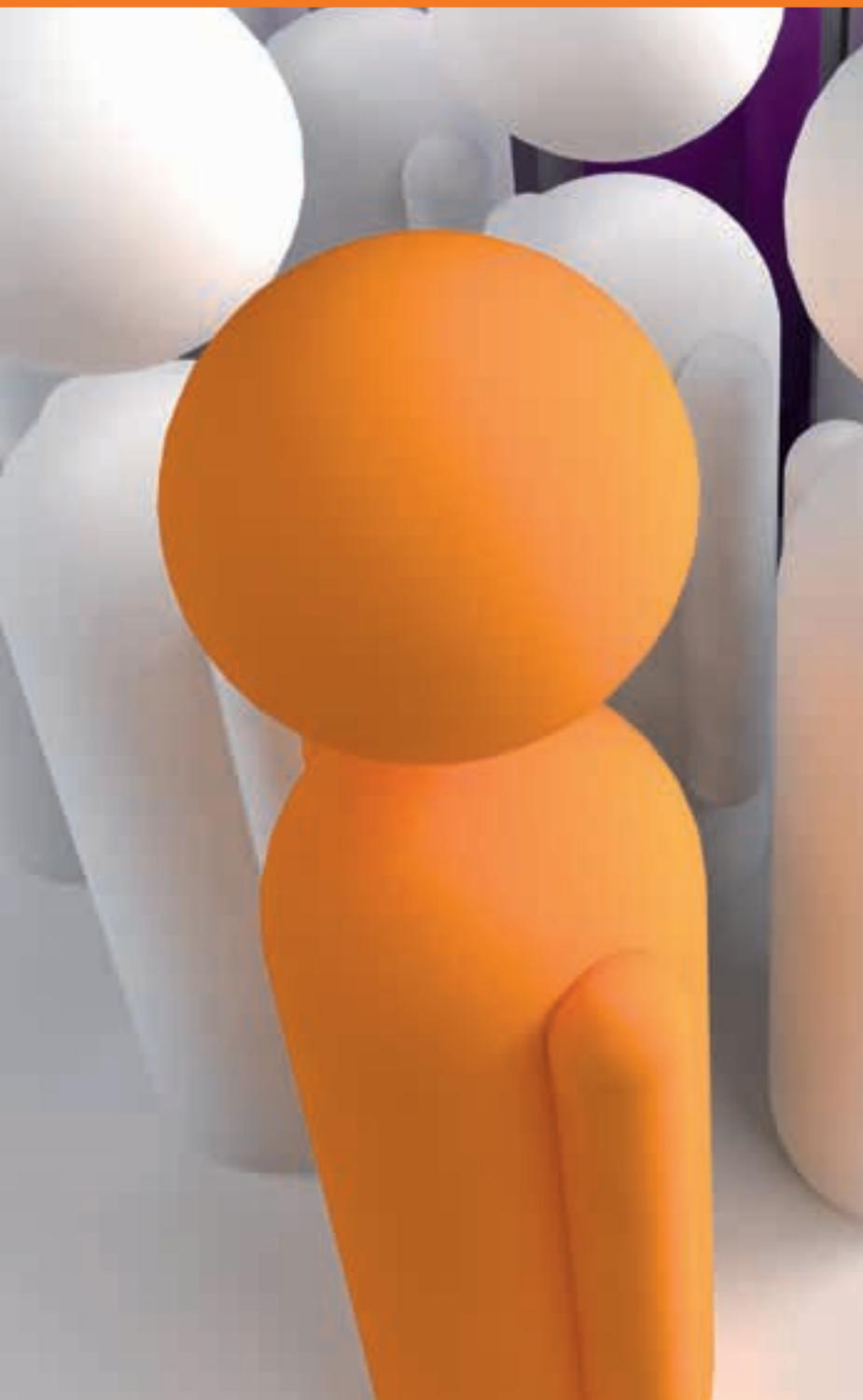


**Annual
report
FSG 2011**

Discrimination and the Roma Community



Presentation of 115 cases
of discrimination

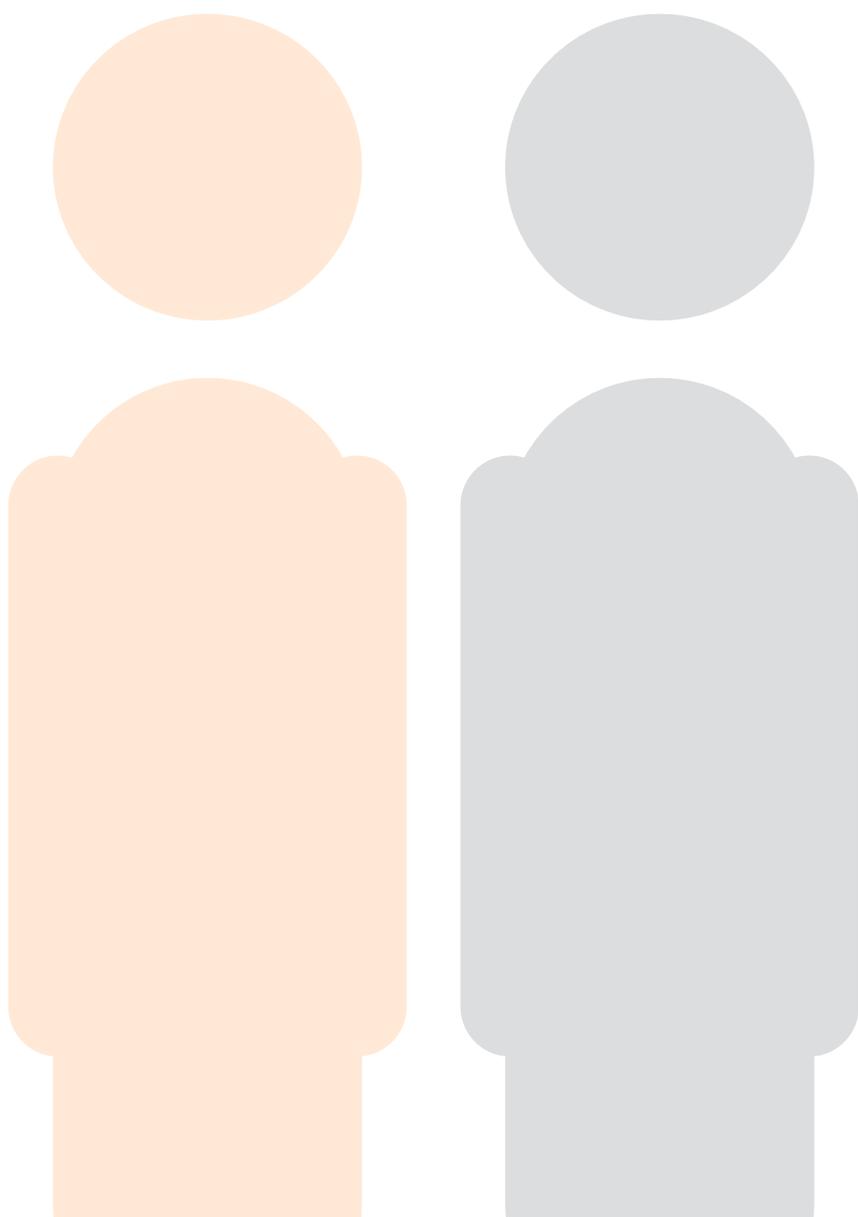
Comprehensive Draft Law
on Equality

Network of assistance
centres for victims
of discrimination

European framework
for the social inclusion
strategy targeting
the Roma population

Discrimination and the Roma Community

**Annual
report
FSG 2011**



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COUNCIL FOR THE PROMOTION
OF EQUAL TREATMENT AND
NON-DISCRIMINATION ON THE GROUNDS
OF RACIAL OR ETHNIC ORIGIN

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Introduction

Introduction

For the 7th year running, the Fundación Secretriado Gitano (FSG) presents its *Report on Discrimination and the Roma community* with a slightly renewed image to lead our ongoing work which has been strengthened and boosted by its association with the Council for the Promotion of equal treatment and non-discrimination, the Network of Assistance Centres for victims of discrimination and its participation in other related collaboration platforms, all allowing us to provide better information, service, training, awareness-raising, etc., and all targeting the elimination of the barrier of discrimination which continues to affect the Roma Community.

The FSG's Area of Equality continues to develop a number of action areas, playing an active role in the fight against discrimination affecting this ethnic minority:

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

The main section of this report is devoted to shedding light on the everyday discrimination still faced today by the Roma community in Spain. **115 cases featuring unequivocal evidence of discrimination** in 2010 are described. The cases registered are presented by areas with disaggregated data so as to provide the greatest degree of information, including a description of some of the work strategies developed. Also, we have drafted the **conclusions** reached from our work assisting victims of discrimination and have **made proposals** to achieve greater effectiveness in the defence of people who fall victim to the regrettable act of discrimination.

This report then delves deeper into some key related issues with specialised **articles such** as discrimination in education, one of the main areas of focus if we expect this ethnic minority to progress, cyber-hatred as one of the worrisome phenomena in today's society and an analysis of the Comprehensive Draft Law for Equality and Non-discrimination, a veritable legislative milestone which the FSG and the rest of the third sector have been and continue to work for



because we feel that our country needs a comprehensive equality law guaranteeing non-discrimination for all citizens for reasons of age, sex, cultural origin, ethnic group, disability, etc. This Bill is now before Parliament and we trust that, despite the political climate characterising our country at this point in time, it will meet with general support and will finally be enacted to guarantee equality for all citizens.

The report again makes its customary reference to important **advances** achieved in 2010–2011 in Europe and Spain in the form of reports and case law in this sphere.

Lastly, we provide a summary of the **affirmative action** measures implemented during the period; the work done by the Platform for Police Management of Diversity; different awareness heightening projects and implementation of equal treatment and anti-discrimination measures at local level; social awareness-raising campaigns, training and awareness-raising done by the FSG, recommendations made by the CERD¹ to Spain and training carried out by the FRA². All actions which we feel are of particular interest for all of the key players involved in the fight against discrimination.

Important headway has been made this year in this connection, particular mention being made of the work carried out by the Council for the Promotion of equal treatment and non-discrimination of persons for reasons of racial or ethnic origin, especially the constitution of the Network of Assistance Centres for Victims of Discrimination and the Comprehensive Draft Law for equal treatment and non-discrimination.

However, this year we have also witnessed regrettable situations. The economic crisis in Spain has sparked a lack of understanding leading to increased rejection and stigmatisation of the Roma community in different European countries including ours. This phenomenon has also been apparent in the discourse of some influential political figures who do not support the Spanish model of integration nor the constitution of a plural, diverse, tolerant society where democratic values prevail.

Therefore, at this time of difficulty, focus must be put on the human capital of our society and government administrations, the third sector and the society at large must all work hand in hand so that equality, one of our most fundamental principles, is not violated.

Once again, we would like to express our gratitude to all of the individuals and institutions who have collaborated in compiling this Report. Firstly to the workers of the FSG who, from their different work centres, were involved in the collection of and follow-up on the different cases and provided support to the victims of discrimination.

Secondly, to the Ministry of Health, Social Policy and Equality which once again has provided the FSG with economic support for the actions we carry out in the promotion of equal treatment of the Roma community.

And lastly, we would like to express our appreciation for the collaboration offered by Fernando Rey, Constitutional Law Professor from the University of Valladolid and by Arancha Moretón, Associate Professor of Constitutional Law at the same University, excellent professionals involved in promoting the principle of equality in our society.

Sara Giménez Giménez

Responsible for the Area Equality at the FSG

¹ Committee on the Elimination of All Forms of Racial Discrimination.

² European Union Agency for Fundamental Rights.



Cases of discrimination



1. Conclusions and recommendations

The following conclusions and proposals are the fruit of the work done by the Fundación Secretariado Gitano's Area of Equal Treatment in helping victims and analysing the 115 cases of discrimination recorded:

1. Lack of information and a sense of defencelessness continue to prevail among victims

We continue to find that victims of discrimination are not aware of their rights thus making it essential to continue implementing information initiatives taking account of the characteristics of these victims, an activity in which the FSG's Area of Equal Treatment is immersed through the publication of an information brochure.

We likewise discovered that many victims of discrimination do not file a complaint because they are convinced that no one is interested in helping them combat the violation of their right to equality. They have no faith whatsoever in the system currently in place to

protect their right to non-discrimination due to its lack of legal services to represent and defend them in court.

We would also point out that in the sphere of employment and education, or when the alleged discriminator is a police officer, victims fear repercussions against themselves or, in some cases, against family members, from filing a complaint and therefore they continue to refuse to take any action.

We also continue to perceive that the majority of Roma consider discrimination as a normal part of their everyday life.

It is extremely important to inform, advise and accompany victims of discrimination throughout the entire process of defending their right to equality and to establish suitable mechanisms whereby to contact them, mechanisms which guarantee independence and assistance during the entire complaint process and envisage specialised legal support services for those cases where victims require defence in a court of law.



2. Lack of action protocols providing objective data regarding complaints and which envisage suitable attention to cases and court proceedings having to do with discrimination

The fact that discrimination is such a common occurrence leads to a sense of normalcy which needs to be combated by empowering potential victims and by providing needed training and awareness-raising to the key players involved such as police and jurists. This awareness can only be heightened through specialised training in this area and by working with cases and victims.

In order to provide an effective response to complaints filed for cases of discrimination, state police and security forces must have a specific action protocol to help officers identify and gather the different components of a discriminatory act and channel cases through the legal system.

The creation of action protocols was one of the lessons learned and effectively applied in the case of gender-based violence where important progress has been made in providing adequate care for victims and gathering solid evidence. The fight against discrimination requires the application of best practices such as the one just described and anti-discrimination action

protocols at national level because to date the only ones in force are the Barcelona regional police protocol (Mossos de Escuadra) and that of the Fuenlabrada local police (Madrid).

Also, courts throughout Spain need to process legal proceedings and complaints in the area of discrimination taking account of the discriminatory practice and the regulations currently in force. We say this because the knowledge of jurists (judges, prosecutors, lawyers, etc.) is often severely lacking in this regard.

On the positive side, we would draw attention to the work undertaken by the Hate and Discrimination Crime Service of the Barcelona Provincial Public Prosecutor which has served as a model for other prosecution offices such as Madrid and the Provincial Prosecutor of Malaga which, on 24 June, implemented the first specialised prosecution service for hate and discrimination crimes.

These legal channels are important if we are to make headway in defending the right to equality in the courts.

We believe that legal and police services must act in accordance with a concrete specific protocol. First of all, this would better serve victims and secondly would be instrumental in obtaining objective data from complaints and legal proceedings involving discrimination, data which to date are non-existent.

Reinforce and disseminate the figure of the Hate Crime and Discrimination Service in public prosecution based on the best practices already implemented in pioneer legal services in this area in Spain.

Increase and improve training in this connection targeting the legal sector and police services.

3. The worrisome propagation of discrimination through the Internet

For another year running, the media is involved in over 30% of the cases recorded. Within the media, **Internet** has taken on a very important role: information in real time, fora, blogs, e-mails, social networks and an endless range of global possibilities which are easy to use and readily accessible. However, this progress is not free of danger. In the field of equal treatment and non-discrimination, many social organisations are concerned about the rise in Internet content encouraging racism, xenophobia and even violence, content uploaded under the pretext of freedom of expression. However, we must not lose sight of the fact that the right "to freely express and disseminate thoughts, ideas and opinions by word, in writing or by any other means of communication" granted by the Spanish Constitution is not without limits nor is it absolute. The Constitution itself lays down limits in referring to "respect for the rights recognized in this Title, by the legal provisions implementing it, and especially by the right to honour, to privacy, to personal reputation and to the protection of youth and childhood.

In addressing the problem of the conflict between the fundamental right to honour and the right to freedom of expression, Supreme Court doctrine has established that "freedom of expression cannot be invoked to le-

gitimise an alleged right to insult others given that this would enter into conflict with the dignity of persons proclaimed in Article 10(1) of the Constitution".

The danger of this is clear. On the one hand we have the difficulties of prosecuting discriminators because in most cases they are impossible to identify considering that a large percentage of this content is published and uploaded to the Internet anonymously or under a pseudonym.

If forum and web managers and administrators were to refuse to allow their platforms to be used for the dissemination of racist or discriminatory ideas, they would be contributing to an atmosphere of support and solidarity towards victims.

Furthermore, the speed at which information is propagated and the potential number of people with access to it makes for a true large-scale threat. In light of this particularity of the Internet, fast and effective mechanisms must be activated to control racist content. Moreover, web pages disseminating content which is an attack on a vital democratic principle, equality, must be closed or suspended.

Continued work with the media is needed with a view to raising awareness and the same is true for professionals who generate social awareness to get them involved in eradicating exclusion and social rejection. We need a tool whereby to speed up investigation and processing proceedings and the closure or suspension of web pages which constitute an affront to equal treatment or contain racist content.



4. Rising number of cases recorded in the area of employment

17% of the 115 cases recorded were in this area. The economic crisis has affected workers, especially the least qualified, including many Roma who are once again seeking employment and suffering from the discrimination barrier. Discrimination is not only apparent in gaining access to employment but also at the workplace where harassment based on ethnicity is at play in over half of the cases recorded at the workplace resulting in victims

quitting their jobs or being unfairly dismissed. Hence, discrimination in this field is of great importance insofar as it affects a basic social right which is vital to the inclusion of the Roma community.

As in reports from past years, when faced with this sort of discrimination most victims refuse to file a complaint for **fear of reprisals** in their future search for employment.

We therefore believe that further work must be done to enhance coordination and cooperation between social entities and other bodies providing support for victims of discrimination and the Labour Inspection Service as a way to effectively fight against discrimination in employment.



5. The negative image of the Roma community persists with special rejection of Roma from the EU

According to the data from the 2009 Eurobarometer, Spanish citizens believe that discrimination based on ethnic origin is the most pervasive in their country. The case of the Roma community is undoubtedly one of the most flagrant. In all of the situations recorded, Roma suffer discrimination because they are associated with negative, preconceived ideas, an image which unfortunately the majority of society has of the Roma community resulting in cases of direct discrimination where discriminators usually express their prejudices openly.

In many cases, this negative perception is fruit of ignorance of the real situation of the Roma community given that the information offered by the media is as-

sociated with conflict and negativity. This is in addition to the discourse of some political leaders who try to stigmatise and blame mostly the Romanian and Bulgarian Roma minority for the current economic crisis and social conflict.

We would draw attention to the difficult situation affecting the EU's Roma population in Europe in the aftermath of the mass expulsions from France, Italy, Hungary, etc., the drafting of guidelines restricting their free movement and political discourse fostering the stigmatisation and rejection of the EU's Roma population which, by association, has a negative effect on Spain's Roma population.

It is therefore important to implement awareness-raising and information actions throughout society and appeal to the great responsibility that political leaders and representatives have in rejecting racist and xenophobic discourse which constitutes an attack on our democratic values and has negative consequences for co-existence and social cohesion.



6. Major barriers standing in the way to equality in access to private goods and services and access to housing

As in past years, we found that the majority of cases occurred in accessing entertainment services and commercial establishments where the young Roma were particularly affected either by being refused entrance to an establishment due to their ethnic background based on owners exercising their right of admission or, in the case of women, being watched or even unfairly accused of stealing in some stores.

This sort of discrimination also affects one's basic social right to housing and there are no effective defence mechanisms in place to prevent these violations. Specifically in access to private housing (purchase and rental) an important discriminatory barrier is that which allows owners to rent or sell their home to the person of their choice. When real estate agencies deal with Roma cus-

tomers they often say that they have no homes for sale or that the owner refuses to rent or sell to Roma persons and have even claimed that the homeowner's association does not want neighbours from this ethnic group.

When faced with cases in either of these two categories, the FSG usually opts for dialogue and mediation to fight this prejudice prompting people to take these erroneous decision but, despite the filing of complaints at the Consumer and User's Office where appropriate, the compensation for the victim is next to nothing because in most cases the discriminators defend themselves saying that they have the right to limit admission or to rent or sell a home to whomever they please and are thus able to commit acts of discrimination with no repercussions whatsoever.

Therefore, an effective defence mechanism is needed to prevent situations where people are excluded from having access to a home of commercial establishment due to their ethnic group given that owners' individual rights and the right to admission must be exercised without violating the fundamental right to non-discrimination.

7. 69% of the victims of discrimination are Roma women

Roma women suffer from multiple discrimination on several fronts (for being women and for belonging to the Roma ethnic group). Also, the greater degree of social exclusion within and outside of the community spells dual vulnerability. Cases of discrimination against women are particularly prevalent in the areas of employment and access to goods and services.

Regarding employment, we would stress the positive fact that Roma women are increasingly entering the 'formal' labour market and in the form of salaried employment. In other words, Roma women have always worked in other contexts such as the home, community, mobile trading, etc., but it is now that they are beginning to form part of the salaried workforce. This partly accounts for the rise in the number of cases in this area. Roma women are discriminated against in accessing the labour market (prejudice in the selection process) and once they are hired (inferior working conditions, unequal treatment and dismissal when it is discovered after the fact that they are Roma). In times of crisis it is not unusual for firms to hire a greater percentage of women given that statistically they work fewer hours and earn up to 30% less than their male counterparts and take on temporary or part-time work to supplement the earnings of men. This means that we still have not overcome the concept of

men being the head of the household, the main wage-earner. In contrast, economic necessity is what forces many women to accept precarious work posts to make an extra albeit temporary contribution giving them the added responsibility of conciliating personal, family and work life. The new role assumed by Roma women, greater training and participation in public life have paved the way to their incorporation into the labour market. Roma women will continue to work for their incorporation into the labour market given that they are the drivers behind change in their community and therefore need the support of the majority society, equal treatment forming a vital part of the equation.

Therefore, the greater number of women suffering discrimination in gaining access to services may be because Roma women are still expected to play their traditional gender roles which means doing housework and caring for family members (shopping, bureaucratic details with government offices, etc.). They spend less time at entertainment centres and in free-time activities and therefore there are fewer cases of discrimination against Roma women in these activities. This difference was noted in past years where it was mainly men taking part in entertainment activities, mostly discotheques and sports arenas.

In light of this fact, special focus must be placed on protecting Roma women from falling prey to multiple discrimination. Similarly, the prevention of gender based discrimination requires awareness-raising throughout the Roma community and among all citizens concerning the need for co-responsibility in the development of the family, personal and group life project and the disadvantages that differential socialisation/education poses for both sexes.

2. Cases of discrimination collected in 2010 by area

Cases of discrimination in the media

1. January. National. Internet. It is not uncommon to find pages in Facebook (social network) with anti-Roma content inciting hatred and violence. This network allows users to create interest groups and in this particular case we found a group with nearly 100 members which called itself 'I also hate gypsies'. Thanks to the action taken by other users who denounced this group, Facebook banned their page. Nevertheless, content of this nature is all too frequent on the different social networks and its detection and elimination is usually complex. Action taken by private citizens as in this case is key to the fight against racism and discrimination on Internet.

2. January. National. Internet. The Internet portal called *El Mundo Today*, an entertainment service whose content and information are fictitious, published a story entitled 'The government plans to open 'gmail' accounts for Roma communities. Spanish shanty-towns will have Internet.' This pseudo-new item announcing a Ministry of Science and Technology plan to make Internet connections available in depressed areas associates the Roma community with a series of criminal behaviours such as: 'The proposal [...] will provide wireless Internet connections so that shanty-town residents won't be able to cut the lines for re-sale'; 'In an attempt to motivate users, they were told that they would be stealing the Wi-Fi connection from their neighbour'. This page includes negative stereotypes, prejudices and slander which are seriously damaging to the dignity and image of the Roma community.





- 3. January. National. The media.** A programme entitled 'Panic on the set' was broadcast on Antena 3, a national television station, during prime time. The broadcast showed the image an elderly Roma person which was used to make a prejudicial and discriminatory parody of the Roma community. The programme's comedian said that the elderly person 'is my uncle Calisto and I know him from when he was in prison for selling pirated CDs on the street'. The picture published without the permission of the man who is highly respected and by members of his community was not only an attack on his dignity and privacy but was also damaging to the entire Roma community insofar as it disseminated a series of negative prejudices and stereotypes. The FSG's area of Equal Treatment sent a letter to those responsible for the programme and to the producer.
- 4. January. National. The media.** The digital edition of the newspaper *Diario de Sevilla* published an opinion article entitled 'Emigrants and vagabonds' in which the journalist asserted that in California in 1936 'the emigrants escaping from the drought had no schools or hospitals and were forced to *live like gypsies*'. Another unfortunate comparison which serves to show how deeply embedded this negative idea about the Roma community is and how it is accepted as an unmoveable truth by society.

Martes, 7 de agosto de 2011 CATEGORÍA GENERAL | OPINIÓN | ECONOMÍA | ENTREVISTA

diariodesevilla.es **OPINIÓN**

PORTADA | SEVILLA | PROVINCIA | DEPORTES | ANÁLISIS | ACTUALIDAD | TECNOLOGÍA | CULTURA | TR

OPINIÓN

Emigrantes y vagabundos

Alfonso Sánchez | Actualizado el 07/08/2011 a las 11:00

En un campamento de emigrantes que trabajaban como jornaleros recogedores fruta en California, en los tiempos de la Gran Depresión, John Steinbeck recogió estas palabras de un hombre que tenía que vivir en una chabola de plástico con su mujer y sus hijos: "Cuando nos necesitan nos llaman emigrantes, y cuando les hemos recogido la cosecha, somos vagabundos y tenemos que largarnos". La frase pertenece a los reportajes de Los vagabundos de la cosecha, que Luis Solano publicó hace tres años en *Litros del Asterisco*. Si aún existen las facultades de Periodismo, espero que esos reportajes se lean y se comenten y se discutan.

El buen reportaje tiene la ventaja de que sigue siendo tan actual como el día en que se escribió. Y no hay un libro más adecuado a lo que está pasando en México y en otros muchos municipios que estos reportajes de Steinbeck escritos hace setenta años. En la California de 1936, los emigrantes que huían de la sequía no encontraban ni escuelas ni hospitales y tenían que vivir como gitanos. En la España actual, por fortuna, las cosas son muy distintas, porque el Estado garantiza una serie de derechos en materia de sanidad y educación que eran inimaginables para los jornaleros de Steinbeck. Pero hay inquietantes coincidencias entre un caso y otro. La actitud del Ayuntamiento de Méjico, por ejemplo, demuestra los mismos prejuicios que imputaban a los ciudadanos de California a tratar como vagabundos a los emigrantes estadounidenses. Y esa actitud es muy peligrosa.

Pero, al mismo tiempo, debemos reconocer que los ayuntamientos no están en condiciones de atender todas las demandas sociales que se les exigen. Desde hace años, el Estado se ha constituido en una especie de ONG permanente que promete atender hasta las más pequeñas necesidades de los ciudadanos. Y esta pretensión es insostenible. Para que el Estado pueda atender las necesidades indispensables en educación y sanidad y servicios sociales, antes tiene que desarrollar una estricta política de austeridad. Es imposible, por ejemplo, que cada comunidad autónoma tenga varias televisiones públicas, y docenas de ONG dedicadas a actividades deportivas, y miles de funcionarios perdidos en dependencias oficiales aún inexploradas. Hay que elegir entre el derroche o la eficiencia, porque de lo contrario se inevitable el aumento del Estado del Bienestar en un plazo de 15 a 20 años. La leyenda se ha sobrevivido a la superación de creer en la capacidad infinita del Estado para solventarlo todo- debe elegir entre administrar bien los recursos públicos o el hundimiento inevitable de todas las prestaciones sociales. No hay otra alternativa: ciudadanos o vagabundos. Incluidos los emigrantes.



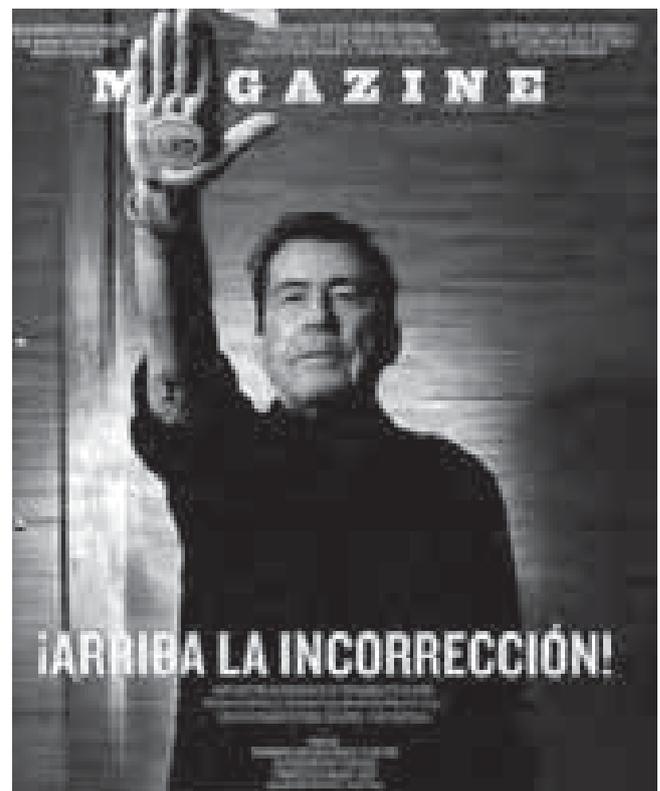
5. February. National. Internet. Once again in *Facebook* we found another group called *I also believe that the ewoks are the first gypsies of the of the lover bears* with 21,929 "admirers". Following are some of the comments: "That's a very interesting theory", "These guys are the laughing stock... with their dilapidated vans all full of lice!!!" "Look at the way they dress." We think that the way the negative image of this ethnic minority is perpetuated through the social networks is cause for concern.



