
# Cases of discrimination gathered by the FSG in 2008

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In this section we propose to present the **one hundred and eleven real-life cases** gathered by the FSG during 2008 that –though we believe are not a good numerical representation (the very dynamics of the work mean that one may be more attentive to certain areas than to others, or that the territorial distribution of FSG's staff means that more cases are gathered in some autonomous communities than in others, for example), they do make it clear that ethnic discrimination exists and is suffered by many on a daily basis.

This year, we present three cases in depth. The first –**racist violence in Cortegana**– is an old case, but given its significant repercussions and importance, we have asked one of the lawyers representing the Roma families to tell us about the sentence and explain its consequences. The second is a case of discrimination whose defence was supported by the FSG from the beginning: the **denial of a widow's pension** to a woman –María Luisa Muñoz– who was married by the Roma rite. This year, the case was heard in the Court of Human Rights in Strasbourg, and so we present a brief analysis of it and the current situation. Lastly, we present a case in depth that was indeed one of the cases gathered in 2008, the **case involving the San Roque School** in Madrid. This is a case that seems particularly serious to us due to the number of victims and because they are boys and girls who have been discriminated against when exercising their fundamental right to an education, with the undeniable consequences that occurred as a result.

## 1. In depth: a study of three cases of discrimination

### 1.1. The Cortegana case: racist violence[1]

*Carmen Santiago,* Attorney.

**The Provincial Court of Huelva, Section 2, in the sentence of 3 September 2008, rec. 197/2008, confirms the sentence issued by Criminal Court No. 2 of Huelva dated 14 April 2008,** as a result of the events that took place in the town of Cortegana on 16 January 2005.

The decision sentenced several of those charged as the perpetrators of **a crime of disorderly conduct** to terms of **one year and nine months of prison with the added punishment of the deprivation of the right to vote and, as perpetrators of a crime of criminal damage, to a fine of eighteen months at a rate of four euros a day with subsidiary criminal responsibility in case of default.**

The **aggravating circumstance provided for in Article 22. 4 of the Criminal Code –committing the crime for racist reasons** –is also present.

[1] On 16 January 2005, a series of incidents took place in Cortegana (Huelva) against the Roma community during the protest organised by the town council after the death of a person for which two members of Roma ethnicity were arrested. The protest –which was to pass between Constitución Square and Esperanza Square– did not stop there and continued on into Encina Street, located in the Eritas neighbourhood, where most of the Roma community live, while the mayor did nothing to stop the protest where it was planned to end. The protesters, acting in unison, began to shout slogans against the Roma community, with expressions such as "we're going to kill you", "get out of town" and others like these that were clearly against their ethnicity. At the same time, they were throwing stones and other objects against the houses, the car and other property belonging to the Roma. They had to be stopped and taken away by Civil Guard officers, and they caused significant damage.

**Civil liability** was imposed, with those convicted having to pay for the damage to the Romas' homes, vehicles and belongings, as well as being sentenced to pay **3,000 euros to the homes' residents for the moral damages** caused to them and their direct family members.

As regards the facts that led to these proceedings, we are going to summarise the Sentence leading to this procedure, as I understand that it offers a perfect description of what happened there and gives us a clear picture of the situation. The Sentence states:

> *... ... ... several relatives and friends of the victim met with the mayor of the Town Council, after a demonstration be held to show their outrage about the events and to ask for justice and security. This proposal was accepted by the mayor, and the demonstration was organised. In the days before the demonstration took place, leaflets on Town Council letterhead were distributed in the streets of the town. These leaflets provided information about the date and time of the event, as well as its route.*
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> *Participants gathered at the time and place as planned to begin the demonstration (Constitución Square) but, at a given moment, the demonstration changed path – not due to a particular, decision, but as the result of the voices of several unidentified demonstrators who shouted, "go forward", and as the result of the group's own inertia.*
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> *... .... The group, despite what had been planned and announced when the demonstration was organised, did not congregate in Esperanza Square, and continued forward until it reached the Eritas neighbourhood, on the outside of town.*
>
> *This neighbourhood is populated by –among others– most of the Roma families living in the town. During the march planned when the demonstration was organised, the demonstrators carried various placards with shouted repeated cries for – among other words – "justice" and "security". Subsequently, however, on the unplanned route followed by only some of the demonstrators, there were also cries of **"Gypsies get out", "murderers", "we want them out of here" and "we don't want to live with murderers",** among others, referring to Roma in a generic fashion, and without referring at any time to any particular member or family belonging to the group of Roma, whom they linked to the murder of several local residents.*
>
> *In view of the statements made, it was clear that the initial mood calling for security and justice (in the abstract sense, though rooted in recent events) turned or grew into –for many of those attending the event– **a mood of protest, accusation, contempt, hostility and revenge towards Roma**, and this is what motivated the procession to cross the road, pass through the Eritas neighbourhood and then return to the road.*
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> *Minutes before the head of the demonstration reached Encina Street, when the Civil Guard officers who were ahead of it noticed the climate of hostility (as demonstrated by the shouting and by the path chosen by the group), they moved forward and approached several Roma who were outside their homes and in a vacant lot nearby, informing them of the arrival of the procession and that it would be sensible to take refuge inside their homes in order to avoid conflict. They did so at once and, once inside and filled with fear from hearing their voices, proceeded to close their doors and windows and turn out their lights.*
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> *When a group of young people (the number could not be determined, but several Civil Guard officers estimated it to be between 20 and 30) who had been marching in the middle of the demonstration, –without a clear prior agreement, but with improvised tacit approval, – **acted together and, cheering each other on, charged as one with more force, power and virulence than that seen thus far against those hiding inside their homes. They did this with a firm and persistent desire to offend, stigmatise, show contempt, challenge them to physical confrontation and violence, cause damage to their property, fill them with fear and terrorise them by their words and deeds, thus making peaceful co-existence impossible and showing utter disdain for the consequences for their physical and psychological welfare and preservation of their property. They repeatedly shouted expressions at the Roma such as "get out of town", "we're going to burn you out", "let's burn down their houses", "we don't want Gypsies in Cortegana", "let's get some petrol so we can burn them out", "let's burn what's back there, the stables and shacks", "Gypsy murderers, come out, we're going to kill you", and "let's get them"**, while they picked up rocks of all sizes from the ground and threw them hard against the façades of the aforementioned buildings, as well against the cars and other property parked nearby. All of these were very close to the entrance to the houses, and several demonstrators approached the doors and pounded on them, trying to break them down. They were stopped by the Civil Guard.*
>
> *Several members of this group **managed to get through the police cordon and enter through a patio located in an unlit area behind the houses, where they continued to cause damage. They found a pile of straw that was being stored, and set it on fire, causing a huge fire that threatened other property**, and which had to be put out by several volunteers and the town's fire department.*

***At the same time they were throwing stones and shouting about the Roma, besides tearing up a piece of herb from the ground and pulling down a street lamp, they were also shouting about the actions of the officers and others belonging to the Civil Guard (who had formed the security cordon) with regard to the Roma, such as:*** *"sons of bitches, all you know how to do is file complaints and you defend Gypsies and drug addicts", "you're a bigger murderer than the Gypsies", "in Aroche, three Civil Guards and two local police threw out the Gypsies, but not in this town, no, they're useless."*

*As a result of the actions described above, the aforementioned defendants* ***created a climate full of distress, anxiety, panic and terror among those who had taken refuge inside their houses, including many children, who hid in the dark without any way of knowing what was going on outside. Hearing the shouts and the many attacks on different parts of their homes (doors, windows, roofs), they were afraid that the attackers would gain access to the inside of the houses, given that these are characteristically highly vulnerable. All of this with the consequences that could derive from this manifestation of hostility and aggressiveness as shown by so many bad deeds, without any chance to defend themselves or even react, causing a profound sense of insecurity and fear in those who suffered from these actions;*** *this was resolved over time….*

I think an analysis of the proven facts allows us to have some idea of the seriousness of the events that took place there and that could have had greater significance if not for the effective intervention of the Civil Guard, who cordoned off and protected the Roma's homes at great risk to their own safety.

