that a discriminatory act has been committed, the gathering of hard evidence thus distorting and rendering ineffective the protection mechanism enshrined in Directive 2000/43.

Making it necessary to...

- Disseminate and harmonise anti-discrimination legislation to make it more clear and accessible and provide suitable training for legal professionals to increase their practical knowledge especially regarding novel and controversial aspects such as the reversal of the burden of proof.
 - Lend specific technical assistance to victims of ethnic discrimination in coordination with their representative organisations and NGOs at all legal proceedings including misdemeanour hearings where the presence of counsel alongside complainants needs to be encouraged.
- In general terms, we noticed a lack of sensitivity on the part of the courts insofar as they did not take stock of specific circumstances or the historic situation of disadvantage suffered by the Roma people. They have also proven to be reluctant to admit or look kindly upon alternative forms of evidence such as research or the use of general statistical data regarding discrimination in support of claims lodged by victims.



- Covert discrimination, while difficult to prove, persists and is not adequately analysed by public authorities often giving rise to the dismissal of cases which only discourages victims from lodging complaints through the court system.

Making it necessary to...

- Collect statistical data and conduct research, especially on the part of the public authorities, to analyse the causes and consequences of discrimination and to quantify the latter.
- Encourage the use of this information as evidence in court especially in the form of presenting similar cases which have taken place in the same geographical location or involving the same offender.
- Promote campaigns, with a view to providing a more accurate social image of the Roma community, capable of having a real effect on public opinion and the institutions with a view to raising their awareness and combating the persistent indirect and structural discrimination prevalent in the public domain.

- Lack of specific sanction proceedings to punish acts of discrimination by representatives of public authorities, especially when such acts become press headlines.

Making it necessary to...

- Train key agents in the public and private sectors in the fight against ethnic discrimination including public officials at all levels of the administration, entrepreneurs and trade unions, those responsible for public tenders, prison personnel, law enforcement officials, etc.
- Implement codes of conduct and equality programmes within the Spanish public administration which prohibit discrimination and incorporate measures for the monitoring, control and assessment of compliance.
- Approve the Royal Decree regulating the *Council for the advancement of equal treatment* assuring that the latter complies with the functions vouchsafed to it by law in line with the principles of independence, plurality, financial autonomy and accessibility to victims and operates as a control mechanism over actions taken by public authorities.



- Improve the manner in which racist violence is dealt with by the courts: complaints which pass the initial screening are admitted by the court and a judicial investigation is conducted. More attention needs to be paid, however, to the conclusion of that process and the number and seriousness of convictions.
- Difficulties are still encountered in identifying those responsible for racist/discriminatory practices, especially when these are anonymous.

Making it necessary to...

- Come up with integrated anti-discrimination measures at state, regional and especially local level (the latter being in closest contact with citizens) and providing public authorities with sufficient means by which to more effectively carry out their actions and investigations.

- Victims of ethnic discrimination are becoming somewhat more aware of their rights and are slightly more willing to lodge complaints especially when it comes to racial violence and discrimination in the ambits of goods and services, social rights and employment.

Making it necessary to...

- Provide victims of discrimination due to ethnic origin with integral help in defending their rights through partnership with their representative organisations/associations guaranteeing accessibility and efficacy in services rendered, especially legal and mediation services.
- Make headway in the institutional recognition of the Roma community and strengthen its social participation mechanisms.