CASE 5

6. February. National. The media. Channel 4, a national television station, broadcasts the programme entitled *Callejeros* (on the street) which usually focuses on marginalised neighbourhoods in Spain. These are typically areas in risk of social exclusion where, among others, Roma live. Programmes like this which focus on the most spectacular cases of exclusion and marginalisation contribute to the creation of a false image of the social reality of these neighbourhoods where there are many people who have nothing to do with the negative stereotypes highlighted by the programme - honourable families who live in a situation of poverty and are taking part in programmes to improve their standard of living. Specifically, the issue of the social image of the Roma community is especially relevant because the perpetuation of negative prejudices and stereotypes in the public opinion has serious consequences on their access to the most basic of citizen's rights and only serves to reinforce social rejection and is not an image which reflects the heterogeneous reality of this community.

7. March. National. The media. In the publication entitled *Magazine*, a supplement of the *El Mundo* national newspaper, an article was published under the following title: "An expensive attitude. Politically incorrect on the offensive", focusing on the censorship of the "politically incorrect" in our democracy. The article features interviews of several known figures of Spanish society who address this issue. The following quote was included in that report: "If a person publicly states that s/he likes to pray, that her dream is to be a housewife and have a large family, that s/he has doubts about climate change, that the American people are indisputably superior or that s/he does not trust gypsies, that person would be considered politically incorrect, a mortal sin in our society the consequence of which is ostracism and verbal attack." This is a defence of the right to uphold stereotypes and prejudices against the Roma community (and others). The article goes on to assert that those who criticise these actions, ideas or the improper use of terms, are nothing more than censors and are close-minded.



CASE 7

8. March. National. Internet. The Internet and its social networks are being increasingly used as tools to disseminate prejudice and stereotypes. Once again in *Facebook* we find several interest groups with strong and unfavourable ideas and opinions against people of the Roma ethnic



group who are widely misunderstood.. In this case we found a group called *I also believe that Marc Lenders was a GYPSY* with 1,630 fans and comments such as: "Their dirty hair and skin tone are tell-tale signs... if their shirt is buttoned all the way up, you can be sure that underneath you'll find a thick chain around their neck." Then there is the group called *I've never seen a gypsy with glasses* with 5,291 followers where we can find the following debate between supporters and critics: "This is addressed to you cultured and educated non-Roma: In the Review section of this page, I've left you a debate forum. I hope that at least some of you have an elementary school education and can read and respond with a degree of respect and coherence. Signed, a Gypsy." Lastly, we found a group called *You're more suspect than a Gypsy out running* with 11,324 followers responding to contrary opinions using arguments such as the following: "You have to be politically correct and not crack a smile (just kidding). I think that those people who call us racist have too much free time on their hands, they need some All Bran cereal..." All of these comments are a symptom of the tense discussion and misinformation that exists in our society when it comes to matters of equal treatment and non-discrimination.

9. **April. National. Internet.** A blog published in the digital newspaper called *Que!* entitled *Gypsy-Land. a united and clean Spain* contained blatantly racist and discriminatory comments inciting hate and violence, transforming the forum into an open conflict between Roma and non-Roma. Following are some of the comments made: I see that the conflict is on the table. I wanted to add my two cents to give an idea of how much better off we would be in this country without that band of ignorant Neanderthals. Bastard stinking gypsies, you can't even speak like a real person, mumbling that unintelligible shit all the time. SIEG HAIL!!!!. That area of the web page is no longer accessible which could mean heightened awareness of this media where the anonymous author has always been given the freedom to publish whatever s/he wants.

10. **April. National. Internet.** The digital editions of newspapers give their readers the freedom to add their comments to the news stories published. This novel service allowing for citizen participation can sometimes be dangerous, however, given the lack of control over the content of those comments. It could even become an optimal tool for the dissemination of racist and discriminatory messages. An example of this are the comments made in the digital edition of the *ABC* newspaper in response to a news story about the exclusion of Andalusian Roma (*30% of Andalusian Roma suffer exclusion*), the Autonomous Community with the largest Roma population. Following the article are a series of comments reflecting what could be the general negative opinion of the Spanish society towards members of the Roma community: "Self-exclusion if what I would call it... and it doesn't surprise me. To date they've done just fine living off of hand-outs from Spanish workers"; "Has anyone asked them if they want to integrate?"; "They've been in Spain for over 500 years now. What make you think that this money is going to change them overnight? Wake up, people!!! We would all love to live without working and have a house, school, etc. all paid for. If they want to integrate, build flats for them in residential neighbourhoods next to the do-gooder politicians". This shows the complex situation in our country where there is a clear association between the Roma community and social exclusion, without distinguishing that these are two different realities and that the Roma Community is plural It is therefore important to implement awareness-raising schemes targeting the society at large.



11. April. National. The media. The disparaging use of the term “gypsy” is frequent in Spain and internationally despite efforts made to revitalise the term and rid it of negative connotations. However, this case shows that the disparaging use of the term is common even in sectors where one would not expect it. An article published in the *ABC* newspaper explains how a new disparaging acronym has made its way into international financial markets, i.e. the term GIPSY used to refer to Greece, Ireland, Portugal, Spain and Italy (corresponding to the first letter of each country except for the final Y of Italy) – economic doubts surrounding the future of the European Union. In the 1980s, the term PIGS was coined to refer to these countries (except for Italy) and became very popular in the media. Today, however the PIGS are being replaced by the GIPSYs to refer to countries under financial pressure due to high debt; another example of a lack of sensitivity on the part of these alleged experts and professionals.

12. April. National. The media. A morning programme on Channel 4 addressed the problem of the growing number of inmates in Spanish prisons making a number of negative comments about the foreign Roma population. The ensuing discussion reiterated the idea that Spain and Italy’s problems with the Romanian Roma population have to do with the rapid accession of Romania into the EU. During this live broadcast, the programme took calls from viewers who also took the opportunity to make comments like the Roma community from Eastern Europe has to adapt to our way of life, stressing the lack of hygiene of these people and other similar comments. Despite the moderator stressing avoiding generalisations and the fact that the discussion should focus on the actions of individuals and not groups, the tone of the debate continued along the same discriminatory, prejudicial and stereotyped line.

13. April. National. The media. In the digital format of the *Expansión* newspaper, an economic journalist used his blog to analyse the role of Spanish politicians in the crisis and their predisposal to draw up a pact. In an attempt to discredit the politicians he resorted to comparisons with the Roma community. The Spanish Parliament is like the *Café Chinitas* (Flamenco establishment in Madrid)... In reference to the audacity of politicians the writer says “They tell their brothers:” “I’m braver than you, more of a bullfighter and more gypsy...” This use of stereotypes and absurd comparisons impoverishes journalism which sometimes strays from values, deontological principles and established constitutional rights such as the right to equal treatment and non-discrimination.





14. **May. National. Internet.** A national-socialist web page, *www.milucha.org*, addressed the topic it called *Europe against gypsies* in its forum section. The forum opened with a news item about an electoral video used by a nationalist party of the Czech Republic and broadcast on Czech national television during the 2009 Euro-parliamentary campaign depicting an ultra right-wing political party proposing a "final solution" against the Roma community. These anonymous people make comments indicating that the Roma community is dangerous for Europe due to its high birth rate and they assert that this will cause increased inter-racial tension throughout the continent. Comments such as these show clear support of hatred and xenophobia.



CASE 14

15. **May. National. The media.** The national newspaper *La Razón* published an opinion article entitled 'Rom, gitano rumano'. The author, in her chaotic style, tried to address the controversy surrounding the racist flyer distributed by the PP party candidate from Badalona, García Albiol. She began by stating that the concepts of 'racism' and 'xenophobia' were tantamount to 'moral stupidity'. She also pointed a finger at the European Union as the maximum authority responsible for the 'dreadful movements of population' from Eastern Europe. Then, in a half-hearted attempt to put together a somewhat coherent and objective article, she says that 'no human being, for simply belonging to a particular community, can be judged by anyone but himself and not by myths or stereotypes attributed to his group. To say that all Romanian Roma are delinquents is ridiculously bold and just plain inaccurate. However, it would appear that many of them get by thanks to petty crime and begging

which are 'cultural' attributes of their communities, a moral code and lifestyle which, to them, are both dignified and decent. No one wants them. Not even their own countrymen. Not even their governmental leaders'. It goes without saying that the incoherent and prejudiced comments of this person are at least striking. After warning against making generalisations, she goes on to say that petty crime and begging are 'cultural' attributes of the Roma community, an affirmation which underscores the sort of racism underlying prejudice. For this person, clearly ignorant of the values underlying Roma culture, the people missing the point are the ones like us who are trying to combat discrimination and promote equal treatment among all people which she refers to as 'the ridiculous tyranny of political correctness'.


QUÉDASE: 118000
E.U.M.: 118000
Tarifa (C): 5000

LA RAZÓN

Fecha: 20/01/2018
Sección: OPINIÓN
Página: 22

BONUS TRACK

Rom, gitano rumano

Si parece cierto que muchos gitanos rumanos sobreviven gracias al hurto y la mendicidad

Angela VALLVET



No confunda los conceptos de «racismo» y «xenofobia». Ambos me parecen una estupidez moral, acciones parientes de un vicio cognitivo. Del racista puedo decir, sin temor a equivocarme, que es un supremacista ignorante de formación culturranda, por no escribir insistente. Del xenófobo, que no cree en el albedrío porque probablemente carece de fe que alberga acciones liberticidas en su pequeña, endémica y bívora imaginación. La polémica despertada por el panfleto del candidato del PP García Abellán en Badajoz, que reproducía una foto donde se veía una pancarta, escrita por algún particular, con la frase «No queremos rumanos», ha despertado las conciencias siempre vivas de nuestros guardianes de la corrección social. «Racismo», «xenofobia», «antisemitismo», nos comisionan desde su impecable sopesado Personalismo no creo que exista tanto racismo alestregado esperando atacar como una serpiente largo tiempo adormecida en el inconsciente colectivo. ¿No serán rigurosos, marones y educación quienes nos separan? Si los gitanos rumanos fueran millonarios ociosos sus vecinos no escribirían panfletos, no se quejarían ni harían nada que se pudiera catalogar como prejuicios racistas. No hace tanto, en Italia, una serie de crímenes cometidos por gitanos rumanos escandalizaron a la opinión pública y el entonces gobierno de Prodi no tardó en aprobar un decreto que permitía «entender a los ciudadanos rumanos como peligrosos» las condiciones de expulsión de los extracomunitarios», una medida destinada a los gitanos rumanos que habían acampado a miles en asentamientos del Tibet, el Transilvania, Tor di Quinto, puente Mammolo, Torre Salaria... El alcalde de Roma, de centro-izquierda, anunció «el fin de la tolerancia». Prodi confesó que «Europa subestimó el alcance del flujo de ciudadanos de Rumania cuando ingresó este año en la Unión Europea» (lo hizo en 2007). La UE, en su histórica vocación por «exportar la democracia» al Este de Europa, alejándolo del eje Rusia, ha propiciado movimientos de población espeluznantes, para los que no estábamos preparados. Probablemente muchos de los gitanos rumanos que fueron obligados a abandonar Italia están ahora por Badajoz. Ningún ser humano, por el simple hecho de pertenecer a una comunidad determinada, puede ser juzgado más que por sí mismo, no por los mitos y los tópicos que se le presuponen a su grupo. Decir que todos los gitanos rumanos son delincuentes es un torpe atrevimiento, además de una falacia. Pero sí parece cierto que muchos de ellos sobreviven gracias al hurto y la mendicidad, que ya son algo «cultural» en sus comunidades, un código moral y una forma de vida digna y decente a sus ojos. Nadie los quiere, ni siquiera sus compatriotas. Ni sus gobernantes, que ponen el grito en el cielo, por causas diplomáticas, al menos arriba de «xenofobia», pero que los alientan desde Rumania a hacer el petate y largarse. La insensata tiranía de la corrección política bajo la que vivimos nos está llevando a situaciones absurdas: «Si yo robo y soy gitano rumano, yo me llamo ladrón, si tú robas y eres gitano rumano, yo no te puedo señalar como ladrón porque eso me convierte en racista». ¡Gigap, qué miedo!



16. May. National. The media. The digital weekly called *Alba*, part of the *Intereconomía Comunicación* Group, ran a story entitled "What is really happening in Badalona" in reference to the statements made by the Councillor from the PP party, García Albiol, is an example of the persistence of prejudice in the media. The news story, allegedly based on investigative work in three of Badalona's worst neighbourhoods, is nothing more than a string of stereotyped ideas systematically linking Roma, Romanians and other minorities with crime. The rigour of the investigation is apparent in assertions such as: To get an idea of the modus operandi of this community, all you have to do is go to the plaza of Antonio Machado in the La Salud neighbourhood or the Plaza de Camarón de la Isla in San Roque at eight o'clock in the morning. There you will find several groups of Romanian Roma, mostly men and young women, who gather to arrange the 'day's work': shoplifting, scrap metal collection and begging. [...] The patriarchs of the different clans control productivity and workers who do not meet their quota will be punished: the rest of group is forbidden to speak to them and men will not be able to have relations with their wives." Stereotyped terms such as patriarch and clan are used throughout the text producing an intentional distance between the reader and the individuals of the news story. Furthermore, police statistics and statements made by neighbours contribute to the formation of a co-existence pyramid where "Romanian Roma" are at the lowest level. In conclusion, the statements made by a neighbour, together with the assessment of the journalist, legitimise the racist declarations made by the Badalona councillor and serve to censure the criticism received.

17. May. Castile-Leon. The media. *El Norte de Castilla*, a regional newspaper, ran a story entitled 'Six mobile traders in possession of imitation watches acquitted'. This is still another example where mention is made of the ethnic origin of those involved in the news story. Despite the fact that this is considered personal information requiring special protection, ethnic origin continues to be one of the personal details which is most commonly revealed by the media. And it must not be forgotten that this mention is completely unnecessary given that, in most cases such as this one, this personal information does not contribute anything to the understanding of the news item.



18. June. Castile-Leon. The media. *La Gaceta de Salamanca* published a story under the headline ‘Knife brawl and a the entrance to a school in San José. This goes back to an argument between two Roma families whose children are students at the school and had problems with one another.’ The FSG works with this school and therefore was able to look into the situation and get first-hand information. The two young men involved were actually not Roma at all, a fact confirmed by the school’s head of studies. This mistake was the result of sloppy journalism and the tendency to automatically link certain criminal acts and conduct to a particular ethnic group which leads to discrimination by error or association.

La Gaceta de Salamanca, 1 de junio de 2018

ELIMINATA ■ A LAS 12:30 HORAS

Reyerta con cuchillo a las puertas de un instituto en San José

■ El origen, una discusión entre dos familias gitanas cuyos hijos, alumnos del centro, tenía problemas entre ellos ■ Uno de los implicados acudió a su casa para hacerse con el arma

14.

En la mañana de ayer se registró una reyerta con armas a plena luz del día en el barrio de San José a las puertas del Instituto de Enseñanza Secundaria Torres Villard, y terminó.

Los hechos se produjeron en torno a las 12:30 horas cuando una llamada al 112 alertó de que un joven armado con una navaja se dirigía corriendo por la avenida de Milagro Compañeros hacia el instituto donde había un gran número de alumnos.

Según la jefe de estudios del centro, todo comenzó como consecuencia de una discusión entre dos alumnos del centro, un chico y una chica de estas etnias, que venían arrastrando problemas desde hacía tiempo. Como consecuencia de esos problemas las familias habían acudido al centro y mantenido reuniones con fuertes discusiones entre las dos familias que acabó en las puertas del instituto. Al parecer, y como consecuencia de la acalorada discusión, uno de los implicados acudió a su domicilio con una navaja y salió de él armado con un cuchillo en dirección a la escuela, produciendo incidentes entre uno de los alumnos.

Por las peticiones de la Policía Local y de la Policía Nacional se dio origen a la llamada al lugar de los hechos, después de que varias llamadas desde el instituto. Cuando llegaron las agentes, el momento agresor ya había abandonado el lugar de los hechos. Las agentes pudieron hablar, no sólo con la víctima quien aseguró que había recibido amenazas y que se le presentaría una denuncia en Compañeros, sino también, se quiso facilitar alguna descripción física del agresor.

PENDIENTES DEL SUCESO. La historia a la que se produce el incidente, a continuación, y la Dirección de la Policía para ver si puede haber ocurrido gran repercusión en la zona. Muchas veces cuando de los sucesos y de los hechos suceden para intervenir por lo que resulta sorprendente. Los próximos sucesos desde las versiones de los diferentes sucesos para la Dirección del centro.



Agentes de la Policía Local y Nacional en las dependencias del instituto Torres Villard, y Compañeros

La Policía habló con la víctima que aseguró que iba a interponer denuncia, pero no quiso facilitar una descripción del agresor

19. June. Asturias. The media. *La Voz de Asturias* ran a story it called ‘Cousin, don’t forget your books’ with regard to an FSG campaign to foster education. The article starts off with several inappropriate assertions which include genetic explanations to justify early school leaving on the part of young Roma: ‘The Roma people carry nomadism in their genes. It’s hard for them to settle down in one place follow a set habit. Studies affirm this historical phenomenon.’ The media play an important role in fighting prejudice and stereotypes and have the capacity to make an enormous contribution to the equal treatment and non-discrimination of the most vulnerable groups. However, comments such as these appearing in the press lead us to view the media as active discriminatory agents, tarnishing the image of these communities and seriously offending their dignity.

20. July. Extremadura. The media. The following news story from the city of Cáceres was published in the regional digital newspaper called *Hoy*, part of the *Vocento* media group: ‘My store has been robbed ten times just this year.’ The article quotes several store owners affected by these crimes which they link directly to Roma and Romanians and only one of the businessmen recognises that people from these groups are not the only ones to blame. Although ethnic group or nationality is irrelevant information insofar as it does not contribute basic information aiding in the understanding of the news item, it appears constantly in the media. The implicit linking of ethnic group and certain illegal acts should be avoided because this contributes to the reinforcement of existing prejudices against the Roma community and their social rejection. The FSG also believes that the spread of stigmatised notions about this community constitutes a violation of the honour and image of the Roma people.

21. July. Galicia. The media. The regional newspaper *El Ideal Gallego* published a story entitled ‘A Peruvian man accused of kidnapping the under-age daughter of a family was brutally beaten’. Mention was also made of the ethnic background of the young girl in question but the most striking aspect of the article was the sub-heading entitled ‘A culture over-protective of its young women’ which makes a blanket statement about the behaviour of the entire Roma community which it describes as unorthodox: ‘The fact that the family is Roma explains the insistence and unorthodox methods used to achieve their aims.’

CRÉDITO
No dejes los libros, primo
 EDUCACIÓN Secretariado Gitano fomenta la formación entre los adolescentes cado.

INFORMACIÓN DE I AMO GALAN

Los gitanos llevan el nomadismo en los genes. Se les hace difícil asentarse, persistir en un lugar o un hábito. Los estudios no son ajenos a esta fenomenología histórica. Los datos son desalentadores: el 80 por ciento de los adolescentes gitanos de Asturias abandona sus estudios en la ESO. Una cifra estratosférica que denota una situación en cadena, presencia testimonial en la Universidad, falta de integración social y trabajos en precario. Un gran porcentaje de los gitanos asentados en Oviedo se autointitula o percibe merced a la economía sumergida. La Fundación Secretariado Gitano quiere paliar este déficit con la puesta en marcha, en colaboración con el Principado y los Ayuntamientos, de sendos programas de fomento de los estudios entre los jóvenes de esta edad.



Asistió al encuentro de estudiantes gitanos que se celebró en el Instituto Páez de Ayala. (FOTOGRAFÍA: VILLARÍN)

Las actividades culminaron ayer con el IV Encuentro de Estudiantes gitanos y sus familias, que se celebró en el Instituto Páez de Ayala, en Ventanillas, uno de los barrios con mayor población gitana de Oviedo. Al acto asistieron los chavales que participan del Programa de Acción Tutorial de Secretariado Gitano, que está presente en Oviedo, Gijón, Castiellón, Gocón, Muro de Nalón, Soto del Blanco y Pravia. Unos 120 adolescentes, muchos de los cuales estuvieron acompañados por sus familias. A los progenitores se les dedicó buena parte del acto, en el que los chavales expusieron los trabajos que han elaborado durante el curso. Y es que, para Secretariado Gitano, las tradiciones que pasan de generación en generación son uno de los lastres que deben amarrar los jóvenes gitanos de hoy día. ‘La mayoría de las veces, los chavales dejan de estudiar porque sus padres los reclaman para que les ayuden en los labores domésticos. Hay que cambiar esa dinámica y que los padres le vean sentido a la educación de sus hijos’, señala Víctor García Ordás, director de Secretariado Gitano.

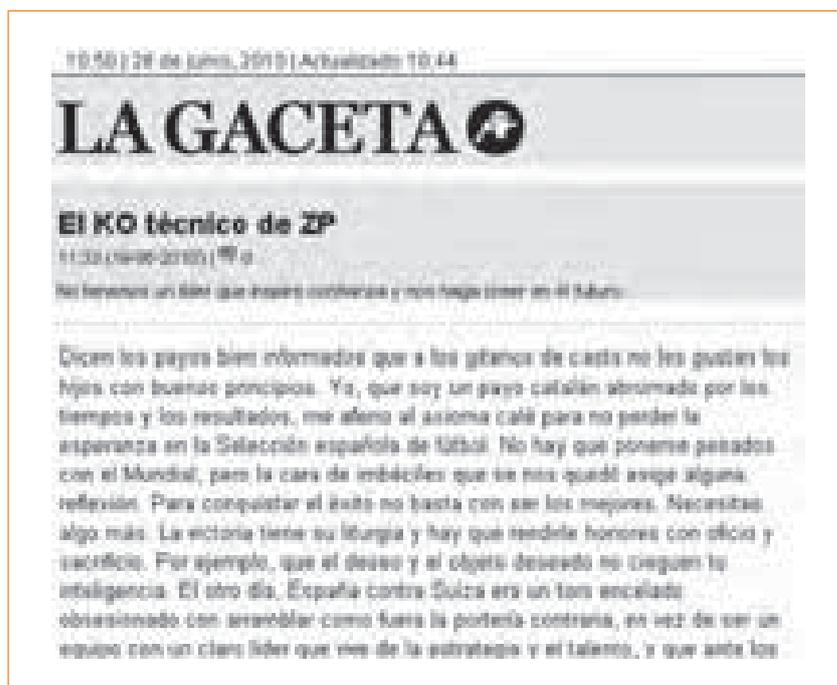
Los participantes intentaron concienciar a sus padres de la importancia de la formación académica. ‘Ayudados a acordarnos antes para que al día siguiente nos levantemos de buen humor. Ayudados a hacer la mochila. Cuando lleguemos a casa, preguntarnos qué tal en clase’, invitaron los chavales a sus padres a través de los textos que leyeron en el Páez de Ayala.

Además de la lectura de textos, los participantes pusieron en común los vídeos que grabaron a lo largo del curso, con testimonios en los que se insiste en la importancia de los estudios para encontrar un trabajo de garantías. ‘Deja las malas compañías, pasa de los callejitos. La ESO abre muchas puertas’, fue uno de los consejos.

CASE 19

22. July. National. The media. The *Intereconomía* Corporación is comprised of several television channels, a national newspaper, radio stations, two weeklies, a programme and audiovisual producer, a publisher and an Internet portal, along with other services not directly related with the media, such as a finance school. This group is quite influential and is growing at a fast pace. The Roma community is not generally portrayed in a positive light in the publications of this group which we consulted insofar as they tend to inappropriately connect certain it with situations of delinquency and marginalisation. Disparaging stereotypes and expressions (headlines such as "like comparing God with a gypsy"

and comments like "Real Roma don't want children with high moral principles") are common, as are criticisms of equal treatment and non-discrimination policies, especially when Roma are the beneficiaries. However, the most serious situation is found in its digital publications where there is no control allowing them to serve a platform for racist and discriminatory propaganda and xenophobia where the Roma community is often the main target of these comments which sometimes even encourage violence. For a more detailed idea of this content, simply type in the word "gitano" in the search page of *Intereconomía*. The FSG has sent several letters to the person responsible for the media but has never received a reply.



CASE 22

23. July. National. The media. The regional edition of the *ABC* newspaper published an article entitled "The woman with the look of a gypsy and a heart of gold. Despite the article's good intentions, highlighting the positive aspects of a person who one might identify as being Roma, implies a number of stereotypes which could contribute to their perpetuation. Reference was made to "significant external indications." The article said that Roma women could be identified by "their characteristics and way of dress -modest- and with abundant jewellery." This is a classical stereotype which assumes that it is possible to physically identify members of the Roma community. The description of this particular woman included the adjective "agitanada" or gypsy-like due to her external appearance. This is once again unfortunate and assumes that there is only one way of being or looking Roma. The underlying message of this article is apparently positive. Unfortunately, it confirms that a Roma person generally appears in the media because of unpleasant events.



CASE 23

24. July. National. The media. The print edition of the national newspaper *Público* ran a story about 'Three people arrested for a shooting in Asturias', the summary reading as follows: 'A father and his two sons turn themselves in after killing two members of another Roma clan.' The article once again labels the individuals arrested for this terrible event as 'members of a Roma clan' The victims were also referred to as 'members of their clan.' In this case, we would draw attention to the unnecessary mention of the ethnic group together with the term 'clan,' one of the pejorative terms most frequently used by the media.' The fact is that the word 'clan' used to refer to Roma families in general, creates a clear distance between the reader and the people in the news story and this is just one more barrier between this community and the rest of the society. This is totally unnecessary and the Roma community itself is trying to combat this.

25. July. National. The media. Another example of inappropriate information disseminated through the digital publication called *La verdad de Murcia* is an article entitled 'An unpleasant swim' showing the negative view of municipal pool users where the alleged criminal act occurred. The news story places more importance on the presence of immigrants and Roma than the facts themselves which are given with very little detail. What the article does do is link ethnic groups with anti-social behaviour such as insults or fighting. It also provides an exaggerated view by referring to groups of friends who go to the pool as 'gangs' for the purpose of making the article more attractive.

Público

Fecha: 22/07/2010
Sección: ACTUALIDAD

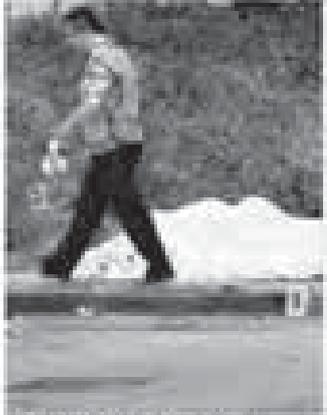
Tres detenidos por el tiroteo de Asturias

Un padre y dos hijos se entregan tras matar a dos miembros de otro clan gitano

A CASTAÑO
MIERES (ASTURIAS)

— La Guardia Civil ha detenido a un padre y dos hijos, miembros de un clan gitano, como presuntos autores del tiroteo que el pasado martes costó la vida a dos personas y causó heridas a otras cinco en Vega de Ujo (Asturias). Los arrestos se produjeron tras presentarse los tres en el cuartel del instituto armado de la localidad.

El suceso se desencadenó, según confirmaron ayer fuentes de la investigación, después de que las dos víctimas mortales, David Ferreruela Gabarre, de 25 años, y su tío Juan Ferreruela Barrull, de 45 años, acudieran junto a otros integrantes de su clan a celebrar un cumpleaños al área recreativa del municipio. Su actitud fue recriminada por uno de los detenidos, que les instó a irse del lugar ya que su fami-



Escenario del crimen.

lia guardaba luto por un reciente fallecimiento.

Ante la negativa de los Ferreruela, uno de los presuntos agresores se dirigió a su domicilio, situado a escasos metros de allí, y cogió la pistola con la que minutos después provocaba la tragedia. "En un momento, el barrio se convirtió en un escenario de guerra con heridos de bala y por atropello", apuntaban testigos del tiroteo.