However, an analysis of the facts and of the final decision as included the sentence would most likely lead us to believe that **the penalties imposed are very lenient relative to the seriousness of the crimes being judged**, and this is indeed the opinion of this attorney.

We would have liked a conviction based on Article 510 of the Criminal Code, because we understand that some of the participants "incited discrimination for racist motives".

It is true that there is very little case law that applies this criminal offence. As stated in the sentence of 05.03.08 from Barcelona's Provincial Court concerning the incitement to discrimination and hatred with respect to the issue of the Europa bookstore, inciting discrimination means, following part of the legal expert's opinion (Landa Gorotiza), to encourage others to carry out this harmful attitude, to create optimum conditions for the situation of risk and danger to develop, and that this provision is to ensure the security of particularly vulnerable groups and should be applied restrictively. It also states that another part of the legal expert's opinion considers that an Article 510 crime exists where there is direct incitement before a group of people, with publicity, and there is incitement to commit a crime.

This party considers that, despite the vagueness and generality of Article 510 of the Criminal Code, it would be reasonable to issue a conviction for this crime in this particular case and, if not, what should be done is to modify a practically ineffective provision, as there are few occasions like this one, when we find a group of people –in this case, Roma– who are vulnerable and need protection, who receive an unequal or discriminatory treatment and against whom a group of people is incited to commit a crime. To do this, we would like to refer to events that were proven to take place and in which the following was said: "lets' burn you out", "lets' throw them out of town"... If this is not incitement to commit a crime, we have no idea what behaviour could be or what it could consist of that would be closer to the aforementioned actions.

Of course, this crime cannot be applied to events like these tried in court; it will have to be changed.

Regarding the aggravating circumstance in Article 22.4 –in our view, correctly applied– the sentence states that it derives from the combination of greater moral and social reproach. The assault on the families of Roma ethnicity (and has been declared as proven that they had no family relationship to those arrested for a recent crime in the town) is due to **confusing isolated individual responsibility for certain acts with a kind of collective racial responsibility**, as if everyone making up this ethnic group were prone to violence. That mistake **– to project on to the group as an abstract concept (the responsibility for the actions of certain people as a result of the ties of race) – is precisely one of the common reasons for discrimination** (due to acting indiscriminately and blindly against the group, without distinguishing or separating the members within the group itself).

This is what the legislation whose applicability is being questioned aims to prevent. There was no attempt to gain access, and stones were not thrown at, one or several houses belonging to specific Roma, but to "Gypsies"; it wasn't about filling with fear or terrorising certain people, but rather a group of Roma, just because they were Roma.

The sentence states that they acted with the intention to discriminate and they did discriminate and threaten, seriously affecting elements of human dignity. Thus, the aggravating circumstance in Article 22.4 of the Criminal Code should be applied.

We also welcome the fact that the sentence included **paying compensation as a result of the pain and suffering caused to the Roma families** who, as stated in the sentence, suffered the anguish and distress caused by events such as those described, in which the threat of death had signs of being carried out, due to the contempt, indifference and cruelty the attackers showed towards so many human beings of all types –including children– who had nothing more in common than being Roma.

Apart from the above considerations, we can say that we are satisfied with the outcome of this procedure, for several reasons:

Firstly, we would like to express our appreciation for those participating in these proceedings because, despite the difficulties the process entailed –both due to the matter under discussion, as well as to the large number of participants– this party is very pleased with how the case developed, and this is largely due to the superb work carried out by the examining magistrate –who spared neither his time nor his dedication so that the case would be heard fully in accordance with the law– as well as by the judge in charge of the Criminal Court who, despite the initial misgivings that resulted from the charges, also made it possible to carry out the process as guaranteed by law for all the parties in the case, and who made the oral hearings a pleasant experience that none of us taking part will likely ever forget.

We are accustomed to denying the existence of discrimination and, unfortunately, we have seen how cases related to similar events are closed and not correctly processed.

Secondly, because these sentences of less than two years were what the victims (the Roma of Cortegana) wanted. These people, besides witnessing a fair trial of the events that took place –have received apologies from many of those accused and from others involved in the demonstration and, unlike other victims of similar procedures (Martos, Mancha Real), have continued to live in their locality, in their town. In short, order and social harmony –which had been torn apart in Cortegana– have been restored and, for the first time after similar events, these victims have not had to leave town.

Once the proceedings began, perhaps the most difficult issue was to satisfy the victims (the Roma of Cortegana) who didn't want their neighbours to go to jail. To start with, they were afraid of what could happen again, because there were many defendants, a lot of pressure was exerted and, moreover, they were aware that there was a need for everyone who had violated the law to be sentenced.

Thus, although this party does not share some of the legal foundations of the sentence, we are pleased to have taken part in this procedure because of how the judicial proceedings were carried out and because –once the trial was held– social harmony has returned and the Roma families in Cortegana can walk down the streets of their town without fear and just as any other citizen without their rights being violated.

## 1.2. The "La Nena" Case: an example of multiple discrimination

*Dr Fernando Rey Martinez, University of Valladolid.*
*Sara Giménez Giménez.* Head, Department for Equal Treatment FSG.

We'll begin our analysis with a brief summary of the facts in the case of Maria Luisa Muñoz, a Roma woman who married Mariano Dual in 1971 (a pre-constitutional period characterized by the violation of the rights of the Roma people through pragmatic persecution of their distinguishing features, typical of the customs of their people). From this date forward, Maria Luisa and Mariano considered themselves married and, as such, fulfilled all the obligations this entailed. Her husband paid Social Security taxes for 19 years, although the marriage –celebrated in 1971 according to the Roma rite– was not registered in the Civil Registry Office. Nevertheless, the government gave them the Family Book and –as they had six children– recognised them as a "large family".

20 minutos Madrid

**Una viuda se queda sin pensión porque se casó por el rito gitano**

**El Tribunal Constitucional** (TC) ha denegado la pensión de viudedad a una mujer que la reclamaba tras haber contraído matrimonio sólo por el rito gitano. Según el TC, mientras el legislador no regule las condiciones para que estas uniones puedan contar con plenos efectos civiles, no se puede establecer que la negativa a conceder la pensión suponga un trato discriminatorio ni por motivos sociales ni por razones étnicas o raciales.