Tras entregarse los tres presuntos autores, el resto del clan Vargas abandonó Asturias bajo protección policial para evitar represalias. ■



CASE 26

- 26. July. National. The media.** The digital edition of the *Última Hora* newspaper of the Balearic Islands reported on a fight between two groups in Son Gotleu, in Palma de Mallorca. The story begins with 'In Son Gotleu periods of peace are short-lived and hostilities erupt with dangerous frequency.' This is already an inappropriate reference to the ethnic group of the people involved. The rest of the article continues in the same vein: 'On Monday evening a group of about 50 Roma and blacks went head on in the square after an African woman allegedly wrecked a Roma man's car.' As we have pointed out on several occasions, the mention of ethnic group does not contribute anything to the news story but rather gives the idea that immigrants and Roma are the only groups behind the 'social violence' affecting the neighbourhood and hence reaffirm the negative image of these two communities.
- 27. July. Castile-Leon. The media.** *Diario de Valladolid* newspaper published two stories on the same day specifying the ethnic background of the people involved in the events related: 'I don't sell drugs but have a serious addiction problem' and 'Seven and half year sentence for two 'Monchines' in possession of the biggest shipment of hashish.' When the FSG approached the editor he admitted that more care could be taken with these important details but time constraints do not allow for careful writing. The issue then is that media professionals naturally mention ethnic origin when it comes to certain communities. But, how often do we find specific references to the Caucasian race? It is simply a matter of setting a general rule of never, under any circumstances, mentioning any sensitive piece of very personal information such as race or ethnicity.
- 28. August. National. The media.** *Libertad Digital* published a news story under the following headline: 'A group of minors causes panic with full impunity at public pools in Madrid.' Once again, the Roma community is explicitly linked with delinquent behaviour. On the positive side, in this case a comment was made about the intermediation work being done by Roma people to put an end to situations such as these.



29. August. Castile-Leon. The media. Still another example of mention being made of the ethnic background of people in the news is found in an article entitled "Persecution of a minor driving without a license to the San Cristobol industrial park" appearing in the regional newspaper *El Norte de Castilla*. The ethnic background of the youth in question was mentioned in the article.



CASE 29

30. September. National. The media. The radio station *40 Principales* broadcasts a humour programme called "Los chichouss". The name of the programme is intended as a parody of the US cartoon series "The Simpsons". It presents an average Roma family and includes practically all of the stereotypes possible about the Roma community. The name itself, "Chichouss," associates the Roma community with the Rumba group called *Los Chichos*, famous for representing many of the stereotyped images of the Roma community in Spain. The programme continues making a parody of "The Simpsons" while singing Rumba music. Also, the mention of a character such as Farruquito once again associates the Roma community with delinquency. A part of the parody is based on simply pronouncing a sentence in English with an accent typically used to imitate the Roma community. But the programme takes things a step further. There are many references to Flenenco stereotypes, traditional activities (markets) and also references to some of the most recent jokes about Roma disseminated in other media. In short, the media show no interest whatsoever in disseminating a realistic image of the Roma community. Moreover, stressing negative stereotypes continues to be considered funny.

- 31. October. National. Internet.** The FSG documentation centre received the following e-mail: 'You gypsies are the garbage of humanity. You should be killed like sewer rats, parasites, sons of bitches. Gypsies should be shot in the head. You're nothing more than stinking rats living off the rest of us. You should all be thrown out of Europe and go back to your sewer (Romania) to breed like rats and kill each other. The only thing you're good at is extortion, robbery, threats and living off public subsidies. What a shame that Hitler didn't put an end to your miserable asses. Apart from having 8 kids each, do you know how to do anything other than sponging off the State? You should all be sent back to Romania (Europe's trash dump where all the shit lives). The final solution against gypsies is fully legitimate and valid. A definitive end must be put to garbage and shit.' This clearly racist e-mail is a gross insult to the Roma community and is overflowing with prejudice. The FSG reported it to the Computer Crime Brigade and the case is currently still open.
- 32. October. National. The media.** As part of an awareness-raising campaign to fight poverty, the national television station broadcast a documentary on evictions in a Barcelona neighbourhood called Can Tunis. The programme presented an image of the Roma community linked to delinquency, drugs and marginalisation. It also focused on the testimony of several Roma children which reinforced the image of delinquency and marginalisation of this community and had the exact opposite effect on the audience than was intended, i.e. instead of offering a thought-provoking image of the reality of social exclusion, the documentary served to exacerbate social rejection against this group.
- 33. November. Galicia. The media.** *Diario de Ferrol* ran a news story entitled 'A brawl between Roma clans brings the police to the Catabois Cemetery'. It included exaggerated details of the confrontation between several Roma individuals: 'a huge fight [...] a group of women was fighting it out to the death, pulling out one another's hair and slapping one another. The men took off their jackets and joined in the melee which immediately grew to over 100 people.' In the same news story a reference was made to the Roma community's All Soul's Day tradition which was inappropriate and disrespectful of what is a very important cultural element of this community: 'Just like every other year, and maybe even more this year, the pantheons and grave sites of these families are the ones with the largest and most striking and expensive floral arrangements [...] They joined together in large group next to the tombs [...] taking turns to not leave their departed alone. That is why there were so many people in Catabois. The rest of the visitors simply visited their deceased friends and family but didn't hang around all day long.' In addition to mentioning an ethnic group and making the events sound extremely dangerous thus reinforcing the already poor image of the Roma community, the article also employs language charged with negative connotations such as 'brawl' and 'clan'.





34. November. Galicia. The media. *Diario de Ferrol* ran a story about a person sentenced to seven years and nine months prison for three robberies with the use of force. The article describes the events and the hearing including the statements made by the defendant and the complainants. The defendant's initials were revealed and the fact that he was Roma.

35. December. National. Internet. The FSG received the following e-mail: 'My name is Roberto and I'm looking for a virgin gypsy to have a sexual relationship. I live in Madrid and pay very well. I can't provide my details for security reasons but when we speak on the phone I'll specify the amount per sexual act. Age is not an issue as long as the gypsy girl is under 16. I pay very well but the girl must be a gypsy and a virgin. My name is Roberto and I request discretion when I call on the phone. I repeat, I will pay a lot of money but I want a virgin gypsy. I know that this is not easy because this is a promiscuous race but I do insist on seriousness and discretion in exchange for a lot of money per sexual encounter with a virgin gypsy. My number is...' The Area of Equal Treatment has identified this as a case of discrimination and a possible crime of corruption of minors, concretely Roma women. The FSG contacted the hate and discrimination Public Prosecutor in Barcelona and in Madrid and we also filed a complaint with the computer crime brigade.

36. December. National. Internet. Two digital publications, *El Mundo Today* and *Voley San Javier* both covered the same story which reflected poorly on the Roma. In a feeble attempt at humour, the headline read 'NASA is training gypsies to collect scrap metal in space' and went on to make comments such as the following: 'Efforts are being made to train gypsies to fly the spaceship although they say they do not need any training. I don't have a driving license and I've been driving since I was seven. Flying rocket ships is pretty much the same thing' according to José, one of the future astronauts. These publications systematically discriminate against the Roma community associating it with delinquency, robbery and all sorts of criminal behaviour in addition to reinforcing the negative stereotypes which this community endures.

37. December. National. The media. Several newspapers ran the same story based on information from the press agency *Europa Press*. The articles focus on a court case known as 'El Peluso' where the Supreme Court exonerated the 18 defendants charged with drugs trafficking as part of Operación Plata. In its report on the police investigation, the news agency affirmed that a person 'had seen him in the Pajarillos neighbourhood contacting Roma people in the vicinity of 'Los Monchines''. This one short sentence not only makes an unnecessary reference to the ethnic group of certain individuals but also mentions Pajarillos, a working class neighbourhood in Valladolid which is desperately trying to improve its reputation and disassociate itself from the negative image it has which is the result of certain residents involved in illegal activities.





Cases of discrimination in employment

- 1. January. Murcia. Employment.** Two women with permanent contracts in a cleaning company were sanctioned with suspension from work and pay for two days. The reason: for coming to work dressed inappropriately. Workers at this company have to wear uniforms. In the case of these two women, they were given one uniform and shoes in 2008 which, after two years, were threadbare and the company refused their request for new outfits. Therefore these two women, just as the majority of the other workers, occasionally report to work wearing jeans. The day they were sanctioned there were a total of eight workers out of uniform. However only these two women, the only Roma workers, were sanctioned. Moreover, the women stated that they suffer harassment in the form of negative comments about their attitude and the quality of their work from the boss of the store where they clean up. In this case the FSG spoke with the cleaning company and managed to solve the problem. Today the two women remain at their jobs and are not subject to any sort of discrimination from their bosses.
- 2. January. Andalusia. Employment.** A woman was working in an ice cream shop in a mall in the province of Cadiz where she was well treated and had no problems. One day she invited her family to have a coffee at the shop and her boss was surprised and told her that she didn't know that she and her family were Roma. A few days later the woman was sacked for no apparent reason. As in this case, Roma people who do not have the stereotyped physical appearance typically attributed to this group, usually have an easier time finding a job and have no problems keeping it. However, discrimination arises when, one way or another, they are identified as Roma. That is when we see cases of harassment and wrongful dismissal. These are clear examples of discrimination based on ethnic origin.
- 3. January. Andalusia. Employment.** An Acceder programme participant went with a friend to apply for a job at a bakery. The two women left their résumés the same day. The friend began was given the job first and it took quite a bit longer for the young Roma women to be offered a job. The women in charge of the bakery asserted that she did not want Roma workers because they do not know how to work and are only good for clapping. However, not long after getting the job, our programme participant was promoted and put in charge of the bakery for her good work.
- 4. January. Andalusia. Employment.** An FSG enterprise mediator contacted an automobile repair shop in the province of Almería to offer candidates for the post of mechanic. The head of the company was interested because he wanted to bring in young people to work as part of their professional training. Upon receiving the résumés, the entrepreneur showed interest in the Foundation's programme participants. When he realised that most of the candidates were Roma, the man said that while he was not racist, he had had bad experiences with the Roma community mostly due to the negative reaction from his customers and was therefore not interested in hiring them. It is quite common for business people in charge of hiring to base their rejection of the Roma community on possible negative repercussions on their business. However, this justification does not exempt them from their responsibility for this sort of direct discrimination.
- 5. February. Extremadura. Employment.** Officials from the "Local Pact for Employment in Merida" (Spanish acronym PLEM), a local programme, were seeking internships in businesses for job seekers with training. They visited several businesses, including a prestigious Spanish fashion franchise. The officials first filled out a questionnaire to define the type of post they were looking for and the types of groups they work with. The store manager stated that potential workers could be from any group but could not be Roma because the workers had to present the right image. The manager then realised what he had said and tried to better express his preferences and tried to base his preferences on his need for skilled workers. The PLEM officials contacted the FSG to report this act of discrimination. Following a meeting with the PLEM managers, it was decided to send a letter to the store manager informing him that "they would no longer be able to supply his company with interns in light of his clearly discriminatory position that violated the spirit of the Local Pact for Employment. To do so would mean that municipal officials were tolerant of his attitude." Support from the public administrations as guarantors of the right to equal treatment is a fundamental part of the fight against discrimination. This stance also bolsters the society's legal and moral obligation with regard to this constitutionally protected right.



- 6. February. Andalusia. Employment.** The Córdoba branch of the FSG tried to sign a training agreement with a publishing company through a temporary employment agency (TEA) which it collaborates with through the Acceder employment programme. Through the TEA the company manager claimed to have had a bad experience with a Roma employee and said that he wants nothing more to do with people from that ethnic group.
- 7. March. Andalusia. Employment.** An FSG enterprise mediator visited a transport company in Jaen to present the Acceder employment programme. The interview progressed as expected and at the end the employer offered a contract for one person for a 15-day trial period with the possibility of staying on for a further six months filling in for people off on holiday. The next day the employer called the enterprise mediator to tell him that in no case did he want a Roma worker or anyone from Romania. He claimed to have had previous professional experiences with people from these groups and they had been unpleasant. However, the possibility of hiring other people from the employment programme remained open. The attempt made to reason with the employer and raise his awareness regarding the importance of not discriminating against an entire community for isolated incidents was unsuccessful.
- 8. May. Extremadura. Employment.** Two FSG Acceder programme participants were given an interview at a private company in Badajoz for training and the promise of subsequent paid work. After a presentation of the employment programme and a number of meetings to establish the terms of the collaboration agreement between the FSG and the company, the latter refused to train (much less engage) Roma people. A number of racist comments were made by the company's managers: 'I don't want gypsies in my company', 'I rarely have gypsy customers but when I do I charge them double', 'if gypsies don't get you on their way in, they'll get you on their way out' etc. The FSG enterprise mediator, in an attempt to get the employer to soften his stance, showed him documentation attesting to the success of the employment programme to date and showed him other collaboration agreements signed with large national companies. The response received by the employers was the maybe our programme participants were not 'bad kids' but that it would be better if we sent them 'normal people' because they were afraid that 'the company would become overrun with gypsies'. They also wanted to know what reason would be given to the young people for their refusal to sign the agreement because they were concerned about possible reprisals. This is a clear example of the difficulty encountered by Roma people in finding a job. These are barriers which are difficult to overcome no matter how much awareness-raising and dialogue is done by organisations such as ours. Direct discrimination, prohibited under Directive 2000/43/EC, is once again at the forefront in these cases.
- 9. May. Andalusia. Employment.** A young girl participating in the FSG's Acceder programme in Huelva trained as a store clerk and was starting her on-the-job training at a perfume shop. At the beginning the work atmosphere was very good. They explained everything to her and the boss even said that she would teach her how to use the cash register since the cashier was about to go on maternity leave and the young girl was slated to take her place. However, one day a customer in the store commented on the fact that this girl was Roma. Her boss asked her directly if she was Roma. From that point, the girl was treated completely differently. When she finished her training period, she was not called to cover the cashier's post.
- 10. May. Castile-Leon. Employment.** A woman went to the FSG office in Salamanca stating that she was a victim of discrimination in a case of unfair dismissal. The young girl was working in a shop and the problems began when her boss realised that her landlord was Roma. He then started to suspect that there might be some connection with the Roma landlord. The boss' attitude towards the girl changed noticeably. A few weeks later the girl's mother-in-law, also Roma, came into the shop. A few days later the boss asked the girl directly, 'I want to know more about you. I'm concerned that I don't know enough about you'. A few days later he came to her with severance pay in hand and dismissed her saying that he no longer trusted her. The FSG tried to talk with the employer but he refused. Given that this was an unfair dismissal and it was impossible to speak with the employer, the young woman was advised to submit a labour complaint before the Mediation, Arbitration and Conciliation Services (Spanish acronym SMAC). The employer did not show up at the conciliation proceeding and the case was referred to the courts.



- 11. June. Andalusia. Employment.** A young Roma woman received a call from a temporary employment agency (TEA) in the province of Jaen to work as a chamber maid for one weekend. She went to the workplace where her workmate started making comments about the woman's ability to do the job given that she was Roma and exhibited clear mistrust in the woman's ability to do the job and lack of respect.
- 12. June. Andalusia. Employment.** A young woman participating in the FSG's Acceder programme in Granada went to a clothing shop that was in need of a salesperson. She asked about the offer of employment and was told to leave her résumé another day because the boss was not there. A few days later she tried to leave her résumé but was told that the post was no longer vacant. However, the offer of employment was still hanging on the door of the shop. The woman did not want the Foundation workers to get involved in the affair. This is quite typical, especially in small towns where this could further complicate the job-seeking process which is already difficult enough for minority members.
- 13. June. Andalusia. Employment.** A temporary employment agency (TEA) contacted the Fundación Secretariado Gitano in Jaen to ask them for user profiles of job seekers. Following the interviews, the TEA called the Foundation to ask about the Roma background of one of the women. The labour counsellor answered that belonging to a particular ethnic group should not be considered when assessing one's capacity for work. The person responsible for the TEA answered that while he was not a racist, employers generally do not accept Roma workers. After a series of phone calls and conversations between the Foundation and the person in charge of the TEA, the woman was proposed and selected for the job opening.
- 14. June. Andalusia. Employment.** In the province of Seville a young Roma woman looking for work went to an interview and was told on the spot that she was not accepted because she looks like a typical Roma woman. The woman decided not to take any action.
- 15. July. Extremadura. Employment.** A temporary employment agency (TEA) in the Province of Caceres had an opening to fill in for workers on summer holiday. The TEA selected a Roma woman with a 45% sensorial disability. After getting through this first stage, the woman was interviewed by the hiring company which rejected her candidacy for the following reasons: the woman has a hearing disability; she's Roma and did not adequately express herself during the interview. The Foundation employee tried to explain to the company that the interviews targeted people with some sort of disability and that the candidate in question met this and all other requirements of the job offer. Nevertheless, the employer refused to change his mind and said that 'I can't leave a Roma person alone in the office and, given the state of the economy, I can't afford to lose customers'.
- 16. September. Aragon. Employment.** In Huesca, a young Roma woman started working at a shoe shop. Apparently, she was treated unpleasantly from the beginning and was referred to as the 'gypsy', was the only one who could not take breaks and had to endure comments made in front of customers like 'gypsies don't know how to work'. On one occasion, money went missing from the register and she was immediately accused. When they realised that a mistake had been made with a credit card payment, she received no apologies for the false accusation. The woman tried to contact the headquarters of the store chain in Zaragoza but was told by her boss that her only alternative was to quit her job. In light of this on the job harassment, the FSG spoke with the company but was unable to reach an agreement because the woman's bosses denied that they had discriminated against her. In the end, the woman quit her job. We should note, however, that another Foundation programme participant applied for the job opening and, while the woman was not Roma, her appearance was such that she could be mistaken for a member of the Roma community and was turned down allegedly for being too old. She was 29.
- 17. October. Andalusia. Employment.** The FSG enterprise mediators conducted a survey of companies that could be interested in hiring. In this case the focus was on a car repair shop in the province of Almeria where the manager openly acknowledged that he did not want any Roma workers due to bad past experiences. Direct discrimination in access to employment is, as we can see, one of the most frequent and difficult to solve cases.



Awareness-raising is key in fighting against these negative preconceived ideas which the society has of the Roma community in general. Obviously, the heterogeneity of this community makes it impossible to attribute certain inappropriate conduct to an entire group of people based on their ethnic background.

- 18. October. Andalusia. Employment.** A young woman from the province of Almería was working in a fruit shop. The company decided to dismiss her because, according to management, the shop's sales declined because of the woman's ethnic group. This woman's physical appearance corresponds to the stereotyped image of Roma and customers did not want to buy from Roma people. Prejudice leads to situations where certain objective facts, such as declining sales during an economic crisis, are attributed to certain people based on their ethnic origin.
- 19. October. Andalusia. Employment.** An FSG programme participant from Cordoba was taking a vocational training course to become a shop assistant and, due to family problems, had to drop out of the course. When she informed the training director, he responded with a series of insulting stereotypes about the Roma ethnic group such as: 'Roma don't want to study. I'll bet it's your husband who's making you drop out. No wonder you Roma are so backward.' In other words, without sufficient information, this person assumed that the reason she was leaving the course had to do with the fact that she was Roma.
- 20. November. Valencia. Employment.** A woman was leaving a shopping centre in Valencia where she worked and was met by her husband and sister-in-law, both Roma, and ran into her boss. When her boss saw the woman's family, she asked her about her ethnic origin. The next day they dismissed her. When the woman asked for an explanation, she was told, point blank, that it was because she was Roma and therefore couldn't be trusted. The worker's contract had just been renewed and only two days before her dismissal she had been selected for a promotion. Since the circumstances of this case point to wrongful dismissal, the woman received legal counsel from the Foundation.

Cases of discrimination in education

- 1. January. Andalusia. Education.** A mother was picking up her daughter at school in the province of Huelva and called her by her name and surname. Another woman overheard her and said: 'That's a Gypsy surname', to which the child responded, 'that's because I'm Roma'. The woman then said: 'Well don't go around telling people because you don't look gypsy.' The mother proudly said that there is no reason for them to conceal their ethnic background, that the girl's father is Roma and that the child is proud to be Roma.
- 2. February. Andalusia. Education.** A young Roma man was studying to be an electrician in a Preliminary Professional Qualification Programme (Spanish acronym PCPI). When it came time for the practical training part, the school contacted the different electricity companies in the province of Almeria and they all refused to accept Roma or immigrants.
- 3. February. Andalusia. Education.** The mother of a 13 year old child went to the FSG office in Almeria claiming that her daughter was the victim of discrimination from a teacher and several classmates. Apparently, they constantly call her a dirty gypsy and tell her to get out of the school. At the beginning, the child did not tell her family. She started saying that she did not want to go to school and then became depressive and finally had to be treated for an anxiety disorder. The mother met with the school director who assured her that 'children will be children' and that there is no discrimination or racism in his school.
- 4. April. Andalusia. Education.** For the launch of an FSG education programme whose purpose is to improve academic performance in the last two years of compulsory secondary education and promote staying in school after that either in higher education or vocational training, schools need to participate in the actions carried out with the youngsters. In this case, the FSG worker from the educational programme in the province of Jaen met with the school administration and the family of the child in question to request their collaboration. Despite the positive view the school has of this child, a stereotyped and prejudiced attitude towards the Roma community on the part of the head teacher, who claimed to have had a bad experience with the Roma community at another school, was apparent at the meeting. This attitude was discussed in an attempt to raise awareness regarding the importance of avoiding generalisations.
- 5. May. Aragon. Education.** Activities with Roma families are carried out at a primary school in the province of Huesca including a classes for mothers while the children attend after-school support classes. On one occasion, these two activities coincided in the same classroom and the teacher, who was working with four children, three of whom were Roma, asked to children to solve the following maths problem: If JR has 20 lice and E removes 12, how many lice does JR have now? One of the mother told the teacher that the example was inappropriate to which she answered that this helps the children to understand. The FSG contacted the school administration which apologised for what had happened and assured the FSG that they would speak with this teacher to avoid situations like this in the future. The families affected were satisfied and did not want to take any further action.
- 6. June. Aragon. Education.** Money was being collected for a trip in a school in the province of Huesca. When the money vanished, the teacher immediately accused a Roma child in front of all of the other students. The child insisted that he had not taken the money. The teacher continued searching and found the lost money but never publicly apologised to the child. The parents told the FSG that they did not want to take any action because the school administration had called them and the situation was clarified.
- 7. June. Andalusia. Education.** The Fundación Secretariado Gitano attended a meeting at a secondary school in the province of Jaen taking part in an FSG educational programme to analyse progress made by students. The teachers claimed that it is impossible to work with some Roma children and, in light of their conduct and their poor academic performance, this school is not the right place for them and they would be better off in some other sort of arrangement. The FSG proposed supporting these students through our education action schemes



to try to improve the performance of Roma students. Work is also done with the parents to raise their awareness as to the importance of adhering to school guidelines and rules and with teachers to get them to collaborate in giving students academic support.

- 8. June. Andalusia. Education.** The Fundación Secretariado Gitano organised an exhibit on the Roma people to be visited by all schools taking part in the Foundation's educational programmes in Cordoba. The director of one of the schools told us that many parents are reluctant to let their sons and daughters participate in activities organised by the Foundation given that it is an organisation devoted to the advancement and defence of the Roma people.

- 9. October. Galicia. Education.** The FSG works with schools and Roma families through educational support initiatives designed to prevent absenteeism and promote keeping Roma children in school until the end of compulsory education. In one of the public schools in the Province of Pontevedra where the Foundation works, our professionals heard racist expressions first-hand from the school director such as "can't these kids go to some other school?" "we're losing enrolment because of the gypsies," in an attempt to encourage Roma children to leave the school. An arrangement was made with one Roma family with two children at the school to sign the children up for the lunch service in order to decrease absenteeism. However, one of the children was expelled from the cafeteria with no first warning despite the meeting held between the parents, the school and the FSG regarding the importance of keeping the children on the lunch plan. The child's expulsion was only communicated to the person responsible for municipal services. The Foundation acted as mediator in the case but the administration insisted that "this school is becoming a gypsy school and this is bringing our enrolment down which is jeopardising our very survival".



Cases of discrimination in access to goods and services

- 1. January. Andalusia. Access to goods and services.** A young man went with his friends to a discotheque in the province of Malaga. When he went to buy his ticket he was told that he couldn't go in because he was Roma and that these were the boss' orders.
- 2. January. Andalusia. Access to goods and services.** A boy and his friends went to a discotheque in the province of Almeria. They all got in, even two under-age girls, except for him because the doorman said that the management does not want gypsies because they come in big groups, take up all of the space and decrease sales.
- 3. February. Andalusia. Access to goods and services.** A woman and her daughter went to a department store in the province of Jaen. In the fashion section they decided to try on some dresses but, soon after going into the changing room the security guard, with no forewarning, switched off all the lights and told the two women to leave. The mother and daughter decided to leave and at the exit the shop workers made them walk through the detector arch. In the afternoon they came back to the shop and once again went to try on some dresses. The security guard came and knocked on the door of the changing room and went in where the mother was undressed. The guard said 'you have five seconds to get dressed and leave. This morning stole two dresses and the police are on their way right now'. The police arrived at the shop and asked both women to show their identity cards. Since the mother did not have her card with her, she was taken to the police station. In the meantime, the daughter went to get her mother's ID card and they both left the police station without any problem. The FSG and the police told the woman that if she wanted to file a complaint, she should go to the shopping centre and ask for the complaint sheet, which she did the following day. The emotional state of the woman, a leader in her community who had never been subjected to such treatment, prompted the Foundation worker to refer her to a health clinic.
- 4. February. Andalusia. Access to goods and services.** A Roma youth sat down in a cafeteria to have breakfast. The waiter saw her but waited on everyone else except her. After waiting for 15 minutes, she left the cafeteria.
- 5. February. Andalusia. Access to goods and services.** A young Roma woman applied for an aesthetician course. There were 15 people at the information session. The teacher told this woman to take a seat which was removed from where the rest of the students were sitting. The teacher explained the content of the course but never once looked in the direction of the Roma woman. Realising that she was not being given the information like the rest of the students she asked the teacher if she was going to be able to take the course and was told that it would be up to the director. When the director came into the classroom he said that whoever was on the list was admitted to the course and invited everyone else to leave. Of all the people in the class, the only ones not named were the Roma woman and one other girl. The teacher told the director that they had to do everything they could to see that the other applicant left out was admitted to the class. In the end, the Roma woman was the only one left out of the course. The teacher told the woman to leave her telephone number in case someone dropped out but, according to other students, she threw the paper in the waste basket as soon as the Roma woman left the classroom. Some people did in fact drop out of the course but the young woman was never called but knows that other people who did not even attend the information session were called to fill those vacancies.
- 6. February. Andalusia. Access to goods and services.** Two girls went to a discotheque but the doorman would not let them in. When they asked why, the man said that it was up to him who gets in and who doesn't. Then, two non-Roma girls were let in without any problem. This prompted the two girls to ask whether they were not allowed in because they were Roma. The man did not answer and one of them said that she didn't understand that racist attitude. The doorman simply said, 'if you don't understand, you might as well leave'.
- 7. March. Madrid. Access to goods and services.** For International Women's Day the Spanish Theatre of Madrid, in collaboration with the Office of the European Parliament and the Representation of the European Commission in Spain, presented a version of the play *The Casa de Bernarda Alba* produced by the TNT Theatrical Investi-



gation Centre of Seville. The actors, a group of illiterate Roma women from a Seville village called El Vacie, had captivated their audiences since the show opened in Seville. However, during their stay in Madrid these women were subjected to several instances of direct discrimination in gaining access to different services. The first instance was upon their arrival to Madrid where the taxi driver refused to take them. They had to call the police who made one of the taxis at the stand take them. Over the next several days, several clothing shops refused to let them enter. Also, in the company of TNT staff, they went to have a cup of coffee and the waiter told them that he would serve them coffee but then they would have to leave. That prompted the stage manager to ask for the complaint sheet and he was initially refused. He then called the police and only after the police came into the cafeteria did they give him a complaint sheet. The women contacted the FSG and, after learning of their different options, decided against filing an official complaint but rather offered an interview to a national newspaper. This coverage had a positive effect on the owner of the cafeteria who apologised and invited the women back to his restaurant.

- 8. March. Andalusia. Access to goods and services.** An FSG worker went into shop that sells flamenco clothes and articles in the province of Jaen. When she was leaving the shop, two Roma women came in with a baby carriage. The shop worker mumbled to herself "here come these two again".
- 9. April. Andalusia. Access to goods and services.** A Roma family got together to have lunch at a restaurant in a town of Granada. When they went in the owner told them that the tables were reserved even though there was no sign on any of the tables in the dining area. The women said that in that case they would eat at one of the small tables in the area adjacent to the bar. The owner told them that he didn't know when he was going to be able to serve them. The family said that they understood and that they weren't in a hurry and that they would have a drink in the meantime. The man insisted that he was not going to be able to serve them. In the end, the family left.
- 10. November. Andalusia. Access to goods and services.** Two FSG workers in Jaen went to a Foundation meeting held in a hotel. After checking the arrangements, the hotel worker asked them how they were going to pay. When the Foundation workers explained that payments were usually by bank transfer in 30 days, the worker called the hotel manager. They were invited into the manager's office and were told that the hotel had had problems with the bill of a Roma family and they had decided to switch to a pre-payment system for all of their customers. The Foundation workers informed the manager of the Foundation's activities and its means of finance and supporting institutions. They also expressed their regret that issues with other customers engendered mistrust on the part of the hotel and tried to explain that they should not generalise. They then told him that they would go elsewhere to hold their event. This is a case of discrimination by association.
- 11. November. Andalusia. Access to goods and services.** A young Roma woman was checking out of the supermarket. The security guard claimed that the woman had taken lipstick and not paid for it. The woman told him that he was mistaken. They took her to the office, checked her bag and then let her leave. The young woman felt discriminated and believed that the guard suspected her because of her physical appearance and not because he had any real suspicion that she had taken something without paying.
- 12. December. Murcia. Access to goods and services.** A young man was with his friends in a discotheque. After more than an hour, a security guard approached him and told him to come outside to talk. When they reached the door, the young man was told that by order of the manager, he was not allowed to be there. The young man called the local police who spoke privately with the manager and asked to see the young Roma man's identification and then left without offering any solution. The young man, a regular customer at that discotheque, asked the manager if he had ever had any sort of problem with him. The manager admitted that he had not and that his decision was based solely on racial motives. He explained that he was in charge and had to look out for the good of the business. The young man then went to the national police station to file a complaint and came back to the discotheque to ask for a complaint sheet. The official reason given by the establishment was that it was "full". The young man came to the FSG for help and filed a complaint before the consumer and user service.



Cases of discrimination in housing

- 1. January. Madrid. Housing.** A recently married woman went to the municipal office of a town in the community of Madrid to register her new address at the home of her husband. The office refused to register the new address claiming that there was an eviction order covering that whole shanty town area. Her husband, however, has been registered at that address for 18 years and until a resettlement initiative is implemented the two of them will be residing at that address.
- 2. January. Andalusia. Housing.** After several telephone calls to the owner of a flat up for rent in the province of Huelva, and after reaching an agreement to rent it, a young couple arranged an appointment to go see it. When the couple arrived at the flat the owner asked them if they were Roma and they told him that they were. Without any further explanation, the owner said that he was very sorry but that he was not willing to rent his flat to Roma.
- 3. February. Andalusia. Housing.** A couple searching for a flat to rent went to a real estate agency in the province of Jaen. The couple expressed their interest in one of the flats for rent. The real estate agent made an appointment to visit the flat but told the husband to go without his wife because the owner is racist. The husband explained that he too was Roma but the agent told him that he didn't look Roma and that the important thing was to sign the contract. After that it wouldn't matter what people thought. The couple decided to cancel the appointment.
- 4. February. Andalusia. Housing.** A man went to a real estate agency to rent a flat in the province of Jaen that he had already seen on a previous occasion. After agreeing on the price, the man provided all of the necessary documentation for the rental contract. When the owner received the information, the real estate manager called the future tenant to tell him that his surnames indicated that he was Roma and that the owner did not want to rent the flat to him.
- 5. March. Andalusia. Housing.** A couple went to the FSG office in Jaen to request help in looking for a home. They had been trying for some time but no one wanted to rent to them. This was an urgent case because the home where they were living was in shambles and the city had issued an eviction notice and the local social services were offering economic support for the temporary payment of rent. The Foundation worker accompanied the wife to the real estate office but without the husband whose physical appearance is considered to be 'typically Roma'. They made an appointment to see the flat and expressed their interest in renting. However, the agency claimed that the husband's pension did not guarantee payment of the monthly rent and that they needed the guarantee of someone with substantial income. The FSG worker explained that they had the economic backing of social services and that their total income was more than enough to cover the rent and all of their basic needs. The real estate agent told them that the owner had had problems with the previous tenants, one of whom was Roma, and asked them if they were Roma. The FSG worker answered that they were and then tried to explain that one bad experience should be allowed to stigmatise an entire community. The agent shared his view and agreed to speak with the flat owner. In the end, despite the agent's efforts, he called the FSG confirming the owner's refusal to rent the flat to Roma.
- 6. March. Andalusia. Housing.** A Roma couple made an appointment over the telephone with the owner of a flat for rent in the province of Huelva. When they arrived at the flat the owner told them that he had decided not to rent the flat after all. The couple felt they had been discriminated against because they recognise that their physical appearance identifies them as Roma and the owner did not give them any convincing reason for changing his mind.
- 7. April. Galicia. Housing.** An FSG worker in Lugo accompanied a programme user to rent a flat. The young Roma man was interested in the flat and accepted the owner's request to submit a bank guarantee in the amount of €1,000 or a pay slip and made an appointment to speak with the owner after the weekend. When the young man called the owner on Monday morning he was told that the flat had already been rented. Later that same morning another Foundation worker called the owner and discovered that the flat was still for rent.



- 8. May. Asturias. Housing.** A three-storey single family home in a town in Asturias was up for rent through a real estate agency. It was rented to three Roma women with an option to buy. In this case, each tenant would buy one of the floors. All the arrangements were properly made, the contract signed and the guarantee paid. The neighbours complained verbally from the very beginning but soon thereafter filed a formal complaint with the police for, among other things, possession of dogs. Another complaint was filed with the electricity company for not having a formal electricity contract which prompted the company to cut off electricity to the home; and a further complaint was submitted to the local urban planning office claiming that the home did not meet habitability requirements. The neighbours also filed a complaint because there was only one water meter for the three homes. Then a second complaint was made to the police claiming that the tenants were delinquents. At this stage, the local police asked the owner to show them a copy of the rental contract. The two owners assert that all of these complaints are due to the ethnic origin of the tenants, i.e. because they are Roma, and state that they feel harassed by their neighbours.

- 9. June. Andalusia. Housing.** The Anaquerando Roma Association and the FSG attended a special plenary session of a city council in the province of Granada at the request of a group of 30 local families affected by the rehabilitation of their homes in risk of collapsing. In 1998, Public Works and Transport of the Regional Government of Andalusia granted a subsidy to the city council to pay for part of the rehabilitation of those houses belonging to Roma families in risk of exclusion and with income levels below the poverty line. The rest of the rehabilitation budget was to come from the local government. These funds were earmarked through a works execution agreement signed with Public Works and Transport of the Regional Government of Andalusia in 2006. In that year, the city council was to receive the first part of the rehabilitation funds. However, in 2010 the city council informed the families that it did not have the funds to carry out the planned project. The only viable option forwarded by the city council was for each beneficiary to pay their part which, all told, would come to 30% of the total cost of the housing rehabilitation project or, as the case may be, the return of the subsidy granted in 1998 by the regional government. At that special plenary meeting held in March 2010 and the local town hall attended by the FSG, they approved the return of the subsidy granted in 1998. The families affected then created a platform and with the help of FSG experts and others, submitted a formal complaint to the Ombudsman who, in turn, issued a favourable report and informed the local government that its office was to report to the Andalusian Parliament regarding its deficient management and its failure to meet its legal duty to serve its citizens in an effective and efficient manner. The Foundation met with the city council to inform its members of the situation of the families affected and is providing legal counsel to the families who decide to take the case to court with a private attorney. The FSG's area of equality is monitoring the case. The case has been filed before the court for administrative-contentious matters.

- 10. October. Andalusia. Housing.** A young woman was looking to rent a room in a shared flat in Granada. The interview with the tenants in one of the flats advertised went very well. However, everything changed when they met the girl's parents who looked "typically Roma". That same day they called to tell her that they had already promised the room to another person.

Cases of discrimination in the area of citizen security

- 1. February. Andalusia. Citizen Security.** In the province of Malaga, a group of Romanian Roma was collecting scrap metal in a deserted area. All of a sudden a number of plain-clothes policemen arrived on the scene, yelling and making threatening gestures. The group of Romanians immediately got into their van and left but were soon stopped by a national police patrol car. The plain-clothes officers handcuffed them roughly and hit them according to statements made. In the end they were accused of resisting authority and their van, essential for their livelihood, was requisitioned. This group decided not to take action for possible ill treatment at the hands of the officers due to fear of reprisals.
- 2. June. Andalusia. Citizen Security.** The local Cordoba police received orders to dismantle an illegal camp of Romanian Roma. The families quietly gathered their belongings in their carts and moved several metres away from the area. The operation was carried out without any incident until one of the officers, apparently with a higher rank, gave the order to the clean-up company to also remove all of the families' personal belongings and ordered the police officers to hold the families back to prevent them from approaching their carts. They destroyed not only the camp structure but also their essential belongings and personal and administrative documentation which was vital to the inhabitants of the camp. In addition to providing legal counsel, the FSG met with the local police chief in an attempt to mediate in the conflict. A course on interculturalism, immigration and equal treatment was also provided for members of the police force.
- 3. July. Valencia. Citizen Security.** The father of a family went to the local police station to file a complaint to which the officer responded that the event he was reporting did not constitute a complaint and then added: "you gypsies complain about a lot of things but what you should be doing is filing complaints against the gypsies in the neighbourhood who are selling drugs." The man then went to the Justice of the Peace to tell his story and was told to go back to the police station and ask for the specific group in charge of affairs concerning minors. The man went back and had to speak with the same officers who told him that there is no group dealing with minors, effectively denying him once again access to public recourse. The family did not take any further action for fear of reprisals.
- 4. September. Catalonia. Citizen Security.** A Romanian Roma woman was arrested for having allegedly (according to the police report) mistreated her one-month-old daughter while she was begging. The woman was released with charges in less than 72 hours and a restraining order was issued, her daughter being taken to a centre for minors. According to the statement made by the Mossos d'Esquadra (Catalonian regional police), when the woman was identified and warned that she could not beg on the street, she tipped over the baby carriage and then kicked her young daughter. Later, after statements were taken from several witnesses, the officers changed the statement they originally made before the court and the charge of ill treatment was dropped rendering null and void the reasoned decision of the court calling for the restraining order. The FSG filed a complaint before the regional Ministry of the Interior of the Regional Government of Catalonia and before the authority responsible for the Mossos d'Esquadra.
- 5. December. Aragon. Citizen Security.** A man driving his car was stopped by the police and was then harassed by the officer who asked him what he was hiding while feeling the man's trouser pockets. The man turned and faced the officer, creating a confrontation between the two men. Down at the police station the officer continued to provoke the man saying things like "go ahead, call me a son of a bitch" but the man refused. The officer continued to insult the man calling him a "fuckin' gypsy" and telling him that he smelled bad. The man filed a complaint against the police officer.



Cases of discrimination in other areas

- 1. January. Canary Islands. Discrimination by the Administration.** At a special meeting of a town hall in Tenerife, the mayor denied a group of Roma citizens the right to speak. Apparently, this group had made a request to set up a market and, according to government officials, they had not procured the 100 signatures needed. However, the opposition groups clearly stated that this was not the case. The incident ended with these groups leaving the plenary meeting room accusing government official of being "racist". However, the councillor simply reiterated that the Roma group's failure to procure the 100 signatures meant that they could not participate in the debate.
- 2. January. Andalusia. Racism.** A Roma family was visiting a family member in hospital in Almeria. The nurse came into the room and was chatting with the family. As she was leaving she said: "keep your bags in sight. Next door there's a gypsy family and you know what can happen with those sort of people." When she saw the look of surprise on their faces, the nurse realised what she had done and left the room without another word.
- 3. January. Andalusia. Racism.** In the province of Huelva a young Roma man was working as a bricklayer on a construction site. His workmate frequently told jokes about Roma and most in a disrespectful tone. When he got tired of listening to these incessant comments, the young man asked him if he knew the he himself was Roma. The workmate looked surprised and didn't believe him because he didn't look or talk like a Roma person. The young man attempted to explain that not all Roma are alike but from that day forward their relationship gradually deteriorated.
- 4. January. Andalusia. Racism.** A Roma woman was having problems with the father of her current partner. The father refuses to accept the woman and has even locked her out of the house. The relationship deteriorated to the point that the man threw his son out of the house for living with a Roma person.
- 5. January. Andalusia. Racism.** Two FSG programme participants from Almeria went to the headquarters of the Business Federation of the Province of Almeria (Spanish acronym ASEMPAL) to gather information on self-employment. The consultant they spoke to made several off colour and racist comments about Roma weddings in a feeble attempt at humour.
- 6. February. Andalusia. Racism.** A Roma family owned a flat in a neighbourhood of Jerez de la Frontera where the eldest daughter lived with her husband. They were having problems, as were the rest of the building's residents, with one of their neighbours. The most recent incident happened in 2010 when this man became physically violent with two members of this Roma family, the eldest daughter and her partner, and told them "I'm going to use my gun and kill you gypsies. You may be able to get out of jail but not out of the cemetery". This man also makes a habit of going to the shopping centre where the eldest works as a cashier and pretends to be speaking on the phone saying things like "those stinking gypsies, the gypsies should be at door II". The police arrested the man and the case is now in the courts.
- 7. February. Andalusia. Racism.** At a meeting for Roma youth within the framework of the "Citizenship and Roma population Programme" in the province of Jaen with the collaboration of several associations from the sector and the presence of a representative of the local government's youth councillor, the president of a residents' association began his presentation by asking "Are these people going to be understand what I'm explaining to them? Well, let's give it a try". He then added, "I would bet my right arm that none of you has completed secondary school". He made several more racist comments about the Roma community during his presentation and even said "you Roma are always lagging behind and thanks to social workers and the associations, you're able to get by".



- 8. March. Andalusia. Racism.** The FSG team in Jerez de la Frontera received a white envelope sealed with tape in the post. Inside was a photograph cut from the newspaper *Viva Jerez* depicting several members of the team together with political officials receiving the Racimo Award for the work done by the FSG in the area of women's affairs. A swastika was drawn over the photograph. The Foundation reported this to the police.
- 9. April. Andalusia. Racism.** In celebration of International Roma Day on the 8th of April, the Fundación Secretariado Gitano organised a guided visit of their Cordoba headquarters for school students. The director of the school told us that some parents are reluctant to let their sons and daughters participate in activities organised by the Foundation given that it is an organisation devoted to the advancement and defence of the Roma people.
- 10. April. Catalonia. Racism.** The leader of People's Party (PP) in Badalona, Xavier García Albiol, spoke harshly against the Romanian Roma living in the city which he described as a 'plague' and a 'burden' on the city. In a televised panel discussion García Albiol affirmed that the Romanians 'have come exclusively to commit crime' and then added that he was referring only to the Roma. Also, the PPC of Badalona based its electoral message on racist and xenophobic ideas, blaming crime on immigration in general and on Romanian Roma in particular. The distribution of leaflets classified as xenophobic on the basis of their content, along with the declarations of Mr. Albiol such as those just described, prompted the FSG to disseminate a nationwide communiqué against these initiatives and to sign another communiqué together with FAGIC, Union Romaní and FACA. Also, SOS Racismo of Catalonia and the Federació d'Associacions Gitanes de Catalunya filed legal charges against the leader of PP in Badalona, Xavier García Albiol, for engendering hatred and violence described under Article 510 of the Criminal Code. In March, local criminal court No 2 of Badalona declared the case inadmissible. However, the complainants filed an appeal, with the support of Barcelona's Hate and Discrimination Crime Special Public Prosecutor, which was declared admissible by the Barcelona Provincial Court on 24 May 2011 which ordered the judge to initiate proceedings to gather the evidence requested by the parties.
- 11. April. Andalusia. Racism.** The Fundación Secretariado Gitano was invited to take part in the Monitoring Commission of the *Zones programme* of the provincial government of Jaen at the local city council. The *Zones Programme* targets people who receive Minimum Income for Inclusion in Society (RMI) providing them with remunerated training, labour market intermediation and subsequent labour market integration. During the course of the meeting the Foundation representatives detected discriminatory attitudes based on prejudice and stereotypes towards the Roma community on the part of some of the participants. These individuals made comments such as 'Roma women do not even know how to sew' and 'the money spent on trying to get the Roma to change their customs will be wasted'. The FSG workers tried to get the meeting back on track by raising awareness regarding these prejudiced ideas.
- 12. May. Andalusia. Others.** The Provincial Government of Huelva invited the FSG to take part in the celebration of Europe Day, the 9th of May, coinciding with the European year for combating poverty and social exclusion. The event depicted the situation of the different underprivileged groups which are targeted by the different organisations. The Foundation proposed representing, among others, a group of Roma working in their traditional and artistic trades to symbolise the past and a scene from the present with Roma working in trades adapted to the needs of today's labour market. However, a government official rejected the proposal allegedly because it was not adapted to the reality of the Roma community and proposed the following: a Roma man standing on a box and next to him a Roma woman with a baby carriage a little further away showing that they are not overly concerned about their children; a Roma person selling fruit in the street and a Roma person selling gold in the street. The group accepted this proposal made by the official and the idea was approved. The FSG coordinator informed the event organisers that this depicted stereotypes about the Roma community and not its heterogeneous reality and met with the Provincial Government to explain his disagreement. In the end, the event manager accepted the FSG's proposal adding, however, that in any case one can only determine that they are Roma by their physical appearance and dress. The coordinator stressed that the actors will not be chosen based on the stereotyped physical image that most people have of the Roma community.
- 13. May. Andalusia. Racism.** A group of young people were sitting on a city bench making fun of Roma. One of them said that there are many types of dogs which are just like Roma.



- 14. June. Castile-La Mancha. Racism.** Two retired Roma women went into a bar and ordered coffee to go in a plastic cup and a tapa. The owner said that he did not have any tapas and the women decided to go elsewhere. The owner then said "You gypsies are so modern now. You don't remember when you used to drink right out of the can". The women told him that that was a racist comment and the man said that it was the simple truth. In response to the request made by the two women, the FSG sent a letter to the owner of the bar who responded by apologising and expressing his respect for the Roma community.
- 15. June. Andalusia. Racism.** A young Roma man receiving training at a workshop school had to constantly listen to comments from his mates questioning the honesty and perseverance of Roma in their work habits. The young man asked them to refrain from speaking like that, at least in his presence. As the course wore on, his mates gradually changed their opinion in light of the excellent work and discipline shown by the young man and some even apologised for their previous attitude.
- 16. June. Andalusia. Racism.** A Roma association had a reserved parking spot. The neighbours could not accept that a Roma organisation would be given this privilege and continuously made insulting comments. One day one of the neighbours told the coordinator of the association not to park in that area because she was a "fuckin gypsy" - The victim pressed charges for slander and unwarranted harassment. The FSG provided legal consultation for the misdemeanour hearing and the evidence to be presented. In the end, the neighbour was convicted of a misdemeanour for unwarranted harassment and ordered to pay a fine of €100.
- 17. June. Andalusia. Racism.** These events occurred at a parking area reserved for the town hall of Cordoba. Here, the Romanian "gorillas" are very active as is the valet parking service run by a local company authorised to regulate that activity. A Romanian Roma woman was in this area chatting with a friend. One of the valets asked the woman to leave the premises. The woman said that she was not working and refused to leave. The man then called the police who, without listening to women's side of the story, put her in the police van and drove her home. The worker at the valet parking company pressed legal charges against the woman for coercion. The FSG provided the woman with legal counsel regarding the proceeding. On the day of the hearing, the Foundation worker spoke with the complainant and convinced him to drop the charges and to privately apologise to the woman. The hearing was not held.
- 18. July. France. Racism.** In the summer of 2010 the French government announced the dismantling of illegal Roma camps and the expulsion of their inhabitants to their countries of origin, mainly Romania and Bulgaria. Since that time, the Fundación Secretariado Gitano has developed a broad intervention strategy at national and European level and has reiterated its condemnation of the deportation of Roma citizens, an act it considers illegal and indignant, while reminding the authorities that Roma are also European citizens. The Foundation is deeply concerned by these discriminatory practices occurring in more than one European country and has requested an effective response from the European Union.
- 19. August. Madrid. Justice.** A child received an order from the court to make a statement concerning an incident that occurred at a camp ground. The events occurred when the girl was with her cousins in the showers of the establishment when a woman started banging on the shower door telling them to get out and repeatedly screaming "fuckin gypsies". There was a confrontation when they opened the shower door which the camp managers managed to control. The family turned to the FSG for advice in the ensuing legal proceeding.
- 20. August. Slovakia. Racism.** An armed man killed six members of a Roma family in the city of Bratislava and then exchanged fire with the police killing one person and wounding a further 15. He then took his own life. The man came into the apartment of the family armed with a machine gun and two handguns killing four women and a man. He then killed another family member at the door before the police surrounded him.
- 21. October. Castile-Leon. Racism.** A Valladolid neighbourhood with a large Roma population is undergoing rehabilitation following the dismantling of a shanty town. A number of social organisations, including the FSG,



were working together there to try to improve co-existence and life in general in the neighbourhood. However, in 2010 graffiti began to appear insulting the Roma and immigrant populations and encouraging hatred and violence. The social organisations sent letters to the press and published a manifesto marking the celebration of Human Rights Day. The situation was also reported to the city council which cleaned up the graffiti which reappeared the next day.

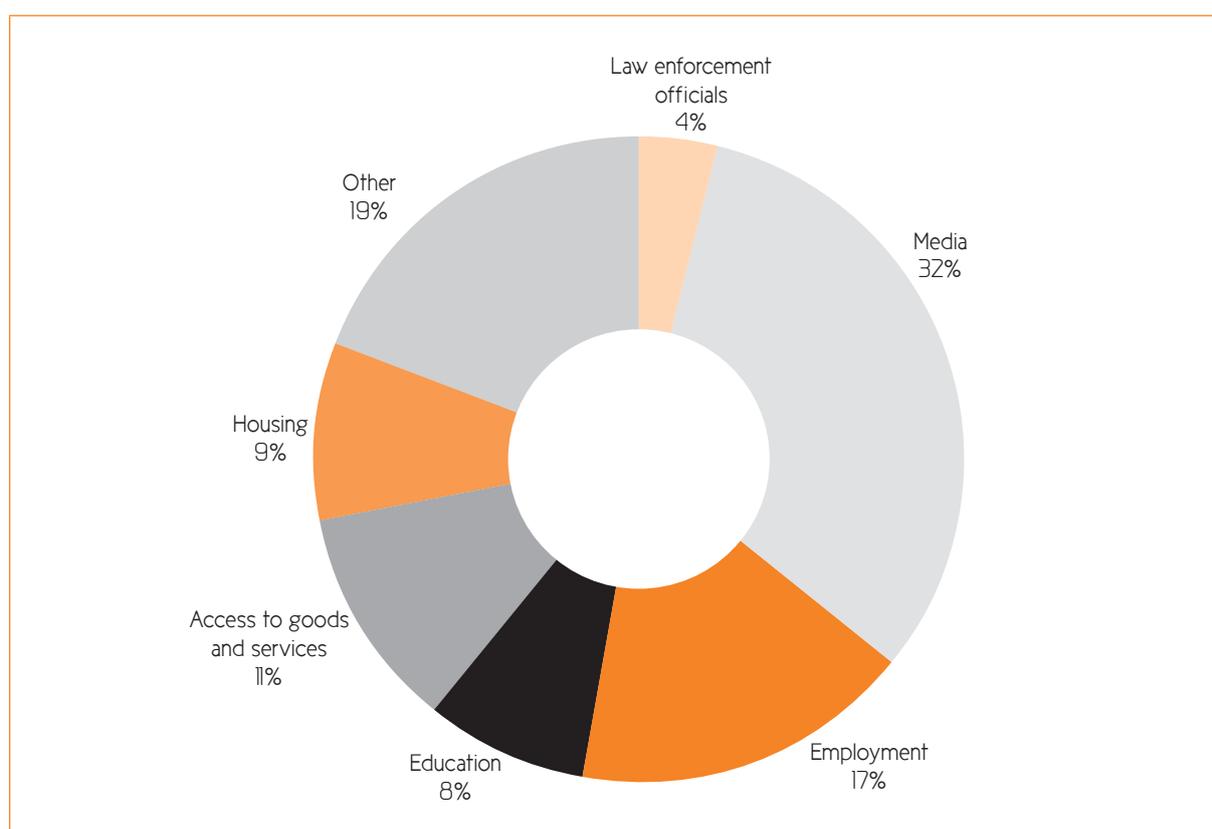
- 22. October. Aragon. Racism.** Two FSG workers asked permission at the Zaragoza Civic Centre to hang posters related to an education campaign and invite young Roma to participate. The man responded that Roma only use the Civic Centre for 'malicious deeds' and that they are not interested in education but that they could leave the posters there and he would check to see if they could be put up.

3. Presentation of disaggregated data

In this section we present the disaggregated data from the 115 cases of discrimination collected by the FSG in 2010.

Areas of discrimination:

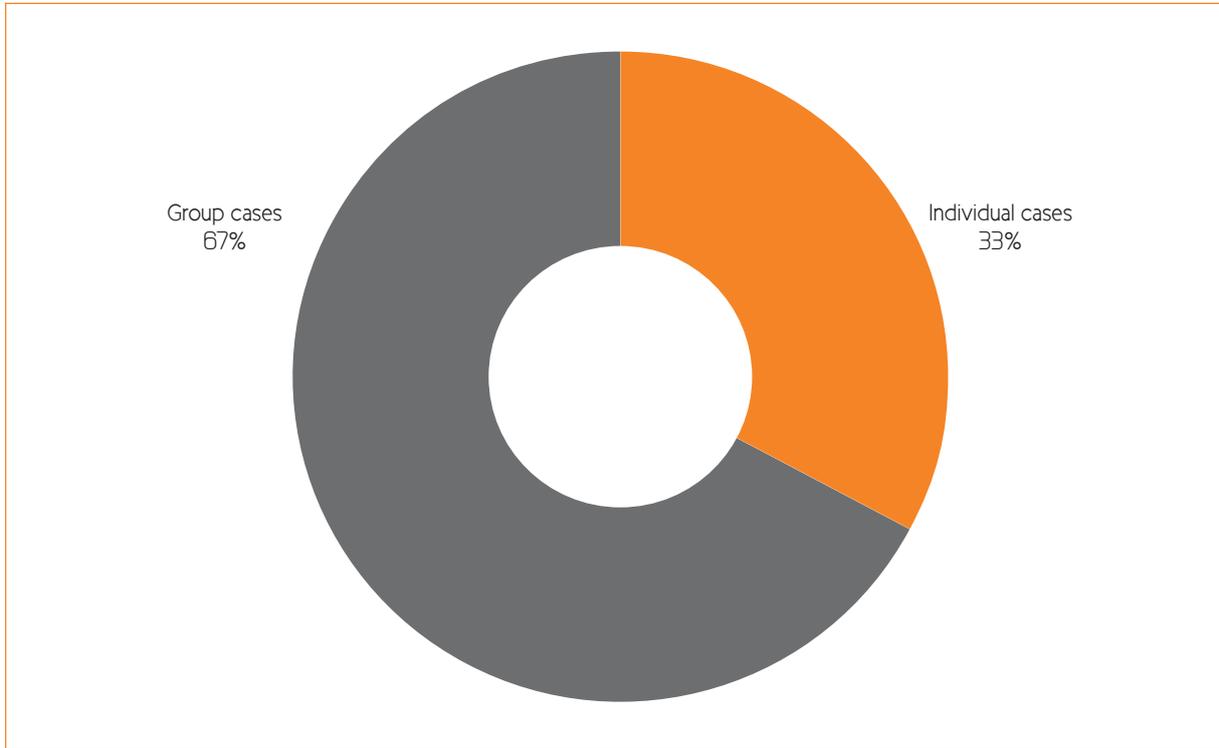
- The media: 37
- Employment: 20
- Education: 9
- Access to goods and services: 12
- Housing: 10
- Other: 22
- Citizen Security: 5





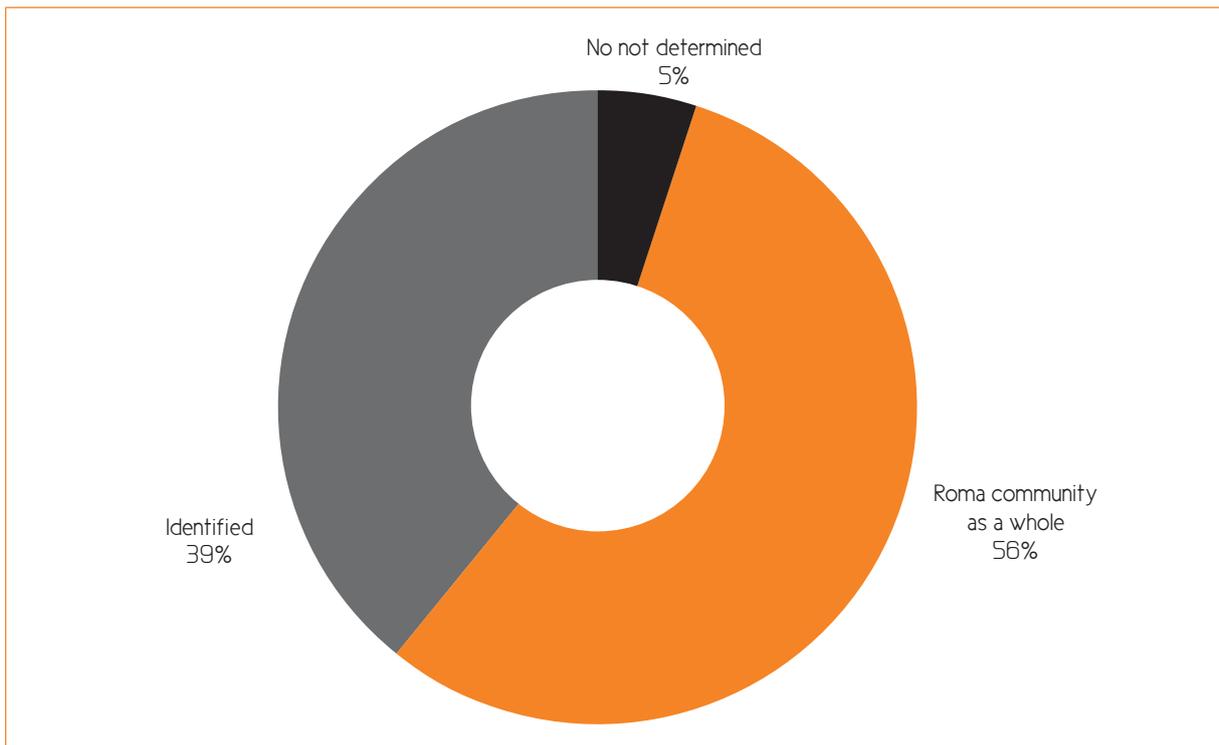
Cases:

- Individual: 38
- Group: 77



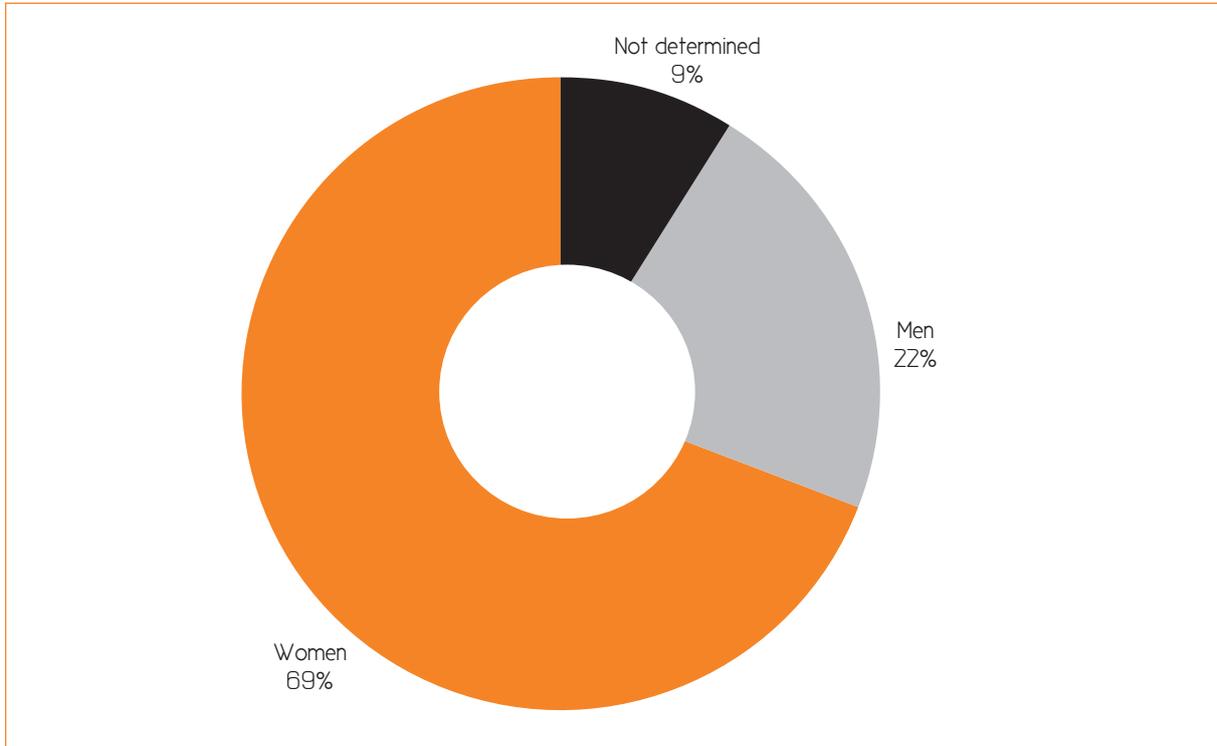
Victims:

In 45 of the 115 cases we were able to individualise the number of people affected, the total coming to **64 victims**. In 64 of the cases, the discriminatory incident affected the entire Roma community and in 6 cases the number of victims could not be determined, i.e. they affected a specific group of people whose number could not be determined.