La mujer, madre de seis hijos, solicitó en 2001 la pensión de viudedad que le fue denegada por el Instituto Nacional de la Seguridad Social alegando que no era cónyuge del fallecido y la ausencia de cualquier imposibilidad legal de haber contraído matrimonio con su pareja antes de su muerte.

La mujer adujo que en la cartilla de la Seguridad Social figuraba como beneficiaria de su marido, ya que era su esposa según el rito gitano.

**Casados desde 1971**

Un juzgado dio la razón a la mujer al considerar que había demostrado que tanto ésta como el fallecido eran de origen gitano y que contrajeron matrimonio en 1971 por ese rito.

Sin embargo, el Tribunal Superior de Justicia estimó el recurso del INSS tras subrayar que «ha de distinguirse entre lo que es legalidad vigente y aplicable de aquella que puede entenderse deseable» y negó la existencia de un trato discriminatorio.

On 26 May 2009, a hearing was held at the European Court of Human Rights to address María Luisa Muñoz's "La Nena" lawsuit, in which she requested that her right to a widow's pension be recognised. This lawsuit at the Strasbourg Court was the last resort, and was assisted by the Fundación Secretariado Gitano due to discriminatory treatment by the Spanish justice system after years of litigation in different courts and, especially, the Constitutional Court's rejection of the lawsuit requesting protection filed in 2002.

To the question regarding whether the denial of the pension has entailed a violation of the principle of non-discrimination based on belonging to a minority race, or on any other situation protected by the article in the Rome Convention, the answer must be unequivocally affirmative.

**a)** If one focuses on the identical treatment applied to the plaintiff and her husband with regard to other couples who, in general, as the result of not marrying according to applicable civil law, have not been able to receive the widow's pension, we may conclude, firstly, that we are witnessing a clear case of **discrimination due to failure to provide different treatment**. In these cases, the constitutional principle of equal treatment would be 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 Strasbourg court has appreciated the possible validity of discrimination by failure to provide different treatment in the matter of Thlimmenos v. Greece of 6 April 2000, and this legal expert's opinion could be extended to the case at hand. It is important at this time to recall the brilliant statement by the European Court of Human Rights (in Nachova and Others v. Bulgaria of 6 July 2005) regarding the vision of "democracy as a society in which diversity is not perceived as a threat, but rather as a source of wealth", as well as the decisions in the cases of Beard, Coster, Chapman, Smith and Lee v. United Kingdom of 18 January 2001, which also stated that "the vulnerability of the Roma entails giving special attention to their needs and their particular lifestyle". This idea will be repeated once again in the aforementioned D.H. and Others

ruling against the Czech Republic of 13 November 2008 (Paragraph 181): "The Romas' vulnerable position requires that their different needs and lifestyles be given special consideration within general regulatory frameworks and in rulings related to particular cases", adding: "Cultural diversity (the Roma) has value for society." How can this interpretation be reconciled with that made at one time by the Spanish Constitutional Court? How can the idea that the Roma community needs special protection (HR decision and others) be reconciled with the view that cultural diversity (for example, the secular Roma marriage rite) is a resource in a democratic society, and the treatment afforded it be made compatible with the treatment afforded any other couple who –without any racial or ethnic motive– have not celebrated their marriage in accordance with civil law? In short, we are witnessing a clear case of (racial/ethnic) discrimination by failure to provide different treatment.



EL PAIS
DIARIO INDEPENDIENTE DE LA MAÑANA

# El Constitucional niega la pensión a una viuda casada por lo gitano

## Uno de los magistrados emitió un voto particular a favor de la mujer

M. C. BELAZA, **Madrid**

**Casarse por el rito gitano no da derecho a una pensión de viudedad. Así lo ha decidido el Constitucional, que no ha amparado a una mujer a la que la Seguridad Social había denegado la prestación.**

**El Alto Tribunal entiende que la letra de la ley es clara, que las bodas gitanas no tienen, hoy por hoy, efectos civiles y que, por tanto, denegar la pensión no es discriminatorio. Uno de los magistrados ha sostenido una tesis distinta en un voto particular.**

María Luisa Muñoz Díaz, madre de seis hijos, solicitó en 2001 una pensión de viudedad. Se había casado con su difunto marido en 1971 por el rito gitano. El Instituto Nacional de Seguridad Social le denegó la prestación aduciendo que su matrimonio no tenía efectos legales. Ella decidió recurrir esta decisión, alegando que aparecía en la cartilla de la Seguridad Social de su marido como beneficiaria. Se abrió así una larga discusión judicial que zanjó la semana pasada el Constitucional: si no se modifica la ley, los matrimonios gitanos no dan derecho a exigir pensiones de viudedad. La única instancia que queda ahora es el Tribunal de Estrasburgo.

El juzgado de lo social número 12 de Madrid dio la razón a María Luisa en 2002. La resolución afirmaba que el matrimonio gitano estaba perfectamente acreditado y que no considerarlo tal implicaba "un trato discriminatorio por razón de etnia contrario al artículo 14 de la Constitución".

El Tribunal Superior de Justicia de Madrid, sin embargo, discrepó de este criterio, subrayando que "ha de distinguirse entre lo que es legalidad vigente y aplicable en cada momento de aquélla que puede entenderse deseable por parte de un sector de la sociedad". Este tribunal señalaba que según la ley vigente el matrimonio celebrado única y exclusivamente conforme al rito gitano no tiene efectos civiles.

Es el mismo argumento que ha seguido ahora el Constitucional. Los magistrados afirman que la exigencia de que exista un matrimonio válido para poder percibir una pensión de viudedad "en ningún caso supone tomar como elemento referencial circunstancias raciales o étnicas". Subrayan que la regulación legal del matrimonio no contiene discriminación alguna por razón de etnia y que, por lo tanto, María Luisa Muñoz y su marido, si hubieran querido, podían haberlo formalizado. Le sentencia concluye sugiriendo la posibilidad de que se impulse una legislación para que las uniones gitanas puedan tener efectos civiles.

No todos los magistrados han estado de acuerdo con esta decisión. Jorge Rodríguez-Zapata ha presentado un voto particular en el que muestra su "profundo disentimiento" con la sentencia. Asegura que la protección de las minorías exige medidas de discriminación positiva para conseguir la igualdad. Concluye calificando como "claramente desproporcionado" que el Estado español, que ha tenido en cuenta a María Luisa y a su familia gitana para al otorgarle el Libro de Familia o para reconocerles a ella y a sus hijos la asistencia sanitaria, "quiera desconocer hoy que el matrimonio gitano resulta válido en materia de pensión de viudedad".

EL CORREO ESPAÑOL

EL CORREO

**El Constitucional niega la pensión de viudedad a una mujer que se casó por el rito gitano**

E. C. MADRID

La Sala Primera del Tribunal Constitucional (TC) ha denegado el amparo a una mujer que contrajo matrimonio por el rito gitano y que reclamaba la pensión de viudedad, al estimar que mientras no exista una regulación legal de las condiciones de estas uniones no puede considerarse discriminatorio este tipo de casos. La sentencia cuenta con el voto particular de uno de los magistrados.