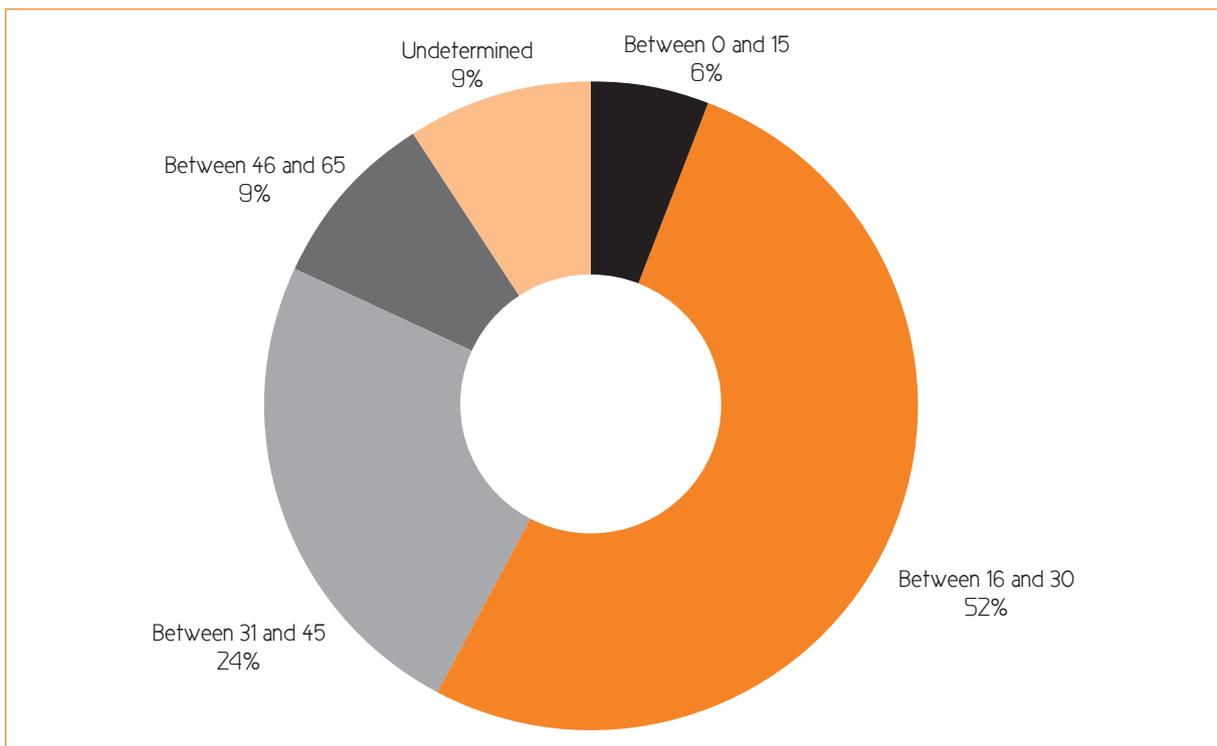
Sex of the victims

Of the 64 individualised victims, 44 were women, 14 men and 6 not determined (the latter referring to group cases where we knew the number of people affected but did not have detailed information on each one).



Age of the victims

- Between 0 and 15: 4
- Between 16 and 30: 33
- Between 31 and 45: 15
- Between 46 and 65: 6
- Undetermined: 6





**Putting discrimination
in context**

1. Equality and non-discrimination in the sphere of education

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Attorney at Law Responsible for the Area of Equality FSG

- I. Education from a legal perspective
- II. The educational situation of the Roma community in Spain
- III. Discrimination of the Roma community in the area of education
- IV. Conclusions

I. Education from a legal perspective

It is important to begin by stating that education is as much a fundamental right as it is an instrument which all people need to develop their skills and achieve a decent standard of living. This is especially true in the case of the most vulnerable groups for whom education is one of the only ways to overcome their situation of social exclusion.

The transversal inclusion of education in all of the millennium development goals validates and reinforces this notion, acknowledging it as one of the indispensable requirements to foster human development and combat poverty.

The international regulation of this right is addressed in Article 26 of the 1948 Universal Declaration of Human Rights¹ which recognises every person's right to education. Here it is of vital importance to take account of paragraph two providing that the aim of education is the full development of the human personality and the strengthening of respect for human rights. This right is intimately linked to the right regulated in Article 25 of the same text recognising that every person has the right to an adequate standard of living.

More recently, in April 2000, the World Education Forum was held in Dakar², where more than 164 govern-

ments and international organisations made the commitment to comply with the so-called Objectives of Education for All (EFA) with a view to consolidating the right to basic quality education the world over by 2015.

Moving on to the national legal framework, the right to education is regulated in Article 27³ of our Constitution which provides that everyone is entitled to an education, that elementary education is free and that it is the duty of public authorities to guarantee this right.

And lastly, delving deeper into the specific regulation of education in Spain, we will focus more closely on the Education Act, Organic Law 2/2006 (known as the LOE).

Article 1 of the Preliminary Title of the LOE refers to the principles and aims of education of which we would draw attention to the following:

- *The quality of education for all students, irrespective of their conditions and circumstances.*
- *Equality, guaranteeing equal opportunities, educational inclusion and non-discrimination, and serving as a compensating factor for personal, cultural, economic and social inequalities, paying special attention to those deriving from disabilities.*

¹ Article 26(2) 'Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups.'

² <http://unesdoc.unesco.org/images/0012/001211/12117s.pdf>

³ We would draw attention to the following paragraphs of Article 27:
- Paragraph 1 states that 'everyone is entitled to education'.
- Paragraph 4 provides that 'elementary education is compulsory and free'.
- Paragraph 5 states that 'the public authorities guarantee the right of everyone to education, through general planning of education, with the effective participation of all parties concerned and the setting up of teaching establishments'.



- *The conveyance and implementation of values favouring personal freedom, responsibility, democratic citizenship, solidarity, tolerance, equality, respect and justice and which help in overcoming all forms of discrimination.*
- *Flexibility to adapt education to diversity in terms of the aptitudes, interests, expectations and needs of students and to the changes which both students and society are undergoing.*

When speaking of the principles underlying the educational system, we must bear in mind that if we are to make progress in democratic citizenship, we must educate in non-discrimination as a fundamental right of our country; here a claim is still outstanding when it comes to the Roma community. It goes without saying that the inclusion of the Roma people in the school curriculum would help to break down the barrier of discrimination engendered by ignorance of their history, culture and current situation.

An analysis of the LOE with regard to **equality in education** takes us to Title II, Chapter I where we would stress certain aspects.

It can be assumed that educational equality refers to those students who require different or out of the ordinary educational support due to special educational needs in light of specific learning difficulties, their high intellectual capacity, because they joined the educational systems later than other students or due to personal academic conditions.

The following fit into this classification:

- *Students who have special educational needs:* those who need academic support or specific attention due to a disability or serious behavioural disorder for a period of time or throughout their whole academic career.
- *Students with high intellectual capacity.*
- *Students who arrived late to the Spanish educational system.*

Moreover, the law provides that the educational administrations must guarantee the necessary resources so that these students can develop their personal capacities to the highest possible degree and, in any case, achieve the general objectives established for all students.

Delving still further into the regulation, another of the important aspects which Chapter II regulates is **compensation for inequalities**: compensatory educational policies are established with a view to preventing inequality arising from social, economic, cultural, geographic, ethnic or any other type of factor.

Chapter III addresses enrolment in **public and private schools** and here we would stress two articles related to student admissions, Article 84 and 87⁴, where special reference is made to the adequate and balanced distribution of students with specific need for educational support and the prohibition of discrimination.

Therefore, if we are to comply with the regulation, we must have an inclusive and fair educational system which compensates for inequalities. Considering that compulsory education is a tool which all people need to develop and live a dignified life, public authorities are obliged to establish the measures that guarantee that students are able to develop the personal and educational skills established for all students.

II. The educational situation of the Roma community in Spain

Taking account of the results of the different studies on the situation of Roma students in primary⁵ and compulsory secondary education, we would note that:

In compulsory primary education:

- Practically the entire Roma student body is enrolled in primary school (close to 94% by the age of 6) and the educational process is increasingly normalised.
- 50% of parents want their children to complete their compulsory studies and 38.4% would like to see them go on to post-compulsory studies.

⁴ Article 84 Admission of students.

-Educational administrations shall regulate the admission of students in public and semi-private schools such as to guarantee the right to education, access on an equal footing and the freedom of parents or guardians to choose the school. In any case, there will be an adequate and balanced distribution between schools and students with specific needs for educational support (...).

-In no case shall there be discrimination on the grounds of birth, race, sex, religion, opinion or any other personal or social condition or circumstance (...).

-It is the duty of the educational administrations to establish the procedure and conditions whereby public schools ascribe to that described in the preceding paragraph, respecting the possibility of free choice of the school.

Article 87. Balance in student admissions.

-In order to ensure educational quality for all, social cohesion and equal opportunity, government administrations shall guarantee an adequate and balanced enrolment of students with specific needs for educational support. To that end, they shall establish the proportion of students of these characteristics to be enrolled in each public and semi-private school and shall guarantee that schools have the necessary personal and economic resources so as to be able to offer said support.

-In order to facilitate enrolment and guarantee the right of students with specific needs to education, the educational administrations may reserve a certain number of seats in public and semi-private schools until the end of the pre-registration and registration periods (...).

-The educational administrations shall adopt the enrolment measures envisaged in the preceding sections taking account of the socio-economic and demographic conditions of the respective area and the personal or family situation of students which could warrant specific educational support.

⁵ "Evaluation of the situation of the educational mainstreaming of Roma students at the primary level of education." FSG/Women's Institute/IFFIE. Madrid, 2010.



- 81% of the Roma student body is at the right grade level for their age, a major advancement vis-à-vis the 1994 (65%) and 2001 (69%) figures. However, 64% of students are "below" or "far below" the group average in terms of performance. The areas where students have the most difficulty are maths and Spanish language and literature (co-official language and literature).
- With regard to the foregoing data, we would note that 37% of Roma students are very unmotivated when it comes to their studies, 27% never do their homework and 50% do homework sometimes.
- 28% of the students at this level do not attend class regularly.

The data from a national study conducted by the Fundación Secretariado Gitano⁶ on the educational situation of Roma students in ESO (compulsory secondary education), lead us to the following conclusions:

- 80% of the Roma students who enter their first year of compulsory secondary education drop out before completing their last year. Although the enrolment level is lower in the case of Roma girls at the outset of this new educational level, girls have lower dropout rates than boys at the second stage of compulsory secondary education.
- Early school dropout is usually preceded by absenteeism due to the fact that academically they lag behind the rest of the students.
- Lack of work and study habits on the part of Roma students and stormy relationships between families and schools is apparent.
- Lack of motivation at school (68.5% are unmotivated or do not like school at all compared with 46.9% of the non-Roma student body) leading to high failure rates (only 16.9% of Roma students pass all of their class subjects compared with 46.9% of their non-Roma classmates).

Based on the experience of the Fundación Secretariado Gitano, all of these circumstances are the main cause of **segregation in schools**:

- In some schools, academic performance is one of the criteria used to distribute students in classes.

⁶ Incorporation and performance of Roma girls in compulsory secondary education. Educational Research and Documentation Centre (Ministry of Education) / Women's Institute (Ministry of Labour and Social Affairs) / Fundación Secretariado Gitano. Madrid, 2006 (printed and on CD). FUNDACIÓN SECRETARIADO GITANO Incorporación y trayectoria de niñas gitanas en la ESO. (Incorporation and pathways of Roma girls in compulsory secondary education). Madrid: Fundación Secretariado Gitano, 2006 175 p. ISBN 84-690-3454-5

This means that students with the most shortcomings and in need of educational support tend to be grouped together in the same classrooms. Therefore, in some schools this sort of segregation is due to the fact that a large proportion of the Roma student body is academically behind the average.

- Roma parents freedom to choose their children's school also leads to a higher concentration of Roma students in some schools. Naturally, parents want to enrol their sons and daughters in schools attended by children they know and where they have networks that are there in times of need. Also, non-Roma parents exercising that same right often send their children to schools with fewer Roma students.
- Another relevant aspect related to school segregation is the vulnerability of the Roma community when it comes to housing, a problem linked to urban planning, the decline of disadvantaged neighbourhoods and the growth of the Roma population itself.

In this connection, we observe the concentration of the Roma population (and of other vulnerable groups) in certain neighbourhoods. We must remember that although the Roma birth rate has fallen considerably, a very large proportion of the population is still quite young. Therefore, natural growth means that the percentage of Roma will rise in the neighbourhood where they live⁷ and it is natural for parents living in a certain neighbourhood to want their children to attend a local school. Clearly, neighbourhoods of this nature are not at all ideal because non-Roma leave the neighbourhood and the school leading to situations of school segregation and the emergence of *ghetto schools*.

Regarding enrolment in semi-private schools (partially financed with Ministry of Education funds), we have observed reluctance on the part of some schools to admit Roma students and they have devised different ways to prevent their enrolment. For instance, we have encountered situations where schools try to charge families a fee for activities which by law are free, sums of money which some Roma and non-Roma families either cannot or refuse to pay.

In light of this situation, an effective inspection service is required to supervise the proper operation of schools ensuring equal opportunity and equal access in accordance with the law.

Lastly, we would point out that the enrolment of Roma children in school is a reality today thanks to the efforts

⁷ By way of example, studies have been conducted on some neighbourhoods built in the 70's where 20% of the population was Roma. In addition to natural population growth accounting for the doubling of this percentage, some of the non-Roma left the neighbourhoods and were replaced by new Roma families putting the percentage of Roma at over 50% and the percentage of Roma children at school at 80%.



made by education administrations and professionals, the schools and the families. This is a recent phenomenon, however, only affecting the last few generations meaning that children are reaching higher academic levels than their parents or their grandparents.

There is a growing tendency among Roma families to put a greater value on education as a basic means of social advancement, personal development and to create more opportunity for the future. This tendency is evident in the slow but sure rise in the number of Roma students taking part in middle and higher studies and other educational opportunities such as middle and upper level vocational training, three and four-year university degrees, PhD degrees, university access for students over the age of 25, etc.

III. Discrimination of the Roma community in the area of education

In this section we will focus on a fundamental right related to the right to education, i.e. the right to non-discrimination with regard to accessing schools and in terms of the quality of education provided. The Roma community continues to suffer from a high level of discrimination. In the Sociological Research Centre's 2005 barometer on discrimination, participants responded to the question 'To what degree would it bother you if your children were in class with children from immigrant families?' And children from Roma families?' (Question 16). 25.3% of Spaniards surveyed answered that they would be bothered 'very much' or 'much' if their children had to share a classroom with Roma children. The percentage was 9.9% in the case of children from immigrant families.

Non-discrimination is regulated by a number of national and international laws, the most relevant being: the 1948 Universal Declaration of Human Rights (Articles 1, 7 and 10); Council Directive 2 000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, transposed into the Spanish legal system by Law 62/2003 of 30 December 2003; our 1978 Constitution (Articles 14 and 9.2) and the Organic Law on Education (Article 1.c and Title II on Educational Equality, and others).

Unfortunately, discrimination against the Roma community is embedded in our society. Since the commencement of our work in the FSG's Area of Equal Treatment we have recorded 50 cases of discrimination. In 2010 alone we recorded 9 cases within the sphere of education which, in our view, is a sample of what is going on in our society. It is important to point out that in this area most victims of discrimination are **groups** which is why it has important social repercussions.

If we analyse these cases we can observe some representative characteristics in these situations of discrimination against the Roma community.

Educational discrimination is present in 8 of these cases; not in the right to enrol in school but rather in the educational service rendered. In one of the cases it does affect the right to admission given that in response to the enrolment of Roma children the school director asked *'Isn't there some other school where these kids can enrol? Our enrolment is down because of the gypsies.'*

In seven of the cases the alleged discriminators were the workers at the schools who have stereotyped and prejudiced ideas about this minority which emerge in different ways such as: in giving a maths problem '... if one gypsy kid has 20 lice...', unfairly accusing a student of stealing money, suggesting that resources be put to better use when the FSG offered academic support to students with difficulties, etc.

The case in which the teacher and students reject a student on the basis of her ethnicity is very glaring. And when the mother informed the director about that situation, his response was *'kids will be kids; there is no discrimination in our school'*. In light of a response like this, we must be aware of the difficulties faced by the victims. They believe that if they file a complaint, who is going to believe them and how are they going to prove the discrimination. They are in a weak position in comparison with the school.

In two of the cases, the racist attitudes come from parents. In one, the parent says that it's good if people can't tell that you're Roma and in the other, parents did not want their children to participate in an activity related with the Roma community. This latter case shows how they clearly do not want to learn about the historical or cultural aspects of this minority. This attitude prevents the sort of inter-cultural exchange which would foster non-discrimination towards this community.

In another of the cases, discrimination arises in access to on-the-job training within the framework of a vocational training programme. If people are rejected on the basis of their ethnic origin and cannot take part in training, they are effectively being prevented from completing their training and are hence shut out of the labour market. Practices such as these put up a barrier which is very difficult to overcome and it curtails employment, a basic social right. This will ultimately stand in the way to mainstreaming and this minority's inclusion in society.

The actions carried out by the FSG's Area of Equal Treatment with regard to these cases of discrimination have been based on dialogue, mediation and awareness-raising at the school in question because

we feel that the training of teachers and the entire educational community is the way to break the vicious circle of prejudice and social rejection afflicting the Roma population.

IV. Conclusions

The Roma community has progressed over the last several years in terms of enrolment at school. However, the school drop-out rate is still very high and this requires effort on the part of all sectors involved (school administration, social organisations and the Roma Community itself).

There are education programmes funded by the public administration which are contributing to the educational mainstreaming of this ethnic minority but more needs to be done along these lines.

The segregation of these students in certain public schools or special education classes is a discriminatory practice giving rise to lower quality education with less resources thus increasing the risk of marginalisation and the creation of ethnic minority ghettos.

Moreover, it must not be forgotten that some educational rules which were apparently neutral at the outset can lead to implicit indirect discrimination, especially when they are implemented only bearing in mind the social characteristics of the majority population. Furthermore, references to Roma people and their culture are non-existent in teaching materials, school curricula

and textbooks or, when they do exist, transmit a negative image of this community.

For all of the foregoing, we would make the following recommendations:

- Devise measures which encourage and provide incentive for the non-Roma population to enrol in local schools (to offset the escape effect) and hence prevent the concentration of Roma students in a particular school where more schools are available in that district. With regard to housing policy, it is also essential to try to avoid the concentration of vulnerable communities in specific neighbourhoods so as to avoid housing and school ghettos.
- Regarding the lack of familiarity with the Roma community, the existence of prejudices and stereotypes among some teachers and students resulting in unequal treatment of Roma students, it is important to include information about Roma history, culture and the current situation of this ethnic minority in the school curriculum and teacher training.
- Lastly, we believe that it is vitally important for school inspection services to be involved in non-discrimination, both in terms of access to schools and teaching quality because, as mentioned throughout this article, the rejection barrier in education jeopardises the mainstreaming process for future generations of an ethnic minority which needs this tool to integrate and advance in society.



2. Brief analysis of the comprehensive draft law on Equal Treatment and non-discrimination

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- I. Why another equal treatment law?
- II. What type of law?: a law offering guarantees, a comprehensive law and a law that is binding to both the State and individuals.
- III. What discrimination and what modalities and scenarios?
- IV. What guarantees?: Procedural, punitive and institutional¹

I. Why another equal treatment law?

At the beginning of 2011 the government cabinet passed a comprehensive Draft Law on equal treatment and non-discrimination which is still going through Parliament. This text will no doubt be amended at the request of the advisory bodies which are informing the law (Council of State, the General Council of the Judiciary, the State Council of the Roma People and others), third sector organisations and of course Parliament itself will suggest changes. This shows the significant participation of public and social entities in the development of the law which is in sharp contrast with the unfortunate and perfunctory initial transposition of the Racial Equality Directive through Law 62/2003. Despite being a draft text, it still merits analysis. This will help us to better understand and value the changes being introduced during the parliamentary process.

The most conservative sector of the media has treated this regulation with suspicion in a context of political criticism. They were initially nervous about the reversal of the burden of proof in discrimination cases (Article 28) but did not realise that, as indicated in paragraph 3 of that article, no reference is

made to criminal or punitive proceedings in general (where the right to the presumption of innocence prevails). Nor is this something new but rather is a rule imposed by European Union law which has been applied with no problems for years in our country. They then expressed concern with regard to Article 16(2) which states that schools that do not admit students for the reasons listed in the regulation (Article 2(1)), especially on the grounds of their sex, will not be given any form of public funding. This led to the debate on whether private all boys or all girls schools could gain access to funding under the semi-private scheme. There is no doubt that the issue of whether co-education is a suitable pedagogical option, at least in certain cases, or a discriminatory and negative way to organise a school, will be one of the main debates in this process. In any event, it is no secret to anyone that in the final debate at governmental level the number one concern will be an issue that frequently appears in the ombudsman's reports: that a significant number of semi-private schools go to great lengths to not admit minority children or students with disabilities in their classrooms, which is why there is a much higher concentration of these students in public schools. Lastly, some media have become alarmed because Article 19(2) prohibits rejection of offers to buy or rent for any of the discriminatory reasons envisaged in the law. Apparently, refusing to rent a flat to a person because s/he is

¹ Article published in the quarterly publication of the Fundación Secretariado Gitano, issue No 57.



Roma is socially acceptable. This confirms what the statistics have been indicating: the majority of Spaniards are unaware of the situation of discrimination that many people suffer (sometimes victims themselves are not even able to identify the aggression itself although they do feel its effects) and, when confronted with them, they don't believe they are so bad. And the most surprising fact is that they don't consider themselves to be particularly racist, sexist, homophobic, xenophobic, etc. It would seem that there is no real problem and therefore certain media question the appropriateness or need for a new law in this regard. This is clearly the major criticism. Is it really necessary? At the drafting stage someone told me that there was no need for new criminal policy measures to step up the fight against racial discrimination because there are hardly any judicial decisions in this connection in Spain. My response to that was that precisely that low number of convictions for racism demonstrated just the opposite. In other words, the problem is bigger than we thought because victims are not aware of their rights, do not trust the justice system and, to date, this system has not been particularly sensitive to issues such as racial discrimination, xenophobia, etc.

So, the first and most important question is: Why do we need another equality law? and, related to that, What type of equality law do we need? These questions are addressed in the law's explanatory statement. The law is necessary for the following reasons: (1) To adequately transpose (at last) the European regulation regarding anti-discrimination law. Nearly all EU countries, and all of the most advanced, have a similar regulation (EU law and the implementing regulations of the principal States have influenced the Spanish regulation). This first response is enough to explain why Spain needs a comprehensive equality regulation but there are more reasons. (2) Equality in the sphere of gender, sexual orientation, dependent persons, etc. has been at the top of the Government's political agenda. It should therefore come as no surprise that this regulation is designed to situate Spain among the states with the most effective and advanced equality and non-discrimination institutions, instruments and legal techniques. (3) The regulation is also intended to consolidate equal treatment law by adapting it to the new social reality which is increasingly complex (such that the equality discourse does not apply only to minorities because any person during the course of his/her lifetime could fall victim to some sort of discrimination), more variable (the causes of discrimination change and new ones emerge as, for example, physical appearance) and subject to economic ups and down (during long periods of economic crisis, the incidence of discriminatory phenomena rises sharply).

II. What type of law?: a law offering guarantees, a comprehensive law and a law that is binding to both the State and individuals

As described in its explanatory statement, the new equality law is one of guarantees and is comprehensive. The notion of a guarantee is the real common theme of the law, the criterion which gives it consistency and makes it novel. Spain already has a large number of regulations on equal treatment and opportunity based on gender, ethnic origin, etc. However, one of the main problems detected is that quite a number of these regulations are not actually enforced. Therefore, the problem of equal treatment in Spain is not so much one of recognition but rather the real protection it affords; in other words, its guarantees or mechanisms to ensure the real application of the rules. Rights are only as good as the guarantees backing them up. This new regulation has a wide range of guarantees: regulatory, procedural, criminal and institutional (through the delegate prosecutor of the Prosecutor General to safeguard equal treatment and non-discrimination provided for under Article 30.1, and especially through the new institution called the equal treatment and non-discrimination Authority provided for under Title III of the law).

It is also a comprehensive law both with regard to its aim and scope and also its territorial beneficiaries. Regarding its aim, it is not limited to one type of discrimination such as gender or racial as has been the case to date, but rather encompasses all possible types of especially hateful discrimination. Article 2 makes reference to these types: 'no one shall be subjected to discrimination on the grounds of birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity, disease, language or any other personal or social condition or circumstance.' Note that this list, based especially on Article 14 of our Constitution, on Constitutional Court case law and on the Charter of Fundamental Rights of the European Union, is an open and not a closed clause which can therefore accommodate other types of significant discrimination. As is well-known, anti-discrimination law in the European Union is being built on six characteristics: sex, ethnic origin/race, conviction/religion, age, disability and sexual orientation. However, national laws are free to go beyond European law which, on this point, marks a minimum and not a maximum.

It is also a comprehensive law in light of the areas to which it refers which are very broad: employment, education, health, social benefits and services, access to publicly available goods and services (Article 3.1) and also with respect to its territorial beneficiaries. Indeed, according to the first final provision, a number of its articles are basic legislation meaning that they apply to all na-

tional territory. The Autonomous Communities also have competencies in the area of equal opportunity and in all of the areas referred to in the regulation meaning that regions will be responsible for enacting implementing legislation and enforcement. I personally would not like to see the regions create their own equality authority due to the public expense involved. It will be important, however, to have close cooperation between the national and regional governments to implement a coordinated anti-discrimination system throughout the whole country.

A very important aspect of the law is that it applies not only to public authorities but also individual citizens (Article 2.5). It stands to reason that if one of the main areas of discrimination is labour relations, for example, equal treatment provisions must be binding for employers. It is true that this powerful public intervention in relations between individuals could be problematic if it were allowed to freely undermine the characteristic independence of such relations. There is a risk of imposing equality at the expense of freedom if done in an imbalanced way. It is equally true that individual autonomy in the private sphere cannot justify all actions. A balance must be struck.

III. What discrimination and what modalities and scenarios?

Not all unequal treatment on grounds of birth, racial or ethnic origin, age, etc. is discriminatory but rather only that which cannot be justified by a legitimate purpose and as an adequate, necessary and proportionate measure to fulfil such purpose (Article 4.2). This difference is of capital importance. An example to illustrate my point: Article 12 of the Constitution establishes 18 as legal age and this difference in treatment on the grounds of age prevents minors from voting or running for public office. Is this difference in treatment justified? As it forms part of the Constitution, the answer is clearly affirmative. This is a non-discriminatory difference because its purpose is to guarantee that only mature people are permitted to vote (although, as with all legal fiction based on generalisations extracted from experience, its validity in specific cases can be questionable). In most cases, identical treatment is required when prohibiting discrimination, but not always. If a minority of people is worse off than the majority, regulations should be set to treat the minority differently in order to improve their lot (affirmative action). The question now is, how do we determine what sort of different treatment constitutes discrimination? Title I of the law includes a large number of definitions devoted to that question. The aim of Title I is not scholarly or instructive. It seeks to define our understanding of discrimination and widen the scope of protection to include new forms of discrimination such as "multiple discrimination" or that committed "by association" which were formerly not envisaged in our legal system.

The right to equal treatment and non-discrimination prohibits all behaviour, acts, criteria or practices which constitute direct discrimination (different treatment on grounds of sex, ethnic origin, etc.) or indirect discrimination (different treatment not based on sex, ethnic origin, etc. but rather on an apparently neutral or valid criterion but which in fact has a negative impact on women, ethnic minorities, etc.). Discrimination by association is likewise prohibited. This is a concept arising from European Union Court of Justice case law. Let's imagine that a woman is sacked because she has a child with a disability and it is assumed that she will not be able to properly discharge her work duties. This is not a case of direct discrimination on the grounds of disability but rather by association, i.e. the mother-child relationship. Another form of prohibited discrimination is that occurring by mistake. This is where the discriminator claims that s/he acted on the basis of an erroneous assessment of the discriminated person (e.g. assuming he was homosexual when in fact he was not). This argument would not be valid and the act would be judged as discrimination to the fullest extent of the law. Discriminatory harassment and inducing, ordering or instructing others to discriminate are also illegal as is the adverse treatment of any person filing a complaint or participating or collaborating in a proceeding to stop or compensate for a discriminatory situation.

Summing up, Title I of the law features an extensive and updated list of types of discrimination. The only other feature I would like to see is *reasonable accommodation* which already exists in the Spanish legal system for discrimination on the basis of disability but which could be extended to others such as religious discrimination as in the Canadian system. It also includes the novel concept of multiple discrimination (Article 7) which is when "different causes among those envisaged in this Law concur or interact generating a specific form of discrimination". Having regard to the national equal treatment strategy approved by the Government Cabinet and prepared by the Sectoral Equality Council, the law calls for "special attention" to be paid to multiple discrimination, which "by its very nature, constitutes a more serious attack on the right to equal treatment and non-discrimination" (Article 32.4.c). Also, the maximum sanction should be applied in the case of multiple discrimination (Article 44.2).

Basically, the Law seeks to establish guarantees ensuring equal treatment defined as the absence of discrimination (in the sense described). However, it does not renounce recognition, alongside equal treatment, of the mandate of public authorities to establish affirmative action, i.e. "differentiated treatment designed to prevent, eliminate and, as the case may be, compensate for any form of discrimination with regard to its collective or social dimension" (Article 11). These measures are not intended to repress an act against equal treatment but rather to



oblige public authorities (and urge individual citizens) to take the necessary action to foster equal opportunity. The definition found in Article 11 is taken from the law on effective equality between men and women (which, in turn, was based on the European Union regulation), but is debatable in my opinion. Article 11 requires that affirmative action be reasonable, proportionate with regard to means of implementation, temporary, etc. In other words, it is devised as an exception (therefore requiring more stringent justification) to equal treatment; as if equality treatment were the norm. This is a conceptual error. Under law, acts which are different cannot be treated identically. Affirmative action is not an exception to equal treatment, it complements it. The right to not be subjected to discrimination covers equal treatment as well as equal opportunity and is therefore a mandate for affirmative action. Positive discrimination is something else and could be more difficult to justify which is why it needs to be interpreted more strictly. Affirmative action, however, should be free of all suspicion. In any case, it is important to note that doctrine, lawmakers and case law are at loggerheads regarding the distinction between affirmative action and positive discrimination. It is certainly not a cut and clear issue.

Title II, Chapter II lists some of the affirmative actions generally alluded to in Article 11: promotion of such actions by the public authorities and also individual citizens, especially in the business world, through social responsibility initiatives (Article 31.2); the interesting multi-annual equal treatment strategy mentioned above (Article 32); the duty for administrations to collaborate with one another (Article 33); the obligatory inclusion in public statistics and reports of indicators to better analyse the causes of effects of discrimination (Article 34.1), special attention being paid to data collected by law enforcement officials (Article 34.2 – very important in practice to be able to subsequently assess the sexist, racist, etc. component of the act) and court statistics (Article 34.3 – shedding light on the real enforcement of the laws guaranteeing equal treatment); assessment of equal treatment policies implemented by companies and organisations when awarding subsidies and public contracts (Article 35); and the duty to include equal treatment issues in training schemes and in selection tests for public employment (Article 36). This duty to provide training is emphatically reiterated with regard to members of the public prosecutor's office (Article 30.2 – important because up to now there has not been a serious criminal policy to persecute discrimination crimes and the public prosecutor plays a key role in criminal policy). In my opinion, the article about the need to statistically monitor the phenomenon of discrimination (which the anti-discrimination movement has been calling for quite some time) is not affirmative action but rather a guarantee (organisational or procedural) of equal treatment and therefore is situated in the wrong place in the text (it would have been better following current Article 29).

Title I goes beyond establishing the illegal forms or types of discrimination described in its first chapter. Chapter two specifies these forms in some of the main social scenarios of discrimination, identifying some types of discrimination which are as common as they are tacitly illegal. It describes eight scenarios:

1. Labour relations. Four articles (12–15) are devoted to this area, the one mentioned first, giving an idea of its importance. The law refers to salaried employment, collective bargaining, self-employment, trade unions and business and professional organisations. One of the main novelties of these precepts is the duty of labour inspection authorities to include in their annual action plan, the implementation of specific schemes on equal treatment in access to employment and work (Article 12.3).
2. Education (Article 16) alluded to above. The law seeks to prevent discrimination in gaining access to schools, including semi-private schools, and orders specific tutoring and absenteeism programmes for children who are victims of discrimination (especially, although not expressly mentioned in the law, racial/ethnic discrimination – currently one of the main problems).
3. Health-care (Article 17). The law mandates the prohibition of discrimination for any reason but orders "extreme caution" when it comes to discrimination on the basis of birth, sex, sexual orientation or identity, racial or ethnic origin and nationality (this latter case when health-care is legally applicable). Paragraph three orders affirmative action in the field of health for "groups of the population with specific health needs" such as the elderly, children, the disabled, and those with mental, chronic rare, degenerative or terminal diseases. Health-care treatment may not be denied on the basis of other pre-existing or inter-current diseases except for strict medical reasons.
4. Social services (Article 18) prioritises the drafting and execution of social schemes and programmes for "especially vulnerable groups".
5. Housing (Article 19). Here I would draw attention to the prohibition placed on service providers, landlords and real estate agents to discriminate any person for any of the reasons stipulated in the law, especially as concerns refusing, preventing or denying an offer to buy or rent. This clause has also been the target of criticism among some conservative media that believe it is perfectly acceptable to refuse to rent a flat to a person because s/he is homosexual, an alien, Roma, etc. This is an example of what is referred to in specialised circles in North America as "unconscious racism" (although, between you and me, there might very well be quite a bit of unconfessed conscious racism as well).



6. Public offering of goods and services such as financial services, transport, training, entertainment, etc. (Article 20). Here, specific mention is made of the sale of insurance.
7. Public establishments (Article 21). People cannot be denied access to establishments or be thrown out of them for the reasons described in the law.
8. Media and advertising (Article 22). The law refers to the promotion of self-regulatory agreements (which, by the way, have not been particularly fruitful to date) and includes on the list of unlawful advertising that which contains discriminatory elements.

Hence, in this second chapter of Title I, lawmakers have selected the main scenarios of discrimination (the battlefields where the war on discrimination is mainly to be fought). An important scenario is missing here: the Internet, where high-impact ideas, images and racist, xenophobic, homophobic, etc. material, extremely difficult to prevent, is produced and transmitted. In this connection, the First Additional Provision of the law authorises the competent legal bodies to restrict or limit the provision of services or the removal of Internet pages pursuant to the provisions of the law on information society and electronic commerce services. In my opinion, the law is missing a fundamental scenario of discrimination, especially with regard to ethnicity/race: political participation. Sustainable advancement in the fight against this sort of discrimination will not be possible until Roma people are present in city councils and parliaments in numbers consistent with their demographic proportions.

IV. What guarantees?: procedural, punitive and institutional

As we have pointed out, the notion of guaranteeing the prohibition of discrimination is the common theme of the law. These guarantees are reflected in chapter one of Title II and in Titles III and IV. I believe that we can break down the table of guarantees into three categories: procedural, punitive and institutional.

A) Procedural guarantees. The law contains the following: judicial protection of equal treatment includes all of the measures needed to put an end to discrimination (immediate suspension, prevention of imminent or subsequent violations, compensation for damages and re-establishment of the victim's full rights), Article 26; the attribution of legal capacity to parties, social services and specialised organisations (that meet certain requirements) to defend the rights and interest of their associates before the courts (Article 27); the status of "stakeholder" for those same organisations in proceedings where the administration must rule with regard to a situation of discrimination, provided they have

the authorisation of the injured party or without such authorisation in cases where an undetermined number or group of people is affected (Article 29.2); and lastly, reversal of the burden of proof, except in criminal and punitive administrative matters (Article 28).

B) Punitive guarantees. There are quite a number of important guarantees in this category. The lawmaker is aware that equality must not only be proposed but, in the case of non-compliance, must also be forcefully imposed. In this connection, the law provides the following provisions: the nullification of any provision, act or legal transaction that causes or could cause discrimination (Article 23); the eventual demand for administrative, criminal or civil liability for damages arising from failure to provide protection from discrimination (including the adoption of preventive measures, the application of adequate methods or instruments for its detection and the development of adequate measures to put an end to situations of discrimination, Article 24.1); the attribution of pecuniary liability in cases of discrimination (presuming the existence of moral damages) to the discriminating party and the employers or providers of goods and services when the said discrimination, including harassment, takes place within the context of the organisation or administrative office and they have failed to comply with the protection obligations of Article 24.1 (Article 25); public authorities who, in the discharge of their duties, become aware of a case of discrimination, are bound to initiate the requisite administrative proceeding where they may call for an investigation of the facts and the adoption of "appropriate and proportionate" measures to eliminate it or, if appropriate, immediately communicate these facts to the competent administration (Article 29.1).

Special mention should be made of Title IV focusing on infringements and sanctions. It is important to point out that, given the enormous range of its material scope (employment, education, health, etc.), illegal discrimination may arise from any public administration or even from individuals. In this regard, the law provides a basic procedure applicable to all national territory without prejudice to the regions establishing, as they see fit, their own implementing legislation (Article 41.1). In cases of discrimination where there is a specific infraction and sanction procedure (disability, for instance), such procedure is to be applied in accordance with the general procedure laid down in the Equal Treatment Act.

Naturally, the Equal Treatment Authority is not the body called on to issue sanctions, in contrast with what certain sectors of the press have sustained, the public administration has competence in this matter. If the issue is possible discrimination at a school in Valladolid, for example, the Department of Education of the Castile-Leon Regional Government would be the administration responsible for managing the sanction proceeding. The



law provides a list of infractions (Article 42) and rates them (as is common practice) as minor (simple formal irregularities), serious (direct and indirect discrimination, instruction, inducement or order to discriminate, discriminatory harassment, reprisal, failure to comply with a specific administrative request, commission of a third minor infraction with a period of one year) or very serious (discriminatory harassment including very serious humiliation or against fundamental rights or which engender serious economic or professional damages, serious pressure on public authorities or employees, commission of a third serious infraction with a two year period). The list of infractions is accompanied by the corresponding sanctions (Article 43): minor infractions from €150 to €10,000, serious infractions from €10,001 to 60,000 and very serious from 60,001 to 500,000. The law lays down the criteria whereby to scale minimum, medium and maximum sanctions (Article 44): intention of the perpetrator, nature of the damage, number of people affected, social repercussions of the infractions, permanent or transient nature of the repercussions, repeat offence and economic benefit generated in favour of the perpetrator. The government is free to periodically update the amount of these sanctions taking account of variations in the CPI (additional provision seven). In addition to economic sanctions (fines), administrative bodies may impose accessory sanctions such as the suppression, cancellation or total suspension of official support received by the offender, the closing of the latter's place of business or the shut down of the offender's economic or professional activity (Article 45.1). Where the infraction is issued by a public administration, when the competent body is so informed it may adopt the appropriate provisional measures to put an end to the discrimination (Article 46.3).

A novel and interesting provision of the law is the possibility, with the consent of the sanctioned party and provided it is not a very serious infraction, given to the competent administrative body to substitute the economic sanction with personal, unremunerated collaboration in activities for the public good and with social interest and educational value, or in works to redress damage caused or support or assistance to the victims of the acts of discrimination, or participation in training courses or individualised sessions or any other alternative measure whose purpose is to raise the offender's awareness of equal treatment and to redress the moral damage done to individual victims and groups affected (Article 45.2). I see this as a positive message. While the violation of equality norms is punishable, the important issue is not so much the punishment but rather the need to change habits and mindsets in favour of a society of equals. This measure (which I'm afraid will not often be used) was designed to undermine the ideological basis of sexism, racism, etc. which are the ideological munitions of discrimination.

C) Institutional guarantees. This is undoubtedly the law's most important novelty and guarantee: the creation of an equal treatment and non-discrimination authority (Title III). With this body, required under European Union law (an order which we have glaringly failed to comply with until now), lawmakers ensure that all of the other guarantees (and future ones deemed necessary) are effectively upheld. Protection of equal treatment with this body will be dynamic and adaptable to new situations and will prevent lethargic, outdated and insincere anti-discrimination policy. Before describing the main elements of the organisational procedure and operation of this new body, I would draw attention to the fact that the law contains another very important institutional guarantee: the Delegate prosecutor of the Prosecutor General to oversee equal treatment and non-discrimination (Article 30).

How does the law envisage the equal treatment and non-discrimination authority. This is an independent, single-member authority with organisational and operational autonomy and full legal personality, appointed for a non-renewable six-year term by the Government subject to appearance before the Congress of Deputies (interesting that to ensure its independence, its mandate does not coincide with the four-year term of the appointing Government). The duty of the Authority is to protect and promote equal treatment and non-discrimination in the public and private sectors. The General Council of the Judiciary's report will warn of any possible risk of overlapping between the Authority and the Ombudsman. Certainly the legal requirements of the European Union would have been met if lawmakers had opted for a third Deputy for Equal Treatment attached to the Ombudsman's office but this solution raised serious problems: the creation of another Defender within the structure of the Ombudsman, amendment of the Ombudsman's regulation and most likely the Constitution itself given that the latter only permits the action of the Ombudsman in acts of the public administrations but not in private situations (this being the essential difference between the two institutions). Moreover, while the Ombudsman 'only' has the authority to issue recommendations, the Authority can take more decisive action to assist victims of discrimination. Article 36 refers to these (with an open list): provide support to victims of discrimination in the processing of complaints; provide mediation or conciliation (except for criminal or labour cases); investigate ex officio especially serious or relevant situations of discrimination and, in this case, administrations and individuals must collaborate as required which includes providing information and data, and even the personal details of third-parties without their consent (Article 40); take legal action to defend the rights arising from equal treatment (strategic litigation); call for the action of the competent public administration to sanction infractions; call for the action of the public prosecutor where there are indications of



crime; promote the adoption of codes of best practices; collaborate with the Ombudsman and comparable regional and international institutions; emit opinions on the Equal Treatment Act's implementing legislation; inform on the national action strategy for equal treatment and non-discrimination and on especially relevant plans and programmes in this sphere; draw up statistical reports, promote studies by its own initiative or at the request of the central or regional governments; design and maintain an equal treatment barometer; oversee compliance with equal treatment regulations and formulate proposals for amendment; inform, at the request of the Public Prosecutor or competent legal body, on cases regarding this matter; approve the annual report of activities which is to be sent to Congress, the Government and the Ombudsman.

If this Authority operates properly, we can expect substantial progress in the fight against discrimination in our country. A vital point is the Authority's autonomy vis-à-vis the Government in office. As mentioned, the Authority's term of office does not coincide with that of the Government and the law contains other similar provisions such as implementation through the Authority's regulation (organisational structure, per-

sonnel regime, economic and budgetary system, etc.) is done by the Authority itself and submitted to the Government subsequently for approval (Article 37.3); suspension can only be by resignation, permanent disability, final conviction for a criminal offence or serious non-compliance with the duties of office (Article 37.4); the Authority draws up a preliminary draft budget each year and submits it to the Ministry of Economy and Finance for integration into the General State Budget bill (Article 38.2).

While the law does not define the Authority's organisational structure, it does stipulate that its Articles of Association must ensure the participation of organisations representing the social interests affected and the public administrations in general, and national associations and organisation whose main purpose is the defence of equal treatment and non-discrimination in its activities (Article 39). The law's Final provision two provides that three months after its entry into force, the head of the Authority is to be named and some of the overlapping bodies and services integrated into it. In other words, a rational organisation of bodies (and resources) is announced as is a new institutional ecology stemming from the creation of the Authority.

3. “Cyber-hatred” and freedom of expression

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- I. Preliminary remarks: hate crimes and the message of hate
- II. Reactions to the expression of hatred
- III. Particularities of *cyber-hatred*
- IV. Bibliographical resources and work material

I. Preliminary remarks: hate crimes and the message of hate

Hatred is an intense human emotion which can lead (although not necessarily) to violent action (physical force). However, even verbal manifestations of hate can also violate different legal rights such as the right to personal honour and dignity.

In identifying the most serious forms of exclusion (racism, sexism, xenophobia and others), i.e. those described in the Criminal Code, the general category of “hate crimes” is often used and, while quite expressive and promoting the joint treatment of this set of behaviours, if it is taken literally it can be misleading. Hatred is the private and subjective attitude of the aggressor which may not coincide with what is typically meant by the term. Moreover, it is not exclusive of these aggressions.

In any case, as a generic category it does serve as a working tool to try to detect and highlight (as the first step in their eradication) the conducts and practices whose essential component is aversion to things that are different, intolerance and prejudice in its most destructive manifestation.

Not only is it important to identify and define conducts but also to monitor them with a view to studying their aetiology and development because when it comes to these types of conduct, the unknown or missing figures prevent us from taking stock of the whole dimension of the problem and stand in the way to a suitable response.

From a legal standpoint, the most serious response (but not the only one) puts us in the arena of criminal law where the focus is on those hateful or disdainful conducts most damaging to legal, personal and property rights. These crimes are committed on the basis of race, ethnic origin, nationality, sexual orientation or gender identity, religious conviction, disability, etc. and not only are an affront to individual or some specific collective rights but also have important potential to create social fractures and spiralling violence.

Until fairly recently, this additional racist or xenophobic component, i.e. discrimination (a sort of “specific or selective hatred”) was simply another of the myriad of common crimes and did not merit any specific response.

Greater legal and social awareness, in the wake of the work done by international human rights bodies and institutions, has helped to shed more light on these conducts “motivated by prejudice” (alternative term replacing hatred proposed by the OSCE¹) and has been the inspiration for important legislative reform in Spain and internationally to move forward in the eradication of a growing criminal phenomenon.

When these conducts or manifestations of hate are propagated through the Internet, we enter the realm of

¹ The working definition used by the OSCE includes as a characteristic of the so-called “hate crimes”, the selection of the victim or the place or aim of the infraction for one of the following factors which could be real or imagined: race, ethnic origin, sexual orientation or gender identity, religious conviction or disability, or other similar factors. See *Laws of Hate Crimes: a practical guide*, compiled by the OSCE and published by the MOVEMENT AGAINST INTOLERANCE in: *Analysis Journal* No 32.



cyber-crime (with all of its complexity) and when we add a specific motive it is known as *cyber-hatred*.

Cyber-hatred as a general category includes hate conduct (motivated by excluding or discriminating prejudice) liable to being committed through this media.

While the range can be very wide in light of the legal right affected (and due to the multiple possibilities of the Internet), acts committed under the alleged exercise of freedom of expression can be found within the category of cyber-hatred.

Therefore, the legal solution inevitably calls for a constitutional assessment of the rights in conflict. Adjacent to the fundamental right of freedom of expression we have the fundamental right to honour, dignity and the right to not have to face discrimination, on which lawmakers have built some of the criminal descriptions which form part of (but are not exclusive to) the category of "hate crimes" as the antithesis of these fundamental rights.

II. Reactions to the expression of hatred

The legal reaction to discrimination initially (but not exclusively) focused on the criminal reaction² to capture and sanction, together with most serious offences to legal rights, "the deliberate disrespect and discrimination of people or groups on grounds of any personal condition or circumstance". This discriminatory motivation also includes the particular criminal aspect of intimidation, both of the victim and the society at large insofar as the selective behaviour of the perpetrator on the basis of personal characteristics of the individual or group (manifestations of one's very identity and therefore intimately linked to personal dignity) makes anyone a potential target.

For an important doctrinal sector, "hate crimes" are specific crimes because, apart from the act itself, the perpetrator sends a collective message about the victim and his right to belong to society through the selection of the victim in his mind.

The system in place in our Criminal Code to pursue these crimes is mixed in the sense that it shifts between a generic aggravating circumstance for common crimes and is described as a specific crime.

This criminal regulation is relatively recent (Organic Law 4/1995 of 12 May) and it stems from the proliferation of racist groups in Europe (including Spain) and the need to adapt our legislation to some internatio-

nal treaties such as the 09 December 1948 New York Convention for the prevention and punishment of the crime of genocide and the 21 December 1965 International Convention on the Elimination of all Forms of Racial Discrimination, as expressly stated in the law's explanatory statement. Incrimination of these activities was also boosted by several important Constitutional Court decisions such as STC 101/1990 of 11 November (Violeta Friedman case) where the Court confirmed its earlier case law on the freedom of expression but introduced some important nuances in support of the appellant.

The aggravating circumstance is found in Article 22(4) of the Criminal Code and serves to assess the especially contemptible motive of the perpetrator (literally, "to commit a crime for racist, anti-Semitic or other type of discrimination based on ideology, religion or belief of the victim, ethnic origin, race or nation, sex, sexual orientation or identity, disease or disability").

Therefore, any of the Code's crimes committed with this motivation would entail a stiffer sentence which would allow for the punishment of a large number of "hate crimes".

In addition to this generic aggravating circumstance, the Criminal Code describes some autonomous types under Article 510, 607(2) and 611 which are accompanied by a stiffer sentence than for other similar offences (for example, slander) but where the selective or discriminatory element is not present.

Acts committed through the media (which is the focus of this paper) are punished specifically. In addition to defence and justification of terrorism and genocide, the following types of discriminatory messages are punishable under law:

- Incitement to discrimination, hatred or violence against groups or associations on the grounds of race, anti-Semitism or other ideologies, religion or belief, family status, ethnicity or race, national origin, sex, sexual preference, disease or disability (Article 501.1 of the Criminal Code); and
- Discriminatory slander or the dissemination of slanderous information regarding groups or associations with regard to their ideology, religion or beliefs, ethnic origin or race, national origin, sex, sexual orientation, disease or disability (Article 501.2 of the Criminal Code).

These criminal conducts are grouped in a chapter under the heading "Crimes against the fundamental rights of individuals" comprising what could be called the "flip side of the Constitution" because what the Criminal Code does is provide a criminal guarantee for the right to freedom, equality and dignity enshrined in the Constitution.

² From the legislative policy point of view, there is a strong current advocating the comprehensive treatment of discrimination through specific laws addressing all of its aspects.



Article 501 of the Criminal Code has been carefully scrutinised in doctrine. The first paragraph of that Article punishing incitement to discrimination, hatred or violence has been widely criticised for being too broad and is directly related to Article 18 of the Criminal Code which provides a generic definition of incitement to defend such acts. The issue is that according to this mainstream interpretation, the incitement sanctioned under Article 501 requires that the nature and circumstances of the act constitute direct incitement to commit a crime and a real and imminent danger for legal rights. In opposition to this stance, voices have been raised calling for reform of this law with a view to including under this criminal category those acts which, "while not creating real and imminent danger" for the target groups, do constitute a direct attack on co-existence and plurality in society and create feelings of exclusion, rejection or discrimination³.

Formerly (although for the OSCE in its strict interpretation this is not a hate crime but something similar) Article 607(2) of our Criminal Code also penalised, together with defence and justification, negation of genocide (sometimes referred to as "negationism") until the declaration of unconstitutionality in STC 735/2007 of 7 November 2007 for its conflict with the freedom of expression.

Certainly, the scope of these criminal concepts raises problems of interpretation on top of the difficulty in determining the reach of freedom of expression where it emerges united with ideological freedom. In other words, the issue is whether the expression of negative ideas and opinions which are contrary to constitutional principles (for example equality) are protected by freedom of expression and, no matter how despicable, are allowed to form part of public discourse, or whether these opinions can be criminalised on the basis of their content without this being considered a limit to freedom of expression.

The problem is not so much with regard to slanderous expressions with an added dose of discrimination because the former are criminal acts already and, as indicated by STC 214/1991, "the deliberate intention to despise and discrimination individuals or groups on the basis of any personal condition or circumstance" strips freedom of expression of constitutional protection. Neither does the problem lie with expressions which directly provoke violence. It is the other "grey area" which includes simple communication (verbal or non-verbal) which could indirectly spark or encourage reactions of hatred and which transcend the mere transmission of simple ideas, information or criticisms.

In this connection, our Constitutional Court (for example in STC 174/2006 of 5 June) and also the ECHR (in the important *Handyside v. United Kingdom* Judgement of 1976) has repeatedly pointed out that the freedom of expression is enormously broad and covers not only the transmission of the ideas or information shared by the majority but also ideas which are considered inoffensive or cause indifference and even those others which "disturb, clash with or concern" the State or a part of the population.

It must not be forgotten that the institutional nature of freedom of expression, its public dimension which extends beyond the purely individual meaning it has for its owner and which puts it at the very core of democracy, gives it preferential relative weight when balancing the limit of its possible contradiction with other fundamental rights. In other words, the freedom of expression (in the broad sense of "freely expressing and disseminating thoughts, ideas and opinions by means of the spoken or written word or any other means of reproduction" as stated in Article 20 of our Constitution) is indispensable for free public opinion and without which other fundamental rights would be void of meaning (STC 6/1981) as would democracy itself.

Regarding these rights which limit the freedom of expression, Article 20 of the Constitution acknowledges this limit: "These freedoms are limited by respect for the rights recognized in this Title, by the legal provisions implementing it, and especially by the right to honour, to privacy, to personal reputation and to the protection of youth and childhood". Article 10.2 of the 1950 European Convention on Human Rights mentions, among other possible limits, public security, crime prevention and the protection of the reputation and rights of others.

In Judgement 101/1990 the Constitutional Court specifically says that "neither the exercise of ideological freedom nor the freedom of expression can justify manifestations or expressions intended to cause feelings of hostility against certain ethnic groups, aliens or immigrants or religious or social groups. In a nation such as Spain, where social and democratic values and rule of law prevails, member of those groups have the right to peacefully co-exist and be fully respected by all other members of society".

Later, in the much awaited judgement 235/2007 (which ruled unconstitutional the crime of negating the genocide), diverging from the tendency of many European countries and modelled on the North American system, the Court excluded the crime of negation of the genocide from the "discourse of hatred" and from the Criminal Code because it did not pose a potential danger to legal rights but, on the other hand, it kept the possibility of punishing the justification of the genocide when tantamount to indirect incitement.

³ See AGUILAR, Miguel Ángel: 'Necesaria reforma del artículo 510 del Código Penal', in the Raxen Report. Especial Acción Jurídica contra el racismo y los crímenes de odio 2010 y las Memorias de la Fiscalía General del Estado correspondientes a los años 2009 y 2011 (apartado 'Propuestas de Reformas Legislativas').



III. Particularities of *cyber-hatred*

Our Criminal Code does not specifically refer to the Internet as one of the media through which so-called hate crimes can be committed. However, it is precisely in this arena where, given its special characteristics, hate messages can best be propagated.