Alegando que figuraba como beneficiaria de su marido, la mujer, madre de seis hijos, solicitó en 2001 la pensión de viudedad, que le fue denegada por el Instituto Nacional de la Seguridad Social (INSS). Tras recurrir a la vía judicial, un juzgado de Madrid dio la razón a la mujer al considerar que estaba demostrado que la pareja había contraído matrimonio en 1971.

Sin embargo, el Tribunal Superior de Justicia de Madrid estimó el recurso del INSS al subrayar que debe «distinguirse entre lo que es la legalidad vigente (...) de la que puede entenderse deseable por parte de un sector de la sociedad», por lo que negó un trato discriminatorio. Finalmente, el Constitucional ha mantenido los argumentos del Superior.

EL PAIS

DIARIO INDEPENDIENTE DE LA MAÑANA

**Una viuda gitana pide su pensión en Estrasburgo**

La gitana María Luisa Muñoz reclamará que el Estado le conceda su pensión de viudedad en el Tribunal Europeo de Derechos Humanos una vez que el Constitucional ha denegado su recurso de amparo. Muñoz lleva ocho años luchando por esta pensión, que no se concedió porque estaba casada por el rito gitano.– C. M.

**b)** Furthermore, if one analyses the treatment afforded the appellant and her husband in comparison with other legally constituted marriages (the former would not have access to a widow's pensions, the latter would), it must be considered that the appellant is subjected to two types of discrimination in her detriment:

– Firstly, **racial/ethnic discrimination that is indirect or of disparate impact**. The Strasbourg Court has recently included in its case law the concept of indirect discrimination in its ruling regarding D.H. et al v. Czech Republic of 13 November 2007. This concept is well known in the European Union's legal system and in those of the majority of European countries. In this case, a different treatment would have been afforded the appellant (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 have access the widow's pension), but that, in fact, has an adverse impact on people belonging to a disadvantaged group (widows married according to the Roma rite) without there being sufficient justification (different treatment is not an objective or essential requirement for obtaining a legitimate public objective –or, at least the government has not justified it). In principle, the governmental legislative body may link –for reasons of legal certainty– the

provision of widow's benefits to some forms of cohabitation and not to others. However, to entirely exclude the method of cohabitation based on Roma customs at a point in history in which the plaintiff could not (except in very limited way) enter in to a civil marriage, would, *de facto*, exclude access by a whole group of women to the widow's pension based on ethnic/racial reasons. For that very reason, the indifferent approach to the race factor ("*race blind*") applied by the Spanish Constitutional Court is not convincing, because this case cannot be understood without its profoundly racial significance.

– Secondly, **multiple discrimination (from combining ethnic/racial and gender criteria)**. The concept of multiple discrimination –referred to in different pieces of the European Union's legislation– has not been, however, judicially recognised to date. The lawsuit requests the Court to recognise it for the first time. The applicant is treated differently and in a worse fashion than widows who have married legally because she is –at one and the same time– both Roma and a woman, i.e., because she is a Roma woman. It is true that a Roma 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 available only to women– connotes a specific meaning (in quantity and quality) with regard to women. In the case at hand, a Roma woman has been discriminated against due to a situation that can cause only victims who are Roma women. The applicant lived in accordance with the role of the Roma women of her time. She married based on the customs of the Roma 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 have applied to a non-Roma woman or a Roma man. This is a specific discrimination: it is a multiple discrimination because the victim can be none other than a Roma woman.

adn Madrid

SOCIEDAD TRIBUNALES

# La Nena reclama a Estrasburgo

## La Justicia niega una pensión de viudedad a una mujer que se casó por el rito gitano

**Daniel S. Caballero**
Madrid

Con los ojos enrojecidos, quizá cansada de perder, *La Nena* se va a Estrasburgo a ver si cambia su suerte. María Luisa Muñoz, mujer, gitana, viuda, vendedora de flores, madre de seis hijos, lleva cinco años perdiendo juicios en España. Y siete sin recibir la pensión de viudedad que reclama desde que falleció su marido en 2000.

La Nena se casó por el rito gitano –el único que reconoce la comunidad– en 1971 con Mariano Jiménez. Tiene libro de familia y su marido cotizó 20 años a la Seguridad Social. Insuficiente para el Instituto Nacional de la Seguridad Social (INSS), que le denegó la viudedad por "no haber sido cónyuge del fallecido" al no reconocer el rito gitano como "legal".

Recurrió. Un juzgado llegó a darle la razón, pero el INSS interpuso un recurso y, desde entonces, cada instancia –incluyendo el Tribunal Constitucional (TC), el pasado mes de abril– le ha negado el derecho a una pensión que sería de menos de 500 euros al mes. Quemadas las opciones locales, La Nena se va a Estrasburgo a reclamar ante el Tribunal Europeo de Derechos Humanos con el apoyo de la Fundación Secretariado Gitano (FSG). Cuentan con el voto favorable que uno de los magistrados del TC emitió en su caso afirmando que "procedía en justicia el otorgamiento" de la pensión.

María Luisa Muñoz, 'La Nena', durante la rueda de prensa que ofreció ayer. SYLVAIN CHERKAOUI

La Nena contó ayer que no da crédito. "Somos personas normales, mi marido cotizó y ahora debería haber [dinero] para mi y mis hijos. Pido algo que es mío", explicó. Pero se muestra esperanzada: "Creo que voy a recibir la pensión".

Para Isidro Rodríguez, director de la FSG, el caso está claro: negar la pensión a La Nena es "un claro ejemplo de discriminación".

### El apunte

**Un caso similar se zanjó a favor del viudo**

● El caso apenas tiene antecedentes. El abogado explicó el del viudo de una funcionaria que demostró que tenía una relación conyugal, aunque no figuraba en el registro civil. El Tribunal Constitucional declaró vulnerado su derecho de igualdad y le dio su pensión.

LA RAZÓN

# La pensión de «La Nena» llega a Estrasburgo

## Pide que le reconozcan la viudedad que le niega España por casarse por el rito gitano

**Desde hace siete años,** María Luisa lucha para recibir la pensión que le corresponde por su marido, que cotizó durante 19 años.

**R. M.**

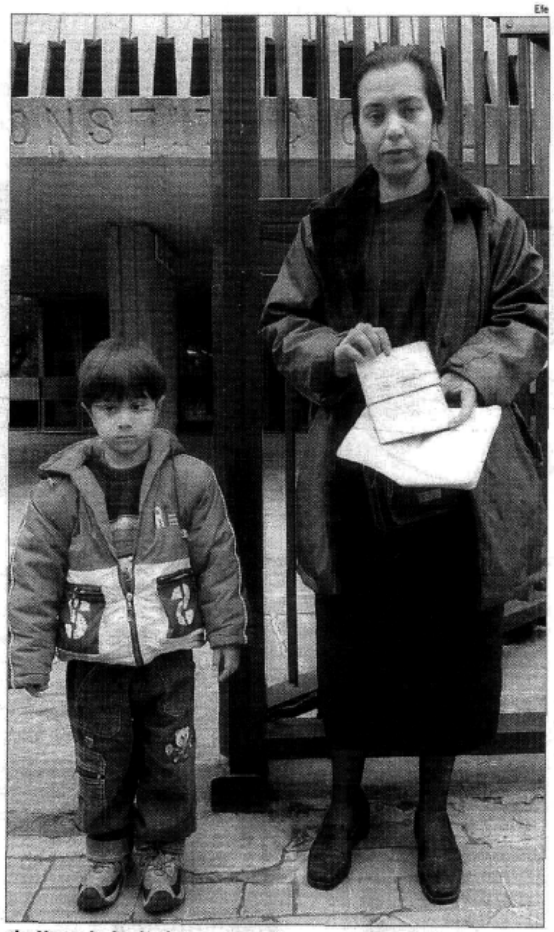
MADRID- Su marido murió después de haber cotizado durante 19 años a la Seguridad Social. Sin embargo a María Luisa Muñoz, le han negado en todos los tribunales españoles, durante siete años de lucha, el derecho a cobrar la pensión de viudedad. «La Nena», como se la conoce en su casa, se casó por el rito tradicional gitano en el año 1971 con Mariano Jiménez, con el que tuvo seis hijos, quien murió en diciembre del 2000.

Desde entonces «La Nena» trabaja vendiendo flores por las calles de Madrid y con el apoyo de la Fundación del Secretariado Gitano (FSG), ha agotado todas las instancias a las que recurrir en España por lo que ha decidido acudir al Tribunal Europeo de Derechos Humanos (TEDH) de Estrasburgo para que le sea reconocido su derecho a la pensión de viudedad que el Tribunal Constitucional le ha denegado por no admitir como legal el matrimonio. Nó le sirvió de nada a «La Nena», presentar, entre otras cosas un Libro de Familia en el que consta el nacimiento de cada uno de sus seis hijos en el Instituto Nacional de la Seguridad Social (INSS), que le denegó la pensión al «no haber sido cónyuge del fallecido».

Entonces, el caso se llevó al Juzgado de lo Social de Madrid y éste emitió una sentencia favorable a «La Nena» argumentando que su matrimonio «se había celebrado en territorio español con una forma válida y admitida por la costumbre y los usos de su etnia». Ante esta sentencia, el INSS interpuso un recurso y el Tribunal Superior de Justicia de Madrid decidió no reconocer la viudedad a la mujer.

### El Juzgado de lo Social le dio la razón, pero la Seguridad Social frenó la sentencia

Finalmente, el recurso de amparo presentado por «La Nena» ante el Tribunal Constitucional, fue denegado con el voto en contra del magistrado Jorge Rodríguez Zapata. Ahora, su abogado y la FSG han decidido llevar el caso ante el Tribunal de Estrasburgo, ante lo que «La Nena» no pierde la esperanza: «Creo que voy a recibir la pensión, aunque la cosa está muy fastidiada. Si Dios quiere, todo va a salir bien y voy a poder darle una vida digna a mis hijos», declaró a Ep.



«La Nena» lucha desde hace siete años por una pensión de viudedad

## 1.3. The "San Roque" Case: discrimination in education

### Presentation of the case

At the request of the Regional Education Office of the City of Madrid, the Department of Education decided –without prior consultation or approval by the School Board– to switch two public schools (San Roque and Cristóbal Colón), both of which are located in the Villaverde district in Madrid. This meant that, beginning with the next school year, San Roque students would have to go to the facilities at the Cristóbal Colón public school, since the Cristóbal Colón students would be transferred to the facilities at San Roque.

One cannot ignore the **social context** we are talking about here: at that time, roughly 58% of the San Roque students were of Roma origin, two percent were not Roma, and the remaining forty percent of the students were mostly immigrants who from a total of 20 different nationalities and cultures. The San Roque centre was, moreover, a modern facility that had been maintained and enlarged. The Cristóbal Colón students, on the other hand, were mostly non-Roma Spaniards, and the centre's facilities were quite inferior to those of San Roque.

Regarding **the decision making process**, while families of the Cristóbal Colón students were informed, consulted and asked to provide written consent, the families of the San Roque students were not consulted, nor were they sent any official notification of a decision which, –from the moment they became aware of it–, they roundly and definitively rejected it. The first notification to the families of the San Roque school took place via an informational leaflet on the school notice board dated 10 March. This leaflet reported that a study of the schools' enrolment needs had been carried out in the San Andrés neighbourhood in the Villaverde district, and that *"in order to adapt the supply of student places to the demand in that area"* decisions had been made that affected the centre. In particular, a decision was made *"to switch the buildings of the Cristóbal Colón and San Roque Public Schools"*. The information leaflet was signed by the Director of the Regional Education Office of the City of Madrid.

Given the situation, the San Roque Parents' Association met with the Giner de los Ríos Federation of the Madrid Community Parents' Associations (FAPA), who issued a press release on 17 April reporting on the case, showing their opposition to this measure and warning that it would cause nothing but confrontation with the educational communities of both centres, as well as with Madrid society. That same day, several newspapers published statements by the Minister of Education Lucia Figar declaring that the *"switch" of the buildings will not take place if there is no agreement"*. However, the process continued on and a few days later, on 18 April, the parents of San Roque students received an invitation from the school's director to meet with him so that he could personally inform them about beginning the 2008/2009 school year in the school's new location, which until then had been the location of the Cristóbal Colón school. At that time, the families –via the Parents' Association– also issued a press release stating that they did not want to leave the school and that they had no problem with all the places being filled. They didn't want families confronting each other, since everyone had the same objective of obtaining the best possible education for their children, and the government's action made them feel discriminated against. The mothers of the San Roque Parents' Association mobilised and convened a meeting with the FAPA and the Fundación Secretariado Gitano, in which they could study the case and come up with strategies and alternatives. The proposal of the

EL PAÍS MADRID

**La fiscalía investigará el intercambio de niños entre dos colegios**

El fiscal jefe de Madrid, Esteban Rincón, aseguró ayer a EL PAÍS que investigará el intercambio de niños que la Comunidad de Madrid planea hacer entre dos colegios de Villaverde. Uno de ellos, el San Roque, tiene unas modernas instalaciones y fama de conflictivo. Tiene capacidad para 700 alumnos, pero sólo tiene matriculados a 210. El 60% de su alumnado es de etnia gitana y el resto de 20 nacionalidades distintas. El otro es el Cristóbal Colón, un centro muy masificado. La solución que ha dado la Consejería de Educación ante las protestas de los padres de este centro es intercambiar a los niños. PÁGINA 5

metro
MADRID

# "En septiembre llevaremos a nuestros hijos al cole de siempre"

EDUCACIÓN. Los alumnos del colegio público San Roque, en Villaverde estudiaban hasta ahora felices porque no había problemas de plazas ni de integración (el 80% del alumnado es gitano). Pero en septiembre, por orden de la Consejería de Educación, algunos tendrán que ir a un colegio cercano, el Cristóbal Colón, a pesar de que en el San Roque hay varias plazas libres. ¿Por qué? Para la Asociación de Madres y Padres de Alumnos (AMPA) del centro, porque se va a crear "a sabiendas" un gueto educativo mediante la permuta con el Colón.