This is such the case that the expression "cyber-hatred" has been coined to refer to actions of hate carried out via the Internet (more specifically, racist and xenophobic propaganda disseminated by means of computer systems⁴), acts which, in many cases, are the cybernetic version of those already mentioned (and therefore permit the application of the same solutions). In some cases, however, these are new manifestations or actions which require a different sort of response.

Cyber-hatred has many faces: not only web pages but also social networks, mass e-mailings, on-line games, musical compositions, videos, forum posts, etc.

This is a media, or area of communication with so many possibilities that it is also "a space with no doors" which is open to all types of messages, including discriminatory content. Easy access, low cost, the principle of freedom on which it was founded, anonymity, the potentially huge audience which can be reached and the ease with which these crimes can be committed, are just some of the essential factors that promote abuse.

In many aspects, it can be assimilated into traditional media (and this is the difficult part) and can envelop several of them at the same time: a public arena for the exchange of information, a propaganda mail service, a shop window, a private mailbox, a newspaper, radio and television, a telephone conversation, and the list goes on.

The configuration of the Internet as a public space (with its relatively large privacy compartments) which transcends physical boundaries and is based essentially on freedom, denies all attempts to limit or control it. But "everything goes" is unacceptable, even in this open media. The greater technical freedom afforded by the Internet does not justify, from a legal standpoint, the acts which are prosecuted outside of the network. Therefore, what is a criminal act outside of the Internet is also a crime when committed using this tool. Something else all together are the practical difficulties in gathering evidence, for example, or determining liability.

The possibility of establishing controls or limits on this media, over and above legal difficulties arising from clashes with the freedom of expression, is wrought

with technical obstacles which raise serious questions as to the effectiveness of such measures.

On the other hand, the total absence of reaction (at the appropriate level and which certainly does not have to entail criminal consequences) to offensive acts could make them commonplace in a media which is the one preferred by young people.

At international level there are few countries which specifically address cyber-hatred in their laws. The solution to disputes arising from the Internet is found in general laws which include the Internet among the different media.

Some of these classical responses tailored to the Internet could be acceptable because the acts are comparable. However, there are others which certainly require a specific response: chain letters with discriminatory or xenophobic content, dissemination of false information reporting on alleged criminal acts committed by delinquents of a certain ethnic origin or race to terrify the public, racist messages in fora targeting young people, etc.

New solutions have also been devised such as identification pages and the reporting of sites harbouring discriminatory content, strengthening the role of forum moderators, setting up filters whereby to detect and prevent "undesirable content", the publication of forum access rules, require some sort of participant identification, rating systems for the reliability of the information appearing on a web site in an attempt to differentiate between quality information and mere propaganda based on what sources of information were used, etc.

In any case, everyone will agree that for contention measures to be effective there must not only be individual reactions in each country but also agreement and cooperation worldwide because the international nature of the network demands joint action.

In this connection, the Office of Democratic Institutions and Human Rights of the OSCE (ODIHR), the European Commission against Racism and Intolerance (ECRI) and the European Union Fundamental Rights Agency (FRA) fully condemn manifestations of racism and xenophobia and put a special accent on the Internet.

In this same vein we have the Additional Protocol to the Convention concerning Cyber-crime which specifically refers to the criminalisation of racist and xenophobic acts perpetrated using computer systems. The Protocol's explanatory statement refers specifically to the need to adopt flexible and modern means for international cooperation justified by the need to harmonise substantive legal provisions regarding the fight against racist and xenophobic propaganda.

⁴ See the Preamble to the Council of Europe's Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (Strasbourg, 30 January 2003).



As already mentioned, the different degrees of freedom of expression among the different European countries (and these in comparison with the North American system) hinders a single response to determine what is and what is not permitted; secondly, a system of effective liability is difficult to arrange when the different stakeholders are found in different countries (thus the importance of agreements with minimum standards acceptable to the majority of countries to enable joint action).

In addition to these legal-material difficulties, equally important are the often-stressed deficiencies in pursuing these crimes including lack of information from victims to identify criminal acts, few complaints filed by those affected, lack of precautionary measures at the disposal of judges such as closing down web sites, lack of monitoring instruments such as statistics and the lack of professional specialisation, all of which point to the need to clarify and update our laws.

Summing up, not all offensive discourse should necessarily be handled under criminal law which is the last punitive recourse, only appropriate where all other legal mechanisms fail and protected legal rights are in jeopardy. Therefore, and without prejudice to a response of this nature for the more serious and truly damaging offences, others would be better dealt with using a different approach such as the civil system.

In any case, legal regulations aside, it is equally necessary to take preventive action with a view to, for example, eliminating "inappropriate" comments on certain Internet pages, fostering the creation of and respect for ethical codes, continuing to foster education for equality, facilitating access to information to foster a critical spirit so as to be able to discern between objective information and mere propagandistic poison and setting up concrete measures to protect youth and children who are especially vulnerable to messages of this sort.

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**Headway made
in combating
discrimination
in 2010 and 2011**



1. European Union

I. Fourth Report from the European Commission against Racism and Intolerance (ECRI) regarding Spain

The European Commission against Racism and Intolerance, independent supervisory body in the area of human rights specialised in racism and intolerance, published its fourth report on Spain on 08 February 2011. As the report explains, the work methods used to draw up this report include document analysis, a visit to the country and confidential dialogue with national authorities. This fourth report on Spain focuses on the application of the principals and recommendations that the ECRI has made in past reports, assessment of the policies adopted and measures taken and the formulation of new recommendations along with a request for priority execution. Among the concerns expressed by ECRI, we would draw attention to Spain's lack of data regarding acts of racism and racial discrimination, the lack of independence of the Council for the Promotion of equal treatment of persons based on racial or ethnic origin and the imbalanced distribution of immigrant and Roma students resulting in so-called ghetto schools. In the vulnerable groups section, ECRI specifically focuses on the Roma community where it reiterates the recommendations made in past reports, congratulates Spain on the significant progress it has made in dealing with the social exclusion of this population and also urges authorities to continue improving to give this population the opportunity to assume a leadership role with decision-taking capacity. The Commission also draws attention to the need to pursue the aim of eradicating shanty towns and sub-standard housing and calls for the adoption of measures to reduce early school dropout for Roma students in secondary school, with special focus on girls and women.

II. Handbook on European non-discrimination law. European Court of Human Rights and the European Union Agency for Fundamental Rights

This handbook, jointly compiled by the European Court of Human Rights and the European Union Agency for

Fundamental Rights, is the very first publication to present and explain the existing body of European legislation on discrimination.²

This material was taken from two of the major bodies of legislation at European level: the European Convention on Human Rights adopted by the Council of Europe in 1950 and European Union anti-discrimination regulations gleaned from the different European directives. Hence, this is a handbook compiled from two very different sources of legislation which permits the study of these two protection systems, pointing out where they are complementary in many aspects and where the differences lie. This is an important handbook for professionals in this field which not only clarifies concepts and provides in-depth insights into legislation but also includes case law from the different European courts with jurisdiction in anti-discrimination matters. The Spanish version of this handbook will be published in the near future.

III. European Framework for National Inclusion Strategies targeting the Roma population

On 05 April 2011 the European Commission published a Communication on an EU Framework for National Roma Integration Strategies up to 2020 which, for the first time, set up a common framework for the development of measures and policies at national level based on approaches, objectives and work areas shared by all EU Member States. This Communication is the political document whereby the European Commission establishes for the first time the responsibility that each Member State has with regard to the Roma population. The Commission provides shared approaches, establishes priority areas of work and sets targets and then each Member State, on the basis of the size of its Roma population, must define the roadmap of its National Strategy.

The adoption of these common guidelines was sparked by the incidents that occurred in France in the summer of 2010 when Roma families from Romania and Bulga-

¹ <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-IV-2011-004-ESP.pdf>

² http://fra.europa.eu/FraWebsite/attachments/FRA-CASE-LAWHANDBOOK_EN.pdf



ria were expelled. The final push for the drafting of a strategic framework was provided by the European Parliament through a number of Resolutions urging the adoption of a European Strategy for the Inclusion of the Roma population. In this regard, special mention should be made of the 9 March 2011 Resolution based on a report by the Hungarian European Parliamentary Member Livia Jaroka featuring proposals for the future European Strategy. On this basis, the European Commission took the political initiative to design the European Framework which required the support of the Member States in order to operate at national level. To that end, during the first half of 2011 the Hungarian Presidency of the EU sought consensus through a conclusions document supporting this European Framework which was approved by the Council of Ministers of Social Affairs and Employment (EPSCO) on 19 May 2011 and subsequently adopted by the European Council on 24 June.

This new European scenario is the starting point for a new stage in which National Strategies are expected to

move forward in the areas of education, employment, housing and health, priority areas highlighted in the Communication, by making more efficient use of available European resources and making Strategies result-oriented and assessable.

The Fundación Secretariado Gitano has made an unequivocally positive assessment of this process while also criticising some aspects and taking a "wait and see" attitude regarding the development of the new stage commencing with the drafting of the National Strategies. The focus of this new European Framework is clearly one of social and economic integration but it is missing a clearer reference to the fight on discrimination and equal treatment as the fundamental pillars of National Strategies given that full integration will be difficult to achieve without clear action in these areas³.

³ See related documents at: <http://www.gitanos.org/servicios/prensa/dossieres/71895.html>



2. National

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

The mission of the Council for the Promotion of equal treatment and non-discrimination based on racial or ethnic origin is to promote the principle of equal treatment and non-discrimination in different walks of life such as education, health-care, housing, employment and access to all types of good or service⁴.

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

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

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

- Take action to prevent possible situations of discrimination.
- Inform people liable to fall victim to discrimination of their rights and available resources.
- Detect cases of discrimination as they occur.
- Support and advise victims of discrimination.
- Develop social awareness-raising actions.

This Network has over 100 points of information distributed around Spain and includes the following member organisations:

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

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

In the individual cases, the three most frequent areas of discrimination were: access to goods and services (24%), treatment received at the hands of law enforcement officials (22%) and employment (17%). As for group cases, the three most frequent areas were: employment (32%), the media (18%) and access to goods and services (18%). Lastly, we would note that the type of discrimination suffered by victims is mainly direct discrimination in both individual (61%) and group cases (85%).

Aside from assistance for victims, another of the areas where the Council has advanced is the compiling of studies and reports on the status of discrimination in Spain. The work undertaken by the different working groups and the Council plenum has resulted in the following publications⁵:

- 2010 report from the Network of Assistance Centres for Victims of Discrimination based on Racial or Ethnic Origin (February 2011).

⁴ Royal Decree 1262/2007 of 21 September 2007.

⁵ All of these publications are available in digital version at: www.igualdadynodiscriminacion.org in the Recursos Útiles, publications section.



- Report on the Comprehensive Bill for Equal Treatment and Anti-Discrimination (February 2011).
- Panel on discrimination based on racial or ethnic origin (2010): the perception of potential victims (March 2011).
- Proposal: "Avoid the use of discriminatory, racist and xenophobic discourse in electoral campaigns" (May 2011).
- Recommendation: "Guarantee equal treatment and the fundamental rights of the Eastern European Roma population in Spain" (May 2011).
- 2010 Annual Report on the status of discrimination and the application of the principle of equal treatment irrespective of racial or ethnic origin in Spain (June 2011).

The FSG's area of equal treatment has been actively involved in all of the activities undertaken by the Council in 2010 and the first half of 2011, especially in the group providing assistance to victims of discrimination which we coordinate and offering this service as part of the network of centres assisting victims of discrimination **registering 60 cases with clear evidence of discrimination from June 2010 to April 2011.**

Lastly, we would note that through the activity of the Council during this period, information and counsel has been provided to victims whose right to equality has been violated and proper working tools have been created for the professionals involved in this work. These actions need to continue developing in order to combat discrimination for reasons of racial or ethnic origin.

II. Panel on discrimination for reasons of racial or ethnic origin (2010): Perception of the victims. The Council for the Promotion of equal treatment and non-discrimination for reasons of racial or ethnic origin

We would begin by noting that the Panel on Discrimination for reasons of racial or ethnic origin of the Council for the Promotion of equal treatment and non-discrimination for reasons of racial or ethnic origin is the first study of these characteristics conducted in Spain and is a study designed to gain insight into how the people in risk of suffering discrimination for reasons of their racial or ethnic origin perceive that discrimination and to what degree and how this affects them in their daily lives. Following are the most important results:

- **Perception and image vis-à-vis the Spanish society:** there are very important differences in the image that each group has of itself with regard to the Spanish society: the worst self-perception is that of the Roma population, one of the most discriminated groups (the most widely employed adjectives by members of this group, in higher proportions than other groups, i.e. more than 10 of those surveyed – are "thieves, lazy, drug traffickers and bad people"); the next are the North Africans who are also subject to a considerable degree of discrimination (the most frequent adjectives being "radical and thieves"). In contrast, the Asian population in general feels that it has a good image (the most frequent adjective used –well above any other at 34 – was "hard-working people").
- **Diminished understanding of discrimination:** the level of ignorance or lack of understanding of what discrimination means was notable. This could be due to two reasons: the fact that in the societies of origin discrimination is an accepted fact and assimilated by certain social groups which could explain why these people tend to accept discrimination as something "normal" in their lives. In other words, discrimination only has real meaning in a society where equality is a fundamental value. The second reason could be the low level of education and language difficulties, factors contributing to social barriers.
- **Varying levels of awareness and perception of discrimination:** there is a notable difference between discrimination identified spontaneously (a priori subjective perception) and objective facts attributable to discrimination for reason of ethnic origin (subjective perception based on life experiences). Approximately 70 of the people who initially said that they had not felt any personal discrimination for reasons of racial or ethnic origin, when asked about very specific situations which could be described as discriminatory in different facets of their everyday life, admitted that they had indeed had these experiences. This reveals that there is a high threshold level for the detection of discrimination a priori and high tolerance.
- Areas in which greater levels of discrimination are perceived: housing and homeowner's associations; law enforcement officials; public entertainment centres.
- **Low degree of action taken in response to discrimination:** the number of formal complaints detected in the survey was very low. Only 4 of those surveyed who had been victims of some form of discrimination stated to have reported the situation to the authorities.



III. 2010 Report: Hate and Discrimination Crime Service of the Barcelona Provincial Public Prosecutor

The Hate and Discrimination Crime Service of the Barcelona Provincial Public Prosecutor published its 2010 annual report. This entity was set up in 2009 to focus on the study and analysis of delinquency rooted in discrimination for reasons of race, ethnic origin, sexual orientation or identity, religious or ideological beliefs, disability, age, disease and others. The 2010 report highlights the year as one of consolidation and expansion of the Hate and Discrimination Crime Service, stressing the initiatives developed to make citizens and organisations aware of its existence with a view to reducing the number of offences that go unreported. Following a diagnosis of the current status of hate and discrimination criminality and the main problems identified, the special Public Prosecutor focuses on the incorporation by the regional police force in Catalonia (Mossos d'Esquadra) of the "Procedure for crimes rooted in hate or discrimination". This is the first police force in Spain to be given a tool whereby to collect data on crimes and misdemeanours reported in the area of discrimination. In fact, the report also provides the first statistical data on complaints filed before the Mossos d'Esquadra for discrimination crimes, fruit of this new action protocol. Lastly, this report describes other actions carried out by the Hate and Discrimination Crime Service such as work with the different administrations and public authorities at local, regional and European level, study of the main legislative novelties at national and regional level and a selection of the most important judgements handed down by this Service and its recommendations to further the cause of the fight against discrimination.

IV. International Report: Derechos Humanos a la intemperie (Human Rights without a roof) Obstáculos para hacer valer los derechos económicos, sociales y culturales en España (Barriers in the way to exercising economic, social and cultural rights in Spain)

The report entitled *Derechos Humanos a la intemperie. Obstáculos para hacer valer los derechos económicos, sociales y culturales en España* was published in April 2011 within the scope of the *Demand Dignity* campaign undertaken by the Spanish section of Amnesty International. The report looks into the legal treatment of economic, social and cultural rights (ESCR) in Spain and identifies the barriers and obstacles affecting their real and effective enforcement. To that end it examines the legislative, administrative and legal framework with provisions regarding these rights. In its report, Amnesty International points to the large number of people in Spain living at the poverty line, approximately 22.7% of the total population, stressing the need to enhance and protect ESCR. Human Rights are universal, inalienable, indivisible and interdependent meaning that the advancement of one facilitates the advancement of the rest. Similarly, limitation of one right has a negative affect on the others. Rights such as the right to health-care and housing are given special attention in this report. Amnesty underscores that the lack of recognition of the ESCR as human rights under law and in the actions and decisions taken by the authorities affects people's lives. Lastly, the report issues a series of recommendations urging competent Spanish bodies to adopt the necessary measures to guarantee the economic, social and cultural rights of all people in a non-discriminatory fashion⁶.

⁶ See the complete report at: <https://doc.es.amnesty.org/cgbin/ai/BRSCGI?CMD=VERLST&BASE=SI&DOCS=110&separador=&INAI=EUR4110011>



3. Case law and judgements

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

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

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

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

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

First of all, it is encouraging to observe that the precept on which an eventual conviction would be based is Article 510(2) of the Criminal Code⁷, so frequently invoked by victims of discrimination and so frequently ignored by the courts.

Lastly, the decision does not mention that these leaflets contained slander and were an affront to the honour of the Romanian Roma people which also constitutes a violation of Article 18 of the Spanish Constitution⁸.

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

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

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

The past electoral campaign served as a loud speaker to disseminate racist and xenophobic declarations like the one under analysis and this goes to show that parties with a clear racist ideology have a constituency in some municipal corporations⁹.

The discourse of these political groups has been instrumental in disseminating a false and damaging image for migration. However, the immigration-delinquency binomial is not borne out by the statistics. Antonio Camacho, Secretary of State for Security, spoke to this with an example: *'In 2002, with only half of the immigrant population, the criminality rate was 1.5% higher than in 2006. Therefore, there is no correlation between immigration and delinquency despite the insistence on the part of some irresponsible people on making this connection.'* Experts share this theory. José Luis Díez Ripollés, Criminal Law Professor at the University of Malaga, asserts that *'it cannot be said that the presence of immigrant population is a determining factor in accounting for crime levels'*. The police confirmed that 63.5% of criminal groups are mixed (comprised of Spanish nationals and aliens)¹⁰.

⁷ Criminal Code Article 510.

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

⁸ Article 18, Spanish Constitution of 1978

1. The right to honour, to personal and family Privacy and to personal reputation is guaranteed.

2. The home is inviolable. No entry or search may be made without the consent of the occupant or under a legal warrant, except in cases of flagrante delicto.

3. Secrecy of communications is guaranteed, particularly of postal, telegraphic and telephonic communications, except in the event of a court order to the contrary.

4. The law shall limit the use of data processing in order to guarantee the honour and personal and family privacy of citizens and the full exercise of their rights.

⁹ Amnesty International News Spain 21-6-2011: <http://www.es.amnesty.org/noticias/noticias/articulo/ai-pide-medidas-para-abordar-el-racismola-discriminacion-los-desalojos-forzosos-y-la-proteccion-d/>

¹⁰ Publico Digital on 08-02-2008 <http://www.publico.es/46444/diez-falsosmitos-sobre-los-inmigrantes>



On many occasions, use of this sort of discourse is intended to divert attention from the real problems affecting local corporations which has little or nothing to do with migration. The main issue is that the services requiring the largest budgets are health-care and education, both of which have been devolved to the regions. Integration policy is likewise the responsibility of municipal governments but its priority in municipal budgets is relative. According to Alfonso Utrilla, Professor of the Finance and Tax System Department of the Universidad Complutense de Madrid, *“of the €3 billion annual budget of the Local Corporation of Madrid, €240 million are earmarked for social policies and of that sum, only 12 are used for integration policies. The relative weight of immigrants in local corporation budgets is not very large. While the recession does affect the finances of local corporations, this has little to do with aliens”*¹¹.

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

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

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

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

In his decision, the judge stated that there was no doubt that the overwhelming majority of the dialogue from the programme about the celebration of the baptism are mocking, sarcastic and hurtful comments.

The images used invite or predispose the spectator to a grotesque or abnormal spectacle, ridiculing the cele-

bration and emphasising the fact that this is a *“gypsy baptism”*. Throughout the broadcast, individuals and the group in general are ridiculed.

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

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

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

{...}

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

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

In weighing freedom of expression and information and the right to honour and personal privacy, the Court ruled that in this case freedom of information or freedom of expression cannot prevail and the act therefore constitutes a violation of the right to honour, personal privacy and personal reputation.

This judgement is considered to be especially relevant in the fight against discrimination of the Roma community because of the following extract transcribed literally:

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

¹¹ Digital version of the newspaper *Expansión* 02-02 2010.
<http://www.expansion.com/2010/02/02/economia-politica/1265134453.html>



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

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

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

III. The Kalki book store case – Barcelona. Judgement of the Provincial Court of Barcelona issued on 28 September 2009 and Supreme Court Judgement of 12 April 2011

On 12 April 2011 the Supreme Court Chamber for Criminal Cases issued its judgement regarding charges brought against four people for different crimes, the owner of a book store, his personal secretary and event organiser and two owners of two different publishing houses.

These four people published and distributed clearly anti-Semitic material which also levelled attacks against homosexuals, trans-sexuals, Roma, the disabled, blacks, North Africans, victims of gender-based violence, feminists and women in general.

Their discourse has a national-socialist slant and they identified themselves with the doctrine of the "Third Reich" based on race supremacy and ethnic cleaning. They interpreted these doctrines and applied them to current situations where they took a radical stance in line with Nazi theories.

They had two publishers at their disposal and a book store. They also founded a neo-Nazi organisation where they even encouraged armed conflict.

The public prosecutor and popular accusation comprised of the Israelite Community of Barcelona, the Federation of Israelite Communities of Spain, S.O.S Racism, Amical of Mauthausen and other camps of all victims of Nazism in Spain, jointly filed charges before the Provincial Court of Barcelona which, in 2009, convicted the four defendants.

The accused parties were considered criminally liable as the authors of the crimes of dissemination of genocidal ideas and crimes committed in the exercise of fundamental rights and public freedoms guaranteed by the Constitution. Three of the defendants were also convicted of unlawful association.

The convicts filed a Supreme Court appeal on 28 September 2009 against this judgement from Section Ten of the Barcelona Provincial Court claiming that the presumption of innocence was violated, that the evidence had not been properly assessed, that their actions had erroneously been interpreted as crimes, that there had been undue delay during the proceeding, that the judgement was not legally grounded and that, despite the €18,000 allocation of funds made by the convicts, they claimed that the mitigating circumstance of redress for damages had not been applied.

Unfortunately, the Supreme Court judgement upheld the claims made by the appellants rendering null and void the judgement of the Provincial Court and acquitting the defendants.

In its decision, the Supreme Court claimed that the proven facts were insufficient for the criminal category in which they were charged.

Hence, regarding the charge of dissemination of genocidal ideas, the high court ruled that the expression of ideas is insufficient. These ideas must incite others to commit crimes meaning that the manifestation of these ideas entails a real and not merely a presumed danger.

What is truly surprising is that this argument rules out the application of this criminal precept despite having proven the existence of a sufficient infrastructure for dissemination comprised of the publishers, book store, web page and a postal address, sufficient to incite dangerous racist actions. In so doing, the accused had developed an organisation with a full-fledged logistical infrastructure.

Nevertheless, those accused of unlawful association were also acquitted based on the argument that the expression of a particular ideology by part of a group is insufficient. This expression must incite others to discriminate.

As a result of these arguments, the judgement appears to have entered into a vicious circle in the interpretation of the law. It says that there was no dissemination of genocidal ideas because the association was not dangerous and that the association was not dangerous because it did not incite others to commit racially discriminatory acts.

Moreover, the judgement states that the possession or availability of arms is not sufficient to conclude that the



organisation had a paramilitary component. Such a conclusion would require an organisational structure and the structure of this organisation was deemed insufficient in that connection. However, the judgement did show that *the defendants formed part of a structured two-tiered organisation; the outer circle composed of members and supporters and the inner circle composed of selected people. Also, there was a basic action unit called the "fulmen". The proven facts also pointed to elements of internal organisation such as bylaws, compulsory attendance at certain acts, promise of loyalty and the wearing of uniforms and symbols resembling those of the Nazi ideology which came into power in Germany in 1933*¹².

However, the judgement was not unanimous, the dissenting vote coming from the Honourable Andrés Martínez Arrieta who made solid arguments against the grounds on which the Court based its decision. We have reproduced the following significant fragments from that opinion:

Hence, one of the publications appearing in the proven facts, contains language directly provoking hatred against other races and justifying the genocide which they say never took place although it would have been justified.

...}

In my view, the majority opinion downplays the dangerousness of these associations and does not coincide with daily experience and news regarding the sort of motive for aggression described in the sentence. The proven facts make mention of the existence of an organisation with an ideological branch and an action branch called "fulmen" with different levels designed by the entity.

In conclusion, with all due respect for the judiciary and its decisions, this Supreme Court decision represents a step backwards in the fight against discrimination and, in our view, gives a feeling of impunity in the commission of racist acts and support of genocide.

IV. Aksu v. Turkey. Judgement delivered by the European Court of Human Rights on 27 July 2010

On this occasion, the European Court heard two cases in the same proceeding. This was because of the similarity of the subject and the fact that the parties to both cases were the same people.

The case goes back to two publications made by the Turkish Government through its Ministry of Culture. The

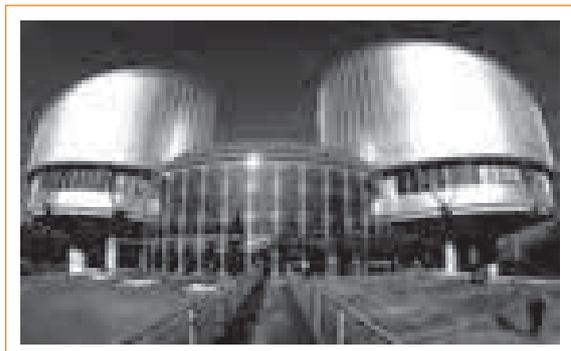
first was entitled *Roma in Turkey* and contained passages which were openly offensive. Following is one which was used in the Court's judgement as an example:

"The most important bonds unifying the Roma people are their family and social structures and their traditions. Despite being a nomadic people for over a thousand years, they have managed to maintain their traditional way of life thanks to their endogamic practices. They adhere to these traditions from birth until death. There is no doubt that tradition is the most important factor in the lives of the Roma people. The elderly Roma have the greatest responsibility in protecting and perpetuating these traditions. However, due to a series of circumstances and needs in constant evolution, the social structure of the Roma is difficult to conserve. Specifically, maintaining one of these social structures called "Nafia" is no longer possible in today's Turkey.

The most eye-catching characteristic of the Roma people is their lifestyle. Therefore, all branches of socio-cultural activity consisting of migration and settlement, dance, music, language, food and drink, fortune-telling, witchcraft and trades constitute the authentic nature of Roma life. In other words, these elements form the visible part of the iceberg. Other people typically recognise the Roma through these characteristics. However, the way to really get to know the Roma is to blend into their society and take an in-depth look at their traditions and beliefs. The secret world of the Roma is revealed to us through their beliefs, especially through their superstitions and taboos.

Roma, like all other people, need faith and worship. In addition to adopting the religion of the country where they live, they also perpetuate traditional beliefs specific to their culture. Therefore, we see that Roma have authentic celebrations stemming from beliefs whose origin may be attributable to Hinduism.

In our opinion, these people who suffer humiliation and rejection wherever they go, have the potential to be active citizens in our country once their educational, social, cultural and medical problems have been sorted out. This issue simply needs to be addressed with patience and determination."



¹² DISSENTING OPINION formulated by the Honourable Andrés Martínez Arrieta with regard to Judgement No 259/2011 delivered in Supreme Court Appeal No 1172/2010.



The second case relates to a dictionary published by the non-governmental organisation called "Language Association".

The publication in question is called the *Turkish Dictionary for Students* and contains the following entries in reference to Turkish slang:

- "Gypsy" (çingene): (in a metaphorical sense) stingy.
- "Gypsy-like" (çingenelik) (in a metaphorical sense): stinginess, greed.
- "To act like a Gypsy" (Çingenelesmek): to act in a greedy manner.
- "Gypsy's debt" (Çingene borcu): an unimportant debt.
- "Gypsies performing Kurdish dances" (Çingene çalar Kürt oynar): place with a lot of noise and ruckus.
- "Gypsy shop" (Çingene çergesi): (metaphorically): a dirty, poor place.
- "Gypsy wedding" (Çingene dgünü): a cramped and noisy get-together.
- "Gypsy fight" (Çingene kavgası): verbal confrontation where vulgar language is employed.
- "Gypsy money" (Çingene parası): small change.
- "Gypsy rose" (Çingene pembesi): rose.

The court first ruled on technical procedural aspects which are unimportant.

The condition of the claimant as the direct victim as the result of expressions about an ethnic group without focusing any one particular person was discussed. In this regard, the Court ratified procedural capacity based on the fact that all members of an ethnic group that is presumably the target of racially discriminatory expressions is considered a victim, given that these expressions engender a feeling of prejudice against each and every one of the members of that group. In support of that argument, reference was made to the *Micallef v. Malta* case. Moreover, the claimant had substantiated the same proceeding in the internal jurisdiction of the country meaning that the protection of the ECHR could not be less than that offered under the domestic system of the country in question: when the condition of victim is acknowledged by domestic courts, it cannot be rejected by the European Court.