**"Educación no puede consentir ni fomentar actitudes racistas"**
Fapa Giner de los Ríos

Los padres no lo entienden. San Roque tiene 210 plazas ocupadas de casi 600, mientras que Cristóbal Colón tiene 425 peticiones y sólo 300 plazas. Para ellos sería mucho más fácil que los chicos que no caben en Colón ocupasen las plazas sobrantes de San Roque. Pero para la Comunidad, la permuta es la única forma de resolver la demanda de plazas en la zona, ya que no se puede construir un nuevo colegio "porque no hay suelo". Afirma que permuta "con el acuerdo mayoritario de los profesores y asociaciones de padres de ambos centros". También se ha pronunciado la Asociación Presencia Gitana, que dice que "las decisiones se están tomando a sabiendas de que son injustas e irregulares".

Sea como sea, los padres del San Roque han anunciado que el 15 de septiembre llevarán a sus hijos al colegio de siempre. OLIVIA PIQUERO

**Sin consentimiento de los padres**
Durante la rueda de prensa de ayer, la presidenta de la Asociación de Madres y Padres de Alumnos del colegio público San Roque, Liria de la Cruz, se quejó de que Educación ha decidido la permuta entre ambos centros sin contar con el consentimiento de los padres, que, según ella, no están conformes.

**Lo que exigen desde San Roque**

1. Que sus hijos sigan en el centro.
2. Que Educación busque una solución al problema del Cristóbal Colón que no afecte negativamente a los alumnos del San Roque.
3. Que la Administración no segregue al alumnado y evite formar guetos.
4. Que el colegio San Roque cumpla con el currículo establecido por la LOE y refuerce los programas de compensación educativa, evaluando los resultados.

San Roque Parents' Association was to enrol students from the two centres in the San Roque school because it had space for everyone and facilities that had been renovated and upgraded, improvements that the AMPA itself had been asking for and promoting for years. Subsequently, the Department of Education requested the FAPA to intervene in the two centres to try to reach a joint agreement.

Although it seemed that the government was becoming aware of the situation, in May they decided to go ahead with the switch instead of with trying to reach an agreement between the two centres, so the process was begun to arrange a meeting with the Education Department ware initiated prior to the appropriate administrative procedures ahead of a possible appeal against the decision to switch the schools. Both attempts proved futile: in the meetings we were invited to, the representatives of either one or the other organisation were not allowed to enter, and when a copy of the administrative record was requested, the response from the Director of the Regional Office of the City of Madrid was that "school planning based on the needs identified in the capital and on the capacity of the school in the capital's districts is the responsibility of the Department of Education (...) without that action creating any files or administrative proceedings". *Therefore, and in the absence of administrative records or proceedings concerning the switching of the Cristóbal Colón and San Roque schools, in application "a sensu contrario" of the provisions contained in Articles 35 and 37 of the law currently in effect* (...) *providing you with an administrative file that doesn't exist is not applicable".* Moreover, in reply to another letter from the FSG regarding this matter, the same Regional Director stated to us the alleged reasons that students from both schools could not be together in one school: *The type of San Roque's students, with a highly elevated number of absent pupils,* (...), *students being enrolled with significant scholastic delay and outside of the usual time periods, has made it necessary for this school to implement a specific project* (...). *The Cristóbal Colón school has a regulation educational project.* (...) *The Cristóbal Colón school will begin the next school year with approximately 435 students. The San Roque facilities can accommodate 676 students. They are being underutilised, given that approximately 200 students will be enrolled for the next school year."* In short, although the total number of pupils would fit in the San Roque facilities, the merger is not possible because all of the pupils at San Roque receive a "targeted" education due to their level of absenteeism and scholastic delay in some some students, while the students at Cristóbal Colón receive the regulation curriculum.

Subsequent to this, a platform of support for the San Roque Parents' Association was created, in which the FAPA, the FSG, the Romí Sersení, Presencia Gitana and Movimiento Contra la Intolerancia associations all participated. Their first act was to convene a press conference to try to mobilise public opinion against this unilateral decision with strong discriminatory overtones by the government. While the press conference was widely followed, the Department of Education continued on with its plan, so the Giner de los Ríos FAPA's legal department filed an appeal against the Department's decision and

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## Figar no autorizará la permuta de colegios de gitanos y payos si no hay acuerdo

17/04/2008 - 7:04

Madrid, 17 abr (EFE).- La consejera de Educación, Lucía Figar, ha asegurado hoy que la "permuta" de los edificios de los colegios públicos San Roque (casi con el cien por cien de alumnos gitanos) y Cristóbal Colón, en el barrio de San Andrés de Villaverde, "no se va a llevar a cabo, si no hay un acuerdo" entre los implicados.

Lucía Figar, que se ha referido a este asunto en el pleno de la Asamblea, en respuesta a una pregunta de la portavoz de Educación de IU, Eulalia Vaquero, ha explicado que la permuta es la "única solución posible para que las familias que escogen como primera opción la escuela pública puedan acudir a escuela pública y en su barrio".

Según la consejera, los cinco centros públicos del barrio de San Andrés de Villaverde están "llenos, sin una sola vacante", mientras que el San Roque -de alumnado gitano- tiene 500 plazas, sólo se ocupan 210, y además registra un 49% de absentismo.

Al lado de éste, el colegio público Cristóbal Colón tiene 425 peticiones y sólo 300 plazas.

"Estas familias quieren una opción de escuela pública y no hay suelo en el barrio para construir más centros públicos, ni para ampliar el centro Cristóbal Colón", ha señalado.

Figar ha defendido que esta permuta "no tiene nada que ver con el racismo, porque en el Cristóbal Colón hay alumnos de 22 nacionalidades".

the FSG filed a complaint with the Ombudsman; however, in September the students at San Roque had no choice but to start their classes at the other facilities.

### Is there discrimination?

On this occasion, we have before us a very common situation in the Spanish educational system: a school without sufficient places for all the students requesting enrolment, and another school where there are more than enough places to enrol new students.

With the right of parents or guardians to choose the school as established by the Organic Law regulating the right to an education as the starting point, the Education Act establishes that the government's educational agencies shall regulate the admission of students to public schools in a way that ensures the right to an education, equal access and, in the event that there are not enough places, that the process of admitting students be governed by criteria of priority. Nevertheless, despite what they had said, instead of assigning places at the San Roque school or at others in the area to those who couldn't be enrolled at Cristóbal Colón, the government created a specific solution for this case that was totally different to that described in the Education Act by organising a switch of all of the students and teachers at one school with those at another, thus perpetuating educational segregation and losing the opportunity to provide an integrated, inclusive educational response for all students.

In situations such as this one, where we find similar realities treated differently without any objective justification, both the Convention for the Protection of Human Rights and Fundamental Freedoms as well as Directive 2000/43/EC establish that we may be facing a situation of discrimination. In this particular case, it seems obvious that the only reason for the different treatment is the students' ethnicity which –let us remember– is mostly Roma and immigrant.

According to the European Court of Human Rights (ECHR) case law[2], a different treatment is discriminatory when it has neither a reasonable objective nor a reasonable justification, if it does not pursue a legitimate objective, and if there is not a reasonable relationship of proportionality between the means employed and the aim sought. Moreover, when the difference in treatment is based on ethnicity, the concept of "reasonable justification" must be interpreted as strictly as possible.

In no event do the reasons alleged by the government seem to us to pursue a reasonable objective, since more integrative solutions –such as "bridge classrooms" or compensatory education programmes– could have been sought, instead of maintaining the ghetto-school situation that has been going on for years.

[2] ECHR "D.H. and Others v. the Czech Republic"; "Larkos v. Cyprus"; and "Stec and Others"

Based on the above, the FSG understands that the case involving the switch of the San Roque and Cristóbal Colón schools is a case of ethnicity-based direct discrimination affecting an unknown number of people –not just students, but also their families– in which the government –specifically, the Department of Education of the City of Madrid– is the discriminatory party.

## What are the consequences?

The practical consequences of this type of discriminatory actions –carried out by the government and in cases where the victims were minors– have also been examined by the ECHR.

In a **sentence handed down by the ECHR on 13 November 2007 (*"D.H. and Others v. The Czech Republic"*)** regarding racial segregation in preschools, the Court recognised the existence of discrimination and admitted that –as a consequence of being subjected to this segregation in schools where the basic curriculum was inferior to that of normal schools– this type of education increased their difficulties and compromised their subsequent personal development instead of addressing their actual problems or helping them to integrate into normal schools and develop habits that would allow them to live a lifestyle similar to that of the majority population, as well as that the chances of finding work are much more limited for those having received this kind of education.

adn Madrid

# Trueque polémico

## EDUCACIÓN PLANEA QUE UN CENTRO SE MUDE A OTRO

IU y los padres del San Roque (50% gitanos) ven "racista" el cambio al Cristóbal Colón, más pequeño

**Saray Marqués**
Madrid

● "Dicen que aquí hay muchas faltas de asistencia, unas 220. Pues allí van a tener 220 multiplicadas por 365, porque no vamos a ir". Enrique Cortés, de 30 años, ex alumno del San Roque (Villaverde) y padre de tres niños que estudian hoy en el colegio, se envalentona. Es gitano, como el 50% de los padres de alumnos de este centro con 30 años de historia, pero con un futuro poco claro.

En el tablón de anuncios se lee: "A partir de septiembre de 2008, las instalaciones del actual colegio público San Roque, los alumnos, profesores y personal no docente se trasladarían al colegio público Cristóbal Colón, en la calle Oxígeno, 43". El motivo: en el Cristóbal Colón, situado a apenas 500 metros, faltan plazas, mientras que en San Roque sobran, según explicó el director de Área Territorial Madrid Sur, Bonifacio Alcañiz, a los padres.

El Colón tiene capacidad para 300 alumnos y hay 400 (25% extranjeros y 3% gitanos). El San Roque, 700 plazas para 200 chavales (un 50%, gitanos). Y para el próximo curso sólo ha recibido seis solicitudes. Algunos padres creen que eso ha condicionado la propuesta.

La Consejería de Educación desmiente el tablón de anuncios: "No se hará la permuta si no lo aprueban ambos consejos escolares", señala un portavoz. Alcañiz propuso antes de Semana Santa a la dirección de los centros el intercambio. "No hay suelo público para otro colegio y se pensó en rentabilizar el San Roque", afirman fuentes del Cristóbal Colón.



Los padres van a buscar a sus hijos al colegio de Infantil y Primaria San Roque (carretera de Carabanchel a Villaverde, 109).

**"INJUSTO"**

El grupo de IU en la Asamblea ve "racista" e "injusta" la propuesta, que beneficia al centro con más alumnos payos. "La Comunidad no debe consentir ni beneficiar la selección del alumnado, porque incide en la marginación de los niños gitanos", dice Eulalia Vaquero, portavoz de Educación.

Hay otro cartel en el San Roque, sobre la construcción de un aulario con 1.082.384,70 euros de inversión. Pero los padres sospechan que no serán sus hijos quienes lo disfruten. De hecho, a un pabellón recién construido y sin estrenar le llaman ya "Pabellón Colón".

"Éste es un barrio racista", lamenta Enrique Cortés, "pero en este caso la racista es la Administración". Enrique y otros cuatro padres del San Roque se reunieron con el jefe de área hace 15 días. Le preguntaron por qué no llevaban al San Roque a los niños sobrantes del Cristóbal Colón. Les contestó que no podían obligar a los padres a apuntarse al San Roque. "Pero a nosotros sí a cambiarnos de sitio...", lamenta Enrique.

### La opinión de las madres



**«Veo bien el cambio, siempre que no haya fusión. Nos han dicho que quizá allí puedan hacer hasta la ESO»**
**Dolores Hernández**
36 AÑOS. FISIOTERAPEUTA. MADRE DE UN NIÑO DE INFANTIL DEL CRISTÓBAL COLÓN



**«Aquel colegio es más chiquitajo y está viejo. Éste, recién arreglado ¿Lo hicieron para ellos?»**
**Adoración García**
21 AÑOS. AMA DE CASA. MADRE DE UN NIÑO DEL COLEGIO SAN ROQUE



**«En el Cristóbal Colón no entran todos. Hay 75 niños de tres años. Y ni siquiera tienen un salón de actos»**
**María Paz Fernández**
32 AÑOS. COMERCIAL. MADRE DE UN NIÑO DE INFANTIL DEL CRISTÓBAL COLÓN

### Las cifras

**50%** DE LOS **Padres** del San Roque están en contra del traslado al Cristóbal Colón, según la Consejería. El Colón es un centro "con buena fama" y el San Roque, uno prioritario, que debería contar con discriminación positiva.

**50%** ALCANZA **El absentismo** en el San Roque, según IU. Un cartel recuerda que es una infracción no procurar la asistencia al centro escolar de un menor.

The ECHR has gone even further, stating that this kind of segregational activity in the schools could be a violation of Article 3 of the Convention (prohibition of subjection to degrading treatment) due to the feelings of inferiority and humiliation caused by this ethnicity-based[3] discriminatory segregation.

## Response

Firstly, there was an attempt to mediate between the Parents' Association of the school involved and the government. The aim was to have the Parents' Association's proposals and opinions taken into consideration. Nevertheless, none of these actions gave any type of positive result.

At that point, the FSG submitted a complaint to the Ombudsman, informing him about the case and discriminatory overtones it had. The Ombudsman responded, stating his serious reservations about the volume and characteristics of the students at each of the schools involved, the total imbalance in the distribution of students with specific educational support needs between one school and the other, as well as a negative opinion regarding the fact that measures designed to switch the schools were not accompanied by other measures aimed at more appropriately distributing the students with specific educational support needs between the two centres.

In addition the Giner de los Ríos FAPA's legal department filed a suit against the government's activity. At the time this report is being written, the outcome of this suit is still unknown.

In conclusion, we think this case is especially serious, not just because the discriminatory party is the government –which is precisely charged by the constitution with promoting conditions so that the equality of individuals is real and effective, and with removing any obstacles preventing them from fully developing their lives– but also because the victims most directly affected by this case are minors who are being discriminated against in their exercise of a fundamental right –an education– sentencing them to a lifetime of social inferiority by making it more difficult for them to have equal access to acquiring the knowledge and tools they need to access higher education or find a job.

It is really quite worrying that situations such as that described above continue to be tolerated and encouraged in a social, democratic country ruled by law that, moreover, has signed and ratified a number of instruments and conventions protecting fundamental rights. It is clear that a legislative framework is insufficient to fight discrimination if it is not appropriately put into practice, if it is not accompanied by complementary policies, measures for monitoring compliance and a system of effective sanctions acting as deterrents applicable, first and foremost, to governmental agencies.

[3] ECHR *"Orsus and Others v. Croatia"*

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Especial Universidad y Formación (En páginas interiores)

20 minutos Madrid

**Polémica permuta**

IU criticó ayer la permuta de los edificios de dos colegios de Villaverde: uno grande, con el 100% de alumnado gitano, y el otro pequeño y con alumnado payo. La Comunidad dice que sólo se hará si hay acuerdo entre los consejos escolares.

EL PAÍS, miércoles 13 de agosto de 2008

# El fiscal investigará la permuta de dos colegios públicos en Villaverde

## Uno, medio vacío, tiene un 60% de alumnos gitanos y el otro está masificado

ELENA G. SEVILLANO
**Madrid**

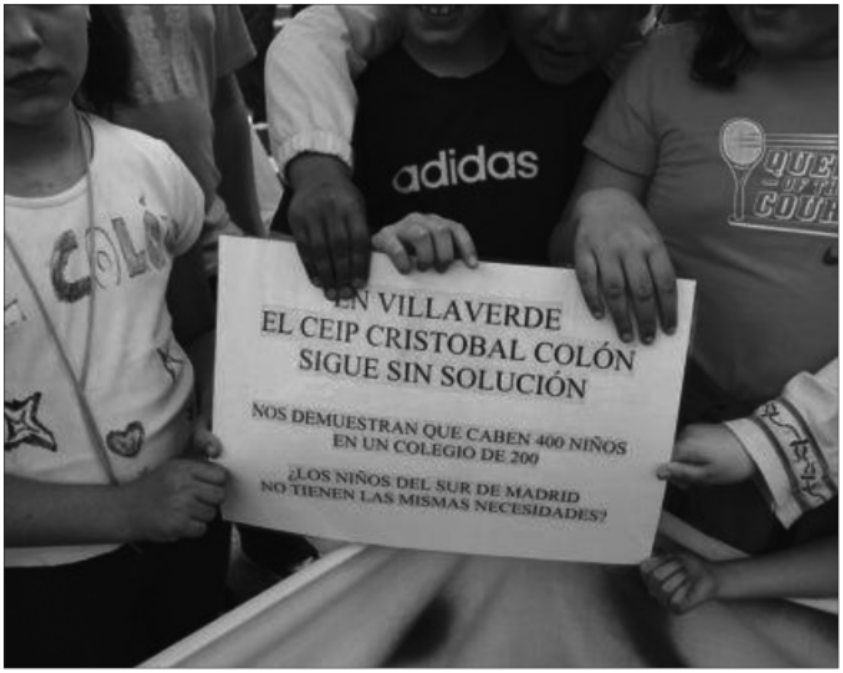
Los padres del colegio público San Roque no tienen ninguna duda: "Si nuestros hijos no fueran gitanos, esto no se haría". Lo dice Liria de la Cruz, presidenta del AMPA, que ayer se entrevistó con el fiscal jefe de Madrid, Eduardo Esteban Rincón, para contarle en qué situación se encuentra este colegio del barrio de San Andrés, en Villaverde. "Hay actuaciones un poco extrañas que habrá que investigar", aseguró después el fiscal a EL PAÍS.

La historia se podría resumir así: el San Roque tiene un 60% de alumnos gitanos y el resto, de 20 nacionalidades. Tiene capacidad para 700 alumnos, pero el curso pasado sólo se matricularon 210. Sus instalaciones son amplias y modernas. Su patio, la envidia del barrio. Pero en Villaverde tiene fama de conflictivo.

En el otro extremo, aunque a sólo 250 metros del San Roque, está el colegio Cristóbal Colón, también público. Pensado para acoger a un máximo de 300 niños, roza los 400. Ya no tiene salón de actos, ni biblioteca, ni sala de informática, ni laboratorio. Los espacios comunes ahora son aulas. "Está saturado", resume la presidenta del AMPA, Adolfina Marín. Los padres se manifestaron en junio pasado para exigir soluciones. "O menos inscripciones o nuevas instalaciones", decían las pancartas.

La solución que ha dado la Consejería de Educación, y que tiene soliviantados a los gitanos, es la permuta de los centros. Es decir, trasladar alumnos y profesores de unas instalaciones a las otras. "Nos están robando un colegio hermoso, grande, para meternos en el que no quieren para sus hijos", se queja De la Cruz.

Los padres van a presentar un recurso contencioso administrativo con el apoyo, entre otras, de la Federación de Asociaciones de Padres y Madres del Alumnado (FAPA) Giner de los Ríos, el sindicato de Trabajadores de la Enseñanza de Madrid y la Fundación Secretariado Gitano. Al fiscal jefe, que se sumará a ese recurso, le llama la atención que la permuta se haga sin el acuerdo de los padres y que "en el colegio sólo exista un colectivo que en la sociedad es minoritario".




**Manifestación contra la masificación del colegio Cristóbal Colón, en Villaverde, el pasado junio.** / LUIS SEVILLANO

> "Si nuestros hijos no fueran gitanos, no lo harían", dice la presidenta del AMPA

Mientras, aprovechando las vacaciones escolares, los obreros ya preparan el traslado. La Consejería de Educación lleva meses defendiendo que la permuta cuenta con el visto bueno de todos los implicados, aunque ayer un portavoz admitió que "no se llegó a votar en el consejo escolar del San Roque". "Lo decidieron a escondidas", insiste De la Cruz. Los padres del Cristóbal Colón sí votaron a favor de la permuta, pero no porque les parezca la mejor opción. "No nos han ofrecido otra", critica la presidenta del AMPA. La solución que proponen, en vista de la saturación que viven los colegios de la zona, sería construir un centro nuevo. La Consejería de Educación asegura que no hay suelo.

El colegio gitano se ofrece a fusionarse con el Cristóbal Colón. "Cabemos perfectamente. Somos conscientes de que tenemos peor nivel educativo, pero nos adaptaríamos", asegura De la Cruz. Las asociaciones de esta etnia afirman que la intención de la consejería es perpetuar la segregación de los alumnos gitanos. "El nivel del San Roque es muy bajo, pero es porque las autoridades educativas no le han puesto remedio. La ley dice que los niños deben tener unos conocimientos mínimos. Ha habido una negligencia", asegura Amara Montoya, de la Asociación de Mujeres Gitanas Españolas.

La consejería insiste en que prima el derecho de elección de centro de los padres. "Sólo han pedido el San Roque dos familias", asegura el director del Área Territorial de Madrid Capital, Bonifacio Alcañiz. La otra comunidad educativa, afirma, no acepta la fusión. "El barrio considera que el proyecto educativo del San Roque no les satisface. Queremos cambiar esa realidad social y estamos dispuestos a escuchar propuestas, ampliar horarios o contratar más profesores".