Moreover, the claimant based his claims on Article 6 and 14 of the Convention¹³, but it was the Court's view that

¹³ Article 14: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

the case fit Article 8 of the Convention¹⁴ and the procedure was carried out on that basis.

As for the substance of the decision, the Court dismissed the claim of the accusation despite being aware of the need to give special protection to the values and culture of the Roma people.

In the case of the book it concludes that, while reading isolated passages the expressions are insulting, within the context of the entire book they are not. In these paragraphs the author makes reference to a biased image and gives examples but these are not the perceptions of the author but are examples from the Turkish society about the Roma people. The author actually wants to correct these prejudices and clearly expresses the need to respect the Roma.

The dictionary expressly indicates that these are metaphorical expressions and are therefore legitimately listed therein.

However, this judgement was issued with the dissenting opinion of three members of the Court who believed that the book contained grey areas which merit a more detailed explanation and more forcefulness in the conclusions. In the case of the dictionary they believe that recourse to rhetoric gives more credence to the prejudice in this latter text. Also, since it is a dictionary intended for students, these expressions would only contribute to perpetuating prejudices and stigmas against the Roma community.

Again, we have a decision from a high court which does not support the intercultural model.

These kinds of decision establishing European case law do damage to the international legal framework. Moreover, since they are issued from a court with the capacity to establish supra-national case law, they have an impact on the national legal frameworks under its jurisdiction, thus multiplying the negative effect in detriment of the advances made by our societies.

It must not be forgotten that these courts are not only generating case law but are also validating doctrines that contravene cultural integration models and these can be invoked before courts which are beyond the scope of European courts.

As a result, damaging judgements such as these have a direct impact on the judicial bodies both within and outside of their jurisdictional boundaries in detriment to the integrating socio-cultural models in any part of the world.

¹⁴ Article 8:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.



**Affirmative action
in the sphere of the
fight on discrimination**



1. Platform for Police Management of Diversity

In 2010, the *Platform for Police Management of Diversity* was presented in Madrid. This is an initiative designed to boost and promote improvement in the procedures implemented by law enforcement officials to guarantee all people equal treatment and the defence of their rights, especially the most vulnerable in an increasingly diverse society.

This Platform was strengthened in 2011 with the incorporation of new organisations. The following are currently members: UNIJEPOL (National Union of Local Police Chiefs and Managers), the RAIS Foundation, the Pluralism and Co-existence Foundation, the Spanish Confederation of Organisations for People with Intellectual Disabilities (FEAPS), the Spanish Federation of Gays, Lesbians, Transsexuals and Bisexuals (FELGTB), the Spanish Catholic Migrations Commission Association, the CEPAIM Foundation, Movement against Intolerance and the Fundación Secretariado Gitano. The Open Society Justice Initiative (Soros Foundation) and Amnesty International are collaborating organisations.

The Manifesto signed by all of the Platform members expresses their concern for the problems of discrimination in our country, especially towards the most vulnerable groups, and the need for all public institutions to effectively guarantee the exercise of human rights on an equal footing for all. In this connection, police services can and should play a fundamental role in the management of social diversity and the guarantee of equal treatment.

In 2011, the Platform organisations organised themselves in different working groups to achieve their goals.

The **training group** is working to design a training proposal for police forces that offers information on equal treatment and anti-discrimination regulations currently in force and the most suitable action strategies and frameworks to improve the operation of police services in their interactions with a diverse society. This proposal, based on the diverse experiences which some members of the Platform have been developing and on awareness of interculturalism and diversity, will take an

especially practical approach focused on the reality of the everyday activity of the professionals forming part of police services.

In 2011, the Platform has taken part in two training activities targeting the police. The first was organised in March by the Delegation of the Government of Extremadura and the FSG where the Platform was represented by the Local Police of Fuenlabrada (Madrid) and by the FSG. Approximately 70 members of the Civil Guard and the National Police attended.

The second training experience took place in June and targeted the local police and social services of the Local Corporation of Puertollano (Ciudad Real); on this occasion, the Platform was represented by the local police of Fuenlabrada (Madrid), ACCEM and the FSG.

The **Institutional Relations Group and Spokesperson's Office** held several meetings with institutions responsible for matters of public security with the aim of communicating the position and proposals of the Platform to them. One of these institutions was the Gabinete de Estudios de Seguridad Interior (Studies office for Home Security – Ministry of the Interior) which heard the concerns of Platform representatives regarding the need for anti-discrimination training for state police and security forces and concerning the incorporation of indicators on hate and discrimination crimes in police statistics.

This group is also constructing a Platform web page which will be made public at the end of 2011 as the main channel of communication to disseminate its activities. Its contents will include documents of interest and news items related with its objectives and information regarding actions implemented.

The **Best Practices Group** is working on the criteria to be followed in formally assessing a police experience as a "best practice" as regards the management of diversity, and in order to identify the most effective actions undertaken by different law enforcement officials. These actions will then be compiled and analysed to serve as a model for other police services in and outside of Spain.



2. “*Todoimás Project*” (Everything and More) 2011 Equal Treatment and non-discrimination Forum. Directorate-General for Equality in Employment and non-Discrimination

The *Todoimás* project: The aim of the 2011 *equal treatment and non-discrimination forum* led by the Directorate-General for Equality in Employment and Non-discrimination of the Ministry of Health, Social Policy and Equality is to promote the participation of all of the public institutions and social organisations working within the sphere of equal treatment and non-discrimination and which represent groups suffering discrimination, special mention made of the active involvement of the Council for the promotion of equal treatment and non-discrimination of persons for reasons of racial or ethnic origin. This project is carried out within the framework of the 2010–2011 Community Progress call for proposals.

The following activities have been organised to spark thought and debate on the key issues of equal treatment at national and regional levels from a transversal approach¹:

- Follow-up meetings through participation and management Committees;
- Organisation of a project launch seminar (16 March 2011).
- Agreed compilation and publication of two working document: and analytical-thought provoking document and an awareness-raising handbook;
- Organisation of eight seminars to be held in different Autonomous Communities;
- A closing seminar (November 2011).

The Fundación Secretariado General collaborates in this project. To that end, on 17 June the FSG coordinated the assistance group for victims of discrimination at the first seminar held at the Euskalduna Palace in Bilbao, organised by the Directorate-General for Equality in Employment and Non-Discrimination and the Directorate for Immigration and the Management of Diversity of the Basque Government's Department of Employment and Social Affairs.

¹ Publications from this project and all of the information regarding its activities can be found at: (http://www.migualdad.es/ss/Satellite?c=MIGU_Campania_FA&cid=1244651309703&language=cas_ES&pageid=119304983165&pagename=MinisterioIgualdad%2FMIGU_Campania_FA%2FMIGU_campaniaGenerica).



3. Local awareness-raising schemes on Equal Treatment and non-Discrimination. OBERAXE

This is a new project led by the Spanish Observatory against Racism and Xenophobia (OBERAXE) of the Ministry of Labour and Immigration culminating in the publication of a Compendium of success stories in the implementation of local awareness-raising schemes in the area of equal treatment and non-discrimination². The Project which is entitled *ESCI III: Awareness-raising Schemes: Success stories at local level*, is carried out within the framework of the Progress Community Programme for employment and social solidarity (2007–2013) under the auspices of the European Commission Directorate-General for Employment, Social Affairs and Equal Opportunity and is the continuation of two previous projects, ESCI I and ESCI II referred to in previous editions of this report.

This third stage of ESCI (ESCI III) was launched with the aim of incorporating and involving public and private institutions and local and regional bodies in the implementation of actions to promote awareness-raising and

equal treatment and non-discrimination by designing local awareness-raising schemes against discrimination for reason of racial or ethnic origin and in support of equal treatment. It also intends to identify, assess and disseminate best practices and experiences carried out at local level.

The aim of this new project is to progress towards improving the quality of the strategies used by local authorities in raising awareness by providing support, monitoring and tutoring in the design and implementation of local awareness-raising schemes, selecting success stories and compiling a compendium of best practices which includes an analysis of the transferability of these experiences and defines recommendations for the implementation of the tool in other settings.

In developing the project, we worked hand in hand with the public administrations and agents considered to have a key influence at the grass-roots level in the design and implementation of national and European policies.

² See: www.oberaxe.es



4. Local comprehensive anti-discrimination schemes. Secretariat of State for Equality and FEMP

This project is part of the agreement concluded between the Spanish Federation of Municipalities and Provinces (FEMP) and the Secretariat of State for Equality which first got under way at the end of 2010 and is led by Folia Consultants in collaboration with the European Anti Poverty Network in Spain (EAPN-ES) and the Gender Chair of the Public Law Institute of the University Rey Juan Carlos.

Its aim is to undertake initiatives which provide local authorities with the methodological and organisational tools needed to implement policies and actions to prevent and eradicate discrimination for reasons of sex, racial or ethnic origin, disability, age, religion or creed, sexual orientation or any other personal or social circumstance, and to provide care for victims of discrimination.

So far in this project, research–diagnosis has been done on discrimination at local level with local administrative entities serving as the sample. The sample was collected at 33 municipalities in 16 Autonomous Communities: Andalusia, Aragon, Asturias, Cantabria, Castile–La Mancha, Castile–Leon, Catalonia, Extremadura, Galicia, Balearic Islands, Canary Islands, Madrid, Murcia, Navarre, Basque Country and Valencia.

Best practices were also identified from local policy proposals to combat discrimination and assist victims. Concurrently, an agreement was signed with seven local corporations to launch pilot anti-discrimination schemes which are intended to continue after this project has concluded. As from September, project activity will be accompanied by an awareness-raising campaign whose materials will be distributed to all local administration organisations.

The final product will be a Handbook for Local Governments with a comprehensive draft of a local action scheme to combat discrimination which will include the results of the entire process and information on the social and institutional context of discrimination; the theoretical–conceptual framework of discrimination; a methodological proposal for local intervention against discrimination for reason of sex, racial or ethnic origin, religion or creed, sexual orientation, age or any other personal or social condition; criteria for a local diagnosis of discrimination; intervention strategies, effective tools and conditions for their use; resources to make processes sustainable; best practices: tools, analysis and conditions for their transfer; and challenges and proposals on the basis of the different players taking part in anti-discrimination activities at local level.



5. Anti-racism Rap Campaign Movement against Intolerance

The NGO called Movement against Intolerance launched the school and youth awareness-raising campaign entitled 'Rap against Racism' consisting of a video clip and a song by the most important Spanish rap stars. The initiative was sparked by the interest of the rap singer 'El Chojín' who wanted to collaborate in the fight against racism and xenophobia. In the end, the most outstanding rap groups from Spain have joined forces to proclaim 'Do something to fight racism, and if it's rap, all the better.'

The campaign is going to distribute 3,000 DVDs of the video-clip of the song at schools, cultural and youth centres and through the Internet. The aim is spark debate and generate interest among young people and foster their commitment to fight racism and xenophobia. Promotion of the initiative will also be accompanied by other activities and workshops on graffiti art, how to become a DJ, music production, etc.³

³ <http://www.movimientocontralaintolerancia.com/html/Admin/verNoticia.asp?cod=1905&esBusq=True>



6. Activities carried out by the FSG

I. Social awareness raising Campaign Gitan@s=Ciudadan@s (Roma = Citizens) Roma are European citizens too

Before the regrettable incidents which took place in France in the middle of 2010, i.e. the mass expulsion of Romanian and Bulgarian citizens of Roma origin, the Fundación Secretariado Gitano, together with the Unión Romani, implemented the first stage of a social awareness-raising campaign with a simple slogan: *Gitan@s = Ciudadan@s*. The aim of this campaign was to drum up support and to get the third sector and civil society to take a clear position in putting a social barrier in the path of this increasingly generalised trend of 'everything goes against the Roma', reminding all of elementary principles and values such as the equality and dignity of all persons and shared rights of all citizens.

This first stage of the campaign had the support of the Ministry of Health, Social Policy and Equality. Products included different buttons in Spanish and English, a banner and an Internet page where people could sign up in support of our proposal.

At the second stage of the campaign the FSG, very concerned about the situation of discrimination and social exclusion affecting the Roma community in Europe, especially now in times of economic crisis, took new steps in raising awareness as to the importance of establishing a social inclusion and non-discrimination strategy targeting the Roma community in each Member State of the European Union. The slogan and messages established during the first stage were further developed in the second: *Gitan@s=Ciudadan@s. Roma are European citizens too. Seeking a social inclusion and non-discrimination strategy for the Roma community*. This was developed as art of an agreement concluded between the FSG and the Council for the promotion of equal treatment and non-discrimination of persons for reasons of racial or ethnic origin⁴.

The material of this second stage consists of leaflets and information banners and other merchandising elements. We hope that the distribution of this material will contribute to raising the awareness of society.

II. Training targeting key players in the fight against discrimination

In 2010 and 2011 the FSG's Area of Equality has continued its work in the area of training and awareness-raising of key agents in the promotion of equal treatment and the fight against discrimination of the Roma community and other groups that are ethnically or culturally different.

The activities undertaken have mainly targeted jurists and lawyers, state police and security forces, municipal social services professionals, professionals and volunteers of social entities and media professionals. The purpose of these actions is to raise the awareness of key agents in the fight against discrimination as to the reality of our diverse society, existing regulations regarding equality and new approaches for the management of diversity from different professional spheres.

Following are the main activities:

- Ongoing training and capacity-building for FSG personnel responsible for the detection, recording and assistance of victims of discrimination from the different Autonomous Communities (Castile-La Mancha, Basque Country, Cantabria, Madrid, Galicia, etc.) with the aim of working in accordance with the tools of the Network of assistance centres for victims of discrimination and to improve in identifying cases of discrimination and implementing action strategies.
- Speakers at the VI Cultural Conference organised by the Local Corporation of Leon on 01 October 2010 presenting a communication on assisting victims of discrimination attended by 25 social workers.
- Speakers at the VI Immigration and Interculturality Conference organised by the civil protection service of the Andalusian Regional Government from 18 to 22 October 2010. Thirty professionals from that area attended.
- Presentation at the Cordoba University Law Faculty on 22 October 2010 where 40 students received training regarding the criminal regulation of discrimination and the violation of the right to equality suffered by the Roma community.

⁴ All of this material can be found at: www.gitanos.org



- At international level we participated in a training course on Strategies for Equality organised by the Spanish Cooperation and Development Agency of the Ministry of Health, Social Policy and Equality on social and equality policy in Antigua (Guatemala) from 22 to 26 November 2010 where a presentation was made on the FSG's work dealing with cases of discrimination as members of the Council for the promotion of equal treatment and non-discrimination of persons for reasons of racial or ethnic origin.
- Participation in the conferences organised by the Acoge Network in Madrid called 'Discrimination based on racial or ethnic origin' held on 25-26 November 2010. The FSG presented the practical work undertaken in providing assistance to victims of discrimination to approximately 50 social workers.
- Participation in the activity presented on 30 November 2010 organised by the Zaragoza Bar Association featuring a presentation entitled 'Human rights and the Roma people. European Community anti-discrimination policies and regulations; application in Spain and the rest of Europe.' This activity delves deeper into the situation facing the European Union's Roma citizens from a legislative point of view, especially in light of the mass expulsions which took place in France.
- Conference on Equal Treatment and non-discrimination on 25 February 2011 at the 'II Meeting *Perspective of the South*' within the framework of the co-existence and anti-racism activities organised by social entities of municipalities in the south of Madrid and their local corporations. Close to 60 people attended that conference.
- Awareness-raising talk on equal treatment and non-discrimination for 100 students of the Law Faculty of the Universidad de Valladolid on 24 March 2011.
- On 29 March 2011 the Fundación Secretariado Gitano ran a training programme at the Government Delegation in Extremadura for the state police and security forces on equal treatment and the Roma community. Approximately 70 members of the Guardia Civil and the National Police attended.
- On 05 May 2011, in collaboration with the CEPAIM organisation, the FSG organised a conference entitled 'Equal Treatment and non-discrimination for reason of ethnic or cultural origin: learning about new realities'. Approximately 45 social services professionals from the Local Corporation of Murcia attended.
- Participation in the conference at the Public University of Navarre called 'Key elements for Equality and Social Inclusion' organised by the Gaztelan Association on 08 June 2011 presenting the work that the FSG is carrying out as the Antenna Network of the Council for the promotion of equal treatment and non-discrimination of persons for reasons of racial or ethnic origin. Approximately 100 people from the third sector, public officials and university personnel were in attendance.
- Participation by the Area of Equal Treatment in the seminar held in Rome organised by the Cittalia Foundation on 12-13 June 2011 as part of the European project RESPECT to combat prejudices and stereotypes against the Roma community. There we presented the material developed by our Foundation called 'A Practical Handbook for Journalists. Equal treatment, media and the Roma community'. Representatives from different social organisations throughout Italy, journalists, university professionals, politicians, etc. attended that seminar.
- Within the framework of that same project, we attended the Final Conference on strategies to combat discrimination and foster the social inclusion of the Roma community held at the Palazzo Valentini in Rome. That conference was inaugurated by different Italian authorities and the Cittalia Foundation and among the activities presented was the educational programme implemented by the Local Corporation of Puerto Lumbreras (Murcia) where policies on the social inclusion of the Roma community in Italy and Europe were discussed.
- Organisation of the training conference held on 13 June 2011 in Puertollano (Ciudad Real) entitled 'Equal treatment and non-discrimination - a look at new realities' where nearly 40 professionals took part, all members of the local police force and social services. The social organisation ACCEM and the local police of Fuenlabrada also participated in that activity.

III. Committee on the Elimination of Racial Discrimination. Assessment of Spain

On 23 February 2011 the FSG, together with SOS Racismo and CEAR, was in Geneva to present a shadow report to the United Nations Committee on the Elimination of Racial Discrimination (CERD) where stock was taken of the progress made by the Roma population and the efforts of the Spanish Government in that connection. The report also underscored those areas which are still of particular concern if the Spanish Roma population is to enjoy full citizenship on an equal footing with the rest of the population; these include: education, employment, housing and social image. The other organisations which presented reports before the United Nations Committee were Amnesty International, the External Council of India and the Spanish Association for International Law and Human Rights.



The Committee on the Elimination of Racial Discrimination is the body of independent experts that monitors the application of the Convention on the Elimination of all forms of Racial Discrimination in signatory States. Periodically, these States are called on to submit reports to the Committee on how rights are being upheld in each country. The Committee examines these reports, expresses its concerns and makes recommendations to the State Party in the form of "final observations" partly based on the reports submitted by civil society organisations.

At the 78th session of the CERD held on 23–24 February 2011 the Spanish Government's report was presented by a delegation led by Ambassador Javier Garrigues and representatives from the Ministries of Justice, Labour and Immigration, Health, Social Policy and Equality, Interior, Education, Foreign Affairs and Cooperation and the Ombudsman.

Following the official presentation, the Committee's experts posed questions to the Spanish Government about areas specifically concerning the Roma population. They expressed concern regarding the early school dropout rate of Roma students at the compulsory level of education, especially Roma girls, and the existence of segregated schools. They also asked the government about the persistence of shanty towns, the lack of official data broken down by ethnic group and the persistence of a negative social image of the Roma community.

Having completed its period of sessions, the Committee issued recommendations to Spain on 10 March 2011. Among others, we would draw attention to the Committee's insistent mention of the need to collect statistical information on the ethnic and racial makeup of the population; review of criteria applied and methods used in the public and private school admissions process to guarantee a balanced distribution of students in schools; and a call for continued effort in improving the situation of Roma and their integration into Spanish society, especially by adopting measures designed to improve the lot of Roma girls and women⁵.

⁵ <http://www2.ohchr.org/english/bodies/cerd/cerds78.htm>

IV. Annual Meeting of the European Fundamental Rights Platform

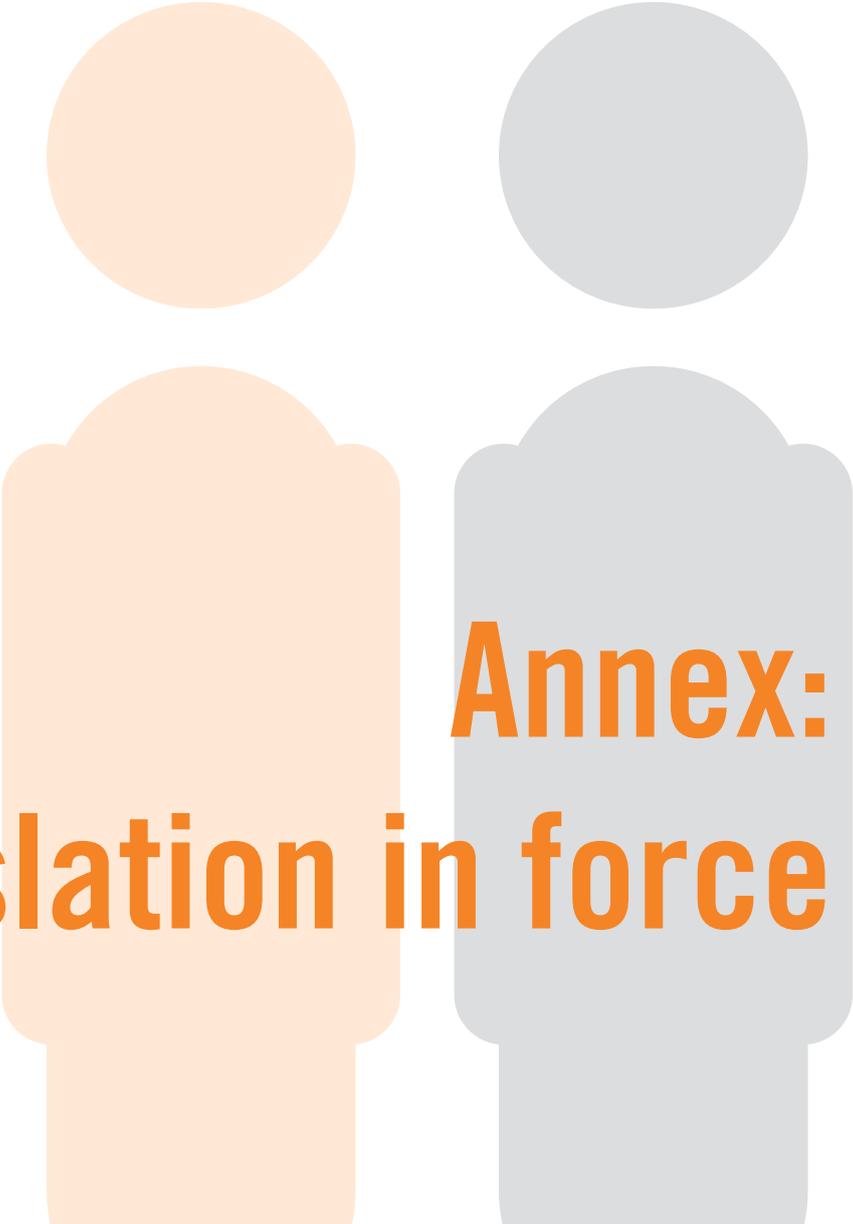
The European Union Agency for Fundamental Rights (FRA), an EU advisory body for the protection of personal rights in Europe, held its IV annual meeting of the European Fundamental Rights Platform in Vienna on 14–15 April 2011. This Platform is a European network for cooperation and the exchange of information between the FRA and the different social organisations working in the field of Fundamental Rights in Europe.

On this occasion there were approximately 180 representatives from civil society organisations, including the Fundación Secretariado Gitano, from the 27 European Union countries which were able to actively participate in a new area of sessions created for the presentation of works developed in different spheres by non-governmental organisations participating on the Platform.

This year we should make special mention of the plenary sessions where important issues were addressed such as victims' access to justice and the EU's ratification of the UN Convention on the rights of persons with disabilities, as examples of best practices. The FRA also devoted a portion of the sessions to explaining the collaboration and working mechanisms between the Agency and social organisations.

The meeting was a success in terms of the representation and participation of the organisations invited and the different topics covered within the broad area of Fundamental Rights. It proved to be a unique opportunity for cooperation and the exchange of experiences at European level⁶.

⁶ <http://www.fra.europa.eu/fraWebsite/networks/frp/meetings/frpapr1-2011.en.htm>



**Annex:
Legislation in force**



Annex: Legislation in force

National

- [Law 19/2007](#) of 11 July 2007 against violence, racism, xenophobia and intolerance in sports.
- [Organic Law 3/2007](#) of 22 March safeguarding effective equality between women and men.
- [Law 62/2003](#) of 30 December 2003 on fiscal, administrative and social order measures. (Chapter III. Measures for the enforcement of the equal treatment principle).
- [Legislative Royal Decree 5/2000](#) of 4 August 2000 establishing the consolidated text of the Law on social order infractions and penalties.
- [Organic Law 10/1995](#) of 23 November 1995 on the Criminal Code.
- [Instrument of ratification of the Convention on the Rights of persons with disabilities](#) done at New York on 13 December 2006, ratified by Spain on 23 November 2007. (Official State Gazette No 96 of 21 April 2008).
- [Instrument of ratification of Protocol No 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms](#) (No 177 of the Council of Europe) done at Rome on 4 November 2000. Official State Gazette (BOE) No 64 of 14 March 2008.
- [Instrument of ratification of the Framework Convention for the Protection of National Minorities](#) (number 157 of the Council of Europe) done at Strasbourg on 1 February 1995. (Official State Gazette No 20 of 23 January 1998).
- [Organic Law 4/2000](#) of 11 January on the rights and freedoms of aliens in Spain and their social integration.

European Union

- [Directive 2006/54/EC](#) of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).
- [Council Directive 2004/113/EC](#) of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.
- [Council Directive 2000/78/EC](#) of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.
- [Council Directive 2000/43/EC](#) of 29 June implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
- [Charter of Fundamental Rights of the European Union](#). OJEC C, 364/1 of 18 December 2000.
- [Resolution of 05 April 1999 of the Technical Secretariat-General making the merged texts of the of the European Convention for the Protection of Human Rights and Fundamental Freedoms](#) done at Rome on 4 November 1950 public: the additional protocol to the Convention, done at Paris on 20 March 1952 and Protocol No 6 abolishing the death penalty done at Strasbourg on 28 April 1983.



International

- **The Universal Declaration of Human Rights** adopted by the General Assembly through Resolution 217 A (III) of 10 December 1948.
- **International Covenant on Economic, Social and Cultural Rights** adopted and open for signing, ratification and accession by the General Assembly through Resolution 2200 A (XXI) of 16 December 1966.
- **International Covenant on Civil and Political Rights** adopted and open for signing, ratification and accession by the General Assembly through Resolution 2200 A (XXI) of 16 December 1966.
- **Discretionary Protocol of the International Covenant on Civil and Political Rights** adopted and open for signing, ratification and accession by the General Assembly through Resolution 2200 A (XXI) of 16 December 1966.
- **Second Discretionary Protocol of the International Covenant on Civil and Political Rights** to abolish the death penalty adopted and open for signing, ratification and accession by the General Assembly through Resolution 44/128 of 15 December 1989.
- **International Convention on the Elimination of all Forms of Racial Discrimination** adopted and open for signing, ratification and accession by the General Assembly through Resolution 2106 A (XX) of 21 December 1965 CERD.
- **International Covenant on Civil and Political Rights** adopted and open for signing, ratification and accession by the General Assembly through Resolution 2200 A (XXI) of 16 December 1966 HRC.
- **International Covenant on Economic, Social and Cultural Rights** adopted and open for signing, ratification and accession by the General Assembly through Resolution 2200 A (XXI) of 16 December 1966 CESCR.
- **Convention on the Elimination of all Forms of Discrimination against Women** adopted and open for signing, ratification and accession by the General Assembly through Resolution 34/180 of 18 December 1979 (CEDAW).
- **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** adopted by the General Assembly through Resolution 45/158 of 18 December 1990 ICRMW.
- **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities**, passed by the General Assembly through Resolution 47/135 of 18 December 1992.
- **Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value**, adopted on 29 June 1951 by the General Conference of the International Labour Organisation at its 34th meeting.
- **Convention concerning Discrimination in Respect of Employment and Occupation**, adopted on 25 June 1958 by the General Conference of the International Labour Organisation at its 42nd meeting.
- **International Convention on the Elimination of all Forms of Racial Discrimination** adopted and open for signing and ratification by the General Assembly through Resolution 2106 A (XX) of 21 December 1965.
- **Declaration on Race and Racial Prejudice**, approved by the General Conference of the United Nations Educational, Scientific and Cultural Organisation on 27 November 1978.
- **Convention against discrimination in education**, adopted on 14 December 1960 by the General Conference of the United Nations Educational, Scientific and Cultural Organisation
- **Protocol Instituting a Conciliation and Good offices Commission to be Responsible for Seeking the settlement of any Disputes which may Arise between States Parties to the Convention against Discrimination in Education**.
- **World Conference against Racism, 2001** (Declaration of Programme of Action).
- **Declaration on the human rights of individuals who are not nationals of the country in which they live**, adopted by the General Assembly through Resolution 40/144 of 13 December 1985.



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Collaboration:

